expect the government to play by the rules if your investment pays off. With that kind of federal attitude, what sane investor would risk their hard-earned capital on today's fledgling companies that take huge financial and technological risks at the request of the government, as COMSAT did in the 1960s.

In the Communications Satellite Act of 1962, Congress commissioned COMSAT to ''establish in conjunction and in cooperation with other countries, as expeditiously and practicable, a commercial communications satellite system.'' At the time, this task was recognized to be a risky financial and technological undertaking. Congress's mandate led to the creation of the International Telecommunications Satellite Organization (INTELSAT), an international consortium that now includes some 140-member countries. A similar international organization, the International Mobile Satellite Organization, or ''Inmarsat'' was formed in 1978.

As the U.S. representative to INTELSAT and Inmarsat, COMSAT has been bound by those organizations' operating agreements which (among other things) obligate COMSAT to meet all of INTELSAT and Inmarsat's capital investment calls. Moreover, COMSAT must seek FCC approval for every investment.

In exchange for living within these constraints, COMSAT was afforded an opportunity to earn a reasonable return on its investments. It also was given exclusive franchise in selling services using INTELSAT AND Inmarsat satellites for communications to and from the United States. Access has never been a problem for customers: these services are energetically offered to all at non-discriminatory rates.

During the 1960s and 1970s, INTELSAT and Inmarsat satellites were the only ''birds'' in the sky American telephone companies and television networks needing satellite services had to purchase them from COMSAT. But since the early 1980s other companies have been allowed to launch competing communications satellite systems. These systems have been extremely successful.

In addition to the growth of new, rival service providers, new technologies also have created more competition for satellites. For example, higher capacity fiber-optic undersea cable has become the favored mode of transmitting phone calls internationally. Today, 117 countries are directly connected to the United States by fiber-optic cable.

As a result of these technological and marketplace development, COMSAT now has only 21 percent of the market for international voice communications and about 42 percent of the market for international video transmission.

There are still those who inexplicably view COMSAT, a relatively small player in the communications marketplace, as a monopoly despite the fact that numerous suppliers serve the market today. Believers in the ''monopoly power'' of COMSAT have introduced a bill in Congress that would, among other things:

Authorize customers to abrogate their existing contracts with COMSAT;

Require the immediate surrender of allocated orbital slots (essentially a parking place for a satellite in outer space) not in actual commercial use, despite the millions of dollars COMSAT, INTELSAT, and Inmarsat have invested in satellites intended for those slots;

Terminate existing services that COMSAT is providing to customers, as well as restricting the company's participation in new services (such as Internet access, high-speed data and interactive services) thus depriving Americans of advanced computer and video technologies.

Maybe some in Congress believe that this is the definition of progressive, fair and pro-competition legislation, but COMSAT and its shareholders aren't laughing about a bill that would knock this competitor out of the market in the name of competition.

This bill would breach COMSAT's implicit but enforceable regulatory compact with the federal government. As the Supreme Court recently said when enforcing promises made by bank regulators to savings and loans institutions, Congress is free to change its policies and, as a result, to break a pledge to a private party. But if Congress does so, it must ''insure the promise against loss arising from the promised condition's nonoccurrence.''

The government also would have to compensate COMSAT for taking the company's property in violation of the Fifth Amendment's guarantee against uncompensated takings. The U.S. is liable for just compensation not just when it physically seizes real or personal property but also, as Justice Holmes said in 1922, ''if regulation goes too far it will be recognized as taking.''

Clearly, it is going ''too far'' to require COMSAT and its investors to bear the burden of a congressional decision to reverse course and exclude treaty organizations and their signatories from almost the entire field of satellite communications. If Congress were to order this, it would have to compensate companies for investments they made at the government's behest and approval—investments made specifically to solidify the U.S. as the satellite industry leader.

The provision that would invalidate existing contracts is even a more obvious and aggressive taking of private property. It is well recognized that contract rights are property rights, protected by the Constitution. Congress can no more abrogate existing contracts than it can take away tangible personal property without just compensation. Yet this bill would void current and future agreements negotiated between COMSAT and other parties.

Of course, deregulation must be pursued with vigor. At the same time, promises governments made to private companies, and on which investors based their investment, must be kept. Deregulation cannot be an excuse for the uncompensated confiscation of private property.

Mr. Chairman, the service restrictions of H.R. 1872 are not only unconstitutional, they are anticompetitive and they are anticonsumer. They will remove a competitor from the marketplace, and therefore, they will then deny consumers, including the U.S. Government, an alternative service provider. COMSAT's competitors will have succeeded in ejecting a major player from the communications marketplace. They are the only beneficiaries of these provisions.

So, Mr. Chairman, we also put satellite reform, but we must proceed in a way that is fair to the customers, fair to COMSAT, and above all else consistent with the Constitution. We must avoid enacting a law that is found to be unconstitutional and that exposes the Treasury to a multibillion-dollar liability for damages.

Mr. Chairman, I ask my colleagues to support this amendment.

Mr. BLILEY. Mr. Chairman, I rise in opposition to the amendment of my good friend, the gentlewoman from Maryland (Mrs. MORELLA).

Before I begin, let me share with my colleagues an interesting bit of history. The phrase ''red herring'' comes from the practice of dragging a smoked and, thus, red herring across the path of a track of dogs trying to follow a scent. The idea was to use the scent to distract them from that prey.

In this case, the taking issue is being used in an attempt to distract Members from the real issue, which is that without incentives that could cost the intergovernmental satellite organizations money, they will never privatize in a procompetitive manner.

The amendment is an attempt to tie down the FCC through litigation. Currently, if COMSAT has a takings claim, it can sue the FCC. Just like anyone else, if there were a taking, they could go to court. Why do they want this amendment? To tie the bill in knots through litigation, that is why.

The amendment offered in committee by the gentleman from Maryland (Mr. WYNN), the colleague of the gentlewoman, was offered which also sought to cause fundamental problems for the bill. The gentleman from Maryland (Mr. WYNN) failed by a vote of 37-to-8. This one dresses the knife up in takings clothing possibly in the hope that many of my conservative colleagues who care about takings will join the gentlewoman in attacking our carefully crafted legislation.

I have to tell my colleagues that I do not think the amendment of the gentlewoman from Maryland (Mrs. MORELLA) is designed to fix the takings problem. It is designed to protect her constituent COMSAT. And it does that well. It says that the FCC shall not restrict the activities of COMSAT in a manner which would create liability for the U.S. under the fifth amendment, which would mean COMSAT could go to the courts as soon as the FCC issued a decision and tie the bill up for years. COMSAT's whole strategy is to delay reform. This would play right into their hands.

What the amendment does not take into account is that we already have a Constitution with the fifth amendment that protects against takings. There is also a remedy. Under current law, if they think there is a taking, they can sue, but under the same laws applicable to any other company.

Once again, the intergovernmental satellite organizations and the U.S. affiliate, COMSAT, want to continue the special advantages they have always had.

Now, I thought I would take a moment to address the takings issue itself. The committee has thoroughly analyzed that there are no takings. CRS has looked at the issue. They found that ''a review of the bill's text reviews no provisions likely to cause constitutional takings.'' The committee's analysis, which quotes at length from the CRS, is available in the committee report.

I would now like to read a letter dated May 5 from the Washington Legal Foundation to me.

Dear Chairman Bliley, this is in response to your letter requesting a clarification of