

WLF's views regarding the Communications Satellite Competition and Privatization Act in light of concerns that WLF's views had been mischaracterized.

I want to make it very clear that the Washington Legal foundation does not in the any way oppose your bill or in any manner support amendments to your bill. WLF does not engage or partner in any lobbying activity whatsoever. In fact, some members of the WLF's own advisory boards disagree with the WLF's legal analysis of the takings clause in connection with this legislation.

Unfortunately, when we sent our analysis to Members who requested it, we did not anticipate that it would be used as the basis for any legislative tactics or strategy which would oppose your satellite reform bill. We take no legislative position whatsoever. We are grateful for your leadership on free enterprise issues and appreciate the opportunity to clarify this matter for you. Sincerely, Daniel J. Popeo, General Counsel.

Mrs. MORELLA. Mr. Chairman, will the gentleman yield?

Mr. BLILEY. I yield to the gentlewoman from Maryland.

Mrs. MORELLA. Mr. Chairman, if in fact there is no takings problem, then what is wrong with the amendment?

Mr. BLILEY. Reclaiming my time, the gentlewoman must not have been listening. They have the right under the Constitution now by the fifth amendment. What this does is it puts a chill on the FCC. As soon as they do anything, they will can run into court and tie them up for years. That is what the strategy of COMSAT is, delay, delay, delay, hold their monopoly, get those 68 percent profits as long as they possibly can; and if we are forced to privatize, set it up in such a way that all we have done is change the name, but we still have the monopoly.

Mr. WYNN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to thank my colleague, the gentlewoman from Montgomery County, Maryland, (Mrs. MORELLA) for her leadership on this issue. It is a very important issue to one of our own companies, COMSAT.

The question that is posed by this amendment is simply this: deregulation or plain old theft? This the question was posed by Nancie Marzulla, president of the Defenders of Property Rights, in an op-ed piece in the April 27, 1998, edition of the Washington Times.

In her piece they state clearly that the sponsors in the quest for deregulation have proposed Federal legislation that could end up costing American citizens hundreds of millions, if not billions, of dollars to cover COMSAT's takings claims. That is right, takings claims.

As reported by the Committee on Commerce, this legislation contains restrictions that will limit the services that COMSAT can offer using its satellite assets. The restrictions take effect if rigid milestones are not met for privatization. The critical point, however, is that these milestones are not milestones within the control of COMSAT; they are milestones beyond their control, in fact, in the control of international organizations.

COMSAT is urging and helping move toward privatization, but they cannot control the pace of privatization. Nonetheless, they would be subject to unfair restrictions if our imposed milestones are not met. And I do not believe that this is fair.

I know we have constitutional scholars in this body, and I call upon them today. This is an unconstitutional taking. COMSAT is a private, investor-owned company. COMSAT's contract rights are property; and under the fifth amendment of the Constitution, the government simply cannot take this property, which is what this legislation does, without paying for it; and I fully expect that COMSAT will be filing claims on this issue.

Should this occur, the money the U.S. taxpayers will have to pay as a result of litigation will far exceed anything we are contemplating now in the context of our tobacco concerns. The amendment being offered by my colleague today will significantly reduce our liability and that of our constituents by eliminating the takings provisions for the bill's restrictions on COMSAT. The amendment does the right thing by allowing COMSAT to continue to use its property, and I urge our Members to support this amendment.

Now, I applaud the purpose of the chairman with this legislation, and I think the intent is laudable and he has worked very hard. However, the underlying theory of this legislation is quite flawed. The sponsors of this bill would have us believe that COMSAT is a huge, untenable monopoly. This is simply not true.

In fact, there are more than 20 current competitors to COMSAT, with more than \$14 billion in investments and \$40 billion in stock value. If this is not competition, I do not know what is. I do not think we can ask for much more. But let us consider further.

In 1998, COMSAT controlled 70 percent of the international voice traffic. Today they have only a 21 percent share. Significantly, COMSAT's market share has declined. In 1993, COMSAT controlled 80 percent of the video market; today it controls 42 percent. Clearly, competition is emerging under our present structure. We do not need this piece of legislation to promote competition.

But finally and most telling, on April 28 of this year, the FCC declared that COMSAT is nondominant in most of its market, thus authoritatively eliminating the argument that we have to get rid of COMSAT or punish COMSAT because it is an egregious monopoly.

Despite these facts, however, the sponsors of the legislation, so intent on privatizing this industry, would subject our constituents to potentially billions of dollars in liability as a result of litigation.

I think Ms. Marzulla put it best in her op-ed piece when she said, "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." And that is what we are debating here today.

I urge my colleagues to support and adopt the Morella amendment. I believe that this is a proper move and an appropriate step to making this bill something that we can support.

Mr. WELDON of Florida. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I too oppose the amendment offered by the gentlewoman from Maryland (Mrs. MORELLA). The Morella amendment is premised on the notion that H.R. 1872, as reported out of the committee, would work a taking of COMSAT's property. This proposition seems to me to be entirely unfounded.

To begin with, I am at a loss to see any property that would be impacted by the bill. The term "property" has a particular legal meaning. It is not just a unilateral expectation, as the opponents of this bill have suggested, but rather an entitlement based upon a mutually explicit understanding.

The fact that COMSAT or its shareholders may have made investments with the expectation that COMSAT would continue to operate as the monopoly provider of INTELSAT and Inmarsat's services in the United States does not give them a property interest in those investments. Half the equation is missing.

To constitute property protected by the fifth amendment, COMSAT would need to show that these expectations were based upon a mutuality of understanding sufficiently well-grounded to create an entitlement protected at law. Of course, any such claim would collide headlong with the reality that when Congress established COMSAT in the 1962 Satellite Act, it expressly reserved the right to modify COMSAT's role in the market at any time.

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To the extent that COMSAT and its shareholders made investments based on the provisions of the Satellite Act, they did so presumably knowing of the risk that Congress might some day do so. It is absolutely baffling to me that COMSAT could think that Congress created an entitlement, a property interest, by the terms of the Satellite Act. In any event, even if COMSAT had identified a protected property interest that would be impacted by H.R. 1872, the legislation hardly would reach the level of a regulatory taking, quote-unquote, under the Supreme Court's cases.

The bill will without a doubt adjust the benefits and burdens of economic life, quote-unquote, and end one of the last government protected monopolies in the telecommunications field. It would not, however, take any tangible property or vitiate any specific right or assurance conferred by the government. I therefore urge the Members to oppose this amendment.