Calendar No. 189

106TH CONGRESS *1st Session*	SENATE	REPORT 106–100

OPEN-MARKET REORGANIZATION FOR THE BETTERMENT OF INTERNATIONAL TELECOMMUNICATIONS ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 376

JUNE 30, 1999.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

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JUNE 30, 1999.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 376]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 376) "A Bill to amend the Communications Satellite Act of 1962 to promote competition and privatization in satellite communications, and for other purposes", having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

Extraordinary technological and market changes have reshaped the global satellite communications marketplace in the thirty-seven years since enactment of the Communications Satellite Act of 1962 and the creation of COMSAT and INTELSAT. Where once only a treaty-based intergovernmental satellite system would be willing to undertake the enormous financial risks associated with developing, launching, and maintaining a global satellite system, there are now multiple commercial satellite systems providing an array of international telecommunications services in this increasingly competitive marketplace. However, in this mature, competitive satellite services environment, it is no longer appropriate for any single competitor to be advantaged by an intergovernmental structure accompanied by certain privileges and immunities; rather it must be transformed into a commercial structure comparable to that of any of the existing commercial satellite entities.

Separately, COMSAT, the private company created statutorily both to assume the private financial investment risks of the United

States Government's vision of INTELSAT and to serve as this nation's Signatory to INTELSAT, must also be transformed into a normalized commercial entity, which includes shedding outdated statutory encumbrances. Such dramatic structural shifts necessitate adaptation of our nation's satellite laws to a new policy framework that more accurately reflects the burgeoning international satellite communications marketplace of the 21st century. S. 376 reflects this need for a new regulatory structure cognizant of the wholesale changes that have taken place, and continue to take place, in this dynamic market.

S. 376 is the fundamental realization of this new policy framework. While recognizing the imperative that INTELSAT be privatized as rapidly as possible, the Committee is mindful of the fact that INTELSAT is an intergovernmental organization which the United States can influence, but not control. Importantly, S. 376 provides a sound statutory framework for the timely, pro-competitive privatization of INTELSAT by no later than January 1, 2002, creating a process to both encourage and verify such bona fide privatization. This process includes requirements for regular reports to Congress to facilitate our continued monitoring of INTELSAT's progress toward privatization. S. 376 also sets forth the necessary guidance to, and requirements for, the President and the Federal Communications Commission with respect to their respective roles and responsibilities in the process. S. 376 leverages access by INTELSAT to the most lucrative telecommunications market in the world—the United States market—as an incentive to achieve a rapid pro-competitive privatization. In so doing, the legislation withholds direct market access from INTELSAT until it is privatized, denying them the ability to expand their market presence and solidify a broader customer base. S. 376 embraces the view that any satellite privatization legislation must include incentives for INTELSAT to privatize in a pro-competitive manner.

With respect to COMSAT, S. 376 repeals the old, unnecessarily intrusive statutory ownership and governance provisions that have the effect of hindering competition by saddling one company with unique restrictions, such as access to capital. Absent repeal of such provisions, COMSAT may by dint of regulation, not marketplace behavior, be deprived of financial opportunities available to its competitors.

Enactment of S. 376 facilitates enhanced competition, rather than elimination of a single competitor from the marketplace, thus furthering our goal of bringing advanced satellite-based telecommunication services to every corner of this nation and the globe, including poor, remote and lesser developed countries.

BACKGROUND AND NEEDS

In 1962, Congress passed the Communications Satellite Act (1962 Act), creating a new publicly-traded stock corporation, the Communications Satellite Corporation (COMSAT), with the specific charter of forming an international consortium to realize the United States vision of a global satellite communications system able to reach every corner of the globe. As a result, the International Telecommunications Satellite Organization (INTELSAT) was established through an unprecedented partnership of nations

in Africa, Europe, the Americas, and Asia. Given the infancy of satellite technology in 1963, this multinational partnership was really borne from the recognition that individual companies were not willing to undertake the financial and other risks associated with development of such a global satellite communications system. In 1973, INTELSAT was transformed into an international treaty-based organization in which governments ("Parties") and telecommunications entities ("Signatories") each play a particular role. The Parties are the national governments that entered into the treaty agreement on INTELSAT, and that designate the Signatory to INTELSAT. The Signatories are themselves the actual owners and operators of the INTELSAT system, responsible for the distribution of INTELSAT services in their respective countries.

While initially the foreign Signatories were government-owned Post, Telegraph and Telecommunications (PTT) entities, this too has evolved in keeping with the overall global trend toward privatization and liberalization epitomized in the WTO Agreement on Basic Telecommunications. The majority ownership stake of INTELSAT is held by Signatories that are fully or partially privatized, or committed to privatization on a general timeframe. Unlike foreign Signatories, the United States Signatory, COMSAT, is a publicly traded private corporation with no government ownership and with no former or current participation in the domestic United States telecommunications marketplace. In keeping with its role as the sole United States owner and investor in INTELSAT since its inception, COMSAT currently has the exclusive franchise on the distribution of INTELSAT capacity in the United States market.

Today, INTELSAT has realized the vision set forth by the United States Government by its development and operation of a global satellite system that serves every corner of the world. As a byproduct of its success, its financing of the development of accessible satellite technology enabled greater commercial confidence and reliance on the use of satellite-based telecommunications infrastructure. It and its 143 member countries provide space segment capacity for international telecommunications services. As a result of a previous commercial spin-off (New Skies Satellite NV), INTELSAT is currently operating 19 satellites, supporting basic telephony, INTERNET, video, and other services to users around the world. Competition to INTELSAT is characterized by the Federal Communications Commission as comprising both satellite systems and high-capacity fiber optic submarine cables spanning the globe. For example, PanAmSat Corporation, owned 82% by Hughes, currently operates a global network of 19 satellites with announced plans to further expand to 20 satellites by end of year and 24 in 2000. U.S. submarine cable carriers, which are dominated by MCI/WorldCom, ATT, Sprint, and other smaller carriers are capable of collectively carrying capacity and are also significant sources of competition.

LEGISLATIVE HISTORY

Senator Burns, Chairman of the Subcommittee on Communications, introduced S. 376 on February 24, 1999 to foster increased competition in the increasingly dynamic international satellite communications marketplace. In addition to two hearings held during

the 105th Congress, the Communications Subcommittee held a two-panel hearing on S. 376, on March 25, 1999. Government testimony was received from Ambassador Vonya McCann, Office of Communications and Information Policy, United States Department of State; Mr. Roderick Porter, Acting Chief, International Bureau, Federal Communications Committee; private sector testimony was received from Ms. Betty Alewine, Chief Executive Officer, Comsat Corporation; Conny Kullman, Director-General, Intelsat; James Cuminale, General Counsel and Senior Vice President, Panamsat Corporation; and John V. Sponyoe, Chief Executive Officer, Lockheed Martin Global Telecommunications. Subsequent to the hearing, testimony was received from MCI/WorldCom, ATT, British Telecom, Iridium, and Hughes. On May 5, 1999, the Senate Commerce Committee, Chaired by Senator McCain, met in an open markup session to consider S. 376. At that time, Senators McCain, Burns, Hollings and Breaux introduced an amendment in the nature of a substitute which was voted out of the full committee by unanimous consent.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 24, 1999.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 376, the Open-Market Reorganization for the Betterment of International Telecommunications Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kathleen Gramp (for federal cost) and Jean Wooster (for the private-sector impact).

Sincerely,

PAUL VAN DE WATER
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 376—Open-Market Reorganization for the Betterment of International Telecommunications Act

Summary: S. 376 would amend existing law regarding the federal regulation of international satellite communications systems and their relationship to the U.S. market. A treaty-based entity—the International Telecommunications Satellite Organization (INTELSAT)—currently provides satellite-based communications services worldwide. A private company, COMSAT, serves as the U.S. signatory to the organization and, under current law, has the

right to market its services. This bill would establish U.S. policy regarding the privatization of INTELSAT and would direct the President, the Federal Communications Commission (FCC), and COMSAT to implement those policies. If the privatization fails to occur in a manner consistent with the criteria and deadlines in the bill, the President would be required to pursue various remedies, including having the U.S. withdraw from INTELSAT. Other provisions in the bill would revise the statutory guidelines for U.S. participation in the International Mobile Satellite Organization following its privatization in April 1999, and would repeal most of the statutory conditions on COMSAT's financing and operations.

Assuming appropriation of the necessary amounts, CBO estimates that implementing S. 376 would cost about $1 million over the 2000–2004 period if INTELSAT meets the privatization standards in the bill. If triggered, the sanctions for failing to meet the privatization criteria would affect discretionary spending for procuring and regulating telecommunications services, but CBO has no basis for estimating any such costs. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

S. 376 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. Provisions in this bill may affect COMSAT and end users of INTELSAT services if INTELSAT does not meet the privatization criteria outlined in the bill.

Estimated cost to the Federal Government: CBO estimates that federal agencies would spend about $1 million over the 2000–2004 period to complete the various reports and negotiations required by S. 376. CBO expects that most of these costs would be incurred by the Department of State, which along with the Department of Commerce implements U.S. policy with regard to such international organizations. According to the FCC, the commission's workload would not change significantly if the privatization of INTELSAT meets the conditions specified in the bill.

Most observers expect that INTELSATE will be privatized by 2002, but there is a chance that the new entity may not satisfy some of the criteria in S. 376. Should that occur, S. 376 would require that the U.S. withdraw as a party to INTELSAT. In addition, INTELSAT would not be allowed to market its services or capacity directly to end users (other than to the U.S. signatory, COMSAT) unless the privatization criteria are met.

If triggered, the bill's sanctions would affect the government's spending for certain international telecommunications services. But CBO has no basis for estimating the magnitude of the potential costs because we cannot predict how the FCC would reconcile the need to maintain access to INTELSAT satellites while complying with the bill's restrictions on the marketing of its services if the privatization is deemed deficient. Agencies that purchase certain services directly from COMSAT, such as the Department of Defense, might need to renegotiate contracts or modify equipment if the sanctions were to require a change in suppliers. On the other hand, their costs could be negligible if the FCC determined that COMSAT could continue to provide INTELSAT services. Agencies

that use INTELSAT services through government contracts with Sprint and MCI WorldCom would be affected only if those companies changed their prices as a result of the sanctions.

According to agency officials, the FCC would play a key role in implementing these sanctions, including determining the terms and conditions under which U.S. market could continue to have access to INTELSAT services. CBO estimates that FCC's role in the implementation of such sanctions would have no net budgetary impact, because the commission is authorized under current law to collect fees from the telecommunications industry sufficient to offset the cost of its regulatory and applications activities.

Pay-as-you-go considerations: None.

Estimated impact on State, local, and tribal governments: S. 376 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: S. 376 would impose no new private-sector mandates as defined in the UMRA. Provisions in this bill may affect COMSAT and end users of INTELSAT services if INTELSAT does not meet the privatization criteria outlined in the bill.

Based on information from the FCC, COMSAT, and INTELSATE, CBO expects that INTELSAT would be privatized by the January 1, 2002, deadline. If INTELSAT does not privatize in a manner consistent with the criteria set forth in the bill, the bill would direct the United States to withdraw as a party from INTELSAT. Upon withdrawal, COMSAT would no longer be the U.S. signatory and therefore could not be an investor in INTELSAT, which would reimburse COMSAT for its investment. That reimbursement would be made at the book value of the stock rather than its market value, causing a loss for COMSAT. COMSAT would probably still be permitted to sell INTELSAT services to U.S. customers in a non-signatory capacity.

Estimate prepared by: Federal costs: Kathleen Gramp; impact on the private sector: Jean Wooster.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The Committee believes that the bill will not subject any individuals or businesses affected by the bill to any additional regulation.

ECONOMIC IMPACT

After full implementation of the bill, individuals and businesses will benefit from increased opportunities for competition in the provision of international satellite services. Increased competition, and the resulting choices in the marketplace will provide consumers with better and more product for their dollar, as well as potentially freeing up their resources for other pursuits.

PRIVACY

There will be no impact on personal privacy as a result of this legislation.

PAPERWORK

The paperwork resulting from this legislation will be primarily due to the FCC licensing process.

SECTION-BY-SECTION ANALYSIS

Section 4. Revision of Communications Satellite Act of 1962

This section adds a new title VI to the 1962 Act regarding Satellite Services Competition and Privatization, as follows:

TITLE VI—SATELLITE SERVICES COMPETITION AND PRIVATIZATION

SUBTITLE A—TRANSITION TO A PRIVATIZED INTELSAT

Section 601. Policy of the United States

This section states that it is the policy of the United States that INTELSAT be privatized in a pro-competitive manner as quickly as possible, but not later than January 1, 2002, recognizing that a reasonable transition period is required to achieve the comprehensive restructuring of the organization that the United States envisions. This section also encourages Inmarsat to fully implement its privatization framework.

Section 602. Role of COMSAT

This section requires COMSAT, as United States Signatory, to act as an aggressive advocate of United States policy in favor of a pro-competitive privatization of INTELSAT. In so doing, COMSAT is required to consult fully with the United States government prior to exercising its voting rights with respect to any matter related to INTELSAT's privatization, and to comply fully with any instructions issued by the United States. Further, this section also provides for the case where the United States Signatory, COMSAT, is acquired after the date of enactment of this section, by requiring the President and the Federal Communications Commission (the Commission) to ensure that the instructional process between the United States Government and COMSAT safeguards against conflicts of interest.

The Committee does not intend that the consultative requirements of this section should in any way inhibit the timely exercise of COMSAT's voting rights in support of United States Government efforts to accomplish a rapid and complete pro-competitive privatization of INTELSAT that complies with the requirements set forth in sections 612(b) and 613(c). For example, the Committee does not intend to require that in order for communications to be deemed valid instructions from the United States Government to COMSAT (or any acquiring entity) that they be set forth in writing as such a requirement ignores the realities of timing in international negotiations.

Subsection (b) requires the President and the Commission to report to Congress annually on the progress of privatization efforts.

Section 603. Restrictions pending privatization

This section prohibits INTELSAT from directly entering the United States communications market to provide space segment or satellite communications services to carriers or end-users until after there has been a pro-competitive privatization in accordance with the criteria set forth in section 613(c).

This section embraces the view that any satellite privatization legislation must include incentives for INTELSAT to privatize in a pro-competitive manner. The prospect of expanded market access in the most lucrative telecommunications market in the world—the United States market—serves as a significant incentive for INTELSAT to achieve a rapid pro-competitive privatization. Therefore, the Committee has decided to withhold direct market access from INTELSAT until it is privatized.

SUBTITLE B—ACTIONS TO ENSURE PRO-COMPETITIVE SATELLITE SERVICES

Section 611. Privatization

This section directs the President to seek to conclude a pro-competitive privatization of INTELSAT no later than January 1, 2002. The President shall seek to confirm the outcome of the privatization negotiations through a final decision of the INTELSAT Assembly of Parties prior to that date, and to ensure that a subsequent initial public offering of stock of the privatized INTELSAT entity occurs in a timely fashion, taking into account the relative market conditions. The Committee intends to encourage INTELSAT to proceed to a public offering as quickly as possible, but does not intend to establish an exact timeline which would completely prohibit taking into consideration the realities of the marketplace, particularly the marketplace for stock offering by satellite companies. In the transformation of INTELSAT into a normal commercial entity, the Committee intends to allow INTELSAT to proceed with a public stock offering in a manner consistent with normal business considerations.

The President and the Commission are also directed to ensure the privatization of Inmarsat continues in a pro-competitive manner.

Section 612. Provision of services in the United States by privatized affiliates of IGOs

Subsection (a) requires the Commission to apply to extend its DISCO II rules to a privatized affiliate or successor of an IGO. There will be a presumption in favor of any application or letter of intent submitted by a privatized affiliate or successor of an IGO if such affiliate or successor is licensed by a country that is a member of the World Trade Organization (WTO) and the services to be offered are included in the commitments of the United States under the WTO Basic Agreement on Telecommunications Services (WTO Basic Telecom Agreement). The Commission may attach conditions to the approval if the IGO affiliate or successor raises the

potential for competitive harm; in exceptional cases, it may also deny the application where the IGO affiliate or successor would pose a very high risk to competition in the United States satellite market. If the IGO affiliate or successor is not licensed by a WTO member country, then the Commission should apply the existing Eco-Sat test for market entry by entities from non-WTO member countries set out in the Commission's DISCO II decision.

Subsection (b) is applicable only to IGO affiliates. It sets forth factors related to an IGO affiliate and its structure, degree of independence and ability to benefit from any continued relationship with the IGO that the Commission should use in determining under subsection (a)(2) whether the IGO affiliate raises the potential for competitive harm.

Subsection (c) recognizes that there is no further need for such a determination under subsection (b) once the IGO is pro-competitively privatized consistent with section 613. Thus, upon approval of an application pursuant to section 613(d) this provision ceases to have effect.

In subsection (d), the Committee clarifies that once the determination under section 613 has been made, the Commission may then proceed to make a public interest determination based on traditional factors applied to any FCC application. While it is not intended by this provision that the Commission may deviate from the statutory criteria provided in section 613 pertaining to its evaluation of the implementation of privatization and, further, it is expected that the Commission would give due deference to the public interest benefits of market access for a pro-competitively privatized INTELSAT, this section is not intended to confine the Commission's public interest determination to factors related to privatization.

Section 613. Presidential negotiating objectives and FCC criteria for privatized IGOs

Subsection (a) requires that, within 30 days after a final decision on the legal structure and characteristics of a privatized INTELSAT by the INTELSAT Assembly of Parties, the President shall transmit to Congress a report on (1) the extent to which this decision meets the criteria set forth in section 613(d) and (2) whether entry into the United States communications markets by the privatized INTELSAT or Inmarsat will not likely distort competition. In determining whether entry by a privatized INTELSAT or Inmarsat will not likely distort competition, the President needs to take into consideration all other relevant competitive factors, including the structure of other satellite operators.

Subsection (b) sets forth the 3 purposes that the criteria contained in section 613(c) serves: (1) the negotiating objectives to be used by the President and COMSAT to achieve the privatization of INTELSAT by January 1, 2002, as well as the continued privatization of Inmarsat; (2) the standard for measuring under section 613(a) whether negotiations on privatization of INTELSAT and Inmarsat have resulted in an acceptable framework for privatization; and (3) the licensing criteria to be used by the Commission in determining whether the accepted pro-competitive framework has been properly implemented.

Subsection (c) contains the criteria for the 3 purposes set forth in (b). The Committee does not intend that any one criterion will be given greater scrutiny or importance by the Commission over another in identifying a pro-competitively privatized INTELSAT or Inmarsat. The Committee notes the need for due consideration of the international connectivity requirements of "thin route" countries, and encourages all competitive international facilities-based service providers, both fiber optic submarine cable and satellite operators, to seek to provide service to those "thin route" countries.

Subsection (d) provides for the Commission, after the Presidential report to Congress under (a), to determine whether the privatization objectives of subsection (c) have been implemented by the privatized IGO. The Committee intends that the Commission shall neither expand nor contract the specific list of criteria for purposes of determining whether a pro-competitive privatization has been implemented. Once it has determined, the Commission may based on public interest reasons unrelated to privatization implementation decide to condition or deny an application.

The Committee notes that INTELSAT has constructed its headquarters building in the International Center managed by the Department of State under the International Center Act (Public Law 90–553). INTELSAT has made substantial investments in its telecommunications infrastructure at this headquarters site, and INTELSAT's continued presence would be an asset both to the International Center and to the District of Columbia. The Committee would therefore encourage the Department of State to negotiate an appropriate modification or novation of the underlying land lease for the International Center property that would permit INTELSAT to remain in its present headquarters after privatization.

Section 614. Failure to privatize in a timely manner

This section sets forth the actions to be taken by the President in the event that INTELSAT fails to fully privatize as provided in section 611 by January 1, 2002. Should INTELSAT fail to privatize by January 1, 2002, the President is directed to (1) instruct all government agencies to grant a preference for the procurement of satellite services from commercial providers of such services rather than IGOs; (2) immediately commence deliberations on additional measures that can be implemented to ensure rapid privatization; (3) report those measures to the Congress no later than March 31, 2002; and (4) withdraw the United States Government as a Party from INTELSAT.

Subsection (b) reserves to the President, after consultation with Congress, the ability to determine that it is in the national interest to provide a reasonable extension of time for INTELSAT to complete its privatization. The Committee recognizes that there may, for reasons outside the control of INTELSAT, be unintended delays or other hindrances to the achievement of the pro-competitive privatization.

SUBTITLE C—COMSAT GOVERNANCE AND OPERATION

Section 621. Elimination of privileges and immunities

Subsection (a) eliminates any privileges and immunities that COMSAT has as a result if being the United States Signatory to INTELSAT, with narrow exceptions provided for during the transition period to privatization and elimination of the role of Signatories and Parties. The narrow exceptions for which COMSAT retains its privileges and immunities are for action taken as Signatory to INTELSAT or Inmarsat upon the instructions of the United States Government or when fulfilling its Signatory obligations under the INTELSAT Operating Agreement.

Subsection (b) limits COMSAT's liability for actions taken as a signatory or a representative of the United States to COMSAT's percentage of responsibility as determined by the court. In any event, the Committee does not intend that the percentage of responsibility would correspond to any percentage greater than COMSAT's ownership share in INTELSAT.

Subsection (c) provides, as a matter of equity, that the elimination of privileges and immunities contained in this section shall apply only to actions or decisions taken by COMSAT after the date of enactment of this section.

Section 622. Abrogation of contracts prohibited

This section prohibits the abrogation of contracts, including tariffs in the nature of contracts, or agreements involving COMSAT or INTELSAT, or of any specific terms or conditions in such contracts or agreements in force on the date of enactment. In addition, this section prohibits the Commission from permitting, by rulemaking or any other means, the invalidation of any such contracts or agreements. The Committee believes that there is no justification for allowing the abrogation of any such contracts, and that with respect to the contracts between COMSAT and its customers, they were bid and won in a competitive environment, including both international satellite and fiber optic submarine cables.

Government abrogation of private contracts is an extraordinary remedy that it has only been applied four times since enactment of the Communications Act of 1934, and only then under the extreme circumstances when long-term contracts had been used to freeze an entire market. And both the FCC and a U.S. district court have rejected arguments that the circumstances exist to for the government to abrogate COMSAT's long-term contracts. Moreover, such an action seems particularly unwarranted where COMSAT's customers are both its competitors and much larger corporations, and the FCC has determined that these Contracts do not impede Comsat's customers from switching service providers.

Congress is also concerned that because COMSAT is a private, investor-owned entity, and contracts are property rights, such a government-mandated taking of this property could be deemed unlawful. Moreover, any attempted congressional adjudication that COMSAT has an unlawful monopoly, and therefore its contracts should be taken away, could be determined to usurp the judiciaries function and be an unconstitutional Bill of Attainder.

Section 623. Permitted COMSAT investment

This section states that nothing in the Act shall be construed to preclude COMSAT from investing in or owning satellites or other facilities independent of INTELSAT or from providing any type of service through the capacity of satellite systems other than INTEL SAT. Nor should this section be construed to restrict COMSAT in the type of contracts it can enter into or services it can provide via these independent facilities or satellites.

SUBTITLE D—GENERAL PROVISIONS

Section 631. Promotion of efficient use of orbital slots and spectrum

This section mandates that all satellite system operators authorized to access the United States market make efficient and timely use of orbital and spectrum resources for which they are licensed or otherwise authorized to hold. The Committee is concerned about the warehousing of scarce resources that inhibits competition. Where assurance of such efficient and timely use cannot be provided, satellite system operators shall be required to arbitrate their rights to these procedures in compliance with International Telecommunications Union (ITU) procedures applicable to the use of such resources.

Section 632. Prohibition on procurement preferences

This section states that, except as provided in section 61 4, nothing in this title or the Communications Act shall be construed as authorizing or requiring a procurement preference for or bias against the use of INTELSAT or Inmarsat space segment capacity for the provision of communications services to the United States government. The Committee intends this section to clarify that it is the policy of the United States that, except as specifically provided in this title, IGO or IGO affiliated satellite systems are to be accorded the exact same treatment in Federal government procurement processes as any commercial satellite system.

Section 633. Satellite auctions

This section prohibits the Commission from assigning by competitive bidding either orbital locations or spectrum used for the provision of international or global satellite communications services.

Section 634. Relationships to other law

This section states that the provisions of this Act shall govern in the event of any inconsistency with provisions of the Communications Act.

Section 635. Exclusivity arrangements

Subsection (a) prohibits any satellite system operator from acquiring or enjoying an exclusive right to handle communications traffic to or from the United States and any other country by reason of any concession, contract, understanding or working arrangement to which the satellite system operator is a party. The Committee intent here is simply to ensure that satellite system operators do not negotiate or seek to negotiate exclusive market access

rights with the national licensing authorities, not to prohibit satellite systems from being the sole system operator or service provider for service to between a national market and the United States. To do otherwise would result in Congress holding a single commercial entity responsible for the domestic telecommunications policy of every nation in which it seeks to conduct business. Moreover, it would undermine the congressional goal of fostering incentives for commercial entities to provide service to unserved and underserved areas here and around the world.

Subsection (b) states that, in enforcing the prohibition in subsection (a), the Commission shall not require the termination of existing satellite telecommunications services under contract with, or a tariff commitment to, a satellite system operator already providing service in the United States as of the date of enactment of this section. This subsection further provides that the Commission may, if it finds it in the public interest, require the termination of new services to the country that the satellite operator has successfully negotiated the exclusive right to handle traffic.

SUBTITLE E—DEFINITIONS

Section 641. Definitions

Subsection (a) provides definitions for 20 terms used in the new title VI of the 1962 Act. Subsection (b) provides that, except where defined otherwise in subsection (a), terms used in new title VI that are defined in the Communications Act of 1934 (47 U.S.C. 151 et seq.) have the same meaning as provided in that Act.

Section 5. Repeal of ownership and structural provisions

This section makes necessary conforming and technical changes in the 1962 Act to reflect the substantive changes in that Act made by the bill, including the repeal of ownership limitations and certain governance provisions of the Act. For example, the current 10 percent and 50 percent ownership caps would be removed so as to enable COMSAT to have the same access to capital as any other commercial corporation. The other enumerated sections that are repealed address specific organization and structural restraints on COMSAT that constrain its ability to act as any other private corporation, actions by the President, the National Aeronautics and Space Administration, and the Commission that have been completed or are no longer necessary, and reports to Congress that are no longer necessary.

Section 6. International maritime satellite Telecommunications Act amendments

This section amends the International Maritime Satellite Telecommunications Act to authorize the President, in order to ensure the continued provision of global maritime distress and safety satellite telecommunications services after the privatization of INMARSAT, to maintain U.S. membership in the International Mobile Satellite Organization on behalf of the United States in order to ensure the continued provision of global maritime distress and safety satellite services after the privatization of INMARSAT. Subsection (b) repeals Sections 502, 503, 504, and 505 (47 U.S.C.

751, 752, 753, and 757) effective on the date on which the IMSO ceases to operate directly a global mobile satellite system.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S.376:

Senator Burns, for himself, Mr. Burns, Mr. Hollings, and Mr. Breaux, offered an amendment in the nature of a substitute. By a rollcall vote of 20 yeas and 0 nays, the amendment was agreed to unanimously.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS SATELLITE ACT OF 1962

TITLE I—SHORT TITLE, DECLARATION OF POLICY AND DEFINITIONS

SEC. 101. SHORT TITLE.

This Act may be cited as the "Communications Satellite Act of 1962".

SEC. 102. DECLARATION OF POLICY AND PURPOSE.

[47 U.S.C. 701]

(a) The Congress hereby declares that it is the policy of the United States to establish, in conjunction and in cooperation with other countries, as expeditiously as practicable a commercial communications satellite system, as part of an improved global communications network, which will be responsive to public needs and national objectives, which will serve the communication needs of the United States and other countries, and which will contribute to world peace and understanding.

(b) The new and expanded telecommunication services are to be made available as promptly as possible and are to be extended to provide global coverage at the earliest practicable date. In effectuating this program, care and attention will be directed toward providing such services to economically less developed countries and areas as well as those more highly developed, toward efficient and economical use of the electromagnetic frequency spectrum, and toward the reflection of the benefits of this new technology in both quality of services and charges for such services.

(c) In order to facilitate this development and to provide for the widest possible participation by private enterprise, United States participation in the global system shall be in the form of a private corporation, subject to appropriate governmental regulation. It is the intent of Congress that all authorized users have nondiscriminatory access to the system; that maximum competition be main-

tained in the provision of equipment and services utilized by the system; that the corporation created under this Act be so organized and operated as to maintain and strengthen competition in the provision of communications services to the public; and that the activities of the corporation created under this Act and of the persons or companies participating in the ownership of the corporation shall be consistent with the Federal antitrust laws.

(d) It is not the intent of Congress by this Act to preclude the use of the communications satellite system for domestic communication services where consistent with the provision of this Act nor to preclude the creation of additional communications satellite systems, if required to meet unique governmental needs or if otherwise required in the national interest.

SEC. 103. DEFINITIONS.

[47 U.S.C. 702]

As used in this Act, and unless the context otherwise requires—

(1) the term "communications satellite system" refers to a system of communications satellites in space whose purpose is to relay telecommunication information between satellite terminal stations, together with such associated equipment and facilities for tracking, guidance, control, and command functions as are not part of the generalized launching, tracking, control, and command facilities for all space purposes;

(2) the term "satellite terminal station" refers to a complex of communication equipment located on the earth's surface, operationally connected with one or more terrestrial communication systems, and capable of transmitting telecommunications to or receiving telecommunications from a communications satellite system;

(3) the term "communications satellite" means an earth satellite which is intentionally used to relay telecommunications information;

(4) the term "associated equipment and facilities" refers to facilities other than satellite terminal stations and communications satellites, to be constructed and operated for the primary purpose of a communications satellite system, whether for administration and management, for research and development, or for direct support of space operations;

(5) the term "research and development" refers to the conception, design, and first creation of experimental or prototype operational devices for the operation of a communications satellite system, including the assembly of separate components into a working whole, as distinguished from the term "production," which relates to the construction of such devices to fixed specifications compatible with repetitive duplication for operational applications;

(6) the term "telecommunication" means any transmission, emission or reception of signs, signals, writings, images, and sounds or intelligence of any nature by wire, radio, optical, or other electromagnetic systems;

(7) the term "communications common carrier" has the same meaning as the term "common carrier" has when used in the Communications Act of 1934, as amended, and in addition in-

cludes, but only for purposes of sections 303 and 304, any individual, partnership, association, joint-stock company, trust, corporation, or other entity which owns or controls, directly or indirectly, or is under direct or indirect common control with, any such carrier; and the term "authorized carrier", except as otherwise provided for purposes of section 304 by section 304(b)(1), means a communications common carrier which has been authorized by the Federal Communications Commission under the Communications Act of 1934, as amended, to provide services by means of communications satellites;

(8) the term "corporation" means the corporation authorized by title III of this Act;

(9) the term "Administration" means the National Aeronautics and Space Administration; and

(10) the term "Commission" means the Federal Communications Commission.

TITLE II—FEDERAL COORDINATION, PLANNING, AND REGULATION

[SEC. 201. IMPLEMENTATION OF POLICY.

[47 U.S.C. 721]

[In order to achieve the objectives and to carry out the purposes of this Act—

[(a) the President shall—

[(1) aid in the planning and development and foster the execution of a national program for the establishment and operation, of a commercial communications satellite system;

[(2) provide for continuous review of all phases of the development and operation of such a system, including the activities of a communications satellite corporation authorized under title III of this Act;

[(3) coordinate the activities of governmental agencies with responsibilities in the field of telecommunication, so as to insure that there is full and effective compliance at all times with the policies set forth in this Act;

[(4) exercise such supervision over relationships of the corporation with foreign governments or entities or with international bodies as may be appropriate to assure that such relationships shall be consistent with the national interest and foreign policy of the United States;

[(5) insure that timely arrangements are made under which there can be foreign participation in the establishment and use of a communications satellite system;

[(6) take all necessary steps to insure the availability and appropriate utilization of the communications satellite system for general governmental purposes except where a separate communications satellite system is required to meet unique governmental needs, or is otherwise required in the national interest; and

[(7) to exercise his authority as to help attain coordinated and efficient use of the electromagnetic spectrum

and the technical compatibility of the system with existing communications facilities both in the United States and abroad.

[(b) the National Aeronautics and Space Administration shall—

[(1) advise the Commission on technical characteristics of the communications satellite system;

[(2) cooperate with the corporation in research and development to the extent deemed appropriate by the Administration in the public interest;

[(3) assist the corporation in the conduct of its research and development program by furnishing to the corporation, when requested, on a reimbursable basis, such satellite launching and associated services as the Administration deems necessary for the most expeditious and economical development of the communications satellite system;

[(4) consult with the corporation with respect to the technical characteristics of the communications satellite system;

[(5) furnish to the corporation, on request and on a reimbursable basis, satellite launching and associated services required for the establishment, operation, and maintenance of the communications satellite system approved by the Commission; and

[(6) to the extent feasible, furnish other services, on a reimbursable basis, to the corporation in connection with the establishment and operation of the system.

[(c) the Federal Communications Commission, in its administration of the provisions of the Communications Act of 1934, as amended, and as supplemented by this Act, shall—

[(1) insure effective competition, including the use of competitive bidding where appropriate, in the procurement by the corporation and communications common carriers of apparatus, equipment, and services required for the establishment and operation of the communications satellite system and satellite terminal stations; and the Commission shall consult with the Small Business Administration and solicit its recommendations on measures and procedures which will insure that small business concerns are given an equitable opportunity to share in the procurement program of the corporation for property and services, including but not limited to research, development, construction, maintenance, and repair.

[(2) insure that all present and future authorized carriers shall have nondiscriminatory use of, and equitable access to, the communications satellite system and satellite terminal stations under just and reasonable charges, classifications, practices, regulations, and other terms and conditions and regulate the manner in which available facilities of the system and stations are allocated among such users thereof;

[(3) in any case where the Secretary of State, after obtaining the advice of the Administration as to technical feasibility, has advised that commercial communication to

a particular foreign point by means of the communications satellite system and satellite terminal stations should be established in the national interest, institute forthwith appropriate proceedings under section 214(d) of the Communications Act of 1934, as amended, to require the establishment of such communication by the corporation and the appropriate common carrier or carriers;

[(4) insure that facilities of the communications satellite system and satellite terminal stations are technically compatible and interconnected operationally with each other and with existing communications facilities;

[(5) prescribe such accounting regulations and systems and engage in such ratemaking procedures as will insure that any economies made possible by a communications satellite system are appropriately reflected in rates for public communication services;

[(6) approve technical characteristics of the operational communications satellite system to be employed by the corporation and of the satellite terminal stations; and

[(7) grant appropriate authorization for the construction and operation of each satellite terminal station, either to the corporation or to one or more authorized carriers or to the corporation and one or more such carriers jointly, as will best serve the public interest, convenience, and necessity. In determining the public interest, convenience, and necessity the Commission shall authorize the construction and operation of such stations by communications common carriers or the corporation, without preference to either;

[(8) authorize the corporation to issue any shares of capital stock, except the initial issue of capital stock referred to in section 304(a), or to borrow any moneys, or to assume any obligation in respect of the securities of any other person, upon finding that such issuance, borrowing, or assumption is compatible with the public interest, convenience, and necessity and is necessary or appropriate for or consistent with carrying out the purposes and objectives of this Act by the corporation;

[(9) insure that no substantial additions are made by the corporation or carriers with respect to facilities of the system or satellite terminal stations unless such additions are required by the public interest, convenience, and necessity;

[(10) require, in accordance with the procedural requirements of section 214 of the Communications Act of 1934, as amended, that additions be made by the corporation or carriers with respect to facilities of the system or satellite terminal stations where such additions would serve the public interest, convenience, and necessity; and

[(11) make rules and regulations to carry out the provisions of this Act.]

SEC. 201. IMPLEMENTATION OF POLICY.

The Federal Communications Commission, in its administration of the Communications Act of 1934, shall make rules and regulations to carry out the provisions of this Act.

TITLE III—[CREATION OF A COMMUNICATIONS SATELLITE] CORPORATION

[SEC. 301. CREATION OF CORPORATION.

[47 U.S.C. 731]

[There is authorized to be created a communications satellite corporation for profit which will not be an agency or establishment of the United States Government.]

SEC. 301. CORPORATION.

The corporation organized under the provisions of this title, as this title existed before the enactment of the Open-market Reorganization for the Betterment of International Telecommunications Act, known as COMSAT, and its successors and assigns, are subject to the provisions of this Act. The right to repeal, alter, or amend this Act at any time is expressly reserved.

[SEC. 302. APPLICABLE LAWS.

[47 U.S.C. 732]

[The corporation shall be subject to the provisions of this Act and, to the extent consistent with this Act, to the District of Columbia Business Corporation Act. The right to repeal, alter, or amend this Act at any time is expressly reserved.

[SEC. 303. DIRECTORS AND OFFICERS.

[47 U.S.C. 733]

[(a) The corporation shall have a board of directors consisting of fifteen individuals who are citizens of the United States, of whom one shall be elected annually by the board to serve as chairman. Three members of the board shall be appointed by the President of the United States, by and with the advice and consent of the Senate, effective the date on which the other members are elected, and for terms of three years or until their successors have been appointed and qualified, and any member so appointed to fill a vacancy shall be appointed only for the unexpired term of the director whom he succeeds. The remaining twelve members of the board shall be elected annually by the stockholders. Six of such members shall be elected by those stockholders who are not communications common carriers, and the remaining six such members shall be elected by the stockholders who are communications common carriers, except that if the number of shares of the voting capital stock of the corporation issued and outstanding and owned either directly or indirectly by communications common carriers as of the record date for the annual meeting of stockholders is less than 45 per centum of the total number of shares of the voting capital stock of the corporation issued and outstanding, the numbers of members to be elected at such meeting by each group of stockholders shall be determined in accordance with the following table:

When the number of shares of the voting capital stock of the corporation issued and outstanding and owned either directly or indirectly by communications common carriers is less than—	But not less than—	The number of members which stockholders who are communications common carriers are entitled to elect shall be—	And the number of members which other stockholders are entitled to elect shall be—
45 per centum	40 per centum	5	7
40 per centum	35 per centum	4	8
35 per centum	25 per centum	3	9
25 per centum	15 per centum	2	10
15 per centum	8 per centum	1	11
8 per centum	.....	0	12

No stockholder who is a communications common carrier and no trustee for such a stockholder shall vote, either directly or indirectly, through the votes of subsidiaries or affiliated companies, nominees, or any persons subject to his direction or control, for more than three candidates for membership on the board, except that in the event the number of shares of the voting capital stock of the corporation issued and outstanding and owned either directly or indirectly by communications common carriers as of the record date for the annual meeting is less than 8 per centum of the total number of shares of the voting capital stock of the corporation issued and outstanding, any stockholder who is a communications common carrier shall be entitled to vote at such meeting for candidates for membership on the board in the same manner as all other stockholders. Subject to the foregoing limitations, the articles of incorporation of the corporation shall provide for cumulative voting under section 327(d) of the District of Columbia Business Corporation Act (D.C. Code, sec. 29–327(d)). The articles of incorporation of the corporation may be amended, altered, changed, or repealed by a vote of not less than 66⅔ per centum of the outstanding shares of the voting capital stock of the corporation owned by stockholders who are communications common carriers and by stockholders who are not communications common carriers, voting together if such vote complies with all other requirements of this Act and of the articles of incorporation of the corporation with respect to the amendment, alteration, change, or repeal of such articles. The corporation may adopt such bylaws as shall, notwithstanding the provisions of section 336 of the District of Columbia Business Corporation Act (D.C. Code, sec. 29–336(d)), provide for the continued ability of the board to transact business under such circumstances of national emergency as the President of the United States, or the officer designated by him, may determine, after February 18, 1969, would not permit a prompt meeting of a majority of the board to transact business.

[(b) The corporation shall have a president, and such other officers as may be named and appointed by the board, at rates of compensation fixed by the board, and serving at the pleasure of the board. No individual other than a citizen of the United States may be an officer of the corporation. No officer of the corporation shall receive any salary from any source other than the corporation during the period of his employment by the corporation.

[SEC. 304. FINANCING OF THE CORPORATION.

[47 U.S.C. 734]

[(a) The corporation is authorized to issue and have outstanding, in such amounts as it shall determine, shares of capital stock, without par value, which shall carry voting rights and be eligible for dividends. The shares of such stock initially offered shall be sold in a manner to encourage the widest distribution to the American public. Subject to the provisions of subsections (b) and (d) of this section, shares of stock offered under this subsection may be issued to and held by any person.

[(b)(1) For the purposes of this section the term "authorized carrier" shall mean a communications common carrier which is specifically authorized or which is a member of a class of carriers authorized by the Commission to own shares of stock in the corporation upon a finding that such ownership will be consistent with the public interest, convenience, and necessity.

[(2) Only those communications common carriers which are authorized carriers shall own shares of stock in the corporation at any time, and no other communications common carrier shall own shares either directly or indirectly through subsidiaries or affiliated companies, nominees, or any persons subject to its direction or control. At no time after the initial issue is completed shall the aggregate of the shares of voting stock of the corporation owned by authorized carriers directly or indirectly through subsidiaries or affiliated companies, nominees, or any persons subject to their direction or control exceed 50 per centum of such shares issued and outstanding.

[(3) At no time shall any stockholder who is not an authorized carrier, or any syndicate or affiliated group of such stockholders, own more than 10 per centum of the shares of voting stock of the corporation issued and outstanding.

[(c) The corporation is authorized to issue, in addition to the stock authorized by subsection (a) of this section, nonvoting securities, bonds, debentures, and other certificates of indebtedness as it may determine. Such nonvoting securities, bonds, debentures, or other certificates of indebtedness of the corporation as a communications common carrier may own shall be eligible for inclusion in the rate base of the carrier to the extent allowed by the Commission. The voting stock of the corporation shall not be eligible for inclusion in the rate base of the carrier.

[(d) Not more than an aggregate of 20 per centum of the shares of stock of the corporation authorized by subsection (a) of this section which are held by holders other than authorized carriers may be held by persons of the classes described in subsection (a) and paragraphs (1) through (4) of subsection (b) of section 310 of the Communications Act of 1934, as amended (47 U.S.C. 310).

[(e) The requirement of section 345(b) of the District of Columbia Business Corporation Act (D.C. Code, sec. 29–345(b)) as to the percentage of stock which a stockholder must hold in order to have the rights of inspection and copying set forth in that subsection shall not be applicable in the case of holders of the stock of the corporation, and they may exercise such rights without regard to the percentage of stock they hold.

[(f) Upon application to the Commission by any authorized carrier and after notice and hearing, the Commission may compel any other authorized carrier which owns shares of stock in the corporation to transfer to the applicant, for a fair and reasonable consideration, a number of such shares as the Commission determines will advance the public interest and the purposes of this Act. In its determination with respect to ownership of shares of stock in the corporation, the Commission, whenever consistent with the public interest, shall promote the widest possible distribution of stock among the authorized carriers.

SEC. [305.] *302.* PURPOSES AND POWERS OF THE CORPORATION.

[47 U.S. 735]

(a) In order to achieve the objectives and to carry out the purposes of this Act, the corporation is authorized to—

(1) plan, initiate, construct, own, manage, and operate itself or in conjunction with foreign governments or business entities a commercial communications satellite system;

(2) furnish, for hire, channels of communication to United States communications common carriers and to other authorized entities, foreign and domestic; and

(3) own and operate satellite terminal stations when licensed by the Commission under section 201(c)(7).

(b) Included in the activities authorized to the corporation for accomplishment of the purposes indicated in subsection (a) of this section, are, among others not specifically named—

(1) to conduct or contract for research and development related to its mission;

(2) to acquire the physical facilities, equipment and devices necessary to its operations, including communications satellites and associated equipment and facilities, whether by construction, purchase, or gift;

(3) to purchase satellite launching and related services from the United States Government;

(4) to contract with authorized users, including the United States Government, for the services of the communications satellite system; and

(5) to develop plans for the technical specifications of all elements of the communications satellite system.

[(c) To carry out the foregoing purposes, the corporation shall have the usual powers conferred upon a stock corporation by the District of Columbia Business Corporation Act.]

TITLE IV—MISCELLANEOUS

SEC. 401. APPLICABILITY OF COMMUNICATIONS ACT OF 1934.

[47 U.S.C. 741]

The corporation shall be deemed to be a common carrier within the meaning of section 3(h) of the Communications Act of 1934, as amended, and as such shall be fully subject to the provisions of title II and title III of that Act. The provision of satellite terminal station facilities by one communication common carrier to one or more other communications common carriers shall be deemed to be

a common carrier activity fully subject to the Communications Act. Whenever the application of the provisions of this Act shall be inconsistent with the application of the provisions of the Communications Act, the provisions of this Act shall govern.

[SEC. 402. NOTICE OF FOREIGN BUSINESS NEGOTIATIONS.

[47 U.S.C. 742]

[Whenever the corporation shall enter into business negotiations with respect to facilities, operations, or services authorized by this Act with any international or foreign entity, it shall notify the Department of State of the negotiations, and the Department of State shall advise the corporation of relevant foreign policy considerations. Throughout such negotiations the corporation shall keep the Department of State informed with respect to such considerations. The corporation may request the Department of State to assist in the negotiations, and that Department shall render such assistance as may be appropriate.

SEC. 403. SANCTIONS.

[47 U.S.C. 743]

[(a) If the corporation created pursuant to this Act shall engage in or adhere to any action, practices, or policies inconsistent with the policy and purposes declared in section 102 of this Act, or if the corporation or any other person shall violate any provision of this Act, or shall obstruct or interfere with any activities authorized by this Act, or shall refuse, fail, or neglect to discharge his duties and responsibilities under this Act, or shall threaten any such violation, obstruction, interference, refusal, failure, or neglect, the district court of the United States for any district in which such corporation or other person resides or may be found shall have jurisdiction, except as otherwise prohibited by law, upon petition of the Attorney General of the United States, to grant such equitable relief as may be necessary or appropriate to prevent or terminate such conduct or threat.]

[(b)] *(a)* Nothing contained in this section shall be construed as relieving any person of any punishment, liability, or sanction which may be imposed otherwise than under this Act.

[(c)] *(b)* It shall be the duty of the corporation and all communications common carriers to comply, insofar as applicable, with all provisions of this Act and all rules and regulations promulgated thereunder.

[SEC. 404. REPORTS TO THE CONGRESS.

[47 U.S.C. 744]

[The corporation shall transmit to the President and the Congress, annually and at such other times as it deems desirable, a comprehensive and detailed report of its operations, activities, and accomplishments under this Act.]

TITLE V—INTERNATIONAL MARITIME SATELLITE TELECOMMUNICATIONS

SEC. 501. SHORT TITLE.

This title may be cited as the "International Maritime Satellite Telecommunications Act".

[SEC. 502. DECLARATION OF POLICY AND PURPOSE.

[47 U.S.C. 751]

[(a) The Congress hereby declares that it is the policy of the United States to provide for the participation of the United States in the International Maritime Satellite Organization (hereinafter in this title referred to as "INMARSAT") in order to develop and operate a global maritime satellite telecommunications system. Such system shall have facilities and services which will serve maritime commercial and safety needs of the United States and foreign countries.

[(b) It is the purpose of this title to provide that the participation of the United States in INMARSAT shall be through the communications satellite corporation established pursuant to title III of this Act, which constitutes a private entity operating for profit, and which is not an agency or establishment of the Federal Government.

[SEC. 503. DESIGNATED OPERATING ENTITY.

[47 U.S.C. 752]

[(a)(1) The the communications satellite corporation established pursuant to title III of this Act is hereby designated as the sole operating entity of the United States for participation in INMARSAT, for the purpose of providing international maritime satellite telecommunications services.

[(2) The corporation may participate in and is hereby authorized to sign the operating agreement or other pertinent instruments of INMARSAT as the sole designated operating entity of the United States.

[(b) The corporation—

[(1) may own and operate satellite earth terminal stations in the United States;

[(2) shall interconnect such stations, and the maritime satellite telecommunications provided by such stations, with the facilities and services of United States domestic common carriers and international common carriers, other than any common carrier or other entity in which the corporation has any ownership interest, as authorized by the Commission;

[(3) shall interconnect such stations and the maritime satellite telecommunications provided by such stations, with the facilities and services of private communications systems, unless the Commission finds that such interconnection will not serve the public interest; and

[(4) may establish, own, and operate the United States share of the jointly owned international space segment and associated ancillary facilities.

[(c) The corporation shall be responsible for fulfilling any financial obligation placed upon the corporation as a signatory to the operating agreement or other pertinent instruments, and any other financial obligation which may be placed upon the corporation as the result of a convention or other instrument establishing INMARSAT. The corporation shall be the sole United States representative in the managing body of INMARSAT.

[(d)(1) Any person, including the Federal Government or any agency thereof, may be authorized, in accordance with paragraph (2) or paragraph (3), to be the sole owner or operator, or both, of any satellite earth terminal station if such station is used for the exclusive purposes of training personnel in the use of equipment associated with the operation and maintenance of such station, or in carrying out experimentation relating to maritime satellite telecommunications services.

[(2) If the person referred to in paragraph (1) is the Federal Government or any agency thereof, such satellite earth terminal station shall have been authorized to operate by the executive department charged with such responsibility.

[(3) In any other case, such satellite earth terminal station shall have been authorized by the Commission.

[(e) The Commission may authorize ownership of satellite earth terminal stations by persons other than the corporation at any time the Commission determines that such additional ownership will enhance the provision of maritime satellite services in the public interest.

[(f) The Commission shall determine the operational arrangements under which the corporation shall interconnect its satellite earth terminal station facilities and services with United States domestic common carriers and international common carriers, other than any common carrier, system, or other entity in which the corporation has any ownership interest, and private communications systems when authorized pursuant to subsection (b)(3) for the purpose of extending maritime satellite telecommunications services within the United States and in other areas.

[(g) Notwithstanding any provision of State law, the articles of incorporation of the corporation shall provide for the continued ability of the board of directors of the corporation to transact business under such circumstances of national emergency as the President or his delegate may determine would not permit a prompt meeting of the number of directors otherwise required to transact business.

[SEC. 504. IMPLEMENTATION OF POLICY.

[47 U.S.C. 753]

[(a) The Secretary of Commerce shall—

[(1) coordinate the activities of Federal agencies with responsibilities in the field of telecommunications (other than the Commission), so as to ensure that there is full and effective compliance with the provisions of this title;

[(2) take all necessary steps to ensure the availability and appropriate utilization of the maritime satellite telecommunications services provided by INMARSAT for general governmental purposes, except in any case in which a separate tele-

communications system is required to meet unique governmental needs or is otherwise required in the national interest;

[(3) exercise his authority in a manner which seeks to obtain coordinated and efficient use of the electromagnetic spectrum and orbital space, and to ensure the technical compatibility of the space segment with existing communications facilities in the United States and in foreign countries; and

[(4) take all necessary steps to determine the interests and needs of the ultimate users of the maritime satellite telecommunications system and to communicate the views of the Federal Government on utilization and user needs to INMARSAT.

[(b) The President shall exercise such supervision over, and issue such instructions to, the corporation in connection with its relationships and activities with foreign governments, international entities, and INMARSAT as may be necessary to ensure that such relationships and activities are consistent with the national interest and foreign policy of the United States.

[(c) The Commission shall—

[(1) institute such proceedings as may be necessary to carry out the provisions of section 503 of this title;

[(2) make recommendations to the President for the purpose of assisting him in his issuance of instructions to the corporation;

[(3) grant such authorizations as may be necessary under title II and title III of the Communications Act of 1934 to enable the corporation—

[(A) to provide to the public, in accordance with section 503(c)(2) of this title, space segment channels of communication obtained from INMARSAT; and

[(B) to construct and operate such satellite earth terminal stations in the United States as may be necessary to provide sufficient access to the space segment;

[(4) grant such other authorizations as may be necessary under title II and title III of this Communications Act of 1934 to carry out the provisions of this title;

[(5) establish procedures to provide for the continuing review of the telecommunications activities of the corporation as the United States signatory to the operating agreement or other pertinent instruments; and

[(6) prescribe such rules as may be necessary to carry out the provisions of this title.

[(d) The Commission is authorized to issue instructions to the corporation with respect to regulatory matters within the jurisdiction of the Commission. In the event an instruction of the Commission conflicts with an instruction of the President pursuant to subsection (b), the instructions issued by the President shall prevail.

[SEC. 505. DEFINITIONS.

[47 U.S.C. 757]

[For purposes of this title—

[(1) the term "person" includes an individual, partnership, association, joint stock company, trust, or corporation;

[(2) the term "satellite earth terminal station" means a complex of communications equipment located on land, operationally interconnected with one or more terrestrial communications systems, and capable of transmitting telecommunications to, or receiving telecommunications from, the space segment;

[(3) the term "space segment" means any satellite (or capacity on a satellite) maintained under the authority of INMARSAT, for the purpose of providing international maritime telecommunications services, and the tracking, telemetry, command, control, monitoring, and related facilities and equipment required to support the operations of such satellite; and

[(4) the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.]

SEC. 502. GLOBAL SATELLITE SAFETY SERVICES AFTER PRIVATIZATION OF BUSINESS OPERATIONS OF INMARSAT.

In order to ensure the continued provision of global maritime distress and safety satellite telecommunications services after privatization of the business operations of Inmarsat, the President may maintain membership in the International Mobile Satellite Organization on behalf of the United States.

TITLE VI—SATELLITE SERVICES COMPETITION AND PRIVATIZATION

SUBTITLE A—TRANSITION TO A PRIVATIZED INTELSAT

SEC. 601. POLICY OF THE UNITED STATES.

It is the policy of the United States to—

(1) encourage INTELSAT to privatize in a pro-competitive manner as soon as possible, but not later than January 1, 2002, recognizing the need for a reasonable transition and process to achieve a full, pro-competitive restructuring; and

(2) work constructively with its international partners in INTELSAT, and with INTELSAT itself, to bring about a prompt restructuring that will ensure fair competition, both in the United States as well as in the global markets served by the INTELSAT system; and

(3) encourage Inmarsat's full implementation of the terms and conditions of its privatization agreement.

SEC. 602. ROLE OF COMSAT.

(a) ADVOCACY.—As the United States signatory to INTELSAT, COMSAT shall act as an aggressive advocate of pro-competitive privatization of INTELSAT. With respect to the consideration within INTELSAT of any matter related to its privatization, COMSAT shall fully consult with the United States government prior to exercising its voting rights and shall exercise its voting rights in a manner fully consistent with any instructions issued. In the event that the United States signatory to INTELSAT is acquired after enactment of this section, the President and the Commission shall assure that the instructional process safeguards against conflicts of interest.

(b) ANNUAL REPORTS.—The President and the Commission shall report annually to the Committee on Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, respectively, on the progress being made by INTELSAT and Inmarsat to privatize and complete privatization in a pro-competitive manner.

SEC. 603. RESTRICTIONS PENDING PRIVATIZATION.

INTELSAT shall be prohibited from entering the United States market directly to provide any satellite communications services or space segment capacity to carriers (other than the United States signatory, COMSAT) or end users in the United States prior to achieving a pro-competitive privatization pursuant to section 613(a).

SUBTITLE B—ACTIONS TO ENSURE PRO-COMPETITIVE SATELLITE SERVICES

SEC. 611. PRIVATIZATION.

(a) IN GENERAL.—The President shall seek a pro-competitive privatization of INTELSAT as soon as practicable, but no later than January 1, 2002. Such privatization shall be confirmed by a final decision of the INTELSAT Assembly of Parties and shall be followed by a timely initial public offering taking into account relative market conditions.

(b) ENSURE CONTINUATION OF PRIVATIZATION.—The President and the Commission shall seek to ensure that the privatization of Inmarsat continues in a pro-competitive manner.

SEC. 612. PROVISION OF SERVICES IN THE UNITED STATES BY PRIVATIZED AFFILIATES OF INTERGOVERNMENTAL SATELLITE ORGANIZATIONS.

(a) IN GENERAL.—With respect to any application for a satellite earth station or space station under title III, or any application under section 214, of the Communications Act of 1934 (47 U.S.C. 301 et seq.), or any letter of intent to provide service in the United States via non-United States licensed space segment, submitted by a privatized IGO affiliate or successor, the Commission—

(1) shall apply a presumption in favor of entry to an IGO affiliate or successor licensed by a WTO Member for services covered by United States commitments under the WTO Basic Telecom Agreement;

(2) may attach conditions to any grant of authority to an IGO affiliate or successor that raises the potential for competitive harm; or

(3) shall in the exceptional case in which an application by an IGO affiliate or successor would pose a very high risk to competition in the United States satellite market, deny the application.

(b) DETERMINATION FACTORS.—In determining whether an application to serve the United States market by an IGO affiliate raises the potential for competitive harm or risk under (a)(2), the Commission shall consider any potential anti-competitive or market distorting consequences of continued relationships or connections between an IGO and its affiliates including—

(1) whether the IGO affiliate is structured to prevent anti-competitive practices such as collusive behavior or cross-subsidization;

(2) the degree of affiliation between the IGO and its affiliate;

(3) whether the IGO affiliate can directly or indirectly benefit from IGO privileges and immunities;

(4) the ownership structure of the affiliate and the effect of IGO and other Signatory ownership;

(5) the existence of clearly defined arm's-length conditions governing the affiliate-IGO relationship including separate officers, directors, employees, and accounting systems;

(6) the existence of fair market valuing for permissible business transactions between an IGO and its affiliate that is verifiable by an independent audit and consistent with normal commercial practice and generally accepted accounting principles;

(7) the existence of common marketing;

(8) the availability of recourse to IGO assets for credit or capital;

(9) whether an IGO registers or coordinates spectrum or orbital locations on behalf of its affiliate; and

(10) whether the IGO affiliate has corporate charter provisions prohibiting reaffiliation with the IGO after privatization.

(c) SUNSET.—The provisions of subsection (b) shall cease to have effect upon approval of the application pursuant to section 613.

(d) PUBLIC INTEREST DETERMINATION.—Nothing in this Act shall affect the Commission's ability to make a public interest determination concerning any application pertaining to entry into the United States market.

SEC. 613. PRESIDENTIAL NEGOTIATING OBJECTIVES AND FCC CRITERIA FOR PRIVATIZED IGOs.

(a) IN GENERAL.—Upon a final decision of the INTELSAT Assembly of Parties creating the legal structure and characteristics of the privatized INTELSAT and recognizing that Inmarsat transitioned into a private company on April 15, 1999, the President shall within 30 days report to the Congress on the extent to which such privatization framework meets each of the criteria in subsection (c), and whether taking into consideration all other relevant competitive factors, entry of a privatized INTELSAT or Inmarsat into the United States market will not be likely to distort competition.

(b) PURPOSE OF PRIVATIZATION CRITERIA.—The criteria provided in subsection (c) shall be used as—

(1) the negotiation objectives for achieving the privatization of INTELSAT no later than January 1, 2002, and also for Inmarsat;

(2) the standard for measuring, pursuant to subsection (a), whether negotiations have resulted in an acceptable framework for achieving the pro-competitive privatization of INTELSAT and Inmarsat; and

(3) licensing criteria by the Commission in making its independent determination of whether the certified framework for achieving the pro-competitive privatization of INTELSAT and Inmarsat has been properly implemented by the privatized INTELSAT and Inmarsat.

(c) PRIVATIZATION CRITERIA.—A pro-competitively privatized INTELSAT or Inmarsat—

(1) has no privileges or immunities limiting legal accountability, commercial transparency, or taxation;

(2) has submitted to the jurisdiction of competition and independent regulatory authorities of a nation that is a signatory to the World Trade Organization Agreement on Basic Telecommunications and that has implemented or accepted the agreement's reference paper on regulatory principles;

(3) can offer assurance of an arm's-length relationship in all respects between itself and any IGO affiliate;

(4) has given due consideration to the international connectivity requirements of thin route countries;

(5) can demonstrate that the valuation of assets to be transferred post-privatization is in accordance with generally accepted accounting principles;

(6) has access to orbital locations and associated spectrum post-privatization in accordance with the same regulatory processes and fees applicable to other commercial satellite systems;

(7) conducts technical coordinations post-privatization under normal, established ITU procedures;

(8) has an ownership structure in the form of a stock corporation or other similar and accepted commercial mechanism, and a commitment to a timely initial public offering has been established for the sale or purchase of company shares;

(9) shall not acquire, or enjoy any agreements or arrangements which secure, exclusive access to any national telecommunications market; and

(10) will have accomplished a privatization consistent with the criteria listed in this subsection at the earliest possible date, but not later than January 1, 2002, for INTELSAT and Inmarsat.

(d) FCC INDEPENDENT DETERMINATION ON IMPLEMENTATION.—After the President has made a report to Congress pursuant to subsection (a), with respect to any application for a satellite earth station or space station under title III or any application under section 214 of the Communications Act of 1934 (47 U.S.C. 214), or any letter of intent to provide service in the United States via a non-United States licensed space segment, submitted by a privatized affiliate prior to the privatized IGO, or by a privatized IGO, the Commission shall consider whether the enumerated objectives for a pro-competitive privatization of INTELSAT under this section have been implemented with respect to the privatized IGO, but in making that consideration, may neither contract or expand the privatization criteria in subsection (c).

(e) AUTHORITY TO DENY AN APPLICATION.—Nothing in this section affects the Commission's authority to condition or deny an application on the basis of the public interest.

SEC. 614. FAILURE TO PRIVATIZE IN A TIMELY MANNER.

(a) REPORT.—In the event that INTELSAT fails to fully privatize as provided in sections 611 by January 1, 2002, the President shall—

(1) instruct all instrumentalities of the United States Government to grant a preference for procurement of satellite services

from commercial private sector providers of satellite space segment rather than IGO providers;

(2) immediately commence deliberations to determine what additional measures should be implemented to ensure the rapid privatization of INTELSAT;

(3) no later than March 31, 2002, issue a report delineating such other measures to the Committee on Commerce of the House of Representatives, and Committee on Commerce, Science, and Transportation of the Senate; and

(4) withdraw as a party from INTELSAT.

(b) RESERVATION CLAUSE.—The President may determine, after consulting with Congress, that in consideration of privatization being imminent, it is in the national interest of the United States to provide a reasonable extension of time for completion of privatization.

SUBTITLE C—COMSAT GOVERNANCE AND OPERATION

SEC. 621. ELIMINATION OF PRIVILEGES AND IMMUNITIES.

(a) COMSAT.—COMSAT shall not have any privilege or immunity on the basis of its status as a signatory or a representative of the United States to INTELSAT and Inmarsat, except that COMSAT retains its privileges and immunities—

(1) for those actions taken in its role as the United States signatory to INTELSAT or Inmarsat upon instruction of the United States Government; and

(2) for actions taken when acting as the United States signatory in fulfilling signatory obligations under the INTELSAT Operating Agreement.

(b) NO JOINT OR SEVERAL LIABILITY.—If COMSAT is found liable for any action taken in its status as a signatory or a representative of the party to INTELSAT, any such liability shall be limited to the portion of the judgment that corresponds to COMSAT's percentage of the responsibility, as determined by the trier of fact.

(c) PROSPECTIVE EFFECT OF ELIMINATION.—The elimination of privileges and immunities contained in this section shall apply only to actions or decisions taken by COMSAT after the date of enactment of the Open-market Reorganization for the Betterment of International Telecommunications Act.

SEC 622. ABROGATION OF CONTRACTS PROHIBITED.

Nothing in this Act or the Communications Act of 1934 (47 U.S.C. 151 et seq.) shall be construed to modify or invalidate any contract or agreement involving COMSAT, INTELSAT, or any terms or conditions of such agreement in force on the date of enactment of the Open-market Reorganization for the Betterment of International Telecommunications Act, or to give the Commission authority, by rule-making or any other means, to invalidate any such contract or agreement, or any terms and conditions of such contract or agreement.

SEC. 623. PERMITTED COMSAT INVESTMENT.

Nothing in this Act shall be construed as precluding COMSAT from investing in or owning satellites or other facilities independent from INTELSAT, or from providing services through reselling capacity over the facilities of satellite systems independent from

INTELSAT. This section shall not be construed as restricting the types of contracts which can be executed or services which may be provided by COMSAT over the independent satellites or facilities described in this subsection.

SUBTITLE D—GENERAL PROVISIONS

SEC. 631. PROMOTION OF EFFICIENT USE OF ORBITAL SLOTS AND SPECTRUM.

All satellite system operators authorized to access the United States market should make efficient and timely use of orbital and spectrum resources in order to ensure that these resources are not warehoused to the detriment of other new or existing satellite system operators.Where these assurances cannot be provided, satellite system operators shall arbitrate their rights to these resources according to ITU procedures.

SEC. 632. PROHIBITION ON PROCUREMENT PREFERENCES.

Except pursuant to section 615 of this Act, nothing in this title or the Communications Act of 1934 (47 U.S.C. 151 et seq.) shall be construed to authorize or require any preference in Federal Government procurement of telecommunications services, for the satellite space segment provided by INTELSAT or Inmarsat, nor shall anything in this title or that Act be construed to result in a bias against the use of INTELSAT or Inmarsat through existing or future contract awards.

SEC. 633. SATELLITE AUCTIONS.

Notwithstanding any other provision of law, the Commission shall not assign by competitive bidding orbital locations or spectrum used for the provision of international or global satellite communications services. The President shall oppose in the International Telecommunications Union and in other bilateral and multilateral negotiations any assignment by competitive bidding of orbital locations, licenses, or spectrum used for the provision of such services.

SEC. 634. RELATIONSHIP TO OTHER LAWS.

Whenever the application of the provisions of this Act is inconsistent with the provisions of the Communications Act of 1934, the provisions of this Act shall govern.

SEC. 635. EXCLUSIVITY ARRANGEMENTS.

(a) IN GENERAL.—No satellite operator shall acquire or enjoy the exclusive right of handling traffic to or from the United States, its territories or possessions, and any other country or territory by reason of any concession, contract, understanding, or working arrangement to which the satellite operator or any persons or companies controlling or controlled by the operator are parties.

(b) EXCEPTION.—In enforcing the provisions of this subsection, the Commission—

(1) shall not require the termination of existing satellite telecommunications services under contract with, or tariff commitment to, such satellite operator; but

(2) may require the termination of new services only to the country that has provided the exclusive right to handle traffic,

if the Commission determines the public interest, convenience, and necessity so requires.

SUBTITLE E—DEFINITIONS

SEC. 641. DEFINITIONS.

(a) IN GENERAL.—In this title:

(1) INTELSAT.—The term "INTELSAT" means the International Telecommunications Satellite Organization established pursuant to the Agreement Relating to the International Telecommunications Satellite Organization.

(2) INMARSAT.—The term "Inmarsat" means the International Mobile Satellite Organization established pursuant to the Convention on the International Maritime Satellite Organization and may also refer to INMARSAT Limited when appropriate.

(3) COMSAT.—The term "COMSAT" means the corporation established pursuant to title III of this Act and its successors and assigns.

(4) SIGNATORY.—The term "signatory" means the telecommunications entity designated by a party that has signed the Operating Agreement and for which such Agreement has entered into force.

(5) PARTY.—The term "party" means, in the case of INTELSAT, a nation for which the INTELSAT agreement has entered into force or been provisionally applied, and in the case of INMARSAT, a nation for which the Inmarsat convention entered into force.

(6) COMMISSION.—The term "Commission" means the Federal Communications Commission.

(7) INTERNATIONAL TELECOMMUNICATION UNION; ITU.—The terms "International Telecommunication Union" and "ITU" mean the intergovernmental organization that is a specialized agency of the United Nations in which member countries cooperate for the development of telecommunications, including adoption of international regulations governing terrestrial and space uses of the frequency spectrum as well as use of the geostationary orbital arc.

(8) PRIVATIZED INTELSAT.—The term "privatized INTELSAT" means any entity created from the privatization of INTELSAT from the assets of INTELSAT.

(9) PRIVATIZED INMARSAT.—The term "privatized Inmarsat" means any entity created from the privatization of Inmarsat from the assets of Inmarsat, namely INMARSAT, Ltd.

(10) ORBITAL LOCATION.—The term "orbital location" means the location for placement of a satellite in geostationary orbits as defined in the International Telecommunication Union Radio Regulations.

(11) SPECTRUM.—The term "spectrum" means the range of frequencies used to provide radio communication services.

(12) SPACE SEGMENT.—The term "space segment" means the satellites, and the tracking, telemetry, command, control, monitoring and related facilities and equipment used to support the operation of satellites owned or leased by INTELSAT and Inmarsat or an IGO successor or affiliate.

(13) INTELSAT AGREEMENT.—The term "INTELSAT agreement" means the agreement relating to the International Telecommunications Satellite Organization, including all of its annexes (TIAS 7532, 23 UST 3813).

(14) OPERATING AGREEMENT.—The term "operating agreement" means—

(A) in the case of INTELSAT, the agreement, including its annex but excluding all titles of articles, opened for signature at Washington on August 20, 1971, by governments or telecommunications entities designated by governments in accordance with the provisions of The Agreement; and

(B) in the case of Inmarsat, the Operating Agreement on the International Maritime Satellite Organization, including its annexes.

(15) HEADQUARTERS AGREEMENT.—The term "headquarters agreement" means the binding international agreement, dated November 24, 1976, between the United States and INTELSAT covering privileges, exemptions, and immunities with respect to the location of INTELSAT's headquarters in Washington, D.C.

(16) DIRECT-TO-HOME SATELLITE SERVICES.—The term "direct-to-home satellite services" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

(17) IGO.—The term "IGO" means the Intergovernmental Satellite organizations, INTELSAT and Inmarsat.

(18) IGO AFFILIATE.—The term "IGO affiliate" means any entity in which an IGO owns or has owned an equity interest of 10 percent or more.

(19) IGO SUCCESSOR.—The term "IGO Successor" means an entity which holds substantially all the assets of a pre-existing IGO.

(20) GLOBAL MARITIME DISTRESS AND SAFETY SERVICES.—The term "global maritime distress and safety services" means the automated ship-to-shore distress alerting system which uses satellite and advanced terrestrial systems for international distress communications and promoting maritime safety in general, permitting the worldwide alerting of vessels, coordinated search and rescue operations, and dissemination of maritime safety information.

(b) COMMON TERMS.—Except as otherwise provided in subsection (a), terms used in this title that are defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153) have the meaning provided in that section.

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