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2^D SESSION

H. R. 1872

IN THE SENATE OF THE UNITED STATES

MAY 7, 1998

Received; read twice and referred to the Committee on Commerce, Science,
and Transportation

AN ACT

To amend the Communications Satellite Act of 1962 to promote competition and privatization in satellite communications, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Communications Sat-
3 ellite Competition and Privatization Act of 1998”.

4 **SEC. 2. PURPOSE.**

5 It is the purpose of this Act to promote a fully com-
6 petitive global market for satellite communication services
7 for the benefit of consumers and providers of satellite serv-
8 ices and equipment by fully privatizing the intergovern-
9 mental satellite organizations, INTELSAT and Inmarsat.

10 **SEC. 3. REVISION OF COMMUNICATIONS SATELLITE ACT OF**
11 **1962.**

12 The Communications Satellite Act of 1962 (47
13 U.S.C. 101) is amended by adding at the end the following
14 new title:

15 **“TITLE VI—COMMUNICATIONS**
16 **COMPETITION AND PRIVAT-**
17 **IZATION**

18 **“Subtitle A—Actions To Ensure**
19 **Procompetitive Privatization**

20 **“SEC. 601. FEDERAL COMMUNICATIONS COMMISSION**
21 **LICENSING.**

22 “(a) LICENSING FOR SEPARATED ENTITIES.—

23 “(1) COMPETITION TEST.—The Commission
24 may not issue a license or construction permit to
25 any separated entity, or renew or permit the assign-
26 ment or use of any such license or permit, or author-

1 ize the use by any entity subject to United States ju-
2 risdiction of any space segment owned, leased, or op-
3 erated by any separated entity, unless the Commis-
4 sion determines that such issuance, renewal, assign-
5 ment, or use will not harm competition in the tele-
6 communications market of the United States. If the
7 Commission does not make such a determination, it
8 shall deny or revoke authority to use space segment
9 owned, leased, or operated by the separated entity to
10 provide services to, from, or within the United
11 States.

12 “(2) CRITERIA FOR COMPETITION TEST.—In
13 making the determination required by paragraph
14 (1), the Commission shall use the licensing criteria
15 in sections 621 and 623, and shall not make such
16 a determination unless the Commission determines
17 that the privatization of any separated entity is con-
18 sistent with such criteria.

19 “(b) LICENSING FOR INTELSAT, INMARSAT, AND
20 SUCCESSOR ENTITIES.—

21 “(1) COMPETITION TEST.—The Commission
22 shall substantially limit, deny, or revoke the author-
23 ity for any entity subject to United States jurisdic-
24 tion to use space segment owned, leased, or operated
25 by INTELSAT or Inmarsat or any successor enti-

1 ties to provide non-core services to, from, or within
2 the United States, unless the Commission deter-
3 mines—

4 “(A) after January 1, 2002, in the case of
5 INTELSAT and its successor entities, that
6 INTELSAT and any successor entities have
7 been privatized in a manner that will not harm
8 competition in the telecommunications markets
9 of the United States; or

10 “(B) after January 1, 2001, in the case of
11 Inmarsat and its successor entities, that
12 Inmarsat and any successor entities have been
13 privatized in a manner that will not harm com-
14 petition in the telecommunications markets of
15 the United States.

16 “(2) CRITERIA FOR COMPETITION TEST.—In
17 making the determination required by paragraph
18 (1), the Commission shall use the licensing criteria
19 in sections 621, 622, and 624, and shall not make
20 such a determination unless the Commission deter-
21 mines that such privatization is consistent with such
22 criteria.

23 “(3) CLARIFICATION: COMPETITIVE SAFE-
24 GUARDS.—In making its licensing decisions under
25 this subsection, the Commission shall consider

1 whether users of non-core services provided by
2 INTELSAT or Inmarsat or successor or separated
3 entities are able to obtain non-core services from
4 providers offering services other than through
5 INTELSAT or Inmarsat or successor or separated
6 entities, at competitive rates, terms, or conditions.
7 Such consideration shall also include whether such
8 licensing decisions would require users to replace
9 equipment at substantial costs prior to the termi-
10 nation of its design life. In making its licensing deci-
11 sions, the Commission shall also consider whether
12 competitive alternatives in individual markets do not
13 exist because they have been foreclosed due to anti-
14 competitive actions undertaken by or resulting from
15 the INTELSAT or Inmarsat systems. Such licensing
16 decisions shall be made in a manner which facilitates
17 achieving the purposes and goals in this title and
18 shall be subject to notice and comment.

19 “(c) **ADDITIONAL CONSIDERATIONS IN DETERMINA-**
20 **TIONS.**—In making its determinations and licensing deci-
21 sions under subsections (a) and (b), the Commission shall
22 take into consideration the United States obligations and
23 commitments for satellite services under the Fourth Pro-
24 tocol to the General Agreement on Trade in Services.

1 “(d) INDEPENDENT FACILITIES COMPETITION.—
2 Nothing in this section shall be construed as precluding
3 COMSAT from investing in or owning satellites or other
4 facilities independent from INTELSAT and Inmarsat,
5 and successor or separated entities, or from providing
6 services through reselling capacity over the facilities of
7 satellite systems independent from INTELSAT and
8 Inmarsat, and successor or separated entities. This sub-
9 section shall not be construed as restricting the types of
10 contracts which can be executed or services which may be
11 provided by COMSAT over the independent satellites or
12 facilities described in this subsection.

13 **“SEC. 602. INTELSAT OR INMARSAT ORBITAL LOCATIONS.**

14 “(a) REQUIRED ACTIONS.—Unless, in a proceeding
15 under section 601(b), the Commission determines that
16 INTELSAT or Inmarsat have been privatized in a manner
17 that will not harm competition, then—

18 “(1) the President shall oppose, and the Com-
19 mission shall not assist, any registration for new or-
20 bital locations for INTELSAT or Inmarsat—

21 “(A) with respect to INTELSAT, after
22 January 1, 2002; and

23 “(B) with respect to Inmarsat, after Janu-
24 ary 1, 2001; and

1 “(2) the President and Commission shall, con-
2 sistent with the deadlines in paragraph (1), take all
3 other necessary measures to preclude procurement,
4 registration, development, or use of new satellites
5 which would provide non-core services.

6 “(b) EXCEPTION.—

7 “(1) REPLACEMENT AND PREVIOUSLY CON-
8 TRACTED SATELLITES.—Subsection (a) shall not
9 apply to—

10 “(A) orbital locations for replacement sat-
11 ellites (as described in section 622(2)(B)); and

12 “(B) orbital locations for satellites that are
13 contracted for as of March 25, 1998, if such
14 satellites do not provide additional services.

15 “(2) LIMITATION ON EXCEPTION.—Paragraph
16 (1) is available only with respect to satellites de-
17 signed to provide services solely in the C and Ku for
18 INTELSAT, and L for Inmarsat bands.

19 **“SEC. 603. ADDITIONAL SERVICES AUTHORIZED.**

20 “(a) SERVICES AUTHORIZED DURING CONTINUED
21 PROGRESS.—

22 “(1) CONTINUED AUTHORIZATION.—The Com-
23 mission may issue an authorization, license, or per-
24 mit to, or renew the license or permit of, any pro-
25 vider of services using INTELSAT or Inmarsat

1 space segment, or authorize the use of such space
2 segment, for additional services (including additional
3 applications of existing services) or additional areas
4 of business, subject to the requirements of this sec-
5 tion.

6 “(2) ADDITIONAL SERVICES PERMITTED UNDER
7 NEW CONTRACTS UNLESS PROGRESS FAILS.—If the
8 Commission makes a finding under subsection (b)
9 that conditions required by such subsection have not
10 been attained, the Commission may not, pursuant to
11 paragraph (1), permit such additional services to be
12 provided directly or indirectly under new contracts
13 for the use of INTELSAT or Inmarsat space seg-
14 ment, unless and until the Commission subsequently
15 makes a finding under such subsection that such
16 conditions have been attained.

17 “(3) PREVENTION OF EVASION.—The Commis-
18 sion shall, by rule, prescribe means reasonably de-
19 signed to prevent evasions of the limitations con-
20 tained in paragraph (2) by customers who did not
21 use specific additional services as of the date of the
22 Commission’s most recent finding under subsection
23 (b) that the conditions of such subsection have not
24 been obtained.

25 “(b) REQUIREMENTS FOR ANNUAL FINDINGS.—

1 “(1) GENERAL REQUIREMENTS.—The findings
2 required under this subsection shall be made, after
3 notice and comment, on or before January 1 of
4 1999, 2000, 2001, and 2002. The Commission shall
5 find that the conditions required by this subsection
6 have been attained only if the Commission finds
7 that—

8 “(A) substantial and material progress has
9 been made during the preceding period at a
10 rate and manner that is probable to result in
11 achieving pro-competitive privatizations in ac-
12 cordance with the requirements of this title;
13 and

14 “(B) neither INTELSAT nor Inmarsat are
15 hindering competitors’ or potential competitors’
16 access to the satellite services marketplace.

17 “(2) FIRST FINDING.—In making the finding
18 required to be made on or before January 1, 1999,
19 the Commission shall not find that the conditions re-
20 quired by this subsection have been attained unless
21 the Commission finds that—

22 “(A) COMSAT has submitted to the
23 INTELSAT Board of Governors a resolution
24 calling for the pro-competitive privatization of

1 INTELSAT in accordance with the require-
2 ments of this title; and

3 “(B) the United States has submitted such
4 resolution at the first INTELSAT Assembly of
5 Parties meeting that takes place after such date
6 of enactment.

7 “(3) SECOND FINDING.—In making the finding
8 required to be made on or before January 1, 2000,
9 the Commission shall not find that the conditions re-
10 quired by this subsection have been attained unless
11 the INTELSAT Assembly of Parties has created a
12 working party to consider and make recommenda-
13 tions for the pro-competitive privatization of
14 INTELSAT consistent with such resolution.

15 “(4) THIRD FINDING.—In making the finding
16 required to be made on or before January 1, 2001,
17 the Commission shall not find that the conditions re-
18 quired by this subsection have been attained unless
19 the INTELSAT Assembly of Parties has approved a
20 recommendation for the pro-competitive privatization
21 of INTELSAT in accordance with the requirements
22 of this title.

23 “(5) FOURTH FINDING.—In making the finding
24 required to be made on or before January 1, 2002,
25 the Commission shall not find that the conditions re-

1 quired by this subsection have been attained unless
2 the pro-competitive privatization of INTELSAT in
3 accordance with the requirements of this title has
4 been achieved by such date.

5 “(6) CRITERIA FOR EVALUATION OF HINDER-
6 ING ACCESS.—The Commission shall not make a de-
7 termination under paragraph (1)(B) unless the Com-
8 mission determines that INTELSAT and Inmarsat
9 are not in any way impairing, delaying, or denying
10 access to national markets or orbital locations.

11 “(c) EXCEPTION FOR SERVICES UNDER EXISTING
12 CONTRACTS IF PROGRESS NOT MADE.—This section shall
13 not preclude INTELSAT or Inmarsat or any signatory
14 thereof from continuing to provide additional services
15 under an agreement with any third party entered into
16 prior to any finding under subsection (b) that the condi-
17 tions of such subsection have not been attained.

18 **“Subtitle B—Federal Communica-**
19 **tions Commission Licensing Cri-**
20 **teria: Privatization Criteria**

21 **“SEC. 621. GENERAL CRITERIA TO ENSURE A PRO-COM-**
22 **PETITIVE PRIVATIZATION OF INTELSAT AND**
23 **INMARSAT.**

24 “The President and the Commission shall secure a
25 pro-competitive privatization of INTELSAT and Inmarsat

1 that meets the criteria set forth in this section and sec-
2 tions 622 through 624. In securing such privatizations,
3 the following criteria shall be applied as licensing criteria
4 for purposes of subtitle A:

5 “(1) DATES FOR PRIVATIZATION.—Privatiza-
6 tion shall be obtained in accordance with the criteria
7 of this title of—

8 “(A) INTELSAT as soon as practicable,
9 but no later than January 1, 2002; and

10 “(B) Inmarsat as soon as practicable, but
11 no later than January 1, 2001.

12 “(2) INDEPENDENCE.—The successor entities
13 and separated entities of INTELSAT and Inmarsat
14 resulting from the privatization obtained pursuant to
15 paragraph (1) shall—

16 “(A) be entities that are national corpora-
17 tions; and

18 “(B) have ownership and management that
19 is independent of—

20 “(i) any signatories or former signato-
21 ries that control access to national tele-
22 communications markets; and

23 “(ii) any intergovernmental organiza-
24 tion remaining after the privatization.

1 “(3) TERMINATION OF PRIVILEGES AND IMMUNITIES.—The preferential treatment of INTELSAT
2 and Inmarsat shall not be extended to any successor
3 entity or separated entity of INTELSAT or
4 Inmarsat. Such preferential treatment includes—
5

6 “(A) privileged or immune treatment by
7 national governments;

8 “(B) privileges or immunities or other
9 competitive advantages of the type accorded
10 INTELSAT and Inmarsat and their signatories
11 through the terms and operation of the
12 INTELSAT Agreement and the associated
13 Headquarters Agreement and the Inmarsat
14 Convention; and

15 “(C) preferential access to orbital loca-
16 tions, including any access to orbital locations
17 that is not subject to the legal or regulatory
18 processes of a national government that applies
19 due diligence requirements intended to prevent
20 the warehousing of orbital locations.

21 “(4) PREVENTION OF EXPANSION DURING
22 TRANSITION.—During the transition period prior to
23 full privatization, INTELSAT and Inmarsat shall be
24 precluded from expanding into additional services

1 (including additional applications of existing serv-
2 ices) or additional areas of business.

3 “(5) CONVERSION TO STOCK CORPORATIONS.—

4 Any successor entity or separated entity created out
5 of INTELSAT or Inmarsat shall be a national cor-
6 poration established through the execution of an ini-
7 tial public offering as follows:

8 “(A) Any successor entities and separated
9 entities shall be incorporated as private cor-
10 porations subject to the laws of the nation in
11 which incorporated.

12 “(B) An initial public offering of securities
13 of any successor entity or separated entity shall
14 be conducted no later than—

15 “(i) January 1, 2001, for the succes-
16 sor entities of INTELSAT; and

17 “(ii) January 1, 2000, for the succes-
18 sor entities of Inmarsat.

19 “(C) The shares of any successor entities
20 and separated entities shall be listed for trading
21 on one or more major stock exchanges with
22 transparent and effective securities regulation.

23 “(D) A majority of the board of directors
24 of any successor entity or separated entity shall

1 not be subject to selection or appointment by,
2 or otherwise serve as representatives of—

3 “(i) any signatory or former signatory
4 that controls access to national tele-
5 communications markets; or

6 “(ii) any intergovernmental organiza-
7 tion remaining after the privatization.

8 “(E) Any transactions or other relation-
9 ships between or among any successor entity,
10 separated entity, INTELSAT, or Inmarsat
11 shall be conducted on an arm’s length basis.

12 “(6) REGULATORY TREATMENT.—Any succes-
13 sor entity or separated entity shall apply through the
14 appropriate national licensing authorities for inter-
15 national frequency assignments and associated or-
16 bital registrations for all satellites.

17 “(7) COMPETITION POLICIES IN DOMICILIARY
18 COUNTRY.—Any successor entity or separated entity
19 shall be incorporated and headquartered in a nation
20 or nations that—

21 “(A) have effective laws and regulations
22 that secure competition in telecommunications
23 services;

1 “(B) are signatories of the World Trade
2 Organization Basic Telecommunications Serv-
3 ices Agreement; and

4 “(C) have a schedule of commitments in
5 such Agreement that includes non-discrimina-
6 tory market access to their satellite markets.

7 “(8) RETURN OF UNUSED ORBITAL LOCA-
8 TIONS.—INTELSAT, Inmarsat, and any successor
9 entities and separated entities shall not be permitted
10 to warehouse any orbital location that—

11 “(A) as of March 25, 1998, did not con-
12 tain a satellite that was providing commercial
13 services, or, subsequent to such date, ceased to
14 contain a satellite providing commercial serv-
15 ices; or

16 “(B) as of March 25, 1998, was not des-
17 ignated in INTELSAT or Inmarsat operational
18 plans for satellites for which construction con-
19 tracts had been executed.

20 Any such orbital location of INTELSAT or
21 Inmarsat and of any successor entities and sepa-
22 rated entities shall be returned to the International
23 Telecommunication Union for reallocation.

24 “(9) APPRAISAL OF ASSETS.—Before any trans-
25 fer of assets by INTELSAT or Inmarsat to any suc-

1 cessor entity or separated entity, such assets shall be
2 independently audited for purposes of appraisal, at
3 both book and fair market value.

4 “(10) LIMITATION ON INVESTMENT.—Notwith-
5 standing the provisions of this title, COMSAT shall
6 not be authorized by the Commission to invest in a
7 satellite known as K-TV, unless Congress authorizes
8 such investment.

9 **“SEC. 622. SPECIFIC CRITERIA FOR INTELSAT.**

10 “In securing the privatizations required by section
11 621, the following additional criteria with respect to
12 INTELSAT privatization shall be applied as licensing cri-
13 teria for purposes of subtitle A:

14 “(1) NUMBER OF COMPETITORS.—The number
15 of competitors in the markets served by
16 INTELSAT, including the number of competitors
17 created out of INTELSAT, shall be sufficient to cre-
18 ate a fully competitive market.

19 “(2) PREVENTION OF EXPANSION DURING
20 TRANSITION.—

21 “(A) IN GENERAL.—Pending privatization
22 in accordance with the criteria in this title,
23 INTELSAT shall not expand by receiving addi-
24 tional orbital locations, placing new satellites in
25 existing locations, or procuring new or addi-

1 tional satellites except as permitted by subpara-
2 graph (B), and the United States shall oppose
3 such expansion—

4 “(i) in INTELSAT, including at the
5 Assembly of Parties;

6 “(ii) in the International Tele-
7 communication Union;

8 “(iii) through United States instruc-
9 tions to COMSAT;

10 “(iv) in the Commission, through de-
11 clining to facilitate the registration of addi-
12 tional orbital locations or the provision of
13 additional services (including additional
14 applications of existing services) or addi-
15 tional areas of business; and

16 “(v) in other appropriate fora.

17 “(B) EXCEPTION FOR CERTAIN REPLACE-
18 MENT SATELLITES.—The limitations in sub-
19 paragraph (A) shall not apply to any replace-
20 ment satellites if—

21 “(i) such replacement satellite is used
22 solely to provide public-switched network
23 voice telephony or occasional-use television
24 services, or both;

1 “(ii) such replacement satellite is pro-
2 cured pursuant to a construction contract
3 that was executed on or before March 25,
4 1998; and

5 “(iii) construction of such replacement
6 satellite commences on or before the final
7 date for INTELSAT privatization set forth
8 in section 621(1)(A).

9 “(3) TECHNICAL COORDINATION AMONG SIG-
10 NATORIES.—Technical coordination shall not be used
11 to impair competition or competitors, and coordina-
12 tion under Article XIV(d) of the INTELSAT Agree-
13 ment shall be eliminated.

14 **“SEC. 623. SPECIFIC CRITERIA FOR INTELSAT SEPARATED**
15 **ENTITIES.**

16 “In securing the privatizations required by section
17 621, the following additional criteria with respect to any
18 INTELSAT separated entity shall be applied as licensing
19 criteria for purposes of subtitle A:

20 “(1) DATE FOR PUBLIC OFFERING.—Within
21 one year after any decision to create any separated
22 entity, a public offering of the securities of such en-
23 tity shall be conducted.

24 “(2) PRIVILEGES AND IMMUNITIES.—The privi-
25 leges and immunities of INTELSAT and its signato-

1 ries shall be waived with respect to any transactions
2 with any separated entity, and any limitations on
3 private causes of action that would otherwise gen-
4 erally be permitted against any separated entity
5 shall be eliminated.

6 “(3) INTERLOCKING DIRECTORATES OR EM-
7 PLOYEES.—None of the officers, directors, or em-
8 ployees of any separated entity shall be individuals
9 who are officers, directors, or employees of
10 INTELSAT.

11 “(4) SPECTRUM ASSIGNMENTS.—After the ini-
12 tial transfer which may accompany the creation of a
13 separated entity, the portions of the electromagnetic
14 spectrum assigned as of the date of enactment of
15 this title to INTELSAT shall not be transferred be-
16 tween INTELSAT and any separated entity.

17 “(5) REAFFILIATION PROHIBITED.—Any merg-
18 er or ownership or management ties or exclusive ar-
19 rangements between a privatized INTELSAT or any
20 successor entity and any separated entity shall be
21 prohibited until 15 years after the completion of
22 INTELSAT privatization under this title.

23 **“SEC. 624. SPECIFIC CRITERIA FOR INMARSAT.**

24 “**In securing the privatizations required by section**
25 621, the following additional criteria with respect to

1 Inmarsat privatization shall be applied as licensing criteria
2 for purposes of subtitle A:

3 “(1) MULTIPLE SIGNATORIES AND DIRECT AC-
4 CESS.—Multiple signatories and direct access to
5 Inmarsat shall be permitted.

6 “(2) PREVENTION OF EXPANSION DURING
7 TRANSITION.—Pending privatization in accordance
8 with the criteria in this title, Inmarsat should not
9 expand by receiving additional orbital locations, plac-
10 ing new satellites in existing locations, or procuring
11 new or additional satellites, except for specified re-
12 placement satellites for which construction contracts
13 have been executed as of March 25, 1998, and the
14 United States shall oppose such expansion—

15 “(A) in Inmarsat, including at the Council
16 and Assembly of Parties;

17 “(B) in the International Telecommuni-
18 cation Union;

19 “(C) through United States instructions to
20 COMSAT;

21 “(D) in the Commission, through declining
22 to facilitate the registration of additional orbital
23 locations or the provision of additional services
24 (including additional applications of existing
25 services) or additional areas of business; and

1 “(E) in other appropriate fora.

2 This paragraph shall not be construed as limiting
3 the maintenance, assistance or improvement of the
4 GMDSS.

5 “(3) NUMBER OF COMPETITORS.—The number
6 of competitors in the markets served by Inmarsat,
7 including the number of competitors created out of
8 Inmarsat, shall be sufficient to create a fully com-
9 petitive market.

10 “(4) REAFFILIATION PROHIBITED.—Any merg-
11 er or ownership or management ties or exclusive ar-
12 rangements between Inmarsat or any successor en-
13 tity or separated entity and ICO shall be prohibited
14 until 15 years after the completion of Inmarsat pri-
15 vatization under this title.

16 “(5) INTERLOCKING DIRECTORATES OR EM-
17 PLOYEES.—None of the officers, directors, or em-
18 ployees of Inmarsat or any successor entity or sepa-
19 rated entity shall be individuals who are officers, di-
20 rectors, or employees of ICO.

21 “(6) SPECTRUM ASSIGNMENTS.—The portions
22 of the electromagnetic spectrum assigned as of the
23 date of enactment of this title to Inmarsat—

24 “(A) shall, after January 1, 2006, or the
25 date on which the life of the current generation

1 of Inmarsat satellites ends, whichever is later,
2 be made available for assignment to all systems
3 (including the privatized Inmarsat) on a non-
4 discriminatory basis and in a manner in which
5 continued availability of the GMDSS is pro-
6 vided; and

7 “(B) shall not be transferred between
8 Inmarsat and ICO.

9 “(7) PRESERVATION OF THE GMDSS.—The
10 United States shall seek to preserve space segment
11 capacity of the GMDSS.

12 **“SEC. 625. ENCOURAGING MARKET ACCESS AND PRIVAT-**
13 **IZATION.**

14 “(a) NTLA DETERMINATION.—

15 “(1) DETERMINATION REQUIRED.—Within 180
16 days after the date of enactment of this section, the
17 Secretary of Commerce shall, through the Assistant
18 Secretary for Communications and Information,
19 transmit to the Commission—

20 “(A) a list of Member countries of
21 INTELSAT and Inmarsat that are not Mem-
22 bers of the World Trade Organization and that
23 impose barriers to market access for private
24 satellite systems; and

1 “(B) a list of Member countries of
2 INTELSAT and Inmarsat that are not Mem-
3 bers of the World Trade Organization and that
4 are not supporting pro-competitive privatization
5 of INTELSAT and Inmarsat.

6 “(2) CONSULTATION.—The Secretary’s deter-
7 minations under paragraph (1) shall be made in con-
8 sultation with the Federal Communications Commis-
9 sion, the Secretary of State, and the United States
10 Trade Representative, and shall take into account
11 the totality of a country’s actions in all relevant
12 fora, including the Assemblies of Parties of
13 INTELSAT and Inmarsat.

14 “(b) IMPOSITION OF COST-BASED SETTLEMENT
15 RATE.—Notwithstanding—

16 “(1) any higher settlement rate that an over-
17 seas carrier charges any United States carrier to
18 originate or terminate international message tele-
19 phone services; and

20 “(2) any transition period that would otherwise
21 apply,

22 the Commission may by rule prohibit United States car-
23 riers from paying an amount in excess of a cost-based set-
24 tlement rate to overseas carriers in countries listed by the
25 Commission pursuant to subsection (a).

1 “(c) SETTLEMENTS POLICY.—The Commission shall,
2 in exercising its authority to establish settlements rates
3 for United States international common carriers, seek to
4 advance United States policy in favor of cost-based settle-
5 ments in all relevant fora on international telecommuni-
6 cations policy, including in meetings with parties and sig-
7 natories of INTELSAT and Inmarsat.

8 **“Subtitle C—Deregulation and**
9 **Other Statutory Changes**

10 **“SEC. 641. DIRECT ACCESS; TREATMENT OF COMSAT AS**
11 **NONDOMINANT CARRIER.**

12 “The Commission shall take such actions as may be
13 necessary—

14 “(1) to permit providers or users of tele-
15 communications services to obtain direct access to
16 INTELSAT telecommunications services—

17 “(A) through purchases of space segment
18 capacity from INTELSAT as of January 1,
19 2000, if the Commission determines that—

20 “(i) INTELSAT has adopted a usage
21 charge mechanism that ensures fair com-
22 pensation to INTELSAT signatories for
23 support costs that such signatories would
24 not otherwise be able to avoid under a di-
25 rect access regime, such as insurance, ad-

1 ministrative, and other operations and
2 maintenance expenditures;

3 “(ii) the Commission’s regulations en-
4 sure that no foreign signatory, nor any af-
5 filiate thereof, shall be permitted to order
6 space segment directly from INTELSAT
7 in order to provide any service subject to
8 the Commission’s jurisdiction; and

9 “(iii) the Commission has in place a
10 means to ensure that carriers will be re-
11 quired to pass through to end-users sav-
12 ings that result from the exercise of such
13 authority; and

14 “(B) through investment in INTELSAT as
15 of January 1, 2002, if the Commission deter-
16 mines that such investment will be attained
17 under procedures that assure fair compensation
18 to INTELSAT signatories for the market value
19 of their investments;

20 “(2) to permit providers or users of tele-
21 communications services to obtain direct access to
22 Inmarsat telecommunications services—

23 “(A) through purchases of space segment
24 capacity from Inmarsat as of January 1, 2000,
25 if the Commission determines that—

1 “(i) Inmarsat has adopted a usage
2 charge mechanism that ensures fair com-
3 pensation to Inmarsat signatories for sup-
4 port costs that such signatories would not
5 otherwise be able to avoid under a direct
6 access regime, such as insurance, adminis-
7 trative, and other operations and mainte-
8 nance expenditures;

9 “(ii) the Commission’s regulations en-
10 sure that no foreign signatory, nor any af-
11 filiate thereof, shall be permitted to order
12 space segment directly from Inmarsat in
13 order to provide any service subject to the
14 Commission’s jurisdiction; and

15 “(iii) the Commission has in place a
16 means to ensure that carriers will be re-
17 quired to pass through to end-users sav-
18 ings that result from the exercise of such
19 authority; and

20 “(B) through investment in Inmarsat as of
21 January 1, 2001, if the Commission determines
22 that such investment will be attained under pro-
23 cedures that assure fair compensation to
24 Inmarsat signatories for the market value of
25 their investments;

1 “(3) to act on COMSAT’s petition to be treated
2 as a nondominant carrier for the purposes of the
3 Commission’s regulations according to the provisions
4 of section 10 of the Communications Act of 1934
5 (47 U.S.C. 160); and

6 “(4) to eliminate any regulation on the avail-
7 ability of direct access to INTELSAT or Inmarsat
8 or to any successor entities after a pro-competitive
9 privatization is achieved consistent with sections
10 621, 622, and 624.

11 **“SEC. 642. TERMINATION OF MONOPOLY STATUS.**

12 “(a) RENEGOTIATION OF MONOPOLY CONTRACTS
13 PERMITTED.—The Commission shall, beginning January
14 1, 2000, permit users or providers of telecommunications
15 services that previously entered into contracts or are under
16 a tariff commitment with COMSAT to have an oppor-
17 tunity, at their discretion, for a reasonable period of time,
18 to renegotiate those contracts or commitments on rates,
19 terms, and conditions or other provisions, notwithstanding
20 any term or volume commitments or early termination
21 charges in any such contracts with COMSAT.

22 “(b) COMMISSION AUTHORITY TO ORDER RENEGO-
23 TIATION.—Nothing in this title shall be construed to limit
24 the authority of the Commission to permit users or provid-
25 ers of telecommunications services that previously entered

1 into contracts or are under a tariff commitment with
2 COMSAT to have an opportunity, at their discretion, to
3 renegotiate those contracts or commitments on rates,
4 terms, and conditions or other provisions, notwithstanding
5 any term or volume commitments or early termination
6 charges in any such contracts with COMSAT.

7 “(c) PROVISIONS CONTRARY TO PUBLIC POLICY
8 VOID.—Whenever the Commission permits users or pro-
9 viders of telecommunications services to renegotiate con-
10 tracts or commitments as described in this section, the
11 Commission may provide that any provision of any con-
12 tract with COMSAT that restricts the ability of such users
13 or providers to modify the existing contracts or enter into
14 new contracts with any other space segment provider (in-
15 cluding but not limited to any term or volume commit-
16 ments or early termination charges) or places such users
17 or providers at a disadvantage in comparison to other
18 users or providers that entered into contracts with COM-
19 SAT or other space segment providers shall be null, void,
20 and unenforceable.

21 **“SEC. 643. SIGNATORY ROLE.**

22 “(a) LIMITATIONS ON SIGNATORIES.—

23 “(1) NATIONAL SECURITY LIMITATIONS.—The
24 Federal Communications Commission, after a public
25 interest determination, in consultation with the exec-

1 utive branch, may restrict foreign ownership of a
2 United States signatory if the Commission deter-
3 mines that not to do so would constitute a threat to
4 national security.

5 “(2) NO SIGNATORIES REQUIRED.—The United
6 States Government shall not require signatories to
7 represent the United States in INTELSAT or
8 Inmarsat or in any successor entities after a pro-
9 competitive privatization is achieved consistent with
10 sections 621, 622, and 624.

11 “(b) CLARIFICATION OF PRIVILEGES AND IMMUNI-
12 TIES OF COMSAT.—

13 “(1) GENERALLY NOT IMMUNIZED.—Notwith-
14 standing any other law or executive agreement,
15 COMSAT shall not be entitled to any privileges or
16 immunities under the laws of the United States or
17 any State on the basis of its status as a signatory
18 of INTELSAT or Inmarsat.

19 “(2) LIMITED IMMUNITY.—COMSAT and any
20 other company functioning as United States signa-
21 tory to INTELSAT or Inmarsat shall not be liable
22 for action taken by it in carrying out the specific,
23 written instruction of the United States issued in
24 connection with its relationships and activities with

1 foreign governments, international entities, and the
2 intergovernmental satellite organizations.

3 “(3) PROVISIONS PROSPECTIVE.—Paragraph
4 (1) shall not apply with respect to liability for any
5 action taken by COMSAT before the date of enact-
6 ment of the Communications Satellite Competition
7 and Privatization Act of 1998.

8 “(c) PARITY OF TREATMENT.—Notwithstanding any
9 other law or executive agreement, the Commission shall
10 have the authority to impose similar regulatory fees on
11 the United States signatory which it imposes on other en-
12 tities providing similar services.

13 **“SEC. 644. ELIMINATION OF PROCUREMENT PREFERENCES.**

14 “Nothing in this title or the Communications Act of
15 1934 shall be construed to authorize or require any pref-
16 erence, in Federal Government procurement of tele-
17 communications services, for the satellite space segment
18 provided by INTELSAT, Inmarsat, or any successor en-
19 tity or separated entity.

20 **“SEC. 645. USE OF ITU TECHNICAL COORDINATION.**

21 “The Commission and United States satellite compa-
22 nies shall utilize the International Telecommunication
23 Union procedures for technical coordination with
24 INTELSAT and its successor entities and separated enti-
25 ties, rather than INTELSAT procedures.

1 **“SEC. 646. TERMINATION OF COMMUNICATIONS SATELLITE**
2 **ACT OF 1962 PROVISIONS.**

3 “Effective on the dates specified, the following provi-
4 sions of this Act shall cease to be effective:

5 “(1) Date of enactment of this title: Sections
6 101 and 102; paragraphs (1), (5) and (6) of section
7 201(a); section 301; section 303; section 502; and
8 paragraphs (2) and (4) of section 504(a).

9 “(2) On the effective date of the Commission’s
10 order that establishes direct access to INTELSAT
11 space segment: Paragraphs (1), (3) through (5), and
12 (8) through (10) of section 201(c); and section 304.

13 “(3) On the effective date of the Commission’s
14 order that establishes direct access to Inmarsat
15 space segment: Subsections (a) through (d) of sec-
16 tion 503.

17 “(4) On the effective date of a Commission
18 order determining under section 601(b)(2) that
19 Inmarsat privatization is consistent with criteria in
20 sections 621 and 624: Section 504(b).

21 “(5) On the effective date of a Commission
22 order determining under section 601(b)(2) that
23 INTELSAT privatization is consistent with criteria
24 in sections 621 and 622: Paragraphs (2) and (4) of
25 section 201(a); section 201(c)(2); subsection (a) of
26 section 403; and section 404.

1 **“SEC. 647. REPORTS TO CONGRESS.**

2 “(a) ANNUAL REPORTS.—The President and the
3 Commission shall report to the Committees on Commerce
4 and International Relations of the House of Representa-
5 tives and the Committees on Commerce, Science, and
6 Transportation and Foreign Relations of the Senate with-
7 in 90 calendar days of the enactment of this title, and
8 not less than annually thereafter, on the progress made
9 to achieve the objectives and carry out the purposes and
10 provisions of this title. Such reports shall be made avail-
11 able immediately to the public.

12 “(b) CONTENTS OF REPORTS.—The reports submit-
13 ted pursuant to subsection (a) shall include the following:

14 “(1) Progress with respect to each objective
15 since the most recent preceding report.

16 “(2) Views of the Parties with respect to privat-
17 ization.

18 “(3) Views of industry and consumers on pri-
19 vatization.

20 “(4) Impact privatization has had on United
21 States industry, United States jobs, and United
22 States industry’s access to the global marketplace.

23 **“SEC. 648. CONSULTATION WITH CONGRESS.**

24 “The President’s designees and the Commission shall
25 consult with the Committees on Commerce and Inter-
26 national Relations of the House of Representatives and

1 the Committees on Commerce, Science, and Transpor-
2 tation and Foreign Relations of the Senate prior to each
3 meeting of the INTELSAT or Inmarsat Assembly of Par-
4 ties, the INTELSAT Board of Governors, the Inmarsat
5 Council, or appropriate working group meetings.

6 **“SEC. 649. SATELLITE AUCTIONS.**

7 “Notwithstanding any other provision of law, the
8 Commission shall not have the authority to assign by com-
9 petitive bidding orbital locations or spectrum used for the
10 provision of international or global satellite communica-
11 tions services. The President shall oppose in the Inter-
12 national Telecommunication Union and in other bilateral
13 and multilateral fora any assignment by competitive bid-
14 ding of orbital locations or spectrum used for the provision
15 of such services.

16 **“Subtitle D—Negotiations To**
17 **Pursue Privatization**

18 **“SEC. 661. METHODS TO PURSUE PRIVATIZATION.**

19 “The President shall secure the pro-competitive
20 privatizations required by this title in a manner that meets
21 the criteria in subtitle B.

22 **“Subtitle E—Definitions**

23 **“SEC. 681. DEFINITIONS.**

24 “(a) IN GENERAL.—As used in this title:

1 “(1) INTELSAT.—The term ‘INTELSAT’
2 means the International Telecommunications Sat-
3 ellite Organization established pursuant to the
4 Agreement Relating to the International Tele-
5 communications Satellite Organization
6 (INTELSAT).

7 “(2) INMARSAT.—The term ‘Inmarsat’ means
8 the International Mobile Satellite Organization es-
9 tablished pursuant to the Convention on the Inter-
10 national Maritime Organization.

11 “(3) SIGNATORIES.—The term ‘signatories’—

12 “(A) in the case of INTELSAT, or
13 INTELSAT successors or separated entities,
14 means a Party, or the telecommunications en-
15 tity designated by a Party, that has signed the
16 Operating Agreement and for which such
17 Agreement has entered into force or to which
18 such Agreement has been provisionally applied;
19 and

20 “(B) in the case of Inmarsat, or Inmarsat
21 successors or separated entities, means either a
22 Party to, or an entity that has been designated
23 by a Party to sign, the Operating Agreement.

24 “(4) PARTY.—The term ‘Party’—

1 “(A) in the case of INTELSAT, means a
2 nation for which the INTELSAT agreement
3 has entered into force or been provisionally ap-
4 plied; and

5 “(B) in the case of Inmarsat, means a na-
6 tion for which the Inmarsat convention has en-
7 tered into force.

8 “(5) COMMISSION.—The term ‘Commission’
9 means the Federal Communications Commission.

10 “(6) INTERNATIONAL TELECOMMUNICATION
11 UNION.—The term ‘International Telecommuni-
12 cation Union’ means the intergovernmental organi-
13 zation that is a specialized agency of the United Na-
14 tions in which member countries cooperate for the
15 development of telecommunications, including adop-
16 tion of international regulations governing terrestrial
17 and space uses of the frequency spectrum as well as
18 use of the geostationary satellite orbit.

19 “(7) SUCCESSOR ENTITY.—The term ‘successor
20 entity’—

21 “(A) means any privatized entity created
22 from the privatization of INTELSAT or
23 Inmarsat or from the assets of INTELSAT or
24 Inmarsat; but

1 “(B) does not include any entity that is a
2 separated entity.

3 “(8) SEPARATED ENTITY.—The term ‘sepa-
4 rated entity’ means a privatized entity to whom a
5 portion of the assets owned by INTELSAT or
6 Inmarsat are transferred prior to full privatization
7 of INTELSAT or Inmarsat, including in particular
8 the entity whose structure was under discussion by
9 INTELSAT as of March 25, 1998, but excluding
10 ICO.

11 “(9) ORBITAL LOCATION.—The term ‘orbital lo-
12 cation’ means the location for placement of a sat-
13 ellite on the geostationary orbital arc as defined in
14 the International Telecommunication Union Radio
15 Regulations.

16 “(10) SPACE SEGMENT.—The term ‘space seg-
17 ment’ means the satellites, and the tracking, telem-
18 etry, command, control, monitoring and related fa-
19 cilities and equipment used to support the operation
20 of satellites owned or leased by INTELSAT,
21 Inmarsat, or a separated entity or successor entity.

22 “(11) NON-CORE SERVICES.—The term ‘non-
23 core services’ means, with respect to INTELSAT
24 provision, services other than public-switched net-
25 work voice telephony and occasional-use television,

1 and with respect to Inmarsat provision, services
2 other than global maritime distress and safety serv-
3 ices or other existing maritime or aeronautical serv-
4 ices for which there are not alternative providers.

5 “(12) ADDITIONAL SERVICES.—The term ‘addi-
6 tional services’ means Internet services, high-speed
7 data, interactive services, non-maritime or non-aero-
8 nautical mobile services, Direct to Home (DTH) or
9 Direct Broadcast Satellite (DBS) video services, or
10 Ka-band services.

11 “(13) INTELSAT AGREEMENT.—The term
12 ‘INTELSAT Agreement’ means the Agreement Re-
13 lating to the International Telecommunications Sat-
14 ellite Organization (‘INTELSAT’), including all its
15 annexes (TIAS 7532, 23 UST 3813).

16 “(14) HEADQUARTERS AGREEMENT.—The term
17 ‘Headquarters Agreement’ means the International
18 Telecommunication Satellite Organization Head-
19 quarters Agreement (November 24, 1976) (TIAS
20 8542, 28 UST 2248).

21 “(15) OPERATING AGREEMENT.—The term
22 ‘Operating Agreement’ means—

23 “(A) in the case of INTELSAT, the agree-
24 ment, including its annex but excluding all ti-
25 tles of articles, opened for signature at Wash-

1 ington on August 20, 1971, by Governments or
2 telecommunications entities designated by Gov-
3 ernments in accordance with the provisions of
4 the Agreement; and

5 “(B) in the case of Inmarsat, the Operat-
6 ing Agreement on the International Maritime
7 Satellite Organization, including its annexes.

8 “(16) INMARSAT CONVENTION.—The term
9 ‘Inmarsat Convention’ means the Convention on the
10 International Maritime Satellite Organization
11 (Inmarsat) (TIAS 9605, 31 UST 1).

12 “(17) NATIONAL CORPORATION.—The term
13 ‘national corporation’ means a corporation the own-
14 ership of which is held through publicly traded secu-
15 rities, and that is incorporated under, and subject
16 to, the laws of a national, state, or territorial gov-
17 ernment.

18 “(18) COMSAT.—The term ‘COMSAT’ means
19 the corporation established pursuant to title III of
20 the Communications Satellite Act of 1962 (47
21 U.S.C. 731 et seq.)

22 “(19) ICO.—The term ‘ICO’ means the com-
23 pany known, as of the date of enactment of this
24 title, as ICO Global Communications, Inc.

1 “(20) REPLACEMENT SATELLITE.—The term
2 ‘replacement satellite’ means a satellite that replaces
3 a satellite that fails prior to the end of the duration
4 of contracts for services provided over such satellite
5 and that takes the place of a satellite designated for
6 the provision of public-switched network and occa-
7 sional-use television services under contracts exe-
8 cuted prior to March 25, 1998 (but not including
9 K-TV or similar satellites). A satellite is only con-
10 sidered a replacement satellite to the extent such
11 contracts are equal to or less than the design life of
12 the satellite.

13 “(21) GLOBAL MARITIME DISTRESS AND SAFE-
14 TY SERVICES OR GMDSS.—The term ‘global mari-
15 time distress and safety services’ or ‘GMDSS’ means
16 the automated ship-to-shore distress alerting system
17 which uses satellite and advanced terrestrial systems
18 for international distress communications and pro-
19 moting maritime safety in general. The GMDSS per-
20 mits the worldwide alerting of vessels, coordinated
21 search and rescue operations, and dissemination of
22 maritime safety information.

23 “(b) COMMON TERMINOLOGY.—Except as otherwise
24 provided in subsection (a), terms used in this title that

1 are defined in section 3 of the Communications Act of
2 1934 have the meanings provided in such section.”.

Passed the House of Representatives May 6, 1998.

Attest:

ROBIN H. CARLE,

Clerk.