

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Intelsat LLC
Request for Extension of Time Under
Section 621(5) of the ORBIT Act
File No: SAT-MS-20030822-00292

MEMORANDUM OPINION AND ORDER

Adopted: December 17, 2003

Released: December 17, 2003

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we grant the request by Intelsat LLC ("Intelsat") to extend, for a six-month period, the December 31, 2003 deadline for conducting an initial public offering ("IPO") of securities as required under Section 621(5)(A)(i) of the Open-Market Reorganization for the Betterment of International Telecommunications Act ("the ORBIT Act").

II. BACKGROUND

2. The International Telecommunications Satellite Organization ("INTELSAT") was an intergovernmental organization ("IGO") created to provide satellite communications. INTELSAT privatized on July 18, 2001, into a corporate holding company structure. Intelsat is a subsidiary within that privatized structure and the U.S. licensee for operation of existing and planned satellites in the C-band and Ku-band.

1 ORBIT Act, Pub. L. 106-180, 114 Stat. 48 (2000), as amended, Pub. L. No. 107-233 § 1, 116 Stat. 1480 (2002) (hereinafter cited as "ORBIT Act").

2 INTELSAT and the International Maritime Satellite Organization ("Inmarsat") were originally IGOs created by international agreements as a result of initiatives undertaken in the early days of development of space technology by the United States under the Communications Satellite Act of 1962.

3 See e.g., Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, Memorandum Opinion Order and Authorization, 16 FCC Rcd 12280 (2001) ("Intelsat LLC ORBIT Act Compliance Order").

4 See Applications of Intelsat LLC For Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, Memorandum Opinion Order and Authorization, 15 FCC Rcd 15460 (2000) ("Licensing Order"), Recon. denied, 15 FCC Rcd 25234 (2000). The conventional C-band refers to the 3,700-4,200/5,925-6,425 MHz frequency bands. Intelsat is also authorized to operate in the extended C-band frequencies 3,625-3,700/5,850-5.925/6.425-6,650 MHz on certain

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compliance with the ORBIT Act.⁵

3. The ORBIT Act establishes criteria for Commission review of applications to serve the U.S. market by “successor entities” created as a result of the privatization of INTELSAT and Inmarsat.⁶ Intelsat constitutes a “successor entity” under the ORBIT Act. It therefore is subject to the ORBIT Act requirement under Section 621(5)(A)(i) that it conduct an IPO.⁷ The original deadline by which Intelsat was required to conduct an IPO was October 31, 2001, unless the Commission extended the deadline as provided for under Section 621(5)(A)(i), but such extension could not be later than December 31, 2002.⁸ Intelsat requested an extension of the October 31, 2001 deadline, and upon review, the Commission found that the grant of the extension request would be consistent with the ORBIT Act.⁹ Accordingly, on October 5, 2001, the Commission granted an extension of the original deadline on the basis of Intelsat’s demonstration that it had insufficient time to take the substantial planning, financial, and legal preparations necessary to conduct an IPO.¹⁰

4. On October 1, 2002, prior to an IPO taking place, Congress passed a bill to amend Section 621(5)(A)(i) of the ORBIT Act. The amendment extended the deadline by which Intelsat must conduct an IPO, stating that it “shall be conducted on or about December 31, 2003, except that the Commission may extend this deadline in consideration of market conditions and relevant business factors relating to the timing of an initial public offering, but such extensions shall not permit such offering to be conducted later than June 30, 2004.”¹¹ Thus, under current law, the deadline for Intelsat to conduct an IPO is December 31, 2003, subject to the Commission’s discretion to grant an extension until June 30, 2004.¹²

5. On August 22, 2003, Intelsat filed the instant request for an additional extension of time from December 31, 2003, to June 30, 2004.¹³ The Commission placed this request on public notice on September 5, 2003.¹⁴ Comments were filed by EchoStar Satellite Corporation on October 6, 2003. Intelsat filed a response on October 21, 2003. EchoStar withdrew its comments on October 28, 2003. Consequently, there are no objections on the record to Intelsat’s request to extend the IPO deadline to June 30, 2004.

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satellites at certain orbital locations. In addition, Intelsat is authorized to operate in the extended C-band frequencies 3,420-3,625 MHz on the Intelsat-805 at 55.5° W.L. for service to non-US locations. The 3,420-3,600 GHz portion of this frequency band is not a satellite band in the U.S. and is operated by Intelsat outside the U.S. subject to potential interference from worldwide shipborne U.S. military radar operations. The conventional Ku-band refers to the 11.7-12.2/14.0-14.5 GHz frequency bands. Intelsat is also authorized to operate in the extended Ku-frequency bands 10.95-11.2/11.45-11.7/12.5-12.75/13.75-14.0 GHz on certain satellites at certain orbital locations.

⁵ See *Licensing Order*, 15 FCC Rcd at 15519; *Intelsat LLC ORBIT Act Compliance Order*, 16 FCC Rcd at 12303.

⁶ Criteria are specified in the ORBIT Act for privatization of INTELSAT in Sections 621 and 622. See ORBIT Act §§ 621 and 622.

⁷ See ORBIT Act § 621(5)(A)(i).

⁸ See Pub. L. 106-180 § 621(5)(A)(i).

⁹ See *In the Matter of Intelsat LLC, Request for Extension of Time Under Section 621(5) of the ORBIT Act*, Memorandum Opinion and Order, 16 FCC Rcd 18185 (2001) (“*Extension Order*”).

¹⁰ *Id.* at 18188.

¹¹ See Pub. L. 107-233 § 1.

¹² See ORBIT Act § 621(5)(A)(i).

¹³ See *In the Matter of Intelsat LLC Request for Extension of Time Under Section 621(5) of the ORBIT Act*, filed August 22, 2003 (“*Intelsat Extension Request*”).

¹⁴ See Intelsat LLC, SAT-MS-20030822-00292, Public Notice, Report No. SAT-00163, September 5, 2003.

III. DISCUSSION

6. A primary objective of the ORBIT Act is to achieve a fully “pro-competitive privatization” of INTELSAT.¹⁵ The ORBIT Act established several criteria to ensure a pro-competitive privatization, including a deadline for conducting an IPO, originally established as October 1, 2001, absent an extension.¹⁶ As stated in the previous *Extension Order*, the purpose of the IPO requirement under Section 621(5)(A)(i) of the ORBIT Act is to ensure that the privatized successor entities of INTELSAT become independent commercial entities with pro-competitive ownership structures.¹⁷ The ORBIT Act anticipates that independence will be achieved, in part, through conducting an IPO that will substantially dilute the aggregate ownership of Intelsat.¹⁸ Thus, our consideration of Intelsat’s request for an additional extension, like the Commission’s grant of the previous extension, must be based upon whether the proposed extension is consistent with the underlying purpose of the requirement for an IPO.¹⁹

7. Based upon the information presented by Intelsat we conclude that a grant of the further extension would be consistent with the ORBIT Act and the public interest. In its extension request, Intelsat states that current market conditions would not support an IPO of the size necessary to allow for substantial dilution of the equity percentage held by the former INTELSAT Signatories and to satisfy the goals of the ORBIT Act.²⁰ In support of its claims, Intelsat provides statements from three financial advisors supporting their claims relative to the market conditions for an IPO of the size necessary to achieve substantial dilution.²¹ Intelsat states that the decision to pursue the Loral acquisition was based on the belief that the acquisition would improve the company’s competitive position in advance of an IPO.²² Intelsat further claims that, if an IPO were conducted prior to the resolution of the pending transaction and of any related uncertainty about Intelsat’s business and capital strategies, the market evaluation of Intelsat’s offering would be biased downward. Intelsat claims that this bias would cause existing shareholders to withhold their participation in the IPO and would reduce the likelihood that Intelsat could achieve substantial dilution through the IPO.

8. No party disputes on the record, Intelsat’s assertion, supported by the statements of its

¹⁵ “It is the purpose of this Act to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat.” See ORBIT Act § 2.

¹⁶ See ORBIT Act § 621(5)(A)(i).

¹⁷ *Extension Order*, 16 FCC Rcd at 18187. See also ORBIT Act § 621(2) which provides, in part: “INDEPENDENCE – The Privatized successor entities and separated entities of INTELSAT and Inmarsat shall conduct an initial public offering in accordance with paragraph (5) to achieve such independence. Such offering shall substantially dilute the aggregate ownership of such entities by such signatories or former signatories. In determining whether a public offering attains substantial dilution, the Commission shall take into account the purpose and intent, privatization criteria, and other provisions of this title, as well as market conditions.” *Id.*

¹⁸ *Id.*

¹⁹ See e.g., *Extension Order*, 16 FCC Rcd at 18187.

²⁰ *Intelsat Extension Request* at 5.

²¹ See *Intelsat Extension Request* at Exhibit 2. Exhibit 2 contains three letters: Letter from Max Herrstein, Managing Director, Morgan Stanley & Co., Inc. to Mr. Donald Abelson, dated August 20, 2003 (“*Morgan Stanley Letter*”); Letter from Michael Gordon, Director, Merrill, Lynch, Pierce, Fenner & Smith, Inc. to Mr. Donald Abelson, dated August 21, 2003 (“*Merrill Lynch Letter*”); and Letter from Ozzie Ramos, Senior Vice President, Lehman Brothers, Inc. to Mr. Donald Abelson, dated August 21, 2003 (“*Lehman Brothers Letter*”).

²² *Intelsat Extension Request* at 7.

three financial advisors,²³ that by extending the period during which it would conduct an IPO, Intelsat will likely be able to achieve substantial dilution of equity, which in turn will help achieve a pro-competitive privatization. The record contains no information or basis for arriving at a contrary conclusion. Accordingly, we find that a six-month extension will provide Intelsat ample opportunity to conduct an IPO that would likely achieve “substantial dilution” as required under the ORBIT Act. Congress gave the Commission discretion to extend the ORBIT Act IPO deadline to give Intelsat flexibility to achieve ORBIT Act goals as well as act within its own business interests.²⁴ We note that Intelsat has made progress toward conducting an IPO.²⁵ In January 2003, Intelsat completed its exchange offer for debt issued by the company and has since been subject to the reporting information requirements of the Securities Exchange Act of 1934, as amended.²⁶ Intelsat is required, as a foreign private issuer, to file with the U.S. Securities and Exchange Commission, an annual report on Form 20-F within six months after the end of each fiscal year. Intelsat filed its annual report on April 1, 2003.²⁷ However, given that Intelsat must conduct a large IPO in order to be confident that the IPO would achieve “substantial dilution,” and there are serious concerns that current market conditions could not support an IPO of sufficient size, we find that an extension of the IPO deadline is consistent with the goals of the ORBIT Act.

9. To ensure that Intelsat is exercising due diligence in preparing for an IPO based upon the advice of its financial advisors, we require Intelsat to continue to file progress reports on a six-month basis with the Commission. Specifically, in our earlier grant of Intelsat’s extension request, we required Intelsat to file reports on a six-month basis demonstrating due diligence in pursuing an IPO under the requirements of the Act.²⁸ These reports were required to include specific information on the IPO such as: (1) selection of an investment bank/underwriter; (2) filing of the registration statement with the Securities and Exchange Commission; (3) completion of financial analysis and due diligence; (4) a copy of the Preliminary Prospectus and the Final Prospectus (when made available to the general public); and (5) the anticipated time of the IPO.²⁹ We note that these reports, including information of the filing of appropriate documents with the Securities Exchange Commission, will ensure that the actions of Intelsat in conducting an IPO will be appropriately open and transparent.

²³ For example, according to Morgan Stanley, the capital market environment at present is relatively unproven for large initial public offerings in the United States. *Morgan Stanley Letter* at 1. Morgan Stanley points out that only three U.S. media and telecommunications companies have completed IPOs in the last three years compared to 104 for 1998-2001, and no U.S. media or telecommunications company has executed an IPO in excess of one billion dollars since 2000. *Id.* at 2. Merrill Lynch reiterates the point that Intelsat’s IPO is expected to exceed \$1 billion, and that there have been no IPOs in excess of \$1 billion in 2003. *Merrill Lynch Letter* at 1. Although it provides different numbers for different time periods, Lehman Brothers makes the same argument. *Lehman Brothers Letter* at 1. See *Intelsat Extension Request* at Exhibit 1.

²⁴ See, e.g., *Extension Order*, 16 FCC Rcd at 18189.

²⁵ In view of the responsibility Congress has given the Commission to carry out the provisions of the ORBIT Act, the Commission required Intelsat to file with the Commission, reports on a six-month basis demonstrating due diligence in pursuing an IPO under the requirements of the ORBIT Act. See *Extension Order*, 16 FCC Rcd at 18190.

²⁶ 15 U.S.C. § 78a, 48 Stat. 881.

²⁷ See Progress Report, In the Matter of Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, File Nos. SAT-A/O 20000119-00001/18, SAT-AMD-20000119-00029/41, SAT-LOA-20000119-00019/28, filed April 1, 2003.

²⁸ See *Extension Order*, 16 FCC Rcd at 18190. Intelsat last filed a Progress Report in October 2003.

²⁹ *Id.*

IV. CONCLUSION

10. We find that Intelsat has made a sufficient showing of market conditions and relevant business factors related to the timing of an IPO to warrant an additional extension of six months to satisfy the ORBIT Act's ownership requirements. However, we caution Intelsat that this is the last extension that we may grant to Intelsat under the ORBIT Act. That is, the ORBIT Act states that, if the IPO is not conducted by June 30, 2004, to achieve "substantial dilution" of ownership, the Commission must "limit through conditions or deny" any pending application or request, and "limit or revoke previous authorizations" for Intelsat LLC non-core services consistent with Section 601(b)(i).³⁰

V. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to Sections 621(2) and 621(5) of the Satellite Communications Act of 1962, as amended by the Open-Market Reorganization for the Betterment of International Telecommunications Act, and Public Law No. 107-233 § 1, 116 Stat. 1480 (October 1, 2002), that Intelsat LLC's request for an extension of the December 31, 2003 deadline to conduct an initial public offering, File No: SAT-MS-20030822-00292, IS GRANTED, and the deadline for Intelsat LLC to conduct the initial public offering, consistent with the ORBIT Act, is June 30, 2004.

12. IT IS FURTHER ORDERED that Intelsat LLC shall file a report with the Commission on April 1, 2004 on the progress toward preparing to conduct its IPO.

13. IT IS FURTHER ORDERED that Intelsat LLC shall file with the Commission 30 days after conduct of the initial public offering a demonstration that the initial public offering is consistent with Sections 621(2) and 621(5)(A)(i) of the ORBIT Act.

14. IT IS FURTHER ORDERED that this Order shall be effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau

³⁰ See ORBIT Act § 601(b)(i).