



PUBLIC NOTICE

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AUTHORIZATIONS GRANTED

Applications of Comsat General Corporation, Lockheed Martin Global Telecommunications LLC, Comsat New Services, Inc., Intelsat LLC, and Intelsat MTC LLC to Assign Licenses and Authorizations and Request for a Declaratory Ruling on Foreign Ownership

IB Docket No. 04-235

By the Chief, International Bureau and Chief, Wireless Telecommunications Bureau:

On May 28, 2004, COMSAT General Corporation (“COMSAT General”), Lockheed Martin Global Telecommunications, LLC (“LMGT”), and COMSAT New Services, Inc. (“CNSI”) (collectively, “COMSAT General Businesses” or “Assignors”) and Intelsat LLC and Intelsat MTC LLC (together, “Assignees,” and collectively with COMSAT General Businesses, the “Applicants”) filed a series of applications pursuant to sections 214, 308, and 310(d) of the Communications Act of 1934, as amended (the “Act”) and a petition for declaratory ruling under section 310(b)(4) of the Act.¹ The unopposed Applications seek Commission approval for assignment of various licenses and authorizations from the COMSAT General Businesses to Intelsat LLC and Intelsat MTC LLC pursuant to an Asset Purchase Agreement entered into by and among the Applicants. These applications pertain to special temporary authority and licenses for earth stations, a geostationary satellite space station, a private land mobile radio license, and an international section 214 authorization. Intelsat LLC and Intelsat MTC LLC also request a declaratory ruling that their indirect foreign investment is consistent with the public interest.²

On August 10, 2004, the United States Department of Justice, including the Federal Bureau of Investigation and the United States Department of Homeland Security (collectively, the “Executive Branch Agencies”), with the concurrence of COMSAT General, LMGT, and CNSI, submitted a petition requesting that the Commission defer grant of these applications until potential national security, law enforcement, and public safety issues have been addressed by the parties.³ On September 4, 2004, the

¹ 47 U.S.C. §§ 214, 308, 310(b)(4), 310(d). On June 25, 2004, the Commission placed the Applications and Petition for Declaratory Ruling on public notice as acceptable for filing. *Comsat General Corporation, Lockheed Martin Global Telecommunications LLC, Comsat New Services, Inc., Intelsat LLC, and Intelsat MTC LLC Seek FCC Consent to Assign Licenses and Authorizations and a Declaratory Ruling on Foreign Ownership*, IB Docket No. 04-235, Public Notice, DA 04-1873 (Int’l Bur. June 25, 2004).

² A list of the applications and the petition for declaratory ruling filed in this proceeding is set forth in Appendix A of this Public Notice.

³ According to the petition, the Executive Branch Agencies are “evaluating whether the proposed assignment of COMSAT’s licenses and authorizations to Intelsat could impair the ability of authorized governmental agencies in

Department of Defense (“DOD”) filed a separate petition requesting that the Commission defer grant of these applications pending resolution of potential national security issues.⁴ Subsequently, on October 7, 2004, the DOD submitted a petition withdrawing its petition to defer.⁵ That same day, the Executive Branch Agencies submitted a Petition to Adopt Conditions to Authorizations and Licenses (“Petition”).⁶ In the Petition, the Executive Branch Agencies advised the Commission that they do not object to the grant of the instant applications, provided that the Commission conditions such grant on compliance by Intelsat LLC, Intelsat MTC LLC, and Intelsat Government Solutions Corporation (“IGSC”) with the commitments and undertakings they made in an October 5, 2004 letter to the Executive Branch Agencies (the “Intelsat Commitment Letter”).⁷

Upon consideration of the record, the International Bureau and the Wireless Telecommunications Bureau find that grant of the Applications will serve the public interest, convenience and necessity, subject to the conditions set forth in this Public Notice and attachments.⁸ As a preliminary matter, there is no evidence in the record to suggest that Intelsat LLC and Intelsat MTC LLC lack the basic qualifications to hold the FCC licenses necessary to operate the COMSAT General Businesses.⁹ Further, the record contains no evidence that the proposed assignment would harm competition in the U.S.-international satellite communications markets.¹⁰ Intelsat, Ltd. (“Intelsat”), the ultimate parent of the Assignees, owns and operates a global satellite system that provides space segment capacity for various communications services, including voice, video, data, and Internet connections. Its fleet of satellites offers service in more than 200 countries.¹¹ There are a number of competing providers in these markets as well as other

the United States to satisfy their obligations to preserve national security, enforce the laws, and protect public safety.” Department of Justice, Federal Bureau of Investigation, Department of Homeland Security, Intelsat, LLC, Intelsat MTC LLC, COMSAT General Corporation, Lockheed Martin Global Telecommunications, LLC, and COMSAT New Services, Inc., Joint Petition to Defer, IB Docket No. 04-235 at 2 (dated Aug. 10, 2004).

⁴ The DOD states that it is “evaluating whether the proposed assignment of COMSAT’s licenses and authorizations to Intelsat could impair its ability to preserve national security communication options to ensure the defense of America.” Department of Defense, Petition to Defer, IB Docket No. 04-235 at 2 (dated Sept. 14, 2004).

⁵ Department of Defense, The Department of Defense Seeks to Withdraw its Petition to Defer, IB Docket No. 04-235 (dated Oct. 7, 2004).

⁶ Department of Justice, Federal Bureau of Investigation, and Department of Homeland Security, Petition to Adopt Conditions to Authorizations and Licenses, IB Docket No. 04-235 (dated Oct. 7, 2004).

⁷ Letter from Joan M. Griffin, Kelley, Drye, & Warren LLP, Counsel to COMSAT General Corporation, Lockheed Martin Global Telecommunications, LLC, and COMSAT New Services, Inc. and John B. Reynolds, III, Wiley, Rein, & Fielding, LLP, Counsel to Intelsat LLC, INTELSAT MTC LLC, and Intelsat Government Solutions Corporation, to Laura H. Parsky, Deputy Assistant Attorney General, United States Department of Justice, Tina W. Gabbrielli, Director of Intelligence Coordination and Special Infrastructure Protection Programs, United States Department of Homeland Security, and Patrick W. Kelley, Deputy General Counsel, Federal Bureau of Investigation (dated Oct. 5, 2004). This letter is attached to this Public Notice as Appendix B. According to the letter, Intelsat Ltd. and IGSC are parties to the transaction agreement but not to the FCC applications. Intelsat Commitment Letter at n.1.

⁸ 47 U.S.C. §§ 214(a), 310(d).

⁹ See 47 U.S.C. § 308(b).

¹⁰ See Petition for Declaratory Ruling under Section 310 of the Communications Act of 1934, as amended and Joint Application for Consent to Assignments, File No. ISP-PDR-20040528-0005, at 15-19 (filed May 8, 2004) (“Petition for Declaratory Ruling”).

¹¹ *Id.* at 5.

satellite- and cable-based providers.¹² Under these circumstances, we find that granting the proposed transaction will not harm competition in the U.S.-international satellite communications markets. Further, we find that the combination of Intelsat's operations with the assets it proposes to acquire from COMSAT General Businesses should provide Intelsat with the ability to provide its customers greater end-to-end international communications solutions and allow Intelsat to realize economies of scale and scope.¹³

Additionally, based on the certifications and representations made by the Applicants, we find that Intelsat MTC LLC is not affiliated with a foreign carrier within the meaning of the Commission's rules.¹⁴ We therefore conclude that, upon closing, Intelsat MTC LLC shall be classified as a non-dominant international carrier, pursuant to section 63.10 of the rules, on all authorized U.S. international routes.¹⁵ Intelsat MTC LLC, however, will be treated as "dominant" in its provision of Intelsat space segment capacity for switched voice and private line service on non-competitive, or "thin," U.S. international routes and therefore will be subject to the alternative rate regulation adopted in the *Cosat Alternative Rate Regulation Order*.¹⁶

The International Bureau further finds that it would not serve the public interest to deny the applications on the basis of proposed indirect foreign ownership of Intelsat LLC and Intelsat MTC LLC in excess of the 25 percent benchmark of section 310(b)(4). As discussed in the Applications, Intelsat LLC and Intelsat MTC LLC are indirect, wholly-owned subsidiaries of Intelsat (Bermuda), Ltd., and, in turn, by Intelsat, both of which are incorporated under the laws of Bermuda, a World Trade Organization ("WTO") Member country. The Commission has previously approved the indirect foreign ownership of Intelsat LLC in the *Intelsat LLC Licensing Order*.¹⁷ More recently, the International Bureau found, in the

¹² See Petition for Declaratory Ruling at 17-18.

¹³ *Id.*

¹⁴ See 47 C.F.R. § 63.09(d)-(e). Intelsat MTC LLC does not hold any international Section 214 authorizations. See Joint Application for Assignment of International Section 214 Authorization, ITC-ASG-20040528-00235, at 4. However, its direct parent company, IGSC, holds international section 214 authority granted in File No. ITC-214-20040528-00213. See *International Authorizations Granted*, Public Notice, DA 04-2251 (rel. July 22, 2004). In addition, its ultimate parent, Intelsat, Ltd., holds section 214 authorizations through its subsidiary, Intelsat USA License Corp. See *Lockheed Martin Corporation, COMSAT Corporation, and COMSAT Digital Teleport, Inc., Assignors and Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC and Intelsat USA License Corp., Application for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petition for Declaratory Ruling*, 17 FCC Rcd 27732 (Int'l Bur./Wireless Tel. Bur. 2002) ("*Lockheed/Cosat/Intelsat Order*").

¹⁵ 47 C.F.R. § 63.10.

¹⁶ *Cosat Corporation, Policies and Rules for Alternative Incentive Based Regulation of Cosat Corporation*, IB Docket No. 98-60, Report and Order, 14 FCC Rcd 3065 (1999) ("*Cosat Alternative Rate Regulation Order*"). See also *Cosat Corporation Petition Pursuant to Section 10 of the Communications Act for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, IB Docket No. 98-60, Order and Notice of Proposed Rulemaking, 13 FCC Rcd 14083 (1998) ("*Cosat Non-Dominant Order and NPRM*"). Thus, we extend to Intelsat MTC LLC the condition that we imposed on the Assignor, Lockheed Martin Global Telecommunications, LLC with respect to its authorization (ITC-214-20001016-00636). See *International Authorizations Granted*, Public Notice, 15 FCC Rcd 22312, 22314 (2000) (the "requirements of dominant carrier regulation that will apply to the applicant will be the same as those that apply to [COMSAT World Systems]").

¹⁷ *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 and Order and Authorization, 15 FCC Rcd 15460, 15483, ¶¶ 44-55 (2000) ("*Intelsat LLC Licensing Order*"), recon. denied, 15 FCC Rcd 25234 (2000).

*Lockheed/Comsat/Intelsat Order*¹⁸ and in the *Loral/Intelsat Order*,¹⁹ that Intelsat LLC's ultimate parent principally conducts business in and from Bermuda and from other WTO Member countries.²⁰ The Bureau also found that the vast majority of foreign equity and voting interests in Intelsat were held by investors from WTO Member countries.²¹ The Applicants assert in their Petition for Declaratory Ruling that the corporate structure and ownership of Intelsat and all of its subsidiaries have not changed materially since the *Loral/Intelsat Order*.²² Based on our review of the record and the representations made by the Applicants, we conclude that Intelsat LLC and Intelsat MTC LLC are entitled to a rebuttable presumption that their indirect foreign ownership by and through Intelsat and Intelsat (Bermuda), Ltd. does not raise competitive concerns, and there is no evidence in the record that would rebut this presumption. We also determine that the commitments and undertakings Intelsat LLC, Intelsat MTC LLC, and IGSC made in the Intelsat Commitment Letter address and resolve other factors relevant to our public interest analysis under sections 214 and 310(b)(4).²³ Accordingly, we grant the Petition for Declaratory Ruling to permit the foreign ownership of Intelsat LLC and Intelsat MTC LLC by Intelsat and through Intelsat (Bermuda), Ltd. (up to and including 100 percent of equity and voting interests) and by Intelsat's foreign shareholders identified in the application.²⁴ We extend the provisions of our declaratory ruling in the *Loral/Intelsat Order* to Intelsat LLC and Intelsat MTC LLC.²⁵

Finally, consistent with Commission precedent, the Bureaus accord the appropriate level of deference to the Executive Branch Agencies' expertise on national security and law enforcement issues.²⁶ According to the Petition submitted by the Executive Branch Agencies, the Intelsat Commitment Letter addresses the Executive Branch Agencies' stated concerns regarding national security, law enforcement,

¹⁸ *Lockheed/Comsat/Intelsat Order*, 17 FCC Rcd at 27755, ¶¶ 35-46.

¹⁹ *Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), Assignors and Intelsat North America, LLC, Assignee, Applications for Consent to Assignment of Space Station Authorizations and Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act of 1934, as amended, Order and Authorization*, 19 FCC Rcd 2404 (Int'l Bur. 2004) ("*Loral/Intelsat Order*").

²⁰ See, e.g., *Lockheed/Comsat/Intelsat Order*, 17 FCC Rcd at 27757, ¶ 38.

²¹ *Id.*

²² Petition for Declaratory Ruling, at 14. According to the Applicants, Lockheed Martin Corporation, a U.S. company and Intelsat's largest minority shareholder, holds more than 20 percent of the total shares of Intelsat, Ltd. They further state that the remaining ownership interests in Intelsat, Ltd. remain widely dispersed among more than 220 entities, representing more than 145 nations. Additionally, they state that currently, entities from WTO countries hold approximately 94 percent of shares of Intelsat, Ltd. and its subsidiaries, and that indirect foreign government ownership is approximately 30 percent. *Id.* at 14-15.

²³ The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing a transfer of control or assignment application in which foreign ownership is an issue. See *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24170-72, ¶¶ 178-182 (1997) ("*DISCO II Order*"); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-921, ¶¶ 61-66 (1997), Order on Reconsideration, 15 FCC Rcd 18158 (2000) ("*Foreign Participation Order*"). In assessing the public interest, the Commission considers the record and accords the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues. See *Foreign Participation Order*, 12 FCC Rcd at 23919-921, ¶¶ 61-66.

²⁴ See Petition for Declaratory Ruling, Attachment 3: Ownership Information.

²⁵ *Loral/Intelsat Order*, 19 FCC Rcd at 2415, ¶ 26.

²⁶ *DISCO II Order*, 12 FCC Rcd at 24170-72, ¶¶ 178-182; *Foreign Participation Order*, 12 FCC Rcd 23891, 23919-21, ¶¶ 61-66.

and public safety. Accordingly, we grant the Petition filed by the Executive Branch Agencies and grant the subject applications subject to compliance by Intelsat LLC, Intelsat MTC LLC, and IGSC with the terms of the Intelsat Commitment Letter.

The transaction shall be completed within 60 days from the date of authorization.²⁷ Within 30 days of consummation, the Commission shall be notified by letter of the date of consummation and the file numbers of the applications involved in the transaction.²⁸ Failure to comply with all relevant Commission rules, policies, or any specific condition to the grant of these Applications will result in automatic rescission of the Commission's approval, dismissal of the underlying application, and could subject the applications to enforcement action, including but not limited to the imposition of forfeitures.

Pursuant to section 1.103 of the Commission's rules, the grant is effective upon release of this Public Notice.²⁹ Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within 30 days of this Public Notice.³⁰

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²⁷ 47 C.F.R. § 25.119(f).

²⁸ *Id*; *see also* 47 C.F.R. § 1.948(d).

²⁹ 47 C.F.R. § 1.103.

³⁰ 47 C.F.R. §§ 1.106, 1.115.

Appendix A

Section 310 Applications

Part 25 – Satellite Communications

<u>File Number</u>	<u>Assignor</u>	<u>Assignee</u>	<u>Call Sign</u>
SES-ASG-20040528-00744	Lockheed Martin Global Telecommunications, LLC	Intelsat MTC LLC	E960186 E960187
SES-ASG-20040528-00750	Comsat General Corp.	Intelsat LLC	E970053
SES-ASG-20040528-00751	Comsat General Corp.	Intelsat LLC	E980015 E980016 E980019 E980217 E990303
SAT-ASG-20040528-00109	Comsat General Corp	Intelsat LLC	MARISAT F2

Part 90 --Private Land Mobile License

<u>File Number</u>	<u>Assignor</u>	<u>Assignee</u>	<u>Call Sign</u>
0001743676	COMSAT General Corporation	Intelsat LLC	WPYJ473

International Section 214 Authorization

<u>File Number</u>	<u>Assignor</u>	<u>Assignee</u>	<u>Authorization Number</u>
ITC-ASG-20040528-00235	Lockheed Martin Global Telecommunications, LLC	Intelsat MTC LLC	ITC-214-20001016-00636

Petition for Declaratory Ruling

<u>File Number</u>
ISP-PDR-20040528-00005

Appendix B

Intelsat Commitment Letter