

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

In the Matter of the Applications of)	
)	
INTELSAT LLC)	
)	File Nos.
For Authority to Operate, and to Further)	SAT A/O-20000119-00002 to
Construct, Launch and Operate C-band and)	SAT A/O-20000119-00018;
Ku-band Satellites that Form a Global)	SAT-AMD-20000119-00029 to
Communications System in Geostationary)	SAT-AMD-20000119-00041;
Orbit)	SAT-LOA-20000119-00019 to
)	SAT-LOA-20000119-00028

MEMORANDUM OPINION ORDER AND AUTHORIZATION

Adopted: May 24, 2001

Released: May 29, 2001

By the Commission:

I. INTRODUCTION

1. Intelsat LLC has filed supplemental information required by the Commission in its *Memorandum Opinion Order and Authorization* issued on August 8, 2000 in the above captioned proceeding. In that decision, the Commission conditionally granted the applications of Intelsat LLC requesting licenses to: (1) operate 17 existing C-band and Ku-band satellites presently owned and operated by the International Telecommunications Satellite Organization (“INTELSAT”); (2) construct, launch and operate 10 satellites planned by INTELSAT for operation in these bands; and (3) relocate certain currently operating satellites to different orbital locations upon launch of planned satellites.¹

2. Intelsat LLC filed the applications in order to become a Commission licensee upon the privatization of INTELSAT. The licenses are to become effective and operating authority conferred upon Intelsat LLC when INTELSAT transfers its satellites and associated assets to Intelsat LLC and its ITU network filings to the U.S. registry.² The *Licensing Order*, however, required Intelsat LLC to supplement its applications following the November 2000 Assembly of Parties decision to provide the details of INTELSAT’s privatization, as reflected in the Assembly decision.³ The supplemental filings are necessary for the Commission to determine whether INTELSAT’s privatization is consistent with the Open-Market Reorganization for the Betterment of International Telecommunications Act (the “ORBIT” Act).⁴ Congress enacted the ORBIT Act

¹ *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, FCC 00-287 (rel. Aug. 8, 2000)(*Licensing Order*), Order on Reconsideration, FCC 00-437, (rel. Dec. 14, 2000)(*Reconsideration Order*).

² *Licensing Order* at ¶ 38.

³ *Licensing Order* at ¶¶ 38 and 161.

⁴ Pub. L. 106-180, 114 Stat. 48 (2000).

in March 2000 to promote a competitive market for satellite communications through a fully privatized INTELSAT and Inmarsat.⁵

3. On December 18, 2000 Intelsat LLC submitted its Supplemental Information, including the request for confidential treatment of Exhibits 4 and 5 of its filing (Shareholders Agreement and By-laws).⁶ The Supplemental Information was placed on public notice on December 22, 2000.⁷ On January 29, 2001, the International Bureau issued an Order Adopting Protective Order covering the documents which Intelsat LLC claimed confidentiality and extending the deadline for filing comments and replies on Intelsat LLC's Supplemental Information.⁸ The Bureau also required Intelsat LLC to file information and documents relating to INTELSAT's post-privatization distribution arrangements. Intelsat LLC filed this information on March 16, 2001.⁹ The additional information was placed on public notice on March 23, 2001.¹⁰

4. PanAmSat Corporation (PanAmSat) and Lockheed Martin Global Telecommunications (LMGT) filed comments on Intelsat LLC's Supplemental Information.¹¹ Intelsat LLC replied to these comments.¹² PanAmSat and LMGT filed responses to Intelsat LLC's replies.¹³ No comments were filed in response to Information Regarding Post-Privatization Distribution Arrangements filed by Intelsat LLC.

II. BACKGROUND

5. INTELSAT is a 144-member intergovernmental organization created by international agreement.¹⁴ INTELSAT owns and operates a global satellite system over which much of the world's international telephone, video, data, internet and other communications are transmitted. It operates 17 satellites and serves tens of thousands of earth stations. As noted in our *Licensing Order*, INTELSAT was created 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

⁵ Pub. L. 106-180 § 2.

⁶ *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*, Intelsat LLC Supplemental Information (Dec. 18, 2000)(*Supplemental Information*).

⁷ Public Notice Report No. SPB-161, December 22, 2000 (as corrected in Report No. SAT-00063), (January 5, 2000).

⁸ *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*, Order Adopting Protective Order, DA 00-1428, ¶ 10 (rel. Jan 29, 2001)(*Protective Order*).

⁹ *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*, Intelsat LLC Information Regarding Post-Privatization Distribution Arrangements (Mar. 16, 2001)(*Distribution Arrangements Supplemental*).

¹⁰ Public Notice Report No. SPB-164, March 23, 2001.

¹¹ Comments of PanAmSat Corporation dated February 22, 2001 (PanAmSat Comments); Comments of Lockheed Martin Global Telecommunications (LMGT Comments), dated January 23, 2001.

¹² Intelsat LLC Reply to Comments on Supplemental Information, dated March 5, 2001 (Intelsat LLC Reply Comments).

¹³ Response of PanAmSat Corporation dated March 12, 2001 (PanAmSat Response); Response of Lockheed Martin Global Telecommunications, dated March 12, 2001 (LMGT Response).

¹⁴ *See* Agreement Relating to the International Telecommunications Satellite Organization, "INTELSAT", 23 U.S.T. 3813; TIAS No. 7532, (Feb. 12, 1973)("INTELSAT Agreement"), 23 U.S.T. 4091(August 20, 1971)("INTELSAT Operating Agreement").

1962 (“Satellite Act”).¹⁵ The Satellite Act declared it U.S. policy to join with other countries to create a commercial, global communications satellite system that would provide services on a non-discriminatory basis.¹⁶ The United States relies on INTELSAT to satisfy much of its commercial and government satellite communications needs.

6. INTELSAT is currently in the process of privatizing its commercial operations. As an intergovernmental organization, INTELSAT is not now subject to any national licensing authority. It created Intelsat LLC, a wholly owned Delaware corporation, for the purpose of filing applications with the FCC for licenses to operate its satellites. Upon privatization, INTELSAT would transfer its satellites to Intelsat LLC. It also would transfer 22 associated orbital locations to the U.S. registry under the procedures of the International Telecommunication Union (“ITU”).

7. The privatization of INTELSAT has been a policy goal of the United States. A pro-competitive privatization of INTELSAT will make it a more effective competitor and promote fairer and more robust competition in the global satellite market. This goal was enshrined in U.S. law as the stated purpose of the “ORBIT Act”.¹⁷ The ORBIT Act establishes general and specific criteria to ensure a pro-competitive privatization and requires the Commission to take certain actions to ensure fulfillment of the criteria.¹⁸ The ORBIT Act, however, specifically permits the Commission to act upon Intelsat LLC’s application prior to privatization provided that authorization is conditioned upon privatization consistent with the Act.¹⁹ The Commission’s *Licensing Order*, therefore, imposed this condition on Intelsat LLC and provided for review of INTELSAT’s privatization prior to the effective date of the licenses.²⁰

8. In September 2000, the INTELSAT Board of Governors formally recommended that the Assembly of Parties accept the FCC licenses and select the United States to receive and license INTELSAT’s orbital registrations upon privatization, based under the terms of the *Licensing Order*.²¹ The Board also selected the United Kingdom as a backup jurisdiction for licensing INTELSAT’s existing and planned satellites operating in the C-band and Ku-band “should the terms of the U.S. license approval be adversely affected prior to privatization.”²² An Assembly of Parties held November 13-17, 2000 made the final commitment to privatize INTELSAT. The Board’s decision on selection of licensing jurisdictions and other aspects of INTELSAT’s privatization was endorsed by INTELSAT’s member governments at the Assembly of Parties.²³ Subsequent to the November Assembly, the INTELSAT Board of Governors approved underlying documents creating the private company and made preparations to implement privatization by the target date established by the November Assembly -- July 18, 2001.²⁴

¹⁵ *Licensing Order* at ¶ 6, citing the Communications Satellite Act of 1962, as amended, 47 U.S.C. §§ 701 et. seq.

¹⁶ *Id.*

¹⁷ Pub. L. 106-180 (2000).

¹⁸ Pub.L. 106-180 §§ 621 and 622.

¹⁹ Pub. L. 106-180 § 601(b)(1)(d).

²⁰ *Licensing Order* at ¶¶ 38 and 160.

²¹ INTELSAT Press Release, “INTELSAT Board Chooses United States as Jurisdiction for privatized Service Company; Accepts FCC Licenses” (Sept. 15, 2000).

²² *Id.* The Board also selected the United Kingdom as the licensing jurisdiction for future satellites that may be constructed for operating in the Ka-band, V-band and BSS band.

²³ *INTELSAT Assembly of parties Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting*, AP-25-3E FINAL W/11/00 ¶ 34 (Nov. 27, 2000)(“2000 Assembly Decision”). See also INTELSAT Press Release, Historic Assembly says “All Systems Go” for 2001: “INTELSAT Privatization Plan and Schedule Formally Approved by Governments”, November 20, 2000.

²⁴ See 2000 Assembly Decision.

9. Upon privatization, all of INTELSAT's operational assets and liabilities will be transferred to a group of affiliated national corporations with a holding company structure as shown in Attachment A. Intelsat Ltd. will be the holding company for all other companies in the group and organized under the laws of Bermuda and it will hold the United Kingdom authorizations for ITU registrations in the Ka-, BSS-, and V-bands.²⁵ Intelsat Bermuda Ltd., a wholly-owned subsidiary of Intelsat Ltd., will be responsible for operational matters involving control of space and ground segment assets from Bermuda.²⁶ Intelsat Services Corporation, a wholly-owned subsidiary of Intelsat Bermuda and organized as a Delaware corporation will undertake day-to-day operation of the satellite network and provide administrative services to Intelsat Bermuda including marketing, sales, operations, legal, engineering and billing services.²⁷ It also will own and operate ground segment assets in the United States. Intelsat Holdings LLC, also a Delaware Corporation and wholly-owned subsidiary of Intelsat Bermuda, will function only as a holding company for Intelsat LLC – the U.S. licensee for operation of existing and planned satellites in the C-band and Ku-band.²⁸ All space segment assets operating in these bands will be transferred to Intelsat LLC, also a Delaware corporation.²⁹ Intelsat LLC will sell all of its space segment capacity to Intelsat Bermuda.³⁰ Intelsat U.K. Ltd., a wholly-owned subsidiary of Intelsat Bermuda, will handle all customer contracts on behalf of the Intelsat system. All customer contracts will be novated to Intelsat U.K. upon privatization; Intelsat U.K. will buy space segment capacity from Intelsat Bermuda to serve existing and future customers.³¹ Customers will be able to acquire Intelsat space segment capacity either through distributors or on a wholesale customer basis.³² The Intelsat holding company structure will also include regional support centers and field offices providing marketing support and located in various countries as shown in Attachment A.

10. Finally, as part of its decision to privatize INTELSAT, the INTELSAT Assembly of Parties decided to leave in place a small residual intergovernmental organization, to be known as the Telecommunications Satellite Organization known by the acronym as ITSO. ITSO will, through a "Public Services Agreement" with the privatized INTELSAT, monitor performance of the company's public service obligations to: maintain global connectivity and global coverage, provide non-discriminatory access to the system and honor the lifeline connectivity obligation (LCO) to certain customers (those customers in poor or underserved countries that have a high degree of dependence on INTELSAT).³³ ITSO will have no operational or commercial role. The U.S. intends to sign the amended INTELSAT Agreement to become a member of ITSO upon privatization of INTELSAT.³⁴

²⁵ *Supplemental Information* at 15.

²⁶ *Id.* at 15-16.

²⁷ *Id.* at 15-16.

²⁸ *Supplemental Information* at 16.

²⁹ *Id.*

³⁰ *Distribution Arrangements Supplemental* at 2, note 6.

³¹ *Id.* at 2.

³² *Id.* at 3.

³³ 2000 Assembly Decision at 6-8.

³⁴ *Report to the Committees on Energy and Commerce and International Relations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Foreign Relations of the Senate Pursuant to Section 646(A) of Section 3 of the Open-market Reorganization for the Betterment of International Telecommunications Act (P.L. 106-180)*, p.6 (Feb. 28, 2001).

III. PLEADINGS

11. Intelsat LLC asserts that the privatization of INTELSAT will satisfy all relevant criteria of the ORBIT Act. In support, Intelsat LLC, in its supplemental information, provides a description of the proposed INTELSAT privatization and discusses how the privatization will satisfy the requirements of the ORBIT Act. In support, Intelsat LLC has provided copies of relevant Assembly and Board of Governors decisions³⁵ as well as the Shareholders Agreement and the pro forma by-laws of Intelsat LLC.³⁶ The Shareholders Agreement and by-laws have been made available to parties in this proceeding under the Protective Order issued by the International Bureau. In filing Information Regarding Post-privatization Distribution Arrangements, Intelsat LLC has provided also under terms of the Protective Order copies of the Novation Agreement applying to current service contracts between INTELSAT and its customers,³⁷ and the Distribution Agreement and Wholesale Customer Agreement covering future service agreements and being made available to all entities authorized to access the INTELSAT system prior to the date of privatization.³⁸

12. In its comments, LMGT agrees that INTELSAT's privatization will satisfy the ORBIT Act. LMGT states that the U.S. delegation secured through negotiations a privatization plan that achieves the major policy goals of the United States, including elimination of privileges and immunities, satisfaction of all other relevant ORBIT Act criteria and Intelsat LLC being licensed and located in the United States subject to FCC jurisdiction.³⁹ In view of this, LMGT asserts that Intelsat LLC should not be subject to limitations on its ability to conduct business nor restrictions on its access to the U.S. market.⁴⁰

13. PanAmSat, in its initial comments, asserts that Intelsat LLC has not provided sufficient information to adequately address certain competitive concerns that it believes motivated Congress to enact the ORBIT Act.⁴¹ PanAmSat states that, at a minimum, the Commission should require INTELSAT to adhere to the April 1, 2001 privatization deadline in the ORBIT Act.⁴² But PanAmSat is particularly concerned that market access advantages that INTELSAT has, as an intergovernmental organization, will be passed on to Intelsat LLC through distribution arrangements between it and former INTELSAT Signatories.⁴³ PanAmSat also asserts that Intelsat LLC has not adequately addressed whether INTELSAT has violated the ORBIT Act's prohibition against expanding into direct-to-home (DTH) services during the transition period, preceding privatization.⁴⁴ PanAmSat argues that the Commission should not grant final licensing authority to Intelsat LLC until these questions are answered and INTELSAT has fully complied with the ORBIT Act.⁴⁵

14. In reply, Intelsat LLC contends that INTELSAT's privatization schedule is consistent with the ORBIT Act because privatization was "obtained" under Section 621(1)(A) of the Act by the U.S.

³⁵ *Supplemental Information*, Exhibits 1-3 and 6.

³⁶ *Id.*, Exhibits 4 and 5.

³⁷ *Distribution Arrangements Supplemental Exhibit 1*.

³⁸ *Id.*, Exhibits 2 and 3.

³⁹ LMGT Comments at 2.

⁴⁰ *Id.* at 5.

⁴¹ PanAmSat Comments at 2.

⁴² *Id.* at 2 and 3-4.

⁴³ *Id.* at 2-3 and 4-7.

⁴⁴ *Id.* at 8-9.

⁴⁵ *Id.* at 3 and 10.

government with the Assembly of Parties decision on November 17, 2000.⁴⁶ It also argues that the “consistent with” standard in the ORBIT Act permits the Commission to view satisfaction of the Act’s criteria as a whole and not write into the Act “a draconian drop-dead date.”⁴⁷ Intelsat LLC further contends that it will enjoy none of INTELSAT’s market access advantages post-privatization. It first points out that all INTELSAT Parties and Signatories have committed as a pre-condition of privatization not to foreclose, or seek to foreclose, landing rights of competitors.⁴⁸ And it states that those WTO countries granting access to Intelsat LLC will be required to open their markets to U.S. competitors consistent with their most-favored nation obligations.⁴⁹ Second, Intelsat LLC asserts that it will not gain any market access advantage from its lifeline connectivity obligation (LCO) and relationships with ITSO.⁵⁰ Finally, Intelsat LLC contends that it has not expanded into impermissible “additional services” under the ORBIT Act.⁵¹ It states that INTELSAT is not offering any new services of this kind to its customers and is not providing DTH service in the U.S. market.⁵²

15. LMTG agrees with Intelsat LLC that the Act’s April 1, 2001 privatization deadline does not require all privatization steps to have been completed to satisfy its intent.⁵³ It disputes PanAmSat’s contention that Intelsat LLC will enjoy market access advantage after privatization, pointing out that PanAmSat fails to show that it is being excluded from the markets to which Intelsat LLC has gained access.⁵⁴ It also states that ITSO’s role is limited to monitoring Intelsat LLC’s public service obligations of global and lifeline connectivity to customers in poorer, under-served countries. Finally, LMGT contends that the ORBIT Act’s restriction on “additional services” does not limit the uses that end users may make of capacity purchased by Intelsat LLC on a wholesale basis.⁵⁵

16. In response, PanAmSat disputes Intelsat LLC’s view that Congress only intended that privatization be agreed upon by April 1, 2001, with actual implementation permitted at a later date.⁵⁶ PanAmSat contends that the timetable in the Act must be viewed as mandatory under the terms of the Act.⁵⁷ PanAmSat further argues that the fact that the Commission is directed to ensure that the privatization is “consistent with” ORBIT Act criteria does not suggest that the statutory timetable is anything less than mandatory.⁵⁸ As for market access, PanAmSat states that Intelsat LLC apparently enjoy exclusive access in many countries similar to that which has long protected INTELSAT from competition.⁵⁹ It asserts that the Commission should make it clear that the Act prohibits de facto market exclusivity meaning that there is a violation of the Act if competitors are not granted market entry for all services that Intelsat LLC can provide.

⁴⁶ Intelsat LLC Reply Comments at 2-4.

⁴⁷ *Id.* at 3-4.

⁴⁸ *Id.* at 5.

⁴⁹ *Id.*

⁵⁰ *Id.* at 6-7.

⁵¹ *Id.* at 7-8.

⁵² *Id.*

⁵³ LMGT Response at 2-3.

⁵⁴ *Id.* at 4-5.

⁵⁵ *Id.* at 5-6.

⁵⁶ PanAmSat Response at 2.

⁵⁷ *Id.* at 2-3.

⁵⁸ *Id.* at 3.

⁵⁹ *Id.* at 4.

IV. DISCUSSION

A. ORBIT Act Requirements

17. The ORBIT Act establishes criteria for privatization of INTELSAT and Inmarsat as well as their spin-offs.⁶⁰ As applied to INTELSAT, the ORBIT Act requires the Commission to determine whether use of INTELSAT in the United States will harm competition in the U.S. market. This determination is to be made in considering applications or requests to use the INTELSAT system to provide services to, from, or within the United States. Section 601(b)(1) provides:

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

“ (1) Competition Test.—

(A) IN GENERAL. – In considering the application of INTELSAT, Inmarsat, or their successor entities for a license or construction permit, or for the renewal or assignment or use of any such license or permit, or in considering the request of any entity subject to United States jurisdiction for authorization to use any space segment owned, leased, or operated by INTELSAT, Inmarsat, or their successor entities, to provide non-core services to, from, or within the United States, the Commission shall determine whether—

(i) after April 1, 2001, in the case of INTELSAT and its successor entities, INTELSAT and any successor entities have been privatized in a manner that will harm competition in the telecommunications markets of the United States.”⁶¹

18. The ORBIT Act provides general privatization criteria applicable to INTELSAT and Inmarsat.⁶² It also provides specific criteria applicable to INTELSAT.⁶³ The Act requires the Commission to apply these criteria in determining whether competitive harm would result from INTELSAT’s provision of service in the United States. Section 601(b)(2) provides:

(2) CRITERIA FOR COMPETITION TEST. – In making the determination required by paragraph (1), the Commission shall use the licensing criteria in sections 621, 622 and 624, and shall determine that competition in the telecommunications markets of the United States will be harmed unless the Commission finds that the privatization referred to in paragraph (1) is consistent with such criteria.⁶⁴

19. The licensing criteria set forth in the Act includes: 1) conduct of an IPO that achieves substantial dilution of the aggregate ownership of former Signatories of INTELSAT after privatization; 2) termination of privileges and immunities that INTELSAT had as an intergovernmental organization; 3) incorporation in a country that is a Signatory to the WTO Basic Telecommunications Agreement and that has effective laws and regulations that secure competition in telecommunications services; 4) conversion to a stock corporation with a fiduciary board of directors; 5) limitations on interlocking officers, directors, or employees shared with any

⁶¹ Pub. L. 106-180, § 601(b)(1).

⁶² *Id.* § 621.

⁶³ *Id.* § 622.

⁶⁴ *Id.* § 601(b)(2).

intergovernmental organization or any Signatory or former Signatory of INTELSAT; and 6) an arms-length relationship between and among INTELSAT and any separated entities or Inmarsat.⁶⁵ The Act also directs the Commission to construe the criteria in a manner consistent with the United States' WTO commitments.⁶⁶

20. If the Commission determines that authorizing INTELSAT services will harm competition in the U.S. market, the ORBIT Act directs the Commission to “limit through conditions or deny such application or request, and limit or revoke previous authorizations to provide non-core services to, from, or within the United States.”⁶⁷ The Act defines “non-core services” with respect to INTELSAT as “services other than public-switched network voice telephony and occasional-use television”.⁶⁸

B. Standard of Review Under the Act

21. The ORBIT Act requires the Commission to find that competition in the U.S. telecommunications market will be harmed unless INTELSAT's privatization is consistent with the criteria specified in Sections 621 and 622 of the Act.⁶⁹ Over the last year the Commission has undertaken many efforts, both in terms of this proceedings and within the INTELSAT privatization negotiations to ensure that the requirements of the ORBIT Act are satisfied. The *Licensing Order* conditioned Intelsat LLC's licenses on compliance with the ORBIT Act and specifically with the criteria of Sections 621 and 622 of the Act. These criteria are detailed and set a high standard that reflects Congress's concern that the Commission only allow a pro-competitive privatized INTELSAT into the U.S. market. We will therefore carefully examine each of the criteria individually before concluding whether, as a whole, the proposed privatization meets the standards of Section 621 and 622.

22. As noted above, we review the privatization to determine whether it is “consistent with” all of the criteria identified in Sections 621 and 622 taken as a whole.⁷⁰ The courts have not construed “consistent” to mean “alike” or “the same as.” Rather, when preceding the preposition “with,” they have recognized “consistent” as meaning “agreeing” or according in substance or in a form that is congruous or compatible.⁷¹ In the context of applying the ORBIT Act criteria, we construe the “consistent with” standard as inferring a degree of flexibility by requiring “congruity or compatibility.” This flexibility allows us to avoid frustrating congressional intent to enhance competition in the U.S. telecommunications market which could result from an overly narrow interpretation.⁷² Also, applying this reasonably flexible standard will allow the Commission to act in accordance with Section 601(c) which requires the Commission to construe the licensing requirements of the Act in accordance with United States trade

⁶⁵ *Id.* at §§ 621.

⁶⁶ *Id.* at § 601(c).

⁶⁷ *Id.* at § 601(b)(1)(B).

⁶⁸ Pub. L. 106-180 § 681(11).

⁶⁹ *Id.* at § 601(b)(2).

⁷⁰ *Id.*

⁷¹ See *Environmental Defense Fund, Inc. v. Environmental protection Agency*, 82 F.3d. 451, 457, 317 U.S. Apps DC 207, 212 (D.C. Cir. 1996), amended on other grounds, 92 F.3d. 1208 (D.C. Cir. 1996) citing *Oxford English Dictionary* 773 (2d 1989) *N.L. Indes, Inc. v. Kaplan*, 792 F.2d 896, 898-899 (9th Cir. 1996) and *Wickland Oil Terminals v. Asarco, Inc.*, 792 F.2d 887, 891-892 (9th Cir. 1986).

⁷² *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee*, 14 FCC Rcd 14,712, fn. 817 (1999).

obligations under the General Agreement on Trade in Services (GATS). As shown below, we have reviewed the privatization plans in light of each of the criteria in Sections 621 and 622 of the Act and conclude that, as a whole, INTELSAT's privatization is consistent with those sections and achieves the purpose of the Act.

23. The ORBIT Act provides additional direction to the Commission. Section 601(b)(1)(D) provides:

“(D) RULE OF CONSTRUCTION.—Nothing in this subsection is intended to preclude the Commission from acting upon applications of INTELSAT, Inmarsat, or their successor entities prior to the latest date set out in section 621(5)(A), including such actions as may be necessary for the United States to become the licensing jurisdiction for INTELSAT, but the Commission shall condition a grant of authority pursuant to this subsection upon compliance with sections 621 and 622.

24. We construe this provision to mean that we may authorize Intelsat LLC services prior to Intelsat Ltd. conducting an IPO under the timeframe provided in the Act. In doing so, we would assess whether INTELSAT's privatization is “consistent” with other criteria in the Act and impose such conditions as may be necessary to ensure compliance with the criteria. The purpose of Section 601(b)(1)(D) is to give the Commission discretion to authorize Intelsat, LLC services pending Intelsat Ltd.'s conduct of an IPO under favorable market conditions within the timeframe provided in the Act. The Act does not intend to penalize Intelsat LLC by delaying access to the U.S. market pending an IPO if its privatization is otherwise consistent with the Act's criteria.

C. Review of Criteria

(1) Independence

25. The Act requires INTELSAT to be an independent commercial entity and have a pro-competitive ownership structure.⁷³ Independence is to be achieved, in part, through an initial public offering to be conducted by October 1, 2001, unless the date is extended by the Commission to no later than December 31, 2002.⁷⁴ The purpose of the IPO is to “substantially dilute the aggregate ownership” in the privatized successor entities of INTELSAT of the Signatories or former Signatories of INTELSAT.⁷⁵ The Act requires the Commission to determine whether a public offering attains such substantial dilution taking into account the purposes and intent, privatization criteria, and other provisions in the Act, as well as market conditions.⁷⁶ The Act provides in part:

[The privatized successor entities of ...INTELSAT] shall operate as [an] independent commercial entit[y], and have a pro-competitive ownership structure. [The privatized successor entities of ...INTELSAT] shall conduct an initial public offering in accordance with paragraph (5) to achieve such independence. Such offering shall substantially dilute the aggregate ownership of [the privatized successor entities of ...INTELSAT] by such signatories or former signatories. In determining whether a public offering attains such

⁷³ *Id.* § 621(2).

⁷⁴ *Id.* § 621(5)(A)

⁷⁵ *Id.* §§ 621(2).

⁷⁶ *Id.* § 621(2).

substantial dilution, the Commission shall take into account the purposes and intent, privatization criteria, and other provisions of this title, as well as market conditions.”⁷⁷

26. Upon privatization, former INTELSAT Signatories or non-Signatory investing entities will be issued shares in Intelsat Ltd. according to their March 2001 investment shares in INTELSAT.⁷⁸ They will be the shareholders of Intelsat Ltd. until it conducts an IPO. Intelsat LLC anticipates that Intelsat Ltd. will conduct an IPO within the timeframe specified in the Act, currently envisioned for one year after the date of privatization.⁷⁹ PanAmSat questions the certainty of this commitment and whether Signatory ownership and domination of Intelsat LLC will end anytime soon.⁸⁰ Intelsat LLC points out that the Shareholders’ Agreement provides for conducting an IPO no later than December 31, 2002 and requires each shareholder to vote in favor of an IPO and privatized INTELSAT to consult with investment banking firms to ensure the IPO’s success.⁸¹

27. We find that the Shareholders’ Agreement provides sufficient evidence of Intelsat Ltd.’s commitment to conduct an IPO consistent with the requirements of the Act.⁸² For purposes of licensing Intelsat LLC at this time, we condition the licenses pursuant to Section 601(b)(1)(D) on Intelsat Ltd. carrying out its commitment to conduct an IPO consistent with Sections 621(2) and (5)(A). Nothing more is necessary now under the terms of the Act. Intelsat LLC shall file information with the Commission following its IPO to demonstrate that there has been substantial dilution of the aggregate ownership in the company of its former Signatories under the terms of Section 621(2). We will place Intelsat LLC’s filing on public notice and make a determination and take appropriate action under the Act, if any is required based on our determination. As discussed above, however, the pendency of Intelsat Ltd.’s IPO does not preclude us from authorizing Intelsat LLC services in the United States provided that we find INTELSAT’s privatization “consistent with” the other criteria in Sections 621 and 622 of the Act.

(2) Prohibition on IGO Ownership

28. Section 621(2)(A) of the Act precludes an intergovernmental organization from having an ownership interest in the successor or separated entities of INTELSAT.⁸³ ITSO, the residual intergovernmental organization created to monitor INTELSAT’s provision of services to lifeline countries under the Public Service Agreement will not have any ownership interest in Intelsat Ltd., Intelsat LLC or any other subsidiary company.⁸⁴ INTELSAT’s privatization therefore is consistent with Section 621(2)(A) of the Act.

(3) Termination of Privileges and Immunities

29. Section 621(3) prohibits extension to Intelsat Ltd., Intelsat LLC and any other subsidiary company of preferential treatment like that previously accorded by national governments and the INTELSAT Agreement and the associated Headquarters Agreement when INTELSAT was an intergovernmental organization. The section provides:

⁷⁷ *Id.*

⁷⁸ *Supplemental Information* at 18, note 54.

⁷⁹ *Id.* at 17-18 and 23.

⁸⁰ PanAmSat Comments at 4.

⁸¹ *Supplemental Information* at 17-18.

⁸² Shareholders’ Agreement, at Section 5.1.

⁸³ Pub. L. 106-180 § 621(2)(A).

⁸⁴ *Supplemental Information* at 18-19.

- (3) TERMINATION OF PRIVILEGES AND IMMUNITIES.—The preferential treatment of INTELSAT and Inmarsat shall not be extended to any successor entity or separated entity of INTELSAT or Inmarsat. Such preferential treatment includes—
- (A) privileged or immune treatment by national governments;
 - (B) privileges or immunities or other competitive advantages of the type accorded INTELSAT and Inmarsat and their Signatories through the terms and operation of the INTELSAT Agreement and the associated Headquarters Agreement and the Inmarsat Convention; and
 - (C) preferential access to orbital locations. Access to new, or renewal of access to, orbital locations shall be subject to the legal or regulatory processes of a national government that applies due diligence requirements intended to prevent the warehousing of orbital locations.⁸⁵

Neither Intelsat Ltd., Intelsat LLC nor any other subsidiary have privileges and immunities of the type currently accorded to the former intergovernmental organization. They will be organized under national laws and subject to the requirements and regulations in which they operate including tax and legal liability.⁸⁶ Intelsat LLC will operate in the U.S. market subject to the same laws that apply to U.S. satellite service providers. It will have no immune treatment from the INTELSAT Agreement that provides for the creation of ITSO.

30. The ORBIT Act requires that privatized INTELSAT be a “national corporation or similarly accepted commercial structure, subject to the laws of the nation in which incorporated.”⁸⁷ The holding company structure described in paragraph 9 above satisfies this requirement. After privatization, the INTELSAT Agreement will apply exclusively to ITSO and the Headquarters Agreement also will only benefit the ITSO.⁸⁸ Intelsat LLC will be subject to the regulatory authority of this Commission for current and planned services in the C-band and Ku-band and to regulatory authority of the U.K. Government for services in the Ka-band, V-band and BSS band. It will rely on this Commission and on the U.K. Government to represent it at the ITU and register its use of orbital locations and spectrum.⁸⁹ Intelsat LLC will be subject to Commission milestone requirements for new satellite construction and launch in the C-band and Ku-band.⁹⁰ For future satellite construction in other bands, Intelsat Ltd. will be subject to due diligence requirements of the United Kingdom. The Radiocommunications Agency of the Department of Trade and Industry supports policies intended to prevent warehousing of orbital locations and spectrum resources. The Radiocommunications Agency requires construction, launch and operation of a proposed satellite system in conformance with the time scales containing the applicants’ business plan.⁹¹ Failure to comply could result in cancellation of filings with the ITU.

31. Under the circumstances presented, we find that INTELSAT’s privatization meets the requirements set forth in Section 621(3) of the ORBIT Act.

⁸⁵ Pub. L. 106-180, § 621(3).

⁸⁶ *Supplemental Information* at 19-20, citing 2000 Assembly Meeting at ¶ 7(d).

⁸⁷ Pub. L. 106-180 § 621(5).

⁸⁸ *Supplemental Information*, citing 2000 Assembly Meeting, INTELSAT Amendments at III, XIV(b), and XIII(c).

⁸⁹ *Supplemental Information* at 21-22.

⁹⁰ *Licensing Order* at ¶ 137-138 and 156.

⁹¹ See Procedures of the United Kingdom Administration in Relation to Satellite Networks, www.radio.gov.uk.

(4) Conversion to Stock Corporation

32. Section 621(5)(D)(i) of the Act requires that privatized INTELSAT “have a board of directors with a fiduciary obligation.”⁹² Under Bermuda law, which is based upon U.K. law, the Intelsat, Ltd. board of directors must have fiduciary duties to the company.⁹³ And under Delaware law, the Intelsat LLC board must have fiduciary obligations to the company.⁹⁴ Intelsat LLC also states that the Board of Governors specifically determined that the Intelsat Ltd. board have fiduciary duties to the company⁹⁵ and that the by-laws approved by the Board of Governors impose fiduciary duties on the Intelsat Ltd. board.⁹⁶

33. Section 621(5)(B) of the Act requires that privatized INTELSAT be listed for trading on one or more major stock exchanges with transparent and effective securities regulation.⁹⁷ Intelsat LLC states that Intelsat Ltd. will list shares on at least one major stock exchange.⁹⁸ We will require Intelsat LLC to confirm the exchange on which Intelsat Ltd. lists shares following its IPO.

(5) Limitations on Interlocking Directors, Officers and Managers

34. The Act places limitations on interlocking directors, officers, employees and managers with any intergovernmental organization or any Signatory or former Signatory of INTELSAT when it was an intergovernmental organization. Section 621(5)(C) provides:

(C) A majority of the members of the board of directors of any successor entity or separated entity shall not be directors, employees, officers, or managers or otherwise serve as representatives of any signatory or former signatory. No member of the board of directors of any successor or separated entity shall be a director, employee, officer or manager of any intergovernmental organization remaining after the privatization.⁹⁹

35. Intelsat LLC states that INTELSAT has taken measures to ensure that the composition of the Intelsat Ltd. board of directors complies with the ORBIT Act – that is, a majority of the members of the board are “independent” under the terms of Section 621(5)(c).¹⁰⁰ It states that the INTELSAT Board of Governors has determined that the board will have a term of two years and consist of 17 directors, nine of whom will be “independent” and that no member can be a member of any intergovernmental telecommunications organization.¹⁰¹ It further states that, although subsequent boards may vary from 11 to 17 members, a majority of that board must continue to be

⁹² Pub. L. 106-180, § 621(D)(1)(i).

⁹³ Companies Act of 1981, §97 (Berm.).

⁹⁴ *Gottleib v. McKee*, 34 Del. Ch. 537 (1954) (Corporate Officers and Directors stand in a fiduciary relation to the corporation and its stockholders). *Mills Acquisition Co. v. Macmillan, Inc.*, Del. Supr., 559 A.2d 1261 (1988) (Directors are required to demonstrate both their utmost good faith and the most scrupulous inherent fairness of transactions in which they possess a financial, business or other personal interest which does not devolve upon the corporation or all stockholders generally).

⁹⁵ *Supplemental Information*, citing 134th Board of Governors Meeting at ¶ 18(C)(i) and 36(c)(i) (attached as Exh. 3)

⁹⁶ Pro-forma by-laws of Intelat Ltd at ¶ 14(7).

⁹⁷ Pub. L. 106-180 § 621(5)(B).

⁹⁸ *Supplemental Information* at 24.

⁹⁹ Pub. L. 106-180 § 621(5)(C).

¹⁰⁰ *Supplemental Information* at 24.

¹⁰¹ *Id.* at 25, citing 134th Board of Governors Meeting, ¶ 18, 20, 36 (attached as Exh. 3)

“independent” directors.¹⁰² These measures have been incorporated in the Intelsat Ltd. by-laws which were approved by the 138th Board of Governors Meeting.¹⁰³ We find them consistent with the requirements of Section 621(5)(c) of the Act. We require that Intelsat LLC report to the Commission on the composition of the initial board elected by the shareholders upon privatization to confirm that it is consistent with the Act.

36. The Act also places additional restrictions on privatized INTELSAT’s officers, directors and managers. Section 621(5)(D) provides, in part, that privatized INTELSAT shall:

- (ii) have no officers or managers who (I) are officers or managers of any signatories or former signatories, or (II) have any direct financial interest in or financial relationship to any signatories or former signatories, except that such interest may be managed through a blind trust or similar mechanism;
- (iii) have no directors, officers, or managers who hold such positions in any intergovernmental organization.¹⁰⁴

37. Intelsat LLC states that the post-privatization board of directors will not be able to appoint as an officer any person who has a financial relationship with a former Signatory.¹⁰⁵ Our review of the Intelsat Ltd. by-laws confirms that they will specifically preclude the board of directors from appointing as an officer any person prohibited by the Act.¹⁰⁶ Intelsat LLC states that the hiring of management of privatized INTELSAT will be similarly compliant.¹⁰⁷ We require Intelsat LLC to report the identity of officers and managers of Intelsat Ltd., Intelsat LLC and other subsidiary companies after privatization to confirm consistency with the Act.

38. We find that the measures provided for in the Intelsat Ltd. by-laws as to the composition of the board of directors and as to officers and managers are consistent with the requirements of the ORBIT Act.

(6) Arm’s-Length Relationship

39. The ORBIT Act requires that “[a]ny transactions or other relationship between or among any successor entity, separated entity, INTELSAT, or Inmarsat shall be conducted on an arm’s-length basis.”¹⁰⁸ Intelsat LLC states that it will satisfy this requirement by virtue of the 1998 Assembly of Parties’ action in creating New Skies Satellites, N.V., and the 2000 Assembly of Parties’ decision approving INTELSAT’s proposed privatization. Intelsat LLC states that the 1998 Assembly decision required that there be “a clearly defined and visible arms length relationship between [New Skies] and INTELSAT”.¹⁰⁹ In addition, Intelsat LLC states that its relationship with ITSO will comply with the ORBIT Act in view of the fact that ITSO’s role is solely to monitor privatized INTELSAT’s performance of its public service obligations.¹¹⁰

¹⁰² *Id.* at 25.

¹⁰³ Pro-forma by-laws of Intelsat Ltd. at 14 and Annexes A and B.

¹⁰⁴ Pub. L. 106-180 § 621(5)(D).

¹⁰⁵ *Supplemental Information* at 24.

¹⁰⁶ Pro-Forma by-laws of Intelsat Ltd. at ¶ 24.

¹⁰⁷ *Supplemental Information* at 26.

¹⁰⁸ Pub. L. 106-180 § 621(5)(E).

¹⁰⁹ *Supplemental Information* at 27-28 citing “INTELSAT Assembly of Parties Record of Decisions of the Twenty-second (Extraordinary) Meeting, AP-22-3E FINAL 5/3/98, ¶ 10(g)(iii), attached as Exb. 6 (redacted).

¹¹⁰ *Id.* at 28.

40. In our recent decision finding New Skies consistent with ORBIT Act privatization criteria, we found that New Skies and INTELSAT now maintain an arms-length relationship with the exception of certain assigned and leaseback customer contracts still existing as a result of New Skies creation.¹¹¹ We anticipated that assigned contracts would be novated to New Skies upon privatization of INTELSAT and that New Skies and INTELSAT would seek a resolution that is consistent with requirements of the Act prior to INTELSAT's privatization. We required New Skies to report in writing on the progress toward this end.¹¹² We said that if any leaseback contracts remain in effect and they appear likely to distort competition significantly, we would determine whether any actions would be appropriate under the ORBIT Act.¹¹³ In view of this process, we need not take any additional action here. And, as we did with New Skies, we find here that the short-term existence of the leaseback contracts pending negotiation of other commercial arrangements is not a barrier to now authorizing Intelsat LLC services in the United States.

41. Additionally, we find that the relationship between privatized INTELSAT and ITSO will be consistent with the ORBIT Act. ITSO will have no commercial assets and will undertake no commercial operations. ITSO will not be part of commercial contracts between privatized INTELSAT and its customers. Its role as an intergovernmental organization will be to monitor how Intelsat LLC carries out its public service obligations of global and lifeline connectivity to underserved countries.¹¹⁴ ITSO will not hold an ownership interest in Intelsat Ltd.¹¹⁵ ITSO will have a Director General with a very small staff and would be funded by means of an annuity and contingency fund established by INTELSAT prior to privatization.¹¹⁶ Under these circumstances, we find that the "arms-length" requirements of the Act are satisfied.

(7) Regulatory Treatment

42. The ORBIT Act requires that "successor entities" created after its enactment "apply through the appropriate national licensing authorities for international frequency assignments and associated orbital registrations for all satellites."¹¹⁷ As noted above, Intelsat LLC will be subject to Commission jurisdiction for existing and planned operations in the C-band and Ku-band; and, it will rely upon the Commission for its ITU network filings in these bands. In the Ka-band, V-band and BSS bands, Intelsat Ltd. will be subject to the authority of the U. K. Radiocommunications Agency, and will be authorized to provide services under the U.K.'s Outer Space Act.¹¹⁸ The Radiocommunications Agency will submit and will maintain satellite network filings with the ITU on behalf of Intelsat Ltd., and engage in international coordination for those filings with other administrations. Intelsat Ltd. and Intelsat LLC, therefore, satisfy Section 621(6) of the Act.

(8) Competition Oversight

43. The ORBIT Act requires that privatized INTELSAT be subject to a jurisdiction that: (1) has effective laws and regulations that secure competition in telecommunications services; (2) is a

¹¹¹ *New Skies Satellites, N.V.*, Memorandum Opinion and Order, FCC 01-107, ¶ 34-40 (rel. March 29, 2001)(*New Skies Order*).

¹¹² *Id.* at ¶ 38-40.

¹¹³ *Id.* at ¶ 40.

¹¹⁴ *Supplemental Information* at 28, citing 2000 Assembly meeting, LMG T Response at 5.

¹¹⁵ *Supplemental Information* at 19, n.55.

¹¹⁶ *Id.*

¹¹⁷ Pub. L. 106-180 § 621(6).

¹¹⁸ Outer Space Act 1986 (1986 Chapter 38).

Signatory to the WTO Basic Telecommunications Services Agreement; and (3) has a schedule of WTO commitments that include non-discriminatory market access to its satellite market.¹¹⁹ Intelsat LLC's location in the United States satisfies these requirements with respect to its C-band and Ku-band operations. As for future Ka-band, V-band and BSS-band operations, Intelsat Ltd. will be subject to the U.K. regulatory authority and to the competition laws of the European Commission by virtue of membership of the U.K. in the European Union. The U.K. is a Signatory to the WTO Basic Telecommunications Services Agreement. It has committed to grant non-discriminatory market access to its satellite market.¹²⁰ We therefore find that Intelsat Ltd. and Intelsat LLC satisfy the requirements in Section 621(7).

(9) Reaffiliation with New Skies

44. The ORBIT Act prohibits for 11 years after INTELSAT privatization "any merger or ownership or management ties on exclusive arrangements between a privatized INTELSAT or any successor entity or any separated entity."¹²¹ We found in our recent decision granting New Skies full access to the U.S. market that the INTELSAT privatization did not contemplate a merger with New Skies.¹²² Nothing on the record in this proceeding would require a change in that finding.

(10) Limitation on Expansion

The ORBIT Act imposes certain limitations on INTELSAT expansion into services prior to privatization as an incentive to privatize in a manner consistent with the Act. Section 621(4) provides:

"(4) PREVENTION OF EXPANSION DURING TRANSITION. – During the transition period prior to privatization under this title, INTELSAT and Inmarsat shall be precluded from expanding into additional services."¹²³

Section 681(12) defines "additional services" for INTELSAT to be "...direct-to-home (DTH) or direct broadcast satellite (DBS) video services, or services in the Ka- or V-bands."¹²⁴

45. In the *Reconsideration Proceeding*, PanAmSat alleged that INTELSAT is violating Section 621(4) of the ORBIT Act by providing DTH service from France to French Polynesia by transmitting from an earth station in the United States operated by GlobeCast.¹²⁵ PanAmSat

¹¹⁹ Pub. L. 106-180 § 621(7).

¹²⁰ Fourth Protocol to the GATS, April 30, 1996, 36 I.L.M.366 (1997)(Agreement on Basic Telecommunications containing specific commitments).

¹²¹ Pub.L. 106-180 § 623(4)

¹²² *New Skies Order* at ¶ 44.

¹²³ Pub. L. 106-180 § 621(4).

¹²⁴ Pub. L. 106-180 § 681(12).

¹²⁵ *Ex Parte* Letter from PanAmSat Corporation to the Secretary, Federal Communications Commission, October 19, 2000; *Ex Parte* Letter from PanAmSat Corporation to the Secretary, Federal Communications Commission, November 17, 2000; *Reconsideration Order* at ¶ 48. While PanAmSat only alleged violation of Section 621(4) of the Act, Intelsat LLC's response also addressed section 602(a) of the Act in its analysis. (*Ex Parte* Letter from Intelsat LLC to the Secretary, Federal Communications Commission, November 1, 2000). Section 602(a) also refers to limitations on the provision by INTELSAT of additional services pending privatization. (Pub. L. 106-180 § 602(a)). However the parties agree that Section 602(a) relates to situations where the Commission has a licensing matter before it relating to the provision by INTELSAT of Additional Services. (*Ex Parte* Letter from PanAmSat Corporation to the Secretary, Federal Communications Commission, November 17, 2000; *Ex Parte* Letter from Intelsat LLC to the Secretary,

argued that the Act covered DTH services provided by INTELSAT anywhere in the world, not just in the U.S. market, and that this particular service is a new service for the relevant market.¹²⁶ Consequently, according to PanAmSat, provision of the service by INTELSAT is a violation of the ORBIT Act and the Commission should preclude Intelsat LLC from providing non-core services.¹²⁷ Intelsat LLC responded that it was not offering “additional services” within the meaning and prohibited by the Act. It asserted that the DTH services at issue serve French Polynesia in “a purely foreign-to-foreign communication” and not the U.S. market, and so are not within the jurisdiction of the Commission.¹²⁸ In the *Reconsideration Proceeding* we determined that we would consider the issue of Globecast’s use of INTELSAT satellite capacity for provision of DTH services to French Polynesia when we reviewed Intelsat LLC’s privatization information as required by the ORBIT Act.¹²⁹

46. In its Supplemental Information and further pleadings, Intelsat LLC expanded on these positions in stating that it was acting consistent with the Act. Intelsat LLC argues that there is nothing in the ORBIT Act or its legislative history to suggest that Congress intended to expand the reach of U.S. jurisdiction to such non-U.S. activities.¹³⁰ Intelsat LLC also states that INTELSAT has merely offered wholesale Ku-band satellite capacity to one of its customers, something that it has provided for many years to many customers, some of whom have used the capacity for DTH.¹³¹ Intelsat LLC further states that the capacity used by the Offices des Postes et Telecommunications of French Polynesia (OPT) was under commitment prior to the ORBIT Act entering into effect.¹³² LMGT agrees with Intelsat LLC’s position.¹³³

Federal Communications Commission, November 1, 2000). Since there is no matter pertaining to licensing before the Commission with regard to the DTH service to French Polynesia in question, that issue is not addressed in this order.

¹²⁶ *Ex Parte* Letter from PanAmSat Corporation to the Secretary, Federal Communications Commission, November 17, 2000; PanAmSat Comments at 7-9.

¹²⁷ PanAmSat Comments at 8-9; *Ex Parte* Letter from PanAmSat Corporation to the Secretary, Federal Communications Commission, October 19, 2000 at 2; *Ex Parte* Letter from PanAmSat Corporation to the Secretary, Federal Communications Commission, November 17, 2000 at 4.

¹²⁸ *Ex Parte* Letter from Intelsat LLC to the Secretary, Federal Communications Commission, November 1, 2000; *Reconsideration Order* at ¶ 49.

¹²⁹ *Reconsideration Order* at ¶ 51.

¹³⁰ *Ex Parte* Letter from Intelsat LLC to the Secretary, Federal Communications Commission, November 1, 2000 at 3; Supplemental Information at 11-12.

¹³¹ *Ex Parte* Letter from Intelsat LLC to the Secretary, Federal Communications Commission, November 1, 2000 at 3; Supplemental Information at 12.

¹³² Supplemental Information at 11; *Ex Parte* Letter from Intelsat LLC to the Secretary, Federal Communications Commission, May 7, 2001. Intelsat LLC states that INTELSAT concluded a First Right of Refusal (“FRR”) with OPT for the satellite capacity in question almost one year prior to the effective date of the ORBIT Act. OPT requested and was given a conversion of its FRR to a Guaranteed Reservation (GR) in June of 1999. The GR identifies the parameters of the capacity requested by the customer (duration, power, bandwidth, etc.). Once INTELSAT confirms the availability of capacity, receives collateral, and completes credit and other customer checks it confirms the GR. At that point the customer is legally liable for all space segment charges associated with the capacity it has reserved.

Before any service may be started, a customer must have its transmission plans approved by INTELSAT to ensure technical compatibility. In January 2000, OPT submitted a transmission plan requesting analysis for “implementation of a new DTH service.” By February, INTELSAT had completed its review process and returned its analysis of the DTH transmission plan to OPT, approving the technical feasibility of the service. After this approval, OPT proceeded to amend its commitment to allow for the international element of the DTH service and coordinated with INTELSAT and Globecast to ensure that its downlink capacity was appropriately matched with uplink capacity from Globecast. *Ex Parte* Letter from Intelsat LLC to the Secretary, Federal Communications Commission, May 7, 2001.

47. PanAmSat rejects Intelsat LLC's contentions. PanAmSat states that it is immaterial under the ORBIT Act whether the DTH services in question originate or terminate in foreign countries or that INTELSAT provided the satellite capacity to OPT prior to enactment of the Act.¹³⁴

PanAmSat argues that the intent of the Act is to prevent expansion pending privatization and that INTELSAT's continued provision of service to OPT should jeopardize Commission authorization of Intelsat LLC's provision of non-core services in the United States.¹³⁵

48. We disagree with Intelsat LLC that the service it is providing is not within the ambit of the ORBIT Act. The fact that the service only traverses the United States as part of a foreign-to-foreign communication does not mean that it may not be relevant in carrying out the intent of the Act. The Act does not require the Commission to take action to interfere with services that would normally be beyond its jurisdiction. Instead, the Act sets criteria by which we are to determine whether the nature of the privatization will harm competition in the United States. Consistent with our WTO obligations and our *DISCO II* proceeding which developed procedures for Commission action in light of the WTO, the Act contemplates that a finding of harm to competition in the United States is to result in conditions on or denial of access to the U.S. market.¹³⁶ INTELSAT's provision of a service prior to privatization that is precluded by the Act arguably may harm competition if U.S. operators are affected.

49. We also find that for purposes of the ORBIT Act, INTELSAT is providing DTH services that could be deemed "additional services." It is true that all INTELSAT is providing is bare capacity and that OPT is choosing to run a DTH service using that capacity. However, the same could be said about most all of INTELSAT's business. INTELSAT does not provide telephony services, for instance. Rather, INTELSAT provides the satellite capacity by which common carriers offer telephony service to their customers. If we followed the logic that all INTELSAT was providing was the capacity, INTELSAT's telephony business would not be protected as a core service as the ORBIT Act provides for. Thus, defining INTELSAT's business lines by capacity would render meaningless the concepts of core, non-core, and additional services that are central to the structure of the Act.

50. The issue is whether the DTH services OPT is providing in French Polynesia should be seen as expanding into an additional service in violation of the ORBIT Act. The Act speaks of "expanding" into additional service. It neither directs nor indicates that the Commission is to act retroactively in assessing the competitive impact on the U.S. market of existing INTELSAT services. While DTH services are specifically mentioned as "additional services" in the ORBIT Act, INTELSAT has and continues to provide satellite capacity to other customers to use in delivering a DTH service.¹³⁷ Thus the question becomes whether the DTH service in question is a service that existed prior to the effective date of the ORBIT Act (March 17, 2001) or whether it is an expansion into a new service after March 17. Although the press release on which PanAmSat bases its objections is dated September 8, 2000, and customers were not able to receive service until June, 2000, the business, legal, and technical commitments were in place prior to March 17.¹³⁸ OPT had committed itself legally through the Guaranteed Reservation (GR) process for capacity on which it had placed significant collateral and had submitted the technical

¹³³ LMG T Response at 5-6.

¹³⁴ PanAmSat Comments at 8-9.

¹³⁵ *Id.*

¹³⁶ *Amendment of the Commission's Regulatory Policies to Allow Non U.S. Licensed Space Stations to Provide Domestic and International Satellite Services in the United States*, Report and Order, 12 FCC Rcd 24094, 24112 (1997) ("*DISCO II Order*") on reconsideration, 15 FCC Rcd 7207 (1999).

¹³⁷ *Supplemental Information* at 12, n34.

¹³⁸ *Supplemental Information* at n. 30.

specifications for its DTH service for analysis and approval by INTELSAT. INTELSAT had, in turn, committed the capacity to OPT through the legally binding GR process, reviewed the technical submission for DTH services, and given the necessary initial approvals for OPT to move ahead with its final stages of optimization and testing.¹³⁹ Thus the DTH services to French Polynesia were fundamentally in place by the time the Act went into effect. Consequently, we conclude that INTELSAT is not, in the case of providing DTH to French Polynesia via OPT, in violation of the Act.

(11) Technical Coordinations

51. The ORBIT Act requires that, as part of INTELSAT's privatization, technical coordination between Intelsat LLC and its competitors be coordinated under ITU procedures and not under Article XIV(d) of the INTELSAT Agreement.¹⁴⁰ Upon privatization, Article XIV(d) of the INTELSAT Agreement will be eliminated.¹⁴¹ Intelsat Ltd. and Intelsat LLC will coordinate in accordance with national laws (the U.S. for C-band and Ku-band, and the United Kingdom for Ka-band, BSS, and V-band operations) and with ITU procedures. INTELSAT states that, since passage of the ORBIT Act, it has waived the requirement for other administrations to coordinate under Article XIV(d) and now conducts coordination under ITU procedures. We therefore find that Section 622 of the Act has been satisfied.

(12) Date of Privatization

52. The ORBIT Act identifies April 1, 2001 as the date for INTELSAT's privatization and directs the Commission to review the privatization after that date. Section 621(1)(A) requires that INTELSAT privatize in accordance with the criteria in the Act "as soon as practicable, but no later than April 1, 2001".¹⁴² Section 601(b)(1)(A) provides for Commission review of the effect of INTELSAT's privatization on competition in the U.S. market after April 1, 2001.¹⁴³ As discussed above, the Act's requirement that INTELSAT conduct an IPO is not subject to the April 1, 2001 date and we may conditionally license Intelsat LLC prior to the latest date provided in Section 621(5)(A)(i) for the conduct of an IPO.¹⁴⁴

53. Intelsat LLC maintains that INTELSAT has satisfied Section 621(b)(1)(A) by the fact that it has "obtained" privatization within the meaning of that provision through the 2000 Assembly Decision.¹⁴⁵ PanAmSat argues that the April 1, 2001 statutory deadline is mandatory and the Commission should reject Intelsat LLC's arguments that (1) it need only "obtain" privatization by April 1, through an Assembly of Parties decision, and (2) the date need only be consistent with April 1, 2001 and not rigidly limited to April 1.¹⁴⁶

54. We find that Intelsat LLC's interpretation of "obtain" exceeds the bounds of legislative interpretation. For purposes of this proceeding, we conclude that INTELSAT shall be deemed to have obtained privatization when the assets are transferred to Intelsat LLC and the ITU network filings are transferred to the United States and the United Kingdom pursuant to the 2000 Assembly decision.

¹³⁹ *Ex Parte* Letter from Intelsat LLC to the Secretary, Federal Communications Commission, May 7, 2001.

¹⁴⁰ Pub. L. 106-180 § 622.

¹⁴¹ *Supplemental Information* at 13.

¹⁴² Pub. L. 106-180 § 621(1)(A).

¹⁴³ Pub. L. 106-180 § 621(1)(A).

¹⁴⁴ Pub. L. 106-180 § 621(5)(A)(i).

¹⁴⁵ Intelsat LLC Reply Comments at 2-4.

¹⁴⁶ PanAmSat Comments at 3-4. PanAmSat Response at 2.

55. As discussed above, we find that INTELSAT's privatization will be consistent with the other non-IPO privatization criteria in Sections 621 and 622 of the Act. The 2000 Assembly Decision determined that privatization would occur on July 18, 2001. This date is only 109 days later than the statutory date identified in the ORBIT Act of April 1, 2001. Intelsat LLC states that the delay is due to the constitutional timing requirements of some of the member governments and timing obligations under the amendment sections of the INTELSAT Agreement to which the United States is a Party. This is confirmed in the Administration's report to Congress on progress regarding the implementation of the ORBIT Act where the Administration reported that while U.S. delegations consistently advocated the April deadline incorporated in the ORBIT Act, it was necessary to accommodate both the legislative processes of other Parties and the internal waiting time required by the INTELSAT Agreement regarding amendments.¹⁴⁷ Taking into account the importance of accommodating the processes of other governmental bodies and in keeping with the U.S. commitment to the INTELSAT Agreement, we find that the short delay of 109 days does not require Commission action under the Act to limit by condition or deny Intelsat LLC's provision of non-core services in the United States. There is no evidence presented on the record that the short delay has resulted or will result in competitive harm to the U.S. market. As discussed above, the courts have construed the standard of "consistent with" to mean "congruent with" or "compatible with."¹⁴⁸ This flexibility allows us to consider important domestic and international public policy concerns in assessing compliance with the criteria set forth in Sections 621 and 622 of the Act in keeping with the intent of the legislation. We find in this decision that INTELSAT's privatization, in total, is consistent with the non-IPO criteria of the Act and conclude that the intent of the Act is being achieved. Under the circumstances, we find that the short delay beyond April 1, 2001 to accommodate governmental approvals is compatible with the overall intent of the Act.

56. Additionally, Section 601(B)(1)(A) requires the Commission to determine "after April 1, 2001" whether INTELSAT has been "privatized in a manner that will harm competition in the telecommunications market of the United States".¹⁴⁹ This requirement, however, is subject to the rule of construction in Section 601(b)(1)(D) which provides that the Commission is not precluded from taking such actions on applications "as may be necessary for the United States to become the licensing jurisdiction of INTELSAT," provided authority is conditioned on compliance with Sections 621 and 622 of the Act.¹⁵⁰ Intelsat LLC cannot become a U.S. licensee upon privatization

¹⁴⁷ *Report to the Committees on Energy and Commerce and International Relations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Foreign Relations of the Senate Pursuant to Section 646(A) of Section 3 of the Open-market Reorganization for the Betterment of International Telecommunications Act (P.L. 106-180)*, p.5 (Feb. 28, 2001). To prevent a delay in privatization, the INTELSAT Parties agreed, by consensus and to the extent permitted by their national laws, to "rapidly implement" the amendments to the Agreement and Operating Agreement from July 18, 2001, which will precede the date of the amendments' formal entry into force. This decision was made out of concern that awaiting formal entry into force of the amendments would likely delay privatization by a year or more. INTELSAT had advocated an April 1 date for implementation of the amendments, a position consistent with the requirement of the ORBIT Act that INTELSAT privatize by April 1, 2001. In considering July 18, rather than April 1, as the implementation date, however some Parties invoked a provision of the INTELSAT Agreement that provides that an amendment shall not enter into force less than eight months after the date on which it was approved by the Assembly of Parties. July 18, 2001 is eight months after November 17, 2001 -- the date the Assembly approved the amendments.

¹⁴⁸ See *Environmental Defense Fund, Inc. v. Environmental protection Agency*, 82 F.3d. 451, 457, 317 U.S. App. DC 207, 212 (D.C. Cir. 1996), amended on other grounds, 92 F.3d. 1208 (D.C. Cir. 1996) citing *Oxford English Dictionary* 773 (2d 1989) *N.L. Indes, Inc. v. Kaplan*, 792 F.2d 896, 898-899 (9th Cir. 1996) and *Wickland Oil Terminals v. Asarco, Inc.*, 792 F.2d 887, 891-892 (9th Cir. 1986).

¹⁴⁹ Pub. L. 106-180 § 601(B)(1)(A)

¹⁵⁰ Pub. L. 106-180 § 601(b)(1)(D)

unless its licenses are effective upon the date of privatization. As a result, we conclude that we have the discretion to make findings and conclusions under Section 602(b)(1)(A) prior to INTELSAT's July 18, 2001 date for privatization provided that we appropriately condition our action on confirmation that the privatization has been accomplished as represented by Intelsat LLC on the record in this proceeding. We will require Intelsat LLC to file with the Commission a report following its privatization which will be made part of the record in this proceeding. This approach will enable us to assure that the requirements of the Act are satisfied and to enable Intelsat LLC to have operating licenses upon privatization.

D. Other Issues

(1) Exclusive Arrangements

57. The ORBIT Act imposes restrictions on exclusive arrangements for the provision of satellite services between the United States and other countries. Section 648 provides that no satellite operator shall have “the exclusive right of handling telecommunications 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 arrangements to which the satellite operator or any persons or companies controlling or controlled by the operator are parties”.¹⁵¹ The provision provides directions to the Commission in enforcing this requirement.¹⁵² In the Intelsat LLC *Licensing Order*, the Commission conditioned the authorizations granted to Intelsat LLC on compliance with this provision.¹⁵³

58. PanAmSat claims that INTELSAT's privatization will have the effect of perpetuating its past INTELSAT market access advantages. PanAmSat points out INTELSAT has made continued market access a precondition to privatization and has informed customers that it could not continue to honor service commitments unless it secured landing rights post privatization.¹⁵⁴ PanAmSat argues that the fact that INTELSAT is assuring continued market access in this manner implicates the Act's restrictions against exclusive arrangements.¹⁵⁵ It also expresses concern that the Distribution Agreements and Intelsat LLC's relationship with ITSO will give Intelsat LLC market access advantages.¹⁵⁶

59. Intelsat LLC replies that all INTELSAT Signatories have agreed also as a precondition to privatization not to foreclose, or seek to foreclose landing rights for [Intelsat LLC's] competitors and that WTO countries granting access to Intelsat LLC will be required to open their markets to U.S. competitors consistent with most-favored-nation obligations.¹⁵⁷ LMGMT states that Intelsat LLC is being established on terms that will not allow it to exercise anti-competitive leverage in the marketplace.¹⁵⁸ PanAmSat responds that Intelsat LLC will enjoy exclusive access in many countries and urges the Commission to make it clear that the ORBIT Act prohibits *de facto* market exclusivity – that is, there is an ORBIT Act violation whenever competitors are denied market entry for services provided by INTELSAT.¹⁵⁹

¹⁵¹ Pub. L. 106-180 § 648(a).

¹⁵² Pub. L. 106-180 § 648(b).

¹⁵³ *Licensing Order* at ¶¶ 42-43 and 172.

¹⁵⁴ PanAmSat Comments at 4-5.

¹⁵⁵ *Id.* at 5.

¹⁵⁶ *Id.* at 6-7.

¹⁵⁷ Intelsat LLC Reply at 5.

¹⁵⁸ LMGMT Response at 4.

¹⁵⁹ PanAmSat Response at 4.

60. We reject PanAmSat's contentions for several reasons. First, the ORBIT Act is not violated by INTELSAT's efforts to maintain market access post privatization to ensure its ability to continue to provide global connectivity. The Commission pointed out in its *Licensing Order* that the ORBIT Act continues to retain those provisions of the Communications Satellite Act of 1962 requiring INTELSAT to maintain global connectivity.¹⁶⁰ Second, contrary to PanAmSat's suggestions, INTELSAT has been acting to uphold its legal obligations in informing customers that service contracts will not be honored absent landing rights for the privatized company. Under the corporate structure approved by the bodies of INTELSAT and in keeping with the ORBIT Act, ITSO will have no operational capabilities and thus cannot retain any customer contracts. All contracts will be novated to Intelsat LLC. If Intelsat LLC does not have landing rights in a country, it cannot legally provide service. INTELSAT's efforts to inform its customers of this situation and Intelsat LLC's efforts to obtain landing rights so as to continue its commitments are legal and appropriate actions. Third, as described below, the post-privatization distribution and wholesale customer agreements by which Intelsat Ltd. and its subsidiaries will offer service are non-exclusive and we find no evidence that they will cause the market access problems about which PanAmSat is concerned. Nor did PanAmSat file any comments in response to Intelsat LLC's submission on March 16 of its Distribution and Wholesale Customer Agreements. Fourth, we find no basis to conclude that ITSO, an intergovernmental organization yet to be created, will give Intelsat LLC market access advantages.

61. As to PanAmSat's claim that Intelsat will enjoy *de facto* exclusive market access in many countries, PanAmSat has provided insufficient evidence at this time to support its claim. In this proceeding PanAmSat does not identify those markets and services from which it is excluded, much less demonstrate that INTELSAT has sought and received exclusivity. We note that WTO countries will be under an obligation to provide the same access to other foreign companies that they provide to Intelsat LLC.

62. We conclude, in addition, that PanAmSat does not provide a sufficient basis for its contention that Section 648 of the Act should be implemented in a *de facto* manner. If U.S. licenses are being denied market access in a particular country for any services that are provided by Intelsat LLC or by another U.S. licensee, this fact may be considered evidence of a possible ORBIT Act violation. But it cannot alone be a basis for concluding that there is a violation, particularly in light of WTO obligations. Such an approach would be inconsistent with the plain language of Section 648 that prohibits exclusive arrangements "by reason of any concession, contract, understanding, or working arrangement". We will enforce the section on a case-by-case basis as the facts may require. Our action conditioning Intelsat LLC's authorization on compliance with the section, at this time, satisfies the Act's requirement.

(2) Common Carrier Treatment

63. In the previous orders in this proceeding, the Commission addressed PanAmSat's request that we impose dominant carrier regulation on Intelsat LLC. We noted that dominant carrier regulation relies, in part, on the issue of common carrier regulation. In the Intelsat LLC *Licensing Order* the Commission said that, if Intelsat LLC provides satellite capacity directly to U.S. users and service providers for the purpose of serving thin route countries, it would use the two-part analysis enunciated by the D.C. Circuit in *National Association of Regulatory Utility Commissioners v. FCC*, to determine whether a space station operator offering service to another entity, that then

¹⁶⁰ *Licensing Order* at ¶¶ 27-28.

offers service to end users, should be regulated as a common carrier.¹⁶¹ Further, the Commission noted current Commission policy allowing U.S. licensees in the fixed satellite services (FSS) to elect between providing service on common carrier or non-common carrier basis, subject to NARUC I.¹⁶² Finally, it noted that whether Intelsat LLC should be deemed a common carrier, in part, will require consideration of the post-privatization distribution arrangements that were subject to negotiation within INTELSAT at that time.¹⁶³

64. In the *Reconsideration Proceeding*, Intelsat LLC stated that it initially will not be offering service on a common carrier basis.¹⁶⁴ If it does offer common carrier service in the future, Intelsat LLC states that the Commission would need to consider a variety of currently unknown factors, such as routes, services, capacity availability, trends toward liberalization and open entry in markets, and third party influence in markets, in deciding whether Intelsat LLC is a dominant carrier.¹⁶⁵ LMG T similarly argued that it would be premature for the Commission to decide this issue without analysis of the market and services at the time Intelsat LLC decides to offer common carrier services.¹⁶⁶ The Commission required Intelsat LLC to provide information as to post privatization distribution arrangements in its supplemental filings.¹⁶⁷

65. In March, 2001, INTELSAT finalized its post-privatization distribution arrangements and submitted redacted versions to the Commission under protective order.¹⁶⁸ In making its filings, Intelsat LLC states that the Distribution and Wholesale Customer Agreements will be available “on a commercial basis” to “all entities authorized to access the Intelsat system as of the date of privatization.”¹⁶⁹ No comments were received on the post-privatization distribution filings.

66. NARUC I sets forth a two-pronged test for making determinations regarding regulation as a common carrier. First, we must analyze the likelihood that space station capacity in the services in question will be offered indifferently to the public. Second, if there is no such likelihood, we must determine whether there are sufficient public policy reasons to place Intelsat under a legal compulsion to serve the public indifferently.¹⁷⁰ Intelsat LLC has also provided an explanation of the commercial structure that will take it through its transition to private entity and provide a starting point for its offerings post-privatization. Intelsat LLC has stated that it is not, initially, offering service on a common carrier basis. Prior to privatization, INTELSAT will make the Distribution and Wholesale Customer Agreements available only to those customers that it authorizes to access the Intelsat system and will make individual determinations based on factors including customer needs and creditworthiness to decide which customers it will authorize. Intelsat LLC has made no commitments, either to the Commission or in the agreements themselves, as to what agreements it will offer to customers after privatization. It will be able to assign capacity to users on a case-by-case basis, considering the individualized needs and requirements of each user. We therefore find that there is no basis on which to conclude that Intelsat LLC will offer capacity indifferently to the public.

¹⁶¹ *Licensing Order* at ¶ 41, citing *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642(D.C. Cir. 1976) (“NARUC I”).

¹⁶² *Licensing Order* at note 134, citing *DISCO I decision*, 11 FCC Rcd at 2436 (1999).

¹⁶³ *Licensing Order* at ¶ 41.

¹⁶⁴ *Reconsideration Order* at ¶ 53.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Reconsideration Order* at ¶ 55.

¹⁶⁸ *Distribution Agreements Supplemental*.

¹⁶⁹ *Id.* at 3.

¹⁷⁰ *NARUC I*, 525 F.2d at 642.

67. NARUC I also speaks to whether there is any public policy reason to place Intelsat LLC under a legal compulsion to act as a common carrier. As we have noted in the *Licensing Order* and the *Reconsideration Order*, Comsat is still regulated as a dominant carrier on thin routes, but it is not clear what, if any, position Intelsat LLC would play in providing service, itself, on those routes.¹⁷¹ Since no further comments were made on this issue in this proceeding and since we find nothing to change the position we took in our earlier orders, we find that there is no public policy reason at this time to place Intelsat LLC under a legal compulsion to act as a common carrier. Consequently, our analysis under the NARUC I test leads to the conclusion that we need not impose common carrier regulation on Intelsat LLC at this time.

(3) Implementation of Direct Access

68. Section 641(a) of the ORBIT Act provides:

“(a) ACCESS PERMITTED.-- . . .users or providers of telecommunications services shall be permitted to obtain direct access to INTELSAT telecommunications services and space segment capacity through purchases of such capacity or services from INTELSAT. . . at the level commonly referred to by INTELSAT. . .as ‘Level III.

69. In 1999, the Commission released its *Direct Access Order* granting Level 3 direct access to INTELSAT.¹⁷² On September 14, 2000, in compliance with Section 641(b) of the ORBIT Act, the Commission released a Report and Order regarding the availability of space segment capacity for users wishing to directly access INTELSAT.¹⁷³ In that Order, the Commission expressed concerns if the post-privatization sales and distribution structure were to carry forward some of the same privileges or protections enjoyed by Signatories, including Comsat, from the pre-privatization structure. It stated that we would pay close attention to the agreements that resulted from the distribution negotiations to ensure that the benefits of direct access are not diminished in the privatization process.¹⁷⁴ Thus, we must determine here whether the intent of the ORBIT Act – to allow for equal access to INTELSAT for non-Signatory customers – has been met by reviewing, in particular, the distribution structure that the INTELSAT Signatories have chosen to carry forward through the transition into a private company.

70. Our review of the Distribution and Wholesale Customer Agreements show that the agreements are non-exclusive, allowing U.S. direct access users the same opportunities as Signatories to commit to those agreements. We do not see any indication that Signatories would be able to obtain any protections or privileges that direct access users would not be able to also obtain. The specific agreements we reviewed are the only versions of those agreements available for signature prior to privatization. INTELSAT decided to make them available by the end of March, 2001, to all entities authorized to access the INTELSAT system as of the date of privatization, including U.S. direct access users.¹⁷⁵ After privatization, Intelsat LLC will have the same flexibility as any other commercial carrier to negotiate individual contracts with customers, but we have no indication that Intelsat LLC will be inappropriately incented to favor its former Signatories over other users. Moreover, the agreements are subject to national law, which would include the ORBIT Act. We conclude, therefore, that the INTELSAT privatization will carry forward the

¹⁷¹ *Licensing Order* at ¶ 40; *Reconsideration Order* at ¶ 54.

¹⁷² Direct Access to the INTELSAT System, 14 FCC Rcd. 15703 (1999)(*Direct Access Order*).

¹⁷³ *Availability of Space Segment Capacity or Users and Service Providers Seeking to Access INTELSAT Directly*, Report and Order, Docket No. 00-91 (rel. Sept. 14, 2000) (*Capacity Order*).

¹⁷⁴ *Capacity Order* at ¶ 33.

¹⁷⁵ *Distribution Arrangement Supplemental* at 3.

intent of Section 641(c).

V. CONCLUSIONS

71. In view of the above, and subject to the conditions that we impose in this decision, we find that INTELSAT will privatize in a manner consistent with the requirements of Sections 621 and 622 of the ORBIT Act. We therefore find under Section 601(b) of the ORBIT Act that the use of space segment operated by Intelsat Ltd. and Intelsat LLC for services to, from, or within the United States will not harm competition in the telecommunications market of the United States.¹⁷⁶ We condition the authorizations granted herein on INTELSAT's implementing its privatization within the dates and specifications that Intelsat LLC has represented on the record in this proceeding and upon which we base our findings under the ORBIT Act. We also condition the applications on Intelsat Ltd. conducting an IPO consistent with Sections 621(2) and 621(5)(A)(I) of the Act and will make a determination as to whether these provisions have been satisfied following the IPO. We maintain the ability to take action that may be required by the Act should we find Intelsat LLC in violation of any provision of the Act in the future.

72. Under these circumstances the authorizations issued by the Commission in its *Licensing Order* shall not become effective until the date of INTELSAT's privatization – July 18, 2001 -- when INTELSAT transfers its satellites and associated assets to Intelsat LLC and INTELSAT's ITU network filings, for the locations associated with the operation of its satellites, are transferred on a permanent basis to the United States national registry. Absent the occurrence of the events and completion of the conditions mentioned in this paragraph and the proceeding paragraph, there will be no effective license.

VI. ORDERING CLAUSES

73. Accordingly, IT IS DETERMINED that (1) INTELSAT's privatization is consistent with the criteria specified in Sections 621 and 622 of the Open-Market Reorganization for the Betterment of International Telecommunications Act (the "ORBIT Act"), Pub. L. 106-180, §§ 621 and 622; and (2) the use of space segment operated by Intelsat LLC for services to, from or within the United States will not harm competition in the telecommunications market of the United States as contemplated by Section 601(a) of the ORBIT Act, Pub. L. 106-180, § 601.

74. IT IS ORDERED that the authorizations issued to Intelsat LLC by the Commission in the Intelsat LLC *Licensing Order* shall become effective upon privatization on July 18, 2001 when INTELSAT transfers its satellites and associated assets to Intelsat LLC and INTELSAT's ITU network filings, for the locations associated with the operation of its satellites, are transferred on a permanent basis to the United States national registry.

75. IT IS FURTHER ORDERED that the terms and conditions of the *Licensing Order* shall remain in effect.

76. IT IS FURTHER ORDERED that the authorizations issued in the *Licensing Order* are subject to a future Commission finding that the Intelsat Ltd. has conducted an IPO consistent with the requirements of Sections 621(2) and 621(5)(A)(i) of the ORBIT Act and any actions the Commission may take in view of this finding under Section 601(b)(1)(B) of the Act.

¹⁷⁶ Pub. L. 106-180 § 601(b)

77. IT IS FURTHER ORDERED that Intelsat LLC shall file with the Commission 30 days after conduct of its IPO a demonstration that the IPO is consistent with Section 621(2) and 621(5)(A)(i) of the ORBIT Act.

78. IT IS FURTHER ORDERED that Intelsat LLC shall report to the Commission 30 days after the date of privatization confirming that the privatization has been completed within the dates and specifications that Intelsat LLC has represented on the record in this proceeding and upon which we base our findings under the ORBIT Act.

79. IT IS FURTHER ORDERED that Intelsat LLC's report shall identify the directors, officers and managers of Intelsat Ltd., Intelsat LLC and other subsidiary companies to confirm consistency with Section 621(5) of the ORBIT Act.

80. IT IS FURTHER ORDERED that Intelsat LLC shall report to the Commission 15 days after the date of INTELSAT's privatization progress on novating current assigned contracts and leaseback arrangements with New Skies Satellites, N.V.

81. IT IS FURTHER ORDERED that petitions for reconsideration pursuant to Section 1.106 of the Commission's Rules, may be filed with 30 days of the public notice of this Order, 47 C.F.R. § 1.106. This grant is also subject to Section 1.110 of the Commission's Rules, 47 C.F.R. § 1.110.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

ATTACHMENT A

Intelsat, Ltd.
Simplified Corporate Structure

