

FCC REPORT TO CONGRESS AS REQUIRED BY THE ORBIT ACT

This report is submitted in accordance with Section 646 of the Open-market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act).¹

Section 646 states:

“(a) ANNUAL REPORTS - The President and the Commission shall report to the Committees on Commerce and International Relations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Foreign Relations of the Senate within 90 calendar days of the enactment of this title, and not less than annually thereafter, on the progress made to achieve the objectives and carry out the purposes and provisions of this title. Such reports shall be made available immediately to the public.”

“(b) CONTENTS OF REPORTS - The reports submitted pursuant to subsection (a) shall include the following:

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

“(2) Views of the Parties with respect to privatization.

“(3) Views of the industry and consumers on privatization.

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

I. Progress as to Objectives and Purposes

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

The ORBIT Act: (1) mandates the privatization of INTELSAT and Inmarsat; (2) establishes criteria to ensure a pro-competitive privatization; (3) requires the Commission to determine whether INTELSAT, Inmarsat, and the INTELSAT spin-off, New Skies Satellites N.V. (New Skies), have been privatized in a manner that will harm competition in the United States; (4) requires the Commission to use the privatization criteria specified in the ORBIT Act as a basis for making its competition determination; and (5) directs the Commission to “limit through conditions

¹ Pub. L. No. 106-180; 114 Stat. 48 (2000), §646.

² Pub. L. No. 106-180, § 2.

or deny” applications or requests to provide “non-core” services to, from, or within the United States if it finds that competition will be harmed.³ It provides for certain exceptions to limitations on non-core services in the event of such a determination. The Act also prohibits the Commission from authorizing certain “additional” services pending privatization consistent with the criteria in the Act.⁴ In addition, the Act directs the Commission to undertake a rulemaking proceeding to assure U.S. users opportunity for direct access to the INTELSAT System.

The Commission made its first report to Congress on its actions to implement the ORBIT Act on June 15, 2000, following enactment of the Act on March 17, 2000.⁵ In preparation of this report, the Commission issued a Public Notice on April 13, 2001 inviting comment appropriate to the development of this second report.⁶

A. Commission Actions and Activities

The Commission has undertaken the following actions required by the ORBIT Act, or related to its objectives and purposes. The actions described below have been taken to ensure that INTELSAT, Inmarsat, and New Skies have been privatized in a procompetitive manner consistent with the privatization criteria of the Act.⁷ These actions have also been taken to implement certain deregulatory measures in the Act.⁸

INTELSAT

A. Privatization Negotiations

- FCC staff participated in international meetings held by INTELSAT regarding the privatization of INTELSAT. Those meetings included the Assemblies of Parties held in November 2000 and April 2001, regularly scheduled Board of Governors meetings, and the meetings of a working group that developed INTELSAT’s post-privatization distribution and wholesale customer arrangements.⁹

³ The Act defines “non-core” services as “services other than public-switched network voice telephony and occasional-use television” with respect to INTELSAT, and as “services other than global maritime distress and safety services or other existing maritime or aeronautical services for which there are not alternative providers” with respect to Inmarsat. Pub. L. No. 106-180, § 681(a)(11).

⁴ The Act defines “additional” services as “direct-to-home (DTH) or direct broadcast satellite (DBS) video services, or services in the Ka or V bands” for INTELSAT and as “those non-maritime or non-aeronautical mobile services in the 1.5 and 1.6 GHz band on planned satellites or the 2 GHz band” for Inmarsat. Pub. L. No. 106-180, § 681(a)(12).

⁵ *FCC Report to Congress as Required by the ORBIT Act* (rel. June 15, 2000).

⁶ Public Notice, Report No. SPB-167, April 13, 2001.

⁷ Pub. L. No. 106-180, §§ 601, 621, 622, 623, 624, and 648.

⁸ Pub. L. No. 106-180, §§ 641 and 645(1).

⁹ The Assembly of Parties is the principal governing organ of INTELSAT and is composed of all the Parties (the national governments for which the INTELSAT Agreement has entered into force). The Assembly’s primary purpose is to consider general policy and long-term objectives of INTELSAT

- As described below, INTELSAT has decided to privatize on July 18, 2001. The privatized INTELSAT will become an FCC licensee for existing and planned satellites that provide services in the C- and Ku-bands.

B. FCC Licensing Proceeding

- On August 8, 2000, the Commission released the *Intelsat LLC Licensing Order* authorizing Intelsat LLC to operate its existing and planned C- and Ku-band satellites as a U.S. licensee upon privatization of INTELSAT.¹⁰ The authorizations were conditioned upon a subsequent finding by the Commission that INTELSAT's privatization would be consistent with the ORBIT Act criteria and they will not be effective until INTELSAT actually privatized by transferring its assets to a private corporation and its ITU network filings to the national registries of the United States and the United Kingdom.
- Intelsat LLC is the separate private Delaware company created by INTELSAT to hold the U.S. authorizations and associated space segment assets upon privatization. The *Intelsat LLC Licensing Order* conditionally authorized Intelsat LLC to operate 17 satellites presently owned and operated by INTELSAT, 10 future replacement satellites, and 13 modifications permitting relocation of existing satellites upon launch of planned satellites. As part of the authorizations, the Commission waived some of its technical rules in connection with operation of existing and planned satellites.¹¹
- On December 14, 2000, the Commission released an *Order on Reconsideration* denying petitions for reconsideration filed by PanAmSat Corporation and GE American Communications, Inc.¹² In that order, the Commission confirmed its decisions in its *Licensing Order* to: (1) cancel, in accordance with ITU procedures, INTELSAT orbital registrations should it in the future no longer license their use by Intelsat LLC, (2) license Intelsat LLC's use of six currently "unused" orbital locations held by INTELSAT under ITU procedures, (3) not declare Intelsat LLC a dominant

consistent with the terms of the underlying INTELSAT Agreement. Agreement relating to the International Telecommunications Satellite Organization, "INTELSAT," 23 U.S.T. 3813; TIAS No. 7532, (February 12, 1973) (*INTELSAT Agreement*) Articles VII(a) and (b).

¹⁰ *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) (*Intelsat LLC Licensing Order*).

¹¹ Section 601(b)(1)(D) of the ORBIT Act permitted the Commission to act on the Intelsat LLC application prior to completion of then ongoing privatization negotiations, if such action was necessary, for the United States to become the licensing jurisdiction for INTELSAT. In accordance with Section 601(b)(1)(D), the Commission conditioned the authorizations upon compliance with provisions of the ORBIT Act. Pub. L. 106-180 § 601(b)(1)(D). *See also* §§ 621 and 622.

¹² *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 on Reconsideration, FCC 00-437 (rel. Dec. 14, 2000) (*Intelsat LLC Reconsideration Order*).

carrier for services to thin route countries, (4) waive its requirement that Telemetry, Tracking and Control (TT&C) operations be located at the band edge, (5) waive its requirement that U.S. licensed satellites employ linear polarization on C-band satellites, and (6) waive its two-degree spacing requirements.

- On May 29, 2001, the Commission released the *INTELSAT ORBIT Act Compliance Order* finding that (1) INTELSAT's privatization is consistent with the non-IPO criteria specified in Sections 621 and 622 of the ORBIT Act and (2) the use of space segments 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(b) of the ORBIT Act. As a result, the licenses that the Commission issued to Intelsat LLC on August 8, 2000, will become effective upon INTELSAT's privatization on July 18, 2001 when INTELSAT transfers (1) its satellites and associated assets to Intelsat LLC and (2) its ITU network filings for the locations associated with the operation of those satellites, on a permanent basis, subject to the terms of the *Intelsat LLC Licensing Order* to the United States national registry.¹³
- The privatized INTELSAT is required by the ORBIT Act to conduct an IPO by October 1, 2001 to "substantially dilute" ownership by former INTELSAT Signatories. The Commission may extend this deadline to no later than December 31, 2002.¹⁴ The Commission found in its May 29, 2001 decision that the ORBIT Act permits it to authorize services upon privatization prior to INTELSAT conducting its IPO, provided that INTELSAT's privatization is otherwise consistent with the Act's criteria. The Commission required the privatized INTELSAT must file with the Commission 30 days after conduct of its IPO a demonstration that that the IPO is consistent with Section 621(2) and 621(5)(A)(I) of the ORBIT Act. The Commission will then determine whether INTELSAT has achieved "substantial dilution" as required by the ORBIT Act. If the IPO is not conducted within the timeframe established by the ORBIT Act or if "substantial dilution" is not achieved, the Commission retains authority under Section 601(b)(1)(B) of the Act to take appropriate action.¹⁵

Inmarsat

- Inmarsat privatized on April 15, 1999, prior to enactment of the ORBIT Act. The Commission has before it various applications from Comsat Corporation; Stratos Mobile Networks, LLC; SITA Information Computing Canada, Inc.; Honeywell, Inc.; Marisat Communications Network, Inc.; and Deere & Company to use Inmarsat

¹³ *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 00-183 (rel. May 29, 2001) (*Intelsat LLC ORBIT Compliance Order*).

¹⁴ Pub. L. No. 106-180, § 621(5)(A)(i).

¹⁵ If the IPO does not meet the time or size requirements established in the ORBIT Act, Section 601(b)(1)(B) of the Act states that the Commission "shall limit through conditions or deny" any applications before it at that time and "limit or revoke previous authorizations to provide non-core services to, from, or within the United States." Pub. L. No. 106-180, § 601(b)(1)(B).

for communications services to, from or within the United States. Inmarsat has recently taken certain actions which it states brings it into compliance with the privatization criteria of the ORBIT Act. The Commission is reviewing the applications and actions undertaken by Inmarsat to determine compliance with the ORBIT Act and to consider other issues raised in these proceedings. Action is anticipated in the near future. If the Commission concludes that Inmarsat's privatization is not consistent with the Act's privatization criteria, the Act directs the Commission to limit by condition or deny authorizations for non-core services.¹⁶

- The ORBIT Act requires Inmarsat to conduct an IPO no later than October 1, 2000. The Act permits the Commission to extend this deadline to no later than December 31, 2001.¹⁷ In August 2000, Inmarsat requested a six-month extension of the IPO deadline to July 1, 2001. On October 3, 2000, the Commission granted the request on the basis that Inmarsat had demonstrated the need to restructure the company and develop innovative services in order to make an IPO attractive to investors and to achieve the substantial dilution of shareholder ownership as required by the Act.¹⁸ In that decision, the Commission found that the ORBIT Act specifically provides for the authorization of Inmarsat services prior to Inmarsat's conduct of an IPO, provided that other requirements of the ORBIT Act are satisfied.
- On April 5, 2001, Inmarsat filed for a second extension of its IPO deadline to December 31, 2001 based on unfavorable market conditions. The request was placed on public notice on April 12, 2001.¹⁹ The Commission is currently reviewing comments received in the proceeding and analyzing the issues raised. Action is anticipated in the near future.

New Skies Satellites

- New Skies is the Netherlands-based INTELSAT spin-off created in 1998 as INTELSAT's first step toward privatization. In 1999, the Commission granted U.S. earth station operators limited three-year authorizations to operate with New Skies in the U.S. market pending New Skies' taking certain actions to become independent of INTELSAT.²⁰ The Commission found that New Skies had not yet: (1) conducted an initial public offering (IPO) as anticipated by the INTELSAT Assembly of Parties decision approving New Skies' creation; (2) novated customer contracts inherited from INTELSAT,²¹ also as anticipated by the Assembly decision, and; (3) terminated

¹⁶ Pub. L. No. 106-180, § 621(5)(B).

¹⁷ Pub. L. No. 106-180, § 621(5)(A)(ii).

¹⁸ *In the Matter of Inmarsat Ventures Ltd, Request for Extension of Time Under Section 621(5) of the ORBIT Act*, Memorandum Opinion and Order, FCC 00-356 (rel. Oct. 3, 2000).

¹⁹ Public Notice, Report No. SAT-00069, April 12, 2001.

²⁰ *See In the Matter of New Skies Satellites, N.V. for Authorization to Access the U.S. Market*, Order and Authorization, 14 FCC Rcd. 13003 (1999).

²¹ Novation is the substitution of a new obligation or contract for an old one by mutual agreement of all parties concerned. In this case it refers to the substitution of New Skies for INTELSAT in the customer contracts inherited by New Skies from INTELSAT.

certain of transitional support agreements with INTELSAT. It said that it would consider extension of the three-year earth station licenses granted to a normal, full “ten-year” license term if New Skies demonstrates that it has achieved independence from INTELSAT.

- The ORBIT Act requires “separated entities” created before January 1, 1999 to conduct an IPO no later than July 1, 2000. New Skies is a “separated entity.” The section permits the Commission to extend this deadline to no later than July 31, 2001. On May 26, 2000, New Skies requested a six-month extension of the deadline. On June 30, 2000, the Commission released an order finding that New Skies had demonstrated diligence in preparing for an IPO and had acted reasonably in delaying its IPO based on the advice of its investment bankers and underwriters, who focused their recommendations on then unfavorable market conditions.²²
- New Skies conducted its IPO in October 2000. On March 29, 2001, the Commission granted New Skies’ request to provide satellite services to, from, and within the United States on a full-term basis. In taking this action, the Commission found that: (1) New Skies has met the criteria, specified under Sections 621 and 623 of the ORBIT Act and required by the 1999 *New Skies Market Access Order*, for achieving independence from INTELSAT and (2) the use of space segment operated by New Skies will not harm competition in the U.S. telecommunications market, as contemplated in Section 601 of the ORBIT Act. The Commission also extended to full term the authorizations of U.S. earth stations now operating with New Skies satellites. And, subject to conditions, it granted to New Skies an extended waiver of the two-degree spacing policy for New Skies’ currently operating satellites and one replacement satellite to be launched later this year.²³

Lockheed Martin – Comsat Merger

- The Commission on September 15, 1999, authorized Lockheed Martin to acquire up to 49 percent of the stock of Comsat Corporation (“Comsat”), within the limitations then placed on common carrier ownership of Comsat’s stock under the Communications Satellite Act of 1962.²⁴ The ORBIT Act terminated the 1962 Act’s ownership restrictions on Comsat. As a result, on March 23, 2000, Lockheed Martin filed an application with the Commission for transfer of control of Comsat’s various licenses and authorizations. On July 31, 2000, the Commission found that Lockheed Martin’s purchase of Comsat was in the public interest and authorized Comsat to assign its FCC licenses and authorizations to a wholly owned subsidiary of Lockheed

²² *In the Matter of New Skies Satellites, N.V. Request for an Extension under Section 623(1) of the ORBIT Act*, Memorandum Opinion and Order, FCC 00-234 (rel. June 30, 2000).

²³ *In the Matter of New Skies Satellites, N.V. Request for Unconditional Authority to Access the U.S. Market*, Memorandum Opinion and Order, FCC 01-107, ¶ 34-40 (rel. March 29, 2001)(*New Skies Order*).

²⁴ *In the Matter of Lockheed Martin Corporation, Regulus, LLC and Comsat Corporation Application for Transfer of Control of Comsat Government Systems, Inc.*, Memorandum, Order and Authorization, FCC# 99-237, (rel. Sept. 15, 1999). sub nom. PanAmSat Corporation v. FCC, et al. Nos. 99-1384 and 99-1385, 2000 WL 621421 appeal dismissed with partial vacatur (D.C. Cir. April 20, 2000) (grant by court of joint request for dismissal on the basis that the ORBIT Act mooted underlying complaints).

Martin Corporation, permitting the completion of the planned merger. In making this finding, the Commission determined that the merger would not have any adverse impact on the current level of competition in any relevant market relating to the provision of satellite services. The Commission also found that the acquisition of Comsat may have potential efficiencies that will allow the merged company to compete more effectively in the global telecommunications marketplace.

Direct Access

- Section 641(a) of the ORBIT Act requires that users and service providers be permitted to obtain Level 3 direct access to INTELSAT capacity. Previously, the Commission decided in a rulemaking proceeding that Level 3 direct access is in the public interest.²⁵
- As required by Section 641(b), the Commission initiated a rulemaking proceeding to determine whether users or providers of telecommunications services have sufficient opportunity to access INTELSAT space segment capacity directly to meet their service or capacity requirements.²⁶ On September 14, 2000, the Commission released its *INTELSAT Capacity Order* finding that users and service providers do not have "sufficient opportunity" for direct access "to meet their service or capacity requirements."²⁷ To facilitate opportunities for direct access, the Commission required Comsat and direct access customers to negotiate in good faith to find commercial solutions and stated that it would consider other "appropriate action" if it found that commercial solutions do not create a sufficient opportunity for direct access users and service providers to meet their service or capacity requirements. The Commission also emphasized its concern that post-privatization sales and distribution arrangements not carry forward special privileges and protections for Signatories.
- On March 13, 2001, Comsat submitted a report detailing the results of its negotiations and maintaining that direct access opportunities are increasing for those who want them. The negotiations resulted in a commercial agreement between Comsat and WorldCom. The Commission placed Comsat's report on public notice on April 6 and BT North America and Sprint commented opposing termination of the proceeding.²⁸ At this time the Commission is reviewing the issues to determine whether further steps may be appropriate.

²⁵ *Direct Access to the INTELSAT System*, Report and Order, 14 FCC Rcd. 15703 (1999). Level 3 direct access permits non-signatory users and service providers to enter into contractual agreements with INTELSAT for space segment capacity at the same rates that INTELSAT charges its Signatories without having to use a Signatory as a middleman.

²⁶ *Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, Notice of Proposed Rulemaking, IB Docket No. 00-91, FCC 00-186 (rel. May 24, 2000) (*INTELSAT Capacity NPRM*).

²⁷ *In the Matter of the Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, Report and Order, Docket No. 00-91 (rel. Sept. 14, 2000) (*INTELSAT Capacity Order*).

²⁸ Public Notice, Report No. SPB-166, April 6, 2001.

- In its May 29, 2001 *INTELSAT ORBIT Act Compliance Order*, the Commission found that the post-privatization distribution and wholesale customer agreements approved by the INTELSAT Board of Governors did not give any indication that Signatories would be able to obtain any protections or privileges that direct access users would not be able to obtain as well. The specific agreements that the Commission reviewed are non-exclusive and will be the only versions of those agreements available for signature prior to privatization. INTELSAT decided to make them available prior to privatization to all entities authorized to access the INTELSAT system as of the date of privatization, including to U.S. direct access users. The privatized INTELSAT will have the same flexibility as any other commercial carrier to negotiate individual contracts with customers. The Commission found, however, no indication that privatized INTELSAT will be inappropriately motivated to favor its former Signatories over other users. Moreover, the agreements are subject to national law, which would include the ORBIT Act. The Commission concluded, therefore, that the INTELSAT privatization will carry forward the intent of Section 641(a) to continue to make direct access available to U.S. customers.²⁹

Regulatory Fees

- The ORBIT Act authorizes the Commission “to impose similar regulatory fees on the United States signatory which it imposes on other entities providing similar services.”³⁰ The Commission considered in its rulemaking proceeding on assessment and collection of regulatory fees for fiscal year 2000 whether it is appropriate to impose regulatory fees on Comsat.³¹ On July 10, 2000, the Commission released an Order concluding that Comsat should pay a proportionate share of the fees applicable to holders of Title III authorizations to launch and operate geosynchronous space stations.³² Consistent with past decisions, the Commission stated that the costs attributable to space station oversight include costs directly related to INTELSAT signatory activities and are distinct from those recovered by other fees that Comsat pays, such as application fees, fees applicable to international bearer circuits, fees covering Comsat's non-Intelsat satellites, and earth station fees.³³

²⁹ *Intelsat LLC ORBIT Compliance Order* at ¶¶ 66-69.

³⁰ Pub. Law 106-180 § 642[c]. A 1998 decision of the United States Court of Appeals for the District of Columbia Circuit in *PanAmSat Corp. v. FCC*, 198 F.3d 890 (D.C. Cir. 1999), set aside and remanded the Commission’s 1998 fee order, which did not assess a fee against Comsat.

³¹ *In re Assessment and Collection of Regulatory Fees for Fiscal Year 2000*, Notice of Proposed Rulemaking, FCC 00-117, MD Docket No. 00-58 at ¶¶ 16-17 (rel. Apr. 3, 2000).

³² *In re Assessment and Collection of Regulatory Fees for Fiscal Year 2000*, FCC 00-117, MD Docket No. 00-58 at ¶ 24 (rel. July 10, 2000).

³³ *Id.*

B. Status of INTELSAT Privatization

Substantial progress has been made toward achieving a primary purpose of the ORBIT Act – fully privatizing INTELSAT.³⁴ As noted above, the Commission has found that INTELSAT’s planned privatization will be consistent with the privatization criteria of the Act,³⁵ and that competition in the U.S. market will not be harmed by the planned privatization.³⁶ Below, we discuss the progress to date and describe the planned privatization.

(1) Progress of Discussions

In the year since the Commission’s 2000 report to Congress, INTELSAT has held numerous meetings focused largely on the privatization process. In September 2000, the INTELSAT Board of Governors formally recommended that the Assembly of Parties accept the FCC licenses issued in August 2000, and select the United States to receive and license INTELSAT’s orbital registrations upon privatization, based upon the terms of the *Licensing Order*.³⁷ 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.”³⁸ An Assembly of Parties (comprised of the member governments of INTELSAT), held November 13-17, 2000, confirmed the decision of a 1999 Assembly of Parties that INTELSAT should restructure, decided on the terms and conditions that would apply to the restructuring, and approved amendments to the INTELSAT Agreement necessary to effect the privatization. It also endorsed the Board’s decision on selection of licensing jurisdictions and other aspects of INTELSAT’s privatization.³⁹ Subsequent to the November Assembly, the INTELSAT Board of Governors approved underlying documents creating the private company and made preparations to implement privatization by July 18, 2001, the target date established by the November Assembly.⁴⁰

In approving the amendments to the INTELSAT Agreement necessary to effect privatization, the November Assembly also agreed to “rapidly implement” the amendments such that they take effect on July 18, 2001 in order to avoid delaying the privatization transactions by a year or more pending formal entry into force of the amendments. While the United States consistently

³⁴ Pub. L. No. 106-180, § 2.

³⁵ Pub. L. No. 106-180, §§ 621 and 622.

³⁶ Pub. L. No. 106-180, §§ 601(b).

³⁷ INTELSAT Press Release, “INTELSAT Board Chooses United States as Jurisdiction for Privatized Service Company; Accepts FCC Licenses” (Sep. 15, 2000).

³⁸ *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.

³⁹ *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.

⁴⁰ See 2000 Assembly Decision.

advocated the April 1, 2001 privatization target date incorporated into the ORBIT Act, some Parties raised concerns regarding the need to allow for sufficient time to conclude the legislative processes necessary for their governments to officially accept the amendments. In addition, certain 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 it has been approved by the Assembly of Parties.”⁴¹ The Assembly of Parties agreed to a date of July 18, 2001 -- eight months and one day after the close of the Assembly of Parties meeting at which the privatization decisions were finalized.

As part of its decision to privatize INTELSAT, the November Assembly decided to leave in place a small residual intergovernmental organization to be known as ITSO, an acronym for the International Telecommunications Satellite Organization. ITSO will, through a “Public Services Agreement” with the privatized INTELSAT, monitor the 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).⁴² Under these commitments, the privatized INTELSAT will keep capacity available to lifeline users at fixed pre-privatization costs for approximately 12 years, while the lifeline users will only be committed for its capacity on a year-to-year basis at their option. ITSO will have no operational or commercial role.

(2) *Planned Privatization*

At the March 2001 meeting, the Board of Governors gave final approval to corporate and other documents that would create the private company and implement the November Assembly decision. In April 2001, another Assembly of Parties selected Ahmed Toumi of Morocco as the first Director General of ITSO. The Board of Governors meeting scheduled for June 15 – 22 will work to complete its due diligence in preparation for privatization on July 18, 2001.

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. It will hold the United Kingdom authorizations for ITU registrations in the Ka-, BSS-, and V-bands.⁴³ 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.⁴⁴ 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, operations, legal, engineering and billing services.⁴⁵ It also will own and

⁴¹ *INTELSAT Agreement* Article XVII(f).

⁴² 2000 Assembly Decision at 6-8.

⁴³ *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, at 15 (Dec. 18, 2000)(*Supplemental Information*).

⁴⁴ *Id.* at 15-16.

⁴⁵ *Id.* at 15-16.

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.⁴⁶ All space segment assets operating in these bands will be transferred to Intelsat LLC, also a Delaware corporation.⁴⁷ Intelsat LLC will sell all of its space segment capacity to Intelsat Bermuda.⁴⁸ 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.⁴⁹ Customers will be able to acquire Intelsat space segment capacity either through distributors or on a wholesale customer basis.⁵⁰ The Intelsat holding company structure will also include regional support centers and field offices, as shown in Attachment A, providing marketing support and located in various countries.

The companies created will have fiduciary boards of directors. The companies will not have an immune or privileged status. The selection procedure for board members will result in a board that is compliant with the ORBIT Act as well as with the requirements of the New York and London stock exchanges. The licensing companies will be located in countries (U.S. and U.K.) that have effective competition laws and have commitments under the WTO Agreement that include non-discriminatory access to their satellite markets. These companies will be subject to U.S. or U.K. licensing authorities and will conduct satellite coordinations according to ITU procedures under the auspices of these authorities. An Intelsat Ltd. IPO is anticipated prior to the final date (December 31, 2002) established by the ORBIT Act.

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. They will be the shareholders of Intelsat Ltd. until it conducts an IPO. INTELSAT currently anticipates that Intelsat Ltd. will conduct an IPO within a year after the date of privatization – well within the timeframe specified in the Act.

II. Views of INTELSAT Parties on Privatization

The Commission has not received any views from Parties regarding privatization in response to the Public Notice.

III. Views of Industry and Consumers on Privatization

PanAmSat Corporation (PanAmSat), Lockheed Martin Corporation (Lockheed Martin), INTELSAT, Inmarsat Ventures plc. (Inmarsat), the Committee to Restructure the International

⁴⁶ *Id.* at 16.

⁴⁷ *Id.*

⁴⁸ *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 at 2, note 6 (Mar. 16, 2001).

⁴⁹ *Id.* at 2.

⁵⁰ *Id.* at 3.

Satellite Organizations (CRISO), Motient Services Inc. (Motient), and Deere & Company (Deere) responded to the Commission's public notice inviting comments appropriate to the development of this report. The Commission received no filings specifically representing views of consumers or consumer groups.

Lockheed Martin and INTELSAT state that the decisions taken by the various INTELSAT bodies are sufficient to meet the ORBIT Act's non-IPO criteria. Lockheed Martin argues that INTELSAT privatization as currently set forth and Inmarsat's actual privatization will have a number of benefits to consumers and industry should the Commission grant each full access to the U.S. market including: (1) introducing effective competitors into the market, (2) full access by consumers to the full range of legal remedies, (3) contribution to U.S. jobs and productivity as a result of having the INTELSAT service and licensing companies located in the United States, and (4) continued global access commitments through the public service agreements into which each organization and its residual IGO entered.

PanAmSat argues that although it is privatizing, INTELSAT will maintain market exclusivity in numerous countries in contravention of the ORBIT Act. PanAmSat proposes that the U.S. government should work with the International Telecommunication Union (ITU) to undertake a study to assess the relative market access opportunities of private satellite operators. It also proposes the creation of an organization comprised of industry representatives, satellite user groups, and national and international regulatory authorities from around the world to encourage the development of open and competitive satellite markets.

In response to this proposal, Lockheed Martin argues that INTELSAT is not the cause of market access barriers and has not used its current intergovernmental organization (IGO) status to provide privileges for the privatized Intelsat LLC. On the contrary, it states, INTELSAT has sought to further open market access in its member countries. While market access should be pursued in a variety of fora, Lockheed Martin argues that is a trade matter that should be pursued through trade avenues and not through the ITU, as trade matters are not within the ITU's mandate.

In the Intelsat LLC *Licensing Order*, the Commission conditioned the authorizations granted to Intelsat LLC on compliance with the ORBIT Act restrictions on exclusive arrangements for the provision of satellite services between the United States and other countries.⁵¹ We found in the INTELSAT *ORBIT Act Compliance Order* that the INTELSAT privatization will not violate this restriction and said we would enforce it in the future on a case-by-case basis as facts may require.⁵² We agree with PanAmSat, however, that market entry is fundamental to achieving and maintaining competition in satellite communications. The Commission therefore will continue to work with the U.S. government agencies that have the primary responsibility for ensuring that U.S. operators secure market access overseas. We believe that PanAmSat's specific proposals should be considered in an inter-agency context.

Inmarsat, Deere and Lockheed Martin maintain that Inmarsat has already privatized and has done so in a manner consistent with the ORBIT Act subject to Inmarsat undertaking an IPO by the final date incorporated in the Act. Motient maintains that Inmarsat has not privatized consistent with the criteria in the ORBIT Act in that it has not completed an IPO and some of its managers and officers still hold financial interests in former signatories. The comments of these parties reflect the views argued in ongoing Commission proceedings in which the Commission is assessing whether Inmarsat has met the criteria for privatization set forth in the ORBIT Act. We

⁵¹ *Licensing Order* at ¶¶ 27-28.

⁵² *INTELSAT ORBIT Act Compliance Order* at ¶¶ 57-62.

will address their concerns in the appropriate proceeding and report our findings to Congress as required by the Act.

Copies of the comments are attached.

IV. Impact of Privatization

Section 646 requests that we report on the impact of privatization on U.S. industry, jobs, and industry access to the global market. Since INTELSAT has not yet privatized, we cannot report on actual impact. We can, however, identify some of the expected effects on industry and access to the global market based on the decisions already taken by INTELSAT.

The privatization, as structured, is designed to allow privatized INTELSAT to continue to operate in a manner and provide services that meet U.S. commercial and governmental (including national security) needs. The United States will retain under its jurisdiction a company with valuable satellite assets and associated orbital locations. Furthermore, the location of the service and licensing companies in the United States may contribute to jobs and productivity in the United States. INTELSAT currently employs approximately 900 individuals, many of whom are highly skilled in the intricacies of high technology business. In addition, having Intelsat LLC as a U.S. licensee will also help prevent future warehousing of orbital locations in the C- and Ku-Bands. The Commission has (1) imposed milestone requirements on INTELSAT with respect to construction, launch and operation of new satellites; and (2) required that any future requests by INTELSAT to acquire new orbital locations in the C- and Ku- Bands be subject to FCC approval.

Potential coordination problems between other U.S. satellite operators and INTELSAT are expected to ease after privatization when INTELSAT becomes a U.S. licensee. Coordination between U.S. licensed satellite operators is conducted without direct FCC intervention except as may be necessary to address issues that might not be resolved by the licensees in a manner consistent with Commission rules. Coordination between non-U.S. licensed satellite operators and Intelsat LLC would be conducted in accordance with ITU procedures and would involve other governments. In this respect, the fact that Intelsat LLC will be an FCC licensee will facilitate greater U.S. flexibility in negotiations with non-U.S. licensed operators in instances where solutions to satellite coordination issues impact both the operation of Intelsat LLC satellites and other nearby U.S. licensed systems. Additionally, with Intelsat LLC as a U.S. licensee, U.S. involvement and impact in international fora on satellite issues may increase given Intelsat LLC's worldwide ownership.

Finally, both Inmarsat's privatization and INTELSAT's planned privatization have placed a priority on continued provision of service to all portions of the globe. Inmarsat committed to support global maritime distress and safety services and the INTELSAT Assembly of Parties determined that privatized INTELSAT should be contractually bound under a Public Service Agreement with the residual IGO to ensure continued global connectivity -- particularly to countries dependent on INTELSAT's satellite services.

V. Summary

The Commission has undertaken a number of proceedings required by or related to the ORBIT Act and Commission staff continue to work to implement the Act through participation in an advisory capacity in all meetings related to these negotiations. The Commission will continue to implement and enforce the requirements of the ORBIT Act. On the whole, we believe that U.S. policy goals regarding the promotion of a fully competitive global market for satellite communications services are being met in accordance with the Act. The Commission will inform Congress of the actions it takes to implement the requirements of the ORBIT Act and the impact of those actions in its next annual report.

Enclosures: Comments received in response to the Commission's Public Notice.

ATTACHMENT A

Intelsat, Ltd.
Simplified Corporate Structure

