

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

In the matter of Intelsat LLC
Request for Extension of Time Under Section 621(5) of the ORBIT Act
File No. SAT-MS-C-20010822-00075

MEMORANDUM OPINION AND ORDER

Adopted: September 28, 2001

Released: October 5, 2001

By the Commission:

1. Intelsat LLC requests an extension to December 31, 2002, of the October 1, 2001 deadline set forth in Section 621(5)(A)(i) of the Open-Market Reorganization for the Betterment of International Telecommunications Act ("the ORBIT Act") to conduct an initial public offering ("IPO"). Intelsat LLC was originally an affiliate of INTELSAT. INTELSAT was an intergovernmental organization ("IGO") created to provide satellite communications. INTELSAT privatized on July 18, 2001 into a corporate holding company structure. Intelsat LLC is a subsidiary within that privatized structure and the U.S. licensee for operation of existing and planned satellites in the C-band and Ku-band. The Commission conditioned Intelsat LLC's satellite licenses on compliance with ORBIT Act requirements to conduct an IPO.

2. The ORBIT Act establishes criteria for Commission review of applications to serve the U.S. market by "successor entities" created as a result of the privatization of INTELSAT and Inmarsat. Intelsat LLC constitutes a "successor entity" under the ORBIT Act. It therefore is subject to the requirement in Section 621(5)(A)(i) that it conduct an IPO on or about October 1, 2001, unless the Commission extends this deadline as provided in this section. Intelsat LLC requests that the deadline be extended to December 31, 2002.

3. The Commission placed Intelsat LLC's extension request on public notice on August 28, 2001. PanAmSat Corporation (PanAmSat) and New Skies Satellites, N.V. (New Skies) filed comments

1 ORBIT Act, Pub. L. 106-180, 114 Stat. 48 (2000). See also Communications Satellite Act of 1962, as amended, 47 U.S.C. §§ 701 et. seq.

2 See Applications of Intelsat LLC for authority to Operate and to Further Construct, Launch and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit Act, Memorandum Opinion and Authorization. FCC 00-183 (rel. May 29, 2001)(Intelsat LLC ORBIT Act Compliance Order).

3 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).

4 Pub. L. 106-180 § 681(A)(i).

5 Pub. L. 106-180, § 621(5)(A)(i).

6 Public Notice Report No., SAT- 00081, August, 28 2001.

opposing grant of a full extension to December 31, 2002. Lockheed Martin Corporation (Lockheed Martin) filed comments supporting Intelsat LLC's request.⁷ Intelsat LLC replied to PanAmSat's opposition.⁸

4. Intelsat LLC states that it is committed to conducting an IPO at the earliest practicable time. Intelsat LLC contends, however, that it requires the full extension permitted under the ORBIT Act to give it time to conclude business preparations and ensure flexibility to conduct an IPO at such a time that its investment advisors believe will not undermine the size or valuation of the transaction. Intelsat LLC states that it has had insufficient time in which to prepare for and conduct an IPO following its July 18, 2001 privatization. It also argues that current and foreseeable market conditions would not support a successful IPO. Intelsat LLC maintains that an extension of the current October 1, 2001 deadline to December 31, 2002 in view of these factors would be consistent with the Commission's statutory authority and precedent.

5. Lockheed Martin supports Intelsat LLC's extension request. Lockheed Martin argues that the current market conditions are unfavorable to telecommunications IPOs and that Intelsat LLC could not be expected to prepare for an IPO by the current deadline in the short time after privatization of INTELSAT. Lockheed Martin also maintains that, given the depth of the current economic downturn in the telecommunications market, the Commission should exercise its discretion to grant Intelsat LLC the full extent of flexibility under the ORBIT Act by extending the IPO deadline to December 31, 2002.

6. New Skies does not object to a six-month extension for Intelsat LLC in light of adverse market conditions.⁹ New Skies points out that Intelsat LLC is seeking an extension much more generous than those granted previously to its competitors. New Skies contends that granting Intelsat LLC's request in full would be inconsistent with the Commission's past practice and not further the purpose of the ORBIT Act to ensure that Intelsat LLC becomes an independent commercial entity with a pro-competitive ownership as soon as practicable.

7. PanAmSat opposes Intelsat LLC's request for the full fifteen-month extension allowed under the ORBIT Act. It contends that the Commission should at the most, grant a six-month extension. Additionally, PanAmSat contends that we should: (1) require Intelsat LLC to file monthly progress reports and (2) revise our procedures for evaluating any future extension request to require Intelsat LLC to file such request at least 60 days prior to the IPO deadline. PanAmSat asks the Commission to make it clear that any additional request must be accompanied by not only general market information but also information about the specific market that exists for shares in Intelsat LLC. Finally, PanAmSat asks the Commission to place Intelsat LLC on notice that it may have to complete its IPO even if market conditions worsen or do not improve.

8. In reply, Intelsat LLC asks the Commission to reject PanAmSat's and New Skies proposal that the Commission limit an extension to six months.¹⁰ Intelsat LLC maintains that the full extension provided for under the Act would allow it to approach the IPO market at a more favorable time and minimize the impact of a hard deadline under the Act. Intelsat LLC also opposes PanAmSat's request that it be required to file monthly progress reports, although it has no objection to filing reports on a six-month basis. Finally, Intelsat LLC objects to PanAmSat's proposal that it be required to provide specific market information connected with its IPO offering which it views as confidential and proprietary.

⁷ Partial opposition of PanAmSat Corporation, September 5, 2001.

⁸ Letter from Gerald Massara, Lockheed Martin Corporation to Secretary, FCC, dated September 5, 2001.

⁹ New Skies, N.V. Comments, September 5, 2001.

¹⁰ Intelsat LLC Reply Comments, September 10, 2001.

DISCUSSION

9. Section 621(5)(A)(i) of the ORBIT Act provides that:

- (A) An initial public offering of securities of any successor entity or separated entity ... (i) shall be conducted for the successor entities of INTELSAT on or about October 1, 2001, except that the Commission may extend this deadline in consideration of market conditions and relevant business factors relating to the timing of the initial public offering, but such extensions shall not permit such offering to be conducted later than December 31, 2002.¹¹

The purpose of this requirement is to ensure that Intelsat LLC becomes an independent commercial entity with a pro-competitive ownership structure.¹² The ORBIT Act anticipates that independence will be achieved, in part, through the substantial dilution of the aggregate ownership in Intelsat LLC held by former INTELSAT signatories.¹³ Thus, as in other actions granting IPO extensions to other entities under the ORBIT Act, our consideration of Intelsat LLC's request must be based upon whether the proposed extension would serve to achieve the underlying purpose of the requirement for an IPO.

10. We conclude that granting an extension to Intelsat LLC to conduct its IPO is consistent with and will facilitate the purposes of the ORBIT Act. The circumstances before us constitute market conditions and relevant business factors justifying an extension. We grant the full extension requested by Intelsat LLC for the following reasons.

11. The Commission has three times granted requests for extensions of IPO deadlines under the ORBIT Act. In 2000, the Commission granted New Skies a six-month extension of the applicable ORBIT Act deadline upon a finding that New Skies had made the necessary preparations but that market conditions were unfavorable for a successful IPO that would achieve the Act's goal of substantial dilution of former INTELSAT Signatory ownership.¹⁴ Also in 2000, the Commission granted Inmarsat's request for a nine-month extension to allow it adequate time to prepare for an IPO and to provide reasonable flexibility to Inmarsat to time entry into the market to achieve substantial dilution as required

¹¹ Pub. L. 106-180, § 621(5)(A)(i)

¹² See Pub. L. 106-180, § 621(2), which provides, in part:

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

¹³ See Pub. L. 106-180 § 621(2).

¹⁴ *In the Matter of New Skies Satellites N.V. Request for Extension of Time Under Section 623(i) of the ORBIT Act, Memorandum Opinion and Order*, FCC 00-234 (rel. June 30, 2000) (*New Skies Extension Order*) ; New Skies held its IPO within the extended six-month timeframe. The Commission subsequently determined that New Skies had achieved substantial dilution under the ORBIT Act. *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 Market Access Order*).

by the Act.¹⁵ In 2001, the Commission granted a further six-month extension to Inmarsat based on unfavorable market conditions.¹⁶ In each case, the Commission based its decisions on findings that New Skies and Inmarsat had demonstrated due diligence in preparing for an IPO and were reasonably basing their decisions on the IPO's timing on the advice of their financial advisors.

12. As to the request before us, it is clear that there has not been sufficient time for Intelsat LLC to prepare for an IPO since INTELSAT's July 18, 2001 privatization. PanAmSat implies that Intelsat LLC should have made preparations for an IPO prior to INTELSAT's privatization. We do not agree. In acting upon previous extension requests, the Commission has recognized the substantial business planning, financial and legal preparation necessary in preparing to conduct an IPO.¹⁷ These are steps more appropriately taken by a privatized INTELSAT having an independent board of directors with fiduciary responsibilities rather than an intergovernmental organization. Intelsat LLC's financial advisor states that it takes about four to six months to complete preparations prior to conducting an IPO, including preparation and clearance by the Securities and Exchange Commission (SEC) of a registration statement and prospectus and the marketing of the securities.¹⁸ This estimate is similar to those given by Inmarsat's financial advisor in support of Inmarsat's extension requests.¹⁹ Intelsat LLC has begun to prepare for its IPO.²⁰ As a result, we believe that an extension is justified for Intelsat LLC to complete preparations for and conduct an IPO.

13. We disagree with PanAmSat and New Skies that a six-month extension is adequate given the preparations Intelsat LLC must undertake and the need to time the conduct of the IPO that will be consistent with intelsat LLC's business interests and to achieve the ORBIT Act goal of substantial dilution. Intelsat LLC needs flexibility with respect to the timing of the IPO beyond a six-month extension. The issue before us is whether to grant the full extension permitted by the ORBIT Act.

14. The circumstances presented here are different than those that were before the Commission in connection with extensions that were granted previously. The Commission grant to Inmarsat of an initial nine-month extension in 2000 was to allow Inmarsat time to complete IPO preparations and flexibility to select the best timing of the IPO based upon advice of its financial advisor. The decision was based on Inmarsat's expectation of holding the IPO in the first half of 2001.²¹

¹⁵ *Inmarsat Ventures Ltd., Memorandum Opinion and Order* (rel. October 3, 2000. (*Inmarsat First Extension Order*) at ¶'s 10-11.

¹⁶ *Inmarsat Ventures plc, Memorandum Opinion and Order*, FCC 01-193, (rel. June 28, 2001)(*Inmarsat Second Extension Order*) at ¶'s 20-21.

¹⁷ *Inmarsat Second Extension Order* at ¶ 18. The Commission noted that Inmarsat has undertaken a number of activities in preparation for an IPO, including (1): a separation of financial disclosure information for regulatory and marketing purposes; (2) restructuring the company to be compliant with U.K. corporate governance guidelines; (3) completion of legal and financial due diligence necessary to prepare a draft prospectus and financial statements; (4) preparation of a draft prospectus and revision of it based upon comments of the SEC and UK Listing Authority; (5) selection of stock exchanges; and (6) consulting with financial advisors in preparation of the "road show" to market the stock..

¹⁸ *Intelsat LLC Request for Extension of Time*, Exhibit 1, Letter from Jerome D. Lucas, Managing Director, Lehman Brothers Inc. to Donald Abelson, Chief, International Bureau, FCC, August 10, 2001. (Lehman Brothers August 10 letter).

¹⁹ *Inmarsat First Extension Order* at ¶ 4.

²⁰ Intelsat LLC states that it has created a management team to develop and implement a plan for an IPO and is holding discussions with investment banks specializing in satellite and telecommunications equity offerings. It intends to hold a formal competition to select a team of bankers to conduct the IPO. *Intelsat LLC Request for Extension* at p. 8.

²¹ *Inmarsat First Extension Order* at ¶ 9.

Inmarsat's expectation was reasonable in view of the fact that New Skies was then preparing for, and subsequently conducted its IPO, in October, 2000. The subsequent grant of an additional six months to Inmarsat in 2001 was based primarily on the effect of the economic downturn which continues at this time. As a result, the Commission ultimately extended the IPO deadline for Inmarsat for the full period permitted under the Act.

15. Intelsat LLC has provided information on the record to demonstrate that current economic conditions do not support an IPO. Intelsat LLC has provided information showing the deteriorating market for IPOs in 2001 as compared to 2000,²² and the fact that broader market returns have not been as favorable in 2001 as in 2000.²³ Intelsat LLC emphasizes that entering the market under these circumstances, with an IPO of sufficient size to achieve substantial dilution would result in a "fire sale" price for shares, while a reduced size offering may not achieve substantial dilution. PanAmSat contends that the information provided by Intelsat LLC on cancelled or delayed IPOs in 2001 pertains to start-up or unprofitable companies. However, we do not believe that the state of the market one year ago should be used as the measure for analyzing the extension request now before us. Moreover, Intelsat LLC points out that even an established telecommunications operator continues to balk at entering the IPO market.²⁴ In addition to stating that four to six months is necessary to prepare for an IPO, Intelsat LLC's financial advisor emphasizes the importance of flexibility to execute an IPO without the pressure of being required to meet a near-term deadline.²⁵ Lehman Brothers states that Intelsat LLC may not be able to raise as much capital as anticipated if it is forced to conclude an offering prior to an impending arbitrary deadline rather on the basis of appropriate preparation and market conditions.²⁶ Given current market uncertainty, and the need for flexibility in timing an IPO, there would be no public interest benefit derived from granting an extension shorter than the full extension permitted under the Act and thereby requiring Intelsat LLC to apply for yet another extension if market conditions do not improve.²⁷

16. Congress gave the Commission discretion to extend the ORBIT Act IPO deadline to give Intelsat LLC flexibility to achieve the Act's goals as well as act within its own business interests. The best timing for conducting an IPO cannot be accurately forecast. More importantly, should a limited extension have the effect of significantly decreasing the market value of the IPO because potential investors could be positioned to offer only a low price to purchase the available shares, Intelsat LLC may not achieve substantial dilution of its ownership. In addition to the goal of obtaining a substantial dilution in the ownership of Intelsat LLC, it is in the public interest to allow Intelsat LLC the opportunity to obtain

²² Intelsat LLC Comments at 9 and Exhibit 2. Intelsat LLC states that on a year-to-date basis: (1) 44 IPOs have been priced in 2001, raising \$28.6 billion as compared to 255 issues raising \$86.7 billion at this point in 2000; (2) 127 IPOs have been withdrawn or postponed in 2001; (3) the ratio of delayed or postponed IPOs to completed transactions is 2.9, as compared to 0.5 (133/255) at this point in 2000; (4) zero telecom IPOs have been priced, as compared to 33 issues at this point in 2000; and (5) the two satellite IPOs to come to market in 2001 were withdrawn or postponed due to market conditions.

²³ *Id.* Intelsat LLC states that: (1) from January 1, 2000 to August 21, 2001, the S&P 500 and Nasdaq indices are down 21.2% and 55.0% respectively; (2) over the same period, a telecom index comprised of non-incumbent carriers and service providers stocks is down 86.8% and the satellite sector index is down 42.0%; and (3) more recently, since May 1, 2001, the same telecom and satellite indices are down 54.9% and 12.2% respectively, as compared to the S&P 500 and Nasdaq, which are down 8.6% and 15.5% respectively.

²⁴ Intelsat LLC at Reply 4.

²⁵ Lehman Brothers August 10 Letter.

²⁶ *Id.*

²⁷ New Skies' view that Intelsat LLC is being treated more generously than its competitors is misplaced. The Commission granted the only extension request filed by New Skies. New Skies did not at that time request the full extension that would be available to it under the terms of the ORBIT Act, nor did it request a further extension at a later date. Consideration of any such requests would have been based upon the circumstances that existed at the time.

necessary capital investment in order to carry out future expansion and development plans. We believe that a full extension will give Intelsat LLC a clear opportunity to, upon the advice of its financial advisor, conduct its IPO at a time most conducive to achieving the ORBIT Act's goal and consistent with its own business goals.

17. In view of the responsibility Congress has given to this Commission to carry out the provisions of the ORBIT Act, it is necessary to keep informed of Intelsat LLC's progress in preparing to conduct its IPO. A monthly report is not needed for this purpose as proposed by PanAmSat. Rather, we will require Intelsat LLC file reports on a six-month basis demonstrating due diligence in pursuing an IPO under the requirements of the Act. These reports shall include specific information on the IPO such as: (1) selection of an investment bank/underwriter; (2) filing of the registration statement with the Securities and Exchange Commission; (3) completion of financial analysis and due diligence; (4) a copy of the Preliminary Prospectus and the Final Prospectus (when made available to the general public); and (5) the anticipated time of the IPO.²⁸ These reports need not contain specific market information that exists for Intelsat LLC shares as PanAmSat has requested be supplied (in the context of further extension requests). Our goal is to be assured of Intelsat LLC's due diligence in preparing for an IPO based upon advice of its financial advisors. We additionally require Intelsat LLC to file within thirty days of conducting the IPO a demonstration that the IPO has satisfied the requirements of the Act.

18. Therefore, we find that Intelsat LLC has made a sufficient showing of market conditions and relevant business factors relating to the timing of an IPO so as to warrant an extension to Intelsat LLC to December 31, 2002. This is the latest date that we may grant an extension under the ORBIT Act. If Intelsat LLC fails to conduct its IPO by December 31, 2002, or if "substantial dilution" is not achieved through an IPO or other means, the ORBIT Act directs the Commission to "limit through conditions or deny" any pending application or request, and "limit or revoke previous authorizations" to use Intelsat LLC non-core services consistent with section 601(b)(i).²⁹

IV. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED, pursuant to sections 621(2) and 621(5) of the Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. 106-180, 114 Stat. 48 (2000), sections 621(2) and 621(5) that the Intelsat LLC request for an extension of the October 2001 deadline to conduct an IPO IS GRANTED and the deadline for Intelsat LLC to conduct its IPO consistent with the ORBIT Act is December 31, 2002.

²⁸ See *In the Matter of New Skies Satellites, N.V. for Authorization to Access the U.S. Market, Order and Authorization*, 14 FCC Rcd 130003 (1999).

²⁹ Pub. L. 106-180 § 601(b)(?). See also, *Inmarsat Second Extension Order* at ¶ 22.

20. IT IS FURTHER ORDERED that Intelsat LLC shall file reports with the Commission on April 1, 2002 and October 1, 2002 on its progress toward preparing to conduct its IPO.

21. 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.

22. IT IS FURTHER ORDERED that this Memorandum Opinion and Order shall be effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary