

**FCC REPORT TO CONGRESS
AS REQUIRED BY THE ORBIT ACT**

Adopted: June 9, 2004

Released: June 15, 2004

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This report is submitted in accordance with Section 646 of the Open-market Reorganization for the Betterment of International Telecommunications Act (the “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 or deny” applications or requests to provide “non-core” services to, from, or within the

¹ 47 U.S.C. § 765e (2000).

² 47 U.S.C. § 761 NOTE.

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 the 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 The Commission made its second report on June 15, 2001,⁶ its third report on June 14, 2002,⁷ and its fourth report on June 11, 2003.⁸ The Commission issued a Public Notice on April 23, 2004 inviting comment appropriate to the development of this fifth report.⁹ Comments were filed by: Inmarsat Ventures Limited (“Inmarsat”), Intelsat LLC (“Intelsat”), Mobile Satellite Ventures Subsidiary LLC (“MSV”), SES Americom, Inc., (“SES”), Lockheed Martin Corporation (“Lockheed”), Stratos Mobile Networks, Inc and Stratos Communications, Inc. (collectively “Stratos”).

A. Commission Actions and Activities

The Commission has undertaken a number of actions required by the ORBIT Act, or related to its objectives and purposes. The Commission has taken the actions described below to ensure that INTELSAT, Inmarsat, and New Skies have been privatized in a procompetitive manner, consistent with the privatization criteria of the Act.¹⁰ The Commission has also taken these actions to implement certain deregulatory measures in the Act.¹¹

INTELSAT

- In August 2000, the Commission granted conditional licensing authority to Intelsat LLC, (“Intelsat”), a separate, privately held U.S. corporation created by INTELSAT

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. 47 U.S.C. § 769(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. 47 U.S.C. § 769(a)(12).

⁵ *FCC Report to Congress as Required by the ORBIT Act*, 15 FCC Rcd 11288 (2000).

⁶ *FCC Report to Congress as Required by the ORBIT Act*, 16 FCC Rcd 12810 (2001).

⁷ *FCC Report to Congress as Required by the ORBIT Act*, 17 FCC Rcd 11458 (2002).

⁸ *FCC Report to Congress as Required by the ORBIT Act*, 18 FCC Rcd 12525 (2003).

⁹ Public Notice, Report No. SPB-206, April 23, 2003.

¹⁰ 47 U.S.C. §§ 761, 763, 763(a), 763(b), 763(c), and 765(g).

¹¹ 47 U.S.C. §§ 765 and 765(d)(1).

to hold U.S. satellite authorizations and associated space segment assets.¹² Under this conditional licensing authority, the Commission permitted Intelsat LLC's licenses to become effective upon "privatization," meaning the transfer of INTELSAT's satellites and associated assets to Intelsat and the transfer of its ITU network filings to the U.S. registry. Intelsat LLC was granted conditional U.S. authorizations for INTELSAT's existing satellites, planned satellites, and planned system modifications associated with INTELSAT's frequency assignments in the fixed satellite services ("FSS") C- and Ku- bands existing as of privatization.¹³

- Later in 2000, INTELSAT adopted plans to distribute shares in Intelsat LLC to its Signatories on July 18, 2001.¹⁴ The Commission found that, although the initial public offering ("IPO") required under the privatization requirements of the ORBIT Act had not yet been completed, INTELSAT would privatize in a manner consistent with the non-IPO privatization provisions of the ORBIT Act, upon completion of its plans to distribute Intelsat LLC shares to its Signatories.¹⁵ INTELSAT later distributed shares to its Signatories as it had planned.
- As a routine element of the FCC licensing regime, Intelsat has filed with the Commission a number of requests for license modifications. The Commission has reviewed these requests and acted on them in a transparent manner consistent with the United States licensing process.¹⁶

¹² See Application of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, *Memorandum Opinion, Order and Authorization*, 15 FCC Rcd 15460, *recon. denied*, 15 FCC Rcd 25234 (2000), *further proceedings*, 16 FCC Rcd 12280 (2001) ("*Intelsat Licensing Order*").

¹³ See Application of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, *Memorandum Opinion, Order and Authorization*, 15 FCC Rcd 15460, *recon. denied*, 15 FCC Rcd 25234 (2000) ("*Intelsat Licensing Order*"). The conventional C-band refers to the 3700-4200/5925-6425 MHz frequency bands. Intelsat is also authorized to operate in the extended C-band frequencies 3625-3700/5850-5925/6425-6650 MHz on certain satellites at certain orbital locations. In addition, Intelsat is authorized to operate in the extended C-band frequencies 3420-3625 MHz on the Intelsat-805 satellite at 55.5° W.L. for service to non-US locations. The 3420-3600 MHz portion of this frequency band is not a satellite band in the U.S. and is operated by Intelsat outside the U.S. subject to potential interference from worldwide shipborne U.S. military radar operations. The conventional Ku-band refers to the 11.7-12.2/14.0-14.5 GHz frequency bands. Intelsat is also authorized to operate in the extended Ku-frequency bands 10.95-11.2/11.45-11.7/12.5-12.75/13.75-14.0 GHz on certain satellites at certain orbital locations.

¹⁴ Upon privatization, former INTELSAT Signatories and non-Signatory investing entities were issued shares in Intelsat Ltd. according to their March 2001 investment shares in INTELSAT. They will be shareholders of Intelsat Ltd. until it conducts an IPO.

¹⁵ See Application of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, *Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 12313, 12290, para 71 (2001) ("*Intelsat LLC ORBIT Act Compliance Order*").

¹⁶ See e.g., Intelsat LLC, Application to Modify Authorization for INTELSAT 805 to Allow the Provision of Fixed-Satellite Service Between Non-U.S. Points in the 12.7-12.75 GHz Band, *Order and Authorization*, 19 FCC Rcd 2775 (Sat. Div., Int'l Bur. 2004); Intelsat LLC Request for Extension of Milestone Dates for

- On July 28, 2003, Loral Satellite Inc. (Debtor-in-Possession or “DIP”), and Loral SpaceCom Corporation (DIP), and Intelsat North America, LLC filed an application seeking authority to assign five non-common carrier space station licenses to Intelsat North America. On February 11, 2004, the International Bureau (“Bureau”) granted, subject to conditions, authority to assign those licenses as well as the request, subject to limitations, to hold those licenses on both a common carrier and non-common carrier basis.¹⁷ The Bureau found that, subject to certain conditions, approval of the assignment will serve the public interest, convenience, and necessity as required under Section 310(d) of the Communications Act of 1934, as amended. In addition, the Bureau found that approval, subject to certain limitations as specified, is permissible under the ORBIT Act and the foreign ownership provisions of Section 310(b)(4) of the Communications Act. Conditions imposed on the assignment included compliance with the conditions set forth in the petition filed by United States Department of Justice (“DOJ”), the Federal Bureau of Investigation (“FBI”) and the Department of Homeland Security (“DHS”) (collectively, the “Executive Agencies”). Also, because of the ORBIT Act’s prohibition on “additional services,” Intelsat was required to terminate its provision of additional services to former Loral customers within 180 days of the date of consummation. The Bureau also directed Intelsat to provide notice to the former Loral customers within 30 days of consummation that these services would terminate 180 days from date of consummation. Intelsat was granted a 180-day Special Temporary Authority (“STA”) to provide additional services. The STA was intended to allow time for customers to seek alternative providers and thus, avoid disruption of service to end-users.¹⁸
- On April 16, 2004, the Bureau denied Intelsat’s request to defer notification to customers about the additional services STA and required Intelsat to provide notice

the INTELSAT 10-02 (INTELSAT Alpha-2) Satellite, *Memorandum Opinion and Order*, 19 FCC Rcd 5266 (Sat. Div., Int’l Bur., 2002); Intelsat LLC, Amendment to Application to Modify Authorization to Operate and Further Construct, Launch and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit (stamp grant from Thomas S. Tycz, Chief, Satellite Division to Sue Crandall, Counsel for Intelsat LLC, provided on February 23, 2004, with conditions).

¹⁷ Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), and Intelsat North America, LLC, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, *Authorization and Order*, 19 FCC Rcd 2404 (Int’l Bur., 2004) (“*Loral/Intelsat Order*”). On March 4, 2004, the International Bureau adopted a Supplemental Order clarifying the date at which the Special Temporary Authority was to commence. Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), and Intelsat North America, LLC, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, *Supplemental Order*, DA 04-612 (Int’l Bur., released March 4, 2004).

¹⁸ *Loral/Intelsat Order*, 19 FCC Rcd at 2429 (para 65). SES filed an Application for Review of this decision on March 12, 2004. SES also filed a Motion for Expedited Consideration in part of the Application for Review, asking the Commission to vacate the STA as unlawful. On March 29, 2004, Intelsat filed an Opposition to SES Application for Review.

to customers by April 16, 2004, stating that provision of additional service would be discontinued on September 13, 2004.¹⁹

- Intelsat was originally required by the ORBIT Act to conduct an IPO by October 1, 2001 to “substantially dilute” ownership by former INTELSAT Signatories. The ORBIT Act also gave the Commission discretion to extend this deadline to no later than December 31, 2002. Since that time, Congress has amended the ORBIT Act to extend these deadlines. Most recently, on May 18, 2004, President George W. Bush signed a bill to extend Intelsat’s IPO deadline to June 30, 2005, and to provide the Commission with the discretionary authority to further extend the deadline to no later than December 31, 2005.²⁰
- On March 15, 2004, Intelsat LLC filed with the U.S. Securities and Exchange Commission (“SEC”) a registration statement on Form F-1 in connection with its IPO. On April 22, 2004, Intelsat LLC filed an amendment to the March 15 statement. On May 21, 2004, Intelsat issued a press release announcing that it had withdrawn its planned initial public offering and that it intended to explore strategic alternatives.²¹ On May 21, 2004, Intelsat filed with the SEC a second amendment to its registration statement withdrawing the registration statement and confirming that no ordinary shares of Intelsat had been sold in connection with the proposed offering.²²

Inmarsat

- Inmarsat privatized on April 15, 1999, prior to enactment of the ORBIT Act. The ORBIT Act specified a number of criteria for determining whether Inmarsat’s privatization is pro-competitive. On October 9, 2001, the Commission released an Order in which it concluded that Inmarsat had privatized in a manner consistent with the non-IPO requirements of Sections 621 and 624 of the ORBIT Act.²³
- In this decision, having found that Inmarsat had privatized in a manner consistent with the non-IPO requirements of the Act, the Commission granted Comsat Corporation; Stratos Mobile Networks, LLC; SITA Information Computing Canada, Inc.; Honeywell, Inc.; Marisat Communications Network, Inc.; and Deere &

¹⁹ Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession, and Intelsat North America, LLC, Applications for Consent to Assignments of Space Station Authorizations, *Order*, DA 04-1042 (Int’l Bur., released April 16, 2004).

²⁰ Public Law No. 108-228, 118 Stat. 644 (May 18, 2004).

²¹ Intelsat Press Release “*Intelsat Announces Decision to Withdraw Planned Initial Public Offering of Shares and Intention to Explore Strategic Alternatives*,” Press Release: 2004-17, May 21, 2004.

²² *Intelsat, Ltd., Amendment No. 2 to Form F-1 Registration Statement under the Securities Act of 1933*, May 21, 2004, (“*Intelsat, Amendment 2 to F-1 Registration Statement*”).t

²³ Comsat Corporation et. al., *Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 21661 (2001) (“*Inmarsat ORBIT Act Compliance Order*”).

Company permanent authority to use Inmarsat for communications services to, from, or within the United States.²⁴

- The Satellite Division, as a routine element of the FCC licensing regime, also granted several applications to communicate with Inmarsat's satellites as a point of communication.²⁵
- The ORBIT Act originally required Inmarsat to conduct an IPO no later than October 1, 2000. The Act also permitted the Commission to extend this deadline to no later than December 31, 2001.²⁶ Since that time, Congress has amended the ORBIT Act several times to extend the deadline for Inmarsat to conduct an IPO.
- Most recently, on June 30, 2003, Congress amended Clause (ii) of Section 621(5)(A) of ORBIT Act, to further extend Inmarsat's IPO deadline to June 30, 2004. Congress also gave the Commission discretion to further extend this deadline to no later than December 31, 2004.²⁷
- On February 10, 2004, Inmarsat filed a letter informing the Commission of a series of transactions, which it describes as constituting an IPO pursuant to Inmarsat's remaining ORBIT Act requirements. The two transactions were: (1) an equity transaction, by which a 52.28% equity interest was sold to funds advised by Apax Partners and Permira, and Inmarsat management acquired a 4.75% ownership interest; and (2) a public offering of debt in which Inmarsat issued \$375 million of 7 5/8% "Series A" notes due in 2012.²⁸ A Public Notice seeking comment on Inmarsat's compliance with the Orbit Act IPO requirement was issued on March 5, 2004. MSV and SES filed comments requesting that the Commission reject Inmarsat's claims, and Telenor Satellite, Inc ("Telenor"), Stratos and Deere & Company submitted comments in support of Inmarsat's claims. On April 20, 2004 in its Consolidated Response, Inmarsat also requested, as alternative relief in the event that the Commission finds that a provision of the ORBIT Act has not been met prior to June 30, an extension of its IPO deadline to December 31, 2004.

New Skies Satellites

- New Skies is the Netherlands-based INTELSAT spin-off, created in 1998 as INTELSAT's first step toward privatization. On March 29, 2001, the Satellite Division added four satellites operated by New Skies to the "Permitted Space Station

²⁴ See 47 U.S.C. § 761(a), which precludes Commission authorization of additional services by Inmarsat until Inmarsat has privatized in accordance with the Act.

²⁵ See e.g., Stratos Communications, SES MOD 2004011400039, granted January 20, 2004 to access the INMARSAT Ltd. 3 satellite at 54° W.L. and Telenor Satellite SES RWL 200381201122, granted January 13, 2004 to access INMARSAT Ltd.3 satellite at 15.5° W.L.

²⁶ 47 U.S.C. §763 (5)(A)(ii).

²⁷ ORBIT Technical Corrections Act of 2003, Pub. L. No. 108-39, § 763, 117 Stat. 835 (2003).

²⁸ Letter from Alan Auckenthaler, Inmarsat, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Feb. 10, 2004)(File No. SAT-MS-2004021-00027)("February 10 Inmarsat letter").

List²⁹ with conditions to remove secondary status requirements for certain New Skies' satellites. This action enabled New Skies to provide satellite services to, from, and within the United States on a full-term basis.³⁰

- On October 29, 2002, New Skies announced a share buy-back program under which it would repurchase up to 10 percent of its then outstanding shares.³¹ On November 1, 2002, PanAmSat filed an "Emergency Request for Inquiry into the Continuing Qualifications of New Skies to Access the U.S. Market." Through the buy-back program, New Skies purchased a higher percentage of shares held by former Signatories than of shares held by the general public. On September 9, 2003, an Order was issued denying PanAmSat's request, based on a finding that the New Skies share repurchase program had the effect of further diluting the combined interest of the former INTELSAT Signatories in New Skies.³²
- As a routine element of the FCC licensing regime, since privatization, the Satellite Division also granted several requests from earth station operators to add New Skies satellites as a point of communication.³³

Status of Comsat

- The ORBIT Act terminated the Communications Satellite Act of 1962's ownership restrictions on COMSAT Corporation ("Comsat"). As a result, Lockheed Martin and Comsat jointly 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 Martin Corporation.³⁴

²⁹ The Permitted Space Station List denotes all satellites with which U.S. earth stations with "routinely" authorized technical parameters are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' licenses.

³⁰ See New Skies Satellites, N.V., Petition for Declaratory Ruling, *Order*, 16 FCC Rcd 6740 (Sat. and Radio. Div., 2001).

³¹ New Skies Press Release, "New Skies Reports Third Quarter 2002 Earnings and Announces Share Buyback," The Hague, Netherlands, October 29, 2002, <http://www.newskies.com/pbnews/pdfs/PRQ32002.pdf>.

³² See New Skies, N.V. Continuing Access to the U.S. Market, *Order*, 18 FCC Rcd 18501 (2003).

³³ See e.g., Globecom, Systems, Inc., SES MOD 2003021400208, authority granted July 2, 2003 to communicate with the New Skies 5 satellite at 177° W.L. and Cable News Network LP, LLP, SES LIC 2003111701628, authority granted March 15, 2004 to communicate with the New Skies 7 satellite at 21.5° W.L.

³⁴ See Lockheed Martin Corporation, Comsat Government Systems, LLC, and Comsat Corporation, Applications for Transfer of Control of Comsat Corporation and Its Subsidiaries, Licensees of Various Satellite, Earth Station Private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214, *Order and Authorization*, 15 FCC Rcd 22910 (2000), *erratum*, 15 FCC Rcd 23506 (Sat. and Radio. Div., 2000); recon. denied, 17 FCC Rcd 13160 (2002).

- On April 23, 2001, Comsat and Lockheed Martin jointly filed applications to assign four non-common carrier earth station licenses to Intelsat LLC and also filed an application to assign an Experimental License. These applications were placed on Public Notice on May 16, 2001.³⁵
- On December 18, 2001, the Commission granted the applications filed by Lockheed Martin Global Telecommunications, COMSAT Corporation, and COMSAT General Corporation, together with Telenor Satellite Services Holdings, Inc., Telenor Satellite, Inc., and Telenor Broadband Services AS, to assign certain Title II common carrier authorizations and Title III radio licenses held by COMSAT to Telenor.³⁶ This proposed assignment was in connection with Telenor's proposed acquisition of Comsat Mobile Communications ("CMC"), a business unit of COMSAT Corporation. On January 11, 2002, Telenor completed its purchase of substantially all of the assets of CMC, and all of CMC's licenses and authorizations were transferred to Telenor pursuant to Commission authorization.³⁷

On May 11, 2004, Lockheed Martin announced that Intelsat, Ltd. will acquire Lockheed Martin's COMSAT General business.³⁸

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.³⁹ Previously, the Commission decided in a rulemaking proceeding that Level 3 direct access is in the public interest.⁴⁰ The concept of direct access became moot with INTELSAT privatization on July 18, 2001, because Intelsat LLC, as a private company, does not have signatories.
- Prior to INTELSAT's privatization, the Commission implemented the requirement in Section 641(b) of the ORBIT Act that the Commission complete a rulemaking "to

³⁵ Public Notice, Report No. SES-00288, May 16, 2001.

³⁶ Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor and Telenor Satellite Mobile Services, Inc. and Telenor Satellite, Inc., Assignee, Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses, Experimental Licenses, and Earth Station Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act, *Order and Authorization*, 16 FCC Rcd 22897 (2001), *erratum*, 17 FCC Rcd 2147 (Int'l Bur. 2002).

³⁷ See Comments Invited on Telenor Satellite Services Holdings, Inc. Petition for Declaratory Ruling on Inapplicability of Cost Accounting Requirements, *Public Notice*, 17 FCC Rcd 2444 (2002).

³⁸ Lockheed Martin Press Release, "Lockheed Martin's COMSAT General to be Acquired by Intelsat," Bethesda, Maryland, May 11, 2004.

³⁹ 47 U.S.C. § 765(a).

⁴⁰ Direct Access to the INTELSAT System, *Report and Order*, IB Docket No. 98-192, 15 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.

determine if users or providers of telecommunications services have sufficient opportunity to access INTELSAT space segment directly from INTELSAT to meet their service or capacity requirements.”⁴¹ In September 2000, the Commission released a Report and Order requiring Comsat and direct access customers to negotiate commercial solutions if possible to ensure that sufficient opportunity is available for parties to negotiate commercial solutions.⁴²

- 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. For example, the negotiations resulted in a commercial agreement between Comsat and WorldCom. The Commission placed Comsat’s report on public notice, including Comsat’s request to terminate the proceeding.⁴³ With INTELSAT’s privatization and Intelsat Ltd.’s purchase of Comsat,⁴⁴ on November 21, 2002, the Commission released an Order that concluded that the underlying basis for Section 641(b) no longer existed, and terminated the proceeding.⁴⁵ In terminating the proceeding, the Commission noted that the termination does not imply any abdication of the Commission’s appropriate oversight of Intelsat Ltd., and that as a U.S. licensee, Intelsat Ltd., will be subject to the same Commission oversight as any similarly-situated company authorized to provide services in the United States.

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.”⁴⁶ 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.⁴⁷ 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-

⁴¹ 47 U.S.C. § 765(b).

⁴² Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly, *Report and Order*, IB Docket No. 00-91, 15 FCC Rcd 19160 (2000).

⁴³ Public Notice, Report No. SPB-166, April 6, 2001.

⁴⁴ On October 25, 2002, the Commission approved the assignment of various earth station licenses, private land mobile radio licenses and international 214 applications from Comsat Corporation to Intelsat, Ltd.

⁴⁵ Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly, *Order*, IB Docket No. 00-91, 17 FCC Rcd 24242 (2002).

⁴⁶ 47 U.S.C. § 765a(c). A 1999 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.

⁴⁷ *In re* Assessment and Collection of Regulatory Fees for Fiscal Year 2000, MD Docket No. 00-58, 15 FCC Rcd 6533 (para. 17) (2000).

Intelsat satellites, and earth station fees.⁴⁸ In 2002, the Circuit Court of Appeals for the District of Columbia reviewed the Commission's decision and held that the Commission's actions to impose regulatory fees on Comsat were justified on the basis that the underlying policy of Section 9 of the Communications Act of 1934, favoring recovery of regulatory costs, gave the Commission good reason to require Comsat to bear "its proportionate share of (space station) fees."⁴⁹

- Post-privatization, Intelsat, as a U.S. licensee, has been fulfilling its obligations and paying the requisite regulatory fees as mandated in Section 9 of the Communications Act 1934.

B. Status of INTELSAT Privatization

Intelsat privatized and became a U.S. licensee, as of July 18, 2001. As part of its decision to privatize INTELSAT, the Assembly of Parties (comprised of the governments party to the Inmarsat Convention) retained a small residual intergovernmental organization known as the International Telecommunications Satellite Organization ("ITSO"). ITSO, through a "Public Services Agreement" with Intelsat LLC, monitors 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 to certain customers (those customers in poor or underserved countries that have a high degree of dependence on Intelsat LLC).⁵⁰ Under these commitments, the privatized Intelsat LLC keeps capacity available to lifeline users at fixed pre-privatization costs for approximately 12 years, while the lifeline users are only committed for its capacity on a year-to-year basis at their option. ITSO has no operational or commercial role.

INTELSAT as Privatized

Upon privatization, substantially all of INTELSAT's operational assets and liabilities were transferred to several companies within an affiliated group with a holding company structure. Intelsat, Ltd. is the holding company for all other companies in the group and is organized under the laws of Bermuda. It holds the United Kingdom authorizations for INTELSAT's ITU registrations in the Ka-, BSS-, and V-bands.⁵¹ Intelsat (Bermuda), Ltd. ("Intelsat Bermuda"), a wholly owned subsidiary of Intelsat, Ltd., is responsible for the oversight of satellite procurement and operational matters, including matters involving control of space and ground segment assets, from Bermuda. Intelsat Global Service Corporation, a wholly owned subsidiary of Intelsat Bermuda and organized as a Delaware corporation, provides technical, marketing, and business support services to Intelsat, Ltd. and its subsidiaries pursuant to intercompany contracts. These services include the day-to-day operation of the satellite network. Intelsat Holdings LLC, a Delaware limited liability company and also a wholly owned subsidiary

⁴⁸ *Id.*

⁴⁹ *See Comsat Corporation vs. FCC and PanAmSat Corp.*, 283 F.3d 344 (D.C. Cir. 2002).

⁵⁰ *INTELSAT Assembly of Parties Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting*, AP-25-3E FINAL W/11/00 ¶ 34 at 6-8 (Nov. 27, 2000) ("2000 Assembly Decision").

⁵¹ *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 3 (August 17, 2001).

of Intelsat Bermuda, functions only as a holding company for Intelsat LLC, a Delaware limited liability company that is the U.S. licensee for operation of existing and planned satellites in the C-band and Ku-band. All space segment assets operating in these bands have been transferred to Intelsat LLC. Intelsat LLC sells all of its space segment capacity to Intelsat Bermuda.⁵² Intelsat Global Sales & Marketing Ltd. (“Intelsat U.K.”), a wholly owned subsidiary of Intelsat Bermuda organized under the laws of England and Wales, is the contracting party for most of Intelsat’s customer contracts. Going forward, Intelsat’s U.S. customers will contract with Intelsat USA Sales Corp., a wholly owned subsidiary of Intelsat U.K. and a Delaware corporation. Some of Intelsat’s U.S. customers have already transferred their existing customer service commitments to Intelsat USA Sales Corp. Most of the customer service commitments entered into by INTELSAT prior to the privatization were transferred to Intelsat U.K. pursuant to novation agreements. Intelsat U.K. buys space segment capacity from Intelsat Bermuda to serve existing and future customers. Customers are able to acquire Intelsat space segment capacity either through distributors or on a wholesale customer basis. The Intelsat holding company structure also includes regional support centers and field offices, which provide marketing and sales support and are located in various countries.

The companies have created fiduciary boards of directors. The companies do not maintain an immune or privileged status. The selection procedure for members of the board of directors of Intelsat, Ltd. has resulted in a board that is compliant with the ORBIT Act. The licensing companies have licenses through notifying administrations 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.⁵³ These companies are subject to U.S. or U.K. licensing authorities and conduct satellite coordinations according to ITU procedures under the auspices of these authorities.

In January 2003, Intelsat completed its exchange offer for debt issued by the company, securing \$600 million in long term financing,⁵⁴ and is now subject to information reporting requirements of the Securities Exchange Act of 1934, as amended. Accordingly, Intelsat is required, as a foreign private issuer, to file with the U.S. Securities and Exchange Commission an annual report on Form 20-F within six months after the end of each fiscal year. Intelsat filed a Form 20-F on March 28, 2003.

The current deadline for Intelsat to conduct its IPO is June 30, 2005. The Commission has discretionary authority to further extend the deadline no later than December 31, 2005.⁵⁵ On April 1, 2004, Intelsat filed a progress report.⁵⁶ In the Progress Report, Intelsat noted that on

⁵² *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).

⁵³ *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 3 (August 17, 2001).

⁵⁴ *Intelsat, Ltd., Form 6-K, Report of Foreign Private Issuer Pursuant to Rule 13a-16 or 15d-16 under the Securities Exchange Act of 1934, for the month of February 2003.*

⁵⁵ Public Law No. 108-228, 118 Stat. 644 (May 18, 2004).

⁵⁶ *Progress Report, In the Matter of Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications*

March 15, 2004, Intelsat had filed with the U.S. Securities and Exchange Commission (“SEC”) a registration statement on Form F-1 in connection with its IPO. Intelsat also noted the receipt of SEC comments concerning the registration statement, and stated that they would amend the statement to include updated information, including information on the March 17, 2004 closing of the Loral Transaction. Intelsat filed with the SEC an amendment to the registration statement on April 22, 2004. On May 21, 2004, however, Intelsat, Ltd. issued a press release announcing that it had withdrawn its planned initial public offering and had filed with the SEC a Form RW to withdraw its registration statement. Intelsat also announced that it had engaged Morgan Stanley and Merrill Lynch to explore the potential of another party’s investment in or acquisition of Intelsat.⁵⁷

II. Views of INTELSAT Parties on Privatization

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

III. Views of Industry and Consumers on Privatization

As previously noted, Inmarsat, Intelsat, Lockheed Martin, MSV, SES and Stratos responded to the Commission’s public notice inviting comments appropriate to the development of this report. Inmarsat, Intelsat, Lockheed Martin and SES all filed reply comments as well.

Intelsat Privatization Comments

Intelsat maintains that it is continuing to respond to market forces. Intelsat notes that it has acquired certain satellite assets and customer contracts of Loral Space & Communications Corporation, and that with this acquisition, they will have full coverage of North America and will expand the customer base in broadcasting, cable television and corporate networking segments.⁵⁸ Intelsat also notes that it has expanded beyond its traditional space segment services with the launch of its North American video fiber network.

SES maintains that Intelsat’s acquisition of the Loral assets raises competitive concerns. SES states that Intelsat might be able to leverage market power in some international portions of U.S. Government contracts and eliminate competition for the domestic portion of those contracts. SES is also concerned about the possibility that there will be continuing extensions on the special temporary authority to provide additional services. On March 12, 2004, SES filed an Application for Review on these two points. These issues will be discussed in that proceeding.

System in Geostationary Orbit, File Nos. SAT-A/O 20000119-00001/18; SAT-AMD-20000119-00029/41; SAT-LOA-20000119-00019/28, filed April 1, 2004.

⁵⁷ “Intelsat Announces Decision to Withdraw Planned Initial Public Offering of Shares and Intentional to Explore Strategic Alternatives,” Intelsat, Ltd, Press Release, May 21, 2004.

⁵⁸ Intelsat Comments at 1.

Inmarsat Privatization Comments

In its comments, Inmarsat notes that it had submitted a letter to the Commission describing the initial public offering of debt and the equity transaction it financed, and requested a determination from the Commission of whether Inmarsat has satisfied the remaining requirements of the ORBIT Act.⁵⁹

Inmarsat states that the new ownership will invigorate the company and promote the growth and development of Inmarsat's MSS services. Inmarsat also states that they anticipate that the first Inmarsat-4 satellite will be launched during the second half of 2004 and the second satellite will be launched in 2005. In addition, they are also building a ground spare. With these launches, Inmarsat expects to be able to offer advanced mobile satellite broadband and voice services on its next generation network in the United States in 2005. They also note that these spacecraft might be used by the U.S. military to train troops.⁶⁰

SES and MSV maintain that the ORBIT Act unambiguously requires that Inmarsat conduct an IPO of equity securities as the only means for achieving compliance with Section 621.⁶¹ MSV notes that a public equity offering would subject Inmarsat to more meaningful securities regulation than a debt offering.⁶²

In response, Inmarsat asserts that the appropriate standard of review is whether the proposed transaction is "consistent with" the ORBIT Act, and that the ORBIT Act does not include transformation of Inmarsat into a publicly held and traded corporation with broad ownership and control as a stated purpose of the act.⁶³ Inmarsat also claims that the "consistent with" standard is appropriate for the authorization of "additional services."⁶⁴

Stratos and Lockheed support Inmarsat's request that the Commission find that Inmarsat has satisfied the remaining requirements of the ORBIT Act.⁶⁵

MSV states that Inmarsat has a dominant position in MSS and engages in anticompetitive practices to maintain and expand that position. MSV contends that Inmarsat has opposed generic spectrum allocations in international forums and has refused to provide competing L-band MSS systems with assured access to sufficient spectrum, and that Inmarsat has only agreed to year-to-year agreements.⁶⁶ MSV maintains that Inmarsat acts in an anticompetitive manner by failing to expeditiously replace the spectrum-inefficient Inmarsat-A terminals, and also through its use of proprietary protocols and technology.⁶⁷ MSV states that, in the Commission's proceeding on

⁵⁹ Inmarsat Comments at 4.

⁶⁰ Inmarsat Comments at 5.

⁶¹ SES Comments at 9 and MSV Comments at 9-12.

⁶² MSV Comments at 12.

⁶³ Inmarsat Reply at 7-8.

⁶⁴ Inmarsat Reply at 8-10.

⁶⁵ Stratos Comments at 1, Lockheed Comments at 1-2, and Lockheed Reply Comments at 1-3.

⁶⁶ MSV Comments at 17-19.

⁶⁷ MSV Comments at 19-20.

ancillary terrestrial facilities in the L-band, Inmarsat has used the regulatory process to delay and limit MSV's terrestrial operations.⁶⁸ MSV also asserts that it understands that some of Inmarsat's distribution agreements contain exclusive arrangements,⁶⁹ and that Inmarsat is leveraging its position in the maritime MSS market to gain market share in other MSS markets.⁷⁰

In response, Inmarsat maintains that it has supported generic allocations in the 1997 World Radio Conference and in other proceedings since that conference. It also maintains that the issue of long-term coordination agreements is addressed in other proceedings and that Inmarsat is required by the International Maritime Organization to give ship owners five years' notice to phase out the spectrum-inefficient Inmarsat-A terminals, but that Inmarsat and its distributors offered financial incentives to encourage users to upgrade to more spectrum-efficient services.⁷¹ Inmarsat further states that it has no obligation to provide its intellectual property to MSV, and that its concerns in the ATC proceeding are based only on interference issues.⁷² Inmarsat states that MSV's allegations of exclusive agreements are unsubstantiated, that Inmarsat's efforts to inform existing customers of new services is consistent with healthy competition and that the maritime distress market is open to competition.⁷³

In an earlier proceeding, the Commission found that MSV's request for access to proprietary technical information was based on a commercial dispute as to the value of the information sought and the terms and conditions under which it would be provided. The Commission declined to resolve the dispute in that proceeding.⁷⁴ Ancillary terrestrial facilities were addressed in separate Commission proceeding.⁷⁵ The Commission will continue to work with the U.S. government agencies that have the primary responsibility for ensuring equitable access by U.S. operators to markets overseas.

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.

INTELSAT's privatization was designed to allow Intelsat LLC to continue to operate and provide services in a manner that meets U.S. commercial and governmental (including national security) needs. Privatization has enabled Intelsat to compete freely for all U.S. satellite business

⁶⁸ MSV Comments at 21-23.

⁶⁹ MSV Comments at 23-24.

⁷⁰ MSV Comments at 24.

⁷¹ Inmarsat Reply at 17-18.

⁷² Inmarsat Reply at 19-21.

⁷³ Inmarsat Reply at 21-22..

⁷⁴ *Inmarsat ORBIT Compliance Order*, 16 FCC Rcd at 21700 (para. 76).

⁷⁵ Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, IB Docket No. 01-185, Review of the Spectrum Sharing Plan among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands, IB Docket No. 02-364, *Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 1962 (2003).

opportunities, thereby allowing it to explore new and dynamic services to better serve the public. This positively impacts the global marketplace for communications services, ensuring increased competition and more access.⁷⁶ The United States retains 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 contribute to jobs and productivity increases in the United States.

In its capacity as Notifying Administration to the ITU for the FSS C-and Ku-band frequency assignments transferred at privatization, the Commission has participated in a number of international coordination negotiations as Intelsat's licensing administration and, consistent with the U.S. domestic process, has ceased to participate in coordinations between Intelsat and U.S. operators. Since the last Report, the Commission has participated in meetings with Brazil and Holland on behalf of Intelsat and a number of other U.S. licensees. In addition, a coordination agreement has been concluded with Russia.

The United States has in place a coordination process whereby operators may reach operational arrangements with operators of other administrations, which are then submitted to the operators' respective jurisdictions for approval. Once approved by both administrations, the operational arrangements become, or form the basis for, a coordination agreement between the administrations under the ITU procedures. Since the last Report, Intelsat has participated in meetings with operators from Israel and Japan as part of this process. In due course, this will lead to coordination agreements between the United States and these foreign administrations.

Inmarsat's privatization has also had a positive impact on the domestic U.S. market.⁷⁷ Privatization has provided Inmarsat the opportunity to develop new, innovative services for the U.S. market that promises to result in the expansion of options and resources for U.S. customers. This also promises to lead to increased industry competition.⁷⁸ As a result of privatization and Commission authorization, distributors were given access rights to distribute Inmarsat services in the United States.

Finally, both Inmarsat's and INTELSAT's 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 ("GMDSS")⁷⁹ and the INTELSAT Assembly of Parties determined that Intelsat LLC should be contractually bound under a Public Service Agreement with the International Telecommunications Satellite Organization to ensure continued global connectivity -- particularly to countries dependent on Intelsat LLC's satellite services.⁸⁰

⁷⁶ For example, Intelsat has begun providing services other than its traditional space segment services. Intelsat recently launched its North American video fiber network which offers broadcasters an enhanced opportunity to reliably transmit video content to, from and within North America using a global terrestrial and satellite infrastructure, Intelsat Comments at 2.

⁷⁷ Inmarsat Comments at 4-5.

⁷⁸ For example, since Deere & Company's StarFire receivers were authorized to receive Inmarsat signals in the U.S., the improved accuracy on its farming equipment resulted in increased farming equipment capabilities and product demand. *See*, Reply Comments of Deere & Company in the Inmarsat Ventures Limited proceeding (File No. SAT-MS-20040210-00027 filed April 20, 2004, at 2.

⁷⁹ *Inmarsat Finance plc. Offering Circular for 7 5/8% Senior Notes*, January 27, 2004, p. 114.

⁸⁰ *Intelsat, Amendment 2 to F-1 Registration Statement*, p.35.

V. Summary

The Commission has undertaken a number of proceedings required by or related to the ORBIT Act. 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 ORBIT Act. The Commission will continue to 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.

ATTACHMENTS:

Comments, May 07, 2004

Comments of Inmarsat Ventures Limited

Comments of Intelsat LLC

Comments of Lockheed Martin Corporation

Comments of Mobile Satellite Ventures Subsidiary LLC

Comments of SES AMERICOM, Inc.

Comments of Stratos Mobile Networks, Inc. and Stratos Communications, Inc.

Reply Comments, May 14, 2004

Reply Comments of Inmarsat Ventures Limited

Reply Comments of Intelsat LLC

Reply Comments of Lockheed Martin Corporation

Reply Comments of Mobile Satellite Ventures Subsidiary LLC

Reply Comments of SES AMERICOM, Inc.

Additional Submissions

SES AMERICOM, Inc. Letter in Response to Reply Comments of Inmarsat
Ventures Limited, May 20, 2004