

**CONCURRING STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, and PEOP Pas, LLC, Transferors and Intelsat Holdings, Ltd., Transferee, Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp.; IB Docket No. 05-290*

This is a significant merger, and I think it is important that the decision was reviewed by the full Commission in light of the unique position of these two companies in the fixed satellite service (FSS) industry. Given the lack of opposition in the record, I am willing to allow the merger to proceed in the hope that the new company will truly promote the development of innovative products, including competitive satellite broadband services, as asserted by the applicants.

I can only concur to this item, however, because I remain troubled by the significant consolidation in the FSS market that will result from this transaction. For example, post-merger, two companies will control approximately 80% of the transponder capacity sales market in North America. It is likely that these market shares are much higher for the U.S. market, but most of the data in this item curiously is not provided on the national level. While I recognize that the satellite industry is an international one, we should not turn a blind eye to the competitive effects of consolidation on American businesses and the consumers they serve.

I believe that our item disproportionally relies on the bargaining power of larger customers to explain away the obvious public interest harm that stems from the loss of competition with the merger of two of the three largest providers of FSS video, network, and government services. Ultimately, it is unclear to me if the public interest benefits of this merger truly outweigh the possible harms. But the comments in this proceeding do not clearly demonstrate a potentially negative impact on the provision of FSS services as a result of the merger, which prompts my concurrence to the Order.

I also have a concern with the dispute between ITSO and Intelsat regarding the obligations and responsibilities of Intelsat that stem from the “core principles” that are contained in the ITSO Agreement, of which the United States is a party, and implemented through the Public Services Agreement. I look forward to working with the State Department post-merger to ensure that the various obligations that came out of the privatization of Intelsat remain intact. Indeed, as the item rightly points out, Section 316 of the Communications Act may be a more appropriate vehicle for ITSO to seek Commission action outside of this merger proceeding.