

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

**Adopted: June 22, 2012**

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By the Commission:

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

This report is submitted in accordance with the requirements of the Open-Market Reorganization for the Betterment of International Telecommunications Act (the “ORBIT Act” or “Act”)<sup>1</sup> which has an objective of ensuring that INTELSAT and Inmarsat are privatized in a pro-competitive manner. To this end, the Act requires the submission of annual reports to Congress as noted below.

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.<sup>2</sup>

**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

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<sup>1</sup> 47 U.S.C. § 701 (2000).

<sup>2</sup> 47 U.S.C. § 765(e).

and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT<sup>3</sup> and Inmarsat.<sup>4</sup>

The ORBIT Act, as originally passed in 2000, (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 United States if it finds that competition will be harmed.<sup>5</sup> The Act 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.<sup>6</sup> In addition, the Act directs the Commission to undertake a rulemaking proceeding to assure users in the United States the opportunity for direct access to the INTELSAT system.

In October 2004, Congress amended the ORBIT Act, adding Sections 621(5)(F) and (G), to provide a certification process as an alternative to the initial public offering (“IPO”) requirements under Sections 621(5)(A) and (B). In July 2005, Congress further amended the ORBIT Act, striking certain privatization criteria for Intelsat separated entities, removing certain restrictions on separated entities and successors to Intelsat and for other purposes.<sup>7</sup> Congress also added a requirement that the Commission submit to Congress a separate annual report that analyzes the competitive market conditions with respect to domestic and international satellite communications services (“Satellite Competition Report”).<sup>8</sup>

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<sup>3</sup> The intergovernmental satellite body INTELSAT later created Intelsat LLC, a privately-held U.S. corporation that became the licensee of satellite assets formerly held by INTELSAT. See *infra* at 3-4. As a result of an internal reorganization consummated in January 2011, Intelsat LLC was eliminated as a subsidiary company, and the majority of licenses are now held by Intelsat License LLC. See n.44, *infra*, and accompanying text.

<sup>4</sup> 47 U.S.C. § 761 NOTE.

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 (2000), *as amended*, Pub. L. No. 107-233, 116 Stat. 1480 (2002), *as amended*, Pub. L. No. 108-228, 118 Stat. 644 (2004), *as amended*, Pub. L. No. 108-371, 118 Stat. 1752 (October 25, 2004), *as amended*, Pub. L. No. 109-34, 119 Stat. 377 (July 12, 2005).

<sup>8</sup> The most recent satellite competition annual report was released on December 13, 2011. *Third Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services*, IB Docket No. 09-16, and *International Satellite Communications Services and* (continued ...)

The Commission made its first annual report to Congress on its actions to implement the ORBIT Act on June 15, 2000, following enactment of the Act on March 17, 2000.<sup>9</sup> In anticipation of this thirteenth report, the Commission issued a Public Notice on February 3, 2012, inviting comments related to the development of this Report.<sup>10</sup> ARTEL, Inc.<sup>11</sup> (ARTEL), Intelsat License LLC<sup>12</sup> (Intelsat), and Inmarsat PLC<sup>13</sup> (Inmarsat) filed comments. Intelsat<sup>14</sup> and SES S.A.<sup>15</sup> filed reply comments.

### A. Commission Actions and Activities

Since August of 2000, the Commission has undertaken a number of actions either 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 pro-competitive manner, consistent with the privatization criteria of the ORBIT Act.<sup>16</sup> The Commission has also taken actions to implement certain deregulatory measures in the ORBIT Act.<sup>17</sup>

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*Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services*, IB Docket No. 10-99, Third Report, 26 FCC Rcd 17284 (2011) (“*Third Satellite Competition Report*”).

<sup>9</sup> *FCC Report to Congress as Required by the ORBIT Act*, Report, 15 FCC Rcd 11288 (2000); *FCC Report to Congress as Required by the ORBIT Act*, Report, 17 FCC Rcd 11458 (2002); *FCC Report to Congress as Required by the ORBIT Act*, Report, 18 FCC Rcd 12525 (2003); *FCC Report to Congress as Required by the ORBIT Act*, Report, 19 FCC Rcd 10891 (2004); *FCC Report to Congress as Required by the ORBIT Act*, Report, 20 FCC Rcd 11382 (2005); *FCC Report to Congress as Required by the ORBIT Act*, Report, 21 FCC Rcd 6740 (2006); *FCC Report to Congress as Required by the ORBIT Act*, Report, 22 FCC Rcd 11347 (2007); *FCC Report to Congress as Required by the ORBIT Act*, Report, FCC 08-152 (2008); *FCC Report to Congress as Required by the ORBIT Act*, Report, 24 FCC Rcd 8686 (2009); *FCC Report to Congress as Required by the ORBIT Act*, Report, 25 FCC Rcd 7834 (2010) (“*Eleventh ORBIT Act Report*”); *FCC Report to Congress as Required by the ORBIT Act*, Report, 26 FCC Rcd 8998 (2011) (“*Twelfth ORBIT Act Report*”).

<sup>10</sup> *International Bureau Information: Report to Congress Regarding the ORBIT Act: Pleading Cycle Established*, Public Notice, 27 FCC Rcd 412 (Int’l Bur., 2012).

<sup>11</sup> Comments of ARTEL, Inc., filed on March 5, 2012 (“ARTEL Comments”).

<sup>12</sup> Comments of Intelsat License LLC, filed on March 5, 2012 (“Intelsat Comments”).

<sup>13</sup> Comments of Inmarsat PLC, filed on March 5, 2012 (“Inmarsat Comments”).

<sup>14</sup> Reply Comments of Intelsat License LLC, filed on March 15, 2012 (“Intelsat Reply Comments”).

<sup>15</sup> Reply Comments of SES S.A., filed on March 15, 2012 (“SES Reply Comments”).

<sup>16</sup> 47 U.S.C. §§ 761, 763, 763a, 763b, 763c, and 765g.

<sup>17</sup> 47 U.S.C. §§ 765 and 765d(1).

*INTELSAT*

- In August 2000, the Commission granted conditional licensing authority to Intelsat LLC (“Intelsat”), a separate, privately held U.S. corporation, created by INTELSAT to hold U.S. satellite authorizations and associated space segment assets.<sup>18</sup> Under this licensing authority, the Commission permitted Intelsat’s licenses to become effective upon “privatization,” meaning the transfer of INTELSAT’s satellites and associated assets to Intelsat and the transfer of its International Telecommunication Union (“ITU”) network filings to the U.S. registry. Intelsat received 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.<sup>19</sup>
- Later in 2000, INTELSAT adopted plans to distribute shares in Intelsat to its Signatories on July 18, 2001.<sup>20</sup> In May 2001, 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 shares to its Signatories.<sup>21</sup> INTELSAT later distributed shares to its Signatories, as it had planned.
- 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 Commission granted authority to assign those licenses subject to certain conditions and limitations.<sup>22</sup> Loral was providing

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<sup>18</sup> *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*”).

<sup>19</sup> *See generally Intelsat Licensing Order, supra*, n.18. The conventional C-band refers to the 3700-4200/5925-6425 MHz frequency bands. Intelsat was 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 was authorized to operate in the extended C-band frequencies 3420-3625 MHz on the Intelsat-805 satellite at 55.5° W.L. and in the 3400-3625 MHz band on the Intelsat 25 satellite at 31.5 ° W.L. for service to non-U.S. locations. The 3400-3600 MHz portion of this frequency band is not a satellite band in the United States and is operated by Intelsat outside the United States 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 was 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.

<sup>20</sup> 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.

<sup>21</sup> *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 ¶ 71 (2001).

<sup>22</sup> *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*  
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services, such as Direct-to-Home (“DTH”), that are “additional services” as defined in the ORBIT Act. Intelsat was granted authority to provide additional services to the then-existing Loral customers.<sup>23</sup>

- Intelsat was originally required by the ORBIT Act to conduct an IPO by October 1, 2001, in order to “substantially dilute” ownership by former INTELSAT Signatories.<sup>24</sup> Subsequently, in 2002 and 2004, Congress amended the ORBIT Act to extend the deadline for Intelsat to conduct its IPO.<sup>25</sup> In October 2004, Congress added Sections 621(5)(F) and (G) to the ORBIT Act, to provide a certification process as an alternative to the IPO requirements under Sections 621(5)(A) and (B).<sup>26</sup>
- On December 22, 2004, the Commission authorized the transfer of control of Intelsat’s licenses and authorizations to Zeus Holdings Limited (“Zeus”),<sup>27</sup> a private equity group, organized under the law of Bermuda, which would acquire 100 percent of the equity and voting interests of Intelsat (“Zeus/Intelsat Transaction”).<sup>28</sup>

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*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 Commission adopted a Supplemental Order clarifying the date 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, 19 FCC Rcd 4029 (Int’l Bur. 2004).*

<sup>23</sup> *Loral/Intelsat Order*, 19 FCC Rcd at 2429 ¶ 65.

<sup>24</sup> Pub. L. No. 106-180, 114 Stat. 48 (2000). Congress also gave the Commission discretion to extend the IPO deadline to no later than December 31, 2002. *INTELSAT Request for Extension of Time Under Section 621(5) of the ORBIT Act, Order, 16 FCC Rcd 18185 (2001).*

<sup>25</sup> Pub. L. No. 107-233, 116 Stat. 1480 (2002) (extending Intelsat’s IPO deadline to December 31, 2003, and giving the Commission the discretionary authority to further extend the deadline to no later than June 30, 2004); Public Law No. 108-228, 118 Stat. 644 (2004) (extending Intelsat’s IPO deadline to June 30, 2005, and giving the Commission the discretionary authority to further extend the deadline to no later than December 31, 2005).

<sup>26</sup> Public Law No. 108-371, 118 Stat. 1752 (2004).

<sup>27</sup> Zeus Holdings Limited subsequently changed its name to Intelsat Holdings, Ltd. See *infra*, n.40.

<sup>28</sup> *Intelsat, Ltd., Transferor, and Zeus Holdings Limited, Transferee, Consolidated Application for Consent to Transfers of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, As Amended, IB Docket No. 04-366, Order and Authorization, 19 FCC Rcd 24820 (Int’l Bur., Wireless Tel. Bur., and Office of Eng. Tech. 2004).* In early 2005, the Commission granted authority to interpose Intelsat Subsidiary Holding Company Ltd. into the chain of ownership and modified its foreign ownership ruling to include new Bermuda-based intermediate parent Intelsat Subsidiary Holding Company Ltd. *Intelsat, Ltd.*, International Bureau Filing System (IBFS) File No. ISP-PDR-20050203-00004, Grant of Authority, Public Notice, Report No. TEL-00884, DA 05-479, 20 FCC Rcd 4052, 4053 (Int’l Bur., 2005); *Intelsat North America LLC*, IBFS File No. SAT-T/C-20050203-00022, and *Intelsat LLC*, IBFS File No. SAT-T/C-20050203-00023, Grant of Authority, Public Notice, Report No. SAT-00276, DA 05-594 (Int’l Bur., 2005), at 1-2; *Intelsat LLC*, IBFS File Nos. SES-T/C-20050203-00138, -00139 and -00140, and *Intelsat MTC LLC*, IBFS File No. SES-T/C-

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- On April 8, 2005, the Commission determined that (a) Intelsat was in compliance with the alternative certification process under Sections 621(5)(F) and 621(5)(G) of the ORBIT Act; (b) that Intelsat can forgo the requirement for an IPO and the public listing of securities; and that (c) Intelsat was no longer subject to the provisions of Section 602 that prohibited Intelsat from providing “additional services.”<sup>29</sup>
- On May 24, 2005, the Commission granted Intelsat’s request for approval of the *pro forma* assignments of space station authorizations and related Tracking, Telemetry and Control (“TT&C”) earth station licenses, from Intelsat to Intelsat North America LLC.<sup>30</sup>
- On June 19, 2006, the Commission approved the merger of Intelsat Holdings, Ltd. with PanAmSat Holding Corporation (“PanAmSat”).<sup>31</sup> The FCC action approving the transaction granted applications for the transfer of control, to Intelsat, of Commission-issued licenses and authorizations held by PanAmSat and its subsidiaries. Upon consummation of the transaction on July 3, 2006, PanAmSat became a wholly-owned subsidiary of Intelsat continuing operation as a separate corporate entity.
- On December 19, 2007, the Commission granted a series of applications filed by Intelsat Holdings, Ltd. and Serafina Holdings Limited (“Serafina”) seeking consent to transfer of control of Intelsat Holdings, Ltd., and its six subsidiary licensees from Intelsat’s existing control group of four private equity firms to Serafina, a then newly-formed Bermuda company indirectly controlled by BC Partners Holdings Limited, a U.K.-based investment firm organized under the laws of Guernsey, a British Crown Dependency.<sup>32</sup> Serafina and Intelsat subsequently consummated the proposed transaction.

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20050203-00141, Grant of Authority, Report No. SES-00691 (Int’l Bur., 2005), at 26-27; *Intelsat USA License Corp.*, IBFS File No. ITC-T/C-20050418-00279, *Intelsat General Corporation*, IBFS File No. ITC-T/C-20050418-00280, and *Intelsat MTC LLC*, IBFS File No. ITC-T/C-20050418-0281, Grant of Authority, Public Notice, Report No. TEL-00931, DA 05-2192 (Int’l Bur., 2005), at 3-4. During 2005, Zeus Holdings Limited changed its name to Intelsat Holdings, Ltd. See, e.g., *Intelsat USA License Corp.*, Report No. TEL-00931, at 3.

<sup>29</sup> *Intelsat, Ltd. Petition for Declaratory Ruling that Intelsat, Ltd. Complies With Section 621(5)(F) of the ORBIT Act*, IB Docket No. 05-18, Memorandum Opinion and Order, 20 FCC Rcd 8604 (2005).

<sup>30</sup> *Intelsat LLC, Assignor, and Intelsat North America LLC, Assignee, Applications for Consent to Pro Forma Assignment of Space Station Authorizations and Related TT&C Earth Station Licenses*, DA-05-1545, Report No. SAT-00294, Public Notice (Int’l Bur., rel. March 27, 2005).

<sup>31</sup> *Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, PEOP PAS, LLC, Transferors, Intelsat Holdings, LTD, Transferee, Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 7368 (2006).

<sup>32</sup> *Intelsat Holdings, Ltd., Transferor, and Serafina Holdings Limited, Transferee, Consolidated Application for Consent to Transfer Control of Holders of Title II and Title III Authorizations*, IB Docket No. 07-181, Memorandum Opinion and Order, 22 FCC Rcd 22151 (2007).

- On February 21, 2008, the Commission released an order<sup>33</sup> modifying certain space station licenses held by Intelsat North America to include two conditions requested jointly by Intelsat and the International Telecommunications Satellite Organization (“ITSO”).<sup>34</sup> The conditions were two of three conditions initially proposed by ITSO.<sup>35</sup> The adoption of the two conditions was supported by the State Department, after consultations with NTIA.<sup>36</sup>
- On January 20, 2010, Intelsat General Corporation was granted a pro forma transfer of control of Intelsat General Corporation’s international Section 214 authority from Intelsat Global, Ltd. (Bermuda) to Intelsat Global, S.A. (Luxembourg), effective December 15, 2009. All of Intelsat’s (Bermuda) direct and indirect subsidiaries were migrated from Bermuda and reorganized as Luxembourg entities. There was no change in the ultimate ownership and control of Intelsat General Corporation.<sup>37</sup>
- In December 2010 and January 2011, the FCC authorized a number of internal transfers and assignments that resulted in the majority of Intelsat and its affiliated corporate entities’ FCC licenses and authorizations being held by a single subsidiary

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<sup>33</sup> *Petition of the International Telecommunications Satellite Organization under Section 316 of the Communications Act, as Amended*, IB Docket No. 06-137, Order of Modification, 23 FCC Rcd 2764 (Int’l Bur., 2008). The modification implemented a Commission order, pursuant to Section 316 of the Communications Act of 1934, as amended, to impose the two conditions. *See Petition of the International Telecommunications Satellite Organization under Section 316 of the Communications Act, as Amended*, IB Docket No. 06-137, Order Proposing Modification, 22 FCC Rcd 20093 (Int’l Bur. 2007). Intelsat North America, while stating that it did not object to the proposed conditions in principle, filed a Limited Protest to Seek Clarification as to the circumstances in which the conditions would apply. Intelsat North America Limited Protest to Seek Clarification, IB Docket No. 06-137 (filed January 10, 2008) at 1-2. The request for clarification was granted in part, and denied in part, in the February 2008 modification order.

<sup>34</sup> ITSO is the residual, post-privatization intergovernmental organization, governed by international agreement that oversees the Intelsat public service obligations established as part of the 2001 privatization. *See Agreement Relating to the International Telecommunications Satellite Organization (ITSO Agreement)* (November 17, 2000), Art. III(a) (“[T]he main purpose of ITSO is to ensure, through the Public Services Agreement, that the Company provides, on a commercial basis, international public telecommunications services, in order to ensure performance of the Core Principles.”), available at <http://www.itso.int>. The United States is a party to the ITSO Agreement, with the State Department serving as the U.S. representative. *See Order of Modification*, 23 FCC Rcd at 2764. The two conditions explicitly obligate Intelsat to remain a signatory to the Public Services Agreement between Intelsat and ITSO approved by the ITSO Twenty-fifth Assembly of Parties, and provide, for licensing purposes, that no entity can be considered a successor-in-interest to Intelsat under the ITSO Agreement unless the entity has undertaken to perform the obligations of the Public Services Agreement.

<sup>35</sup> *Petition of ITSO*, IB Docket No. 06-137 (filed July 10, 2006).

<sup>36</sup> Letter from Ambassador David A. Gross, United States Coordinator, International Communications and Information Policy, U.S. Department of State, to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission, IB Docket No. 06-137 (dated March 15, 2007) at 1, 3-4. *See also* Letter from Steven W. Lett, Deputy United States Coordinator, International Communications and Information Policy, U.S. Department of State to Helen Domenici, Chief, International Bureau, Federal Communications Commission, IB Docket No. 06-137 (dated February 1, 2008).

<sup>37</sup> *International Authorizations Granted*, DA10-110, Public Notice (Int’l Bur., rel. January 21, 2010).



company, Intelsat License LLC.<sup>38</sup> These transfers and assignments were consummated on January 12, 2011.<sup>39</sup>

- On November 23, 2011, Intelsat submitted applications seeking Commission approval to transfer control of all of its licenses and authorizations (held by Intelsat License LLC, Intelsat New Dawn Company, Ltd., Intelsat USA License LLC, and Intelsat General) pursuant to a public offering of newly issued voting shares by Intelsat Global Holdings S.A.<sup>40</sup> The Commission granted these applications, subject to conditions, on May 16, 2012.<sup>41</sup>
- Pursuant to U.S. obligations as the notifying administration to the ITU<sup>42</sup> for Intelsat's fixed satellite service C- and Ku-band assignments transferred at privatization, the Commission has participated in a number of international satellite coordination negotiations as Intelsat's licensing Administration. Since the Twelfth ORBIT Act Report, the Commission has participated in coordination meetings with the Russian Federation and Malaysia on behalf of Intelsat and a number of other U.S. licensees.
- The United States has a separate process whereby U.S. operators may reach operational arrangements with operators of other Administrations. These operational arrangements are then submitted to the operators' respective Administrations 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 Twelfth ORBIT Act Report, Intelsat has concluded operational arrangements with operators licensed by Intersputnik (an intergovernmental organization), the Netherlands, Luxembourg, and the United Arab Emirates. In due course, this process will lead to coordination agreements between the United States and the pertinent foreign Administrations.
- Since the Twelfth ORBIT Act Report, Intelsat has filed a number of requests for license authorizations and modifications. The Commission has reviewed these

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<sup>38</sup> IBFS File Nos. SES-ASG-20101203-01501, SES-ASG-20101206-01502, SES-T/C-20101203-01503, SES-ASG-20101203-01504, SES-ASG-20101206-01512, SAT-ASG-20101203-00251, SAT-ASG-20101203-00252, SAT-T/C-20101203-00253, SAT-T/C-20101203-00254, and 0004520968. References to "Intelsat" in this document are, for the period following January 12, 2011, to Intelsat License LLC.

<sup>39</sup> Letter from Jennifer D. Hindin, Counsel to Intelsat, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SAT-ASG-20101203-00251 (dated January 18, 2011).

<sup>40</sup> *Intelsat Global Holdings S.A. Files to Transfer Control of Intelsat Licenses and Authorizations From BC Partners Holdings Limited to Public Ownership*, Public Notice, 26 FCC Rcd 16895 (Int'l Bur., 2011).

<sup>41</sup> *Intelsat Global Holdings S.A. Files to Transfer Control of Intelsat Licenses and Authorizations From BC Partners Holdings Limited to Public Ownership*, Order and Authorization, DA 12-768 (Int'l Bur., released May 16, 2012).

<sup>42</sup> As the Notifying Administration on behalf of Intelsat, the Commission is responsible for discharging the obligation undertaken in the Constitution of the ITU, in the Convention of the ITU, and in the Administrative regulations. Article 1, Section 1.2, ITU Radio Regulations.

requests and acted on them consistent with the Commission's licensing rules and processes.<sup>43</sup>

### *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.<sup>44</sup>

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<sup>43</sup> See, e.g., Intelsat License LLC, Special Temporary Authority to drift Intelsat 702, IBFS File No. SAT-STA-20120315-00046, DA 12-549 (grant of authority on March 30, 2012); Intelsat License LLC, Special Temporary Authority to conduct in-orbit testing of Intelsat 22, IBFS File No. SAT-STA-20120126-00013, DA 12-499 (grant of authority on March 28, 2012); Intelsat License LLC, Special Temporary Authority to stop the drift of Intelsat 701, IBFS File No. SAT-STA-20120312-00039, DA 12-499 (grant of authority on March 28, 2012); Intelsat License LLC, Launch of Authority to replace C/Ku-band satellite, to be known as Intelsat 22, IBFS File No. SAT-LOA-20110929-00193, DA 12-415 (grant of authority on March 15, 2012); Intelsat License LLC, Application for Modification, IBFS File No. SES-MFS-20111118-01380 (grant stamp on January 20, 2012); Intelsat License LLC, Special Temporary Authority Intelsat to drift Intelsat 706, IBFS File No. SAT-STA-20111209-00237, DA 11-2029 (grant of authority on December 14, 2011); Intelsat License LLC, Special Temporary Authority Intelsat to drift Galaxy 26, IBFS File No. SAT-STA-20111123-00227, DA 11-2001 (grant of authority on December 6, 2011); Intelsat License LLC, Special Temporary Authority to drift Galaxy 12, IBFS File No. SAT-STA-20111118-00223, DA 11-1962 (grant of authority on December 1, 2011); Intelsat License LLC, Special Temporary Authority to drift Intelsat 701, IBFS File No. SAT-STA-20111114-00218, DA 11-1962 (grant of authority on November 22, 2011); Intelsat License LLC, Application for Authority, IBFS File No. SES-LIC-20110908-01051 (grant of authority on October 24, 2011); Intelsat License LLC, Special Temporary Authority to drift Galaxy 12, IBFS File No. SAT-STA-20110915-00183, DA 11-1764 (grant of authority on October 18, 2011); Intelsat License LLC, Special Temporary Authority Intelsat to drift Intelsat 706, IBFS File No. SAT-STA-20111010-00196, DA 11-1754 (grant of authority on October 13, 2011); Intelsat License LLC, Special Temporary Authority Intelsat to operate certain C- and Ku-band Intelsat 603, IBFS File No. SAT-STA-20110727-00138, DA 11-1565 (grant of authority on September 14, 2011); Intelsat License LLC, Special Temporary Authority Intelsat to operate Intelsat 702, IBFS File No. SAT-STA-20110805-00145, DA 11-1429 (grant of authority on September 18, 2011); Intelsat License LLC, Special Temporary Authority to drift Intelsat 706, IBFS File No. SAT-STA-20110810-00159, DA 11-1429 (grant of authority on September 18, 2011); Intelsat License LLC, Special Temporary Authority Intelsat to de-orbit Intelsat 3R, IBFS File No. SAT-STA-20110726-00134, DA 11-1398 (grant of authority on September 11, 2011); Intelsat License LLC, Special Temporary Authority to drift Intelsat 702, IBFS File No. SAT-STA-20110520-00093, DA 11-1398 (grant of authority on September 5, 2011); Intelsat License LLC, Special Temporary Authority Intelsat to drift Galaxy 26, IBFS File No. SAT-STA-20110727-00137, DA (grant of authority on September 5, 2011); Intelsat License LLC, Special Temporary Authority Intelsat to operate Intelsat 702, IBFS File No. SAT-STA-20110707-00125, DA (grant of authority on September 3, 2011); Intelsat License LLC, Special Temporary Authority Intelsat to drift Intelsat 702, IBFS File No. SAT-STA-20110607-00103, DA (grant of authority on September 3, 2011); Intelsat License LLC, Modify the authorization for the Intelsat 709, IBFS File No. SAT-MOD-20110428-00081, DA (grant of authority on July 27, 2011).

<sup>44</sup> *Comsat Corporation et al.*, Memorandum Opinion, Order and Authorization, 16 FCC Rcd 21661 (2001).

- In its decision, having found that Inmarsat had privatized in a manner consistent with the non-IPO requirements of the Act,<sup>45</sup> the Commission granted Comsat Corporation, Stratos Mobile Networks, LLC, SITA Information Computing Canada, Inc., Honeywell, Inc., Marisat Communications Network, Inc., and Deere & Company regular earth station authority to use certain Inmarsat satellites for communications services to, from, or within the United States.
- The ORBIT Act originally required Inmarsat to conduct an IPO no later than October 1, 2000.<sup>46</sup> Subsequently, Congress amended the ORBIT Act several times to extend the deadline for Inmarsat to conduct an IPO.<sup>47</sup> Ultimately, in October 2004, Congress amended the ORBIT Act, extending the IPO deadline until June 30, 2005 and adding Sections 621(5)(F) and (G) to provide a certification process as an alternative to the IPO requirements under Sections 621(5)(A) and (B).<sup>48</sup>
- On June 14, 2005, the Commission determined that Inmarsat was in compliance with the alternative certification process under Sections 621(5)(F) and 621(5)(G) of the ORBIT Act, that Inmarsat could forgo the requirement for an IPO and the public listing of securities, and that Inmarsat was no longer subject to the provisions of Section 602 that prohibited Inmarsat from providing additional services.<sup>49</sup>
- Beginning in 2005, resellers of Inmarsat satellite services filed applications to continue or, in some cases, to commence operations of mobile earth terminals (“METs”) and gateway land earth stations (“LESSs”) in the United States via various Inmarsat satellites not covered by existing coordination agreements for the L-band over North America, including Inmarsat’s fourth generation (“I-4”) satellites.<sup>50</sup>

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<sup>45</sup> 47 U.S.C. § 761(a), which precludes Commission authorization of additional services by Inmarsat until Inmarsat has privatized in accordance with the Act.

<sup>46</sup> Pub. L. No. 106-180, 114 Stat. 48 (2000).

<sup>47</sup> On June 30, 2003, Congress extended Inmarsat’s IPO deadline to June 30, 2004, and gave the Commission discretion to further extend this deadline to no later than December 31, 2004. ORBIT Technical Corrections Act of 2003, Pub. L. No. 108-39, § 763, 117 Stat. 835 (2003). *Inmarsat Ventures Limited Request for Extension of Time under Section 621(5) of the Communications Satellite Act of 1962, as amended by the Open-Market Reorganization for the Betterment of International Telecommunications Act*, Order, 19 FCC Rcd 11387 (2004).

<sup>48</sup> Public Law No. 108-371, 118 Stat. 1752 (October 25, 2004).

<sup>49</sup> *Inmarsat Group Holdings Limited Petition for Declaratory Ruling that Intelsat, Ltd. Complies With Section 621(5)(F) of the ORBIT Act*, IB Docket 04-439, Memorandum Opinion and Order, 20 FCC Rcd 11366 (2005). Section 681(2) of the ORBIT Act defines “additional services” for Inmarsat as the non-maritime and non-aeronautical services in the 1.5 and 1.6 GHz bands on planned satellites in the 2 GHz band. See Pub. L. 106-180 § 602(a) (precluding Commission authorization of additional services by Inmarsat until it has privatized in accordance with the Act).

<sup>50</sup> The first two Inmarsat I-4 satellites were launched in 2005. See “About Inmarsat: Our Satellites,” available online at [http://www.inmarsat.com/About/Our\\_satellites/default.aspx](http://www.inmarsat.com/About/Our_satellites/default.aspx). The third I-4 satellite was launched on August 18, 2008. Press Release, “Successful Launch for Third Inmarsat-4 Satellite,” dated August 18, 2009, available online at <http://www.inmarsat.com/About/Newsroom/Press/00024237.aspx?language=EN&textonly=False>. <http://www.inmarsat.com/About/Newsroom/Press/00024237.aspx?language=EN&textonly=False>

These applications were opposed by Mobile Satellite Ventures Subsidiary LLC (“MSV”), the U.S.-licensed mobile satellite service (“MSS”) operator in the L-band.<sup>51</sup>

- On December 21, 2007, Inmarsat and MSV signed a “Spectrum Coordination and Cooperation Agreement” that resolved outstanding differences between the parties regarding use of the L-band.<sup>52</sup> According to the parties, the agreement addresses operations in the L-band in North America, including re-banding of spectrum, coordination of next generation Inmarsat and MSV satellites, resolution of pending regulatory issues in the United States and Canada, and greater system technical flexibility.
- On March 26, 2008, the Commission reached government-to-government satellite coordination agreements with the United Kingdom and Canada, based upon the “Spectrum Coordination and Cooperation Agreement” of Inmarsat and MSV. In light of these developments, on March 27, 2008, the Commission granted nearly all pending applications for regular authority to continue existing services via Inmarsat satellites.<sup>53</sup> The Commission also granted one reseller’s applications for regular authority to provide new Broadband Global Area Network (BGAN) services via the I-4F2 satellite on April 1, 2008.<sup>54</sup> An additional reseller’s application for regular authority to provide BGAN services via the I-4F2 was granted on January 14, 2009.<sup>55</sup>
- In June 2008, Inmarsat filed an application seeking approval of the indirect transfer of control of Stratos Global Corporation and its wholly-owned subsidiaries from an irrevocable trust to Inmarsat. In January 2009, the Bureau granted this application for transfer of control.<sup>56</sup> In April 2009, Inmarsat’s prior distribution arrangements expired and Inmarsat entered into new arrangements with its distributors.<sup>57</sup> Inmarsat

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<sup>51</sup> MSV subsequently changed its name, first to SkyTerra, and then to its current name, LightSquared. See Press Release, “Introducing LightSquared: Revolutionizing the U.S. Wireless Industry,” dated July 20, 2010, available online at <http://www.lightsquared.com/press-room/press-releases/introducing-lightsquared-revolutionizing-the-u-s-wireless-industry-2/>.

<sup>52</sup> Press Release, “SkyTerra, Mobile Satellite Ventures and Inmarsat Sign Spectrum Coordination and Cooperation Agreement,” December 21, 2007.

<sup>53</sup> *Actions Taken, Satellite Communications Services Information*, Public Notice, Report No. SES-01021 (Int’l Bur., rel. April 2, 2008).

<sup>54</sup> *Id.* BGAN provides both simultaneous voice and data, globally. [http://www.inmarsat.com/Services/Land/Services/High\\_speed\\_data/BGAN.aspx?language=EN&textonly=False](http://www.inmarsat.com/Services/Land/Services/High_speed_data/BGAN.aspx?language=EN&textonly=False).

<sup>55</sup> *Actions Taken, Satellite Communications Services Information*, Public Notice, Report No. SES-01103 (Int’l Bur., rel. January 14, 2009) (granting authority to provide BGAN services via Inmarsat 4F2 to MVS Fed, LLC).

<sup>56</sup> *Application of Robert M. Franklin (transferor) and Inmarsat plc (transferee) Consolidated Application for Consent to Transfer of Control of Stratos Global Corporation and Its Subsidiaries from an Irrevocable Trust to Inmarsat, plc.*, Memorandum Opinion and Order and Declaratory Ruling, 24 FCC Rcd 449 (Int’l Bur. 2009).

<sup>57</sup> *Inmarsat Group Limited, Form 20-F, Annual Report Pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934 for the fiscal year ended December 31, 2008*, April 29, 2009, at 22, 41, available (continued ...)

also completed the acquisition of the shares of Stratos Global Corporation.<sup>58</sup> In 2012, Inmarsat conducted an internal reorganization that eliminated the use of Stratos as brand name.<sup>59</sup>

- On October 21, 2008, the Commission made administrative changes to the way in which the Commission specifies authorized points of communication in licenses for L-band MSS user terminals using Inmarsat space stations.<sup>60</sup> Specifically, the Commission established a list of Inmarsat satellites approved to serve the United States in the L-band (the “ISAT List”). The list includes all Inmarsat satellites that have been found to meet the Commission’s legal, technical, and policy requirements to access the U.S. market. As a result, earth station licensees and applicants may seek authority to communicate with all Inmarsat satellites on the ISAT List by listing “ISAT” as the point of communication, rather than having to seek authorization to communicate with Inmarsat satellites on a satellite-by-satellite and orbital-location-by-orbital-location basis.
- Four Inmarsat satellites were included in the original ISAT List.<sup>61</sup> Since the creation of the ISAT List, three Inmarsat satellites have been added to the ISAT List,<sup>62</sup> and the orbital location of one satellite on the ISAT List has been changed to a different location.<sup>63</sup> In addition, on October 22, 2009, Inmarsat’s application to operate METs with satellites on the ISAT List was granted.<sup>64</sup>
- Inmarsat has announced a contract with Boeing to build three Inmarsat-5 satellites that will operate in the Ka-band, independent from Inmarsat’s existing L-band

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at <http://www.sec.gov/Archives/edgar/data/1291396/000119312509091361/d20f.htm>.

<sup>58</sup> Inmarsat Press Release, “Inmarsat completes acquisition of Stratos Global and implements new distribution terms with partners,” April 15, 2009, available at <http://www.inmarsat.com/About/Newsroom/Press/00024905.aspx?language=EN&textonly=False>. <http://www.inmarsat.com/About/Newsroom/Press/00024905.aspx?language=EN&textonly=False>

<sup>59</sup> Inmarsat Press Release, “Inmarsat reorganization focuses on partners and customers,” January 3, 2012, available at <http://www.inmarsat.com/About/Newsroom/00040324.aspx?language=EN&textonly=False>.

<sup>60</sup> *Inmarsat, Inc.*, Order, 23 FCC Rcd 15268 (Int’l Bur. 2008).

<sup>61</sup> The Inmarsat satellites included in the original ISAT List were the I-3F2 at 15.5° W.L., the I-3F3 at 178° E.L., the I-3F4 at 142° W.L., and the I-4F2 satellite at 52.75° W.L. *See id.*

<sup>62</sup> *Satellite Communications Services Information Re: Actions Taken*, Public Notice, Report No. SES-01097 (Int’l Bur., rel. December 24, 2008) (adding Inmarsat 4F1 at 143.5° E.L. and Inmarsat 4F3 at 97.65° W.L. to ISAT List). On September 8, 2009, Inmarsat 2F1 at 142° W.L. was added, subject to conditions, to the ISAT list. *See* IBFS File Nos. SAT-PPL-20081219-00235 and SAT-APL-20090609-00068 (grant of authority on September 8, 2009).

<sup>63</sup> Inmarsat plc, Petition for Declaratory Ruling to Modify ISAT List to Reflect Resumed Operations of I-3F4 at 54° W.L., IBFS File No. SAT-PPL-20090107-00003; SAT-APL-20090115-00005 (grant of authority on April 6, 2009).

<sup>64</sup> Inmarsat Hawaii Inc., Application for Inmarsat Hawaii Blanket MET License, IBFS File No. SES-LIC-20090217-00184 (grant of authority on October 22, 2009).

satellites.<sup>65</sup> Inmarsat states that the first Inmarsat-5 satellite is scheduled for completion in 2013, with the entire constellation expected to be complete by the end of 2014.<sup>66</sup>

- Since the Twelfth ORBIT Act Report, the Commission has granted several earth station applications to communicate with Inmarsat's satellites as a point of communication.<sup>67</sup>

### *New Skies*

- New Skies is the Netherlands-based INTELSAT spin-off, created in 1998 as INTELSAT's first step toward privatization. On March 29, 2001, the International Bureau's Satellite and Radiocommunication Division added four satellites operated by New Skies to the Commission's C- and Ku-band Permitted Space Station List<sup>68</sup> ("Permitted List") with conditions to remove secondary status requirements for certain New Skies satellites.<sup>69</sup> This action enabled New Skies to provide satellite services to, from, and within the United States via all routinely authorized U.S. earth stations.<sup>70</sup>
- On June 25, 2004, the Commission granted an application to transfer control of Commission licenses and authorizations held by New Skies Satellites N.V. and New Skies Networks, Inc. to New Skies Satellites B.V.<sup>71</sup>

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<sup>65</sup> Inmarsat website, "About Our Satellites," available at [http://www.inmarsat.com/About/Our\\_satellites/The\\_Inmarsat-5s.aspx?language=EN&textonly=False](http://www.inmarsat.com/About/Our_satellites/The_Inmarsat-5s.aspx?language=EN&textonly=False). The term "Ka-band" generally refers to the space-to-Earth (downlink) frequencies at 17.70-20.20 GHz and the corresponding Earth-to-space (uplink) frequencies at 27.50-30.00 GHz.

<sup>66</sup> *Id.*

<sup>67</sup> See e.g., Comtech Mobile Datacom Corp., Application for Modification, IBFS File No. SES-MOD-20110131-00073 (grant of authority on July 12, 2011), Comtech Mobile Datacom Corp., Application for Modification, IBFS File No. SES-MOD-20110617-00723 (grant of authority on November 1, 2011) Vizada, Inc., Application for Modification, IBFS File No. SES-MOD-20110321-00320 (grant of authority on December 20, 2011), and LXE Inc., Application for Modification, SES-MOD-20111128-01400 (grant of authority on January 9, 2012).

<sup>68</sup> The Permitted List denotes all satellites and services with which U.S. earth stations with "routinely" authorized technical parameters operating in the conventional C- and Ku-bands ("ALSAT" earth stations) are permitted to communicate, without additional Commission action. Those communications must fall within the same technical parameters and conditions established in the earth stations' licenses. *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic International Satellite Service in the United States*, First Order on Reconsideration, 15 FCC Rcd 7207 (1999).

<sup>69</sup> *New Skies Satellites, N.V.*, Order, 16 FCC Rcd 7482 (Int'l Bur., Sat. and Rad. Div. 2001).

<sup>70</sup> *New Skies Satellites, N.V., Petition for Declaratory Ruling*, Order, 16 FCC Rcd 6740 (Int'l Bur., Sat. and Rad. Div. 2001).

<sup>71</sup> *Application of New Skies Satellites N.V. (Transferor) and New Skies Satellites B.V. (Transferee) Transfer Control of FCC Licenses and Authorizations Held by New Skies Satellites N.V. and New Skies Networks, Inc.*, Public Notice, 19 FCC Rcd 21232 (2004).

- On March 29, 2006, the Commission approved the transfer of control from New Skies Networks, Inc. (“NSN”) to SES GLOBAL S.A. of licenses for six non-common carrier earth stations for communication with non-U.S. licensed satellites that have been added to the Commission’s Permitted List.<sup>72</sup> The Commission also approved the transfer of control of three non-U.S. satellites operated by New Skies that the Commission authorized to provide service to the United States pursuant to the Permitted List.<sup>73</sup> The merger was consummated on March 30, 2006.
- On September 7, 2009, SES S.A. announced that the operations of its subsidiaries New Skies Satellites B.V. and SES Americom would be conducted under the single brand name, SES WORLD SKIES.<sup>74</sup> This change did not affect the underlying legal entities that hold Commission authorizations or U.S. market access rights. In September 2011, SES S.A. announced that all subsidiary companies, including SES WORLD SKIES, would do business under the SES brand name.<sup>75</sup>
- Currently, five New Skies satellites are on the Permitted List.<sup>76</sup> Earth station operators with ALSAT authority continue to have authority to access New Skies satellites on the Permitted List.<sup>77</sup>
- An earth station must seek specific authority to communicate with a space station if the earth station does not meet the technical requirements for an ALSAT designation and/or if the earth station seeks to communicate with a satellite in frequency bands other than the conventional C- and Ku-bands. In the last year, the Commission granted numerous earth stations specific authority to communicate with a New Skies satellite.<sup>78</sup>

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<sup>72</sup> Permitted List available online at <http://transition.fcc.gov/ib/sd/se/permitted.html>.

<sup>73</sup> *New Skies Satellites Holdings LTD, Transferor, and SES Global S.A., Transferee, Applications to Transfer Control of Authorizations Held By New Skies Networks, Inc. and Notification of Change to Permitted Space Station List*, Public Notice, 21 FCC Rcd 3194 (Int’l Bur. 2006).

<sup>74</sup> See <http://www.ses.com/4337028/history>. SES also has an ownership interest in regional satellite operators Ciel, QuetzSat, YahLive, O3b Networks, and Solaris Mobile. See <http://www.ses.com/4336990/companies>

<sup>75</sup> SES Press Release, “SES sets signs for further growth,” Sept. 9, 2011, available at <http://www.ses.com/4233325/news/2011/7725000>.

<sup>76</sup> The five New Skies satellites on the Permitted List are: NSS-5 at 20° W.L., NSS-7 at 42° W.L., NSS-703 at 47.05° W.L., NSS 806 at 40.5° W.L., and NSS-9 at 177° W.L. New Skies Satellite B.V. has an application pending to relocate NSS-7 to 20° W.L. See IBFS File No. SAT-MPL-20120215-00017 (filed Feb. 15, 2012).

<sup>77</sup> Any of the over 7296 earth stations that have ALSAT authority can communicate with New Skies satellites that appear on the Permitted List, in the conventional C- and Ku- bands, without any further authorization. See *supra*, n.68.

<sup>78</sup> See e.g., CACI Technologies Inc., Application for Authority, IBFS File No. SES-LIC-20110427-00516 (grant of authority on June 22, 2011), STM Networks Inc., Application for Modification, IBFS File No. SES-MOD-20110425-00500 (grant of authority on July 5, 2011), Vizada, Inc., Application for Modification, IBFS File No. SES-MOD-20110217-00174 (grant of authority on July 8, 2011), Denali 20020, LLC, Application Modification, IBFS File No. SES-MOD-20110509-00565 (grant of authority on  
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*Status of Comsat*

- The ORBIT Act terminated ownership restrictions on COMSAT Corporation (“Comsat”), as mandated by the Communications Satellite Act of 1962. 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.<sup>79</sup>
- On December 18, 2001, the Commission granted requests 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, to assign certain Title II common carrier authorizations and Title III radio licenses held by COMSAT to Telenor.<sup>80</sup> The assignment was in connection with Telenor’s 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.<sup>81</sup>
- On October 25, 2002, the Commission granted Comsat and Lockheed Martin’s jointly filed applications to assign four non-common carrier earth station licenses and an Experimental License to Intelsat.<sup>82</sup>

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July 27, 2011), Allen Holdings, Inc. d/b/a Allen Communications, Application for Modification, IBFS File No. SES-MOD-20110720-00843 (grant of authority on September 6, 2011), STM Networks Inc., Application for Authority, IBFS File No. SES-LIC-20110425-01202 (grant of authority on July 5, 2011), 3003 Moffitt LLC, Application for Authority, IBFS File No. SES-LIC-20111104-01318 (grant of authority on December 19, 2011), 3003 Moffitt LLC, Application for Authority, IBFS File No. SES-LIC-20111104-01319 (grant of authority on December 19, 2011), Vizada, Inc., Application for Modification, IBFS File No. SES-MOD-20110321-00320 (grant of authority on December 20, 2011).

<sup>79</sup> *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 Authorizations*, Order and Authorization, 15 FCC Rcd 22910 (2000), *erratum*, 15 FCC Rcd 23506 (2000); *recon. denied*, 17 FCC Rcd 13160 (2002).

<sup>80</sup> *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 (2002).

<sup>81</sup> *Comments Invited on Telenor Satellite Services Holdings, Inc. Petition for Declaratory Ruling on Inapplicability of Cost Accounting Requirements*, Public Notice, 17 FCC Rcd 2444 (Int’l Bur. 2002).

<sup>82</sup> *Lockheed Martin Corporation, COMSAT Corporation, and COMSAT Digital Teleport, Inc., Assignors*, (continued ...)



- On October 29, 2004, Intelsat, Ltd completed the acquisition of the COMSAT General businesses from COMSAT General Corporation, COMSAT New Services, Inc., and Lockheed Martin.<sup>83</sup> The Commission approved the acquisition subject to compliance by Intelsat subsidiaries with the terms of the Intelsat Commitment letter with the Criminal Division of the U.S. Department of Justice, the U.S. Department of Homeland Security, and the Federal Bureau of Investigation.<sup>84</sup>

### *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.<sup>85</sup> Previously, the Commission decided in a rulemaking proceeding, that Level 3 direct access is in the public interest.<sup>86</sup> The concept of direct access became moot with INTELSAT privatization on July 18, 2001, because Intelsat, 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 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."<sup>87</sup> In September 2000, the Commission released a Report and Order requiring Comsat to "enter into negotiation with direct

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*and Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC and Intelsat USA License Corp., Application for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petition for Declaratory Ruling*, IB Docket No. 02-87, Order and Authorization, 17 FCC Rcd 27732 (Int'l Bur. & Wireless Tel. Bur. 2002).

<sup>83</sup> *Intelsat, Ltd. Form 20-F, Annual Report Pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934 for the fiscal year ended December 31, 2004*, at 94.

<sup>84</sup> *Applications of Comsat General Corporation, Lockheed Martin Global Telecommunications LLC, Comsat New Services, Inc., Intelsat LLC, and Intelsat MTC LLC to Assign Licenses and Authorizations and Request for a Declaratory Ruling on Foreign Ownership, Authorizations Granted*, Public Notice, 19 FCC Rcd 21216 (Int'l Bur. 2004).

<sup>85</sup> 47 U.S.C. § 765(a). "(a) ACCESS PERMITTED.--Beginning on the date of enactment of this title, users or providers of telecommunications services shall be permitted to obtain direct access to INTELSAT telecommunications services and space segment capacity through purchases of such capacity or services from INTELSAT. Such direct access shall be at the level commonly referred to by INTELSAT, on the date of enactment of this title, as 'Level III.'" 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. *Direct Access to the INTELSAT System*, IB Docket No. 98-192, Report and Order, 15 FCC Rcd 15703 (1999) ("*Direct Access Order*").

<sup>86</sup> See generally *Direct Access Order*, *supra*, n.85.

<sup>87</sup> 47 U.S.C. § 765(b).

access customers on options to make capacity available where it is clear that there is insufficient capacity available that is not controlled by Comsat.”<sup>88</sup>

- 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.<sup>89</sup> With INTELSAT’s privatization and Intelsat Ltd.’s purchase of Comsat,<sup>90</sup> 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.<sup>91</sup> 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.”<sup>92</sup> 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.<sup>93</sup> 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.<sup>94</sup> In 2002, the Circuit Court of Appeals for the District of Columbia 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, as amended, favoring recovery of regulatory costs

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<sup>88</sup> *Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, IB Docket No. 00-91, Report and Order, 15 FCC Rcd 19160 (2000).

<sup>89</sup> *Satellite Policy Branch Information: Availability of Intelsat Space Segment Capacity to Users and Service Providers Seeking to Access Intelsat Directly*, Public Notice, Report No. SPB-166 (Int’l Bur., rel. April 6, 2001).

<sup>90</sup> 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.

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

<sup>92</sup> 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.

<sup>93</sup> *In re Assessment and Collection of Regulatory Fees for Fiscal Year 2000*, MD Docket No. 00-58, Report and Order, 15 FCC Rcd 14478 ¶ 17 (2000).

<sup>94</sup> *Id.*

gave the Commission good reason to require Comsat to bear its proportionate share of space station fees.<sup>95</sup>

- Post-privatization, Intelsat, as a U.S. licensee, has paid the required regulatory fees mandated by Section 9 of the Communications Act of 1934.

### **B. Status of INTELSAT Privatization**

Intelsat privatized and became a U.S. licensee, as of July 18, 2001, transferring its assets to a commercial corporation. Pursuant to international agreement, an intergovernmental organization known as the International Telecommunications Satellite Organization (“ITSO”) remained. ITSO, through a “Public Services Agreement” with Intelsat, 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, specifically, those customers in poor or underserved countries that have a high degree of dependence on Intelsat.<sup>96</sup> Under these commitments, the privatized Intelsat has made capacity available to lifeline users at fixed pre-privatization costs for approximately 12 years. ITSO has no operational or commercial role.

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. The record before the Commission showed that the companies created fiduciary Boards of Directors and the selection procedure for members of the Board of Directors of Intelsat, Ltd. resulted in a Board that is compliant with the ORBIT Act. The Commission found that privileges and immunities enjoyed by the pre-privatized INTELSAT had been terminated consistent with the requirements of the ORBIT Act.<sup>97</sup> The licensed companies have licenses through notifying Administrations in countries (the United States and the United Kingdom) that have effective competition laws and have commitments under the WTO Agreement that include

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<sup>95</sup> See *Comsat Corporation v. FCC and PanAmSat Corp.*, 283 F.3d 344 (D.C. Cir. 2002).

<sup>96</sup> *INTELSAT Assembly of Parties Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting*, AP-25-3E FINAL W/11/00, at ¶¶6-8 (November 27, 2000).

<sup>97</sup> 47 U.S.C. § 763(3) states that “such preferential treatment includes –

(A) privileged or immune treatment by national governments;

(B) privileges or immunities or other competitive advantages of the type accorded INTELSAT and Inmarsat and their signatories through the terms and operation of the INTELSAT Agreement and the associated Headquarters Agreement and the Inmarsat Convention; and

(C) preferential access to orbital locations.

Access to new, or renewal of access to, orbital locations shall be subject to the legal or regulatory processes of a national government that applies due diligence requirements intended to prevent the warehousing of orbital locations.

See also *Intelsat Licensing Order*, 15 FCC Rcd at 15464, ¶ 7 (“As an intergovernmental organization, INTELSAT is immune from taxes and suits in national courts, unless it waives its immunity. Its treaty status helps ensure its access to the national markets of member countries.”).

non-discriminatory access to their satellite markets.<sup>98</sup> 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.

Additionally, as detailed above, at the end of 2004 the Commission authorized the transfer of control of Intelsat's licenses and authorizations to Zeus, and the transaction was consummated in 2005.<sup>99</sup> Also in 2005, the Commission determined that Intelsat's certification complied with the ORBIT Act and it could forgo an IPO and listing of securities.<sup>100</sup> Thus, the Commission concluded that the provisions relating to additional services under Section 602 of the ORBIT Act were no longer applicable to Intelsat.<sup>101</sup>

## II. Views of INTELSAT Parties on Privatization

The Commission, in response to the Public Notice for this Report, has not received any views directly from the INTELSAT Parties<sup>102</sup> regarding privatization.

## III. Views of Industry and Consumers on Privatization

ARTEL, Inmarsat, and Intelsat filed comments in response to the Commission's February 3, 2012 Public Notice inviting comments related to the development of this Report.<sup>103</sup> Intelsat and SES filed reply comments.

### A. Inmarsat Privatization Comments

The only party to comment on Inmarsat privatization was Inmarsat. Inmarsat notes that in June 2005, the Commission found that Inmarsat had satisfied the requirement to effectuate a substantial dilution of former Signatory financial interests. Inmarsat further states that, shortly thereafter, Inmarsat completed a successful IPO, and that Inmarsat's shares are traded on the London Stock Exchange. According to Inmarsat, no former Inmarsat Signatory owns five percent or more of the company, and the aggregate ownership of foreign governments is nominal.<sup>104</sup>

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<sup>98</sup> *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).

<sup>99</sup> *See supra*, n.27.

<sup>100</sup> *See supra*, n.29.

<sup>101</sup> *See supra*, n.6, for the definition of "additional services."

<sup>102</sup> The INTELSAT Parties are nations for which the INTELSAT agreement has entered into force. 47 U.S.C. § 769(a)(4)(A). Following privatization, the ITSO Agreement defines "Party" to mean a State for which the ITSO Agreement has entered into force or has been provisionally applied. *See* Agreement Relating to the International Telecommunications Satellite Organization, As Amended by the Twenty-Fifth (Extraordinary) Assembly of Parties in Washington, D.C. (November 17, 2000), at Art. I(p).

<sup>103</sup> *International Bureau Information: Report to Congress Regarding the ORBIT Act, Pleading Cycle Established*, DA 11-333, IB Docket No. 11-30, Report No. SPB-236, Public Notice, (Int'l Bur., rel. February 25, 2011).

<sup>104</sup> Inmarsat Comments at 1-2.

Inmarsat outlines its investments in new technologies, including its deployment of its fourth generation, Inmarsat 4 (“I-4”) satellite network<sup>105</sup> and new or evolved services that are being offered through that network. Inmarsat also cites its announced investment in three new I-5 Ka-band satellites to be launched starting in 2013 for a high bandwidth service.<sup>106</sup>

### B. Intelsat Privatization Comments

Intelsat, ARTEL, and SES filed comments on Intelsat privatization. Intelsat states that the privatization goals of the ORBIT Act have been fulfilled in that Intelsat: (1) operates as a fully privatized company; (2) no longer claims the privileges and immunities of an intergovernmental organization; (3) is neither directly nor indirectly owned or controlled by any government or former signatory; and (4) is regulated by the Commission on the same basis as the Commission regulates other providers of fixed satellite services.<sup>107</sup>

As further evidence of its transformation to a fully privatized entity, Intelsat states that it has a pending application before the Commission to transfer control from its private equity owners to a public company.<sup>108</sup> Intelsat states that its privatization has had a positive impact on the communications services marketplace, and that it faces numerous and legitimate competitors, including fiber optic cable, broadband-enabled IP applications, and terrestrial wireless platforms.<sup>109</sup> Intelsat also states that, in response to these competitive forces, it is conducting a “capital expenditure satellite investment program” – totaling \$3.75 billion during the period of 2008-2013. This project is designed to expand Intelsat’s opportunities in emerging markets and meet the needs of existing customers.<sup>110</sup> According to Intelsat, it faces robust competition which proves that it does not enjoy any market advantages resulting from its days as an intergovernmental organization.<sup>111</sup>

ARTEL, a provider of integrated satellite services that buys capacity from FSS space station operators such as Intelsat, alleges that the FSS market is not fully competitive.<sup>112</sup> However, ARTEL does not provide any specific information alleging anti-competitive conduct in this Orbit Act proceeding that is not already before the Commission in another proceeding. That proceeding involves some anti-competitive allegations filed by others that were acknowledged in the Satellite Competition Report. However, the Commission concluded in the Report that additional information was needed before the allegations could be fully addressed.<sup>113</sup> We also stated that this matter would be considered in a further proceeding.<sup>114</sup> Significantly, the

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<sup>105</sup> *Id.* at 2.

<sup>106</sup> Inmarsat at 4-5. *See also* Inmarsat’s August 6, 2010 press release at <http://www.inmarsat.com/About/Newsroom/00036138.aspx>.

<sup>107</sup> Intelsat Comments at 1-2.

<sup>108</sup> *Id.* at 2.

<sup>109</sup> *Id.* at 3.

<sup>110</sup> *Id.* at 3.

<sup>111</sup> *Id.*

<sup>112</sup> ARTEL Comments at 2-4.

<sup>113</sup> *Third Satellite Competition Report*, 26 FCC Rcd at 17359, ¶¶ 199-202.

<sup>114</sup> *Id.*

Commission did not conclude in its Report that either Intelsat or SES had engaged in anti-competitive conduct.<sup>115</sup> Nor did we conclude that there was not a fully competitive global market for satellite communications services for the benefit of consumers and providers of satellite services.<sup>116</sup>

#### IV. Impact of Privatization

Section 646 requires that the Commission report on the impact of privatization on U.S. industry, jobs, and industry access to the global market.

##### A. Inmarsat

From the record, Inmarsat's privatization appears to have had a positive impact on the domestic market.<sup>117</sup> Inmarsat states that it has continued to invest in new technologies for mobile satellite service customers.<sup>118</sup> As an example of this investment, Inmarsat points to its \$1.5 billion investment in its fourth-generation ("I-4") satellite network, which is currently providing mobile broadband services to the United States and globally, including its BGAN service.<sup>119</sup> Inmarsat also describes its \$1.2 billion investment in three new I-5 Ka-band satellites to be launched beginning in 2013 that will provide high-bandwidth service offerings.<sup>120</sup>

Inmarsat states that it continues to introduce new services, including its IsatPhone Pro handheld and Low Data Rate services. In addition, Inmarsat states that its BGAN service is being utilized in innovative ways by its customers, including in response to recent natural disasters.<sup>121</sup> In this regard, Inmarsat also states that it has a formal agreement with the ITU to help nations

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<sup>115</sup> "The record supporting the preparation of this Third Report provides no information concerning the pricing or other terms and conditions of individually-negotiated transponder leases that might otherwise provide insight with respect to the possible exercise of market power and the effects of relative bargaining power on the negotiated outcomes between the FSS operator and the wholesale customer ... Taken in its entirety, the record supporting the preparation of this Third Report is mixed and, in some respects, contradictory with respect to the extent of competition prevailing in the FSS sector during the reporting period ... Thus, we will initiate a proceeding to develop a more complete record to address the allegations of anticompetitive conduct in the FSS sector." *Id.* at 17359, ¶¶ 199, 202.

<sup>116</sup> *Id.* at 17359, ¶¶ 199-202.

<sup>117</sup> Inmarsat is the only commenter that discussed the impact of Inmarsat's privatization.

<sup>118</sup> Inmarsat Comments at 2.

<sup>119</sup> *See supra*, n.54. BGAN provides voice and broadband service with speeds of almost half a megabit per second using "notebook sized" antennas that are one-third the size, weight and price of traditional Inmarsat antennas. *See* Inmarsat Comments at 2.

<sup>120</sup> Inmarsat at 4-5.

<sup>121</sup> For example, Inmarsat states that its BGAN technology played a critical role in supporting government and non-government agencies as well as international news organizations in response to global disasters including the recent Japanese earthquakes and tsunami, the Chilean earthquake, the New Zealand earthquake, the floods in Pakistan and Thailand, the Gulf of Mexico Oil spill, and the Chilean mine disaster. *See* Inmarsat Comments at 3, n10.

better prepare for and respond to natural disasters, and that its BGAN technology has been used to support government and non-governmental organizations.<sup>122</sup>

### B. Intelsat

In prior ORBIT Act reports, we acknowledged that Intelsat successfully transitioned from an intergovernmental organization to a fully privatized entity, and that privatization has enabled it to more effectively compete in providing services to U.S. commercial and governmental customers. The privatization of INTELSAT enabled it to compete freely for U.S. satellite business opportunities, led to more competitive choices in the U.S. market than existed before privatization, and continues to encourage the development of service offerings to U.S. customers.

As we noted in 2010 and 2011 ORBIT Act Reports, we have received comments that allege certain practices of Intelsat post-privatization are anti-competitive, and that therefore that the market for global satellite communications services is not fully competitive.<sup>123</sup> Intelsat disputes these claims. As stated previously, the Commission will consider appropriate options for addressing competition issues raised by the commenting parties that are within its jurisdiction under the ORBIT Act and other laws.<sup>124</sup> In the *Third Satellite Competition Report*, we committed to conducting a follow-up proceeding, which would allow the development of a more complete record regarding the anticompetitive allegations raised in the ORBIT Act and Satellite Competition Report proceedings.<sup>125</sup> The Commission anticipates initiating this proceeding in the near future.

### V. Summary

The Commission has undertaken a number of proceedings required by or related to the ORBIT Act. While 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, there have been some allegations of anticompetitive conduct that the Commission will investigate further. 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.

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<sup>122</sup> Inmarsat at 3.

<sup>123</sup> See *supra*, Section III.B at 22.

<sup>124</sup> Eleventh ORBIT Act Report, 25 FCC Rcd at 784 (2010).

<sup>125</sup> *Third Satellite Competition Report*, 26 FCC Rcd at 17286, 17359, ¶¶ 3, 202.

## APPENDIX

## Index of Filings

Comments, filed March 6, 2012

Comments of Inmarsat PLC, available at

<http://apps.fcc.gov/ecfs/comment/view?id=6017022821>

Comments of Intelsat License LLC, available at

<http://apps.fcc.gov/ecfs/comment/view?id=6017022844>

Comments of ARTEL, Inc., available at

<http://apps.fcc.gov/ecfs/comment/view?id=6017022680>

Comments, filed March 16, 2012

Comments of Intelsat License LLC, available at

<http://apps.fcc.gov/ecfs/comment/view?id=6017025143>

Comments of SES S.A. available at

<http://apps.fcc.gov/ecfs/comment/view?id=6017025195>