# FCC REPORT TO CONGRESS AS REQUIRED BY THE ORBIT ACT SEVENTEENTH REPORT

**IB Docket No. 16-50 (Terminated)**

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By the Commission: Commissioners Pai and O'Rielly issuing separate statements

# FCC REPORT TO CONGRESS AS REQUIRED BY THE ORBIT ACT SEVENTEENTH REPORT

## I. INTRODUCTION

1. This report is submitted in accordance with Section 646 of the Open-Market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act),[1] which requires the Federal Communications Commission (Commission) to report annually to the Committees on Commerce and International Relations of the U.S. House of Representatives and the Committees on Commerce, Science, and Transportation and Foreign Relations of the U.S. Senate on the progress made to achieve the objectives of the statute.[2] 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."[3]

2. Similar to prior reports, we acknowledge that INTELSAT and Inmarsat successfully transitioned from intergovernmental organizations to fully privatized entities.[4] We note that the 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.

## II. BACKGROUND

3. In 2000, the ORBIT Act required the Commission to: (1) mandate the privatization of INTELSAT[5] and Inmarsat; (2) establish criteria to ensure a pro-competitive privatization; (3) determine whether INTELSAT, Inmarsat, and INTELSAT spin-off New Skies Satellites N.V. (New Skies)[6] have been privatized in a manner that will not harm competition in the United States; (4) use the privatization criteria specified in the ORBIT Act as a basis for making its competition determination; and (5) "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.[7]

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[1] 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 (2004) (*2004 ORBIT Act Amendments*), *as amended*, Pub. L. No. 109-34, 119 Stat. 377 (2005) (*2005 ORBIT Act Amendment*), codified at 47 U.S.C. § 701 *et seq*.

[2] 47 U.S.C. § 765e. For previous ORBIT Act reports to Congress, *see FCC Report to Congress as Required by the ORBIT Act*, https://www.fcc.gov/general/report-congress-required-orbit-act.

[3] 47 U.S.C. § 761 Note, Pub. L. 106-180, 114 Stat 48 (2000).

[4] *See*, *e.g.*, *FCC Report to Congress as Required by the ORBIT Act*, Report, 30 FCC Rcd 6644, 6646-47 (2015) (*Sixteenth ORBIT Act Report*).

[5] The intergovernmental satellite body INTELSAT later created Intelsat LLC, a privately-held U.S. entity that became the licensee of satellite assets formerly held by INTELSAT. 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 (Intelsat).

[6] New Skies is the Netherlands-based INTELSAT spin-off, created as its first step toward privatization. The status of New Skies is summarized in the *Fourteenth ORBIT Act Report*. *FCC Report to Congress as Required by the ORBIT Act,* Report, 28 FCC Rcd 8587, 8600-01 (2013) (*Fourteenth ORBIT Act Report*).

[7] The ORBIT 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). Among other things, the ORBIT Act provides for certain exceptions to limitations on "non-core" services. 47 U.S.C. § 761.

4. The ORBIT Act also required this annual report.[8] Specifically, it requires that the Commission report on 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; and (4) the impact that privatization has had on U.S. industry, jobs and industry's access to the global marketplace.[9]

5. With regard to privatization, in 1998, prior to the enactment of the ORBIT Act, INTELSAT divested five of its 24 satellites to New Skies.[10] In 1999, INMARSAT converted from an intergovernmental organization to a private company.[11] Intelsat privatized and became a U.S. licensee as of July 18, 2001, transferring its assets to a commercial corporation.[12]

6. On June 15, 2000, the Commission submitted its first annual report to Congress on its actions to implement the ORBIT Act, and submitted additional reports every year since.[13] Notably, the Commission acknowledged in several ORBIT Act Reports that INTELSAT and Inmarsat successfully transitioned from intergovernmental organizations to fully privatized entities.[14]

7. In anticipation of this Seventeenth Report, the Commission issued a Public Notice on February 19, 2016 inviting comments related to the development of this report.[15] On March 21, 2016, Inmarsat filed comments.

## III. DISCUSSION

### A. Progress on the Objectives and Purposes Since the *Sixteenth ORBIT Act Report*

[8] 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, and removing certain restrictions on separated entities and successors to INTELSAT and for other purposes. 47 U.S.C. § 701 *et seq*.

[9] *Id.* 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, known as the Satellite Competition Report. 47 U.S.C. § 703. *See also*, *International Bureau Invites Comment for the Fourth Report to Congress on Status of Competition in the Provision of Satellite Services*, IB Docket No. 14-229, Public Notice, 29 FCC Rcd 14351 (IB 2014).

[10] *See*, *e.g.*, *Fourteenth ORBIT Act Report*, 28 FCC Rcd at 8600-01.

[11] *Id.* at 8596.

[12] *Id.* at 8591. As a result of privatization, and pursuant to international agreement, an intergovernmental organization known as the International Telecommunications Satellite Organization (ITSO) was created. 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. *See INTELSAT Assembly of Parties Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting,* AP-25-3E FINAL W/11/00, at paras. 6-8 (Nov. 27, 2000). Under these commitments, the privatized Intelsat made capacity available to lifeline users at fixed pre-privatization costs for approximately 12 years. ITSO has no operational or commercial role.

[13] *FCC Report to Congress as Required by the ORBIT Act*, Report, 15 FCC Rcd 11288 (2000). The *Sixteenth ORBIT Act Report* lists all prior reports. *Sixteenth ORBIT Act Report*, 30 FCC Rcd at 6646-47 n.11.

[14] *Sixteenth ORBIT Act Report*, 30 FCC Rcd at 6646-47.

[15] *International Bureau Seeks Comment on the Next Orbit Act Report*, IB Docket No. 16-50, Public Notice, 31 FCC Rcd 1201 (2016).

8. The Commission took the following actions since the *Sixteenth ORBIT Act Report* to ensure that INTELSAT, Inmarsat, and New Skies remain privatized in a pro-competitive manner, consistent with the privatization criteria of the ORBIT Act.[16]

**a. Intelsat**

9. Pursuant to U.S. obligations as the notifying administration to the International Telecommunication Union (ITU)[17] for Intelsat's Fixed Satellite-Service (FSS) C-and Ku-band space station networks transferred at privatization, the Commission participated in a number of international satellite coordination negotiations as the licensing Administration for Intelsat. Since the *Sixteenth ORBIT Act Report,* the Commission participated in coordination meetings with Russia on behalf of Intelsat and a number of other U.S. licensees.

10. The United States also uses 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 *Sixteenth ORBIT Act Report*, Intelsat concluded operational arrangements with operators licensed by Australia, Bolivia, Iran, Japan, Malaysia, Russia, and Turkey. In due course, this process will lead to coordination agreements between the United States and the pertinent foreign Administrations.

11. Since the *Sixteenth ORBIT Act Report*, Intelsat filed a number of requests for license authorizations and modifications. The Commission reviewed these requests and acted on them consistent with the Commission's licensing rules and processes.[18]

**b. Inmarsat**

12. Since the *Sixteenth ORBIT Act Report*, the Commission granted several earth station applications to communicate with Inmarsat's satellites as points of communication.[19]

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[16] 47 U.S.C. §§ 761, 763, 763a, 763c, and 765g.

[17] 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.

[18] *See*, *e.g.,* Denali 20020, LLC, Application for Modification, IBFS File No. SES-MOD-20150410-00210 (grant of authority July 8, 2015); Denali 20020, LLC, Application for Modification, IBFS File No. SES-MOD-20150410-00211 (grant of authority July 9, 2015); Denali 20020, LLC, Application for Modification, IBFS File No. SES-MOD-20150410-00214 (grant of authority July 7, 2015); TowerStream Corp., Application for Modification, IBFS File No. SES-MOD-20130903-00774 (grant of authority July 24, 2015); Global Crossing Americas Solutions, Inc., Application for Modification, IBFS File No. SES-MOD-20150921-00610 (grant of authority Jan. 13, 2016); Global Crossing Americas Solutions, Inc., Application for Modification, IBFS File No. SES-MOD-20150921-00614 (grant of authority Jan. 13, 2016); Global Crossing Americas Solutions, Inc., Application for Modification, IBFS File No. SES-MOD-20150921-00617 (grant of authority Jan. 13, 2016); Global Crossing Americas Solutions, Inc., Application for Modification, IBFS File No. SES-MOD-20150921-00628 (grant of authority Jan. 13, 2016); Global Crossing Americas Solutions, Inc., Application for Modification, IBFS File No. SES-MOD-20150921-00629 (grant of authority Jan. 13, 2016); License LLC, Application for Modification, IBFS File No. SES-MOD-20151023-00762 (grant of authority Mar. 11, 2016); Intelsat License LLC, Application for Modification, IBFS File No. SES-MOD-20151023-00763 (grant of authority Mar. 11, 2016); Globecomm License Sub LLC, Application for Modification, IBFS File No. SES-MOD-20160121-00068 (grant of authority Mar. 31, 2016).

[19] *See, e.g.,* ISAT US Inc., Application for Authority, IBFS File No. SES-LIC-20141030-00832 (grant of authority Aug. 11, 2015); Comsat Inc. (f/k/a Airbus DS SatCom Government, Inc.), Application for Modification, IBFS File No. SES-MFS-20140630-00546 (grant of authority Aug. 28, 2015); Comsat Inc. (f/k/a Airbus DS SatCom Government, Inc.), Application for Modification, IBFS File No. SES-MFS-20140630-00548 (grant of authority Aug. 28, 2015); ISAT US Inc., Application for Authority, IBFS File No. SES-LIC-20140224-00098 (grant of

(continued….)

#### c. New Skies

13. Since the last report, the Commission granted numerous earth stations specific authority to communicate with New Skies satellites.[20]

### B. Views of the Parties, Industry and Consumers on Privatization

14. Inmarsat was the only entity that filed comments and states that in June 2005, the Commission found that Inmarsat satisfied the requirement to effectuate a substantial dilution of former Signatory financial interests.[21] Inmarsat further states that, shortly thereafter, it completed a successful IPO, and today, its shares are traded on the London Stock Exchange.[22] According to Inmarsat, no former Inmarsat Signatory owns five percent or more of the company, and the aggregate ownership of foreign governments is nominal.[23] Inmarsat adds that "[s]ince its inception more than three decades ago, Inmarsat has remained on the cutting edge of satellite telecommunications sector's vision of the future of telecommunications."[24]

### C. Impact of Privatization on U.S. Industry, Jobs, and Industry Access to the Global Marketplace.

#### a. Inmarsat

15. Inmarsat's privatization appears to have had a positive impact on the domestic market. Inmarsat, in its comments, outlines its investments in future technologies. Inmarsat states that, as the largest mobile satellite operator in the world, it provides critical services, for example, to military and civilian government agencies and the maritime and aviation communities that require access to ubiquitious, reliable, and secure communications.[25] Inmarsat adds that it completed the I-4 satellite system, which is providing mobile satellite service (MSS) and FSS to the United States and globally through the Broadband Global Access Network (BGAN) system, but continues to adapt to support IP-based communications.[26] Inmarsat's Global Xpress high-speed Ka-band satellite broadband system also

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authority Sept. 29, 2015); Comsat Inc. (f/k/a Airbus DS SatCom Government, Inc.), Application for Modification, IBFS File No. SES-MFS-20150602-00315 (grant of authority Oct. 19, 2015); ISAT US Inc., Application for Authority, IBFS File No. SES-LIC-20150625-00383 (grant of authority Oct. 22, 2015); Deere & Company, Application for Modification, IBFS File No. SES-MOD-20141030-00835 (grant of authority Jan. 29, 2016); Deere & Company, Application for Authority, IBFS File No. SES-LIC-20130422-00340 (grant of authority Feb. 9, 2016).

[20] *See, e.g.,* SES Americom, Inc., Application for Modification, IBFS File No. SES-MOD-20150123-00113 (grant of authority May 20, 2015); Allen Holdings, Inc. d/b/a Allen Communications, IBFS File No. SES-MOD-20150401-00187 (grant of authority May 27, 2015); NSSL Global LLC, Application for Modification, IBFS File No. SES-MOD-20150513-00297 (grant of authority July 20, 2015); RigNet SatCom, Inc., Application for Modification, IBFS File No. SES-MOD-20150611-00354 (grant of authority Oct. 7, 2015); SES Americom, Inc., Application for Modification, IBFS File No. SES-MOD-20150416-00218 (grant of authority Dec. 25, 2015); SES Americom, Inc., Application for Modification, IBFS File No. SES-MOD-20150416-00220 (grant of authority Dec. 25, 2015); Astrium Services Business Communications, Inc., Application for Modification, IBFS File No. SES-MFS-20150818-00530 (grant of authority Jan. 5, 2016); Comsat Inc. (f/k/a Satcom Direct Government, Inc.), Application for Modification, IBFS File No. SES-MFS-20150417-00221 (grant of authority Mar. 11, 2016); Globecomm License Sub LLC, Application for Modification, IBFS File No. SES-MOD-20160121-00068 (grant of authority Mar. 31, 2016)

[21] Inmarsat Comments at 1.

[22] *Id*. at 1-2.

[23] *Id*. at 2.

[24] *Id.*

[25] *Id*. at 4.

[26] *Id*. at 4-5.

became fully operational in 2015. Inmarsat states that it also continues to expand, for example, in the area of low data rate services to provide tracking, monitoring, and machine-2-machine (M2M) applications.[27]

16. While the I-4 and Global Xpress program complete Inmarsat's global coverage, Inmarsat announced a further $600 million investment in a new Inmarsat-6 (I-6) satellite constellation, adding depth and increased capabilities to the wide breadth of global coverage already achieved by existing services.[28] The I-6 constellation is comprised of two next generation satellites, each with a dual payload supporting both of Inmarsat's L-band and Ka-band services.[29] Inmarsat states that the new I-6 satellites will bolster and maximize Inmarsat's offerings in both bands to its customers, with future offerings in the area of global flight tracking and aviation safety services.[30]

#### b. Intelsat and New Skies

17. Although we did not receive comments from Intelsat and New Skies, the Commission has acknowledged in prior ORBIT Act reports that Intelsat successfully transitioned from an intergovernmental organization to a fully privatized entity, and that privatization enabled it to compete more effectively in providing services to U.S. commercial and governmental customers.[31] Privatization has enabled Intelsat 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.

## IV. SUMMARY

18. Since the passage of the ORBIT Act, the Commission has undertaken a number of proceedings required by or related to 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.[32]

19. The adoption and release of this Report fulfills the Commission's obligation imposed by Section 646 of the Open-Market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act).[33]

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[27] *Id*. at 6.

[28] *Id.*

[29] *Id.* at 11.

[30] *Id.* In response to the Malaysia Airlines MH370 tragedy, Inmarsat and its partners provide position reporting data using Automatic Dependent Surveillance-Contract (ADS-C). *Id*. ADS-C is a function on an aircraft that broadcasts position altitude, vector, and other information for use by air traffic control. *Id.* Inmarsat states that it uses ADS-C to provide global aircraft surveillance and flight following. *Id.* at 12. Inmarsat hopes to shape and participate future concepts of the next generation of flight safety. *Id.* at 12-13.

[31] *See generally, Sixteenth ORBIT Act Report*.

[32] In February 2015, the United States House of Representatives passed H.R. 734 to amend the Communications Act of 1934, as amended, to consolidate certain reporting obligations of the Commission, including the ORBIT Act Report. *See* Federal Communications Commission Consolidated Reporting Act of 2015, H.R. 734, 114th Cong. § 3 (2015). While the Commission will continue to submit the annual report, we believe this report is no longer necessary in light of the successful privatization of INTELSAT and Inmarsat many years ago in a manner consistent with the ORBIT Act.

[33] 47 U.S.C. § 701 *et seq*.

## V. PROCEDURAL MATTERS

20. IT IS ORDERED that, pursuant to Section 646 of the Open-Market Reorganization for the Betterment of International Telecommunications Act,[34] this Report is ADOPTED, and IB Docket No. 16-50 IS TERMINATED.

[34] *Id.*

**STATEMENT OF**
**COMMISSIONER AJIT PAI**

Re: *FCC Report to Congress as Required by the Open-Market Reorganization for the Betterment of International Telecommunications (ORBIT) Act – Seventeenth Report, IB Docket No. 16-50*

There's no need to reinvent the wheel. I've said it before, time[1] and again[2] and again.[3]

[1] Statement of Commissioner Ajit Pai, *Fourteenth Orbit Act Report* (2013), http://go.usa.gov/chBuC.

[2] Statement of Commissioner Ajit Pai, *Fifteenth Orbit Act Report* (2014), http://go.usa.gov/chBuF.

[3] Statement of Commissioner Ajit Pai, *Sixteenth Orbit Act Report* (2015), http://go.usa.gov/chBJT.

**STATEMENT OF**
**COMMISSIONER MICHAEL O'RIELLY**

Re: *FCC Report to Congress as Required by the Open-Market Reorganization for the Betterment of International Telecommunications (ORBIT) Act – Seventeenth Report, IB Docket No. 16-50*

While the Commission's Seventeenth ORBIT Act Report is somewhat perfunctory, I appreciate the fact that Commissioners were actually provided the opportunity to vote on a Congressionally-mandated report, a rarity lately at the Commission. For that, I extend my thanks to the Commission's International Bureau, which informed us of the due date and gave Commissioners the chance to express interest in voting on the item. I happily took the opportunity and, as promised, voted timely and without reservation. This calls into question the puzzling reasons provided for why such a procedure couldn't have occurred for similar Commission reports.

The process that occurred here is nearly identical to the one that I have proposed for all delegated authority matters, although the Commission has never delegated this report to staff. Specifically, I have discussed with my colleagues the ability of a Commissioner to elevate an issue to be decided by Bureau staff to the full Commission for a vote. In such a case, the item would be circulated and voted on by the Commission within a set timeframe. For substantive matters, placing the full Commission stamp of consideration and potential approval would 1) improve overall processing time by eliminating further staff work on petitions for reconsideration and applications for review, and 2) minimize the likelihood of the Commission's procedures being used as a dilatory tactic to thwart finality on a particular issue. Alas, this reasonable process reform has been summarily rejected to date.

Some in Congress have identified this report as a possible candidate for elimination given the number of years that have passed since the ORBIT Act's implementation. While I may agree with that view, the full Congress has not repealed the requirement yet. Since it is not our general role to question Congressional prerogatives, they must see the report as appropriate and worthy of Commission attention. Accordingly, I turn my attention to its origination and specific contents.

Reading the Seventeenth Report brings back fond memories of my efforts to help get the ORBIT Act passed into law. At that time, there were two intergovernmental organizations, Intelsat and Inmarsat, layered with government benefits and burdens. Partly through Congressional direction, led by former Representative Tom Bliley and Senator Conrad Burns, who recently passed away, and partly through market forces, these organizations were effectively privatized and the entire marketplace changed forever. In the end, those hard fought legislative battles were worthy of the effort, producing a solid outcome for the American people.

Substantively, the report includes a summary of Inmarsat's comments on the impact of its privatization on U.S. industry, jobs, and industry access to the global marketplace. Inmarsat's summary highlights recent activity in the private satellite marketplace to deploy new satellite systems and discusses next generation capabilities. In addition, the report outlines Inmarsat's interest and potential increased involvement in global flight tracking. These appear to be positive developments, albeit many are outside the regulatory purview of the Commission.