

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

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This report is submitted in accordance with Section 646 of the Open-Market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act or the Act).¹

Section 646 states:

(a) ANNUAL REPORTS - The President and the Commission shall report to the Committees on Commerce and International Relations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Foreign Relations of the Senate within 90 calendar days of the enactment of this title, and not less than annually thereafter, on the progress made to achieve the objectives and carry out the purposes and provisions of this title. Such reports shall be made available immediately to the public.

(b) CONTENTS OF REPORTS - The reports submitted pursuant to subsection (a) shall include the following:

(1) Progress with respect to each objective since the most recent preceding report.

(2) Views of the Parties with respect to privatization.

(3) Views of the industry and consumers on privatization.

(4) Impact privatization has had on United States industry, United States jobs, and United States industry's access to the global marketplace.

I. Progress as to Objectives and Purposes

The purpose of the ORBIT Act is “to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat.”²

The ORBIT Act: (1) mandates the privatization of INTELSAT and Inmarsat; (2) establishes criteria to ensure a pro-competitive privatization; (3) requires the Commission to determine whether INTELSAT, Inmarsat, and the INTELSAT spin-off, New Skies Satellites N.V. (“New Skies”), have been privatized in a manner that will harm competition in the United States; (4) requires the Commission to use the privatization criteria specified in the ORBIT Act as a basis for making its competition determination; and (5) directs the Commission to “limit through conditions or deny” applications or requests to provide “non-core” services to, from, or within the

¹ 47 U.S.C. § 765e (2000).

² 47 U.S.C. § 761 NOTE.

United States if it finds that competition will be harmed.³ It provides for certain exceptions to limitations on non-core services in the event of such a determination. The Act also prohibits the Commission from authorizing certain “additional” services pending privatization consistent with the criteria in the Act.⁴ In addition, the Act directs the Commission to undertake a rulemaking proceeding to assure U.S. users the opportunity for direct access to the INTELSAT system.

The Commission made its first report to Congress on its actions to implement the ORBIT Act on June 15, 2000, following enactment of the Act on March 17, 2000.⁵ The Commission made its second report on June 15, 2001,⁶ and its third report on June 14, 2002.⁷ The Commission issued a Public Notice on April 2, 2003 inviting comment appropriate to the development of this fourth report.⁸

A. Commission Actions and Activities

The Commission has undertaken a number of actions required by the ORBIT Act, or related to its objectives and purposes. The Commission has taken the actions described below to ensure that INTELSAT, Inmarsat, and New Skies have been privatized in a procompetitive manner, consistent with the privatization criteria of the Act.⁹ The Commission has also taken these actions to implement certain deregulatory measures in the Act.¹⁰

INTELSAT

- INTELSAT privatized on July 18, 2001. The Commission previously had granted authorizations conditioned on compliance with the ORBIT Act to Intelsat LLC (“Intelsat”), the separate private Delaware company created by INTELSAT, prior to privatization, to hold the U.S. authorizations and associated space segment assets upon privatization.¹¹ These authorizations covered the satellites, planned satellites,

³ The Act defines “non-core” services as “services other than public-switched network voice telephony and occasional-use television” with respect to INTELSAT, and as “services other than global maritime distress and safety services or other existing maritime or aeronautical services for which there are not alternative providers” with respect to Inmarsat. 47 U.S.C. § 769 (a)(11).

⁴ The Act defines “additional” services as “direct-to-home (“DTH”) or direct broadcast satellite (“DBS”) video services, or services in the Ka or V bands” for INTELSAT and as “those non-maritime or non-aeronautical mobile services in the 1.5 and 1.6 GHz band on planned satellites or the 2 GHz band” for Inmarsat. 47 U.S.C § 769(a)(12).

⁵ *FCC Report to Congress as Required by the ORBIT Act*, FCC 00-217, 15 FCC Rcd 11 288 (2000).

⁶ *FCC Report to Congress as Required by the ORBIT Act*, FCC 01-190, 16 FCC Rcd 12810 (2001).

⁷ *FCC Report to Congress as Required by the ORBIT Act*, FCC 02-170, 17 FCC Rcd 11458 (2002).

⁸ Public Notice, Report No. SPB-183, April 2, 2003.

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

¹⁰ 47 U.S.C. § 765 and 765(d)(1).

¹¹ *See Application of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary*

and planned system modifications associated with INTELSAT's frequency assignments in the fixed satellite service ("FSS") C- and Ku-bands¹² existing as of privatization.

- As a routine element of the FCC licensing regime, since privatization, Intelsat LLC has filed with the Commission a number of requests for license modifications. The Commission has reviewed these requests and acted on them in a transparent manner consistent with the United States licensing process.¹³
- Intelsat LLC was required by the ORBIT Act to conduct an Initial Public Offering ("IPO") by October 1, 2001 to "substantially dilute" ownership by former INTELSAT Signatories. The Act gives the Commission discretion to extend this deadline to no later than December 31, 2002. In August 2001, Intelsat requested an extension of the deadline until December 31, 2002. The Commission placed this request on public notice August 28, 2001.¹⁴ On October 5, 2001, the Commission granted this request on the basis of Intelsat's demonstration that it had insufficient time to take the substantial planning, financial, and legal preparations necessary to conduct an IPO since its July 18, 2001 privatization.¹⁵ In its decision, the Commission further concluded that the grant of the extension was consistent with the ORBIT Act, which gave the Commission discretion to extend the deadline in consideration of market conditions and relevant business factors relating to the timing of the IPO.¹⁶
- On October 1, 2002, prior to an IPO taking place, Congress passed a bill to amend Section 621(5)(A)(i) of the ORBIT Act. The amendment extended the deadline by

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*").

¹² The conventional C band refers to the 3,700-4,200/5,925-6,425 MHz frequency bands. Intelsat is also authorized to operate in the extended C-band frequencies 3,625-3,700/5,850-5,925/6.425-6,650 MHz on certain satellites at certain orbital locations. In addition, Intelsat is authorized to operate in the extended C-band frequencies 3,420-3,625 MHz on the Intelsat-805 at 55.5° W.L. for service to non-US locations. The 3,420-3,600 GHz portion of this frequency band is not a satellite band in the U.S. and is operated by Intelsat outside the U.S. subject to potential interference from worldwide shipborne U.S. military radar operations. The conventional Ku band refers to the 11.7-12.2/14.0-14.5 GHz frequency bands. Intelsat is also authorized to operate in the extended Ku-frequency bands 10.95-11.2/11.45-11.7/12.5-12.75/13.75-14.0 GHz on certain satellites at certain orbital locations.

¹³ For example, numerous requests by Intelsat to relocate satellites in its fleet were granted to allow Intelsat to facilitate its fleet management operations. *See, e.g.*, Application of Intelsat LLC to Modify Authorization, to relocate INTELSAT 605 from 27.5° W.L. to 32.9° E.L., granted April 22, 2003; Application of Intelsat LLC to Modify Authorization to relocate INTELSAT 602 from 32.9° E.L. to 29.5° W.L., granted April 22, 2003.

¹⁴ Public Notice, Report No. SAT-00081, August 28, 2001.

¹⁵ *In the Matter of Intelsat LLC, Request for Extension of Time Under Section 621(5) of the ORBIT Act*, Memorandum Opinion and Order, FCC 01-288, 16 FCC Rcd 18185 (2001).

¹⁶ 47 U.S.C. § 763 (5)(A)(i).

which Intelsat must conduct an IPO, specifically, it “shall be conducted on or about December 31, 2003, except that the Commission may extend this deadline in consideration of market conditions and relevant business factors relating to the timing of an initial public offering, but such extensions shall not permit such offering to be conducted later than June 30, 2004.”¹⁷ To date, Intelsat LLC has not completed an IPO.

Inmarsat

- Inmarsat privatized on April 15, 1999, prior to enactment of the ORBIT Act. The 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.¹⁸
- In this decision, having found that Inmarsat had privatized in a manner consistent with the non-IPO requirements of the Act, the Commission granted Comsat Corporation; Stratos Mobile Networks, LLC; SITA Information Computing Canada, Inc.; Honeywell, Inc.; Marisat Communications Network, Inc.; and Deere & Company permanent authority to use Inmarsat for communications services to, from, or within the United States.¹⁹
- The ORBIT Act required Inmarsat to conduct an IPO no later than October 1, 2000. The Act permitted the Commission to extend this deadline to no later than December 31, 2001.²⁰ On October 3, 2000, the Commission granted a request for an extension of the IPO deadline to July 1, 2001, on the basis that Inmarsat had demonstrated the need to restructure the company and develop innovative services in order to make an IPO attractive to investors and to achieve the substantial dilution of shareholder ownership as required by the Act.²¹ In that decision, the Commission found that the ORBIT Act specifically provides for the authorization of Inmarsat services prior to Inmarsat’s conduct of an IPO, provided that other requirements of the ORBIT Act are satisfied.
- On April 5, 2001, Inmarsat filed for a second extension of its IPO deadline to December 31, 2001 based on unfavorable market conditions. On June 28, 2001, the Commission granted this request on finding that Inmarsat had made a sufficient showing of market conditions and relevant business factors relating to the timing of

¹⁷ Public Law No. 107-233 § 1, 116 Stat. 1480 (October 1, 2002).

¹⁸ *In the Matter of Comsat Corporation et. al.*, Memorandum Opinion, Order and Authorization, FCC 01-272, 16 FCC Rcd 21661 (2001) (“*Inmarsat ORBIT Act Compliance Order*”).

¹⁹ *See* 47 U.S.C. § 761(a), which precludes Commission authorization of additional services by Inmarsat until Inmarsat has privatized in accordance with the Act.

²⁰ 47 U.S.C. § 763 (5)(A)(ii).

²¹ *In the Matter of Inmarsat Ventures Ltd., Request for Extension of Time Under Section 621(5) of the ORBIT Act*, Memorandum Opinion and Order, FCC 00-356, 15 FCC Rcd 19740 (2000).

an IPO and had demonstrated diligence in preparing for an IPO since the First Extension Order, so as to warrant an extension.²²

- On November 13, 2001, Congress amended Clause (ii) of section 621(5)(A) of ORBIT Act, to further extend Inmarsat's IPO deadline to December 31, 2002. Congress also gave the Commission discretion to further extend this deadline to no later than June 30, 2003.²³
- On September 25, 2002, Inmarsat filed for a third extension of its IPO deadline to June 30, 2003 based on unfavorable market conditions. On December 17, 2002, the International Bureau granted this request on finding that Inmarsat had made a sufficient showing of market conditions and relevant business factors relating to the timing of an IPO, and had demonstrated continued diligence in preparing for a successful IPO so as to warrant an extension.²⁴ In that decision, the Commission also required that Inmarsat Ventures, PLC file with the Commission 30 days after conduct of its IPO a demonstration that the initial public offering is consistent with Sections 621(2) and 621(5)(A)(ii) of the ORBIT Act. The Commission will then determine whether Inmarsat achieved "substantial dilution." If the Commission determines that Inmarsat failed to conduct its IPO by June 30, 2003, or if "substantial dilution" is not achieved through an IPO or other means, the ORBIT Act directs the Commission to "limit through conditions or deny" any pending application or request and "limit or revoke previous authorizations" to use Inmarsat non-core services consistent with Section 601(b)(1).²⁵
- Inmarsat filed a Petition for Reconsideration in the Inmarsat ORBIT Act Compliance proceeding, relating to the Commission's requirement that investments by Inmarsat's officers and managers be placed in a blind trust, inasmuch as Inmarsat had not provided sufficient information to determine whether the financial interests were, in fact, *de minimis*.²⁶ In its Petition, Inmarsat requested that the Commission establish a *de minimis* standard of \$10,000 for holdings of officers and managers in former

²² *In the Matter of Inmarsat Ventures Ltd., Request for Extension of Time Under Section 621(5) of the ORBIT Act*, Memorandum Opinion and Order, FCC 01-193, 16 FCC Rcd 13494 (2001).

²³ Department of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act, 2002, Pub. L. No. 107-77, § 628, 115 Stat. 748, 804 (2001).

²⁴ *In the Matter of Inmarsat Ventures Ltd, Request for Extension of Time Under Section 651(5) of the ORBIT Act, ("Third Extension Order")*, DA 02-3489, 11 FCC Rcd 25283 (2002).

²⁵ Section 601(b)(1) of the Satellite Act of 1962, as amended by the ORBIT Act, 47 U.S.C. § 761(b)(1).

²⁶ The ORBIT Act placed restrictions on Inmarsat's officers, directors and managers. Section 621(5)(D) provides, in part, that Inmarsat shall: (ii) have no officers or managers who (I) are officers or managers of any signatories or former signatories, or (II) have any direct financial interest in or financial relationship to any signatories or former signatories, except that such interest may be managed through a blind trust or similar mechanism; (iii) have no directors, officers, or managers who hold such positions in any intergovernmental organization. The Commission required the investments for which Inmarsat had not provided information be placed in a blind trust pursuant to the Act. The Commission further stated that Inmarsat may subsequently provide the Commission with additional information on reconsideration which we may take into account in determining whether a blind trust is necessary for those investments.

Signatories for purposes of implementing the ORBIT Act.²⁷ On July 1, 2002, following a change in federal regulations establishing a \$15,000 *de minimis* level for federal employees, the Commission established a \$15,000 *de minimis* level for purposes of implementing the ORBIT Act. The Commission denied Inmarsat's request that stockholdings valued at \$10,000 or less prior to the date of our *Inmarsat ORBIT Compliance Order* be allowed to rise in value beyond the \$15,000 *de minimis* level, and required Inmarsat to notify the Commission of the arrangements made with respect to the two individuals who had stock holdings above this level (one holding approximately \$50,000 in stock and the other approximately \$100,000 in stock).²⁸

- In March 2003, the Commission authorized Richtec Incorporated to operate up to 10,000 half-duplex mobile earth terminals to distribute Inmarsat's D+ services, a low data rate, two-way, short messaging and tracking service in the United States market, with applications such as asset tracking and Supervisory Control and Data Acquisition.²⁹

New Skies Satellites

- New Skies is the Netherlands-based INTELSAT spin-off, created in 1998 as INTELSAT's first step toward privatization. On March 29, 2001, the Commission granted Permitted List conditions to remove secondary status requirements for certain New Skies satellites. This action enabled New Skies to provide satellite services to, from, and within the United States on a full-term basis.³⁰
- In an order released on May 28, 2002, the Commission added NSS-7, a satellite launched and operated by New Skies, to the "Permitted Space Station List" at the 21.5° W.L. (338.5° E.L.) orbital location.³¹ This action allowed all routinely licensed

²⁷ In the *Inmarsat ORBIT Act Compliance Order*, the Commission cited regulations by the Office of Government Ethics for conflict of interest law with an automatic \$5,000 *de minimis* exemption for securities.

²⁸ *In the Matter of Comsat Corporation, etc.* Order on reconsideration, FCC 02-200, 17 FCC Rcd 13179 (2002). Litigation Recovery Trust ("LRT") filed a Petition for Reconsideration directed at the Comsat applications that were granted in the *Inmarsat ORBIT Act Compliance Order*. In this Order, the LRT Petition was denied in all respects.

²⁹ *In the Matter of Richtec Incorporated, Application for Blanket License to Operate up to 10,000 Mobile Earth METs in the 1525-1544 MHz Frequency Bands (E020074)*, File Nos. SES-LIC-20020228-00442 and SES-AMD-20020611-00981, Order and Authorization, DA 03-639 (2003). See also ISP-PDR-20030422-00013 (petition for declaratory ruling concerning U.K. ownership), granted May 23, 2003 in Public Notice, DA 03-1814 (rel. May 29, 2003).

³⁰ See *In the Matter of New Skies Satellites, N.V., Petition for Declaratory Ruling*, Order, DA 01-513, 16 FCC Rcd 6740 (Sat. and Radiocomm. Div., 2001).

³¹ See *In the Matter of New Skies Satellites, N.V., Petition for Declaratory Ruling*, Order, DA 02-1256, 2002 WL 1050040 (F.C.C.) (Sat. and Radiocomm. Div., 2002).

“ALSAT” earth stations³² to provide fixed-satellite service (except direct-to-home service) using the NSS 7 satellite in the conventional C- and Ku-bands.³³

- On January 29, 2003, the Satellite Division of the International Bureau modified an earth station authorization held by New Skies Networks, Inc. (“NSN”) to access the NSS-8 satellite to be launched by New Skies Satellites N.V. at the 105° W.L. orbit location, with certain conditions.³⁴ The Division granted NSN authority to add the NSS-8 satellite as an additional point of communications for its 9.0-meter earth station complex in Bristow, Virginia, to provide FSS to, from, and within the United States in the conventional C-band.³⁵
- On October 29, 2002, New Skies announced a share buy-back program under which it would repurchase up to 10 percent of its then outstanding shares.³⁶ On November 1, 2002, PanAmSat filed an “Emergency Request for Inquiry into the Continuing Qualifications of New Skies to Access the U.S. Market.” On April 28, 2003, New Skies reported that it had completed the buy-back program and reacquired a total of 12,042,407 shares, and that over 11.6 million of those shares, or approximately 96% of the shares purchased, were purchased from former INTELSAT Signatories.³⁷ As of October 2000, 29.3% of New Skies shares were held by non-Signatories.³⁸ Through the buy-back program, New Skies purchased a higher percentage of shares

³² “ALSAT” means “all U.S.-licensed space stations.” Originally, under an ALSAT earth station license, an earth station operator providing fixed-satellite service in the conventional C- and Ku-bands could access any U.S. satellite without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations’ licenses. *See In the Matter of Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, First Order on Reconsideration, 15 FCC Rcd at 7210-11 (¶ 6), (1999). (“*DISCO II First Reconsideration Order*”) The *DISCO II First Reconsideration Order* expanded ALSAT earth station licenses to permit access to any satellite on the Permitted List. *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7215-16 (¶ 19).

³³ *See In the Matter of New Skies Satellites, N.V., Petition for Declaratory Ruling*, Order, DA 02-1256, 2002 WL 1050040 (F.C.C.) (Sat. and Radiocomm. Div, 2002) at 1.

³⁴ *In the Matter of New Skies Network, Inc. Application for Modification of Earth Station to Add NSS-8 at 105° W.L. as an Additional Point of Contact*, Order, DA-03-233, 18 FCC Rcd 896 (2003).

³⁵ On February 6, 2003, New Skies announced that, due to service continuity considerations, the NSS-8 is no longer planned for deployment to the 105° W.L. orbital location. Instead, it will be deployed to the 57° E.L. orbital location, where it will replace the NSS-703. *See New Skies Press Release, “New Skies to re-deploy NSS-8 satellite to satisfy growing demand in Indian Ocean region,”* The Hague, Netherlands, February 6, 2003, http://www.newskies.com/PBNews/NewsTemplateNew.asp?nContentID=16&cont_id=1355

³⁶ New Skies Press Release, “*New Skies Reports Third Quarter 2002 Earnings and Announces Share Buyback*,” The Hague, Netherlands, October 29, 2002, <http://www.newskies.com/pbnews/pdfs/PRQ32002.pdf>.

³⁷ Letter from Andrew R. D’Uva, Vice President & Associate General Counsel, New Skies Satellites N.V., to Secretary, Federal Communications Commission, dated April 28, 2003.

³⁸ *See In the Matter of New Skies Satellites, N.V. Request for Unconditional Authority to Access to the U.S. Market*, Memorandum Opinion and Order, FCC 01-107, 16 FCC Rcd 7482 (2001).

held by former Signatories than of shares held by the general public. New Skies stated that the repurchase program effectively increased the dilution achieved through the IPO.

Status of Comsat

- The ORBIT Act terminated the Communications Satellite Act of 1962's ownership restrictions on COMSAT Corporation ("Comsat"). As a result, Lockheed Martin and Comsat jointly filed an application with the Commission for transfer of control of Comsat's various licenses and authorizations. On July 31, 2000, the Commission found that Lockheed Martin's purchase of Comsat was in the public interest and authorized Comsat to assign its FCC licenses and authorizations to a wholly owned subsidiary of Lockheed Martin Corporation.³⁹
- On April 23, 2001, Comsat and Lockheed Martin jointly filed applications to assign four non-common carrier earth station licenses to Intelsat LLC and also filed an application to assign an Experimental License. These applications were placed on Public Notice on May 16, 2001.⁴⁰
- On December 18, 2001, the Commission granted the applications filed by Lockheed Martin Global Telecommunications, COMSAT Corporation, and COMSAT General Corporation, together with Telenor Satellite Services Holdings, Inc., Telenor Satellite, Inc., and Telenor Broadband Services AS, to assign certain Title II common carrier authorizations and Title III radio licenses held by COMSAT to Telenor Satellite, Inc ("Telenor").⁴¹ This proposed assignment was in connection with Telenor's proposed acquisition of Comsat Mobile Communications ("CMC"), a business unit of COMSAT Corporation. On January 11, 2002, Telenor completed its purchase of substantially all of the assets of CMC, and all of CMC's licenses and authorizations were transferred to Telenor pursuant to Commission authorization.⁴²
- On April 5, 2002, in connection with Intelsat's proposed acquisition of COMSAT World Systems and certain associated Comsat business enterprises from Lockheed Martin, Comsat filed applications to assign common carrier and non-common carrier

³⁹ See *In the Matter of Lockheed Martin Corporation, Comsat Government Systems, LLC, and Comsat Corporation, Applications for Transfer of Control of Comsat Corporation and Its Subsidiaries, Licenses of Various Satellite, Earth Station Private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214*, Order and Authorization, FCC 00-277, 15 FCC Rcd 22910 (2000), DA 00-1789, 15 FCC Rcd 23506 (erratum, Sat. and Radiocomm. Div., 2000); reconsideration den., 17 FCC Rcd 13160 (2002).

⁴⁰ Public Notice, Report No. SES-00288, May 16, 2001.

⁴¹ *In the Matter of 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, FCC 01-369, 16 FCC Rcd 22897 (2001), DA 02-266, 17 FCC Rcd 2147 (erratum, Int'l Bur. rel. Feb. 5, 2002).

⁴² See Public Notice, DA 02-357, February 14, 2002 (Public Notice inviting comments on Telenor Satellite Services Holdings, Inc. petition for declaratory ruling on inapplicability of cost accounting requirements).

earth station licenses, private land mobile radio licenses, and international section 214 authorizations to Intelsat. Comsat also filed applications seeking to modify the common carrier status of certain earth station facilities that it proposed to assign to Intelsat, requesting that the facilities be used to provide service on both a common carrier and non-common carrier basis. On October 25, 2002, the Commission granted these applications, finding that approval of the applications would serve the public interest, convenience, and necessity.⁴³

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.⁴⁴ Previously, the Commission decided in a rulemaking proceeding that Level 3 direct access is in the public interest.⁴⁵ The concept of direct access became moot with INTELSAT privatization on July 18, 2001, because Intelsat LLC, as a private company, does not have signatories.
- Prior to INTELSAT's privatization, the Commission implemented the requirement in Section 641(b) of the ORBIT Act that the Commission complete a rulemaking "to 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."⁴⁶ In September 2000, the Commission released a Report and Order requiring Comsat and direct access customers to negotiate commercial solutions if possible to ensure that sufficient opportunity is available for parties to negotiate commercial solutions.⁴⁷
- 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.⁴⁸ With INTELSAT's

⁴³ *In the Matter of Lockheed Martin Corporation, COMSAT Corporation, and COMSAT Digital Teleport, Inc., Assignors and Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLD and Intelsat USA License Corp. Assignees, Applications for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petition for Declaratory Ruling*, Order and Authorization, DA 02-2254, 17 FCC Rcd 27,732 (2002).

⁴⁴ 47 USCA § 765(a).

⁴⁵ *Direct Access to the INTELSAT System*, IB Docket No. 98-192, Report and Order, 15 FCC Rcd 15703 (1999). Level 3 direct access permits non-signatory users and service providers to enter into contractual agreements with INTELSAT for space segment capacity at the same rates that INTELSAT charges its Signatories without having to use a Signatory as a middleman.

⁴⁶ 47 USCA § 765(b).

⁴⁷ *Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, IB Docket No. 00-91, Report and Order, FCC 00-340, 15 FCC Rcd 19160 (2000).

⁴⁸ Public Notice, Report No. SPB-166, April 6, 2001.

privatization and Intelsat Ltd.'s⁴⁹ purchase of Comsat,⁵⁰ 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.⁵¹ 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."⁵² 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.⁵³ 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.⁵⁴ Recently, the Circuit Court of Appeals for the District of Columbia reviewed the Commission's decision and held that the Commission's actions to impose regulatory fees on Comsat were justified on the basis that the underlying policy of Section 9 of the Communications Act of 1934, favoring recovery of regulatory costs, gave the Commission good reason to require Comsat to bear "its proportionate share of (space station) fees."⁵⁵
- Post-privatization, Intelsat, as a U.S. licensee, has been fulfilling its obligations and paying the requisite regulatory fees as mandated in Section 9 of the Communications Act 1934.

⁴⁹ Intelsat Ltd. is a holding company for the several companies to which INTELSAT transferred substantially all of its operational assets and liabilities on privatization.

⁵⁰ 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.

⁵¹ *In the Matter of Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, IB Docket No. 00-91, FCC 02-316, 17 FCC Rcd 24242 (2002).

⁵² 47 U.S.C. § 765(a)[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.

⁵³ *In re Assessment and Collection of Regulatory Fees for Fiscal Year 2000* MD Docket No. 00-58, ¶ 17, FCC 00-117, 15 FCC Rcd 6533 (2000).

⁵⁴ *Id.*

⁵⁵ *See Comsat Corporation vs. FCC and PanAmSat Corp.*, 283 F.3d 344 (D.C. Cir. 2002).

B. Status of INTELSAT Privatization

Intelsat privatized and became a U.S. licensee, as of July 18, 2001. As part of its decision to privatize INTELSAT, the Assembly of Parties (comprised of the governments party to the Inmarsat Convention) retained a small residual intergovernmental organization known as ITSO, an acronym for the International Telecommunications Satellite Organization. ITSO, through a “Public Services Agreement” with Intelsat LLC, monitors the performance of the company’s public service obligations to: maintain global connectivity and global coverage, provide non-discriminatory access to the system, and honor the lifeline connectivity obligation (“LCO”) to certain customers (those customers in poor or underserved countries that have a high degree of dependence on Intelsat LLC).⁵⁶ Under these commitments, the privatized Intelsat LLC keeps capacity available to lifeline users at fixed pre-privatization costs for approximately 12 years, while the lifeline users are only committed for its capacity on a year-to-year basis at their option. ITSO has no operational or commercial role.

INTELSAT as Privatized

Upon privatization, substantially all of INTELSAT’s operational assets and liabilities were transferred to several companies within an affiliated group with a holding company structure. Intelsat, Ltd. is the holding company for all other companies in the group and is organized under the laws of Bermuda. It holds the United Kingdom authorizations for INTELSAT’s ITU registrations in the Ka-, BSS-, and V-bands.⁵⁷ Intelsat (Bermuda), Ltd. (“Intelsat Bermuda”), a wholly owned subsidiary of Intelsat, Ltd., is responsible for the oversight of satellite procurement and operational matters, including matters involving control of space and ground segment assets, from Bermuda. Intelsat Global Service Corporation, a wholly owned subsidiary of Intelsat Bermuda and organized as a Delaware corporation, provides technical, marketing, and business support services to Intelsat, Ltd. and its subsidiaries pursuant to intercompany contracts. These services include the day-to-day operation of the satellite network. Intelsat Holdings LLC, a Delaware limited liability company and also a wholly owned subsidiary of Intelsat Bermuda, functions only as a holding company for Intelsat LLC, a Delaware limited liability company that is the U.S. licensee for operation of existing and planned satellites in the C-band and Ku-band. All space segment assets operating in these bands have been transferred to Intelsat LLC. Intelsat LLC sells all of its space segment capacity to Intelsat Bermuda.⁵⁸ Intelsat Global Sales & Marketing Ltd. (“Intelsat U.K.”), a wholly owned subsidiary of Intelsat Bermuda organized under the laws of England and Wales, is the contracting party for most of Intelsat’s customer contracts. Going forward, Intelsat’s U.S. customers will contract with Intelsat USA Sales Corp., a wholly owned subsidiary of Intelsat U.K. and a Delaware corporation. Some of Intelsat’s U.S. customers have already transferred their existing customer service commitments to Intelsat USA Sales Corp. Most of the customer service commitments entered into by INTELSAT

⁵⁶ *INTELSAT Assembly of Parties Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting*, AP-25-3E FINAL W/11/00 ¶ 34 at 6-8 (Nov. 27, 2000) (“2000 Assembly Decision”).

⁵⁷ *In the Matter of Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that form a Global Communications System in Geostationary Orbit*, Intelsat LLC Supplemental Information, at 3 (August 17, 2001).

⁵⁸ *In the Matter of Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that form a Global Communications System in Geostationary Orbit*, Intelsat LLC Information Regarding Post-Privatization Distribution Arrangements at 2, note 6 (Mar. 16, 2001).

prior to the privatization were transferred to Intelsat U.K. pursuant to novation agreements. Intelsat U.K. buys space segment capacity from Intelsat Bermuda to serve existing and future customers. Customers are able to acquire Intelsat space segment capacity either through distributors or on a wholesale customer basis. The Intelsat holding company structure also includes regional support centers and field offices, which provide marketing and sales support and are located in various countries.

The companies have created fiduciary boards of directors. The companies do not maintain an immune or privileged status. The selection procedure for members of the board of directors of Intelsat, Ltd. has resulted in a board that is compliant with the ORBIT Act. The licensing companies have licenses through notifying administrations in countries (U.S. and U.K.) that have effective competition laws and have commitments under the WTO Agreement that include non-discriminatory access to their satellite markets.⁵⁹ These companies are subject to U.S. or U.K. licensing authorities and conduct satellite coordinations according to ITU procedures under the auspices of these authorities.

In January 2003, Intelsat completed its exchange offer for debt issued by the company, securing \$600 million in long term financing,⁶⁰ and is now subject to information reporting requirements of the Securities Exchange Act of 1934, as amended. Accordingly, Intelsat is required, as a foreign private issuer, to file with the U.S. Securities and Exchange Commission an annual report on Form 20-F within six months after the end of each fiscal year. Intelsat filed a Form 20-F on March 28, 2003.

The current deadline for Intelsat to conduct its IPO is December 31, 2003, unless the Commission extends the deadline until no later than June 30, 2004 based on the factors listed in section 621(5)(A)(i) of the ORBIT Act. On April 1, 2003, Intelsat filed a progress report.⁶¹ In the Progress Report, Intelsat noted that being subject to SEC information reporting requirements might facilitate the IPO when conditions improve, but that the market in general, and for fixed satellite services in particular, remains depressed and its financial advisors have continued to recommend that Intelsat delay moving forward with an IPO until market conditions are more favorable.

II. Views of INTELSAT Parties on Privatization

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

⁵⁹ *In the Matter of Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that form a Global Communications System in Geostationary Orbit*, Intelsat LLC Supplemental Information, at 3 (August 17, 2001).

⁶⁰ *Intelsat, Ltd., Form 6-K, Report of Foreign Private Issuer Pursuant to Rule 13a-16 or 15d-16 under the Securities Exchange Act of 1934, for the month of February 2003.*

⁶¹ *Progress Report, In the Matter of Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, File Nos. SAT-A/O 20000119-00001/18; SAT-AMD-20000119-00029/41; SAT-LOA-20000119-00019/28, filed April 1, 2003.

III. Views of Industry and Consumers on Privatization

Deere & Company, Inmarsat, Intelsat, Mobile Satellite Ventures Subsidiary, LLC (“MSV”), PanAmSat Corporation (“PanAmSat”), Stratos Mobile Networks, Inc. and Stratos Communications, Inc. (collectively “Stratos”) and Telenor responded to the Commission’s public notice inviting comments appropriate to the development of this report.

Intelsat Privatization Comments

Intelsat maintains that it is continuing to respond to market forces. Intelsat notes that it has acquired substantially all the assets of COMSAT World Systems (“CWS”) and certain associated COMSAT business enterprises, and that this transaction, through integration of its satellite facilities with CWS’s expertise, has allowed Intelsat to more efficiently compete with its integrated competitors. Intelsat also announced its intention to make a minority investment in WildBlue Communications, Inc., which plans to offer “two-way broadband services via satellite to individual consumers in the U.S.”⁶² Intelsat states that this will provide them with a strategic position in the North American retail broadband market. Intelsat also notes that it has announced a joint venture with Television Broadcasts Limited, through which Intelsat will own a 51% stake in Galaxy Satellite Broadcasting Limited. This joint venture will provide pay television service in Hong Kong. Intelsat states that its privatization has allowed Intelsat to provide new services and increase competition in the market.

PanAmSat argues that although privatized, Intelsat still maintains market access privileges it had enjoyed as an intergovernmental organization (“IGO”) in contravention of the ORBIT Act. PanAmSat maintains that Intelsat, while retaining market access, is generally exempt from certain authorization processes that other satellite operators find rigorous, expensive and time-consuming. PanAmSat notes that the General Accounting Office (“GAO”) had been asked to review two market access issues.⁶³ PanAmSat suggests that the Commission should continue to work with other agencies and non-U.S. regulators to increase overseas market access, including: (1) the promotion of transparent and non-discriminatory licensing procedures; (2) efforts to make non-U.S. regulators aware that exclusive access for Intelsat is no longer obligatory; and (3) encouragement of other regulators to provide access to more than one global satellite operator. PanAmSat also encourages U.S. Government participation in the work program of the ITU’s Development Sector (“ITU-D”) Study Group 1, provisionally titled “New Question on Satellite Regulation in Developing Countries.” While, as an example, PanAmSat claims that Intelsat has privileged market access in Mexico, PanAmSat also acknowledges recent successes in increasing market access in other countries, such as the decision by Jamaican regulators adopting pro-competitive regulatory policies.

In the Intelsat LLC *Licensing Order*, the Commission conditioned the authorizations granted to Intelsat LLC on, among other things, compliance with the ORBIT Act restrictions on exclusive arrangements for the provision of satellite services between the United States and other

⁶² *Application for Authority to Transfer Control of Wildblue Communications, Inc. Request for Designation as Permit-But-Disclose Proceeding*, Exhibit A, p. 2, December 26, 2002.

⁶³ In November 2002, the GAO was asked to review U.S. Department of Defense commercial satellite procurement practices. In February 2003, the GAO was asked to determine whether Intelsat currently enjoys competitive advantages over its competitors in terms of whether access by U.S. companies to foreign markets has improved and whether Intelsat’s tax status as a Bermuda company gives it an advantage over U.S. satellite operators.

countries.⁶⁴ We found in the INTELSAT *ORBIT Act Compliance Order* that the INTELSAT privatization would not violate this restriction and said we would enforce it in the future on a case-by-case basis as facts may require.⁶⁵ While no specific case has been presented for enforcement action at this time, we agree with PanAmSat that market entry is fundamental to achieving and maintaining competition in satellite communications. The Commission therefore will continue to work with the U.S. government agencies that have the primary responsibility for ensuring equitable access by U.S. operators to markets overseas. We believe that PanAmSat's specific proposals are beyond the scope of this Report and should be considered in an inter-agency context.

Inmarsat Privatization Comments

In its comments, Inmarsat provides further details on the status of its IPO. Inmarsat notes that in the three years since ORBIT was enacted, Inmarsat had prepared for an IPO five times, and each time was advised that, due to prevailing financial market conditions, the IPO would not be successful. Inmarsat also states that, even though it has not been able to conduct an IPO, there has been a reduction in the shares owned by former Signatories, such that entities that were not former Signatories now own about 16% of the Inmarsat shares.⁶⁶ In addition, Inmarsat notes that 60% of Inmarsat's shares are owned by companies that are not controlled by their governments. This 60% consists of 38% of the shares that are owned by companies with no government ownership and 22% of the shares that are owned by companies with some government ownership, but not controlled by their governments.

Inmarsat, Telenor, Deere and Stratos maintain that Inmarsat's privatization and the October 9, 2001 Commission decision to open the domestic U.S. market to Inmarsat services, have resulted in the expansion of service choices and opportunities for U.S. customers. Specifically, Telenor discusses its ability to offer customers a range of high-speed data services in maritime, land mobile, and aeronautical markets. Telenor notes its recently introduced Regional Broadband Global Area Network ("R-BGAN") service and the financial incentives provided to users of the analog Inmarsat service to convert to the digital "Fleet" services and thereby use spectrum more efficiently.

Deere discusses its ability, through access to Inmarsat Ltd. non-core services via receive-only VSAT terminals, to provide a high level of positioning accuracy for its GreenStar® precision farming applications, which Deere maintains has produced substantial efficiencies in agriculture in the U.S. and abroad.

⁶⁴ *Intelsat Licensing Order* at ¶¶ 27-28.

⁶⁵ *In the Matter of the 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*, Memorandum Opinion Order and Authorization, at ¶¶ 57-62, FCC 01-183, 16 FCC Rcd 12299-12300 (2001) (File Nos. SAT A/O-20000119-00002 to SAT A/O-20000119-00018; SAT-AMD-20000119-00029 to SAT-AMD-20000119-00041; SAT-LOA-20000119-00019 to SAT-LOA-20000119-00028) ("*Intelsat LLC ORBIT Compliance Order*")

⁶⁶ Lockheed Martin acquired COMSAT Corporation, but sold some Inmarsat shares to Telenor, a former Signatory. Lockheed Martin now holds just under 12% of Inmarsat. In December 2001, Telecom Italia sold its Inmarsat shares, just over 2% of Inmarsat, to Genesis Sechste Verwaltungsgesellschaft GmbH, now Mirror International GmbH, an investment vehicle for Lehman Brothers. Comments of Inmarsat Ventures PLC, p. 3.

Stratos, a distributor of mobile satellite services offered by Inmarsat, MSV, and Iridium, maintains that the ORBIT Act and related Commission decisions have contributed to growth in the marketplace for satellite communications and increased jobs in the United States. Stratos also maintains that privatization of Inmarsat and authorization for Stratos to access Inmarsat has increased the availability of high-speed MSS data services through lap-top-size mobile terminals.

MSV, the successor to Motient Services, Inc., formerly known as AMSC Subsidiary Corporation, and also the successor to TMI Communications and Company Limited Partnership with respect to L-band MSS in the United States, maintains that Inmarsat acts in an anticompetitive manner through its use of proprietary protocols and technology, and by failing to expeditiously replace the spectrum-inefficient Inmarsat-A terminals. MSV also notes that Inmarsat has not yet completed its IPO and is seeking either an extension of its IPO deadline or elimination of the IPO deadline. MSV states that Inmarsat is still owned by foreign government post, telephone and telegraph (“PTT”) administrations, and that the disclosures required by a public company would provide a safeguard against anticompetitive and anti-consumer conduct. MSV also repeats its comments in several ongoing Commission proceedings. MSV requests that Inmarsat only be given relief from its ORBIT Act obligations if it: “(i) cooperates in providing MSV with stable access to sufficient spectrum for a competing system; (ii) shares its intellectual property on reasonable terms, sufficient to permit MSV to provide competitive service to Inmarsat customers; and (iii) ceases opposition to reasonable deployment of ancillary terrestrial facilities in the L-band.”⁶⁷

In response, Inmarsat maintains that it is not still owned “in large part” by foreign PTTs, and that Inmarsat is required by the International Maritime Organization to give ship owners five years’ notice to phase out the spectrum-inefficient Inmarsat-A terminals, but that Inmarsat and its distributors offered financial incentives to encourage users to upgrade to more spectrum-efficient services.⁶⁸ In its comments, Inmarsat states that there are a handful of countries where Inmarsat shareholders do not allow competition with the local incumbent operators, but that the policies appear to be designed to protect the local incumbent operator, not Inmarsat.⁶⁹

The issue of obtaining sufficient spectrum for MSV is being addressed in continuing annual L-Band coordination meetings, including MSV, Inmarsat and others. In an earlier proceeding, the Commission found that the Motient request for access to proprietary technical information was based on a commercial dispute as to the value of the information sought and the terms and conditions under which it would be provided. The Commission declined to resolve the dispute in that proceeding.⁷⁰ Ancillary terrestrial facilities have been addressed in another Commission proceeding.⁷¹ The Commission will continue to work with the U.S. government agencies that have the primary responsibility for ensuring equitable access by U.S. operators to markets overseas.

⁶⁷ MSV Comments, p. 15.

⁶⁸ Inmarsat Reply Comments, pp. 1-3.

⁶⁹ Inmarsat Comments, p. 4.

⁷⁰ *Inmarsat ORBIT Compliance Order* at ¶ 76.

⁷¹ *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, IB Docket No. 01-185, *Review of the Spectrum Sharing Plan among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*, IB Docket No. 02-364, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962, FCC 03-15 (2003).

Copies of the comments are attached.

IV. Impact of Privatization

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

INTELSAT's privatization was designed to allow Intelsat LLC to continue to operate and provide services in a manner that meets U.S. commercial and governmental (including national security) needs. Privatization has enabled Intelsat to compete freely for all U.S. satellite business opportunities, thereby allowing it to explore new and dynamic services to better serve the public. This positively impacts the global marketplace for communications services, ensuring increased competition and more access. The United States retains under its jurisdiction a company with valuable satellite assets and associated orbital locations. Furthermore, the location of the service and licensing companies in the United States contribute to jobs and productivity increases in the United States.

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

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

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

Finally, both Inmarsat's and INTELSAT's privatization have placed a priority on continued provision of service to all portions of the globe. Inmarsat committed to support global maritime distress and safety services ("GMDSS") and the INTELSAT Assembly of Parties determined that Intelsat LLC should be contractually bound under a Public Service Agreement with the International Telecommunications Satellite Organization to ensure continued global connectivity -- particularly to countries dependent on Intelsat LLC's satellite services.

V. Summary

The Commission has undertaken a number of proceedings required by or related to the ORBIT Act. The Commission will continue to implement and enforce the requirements of the ORBIT Act. On the whole, we believe that U.S. policy goals regarding the promotion of a fully competitive global market for satellite communications services are being met in accordance with the Act. The Commission will continue to inform Congress of the actions it takes to implement the requirements of the ORBIT Act and the impact of those actions in its next annual report.

Enclosures: Comments received in response to the Commission's Public Notice.