

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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|--------------------------------------|---|---------------------|
| In the Matter of                     | ) |                     |
|                                      | ) |                     |
| Intelsat, Ltd.                       | ) | IB Docket No. 05-18 |
|                                      | ) |                     |
| Petition for Declaratory Ruling that | ) |                     |
| Intelsat, Ltd. Complies With Section | ) |                     |
| 621(5)(F) of the ORBIT Act           | ) |                     |

**MEMORANDUM OPINION AND ORDER**

**Adopted:** April 8, 2005

**Released:** April 15, 2005

By the Commission:

**I. INTRODUCTION**

1. In this Order, we find that Intelsat, Ltd. (“Intelsat”) is in compliance with the Certification it submitted to the Commission<sup>1</sup> pursuant to Section 621(5)(F) of the ORBIT Act,<sup>2</sup> and it therefore need not comply with the criteria of Section 621(5)(A) and (B) of the ORBIT Act (which required that an initial public offering (“IPO”) be conducted and that securities be publicly listed).<sup>3</sup> The Commission has previously found that Intelsat has met its obligations to achieve a pro-competitive privatization under other criteria specified in Sections 621 and 622 of the ORBIT Act.<sup>4</sup> In this Order, we also find that the provisions relating to additional services under Section 602 of the ORBIT Act are no longer applicable to Intelsat,<sup>5</sup> and that the effective date for purposes of Section 645(4) of the ORBIT Act is the effective date

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<sup>1</sup> Petition for Declaratory Ruling that Intelsat, Ltd. Complies With Section 621(5)(F) of the ORBIT Act and attached Certification of Intelsat, Ltd., filed Dec. 23, 2004, and Supplemental Submissions updating Certification, filed Jan. 14, 2005 and Feb. 9, 2005, File No. SAT-PDR-20041228-00231, IB Docket No. 05-18.

<sup>2</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 (2004). The ORBIT Act amended the Satellite Communications Act of 1962, 47 U.S.C. § 701 *et seq.* (Satellite Act) and is *codified at* 47 U.S.C. § 761 *et seq.* For the sake of convenience, in this Order, the term “ORBIT Act” and the citations to statutory section numbers refer to the Satellite Act, as amended by the ORBIT Act. The term “ORBIT Act, as amended” refers to the provisions added by the most recent amendment to the ORBIT Act, Pub. L. No. 108-371, 118 Stat. 1752 (2004), signed into law on October 25, 2004, adding new subsections (F) and (G) to Section 621(5), which provide an alternative method for compliance with the privatization requirements of Section 621(5) of the ORBIT Act. *See*, ORBIT Act, as amended, §§ 621(5)(F) and (G).

<sup>3</sup> ORBIT Act, §§ 621(5)(A) and (B).

<sup>4</sup> ORBIT Act, §§ 621 and 622. *See also*, *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, FCC 01-183, 16 FCC Red 12280 (2001) (“*Intelsat LLC ORBIT Act Compliance Order*”). Herein reference to the *Intelsat LLC ORBIT Act Compliance Order* is by paragraph number.

<sup>5</sup> ORBIT Act, §§ 602(a) and (b). Under the ORBIT Act, the term “additional services” means “for INTELSAT, direct-to-home (DTH) or direct broadcast satellite (DBS) video services, or services in the Ka or V bands.” ORBIT Act, § 681(a)(12)(B).

of this order.<sup>6</sup>

## II. BACKGROUND

2. In March 2000, Congress passed the ORBIT Act, to “promote competition in the provision of satellite communications services” through the pro-competitive privatization of former intergovernmental organizations (“IGOs”), INTELSAT and Inmarsat.<sup>7</sup> The ORBIT Act requires among other things, that the Commission make a determination as to whether INTELSAT’s privatization is pro-competitive and specifies the criteria that the Commission is to use for making this determination. The ORBIT Act sets out detailed criteria in Sections 621 and 622, which sets a standard to ensure a pro-competitive environment in the telecommunications markets of the United States. The criteria includes privatization from an IGO to a non-IGO status within a specified timeframe;<sup>8</sup> conducting an IPO of securities that achieves substantial dilution of the aggregate ownership of former Signatories of INTELSAT after privatization;<sup>9</sup> termination of privileges and immunities that INTELSAT had as an IGO;<sup>10</sup> incorporation in a country that is a Signatory to the World Trade Organization (“WTO”) Basic Telecommunications Agreement and that has effective laws and regulations that secure competition in telecommunications services;<sup>11</sup> conversion to a stock corporation with a fiduciary board of directors;<sup>12</sup> limitations on interlocking officers, directors, or employees shared with any IGO or any Signatory or former Signatory of INTELSAT;<sup>13</sup> and an arms-length relationship between and among INTELSAT and any separated entities or Inmarsat.<sup>14</sup> A recent amendment to Section 621(5) of the ORBIT Act also added as an alternative to conducting an IPO and public securities listing, a certification process that permits Intelsat to certify, and the Commission to determine, that certain financial and control interests by Signatories and former Signatories, and certain ownership interests by IGOs, no longer exist in Intelsat.<sup>15</sup> Until Intelsat is privatized in accordance with the requirements of the ORBIT Act, the ORBIT Act states that Intelsat “shall not be permitted to provide additional services” and the “United States shall oppose and decline to facilitate applications by [Intelsat] for new orbital locations to provide such services.”<sup>16</sup>

3. On August 8, 2000, the Commission released the *Intelsat LLC Licensing Order*<sup>17</sup> authorizing Intelsat LLC to operate INTELSAT’s existing and planned C- and Ku-band satellites as a U.S. licensee

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<sup>6</sup> ORBIT Act, § 645(4).

<sup>7</sup> International Telecommunications Satellite Organization (“INTELSAT”) and the International Maritime Satellite Organization (“Inmarsat”) were originally intergovernmental organizations created by international agreements as a result of early initiatives to develop space technology.

<sup>8</sup> ORBIT Act, § 621(1)(A).

<sup>9</sup> ORBIT Act, §§ 621(2) and 621(5)(A).

<sup>10</sup> ORBIT Act, § 621(3).

<sup>11</sup> ORBIT Act, § 621(7).

<sup>12</sup> ORBIT Act, § 621(5)(D).

<sup>13</sup> ORBIT Act, § 621(5)(C).

<sup>14</sup> ORBIT Act, § 621(5)(E).

<sup>15</sup> ORBIT Act, as amended, §§ 621(5)(F) and (G).

<sup>16</sup> ORBIT Act, §§ 602(a) and (b).

<sup>17</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*, Memorandum Opinion Order and Authorization, FCC 00-287, 15 FCC Rcd 15460 (2000), *Recon. denied*, FCC 00-437, 15 FCC Rcd 25234 (2000). Herein reference to the *Intelsat LLC Licensing Order* is by paragraph number.

upon privatization of INTELSAT.<sup>18</sup> The Commission's authorization was to become effective upon the date of privatization – then targeted for April 1, 2001 – and was conditioned upon a further Commission finding that INTELSAT had actually privatized by transferring its satellites and associated assets to Intelsat LLC and transferring its ITU network filings related to its C- and Ku-band satellites to the national registry of the United States.<sup>19</sup> The Commission's grant of licensing authority to Intelsat LLC was taken prior to INTELSAT's privatization recognizing that INTELSAT had to resolve a variety of issues and make requisite decisions in order to privatize under the timeframe required by the ORBIT Act.<sup>20</sup> The Commission concluded that acting on Intelsat's request for licensing authority prior to INTELSAT undertaking its privatization would provide INTELSAT's September 2000 Board of Governors and November 2000 Assembly of Parties an opportunity to fully consider the United States as a licensing jurisdiction.<sup>21</sup> The Commission required INTELSAT to supplement its applications following the November 2000 Assembly of Parties to provide the full details of INTELSAT's privatization and further conditioned the grant of its authorizations on INTELSAT privatizing in a manner consistent with Sections 621 and 622 of the ORBIT Act.<sup>22</sup>

4. In May 2001, as detailed in the *Intelsat LLC ORBIT Act Compliance Order*,<sup>23</sup> the Commission completed its review and evaluation of privatization plans submitted by INTELSAT, and determined that as a whole, INTELSAT's privatization plans were consistent with the non-IPO

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<sup>18</sup> In the *Intelsat LLC Licensing Order*, the Commission reviewed Intelsat's applications regarding its proposed operation of INTELSAT's existing and planned C-band and Ku-band satellites in the United States. For purposes of review in that proceeding, C-band encompassed the 3.420-4.200 GHz and 5.850-6.650 GHz frequency bands; and the Ku-band encompassed the 10.950-11.200 GHz, 11.450-12.200 GHz, 12.500-12.750 GHz, and 13.750-14.500 GHz frequency bands. In referring to the C-band and Ku-band in the United States, the frequency bands 3.700-4.200 GHz, 5.925-6.425 GHz, 11.7-12.2 GHz, and 14.0-14.5 GHz are considered the "conventional" C-band and Ku-band. The remaining frequency bands, 3.420-3.700 GHz, 5.850-5.925 GHz, 6.425-6.650 GHz, 10.95-11.20 GHz, 11.45-11.70 GHz, and 13.75-14.00 GHz, are considered the "extended" C-band and Ku-band and are either not allocated or are shared with other services in the United States, including the Federal Government, and subject to special conditions when used for the fixed-satellite service ("FSS"). The Commission's decision in the *Intelsat LLC Licensing Order* specified the licensing requirements under which Intelsat could operate in the United States. See, *Intelsat LLC Licensing Order* at paras. 149-162, 166-172.

<sup>19</sup> *Intelsat LLC Licensing Order* at paras. 2, 158, 160. The C- and Ku-band orbital locations/frequency registrations were to be transferred to the United States; the Ka-, V-, and BSS-band orbital locations/frequency registrations were to be transferred to the United Kingdom.

<sup>20</sup> At the time, INTELSAT was a 143-member intergovernmental organization created by international agreement. See, Agreement Relating to the International Telecommunications Satellite Organization, "INTELSAT," 23 U.S.T. 3813; TIAS No. 7532, (February 12, 1973) (INTELSAT Agreement). See also, Operating Agreement Relating to the International Telecommunications Satellite Organization, "INTELSAT," 23 U.S.T. 4091, (August 20, 1971) (INTELSAT Operating Agreement). INTELSAT's two-tier governance structure consisted of: (1) an Assembly of Parties, comprised of representatives from all 143-national governments, who determined overall policy and long-term objectives of INTELSAT consistent with the underlying INTELSAT Agreement; and (2) a Board of Governors, comprised of Signatories, or investors in the system, that made commercial decisions. Comsat was the U.S. Signatory to the INTELSAT Operating Agreement and a member of the Board of Governors. See, *Intelsat LLC Licensing Order* at paras. 5-7, and Appendix B.

<sup>21</sup> *Intelsat LLC Licensing Order* at paras. 34-38, 158. The 25<sup>th</sup> Assembly of Parties met in Washington, D.C. from November 13-17, 2000, the INTELSAT Board of Governors convened from December 5-8, 2000, and the Distribution Strategy Drafting Group met from December 11-14, 2000. The decisions taken at these meetings, along with reports from the 30<sup>th</sup> and 31<sup>st</sup> Meeting of Signatories (AP-25-14 and AP-25-15 and its Corrigendum) on review of reports of the Penang Working Party (AP-25-7) and Board of Governors (AP-25-10 and its Addendum No.1) presented extensive details on the plan for privatization of INTELSAT.

<sup>22</sup> *Intelsat LLC Licensing Order* at paras. 36, 38, 160 and 161.

<sup>23</sup> See *supra*, note 4.

privatization criteria in Sections 621 and 622 of the ORBIT Act. Thus, the Commission found that under Section 601 of the ORBIT Act, use of space segment operated by Intelsat Ltd. and Intelsat LLC for services to, from, or within the United States would not harm competition in the telecommunications market of the United States.<sup>24</sup> The Commission authorized the licensing authority granted to Intelsat LLC to become effective upon INTELSAT implementing its privatization by July 18, 2001,<sup>25</sup> and conditioned Intelsat Ltd.'s authorizations on a future finding that Intelsat Ltd. had conducted an IPO consistent with Sections 621(2) and 621(5)(A) of the ORBIT Act.<sup>26</sup>

5. On July 18, 2001, Intelsat privatized, issuing shares of Intelsat Ltd. to former INTELSAT Signatories and non-Signatory investing entities in proportion to their March 2001 investment shares in INTELSAT.<sup>27</sup> At that time, the authorizations issued to Intelsat Ltd.'s U.S. subsidiary, Intelsat LLC, by the Commission became effective, allowing Intelsat to provide C- and Ku-band services in the United States.<sup>28</sup> Intelsat, however, remained subject to the ORBIT Act's requirements that Intelsat Ltd. conduct an IPO.<sup>29</sup> Under the ORBIT Act's original deadline, Intelsat was required to conduct an IPO by October 1, 2001, unless, based on market conditions and relevant business factors, the Commission extended the deadline to no later than December 31, 2002.<sup>30</sup> The deadlines for Intelsat to conduct an IPO have been extended several times by Congress and the Commission.<sup>31</sup> The most recent extension provides that

<sup>24</sup> *Intelsat LLC ORBIT Act Compliance Order* at paras. 71 and 73. Also, ORBIT Act, §§ 601(a) and (b).

<sup>25</sup> Although the ORBIT Act specified April 1, 2001 as the date for INTELSAT's privatization, the Commission found that the ORBIT Act's 'consistent with' standard permitted a degree of flexibility to consider timing issues associated with administrative processes of the various governmental bodies, as well as U.S. international policies and commitments. *Intelsat LLC ORBIT Act Compliance Order* at paras. 52-56. At that time, INTELSAT was also required to transfer its C- and Ku-band satellites and associated assets to Intelsat LLC and transfer INTELSAT's ITU network filings, for the locations associated with the operations of these satellites, on a permanent basis to the United States national registry. *Id.* at paras. 72, 74.

<sup>26</sup> *Intelsat LLC ORBIT Act Compliance Order* at para. 76. The Commission found that under Section 601(b)(1)(D) it had discretion to authorize Intelsat LLC services prior to Intelsat, Ltd. conducting an IPO of securities under the timeframe provided in the Act. *Id.* at para. 24.

<sup>27</sup> INTELSAT privatized at 7:59:59 PM EDT, on July 18, 2001. See, *FCC Report to Congress as Required by the ORBIT Act* (rel. June 15, 2000) at 3. At the time, foreign government-owned Signatories accounted for approximately 30 percent of INTELSAT's total ownership, distributed among 80 Signatories. The remaining 70 percent ownership was held by 63 private Signatories. In addition, approximately 91 percent of the shares were owned by entities from WTO Member countries, including the United States, and approximately nine percent of the shares were owned by entities from non-WTO Member countries. See, *Intelsat LLC ORBIT Act Compliance Order* at para. 26; *Intelsat LLC Licensing Order* at paras. 44, 45.

<sup>28</sup> Currently, five Intelsat licensees hold Commission licenses: (1) Intelsat LLC (Title III satellite and earth station licenses, certain experimental earth station authorizations and private land mobile radio licenses); (2) Intelsat North America LLC (Title III space station licenses); (3) Intelsat USA License Corp. (Title II international common carrier authorizations); (4) Intelsat General Corporation (Title II international common carrier authorizations); and (5) Intelsat MTC LLC (Title II international common carrier authorization and Title III earth station authorizations).

<sup>29</sup> ORBIT Act, §§ 621(2) and (5)(A). See also, *Intelsat LLC ORBIT Act Compliance Order* at paras. 26-27, 71, 76.

<sup>30</sup> ORBIT Act, § 621(5)(A)(i).

<sup>31</sup> The Commission extended the October 1, 2001 deadline to December 31, 2002. *Intelsat LLC Request for Extension of Time Under Section 621(5) of the ORBIT Act*, Memorandum Opinion and Order, 16 FCC Rcd 18185 (2001). On October 1, 2002, the first amendment to Section 621(5)(A)(i) was signed into law and established a new IPO deadline for Intelsat as December 31, 2003, but provided the Commission with discretion to extend this deadline, in consideration of market conditions and relevant business factors relating to the timing of an IPO, to no later than June 30, 2004. See, Pub. L. No. 107-233, 116 Stat. 1480 (2002). The Commission extended the December 31, 2003 deadline to June 30, 2004. *Intelsat LLC Request for Extension of Time Under Section 621(5) of the ORBIT Act*, Memorandum Opinion and Order, DA 03-4023, 18 FCC Rcd 26290 (2003).

Intelsat must conduct its IPO by June 30, 2005, unless the Commission extends the deadline to no later than December 31, 2005.<sup>32</sup>

6. 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 IPO requirements under Sections 621(5)(A) and (B).<sup>33</sup> Generally, the amendment provides that Intelsat may be deemed a national corporation and may forgo an IPO and public securities listing and still achieve the purposes of Section 621(5), if it certifies to the Commission that certain financial, control and ownership requirements have been met with respect to interests of Signatories, former Signatories and IGOs, and if the Commission, after notice and comment, determines that Intelsat is in compliance with such Certification.<sup>34</sup>

7. On December 22, 2004, the Commission authorized the transfer of control of Intelsat's licenses and authorizations to Zeus Holdings Limited ("Zeus"), a private equity group, organized under Bermuda law, which would acquire 100 percent of the equity and voting interests of Intelsat ("Zeus/Intelsat Transaction").<sup>35</sup> Zeus is wholly owned by 20 entities (collectively, the "Investing Funds"), which are ultimately controlled by the following four private equity fund groups, with each fund group holding 25 percent of the shares of Zeus: (1) Apax Excelsior VI and Apax Europe V (together, "Apax"); (2) Apollo V ("Apollo"); (3) Madison Dearborn ("MDP"); and (4) Permira Europe III ("Permira") (collectively, the "Private Equity Funds.") Two of the Private Equity Funds (Apollo and MDP) ultimately are controlled by U.S. citizens and the other two (Apax and Permira) ultimately are controlled by citizens of the United States and other WTO Members.<sup>36</sup>

8. On December 23, 2004, Intelsat filed the Petition for Declaratory Ruling and Certification pursuant to Section 621(5)(F) of the ORBIT Act at issue in this proceeding. On January 14, 2005, the Commission placed Intelsat's Petition for Declaratory Ruling and Certification on public notice.<sup>37</sup> On January 28, 2005, Intelsat informed the Commission that the Zeus/Intelsat Transaction, as provided for in the *Zeus/Intelsat Order and Authorization*, had been consummated.<sup>38</sup> On February 3, 2005, Intelsat filed applications for a *pro forma* transfer of control seeking to insert a new Bermuda holding company in the

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<sup>32</sup> The second amendment to Section 621(5)(A)(i) was signed into law on May 18, 2004, and extended the IPO deadline for Intelsat until June 30, 2005, unless the Commission extends the deadline, in consideration of market conditions and relevant business factors, to no later than December 31, 2005. See, Pub. L. No. 108-228, 118 Stat. 644 (2004).

<sup>33</sup> ORBIT Act, as amended, §§ 621(5)(F) and (G).

<sup>34</sup> ORBIT Act, as amended, § 621(5)(F).

<sup>35</sup> The Commission approved the proposed transfer of control of Intelsat's Title II and Title III licenses and authorizations to Zeus Holdings Limited. See, *Intelsat, Ltd., Transferor, and Zeus Holdings Limited, Transferee, Consolidated Application for Consent to Transfer Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling under Sections 310 of the Communications Act of 1934, as amended*, Order and Authorization, IB Docket No. 04-366, DA 04-4034, 19 FCC Rcd 24820 (Int'l Bur., Wireless Tele. Bur., OET, 2004) ("Zeus/Intelsat Order and Authorization"). Herein reference to the *Zeus/Intelsat Order and Authorization* is by paragraph number. See also, Erratum, IB Docket No. 04-366, rel. Jan 28, 2005; Satellite Communications Services Information, Actions Taken, Public Notice, Report No. SES-00682, Feb. 2, 2005.

<sup>36</sup> *Zeus/Intelsat Order and Authorization* at para. 6 and Appendix B.

<sup>37</sup> Intelsat, Ltd. Files Petition for Declaratory Ruling and Certification Pursuant to Section 621(5)(F) of the Open-Market Reorganization for the Betterment of International Telecommunications Act, as amended, Public Notice, DA 05-88, IB Docket No. 05-18 (rel. Jan. 14, 2005).

<sup>38</sup> Letter from Counsel for Intelsat LLC and Intelsat North America LLC, to Secretary, FCC, IB Docket No. 04-366, dated Jan. 28, 2005; Letter from Counsel for Zeus Holdings Limited to Secretary, FCC, IB Docket No. 04-366, dated Jan. 28, 2005.

vertical ownership chain of Intelsat's U.S. licensees.<sup>39</sup> On February 9, 2005, Intelsat filed an updated Certification in this proceeding to reflect the consummation of the Zeus/Intelsat Transaction.<sup>40</sup> On February 23, 2005, the Commission approved Intelsat's proposed *pro forma* transfer of control.<sup>41</sup>

9. Northrop Grumman Space & Mission Systems Corporation and Lockheed Martin Corporation filed comments in support of a finding that Intelsat is in compliance with its Certification under Section 621(5)(F) of the ORBIT Act.<sup>42</sup> Comments were also filed by the representative of certain Intelsat Retirees opposing Intelsat's Certification on grounds that Intelsat, Ltd. has not completed the transition to privatization as it continues to use the immunity accorded to pre-privatized Intelsat as a defense against claims brought against Intelsat.<sup>43</sup> Intelsat filed an opposition against the filing made on behalf of the Intelsat Retirees.<sup>44</sup> Below we review the assertions made by Intelsat in its Certification under Section 621(5)(F) of the ORBIT Act. We also address the arguments raised by the Intelsat Retirees and Intelsat's opposition thereto. As discussed, we determine that Intelsat is in compliance with its Certification.

### III. DISCUSSION

10. The recent amendment to Section 621(5) of the ORBIT Act, provides the following:

(F) Notwithstanding subparagraphs (A) and (B), a successor entity may be deemed a national corporation and may forgo an initial public offering and public securities listing and still achieve the purposes of this section if –

(i) the successor entity certifies to the Commission that –

(I) the successor entity has achieved substantial dilution of the aggregate amount of signatory or former signatory financial interest in such entity;

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<sup>39</sup> An internal restructuring was proposed that contemplated the insertion of a new holding company for the purpose of securing certain financing through a debt issuance of new Senior Discount Notes due 2015. As the creation of the new holding company resulted in no change in ultimate ownership or control of the Intelsat's U.S. licensees, the request for approval was properly filed as a *pro forma* transfer of control application. See, IB File Nos. SAT-T/C-20050203-00022, SAT-T/C-20050203-00023, SES-T/C-20050203-00137, SES-T/C-20050203-00138, SES-T/C-20050203-00139, SES-T/C-20050203-00140, SES-T/C-20050203-00141 and OET File No. 0005-EX-TU-2005, and WTB File No. 0002034757. On February 17, 2005, pursuant to Section 1.65 of Commission rules, Intelsat filed updates to these applications to indicate a change in the slate of officers and directors of Zeus and certain of its subsidiaries. Letter from Counsel for Intelsat, LLC, to Secretary, FCC, Feb. 17, 2005.

<sup>40</sup> Letter from Counsel to Intelsat, Ltd. to Secretary, FCC, attaching updated Certification of Intelsat, Ltd., Feb. 9, 2005, File No. SAT-PDR-20041228-00231, IB Docket No. 05-18 ("*February 9 Kullman Certification*"). See also, *supra*, note 1.

<sup>41</sup> The Commission determined that as proposed, the insertion of the new Bermuda holding company, Intelsat Subsidiary Holding Company, Ltd., into the vertical ownership chain of the U.S. Intelsat licensees was a non-substantial *pro forma* change and did not change the control and ownership structure approved in the *Zeus/Intelsat Order and Authorization*. See, e.g., *Intelsat, Ltd.*, File No. ISP-PDR-20050203-00004, Public Notice, International Authorizations Granted, Report No. TEL-00884, DA 05-479 (Int'l Bur., Feb. 24, 2005).

<sup>42</sup> Comments of Northrop Grumman Space & Mission Corporation, IB Docket No. 05-18, filed Feb. 3, 2005. Comments of Lockheed Martin Corporation, IB Docket No. 05-18, filed Feb. 14, 2005.

<sup>43</sup> Statement and Attachments filed by Larry Postol on behalf of Intelsat Retirees, IB Docket No. 05-18, filed Feb. 14, 2005 ("*Intelsat Retirees*").

<sup>44</sup> Intelsat, Ltd. Response to Submission of Larry Postol, IB Docket No. 05-18, filed February 28, 2005 ("*Intelsat Response*").

- (II) any signatories and former signatories that retain a financial interest in such successor entity do not possess, together or individually, effective control of such successor entity; and
  - (III) no intergovernmental organization has any ownership interest in a successor entity of INTELSAT;
- (ii) the successor entity provides such financial and other information to the Commission as the Commission may require to verify such certification.
  - (iii) the Commission determines, after notice and comment, that the successor entity is in compliance with such certification
- (G) For purposes of subparagraph (F), the term ‘substantial dilution’ means that a majority of the financial interests in the successor entity is no longer held or controlled, directly or indirectly, by signatories or former signatories.<sup>45</sup>

11. Intelsat’s Certification, executed on February 8, 2005, by Conny L. Kullman, the Chief Executive Officer of Intelsat, Ltd., certifies to the financial, control, and ownership interests held in Intelsat as required under Section 621(5)(F)(i), stating under penalty of perjury, that the information provided in the Certification and the Petition for Declaratory Ruling is true and correct.<sup>46</sup>

12. Specifically, Intelsat’s Certification, as required under Section 621(5)(F)(i)(I), states that “Intelsat has achieved substantial dilution of the aggregate amount of former signatory financial interest in Intelsat.”<sup>47</sup> Intelsat further certifies, as required under Section 621(5)(F)(i)(II), that “[a]ny signatories or former signatories that retain a financial interest in Intelsat do not possess, together or individually, effective control of Intelsat.”<sup>48</sup> These provisions concern the continued financial interests in, and continued control over, the privatized Intelsat by Signatories and former Signatories of INTELSAT.<sup>49</sup> Intelsat also certifies, as required under Section 621(5)(F)(i)(III), that “[n]o intergovernmental organization has any ownership interest in a successor entity of Intelsat.”<sup>50</sup> This provision concerns the nature of any IGO ownership interests in Intelsat.

13. Through its Petition for Declaratory Ruling and the record developed in the Zeus/Intelsat Transaction proceeding, Intelsat requests that the Commission determine that Intelsat is in compliance with the Certification it filed pursuant to Section 621(5)(F) of the ORBIT Act.<sup>51</sup> In the Zeus/Intelsat proceeding, Intelsat provided information about the ownership structure of Intelsat prior to and after the

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<sup>45</sup> ORBIT Act, as amended, §§ 621(5)(F) and (G).

<sup>46</sup> *February 9 Kullman Certification*.

<sup>47</sup> *February 9 Kullman Certification* at (i).

<sup>48</sup> *February 9 Kullman Certification* at (ii).

<sup>49</sup> In its Petition for Declaratory Ruling, Intelsat states that upon consummation of the Zeus/Intelsat Transaction, all existing Signatory or former Signatory *financial* interest in all Intelsat entities will be eliminated (Petition for Declaratory Ruling at 3); and that upon closing of the Zeus/Intelsat Transaction, the existing *ownership* interest of former Signatories in Intelsat, Ltd. will be eliminated (Petition for Declaratory Ruling at n.12). *See also, February 9 Kullman Certification* at (iv) (“I have read the foregoing Petition for Declaratory Ruling that Intelsat, Ltd. Complies with Section 621(5)(F) of the ORBIT Act. The representations contained therein are true and correct.”)

<sup>50</sup> *February 9 Kullman Certification* at (iii).

<sup>51</sup> *Intelsat Petition* at 2, 4, and 5. *See also Zeus/Intelsat Order and Authorization*, para. 33 and n. 96 (Zeus acquired all interests held by former Signatories).

merger transaction with Zeus.<sup>52</sup> Prior to the Zeus/Intelsat Transaction, the majority of ordinary shares in Intelsat Ltd. were under Signatory ownership.<sup>53</sup> Under the two-phase Zeus/Intelsat Transaction, approved in the *Zeus/Intelsat Order and Authorization*,<sup>54</sup> 100 percent of the outstanding shares in Intelsat Ltd. were ultimately acquired by Zeus, thus eliminating the existing ownership interest of former Signatories in Intelsat, Ltd.<sup>55</sup> As a result, upon consummation of this transaction, each of the four Private Equity Funds, which each hold 25 percent of the equity interest in Zeus, indirectly owns 25 percent of the equity interest in Intelsat, Ltd.<sup>56</sup>

14. The record in the Zeus/Intelsat Transaction proceeding, and the Commission's decision in *Zeus/Intelsat Order and Authorization*, provide information as to the identification of the four Private Equity Funds, Intelsat's new owners.<sup>57</sup> In addition, the board of directors of Zeus consists of an equal number of appointees from each of the Private Equity Funds so that none of the Private Equity Funds has *de facto* control.<sup>58</sup> The Commission relied on this information in making its decision to approve the Zeus/Intelsat Transaction, and Intelsat consummated the transaction, as approved by the Commission, on January 28, 2005.<sup>59</sup> Following consummation of the transaction, Intelsat states that all existing Signatory or former Signatory financial interests in all Intelsat entities have been eliminated and certifies to this

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<sup>52</sup> The record in IB Docket No. 04-366 has been incorporated into this proceeding as directed in Public Notice, DA 05-88, Jan. 14, 2005, at 2. Detailed information concerning (then proposed) new ownership interests in Intelsat is set forth in (1) the Intelsat/Zeus Consolidated Application for Consent to Transfers of Control of the Holders of Title II and Title III Authorizations, Sept. 3, 2004 ("Consolidated Application"); (2) Erratum to the Consolidated Application, including a replacement application, Sept. 10, 2004; (3) Letters from Counsel for Applicants Zeus Holdings Limited and Intelsat, Ltd. to Secretary, FCC, IB Docket No. 04-366, dated Nov. 6, 2004 ("*Nov. 6 Letter*"), Nov. 30, 2004 ("*Nov. 30 Letter*"), and Dec. 9, 2004 ("*Dec. 9 Letter*"). We also rely on public data as well as information provided in other Commission proceedings for purposes of verifying Intelsat's Certification.

<sup>53</sup> According to Intelsat, in August 2004, at the time of the announcement of the sale of Intelsat to Zeus, ownership interest of former Signatories was 76.6%. Intelsat Petition for Declaratory Ruling at p. 5, n. 12.

<sup>54</sup> *Zeus/Intelsat Order and Authorization* at paras. 12 and 13.

<sup>55</sup> Intelsat Petition for Declaratory Ruling at pp. 3, 5, and n. 12.

<sup>56</sup> See *e.g.*, Consolidated Application, Attachment 3 and *Nov. 6 Letter* at pp. 6-11, explaining the ownership and control structure of the Private Equity Funds. See also, *Zeus/Intelsat Order and Authorization* at paras. 6-10; Appendix B, para. 4, and Part III.

<sup>57</sup> As generally described in the Consolidated Application, Zeus is wholly owned by 20 Investing Funds (including domestic, Cayman Islands, German, Guernsey, and United Kingdom limited partnerships, a Guernsey corporation, Dutch partnerships, and a Guernsey employee investment plan) ultimately controlled by the four Private Equity Funds, Apax, Apollo, MDP, and Permira. See, Consolidated Application at 2. See also, *Nov. 6 Letter* at pp. 6-11, and *Zeus/Intelsat Order and Authorization* at paras. 6-10, 16-27, and Appendix B.

<sup>58</sup> As noted in the *Zeus/Intelsat Order and Authorization*: the board of directors of Zeus was to consist of four individuals elected by the affirmative vote of three-fourths of the votes of all issued and outstanding shares of Zeus entitled to vote on the election of directors; each private equity fund had the right to appoint one board member; and all approvals or actions of Zeus would require approval by three of the four directors, with the exception of any act that treats any one of the Investing Funds differently from the treatment of the other Investing Funds, which would require the approval of the differently-treated Investing Fund. See *Zeus/Intelsat Order and Authorization* at para. 13. As shown in a subsequent *pro forma* transfer of control application there was a change in the number of directors from four to nine; each of the four Private Equity Funds now appoints two members to the board, and one of the directors is from Zeus. This change did not result in a change of ownership or control of Intelsat. See, *supra*, notes 39 and 41.

<sup>59</sup> See, *supra*, note 38. We note that the *pro forma* transfer of control applications filed by Intelsat on February 3, 2005, and granted by the Commission on February 23, 2005, did not involve a change in the ultimate ownership and control of Intelsat, as approved by the Commission in its *Zeus/Intelsat Order and Authorization*. See, *supra*, notes 39 and 41.



result.<sup>60</sup> Accordingly, based on the record in this proceeding and information provided in the Zeus/Intelsat Transaction proceeding, we find that no former Signatory has control over the voting interest held by any investing fund<sup>61</sup> and that Intelsat has achieved substantial dilution of the aggregate amount of former Signatory financial interest in Intelsat.<sup>62</sup> Thus, we find that Intelsat is in compliance with its Certification made pursuant to Sections 621(5)(F)(i)(I) and (II) of the ORBIT Act.

15. In the *Intelsat LLC ORBIT Act Compliance Order*, we found that the International Telecommunications Satellite Organization (“ITSO”), a residual IGO created in 2000 to monitor Intelsat’s provision of services to lifeline countries under a “public service” agreement between INTELSAT and the residual IGO, retained no ownership interest in Intelsat.<sup>63</sup> Based on the record in this proceeding and information provided in the Zeus/Intelsat Transaction proceeding, we find that there has been no change in ITSO’s status with respect to its ownership relationship with Intelsat and that no other IGO has any ownership in Intelsat. Accordingly, we find that Intelsat is in compliance with its Certification made pursuant to Section 621(5)(F)(i)(III) of the ORBIT Act.

16. We next turn to the concerns raised by the Intelsat Retirees. The Intelsat Retirees argue that it is improper for Intelsat to claim in this proceeding that it has completed privatization while at the same time claiming treaty immunity as a public international organization in a pending court proceeding.<sup>64</sup> The Intelsat Retirees also argue that, as alleged in the pending class action suit, Intelsat has failed to provide vested health benefits to certain Retirees as required by INTELSAT Board Resolutions in March and April 2001, a condition of the transfer of INTELSAT to the private entity. Until the vested health benefits

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<sup>60</sup> Intelsat Petition for Declaratory Ruling at p. 3; and *February 9 Kullman Certification* at (i), (ii) and (iv). See also *Zeus/Intelsat Order and Authorization*, para. 33 and n. 96 (Zeus acquired all interests held by former Signatories).

<sup>61</sup> Our finding that no former Signatory has control over the voting interest held by any investing fund is supported by the record in the Intelsat/Zeus Transaction. That record established that none of the four Private Equity Funds itself is controlled by any principal or group of principals, except that two U.S. citizens control the Apollo fund. See, *Zeus/Intelsat Order and Authorization* at Appendix B para. 26 and n. 85 (two Apollo principals that are the members, managers, and shareholders of Apollo Advisors V (EH), LLC and AIF V Management Inc. are U.S. citizens); see also *id.* at Appendix C (ownership charts). The principals who ultimately hold the voting rights of each of the four Private Equity Funds are citizens or the estate planning vehicles of citizens of the United States or other WTO Member countries. *Id.* at Appendix C. See also, *Nov. 6 Letter* at pp. 6-11.

<sup>62</sup> The ORBIT Act defines “substantial dilution” for purposes of Section 621(5)(F) to mean that a majority of the financial interests in the successor entity (*i.e.*, INTELSAT) is no longer held or controlled, directly or indirectly, by signatories or former signatories. See, ORBIT Act § 621(5)(G). In the *Zeus/Intelsat Order and Authorization* we examined the foreign equity and voting interests that would be held by and through the 20 Investing Funds, which were ultimately controlled by the principals of the four Private Equity Funds, which collectively owned 100 percent of Zeus. See, *Zeus/Intelsat Order and Authorization* at Appendix B, para. 4. Based on our review and findings in the Zeus/Intelsat proceeding, we conclude for purposes of this proceeding, that any financial or equity interest held by existing Signatories or former Signatories in INTELSAT by the new owners of Intelsat has been substantially diluted as defined under Section 621(5)(G) of the ORBIT Act. See, ORBIT Act § 621(5)(G); and *Zeus/Intelsat Order and Authorization* at Appendix B, paras. 6-40. In addition, we note that in this proceeding, Intelsat claims that all existing Signatory or former Signatory financial interest in all Intelsat entities was eliminated upon consummation of the transaction approved by the Commission in the *Zeus/Intelsat Order and Authorization*. See Petition for Declaratory Ruling at p. 3 and *February 9 Kullman Certification* at (iv).

<sup>63</sup> *Intelsat LLC ORBIT Act Compliance Order* at para. 28. Rather, ITSO has a supervisory role to ensure that Intelsat honors its commitments to maintain global connectivity and coverage and provide satellite capacity to lifeline countries under the public services agreement. See, INTELSAT Assembly of Parties, Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting, 13-17 Nov. 2000, AP-25-3E FINAL W/11/00.

<sup>64</sup> See, Statement on behalf of Intelsat Retirees, *supra*, note 43. The attachments filed on behalf of the Intelsat Retirees included pleadings pending before the United States District Court for the District of Columbia, Civil Action No. 1:04CV01618 (D.D.C. filed Sept. 20, 2004) (“*Acosta v. Intelsat Global Service Corp.*”).

are provided, the Intelsat Retirees claim Intelsat has not completed the transition to privatization.<sup>65</sup> Intelsat replies that the Retirees' submission concerns a matter unrelated to Intelsat's Petition for Declaratory Ruling and Certification and improperly attempts to draw the Commission into an alleged private breach of contract dispute pending before a U.S. district court.<sup>66</sup>

17. In the *Intelsat LLC ORBIT Act Compliance Order*, the Commission reviewed Intelsat's privatization plan and found that, consistent with the requirements under Section 621(3) of the ORBIT Act, neither Intelsat Ltd., Intelsat LLC nor any other Intelsat subsidiary have privileges and immunities of the type accorded to the former IGO (INTELSAT).<sup>67</sup> The Commission found that the privatized Intelsat and its subsidiaries would be organized under national laws and subject to the requirements and regulations in which they operate including tax and legal liability.<sup>68</sup> Thus, in granting Intelsat licensing authority, the Commission was satisfied that the privileges and immunities had been terminated consistent with the requirements of the ORBIT Act.<sup>69</sup> Intelsat remains under a continuing obligation to comply with Section 621(3) of the ORBIT Act under the terms of its license.<sup>70</sup> Our review in this proceeding, however, concerns the evaluation of Intelsat's Certification pursuant to Section 621(5)(F) of the ORBIT Act and whether Intelsat has achieved a substantial dilution of Signatory and former Signatory financial interest and control, and whether all IGO ownership interest in Intelsat has been eliminated. As discussed above, we have found that the record in this proceeding, along with the record in the Zeus/Intelsat Transaction proceeding, supports such a finding. The arguments raised by the Intelsat Retirees as to matters alleged in the pending class action case do not provide a basis for finding that Intelsat has not complied with its Certification under Section 621(5)(F).

#### IV. CONCLUSION

18. Based on the above, we conclude that Intelsat has complied with Section 621(5)(F) of the ORBIT Act, and as such, may forego an IPO and public securities listing as required under Section 621(5)(A) and (B).<sup>71</sup> Thus, we remove from Intelsat's licensing authority, conditions that require Intelsat to conduct an IPO consistent with Sections 621(2) and 621(5)(A) of the ORBIT Act.<sup>72</sup> Further, given our

<sup>65</sup> See, Statement on behalf of Intelsat Retirees, *supra*, note 43.

<sup>66</sup> *Intelsat Response* at 1.

<sup>67</sup> *Intelsat LLC ORBIT Act Compliance Order* at para. 29. Section 621(3) of the ORBIT Act provides: TERMINATION OF PRIVILEGES AND IMMUNITIES. – The preferential treatment of INTELSAT and Inmarsat shall not be extended to any successor entity or separated entity of INTELSAT or Inmarsat. 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, ORBIT Act § 621(3).

<sup>68</sup> *Intelsat LLC ORBIT Act Compliance Order* at para. 29 (“Intelsat LLC will operate in the U.S. market subject to the same laws that apply to U.S. satellite service providers. It will have no immune treatment from the INTELSAT Agreement that provides for the creation of ITSO.”)

<sup>69</sup> *Intelsat LLC ORBIT Act Compliance Order* at para. 31.

<sup>70</sup> The Commission conditioned Intelsat's licenses in 2000 on privatization in a manner consistent with Section 621 and 622 of the ORBIT Act. *Intelsat LLC Licensing Order* at para. 160. It conditioned its findings in the 2001 *Intelsat LLC ORBIT Act Compliance Order* on compliance with the terms and conditions of the *Intelsat LLC Licensing Order*. See, *Intelsat LLC ORBIT Act Compliance Order* at para. 75.

<sup>71</sup> ORBIT Act, as amended, § 621(5)(F).

<sup>72</sup> *Intelsat LLC ORBIT Act Compliance Order* at paras. 71, 76.

findings in this Order, along with our previous findings in the *Intelsat LLC ORBIT Act Compliance Order* that Intelsat's privatization is consistent with the non-IPO provisions of ORBIT Act,<sup>73</sup> we find that Intelsat has met the criteria set forth under Sections 621 and 622 of the ORBIT Act for the purpose of satisfying the Certification requirement. Consequently, we find that Section 602, which prohibits Intelsat from providing additional services and requires the United States to decline and oppose new orbital locations for provision of such services until Intelsat meets the privatization requirements of the ORBIT Act, is no longer applicable.<sup>74</sup>

## V. ORDERING CLAUSES

19. Accordingly, it is DETERMINED THAT Intelsat, Ltd's Certification COMPLIES WITH Section 621(5)(F) and (G) of the Open-Market Reorganization for the Betterment of International Communications Act, as amended. ORBIT Act §§ 621(5)(F) and 621(5)(G).

20. Accordingly, it is FURTHER DETERMINED THAT by this action, and consistent with the provisions of the Open-Market Reorganization for the Betterment of International Communications Act, as amended, Intelsat, Ltd. may forgo the requirement that it hold an initial public offering of securities as set forth in Sections 621(2) and 621(5)(A) and a public listing of securities as set forth in Section 621(5)(B). ORBIT Act §§ 621(2), 621(5)(A), 621(5)(B), 621(5)(F), and 621(5)(G).

21. Accordingly, it is FURTHER DETERMINED THAT by this action, and consistent with the provisions of the Open-Market Reorganization for the Betterment of International Communications Act, as amended, Intelsat, Ltd. IS NO LONGER SUBJECT TO the provisions under Section 602, which prohibited Intelsat, Ltd. from providing additional services and required the United States to oppose and decline to facilitate applications for new orbital locations to provide such services. ORBIT Act §§ 602(a), 602(b).

22. Accordingly, it is FURTHER DETERMINED THAT by this action, and consistent with the provisions of the Open-Market Reorganization for the Betterment of International Communications Act, as amended, the conditions on Intelsat Ltd.'s licenses and authorizations prohibiting Intelsat Ltd. from providing additional services, defined as direct-to-home (DTH) or direct broadcast satellite (DBS) video services, or services in the Ka or V bands, IS HEREBY REMOVED. ORBIT Act §§ 602(a), 681(a)(12)(B).

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<sup>73</sup> *Intelsat LLC ORBIT Act Compliance Order* at paras. 71-73, 76.

<sup>74</sup> ORBIT Act, §§ 602(a) and (b).

23. Accordingly, it is FURTHER DETERMINED THAT by this action, and consistent with the provisions of the Open-Market Reorganization for the Betterment of International Communications Act, as amended, the condition on Intelsat Ltd.'s licenses and authorizations that require a Commission finding that Intelsat has fully complied with the privatization requirements under Section 621 of the ORBIT Act by either conducting an initial public offering in accordance with Sections 621(2) and 621(5)(A)(i) or by making a certification to the Commission pursuant to Section 621(F) that the Commission has determined is in compliance with the certification requirements of Section 621(F) of the ORBIT Act, IS HEREBY REMOVED. ORBIT Act §§ 621(2), 621(5)(A)(i), 621(F).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary