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

In the Matter of	)	
	)	
Expanding Flexible Use of the 3.7 to 4.2 GHz Band	)	GN Docket No. 18-122
	)	

Petition for Clarification and/or Reconsideration

Patrick Masambu
Director General and Chief Executive Officer
International Telecommunications Satellite Organization
4400 Jenifer Street, NW
Suite #332
Washington, D.C. 20015
(202) 243-5096

Counsel for ITSO:

Stephen L. Goodman
Stephen L. Goodman, PLLC
532 North Pitt Street
Alexandria, VA 22314
(202) 607-6756
stephenlgoodman@aol.com

Dated: May 26, 2020

SUMMARY

The International Telecommunications Satellite Organization ("ITSO") seeks clarification and/or reconsideration of the *C-Band Order*. The Commission and ITSO share an important goal in this proceeding – seeking to end the digital divide. And both the Commission and ITSO believe that satellite services can play an important role in that process. Thus, the Commission intends its decision not to adversely affect the provision of C-Band satellite services within the contiguous United States, or outside the United States. Unfortunately, however, there are several respects in which the *C-Band Order* could adversely affect international satellite services, and thereby potentially harm the Common Heritage and inhibit Intelsat's ability to adhere to the Core Principles. In accepting its designation as a Notifying Administration under the ITSO Agreement, the United States has assumed a heightened responsibility with regard to protection of those Common Heritage orbital locations and frequency assignments.

The *C-Band Order* will directly affect international satellite services by limiting international gateway services in the lower portion of the band to four, to-be-designated TT&C sites, and only on a secondary basis. The *C-Band Order* may also indirectly impact international satellite services customers that presently enjoy the benefit of Intelsat's obligation to adhere to the Core Principles. The process of "grooming" could place Intelsat customers onto other satellite service providers' systems or move customers onto other non-Common Heritage Intelsat satellites, and in both cases those customers would lose the protections of Intelsat's obligation to adhere to the Core Principles. In addition, the *C-Band Order* contemplates Intelsat launching multiple replacement satellites, and the design of those satellites and their location could adversely affect international satellite services customers outside the United States.

Although clearly the potential exists for harmful impacts outside the contiguous United States, this is not inevitable if proper safeguards are established that will avoid adversely affecting international satellite services and Intelsat's ability to adhere to the Core Principles. That will depend in many respects on how the transition proceeds, which in turn will hinge on how Intelsat implements the transition, and the guidance the Commission provides. There are steps the Commission can take now to reduce the risk of adverse consequences for international satellite services, and ITSO has an important role to play in that process, too. The Commission can help ensure that ITSO has the resources and information necessary to assess and make recommendations regarding Intelsat's transition plans so that Intelsat's ability to adhere to the Core Principles is not compromised.

Specifically, ITSO seeks the following relief in this Petition for Clarification and/or Reconsideration. First and foremost, ITSO requests that the Commission re-affirm that support for the Core Principles remains the policy of the United States and the Commission, along with re-affirming the Unites States' support for ITSO's supervision of Intelsat's adherence to the Core Principles. Second, ITSO requests that the Commission reconsider the determination in the *C-Band Order* to only permit international gateway services at the four to-be-designated sites on a secondary basis. Third, ITSO requests that the Commission clarify that the "reasonable costs" of the transition that will be reimbursed by the terrestrial licensees will include the reasonable costs of mitigating the impact of the reallocation of the C-band spectrum on international services that

are affected directly or indirectly by the transition. In particular, in order to ensure that ITSO has sufficient resources to perform its oversight role, the Commission should clarify, or determine on reconsideration, that the "soft costs" that can be recovered from the terrestrial licensees would include the reasonable costs ITSO will incur in overseeing Intelsat during the transition to ensure that Intelsat can and will continue to adhere to the Core Principles. In addition, the Commission should make clear that Intelsat needs to timely provide ITSO with sufficient information to conduct its oversight on an ongoing basis, rather than relegating ITSO to simply reviewing the publicly-available transition plans.

Fourth, ITSO requests that the Commission clarify, or determine on reconsideration, that any new satellites acquired by Intelsat pursuant to the transition should be designed and located so as not to degrade the capabilities to fully support satellite services outside as well as inside the contiguous United States consistent with the Core Principles, and that the costs of including such capabilities into Intelsat's satellites are considered fully reimbursable relocation payments. ITSO also requests that the Commission, as appropriate, affix the Common Heritage conditions to any of these orbital locations to which replacement satellites are to be launched. Fifth, ITSO requests that the Commission clarify, or determine on reconsideration, that any "customer grooming" cannot disadvantage Intelsat's customers by involuntarily requiring them to be shifted to any non-Common Heritage satellites. Turning finally to the subject of the incentive payments that Intelsat would be eligible to earn by clearing the 300 MHz of C-band spectrum by specified timeframes, ITSO submits that some portion of that compensation should be made available for the benefit of the ITSO Parties.

TABLE OF CONTENTS

The Commission and ITSO Share Important Goals in this Proceeding 2

The Commission's Decision in this Proceeding Could Adversely Affect Intelsat's Ability to Adhere to the Core Principles and ITSO's Ability to Ensure That the Core Principles Are Being Satisfied 5

The Commission Should Take Steps to Avoid These Harmful Effects on International Satellite Services 12

Requested Relief 15

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

In the Matter of	)	
	)	
Expanding Flexible Use of the 3.7 to 4.2 GHz Band	)	GN Docket No. 18-122
	)	

Petition for Clarification and/or Reconsideration

The International Telecommunications Satellite Organization ("ITSO"), pursuant to Section 1.429 of the Commission's Rules, hereby seeks clarification and/or reconsideration of the Commission's decision to reallocate portions of the C-Band downlink spectrum from satellite usage to terrestrial usage.[1] As explained below, if not properly implemented, interpreted or applied, the Commission's decision to reallocate the C-Band spectrum could adversely affect Intelsat's ability to utilize the ITSO Parties' "Common Heritage,"[2] in meeting its Public Service Obligations to which Intelsat committed as part of the privatization restructuring,[3] as well as

---

[1] *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, FCC 20-22, 35 FCC Rcd 2343 (released March 3, 2020), 85 Fed Red 22804 (April 23, 2020) (hereafter cites as "*C-Band Order*").

[2] *See, Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC and PEOP PAS LLC, Transferors, and Intelsat Holdings, Ltd., Transferee, Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp*., 21 FCC Rcd 7368 (2006) at n. 166:

> The ITSO Agreement defines "common heritage" as 'those frequency assignments associated with orbital locations in the process of advanced publication, coordination or registered on behalf of the Parties with the International Telecommunications Union ("ITU") in accordance with the provision set forth in the ITU's Radio Regulations which are transferred to a Party or Parties pursuant to Article XII.' ITSO Agreement, Art. I(l).

[3] *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*, 15 FCC Rcd 15460 (2000) at ¶ 3.

ITSO's discharge of its supervisory responsibilities over Intelsat to assure that those Public Service Obligations are being met. ITSO thus requests that the Commission clarify and/or reconsider portions of the *C-Band Order* to protect these important principles.

The Commission and ITSO Share Important Goals in this Proceeding

ITSO acknowledges that the Commission in this proceeding is exercising its authority to allocate additional spectrum for terrestrial services in order to facilitate the deployment of 5G services, and thereby foster enhanced access to broadband services and reduce the digital divide.[4] At the same time, the Commission recognizes the importance of satellite services presently provided in the C-band, and thus sought to structure the C-band reallocation in a way that would minimize degradation of these valuable satellite services.[5] The Commission thus intends its decision not to adversely affect the provision of C-Band satellite services within the contiguous United States.[6] Moreover, the Commission recognizes the heightened importance of C-Band satellite systems in remote areas, and thus attempted to design its reallocation decision so as not to adversely affect satellite services outside the contiguous United States.[7]

---

[4] *C-Band Order* at ¶¶ 1-6.

[5] *E.g.*, *C-Band Order* at ¶ 161 ("FSS operations in the C-band are critical to the delivery of television and radio programming, as well as many other services, for tens of millions of Americans, and it is in the public interest to ensure that these services are not disrupted.").

[6] *E.g.*, *C-Band Order* at ¶¶ 136-144.

[7] *E.g.*, *C-Band Order* at ¶ 132:

> Commenters argue, and we agree, that the Commission should exclude locations outside of the contiguous United States from the license modification. Locations outside of the contiguous United States, many of which are remote, have a greater need for a wide variety of C-band services, particularly for the provision of services necessary for the protection of life and property—including telehealth, E911, and education services.

ITSO shares the Commission's goal of fostering the deployment of robust satellite services in order to expand connectivity and reduce the digital divide. Indeed, that is at the core of ITSO's primary mission – to ensure that Intelsat fully satisfies its Public Service Obligations as manifested by the three "Core Principles" set forth in the ITSO Agreement:

- Maintain global connectivity and global coverage;
- Serve lifeline connectivity customers; and
- Provide non-discriminatory access to the Intelsat system for the provision of present and future services.[8]

As the Commission observed when it approved the planned restructuring and privatization of INTELSAT in 2000:

> Both the 1999 Assembly and the [Penang Working Party] also determined that lifeline users and connectivity must be protected through the creation of a residual intergovernmental organization that would ensure such connectivity to countries satisfying certain criteria. . . .This commitment would be contained in an intergovernmental agreement creating the IGO and implemented through a "public services" agreement between the company and the residual IGO. This arrangement reflects the underlying agreement among INTELSAT Parties to privatize INTELSAT – INTELSAT's satellites and other assets and personnel necessary to operate the satellites will be transferred to a private company that no longer has privileges and immunities and is subject to a national licensing authority, as long as that company assures continued services to lifeline users under the "core principles." The United States supported creation of a residual IGO for this purpose.[9]

---

[8] ITSO observes that Intelsat recently filed for bankruptcy protection under Chapter 11, https://cases.stretto.com/intelsat. However, the Public Services Agreement and the Core Principals will continue to apply to Intelsat-as-debtor-in possession, because it is a "successor" to Intelsat. Likewise, whatever entity succeeds to Intelsat after the bankruptcy proceeding will also be bound by the Public Services Agreement and the Core Principles with respect to satellites utilizing the ITSO Parties' Common Heritage assignments. *Petition of ITSO under Section 316 of the Communications Act, as Amended, Order of Modification*, 23 FCC Rcd 2764 (2008), at n. 26. For the sake of brevity, however, ITSO in this pleading will refer to Intelsat, but any such references would include Intelsat's successors and assigns.

[9] *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*, 15 FCC Rcd 15460 (2000) at ¶ 26 (citations omitted).

Those principles are as important today as they were in 2000. ITSO thus seeks clarification and/or reconsideration of the *C-Band Order*, not because it disagrees with the Commission's desired outcome, but instead so that common goals that ITSO and the Commission share can best be achieved. And achieving these shared goals serves the public interest, as the Commission itself acknowledged in an earlier decision imposing a condition in Intelsat's "Common Heritage" licenses requiring that satellites deployed at those orbital locations may only be licensed to an entity that has entered into a public services agreement with ITSO:

> Because the license modifications proposed by the State Letter would result in fuller compliance with the provisions of an international agreement to which the United States is a party and fulfillment of U.S. foreign policy objectives, we find that such modifications will serve the public interest, convenience, and necessity.[10]

Moreover, in accepting its designation as a Notifying Administration under the ITSO Agreement, the United States has assumed a heightened responsibility with regard to protection of those Common Heritage orbital locations and frequency assignments.[11] Indeed, as the United States and the United Kingdom expressly acknowledged in a joint contribution to AP-32, "the United

---

[10] *Petition of ITSO under Section 316 of the Communications Act, as Amended, Order of Modification*, 23 FCC Rcd 2764 (2008), at ¶ 5.

[11] *Ibid*. at ¶ 7. As the Commission acknowledges in that paragraph (footnote 24), the United States taking on the added responsibility as the Notifying Administration is also consistent with statutory instructions:

> Section 644(b) of Public Law 106-180, the Open-Market Reorganization for the Betterment of International Telecommunications Act (the ORBIT Act), 47 U.S.C. § 765c(b), which sought to ensure a pro-competitive privatization of INTELSAT, expressed the intent of Congress that "The President and the Commission shall take the action necessary to ensure that the United States remains the [International Telecommunication Union] notifying administration for the privatized INTELSAT's existing and future orbital slot registrations."

States and United Kingdom owe an obligation as Notifying Administrations to the ITSO Parties to administer the transferred frequency assignments and orbital locations for the benefit of those Parties in accord with the provisions of the ITSO Agreement."[12]

The Commission's Decision in this Proceeding Could Adversely Affect Intelsat's Ability to Adhere to the Core Principles and ITSO's Ability to Ensure That the Core Principles Are Being Satisfied

ITSO filed Reply Comments and a letter in this proceeding raising concerns that the Commission's proposal to reallocate spectrum in the 3.7-4.2 GHz band could adversely affect the Common Heritage and Intelsat's ability to meet the Core Principles.[13] In response, the Commission added a footnote to the *C-Band Order* ostensibly addressing this issue, asserting that:

> By ensuring the continuous and uninterrupted delivery of fixed satellite services currently offered in the band in the United States, our decision today avoids the "unnecessary disruption to existing licensed C-band satellite operations" of concern to the International Telecommunications Satellite Organization. … In addition, our decisions do not affect in any way the Common Heritage ITU frequency assignments, which continue to be as valid as they were before this Commission *Report and Order*. The use of these frequency assignments in any country is subject to its national regulations and the effect of our current actions have fully taken into account the possible effects on currently authorized operators and other users of the services being provided.[14]

---

[12] Contribution of the Parties of the United States and the United Kingdom, AP-32-31, October 6, 2008, at para. 17. As was noted in that document, at AP-25, "the representative of the United States, at the time of privatization, described the United States' role as a Notifying Administration as a 'trustee of the common heritage of the INTELSAT parties in terms of orbital locations and frequency assignments.'" Id, citing the Summary Minutes of Discussion of the 25th (Extraordinary) Meeting, INTELSAT Assembly of Parties, AP-25-4, at para. 415.

[13] Letter from Patrick Masambu, Director General of ITSO to Chairman Pai, GN Docket No. 18-122, dated February 26, 2020; Reply Comments of ITSO, GN Docket No. 18-122, filed July 18, 2019.

[14] *C-Band Order* at n. 104.

ITSO wishes it were so. However, there are several respects in which the *C-Band Order* could adversely affect Intelsat's ability to provide service to customers inside or outside the contiguous United States, and thus potentially affect Intelsat's ability or willingness to fulfill its obligation to adhere to the Core Principles.

The *C-Band Order* recognizes the Commission's obligation not to adversely affect satellite services outside the contiguous United States.[15] Indeed, the Commission recognizes that satellite transmissions sent to locations outside of the contiguous United States and other countries may incidentally transmit to earth stations within the contiguous United States, but because the downlink transmissions pose no risk of harmful interference to terrestrial wireless operations, the Commission will allow such incidental transmissions without penalty.[16] And the Commission recognizes that the newly-authorized terrestrial operations cannot cause harmful interference to satellite operations across the border in Canada and Mexico.[17] The intent of the *C-Band Order* was not to have an extra-territorial effect. Nevertheless, there are direct and indirect ways in which the Commission's decision could disrupt international satellite services using the C-band downlink spectrum.[18]

---

[15] *E.g.*, *C-Band Order* at ¶ 152 ("Outside the contiguous United States for the 3.7-4.2 GHz band and nationwide for the 4.0-4.2 GHz band, these revisions do not apply.") and ¶ 132 ("We note that, consistent with the scope of the public auction we adopt, the section 316 license modification that we adopt applies only to licenses and grants of market access held within the contiguous United States; authorizations for FSS operations outside of the contiguous United States may continue to operate in the entire 3.7-4.2 GHz band. Commenters argue, and we agree, that the Commission should exclude locations outside of the contiguous United States from the license modification.").

[16] *C-Band Order* at ¶ 134.

[17] *C-Band Order* at ¶ 356.

[18] As a general matter, a harmful impact on Intelsat's financial viability resulting from the reallocation decision could adversely affect Intelsat's ability to adhere to the Core Principles. In

The *C-Band Order* will directly affect one aspect of international satellite services – international gateway downlinks into the United States. International gateway services would be permitted to continue to operate in the 3.7-4.0 GHz band, but only at the four to-be-designated TT&C sites, and only on an unprotected basis.[19] Such limitations could adversely affect the quality of these international satellite services, and potentially increase the cost if backhaul prices increase as a result of the move of gateways to these new locations.[20]

The *C-Band Order* may also indirectly impact international satellite services customers that presently enjoy the benefit of Intelsat's obligation to adhere to the Core Principles. One aspect of the continuation of service despite the reduction in C-band spectrum available in the United States is "grooming":

> Through a process of "satellite grooming," each satellite company can use their internal fleet management resources to determine the most efficient way to migrate customers to

---

this regard, ITSO observes that the *C-Band Order* is inconsistent in claiming that the reallocation will allow satellite service providers to grow their C-band services in the United States (*e.g.*, *C-Band Order* at ¶¶ 32, 139, 196), while elsewhere stating that the Commission's actions need do no more than allow the present level of service to continue (*e.g.*, *C-Band Order* at ¶¶ 129, 135-139). The record in this proceeding reflects concerns about the impact of the reallocation on the viability of the satellite service providers (*C-Band Order* at ¶ 50: "Broadcasters and programmers express concern that satellite operators are unlikely to remain in business to provide service to a fraction of their customer base once MVPDs are transitioned to fiber, and earth station owners emphasize the difficulty of making fiber as reliable as existing C-band delivery.").

[19] *C-Band Order* at ¶¶ 379-380. In selecting the four TT&C sites, presumably the satellite system operators will take into account the need to accommodate critical TT&C activities, but there is no assurance they will also factor the potential impact on international gateway services into those siting determinations.

[20] The Customer may not have the option of migrating to alternative transponders so as to be able to limit its downlinks in the United States to only the 4.0-4.2 GHz band, where such operations would continue to be on a protected basis. And presumably the costs of re-configuring any foreign earth stations to accommodate any necessary changes would not be covered under the transition plan, given the definition of "incumbent" earth stations eligible for transition support.

> the upper portion of the band, ***including in some instances by migrating customers to transponders on a different satellite operator's fleet***.[21]

Notably, the *C-Band Order* contemplates customers being shifted to another satellite operator's fleet. However, Intelsat is the only satellite system operator that has an obligation to adhere to the Core Principles.[22] Thus, there is a risk that a customer entitled to the protections of the Core Principles could lose those protections by being assigned to another carrier's satellites, or to Intelsat satellites at non-Common Heritage positions. There is nothing in the *C-Band Order* to suggest that the grooming activities require the consent of the customer.[23]

Another potential indirect aspect of the *C-Band Order* that could adversely affect satellite services outside the United States and thereby impede Intelsat's adherence to the Core Principles concerns the new satellites that will be constructed and launched as part of the spectrum clearing activities.[24] Apparently some of these new satellites will be launched by Intelsat.[25] Depending on how these new satellites are designed and positioned, they could potentially affect adversely service in other countries, including countries that are currently dependent on Intelsat service in compliance with the Core Principles to provide connectivity. For example, if these new satellites

---

[21] *C-Band Order* at ¶ 32 (emphasis added). See also, *C-Band Order* at ¶ 304 ("We recognize that certain space station operators may find it advantageous or necessary to develop a combined space station grooming plan that allows for more efficient clearing by, for example, migrating customers to excess capacity on another space station operator's satellites").

[22] *See*, n. 9, *supra*.

[23] The *C-Band Order* at ¶¶ 302-304 lists the information required to be filed in the Transition Plan, and customer consent is not one of the requirements. Nor is it clear whether Intelsat might attempt to invoke *force majeure* to avoid any particular customer's contractual rights to restrict such an assignment, assuming that such contractual rights exist.

[24] *C-Band Order* at ¶¶ 199, 206.

[25] *C-Band Order* at ¶ 206 ("With respect to new satellites, the C-Band Alliance claims that SES and Intelsat need to procure and launch between eight to ten.").

replace current ones at Common Heritage slots, capacity on these new satellites could be focused on the U.S.-market, reducing or even possibly eliminating capacity available to meet some other countries' needs under the Core Principles. It is also possible that Intelsat would deploy the new satellites replacing current satellites in Common Heritage slots to non-Common Heritage orbital positions, in effect eroding ITSO's ability to ensure that the Core Principles will continue to be met.[26] At a minimum, this may require that the Commission affix the Common Heritage conditions to any of these orbital locations of the non-Common Heritage slots to which replacement satellites are to be launched.

Indeed, the *C-Band Order* says very little about these replacement satellites that will be funded by the terrestrial service providers. The decision merely indicates that the Commission expects "that procuring and launching new satellites may be reasonably necessary to complete the transition. These new satellites will support more intensive use of the 4.0-4.2 GHz band after the transition."[27] The Commission also included broad range of the expected costs:

> Based on the current record, we believe that reasonable estimated costs will include the following ranges, subject to further reevaluation when we create and release a cost category schedule. With respect to satellite procurement and launch costs, we believe that $1.28 billion to 2.5 billion is a reasonable estimated range. This accounts for $160-$250 million in capital costs for each satellite, the high and low ranges provided by the C-Band Alliance and SES, respectively, and the estimated range of eight to 10 additional satellites.[28]

---

[26] To the extent that the Commission is reducing the spectrum available within the United States for the Common Heritage orbital positions, the Commission should ensure that Intelsat's ability and obligation to adhere to the Core Principles is not impaired.

[27] *C-Band Order* at ¶ 199.

[28] *C-Band Order* at ¶ 210.

Elsewhere in the *C-Band Order* the Commission provided general guidelines regarding the costs that can be recovered by the satellite system and earth station operators, although this discussion did not address specifically the satellite construction and launch costs.[29] Some of the more detailed guidance on the "reasonable cost" standard, however, could be read to limit Intelsat's ability to recover some or all of the costs of the satellites that would be necessary to minimize any adverse effects on satellite service customers outside the United States.[30] Thus, the *C-Band*

---

[29] *C-Band Order* at ¶ 193:

> Compensable Relocation Costs. We next set forth guidelines for compensable costs, i.e., those reasonable relocation costs for which incumbent space station operators and incumbent earth station operators can seek reimbursement. Consistent with Commission precedent, compensable costs will include all reasonable engineering, equipment, site and FCC fees, as well as any reasonable, additional costs that the incumbent space station operators and incumbent earth station operators may incur as a result of relocation.

Cf., *C-Band Order* at ¶ 195 ("We recognize that incumbents may attempt to gold-plate their systems in a transition like this. Let us be clear: Incumbents will not receive more reimbursement than necessary, and we require that, to qualify for reimbursement, all relocation costs must be reasonable.").

[30] *See*, *C-Band Order* at ¶ 194 ("Similarly, we expect that some incumbents will not be able to replace older, legacy equipment with equipment that is exactly comparable in terms of functionality and cost because of advances in technology and because manufacturers often cease supporting older equipment. Incumbents may receive the reasonable replacement cost for such newer equipment to the extent it is needed to carry out the transition—and we intend to allow reimbursement for the cost of that equipment and recognize that this equipment necessarily may include improved functionality beyond what is necessary to clear the band. … In contrast, we do not anticipate allowing reimbursement for equipment upgrades beyond what is necessary to clear the band. For example, if an incumbent builds additional functionalities into replacement equipment that are not needed to facilitate the swift transition of the band, it must reasonably allocate the incremental costs of such additional functionalities to itself and only seek reimbursement for the costs reasonably allocated to the needed relocation."); *C-Band Order* at ¶ 200 ("We reiterate that compensable relocation costs are only those that are reasonable and needed to transition existing operations in the contiguous United States out of the lower 300 megahertz of the C-band."); *C-Band Order* at ¶ 195 ("We recognize that incumbents may attempt to gold-plate their systems in a transition like this. Let us be clear: Incumbents will not receive more reimbursement than necessary, and we require that, to qualify for reimbursement, all relocation costs must be reasonable.").

Order fails to unambiguously indicate that any Intelsat replacement satellites deployed as part of the transition can and will continue to satisfy the Core Principles for services inside or outside the United States.

Lastly, the newly-designed satellites could necessitate costly changes to all earth stations communicating with the new satellites, and while such costs will be covered by the successful terrestrial overlay licensees for earth stations within the contiguous United States, such cost reimbursement would apparently not be applicable to earth stations outside the United States.[31] Thus, there is the potential for the Commission's decision to affect adversely international satellite services outside the contiguous United States, notwithstanding its stated intention not to do so.

Although clearly the potential exists for harmful impacts outside the contiguous United States, this is not inevitable if proper safeguards are established that will avoid adversely affecting international satellite services and Intelsat's ability to adhere to the Core Principles. That will depend in many respects on how the transition proceeds, which in turn will hinge on how Intelsat implements the transition, and the guidance the Commission provides. But as discussed below, there are steps the Commission can take now to reduce the risk of adverse consequences for international satellite services. And ITSO has an important role to play in that

[31] *C-Band Order* at ¶ 140 ("Under the rules adopted here, the new C-band entrants would pay for the cost of the reconfiguration of all incumbent earth stations, as well as reasonable relocation costs associated with repacking FSS operations into the upper portion of the band."). However, the order defines "incumbent earth stations" in such a manner as to exclude earth stations outside the United States, because *inter alia* they must have been registered or licensed in the IBFS database. *C-Band Order* at ¶ 116.

process, too. Thus, the Commission should resolve these critical issues now and not defer addressing them until the transition is well under way.

The Commission Should Take Steps to Avoid These Harmful Effects on International Satellite Services

As explained above, both the Commission and ITSO share the same goal of ensuring that the decision to reallocate a large portion of the C-band downlink spectrum does not adversely affect Intelsat's ability to use the Common Heritage assets to fulfill the Core Principles.[32] These Core Principles – adopted with the creation of INTELSAT in 1971[33] and reaffirmed with the restructuring and privatization of Intelsat in 2001[34] – continue to remain critical today. Thus, the Commission must seek to minimize or mitigate any potential harmful effects of the *C-Band Order* on Intelsat's ability to adhere to the Core Principles.

---

[32] *See* pp. 2-5, *supra*.

[33] *See* Agreement Relating to the International Telecommunications Satellite Organization, "INTELSAT," 23 U.S.T. 3813; TIAS No. 7532, (February 12, 1973). *See also* Operating Agreement Relating to the International Telecommunications Satellite Organization, "INTELSAT," 23 U.S.T. 4091, (August 20, 1971).

[34] *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*, 15 FCC Rcd 15460 (2000) at ¶ 3(citations omitted):

> Our action here will promote competition in the provision of satellite communications services through the privatization of INTELSAT in a manner consistent with U.S. law. The licenses granted here will become effective upon the date of such privatization, under the provisions of this Order. Upon effect, the licenses will permit Intelsat LLC to operate pursuant to the principles upon which the 1999 INTELSAT Assembly of Parties based its decision to privatize INTELSAT. These principles include maintaining global connectivity and coverage of the INTELSAT system, protecting lifeline users and connectivity, and ensuring continual non-discriminatory access to the global system. The United States agreed to these principles in joining the Assembly decision to privatize.

While the satellite industry has evolved somewhat in the nineteen years since INTELSAT was restructured in 2001, the Core Principles remain essential today. There are countries today that remain dependent on Intelsat for connectivity, including countries within the footprints of Intelsat satellites also serving the contiguous United States, such as Columbia and Peru. ITSO was established when INTELSAT was restructured to ensure that the privatized entity adhered to the Core Principles,[35] and that role continues to be critical today. Indeed, as the Commission recognized in the *C-Band Order* in rejecting the proposed private auction, the satellite providers cannot be trusted to look out on their own for the best interests of their customers:

> Commission oversight of the public auction and issuance of flexible-use licenses conditioned upon relocation of incumbent operations will more effectively ensure that all incumbent C-band users are made whole upon completion of the transition. The C-Band Alliance's proposal would give certain incumbent space station operators substantial discretion to decide whether and to what extent all affected C-band users should be accommodated in the transition and compensated for their relocation costs. This responsibility is directly at odds with space station operators' fiduciary duties to their shareholders to maximize the retained profits from the private sale.[36]

Thus, it is critical that ITSO be able to play a significant role in the oversight of Intelsat's implementation of the transition, because as discussed in the previous section, the manner in

---

[35] *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, et al*, 16 FCC Rcd 12280 (2001) at ¶ 10:

> Finally, as part of its decision to privatize INTELSAT, the INTELSAT Assembly of Parties decided to leave in place a small residual intergovernmental organization, to be known as the Telecommunications Satellite Organization known by the acronym as ITSO. ITSO will, through a "Public Services Agreement" with the privatized INTELSAT, monitor 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).

[36] *C-Band Order* at ¶ 38.

which some of the aspects of the transition are fulfilled will determine whether Intelsat will maintain the current Common Heritage global interconnectivity and global coverage capabilities in support of the Core Principles. The Commission should thus confirm and facilitate ITSO's essential role in the oversight of Intelsat's plans for the transition. As explained below, the Commission can help ensure that ITSO has the resources and information necessary to assess and make recommendations regarding Intelsat's transition plans so that Intelsat's ability to adhere to the Core Principles is not compromised. Intelsat has incentives to complete the transition rapidly,[37] but the Commission (with the assistance of ITSO's oversight) must ensure that Intelsat undertakes the transition consistent with the public interest, not simply within the deadlines.

ITSO brings unique experience and perspectives with regard to these critical issues, thus its input will be exceedingly valuable during the transition process. But the Commission, too, has a continuing role to play both as the arbiter of the public interest and consistent with the United States' added responsibility as the Notifying Administration. Thus, ITSO expects the Commission to carefully monitor Intelsat's implementation of the transition, and suggests the International Bureau keep an "ear to the ground" on these issues.[38] In addition, ITSO below suggests specific steps the Commission should take in clarifying and/or reconsidering the *C-Band Order* to ensure that the reallocation of the C-band spectrum in the contiguous United

---

[37] Under the *C-Band Order*, Intelsat stands to receive some $4.865 Billion in incentive payments if it meets the two Accelerated Relocation Deadlines.

[38] *Cf., C-Band Order* at ¶ 334 ("We direct the Office of Engineering and Technology to act as a liaison for the Commission with any such multi-stakeholder group so formed. In particular, we expect the Office to observe the functioning of any such group and the technical concerns aired to keep an ear to the ground, as it were, on technical developments that come to light as the relocation process occurs.").

States does not adversely affect international satellite services and Intelsat's adherence to the Core Principles.

Requested Relief

Pursuant to Section 1.429(c) of the Commission's Rules, ITSO addresses the particular respects in which the *C-Band Order* should be clarified or modified. First and foremost, ITSO requests that the Commission re-affirm that support for the Core Principles remains the policy of the United States and the Commission. In a similar vein, ITSO requests that the Commission re-affirm its support for ITSO's supervision of Intelsat's adherence to the Core Principles, including assuring that Intelsat provide ITSO with the information necessary for it to oversee the transition process.

Second, ITSO requests that the Commission reconsider the determination in the *C-Band Order* to only permit international gateway services at the four to-be-designated sites on a secondary basis. Instead, the Commission should allow such services on a protected basis at those four sites. In addition, the Commission should clarify that in selecting the four sites, the satellite operators should take into account backhaul costs.

Third, ITSO also requests that the Commission clarify that the "reasonable costs" of the transition that will be reimbursed by the terrestrial licensees will include the reasonable costs of mitigating the impact of the reallocation of the C-band spectrum on international services that are affected directly or indirectly by the transition. In particular, in order to ensure that ITSO has sufficient resources to perform its oversight role, the Commission should clarify, or determine on reconsideration, that the "soft costs"[39] that can be recovered from the terrestrial licensees would

[39] *C-Band Order* at ¶ 197:

include the reasonable costs ITSO will incur in overseeing Intelsat during the transition to ensure that Intelsat can and will continue to adhere to the Core Principles. Such costs could include the added expenses of reviewing plans for proposed new satellites and continuing usage of the current satellites to assess the impacts on international satellite services, assessing the TT&C sites that will also continue to be used for international gateway services, and reviewing proposals for "grooming" international satellite services customers.[40] In addition, the Commission should make clear that Intelsat needs to timely provide ITSO with sufficient information to conduct its oversight on an ongoing basis, rather than relegating ITSO to simply reviewing the publicly-available transition plans.[41]

Fourth, ITSO additionally requests that the Commission clarify, or determine on reconsideration, that any new satellites acquired by Intelsat pursuant to the transition should be designed and located so as not to degrade the capabilities to fully support satellite services outside as well as inside the contiguous United States consistent with the Core Principles, and, as appropriate, affix the Common Heritage conditions to any of the orbital locations to which

---

> As in prior cases, the Commission will allow reimbursement of some "soft costs"—"legitimate and prudent transaction expenses" incurred by incumbents "that are directly attributable" to relocation. We define soft costs as transactional expenses directly attributable to relocation, to include engineering, consulting, and attorney fees. This is consistent with suggestions from some commenters that the Commission should allow recovery of soft costs for relocation expenses.

[40] *Cf., C-Band Order* at ¶¶ 198-198.

[41] *C-Band Order* at ¶¶ 302-306. Unfortunately, Intelsat has become recalcitrant in furnishing ITSO with sufficient information to conduct its normal oversight duties. The Commission should make sure that Intelsat does not continue such practices, particularly with regard to the information necessary for ITSO to assess the C-band transition process. ITSO thus finds it necessary to request that the Commission direct Intelsat to provide ITSO with the detailed information on its transition plans.

replacement satellites are to be launched. ITSO also requests that the Commission clarify that the costs of including the international capabilities into Intelsat's satellites are considered fully reimbursable relocation payments. ITSO also requests that the Commission clarify, or determine on reconsideration, that any "customer grooming" cannot disadvantage Intelsat's customers by involuntarily requiring them to be shifted to any other satellite system or non-Common Heritage satellites.

Turning finally to the subject of the incentive payments that Intelsat would be eligible to earn by clearing the 300 MHz of C-band spectrum by specified timeframes, although characterized as incentive payments, these payments functionally equate to compensation provided to Intelsat for relinquishment of C-band capacity. Irrespective of whether Intelsat meets those targets or not, all the actual costs associated with the clearing activities will be separately reimbursed, so essentially the "incentive payments" serve as a reward to Intelsat for relinquishment of the spectrum. With respect to the twelve Common Heritage orbital locations at which Intelsat operating satellite systems are covering part or all contiguous United States in the C-band, their capabilities will be relinquished consistent with the *C-Band Order*. That spectrum being relinquished, however, was made available for licensing by the United States as a selected Notifying Administration pursuant to the INTELSAT restructuring on the express understanding that the orbital locations and spectrum would be utilized by Intelsat to satisfy its obligations under the ITSO Treaty and the accompanying Public Services Agreement entered into between ITSO and Intelsat. The C-band corresponding to those twelve Common Heritage locations represents 60% (in the contiguous United States) of the C-band capacity relinquished by Intelsat. And as previously noted, the United States has expressly acknowledged its commitment to "administer the transferred frequency assignments and orbital locations for the benefit of [the

ITSO] Parties." Given that the arrangement pursuant to which Intelsat is securing windfall payments for relinquishing portion of the ITSO Parties Common Heritage has been set in motion by the United States as a Notifying Administration, we submit that some portion of that compensation should be made available for the benefit of the ITSO Parties. This is of even greater critical importance given Intelsat's ongoing efforts to avoid honoring its obligations under the PSA to provide funding for ITSO.

ITSO believes the foregoing clarifications and/or reconsiderations will well serve the public interest by helping to ensure that the *C-Band Order* does not unintentionally impair the Core Principles, and thus truly "avoids the 'unnecessary disruption to existing licensed C-band satellite operations' of concern to the International Telecommunications Satellite Organization,"[42] consistent with ITSO's and the Commission's goals.

Respectfully submitted,

/s/ Patrick Masambu
Patrick Masambu
Director General and Chief Executive Officer
International Telecommunications Satellite Organization
4400 Jenifer Street, NW
Suite #332
Washington, D.C. 20015
(202) 243-5096

Counsel for ITSO:

Stephen L. Goodman
Stephen L. Goodman, PLLC
532 North Pitt Street
Alexandria, VA 22314
(202) 607-6756
stephenlgoodman@aol.com

May 26, 2020

[42] *C-Band Order* at n. 104.