

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

IB Docket No. 15-16

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By the Commission: Commissioner Pai issuing a statement.

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

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

Section 646 states:

- (a) ANNUAL REPORTS - The President and the Commission shall report to the Committees on Commerce and International Relations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Foreign Relations of the Senate within 90 calendar days of the enactment of this title, and not less than annually thereafter, on the progress made to achieve the objectives and carry out the purposes and provisions of this title. Such reports shall be made available immediately to the public.
- (b) CONTENTS OF REPORTS - The reports submitted pursuant to subsection (a) shall include the following:
 - (1) Progress with respect to each objective since the most recent preceding report.
 - (2) Views of the Parties with respect to privatization.
 - (3) Views of the industry and consumers on privatization.
 - (4) Impact privatization has had on United States industry, United States jobs, and United States industry’s access to the global marketplace.²

I. Progress as to Objectives and Purposes Since the *Fifteenth ORBIT Act Report*

The purpose of the ORBIT Act is “to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT³ and Inmarsat.”⁴

The ORBIT Act, as originally passed in 2000, (1) mandates the privatization of INTELSAT and Inmarsat, (2) establishes criteria to ensure a pro-competitive privatization, (3) requires the Commission to determine whether INTELSAT, Inmarsat, and the INTELSAT spin-off New Skies Satellites N.V. (New Skies), have been privatized in a manner that will harm competition in the United States, (4) requires the Commission to use the privatization criteria specified in the ORBIT Act as a basis for making its competition determination, and (5) directs the Commission to “limit through conditions or deny”

¹ Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 (2000), *as amended*, Pub. L. No. 107-233, 116 Stat. 1480 (2002) (codified at 47 U.S.C. § 701 *et seq.*).

² 47 U.S.C. § 765(e).

³ The intergovernmental satellite body INTELSAT later created Intelsat LLC, a privately-held U.S. corporation that became the licensee of satellite assets formerly held by INTELSAT. As a result of an internal reorganization consummated in January 2011, Intelsat LLC was eliminated as a subsidiary company, and the majority of licenses are now held by Intelsat License LLC.

⁴ Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, § 2, 114 Stat. 48 (2000).

applications or requests to provide “non-core” services to, from, or within the United States, if it finds that competition will be harmed.⁵ The Act provides for certain exceptions to limitations on non-core services in the event of such a determination. The Act also prohibits the Commission from authorizing certain “additional” services pending privatization consistent with the criteria in the Act.⁶ In addition, the Act directed the Commission to undertake a rulemaking proceeding to determine whether users or providers of telecommunications services have sufficient opportunity to directly access INTELSAT capacity.

Intelsat privatized and became a U.S. licensee as of July 18, 2001, transferring its assets to a commercial corporation.⁷ In October 2004, Congress amended the ORBIT Act, adding Sections 621(5)(F) and (G), to provide a certification process as an alternative to the initial public offering (IPO) requirements under Sections 621(5)(A) and (B).⁸ In July 2005, Congress further amended the ORBIT Act, striking certain privatization criteria for INTELSAT separated entities, and removing certain restrictions on separated entities and successors to INTELSAT and for other purposes.⁹ Congress also added a requirement that the Commission submit to Congress a separate annual report that analyzes the competitive market conditions with respect to domestic and international satellite communications services (*Satellite Competition Report*).¹⁰

The Commission made its first annual report to Congress on its actions to implement the ORBIT Act on June 15, 2000, and submitted additional reports every year since.¹¹ Notably, we acknowledged in

⁵ The Act defines “non-core” services as “services other than public-switched network voice telephony and occasional-use television” with respect to INTELSAT, and as “services other than global maritime distress and safety services or other existing maritime or aeronautical services for which there are not alternative providers” with respect to Inmarsat. 47 U.S.C. § 769(a)(11).

⁶ The Act defines “additional” services as direct-to-home or direct broadcast satellite video services, or services in the Ka-or V-bands for INTELSAT and as “those non-maritime or non-aeronautical mobile services in the 1.5 and 1.6 GHz band on planned satellites or the 2 GHz band” for Inmarsat. 47 U.S.C. § 769(a)(12).

⁷ As a result of privatization, and pursuant to international agreement, an intergovernmental organization known as the International Telecommunications Satellite Organization (ITSO) was created. ITSO, through a “Public Services Agreement” with Intelsat, monitors the performance of the company’s public service obligations to maintain global connectivity and global coverage, provide non-discriminatory access to the system, and honor the lifeline connectivity obligation to certain customers, specifically, those customers in poor or underserved countries that have a high degree of dependence on Intelsat. See *INTELSAT Assembly of Parties Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting*, AP-25-3E FINAL W/11/00, at ¶¶ 6-8 (Nov. 27, 2000). Under these commitments, the privatized Intelsat made capacity available to lifeline users at fixed pre-privatization costs for approximately 12 years. ITSO has no operational or commercial role.

⁸ Pub. L. No. 108-228, 118 Stat. 644 (2004), as amended, Pub. L. No. 108-371, 118 Stat. 1752 (Oct. 25, 2004).

⁹ Pub. L. No. 109-34, 119 Stat. 377 (July 12, 2005).

¹⁰ The most recent satellite competition report was released on December 13, 2011. *Third Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services*, IB Docket No. 10-99, Report, 26 FCC Rcd 17284 (2011) (*Third Satellite Competition Report*). On November 25, 2014, the International Bureau released a public notice seeking comments for its Fourth Competition Report. See *International Bureau Invites Comment for the Fourth Report to Congress on Status of Competition in the Provision of Satellite Services*, IB Docket No. 14-229, Public Notice, 29 FCC Rcd 14351 (Int’l Bur., 2014).

¹¹ *FCC Report to Congress as Required by the ORBIT Act*, Report, 15 FCC Rcd 11288 (2000); *FCC Report to Congress as Required by the ORBIT Act*, Report, 17 FCC Rcd 11458 (2002); *FCC Report to Congress as Required by the ORBIT Act*, Report, 18 FCC Rcd 12525 (2003); *FCC Report to Congress as Required by the ORBIT Act*, Report, 19 FCC Rcd 10891 (2004); *FCC Report to Congress as Required by the ORBIT Act*, Report, 20 FCC Rcd 11382 (2005); *FCC Report to Congress as Required by the ORBIT Act*, Report, 21 FCC Rcd 6740 (2006); *FCC Report to Congress as Required by the ORBIT Act*, Report, 22 FCC Rcd 11347 (2007); *FCC Report to Congress as Required by the ORBIT Act*, Report, FCC 08-152 (2008); *FCC Report to Congress as Required by the ORBIT Act*, Report, 24 FCC Rcd 8686 (2009); *FCC Report to Congress as Required by the ORBIT Act*, Report, 25 FCC Rcd 7834 (2010) (*Eleventh ORBIT Act Report*); *FCC Report to Congress as Required by the ORBIT Act*, Report, 26 FCC

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several Orbit Act Reports that INTELSAT and Inmarsat successfully transitioned from intergovernmental organizations to fully privatized entities.

In anticipation of this sixteenth report, the Commission issued a Public Notice on February 4, 2015, inviting comments related to the development of this Report.¹² Inmarsat PLC (Inmarsat) filed comments.¹³

II. Commission Actions and Activities

The Commission took the following actions since the *Fifteenth ORBIT Act Report* to ensure that INTELSAT, Inmarsat and New Skies remain privatized in a pro-competitive manner, consistent with the privatization criteria of the ORBIT Act.¹⁴

Intelsat

- Pursuant to U.S. obligations as the notifying administration to the International Telecommunication Union (ITU)¹⁵ for Intelsat's Fixed Satellite-Service (FSS) C-and Ku-band space station networks transferred at privatization, the Commission participated in a number of international satellite coordination negotiations as the licensing Administration for Intelsat. Since the *Fifteenth ORBIT Act Report*, the Commission participated in coordination meetings with China on behalf of Intelsat and a number of other U.S. licensees.
- The United States also uses a separate process whereby U.S. operators may reach operational arrangements with operators of other Administrations. These operational arrangements are then submitted to the operators' respective Administrations for approval. Once approved by both Administrations, the operational arrangements become, or form the basis for, a coordination agreement between the Administrations under the ITU procedures. Since the *Fifteenth ORBIT Act Report*, Intelsat concluded operational arrangements with operators licensed by Bolivia, Brazil, Egypt, France, India, Iran, Kazakhstan, Luxembourg, The Netherlands, Norway, Papua New Guinea, Russia, United Arab Emirates, and United Kingdom. In due course, this process will lead to coordination agreements between the United States and the pertinent foreign Administrations.
- Since the *Fifteenth ORBIT Act Report*, Intelsat filed a number of requests for license authorizations and modifications. The Commission reviewed these requests and acted on them consistent with the Commission's licensing rules and processes.¹⁶

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Rcd 8998 (2011) (*Twelfth ORBIT Act Report*); *FCC Report to Congress as Required by the ORBIT Act*, Report, 27 FCC Rcd 7832 (2012) (*Thirteenth ORBIT Act Report*); *FCC Report to Congress as Required by the ORBIT Act*, Report, 28 FCC Rcd 8587 (2013) (*Fourteenth ORBIT Act Report*); *FCC Report to Congress as Required by the ORBIT Act*, Report, 29 FCC Rcd 6375 (2014) (*Fifteenth ORBIT Act Report*).

¹² *International Bureau Information: Report to Congress Regarding the ORBIT Act*, IB Docket No. 15-16, Public Notice, 30 FCC Rcd 1051 (2015).

¹³ Comments of Inmarsat PLC, filed on Mar. 6, 2015 (Inmarsat Comments).

¹⁴ 47 U.S.C. §§ 761, 763, 763a, 763c, and 765g.

¹⁵ As the Notifying Administration on behalf of Intelsat, the Commission is responsible for discharging the obligation undertaken in the Constitution of the ITU, in the Convention of the ITU, and in the Administrative regulations. Article 1, Section 1.2, ITU Radio Regulations.

¹⁶ *See, e.g.*, Intelsat License LLC, IBFS File No. SAT-MOD-201300513-00068, Request to modify the authorization for the Intelsat 701 (grant of authority Jun. 27, 2014); Intelsat License LLC, IBFS File No. SAT-AMD-20121221-00220, Request for authority to launch and operate Intelsat 30 (grant of authority Aug 14, 2014); Intelsat License LLC, IBFS File No. SAT-MOD-20140204-00019, Request to amend pending modification for Intelsat 702 (grant of authority Sept. 25, 2014); Intelsat License LLC, IBFS File. No. SAT-AMD-20140617-00069,

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Inmarsat

- Inmarsat launched two Inmarsat-5 satellites as part of its Global Xpress system that operates in the Ka-band, independent from Inmarsat's existing L-band satellites.¹⁷ Inmarsat launched the Inmarsat-5 F1 satellite in December 2013 and uses it to provide service in Europe, the Middle East, Africa, and Asia. The Inmarsat-5 F2 satellite launched in February 2015 and, on March 30, 2015, Inmarsat was authorized to construct and operate a fixed-satellite gateway earth station in Lino Lakes, Minnesota, to communicate with the Inmarsat-5 F2 space station.¹⁸ In May 2015, Inmarsat was scheduled to launch F3, the third Inmarsat-5 satellite, but the launch was delayed.¹⁹
- Since the *Fifteenth ORBIT Act Report*, the Commission granted several earth station applications to communicate with Inmarsat's satellites as points of communication.²⁰

New Skies

- Currently, five New Skies satellites are on the C-and Ku-band Permitted List,²¹ and earth station operators with proper authority may access these satellites.
- An earth station must seek specific authority to communicate with a space station if the earth station does not meet the technical requirements for a Permitted List designation and/or if the earth station seeks to communicate with a satellite in frequency bands other than the conventional C-and Ku-bands. In the last year, the Commission granted numerous earth stations specific authority to communicate with New Skies satellites.²²

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Request to relocate Galaxy 11 (grant of authority Oct. 30, 2014); Intelsat License LLC, IBFS File No. SAT-LOA-20140410-00038, Request for authority to launch and operate Intelsat 31 (grant of authority Nov. 6, 2014); Intelsat License LLC, IBFS File No. SAT-LOA-20140114-00005, Request for authority to launch and operate Intelsat 34 (grant of authority Jan. 22, 2015); Intelsat License LLC, IBFS File No. SAT-MOD-20140829-00097, Request to modify the authorization for Intelsat 5 (grant of authority Mar. 26, 2015); Intelsat License LLC, File No. SAT-MOD-20150105-00003, Request to modify the authority for Intelsat 16 (grant of authority Apr. 16, 2015).

¹⁷ The term "Ka-band" generally refers to the space-to-Earth (downlink) frequencies at 17.7-20.2 GHz and the corresponding Earth-to-space (uplink) frequencies at 27.5-30.0 GHz.

¹⁸ *Inmarsat Mobile Networks, Inc. Application to Operate a Fixed-Satellite Service Gateway Earth Station in Lino Lakes, Minnesota with the Inmarsat-5 F2 Space Station*, Order and Authorization and Declaratory Ruling, DA 15-392 (IB Sat. Div. and OET Policy and Rules Div., rel. Mar. 30, 2015).

¹⁹ <http://www.inmarsat.com/news/launch-inmarsats-third-global-xpress-satellite-delayed/>.

²⁰ See, e.g., Inmarsat Mobile Networks, Inc., Application for Modification, File No. SES-MFS-20141003-00786 (grant of authority Jan. 13, 2015); Inmarsat Mobile Networks, Inc., Application for Modification, File No. SES-MFS-20141003-00787 (grant of authority Jan. 13, 2015) Airbus DS SatCom Government, Inc., Application for Modification, File No. SES-MFS-20140804-00633 (grant of authority Jan. 16, 2015); and Airbus DS SatCom Government, Inc., Application for Modification, File No. SES-MFS-20140804-00632 (grant of authority Jan. 21, 2015).

²¹ The Permitted List denotes all satellites and services with which U.S. earth stations with "routinely" authorized technical parameters operating in the conventional C-and Ku-bands are permitted to communicate, without additional Commission action. Those communications must fall within the same technical parameters and conditions established in the earth stations' licenses. *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic International Satellite Service in the United States*, First Order on Reconsideration, 15 FCC Rcd 7207 (1999). See also *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, 28 FCC Rcd 12403, 12409-11, ¶¶ 10-14 (2013). The five New Skies satellites on the Permitted List are: NSS-7 at 20° W.L., NSS-703 at 47.05° W.L., NSS 806 at 47.5° W.L., NSS-9 at 177° W.L., and SES-6 at 40.5° W.L.

²² See, e.g., Application for Modification, File No. SES-MFS-20130603-00461 (grant stamp June 12, 2014); SES

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III. Views of INTELSAT Parties and Intelsat on Privatization

The Commission, in response to the Public Notice for this Report, has not received any views regarding privatization directly from the INTELSAT Parties²³ or Intelsat. In past years, Intelsat commented that it believes that the privatization goals of the ORBIT Act have been fulfilled.

IV. Views of Inmarsat on Privatization

Inmarsat notes that in June 2005, the Commission found that Inmarsat satisfied the requirement to effectuate a substantial dilution of former Signatory financial interests. Inmarsat further states that, shortly thereafter, it completed a successful IPO, and that its shares are traded on the London Stock Exchange. According to Inmarsat, no former Inmarsat Signatory owns five percent or more of the company, and the aggregate ownership of foreign governments is nominal.²⁴

Inmarsat also outlines its investments in new technologies, including its deployment of its fourth generation, Inmarsat 4 (I-4) satellite network and new or evolved services that are being offered through that network.²⁵ Inmarsat also cites its investment in three new Ka-band satellites (Inmarsat 5 satellites) for a high bandwidth service.²⁶

V. Impact of Privatization

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

A. Inmarsat

From the record, Inmarsat's privatization appears to have had a positive impact on the domestic market. Inmarsat states that it continues to invest in new technologies for mobile satellite service customers.²⁷ For example, Inmarsat points to its \$1.5 billion investment in the I-4 satellite network, which is currently providing mobile broadband services to the United States and globally, including its

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Americom, Inc., Application for Amendment, File No. SES-AFS-20130814-00730 (grant stamp June 18, 2014); SES Americom, Inc., Application for Amendment, File No. SES-AFS-20140404-00240 (grant stamp Aug. 8, 2014); SES Americom, Inc., Application for Modification, File No. SES-MFS-20130925-00836 (grant stamp Aug. 8, 2014); Astrium Services Government, Inc., Application for Modification, File No. SES-MOD-20140618-00531 (grant stamp Nov. 6, 2014); Globecom License Sub LLC, Application for Modification, File No. SES-MOD-20141126-00876 (grant stamp Jan. 12, 2015); Harris CapRock Communications, Inc., Application for Authority, File No. SES-LIC-20141221-00920 (grant stamp Feb. 19, 2015); The Boeing Company, Application for Authority, File No. SES-20140922-00748 (grant stamp Mar. 13, 2015); Astronics AeroSat Corporation, Application for Authority, File No. SES-LIC-20140902-00688 (grant stamp Mar. 13, 2015).

²³ The INTELSAT Parties are nations for which the INTELSAT agreement has entered into force. 47 U.S.C. § 769(a)(4)(A). Following privatization, the ITSO Agreement defines "Party" to mean a State for which the ITSO Agreement has entered into force or has been provisionally applied. *See Agreement Relating to the International Telecommunications Satellite Organization, As Amended by the Twenty-Fifth (Extraordinary) Assembly of Parties in Washington, D.C. (Nov. 17, 2000), at Art. I (p).*

²⁴ Inmarsat Comments at 1-2.

²⁵ *Id.* at 2.

²⁶ *Id.* at 7, 9.

²⁷ *Id.* at 2, 7-9.

BGAN service,²⁸ and its \$1.6 billion investment in the three new Inmarsat-5 Ka-band satellites that are also providing high-bandwidth service offerings.²⁹

Inmarsat states that it continues to introduce new services, including its IsatPhone Pro and IsatPhone 2 handhels and Low Data Rate services. In addition, Inmarsat states that its BGAN service is being utilized in innovative ways by its customers, including in response to recent natural disasters,³⁰ as well as used to link medical professionals with rural communities that lack telecommunications.³¹

B. Intelsat

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

VI. Summary

The Commission has undertaken a number of proceedings required by or related to the ORBIT Act. The Commission will continue to implement and enforce the requirements of the ORBIT Act. On the whole, we believe that U.S. policy goals regarding the promotion of a fully competitive global market for satellite communications services are being met in accordance with the ORBIT Act. The Commission will continue to inform Congress of the actions it takes to implement the requirements of the ORBIT Act and the impact of those actions in its next annual report.³²

²⁸ BGAN provides both simultaneous voice and data, globally. <http://www.inmarsat.com/service/bgan/>. BGAN provides voice and broadband service with speeds of almost half a megabit per second using “notebook sized” antennas that are one-third the size, weight and price of traditional Inmarsat antennas. See Inmarsat Comments at 2.

²⁹ *Id.* at 7.

³⁰ For example, Inmarsat states that its BGAN technology played a critical role in supporting government and non-government agencies such as Télécoms Sans Frontières and the American Red Cross, as well as international news organizations, in response to global disasters including earthquake recovery in Chile, Ebola containment in West Africa, and tsunami emergency relief in Indonesia. *Id.* at 3, 5-6.

³¹ *Id.* at 6-7.

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

APPENDIX

Index of Filings

Comments, filed March 16, 2015

Comments of Inmarsat PLC, available at <http://apps.fcc.gov/ecfs/document/view?id=7521091698>

**STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *Report to Congress Regarding the Open-Market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act)*, IB Docket No. 15-16.

In the unforgettable *Groundhog Day*, Pittsburgh TV weatherman Phil Connors found himself doomed to relive the same day over and over again: “I wake up every day, right here, right in Punxsutawney, and it’s always February 2nd, and there’s nothing I can do about it.”³³ Unfortunately, the FCC’s annual ORBIT Act report is our Groundhog Day.³⁴

For each of the last 16 years, the Commission has dutifully reported to Congress on our progress in ensuring the privatization of INTELSAT and Inmarsat. A decade ago, we were able to report success—the privatization was complete, and the ORBIT Act’s goal had been accomplished. Yet ten years, ten reports, and more than 200 pages later, the FCC is still stuck in Punxsutawney. We issue substantially the same report to Congress over and over again, wasting dozens of hours of valuable staff time each year to make hundreds of non-substantive revisions.

But we do not need to keep reliving the past. The U.S. House of Representatives passed the FCC Consolidated Reporting Act 411-0 in February, and the Committee on Commerce, Science, and Transportation reported the bill to the Senate floor just last month. This legislation would eliminate the ORBIT Act report and let the Commission focus on a comprehensive review of the communications marketplace every two years.

I hope that this bipartisan legislation will be enacted into law. Maybe then the FCC, like Phil, could finally wake up to February 3rd and stop perpetually stepping into a waterlogged pothole. Bing!³⁵

¹ Phil Connors, *Groundhog Day* (Columbia Pictures 1993).

² 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) (codified at 47 U.S.C. § 701 *et seq.*) (ORBIT Act).

³ Ned Ryerson, *Groundhog Day* (Columbia Pictures 1993), *available at* <http://bit.ly/1DocQKd>.