B. Convergence Has Increased Competition For Satellite Customers From Terrestrial Sources

Recent technological advances have led to convergence in the provision of communications services. As Chairman Martin recently observed:

> Advances in technology are leading to a convergence of multiple platforms. This development of intermodal competition is fundamentally changing the way that both carriers and their customers use telecommunications and technologies. Given these market changes, we can move towards a more deregulated, competitive environment... [that] is technologically neutral.[49]

This convergence has had a direct and fundamental impact on fixed satellite services, where inter-modal competition is robust and growing stronger. As described below, in this converging telecommunications world, the newly combined entity will face substantial and increasing competition from a variety of terrestrial sources as well as continued strong competition from other satellite systems.

1. Fiber Optic Cable Is A Widely Available Alternative To Satellite And Has An Expanding Footprint

Fiber optic cable deployment has grown dramatically across the U.S. over the past decade. In 1995, there were approximately 9.4 million kilometers of fiber. By 2004, that amount had grown to nearly 100 million kilometers – almost a ten-fold increase.[50] Following historical patterns, new fiber deployments have typically served a combination of existing and

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Completes First Two-Satellite HD Neighborhood with HD-PRIME (Nov. 5, 2004), *available at* http://www.sesamericom.com/media/2004/11_05_04.html. SES has also contracted with Lockheed Martin for a new satellite that will add capacity to this neighborhood during the second half of 2006. *See* Press Release, SES GLOBAL, "SES GLOBAL Announces AMC-18" (Mar. 23, 2005), *available at* http://www.sesamericom.com/media/2005/03_23_05.html.

49 Remarks by Chairman Kevin J. Martin, FCC, to the NARUC Summer Meeting, Austin, TX (July 26, 2005), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-260312A1.pdf.

50 "Worldwide optical fiber and fiber optic cable markets," *KMI Corporation* (Jan. 2005).

previously un-served locations, with the net effect being greater and greater ubiquity of very high capacity facilities.[51]

Actions by both the incumbent local exchange carriers ("ILECs") and the cable multiple system operators ("MSOs") will accelerate further the spread of fiber facilities. Verizon plans to transition a majority of its distribution plant[52] to fiber, while SBC Communications' Project Lightspeed holds a similar ambition.[53] Together these two providers alone account for more than half of all customers served by the regional Bell operating companies.[54] The MSOs are also making major investments in new fiber deployments, passing business customers and adding capacity to support higher bandwidth applications.[55]

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51 "Market Analysis: Worldwide Fiber Access Equipment 2005-2009 Forecast", IDC (Sep. 2005) ("[M]any are betting on fiber access for industry growth. IDC believes the bet is a good one....IDC finds the following: Fiber access networking will include a mix of technologies, but, as a whole, the market will increase at a 16.6% compound annual growth rate (CAGR), increasing from $871M in 2004 to $1.9B by 2009").

52 "Distribution plant" refers to the facilities that carry traffic from central offices where switching equipment is located to customer premises.

53 SBC public press releases state that field trials are under way for Project Lightspeed, its multibillion-dollar fiber deployment that is intended to stem cable MSO incursions into SBC's residential base. "Within five years, SBC expects to be the second largest provider of video services within its fiber footprint." *See* Jim Duffy, "SBC outlines Project Lightspeed fiber plan," *Network World* (Nov. 11, 2004).

54 Verizon and SBC account for approximately 69% of regional Bell Operating Company residential access lines (44.1M and 42.1M lines, respectively). *See* "Telecom Services: Wireline – 2nd Quarter Wrap," *JP Morgan* (Aug. 24, 2005).

55 MSO fiber deployment plans are evidenced by prime player actions. For example, Time Warner Cable's Dedicated Access Services allow Time Warner to leverage an extensive investment in its fiber distribution network to provide Internet access, point-to-point, point-to-multipoint, and teleworker aggregation solutions. *See* Press Release, Time Warner Cable Chooses Superconnect Software To Manage PCT Fiber System (Sept. 28, 2004). *See also* Press Release, Comcast Extends National Fiber Infrastructure (Dec. 7, 2004), *available at* http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&t=Regular&id=650959& (describing Comcast's arrangement with Level 3 to provide inter-city and metro dark fiber as part of Comcast's extension of its fiber footprint).

The last decade has also seen an exponential increase in fiber capacity, causing prices for long haul connectivity (both domestic and international) to plummet.[56] This added capacity is a function of additional strands being laid as well as quantum improvements in the capacity of individual strands due to improvements in wave-division multiplexing technology and underlying optical fiber capacity.[57]

2. Fiber Creates A Significant Competitive Challenge To Satellite Services

The growing ubiquity of fiber and the increased capacity (both of which drive down cost per unit of transmission capacity) mean that fiber is increasingly well positioned to substitute for satellite services. This substitution effect is not limited to circumstances where fiber is already present: falling unit costs mean that, in an ever-increasing number of situations, it is economic to deploy new fiber facilities instead of using satellite links. Thus, as Credit Suisse First Boston observed earlier this year: "The FSS industry has transformed from a high growth industry in the

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[56] In the last ten years, the supply of lit fiber-based capacity has increased over a thousand-fold between many North American cities, and most major cities in the U.S. are connected to multiple terabits of unsold lit capacity. As a result, over the last five years, lease prices for OC-3 fiber carrying traffic at 155.52 Mbps on major U.S. routes have plunged by 85% or more. Telegeography, *Terrestrial Bandwidth 2004 Executive Summary.* Trans-Atlantic fiber capacity increased 100-fold from 251,000 64 kbps equivalent circuits in 1995 to an estimated 27,580,000 64 kbps equivalent circuits in 2005. In the Americas, fiber capacity increased from 69,930 64 kbps equivalent circuits in 1995 to an estimated 3,681,720 64 kbps equivalent circuits in 2005. Trans-Pacific fiber capacity increased from 69,930 64 kbps equivalent circuits in 1995 to an estimated 12,763,170 64 kbps equivalent circuits in 2005. *See* FCC 2003 Section 43.82 Circuit Status Data, Table 7 (Dec. 2004), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-255737A1.pdf.

[57] Technology improvements continue to drive bandwidth capacity improvements. Dense wavelength division multiplexing ("DWDM") technology enables service providers to increase the capacity of their existing fiber optic networks. Prior to the adoption of DWDM technology, only one wavelength of light could be transmitted over an optic fiber. In contrast, today's DWDM platforms can accommodate over 100 individual wavelengths on a single fiber. *See* "Ciena Corporation – Initiating Coverage", *Credit Suisse First Boston* (Nov. 9, 2004).

1990s into a low-growth mature business today as a result of rapid technological change – specifically the proliferation of fiber optic networks into the voice and data traffic business."[58]

The challenges posed by fiber to the satellite business take many forms. First, Intelsat's traditional "carrier" business – providing voice and data circuits to the world's telecom carriers – has eroded dramatically. As publicly reported in SEC filings, Intelsat has experienced declining revenue from carrier services primarily due to the continued migration of point-to-point satellite traffic to fiber, and expects this trend to continue because fiber connectivity on major point-to-point routes is generally more cost-effective than satellite connectivity.[59]

Second, customers are now combining ubiquitous terrestrial networks with satellites to deliver point-to-multipoint video services. For example, NBC used a combination of satellite and fiber paths to transport its 2004 Summer Olympics coverage from Athens to the United States.[60] CBS also utilizes a combination of satellite and fiber capacity to transmit content to and from Europe.[61] Similarly, within the United States, domestic fiber providers carry video services over extensive intercity networks. For example, AT&T's Global Video Service provides

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[58] Credit Suisse First Boston, PanAmSat, "Market Has the Short Term Right; but Ignoring Long Term Challenges" (June 23, 2005). *See also* "Fixed Satellite Services," Bear, Stearns & Co. (Sept. 2002) at 25; "Satellite companies seeking scale: Consolidation in sector 'not only necessary but inevitable'," *International Herald Tribune* (Aug. 31, 2005) ("wherever it is available, fiber is a serious threat to satellite because of its superior cost structure").

[59] Intelsat, Ltd., Annual Report Form 20-F, at 25 (Mar. 15, 2005) *available at* http://www.sec.gov/Archives/edgar/data/1156871/000119312505051262/d20f.htm.

[60] *See* Ken Kerschbaumer, "NBC taps Scopus to transmit Olympics from Athens to America," Broadcasting and Cable (July 26, 2004).

[61] *See* Ken Kerschbaumer, "CBS, BT sat pact: $10 million deal covers satellite, fiber transmission," Broadcasting and Cable (Feb. 4, 2002).

connectivity to more than 90 U.S. cities for video transport.[62] Loral Skynet and Global Crossing have reached an agreement that combines their respective satellite and fiber networks,[63] and Intelsat has teamed up with Broadwing Communications to deliver combined fiber and satellite networks to broadcasters.[64]

Third, video network architectures increasingly favor fiber. The newest MVPD entrants – local telephone companies – have chosen architectures for the distribution of programming to local headends that utilize fiber, *not* satellite links. Verizon, for example, recently began providing its fiber-optic service ("FiOS") TV in Texas.[65] Verizon will use two national "superheadends" to downlink satellite-distributed programming, but will then transport those signals to its local headends using its national fiber backbone.[66] SBC is considering a similar superheadend approach.[67]

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62 *See* AT&T Wholesale Global Video Service web site, *available at* http://www.business.att.com/content/productbrochures/gvs.pdf.

63 Press Release, Global Crossing, Global Crossing To Provide Loral Skynet With Expanded Fast-Track Service Capabilities (May 24, 2005), *available at* http://www.globalcrossing.com/xml/news/2005/may/24_3.xml.

64 Press Release, Intelsat, Intelsat Teams Up with Broadwing Communications and HTN to Expand North American Distribution Network (Apr. 18, 2005), *available at* http://www.intelsat.com/aboutus/press/release_details.aspx?year=2005&art=20050418_01_EN.xml&lang=en&footer=96.

65 *See* Press Release, Verizon, Verizon FiOS TV is Here! (Sept. 22, 2005), *available at* http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=104&STORY=/www/story/09-22-2005/0004113325&EDATE.

66 *See* "Verizon Takes Cable Path – Kind of," Multichannel News (June 6, 2005).

67 *See* "The VOD difference," Telephony Online (Mar. 28, 2005) *available at* http://telephonyonline.com/mag/telecom_vod_difference/.

In the case of cable, there is a trend in network operations to consolidate the number of headends to save operating costs.[68] As cable moves toward fewer headends, fiber becomes an increasingly practical and economic alternative to satellite.[69]

Finally, HDTV is expected to generate demand for vast amounts of bandwidth for both transmission of content to production studios, and for distribution of channels to cable headends. Fiber is well placed to meet this demand. For example, Vyvx, a subsidiary of national fiber operator Wiltel, now provides broadcasters the ability to deliver live HDTV backhaul end-to-end from event locations to their production facilities.[70] In addition, Comcast, the nation's largest cable operator, recently announced a long-term agreement with Level 3 for a national fiber backbone that will be used to deliver, among other things, video-on-demand and HDTV services.[71]

3. Proliferation Of Broadband-Enabled IP Applications Creates Additional Competitive Alternatives To Satellites

Fiber is not the only enabler of terrestrial competition to satellite. The broader transition from a multitude of communications protocols to an "IP everywhere" world will usher in more

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68 "Cable networks a primer: Consolidation and expansion," *Light Reading* (Jan. 12, 2002) ("Ten years ago, each pocket of cable subscribers would be served by a unique headend. Many of these headends have been eliminated or their functions curtailed, and the subscribers they served are now serviced off the ring [mix of DWDM, Sonet, and ATM]").

69 With fewer headends, the number of fiber end points for distribution is smaller, meaning a fiber solution is less costly.

70 *See* Vyvx HD VenueNet web site *available at* http://www.wiltel.com/vyvx/products/content/hdvenuenet.htm.

71 Press Release, Comcast Extends National Fiber Infrastructure (Dec. 7, 2004), *available at* http://www.cmcsk.com/phoenix.zhtml?c=14756&p=irol_newsArticle&t=Regular&id=6509598.

integrated communications applications.[72] Over the last five years, the availability of high-bandwidth, last-mile connections at modest prices has rapidly increased. As of 2004, 49 percent of businesses were utilizing either cable modem service or DSL, whereas a decade ago these services were virtually non-existent.[73]

These broadband access alternatives – particularly when utilized with IP platforms that are flexible and readily scalable – permit many corporate data customers to replace their satellite contracts with terrestrial alternatives.[74] As an example, Intelsat's customer, Enterprise Rental Car, recently switched its network from satellite to a terrestrial IP service offering that is delivered over broadband local access.[75] Ford Motor Company also now favors for its dealers IP

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72 The transition to IP (and away from time division multiplexing and circuit switched voice) is perhaps the most dramatic shift in telecom technology since the digital switch replaced the analogue switch. Voice-over-Internet Protocol ("VoIP") users in the U.S. grew from approximately 1.1 million at year-end 2004 to approximately 1.7 million in the first quarter of 2005. At steady state, this would represent 218% growth per year. *See* "VoIP State of Play", *Deutsche Bank* (Jun. 22, 2005). Tiny VoIP provider Skype was just acquired by eBay for approximately $2.6 billion. *See* Press release, Skype, eBay to Acquire Skype, (Sept. 12, 2005), *available at* http://www.skype.com/company/news/2005/skype_ebay.html. Large business lines over VoIP grow from approximately 21% in 2004 to approximately 50% by 2009. *See* "Business VoIP Market," IDATE – Digiworld focus (Jan. 2004). *See also* White Paper: VoIP Solutions, *Juniper Networks,* 2001 ("service demands are forcing a rapid evolution of the [VoIP] technology. The pace of service integration (convergence) with new and existing networks continues to increase as VoIP products and services develop...VoIP and other IP based technologies are best positioned to be the solution to realize these services").

73 *See* "2004 Broadband Subscriber Forecast," *Yankee Group* (Jan. 2005).

74 The bidding process for new communications services highlights the emerging competitiveness of terrestrial services vis-à-vis satellites. Many of today's potential satellite customers do not seek bids from satellite providers alone, but instead make requests for proposals open to terrestrial or satellite solutions, or combinations of both.

75 *See* Press Release, Sprint, Enterprise Rent-A-Car Selects Sprint to Help Drive Network Redesign (Jan. 22, 2004), *available at* http://www2.sprint.com/mr/news_dtl.do?id=1910.

communications services, provided by large terrestrial carriers.[76] As another example, a customer that traditionally accessed supply chain information from a dedicated network served via satellite services can today engage in a real time voice conversation with a representative of the supplier over the same network via Voice-over-Internet Protocol ("VoIP").[77] Terrestrial networks are at a distinct advantage when it comes to supporting these kinds of integrated services.

4. Evolution Of The Video Market Diminishes The Potential Role Of Satellite Providers

The video entertainment market is also evolving in ways that will make satellite solutions less compelling than they have been historically.[78] Cable companies are increasingly caching or storing content in network servers for delivery to customers using video-on-demand ("VOD") services, rather than consuming transponder capacity to broadcast the same content in multiple time slots.[79] Finally, streaming video delivered to computers via broadband connections (which are largely supported by terrestrial, rather than satellite, networks) is increasingly common.

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76 *See* Paul Travis, "Ford Dealers Move To IP Network," InformationWeek, (Oct. 5, 2004), *available at* http://informationweek.com/story/showArticle.jhtml?articleID=49400731&_loopback=1.

77 Consumer and business users of many commercial websites can already click an on screen button which opens up a live voice chat with a vendor representative.

78 *See generally* Citigroup Smith Barney at 9.

79 MSOs utilize aggregators (*e.g.*, Comcast Media Center (CMC)). Content is aggregated, compressed and encoded and uplinked to the transponder. The content is then fed down to region headends/servers. This does not happen on a real-time basis, though as the VOD content is cached/distributed locally over a fiber network and refreshed only periodically (e.g., monthly). *See* Presentation of John Alchin, Comcast EVP & Co-CFO, at Credit Suisse First Boston (Dec. 2004).

5. Terrestrial Wireless Platforms Pose A Further Challenge To Satellite

Competition to satellite is also emerging from non-fiber-based terrestrial providers that offer wireless broadband and video services, which might otherwise have been carried by a satellite. In just this past year, numerous advanced wireless services have been announced or deployed. Verizon Wireless provides wireless broadband access in over 60 major metropolitan areas and is advertising the rapid implementation of full continental United States coverage.[80] Wi-Fi networks are widely available in airports, restaurants, schools, businesses, and other public and private areas, and leading technology providers – such as Intel, Cisco Systems, Dell, IBM, and SAP – have announced initiatives to aid cities in deploying municipal wireless networks.[81]

C. Competition From Other Providers Of Satellite Services Is Significant

The combined entity will face significant competition from traditional and new satellite sources, and also from resellers holding contracted capacity on satellites throughout the world. In the United States,[82] the merged entity will compete with SES, a strong, established FSS provider. SES recently launched three satellites with U.S. coverage into new locations (AMC-12, AMC-15 and AMC-16) and replaced two old U.S. satellites (with AMC-10 and AMC-11).

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80 *See* Verizon Broadband Access service overview *available at* http://www.verizonwireless.com/b2c/mobileoptions/broadband/serviceoverview.jsp.

81 *See* Carmen Noble, "Intel Launches Digital Communities Initiative," eWEEK.com (Aug. 18, 2005), *available at* http://www.eweek.com/article2/0,1895,1849820,00.asp.

82 *See GM-News Corp. Order*, 19 FCC Rcd at 605 (¶ 303) (holding that alleged potential harms in the Latin America MVPD market were irrelevant to the FCC's analysis because "the Commission generally does not consider harms resulting from a transaction occurring outside the United States in our public interest analysis of a transaction, unless the transaction directly impacts a relevant United States market").

SES also plans to launch at least one more satellite (AMC-18) with U.S. coverage before the end of 2006.[83]

New Skies Satellites, Telesat Canada, and Satmex will also compete with the combined company for U.S. customers. New Skies operates three satellites (*i.e.*, NSS-806, NSS-5 and NSS-7) capable of serving the United States. Telesat Canada similarly operates a satellite fleet with excellent U.S. coverage and just this month launched its state-of-the-art Anik F1-R satellite, which provides 32 Ku-band and 24 C-band transponders at 107.3° W.L. Satmex has two existing satellites with U.S. coverage with which it has been actively pursuing U.S. cable and corporate customers, and has a very large new satellite scheduled for launch in 2006 (Satmex 6), which will have C-band and Ku-band coverage throughout the continental U.S. ("CONUS").[84] The FCC has provided these companies, along with several other satellite systems, ready access to the customers served by the merged entity through the FCC's open-market policies and the creation of the Permitted Space Station List. The combined entity will face competition from 21 foreign-licensed satellites on the FCC's Permitted List,[85] as well as vigorous competition outside the United States from a host of regional satellite systems.

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83 *See* SES Fleet Summary, *available at* http://www.ses-americom.com/satellites/fleet_summary.html; Press Release, SES Global, SES Global Companies Contract Three Satellite Launches with ILS (April 19, 2005), *available at* http://www.ses-global.com/media/04/20040419.htm.

84 "Satmex agrees with Arianespace to launch Satmex 6," *Business News Americas* (Sept. 9, 2005).

85 *See* Permitted Space Station List *available at* http://www.fcc.gov/ib/sd/se/permitted.html. This number excludes Permitted List satellites affiliated with Intelsat or PanAmSat or retired.

Loral Skynet, which operates a fleet of international satellites, has indicated that it is planning to serve U.S. domestic customers via satellite in 2006.[86] Competition by existing operators in new frequency bands is also imminent. For example, Echostar Communications Corporation currently provides Ka-band service via Echostar IX and has two spot beam Ka-band satellites under construction.[87] Similarly, DIRECTV has announced plans to deploy four new satellites into Ka-band slots by 2007 with the launch of the second satellite scheduled for October 2005.[88] Loral has also invested in a satellite carrying X-band capacity.[89] Many of the services offered today by the conventional C- and Ku-band satellites of Intelsat and PaAmSat may also be offered by the emerging Ka- and X-band systems.

FSS providers also face competition from some of their own customers, who either intentionally purchase, or find themselves with, excess capacity available for resale.[90] For

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[86] Satellite Today, Loral Skynet Prepares To Re-Enter U.S. Broadcast Market (Apr. 20, 2005), *available at* http://www.telecomweb.com/cgi/pub/st/st04200501.html.

[87] EchoStar Communications Corporation, 2004 Form 10-K at 10 (filed Mar. 16, 2005), *available at* http://www.sec.gov/Archives/edgar/data/1001082/000095013405005271/d23233e10vk.htm.

[88] The DIRECTV Group Inc., 2004 Form 10-K at 33 (filed Mar. 1, 2005) *available at* http://www.sec.gov/Archives/edgar/data/944868/000119312505038986/d10K.htm.

[89] *See* Press Release, Loral Space & Communications, XTAR Achieves Overwhelming Success In First Trials of X-Band System With the U.S. Army's 7th Signal Brigade, (May 9, 2005), *available at* http://www.loral.com/inthenews/050509.html (noting Loral Space & Communications Ltd.'s 56 % interest in Xtar-LLC).

[90] The FCC has found that resale "creat[es] competitive pressures on carriers to provide service at rates near the cost of service." *AT&T Comms., Apparent Liability for Forfeiture and Order to Show Cause*, Notice of Apparent Liability for Forfeiture and Order to Show Cause, 10 FCC Rcd 1,664, 1,664 (¶ 2) (1995) (citing *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, 60 FCC 2d 261, 283, 298-99 (1976)). *See also Regulation of International Accounting Rates*, First Report and Order, 7 FCC Rcd 559, 560 (¶ 12) (1991) (finding that a more liberal resale policy for international private lines "will compel carriers at both ends of the circuit to bring their prices to cost to avoid losing their current customers to resale providers").

example, Echo Star – which is leasing substantial capacity on SES satellites – has stated publicly that it may use some of this capacity (not needed for its own networks) to compete directly with SES and other U.S. domestic satellite operators.[91]

In addition, mobile satellite service players are increasingly expanding their service offerings, particularly as increased throughput on newer mobile satellite service ("MSS") satellites now permits service to traditional FSS customers. Inmarsat, for example, has launched the Inmarsat-4 satellite, which provides a new Broadband Global Area Network service that will offer voice, fax and data connectivity to fixed users.[92]

Finally, despite the shortage described above relating to protected C-band capacity in the U.S. cable arc, there is more generally a substantial oversupply of FSS capacity. Various analysts have pointed out that the supply of transponders serving the North American market is increasing *faster* than the demand for these transponders.[93] This imbalance is reflected in revenue performance trends (for example, PanAmSat has seen no revenue growth in real terms over the past five full years).[94] Not surprisingly, expected FSS revenue for the next three years in North America is forecast to grow at only two percent.[95]

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91 *See* Peter B. deSelding, Space News, "EchoStar Hedging Bets With Leases, Satellite Orders" at 15 (May 9, 2005) ("[EchoStar's Chairman Charlie] Ergen also said EchoStar could use its excess satellite capacity to lease transponders to other companies – 'not so different than what a PanAmSat does'").

92 Press Release, Immarsat, R-BGAN migration to Inmarsat-4 brings vastly extended coverage for customers across Africa and Asia (July 11, 2005), *available at* http://about.inmarsat.com/news/00017228.aspx?language=EN&textonly=False.

93 Citigroup Smith Barney at 17.

94 *Id.* at 10.

95 *Id.* at 13.

IV. THE PROPOSED TRANSACTION COMPLIES WITH SECTION 310 OF THE ACT AND ALL OTHER APPLICABLE STATUTES AND RULES

As part of its public interest analysis, the Commission determines whether a proposed transaction complies with the relevant provisions of the Communications Act, other applicable statutes, and the Commission's rules,[96] and whether the proposed transferee is qualified to hold FCC licenses under the Act, relevant statutes and rules. Moreover, the Commission considers whether a proposed transaction presents national security, law enforcement, foreign policy, or trade policy concerns.[97]

In the recent *Intelsat-Zeus Order*, the Commission approved Intelsat's legal qualifications to hold its licenses under its present ownership.[98] There have been no material changes to Intelsat's ownership since that time. Furthermore, on April 15, 2005, the Commission issued an order finding that Intelsat is in compliance with its obligations under Sections 621(5)(F) and (G) of the ORBIT Act.[99] The FCC also found that the provisions relating to "additional services"[100]

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96 *See, e.g., Applications for Consent to the Transfer of Control of Licenses from Comcast Corp., AT&T Corp. and AT&T Comcast Corporation*, Memorandum Opinion and Order, 17 FCC Rcd 23,246, 23,255 (¶ 26) (2002).

97 *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23,891, 23,919-21, (¶¶ 61-66) (1997) ("*Foreign Participation Order*"); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Order on Reconsideration, 15 FCC Rcd 18,158 (2000).

98 *Intelsat-Zeus Order* at 19 FCC Rcd at 24,826 (¶ 16).

99 *See Petition for Declaratory Ruling that Intelsat, Ltd. Complies with Section 621(5)(F) of the ORBIT Act,* Memorandum and Order, 20 FCC Rcd 8,604(2005) ("*ORBIT Act Compliance Order*"); 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), §§ 621(5)(F), (G).

100 ORBIT Act § 602; *see also id.* § 681(a)(12)(B) ("additional services" defined as "for INTELSAT, direct-to-home (DTH) or direct broadcast satellite (DBS) video services, or services in the Ka or V bands").

under Section 602 of the ORBIT Act are no longer applicable to Intelsat.[101] Therefore, Intelsat is unquestionably qualified to provide direct-to-home ("DTH") and other "additional services" provided by the PanAmSat Licensees.

Because the PanAmSat Licensees hold only non-common carrier licenses, the specific foreign ownership restrictions set forth in Section 310(b) of the Communications Act are inapplicable to this transaction.[102] In any event, the FCC recently approved the basic corporate structure and specific foreign ownership interests of Intelsat under Section 310(b)(4) in the *Intelsat-Zeus Order*, and, as stated above, the ownership of Intelsat has not materially changed since that approval.[103] Consequently, the transfer of control of PanAmSat raises no new foreign ownership questions.

Finally, the Applicants do not believe that the proposed transaction should raise any national security, law enforcement, or public safety issues that have not already been addressed in prior Intelsat transactions reviewed by the FCC. The Applicants are discussing these matters with the Department of Justice (including the Federal Bureau of Investigation), the Department of Homeland Security, and the Department of Defense (collectively, the "Executive Agencies"), and the FCC will be informed of the outcome of these discussions. If it turns out that the Executive Agencies have conditions they wish to propose in connection with the transaction, the

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101 *ORBIT Act Compliance Order* 20 FCC Rcd at 8,614 (¶ 18).

102 *Constellation Communications Holdings, Inc.*, 16 FCC Rcd 13,724, 13,734 (¶ 25) (2001) ("because there is no foreign government ownership in [Constellation], and because Constellation proposes to operate the satellites authorized herein on a non-common carrier basis, further inquiry into alien ownership issues is unnecessary").

103 A comprehensive description of the foreign ownership interests in Intelsat is provided in Appendix B of the *Intelsat-Zeus Order* and is incorporated by reference herein.

Applicants request that the FCC defer final action on this Application until such matters have been resolved.

V. CONCLUSION.

For the foregoing reasons, the Applicants request Commission approval of the transfer of control of the PanAmSat Licensees from the Transferors to Intelsat Holdings, Ltd.

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FCC IBFS - Electronic Filing

Submission id :IB2005002251

Successfully filed on :Sep 30 2005 5:50:04:223PM

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