

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of

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.

File Nos. _____

IB Docket No. 05-____

CONSOLIDATED APPLICATION FOR AUTHORITY TO TRANSFER CONTROL

Intelsat Holdings, Ltd. (“Intelsat” or “Transferee”) and Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, and PEOP PAS, LLC (collectively “Transferors” and with Intelsat, the “Applicants”) respectfully submit this joint application (“Application”) for Commission consent to transfer control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp. (collectively, the “PanAmSat Licensees”) to Intelsat, pursuant to Section 310(d) of the Communications Act of 1934, as amended (“Communications Act” or “Act”), and Section 25.119 of the Federal Communications Commission’s (“FCC’s” or “Commission’s”) rules. As described in detail below, the Applicants’ subsidiaries have entered into a Merger Agreement (the “Merger Agreement”) under which PanAmSat Holding

Corporation (“PanAmSat”), the indirect parent of the PanAmSat Licensees, will become a wholly-owned indirect subsidiary of Intelsat as a result of the merger.

Combined, these two complementary companies will be able better to serve their private-sector and government customers – with enhanced services, greater innovation, and more efficient operations – and will thereby be a stronger company in what will continue to be a fiercely competitive environment. The merger of Intelsat and PanAmSat is the next logical step in the evolution of satellite communications, creating a company committed to serving its customers and ensuring that the nation has a robust space-based communications infrastructure in a world increasingly dominated by terrestrial networks. Accordingly, as explained in detail below, the merger of Intelsat and PanAmSat is strongly in the public interest.

I. BACKGROUND

A. Components Of The Application

1. Authorizations To Be Transferred

This narrative is filed concurrently with the following applications requesting approval of the transfer of control of the PanAmSat Licensees’ authorizations to Intelsat Holdings, Ltd.:

- (1) Application 1 consists of one FCC Form 312 requesting consent to the transfer of control of twenty-three (23) space station authorizations held by PanAmSat Licensee Corp. (“PanAmSat LC”);
- (2) Application 2 consists of one FCC Form 312 requesting consent to the transfer of control of the license for the SBS-6R satellite, held by PanAmSat H-2 Licensee Corp.;
- (3) Application 3 consists of one FCC Form 312 requesting consent to the transfer of control of three (3) VSAT authorizations held by PanAmSat LC;
- (4) Application 4 consists of one FCC Form 312 requesting consent to the transfer of control of seventy-eight (78) transmit-receive earth station licenses held by PanAmSat LC; and

- (5) Application 5 consists of one FCC Form 312 requesting consent to the transfer of control of two (2) temporary-fixed earth station licenses held by PanAmSat LC.

Concurrently with these applications, PanAmSat LC is filing several requests for special temporary authority (“STA”) to continue certain satellite operations in accordance with the terms of existing STAs following the proposed transfer of control to Intelsat. In addition, PanAmSat Corporation, a subsidiary of PanAmSat and the parent of the PanAmSat Licensees, is one of two members of Horizons Satellite LLC,¹ which operates Horizons I, a satellite licensed by Japan that is on the Commission’s Permitted Space Station List.² Following the consummation of the proposed merger, Applicants will follow the Commission’s procedures for changes of ownership of satellites on the Permitted Space Station List.³ PanAmSat LC also holds two receive-only earth station registrations,⁴ which are only subject to post-transaction notification procedures. Intelsat will accordingly notify the Commission of the transfer of control of these registrations upon consummation of the merger.

¹ Horizons Satellite LLC is jointly owned on a 50/50 basis by PanAmSat Corporation and JSAT International, Inc., a Delaware corporation.

² Horizons I is the Ku-band payload on a hybrid C- and Ku-band satellite operated at the 127° W.L. orbital location. *See Horizons Satellite LLC, Petition for Declaratory Ruling to Add Horizons I to the Permitted Space Station List*, Order, 18 FCC Rcd 24,745 (2003). The FCC has licensed the C-band payload of this satellite to PanAmSat LC under the name Galaxy 13. *See Panamsat Licensee Corp., Application for Authority to Launch a Fixed Satellite Service Satellite and to Operate the C-Band Payload of That Satellite at 127° W.L.*, Order and Authorization, 18 FCC Rcd 19,680 (2003).

³ *See Amendment of the Commission’s Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, 18 FCC Rcd 10,760, 10,880 (¶¶ 326-27) (2003) (“First Space Station Reform Order”).

⁴ *See* File Nos. SES-LIC-19961205-00098 (Call sign E970080); SES-REG-20011217-02317 (Call sign E010334).

2. Request For Approval Of Additional Authorizations

PanAmSat LC currently has on file additional applications and pleadings with respect to the assets involved in the proposed transaction. Following the filing of this Application, PanAmSat and its subsidiaries may file additional applications or petitions, or have currently pending applications or petitions granted, during the Commission's consideration of this Application and the period required for the consummation of the proposed transaction following approval (the "Interim Period"). Accordingly, the Applicants request that the Commission, in acting upon this Application, include authority for the transfer of control to Intelsat Holdings, Ltd. of (1) all authorizations issued to PanAmSat or any of its subsidiaries during the Interim Period; and (2) all applications (including applications for STA), petitions, or other filings that are pending at the time of consummation of the proposed transfer of control.

Following the closing of the proposed transaction, PanAmSat and its subsidiaries will supplement their pending applications as required under the Commission's rules, 47 C.F.R. § 1.65, to reflect the new ownership structure of PanAmSat. Under the rules adopted in the *First Space Station Reform Order*, "transfer applications are no longer considered major amendments to applications."⁵

3. Request For Permit-But-Disclose Status

The Applicants request that this proceeding be designated "permit but disclose" under the Commission's rules controlling *ex parte* presentations.⁶ Designation as a "permit but disclose"

⁵ *Gen. Motors Corporation and Hughes Corporation, Transferors, and The News Corporation Limited, Transferee*, Supplemental Order, 19 FCC Rcd 6,309, 6,311 (¶ 4) (2004) (citing *First Space Station Reform Order*, 18 FCC Rcd at 10,814 (¶ 140)).

⁶ 47 C.F.R. § 1.1200 *et seq.*

proceeding under Section 1.1206 would serve the public interest by facilitating the development of a complete record upon which a well-reasoned decision can be made.

B. Description Of The Applicants

1. PanAmSat Licensees

PanAmSat is a fixed satellite service company that serves the video market in North America and Latin America, as well as providing satellite services elsewhere in the world. Large media and broadcast companies, such as DirecTV, Fox, Disney, and HBO, use PanAmSat's satellites to distribute their programming.

PanAmSat Holding Corporation is a publicly-traded Delaware corporation. PanAmSat Holding Corporation's wholly-owned subsidiary, PanAmSat Corporation, wholly owns the PanAmSat Licensees—PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp. As described above, the PanAmSat Licensees hold authorizations to operate non-common carrier fixed satellite service ("FSS") satellites using the C- and Ku-bands, as well as authorizations for numerous non-common carrier earth stations that transmit and/or receive signals in those frequency bands.

2. Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, and PEOP PAS, LLC

The Transferors—Constellation, LLC ("Constellation"), Carlyle PanAmSat I, LLC ("Carlyle PanAmSat I"), Carlyle PanAmSat II, LLC ("Carlyle PanAmSat II"), PEP PAS, LLC ("PEP PAS") and PEOP PAS, LLC ("PEOP PAS")—collectively hold approximately 58 percent of the stock of PanAmSat.⁷ At present, the Transferors together exercise control over PanAmSat and the PanAmSat Licensees through their control of a majority of PanAmSat's Board seats.

⁷ Constellation holds approximately 26% of PanAmSat Holding Corporation's stock; Carlyle PanAmSat I and Carlyle PanAmSat II together hold approximately 16% of the stock; and PEP PAS and PEOP PAS together hold approximately 16% of the stock.

The Transferors are owned by investment funds associated with three U.S. private investment firms: Kohlberg Kravis & Roberts Co. L.P.; TC Group, L.L.C., d/b/a The Carlyle Group; and Providence Equity Partners, Inc.⁸

3. Intelsat⁹

Intelsat Holdings, Ltd. owns and operates a global satellite system that provides end-to-end network solutions to telecommunications operators, corporate network integrators, governments, Internet service providers, and broadcasters around the world. Intelsat primarily serves the voice, data, and Internet connectivity requirements of telecommunications and government customers. Intelsat's fleet of satellites offers service in more than 200 countries, allowing telecommunications carriers to provide their customers with high quality and reliable voice and data services. Intelsat also provides lifeline connectivity services to less developed areas of the world.

Intelsat Holdings, Ltd. is an entity organized under the laws of Bermuda and ultimately controlled by private equity fund groups advised by or associated with: (1) Apax Partners

⁸ PanAmSat's ownership and management structure was described in additional detail in a consolidated transfer of control application that was granted on August 11, 2004 and consummated on August 20, 2004. *See Applications of the News Corporation Limited and the DIRECTV Group, Inc. (Transferors) and Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC and PEOP PAS, LLC (Transferees) for Authority to Transfer Control of PanAmSat Licensee Corp.*, Public Notice, 19 FCC Rcd 15,424 (2004); Letter from William M. Wiltshire, Counsel for The News Corporation Limited, et al., to Marlene H. Dortch, Secretary, FCC, *In re Applications of The News Corporation Limited and The DIRECTV Group, Inc. (Transferors) and Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC and PEOP PAS, LLC (Transferees) for Authority to Transfer Control of PanAmSat Licensee Corp.*, IB Docket No. 04-209 (August 25, 2004). *See also* FCC File Nos. SAT-T/C-20040924-00190, SES-T/C-20040924-01456, SES-T/C-20040924-01457, and SES-T/C-20040924-01458 (*pro forma* transfer of control of PanAmSat Licensee Corp. following the transfer of control that was consummated on August 20, 2004).

⁹ This section is responsive to Questions 40 and A.20 on FCC Form 312 and Schedule A thereto.

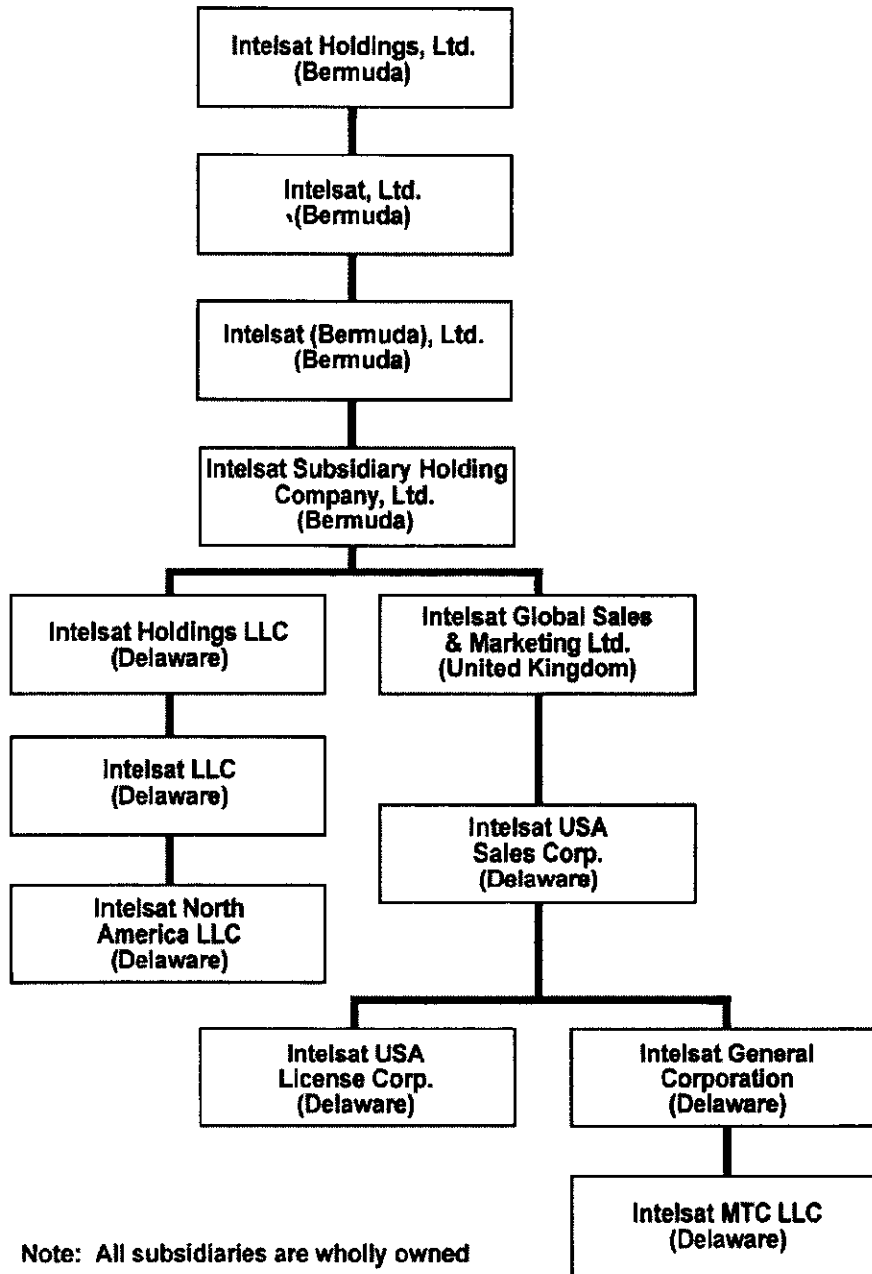
Worldwide LLP and Apax Partners, L.P.; (2) Apollo Management V, L.P.; (3) MDP Global Investors Limited; and (4) Permira Advisers LLC.¹⁰ The FCC recently found that the present ownership structure of Intelsat Holdings, Ltd. is in the public interest.¹¹ The current shareholders holding 10 percent or more of the issued share capital of Intelsat Holdings, Ltd. are shown in the exhibit responding to Questions 40 and A.20 on the Form 312 accompanying the transfer of control applications for PanAmSat's space station licenses.

Through subsidiaries, Intelsat Holdings, Ltd. indirectly controls multiple U.S. C- and Ku-band space station authorizations, earth station licenses, and other ancillary licenses and authorizations. Intelsat Holdings, Ltd.'s FCC-licensed subsidiaries include: (1) Intelsat LLC, which holds Title III licenses; (2) Intelsat North America LLC, which holds Title III licenses; (3) Intelsat USA License Corp., which holds Title II common carrier authorizations; (4) Intelsat General Corporation, which holds a Title II common carrier authorization; and (5) Intelsat MTC LLC, which holds Title III licenses (together, the "Intelsat Licensees").

¹⁰ Intelsat Holdings, Ltd. was formerly known as Zeus Holdings Limited.

¹¹ See *Intelsat, Ltd. and Zeus Holdings Limited, Consolidated Application for Consent to Transfer of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, As Amended, Order and Authorization*, 19 FCC Rcd 24,820, 24,833 (2004) ("*Intelsat-Zeus Order*").

Intelsat's current corporate structure for its U.S.-licensed subsidiaries is depicted graphically below:



The address of Intelsat Holdings, Ltd., Intelsat, Ltd., and Intelsat (Bermuda), Ltd. is:

Wellesley House North
2nd Floor
90 Pitts Bay Road
Pembroke, HM 08
Bermuda

C. Description Of The Proposed Transaction

On August 28, 2005, Intelsat (Bermuda), Ltd. and its wholly owned subsidiary Proton Acquisition Corporation (“Merger Sub”) entered into a Merger Agreement with PanAmSat Holding Corporation. The Merger Agreement contemplates a merger whereby Merger Sub will be merged with and into PanAmSat Holding Corporation, with PanAmSat remaining as the surviving entity. Upon completion of the transaction, PanAmSat will be a direct or indirect wholly-owned subsidiary of Intelsat (Bermuda), Ltd. and of Transferee, and PanAmSat and its subsidiaries will continue as separate corporate entities.

Under the Merger Agreement, each outstanding share of common stock of PanAmSat will be converted into the right to receive \$25.00 in cash, without interest, plus a pro rata portion of any of PanAmSat’s regular quarterly dividend that has not been declared (or has been declared with a record date after the closing) with respect to the fiscal quarter in which the merger occurs (but not for the period after the closing of the merger).¹² Consummation of the merger is subject to conditions, including receipt of requisite regulatory approvals, receipt of financing by Intelsat, and adoption of the Merger Agreement by PanAmSat’s stockholders.

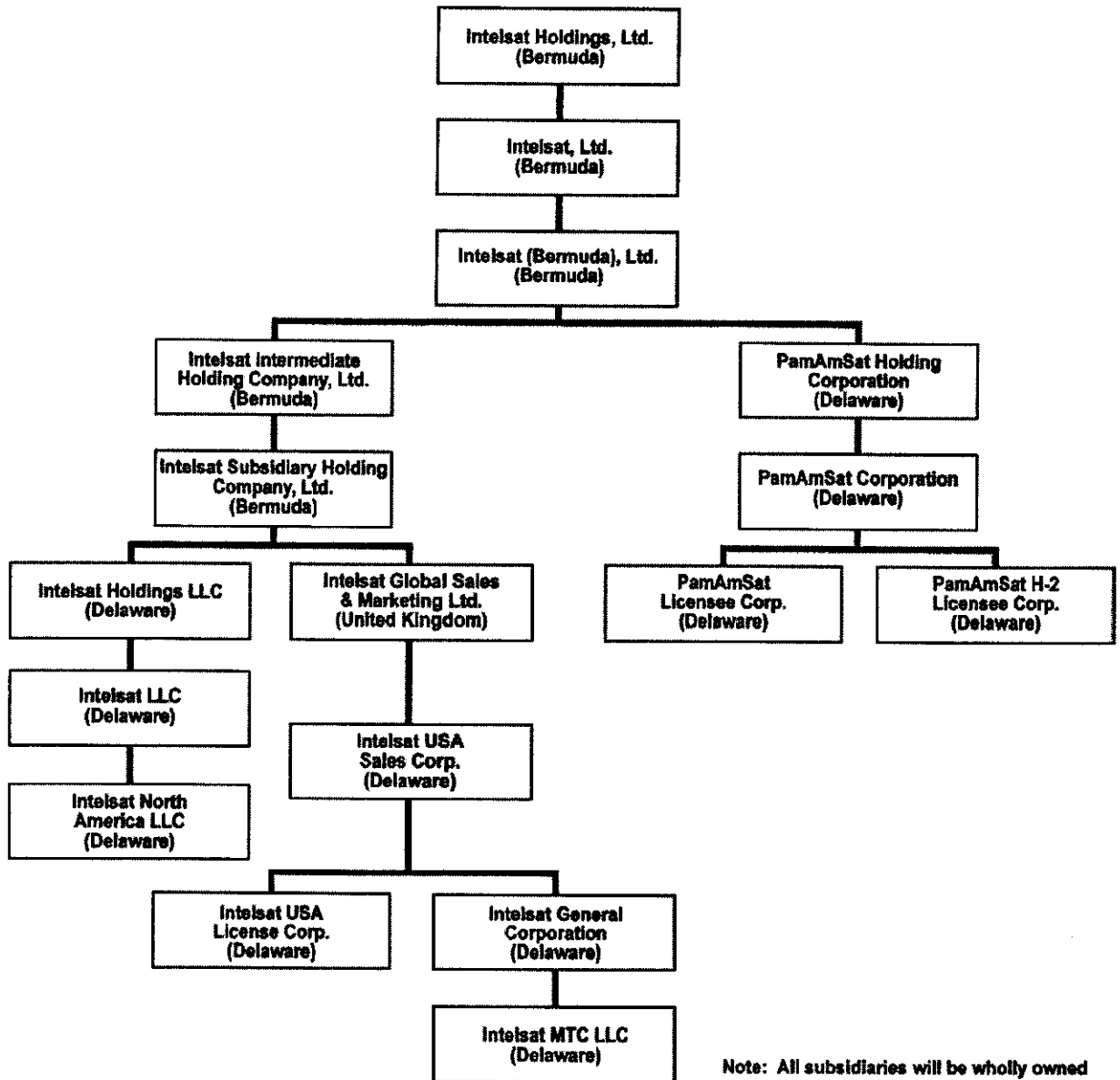
Prior to the closing of the transaction, Intelsat (Bermuda), Ltd. is expected to transfer substantially all of its assets and liabilities to Intelsat Intermediate Holding Company, Ltd.,

¹² Each stock option of PanAmSat will be accelerated and cashed-out for an amount equal to the excess of \$25.00 over its exercise price. Restricted shares will be accelerated and converted into the right to receive the merger consideration.

which is a newly-formed wholly-owned subsidiary formed under the laws of Bermuda. This new Bermuda subsidiary will then become the direct parent of Intelsat Subsidiary Holding Company, Ltd. and its subsidiaries.¹³

¹³ The Intelsat Licensees will be filing an application requesting FCC approval for this *pro forma* transfer of control shortly after the filing of the instant Application.

The chart below depicts Intelsat's corporate structure for its U.S.-licensed subsidiaries subsequent to the merger.



D. Framework For Analysis

Pursuant to Section 310(d) of the Communications Act,¹⁴ the Commission conducts an overall public interest analysis when assessing applications for transfer of control of space and earth station authorizations. In doing so, the agency uses its telecommunications expertise to “weigh the potential public interest harms against the public interest benefits to ensure that, on balance, the proposed transaction will serve the potential public interest, convenience, and necessity.”¹⁵ The overall public interest evaluation also necessarily encompasses the “broad aims of the Communications Act,”¹⁶ which include, among other things, whether the transfer will

¹⁴ 47 U.S.C. § 310(d).

¹⁵ *Lockheed Martin Corporation, COMSAT Corporation and COMSAT Digital Teleport, Inc., Assignors and Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC, and Intelsat USA License Corp., Assignees, Application for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petitions for Declaratory Ruling, Order and Authorization*, 17 FCC Rcd 27,732, 27,739-740 (¶ 12) (2002) (“*Lockheed/Comsat/Intelsat Order*”).

¹⁶ *Gen. Motors Corp. and Hughes Electronics Corp., Transferors And The News Corporation Limited, Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd 473, 483 (¶ 16) (“*GM-News Corp. Order*”); *AT&T-Comcast Order*, 17 FCC Rcd at 23,255 (¶ 27); *Matter of Application of EchoStar Communications Corp., (a Nevada Corporation), Gen. Motors Corp. and Hughes Elec. Corp. (Delaware Corporations); (Transferors) and EchoStar Communications Corp. (a Delaware Corporation); (Transferee)*, Hearing Designation Order, 17 FCC Rcd 20,559, 20,575 (2002) (“*EchoStar-DirecTV HDO*”); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, Memorandum Opinion and Order, 15 FCC Rcd 9,816, 9,821 (¶ 11) (2000) (“*AT&T-MediaOne Order*”) (“*AT&T-Media One Order*”); *Applications of Voicestream Wireless Corp. or Omnipoint Corp., Transferors, and VoiceStream Wireless Holding Co., Transferees*, 15 FCC Rcd 3,341, 3,346-47 (¶ 11) (“*VoiceStream Omnipoint Order*”); *AT&T Corp., British Telecomms., plc, VLT Co. L.L.C., Violet License Co. LLC, and TNV [Bahamas] Limited Applications; For Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection With the Proposed Joint Venture Between AT&T Corp. and British Telecomms., plc*, 14 FCC Rcd 19,140, 19,146 (¶ 14) (“*AT&T Corp.-British Telecomm. Order*”); *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18,025, 18,030 (¶ 9) (1998) (“*World-Com MCI Order*”).

affect the quality of communications services or foster technological development in communications.¹⁷

In assessing a proposed transaction, the FCC must consider technological and market trends, and the nature, complexity, and speed of change within the communications industry.¹⁸ As the Commission has recognized, today's telecommunications marketplace is extraordinarily dynamic,¹⁹ as is the satellite industry. The Commission has found that it should proceed cautiously prior to imposing regulatory burdens during periods of technological change.²⁰

The Commission also must determine whether a proposed transaction complies with the relevant provisions of the Communications Act, other applicable statutes, and the Commission's rules,²¹ and whether the proposed transferee is qualified to hold FCC licenses under the Act, relevant statutes and rules. Finally, the Commission must consider whether a proposed

¹⁷ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,544 (¶ 41); *AT&T-Comcast Order*, 17 FCC Rcd at 23,255 (¶ 27); *AT&T-MediaOne Order*, 15 FCC Rcd at 9,821-22 (¶ 11); *WorldCom-MCI Order*, 13 FCC Rcd at 18,031 (¶ 9).

¹⁸ See *id.*

¹⁹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16,978, 17,372 (¶ 634) (2003) (noting the "continually evolving and dynamic nature of telecommunications networks").

²⁰ See, e.g., *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment*, First Report and Order, 9 FCC Rcd 1,981, 1987 (¶ 30) (1994) ("[T]he potential for [regulation to result in] a constraining effect is substantially greater... where there is rapid development of new communications technologies and services"); *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4,863, 4,867 (¶ 5) (2004) (noting that in competitive, evolving markets, the Commission should "rely... wherever possible on competition and apply... discrete regulatory requirements only where such requirements are necessary to fulfill important policy objectives").

²¹ See, e.g., *Comcast Corporation, AT&T Corp. and AT&T Comcast Corporation*, Memorandum Opinion and Order, 17 FCC Rcd 23,246, 23,255 (¶ 26) (2002).

transaction presents national security, law enforcement, foreign policy, or trade policy concerns.²²

As discussed below, the proposed transaction serves the public interest. It will yield substantial public interest benefits without any potential harm to the public. Intelsat is legally and financially qualified to control the PanAmSat Licensees, and the proposed transaction is consistent with the Act and all applicable Commission rules. Accordingly, the Commission expeditiously should grant the Application.

II. THE TRANSACTION WILL SERVE THE PUBLIC INTEREST

A. The National Interest Will Be Better Served

Intelsat was created over 40 years ago – the culmination of a multilateral effort led by the United States – with a critical mission: to enhance telecommunications connectivity by encouraging the development of communications satellites.²³ Today, this objective of enhancing communications by satellite remains a foundation of U.S. telecommunications policy, because satellites are a crucial component of U.S. and worldwide communications infrastructure. The merger of Intelsat and PanAmSat is a logical next step in the evolution of satellite communications, creating a financially and operationally strong company committed to the

²² 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).

²³ See *Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System* (Washington, 1964); *Agreement Relating to the International Telecommunications Satellite Organization* (“ITSO”) (Washington, 1971).

future success of satellite technology. It will also help to support Intelsat's continuing commitment to ensuring connectivity for its lifeline customers.²⁴

Satellites are taken for granted in many everyday applications. We have all become accustomed to watching cable and direct broadcast satellite ("DBS") television programs delivered over satellite, viewing news feeds "live via satellite," and receiving endless streams of Internet material, voice and data delivered at least in part by satellite communications. When a disaster strikes, however, as recently occurred with Hurricanes Katrina and Rita, or when the United States goes to war, the nation is reminded in other, more direct ways of the critical need for satellite communications. As FCC Chairman Martin noted in his recent testimony:

If we learned anything from Hurricane Katrina, it is that we cannot rely solely on terrestrial communications. When radio towers are knocked down, satellite communications are, in some instances, the most effective means of communicating.²⁵

Intelsat and PanAmSat, along with other satellite providers, contributed capacity, ground terminals, and manpower to the Hurricane Katrina and Hurricane Rita response efforts, and re-established vital communications when all terrestrial means were disrupted.²⁶

²⁴ Intelsat satellites fulfill the core principle of the International Telecommunications Satellite Organization ("ITSO") of ensuring connectivity for lifeline customers. *See* International Telecommunications Satellite Organization, http://216.119.123.56/dyn4000/dyn/docs/ITSO/tpl1_itso.cfm?location=&id=1&link_src=HPL&lang=English.

²⁵ Written Statement of Kevin J. Martin, Chairman, Federal Communications Commission, Hearing on Communications in a Disaster Before the Committee on Commerce, Science and Transportation, United States Senate, Sept. 22, 2005, at 7.

²⁶ As Chairman Martin recently explained, satellite providers helped to bridge gaps left by the communications outages "by providing satellite phones and video links to law enforcement officials, medical personnel, emergency relief personnel, and news outlets." *Id.* at 3. *See also* "Satellite Companies Pitch in Hurricane Katrina Relief Efforts," *Satnews Daily* (Sept. 12, 2005) (describing PanAmSat's donation of satellite capacity to the American Red Cross, and cooperation with the Army Corps of Engineers, the South Carolina National Guard and FEMA to

In times of war, satellites are essential to meeting national defense needs. Since 9/11, the increase in satellite demand by the U.S. military has been tenfold, with satellite-based solutions in the middle of core functions ranging from “morale and welfare applications to unmanned vehicles, tracking, logistics, and beyond.”²⁷ Both Intelsat and PanAmSat have been involved in assisting the U.S. military in Iraq and Afghanistan. As explained below, the merger of Intelsat and PanAmSat will allow the combined fleet of these two companies to respond more rapidly, and with enhanced geographic availability and reliability, to the many situations such as these in which satellite communications are crucial.

B. The Combined Company Will Better Serve Customers

The combined entity will be able to offer increased capacity for key services, improved reliability, and more extensive geographic availability, thus competing more effectively with other satellite providers and with terrestrial infrastructure (as described below) and ensuring that satellite customers have more and better choices.

1. Combining The Satellite Fleets Will Increase The Availability Of Critical Service Offerings

By integrating satellite operations, the combined Intelsat-PanAmSat fleet will increase the amount of highly valued satellite capacity offerings to customers beyond the total that could otherwise be offered by the two companies on a standalone basis. For example, in contrast to the current general oversupply in overall FSS capacity, as discussed below, there is a shortage of

provide connectivity); *Public Safety Communications from 9/11 to Katrina: Critical Public Policy Lessons: Hearing Before the Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce* (Sept. 28, 2005) (Written Statement of Tony Trujillo, Chairman, Satellite Industry Association).

²⁷ “Panelists Talk Broadband over Satellite Shop,” *Communications Daily*, Mar. 22, 2005, at 3.

protected C-band capacity in prime U.S. orbital locations for cable TV distribution.²⁸ Excluding transponders that are already under contract, PanAmSat today is constrained in the number of additional C-band transponders that it can make available to customers on a protected basis over North America. Intelsat cannot today offer any such additional protected transponders. Following the proposed merger, however, the combined company could immediately deliver a four-fold increase in the number of available protected transponders in prime orbital locations – because PanAmSat spare satellites would also be available to serve as spares for (*i.e.*, to back up) Intelsat satellites until such time as (pursuant to contract) these PanAmSat satellites were needed to substitute for failed PanAmSat capacity.

The merger's creation of such highly desirable and otherwise under-supplied capacity will serve the emerging needs of video programmers for high definition television ("HDTV") distribution. Without the merger, this additional capacity could not be released into the market. The merger will thus allow the combined entity to increase its output to meet the needs of customers for protected capacity, and thereby remain a competitive alternative to other satellite and fiber providers.

2. Combining The Satellite Fleets Will Increase The Reliability Of Satellite Services

Providing satellite services unfortunately remains a risky business: about one in ten launches fail,²⁹ and a recent analysis estimated that "the odds of an anomaly are...around 24

²⁸ The Commission has taken notice of the competitive benefits of capacity gains through satellite fleet consolidation. *See Application of Contel Corp., GE Am. Comms., Inc., and GTE Spacenet Corp., for Consent to Transfer Control of GTE Spacenet Corp.*, Order and Authorization, 9 FCC Rcd 5,775, 5,776 (¶ 7) (1994).

²⁹ "Fixed Satellite Services," Bear, Stearns & Co. (Sept. 2002).

percent per satellite per year.”³⁰ Both Intelsat and PanAmSat have suffered from in-orbit satellite failures in recent years.³¹

The merger will allow the combined fleet to be optimized to maximize back-up capabilities, enabling customers to receive better guarantees of service. For example, the merged company could co-locate satellites to provide seamless service in case of a partial or total satellite failure, and would be better able rapidly to reposition satellites to restore service if necessary. Such back-up capability would, among other things, help to support Intelsat’s continuing commitment to ensuring connectivity for its lifeline customers.³²

The newly available back-up capacity could also substitute for increasingly expensive in-orbit commercial insurance.³³ Commercial insurance fails to protect an operator against most

³⁰ “PanAmSat Holding Corp.,” Citigroup Smith Barney (May 18, 2005) (“Citigroup Smith Barney”). These failures can have real consequences for consumers, and so being able to deal with them more effectively is a significant public benefit. For example, in 1998, a “satellite malfunction interrupted paging service for as many as 90% of U.S. pager customers, and disrupted other satellite-based services such as news broadcasts and credit-card authorization at retail stores.... Though the exact number of people affected is unclear, the satellite failure rendered some companies utterly unable to continue their U.S. customers’ paging service. The U.S.-based portion of PageMart Wireless’ 2.7 million customers and PageNet’s 10.4 million customers are all without paging service, according to separate statements from the companies.” (Info World Electric, May 20, 1998).

³¹ See Press Release, Intelsat, Intelsat Reports Loss of Intelsat Americas-7 (Nov. 28, 2004), available at http://www.intelsat.com/aboutus/press/release_details.aspx?year=2004&art=20041129_01_EN.xml; Press Release, Intelsat, Intelsat Reports Loss of IS-804 Satellite (Jan. 16, 2005), available at http://www.intelsat.com/aboutus/press/release_details.aspx?year=2005&art=20050116_01_EN.xml&lang=en&footer=85; Press Release, PanAmSat, PanAmSat Maintains Seamless Service for Customers on Galaxy 10R Satellite Following Propulsion System Failure (Aug. 5, 2004), available at <http://www.panamsat.com/news/pressview.asp?article=1366>.

³² See note 24 *supra*.

³³ See Orion Securities (Feb. 2004) (“Our research suggests that insurance premiums...account for as much as 25% of program costs...elevated insurance costs were a contributing factor in the 2002 trough in satellite orders, and they may temper industry growth prospects going forward”).

opportunity costs (e.g., lost revenues, costs of leasing replacement capacity). Effective self-insurance through increased back-up reduces system costs, and benefits customers in the event of satellite failure by giving them service continuity, as opposed to outage credits, which do not compensate for business losses.

3. The Merged Companies Will Be Able To Use Spectrum More Efficiently And Offer Better Geographic Availability

The larger, integrated fleet of the combined company will provide increased opportunities for customers to be offered “bandwidth portability,” which enables customers to shift their dedicated capacity among and within regions as circumstances warrant. Many customers, including television news gatherers and the U.S. government, have such shifting geographic needs. For example, a large news organization with extensive capacity needs in the Middle East one month (e.g., for the Iraqi election) may wish to shift some of that capacity to Europe the next month (e.g., for the Olympics). Merging Intelsat’s and PanAmSat’s fleets will increase the ability of the combined entity to offer flexibility to customers and to incorporate that flexibility into contracts in ways that allow for more efficient planning.³⁴

The combined fleet will also permit more efficient use of satellite capacity, allowing coverage to be more responsive to consumer needs. Although some Intelsat satellites have steerable beams, once one of those beams is anchored to a specific geographic area by a customer contract, Intelsat is contractually committed not to repoint the beam, even if there is spare capacity on the beam. Therefore, some capacity is not in use, and cannot be sold to customers in another geographic area where demand may be higher.

³⁴ The FCC has recognized that the public interest is served by actions that reduce the time needed to respond to customers’ changing satellite needs. *Amendment of the Commission’s Space Station Licensing Rules and Policies*, Second Report and Order, 18 FCC Rcd 12,507, 12,510 (¶ 7) (2003) (adopting a streamlined, fleet management notification process to “facilitate satellite operators’ efforts to meet the service needs of their customers”).

With a combined fleet this inefficiency can be mitigated. For example, PanAmSat has one satellite (PAS-12, formerly known as Europe*Star 1) and Intelsat has two satellites (IS-802 and IS-704) with beams serving South Africa, with each satellite only partially utilized. After the merger, all of this traffic might be relocated to PAS-12 (a fixed South Africa beam), freeing the IS-704 and IS-802 beams. Those beams could then be repointed, resulting in additional capacity over the Middle East, West Asia, or other regions to serve U.S. government requirements.

C. The Merger Will Drive Innovation

1. Broadband Access For Rural Areas

One of the top priorities of the Administration and of the Commission is to increase the nation's broadband access. As President Bush has said:

We ought to have a universal, affordable access for broadband technology by the year 2007, and then we ought to make sure as soon as possible thereafter, consumers have got plenty of choices when it comes to purchasing the broadband carrier.³⁵

Satellite delivery is the best potential option for bringing broadband service to unserved rural areas. Currently, more than three-quarters of U.S. small businesses in rural areas do not have access to cable-modem or digital subscriber line ("DSL") broadband Internet services.³⁶ In

³⁵ President George W. Bush, MSNBC, March 26, 2004. The same sentiment has also been expressed by Chairman Martin, when as a Commissioner he stated that encouraging the deployment of broadband services to all Americans was his "top priority." As he noted, "[b]roadband services are essential to the economy of the 21st century," and access to such services "is especially important to rural America, providing business, educational and healthcare opportunities to remote parts of the country." Statement of Commissioner Kevin J. Martin, *Availability of Advanced Telecommunications Capability in the United States*, Fourth Report to Congress, Sept. 9, 2004, at 6.

³⁶ Grant Gross, *Broadband Stalls in Small Business*, PC World, (Sept. 21, 2005), available at <http://www.pcworld.com/news/article/0,aid,122635,00.asp>.

addition, satellites are well-suited to provide broadband competition to DSL and cable broadband in urban areas. Yet despite the obvious value of satellite broadband, to date no company has succeeded in creating a commercially viable satellite broadband system. This merger will benefit the public interest by creating a satellite company with the scale, expertise, and resources required to pursue the development of broadband by satellite at affordable prices competitive with today's cable modem and DSL services.³⁷

2. Others Areas Of Innovation

As customer needs become increasingly sophisticated, and terrestrial networks are increasingly able to fulfill those needs, satellite providers will have to invest resources to develop products. This is equally true for government customers (who require highly secure, turnkey solutions³⁸), broadcast customers (as they transition their broadcasts from analog to digital and digital to HDTV), and enterprise customers (as they increasingly transition to internet protocol ("IP")-based networks, as described below). For example, satellite operators have been attempting to develop solutions for disaster areas (such as mobile FSS earth stations) and very small aperture terminal ("VSAT") services with more power and smaller antennas. The enhanced ability of the merged entity to invest in and roll out new services will clearly benefit satellite users.

³⁷ Intelsat has already demonstrated its commitment to broadband by satellite through its investment in the Wildblue Ka-band system. See <http://www.wildblue.com/company/investors.jsp>.

³⁸ "Because the federal government relies on commercial satellites, security threats leading to their disruption or loss would put government functions (including communications and information transmission) at significant risk. . . . GAO also recommends that commercial satellites be identified as a critical infrastructure (or as part of an already identified one) in the national critical infrastructure protection strategy." GAO, "Critical Infrastructure Protection: Commercial Satellite Security Should Be More Fully Addressed," Rep. No. GAO-02-781 at 2 (Aug. 2002), available at <http://www.gao.gov/new.items/d02781.pdf>.

D. The Merger Will Create Operational Efficiencies

Customers of the merged company will reap the benefits of the combined best practices of two experienced satellite-management teams, as well as the cost savings that can be realized from the merger of two entities.

1. The Merged Entity Will Provide Customers With An Array Of Services

Intelsat has historically excelled in providing bandwidth-management services, such as monitoring, transmission planning, and interference resolution to its customers; PanAmSat is an experienced systems integrator, capable of providing its customers with earth station installation, operation, and maintenance services. The two companies also bring complementary expertise in their customers' industries, with PanAmSat's focus on broadcast and cable customers, and Intelsat's in-depth knowledge of telephony and data services (as well as the special concerns of developing countries). The combination of these capabilities will provide customers with the opportunity to purchase more comprehensive services from a single provider³⁹ – and, if problems occur, customers will enjoy the convenience of a single “troubleshooting” contact point. Although customers can assemble this service package for themselves or use systems integrators to do it for them, customers will benefit from the ability to deal directly with an operator that can offer a rich set of options.

³⁹ See *Lockheed Martin Corp., COMSAT Govt. Sys., LLC, and COMSAT Corp.; Applications for Transfer of Control of COMSAT Corp. and Its Subsidiaries, Licensees of Various Satellite, Earth Station Private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214 Authorizations*, Order and Authorization, 15 FCC Rcd 22,910, 22,917 (¶ 21) (2000) (noting that “the combination of Lockheed Martin’s technological skills and resources with Comsat’s long-standing expertise in providing international satellite services will increase operational efficiencies necessary to compete in the international telecommunications marketplace”).

2. **The Merged Entity Will Be Able To Reduce Overhead**

Combining Intelsat's and PanAmSat's operations will result in operational synergies and cost savings that can be used to drive consumer benefits that neither company could provide individually. The proposed transaction will allow the merged company to reduce operating expenses by shedding Intelsat's and PanAmSat's duplicate corporate office facilities, sales and marketing teams, satellite-operations control centers, and general overhead costs. Such actions will free resources that can then be focused on serving customers with, *e.g.*, improved capacity management, more investment in new product offerings, and greater attention to customer service.⁴⁰

III. **THE TRANSACTION WILL ENHANCE COMPETITION**

The merger of Intelsat and PanAmSat will enhance competition by increasing efficiency, improving service, and expanding output. The two companies today have very different focuses to their respective businesses, and little competitive overlap. Both companies also face a robust set of satellite and terrestrial competitors, and a set of economic and technological trends that will continue to raise competitive intensity regardless of this transaction.

A. **The Businesses Are Complementary**

The proposed merger will combine two very different companies with complementary, rather than overlapping, areas of business focus. PanAmSat's North American business is

⁴⁰ See *Applications of Nextel Communications Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, FCC 05-148, 48 (¶ 131) (Aug. 8, 2005) ("Additional savings may be realized through an efficient combination of the development and operation of the billing, sales, and marketing functions of each of the separate entities after the merger"); *Applications of Comsat General Corporation, Lockheed Martin Global Telecommunications LLC, Comsat News Services, Inc., Intelsat LLC, and Intelsat MTC LLC to Assign Licenses and Authorizations and Request for a Declaratory Ruling on Foreign Ownership*, Public Notice, 19 FCC Rcd 21,216, 21,218 (2004) (noting that "the combination of Intelsat's operations with the assets it proposes to acquire from COMSAT General Businesses should ... allow Intelsat to realize economies of scale and scope").

mainly focused on video distribution.⁴¹ Conversely, Intelsat “has historically been weaker in the video segment and has instead elected to focus on the corporate and carrier voice and data segments and – with the relevant acquisition of COMSAT General – the government segment.”⁴²

For example, virtually all of the top U.S. cable networks – *e.g.*, HBO, CNN, Fox News, ESPN, MTV – are contractually tied to PanAmSat and SES Americom satellites for periods of five to fifteen years⁴³ and thus are both price-protected (often into future satellite replacement priorities) and not available to Intelsat. Intelsat therefore provides program distribution services largely for religious and foreign-language channels, not for the leading cable programmers that are the core customers of the PanAmSat and SES video businesses. Even aside from the long-term contracts, these top-tier video customers typically demand protected or non-preemptible capacity, which offer immediate or priority restoration respectively; Intelsat cannot provide this type of service currently because of its scarcity of orbital resources in the cable arc and the partial failure of IA-7 at 129° W.L. in November 2004.⁴⁴

⁴¹ Over the past three years, video services have comprised an average of more than 60% of PanAmSat’s annual revenues. PanAmSat Co., Annual Report Form 10-K, at 6 (Mar. 22, 2005), *available at* <http://www.shareholder.com/Common/Edgar/1037388/1047469-05-7256/05-00.pdf>.

⁴² Citigroup Smith Barney at 14. In 2004, Intelsat derived 32% of its revenues from carrier services, 26% from corporate network applications, 19% from video, 14% from government/military and 9% from Internet. 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>.

⁴³ Satellite contracts are typically five to fifteen years in length. Benjamin Swinburne, Morgan Stanley, “PanAmSat” at 4 (Jan. 7, 2004). *See also* Robert Peck, Bear Stearns, “Fixed Satellite Services” at 54 (Sept. 2002). Longer contracts also create an “all or nothing” dynamic and encourage more aggressive competition for every deal (given the limited number of deals). The Federal Trade Commission and Department of Justice 1992 Horizontal Merger Guidelines, 57 Fed. Reg. 41,552 (Sept. 10, 1992) (Section 2.12), note that such a dynamic reduces the risk of anticompetitive conduct.

⁴⁴ *See* Press Release, Intelsat, Intelsat Regains Control of the Intelsat Americas™-7 Satellite (Dec. 3, 2004), *available at*

Intelsat's lack of premier cable programming customers hinders, in turn, its opportunities to access some of the new or smaller programmers. Large networks function as anchor tenants for "cable neighborhoods," the practice of clustering many programmers on the same satellite as certain highly popular channels. Cable neighborhoods allow new or smaller programmers to maximize the likelihood of distribution by cable systems and other multichannel video program distributors ("MVPDs") that have already installed antennas pointed at the satellites carrying the anchor tenant's popular programming.⁴⁵ Both existing customers and new content providers are constrained from departing these neighborhoods by concern about losing access to cable headends.⁴⁶

As a practical matter, once the neighborhood is established, even anchor tenants may hesitate to switch satellite capacity providers because the remaining programmers constituting the neighborhood could not similarly move until all of their contracts expire.⁴⁷ As a result of these practical competitive realities, cable TV premium channel distribution customers will not be adversely affected by the merger.⁴⁸

http://www.intelsat.com/aboutus/press/release_details.aspx?year=2004&ast=20041203_01_EN.xml&lang=en&footer=82.

⁴⁵ See, e.g., *Ingannamorte v. Kings Super Markets*, 260 A.2d 841 (N.J. 1970) (acknowledging the economic dependence of smaller stores on larger "anchor" stores).

⁴⁶ In some cases, cable systems have an extensive infrastructure of earth station facilities pointed at non-Intelsat satellites, and limited land at cable headends, making it difficult and/or expensive to add another feed horn or antenna pointed at an Intelsat satellite.

⁴⁷ The anchor tenant could, however, select fiber as an alternative because it would not require earth station re-pointing and thus would not disrupt the existing cluster of programmers forming the neighborhood.

⁴⁸ In fact, SES launched a new high-definition cable neighborhood called HD-Prime in 2004 (with a back-up spacecraft), with customers such as the Discovery Channel, Viacom, AT&E, E! Networks, C-SPAN, Court TV, NBC, and Lifetime. Press Release, SES AMERICOM, Prime-Time for Cable: SES AMERICOM Initiates Service on AMC-11,