

**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.

IB Docket No. 05-290

File Nos. SAT-T/C-20050930-00193
SAT-T/C-20050930-00194
SAT-T/C-20050930-01356
SAT-T/C-20050930-01357
SAT-T/C-20050930-01371

JOINT RESPONSE OF INTELSAT AND PANAMSAT

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Intelsat Holdings, Ltd. (“Intelsat”) and PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp. (collectively, “PanAmSat” and with Intelsat, the “Applicants”), submit the following Joint Response to comments in the above-captioned proceeding, in which Applicants seek FCC consent to the transfer of control of PanAmSat’s licenses to Intelsat. As shown below, the vast majority of commenters support grant of the proposed license transfer without conditions, and no party has petitioned the Commission to deny the Application.

I. THE COMMENTERS CONFIRM NUMEROUS PUBLIC INTEREST BENEFITS AND OVERWHELMINGLY ENDORSE THE PROPOSED TRANSFER

The commenters overwhelmingly endorse the transfer of control of PanAmSat’s licenses to Intelsat.¹ As set forth below, the commenters identify a variety of benefits that the U.S.

¹ See ARTEL Inc. Comments, Broadwing Communications, LLC Comments, Convergent Media Systems Comments, Firestone Communications, Inc. Comments, Gateway Communications Comments, Hughes Network Systems Comments, HTN Communications Comments, Loral

government, customers and the public will obtain from the proposed merger of Intelsat's and PanAmSat's satellite fleets. These benefits affirm that grant is in the public interest.²

Commenters lauded the ability of the combined Intelsat-PanAmSat to use satellite capacity more efficiently to the benefit of the U.S. government and humanitarian organizations. ARTEL Inc., which procures satellite capacity on behalf of the Department of Defense, supported the merger because it "could increase the DOD's ability to obtain bandwidth portability – *i.e.*, to shift its contracted-for capacity among and within regions to meet evolving needs."³ The United Nations explained that the satellite coverage requirements of its Department of Peacekeeping Operations fluctuate with fast-changing eruptions of global conflicts, and welcomed the ability of the combined company to "more efficiently utilize its satellite capacity in order to allow its coverage to be more responsive to customers' needs."⁴ Similarly, R.R. Satellite Communications Ltd., a provider of end-to-end transmission services on multiple

Space & Communications, Ltd. Comments, Orbital Sciences Corporation Comments, Pittsburgh International Telecommunications, Inc. Comments, R.R. Satellite Ltd. Comments, StarBand Communications Inc. Comments, SmartJog S.A. Comments, TANDBERG Comments, Teleport International Buenos Aires Comments, United Nations Comments, and ViaSat Comments.

² 47 U.S.C. §310(d) (2004). Indeed, the Commission just recently relied on many of the same public interest benefits in approving the Verizon/MCI and SBC/AT&T mergers. *See SBC Commc'ns Inc. and AT&T Corp., Application for Transfer of Control*, Memorandum Opinion and Order, FCC 05-183, ¶¶ 182-204 (Nov. 17, 2005) ("*SBC/AT&T Order*"); *Verizon Commc'ns Inc. and MCI, Inc., Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, FCC 05-184, ¶¶ 193-214 (Nov. 17, 2005) ("*Verizon/MCI Order*").

³ ARTEL Inc. Comments at 2. The FCC found that a key benefit of both the Verizon/MCI and SBC/AT&T transactions was that the mergers would "enhance service to U.S. government customers and strengthen U.S. national security." The Commission explained that it "take[s] considerations of national security extremely seriously," and each merger would "provide improved service to government customers." *Verizon/MCI Order* ¶¶ 197-198; *SBC/AT&T Order* ¶¶ 186-187.

⁴ United Nations Comments at 3.

continents, “would welcome additional capacity being made available in areas where demand is high.”⁵

Several present or potential customers appreciated the ability of the combined Intelsat-PanAmSat fleet to increase the supply of protected and back-up capacity. Pittsburgh International Telecommunications, Inc., for example, noted its expectation that the merger will greatly better the odds that smaller content providers, such as ethnic programmers, will be able to acquire now scarce protected capacity.⁶ Convergent Media Systems Corporation recognized that “the combined Intelsat/PanAmSat fleet will result in additional restoration options to customers like Convergent, which, in turn, will increase the reliability of the system that Convergent is able to offer its customers.”⁷ End-to-end transmission service providers predicted the combined company’s more reliable system would spur demand for satellite distribution among video program distributors as well as boost the diversity of available video programming to consumers.⁸

In addition, satellite customers endorsed the merged company’s ability to deliver “one-stop shopping,” that is, the opportunity to acquire a “more comprehensive array of services” from a single provider.⁹ Gateway Communications, Hughes Network Systems, LLC, and

⁵ R.R. Satellite Communications Ltd. Comments at 1.

⁶ Pittsburgh International Telecommunications, Inc. Comments at 1.

⁷ Convergent Media Systems Comments at 2.

⁸ Firestone Communications, Inc. Comments at 1, R.R. Satellite Communications Ltd. Comments at 1, SmartJog S.A. Comments at 1.

⁹ Gateway Communications Comments at 2.

TANDBERG all foresaw that the merged company would improve customer service and enhance efficient bandwidth management, with benefits inuring to end-user customers.¹⁰

Significantly, the commenters concurred that the proposed transaction would enhance the merged entity's ability to compete¹¹ in an environment already served by significant terrestrial and other satellite players.¹² Orbital Sciences Corporation pointed to "substantial and increasing competition from numerous terrestrial sources, as well as from domestic and regional satellite systems" and predicted that the efficiencies of the combined company would be vital in this ever more competitive environment.¹³ ViaSat cited the "increased scale, expertise and resources" of the combined company as important factors to drive innovation and allow the satellite industry to remain competitive with terrestrial providers.¹⁴ As Hughes Network Systems explained, the combined company's ability to invest in new services and technological advances serves the Commission's twin goals of "increasing the country's broadband access, and encouraging intermodal competition in broadband."¹⁵

¹⁰ See *id.*; Hughes Network Systems, LLC Comments at 3; and TANDBERG Comments at 2. Cf. *Verizon/MCI Order* ¶¶ 196-203 (explaining that cost savings can lead to public interest benefits in the form of price reductions); *SBC/AT&T Order* ¶¶ 208-213 (same).

¹¹ See *Consolidated Application For Authority to Transfer Control*, IB Docket No. 05-290, at 26-37 (Sept. 30, 2005). The Commission recently noted that mergers can increase the combined entity's "incentive to engage in basic research and development" by "broadening its customer base." *Verizon/MCI Order*, ¶ 207. In turn, such research can "result in new products and services that would not have been introduced absent the proposed transaction." *Verizon/MCI Order*, ¶ 205. See also *SBC/AT&T Order*, ¶¶ 195, 193.

¹² Eutelsat is expected to close an initial public offering intended to raise \$1 billion for satellite construction and system expansion. David Pearson, *France's Eutelsat Revives Its IPO Worth \$1 Billion*, *The Wall Street Journal*, Nov. 29, 2005, at B3.

¹³ Orbital Sciences Corp. Comments at 2.

¹⁴ ViaSat Comments at 2.

¹⁵ Hughes Network Systems, LLC Comments at 2-3.

As significantly, commenters noted that the merger would not harm competition.¹⁶ Loral Space & Communications, Ltd., which sold its domestic satellite fleet to Intelsat last year and will be free to re-enter the U.S. satellite business in the first quarter of 2006, confirmed that combining Intelsat and PanAmSat would have no adverse effect on Loral's ability to compete:

Based on the publicly available materials provided to the Commission by the merger proponents and on the current state of demand for fixed satellite services, Loral does not believe that the proposed transaction diminishes Loral's opportunity to re-enter the U.S. domestic satellite services business.¹⁷

In sum, as the commenting parties have made clear, the widely perceived increased reliability and efficiency of the combined fleet for government and private customers, the benefits of one-stop shopping, and the pro-competitive effects of the merger strongly support grant of the proposed license transfers.

II. THE CONDITIONS PROPOSED BY MICROCOM AND ITSO ARE OUTSIDE THE SCOPE OF THE FCC'S REVIEW AND UNWARRANTED

Although neither Microcom nor the International Telecommunications Satellite Organization ("ITSO") opposed the merger, each suggested conditions to be imposed on the Applicants. As discussed in detail below, the Microcom and ITSO conditions do not meet the Communications Act requirement that conditions be specifically responsive to demonstrated harms cognizable to the transaction. Furthermore, the proposed conditions are unnecessary to ensure the merged company will continue to serve Alaska and, more generally, fulfill its international public service obligations.

¹⁶ See Broadwing Communications, LLC Comments at 3-4.

¹⁷ Loral Space & Communications, Ltd. Comments at 2.

A. Microcom's Proposed Conditions Are Neither Merger-Specific Nor Necessary to Ensure Satellite Coverage of Alaska

The Commission should deny Microcom's request to condition grant of the Intelsat-PanAmSat merger on preferential service guarantees for Alaska.¹⁸ Foremost, Microcom ignores the FCC's steadfast refusal to consider conditions unrelated to the transaction at issue.¹⁹ If the public interest so requires, the Commission may impose "narrowly tailored, transaction-specific conditions" on the transaction to avoid proven harms.²⁰ As the Commission has explained with respect to numerous transactions:

[d]espite the Commission's broad authority, we have held that we will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are fairly related to the Commission's responsibilities under the Communications Act and related statutes. Thus, we do not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.²¹

¹⁸ See Microcom Comments at 1. Specifically, Microcom requests that the Commission require Intelsat to a) identify a replacement strategy for Intelsat Americas 7; b) propose a strategy for serving Alaska from Pacific Ocean satellite slots; c) propose a plan for extending Ku-band coverage of Galaxy 10R and Horizons 1 to include all of Alaska; and d) provide guarantees for providing center of beam performance to Alaska for any new satellite launch west of 110 degrees west longitude and east of 170 degrees east longitude. *Id.*

¹⁹ See *Rainbow DBS Company LLC, Assignor, and EchoStar Satellite L.L.C., Assignee, Consolidated Application for Consent to Assignment of Space Station and Earth Station Licenses, and related Special Temporary Authorization*, Memorandum Opinion and Order, FCC 05-177, ¶ 13 (Oct. 12, 2005) ("[W]e will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are fairly related to the Commission's responsibilities under the Communications Act and related statutes. Thus, we do not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.") (internal citations omitted).

²⁰ *Id.*, ¶ 13, citing 47 U.S.C. § 303(r).

²¹ *Applications of Nextel Comm'n, Inc. and Sprint Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, ¶ 23 (2005) (internal citations omitted); *Applications of Western Wireless Corp. and Alltel Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FC Rcd 13,053, ¶ 21 (2005); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21,522, 21,545 (¶ 43) (2004).

This policy properly reflects the agency's expertise in, and jurisdiction over, telecommunications policy, not contentions about private commercial relationships.²²

Microcom's comments do not identify any harm caused or exacerbated by the proposed transaction. Instead, Microcom discussed historic broadband service levels in Alaska and claimed current service shortcomings. As the FCC has noted, these pre-existing conditions are best addressed through Commission regulatory initiatives, not intervention in transactions pending before the Commission.²³

Moreover, Microcom's proposed conditions would be duplicative of Intelsat's existing Alaskan service commitments. When acquiring certain U.S.-coverage satellites from Loral Satellite, Inc. in 2004, Intelsat voluntarily committed to "ensure and maintain two-way broadband service continuity" to Alaska.²⁴ StarBand Communications Inc., a provider of

²² See *Regents of the Univ. System of Ga. v. Carroll*, 338 U.S. 586, 600 (1950).

²³ See *Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corp. (Debtor-in-Possession), Assignors, and Intelsat North America, LLC, Assignee, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, Order and Authorization*, ("Loral-Intelsat Order") 19 FCC Rcd 2402, 2421 (¶ 39)

("The Commission has implemented, and continues to seek ways to implement, numerous measures to encourage the availability and deployment of broadband service to Americans, especially in areas, such as Alaska and Hawaii, where the provision of such service can be difficult and as a practical matter not feasible to deploy. This is one of the Commission's primary objectives and many initiatives towards meeting this objective are underway. Through these activities, and not through intervention into private commercial contract disputes, the Commission intends to establish regulatory policies that promote competition, innovation, and investment in broadband services and facilities." (internal citations omitted));

General Motors Corp. and Hughes Corp., Transferors, and The News corporation Limited, Transferee, For Authority to Transfer Control, Memorandum Opinion and Order, 19 FCC Rcd 473, 606 (¶ 306) (2004) ("The issues raised by Microcom regarding DBS service to Alaska and Hawaii are not specific to this transaction and are more appropriately being addressed in another Commission proceeding focused specifically on those issues.").

²⁴ *Intelsat Commitment Letter*, File Nos. SAT-ASG-20030728-00138 and SAT-ASG-20030728-00139 (filed Feb. 5, 2004); see *Loral-Intelsat Order*, 19 FCC Rcd at 2421, (¶ 40).

satellite broadband service to Alaska, acknowledged in its comments in this proceeding Intelsat's existing commitment, adding:

Intelsat has been – and continues to be – a very good partner of StarBand's in ensuring that [Alaska] ha[s] access to broadband by satellite.²⁵

Grant of the instant application will not affect the combined company's service to Alaska.

Following its acquisition of PanAmSat, Intelsat will adhere to its existing commitment.

In fact, the Intelsat-PanAmSat merger can only enhance service to Alaska. Contrary to Microcom's contentions,²⁶ Intelsat currently provides voice, data, broadband and cable distribution services to Alaska via six satellites,²⁷ and PanAmSat provides voice, data, and broadband services via eight satellites.²⁸ PanAmSat's Ku-band power levels over the most heavily populated areas of mainland Alaska are comparable to Ku-band power levels in the continental United States, and four PanAmSat satellites provide C-band coverage of all of Alaska, including the Aleutian Islands and the southern Bering Sea.²⁹ After the merger, the combined fleet will have the advantage of greater fleet redundancy. This added redundancy will enable the combined company to provide enhanced service continuity to Alaskan customers.

²⁵ StarBand Communications Inc. Comments at 1-2.

²⁶ See Microcom Comments at 1 (“[N]o Intelsat satellites have ever provided significant service to Alaska...”).

²⁷ Intelsat Americas 8 at 89° W, Intelsat Americas 6 at 93° W, Intelsat Americas 5 at 97° W, Intelsat Americas 13 at 121° W, Intelsat Americas 7 at 129° W, and Intelsat 701 at 180° W. See <http://www.intelsat.com/resources/coveragemaps.aspx>.

²⁸ Galaxy 11 at 91° W, Galaxy 3C at 95° W, Galaxy 4R at 99° W, Galaxy 10R at 123° W, Galaxy 14 at 125° W, Galaxy 13/H-1 at 127° W, Galaxy 15 at 133° W, and PAS-2 at 169° E. See http://www.panamsat.com/global_network/map.asp.

²⁹ PAS-2, Galaxy 10-R, Galaxy 13/H-1, and Galaxy 15 (as well as Galaxy 18 when it replaces Galaxy 10R in 2007).

Finally, regardless of the acquisition, Alaska-based customers still can acquire capacity from other satellite operators. SES Americom has eight satellites that provide coverage of Alaska,³⁰ and expects to launch two additional spacecraft in the near future likely providing full coverage as well.³¹ Two of Telesat Canada's satellites cover Alaska and are on the Commission's Permitted Space Station List,³² with an additional launch scheduled next year.³³

In sum, the Intelsat-PanAmSat merger will not adversely affect the availability of capacity in Alaska. Existing Alaska service commitments already fully address the issue and, furthermore, the merger should increase the availability of fully protected capacity in Alaska. As a result, Microcom's proposed conditions are not specifically related to this transaction and, in any event, are unwarranted.

B. ITSO's Proposed Conditions Attempt to Remedy Speculative Harm And Contradict Commission Policy

As the Application demonstrates, the proposed merger will "creat[e] a financially and operationally strong company committed to the future success of satellite technology" and thus strengthen Intelsat's "continuing commitment to ensuring connectivity for its lifeline

³⁰ Current coverage is provided by: AMC-16 at 85° W, AMC-3 at 87° W, AMC-4 at 101° W, AMC-1 at 103° W, AMC-11 at 131° W, AMC-10 at 135° W, AMC-7 at 137° W, and AMC-8 at 139° W. *See* <http://www.sesamericom.com/american/siteSections/satellitesAndTeleports/satelliteFleet/index.php>.

³¹ AMC-23 is scheduled for launch on Dec. 1, 2005 at 172° E, and AMC-18 is scheduled for launch in the fourth quarter of 2006 at 105° W. *See* <http://www.sesamericom.com/american/siteSections/satellitesAndTeleports/plannedsatellites/index.php>.

³² Current coverage is provided by Anik F1R at 107.3° W and Anik F2 at 111.1° W. *See* <http://www.telesat.com/satellites/footprints/index.htm>; <http://www.fcc.gov/ib/sd/se/permitted.html>.

³³ Telesat is planning to launch Anik F3 in 2006. *See* <http://www.telesat.com/satellites/index.htm>.

customers.”³⁴ Notwithstanding this showing, ITSO³⁵ asks the FCC to guarantee performance of Intelsat’s lifeline obligations in the event of a hypothetical bankruptcy.³⁶ ITSO’s request is speculative and premature. Moreover, ITSO’s request would force the agency to intervene on issues outside of its expertise and jurisdiction,³⁷ and improperly to inject itself as enforcer of a private contractual arrangement that has its own specified remedies. Such a step would be flatly inconsistent with an FCC rulemaking barely two years old.³⁸ For these and other reasons, the Commission should reject ITSO’s proposed conditions.

First, ITSO’s speculative contention that the transaction could bankrupt Intelsat is insufficient for Commission action.³⁹ Intelsat already has obtained financing commitments from

³⁴ Application at 14-15.

³⁵ ITSO is the successor to INTELSAT, the intergovernmental organization (“IGO”) that formerly owned and operated Intelsat’s satellite system. At Intelsat’s privatization, it was determined that INTELSAT’s “core principles” – maintaining global coverage and connectivity and ensuring non-discriminatory access to the satellite system – would be protected through the creation of a residual IGO. This IGO – ITSO – would supervise Intelsat’s commitment to provide satellite capacity to lifeline users, as implemented through a “public services agreement” (“PSA”) between the company and ITSO.

³⁶ Specifically, ITSO asks the Commission to (1) develop and implement “legal mechanisms as may be necessary” to ensure that Intelsat’s lifeline connectivity obligations will survive a bankruptcy proceeding; (2) impose a new condition upon Intelsat’s licenses requiring Intelsat to remain a party to the Public Services Agreement implementing its lifeline obligations in order to retain certain “heritage” orbital locations; and (3) require Intelsat to amend its Bye-Laws to re-insert provisions regarding its lifeline connectivity obligations. ITSO Comments at 2.

³⁷ See *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, Memorandum Opinion and Order, 16 FCC Rcd 6547, 6550 (¶ 6) (2001) (“The Commission recognizes and discourages the temptation and tendency for parties to use the license transfer review proceeding as a forum to address or influence various disputes with one or other of the applicants that have little if any relationship to the transaction or to the policies and objectives of the Communications Act.”).

³⁸ *Amendment of the Commission’s Space Station Licensing Rules and Policies, Mitigation of Orbital Debris*, First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, 18 FCC Rcd 10,760 (2003) (“Space Station Reform Order”).

³⁹ See, e.g. *General Motors Corporation and Hughes Electronics Corporation, Transferors and The News Corporation Limited, Transferee, For Authority to Transfer Control*, Memorandum

a group of financial institutions for the proposed merger. These commitments signal the financial community's expectation that Intelsat will remain creditworthy after the transaction.⁴⁰ As ITSO itself admits, it is not "realistic to assume lenders would underwrite the PanAmSat acquisition in a way that would result in immediate insolvency."⁴¹ Nevertheless, ITSO hypothesizes that Intelsat's post-merger debt level could leave it "vulnerable" to a "market downturn."⁴² The agency's statutory mandate to protect the public interest, however, does not require it to predict Intelsat's economic future. In the unlikely event that unforeseeable market conditions were to cause a future Intelsat bankruptcy, the FCC would have ample opportunity to address ITSO's concerns as part of any application to assign Intelsat's licenses to a debtor-in-possession, trustee or successor.⁴³

Second, ITSO's request contradicts the Commission's 2003 elimination of financial qualifications for satellite applicants.⁴⁴ Acknowledging that previous policies "have not proven to be determinative of whether a licensee implements its system," the Commission substituted "a market-driven rather than a regulatory" approach by allowing "the financial community [to] determin[e] whether the licensee is likely to construct and launch its satellite system."⁴⁵ This

Opinion and Order, 19 FCC Rcd 473,583 (¶ 245) (2004) (rejecting allegations of harms that are "speculative at best").

⁴⁰ See Intelsat Press Release, "Intelsat and PanAmSat to Merge, Creating World-Class Communications Solutions Provider," at http://www.intelsat.com/press/release_details.aspx?year=2005&art=20050829_01_EN.xml&lang=en&footer=7 (Aug. 29, 2005).

⁴¹ ITSO Comments at 11.

⁴² *Id.*

⁴³ See 47 C.F.R. § 25.119.

⁴⁴ *Space Station Reform Order*, *supra* note 38.

⁴⁵ *Id.*, 18 FCC Rcd at 10,824-25 (¶¶ 164, 167).

decision built on experience from agency oversight of other communications services, where the FCC resolved it would “not become involved in reviewing corporate financing decisions, including the amount of debt the company will hold,”⁴⁶ and recognized that “the marketplace has a natural tendency to provide reasonable evaluations of properties’ future financial soundness, through the collective judgment of numerous investors.”⁴⁷ Thus, the FCC will not “second guess the financial community or investors which believe that the surviving company in corporate takeovers or buyouts will be financially strong enough to repay debt,” especially regarding concerns based on “speculative” hypotheses and projections.⁴⁸ ITSO’s argument flouts these findings, instead asking to turn back the regulatory clock to a former policy that the agency properly has abandoned.

ITSO’s historical account also mischaracterizes the respective roles of Intelsat, ITSO, and the FCC with respect to Intelsat’s lifeline obligations. At the time of privatization, the INTELSAT Assembly of Parties resolved this issue through a Public Services Agreement (“PSA”), a private commercial agreement between ITSO and Intelsat that defines Intelsat’s lifeline obligations and specifies express remedies for noncompliance. The FCC is not a party to the PSA, either directly or through ITSO (the U.S. party to ITSO is the State Department), and is not entrusted with any enforcement role.⁴⁹ And ITSO neither alleges any present-day breach nor

⁴⁶ *MMM Holdings, for Transfer of Control of LIN Broad. Corp.*, Memorandum Opinion and Order, 4 FCC Rcd 8243, 8245 (¶ 14) (1989) .

⁴⁷ *Id.*

⁴⁸ *Shareholders of GAF Corp. (Samuel J. Heyman, Application for Transfer of Control of GAF Broad. Co. , Inc. Licensee of Station WNCN(FM), New York, New York, from Shareholders of GAF Corp. to Newco Holdings, Inc.; GAF Corp. Application for Pro Forma Transfer of Control of GAF Broad. Company, Inc. from GAF Corp. to Dorset Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 3225, 3229 (¶ 15) (1992).

⁴⁹ Although ITSO quotes the Commission’s statement in the *Intelsat Licensing Order* that the United States “would continue to facilitate Intelsat LLC’s fulfillment of [the lifeline

pretends to have exhausted its remedies under the PSA, which has a specific set of procedures to be followed in the event of any dispute among the parties to the agreement.

As for the FCC's oversight of Intelsat's "heritage" orbital locations in its capacity as Intelsat's Notifying Administration to the International Telecommunication Union ("ITU"), the Commission's sole commitment (as required by the Assembly of Parties) was to "cancel any transferred frequency assignments and orbital locations under ITU procedures should Intelsat LLC or its successors lose its license to use such frequency assignments and orbital locations."⁵⁰ The FCC already has imposed this condition on Intelsat's licenses.⁵¹ ITSO supplies no support for any additional action.

Likewise, the Commission should reject ITSO's demand that Intelsat reinstate a public services obligation provision in the bylaws of the private corporation. The bylaws permitted change of this provision through unanimous approval of shareholders—which was obtained on March 1, 2005. Indeed, the Assembly of Parties authorized the privatization of Intelsat with the possibility that bylaws could change over time pursuant to 100 percent shareholder vote. Furthermore, just as the Commission does not evaluate corporate financial decisions, the agency does not regulate licensees' internal corporate governance. Finally, elimination of the public services obligation by-law—which did no more than state in essence that Intelsat is bound by the

connectivity] objectives as a U.S. Licensee," that statement actually referred to "the U.S. Party to the residual IGO" – *i.e.* the State Department – rather than the Commission. *Applications of Intelsat LLC, For Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, Memorandum Opinion, Order and Authorization, 15 FCC Rcd 15,460, 15,474 (¶ 28) (2000), recon. denied, 15 FCC Rcd 25, 234 (2000).

⁵⁰ *Intelsat Licensing Order*, 15 FCC Rcd at 15,511 (¶ 130).

⁵¹ *Intelsat Licensing Order*, 15 FCC Rcd at 15,519 (¶ 159).

PSA—in no way affects Intelsat's obligations under the PSA. ITSO's proposal should be rejected.

III. CONCLUSION

In the Application, the parties demonstrated that Commission grant of the proposed transfer of control of PanAmSat licenses to Intelsat would serve the public interest. No entity filing comments in this proceeding disagreed with this demonstration, and just two sought conditions (and inappropriate ones) on the FCC's approval. The overwhelming majority of commenting parties support the merger and believe it would further the public interest. The Commission thus should expeditiously grant the transfer application.

Respectfully submitted,

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Date: November 29, 2005

CERTIFICATE OF SERVICE

I, Christopher E. Ryan, do hereby certify that on this 29th day of November, 2005, I sent, either via electronic mail or by U.S. first class mail, postage pre-paid, a true and correct copy of the foregoing **Joint Response of Intelsat and PanAmSat** to the following:

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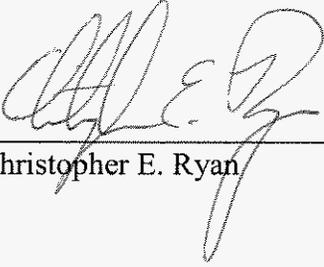
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