

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Constellation, LLC,
Carlyle PanAmSat I, LLC,
Carlyle PanAmSat II, LLC,
PEPPAS, LLC,
and PEOP PAS, LLC,

Transferors,

and

Intelsat Holdings, Ltd.,

Transferee,

Consolidated Application for Authority to
Transfer Control of PanAmSat Licensee
Corporation and PanAmSat H-2 Licensee
Corporation

IB Docket No. 05-290

DA No. 05-2715

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

**REPLY COMMENTS OF THE INTERNATIONAL TELECOMMUNICATIONS
SATELLITE ORGANIZATION (ITSO)**

December 6, 2005

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I. SUMMARY

The Public Services Agreement governing the relationship between ITSO and Intelsat is a unique agreement between Intelsat and the 148 sovereign nations that created Intelsat, Ltd. in 2001. This Agreement stipulates that Intelsat's ongoing performance of its Public Service Obligations "is the consideration for the transfer" of the International Telecommunications Satellite Organization's assets to post-privatization Intelsat. Therefore, although it operates under the laws of the District of Columbia, the Public Services Agreement is not a "private commercial" contract.

Contrary to the Applicant's assertion that the Commission has no obligation to take into consideration Intelsat's ability to comply with its Public Service Obligations in making public interest license transfer determinations regarding Intelsat, Congress has directed that "[T]he Commission shall take the action necessary to ensure that the United States *remains* the ITU notifying administration for the privatized INTELSAT's existing and future orbital slot registrations."¹

We would expect the Commission to condition the PanAmSat acquisition on provisions that ensure survival of the Public Services Agreement and related lifeline connectivity (LCO) contracts in case of Intelsat's insolvency. In their Joint Response, the Applicants have failed to suggest methods by which Intelsat's Public Service Obligations and related contracts could survive Intelsat's bankruptcy. ITSO is ready and available to work with the Commission, in its capacity as the licensing authority for the U.S. Notifying Administration for the transferred orbital assets, in order to facilitate the Commission's consideration and implementation of appropriate licensing conditions.

II. INTELSAT'S PUBLIC SERVICE OBLIGATIONS ARE NOT A "PRIVATE COMMERCIAL AGREEMENT"

Contrary to the Joint Applicants' assertion, Intelsat's Public Service Obligations, as incorporated in the Public Services Agreement, are not part of a private commercial agreement. As former Commission Chairman William Kennard remarked in his statement supporting the initial August 2000 determination to accept the role of post-privatization Notifying Administration for INTELSAT's orbital positions:

¹ Communications Satellite Act of 1962, section 644(b), as amended by the ORBIT Act

[W]e have before us a *unique* situation: the authorization of the already operating system of an intergovernmental organization that is undergoing privatization. This system has never been subject to a national licensing regime. In this respect, we are rejecting the demands of those who believe we should not take steps to accommodate this transition. Our failure to take these steps would have resulted in added costs and service delays that would weaken INTELSAT both as a competitor *and provider of access to the developing world.*²

Indeed, the Public Services Agreement is the formal embodiment of these “unique” circumstances; while the Agreement, itself, is a contract under the laws of the District of Columbia, whose interpretation and enforcement is subject to arbitration, the contract is between Intelsat and the 148 member Parties to the ITSO Agreement, of whom ITSO’s Director General is the elected legal representative.³ ITSO’s member countries created Intelsat, Ltd. in 2001, with a mandate to continue to provide public services under the supervision of ITSO. As set out in ITSO’s initial Comments,⁴ the intergovernmental organization’s assets conditionally were transferred to Intelsat, Ltd., based on Intelsat’s continued adherence to the “core” Public Service principles embodied in the Public Services Agreement. The Commission expressly understood this point, *e.g.*, that Intelsat’s commitment to the core principles:

[W]ould be ... implemented through a “public services” agreement between the company and the residual IGO. This arrangement reflects the underlying agreement among INTELSAT Parties to privatize INTELSAT – INTELSAT’s satellites and other assets and personnel necessary to operate the satellites will be transferred to a private company that no longer has privileges and immunities and is subject to a national licensing authority, *as long as that company assures continued services to lifeline users under the “core principles.”*⁵

(emphasis added).

² *Intelsat, LLC*, 15 FCC Record 15460, 15530 (2000) (emphasis added).

³ ITSO Agreement, Article X(b)(i).

⁴ ITSO Comments at 4-7.

⁵ *Intelsat, LLC*, 15 FCC Record 15460, para. 26 (footnotes omitted, emphasis added).

In this context, the Commission expressly understood the role that the INTELSAT Assembly of Parties expected the Commission to fulfill:

INTELSAT has decided that certain ‘core principles’ of its current mission must be retained after privatization. ... The final Assembly decision to privatize INTELSAT will depend **on receiving assurances from the prospective licensing jurisdictions** that the privatized entity will continue to operate in accordance with these principles.⁶

The 25th INTELSAT Assembly of Parties approved the United States as the licensing jurisdiction based, in significant part, on the representations contained in the Commission’s August 2000 decision.⁷

In addition, contrary to the Applicants’ statement that “ITSO neither alleges any present-day breach nor pretends to have exhausted its remedies under the PSA,”⁸ Intelsat has been notified in March 2005 by ITSO that it is in breach of the Public Services Agreement because of Intelsat’s refusal to provide ITSO access to necessary information to ensure ITSO’s supervisory role, as well as Intelsat’s refusal to validate and certify the 2004 LCO Pricing Index for customers with services in lifeline connectivity countries, despite a reported market price decrease of 37% since 2000. On a separate track from the Commission’s consideration of the transfer of licenses related to the proposed PanAmSat merger, the 148 member countries of ITSO will be discussing Intelsat’s breaches of its Public Service Obligations at its Assembly of Parties meeting on January 30, 2006.

ITSO’s member countries, at its upcoming Assembly meeting, also will be asked to consider Intelsat’s projected reduction in capital expenditures,⁹ and its potential impact

⁶ *Intelsat, LLC*, 15 FCC Record 15460, para. 25 (emphasis added, footnote omitted).

⁷ See AP-25-10E, Attachment 15, quoting *Intelsat, LLC*, 15 FCC Record 15460, para. 28.

⁸ Joint Response at 12-13.

⁹ For example, 16 of Intelsat’s current fleet of 25 satellites will reach their End of Orbital Design Life by 2010. Intelsat, Ltd. 20-F Report, U.S. SEC, at 35 (March 15, 2005).

on Intelsat's public service commitments. ITSO is concerned that the lack of Intelsat's future investments will create a scarcity of capacity, which in turn will trigger price increases that would serve the interests of financial investors by providing a quick return on capital, but at the expense of further excluding more than three billion of the world's population for which satellite technology is the most viable alternative.¹⁰

ITSO's concerns about the Common Heritage assets continue, and ITSO urges continued vigilance by the Commission to ensure that Intelsat's use of frequency assignments continues to be linked to the fulfillment of the core principles.¹¹ The United States, and the Commission as its licensing entity, is mandated by the ITSO Agreement to cancel any transferred frequency assignments and orbital locations under ITU procedures should Intelsat or its successors no longer require such frequency assignments or their use is no longer authorized.¹² ITSO's concerns are particularly keen given recent press reports that some of Intelsat's competitors are interested in purchasing orbital assets that these competitors expect to come up for sale once the PanAmSat merger closes.¹³

In sum, the governments that approved the selection of the United States as the licensing jurisdiction and Notifying Administration, did so with the full expectation that the Commission would base its stewardship of the Common Heritage orbital positions

¹⁰ See, ITU Building Digital Bridges: Approaches and Best Practices – Summary (November 2005) at 26, “The cost of connectivity is an important barrier for access in developing countries ... Internet service providers in developing countries, on a whole, pay more per megabit of bandwidth than developing economies because of the use of high-cost technologies to provide service, such as satellites.”

¹¹ ITSO Agreement, Article XII(c)(i).

¹² ITSO Agreement, Article XII(c)(ii).

¹³ See, for example, statement by SES Global CFO, “SES was interested in looking at any of the Intelsat or PanAmSat orbital assets that might come up for sale once the deal closes.” “2005: *What a Spectacular Year for Europe!*,” by Chris Forrester, SATMAGAZINE.com (December 2005).

within the context of assuring Intelsat's *ongoing* commitment to its Public Service Obligations.

III. ITSO'S CONCERNS REGARDING A POTENTIAL INTELSAT BANKRUPTCY ARE NOT SPECULATIVE

The Applicants' Joint Response claims that ITSO's request to approve the PanAmSat acquisition on conditions that would protect Intelsat's contractual obligations under the Public Services Agreement and related LCO Contracts "is speculative and premature."¹⁴ As set out in ITSO's initial Comments,¹⁵ major financial ratings agencies have expressed significant concerns regarding the financial viability of the obligations of a post-merger Intelsat. It is important to note that debt incurred by Intelsat in conjunction with transactions by Intelsat's current private equity owners, including debt associated with the PanAmSat acquisition, may be structured so as to be senior to obligations incurred prior to Intelsat's purchase by its current owners.

Thus, while Standard & Poor's rates Intelsat, Ltd.'s institutional ratings as BB-, with a Credit Watch-Negative, it rates several individual unsecured Intelsat debt issues as B/Credit Watch-Negative. If the negative credit watch matures to a downgrade after the PanAmSat acquisition, these issues would be downgraded toward CCC. According to S&P's definitions for long-term credit ratings:

An obligation rated CCC is currently vulnerable to non-payment, and is dependent on favorable business, financial, and economic conditions for the obligor to meet its financial commitment on the obligation. In the event of adverse business economic or financial conditions, the obligor is not likely to have the capacity to meet its financial commitment on the obligation.¹⁶

¹⁴ Joint Response at 10.

¹⁵ ITSO Comments at 10-13.

¹⁶ Standard & Poor's, "Standard and Poor's Rating Definitions" (October 27, 2005).

Moody's Investors Service *already* rates several unsecured Intelsat, Ltd. obligations as Caa1. Although Moody's currently has not designated a credit watch, Moody's maintains a "developing" outlook for review awaiting consummation of the PanAmSat acquisition. According to Moody's, "Obligations rated Caa are judged to be of poor standing and are subject to very high credit risk;"¹⁷ the PanAmSat acquisition would increase Intelsat's debt, and thus, the level of risk to unsecured/subordinated obligations. Indeed, Intelsat's recent actions¹⁸ demonstrate a frame of mind that would place the Public Service Obligations at no higher level than this junior, unsecured debt,¹⁹ *i.e.*, the Commission should consider those Obligations to be "rated" no higher than Caa, a level of risk that would be exacerbated by the debt incurred in conjunction with the PanAmSat acquisition.

Even if Intelsat's private equity owners²⁰ and the investment community²¹ may be willing to accept the risk of default (on older Intelsat, Ltd. debt) in the hope of greater financial returns, their private commercial risk preferences should not be able to define the security of ensuring Intelsat's ongoing adherence to its Public Service Obligations. Given

¹⁷ www.moody's.com (Rating Definitions).

¹⁸ ITSO Comments at 11-13.

¹⁹ For example, Applicant's assertion that elimination of Public Service Obligations in its bye-laws, Joint Response at 13-14, had no effect, is contradicted by Intelsat, Ltd.'s statement to the U.S. SEC that the changes to its Bye-laws were intended to "eliminate restrictions on the Company's operations." Intelsat, Ltd., Form 8-K, Item 5.03 U.S. SEC (March 7, 2005). Therefore, it is unlikely that Intelsat would eliminate any "restrictions" if Intelsat perceived them as having no effect. Further, Intelsat has refused ITSO's requests, since March 2005, to reinstate the Public Service Obligations in its Bye-laws.

²⁰ Intelsat, Ltd.'s owners invested \$450 million of equity in purchasing Intelsat in early 2005; to date, they have paid themselves over \$500 million in dividends, \$305.4 million in the Q1 2005 and \$198.8 million on November 4. Intelsat, Ltd. Form 10Q, U.S. SEC, at 6, 20, 21, 31 and 32 (November 10, 2005).

²¹ See, *e.g.*, "The Great Global Buyout Bubble," Andrew Ross Sorkin, *The New York Times* (November 13, 2005).

the high risk of default reported by the major credit rating agencies, particularly on the most junior Intelsat, Ltd. obligations, the 148 member countries of ITSO fully expect the Commission to protect the “public interest” by conditioning its approval of the PanAmSat acquisition on conditions that will ensure continuation of the Public Service Obligations and related contracts, should Intelsat use the occasion of a default to initiate insolvency proceedings.

IV. THE COMMISSION’S PUBLIC INTEREST OBLIGATIONS IN A SECTION 310(d) PROCEEDING CONCERNING INTELSAT COMPEL THE RELIEF SOUGHT BY ITSO

The Commission’s public interest test, and the Applicants’ burden of proof in a section 310(d) license transfer proceeding, were recently set out in the Commission’s order approving News Corp.’s acquisition of control of DirecTV:

The public interest standard involves a balancing of potential public interest harms of the proposed transaction and the potential public interest benefits. The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest ... Our public interest evaluation under Section 310(d) necessarily encompasses the “broad aims of the Communications Act”.... To apply our public interest test, then, we must determine whether the transaction violates our rules, or would otherwise frustrate implementation or enforcement of the Communications Act and federal communication policy.²²

In this context, the Commission noted that, “[W]here necessary, we may also consider whether the transaction also raises issues of ... foreign policy and trade policy....”²³

Where such broader policy issues are implicated, the Commission may condition approval of the transfer application on the transferee’s adherence to appropriate conditions.²⁴

²² *General Motors and the News Corp.* 19 FCC Record 473, 483-484 (2004, footnotes omitted).

²³ 19 FCC Record, at 484, note 56.

²⁴ Thus, for example, the Commission conditioned News Corp.’s purchase of DirecTV on conditions that included establishment of a special procedure concerning the setting of

The “public interest” with respect to license transfers involving Intelsat is, in important part, defined by a unique statutory mandate that is company-specific to Intelsat, and the Commission’s past responses to that mandate. In the ORBIT Act, Congress added a new section 644(b) to the Communications Satellite Act of 1962, which directed that “The President *and* the Commission shall take the action [sic] necessary to ensure that the United States *remains* the ITU notifying administration for the privatized INTELSAT’s existing and future orbital slot registrations.”²⁵ The Commission responded to this mandate by accepting the INTELSAT Assembly of Parties requirements for becoming a Notifying Administration, including its recognition that INTELSAT’s “core principles ... must be retained after privatization.”²⁶ The Assembly of Parties then selected the United States as a Notifying Administration based on these assurances.²⁷

The Joint Response argues that, because the United States has, as a matter of internal sovereign governance, designated the State Department as ITSO’s point of contact, the Commission is excused from considering the effect of the PanAmSat acquisition on Intelsat’s ongoing adherence to its Public Service Obligations in a section 310(d) proceeding.²⁸ This claim is remarkable in light of the direct statutory mandate of section 644(b), and provides an insight into the pattern of disregard that the current Intelsat owners have demonstrated not only for the 148 member countries of ITSO and the Public Service Obligations but also for the role of the United States in its capacity as a

retransmission consent fees charged by News Corp. for small cable operators’ carriage of local Fox stations, given the greater leverage ownership of DirecTV would create in such transactions. 19 FCC Record at 626-627, 680-83.

²⁵ Communications Satellite Act of 1962, section 644(b), as amended by the ORBIT Act (emphasis added).

²⁶ *Intelsat, LLC*, 15 FCC Record 15460, para. 25.

²⁷ ITSO Comments at 4-7.

Notifying Administration and licensing authority for the Common Heritage orbital positions resulting from the Assembly of Parties' decisions.

Therefore, the 148 member countries of ITSO fully expect the Commission to fulfill the responsibilities of the United States by conditioning the PanAmSat acquisition on provisions that ensure survival of the Public Services Agreement and related contracts in case of Intelsat bankruptcy. Moreover, the ITSO Assembly of Parties will review the issues related to the continuity of Intelsat's public services in case of Intelsat's possible insolvency. In the course of its review, the Assembly also may look to actions by the Intergovernmental Organization overseeing the privatized Eutelsat S.A. as a useful template.²⁹

The Commission, in applying ITSO's proposed conditions to the PanAmSat merger, has an opportunity to foster the perception among the 148 member countries of ITSO that the interests of the low-income and low tele-density countries are being protected, and that the U.S. government is a trustworthy steward of the global information infrastructure.

V. ITSO URGES THE COMMISSION TO ENFORCE APPROPRIATE MERGER CONDITIONS, AS PROPOSED IN ITSO'S COMMENTS

In its initial Comments, ITSO set out three categories of safeguards as conditions to the Commission's Approval of the PanAmSat acquisition, as follows:³⁰

²⁸ Joint Response at 12.

²⁹ The Assembly of Parties of the Eutelstat IGO (in which 48 of the 60 member countries also are member countries of ITSO) has considered charging the Eutelsat S.A. with license fees for its use of the orbital positions transferred by the Eutelsat IGO, to ensure observance by the private Eutelsat company of the Basic Principles that were the condition for transferring the IGO's assets to Eutelsat at privatization. See, European Telecommunications Satellite Organization, AP-33 E (April 2005).

³⁰ ITSO Comments at 2.

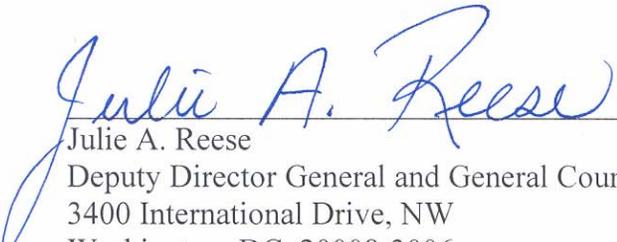
1. Development and implementation of such legal mechanisms as may be necessary (in the opinion of bankruptcy counsel) to assure that the Public Services Agreement and its obligations will survive a bankruptcy proceeding post-PanAmSat acquisition, including adherence to Lifeline Connectivity Obligation (LCO) contracts currently in effect with particular LCO-eligible customers;
2. Restatement of the conditions on the licenses issued by the FCC to Intelsat (authorizing use of the INTELSAT "Common Heritage" orbital positions) to clarify that no entity not bound by the Public Services Agreement, with obligations ongoing, can be considered a "successor" of Intelsat, LLC, and failing which, the licenses are to be canceled and the orbital positions revert to ITU inventory for reassignment or reallocation; and
3. Reinstatement of former Bye-law number 2 (and related definitions) relating to ITSO and the Public Services Agreement in the Bye-laws of Intelsat, Ltd. and any post-merger successor.

The ITSO Assembly of Parties (meeting on January 30, 2006) will be asked to consider methods of protecting the Public Service Obligations in the bankruptcy context. ITSO is ready and available to work with the Commission, in its capacity as the licensing authority for the U.S. Notifying Administration, to consider appropriate licensing conditions.

Respectfully submitted,

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I, Julie A. Reese, do hereby certify that on this 6th day of December 2005, I sent, via electronic mail, a true and correct copy of the foregoing Reply Comments of the International Telecommunications Satellite Organization to the following:

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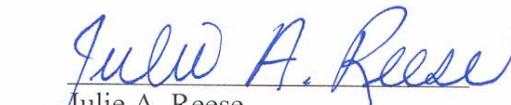
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