



**United States Department of State**

Washington, D.C. 20520

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March 7, 2006

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Intelsat-PanAmSat,  
FCC Docket No. 05-290

Dear Ms. Dortch:

Enclosed please find for filing in the above-captioned docket two copies of a March 7, 2006 letter from Steven W. Lett, the Deputy United States Coordinator for International Communications and Information Policy at the U.S. Department of State, to Mr. Donald Abelson, Chief of International Bureau at the FCC, concerning the above-captioned matter.

Please contact the undersigned at 202-647-0685 if there are any questions concerning this filing.

Thank you for your assistance.

Sincerely,

John P. Schnitker  
Attorney-Adviser  
Office of the Legal Adviser

Enclosures

No. of Copies rec'd 041  
List A B C D E



United States Department of State

Washington, D.C. 20520

MAR -7 2006

Dear Mr. Abelson:

Attached is a copy of the Record of Decisions of the 29<sup>th</sup> Meeting of the International Telecommunication Satellite Organization (ITSO) Assembly of Parties which was held January 30 to February 2, 2006. Also attached is a memorandum from the law firm of Kirkpatrick & Lockhart Nicholson Graham LLP, which was contracted by ITSO to provide advice concerning the proposed acquisition of PanAmSat Corporation by Intelsat, Ltd. These materials are being sent to you by the Department of State at the request of the ITSO Assembly of Parties, which decided:

“to request the United States and the United Kingdom, in their capacity as the selected licensing jurisdictions and ‘Notifying Administrations’ for the orbital locations and frequency assignments transferred in accordance with Article XII of the ITSO Agreement (the ‘Common Heritage’), to communicate to the appropriate authorities the Assembly’s desire that:

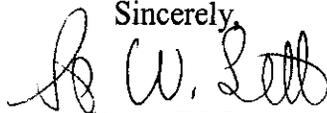
- a) remedies in the nature of those advised by Kirkpatrick & Lockhart Nicholson Graham in Attachment No. 1 to document AP-29-11, are implemented to assure that the Public Services Agreement and its obligations will survive a bankruptcy proceeding post-PanAmSat acquisition, including adherence to Lifeline Connectivity Obligation (LCO) contracts currently in effect with LCO-eligible customers; and
- b) the conditions on the licenses issued by the United States and the United Kingdom to Intelsat (to use the INTELSAT ‘Common Heritage’ orbital positions) clarify that no entity that is not bound by the Public Services Agreement can be considered a ‘successor’ of Intelsat, LLC.”

Mr. Donald Abelson,  
Chief, International Bureau,  
Federal Communications Commission,  
445 12<sup>th</sup> Street, S.W.,  
Washington, D.C. 20554

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In fulfilling the request to transmit these materials, the Department of State is not taking a position on the substance of the matter. Our foreign policy views will be communicated to the Commission separately.

Sincerely,

A handwritten signature in black ink, appearing to read "S. W. Lett". The signature is written in a cursive style with a large initial "S" and "L".

Steven W. Lett

Deputy United States Coordinator  
International Communications and Information Policy

attachments

ITSO RESTRICTED

AP-29-3E FINAL W/01/06  
6 February 2006

**ITSO ASSEMBLY OF PARTIES**  
**RECORD OF DECISIONS OF THE TWENTY-NINTH MEETING**  
**Washington, DC, USA**  
**30 January-2 February 2006**

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**ITSO ASSEMBLY OF PARTIES**  
**RECORD OF DECISIONS OF THE TWENTY-NINTH MEETING**

**Washington, D.C.**

**First Day, Monday**

**30 January 2006**

**AGENDA ITEM NO. 1 – CALL TO ORDER BY THE CHAIRMAN**

1. The TWENTY-NINTH ASSEMBLY OF PARTIES was called to order at 1400 Hours by the Chairman of the Twenty-Eighth Assembly of Parties, H. E. Mr. Joseph Ndong, Minister of Posts and Telecommunications of the Party of Senegal, in accordance with the provisions of Rule VI.C of the Rules of Procedure of the Assembly of Parties.

[Note: Item concluded.]

**AGENDA ITEM NO. 2 – ADOPTION OF THE AGENDA**

Reference: AP-29-1 (DG)

2. The ASSEMBLY OF PARTIES DECIDED to adopt the Agenda, as set forth in AP-29-1.

[Note: Item concluded.]

**AGENDA ITEM NO. 3 – ELECTION OF THE CHAIRMAN AND OTHER OFFICERS OF AP-29**

Reference: AP-29-6 (DG)

3. The ASSEMBLY OF PARTIES DECIDED to elect, by acclamation, H.E. Mr. Maigari Bello Bouba, Minister of Posts and Telecommunications of the Party of Cameroon, as Chairman.

4. The ASSEMBLY OF PARTIES DECIDED to elect, by acclamation, Dr. Juan Manuel Bolaños, representative of the Party of El Salvador, as Deputy Chairman.

5. The ASSEMBLY OF PARTIES DECIDED to elect, by acclamation, the following Vice-chairmen from the five regions defined by the Plenipotentiary Conference of the ITU held at Kyoto, Japan in 1994:

Mr. Félix Castro Rojas  
representative of the Party of Colombia  
(Region A, The Americas)

Mr. Hans-Joachim Schemel  
representative of the Party of Germany  
(Region B, Western Europe)

Mr. Bakhtiyar Mammadov  
representative of the Party of Azerbaijan  
(Region C, Eastern Europe & Northern Asia)

Mr. Patrick Masambu  
representative of the Party of Uganda  
(Region D, Africa)

Mr. Abdul Youssef  
representative of the Party of Lebanon  
(Region E, Asia and Australasia)

[Note: Item concluded]

AGENDA ITEM NO. 4 – APPOINTMENT OF THE CREDENTIALS COMMITTEE

Reference: AP-29-6 (DG)

6. The ASSEMBLY OF PARTIES DECIDED to establish a Credentials Committee consisting of individuals appointed from the following delegations:

Region A - Nicaragua  
Region B - Denmark  
Region C - Czech Republic  
Region D - Gabon  
Region E - Malaysia

[Note: Item concluded.]

7. The first day was adjourned at 18.30 hours.

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**AP-29-3E FINAL W/01/06**

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**ITSO ASSEMBLY OF PARTIES**

**RECORD OF DECISIONS OF THE TWENTY-NINTH MEETING**

**Washington, D.C.**

**Second Day, Tuesday**

**31 January 2006**

**AGENDA ITEM NO. 5 – REPORT OF THE CREDENTIALS COMMITTEE**

References: AP-29-5 (Credentials Committee)  
AP-29-6 (DG)

8. The ASSEMBLY OF PARTIES DECIDED:
- (a) to accept the oral report presented by the Chairman of the Credentials Committee that the Committee had examined the credentials of delegations of 98 Parties entitled to attend the Assembly and found such credentials fully in order; and
  - (b) that the number of representatives of delegations whose credentials were in order and who were present, 98 was sufficient to constitute a quorum, pursuant to Article VII(f) of the ITSO Agreement, as amended.

[Note: Item continued, see para. 34 on page 11. ]

9. The second day was adjourned at 19.45 hours.

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ITSO ASSEMBLY OF PARTIES

RECORD OF DECISIONS OF THE TWENTY-NINTH MEETING

Washington, D.C.

Third day, Wednesday

1 February 2006

AGENDA ITEM NO. 6 – ITSO ADVISORY COMMITTEE

Reference: AP-29-7 (DG)

10. The ASSEMBLY OF PARTIES NOTED the Director General's Report on the ITSO Advisory Committee.

11. The ASSEMBLY OF PARTIES DECIDED to approve the continuation of the IAC, with the existing Structure and Terms of Reference for the IAC as contained in Attachment No.1 of document AP-29-7, amended in paragraph VI.7 – Terms of the IAC to delete the word ordinary before Assembly of Parties.

[Note: Item continued, see para 35 on page 11.]

AGENDA ITEM NO. 9 – BUDGET AND FINANCIAL MATTERS

References: AP-29-13 (DG)  
AP-29-14 (DG)

12. The ASSEMBLY OF PARTIES DECIDED to approve the bi-annual budget for the two fiscal years ending 30 June 2007 and 2008, as detailed in Attachment No. 1 to AP-29-13.

13. The ASSEMBLY of PARTIES DECIDED to:

(a) note that the audited FY 2005 saving of \$36,440 have been put in the Reserve Fund.

(b) authorize the Director General to draw from the Reserve Fund to cover the cost of an extraordinary meeting of the Assembly of Parties, if one is held prior to 30 June 2006.

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14. The ASSEMBLY OF PARTIES DECIDED to establish a Compensation Committee to review and submit to the Assembly of Parties for its decision, the salary adjustments and performance bonuses for the Director General.

15. The ASSEMBLY OF PARTIES DECIDED to note the external audit reports for fiscal years 2004 and 2005 as contained in document AP-29-14.

[Note: Item continued, see para. 39-40 on page 14.]

AGENDA ITEM NO. 10 – CONSIDERATION OF ARTICLE IV (B) APPLICATIONS

References: AP-29-18 (DG)  
AP-29-19 (DG)  
AP-29-20 (Rev. 1) (DG)  
AP-29-21 (Rev. 1) (DG)  
AP-29-22 (DG)

16. The ASSEMBLY OF PARTIES NOTED the requests of the Parties of Saudi Arabia, Sudan, Colombia, Iran and Peru for Article IV(b) determinations.

17. The ASSEMBLY OF PARTIES DECIDED to approve the Article IV(b) determination for the Party of Saudi Arabia, as set forth in Document AP-29-18, for a period of five (5) years from the date of determination by the Assembly of Parties, in conformity with the "Guidelines and Procedures for the Consideration of Article IV(b) Requests."

18. The ASSEMBLY OF PARTIES DECIDED to approve the Article IV(b) determination for the Party of Sudan, as set forth in Document AP-29-19, for a period of five (5) years from the date of determination by the Assembly of Parties, in conformity with the "Guidelines and Procedures for the Consideration of Article IV(b) Requests."

19. The ASSEMBLY OF PARTIES DECIDED to approve the Article IV(b) determination for the Party of Colombia, as set forth in Document AP-29-20 (Rev.1), for a period of five (5) years from the date of determination by the Assembly of Parties, in conformity with the "Guidelines and Procedures for the Consideration of Article IV(b) Requests."

20. The ASSEMBLY OF PARTIES DECIDED to approve the Article IV(b) determination for the Party of Iran, as set forth in Document AP-29-21 (Rev. 1), for a period of five (5) years from the date of determination by the Assembly of Parties, in conformity with the "Guidelines and Procedures for the Consideration of Article IV(b) Requests."

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21. The ASSEMBLY OF PARTIES DECIDED to approve the Article IV(b) determination for the Party of Peru, as set forth in Document AP-29-22, for a period of five (5) years from the date of determination by the Assembly of Parties, in conformity with the "Guidelines and Procedures for the Consideration of Article IV(b) Requests."

[Note: Item concluded.]

AGENDA ITEM NO. 12 – REPORTS OF THE DIRECTOR GENERAL CONCERNING THE IMPLEMENTATION OF GENERAL POLICIES, THE ACTIVITIES AND LONG-TERM PROGRAM OF ITSO

References: AP-29-24 (DG)  
AP-29-25 (DG)

22. The ASSEMBLY OF PARTIES NOTED the report on the Director General's contribution to the World Summit on the Information Society on the "Global Broadband Satellite Infrastructure Initiative," as set forth in AP-29-25.

[Note: Item continued, see para. 42 on page 16. ]

AGENDA ITEM NO. 11 - SELECTION OF LEGAL EXPERTS REFERRED TO IN ARTICLE 3 OF ANNEX A OF THE AGREEMENT

References: AP-29-23 (DG) & Addendum No. 2 (DG) & Corrigendum No. 3 (DG)  
AP/WD-29-106

23. The ASSEMBLY OF PARTIES DECIDED, to note the procedures, for electing a new Panel of Legal Experts and pursuant to Article 3(b) of Annex A to the ITSO Agreement, to select as the members of the Panel of Legal Experts, the following persons:

<u>Name</u>	<u>Country</u>
Mr. Antonio Domingos Teixeira Bedran	Brazil
Mr. Emmanuel Pokossy Belle	Cameroon
Mr. Sui Wei	China
Mr. Alfredo Rey Cordoba	Colombia
Mr. Hussein Mubarak	Egypt

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Mr. Gilbert Guillaume	France
Mr. Karl-Heinz Bockstiegel	Germany
Mr. Kazunori Ishiguro	Japan
Ms. Cherif Chefchaoui Zineb	Morocco
Mr. Thierno Mohanmadou B. Ly	Senegal
Ms. Helgi C. Walker	United States

24. The ASSEMBLY OF PARTIES NOTED:

- (a) consistent with past practices of the intergovernmental organization, the next meeting of the Panel, which will be held for the purpose of designating a Chairman, will be scheduled as soon as possible after the conclusion of the Assembly; and
- (b) that the exact date of the meeting will be communicated to Panel members in the near future.

25. The ASSEMBLY OF PARTIES DECIDED, pursuant to Article 3(b) of Annex A to the ITSO Agreement, to select as the alternates for the members of the Panel of Legal Experts, the following persons:

<u>Name</u>	<u>Country</u>
Mr. Mohammed Nyaoga	Kenya
Mr. Hodge Semakula	Uganda
Mr. R. Michael Senkowski	United States

[Note: Item continued, see para. 41 on page 14.]

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AGENDA ITEM NO. 7 – REPORTS OF THE DIRECTOR GENERAL ON INTELSAT LTD.'S  
OBSERVANCE OF THE CORE PRINCIPLES

References: AP-29-8 (Republic of Azerbaijan)  
AP-29-12 (DG)  
AP-29-15 (DG) & Addendum No. 1 (DG)  
AP/WD-29-105

26. The ASSEMBLY OF PARTIES DECIDED:

- (a) to note the legal opinion of the law firm of Kirkpatrick & Lockhart Nicholson Graham LLP in Attachment No. 1 to document AP-29-12.
- (b) to urge the United States and the United Kingdom, in their capacity as the selected licensing jurisdictions and “Notifying Administrations” for the frequency assignments associated with orbital locations (the “Common Heritage”), to take actions pursuant to their obligations in the ITSO Agreement concerning Intelsat’s adherence to its Public Service Obligations.

27. The ASSEMBLY OF PARTIES DECIDED:

- (a) that the Director General should enlist the assistance of an expert facilitator or facilitators, selected by mutual agreement with Intelsat, to assist in further discussions with Intelsat to guarantee that the Director General receives information sufficient to demonstrate that Intelsat is meeting all aspects of its Public Service Obligations, including LCO tariff policies.
- (b) that the Director General should undertake to clarify the Public Services Agreement between ITSO and Intelsat along the lines proposed by the Director General in Attachment 3 to document AP-29-10, to be signed with the new Intelsat Holding Corporation. This process should be carried out by the ITSO Executive Organ in close cooperation with the ITSO Advisory Committee. This process should take place during a period no longer than six months and would aim at: (i) detailing the reporting obligations and associated information requirements of Intelsat to facilitate ITSO’s supervisory role; and (ii) establishing that ITSO’s Director General should have the role of observer on Intelsat’s board of directors to ensure proper user representation in terms of geography and diversity.<sup>1</sup>
- (c) that an extraordinary meeting of the Assembly of Parties should be held to reaffirm the oversight function of ITSO and review whether corrective measures have been taken. In the case of an unsuccessful outcome of the above mentioned process, the Director General should prepare recommendations to remedy the situation for consideration by the Parties.

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<sup>1</sup> The Parties of Australia, Canada, United Kingdom and United States do not associate with this Decision.

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28. The ASSEMBLY OF PARTIES DECIDED to request the Director General to resolve with Intelsat all issues related to the LCO contracts including: (a) the 2004 and 2005 LCO Pricing Index calculation; (b) the redesign of the LCO Pricing Index Basket to be utilized from 2006; and (c) the possibility of extension of the LCO protection to contracts longer than 10 years.<sup>2</sup>

29. The ASSEMBLY OF PARTIES DECIDED:

- (a) to invite Intelsat to reinstate all of the references to Intelsat's Public Service Obligations that were deleted from the Intelsat Bye-laws after the Zeus acquisition in the first quarter of 2005.

30. The ASSEMBLY OF PARTIES DECIDED:

- (a) to express concern and invite Intelsat to address the following:
  - (a.1) the decline in Intelsat satellite coverage in the Asia Pacific region and in particular the special needs of small Pacific island countries;
  - (a.2) Intelsat Ku-band coverage in Africa; and
  - (a.3) the question of plans to replace retiring satellites, considering the fact that 16 of the 25 satellites in Intelsat's current fleet will reach the end of orbital design life by 2010.

31. The ASSEMBLY OF PARTIES DECIDED to note that the Chairman of AP-28 had received a letter from the Intelsat Retiree's Association concerning retiree health obligations created by the International Telecommunications Satellite Organization prior to privatization and assumed by Intelsat, Ltd.

32. The ASSEMBLY OF PARTIES NOTED the concerns of the Central African Republic regarding Intelsat's severance of satellite links with the Central African Republic and DECIDED to:

- (a) request that Intelsat urgently address the situation, and invite Intelsat to engage in discussions with the Central African Republic with a view to restoring Central African Republic's satellite links;
- (b) request the Director General of ITSO to monitor progress on this matter; and

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<sup>2</sup> The Parties of Australia, Canada, United Kingdom and United States do not associate with Decision 28 (c).

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(c) remind Intelsat that it must adhere strictly to its public service obligations, including those of lifeline connectivity and non-discriminatory access vis-à-vis the Parties

[Note: Item concluded.]

33. The third day was adjourned at 21.45 hours.

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**ITSO ASSEMBLY OF PARTIES**

**RECORD OF DECISIONS OF THE TWENTY-NINTH MEETING**

**Washington, D.C.**

**Fourth day, Thursday**

**2 February 2006**

**AGENDA ITEM NO. 5 – REPORT OF THE CREDENTIALS COMMITTEE**

(Continued)

References: AP-29-5 (Credentials Committee) & Addendum No. 1 (DG)  
AP-28-6 (DG)

34. The ASSEMBLY OF PARTIES DECIDED to adopt the final report of the Credentials Committee, as set forth in AP-29-5, noting that the Committee had examined the credentials of delegations from 102 Parties entitled to attend the Assembly and found those credentials fully in order.

[Note: Item concluded.]

**AGENDA ITEM NO. 6 – ITSO ADVISORY COMMITTEE**

(Continued)

Reference: AP-29-7 (DG)

35. The Assembly of Parties DECIDED to constitute the ITSO Advisory Committee, as set forth in AP-29-7, to be made up of the following nineteen (19) Parties from the following ITU Regions:

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AP-29-3E FINAL W/01/06

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	Party	ITU Region
(1)	Colombia	A
(2)	El Salvador	A
(3)	Jamaica	A
(4)	USA	A
(5)	France	B
(6)	Germany	B
(7)	United Kingdom	B
(8)	Azerbaijan	C
(9)	Russia	C
(10)	Gabon	D
(11)	Guinea	D
(12)	Kenya	D
(13)	Mauritania	D
(14)	Namibia	D
(15)	China	E
(16)	Lebanon	E
(17)	Japan	E
(18)	Sri Lanka	E
(19)	Malaysia	E

[Note: Item concluded.]

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AGENDA ITEM NO. 8 – REPORTS ON INTELSAT’S FINANCIAL, BUSINESS  
VENTURES, PARTNERSHIPS AND ACQUISITIONS MATTERS

References: AP-29-10 (DG)  
AP-29-11 (DG)  
AP-29-16 (DG)

36. The ASSEMBLY OF PARTIES DECIDED:

- (1) to note the review of Intelsat, Ltd.’s financial position;
- (2) to request the Director General to remind Intelsat of the importance of the public service obligations in the course of its business decisions; and
- (3) to note that the Director General will continue to monitor Intelsat’s financial performance, including any significant changes to its financial structure, for purposes of assessing Intelsat’s capacity to fulfill its public service obligations.

37. The ASSEMBLY OF PARTIES DECIDED:

- (1) to note:
  - (1.1) the high level of debt that would result from the proposed acquisition of PanAmSat, and the risk this could create for the continuity of the Public Service Obligations should a market decline result in Intelsat’s bankruptcy or liquidation;
  - (1.2) Intelsat’s statement to the Assembly of Parties that the acquisition will enhance Intelsat’s connectivity resources and ability to comply with the Public Service Obligations.
- (2) to note the legal opinion of the law firm of Kirkpatrick & Lockhart Nicholson Graham LLP in Attachment No. 1 to document AP-29-11.
- (3) to request the United States and the United Kingdom, in their capacity as the selected licensing jurisdictions and “Notifying Administrations” for the orbital locations and frequency assignments transferred in accordance with Article XII of the ITSO Agreement (the “Common Heritage”), to communicate to the appropriate authorities the Assembly’s desire that:
  - (a) remedies in the nature of those advised by Kirkpatrick & Lockhart Nicholson Graham in Attachment No. 1 to document AP-29-11, are implemented 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 LCO-eligible customers; and

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(b) the conditions on the licenses issued by the United States and the United Kingdom to Intelsat (to use the INTELSAT "Common Heritage" orbital positions) clarify that no entity that is not bound by the Public Services Agreement can be considered a "successor" of Intelsat, LLC.

38. The ASSEMBLY OF PARTIES DECIDED:

(1) to note document AP-29-15 of the Director General; and

(2) to request the Director General to develop, with the advice of the ITSO Advisory Committee, practical measures to implement the provisions of the ITSO Agreement Article XII.

[Note: Item concluded.]

AGENDA ITEM NO. 9 – BUDGET AND FINANCIAL MATTERS  
(Continued)

References: AP-29-13 (DG)  
AP-29-14 (DG)

39. The ASSEMBLY OF PARTIES NOTED the report of the Compensation Committee that was established to review and submit to the Assembly of Parties recommendations regarding the salary adjustments and performance bonuses for the Director General.

40. The ASSEMBLY OF PARTIES DECIDED to approve the recommendations of the Compensation Committee.

[Note: Item concluded.]

AGENDA ITEM NO. 11 - SELECTION OF LEGAL EXPERTS REFERRED TO IN  
(Continued) ARTICLE 3 OF ANNEX A OF THE AGREEMENT

References: AP-29-23 (DG) & Addendum No. 1 (DG) & Corrigendum No. 1 (DG)  
AP/WD-29-106

41. The ASSEMBLY OF PARTIES DECIDED, pursuant to Article 3(b) of Annex A to the ITSO Agreement, to approve the following pairings of the Panel of Legal Experts with their alternates:

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Panel of Legal Experts

Alternate

Mr. Antonio Domingos Teixeira Bedran  
(Brazil)

Mr. R. Michael Senkowski  
(United States)

Mr. Emmanuel Pokossy Belle  
(Cameroon)

Mr. Hodge Semakula  
(Uganda)

Mr. Wei Su  
(China)

Mr. Mohammed J. Nyaoga  
(Kenya)

Mr. Alfredo Rey Cordoba  
(Colombia)

Mr. R. Michael Senkowski  
(United States)

Mr. Hussein A. Mubarak  
(Egypt)

Mr. Hodge Semakula  
(Uganda)

Mr. Gilbert Guillaume  
(France)

Mr. Mohammed J. Nyaoga  
(Kenya)

Mr. Karl-Heinz Böckstiegel  
(Germany)

Mr. Hodge Semakula  
(Uganda)

Mr. Kazunori Ishiguro  
(Japan)

Mr. Mohammed J. Nyaoga  
(Kenya)

Ms. Cherif Chefchaoui Zineb  
(Morocco)

Mr. Hodge Semakula  
(Uganda)

Mr. Thierno Mohamadou B. Ly  
(Senegal)

Mr. Mohammed J. Nyaoga  
(Kenya)

Ms. Helgi C. Walker  
(United States)

Mr. R. Michael Senkowski  
(United States)

[Note: Item concluded.]

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AGENDA ITEM NO. 12 – REPORTS OF THE DIRECTOR GENERAL CONCERNING THE  
(Continued) IMPLEMENTATION OF GENERAL POLICIES,  
THE ACTIVITIES AND LONG-TERM PROGRAM OF ITSO

References: AP-29-24 (DG)  
AP-29-25 (DG)

42. The ASSEMBLY OF PARTIES NOTED the report on ITSO's Goals and Objectives (2002-2007), as set forth in AP-29-24.

[Note: Item concluded.]

AGENDA ITEM NO. 13 – DATES AND PLACES OF FUTURE MEETINGS  
OF THE ASSEMBLY OF PARTIES

43. The ASSEMBLY OF PARTIES DECIDED to schedule its next ordinary meeting to be held in the fourth quarter of 2008, the precise dates and venue to be advised by the Director General.

[Note: Item concluded.]

AGENDA ITEM NO. 14 – APPROVAL OF THE RECORD OF DECISIONS OF THE  
TWENTY-NINTH ASSEMBLY OF PARTIES

Reference: AP-29-3 FINAL (DG)

44. The ASSEMBLY OF PARTIES DECIDED to approve the Record of Decisions for the Twenty-Ninth Meeting, as set forth in AP-29-3 FINAL.

ITSO RESTRICTED

ATTACHMENT NO. 1 to  
AP-29-11E W/01/06

**LEGAL OPINION OF  
KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP  
ON THE RISK OF U.S. BANKRUPTCY LAWS  
TO THE CONTINUITY OF PUBLIC SERVICE OBLIGATIONS**



Kirkpatrick & Lockhart  
Nicholson Graham LLP

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## MEMORANDUM

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**TO:** The International Telecommunications Satellite Organization ("ITSO")

**FROM:** Kirkpatrick & Lockhart Nicholson Graham LLP, by Jeffrey N. Rich, Esq.

**DATE:** December 16, 2005

**RE:** Protection of Public Service Obligations and "Common Heritage" Assets in Event of the Bankruptcy or Liquidation of Intelsat, Ltd.

### **I. Summary and Introduction**

As of July 18, 2001, ITSO entered into a Public Services Agreement (the "PSA") with Intelsat, Ltd., a company organized under the laws of Bermuda ("Intelsat"), Intelsat LLC, a Delaware corporation ("Intelsat Limited") and Intelsat Services Corporation, a Delaware corporation ("Intelsat Services") (hereinafter collectively referred to as the "Intelsat Companies") to ensure that the Intelsat Companies provide "on a commercial basis, international public telecommunication services, in order to (i) maintain global connectivity and coverage; (ii) serve its lifetime connectivity customers; and (iii) provide non-discriminatory access to the Intelsat system" (the "Public Service Obligations").

We have been requested to advise ITSO with respect to the following: (1) how the Public Service Obligations would be treated under the bankruptcy laws of the United States if Intelsat, or any of the Intelsat Companies, becomes a "Debtor"<sup>1</sup> under the Bankruptcy Code;<sup>2</sup> and (2) in the event of a bankruptcy filing by any of the Intelsat Companies, what actions ITSO may consider taking to best protect its ability to enforce the Public Service Obligations.

In connection with this Memorandum we have reviewed the PSA, the Agreement Relating to the International Telecommunications Satellite Organization (the "Treaty"), the bylaws of Intelsat, the Restructuring Agreement, the Transfer Agreement and the recent submission by ITSO to the FCC in connection with the Panamsat acquisition. From our review, it is clear and central to the discussion which follows, that the transfer of assets by ITSO to Intelsat was conditioned on the entry by Intelsat into the PSA and the performance by Intelsat of the Public Service Obligations.

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<sup>1</sup> A company in a bankruptcy proceeding under the laws of the United States is commonly referred to as a "Debtor".

<sup>2</sup> The federal law of the United States governing bankruptcy proceedings is known as the "Bankruptcy Code". Individual States also have insolvency laws but these laws are rarely used and the likelihood that the Intelsat Companies would ever file for relief under the insolvency laws of any State is minimal.



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As noted above, Intelsat is a Bermuda-registered company. In addition, Intelsat is subject to the regulatory authorities of the United States and the United Kingdom, in their capacity as the Notifying Administrations and licensing jurisdictions for the orbital locations and associated spectrum transferred by the International Telecommunications Satellite Organization. The Intelsat Companies also have assets in jurisdictions outside the United States, and therefore, Intelsat also might become the subject of the insolvency laws of a foreign jurisdiction.<sup>3</sup> The advice in this Memorandum, however, is limited to the Intelsat Companies as potential Debtors under the United States Bankruptcy Code.

Below is a summary of some of the significant terms of the PSA and the Treaty that would impact any potential bankruptcy proceeding, as well as a general overview of the United States Bankruptcy Code. This is followed by a detailed discussion and specific suggested courses of actions that ITSO should consider taking prior to a bankruptcy filing by an Intelsat Company to protect its rights.

## II. Significant Provisions of the PSA and the Treaty

### A. PSA Provisions

1. **Public Service Obligations:** Specific provisions of the PSA require that the Intelsat Companies provide “on a commercial basis, international public telecommunication services, in order to (i) maintain global connectivity and coverage; (ii) serve its lifetime connectivity customers; and (iii) provide non-discriminatory access to the Intelsat system” (the “Public Service Obligations”).

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<sup>3</sup> It is possible that Intelsat could commence an insolvency proceeding in, among other jurisdictions, Bermuda and then seek to deal with its assets located in the United States through a separate bankruptcy proceeding commenced by Intelsat in the United States. The Bankruptcy Code contains a specific chapter, known as “Chapter 15”, which deals with proceedings commenced in a United States bankruptcy court ancillary to a previously commenced foreign bankruptcy proceeding. A chapter 15 proceeding would give rise to many of the same issues and considerations discussed in this Memorandum in connection with the rights of ITSO under chapters 7 and 11. Because of, among other things, the greater protection that the United States Bankruptcy Code laws would afford to Intelsat, there is little likelihood that Intelsat would commence an insolvency proceeding in Bermuda.



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2. **Supervisory Role:** ITSO is given a supervisory role to review and assess the performance of Intelsat of the Public Service Obligations, including responsibility for ensuring that Intelsat honors the Public Service Obligations, assisting LCO Customers with disputes and reviewing the decisions taken by Intelsat with respect to petitions for eligibility in entering into the LCO Contracts.

3. **Arbitration:** Any dispute between the parties to the PSA arising out of or related to the PSA that is not resolved through negotiation is to be settled by arbitration in Washington, DC in accordance with the rules of the International Chamber of Commerce.

4. **No Assignment:** No party to the PSA may assign its rights or obligations under the PSA without the prior written consent of the other party, which consent will not be unreasonably withheld.

5. **Binding on Successors and Permitted Assigns:** The PSA is binding on the parties thereto and their successors as well as the permitted assigns of Intelsat.

**B. Treaty Provisions**

Article XI(c) of the Treaty requires that all parties shall take the actions required *“under applicable domestic procedure and pertinent international agreements to which they are a party, so that the Company may fulfill the Core Principles.”* The Core Principles are set forth in Article III of the Treaty and are essentially the same as the Public Service Obligations.

**III. General Overview of the Bankruptcy Code**

**A. Chapter 11 and Chapter 7.** The United States Bankruptcy Code is divided into chapters. For corporations, a bankruptcy petition may be filed under either chapter 7 or chapter 11 of the Bankruptcy Code. Chapter 7 provides for the appointment of a trustee to administer and liquidate the Debtor’s assets for distribution to creditors. Chapter 11 allows a company to continue to operate its business and remain in possession of its assets as a “debtor-in-possession”. While Chapter 11 is typically utilized by a company to reorganize its business, courts will often allow a debtor-in-possession to conduct an orderly liquidation of its assets under Chapter 11, particularly if the court believes that a sale of the assets by a debtor-in-possession, rather than a trustee, will maximize the return for creditors.