

Executive Branch agencies have taken the position that their ability to satisfy their obligations to protect the national security, enforce the laws, and preserve the safety of the public could be impaired by transactions in which foreign entities will own or operate a part of the U.S. telecommunications system, or in which foreign-located facilities will be used to provide domestic telecommunications services to U.S. customers.¹⁴³ After discussions with the Applicants, the Executive Branch agencies have concluded that the commitments set forth in the Intelsat/PanAmSat Commitment Letter address their concerns, and therefore ask the Commission to condition the grant on Intelsat's compliance with the commitments set forth in the letter.¹⁴⁴

52. In assessing the public interest, we take into account the record and accord deference to Executive Branch expertise on national security and law enforcement issues.¹⁴⁵ As the Commission stated in the *Foreign Participation Order*, foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch.¹⁴⁶ In presuming that an application involving investment by a World Trade Organization Member applicant does not pose a risk of anticompetitive harm that would justify denial of the application, the Commission does not presume, however, that the application poses no national security, law enforcement, foreign policy, or trade concerns.¹⁴⁷ In 2004, in the *Intelsat-Zeus Order*, the Commission, on delegated authority, granted the petition of the Executive Branch agencies to condition the grant of the licenses and authorizations at issue in that proceeding on certain national security, law enforcement, and public safety commitments.¹⁴⁸ Intelsat now has agreed to extend those commitments to the licenses transferred in this instant proceeding. In accordance with the request of the Executive Branch agencies, in the absence of any objection from the Applicants, and given the discussion above, we condition our grant of the Applications on Intelsat's compliance with the commitments set forth in the Intelsat/PanAmSat Commitment Letter.¹⁴⁹ We include the Executive Branch Petition and the Intelsat/PanAmSat Commitment Letter as Appendix C to this Order.

D. Other Issues

1. ITSO Request for Conditions

53. In 1973, an international agreement created INTELSAT as an intergovernmental organization for the purpose of operating a global commercial telecommunications satellite system.¹⁵⁰ In

¹⁴³ Executive Branch Petition at 2.

¹⁴⁴ *Id.*

¹⁴⁵ *Foreign Participation Order*, 12 FCC Rcd at 23919-21, ¶¶ 61-66.

¹⁴⁶ *Id.* at 23919, ¶ 62.

¹⁴⁷ *Id.* at 23920-21, ¶ 65.

¹⁴⁸ *Intelsat-Zeus Order*, 19 FCC Rcd at 24839, ¶ 49.

¹⁴⁹ *See infra* ¶ 77 (ordering clause).

¹⁵⁰ *See Agreement Relating to the International Telecommunications Satellite Organization "INTELSAT,"* 23 U.S.T. 3813, TIAS No. 7532, 1220 U.N.T.S. 22 (entry into force Feb. 12, 1973).

2001, the parties to the INTELSAT agreement privatized INTELSAT by transferring its assets to a commercial corporation, Intelsat.¹⁵¹ Pursuant to international agreement, ITSO remains as the intergovernmental organization responsible for monitoring Intelsat's adherence to certain "core principles" in providing international public telecommunications services.¹⁵² The United States is a party to the ITSO Agreement, with the U.S. Department of States serving as the U.S. representative. The ITSO Agreement establishes three "core principles" by which Intelsat is to provide services: (1) maintain global connectivity and global coverage; (2) serve lifeline connectivity customers; and (3) provide non-discriminatory access to Intelsat's system.¹⁵³ As part of the privatization and its commitment to the "core principles," Intelsat entered into a Public Services Agreement with ITSO by which Intelsat agreed to provide connectivity and capacity to a predefined group of "lifeline" users for a predetermined number of years, with price protection during the life of the commitments.¹⁵⁴

54. ITSO is concerned that the acquisition of PanAmSat might increase Intelsat's debt level to the extent that Intelsat might consider filing for bankruptcy and as a result might seek to void the Public Services Agreement it has signed with ITSO or take other actions to avoid compliance with the core principles of the ITSO Agreement.¹⁵⁵ To remedy its concerns, ITSO asks the Commission to condition the grant of the Applications on: (1) the development and implementation of such legal mechanisms as may be necessary (in the opinion of ITSO's bankruptcy counsel) to assure that the Public Services Agreement and its obligations will survive a bankruptcy proceeding, including adherence to lifeline connectivity obligation ("LCO") contracts currently in effect with particular LCO-eligible customers; (2) a restatement of the conditions set out in the Commission licenses granted to Intelsat in 2000, to clarify that no entity not bound by the Public Services Agreement could be considered a successor of Intelsat, to prohibit transfer of the licenses and orbital slots to any non-successor, and in such case to ensure that the orbital positions would revert to the International Telecommunication Union ("ITU") inventory for reallocation; and (3) a requirement that Intelsat reinstate its former Bylaw No. 2 and related definitions concerning Intelsat's public service obligations.¹⁵⁶

¹⁵¹ In this section, we use the term "INTELSAT" to refer to the pre-privatized intergovernmental organization and the term "Intelsat" to refer to the commercial corporation after privatization, including that corporation's subsidiary Intelsat LLC, created to hold Commission licenses issued to the privatized company, as well as other Intelsat subsidiaries that now hold Commission licenses and authorizations.

¹⁵² See Agreement Relating to the International Telecommunications Satellite Organization, As Amended by the Twenty-Fifth (Extraordinary) Assembly of Parties in Washington, D.C. (Nov. 17, 2000) ("ITSO Agreement"), available at http://216.119.123.56/dyn4000/dyn/docs/ITSO/tpl1_itso.cfm?location=&id+5&link_src=HPL&lang=english (visited Feb. 22, 2006). See also *Applications of Intelsat LLC for Authorization 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, 16 FCC Rcd 12280, 12283, ¶ 10 (2001) ("Intelsat LLC ORBIT Act Compliance Order").

¹⁵³ See ITSO Agreement, Art. III(b); see also ITSO Comments at 3.

¹⁵⁴ See INTELSAT Assembly of Parties, Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting, 13-17 Nov. 2000, AP-25-3E FINAL W/11/00.

¹⁵⁵ ITSO Comments at 1-2.

¹⁵⁶ *Id.* at 14.

55. The Applicants respond that ITSO's proposed conditions are a premature attempt to remedy a speculative harm of a hypothetical bankruptcy and contradict Commission policy that eliminated the financial qualifications for satellite applicants.¹⁵⁷ Intelsat states that it has obtained financing commitments from a group of financial institutions for the proposed merger and, in the unlikely event that unforeseeable market conditions were to cause a future Intelsat bankruptcy, the Commission would have the opportunity to address ITSO's concerns as part of any application to assign Intelsat's licenses to a debtor-in-possession, trustee, or successor.¹⁵⁸ The Applicants contend that ITSO mischaracterizes the respective roles of Intelsat, ITSO, and the Commission with respect to Intelsat's lifeline connectivity obligations, noting that the Commission is not a party to the Public Services Agreement, which the Applicants characterize as a private commercial agreement between ITSO and Intelsat that defines Intelsat's lifeline connectivity obligations and specifies express remedies for noncompliance.¹⁵⁹ Further, the Applicants assert that the Commission's sole commitment, in granting Intelsat its licenses in 2000, was to "cancel any transferred frequency assignments and orbital locations under ITU procedures should Intelsat or its successors lose its license to use such frequency assignments and orbital locations."¹⁶⁰ Finally, the Applicants state that the Intelsat bylaws permitted Intelsat to remove the public services obligation provision through the unanimous approval of the shareholders, which occurred in March, 2005.¹⁶¹

56. In its reply, ITSO contends that Intelsat's public service obligations are not a "private commercial agreement."¹⁶² Although noting that the Public Services Agreement is a contract under the laws of the District of Columbia, with its interpretation and enforcement subject to arbitration, ITSO states the agreement is a contract between Intelsat and the 148 member parties of the ITSO Agreement.¹⁶³ ITSO further states that the Public Services Agreement stipulates that Intelsat's ongoing performance of its public service obligations "is the consideration for the transfer" of INTELSAT's assets to Intelsat.¹⁶⁴ ITSO states that the Commission, in granting Intelsat LLC the authority to operate, understood that the underlying agreement among the INTELSAT parties to privatize INTELSAT and transfer its assets to Intelsat was premised on Intelsat's adherence to the core public service principles that would be embodied in the Public Services Agreement.¹⁶⁵ Finally, ITSO contends that, in selecting the United

¹⁵⁷ Joint Response at 9-14 and 10 n.38, citing generally to *Space Station Reform Order*, 18 FCC Rcd 10760. The Applicants assert that the Commission's mandate to protect the public interest "does not require it to predict Intelsat's economic future." Joint Response at 11.

¹⁵⁸ *Id.* at 10-11.

¹⁵⁹ *Id.* at 12.

¹⁶⁰ *Id.* at 13, citing to *Intelsat Licensing Order*, 15 FCC Rcd at 15511, ¶¶ 130, 15519, ¶ 159.

¹⁶¹ *Id.* at 13-14.

¹⁶² ITSO Reply at 2-6.

¹⁶³ *Id.* at 3.

¹⁶⁴ *Id.* at 1.

¹⁶⁵ *Id.* at 3-4, citing to the August, 2000 *Intelsat Licensing Order*, 15 FCC Rcd at 15460, ¶¶ 25-26. The ITSO Reply also noted that ITSO's 148 member parties would be meeting in January, 2006 to consider both Intelsat's compliance with the Public Services Agreement and Intelsat's investments in its satellite fleet. ITSO Reply at 4-5.

States as the licensing jurisdiction and notifying administration for Intelsat, the member parties of INTELSAT fully expected the Commission to ensure that the “common heritage” orbital slots transferred from INTELSAT to Intelsat would be managed within the context of Intelsat’s commitment to its public service obligations.¹⁶⁶

57. ITSO also disputes the Applicants’ argument that concerns about a potential Intelsat bankruptcy are speculative.¹⁶⁷ ITSO states that major financial ratings agencies have expressed significant concerns about the financial viability of the obligations of a post-merger Intelsat.¹⁶⁸ ITSO states that the PanAmSat acquisition would increase Intelsat’s debt and the level of risk to unsecured/subordinated obligations.¹⁶⁹ ITSO asserts that the private commercial risk preferences of the investment community and Intelsat’s private equity owners should not be allowed to define the ability of Intelsat to meet its public service obligations.¹⁷⁰ It asks the Commission to condition approval of the Applications to ensure continuation of the public service obligations and related contracts in the event that Intelsat defaults on its financial obligations.¹⁷¹

58. On February 17, 2006, ITSO filed a letter in this proceeding to inform the Commission of certain unanimous decisions taken by the ITSO Assembly of Parties at the January 30-February 2, 2006 Assembly meeting to endorse the ITSO Comments and ITSO Reply filed in this proceeding.¹⁷² The ITSO

¹⁶⁶ ITSO Reply at 5-6. The ITSO Agreement defines “common heritage” as ‘those frequency assignments associated with orbital locations in the process of advanced publication, coordination or registered on behalf of the Parties with the International Telecommunications Union (“ITU”) in accordance with the provision set forth in the ITU’s Radio Regulations which are transferred to a Party or Parties pursuant to Article XII.’ ITSO Agreement, Art. I(1). As noted above, the orbital locations licensed to Intelsat in 2000 are identified in Appendix A of the Commission’s 2000 *Intelsat Licensing Order*. See *Intelsat Licensing Order*, 15 FCC Rcd at 15521, Appendix A.

¹⁶⁷ ITSO Reply at 6-8.

¹⁶⁸ *Id.* at 6-7. ITSO cites to Standard & Poor’s as having given Intelsat an institutional rating of BB- with a Credit Watch-Negative and Intelsat’s individual unsecured debt issues a B/Credit Watch-Negative, and cites to Moody’s Investors Service as rating several unsecured Intelsat obligations as Caa1. *Id.*

¹⁶⁹ *Id.* at 7.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 7-8.

¹⁷² See Letter from Julie A. Reese, Deputy Director General and General Counsel, ITSO, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Feb. 17, 2006) (“ITSO February 17 Letter”), attaching a copy of an *ex parte* letter from Ahmed Toumi, Director General and Chief Executive Officer, ITSO, to Kevin J. Martin, Chairman, Federal Communications Commission (dated Feb. 17, 2006) (“Toumi February 17 Letter”). The Toumi February 17 Letter states that the ITSO Assembly unanimously noted the high level of debt that would result from the proposed acquisition of PanAmSat and the risk this level of debt could create for the continuity of the public service obligations should Intelsat enter into bankruptcy. Toumi February 17 Letter at 1. The letter states that the ITSO Assembly received a report from a bankruptcy lawyer who advised that, in the event of an Intelsat bankruptcy, there is no guarantee to preserve the assets used by Intelsat to fulfill its public service obligations. *Id.* Therefore, the ITSO Assembly unanimously decided to ask the United States to ensure that remedies, in the nature of those advised by ITSO’s bankruptcy expert, are implemented to assure that the Public Services Agreement and its obligations survive a bankruptcy proceeding and that the licenses issued by the United States to Intelsat to use the former INTELSAT orbital positions are protected in the event of (continued....)

February 17 Letter states that the ITSO Assembly ‘unanimously decided to request that the United States, in its capacity as the selected licensing jurisdiction and “Notifying Administration” for the Common Heritage [orbital locations], take actions to ensure Intelsat’s adherence to its Public Service Obligations.’¹⁷³ On March 7, 2006, the U.S. Department of State formally filed in this proceeding the record of decisions taken at the ITSO Assembly of Parties.¹⁷⁴ The U.S. Department of State advises that it has sent the materials to the Commission at the request of the ITSO Assembly of Parties.¹⁷⁵ In

(Continued from previous page)

Intelsat’s insolvency. *Id.* Thus, the Toumi February 17 Letter states, the ITSO Assembly of Parties unanimously endorsed the recommendations in the ITSO Comments and ITSO Reply previously filed with the Commission in this proceeding. *Id.* at 2.

¹⁷³ ITSO February 17 Letter. ITSO filed additional *ex parte* letters. See Letter from Julie A. Reese, Deputy Director General and General Counsel, ITSO, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Mar. 30, 2006), attaching a copy of an *ex parte* letter from Ahmed Toumi, Director General and Chief Executive Officer, ITSO, to Kevin J. Martin, Chairman, Federal Communications Commission (dated Mar. 23, 2006); Letter from Julie A. Reese, Deputy Director General and General Counsel, ITSO, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Apr. 24, 2006), attaching a copy of an *ex parte* letter from Ahmed Toumi, Director General and Chief Executive Office, ITSO, to Kevin J. Martin, Chairman Federal Communications Commission (dated Apr. 24, 2006) (“ITSO April 24 Letter”). ITSO filed the ITSO April 24 Letter in response to an Intelsat *ex parte* filing of April 13, 2006. See Letter from Jennifer D. Hindin, Counsel to Intelsat, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Apr. 13, 2006), attaching Intelsat’s reply comments in IB Docket No. 06-61, a proceeding seeking comments for the Commission’s annual report to Congress regarding the progress made to achieve the objectives and carry out the purposes and provisions of the Open-Market Reorganization for the Betterment of International Telecommunications Act (“ORBIT Act”).

¹⁷⁴ See Letter from John P. Schnitker, Attorney-Advisor, Office of Legal Adviser, U.S. Department of State, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Mar. 7, 2006), attaching letter from Steven W. Lett, Deputy United States Coordinator, International Communications and Information Policy, U.S. Department of State, to Donald Abelson, Chief, International Bureau, Federal Communications Commission (dated Mar. 7, 2006) (“Lett March 7 Letter”). The Lett March 7 Letter attaches a copy of the record of decisions at the ITSO Assembly. See ITSO Assembly of Parties Record of Decisions of the Twenty-Ninth Meeting, Washington, D.C., USA, 30 January-2 February 2006, AP-29-3E Final W/01/06 (Feb. 6, 2006) at 8, ¶¶ 26-27 (Agenda Item No. 7, Reports of the Director General on Intelsat Ltd.’s Observance of the Core Principles) (“ITSO Record of Decisions”). The Lett March 7 Letter also attaches a memorandum from the law firm of Kirkpatrick & Lockhart Nicholson Graham LLP, which ITSO contracted to provide advice concerning the proposed acquisition of PanAmSat by Intelsat. See Lett March 7 Letter at 1 (unpaginated); ITSO Record of Decisions at 8.

¹⁷⁵ Lett March 7 Letter at 1. The ITSO Assembly of Parties 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

(continued....)

fulfilling the request to transmit these materials, the U.S. Department of State is not taking a position on the substance of the matter, and will communicate its foreign policy views to the Commission separately.¹⁷⁶

59. In giving consideration to ITSO's requests, we have reviewed the *Intelsat Licensing Order* and other related Commission decisions. The Commission, in 2000, issued conditional licenses to Intelsat, subject to compliance with the ORBIT Act.¹⁷⁷ The Commission authorized Intelsat to operate seventeen existing C- and Ku-band satellites then owned and operated by INTELSAT, to construct, launch and operate ten satellites planned by INTELSAT for operation in these bands, and to relocate, among twenty-two orbital locations, certain then-operating satellites upon the launch of the ten planned satellites.¹⁷⁸ The *Intelsat Licensing Order* stated that the licenses, once effective, would permit Intelsat to operate pursuant to the core principles upon which the 1999 INTELSAT Assembly of Parties had based its decision to privatize INTELSAT.¹⁷⁹ Those became the "core principles" identified above that are contained in the ITSO Agreement and are implemented through the Public Services Agreement between Intelsat and ITSO. ITSO correctly points out the Commission's recognition of this arrangement as the underlying basis of agreement for privatization of Intelsat.¹⁸⁰

60. In addition, with respect to the orbital slots that were to be transferred to the U.S. national registry, the August, 2000 *Intelsat Licensing Order* provided that, in the event any of these orbital slots no longer was assigned for use by Intelsat or its successors, such orbital location "shall be cancelled in accordance with procedures of the International Telecommunications Union."¹⁸¹ The United States
(Continued from previous page) _____

- 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."

Lett March 7 Letter at 1.

¹⁷⁶ Lett March 7 Letter at 2 (unpaginated).

¹⁷⁷ Pub. L. No. 106-180, 114 Stat. 108 (2000); see also *Intelsat Licensing Order*, 15 FCC Rcd at 15519, ¶ 160.

¹⁷⁸ *Intelsat Licensing Order*, 15 FCC Rcd at 15460, ¶ 1, 15517-20, ¶¶ 149-173 (ordering clauses), *recon. denied*, 15 FCC Rcd 25234 (2000) ("*Intelsat Licensing Reconsideration Order*").

¹⁷⁹ *Intelsat Licensing Order*, 15 FCC Rcd at 15462, ¶ 3, 15473, ¶ 26 (ITSO would supervise the commitment of Intelsat to provide satellite capacity to lifeline users for a predetermined number of years with price protection during the life of the commitment, as contained in an agreement creating ITSO and implemented through an agreement between the company and ITSO), 15474, ¶ 28 (Commission understands that U.S. Party to ITSO will continue to facilitate Intelsat's fulfillment of the core principles of global coverage and connectivity on a commercial and non-discriminatory basis so as to protect lifeline users and global connectivity).

¹⁸⁰ The Commission said: '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." The United States supported continuation of a residual ITSO for this purpose.' *Intelsat Licensing Order*, 15 FCC Rcd at 15473, ¶ 26.

¹⁸¹ *Intelsat Licensing Order*, 15 FCC Rcd at 15519, ¶ 159. The Commission expressly stated that this condition applied only to those orbital locations identified in Appendix A of the decision as being transferred to the (continued....)

selected this condition from among the alternatives that then were being considered by the INTELSAT Assembly of Parties because of certain parties' concerns that a licensing administration might authorize use of Intelsat orbital slots and frequencies to an operator other than Intelsat.¹⁸² In 2000, the Commission neither was requested to condition nor did it condition Intelsat's license on fulfillment of Intelsat's commitments under the Public Services Agreement subsequently entered into by ITSO and Intelsat.

61. The Commission affirmed the orbital slot condition in subsequent orders. In the December, 2000 *Intelsat Licensing Reconsideration Order*, the Commission affirmed that it had intended the condition requiring cancellation of any of the INTELSAT orbital slots under ITU procedures to reflect the long-standing status of INTELSAT orbital slots and to address the concerns of many INTELSAT members that the INTELSAT slots should not be reassigned in a way that would jeopardize the system's ability to maintain global coverage and connectivity, particularly to lifeline users.¹⁸³ Subsequently, in the May, 2001 *Intelsat LLC ORBIT Act Compliance Order*, the Commission stated that the terms and conditions of its August, 2000 *Intelsat Licensing Order* would remain in effect.¹⁸⁴ In July, 2001, INTELSAT privatized, transferring the INTELSAT orbital slots to the U.S. national registry and INTELSAT's assets to Intelsat, at which time the authorizations the Commission had issued to Intelsat became effective.¹⁸⁵

62. We turn to ITSO's first request, that the Commission condition grant of the Applications on the "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."¹⁸⁶ ITSO's (Continued from previous page) _____

U.S. national registry upon privatization, and not to other locations assigned to Intelsat at a later date, which would be subject to the Commission's normal procedures. *Id.* at 15513, ¶ 136.

¹⁸² See *Intelsat Licensing Order*, 15 FCC Rcd at 15511, ¶ 130 (discussing the three alternatives under consideration).

¹⁸³ *Intelsat Licensing Reconsideration Order*, 16 FCC Rcd at 25237-38, ¶¶ 9-14.

¹⁸⁴ *Intelsat LLC ORBIT Act Compliance Order*, 16 FCC Rcd at 12303, ¶ 75. In the 2001 order, the Commission found that INTELSAT had complied with each of the requirements of the ORBIT Act except for the requirement to hold an Initial Public Offering ("IPO"). *Intelsat LLC ORBIT Act Compliance Order*, 16 FCC Rcd 12280. Of relevance, the Commission found that ITSO retained no ownership interest in Intelsat, consistent with ORBIT Act requirements. *Intelsat LLC ORBIT Act Compliance Order*, 16 FCC Rcd at 12289, ¶ 28. In 2005, the Commission concluded that there had been no change in ITSO's status with respect to its ownership relationship with Intelsat and no other intergovernmental organization ("IGO"), had any ownership in Intelsat, and thus that Intelsat remained in compliance with section 621(2)(A) of the ORBIT Act (barring IGO ownership in the successor of INTELSAT). See *Petition for Declaratory Ruling that Intelsat, Ltd. Complies with Section 621(5)(F) of the ORBIT Act*, Memorandum Opinion and Order, IB Docket No. 05-18, 20 FCC Rcd 8604, 8612, ¶ 15 (2005) ("*Intelsat Ltd. Section 621(5)(F) Compliance Order*"). Also in 2005, following amendment of the ORBIT Act, see Pub. L. No. 108-371, 118 Stat. 1752 (2004), providing an alternative method for compliance with the ORBIT Act privatization requirements, the Commission found Intelsat in compliance with the certification it had submitted pursuant to section 621(5)(F) of the ORBIT Act and therefore determined that Intelsat need not comply with the requirement to hold an IPO. *Intelsat Ltd. Section 621(5)(F) Compliance Order*, 20 FCC Rcd at 8613, ¶ 18.

¹⁸⁵ See *Intelsat Ltd. Section 621(5)(F) Compliance Order*, 20 FCC Rcd at 8607, ¶ 5.

¹⁸⁶ ITSO Comments at 14; ITSO Reply at 11.

request is predicated on a concern that the post-merger debt that Intelsat will carry may result in its bankruptcy, placing into jeopardy the continued fulfillment of the Public Services Agreement between ITSO and Intelsat. ITSO states that the pre-merger debt might be structured to become junior to debt associated with the PanAmSat transaction in the event of an Intelsat bankruptcy¹⁸⁷ and that the LCO contracts might be placed at risk if Intelsat were to become insolvent.¹⁸⁸ At the same time, the ITSO Reply recognizes that the Public Services Agreement is a contract under the laws of the District of Columbia, with its interpretation and enforcement subject to arbitration.¹⁸⁹

63. It has been the Commission's long-standing practice to defer to judicial decisions regarding the interpretation of contracts that do not give rise to more general public interest concerns under the Act.¹⁹⁰ In this case, ITSO has not substantiated for the record now before us that obligations set out in the Public Services Agreement between ITSO and Intelsat factually are at significant risk. The record does not demonstrate that Intelsat, as a result of the merger, is likely to enter bankruptcy or default on its contractual obligations. Although bankruptcy can be a risk in a business venture, ITSO's concern remains largely speculative based upon the record before us.

64. We recognize the concern of lifeline connectivity users that must continue to rely primarily on Intelsat for satellite communications. The record does not demonstrate that such reliance will change in the future. Nevertheless, any consideration of the type of relief ITSO seeks (that is, to condition existing Intelsat licenses) should be focused on the Intelsat satellites operating in orbital locations defined by the ITSO Agreement as part of the INTELSAT "common heritage" and used by Intelsat to implement the Public Services Agreement and fulfill Intelsat's obligations under the ITSO Agreement.

65. The Communications Act provides a means for Commission consideration of such requests

¹⁸⁷ ITSO Reply at 6.

¹⁸⁸ *Id.* at 2. See also ITSO Record of Decisions, 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, Memorandum to the International Telecommunications Satellite Organization ("ITSO") from Kirkpatrick & Lockhart Nicholson Graham LLP Re Protection of Public Service Obligations and "Common Heritage" Assets in Event of the Bankruptcy or Liquidation of Intelsat, Ltd. (Dec. 16, 2005) at 5 (noting that a Chapter 11 automatic stay would prevent ITSO from enforcing any of its contractual rights under the Public Services Agreement and enforcing the core principles), 13 (stating that, for the most part, ITSO would become an unsecured creditor in the event that an Intelsat bankruptcy caused Intelsat to break the terms of the Public Services Agreement).

¹⁸⁹ ITSO Reply at 3.

¹⁹⁰ See, e.g., *Regents of University System of Georgia v. Carroll*, 338 U.S. 586, 602 (1950) (holding that the Commission is not the proper forum to litigate contractual disputes between licensees and others); *Applications of Arecibo Radio Corporation*, Memorandum Opinion and Order, 101 F.C.C. 2d 545, 548, ¶ 8 (1985) (because the Commission does not possess the resources, expertise or jurisdiction to adjudicate breach of contract questions fully, the Commission normally defers to judicial decisions regarding the interpretation of contracts); *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, 19 FCC Rcd 2402, 2420, ¶ 37 (Int'l Bur. 2004) ("*Loral-Intelsat Order*") (as the Commission has held, absent a showing of a violation of the Commission's rules or federal statute, the Commission is not the proper forum to raise private contractual disputes).

for relief outside of this proceeding. Under section 316 of the Act, the Commission may modify licenses pursuant to the procedures prescribed therein if, in its judgment, "... such action will promote the public interest, convenience and necessity, or the provisions of this Act or any treaty ratified by the United States will be more fully complied with."¹⁹¹ ITSO may request the Commission to take action under this provision separate from this merger proceeding. The Commission could consider, subject to the procedure provided in section 316, a request by ITSO to impose appropriate conditions on Intelsat satellites operating with former INTELSAT frequency assignments and orbital slots if advised by the U.S. Department of State that such action would promote the provisions of the ITSO Agreement and U.S. fulfillment of obligations under the ITSO Agreement.¹⁹² Any such relief may focus on actions that would assist Intelsat in fulfilling the core principles in the ITSO Agreement.¹⁹³

66. ITSO's second request is that the Commission condition grant of the Applications on a '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 reallocation.'¹⁹⁴ As noted above, the Commission's condition on Intelsat's licenses, with respect to the INTELSAT orbital slots, remains in effect. That is, in the event that any of the orbital locations identified in Appendix A of the *Intelsat Licensing Order* are no longer assigned for use by Intelsat or its successors, such orbital locations shall be cancelled in accordance with procedures of the International Telecommunications Union.¹⁹⁵ ITSO's second request asks us to reconsider the condition on the existing Intelsat licenses. We do not believe it is appropriate here to reconsider the current condition and to limit the class of entities that might be considered eligible to become a "successor" to Intelsat LLC in the event of a future bankruptcy. Any such consideration more appropriately should take place in a separate proceeding, for the reasons discussed above.

67. ITSO's third request is that the Commission condition grant of the Applications on a

¹⁹¹ 47 U.S.C. § 316(a)(1). 'As the D.C. Circuit recently explained in *California Metro Mobile Communications v. FCC*, "Section 316 grants the Commission broad power to modify licenses; the Commission need only find that the proposed modification serves the public interest, convenience and necessity.'" See *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, Eighth Report and Order, Fifth Notice of Proposed Rulemaking and Order, ET Docket No. 00-258, 20 FCC Rcd 15855, 15877, ¶ 19 (2005), citing to *California Metro Mobile Communications v. FCC*, 365 F.3d 38, 45 (D.C. Cir. 2004).

¹⁹² In other contexts, the Commission accords the Executive Branch deference on matters of law enforcement, national security, foreign policy and trade policy. The Commission "will make an independent decision on applications to be considered and will evaluate concerns raised by the Executive Branch agencies in light of all the issues raised (and comments in response) in the context of a particular application." *Foreign Participation Order*, 12 FCC Rcd at 23891-21, ¶ 66. See also *supra* ¶¶ 50-52 (based on the record in this proceeding, deferring to the Executive Branch on national security and law enforcement issues).

¹⁹³ See, e.g., ITSO Agreement, Art. XI(c) (stating that all parties shall take the actions required ... so that Intelsat may fulfill the core principles).

¹⁹⁴ ITSO Comments at 14, ITSO Reply at 11.

¹⁹⁵ *Intelsat Licensing Order*, 15 FCC Rcd at 15519, ¶ 159.

“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.”¹⁹⁶ For the reasons stated above, we do not believe it is appropriate here, in the context of reviewing the transfer of PanAmSat’s licenses, to condition the transfer on a requirement that Intelsat amend its bylaws to reinstate the condition concerning its public service obligations that Intelsat advises its shareholders unanimously removed in March, 2005.

68. ITSO also urges the Commission to ‘impose appropriate measures to reaffirm Intelsat’s Public Service Obligations, as envisioned by the ORBIT Act provision that the Commission should “take the actions necessary to ensure that the United States remains the ITU notifying administration for the privatized INTELSAT’s existing and future orbital slot registrations.”’¹⁹⁷ ITSO does not specify what these appropriate measures might include. For the reasons stated above in our analysis of ITSO’s three specific requests, we find that the record in this proceeding does not support conditioning the grant of the Applications on other, unspecified measures related to licenses that are not the subject of the Applications before us in this proceeding.

2. Microcom Request for Conditions

69. Microcom, a DBS distributor and broadband VSAT provider in Alaska, asks the Commission to require Intelsat to take the following actions: (1) identify a replacement strategy for Intelsat Americas 7; (2) propose a strategy for serving Alaska from Pacific Ocean orbital slots; (3) propose a plan for extending Ku-band coverage of Galaxy 10R and Horizons I to include all of Alaska; and (4) provide guarantees to serve Alaska with technical service levels equal to center-of-beam performance for any new satellite launches west of 110 degrees west longitude (“W.L.”) and east of 170 degrees east longitude (“E.L.”).¹⁹⁸

70. The Applicants respond that Microcom’s proposed conditions are neither merger-specific nor necessary to ensure satellite coverage of Alaska.¹⁹⁹ They state that Microcom does not identify any harm caused or exacerbated by the proposed transaction, but rather discusses historic broadband service

¹⁹⁶ ITSO Comments at 14, ITSO Reply at 11.

¹⁹⁷ ITSO Reply at 14.

¹⁹⁸ Microcom Comments at 2 (unpaginated). In support of its proposed conditions, Microcom asserts that service levels in Alaska historically have been substantially less than service levels in other areas, that no Intelsat satellites have provided significant service to Alaska although Intelsat’s Pacific Ocean satellite slots are well positioned to serve Alaska, that Intelsat has not proposed plans for replacing the loss of Ku-band capacity on Intelsat Americas 7, and that the Ku-band antennas on Galaxy 10R and Horizons I do not serve the Aleutian Chain and southern Bering Sea. *Id.* Microcom claims that, because of elevation angles from Alaska earth stations to Intelsat Americas 5 and Intelsat Americas 8, these satellites cannot reasonably be considered to provide significant service to the west and north of Anchorage, and it asserts that Intelsat Americas 6, Intelsat Americas 13, and Intelsat Americas 7 also cannot be considered to provide significant service to Alaska. Microcom Reply at 2. It further claims that Intelsat 701 and PAS-2, although technically covering Alaska, do so at a minimum level of service. *Id.* at 3 (unpaginated). Microcom contends that the only capacity available for expanding broadband bandwidth serving rural Alaska is in the Ku-band; however, it asserts that Galaxy 10R and Horizons I do not serve the Aleutian Islands and southern Bering Sea and states that Intelsat Americas 7 has lost a significant amount of its capacity. *Id.* at 2.

¹⁹⁹ Joint Response at 6-9.

levels in Alaska.²⁰⁰ They assert that Microcom's proposed conditions would be duplicative of Intelsat's existing Alaskan service commitments, noting that, in 2004, when acquiring U.S.-coverage satellites from Loral Satellite, Inc., Intelsat voluntarily committed to "ensure and maintain two-way broadband service continuity" to Alaska.²⁰¹ The Applicants state that Intelsat will adhere to its existing commitment following its acquisition of PanAmSat.²⁰²

71. As noted, Intelsat affirmatively states that it will continue to adhere to the voluntary commitments it made in 2004.²⁰³ As the International Bureau did in 2004, we rely on Intelsat's commitments, which were a factor in the grant of its current licenses for the satellites acquired in 2004.²⁰⁴ Therefore, we conclude that the merger will not diminish the current services provided by Intelsat and PanAmSat in Alaska and we do not adopt Microcom's alternative conditions.²⁰⁵

3. Pending Applications

72. The Applicants request that the Commission, in acting on the Applications, include authority to transfer control to Intelsat of: (1) all authorizations issued to PanAmSat or any of its subsidiaries during the period between September 30, 2005 and the consummation of the proposed transaction (the

²⁰⁰ *Id.* at 7. The Applicants assert that the Intelsat-PanAmSat merger will enhance service to Alaska by providing greater fleet redundancy. *Id.* at 8 (stating that Intelsat currently provides voice, data, broadband and cable distribution services to Alaska via six satellites – Intelsat Americas 8 at 89° W.L., Intelsat Americas 6 at 93° W.L., Intelsat Americas 5 at 97° W.L., Intelsat Americas 13 at 121° W.L., Intelsat Americas 7 at 129° W.L., and Intelsat 701 at 180° W.L. – and that PanAmSat provides voice, data and broadband services to Alaska via eight satellites – Galaxy 11 at 91° W.L., Galaxy 3C at 95° W.L., Galaxy 4R at 99° W.L., Galaxy 10R at 123° W.L., Galaxy 14 at 125° W.L., Galaxy 13/Horizons I at 127° W.L., Galaxy 15 at 133° W.L., and PAS-2 at 169° W.L.). They contend that PanAmSat's Ku-band power levels over the most heavily populated areas of mainland Alaska are comparable to Ku-band power levels in the contiguous United States and four PanAmSat satellites – PAS-2, Galaxy 10R, Galaxy 13/Horizons I, and Galaxy 15 – provide C-band coverage of all of Alaska, including the Aleutian Islands and the southern Bering Sea. *Id.* at 8, n.29.

²⁰¹ Joint Response at 7, citing to *Loral-Intelsat Order*, 19 FCC Rcd 2421, ¶ 40 (noting and relying on Intelsat's voluntary commitment) and to Intelsat's February 5, 2004 commitment letter, attached as Appendix D to the *Loral-Intelsat Order*.

²⁰² Joint Response at 8.

²⁰³ See *Loral-Intelsat Order*, 19 FCC Rcd at 2421, ¶ 40 (relying on Intelsat's commitment), 2456-57, Appendix D (Intelsat Commitment Letter). Additionally, Microcom's complaint about technical coverage in Alaska is unrelated to the merger of Intelsat and PanAmSat. Alaska will be served by the same FSS providers – SES Americom and Intelsat-PanAmSat, among others – as serve the contiguous United States. See Joint Response at 9 (noting the presence of other satellite operators and stating that SES Americom has ten satellites covering, or soon to cover, Alaska).

²⁰⁴ See *Loral-Intelsat Order*, 19 FCC Rcd at 2432, ¶ 71 (ordering clause).

²⁰⁵ The Commission regularly has held that it will impose merger conditions only to remedy harms that arise from a transaction. See, e.g., *Verizon-MCI Order*, 20 FCC Rcd at 18445, ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18303, ¶ 19; *Rainbow-EchoStar Order*, 20 FCC Rcd at 16875, ¶ 13; *Sprint-Nextel Order*, 20 FCC Rcd at 13979, ¶ 23; *Alltel-Western Wireless Order*, 20 FCC Rcd at 13066, ¶ 21; *GM-News Corp Order*, 19 FCC Rcd at 534, ¶ 131 (Commission will impose conditions only to remedy harms that arise from a transaction and are fairly related to the Commission's responsibilities under the Communications Act and related statutes).

“Interim Period”); and (2) all applications (including applications for STA), petitions or other filings that remain pending at the time of consummation of the proposed transfers of control.²⁰⁶ The Applicants state that, following the conclusion of the proposed transaction, PanAmSat and its subsidiaries will supplement their pending applications as required under section 1.65 of the Commission’s rules to reflect the new ownership structure of PanAmSat.²⁰⁷

73. We grant Applicants’ request. Consistent with section 1.65 of the Commission’s rules, PanAmSat and its subsidiaries should amend any currently pending applications to reflect the consummation of the transaction approved by this Order.²⁰⁸ Additionally, to the extent that Appendix A to this Order does not include all authorizations issued to PanAmSat and its subsidiaries during the Interim Period, the Applicants should file with the Commission, within 30 days of consummation of the transaction, a section 1.65 letter referencing IB Docket No. 05-290 and each applicable file number and providing an updated version of Appendix A that includes each such authorization and each of its respective call signs.

VI. CONCLUSION

74. Based on the record in this proceeding, we conclude that the proposed transaction will be in the public interest. Additionally, we condition our grant on the condition sought by the Executive Branch concerning national security, law enforcement and public safety. We do not adopt the conditions sought by ITSO and Microcom in the context of this proceeding. We approve the Applicants’ request to include authority to transfer control to Intelsat of all authorizations issued to the PanAmSat Licensees during the Interim Period and of all applications or other filings of the PanAmSat Licensees that remain pending.

75. Accordingly, we approve the requested transfer of the licenses and authorizations listed in Appendix A, subject to the requirements and conditions specified in this Order.

VII. ORDERING CLAUSES

76. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(d), the Applications ARE GRANTED to the extent specified in this Order.

77. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, and 310(d), the Petition to Adopt Conditions to Authorizations and Licenses filed by the U.S. Department of Justice, Federal Bureau of Investigation, U.S. Department of Homeland Security, and U.S. Department of Defense on December 6, 2005, IS GRANTED, and the authorizations and licenses granted herein are SUBJECT TO COMPLIANCE WITH the provisions of the Intelsat/PanAmSat Commitment Letter, dated December 5, 2005, and attached hereto as Appendix C.

78. IT IS FURTHER ORDERED that, pursuant to section 25.119(f) of the Commission’s rules,

²⁰⁶ Consolidated Application at 4.

²⁰⁷ *Id.* at 4.

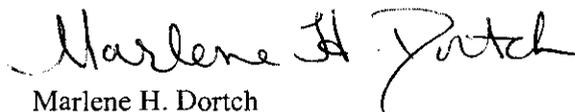
²⁰⁸ See 47 C.F.R. § 1.65.

47 C.F.R. § 15.119(f), Applicants SHALL COMPLETE the proposed transaction within 60 days from the release date of this Order. Pursuant to section 25.119(f) of the Commission's rules, 47 C.F.R. § 25.119(f), within 30 days of consummation, the Applicants SHALL NOTIFY the Commission, by letter, of the date of the consummation, giving reference to the docket number and the file numbers of the Applications involved in the transaction.

79. IT IS FURTHER ORDERED that, pursuant to section 1.65 of the Commission's rules, 47 C.F.R. § 1.65, the Applicants are afforded 30 days from the date of release of this Order to amend all pending applications in connection with the instant Applications to reflect the transfer of control approved in this Order.

80. This Order is effective upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within 30 days of the date of the release of this Order. *See* 47 C.F.R. § 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

Appendix A
List of Licenses²⁰⁹

File Number	Licensee	Call Signs
SAT-T/C-20050930-00193	PanAmSat Licensee Corp.	GAL III-R, SBS-6, S2461, S2237, S2253, S2387, PAS-2R, S2359, PAS-9, S2368, S2131, S2146, S2229, S2378, S2380, S2381, S2382, S2385, S2386, S2422, S2460, S2459, S2377
SAT-T/C-20050930-00194	PanAmSat H-2 Licensee Corp.	S2423
SAT-T/C-20060504-00053	PanAmSat Licensee Corp.	S2687 ²¹⁰
SAT-STA-20060616-00064	PanAmSat Licensee Corp.	S2687
SES-STA-20060616-01020	PanAmSat Licensee Corp.	E060198
SES-T/C-20050930-01356	PanAmSat Licensee Corp.	E010118, E990055

²⁰⁹ The acceptable-for-filing Public Notice in this proceeding also listed five STA applications. *See supra* note 43 and accompanying text. PanAmSat no longer needs continuing authority for four of the STAs. *See* Letter from Bert W. Rein and Jennifer D. Hindin, Counsel to Intelsat, and Henry Goldberg and Joseph A. Godles, Counsel to PanAmSat, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed June 16, 2006) ("June 16 Letter") at 1. The Commission previously dismissed the fifth STA. *See* June 16 Letter at 1-2. Applicants have added two STA requests. *See* June 16 Letter at 2; see also File Nos. SAT-STA-20060616-00064, SES-STA-20060616-01020 (seeking STAs to continue satellite operations in accordance with the terms of existing STAs following the consummation of the transaction).

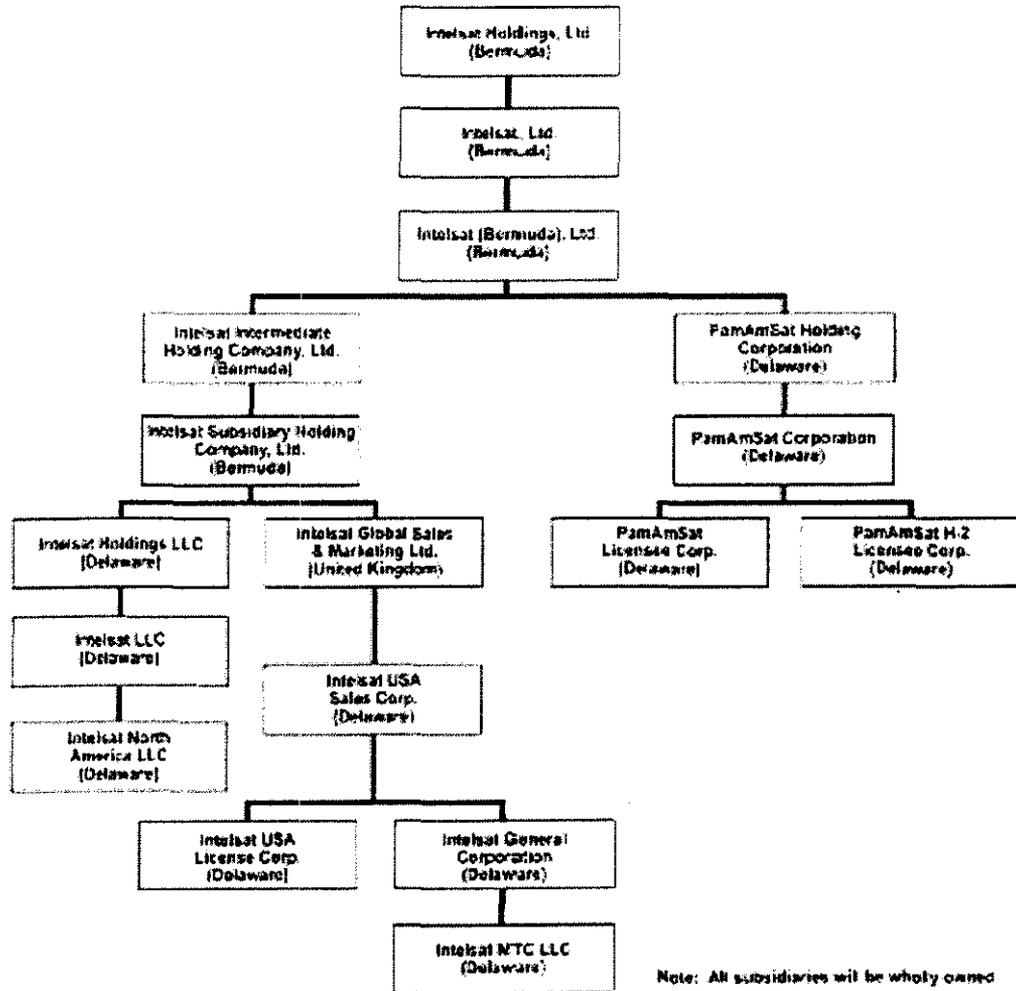
²¹⁰ On May 4, 2006, pursuant to section 1.65 of the Commission's rules, 47 C.F.R. § 1.65, the Applicants advised that the Commission had granted PanAmSat Licensee Corp. a new space station license, S2687, effective Mar. 3, 2006. Applicants concurrently filed the application in File No. SAT-T/C-20060504-00053. *See* Letter from Bert W. Rein and Jennifer D. Hindin, Counsel to Intelsat Holdings, Ltd., and Henry Goldberg and Joseph A. Godles, Counsel to PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 and File No. SAT-RPL-20051118-00233 (filed May 4, 2006). *See also* PanAmSat Licensee Corp., Grant of Authority, File No. SAT-RPL-20051118-00233, Public Notice, Report No. SAT-00345, DA No. 06-524 (Int'l Bur. Mar. 3, 2006) at 1 (granting S2687).

SES-T/C-20050930-01357	PanAmSat Licensee Corp.	E010280, E050174, E050169
SES-T/C-200501004-01371 ²¹¹	PanAmSat Licensee Corp.	E000048, E950267, E940532, E990323, E990091, E980503, E000049, E980501, E950508, E950502, E970051, E030073, E030072, E030232, E030096, E030106, E990024, E030012, E020309, E900757, E970189, KA450, E980502, E990334, E980467, E980460, E970392, E970391, KA416, E980069, E960411, E030182, E020260, E990441, E030307, E030306, E030175, KA71, E930088, E990092, E881286, E7465, E010112, E010019, E000488, E000364, E000274, KA391, E990433, E990363, E950067, E990224, E990223, E990214, E950307, E030020, E990056, E990365, E2178, E881304, KL92, E040174, E860175, E4132, E010133, E010113, E940333, E000363, E000063
SES-T/C-20060504-00744	PanAmSat Licensee Corp.	E050311 ²¹²

²¹¹ On December 1, 2005, counsel to Applicants filed a letter with the Commission requesting the removal of nine earth station licenses from the Applications because PanAmSat Licensee Corp. had surrendered the licenses. Letter from Bert W. Rein and Jennifer D. Hindin, Counsel to Intelsat Holdings, Ltd., and Henry Goldberg and Joseph A. Godles, Counsel to PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Dec. 1, 2005) ("December 1 Letter"); see also *PanAmSat Licensee Corp.*, File Nos. SES-LIC-19970609-00737, *et al.*, Surrender, Public Notice, Report No. SES-00767 (Int'l Bur. Nov 16, 2005) at 14 (noting PanAmSat Licensee Corp.'s surrender of the nine earth station licenses). The nine call signs were: E970352; E990093; E990364; E010131; E030174; KA244; KA245; E890530; and E920377.

²¹² On February 15, 2006, pursuant to § 1.65 of the Commission's rules, 47 C.F.R. § 1.65, the Applicants advised that the Commission had granted PanAmSat Licensee Corp. a new earth station license, E050311, effective November 28, 2005. Applicants concurrently filed the application in File No. SES-T/C-20060504-00744. See Letter from Bert W. Rein and Jennifer D. Hindin, Counsel to Intelsat Holdings, Ltd., and Henry Goldberg and Joseph A. Godles, Counsel to PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 and File No. SES-LIC-20051004-01371 (filed Feb. 15, 2006). See also *PanAmSat Licensee Corp.*, Grant of Authority, File No. SES-LIC-020051021-01460, Public Notice, Report No. SES-00771 (Int'l Bur. Nov. 30, 2005) at 9-10 (granting E050311).

Appendix B
 Post-Transaction Corporate Structure²¹³



²¹³ See Consolidated Application at 11.

Appendix C
Executive Branch Petition and Intelsat/PanAmSat Commitment Letter

Before the
Federal Communications Commission
Washington, DC 20554

<hr/>)	
In the Matter of)	
)	
Constellation, LLC, Carlyle PanAmSat I,		)	IB Docket No. 05-290
LLC, Carlyle PanAmSat II, LLC, PEP)	
PAS, LLC, and PEOP PAS, LLC,		)	IB File Nos.
<i>Transferees,</i>		)	SAT-T/C-20050930-00193;
		)	SAT-T/C-20050930-00194;
and		)	SAT-STA-20050930-00188;
		)	SAT-STA-20050930-00189;
Intelsat Holdings, Ltd.,		)	SAT-STA-20050930-00190;
<i>Transferee,</i>		)	SAT-STA-20050930-00191;
		)	SAT-STA-20050930-00192;
		)	SES-T/C-20050930-01356;
Consolidated Application for Authority to		)	SES-T/C-20050930-01357;
Transfer Control of PanAmSat Licensee		)	SES-T/C-20051004-01371
Corp. and PanAmSat H-2 Licensee Corp.)	
<hr/>)	

PETITION TO ADOPT CONDITIONS TO
AUTHORIZATIONS AND LICENSES

The United States Department of Justice (“DOJ”), including the Federal Bureau of Investigation (“FBI”), together with the United States Department of Homeland Security (“DHS”) and the United States Department of Defense (collectively, the “Agencies”), respectfully submit this Petition to Adopt Conditions to Authorizations and Licenses (“Petition”), pursuant to Section 1.41 of the Federal Communications Commission’s (“FCC” or “Commission”) rules.¹ Through this Petition, the Agencies advise the Commission that they have no objection to the Commission granting the applications filed in the above-referenced

¹ 47 C.F.R. § 1.41.

proceeding, provided that the Commission conditions the grant of the applications on Intelsat Holdings, Ltd. ("Intelsat") abiding by the commitments and undertakings contained in its December 5, 2005 letter to Laura H. Parsky, Stewart A. Baker, and Elaine N. Lammert (the "Letter") attached hereto as Exhibit 1.

In the above-captioned proceeding, Intelsat and various stockholders of PanAmSat Holding Corporation ("PanAmSat") (collectively, the "Applicants") filed a consolidated application with the FCC seeking consent to transfer control of PanAmSat's FCC-licensed subsidiaries to Intelsat.²

As the Commission is aware, the Agencies have taken the position that their ability to satisfy their obligations to protect the national security, enforce the laws, and preserve the safety of the public could be impaired by transactions in which foreign entities will own or operate a part of the U.S. telecommunications system, or in which foreign-located facilities will be used to provide domestic telecommunications services to U.S. customers. After discussions with representatives of Intelsat and PanAmSat in connection with the proposed acquisition of PanAmSat by Intelsat and the related transfer of control over PanAmSat's FCC-licensed subsidiaries, the Agencies have concluded that the commitments set forth in the Letter address their concerns. Accordingly, the Agencies hereby advise the Commission that they have no objection to the Commission granting the above-referenced applications for consent to transfers of control, provided that the Commission conditions its consent on compliance by Intelsat with the commitments set forth in the Letter.

² *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 (filed Sept. 30, 2005).

The Agencies are authorized to state that the Applicants do not object to the grant of this Petition.

Respectfully submitted,

Laura H. Parsky
Deputy Assistant Attorney General
Office of the Assistant Attorney General
Criminal Division – Room 2113
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
(202) 616-3928



Stewart A. Baker
Assistant Secretary for Policy
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528
(202) 282-8582

Elaine N. Lammert
Deputy General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, DC 20532
(202) 324-6829

Carl W. Smith
General Counsel
Defense Information Systems Agency
P.O. Box 4502
Arlington, VA 22204
(703) 607-6091

December 6, 2005



December 5, 2005

Ms. Laura H. Parsky
Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Phillip L. Spector
Executive Vice President
and General Counsel

Mr. Stewart A. Baker
Assistant Secretary for Policy
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

Ms. Elaine N. Lammert
Deputy General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535

**Re: Proposed Acquisition of PanAmSat Holding Corporation by a Subsidiary of
Intelsat Holdings, Ltd.**

Dear Ms. Parsky, Mr. Baker, and Ms. Lammert:

As a follow-up to our recent discussions with representatives of the Department of Justice ("DOJ"), the Department of Homeland Security ("DHS"), and the Federal Bureau of Investigation ("FBI") (collectively, the "Agencies"), along with representatives of the Department of Defense ("DOD"), this letter is intended to reconfirm the commitments set forth in our November 24, 2004 letter to the Agencies ("Intelsat/Zeus Commitment Letter")¹, and to confirm that Intelsat Holdings, Ltd. (formerly Zeus Holdings Limited ("Zeus")) and Intelsat, Ltd. (collectively, "Intelsat") will extend those commitments to cover the businesses of PanAmSat Holding Corporation ("PanAmSat") once the pending acquisition of PanAmSat closes.

¹ See *Intelsat, Ltd., Transferor, and Zeus Holdings Limited, Transferee, Consolidated Application for Consent to Transfers 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*, FCC Order and Authorization, December 22, 2004, IB Docket No. 04-366 at Appendix D.

I. The Transaction

On August 29, 2005, Intelsat and PanAmSat announced the execution of a definitive merger agreement ("Merger Agreement") under which Intelsat intends to acquire PanAmSat for approximately \$3.2 billion in cash and the assumption or refinancing of approximately \$3.2 billion in debt owed by PanAmSat and its subsidiaries. Under the terms of the Merger Agreement, a newly created indirect Delaware subsidiary of Intelsat will be merged into PanAmSat, with PanAmSat remaining as the surviving entity. Upon completion of the transaction, PanAmSat and its subsidiaries will continue as separate corporate entities, but PanAmSat will be an indirect wholly owned subsidiary of Intelsat.²

PanAmSat is a publicly traded Delaware corporation and a fixed satellite service ("FSS") company with a fleet of 26 satellites. The bulk of PanAmSat's revenues involve video distribution, with large media and broadcast companies using PanAmSat's satellites to distribute their programming. Two subsidiaries of PanAmSat (the "PanAmSat Licensees") hold authorizations from the Federal Communications Commission ("FCC") to operate non-common carrier 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. Neither PanAmSat nor its subsidiaries offer common carrier switched services or hold any Section 214 authorizations from the FCC.

Consummation of the transaction is subject to a number of closing conditions, including approval by PanAmSat's stockholders and receipt of requisite regulatory approvals. Among other regulatory filings that have been or will be made, a consolidated application seeking approval to transfer control over the FCC authorizations held by the PanAmSat Licensees was filed at the FCC on September 30, 2005. In light of the conditions to be met, Intelsat and PanAmSat envision a closing of the transaction sometime between March and September 2006.

The combined company will have over 50 satellites and connectivity into some 200 countries and territories. The core network control assets of both companies are located in the United States, and the combined company will have all key control functions – operational headquarters, network operating center, and central TT&C functions – based in the United States.

² As representatives of the Agencies and of DOD are aware, and as discussed further below, one element of restructuring within PanAmSat is envisioned at the time Intelsat acquires PanAmSat – namely, the PanAmSat subsidiary that services U.S. government customers (G2 Satellite Solutions Corporation) would be moved under or merged into the cleared Intelsat subsidiary that engages in similar business activities (Intelsat General Corporation).

II. Updating Existing Intelsat Commitments

A. Security Committee of Intelsat Global Services Corporation

In the Intelsat/Zeus Commitment Letter, which continued certain commitments made to the Agencies in previous Intelsat transactions, we agreed to maintain a Security Committee within our U.S. subsidiary, Intelsat Global Services Corporation ("IGSC"). This Security Committee, which is composed exclusively of U.S. citizens who serve on the board of IGSC, has lead responsibility for overseeing security issues related to Intelsat's domestic communications network, records related to domestic communications, and electronic surveillance by U.S. federal, state, and local authorities. In addition, the Security Committee serves as a point of contact for addressing law enforcement, national security, and infrastructure protection issues with U.S. government agencies. The Security Committee has carried out these responsibilities, and will continue to carry them out after the consummation of the transaction with PanAmSat.

In the Intelsat/Zeus Commitment Letter, a commitment was also made to provide the Agencies, within 60 days of the closing of the Intelsat/Zeus transaction, with a copy of the policies and procedures adopted and implemented by the Security Committee. That commitment was met in Intelsat's letter to the Agencies dated January 27, 2005, and an updated copy of the policies and procedures was provided in Intelsat's letter dated October 28, 2005.

Assuming consummation of the transaction with PanAmSat, Intelsat will ensure that the role and responsibilities of the IGSC Security Committee are extended to cover the PanAmSat businesses. Thus, the domestic communications security oversight and U.S. government interface functions of the Security Committee will extend equally to the Intelsat and PanAmSat businesses and assets. In addition, to ensure that the Agencies maintain up-to-date information concerning the Security Committee, IGSC will inform the Agencies in a timely fashion of changes to the composition of the Committee.

B. Proxy Agreement for Intelsat General Corporation

In the Intelsat/Zeus Commitment Letter, we agreed to maintain the proxy agreement structure that covers our cleared U.S. subsidiary, Intelsat General Corporation ("Intelsat General"), so as to ensure that no impermissible foreign ownership, control, or influence is exercised over the business activities of Intelsat General. Intelsat General will continue to operate under that proxy agreement structure.

Assuming consummation of the transaction with PanAmSat, Intelsat will ensure that the PanAmSat subsidiary that is involved in servicing U.S. government customers – namely, G2 Satellite Solutions Corporation ("G2") – is placed under or merged into Intelsat General. As a consequence, G2 will become part of Intelsat General, and will operate under the proxy agreement structure, including any modifications that may be made to that agreement in connection with the transaction with PanAmSat. Intelsat General operates at very high security clearance levels, and envisions no difficulty absorbing and managing G2's classified activities.

C. Cooperation with U.S. Government Electronic Surveillance Activities

In the Intelsat/Zeus Commitment Letter, we agreed to take all reasonable measures to assist and support the FBI or any other U.S. federal, state, or local agency with law enforcement or national security responsibilities in conducting, in a secure and efficient manner, lawfully authorized electronic surveillance. We also agreed that such assistance would include disclosure, if necessary, of technical and engineering information related to the design, maintenance, or operation of Intelsat's systems. Finally, we agreed that Intelsat and the agency seeking electronic surveillance cooperation would work together in determining what is reasonable, taking into account the investigative needs of the agency and Intelsat's commercial interests. The pending transaction with PanAmSat does not alter the commitments of Intelsat set forth or continued in the Intelsat/Zeus Commitment Letter.

The nature of Intelsat's business is such that there is no existing or contemplated provision of common carrier switched services by Intelsat. Thus, we continue to believe that Intelsat is, generally speaking, an unlikely target for requests to assist U.S. law enforcement agencies with electronic surveillance. Nonetheless, we have stood ready, and continue to stand ready, to assist government agencies with lawfully authorized electronic surveillance.

Assuming consummation of the transaction with PanAmSat, Intelsat will ensure that these commitments to cooperate with U.S. government electronic surveillance activities apply equally to the PanAmSat businesses. As noted above, the IGSC Security Committee will continue to be the primary point of contact for U.S. government agencies in connection with requests for assistance with electronic surveillance.

Nothing in this letter is intended to excuse Intelsat from any obligation it may have to comply with U.S. legal requirements for the retention, preservation, or production of information, records or data, or from any applicable requirements of the Communications Assistance for Law Enforcement Act, 47 U.S.C. § 1001, et. seq.

D. Provision of Common Carrier Switched Services in the Future

In the Intelsat/Zeus Commitment Letter, we agreed to provide the Agencies with advance notice of any provision of common carrier switched services by Intelsat, even if no further FCC authorization is required. In particular, we agreed that (i) for any common carrier switched service that requires additional Section 214 authorization, we would provide the Agencies with a copy of any application filed with the FCC; (ii) for any common carrier switched service that may be provided without obtaining a new Section 214 authorization (such as a new domestic switched service), we would notify the Agencies 30 days before offering the service; and (iii) before using any of the equipment subject to Title III licenses transferred in connection with the Intelsat/Zeus transaction to provide common carrier switched services, we would notify the Agencies 30 days in advance.

Assuming consummation of the transaction with PanAmSat, we will extend these commitments set forth or continued in the Intelsat/Zeus Commitment Letter to cover the PanAmSat businesses. As noted above, neither Intelsat nor PanAmSat offers any common carrier switched service or has any plan to do so. Nonetheless, should any part of the combined company offer such service in the future, we will provide advance notice to the Agencies as described in the Intelsat/Zeus Commitment Letter.

E. Future Changes to Boards of Directors

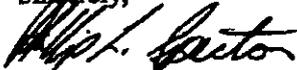
In the Intelsat/Zeus Commitment Letter, Zeus agreed to notify the Agencies of the initial composition of the boards of directors of Zeus, Intelsat, Ltd., and Intelsat (Bermuda), Ltd. (the "Boards") and of subsequent changes to the Boards. By letter dated February 11, 2005, we provided the Agencies with information concerning the initial composition of the Boards. In addition, by letter dated March 29, 2005, we supplied the Agencies with updated information concerning the composition of the Boards, and notified the agencies that Zeus had changed its name to Intelsat Holdings, Ltd.

No element of the transaction with PanAmSat changes the effectiveness or scope of this commitment. We will continue to provide the Agencies with updated information concerning the composition of the Boards, until such time as such notification is no longer needed by operation of law or by decision of the Agencies. In addition, we remain willing to provide the Agencies with such other information concerning the Boards as they may reasonably request.

* * * * *

If you require any further information regarding these matters, please contact either the undersigned or Richard Elliott at Paul, Weiss (202-223-7324).

Sincerely,


Phillip L. Spector
Executive Vice President
and General Counsel

cc: John R. LoGalbo
Criminal Division
Department of Justice

Lou W. Brenner, Jr.
Office of General Counsel
Department of Homeland Security

Jon D. Pifer
Office of General Counsel
Federal Bureau of Investigation

Carl W. Smith
Hillary J. Morgan
Defense Information Systems Agency
Department of Defense

Richard S. Elliott
Paul, Weiss, Rifkind, Wharton & Garrison LLP

**CONCURRING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

RE: Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PamAmSat H-2 Licensee Corp, IB Docket No. 05-290.

I have serious doubts about the competitive effects of allowing a merger between two of the three leading Fixed Satellite Service providers in North America. Though Intelsat and PanAmSat do not provide wholly overlapping services, they do compete in certain markets for the same customers. I worry that these customers will face higher prices as a result of our decision today. More generally, I am concerned because the transaction we approve today is part of an unprecedented trend towards consolidation in every sector of the communications industry. As I have said many times, I believe this trend will prove enormously harmful in the long run for consumers and the public interest.

At the same time, I recognize that none of the merging parties' customers opposes this merger, and indeed several have filed comments in support of it. These customers apparently believe that the merger will not harm them, and I hope they are right. Given the strength of the record in favor of this transaction, it becomes difficult to dissent to this item.

I note the separate concerns – unrelated to economic consolidation – raised by the International Telecommunications Satellite Organization (ITSO), which has the critically important duty of ensuring that Intelsat lives up to the promises it made when it converted from an intergovernmental organization to a private commercial entity. At the same time, I do not believe the issues ITSO raises – which do not involve PanAmSat at all – are properly addressed within the context of our merger review. As the item explains, Section 316 of the Act allows ITSO to bring its claims against Intelsat before the Commission. If ITSO chooses to do so, we will fulfill our statutory duty to consider them carefully and thoroughly.

**CONCURRING STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: 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

This is a significant merger, and I think it is important that the decision was reviewed by the full Commission in light of the unique position of these two companies in the fixed satellite service (FSS) industry. Given the lack of opposition in the record, I am willing to allow the merger to proceed in the hope that the new company will truly promote the development of innovative products, including competitive satellite broadband services, as asserted by the applicants.

I can only concur to this item, however, because I remain troubled by the significant consolidation in the FSS market that will result from this transaction. For example, post-merger, two companies will control approximately 80% of the transponder capacity sales market in North America. It is likely that these market shares are much higher for the U.S. market, but most of the data in this item curiously is not provided on the national level. While I recognize that the satellite industry is an international one, we should not turn a blind eye to the competitive effects of consolidation on American businesses and the consumers they serve.

I believe that our item disproportionately relies on the bargaining power of larger customers to explain away the obvious public interest harm that stems from the loss of competition with the merger of two of the three largest providers of FSS video, network, and government services. Ultimately, it is unclear to me if the public interest benefits of this merger truly outweigh the possible harms. But the comments in this proceeding do not clearly demonstrate a potentially negative impact on the provision of FSS services as a result of the merger, which prompts my concurrence to the Order.

I also have a concern with the dispute between ITSO and Intelsat regarding the obligations and responsibilities of Intelsat that stem from the "core principles" that are contained in the ITSO Agreement, of which the United States is a party, and implemented through the Public Services Agreement. I look forward to working with the State Department post-merger to ensure that the various obligations that came out of the privatization of Intelsat remain intact. Indeed, as the item rightly points out, Section 316 of the Communications Act may be a more appropriate vehicle for ITSO to seek Commission action outside of this merger proceeding.