

06-137

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United States Department of State

Washington, D.C. 20520



March 15, 2007

Dear Chairman Martin:

This letter is in further response to the letter from Mr. John Giusti of the Federal Communications Commission (FCC) to Mr. Steven Lett of the Department of State on July 27, 2006. Mr. Giusti's letter forwarded a copy of the Petition filed by the International Telecommunications Satellite Organization (ITSO) at the direction of its Director General under Section 316 of the Communications Act (IB Docket 06-137). The Petition requests the FCC to modify the licenses previously issued by the FCC to Intelsat, LLC, to impose certain conditions on use of the orbital locations and associated radio frequency assignments transferred to the United States Notifying Administration at the time of the privatization of the commercial activities of the intergovernmental organization (IGO) INTELSAT. In his letter, Mr. Giusti requested the views of the Department of State on the ITSO Petition, including whether such action would promote the provisions of the ITSO Agreement and U.S. fulfillment of obligations under the ITSO Agreement. The Department of State, in consultation with the National Telecommunications and Information Administration (NTIA), has concluded that an FCC order imposing the conditions specified below would promote the provisions of the ITSO Agreement, fulfillment of U.S. obligations under that Agreement and fulfillment of U.S. foreign policy objectives.

Before elaborating on the conditions that we recommend, I believe it is useful to review the circumstances surrounding the transfer of these orbital positions/frequency assignments to the United States as one of two Notifying Administrations under the ITSO Agreement, and the FCC's subsequent licensing of these orbital positions/frequency assignments to the privatized Intelsat in 2000. Noting "that commercial, competitive and regulatory forces require that INTELSAT [the IGO] Restructure," the Twenty-fourth Assembly of Parties of INTELSAT (now ITSO) decided "that INTELSAT should restructure in a manner ... that results in [Intelsat] being operated as a corporation with an optimal tax, regulatory and operational structure and without privileges and immunities...." (AP-24-3, ¶¶ 15, 16(a).) The Assembly also decided that "the current Notifying Administration (the United States Federal Communications Commission) and the new Notifying Administration(s) shall expressly indicate their commitment to agree

The Honorable Kevin J. Martin,
 Chairman,
 Federal Communications Commission,
 445 12th Street, SW,
 Washington, DC 20554.

to the transfer of the USA/IT satellite network filings.... [and] shall agree to reserve such filings for the use by [Intelsat] to the greatest extent permitted by the ITU regulations.” (AP-24-3, ¶ 16(c)(iv).)

The Twenty-fourth Assembly’s decision that the existing INTELSAT orbital positions and related frequency assignments should be transferred was put into effect by the decision of the Twenty-fifth (Extraordinary) Assembly of Parties “to endorse the recommendation of the Board of Governors that the United States be selected as the Notifying Administration for the existing frequency assignments of INTELSAT satellites operating exclusively in the FSS C- and Ku-bands; and to endorse the recommendation of the Board of Governors that the United Kingdom be selected as the Notifying Administration for the existing frequency assignments of INTELSAT’s Ka-, V- and BSS-band satellite network filings, including associated C- and Ku-band frequency assignments.” (AP-25-3, ¶¶ 29(f), (g).) These transfers subsequently occurred according to the terms of the ITSO Agreement, which says that the INTELSAT Notifying Administration shall “upon the receipt of the notification by the Depository of the approval, acceptance or ratification of the present Agreement by a Party selected by the Assembly of Parties to act as a Notifying Administration for the Company, transfer such assignments to the selected Notifying Administration(s).” (ITSO Agreement, Article XII(b).)

The ITSO Agreement goes on to impose certain conditions on the selected Notifying Administrations, i.e., the United States and the United Kingdom, in relation to their treatment of these orbital positions/frequency assignments. Specifically: “Any Party selected to act as [Intelsat’s] Notifying Administration shall, under applicable domestic procedure: (i) authorize the use of such frequency assignment by the Company [i.e., the privatized Intelsat] so that the Core Principles may be fulfilled; and (ii) in the event that such use is no longer authorized, or the Company no longer requires such frequency assignment(s), cancel such frequency assignment under the procedures of the ITU.” (ITSO Agreement, Article XII(c).) The “Core Principles,” require Intelsat to “maintain global connectivity and global coverage,” “serve . . . lifeline connectivity customers”; and “provide non-discriminatory access to the Company’s system.” (ITSO Agreement, Article III(b).) The FCC satisfied the first of the Notifying Administration conditions in 2000 by licensing the orbital locations and associated radio frequency assignments to Intelsat, LLC, the licensing action that is the subject of ITSO’s Section 316 Petition. There has yet been no occasion to invoke the second condition.

In sum, the Assembly of Parties made clear several expected outcomes:

- The privatized Intelsat, while obliged to adhere to the Public Service Obligations, was to be made, as much as possible, an equal competitor in the field of telecommunications, with neither handicaps nor privileges relative to other market participants (e.g., other satellite companies).
- Intelsat would continue to use the orbital positions/frequency assignments originally registered on behalf of INTELSAT at the International

Telecommunication Union (ITU) through the normal licensing processes of those jurisdictions to which the orbital positions/frequency assignments were transferred (ultimately, the United States and United Kingdom).

- The selected Notifying Administrations (the United States and the United Kingdom) would be obligated to license the orbital positions/frequency assignments to the privatized Intelsat, but once no longer licensed to Intelsat, these orbital positions/frequency assignments would be cancelled under the procedures of the ITU Radio Regulations.

These decisions meant that the business activities of the IGO INTELSAT would be preserved and would continue as Intelsat, LLC, and that the Notifying Administrations would not be able to take advantage of their status as transferees of the orbital positions/frequency assignments to give unfair advantage to another satellite operator. Perhaps most importantly, it meant that the time-tested and orderly mechanisms of the ITU Radio Regulations in the management of the orbital positions and associated frequency assignments would be fully respected as the optimum forum for addressing the treatment of these resources.

Turning now to the petition before the Commission, the ITSO Director General has asked that the subject Intelsat licenses issued by the FCC be conditioned in three ways:

- Ensuring that the licenses are linked to the "Core Principles" of the ITSO Agreement.
- Ensuring that any successor to Intelsat, or other satellite operator that uses the licensed orbital locations/frequency assignments, is bound by the "Core Principles" through the execution of a public services agreement with the ITSO.
- Requiring that Intelsat place a lien, letter of credit, third party guarantee or other legal instrument on certain satellites in order to provide bankruptcy protection.

In the context of the decisions of the Assembly of Parties and the amendments of the ITSO Agreement leading up to privatization, it is clear that the ITSO member states expected Intelsat to be bound by the Public Services Agreement (which is the agreed mechanism for satisfying the Public Service Obligations that are to ensure performance by Intelsat of the "Core Principles" stated in the ITSO Agreement, as noted above). It also is clear that there is an expectation that the subject orbital locations/frequency assignments would be licensed by the Notifying Administrations to Intelsat so that Intelsat could fulfill the "Core Principles." (ITSO Agreement, Article III.) Therefore, we believe that it is appropriate to satisfy the first of the ITSO Director General's requests by explicitly obligating Intelsat, as a condition for holding the subject FCC licenses, to remain a signatory to the Public Services Agreement approved by the Twenty-fifth Assembly of Parties.

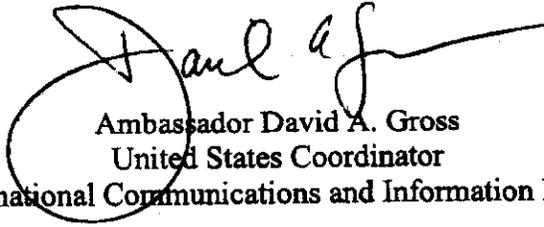
With respect to the second request, the realities of modern commerce are that private companies routinely create parent and subsidiary corporations, change investments, and reallocate assets, all in order to increase the efficiency of their financing and business operations. Also, companies sometimes change their trademarks and trade names. Hence, the ITSO Agreement does not refer to "Intelsat" by name but instead refers generically to the "Company," which includes its "successors-in-interest." (ITSO Agreement, Article I(d).) Under the ITSO Agreement, it is the "Company's" (and the "successor-in-interest's") obligation "to ensure performance of the Core Principles." (ITSO Agreement, Article III(a).) Additionally, U.S. bankruptcy law permits a debtor-company, instead of having its assets liquidated to pay creditors, to reorganize under the supervision of a federal bankruptcy court to allow it to continue operations while restructuring its debt and other obligations. In such a case, the entity that continues the business operations of the debtor company in bankruptcy is known as the "debtor-in-possession." In our view, such a "debtor-in-possession" would be a "successor-in-interest" to Intelsat under the ITSO Agreement. We believe that the contingency of a possible Intelsat bankruptcy, which was not fully anticipated by the decisions of the Assembly of Parties leading up to the privatization, should be addressed in the spirit of those decisions jointly made by the United States and the other ITSO Parties. Accordingly, we believe that the FCC should condition the subject Intelsat licenses such that no entity can be considered a successor-in-interest to Intelsat under the ITSO Agreement for licensing purposes unless it has undertaken to perform the obligations of the Public Services Agreement approved by the Twenty-fifth Assembly of Parties.

Concerning the third request of the ITSO Director General, we must look at the plain meaning of the decisions made by the Assembly of Parties leading to privatization. Those decisions were to make Intelsat responsible for satisfying the Public Service Obligations by the mechanism of the Public Services Agreement. They were not intended to create a new international framework that, at best, would rely on a series of undefined institutions and measures. Doing that would roll back the clock by reverting to arrangements that the member states clearly intended to end by privatization. It would be inconsistent with the understandings agreed to and accepted by the United States and other ITSO Parties at that time. Moreover, these measures are rendered unnecessary in the context of the conditions that we are recommending above and the realities of satellite communications infrastructure. There is no possibility, in the event of an Intelsat bankruptcy, that the orbiting satellites would be put to a use other than their designed telecommunications function. As long as the "successor-in-interest" to Intelsat is bound by its license to comply with and perform the obligations of the existing Public Services Agreement, as we have proposed, the satellites using the subject orbital locations/frequency assignment must always be operated in a manner that satisfies those obligations.

In closing, I would note that when the commercial activities of the IGO INTELSAT were privatized, the decisions of the Assembly of Parties culminated years of painstaking analysis and negotiations among more than a hundred governments that balanced countless legal, financial, operational, public policy and diplomatic interests. The United States was proud to join the unanimous agreement of the Parties to adopt and implement

this carefully balanced outcome. The foreign policy interests of the United States are advanced by our steady adherence to the commitments that we made at that time in the process of privatization. The United States remains a strong supporter of the ITSO Agreement and the principles embodied therein. The State Department, in consultation with NTIA, believes that these interests would be best served by an FCC decision imposing the two conditions proposed above on the FCC licenses to Intelsat LLC for the orbital locations and associated radio frequency assignments transferred to the United States Notifying Administration pursuant to the decisions of the Twenty-fifth Assembly of Parties.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Gross". The signature is written in a cursive style with a large, looping initial "D".

Ambassador David A. Gross
United States Coordinator
International Communications and Information Policy