

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Report to Congress Regarding the ) IB Docket No. 10-70  
ORBIT Act )

**COMMENTS OF GLOBECOMM SYSTEMS INC.**

Globecomm Systems Inc. (“Globecomm”) submits these comments in response to the Public Notice released March 17, 2010.<sup>1</sup> The Public Notice solicited comments relating to the Open-Market Reorganization for the Betterment of International Telecommunications Act (“the ORBIT Act”). Section 646 of the ORBIT Act requires the Federal Communications Commission (“FCC” or “Commission”) to provide an annual report to the Committees on Commerce and International Relations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Foreign Relations of the Senate on the progress made to achieve the objectives of the ORBIT Act. 47 U.S.C. § 646.

Globecomm provides predominantly international services and is a leading provider of advanced telecommunications services to numerous government and private entities. As part of its business operations, Globecomm is a licensee of many earth stations and provides significant satellite downlink and uplink services to its clients. Accordingly, Globecomm is a consumer of

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<sup>1</sup> Public Notice, International Bureau Information: Report to Congress Regarding the ORBIT Act, DA 10-448 (rel. March 17, 2010).

the very services which are the subject of the ORBIT Act. Contrary to the purpose of the ORBIT Act to promote a fully competitive global market for satellite communications services, Globecomm maintains that competition has actually been undermined and hindered in the global fixed satellite services market by INTELSAT's privatization.

## **I. Introduction**

Last year, when the Commission requested comments in preparation for its tenth annual *Report to Congress as Required by the ORBIT Act*,<sup>2</sup> it did not receive any comments from industry members or the public regarding privatization.<sup>3</sup> It received only two comments, from Intelsat and Inmarsat. Necessarily relying on this scant, one-sided record, the Commission reported to Congress that privatization has positively impacted U.S. industry, jobs, and industry access to the global market.<sup>4</sup> In its Comments, Globecomm seeks to rectify the record and ensure that the upcoming 2010 Report reflects the actual impact of INTELSAT's privatization on competitiveness within the U.S. satellite communications services industry.

## **II. Impact of INTELSAT's Privatization on the U.S. Satellite Communications Services Industry**

Over the past decade, privatization and consolidation have undermined competition and hindered U.S. access to the global fixed satellite communications market. Below, we set out the various factors that have created and exacerbated this situation.

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<sup>2</sup> *FCC Report to Congress as Required by the ORBIT Act*, Tenth Report, 24 FCC Rcd 8686 (2009).

<sup>3</sup> *Id.* at 20.

<sup>4</sup> *Id.* at 21-22.

***PanAmSat Merger.*** In 2006, the Commission approved the merger of Intelsat and PanAmSat, also relying on a lopsided record.<sup>5</sup> In the Order, the Commission observed that fixed satellite service (“FSS”) markets at the time were already “characterized by high barriers to entry.”<sup>6</sup> In concurring statements, Commissioners Copps and Adelstein expressed fears that consolidation in the FSS market—resulting in control of 80% of the transponder capacity sales market in North America—would have “[anti-] competitive effects on American businesses and the consumers they serve.”<sup>7</sup> The Commissioners’ fears turned out to be well-founded. In the years after the merger, competition within the market has eroded even further as the now fully dominant Intelsat began to expand vertically and restrict fleet access to competing distributors.

***Vertical Integration.*** Intelsat’s vertical integration came about primarily through its acquisition of Comsat General Corporation and PanAmSat’s G2 Satellite Solutions Division, in 2005 and 2006, respectively. These entities became the Intelsat subsidiary Intelsat General (“IGEN”), which provides services to the U.S. military, government agencies, and NATO, as well as to commercial customers. In recent years, IGEN has openly declared that it is moving away from its role as a satellite company and “looking for [federal sales] opportunities from a total end-to-end perspective.”<sup>8</sup> In the process, IGEN has exploited its ability to procure Intelsat

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<sup>5</sup> *Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, and PEOP PAS, LLC*, Memorandum Opinion and Order, 21 FCC Rcd 7368, 7383 (2006) (“[T]he record contains no comments stating any concern about the competitive effects of the proposed transaction.”).

<sup>6</sup> *Id.* at 7383-7384.

<sup>7</sup> *Id.*, Concurring Statements of Commissioners Jonathan S. Adelstein and Michael J. Copps, at 7421.

<sup>8</sup> David Hubler, *Bandwidth Demand will Stoke Intelsat General Growth*, Oct. 22, 2009, WASHINGTON TECHNOLOGY, available at <http://washingtontechnology.com/Articles/2009/10/22/Bandwidth-demand-will-stoke-Intelsat-General-growth.aspx?Page=1>.

Fleet capacity at preferable rates to undermine competition from independent firms. Industry sources report that because Intelsat price quotes are made through IGEN, if IGEN is competing for the same program, it might refuse to provide pricing information or use the information from a competitor's service request to formulate an opposing bid. Some distributors have even reported that they have experienced retribution from IGEN when they have complained about these matters. To make the situation worse, IGEN's ability to restrict access extends beyond Intelsat's fleet.

***Lack of Fixed Satellite Operators.*** Anti-competitive behavior in the fixed satellite industry is not controlled by the marketplace. Massive consolidation and a cluttered orbital arc have eliminated competition for providers of transponder capacity. Most viable intercontinental orbital slots today are held by Intelsat or its lone remaining competitor, SES S.A. In fact, there are only two satellites between 10 degrees W.L. and 60 degrees W.L. (the principal AOR arc) equipped with a C-band transponder payload that are not Intelsat or SES spacecraft, which gives these two companies over 88% of the available satellites in the AOR. Tight spacing and existing reservations still pending before the ITU make it difficult, if not impossible, for any new competitor to launch a competitive geostationary satellite.

***Lack of Transparency.*** Before privatization, INTELSAT's services were transparent and provided on a non-discriminatory basis. Everyone ordered from the same "menu" and no distributor received preferential treatment. Space segment capacity was provided at charges determined by the INTELSAT Board of Governors and published in the INTELSAT Tariff Manual.<sup>9</sup> Capacity could be purchased on a bit rate basis (IDR or IBS rates) or leased as raw

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<sup>9</sup> *Applications of INTELSAT, LLC*, Memorandum Opinion Order and Authorization, 15 FCC Rcd 15460, 15464, ¶ 7 (2000) ("*Intelsat Order*").

transponder space segments. In addition to its Tariff Manual, INTELSAT published transponder guides and contour maps with detailed information. Post-privatization, Intelsat's transactions have steadily become more opaque. Previously publicly accessible information is now off-line, pricing is negotiated now rather than offered à la carte, and customers do not have access to information on the pricing Intelsat provides to its own service divisions. Increased transparency is necessary to ensure Intelsat's compliance with its public service obligations and to enable the market to function properly.

### **III. The Role of the Federal Communications Commission**

Under its licensing authority, the Commission must ensure that Intelsat's longstanding obligation to provide non-discriminatory access is clearly articulated and enforced.

*International Obligations under the ITSO Public Services Agreement.* The trends described in Part II, *supra*, are not only anti-competitive; they are in clear violation of Intelsat's obligations under the International Telecommunications Satellite Organization Agreement ("ITSO Agreement").<sup>10</sup> 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.<sup>11</sup> By obscuring its pricing policy and providing discriminatory access and pricing to its subsidiaries, Intelsat is in direct violation of the core principle mandating non-discriminatory access to its satellite system.

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<sup>10</sup> Agreement Relating to the International Telecommunications Satellite Organization "INTELSAT," Aug. 20, 1971, 23 U.S.T. 3813, 1220 U.N.T.S. 22 (entered into force Feb. 12, 1973) ("*ITSO Agreement*"), available at [http://67.228.58.85/dyn4000/itso/tpl1\\_itso.cfm?location=&id=5&link\\_src=HPL&lang=english](http://67.228.58.85/dyn4000/itso/tpl1_itso.cfm?location=&id=5&link_src=HPL&lang=english).

<sup>11</sup> *Id.* art. III.

**FCC's Licensing Authority.** In its original licensing order, the Commission stated that “the licenses will permit Intelsat LLC to operate pursuant to the principles upon which the 1999 INTELSAT Assembly of Parties based its decision to privatize INTELSAT. These principles include . . . ensuring continual non-discriminatory access to the global system.”<sup>12</sup> Furthermore, in 2008, the Commission expressly conditioned Intelsat’s satellite licensing upon remaining a signatory to the Public Services Agreement between Intelsat and ITSO, in response to foreign policy recommendations received from the State Department and in keeping with express U.S. policy regarding Intelsat.<sup>13</sup> This condition was intended to ensure compliance with the ITSO Agreement to which the United States is a party.<sup>14</sup> “Non-discriminatory access” under the ITSO Agreement means “fair and equal opportunity to access [Intelsat]’s system.”<sup>15</sup> The Commission should take active steps to implement this longstanding policy and bring Intelsat into compliance with the ITSO Agreement and its licensing conditions.

**Enforcement.** To restore competitive FSS markets, the Commission must clarify and structure Intelsat’s obligations under the ITSO-related licensing conditions and provide procedures for identifying and addressing noncompliant behavior. To do so, the Commission should establish complaint procedures similar to those for common carriers under 47 U.S.C. § 208. Also, as a fundamental component of either regulatory compliance or increased market

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<sup>12</sup> *Intelsat Order*, *supra* note 8, at 15462 ¶ 3.

<sup>13</sup> *Petition of the International Telecommunications Satellite Organization under Section 316 of the Communications Act, as Amended*, Order of Modification, 23 FCC Rcd 2764, 2767, ¶¶ 5,6 (2008) (“*IPSO Conditions Order*”); *see also Intelsat Order*, *supra* note 9, at 15474 ¶ 28 (“U.S. satellite licenses will allow Intelsat LLC to continue to provide global coverage and connectivities on a commercial and non-discriminatory basis.”); *Open-Market Reorganization for the Betterment of International Telecommunications Act*, Pub. L. 106-180, 114 Stat. 48 (2000) (codified at 47 U.S.C. § 761-769) (“*ORBIT Act*”), § 761(b)(1).

<sup>14</sup> *IPSO Conditions Order*, *supra* note 13, at 2769 ¶ 9.

<sup>15</sup> *ITSO Agreement* art. I, *supra* note 10.

efficacy, it must require transparency of the rates, terms, and conditions of service provided by Intelsat to its affiliates.

***Relationship with Affiliates.*** Intelsat transactions with its affiliates should be carried out on an arm's length basis, reduced in writing and available for public inspection. Intelsat should only be able to enter the market for competitive facilities through a fully separate subsidiary. This includes separate accounting books, officers, personnel, equipment, and facilities. Intelsat should be prohibited from promoting its subsidiaries' competitive services. A service subsidiary should not be permitted to own transmission facilities. Finally, any subsidiary should acquire transponder capacity from Intelsat on a tariffed basis.

***Cross-subsidization.*** To avoid cross-subsidization, the cost of providing services by a subsidiary should not be passed on, directly or indirectly, to non-competitive services provided by Intelsat. Similarly, revenues derived from non-competitive services should not be used to subsidize competitive services provided by any subsidiary.

#### **IV. Conclusion**

For the reasons given above, Globecom submits that privatization and consolidation have harmed competitiveness in the FSS communications services market. The privatization process initially attempted to strike a balance between expanding INTELSAT's business flexibility while ensuring that competition would not suffer from INTELSAT's incumbent position and governmental privileges. This balance was upset by Intelsat's merger with PanAmSat, which resulted in its dominance of the FSS transponder capacity market. It was further eroded by the company's vertical integration through its service division IGEN, who now competes directly with other service companies for its parent's transponder capacity. These

developments inevitably led to market abuses, such as discriminatory pricing and restricted access to Intelsat's systems. The cure is transparency and accountability. The FCC and Congress should make every effort to rectify this situation and restore the competitiveness of the U.S. satellite communications services market.

Respectfully submitted,

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