

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

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

COMMENTS OF SPACENET INC.

I. Introduction

Spacenet Inc. (“Spacenet”), by its attorney, hereby submits these Comments in response to the Commission’s request¹ for input for its eleventh report to Congress on achieving the goals and objectives of the Open-Market Reorganization for the Betterment of International Telecommunications Act (the “ORBIT Act” or “Act”).² In this proceeding, the Commission seeks comment on the impact of INTELSAT’s privatization on U.S. industry, jobs, and industry access to the global marketplace. At present, Spacenet provides satellite communications services in the U.S. to more than 100,000 customer locations using very small aperture terminal (“VSAT”) technology and Ku-band transponder capacity that it leases from various satellite operators. As such, Spacenet has a direct and vital interest in the successful implementation of the ORBIT Act and in this proceeding.

As discussed below, the current state of the fixed satellite services (“FSS”) market poses challenges to the continued success of the ORBIT Act. A key purpose of the ORBIT Act was to promote competition in the satellite market, to the ultimate benefit of U.S. consumers. The consolidation of satellite operators in the FSS market has created uncertainty about

¹ Report No. SPB-234, DA 10-448, rel. Mar. 17, 2010.

² 47 U.S.C. § 761 *et seq.*

continuity of service at specific orbital locations for data network operators such as Spacenet. Furthermore, this consolidation has encouraged the warehousing of orbital locations, and is likely to limit the future supply of transponder capacity. In addition, it has discouraged new satellite operators from entering the market. As such, the consolidation of satellite operators in the FSS market has hindered competition in the market for satellite services. To preserve the benefits of the ORBIT Act for the public, the Commission should reassess its rules and policies regarding orbital assignments so as to promote efficient use of the spectrum and competition in the market for U.S. transponder capacity.

II. The Consolidation of Satellite Operators in the FSS Market, Coupled With the Lack of Bargaining Power on the Part of Data Network Operators, Has Encouraged Spectrum Warehousing And Created Uncertainty About the Continued Availability of Transponder Capacity, Thereby Discouraging the Competition that the ORBIT Act Was Intended to Promote.

The purpose of the ORBIT Act is “to promote a fully competitive global market for satellite communications services for the benefit of consumers and providers of satellite services and equipment.”³ As the Commission has recognized, the privatization of INTELSAT has had a positive impact on the domestic and global telecommunications markets. In particular, enabling Intelsat to compete freely in the market for U.S. satellite services has increased competition in the U.S. market and encouraged the development of service offerings for U.S. customers.⁴

However, in more recent years there have been major changes in the market for transponder capacity serving the U.S. These changes have weakened competition in the transponder capacity market and thus degraded the benefits of the ORBIT Act for the American

³ 47 U.S.C. § 761 notes.

⁴ *FCC Report to Congress as Required by the ORBIT Act, Tenth Report*, 24 FCC Rcd 8686, 8706-8707 (2009).

people. In the years since INTELSAT was privatized, demand for transponder capacity has remained strong. Transponder agreement revenues represent the core of the fixed satellite services sector, growing by 6 percent in 2008 alone.⁵ The growth in satellite carriage of HDTV, the ongoing demand for corporate networks, and the introduction of broadband satellite payloads and new technologies with improved compression techniques all drive transponder service revenues.⁶ Globally, the fixed satellite services sector has been one of the most resilient during the recent downturn, largely due to increased demand for capacity and high fill rates.⁷

At the same time, there remain few choices today in the transponder capacity market for FSS data network operators such as Spacenet, largely as a result of consolidation among FSS operators. Since the privatization of INTELSAT, Intelsat has merged with PanAmSat and acquired certain assets (including satellite licenses) from Loral Skynet, while SES Americom has merged with New Skies (an Intelsat company) to form SES Global. By the Commission's own estimates, Intelsat and SES Global now control 83 percent of the data network services transponders serving the U.S.⁸

⁵ Satellite Industry Ass'n. and Futron Corp., *2009 State of the Satellite Industry Report*, June 2009, at 10, available at <http://www.sia.org/IndustryReport.htm> (last visited Apr. 4, 2010) ("*2009 SIA/Futron Report*")

⁶ See *2009 SIA/Futron Report* at 20; ITU News, *Satellite Industry Outlook*, November 2009, at 2, available at <http://www.itu.int/net/itunews/issues/2009/09/44.aspx> (last visited Apr. 4, 2010) ("*ITU Satellite Industry Outlook*"). Per the *2009 SIA/Futron Report*, the number of HDTV channels worldwide grew by almost 170 percent from the end of 2006 and May 2009, with more than 60 percent of HDTV channels currently serving the North American market. *2009 SIA/Futron Report* at 20.

⁷ *ITU Satellite Industry Outlook* at 2.

⁸ *Second Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Communications Services, Second Report*, 23 FCC Rcd 15170, ¶ 85 ("*Second Satellite Competition Report*"). Commissioner Copps expressed "serious doubts" about the competitive effects of FSS industry consolidation in reviewing the merger between Intelsat and PanAmSat. See *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., Concurring Statement of Commissioner Michael J. Copps*, 21 FCC Rcd 7368 (2006) ("*Intelsat/PanAmSat Order*").

This situation is unlikely to change in the future, because there are so few orbital locations left from which service to the U.S. can be provided. Between 70°W.L. and 131°W.L., every Ku-band slot is assigned to an operator or is subject to the superior rights of another country. Intelsat and SES Global control or have rights to two-thirds (2/3) of the 31 slots in this portion of the orbital arc from which service can be provided to the U.S. Of the 20 Ku-band orbital locations assigned by the Commission in this section of the arc, all but one (1) have been assigned to SES Global or Intelsat. Not surprisingly, Intelsat today controls twice the number of orbital locations on a world-wide basis that it controlled before privatization. As the Commission has recognized, the lack of available commercial spectrum is a significant barrier to entry into the market for commercial satellite communications services.⁹ Given the constraints on spectrum availability and orbital locations in the fixed satellite market segment, it is difficult if not impossible today to enter the satellite communications industry as a satellite operator.

The Commission has previously found that the loss of competition resulting from consolidation in the fixed satellite market does not harm the public interest, at least with respect to the wholesale transponder services market, on the grounds that the relatively small number of customers in this market have bargaining power.¹⁰ Spacenet submits, however, that wholesale transponder service customers have no bargaining power, particularly those wholesale transponder service customers who are data network operators.

⁹ *Second Satellite Competition Report* at ¶ 51; see also *Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Communications Services, First Report*, 22 FCC Rcd 5943, ¶ 106 (“*First Satellite Competition Report*”) (while technological advances have steadily increased the ability to fit more users into any given band, radio spectrum remains a finite resource).

¹⁰ *Second Satellite Competition Report* at ¶¶ 73, 85; *First Satellite Competition Report* at ¶ 168; *Intelsat/PanAmSat Order* at ¶¶ 2, 29-32.

As the Commission has recognized, the investment required to enter into and operate in virtually any satellite communications market is substantial, fixed, and largely sunk.¹¹ Unique attributes of satellite transponder capacity, including frequency, power, bandwidth, and in particular orbital location, are critical to data network operators and thus severely limit the data network operator's choice of space segment. Today's VSAT data networks frequently contain thousands, if not hundreds of thousands, of endpoints. As such, the cost of re-pointing VSATs when changing satellite operators substantially constrains a data network operator's flexibility to move from one satellite operator to another.¹² Furthermore, the technical complexity of coordinating the establishment of satellite transmission service between the satellite and earth stations, and the engineering required to establish and maintain the technical parameters of satellite transmission, necessitate a long-term, ongoing business relationship between the satellite operator and the data network operator that can be difficult to move to another satellite operator. As the Commission has admitted, the high earnings of satellite operators are consistent with their customers' lack of significant 'outside options.'¹³

The net result of the consolidation of satellite operators in the FSS market and the lack of bargaining power on the part of data network operators is an increasingly unstable and untenable environment for data network operators and other purchasers of transponder capacity. Spacenet and its customers, which include federal, state, and local governments, have invested millions of dollars in VSAT data networks that provide critical communications services to hundreds of thousands of customer locations. These networks depend on the continuity of satellite service at specific orbital slots. Yet because there are so few satellite operators, and

¹¹ *First Satellite Competition Report* at ¶ 86.

¹² *See First Satellite Competition Report* at ¶ 105.

¹³ *First Satellite Competition Report* at ¶ 174.

these operators control so many orbital locations, satellite operators can afford to make decisions on satellite replacement purely on the basis of their own economic considerations, without regard to the ramifications of their decisions on data network operators and users or on total system costs. For example, satellite operators can – and do – make decisions at the last minute to place satellites near the end of life in an inclined orbit, or replace them temporarily with old technology, to hold onto these orbital slots.

While certainly satellite operators have the right and obligation to look after their own economic interests in managing the orbital locations with which they have been entrusted, the fact remains that satellite operators are the custodians of a scarce public resource, the frequency spectrum. As such, satellite operators must look after the interests of the public, including the interests of data network operators and their customers, as well as their own economic interests in managing their orbital locations. The public interest is not served when a satellite operator uses its assigned spectrum inefficiently, such as by operating a satellite in an inclined orbit, thereby displacing large, long-established data networks.

Ultimately, uncertainty about satellite replacement and the timing thereof discourages the competition that the ORBIT Act was intended to produce. Without the assurance of continuity of service at specific orbital locations, or timely information on discontinuance of station-keeping operations at a particular orbital slot, data network operators and their customers will be hesitant to invest in satellite networks. If the incumbent satellite operators are allowed to warehouse orbital locations, potential new satellite operators will be discouraged from entering the market and providing data network operators with the transponder capacity and continuity of service they need to serve their customers.

III. In Light of These Market Changes, the Commission Should Rethink Its Rules and Policies Regarding Orbital Assignments So As to Promote Competition in the Market For U.S. Transponder Capacity and Preserve the Benefits of the ORBIT Act For the Public.

As the Commission has recognized, commercial satellite communications are a significant part of the national communications infrastructure. Satellites provide important services to the military, emergency responders, other providers of communications services for restoration purposes, and personnel who are involved in homeland defense and security and emergency preparedness functions.¹⁴ Because satellites are both ubiquitous and have a geographically independent cost structure, satellite data networks are uniquely capable of satisfying demand for high-speed data communications services in low density areas where DSL and cable are unavailable and/or where mobility is required with quick deployment.¹⁵ Spacenet's VSAT customers use the data networks that Spacenet supplies to monitor oil and natural gas pipelines; support U.S. Postal Service locations in remote areas; run credit card processing and point-of-sale data management, inventory control, payroll processing, and employment applications; provide back-up network routing capability for terrestrial communications networks as well as law enforcement and security agencies; and process lottery ticket sales for numerous state lotteries. As such, Spacenet's customers and their VSAT data networks provide a real-world illustration of the extent to which satellite communications are essential to the U.S. economy and national security as well as to the operation of government, business, and critical infrastructure.

Considering the importance of satellite communications to the U.S. economy, the Commission's satellite spectrum policies should recognize and accommodate the lengthy and

¹⁴ See *Connecting America: the National Broadband Plan*, Mar. 2010, at 320 ("National Broadband Plan"); *In Re New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Notice of Proposed Rulemaking*, 19 FCC Rcd 3373, 3383 (2004).

¹⁵ See *National Broadband Plan* at 137.

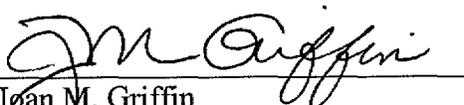
costly commitment that data network operators have made in their networks and in the continued availability of suitable space segment capacity at specific orbital locations. The Commission's rules and policies on orbital assignment should produce timely decisions for *data network operators and their customers* on satellite replacement at specific orbital locations in order to assure continuity of service. Such action will promote investment in satellite networks and competition in the U.S. satellite services market, thereby preserving the achievements of the ORBIT Act for U.S. consumers. In the coming weeks, Spacenet intends to provide to the Commission concrete proposals for changing the Commission's rules and policies on orbital assignment so as to assure continuity of service for data network operators and their customers .

IV. Conclusion

For these reasons, the Commission should reassess its rules and policies regarding orbital assignments so as to promote competition in the market for U.S. transponder capacity, thereby ensuring that the American people receive the benefits intended by the ORBIT Act.

Respectfully submitted,

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