

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Federal Communications Commission's Report) IB Docket No. 10-70
to Congress as Required by the ORBIT Act)
)
)
)

COMMENTS OF ARTEL, INC.

Catherine Wang
Frank G. Lamancusa
Timothy L. Bransford
BINGHAM MCCUTCHEN LLP
2020 K Street, N.W.
Washington, DC 20006
(202) 373-6000

Counsel for ARTEL, INC.

Dated: April 7, 2010

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	i
I. THE ORBIT ACT CONTEMPLATED THAT PRIVATIZATION WOULD NOT DISTORT COMPETITION IN THE GLOBAL FIXED SATELLITE MARKET	1
II. AFTER A DECADE OF PRIVATIZATION AND CONSOLIDATION, INTELSAT HAS BECOME VERTICALLY INTEGRATED AND EXERCISES MARKET POWER ON INTERCONTINENTAL ROUTES THROUGH ITS AFFILIATE IGC TO UNDERMINE COMPETITION IN THE INTERNATIONAL FIXED SATELLITE SERVICE MARKET	4
A. IGC Has Engaged In Anticompetitive And Retaliatory Acts That Disadvantage And Intimidate Other Distributors Of Intelsat Capacity	5
B. Intelsat’s Anticompetitive Behavior Threatens Competition And Irreparable Harm To The International Fixed Satellite Industry	7
III. CONSOLIDATION HAS SWEEPED ASIDE ALTERNATIVE INTERNATIONAL FIXED SATELLITE OPERATORS, AND HIGH BARRIERS TO ENTRY PREVENT NEW ENTRANTS FROM MOUNTING A SERIOUS CHALLENGE TO INTELSAT	8
A. Consolidation In The Last Decade Eliminated More Than Half Of Intercontinental Satellite Operators And Strengthened Intelsat’s Dominant Market Position	9
B. No New Entrants Have Emerged In The Last Decade And Regulatory Complexities Coupled With Limited Orbital Positions Will Continue To Limit Intercontinental Fixed Satellite Services Competition	11
C. Columbia, New Skies, PanAmSat And Orion Had Access to IGO/Intelsat Capacity That Would Not Be Available Today From Intelsat	12
IV. PRIVATIZATION AND CONSOLIDATION HAVE MADE INTELSAT LESS TRANSPARENT	13
V. INTELSAT REMAINS OBLIGATED TO PROVIDE NON-DISCRIMINATORY ACCESS AND THE COMMISSION SHOULD IMPLEMENT MECHANISMS TO ENSURE COMPETITION	14
CONCLUSION	17

SUMMARY

As more fully discussed within, ARTEL, Inc. (“ARTEL”) contends that the privatization of the International Telecommunications Satellite Organization (“INTELSAT” or “IGO/Intelsat”) has failed to attain the statutory purposes of the ORBIT Act and that recent actions have harmed the global market for satellite communications services to the detriment of providers and consumers of satellite services and equipment, including the U.S. government. ARTEL further asserts that unless action is taken promptly, the fixed satellite services market for international communications may be irreparably damaged.

Accordingly, ARTEL requests that the Commission report these ORBIT Act failures to Congress and initiate further proceedings to correct the identified problems that negatively impact U.S. industry, jobs, and industry access to the global marketplace. In particular, ARTEL supports a comprehensive inquiry into the current structure of the international fixed satellite industry, including an examination of market dominance of Intelsat on critical intercontinental routes, the need for greater transparency in the terms and conditions upon which U.S. providers are able to gain access to Intelsat international satellite capacity, Intelsat’s obligation to provide nondiscriminatory access, and what mechanisms should be put in place that provide meaningful enforcement of these obligations.

Given the significant distortions in the current intercontinental fixed satellite market, ARTEL urges the Commission to initiate a comprehensive inquiry to specifically examine whether and to what extent regulatory controls should be established and enforcement actions should be taken to address anticompetitive behavior of the dominant provider that may have occurred or would be likely to occur under these skewed market conditions. The Commission’s inquiry should investigate any practices that could be deemed to be anticompetitive activities,

including collusive behavior, wholesaler intimidation, price fixing, retaliatory actions and any other behavior that Intelsat is positioned to engage in that undermines competition, or is designed to prevent competitors, distributors or wholesalers from accessing fixed satellite capacity. As a part of that inquiry, ARTEL urges the Commission to evaluate all possible remedies to protect against anticompetitive behavior of the dominant provider that might be identified, including regulatory requirements for transparency in contract terms and conditions for international space segment services, the creation of a separate wholesale channel, the implementation of additional license conditions, the divestiture of orbital assets or positions, and/or the divestiture of vertically integrated assets, including Intelsat General Corporation (“IGC”), an indirect wholly owned subsidiary of Intelsat.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Federal Communications Commission’s Report)	IB Docket No. 10-70
to Congress as Required by the ORBIT Act)	
)	
)	
)	

COMMENTS OF ARTEL, INC.

ARTEL, Inc. (“ARTEL”) submits these comments in connection with the Federal Communication Commission’s requirement under Section 646 of the Open-Market Reorganization for the Betterment of International Telecommunications Act (“the ORBIT Act”), 47 U.S.C. § 646, to report annually 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 regarding the progress made to achieve the objectives and carry out the purposes and provisions of the ORBIT Act.

I. THE ORBIT ACT CONTEMPLATED THAT PRIVATIZATION WOULD NOT DISTORT COMPETITION IN THE GLOBAL FIXED SATELLITE MARKET

In 2001, the parties to the International Telecommunications Satellite Organization (“INTELSAT” or “IGO/Intelsat”) – the intergovernmental organization created by international treaty and charged with operating the world’s first global telecommunications satellite system – privatized INTELSAT and transferred its C- and Ku-band space stations to Intelsat LLC

(“Intelsat”), a U.S. entity.¹ The effort had begun the year before when Congress passed the ORBIT Act mandating the privatization of IGO/Intelsat while at the same time requiring that the successor organization remain pro-competitive.²

The purpose of the ORBIT Act is to promote a fully competitive global market for satellite communications services for the benefit of consumers, providers of satellite services and manufacturers of equipment by fully privatizing Intelsat.³ Among other responsibilities, the Orbit Act directs the Commission to “condition or deny” authority sought by a successor to IGO/Intelsat to the extent necessary to protect competition in the commercial satellite market.⁴ The Commission, as the notifying administration for the legacy Intelsat fleet, must also ensure the continued fulfillment of the “core principles” enumerated in the International Telecommunications Satellite Organization (“ITSO”) Treaty, including the obligation that a successor to IGO/Intelsat provides non-discriminatory access to the legacy fleet assets.⁵

¹ Intelsat was sold in 2005 to private investors for approximately \$5 billion. *See Intelsat, Ltd., Transferor, and Zeus Holdings Limited, Transferee, Consolidated Application for Consent to Transfer Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling under Sections 310 of the Communications Act of 1934, as amended, Order and Authorization*, 19 FCC Rcd 24820, Appendix D (Dec. 22, 2004) (“*Zeus/Intelsat Order and Authorization*”).

² *See Open-Market Reorganization for the Betterment of International Telecommunications Act*, Pub. Law 106-180, 114 Stat. 48, § 2 (2000), *most recently amended* Pub. Law 108-371, 118 Stat. 1752 (2004) (“*ORBIT Act*”) (“It is the purpose of this Act to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services and equipment”).

³ *See ORBIT Act* § 2.

⁴ *Id.* at § 601.

⁵ “[A] party selected to act as Intelsat’s Notifying Administration shall authorize the use of the relevant orbital slots and frequency assignments by Intelsat so that the Core Principles of global connectivity and coverage, lifeline connectivity, and non-discriminatory access may be fulfilled and in the event that such use is no longer authorized, or Intelsat no longer requires such frequency assignments, cancel such frequency assignment under the procedures of the ITU.” *See Petition of the International Telecommunications Satellite Organization under Section 316 of the Communications Act*, Order of Modification, 23 FCC Rcd 2764, ¶ 7 (Feb. 21, 2008) (“2008 License Conditioning Order”) *quoting* Letter from Ambassador David A. Gross, United States Coordinator, International Communications and Information Policy, U.S. Department of State, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission, IB Docket No. 06-137, at 1 (dated Mar. 15, 2007) (internal quotations and brackets omitted).

While the privatization process was intended to respond to competitive pressures from the proliferation of privately owned telecommunications satellites and transoceanic fiber optic cables, privatization and Intelsat's subsequent acquisitions of its fixed satellite competitors have resulted in a fixed satellite service market with fewer choices and less transparency than before, thus positioning the dominant provider to engage in anticompetitive behavior. This situation has not come as a surprise, as both Commissioner Copps and Adelstein expressed deep concerns in 2006 that allowing Intelsat and PanAmSat -- its then principal competitor in the international fixed satellite service market -- to merge would harm competition and the public interest.⁶

The two Commissioners were not the only ones to express their doubts. The International Telecommunications Satellite Organization ("ITSO") had raised similar issues during the transfer of control proceeding for the licenses held by PanAmSat.⁷ While it initially declined to adopt the relief sought by ITSO, the Commission later modified the Intelsat licenses to require that Intelsat remain a party to an agreement between Intelsat and ITSO that governed Intelsat's conduct and ensured that it follow the "core principles" of global connectivity and coverage, lifeline connectivity, and non-discriminatory access.

Congress requires that the Commission report on an annual basis on the progress made to achieve the objectives and carry out the purposes and provisions of the ORBIT Act. For that

⁶ 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.*, Memorandum Opinion and Order, 21 FCC Rcd 7368, Concurring Statement of Michael J. Copps (2006) ("*PanAmSat Acquisition Order*") ("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"); see also *PanAmSat Acquisition Order*, Concurring Statement of Jonathan S. Adelstein ("I remain troubled by the significant consolidation in the FSS market that will result from this transaction").

⁷ See Comments of International Telecommunications Satellite Organization, IB Docket No. 05-290, at 13 (filed Nov. 14, 2005) ("ITSO Comments") ("Intelsat, Ltd.'s proposed acquisition of PanAmSat Holding Corporation may have profound effects upon Intelsat customers and the governments that created Intelsat and conditionally transferred its assets to the privatized company INTELSAT (now ITSO). It is critical that the Public Service Obligations undertaken by Intelsat, as the consideration for the transfer of assets to it in the privatization process, be observed faithfully by the company that results from the merger of Intelsat and PanAmSat").

purpose, ARTEL herein informs the Commission of specific distortions that have developed in the market after a decade of privatization and consolidation and ongoing Intelsat behavior that is contrary to the intent and obligations of the ORBIT Act. These market distortions and behavior threaten the future of competition in the international fixed satellite service market to the detriment of U.S industry, jobs, and industry access to the global marketplace.

II. AFTER A DECADE OF PRIVATIZATION AND CONSOLIDATION, INTELSAT HAS BECOME VERTICALLY INTEGRATED AND EXERCISES MARKET POWER ON INTERCONTINENTAL ROUTES THROUGH ITS AFFILIATE IGC TO UNDERMINE COMPETITION IN THE INTERNATIONAL FIXED SATELLITE SERVICE MARKET

As previously noted, Commissioners Copps and Adelstein expressed deep concerns that allowing Intelsat and PanAmSat to merge would harm competition and the public interest in 2006. Today, Commissioner Copps' "serious doubts about the competitive effects of allowing a merger between two of the three" remaining Fixed Satellite Service ("FSS") providers have been realized.⁸ After acquiring PanAmSat's global fleet and reestablishing market dominance on many international routes, Intelsat has pursued an aggressive vertical integration campaign⁹ that enables its affiliate to provide value-added, "end-to-end" services that IGO/Intelsat had not previously been allowed to offer. Most significantly, Intelsat General Corporation ("IGC"), an indirect wholly owned subsidiary of Intelsat, the sales organization and wholesale/retail customer interface for Intelsat, has begun to market value-added solutions to government and commercial

⁸ *PanAmSat Acquisition Order*, Concurring Statement of Michael J. Copps.

⁹ *See, e.g.,* Rachel Villain, *The U.S. Market Drives Satellite Technology & Applications*, SATMAGAZINE, Feb. 2009, at 15 (noting that Intelsat has acquired downstream service providers in an effort to introduce itself in other areas of the "value chain"); *see also* Kay Sears, Senior Vice President, Sales, Marketing & Business Development - Intelsat General Corporation, *The View from Intelsat*, SATMAGAZINE, Dec. 2007, at 46 (describing how "[d]uring its first full year of operation after the PanAmSat merger, Intelsat General introduced a number of initiatives designed to move away from a focus on purely bandwidth sales. The emphasis today is on offering end-to-end solutions to customers").

customers in the U.S. and abroad in direct competition with U.S. providers seeking wholesale international satellite capacity from Intelsat.¹⁰

A. IGC Has Engaged In Anticompetitive And Retaliatory Acts That Disadvantage And Intimidate Other Distributors Of Intelsat Capacity

While Intelsat assured the Commission in its 2006 application for Commission approval to acquire PanAmSat that it would not disrupt existing distribution channels for space segment,¹¹ and IGC did not initially engage in anticompetitive behavior, in the last two years IGC has aggressively taken steps that restrict other users from directly accessing the legacy IGO/Intelsat fleet. Intelsat has diverted independent distributors, including ARTEL, seeking access to the wholesale space segment capacity from its legacy IGO fleet to Intelsat's wholesale/retail network service provider arm IGC. IGC, in turn, has begun to discriminate against and deny access to independent distributors. This behavior reflects the inherent conflict of interest in IGC's position as both the sole point of contact for independent distributors seeking access to wholesale Intelsat space segment as well as a competitor for the same customers in the same market using Intelsat space segment.

IGC's anticompetitive and discriminatory behavior has taken several forms:

- Refusal to provide space segment capacity pricing to competitors. On occasions when it has competed directly for projects that include space segment capacity, IGC has refused to provide pricing to other wholesale distributors or systems integrators that want to independently pursue these opportunities.

¹⁰ Valued-added solutions may involve the provision of end-to-end facilities that include space segment, earth stations and terrestrial network infrastructure. Value-added solutions may also involve systems integration, installation and a variety of technical support services

¹¹ See Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp, FCC File Nos. SAT-T/C-20050930-00193, SAT-T/C-20050930-00194, SAT-T/C-20060504-00053, SES-T/C-20050930-01356, SES-T/C-20050930-01357, SES-T/C-20051004-01371 and SES-T/C-20060504-00744, Exhibit F (noting that customers will still be able to procure services from existing systems integrators). In 2006, ARTEL, among other independent distributors, supported Intelsat's application for approval of the PanAmSat acquisition. Despite reservations, ARTEL submitted its support, at Intelsat's specific request, and based on Intelsat's assurances that it would not disturb distributor relationships or use its consolidated space station assets to compete with independent distributors like ARTEL. Unfortunately, contrary to those assurances, Intelsat is now exploiting its position to stifle competition.

- Retaliation and intimidation of distributors competing against IGC. Distributors that compete against or protest contract awards to IGC have been subjected to aggressive retaliation, which has taken several forms, including a refusal to provide pricing and terms necessary to continue ongoing, established space segment leases. Distributors have similarly been asked to refrain from bidding on projects of interest to IGC and been denied pricing for later opportunities apparently as retaliation for failing to comply with IGC's request.
- Exclusionary arrangements that restrict competing distributors from working with other satellite providers. In addition to restricting access to the legacy Intelsat and PanAmSat fleets, Intelsat through IGC appears to have used its market power in C- and Ku-band frequencies to create "exclusive" relationships with other satellite operators, including X-band operators and other international satellite systems, that prevent or discourage these operators from working with IGC competitors. This type of "exclusive" relationship with operators in related markets has precluded IGC competitors from pursuing opportunities in X-band and other frequencies where Intelsat actually has no capacity on any operational satellite within its fleet.¹²

These discriminatory practices are enabled by Intelsat's ability to exert market power obtained since privatization, as discussed more fully below, as well as by IGC's inappropriate access to the proprietary pricing, technical, and operational proposals of competitive distributors.¹³ IGC's at will ability to handcuff its largest competitors, or perhaps the competitors deemed most threatening, in many cases leaves end users with international fixed satellite service requirements with IGC as the only viable option. As a result, for the first time since 1999 when the FCC determined that direct access to the Intelsat fleet would allow U.S. customers to "realize greater efficiency, flexibility, control and cost savings,"¹⁴ there is a barrier between the U.S. telecommunications industry and the legacy IGO satellites Intelsat has been entrusted to operate. This is hardly the competitive environment envisioned when Intelsat was

¹² See, e.g., Joint Press Release, Intelsat General Corporation and Paradigm Secure Communications Ltd., Intelsat General Selected as Preferred U.S. Distributor of Paradigm's X-band, UHF Services (Sep. 14, 2009).

¹³ Through this inappropriate access, IGC has been able to expeditiously bring its own suite of end to end services on line by closely modeling its product portfolios after the distributors and systems integrators that until recently candidly shared advanced engineering solutions and pricing strategies with IGC.

¹⁴ *Direct Access to INTELSAT*, Report and Order, 14 FCC Rcd 15703, ¶ 22 (Sep. 16, 1999).

privatized and is inconsistent with the policies and obligations set forth by ITSO, the ORBIT Act, and the Commission.

B. Intelsat's Anticompetitive Behavior Threatens Competition And Irreparable Harm To The International Fixed Satellite Industry

Preventing competitors from accessing international fixed satellite assets that cannot be recreated or otherwise obtained converts Intelsat's privatization into a platform for profoundly limiting the prospects for future competition in the global fixed satellite service market. In the absence of regulatory controls on or scrutiny of Intelsat's exertion of market power, competitive pressure will no longer be brought to bear to ensure that end users -- including important government end users -- obtain the fixed satellite network performance, services and pricing that they would otherwise receive in a competitive marketplace.

Fixed satellite capacity is only as effective as the ground station facilities, terrestrial network infrastructure and engineers that integrate the satellite transponder capacity into the larger network. By restricting access to the legacy IGO/Intelsat fleet, IGC is forcing its technical solutions on end users that are precluded from working with other providers and integrators that have been denied access to satellite capacity. IGC earth station facilities and the terrestrial infrastructure behind those facilities may not provide the optimal configuration for many customers. In short, IGC may not always propose the most cost-effective solution or provide the best service for U.S. customers, including the U.S. government.

Eliminating competition also creates a strong disincentive for IGC to provide service at the lowest possible cost to the ultimate end users. In fact, to the extent that IGC is allowed to "cherry pick" end users and prohibit other service providers from working with them, it effectively exerts market power with regard to those end users. Even at the apex of its authority as a government-sanctioned monopoly provider of intercontinental fixed satellite services in the

1980s, IGO/Intelsat had to publish tariffs and was subject to careful price controls.¹⁵ Those safeguards are gone today, and if existing distributors are precluded from competing with IGC, there may be no constraints at all on what IGC decides to charge for routes over which it has exclusive control.

III. CONSOLIDATION HAS SWEEPED ASIDE ALTERNATIVE INTERNATIONAL FIXED SATELLITE OPERATORS, AND HIGH BARRIERS TO ENTRY PREVENT NEW ENTRANTS FROM MOUNTING A SERIOUS CHALLENGE TO INTELSAT

The international fixed satellite industry -- once known for its maverick executives who vigorously fought IGO/Intelsat's monopoly on intercontinental satellite communications -- has now largely consolidated into two super-fleets, operating most of the Atlantic Ocean Region ("AOR") and Pacific Ocean Region ("POR") geostationary satellites that support duplex communications between the conterminous United States and remote earth stations on continents outside our hemisphere. This consolidation has left Intelsat, which operates the significantly larger of the two remaining fleets, controlling the vast majority of the fixed intercontinental satellites. Today, alarmingly, Intelsat controls a greater concentration of AOR (15 out of 18) and POR (4 out of 6) orbital positions than it did prior to its privatization and divestiture of satellites that were intended to create a viable intercontinental competitor.¹⁶ In total Intelsat currently operates 52 satellites. Just prior to privatization IGO/Intelsat operated approximately 20 satellites.

¹⁵ See *Applications of Intelsat LLC for Authority 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*, 15 FCC Rcd 15460, ¶7 (2000) ("*Intelsat Licensing Order*"), *recon. denied*, 15 FCC Rcd 25234 (2000).

¹⁶ See *New Skies Satellites, N.V.; For Authorization to Access the U.S. Market*, Order and Authorization, 14 FCC Rcd 13003, ¶ 15 (Aug. 6, 1999) (noting that New Skies was intended to be an "effective competitor free from the constraints INTELSAT has experienced as an IGO in responding to competition, but not having the attributes that INTELSAT's competitors have contended give an IGO competitive advantages").

It would be difficult if not impossible for a new entrant to challenge Intelsat today. The favorable conditions for launching intercontinental satellites in the 1980s and 1990s – an uncluttered geostationary arc and a carefully monitored and regulated IGO/Intelsat – do not exist in 2010. Today, the geostationary arc is crowded with operational satellites and suitable positions for AOR and POR satellites are already occupied or reserved. Even if ample orbital positions were available to support a new fleet, which they are not, the regulatory safeguards that enabled new intercontinental satellite systems to flourish under IGO/Intelsat in the 1980s and 1990s have been eliminated. Without regulatory controls, Intelsat is positioned to prevent any future competitor from accessing and reselling its capacity during the construction of its own fleet, the strategy employed by several of IGO/Intelsat’s competitors in the 1980s and 1990s.

A. Consolidation In The Last Decade Eliminated More Than Half Of Intercontinental Satellite Operators And Strengthened Intelsat’s Dominant Market Position

During the late 1990s there were five unaffiliated satellite operators launching geostationary satellites designed to serve the U.S. from intercontinental AOR and POR orbital positions. Specifically, in addition to Intelsat, Columbia Communications Corporation (“Columbia”), New Skies Satellites N.V. (“New Skies”), Orion Network Systems, Inc. (“Orion”) and Pan American Satellite (“PanAmSat”) were developing and launching fleets of intercontinental satellites designed to serve as a transmission medium between the conterminous U.S. and remote points outside the Western Hemisphere. Through a series of transactions, these five fleets have largely been absorbed into the existing fleets of Intelsat and Société Européenne des Satellites (“SES”), a European operator that previously developed satellites principally for broadcast television applications. During this period of consolidation, Intelsat maintained its

legacy fleet of satellites and absorbed its principle competitor, PanAmSat.¹⁷ SES acquired the intercontinental fleets of both New Skies and Columbia Communications.¹⁸ Orion's intercontinental fleet, although still independent from Intelsat and SES today, has passed between several owners in the last decade, experienced significant financial hardship, and has not expanded beyond the three satellites planned in the mid-1990s.¹⁹

Consolidation has created an intercontinental satellite market that in 2010 is dominated by Intelsat, and is far less competitive than during the years immediately preceding IGO/Intelsat's privatization. For example, Intelsat maintains a near monopoly on intercontinental satellite communications between the U.S. and remote points in East Africa, the Mid-East and Central Asia, regions that are strategically critical to U.S. foreign interests, and which in most cases are not served by submarine cable facilities. Remote earth stations in these regions are generally only accessible from satellites in AOR orbital positions between 330 and 360 degrees East longitude.²⁰ For mission critical applications where C-band frequencies are

¹⁷ Intelsat also acquired the domestic satellite fleet of Loral. *See Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (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 2404 (Feb. 11, 2004).

¹⁸ Columbia's fleet was initially acquired by GE Americom, a U.S. domestic satellite operator. SES later acquired the legacy Columbia fleet as part of its acquisition of GE Americom in 2001. *See GE American Communications, Inc., CCC Merger Sub, Inc., and Columbia Communications Corp. (Application for Consent to Transfer of Space Station Licenses of Columbia Communications Corporation) GE American Communications, Inc., CCC Merger Sub, Inc., and Columbia Communications Corp. (Application for Consent to Transfer of Earth Station License of Columbia Communications Corporation)*, Order and Authorization, 15 FCC RCD 11590, 11591-11592, 11595 (June 27, 2000); *In re Application of General Electric Capital Corporation, Transferors, and SES Global, S.A., Transferee for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214(a) and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, 16 FCC Rcd 17575, 17576, 17600-17601 (Oct. 2, 2001).

¹⁹ Orion does not serve the conterminous U.S. from a POR satellite, and has not been able to coordinate and launch an AOR satellite with a C-band transponder payload.

²⁰ Orbital positions between 300 and 359 degrees east longitude are generally recognized within the satellite industry as AOR. The 359 degree east longitude position currently occupied by Intelsat is the furthest eastern position accessible from earth station facilities positioned in North America. Satellites positioned west of 330 degrees east longitude are inaccessible from ground station facilities in the Mid-East and Central Asia. *See*

necessary to avoid outages resulting from atmospheric anomalies that disrupt transmissions in other bands, Intelsat operates six of the seven operational C-band equipped intercontinental satellites positioned between 330 and 360 degrees East longitude. SES operates a lone C-band equipped satellite from 338.5 degrees East longitude.²¹ No other operator approved by the FCC to serve the U.S. market has a C-band equipped satellite in this critical segment of the geostationary arc. The POR is not as robust as the AOR given its more narrow useable arc. As a result, Intelsat occupies four of the approximately six available C-band slots.

The practical effect of Intelsat's dominant position in the intercontinental satellite market is that in 2010 telecommunication service providers have the same intercontinental satellite options they had 20 years ago, a large fleet of Intelsat spacecraft with a handful of alternatives for a minority of routes, but without the regulatory safeguards in place to prevent unlawful conduct or the exertion of market power.

B. No New Entrants Have Emerged In The Last Decade And Regulatory Complexities Coupled With Limited Orbital Positions Will Continue To Limit Intercontinental Fixed Satellite Services Competition

No alternative intercontinental fleet of geostationary satellites has launched in the last ten years, and it is unlikely that a new system will become operational in the next ten. The three independent intercontinental satellite systems that were launched in the late 1980s and 1990s were conceived at a time when fewer orbital positions were reserved. Today, regional satellite systems designed to provide video or data service to a narrower footprint occupy the majority of

Exhibit 1.0, providing an overview of available AOR C-band capacity prior to privatization; *see also* **Exhibit 2.0**, providing an overview of available AOR C-band capacity in Q1 2010.

²¹ The POR arc capable of simultaneously accessing the principal North American and Asian land masses only extends approximately from 160 to 190 degrees east longitude due to the significant between land masses in the Pacific Ocean. *See* **Exhibit 1.0**, providing an overview of available AOR C-band capacity prior to privatization; *see also* **Exhibit 2.0**, providing an overview of available AOR C-band capacity in Q1 2010.

vacant orbital positions capable of supporting intercontinental satellites.²² Given that the operators of these satellites have a right to renew and continue to use their orbital positions as long as they populate them with operational satellites, it is unlikely that a significant number of suitable intercontinental orbital positions will become available in the future for use by a new, independent satellite operator.

Even if an existing satellite abandoned its AOR or POR orbital position, it would take a fully funded new entrant a minimum of three to four years to design, construct and launch a satellite.²³ Given that spectral rights are fragmented in many orbital positions (*i.e.*, separate notifying administrations have rights to use the C-, Ku- and/or Ka-band frequencies), it is also unlikely that all fixed satellite frequencies would be accessible from an abandoned orbital position, and launching a hybrid satellite equipped with a multi-band transponder payload may be difficult, if not, impossible.

C. Columbia, New Skies, PanAmSat And Orion Had Access to IGO/Intelsat Capacity That Would Not Be Available Today From Intelsat

It would not have been possible for the intercontinental satellites fleets that launched in the 1980s and 1990s to succeed without the right to nondiscriminatory access to IGO/Intelsat space segment. By law, IGO/Intelsat could not withhold services from its competitors. This enabled all of the above-referenced intercontinental satellite fleets to purchase and resell IGO/Intelsat capacity in anticipation of launching their own satellites.²⁴ After their own spacecraft were operational, they then transitioned their established customers to their new

²² For example, the AOR arc between 350 and 360 degrees east longitude is cluttered with Eutelsat, Nilesat, Amos and Thor regional satellites.

²³ That aggressive timeline also assumes that no other entity has secondary or tertiary rights to the abandoned orbital position. To the extent that there is another operator in the queue ahead of the new entrant, that party would need to surrender its reservation or fail to populate the position within the seven year window permitted by the ITU to “bring to use” a new satellite before a competitor could assert priority.

²⁴ For example, Orion Network Systems resold Ku-band transponder capacity on the Intelsat 603 positioned at 335.5 degrees East longitude both before and after the launch of the Orion 1.

satellite, although several continued to resell transponder capacity on IGO/Intelsat satellites for years after the launch of their own facilities. Intelsat's requirement to resell capacity was a critical factor in the growth of a robust, competitive market for international satellite services.

Intelsat is now positioned to withhold space segment and resources from any service provider that expresses an interest in launching an intercontinental satellite in the future. Therefore, any new entrant would need to be massively funded to endure huge losses during its initial years of operation as the business would have no customers or revenue from satellite operations until its own spacecraft came on line.

IV. PRIVATIZATION AND CONSOLIDATION HAVE MADE INTELSAT LESS TRANSPARENT

Not only has consolidation harmed the competitive landscape for intercontinental fixed satellite services, but Intelsat's privatization has eliminated the transparency that once existed in the wholesale market. This opacity has allowed Intelsat to avoid scrutiny by regulators and customers and has, coupled with the high degree of market concentration, resulted in fewer actual competitive alternatives to end-users seeking intercontinental fixed satellite communications services.

Prior to privatization, IGO/Intelsat was required to publish its tariffed rates for every space segment to the general public. IGO/Intelsat also provided transponder guides and contour maps for the satellites to assist consumers with their decision making process and resellers with the ability to construct service offerings at rates.

Capacity was sold on bit rate basis either at a pure data rate or at a business services rate. Capacity could also be leased as raw transponder space segment. IGO/Intelsat provided space segment capacity to users of its global satellite system at charges determined by the INTELSAT

Board of Governors and reflected in the INTELSAT Tariff Manual.²⁵ After privatization, Intelsat removed its publicly accessible information and now negotiates pricing only on an individual basis. This is a problem because IGC, acting as both wholesaler and competitor, is privy to proposed new contract information and proprietary terms of competitors' proposals, while being positioned to easily dictate pricing to competitors that favors Intelsat's operations.

V. INTELSAT REMAINS OBLIGATED TO PROVIDE NON-DISCRIMINATORY ACCESS AND THE COMMISSION SHOULD IMPLEMENT MECHANISMS TO ENSURE COMPETITION

Intelsat remains obligated to provide access to its global satellite communications system on a non-discriminatory basis. When it was created, Intelsat was required to provide, on a commercial basis, international public telecommunications services in a manner that (1) maintained global connectivity and global coverage, (2) serviced its lifeline connectivity customers, and (3) provided non-discriminatory access to its systems. These requirements are referred to as Intelsat's "Core Principles."²⁶

When the movement toward the privatization of Intelsat began, the parties to the INTELSAT agreement expressed an intent to require that a new private Intelsat adhere to the Core Principles that had governed its prior operations. As a result, the International Telecommunications Satellite Organization ("ITSO") was created and charged with ensuring, through a Public Service Agreement ("PSA") with the new Intelsat, that Intelsat adhere to those Core Principles. Therefore, as before, Intelsat remains obligated to meet its non-discriminatory requirements by providing a means for the fair and equal access to its system.²⁷

²⁵ See *Intelsat Licensing Order* ¶ 7.

²⁶ See, e.g., Agreement Relating to the International Telecommunications Satellite Organization, Art. III(b) (Nov. 17, 2000) ("*ITSO Agreement*").

²⁷ Subsequent to Intelsat's privatization, ITSO requested the imposition of three conditions on the Intelsat licenses for the orbital locations and frequencies transferred to Intelsat upon privatization. The Commission

The Commission also has reporting obligations and oversight authority of Intelsat services and operations pursuant to the Orbit Act. For example, the Commission is authorized to review and license Intelsat's ability to provide non-core services (*i.e.*, services other than public-switched network voice telephony and occasional-use television).²⁸ Such non-core Intelsat services make up the bulk of what IGC provides in competition with ARTEL. When evaluating Intelsat's use of a space segment to provide non-core services, the Commission must consider whether "competitive alternatives in individual markets do not exist because they have been foreclosed due to anticompetitive actions undertaken by or resulting from the Intelsat system."²⁹ With respect to its reporting obligations under the ORBIT Act, the Commission is required to submit an annual report to several Congressional committees that, among other things, includes the views of industry and consumers on the privatization of Intelsat and the impact that privatization has had on U.S. industry, jobs and industry's access to the global markets. As an FCC licensee, Intelsat is also subject to the Commission's jurisdiction under Title III of the Communications Act, as amended.³⁰

ARTEL contends that based on the market distortions and anticompetitive practices identified above, in addition to reporting these issues in its submission to Congress, the Commission should undertake a thorough examination of Intelsat's position as a dominant provider with market power, particularly on critical intercontinental routes, and actual and

initially denied ITSO's request in the context of the PanAmSat/Intelsat license transfer proceeding but recommended that ITSO make a subsequent request to modify those licenses consistent with ITSO's concerns. In that later proceeding, pursuant to its authority under section 316(a) of the Act, the Commission modified the Intelsat licenses by requiring two conditions: that Intelsat remain a signatory to the PSA and that any successor-in-interest to Intelsat agree to perform the obligations of the PSA. These conditions, including the non-discriminatory obligation, ensured Intelsat's compliance with its ITSO agreement obligations. Accordingly, Intelsat remains obligated to provide fair and equal access to its global communications satellite systems.

²⁸ 47 U.S.C. § 761.

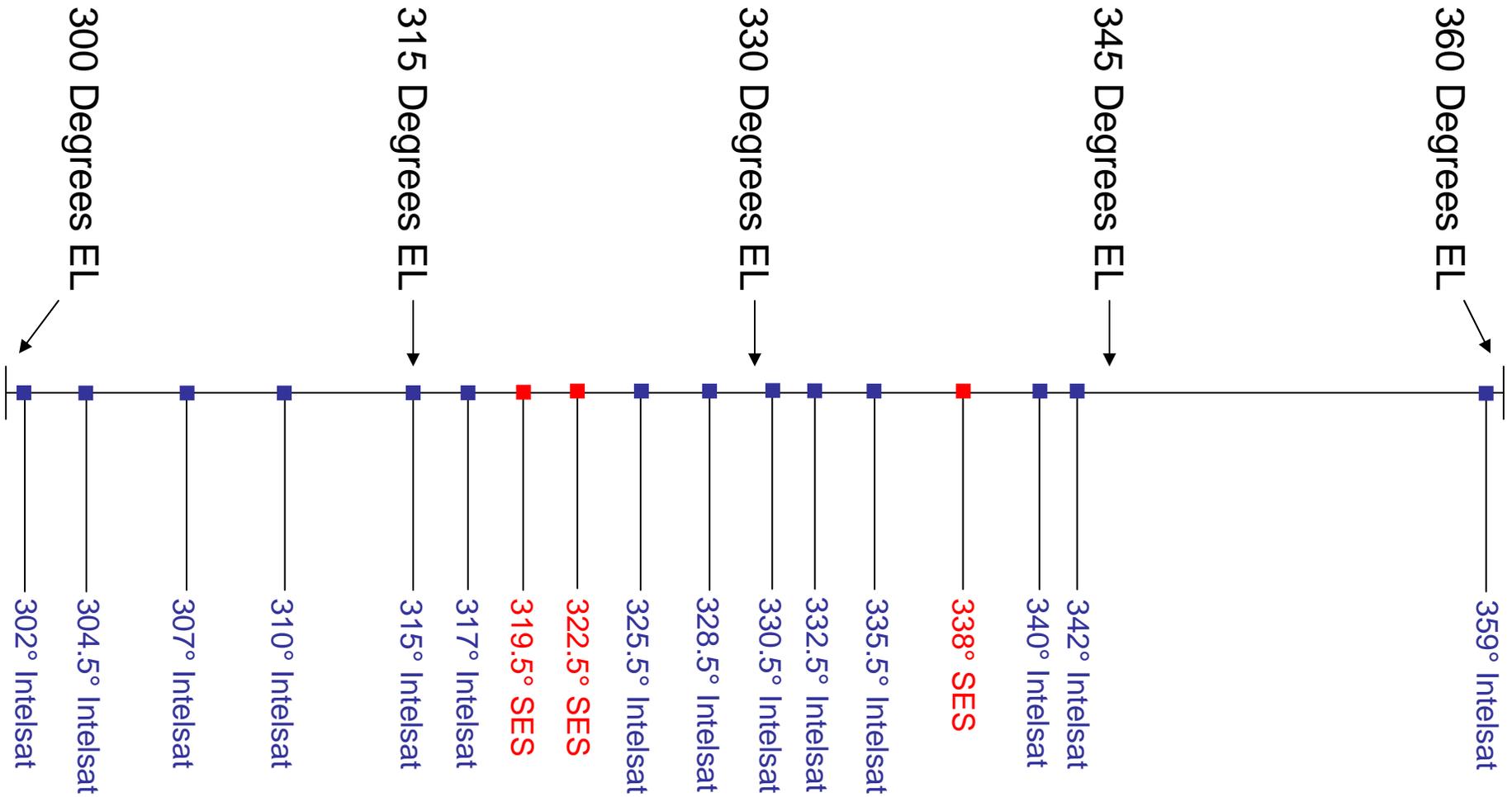
²⁹ 47 U.S.C. § 761(b)(3).

³⁰ The Commission may also exercise ancillary authority under Title I of the Act if its actions are reasonably ancillary to effective performance of the Commission's statutorily mandated responsibilities.

potential anticompetitive actions under the requirements of both the Communications Act and the Orbit Act. The solicitation of comments in the instant proceeding does not allow for a full exposition of the issues that now appear to plague the international fixed satellite services market. Accordingly, based on the Commission's ample authority over the international fixed satellite service market in the United States and Intelsat, the Commission should undertake a comprehensive inquiry into the current structure of the international fixed satellite industry, including an examination of the market dominance of Intelsat and its practices on critical routes, Intelsat's compliance, or lack thereof, with its obligation to provide nondiscriminatory access, and what mechanisms should be put in a place that provide meaningful enforcement of these obligations. In exploring the impact of Intelsat behavior on competition in the market, the Commission should examine whether, and to what extent, regulatory controls should be established and enforcement actions should be taken to address any anticompetitive behavior of the dominant provider that may have occurred or would be likely to occur under the skewed market conditions described above. The Commission's inquiry should investigate any practices that could be deemed to be anticompetitive activities, including collusive behavior, wholesaler intimidation, price fixing, retaliatory actions and any other behavior that Intelsat may have engaged in or is positioned to engage in that undermines competition, or is designed to prevent competitors, distributors or wholesalers from accessing fixed satellite capacity. As part of that inquiry, the Commission should consider the need for greater transparency in the terms and conditions upon which U.S. providers are able to gain access to Intelsat international satellite capacity and in particular explore the benefits of requiring the publication of the rates, terms and conditions under which Intelsat makes its services available to its affiliates or subsidiaries. ARTEL further suggests that the potential to mandate the creation of a separate wholesale

EXHIBIT 1.0

*Based on ITU Satellite Network System Data

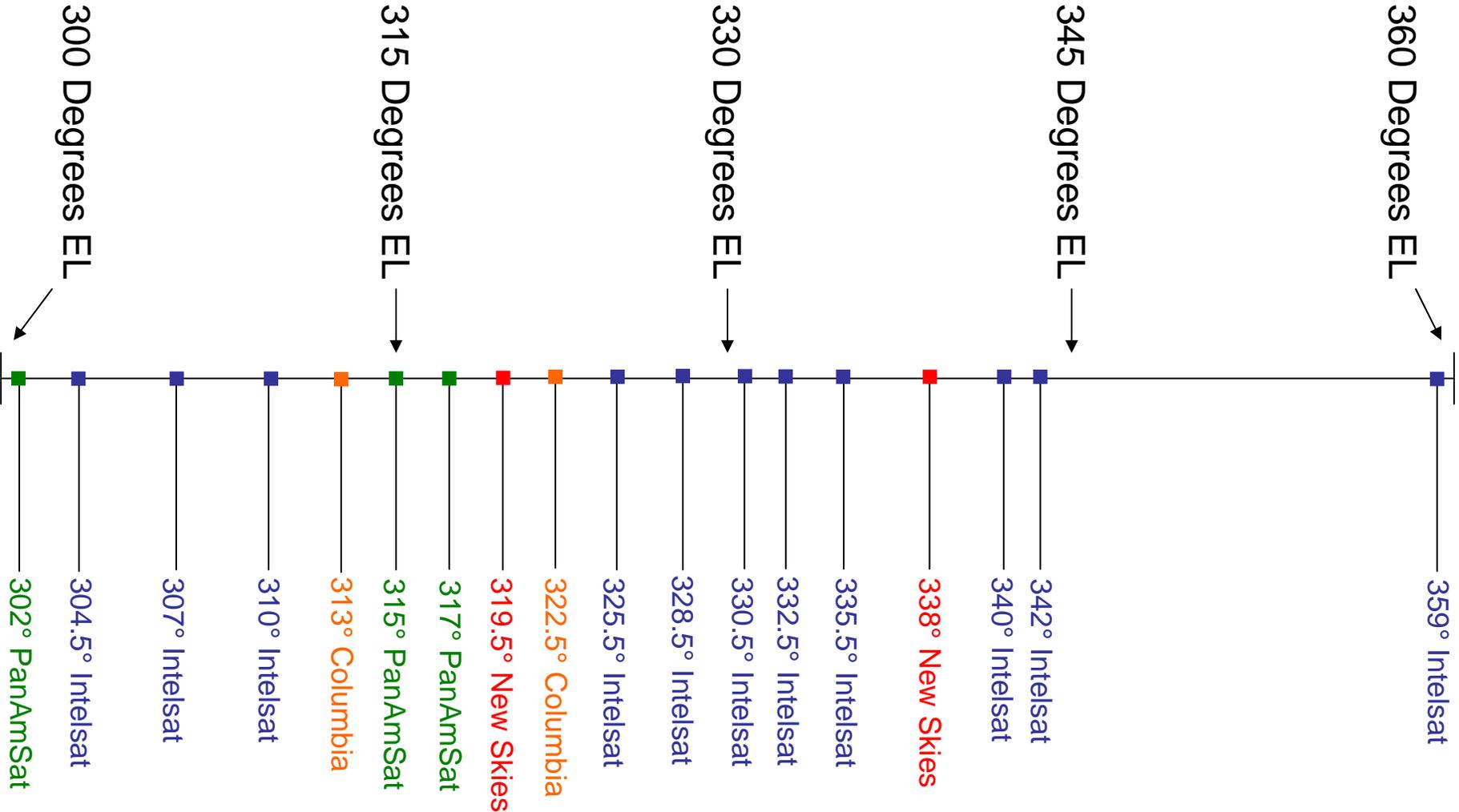


**Atlantic Ocean Region C-Band Satellites
Approved for U.S. Access 2010**

Intelsat Controls Most AOR Orbital Slots

EXHIBIT 2.0

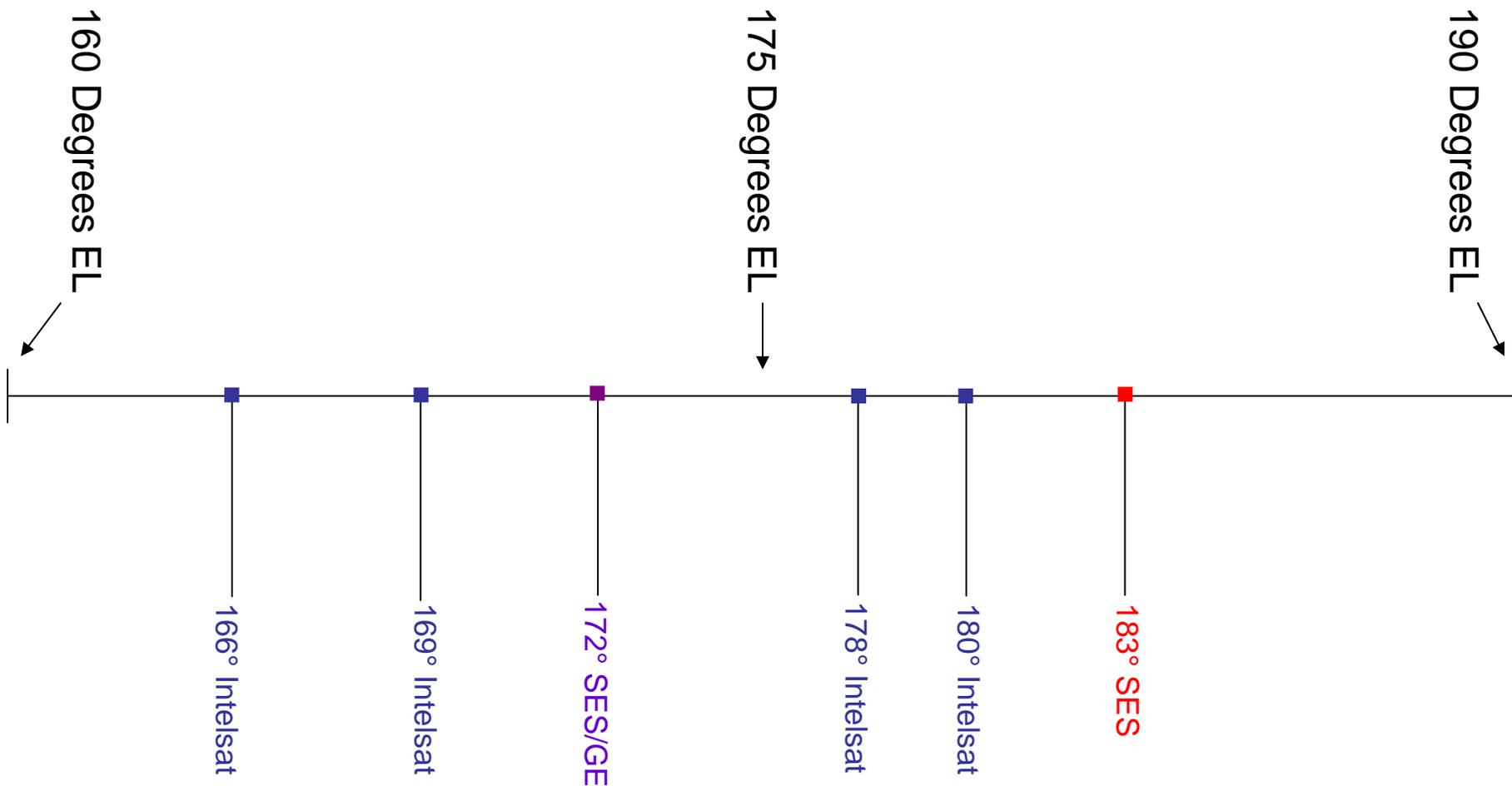
*Based on ITU Satellite Network System Data



**Atlantic Ocean Region C-Band Satellites
Pre-Consolidation (Late 1990s)**

EXHIBIT 3.0

*Based on ITU Satellite Network System Data

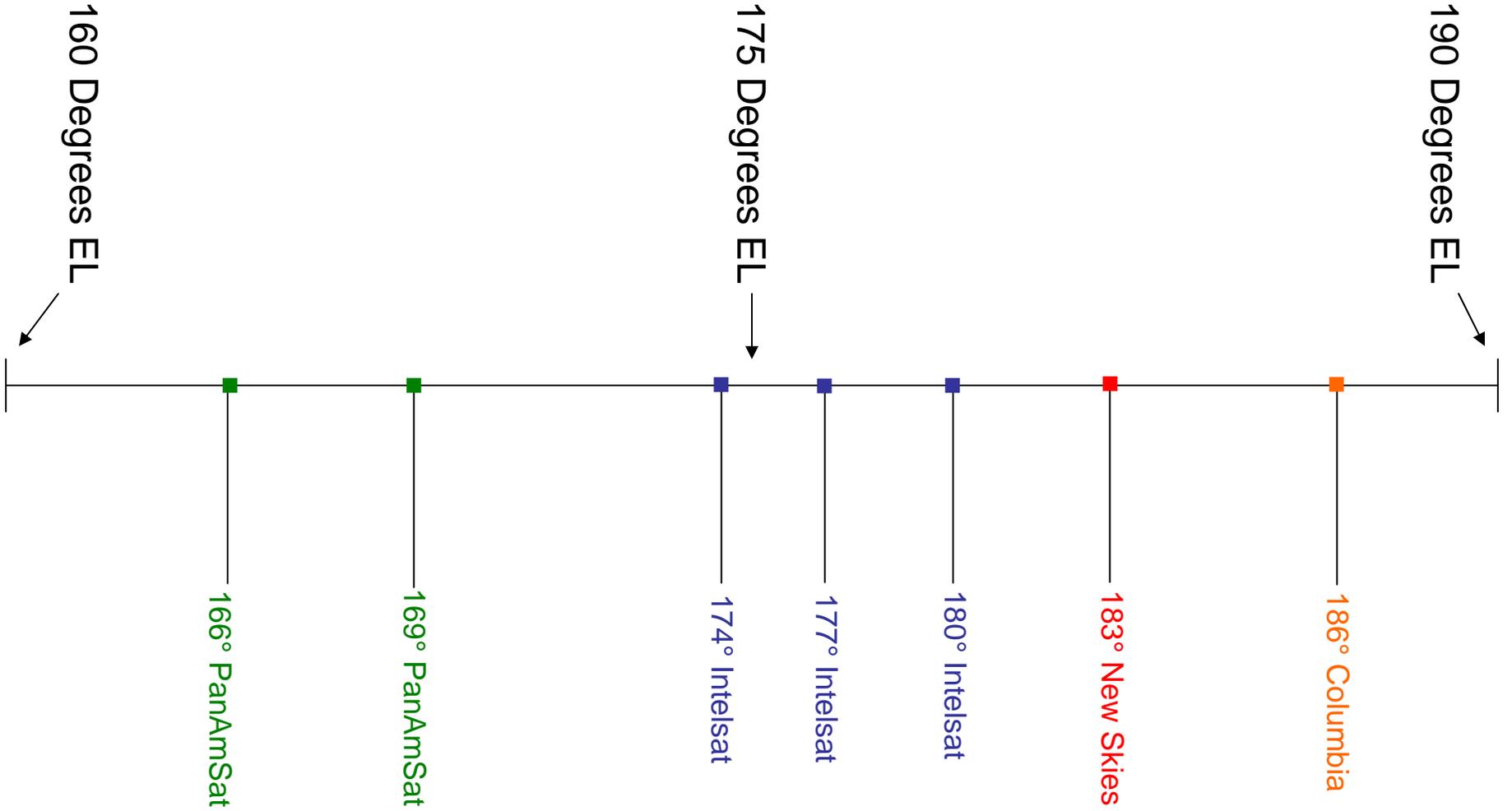


**Pacific Ocean Region C-Band Satellites
Approved for U.S. Access 2010**

Intelsat Controls Most POR Orbital Slots

EXHIBIT 4.0

*Based on ITU Satellite Network System Data



**Pacific Ocean Region C-Band Satellites
Pre-Consolidation (Late 1990s)**