

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

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

**REPLY COMMENTS OF INTELSAT**

Intelsat LLC and its affiliated entities (collectively “Intelsat”) hereby respond to comments filed in the above referenced proceeding.<sup>1</sup> The Federal Communications Commission (“Commission” or “FCC”) has sought comments in order to compile its eleventh report to Congress pursuant to Section 646 of the Open-Market Reorganization for the Betterment of International Telecommunications Act (“ORBIT Act”).<sup>2</sup>

The limited purpose of this proceeding is to assist the Commission in reporting to Congress on whether Intelsat and Inmarsat plc (“Inmarsat”) have been fully privatized and now compete on a level playing field with all other satellite providers in accordance with the goals of the ORBIT Act. Any review of Intelsat’s ownership and operations clearly shows that the privatization goals of the ORBIT Act have been fulfilled. Intelsat—privatized nearly nine years ago, in mid-2001—no longer claims the privileges and immunities of an intergovernmental organization (“IGO”), is not owned or controlled (directly or indirectly) by any government or

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<sup>1</sup> *Int’l Bureau Information: Report to Congress Regarding the ORBIT Act*, Report No. SPB-234, DA 10-448 (Mar. 17, 2010) (Public Notice).

<sup>2</sup> Open-Market Reorganization for the Betterment of Int’l Telecomms. Act, 47 U.S.C. § 646, Pub. L. 106-180, 114 Stat. 48 (2000), *as amended*, Pub. L. No. 107-233, 116 Stat. 1480 (2002), *as amended*, Pub. L. No. 108-228, 118 Stat. 644 (2004), *as amended*, Pub. L. No. 108-371, 118 Stat. 1752 (2004), *as amended*, Pub. L. No. 109-34, 119 Stat. 377 (2005).

former signatory, and is regulated by the Commission on the same basis as other providers of fixed satellite services. No commenter provides any suggestion to the contrary.

Instead, the comments filed by CapRock, ARTEL, Globecomm, and Spacenet<sup>3</sup> inappropriately seek to use the instant proceeding as a forum to hobble Intelsat as a privatized competitor and to restore the regulation in U.S. markets to which Intelsat was subject as an IGO. CapRock, ARTEL, and Globecomm—all competitors to Intelsat’s subsidiary, Intelsat General Corporation (“IGC”)—were unsuccessful bidders on a large U.S. government contract, and they now seek to involve the Commission in a pending proceeding before the Government Accountability Office (“GAO”) contesting the award to IGC. Spacenet apparently believes that further regulating Intelsat would enhance Spacenet’s position as a customer. Even apart from the absence of merit in their positions, the commenters’ views are clearly extraneous to this proceeding and should not be injected into the Commission’s report under the ORBIT Act.

**I. COMMENTS FILED BY THE PARTIES IN THIS PROCEEDING FAIL TO ADDRESS THE LIMITED PURPOSE OF THE ORBIT ACT.**

The ORBIT Act was enacted based on a determination that the operation of Intelsat and Inmarsat as IGOs distorted the satellite marketplace.<sup>4</sup> Consequently, the stated 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 *by fully*

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<sup>3</sup> See Comments of CapRock Communications, Inc. (“CapRock”); Comments of ARTEL, Inc. (“ARTEL”); Comments of Globecomm Systems Inc. (“Globecomm”); Comments of Spacenet Inc. (“Spacenet”), all comments from IB Docket No. 10-70 (filed Apr. 7, 2010).

<sup>4</sup> See 145 Cong. Rec. S1276 (daily ed. Feb. 4, 1999) (statement of Sen. Burns) (“while the success of INTELSAT has spurred multiple private commercial companies to penetrate the global satellite market, these private companies have expressed serious concern about the existence of INTELSAT, in its present form, and the unlevel playing field upon which they must compete with INTELSAT.”).

*privatizing...INTELSAT and Inmarsat.*”<sup>5</sup> Sections 621 and 622 of the ORBIT Act establish the sole criteria for ensuring the pro-competitive privatization of Intelsat.<sup>6</sup> These criteria require Intelsat to operate as an independent commercial entity and to have a pro-competitive ownership structure.<sup>7</sup> Moreover, the ORBIT Act terminates the privileges and immunities which had provided Intelsat with preferential treatment as an IGO.<sup>8</sup>

The limited purpose of the instant proceeding is to provide a report to Congress to confirm that Intelsat now operates in the satellite marketplace as a fully privatized company. No party in this proceeding alleges that Intelsat has not been fully privatized. Similarly, none allege that any of the commercial disputes of which they complain are based on Intelsat’s former status as an IGO, or that they are at all connected to the privatization of Intelsat. As such, these comments are inappropriately filed in the instant proceeding and should be dismissed.

## **II. SUGGESTIONS THAT INTELSAT SHOULD BE RE-REGULATED ACCORDING TO HISTORIC INTERGOVERNMENTAL ORGANIZATION REQUIREMENTS UNDERMINE THE PURPOSE OF THE ORBIT ACT.**

Rather than addressing how the competitive satellite marketplace has been affected by Intelsat’s privatization, the commenters in fact propose that the Commission undermine the purpose of the ORBIT Act by taking actions that would require Intelsat to operate under conditions suitable only for an IGO. For example, the prior Intelsat IGO was not permitted to provide satellite services directly to end users.<sup>9</sup> Instead, all Intelsat space segment was offered to

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<sup>5</sup> ORBIT Act, Pub. L. No. 106-180, 114 Stat 48, § 2 (2000) (emphasis added).

<sup>6</sup> *Id.* at §§ 621 and 622.

<sup>7</sup> *Id.* at § 621(2).

<sup>8</sup> *Id.* at § 621(3).

<sup>9</sup> *See* Article V(e) of the Agreement Relating to the International Telecommunications Satellite Organization, “INTELSAT”, 23 U.S.T. 3813; TIAS No. 7532 (Feb. 12, 1973) (“INTELSAT Agreement”).

U.S. customers through Comsat. Privatization was intended to end this separation of Intelsat from end users, and to permit Intelsat to compete in the same manner as all other satellite providers.<sup>10</sup> Today, as a result of Congressional and FCC action, private entities such as ARTEL, CapRock, Globecom, and Spacenet, as well as the Department of Defense and other government end users, have “direct access” to Intelsat.<sup>11</sup> The regulations and restrictions suggested by some commenters seek to undermine this key objective of privatization by precluding Intelsat from fairly competing for end user business, and from making pricing proposals responsive to private and government user needs and based on Intelsat’s own business judgment.

In addition, as an IGO, Intelsat was required to price uniformly throughout the world. Several commenters suggest that, because of its historic status, Intelsat should again be required to provide satellite capacity at uniform terms and prices.<sup>12</sup> In reality, these parties seek to have Intelsat regulated as a public utility, rather than as an efficient and effective competitor for end users. The FCC already regulates Intelsat’s service as common carriage on a limited number of routes not yet shown to have competitive alternatives (known as “thin routes”).<sup>13</sup> On these thin

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<sup>10</sup> See S. Rep. No. 106-100, at 1 (Purpose of the Bill) (1999) (“in this mature, competitive satellite services environment, it is no longer appropriate for any single competitor to be advantaged by an intergovernmental structure accompanied by certain privileges and immunities; rather it must be transformed into a commercial structure comparable to that of any of the existing commercial satellite entities.”). There is no equivalent to Article V(e) of the INTELSAT Agreement in the ITSO Agreement (Agreement Relating to the International Telecommunications Satellite Organization) or the Public Services Agreement.

<sup>11</sup> ORBIT Act, Sec. 641; *Direct Access to the INTELSAT System*, Report and Order, 14 FCC Rcd 15,703, 15,704 (¶ 1) (1999) (defining direct access as “the means by which users of the INTELSAT satellite system may obtain space segment capacity directly from [pre-privatized] INTELSAT rather than having to go through [Comsat].”).

<sup>12</sup> See Comments of ARTEL at 14-17.

<sup>13</sup> See Comments of CapRock at 5-7.

routes, Intelsat still offers certain services pursuant to tariff.<sup>14</sup> On all other routes, Intelsat, just like any other satellite services provider, has the option of operating as a common carrier or non-common carrier.<sup>15</sup> Forcing Intelsat to operate as a common carrier, or forcing Intelsat to provide services at uniform prices on all routes, would greatly harm Intelsat's ability to compete with other satellite providers. Nothing in the ORBIT Act could justify this anti-competitive result, particularly since intermediaries like the commenters here have access to a number of space segment providers.

Commenters also incorrectly assert that the Public Services Agreement<sup>16</sup> between the International Telecommunications Satellite Organization ("ITSO") and Intelsat requires the Commission to regulate Intelsat's pricing.<sup>17</sup> The PSA is a private contract, uniquely enforceable by ITSO under arbitration procedures.<sup>18</sup> The Commission has repeatedly stated that it does not intervene in private contractual matters,<sup>19</sup> and in any event ITSO is not a party here. The "core

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<sup>14</sup> *COMSAT Corp., Policies and Rules for Alternative Incentive Based Regulation of Comsat Corp.*, 14 FCC Rcd 3065, 3081-82 (¶¶ 43-45) (1999) (finding that INTELSAT was required to offer three services on common carrier basis: switched-voice, private line and occasional-use video).

<sup>15</sup> *Amendment to the Commc'ns Regulatory Policies Governing Domestic Fixed Satellites and Separate Int'l Satellite Sys.*, Report and Order, 11 FCC Rcd 2429 (1996) ("DISCO I").

<sup>16</sup> INTELSAT Assembly of Parties, Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting, 13-17 Nov. 2000, AP-25-3E FINAL W/11/00 ("PSA").

<sup>17</sup> Comments of ARTEL at 14-17.

<sup>18</sup> See PSA, Article 6.03 ("Any dispute, controversy or claim between the parties to this PSA arising out of or relating to this PSA that is not resolved through negotiation as provided for in 6.02. shall be settled by arbitration in the city where ITSO's headquarters is located.").

<sup>19</sup> See *Loral Corp. Request For a Declaratory Ruling Concerning Section 310(b)(4) of the Commc'ns Act of 1934 and R/L DBS Company For Assignment of Continental Satellite Corp.'s Direct Broad. Satellite Construction Permit*, Memorandum Opinion and Order, 12 FCC Rcd 24325, ¶ 13 (1997) (noting that the Commission has "consistently declined to involve ourselves with commercial disputes"); *Sonderling Broadcasting Co.*, 46 RR 2d 889, 894 (1979) ("[t]he Commission has consistently taken the position that it is not the proper forum for the resolution of private contractual disputes and that such matters are appropriately left to the courts or other

principle” of non-discriminatory access incorporated into that agreement, moreover, is a safeguard against governments foreclosing Intelsat from serving certain national markets and thus impairing global connectivity and coverage.<sup>20</sup> Simply put, the non-discriminatory access provision in the Public Services Agreement is unrelated to Intelsat’s prices, does not apply to commercial customers such as ARTEL, and provides no basis for additional Commission regulation.

### **III. INTELSAT’S PRIVATIZATION CONTINUES TO HAVE A POSITIVE IMPACT ON THE GLOBAL MARKETPLACE FOR COMMUNICATIONS SERVICES.**

To advance their complaints about commercial dealings with Intelsat, the commenters allege that the satellite industry is insufficiently competitive.<sup>21</sup> In addition to being improperly filed in the instant proceeding,<sup>22</sup> these comments distort the current state of the satellite industry. In fact, the satellite industry is increasingly competitive. SES, Telesat, Eutelsat and Intelsat all compete with integrated systems of multiple satellites. Moreover, several new regional satellite service providers, including Hispasat (Brazil), Ciel (Canada), and Quetzsat (Mexico) have

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forums which have the jurisdiction to resolve them.”). The United States Supreme Court has determined that “the Communications Act [does not] give authority to the Commission to determine the validity of contracts between licensees and others.” *Regents of Univ. System of Georgia v. Carroll*, 338 U.S. 586, 602 (1950).

<sup>20</sup> See PSA, Article 2.02(iv) (“Non-discriminatory access: means fair and equal opportunity to access the Intelsat system”; see also PSA, Article 2.03 (“In performing its Public Service Obligations, Intelsat shall be subject to applicable national law. In the event Intelsat reasonably believes the application of national law, or proposed changes to national law, will prevent Intelsat from complying with the Public Service Obligations, Intelsat shall, on a commercial basis, use its best efforts to mitigate the adverse consequences of such law to the extent permitted under law.”).

<sup>21</sup> See Comments of ARTEL at 8-13; Comments of Globecomm at 3-4; Comments of Spacenet at 3-4.

<sup>22</sup> As discussed herein, the Commission annually seeks comment in order to prepare a report on the status of competition in the satellite industry. All issues regarding alleged competitive issues in the satellite industry should be addressed in that proceeding.

entered the already competitive satellite communications services industry. Columbia, Venezuela and Bolivia are also planning or have launched new systems. In August 2008, SES Gibraltar launched an additional Ku-band satellite, AMC-21, to the 125° W.L. orbital location.<sup>23</sup> In 2009, SES also began commercial service on two new satellites, NSS-9<sup>24</sup> and NSS-12,<sup>25</sup> and continues to expand its fleet with the addition of satellites to occupy new orbital slots.<sup>26</sup> Finally, OverHorizon is launching a high-throughput Ku-band satellite that will provide broadband communications services.<sup>27</sup>

The Commission annually prepares a report on the status of competition in the satellite industry. Although issues regarding competition in the satellite market should be addressed in that docket, rather than in the instant limited proceeding, Intelsat notes that in the most recent report, the FCC found “that markets for commercial communications satellite services are

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<sup>23</sup> “SES’ AMC-21 Satellite Successfully Launched from Kourou Spaceport,” Aug. 15, 2008 (Press Release), *available at* <http://www.ses.com/ses/siteSections/newsroom/archive/2008/index.php?pressRelease=/pressReleases/archive-by-year/2008/08-08-15/index.php> (last visited Apr. 20, 2010).

<sup>24</sup> “NSS-9 Satellite Of SES AMERICOM-NEW SKIES Goes Live,” Mar. 31, 2009 (Press Release), *available at* <http://www.ses.com/ses/siteSections/newsroom/archive/2009/index.php?pressRelease=/pressReleases/archive-by-year/2009/09-03-31/index.php> (last visited Apr. 20, 2010).

<sup>25</sup> “NSS-12 Satellite of SES World Skies Goes Live,” Jan. 18, 2010 (Press Release) (reporting commercial service by NSS-12 satellite at 57° E.L.), *available at* [http://www.ses.com/ses/siteSections/newsroom/Latest\\_News/index.php?pressRelease=/pressReleases/pressReleaseList/10-01-18/index.php](http://www.ses.com/ses/siteSections/newsroom/Latest_News/index.php?pressRelease=/pressReleases/pressReleaseList/10-01-18/index.php) (last visited Apr. 20, 2010).

<sup>26</sup> *See, e.g.*, “SES WORLD SKIES Cooperates With Andean Community To Develop Orbital Slot At 67 Degrees West,” Feb. 8, 2010 (Press Release), *available at* [http://www.ses-worldskies.com/worldskies/news\\_and\\_events/press\\_releases/index.php?pressRelease=/pressReleases/pressReleaseList/10-02-08-1/index.php](http://www.ses-worldskies.com/worldskies/news_and_events/press_releases/index.php?pressRelease=/pressReleases/pressReleaseList/10-02-08-1/index.php) (last visited Apr. 20, 2010).

<sup>27</sup> “Orbital and Thales Alenia Space Receive Contract for OverHorizon Commercial Commc’ns Satellite,” Dec. 23, 2009 (Press Release), *available at* <http://www.orbital.com/NewsInfo/release.asp?prid=716> (last visited Apr. 20, 2010).

subject to effective competition” and that “consumers of communications satellite services continue to realize significant benefits in terms of service choice, innovations fostered by technological change and improvements in both space and ground segment, and improvements in service quality.”<sup>28</sup>

Moreover, although the commenters suggest that the satellite industry is not fully competitive, they tellingly do not seek to regulate any other providers. Rather, they attack only Intelsat to advance their particular private agendas. None of the complaints provided relates to Intelsat’s privatization from its previous status as an IGO. Indeed, even Spacenet concurs that “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 satellite services has increased competition in the U.S. market and encouraged the development of service offerings for U.S. customers.”<sup>29</sup>

#### **IV. COMMENTERS INAPPROPRIATELY SEEK TO USE THIS LIMITED PROCEEDING AS A MEANS OF INJECTING THE FCC IN COMMERCIAL DISPUTES.**

ARTEL, CapRock, and Globecom all compete with Intelsat and its subsidiaries. Spacenet is a customer of Intelsat’s services. The disappointed competitors seek to pursue lost procurement bids, while the customer believes the Commission should regulate the business relationship between satellite operators and their customers. The limited purpose of the instant proceeding makes it the wrong forum to address either government contracting issues or the

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<sup>28</sup> *Second Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and Int’l Satellite Commc’ns Servs*, Second Report, 23 FCC Rcd 15,170, 15,171 (¶ 3) (2008).

<sup>29</sup> Comments of Spacenet at 2, citing *FCC Report to Congress as Required by the ORBIT Act*, Tenth Report, 24 FCC Rcd 8686, 8706-07 (2009).

commercial practices of the satellite industry. Moreover, it is equally inappropriate to attempt to inject the FCC into ongoing commercial disputes.<sup>30</sup>

In particular, ARTEL, CapRock, and Globecom seek to inject the FCC in a dispute regarding a U.S. government contract recently awarded to Intelsat's subsidiary, IGC. In January 2010, IGC was awarded a contract for the Space and Naval Warfare Systems Command's Commercial Broadband Satellite Program ("CBSP").<sup>31</sup> Under this contract, IGC will provide C-, Ku- and X-band satellite capacity, terrestrial backhaul and network management services as the prime contractor for the Navy's CBSP. CapRock, ARTEL, and Globecom also placed bids for this contract in a full and open competition, and now seek to use this FCC forum to address their loss.<sup>32</sup> Intelsat recognizes the right of these companies to file bid protests under the U.S. Government's contracting procedures, and indeed CapRock and ARTEL have filed bid protests with regard to the CBSP contract. That proceeding is currently pending before the GAO, and the commenters' attempt to involve the Commission in that dispute is clearly inappropriate.

Similarly, Spacenet seeks to use the instant proceeding to improve its commercial standing in the competitive satellite marketplace. Spacenet is a data network operator that purchases satellite capacity from satellite providers, including (but not limited to) Intelsat. Procurement of such capacity at lower rates is clearly in Spacenet's best commercial interests.

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<sup>30</sup> See *supra* note 19.

<sup>31</sup> Department of Defense, Contracts, Defense Information Systems Agency, Jan. 26, 2010, *available at* <http://www.defense.gov/contracts/contract.aspx?contractid=4208>.

<sup>32</sup> Globecom bemoans the fact that it must negotiate prices with Intelsat and thus cannot be assured that its competitors have not negotiated a lower price. Globecom Comments at 3-4. However, this was precisely the intended result of privatization and what occurs naturally in any competitive industry.

However, use of the instant proceeding to attempt to give Spacenet leverage over Intelsat's pricing or other commercial decisions is clearly unwarranted.<sup>33</sup>

## V. CONCLUSION

The comments filed by Intelsat's competitors and customers are a transparent and inappropriate attempt to use the instant proceeding to gain an advantage in ongoing commercial matters. These comments have no place in a proceeding dedicated to evaluating the success of Intelsat's privatization according to the requirements of the ORBIT Act. Indeed, the increased competition envisioned by the Congress in passing the ORBIT Act is precisely what has led to the commenters' complaints; ironically, their own filings offer clear evidence that privatization has produced an increasingly competitive satellite marketplace. Since privatization, Intelsat has responded, and will continue to respond, to these competitive market forces.

Respectfully submitted,

Intelsat LLC

By: /s/ Jennifer D. Hindin

Bert W. Rein  
Jennifer D. Hindin  
Wiley Rein LLP  
1776 K Street, N.W.  
Washington, DC 20006  
202.719.7000  
Its Attorneys

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<sup>33</sup> Spacenet complains about "warehouse[ing] [of] orbital locations", Spacenet Comments at 6, and about Intelsat's decisions on which satellites to locate where. *Id.* The Commission has policies and procedures relating to both of these matters, and Spacenet has had, and will continue to have, ample opportunity to raise satellite slot use and satellite location issues in appropriate FCC proceedings.