

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Constellation, LLC, Carlyle PanAmSat I, LLC,)	
Carlyle PanAmSat II, LLC, PEP PAS, LLC, and)	IB Docket No. 05-290
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

Adopted: June 19, 2006

Released: June 19, 2006

By the Commission: Commissioners Copps and Adelstein concurring and issuing separate statements.

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I. INTRODUCTION

1. In this Order, we consider and grant a series of applications filed by Constellation, LLC (“Constellation”), Carlyle PanAmSat I, LLC (“Carlyle PanAmSat I”), Carlyle PanAmSat II, LLC (“Carlyle PanAmSat II”), PEP PAS, LLC (“PEP PAS”), and PEOP PAS, LLC (“PEOP PAS” and collectively with Constellation, Carlyle PanAmSat I, Carlyle PanAmSat II, and PEP PAS, the “Transferors”), Intelsat Holdings, Ltd. (“Intelsat” or the “Transferee”), and PanAmSat Holding Corporation (“PanAmSat”, and together with the Transferors and the Transferee, the “Applicants”) for consent to transfer control of Commission licenses held by two indirect subsidiaries of PanAmSat to Intelsat.¹ The two subsidiaries, PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp. (the “PanAmSat Licensees”), hold Commission authorizations to operate non-common carrier Fixed-Satellite Service (“FSS”) satellites using the C- and Ku-bands, as well as authorizations for numerous non-common carrier earth stations that transmit and/or receive signals in those frequency bands.²

2. The transaction involves the merger of two major providers of FSS transponder capacity in the United States.³ Pursuant to section 310(d) of the Communications Act of 1934, as amended (“Communications Act” or “Act”), we must determine whether the Applicants have demonstrated that the proposed transfers would serve the public interest, convenience, and necessity.⁴ The transaction is unopposed, with two parties requesting that grant of the Applications be subject to certain conditions. Several satellite communications customers and equipment manufacturers and suppliers filed comments specifically supporting the transaction. Our analysis of the record as a whole leads us to conclude that the transaction is unlikely to result in public interest harm in the FSS markets. We reach this conclusion primarily because of the pervasiveness of negotiated contractual arrangements between satellite carriers and end-users in the FSS industry and the multiple factors that condition actual negotiated contractual outcomes for individual customers. For these reasons, we conclude that the merger of Intelsat and PanAmSat is unlikely to have substantial adverse effects on end-users in terms of price changes, reductions in the quantity of satellite communication service available, or terms and conditions of transponder availability. As a result, based on the record before us, and as discussed more fully below, we find that the transaction meets the criteria set forth in section 310(d) of the Act.

¹ File Nos. SAT-T/C-20050930-00193, SAT-T/C-20050930-00194, SAT-T/C- 20060504-00053, SAT-STA-20060616-00064, SES-STA-20060616-01020, SES-T/C-20050930-01356, SES-T/C-20050930-01357, SES-T/C-20051004-01371, SES-T/C-20060504-00744 (the “Applications”). The Applications consist of seven transfer of control applications and two requests for special temporary authority (“STA”) to continue certain satellite operations in accordance with the terms of existing STAs following the proposed transfer of control to Intelsat. The Applicants included a narrative entitled “Consolidated Application for Authority to Transfer Control” (“Consolidated Application”).

² Appendix A to this Order lists the licensee and call signs associated with each of the Applications.

³ See *infra* ¶ 25.

⁴ 47 U.S.C. § 310(d).

II. BACKGROUND

A. Description of the Applicants

1. PanAmSat

3. PanAmSat, a publicly-traded Delaware corporation, is an FSS provider that serves the video market in North America and Latin America and provides satellite services elsewhere in the world.⁵ Large media and broadcast companies such as DirecTV, Fox, Disney and HBO use PanAmSat's satellites to distribute their programming.⁶ In fiscal year 2004, PanAmSat earned total revenues of approximately \$827 million, of which approximately 57 percent, or \$472.4 million, derived from PanAmSat's lease of transponder capacity for video services.⁷ Video services include video distribution, DTH television services, full-time contribution services, and occasional use services.⁸ In addition to video services, PanAmSat's operations include network, government, and other services, which in fiscal year 2004 represented, respectively, 26 percent, ten percent and seven percent of total revenues.⁹ In fiscal year

⁵ Consolidated Application at 5. *See also* PanAmSat Corporation, Annual Report on Form 10-K Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Fiscal Year Ended December 31, 2004 ("PanAmSat 10-K 2004") at 4 (PanAmSat is a leading global provider of video, corporate, Internet, voice and government communications services, leasing transponder capacity on its satellites to cable television systems, television broadcasters, direct-to-home ("DTH") television systems, Internet service providers ("ISPs"), telecommunications companies, governments and other corporations), *available at* <http://www.sec.gov/Archives/edgar/data/1037388/000104746905007256/a2154134z10-k.htm> (visited Dec. 2, 2005); PanAmSat Corporation, Annual Report on Form 10-K Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Fiscal Year Ended December 31, 2005 ("PanAmSat 10-K 2005") at 5 (same), *available at* <http://www.sec.gov/Archives/edgar/data/1310897/000110465906017745/0001104659-06-017745-index.htm> (visited Apr. 25, 2006).

⁶ Consolidated Application at 5. *See also* PanAmSat 10-K 2004 at 4 ("Through our satellite-based video distribution business, we believe we distribute more television channels over our network than any other company in the world.").

⁷ PanAmSat 10-K 2004 at 6, 35. *See also* PanAmSat 10-K 2005 at 8, 37 (in 2005, PanAmSat earned total revenues of \$861 M, of which 63% derived from video services).

⁸ PanAmSat 10-K 2004 at 6. According to the PanAmSat 10-K 2004, PanAmSat provides four categories of video services: (1) video distribution services -- the full-time transmission of television programming to cable systems, network affiliates and other redistribution systems; (2) DTH television services -- the full-time transmission of multiple television channels for household reception; (3) full-time contribution services -- the transmission of news, sports and entertainment segments to cable and broadcast centers around the world; and (4) occasional use services -- short-term satellite services provided to broadcasters when they need on-the-scene coverage of sporting events and breaking news. *Id.* *See also* PanAmSat 10-K 2005 at 9 (same).

⁹ PanAmSat 10-K 2004 at 6, 35. *See also* PanAmSat 10-K 2005 at 8 (the 2005 breakdown was 24% network services, 10% government services, and 3% technical/consulting services). According to the PanAmSat 10-K 2005, PanAmSat provides two categories of network services: (1) private business network services, which involve satellite capacity provided for secure, high speed corporate data networks, such as very small aperture terminal ("VSAT") networks used in business functions; and (2) Internet services, which involve satellite capacity provided to ISPs for high data rate Internet connections and point-to-multipoint content distribution. PanAmSat 10-K 2005 at 10.

2004, PanAmSat earned 44 percent of its revenue from operations in the United States.¹⁰

4. The Transferors – Constellation, Carlyle PanAmSat I, Carlyle PanAmSat II, PEP PAS, and PEOP PAS – collectively hold approximately 58 percent of the stock of PanAmSat and together exercise control over PanAmSat and the PanAmSat Licensees through their control of a majority of the seats on the board of directors of PanAmSat.¹¹ PanAmSat’s wholly-owned subsidiary PanAmSat Corporation wholly owns the PanAmSat Licensees, PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp.¹² As noted above, the PanAmSat Licensees hold authorizations to operate non-common carrier FSS satellites using the C- and Ku-bands and authorizations for numerous non-common carrier earth stations that transmit and/or receive signals in those frequency bands.

5. In addition, PanAmSat Corporation, the parent of the PanAmSat Licensees, is one of two members of Horizon Satellite LLC, which operates Horizons I, a satellite licensed by Japan that is on the Commission’s Permitted Space Station List.¹³ Horizons Satellite LLC is jointly owned on a 50/50 basis by PanAmSat Corporation and JSAT International, Inc., a Delaware corporation.¹⁴ Horizons I is the Ku-

¹⁰ PanAmSat 10-K 2004 at 34. The fiscal year 2004 geographic breakdown of revenue from operations in other regions was: Latin America (17%); Asia (13%); Africa (10%); and other (16%). *Id.* See also PanAmSat 10-K 2005 at 48 (in fiscal year 2005, PanAmSat earned 48% of its revenue from operations in the United States, 17% in Latin America, 10% in Asia, 10% in Africa, and 15% elsewhere).

¹¹ Consolidated Application at 5. The Transferors’ approximate ownership interests in PanAmSat are: Constellation (26%), Carlyle PanAmSat I and Carlyle PanAmSat II (collectively, 16%), and PEP PAS and PEOP PAS (collectively, 16%). *Id.* at 5 n.7.

In 2004, the International Bureau approved the transfer of control of PanAmSat to the Transferors. See *Applications of The News Corporation Limited and The DIRECTV Group, Inc. (Transferors) and Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC and PEOP PAS, LLC (Transferees) for Authority to Transfer Control of PanAmSat Licensee Corp.*, IB Docket No. 04-209, Public Notice, DA No. 04-2509, 19 FCC Rcd 15424 (Int’l Bur. 2004) (“*PanAmSat Public Notice Grant*”). Later in 2004, the International Bureau granted the Transferors the authority to interpose PanAmSat Holding Corporation into the chain of ownership of PanAmSat Licensee Corp. See *PanAmSat Licensee Corp.*, File No. SAT-T/C-20040924-00190, Grant of Authority, Public Notice, Report No. SAT-00249, DA No. 04-3222, 19 FCC Rcd 19697, 19698 (Int’l Bur. 2004); *PanAmSat Licensee Corp.*, File Nos. SES-T/C-20040924-01456, -01457, and -01458, Grant of Authority, Public Notice, Report No. SES-00649 (Int’l Bur. Oct. 6, 2004) at 36. During early 2005, PanAmSat held a public offering that resulted in the sale of approximately 42% of its stock. See, e.g., *PanAmSat Holding Corporation Prices Initial Public Offering at \$18.00 Per Share*, News Release (Mar. 16, 2005), available at <http://www.shareholder.com/pa/ReleaseDetail.cfm?ReleaseID=158908> (visited Dec. 2, 2005).

¹² Consolidated Application at 5. In 2005, PanAmSat Licensee Corp. assigned one of its satellite licenses to sister subsidiary PanAmSat H-2 Licensee Corp. See *PanAmSat Licensee Corp.*, File No. SAT-ASG-20050727-00148, Grant of Authority, Public Notice, Report No. SAT-00318, DA No. 05-2435 (Int’l Bur. Sept. 9, 2005) at 1.

¹³ See Permitted Space Station List, available at www.fcc.gov/ib/sd/se/permitted.html (visited Dec. 2, 2005); see also 47 C.F.R. § 25.137 (application requirements for earth stations operating with non-U.S. licensed space stations).

¹⁴ Consolidated Application at 3.

band payload on a hybrid C- and Ku-band satellite operated at the 127° W.L. orbital location.¹⁵ The Applicants state that, following the consummation of the proposed merger, they will follow the Commission's procedures for changes of ownership of satellites on the Permitted Space Station List.¹⁶ The Applicants also state that Intelsat will notify the Commission of the transfer of control of the two receive-only earth station registrations held by PanAmSat Licensee Corp. and subject to post-transaction notification procedures.¹⁷

2. Intelsat

6. Intelsat is an FSS operator that owns and operates a global satellite system providing end-to-end network services to telecommunications operators, corporate network integrators, governments, ISPs, and broadcasters around the world.¹⁸ Intelsat primarily serves the voice, data, and interconnectivity requirements of telecommunications and government customers.¹⁹ In fiscal year 2004, Intelsat earned revenues of approximately \$1.044 billion, of which approximately 32 percent derived from the provision of carrier services and approximately 26 percent derived from corporate network services.²⁰ For the same period, other segments were video services (19 percent of total revenue), government services (14 percent) and Internet services (nine percent).²¹ Intelsat also provides lifeline connectivity services to less

¹⁵ See *Horizons Satellite LLC, Petition for Declaratory Ruling to Add Horizons I to the Permitted Space Station List*, Order, 18 FCC Rcd 24745 (Int'l Bur. 2003). PanAmSat operates the C-band payload pursuant to Commission authorization. See *PanAmSat Licensee Corp., Application for Authority to Launch a Fixed Satellite Service Satellite and to Operate the C-Band Payload of That Satellite at 127° W.L.*, Order and Authorization, 18 FCC Rcd 19680 (Int'l Bur. 2003).

¹⁶ Consolidated Application at 3. See also *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, IB Docket No. 02-34, 18 FCC Rcd 10760, 10880, ¶¶ 326-27 (2003) ("*Space Station Reform Order*"); 47 C.F.R. § 25.137(g).

¹⁷ Consolidated Application at 3 and 3 n.4.

¹⁸ Consolidated Application at 6. See also Intelsat, Ltd., Form 20-F, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Fiscal Year Ended December 31, 2004 ("*Intelsat 20-F 2004*") at 22-23 (stating that Intelsat is a leading global provider of FSS, with customers that include leading telecom companies, multinational corporations, ISPs, media broadcasters, and government and military organizations, and supplies voice, data and video connectivity in over 200 countries and territories for over 700 customers), available at <http://www.sec.gov/Archives/edgar/data/1156871/000119312505051262/d20f.htm> (visited Dec. 2, 2005); Intelsat, Ltd., Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Fiscal Year Ended December 31, 2005 ("*Intelsat 10-K 2005*") at 7 (same), available at <http://www.sec.gov/Archives/edgar/data/1156871/000119312506081358/d10k.htm> (visited Apr. 25, 2006).

¹⁹ Consolidated Application at 6. Intelsat states that it was the leading provider of satellite capacity for voice and data applications in 2004. Intelsat 10-K 2005 at 8, 12. Intelsat also states that it was the largest FSS provider of government satellite services in 2004. *Id.* at 9, 12.

²⁰ Intelsat 20-F 2004 at 22-23. See also Intelsat 10-K 2005 at 8, 60 (2005 revenues of \$1.72 B, with 62% in carrier and corporate network services).

²¹ Intelsat 20-F 2004 at 25. See also Intelsat 10-K 2005 at 9 (17% for video and 20% for government in 2005).

developed areas of the world.²²

7. Intelsat is an entity organized under the laws of Bermuda and ultimately controlled by private equity fund groups advised by or associated with: (1) Apax Partners Worldwide LLP and Apax Partners, L.P.; (2) Apollo Management V, L.P.; (3) MDP Global Investors Limited; and (4) Permira Advisers LLC.²³ Through wholly-owned subsidiaries, Intelsat indirectly controls multiple U.S. C- and Ku-band space station authorizations, earth station licenses, and other licenses and authorizations. Its Commission-licensed subsidiaries (the “Intelsat Licensees”) are: (1) Intelsat LLC, a Title III licensee; (2) Intelsat North America LLC, a Title III licensee; (3) Intelsat USA License Corp, a Title II common carrier authorization-holder; (4) Intelsat General Corporation, a Title II common carrier authorization-holder; and (5) Intelsat MTC LLC, a Title III licensee.²⁴

B. Description of the Transaction

8. On August 28, 2005, Intelsat’s indirect subsidiary Intelsat (Bermuda), Ltd. and Intelsat (Bermuda), Ltd.’s wholly-owned subsidiary Proton Acquisition Corporation (“Merger Sub”) entered into a merger agreement with PanAmSat.²⁵ The merger agreement contemplates that Merger Sub will be merged with and into PanAmSat, with PanAmSat remaining as the surviving entity.²⁶ Upon completion of the transaction, PanAmSat will be a direct wholly-owned subsidiary of Intelsat (Bermuda), Ltd. and an indirect wholly-owned subsidiary of Intelsat.²⁷ Post-merger, PanAmSat and its subsidiaries will continue

²² Consolidated Application at 6. *See infra* Section V.D.1.

²³ Consolidated Application at 7. In 2004, the International Bureau, Wireline Competition Bureau, and Office of Engineering and Technology approved the transfer of control of Intelsat, Ltd. and its subsidiaries to the Transferee, then known as Zeus Holdings Limited. *See Intelsat, Ltd., Transferor, and Zeus Holdings Limited, Transferee, Consolidated Application for Consent to Transfers of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, As Amended*, IB Docket No. 04-366, Order and Authorization, DA No. 04-4034, 19 FCC Rcd 24820 (Int’l Bur., WTB and OET 2004) (“*Intelsat-Zeus Order*”). In early 2005, the International Bureau granted authority to interpose Intelsat Subsidiary Holding Company Ltd. into the chain of ownership and modified its foreign ownership ruling to include new Bermuda-based intermediate parent Intelsat Subsidiary Holding Company Ltd. *See Intelsat, Ltd.*, File No. ISP-PDR-20050203-00004, Grant of Authority, Public Notice, Report No. TEL-00884, DA No. 05-479, 20 FCC Rcd 4052, 4053 (Int’l Bur. 2005); *Intelsat North America LLC*, File No. SAT-T/C-20050203-00022, and *Intelsat LLC*, File No. SAT-T/C-20050203-00023, Grant of Authority, Public Notice, Report No. SAT-00276, DA No. 05-594, 20 FCC Rcd 4377, 4377-78 (Int’l Bur. 2005); *Intelsat LLC*, File Nos. SES-T/C-20050203-00138, -00139 and -00140, and *Intelsat MTC LLC*, File No. SES-T/C-20050203-00141, Grant of Authority, Report No. SES-00691 (Int’l Bur. Mar. 2, 2005) at 26-27; *Intelsat USA License Corp.*, File No. ITC-T/C-20050418-00279, *Intelsat General Corporation*, File No. ITC-T/C-20050418-00280, and *Intelsat MTC LLC*, File No. ITC-T/C-20050418-00281, Grant of Authority, Public Notice, Report No. TEL-00931, DA No. 05-2192 (Int’l Bur. Jul. 28, 2005) at 3-4. During 2005, Zeus Holdings Limited changed its name to Intelsat Holdings, Ltd. *See, e.g., Intelsat USA License Corp.*, Report No. TEL-00931 at 3. Recently, the International Bureau granted permission to interpose a second wholly-owned subsidiary and modified Intelsat’s foreign ownership ruling accordingly. *See infra* note 29.

²⁴ Consolidated Application at 7.

²⁵ *Id.* at 9.

²⁶ *Id.*

as separate corporate entities.²⁸ Appendix B to this Order depicts the post-transaction corporate structure for the Commission-licensed subsidiaries of Intelsat.²⁹

9. The terms of the merger agreement provide that each outstanding share of common stock of PanAmSat will be converted into the right to receive \$25.00 in cash, without interest, plus a *pro rata* portion of any of PanAmSat's regular quarterly dividend that has not been declared (or has been declared with a record date after the closing) with respect to the fiscal quarter in which the merger occurs (but not for the period after the closing of the merger).³⁰ Consummation of the merger is subject to conditions, including receipt of requisite regulatory approvals, receipt of financing by Intelsat, and adoption of the merger agreement by PanAmSat's stockholders.³¹

10. The Applicants assert that approval of the proposed transaction will serve the public interest.³² First, they state that the national interest will be better served because the merger of Intelsat and PanAmSat will create a financially and operationally strong company committed to the future success of satellite technology and supportive of Intelsat's continuing commitment to lifeline customer

(Continued from previous page) _____

²⁷ *Id.*

²⁸ *Id.*

²⁹ See *infra* Appendix B. Prior to the closing of the transaction, Intelsat (Bermuda), Ltd. is expected to transfer substantially all of its assets and liabilities to Intelsat Intermediate Holding Company, Ltd., a newly-formed wholly-owned subsidiary formed under the laws of Bermuda. Consolidated Application at 9-10. This new Bermuda subsidiary then will become the direct parent of Intelsat Subsidiary Holding Company, Ltd. and its subsidiaries, including the five Intelsat Licensees. Consolidated Application at 10. The Consolidated Application stated that the Intelsat Licensees would be filing a separate application requesting Commission approval for the insertion of this new Bermuda-based entity within the chain of ownership of the Intelsat Licensees. *Id.* at 10 n.13. See also *Intelsat, Ltd., Petition for Declaratory Ruling, Grant of Authority*, File No. ISP-PDR-20060324-00004, Public Notice, Report No. TEL-01018, DA No. 06-905 (Int'l Bur. Apr. 20, 2006) at 2; *Intelsat MTC LLC, Intelsat LLC, and Intelsat North America LLC, Applications for Consent to Transfer of Control*, File Nos. SES-T/C-20060327-00519, SES-T/C-20060327-00520, SES-T/C-20060327-00521, SES-T/C-20060327-00522, SES-T/C-20060327-00523, Grant of Authority, Public Notice, Report No. SES-00813 (Int'l Bur. Apr. 19, 2006) at 29-30; *Intelsat North America LLC*, File Nos. SAT-T/C-20060324-00027, SAT-T/C-20060324-00028, Transfer of Control, Public Notice, Report No. SAT-00358, DA No. 06-980 (Int'l Bur. May 5, 2006) at 2; *Intelsat LLC*, File No. 0002521597, Transfer of Control, Public Notice, Report No. 2493A (WTB May 3, 2006) at 9 (together, modifying Intelsat's foreign ownership ruling and granting the respective *pro forma* transfer applications). On June 6, 2006, the International Bureau granted Intelsat's request for an additional 60 days to complete the *pro forma* transfer of control of the earth and space station authorizations. See Letter from Jennifer D. Hindin, Counsel to Intelsat, to Marlene H. Dortch, Secretary, Federal Communications Commission, File Nos. SAT-T/C-20060324-00027 *et al.* (filed June 5, 2006). In addition, once Intelsat consummates the *pro forma* transaction, it will file notification of the transfer of its international section 214 authorizations. See 47 C.F.R. § 63.24(f).

³⁰ Consolidated Application at 9.

³¹ *Id.* at 9.

³² *Id.* at 14-40.

connectivity.³³

11. Second, the Applicants contend that the combined entity will be able to offer increased capacity for key services, improved reliability and more extensive geographic availability to better serve customers and meet national defense requirements.³⁴ In this regard, they assert that the combined Intelsat-PanAmSat fleet of satellites will: (1) increase the availability of protected C-band capacity in prime orbital locations over North America and thus serve the emerging needs of video programmers for high definition television distribution;³⁵ (2) maximize back-up capabilities through collocation of satellites to provide seamless service in cases of partial or total satellite failure and through rapid repositioning of satellites to restore service if necessary, thereby increasing service reliability and reducing satellite system costs through effective self-insurance;³⁶ and (3) use spectrum more efficiently and offer better geographic availability in response to customer needs, such as by relocating traffic among satellites to free up capacity on steerable beams that can be repointed to regions with higher demand.³⁷

12. Third, the Applicants argue that the merger will drive innovation, particularly in the development of satellite broadband access for small businesses in rural areas that currently do not have access to cable-modem or digital subscriber line (“DSL”) broadband Internet services.³⁸ They state that the combined company will have the scale, expertise, and resources needed to pursue development of broadband by satellite at affordable prices that are competitive with cable-modem and DSL services.³⁹ They also state that the merged entity will have an enhanced ability to invest in and roll out new solutions for disaster relief and VSAT services with more power and smaller antennas.⁴⁰

13. Finally, the Applicants contend that the merger will create operational efficiencies by providing customers with an array of services from the merged entity and giving the merged entity the opportunity to reduce operating expenses.⁴¹

C. Application and Review Process

14. As noted, on September 30, 2005 and October 4, 2005, pursuant to section 310(d) of the

³³ *Id.* at 14-16. They note that satellite systems served the national interest during the Hurricane Katrina and Hurricane Rita response efforts, when terrestrial communications systems were disrupted, and that demand for satellite capacity has increased tenfold to meet national defense needs over the past four years. *Id.* at 16.

³⁴ Consolidated Application at 16.

³⁵ *Id.* at 16-17.

³⁶ *Id.* at 17-19.

³⁷ *Id.* at 19-20.

³⁸ *Id.* at 20-21.

³⁹ *Id.* at 21.

⁴⁰ *Id.*

⁴¹ *Id.* at 22-23.

Communications Act, the Applicants filed the Applications.⁴² On October 14, 2005, the International Bureau released a Public Notice seeking comment on the proposed transaction.⁴³ In response to the Public Notice, eighteen entities timely filed comments in the docket. Two filers, ITSO and Microcom, requested relief in the form of conditions to the grant of the Applications.⁴⁴ Fifteen entities filed timely comments in support of the Applications.⁴⁵ The U.S. Department of Justice (“DOJ”) filed a letter asking the Commission to defer final action on the Applications until such time as DOJ, the Federal Bureau of Investigation (“FBI”), the Department of Homeland Security (“DHS”), and the Department of Defense (“DOD”) had notified the Commission that potential national security, law enforcement, and public safety

⁴² See *supra* note 1. See also *infra* Appendix A.

⁴³ *Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC and PEOP PAS, LLC, Transferors, and Intelsat Holdings, Ltd., Transferee, Seek FCC Consent to Transfer Control of Licenses and Authorizations Held by PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp.*, Public Notice, DA 05-2715, 20 FCC Rcd 16330 (Int’l Bur. 2005) (establishing pleading cycle for comments/petitions, responses/oppositions, and replies of, respectively, Nov. 14, Nov. 29 and Dec. 6, 2005).

⁴⁴ See Comments of the International Telecommunications Satellite Organization (ITSO), IB Docket No. 05-290 (filed Nov. 14, 2005) (“ITSO Comments”); Comments of Microcom, IB Docket No. 05-290 (filed Nov. 1, 2005) (“Microcom Comments”).

⁴⁵ See Letter from Peter Gbedemah, Managing Director, Gateway Communications, to Marlene Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Nov. 4, 2005); Comments of Orbital Sciences Corporation, IB Docket No. 05-290 (filed Nov. 8, 2005); Letter from Julien Seligman, Director General, SmartJog, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Nov. 9, 2005); Letter from David Rivel, CEO and Founder, RR Satellite Communications Ltd., to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Nov. 10, 2005); Comments of Hughes Network Systems, LLC, IB Docket No. 05-290 (filed Nov. 14, 2005); Letter from John Rourke, HTN Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Nov. 14, 2005); Comments of ARTEL Incorporated, IB Docket No. 05-290 (filed Nov. 14, 2005) (“ARTEL Comments”); Comments of Chief, Network Operations Section, OS, United Nations, IB Docket No. 05-290 (filed Nov. 14, 2005) (“UN Network Operations Comments”); Comments of Convergent Media Systems Corporation, IB Docket No. 05-290 (filed Nov. 14, 2005); Comments of Broadwing Communications, LLC, IB Docket No. 05-290 (filed Nov. 14, 2005); Letter from Lawrence D. Atlas, Loral Space & Communications Ltd. (Debtor in Possession), to Donald Abelson, Chief, International Bureau, Federal Communications Commission, IB Docket No. 05-290 (filed in the Commission’s Electronic Comment Filing System, or ECFS, on Nov. 14, 2005); Letter from Norberto Alvarez Vitale, President, Teleport International Buenos Aires, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Nov. 14, 2005); Letter from Reggie Bradford, President TANDBERG Television, to Marlene Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Nov. 14, 2005); Comments of ViaSat, Inc., IB Docket No. 05-290 (filed Nov. 14, 2005) (“ViaSat Comments”); Letter from Glenn Katz, Chief Operating Officer, StarBand, to Marlene Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Nov. 14, 2005). Four additional entities filed in support of the Applications following the November 14, 2005 comment date. See Letter from Michael G. Fletcher, President, Firestone Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (dated Nov. 14, 2005 and filed in ECFS Nov. 15, 2005); Letter from Albert M. Stem, President, Pittsburgh International Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (dated Nov. 11, 2005 and date-stamped as received in the FCC File Room on Nov. 17, 2005); Comments of Integral Systems, Inc., IB Docket No. 05-290 (filed Nov. 30, 2005); Comments of Harris Corporation, IB Docket No. 05-290 (filed Dec. 27, 2005).

issues raised by the Applications had been addressed.⁴⁶ The Applicants filed a joint response.⁴⁷ ITSO and Microcom each filed a reply.⁴⁸

15. On November 23, 2005, the International Bureau released a protective order under which third parties were allowed to review confidential or proprietary documents submitted by the Applicants (“Protective Order”).⁴⁹ On November 23, 2005 and May 23, 2006, the International Bureau requested additional information from the Applicants (respectively, “Information Request” and “Document Requests”).⁵⁰ The Applicants’ responses to the Information Request and Document Requests are included in the record.⁵¹

⁴⁶ Letter from Laura H. Parsky, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Nov. 14, 2005). *See also infra* note 52 and accompanying text.

⁴⁷ Joint Response of Intelsat and PanAmSat, IB Docket No. 05-290 (filed Nov. 29, 2005) (“Joint Response”). The Applicants also filed two *ex parte* letters. *See* Letter from Phillip Spector, Executive Vice President and General Counsel, Intelsat, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Feb. 23, 2006) (discussing emergency preparedness) (“Intelsat February 23 Letter”); Letter from Jennifer D. Hindin, Counsel to Intelsat, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Mar. 23, 2006) (discussing status of competition in North America).

⁴⁸ Reply Comments of the International Telecommunications Satellite Organizations (ITSO), IB Docket No. 05-290 (filed Dec. 6, 2005) (“ITSO Reply”); Reply Comments of Microcom, IB Docket No. 05-290 (undated and filed electronically in ECFS on Dec. 13, 2005) (“Microcom Reply”). We note that the Microcom Reply is a late-filed pleading, as the reply due date in the proceeding was December 6, 2005. Microcom did not include a motion for extension of time with the Microcom Reply. It is Commission policy not to routinely grant extensions of time. *See* 47 C.F.R. § 1.46(a). In this instance, even considering the late-filed Microcom Reply, we would not grant Microcom’s request for conditions, for the reasons stated below in Section V.D.2.

⁴⁹ *Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, and PEOP PAS, LLC, Transferors, and Intelsat Holdings, Ltd., Transferee, Applications for Approval of Transfer of Control, Order Adopting Protective Order*, Order, IB Docket No. 05-290, 20 FCC Rcd 18257 (Int’l Bur. 2005).

⁵⁰ Letter from James L. Ball, Chief, Policy Division, International Bureau, Federal Communications Commission, to Phillip Spector, Executive Vice President and General Counsel, Intelsat Holdings, Ltd., Susan Crandall, Assistant General Counsel, Intelsat Global Service Corporation, and James W. Cuminale, Executive Vice President, General Counsel and Secretary, PanAmSat Holding Corporation, IB Docket No. 05-290 (dated Nov. 23, 2005); Letter from James L. Ball, Chief, Policy Division, International Bureau, Federal Communications Commission, to Bert W. Rein, and Jennifer D. Hindin, Counsel for Intelsat, IB Docket No. 05-290 (dated May 23, 2006); Letter from James L. Ball, Chief, Policy Division, International Bureau, Federal Communications Commission, to Henry Goldberg and Joseph A. Godles, Counsel for PanAmSat, IB Docket No. 05-290 (dated May 23, 2006).

⁵¹ *See* Letter from Phillip L. Spector, Executive Vice President and General Counsel, Intelsat, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Dec. 14, 2005) (“Intelsat December 14 Response”); Letter from Kalpak S. Gude, Vice President, Government and Regulatory Affairs & Associate General Counsel, PanAmSat, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Dec. 14, 2005) (“PanAmSat December 14 Response”); Letter from Phillip L. Spector, Executive Vice President and General Counsel, Intelsat, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket 05-290 (filed Feb. 1, 2006) (“Intelsat Supplemental Response”); Letter from Jennifer D. Hindin, Counsel of Intelsat Holdings, Ltd., to Marlene H. Dortch, Secretary, Federal (continued....)

16. On December 6, 2005, DOJ, including the FBI, and together with DHS and DOD, filed a petition to adopt conditions to the licenses to address potential national security, law enforcement, and public safety concerns.⁵² We discuss this petition in Section V.C of this Order.⁵³

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

17. Pursuant to section 310(d) of the Communications Act, we must determine whether the Applicants have demonstrated that the proposed transfer of control to Intelsat of the licenses held by PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp. will serve the public interest, convenience, and necessity.⁵⁴ In making this determination, we first assess whether the proposed transaction complies with section 310(d),⁵⁵ other applicable statutes, and the Commission's rules.⁵⁶ If the transaction does not violate a statute or rule, we next consider whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes. We then employ a balancing process weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.⁵⁷ The Applicants bear the burden of proving, by

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Communications Commission, IB Docket 05-290 (filed May 25, 2006) ("Intelsat Response to Document Request"); Letter from Joseph A. Godles, Attorney for PanAmSat Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket 05-290 (filed May 25, 2006) ("PanAmSat Response to Document Request"). Intelsat and PanAmSat filed portions of their responses under the terms of the Protective Order.

⁵² Petition to Adopt Conditions to Authorizations and Licenses, IB Docket No. 05-290 (filed Dec. 6, 2005).

⁵³ See *infra* Section V.C (National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns).

⁵⁴ 47 U.S.C. § 310(d).

⁵⁵ Section 310(d), 47 U.S.C. § 310(d), requires that we consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. See, e.g., *Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 05-75, 20 FCC Rcd 18433, 18443, ¶ 16 n.59 (2005) ("*Verizon-MCI Order*"); *SBC Communications Inc. and AT&T Corp., Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 05-65, 20 FCC Rcd 18290, 18300, ¶ 16 n.60 (2005) ("*SBC-AT&T Order*"); *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, WT Docket No. 05-63, 20 FCC Rcd 13967, 13976, ¶ 20 (2005) ("*Sprint-Nextel Order*").

⁵⁶ See, e.g., *Verizon-MCI Order*, 20 FCC Rcd at 18443, ¶ 16; *SBC-AT&T Order*, 20 FCC Rcd at 18300, ¶ 16; *Rainbow DBS Company LLC, Assignor, and EchoStar Satellite LLC, Assignee, Consolidated Application for Consent to Assignment of Space Station and Earth Station Licensees, and Related Special Temporary Authorization*, Memorandum Opinion and Order, IB Docket No. 05-72, 20 FCC Rcd 16868, 16872, ¶ 10 (2005) ("*Rainbow-EchoStar Order*"); *Sprint-Nextel Order*, 20 FCC Rcd at 13976, ¶ 20; *Application of EchoStar Communications Corporation (A Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation, Transferors, and EchoStar Communications Corporation (A Delaware Corporation), Transferee, Hearing Designation Order*, 17 FCC Rcd 20559, 20574 ¶ 25 (2002) ("*EchoStar-DirecTV HDO*").

⁵⁷ See, e.g., *Verizon-MCI Order*, 20 FCC Rcd at 18443, ¶ 16; *SBC-AT&T Order*, 20 FCC Rcd at 18300, ¶ 16; *Rainbow-EchoStar Order*, 20 FCC Rcd at 16872, ¶ 10; *Sprint-Nextel Order*, 20 FCC Rcd at 13976, ¶ 20; *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20574, ¶ 25.

a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.⁵⁸ If we find that the proposed transaction does not serve the public interest for any reason, or if the record presents a substantial and material question of fact, we would designate the application for hearing under section 309(e) of the Act.⁵⁹

18. The Commission's public interest evaluation necessarily encompasses the "broad aims of the Communications Act,"⁶⁰ which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest.⁶¹

19. In determining the competitive effects of the merger, our analysis is informed by, but not limited to, traditional antitrust principles.⁶² The Commission and the DOJ each have independent authority to examine communications mergers, but the standards governing the Commission's review differ from those of the DOJ.⁶³ The Antitrust Division of the DOJ reviews telecommunications mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that are likely to substantially lessen

⁵⁸ See, e.g., *Verizon-MCI Order*, 20 FCC Rcd at 18443, ¶ 16; *SBC-AT&T Order*, 20 FCC Rcd at 18300, ¶ 16; *Rainbow-EchoStar Order*, 20 FCC Rcd at 16872-73, ¶ 10; *Sprint-Nextel Order*, 20 FCC Rcd at 13976-77, ¶ 20; *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20574, ¶ 25.

⁵⁹ 47 U.S.C. § 309(e). See also *Verizon-MCI Order*, 20 FCC Rcd at 18443, ¶ 16 n.62; *SBC-AT&T Order*, 20 FCC Rcd at 18300-01, ¶ 16; *Rainbow-EchoStar Order*, 20 FCC Rcd at 16873, ¶ 10; *Sprint-Nextel Order*, 20 FCC Rcd at 13977, ¶ 20; *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20574, ¶ 25.

⁶⁰ See, e.g., *Verizon-MCI Order*, 20 FCC Rcd at 18443, ¶ 17; *SBC-AT&T Order*, 20 FCC Rcd at 18301, ¶ 17; *Rainbow-EchoStar Order*, 20 FCC Rcd at 16873, ¶ 11; *Sprint-Nextel Order*, 20 FCC Rcd at 13977, ¶ 21; *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20575, ¶ 26.

⁶¹ Our public interest analysis also may entail assessing whether the merger will affect the quality of communications services or will result in the provision of new or additional services to consumers. See, e.g., *Verizon-MCI Order*, 20 FCC Rcd at 18444, ¶ 17; *SBC-AT&T Order*, 20 FCC Rcd at 18301, ¶ 17; *Rainbow-EchoStar Order*, 20 FCC Rcd at 16873, ¶ 11; *Sprint-Nextel Order*, 20 FCC Rcd at 13977, ¶ 21; *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20575, ¶ 26. In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry. See, e.g., *Verizon-MCI Order*, 20 FCC Rcd at 18444, ¶ 17; *SBC-AT&T Order*, 20 FCC Rcd at 18301-02, ¶ 17; *Rainbow-EchoStar Order*, 20 FCC Rcd at 16873, ¶ 11; *Sprint-Nextel Order*, 20 FCC Rcd at 13977, ¶ 21; *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20575, ¶ 26.

⁶² See, e.g., *Verizon-MCI Order*, 20 FCC Rcd at 18444, ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18302, ¶ 18; *Rainbow-EchoStar Order*, 20 FCC Rcd at 16874, ¶ 12; *Sprint-Nextel Order*, 20 FCC Rcd at 13977-78, ¶ 22; *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20575, ¶ 27.

⁶³ See, e.g., *Verizon-MCI Order*, 20 FCC Rcd at 18444, ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18302, ¶ 18; *Rainbow-EchoStar Order*, 20 FCC Rcd at 16874, ¶ 12; *Sprint-Nextel Order*, 20 FCC Rcd at 13978, ¶ 22; *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20575, ¶ 27. See also *Satellite Business Systems*, 62 FCC 2d 997, 1088 (1977), *aff'd sub nom. United States v. FCC*, 652 F.2d 72 (D.C. Cir. 1980) (*en banc*); *Northern Utilities Service Co. v. FERC*, 993 F.2d 937, 947-48 (1st Cir. 1993) (public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply").

competition.⁶⁴ The Antitrust Division's review is limited solely to an examination of the competitive effects of the acquisition, without reference to national security, law enforcement, or other public interest considerations.⁶⁵

20. The Commission, on the other hand, is charged with determining whether the transfer of control serves the broader public interest. In the communications industry, competition is shaped not only by antitrust rules, but also by the regulatory policies that govern the interactions of industry players.⁶⁶ In addition to considering whether the merger will reduce existing competition, therefore, we also must focus on whether the merger will accelerate the decline of market power by dominant firms in the relevant communications markets and the merger's effect on future competition.⁶⁷ The same consequences of a proposed merger that are beneficial in one sense may be harmful in another. For instance, combining assets may allow the merged entity to reduce transaction costs and offer new products, but it also may create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.⁶⁸

21. The Commission's public interest authority also enables it to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.⁶⁹ Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or

⁶⁴ 15 U.S.C. § 18.

⁶⁵ Applicants advise that the DOJ closed its antitrust investigation and did not seek to impose conditions. See Letter from Jennifer D Hindin, Counsel for Intelsat, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed May 26, 2006) (attaching copy of Intelsat May 26, 2006 press release).

⁶⁶ See, e.g., *Verizon-MCI Order*, 20 FCC Rcd at 18444, ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18302, ¶ 18; *Rainbow-EchoStar Order*, 20 FCC Rcd at 16874, ¶ 12; *Sprint-Nextel Order*, 20 FCC Rcd at 13978, ¶ 22; *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20575, ¶ 27.

⁶⁷ See, e.g., *Verizon-MCI Order*, 20 FCC Rcd at 18444, ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18302, ¶ 18; *Rainbow-EchoStar Order*, 20 FCC Rcd at 16874, ¶ 12; *Sprint-Nextel Order*, 20 FCC Rcd at 13978, ¶ 22; *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20575, ¶ 27.

⁶⁸ See, e.g., *Verizon-MCI Order*, 20 FCC Rcd at 18444-45, ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18302, ¶ 18; *Rainbow-EchoStar Order*, 20 FCC Rcd at 16874, ¶ 12; *Sprint-Nextel Order*, 20 FCC Rcd at 13978, ¶ 22; *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20575-76, ¶ 27; *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner, Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, CS Docket No. 00-30, Memorandum Opinion and Order, 16 FCC Rcd 6547, 6550, ¶ 5, 6553, ¶ 15 (2001).

⁶⁹ See, e.g., *Applications of Western Wireless Corporation and Alltel Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, WT Docket No. 05-50, 20 FCC Rcd 13053, 13065, ¶ 21 (2005) ("*Alltel-Western Wireless Order*") (conditioning approval on the divestiture of operating units in specified markets); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, Memorandum Opinion and Order, WT Docket 04-70, 19 FCC Rcd 21522, 21545, ¶ 43 (2004) ("*Cingular-AT&T Wireless Order*") (same); see also *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, CC Docket No. 97-211, 13 FCC Rcd 18025, 18032, ¶ 10 (1998) ("*WorldCom-MCI Order*") (conditioning approval on the divestiture of MCI's Internet assets).

conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.⁷⁰ Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to impose and enforce conditions based upon our extensive regulatory and enforcement experience to ensure that the merger will, overall, serve the public interest.⁷¹ Despite broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms)⁷² and that are related to the Commission's responsibilities under the Communications Act and related statutes.⁷³ Thus, we will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.

IV. QUALIFICATIONS OF APPLICANTS

22. Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite "citizenship, character, financial, technical, and other qualifications."⁷⁴ Therefore, as a threshold matter, the Commission must determine whether the parties have the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission's rules.⁷⁵ In making this determination, the Commission, as a general rule, does not reevaluate the qualifications of transferors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.⁷⁶

23. We find that PanAmSat and Intelsat have the requisite qualifications. The Commission previously has determined that PanAmSat and Intelsat are qualified to hold licenses.⁷⁷ No parties have

⁷⁰ 47 U.S.C. § 303(r).

⁷¹ 47 U.S.C. § 303(r); *see, e.g., Alltel-Western Wireless Order*, 20 FCC Rcd at 13066, ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544-45, ¶ 43; *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14047, ¶ 24 (2002); *WorldCom-MCI Order*, 13 FCC Rcd at 18032, ¶ 10; *Cf. FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989).

⁷² *See, e.g., Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544-45, ¶ 43; *In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, MB Docket No. 03-124, 19 FCC Rcd 473, 534, ¶ 131 (2004) ("*GM-News Corp. Order*").

⁷³ *See, e.g., Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544-45, ¶ 43.

⁷⁴ *See* 47 U.S.C. §§ 308, 310(d); *Verizon-MCI Order*, 20 FCC Rcd at 18525-26, ¶ 183; *SBC-AT&T Order*, 20 FCC Rcd at 18379, ¶ 171; *Sprint-Nextel Order*, 20 FCC Rcd at 13979, ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543, ¶ 44; *GM-News Corp. Order*, 19 FCC Rcd at 485, ¶ 18.

⁷⁵ *See* 47 U.S.C. § 310(d); 47 C.F.R. § 25.119. *See also, e.g., Verizon-MCI Order*, 20 FCC Rcd at 18526, ¶ 183; *SBC-AT&T Order*, 20 FCC Rcd at 18379, ¶ 171; *Sprint-Nextel Order*, 20 FCC Rcd at 13979, ¶ 24.

⁷⁶ *See Verizon-MCI Order*, 20 FCC Rcd at 18526, ¶ 183; *SBC-AT&T Order*, 20 FCC Rcd at 18379, ¶ 171; *Rainbow-EchoStar Order*, 20 FCC Rcd at 16875, ¶ 14; *Sprint-Nextel Order*, 20 FCC Rcd at 13979, ¶ 24.

⁷⁷ *See, e.g., PanAmSat Public Notice Grant*, 19 FCC Rcd 15425; *Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-Band and Ku-Band Satellites that Form a* (continued....)

raised issues with respect to the basic qualifications of PanAmSat or Intelsat.

V. PUBLIC INTEREST ANALYSIS

24. In this section, we consider whether there may be potential public interest harms, including potential harms to competition, associated with the transaction. We conclude that the merger of Intelsat and PanAmSat is unlikely to have substantial adverse effects on end-users in terms of price changes, reductions in the quantity of satellite communication service available, or terms and conditions of transponder availability. We also examine other public interest issues. We find that the proposed acquisition of PanAmSat is not likely to create competitive distortions in the U.S. market based on the foreign ownership of Intelsat. We consider and grant a petition filed by the Executive Branch concerning national security, law enforcement, and public safety issues. We address ITSO's comments concerning the public services agreement between ITSO and Intelsat and Microcom's comments about FSS service to Alaska. We respond to the Applicants' request for approval of additional authorizations.

A. Competitive Effects

25. In this section, we analyze the competitive implications of the proposed transaction to competition in markets that use FSS capacity. A merger between Intelsat and PanAmSat will combine two of the larger FSS operators serving the United States.⁷⁸ Moreover, Intelsat and PanAmSat are the

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Global Communications System in Geostationary Orbit, Memorandum Opinion, Order and Authorization, 15 FCC Rcd 15460 (2000), *recon. denied*, 15 FCC Rcd 25234 (2000) (“*Intelsat Licensing Order*”); *Intelsat-Zeus Order*, 19 FCC Rcd 24820.

⁷⁸ PanAmSat and Intelsat, respectively, are the second- and third-largest providers in the U.S. markets. See *Global Assessment of Satellite Demand: 2nd Edition*, Northern Sky Research, LLC (August 2005) (“*Northern Sky Report*”) at 3-3 (based on leased North American C- and Ku-band transponder capacity, measured in 36-MHz transponder equivalents (“TPE”)); *World Satellite Communication & Broadcasting Markets Survey: Market Forecasts to 2014*, 12th Edition of Euroconsult Research Report on the FSS Satellite Industry, Euroconsult (August 2005) (“*Euroconsult Report*”) at 199 (in 2004, of \$[REDACTED] in revenue for North America, SES Americom had \$[REDACTED], PanAmSat had \$[REDACTED], and Intelsat had \$[REDACTED]). See also SES Americom, *Investors Day Presentation*, May 25, 2005, at 10 (“*SES Americom Investors Day Presentation*”), available at http://www.ses-global.com/ses-global/downloads/AMC_Investor_Day_25_May_2005.pdf (visited Feb. 24, 2006) (reporting that in December, 2004 PanAmSat and Intelsat had 43% of total C-band transponders and 38% of total Ku-band transponders serving North America). SES Americom is the largest FSS provider serving North America. See *SES Americom Investors Day Presentation* at 10; *Euroconsult Report* at 199 (in 2004, SES Americom had \$[REDACTED] in revenue for North America). The reports focus on North America as a region and do not provide separate market shares for the United States. The shares of leased U.S. C- and Ku-band transponder capacity provided by SES Americom, PanAmSat and Intelsat are somewhat larger than their North American shares inasmuch as the Canadian market is the core business for Telesat Canada, which, according to one measure, has 12% of North American C-band capacity and 16% of North American Ku-band capacity. See *SES Americom Investors Day Presentation* at 10; see also note 95, below. At the same time, Telesat Canada and other providers clearly are participants in the U.S. FSS satellite transponder markets. See *Permitted Space Station List*, available at www.fcc.gov/ib/sd/se/permitted.html (listing, in addition to all U.S.-licensed space stations, over twenty other satellites authorized to serve the United States).

In this Order, “REDACTED” indicates that confidential or proprietary information that is subject to the Protective Order in this proceeding has been redacted from the public version of this Order. The unredacted text is included in the confidential version of this Order, which is available upon request only to those parties who have executed and filed with the Commission signed acknowledgments of the Protective Order. Qualified persons (continued....)

global market leaders in the provision of leased FSS transponder capacity.⁷⁹ Each of these markets is characterized by high barriers to entry.⁸⁰ At the same time, the record contains no comments stating any concern about the competitive effects of the proposed transaction.⁸¹

26. Consistent with Commission precedent, we first perform a structural analysis of the merger to examine whether it is likely to result in anticompetitive horizontal effects.⁸² We begin by defining the relevant markets.⁸³ We next identify market participants and examine market concentration and how market concentration will change as a result of the transaction. We also consider other factors that might affect the likelihood that prices might increase as a result of the proposed transaction.

27. If our structural analysis suggests that the proposed transaction may have anticompetitive effects, we then examine in more detail whether and how the proposed transaction will affect competitive behavior. In performing this behavioral analysis, we consider whether the proposed transaction is likely to have anticompetitive effects either through unilateral actions of the merged firm or through coordinated

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who have not yet signed the required acknowledgments may do so in order to obtain the confidential version of this Order.

⁷⁹ See Northern Sky Report at ES-6, ES-7. Globally, PanAmSat describes competition in FSS as including global competitors Intelsat, and SES Americom and New Skies (both subsidiaries of SES GLOBAL), as well as regional competitors that do not serve the U.S. market. See PanAmSat 10-K 2004 at 19-20; PanAmSat 10-K 2005 at 19. For 2004, Intelsat reported total revenues of \$1.044 B. Intelsat 20-F 2004 at 5, 59, 60; see also Intelsat 10-K 2005 at 60 (2005 total revenue of \$1.172 B). PanAmSat reported 2004 total revenues of \$762.9 M. PanAmSat 10-K 2004 at 39; see also PanAmSat 10-K 2005 at 54 (2005 total revenue of \$799.6 M). In the global markets, including the markets for international service to and from the United States, Intelsat is the market leader with [REDACTED]% of leased FSS transponder capacity, followed by PanAmSat with [REDACTED]%, SES GLOBAL, the parent of SES Americom, SES Astra, and New Skies, with [REDACTED]%, and Eutelsat, a European-based satellite provider, with [REDACTED]%. Northern Sky Report at ES-6, ES-7.

⁸⁰ See, e.g., [REDACTED].

⁸¹ In fact, as noted above, the only comments on the competitive effects of the merger were from several customers and equipment providers that supported the proposed transaction. See *supra* note 45.

⁸² Structural merger analysis, as the name suggests, considers structural characteristics of the merging firms and the relevant markets, such as market shares and entry conditions, to make predictions about the likely competitive effects of a proposed merger.

⁸³ A relevant product market has been defined as the smallest group of competing products for which a hypothetical monopoly provider of the products would profitably impose at least a “‘small but significant and nontransitory’ increase in price.” Horizontal Merger Guidelines, U.S. Department of Justice and the Federal Trade Commission, §§ 1.11, 1.12 (issued Apr. 2, 1992, revised Apr. 8, 1997) (“DOJ/FTC Guidelines”), available at http://www.usdoj.gov/atr/public/guidelines/horiz_book/toc.html (visited Feb. 24, 2006); see also *EchoStar-DirectTV HDO*, 17 FCC Rcd at 20605-6, ¶ 106.

A relevant geographic market has been defined “as the region where a hypothetical monopolist that is the only producer of the relevant product in the region would profitably impose at least a ‘small but significant and nontransitory’ increase in the price of the relevant product, assuming that the prices of all products provided elsewhere do not change.” *EchoStar-DirectTV HDO*, 17 FCC Rcd at 20609, ¶ 117 (citing DOJ/FTC Guidelines, § 1.21).

interaction among firms competing in the relevant market.⁸⁴

28. As a general matter, if firms produce nearly homogeneous products or services and compete for customers on the basis of price, then there exists a direct relationship between the number of firms in the relevant market and the observed level of product price.⁸⁵ For this reason, a merger in an industry composed of a few firms raises the concern that customers may be harmed post-merger, by higher prices and reductions in output.

29. Importantly, prices in the markets for satellite communications services are determined somewhat differently than in the markets just described. First, satellite communication services are substantially differentiated one from another in terms of frequency band, transponder power, and the geographic coverage of antennas. Second, a buyer's utilization of a satellite communication service involves a long-term, ongoing business relationship with the communications satellite carrier, and not a simple, "one-shot" impersonal purchase of a standardized commodity. In fact, the actual sale and purchase of most FSS satellite communication services often involves extensive negotiation between the communication satellite carrier and the buyer. Given the specialized service and extensive negotiation between an FSS satellite carrier and buyer, the effects of a reduction in the number of competitors on communication satellite service prices are neither as direct nor as straightforward as such effects are in markets where prices are determined primarily through adjustments in excess supply or demand.

30. Still, it might be argued that a reduction in the number of independent satellite operators reduces the number of sellers that a buyer may "play off" against another seller in bargaining for the best price and most favorable terms and conditions of sale. In other words, the bargaining power of a buyer may be reduced as a result of a post-merger reduction in the number of independent, competing satellite operators. Reduction in buyer-seller bargaining power, however, is neither inevitable nor for that matter necessarily likely. First, given the critical importance to buyers of the unique attributes of satellite transponder capacity including frequency, power, bandwidth, and orbital location, it is not necessarily the case that any competing satellite operator can meet the unique satellite communications requirements of a given buyer. Thus, the presence of multiple, independent satellite operators may be completely irrelevant

⁸⁴ *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20619, ¶ 151. As the Commission explained in *EchoStar-DirecTV HDO*:

Unilateral effects arise when the merging firm finds it profitable to alter its behavior following the merger. Examples of unilateral effects include a merging firm's raising its price or reducing the quantity it supplies. Coordinated effects, in contrast, arise when competing firms, recognizing their interdependence, take actions "that are profitable for each of them only as a result of the accommodating reactions of others." Because coordinated effects generally are more likely the smaller the number of firms in a market, mergers may significantly increase the likelihood of coordinated effects by reducing the number of firms. Examples include explicit collusion, tacit collusion, and price leadership.

Id. at 20619, ¶ 152 (footnotes omitted).

⁸⁵ More precisely, as the number of competitors increases, the equilibrium price-cost margin declines. In the limit of this process, equilibrium price approaches the marginal cost of production. The basic Cournot oligopoly model reflects such pricing behavior as the number of competitors varies. *See, e.g.*, W. Kip Viscusi *et al.*, *Economics of Regulation and Antitrust*, 3rd Ed. (Cambridge, Mass: The MIT Press, 2000) at 102-108. Conversely, a reduction in the number of competitors may be expected to increase equilibrium price-cost margins and the unit price of output.

to a given buyer if only one satellite carrier has the transponder capacity to meet the buyer's communications requirements. Under these circumstances, the buyer's bargaining power relative to the satellite carrier largely is unaffected by a reduction in the number of independent communication satellite operators. Second, other factors affect the relative bargaining power of buyer and seller, such as the value or opportunity cost of time of parties in the negotiation process,⁸⁶ or the risk that negotiations might randomly and exogenously fail.⁸⁷ Additionally, the outcome of the bargaining process and the price ultimately paid by the buyer ultimately will depend on the bargaining procedure actually followed by the buyer and seller, the bargaining tactics adopted by the parties to the negotiating process, and the extent of asymmetric information between the buyer and seller.⁸⁸

31. Finally, it is useful to contrast the nature of competitive rivalry in *retail* satellite service markets, where customers are ordinary consumers buying, for example, multi-channel video programming services, and *wholesale* satellite service markets, where customers are business entities buying video transmission services by satellite for either contribution or distribution purposes. In retail satellite services markets, the satellite operator faces an addressable market of thousands, even millions, of potential customers. The individual customer largely is anonymous to the satellite operator but for critical service and billing parameters and only the most perfunctory personal relationship exists between the customer and the satellite operator. Ordinarily, all customers pay the same price for the service, given differentiation between service tiers, promotional offers, or certain customer groupings. Individual customers generally do not negotiate over price or other terms and conditions of service.

32. By contrast, in wholesale satellite services markets, the satellite operator faces a relatively small number of potential customers compared to retail satellite services markets. Given the technical complexity of coordinating the establishment of satellite transmission service between the satellite and earth stations and the engineering required to establish, maintain, restore, or otherwise modify the technical parameters of satellite transmission, an ongoing personal relationship between the video customer and the satellite operator is essential. Moreover, the scope of the ongoing personal relationship is broad and complex, involving personnel from sales, marketing, engineering, and accounting and billing, among other units in the corporate organization of the satellite operator. Although the focal points of competitive rivalry in retail satellite services markets are price and terms and conditions of service, the focal point of competitive rivalry in wholesale satellite service markets is the *entire business relationship* with its many components, including price, between the wholesale video customer and the satellite operator. Often, quality and reliability of service will be more important to a wholesale video customer than just the lowest transponder lease rate.

33. Given the significant structural and behavioral differences between retail and wholesale satellite services markets, different models of competitive rivalry apply. In general terms, static models of price competition as reflected in the DOJ/FTC Merger Guidelines provide a useful approximation of

⁸⁶ See, e.g., A. Rubinstein, "Perfect Equilibrium in a Bargaining Model," *Econometrica* 50 (1982): 97-110 and A. Rubinstein, "A Bargaining Model with Incomplete Information about Time Preferences," *Econometrica* 53 (1985):1151-1172.

⁸⁷ See Abhinav Muthoo, *Bargaining Theory with Applications* (Cambridge, UK: Cambridge University Press, 1999), Chapter 4.

⁸⁸ See *id.* (analyzing these and other influences on the bargaining process).

the likely competitive effects of a merger between satellite operators competing for retail customers.⁸⁹ Under these circumstances, a reduction in the number of competing satellite operators may, but not necessarily, adversely affect the welfare of retail customers in terms of prices paid and the quantity of services available. By contrast, the economic analysis of competitive effects in wholesale satellite services markets requires economic models that capture the complex interdependencies between small numbers of buyers and sellers. For example, contemporary game-theoretic models of bargaining relationships can provide an appropriate analytical foundation for predicting the likely economic effects of changes in industry structure induced by a merger. Such models reveal the substantial complexity in relationships between the number of competitors and possible metrics of buyer and seller welfare.

34. For the purposes of our public interest analysis, we begin by considering the provision of FSS services in the C- and Ku-bands to various types of customers.⁹⁰ As the record demonstrates, this transaction involves several relevant product markets, and, for the purposes of this transaction, we will consider: (1) video services, including video distribution, full-time video contribution, and occasional use video services; (2) network services; and (3) government/military services. Although there are differences in the characteristics of demand for these three types of services, we note that customers in each of these markets largely will be relying on the same FSS operators and using capacity on the same satellites.

1. FSS Video Services

35. For the purposes of this analysis, we consider video services using FSS capacity within the United States. We include video distribution (transmission of programming to broadcasters, cable systems and other redistribution systems), video contribution (transmission of news, sports, and other video programming from various locations to central video production studios), and occasional use video (short-term satellite services provided to broadcasters and others for coverage of sporting events, special events and breaking news).⁹¹ We do not include in the analysis the impact of the proposed transaction on the DTH market, but do consider whether FSS capacity that currently is allocated to DTH services might become available for contribution, distribution and occasional use services if there were an increase in price, and whether the possible availability of that capacity might mitigate any competitive harms that we might find.⁹²

⁸⁹ Recent models of competition in quality also may be applicable. *See, e.g.*, John Sutton, *Sunk Costs and Market Structure* (MIT Press, 1997).

⁹⁰ We will consider both C-band and Ku-band capacity. There are some differences in the properties of these frequencies and the relative attractiveness of the bands and orbital locations for different types of services and for different types of customers. C-band frequencies traditionally have been used for video broadcasting and data and voice communications. C-band frequencies have longer wavelengths and therefore are less susceptible to terrestrial and atmospheric interference but require large antennas, typically three to six meters in diameter, to transmit and receive signals. On the other hand, Ku-band frequencies have shorter wavelengths and require more powerful transponders, thereby allowing customers to use smaller antennas, 60 to 180 centimeters in diameter. Ku-band has been used for such services as DTH broadcasting, video distribution and private data networks. *See* PanAmSat 10-K 2004 at 4-5.

⁹¹ *See, e.g.*, PanAmSat 10-K 2004 at 39; Intelsat 20-F 2004 at 25-29.

⁹² In evaluating the transaction, we need not consider the direct impact of the transaction on direct broadcast satellite (“DBS”) services, which, in the United States, would not be affected by the proposed (continued....)

36. SES Americom and PanAmSat are the two major providers of video services in North America, with [REDACTED] percent and [REDACTED] percent of leased C- and Ku-band transponder capacity in North America,⁹³ respectively, with higher market shares of FSS services in the United States. Intelsat has [REDACTED] percent of the leased C-band and Ku-band transponder capacity in North America.⁹⁴ Telesat Canada has approximately [REDACTED] percent of the leased transponder capacity in North America.⁹⁵ Video distribution accounts for a significant share of C-band capacity used for video services in North America, and a smaller share of Ku-band capacity.⁹⁶ PanAmSat has focused mainly on video distribution⁹⁷ with full-time transmission of television programming to cable systems, network affiliates and other redistribution systems. PanAmSat has “cable neighborhoods,” with popular television channels acting as “anchor tenants.”⁹⁸ Over half of PanAmSat’s fleet is part of a cable neighborhood.⁹⁹ Seven satellites serving the United States are part of cable neighborhoods serving the United States.¹⁰⁰ Similarly, SES Americom has established cable neighborhoods and also provides FSS video distribution services to popular networks. Some of the top U.S. cable networks have contracts for periods of five to fifteen years with SES Americom and PanAmSat.¹⁰¹ By contrast, Intelsat currently provides program

(Continued from previous page)

transaction. However, we note that EchoStar, a DBS provider, leased Ku- and Ka-band capacity on several SES Americom satellites for the provision of DBS services. *See* EchoStar Communications Corporation, Annual Report on Form 10-K Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Fiscal Year Ended December 31, 2004 at 8. *See also* Northern Sky Report at 3-12 to 3-13. In evaluating the transaction, we consider the potential availability of this leased capacity for other FSS services.

⁹³ Northern Sky Report at 3-4.

⁹⁴ Northern Sky Report at 3-4.

⁹⁵ Northern Sky Report at 3-4. Telesat Canada has 20% of transponder sales for North America. *See* SES Americom Investors Day Presentation at 10. A considerable portion of Telesat Canada’s revenue is generated by service to the Canadian market. For example, Telesat Canada’s satellites are used by most of Canada’s national and regional television services for programming distribution, with more than 200 television signals distributed on a full-time basis. *See* <http://www.telesat.ca/broadcast/index.htm> (visited Feb. 24, 2006). Telesat Canada provides service to both the United States and Canada, but states that its focus is to “maintain its strong presence and core business in Canada.” *See* Telesat 2004 Annual Report at 14, *available at* <http://www.telesat.ca/pdfs/2004/entirereport.pdf> (visited Feb. 24, 2006). *See also* Management’s Discussion and Analysis for Telesat Canada Consolidated Financial Statement December 31, 2004, *available at* <http://www.telesat.ca/pdfs/2004/mda.pdf> (visited Feb. 24, 2006). At the same time, Telesat Canada is one of several satellite transponder providers, in addition to U.S.-licensed space station providers, that have Commission authorization to access the U.S. market. *See* Permitted Space Station List.

⁹⁶ In 2004, video distribution accounted for [REDACTED] of the C-band TPE, or [REDACTED]% of the C-band capacity used for video services. Video distribution accounted for [REDACTED] of the Ku-band TPE, or [REDACTED]% of the Ku-band capacity used for video services. *See* Northern Sky Report at 3-5 to 3-6.

⁹⁷ Consolidated Application at 23-24 and 24 n.41.

⁹⁸ PanAmSat 10-K 2004 at 7; PanAmSat 10-K 2005 at 9.

⁹⁹ PanAmSat 10-K 2005 at 9 (of 23 satellites in orbit at time of 2005 10-K report, 12 were part of cable neighborhoods around the world).

¹⁰⁰ PanAmSat 10-K 2005 at 9.

¹⁰¹ Consolidated Application at 24.

distribution services for ethnic and other specialized programming.¹⁰²

37. The Applicants assert that the proposed transaction will enhance competition, based, in part, on the claim that the two companies have complementary, rather than overlapping, areas of business focus.¹⁰³ To support this claim, the Applicants assert that Intelsat does not compete with SES Americom and PanAmSat for top-tier video customers, which are the core of PanAmSat's and SES Americom's video distribution business. The Applicants claim that Intelsat is unable to compete for those customers since it lacks a "cable neighborhood" and is unable to provide sufficient protected or non-preemptible capacity for those customers. The Applicants cite the need for an anchor tenant with popular programming, as well as concerns by existing and new content providers about losing access to some cable headends, as difficulties in attracting video distribution customers or establishing a "cable neighborhood."¹⁰⁴ However, Intelsat does provide video distribution services for ethnic and other specialized programming, which is a growing segment of the video distribution market,¹⁰⁵ and competes with SES Americom and PanAmSat for those customers. For ethnic and specialized programmers that currently see the Intelsat capacity as a substitute for SES Americom and/or PanAmSat capacity, the proposed transaction will combine two of the three largest providers of FSS capacity for video distribution.

38. Video customers may experience differing competitive effects from the merger, reflecting both differences in the bargaining power of the video customers and the varying importance of a continuing relationship between the merged satellite entity and the customer. Large customers, such as the top-tier video customers, are likely to retain sufficient bargaining power post-merger such that the merged entity will gain little bargaining advantage over these customers. To the extent that second- and third-tier customers may view a reduction in the number of independent suppliers of video transponder capacity as weakening, to some extent, their bargaining power, we conclude that the post-merger Intelsat may lack the incentive to exercise such augmented bargaining power because second- and third-tier video customers represent a potential revenue growth opportunity for the post-merger Intelsat. For this reason, and based on the record in this proceeding, we conclude that the merger is unlikely to induce any significant adverse competitive effects for either well-established or less-advantaged video customers.

39. We next consider both full-time video contribution services, which broadcasters use to consolidate programming from various locations and assemble it in a central location to produce the final programming product, and occasional use services, which broadcasters use for coverage of news, special events and sporting events. With full-time contribution services, broadcasters have a dedicated pipe for the full-time consolidation of programming segments.¹⁰⁶ For full-time contribution services, some of the

¹⁰² Consolidated Application at 24 (Intelsat provides program distribution services largely for religious and foreign-language channels); Intelsat 20-F 2004 at 26 (Intelsat as the leading provider of FSS capacity for non-English language programming distribution in North America, with over 150 channels broadcast); Intelsat 10-K 2005 at 9 (Intelsat as one of the leading providers of FSS capacity for ethnic programming distribution in North America, with over 150 channels broadcast).

¹⁰³ Consolidated Application at 23.

¹⁰⁴ *Id.* at 24-25.

¹⁰⁵ See Intelsat 10-K 2005 at 13; PanAmSat 10-K 2004 at 13; [REDACTED].

¹⁰⁶ See PanAmSat 10-K 2004 at 7.

larger customers have contracts for a core capacity,¹⁰⁷ and, for those customers, some of the impact of any reduction in competition would be mitigated. Even absent the protective effects of long-term contracts for video transponder capacity, video customers requiring satellite capacity for video contribution services nevertheless may retain substantial bargaining power with respect to the post-merger Intelsat, especially if fiber optic telecommunications facilities are a technical and economic alternative in specific video transmission applications. As we explain in paragraph 38, a continuing relationship between a video customer and the satellite operator is often valuable to both buyer and seller of video transponder services, and the competitive effects from the merger may be expected to differ for different video customers, reflecting differences in bargaining power and the specific attributes of the ongoing business relationship. For this reason, and based on the record in this proceeding, we conclude that the merger is unlikely to induce any significant adverse competitive effects for video customers requiring satellite capacity in the production of contribution services.

40. For occasional use video, customers are less sensitive to orbital location, and there is no advantage to being in a “cable neighborhood,” but operators can use occasional use video to take advantage of underutilized capacity on their satellites.¹⁰⁸ We conclude that because customers have more flexibility in fulfilling their occasional use video requirements, the proposed transaction is less likely to present competitive concerns with respect to occasional use video services than for full-time video services.

2. FSS Network Services

41. For purposes of this analysis, we define the FSS network services market to include voice and data applications provided to telecommunications carriers (mostly point-to-point transmission between telecommunications hubs), corporate network applications (including point-to-point and point-to-multipoint traffic for one- and two-way communications among multiple business sites), and Internet applications (including satellite capacity for Internet Protocol trunking and direct Internet access broadband connectivity).¹⁰⁹

42. The proposed transaction will combine two of the three largest providers of FSS network services, where, for North America, SES Americom, PanAmSat and Intelsat have, respectively, 31 percent, 34 percent and 15 percent of transponder capacity sales.¹¹⁰ For some applications, terrestrial networks are available and the Applicants claim that fiber is increasingly well-positioned to substitute for satellite services.¹¹¹ In considering the likely competitive impact of the proposed transaction, we consider the service applications for which customers do not find terrestrial networks to be a reasonable substitute, including, for example, multicasting and narrowband VSAT services.¹¹² We note that, for FSS

¹⁰⁷ See, e.g., PanAmSat 10-K 2004 at 8, PanAmSat 10-K 2005 at 10 (listing video distribution customers).

¹⁰⁸ PanAmSat 10-K 2004 at 8, PanAmSat 10-K 2005 at 10.

¹⁰⁹ See Intelsat 20-F 2004 at 25, PanAmSat 10-K 2004 at 8, Intelsat 10-K 2005 at 8-9, PanAmSat 10-K 2005 at 10-11.

¹¹⁰ SES Americom Investors Day Presentation at 31.

¹¹¹ Consolidated Application at 28.

¹¹² See, e.g., PanAmSat 10-K 2004 at 13, 20; Intelsat 10-K 2005 at 26; [REDACTED].

network services, the top ten customers account for a very large share of U.S. revenue and some of those customers have long-term contracts for a portion of their capacity.¹¹³ Again, for large customers with long-term contracts for a significant portion of their demand, potential competitive harms might be mitigated or delayed. On balance, and based on the record, which contains no comments about any potential negative impact on the provision of FSS network services, we conclude that the merger is unlikely to result in competitive harms in this sector.

3. FSS Government Services

43. For the purposes of this analysis, we consider satellite services provided to the U.S. and other government entities and their contractors. For example, PanAmSat, in its government services segment, serves three customer groups: federal agencies and organizations through a General Services Administration contract, the U.S. Department of Defense, and prime contractors and system integrators managing government accounts.¹¹⁴ For domestic and global government services, the proposed transaction will increase concentration. The effect of the proposed transaction on market structure for government services will be similar to the effect for the other types of services, except that some providers might not be considered eligible to provide certain services. The combination of the two fleets, however, also might result in increased redundancy and enhanced geographic availability, and provide these purchasers of satellite services with enhanced geographic portability, *i.e.*, the ability to shift their contracted capacity within a larger fleet, providing additional access among and within regions.¹¹⁵ We have not received comments from any government agencies and contractors expressing concerns about potential competitive harms. We determine that the record in this proceeding does not support a finding of competitive harms in the provision of FSS government services in the United States.

4. Transaction-Specific Benefits

44. The Applicants claim that the proposed transaction will allow the combined fleet to be optimized to maximize back-up capabilities, for example through collocating satellites or more rapidly repositioning satellites to restore service in the event of a partial or total failure.¹¹⁶ The Applicants claim that this will allow them to increase the amount of C-band capacity that will be available to customers on a protected basis.¹¹⁷ Some transaction-specific benefits might arise from the ability to use the combined fleet to provide additional protected C-band capacity and to provide more options for restoration of

¹¹³ Intelsat's top ten U.S. customers account for [REDACTED]% of its Intelsat Americas revenue from network services, with the largest customer accounting for [REDACTED]% of Intelsat Americas revenue from network services. Intelsat December 14 Response at 16. PanAmSat's top ten U.S. customers account for [REDACTED]% of U.S. revenue from network services, with the largest customer accounting for [REDACTED]% of U.S. revenue from network services. PanAmSat December 14 Response at [REDACTED]. Several of the top ten customers have long-term contracts that cover a significant amount of their demand. *Id.* at [REDACTED].

¹¹⁴ PanAmSat 10-K 2004 at 10.

¹¹⁵ ARTEL Comments at 2. ARTEL is a contractor procuring commercial FSS bandwidth and related satellite-based services and applications for the U.S. Department of Defense. *Id.*

¹¹⁶ Consolidated Application at 17-19.

¹¹⁷ *Id.* at 17.

service in the event of a failure.¹¹⁸

45. The Applicants assert that the proposed transaction will drive innovation. The Applicants also state that the proposed transaction will create a new company with sufficient scale, expertise and resources to invest in the development of broadband by satellite at prices that would be competitive with terrestrial broadband services and in the development of other new services.¹¹⁹ Furthermore, the Applicants assert that the proposed transaction will help to achieve critical public policy emergency preparedness goals, by reducing the cost of providing service and thereby providing an incentive for companies to incorporate satellites into their plans, by creating a larger company with more flexibility and with more resources that can be used for “rapid response,” and by producing a company that will focus on innovation and work with vendors to supply higher quality of service in emergency situations.¹²⁰

46. The Applicants also claim that, with the proposed transaction, the merged companies will be able to use spectrum more efficiently and offer better geographic availability. In making this claim, they point to the utilization rates of some Intelsat satellites with steerable beams, and note that Intelsat is contractually committed not to repoint the beams, even if there is spare capacity on the beams.¹²¹ This contractual obligation prevents Intelsat from selling the unused capacity to customers seeking service in another region.¹²² The Applicants also note that, in some instances, PanAmSat might have unused capacity serving the region currently served using Intelsat’s steerable beams.¹²³ With the proposed transaction, the Applicants claim that the Intelsat customers can be moved to the PanAmSat capacity, thereby freeing the steerable beam to be repointed to another region requiring additional capacity.¹²⁴ Based on the current record, we find that the transaction might result in some efficiencies based on the ability to relocate customers on some of Intelsat’s steerable beams, freeing that capacity to serve a different region.¹²⁵

B. Foreign Ownership

¹¹⁸ [REDACTED.] See also UN Network Operations Comments at 2-3.

[REDACTED.]

¹¹⁹ Consolidated Application at 21. [REDACTED]

¹²⁰ Intelsat February 23 Letter at 2.

¹²¹ Consolidated Application at 19.

¹²² *Id.*

¹²³ *Id.* at 20.

¹²⁴ *Id.* at 19-20. The Applicants note that PanAmSat has one satellite, PAS-12, formerly known as Europe*Star 1, and Intelsat has two satellites, IS-704 and IS-802, with beams serving South Africa, with each satellite only partially utilized, and that with the proposed transaction, traffic on the Intelsat satellites can be relocated to PAS-12. That relocation will permit the beams on the two Intelsat satellites to be repointed, providing additional capacity in other regions. *Id.* at 20.

¹²⁵ UN Network Operations Comments at 3. See also ViaSat Comments at 2.

47. Because of the foreign ownership interests presented in this case,¹²⁶ we first consider the applicability of section 310(a) and (b) of the Communications Act.¹²⁷ We find that neither provision applies to the proposed transaction. No foreign government or its representative would hold any of the subject licenses. Thus, our review does not fall under section 310(a) of the Act, which prohibits “any foreign government or the representative thereof” from holding a license.¹²⁸ Further, the Applications before us involve the transfer of control of earth and space station licenses for provision of FSS service, all of which are held, and are to be transferred, on a non-common carrier basis.¹²⁹ Thus, we find that the proposed transaction does not involve a “broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license,” and the statutory provisions of section 310(b) of the Act do not apply.¹³⁰

48. Regardless of the applicability of section 310(a) and (b) of the Act, the Commission maintains a responsibility pursuant to section 310(d) to examine and make a finding as to whether a specific transfer or assignment involving Title III licenses will serve the public interest, convenience, and necessity.¹³¹ Thus, consistent with our responsibilities under section 310(d), where appropriate, our review considers whether public interest harms are likely to result from foreign investment in Title III licenses.¹³² In this case, we consider whether foreign investment in a U.S. licensee is likely to distort competition in any relevant U.S. market. We also consider whether such foreign investment will further competition in the U.S. market and whether efficiencies and other public interest benefits are likely to result. If we find any harms resulting from foreign investment, these harms are considered in the overall balancing of the potential public interest harms and benefits of the proposed transaction.¹³³

49. The nature of our inquiry here focuses on whether the transfer of control of the PanAmSat Licensees, from PanAmSat to Intelsat, is likely to create competitive distortions in the U.S. market based on the foreign ownership of Intelsat. In 2004, we determined that the public interest would not be served by prohibiting the identified, then-proposed indirect foreign ownership of the Intelsat Title III licensees in

¹²⁶ Intelsat is an entity organized under the laws of Bermuda and ultimately controlled by private equity fund groups that include investing funds: (1) organized under foreign laws; (2) having foreign limited partners; and (3) having foreign citizens or entities with direct or indirect controlling interests in the investing funds. *See, e.g., Intelsat-Zeus Order*, 19 FCC Rcd at 24830-31, ¶ 27 (foreign ownership ruling).

¹²⁷ *See* 47 U.S.C. § 310(a), (b).

¹²⁸ *See* 47 U.S.C. § 310(a).

¹²⁹ *See* Consolidated Application at 39.

¹³⁰ *See* 47 U.S.C. § 310(b).

¹³¹ 47 U.S.C. § 310(d).

¹³² *See, e.g., GM- News Corp. Order*, 19 FCC Rcd at 491, ¶ 33; *Application of Verestar, Inc. (Debtor-in-Possession) for Consent to Assignment of Licenses to SES Americom, Inc.*, Memorandum Opinion, Order and Authorization, 19 FCC Rcd 22750, 22754, ¶ 11 (Int’l Bur. 2004); *Application of Orbital Communications Corporation and ORBCOMM Global, L.P., Assignors, for Consent to Assign Non-Common Carrier Earth and Space Station Authorizations, Experimental Licenses, and VSAT Network to ORBCOMM License Corp. and ORBCOMM LLC, Assignees*, Order and Authorization, 17 FCC Rcd 4507, 4506, ¶ 19 (Int’l Bur. 2002).

¹³³ *See supra* Section V.A (Competitive Effects).

excess of the 25 percent benchmark set by section 310(b)(4) of the Act.¹³⁴ Intelsat has substantiated for the record that there has been only immaterial change (less than one percent) in the amount of, or identify of, foreign equity and voting interests held in Intelsat by and through each of the individual private equity funds investing directly in Intelsat.¹³⁵ Based on Intelsat's representations and our review of the record, we find that the proposed acquisition of PanAmSat by Intelsat is not likely to create competitive distortions in the U.S. market based on the foreign ownership of Intelsat.

C. National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns

50. When analyzing a transfer of control or assignment application in which foreign investment is involved, we also consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the Executive Branch.¹³⁶ According to the Consolidated Application, the Applicants do not believe the proposed transaction should raise any national security, law enforcement, or public safety issues that have not already been addressed in prior Intelsat transactions reviewed by the Commission.¹³⁷ In the Consolidated Application, the Applicants advised that they were discussing these matters with the relevant Executive Branch agencies and asked the Commission to defer final action on the Applications until such matters had been resolved.¹³⁸ Additionally, as noted above, on November 14, 2005, the DOJ, including the FBI, with the concurrence of the DHS and the DOD, asked the Commission to defer formal action on the Applications until such time as these Executive Branch agencies notified the Commission that potential national security, law enforcement, and public safety issues had been addressed.¹³⁹

51. On December 6, 2005, the DOJ, including the FBI, together with the DHS and the DOD filed a Petition to Adopt Conditions to Authorizations and Licenses ("Executive Branch Petition"), advising the Commission that they have no objection to the Commission granting the Applications, provided that the Commission conditions the grant on Intelsat's compliance with the commitments and undertakings contained in a December 5, 2005 letter attached as Exhibit 1 to the Executive Branch Petition.¹⁴⁰ Exhibit 1 is a letter from Intelsat to the DOJ, DHS and FBI confirming that Intelsat will extend its current national security, law enforcement and public safety commitments to cover the businesses acquired in the pending

¹³⁴ *Intelsat-Zeus Order*, 19 FCC Rcd at 24820, ¶ 1, 24830-31, ¶ 27. Additionally, the order observed that Zeus would be acquiring the interests then held by former signatories of INTELSAT and by entities the Commission has found to possess market power in foreign telecommunications markets. *Id.* at 24833, ¶ 33.

¹³⁵ See, e.g., Intelsat Supplemental Response at 1-2 and redacted response to Question 1(b).

¹³⁶ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, IB Docket Nos. 97-142 and 95-22, 12 FCC Rcd 23891, 23918, ¶ 59 (1997), *recon. denied*, 15 FCC Rcd 18158 (2000) ("*Foreign Participation Order*"); *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24170, ¶ 178 (1997).

¹³⁷ Consolidated Application at 39.

¹³⁸ *Id.* at 39-40.

¹³⁹ See *supra* ¶ 14 and ¶ 14 note 46, ¶ 16 and ¶ 16 note 52.

¹⁴⁰ Petition to Adopt Conditions to Authorizations and Licenses, IB Docket No. 05-290 (filed Dec. 6, 2005) at 1-2.

transaction (“Intelsat/PanAmSat Commitment Letter”).¹⁴¹ These current commitments include maintaining a security committee of Intelsat Global Services Corporation and a proxy agreement for Intelsat General Corporation, cooperating with U.S. government electronic surveillance activities, and providing advance notice to the Executive Branch agencies if the Applicants should elect to offer common carrier switched services at some future date.¹⁴² The Executive Branch Petition states that the Executive Branch agencies have taken the position that their ability to satisfy their obligations to protect the national security, enforce the laws, and preserve the safety of the public could be impaired by transactions in which foreign entities will own or operate a part of the U.S. telecommunications system, or in which foreign-located facilities will be used to provide domestic telecommunications services to U.S. customers.¹⁴³ After discussions with the Applicants, the Executive Branch agencies have concluded that the commitments set forth in the Intelsat/PanAmSat Commitment Letter address their concerns, and therefore ask the Commission to condition the grant on Intelsat’s compliance with the commitments set forth in the letter.¹⁴⁴

52. In assessing the public interest, we take into account the record and accord deference to Executive Branch expertise on national security and law enforcement issues.¹⁴⁵ As the Commission stated in the *Foreign Participation Order*, foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch.¹⁴⁶ In presuming that an application involving investment by a World Trade Organization Member applicant does not pose a risk of anticompetitive harm that would justify denial of the application, the Commission does not presume, however, that the application poses no national security, law enforcement, foreign policy, or trade concerns.¹⁴⁷ In 2004, in the *Intelsat-Zeus Order*, the Commission, on delegated authority, granted the petition of the Executive Branch agencies to condition the grant of the licenses and authorizations at issue in that proceeding on certain national security, law enforcement, and public safety commitments.¹⁴⁸ Intelsat now has agreed to extend those commitments to

¹⁴¹ Letter from Phillip L. Spector, Executive Vice President and General Counsel, Intelsat, to Laura H. Parsky, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice, Steward A. Baker, Assistant Secretary for Policy, U.S. Department of Homeland Security, and Elaine N. Lammert, Deputy General Counsel, Federal Bureau of Investigation (dated Dec. 5, 2005) at 1-2. In this regard, the Intelsat/PanAmSat Commitment Letter refers to the November 24, 2004 letter making the earlier commitments, which the Commission included as Appendix D to the *Intelsat-Zeus Order*. See *Intelsat-Zeus Order*, 19 FCC Rcd at 24872, Appendix D.

¹⁴² Intelsat/PanAmSat Commitment Letter at 3-5. As part of these commitments, Intelsat states that it will ensure that the PanAmSat subsidiary that is involved in servicing U.S. government customers, G2 Satellite Solutions Corporation (“G2”), is placed under or merged into Intelsat General Corporation (“Intelsat General”). As a result, G2 will operate under the Intelsat General proxy agreement structure. Intelsat/PanAmSat Commitment Letter at 3.

¹⁴³ Executive Branch Petition at 2.

¹⁴⁴ *Id.*

¹⁴⁵ *Foreign Participation Order*, 12 FCC Rcd at 23919-21, ¶¶ 61-66.

¹⁴⁶ *Id.* at 23919, ¶ 62.

¹⁴⁷ *Id.* at 23920-21, ¶ 65.

¹⁴⁸ *Intelsat-Zeus Order*, 19 FCC Rcd at 24839, ¶ 49.

the licenses transferred in this instant proceeding. In accordance with the request of the Executive Branch agencies, in the absence of any objection from the Applicants, and given the discussion above, we condition our grant of the Applications on Intelsat's compliance with the commitments set forth in the Intelsat/PanAmSat Commitment Letter.¹⁴⁹ We include the Executive Branch Petition and the Intelsat/PanAmSat Commitment Letter as Appendix C to this Order.

D. Other Issues

1. ITSO Request for Conditions

53. In 1973, an international agreement created INTELSAT as an intergovernmental organization for the purpose of operating a global commercial telecommunications satellite system.¹⁵⁰ In 2001, the parties to the INTELSAT agreement privatized INTELSAT by transferring its assets to a commercial corporation, Intelsat.¹⁵¹ Pursuant to international agreement, ITSO remains as the intergovernmental organization responsible for monitoring Intelsat's adherence to certain "core principles" in providing international public telecommunications services.¹⁵² The United States is a party to the ITSO Agreement, with the U.S. Department of States serving as the U.S. representative. 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.¹⁵³ As part of the privatization and its commitment to the "core principles," Intelsat entered into a Public Services Agreement with ITSO by which Intelsat agreed to provide connectivity and capacity to a predefined group of "lifeline" users for a predetermined number of years, with price protection during the life of the commitments.¹⁵⁴

54. ITSO is concerned that the acquisition of PanAmSat might increase Intelsat's debt level to the extent that Intelsat might consider filing for bankruptcy and as a result might seek to void the Public

¹⁴⁹ See *infra* ¶ 77 (ordering clause).

¹⁵⁰ See Agreement Relating to the International Telecommunications Satellite Organization "INTELSAT," 23 U.S.T. 3813, TIAS No. 7532, 1220 U.N.T.S. 22 (entry into force Feb. 12, 1973).

¹⁵¹ In this section, we use the term "INTELSAT" to refer to the pre-privatized intergovernmental organization and the term "Intelsat" to refer to the commercial corporation after privatization, including that corporation's subsidiary Intelsat LLC, created to hold Commission licenses issued to the privatized company, as well as other Intelsat subsidiaries that now hold Commission licenses and authorizations.

¹⁵² See Agreement Relating to the International Telecommunications Satellite Organization, As Amended by the Twenty-Fifth (Extraordinary) Assembly of Parties in Washington, D.C. (Nov. 17, 2000) ("ITSO Agreement"), available at http://216.119.123.56/dyn4000/dyn/docs/ITSO/tpl1_itso.cfm?location=&id+5&link_src=HPL&lang=english (visited Feb. 22, 2006). See also *Applications of Intelsat LLC for Authorization 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, 16 FCC Rcd 12280, 12283, ¶ 10 (2001) ("*Intelsat LLC ORBIT Act Compliance Order*").

¹⁵³ See ITSO Agreement, Art. III(b); see also ITSO Comments at 3.

¹⁵⁴ See INTELSAT Assembly of Parties, Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting, 13-17 Nov. 2000, AP-25-3E FINAL W/11/00.

Services Agreement it has signed with ITSO or take other actions to avoid compliance with the core principles of the ITSO Agreement.¹⁵⁵ To remedy its concerns, ITSO asks the Commission to condition the grant of the Applications on: (1) the development and implementation of such legal mechanisms as may be necessary (in the opinion of ITSO's bankruptcy counsel) to assure that the Public Services Agreement and its obligations will survive a bankruptcy proceeding, including adherence to lifeline connectivity obligation ("LCO") contracts currently in effect with particular LCO-eligible customers; (2) a restatement of the conditions set out in the Commission licenses granted to Intelsat in 2000, to clarify that no entity not bound by the Public Services Agreement could be considered a successor of Intelsat, to prohibit transfer of the licenses and orbital slots to any non-successor, and in such case to ensure that the orbital positions would revert to the International Telecommunication Union ("ITU") inventory for reallocation; and (3) a requirement that Intelsat reinstate its former Bylaw No. 2 and related definitions concerning Intelsat's public service obligations.¹⁵⁶

55. The Applicants respond that ITSO's proposed conditions are a premature attempt to remedy a speculative harm of a hypothetical bankruptcy and contradict Commission policy that eliminated the financial qualifications for satellite applicants.¹⁵⁷ Intelsat states that it has obtained financing commitments from a group of financial institutions for the proposed merger and, in the unlikely event that unforeseeable market conditions were to cause a future Intelsat bankruptcy, the Commission would have the opportunity to address ITSO's concerns as part of any application to assign Intelsat's licenses to a debtor-in-possession, trustee, or successor.¹⁵⁸ The Applicants contend that ITSO mischaracterizes the respective roles of Intelsat, ITSO, and the Commission with respect to Intelsat's lifeline connectivity obligations, noting that the Commission is not a party to the Public Services Agreement, which the Applicants characterize as a private commercial agreement between ITSO and Intelsat that defines Intelsat's lifeline connectivity obligations and specifies express remedies for noncompliance.¹⁵⁹ Further, the Applicants assert that the Commission's sole commitment, in granting Intelsat its licenses in 2000, was to "cancel any transferred frequency assignments and orbital locations under ITU procedures should Intelsat or its successors lose its license to use such frequency assignments and orbital locations."¹⁶⁰ Finally, the Applicants state that the Intelsat bylaws permitted Intelsat to remove the public services obligation provision through the unanimous approval of the shareholders, which occurred in March, 2005.¹⁶¹

56. In its reply, ITSO contends that Intelsat's public service obligations are not a "private

¹⁵⁵ ITSO Comments at 1-2.

¹⁵⁶ *Id.* at 14.

¹⁵⁷ Joint Response at 9-14 and 10 n.38, citing generally to *Space Station Reform Order*, 18 FCC Rcd 10760. The Applicants assert that the Commission's mandate to protect the public interest "does not require it to predict Intelsat's economic future." Joint Response at 11.

¹⁵⁸ *Id.* at 10-11.

¹⁵⁹ *Id.* at 12.

¹⁶⁰ *Id.* at 13, citing to *Intelsat Licensing Order*, 15 FCC Rcd at 15511, ¶ 130, 15519, ¶ 159.

¹⁶¹ *Id.* at 13-14.

commercial agreement.”¹⁶² Although noting that the Public Services Agreement is a contract under the laws of the District of Columbia, with its interpretation and enforcement subject to arbitration, ITSO states the agreement is a contract between Intelsat and the 148 member parties of the ITSO Agreement.¹⁶³ ITSO further states that the Public Services Agreement stipulates that Intelsat’s ongoing performance of its public service obligations “is the consideration for the transfer” of INTELSAT’s assets to Intelsat.¹⁶⁴ ITSO states that the Commission, in granting Intelsat LLC the authority to operate, understood that the underlying agreement among the INTELSAT parties to privatize INTELSAT and transfer its assets to Intelsat was premised on Intelsat’s adherence to the core public service principles that would be embodied in the Public Services Agreement.¹⁶⁵ Finally, ITSO contends that, in selecting the United States as the licensing jurisdiction and notifying administration for Intelsat, the member parties of INTELSAT fully expected the Commission to ensure that the “common heritage” orbital slots transferred from INTELSAT to Intelsat would be managed within the context of Intelsat’s commitment to its public service obligations.¹⁶⁶

57. ITSO also disputes the Applicants’ argument that concerns about a potential Intelsat bankruptcy are speculative.¹⁶⁷ ITSO states that major financial ratings agencies have expressed significant concerns about the financial viability of the obligations of a post-merger Intelsat.¹⁶⁸ ITSO states that the PanAmSat acquisition would increase Intelsat’s debt and the level of risk to unsecured/subordinated obligations.¹⁶⁹ ITSO asserts that the private commercial risk preferences of the investment community and Intelsat’s private equity owners should not be allowed to define the ability of Intelsat to meet its public service obligations.¹⁷⁰ It asks the Commission to condition approval of the Applications to ensure continuation of the public service obligations and related contracts in the event that

¹⁶² ITSO Reply at 2-6.

¹⁶³ *Id.* at 3.

¹⁶⁴ *Id.* at 1.

¹⁶⁵ *Id.* at 3-4, citing to the August, 2000 *Intelsat Licensing Order*, 15 FCC Rcd at 15460, ¶¶ 25-26. The ITSO Reply also noted that ITSO’s 148 member parties would be meeting in January, 2006 to consider both Intelsat’s compliance with the Public Services Agreement and Intelsat’s investments in its satellite fleet. ITSO Reply at 4-5.

¹⁶⁶ ITSO Reply at 5-6. The ITSO Agreement defines “common heritage” as ‘those frequency assignments associated with orbital locations in the process of advanced publication, coordination or registered on behalf of the Parties with the International Telecommunications Union (“ITU”) in accordance with the provision set forth in the ITU’s Radio Regulations which are transferred to a Party or Parties pursuant to Article XII.’ ITSO Agreement, Art. I(1). As noted above, the orbital locations licensed to Intelsat in 2000 are identified in Appendix A of the Commission’s 2000 *Intelsat Licensing Order*. See *Intelsat Licensing Order*, 15 FCC Rcd at 15521, Appendix A.

¹⁶⁷ ITSO Reply at 6-8.

¹⁶⁸ *Id.* at 6-7. ITSO cites to Standard & Poor’s as having given Intelsat an institutional rating of BB- with a Credit Watch-Negative and Intelsat’s individual unsecured debt issues a B/Credit Watch-Negative, and cites to Moody’s Investors Service as rating several unsecured Intelsat obligations as Caa1. *Id.*

¹⁶⁹ *Id.* at 7.

¹⁷⁰ *Id.*

Intelsat defaults on its financial obligations.¹⁷¹

58. On February 17, 2006, ITSO filed a letter in this proceeding to inform the Commission of certain unanimous decisions taken by the ITSO Assembly of Parties at the January 30-February 2, 2006 Assembly meeting to endorse the ITSO Comments and ITSO Reply filed in this proceeding.¹⁷² The ITSO February 17 Letter states that the ITSO Assembly ‘unanimously decided to request that the United States, in its capacity as the selected licensing jurisdiction and “Notifying Administration” for the Common Heritage [orbital locations], take actions to ensure Intelsat’s adherence to its Public Service Obligations.’¹⁷³ On March 7, 2006, the U.S. Department of State formally filed in this proceeding the record of decisions taken at the ITSO Assembly of Parties.¹⁷⁴ The U.S. Department of State advises that

¹⁷¹ *Id.* at 7-8.

¹⁷² See Letter from Julie A. Reese, Deputy Director General and General Counsel, ITSO, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Feb. 17, 2006) (“ITSO February 17 Letter”), attaching a copy of an *ex parte* letter from Ahmed Toumi, Director General and Chief Executive Officer, ITSO, to Kevin J. Martin, Chairman, Federal Communications Commission (dated Feb. 17, 2006) (“Toumi February 17 Letter”). The Toumi February 17 Letter states that the ITSO Assembly unanimously noted the high level of debt that would result from the proposed acquisition of PanAmSat and the risk this level of debt could create for the continuity of the public service obligations should Intelsat enter into bankruptcy. Toumi February 17 Letter at 1. The letter states that the ITSO Assembly received a report from a bankruptcy lawyer who advised that, in the event of an Intelsat bankruptcy, there is no guarantee to preserve the assets used by Intelsat to fulfill its public service obligations. *Id.* Therefore, the ITSO Assembly unanimously decided to ask the United States to ensure that remedies, in the nature of those advised by ITSO’s bankruptcy expert, are implemented to assure that the Public Services Agreement and its obligations survive a bankruptcy proceeding and that the licenses issued by the United States to Intelsat to use the former INTELSAT orbital positions are protected in the event of Intelsat’s insolvency. *Id.* Thus, the Toumi February 17 Letter states, the ITSO Assembly of Parties unanimously endorsed the recommendations in the ITSO Comments and ITSO Reply previously filed with the Commission in this proceeding. *Id.* at 2.

¹⁷³ ITSO February 17 Letter. ITSO filed additional *ex parte* letters. See Letter from Julie A. Reese, Deputy Director General and General Counsel, ITSO, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Mar. 30, 2006), attaching a copy of an *ex parte* letter from Ahmed Toumi, Director General and Chief Executive Officer, ITSO, to Kevin J. Martin, Chairman, Federal Communications Commission (dated Mar. 23, 2006); Letter from Julie A. Reese, Deputy Director General and General Counsel, ITSO, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Apr. 24, 2006), attaching a copy of an *ex parte* letter from Ahmed Toumi, Director General and Chief Executive Office, ITSO, to Kevin J. Martin, Chairman Federal Communications Commission (dated Apr. 24, 2006) (“ITSO April 24 Letter”). ITSO filed the ITSO April 24 Letter in response to an Intelsat *ex parte* filing of April 13, 2006. See Letter from Jennifer D. Hindin, Counsel to Intelsat, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Apr. 13, 2006), attaching Intelsat’s reply comments in IB Docket No. 06-61, a proceeding seeking comments for the Commission’s annual report to Congress regarding the progress made to achieve the objectives and carry out the purposes and provisions of the Open-Market Reorganization for the Betterment of International Telecommunications Act (“ORBIT Act”).

¹⁷⁴ See Letter from John P. Schnitker, Attorney-Advisor, Office of Legal Adviser, U.S. Department of State, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Mar. 7, 2006), attaching letter from Steven W. Lett, Deputy United States Coordinator, International Communications and Information Policy, U.S. Department of State, to Donald Abelson, Chief, International Bureau, Federal Communications Commission (dated Mar. 7, 2006) (“Lett March 7 Letter”). The Lett March 7 Letter attaches a copy of the record of decisions at the ITSO Assembly. See ITSO Assembly of Parties Record of Decisions of the (continued....)

it has sent the materials to the Commission at the request of the ITSO Assembly of Parties.¹⁷⁵ In fulfilling the request to transmit these materials, the U.S. Department of State is not taking a position on the substance of the matter, and will communicate its foreign policy views to the Commission separately.¹⁷⁶

59. In giving consideration to ITSO's requests, we have reviewed the *Intelsat Licensing Order* and other related Commission decisions. The Commission, in 2000, issued conditional licenses to Intelsat, subject to compliance with the ORBIT Act.¹⁷⁷ The Commission authorized Intelsat to operate seventeen existing C- and Ku-band satellites then owned and operated by INTELSAT, to construct, launch and operate ten satellites planned by INTELSAT for operation in these bands, and to relocate, among twenty-two orbital locations, certain then-operating satellites upon the launch of the ten planned satellites.¹⁷⁸ The *Intelsat Licensing Order* stated that the licenses, once effective, would permit Intelsat to operate pursuant to the core principles upon which the 1999 INTELSAT Assembly of Parties had based its decision to privatize INTELSAT.¹⁷⁹ Those became the "core principles" identified above that are

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Twenty-Ninth Meeting, Washington, D.C., USA, 30 January-2 February 2006, AP-29-3E Final W/01/06 (Feb. 6, 2006) at 8, ¶¶ 26-27 (Agenda Item No. 7, Reports of the Director General on Intelsat Ltd.'s Observance of the Core Principles) ("ITSO Record of Decisions"). The Lett March 7 Letter also attaches a memorandum from the law firm of Kirkpatrick & Lockhart Nicholson Graham LLP, which ITSO contracted to provide advice concerning the proposed acquisition of PanAmSat by Intelsat. See Lett March 7 Letter at 1 (unpaginated); ITSO Record of Decisions at 8.

¹⁷⁵ Lett March 7 Letter at 1. The ITSO Assembly of Parties decided:

"to request the United States and the United Kingdom, in their capacity as the selected licensing jurisdictions and 'Notifying Administrations' for the orbital locations and frequency assignments transferred in accordance with Article XII of the ITSO Agreement (the 'Common Heritage'), to communicate to the appropriate authorities the Assembly's desire that:

- a) remedies in the nature of those advised by Kirkpatrick & Lockhart Nicholson Graham in Attachment No. 1 to document AP-29-11, are implemented to assure that the Public Services Agreement and its obligations will survive a bankruptcy proceeding post-PanAmSat acquisition, including adherence to Lifeline Connectivity Obligation (LCO) contracts currently in effect with LCO-eligible customers; and
- b) the conditions on the licenses issued by the United States and the United Kingdom to Intelsat (to use the INTELSAT 'Common Heritage' orbital positions) clarify that no entity that is not bound by the Public Services Agreement can be considered a 'successor' of Intelsat, LLC."

Lett March 7 Letter at 1.

¹⁷⁶ Lett March 7 Letter at 2 (unpaginated).

¹⁷⁷ Pub. L. No. 106-180, 114 Stat. 108 (2000); see also *Intelsat Licensing Order*, 15 FCC Rcd at 15519, ¶ 160.

¹⁷⁸ *Intelsat Licensing Order*, 15 FCC Rcd at 15460, ¶ 1, 15517-20, ¶¶ 149-173 (ordering clauses), *recon. denied*, 15 FCC Rcd 25234 (2000) ("*Intelsat Licensing Reconsideration Order*").

¹⁷⁹ *Intelsat Licensing Order*, 15 FCC Rcd at 15462, ¶ 3, 15473, ¶ 26 (ITSO would supervise the commitment of Intelsat to provide satellite capacity to lifeline users for a predetermined number of years with price protection during the life of the commitment, as contained in an agreement creating ITSO and implemented through an agreement between the company and ITSO), 15474, ¶ 28 (Commission understands that U.S. Party to (continued....)

contained in the ITSO Agreement and are implemented through the Public Services Agreement between Intelsat and ITSO. ITSO correctly points out the Commission's recognition of this arrangement as the underlying basis of agreement for privatization of Intelsat.¹⁸⁰

60. In addition, with respect to the orbital slots that were to be transferred to the U.S. national registry, the August, 2000 *Intelsat Licensing Order* provided that, in the event any of these orbital slots no longer was assigned for use by Intelsat or its successors, such orbital location "shall be cancelled in accordance with procedures of the International Telecommunications Union."¹⁸¹ The United States selected this condition from among the alternatives that then were being considered by the INTELSAT Assembly of Parties because of certain parties' concerns that a licensing administration might authorize use of Intelsat orbital slots and frequencies to an operator other than Intelsat.¹⁸² In 2000, the Commission neither was requested to condition nor did it condition Intelsat's license on fulfillment of Intelsat's commitments under the Public Services Agreement subsequently entered into by ITSO and Intelsat.

61. The Commission affirmed the orbital slot condition in subsequent orders. In the December, 2000 *Intelsat Licensing Reconsideration Order*, the Commission affirmed that it had intended the condition requiring cancellation of any of the INTELSAT orbital slots under ITU procedures to reflect the long-standing status of INTELSAT orbital slots and to address the concerns of many INTELSAT members that the INTELSAT slots should not be reassigned in a way that would jeopardize the system's ability to maintain global coverage and connectivity, particularly to lifeline users.¹⁸³ Subsequently, in the May, 2001 *Intelsat LLC ORBIT Act Compliance Order*, the Commission stated that the terms and conditions of its August, 2000 *Intelsat Licensing Order* would remain in effect.¹⁸⁴ In July, 2001,

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ITSO will continue to facilitate Intelsat's fulfillment of the core principles of global coverage and connectivity on a commercial and non-discriminatory basis so as to protect lifeline users and global connectivity).

¹⁸⁰ The Commission said: 'This arrangement reflects the underlying agreement among INTELSAT Parties to privatize INTELSAT – INTELSAT's satellites and other assets and personnel necessary to operate the satellites will be transferred to a private company that no longer has privileges and immunities and is subject to a national licensing authority, as long as that company assures continued services to lifeline users under the "core principles." The United States supported continuation of a residual ITSO for this purpose.' *Intelsat Licensing Order*, 15 FCC Rcd at 15473, ¶ 26.

¹⁸¹ *Intelsat Licensing Order*, 15 FCC Rcd at 15519, ¶ 159. The Commission expressly stated that this condition applied only to those orbital locations identified in Appendix A of the decision as being transferred to the U.S. national registry upon privatization, and not to other locations assigned to Intelsat at a later date, which would be subject to the Commission's normal procedures. *Id.* at 15513, ¶ 136.

¹⁸² See *Intelsat Licensing Order*, 15 FCC Rcd at 15511, ¶ 130 (discussing the three alternatives under consideration).

¹⁸³ *Intelsat Licensing Reconsideration Order*, 16 FCC Rcd at 25237-38, ¶¶ 9-14.

¹⁸⁴ *Intelsat LLC ORBIT Act Compliance Order*, 16 FCC Rcd at 12303, ¶ 75. In the 2001 order, the Commission found that INTELSAT had complied with each of the requirements of the ORBIT Act except for the requirement to hold an Initial Public Offering ("IPO"). *Intelsat LLC ORBIT Act Compliance Order*, 16 FCC Rcd 12280. Of relevance, the Commission found that ITSO retained no ownership interest in Intelsat, consistent with ORBIT Act requirements. *Intelsat LLC ORBIT Act Compliance Order*, 16 FCC Rcd at 12289, ¶ 28. In 2005, the Commission concluded that there had been no change in ITSO's status with respect to its ownership relationship with Intelsat and no other intergovernmental organization ("IGO"), had any ownership in Intelsat, and thus that Intelsat remained in compliance with section 621(2)(A) of the ORBIT Act (barring IGO ownership in the (continued....)

INTELSAT privatized, transferring the INTELSAT orbital slots to the U.S. national registry and INTELSAT's assets to Intelsat, at which time the authorizations the Commission had issued to Intelsat became effective.¹⁸⁵

62. We turn to ITSO's first request, that the Commission condition grant of the Applications on the "Development and implementation of such legal mechanisms as may be necessary (in the opinion of bankruptcy counsel) to assure that the Public Services Agreement and its obligations will survive a bankruptcy proceeding post-PanAmSat acquisition, including adherence to Lifeline Connectivity Obligation (LCO) contracts currently in effect with particular LCO-eligible customers."¹⁸⁶ ITSO's request is predicated on a concern that the post-merger debt that Intelsat will carry may result in its bankruptcy, placing into jeopardy the continued fulfillment of the Public Services Agreement between ITSO and Intelsat. ITSO states that the pre-merger debt might be structured to become junior to debt associated with the PanAmSat transaction in the event of an Intelsat bankruptcy¹⁸⁷ and that the LCO contracts might be placed at risk if Intelsat were to become insolvent.¹⁸⁸ At the same time, the ITSO Reply recognizes that the Public Services Agreement is a contract under the laws of the District of Columbia, with its interpretation and enforcement subject to arbitration.¹⁸⁹

63. It has been the Commission's long-standing practice to defer to judicial decisions regarding the interpretation of contracts that do not give rise to more general public interest concerns under the Act.¹⁹⁰ In this case, ITSO has not substantiated for the record now before us that obligations set out in the

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 successor of INTELSAT). See *Petition for Declaratory Ruling that Intelsat, Ltd. Complies with Section 621(5)(F) of the ORBIT Act*, Memorandum Opinion and Order, IB Docket No. 05-18, 20 FCC Rcd 8604, 8612, ¶ 15 (2005) ("*Intelsat Ltd. Section 621(5)(F) Compliance Order*"). Also in 2005, following amendment of the ORBIT Act, see Pub. L. No. 108-371, 118 Stat. 1752 (2004), providing an alternative method for compliance with the ORBIT Act privatization requirements, the Commission found Intelsat in compliance with the certification it had submitted pursuant to section 621(5)(F) of the ORBIT Act and therefore determined that Intelsat need not comply with the requirement to hold an IPO. *Intelsat Ltd. Section 621(5)(F) Compliance Order*, 20 FCC Rcd at 8613, ¶ 18.

¹⁸⁵ See *Intelsat Ltd. Section 621(5)(F) Compliance Order*, 20 FCC Rcd at 8607, ¶ 5.

¹⁸⁶ ITSO Comments at 14; ITSO Reply at 11.

¹⁸⁷ ITSO Reply at 6.

¹⁸⁸ *Id.* at 2. See also ITSO Record of Decisions, Attachment No. 1 to AP-29-11E W/01/06, Legal Opinion of Kirkpatrick & Lockhart Nicholson Graham LLP on the Risk of U.S. Bankruptcy Laws to the Continuity of Public Service Obligations, Memorandum to the International Telecommunications Satellite Organization ("ITSO") from Kirkpatrick & Lockhart Nicholson Graham LLP Re Protection of Public Service Obligations and "Common Heritage" Assets in Event of the Bankruptcy or Liquidation of Intelsat, Ltd. (Dec. 16, 2005) at 5 (noting that a Chapter 11 automatic stay would prevent ITSO from enforcing any of its contractual rights under the Public Services Agreement and enforcing the core principles), 13 (stating that, for the most part, ITSO would become an unsecured creditor in the event that an Intelsat bankruptcy caused Intelsat to break the terms of the Public Services Agreement).

¹⁸⁹ ITSO Reply at 3.

¹⁹⁰ See, e.g., *Regents of University System of Georgia v. Carroll*, 338 U.S. 586, 602 (1950) (holding that the Commission is not the proper forum to litigate contractual disputes between licensees and others); *Applications of Arecibo Radio Corporation*, Memorandum Opinion and Order, 101 F.C.C. 2d 545, 548, ¶ 8 (1985) (continued....)

Public Services Agreement between ITSO and Intelsat factually are at significant risk. The record does not demonstrate that Intelsat, as a result of the merger, is likely to enter bankruptcy or default on its contractual obligations. Although bankruptcy can be a risk in a business venture, ITSO's concern remains largely speculative based upon the record before us.

64. We recognize the concern of lifeline connectivity users that must continue to rely primarily on Intelsat for satellite communications. The record does not demonstrate that such reliance will change in the future. Nevertheless, any consideration of the type of relief ITSO seeks (that is, to condition existing Intelsat licenses) should be focused on the Intelsat satellites operating in orbital locations defined by the ITSO Agreement as part of the INTELSAT "common heritage" and used by Intelsat to implement the Public Services Agreement and fulfill Intelsat's obligations under the ITSO Agreement.

65. The Communications Act provides a means for Commission consideration of such requests for relief outside of this proceeding. Under section 316 of the Act, the Commission may modify licenses pursuant to the procedures prescribed therein if, in its judgment, "... such action will promote the public interest, convenience and necessity, or the provisions of this Act or any treaty ratified by the United States will be more fully complied with."¹⁹¹ ITSO may request the Commission to take action under this provision separate from this merger proceeding. The Commission could consider, subject to the procedure provided in section 316, a request by ITSO to impose appropriate conditions on Intelsat satellites operating with former INTELSAT frequency assignments and orbital slots if advised by the U.S. Department of State that such action would promote the provisions of the ITSO Agreement and U.S. fulfillment of obligations under the ITSO Agreement.¹⁹² Any such relief may focus on actions that would

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(because the Commission does not possess the resources, expertise or jurisdiction to adjudicate breach of contract questions fully, the Commission normally defers to judicial decisions regarding the interpretation of contracts); *Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corp. (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 2402, 2420, ¶ 37 (Int'l Bur. 2004) ("*Loral-Intelsat Order*") (as the Commission has held, absent a showing of a violation of the Commission's rules or federal statute, the Commission is not the proper forum to raise private contractual disputes).

¹⁹¹ 47 U.S.C. § 316(a)(1). 'As the D.C. Circuit recently explained in *California Metro Mobile Communications v. FCC*, "Section 316 grants the Commission broad power to modify licenses; the Commission need only find that the proposed modification serves the public interest, convenience and necessity.'" See *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, Eighth Report and Order, Fifth Notice of Proposed Rulemaking and Order, ET Docket No. 00-258, 20 FCC Rcd 15855, 15877, ¶ 19 (2005), citing to *California Metro Mobile Communications v. FCC*, 365 F.3d 38, 45 (D.C. Cir. 2004).

¹⁹² In other contexts, the Commission accords the Executive Branch deference on matters of law enforcement, national security, foreign policy and trade policy. The Commission "will make an independent decision on applications to be considered and will evaluate concerns raised by the Executive Branch agencies in light of all the issues raised (and comments in response) in the context of a particular application." *Foreign Participation Order*, 12 FCC Rcd at 23891-21, ¶ 66. See also *supra* ¶¶ 50-52 (based on the record in this proceeding, deferring to the Executive Branch on national security and law enforcement issues).

assist Intelsat in fulfilling the core principles in the ITSO Agreement.¹⁹³

66. ITSO's second request is that the Commission condition grant of the Applications on a 'Restatement of the conditions on the licenses issued by the FCC to Intelsat (authorizing use of the INTELSAT "Common Heritage" orbital positions) to clarify that no entity not bound by the Public Services Agreement, with obligations ongoing, can be considered a "successor" of Intelsat LLC, and failing which, the licenses are to be canceled and the orbital positions revert to ITU inventory for reallocation.'¹⁹⁴ As noted above, the Commission's condition on Intelsat's licenses, with respect to the INTELSAT orbital slots, remains in effect. That is, in the event that any of the orbital locations identified in Appendix A of the *Intelsat Licensing Order* are no longer assigned for use by Intelsat or its successors, such orbital locations shall be cancelled in accordance with procedures of the International Telecommunications Union.¹⁹⁵ ITSO's second request asks us to reconsider the condition on the existing Intelsat licenses. We do not believe it is appropriate here to reconsider the current condition and to limit the class of entities that might be considered eligible to become a "successor" to Intelsat LLC in the event of a future bankruptcy. Any such consideration more appropriately should take place in a separate proceeding, for the reasons discussed above.

67. ITSO's third request is that the Commission condition grant of the Applications on a "Reinstatement of former Bye-law number 2 (and related definitions) relating to ITSO and the Public Services Agreement in the Bye-laws of Intelsat, Ltd. and any post-merger successor."¹⁹⁶ For the reasons stated above, we do not believe it is appropriate here, in the context of reviewing the transfer of PanAmSat's licenses, to condition the transfer on a requirement that Intelsat amend its bylaws to reinstate the condition concerning its public service obligations that Intelsat advises its shareholders unanimously removed in March, 2005.

68. ITSO also urges the Commission to 'impose appropriate measures to reaffirm Intelsat's Public Service Obligations, as envisioned by the ORBIT Act provision that the Commission should "take the actions necessary to ensure that the United States remains the ITU notifying administration for the privatized INTELSAT's existing and future orbital slot registrations."¹⁹⁷ ITSO does not specify what these appropriate measures might include. For the reasons stated above in our analysis of ITSO's three specific requests, we find that the record in this proceeding does not support conditioning the grant of the Applications on other, unspecified measures related to licenses that are not the subject of the Applications before us in this proceeding.

2. Microcom Request for Conditions

69. Microcom, a DBS distributor and broadband VSAT provider in Alaska, asks the Commission to require Intelsat to take the following actions: (1) identify a replacement strategy for

¹⁹³ See, e.g., ITSO Agreement, Art. XI(c) (stating that all parties shall take the actions required ... so that Intelsat may fulfill the core principles).

¹⁹⁴ ITSO Comments at 14, ITSO Reply at 11.

¹⁹⁵ *Intelsat Licensing Order*, 15 FCC Rcd at 15519, ¶ 159.

¹⁹⁶ ITSO Comments at 14, ITSO Reply at 11.

¹⁹⁷ ITSO Reply at 14.

Intelsat Americas 7; (2) propose a strategy for serving Alaska from Pacific Ocean orbital slots; (3) propose a plan for extending Ku-band coverage of Galaxy 10R and Horizons I to include all of Alaska; and (4) provide guarantees to serve Alaska with technical service levels equal to center-of-beam performance for any new satellite launches west of 110 degrees west longitude (“W.L.”) and east of 170 degrees east longitude (“E.L.”).¹⁹⁸

70. The Applicants respond that Microcom’s proposed conditions are neither merger-specific nor necessary to ensure satellite coverage of Alaska.¹⁹⁹ They state that Microcom does not identify any harm caused or exacerbated by the proposed transaction, but rather discusses historic broadband service levels in Alaska.²⁰⁰ They assert that Microcom’s proposed conditions would be duplicative of Intelsat’s existing Alaskan service commitments, noting that, in 2004, when acquiring U.S.-coverage satellites from Loral Satellite, Inc., Intelsat voluntarily committed to “ensure and maintain two-way broadband service continuity” to Alaska.²⁰¹ The Applicants state that Intelsat will adhere to its existing commitment following its acquisition of PanAmSat.²⁰²

¹⁹⁸ Microcom Comments at 2 (unpaginated). In support of its proposed conditions, Microcom asserts that service levels in Alaska historically have been substantially less than service levels in other areas, that no Intelsat satellites have provided significant service to Alaska although Intelsat’s Pacific Ocean satellite slots are well positioned to serve Alaska, that Intelsat has not proposed plans for replacing the loss of Ku-band capacity on Intelsat Americas 7, and that the Ku-band antennas on Galaxy 10R and Horizons I do not serve the Aleutian Chain and southern Bering Sea. *Id.* Microcom claims that, because of elevation angles from Alaska earth stations to Intelsat Americas 5 and Intelsat Americas 8, these satellites cannot reasonably be considered to provide significant service to the west and north of Anchorage, and it asserts that Intelsat Americas 6, Intelsat Americas 13, and Intelsat Americas 7 also cannot be considered to provide significant service to Alaska. Microcom Reply at 2. It further claims that Intelsat 701 and PAS-2, although technically covering Alaska, do so at a minimum level of service. *Id.* at 3 (unpaginated). Microcom contends that the only capacity available for expanding broadband bandwidth serving rural Alaska is in the Ku-band; however, it asserts that Galaxy 10R and Horizons I do not serve the Aleutian Islands and southern Bering Sea and states that Intelsat Americas 7 has lost a significant amount of its capacity. *Id.* at 2.

¹⁹⁹ Joint Response at 6-9.

²⁰⁰ *Id.* at 7. The Applicants assert that the Intelsat-PanAmSat merger will enhance service to Alaska by providing greater fleet redundancy. *Id.* at 8 (stating that Intelsat currently provides voice, data, broadband and cable distribution services to Alaska via six satellites – Intelsat Americas 8 at 89° W.L., Intelsat Americas 6 at 93° W.L., Intelsat Americas 5 at 97° W.L., Intelsat Americas 13 at 121° W.L., Intelsat Americas 7 at 129° W.L., and Intelsat 701 at 180° W.L. – and that PanAmSat provides voice, data and broadband services to Alaska via eight satellites – Galaxy 11 at 91° W.L., Galaxy 3C at 95° W.L., Galaxy 4R at 99° W.L., Galaxy 10R at 123° W.L., Galaxy 14 at 125° W.L., Galaxy 13/Horizons I at 127° W.L., Galaxy 15 at 133° W.L., and PAS-2 at 169° W.L.). They contend that PanAmSat’s Ku-band power levels over the most heavily populated areas of mainland Alaska are comparable to Ku-band power levels in the contiguous United States and four PanAmSat satellites – PAS-2, Galaxy 10R, Galaxy 13/Horizons I, and Galaxy 15 – provide C-band coverage of all of Alaska, including the Aleutian Islands and the southern Bering Sea. *Id.* at 8, n.29.

²⁰¹ Joint Response at 7, citing to *Loral-Intelsat Order*, 19 FCC Rcd 2421, ¶ 40 (noting and relying on Intelsat’s voluntary commitment) and to Intelsat’s February 5, 2004 commitment letter, attached as Appendix D to the *Loral-Intelsat Order*.

²⁰² Joint Response at 8.

71. As noted, Intelsat affirmatively states that it will continue to adhere to the voluntary commitments it made in 2004.²⁰³ As the International Bureau did in 2004, we rely on Intelsat's commitments, which were a factor in the grant of its current licenses for the satellites acquired in 2004.²⁰⁴ Therefore, we conclude that the merger will not diminish the current services provided by Intelsat and PanAmSat in Alaska and we do not adopt Microcom's alternative conditions.²⁰⁵

3. Pending Applications

72. The Applicants request that the Commission, in acting on the Applications, include authority to transfer control to Intelsat of: (1) all authorizations issued to PanAmSat or any of its subsidiaries during the period between September 30, 2005 and the consummation of the proposed transaction (the "Interim Period"); and (2) all applications (including applications for STA), petitions or other filings that remain pending at the time of consummation of the proposed transfers of control.²⁰⁶ The Applicants state that, following the conclusion of the proposed transaction, PanAmSat and its subsidiaries will supplement their pending applications as required under section 1.65 of the Commission's rules to reflect the new ownership structure of PanAmSat.²⁰⁷

73. We grant Applicants' request. Consistent with section 1.65 of the Commission's rules, PanAmSat and its subsidiaries should amend any currently pending applications to reflect the consummation of the transaction approved by this Order.²⁰⁸ Additionally, to the extent that Appendix A to this Order does not include all authorizations issued to PanAmSat and its subsidiaries during the Interim Period, the Applicants should file with the Commission, within 30 days of consummation of the transaction, a section 1.65 letter referencing IB Docket No. 05-290 and each applicable file number and providing an updated version of Appendix A that includes each such authorization and each of its respective call signs.

²⁰³ See *Loral-Intelsat Order*, 19 FCC Rcd at 2421, ¶ 40 (relying on Intelsat's commitment), 2456-57, Appendix D (Intelsat Commitment Letter). Additionally, Microcom's complaint about technical coverage in Alaska is unrelated to the merger of Intelsat and PanAmSat. Alaska will be served by the same FSS providers – SES Americom and Intelsat-PanAmSat, among others – as serve the contiguous United States. See Joint Response at 9 (noting the presence of other satellite operators and stating that SES Americom has ten satellites covering, or soon to cover, Alaska).

²⁰⁴ See *Loral-Intelsat Order*, 19 FCC Rcd at 2432, ¶ 71 (ordering clause).

²⁰⁵ The Commission regularly has held that it will impose merger conditions only to remedy harms that arise from a transaction. See, e.g., *Verizon-MCI Order*, 20 FCC Rcd at 18445, ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18303, ¶ 19; *Rainbow-EchoStar Order*, 20 FCC Rcd at 16875, ¶ 13; *Sprint-Nextel Order*, 20 FCC Rcd at 13979, ¶ 23; *Alltel-Western Wireless Order*, 20 FCC Rcd at 13066, ¶ 21; *GM-News Corp Order*, 19 FCC Rcd at 534, ¶ 131 (Commission will impose conditions only to remedy harms that arise from a transaction and are fairly related to the Commission's responsibilities under the Communications Act and related statutes).

²⁰⁶ Consolidated Application at 4.

²⁰⁷ *Id.* at 4.

²⁰⁸ See 47 C.F.R. § 1.65.

VI. CONCLUSION

74. Based on the record in this proceeding, we conclude that the proposed transaction will be in the public interest. Additionally, we condition our grant on the condition sought by the Executive Branch concerning national security, law enforcement and public safety. We do not adopt the conditions sought by ITSO and Microcom in the context of this proceeding. We approve the Applicants' request to include authority to transfer control to Intelsat of all authorizations issued to the PanAmSat Licensees during the Interim Period and of all applications or other filings of the PanAmSat Licensees that remain pending.

75. Accordingly, we approve the requested transfer of the licenses and authorizations listed in Appendix A, subject to the requirements and conditions specified in this Order.

VII. ORDERING CLAUSES

76. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(d), the Applications ARE GRANTED to the extent specified in this Order.

77. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, and 310(d), the Petition to Adopt Conditions to Authorizations and Licenses filed by the U.S. Department of Justice, Federal Bureau of Investigation, U.S. Department of Homeland Security, and U.S. Department of Defense on December 6, 2005, IS GRANTED, and the authorizations and licenses granted herein are SUBJECT TO COMPLIANCE WITH the provisions of the Intelsat/PanAmSat Commitment Letter, dated December 5, 2005, and attached hereto as Appendix C.

78. IT IS FURTHER ORDERED that, pursuant to section 25.119(f) of the Commission's rules, 47 C.F.R. § 15.119(f), Applicants SHALL COMPLETE the proposed transaction within 60 days from the release date of this Order. Pursuant to section 25.119(f) of the Commission's rules, 47 C.F.R. § 25.119(f), within 30 days of consummation, the Applicants SHALL NOTIFY the Commission, by letter, of the date of the consummation, giving reference to the docket number and the file numbers of the Applications involved in the transaction.

79. IT IS FURTHER ORDERED that, pursuant to section 1.65 of the Commission's rules, 47 C.F.R. § 1.65, the Applicants are afforded 30 days from the date of release of this Order to amend all pending applications in connection with the instant Applications to reflect the transfer of control approved in this Order.

80. This Order is effective upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within 30 days of the date of the release of this Order. *See* 47 C.F.R. § 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Appendix A
List of Licenses²⁰⁹

File Number	Licensee	Call Signs
SAT-T/C-20050930-00193	PanAmSat Licensee Corp.	GAL III-R, SBS-6, S2461, S2237, S2253, S2387, PAS-2R, S2359, PAS-9, S2368, S2131, S2146, S2229, S2378, S2380, S2381, S2382, S2385, S2386, S2422, S2460, S2459, S2377
SAT-T/C-20050930-00194	PanAmSat H-2 Licensee Corp.	S2423
SAT-T/C-20060504-00053	PanAmSat Licensee Corp.	S2687 ²¹⁰
SAT-STA-20060616-00064	PanAmSat Licensee Corp.	S2687
SES-STA-20060616-01020	PanAmSat Licensee Corp.	E060198
SES-T/C-20050930-01356	PanAmSat Licensee Corp.	E010118, E990055
SES-T/C-20050930-01357	PanAmSat Licensee Corp.	E010280, E050174, E050169
SES-T/C-200501004-01371 ²¹¹	PanAmSat Licensee Corp.	E000048, E950267, E940532, E990323, E990091, E980503, E000049, E980501, E950508, E950502, E970051, E030073,

²⁰⁹ The acceptable-for-filing Public Notice in this proceeding also listed five STA applications. *See supra* note 43 and accompanying text. PanAmSat no longer needs continuing authority for four of the STAs. *See* Letter from Bert W. Rein and Jennifer D. Hindin, Counsel to Intelsat, and Henry Goldberg and Joseph A. Godles, Counsel to PanAmSat, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed June 16, 2006) (“June 16 Letter”) at 1. The Commission previously dismissed the fifth STA. *See* June 16 Letter at 1-2. Applicants have added two STA requests. *See* June 16 Letter at 2; see also File Nos. SAT-STA-20060616-00064, SES-STA-20060616-01020 (seeking STAs to continue satellite operations in accordance with the terms of existing STAs following the consummation of the transaction).

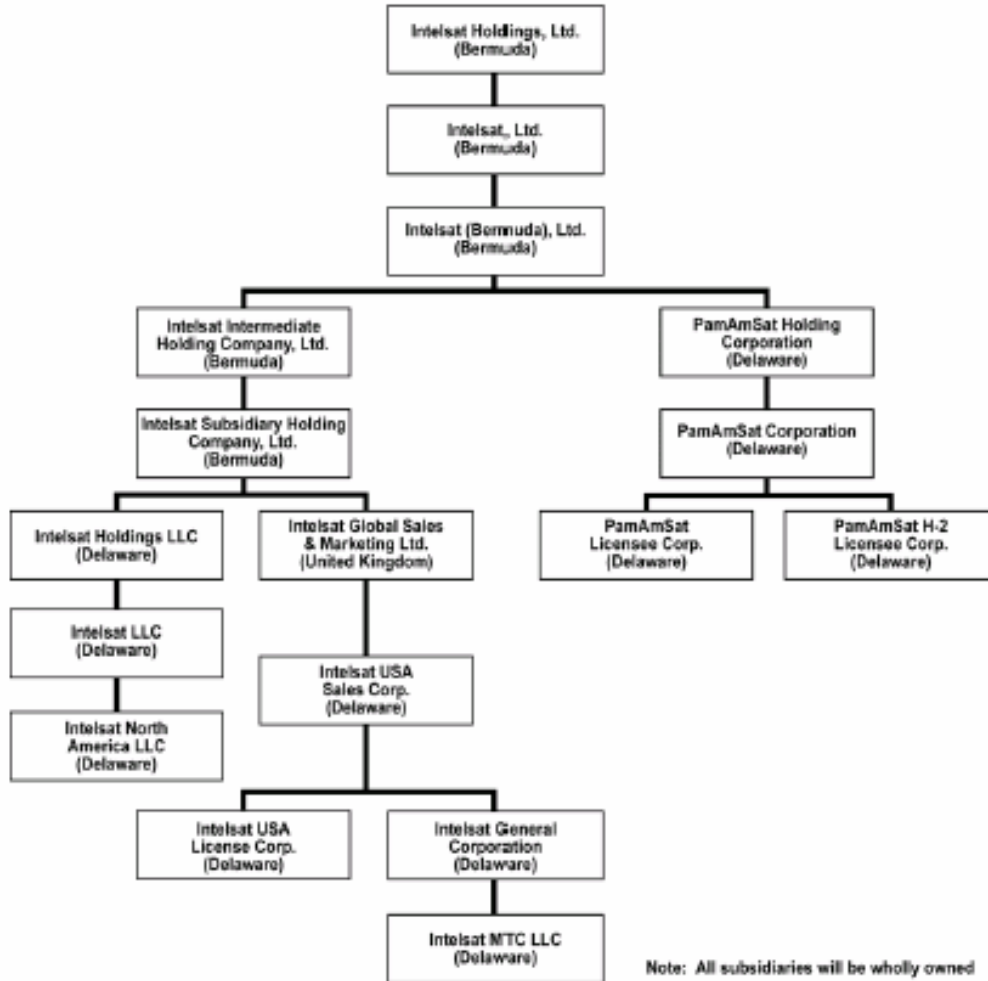
²¹⁰ On May 4, 2006, pursuant to section 1.65 of the Commission’s rules, 47 C.F.R. § 1.65, the Applicants advised that the Commission had granted PanAmSat Licensee Corp. a new space station license, S2687, effective Mar. 3, 2006. Applicants concurrently filed the application in File No. SAT-T/C-20060504-00053. *See* Letter from Bert W. Rein and Jennifer D. Hindin, Counsel to Intelsat Holdings, Ltd., and Henry Goldberg and Joseph A. Godles, Counsel to PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 and File No. SAT-RPL-20051118-00233 (filed May 4, 2006). *See also PanAmSat Licensee Corp.*, Grant of Authority, File No. SAT-RPL-20051118-00233, Public Notice, Report No. SAT-00345, DA No. 06-524 (Int’l Bur. Mar. 3, 2006) at 1 (granting S2687).

²¹¹ On December 1, 2005, counsel to Applicants filed a letter with the Commission requesting the removal of nine earth station licenses from the Applications because PanAmSat Licensee Corp. had surrendered the licenses. Letter from Bert W. Rein and Jennifer D. Hindin, Counsel to Intelsat Holdings, Ltd., and Henry Goldberg and Joseph A. Godles, Counsel to PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 (filed Dec. 1, 2005) (“December 1 Letter”); *see also PanAmSat Licensee Corp.*, File Nos. SES-LIC-19970609-00737, *et al.*, Surrender, Public Notice, Report No. SES-00767 (Int’l Bur. Nov 16, 2005) at 14 (noting PanAmSat Licensee Corp.’s surrender of the nine earth station licenses). The nine call signs were: E970352; E990093; E990364; E010131; E030174; KA244; KA245; E890530; and E920377.

		E030072, E030232, E030096, E030106, E990024, E030012, E020309, E900757, E970189, KA450, E980502, E990334, E980467, E980460, E970392, E970391, KA416, E980069, E960411, E030182, E020260, E990441, E030307, E030306, E030175, KA71, E930088, E990092, E881286, E7465, E010112, E010019, E000488, E000364, E000274, KA391, E990433, E990363, E950067, E990224, E990223, E990214, E950307, E030020, E990056, E990365, E2178, E881304, KL92, E040174, E860175, E4132, E010133, E010113, E940333, E000363, E000063
SES-T/C-20060504-00744	PanAmSat Licensee Corp.	E050311 ²¹²

²¹² On February 15, 2006, pursuant to § 1.65 of the Commission's rules, 47 C.F.R. § 1.65, the Applicants advised that the Commission had granted PanAmSat Licensee Corp. a new earth station license, E050311, effective November 28, 2005. Applicants concurrently filed the application in File No. SES-T/C-20060504-00744. See Letter from Bert W. Rein and Jennifer D. Hindin, Counsel to Intelsat Holdings, Ltd., and Henry Goldberg and Joseph A. Godles, Counsel to PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 05-290 and File No. SES-LIC-20051004-01371 (filed Feb. 15, 2006). See also *PanAmSat Licensee Corp.*, Grant of Authority, File No. SES-LIC-020051021-01460, Public Notice, Report No. SES-00771 (Int'l Bur. Nov. 30, 2005) at 9-10 (granting E050311).

Appendix B
 Post-Transaction Corporate Structure²¹³



²¹³ See Consolidated Application at 11.

Appendix C
Executive Branch Petition and Intelsat/PanAmSat Commitment Letter

Before the
Federal Communications Commission
Washington, DC 20554

_____)	
In the Matter of)	
)	
Constellation, LLC, Carlyle PanAmSat I,)	IB Docket No. 05-290
LLC, Carlyle PanAmSat II, LLC, PEP)	
PAS, LLC, and PEOP PAS, LLC,)	IB File Nos.
<i>Transferors,</i>)	SAT-T/C-20050930-00193;
)	SAT-T/C-20050930-00194;
and)	SAT-STA-20050930-00188;
)	SAT-STA-20050930-00189;
Intelsat Holdings, Ltd.,)	SAT-STA-20050930-00190;
<i>Transferee,</i>)	SAT-STA-20050930-00191;
)	SAT-STA-20050930-00192;
)	SES-T/C-20050930-01356;
Consolidated Application for Authority to)	SES-T/C-20050930-01357;
Transfer Control of PanAmSat Licensee)	SES-T/C-20051004-01371
Corp. and PanAmSat H-2 Licensee Corp.)	
_____)	

PETITION TO ADOPT CONDITIONS TO
AUTHORIZATIONS AND LICENSES

The United States Department of Justice (“DOJ”), including the Federal Bureau of Investigation (“FBI”), together with the United States Department of Homeland Security (“DHS”) and the United States Department of Defense (collectively, the “Agencies”), respectfully submit this Petition to Adopt Conditions to Authorizations and Licenses (“Petition”), pursuant to Section 1.41 of the Federal Communications Commission’s (“FCC” or “Commission”) rules.¹ Through this Petition, the Agencies advise the Commission that they have no objection to the Commission granting the applications filed in the above-referenced

¹ 47 C.F.R. § 1.41.

proceeding, provided that the Commission conditions the grant of the applications on Intelsat Holdings, Ltd. (“Intelsat”) abiding by the commitments and undertakings contained in its December 5, 2005 letter to Laura H. Parsky, Stewart A. Baker, and Elaine N. Lammert (the “Letter”) attached hereto as Exhibit 1.

In the above-captioned proceeding, Intelsat and various stockholders of PanAmSat Holding Corporation (“PanAmSat”) (collectively, the “Applicants”) filed a consolidated application with the FCC seeking consent to transfer control of PanAmSat’s FCC-licensed subsidiaries to Intelsat.²

As the Commission is aware, the Agencies have taken the position that their ability to satisfy their obligations to protect the national security, enforce the laws, and preserve the safety of the public could be impaired by transactions in which foreign entities will own or operate a part of the U.S. telecommunications system, or in which foreign-located facilities will be used to provide domestic telecommunications services to U.S. customers. After discussions with representatives of Intelsat and PanAmSat in connection with the proposed acquisition of PanAmSat by Intelsat and the related transfer of control over PanAmSat’s FCC-licensed subsidiaries, the Agencies have concluded that the commitments set forth in the Letter address their concerns. Accordingly, the Agencies hereby advise the Commission that they have no objection to the Commission granting the above-referenced applications for consent to transfers of control, provided that the Commission conditions its consent on compliance by Intelsat with the commitments set forth in the Letter.

² *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.*, IB Docket No. 05-290 (filed Sept. 30, 2005).

The Agencies are authorized to state that the Applicants do not object to the grant of this Petition.

Respectfully submitted,

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December 6, 2005



December 5, 2005

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Phillip L. Spector
Executive Vice President
and General Counsel

**Re: Proposed Acquisition of PanAmSat Holding Corporation by a Subsidiary of
Intelsat Holdings, Ltd.**

Dear Ms. Parsky, Mr. Baker, and Ms. Lammert:

As a follow-up to our recent discussions with representatives of the Department of Justice ("DOJ"), the Department of Homeland Security ("DHS"), and the Federal Bureau of Investigation ("FBI") (collectively, the "Agencies"), along with representatives of the Department of Defense ("DOD"), this letter is intended to reconfirm the commitments set forth in our November 24, 2004 letter to the Agencies ("Intelsat/Zeus Commitment Letter")¹, and to confirm that Intelsat Holdings, Ltd. (formerly Zeus Holdings Limited ("Zeus")) and Intelsat, Ltd. (collectively, "Intelsat") will extend those commitments to cover the businesses of PanAmSat Holding Corporation ("PanAmSat") once the pending acquisition of PanAmSat closes.

¹ See *Intelsat, Ltd., Transferor, and Zeus Holdings Limited, Transferee, Consolidated Application for Consent to Transfers of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, As Amended*, FCC Order and Authorization, December 22, 2004, IB Docket No. 04-366 at Appendix D.

I. The Transaction

On August 29, 2005, Intelsat and PanAmSat announced the execution of a definitive merger agreement ("Merger Agreement") under which Intelsat intends to acquire PanAmSat for approximately \$3.2 billion in cash and the assumption or refinancing of approximately \$3.2 billion in debt owed by PanAmSat and its subsidiaries. Under the terms of the Merger Agreement, a newly created indirect Delaware subsidiary of Intelsat will be merged into PanAmSat, with PanAmSat remaining as the surviving entity. Upon completion of the transaction, PanAmSat and its subsidiaries will continue as separate corporate entities, but PanAmSat will be an indirect wholly owned subsidiary of Intelsat.²

PanAmSat is a publicly traded Delaware corporation and a fixed satellite service ("FSS") company with a fleet of 26 satellites. The bulk of PanAmSat's revenues involve video distribution, with large media and broadcast companies using PanAmSat's satellites to distribute their programming. Two subsidiaries of PanAmSat (the "PanAmSat Licensees") hold authorizations from the Federal Communications Commission ("FCC") to operate non-common carrier FSS satellites using the C- and Ku-bands, as well as authorizations for numerous non-common carrier earth stations that transmit and/or receive signals in those frequency bands. Neither PanAmSat nor its subsidiaries offer common carrier switched services or hold any Section 214 authorizations from the FCC.

Consummation of the transaction is subject to a number of closing conditions, including approval by PanAmSat's stockholders and receipt of requisite regulatory approvals. Among other regulatory filings that have been or will be made, a consolidated application seeking approval to transfer control over the FCC authorizations held by the PanAmSat Licensees was filed at the FCC on September 30, 2005. In light of the conditions to be met, Intelsat and PanAmSat envision a closing of the transaction sometime between March and September 2006.

The combined company will have over 50 satellites and connectivity into some 200 countries and territories. The core network control assets of both companies are located in the United States, and the combined company will have all key control functions – operational headquarters, network operating center, and central TT&C functions – based in the United States.

² As representatives of the Agencies and of DOD are aware, and as discussed further below, one element of restructuring within PanAmSat is envisioned at the time Intelsat acquires PanAmSat – namely, the PanAmSat subsidiary that services U.S. government customers (G2 Satellite Solutions Corporation) would be moved under or merged into the cleared Intelsat subsidiary that engages in similar business activities (Intelsat General Corporation).

II. Updating Existing Intelsat Commitments

A. Security Committee of Intelsat Global Services Corporation

In the Intelsat/Zeus Commitment Letter, which continued certain commitments made to the Agencies in previous Intelsat transactions, we agreed to maintain a Security Committee within our U.S. subsidiary, Intelsat Global Services Corporation ("IGSC"). This Security Committee, which is composed exclusively of U.S. citizens who serve on the board of IGSC, has lead responsibility for overseeing security issues related to Intelsat's domestic communications network, records related to domestic communications, and electronic surveillance by U.S. federal, state, and local authorities. In addition, the Security Committee serves as a point of contact for addressing law enforcement, national security, and infrastructure protection issues with U.S. government agencies. The Security Committee has carried out these responsibilities, and will continue to carry them out after the consummation of the transaction with PanAmSat.

In the Intelsat/Zeus Commitment Letter, a commitment was also made to provide the Agencies, within 60 days of the closing of the Intelsat/Zeus transaction, with a copy of the policies and procedures adopted and implemented by the Security Committee. That commitment was met in Intelsat's letter to the Agencies dated January 27, 2005, and an updated copy of the policies and procedures was provided in Intelsat's letter dated October 28, 2005.

Assuming consummation of the transaction with PanAmSat, Intelsat will ensure that the role and responsibilities of the IGSC Security Committee are extended to cover the PanAmSat businesses. Thus, the domestic communications security oversight and U.S. government interface functions of the Security Committee will extend equally to the Intelsat and PanAmSat businesses and assets. In addition, to ensure that the Agencies maintain up-to-date information concerning the Security Committee, IGSC will inform the Agencies in a timely fashion of changes to the composition of the Committee.

B. Proxy Agreement for Intelsat General Corporation

In the Intelsat/Zeus Commitment Letter, we agreed to maintain the proxy agreement structure that covers our cleared U.S. subsidiary, Intelsat General Corporation ("Intelsat General"), so as to ensure that no impermissible foreign ownership, control, or influence is exercised over the business activities of Intelsat General. Intelsat General will continue to operate under that proxy agreement structure.

Assuming consummation of the transaction with PanAmSat, Intelsat will ensure that the PanAmSat subsidiary that is involved in servicing U.S. government customers – namely, G2 Satellite Solutions Corporation ("G2") – is placed under or merged into Intelsat General. As a consequence, G2 will become part of Intelsat General, and will operate under the proxy agreement structure, including any modifications that may be made to that agreement in connection with the transaction with PanAmSat. Intelsat General operates at very high security clearance levels, and envisions no difficulty absorbing and managing G2's classified activities.

C. Cooperation with U.S. Government Electronic Surveillance Activities

In the Intelsat/Zeus Commitment Letter, we agreed to take all reasonable measures to assist and support the FBI or any other U.S. federal, state, or local agency with law enforcement or national security responsibilities in conducting, in a secure and efficient manner, lawfully authorized electronic surveillance. We also agreed that such assistance would include disclosure, if necessary, of technical and engineering information related to the design, maintenance, or operation of Intelsat's systems. Finally, we agreed that Intelsat and the agency seeking electronic surveillance cooperation would work together in determining what is reasonable, taking into account the investigative needs of the agency and Intelsat's commercial interests. The pending transaction with PanAmSat does not alter the commitments of Intelsat set forth or continued in the Intelsat/Zeus Commitment Letter.

The nature of Intelsat's business is such that there is no existing or contemplated provision of common carrier switched services by Intelsat. Thus, we continue to believe that Intelsat is, generally speaking, an unlikely target for requests to assist U.S. law enforcement agencies with electronic surveillance. Nonetheless, we have stood ready, and continue to stand ready, to assist government agencies with lawfully authorized electronic surveillance.

Assuming consummation of the transaction with PanAmSat, Intelsat will ensure that these commitments to cooperate with U.S. government electronic surveillance activities apply equally to the PanAmSat businesses. As noted above, the IGSC Security Committee will continue to be the primary point of contact for U.S. government agencies in connection with requests for assistance with electronic surveillance.

Nothing in this letter is intended to excuse Intelsat from any obligation it may have to comply with U.S. legal requirements for the retention, preservation, or production of information, records or data, or from any applicable requirements of the Communications Assistance for Law Enforcement Act, 47 U.S.C. § 1001, et. seq.

D. Provision of Common Carrier Switched Services in the Future

In the Intelsat/Zeus Commitment Letter, we agreed to provide the Agencies with advance notice of any provision of common carrier switched services by Intelsat, even if no further FCC authorization is required. In particular, we agreed that (i) for any common carrier switched service that requires additional Section 214 authorization, we would provide the Agencies with a copy of any application filed with the FCC; (ii) for any common carrier switched service that may be provided without obtaining a new Section 214 authorization (such as a new domestic switched service), we would notify the Agencies 30 days before offering the service; and (iii) before using any of the equipment subject to Title III licenses transferred in connection with the Intelsat/Zeus transaction to provide common carrier switched services, we would notify the Agencies 30 days in advance.

Assuming consummation of the transaction with PanAmSat, we will extend these commitments set forth or continued in the Intelsat/Zeus Commitment Letter to cover the PanAmSat businesses. As noted above, neither Intelsat nor PanAmSat offers any common carrier switched service or has any plan to do so. Nonetheless, should any part of the combined company offer such service in the future, we will provide advance notice to the Agencies as described in the Intelsat/Zeus Commitment Letter.

E. Future Changes to Boards of Directors

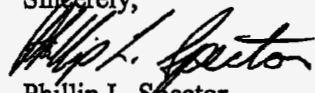
In the Intelsat/Zeus Commitment Letter, Zeus agreed to notify the Agencies of the initial composition of the boards of directors of Zeus, Intelsat, Ltd., and Intelsat (Bermuda), Ltd. (the "Boards") and of subsequent changes to the Boards. By letter dated February 11, 2005, we provided the Agencies with information concerning the initial composition of the Boards. In addition, by letter dated March 29, 2005, we supplied the Agencies with updated information concerning the composition of the Boards, and notified the agencies that Zeus had changed its name to Intelsat Holdings, Ltd.

No element of the transaction with PanAmSat changes the effectiveness or scope of this commitment. We will continue to provide the Agencies with updated information concerning the composition of the Boards, until such time as such notification is no longer needed by operation of law or by decision of the Agencies. In addition, we remain willing to provide the Agencies with such other information concerning the Boards as they may reasonably request.

* * * * *

If you require any further information regarding these matters, please contact either the undersigned or Richard Elliott at Paul, Weiss (202-223-7324).

Sincerely,


Phillip L. Spector
Executive Vice President
and General Counsel

cc: John R. LoGalbo
Criminal Division
Department of Justice

Lou W. Brenner, Jr.
Office of General Counsel
Department of Homeland Security

Jon D. Pifer
Office of General Counsel
Federal Bureau of Investigation

Carl W. Smith
Hillary J. Morgan
Defense Information Systems Agency
Department of Defense

Richard S. Elliott
Paul, Weiss, Rifkind, Wharton & Garrison LLP

**CONCURRING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

RE: Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PamAmSat H-2 Licensee Corp, IB Docket No. 05-290.

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. Though Intelsat and PanAmSat do not provide wholly overlapping services, they do compete in certain markets for the same customers. I worry that these customers will face higher prices as a result of our decision today. More generally, I am concerned because the transaction we approve today is part of an unprecedented trend towards consolidation in every sector of the communications industry. As I have said many times, I believe this trend will prove enormously harmful in the long run for consumers and the public interest.

At the same time, I recognize that none of the merging parties' customers opposes this merger, and indeed several have filed comments in support of it. These customers apparently believe that the merger will not harm them, and I hope they are right. Given the strength of the record in favor of this transaction, it becomes difficult to dissent to this item.

I note the separate concerns – unrelated to economic consolidation – raised by the International Telecommunications Satellite Organization (ITSO), which has the critically important duty of ensuring that Intelsat lives up to the promises it made when it converted from an intergovernmental organization to a private commercial entity. At the same time, I do not believe the issues ITSO raises – which do not involve PanAmSat at all – are properly addressed within the context of our merger review. As the item explains, Section 316 of the Act allows ITSO to bring its claims against Intelsat before the Commission. If ITSO chooses to do so, we will fulfill our statutory duty to consider them carefully and thoroughly.

**CONCURRING STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: 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.; IB Docket No. 05-290

This is a significant merger, and I think it is important that the decision was reviewed by the full Commission in light of the unique position of these two companies in the fixed satellite service (FSS) industry. Given the lack of opposition in the record, I am willing to allow the merger to proceed in the hope that the new company will truly promote the development of innovative products, including competitive satellite broadband services, as asserted by the applicants.

I can only concur to this item, however, because I remain troubled by the significant consolidation in the FSS market that will result from this transaction. For example, post-merger, two companies will control approximately 80% of the transponder capacity sales market in North America. It is likely that these market shares are much higher for the U.S. market, but most of the data in this item curiously is not provided on the national level. While I recognize that the satellite industry is an international one, we should not turn a blind eye to the competitive effects of consolidation on American businesses and the consumers they serve.

I believe that our item disproportionately relies on the bargaining power of larger customers to explain away the obvious public interest harm that stems from the loss of competition with the merger of two of the three largest providers of FSS video, network, and government services. Ultimately, it is unclear to me if the public interest benefits of this merger truly outweigh the possible harms. But the comments in this proceeding do not clearly demonstrate a potentially negative impact on the provision of FSS services as a result of the merger, which prompts my concurrence to the Order.

I also have a concern with the dispute between ITSO and Intelsat regarding the obligations and responsibilities of Intelsat that stem from the “core principles” that are contained in the ITSO Agreement, of which the United States is a party, and implemented through the Public Services Agreement. I look forward to working with the State Department post-merger to ensure that the various obligations that came out of the privatization of Intelsat remain intact. Indeed, as the item rightly points out, Section 316 of the Communications Act may be a more appropriate vehicle for ITSO to seek Commission action outside of this merger proceeding.