

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

In the Matter of	)	
	)	
Lockheed Martin Corporation,	)	
COMSAT Corporation, and	)	IB Docket No. 02-87
COMSAT Digital Teleport, Inc., Assignors	)	
	)	
and	)	
	)	
Intelsat, Ltd.,	)	
Intelsat (Bermuda), Ltd.,	)	
Intelsat LLC, and	)	
Intelsat USA License Corp., Assignees	)	
	)	
Applications for Assignment of Earth Station	)	
and Wireless Licenses and Section 214	)	
Authorizations and	)	
Petition for Declaratory Ruling	)	

**ORDER AND AUTHORIZATION**

**Adopted:** October 25, 2002

**Released:** October 25, 2002

By the Chief, International Bureau and Chief, Wireless Telecommunications Bureau:

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### I. INTRODUCTION

1. We grant the Applications of Lockheed Martin Corporation (“Lockheed Martin”), Comsat Corporation and Comsat Digital Teleport, Inc. (collectively, “Comsat” and, with Lockheed Martin, “Assignors”), and Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC, and Intelsat USA License Corp. (collectively, “Intelsat” or “Assignees” and, together with Assignors, “Applicants”) to assign common carrier and non-common carrier earth station licenses, private land mobile radio (“PLMR”) licenses, and international section 214 authorizations from Assignors to Intelsat.<sup>1</sup> We also grant Assignors’ request to modify the regulatory status of the common carrier earth station licenses to dual-use common carrier and non-common carrier licenses.<sup>2</sup> As discussed below, we conclude, pursuant to our review under sections 214(a) and 310(d) of the Communications Act of 1934, as amended (the “Communications Act” or “Act”),<sup>3</sup> that approval of the Applications will serve the public interest, convenience, and necessity. In addition, subject to the limitations specified herein, we find that the public interest would not be served by prohibiting the proposed indirect foreign ownership of Intelsat LLC in excess of the twenty-five percent benchmark set by section 310(b)(4) of the Act.<sup>4</sup>

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<sup>1</sup> See Application for Consent to Assignments, File No. ISP-PDR-20020405-00010 (“Petition for Declaratory Ruling”); Applications for Satellite Space and Earth Station Authorizations, File Nos. SES-ASG-20020405-00552, SES-ASG-20020405-00561, SES-ASG-20020405-00564, SES-ASG-20020405-00565, SES-ASG-20020405-00566 and File Nos. SES-MOD-20020405-00568 *et al.* (“Earth Station Applications”); Application for Assignments of Authorization, File No. 0000838233 (“PLMR Applications”); Application for Assignment of Section 214 Authorizations, File No. ITC-ASG-20020405-00185 (“International 214 Application” and, together with PLMR Applications, Earth Station Applications, and Petition for Declaratory Ruling, “Applications”). See Appendix B to this Order and Authorization for a detailed list of the licenses and authorizations involved in the Applications, as updated by Applicants’ submission in Appendix C to this Order and Authorization.

<sup>2</sup> See File Nos. SES-MOD-20020405-00568 *et al.*; Petition for Declaratory Ruling, *supra* note 1, at n.2. Assignors seek modification of the common carrier licenses to dual-use licenses to allow the licensee, and eventually the assignee, to make the most efficient use of the facilities. See, e.g., File Nos. SES-MOD-20020405-00568 *et al.* at Exhibit II.

<sup>3</sup> The Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.* The Telecommunications Act of 1996 (the “1996 Act”) amends the Communications Act of 1934. See Pub. Law No. 104-104, § 202, 110 Stat. 56 (1996). Hereinafter, all citations to the Communications Act will be to the relevant section of the United States Code unless otherwise noted. See 47 U.S.C. §§ 214(a), 310(d).

<sup>4</sup> 47 U.S.C. § 310(b)(4).

## II. BACKGROUND

### A. Assignors

2. Comsat Corporation, incorporated in the District of Columbia, is a wholly-owned subsidiary of Lockheed Martin Global Telecommunications LLC, a Delaware limited liability company that in turn is a wholly-owned subsidiary of Lockheed Martin, a publicly-traded U.S. company incorporated in Maryland.<sup>5</sup> Comsat Corporation is a major U.S. distributor of Intelsat system capacity and a provider of ground services, network management services, and other value-added services incorporating Intelsat capacity.<sup>6</sup> Comsat Corporation previously served as the U.S. Signatory to the International Satellite Telecommunications Organization (“INTELSAT”) prior to INTELSAT’s privatization from an intergovernmental organization on July 18, 2001.<sup>7</sup> On July 31, 2000, the Commission found that the transfer of control of Comsat Corporation to Lockheed Martin was in the public interest.<sup>8</sup>

### B. Assignees

3. Intelsat, Ltd., the privatized successor to the intergovernmental organization INTELSAT, is a company incorporated under the laws of Bermuda. Intelsat, Ltd. owns and operates a global satellite system providing space segment capacity for communications services.<sup>9</sup> Upon privatization, substantially all of INTELSAT’s operational assets and liabilities were transferred to several companies within an affiliated group with a holding company structure. Intelsat, Ltd. is the parent of all other companies in the group and holds the United

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<sup>5</sup> See Petition for Declaratory Ruling, *supra* note 1, at 4; International 214 Application, *supra* note 1, at 3; see also *Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor, and Telenor Satellite Mobile Services, Inc., and Telenor Satellite, Inc., Assignee, Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses, Experimental Licenses, and Earth Station Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, FCC 01-369, 16 FCC Rcd 22897 (2001), *erratum*, DA 02-266, 17 FCC Rcd 2147 (IB 2002) (“*Comsat-Telenor Order*”), *recon. denied*, Order on Reconsideration, FCC 02-207 (rel. July 12, 2002) (“*Comsat-Telenor Reconsideration Order*”).

<sup>6</sup> Petition for Declaratory Ruling, *supra* note 1, at 19.

<sup>7</sup> See, e.g., *FCC Report to Congress as Required by the ORBIT Act*, FCC 02-170, 2002 WL 1332760 (rel. June 14, 2002) (“*2002 ORBIT Act Report*”).

<sup>8</sup> See *Lockheed Martin Corporation, Comsat Governmental Systems, LLC, and Comsat Corporation, Applications for Transfer of Control of Comsat Corporation and Its Subsidiaries, Licensees of Various Satellite, Earth Station Private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214 Authorizations*, Order and Authorization, File Nos. SAT-T/C-20000323-00078 and SAT-STA-20000323-00078, FCC 00-277, 15 FCC Rcd 22910 (2000), *erratum*, DA 00-1789, 15 FCC Rcd 23506 (SRD/IB 2000) (“*Comsat-Lockheed Order*”), *recon. denied*, FCC 02-197 (rel. July 5, 2002) (“*Comsat-Lockheed Reconsideration Order*”). The parties consummated the transaction on August 3, 2000. See Letter from Raymond G. Bender, Jr., Counsel for Comsat Corporation, to the Secretary, Federal Communications Commission (filed Aug. 21, 2000).

<sup>9</sup> See Petition for Declaratory Ruling, *supra* note 1, at 5.

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Kingdom authorizations for International Telecommunication Union registrations in the Ka-, BSS-, and V-bands.<sup>10</sup> As a “successor entity” to INTELSAT, Intelsat, Ltd. is scheduled to conduct an initial public offering (“IPO”), to dilute substantially the ownership by former INTELSAT Signatories.<sup>11</sup>

4. Intelsat (Bermuda), Ltd., a wholly-owned subsidiary of Intelsat, Ltd. and also organized under the laws of Bermuda, is responsible for the oversight of satellite procurement and operational matters, including matters involving control of space and ground segment assets.<sup>12</sup> Intelsat Global Service Corporation, a wholly-owned subsidiary of Intelsat (Bermuda), Ltd. and incorporated in Delaware, provides technical, marketing, and business support services, including day-to-day operation of the satellite network, to Intelsat, Ltd. and its subsidiaries.<sup>13</sup> Intelsat Global Sales & Marketing Ltd., also a wholly-owned subsidiary of Intelsat (Bermuda), Ltd. and organized under the laws of England and Wales, is the contracting party for most of Intelsat’s customer contracts and buys space segment capacity from Intelsat (Bermuda), Ltd.<sup>14</sup> On a going forward basis, Intelsat’s U.S. customers will contract with Intelsat USA Sales Corporation, a Delaware corporation that is wholly owned by Intelsat Global Sales & Marketing Ltd.<sup>15</sup> Today, in addition to the Intelsat group of companies, more than 300 official distributors and wholesale customers market Intelsat communications capacity.<sup>16</sup>

5. Intelsat LLC, a Delaware limited liability company that is the proposed Title III licensee for the earth station and PLMR licenses, already holds the Intelsat C- and Ku-band satellite licenses issued by this Commission.<sup>17</sup> Intelsat LLC is wholly owned by Intelsat

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<sup>10</sup> See 2002 ORBIT Act Report, *supra* note 7.

<sup>11</sup> See section 621, Open-Market Reorganization for the Betterment of International Telecommunications Act, Public Law 106-180 (the “ORBIT Act”), 47 U.S.C. § 763; *Intelsat LLC, Request for Extension of Time Under Section 621(5) of the ORBIT Act*, Memorandum Opinion and Order, File No. SAT-MS-20010822-00075, FCC 01-288, 16 FCC Rcd 18185 (2001). The U.S. Senate and House have passed S.2810, which would extend the deadline from December 31, 2002 to December 31, 2003.

<sup>12</sup> Petition for Declaratory Ruling, *supra* note 1, at 5.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 2-3. Applicants state that under the terms of Intelsat’s Distribution Agreement, Wholesale Customer Agreement, and Non-Exclusive Customer Service Agreement, both distribution and wholesale customers can, and often do, resell Intelsat capacity as part of the services they provide to consumers. *Id.* at n.3.

<sup>17</sup> See *Applications of Intelsat LLC For Authority to Operate, and to Further Construct, Launch, and Operate C-Band and Ku-Band Satellites that Form a Global Communications System in Geostationary Orbit*, Memorandum Opinion, Order and Authorization, FCC 00-287, 15 FCC Rcd 15460 (2000), (“*Intelsat LLC Licensing Order*”), *recon. denied*, FCC 00-437, 15 FCC Rcd 25234 (2000). The Commission conditioned the authorizations on a subsequent Commission finding that INTELSAT’s privatization would be consistent with the ORBIT Act criteria. *Intelsat LLC Licensing Order*, 15 FCC Rcd at 15519, para. 160. On May 29, 2001, the (continued....)

Holdings LLC, a Delaware limited liability company that itself is wholly owned by Intelsat (Bermuda), Ltd.<sup>18</sup> Intelsat LLC sells all of its space segment capacity to Intelsat (Bermuda), Ltd.<sup>19</sup>

6. Intelsat USA License Corp., a Delaware corporation that is wholly owned and controlled by Intelsat USA Sales Corporation, is the proposed holder of the international section 214 authorizations and will provide common carrier services to customers.<sup>20</sup> Intelsat USA Sales Corporation will provide non-common carrier services to customers.<sup>21</sup>

### C. The Transaction

7. Applicants seek approval of the Applications in connection with Intelsat (Bermuda), Ltd.'s proposed acquisition of the assets of a Lockheed Martin business unit known as Comsat World Systems ("CWS") and the assets of certain associated Comsat business enterprises, namely, Comsat Digital Teleport, Inc. ("CDTI") and Comsat General Corporation ("Comsat General"), both of which are subsidiaries of Comsat Corporation.<sup>22</sup> In addition to the Petition for Declaratory Ruling, the Applications request that the Commission authorize: (1) the assignment of seventeen common carrier licenses from Comsat Corporation/CWS to Intelsat LLC (File No. SES-ASG-20020405-00564); (2) the assignment of eight non-common carrier licenses from Comsat Corporation/CWS to Intelsat LLC (File No. SES-ASG-20020405-00565); (3) the assignment of four non-common carrier licenses from CDTI to Intelsat LLC (File No. SES-ASG-20020405-00566); (4) the assignment of four common carrier licenses from Comsat General to Intelsat LLC (File No. SES-ASG-20020405-00561); (5) the assignment of one non-common carrier license from Comsat General to Intelsat LLC (File No. SES-ASG-2002-0405-  
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Commission released the *INTELSAT ORBIT Act Compliance Order* finding that INTELSAT's privatization would be consistent with the non-IPO criteria specified in sections 621 and 622 of the ORBIT Act. *See Applications of Intelsat LLC For Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, Memorandum Opinion, Order and Authorization, FCC 01-183, 16 FCC Rcd 12280 (2001) ("*INTELSAT ORBIT Act Compliance Order*"); 47 U.S.C. §§ 763-763a. The licenses became effective and operating authority was conferred upon Intelsat LLC when INTELSAT transferred its satellites and associated assets to Intelsat LLC on July 18, 2001.

<sup>18</sup> See Petition for Declaratory Ruling, *supra* note 1, at 6.

<sup>19</sup> 2002 ORBIT Act Report, *supra* note 7; *INTELSAT ORBIT Act Compliance Order*, 16 FCC Rcd at 12283, para. 9.

<sup>20</sup> See Petition for Declaratory Ruling, *supra* note 1, at 7.

<sup>21</sup> See Letter from Lawrence W. Secrest, III and Rosemary C. Harold, Counsel to Intelsat LLC, to James L. Ball, Chief, Policy Division, International Bureau, Federal Communications Commission (filed July 24, 2002) ("July 24 Letter"), at 3.

<sup>22</sup> Petition for Declaratory Ruling, *supra* note 1, at 2, n.2. The proposed sale includes the assignment of the CDTI business, but not that of Comsat General. *Id.* at n.2. The contemplated acquisition would occur under the terms of an Asset Purchase Agreement entered into on March 15, 2002 by and among Comsat Corporation, Comsat Digital Teleport, Inc., and Intelsat (Bermuda), Ltd. *Id.* at 10-11.

00552); (6) the modification of the seventeen common carrier licenses held by Comsat Corporation/CWS, to be assigned to Intelsat LLC in File No. SES-ASG-20020405-00564, from common carrier status to dual-use common carrier/non-common carrier status (File Nos. SES-MOD-20020405-00568 *et al.*); (7) the modification of the four common carrier licenses held by Comsat General, to be assigned to Intelsat LLC in File No. SES-ASG-20020405-00561, from common carrier status to dual-use common carrier/non-common carrier status (File Nos. SES-MOD-20020405-00594 *et al.*); (8) the assignment of 36 section 214 authorizations from Comsat Corporation to Intelsat USA License Corp. (File No. ITC-ASG-20020405-00185); and (9) the assignment of two PLMR licenses held by Comsat Corporation to Intelsat LLC (File No. 0000838233).<sup>23</sup>

8. Upon the closing of the proposed transaction, Intelsat LLC would hold the Title III licenses and Intelsat USA License Corp. would hold the section 214 authorizations.<sup>24</sup> Intelsat Global Service Corporation would hold title to the earth station facilities and equipment as well as to real estate in Clarksburg, Maryland and Paumalu, Hawaii.<sup>25</sup> According to Applicants, the proposed transaction does not affect Lockheed Martin's current ownership of approximately 24.05 % of Intelsat, Ltd.<sup>26</sup> Applicants also seek approval of the assignment to Intelsat of: (1) any authorization issued to Comsat/CWS during the pendency of the Commission's consideration of the assignment applications or during the period required for consummation of the assignment following approval; and (2) applications that will have been filed by Comsat/CWS and that are pending at the time of consummation of the proposed assignment, including requests for special temporary authority concerning a new or existing facility associated with this transaction.<sup>27</sup>

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<sup>23</sup> See Appendix B to this Order and Authorization, as updated by Applicants' submissions in Appendix C to this Order and Authorization. As part of the planned dissolution of Lockheed Martin Global Telecommunications LLC, Comsat General and Lockheed Martin filed a pro forma application to transfer control of all Comsat General applications from Comsat General to Lockheed Martin. See Petition for Declaratory Ruling, *supra* note 1, at n.5. On May 22, 2002, Assignors advised that Lockheed Martin and its subsidiary Comsat General had consummated the pro forma transfer of control of all Comsat General licenses to Lockheed Martin on April 25, 2002. See Letter from Martha E. Heller to the Secretary, Federal Communications Commission (filed May 22, 2002). Of the seventeen transferred licenses, five earth station licenses listed in File Nos. SES-ASG-20020405-00552 and SES-ASG-20020405-00561 will be assigned to Intelsat LLC as a part of this transaction. See Petition for Declaratory Ruling, *supra* note 1, at n.5; see also File Nos. SES-T/C-20020408-00605 *et al.*

<sup>24</sup> Petition for Declaratory Ruling, *supra* note 1, at 4-5. Intelsat USA License Corp. would administer the common carrier services and would outsource customer service, billing, and related functions to its parent Intelsat USA Sales Corporation. The non-common carrier business operations of the former CWS would be absorbed by either Intelsat USA Sales Corporation or Intelsat Global Services Corporation. See July 24 Letter, *supra* note 21, at 3.

<sup>25</sup> Petition for Declaratory Ruling, *supra* note 1, at 11.

<sup>26</sup> *Id.* at 9. The remaining 75.95 % ownership interests in Intelsat, Ltd. are held by more than 220 entities, representing more than 145 nations. *Id.* See *infra* para. 39.

<sup>27</sup> Petition for Declaratory Ruling, *supra* note 1, at 11-12.

9. Applicants state that, through the proposed transaction, Intelsat would acquire the same operational capabilities as its facilities-based rivals, which would accelerate Intelsat's development as an efficient competitor with the ability to market a full range of communications services closely tailored to customer needs.<sup>28</sup> Applicants further state that the proposed transaction is largely complementary because it would combine Intelsat space segment capacity with the CWS downstream distribution infrastructure.<sup>29</sup> Further, according to Applicants, customers would continue, after the transaction, to be able to select from among a wide range of competitive providers of numerous other satellite systems, fiber-optic cables, and resellers of Intelsat capacity.<sup>30</sup>

10. On April 24, 2002, the International Bureau issued a public notice, announcing that the Applications were accepted for filing and establishing a pleading cycle to permit interested parties an opportunity to comment on the Applications.<sup>31</sup> AT&T Corp. filed a petition to deny the Applications; Worldcom, Inc. and Sprint Communications Company LP ("Worldcom and Sprint") filed a petition to condition grant of the Applications; Verestar, Inc. filed a letter supporting the Applications with one proviso; and Litigation Recovery Trust ("LRT") filed a "provisional" petition to deny the Applications.<sup>32</sup> Applicants filed an opposition to the petitions to deny and condition grant.<sup>33</sup> LRT filed additional pleadings, and Applicants responded.<sup>34</sup>

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<sup>28</sup> *Id.* at 13. In particular, Applicants state that the majority of Intelsat's current business is the provision of space segment capacity to a number of distributors and wholesale customers that in turn provide various satellite-based services to carriers and an array of customers, and that Intelsat only recently has begun to gain experience in providing capacity directly to carriers and other U.S. customers. *Id.* at 21. Applicants state that, by combining Intelsat's experience in providing raw space segment capacity with Comsat's marketing acumen, ground services and network management services, the combined enterprise will be able to take advantage of the same business efficiencies that its competitors now employ. *Id.* at 22. Moreover, Applicants state that Intelsat, as an integrated service provider, would be able to compete more effectively with major international facilities-based providers in offering "one-stop shopping" to end users, providing its own telemetry, tracking and control, and offering remapping and other value-added services. *Id.* at 21-22.

<sup>29</sup> *Id.* at 5.

<sup>30</sup> *Id.* at 13.

<sup>31</sup> *See Public Notice, Lockheed Martin/Comsat and Intelsat Seek FCC Consent to Assign Licenses and Section 214 Authorizations*, DA 02-951 (rel. Apr. 24, 2002).

<sup>32</sup> *See* AT&T Petition to Deny (filed May 24, 2002) ("AT&T Petition"); Petition of Worldcom and Sprint to Condition Grant (filed May 24, 2002) ("Worldcom/Sprint Petition"); Letter from Scott H. Lyon, Assistant General Counsel, Verestar, Inc. to Secretary, Federal Communications Commission (filed May 24, 2002) ("Verestar Letter"); LRT Provisional Petition to Deny (filed May 24, 2002) ("LRT Provisional Petition").

<sup>33</sup> Opposition of Lockheed Martin Corporation, *et al.*, and Intelsat, Ltd., *et al.* to Petitions to Deny and Petitions to Condition Grant (filed June 7, 2002) ("Comsat/Intelsat Opposition").

<sup>34</sup> *See* Reply Comments (filed June 7, 2002) ("LRT Reply"), Proposal for Administrative Dispute Resolution of Issues (filed June 7, 2002), and Motion to Accept Supplement to Provisional Petition to Deny and Supplement to Provisional Petition to Deny (filed June 24, 2002). Assignors responded to LRT's June 24, 2002 filings with a June 27, 2002 letter. In addition, LRT filed, on July 22, 2002, another pleading denominated as a (continued....)

Worldcom and Sprint filed an August 23, 2002 letter, and Applicants responded.<sup>35</sup> Appendix A to this Order and Authorization lists the parties to this proceeding.

### III. PUBLIC INTEREST ANALYSIS

#### A. Framework for Analysis

11. In considering the Applications, the Commission must determine, pursuant to section 214(a) and section 310(d) of the Act, whether the proposed assignments will serve the public interest.<sup>36</sup> In addition, because of the foreign ownership interests presented in this case, we also must determine whether the proposed assignment of licenses to Intelsat LLC is permissible under the foreign ownership provisions of section 310 of the Act.<sup>37</sup>

12. The legal standards that govern our public interest analysis for assignment of licenses and authorizations under sections 214(a) and 310(d) require that we weigh the potential public interest harms against the potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest, convenience, and necessity.<sup>38</sup> Our analysis considers the likely competitive effects of the proposed assignments and whether such assignments raise significant anti-competitive issues.<sup>39</sup> In addition, we consider the efficiencies and other public interest benefits that are likely to result from the proposed assignments.<sup>40</sup>

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Motion to Strike, to which Assignors responded on July 29, 2002. Further, LRT filed a “Reply to Lockheed Opposition” on August 8, 2002, to which Assignors responded on August 26, 2002. On September 16, 2002, LRT filed a “Motion to Strike Unauthorized Responsive Pleading of Comsat.”

<sup>35</sup> See Letter from Alfred M. Mamlet and Maury Shenk, Counsel for Sprint Communications Company, L.P. and Worldcom, Inc., to Secretary, Federal Communications Commission (filed August 23, 2002) (“Worldcom/Sprint Letter”); Letter from Lawrence W. Secrest, III and Rosemary C. Harold, Counsel to Applicants, to Secretary, Federal Communications Commission (filed September 9, 2002) (“September 9 Letter”).

<sup>36</sup> 47 U.S.C. §§ 214(a), 310(d).

<sup>37</sup> See 47 U.S.C. § 310(a), (b).

<sup>38</sup> See, e.g., *Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and for Declaratory Ruling Pursuant to Section 310 of the Communications Act*, Memorandum Opinion and Order, FCC 01-142, 16 FCC Rcd 9779, 9789, para. 17 (2001) (“*VoiceStream/Deutsche Telekom Order*”). See also *AT&T Corp., British Telecommunications, plc, VLT Co. LLC, Violet License Co. LLC, and TNV (Bahamas) Limited, Applications For Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection with the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, plc*, Memorandum Opinion and Order, FCC 99-313, 14 FCC Rcd 19140, 19147, para. 15 (1999) (“*AT&T/BT Order*”); *Motient Services Inc. and TMI Communications and Company, LP, Assignors, and Mobile Satellite Ventures Subsidiary LLC, Assignee*, Order and Authorization, DA 01-2732, 16 FCC Rcd 20469, 20473, para. 11 (IB 2001) (“*Motient Services Order*”).

<sup>39</sup> See, e.g., *AT&T/BT Order*, 14 FCC Rcd at 19148, para. 15.

<sup>40</sup> See, e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9789, para. 17.



Further, we consider whether the proposed transactions present national security, law enforcement, foreign policy or trade policy concerns.<sup>41</sup>

## B. Qualifications

13. As a threshold matter, we must determine whether the Applicants are qualified to hold and assign licenses under section 310(d) of the Act and Commission rules. In making this determination, we do not, as a general rule, re-evaluate the qualifications of the assignors 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.<sup>42</sup> Conversely, the analysis of every assignment application requires that we determine whether the proposed assignee is qualified to hold Commission licenses.<sup>43</sup> Section 310(d) requires that the Commission consider the qualifications of the proposed assignee as if the assignee were applying for the license directly under section 308 of the Act.<sup>44</sup>

14. LRT alleges that the Applications are defective for failing to disclose information critical to assessing the Assignors' qualifications to continue as Commission licensees. In particular, LRT argues that Assignors fail to disclose that Lockheed Martin doesn't possess a final grant of authority for the Comsat licenses because LRT filed a petition for reconsideration of the Commission's July 31, 2000 grant, in the *Comsat-Lockheed Order*, of the transfer of control of Comsat Corporation to Lockheed Martin and thus the transfer of control is "non final."<sup>45</sup> In July 2002, however, the Commission dispensed with this and related arguments in a series of orders denying LRT's various petitions seeking reconsideration of Commission decisions granting authority to Lockheed Martin and Comsat.<sup>46</sup> In particular, in the *Comsat-*

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<sup>41</sup> See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891, 23919-21, paras. 61-66 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, FCC 00-339, 15 FCC Rcd 18158 (2000).

<sup>42</sup> See, e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9790, para. 19.

<sup>43</sup> See 47 U.S.C. § 308; see also *Applications of AirTouch Communications, Inc., Transferor, and Vodafone Group, PLC, Transferee, For Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order, File Nos. 0000003690 *et al.*, DA 99-1200, 14 FCC Rcd 9430, 9432-34, paras. 5-9 (WTB 1999).

<sup>44</sup> 47 U.S.C. § 308.

<sup>45</sup> LRT Provisional Petition, at 2-11.

<sup>46</sup> See *Comsat-Lockheed Reconsideration Order*, FCC 02-197 (rel. July 5, 2002); *Lockheed Martin Corporation, Authority to Construct, Launch, and Operate a Ka-Band Satellite System in the Fixed-Satellite Service*, Order on Reconsideration, FCC 02-198 (rel. July 5, 2002); *Litigation Recovery Trust, Petition for Declaratory Ruling Seeking a Determination that Comsat Corporation Has Violated the Satellite Act in Making Acquisitions of Stock in Various Other Companies*, FCC 02-199 (rel. July 5, 2002); *Comsat Corporation d/b/a/ Comsat Mobile Communications, Application for Authority under Section 753(c) of the International Maritime Satellite Act and Section 214 of the Communications Act of 1934, as amended, to Establish Channels of Communication Between Land Earth Stations and Inmarsat Third Generation Satellites*, File Nos. ITC-97-222 *et* (continued....)

*Lockheed Reconsideration Order*, the Commission denied with prejudice and in all respects LRT's petition for reconsideration of the *Comsat-Lockheed Order*.<sup>47</sup> We find that LRT has raised no substantial and material facts as to Comsat's qualifications as assignor of Commission licenses and authorizations. Further, as noted above, the Commission previously has found Intelsat LLC to be qualified to be a Commission licensee.<sup>48</sup> Based on our review of Assignees' current ownership, we conclude that Intelsat LLC and Intelsat USA License Corp. are qualified under our rules to hold the licenses and authorizations at issue in this proceeding.<sup>49</sup>

### C. Competitive Effects

15. Our public interest analysis under sections 214(a) and 310(d) includes an evaluation of the competitive effects of the proposed transaction in both the relevant product markets and the relevant geographic markets. For telecommunications service providers, the Commission has determined that the relevant product and geographic markets can include both U.S. domestic telecommunications services markets and telecommunications services between the United States and foreign points.<sup>50</sup> For the international telecommunications market, the Commission has evaluated the competitive effects on a country-by-country basis, for service between the United States and specific foreign countries, where service to each foreign country from the United States represents a separate geographic market.<sup>51</sup> In those analyses, the

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*al.*, FCC 02-2000 (rel. July 5, 2002); *Comsat-Telenor Reconsideration Order*, FCC 02-207 (rel. July 12, 2002), *erratum* DA 02-1910 (PD/IB Aug. 5, 2002). LRT has sought judicial review of several of these orders. *See LRT v. FCC*, USCA Docket No. 02-4372 (2d. Cir) (filed Aug. 8, 2002). *See also* 47 C.F.R. § 1.106(n) (the filing of a petition for reconsideration does not stay the effectiveness of a Commission decision).

<sup>47</sup> *Comsat-Lockheed Reconsideration Order*, FCC 02-197, at paras. 2, 20-21. The fact that LRT has filed yet another pleading in that proceeding does not obviate the finality of the Commission's July 12, 2002 action or our reliance upon it in this proceeding. Further, the Commission in that action stated, with regard to Comsat/Lockheed's claims that LRT and/or its members' primary aim in filing the various pleadings is to harass Comsat and its successor and/or assigns, that it takes these claims very seriously, noting a documented pattern of conduct by LRT and/or its members with regard to Comsat and/or its successors or assigns that appears to go beyond legitimate advocacy. The Commission expressly warned LRT and/or its members that sanctions may apply should they file abusive or harassing pleadings with the Commission. *Id.* at para. 19.

<sup>48</sup> *See supra* para. 5.

<sup>49</sup> *See infra* section III.F, paras. 35-46.

<sup>50</sup> *See, e.g., VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9823, para. 78, 9825, para. 81, 9833, para. 97. *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, FCC 98-225, 13 FCC Rcd 18025 (1998) ("*MCI/WorldCom Order*"); *Comsat/Lockheed Order*, 15 FCC Rcd at 22915, para. 16; and *Application of General Electric Capital Corporation and SES Global S.A. for Consent to Transfer Control of Licenses and Authorizations Pursuant to Section 214(a) and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, DA 01-2100, 16 FCC Rcd 17575 (IB & WTB, 2001), Supplemental Order, DA 01-2482, 16 FCC Rcd 18878 (IB & WTB, 2001) ("*GE/SES Order*").

<sup>51</sup> *Comsat/Lockheed Order*, 15 FCC Rcd at 22916, para. 18.

Commission considered whether proposed transactions would lessen or enhance competition in the provision of communications services in, to, or from the United States.

16. Worldcom and Sprint argue that the relevant product market is wholesale, unbundled Intelsat space segment services.<sup>52</sup> They contend that this product market is characterized by the continuing dominance of Comsat.<sup>53</sup> They state that the merger of Intelsat and Comsat would involve a horizontal combination of the largest and second-largest U.S. providers of wholesale Intelsat services that would result in increased market power by the merged entity, and a vertical integration of wholesale space segment with retail businesses that would increase the ability of the combined entity to impose a price squeeze on competitors that must purchase Intelsat services as an input.<sup>54</sup> Further, they contend that the provision of Intelsat services is a distinct product market because the Commission regulates Comsat as dominant on thin routes.<sup>55</sup> They state that it is primarily on thin routes that Worldcom, Sprint and other major U.S. customers heavily consume Intelsat services.<sup>56</sup> They further state that they would have no reason to purchase Intelsat services from Comsat if fiber optic cables or other satellite systems were available as viable alternatives.<sup>57</sup>

17. We find no basis to conclude that the combination of Intelsat's and Comsat's operations, nor the integration of Intelsat's wholesale business with Comsat's retail business, will cause competitive harm.<sup>58</sup> Consistent with Commission precedent, we conclude that: (1) the relevant product markets, for purposes of our public interest analysis under sections 214(a) and 310(d), are international switched voice, private line, video, and earth station services, not wholesale Intelsat space segment services as stated by petitioners; (2) these markets are competitive, with the exception of international switched voice and private line services on

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<sup>52</sup> Worldcom/Sprint Petition at 2-4. By wholesale, unbundled space segment, Worldcom and Sprint mean space segment capacity separate from value-added earth station services. *See id.* at 4, n.4.

<sup>53</sup> Worldcom/Sprint Petition at 3; *see also* Worldcom/Sprint Letter at 5. Petitioners state that the proposed transaction would eliminate Comsat as a competitor to Intelsat. *Id.* at 6. *See also* Worldcom/Sprint Letter at 2-4 (arguing, *i.e.*, that various historical and technical factors prevent submarine cable systems and commercial satellite providers from exercising effective competitive discipline over Comsat/Intelsat).

<sup>54</sup> Worldcom/Sprint Petition at 2-3, 8-10. In particular, they argue that the availability of competition from other providers of international telecommunications services would not remedy the discrimination they see between Intelsat and Comsat prices. *Id.* at 9-10. We discuss the abrogation of contracts issue at section III.E, paras. 30-34, below.

<sup>55</sup> Worldcom/Sprint Petition at 10.

<sup>56</sup> *Id.* at 11.

<sup>57</sup> *Id.* at 2.

<sup>58</sup> *See also* Letter from Sandra M. Peay, Federal Trade Commission, to Bert Rein, Counsel to Applicants (dated April 5, 2002) ("FTC Letter") (providing early termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act).

“thin” routes; and (3) following the proposed transaction, Intelsat USA License Corp. would not have market power on “thick” routes, but would have market power in its provision of space segment capacity for switched voice and private line services on thin routes.<sup>59</sup>

18. We agree with Applicants that characterizing the provision of Intelsat space segment services as a distinct product market would ignore Commission precedent recognizing the existence of much broader markets that include multiple providers of both satellite and submarine cable services.<sup>60</sup> The Commission, in the *Comsat Non-Dominance Order* and other proceedings, has concluded that Intelsat and Comsat compete with many satellite providers and fiber optic submarine cable systems.<sup>61</sup> The types of customers served by CWS are international telecommunications service providers, domestic long distance carriers, broadcasters, and multi-national corporations.<sup>62</sup> Intelsat’s customers include distributors such as Comsat that resell capacity, as well as customers that purchase capacity for their own use, such as large telecommunications carriers, broadcasters, corporate networks and Internet service providers.<sup>63</sup> These types of customers also use other satellite providers and fiber optic cables to meet their international capacity requirements.<sup>64</sup>

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<sup>59</sup> Thick route switched voice and private line markets are routes linked to the United States by submarine cable and satellites. Thin route switched voice and private line markets are routes not linked to the United States by cable and where Comsat is the dominant provider of service. See *Comsat Corporation, Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, Order and Notice of Proposed Rulemaking, File No. 60-SAT-ISP-97, FCC 98-78, 13 FCC Rcd 14083, 14096, para. 20, 14107, para. 42 (1998) (“*Comsat Non-Dominance Order*”); see also *infra* para. 19.

<sup>60</sup> See *Comsat/Intelsat Opposition* at 2.

<sup>61</sup> *Comsat Non-Dominance Order* at 14103, para. 32, 14096, para. 19 (submarine cable and satellite are fungible technologies utilized in the transmission of international switched voice services, with fiber optic cables now providing a highly competitive transmission alternative for providers of international switched voice and private line services, and satellite companies effectively compete for the provision of full-time video services); *Direct Access to the INTELSAT System*, Report and Order, IB Docket No. 98-12, FCC 99-236, 14 FCC Rcd 15703, 15723, para. 41 (1999) (“*Direct Access Order*”) (the international telecommunications market is largely competitive in terms of availability of alternative suppliers of international transmission capacity); *Intelsat LLC Licensing Order*, 15 FCC Rcd at 15463-64, para. 6 (Intelsat faces competition globally from both satellite systems and fiber optic submarine cable systems).

<sup>62</sup> See *Petition for Declaratory Ruling*, *supra* note 1, at 4.

<sup>63</sup> See *id.* at 5.

<sup>64</sup> See, e.g., [www.panamsat.com/company/index.asp](http://www.panamsat.com/company/index.asp) (visited Sept. 30, 2002) (PanAmSat customers include U.S. and international television broadcasters, telecommunications service providers, Internet service providers, and corporations); [www.loralskynet.com/news\\_events/nw\\_us.asp?id=59](http://www.loralskynet.com/news_events/nw_us.asp?id=59) (visited Sept. 30, 2002) (Loral Skynet provides high-volume communications and data transmission services to broadcasting, cable TV, Internet and industrial companies around the world); *AT&T et al., Joint Application for a License to Land and Operate a Submarine Cable Network Between the United States and Japan*, Cable Landing License, File No. SCL-LIC-19981117-00025, FCC 99-167, 14 FCC Rcd 13066 (1999) (nineteen applicants, including AT&T Corp., Sprint (continued....))

19. We disagree with petitioners that Intelsat services are a distinct product market because the Commission regulates Comsat as dominant on thin routes. Rather, the Commission regulates Comsat as dominant on thin routes because Comsat possesses market power in this geographic market. The Commission, in its 1998 *Comsat Non-Dominance Order*, aggregated point-to-point markets, finding that Comsat lacks market power in the provision of transmission capacity for switched voice and private line services on “thick” routes that include one or more fiber optic submarine cables and possesses market power on “thin” routes where no submarine cable is available and Comsat generally is the only provider of satellite services.<sup>65</sup> Following the proposed transaction, Intelsat USA License Corp., which will acquire all of Comsat’s common carrier contracts,<sup>66</sup> will have market power in the provision of transmission capacity for switched voice and private line services on thin routes. However, Assignees have stated that Intelsat USA License Corp. will comply with the terms of the *Comsat Alternative Rate Regulation Order*,<sup>67</sup> and, as discussed *infra* in section III.D, we will condition grant of the Applications on Intelsat USA License Corp. or any successor entity abiding by these terms in its provision of common carrier services on thin routes. Thus, on the thin routes where petitioners must rely on Intelsat capacity, Intelsat USA License Corp. will be a common carrier subject to the alternative rate regulation previously applicable to Comsat’s provision of capacity on these routes.

20. In addition, the proposed transaction would achieve public interest benefits. INTELSAT’s privatization and transformation into a strong commercial entity licensed in the  
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Communications Company L.P., MCI Worldcom, Inc., and other international telecommunications providers, granted authority to land and operate the Japan-US consortium submarine cable network between the United States and Japan); *AT&T et al., Joint Application for a License to Land and Operate in the United States a Submarine Cable System Extending Between the United States, Denmark, Germany, the Netherlands, France and the United Kingdom*, Cable Landing License, File No. SCL-LIC-19990303-00004, DA 99-2042 (TD/IB rel. Oct. 1, 1999) (nineteen applicants, including AT&T Corp., Sprint Communications Company, L.P., MCI Worldcom, Inc., and other international telecommunications providers, granted authority to land and operate the TAT-14 consortium submarine cable network between the United States and various European countries); *AT&T Corp. et al., Joint Application for a License to Land and Operate a Digital Submarine Cable System Between the United States, the Cayman Islands, Colombia, Costa Rica, Honduras, Mexico and Panama, the MAYA-1 Cable Network*, Cable Landing License, File No. SCL-LIC-19990325-00006, DA 99-257, 14 FCC Rcd 19456 (TD/IB 1999) (nine applicants, including AT&T Corp., Sprint Communications Company L.P., MCI Worldcom, Inc., and other international telecommunications providers granted authority to land and operate the MAYA-1 consortium submarine cable network between the United States and various Latin American countries).

<sup>65</sup> *Comsat Non-Dominance Order*, 13 FCC Rcd at 14100-01, para. 28 (finding that point-to-point routes between the U.S. and foreign countries can be grouped into two separate and distinct geographic markets – thick and thin routes -- because the markets within each of the two groups have similar characteristics).

<sup>66</sup> July 24 Letter, *supra* note 21, at 3.

<sup>67</sup> See Petition for Declaratory Ruling, *supra* note 1, at 31; Comsat/Intelsat Opposition at 25; *Comsat Corporation, Policies and Rules for Alternative Incentive Based Regulation of Comsat Corporation*, Report and Order, IB Docket No. 98-60, FCC 99-17, 14 FCC Rcd 3065 (1999) (“*Comsat Alternative Rate Regulation Order*”) (adopting incentive-based price regulation of Comsat’s provision of capacity for switched voice and private line services in non-competitive, or “thin,” geographic markets served only by satellite systems and where Comsat has market power).

United States has been a U.S. policy goal.<sup>68</sup> The assignment of Comsat's licenses and authorizations, respectively, to Intelsat LLC and Intelsat USA License Corp. would accelerate the transformation of the Intelsat companies into commercial entities on par with competitive providers of international transmission service capacity. Given that: (1) there are a number of other firms offering international capacity for the provision of switched voice, private line, video, and earth station services to customers in the United States; (2) the Intelsat companies would not have market power in these product markets on thick routes; and (3) the terms of the *Comsat Alternative Rate Regulation Order*, as applied to Intelsat USA License Corp., would constrain market power in the provision of capacity for switched voice and private line services on thin routes, we find that the proposed transaction raises no significant competitive concerns.

#### D. Regulatory Status

##### 1. Intelsat USA License Corp.

21. Intelsat USA License Corp., the Intelsat company that would hold the assigned international section 214 authorizations, seeks to operate as a common carrier.<sup>69</sup> Intelsat, Ltd. and Intelsat USA License Corp. state that, in acquiring Comsat's international section 214 authorizations, Intelsat USA License Corp. is entitled to non-dominant treatment for services on all domestic and international routes, with the exception of those listed in Appendix A of the *Comsat Non-Dominance Order*.<sup>70</sup> For these non-competitive, or "thin," routes, Intelsat USA License Corp. seeks authority to provide service as a dominant carrier subject to the alternative rate requirements adopted in the *Comsat Alternative Rate Regulation Order*.<sup>71</sup> Petitioners

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<sup>68</sup> See *Intelsat LLC Licensing Order*, 15 FCC Rcd at 15470-71, para. 22, 15475, para. 31; *INTELSAT ORBIT Act Compliance Order*, 16 FCC Rcd at 12282, para. 7 ("A pro-competitive privatization of INTELSAT will make it a more effective competitor and promote fairer and more robust competition in the global satellite market."); the ORBIT Act, § 2 ("It is the purpose of this Act to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the international satellite organizations, INTELSAT and Inmarsat.").

<sup>69</sup> See International 214 Application, *supra* note 1; Petition for Declaratory Ruling, *supra* note 1, at 6-7.

<sup>70</sup> See International 214 Application at 2; see also *Comsat Non-Dominance Order*, 13 FCC Rcd at 14176-14183 (Appendix A listed sixty-three non-competitive, or thin, routes for the provision of switched voice and private line services). We note that new submarine cables have come into service since the Commission adopted the *Comsat Non-Dominance Order* in 1998. See, e.g., *The World's First Undersea Optic Fibre Cable System Around Africa to Europe and Asia, Officially Inaugurated by the Senegalese Head of State*, [www.safe-sat3.co.za/news.htm](http://www.safe-sat3.co.za/news.htm) (visited Sept. 30, 2002) (SAT-3/WASC/SAFE, which began service in May 2002, lands in several African countries that the Commission determined in 1998 were "thin" route destination markets).

<sup>71</sup> International 214 Application, *supra* note 1, at 3-4; see also *Comsat Alternative Rate Regulation Order*, 14 FCC Rcd at 3072-75, paras. 19-22, 25 (adopting alternative rate regulation that reduces rates for the provision of switched-voice capacity on thin routes by at least 4% annually, comparable to rates charged on thick routes, and capping private line rates on thin routes to thick route pricing, with no future rate increases), *erratum* (IB Feb. 11, 1999).

support dominant carrier treatment for Intelsat USA License Corp. in its provision of service on thin routes.<sup>72</sup>

22. Consistent with the *Comsat Non-Dominance Order*, we will treat Intelsat USA License Corp. as dominant in its provision of space segment capacity for switched voice and private line service on thin routes. In the *Comsat Non-Dominance Order*, the Commission found that Comsat continued to exercise market power and was dominant in its provision of capacity for switched voice and private lines service between the United States and sixty-three countries.<sup>73</sup> Subsequently, the Commission adopted a policy of incentive-based price regulation for Comsat's provision of capacity on non-competitive, or thin, routes.<sup>74</sup> Intelsat USA License Corp., in acquiring all of Comsat's common carrier contracts, will exercise market power in the provision of capacity for switched voice and private line service on thin routes. Therefore, we grant Intelsat USA License Corp.'s request for authority to provide these services subject to the alternative rate regulation adopted in the *Comsat Alternative Rate Regulation Order*. We will condition grant of the Applications on Intelsat USA License Corp. or any successor entity abiding by these terms in its provision of common carrier services on thin routes. With respect to thick routes, we note that, on a going forward basis, we do not believe that Intelsat will be in the position to charge U.S. customers prices that exceed competitive norms because, as we have stated above, the market for international transmission capacity is competitive.

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<sup>72</sup> AT&T Petition at 7; Worldcom/Sprint Petition at 14. In its August 23, 2002 letter, however, Worldcom and Sprint argue that on thick routes Intelsat may discriminate by offering favorable private carrier rates to some entities, such as monopoly foreign carriers, while charging Sprint and Worldcom inflated prices. Worldcom/Sprint Letter, at 7-8. Applicants, in their September 9, 2002 letter, reply that Worldcom and Sprint appear to be concerned that the proposed transaction would enable Intelsat to offer customers lower prices, which they state is the kind of pricing behavior typical of firms operating in a competitive environment. See September 9 Letter, *supra* note 35, at 1-2. Applicants further state that, to the extent that Worldcom and Sprint have expressed dissatisfaction with their long-term capacity agreements with CWS, that is not a matter affected by the pending assignment applications because the contractual agreements will remain in place regardless of whether Comsat or Intelsat holds the authorizations that are the subject of the instant applications. *Id.* at 3.

<sup>73</sup> See *Comsat Non-Dominance Order*, 13 FCC Rcd at 14142, para. 117, 14147, para. 129. The Commission concluded that Comsat's substantially high market share in the provision of capacity for switched voice and private line service on these routes and its satellite competitors' low penetration of the market evidenced inelastic demand for the provision of capacity for switched voice and private line service to the thin-route market countries. *Id.* at 14142, para. 118. The Commission also concluded that the thin-route market was subject to an inelastic competitive supply because the countries within this geographic market were not connected to the United States by cable and there was little evidence that satellite operators, other than Comsat, were able to supply any significant amount of switched voice and private line capacity to the thin-route market. *Id.* at 14143-44, para. 120-22. Further, the Commission found that Comsat's satellite competitors encountered difficulty in providing a full range of telecommunications services in foreign markets where the monopoly telecommunications service provider was the INTELSAT Signatory, *id.* at 14145, para. 124, and that Comsat retained a significant cost advantage over other U.S. authorized carriers in the provision of switched voice and private line capacity to the thin-route market, *id.* at 14146, para. 127. Finally, the Commission found that substantial barriers to entry continued to exist within thin-route market countries and most had not made any commitments under the WTO Agreement. *Id.* at 14147, para. 129.

<sup>74</sup> See *Comsat Alternative Rate Regulation Order*, 14 FCC Rcd 3065.

23. Worldcom and Sprint state that although they welcome Intelsat USA License Corp.'s commitment to comply with the alternative rate requirements adopted in the *Comsat Alternative Rate Regulation Order*, they urge the Commission to clarify that this commitment refers to Intelsat's prices, not Comsat's current prices.<sup>75</sup> As noted, in the *Comsat Alternative Rate Regulation Order* the Commission adopted a policy of incentive-based price regulation for Comsat's provision of capacity for switched voice and private line services in non-competitive, or thin, markets. The Commission found Comsat's proposals to reduce switched voice service rates on thin routes by four percent annually, comparable to rates charged on thick routes, and to cap the rates for private line service to thin-route markets at the rates offered on thick routes, with no future rate increases, to be reasonable.<sup>76</sup> Although the Commission declined to sunset the incentive-based policy on a particular date, the Commission observed that Comsat could petition for review of the alternative incentive-based plan if it believed market conditions had changed enough to warrant a modification.<sup>77</sup> Intelsat USA License Corp.'s assumption of Comsat's obligation to serve thin routes in accordance with the alternative incentive-based plan means that Intelsat USA License Corp. will provide at least a four percent annual reduction off of Intelsat USA License Corp. prices in its provision of capacity for switched voice services on thin routes, comparable to rates charged on thick routes, and will cap rates for private line service to thin routes at the rates offered on thick routes, with no future rate increases. This does not mean, however, that existing long-term contracts novated to Intelsat USA License Corp. will be unilaterally modified. As noted *infra* in section III.E, the Commission previously has found no public interest reason to require a change in these long-term contract prices and the record here provides no rationale to conclude otherwise.

## 2. Intelsat LLC

24. Intelsat LLC, the Intelsat company that would hold the assigned earth station licenses, including certain dual-use non-common carrier/common carrier earth station licenses, would continue to operate as a private carrier for the provision of space segment capacity to Intelsat (Bermuda), Ltd. and the provision of earth station capacity to Intelsat USA License Corp. and Intelsat USA Sales Corporation.<sup>78</sup> The Commission currently does not regulate Intelsat LLC as a common carrier. In August 2000, in licensing Intelsat LLC to operate seventeen existing C-band and Ku-band satellites and to construct, launch and operate an

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<sup>75</sup> Worldcom/Sprint Petition at 14.

<sup>76</sup> *Comsat Alternative Rate Regulation Order*, 14 FCC Rcd 3072, para. 19, 3074, para. 25.

<sup>77</sup> *Id.* at 3073, para. 22. As noted, *see supra* note 70, new submarine cables have come into service since the Commission established its list of thin routes. We cannot determine, based on the record in this proceeding, that market conditions have changed enough to warrant a modification. The addition of new cables in service, however, may provide a basis for redefining which countries listed as thin-route countries now are subject to competition. *See Comsat Alternative Rate Regulation Order*, 14 FCC Rcd at 3078-80, paras. 35-41 (establishing a procedure for modifying the classification of thin-route countries).

<sup>78</sup> *See* Letter from Rosemary C. Harold, Counsel to Intelsat LLC, to Secretary, Federal Communications Commission (filed Oct. 1, 2002).



additional ten satellites in these bands, the Commission observed that Intelsat LLC did not propose to operate at least initially on a common carrier basis, and the Commission did not require Intelsat LLC to provide space segment capacity on a common carrier basis.<sup>79</sup> The Commission stated that, should Intelsat LLC provide satellite capacity directly to U.S. users and service providers, the Commission would use the two-part analysis enunciated by the D.C. Circuit in *NARUC I* to determine whether Intelsat LLC should be regulated as a common carrier.<sup>80</sup> Additionally, the Commission stated that Intelsat LLC's regulatory status would be determined, in part, by consideration of the post-privatization distribution arrangements that were then under negotiation within INTELSAT.<sup>81</sup>

25. The Commission applied the two-prong *NARUC I* test in May 2001 in its *INTELSAT ORBIT Act Compliance Order*. Specifically, the Commission determined that INTELSAT's privatization would be consistent with the non-IPO requirements of the ORBIT Act, finding both that: (1) INTELSAT's distribution and wholesale customer agreements were not likely to be offered indifferently to the public as a common carrier service; and (2) there was, at that time, no public policy reason to place Intelsat LLC under a legal compulsion to act as a common carrier in its provision of space segment capacity.<sup>82</sup>

26. AT&T urges the Commission to require Intelsat LLC to provide space segment to

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<sup>79</sup> See *Intelsat LLC Licensing Order*, 15 FCC Rcd at 15478, para. 40. In seeking authority to operate the C- and Ku-band satellites, Intelsat LLC asked that its licenses permit flexibility to operate on both a private and common carrier basis, but stated that it had no current plans to provide common carrier services and would seek section 214 authority if it decided to do so. See *Intelsat LLC Licensing Order*, 15 FCC Rcd at 15466, para. 13, n.31.

<sup>80</sup> *Id.* at 15478-79, para. 41, citing *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976) ("*NARUC P*").

<sup>81</sup> *Intelsat LLC Licensing Order*, 15 FCC Rcd at 15479, para. 41. In the *Intelsat LLC Licensing Reconsideration Order*, the Commission noted Intelsat LLC's statement that it initially would not offer service on a common carrier basis and reiterated the Commission's intent to apply the *NARUC I* test if Intelsat LLC were to provide satellite capacity directly to U.S. users and service providers. See *Intelsat LLC, Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, Order on Reconsideration, FCC 00-437, 15 FCC Rcd 25234, 25255-56, paras. 53-55 (2000) ("*Intelsat LLC Licensing Reconsideration Order*"). The Commission further noted that Commission policy allows U.S. licensees in the fixed satellite service to elect between providing service on a common carrier or non-common carrier basis, subject to *NARUC I*. *Id.* at 25255-56, para. 55, citing *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Services in the United States*, Report and Order, FCC 96-14, 11 FCC Rcd 2429, 2436, para. 49 (1996) ("*DISCO P*"). The Commission also required INTELSAT to provide information on its post-privatization distribution arrangements. *Intelsat LLC Licensing Reconsideration Order*, 15 FCC Rcd at 25255, para. 55. In March 2001, INTELSAT finalized its post-privatization distribution arrangements and submitted redacted versions to the Commission under protective order. See *INTELSAT ORBIT Act Compliance Order*, 16 FCC Rcd at 12301, para. 65.

<sup>82</sup> See *INTELSAT ORBIT Act Compliance Order*, 16 FCC Rcd at 12302, para. 67.

CWS and other U.S. customers on a common carrier basis.<sup>83</sup> AT&T states that continuation of Intelsat LLC's private carrier status would impede the Commission's ability to ensure equal access to Intelsat capacity.<sup>84</sup> AT&T asserts that the grant of the proposed transaction would provide "sufficient public policy reasons to place Intelsat under a legal compulsion to serve the public indifferently,"<sup>85</sup> and thus requires a reevaluation of the Commission's determination in the *INTELSAT ORBIT Act Compliance Order* that there is no public policy reason to compel Intelsat LLC to act as a common carrier.<sup>86</sup> AT&T further seeks to impose dominant carrier-like requirements on Intelsat LLC in its provision of Intelsat space segment capacity. For example, AT&T argues that the Commission should order the former CWS to operate separately from Intelsat LLC, with separate books of account and separate switching and transmission facilities.<sup>87</sup>

27. Applicants oppose AT&T's petition, stating that the arguments for imposition of common carrier or other non-discrimination obligations are inconsistent with *NARUC I*, given that petitioners seek to treat "only one non-dominant provider in a crowded market" as a common carrier.<sup>88</sup> Applicants state that CWS no longer would be a stand-alone unit once the proposed transaction closes.<sup>89</sup> Applicants further indicate that Comsat currently is subject to common carrier alternative rate regulation on non-competitive, thin routes, and, as discussed above, following consummation of the proposed transaction, Intelsat USA License Corp. would abide by the terms of the *Comsat Alternative Rate Regulation Order* on these thin routes.<sup>90</sup>

28. We conclude that there is no basis on the record for a reevaluation of the Commission's May 2001 finding, in the *INTELSAT ORBIT Act Compliance Order*, that it should not compel Intelsat LLC to provide space segment service on a common carrier basis.<sup>91</sup> As the Commission observed in that proceeding, Intelsat LLC has elected to operate as a private carrier in the provision of space segment capacity.<sup>92</sup> We also find no reason in the record to change the determination reached by the Commission in the *Intelsat LLC Licensing Reconsideration Order*. In that decision, the Commission concluded that there was no basis for imposing dominant

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<sup>83</sup> AT&T Petition at 2, 7-8.

<sup>84</sup> *Id.* at 7.

<sup>85</sup> *Id.* at n.18.

<sup>86</sup> *Id.* at 7, citing to *INTELSAT ORBIT Act Compliance Order*, 16 FCC Rcd at 12302, para. 67.

<sup>87</sup> AT&T Petition at 1-2, 7.

<sup>88</sup> Comsat/Intelsat Opposition at 23.

<sup>89</sup> *Id.* at n.69; July 24 Letter, *supra* note 21.

<sup>90</sup> Comsat/Intelsat Opposition at 25.

<sup>91</sup> See *INTELSAT ORBIT Act Compliance Order*, 16 FCC Rcd at 12302, para. 67.

<sup>92</sup> *Id.* at 12301, para. 66.

carrier regulation on Intelsat LLC's provision of space segment services merely because the Commission had regulated Comsat as dominant on thin routes.<sup>93</sup> As noted, it is now Intelsat USA License Corp., through its acquisition of Comsat's common carrier contracts, that would control the Intelsat capacity useful in providing much of the services to thin-route countries. As the Commission observed in the *Intelsat LLC Licensing Reconsideration Order*, petitioners provide no rationale as to why an additional layer of regulation of Intelsat LLC is necessary to protect U.S. ratepayers, as long as the Commission regulates as dominant the party that controls the satellite capacity useful in providing much of the services on thin routes.<sup>94</sup> AT&T asserts that Intelsat will have the incentive to favor CWS over other U.S. users to enhance CWS's profitability.<sup>95</sup> However, Applicants have advised that CWS will cease to exist upon the closing of the transaction.<sup>96</sup> Intelsat LLC itself does not propose to operate as a common carrier in the provision of space segment services, and we find no reason at this time to require Intelsat LLC to provide space segment service on a common carrier basis, nor to subject Intelsat LLC to dominant carrier regulation. However, U.S. carriers in the future may file petitions to impose common carrier status on Intelsat LLC if they present information that Intelsat LLC is treating former Signatories more favorably than other U.S. customers in its provision of space segment capacity, or otherwise is operating as a common carrier. The Commission would consider such information under the *NARUC I* test.

29. As a separate matter, Assignors seek to modify the common carrier earth station licenses Intelsat LLC will acquire to allow these licenses to be classified as dual-use non-common carrier and common carrier licenses.<sup>97</sup> In 1996, the Commission determined that INTELSAT earth station services exhibited competitive characteristics.<sup>98</sup> We find no basis in the record to warrant a finding to the contrary. Thus, we conclude that there is no reason to compel common carrier status or dominant carrier regulation in this case. Consequently, we will authorize the earth stations to operate on both a common carrier and non-common carrier basis. Should Intelsat LLC seek to provide common carrier services, we require Intelsat LLC to file for any necessary section 214 authority to do so, and will assess at that time what conditions, if any, to attach to any such grant of authority.

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<sup>93</sup> See *Intelsat LLC Licensing Reconsideration Order*, 15 FCC Rcd at 25255, para. 54.

<sup>94</sup> *Id.* at 25255, para. 54.

<sup>95</sup> AT&T Petition at 5.

<sup>96</sup> July 24 Letter, *supra* note 21, at 3.

<sup>97</sup> See File Nos. SES-MOD-20020405-00568 *et al.*; Petition for Declaratory Ruling, *supra* note 1, at n.2.

<sup>98</sup> See *Comsat Non-Dominance Order*, 13 FCC Rcd at 14086, para. 2, 14141, para. 116; see also *Motion of AT&T to be Declared Non-Dominant for International Services*, Order, FCC 96-209, 11 FCC Rcd 17963, 17987, para. 65 (1996) (finding high supply elasticity because competitors could enter this market relatively easily and add to existing capacity, and high demand elasticity because customers are able to switch among carriers and services).

**E. Access to Intelsat Space Segment Capacity**

30. Petitioners argue that they do not have equal access opportunities because Comsat retains control of the majority of Intelsat capacity in the United States and charges a premium over Intelsat pricing.<sup>99</sup> Worldcom and Sprint state that, in the period after the Commission's 1999 *Direct Access Order*, INTELSAT rejected most U.S. customer orders for direct access circuits because Comsat already had contracted for nearly all of the capacity.<sup>100</sup> As Applicants note, however, upon consummation of the proposed transaction, Intelsat and Comsat immediately would terminate their existing capacity agreements for capacity not already sold by Comsat.<sup>101</sup> It is not clear from the Applications how much capacity, if any, would become available immediately upon consummation of the proposed transaction. However, Applicants state that Intelsat capacity committed to Comsat that becomes available upon the expiration of contracts with Comsat's customers will be accessible for new business in a common pool of Intelsat capacity, and the capacity pool will continue to expand as existing contracts between Comsat and its customers expire.<sup>102</sup>

31. Petitioners effectively seek to change the terms of their existing long-term contracts with Comsat.<sup>103</sup> Worldcom and Sprint ask the Commission to condition grant of the Applications on Intelsat changing the prices in the Comsat long-term contracts it will acquire to the circuit prices charged by Intelsat at the time petitioners purchased the circuits pursuant to long-term contracts.<sup>104</sup> They also ask that grant of the Applications be conditioned upon the merged entity offering U.S. customers the same prices as it offers to customers around the world. For example, they suggest that Intelsat should implement a "single worldwide pricing structure that is not inconsistent with the contracts that U.S. carriers have" or "decide not to proceed with the instant transaction."<sup>105</sup> They claim that they are not seeking to abrogate their existing

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<sup>99</sup> Worldcom/Sprint Petition at 4-5.

<sup>100</sup> *Id.* at 5. The Commission adopted its direct access policy in 1999 to permit U.S. users of the INTELSAT satellite system to obtain space segment capacity directly from INTELSAT rather than having to purchase capacity indirectly through Comsat. *See Direct Access Order*, 14 FCC Rcd at 15703, para. 1. In adopting direct access, the Commission observed that the international telecommunications market was largely competitive in terms of the availability of alternative suppliers of international transmission capacity. *Id.* at 15723, para. 41. The Commission stated that although direct access did not add another facilities-based competitor, the additional choice, flexibility, and cost savings to U.S. customers from direct access would result in increased competition. *Id.* at 15723, para. 42. In 2000 the ORBIT Act specifically permitted users or providers of telecommunications services to obtain "Level 3" direct access from INTELSAT in the United States. *See* section 641(a) of the Satellite Act, as amended by the ORBIT Act, 47 U.S.C. § 765(a).

<sup>101</sup> Comsat/Intelsat Opposition, at 7-8.

<sup>102</sup> *Id.* at 8.

<sup>103</sup> Worldcom/Sprint Petition at 12; Verestar Letter.

<sup>104</sup> Worldcom/Sprint Petition at 12.

<sup>105</sup> *See* Worldcom/Sprint Letter at 7.

contracts but rather to “impose appropriate merger-related conditions on the contracts in order to eliminate discrimination.”<sup>106</sup> They argue that such price changes would not require the “abrogation or modification of any contract,” citing to 47 U.S.C. § 765(c), because “Intelsat would have the choice of whether or not to proceed with its proposed acquisition . . . .”<sup>107</sup> Worldcom and Sprint state that, since privatization in 2001, Intelsat has offered promotional pricing to its large customers that includes discounts of as much as 30 percent below Intelsat prices, while Worldcom and Sprint pay charges, for long-term contract capacity purchased through Comsat, that are significantly in excess of the underlying Intelsat prices.<sup>108</sup> Thus, they state that, for many Intelsat services, they pay contractual prices of up to 50 percent more than they would pay if purchasing those services directly from Intelsat.<sup>109</sup> They suggest that once Intelsat and Comsat are a single integrated entity, there would be no competitive justification for any discrepancy between the prices offered by Intelsat and those charged under Comsat’s “legacy” contracts.<sup>110</sup> They also state that competition from other providers of international satellite-based and terrestrial telecommunications services will not remedy what they see as “clear discrimination” between the generally-available Intelsat prices and legacy Comsat prices.<sup>111</sup> Finally, they are concerned that Intelsat’s proposed division of common carrier (Intelsat USA License Corp.) and private carrier (Intelsat USA Sales Corporation) services offers opportunities for discrimination if Intelsat offers favorable private carrier off-tariff pricing to foreign carriers but charges Worldcom and Sprint higher prices to communicate with those foreign carriers.<sup>112</sup>

32. The relief sought by the petitioners does not appear relevant or appropriate in the context of the license assignment analysis that we must do in considering the Applications before us. The petitioners essentially raise issues in connection with pre-existing contracts that are not changed by the proposed transaction and seek a type of relief that the Commission previously has twice rejected. The Commission previously decided not to require the abrogation or modification of U.S. carrier long-term contracts with Comsat. In 1999, in its *Direct Access Order*, the Commission determined that the public interest would not be served by nullifying

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<sup>106</sup> *Id.*

<sup>107</sup> *Id.*; see also 47 U.S.C. §765(c).

<sup>108</sup> Worldcom/Sprint Petition at 6.

<sup>109</sup> *Id.* at 6-7.

<sup>110</sup> *Id.* at 7-8.

<sup>111</sup> *Id.* at 9-10. In their August 23, 2002 letter, Worldcom and Sprint speculate that Intelsat, after the contemplated transaction, would “accelerate its existing discriminatory practices” of promotional discount pricing to large customers. Worldcom/Sprint Letter at 6. Thus, they seek to “impose appropriate merger-related conditions” on Comsat’s existing contracts to eliminate this perceived discrimination. *Id.* at 7.

<sup>112</sup> Worldcom/Sprint Letter at 7, citing July 24 Letter, *supra* note 21, at 3-4.

Worldcom's and AT&T's contractual obligations to Comsat.<sup>113</sup> The Commission noted that AT&T and Worldcom entered these contracts based on: (1) business judgment; (2) the perception that eliminating the Commission's circuit distribution policy in favor of the long-term contracts was desirable; and (3) the ability to obtain discounted rates for long-term capacity purchases.<sup>114</sup> In its *Direct Access Capacity Availability Order*, the Commission also determined that it would rely initially on negotiations between U.S. carriers and Comsat rather than on regulatory solutions such as abrogation of contracts to resolve capacity problems.<sup>115</sup> Comsat entered into those negotiations and filed a report with the Commission as required by the *Direct Access Capacity Availability Order*.<sup>116</sup> The report is currently before the Commission.

33. Further, in its *INTELSAT ORBIT Act Compliance Order*, the Commission found that INTELSAT's privatization would carry forward the intent of the ORBIT Act, which provides for direct access to Intelsat for U.S. customers.<sup>117</sup> The Commission noted that, after privatization, Intelsat would have flexibility to negotiate individual contracts with customers and that there was no indication that Intelsat would inappropriately favor its former Signatories over

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<sup>113</sup> *Direct Access Order*, 14 FCC Rcd at 15754, para. 125.

<sup>114</sup> *Id.*

<sup>115</sup> *See Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, Report and Order, IB Docket No. 00-91, FCC 00-340, 15 FCC Rcd 19160, 19177, para. 40 (2000) ("*Direct Access Capacity Availability Order*"). Pursuant to section 641(b) of the ORBIT Act, in September 2000, the Commission determined that direct access customers would not have "sufficient opportunity," within the meaning of the statute, to access INTELSAT directly if: (1) there was insufficient capacity available on INTELSAT satellites to reasonably satisfy direct access users' needs; or (2) INTELSAT's distribution arrangements allowed Comsat to limit unreasonably the INTELSAT capacity that otherwise would be available to U.S. direct access users. *Direct Access Capacity Availability Order*, 15 FCC Rcd at 19165, para. 15. In the *Direct Access Capacity Availability Order*, the Commission concluded that U.S. users and providers of telecommunications services did not have, at the time of its decision in that proceeding, sufficient opportunity to access INTELSAT capacity directly to meet their service or capacity requirements because: (1) Comsat controlled through lease or reservation nearly 60% of INTELSAT capacity that could be accessed from the United States; (2) some of the remaining INTELSAT capacity accessible from the United States was used by foreign Signatories and was not necessarily available for U.S. use; (3) uncommitted capacity was spread over thirteen U.S.-accessible satellites; and (4) the capacity available on these satellites was not necessarily useful to direct access users from a customer requirements standpoint. *Direct Access Capacity Availability Order*, 15 FCC Rcd at 19175, para. 34. Although noting that future INTELSAT capacity accessible to the United States apparently would increase and Comsat's overall share would decrease, the Commission also observed that Comsat's share would remain significant and was subject to renewal rights under INTELSAT procedures, essentially ensuring Comsat and other Signatories the ability to control INTELSAT capacity in the future. *Id.* at 19175, para. 35. The Commission retained the option of taking regulatory action if commercial solutions are unsuccessful. *Id.* at 19179-80, paras. 47-48.

<sup>116</sup> Letter from Howard D. Polsky, Vice President and General Counsel, Lockheed Martin Global Communications, to Secretary, Federal Communications Commission, in IB Docket No. 00-91 (filed March 13, 2001).

<sup>117</sup> *INTELSAT ORBIT Act Compliance Order*, 16 FCC Rcd at 12302-03, para. 70.

other users.<sup>118</sup> This was a primary concern for the Commission.<sup>119</sup> The Commission concluded, however, that INTELSAT's distribution and wholesale customer agreements were non-exclusive and allowed U.S. direct access users the same opportunities as Signatories to commit to these agreements.<sup>120</sup> Nothing in the record before us requires a change in these findings. Today, post-privatization, Intelsat provides capacity in the United States through direct relationships with U.S. customers as well as through distributors, including Comsat.<sup>121</sup> Based on the representations of Assignees in their July 24, 2002 letter to the Commission, we understand that current Comsat customers will have the same opportunity to obtain new capacity as other Intelsat customers, subject to availability based on Intelsat's global demand.<sup>122</sup> According to Assignees' representations, Intelsat makes its decisions based on commercial considerations, with no distinction between the treatment of pre-privatization customers, including former INTELSAT Signatories, and post-privatization customers.<sup>123</sup>

34. Under these circumstances, we will not impose a condition to the license assignment that in effect requires modification of pre-existing contracts between the petitioners and Comsat. U.S. carriers currently obtaining capacity under contract with Comsat are free to seek renegotiation of the contracts that Intelsat will acquire from Comsat. They also, according to the Assignees, will be free to extend or renew (through Intelsat USA Sales Corporation or Intelsat USA License Corp.) "as any other Intelsat customer."<sup>124</sup> We interpret this to mean that U.S. carriers will have available, on a going-forward basis, the terms and conditions available to former INTELSAT Signatories and other foreign carriers with which they compete on a global basis. We remain concerned, however, about Intelsat's ability to exercise market power on thin routes. In the *Comsat Non-Dominance Order*, the Commission sought to ensure that rates would decrease over time toward competitive norms by imposing alternative rate regulation on Comsat's provision of space segment capacity on thin routes. We believe that this transaction takes another step in the direction of lower rates by eliminating Comsat as the primary distributor, other than Intelsat, of space segment capacity on thin routes. We cannot conclude, based on the record, that Intelsat USA Sales Corporation may have an incentive to take

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<sup>118</sup> *Id.* at 12302, para. 70.

<sup>119</sup> The Commission stated that it would have concerns if the post-privatization sales and distribution structure were to carry forward some of the same privileges or protections enjoyed by Signatories, including Comsat, from the pre-privatization structure, and thus that it would pay close attention to the agreements resulting from the distribution negotiations. *Direct Access Capacity Availability Order*, 15 FCC Rcd at 19174-75, para. 33.

<sup>120</sup> *See INTELSAT ORBIT Act Compliance Order*, 16 FCC Rcd at 12302, para. 70.

<sup>121</sup> *See generally* Petition for Declaratory Ruling, *supra* note 1, at 29-30 (approximately two dozen entities have the right to resell Intelsat capacity in the United States).

<sup>122</sup> *See* July 24 Letter, *supra* note 21, at 5.

<sup>123</sup> *Id.* at 6.

<sup>124</sup> *See* July 24 Letter, *supra* note 21, at 5.

advantage of its private carrier status and discriminate in the provision of space segment service on thin routes by offering below-cap rates solely to affiliated companies or to preferred end users.<sup>125</sup> We will continue to monitor the performance of the thin route market to ensure that anti-competitive abuses do not occur. In this regard, as with Intelsat LLC, U.S. carriers in the future may file petitions to impose common carrier status on Intelsat USA Sales Corporation if they present information that Intelsat USA Sales Corporation is acting as a common carrier in its provision of space segment capacity.

#### F. Foreign Ownership

35. Section 310(b)(4) of the Act establishes a twenty-five percent benchmark for indirect, attributable investment by foreign individuals, corporations, and governments in U.S. common carrier radio licensees, but grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.<sup>126</sup> Intelsat LLC, although not providing service at this time on a common carrier basis, would hold dual-use non-common carrier and common carrier radio licenses. Applicants identify proposed indirect foreign investment in Intelsat LLC that would exceed the twenty-five percent benchmark set by section 310(b)(4). We therefore must consider the proposed assignment of these dual-use licenses to Intelsat LLC under this section of the Act.<sup>127</sup> For the reasons discussed below, we conclude that it would not serve the public interest to deny the assignment applications because of the identified indirect foreign ownership of Intelsat LLC.

36. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by entities from World Trade

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<sup>125</sup> In this instance, affiliation entails equity holdings, joint ownership, or other kinds of joint venture agreements.

<sup>126</sup> See 47 U.S.C. § 310(b)(4) (providing that “No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by ... any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government, or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest would be served by the refusal or revocation of such license.”).

<sup>127</sup> Section 310(a) of the Act prohibits any radio license from being “granted to or held by” a foreign government or its representative. See 47 U.S.C. § 310(a). The ownership structure proposed by Intelsat LLC is such that no foreign government or representative will hold any of the Intelsat LLC radio licenses. Section 310(b)(1)-(2) of the Act prohibits common carrier, broadcast and aeronautical fixed or en route radio licenses from being “granted to or held by” aliens, or their representatives, or foreign corporations. See 47 U.S.C. § 310(b)(1), (2). According to the Applications, no alien, or representative, or foreign corporation will hold the common carrier licenses. Accordingly, the proposed transaction does not trigger the foreign ownership provisions of section 310(a), (b)(1)-(b)(2) of the Act. See *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9799-9800, paras. 38-48 (issues related to indirect foreign ownership of common carrier licensees addressed under section 310(b)(4)). In addition, because the proposed transaction does not involve direct foreign investment in Intelsat LLC, which would hold the common carrier licenses, it does not trigger section 310(b)(3) of the Act, which places a 20% limit on direct alien, foreign corporate or government ownership of entities that hold common carrier, broadcast and aeronautical fixed or en route Title III licenses. See 47 U.S.C. § 310(b)(3).



Organization (“WTO”) Member countries in U.S. common carrier and aeronautical fixed and en route licensees.<sup>128</sup> Therefore, with respect to indirect foreign investment from WTO Members, the Commission replaced its “effective competitive opportunities,” or “ECO,” test with a rebuttable presumption that such investment generally raises no competitive concerns.<sup>129</sup> With respect to non-WTO Members, the Commission continues to apply the ECO test in order to preserve the international public policy goals of: (i) promoting effective competition in the global market for communications services; (ii) preventing anti-competitive conduct in the provision of international services or facilities; and (iii) encouraging foreign governments to open their communications markets.<sup>130</sup> In evaluating an applicant’s request for approval of foreign ownership interests under section 310(b)(4), the Commission uses a “principal place of business” test to determine the nationality or “home market” of foreign investors.<sup>131</sup> Thus, in light of the policies adopted in the *Foreign Participation Order*, we begin our evaluation of the proposed transaction under section 310(b)(4) by calculating the proposed attributable, indirect foreign equity and voting interests in Intelsat LLC. We then determine whether these foreign interests properly are ascribed to individuals or entities having their principal places of business in WTO Member countries.

37. The calculation of foreign ownership interests under section 310(b)(4) is a two-pronged analysis in which the Commission examines separately the equity interests and the voting interests in the licensee’s parent.<sup>132</sup> The Commission calculates the equity interest of each foreign investor in the parent and then aggregates these interests to determine whether the sum of the foreign equity interests exceeds the statutory benchmark. Similarly, the Commission calculates the voting interest of each foreign investor in the parent and aggregates these voting interests.<sup>133</sup> The presence of aggregated alien equity or voting interests in a common carrier

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<sup>128</sup> *Foreign Participation Order*, 12 FCC Rcd at 23896, para. 9, 23913, para. 50, and 23940, paras. 111-12.

<sup>129</sup> *Id.* at 23896, para. 9, 23913, para. 50, 23940, paras. 111-12.

<sup>130</sup> *Id.* at 23894-95, para. 5.

<sup>131</sup> Specifically, in determining a foreign entity’s home market for purposes of the public interest determination under section 310(b)(4), the Commission will identify and balance the following factors: (1) the country of its incorporation, organization or charter; (2) the nationality of all investment principals, officers, and directors; (3) the country in which its world headquarters is located; (4) the country in which the majority of its tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which it derives the greatest sales and revenues from its operations. *See Foreign Participation Order*, 12 FCC Rcd at 23941, para. 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, FCC 95-475, 11 FCC Rcd 3873, 3951, para. 207 (1995) (“*Foreign Carrier Entry Order*”). For examples of cases applying the five-factor “principal place of business” test, *see Comsat-Telenor Order*, 16 FCC Rcd 22897 (2001); *Space Station System Licensee, Inc. (Assignor) and Iridium Constellation LLC (Assignee)*, Memorandum Opinion, Order and Authorization, DA 02-307, 17 FCC Rcd 2271 (IB 2002).

<sup>132</sup> *BBC License Subsidiary L.P.*, Memorandum Opinion and Order, DA 95-364, 10 FCC Rcd 10968, 10973, para. 22 (1995) (“*BBC License Subsidiary*”).

<sup>133</sup> *See id.* at 10972, para. 20.

licensee's parent in excess of twenty-five percent triggers the applicability of section 310(b)(4)'s statutory benchmark.<sup>134</sup> Once the benchmark is triggered, section 310(b)(4) directs the Commission to determine whether the “public interest will be served by the refusal or revocation of such license.”<sup>135</sup> Assignees advise that the equity interest of each shareholder of Intelsat LLC's ultimate parent Intelsat, Ltd., set out in Attachment 2 to the Petition for Declaratory Ruling, is equivalent to that shareholder's voting interest.<sup>136</sup>

38. As discussed in section II.B above, Intelsat LLC is a Delaware limited liability company that is wholly owned by Intelsat Holdings LLC, also a Delaware limited liability company. Intelsat Holdings LLC is wholly owned by Intelsat (Bermuda), Ltd., which, in turn, is a direct, wholly-owned subsidiary of Intelsat, Ltd. We have previously determined that Bermuda, a dependent territory of the United Kingdom, is treated as a WTO Member country.<sup>137</sup> Although the Applicants have not submitted a formal principal place of business showing for Intelsat, Ltd. or its foreign subsidiary holding company, we find that the privatized company and its foreign subsidiary should be considered principally to conduct business in and from Bermuda and other WTO Member countries. Intelsat, Ltd. and Intelsat (Bermuda), Ltd. are incorporated under the laws of Bermuda.<sup>138</sup> Intelsat, Ltd. has its headquarters in Bermuda and maintains other offices in several WTO Member countries, including the United States.<sup>139</sup> The officers and directors of Intelsat, Ltd. are citizens of Bermuda, the United States and other WTO Member

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<sup>134</sup> See, e.g., *Sprint Corporation, Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended*, Declaratory Ruling and Order, FCC 95-498, 11 FCC Rcd 1850, 1857, para. 47 (1995) (“*Sprint Ruling*”). See also *BBC License Subsidiary*, 10 FCC Rcd at 10972, para. 20; *Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended*, Declaratory Ruling, FCC 85-295, 103 FCC 2d 511, 520, para. 16, 523, para. 21 (1985) (“*Wilner & Scheiner I*”), *recon. in part*, FCC 86-406, 1 FCC Rcd 12 (1986) (“*Wilner & Scheiner II*”).

<sup>135</sup> See *Sprint Ruling*, 11 FCC Rcd at 1857, para. 47 (quoting section 310(b)(4)). It is the licensee's obligation to inform the Commission before its indirect foreign ownership exceeds the 25% benchmark set forth in section 310(b)(4). See *Fox Television Stations, Inc.*, Order, FCC 95-188, 10 FCC Rcd 8452, 8474, para. 52 (1995).

<sup>136</sup> July 24 Letter, *supra* note 21, at 1.

<sup>137</sup> See *Cable & Wireless USA, Inc., Application for Authority to Operate as a Facilities-Based Carrier in Accordance with the Provisions of Section 63.18(e)(4) of the Rules Between the United States and Bermuda*, Order, Authorization and Certificate, DA 00-311, 15 FCC Rcd 3050, 3052, para. 7 (TD/IB 2000) (relying on an opinion provided by the U.S. Department of State that the 1994 Marrakash Agreement Establishing the World Trade Organization applies to Bermuda).

<sup>138</sup> See Petition for Declaratory Ruling, *supra* note 1, at 6-7. The Commission specifically acknowledged in the *Intelsat LLC Licensing Order* that INTELSAT intended to transfer its assets to a national stock corporation, with a holding company structure, that likely would be incorporated and located in Bermuda. See *Intelsat LLC Licensing Order*, 15 FCC Rcd at 15471, para. 23.

<sup>139</sup> See [www.intelsat.com/news/mediakit/news/news\\_facts.asp](http://www.intelsat.com/news/mediakit/news/news_facts.asp) (visited Sept. 30, 2002).

countries.<sup>140</sup> We also find below, as did the Commission in the *Intelsat LLC Licensing Order*, that only a small percentage of the equity and voting interests in Intelsat, Ltd. are held by individuals or entities from non-WTO Member countries.<sup>141</sup> Intelsat, Ltd. offers service in more than 200 countries utilizing a network that includes twenty-two geostationary satellites, and it derives revenues on a global basis, not from any particular country or region.<sup>142</sup> Thus, on balance, we find that Intelsat, Ltd. and its subsidiaries should be considered principally to conduct business in and from Bermuda and other WTO Member countries.<sup>143</sup>

39. According to Applicants, Lockheed Martin, a U.S. corporation, holds approximately 24.05% of equity and voting interests in Intelsat, Ltd. through Comsat Corporation and related Comsat business entities.<sup>144</sup> The Applicants further represent that the remaining equity and voting interests in Intelsat, Ltd. are widely dispersed among more than 220 entities, representing more than 145 nations.<sup>145</sup>

40. When the Commission first considered the indirect foreign ownership of Intelsat LLC in the *Intelsat LLC Licensing Order*, it found that approximately ninety-one percent of Intelsat LLC shares would be held by entities that had their home markets in WTO Member countries (including the United States).<sup>146</sup> Applicants state that, since that time, the ownership of Intelsat, Ltd. has not materially changed.<sup>147</sup> They assert that the only change in ownership interests since the *Intelsat LLC Licensing Order* is an increased degree of WTO Member country ownership.<sup>148</sup> Applicants attached to their petition for declaratory ruling a listing of Intelsat, Ltd. shareholders, each shareholder entity's "nationality," the status of the home country's

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<sup>140</sup> See Letter from Martha F. Heller, Wiley Rein & Fielding LLP, to Secretary, Federal Communications Commission (filed September 11, 2002) (Intelsat, Ltd. officers and directors are citizens of Argentina, Australia, Bermuda, Brazil, Canada, France, Germany, India, Norway, Senegal, Sweden, Tanzania, the United Kingdom, and the United States).

<sup>141</sup> See *infra* para. 40.

<sup>142</sup> Revenue by region in 2001 is as follows: Europe (29%); North America and Caribbean (24%); Asia and Pacific (18%); Latin America (13%); and Middle East and Africa (16%). See [www.intelsat.com/news/mediakit/news\\_facts.asp](http://www.intelsat.com/news/mediakit/news_facts.asp) (visited Sept. 30, 2002).

<sup>143</sup> See *Global Crossing Ltd. and Frontier Corporation, Applications for Transfer of Control Pursuant to Sections 214(a) and 310(d) of the Communications Act, as amended*, CC Docket No. 99-264, Memorandum Opinion and Order, 14 FCC Rcd 15911, 15919, para. 17 (WTB/IB/CCB 1999) (finding on balance that Global Crossing principally conducts its business in countries that are Members of the WTO).

<sup>144</sup> See Petition for Declaratory Ruling, *supra* note 1, at 9.

<sup>145</sup> See *id.*

<sup>146</sup> *Intelsat LLC Licensing Order*, 15 FCC Rcd at 15484, para. 55.

<sup>147</sup> See Petition for Declaratory Ruling, *supra* note 1, at 9.

<sup>148</sup> Petition for Declaratory Ruling, *supra* note 1, at 16; July 24 Letter, *supra* note 21, at 2.

membership in the WTO, the percentage of shares held by each stakeholder, and the percentage of foreign government ownership of each shareholder, if any.<sup>149</sup> According to the revised shareholder list, entities from non-WTO Member countries, including WTO Observer countries, indirectly hold, in the aggregate, 6.07% of the equity and voting interests, well under the twenty-five percent threshold of non-WTO Member ownership and voting established by the *Foreign Participation Order*.

41. Applicants contend that there is no reason to depart from the Commission's determination, in the *Intelsat LLC Licensing Order*, that Intelsat LLC is entitled to the presumption that indirect investment from its WTO Member country shareholders is in the public interest.<sup>150</sup> LRT argues, however, that grant of the Applications would result in noncompliance with section 310(b)(4). LRT contends that the joint ownership of Intelsat, Ltd. by several foreign entities, including foreign governmental entities, could result in a government entity increasing its spending for communications services at price levels that would subsidize Intelsat LLC, leading to an increase in Intelsat LLC's market share and adversely impacting other competitors.<sup>151</sup>

42. Consistent with the *Foreign Participation Order*, we presume that indirect foreign ownership by investors from WTO Members serves the public interest. In this regard, the Commission has made no distinction between indirect government and private foreign ownership of U.S. common carrier licensees.<sup>152</sup> LRT provides no persuasive evidence in this case to rebut the presumption that market entry by WTO Member investors, including foreign government stakeholders, raises no competitive concerns. As explained below, LRT has not demonstrated that indirect foreign government ownership of Intelsat LLC creates a high risk to competition in the United States such that special conditions or denial of the applications are warranted.

43. According to Applicants, total indirect foreign government ownership of Intelsat LLC currently is no higher than at the time of the *Intelsat LLC Licensing Order*, approximately 30 percent.<sup>153</sup> No single stakeholder with foreign government ownership has an ownership

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<sup>149</sup> Appendix C to this order includes a corrected and updated version of this list, which Applicants initially appended to their petition as Attachment 2 and subsequently revised in their July 24 Letter, *supra* note 21, and then subsequently revised again in their September 6 Letter to take account of changes that had occurred after the filing of the Petition for Declaratory Ruling. See Letter from Rosemary C. Harold, Counsel to Applicants, to James L. Ball, Chief, Policy Division, International Bureau, Federal Communications Commission (filed September 6, 2002) ("September 6 Letter").

<sup>150</sup> *Intelsat LLC Licensing Order*, 15 FCC Rcd at 15483-84, paras. 51-55.

<sup>151</sup> LRT Provisional Petition at 20-31.

<sup>152</sup> See *Comsat-Telenor Order*, 16 FCC Rcd at 22910, para. 30 (citing *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9810-11, para. 51).

<sup>153</sup> See Petition for Declaratory Ruling, *supra* note 1, at 16 n.23.

interest in Intelsat, Ltd. exceeding 4.2%.<sup>154</sup> Further, the ORBIT Act requires that Intelsat, Ltd. conduct a public offering and substantially reduce the aggregate level of ownership by former Signatories.<sup>155</sup> Although an individual stakeholder with foreign government ownership may increase its interest in Intelsat, Ltd. in the context of that offering, the specific foreign ownership ruling we adopt in this order prohibits any foreign person or entity, including a foreign government, from acquiring an indirect interest in Intelsat LLC that exceeds twenty-five percent without prior Commission approval. In addition, any increase above an individual investor's current indirect ownership interest, including any interest held indirectly by a foreign government, must be counted toward the aggregate twenty-five percent cap that we here impose on new indirect foreign ownership of Intelsat LLC.<sup>156</sup> More importantly, even assuming that a foreign government acquires indirectly as much as twenty-five percent of Intelsat LLC as a result of the public offering or otherwise,<sup>157</sup> any attempt to aid Intelsat LLC by funding predatory pricing strategies would be likely to fail. Anti-competitive activity can succeed only if the market that is the object of such activity is susceptible to the consolidation and maintenance of market power. As the Commission previously has recognized, to consolidate and maintain market power, a company would need to force the exit of its competitors from the market and prevent the entry of new competitors.<sup>158</sup>

44. We find that attempts at exclusion through predatory pricing in the provision of fixed satellite service capacity would be unlikely to succeed. As explained *supra* in section III.C, with the exception of Intelsat's provision of switched and private line service capacity on thin routes, it faces numerous competitors and low barriers to entry in the provision of international transport capacity. In such circumstances, predation is unlikely to succeed. On thin routes, because Intelsat would be subject to alternative rate regulation, it could not recoup the losses that it would have to incur in its attempt to drive competition out of the market on

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<sup>154</sup> See September 6 Letter, *supra* n. 149; see also Appendix C to this order (France Telecom, 54%-owned by the French government, owns 4.2%; Telenor Broadband Services AS, 79%-owned by the Norwegian government, owns 4.1%; and each other stakeholder with foreign government ownership owns less than 4%).

<sup>155</sup> See *supra* para. 3 and note 11.

<sup>156</sup> See *infra* para. 46. These limitations on new, indirect foreign investment in Intelsat LLC are the same as those imposed in other section 310(b)(4) rulings. See, e.g., *Comsat-Telenor Order*, 16 FCC Rcd at 22913, para. 36; *GE/SES Order*, 16 FCC Rcd at 18884-85, para. 11; *Motient Services Order*, 16 FCC Rcd at 20477, para. 22. In this case, they provide additional assurance that the risk of predatory behavior alleged by LRT is negligible.

<sup>157</sup> We note that the Commission has determined as a general matter that interests of less than 25% in a U.S. carrier by any single foreign carrier or by any group of foreign carriers acting in concert is unlikely to provide the investing entities with an incentive to use any market power they may possess to engage in anti-competitive conduct for the purpose of increasing their profits. See *Foreign Participation Order*, 12 FCC Rcd at 23992, para. 223 (citing *Foreign Carrier Entry Order*, 11 FCC Rcd at 3904, para. 83); see also *Foreign Carrier Entry Order*, 11 FCC Rcd at 3905, para. 84 (noting that 25% also is the level at which foreign ownership in parents of a radio licensee is scrutinized under section 310(b)(4) of the Act).

<sup>158</sup> See *Comsat-Telenor Order*, 16 FCC Rcd at 22912, para. 33

those routes by raising rates.

45. Accordingly, we cannot find that Intelsat LLC's acquisition of dual-use earth station licenses from Assignors presents a high risk to competition that warrants the imposition of special conditions or denial of the assignment applications. We also note that the Executive Branch has not raised national security, law enforcement, foreign policy, trade policy or other concerns.<sup>159</sup> We therefore conclude, pursuant to section 310(b)(4) and the Commission's "open entry" standard for indirect investment from WTO Members in U.S. common carrier licensees, that it will not serve the public interest to prohibit the proposed assignment of the dual-use earth station licenses to Intelsat LLC.

46. Specifically, this ruling permits the indirect foreign ownership of Intelsat LLC by the foreign individuals and entities identified in Appendix C to this Order and Authorization. Intelsat LLC may acquire up to and including an additional, aggregate twenty-five percent indirect equity and/or voting interests from the foreign investors identified in Appendix C or from other foreign individuals or entities without seeking further Commission approval under section 310(b)(4), subject to the following conditions. First, no single foreign individual or entity, including those named in Appendix C, may acquire indirect equity and/or voting interests in Intelsat LLC in excess of twenty-five percent without prior Commission approval. Second, Intelsat LLC shall seek prior Commission approval before it accepts any additional indirect equity and/or voting interests from any investor from a non-WTO Member country that, when aggregated with non-WTO investment identified in Appendix C, exceeds twenty-five percent.

#### **G. Foreign Carrier Affiliation**

47. As part of our public interest analysis under section 214(a), we also consider whether, upon consummation of the proposed transaction, Intelsat USA License Corp. will be, or will be affiliated with, a foreign carrier that has market power on the foreign end of a U.S. international route that Intelsat USA License Corp. will have authority to serve pursuant to the international section 214 authorizations acquired from Comsat. Under rules adopted in the *Foreign Participation Order*, the Commission classifies a U.S. carrier as a "dominant" international carrier on a particular route if it is, or is affiliated with, a foreign carrier that controls essential facilities on the foreign end of that route.<sup>160</sup>

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<sup>159</sup> See *infra* paras. 49-51.

<sup>160</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23987, 23991-99, paras. 215, 221-39. A carrier classified as dominant on a particular U.S. international route due to an affiliation with a foreign carrier that has market power on the foreign end of the route is subject to specific international dominant carrier safeguards set forth in section 63.10 of the rules. See 47 C.F.R. § 63.10(c), (e). These safeguards are designed to address the possibility that a foreign carrier with control over facilities or services that are essential inputs for the provision of U.S. international services could discriminate against rivals of its U.S. affiliates (i.e., vertical harms). In the *Foreign Participation Order*, the Commission concluded that these safeguards, in conjunction with generally applicable international safeguards, are sufficient to protect against vertical harms by carriers from WTO Member countries in virtually all circumstances. In the exceptional case where an application poses a very high risk to competition in the U.S. market, and where the standard safeguards and additional conditions would be ineffective, (continued....)

48. Based on the representations in the record, we find that Intelsat USA License Corp. is not affiliated with a foreign carrier within the meaning of the Commission's rules.<sup>161</sup> We therefore conclude that, upon closing, Intelsat USA License Corp. shall be classified as a non-dominant international carrier, pursuant to section 63.10 of the rules, on all authorized U.S. international routes. As a separate matter, however, and as explained in section III.C *supra*, Intelsat USA License will be treated as "dominant" in its provision of Intelsat space segment capacity for switched voice and private line service on non-competitive, or "thin," U.S. international routes and therefore will be subject to the alternative rate regulation currently applied to Comsat.<sup>162</sup>

#### H. National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns

49. When analyzing any transfer of control or assignment application in which foreign ownership is an issue, we also consider any national security, law enforcement, foreign policy, and trade policy concerns raised by the Executive Branch.<sup>163</sup> We recognize that there are significant national security and law enforcement issues that are uniquely within the expertise of the Executive Branch, and in addition to our own independent public interest review, we take into account the legitimate concerns raised by the Executive Branch regarding these issues.<sup>164</sup>

50. In exchanges between the Applicants and the Executive Branch on matters relevant to law enforcement and national security issues surrounding the proposed transfer, Applicants provided information to the Executive Branch about their service offerings and Commission authorizations. Further, Applicants made certain commitments to the Executive Branch.<sup>165</sup> Specifically, Applicants stated that they do not provide common carrier switched

(Continued from previous page) \_\_\_\_\_  
the Commission reserves the right to deny the application. *Foreign Participation Order*, 12 FCC Rcd at 23913-14, para. 51. In circumstances where an affiliated foreign carrier possesses market power in a non-WTO Member country, the Commission applies the "effective competitive opportunities," or "ECO," test as part of its public interest inquiry under section 214(a). *Id.* at 23944, para. 124.

<sup>161</sup> 47 C.F.R. § 63.09(d)-(e). *See* International 214 Application, *supra* note 1, at 5.

<sup>162</sup> *See supra* paras. 21-23. *See also Foreign Participation Order*, 12 FCC Rcd at 23951-52, para. 144 and 23987-88, para. 215 (explaining that the Commission's general regulatory framework distinguishes between the ability of U.S. carriers to harm competition and consumers in the U.S. market by exercising market power on the U.S. end of an international route and on the foreign end of that route).

<sup>163</sup> *Foreign Participation Order*, 12 FCC Rcd at 23918-21, paras. 59-66. These factors are relevant public interest factors in evaluating applications from parties affiliated with foreign entities when considering whether to grant or deny section 214 and section 310(b)(4) applications.

<sup>164</sup> *Id.* at 23919, para. 62.

<sup>165</sup> *See* Letter from John B. Reynolds, III, Wiley Rein & Fielding LLP, to James Lovelace, Chief, Technology Law Unit, Office of the General Counsel, Federal Bureau of Investigation (dated Oct. 15, 2002).

services internationally or domestically.<sup>166</sup> Moreover, Comsat and Intelsat stated that they do not provide, and have no plans to provide, switched communications services via equipment authorized under current or anticipated future Title III radio licenses.<sup>167</sup> Intelsat, however, has made a commitment to notify the Executive Branch at least 30 days before providing switched services, including any such provision of services via equipment authorized under Title III licenses.<sup>168</sup> Based on these statements and the commitments made by Intelsat, the Executive Branch has not filed comments or objections to the proposed transaction. Rather, the Federal Bureau of Investigation (“FBI”) states that, in reliance on representations made by Comsat and Intelsat in an October 15, 2002 letter, the FBI and the Department of Justice “have decided not to file an objection or other comments” concerning the Applications filed in connection with the proposed transaction.<sup>169</sup> We also note that the Federal Trade Commission provided for early termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act.<sup>170</sup> Thus, based on the record before us and the commitments made by the Applicants to the Executive Branch, we conclude that the proposed transaction poses no national security, law enforcement, foreign policy, or trade policy concerns.

51. LRT argues that the Commission and Executive Branch should establish a special task force to assess whether the Applications raise national security implications.<sup>171</sup> LRT, however, states that it recognizes that national security considerations are matters “reserved” to the appropriate U.S. government agencies and departments.<sup>172</sup> We find no reason on the record to establish a special task force to assess whether the Applications raise any national security implications.

### **I. Other Issues**

52. *LRT*. LRT raises other issues. First, LRT asks that any Commission grant be subject to “Protective Orders” that LRT has drafted and attached as Appendix A of its petition.<sup>173</sup>

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<sup>166</sup> *Id.* at 2.

<sup>167</sup> *Id.* at 8.

<sup>168</sup> *Id.* at 9.

<sup>169</sup> *See* Letter from Patrick W. Kelley, Deputy General Counsel, FBI to Secretary, Federal Communications Commission (filed Oct. 15, 2002). *See also* Letter from John B. Reynolds, III, Wiley Rein & Fielding LLP, to James Lovelace, Chief, Technology Law Unit, Office of the General Counsel, FBI (dated Oct. 15, 2002); Letter from Patrick W. Kelley to John B. Reynolds, III (dated Oct. 15, 2002).

<sup>170</sup> *See* FTC Letter, *supra* note 58.

<sup>171</sup> LRT Provisional Petition at 32.

<sup>172</sup> *Id.*

<sup>173</sup> LRT Provisional Petition at 32, 33-39; LRT Reply at 6. LRT also filed, on June 7, 2002, a “Proposal for Administrative Dispute Resolution of Issues,” and, on July 22, 2002, a Motion to Strike all pleadings filed by Assignors in this proceeding. *See* LRT Motion to Strike, at 7.



Further, LRT asks to review the Comsat-Intelsat purchase and sales agreement.<sup>174</sup> Additionally, LRT argues that the Commission should adopt an order requiring Lockheed Martin to pay to the Commission all net proceeds from its sale of Comsat assets for the purpose of establishing a digital conversion fund and various other conditions.<sup>175</sup> We find no merit to these proposals, which are similar to those previously advanced by LRT and rejected by the Commission in previous proceedings.<sup>176</sup> The Commission previously has rejected requests by LRT that it issue “Protective Orders” similar to those proposed by LRT in this proceeding.<sup>177</sup> LRT fails to advance a basis for issuing a protective order that either has not been previously considered by the Commission or otherwise is supported by the facts of this proceeding. We also find no need here to review the Comsat-Intelsat purchase and sales agreement to address the issues raised in the Applications before us. Nothing presented by LRT persuades us of a need to require such additional information in this instance. And, we are not persuaded to adopt LRT’s proposal that the Commission should require Lockheed Martin, a private entity, to use proceeds from CWS transactions to fund some type of digital conversion fund. The Commission has previously rejected a similar proposal by LRT in another proceeding.<sup>178</sup> The proposal presented here has no relevance to the issues in this proceeding other than the fact of Comsat’s involvement. Finally, LRT has filed a motion to suspend action on the applications before us pending solicitation of further comments.<sup>179</sup> LRT bases its request upon press reports that Intelsat, Ltd. may be considering acquiring Eutelsat, S.A., a major satellite company in Europe. We deny LRT’s motion. Press reports speculating on possible future acquisitions by Intelsat, Ltd. are not a basis to delay action in this proceeding.

53. *Pending Applications.* Finally, Applicants request that grant of the Applications

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<sup>174</sup> LRT Reply at 4.

<sup>175</sup> LRT Provisional Petition at 16; LRT Reply at 6-8.

<sup>176</sup> Nor do we see any merit in referring the matters raised by LRT to administrative dispute resolution, as proposed by LRT and opposed by Applicants. *See* LRT “Proposal for Administrative Dispute Resolution of Issues” (filed June 7, 2002). Administrative dispute resolution is a procedure that is voluntary for parties and discretionary to the Commission. *See* Administrative Dispute Resolution Act, 5 U.S.C. § 582(c). LRT’s longstanding “dispute” with Comsat is not relevant to this proceeding. *See* the cases cited at note 46 above. Further, we see no merit in LRT’s motions to strike Applicants’ filings. Nor do we find that LRT has demonstrated that Assignors have violated the Commission’s *ex parte* rules, as alleged by LRT in its Motion to Strike, Reply to Opposition to Motion to Strike, and “Motion to Strike Unauthorized Responsive Pleading of Comsat.”

<sup>177</sup> *See Comsat-Lockheed Order*, 15 FCC Rcd at 22918, para. 23; *Comsat-Lockheed Reconsideration Order*, FCC 02-197, at 4-5, para. 11; *Comsat-Telenor Order*, 16 FCC Rcd at 22920, para. 60.

<sup>178</sup> *See Comsat-Lockheed Reconsideration Order*, FCC 02-197, at paras. 5 and 20. *See also Comsat Corporation*, FCC 97-422, 13 FCC Rcd 2714, 2927, para. 33 (1998), *recon. denied*, 15 FCC Rcd 19516 (2000), in which the Commission emphasized that Comsat was a private corporation not subject to government management.

<sup>179</sup> Motion to Postpone Further Action Pending Solicitation of New Round of Comments (filed Sept. 23, 2002).

include authority for assignment to Intelsat of: (1) any authorization issued to Comsat/CWS during the pendency of the Commission's consideration of the assignment applications or during the period required for consummation of the assignments following approval; and (2) applications that will have been filed by Comsat/CWS and that are pending at the time of consummation of the proposed assignment.<sup>180</sup> We conclude that any authorizations issued during the pendency of this proceeding or filed after the Applications and still pending at the time of the release of this Order and Authorization should be deemed to be covered by this Order and Authorization to the extent that the pending applications are listed in Appendix C. Consistent with section 1.65 of the Commission's rules, Applicants should amend any current pending applications to reflect the transaction approved by this Order and Authorization.<sup>181</sup>

#### IV. CONCLUSION

54. In view of the foregoing, we find that granting the applications to assign the licenses and authorizations listed in Appendix B to Intelsat LLC and Intelsat USA License Corp. will serve the public interest, convenience, and necessity consistent with sections 214(a) and 310(d) of the Communications Act of 1934. We also conclude that assignment of the listed international section 214 authorizations will not create risks to competition in the U.S. international services market that would warrant the imposition of additional competitive safeguards. Finally, pursuant to section 310(b)(4) and the Commission's "open entry" standard for indirect investment by WTO Members in U.S. common carrier licenses, we conclude that it will not serve the public interest to prohibit the proposed indirect foreign ownership of Intelsat LLC in excess of the statutory twenty-five percent benchmark. On this basis, and for the reasons described in this Order and Authorization, we grant the Applicants' requests to the extent described above.

#### V. ORDERING CLAUSES

55. Accordingly, IT IS ORDERED that, pursuant to section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), the applications for assignment of licenses listed in Appendix B, ARE GRANTED to the extent specified in this Order and Authorization.

56. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, the application for assignment of section 214 authorizations listed in Appendix B, IS GRANTED to the extent specified in this Order and Authorization.

57. IT IS FURTHER ORDERED that, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, the petition for declaratory ruling filed by Applicants IS GRANTED to the extent specified in this Order and Authorization. Accordingly, Intelsat

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<sup>180</sup> Petition for Declaratory Ruling, *supra* note 1, at 11.

<sup>181</sup> 47 C.F.R. § 1.65.

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LLC is authorized to accept indirect foreign ownership in excess of the twenty-five percent benchmark in section 310(b)(4) of the Act, as specified in this Order and Authorization.

58. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and the Commission's decisions in the *Comsat Non-Dominance Order* and the *Comsat Alternative Rate Regulation Order*, Intelsat USA License Corp. or any successor entity shall be regulated as a dominant international carrier on thin routes in its provision of capacity for switched-voice and private line services, subject to the alternative rate regulation set out in the *Comsat Alternative Rate Regulation Order*, and as a non-dominant international carrier in its provision of all other common carrier services, as specified in this Order and Authorization.

59. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 214(a), 214(c), 309, 310(b) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i) and (j), 214(a) and (c), 309, 310(b) and (d), the Petition to Deny of AT&T Corp. and the Petition to Condition Grant of Worldcom, Inc. and Sprint Communications Company LP, ARE DENIED for the reasons stated herein.

60. IT IS FURTHER ORDERED that the Motion to Accept Supplement to Provisional Petition to Deny filed by Litigation Recovery Trust IS GRANTED, and we accept the Supplement to Provisional Petition to Deny into the record of this proceeding.

61. IT IS FURTHER ORDERED that the Provisional Petition to Deny, including the Proposed Protective Orders, and the Supplement to Provisional Petition to Deny of Litigation Recovery Trust ARE DENIED for the reasons stated herein.

62. IT IS FURTHER ORDERED that the Proposal for Administrative Dispute Resolution of Issues filed by Litigation Recovery Trust IS DENIED for the reasons stated herein.

63. IT IS FURTHER ORDERED that the Motion to Strike filed by Litigation Recovery Trust IS DENIED for the reasons stated herein.

64. IT IS FURTHER ORDERED that the "Motion to Strike Unauthorized Responsive Pleading of Comsat" filed by Litigation Recovery Trust IS DENIED for the reasons stated herein.

65. IT IS FURTHER ORDERED that the "Motion to Postpone Further Action Pending Solicitation of New Round of Comments" filed by Litigation Recovery Trust IS DENIED for the reasons stated herein.

66. 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 thirty days from the date of release of this Order and Authorization to amend all pending applications in connection with the instant Application to reflect the new ownership structure approved in this Order and Authorization.

67. This Order and Authorization is issued pursuant to sections 0.261 and 0.331 of the Commission's rules on delegated authority, 47 C.F.R. §§ 0.261, 0.331, and is effective upon

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release. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of the release of this Order and Authorization. *See* 47 C.F.R. § 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson, Chief  
International Bureau

Thomas Sugrue, Chief  
Wireless Telecommunications Bureau

**APPENDIX A  
LIST OF PARTIES**

Lockheed Martin Corporation, COMSAT Corporation, and COMSAT Digital Teleport, Inc.  
(Assignors)

Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC, and Intelsat USA License Corp.  
(Assignees)

AT&T Corp.

Litigation Recovery Trust

Verestar, Inc.

Worldcom, Inc. and Sprint Communications Company LP

**APPENDIX B  
LIST OF APPLICATIONS**

**Petition for Declaratory Ruling**

ISP-PDR-20020405-00010 Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC

**International Section 214 Authorizations**

ITC-ASG-20020405-00185 COMSAT Corporation (also known as Communications Satellite Corporation) to assign several international section 214 authorizations to provide common carrier services:

IPC-50	CSS-90-001
CSS-81-003-P	ITC-92-144
IPC-83-008; Transmittal Nos. 428 & 431	ITC-92-141
CSS-82-001-P	ITC-93-046
ITC-84-150	ITC-93-134
ITC-85-086	CSS-92-004
ITC-85-160	ITC-94-272
ITC-86-025	ITC-94-351
ITC-86-109	ITC-95-310
ITC-88-006	ITC-95-407
ITC-88-207; CSG-88-090-P/L	ITC-96-173
CSS-88-005	CSS-95-002
CSS-89-004	CSS-93-009(4)-A (Sept. 19, 1997)
ITC-87-097	CSS-93-009(4)-A (May 22, 1998)
ITC-91-024	10010-CSS-MP-80
ITC-91-215-A; ITC-92-041; ITC-92-047; ITC-92-074	ITC-MS-C-20011101-00550

**Earth Station Assignment Applications**

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign(s) &amp; Regulatory Status</u>
SES-ASG-20020405-00552	Comsat General	E970168 (Non-Common Carrier)
SES-ASG-20020405-00561	Comsat General	E930312, E980510, WA27, WN52 (Common Carrier)
SES-ASG-20020405-00564	Comsat Corp/CWS	KA25, KA251, KA258, KA259, KA260, KA261, KA262, KA264, KA265, KA266, KA267, KA268, KA269, KA270, KA275, KA398, WA22 (Common Carrier)
SES-ASG-20020405-00565	Comsat Corp/CWS	E920519, E970091, E970319, E970325, E970326, E970330, E980485, KA263 (Non-Common Carrier)
SES-ASG-20020405-00566	Comsat Digital Teleport, Inc	E000355, E980526, E990122, E990131 (Non-Common Carrier)

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### Earth Station Modification Applications

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign(s) &amp; Regulatory Status</u>	
SES-MOD-20020405-00568	Comsat Corp/CWS	KA258	Common Carrier
SES-MOD-20020405-00569	Comsat Corp/CWS	KA259	Common Carrier
SES-MOD-20020405-00570	Comsat Corp/CWS	KA261	Common Carrier
SES-MOD-20020405-00571	Comsat Corp/CWS	KA260	Common Carrier
SES-MOD-20020405-00572	Comsat Corp/CWS	KA262	Common Carrier
SES-MOD-20020405-00574	Comsat Corp/CWS	KA264	Common Carrier
SES-MOD-20020405-00579	Comsat Corp/CWS	KA265	Common Carrier
SES-MOD-20020405-00581	Comsat Corp/CWS	KA266	Common Carrier
SES-MOD-20020405-00582	Comsat Corp/CWS	KA267	Common Carrier
SES-MOD-20020405-00583	Comsat Corp/CWS	KA268	Common Carrier
SES-MOD-20020405-00590	Comsat Corp/CWS	KA270	Common Carrier
SES-MOD-20020405-00591	Comsat Corp/CWS	KA269	Common Carrier
SES-MOD-20020405-00592	Comsat Corp/CWS	KA398	Common Carrier
SES-MOD-20020405-00593	Comsat Corp/CWS	WA22	Common Carrier
SES-MOD-20020405-00594	Comsat General	E930312	Common Carrier
SES-MOD-20020405-00595	Comsat General	E980510	Common Carrier
SES-MOD-20020405-00596	Comsat General	WA27	Common Carrier
SES-MOD-20020405-00597	Comsat General	WN52	Common Carrier
SES-MOD-20020405-00619	Comsat Corp/CWS	KA25	Common Carrier
SES-MOD-20020405-00620	Comsat Corp/CWS	KA251	Common Carrier
SES-MOD-20020405-00621	Comsat Corp/CWS	KA275	Common Carrier

### Private Land Mobile Radio Assignment Application

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign(s)</u>
0000838233	Comsat Corp/CWS	WPAG761, WPAM980

**APPENDIX C**

**FOREIGN OWNERSHIP INFORMATION &  
PENDING APPLICATIONS AND AUTHORIZATIONS**