



Wiley Rein & Fielding LLP

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202 719 7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
SUITE 6200
McLEAN, VA 22102
PHONE 703 905.2800
FAX 703 005.2820

www.wrf.com

December 17, 2002

Rosemary C. Harold
202.719.4901
rharold@wrf.com

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DEC 17 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

Re: Notification of Consummation of Assignment of Licenses and Authorizations. IB Docket No. 02-87

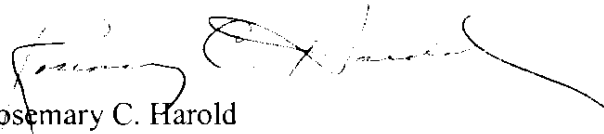
Dear Ms. Dortch:

On behalf of Intelsat, Ltd., Intelsat Bermuda), Ltd., Intelsat LLC and Intelsat USA License Corp. ("Intelsat"), this letter hereby notifies the Commission that all acts necessary to consummate the assignment of the licenses and authorizations referenced in the Commission's Order in IB Docket No. 02-87 were completed as of November 25, 2002. See *Order and Authorization In the Matter of Lockheed Martin Corporation, COMSAT Corporation and COMSAT Digital Teleport, Inc., Assignors and Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC and Intelsat USA License Corp., Assignees, DA 02-2254*, released October 25, 2002 (copy attached).

Intelsat filed the necessary electronic consummation notice for the wireless authorizations subject to this transaction on December 13, 2002.

If any questions should arise concerning this matter, kindly contact the undersigned directly.

Respectfully submitted,


Rosemary C. Harold



Cc: Susan Crandall
Robert Mansbach

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

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DEC 17 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Lockheed Martin Corporation.)	
COMSAT Corporation, and)	IB Docket No. 02-87
COMSAT Digital Telephon, 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.¹ 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.² 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”), 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.⁴

See Application for Consent to Assignments, File No. ISP-PDR-20020405-00010 (“Perilion 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.

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.

³ 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).

⁴ 47 U.S.C. § 310(b)(4).

11. 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.⁵ 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.⁶ 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, 2001.⁷ On July 31, 2000, the Commission found that the transfer of control of Comsat Corporation to Lockheed Martin was in the public interest.⁸

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.⁹ 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

⁵ See Petition for Declaratory Ruling, *supra* note 1, at 4; International 214 Application, *supra* note 1, at 3; see also *Lockheed Martin Global Telecommunications, Corisat Corporation, and Corisat 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”).

⁶ Petition for Declaratory Ruling, *supra* note 1, at 19.

⁷ 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”).

⁸ 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).

⁹ 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.¹⁰ As a “successor entity” to INTELSAT, Inrelnsat, Ltd. is scheduled to conduct an initial public offering (“IPO”), to dilute substantially the ownership by former [REDACTED] AT Signatories.”

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.¹² 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. “Inrelnsar 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.”¹⁴ 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.¹⁵ Today, in addition to the Intelsat group of companies, more than 300 official distributors and wholesale customers market Intelsat communications capacity.¹⁶

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.” Intelsat LLC is wholly owned by Intelsat

¹⁰ See 2002 ORBITAcr Repon. *supra* note 7

¹¹ 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: *Inrelnsar LLC. Request for Extension of Time Under Section 621(5) of the ORBITAcr*, 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.

¹² Petition for Declaratory Ruling. *supra* note 1, at 5.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *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 Inrelnsar capacity as part of the services they provide to consumers. *Id.* at n.3.

¹⁷ See *Applications of Inrelnsar 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. *Inrelnsar 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.¹⁸ Intelsat LLC sells all of its space segment capacity to Intelsat (Bermuda), Ltd.¹⁹

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.²⁰ Intelsat USA Sales Corporation will provide non-common carrier services to customers.²¹

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 Telephon, Inc. ("CDTI") and Comsat General Corporation ("Comsat General"), both of which are subsidiaries of Comsat Corporation." 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-

(Continued from previous page)

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

¹⁸ See Petition for Declaratory Ruling, *supra* note 1, at 6

¹⁹ 2002 **ORBIT Act Repon.** *supra* note 7; **INTELSAT ORBIT Act Compliance Order**, 16 FCC Rcd at 12283, para. 9.

²⁰ See Petition for Declaratory Ruling, *supra* note 1, at 1

²¹ See Letter from Lawrence W. Secret, 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

²² 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 Telephon, Inc., and Intelsat (Bermuda), Ltd. *Id.* at 10-11.

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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).²³

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.” 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.²⁵ According to Applicants, the proposed transaction does not affect Lockheed Martin’s current ownership of approximately 24.05 % of Intelsat, Ltd.²⁶ Applicants also seek approval of the assignment to Intelsat of (1) an 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.²⁷

²³ 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.*

²⁴ 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.

Petition for Declaratory Ruling, *supra* note 1, at 11

²⁶ *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.

²⁷ 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.²⁸ Applicants further state that the proposed transaction is largely complementary because it would combine Intelsat space segment capacity with the CWS downstream distribution infrastructure.²⁹ 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.³⁰

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.³¹ 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.³² Applicants filed an opposition to the petitions to deny and condition grant.³³ LRT filed additional pleadings, and Applicants responded.³⁴

²⁸ *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.

¹⁹ *Id.* at 5.

³⁰ *Id.* at 13.

³¹ 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).

³² 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").

³³ 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").

³⁴ 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 Motion to (continued...)

Worldcom and Sprint filed an August 23, 2002 letter, and Applicants responded." 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.³⁶ 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.³⁷

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." Our analysis considers the likely competitive effects of the proposed assignments and whether such assignments raise significant anti-competitive issues.³⁹ In addition, we consider the efficiencies and other public interest benefits that are likely to result from the proposed assignments.⁴⁰

(Continued from previous page)

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."

³⁵ 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. Secret III and Rosemary C. Harold, Counsel to Applicants, to Secretary, Federal Communications Commission (filed September 9, 2002) ("September 9 Letter").

³⁶ 47 U.S.C. §§ 214(a), 310(d)

³⁷ See 47 U.S.C. § 310(a), (b).

³⁸ 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").

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

⁴⁰ 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.”

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.” Conversely, the analysis of every assignment application requires that we determine whether the proposed assignee is qualified to hold Commission licenses.⁴³ 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.⁴⁴

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 **Conisat-Lockheed Order**, of the transfer of control of Comsat Corporation to Lockheed Martin and thus the transfer of control is “non final.”⁴⁵ 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.⁴⁶ In particular, in the *Comsat-*

⁴¹ 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).

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

⁴³ 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).

⁴⁴ 47 U.S.C. § 308.

⁴⁵ LRT Provisional Petition, at 2-11

⁴⁶ 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 Conisar 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/ Conisar 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. JTC-97-222 et al., FCC 02-2000 (rel. July 5, 2002); *Comsat-Telenor Reconsideration Order*, FCC 02-207 (rel. July 12, 2002). (continued....)

Lockheed Reconsideration Order, the Commission denied with prejudice and in all respects LRT's petition for reconsideration of the *Comsat-Lockheed Order*." 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." 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."

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.⁵⁰ 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.⁵¹ In those analyses, the Commission considered whether proposed transactions would lessen or enhance competition in

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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).

⁴⁷ *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.

⁴⁸ See *supra* para. 5

⁴⁹ See *infra* section III.F, paras. 35-46.

⁵⁰ 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*").

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

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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.⁵² They contend that this product market is characterized by the continuing dominance of Comsat.” 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.⁵⁴ Further, they contend that the provision of Intelsat services is a distinct product market because the Commission regulates Comsat as dominant on thin routes.⁵⁵ They state that it is primarily on thin routes that Worldcom, Sprint and other major U.S. customers heavily consume Intelsat services.⁵⁶ 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.⁵⁷

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.⁵⁸ 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 “thin” routes; and (3) following the proposed transaction, Intelsat USA License Corp. would not

⁵² 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.

⁵¹ 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).

⁵⁴ 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.

⁵⁵ Worldcom/Sprint Petition at 10.

¹⁶ *Id.* at 11

⁵⁷ *Id.* at 2

⁵⁸ *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).

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.⁵⁹

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.⁶⁰ 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.⁶¹ The types of customers served by CWS are international telecommunications service providers, domestic long distance carriers, broadcasters, and multinational corporations.⁶² 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.⁶³ These types of customers also use other satellite providers and fiber optic cables to meet their international capacity requirements.⁶⁴

⁵⁹ 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.

⁶⁰ See Comsat/Intelsat Opposition at 2

⁶¹ **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-line 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).

⁶² See Petition for Declaratory Ruling, *supra* note 1, at 4

⁶³ See *id.* at 5.

⁶⁴ See, e.g., 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.loral.skynet.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 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 (continued...))

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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.⁶⁵ Following the proposed transaction, Intelsat USA License Corp., which will acquire all of Comsat's common carrier contracts,⁶⁶ 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 Rare Regularior Order*,⁶⁷ 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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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).

⁶⁵ *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).

⁶⁶ July 24 Letter, *supra* note 21, at 3

⁶⁷ See Petition for Declaratory Ruling, *supra* note 1, at 31; Comsat/Intelsat Opposition at 25; *Comsat Corporation's Policies and Rules for Alternative Incentive Eased Regularior of Comsat Corporation*, Report and Order, IB Docket No. 98-60, FCC 99-17, 14 FCC Rcd 3065 (1999) ("*Comsat Alternative Rare Regularior 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.⁶⁸ 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.⁶⁹ 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*.⁷⁰ 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*.⁷¹ Petitioners support dominant carrier treatment for Intelsat USA License Corp. in its provision of service on

⁶⁸ See *Inmarsat LLC Licensing Order*, 15 FCC Rcd at 15470-71, para. 22, 15475, para. 31; *INTELSAT ORBITAcr 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.").

⁶⁹ See International 214 Application, *supra* note 1; Petition for Declaratory Ruling, *supra* note 1, at 6-7

⁷⁰ 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 (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 markers).

⁷¹ 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* (18 Feb. 11, 1999).

thin routes.”

22. Consistent with the *Comsar 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 *Comsar 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.⁷³

Subsequently, the Commission adopted a policy of incentive-based price regulation for Comsat's provision of capacity on non-competitive, or thin, routes.” 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 *Comsar Alternative Rate Regularization 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.

⁷³ 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.

¹³ See *Comsar 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.

⁷⁴ See *Comsar Alternative Rate Regularization 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 *Comisar Alternative Rare Regularion Order*, they urge the Commission to clarify that this commitment refers to Intelsat's prices, not Comsat's current prices.⁷⁵ As noted, in the *Comisar Alternative Rare Regularion 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.⁷⁶ 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.⁷⁷ 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.⁷⁸ 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 additional ten satellites in

⁷⁵ Worldcom/Sprint Petition at 14.

⁷⁶ *Comisar Alternative Rare Regularion Order*, 14 FCC Rcd 3072, para. 19, 3074, para. 25.

⁷⁷ *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 *Comisar Alternative Rare Regularion Order*, 14 FCC Rcd at 3078-80, paras. 35-41 (establishing a procedure for modifying the classification of thin-route countries).

⁷⁸

See Letter from Rosemary C. Harold, Counsel to Intelsat LLC, to Secretary, Federal Communications Commission (filed Oct. 1, 2002).

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.⁷⁹ The Commission stated that, should Intelsat LLC provide satellite capacity directly to U.S. users and service providers, the Commission would use the two-prong analysis enunciated by the D.C. Circuit in *NARUC I* to determine whether Intelsat LLC should be regulated as a common carrier.⁸⁰ Additionally, the Commission stated that Intelsat LLC's regulatory status would be determined, in pari, by consideration of the post privatization distribution arrangements that were then under negotiation within INTELSAT.⁸¹

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.⁸²

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

⁷⁹ See *Inrelesar 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.

⁸⁰ *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 I*").

⁸¹ *Intelsat LLC Licensing Order*, 15 FCC Rcd at 15479, para. 41. In the *Inrelesar LLC Licensing Reconsideration Order*, the Commission noted Inrelesar 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 *Inrelesar 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) ("*Inrelesar 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 I*"). The Commission also required INTELSAT to provide information on its post-privatization distribution arrangements. *Inrelesar 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.

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

CWS and other U.S. customers on a common carrier basis.⁸³ 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.⁸⁴ 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,"⁸⁵ and thus requires a reevaluation of the Commission's determination in the *INTELSAT ORBITAcr Compliance Order* that there is no public policy reason to compel Intelsat LLC to act as a common carrier.⁸⁶ 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.⁸⁷

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." Applicants state that CWS no longer would be a stand-alone unit once the proposed transaction closes.⁸⁸ 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 *Comsar Alternative Rare Regulation Order* on these thin routes.⁸⁹

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." As the Commission observed in that proceeding, Intelsat LLC has elected to operate as a private carrier in the provision of space segment capacity." 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

⁸³ AT&T Petition at 2, 7-8.

⁸⁴ *Id.* at 7

⁸⁵ *Id.* at n.18.

⁸⁶ *Id.* at 7, citing to *INTELSAT ORBITAcr Compliance Order*, 16 FCC Rcd at 12302, para. 67.

⁸⁷ AT&T Petition at 1-2, 7

⁸⁸ Comsat/Intelsat Opposition at 23

⁸⁹ *Id.* at n.69; July 24 Letter, *supra* note 21

⁹⁰ Comsat/Intelsat Opposition at 25.

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

⁹² *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." 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." AT&T asserts that Intelsat will have the incentive to favor CWS over other U.S. users to enhance CWS's profitability." However, Applicants have advised that CWS will cease to exist upon the closing of the transaction.⁹⁶ 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.⁹⁷ In 1996, the Commission determined that LWTELSAT earth station services exhibited competitive characteristics.⁹⁸ 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.

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

⁹⁴ Id. at 25255, para. 54.

⁹⁵ AT&T Petition at 5.

⁹⁶ July 24 Letter, supra note 21, at 3

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

⁹⁸ 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.⁹⁹ 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." 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." 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.¹⁰²

31. Petitioners effectively seek to change the **terms** of their existing long-term contracts with Comsat.¹⁰³ 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.¹⁰⁴ 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."¹⁰⁵ They claim that they are not seeking to abrogate their existing

⁹⁹ Worldcom/Sprint Petition at 4-5.

¹⁰⁰ *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).

¹⁰¹ Comsat/Intelsat Opposition, at 7-8.

¹⁰² *Id.* at 8

¹⁰³ Worldcom/Sprint Petition at 17; Verestar Letter

¹⁰⁴ Worldcom/Sprint Petition at 12

¹⁰⁵ *See* Worldcom/Sprint Letter at 7

contracts but rather to "impose appropriate merger-related conditions on the contracts in order to eliminate discrimination." 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"¹⁰⁷ 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.¹⁰⁸ 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.¹⁰⁹ 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.¹¹⁰ 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.¹¹¹ 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.¹¹²

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

¹⁰⁶ *Id.*

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

¹⁰⁸ Worldcom/Sprint Petition at 6.

¹⁰⁹ *Id.* at 6-7.

¹¹⁰ *Id.* at 7-8.

¹¹¹ *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.

¹¹² 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.'" 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.¹¹⁴ 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.¹¹⁵ Comsat entered into those negotiations and filed a report with the Commission as required by the *Direct Access Capacity Availability Order*.'" 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.¹¹⁷ 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

¹¹³ *Direct Access Order*, 14 FCC Rcd at 15754, para. 125.

¹¹⁴ *Id.*

¹¹⁵ See *Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, Report and Order, 18 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.

¹¹⁶ Letter from Howard D. Polsky, Vice President and General Counsel, Lockheed Martin Global Communications, to Secretary, Federal Communications Commission, in 18 Docket No. 00-91 (filed March 13, 2001).

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

other users.” This was a primary concern for the Commission.¹¹⁹ 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.” 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.” 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.¹²² 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.¹²³

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.”¹²⁴ 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

¹¹⁸ *Id.* at 12302, para. 70,

¹¹⁹ 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.

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

¹²¹ 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).

¹²² See July 24 Letter, *supra* note 21, at 5.

¹²³ *Id.* at 6.

¹²⁴ See July 24 Letter, *supra* note 21, at 5.