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

In the Matter of	
LORAL SATELLITE, INC. (DEBTOR-IN-POSSESSION) **LORAL SPACECOM CORPORATION (DEBTOR-IN-POSSESSION),** Assignors	SAT-ASG-20030728-00138 SAT-ASG-20030728-00139
And	
INTELSAT NORTH AMERICA LLC Assignee	
Application for Consent to Assignments of Space Station Authorizations	

PETITION OF ECHOSTAR SATELLITE CORPORATION TO DISMISS, DENY OR HOLD IN ABEYANCE

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PETITION OF ECHOSTAR SATELLITE CORPORATION TO DISMISS, DENY OR HOLD IN ABEYANCE

EchoStar Satellite Corporation ("EchoStar") hereby petitions to dismiss, deny or hold in abeyance the above-captioned applications for consent to assignment of certain space station authorizations from Loral Satellite, Inc. ("Loral Satellite"), Loral SpaceCom Corporation ("Loral SpaceCom") and Loral Space & Communications, Ltd. ("Loral Ltd.") (Debtors-in-Possession for the respective Loral entities, collectively "Loral") to Intelsat North America LLC.[1]

[1] *Loral Satellite Inc., et al., Application for Consent to Assignments of Space Station Authorizations*, File Nos. SAT-ASG-20030728-00138 and SAT-ASG-20030728-00139 (filed July 28, 2003) ("Application").

I. INTRODUCTION AND SUMMARY

As the Commission is aware, on July 15, 2003, Loral commenced voluntary Chapter 11 Bankruptcy proceedings in the United States Bankruptcy Court for the Southern District of New York.[2] On the same date, Loral announced its agreement to sell its six most valuable assets, consisting of six North American "Telstar" satellites, to Intelsat, Ltd. And Intelsat (Bermuda) Ltd. (collectively "Intelsat") in a cash transaction. The plan described in the Application is for Intelsat to obtain a greater North American footprint and for Loral to "reorganize around its remaining fleet of five primarily international satellites and its satellite manufacturing operations . . . ."[3]

On August 17, 2003, EchoStar delivered an offer to Loral to purchase free and clear of liens, claims, interests and encumbrances (other than certain assumed liabilities) the six North American Telstar satellites and related assets covered by the agreement with Intelsat. EchoStar's proposal contained no material financing or other contingencies that were not present in the agreement with Intelsat, other than the satisfactory completion of due diligence with respect to the six North American satellites and related asets. EchoStar also offered to acquire free and clear of all liens, claims, interests and encumbrances (other than certain assumed liabilities) substantially all of Loral's remaining assets, including the remaining 5 "international" satellites (two of them licensed by the Commission), several unbuilt Commission authorizations

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[2] *See Loral Space & Communications Ltd., et al.* (Chapter 11 Case No. 03-417100 (RDD)) (consolidating the Chapter 11 cases of Loral Ltd and certain of its subsidiaries for procedural purposes only); Application at 7 n.13.

[3] *See* Application at 8. According to the Applicants, Loral's remaining fleet of satellites (Telstar 10, 11, 14 and 18) "serves South America, Europe and Asia . . . ." *Id.*

that are similarly not part of the Intelsat deal and Loral's satellite manufacturing operations, conditioned on (a) EchoStar's successful acquisition of the six North American satellites and related assets, and (b) satisfactory completion of due diligence with respect to the remaining assets. As with its offer for the six North American satellites and related assets, EchoStar's proposal to acquire these remaining assets contained no material financing or other contingencies, except as set forth above.

The bankruptcy court has approved the solicitation of higher or better bids for the satellites covered by the agreement with Intelsat and the remaining assets of Loral, and has ordered an auction based on these bids to be conducted on October 20, 2003.

EchoStar has expressed an interest in submitting a bid for these satellites. In addition, EchoStar has expressed an interest in acquiring the entire business of Loral, including the remaining 5 "international" satellites (two of them licensed by the Commission) and several unbuilt Commission authorizations that are similarly not part of the Intelsat deal.

In addition to its interest in Loral's assets, EchoStar is a customer of Loral, presently leasing transponder capacity from Loral and purchasing telemetry, tracking and control ("TT&C") services from Loral for six of EchoStar's nine satellites in orbit. EchoStar also shares ownership of one of the satellites involved in this proceeding, Telstar 13/EchoStar 9. For all of these reasons, EchoStar is a party in interest with standing in this proceeding.[4]

These applications should be dismissed, denied or held in abeyance pending further inquiry for the following reasons. *First*, Intelsat has not yet diluted ownership of its former signatories by conducting an initial public offering ("IPO") as required by the Open-Market Reorganization for the Betterment of International Telecommunications Act ("ORBIT

[4] *See* 47 U.S.C. § 309(d)(1).

Act" or "Act"),[5] and should be prevented from acquiring additional spectrum licenses until it has done so. The ORBIT Act mandates that the IPO "substantially dilute" the aggregate ownership of Intelsat's former foreign signatories, still at about 80% – with 38% controlled by foreign governments. Consistent with the Act, Intelsat's existing licenses are also subject to substantial dilution of its former signatories' ownership as a condition subsequent, a condition that has not been satisfied. As a consequence, Intelsat, an entity that was supposed to have become private but that remains significantly government-owned, should not be found qualified to purchase additional licenses. Even if the Commission could find Intelsat conditionally qualified, approval of these assignments would be imprudent: it would make it more difficult to "undo" the deal later if Intelsat fails to conduct an IPO or if Intelsat's IPO fails to substantially dilute the foreign signatories' ownership as required by the Act. Subsequent revocation of the licenses would deal a serious blow to the Loral business and cast doubt on the continuation of the service currently provided to consumers by Loral. As a result, consideration of the applications is premature and should be deferred until after Intelsat conducts the required IPO and the Commission has determined that it "substantially dilutes" the former signatories' ownership interests.

Second, a review of the public interest implications of Intelsat's foreign ownership will be necessary because the satellites being transferred are used in part for the provision of DTH services, which are not covered by the World Trade Organization ("WTO") Agreement on Basic Telecommunications. Therefore, Intelsat cannot rely on past Commission findings that foreign ownership of Intelsat is in the public interest based on the presumption in favor of such findings for WTO-covered services. Instead, a separate competitive analysis will be required to ensure that U.S. licensees are not hampered from competing in the relevant

[5] P.L. 106-180 (2000), 114 Sat. 48, *codified at* 47 U.S.C. §§ 761 *et seq.* (2001).

markets of Intelsat's "home" country or countries in light of the privileged status of many Intelsat owners. In addition, the Commission must examine the national security implications of the proposed transfer of licenses to a company still owned by a number of foreign governments. As the completion of the privatization process is still languishing three years after the Commission approved Intelsat as a U.S. licensee, the Commission can no longer afford to assume foreign-government ownership of Intelsat is a temporary phenomenon.

Third, aside from alien ownership considerations, this deal could result in a significant increase of Intelsat's market share in the relevant FSS market. Intelsat now has over 20 Fixed-Satellite Service ("FSS") satellites,[6] and the acquisition of another six might cause a significant increase in concentration depending on how the relevant market is defined. The Commission should define that market without regard to the artificial and abandoned distinction between domestic and international FSS satellites. It is well-established that the Commission's responsibility to do so under the public interest standard is independent of the work of the antitrust enforcement agencies, which have reportedly cleared this transaction, particularly since the Commission possesses unique expertise in the evaluation of the FSS market.

Fourth, the Commission should inquire into whether Intelsat is legally authorized to hold a U.S. Ka-band license. Intelsat is seeking to acquire the Ka-band authorization for Telstar 8 as part of the proposed asset purchase transaction. However, as part of the decision to

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[6] *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*, 15 FCC Rcd. 15460, 15465 (2000), at ¶ 11 ("*Intelsat Licensing Order*") (granting Intelsat authorizations for its 17 existing satellites and authorizing the launch of 10 more planned satellites), *pet. for recon. denied* 15 FCC Rcd. 25234 (2000). In fact, Intelsat currently has a fleet of "over 20 satellites" (*see* http://www.intelsat.com/resources/satellites.aspx) and reportedly has capacity on 26 satellites in prime geosynchronous orbital locations. *See* Intelsat Ltd., News Release NR 2003-26, *Intelsat Signs Agreement to Purchase Loral's North American Satellite Services Assets*, July 15, 2003.

privatize Intelsat, the Intelsat Board of Governors and Assembly of Parties selected the United Kingdom and not the United States as the licensing jurisdiction for future Ka-band satellites (as well as for V-band and Broadcast-Satellite Service satellites). Moreover, the ORBIT Act prohibits the Commission from licensing Intelsat to provide services in the V- or Ka-band until Intelsat is privatized in accordance with the requirements of the Act. As previously noted, Intelsat has not satisfied perhaps the most important requirement of the ORBIT Act – dilution of the aggregate ownership of its signatories or former signatories in its successor entity.[7] Simply put, Intelsat remains a company with significant foreign-government ownership, and cannot be considered a private company. As the purpose of this limitation in the ORBIT Act is to provide Intelsat with an incentive to complete privatization in accordance with the Act, approval of the assignment at this time would run afoul of that limitation.

Fifth, the transaction threatens the public interest because it is structured in a manner that will leave unused several Loral authorizations. Specifically, a number of Loral licenses, for as many as eight satellites, will neither be transferred to Intelsat nor, it seems, be used by Loral, which has stated it will reorganize around its existing international business. That spectrum will lie fallow until the licenses are surrendered or declared null and void for failure to meet Loral's diligence milestones, causing significant delays in bringing this valuable resource to productive use.

Finally, even if it does not deny its consent to this transfer, the Commission should defer granting the applications so as to avoid prejudicing in favor of one bidder the bidding process that is underway in the bankruptcy court proceeding.

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[7] *See* ORBIT Act § 621(2), *codified at* 47 U.S.C. § 763(2).

II. THE COMMISSION SHOULD REQUIRE INTELSAT TO ACHIEVE SIGNIFICANT DILUTION OF ITS FOREIGN GOVERNMENT OWNERSHIP BEFORE ACQUIRING MORE AUTHORIZATIONS

Privatization is a process whereby a government-owned company becomes private, so it is no wonder that the substantial dilution of the former Intelsat signatories' ownership through an IPO was one of the most important requirements of the ORBIT Act as well as a condition of Intelsat's current licenses. Because Intelsat has not met this requirement, it is unqualified to hold additional licenses. Moreover, even if the Commission were to find Intelsat conditionally qualified, it would be imprudent to permit Intelsat to amass additional licenses even as all of its licenses are subject to possible revocation for failure to meet a condition subsequent. If Intelsat finally conducts an IPO and the Commission finds that the IPO has not achieved substantial dilution of the Intelsat signatories' stakes, what is done would be that much more difficult to undo after the acquisition of another six U.S. authorizations.

A. It Would Be Inappropriate to Grant Intelsat More Licenses Before It Has Met the Conditions of Its Current Authorization

Under section 621(2) of the ORBIT Act, Intelsat must conduct an IPO, and the Commission must determine whether the IPO has substantially diluted the aggregate ownership of Intelsat's former signatories in the privatized successor entities and thereby become an independent commercial entity.[8] To decide whether the IPO has attained this substantial dilution, the Commission must consider the "purposes and intent, privatization criteria [of §§ 621-622], and other provisions of this subchapter, as well as market conditions."[9]

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[8] 47 U.S.C. § 763(2) ("The privatized successor entities . . . of INTELSAT and Inmarsat shall operate as independent commercial entities, and have a pro-competitive ownership structure. The successor entities . . . shall conduct an initial public offering in accordance with paragraph (5) to achieve such independence. Such offering shall substantially dilute the aggregate ownership of such entities by such signatories or former signatories.").

[9] *Id.*

In May 2001, the Commission expressly conditioned Intelsat's licenses to operate certain satellites on its conducting an IPO under the ORBIT Act and the *Intelsat Licensing Order*:

> [W]e ... condition the [Intelsat authorizations] on Intelsat Ltd. conducting an IPO consistent with Sections 621(2) and (5)(A) [of the ORBIT Act] and will make a determination as to whether these provisions have been satisfied following the IPO....
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> [T]he authorizations ... are subject to a future Commission finding that Intelsat Ltd. has conducted an IPO consistent with the[se] requirements ....[10]

The ORBIT Act also requires the Commission to assess whether, under the privatization criteria, Intelsat's providing service in the United States would cause competitive harm. If it would, the Commission must "limit through conditions or deny such [license] application or request, and limit or revoke previous authorizations . . ." to Intelsat.[11]

Originally, section 621 required Intelsat to conduct the IPO by October 1, 2001. At Intelsat's request in August 2001, the Commission extended the deadline to December 31, 2002. The Commission found Intelsat had had insufficient time to take the "substantial planning, financial, and legal preparations" necessary to conduct an IPO since its July 2001 privatization.[12] In October 2002, Congress amended the ORBIT Act to extend the IPO deadline again – to "on or

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[10] *See Intelsat LLC*, Memorandum Opinion Order and Authorization, 16 FCC Rcd. 12280, 12303 (2001) ("*Intelsat 2001 Decision*").

[11] ORBIT Act § 601(b)(1)(B), 47 U.S.C. § 761(b)(1)(B); *Intelsat 2001 Decision* 16 FCC Rcd. at 12287, ¶ 20.

[12] *See Intelsat LLC, Request for Extension of Time Under Section 621(5) of the ORBIT Act*, 16 FCC Rcd. 18185 (2001) ("*Intelsat Extension Order*"); FCC Report to Congress, FCC 03-131 (rel. June 16, 2003).

about" December 31, 2003 (with Commission discretion to extend it to June 30, 2004).[13] Sponsoring Senate members felt "the current adverse conditions in the stock market in general and the telecommunications sector in particular" might prevent the IPO from achieving the dilution required by the Act.[14] Recently, Intelsat requested a third extension of time to conduct the IPO – until June 30, 2004.[15]

Whether or not the Commission grants this last extension request, it is one thing to take the Draconian step of revoking Intelsat's *current* licenses for repeated failure to meet the IPO condition, and another thing altogether to consider Intelsat's qualifications to purchase *additional* licenses. The Commission may be understandably reluctant to do the former. On the other hand, the Commission should certainly find that Intelsat, a company that was supposed to have become private long ago but remains significantly government-owned, is unqualified to acquire additional licenses until it satisfies the ORBIT Act's dilution requirement.

Moreover, even if Intelsat could be found to be legally qualified to buy more licenses subject to the condition subsequent of a dilutive IPO, it would be highly imprudent to allow such a transfer. If Intelsat were to gain additional licenses and did not conduct an IPO, or if the IPO failed to meet the substantial dilution requirement, undoing the harm done by Intelsat's failure to go private would be that much more complicated with six more satellites in the mix. The potential revocation of these licenses would be detrimental to the consumers receiving services from Loral's six satellites as well as to the IPO investors. If Intelsat is unable

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[13] *See* P.L. 107-233, § 1 (Oct. 1, 2002).

[14] Cong. Rec. S7439, Sen. 7/26/02.

[15] *Intelsat LLC, Request for Extension of Time Under Section 621(5) of the ORBIT Act*, SAT-MSC-20030822-00292 (filed Aug. 22, 2003) ("Intelsat 2003 Extension Request"); Public Notice, Report No. SAT-00163 (Sept. 5, 2003).

to conduct a successful IPO *after* it has acquired Loral's licenses, ordering investor divestiture and cancellation of those authorizations will have a far more severe economic impact than revoking only Intelsat's present licenses.

Thus, the Commission should not act on the Loral/Intelsat transfer until Intelsat has conducted an IPO and the Commission has determined that Intelsat has met the conditions of its existing authorization – *i.e.*, substantial dilution of the stake of former Intelsat signatories. This is true whether or not the Commission agrees to extend Intelsat's current IPO deadline to June 30, 2004.

B. Intelsat Need Not Acquire the Loral Licenses to Meet the Dilution Requirement

In support of its last extension request, Intelsat cites, remarkably, the pendency of the Loral deal as well as what it views as the still unsatisfactory state of the capital markets.[16] While it is unclear that the Commission should extend Intelsat's deadline for becoming a private company one more time, it is certain that it should *not* do so on account of the pending Loral transaction – an argument that puts the cart before the horse.

First, under the reasoning of both the first Intelsat extension order and general Commission standards for considering extension requests, an extension would be inappropriate except for circumstances beyond the requesting party's control.[17] Here, Intelsat itself has

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[16] *See* Intelsat 2003 Extension Request, at 7-8.

[17] *See Intelsat Extension Order*, 16 FCC Rcd. at 18188 (extension granted based on market conditions and lack of adequate time for preparation). *See also Loral SpaceCom Corp. and Loral Space & Communications, Inc.*, Memorandum Opinion, Order and Authorization, 18 FCC Rcd. 6301, 6307 at ¶ 9 (Int'l Bur. 2003) (denying Loral's satellite construction milestone request) ("Milestone extensions are granted only when the delay in implementation is due to circumstances beyond the licensee's control."); *AMSC Subsidiary Corp., Application for Modification of Construction Permit and License for the AMSC-1 Satellite*, Order and Authorization, 10 FCC Rcd. 3791 at ¶ 4 (1995) ("Generally, extensions of implementation

engineered the proposed transaction to buy assets from a bankrupt company. This self-created circumstance gives Intelsat no legitimate ground to claim it is unable to conduct the required IPO by December 30, 2003. If this were accepted as an appropriate justification, Intelsat would be allowed to write and rewrite its own deadline by entering into a string of new acquisitions and speculating either that completion of these transactions would help an IPO or that the uncertainty arising from their pendency would hurt it.

Second, Intelsat makes both of these slightly inconsistent points to explain its position: it argues both that the pendency of the Loral deal creates uncertainty for the capital markets, *and* that the completion of the deal would make Intelsat a stronger company, thus helping with the IPO.[18] On the first point, dismissal of the application would remedy the uncertainty just as effectively as a grant. In any event, as mentioned above, the uncertainty cited by Intelsat is exclusively of its own making. On the second point, there has been no clamor in the financial markets for Intelsat to buy more satellites before it could conduct its IPO. Intelsat has been, and is, financially healthy because its customers include some of the largest, most stable telecommunications companies in the world.[19] Unlike a start-up or unprofitable firm, Intelsat enjoys an established customer base and substantial revenue stream that makes it attractive to investors. Indeed, when the Loral deal was announced, Intelsat did not present it as

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milestone dates are granted when the delay in implementation is due to circumstances beyond the control of the licensee.").

[18] *See* Intelsat 2003 Extension Request at 7 ("Intelsat's management . . . believes that the acquisition will improve the company's competitive position in advance of an IPO."); *id.* at 8 ("However, the Loral transaction's pendency creates a high level of uncertainty regarding Intelsat's business model and capital structure.").

[19] *See* Yuki Noguchi, *Intelsat to Bid for Loral Assets*, WASHINGTON POST, July 16, 2003, at E05.

a needed first step to the IPO.[20] It was only later, when Intelsat needed to request an extension of the IPO deadline from the Commission, that Intelsat discovered this connection, apparently for advocacy purposes.

In fact, far from being of help, some experts believe that the acquisition could hurt Intelsat's ability to accomplish the required IPO due to the significant financial risks it poses. While there does not seem to be consensus in the analyst community on this matter, in one commentator's opinion, the proposed transaction represents a "high-stakes gamble" for Intelsat because, among other things, Intelsat would have to assume $1 billion in debt to pay cash to Loral.[21] The period of preparation for an IPO is not the most auspicious time for high-stakes gambles. Permitting Intelsat to acquire further licenses under these risky financial circumstances could therefore create *obstacles* to Intelsat's achieving the IPO mandated by the ORBIT Act. The Commission should require Intelsat to meet this condition before allowing it to expand its authorizations.

C. Current Market Conditions Would Support a Successful IPO

Nor is it clear that an extension of the IPO deadline is warranted on account of the current economic climate. Recent financial reports indicate that current economic conditions are favorable for United States IPOs, due to the past several months of steady stock market gains. In the first half of 2003, shares of companies that went public in the U.S. rose an average of fifty

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[20] Both Loral's and Intelsat's initial press releases regarding the deal are silent on the matter of Intelsat's IPO. *See* Intelsat Ltd, News Release NR 2003-26, *supra* note 6; Loral Space & Communications, Ltd, Press Release, *Loral Reaches Agreement to Sell Six Satellites to Intelsat For Up to $1.1 billion; Files Voluntary Chapter 11 Petition As Precondition to Transaction* (Jul. 15, 2003), *at* http://www.loral.com/inthenews/030715.html (last visited Sept. 14, 2003).

[21] *See Satellite News,* "Intelsat Fills Void with Loral Deal" (July 21, 2003).

percent on their first trading day.[22] In August alone, there were 20 IPO filings, the highest number since April 2002 when 20 filings also occurred.[23] Noting the "increasingly resurgent" IPO market, financial experts state that the success of recent IPOs is an encouraging sign for companies considering going public.[24] The current IPO backlog of over $5.3 billion by forty-two companies is a certain indication of optimism toward a revitalized IPO market.[25]

At least four companies in the media/data services industry have conducted successful IPOs this year. Shares of three of those companies closed an average thirty-four percent above the offering price on the first trading day, and the fourth company's flotation gained forty-seven percent in its market debut.[26] All of those companies were able to raise more money than they had planned coming into their deals. In addition, IPOs launched in 2003 by Real Estate Investment Trusts (REITs) and other dividend-paying companies have performed well, with two of these companies offering nearly $700 million each.[27] Their success indicates that an IPO by Intelsat this year will likewise attract the private investors it needs, because

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[22] Caroline Muspratt, *U.S. Corporates Keener to Participate in New Issues*, EFINANCIALNEWS, Aug. 31, 2003.

[23] *Id.*

[24] *Id.;* Frances McMorris & Jonathan Berke, *Nasdaq IPOs Make Modest Gains*, DAILY DEAL, Aug. 14, 2003.

[25] *IPO Filings*, HOOVER'S IPO CENTRAL, *at* http://premium.hoovers.com/global/ipoc/index.xhtml?pageid=10005&Date=2003-3 (last visited Sept. 15, 2003).

[26] *IPO Performance*, HOOVER'S IPO CENTRAL, *at* http://premium.hoovers.com/global/ipoc/index.xhtml?pageid=10008&PDate=Q-2003-3 (last visited Sept. 15, 2003).

[27] *American Financial Realty Trust,* HOOVER'S ONLINE, *at* http://premium.hoovers.com/subscribe/co/ipo.xhtml?COID=106414 (last visited Sept. 15, 2003); *id.* at *Maguire Properties, Inc.* at COID=106835.

Intelsat's low-risk, low-growth, dividend-paying profile makes it more akin to a REIT from an investment point of view.

Moreover, in the last six months, stock prices of companies in the FSS market sector have risen twenty-nine percent, and the NASDAQ Composite Index is up thirty-nine percent. In addition, the share value of Intelsat competitor PanAmSat Corporation is up since January 2003. Intelsat may try to paint a gloomy market picture by pointing to statistics from 2001 and 2002, but those numbers are misleading. The relevant time frame here is the period since December 2002 – the last Intelsat IPO deadline that was extended by Congress. Since that time, virtually all of the relevant measures for equity market performance and investment opportunities have been positive. In fact, an IPO in December 2002 by a technology firm – whose shares are currently up 95% – offered $870 million.[28]

Intelsat also contends it must conduct an IPO of more than $1 billion to meet the ORBIT Act's substantial dilution requirement.[29] But Intelsat submits no evidence at all that this is true. The ORBIT Act specifies no minimum size or valuation for the required IPO. While it may be true that no IPO over $1 billion has been conducted recently, this is a yardstick of Intelsat's own creation, and companies have recently completed very substantial IPOs, raising as much as $870 million.

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[28] *IPO Scorecard,* HOOVER'S IPO CENTRAL, *at* http://premium.hoovers.com/global/ipoc/index.xhtml?pageid=4546 (last visited Sept. 15, 2003); *Seagate Technology Holdings,* HOOVER'S IPO CENTRAL, *at* http://premium.hoovers.com/subscribe/co/ipo.xhtml?COID=14678 (last visited Sept. 15. 2003).

[29] Letter from Michael Gordon, Merrill Lynch, to Donald Abelson, Federal Communications Commission, at 1 (Aug. 21, 2003) ("While the Intelsat IPO is expected to exceed $1 billion in order to achieve the goals of Intelsat and its shareholders as we understand them and to achieve the 'substantial dilution' of Intelsat's ownership required by the ORBIT Act, we note that no IPOs in excess of $1 billion have been completed in the U.S. this year."), *filed in* Intelsat 2003 Extension Request, Ex. 2).

With the recent sustained market activity and success of IPOs, including those by companies similar to Intelsat, every indication exists that an IPO by Intelsat in the next few months would not fare any worse than in any period of mild economic growth. While it may be reasonable to grant an extension of the IPO requirement at times of severe lack of confidence in the capital markets, it is certainly inappropriate to create a standard whereby Intelsat does not need to comply with the IPO requirement until the economy is booming and the economic climate becomes absolutely optimal in Intelsat's judgment.

In any event, whether or not the Commission approves Intelsat's latest request for an extension of time to conduct the IPO, it should defer consideration of the Loral deal until after the IPO is consummated and the Commission has had the opportunity to evaluate and approve it.

III. THE COMMISSION MUST REVISIT THE FOREIGN OWNERSHIP OF INTELSAT

About 80% of Intelsat's equity seems to be controlled by foreign entities,[30] and 38% is apparently still held by foreign governments or government affiliates. Nevertheless, the Applicants assume that the transaction raises no foreign ownership concerns. The Applicants base their assumption on the Commission's approval of Intelsat's foreign ownership interests as part of the Commission's attempt to help effectuate Intelsat's privatization.[31] However, a large part of the rationale for approving foreign ownership of U.S. licenses in that context is not implicated here. Moreover, in this instance, the Commission cannot apply the presumption, employed in the privatization context, that the foreign investment in Intelsat is in the public

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[30] *Intelsat LLC*, Memorandum Opinion Order and Authorization, 15 FCC Rcd. 15460, 15480 at ¶ 44 (2000) ("*Intelsat Licensing Order*"), *pet. for recon. denied* 15 FCC Rcd. 25234 (2000).

[31] Application at 15.

interest. The Commission must therefore revisit the issue of Intelsat's foreign ownership and assess whether it is in the public interest to authorize Intelsat to hold the licenses in question, also taking into account competitive and national security considerations.

A. A Large Part of the Rationale for Approving Foreign Ownership of U.S. Licenses in the Privatization Context Is Not Implicated Here

When it initially authorized Intelsat to hold U.S. licenses, the Commission made clear that it did so to help effectuate Intelsat's privatization. In the *Intelsat Licensing Order*, the Commission explained that "privatization of Intelsat is a policy goal of the United States."[32] To fulfill that goal, the Commission explained further, Congress directed the Commission to take "'such actions as may be necessary for the United States to become the licensing jurisdiction for Intelsat'" and "'take the action necessary to ensure that the United States remains the ITU notifying administration for the privatized Intelsat's existing and future orbital slot registrations.'"[33] Consequently, the FCC approved Intelsat's initial request for authorizations, including the approval of Intelsat's foreign ownership structure, to "promote privatization and the public interest benefits flowing from licensing the privatized Intelsat in the United States."[34] The Commission made this public benefit explicitly part of its reasoning for waiving the alien ownership restrictions of Section 310 of the Communications Act.

The Applicants cannot bootstrap the unique public interest justification that existed at the time the United States was attempting to help effectuate privatization of Intelsat and assume that the same public interests apply here. The Commission must assess the instant

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[32] *Intelsat Licensing Order*, 15 FCC Rcd. at 15470, ¶ 22.

[33] *Id.* at ¶ 35 (quoting Sections 601(b)(1)(d) and 644(b) of the ORBIT Act).

[34] *Id.* at ¶ 37; *see also id.* at ¶ 54.

transaction based on whether the public interest will be served by permitting the largely foreign government-owned Intelsat to acquire the licenses held by Loral.

B. The Commission Cannot Apply a Presumption That Intelsat's Foreign Ownership Is in the Public Interest

In the *Intelsat Licensing Order* and other decisions cited by the Applicants, the Commission has applied a presumption, arising from the United States' commitment to opening its satellite market in the WTO Basic Telecom Agreement, that the public interest is served by permitting investment by entities from WTO Member countries in U.S. common carrier radio licenses.[35] However, this presumption does not apply to "non-WTO services," i.e., those to which the United States took an exception when it committed to opening its satellite market to foreign participation.[36] The non-WTO services are Direct-to-Home ("DTH") service, Direct Broadcast Satellite ("DBS") service, and Digital Audio Radio service ("DARS"). For applications involving these services, as well as those for non-common carrier services not covered by the foreign ownership restrictions in Section 310(b) of the Communications Act, the Commission instead applies a competitive opportunity equivalency analysis akin to the test it applies to requests to provide non-WTO-covered services via foreign-licensed satellites – an analysis similar to the so-called ECO-Sat test.

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[35] *See, e.g., id.* at ¶ 55; *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 Licensee Corp., Assignees; Applications for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petition for Declaratory Ruling*, 17 FCC Rcd. 27732 (Int'l Bur. 2002) ("*Lockheed/COMSAT/Intelsat Order*"); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd. 23891 (1997) ("*Foreign Participation Order*"), *on recon.*, 15 FCC Rcd. 18158 (2000).

[36] *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, 12 FCC Rcd. 24094, 24125 (1997) ("*DISCO II Order*").

For example, in *Orbital Communications Corporation and ORBCOMM Global, L.P.*,[37] the Bureau considered whether assignment of non-common carrier satellite system licenses to an entity approximately 37% owned by foreign interests would serve the public interest. The Commission explained that while Section 310(b) only restricted foreign ownership levels in broadcast, common carrier or aeronautical radio stations licenses, the Commission "maintains a responsibility pursuant to Section 310(d) to examine and make a finding as to whether a specific transfer or assignment involving any Title III license will serve the public interest," and one factor of this examination is a "competition analysis" to assess whether the proposed foreign ownership may adversely affect the public interest.[38]

The analytical framework for evaluating the foreign investment in an entity seeking to provide a non-WTO service was recently articulated by the Bureau in *SES Americom, Inc., Applications for Modification of Fixed-Satellite Service Space Station Licenses*, Order and Authorization, DA 03-2683 (Int'l Bur. rel. Aug. 15, 2003), 2003 FCC LEXIS 4601 ("*SES DTH Decision*"). There, the Bureau considered the request of SES, a foreign-controlled entity, to provide DTH service to the United States via U.S.-licensed satellites. The Bureau first explained that the ECO-Sat test was adopted to evaluate requests to provide non-WTO services to the United States via foreign-licensed satellites, and further explained that the test "ensures that the competitive environment in the United States is not distorted by foreign entry" by determining whether a U.S.-licensed satellite has "effective competitive opportunities" to provide DBS, DTH

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[37] 17 FCC Rcd. 4496 (Int'l Bur. 2002) ("*Orbcomm Decision*").

[38] *Id.* at 4506, ¶¶ 19-20 (discussing the "competition analysis [the Commission] conduct[s] pursuant to section 310(d)").

and/or DARS service in the country that licenses the foreign satellite."[39] The Bureau acknowledged that SES's request to provide non-WTO services to the U.S. via *U.S.-licensed* satellites did not fit squarely within the ECO-Sat analytical framework, but determined that it must nonetheless examine "whether the foreign ownership of the Applicants by SES Global is likely to distort competition in any relevant U.S. market." *Id.* at ¶ 10.

The Bureau explained that "competitive concerns could arise in the provision of these non-WTO covered services where a foreign operator 'buys' U.S.-licensed satellites," and that "competitive distortions" could be created where, for example, "a U.S.-licensed satellite is owned by a foreign operator and that foreign operator could provide services in the United States that a U.S.-owned operator could not provide because it could not obtain authorization to operate in the home market of the foreign operator." *Id.* at ¶ 16. This examination of whether foreign ownership will result in "competitive distortions" arising from a foreign market being closed to U.S. operators is similar, if not identical, to the ECO-Sat test. Therefore, where, as here, the Commission considers the effect of foreign investment in an entity seeking to provide a non-WTO covered service via U.S.-licensed satellites, a competitive equivalency analysis like the ECO-Sat test must be performed.

Here, a non-WTO service, DTH, is among the services that are provided by the Loral satellites in question and that Intelsat intends to continue to provide (and expand). EchoStar, for example, leases now and has leased in the past transponders on Loral satellites for DTH services, and believes that Loral leases transponders for DTH services to others as well. Intelsat, for its part, has emphasized that acquisition of Loral's authorizations will help it create

[39] *SES DTH Decision*, 2003 FCC LEXIS 4601 at ¶ 9. For Intelsat, of course, the relevant market is its home markets.

"a new provider of domestic video distribution services."[40] Any argument that the planned video distribution service will not be offered to end users does not exempt these services from DTH status, for it is well-established that the provision of transmission capacity to DTH providers also constitutes DTH service.[41]

Accordingly, the Commission must apply the competitive equivalency test to Intelsat's foreign ownership interests, assessing whether effective competitive opportunities exist for U.S.-licensed satellites to provide the service in question in the home market of Intelsat and its foreign investors. To determine an alien entity's home market for purposes of a Section 310 foreign ownership analysis, the Commission identifies the entity's "principal place of business" by examining five factors: (1) the country of incorporation, organization or charter; (2) the nationality of all investment principals, directors and officers; (3) the location of the entity's world headquarters; (4) the country in which a majority of the entity's tangible property is located; and (5) the country from which the entity derives the greatest sales and revenues from its operations.[42] The home market of Intelsat, Ltd., the 100% indirect owner of Applicant Intelsat North America LLC, and Intelsat, Ltd.'s foreign investors has already been determined by the Commission. Specifically, the Commission has found that "Intelsat, Ltd. and its subsidiaries should be considered principally to conduct business in and from Bermuda and other WTO Member countries."[43] Thus, in order to determine whether foreign ownership of the assets

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[40] Application at 2.

[41] *See SES DTH Decision*, 2003 FCC LEXIS 4601, at ¶¶ 11-13.

[42] *In the Matter of Market Entry and Regulation of Foreign-Affiliated Entities*, 11 FCC Rcd. 3873 (1995), ¶ 207; *see also Lockheed/COMSAT/Intelsat Order*, 17 FCC Rcd. at 27756, n.131 (citations omitted).

[43] *Lockheed/COMSAT/Intelsat Order*, 17 FCC Rcd. at 27758, ¶ 38 (footnote omitted).

at issue here will adversely affect the public interest, as required by Section 310(d) of the Communications Act, the Commission must perform a competitive opportunities equivalency analysis with respect to Bermuda and each of the WTO member countries.

In addition, the Commission must examine the national security implications of the proposed transfer of licenses to a company still owned by a number of foreign governments.[44] As the completion of the privatization process is still languishing three years after the Commission approved Intelsat as a U.S. licensee, the Commission can no longer afford to assume foreign government ownership of Intelsat is a temporary phenomenon.

IV. THE COMMISSION SHOULD INQUIRE INTO WHETHER INTELSAT CAN LEGALLY HOLD A U.S. KA-BAND LICENSE

As part of the asset purchase transaction, Intelsat will be acquiring the Ka-band authorization for Loral's Telstar 8 satellite, one of three payloads to be launched on that satellite.[45] However, as part of Intelsat's privatization, the former Intelsat Board of Governors and Assembly of Parties reportedly selected the United States as the licensing jurisdiction for the privatized Intelsat's C- and Ku-band licenses only, but selected "the United Kingdom as the licensing jurisdiction for future satellites that may be constructed for operating in the Ka-band, V-band and BSS band."[46] This raises a question as to whether Intelsat has the ability to hold a

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[44] *See, e.g., SES DTH Decision*, 2003 FCC LEXIS 4601, ¶ 10.

[45] *See Loral SpaceCom Corporation and Loral Space & Communications Corporation*, Memorandum Opinion, Order and Authorization, DA 03-1045, 18 FCC Rcd. 6301 (Int'l Bur. 2003).

[46] *See Intelsat 2001 Decision,* 16 FCC Rcd. at 12282, ¶ 8 n.22 (referring to the Intelsat Board of Governors recommendation). In November 2000, the Intelsat Assembly of Parties endorsed the Board of Governors recommendations on privatization, including the selection of licensing jurisdictions. *Id.* at ¶ 8. Apparently, the text of the Board of Governors recommendation is confidential and not publicly available. *See* Supplemental Information at ex. 3 (redacted), *filed in Intelsat LLC*, SAT-A/)-20000119-00002/18, SAT-AMD-20000119-

U.S. Ka-band license, when it should be obtaining Ka-band licenses from the United Kingdom under the Intelsat Board of Governors and Assembly of Parties decisions.

Moreover, until it is fully privatized in accordance with the statute, the ORBIT Act limits the ability of Intelsat to obtain permission to provide "additional services," which, for Intelsat, includes "services in the Ka or V bands."[47] Section 602(a) of the ORBIT Act provides that:

> Until INTELSAT, Inmarsat, and their successor or separate entities are privatized *in accordance with the requirements of this title*, INTELSAT, Inmarsat and their successor or separate entities, respectively, shall not be permitted to provide additional services. The Commission shall take all necessary measures to implement this requirement, including denial by the Commission of licensing for such services.[48]

Intelsat's privatization is not complete and the privatization requirements of the ORBIT Act have not yet been satisfied. It is true that the Commission has found for the purposes of the initial licensing of Intelsat that "INTELSAT shall be deemed to have obtained privatization when the assets are transferred to Intelsat LLC and the ITU network filings are transferred to the United States and United Kingdom pursuant to the 2000 Assembly decision."[49] That finding, however, was subject to a condition subsequent – namely that Intelsat conduct an IPO to "substantially dilute" government ownership of the privatized entity within the statutory

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00029/41, SAT-LOA-20000119-00019/28 (filed Dec. 18, 2000) ("*Intelsat Supplemental Information*").

[47] ORBIT Act § 681(a)(12)(B), 47 U.S.C. § 769(a)(12)(B).

[48] ORBIT Act § 602(a), 47 U.S.C. § 761a(a) (emphasis added). *See also* ORBIT Act § 621(4), 47 U.S.C. § 763(4) ("During the transition period prior to privatization under this title, Intelsat and Inmarsat shall be precluded from expanding into additional services.").

[49] *Intelsat 2001 Decision*, 16 FCC Rcd. at 12297, ¶ 54.

timeframe.[50] In other words, the Commission's finding that Intelsat had "privatized" was provisional upon Intelsat's completion of an IPO.

The very purpose of the ORBIT Act's restriction on Intelsat's provision of additional services is to spur Intelsat to complete all steps for privatization prescribed in the ORBIT Act – all of the "requirements of this title" – in a timely fashion.[51] To date, however, Intelsat remains a company with significant foreign-government ownership, not the privately-owned entity that Congress wants it to become. The Commission should give effect to both the express words and purpose of Section 602(a) by denying Intelsat's application for assignment of Loral's Ka-band authorization for the Telstar 8 satellite.

V. INTELSAT'S PARTIAL ACQUISITION OF LORAL'S ASSETS DISSERVES THE PUBLIC INTEREST

The proposed piecemeal assignment of certain Loral assets threatens the public interest in another important respect: it would mean that several of Loral's satellite licenses will likely remain unused. Intelsat will only be acquiring six of Loral's satellites serving North America and their associated authorizations. The plan described in the Application is for Intelsat

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[50] *Id.* at ¶ 24 (citing the rule of construction in ORBIT Act § 601(b)(1)(D) as permitting it to "assess whether Intelsat's privatization is "consistent with other criteria in the Act and impose such conditions as may be necessary to ensure compliance with the [IPO] criteria."); *id.* at ¶ 27 ("For purposes of licensing Intelsat LLC at this time, we condition the licenses pursuant to Section 601(b)(1)(D) on Intelsat Ltd. carrying out its commitment to conduct an IPO consistent with Sections 621(2) and (5)(A).").

[51] *See* ORBIT Act § 602(a), 47 U.S.C. § 761a(a) (which is headed "Incentives; Limitation on Expansion Pending Privatization").

to obtain a greater North American footprint and for Loral to "reorganize around its remaining fleet of five primarily international satellites and its satellite manufacturing operations . . . ."[52]

The combination of the partial transfer to Intelsat and Loral's focus on its existing international satellites potentially leaves in a vacuum Loral's authorizations for as many as nine unbuilt satellites, both domestic and international: Telstar 9,[53] Orion F2,[54] Orion F4,[55] Orion F5

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[52] *See* Application at 8. According to the Applicants, Loral's remaining fleet of satellites (Telstar 10, 11, 14 and 18) "serves South America, Europe and Asia – areas Loral believes are currently underserved and have potential for growth." *Id.*

[53] *See Applications of AT&T Corp. for Authority to Construct, Launch and Operate Space Stations in the Domestic Fixed-Satellite Service*, Order and Authorization, 11 FCC Rcd. 15038 (1996) (granting AT&T authority to construct, launch and operate, among others, a C/Ku-band satellite (Telstar 6, later Telstar 9) at 69° W.L.); *AT&T Corp. (Assignor) and Loral SpaceCom Corporation (Assignee)*, Order and Authorization, DA 97-125, 12 FCC Rcd. 925 (1997) (granting the assignment of AT&T Corp.'s satellite licenses to Loral SpaceCom); *Loral SpaceCom Corp., Application for Extension of Milestone Dates*, SAT-MOD-20021213-00242 (filed Dec. 13, 2003) (requesting further extension of construction completion and launch milestones); *Loral SpaceCom Corp. (Debtor-in-Possession)*, SAT-ASG-20030725-00145 (filed Jul. 25, 2003) (stamp granted Aug. 14, 2003) (assigning certain satellite licenses held by Loral SpaceCom to Loral SpaceCom Corp. (Debtor-in-Possession)).

[54] *See Orion Satellite Corp., Request for Final Authority to Construct, Launch and Operate an International Satellite System*, Order, 6 FCC Rcd. 4201 (1991) (granting Orion final authority to construct, launch and operate Ku-band Orion F1 and Orion F2 satellites at 37.5° W.L. and 47° W.L.); *Orion Atlantic, L.P.*, Order and Authorization, 13 FCC Rcd. 1416 (1997) (granting authorization to add Ka-band capacity to the Orion F2 Ku-band satellite authorized for 47° W.L.); *Loral Space & Communication Ltd. and Orion Network Systems, Inc., et al.*, Order and Authorization, 13 FCC Rcd. 4592 (1998) (authorizing the merger of Loral and Orion) ("Loral-Orion Merger Order"); *Loral SpaceCom Corp. and Loral Space & Communications Corp.*, Memorandum Opinion, Order and Authorization, 18 FCC Rcd. 6301 (2003) (affirming cancellation of Ka-band authorization at 47° W.L. and confirming validity of Ku-band authorization at 47° W.L.); *Loral Orion Ltd. (Debtor-in-Possession)*, SAT-ASG20030725-00146 (filed Jul. 25, 2003) (stamp granted Aug. 14, 2003) ("Loral Bankruptcy Assignment") (assigning certain satellite licenses held by Loral Orion to Loral Orion Ltd. (Debtor-in-Possession)).

[55] *See Application of Orion Network Systems, Inc. for Authority to Construct, Launch and Operate a Space Station in the Domestic Fixed-Satellite Service*, Order and Authorization, 11 FCC Rcd. 20434 (1997) (granting Orion conditional authority to launch, construct and operate the Orion F4 Ku-band satellite at 135° W.L.); Loral Orion Merger Order; Loral Orion Bankruptcy Assignment.

and F10,[56] Orion F11 and F12,[57] and CyberStar 1 and 2.[58] These satellites are not mentioned as part of either the Intelsat transaction or Loral's reorganization plan. In the case of Telstar 9, Orion F2, Orion F5, Orion F11 and CyberStar 1 and CyberStar 2, Loral has reported to the Commission that the satellites are currently under construction. Nevertheless, if the Commission were to approve this piecemeal transfer, these authorizations would likely continue to lie fallow and satellites would not be deployed to these locations.

VI. THE COMMISSION SHOULD CONDUCT ITS OWN ANALYSIS OF THE COMPETITIVE EFFECTS OF THE PROPOSED TRANSACTION

Aside from alien ownership considerations, this deal could result in a significant increase of Intelsat's market share in the relevant FSS market. Of course, the Commission must

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[56] *See Loral CyberStar, Inc., Application for Authority to Construct, Launch and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, 16 FCC Rcd. 14346 (2001) (granting authorization for two Ka-band satellites at 147° W.L. (Orion F5) and 15° W.L. (Orion F-10)); *Second Round Reassignment of Geostationary Satellite Orbit Locations to Fixed-Satellite Service Space Stations in the Ka-band*, 17 FCC Rcd. 14400 (2002) (reassigning Orion F-5 to 139° W.L.); Loral Bankruptcy Assignment.

[57] *See Loral CyberStar, Inc., Applications for Authority to Construct, Launch and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, 15 FCC Rcd. 24602 (2000) (granting authorization for two Ka-band satellites at 67° W.L. (Orion F-11) and 126.5° E.L. (Orion F-12)); Loral Bankruptcy Assignment.

[58] *See Loral Space & Communications Ltd., Application for Authority to Construct, Launch, and Operate a Ka-Band Satellite System in the Fixed-Satellite Service*, Order and Authorization, 13 FCC Rcd. 1379 (1997) (granting authorization to construct, launch and operate Ka-band satellites at 115° W.L. (CyberStar 1), 28° E.L. (CyberStar 2) and 105.5° E.L. (CyberStar 3)); Letter from Thomas S. Tycz, Federal Communications Commission to Philip L. Verveer, Wilkie, Farr & Gallagher (Mar. 31, 1998) (granting pro forma assignment of Ka-band licenses to CyberStar Licensee, LLC); *CyberStar Licensee LLC, Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, Order and Authorization, 16 FCC Rcd. 2481 (2001) (granting modification of license to operate inter-satellite links and to substitute 93° W.L. for 28° E.L. orbit location); Letter from John Stern, Loral Space & Communications Ltd to Marlene H. Dortch (Jun. 30, 2003) (surrendering Ka-band satellite license for CyberStar 3 at 105.5° E.L.); *CyberStar Licensee, LLC*, SAT-ASG-20030725-00147 (filed Jul. 25, 2003) (stamp granted Aug. 14, 2003) (transferring control of CyberStar Licensee LLC from CyberStar, L.P. to CyberStar, L.P. (Debtor-in-Possession)).

first determine what *is* the relevant market. The applicants offer absolutely no evidence in that regard. Notably, the Commission has abolished as artificial the distinction between domestic and international FSS satellites,[59] and its relevant market analysis cannot be informed by such a "cookie-cutter" distinction. The fact is that Intelsat now has over 20 FSS satellites,[60] and the acquisition of another six from Loral may augur a significant further increase in concentration in the relevant market. It is well-established that the Commission's responsibility to do so under the public interest standard is independent of the work of the antitrust enforcement agencies, which have reportedly cleared this transaction, particularly since the Commission possesses unique expertise in the evaluation of the FSS market.

VII. THE COMMISSION SHOULD NOT PREJUDICE OTHER BIDDERS IN THE BANKRUPTCY PROCESS

Even if the Commission does not deny its consent to this transfer, the Commission should defer granting the applications so as to avoid prejudicing in favor of one bidder the bidding process that is underway in the bankruptcy court proceeding.

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[59] *See In the Matter of Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems and DBSC Petition for Declaratory Rulemaking Regarding the Use of Transponders to Provide International DBS Service*, 16 FCC Rcd. 15579 (2001) ("In *DISCO I*, the Commission concluded that globalization of satellite markets had rendered prior distinctions between domestic and international system licensees unnecessary. The Commission decided to eliminate the prior distinctions between [domestic satellites] . . . and separate systems. That is, it decided to allow satellite systems licensed as "domestic" to provide service to any international point within the footprints of their satellites and to allow systems licensed as "international" to provide service between any points in the United States that lie within the footprints of their satellites.") (explaining the Commission's decision in *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems*, 11 FCC Rcd. 2429 (1996) ("*DISCO I*")).

[60] *See supra* note 6.

VIII. CONCLUSION

For the foregoing reasons, the Commission should dismiss, deny or hold in abeyance the pending applications.

Respectfully submitted,

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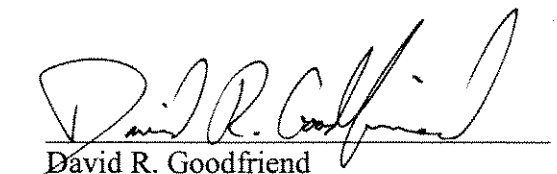
DECLARATION OF DAVID R. GOODFRIEND

I declare under penalty of perjury that the allegations of fact in the foregoing are true and correct to the best of my information, knowledge and belief. Executed on September 15, 2003.



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CERTIFICATE OF SERVICE

I, Chung Hsiang Mah, hereby certify that on September 15, 2003, a true and correct copy of the foregoing was served by hand, or by first-class mail (indicated by *), postage pre-paid, upon the following:

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