

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

In the Matter of	)	IB Docket No. 06-137
	)	File No. SAT-MSC-20060710-00076
Petition of the International Telecommunications	)	Call Signs S2400, S2394, S2389, S2396,
Satellite Organization under Section 316 of the	)	S2397, S2410, S2406, S2408, S2388, S2401,
Communications Act, as Amended	)	S2402, S2414, S2405, S2399, S2409, S2411,
	)	S2391, S2407, S2395, S2398, S2404

**ORDER PROPOSING MODIFICATION**

**Adopted:** November 23, 2007

**Released:** November 23, 2007

By the Chief, International Bureau:

**I. INTRODUCTION**

1. In this Order, we propose to modify, pursuant to section 316(a) of the Communications Act, as amended (“the Act”), certain space station licenses held by Intelsat North America LLC (“Intelsat North America”). The proposed modifications would add to Intelsat North America’s space station licenses certain conditions requested by the U.S. Department of State (“State Department”), in consultation with the National Telecommunications and Information Administration (“NTIA”), to promote fulfillment of U.S. obligations under an international agreement and fulfillment of U.S. foreign policy objectives. Section 316 provides Intelsat North America with the opportunity to object to these proposed modifications.<sup>1</sup>

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<sup>1</sup> Pursuant to section 316 and its implementing rule, no order of modification becomes final until the Commission notifies the licensee in writing of the proposed action and the grounds and reasons for the proposed action and affords the licensee an opportunity to protest the proposed modification. 47 U.S.C. § 316(a)(1); 47 C.F.R. § 1.87(a). Any protest filed pursuant to 47 U.S.C. § 316(a) shall be subject to the requirements of section 309 for petitions to deny. 47 U.S.C. § 316(a)(3), 47 C.F.R. § 1.87(d); *see also* 47 U.S.C. § 309(d). Subsequently, any order of modification issued pursuant to section 1.87 shall include a statement of the findings and the grounds and reasons for the action, shall specify the effective date of the modification, and shall be served on the licensee. 47 C.F.R. § 1.87(i).

## II. BACKGROUND

2. Intelsat North America is an indirect U.S. subsidiary of Intelsat Holdings Ltd. (“Intelsat”).<sup>2</sup> Intelsat is a Fixed-Satellite Service (“FSS”) operator that owns and operates a global satellite system providing end-to-end network services to telecommunications operators, corporate network integrators, governments, Internet service providers, and broadcasters around the world.<sup>3</sup> Intelsat is a privatized commercial successor to INTELSAT, the intergovernmental organization (“IGO”) created by international agreement in 1973 to operate a global commercial telecommunications system.<sup>4</sup> In 2001, the parties to the INTELSAT Agreement privatized INTELSAT.<sup>5</sup> INTELSAT transferred its C- and Ku-band space stations to Intelsat LLC, a U.S. entity created by INTELSAT for the purpose of owning and operating INTELSAT’s C- and Ku-band FSS satellites upon privatization. This transfer occurred pursuant to a 2000 Commission decision that made the Intelsat licenses effective upon privatization.<sup>6</sup> Subsequently, Intelsat LLC assigned its authorizations to Intelsat North America, its wholly-owned U.S. subsidiary.<sup>7</sup>

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<sup>2</sup> Intelsat is an entity organized under the laws of Bermuda and ultimately controlled by private equity fund groups advised by or associated with: (1) Apax Partners Worldwide LLP and Apax Partners, L.P.; (2) Apollo Management V, L.P.; (3) MDP Global Investors Limited; and (4) Permira Advisers LLC. *Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC and PEOP PAS LLC, Transferors, and Intelsat Holdings, Ltd., Transferee, Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp.*, IB Docket No. 05-290, Memorandum Opinion and Order, FCC 06-85, 21 FCC Rcd 7368, 7372-73, ¶ 7 (2006) (“*Intelsat-PanAmSat Order*”). Through wholly-owned subsidiaries, Intelsat indirectly controls multiple U.S. C- and Ku-band space stations, earth stations, and other facilities. *Id.*

<sup>3</sup> *Intelsat-PanAmSat Order*, 21 FCC Rcd at 7372, ¶ 6.

<sup>4</sup> See Agreement Relating to the International Telecommunications Satellite Organization “INTELSAT,” 23 U.S.T. 3813, TIAS No. 7532, 1220 U.N.T.S. 22 (entry into force Feb. 12, 1973) (“INTELSAT Agreement”).

<sup>5</sup> See INTELSAT Assembly of Parties, Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting, 13-17 Nov. 2000, AP-25-3E FINAL W/11/00. The privatization took place on July 18, 2001. See, e.g., *Intelsat, Ltd., Petition for Declaratory Ruling that Intelsat, Ltd. Complies with Section 621(5)(F) of the ORBIT Act*, IB Docket No. 05-18, Memorandum Opinion and Order, FCC 05-86, 20 FCC Rcd 8604, 8607, ¶ 5 (2005).

<sup>6</sup> The Commission, in 2000, had authorized Intelsat to operate seventeen C- and Ku-band satellites then owned and operated by INTELSAT, to construct, launch and operate ten satellites planned by INTELSAT for operation in these bands, and to relocate certain satellites upon the launch of the ten planned satellites. *Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch and Operate, C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, Memorandum Opinion, Order and Authorization, FCC 00-287, 15 FCC Rcd 15460, 15517-20, ¶¶ 149-173 (2000) (“*Intelsat Licensing Order*”), *recon. denied*, 15 FCC Rcd 25234 (2000). The authorizations were to become effective upon the date in which INTELSAT transferred its satellites to Intelsat LLC and its International Telecommunication Union (“ITU”) network filings to the United States. *Id.* at 15519, ¶ 158.

<sup>7</sup> See *Policy Branch Information, Actions Taken*, Public Notice, File Nos. SAT-ASG-20050418-00084 and SAT-ASG-20050418-00085, Report No. SAT-00294, 20 FCC Rcd 9959 (PB/SD/IB 2005). See also, e.g., Application for Satellite Space and Earth Station Authorizations for Transfer of Control or Assignment, File No. SAT-ASG-20050418-00084, Exhibit C at 1, Exhibit E at 1 (Intelsat North America is wholly-owned U.S. subsidiary of Intelsat LLC). Prior to the assignments Intelsat LLC held the majority of Intelsat’s space and earth station licenses while Intelsat North America held the space station licenses acquired from Loral Satellite, Inc. and Loral (continued....)

3. INTELSAT retained a residual, post-privatization intergovernmental organization, the International Telecommunications Satellite Organization (“ITSO”), governed by international agreement (“ITSO Agreement”).<sup>8</sup> Pursuant to the ITSO Agreement, ITSO oversees the privatized company’s public service obligations that were established as part of the privatization.<sup>9</sup> The United States is a party to the ITSO Agreement, with the State Department serving as the U.S. representative.<sup>10</sup> The ITSO Agreement establishes three “core principles” under which Intelsat is to operate: (1) maintain global connectivity and global coverage; (2) serve lifeline connectivity customers; and (3) provide non-discriminatory access to Intelsat’s system.<sup>11</sup> As part of the privatization and its commitment to the “core principles,” Intelsat entered into a Public Services Agreement with ITSO by which Intelsat agreed to provide connectivity and capacity to a predefined group of “lifeline” users for a predetermined number of years, with price protection during the life of the commitments.<sup>12</sup> Thus, the relationships among ITSO, Intelsat, the State Department and the Commission are as follows: The State Department serves as the U.S. representative to ITSO; ITSO and Intelsat have entered into the Public Services Agreement; and the Commission exercises its licensing authority to authorize Intelsat to operate the relevant space stations and other communications assets. Consistent with these roles and discussed below, the Commission’s licensing policies give deference to the Executive Branch on foreign policy issues as part of the Commission’s public interest analysis.<sup>13</sup>

4. In September 2005, Intelsat and the private equity owners of PanAmSat, another FSS provider, filed a series of applications seeking to transfer control of licenses held by two subsidiaries of PanAmSat to Intelsat. ITSO filed comments on November 14, 2005 asking the Commission to condition grant of the transfer of control of the PanAmSat authorizations to Intelsat by modifying the conditions the Commission had imposed on Intelsat LLC in the *Intelsat Licensing Order*.<sup>14</sup> ITSO’s stated concern was that Intelsat’s acquisition of PanAmSat might increase Intelsat’s debt level to such an extent that Intelsat might consider filing bankruptcy and as a result might seek to void the Public Services Agreement it had

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SpaceCom Corporation in 2004. *Id.* at Exhibit F. The assignments consolidated Intelsat’s space station licenses within a single subsidiary. *Id.*

<sup>8</sup> See Agreement Relating to the International Telecommunications Satellite Organization (ITSO Agreement) (Nov. 17, 2000), available at [www.itso.int](http://www.itso.int); see also U.S. Department of State, International Agreements, No. 04-778, available at <http://foia.state.gov/documents/IntAgreements/0000CE81.pdf>.

<sup>9</sup> ITSO Agreement, Art. III(a) (“... the main purpose of ITSO is to ensure, through the Public Services Agreement, that the Company provides, on a commercial basis, international public telecommunications services, in order to ensure performance of the Core Principles.”).

<sup>10</sup> See *Intelsat-PanAmSat Order*, 21 FCC Rcd at 7395, ¶ 53.

<sup>11</sup> ITSO Agreement, Art. III(b); *Intelsat-PanAmSat Order*, 21 FCC Rcd at 7395, ¶ 53.

<sup>12</sup> See INTELSAT Assembly of Parties, Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting, 13-17 Nov. 2000, AP-25-3E FINAL W/11/00; *Intelsat-PanAmSat Order*, 21 FCC Rcd at 7395, ¶ 53 & ¶ 53 n. 154. See also State Letter at 3 (stating that the Public Services Agreement is the agreed mechanism for satisfying the public service obligations that are intended to ensure performance by Intelsat of the “core principles” stated in the ITSO Agreement).

<sup>13</sup> See *infra* ¶ 9.

<sup>14</sup> Comments of the International Telecommunications Satellite Organization (ITSO), IB Docket No. 05-290 (filed Nov. 14, 2005). See also *Intelsat-PanAmSat Order*, 21 FCC Rcd at 7377, ¶ 14, 7394-7403, ¶¶ 53-68.

signed with ITSO or take other actions to avoid compliance with the core principles of the ITSO Agreement.<sup>15</sup> The Commission, in an order released in June 2006, granted the requested transfer of control of the PanAmSat licenses to Intelsat.<sup>16</sup> The Commission declined, however, to apply the conditions ITSO requested.<sup>17</sup> The Commission explained, however, that it could consider a separate request by ITSO under section 316 of the Act to impose appropriate conditions on the relevant Intelsat licenses, if advised by the State Department that such action would promote the provisions of the ITSO Agreement and U.S. fulfillment of obligations under that international agreement.<sup>18</sup>

5. On July 10, 2006, ITSO filed a Petition asking the Commission to modify Intelsat's satellite licenses for use of the orbital locations and associated radio frequency assignments that constitute the INTELSAT "common heritage"<sup>19</sup> under the ITSO Agreement.<sup>20</sup> In its Petition, ITSO seeks the addition of three conditions to Intelsat's licenses. ITSO asks the Commission to:

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<sup>15</sup> Comments of the International Telecommunications Satellite Organization (ITSO), IB Docket No. 05-290 (filed Nov. 14, 2005), at 1-2. *See also Intelsat-PanAmSat Order*, 21 FCC Rcd at 7395, ¶ 54.

<sup>16</sup> *Intelsat-PanAmSat Order*, 21 FCC Rcd at 7405, ¶ 76 (ordering clause).

<sup>17</sup> *Intelsat-PanAmSat Order*, 21 FCC Rcd at 7400-03, ¶¶ 62-68. In declining to apply the conditions, the Commission noted that ITSO had not substantiated for the record that obligations set out in the Public Services Agreement between ITSO and Intelsat factually were at significant risk or that Intelsat was likely to enter bankruptcy or default on its contractual obligations as a result of the merger with PanAmSat. *Id.* at 7401, ¶ 63. Moreover, the Commission stated that it was not appropriate, in the context of the Intelsat-PanAmSat merger proceeding, to limit the class of entities that might be considered to become a "successor" to Intelsat LLC in the event of a future bankruptcy, *id.* at 7402, ¶ 66, or to condition the transfer on a requirement that Intelsat amend its bylaws to reinstate a condition that the record showed the shareholders unanimously had removed in March 2005, *id.* at 7403, ¶ 67. ITSO had asked the Commission to condition the grant of the Intelsat-PanAmSat grant on: (1) "development and implementation of such legal mechanisms as may be necessary (in the opinion of bankruptcy counsel) to assure that the Public Services Agreement and its obligations will survive a bankruptcy proceeding post-PanAmSat acquisition, including adherence to Lifeline Connectivity Obligation (LCO) contracts currently in effect with particular LCO-eligible customers"; (2) "Restatement of the conditions on the licenses issued by the FCC to Intelsat (authorizing use of the INTELSAT "Common Heritage" orbital positions) to clarify that no entity not bound by the Public Services Agreement, with obligations ongoing, can be considered a 'successor' of Intelsat LLC, and failing which, the licenses are to be canceled and the orbital positions revert to ITU inventory for reallocation"; and (3) "Reinstatement of former Bye-law number 2 (and related definitions) relating to ITSO and the Public Services Agreement in the Bye-laws of Intelsat, Ltd. and any post merger successor." Comments of the International Telecommunications Satellite Organization (ITSO), IB Docket No. 05-290 (filed Nov. 14, 2005), at 14; *Intelsat-PanAmSat Order*, 21 FCC Rcd at 7400-01, ¶ 62, 7402, ¶ 66, 7402-03, ¶ 67.

<sup>18</sup> *Intelsat-PanAmSat Order*, 21 FCC Rcd at 7402, ¶ 65. The Commission cautioned that any consideration of the type of relief sought by ITSO (that is, to condition existing Intelsat licenses) should be focused on the Intelsat satellites operating in orbital locations defined by the ITSO Agreement as part of the INTELSAT "common heritage" and used by Intelsat to implement the Public Services Agreement and fulfill Intelsat's obligations under the ITSO Agreement. *Id.* at 7401, ¶ 64.

<sup>19</sup> *See* ITSO Agreement, Art. I(1) ("Common Heritage" means those frequency assignments associated with orbital locations in the process of advanced publication, coordination or registered on behalf of the Parties with the International Telecommunications Union ("ITU") in accordance with the provisions set forth in the ITU's Radio Regulations which are transferred to a Party or Parties pursuant to Article XII."); *see also* ITSO Agreement, Art. XII, Frequency Assignments.

“... condition the relevant licenses by:

1. Ensuring that the Commission’s licenses to Intelsat are linked to the Core Principles;
2. Ensuring that any successor to Intelsat, or other satellite operator that uses the Parties’ Common Heritage assets, is bound by the Core Principles in the ITSO Agreement through the execution of a public services agreement with ITSO; and
3. Requiring that Intelsat place a lien, letter of credit, third party guarantee or other legal instrument on certain satellites in order to provide bankruptcy protection to ensure the fulfillment of the “Core Principles” of the ITSO treaty Agreement, including global connectivity, global coverage, non-discriminatory access and protection of lifeline connectivity obligation (LCO) contracts. This protection would include the replacement of a sufficient number of satellites for the ongoing achievement of these goals.”<sup>21</sup>

ITSO’s Petition asserts that the license modifications are sought to ensure that Intelsat and its successors adhere to the core principles of the ITSO Agreement.<sup>22</sup> On July 18, 2006, the International Bureau (“Bureau”) placed the Petition on public notice.<sup>23</sup> Intelsat North America initially opposed the Petition.<sup>24</sup> It subsequently withdrew its opposition, however, as discussed below.<sup>25</sup>

6. Additionally, on July 27, 2006, the Bureau sent a letter to the State Department, and NTIA, transmitting the Petition and Public Notice and seeking Executive Branch comments and advice on the ITSO Petition. After consultations with NTIA, the State Department replied on March 15, 2007 (“State Letter”), recommending that the Commission impose two of ITSO’s three conditions and stating that “...an FCC order imposing the conditions specified below would promote the provisions of the ITSO Agreement, fulfillment of U.S. obligations under that Agreement and fulfillment of U.S. foreign policy

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<sup>20</sup> Petition of the International Telecommunications Satellite Organization (ITSO), IB Docket No. 06-137 (filed July 10, 2006) (“Petition”), at 1. The Petition states that “Intelsat, LLC is the U.S. licensee for satellites operated by Intelsat, Ltd. of Bermuda, which uses the ITSO Parties’ Common Heritage orbital locations that are the subject of this petition.” *Id.* at 1 n.2. In fact, as noted above, *see supra* ¶ 2 and note 7, it is Intelsat LLC’s subsidiary, Intelsat North America, that is the current space station licensee.

<sup>21</sup> Petition at 2-3.

<sup>22</sup> Petition at 2.

<sup>23</sup> *Petition of the International Telecommunications Satellite Organization Under Section 316 of the Act, IB Docket No. 06-137 and File No. SAT-MS-20060710-00076*, Public Notice, DA 06-1460, 21 FCC Rcd 7923 (IB 2006) (“Public Notice”). The Public Notice accepted the Petition as an informal pleading under 47 C.F.R. § 1.41 and sought comment, Public Notice, 21 FCC Rcd at 7924.

<sup>24</sup> Opposition of Intelsat, IB Docket No. 06-137 and File No. SAT-MS-20060710-00076 (filed Aug. 17, 2006). ITSO responded to Intelsat’s opposition. Reply Comments of the International Telecommunications Satellite Organization (ITSO), IB Docket No. 06-137 and File No. SAT-MS-20060710-00076 (filed Aug. 28, 2006). Intelsat replied to ITSO’s response. Reply of Intelsat, IB Docket No. 06-137 and File No. SAT-MS-20060710-00076 (filed Sept. 5, 2006).

<sup>25</sup> See Letter to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission, from Ahmed Toumi, Director General & Chief Executive Officer, ITSO and Phillip L. Spector, Secretary, Intelsat North America L.L.C., dated October 19, 2007 (“Joint ITSO-Intelsat Letter”).

objectives.”<sup>26</sup> The conditions proposed by the State Letter are: (1) to explicitly obligate Intelsat, as a condition for holding the subject licenses, to remain a signatory to the Public Services Agreement between Intelsat and ITSO that was approved by the ITSO Twenty-Fifth Assembly of Parties; and (2) to require, for licensing purposes, that no entity can be considered a successor-in-interest to Intelsat under the ITSO Agreement unless the entity has undertaken to perform the obligations of the Public Services Agreement.<sup>27</sup> The State Letter did not propose the third condition that ITSO set forth requiring a lien, letter of credit, third party guarantee or other legal instrument on certain satellites.

7. On October 19, 2007, in a joint letter, ITSO and Intelsat informed the Commission that the actions recommended by the State Department would be acceptable to them and, in their view, resolve matters raised in this proceeding.<sup>28</sup> They requested the Commission to expeditiously condition the subject licenses as requested by the State Department.<sup>29</sup> Intelsat withdrew its opposition to the ITSO petition.<sup>30</sup> ITSO withdrew its third request in its petition, as referred to in the State Letter.<sup>31</sup>

### III. DISCUSSION

8. Section 316 of the Communications Act grants the Commission authority to modify licenses if, in the judgment of the Commission, such action will promote the public interest, convenience, and necessity or will result in fuller compliance with the provisions of the Act or of any treaty ratified by the United States.<sup>32</sup> Section 1.87 of the Commission’s rules implements section 316.<sup>33</sup>

9. We propose to modify the relevant Intelsat North America space station licenses to include the conditions recommended by the State Department and acceptable to ITSO and Intelsat. As we discuss below, because the license modifications proposed by the State Department would result in fuller compliance with the provisions of an international agreement to which the United States is a party,

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<sup>26</sup> Letter from Ambassador David A. Gross, United States Coordinator, International Communications and Information Policy, U.S. Department of State, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission, IB Docket No. 06-137 (dated Mar. 15, 2007), at 1. The record in this proceeding also includes an August 17, 2006 letter from the State Department advising the Commission that the Department had begun Executive Branch agency consultations in response to the Bureau’s letter.

<sup>27</sup> State Letter at 3, 4.

<sup>28</sup> Joint ITSO-Intelsat Letter at 1.

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

<sup>30</sup> Joint ITSO-Intelsat Letter at 2.

<sup>31</sup> *Id.*

<sup>32</sup> 47 U.S.C. § 316(a)(1). *See also California Metro Mobile Communications, Inc. v. FCC*, 365 F.3d 38, 45 (D.C. Cir. 2004) (“*California Metro*”) (stating “Section 316 grants the Commission broad power to modify licenses; the Commission need only find that the proposed modification serves the public interest, convenience and necessity.”); *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, ET Docket No. 00-258, Eighth Report and Order, Fifth Notice of Proposed Rulemaking and Order, 20 FCC Rcd 15866, 15877, ¶ 19 (2005) (same, citing to *California Metro*).

<sup>33</sup> 47 C.F.R. § 1.87.

fulfillment of U.S. obligations under that agreement, and fulfillment of U.S. foreign policy objectives, we find that it will serve the public interest, convenience, and necessity to modify the relevant space station licenses to add certain conditions.<sup>34</sup> The State Department asserts that it is appropriate to satisfy the first of the ITSO requests by explicitly obligating Intelsat, as a condition for holding the subject licenses, to remain a signatory to the Public Services Agreement between Intelsat and ITSO that was approved by the ITSO Twenty-Fifth Assembly of Parties.<sup>35</sup> The State Department also asserts that the Commission should respond to ITSO's second request by conditioning the subject Intelsat licenses to provide that, for licensing purposes, no entity can be considered a successor-in-interest to Intelsat under the ITSO Agreement unless the entity has undertaken to perform the obligations of the Public Services Agreement.<sup>36</sup> As recommended by the State Department, we decline to consider the third condition proposed by ITSO.<sup>37</sup> The State Department advises that such a condition "would be inconsistent with the understandings agreed to and accepted by the United States and other ITSO Parties" to implement INTELSAT's privatization.<sup>38</sup> We give deference to the State Department on this matter. As a result, we propose to satisfy two of the three conditions requested by ITSO as recommended by the State Letter.

10. We propose these two license modifications after considering the foreign policy interests raised by the State Letter.<sup>39</sup> In other contexts, the Commission's licensing policies give deference to the Executive Branch on foreign policy issues.<sup>40</sup> Here, as discussed below, we give deference to the

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<sup>34</sup> See 47 U.S.C. § 316(a)(1) (Commission may modify license if, in Commission's judgment, such action will promote public interest, convenience, and necessity or result in fuller compliance with provisions of Act or any treaty ratified by United States).

<sup>35</sup> State Letter at 3.

<sup>36</sup> State Letter at 4. The State Department observes that the ITSO Agreement expressly defines the privatized successor to INTELSAT as including the privatized company's successors-in-interest. State Letter at 4; ITSO Agreement, Art. I(d). The State Department notes that, under the ITSO Agreement, it expressly is the obligation of the privatized entity, Intelsat, and of Intelsat's successors-in-interest, "to ensure performance of the Core Principles." State Letter at 4, *citing to* ITSO Agreement, Art III(a).

<sup>37</sup> The State Department asserts that the third condition requested by the ITSO Director General – requiring Intelsat to place a lien, letter of credit, third party guarantee or other legal instrument on certain satellites in order to provide bankruptcy protection – is inconsistent with the understandings agreed to and accepted by the United States and other ITSO parties to implement INTELSAT's privatization and is unnecessary in the context of the two other recommended conditions and the realities of satellite communications infrastructure. State Letter at 4. The State Department asserts there is no possibility, in the event of an Intelsat bankruptcy, that the orbiting satellites would be put to a use other than their designed telecommunications function so long as the successor-in-interest to Intelsat is bound by its license to comply with and perform the obligations of the existing Public Services Agreement. *Id.*

<sup>38</sup> State Letter at 4. See also State Letter at 1-3, reviewing the circumstances surrounding the transfer of the relevant orbital positions/frequency assignments from INTELSAT to Intelsat.

<sup>39</sup> We also propose an administrative condition requiring Intelsat, in filing any application seeking Commission approval to modify, assign, transfer or otherwise take action with respect to the relevant space station authorizations, to cite, in the narrative section of the relevant application, to the modification order we propose to issue under section 316. See *infra* ¶ 14.

<sup>40</sup> For example, when analyzing a transfer of control or assignment application in which foreign investment is involved, the Commission also considers any national security, law enforcement, foreign policy, or trade policy concerns raised by the Executive Branch. *Rules and Policies on Foreign Participation in the U.S.* (continued....)

Executive Branch on its interpretation of the foreign policy benefits of modifying the relevant licenses to promote the provisions of an international agreement to which the United States is a party. In this regard, the State Letter asserts that:

[...] when the commercial activities of the IGO INTELSAT were privatized, the decisions of the Assembly of Parties culminated years of painstaking analysis and negotiations among more than a hundred governments that balanced countless legal, financial, operational, public policy and diplomatic interests. The United States was proud to join the unanimous agreement of the Parties to adopt and implement this carefully balanced outcome. The foreign policy interests of the United States are advanced by our steady adherence to the commitments that we made at that time in the process of privatization. The United States remains a strong supporter of the ITSO Agreement and the principles embodied therein. The State Department, in consultation with NTIA, believes that these interests would be best served by an FCC decision imposing the two conditions proposed above on the FCC licenses to Intelsat LLC for the orbital locations and associated radio frequency assignments transferred to the United States Notifying Administration pursuant to the decisions of the Twenty-fifth Assembly of Parties.<sup>41</sup>

The State Letter asserts that the advancement of U.S. foreign policy interests will be achieved by adhering to the commitments made in the process of INTELSAT's privatization.<sup>42</sup> In referring to these commitments, the State Letter references Article XII(c) of the ITSO Agreement, which states that a party selected to act as Intelsat's Notifying Administration shall "authorize the use of [the relevant orbital slots and frequency assignments] by [Intelsat] so that the Core Principles [of global connectivity and coverage, lifeline connectivity, and non-discriminatory access] may be fulfilled" and "in the event that such use is no longer authorized, or [Intelsat] no longer requires such frequency assignments(s), cancel such

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*Telecommunications Market*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918, ¶ 59 (1997) (noting that, in general, the Commission has worked closely with the Executive Branch agencies to ensure that our actions and policies affecting international telecommunications do not impede or thwart the policies of the Executive Branch), *on reconsideration*, 15 FCC Rcd 18158 (2000); *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*, IB Docket No. 96-111, Report and Order, 12 FCC Rcd 24094, 24170, ¶ 179 (1997) (noting that the Commission will consider concerns raised by the Executive Branch as the Commission undertakes its own independent analysis of whether grant of a particular authorization is in the public interest). In this instance, the Intelsat space station licensee, Intelsat North America, is a U.S. subsidiary of a foreign entity, and the Commission previously has deferred to the Executive Branch in conditioning the transfer or assignment of various Intelsat licenses on national security conditions. *See, e.g., Intelsat-PanAmSat Order*, 21 FCC Rcd at 7392-94, ¶¶ 50-52.

<sup>41</sup> State Letter at 4-5. We note again that it is Intelsat North America, and not its parent company Intelsat LLC, that now holds the relevant space station licenses. *See supra* ¶ 2, note 7, and note 20. *See also* Public Notice, *supra* note 23, 21 FCC Rcd at 7924 n.3; Intelsat Opposition at 1 n.1; Intelsat Reply at 1 n.1 (all reflecting that Intelsat North America is the space station licensee).

<sup>42</sup> State Letter at 5. Commitments made towards INTELSAT's privatization had statutory support. Section 644(b) of Public Law 106-180, the Open-Market Reorganization for the Betterment of International Telecommunications Act (the ORBIT Act), 47 U.S.C. § 765c, which sought to ensure a pro-competitive privatization of INTELSAT, expressed the intent of Congress that "The President and the Commission shall take the action necessary to ensure that the United States remains the [International Telecommunication Union] notifying administration for the privatized INTELSAT's existing and future orbital slot registrations."



frequency assignment under the procedures of the ITU.”<sup>43</sup> The State Letter advises that the two proposed conditions will further ensure adherence to these commitments.<sup>44</sup> We are required, pursuant to section 316, to decide whether such conditions will promote the public interest, convenience, and necessity or result in fuller compliance with the provisions of the Act or of any treaty ratified by the United States.<sup>45</sup> In this case, based on the foreign policy analysis done by the State Department, we find that these conditions will promote the public interest, convenience and necessity by providing fuller compliance with the provisions of the ITSO Agreement to which the United States is a party.

11. We observe that these conditions would not change any other existing condition on the Intelsat North America licenses.<sup>46</sup> We emphasize that the proposed conditions are not intended to serve as an enforcement mechanism for the Public Services Agreement or in any way to modify the contractual relationship between Intelsat and ITSO.<sup>47</sup> Rather, consistent with the foreign policy reasons detailed in the State Letter, the proposed licensing conditions to the relevant licenses are intended to ensure compliance with the ITSO Agreement to which the United States is a party.

12. The State Letter recommends imposing the two conditions on the Intelsat licenses for "... the orbital locations and associated radio frequency assignments transferred to the United States Notifying Administration...."<sup>48</sup> We observe that four orbital locations licensed in 2000 currently are unused. They are 178 E.L., 177 E.L., 176 E.L., and 330.5 E.L. (29.5 W.L.). Should Intelsat file an application to license a space station at any of these locations, we would apply the proposed conditions to any grant of

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<sup>43</sup> State Letter at 2; ITSO Agreement, Art. XII(c).

<sup>44</sup> See, e.g., State Letter at 1 (advising that adoption of the two proposed conditions will promote the provisions of the ITSO Agreement, fulfillment of U.S. obligations under the ITSO Agreement, and fulfillment of U.S. foreign policy objectives). The State Letter states that the Commission satisfied the first Art. XII(c) obligation in 2000 by licensing the orbital locations and associated frequencies to Intelsat LLC. State Letter at 2. However, it further states that, in light of the clear expectation that the orbital locations/frequency assignments would be licensed so that Intelsat could fulfill the “core principles,” it is appropriate to grant the ITSO Director General’s first request by explicitly requiring Intelsat, as a condition for holding the subject licenses, to remain a signatory of the Public Services Agreement. *Id.* at 3. It also advises that, because the contingency of a possible Intelsat bankruptcy was not fully anticipated prior to INTELSAT’s privatization, that contingency now should be addressed by adding the proposed condition requiring any successor-in-interest to Intelsat to be a signatory of the Public Services Agreement, to ensure continuing compliance with the core principles even after any potential bankruptcy. State Letter at 4. The State Letter observes that there has been no occasion to invoke the second Art. XII(c) obligation. *Id.* at 2. We note that an existing condition applicable to the relevant licenses provides the basis for meeting the second Art. XII(c) obligation, should the occasion arise. See *Intelsat LLC Order*, 15 FCC Rcd at 15519, ¶ 159 (ordering cancellation of orbital locations and associated frequencies in event they no longer are assigned for use by Intelsat LLC or its successors).

<sup>45</sup> 47 U.S.C. § 316(a)(1).

<sup>46</sup> See, e.g., *Intelsat Licensing Order*, 15 FCC Rcd at 15517-20, ¶¶ (ordering clauses); *Intelsat LLC ORBIT Act Compliance Order*, 16 FCC Rcd 12280, 12303-04, ¶¶ 73-81 (2001) (same).

<sup>47</sup> See, e.g., *Intelsat-PanAmSat Order*, 21 FCC Rcd at 7401, ¶ 64 (“...any consideration of the type of relief ITSO seeks (that is, to condition existing Intelsat licenses) should be focused on the Intelsat satellites operating in orbital locations defined by the ITSO Agreement as part of the INTELSAT “common heritage” and used by Intelsat to implement the Public Services Agreement and fulfill Intelsat’s obligations under the ITSO Agreement.”).

<sup>48</sup> State Letter at 5.

such application. Appendix A to this Order lists the twenty-two spacecraft and the twenty-three orbital locations subject to the 2000 *Intelsat Licensing Order*.<sup>49</sup>

13. Pursuant to section 316(b) of the Communications Act, 47 U.S.C. § 316(b), and section 1.87(c) of the Commission's rules, 47 C.F.R. § 1.87(c), we afford Intelsat North America the opportunity to protest these proposed modifications as applied to any of the relevant satellites, orbital locations, and associated frequencies.

#### IV. ORDERING CLAUSES

14. Accordingly, IT IS PROPOSED that, pursuant to section 316(a) of the Communications Act, 47 U.S.C. § 316(a), each of Intelsat North America's space station authorizations, call signs S2400, S2394, S2389, S2396, S2397, S2410, S2406, S2408, S2388, S2401, S2402, S2414, S2405, S2399, S2409, S2411, S2391, S2407, S2395, S2398, and S2404, SHALL BE MODIFIED by adding the following conditions:

IT IS ORDERED that Intelsat SHALL REMAIN A SIGNATORY to the Public Services Agreement between Intelsat and the International Telecommunications Satellite Organization (ITSO) that was approved by the ITSO Twenty-Fifth Assembly of Parties, as amended;

IT IS FURTHER ORDERED that no entity shall be considered a successor-in-interest to Intelsat under the ITSO Agreement for licensing purposes unless it has undertaken to perform the obligations of the Public Services Agreement approved by the Twenty-fifth Assembly of Parties, as amended.

IT IS FURTHER ORDERED that Intelsat, in filing any application seeking Commission approval to modify, assign, transfer or otherwise take action with respect to this authorization, SHALL CITE TO this modification order in the narrative section of the relevant application.

15. IT IS ORDERED that, pursuant to section 1.87(a) of the Commission's rules, 47 C.F.R. § 1.87(a), Intelsat North America may file, no later than thirty (30) days from the release date of this Order, a written statement showing with particularity why its licenses should not be modified as proposed in this Order.

16. If the licensee raises a substantial and material question of fact, a hearing may be required to resolve such question of fact pursuant to section 1.87 of the Commission's rules.<sup>50</sup> Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statements are filed by thirty (30) days from the release date of this Order, the licensee will be deemed to have consented to a modification as proposed in this Order and a final order will be issued if the Commission finds a modification to be in the public interest.

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<sup>49</sup> A twenty-third satellite, IS-804, also transferred to Intelsat LLC in 2000, but subsequently experienced an in-orbit anomaly and is no longer operating.

<sup>50</sup> 47 C.F.R. § 1.87.

17. IT IS FURTHER ORDERED that a copy of this Order Proposing Modification SHALL BE SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to:

Intelsat North America LLC  
c/o Kalpak Gude  
Vice President & Deputy General Counsel  
Susan H. Crandall  
Assistant General Counsel  
Intelsat Corporation  
3400 International Drive, N.W.  
Washington, D.C. 20008

with a copy to each of the following:

Phillip Spector  
Executive Vice President and  
General Counsel  
Intelsat Holdings, Ltd.  
Wellesley House North, 2<sup>nd</sup> Floor  
90 Pitts Bay Road  
Pembroke, HM 08, Bermuda

and

Bert W. Rein  
Carl R. Frank  
Counsel to Intelsat North America LLC  
Wiley Rein LLP  
1776 K Street, N.W.  
Washington, D.C. 20006.

18. This action is taken under delegated authority pursuant to sections 0.51 and 0.261 of the Commission's rules, 47 C.F.R. §§ 0.51, 0.261.

FEDERAL COMMUNICATIONS COMMISSION

Helen Domenici, Chief  
International Bureau

**Appendix A**  
**Authorizations and Orbital Locations Subject to the 2000 *Intelsat Licensing Order***

Satellite (Call Sign)	Orbital Location
IS-701 (S2400)	180° E.L.
-	178° E.L.
-	177° E.L.
-	176° E.L.
IS-605 (S2394)	174° E.L.
IS-602 (S2389)	157° E.L.
IS-709 (S2396) <sup>51</sup>	85° E.L.
IS-704 (S2397)	66° E.L.
IS-906 (S2410), IS-601 <sup>52</sup>	64° E.L.
IS-902 (S2406)	62° E.L.
IS-904 (S2408)	60° E.L.
IS-702 (S2388) <sup>53</sup>	-
IS-706 (S2401) <sup>54</sup>	-
IS-802 (S2402) <sup>55</sup>	33° E.L.
IS-10-02 (S2414)	359° E.L. (1° W.L.)
IS-901 (S2405)	342° E.L. (18° W.L.)
IS-603 (S2399) <sup>56</sup>	340° E.L. (20° W.L.)
IS-905 (S2409)	335.5° E.L. (24.5° W.L.)
IS-907 (S2411)	332.5° E.L. (27.5° W.L.)
-	330.5° E.L. (29.5° W.L.)
IS-801 (S2391)	328.5° E.L. (31.5° W.L.)
IS-903 (S2407)	325.5° E.L. (34.5° W.L.)
IS-705 (S2395)	310° E.L. (50° W.L.)
IS-707 (S2398)	307° E.L. (53° W.L.)
IS-805 (S2404)	304.5° E.L. (55.5° W.L.)

<sup>51</sup> IS-709 is authorized to operate at 85.15° E.L.

<sup>52</sup> The authorization for IS-601 was terminated effective Nov. 3, 2007. DA 07-4482. IS-906 continues to operate at 64.15° E.L.

<sup>53</sup> IS-702 currently is located at 54.85 E.L., which is not one of the twenty-three orbital locations authorized in 2000.

<sup>54</sup> IS-706 currently is located at 50.25 E.L., which is not one of the twenty-three orbital locations authorized in 2000.

<sup>55</sup> IS-802 is authorized to operate at 32.9° E.L.

<sup>56</sup> IS-603 is authorized to operate at 19.95° W.L.