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10 July 2006

Marlene H. Dortch, Secretary
U.S. Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Section 316 Petition of the
International Telecommunications Satellite Organization (ITSO)
IB Docket No. 06-___

Dear Ms. Dortch:

Please accept for filing the attached Petition of the International Telecommunications Satellite Organization (ITSO) under Section 316 of the Act to modify certain space station authorizations held by Intelsat, LLC. This filing responds to the Commission's invitation to file such a Petition, contained in its June 19, 2006 order in IB Docket 05-290 (FCC 06-85, at paragraph 65).

Please contact the undersigned with any questions.

Sincerely,

A handwritten signature in black ink that reads "Julie A. Reese". The signature is written in a cursive, flowing style.

cc (w/ attachments): Chairman Kevin J. Martin
Commissioner Jonathan S. Adelstein
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Deborah Taylor Tate
John Giusti, Acting Bureau Chief, International Bureau
Jim Ball, Chief, Policy Division, International Bureau

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re:

Modification of Intelsat, LLC Space Station
Authorizations Pursuant to Communications
Act Section 316

IB Docket No. 06-__

**PETITION OF THE INTERNATIONAL TELECOMMUNICATIONS
SATELLITE ORGANIZATION (ITSO)**

July 10, 2006

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**PETITION OF THE INTERNATIONAL TELECOMMUNICATIONS
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I. SUMMARY

Pursuant to the invitation extended in the Commission's *Intelsat-PanAmSat Transfer of Control Order*,¹ (hereafter "*PanAmSat Transfer Order*") the International Satellite Telecommunications Organization ("ITSO") hereby respectfully petitions the Commission under section 316 of the Communications Act to modify Intelsat, LLC's² satellite licenses for use of the orbital locations and associated radio frequency assignments that constitute the ITSO Parties' Common Heritage. The ITSO Parties' Common Heritage assets are governed by the ITSO treaty Agreement (ITSO Agreement), a "treaty" to which the United States is a party. ITSO's Parties, the 148 member States of the Organization, acquired rights to these Common Heritage assets prior to the

¹ *Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp.*, IB Docket No. 05-290, FCC 06-85, at para. 65 (June 19, 2006).

² Intelsat, LLC is the U.S. licensee for satellites operated by Intelsat, Ltd. of Bermuda, which uses the ITSO Parties' Common Heritage orbital allocations that are the subject of this petition.

restructuring of the Organization in July 2001, and retained interests in these Common Heritage assets in accordance with the ITSO Agreement. Under section 316, a station license may be modified by the Commission as in the public interest “if in the judgment of the Commission ... the provisions ... of any treaty ratified by the United States will be more fully complied with.”

The license modifications requested by ITSO are intended to assure adherence by Intelsat, or any successor or subsequent satellite operator using the Parties’ Common Heritage assets, to the “Core Principles” established by the ITSO Agreement. These principles include: (i) maintaining global connectivity and global coverage; (ii) serving lifeline connectivity customers; and (iii) providing non-discriminatory access to the Intelsat system. The importance of these license modifications is high-lighted by Intelsat’s debt burden and the risk that this could create for the continuity of the Core Principles and the Parties’ interest in the Common Heritage orbital locations, should a market decline result in Intelsat’s bankruptcy or liquidation. Conversely, ITSO’s proposed license modifications for Intelsat’s use of the Parties’ Common Heritage will not have a significant impact on Intelsat unless and until Intelsat’s financial situation jeopardizes the Parties’ interests in the Common Heritage assets and/or Intelsat’s ability to meet its obligations under the Core Principles.

By filing this Petition, ITSO requests that the Commission, in accordance with the U.S. role as the primary “Notifying Administration” and licensing jurisdiction for the Parties’ Common Heritage assets, 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.

Approval of the requested safeguards under section 316 will fulfill the primary purpose of privatization, which was to ensure the *long-term* protection of the Core Principles that secures the provision of international public telecommunications services to all countries of the world. The U.S. extensively uses Intelsat capacity to ensure international connections with many foreign countries, and therefore, the U.S. would be among those countries most critically affected by any interruption of global connectivity and global coverage.

II. ITSO AGREEMENT ESTABLISHES A U.S. TREATY OBLIGATION TO ENSURE INTELSAT’S COMPLIANCE WITH “CORE PRINCIPLES”

On July 18, 2001 the satellite fleet and contractual backlog of ITSO (formerly known as “INTELSAT”) were transferred to Intelsat, Ltd., through its subsidiaries.³ As part of the privatization process, ITSO was tasked to ensure the fulfillment of the public service Core Principles, and to protect the Parties’ interests in the Common Heritage assets.⁴ Also as part of this process, the United States was designated by a decision of the Twenty-Fifth Assembly of Parties (AP-25) in November 2000 as the primary “Notifying

³ The Commission’s *PanAmSat Transfer Order* states, e.g., paragraph 53, that the member States “*privatized INTELSAT by transferring its assets to a commercial corporation, Intelsat, Ltd.*” In fact, ITSO retained certain assets, including ITSO annuity funds, non-novated customer contracts, etc.

⁴ See Agreement Relating to the International Telecommunications Satellite Organization, “INTELSAT,” 23 U.S.T. 3813; TIAS No. 7532, (February 12, 1973). Amendments to the Agreement entered into force on November 30, 2004 in accordance with Article XVII, paragraph (e). **The ITSO Agreement is attached to this Petition as Exhibit I.**

Administration” and licensing jurisdiction for the Parties’ Common Heritage orbital locations and associated radio frequency assignments in the C- and Ku-bands.⁵

Selection of the United States as the primary Notifying Administration was based on an international competition among ITSO’s member States to become the licensing jurisdiction for the Parties’ Common Heritage. INTELSAT’s Board of Governors reviewed several “finalists” prior to privatization, including France, Norway, the United Kingdom, and the United States. The Board recommended the United States for the C- and Ku-band registrations, based on the U.S. commitment to support the Core Principles and protect the Common Heritage assets. The Commission emphasized the importance to the Assembly of Parties of the licensing jurisdiction’s assurance of compliance with the core public service principles:

“INTELSAT has decided that certain ‘core principles’ of its current mission must be retained after privatization. ... *The final Assembly decision to privatize INTELSAT will depend on receiving assurances from the prospective licensing jurisdictions that the privatized entity will continue to operate in accordance with these principles.*”⁶

Subsequently, AP-25 ratified the Board of Governors’ recommendation to designate the United States as the primary Notifying Administration and licensing jurisdiction.⁷

Prior to the selection of the United States as the Notifying Administration at AP-25 in November 2000, the Commission in August 2000⁸ had issued licenses to Intelsat to *use* the Parties’ Common Heritage orbital locations; however, these licenses do not

⁵ The Commission has identified these orbital locations in the *PanAmSat Transfer Order*, footnote 166.

⁶ *Intelsat, LLC*, 15 FCC Record 15460, para. 25 (emphasis added, footnote omitted).

⁷ AP-25-3E, para. 29.

⁸ Memorandum Opinion and Authorization, FCC 00-287, released August 8, 2000, *in the matter of the Application of Intelsat LLC for Authority to Operate, and Further Construct, Launch, and Operate C-band and Ku-band Satellites that form a Global Communication System in Geostationary Orbit*.

reflect the obligation of the U.S., as the Notifying Administration under Article XII of the ITSO Agreement. **Therefore, there is a discrepancy that needs to be corrected between the Commission licenses issued in August 2000, and the obligations of the U.S. as the Notifying Administration adopted by AP-25 in November 2000 and incorporated into the ITSO Agreement.**

The general history of INTELSAT's formation and its privatization previously has been summarized by the Commission.⁹ The privatization of INTELSAT's operating assets and the reorganization of the INTELSAT IGO that created the ITSO oversight mechanism are the products of a treaty to which the United States is a party. As set out in the preamble to the current ITSO (amended INTELSAT) Agreement:

[The State Parties to this Agreement] *Intending that the Company will honor the Core Principles set forth in Article III of this Agreement and will provide, on a commercial basis, the space segment required for international public telecommunications services of high quality and reliability,*

Having determined that there is a need for an intergovernmental supervisory organization, to which any State member of the United Nations or the International Telecommunication Union may become a Party, to ensure that the Company fulfills the Core Principles on a continuing basis ... (emphasis added).

Under the ITSO Agreement, the "Core Principles" of the post-privatization Intelsat are defined in Article III(b) as being to: "(i) maintain global connectivity and global coverage; (ii) serve its lifeline connectivity customers; and (iii) provide non-discriminatory access to the Company's system. Three separate mechanisms exist to ensure post-privatization Intelsat's compliance with the Core Principles:

- (a) the actions of the **Parties**, collectively through the Assembly of Parties, and individually through their sovereign treaty obligations, to ensure Intelsat's compliance with the Core Principles;

⁹ See, *Intelsat, LLC*, 15 FCC Record 15460, paras. 5-10 (2000); 16 FCC Record 12280, paras. 5-10 (May 29, 2001).

- (b) the actions of the **Notifying Administrations** for the Parties' Common Heritage orbital locations, on behalf of all Parties, to ensure compliance with the Core Principles; and
- (c) a **Public Services Agreement** between ITSO and Intelsat incorporating the Core Principles as contractual Public Service Obligations (PSOs),¹⁰ with respect to which ITSO has oversight responsibilities. Intelsat's continued fulfillment of these PSOs is the basis on which ITSO conditionally transferred the assets (e.g., satellites, \$5.8 billion backlog, etc.).

The Commission's *PanAmSat Transfer Order* addressed the Commission's role with respect to the Public Services Agreement and existing conditions on Intelsat's satellite licenses for Common Heritage orbital locations.¹¹ This Petition is based on the Commission's invitation to focus on actions that would "promote the provisions of the ITSO Agreement and U.S. fulfillment of obligations under the ITSO Agreement."¹² This Petition, therefore, focuses on the first two enforcement mechanisms (a) and (b) above.

The Parties' oversight responsibilities. The provisions of the Agreement set out the Parties' role in ensuring Intelsat's compliance with the Core Principles.

- Article IX establishes the Assembly of Parties, which is composed of all State Parties to the Agreement, as the "principal organ of ITSO."¹³ Article IX(c) in turn, directs that the Assembly "shall ... in particular ensure that the Company provides, on commercial basis, international telecommunications services in order to" fulfill the Core Principles.
- Article XI addresses the Rights and Obligations of Parties. Article XI(a) directs that Parties shall "exercise their rights and meet their obligations" under the Agreement "in a manner fully consistent with and in furtherance of the principles stated in the Preamble [and] the Core Principles in Article III."

¹⁰ It should be noted that the existing Public Services Agreement was signed prior to the date of privatization on behalf of *both parties by the same individual* in his capacity as the then-Director General of INTELSAT (on behalf of post-privatization ITSO), and as chief executive-designate of post-privatization Intelsat, Ltd. (on behalf of that company).

¹¹ See, e.g., paragraphs 63, 64.

¹² Paragraph 65.

¹³ Article VIII(b) establishes "an executive organ, headed by the Director General, responsible to the Assembly of Parties."

The Director General also has oversight responsibilities for the Parties' Common Heritage. Specifically, the Director General is tasked, under Article X(j) of the ITSO Agreement, to consider on behalf of ITSO all issues arising from the Parties' Common Heritage and shall communicate the views of ITSO's Parties to the Notifying Administrations.

The Notifying Administration's oversight responsibilities. Article XII of the ITSO Agreement addresses the Parties' Common Heritage and authorizes the Assembly of Parties to designate one or more Parties as the ITU Notifying Administration for the Parties' Common Heritage orbital positions. Article XII imposes several obligations on a Notifying Administration. Consequently, a Party selected as a Notifying Administration takes on certain responsibilities in order to assure not only the fulfillment of the Core Principles,¹⁴ but to work with the Director General on potential activities to expand access to lifeline countries¹⁵ and to consult with the ITU regarding the satellite communications needs of lifeline users.¹⁶ In so doing, a Notifying Administration serves as trustee for the orbital locations for which they have been selected as the Notifying Administration, and becomes directly responsible to ITSO's Parties for ensuring the continued fulfillment of the Core Principles.

The United States recognized its obligations in accepting the nomination as the primary Notifying Administration in 2000 at AP-25 as the result of the competitive selection process. At AP-25, the representative of the Party of the United States stated that:

¹⁴ ITSO Agreement, Article XII(e)(iv).

¹⁵ Id. at Article XII(e)(iii).

¹⁶ Id. at Article XII(e)(v).

“... the United States is honored to be selected along with the United Kingdom as the notifying administration for the privatized Intelsat *and the trustee of common heritage of the INTELSAT Parties in terms of locations and frequency assignments. His Party fully appreciates the trust that has been placed with it and it does not take this responsibility lightly.* In accepting this important responsibility, he concluded, we look forward to working together with the ITSO, with Intelsat Ltd. and *to achieve the Assembly’s common vision of a healthy, strong Intelsat that can best fulfill its core principles.*”¹⁷

At the Twenty-Ninth Assembly of Parties (AP-29) meeting in February 2006, the Assembly of Parties decided to call upon the United States to act in its role as the primary Notifying Administration and trustee of the assigned Common Heritage orbital locations, by requesting the Commission to require appropriate conditions safeguarding Intelsat’s adherence to Core Principles as part of the PanAmSat approval process. The Commission noted the Assembly’s request,¹⁸ but deferred consideration of any such conditions to this section 316 proceeding.¹⁹

¹⁷ AP-25-4, paragraph 415, emphasis added.

¹⁸ The *PanAmSat Transfer Order* stated, at note 175:

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

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

¹⁹ *PanAmSat Transfer Order*, at paragraphs 62-66.

III. COMMISSION IS BOUND BY U.S. RESPONSIBILITIES AS A NOTIFYING ADMINISTRATION.

The Commission is bound by the “trustee” obligations of the United States as the Notifying Administration, both as a matter of international and domestic law, and based on the Commission’s own representations to AP-25 that were determinative of the Assembly’s decision to select the United States as a Notifying Administration in a competitive selection process.²⁰ First, treaty obligations are obligations of the United States as a State, and the organizational structure of a States’ government are internal matters. Independent administrative authorities, such as the Commission, are components of the States which establish them and draw their authority from those States. Consequently, although they may have independent status within the internal framework of the State in question, independent agencies are bound by all international commitments of the State of which they are a part.

Second, the ORBIT Act itself recognizes the unitary nature of the United States’ interest in the privatization of INTELSAT, since section 644(b) of the Communications Satellite Act of 1962, as amended by the ORBIT Act, is addressed to both the U.S.’ executive branch and the Commission: “The President and the Commission shall take the action [sic] necessary to ensure that the United States *remains* the ITU notifying administration for the privatized INTELSAT’s existing and future orbital slot registrations.” (Emphasis added.) Thus, the United States’ recognition, at AP-25, that

²⁰ In the *PanAmSat Transfer Order*, at paragraph 65, the Commission implied that it would consider ITSO’s section 316 petition only if advised by the State Department that such consideration “would promote the provisions of the ITSO Agreement.” While U.S. government deliberative processes are an internal U.S. matter (but whose outcome should be articulated, see *Order* at note 176), for reasons set out in this section, the Commission is directly bound by the ITSO Agreement and the U.S.’ obligations as Notifying Administration for the Parties’ Common Heritage orbital locations.

United States, as a Notifying Administration, would serve as “trustee” on behalf of the Parties with respect to their Common Heritage orbital locations is—under the ORBIT Act—as binding on the Commission as on any executive branch department.

Lastly, the formal actions of the Commission, itself, were central to the selection of the United States as Notifying Administration. As noted above, the approval of the United States as the primary Notifying Administration at AP-25 in November 2000, after a competitive selection process among ITSO’s member States, was based on the U.S. commitment to support the Core Principles and protect the Common Heritage assets.

IV. INSOLVENCY RISK ASSOCIATED WITH POST-MERGER INTELSAT IS REAL AND NOT “SPECULATIVE”

In the *PanAmSat Transfer Order*, the Commission rejected ITSO’s warnings that the increase in Intelsat debt associated with the PanAmSat acquisition could place Intelsat’s solvency at significant risk, which could lead to avoidance of Intelsat’s contractual obligations under the ITSO-Intelsat Public Services Agreement or under Intelsat’s Lifeline Connectivity Obligation contracts in eligible markets:

In this case, ITSO has not substantiated for the record now before us that obligations set out in the Public Services Agreement between ITSO and Intelsat factually are at significant risk. The record does not demonstrate that Intelsat, as a result of the merger, is likely to enter bankruptcy or default on its contractual obligations. Although bankruptcy can be a risk in a business venture, ITSO’s concern remains largely speculative based upon the record before us. *PanAmSat Transfer Order*, at paragraph 63.

In reviewing the Commission’s decision, ITSO would like to highlight that, what might be perceived as speculative could turn into a tragic event following recent concrete examples. On Friday, August 26, 2005, it was “speculative” that Hurricane Katrina, then in the eastern Gulf of Mexico, would strike New Orleans. What was not speculative was that there was a significant risk that it would do so, and if it did strike New Orleans, the

results could be catastrophic. Similarly, it is presently unknowable whether Intelsat will, in fact, default, in whole or part, on its financial or contractual obligations, or in light of its credit agreements, fail to have sufficient access to capital to replace satellites currently occupying Common Heritage orbital positions as they reach the end of their service lives. What is not contestable is that there is a significant—and growing—risk of such adverse outcomes, and that such financial difficulties could have a catastrophic effect on Intelsat’s ability to fulfill the Core Principles and ITSO’s ability to protect the Parties’ Common Heritage assets. What also is not speculative is that it is better to prepare for potentially catastrophic situations prior to their arrival, as opposed to improvising solutions once they are at hand. This is particularly critical in the event of bankruptcy, where protections need to be in place at least 90 days prior to any bankruptcy filing to be effective.

In its Reply Comments in the PanAmSat proceeding, ITSO observed that: “Moody’s Investors Service *already* rates several unsecured Intelsat, Ltd. obligations as Caa1. ... According to Moody’s, ‘Obligations rated Caa are judged to be of poor standing and are subject to very high credit risk;’ the PanAmSat acquisition would increase Intelsat’s debt and thus the level of risk to unsecured/subordinated obligations.”²¹ ITSO thus suggested the Commission should consider Intelsat’s Public Service Obligations to be “rated” at no higher level than existing, unsecured debt, *i.e.*, no higher than Caa, a level of risk that would be exacerbated by the debt incurred in conjunction with the PanAmSat acquisition.

²¹ ITSO *Reply Comments*, IB Docket No. 05-290, at 7 (December 6, 2005, footnotes omitted).

Events surrounding the financing of the PanAmSat acquisition have underscored ITSO's concerns. For example, on June 9, 2006, Moody's did, in fact, downgrade senior unsecured Intelsat, Ltd. debt from Caa1 to Caa2 (while assigning a higher, but still speculative, B1 rating to secured bank credit facilities).²² Also on June 9, 2006, Standard & Poor's released a rating of B for certain debt associated with the PanAmSat transaction. According to S&P, "An obligation rated 'B' is more vulnerable to nonpayment than obligations rated 'BB', but the obligor currently has the capacity to meet its financial commitment on the obligation. Adverse business, financial, or economic conditions will likely impair the obligor's capacity or willingness to meet its financial commitment on the obligation." Consistent with the rating, S&P noted that the benefit of Intelsat's cash flow from long-term satellite capacity leases was counterbalanced by other risk factors:

The ratings on the combined Intelsat and PanAmSat primarily reflect *high financial risk* from acquisition-related debt and a demonstrated shareholder-oriented financial policy. Although the company has indicated it will refrain from shareholder distributions for one year following the transaction, *the company's historical financial policy suggests that it may make substantial shareholder distributions over the medium term.* Other concerns include mature industry growth prospects, declining demand for point-to-point satellite applications, and modest risk of satellite failure.²³

Events subsequent to the two agencies' June 9, 2006 ratings have further heightened ITSO's concerns. For example, on June 19, 2006 it was reported that Intelsat experienced a \$600 million shortfall in expected bond financing for the PanAmSat merger, and a significant portion of the bonds sold were at an interest rate of 11.25 percent, "a quarter of a percentage point more than the top end of the range bankers

²² See www.moodys.com.

²³ **Standard & Poor's**, "Intelsat BB- Corporate Rating Affirmed" (Press Release, June 9, 2006, emphasis added).

originally estimated.”²⁴ Indeed, the capital markets have not responded favorably to the Intelsat debt offerings associated with the PanAmSat acquisition: according to press reports, these Intelsat offerings experienced “disappointing performances in the secondary market.”²⁵ The \$600 million gap is to be made up by bank bridge loans that will have to be refinanced in the near term.

Of course, the increased cash flow needed to support debt service at higher-than-expected interest rates reduces the post-interest cash flow available to support Intelsat’s operations. The importance of these license modifications is high-lighted by Intelsat’s debt burden of \$11.4 billion, which is eight times (8x) its earnings before interest, taxes, depreciation and amortization (EBITDA),²⁶ and the risk (as confirmed by ITSO’s legal advisor²⁷) that this could create for the continuity of the Core Principles and the Parties’ interest in the Common Heritage orbital locations, should a market decline result in Intelsat’s bankruptcy or liquidation. Intelsat will pay approximately \$1 billion annually to service its debt obligations, which represents 53% of the 2005 combined Intelsat / PanAmSat revenues.²⁸ Should the resulting “very high financial risk” (Moody’s Caa definition) associated with Intelsat’s high debt level and expected distributions to shareholders in fact “breach the levees” that are critical to ensuring Intelsat’s liquidity, the result could be catastrophic for the Core Principles and the Parties’ Common Heritage

²⁴ **Bloomberg.com**, “Intelsat Reduces Bond Sale by \$600 Million to \$2.9 billion (Update 1)” (June 19, 2006).

²⁵ See, “In Junk Deals, Buyers Calling the Shots,” *Wall Street Journal*, at C5 (June 28, 2006).

²⁶ See, **Satellite Finance**, 6 July 2006.

²⁷ See, “*Legal Opinion of Kirkpatrick & Lockhart Nicholson Graham LLP on the Risk of U.S. Bankruptcy Laws to the Continuity of Public Service Obligations*,” submitted in IB Docket 05-290 by the U.S. Department of State (March 7, 2006).

²⁸ Intelsat, Ltd. 10-K Report (2005 Annual Report), U.S. SEC (April 17, 2006).

assets, and could include: (a) elimination or reduction of the financial and/or technical capacity necessary to support global coverage/global connectivity obligations;²⁹ (b) potential avoidance of Public Service Obligations, including Lifeline Connectivity commitments, in bankruptcy/insolvency proceedings; (c) sale of existing satellites using the Parties' Common Heritage orbital locations to entities not subject to the Core Principles as a means of raising cash for Intelsat or otherwise satisfying lender requirements; and/or (d) commercial transactions that involve the Parties' Common Heritage assets.

Moreover, recent developments in the broader market for “junk” debt used by buyout firms heighten the risk of a rapid, adverse outcome. “At some point, the current conditions will turn ugly as higher interest rates and slower growth start to pinch debt-laden companies. The wizardry that has gone into creating these new structures means there will be little warning when the turn comes. ... All this means that when defaults come, they will come suddenly. That is because there are so many layers of debt, compared with previous cycles.”³⁰ Also, according to the head of Standard & Poor's Leveraged Commentary and Data Unit, “private-equity firms have taken a lot of cash out of their portfolio companies while putting more debt on the balance sheet, leaving less for creditors when these companies finally hit the wall.”³¹

²⁹ For example, 16 of Intelsat's pre-PanAmSat and Loral acquisition fleet of 25 satellites will reach their End of Orbital Design Life by 2010. Intelsat, Ltd. 20-F Report, U.S. SEC, at 35 (March 15, 2005).

³⁰ “High-Risk Debt Still Has Allure for Buyout Deals,” *Wall Street Journal*, at C1 (June 13, 2006).

³¹ Quoting Steve Miller, head of Standard & Poor's Leveraged Commentary and Data Unit, in *Wall Street Journal*, at C1 (June 13, 2006). Intelsat's private equity investors reported to the U.S. SEC that they have withdrawn two dividends in 2005, since acquiring Intelsat in January 2005, of \$504.7 million, plus an additional \$71.5 million in

Fortunately, unlike remedies associated with the potential landfall of a hurricane, the modifications that ITSO requests to Intelsat licenses neither generate a requirement for current expenditures nor cause disruption.

V. COMMISSION SHOULD USE ITS SECTION 316 AUTHORITY TO ADOPT APPROPRIATE LICENSE MODIFICATIONS AS A CONDITION OF INTELSAT'S USE OF PARTIES' COMMON HERITAGE ORBITAL LOCATIONS.

In its *PanAmSat Transfer Order*, the Commission invited ITSO to petition the Commission under section 316, a process in which it “could consider ... a request by ITSO to impose appropriate conditions on Intelsat satellites operating with former INTELSAT frequency assignments and orbital slots...”³² As set out in Section II above, the United States has an obligation to the other Parties, in its capacity as the selected primary Notifying Administration, to ensure that Intelsat’s use of the Parties’ Common Heritage orbital locations remains in accord with the Core Principles. This obligation is separate from the contractual arrangement, under the Public Services Agreement, between ITSO and Intelsat. As set out in Section III above, this obligation falls directly on the Commission both under international law, and under section 644(b) of the ORBIT Act. Ensuring the fulfillment of these ITSO Agreement responsibilities falls squarely within the purposes of section 316.

2005 in management fees (including a \$21.5 million annual “monitoring fee” and an additional \$50 million “transaction and advisory fee”). Intelsat, Ltd. 10-K Report (2005 Annual Report), U.S. SEC, at 109-110 and F-34, (April 17, 2006).

³² *PanAmSat Transfer Order*, paragraph 65.

ITSO believes that three³³ modifications to Intelsat, LLC's³⁴ fixed satellite service (FSS) space station licenses using the ITSO Parties' Common Heritage orbital locations,³⁵ would ensure that the obligations imposed by the ITSO Agreement on a Notifying Administration are more fully complied with. As the Commission noted in its *PanAmSat Transfer Order*,³⁶ the Twenty-Ninth meeting of the Assembly of Parties (AP-29)³⁷ requested that the Commission take steps in approving the PanAmSat acquisition to protect Intelsat's ability to fulfill the Core Principles in case of its bankruptcy or default. Since AP-29, ITSO has sought to refine the Assembly's recommendations, taking into consideration the legal advice of its bankruptcy counsel.³⁸ Based on these analyses, ITSO requests that the Commission should:

1. Ensure that the Commission's licenses to Intelsat are linked to the Core Principles;
2. Ensure 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. Require 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)

³³ In the PanAmSat acquisition proceeding, ITSO also had requested that the Commission condition approval of that transaction on Intelsat reinstatement of its Bye-Law number 2 relating to ITSO and to Intelsat's Public Service Obligations. Intelsat subsequently committed to making this change during Intelsat's presentation to the ITSO member States during AP-29.

³⁴ Intelsat, LLC is the U.S. licensee for satellites operated by Intelsat, Ltd. of Bermuda, using orbital allocations that are the subject of this petition.

³⁵ See *PanAmSat Transfer Order*, footnote 166.

³⁶ At footnote 175.

³⁷ AP-29 was held on January 30 – February 2, 2006.

³⁸ The Deputy United States Coordinator, International Communications and Information Policy, conveyed to the Commission the analysis and recommendations of ITSO's bankruptcy counsel. See *PanAmSat Transfer Order*, footnote 174.

contracts. This protection would include the replacement of a sufficient number of satellites for the ongoing achievement of these goals.

With respect to the **first requested license modification**, there is a discrepancy that needs to be corrected between the Commission licenses issued in August 2000, and the obligations of the U.S. as the Notifying Administration and the Core Principles, which were adopted by AP-25 in November 2000, which were the primary basis for privatization in July 2001, and which were incorporated into the ITSO Agreement that was adopted by AP-25 in November 2000 and formally ratified in September 2004.

With respect to the **second requested license modification**, the nature of an Intelsat “successor” was not defined in the privatization agreements, nor was the relationship between an Intelsat successor and the Public Services Agreement specified.³⁹ Given the “very high financial risk” associated with Intelsat’s operation, it is incumbent on the Commission to clarify the definition of an Intelsat successor *now*, and not wait until an Intelsat bankruptcy or default. The Commission also needs to ensure that any satellite operator using any of the Parties’ Common Heritage assets, is bound by the Core Principles in the ITSO Agreement through the execution of a public services agreement

³⁹ In *PanAmSat Transfer Order* paragraph 60, the Commission also stated that, “In 2000, the Commission neither was requested to condition nor did it condition Intelsat’s license on fulfillment of Intelsat’s commitments under the Public Services Agreement subsequently entered into by ITSO and Intelsat.” If helpful to the Commission’s decisional process with respect to the current Petition, **ITSO notes that the license transfer application was executed on behalf of ITSO by the existing INTELSAT Management, which also was designated to become the management of Intelsat, Ltd. upon privatization.** As noted in footnote 12, the prospective CEO of Intelsat, Ltd. management simultaneously signed certain privatization documents (e.g., the Public Services Agreement) on behalf of ITSO *and* on behalf of Intelsat, Ltd. The current ITSO structure and personnel did not begin operation until the date of privatization, July 19, 2001. Further, the removal of the ORBIT Act’s IPO requirement by Public Law 108-371 (October 25, 2004), permitting the purchase of Intelsat by a single investment group, was not in the Parties’ contemplation in 2000.

with ITSO.⁴⁰ This is intended to cover the wide spectrum of transactions that could be employed to maximize equity returns or provide liquidity for Intelsat shareholders and/or creditors at a time of financial difficulty. It is also intended to reflect the possible desire of Intelsat and other parties to rationalize the Intelsat satellite fleet as future business conditions may warrant.⁴¹

The **third requested modification** addresses the possibility that prospective Intelsat financial difficulties, whether or not resulting in bankruptcy or default, could leave Intelsat without sufficient resources to enable it to procure and operate replacement satellites necessary to meet the Core Principles of “global coverage” and “global connectivity.” ITSO estimates that at least five strategically-placed satellites are necessary to maintain a *minimum* level of global coverage and global connectivity to preserve the Core Principles. These five satellites would amount to less than 10 percent of Intelsat’s 53-satellite fleet, resulting from the PanAmSat acquisition.

⁴⁰ As the Commission noted in its *PanAmSat Transfer Order*: “[W]ith respect to the orbital slots that were to be transferred to the U.S. national registry, the August, 2000 *Intelsat Licensing Order* provided that, in the event any of these orbital slots no longer was assigned for use by Intelsat or its successors, such orbital location “shall be cancelled in accordance with procedures of the International Telecommunications Union.” *PanAmSat Transfer Order*, paragraph 60. However, the term “use” is not defined, and Intelsat’s “use” could potentially include transactions that may impact a portion of a Common Heritage frequency assignment, including modification, suppression or cancellation of the Parties’ Common Heritage frequency assignments resulting from intersystem coordinations, decisions of the Notifying Administrations, or agreements between Intelsat and third parties. *See, for example*, “*New Skies agreed not to bring into use a satellite at its 120.8 degrees west orbital position in order to ensure the long term, interference-free operation of Intelsat’s IA-13 satellite, in exchange for a one-time cash payment from INTELSAT to New Skies of US\$32 million.*” *New Skies Satellites N.V. First Quarter 2004 Financial Results*, 5 May 2004, (*emphasis added*).

⁴¹ *See, for example*, the statement by SES Global’s CFO, “SES was interested in looking at any of the Intelsat or PanAmSat orbital assets that might come up for sale once the deal closes.” “*2005: What a Spectacular Year for Europe!*,” by Chris Forrester, **SATMAGAZINE.com** (December 2005).

ITSO requests that the Commission modify each Intelsat satellite license using the Parties' Common Heritage orbital positions to require that Intelsat place liens on a sufficient number of those satellites to ensure, in a manner and number satisfactory to ITSO, that ITSO can obtain control of, and finance replacements for, five "global coverage and connectivity" satellites, if conditions warrant such actions. ITSO will work with the Commission during the course of this section 316 proceeding to elaborate the detailed elements of this proposal.

The ITSO extraordinary Assembly of Parties meeting, in Paris on July 19-21, 2006, will consider issues arising from the need to protect the Core Principles following Intelsat's acquisition of PanAmSat, as well as matters relating to Intelsat's compliance with its Public Service Obligations. ITSO will ensure that the Commission is advised of the results of this Assembly.

VI. CONCLUSION

For the reasons set out above, the Commission should find the modifications to Intelsat's satellite licenses using the ITSO Parties' Common Heritage orbital locations, as proposed in this Petition, to be in the public interest under section 316 of the Communications Act, because these modifications would enforce U.S. treaty obligations, and in particular will: (a) ensure the maintenance of the ITSO Agreement's Core Principles, including global coverage and global connectivity, and providing international public telecommunications services to lifeline countries; and (b) be consistent with the trustee role of the United States as the selected Notifying Administration for the Parties' Common Heritage, as stipulated in the ITSO Agreement.

Respectfully submitted,

The International Telecommunications Satellite Organization
By:

/SIGNED/

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July 10, 2006

EXHIBIT I

AGREEMENT RELATING TO THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE ORGANIZATION

PREAMBLE

The States Parties to this Agreement,

Considering the principle set forth in Resolution 1721 (XVI) of the General Assembly of the United Nations that communication by means of satellites should be available to the nations of the world as soon as practicable on a global and non-discriminatory basis,

Considering the relevant provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, and in particular Article I, which states that outer space shall be used for the benefit and in the interests of all countries,

Recognizing that the International Telecommunications Satellite Organization has, in accordance with its original purpose, established a global satellite system for providing telecommunications services to all areas of the world, which has contributed to world peace and understanding,

Taking into account that the 24th Assembly of Parties of the International Telecommunications Satellite Organization decided to restructure and privatize by establishing a private company supervised by an intergovernmental organization,

Acknowledging that increased competition in the provision of telecommunications services has made it necessary for the International Telecommunications Satellite Organization to transfer its space system to the Company defined in Article I(d) of this Agreement in order that the space system continues to be operated in a commercially viable manner,

Intending that the Company will honor the Core Principles set forth in Article III of this Agreement and will provide, on a commercial basis, the space segment required for international public telecommunications services of high quality and reliability,

Having determined that there is a need for an intergovernmental supervisory organization, to which any State member of the United Nations or the International Telecommunication Union may become a Party, to ensure that the Company fulfills the Core Principles on a continuing basis,

Agree as follows:

Definitions

ARTICLE I

For the purposes of this Agreement:

(a) "Agreement" means the present agreement, including its Annex, and any amendments

thereto, but excluding all titles of Articles, opened for signature by Governments at Washington on August 20, 1971, by which the international telecommunications satellite organization is established;

(b) "Space segment" means the telecommunications satellites, and the tracking, telemetry, command, control, monitoring and related facilities and equipment required to support the operation of these satellites;

(c) "Telecommunications" means any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, optical or other electromagnetic systems;

(d) "Company" means the private entity or entities established under the law of one or more States to which the international telecommunications satellite organization's space system is transferred and includes their successors-in-interest;

(e) "On a Commercial Basis" means in accordance with usual and customary commercial practice in the telecommunications industry;

(f) "Public telecommunications services" means fixed or mobile telecommunications services which can be provided by satellite and which are available for use by the public, such as telephony, telegraphy, telex, facsimile, data transmission, transmission of radio and television programs between approved earth stations having access to the Company's space segment for further transmission to the public, and leased circuits for any of these purposes; but excluding those mobile services of a type not provided under the Interim Agreement and the Special Agreement prior to the opening for signature of this Agreement, which are provided through mobile stations operating directly to a satellite which is designed, in whole or in part, to provide services relating to the safety or flight control of aircraft or to aviation or maritime radio navigation;

(g) "Interim Agreement" means the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System signed by Governments at Washington on August 20, 1964;

(h) "Lifeline Connectivity Obligation" or "LCO" means the obligation assumed by the Company as set out in the LCO contract to provide continued telecommunications services to the LCO customer;

(i) "Special Agreement" means the agreement signed on August 20, 1964, by Governments or telecommunications entities designated by Governments, pursuant to the provisions of the Interim Agreement;

(j) "Public Services Agreement" means the legally binding instrument through which ITSO ensures that the Company honors the Core Principles;

(k) "Core Principles" means those principles set forth in Article III;

(l) "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 Telecommunication 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;

(m) "Global coverage" means the maximum geographic coverage of the earth towards the

northernmost and southernmost parallels visible from satellites deployed in geostationary orbital locations;

(n) "Global connectivity" means the interconnection capabilities available to the Company's customers through the global coverage the Company provides in order to make communication possible within and between the five International Telecommunication Union regions defined by the plenipotentiary conference of the ITU, held in Montreux in 1965;

(o) "Non-discriminatory access" means fair and equal opportunity to access the Company's system;

(p) "Party" means a State for which the Agreement has entered into force or has been provisionally applied;

(q) "Property" includes every subject of whatever nature to which a right of ownership can attach, as well as contractual rights;

(r) "LCO customers" means all customers qualifying for and entering into LCO contracts; and

(s) "Administration" means any governmental department or agency responsible for compliance with the obligations derived from the Constitution of the International Telecommunication Union, the Convention of the International Telecommunication Union, and its Administrative Regulations.

Establishment of ITSO

ARTICLE II

The Parties, with full regard for the principles set forth in the Preamble to this Agreement, establish the International Telecommunications Satellite Organization, herein referred to as "ITSO".

Main Purpose and Core Principles of ITSO

ARTICLE III

(a) Taking into account the establishment of the Company, 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.

(b) The Core Principles are:

(i) maintain global connectivity and global coverage;

(ii) serve its lifeline connectivity customers; and

(iii) provide non-discriminatory access to the Company's system.

Covered Domestic Public Telecommunications Services

ARTICLE IV

The following shall be considered for purposes of applying Article III on the same basis as international public telecommunications services:

- (a) domestic public telecommunications services between areas separated by areas not under the jurisdiction of the State concerned, or between areas separated by the high seas; and
- (b) domestic public telecommunications services between areas which are not linked by any terrestrial wideband facilities and which are separated by natural barriers of such an exceptional nature that they impede the viable establishment of terrestrial wideband facilities between such areas, provided that the appropriate approval has been given.

Supervision

ARTICLE V

ITSO shall take all appropriate actions, including entering into the Public Services Agreement, to supervise the performance by the Company of the Core Principles, in particular, the principle of non-discriminatory access to the Company's system for existing and future public telecommunications services offered by the Company when space segment capacity is available on a commercial basis.

Juridical Personality

ARTICLE VI

(a) ITSO shall possess juridical personality. It shall enjoy the full capacity necessary for the exercise of its functions and the achievement of its purposes, including the capacity to:

- (i) conclude agreements with States or international organizations;
- (ii) contract;
- (iii) acquire and dispose of property; and
- (iv) be a party to legal proceedings.

(b) Each Party shall take such action as is necessary within its jurisdiction for the purpose of making effective in terms of its own law the provisions of this Article.

Financial Principles

ARTICLE VII

(a) ITSO will be financed for the twelve year period established in Article XXI by the retention of certain financial assets at the time of transfer of ITSO's space system to the Company.

(b) In the event ITSO continues beyond twelve years, ITSO shall obtain funding through the Public Services Agreement

Structure of ITSO

ARTICLE VIII

ITSO shall have the following organs:

(a) the Assembly of Parties; and

(b) an executive organ, headed by the Director General, responsible to the Assembly of Parties.

Assembly of Parties

ARTICLE IX

(a) The Assembly of Parties shall be composed of all the Parties and shall be the principal organ of ITSO.

(b) The Assembly of Parties shall give consideration to general policy and long-term objectives of ITSO.

(c) The Assembly of Parties shall give consideration to matters which are primarily of interest to the Parties as sovereign States, and in particular ensure that the Company provides, on a commercial basis, international public telecommunications services, in order to:

(i) maintain global connectivity and global coverage;

(ii) serve its lifeline connectivity customers; and

(iii) provide non-discriminatory access to the Company's system.

(d) The Assembly of Parties shall have the following functions and powers:

(i) to direct the executive organ of ITSO as it deems appropriate, in particular regarding the executive organ's review of the activities of the Company that directly relate to the Core Principles;

(ii) to consider and take decisions on proposals for amending this Agreement in accordance with Article XV of this Agreement;

(iii) to appoint and remove the Director General in accordance with Article X;

(iv) to consider and decide on reports submitted by the Director General that relate to the

Company's observance of the Core Principles;

(v) to consider and, in its discretion, take decisions on recommendations from the Director General;

(vi) to take decisions, pursuant to paragraph (b) of Article XIV of this Agreement, in connection with the withdrawal of a Party from ITSO;

(vii) to decide upon questions concerning formal relationships between ITSO and States, whether Parties or not, or international organizations;

(viii) to consider complaints submitted to it by Parties;

(ix) to consider issues pertaining to the Parties' Common Heritage;

(x) to take decisions concerning the approval referred to in paragraph (b) of Article IV of this Agreement;

(xi) to consider and approve the budget of ITSO for such period as agreed to by the Assembly of Parties;

(xii) to take any necessary decisions with respect to contingencies that may arise outside of the approved budget;

(xiii) to appoint an auditor to review the expenditures and accounts of ITSO;

(xiv) to select the legal experts referred to in Article 3 of Annex A to this Agreement;

(xv) to determine the conditions under which the Director General may commence an arbitration proceeding against the Company pursuant to the Public Services Agreement;

(xvi) to decide upon amendments proposed to the Public Services Agreement; and

(xvii) to exercise any other functions conferred upon it under any other Article of this Agreement.

(e) The Assembly of Parties shall meet in ordinary session every two years beginning no later than twelve months after the transfer of ITSO's space system to the Company. In addition to the ordinary meetings of the Parties, the Assembly of Parties may meet in extraordinary meetings, which may be convened upon request of the executive organ acting pursuant to the provisions of paragraph (k) of Article X, or upon the written request of one or more Parties to the Director General that sets forth the purpose of the meeting and which receives the support of at least one-third of the Parties including the requesting Parties. The Assembly of Parties shall establish the conditions under which the Director General may convene an extraordinary meeting of the Assembly of Parties.

(f) A quorum for any meeting of the Assembly of Parties shall consist of representatives of a majority of the Parties. Decisions on matters of substance shall be taken by an affirmative vote cast by at least two-thirds of the Parties whose representatives are present and voting. Decisions on procedural matters shall be taken by an affirmative vote cast by a simple majority of the Parties whose representatives are present and voting. Disputes whether a specific matter is procedural or substantive shall be decided by a vote cast by a simple majority of the Parties

whose representatives are present and voting. Parties shall be afforded an opportunity to vote by proxy or other means as deemed appropriate by the Assembly of Parties and shall be provided with necessary information sufficiently in advance of the meeting of the Assembly of Parties.

(g) For any meeting of the Assembly of Parties, each Party shall have one vote.

(h) The Assembly of Parties shall adopt its own rules of procedure, which shall include provision for the election of a Chairman and other officers as well as provisions for participation and voting.

(i) Each Party shall meet its own costs of representation at a meeting of the Assembly of Parties. Expenses of meetings of the Assembly of Parties shall be regarded as an administrative cost of ITSO.

Director General

ARTICLE X

(a) The executive organ shall be headed by the Director General who shall be directly responsible to the Assembly of Parties.

(b) The Director General shall

(i) be the chief executive and the legal representative of ITSO and shall be responsible for the performance of all management functions, including the exercise of rights under contract;

(ii) act in accordance with the policies and directives of the Assembly of Parties; and

(iii) be appointed by the Assembly of Parties for a term of four years or such other period as the Assembly of Parties decides. The Director General may be removed from office for cause by the Assembly of Parties. No person shall be appointed as Director General for more than eight years.

(c) The paramount consideration in the appointment of the Director General and in the selection of other personnel of the executive organ shall be the necessity of ensuring the highest standards of integrity, competency and efficiency, with consideration given to the possible advantages of recruitment and deployment on a regionally and geographically diverse basis. The Director General and the personnel of the executive organ shall refrain from any action incompatible with their responsibilities to ITSO.

(d) The Director General shall, subject to the guidance and instructions of the Assembly of Parties, determine the structure, staff levels and standard terms of employment of officials and employees, and shall appoint the personnel of the executive organ. The Director General may select consultants and other advisers to the executive organ.

(e) The Director General shall supervise the Company's adherence to the Core Principles.

(f) The Director General shall

(i) monitor the Company's adherence to the Core Principle to serve LCO customers by honoring LCO contracts;

- (ii) consider the decisions taken by the Company with respect to petitions for eligibility to enter into an LCO contract;
- (iii) assist LCO customers in resolving their disputes with the Company by providing conciliation services; and
- (iv) in the event an LCO customer decides to initiate an arbitration proceeding against the Company, provide advice on the selection of consultants and arbiters.
- (g) The Director General shall report to the Parties on the matters referred to in paragraphs (d) through (f).
- (h) Pursuant to the terms to be established by the Assembly of Parties, the Director General may commence arbitration proceedings against the Company pursuant to the Public Services Agreement.
- (i) The Director General shall deal with the Company in accordance with the Public Services Agreement.
- (j) The Director General, on behalf of ITSO, shall consider all issues arising from the Parties' Common Heritage and shall communicate the views of the Parties to the Notifying Administration(s).
- (k) When the Director General is of the view that a Party's failure to take action pursuant to Article XI(c) has impaired the Company's ability to comply with the Core Principles, the Director General shall contact that Party to seek a resolution of the situation and may, consistent with the conditions established by the Assembly of Parties pursuant to Article IX(e), convene an extraordinary meeting of the Assembly of Parties.
- (l) The Assembly of Parties shall designate a senior officer of the executive organ to serve as the Acting Director General whenever the Director General is absent or is unable to discharge his duties, or if the office of Director General should become vacant. The Acting Director General shall have the capacity to exercise all the powers of the Director General pursuant to this Agreement. In the event of a vacancy, the Acting Director General shall serve in that capacity until the assumption of office by a Director General appointed and confirmed, as expeditiously as possible, in accordance with subparagraph (b) (iii) of this Article.

Rights and Obligations of Parties

ARTICLE XI

- (a) The Parties shall exercise their rights and meet their obligations under this Agreement in a manner fully consistent with and in furtherance of the principles stated in the Preamble, the Core Principles in Article III and other provisions of this Agreement.
- (b) All Parties shall be allowed to attend and participate in all conferences and meetings, in which they are entitled to be represented in accordance with any provisions of this Agreement, as well as any other meeting called by or held under the auspices of ITSO, in accordance with the arrangements made by ITSO for such meetings regardless of where they may take place. The executive organ shall ensure that arrangements with the host Party for each such conference or meeting shall include a provision for the admission to the host country and sojourn for the

duration of such conference or meeting, of representatives of all Parties entitled to attend.

(c) All Parties shall take the actions required, in a transparent, non-discriminatory, and competitively neutral manner, under applicable domestic procedure and pertinent international agreements to which they are party, so that the Company may fulfill the Core Principles.

Frequency Assignments

ARTICLE XII

(a) The Parties of ITSO shall retain the orbital locations and frequency assignments in process of coordination or registered on behalf of the Parties with the ITU pursuant to the provisions set forth in the ITU's Radio Regulations until such time as the selected Notifying Administration(s) has provided its notification to the Depository that it has approved, accepted or ratified the present Agreement. The Parties shall select among the ITSO members a Party to represent all ITSO member Parties with the ITU during the period in which the Parties of ITSO retain such assignments.

(b) The Party selected pursuant to paragraph (a) to represent all Parties during the period in which ITSO retains the assignments shall, upon the receipt of the notification by the Depository of the approval, acceptance or ratification of the present Agreement by a Party selected by the Assembly of Parties to act as a Notifying Administration for the Company, transfer such assignments to the selected Notifying Administration(s).

(c) Any Party selected to act as the Company's Notifying Administration shall, under applicable domestic procedure:

(i) authorize the use of such frequency assignment by the Company so that the Core Principles may be fulfilled; and

(ii) in the event that such use is no longer authorized, or the Company no longer requires such frequency assignment(s), cancel such frequency assignment under the procedures of the ITU.

(d) Notwithstanding any other provision of this Agreement, in the event a Party selected to act as a Notifying Administration for the Company ceases to be a member of ITSO pursuant to Article XIV, such Party shall be bound and subject to all relevant provisions set forth in this Agreement and in the ITU's Radio Regulations until the frequency assignments are transferred to another Party in accordance with ITU procedures.

(e) Each Party selected to act as a Notifying Administration pursuant to paragraph (c) shall:

(i) report at least on an annual basis to the Director General on the treatment afforded by such Notifying Administration to the Company, with particular regard to such Party's adherence to its obligations under Article XI(c);

(ii) seek the views of the Director General, on behalf of ITSO, regarding actions required to implement the Company's fulfillment of the Core Principles;

(iii) work with the Director General, on behalf of ITSO, on potential activities of the Notifying

Administration(s) to expand access to lifeline countries;

(iv) notify and consult with the Director General on ITU satellite system coordinations that are undertaken on behalf of the Company to assure that global connectivity and service to lifeline users are maintained; and

(v) consult with the ITU regarding the satellite communications needs of lifeline users.

ITSO Headquarters, Privileges, Exemptions, Immunities

ARTICLE XIII

(a) The headquarters of ITSO shall be in Washington, D.C. unless otherwise determined by the Assembly of Parties.

(b) Within the scope of activities authorized by this Agreement, ITSO and its property shall be exempt in all States Party to this Agreement from all national income and direct national property taxation. Each Party undertakes to use its best endeavors to bring about, in accordance with the applicable domestic procedure, such further exemption of ITSO and its property from income and direct property taxation, and customs duties, as is desirable, bearing in mind the particular nature of ITSO.

(c) Each Party other than the Party in whose territory the headquarters of ITSO is located shall grant in accordance with the Protocol referred to in this paragraph, and the Party in whose territory the headquarters of ITSO is located shall grant in accordance with the Headquarters Agreement referred to in this paragraph, the appropriate privileges, exemptions and immunities to ITSO, to its officers, and to those categories of its employees specified in such Protocol and Headquarters Agreement, to Parties and representatives of Parties. In particular, each Party shall grant to these individuals immunity from legal process in respect of acts done or words written or spoken in the exercise of their functions and within the limits of their duties, to the extent and in the cases to be provided for in the Headquarters Agreement and Protocol referred to in this paragraph. The Party in whose territory the headquarters of ITSO is located shall, as soon as possible, conclude a Headquarters Agreement with ITSO covering privileges, exemptions and immunities. The other Parties shall, also as soon as possible, conclude a Protocol covering privileges, exemptions and immunities. The Headquarters Agreement and the Protocol shall be independent of this Agreement and each shall prescribe the conditions of its termination.

Withdrawal

ARTICLE XIV

(a) (i) Any Party may withdraw voluntarily from ITSO. A Party shall give written notice to the Depositary of its decision to withdraw.

(ii) Notification of the decision of a Party to withdraw pursuant to subparagraph (a)(i) of this Article shall be transmitted by the Depositary to all Parties and to the executive organ.

(iii) Subject to Article XII(d), voluntary withdrawal shall become effective and this Agreement shall cease to be in force, for a Party three months after the date of receipt of the notice referred to in

subparagraph (a)(i) of this Article.

(b) (i) If a Party appears to have failed to comply with any obligation under this Agreement, the Assembly of Parties, having received notice to that effect or acting on its own initiative, and having considered any representations made by the Party, may decide, if it finds that the failure to comply has in fact occurred, that the Party be deemed to have withdrawn from ITSO. This Agreement shall cease to be in force for the Party as of the date of such decision. An extraordinary meeting of the Assembly of Parties may be convened for this purpose.

(ii) If the Assembly of Parties decides that a Party shall be deemed to have withdrawn from ITSO pursuant to subparagraph (i) of this paragraph (b), the executive organ shall notify the Depositary, which shall transmit the notification to all Parties.

(c) Upon the receipt by the Depositary or the executive organ, as the case may be, of notice of decision to withdraw pursuant to subparagraph (a)(i) of this Article, the Party giving notice shall cease to have any rights of representation and any voting rights in the Assembly of Parties, and shall incur no obligation or liability after the receipt of the notice.

(d) If the Assembly of Parties, pursuant to paragraph (b) of this Article, deems a Party to have withdrawn from ITSO, that Party shall incur no obligation or liability after such decision.

(e) No Party shall be required to withdraw from ITSO as a direct result of any change in the status of that Party with regard to the United Nations or the International Telecommunication Union.

Amendment

ARTICLE XV

(a) Any Party may propose amendments to this Agreement. Proposed amendments shall be submitted to the executive organ, which shall distribute them promptly to all Parties.

(b) The Assembly of Parties shall consider each proposed amendment at its first ordinary meeting following its distribution by the executive organ, or at an earlier extraordinary meeting convened in accordance with the procedures of Article IX of this Agreement, provided that the proposed amendment has been distributed by the executive organ at least ninety days before the opening date of the meeting.

(c) The Assembly of Parties shall take decisions on each proposed amendment in accordance with the provisions relating to quorum and voting contained in Article IX of this Agreement. It may modify any proposed amendment, distributed in accordance with paragraph (b) of this Article, and may also take decisions on any amendment not so distributed but directly consequential to a proposed or modified amendment.

(d) An amendment which has been approved by the Assembly of Parties shall enter into force in accordance with paragraph (e) of this Article after the Depositary has received notice of approval, acceptance or ratification of the amendment from two-thirds of the States which were Parties as of the date upon which the amendment was approved by the Assembly of Parties.

(e) The Depositary shall notify all the Parties as soon as it has received the acceptances, approvals or ratifications required by paragraph (d) of this Article for the entry into force of an amendment. Ninety days after the date of issue of this notification, the amendment shall enter

into force for all Parties, including those that have not yet accepted, approved, or ratified it and have not withdrawn from ITSO.

(f) Notwithstanding the provisions of paragraphs (d) and (e) of this Article, an amendment shall not enter into force less than eight months after the date it has been approved by the Assembly of Parties.

Settlement of Disputes

ARTICLE XVI

(a) All legal disputes arising in connection with the rights and obligations under this Agreement between Parties with respect to each other, or between ITSO and one or more Parties, if not otherwise settled within a reasonable time, shall be submitted to arbitration in accordance with the provisions of Annex A to this Agreement.

(b) All legal disputes arising in connection with the rights and obligations under this Agreement between a Party and a State which has ceased to be a Party or between ITSO and a State which has ceased to be a Party, and which arise after the State ceased to be a Party, if not otherwise settled within a reasonable time, shall be submitted to arbitration in accordance with the provisions of Annex A to this Agreement, provided that the State which has ceased to be a Party so agrees. If a State ceases to be a Party, after a dispute in which it is a disputant has been submitted to arbitration pursuant to paragraph (a) of this Article, the arbitration shall be continued and concluded.

(c) All legal disputes arising as a result of agreements between ITSO and any Party shall be subject to the provisions on settlement of disputes contained in such agreements. In the absence of such provisions, such disputes, if not otherwise settled, may be submitted to arbitration in accordance with the provisions of Annex A to this Agreement if the disputants so agree.

Signature

ARTICLE XVII

(a) This Agreement shall be open for signature at Washington from August 20, 1971 until it enters into force, or until a period of nine months has elapsed, whichever occurs first:

(i) by the Government of any State party to the Interim Agreement;

(ii) by the Government of any other State member of the United Nations or the International Telecommunication Union.

(b) Any Government signing this Agreement may do so without its signature being subject to ratification, acceptance or approval or with a declaration accompanying its signature that it is subject to ratification, acceptance or approval.

(c) Any State referred to in paragraph (a) of this Article may accede to this Agreement after it is closed for signature.

(d) No reservation may be made to this Agreement.

Entry Into Force

ARTICLE XVIII

(a) This Agreement shall enter into force sixty days after the date on which it has been signed not subject to ratification, acceptance or approval, or has been ratified, accepted, approved or acceded to, by two-thirds of the States which were parties to the Interim Agreement as of the date upon which this Agreement is opened for signature, provided that such two-thirds include parties to the Interim Agreement which then held at least two-thirds of the quotas under the Special Agreement. Notwithstanding the foregoing provisions, this Agreement shall not enter into force less than eight months or more than eighteen months after the date it is opened for signature.

(b) For a State whose instrument of ratification, acceptance, approval or accession is deposited after the date this Agreement enters into force pursuant to paragraph (a) of this Article, this Agreement shall enter into force on the date of such deposit.

(c) Upon entry into force of this Agreement pursuant to paragraph (a) of this Article, it may be applied provisionally with respect to any State whose Government signed it subject to ratification, acceptance or approval if that Government so requests at the time of signature or at any time thereafter prior to the entry into force of this Agreement. Provisional application shall terminate:

(i) upon deposit of an instrument of ratification, acceptance or approval of this Agreement by that Government;

(ii) upon expiration of two years from the date on which this Agreement enters into force without having been ratified, accepted or approved by that Government; or

(iii) upon notification by that Government, before expiration of the period mentioned in subparagraph (ii) of this paragraph, of its decision not to ratify, accept or approve this Agreement.

If provisional application terminates pursuant to subparagraph (ii) or (iii) of this paragraph, the provisions of paragraph (c) of Article XIV of this Agreement shall govern the rights and obligations of the Party

(d) Upon entry into force, this Agreement shall replace and terminate the Interim Agreement.

Miscellaneous Provisions

ARTICLE XIX

(a) The official and working languages of ITSO shall be English, French and Spanish.

(b) Internal regulations for the executive organ shall provide for the prompt distribution to all Parties of copies of any ITSO document in accordance with their requests.

(c) Consistent with the provisions of Resolution 1721 (XVI) of the General Assembly of the United Nations, the executive organ shall send to the Secretary General of the United Nations, and to

the Specialized Agencies concerned, for their information, an annual report on the activities of ITSO.

Depositary

ARTICLE XX

(a) The Government of the United States of America shall be the Depositary for this Agreement, with which shall be deposited declarations made pursuant to paragraph (b) of Article XVII of this Agreement, instruments of ratification, acceptance, approval or accession, requests for provisional application, and notifications of ratification, acceptance or approval of amendments, of decisions to withdraw from ITSO, or of termination of the provisional application of this Agreement.

(b) This Agreement, of which the English, French and Spanish texts are equally authentic, shall be deposited in the archives of the Depositary. The Depositary shall transmit certified copies of the text of this Agreement to all Governments that have signed it or deposited instruments of accession to it, and to the International Telecommunication Union, and shall notify those Governments, and the International Telecommunication Union, of signatures, of declarations made pursuant to paragraph (b) of Article XVII of this Agreement, of the deposit of instruments of ratification, acceptance, approval or accession, of requests for provisional application, of commencement of the sixty-day period referred to in paragraph (a) of Article XVIII of this Agreement, of the entry into force of this Agreement, of notifications of ratification, acceptance or approval of amendments, of the entry into force of amendments, of decisions to withdraw from ITSO, of withdrawals and of terminations of provisional application of this Agreement. Notice of the commencement of the sixty-day period shall be issued on the first day of that period.

(c) Upon entry into force of this Agreement, the Depositary shall register it with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.

Duration

ARTICLE XXI

This Agreement shall be in effect for at least twelve years from the date of transfer of ITSO's space system to the Company. The Assembly of Parties may terminate this Agreement effective upon the twelfth anniversary of the date of transfer of ITSO's space system to the Company by a vote pursuant to Article IX(f) of the Parties. Such decision shall be deemed to be a matter of substance.

IN WITNESS WHEREOF the Plenipotentiaries gathered together in the city of Washington, who have submitted their full powers, found to be in good and due form, have signed this Agreement.

DONE at Washington, on the 20th day of August, one thousand nine hundred and seventy one.

Provisions on Procedures Relating to Settlement of Disputes

ANNEX A

ARTICLE 1

The only disputants in arbitration proceedings instituted in accordance with this Annex shall be those referred to in Article XVI of this Agreement.

ARTICLE 2

An arbitral tribunal of three members duly constituted in accordance with the provisions of this Annex shall be competent to give a decision in any dispute cognizable pursuant to Article XVI of this Agreement.

ARTICLE 3

(a) Not later than sixty days before the opening date of the first and each subsequent ordinary meeting of the Assembly of Parties, each Party may submit to the executive organ the names of not more than two legal experts who will be available for the period from the end of such meeting until the end of the second subsequent ordinary meeting of the Assembly of Parties to serve as presidents or members of tribunals constituted in accordance with this Annex. From such nominees the executive organ shall prepare a list of all the persons thus nominated and shall attach to this list any biographical particulars submitted by the nominating Party, and shall distribute such list to all Parties not later than thirty days before the opening date of the meeting in question. If for any reason a nominee becomes unavailable for selection to the panel during the sixty-day period before the opening date of the meeting of the Assembly of Parties, the nominating Party may, not later than fourteen days before the opening date of the meeting of the Assembly of Parties, substitute the name of another legal expert.

(b) From the list mentioned in paragraph (a) of this Article, the Assembly of Parties shall select eleven persons to be members of a panel from which presidents of tribunals shall be selected, and shall select an alternate for each such member. Members and alternates shall serve for the period prescribed in paragraph (a) of this Article. If a member becomes unavailable to serve on the panel, he shall be replaced by his alternate.

(c) For the purpose of designating a chairman, the panel shall be convened to meet by the executive organ as soon as possible after the panel has been selected. Members of the panel may participate in this meeting in person, or through electronic means. The quorum for a meeting of the panel shall be nine of the eleven members. The panel shall designate one of its members as its chairman by a decision taken by the affirmative votes of at least six members, cast in one or, if necessary, more than one secret ballot. The chairman so designated shall hold office as chairman for the rest of his period of office as a member of the panel. The cost of the meeting of the panel shall be regarded as an administrative cost of ITSO.

(d) If both a member of the panel and the alternate for that member become unavailable to serve, the Assembly of Parties shall fill the vacancies thus created from the list referred to in paragraph (a) of this Article. A person selected to replace a member or alternate whose term of office has not expired shall hold office for the remainder of the term of his predecessor. Vacancies in the office of the chairman of the panel shall be filled by the panel by designation of one of its members in accordance with the procedure prescribed in paragraph (c) of this Article.

(e) In selecting the members of the panel and the alternates in accordance with paragraph (b) or (d) of this Article, the Assembly of Parties shall seek to ensure that the composition of the panel will always be able to reflect an adequate geographical representation, as well as the principal legal systems as they are represented among the Parties.

(f) Any panel member or alternate serving on an arbitral tribunal at the expiration of his term shall continue to serve until the conclusion of any arbitral proceeding pending before such tribunal.

ARTICLE 4

(a) Any petitioner wishing to submit a legal dispute to arbitration shall provide each respondent and the executive organ with a document which contains:

(i) a statement which fully describes the dispute being submitted for arbitration, the reasons why each respondent is required to participate in the arbitration, and the relief being requested;

(ii) a statement which sets forth why the subject matter of the dispute comes within the competence of a tribunal to be constituted in accordance with this Annex, and why the relief being requested can be granted by such tribunal if it finds in favor of the petitioner;

(iii) a statement explaining why the petitioner has been unable to achieve a settlement of the dispute within a reasonable time by negotiation or other means short of arbitration;

(iv) in the case of any dispute for which, pursuant to Article XVI of this Agreement, the agreement of the disputants is a condition for arbitration in accordance with this Annex, evidence of such agreement; and

(v) the name of the person designated by the petitioner to serve as a member of the tribunal.

(b) The executive organ shall promptly distribute to each Party, and to the chairman of the panel, a copy of the document provided pursuant to paragraph (a) of this Article.

ARTICLE 5

(a) Within sixty days from the date copies of the document described in paragraph (a) of Article 4 of this Annex have been received by all the respondents, the side of the respondents shall designate an individual to serve as a member of the tribunal. Within that period, the respondents may, jointly or individually, provide each disputant and the executive organ with a document stating their responses to the document referred to in paragraph (a) of Article 4 of this Annex and including any counter-claims arising out of the subject matter of the dispute. The executive organ shall promptly furnish the chairman of the panel with a copy of any such document.

(b) In the event of a failure by the side of the respondents to make such a designation within the period allowed, the chairman of the panel shall make a designation from among the experts whose names were submitted to the executive organ pursuant to paragraph (a) of Article 3 of this Annex.

(c) Within thirty days after the designation of the two members of the tribunal, they shall agree on a third person selected from the panel constituted in accordance with Article 3 of this Annex, who shall serve as the president of the tribunal. In the event of failure to reach agreement within such period of time, either of the two members designated may inform the chairman of the panel, who, within ten days, shall designate a member of the panel other than himself to serve as president of

the tribunal.

(d) The tribunal is constituted as soon as the president is selected.

ARTICLE 6

(a) If a vacancy occurs in the tribunal for reasons which the president or the remaining members of the tribunal decide are beyond the control of the disputants, or are compatible with the proper conduct of the arbitration proceedings, the vacancy shall be filled in accordance with the following provisions:

(i) if the vacancy occurs as a result of the withdrawal of a member appointed by a side to the dispute, then that side shall select a replacement within ten days after the vacancy occurs;

(ii) if the vacancy occurs as a result of the withdrawal of the president of the tribunal or of another member of the tribunal appointed by the chairman, a replacement shall be selected from the panel in the manner described in paragraph (c) or (b) respectively of Article 5 of this Annex.

(b) If a vacancy occurs in the tribunal for any reason other than as described in paragraph (a) of this Article, or if a vacancy occurring pursuant to that paragraph is not filled, the remainder of the tribunal shall have the power, notwithstanding the provisions of Article 2 of this Annex, upon the request of one side, to continue the proceedings and give the final decision of the tribunal.

ARTICLE 7

(a) The tribunal shall decide the date and place of its sittings.

(b) The proceedings shall be held in private and all material presented to the tribunal shall be confidential, except that ITSO and the Parties who are disputants in the proceedings shall have the right to be present and shall have access to the material presented. When ITSO is a disputant in the proceedings, all Parties shall have the right to be present and shall have access to the material presented.

(c) In the event of a dispute over the competence of the tribunal, the tribunal shall deal with this question first, and shall give its decision as soon as possible.

(d) The proceedings shall be conducted in writing, and each side shall have the right to submit written evidence in support of its allegations of fact and law. However, oral arguments and testimony may be given if the tribunal considers it appropriate.

(e) The proceedings shall commence with the presentation of the case of the petitioner containing its arguments, related facts supported by evidence and the principles of law relied upon. The case of the petitioner shall be followed by the counter-case of the respondent. The petitioner may submit a reply to the counter-case of the respondent. Additional pleadings shall be submitted only if the tribunal determines they are necessary.

(f) The tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute, provided the counter-claims are within its competence as defined in Article XVI of this Agreement.

(g) If the disputants reach an agreement during the proceedings, the agreement shall be recorded

in the form of a decision of the tribunal given by consent of the disputants.

(h) At any time during the proceedings, the tribunal may terminate the proceedings if it decides the dispute is beyond its competence as defined in Article XVI of the Agreement.

(i) The deliberations of the tribunal shall be secret.

(j) The decisions of the tribunal shall be presented in writing and shall be supported by a written opinion. Its rulings and decisions must be supported by at least two members. A member dissenting from the decision may submit a separate written opinion.

(k) The tribunal shall forward its decision to the executive organ, which shall distribute it to all Parties.

(l) The tribunal may adopt additional rules of procedure, consistent with those established by this Annex, which are necessary for the proceedings.

ARTICLE 8

If one side fails to present its case, the other side may call upon the tribunal to give a decision in its favor. Before giving its decision, the tribunal shall satisfy itself that it has competence and that the case is well-founded in fact and in law.

ARTICLE 9

Any Party not a disputant in a case, or ITSO, if it considers that it has a substantial interest in the decision of the case, may petition the tribunal for permission to intervene and become an additional disputant in the case. If the tribunal determines that the petitioner has a substantial interest in the decision of the case, it shall grant the petition.

ARTICLE 10

Either at the request of a disputant, or upon its own initiative, the tribunal may appoint such experts as it deems necessary to assist it.

ARTICLE 11

Each Party and ITSO shall provide all information determined by the tribunal, either at the request of a disputant or upon its own initiative, to be required for the handling and determination of the dispute.

ARTICLE 12

During the course of its consideration of the case, the tribunal may, pending the final decision, indicate any provisional measures which it considers would preserve the respective rights of the disputants.

ARTICLE 13

(a) The decision of the tribunal shall be based on

(i) this Agreement; and

(ii) generally accepted principles of law.

(b) The decision of the tribunal, including any reached by agreement of the disputants pursuant to paragraph (g) of Article 7 of this Annex, shall be binding on all the disputants and shall be carried out by them in good faith. In a case in which ITSO is a disputant, and the tribunal decides that a decision of one of its organs is null and void as not being authorized by or in compliance with this Agreement, the decision of the tribunal shall be binding on all Parties.

(c) In the event of a dispute as to the meaning or scope of its decision, the tribunal shall construe it at the request of any disputant.

ARTICLE 14

Unless the tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of the members of the tribunal, shall be borne in equal shares by each side. Where a side consists of more than one disputant, the share of that side shall be apportioned by the tribunal among the disputants on that side. Where ITSO is a disputant, its expenses associated with the arbitration shall be regarded as an administrative cost of ITSO.

AMENDMENT TO THE OPERATING AGREEMENT

The only amendment involves Article 23 (Entry Into Force) of the Operating Agreement; all other provisions remain unchanged:

Entry Into Force

ARTICLE 23

(a) This Operating Agreement shall enter into force for a Signatory on the date on which the Agreement enters into force, in accordance with paragraphs (a) and (d) or paragraphs (b) and (d) of Article XVIII of the Agreement, for the Party concerned.

(b) This Operating Agreement shall be applied provisionally for a Signatory on the date on which the Agreement is applied provisionally, in accordance with paragraphs (c) and (d) of Article XVIII of the Agreement, for the Party concerned.

(c) This Operating Agreement shall terminate either when the Agreement ceases to be in force or when amendments to the Agreement deleting references to the Operating Agreement enter into force, whichever is earlier.

CERTIFICATE OF SERVICE

I, Julie A. Reese, do hereby certify that on this 10th day of July 2006, I sent, via electronic mail, a true and correct copy of the foregoing Petition of the International Telecommunications Satellite Organization to the following:

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/SIGNED/

Julie A. Reese