

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

Request for Commission Action to Update
the ITSO Conditions

To: The Commission

IB Docket No. _____

REQUEST FOR COMMISSION ACTION

Intelsat License LLC, as debtor in possession (“Intelsat”), respectfully submits this request for Commission action under FCC Rule 1.41¹ to update conditions on certain of its satellite authorizations relating to the International Telecommunications Satellite Organization agreement (“ITSO,” “ITSO Conditions,” and “ITSO Agreement,” respectively).² Specifically, in preparation for a possible upcoming vote in mid-2021 to terminate the ITSO Agreement by the ITSO Assembly of Parties (“AP”) with support from ITSO staff and the Director General, Intelsat proposes that the FCC use its authority under Section 316 of the Communications Act to update conditions concerning the Public Services Agreement (“PSA”) between Intelsat and ITSO.³ These updated conditions would help ensure that Intelsat will continue to provide the “Core Principles” of global connectivity and coverage, and non-discriminatory access to Intelsat’s system when utilizing certain International Telecommunication Union (“ITU”) satellite

¹ 47 C.F.R. § 1.41.

² See *Petition of the International Telecommunications Satellite Organization under Section 316 of the Communications Act, as Amended*, Order of Modification, 23 FCC Rcd 2764, ¶ 13 (2008) (“*Order of Modification*”) (adopting the “ITSO Conditions”). See generally Agreement Relating to the International Telecommunications Satellite Organization ITSO (formerly INTELSAT), *amendment opened for signature* Nov. 17, 2000, 23 UST 3813, 1220 UNTS 21 (“ITSO Agreement”).

³ 47 U.S.C. § 316. See generally Public Service Agreement between The International Telecommunications Satellite Organization (ITSO) and Intelsat, July 18, 2001 (“PSA”).

network filings after the ITSO Agreement's possible termination.⁴ Intelsat has an established track record of observing these Core Principles of the PSA, and it will continue to do so in today's global telecommunications environment even after termination of the PSA and supervision by ITSO. Updating the existing ITSO Conditions will further U.S. foreign policy objectives and the public interest by demonstrating to nations that are Parties to the ITSO Agreement that Intelsat will continue to have a licensing condition to adhere to these Core Principles even in the event that it is no longer subject to oversight by ITSO.

I. BACKGROUND

In 1971, a handful of countries (the "Member Countries"), including the United States, signed the Agreement Relating to the International Telecommunications Satellite Organization (the "INTELSAT Agreement").⁵ The INTELSAT Agreement created "INTELSAT" as an intergovernmental consortium to own and operate a global satellite system. The Member Countries' goal was to provide global connectivity and coverage on a non-discriminatory basis for the benefit of all nations.⁶ To protect its satellite transmissions from interference by other satellites, INTELSAT's orbital locations and frequency assignments (commonly referred to as "ITU filings") were registered with the ITU. The totality of ITU filings that existed prior to the transfer described below is known as the "Common Heritage."⁷

In 2000, the Member Countries determined to transfer INTELSAT's assets to an independent private company, Intelsat LLC,⁸ for the purpose of owning and operating

⁴ Appendix A contains the orbital locations with Common Heritage frequencies.

⁵ ITSO Agreement.

⁶ *Id.* pmb1.

⁷ ITSO Agreement, Art. I.

⁸ Intelsat LLC subsequently transferred control of the licenses to its wholly-owned U.S. subsidiary, Intelsat North America. As a result of later reorganizations and transfers of control, the licenses are now held by Intelsat License LLC, as debtor-in-possession.

INTELSAT's satellite system upon completion of that transfer. The Member Countries also transferred the entirety of the Common Heritage ITU filings to the United States and the United Kingdom.⁹

In 2001, the Member Countries amended the INTELSAT Agreement by deleting all provisions relating to satellite operations and leaving behind a residual organization called "ITSO."¹⁰ ITSO was created as a narrowly-purposed "supervisory organization . . . to ensure that [the privatized Intelsat] fulfills the Core Principles" of global connectivity and global coverage, serving lifeline connectivity customers, and providing non-discriminatory access "on a continuing basis."¹¹ That same year, ITSO and Intelsat entered into the PSA pursuant to which Intelsat committed to fulfill its public service obligations by (i) maintaining global connectivity and coverage, (ii) providing non-discriminatory access to the Intelsat satellite system, and (iii) honoring favorable contracts with existing lifeline customers (the "LCO contracts").¹²

ITSO's supervisory role is intended to be transitional and time limited. Article XXI of the ITSO Agreement provides that the agreement shall be in effect for at least 12 years, subject to termination thereafter by a two-thirds vote of the Member Countries present and voting at any AP with no ratification requirement.¹³ During its thirty-fifth meeting in July 2012, ITSO voted to continue its operations for an additional eight years, a period which ends on July 18, 2021.¹⁴

⁹ ITSO Agreement, Art. XII.

¹⁰ ITSO Agreement.

¹¹ *Id.* Pmb1 and Art. III(b). ITSO is comprised of the Assembly of Parties and a Director General who reports to the Assembly of Parties.

¹² *Id.*

¹³ *Id.* Art. XXI and Art. IX(f).

¹⁴ ITSO Assembly of Parties, *Record of Decisions of the Thirty-Fifth Meeting*, AP-35-3E, ¶ 13 (July 3-6, 2012).

At that same meeting, the AP also agreed to consider the possible termination of the ITSO Agreement at its ordinary meeting in 2020.¹⁵

In 2006, ITSO petitioned the FCC “to modify [Intelsat] satellite licenses for use of the orbital locations and associated radio frequency assignments that constitute the ITSO Parties’ Common Heritage.”¹⁶ ITSO sought 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.”¹⁷ The U.S. Department of State, in consultation with the National Telecommunications and Information Administration (“NTIA”), recommended adoption of two conditions to help fulfill U.S. obligations under the ITSO Agreement and further U.S. foreign policy objectives. Intelsat did not object to the licensing conditions, following clarifications made by the Commission concerning their application. Accordingly, the Commission in 2008 adopted an *Order of Modification* applying two conditions:

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; and

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.¹⁸

These conditions currently apply to Intelsat licenses authorizing satellite operations at orbital locations identified in Appendix A.

¹⁵ *Id.*

¹⁶ Petition of the International Telecommunications Satellite Organization (ITSO) under Section 316 of the Act, IB Docket No. 06-137 and File No. SAT-MS-20060710-00076, at 1 (filed July 10, 2006).

¹⁷ *Id.* at 2.

¹⁸ *Order of Modification*, ¶ 13.

The last of the LCO contracts expired in 2019 and, with it, the majority of ITSO's supervisory tasks.¹⁹ Intelsat understands that ITSO will convene an AP by the end of June 2021, during which the Parties will consider a resolution to terminate the ITSO Agreement and consequently the ITSO oversight body and the PSA. Intelsat further understands that ITSO staff and the Director General will support and advocate for Member Countries to vote in favor of a resolution to terminate the ITSO Agreement effective July 18, 2021.

II. THE COMMISSION SHOULD UPDATE THE ITSO CONDITIONS TO REQUIRE CONTINUED GLOBAL CONNECTIVITY AND COVERAGE AND NON-DISCRIMINATORY ACCESS TO THE INTELSAT SYSTEM FOLLOWING TERMINATION OF THE ITSO AGREEMENT.

The Commission should update the ITSO Conditions to require Intelsat's continued performance of the enduring Core Principles to (i) maintain global connectivity and coverage and (ii) provide non-discriminatory access to the Intelsat satellite system, upon an AP decision to terminate the ITSO Agreement.²⁰ Specifically, Intelsat recommends revising the ITSO Conditions as follows:

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; and

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

¹⁹ See ITSO Assembly of Parties, Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting, AP-25-3E, ¶ 8(e) (Nov. 13-17, 2000) (explaining that four of ITSO's six supervisory tasks involve monitoring LCO contracts and customers). ITSO has no further role to play in Intelsat customer relations, no longer must ensure that Intelsat "honors its obligations" under now-expired contracts, and will never have to assist in a dispute between LCO customers and Intelsat. See PSA Art. 2.01(ii).

²⁰ A condition that requires Intelsat to continue to provide global connectivity and coverage and non-discriminatory access to the Intelsat system would not subject Intelsat to common carrier obligations. Intelsat does not provide service on a common carrier basis, as it does not "offer[] telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public." 47 U.S.C. § 153(53). Rather, Intelsat's obligations under the ITSO Agreement are to make its system available "to the nations of the world as soon as practicable on a global and nondiscriminatory basis." ITSO Agreement, pmbl. The scope of the FCC's non-discrimination provision should be the same as Intelsat's current ITSO Agreement obligations.

obligations of the Public Services Agreement approved by the Twenty-fifth Assembly of Parties, as amended.

Upon termination of the ITSO Agreement, the preceding two conditions will cease and be replaced with the condition that Intelsat shall provide global connectivity and coverage and non-discriminatory access to the Intelsat system.

Intelsat's obligation under the updated condition to "provide global connectivity and coverage" would be satisfied—as it is now under the PSA—by "providing the capability for any country or territory to connect with any other country or territory through the provision of capacity from at least one satellite in each of the three ocean regions: the Atlantic Ocean region (304.5 to 359 deg. E), the Indian Ocean region (60 to 66 deg. E), and the Pacific Ocean region (174 to 180 deg. E) such that these satellites together provide global coverage to all ITU regions."²¹

Section 316 of the Communications Act authorizes the Commission to "modif[y]" licenses if, in the agency's judgment, 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."²² As explained below, modification of the ITSO Conditions will help facilitate the end of ITSO oversight, which is appropriate considering Intelsat's performance over the 20 years since privatization, changes in the communications market, and the resulting public interest benefits. The updated condition would serve the public interest and further current U.S. foreign policy objectives by giving the U.S. direct oversight to ensure Intelsat continues to provide global connectivity and coverage and non-discriminatory access to

²¹ PSA Art. 2.01(i). "Global connectivity" means "the interconnection capabilities available to Intelsat users through the global coverage Intelsat provides in order to make communication possible within and between the five ITU regions defined by the Plenipotentiary Conference of the International Telecommunication Union, held in Montreux in 1965;" "global coverage" means "the maximum geographic coverage of the earth towards the northernmost and southernmost parallels visible from satellites deployed in geostationary orbital locations;" and "non-discriminatory access" means "fair and equitable opportunity to access the Intelsat system." *Id.*, Art. 2.02(ii)-(iv).

²² 47 U.S.C. § 316(a)(1). The FCC acted under this authority to modify Intelsat's Common Heritage licenses in 2008 to add the ITSO Conditions. *Order of Modification*, ¶ 13.

the Intelsat system, thereby assuaging potential reservations Member Countries may have with voting to terminate the ITSO Agreement.

The FCC adopted the ITSO Conditions in 2008 to provide “fuller compliance with the provisions of [the ITSO Agreement] to which the United States is a party” and “fulfillment of U.S. foreign policy objectives.”²³ Specifically, the Commission anticipated that the ITSO Conditions would further the U.S.’s commitment under Article XII(c) of the ITSO Agreement. Article XII(c) provides in part that the Notifying Administration shall “authorize the use of [the relevant orbital slots and frequency assignments] by [Intelsat] so that the Core Principles may be fulfilled.”²⁴ By requiring Intelsat to remain a signatory to the PSA and that any successor-in-interest commit to performing Intelsat’s obligations under the PSA, the Commission sought to bind Intelsat to the Core Principles of global connectivity and coverage and of non-discriminatory access to the Intelsat satellite system.²⁵

ITSO oversight has become unnecessary given Intelsat’s performance and increased market competition. Intelsat has provided global connectivity and coverage and non-discriminatory access to the Intelsat system to customers around the world for nearly 50 years and is prepared to continue to do so.²⁶ The global market for telecommunications has evolved significantly since then. At that time, telecommunications infrastructure was still in its infancy in many developing countries. In 2001, when Intelsat was privatized, approximately 92% of the

²³ *Order of Modification*, ¶ 6.

²⁴ ITSO Agreement, Art. XII(c)(i).

²⁵ *Order of Modification*, ¶ 7.

²⁶ Intelsat’s success in this regard is reflected in the conclusions of ITSO itself. See About Us, ITSO, <https://itso.int/about-us/more/> (last visited Nov. 6, 2020) (recognizing Intelsat’s success “in providing high-quality and reliable space segment capacity for public telecommunications services . . . no matter their location, size or level of development”).

world still lacked Internet access.²⁷ As of 2018, however, there are more people with Internet access than without.²⁸ The most dramatic gains have come from developing countries.²⁹ A vibrant, competitive satellite market is improving access worldwide. Non-discriminatory access and global connectivity are thus guaranteed without ITSO.

Recognizing that ITSO has fulfilled its transitional and time limited mission, Member Countries including the United States, Canada, Denmark, the Netherlands, and the United Kingdom have been calling for the termination of the organization for nearly a decade.³⁰ Intelsat understands the AP will consider a proposal—with support from ITSO staff and the Director General—to terminate the ITSO Agreement effective July 18, 2021. Termination of the ITSO Agreement would dissolve the ITSO supervisory body and the PSA between ITSO and Intelsat. To facilitate termination of the ITSO Agreement, Intelsat requests at its own suggestion that the Commission help reassure Member Countries that Intelsat will abide by the Core Principles indefinitely by modifying the ITSO Conditions as proposed herein.

Updated conditions requiring Intelsat’s continued adherence to the Core Principles of global connectivity and coverage and non-discriminatory access to the Intelsat system upon

²⁷ See *Individuals using the Internet (% of population)*, The World Bank, <https://data.worldbank.org/indicator/IT.NET.USER.ZS?end=2018&start=2001> (last visited Nov. 6, 2020).

²⁸ CISCO Annual Internet Report (2018–2023) White Paper, at 5 (Mar. 9, 2020), <https://www.cisco.com/c/en/us/solutions/collateral/executive-perspectives/annual-internet-report/white-paper-c11-741490.html> (finding 3.9 billion people—51% of the global population—had Internet access in 2018).

²⁹ See *Individuals using the Internet (% of population) - Low income*, The World Bank, <https://data.worldbank.org/indicator/IT.NET.USER.ZS?end=2018&locations=XM&start=2001> (last visited June 3, 2020) (showing that the percent of the population using the Internet grow from roughly one tenth of 1% in 2001 to more than 16% in 2018 in countries classified by the World Bank as “low income”).

³⁰ See, e.g., *16th Meeting of the ITSO Advisory Committee – Washington*, Anacom, <http://www.anacom.pt/render.jsp?contentId=1124413> (last visited July 16, 2020). Even those Member Countries who initially supported the continuation of ITSO after its first 12 years of existence agreed that “debate over [ITSO’s] future” should resume in 2021, thereby acknowledging that ITSO was never envisioned to be a permanent organization. *Id.*

termination of the ITSO Agreement serves the public interest and U.S. foreign policy objectives. Given the United States' role as the Notifying Administration for the majority of the Common Heritage ITU filings and the FCC's active and effective oversight of Intelsat's use of frequencies, the United States can help facilitate Intelsat's continued adherence to the Core Principles and furtherance of U.S. foreign policy objectives by enabling Intelsat's assumption of this responsibility directly through adoption of the modified conditions.³¹ As such, Intelsat would continue to adhere to the Core Principles, thereby eliminating any arguable need to retain ITSO oversight. Updating the ITSO Conditions would further serve the public interest by demonstrating U.S. leadership as a Notifying Administration of the Common Heritage ITU filings.

Additionally, updating the ITSO Conditions would serve as a step toward alleviating potential strains on Intelsat's ability to compete. As Intelsat seeks to reorganize under the protection of Chapter 11 and emerge with a streamlined corporate structure, all stakeholders should support removal of any unnecessary constraints.³² Ensuring Intelsat's ongoing financial and operational health is in the best interests of all countries—and all Intelsat customers. Advancing the principles of global connectivity, coverage, and non-discriminatory access, while eliminating unnecessary bureaucratic hurdles—*i.e.*, duplicative funding, reporting, and oversight

³¹ Intelsat proposes that the replacement condition apply to all present and future operations in frequencies and at orbital locations transferred to Intelsat at privatization, irrespective of the particular satellite involved. For administrative efficiency, Intelsat further recommends that the new condition attach automatically to a license when the satellite is operating pursuant to Common Heritage filings and remove from a license automatically when the satellite relocates to a non-Common Heritage location. This practice would be consistent with the Commission's current application of the ITSO Conditions. *See Order of Modification*, ¶ 12.

³² A Chapter 11 bankruptcy enables a company to restructure its debts and emerge stronger than before. For example, General Motors, Texaco, and Marvel Entertainment all emerged successfully from Chapter 11 and have gone on to become more profitable than ever. Shedding unnecessary burdens is a critical component of a successful Chapter 11 restructuring and renewed fiscal health.

obligations necessitated by ITSO's involvement—further the public interest. The proposed updated conditions serve the public interest and better fulfill U.S. treaty obligations, thus falling comfortably within the FCC's authority under Section 316.

III. CONCLUSION

Intelsat is committed to continuing to provide global connectivity and coverage on non-discriminatory terms beyond the life of the ITSO Agreement and voluntarily submits itself to enforcement of this commitment by the United States. Commission modification of the ITSO Conditions would help resolve reservations some Member Countries may have with terminating the ITSO Agreement. This, in turn, would advance U.S. foreign policy objectives and the public interest by facilitating Intelsat's continued adherence to the Core Principles without unnecessary and burdensome oversight by ITSO.

Respectfully submitted,

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APPENDIX A

Orbital Locations with Common Heritage Frequencies¹

359° E.L. (1° W.L.)	180° E.L. (180° W.L.)
342° E.L. (18° W.L.)	178° E.L. (182° W.L.)
340° E.L. (20° W.L.)	177° E.L. (183° W.L.)
335.5° E.L. (24.5° W.L.)	176° E.L. (184° W.L.)
332.5° E.L. (27.5° W.L.)	174° E.L. (186° W.L.)
330.5° E.L. (29.5° W.L.)	157° E.L. (203° W.L.)
328.5° E.L. (31.5° W.L.)	85° E.L. (275° W.L.)
325.5° E.L. (34.5° W.L.)	66° E.L. (294° W.L.)
310° E.L. (50° W.L.)	64° E.L. (296° W.L.)
307° E.L. (53° W.L.)	62° E.L. (298° W.L.)
304.5° E.L. (55.5° W.L.)	60° E.L. (300° W.L.)
	33° E.L. (327° W.L.)

¹ In preparing the list of orbital locations with Common Heritage frequencies, Intelsat relied on Appendix A of the *Order of Modification*, “Authorization and Orbital Locations Subject to the 2000 Intelsat Licensing Order.” See *Petition of the International Telecommunications Satellite Organization under Section 316 of the Communications Act, as Amended*, Order of Modification, 23 FCC Rcd 2764, Appendix A (2008).