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TELECOMMUNICATIONS

Market Developments in the Global Satellite Services Industry and the Implementation of the ORBIT Act

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Highlights of [GAO-05-550T](#), a testimony before the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives

Why GAO Did This Study

In 2000, the Congress passed the Open-market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act) to help promote a more competitive global satellite services market. The ORBIT Act called for the full privatization of INTELSAT, a former intergovernmental organization that provided international satellite services. In this testimony, GAO discusses (1) the impetus for the privatization of Intelsat as competition developed in the 1990s, (2) the extent to which the privatization steps required by the ORBIT Act have been implemented, and (3) whether access by global satellite companies to non-U.S. markets has improved since the enactment of the ORBIT Act.

www.gao.gov/cgi-bin/getrpt?GAO-05-550T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact JayEtta Z. Hecker at (202) 512-2834 or heckerj@gao.gov.

TELECOMMUNICATIONS

Market Developments in the Global Satellite Services Industry and the Implementation of the ORBIT Act

What GAO Found

When commercial satellite technology was first deployed, a worldwide system was seen as the most efficient means to facilitate the advancement of a fully global provider. INTELSAT was thus established as an intergovernmental entity, originally established by 85 nations, that was protected from competition in its provision of global satellite communications services. By the 1980s, however, technology developments enabled private companies to efficiently compete for global communications services, and in 1984, President Reagan determined that it would be in the national interest of the United States for there to be greater competition in this market. New commercial satellite systems emerged, but soon found that INTELSAT enjoyed advantages stemming from its intergovernmental status and ownership by telecommunications companies in other countries that impeded new satellite companies from effectively competing. The new satellite companies began to call for INTELSAT to be privatized. Decision makers within INTELSAT also determined that privatization would enable more rapid business decisions.

Just prior to INTELSAT's privatization in July 2001, FCC determined that INTELSAT's privatization plan was consistent with requirements of the ORBIT Act. The Federal Communications Commission (FCC) thus authorized the privatized Intelsat—the official name of the company after privatization—to use its U.S. satellite licenses to provide services within the United States pending an initial public offering (IPO) of securities that was mandated by the ORBIT Act to occur at a later time. New legislation was passed in 2004 that allows Intelsat to forgo an IPO if it has achieved substantial dilution of its “signatory” ownership—that is, dilution of ownership by those entities (mostly government-controlled telecommunications companies) that had been the investors in INTELSAT when it was an intergovernmental entity. Since Intelsat has recently been sold to a consortium of four private investors, it no longer has, according to an Intelsat official, any former signatory ownership. FCC is still reviewing this transaction to determine whether Intelsat has met the requirements of the ORBIT Act as amended and thus is no longer required to hold an IPO.

Most of the stakeholders we spoke with said that access to non-U.S. satellite markets has generally improved during the past decade. This improvement in market access is generally attributed to global trade agreements and privatization trends. Despite this general view, some satellite companies expressed concerns that some market access issues still exist. For example, some companies noted that some countries may favor domestic satellite providers or may choose to continue obtaining service from Intelsat because of long-term business relationships that were forged over time. Nevertheless, Intelsat officials noted that it seeks market access on a transparent and nondiscriminatory basis and that Intelsat has participated with other satellite operators, through various trade organizations, to lobby governments to open their markets.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the privatization of INTELSAT and the implementation of the ORBIT Act. In 2000, the Congress passed the Open-market Reorganization for the Betterment of International Telecommunications Act¹ (ORBIT Act) to help promote a more competitive global satellite communication services market. Today we will discuss (1) the impetus for the privatization of INTELSAT² as competition developed during the 1990s, (2) the extent to which the privatization steps required by the ORBIT Act have been implemented, and (3) whether access by global satellite companies to non-U.S. markets has improved since the enactment of the ORBIT Act.

To address these issues, we have drawn upon our previous work on the international satellite market and the ORBIT act. We issued two reports on the international satellite market in 1996.³ In addition, we issued two reports in September 2004, one of which focused on the implementation of the ORBIT Act;⁴ see appendix I for a list of related GAO products. For the latter report, we conducted semistructured interviews with satellite service providers and experts. Additionally, we interviewed officials from the Federal Communications Commission (FCC), the United States Trade Representative; the Department of State; and the National Telecommunications and Information Administration of the Department of Commerce. We conducted our work for the September 2004 report from February through June 2004 in accordance with generally accepted government auditing standards.

Following is a summary of our findings:

¹Pub. L. 106-180, 114 Stat. 48 (2000).

²The official name of the intergovernmental organization was INTELSAT—all capital letters. After privatization, the privatized company is known as Intelsat. We make this distinction throughout this report.

³See GAO, *Telecommunications: Competitive Impact of Restructuring of the International Satellite Organizations*, [GAO/RCED-96-204](#) (Washington, D.C.: July 8, 1996); and GAO, *Telecommunications: Competition Issues in International Satellite Communications*, [GAO/RCED-97-1](#) (Washington, D.C.: Oct. 11, 1996).

⁴See GAO, *Telecommunications: Intelsat Privatization and the Implementation of the Orbit Act*, [GAO-04-891](#) (Washington, D.C.: Sept. 13, 2004); and GAO, *Tax Policy: Historical Tax Treatment of INTELSAT and Current Tax Rules for Satellite Corporations*, [GAO-04-994](#) (Washington, D.C.: Sept. 13, 2004).

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- When commercial satellite technology was first deployed, a worldwide system was seen as the most efficient means to facilitate the advancement of a fully global provider. INTELSAT was thus established as an intergovernmental entity that was protected from competition in its provision of global satellite communications services. By the 1980s, however, technology developments enabled private companies to efficiently compete for global communications services, and in 1984, President Reagan determined that it would be in the national interest of the United States for there to be greater competition in this market. New commercial satellite systems emerged, but within a few years, these providers became concerned that INTELSAT enjoyed certain advantages stemming from its intergovernmental status that impeded others from effectively competing. The new satellite companies began to argue that the marketplace would not become fully competitive unless INTELSAT became a private company that no longer enjoyed such advantages. At about the same time, decision makers within INTELSAT decided to privatize the organization because of the difficulties of making business decisions within an intergovernmental entity.
 - Just prior to INTELSAT's privatization in July 2001, FCC determined that INTELSAT's privatization plan was consistent with requirements of the ORBIT Act. FCC thus authorized Intelsat, LLC—the U.S. subsidiary of the privatized entity Intelsat Ltd.—to use its U.S. satellite licenses to provide services within the United States pending an initial public offering (IPO) of securities that was mandated by the ORBIT Act to occur at a later time. In 2004, however, new legislation allowed Intelsat to forgo an IPO if it achieved substantial dilution of its “signatory” ownership—or dilution of ownership by those entities that had been the signatories to INTELSAT when it was an intergovernmental entity. Since Intelsat has recently been sold to a consortium of four private investors, it no longer has, according to an Intelsat official, any former signatory ownership. FCC is still reviewing this transaction to determine whether Intelsat has met the requirements of the ORBIT Act as amended and thus no longer is required to hold an IPO.
 - Most of the stakeholders we spoke with said that access to non-U.S. satellite markets has generally improved during the past decade. This improvement in market access is generally attributed to global trade agreements and privatization trends. Despite this general view, some satellite companies expressed concerns that some market access issues still exist. These remaining market access problems were attributed to foreign government policies that may limit or slow satellite competitors' access to certain markets. For example, some companies noted that some countries may favor domestic satellite providers or may choose to

continue obtaining service from Intelsat because of long-term business relationships that were forged over time. Nevertheless, Intelsat officials noted that it seeks market access on a transparent and nondiscriminatory basis and that Intelsat has participated with other satellite operators, through various trade organizations, to lobby governments to open their markets.

Background

The Congress passed the Communications Satellite Act of 1962 to promote the creation of a global satellite communications system. As a result of this legislation, the United States joined with 84 other nations in establishing the International Telecommunications Satellite Organization—more commonly known as INTELSAT—roughly 10 years later.⁵ Each member nation designated a single telecommunications company to represent its country in the management and financing of INTELSAT. These companies were called “signatories” to INTELSAT and were typically government-owned telecommunications companies, such as France Telecom, that provided satellite communications services as well as other domestic communications services. Unlike any of the other nations that originally formed INTELSAT, the United States designated a private company, Comsat Corporation, to serve as its signatory to INTELSAT.

The ORBIT Act, enacted by the Congress in March 2000, was designed to promote a competitive global satellite communication services market. The act did so primarily by calling for the privatization of INTELSAT after about three decades of operation as an intergovernmental entity.⁶ The ORBIT Act required, for example, that INTELSAT be transformed into a privately held, for-profit corporation with a board of directors that would be largely independent of former INTELSAT signatories. Moreover, the act required that the newly privatized Intelsat retain no privileges or other benefits from governments that had previously owned or controlled it. To ensure that this transformation occurred, the Congress imposed certain restrictions on the granting of licenses that allow Intelsat to provide services within the United States. The Congress coupled the issuance of licenses granted by FCC to INTELSAT’s successful privatization under the ORBIT Act. That is, FCC was told to consider compliance with provisions

⁵By the time Intelsat privatized in 2001, 148 countries had become parties to the intergovernmental organization.

⁶The act also pertained to Inmarsat. A discussion of Inmarsat’s privatization is outside the scope of this testimony.

of the ORBIT Act as it made decisions about licensing Intelsat's domestic operations in the United States. Moreover, FCC was empowered to restrict any satellite operator's provision of certain new services from the United States to any country⁷ that limited market access exclusively to that satellite operator.⁸

Concerns That INTELSAT Enjoyed Competitive Advantages Provided Impetus for Its Privatization

When satellite technology first emerged as a vehicle for commercial international communications, deploying a global satellite system was both risky and expensive. Worldwide organizations were considered the best means for providing satellite-based services throughout the world. When INTELSAT was established, the member governments put in place a number of protections to encourage its development. In essence, INTELSAT was created as an international monopoly—with little competition to its international services allowed by other satellite systems, although domestic and other satellite systems were allowed under certain conditions. As such, during the 1970s and early 1980s, INTELSAT was the only wholesale provider of certain types of global⁹ satellite communications services such as international telephone calls and relay of television signals internationally.¹⁰

As satellite technology advanced, it became economically more feasible for private companies to develop global satellite systems. This occurred in part because of growing demand for communications services as well as falling costs for satellite system equipment. In particular, some domestic systems that were already in operation expressed interest in expanding into global markets. By the mid-1980s, the United States began encouraging the development of commercial satellite communications systems that would compete with INTELSAT. To do so under the

⁷This provision was limited to those countries that were not members of the World Trade Organization.

⁸Additionally, once INTELSAT was privatized under provisions of the ORBIT Act, Comsat Corporation's role as the U.S. signatory to the INTELSAT operating agreement was ended.

⁹Some other satellite companies provided fixed satellite services between some countries, but INTELSAT was the only provider at that time that could provide service to all parts of the globe.

¹⁰While INTELSAT was the only provider at that time of what is called global fixed satellite services—that is, services provided between fixed points on land—another global satellite organization that was also formed based on amendments to the Communications Satellite Act provided global *maritime* satellite communications. This organization is commonly known as Inmarsat.

INTELSAT treaty agreements, President Reagan determined that competing international satellite systems were required in the national interest of the United States.¹¹ After that determination, domestic purchasers of international satellite communications services were allowed to use systems other than INTELSAT. In 1988, PanAmSat was the first commercial company to begin launching satellites in an effort to develop a global satellite system. Within a decade after PanAmSat first entered the market, INTELSAT faced other global satellite competitors. Moreover, intermodal competition emerged during the 1980s and 1990s as fiber optic networks were widely deployed on the ground and underwater to provide international communications services.

As competition to INTELSAT grew throughout the 1990s, commercial satellite companies became concerned that INTELSAT enjoyed certain advantages stemming from its intergovernmental status. In particular, the new satellite companies noted that INTELSAT enjoyed immunity from legal liability and was often not taxed in the various countries it served. Additionally, new competitors noted that the signatories to INTELSAT in many countries were typically government-owned telecommunications companies, and many were the regulatory authorities that made decisions on satellite access to their respective domestic markets. As such, new satellite companies were concerned that those entities, because of their ownership stake in INTELSAT as signatories, might favor INTELSAT and thus render entry for other satellite companies more difficult. Because of these concerns, competitors began to argue that the satellite marketplace would not become fully competitive unless INTELSAT became a private company that operated like any other company and no longer enjoyed any advantages.

During the same time frame, some of the signatories to INTELSAT came to believe that certain of INTELSAT's obligations as an intergovernmental entity impeded its own market competitiveness. For example, decision-makers within INTELSAT became concerned that the cumbersome nature of the intergovernmental decision-making process left the company unable to rapidly respond to changing market conditions—a disadvantage in comparison with competing private satellite providers. In 1999, INTELSAT announced its decision to become a private corporation, but to leave in

¹¹See Presidential Determination Number 85-2.

place a residual intergovernmental organization that would monitor the privatized Intelsat's remaining public service obligations.¹²

FCC Believes INTELSAT's Privatization Was Consistent with the ORBIT Act's Requirements

On July 18, 2001, INTELSAT transferred virtually all of its financial assets and liabilities to a private company called Intelsat, Ltd., a holding company incorporated in Bermuda. Intelsat, Ltd. has several subsidiaries, including a U.S.-incorporated indirect subsidiary called Intelsat LLC. Upon their execution of privatization, INTELSAT signatories received shares of Intelsat, Ltd. in proportion to their investment in the intergovernmental INTELSAT.¹³ Two months before the privatization, FCC determined that INTELSAT's privatization plan was consistent with the requirements of the ORBIT Act for a variety of reasons, including the following:

- Intelsat, Ltd.'s Shareholders' Agreement provided sufficient evidence that the company would conduct an initial public offering (IPO).
- Intelsat, Ltd. no longer enjoyed the legal privileges or immunities of the intergovernmental INTELSAT.
- Both Intelsat, Ltd. and Intelsat LLC are incorporated in countries that are signatories to the World Trade Organization (WTO) and have laws that secure competition in telecommunications services.
- Intelsat, Ltd. converted into a stock corporation with a fiduciary board of directors.
- Measures were taken to ensure that a majority of the members of Intelsat, Ltd.'s Board of Directors were not directors, employees, officers, managers, or representatives of any signatory or former signatory of the intergovernmental INTELSAT.

¹²The residual intergovernmental organization is known as the International Telecommunications Satellite Organization (ITSO).

¹³In addition, some portion of the intergovernmental Intelsat was owned by nonsignatory—or "investing"—entities, which also received pro rata shares in the new Intelsat, Ltd.

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- Intelsat, Ltd. and its subsidiaries had only arms-length business relationships with certain other entities that obtained INTELSAT's assets.¹⁴

In light of these findings, FCC conditionally authorized Intelsat LLC to use its U.S. satellite licenses to provide services within the United States.¹⁵ However, FCC conditioned this authorization on Intelsat, Ltd. conducting an IPO of securities as mandated by the ORBIT Act. In the past year, however, several changes have occurred that alter the circumstances and requirements associated with Intelsat's IPO. On August 16, 2004, Intelsat, Ltd. announced that its Board of Directors approved the sale of the company to a consortium of four private investors. According to an Intelsat official, this transaction, which was completed on January 28, 2005, eliminates former signatories' ownership in Intelsat. Additionally, on October 25, 2004, the President signed legislation modifying the requirements for privatization in the ORBIT Act. Specifically, Intelsat, Ltd. may forgo an IPO under certain conditions, including, among other things, certifying to FCC that it has achieved substantial dilution of the aggregate amount of signatory or former signatory financial interest in the company.¹⁶ FCC is still reviewing this transaction to determine whether Intelsat has met the requirements of the ORBIT Act as amended and thus is no longer required to hold an IPO.

¹⁴These entities include New Skies Satellites N.V., a spin-off company created approximately 1 year before the privatization of Intelsat that received some of INTELSAT's satellites, and the International Telecommunications Satellite Organization, the ongoing intergovernmental organization responsible for monitoring Intelsat, Ltd.'s continuing "lifeline" obligations, which received start-up funding from INTELSAT when it was privatized.

¹⁵In its required annual reports to the Congress on the ORBIT Act, FCC has continued to report that Intelsat has complied with ORBIT Act provisions.

¹⁶In the law, significant dilution means that a majority of the financial interests in Intelsat is no longer held or controlled, directly or indirectly, by signatories or former signatories.

While Market Access Has Improved, Some Companies Say That Certain Market Access Challenges Remain

According to most stakeholders and experts we spoke with, access to non-U.S. satellite markets has generally improved during the past decade, which they generally attribute to global trade agreements and privatization trends. In particular, global satellite companies appear less likely now than they were in the past to encounter government restraints or business practices that limit their ability to provide service in non-U.S. markets. Satellite companies and experts we spoke with generally indicated that access to non-U.S. satellite markets has improved. Additionally, most stakeholders attributed this improved access to global trade agreements that helped to open telecommunications markets around the world, as well as to the trend toward privatization in the global telecommunications industry. At the same time, many stakeholders noted that the ORBIT Act had little to no impact on improving market access. According to several stakeholders, market access was already improving when the ORBIT Act was passed.

Despite the general view that market access has improved, some satellite companies and experts expressed concerns that market access issues still exist. These remaining market access problems were attributed to foreign government policies that limit or slow satellite competitors' access to certain markets. For example:

- Some companies and experts we spoke with said that some countries have policies that favor domestic satellite providers over other satellite systems and that this can make it difficult for nondomestic companies to provide services in these countries.
- Some companies and one expert we spoke with said that because some countries carefully control and monitor the content that is provided within their borders, the country's policies may limit certain satellite companies' access to their market.
- Several companies and an expert we interviewed said that many countries have time-consuming or costly approval processes for satellite companies.¹⁷

In addition to these government policies, some stakeholders believe that Intelsat may benefit from legacy business relationships. Since INTELSAT

¹⁷Some stakeholders we spoke with who made this point also noted that the same countries may have bureaucratic and costly processes for any foreign company—not just satellite or telecommunications companies—that wants to do business in their country.

was the dominant provider of global satellite services for approximately 30 years, several stakeholders noted that Intelsat may benefit from the long-term business relationships that were forged over time, as telecommunications companies in many countries may feel comfortable continuing to do business with Intelsat as they have for years. Additionally, two stakeholders noted that because companies have plant and equipment as well as proprietary satellite technology in place to receive satellite services from Intelsat, it might cost a significant amount of money for companies to replace equipment in order to use satellite services from a different provider. Alternatively, representatives of Intelsat, Ltd. told us that Intelsat seeks market access on a transparent and nondiscriminatory basis and that Intelsat has participated with other satellite operators, through various trade organizations, to lobby governments to open their markets. Further, some companies and many of the experts we interviewed told us that, in their view, Intelsat does not have preferential access to non-U.S. satellite markets and that they have no knowledge that Intelsat in any way seeks or accepts exclusive market access arrangements or attempts to block competitors' access to non-U.S. satellite markets.

Finally, some of the companies we spoke with believe that FCC should take a more proactive role in improving access for satellite companies in non-U.S. markets. For example, one satellite company said that section 648 of the ORBIT Act, which prohibits any satellite operator from acquiring or enjoying an exclusive arrangement for service to or from the United States, provides a vehicle for FCC to investigate the status of access for satellite companies to other countries' markets. Conversely, FCC officials told us they do not believe that FCC should undertake investigations of market access concerns without specific evidence of violations of section 648 of the ORBIT Act. While some comments filed with FCC in proceedings on Intelsat's licensing and for FCC's annual report on the ORBIT Act raise concerns about market access, FCC has stated that these filings amount only to general allegations and fall short of alleging any specific statutory violation that would form a basis sufficient to trigger an FCC enforcement action.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

**GAO Contacts and
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Acknowledgments**

For questions regarding this testimony and the report on which it is based, please contact JayEtta Z. Hecker at (202) 512-2834 or heckerj@gao.gov, or Mark L. Goldstein at (202) 512-2834 or goldsteinm@gao.gov. Individuals making key contributions to this testimony included Amy Abramowitz, Michael Clements, Emil Friberg, Bert Japikse, Logan Kleier, Richard Seldin, and Juan Tapia-Videla.

Related GAO Products

Tax Policy: Historical Tax Treatment of INTELSAT and Current Tax Rules for Satellite Corporations. [GAO-04-994](#). Washington, D.C.: September 13, 2004.

Telecommunications: Intelsat Privatization and the Implementation of the ORBIT Act. [GAO-04-891](#). Washington, D.C.: September 13, 2004.

Telecommunications: Competition Issues in International Satellite Communications. [GAO/RCED-97-1](#). Washington, D.C.: October 11, 1996.

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