

**WRITTEN STATEMENT**

**of**

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**on**

**The ORBIT Act:**

**An Examination of Progress Made in Privatizing  
the Satellite Communications Marketplace**

**Before the  
Subcommittee on Telecommunications and the Internet  
Committee on Energy & Commerce  
United States House of Representatives**

**Thursday, April 14, 2005  
10:00 a.m.**

Good morning, Chairman Upton, Mr. Markey, and distinguished members of the Subcommittee. I am Donald Abelson, Chief of the International Bureau of the Federal Communications Commission (FCC) and it is my pleasure to come before you today to discuss the Open-Market Reorganization for the Betterment of International Telecommunications (ORBIT) Act.

The FCC is actively engaged in implementing the requirements of the ORBIT Act as set forth by Congress. The purpose of the Act is “to promote a fully competitive global market for satellite communications services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat.”

As required by the statute, the Commission has reported to Congress on annual basis regarding its actions to implement the ORBIT Act. We intend to submit our next report to Congress on or before the due date of June 15, 2005.

Since January 2000, the Commission has undertaken a number of actions to ensure that the former intergovernmental satellite organizations, INTELSAT and Inmarsat, and the separated entity of INTELSAT, New Skies, have been privatized in a pro-competitive manner, consistent with the criteria of the statute. The Commission took the following actions since enactment of the ORBIT Act in 2000:

## INTELSAT

- In August 2000, the Commission granted conditional licenses to Intelsat -- a separate, privately held U.S. corporation created by INTELSAT<sup>1</sup>-- to hold U.S. satellite authorizations and associated space segment assets in anticipation of INTELSAT's full privatization. The FCC authorizations applied to INTELSAT's existing satellites, planned satellites, and planned system modifications associated with INTELSAT's frequency assignments in the fixed satellite services ("FSS") C- and Ku- bands existing as of privatization. They were conditioned upon Intelsat privatizing in a manner consistent with the ORBIT Act.

- Intelsat privatized in 2001. The Commission determined that Intelsat had privatized in a manner consistent with the privatization criteria of the ORBIT Act, except for the requirement that Intelsat conduct an Initial Public Offering (IPO). The Commission conditioned its findings on Intelsat conducting an IPO within the timeframe stipulated by the ORBIT Act.

- The ORBIT Act requirement for an IPO was intended to achieve the independence of the newly privatized company by substantially diluting ownership by former INTELSAT Signatories.<sup>2</sup> The ORBIT Act initially required an IPO by October 1, 2001, but gave the Commission discretion to extend this deadline to no later than December 31, 2002. Since that time, Congress has amended the ORBIT Act a number of

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<sup>1</sup> For the purposes of this testimony, the term "INTELSAT" refers to the original intergovernmental organization prior to privatization. The term "Intelsat" refers to the Intelsat Ltd. and its subsidiaries created upon privatization in 2001.

<sup>2</sup> Pub.L. 106-180, 114 Stat. 48 § 621(2).

times to extend these deadlines. The Commission, under the authority of Congress, has also extended this deadline. Currently, the deadline is June 30, 2005.

- In 2004, Congress also enacted legislation amending the ORBIT Act by adding Section 621(5)(F) allowing for a certification process as an alternative to conducting an IPO and public securities listing.<sup>3</sup> This process permits Intelsat (and Inmarsat) to certify, and the Commission to determine, that certain financial and control interests held by Signatories and former Signatories of pre-privatized INTELSAT, and certain ownership interests held by intergovernmental organizations, no longer exist in Intelsat.

- In December 2004, an Order was issued granting applications filed by Intelsat, and Zeus Holdings Limited, a private equity fund, to transfer control of certain Commission authorizations from Intelsat to Zeus. The Commission concluded, pursuant to sections 214(a) and 310(d) of the Communications Act, that approval of the applications will serve the public interest, convenience, and necessity.

- In December 2004, Intelsat filed a Petition for Declaratory Ruling and Certification (updated February 9, 2005) requesting that the Commission find Intelsat to be in compliance with the certification requirements as provided under Section 621(5)(F) of the ORBIT Act. The Commission has adopted an order regarding this matter and expects to release it shortly.

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<sup>3</sup> Pub.L. 108-371.

## Inmarsat

- Since 1978, Inmarsat has provided maritime services to and from the United States. Inmarsat privatized in 1999, prior to enactment of the ORBIT Act. In 2001, the Commission concluded that Inmarsat had privatized in a manner consistent with the non-IPO requirements of the ORBIT Act and authorized the provision of mobile services in the United States, subject to Inmarsat complying with its requirement to conduct an IPO under the terms of the ORBIT Act. The Commission granted several operators in the United States authority to use Inmarsat for communications services to, from, or within the United States.

- In February 2004, Inmarsat filed a letter informing the Commission of a series of transactions, which it described as constituting an IPO pursuant to Inmarsat's remaining ORBIT Act requirements. In response to this letter, the Commission released a Public Notice and also extended the deadline for Inmarsat to conduct an IPO to December 31, 2004.

- Congress has amended the ORBIT Act several times to extend the deadline for Inmarsat to conduct an IPO. Most recently, in October 2004, Congress amended Clause (ii) of Section 621(5)(A) of the ORBIT Act to extend Inmarsat's IPO deadline to June 30, 2005.<sup>4</sup>

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<sup>4</sup> Pub.L. 108-371.

- On November 15, 2004, Inmarsat filed a certification with the Commission that it has fulfilled the amended privatization requirements of the ORBIT Act. Inmarsat also petitioned the Commission to determine that its certification complied with the remaining privatization criteria of the statute. The Commission placed Inmarsat's Request for Declaratory Ruling on Public Notice on December 21, 2004. This matter is currently pending before the Commission.

#### New Skies

- New Skies is the Netherlands-based private company INTELSAT created in 1998 as INTELSAT's first step toward privatization. In 1999, prior to the enactment of the ORBIT Act, the Commission granted U.S. earth station operators limited three-year authorizations to operate with New Skies in the U.S. market. This grant was conditioned on New Skies' taking certain actions to become independent of INTELSAT, including conducting an IPO as anticipated by the INTELSAT Assembly of Parties decision approving New Skies' creation. New Skies conducted its IPO in October 2000. In 2001, the Commission granted New Skies' request to provide satellite services to, from and within the United States. The Commission found that New Skies had met the criteria of the ORBIT Act, including substantially diluting the ownership of former INTELSAT Signatories through the IPO.

- In 2001, New Skies petitioned for, and the Commission granted under delegated authority, the addition of four satellites operated by New Skies to the

“Permitted Space Station List” with conditions to remove secondary status requirements for certain New Skies’ satellites.

- In 2002, New Skies announced a share buy-back program under which it would repurchase up to 10 percent of its then outstanding shares. In 2002, PanAmSat filed an “Emergency Request for Inquiry into the Continuing Qualifications of New Skies to Access the U.S. Market.” In 2003, an Order was issued denying PanAmSat’s request, based on a finding that the New Skies share repurchase program had the effect of further diluting the combined interest of the former INTELSAT Signatories in New Skies. Through the buy-back program, New Skies purchased a higher percentage of shares held by former Signatories than of shares held by the general public.

#### Other Actions

- The ORBIT Act requires that users and service providers be permitted to obtain a form of direct access to INTELSAT capacity and directed the Commission to conduct a rulemaking to determine if users or providers of telecommunications services have sufficient access to INTELSAT space segment directly from INTELSAT to meet their service capacity requirements. Prior to the adoption of the ORBIT Act, the Commission had decided in a rulemaking proceeding that direct access is in the public interest allowing customers in the United States to acquire satellite capacity directly from INTELSAT rather than from the U.S. signatory, Comsat Corporation (Comsat).

- In 2000, the Commission initiated a rulemaking and released a Report and Order requiring Comsat and direct access customers to negotiate commercial solutions if possible to ensure that sufficient opportunity is available for parties to negotiate commercial solutions. In 2001, Comsat filed a report, as required by the Commission, detailing the results of negotiations and maintaining direct access opportunities were increasing at that time. In November 2001, following INTELSAT's privatization and Intelsat's purchase of Comsat, the Commission concluded that the underlying basis for the direct access provisions of its rulemaking no longer existed, and terminated the proceeding.

- Finally, the Commission has authorized several other acquisitions involving entities subject to the ORBIT Act, including: (1) the acquisition of Comsat by Lockheed Martin in 2000;<sup>5</sup> (2) the acquisition of Comsat's former mobile services business from Lockheed Martin by Telenor in 2001; (3) the acquisition of Comsat's former world systems business from Lockheed Martin by Intelsat in 2002; (4) the acquisition of Comsat General from Lockheed Martin by Intelsat in 2004; and (5) the acquisition of New Skies by Blackstone Funds in 2004.

In conclusion, the Commission will continue to implement and enforce the requirements of the ORBIT Act as directed to by Congress. Furthermore, the

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<sup>5</sup> The ORBIT Act terminated the Communications Satellite Act of 1962's ownership restrictions on COMSAT Corporation ("Comsat"). As a result, Lockheed Martin and Comsat jointly filed an application with the Commission for transfer of control of Comsat's various licenses and authorizations.

Commission will continue to inform Congress of the actions it takes to implement the requirements of the statute in its next annual report.

Thank you again for the opportunity to appear before you today. I will be happy to respond to your questions.