

September 2004

TELECOMMUNICATIONS

Intelsat Privatization
and the
Implementation of the
ORBIT Act



G A O

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Highlights of [GAO-04-891](#), a report to congressional requesters

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. GAO agreed to provide federal officials' and stakeholders' views on (1) whether the privatization steps required by the ORBIT Act have been implemented and whether there were potential inconsistencies between ORBIT Act requirements and U.S. obligations made in international trade agreements; (2) whether access by global satellite companies to non-U.S. markets has improved since the enactment of the ORBIT Act and, if so, to what is this generally attributed; and (3) if any market access problems remain, what role does the Federal Communications Commission (FCC) have in addressing those problems under the ORBIT Act.

www.gao.gov/cgi-bin/getrpt?GAO-04-891.

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

TELECOMMUNICATIONS

Intelsat Privatization and the Implementation of the ORBIT Act

What GAO Found

Most of INTELSAT's privatization steps have taken place and a variety of stakeholders told us that implementation of the ORBIT Act was not inconsistent with the commitments that the United States made in international trade agreements. In July 2001, INTELSAT transferred its satellite and financial assets to a private company. FCC determined that this and other actions satisfied the ORBIT Act requirements for INTELSAT's privatization but noted that the company must hold an initial public offering (IPO) of securities by a required date. The current deadline for the IPO is June 30, 2005. Because Intelsat has not completed the IPO, some satellite companies assert that privatization is not fully complete. Some parties have pointed out that there was a possibility that implementation of the ORBIT Act could have given rise to action arguably inconsistent with commitments that the United States made in international trade agreements. However, we were told that actual implementation avoided such outcomes and no disputes arose.

Most stakeholders and experts that GAO spoke with believe that access to non-U.S. satellite markets has improved, but few attribute this improvement to the ORBIT Act. These stakeholders and experts said that global trade agreements, such as the WTO's basic telecommunications commitments, and the global trend towards privatization of telecommunications companies have improved access in non-U.S. markets. Several stakeholders and experts told GAO that improvements in market access were already underway when the Congress passed the ORBIT Act and that the act has complemented ongoing trends towards more open satellite markets.

Some satellite companies report continuing market access problems, but there are disagreements regarding whether FCC should investigate and resolve these problems. Some satellite companies that GAO spoke with report problems with access to non-U.S. satellite markets, which they attribute to countries with policies that favor domestic and regional satellite companies, countries exercising control over content, bureaucratic processes in various countries, and long-term business relationships between INTELSAT and various telecommunications companies. Most companies GAO spoke with report that Intelsat does not take active steps to acquire preferential or exclusive market access, and Intelsat itself stated that it does not seek nor, if offered, would accept preferential market access. Finally, some companies suggest that FCC should take a more proactive role in investigating market access problems, rather than assuming an adjudicative role. FCC said that evidence provided to the agency has not been sufficient to warrant action and also suggested that trade disputes are more appropriately addressed by the United States Trade Representative.

We provided a draft of this report to four government agencies and five private companies for review and comment. Their comments are summarized in the letter of this report.

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Abbreviations

EC	European Commission
EU	European Union
FCC	Federal Communications Commission
GATS	General Agreement on Trade in Services
IPO	Initial public offering
ITSO	International Telecommunications Satellite Organization
NTIA	National Telecommunications and Information Administration
ORBIT Act	Open-market Reorganization for the Betterment of International Telecommunications Act
SEC	Securities and Exchange Commission
USTR	United States Trade Representative
WTO	World Trade Organization

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United States Government Accountability Office
Washington, D.C. 20548

September 13, 2004

Congressional Requesters:

INTELSAT was created as an intergovernmental organization designed to bring satellite services—such as international telephone calls and relay of television signals internationally—to countries around the world.¹ As an operator of an international network of communications satellites, INTELSAT was capitalized and controlled primarily by the designated *signatories*² of the governments that entered into the agreement to form INTELSAT. Due to its intergovernmental nature, INTELSAT benefited from many privileges that privately owned companies do not enjoy. During the 1990s, there was considerable criticism from new commercial satellite companies focused on the difficulty of competing against a company with the advantages that flowed from INTELSAT's intergovernmental status. At about the same time, decision-makers within INTELSAT began to believe that its intergovernmental structure led to a slow decision-making process that did not enable INTELSAT to be sufficiently nimble in the increasingly dynamic global communications marketplace.

In 2000, the Congress passed the Open-market Reorganization for the Betterment of International Telecommunications Act³ (ORBIT Act) to help promote a more competitive global satellite communication services market. The ORBIT Act called for the full privatization of INTELSAT and imposed certain criteria on the nature of INTELSAT's privatization. You asked us to provide information related to the implementation of the ORBIT Act and the status of market access for global satellite companies in countries around the world. Specifically, this report provides federal officials' and stakeholders' views on (1) whether the privatization steps required by the ORBIT Act have been implemented and whether there were potential inconsistencies between ORBIT Act requirements and U.S.

¹The impetus for the creation of Intelsat was enactment of the Communications Satellite Act of 1962, which chartered Comsat Corporation and, from 1964 until 1971, fostered the development of interim Intelsat agreements and operations. A formal Intelsat agreement, with annexes, and the Intelsat operating agreement, were agreed to in Washington, D.C., on August 20, 1971, and entered fully into force on February 12, 1973.

²Each country designated a company—typically a government-owned telephone provider—to be the country's *signatory* to Intelsat. The signatories provided investment dollars to Intelsat, which operated a fleet of satellites on their behalf.

³Pub. L. 106-180, 114 Stat. 48 (2000).

obligations made in international trade agreements; (2) whether access by global satellite companies to non-U.S. markets has improved since the enactment of the ORBIT Act and, if so, to what is this generally attributed; and (3) if any market access problems remain, what role does the Federal Communications Commission (FCC) have in addressing those problems under the ORBIT Act. In addition, you asked us to provide information related to the tax status of INTELSAT prior to privatization as well as the current tax treatment of multinational corporations. As we agreed, we are issuing a separate report to you on these tax issues.

To respond to the three objectives of this report, we conducted semi-structured interviews with a variety of industry participants. We interviewed five satellite service providers and six scholars and attorneys who specialize in the regulatory and market access issues related to satellite communications. We selected scholars and attorneys based on their recently published articles or speeches on competition in the satellite services market. We also interviewed officials from FCC; the United States Trade Representative (USTR); the Department of State; the National Telecommunications and Information Administration (NTIA); and the International Telecommunications Satellite Organization, an intergovernmental entity formed when INTELSAT privatized that works to ensure that satellite service is available to countries that might not otherwise have access to such services. We also reviewed key documents, including relevant provisions of the Communications Satellite and ORBIT acts, and other relevant documents obtained from FCC, USTR, and NTIA about the ORBIT Act and related concerns about market access in non-U.S. markets. Using FCC's Electronic Comment Filing System, we searched for filings on market access concerns and checked for any other such complaints filed with the agency. We also searched for any complaints on market access issues that might be filed with USTR and NTIA. We did not verify the reliability of these complaint data because these issues were not material to the primary focus of this report.

We conducted our review from February through June 2004 in accordance with generally accepted government auditing standards.

Results in Brief

Two months before INTELSAT's privatization in 2001, FCC determined that the privatization would be in accordance with the ORBIT Act; in addition, we were told that the implementation of the act was not inconsistent with the commitments that the United States made in international trade agreements. Based on its determination, FCC granted licenses that

authorized a U.S. subsidiary of Intelsat,⁴ Ltd.—the newly privatized company—to provide services within the United States, but conditioned that licensing on the company holding an initial public offering (IPO) of securities, as required under the ORBIT Act, by a required date.⁵ Although most of the officials of competitive satellite companies and experts that we interviewed agree with FCC’s finding that INTELSAT privatized according to the requirements of the ORBIT Act, some of them also believe that the privatization will not be fully complete until the IPO is held. 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, if approved, would eliminate former signatories’ ownership in Intelsat. Additionally, some parties have pointed out that there was a possibility that implementation of the ORBIT Act could have given rise to action arguably inconsistent with commitments that the United States made in international trade agreements. However, we were told that actual implementation avoided such outcomes and no disputes arose.

Most stakeholders and experts that we spoke with believe that access to non-U.S. satellite markets has improved, but few attribute this improvement to the ORBIT Act. These stakeholders and experts said that global trade agreements, such as the WTO’s basic telecommunications commitments, and the global trend towards privatization of telecommunications companies have improved access in non-U.S. markets. As such, most stakeholders and experts that we spoke with believe that improvements in market access were already underway when the Congress passed the ORBIT Act and that the act has complemented ongoing trends towards more open satellite markets.

Although access to markets has improved, some satellite companies have stated that market access problems still exist and parties disagree about the extent to which FCC should take action to address these problems. For

⁴The official name of the intergovernmental organization was INTELSAT—all capital letters. After privatization, the privatized company is known as Intelsat. As such, we make this distinction throughout this report.

⁵The requirement for a public offering is covered in a portion of the act that deals with the larger matter of Intelsat’s conversion to a stock corporation. The IPO provision requires that Intelsat be incorporated as a national corporation or similar accepted commercial structure for which an initial public offering is to be conducted. This is then to result in shares being listed for trading on one or more major stock exchanges with transparent and effective securities regulation.

the most part, these problems are attributed to policies of foreign governments that may have the effect of making entry into their country costly and time-consuming for some satellite providers. Additionally, some companies attribute any continuing preference that governments and foreign telecommunications companies may have for doing business with Intelsat, Ltd., to the long-standing business relationships that were forged over a long period of time and to the continued investment that some international telecommunications companies have had in Intelsat, Ltd. While some satellite companies believe that FCC should be taking a more proactive approach toward addressing any remaining market access problems in non-U.S. markets, FCC has stated that the concerns and complaints about market access issues it has received have not been of sufficient specificity to warrant an FCC proceeding. Moreover, FCC has noted that concerns about market access would generally be more appropriately handled by USTR. USTR has received no complaints about access problems by satellite companies in non-U.S. markets in either their annual review of compliance with telecommunications trade agreements, or in comments solicited in the context of ongoing WTO services negotiations.

We provided a draft of this report to the Federal Communications Commission (FCC), the Department of State, the National Telecommunications and Information Administration (NTIA) of the Department of Commerce, and the United States Trade Representative (USTR) for their review and comment. FCC did not provide comments. USTR and the Department of State provided technical comments that were incorporated into the report. NTIA also provided technical comments that were incorporated into the report as appropriate and also sent formal comments in a letter, which appears in appendix II. In its formal comments, NTIA stated that they generally agree with the findings of our report and remain interested in developments regarding Intelsat's further plans to pursue a private equity buyout.

We also invited representatives from five companies to review and comment on a draft of this report. These companies included: Intelsat, Ltd.; Lockheed Martin Corporation; PanAmSat Corporation; SES Americom Inc.; and New Skies Satellite N.V. New Skies and PanAmSat did not provide comments on the draft report. Both Lockheed Martin and Intelsat provided technical comments that were incorporated as appropriate. SES Americom provided both technical comments—which we addressed as appropriate—and substantive comments that expressed concerns about our

characterization of some of the issues discussed in this report. Their substantive comments are discussed in appendix I.

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.⁶ 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.

During the 1970s and early 1980s, INTELSAT was the only wholesale provider of certain types of global⁷ satellite communications services such as international telephone calls and relay of television signals internationally.⁸ By the mid-1980s, however, the United States began encouraging the development of commercial satellite communications systems that would compete with INTELSAT.⁹ 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 global satellite competitors. Moreover, *intermodal* competition emerged during the 1980s and 1990s as

⁶By the time Intelsat privatized in 2001, 148 countries had become parties to the intergovernmental organization.

⁷Some 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.

⁸While 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.

⁹See Presidential Determination Number 85-2 (1984).

fiber optic networks were widely deployed on the ground and underwater to provide international communications services.

As competition to INTELSAT grew, there was considerable criticism from commercial satellite companies because they believed that INTELSAT enjoyed advantages stemming from its intergovernmental status that made it difficult for other companies to compete in the market. In particular, these companies noted that INTELSAT enjoyed immunity from legal liability and was often not taxed in the various countries that it served. By the mid-1990s, competitors began to argue that for the satellite marketplace to become fully competitive, INTELSAT would need to be privatized so that it would operate like any other company and no longer enjoy such advantages. At about the same time, INTELSAT recognized that privatization would be best for the company. Decision-makers within INTELSAT noted that the cumbersome nature of the intergovernmental decision-making process left the company unable to rapidly respond to changing market conditions. In 1999, INTELSAT announced its decision to privatize and thus become a private corporation.¹⁰

By the late 1990s, the United States government also decided that it would be in the interests of consumers and businesses in the United States for INTELSAT to privatize. The ORBIT Act, enacted in March 2000, was designed to promote a competitive global satellite communication services market. It did so primarily by calling for INTELSAT to be fully privatized.¹¹ 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

¹⁰Intelsat agreed to leave in place a residual intergovernmental organization, the International Telecommunications Satellite Organization (ITSO), which would monitor the performance of Intelsat, Ltd.'s remaining public service obligations. In particular, after the privatization, Intelsat, Ltd. was tasked with maintaining global connectivity and honoring connectivity obligations that had been made by the intergovernmental INTELSAT to customers in countries that have low per capita income or that have a relatively low level of telecommunications facilities per capita and that have a high degree of dependence on Intelsat for their communication needs.

¹¹The act also pertained to Inmarsat. A discussion of Inmarsat's privatization is outside the scope of this report.

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 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 country¹² that limited market access exclusively to that satellite operator.¹³

Market access for satellite firms to non-U.S. markets was also affected by trade agreements that were negotiated during the 1990s. Specifically, the establishment of the World Trade Organization (WTO) on January 1, 1995, with its numerous binding international trade agreements formalized global efforts to open markets to the trade of services. Since that time, WTO has become the principal international forum for discussion, negotiation, and resolution of trade issues. For example, the first global trade agreement that promotes countries' open and nondiscriminatory market access to services was the General Agreement on Trade in Services (GATS), which provides a legal framework for addressing barriers to international trade and investment in services, and includes specific commitments by member countries to restrict their use of these barriers. Since adoption of a basic telecommunications services protocol by the GATS in 1998, telecommunications trade commitments have also been incorporated into the WTO rules. Such commitments resulted in member countries agreeing to open markets to telecommunications services, such as global satellite communications services.

¹²This provision was limited to those countries that were not members of the WTO.

¹³Additionally, 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.

Most INTELSAT Privatization Steps Have Taken Place and Stakeholders Stated That Implementation of the ORBIT Act Was Not Inconsistent with U.S. Obligations in International Trade Agreements

FCC determined that INTELSAT's July 2001 privatization was in accordance with the ORBIT Act's requirements and licensed the new private company to provide services within the United States. FCC's grant of these licenses was conditioned on Intelsat holding an initial public offering (IPO) of securities by October 1, 2001. The Congress and FCC have extended this date three times and the current deadline for the IPO is June 30, 2005.¹⁴ Because Intelsat has not yet completed the IPO, some competing satellite companies have stated that the privatization is not fully complete. Some parties have pointed out that there was a possibility that implementation of the ORBIT Act could have given rise to action arguably inconsistent with commitments that the United States made in international trade agreements. However, we were told that actual implementation avoided such outcomes and no disputes arose.

Most Stakeholders Believe INTELSAT's Privatization Is Consistent with the ORBIT Act's Requirements, but the IPO Remains a Final Step

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.¹⁵ Two months before the privatization, FCC determined that INTELSAT's privatization plan was consistent with the requirements of the ORBIT Act¹⁶ for a variety of reasons, including the following.

- Intelsat, Ltd.'s Shareholders' Agreement provided sufficient evidence that the company would conduct an IPO, which would in part satisfy the act's requirement that Intelsat be an independent commercial entity.

¹⁴FCC is authorized to extend the deadline to December 31, 2005, based on its consideration of relevant factors.

¹⁵In 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.

¹⁶FCC's determination on Intelsat's privatization followed public notices and proceedings as required by the Administrative Procedures Act (5 U.S.C. section 551, *et. seq.*) and FCC's published procedures, which are codified at 47 C.F.R. pt.1. These procedures afforded other interested parties an opportunity to comment and submit information in response to Intelsat's FCC filings. FCC considered these materials in reaching its decision.

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- Intelsat, Ltd. no longer enjoyed the legal privileges or immunities of the intergovernmental INTELSAT, since it was organized under Bermuda law and subject to that country's tax and legal liability requirements.
 - Both Intelsat, Ltd. and Intelsat, LLC are incorporated in countries that are signatories to the WTO and have laws that secure competition in telecommunications services.
 - Intelsat, Ltd. converted into a stock corporation with a fiduciary board of directors. In particular, FCC said that the boards of directors of both Intelsat, Ltd. and Intelsat, LLC were subject to the laws of Bermuda and the United States, respectively, and that the laws of these countries require boards of directors to have fiduciary obligations to the company.
 - Measures 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 were consistent with the requirements of the ORBIT Act.
 - Intelsat, Ltd. and its subsidiaries had only arms-length business relationships with certain other entities that obtained INTELSAT's assets.¹⁷

In light of these findings, FCC conditionally authorized Intelsat, LLC to use its U.S. satellite licenses to provide services within the United States.¹⁸ However, FCC conditioned this authorization on Intelsat, Ltd.'s conducting an IPO of securities as mandated by the ORBIT Act. In December 2003, FCC noted that if Intelsat, Ltd. did not conduct an IPO by the statutory deadline, the agency would limit or deny Intelsat, LLC's applications or requests and revoke the previous authorizations granting Intelsat, LLC the

¹⁷These entities include New Skies Satellites N.V., a spin-off company created approximately 1 year before the privatization of Intelsat which 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.

¹⁸In its required annual reports to the Congress on the ORBIT Act, FCC has continued to report that Intelsat has complied with ORBIT Act provisions to date.

authority to provide satellite services in the United States.¹⁹ In March 2004, Intelsat, Ltd. filed a registration statement with the Securities and Exchange Commission (SEC) indicating its intention to conduct an IPO. Since that time, however, the Congress further extended the required date by which the IPO must occur. In May 2004, the Congress extended the IPO deadline to June 30, 2005, and authorized FCC to further extend that deadline to December 31, 2005, under certain conditions. In late May 2004, Intelsat withdrew its filing with SEC regarding its registration to conduct an IPO.²⁰ 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; the sale requires the approval of shareholders holding 60 percent of Intelsat's outstanding shares and also regulatory approval. According to an Intelsat official, this transaction, if approved, would eliminate former signatories' ownership in Intelsat.

Most companies and experts that we interviewed believe that, to date, Intelsat's privatization has been in accordance with the ORBIT Act's requirements, and some of these companies and experts that we interviewed believe that FCC is fulfilling its duties to ensure that the privatization is consistent with the act. These parties noted that the ORBIT Act set forth many requirements for Intelsat and that most of these requirements have been fulfilled. However, some companies and experts believe that the IPO is a key element to complete Intelsat's privatization. According to some parties, the IPO would further dilute signatory ownership in Intelsat, Ltd. as envisioned by the ORBIT Act, which would reduce any incentive that former signatories might have to favor Intelsat

¹⁹The ORBIT Act initially required the IPO to occur by October 2001, and gave FCC discretion to extend the IPO deadline to December 31, 2002. That extension was granted. In October 2002, the Congress extended Intelsat's IPO deadline to December 31, 2003, and gave FCC authority to further extend this deadline to June 30, 2004. On December 17, 2003, FCC extended the deadline for Intelsat's IPO until June 30, 2004. In both cases, FCC extended the IPO deadline based on its determination that market conditions were sufficiently negative to warrant an extension. In May 2004, the Congress extended the IPO deadline to June 30, 2005, and authorized FCC to further extend that deadline to December 31, 2005.

²⁰Inmarsat was also required under the ORBIT Act to hold an IPO of securities, be listed on a major stock exchange, and have substantial dilution of former signatory ownership. In a February 2004 letter filed with FCC, Inmarsat stated that a majority equity interest of its ownership has been sold to nonsignatory shareholders and that it has made a public offering of debt securities, which will be traded on the Luxembourg stock exchange. Inmarsat's letter maintains that these steps are sufficient to satisfy ORBIT Act requirements regarding the IPO, the listing of securities on a major stock exchange, and the dilution of ownership by former signatories to Inmarsat. This matter is pending before FCC.

when selecting a company to provide satellite services. Table 1 compares Intelsat, Ltd.'s ownership on the day of privatization in 2001 with the ownership as of May 6, 2004. As indicated in the table, in May 2004, more than 50 percent of Intelsat, Ltd. was owned by the former signatories to the intergovernmental INTELSAT; although, as mentioned above, the recently announced purchase of Intelsat by four private investors, if approved, would eliminate former signatory ownership in Intelsat, according to an Intelsat official.

Table 1: Former Signatory and Nonsignatory Ownership of Intelsat, Ltd., as of Privatization in July 2001 and May 2004

Companies	Former signatory	% Investment share in July 2001	% Investment share in May 2004
Comsat Corporation ^a	Yes	21.8	21.8
Videsh Sanchar Nigam Ltd.	Yes	5.4	5.4
France Telecom	Yes	4.2	4.2
Telenor	Yes	4.1	4.1
British Telecom	Yes	3.8	3.8
Teleglobe	Yes	3.8	Less than 1 percent
Deutsche Telekom	Yes	3.4	3.4
Telecom Italia	Yes	2.8	No ownership in 2004
Embratel	Yes	2.3	No ownership in 2004
Cable and Wireless	No	2.0	2.0
Intelsat Global Sales and Marketing, Ltd. ^b	No	No ownership in 2001	3.8
Mirror International	No	No ownership in 2001	2.8
Telstra	No	Not in top 10 in 2001	1.7
Total of top 10 owners		53.6	53.0
Total all other owners		46.4	47.0
Total former signatory ownership		86.1	76.6
Total nonsignatory ownership		13.9	23.4

Source: GAO analysis of Intelsat data.

^aComsat Corporation is now a wholly-owned subsidiary of Lockheed Martin Corporation, which was never a signatory to INTELSAT. Because Comsat Corporation, which was a signatory to INTELSAT, still exists as a corporate entity, we have counted these shares as being owned by a former signatory.

Some parties believe that because the current parent company to Comsat was not a signatory, these shares should not be counted as shares of an ex-signatory. If they were not, the total former signatory ownership share of Intelsat would fall from 76.6 percent to 54.8 percent.

^bThe name for Intelsat Global Sales and Marketing, Ltd. is now Intelsat (Bermuda) Ltd.

Stakeholders Note Potential for Inconsistencies between ORBIT Act and International Trade Agreements, but Stated That Implementation of the Act Was Not Inconsistent with Those Agreements

We were told that there were potential inconsistencies between the ORBIT Act and obligations the United States made in international trade agreements. In particular, the ORBIT Act set requirements for INTELSAT's privatization that, if not met, could have triggered FCC's denial of licenses that would allow a successor private company to INTELSAT to provide services in the United States once that company was incorporated under foreign law. Some stakeholders told us that, had this occurred, FCC's actions could have been viewed as inconsistent with U.S. obligations in international trade agreements. In fact, on August 1, 2000, following the enactment of the ORBIT Act, the European Commission (EC) stated that the ORBIT Act raised a general concern regarding its compatibility with the U.S. obligations in the WTO. The EC further emphasized that if the act was going to be used against European Union (EU) interests, the EU would consider exercising its rights to file a trade dispute under the WTO.²¹

While we were told that potential inconsistencies could have arisen, INTELSAT privatized according to the ORBIT Act removing any need for FCC to act in a manner that might be inconsistent with U.S. international trade obligations, and no trade disputes arose. Most stakeholders we spoke with generally stated that the ORBIT Act's requirements have not conflicted with international trade agreements during the privatizations of INTELSAT. Officials from FCC, USTR, the Department of State, as well as satellite company representatives and experts on telecommunications issues, told us that INTELSAT privatized according to the act's requirements. Several stakeholders emphasized that trade disputes had not arisen because INTELSAT privatized in accordance with the ORBIT Act. As of June 2004, WTO and USTR documentation showed that no trade complaints had been filed at the WTO about the ORBIT Act and INTELSAT's privatization. Finally, several stakeholders noted that the act had the effect of complementing international trade agreements by seeking to further open and liberalize trade in international satellite communications services.

²¹A WTO trade dispute arises when a member country believes another member country is violating WTO rules—such as by implementing discriminatory measures regarding market access—and commences an action within the WTO dispute settlement system.

Stakeholders Attribute Recent Improvements in Market Access to Global Trade Agreements and Privatization Trends, Rather Than the ORBIT Act

According to most stakeholders and experts we spoke with, access to non-U.S. satellite markets has generally improved during the past decade. 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. All five satellite companies that we spoke with indicated that access to non-U.S. satellite markets has generally improved. Additionally, four experts that we spoke with also told us that market access has generally improved.

Most stakeholders that we spoke with attributed the improved access in non-U.S. satellite markets to the WTO and global trade agreements and the trend towards privatization in the global telecommunications industry, rather than to the ORBIT Act. Five satellite companies and four of the experts that we spoke with said that agreements negotiated through the WTO, such as the basic telecommunications commitments, helped improve access in non-U.S. satellite markets. Additionally, two of the satellite companies and one expert told us that the trend towards privatization in the telecommunications industry—such as governments privatizing state-controlled telephone companies—has helped improve market access. 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. While some of those we spoke with noted that the ORBIT Act might have complemented the ongoing trends in improved market access, only one satellite company we interviewed stated that the act itself improved market access. This company noted that, by breaking the ownership link between state-owned or monopoly telecommunications companies and Intelsat, the ORBIT Act encouraged non-U.S. telecommunications companies to consider procuring services from competitive satellite companies.

Some Companies Say That Market Access Challenges Remain and Suggest More FCC Action under the ORBIT Act to Address These Issues

Some satellite companies have stated that some market access problems still exist, which they attribute to foreign government policies that limit or slow entry. Some of the companies and experts we spoke with attribute any continuing preference that governments and foreign telecommunications companies may have for doing business with Intelsat to the long-standing business relationships that were forged over a period of time. While some satellite companies believe that FCC should be taking a more proactive approach toward addressing any remaining market access problems in non-U.S. markets, FCC has stated that concerns about these issues provided to them have not been specific enough to warrant an FCC

proceeding. Additionally, FCC has stated that many concerns about market access issues would be most appropriately filed with USTR. USTR has received no complaints about access problems by satellite companies in non-U.S. markets in either their annual review of compliance with telecommunications trade agreements, or in comments solicited in the context of ongoing WTO services negotiations.

Remaining Concerns about Market Access Focus Largely on Foreign Government Regulatory Structure

Despite the general view that market access has improved, some satellite companies and experts expressed concerns that market access issues still exist. These companies and experts generally attributed any remaining market access problems 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. For example, we were told that some countries require satellite contracts to go first to any domestic satellite providers that can provide the service before other providers are considered.
- 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 countries' policies may limit certain satellite companies' access to their markets.
- Several companies and an expert we interviewed said that many countries have time-consuming or costly approval processes for satellite companies. In particular, we were told that some countries have bureaucratic processes for licensing and other necessary business activities that make it time-consuming and costly for satellite companies to gain access to these markets.²²

²²Some of those 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.

Some Stakeholders Believe That Legacy Business Relationships also Contribute to Market Access Problems

Some stakeholders believe that Intelsat may benefit from legacy business relationships. For approximately 30 years, INTELSAT was the dominant provider of global satellite services. Moreover, until 2001, INTELSAT was an intergovernmental organization, funded and controlled through signatories—often state-controlled telecommunications companies—of the member governments. Several stakeholders noted that Intelsat may benefit from the long-term business relationships that were forged over the decades, since telecommunications companies in many countries will feel comfortable continuing to do business with Intelsat as they have for years. Additionally, two of the satellite companies noted that because some of these companies have been investors in the privatized Intelsat, there may be an incentive to favor Intelsat over other satellite competitors. One global satellite company told us that Intelsat’s market access advantages continue because of inertia—inertia that will only dissipate with time. Two stakeholders also noted that because companies—including domestic telecommunications providers as well as direct customers of satellite services—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 satellite provider. These legacy advantages can make it more difficult for satellite companies to convince telecommunications companies to switch from Intelsat’s service to their service.

However, some other companies have a different view on whether Intelsat has any preferential or exclusive market access advantages. 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. Representatives of Intelsat, Ltd. also told us that former signatories of Intelsat own such small percentages of Intelsat, Ltd. that such ownership interests would not likely influence market access decisions in countries in which the government still controls the former signatory. Some companies and many of the experts that we interviewed told us that, in their view, Intelsat does not have preferential access to non-U.S. satellite markets. Further, all five satellite companies as well as several experts that we spoke with said 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. While Intelsat is the sole provider of satellite service into certain countries, we were generally told that traffic into some countries is “thin”—that is, there is not much traffic,

and therefore there is little revenue potential. In such cases, global satellite companies other than Intelsat may not be interested in providing service to these countries. Thus, the lack of competition in some non-U.S. satellite markets does not necessarily indicate the presence of barriers to market access for competitive satellite companies.

Some Satellite Companies and FCC Differ on FCC's Responsibilities under the ORBIT Act

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. In particular, some satellite companies and an expert we spoke with indicated that FCC has not done enough to appropriately implement the ORBIT Act because, in their view, the ORBIT Act shifted the burden to FCC to investigate and prevent access issues, rather than solely to adjudicate concerns brought before it. 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. If FCC were to find a violation of section 648, it would have the authority to withdraw or modify the relevant company's licenses to provide services within the U.S. market.²³ Another satellite company told us that FCC should conduct an ORBIT Act inquiry under the privatization sections of the act to address any market access issues that might arise if Intelsat has preferential market access related to any remaining advantages from its previous intergovernmental status.

Certain other companies, experts, and FCC told us that nothing to date has occurred that would require additional FCC actions regarding the implementation of the ORBIT Act. FCC officials told us that 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. Some companies and experts that we spoke with agreed that no

²³Section 648 of the ORBIT Act provides that FCC may take actions in the case of new exclusive agreements for services if FCC finds that the public interest, convenience, and necessity so requires.

evidence of a market access problem has been put forth that would warrant an FCC investigation under the ORBIT Act. Even the satellite companies that complained to FCC in the context of Intelsat's licensing proceedings told us that they had not made any formal complaints of ORBIT Act violations or asked FCC to initiate a proceeding on the matter. Additionally, FCC told us that broad market access concerns are most appropriately handled by USTR through the WTO. USTR has received no complaints about access problems by satellite companies in non-U.S. markets in either their annual review of compliance with telecommunications trade agreements, or in comments solicited in the context of ongoing WTO services negotiations.

Agency Comments

We provided a draft of this report to the Federal Communications Commission (FCC), the Department of State, the National Telecommunications and Information Administration (NTIA) of the Department of Commerce, and the United States Trade Representative (USTR) for their review and comment. FCC did not provide comments. USTR and the Department of State provided technical comments that were incorporated into the report. NTIA also provided technical comments that were incorporated into the report as appropriate and also sent formal comments in a letter, which appears in appendix II. In its formal comments, NTIA stated that they generally agree with the findings of our report and remain interested in developments regarding Intelsat's further plans to pursue a private equity buyout.

Industry Comments

We also invited representatives from five companies to review and comment on a draft of this report. These companies included: Intelsat, Ltd.; Lockheed Martin Corporation; PanAmSat Corporation; SES Americom Inc.; and New Skies Satellites N.V. New Skies and PanAmSat did not provide comments on the draft report. Both Lockheed Martin and Intelsat provided technical comments that we incorporated as appropriate. SES Americom provided both technical comments—which we addressed as appropriate—and substantive comments that expressed concerns about our characterization of some of the issues discussed in this report. The comments from SES Americom and our response are contained in appendix I.

As agreed with your offices, unless you publicly release its contents earlier, we plan no further distribution of this report until 15 days after the date of this letter. At that time, we will provide copies to interested congressional committees; the Chairman, FCC; and other interested parties. We will also make copies available to others upon request. In addition, this report will be available at no charge on the GAO Web site at <http://www.gao.gov>. If you have any questions about this report, please contact me at (202) 512-2834 or goldsteinm@gao.gov or Amy Abramowitz at (202) 512-2834.

Major contributors to this report include Amy Abramowitz, Michael Clements, Emil Friberg, Bert Japikse, Logan Kleier, Richard Seldin, and Juan Tapia-Videla.

A handwritten signature in black ink, appearing to read 'M. Goldstein', with a long horizontal flourish extending to the right.

Mark L. Goldstein
Director, Physical Infrastructure Issues

List of Congressional Requesters

The Honorable Ernest “Fritz” Hollings
Ranking Minority Member
Committee on Commerce, Science and Transportation
United States Senate

The Honorable Conrad Burns, Chairman
Subcommittee on Communications
Committee on Commerce, Science and Transportation
United States Senate

The Honorable Joe Barton, Chairman
Committee on Energy and Commerce
House of Representatives

The Honorable Edward J. Markey
Ranking Minority Member
Subcommittee on Telecommunications and the Internet
Committee on Energy and Commerce
House of Representatives

The Honorable W.J. “Billy” Tauzin
House of Representatives

Discussion of Comments from SES Americom

SES Americom Inc. provided several comments on the draft report. While several were minor technical comments, which we incorporated as appropriate, some of the comments were of a more substantive nature. This appendix provides a summary of the substantive comments and GAO's response to those comments.

- SES Americom stated that while GAO notes that several companies have stated that Intelsat's privatization is not complete until the IPO occurs, GAO fails to note that FCC's International Bureau has also stated this to be the case.

GAO response: Our discussion of FCC's authorization of licenses for Intelsat to operate in the U.S. makes clear that FCC provided these licenses on a conditional basis because the required IPO had yet to occur.

- SES Americom states that GAO's discussion of possible preferences countries and businesses may have for doing business with Intelsat does not fully explain why this may occur. While SES notes that GAO correctly attributes possible preferences to long term business relationships companies/countries may have with Intelsat, SES Americom believes that GAO should mention that possible preferences also arise because Intelsat's customers have equipment suitable solely for use with Intelsat satellites.

GAO response: Regarding customer equipment, we mention that companies have plant and equipment in place to receive service from Intelsat that might cost a significant amount of money to replace, which we believe adequately addresses this point.

- SES Americom states that GAO should preface our discussion of the required IPO with the word "equity".

GAO response: The ORBIT Act's requirement for an IPO does not specifically state "equity IPO," but states that Intelsat must hold an "IPO of securities." Nevertheless, in the context of Inmarsat's required IPO, which is also required under the ORBIT Act, FCC is currently reviewing this very issue—that is, whether the IPO must be an offering of *equity* securities. Thus, FCC's decision will determine how this will be interpreted.

Comments from the Department of Commerce



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

July 22, 2004

Mr. Mark L. Goldstein
Director, Physical Infrastructure Issues
United States General Accounting Office
Washington, DC 20548

Dear Mr. Goldstein:

Thank you for sending the Department of Commerce the draft report, *Telecommunications: Intelsat Privatization and the Implementation of the ORBIT Act*, for our comments. We recognize the importance of reviewing the effects of implementing the Open-market Reorganization for the Betterment of International Telecommunications (ORBIT) Act, to both ensure the privatization of Intelsat and Inmarsat, and to assist U.S. companies that compete with these entities in the United States and in global markets.

It remains our goal to promote the ability of American satellite companies to compete in all markets, in the United States and overseas. The privatization of Intelsat was just one measure to ensure improved global market access, decreased prices, and innovation of service offerings for satellite customers. We continue our efforts, through participation in the work of the residual intergovernmental International Telecommunications Satellite Organization, to ensure that Intelsat Ltd. fulfills its public service obligations and lifeline connectivity obligations.

In general we agree with your initial key findings. We believe that, to date, Intelsat has been satisfactorily pursuing its privatization steps. However, we watch with keen interest new developments now that Intelsat has withdrawn its Initial Public Offering filing from the Securities and Exchange Commission and is pursuing a private equity buyout. As we have throughout its preparation, the Department will continue to assist the GAO in completion of this report. Please contact Assistant Secretary for Communications and Information Michael D. Gallagher at (202) 482-1840 if you have any further concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Evans".

Donald L. Evans

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