

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Availability of INTELSAT	)	
Space Segment Capacity to	)	IB DOCKET NO. 00-91
Users and Service Providers	)	
Seeking to Access	)	
INTELSAT Directly	)	
	)	
	)	

**NOTICE OF PROPOSED RULE MAKING**

**Adopted:** May 22, 2000

**Released:** May 24, 2000

Comments due: June 23, 2000  
Reply Comments due: July 6, 2000  
Responses to reply comments due: July 11, 2000

By the Commission:

1. We initiate this rulemaking pursuant to the Open-Market Reorganization for the Betterment of International Telecommunications Act (the ORBIT Act or Act), which was enacted into law on March 17, 2000.<sup>1</sup> The ORBIT Act amends the Communications Satellite Act of 1962<sup>2</sup> (1962 Satellite Act) to promote a fully competitive global market for satellite communications services by fully privatizing INTELSAT and Inmarsat.<sup>3</sup> The ORBIT Act also provides for users or providers of telecommunications service to obtain Level 3 direct access from INTELSAT. Section 641(b) of the Act requires the Commission to complete a rulemaking within 180 days of enactment to determine whether “sufficient opportunity” exists for users and service providers “to access INTELSAT space segment capacity directly to meet their service or capacity requirements.”<sup>4</sup> It also requires the Commission to take “appropriate action” if it finds that sufficient opportunity does not exist and otherwise to “take such steps as may be necessary to prevent circumvention” of the section.<sup>5</sup>

<sup>1</sup> Pub. L. No. 106-180, 114 Stat. 48 (2000).

<sup>2</sup> 47 U.S.C. §§ 701 et. seq.

<sup>3</sup> Pub. L. No. 106-180 § 2.

<sup>4</sup> Pub. L. No. 106-180 § 641(b)

<sup>5</sup> *Id.*

2. The purpose of this proceeding is to: (1) obtain the information necessary to make the determination required by the ORBIT Act; (2) seek comment on potential Commission action should we conclude that sufficient opportunity does not exist for users and service providers to directly access INTELSAT space segment capacity; and (3), if necessary, take such actions as may be appropriate to facilitate direct access. In reaching conclusions in this proceeding, we will take into account the fact that INTELSAT is currently seeking to privatize its commercial operations. As part of the privatization, INTELSAT will redefine existing distribution relationships with its Signatories and direct access users. Post-privatization distribution arrangements are currently being negotiated as part of the privatization process.

3. We intend to make the determination required by Section 641(b) of the ORBIT Act no later than September 13, 2000, as required by the Act. If necessary, we may initiate additional proceedings if our determination warrants such action.

4. We are making Comsat Corporation (Comsat), the U.S. Signatory to INTELSAT, a party respondent in this proceeding, and will require Comsat to provide the information concerning existing and future capacity in the INTELSAT system necessary for us to make the Section 641(b) determination. We also may seek additional information from Comsat or directly from INTELSAT if necessary and appropriate. In view of the short time specified in Section 641(b), we do not anticipate extending the filing deadlines established by this Notice.

## I. DISCUSSION

5. INTELSAT is a 143-member intergovernmental cooperative that operates 17 satellites providing telecommunications services to over 99 percent of the globe. Comsat is the U.S. investor and participant in INTELSAT commercial decisions, pursuant to the 1962 Satellite Act. Until 1999, Comsat was the only company permitted to access INTELSAT satellites and distribute its services in the United States.

6. In 1999, we permitted users and service providers in the United States to obtain Level 3 direct access to INTELSAT space segment capacity. Level 3 direct access permits non-signatory users and service providers to enter into contractual agreements with INTELSAT for space segment capacity at the same rates that INTELSAT charges its Signatories.<sup>6</sup> We concluded that Level 3 direct access would result in substantial benefits, including: (1) creating operational efficiencies and cost savings for U.S. customers in accessing INTELSAT satellites;<sup>7</sup> (2) exerting competitive pressure on other satellite operators in terms of service quality and rates, as well as on Comsat with respect to services for which Comsat has a substantial mark up over INTELSAT rates;<sup>8</sup> and (3) enabling U.S. service providers to be more competitive in the global telecommunications market with their foreign counterparts.<sup>9</sup>

7. We declined, however, to take an additional step requested by two service providers

---

<sup>6</sup> *Direct Access to the INTELSAT System*, Report and Order, 14 FCC Rcd 15703 (1999), (*Direct Access decision*).

<sup>7</sup> *Direct Access decision*, 14 FCC Rcd at 15716.

<sup>8</sup> *Id* at 15723.

<sup>9</sup> *Id* at 15725.

and require the “portability” of INTELSAT space segment capacity controlled by Comsat by virtue of its historic monopoly over access to INTELSAT satellites. MCI Worldcom and Sprint argued that, because Comsat has access to the vast majority of INTELSAT satellite capacity accessible to U.S. users, “portability” of Comsat capacity is necessary for U.S. direct access customers to enjoy the benefits of direct access and prevent Comsat from continuing a de facto monopoly over INTELSAT capacity. In this context, “portability” would permit a customer of Comsat to obtain directly from INTELSAT the transponder capacity that the customer previously was receiving through Comsat. Comsat opposed portability contending that the Commission does not have authority to abrogate its agreements with INTELSAT for access to space segment capacity.

8. We found that the record then before us did not support requiring the portability of INTELSAT space segment capacity controlled by Comsat.<sup>10</sup> Absent evidence that INTELSAT will be unable to provide sufficient capacity to U.S. direct access customers, we did not wish to interfere with Comsat’s service agreements with INTELSAT. We said, however, that we would be concerned if Comsat control of INTELSAT space segment capacity effectively denies U.S. carriers and users the benefits of direct access, or if Comsat moves to increase its control of INTELSAT capacity in order to deny the availability of capacity to U.S. direct access users. We therefore indicated our willingness to revisit this issue if evidence is presented of insufficient capacity available to direct access customers or that Comsat is using its Signatory status to buy future or additional INTELSAT space segment capacity without any U.S. customer requirements. We said that, if INTELSAT capacity proves insufficient to serve U.S. direct access user needs because Comsat acquires capacity available for U.S. service, direct access users should first pursue commercial solutions with Comsat to resolve the matter. We stated that we would entertain petitions for a regulatory solution if commercial solutions are unavailable and the full benefits of direct access are denied to U.S. users of INTELSAT.

#### **A. Requirements of the ORBIT Act**

9. The ORBIT Act provides for users and service providers in the United States to obtain Level 3 direct access to INTELSAT. Section 641(a) provides:

[a] ACCESS PERMITTED – Beginning on the date of enactment of this title, users or providers of telecommunications services shall be permitted to obtain direct access to INTELSAT telecommunications services and space segment capacity through purchases of such capacity or services from INTELSAT. Such direct access shall be at the level commonly referred to by INTELSAT, on the date of enactment of this title, as “Level III”.

Further, Section 641(b) provides:

[b] RULEMAKING – Within 180 days after the date of enactment of this title, the Commission shall complete a rulemaking, with notice and opportunity for submission of comment by interested persons, to determine if users or providers of telecommunications services have sufficient opportunity to access INTELSAT space segment capacity directly from INTELSAT to meet their service or capacity requirements. If the Commission determines that such opportunity to access does not exist, the Commission

---

<sup>10</sup> *Direct Access decision* at 15754.

shall take appropriate action to facilitate such direct access pursuant to its authority under this Act and the Communications Act of 1934. The Commission shall take such steps as may be necessary to prevent the circumvention of the intent of this section.

And, Section 641(c) provides:

[c] CONTRACT PRESERVATION – Nothing in this section shall be construed to permit the abrogation or modification of any contract.

Finally, we note that the ORBIT Act retains sections 102(c) and 201(c)(2) of the 1962 Satellite Act until the Commission determines that INTELSAT privatization is consistent with the criteria specified in other provisions of the ORBIT Act.<sup>11</sup> Section 102(c), in part, requires that “all authorized users have non-discriminatory access to the system.”<sup>12</sup> Section 201(c)(2) requires the Commission to ensure that “all present and future authorized carriers shall have non-discriminatory use of, and equitable access to” the system “under just and reasonable charges” and to “regulate the manner in which available facilities of the system.... are allocated.”<sup>13</sup>

10. In carrying out the requirements of Section 641, we must obtain information as to the availability of existing and planned INTELSAT capacity to meet present and future service and capacity requirements of direct access users and service providers in the United States. If we find inadequate capacity available to satisfy these requirements, we must determine whether users and service providers have a “sufficient opportunity” to directly access INTELSAT to meet these service and capacity requirements. In considering whether “sufficient opportunity” exists, we also must take into account how current distribution arrangements for INTELSAT impact the availability of current and planned capacity to U.S. users and service providers.

## **B. INTELSAT Distribution Arrangements**

11. INTELSAT provides capacity to Signatories and direct access users on a channel/carrier service basis and on a transponder lease basis.<sup>14</sup> In addition, INTELSAT provides cable restoration, television, and radio broadcast channel services. Channel/carrier services generally are offered for periods ranging from one day to 15 years, depending on the service. Transponder capacity can be leased for all services pursuant to INTELSAT’s Transponder Lease Policy.<sup>15</sup> That policy applies to operational and non-operational capacity and provides for guaranteed reservations and first refusal reservations.

12. Operational capacity is: (1) capacity currently operational at a specific orbital location, or (2) capacity (either procured or not yet procured) that will replace an existing satellite at a specific orbital location and that has the same or similar characteristics as the capacity it is

---

<sup>11</sup> Pub. L. No. 106-180, § 645(4).

<sup>12</sup> 47 U.S.C. § 701(c).

<sup>13</sup> 47 U.S.C. § 741(c)(2).

<sup>14</sup> See INTELSAT Tariff Manual, July 1999, for a full description of the services offered and the terms and conditions of the services.

<sup>15</sup> INTELSAT Tariff Manual, Lease Reservation Policy at 96 – 106.

replacing.<sup>16</sup> Non-operational capacity is either: (1) capacity on a satellite at a new orbital location, or (2) capacity on a future satellite on an existing orbital location, that offers technical characteristics significantly different from those previously available.<sup>17</sup>

13. A Signatory or direct access user can “guarantee” reservations for both operational and non-operational capacity by submitting an initial deposit and making additional payments prior to the start of service. No deposit is required from customers deemed to be fully creditworthy.<sup>18</sup> The effect of a guaranteed reservation is to ensure the will be available to the customer at the start date for service. As an alternative, a Signatory or direct access user can obtain a “first refusal” reservation on operational capacity for a specified fee up to three years prior to initiation of service.<sup>19</sup> The first refusal reservation gives the customer the first opportunity to place a guaranteed reservation on specific capacity. A first refusal reservation, however, may be challenged by another customer seeking to place a guaranteed reservation on the same capacity. In such a case, the customer with the first refusal reservation must either (1) enter into a guaranteed reservation, (2) transfer the first refusal reservation to alternative capacity, or (3) relinquish the first refusal reservation with refund of the fee. Both guaranteed and first refusal reservations also are available for non-operational capacity that has not yet been procured up to three and five years in advance of capacity availability, subject to such availability, a fee (unless the customer is deemed fully creditworthy), and other conditions.<sup>20</sup>

14. Both guaranteed and first refusal reservations are accepted on a first-come, first-served basis.<sup>21</sup> For international services, they must be accompanied by a matching order from the customer’s foreign correspondent providing the matching half circuit link. Each customer may incur 50 percent of the termination liability for failure to implement a guaranteed reservation.<sup>22</sup> All in-service long-term leases will be considered to be under an “automatic” first refusal reservation for purposes of renewal of the lease; and current leaseholders at any time may upgrade their automatic first refusal reservations from lease renewal to guaranteed status.<sup>23</sup>

15. The INTELSAT arrangements for capacity distribution to Signatories and direct access users provide a process through which INTELSAT capacity can be tied up well into the future, even before satellites are constructed and launched. The primary beneficiaries of this arrangement are INTELSAT Signatories that are involved in the planning and implementation of new satellites and services. From a commercial standpoint, the process is beneficial to INTELSAT because it ensures the future usage of planned capacity. The process appears to apply equally to direct access users. We tentatively conclude, however, that to the extent that existing and future satellite capacity is tied up by guaranteed or first refusal reservations, and that

---

<sup>16</sup> *Id.* at 96.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 96-98.

<sup>19</sup> *Id.* at 98-99.

<sup>20</sup> *Id.* at 102-103.

<sup>21</sup> *Id.* at 99.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 100-101.

long-term leases are automatically renewed as first refusal reservations, new direct access users are placed at a disadvantage in obtaining capacity. This disadvantage particularly applies to U.S. direct access users, who only recently have been allowed to use INTELSAT capacity on a direct access basis as a result of our 1999 *Direct Access decision*. We request comment on this tentative conclusion.

16. Finally, we note that privatization of INTELSAT will entail redefinition of arrangements for distribution of INTELSAT services. The benefits of direct access, however, must not be lost through privatization. We indicated in our 1999 *Direct Access decision*, INTELSAT should have a retail role upon privatization and arrangements with distributors must be non-exclusive and non-preferential to Signatories.<sup>24</sup> The INTELSAT Assembly of Parties, in deciding on principle to privatize, determined that, where permitted by national law and policy, INTELSAT should "enter into new service agreements to provide satellite services (including, where permitted, direct to customers) on an independent and transparent basis."<sup>25</sup> The direct access policy established by the ORBIT Act effectively mandates direct access as a matter of law and policy in the United States.<sup>26</sup>

17. Accordingly, looking forward, we expect that U.S. service providers who must compete in the global telecommunications market with former INTELSAT Signatories will have the same distribution rights and opportunities as those of former Signatories. We also expect that U.S. users that make a commercial decision not to commit to being a distributor will be able to take service directly from INTELSAT. We seek comment on these expectations and the effect that post-privatization distribution arrangements that do not meet these expectations would have on the opportunity for users and service providers to access INTELSAT space segment capacity directly.<sup>27</sup> We also request comment on whether and to what extent post-privatization arrangements may serve to resolve or exacerbate any problems with the ability of U.S. users and service providers to obtain INTELSAT capacity to meet their needs. Specifically, we seek comment on what type of action, if any, would be appropriate in the event that post-privatization distribution arrangements limit INTELSAT's flexibility in negotiating other arrangements with customers, whether retail or wholesale. Likewise, we seek comment on what action we could take if distribution arrangements impede the opportunity for direct access to INTELSAT capacity in the U.S. market. In particular, how would we adequately address the concerns expressed above if certain aspects of INTELSAT's current distribution arrangements, including unlimited extension of leases and guaranteed reservations, are replicated after privatization? We also would be concerned if distribution arrangements limit INTELSAT's commercial flexibility to develop

---

<sup>24</sup> *Direct Access decision*, 14 FCC Rcd at 15759.

<sup>25</sup> Twenty-fourth INTELSAT Assembly of Parties, Penang, Malaysia, October 26-29, 1999. Record of Decisions (AP 24-3EP/10/99) at page 14.

<sup>26</sup> In addition to Section 641(a), Section 601(b)(1)(c) of the ORBIT Act provides that certain departments or agencies of the United States may obtain "non-core" INTELSAT services directly from INTELSAT, as well as indirectly through Comsat, authorized carriers, or distributors of a privatized INTELSAT.

<sup>27</sup> Comment on INTELSAT post-privatization distribution arrangements is appropriate in this proceeding. U.S. service providers other than Comsat are not involved in the negotiations regarding such distribution arrangements. As the Commission has the responsibility for upholding its policies, including those relating to direct access and pro-competitive behavior of licensees, it is important to have a robust understanding of the potential implications of post-privatization distribution arrangements within INTELSAT.

and provide services and, thereby, diminish its effectiveness as a competitor in the U.S. market and opportunities for direct access. Finally, we seek comment whether we should also examine these matters in connection with INTELSAT's request to operate in the U.S. market as a private entity.<sup>28</sup>

### C. INTELSAT Capacity Availability

16. The 17 currently operating INTELSAT satellites include one INTELSAT V-A, five INTELSAT VI, seven INTELSAT VII-VII-A, and four INTELSAT VIII satellites.<sup>29</sup> They are used to provide telecommunications and video services, including telephony, facsimile, video conferencing, multi-media traffic, television, data transmission and Internet services.<sup>30</sup> INTELSAT plans to launch and operate 10 replacement satellites that include seven INTELSAT IX, two NI-ALPHA, and one NI-BETA satellites in the future.<sup>31</sup> Each operational and replacement satellite has C-band and Ku-band transponders, except for the NI-BETA satellite, which will operate in the Ku-band only.<sup>32</sup> Some currently operating satellites will be taken out of operation as replacement satellites are launched. Other existing operating satellites will be moved to other orbit locations. By the end of 2004, INTELSAT plans to have a system comprised of 22 satellites.<sup>33</sup>

17. Of the 17 currently operational satellites, 13 are capable of accessing part of the contiguous United States (CONUS).<sup>34</sup> Of the planned satellites, seven will have partial CONUS coverage.<sup>35</sup> By the end of 2004, INTELSAT plans to have 15 satellites capable of partial CONUS coverage, of which some will have coverage of Puerto Rico. In addition, certain

---

<sup>28</sup> Section 601(b) of the ORBIT Act requires the Commission to determine after April 1, 2001, whether INTELSAT has been privatized in a manner that will harm competition in the U.S. telecommunications market. As we have noted, the ORBIT Act maintains our 1962 Satellite Act authority to assure non-discriminatory use and equitable access to INTELSAT capacity until we make such a determination.

<sup>29</sup> INTELSAT L.L.C. Satellite Applications for Authority to Operate, Further Construct and Operate, C-band and Ku-band Satellites that form a Global Communications System in Geostationary Orbit, SAT-A/O-20000119-00002 S2388 *et seq.*, filed January 19, 2000, at Vol. I, p.11 (INTELSAT Application).

<sup>30</sup> INTELSAT Application, Vol. I at p.11

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* For specific frequency bands included in the system, *see* INTELSAT L.L.C. Application, Vol. 11 at p.11.

<sup>33</sup> INTELSAT Application Vol. I at p.12.

<sup>34</sup> The currently-operating INTELSAT satellites whose coverage include parts of CONUS are INTELSAT-805 (55.5°W), INTELSAT-706 (53.0°W), INTELSAT-709 (50.0°W), INTELSAT-601 (34.5°W), INTELSAT-801 (31.5°W), INTELSAT-511 (29.5°W), INTELSAT-605 (27.5°W), INTELSAT-603 (24.5°W), INTELSAT-705 (18.0°W), INTELSAT-707 (1.0°), INTELSAT-802 (186°W), INTELSAT-702 (184°W) and INTELSAT-701 (180°W).

<sup>35</sup> The planned INTELSAT satellites whose coverage will include parts of CONUS are INTELSAT-ALPHA-1 (50.0°W), INTELSAT-904 (34.5°W), INTELSAT-907 (31.5°W), INTELSAT-905 (27.5°W), INTELSAT-903 (24.5°W), INTELSAT-906 (18.0°W) and INTELSAT-ALPHA-2 (1.0°W).

INTELSAT satellites are or will be capable of accessing Alaska, Hawaii, and/or the Mariana Islands and Guam.<sup>36</sup> While the aggregate usable bandwidth of these satellites can be calculated,<sup>37</sup> this calculation in and of itself would not yield an accurate picture of capacity available to U.S. users. The amount of available bandwidth depends on the configuration of services for which it is used. The same bandwidth also can be used for service to and from other countries. In addition, a U.S. user or service provider and its foreign correspondents must operate “matching” half circuits. Thus, in order to assess the availability of existing and future U.S. capacity, we must determine the amount of capacity in terms of bandwidth that has not yet been committed to Signatories, including Comsat, and whether available capacity can be “matched” with the user or service provider’s foreign correspondent.

18. In 1999, INTELSAT provided to Commission staff on an informal basis a summary of uncommitted capacity available on INTELSAT satellites now serving North America.<sup>38</sup> Uncommitted capacity means capacity not already claimed by Signatories and direct access users through service agreements, guaranteed or first refusal reservations. The information showed that there is very little capacity currently available for service to and from North America that could be used by U.S. direct access users. Only two satellites have an appreciable amount of uncommitted capacity available to and from North America. Of these, the available capacity on the 304.5E (55.5 W) satellite is not useful over North America because it is in the extended C band (3.4 – 3.7 GHz), of which only 50 MHz (3.60 – 3.65 GHz) is available on a very limited basis in the United States at this time, requiring case-by-case electromagnetic compatibility analysis. The capacity on the 330.5E (29.5W) satellite is of marginal use because the satellite is in inclined orbit and the connectivity is limited to a single spot beam.

19. The information informally received from INTELSAT, by itself, is inadequate for us to make the determinations required by the ORBIT Act. To determine whether users and service providers have a sufficient opportunity to access INTELSAT space segment capacity directly to meet their service or capacity requirements, we must provide them an opportunity to comment on current information about uncommitted capacity. This information must cover not only existing satellites, but also satellites planned for future construction and launch. Further, in considering “appropriate action” that may be available, we will require information about committed capacity on existing and planned satellites -- that is, capacity that is subject to guaranteed and first refusal reservations. Our interest in committed capacity applies primarily to that held by Comsat as the U.S. Signatory. As we noted in our *Direct Access decision*, we would be concerned if Comsat’s control of space segment capacity effectively denies users the benefits of direct access or if Comsat moves to increase its control of capacity in order to deny its availability to direct access users.

---

<sup>36</sup> In the future, INTELSAT plans to deploy first the INTELSAT-601 and later the INTELSAT-BETA-1 to 85.0°E from which location service will be possible to Guam and the Mariana Islands. INTELSAT also plans to deploy the INTELSAT-602 and later the INTELSAT-709 to 157°E, from which location service will be possible to the U.S. Pacific island territories in addition to Hawaii and Alaska.

<sup>37</sup> See INTELSAT Applications Vol. II at p.17.

<sup>38</sup> INTELSAT uses the designation “North America” in describing beam direction (*i.e.*, North America to Europe; South America to North America). For purposes of consistency with INTELSAT practices, we will use it in this document as well. We clarify, however, that the purpose of any information requested or positions suggested is only to address issues related to the services provided to and from the U.S. market.



20. We therefore require Comsat to obtain from INTELSAT, and provide as part of its comments, the following information in the format shown in Appendix A:

[1] Uncommitted capacity (*i.e.*, not committed under a first refusal reservation or a guaranteed reservation) available for service to and from North America on existing satellites identified in footnote 29. The information should be provided on a satellite-by-satellite basis by beam and in units of 36 MHz bandwidth equivalents. For each beam, the information should disclose beam direction (*e.g.*, Europe to North America; North America to South America); and

(2) Uncommitted capacity (*i.e.*, not committed under a first refusal reservation or a guaranteed reservation) available for service to and from North America on future satellites identified in footnote 30. The information also should be provided on a satellite-by-satellite basis by beam and in units of 36 MHz bandwidth equivalents. For each beam, the information should disclose the beam direction (Europe to North America; North America to South America).

21. We request comment on what should constitute “sufficient opportunity” to access INTELSAT directly. In view of the information Comsat provides as to the availability of INTELSAT capacity, we request comment as to whether uncommitted capacity on existing and future satellites will give users and service providers “sufficient opportunity” to access INTELSAT directly to meet their service and capacity requirements. Users and service providers should describe their service and capacity requirements, including the type of services and current and future bandwidth requirements. They should discuss their initial experiences as direct access users in obtaining capacity from INTELSAT. They also should demonstrate the extent to which INTELSAT is the only alternative for international transmission capacity for operational or technical reasons, or why use of INTELSAT capacity may be preferable to other alternatives.

22. We also require that Comsat provide in the format specified in Appendix B information concerning capacity it has committed on both future and planned satellites providing service to or from North America. Comsat must provide on a satellite-by-satellite basis information as to capacity that it: (1) now has in service; (2) holds but does not have in service; (3) holds as a guaranteed reservation; and (4) holds as a first refusal reservation. Comsat must also indicate the extent to which the capacity it holds or has reserved on future satellites is intended to satisfy existing long-term contracts that will continue when future capacity becomes available. It must also identify capacity on future satellites for which it has no explicit customer requirements. In addition, Comsat must indicate the extent to which it holds or has capacity reservations in anticipation of renewal of existing long-term contracts. To the extent that certain portions of this information may be commercially sensitive, we will consider requests submitted consistent with Section 0.459 of the Commission’s rules that submitted materials be treated confidentially.<sup>39</sup>

23. We request that users and service providers comment on the effect of Comsat-held capacity on their ability to directly access INTELSAT to satisfy existing and future service and capacity requirements. Specifically, we request comment on whether Comsat holds or has reservations for capacity that is the only capacity useful to the user or service provider. Users and service providers should specify satellite and bandwidth held by Comsat and demonstrate how such capacity is unique to their needs. That is, for example, does the user or service provider

---

<sup>39</sup> 47 C.F.R. § 0.459.

require specific capacity because it is the only capacity that can be matched with the capacity held by its foreign correspondent, or because of ground segment considerations (e.g., the user's or service provider's ground station antenna can only access a particular satellite). We stress, however, that users and service providers claiming that Comsat holds or has reserved capacity unique to their needs must explain why the use of other available capacity is not viable from a technical, operational, commercial or economic standpoint.

#### **D. Alternatives for Appropriate Action**

24. The ORBIT Act requires the Commission to take "appropriate action" if we determine that users and service providers do not have "sufficient opportunity" to access INTELSAT space segment directly. The ORBIT Act does not define what might be deemed "sufficient opportunity", nor does it indicate what action to take if we determine that "sufficient opportunity" does not exist. We essentially are directed to act to facilitate the intent of Section 641 – that users and service providers be able to obtain capacity directly from INTELSAT. While we are not to construe the section as permitting the abrogation or modification of any contract under subsection 641(c), subsection 641(b) directs us to take "appropriate action" pursuant to our authority under ORBIT and the Communications Act of 1934. We request comment on the appropriate construction of Section 641(b) and (c), including the proper construction of "appropriate action" in this Section.<sup>40</sup>

25. Without prejudging our determination of whether users and service providers have "sufficient opportunity" to access INTELSAT space segment capacity directly, we request comment on what actions are "appropriate" should we find that "sufficient opportunity" to access INTELSAT directly does not exist for users and service providers. We tentatively conclude that the first option for resolving this problem should be commercial solutions between Comsat and users and service providers seeking to access INTELSAT directly through space segment capacity held or reserved by Comsat. This is the approach that we adopted in our *Direct Access decision*.<sup>41</sup> The problem of allocation of limited satellite capacity is better resolved through commercial negotiations which, if successful, are more likely to result in a faster solution that addresses the specific requirements of the user or service provider. The nature of any commercial solution would depend on the type of Comsat holding – existing lease, guaranteed reservation, or first refusal reservation on space segment capacity. The success of this approach would depend on good faith negotiation among parties. We would, however, retain the option to fashion a regulatory solution where commercial negotiation fails to yield a solution.

26. One approach would be that proposed by the Satellite Users Coalition in our Direct Access proceeding. The Satellite Users Coalition proposed that, when a user's existing contract

---

<sup>40</sup> Subsection 641(c) provides that "[n]othing in this section shall be construed to permit the abrogation or modification of any contract". We seek comment on the appropriate construction of subsection 641(c) and its effect on existing precedents that permit the Commission to prescribe changes in contracts if it finds provisions unlawful or to modify contract provisions if in the public interest. See *Cable and Wireless v. FCC*, No. 97-1612 (D.C. Circuit, January 12, 1999), citing *Western Union Telegraph v. FCC*, 815 F.2<sup>nd</sup> 1495 at 1501 (D.C. Cir. 1987). See also *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, 16044-45 (1996); *Expanded Interconnection with Local Telephone Company Facilities*, 8 FCC Rcd 7341., 7342, 7346-48; *Allocation of the 849-851 MHz/894-896 MHz Bands*, 6 Fcc Rcd 4582, 4583 (1991); *Western Union Tel. Co. v. FCC*, 815 F.2<sup>nd</sup> 1495, 1495, 1501 (D.C. Cir. 1987).

<sup>41</sup> *Direct Access decision at 15754*

with Comsat expires, the user should have the opportunity to renew its access to INTELSAT, through Comsat, but by paying Comsat the INTELSAT Utilization Charge (IUC) for the service plus a network management fee to cover Comsat's costs for circuit orders, change orders and billing and collection.<sup>42</sup> The concept is intended to afford users and service providers the advantages of lower direct access rates on space segment capacity that they have previously used with these foreign correspondents on a matching basis, while paying Comsat a negotiated network management fee to cover its costs. The Satellite Users Coalition stated that the concept would be a transitional mechanism for service providers to take advantage of direct access "due to the limited amount of uncommitted INTELSAT capacity available and the difficulties in using that capacity with foreign correspondents."<sup>43</sup> We request comment on this approach.

27. If commercial solutions prove unattainable, regulatory action may be appropriate where the user or service provider can demonstrate that Comsat is holding capacity that is unique to its requirements and has not engaged in good faith negotiations to find a commercial solution. We may consider as "unique" space segment capacity on a planned and yet-to-be launched satellite that is the only capacity available to meet the needs of a particular user or service provider because of operational requirements of its foreign correspondent or other operational, commercial, technical, or economic considerations. The burden would be on the user or service provider to demonstrate that capacity is unique and regulatory action required. In such cases, we may consider limiting or modifying Comsat's authority to provide services via the capacity in question. This approach most appropriately might be applied to guaranteed or first refusal reservations on satellites not yet in operation.<sup>44</sup> We further request comment on whether permissible "appropriate action" under Section 641 includes requiring Comsat, at no penalty to itself, to relinquish its claim on future capacity that is unique to customer needs, as discussed above. While regulatory action is not the preferable approach, we believe that we must be prepared to step in if it appears Comsat is using its control of INTELSAT capacity to extend its past monopoly over access to INTELSAT and deny users and service providers the benefits of direct access in the future.

28. We also request counter proposals that will achieve Congressional intent. We recognize that interested parties may not be able to develop counter proposals without consideration of the information we are requiring Comsat to provide in its comments. Parties, therefore, may offer counter proposals in their reply comments. To allow for an opportunity for comment on any counter-proposals we are providing for responses to reply comments.

---

<sup>42</sup> See Letter from Alfred Mamlet on behalf of the Satellite Users Coalition (AT&T Corp., MCI Worldcom, Inc., and Sprint Communications, L.P.) to Secretary, Federal Communications Commission, dated September 8, 1999.

<sup>43</sup> *Id.*

<sup>44</sup> Comsat must obtain Commission authorization to participate in the launch and provide regularly authorized services over INTELSAT satellites. See *Comsat Corporation, Application for Authority to Participate and Provide Authorized Services via INTELSAT VIII Satellites*, DA 98-985 (International Bureau, rel. May 22, 1998).

## II. PROCEDURAL MATTERS

### A. Ex Parte Presentations

29. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex Parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.<sup>45</sup>

### B. Regulatory Flexibility Act

30. See Appendix C, *infra* for the Initial Regulatory Flexibility Analysis.

### C. Paperwork Reduction Act

31. This Notice of Proposed Rulemaking has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, and contains no new or modified information collection requirements that are subject to Office of Management and Budget (OMB) review.

### D. Comment Filing Procedures

32. General Requirements: Interested parties may file comments on or before June 23, 2000, reply comments on or before July 6, 2000, and responses to reply comments on or before July 11, 2000. Comments may be filed either by filing paper copies or using the Commission's Electronic Comment Filing System (ECFS).<sup>46</sup> Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules 47 C.F.R. §§ 1.415, 1.419, for paper filings, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and 11 copies. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554, with a copy to Kathleen A. Campbell of the International Bureau, 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554. Paper filings will be received at a designated counter located at TW-A325 in the 12<sup>th</sup> street lobby. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center within the Consumer Information Bureau, 445 12<sup>th</sup> Street, SW, Room CY-A257, Washington, D.C. 20554.

33. Electronically filed comments that conform to the Commission's Rules will be considered part of the record in this proceeding. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Comments filed through the ECFS can be sent as an electronic file

---

<sup>45</sup> See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

<sup>46</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24, 121 (1998).

via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. To file electronic comments, you must use the electronic filing interface available on the FCC's World Wide Web site at <http://dettifoss.fcc.gov:8080/cgi-bin/ws.exe/beta/ecfs/upload/hts>. Further information on the process of submitting comments electronically is available at that location and at <http://www.fcc.gov/e-file/>. You must note whether an electronic submission is an exact copy of the formal comments on the subject line. You also must include your full name and Postal Service mailing address in your submission. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

34. Other requirements: Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's rules.<sup>47</sup> We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments also must clearly identify the specific portion of this Notice to which a particular comment or set of comments is responsive. If a portion of a party's comments does not fall under a particular topic listed in the outline of this Notice, such comments must be included in a clearly labeled section at the beginning or end of the filing.

35. Parties submitting diskettes should submit them along with their formal filing to the Office of the Secretary. These diskettes should be submitted to: Kathleen A. Campbell of the International Bureau, 445 12th Street, SW, Room 6-B418, Washington, DC, 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Microsoft Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number, in this proceeding IB Docket No. 00-91), type of pleading (comment, reply comment, or response to reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy – Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Services, Inc., 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554.

### III ORDERING CLAUSES

36. Accordingly, IT IS ORDERED, that pursuant to the authority contained in sections 1, 4(i), 4(j), 201, 202, 214 and Title III and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201, 202, 214, 301 *et seq.* and 403, and sections 102(c), 201(c)(2), and c(11), of the Communications Satellite Act of 1962, as amended, 47 U.S.C. §§ 721(c), 741(c)(12) and (11), section 641 of the Open-Market Reorganization for the Betterment of International Telecommunications Act, 47 U.S.C. § 601 *et. Seq.*, the applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415 and 1.419, and 5 USC 553 of the Administrative Procedures Act, that this Notice of Proposed Rulemaking IS HEREBY ADOPTED.

---

<sup>47</sup> See 47 C.F.R. § 1.49. We require, however, that a summary be included with all comments, reply comments, and responses to reply comments. The summary may be paginated separately from the rest of the pleading (e.g. as "I, ii"). See 47 C.F.R. § 1.49.

37. IT IS FURTHER ORDERED that interested parties MAY FILE COMMENTS on or before June 23, 2000, reply comments on or before July 6, 2000 and responses to reply comments on or before July 11, 2000.

38. IT IS FURTHER ORDERED, that Comsat Corporation IS NAMED A PARTY RESPONDENT in this proceeding and IS REQUIRED TO SUBMIT in its comments the information specified in paragraphs 20 and 22 of this Notice, using the format provided in Appendix A and B.

39. IT IS FURTHER ORDERED, that the Commission's Consumer Information Bureau Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

**Secretary**

**APPENDIX A**

**Available Capacity for North America in 36 MHz Bandwidth (as of April 1, 2000)**

**Table 1**

Satellite	Orbital Location	List Beams	From North America	To
<b><u>Existing</u></b>				
IS-805	55.5°w			
IS-706	53.0°W			
IS-709	50.0°W			
IS-601	34.5°W			
IS-801	31.5°W			
IS-511	29.5°W			
IS-605	27.5°W			
IS-603	24.5°W			
IS-705	18.0°W			
IS-707	1.0°W			
IS-802	186°W			
IS-702	184°W			
IS-701	180°W			
<b><u>Planned</u></b>				
ALPHA-1	50.0°W			

Satellite	Orbital Location	List Beams	From North America	To
IS-904	34.5°W			
IS-907	31.5°W			
IS-905	27.5°W			
IS-903	24.5°W			
IS-906	18.0°W			
IS-ALPHA-2	1.0°W			



## APPENDIX A

Table 2

Satellite	Orbital Location	List Beams	From	To North America
<b><u>Existing</u></b>				
IS-805	55.5°W			
IS-706	53.0°W			
IS-709	50.0°W			
IS-601	34.5°W			
IS-801	31.5°W			
IS-511	29.5°W			
IS-605	27.5°W			
IS-603	24.5°W			
IS-705	18.0°W			
IS-707	1.0°W			
IS-802	186.0°W			
IS-702	184.0°W			
IS-701	180.0°W			
<b><u>Planned</u></b>				
IS-ALPHA-1	50.0°W			
IS-904	34.5°W			
IS-907	31.5°W			
IS-905	27.5°W			
IS-903	24.5°W			
IS-906	18.0°W			
IS-ALPHA-2	1.0°W			

## APPENDIX B

**Comsat Capacity in 36 MHz Bandwidth in Satellites Providing Service from North America to  
Other Points (as of April 1, 2000)**

Satellite	Orbital Location	List Beams	Current Lease	Guaranteed Reservation	1 <sup>st</sup> Refusal Reservation
<b><u>Existing</u></b>					
IS-805	55.5°W				
IS-706	53.0°W				
IS-709	50.0°W				
IS-601	34.5°W				
IS-801	31.5°W				
IS-511	29.5°W				
IS-605	27.5°W				
IS-603	24.5°W				
IS-705	18.0°W				
IS-709	1.0°W				
IS-802	186.0°W				
IS-702	184.0°W				
IS-701	180.0°W				
<b><u>Planned</u></b>					
IS-ALPHA-1	50.0°W				
IS-904	34.5°W				
IS-907	31.5°W				
IS-905	27.5°W				
IS-903	24.5°W				
IS-906	18.0°W				
IS-ALPHA-2	1.0°W				

Satellite	Orbital Location	List Beams	Current Lease	Guaranteed Reserve	1 <sup>st</sup> Refusal Res.

## APPENDIX C

### Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking (Notice)*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice* provided above in paragraphs 34 - 38. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. 5 U.S.C. § 603(a). In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.

#### I. Need for, and Objectives of, the Proposed Rules

The purpose of the *Notice* is to comply with the Orbit Act requirement that the Commission initiate a notice and comment proceeding to determine whether sufficient opportunity exists for users and service providers to access INTELSAT space segment capacity directly to meet their service or capacity requirements. If commenters believe that the proposals discussed in the *Notice* require additional RFA analysis, they should include a discussion of this in their comments.

#### II. Legal Basis

The authority for the *Notice* is pursuant to the authority contained in sections 1, 4(i), 4(j), 201, 202, 214 and Title III and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201, 202, 214, 301 *et seq.* and 403, and sections 102(c), 201(c)(2), and c(11), of the Communications Satellite Act of 1962, as amended, 47 U.S.C. §§ 721(c), 741(c)(12) and (11), section 641 of the Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. 106-180, 114 Stat. 48 (2000) § 641, the applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415 and 1.419, and 5 USC 553 of the Administrative Procedures Act.

#### III. Description and Estimate of the Number of Small Entities to Which Proposed Rule Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. § 603(b)(3). The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization" and "small business concern" under Section 3 of the Small Business Act. A "small business concern" is one which is (1) independently owned and operated; (2) not dominant in its field of operation; (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). 15 U.S.C. § 632.

The Commission has not developed a definition of small entities applicable to satellite service licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration ("SBA") rules applicable to Communications Services "Not Elsewhere Classified." This definition provides that a small entity is one with \$11 million or less in annual receipts. 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4899. According to the SBA, the Census Bureau estimates that there are approximately 631 entities providing communications services, not elsewhere

---

<sup>1</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

classified. Of those, between 401-631 reported annual receipts of less than \$9.999 million or less and would qualify as small entities subject to the proposed rules.<sup>2</sup> More precise data is not available.

The proposed *Notice* requires Comsat Corporation ("Comsat") to provide information concerning existing and future capacity in the INTELSAT system necessary for us to make the determination required by the ORBIT Act. The Commission also may seek information directly from INTELSAT if necessary and appropriate. Comsat's 1999 revenues were in excess of \$11 million. Thus, Comsat does not qualify as a small entity under the SBA's definition. U.S. carriers and users, including any small entities, that may be affected indirectly, would likely benefit from the proposed action.

#### **IV. Description of Projected Reporting, Recordkeeping or Other Compliance Requirements**

The proposals in the *Notice* are not expected to result in any additional reporting, recordkeeping and other compliance.

#### **V. Steps Taken to Minimize Significant Economic Burden on Small Entities, and Significant Alternatives Considered**

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

Without prejudgment as to whether it will determine that "sufficient opportunity" exists, the Commission is seeking comment on alternatives for "appropriate action" should it determine that sufficient opportunity does not exist for users and service providers to access INTELSAT directly. The Commission tentatively concludes that the first option for resolving this problem should be commercial solutions between Comsat and users and service providers. It also seeks comment on possible regulatory action should commercial negotiations fail to yield a solution. The intent of any regulatory action would be to permit users and service providers, including small entities, to benefit from the availability of direct access to INTELSAT space segment capacity to meet service or capacity requirements. We do not expect the proposals to cause any economic burden to small entities, and seek comment on any issues pertinent to this.

#### **VI. Federal Rules That Overlap, Duplicate, or Conflict with These Proposed Rules**

None.

List of Subjects in 47 CFR Part 25  
Satellites  
Federal Communications Commission

---

<sup>2</sup> U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table D, Employment Size of Firms: 1992, SIC Code 4899 (May 1995).