U.S. Department of Justice
Washington, DC 20530

Supplemental Statement
Pursuant to Section 2 of the Foreign Agents Registration Act of 1938, as amended.

OMB No. 1105-0002
Approval Expires Oct. 31, 1986

For Six Month Period Ending 4
(Insert date)

Name of Registrant
Akin, Gump, Strauss, Hauer & Feld

Registration No. 3492

Business Address of Registrant
1333 New Hampshire Avenue, N.W., Suite 400, Washington, D.C. 20036

I—REGISTRANT

1. Has there been a change in the information previously furnished in connection with the following:

(a) If an individual:

(1) Residence address	Yes ☐	No ☐
(2) Citizenship	Yes ☐	No ☐
(3) Occupation	Yes ☐	No ☐

(b) If an organization:

(1) Name	Yes ☐	No ☒
(2) Ownership or control	Yes ☐	No ☒
(3) Branch offices	Yes ☐	No ☒

2. Explain fully all changes, if any, indicated in item 1.

N/A

IF THE REGISTRANT IS AN INDIVIDUAL, OMIT RESPONSE TO ITEMS 3, 4, and 5.

3. Have any persons ceased acting as partners, officers, directors or similar officials of the registrant during this 6 month reporting period? Yes ☒ No ☐

If yes, furnish the following information:

Name	*Position*	*Date Connection Ended*
Jack W. Hanks	Partner	12/31/84
James Rogers	Partner	3/15/85
Christopher Gillam	Partner	4/15/85
Richard Gump, Jr.	Partner	4/30/85

4. Have any persons become partners, officers, directors or similar officials during this 6 month reporting period? Yes ☒ No ☐

If yes, furnish the following information: See attached for additional information.

Name	*Residence Address*	*Citizenship*	*Position*	*Date Assumed*
Laura L. Rodenburg	5946 Williamstown Dallas, Texas 75230	U.S.A.	Partner	1/1/85

5. Has any person named in Item 4 rendered services directly in furtherance of the interests of any foreign principal? Yes ☐ No ☒

If yes, identify each such person and describe his services.

6. Have any employees or individuals other than officials, who have filed a short form registration statement, terminated their employment or connection with the registrant during this 6 month reporting period? Yes ☐ No ☒

If yes, furnish the following information:

Name	*Position or connection*	*Date terminated*

7. During this 6 month reporting period, have any persons been hired as employees or in any other capacity by the registrant who rendered services to the registrant directly in furtherance of the interests of any foreign principal in other than a clerical or secretarial, or in a related or similar capacity? Yes ☐ No ☒

If yes, furnish the following information:

Name	*Residence Address*	*Position or connection*	*Date connection began*

II—FOREIGN PRINCIPAL

8. Has your connection with any foreign prinicpal ended during this 6 month reporting period? Yes ☒ No ☐

If yes, furnish the following information:

Name of foreign principal	*Date of Termination*
INTELSAT	April 18, 1985
GOVERNMENT OF CANADA	June 15, 1985

9. Have you acquired any new foreign principal[1] during this 6 month reporting period? Yes ☐ No ☒

If yes, furnish following information:

Name and address of foreign principal	*Date acquired*

10. In addition to those named in Items 8 and 9, if any, list the foreign principals[1] whom you continued to represent during the 6 month reporting period.

EMBASSY OF THE PEOPLE'S REPUBLIC OF CHINA
FRUPAC

III—ACTIVITIES

11. During this 6 month reporting period, have you engaged in any activities for or rendered any services to any foreign principal named in Items 8, 9, and 10 of this statement? Yes ☒ No ☐

If yes, identify each such foreign principal and describe in full detail your activities and services:

See Attachment

[1]The term "foreign principal" includes, in addition to those defined in section 1(b) of the Act, an individual or organization any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign government, foreign political party, foreign organization or foreign individual. (See Rule 100(a)(9)).

A registrant who represents more than one foreign principal is required to list in the statements he files under the Act or ly those foreign principals for whom he is not entitled to claim exemption under Section 3 of the Act. (See Rule 208.)

12. During this 6 month reporting period, have you on behalf of any foreign principal engaged in political activity[2] as defined below?
Yes ☒ No ☐

If yes, identify each such foreign principal and describe in full detail all such political activity, indicating, among other things, the relations, interests and policies sought to be influenced and the means employed to achieve this purpose. If the registrant arranged, sponsored or delivered speeches, lectures or radio and TV broadcasts, give details as to dates, places of delivery, names of speakers and subject matter.

See Attachment

13. In addition to the above described activities, if any, have you engaged in activity on your own behalf which benefits any or all of your foreign principals? Yes ☐ No ☒

If yes, describe fully.

[2]The term "political activities" means the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

IV—FINANCIAL INFORMATION

14. (a) **RECEIPTS—MONIES**

During this 6 month reporting period, have you received from any foreign principal named in Items 8, 9 and 10 of this statement, or from any other source, for or in the interests of any such foreign principal, any contributions, income or money either as compensation or otherwise? Yes ☒ No ☐

If yes, set forth below in the required detail and separately for each foreign principal an account of such monies.[3]

Date	*From Whom*	*Purpose*	*Amount*
1/2/85	CANADA	PAYMENT FOR LEGAL SERVICES RENDERED	$ 14,291.00
3/22/85	"	"	14,773.75
4/26/85	"	"	19,142.75
5/9/85	"	"	12,122.50

Total See attached for additional information.

(b) **RECEIPTS—THINGS OF VALUE**

During this 6 month reporting period, have you received any thing of value[4] other than money from any foreign principal named in Items 8, 9 and 10 of this statement, or from any other source, for or in the interests of any such foreign principal? Yes ☐ No ☒

If yes, furnish the following information:

Name of foreign principal	*Date received*	*Description of thing of value*	*Purpose*

[3] A registrant is required to file an Exhibit D if he collects or receives contributions, loans, money, or other things of value for a foreign principal, as part of a fund raising campaign. See Rule 201(e).
[4] Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks," and the like.

15. (a) DISBURSEMENTS–MONIES

During this 6 month reporting period, have you

(1) disbursed or expended monies in connection with activity on behalf of any foreign principal named in Items 8, 9 and 10 of this statement? Yes ☒ No ☐

(2) transmitted monies to any such foreign principal? Yes ☐ No ☒

If yes, set forth below in the required detail and separately for each foreign principal an account of such monies, including monies transmitted, if any, to each foreign principal.

Date	*To Whom*	*Purpose*	*Amount*
CANADA			
1/2/85	Firm	CLERICAL and SUPPORT SERVICES	$ 211.40
3/22/85	"	"	496.66
4/26/85	"	"	666.56
5/9/85	"	"	634.63
CHINA			
1/8/85	Firm	CLERICAL and SUPPORT SERVICES	1,887.25
5/1/85	"	"	2,354.73
FRUPAC			
4/15/85	FIRM	CLERICAL and SUPPORT SERVICES	1,466.62
INTELSAT			
12/27/84	FIRM	CLERICAL and SUPPORT SERVICES	979.33
1/11/85	"	"	1,468.19
1/22/85	"	"	--
2/19/85	"	"	1,916.72
4/19/85	"	"	966.91
5/3/85	"	"	1,667.14
5/23/85	"	"	1,016.23
6/24/85	"	"	3,114.82

$18,847.19

Total

15. (b) DISBURSEMENTS—THINGS OF VALUE

During this 6 month reporting period, have you disposed of anything of value[5] other than money in furtherance of or in connection with activities on behalf of any foreign principal named in items 8, 9 and 10 of this statement?
Yes ☐ No ☒

If yes, furnish the following information:

Date disposed	*Name of person to whom given*	*On behalf of what foreign principal*	*Description of thing of value*	*Purpose*

(c) DISBURSEMENTS—POLITICAL CONTRIBUTIONS

During this 6 month reporting period, have you from your own funds and on your own behalf either directly or through any other person, made any contributions of money or other things of value[5] in connection with an election to any political office, or in connection with any primary election, convention, or caucus held to select candidates for political office?
Yes ☒ No ☐

If yes, furnish the following information: See attached authorized contributions for 1984/1985.

Date	*Amount or thing of value*	*Name of political organization*	*Name of candidate*

V—POLITICAL PROPAGANDA

(Section 1(j) of the Act defines "political propaganda" as including any oral, visual, graphic, written, pictorial, or other communication or expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions, or (2) which advocates, advises, instigates, or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in any other American republic or the overthrow of any government or political subdivision of any other American republic by any means involving the use of force or violence.)

16. During this 6 month reporting period, did you prepare, disseminate or cause to be disseminated any political propaganda as defined above? Yes ☒ No ☐

IF YES, RESPOND TO THE REMAINING ITEMS IN THIS SECTION V.

17. Identify each such foreign principal.
INTELSAT

[5]Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks," and the like.

18. During this 6 month reporting period, has any foreign principal established a budget or allocated a specified sum of money to finance your activities in preparing or disseminating political propaganda? Yes ☐ No ☒

If yes, identify each such foreign principal, specify amount, and indicate for what period of time.

19. During this 6 month reporting period, did your activities in preparing, disseminating or causing the dissemination of political propaganda include the use of any of the following:

☐ Radio or TV broadcasts ☐ Magazine or newspaper articles ☐ Motion picture films ☐ Letters or telegrams
☐ Advertising campaigns ☒ Press releases ☐ Pamphlets or other publications ☐ Lectures or speeches

☒ Other *(specify)* White Paper, Letters

20. During this 6 month reporting period, did you disseminate or cause to be disseminated political propaganda among any of the following groups:

☐ Public Officials ☐ Newspapers ☐ Libraries
☒ Legislators ☐ Editors ☐ Educational institutions
☐ Government agencies ☐ Civic groups or associations ☐ Nationality groups
☐ Other *(specify)* _____

21. What language was used in this political propaganda:

☒ English ☐ Other *(specify)* _____

22. Did you file with the Registration Section, U.S. Department of Justice, two copies of each item of political propaganda material disseminated or caused to be disseminated during this 6 month reporting period? Yes ☒ No ☐

23. Did you label each item of such political propaganda material with the statement required by Section 4(b) of the Act? Yes ☒ No ☐

24. Did you file with the Registration Section, U.S. Department of Justice, a Dissemination Report for each item of such political propaganda material as required by Rule 401 under the Act? Yes ☒ No ☐

VI—EXHIBITS AND ATTACHMENTS

25. **EXHIBITS A AND B**

(a) Have you filed for each of the newly acquired foreign principals in Item 9 the following:

N/A

Exhibit A[6] Yes ☐ No ☐
Exhibit B[7] Yes ☐ No ☐

If no, please attach the required exhibit.

(b) Have there been any changes in the Exhibits A and B previously filed for any foreign principal whom you represented during this six month period? N/A Yes ☐ No ☐

If yes, have you filed an amendment to these exhibits? Yes ☐ No ☐

If no, please attach the required amendment.

[6]The Exhibit A, which is filed on Form CRM-157 (Formerly OBD-67) sets forth the information required to be disclosed concerning each foreign principal.
[7]The Exhibit B, which is filed on Form CRM-155 (Formerly OBD-65) sets forth the information concerning the agreement or understanding between the registrant and the foreign principal.

26. **EXHIBIT C**

If you have previously filed an Exhibit C[8], state whether any changes therein have occurred during this 6 month reporting period. Yes ☐ No ☒

If yes, have you filed an amendment to the Exhibit C? Yes ☐ No ☐

If no, please attach the required amendment.

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27. **SHORT FORM REGISTRATION STATEMENT**

Have short form registration statements been filed by all of the persons named in Items 5 and 7 of the supplemental statement? Yes ☐ No ☐ N/A

If no, list names of persons who have not filed the required statement.

The undersigned swear(s) or affirm(s) that he has (they have) read the information set forth in this registration state. .. and the attached exhibits and that he is (they are) familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his (their) knowledge and belief, except that the undersigned make(s) no representation as to the truth or accuracy of the information contained in attached Short Form Registration Statement, if any, insofar as such information is not within his (their) personal knowledge.

(Both copies of this statement shall be signed and sworn to before a notary public or other person authorized to administer oaths by the agent, if the registrant is an individual, or by a majority of those partners, officers, directors or persons performing similar functions who are in the United States, if the registrant is an organization.)

(Type or print name under each signature)

Akin, Gump, Strauss, Hauer & Feld
By: Daniel L. Spiegel, Power of Attorney
Attorney

Akin, Gump, Strauss, Hauer & Feld

By: Daniel L. Spiegel, Power of Attorney

Subscribed and sworn to before me at Wash., D.C.

this 24th day of July, 19 85

Elaine C. Gregg
(Signature of notary or other officer)

My Commission Expires July 14, 1989

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[8]The Exhibit C, for which no printed form is provided, consists of a true copy of the charter, articles of incorporation, association, constitution, and bylaws of a registrant that is an organization. (A waiver of the requirement to file an Exhibit C may be obtained for good cause upon written application to the Assistant Attorney General, Criminal Division, Internal Security Section, U.S. Department of Justice, Washington, D.C. 20530.)

4. continued

Name	Residence Address	Citizenship	Position	Date Assumed
Timothy P. Tehan	4646 Millcreek Road Dallas, Texas 75244	U.S.A.	Partner	1/1/85
Paul E. Galvin	7111 Lakewood Boulevard Dallas, Texas 75214	U.S.A.	Partner	1/1/85
Richard R. Ertel	816 Liberty Dallas, Texas 75204	U.S.A.	Partner	1/1/85
Donald R. Rector	16015 Ranchita Drive Dallas, Texas 75248	U.S.A.	Partner	2/1/85
John J. Kendrick, Jr.	4800 Drehel Drive Dallas, Texas 75205	U.S.A.	Partner	5/6/85
W. Thomas Weir	7522 Bridgewater San Antonio, Texas 78205	U.S.A.	Partner	2/1/85
Ronald M. Johnson	422 Greenbrier Drive Silver Spring, Maryland 20910	U.S.A.	Partner	1/1/85
Smith W. Davis	7421 Foxleigh Way Alexandria, Virginia 22310	U.S.A.	Partner	1/1/85
James P. Denvir	5616 Nevada Avenue, N.W. Washington, D.C. 20015	U.S.A.	Partner	1/1/85
Ralph J. Gerson	1719 Hoban Road, N.W. Washington, D.C. 20007	U.S.A.	Partner	1/1/85

CANADA

Services included the performance of research on various legislative and administrative policy issues for the Embassy of Canada. Our work included conferences with congressional staff and Executive Branch officials; these meetings were held purely to gather information, and no effort was made to present the views of the Government of Canada. The firm has advised personnel of the Canadian Embassy regarding a wide variety of domestic and international issues of concern to Canada and has prepared various written materials for the Canadian Embassy staff.

FRUPAC

The firm did not provide services to the client during this period.

INTELSAT

Provided general counsel and advice to the client regarding international telecommunications policy. Also participated in consultations with Executive Branch officials and congressional staff to explain how INTELSAT works and discuss the legal impediments which exist under INTELSAT agreements to prevent it from competing with specialized private systems.

PEOPLE'S REPUBLIC OF CHINA

Our services primarily consisted of general counsel and advice regarding a variety of trade and foreign policy issues of concern to the client. In addition to general research on and monitoring of these issues, our activities included meetings with selected congressional staff concerning proposed amendments relating to China to the foreign assistance authorization bill and the State Department authorization bill. We also rendered general advice to the client regarding the U.S.-China Nuclear Agreement.

INTELSAT

Consultation with decisionmakers within the Executive Branch and Congress to explain how INTELSAT works and to discuss the legal impediments which exist under INTELSAT agreements to prevent it from competing with specialized private systems. Activities included meetings and telephone conversations throughout the past six months with congressional and Executive Branch staff regarding the status of White House review of the NTIA and SIG recommendations for international satellite telecommunications policy.

PEOPLE'S REPUBLIC OF CHINA

Services in this regard included conferences with selected congressional staff regarding proposed amendments relating to China to the foreign assistance and State Department authorization bills.

12. Continued

Discussions:

INTELSAT

Tom Bruce, Office of Rep. Dan Mica, 1/9/85
Mike Findlay, Office of Rep. Dante Fascell, 1/9/85
Judith Davison, Office of Sen. Paul Sarbanes, 1/9/85
Scott Wilson, Office of Sen. Jesse Helms, 1/10/85
Ken Cribb, White House, 1/16/85
Abbott Washburn (former Commissioner of FCC), 1/17/85
Robert E. Rich, Deputy Director, National Security Agency, 1/17/85
Bill Schneider, Under Secretary of State, 1/18/85
James H. Quello, Mary Ann Weyforth Dawson, Commissioners, FCC, 1/18/85
Dennis R. Patrick, Commissioner, FCC, 1/25/85
Sen. Claiborne Pell, 1/25/85
Bill Schneider, Undersecretary of State; Rich Colino, INTELSAT Director General; and Dave Markey, Assistant Secretary of Commerce, 1/28/85
Dave Markey, Assistant Secretary of Commerce, 1/29/85
Sen. Alan Cranston, 1/29/85
Sen. Pete Wilson, 1/31/85
Staff, House Appropriations Committee, 2/85
Janice O'Connell, Senate Foreign Relations Committee, 2/85
State Department Assistant Secretary, 2/6/85
Sen. Charles Mathias, 2/6/85
Staff of Sen. Charles Mathias, 2/7/85
Jack Schmitt (former Senator), 2/19/85
Mark Fowler, Commissioner, FCC, 2/22/85
Mary Ann Weyforth Dawson, Commissioner, FCC, 2/25/85
Rep. Howard Berman, 2/25/85
UK Officials, 2/26/85
Tom Rogers, Office of Rep. Tim Wirth, 2/26/85
Tom Ryan, Office of Rep. John Dingell, 2/27/85
Janice O'Connell, Senate Foreign Relations Committee, 3/85
Dave Markey, Assistant Secretary of Commerce, 3/7/85
State Department Officials, 3/11/85
State Department Officials, 3/13/85
Mark Fowler, Chairman, FCC, 3/20/85
Dave Markey, Assistant Secretary of Commerce, 3/20/85
Mark McCarthy, Office of Rep. John Dingell, 3/25/85

PEOPLE'S REPUBLIC OF CHINA

Don Anderson, China Desk, East Asia Bureau, State Department, 4/25/85
Richard Bush, House Foreign Affairs Committee, 5/31/85
Herb Levin, House Foreign Affairs Committee, 5/31/85
Janice O'Connell, Senate Foreign Relations Committee, 6/85

(Contact with the above-named persons also included periodic telephone conversations over the course of the past six months.)

12. Continued

Discussions:

People's Republic of China

Richard Bush, Staff Consultant, Asian and Pacific Subcommittee, House Foreign Affairs Committee, 7/24/85
Richard Collins, Professional Staff, Foreign Operations Subcommittee, Senate Appropriations Committee, 7/85
Ed Long, Legislative Assistant, Office of Sen. Tom Harkin, 7/85
Liz Tankersley, Legislative Director, Office of Sen. Tom Harkin, 7/85
Rep. Peter Kostmayer, 7/24/85
James Heck, Jr., Legislative Assistant, Office of Rep. Peter Kostmayer, 7/85
F.H. Brewer III, Administrative Assistant, Office of Rep. Peter Kostmayer, 7/85
Robert M. Finley, Deputy Chief of Staff, House Foreign Affairs Committee, 7/85
Mark J. Tavlarides, Staff Director, Human Rights-International Organizations Subcommittee, House Foreign Affairs Committee, 7/85

(Contact with the above-named persons also included periodic telephone conversations over the course of the past six months.)

AUTHORIZED CONTRIBUTIONS/EXPENDITURES FOR JUNE-DECEMBER 1985

	Date	Campaign	PAC
1.	06/04/85	Wyden for Congress (Ron, D-3, Ore.)	500.00
2.	06/04/85	Friends of Neal Smith (D-4, Iowa)	250.00
3.	06/04/85	Eckart for Congress (Dennis, D-11, OH)	500.00
4.	06/07/85	Citizens for Downey (Tom, D-2, NY)	1,000.00
5.	06/11/85	Cranston for Senate Committee (Alan, D-Calif.)	1,000.00
6.	06/12/85	Bumpers 86 Reelection Committee (Dale, D-Ark.)	1,000.00
7.	06/13/85	Bill Richardson for Congress (D-3, N.M.)	250.00
8.	06/13/85	Committee for Fauntroy (Walter, D-Del, D.C.)	500.00
9.	06/17/85	Quillen for Congress (James, R-1, TN)	500.00
10.	06/18/85	People to Re-elect Bedell (Berkley, D-6, Iowa)	250.00
11.	06/18/85	Citizens for Mike Lowry (D-7, Wash.)	250.00
12.	06/21/85	Friends of Joe Barton (R-6, TX)	250.00
13.	06/25/85	Kennedy PAC - Fund for Democratic Majority	1,000.00
14.	06/25/85	Re-elect Rinaldo to Congress (Matt, R-7, N.J.)	500.00
15.	06/25/85	Claude Pepper Campaign Committee (D-18, Fla.)	500.00
16.	06/26/85	Friends of Congressman George Miller (D-7, Calif.)	500.00
17.	07/22/85	Re-elect Senator Mark Andrews (R-N.D.)	1,000.00
18.	08/14/85	Democratic House & Senate Council	164.90
19.	09/10/85	James R. Jones Campaign Committee (D-1, Okla.)	1,000.00
20.	09/11/85	People for Frank Annunzio (D-11, IL)	1,000.00
21.	09/18/85	DSCC - Business Roundtable annual dinner	2,000.00

	Date	Campaign	PAC
22.	09/18/85	Alan Wheat for Congress (D-5, MO)	500.00
23.	09/30/85	Mike Oxley for Congress (R-4, OH)	250.00
24.	10/01/85	Bingaman for U.S. Senate (D-N.M.)	500.00
25.	10/01/85	Coelho for Congress Committee (D-15, CA)	500.00
26.	10/01/85	Committee to Re-elect Wyche Fowler (D-5, GA)	500.00
27.	10/03/85	Norm Lent for Congress (R-4, NY)	250.00
28.	10/08/85	John Melcher for Senate (D-Mont.)	500.00
29.	10/15/85	Arlen Specter for U.S. Senate (R-PA)	500.00
30.	10/15/85	Bingaman - Jefferson Hotel (cont. in kind for 10/1 event)	187.50
31.	10/16/85	Quentin Burdick Campaign Comm. (D-N.D.)	500.00
32.	10/18/85	Jones - Ritz Carlton Hotel (cont. in kind for 9/11 event)	224.64
33.	10/22/85	Jim Bates for Congress (D-44, CA)	250.00
34.	11/06/85	Committee for Sam Gibbons (D-7, Fla.)	500.00

14. (a) RECEIPTS - MONIES

DATE	FROM WHOM	PURPOSE	AMOUNT
1/8/85	CHINA	PAYMENT FOR LEGAL SERVICES RENDERED	$ 37,317.00
5/1/85	"	"	25,321.40
4/15/85	FRUPAC	PAYMENT FOR LEGAL SERVICES RENDERED	3,533.38
12/27/84	INTELSAT	PAYMENT FOR LEGAL SERVICES RENDERED	30,828.00
1/11/85	"	"	31,830.00
1/22/85	"	"	23,744.50
2/19/85	"	"	(364.50)
4/19/85	"	"	52,701.00
5/3/85	"	"	37,422.50
5/23/85	"	"	31,870.00
6/24/85	"	"	17,998.00
		TOTAL	$352,531.28

AKIN, GUMP, STRAUSS, HAUER & FELD PAC

AUTHORIZED CONTRIBUTIONS/EXPENDITURES FOR JANUARY - JUNE 1985

	Date	Campaign	PAC
1.	3/04/85	Texas Secretary of State	$100.00
2.	3/15/85	Ridgewells (Fundraiser for Senator Wendell Ford of 2/27/85)	695.02
3.	3/15/85	John Bryant Campaign Fund (D-5, TX)	500.00
4.	3/20/85	Richard Stallings for Congress (D-2, ID)	250.00
5.	3/20/85	Bill Gray for Congress (D-2, PA)	500.00
6.	3/26/85	Committee for Sam Gibbons (D-7, FL)	500.00
7.	3/27/85	Jim Bates for Congress (D-44, CA)	250.00
8.	3/27/85	Doug Bosco for Congress Committee	250.00
9.	3/27/85	Rick Boucher for Congress Committee (D-9, VA)	500.00
10.	3/27/85	Mississippians for Cong. Wayne Dowdy (D-2, MS)	500.00
11.	3/27/85	Reelect Tom Hartnett to Congress (R-1, SC)	500.00
12.	3/27/85	Friends of Congressman Gerry Sikorski (D-6, MN)	250.00
13.	3/27/85	Pete Stark Reelection Committee (D-9, CA)	500.00
14.	3/27/85	Friends of Phil Sharp (D-2, Ind.)	250.00
15.	3/28/85	Senator Slade Gorton '86 Committee (R-Wash.)	500.00
16.	3/28/85	Tom DeLay for Congress Committee (R-22, TX)	250.00
17.	4/2/85	Chris Dodd for Senate (D-CT)	500.00
18.	4/3/85	Pennsylvanians for Paul Kanjorski (D-11, PA)	250.00

	Date	Campaign	PAC
19.	4/3/85	Committee for Congressman Joseph P. Addabbo (D-6, NY)	500.00
20.	4/5/85	The Albert G. Bustamante Campaign Committee	250.00
21.	4/11/85	DCCC - Women's Congressional Council	500.00
22.	4/17/85	Ron Coleman for Congress (D-16, TX)	250.00
23.	4/19/85	Texas for Sweeney (D-14, TX)	500.00
24.	4/22/85	Bart Gordon for Congress (D-6, TN)	500.00
25.	4/25/85	Feighan for Congress Committee (D-19, OH)	250.00
26.	4/25/85	Friends of Bob Torricelli (D-9, NJ)	250.00
27.	4/30/85	Steve Neal for Congress (D-5, NC)	500.00
28.	4/30/85	Daniel K. Inouye in '86 Comm. (D-HI)	1,000.00
29.	5/1/85	Citizens' Committee for Ernest F. Hollings (D-SC)	1,000.00
30.	5/1/85	Ralph Hall for Congress Committee (D-4, TX)	500.00
31.	5/1/85	Ronnie G. Flippo for Congress (D-5, AL)	1,000.00
32.	5/1/85	Tommy F. Robinson for Congress Campaign Fund (D-2, AR)	250.00
33.	5/2/85	English for Congress (D-6, OK)	500.00
34.	5/7/85	Friends of Bob Carr (D-6, MI)	500.00
35.	5/7/85	Tim Wirth for Congress Committee (D-2, CO)	1,000.00
36.	5/8/85	Democratic Congressional Dinner Committee - annual dinner	10,000.00
37.	5/14/85	Friends of Al Gore, Jr. (D-TN)	500.00

	Date	Campaign	PAC
38.	5/14/85	Riegle for Senate Committee (D-MI)	1,000.00
39.	5/14/85	Leland for Congress (D-18, TX)	250.00
40.	5/14/85	Friends of Lindy Boggs (D-2, LA)	500.00
41.	5/15/85	Sabo for Congress (D-5, MN)	250.00
42.	5/15/85	Martin Frost Campaign Committee (D-24, TX)	250.00
43.	5/15/85	Butler Derrick Finance Committee (D-3, SC)	500.00
44.	5/16/86	Republican Dinner Committee - The President's Dinner	6,000.00
45.	5/21/85	Larry Smith for Congress (D-16, FL)	300.00
46.	5/21/85	Committee to Reelect Barbara Boxer (D-6, CA)	250.00
47.	5/22/85	Glickman for Congress (D-4, KS, Dan)	500.00
48.	5/22/85	Friends of Congressman John Conyers (D-1, MI)	250.00
49.	5/22/85	Coble for Congress (R-6, NC)	500.00
50.	5/22/85	The Billy Tauzin Committee (D-3, LA)	500.00
51.	5/28/85	DCCC - The Chairmen's Council	2,000.00
52.	6/4/85	Wyden for Congress (D-3, OR)	500.00
53.	6/4/85	Friends of Neal Smith (D-4, IA)	250.00
54.	6/4/85	Eckart for Congress (D-11, OH)	500.00
55.	6/7/85	Citizens for Downey (D-2, NY)	1,000.00
56.	6/12/85	Bumpers 86 Reelection Committee (D-AR)	1,000.00
57.	6/11/85	Cranston for Senate Committee (D-CA)	1,000.00
58.	6/13/85	Bill Richardson for Congress (D-3, NM)	250.00

	Date	Campaign	PAC
59.	6/13/85	Committee for Fauntroy (D-Del, DC)	500.00
60.	6/17/85	Quillen for Congress (R-1, TN)	500.00
61.	6/18/85	People to Re-elect Bedell (D-6, IA)	250.00
62.	6/18/85	Citizens for Mike Lowry (D-7, WA)	250.00
63.	6/21/85	Friends of Joe Barton (R-6, TX)	250.00
64.	6/25/85	Kennedy PAC - Fund for Democratic Majority (fund-raiser for Russell Long of 6/17)	1,000.00
65.	6/25/85	Re-elect Rinaldo to Congress (R-7, NJ)	500.00
66.	6/25/85	Claude Pepper Campaign Committee (D-18, FL)	500.00
67.	6/25/85	Glickman (D-KS) contribution in kind	575.56
68.	6/26/85	Friends of Congressman George Miller (D-7, CA)	500.00

A White Paper on New International Satellite Systems

Senior Interagency Group
on International Communication
and Information Policy

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February 1985

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Introduction

Since 1983, several U.S. firms have filed applications with the Federal Communications Commission (FCC) to establish international communications satellite systems in addition to the global system owned by the International Telecommunications Satellite Organization (INTELSAT). Orion Satellite Corporation, International Satellite, Inc. (ISI), and Cygnus Corporation propose new transatlantic communications systems, and RCA American Communications, Inc. (RCA) has applied to use capacity on a U.S. domestic satellite to provide international service. Pan American Satellite Corporation (PanAmSat) proposes to establish a system which would serve Latin America. In addition to existing and planned regional satellite systems independent of INTELSAT, other transoceanic satellite systems are under consideration abroad. Approved and proposed transatlantic submarine cable communications facilities, many of which are actually or potentially competitive with INTELSAT, are pending as well.

Focus of Report

The filing of U.S.-based satellite system applications with the FCC prompted action by the Executive branch, which has special responsibilities in this field under the Communications Satellite Act of 1962, as amended (47 U.S.C. 701 et seq.), including the responsibility to determine whether additional U.S. international satellite systems are "required in the national interest." The Senior Interagency Group on International Communication and Information Policy (SIG) reviewed U.S. international satellite policy to determine whether, and under what conditions, authorizing satellite systems and services in addition to INTELSAT would be: (a) consistent with prevailing U.S. law, practice, and international treaty obligations; (b) compatible with sound foreign policy and telecommunications policy goals; and, (c) in the U.S. national interest. 1/

1/ The SIG is composed of representatives of the Departments of State, Justice, Defense, and Commerce; the Offices of Management and Budget, Science and Technology Policy, Policy Development, and the U.S. Trade Representative; the National Security Council; the Central Intelligence Agency; the U.S. Information Agency (USIA); the Board for International Broadcasting; the Agency for International Development; and the National Aeronautics and Space Administration. Commerce and State co-chair the SIG and USIA serves as vice chair.

The Executive agencies represented on the SIG undertook a study and reached a unanimous position in favor of new entry, subject to certain limitations. A recommendation subsequently was made to the President by the Secretaries of State and Commerce. The President determined on November 28, 1984, that international satellite systems separate from INTELSAT were required in the U.S. national interest, subject to certain conditions. Specific criteria relating to the President's determination were then forwarded to the FCC by the Secretaries of Commerce and State jointly. See Appendixes A and B.

This report provides background information regarding the President's determination, and it also provides information on important regulatory and other parallel measures which are desirable to ensure that the Executive branch's fundamental policy goal -- an efficient and responsive international communications environment -- is achieved. The discussion here focuses on the major communications and information policy issues raised by the applications before the FCC. It addresses commercial, trade, and legal matters, and also examines major U.S. foreign policy interests and concerns.

This report does not seek to resolve all of the questions that have been raised regarding new international satellite systems nor to direct action by the FCC on specific pending applications. It does, however, consolidate much of the extensive analysis that has been undertaken by the Executive branch and sets forth the requirements applicable to any system the FCC may eventually authorize.

The Executive branch has concluded, in brief, that it is technically feasible, economically desirable, and in the national interest to allow new entry by U.S. firms into the international satellite field. Customers should be afforded both the new service options and the benefits of competition among customized service providers that new entry promises. This can be accomplished, moreover, while maintaining the technical integrity of the INTELSAT global system and avoiding significant economic harm to that system. U.S. foreign policy, and international communications and information policy, require a continued strong national commitment to INTELSAT as "a single global commercial telecommunications satellite

system as part of an improved global telecommunications network." 2/ But our national commitment to INTELSAT and other important goals can be accommodated, provided that new international satellite systems and services are authorized and regulated along the lines discussed in this report.

Specifically, this report concludes that --

(a) Additional international satellite facilities should be permitted by the FCC, provided they satisfy conventional regulatory requirements, but the new entrants must be restricted to providing customized services, as defined in this report. When one or more authorities abroad authorizes use of such new systems, the United States with those authorities will enter into consultation procedures with INTELSAT under Article XIV(d) of the INTELSAT Agreement. Construction permits may be issued at the conclusion of regulatory proceedings to those applicants meeting the public interest requirements of the Communications Act. Final licenses and authorizations should not be issued, however, until after INTELSAT consultation is completed.

(b) The FCC should examine allowing U.S. carriers and users in addition to the Communications Satellite Corporation (Comsat) to have cost-based access to the INTELSAT space segment for customized services. This matter can be pursued on a parallel track, as the pending applications are being processed, however, and does not constitute a condition to FCC action on these applications.

(c) The United States should, and will, maintain its full commitment to INTELSAT, while permitting technology-driven competition in this important sector to evolve.

I. THE INTERNATIONAL COMMUNICATIONS MARKETPLACE TODAY

Industry Participants

International communications today constitutes one of the most rapidly growing parts of the overall telecommunications industry, and the services

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2/ Preamble, Agreement Relating to the International Telecommunications Satellite Organization "INTELSAT," TIAS 7532, 23 UST 3813, 3814 (1973).

involved are critical to U.S. trade, national defense, foreign policy, and international investment. The services involved traditionally have been categorized as "voice" or "record," "private line" or "public-switched," and, historically, the American Telephone and Telegraph Company (AT&T) has handled most of the international voice traffic. Six major international record carriers (IRCs) -- ITT Worldcom, RCA Communications, MCI International, TRT Communications, Western Union, and FTC Communications -- currently share the telex and telegraph components of the $2.8 billion a year international communications market. AT&T and the IRCs competitively offer international private line services, generally used by major corporate and Government users for data and voice communication. 3/

There are two principal international transmission modes: submarine cables and communications satellite facilities. The submarine cables which provide U.S. international service are owned collectively by AT&T, the IRCs, and their foreign correspondents. 4/ Seven transatlantic cables now terminate in the United States and an eighth, 38,000-circuit, fiber optic cable has been approved by the FCC. 5/ U.S. international satellite circuits are provided by Comsat, which has functioned as a "carrier's carrier" and holds a 23 percent interest in INTELSAT, the 109-nation organization that owns and manages the global satellite system. 6/ Comsat's investment share is adjusted annually to reflect U.S. use of the INTELSAT system.

3/ See Overseas Communications Services, 92 FCC 2d 641 (1982). See also WUI, Inc. v. FCC, 673 F.2d 539 (D.C. Cir. 1982) (and citations therein); TAT-5, 13 FCC 2d 263 (1968). See generally Comsat Rate Case, 56 FCC 2d 1101 (1975), aff'd, 611 F.2d 883 (D.C. Cir. 1977); Comsat Study, 77 FCC 2d 564 (1982); Comsat Structure Decision, 52 P. & F. Radio Reg. 2d 153 (1982); Schwartz, Comsat, the Carriers, and the Earth Stations: Some Problems With 'Melding Variegated Interests,' 76 Yale L.J. 441 (1967).

4/ Such correspondents typically consist of government-owned (or, in the case of Britain and Japan, "privatised") postal, telephone, and telegraph administrations (PTTs) that both provide and regulate domestic and international communications services.

5/ See Applications of AT&T et al. (File No. ITC 84-072), FCC Mimeo 84-240 (June 8, 1984). In addition, two sets of applications to install noncarrier-owned transatlantic cables are now before the FCC.

6/ The FCC has recently increased the range of "authorized users" to whom Comsat may provide services. Authorized User II Policy (CC Dkt 80-170), FCC Mimeo 84-633 (Dec. 19, 1984).

The U.S. earth stations used to provide access to the satellites are now collectively owned by Comsat, AT&T, and the IRCs, although the FCC recently made changes in this regard. 7/

U.S. Policy Goals

The international communications and information policy goals of the United States are the following:

- To enhance the free flow of information and ideas among nations;
- To promote harmonious international relations and contribute to world peace and understanding through communications;
- To promote, in cooperation with other nations, the development of efficient, innovative, and cost-effective international communications services responsive to the needs of users and supportive of the expanding requirements of commerce and trade;
- To ensure the continued technological and economic strength and leadership of the United States in the communications, information, and aerospace fields;
- To expand U.S. private sector investment and involvement in civil space and related activities;
- To promote expanded international trade and to ensure opportunities to U.S. firms to participate in such trade;
- To promote the continuing evolution of an international configuration of communications services that can meet the needs of all nations of the world, with attention toward providing such services to developing nations;
- To ensure efficient utilization of the geostationary orbit and the electromagnetic radio frequency spectrum;
- To promote competition and reliance on market mechanisms, as feasible, and to foster cost-based pricing, quality service, and more efficient use of resources; and,
- To ensure the needs of national defense, security, and emergency preparedness are satisfactorily met.

7/ See Earth Station Ownership, 90 FCC 2d 1958 (1982); Modification of Earth Station Policies (CC Docket No. 82-540), FCC Mimeo 84-605 (released Dec. 18, 1984). See generally Twenty-First Comsat Report to the President and the Congress at pp. 2-3, 6-7 (September 17, 1984).

These basic policy goals are mutually supportive. There is a continuing need to review and assess their requirements. Satisfying all of these goals to the maximum extent possible requires striking a reasonable balance.

Evolution in International Communications

The U.S. international communications business has experienced sustained rapid growth and fundamental regulatory changes in recent years as technology has advanced, demand has grown, and the level of competition has increased. International telephone calls increased more than 15 percent in 1984, for example, producing revenues of over $2 billion. The IRCs in 1984 are expected to report operating revenues exceeding $650 million, up from $617 million in 1983. Overseas circuits used by the IRCs grew to 2,874 in 1983, an 8.2 percent increase over 1982 levels, despite depressed economic conditions worldwide. Changes in FCC "gateway" and related regulations have permitted the IRCs to offer an expanding customer base improved and more responsive services. Under the Record Carrier Competition Act of 1981 (Public Law No. 97-130), Western Union was permitted to reenter the international record communications business. GTE Sprint and MCI, important U.S. competitive carriers domestically, have entered the international field and will both begin providing international telephone service in 1985. 8/

Domestically, the continuing advent of International Direct Distance Dialing (IDDD), which enables subscribers to dial a growing number of nations without operator assistance, has facilitated international telephone calling. By 1983, IDDD capability existed in 86 locations around the world and about 60 percent of U.S. telephone subscribers enjoyed this capability. Continued installation of advanced electronic switching is expected to boost U.S. IDDD penetration to about 67 percent by the end of 1984. This should have a positive effect on the overall volume of public-switched message traffic.

8/ See generally 1985 U.S. Industrial Outlook, Ch. 31 (U.S. Department of Commerce, 1985). In contrast to the domestic sector, where record communications are marginally significant, differences in language and time zones make international record communications services commercially critical.

Steadily growing demand for conventional international communications services is reflected in other statistics as well. Comsat's World Systems Division, for instance, obtains circuit capacity from INTELSAT and provides that capacity to other U.S. international carriers for telephone, data, telex, and facsimile services. The volume of Comsat's communications business through INTELSAT increased 6 percent between 1982 and 1983, again despite a worldwide economic downturn, and notwithstanding the loading of a new transatlantic cable (TAT-7), which shared traffic growth with the satellite network. In 1983, Comsat's regulated satellite services accounted for most of the firm's revenues of $440 million and net income of $50 million. The FCC in 1982 authorized Comsat to retail certain services (such as television transmission service) directly to end-users, altering its traditional policy of restricting Comsat to serving as a "carrier's carrier." The FCC's legal authority to do so was sustained on appeal, although its decision was remanded for further consideration. 9/ Recently, the FCC again ruled that expanded retail activities by Comsat are in the public interest and this action should have a beneficial effect on the volume of Comsat's business. 10/

The INTELSAT system and the number of facilities which access INTELSAT's satellites have expanded rapidly. INTELSAT's 15 satellites today serve 173 countries, territories, and possessions directly or indirectly, and the organization leases satellite capacity to 26 nations for domestic services. Nineteen new earth stations and 39 new international communications antennas were added in 1982 alone. As of November 1984, there were 198 INTELSAT earth station sites and 293 international antennas in 157 countries, dependencies, and areas of other special sovereignty.

INTELSAT now handles about two-thirds of the world's transoceanic telecommunications traffic and most international television transmissions. Demand for full-time voice, record, and data services for INTELSAT grew by 18 percent in 1982; these services accounted for about 86 percent of the total

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9/ See Modification of Authorized User Policy, 90 FCC 2d 1934 (1982), rev'd sub nom. ITT Worldcom v. FCC, 725 F.2d 732 (D.C. Cir. 1984).

10/ See note 6, above.

satellite utilization revenue received by INTELSAT that year. The most recently published INTELSAT annual report states that INTELSAT expects continued strong growth of 15 percent annually on an expanded base of conventional international traffic over the 1988-2000 time period. 11/ 1983 INTELSAT Annual Report at pp. 10, 17 (March, 1984).

With the growth of the INTELSAT system, circuit charges have steadily declined. The annual charge for a 1965 INTELSAT I "Early Bird" half-circuit, for example, was $32,000, while the 1982-83 charge for an equivalent, though technically superior, half-circuit was $4,680. There is disagreement, however, over whether the substantial INTELSAT charge reductions over the past decades have been fully reflected in the prices which Comsat has charged U.S. international carriers or the prices which those carriers have charged their customers. At present, end-user prices for many international satellite services both here and abroad typically are between two to ten times INTELSAT's charges. 12/ U.S. international communications costs, moreover, often are very substantially above those for comparable domestic service.

INTELSAT has continued to grow and to prosper in an increasingly competitive international communications environment. Since 1981, the FCC has sanctioned certain international communications services using U.S. domestic satellite systems. At present, U.S. and Canadian satellites are used to provide certain services throughout North America and the Caribbean. 13/ Additional proposals for such transborder satellite service will be the object of consultations with

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11/ 1983 INTELSAT Annual Report at pp. 10, 17 (March, 1984). There are indications that INTELSAT's rate of growth declined in 1983 and 1984, but official statistics have not yet been published. Similarly, it has been suggested that the mix of traffic also has changed. The statistics here are from the most recent official reports available to the public.

12/ See "Price of International Satellite Service: Comsat vs. INTELSAT" (NTIA Rep. No. 83-122); Statement of then-INTELSAT Director General-elect Colino Before the Senate Subcommittee on Arms Control, Oceans, International Operations, and Environment, 98th Cong., 2d Sess., at p. 33 and Appendix 5 (Oct. 19, 1983); Colino, "The INTELSAT System: An Overview," in The INTELSAT Global Satellite System (S. Alper & J. Pelton, eds.)(AIAA, 1984).

13/ See Transborder Satellite Video Services, 88 FCC 2d 258 (1981); FCC Common Carrier Bureau Order No. 6119 (1983).

INTELSAT. INTELSAT recently accelerated its plans and now offers a number of international communications services aimed particularly at meeting specialized and sophisticated business community needs.

Significance to Industry and Government

International communications services constitute an essential component of international trade today. Efficient and effective international communications are necessary to international finance, to facilitate the production and shipment of goods, and to manage U.S. off-shore operations, assets, and investments. 14/ International communications are also critical to the continued development of U.S. trade in services, which exceeded $40 billion in 1982. 15/ International communications, moreover, play a central role in facilitating the further economic development of less developed nations, thus permitting these countries to participate more fully in the world economy and contributing to peace, stability, and greater understanding.

Space communications is a major part of the aerospace industry, one of the world economy's most important "high-tech" or "sunrise" sectors, and an area where the excellence of U.S. manufacturing techniques and high technologies is reflected in the preeminence of the U.S. aerospace industry. U.S. aerospace trade is forecast to accelerate in 1985 as both exports and imports reach record highs. Aerospace exports should climb to a projected $18.9 billion, while imports will rise to $5.0 billion. The resultant trade surplus of $13.9 billion will be more than 30 percent above the level recorded in 1984. Total U.S. aerospace employment will rise an estimated 4 percent in 1985 to 739,000, with an estimated gain of 7 percent in the number of production workers. 16/

14/ See generally Bryant & Krause, World Economic Interdependence in Setting National Priorities: Agenda for the 1980s (J.A. Pechman, ed., Brookings Inst., 1980) at pp. 71, 74; Saunders, Warford & Wellenius, Telecommunications and Economic Development (World Bank, 1983) at pp. 100-02.

15/ See, e.g., Long-Range Goals in International Telecommunications and Information at p. 185 et seq. (NTIA, 1983) (reprinted as Senate Commerce Committee Print No. 98-22, 98th Cong., 1st Sess.); 1985 U.S. Industrial Outlook at p. 38 (U.S. Department of Commerce, 1985).

16/ See 1985 U.S. Industrial Outlook, at p. 37-9 (U.S. Department of Commerce, 1985).

Existing Policies and Objectives

U.S. policy regarding international public-switched message services via satellite has centered on the 1962 Satellite Act and associated Executive Orders for more than 20 years. The 1962 Act authorized the establishment of Comsat and franchised it to serve as the U.S. private sector commercial participant in the INTELSAT system.

The established foreign and domestic policies of the U.S. Government in this area seek to further the basic goals which are outlined above. These policies include:

-- Adhering to the requirements and provisions of the Communications Act of 1934, as amended (47 U.S.C. 151 et seq.) and the 1962 Satellite Act, as amended (47 U.S.C. 701 et seq.);

-- Complying with the terms of the INTELSAT Agreement (TIAS 7532) and all the privileges and obligations the Agreement provides its Parties and Signatories;

-- Supporting INTELSAT as "a single global commercial telecommunications satellite system as part of an improved global telecommunications network" (Preamble, INTELSAT Agreement), and as a key element providing all countries of the world access to global communications services;

-- Concurring in the development, separate from INTELSAT, of customized, regional, and transborder satellite services where technical or economic consultation, or both, is accomplished as required under the terms of the INTELSAT Agreement and such systems are consistent with the Agreement;

-- Pursuing a nondiscriminatory satellite launch policy;

-- Adopting domestic communications policies which emphasize reduced Government regulation, wherever feasible, and increased reliance on market forces in the provision of communications and information services;

-- Advocating and adopting international communications policies which stress reliance on free enterprise, competition, and free trade, wherever feasible, with full recognition that provision of international communications and information services involves the joint undertakings among sovereign nations requiring mutually acceptable agreements to accommodate differing national policies;

-- Supporting and fostering the development of a diversity of international communications technologies and modes, including fixed, mobile, and broadcast satellite, microwave, terrestrial and undersea cable, and optical fiber;

-- Supporting and undertaking bilateral consultations and agreements, as well as multilateral deliberations in appropriate international forums, to ensure order and cooperation in the evolution of international communications and information services.

Already Competitive Environment

It is important to bear in mind that the pending proposals to establish U.S. international satellite systems separate from INTELSAT represent only possible incremental -- not fundamental -- competitive change in an international communications environment which is already characterized by some competition. The present proceeding thus does not pose choices directly comparable to those presented in 1968 when the FCC approved domestic, facilities-based competition by companies, such as MCI, with the dominant long-distance carrier, AT&T, or in 1970, when the FCC considered adoption of an "open skies" policy regarding proposed U.S. domestic satellite systems. 17/ Despite significant regulation of the international communications industry both here and abroad, there nevertheless is competition between the extensive submarine cable facilities owned by terrestrial carriers and the satellite and earth station facilities owned by Comsat and INTELSAT. This competition stands to increase when high-capacity fiber optic cables -- both carrier-owned and, perhaps, noncarrier-owned as well -- become operational, especially if the traditional "balanced loading" rules governing the apportionment of traffic are changed.

There has also been competition among satellite systems for several years. As noted, U.S. and Canadian domestic satellite systems, for instance, have been authorized to handle traffic that is technically "international" -- involving Canada, the United States, and Caribbean nations and locations. "Domestic-overseas" traffic to Alaska, Hawaii, and U.S. possessions which previously transited Comsat and INTELSAT facilities, is now handled by U.S. domestic satellite systems. 18/

17/ See generally Washington Util. & Transp. Comm'n v. FCC, 513 F.2d 1142 (9th Cir.), cert. denied, 423 U.S. 836 (1975); Network Project, Inc. v. FCC, 511 F.2d 786 (D.C. 1975).

18/ See, e.g., Colino, International Cooperation Between Communications Satellite Systems: An Overview of Current Practices and Future Prospects, 5 J. Space L. 65, 92 (1977).

Nor is this emerging actual and potential competition limited to the Western Hemisphere by any means. Regional satellite systems operate in Southeast Asia and Europe and are planned for the Middle East and, perhaps, Africa as well. Several European administrations also plan soon to deploy "domestic" satellite systems which are capable of providing transatlantic service. The "footprints" of the planned British and French domestic satellite systems, for example, cover much of the eastern half of the United States and Canada. Extensive submarine cable facilities, moreover, are under construction in the Mediterranean, Indian Ocean, and Pacific region. There is no evidence, in this regard, that these new communications systems have had any adverse impact on the technical or economic integrity of the INTELSAT global system.

II. INSTITUTIONAL LIMITS ON COMPETITION

The United States since the early 1970s consistently has sought to reduce outmoded communications regulation and to eliminate unnecessary barriers to competition chiefly domestically, but internationally as well. Important changes and regulatory reforms have been accomplished. 19/ All recognize, however, that achieving a regulation-free international communications environment is not foreseeable at this time. There will remain significant U.S. limitations on competition in international communications as well as limits imposed by communications administrations abroad. Understanding some of these limits on potential competition is important to addressing the issues presented by the satellite applications pending before the FCC and reinforces our assessment that these applications imply continued evolutionary development, not radical or disruptive change.

Regulatory Constraints

There are, to begin with, a number of statutory requirements and limitations which bear on the level and intensity of potential competition in the international communications field. To enter the international communications satellite business, U.S. firms require FCC permission under title III of the 1934 Communications Act, provisions of title II of that Act (for would-be common carrier entrants), as well as provisions of the 1962 Satellite Act. The FCC is required by

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19/ See Computer and Communications Industry Assoc. v. FCC, 693 F.2d 198 (D.C. Cir. 1982); Detariffing International Enhanced Services, FCC Docket Nos. RM-4435, CC 83-1230 (1983).

law to make an affirmative "public interest" finding prior to issuing construction permits and licenses to use the radio frequency spectrum. 20/ Considerable regulatory review of proposed systems typically is entailed. It is also relevant in this regard to note that given spectrum use limitations and international procedures governing the use of the geostationary orbital resource, there are significant technical constraints on possible entry into international satellite communications. 21/

Entrants proposing to operate on a common carrier basis are subject to many provisions of title II of the 1934 Communications Act (e.g., 47 U.S.C. 214). Under title II, the FCC must generally find that the public interest, convenience, and necessity will be furthered by approving an additional international common carrier facility. Existing common carriers, moreover, must generally receive permission to make use of new facilities. As with other regulatory agencies, the FCC is required to weigh competitive factors when it functions as a "gatekeeper" with respect to common carrier communications. 22/ Under present law, however, the FCC may not legally authorize new common carrier systems simply to foster competition. 23/ It must instead make affirmative public interest findings that competition, for example, will spur technological progress, increase efficiency, and more rapidly expand customer choice. 24/

20/ See, e.g., Telocator Network of America v. FCC, 691 F.2d 525, 548 (D.C. Cir. 1982) (and citations therein).

21/ See generally Orbital Locations, 54 P. & F. Radio Reg. 2d 550 (1983); Orbital Spacing, 54 P. & F. Radio Reg. 2d 577 (1983); Robinson, Regulating International Airwaves: the 1979 WARC, 21 Va. J. Int'l L. 1, 44 (1980).

22/ See, e.g., FMC v. Aktiebolaget Svenska Amerika Linien, 390 U.S. 238, 240-44 (1968); Network Project v. FCC, 513 F.2d 786 (D.C. Cir. 1975). Cf. City of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389, 406 (1978).

23/ See, e.g., FCC v. RCA Communications, 346 U.S. 86, 93 (1953); Hawaiian Teleph. Co. v. FCC, 498 F.2d 771, 778 (D.C. Cir. 1974).

24/ See United States v. FCC, 652 F.2d 72, 91, 98-99 (D.C. Cir. 1980) (en banc). See generally Van Deerlin, The Proposed Deregulation of Domestic Common Carrier Telecommunications, 69 Cal. L. Rev. 455 (1981); Palenberg, International Telecommunications: Proposed Deregulation of Overseas Services, 23 Harv. Int'l L.J. 214 (1981).

Executive Responsibilities

In addition to the limitations on entry and competition contained in titles II and III of the Communications Act, section 102(d) of the Satellite Act recognizes the foreign policy, trade, and national security aspects of international satellite communications and provides that the President is responsible to determine whether additional international satellite systems are required to meet unique governmental needs or are otherwise required in the national interest. 25/

The term "national interest" is not defined in the Satellite Act, but it encompasses considerations broader than those implicit in the FCC's regulatory "public interest" standard 26/, a standard which the courts have ruled is not limitless. 27/ "National interest" is within the mandate of the Executive branch and includes such factors as general competition policy, whether entry will advance technological progress and innovation, promote U.S. international trade in goods and services, expand the international communications options available to the U.S. business community, and further overall U.S. spectrum management goals. Foreign policy and national security considerations are also important aspects of the national interest, and matters which are the Constitutional responsibilities of the Executive. The FCC in the past has generally deferred to Executive branch views on policies which are not directly within its regulatory purview. 28/ In sum, the "national interest" standard in the 1962 Satellite Act should be read as according the Executive branch responsibility to determine the compatibility of

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25/ "Unique governmental needs" are not at issue here. None of the applicants now before the FCC maintains that its system will meet such needs nor has any agency identified unique needs that might thus be served.

26/ See, e.g., Domestic Satellites, 22 FCC 2d 86, 133 (App. D)(1970); Authorized Users, 6 FCC 2d 593, 594-95 (1962). See generally Legislation Note, The Communications Satellite Act of 1962, 76 Harv. L. Rev. 388, 389 (1962). Cf. Telemanson v. United States, 386 F.2d 811, 812 (1st Cir. 1967); Gardels v. CIA, 484 F. Supp. 368, 371 (D.D.C. 1980).

27/ See NAACP v. FPC, 425 U.S. 662, 669 (1976); National Organization for Women v. FCC, 555 F.2d 1002, 1017 (D.C. Cir. 1977).

28/ See, e.g., United States v. FCC, 652 F.2d 72, 90 (D.C. Cir. 1980)(en banc); AT&T Co. (NE Corridor Light Guide System), 51 P. & F. Radio Reg. 2d 717, 725 (1982).

responsibility to determine the compatibility of proposed international satellite systems with the broad range of U.S. programs and policies affected by such enterprises.

International Obligations

In addition to the limitations on competition implicit in the 1934 Communications Act and the special "national interest" criterion in the 1962 Satellite Act, U.S. international obligations are relevant. Certain responsibilities under Article XIV of the INTELSAT Agreement are also discussed in the Memorandum of the Legal Adviser of the Department of State which was transmitted to the FCC in 1984 and which is set forth as Appendix B to this report.

The INTELSAT Agreement entered into force for the United States on February 12, 1973. 29/ While the INTELSAT Agreement implicitly acknowledges that nations party to the Agreement retain the sovereign right to establish satellite telecommunications facilities separate from the INTELSAT system, the Agreement establishes: (1) a generalized obligation of the parties to act in a manner consistent with and in furtherance of the principles stated in the Preamble and other provisions of the Agreement (Article XIV(a)); and (2) a consultation process to be undertaken before a nation or its designated operating entity (a "Signatory") establishes, acquires, or utilizes separate, non-INTELSAT space segment facilities to meet its telecommunications requirements (Article XIV).

Article XIV(d) of the INTELSAT Agreement addresses the consultation obligation with regard to international public telecommunications services. In substance, it provides that a nation member or its Signatory shall furnish all relevant information to INTELSAT and shall consult with INTELSAT: (1) to ensure technical compatibility of the contemplated satellite facilities with the use of the radio frequency spectrum and the geostationary orbital space by the existing or planned INTELSAT satellites; and (2) to avoid significant economic harm to the global system of INTELSAT. At the conclusion of the consultation process, the INTELSAT Assembly of Parties (the principal organ of INTELSAT, composed of the

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29/ See Agreement Relating to the International Telecommunications Satellite Organization "INTELSAT", 23 UST 3813, TIAS No. 7532 (1973). See also Simsarian, Interim Arrangements for a Global Commercial Communications Satellite System, 59 Am. J. Int'l L. 344 (1965).

representatives of all member nations) makes findings in the form of recommendations on the subjects of the consultation and further regarding the assurance that the proposed satellite facility will not prejudice the establishment of direct telecommunications links through the INTELSAT space segment among all the participants in the proposed system.

Considering the wide participation in INTELSAT, most of the contemplated separate satellite systems would involve two or more INTELSAT members. It is common practice for the INTELSAT members contemplating the establishment of separate satellite facilities to meet their international public telecommunication consultation requirements by consulting jointly with INTELSAT in accordance with the provisions of Article XIV(d) of the Agreement.

The term "public telecommunications services" is defined in Article I(k) of the INTELSAT Agreement as meaning:

> (F)ixed or mobile telecommunications services which can be provided by satellite and which are available for use by the public, such as telephony, telegraphy, telex, facsimile, data transmission, transmission of radio and television programs between approved earth stations having access to the INTELSAT space segment for further transmission to the public, and leased circuits for any of these purposes; but excluding those mobile services of a type not provided under the Interim Agreement and the Special Agreement prior to the opening for signature of this Agreement, which are provided through mobile stations operating directly to a satellite which is designated, in whole or in part, to provide services relating to the safety or flight control of aircraft or to aviation or maritime radio navigation.

23 UST 3813, 3816

At least one of the current U.S. applicants has contended that consultation with INTELSAT should not take place pursuant to Article XIV(d) but rather pursuant to Article XIV(e). A consultation pursuant to Article XIV(e), which deals with "specialized telecommunications services requirements," would not include the subject of possible significant economic harm to the global INTELSAT system. A proposed satellite system, however, may well provide "public telecommunications services" (as defined in the INTELSAT Agreement) even though the applicant characterizes its endeavor as a noncommon carrier, and therefore, "private" satellite system.

Consultation within the INTELSAT framework occurs pursuant to the definitions contained in the INTELSAT Agreement. U.S. domestic communications policy currently recognizes a number of distinctions between traditional common carrier and other communications services. 30/ Such distinctions, however, do not necessarily determine the international obligations of the U.S. Government. The United States will continue to consult with INTELSAT pursuant to Article XIV(d) regarding those satellite systems which would provide "international public telecommunications services," as discussed in the Legal Memorandum appended to this report. See Appendix B..

Consultation pursuant to the INTELSAT Agreement need not be protracted. Indeed, Article XIV(f) provides that INTELSAT shall make its recommendations within a period of six months from the date of commencing the consultation procedures. In practice, however, such a consultation cannot commence until the U.S. Government or the U.S. Signatory (Comsat) furnishes INTELSAT with all relevant information. In the past, delays in consultation have occurred because the information required of an applicant by the FCC in making its regulatory decision on initial authorization is not identical to that information relevant to the consultation with INTELSAT.

The United States is committed to ensuring that non-INTELSAT satellite systems are technically compatible with existing and planned INTELSAT satellites, and to avoiding significant economic harm to the global INTELSAT system. Accordingly, the Executive branch will initiate consultations with INTELSAT only for those non-INTELSAT systems which it believes meet the technical and economic conditions described in the INTELSAT Agreement. The United States will continue to consult with INTELSAT in good faith; therefore, the possibility cannot be excluded that, following the consultation process, the Executive branch might find that final regulatory authorization should not be granted.

30/ See, e.g., National Assoc. of Regulatory Util. Comm'rs v. FCC, 525 F.2d 630, 640 (D.C. Cir. 1976); National Assoc. of Regulatory Util. Comm'rs v. FCC, 533 F.2d 601, 608 (D.C. Cir. 1976). See also CCIA v. FCC, 693 F.2d 198 (D.C. Cir. 1982).

The consultation with INTELSAT would normally end with a recommendation being made by the INTELSAT Assembly of Parties. Such recommendations are not binding on the United States, although the U.S. Government will carefully consider all recommendations. It will go forward only with systems it deems consistent with its obligations to INTELSAT.

III. FOREIGN POLICY CONSIDERATIONS REGARDING INTERNATIONAL SATELLITES

Addressing the issues raised by the proposed establishment of U.S. international satellite systems separate from INTELSAT requires consideration of U.S. foreign policy objectives. These objectives have been considered within the Executive branch and do not constitute an appropriate matter for independent determination by a regulatory agency. Here, however, the major foreign policy matters that were weighed are generally discussed to further understanding of the President's determination.

In his September 1983 letter to Chairman Charles H. Percy of the Senate Committee on Foreign Relations, Secretary of State George P. Shultz reiterated the basic foreign policy objectives of the United States in international communications, and they are similar to those enumerated in detail above: "To promote an environment in which ideas and information can flow freely among nations, to support the advancement of international commerce through the efficient and innovative use of communications resources, and to expand information access and communications capabilities of developing countries."

The 1962 Satellite Act reflects these objectives and others which have been furthered through our participation in developing and supporting the INTELSAT system. INTELSAT's manifest success has:

- Provided a dramatic example of U.S. leadership in the peaceful use of space in the interest of all countries;
- Contributed to meeting evolving U.S. commercial needs for efficient international communications services;
- Provided developing countries with improved communications at reasonable and affordable rates;
- Confined the Soviet INTERSPUTNIK system to a relatively small portion of the world;

- Supplied developing countries with access to the geostationary orbit and satellite radio frequencies; and,
- Provided benefits to U.S. companies through open international procurement for the international system's space communications equipment and services.

Permitting U.S. international satellite systems separate from INTELSAT, however, could:

- Bring new diversity and flexibility to international communications;
- Create or expand markets in new areas, such as customized, data, and video services;
- Provide incentives for INTELSAT and its Signatories to be more efficient and innovative; and,
- Permit outside financial sources to undertake high-risk, speculative ventures, thereby enabling INTELSAT to concentrate its resources on further extending basic services through prudent financial management.

To attain the optimal combination of benefits from both INTELSAT and additional U.S. international satellite systems, the United States must develop procedures and conditions under which procompetitive domestic goals can be made compatible with foreign policy objectives which have been well served by INTELSAT.

Background of INTELSAT

The United States played a leading role in the creation of INTELSAT in order to further national political, economic, and security objectives. The decision to speed development of communications satellites was first made by President Eisenhower and became a centerpiece of overall U.S. space and foreign policy programs. Five weeks after the Soviet Union launched the first man into orbit, President Kennedy sent his "man-to-the-moon" message to Congress (May 25, 1961). As part of an expanded U.S. space program, he called for accelerated development of satellites for worldwide communications.

Explaining to Congress the need for an international communications satellite system, Department of State officials in July 1961 emphasized:

- The global concept. The system should cover not only developed but also developing countries and service both small-volume as well as large-volume users, thus linking the United States to as many other nations as possible.

- Political benefits. The system should provide an opportunity for cooperation with as many other countries as possible in the peaceful use of space, thereby forging mutually beneficial ties.

- Trade benefits. The system should facilitate transaction of the world's business and ensure more open markets for U.S. technology and other products.

- Conservation of the frequency spectrum. The system should conserve rather than consume, frequencies and thus help all nations, working through the International Telecommunication Union (ITU), make more effective use of the limited frequency spectrum.

- National security. Space communications should link U.S. forces and those of U.S. allies, and help in UN peacekeeping efforts.

These objectives were incorporated in the 1962 Satellite Act which declared in its Preamble that:

> (I)t is the policy of the United States to establish, in conjunction and in cooperation with other countries as expeditiously as practicable, a commercial communications satellite system, as part of an improved global communications network, which will be responsive to public needs and national objectives, which will serve the communications needs of the United States and other countries, and which will contribute to world peace and understanding. The new and expanded telecommunications services are to be made available as promptly as possible and are to be extended to provide global coverage at the earliest practicable date. In effectuating this program, care and attention will be directed toward providing such services to economically less developed countries and areas as well as those more highly developed, toward efficient and economical use of the electromagnetic frequency spectrum, and toward the reflection of the benefits of this new technology in both quality of services and charges for such services.

47 U.S.C. 701(a)-(b).

The concept of a global system was fundamental to meeting these policy goals. Technology transfer, aerospace product sales, and satellite launch policies evolved in keeping with the global system concept.

The United States has continued to reaffirm its strong commitment to INTELSAT over the years. Under Secretary of State James L. Buckley, after consulting with other parts of the Executive branch, wrote to the FCC on July 23, 1981, regarding transborder satellite services and reaffirmed the importance to the United States of the integrity of the INTELSAT system, stating:

> The foundation of our international communications satellite policy includes the concept of a global system to which all nations can have nondiscriminatory access, and through which international communications can flow free of artificial constraints.

At the same time, Mr. Buckley recognized that exceptional circumstances might warrant the use of domestic satellites for international service. The FCC was informed that there were no foreign policy objections to U.S. domestic space systems being allowed to provide transborder service to Canada, Mexico, or the Caribbean, provided there was consultation with INTELSAT under Article XIV and appropriate foreign government approval was obtained. Services could also be inaugurated if proposals are "supported by the U.S. Government and both the United States and the foreign governmental authorities concerned, in the absence of a favorable recommendation by the Assembly, consider in good faith that the obligations under Article XIV have been met."

Service to Developing Countries

A primary foreign policy dimension of INTELSAT is service to developing countries. INTELSAT is a cooperative whose members make capital contributions commensurate with their use of the system. Members receive a return on capital (currently about 16 percent) and pay charges which reflect the variable costs of providing them service, together with an allocation of joint and common overhead costs. From the outset, INTELSAT has charged uniform rates for identical services provided on a global basis, although traffic in the Atlantic Ocean area reportedly is some six times that of the Pacific Ocean area and three times that of the Indian Ocean area.

There is volume efficiency in the use of communications satellites that has not been fully reflected in INTELSAT's rates. Such pricing policies further interests of the United States and other developed countries, as well as the interests of developing nations, because they promote the objective of linking as many countries as possible to the global system.

Although INTELSAT continues to introduce advanced equipment, it maintains less sophisticated technologies in service as well, to meet the needs of its less developed members. INTELSAT strikes a balance in all of the frequency ranges and provides for automatic and semi-automatic signaling and switching apparatus. How

well INTELSAT can maintain and expand its ability to provide basic services, including the introduction of thin-route services such as VISTA and INTELNET, while, at the same time, attempting to meet all the demands of new specialized markets and services, is another consideration in examining the best ways to fulfill the intent of the INTELSAT Agreement.

Concerns were expressed by some administrations from developing countries at the April 1983 meeting of INTELSAT Signatories in Bangkok and again at the October 1983 meeting of the Assembly of Parties in Washington that if significant traffic were diverted from INTELSAT's Atlantic Ocean region to non-INTELSAT satellite systems, a worldwide rate increase might ensue. The avoidance of significant economic harm to the global system of INTELSAT by the conditions placed on non-INTELSAT U.S. satellite systems should allay those concerns.

Statements made by developing country representatives at the October 1983 meeting reflected their interpretation of the term "single global system" used in the INTELSAT Agreement. Some maintained this term precludes the establishment of virtually any satellite system outside INTELSAT and, indeed, would preclude even the existing "regional" satellite systems. The Preamble of the INTELSAT Agreement, however, itself envisioned "a single global ... system as part of an improved global telecommunications network" (emphasis supplied) and the Article XIV mechanism expressly contemplates non-INTELSAT satellites. Non-INTELSAT satellite systems today provide international public telecommunications services after appropriate consultation with INTELSAT. It has been suggested by some administrations that the development of additional satellite systems apart from INTELSAT on the part of the United States would contravene the INTELSAT Agreement and therefore constitute a signal that the United States no longer supports INTELSAT. This is clearly not the case.

Access to the Geostationary Orbit

How all nations can enjoy "equitable access" to the geostationary satellite orbit and to the associated radio spectrum is a major concern within the International Telecommunication Union (ITU). The results of the ITU's consideration of this issue at the upcoming World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing It (Space WARC) in August 1985 and June 1988 is important to the

United States and many other countries. INTELSAT's role in meeting developing countries' communications needs could make it a critical, if indirect, participant in the resolution of this issue on terms acceptable to ITU member nations.

For more than a decade, some developing countries have sought a guaranteed share of the geostationary orbit and the radio spectrum allocated to space services. They maintain that unconstrained growth of commercial satellite communications systems could exhaust the geostationary orbit and the frequencies currently available. Fearful of losing their share of what they understand to be limited global resources, developing countries in 1973 inscribed "equitable access" provisions into the ITU Convention. By the 1979 WARC, they were determined to write new rules for the use of the geostationary orbit and associated radio spectrum and obtained a commitment for the two-part Space WARC in the 1980s.

The availability of INTELSAT has not eliminated developing country demands for equitable access to the geostationary orbit and related spectrum. Nevertheless, its existence offers an alternative to the implementation of costly national satellite systems. So long as low-cost and technically attractive service is available through an international organization which accommodates the sovereignty interests of each country, there is added hope that developing countries may meet some of their needs through INTELSAT.

The proliferation of communications satellite systems already in progress, moreover, will heighten the importance of INTELSAT's role in frequency conservation. Increasing demand for the radio spectrum is hastening the development and implementation of innovative technologies which expand the capacity of the geostationary orbit resource and permit greater efficiency through multiple uses of the same frequency. Large-scale space platforms and other techniques have the potential to increase frequency usage efficiency by perhaps 50- to 100-fold; INTELSAT's multinational consolidation of demand -- domestic, regional, and transoceanic -- will thus have particular attraction. With these considerations in mind, the United States lent strong support at the October 1982 INTELSAT Assembly of Parties to the principle of domestic service using INTELSAT facilities, despite European opposition.

An indication of the developing countries' growing stake in INTELSAT can be found in INTELSAT's evolution toward playing a larger role in the provision of domestic satellite service. In 1974, Algeria proposed to lease INTELSAT capacity for enhancement of its domestic telecommunications network. Today, some 26 countries use INTELSAT to provide domestic service. INTELSAT has responded to this demand by committing itself to include planned domestic capacity, as opposed to relying solely on preemptible, spare capacity, in future generations of satellites. It has also developed higher power satellites that are compatible with the small earth stations that have proved most economical for domestic service.

INTERSPUTNIK

The Soviet Union uses satellite communications to help cement its relations with client states and to extend its influence with nonaligned nations. INTERSPUTNIK serves a number of Soviet policy goals, including Soviet interest in a "new world information order." The success of INTELSAT in providing quality service at decreasing rates to developing countries has preempted the USSR from extending its technically inferior rival service, INTERSPUTNIK, to more than a few noncommunist nations. Since it began operations, INTERSPUTNIK has obtained only five new members (Vietnam, Afghanistan, Laos, South Yemen, and Syria) beyond its original nine charter members (Bulgaria, Cuba, East Germany, Poland, Romania, Mongolia, Czechoslovakia, Hungary, and the USSR). Other countries using the INTERSPUTNIK system include Algeria, Libya, and Nicaragua.

Some suggest that potential competition with INTELSAT will lend impetus to the development of INTERSPUTNIK and increase Soviet influence in international satellite communications. 31/ Soviet development of INTERSPUTNIK, as well as the emergence of the Soviet Union as a competitor in the world market for satellite launch services, however, is likely to go forward unaffected by U.S. decisions to authorize additional U.S. international satellite systems. A substantial weakening of INTELSAT as the dominant global satellite communications system, nevertheless, could potentially enhance Soviet efforts to penetrate developing

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31/ See, e.g., Statement of Mr. Joseph Charyk, Chairman, Comsat Corporation, before the Senate Foreign Relations Committee, 98th Cong., 1st Sess. (Oct. 31, 1983) at p. 8.

countries through Soviet communication satellite facilities. An INTELSAT less attentive to developing country needs could encourage INTERSPUTNIK's efforts to expand its service area. This will continue to be an area of concern under any circumstances.

Satellite Proliferation

In addition to INTERSPUTNIK, other systems outside INTELSAT have evolved, as earlier indicated. In 1978, for example, governments (including the United States and the Soviet Union) founded the International Maritime Satellite Organization (INMARSAT) to provide service to ships at sea. A number of regional and domestic satellite systems have also developed, after consultation took place with INTELSAT under Article XIV(d) of the INTELSAT Agreement.

In the future, INTELSAT is likely to face additional satellite competition. There are a number of existing and planned satellite systems in addition to any U.S.-based systems which may be authorized. These include:

- o UNISAT. Britain's first satellite system could provide both domestic television transmission and certain international communications services. After its scheduled launch in 1986, UNISAT's beam or "footprint" will cover the U.S. eastern seaboard as well as most of Western Europe.

- o TELECOM. The first TELECOM satellite, the French counterpart to UNISAT, was launched in 1984. The system not only will serve domestic French needs but also will cover most of Europe and provide telephone and television connections to the French overseas departments. Its capacity will extend to the French Caribbean, eastern Canada (St. Pierre and Miquelon), and the Indian Ocean (Reunion and Mayotte).

- o EUTELSAT. This Paris-based consortium of 20 participating European countries launched its first communications satellite in 1983. The system will provide telephone, television program distribution, and data transmission services within Western Europe, North Africa, and the Middle East countries bordering on the Mediterranean Basin.

- o Arabsat. The Arab Satellite Communications Organization, based in Riyadh, will serve 22 Arab countries. The first of its two satellites will be launched in 1985. The system is designed to supply telephone, television distribution, and data transmission services to most of the Middle East and North Africa.

- o Palapa. Indonesia's Palapa System currently provides both domestic service as well as service with the Philippines, Malaysia, and other Southeast Asia nations.

- Pacific Basin Proposal. At the Pacific Telecommunication Conference in January 1983, the Japanese Research Institute of Telecommunications and Economics (RITE) presented a detailed plan for a Pacific Regional Satellite Communications System, ostensibly designed to "supplement" the existing INTELSAT network. It would provide two dissimilar services: high-speed digital communications for data and video transmission between major cities from the U.S. west coast to Japan, Australia, and Southeast Asia; and low-volume telephone communication between rural areas, remote islands, and their capital cities.

U.S. Role in INTELSAT

The U.S. role in INTELSAT continues to be strong, although it has changed over the past 20 years. The U.S. investment share has decreased from 61 to 23 percent; hence the U.S. weighted vote in the Board of Governors has decreased to the current 23 percent. An international secretariat of some 600 INTELSAT staff now manages the system rather than Comsat. A U.S. citizen was recently elected Director General of INTELSAT. INTELSAT no longer purchases almost all of its equipment from U.S. manufacturers, although the United States still supplies about 70 percent of INTELSAT's purchases. The United States is the host country for the INTELSAT headquarters.

The United States has been and should continue to be a strong leader and contributor to the INTELSAT system. Changing technology, competitive economics, and diversifying user needs, however, have created a new international telecommunications environment. There is a manifest trend toward coexistent, separate national and regional satellite systems. This does not obviate the continued need for a global system providing an essential core for public-switched international communications. The 1962 Satellite Act and the INTELSAT Agreement both specifically anticipated communications satellite systems outside INTELSAT, and provided the flexibility to allow for and to respond to such systems.

INTELSAT serves the world well. It has established and currently operates an efficient global communications system; promotes closer ties among noncommunist countries; facilitates international business expansion; helps to develop markets for U.S. industry; prevents the spread of a global communications satellite network controlled by the Soviet Union; and is an effective international organization reflecting shared technical and political interests. At the same time, new satellite systems can supply services inconceivable 20 years ago and provide services sought by high-volume users, including the U.S. Government. New approaches promise diversity and flexibility.

INTELSAT faces growing competition from new fiber optic cables, which may constitute a more significant challenge to it than separate satellite systems. The transatlantic cable (TAT-8) planned for 1988 by AT&T and the IRCs, Teleglobe Canada, and European telecommunications administrations will have a capacity equivalent to about 38,000 telephone circuits, as previously noted, and nearly quadruple the current submarine cable capacity across the North Atlantic. This fiber optic cable, moreover, will have technical capabilities, including the ability to transmit high-quality video signals, which existing submarine cables lack.

A "status quo approach" often has short-term appeal and merit from a foreign policy standpoint. Change inherently creates pockets of concern in the complex environment of international relations. By its very nature, however, telecommunications is uniquely amenable to change. The issues associated with international telecommunications cannot and will not stand still. They are driven by technology -- and technology, in turn, is driven by continuing innovation and evolution.

U.S. policy leaders 20 years ago could not easily have envisioned the exponential expansion of communications horizons through new technology which has subsequently occurred. They did, however, anticipate the need for flexibility to develop the then-uncharted telecommunications frontier.

Unlimited proliferation of communications satellite systems separate from INTELSAT has the obvious potential to inflict significant economic harm on the global system. At the same time, U.S. economic goals require recognition of the changing marketplace and encouragement of innovation. The approach discussed in this report and reflected in the President's determination strikes a sound balance in this regard.

INTELSAT as a Competitor

An essential ingredient for the formation of INTELSAT was the provision on universal pricing for each defined service that is contained in Article V(d) of the INTELSAT Agreement. The Board of Governors, under the guidance of the Meeting of Signatories, establishes rates for each specific service or group of services which are then applied on a nondiscriminatory basis. The Signatories have established

the principle that rates shall, as far as practicable, reflect costs. This built-in flexibility within the INTELSAT Agreement permits INTELSAT to offer new services, to take advantage of new technologies, and to price new services as close as practicable to cost (including direct as well as indirect costs).

This flexibility lessens some of the concerns which arose domestically when long-distance competition was sanctioned, but incumbent carriers were not afforded the ability to price responsively. 32/ INTELSAT's ability to match the prices of other international satellite systems, however, is limited as it deals through its Signatories. As indicated above, INTELSAT's charges constitute only part of the end-user price for service. 33/ Significant changes in end-user prices are thus dependent on action by its Signatories (or, in the United States, by Comsat and terrestrial carriers such as AT&T).

INTELSAT, in any event, should enjoy some competitive advantages with respect to new satellite systems offering customized services. The INTELSAT system may embody economies of scale and scope; INTELSAT enjoys a breadth of coverage today that new satellite systems could not easily replicate. The technology currently used by INTELSAT may not permit the organization to provide efficiently all of the

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32/ See Aeronautical Radio, Inc. v. FCC, 642 F.2d 1221, 1228-29 (D.C. Cir. 1980); cf. National Assoc. of Greeting Card Publishers v. U.S. Postal Service, 569 F.2d 570, 582 (D.C. Cir. 1976) rev'd in part, 434 U.S. 884 (1977).

33/ Some indication of the costs associated with current arrangements is afforded by considering the minimum cost of a one-hour video transmission from Rockefeller Center, New York, to the British Broadcasting Corporation facilities in London. At present, the minimum cost for such service would be $2,727 per hour. On the U.S. side, AT&T's charges for domestic transmission (New York to Andover, Maine) would be about $439. Comsat's minimum charge would be about $633 (of which $480 goes to INTELSAT), yielding a total U.S. cost of about $1,072 per hour. British Telecom would then charge 4,200 gold francs for the British side of the circuit (which charge would include landline charges) or about $1,655 per hour (of which INTELSAT would get another $480). Thus, of this total charge of $2,727, INTELSAT would receive $960, or about 35 percent. The figures, it should be noted, do not necessarily reflect INTELSAT's payments to owners. Satellite charges were computed using Comsat's "Satellite Television International Tariff Information Handbook" (Aug. 1, 1982, as revised) at pp. 140, 142. Domestic AT&T tariff prices were supplied by AT&T.

customized services some of the new entrants envision. INTELSAT may also, as a matter of prudent management, choose not to seek to offer all such services. New satellite entry subject to the conditions discussed in this report, however, does not pose any substantial risk of significant economic harm to the INTELSAT global system.

IV. RECOMMENDED APPROACH TO NEW SYSTEM PROPOSALS

The primary focus of this report is on those factors underpinning the President's November 1984 determination that new U.S. entry into the international satellite business is "required in the national interest," provided entrants are not interconnected with public-switched message networks and joint consultation with INTELSAT is undertaken. The Presidential determination does not constitute endorsement of any specific pending satellite application. It represents, rather, a determination of the terms and conditions under which entry will be in the national interest. Reducing barriers to entry and permitting entrepreneurs to go forward is an important step toward achieving an efficient market for customized services. Other policy components to this process would also facilitate efficiency and can be pursued in parallel proceedings. In this section, the Presidential determination and those "parallel track" matters are discussed in detail.

New Systems Should Be Permitted

First, additional U.S. international satellite systems should be permitted, but subject to the terms and conditions previously specified. New service alternatives are proposed in the pending applications that would be in the national interest. These include certain international video and data transmission services not now available through the INTELSAT system. The proposed systems also may offer major users a means of enjoying more of the savings associated with service on high-traffic volume communications routes than those customers have today.

Users, and particularly sophisticated business service customers, stand to benefit from satellite communications options which are more closely tailored to their special needs. INTELSAT has concentrated on its primary function -- serving public-switched service users. The present INTELSAT system, moreover, is not configured to provide every important customized business service efficiently. Requiring business users with special needs to conform to "lowest common

denominator" communications offerings imposes economic costs which can and should be lessened.

Service Limitations Required

Service limitations are required, however, to avoid significant economic harm to INTELSAT. New entrants thus should be limited to the provision of customized service. Such services involve the sale or long-term lease of transponders or space segment capacity for communications that are not interconnected with public-switched message networks. Customized services include intracorporate networks and television transmission. Emergency restoration services would also constitute a customized service. 34/ Prospective new satellite entrants maintain they will target communications needs that are not now efficiently served by INTELSAT. They should thus be authorized under regulatory terms and conditions that will hold them to their commitments and ensure that their attention is focused on serving and developing the customized service market.

At present, public-switched message traffic comprises the overwhelming majority of INTELSAT traffic. As indicated above, the most recently published INTELSAT annual report states that full-time voice, record, and data service accounts for about 86 percent of the total satellite utilization revenue INTELSAT receives. Such public-switched traffic constitutes the commercial core of the INTELSAT operation and, again as indicated above, it is forecast to increase by 15 percent over the 1988-2000 time period. 35/ Technical advances including IDDD, as well as additional entry into the international telephone business by U.S. carriers such as MCI and GTE Sprint, should have a positive effect on public-switched traffic. Increasing service and price competition among AT&T and other U.S. carriers, moreover, are likely to stimulate overall demand. There is evidence suggesting such competition in domestic public-switched service markets stimulated

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34/ Recommendation D.1 of the International Consultative Telegraph and Telephone Committee (CCITT) places certain limitations on customer use of international private leased circuits. FCC regulations do not now permit the resale or sharing of international private line services.

35/ 1983 INTELSAT Ann. Rep. at p. 17; 1985 U.S. Industrial Outlook at p. 31-7. See n. 11, supra.

demand. 36/ There are also indications that this demand-stimulation effect may already be operating in some international public-switched service markets. 37/

Limiting new entrants to customized services reduces any likelihood of significant adverse economic impact on INTELSAT. Such restrictions are sustainable domestically and internationally, particularly given the multinational character of international telecommunications and the fact that foreign PTTs police the services provided by companies serving their countries. No regulatory regime can be "air-tight." But the limitations discussed here are adequate to safeguard the economic integrity of INTELSAT, especially given public-switched market trends as discussed in the subsequent section on the sustainability of such restrictions.

36/ Between 1978 and 1979, for example, U.S. domestic telephone revenues increased by 6 percent. In 1978, the remaining restrictions on competition among domestic carriers were removed. Between 1979 and 1980, the first full year of generally unrestricted public-switched message competition, the annual rate of increase rose a full percentage point, to about 7 percent (using constant 1972 dollars). Between 1980 and 1981, the annual rate of increase rose to about 10.5 percent, or about 40 percent higher than the rate which prevailed when the domestic public-switched services market was far less competitive. See 1978 through 1982 U.S. Industrial Outlooks.

37/ As one international communications expert has stated:

> As you may know, we've had some competition on service to Canada, and that same competitor (MCI) has set up an experiment with Australia. It's very early to be drawing direct conclusions, but I'd like to share some figures with you. We had forecast ten percent growth this year in our messages to Canada. Our actual growth in the first seven months of the year was sixteen percent -- six percentage points higher than we predicted. Now, these results are subject to interpretation. They can be attributed to such things as marketing efforts, advertising, and, of course, the recovery of our economy. And, as I said, it is still very early. But it certainly appears to me that, from what we've seen so far at least, competition has not hurt growth. And perhaps, as more time elapses, we will be able to say it has stimulated business. It makes one wonder, if we had competition in other countries, whether perhaps the total communications package would grow at an accelerated rate.

Remarks of Mr. R.B. Nichols, AT&T, at TELEVENT '83, Montreux, Switzerland, Oct. 25, 1983 at p. 17.

Cost-based Access An Important Issue

The economic well-being of INTELSAT may be furthered by "cost-based" access for customized services. One way this could be secured is by permitting U.S. carriers and users to deal directly with INTELSAT, with the U.S. Signatory (Comsat) serving as their ministerial agent. Another way could be to ensure that all of the costs which Comsat and the carriers assess in addition to the basic INTELSAT charge reflect legitimate, necessary costs.

The process by which customers obtain international satellite communications service results in end-user prices substantially above INTELSAT circuit charges. The current U.S. arrangement where Comsat, in effect, functions as exclusive U.S. marketing agent for INTELSAT circuits, may be ill-suited to an era of proliferating customer demands. No single entity, no matter how perceptive, can reasonably be expected to anticipate and satisfy all customer demands and needs in a market which is experiencing rapid demand-inducing and cost-reducing technological advances. Permitting expanded, direct, cost-based access to INTELSAT may be the most reliable means of substantially reducing costs and ensuring valid entry signals.

Recently, the FCC required Comsat to unbundle its INTELSAT tariff into separate, "cost based" rates for space segment and earth segment services. 38/ In addition, the FCC determined that AT&T and the IRCs could own earth stations independent of the traditional joint ownership arrangement, subject to FCC approval on a case-by-case basis. This decision seeks to stimulate competition to provide earth station services, and to lower costs and increase the availability of services to the consumer. The decision may also allow the FCC further to identify legitimate cost components of Comsat's space segment rate.

The Executive branch shares the FCC's goals of providing users with cost-based international satellite communications services of high quality and reliability, tailored to individual needs. The FCC recently declined to commence a formal

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38/ Earth Station Ownership (CC Dkt. 82-540), FCC Mimeo 84-605 (released Dec. 18, 1984).

rulemaking with a view toward sanctioning expanded, cost-based access to INTELSAT. It expressed the view that regulatory measures could lessen the need for such structural change for end-users and Comsat's carrier customers, but emphasized that it was not foreclosing reconsideration of direct access should alternative measures prove ineffective. 39/

The Executive branch nevertheless recommends that the FCC examine cost-based carrier and user access to INTELSAT with respect to customized services, and the Department of Commerce will soon file detailed recommendations in this regard. While this issue might entail substantial public benefits when viewed in parallel with the establishment of alternative satellite systems, it is not a prerequisite for, nor should it be the basis for any delay in, ruling on the applications now before the FCC.

In sum, the President has determined that entry by additional international satellite systems, limited to customized services, is required in the national interest because it will:

-- Provide users more flexible options and facilitate more efficient international satellite communications services;

-- Promote development and use of satellite technology; and,

-- Afford U.S. entrepreneurs an opportunity to develop new communications services and increase international trade opportunities.

V. AN EVOLUTIONARY APPROACH

The concept of additional entry into the international satellite communications business is not new. The United States, as earlier discussed, has permitted such entry by sanctioning transborder satellite communications, after consultation with INTELSAT, and has supported establishment of a number of regional satellite systems. The approach recommended here should thus be regarded as facilitating evolutionary, not revolutionary, change in international telecommunications.

39/ Regulatory Policies Concerning Direct Access to INTELSAT (CC Dkt 82-548), 97 FCC 2d 296 (1984).

Objections have been voiced to any changes in the status quo. Some suggest, for example, that there would be a severe adverse economic impact on INTELSAT from new systems, even if the scope of their offerings were limited, or that any limitations would prove unenforceable or ineffective over time. Similarly, it has been suggested there are certain international radio frequency management obstacles. Finally, it has been asserted that U.S. international trade or other interests, or the legitimate interests of less developed countries, could be adversely affected. None of these objections withstand close analysis, however, nor do they override the advantages of additional entry to the national interest.

No Adverse Economic Effects Are Likely

Under the recommendations and criteria discussed in this report and in the President's determination, new satellite entrants could not offer public-switched services directly or indirectly and would be obliged to focus on developing customized service markets. Since public-switched services comprise by far the largest part of international traffic, any significant adverse impact on INTELSAT could result only if: (i) customized communications quickly supplant conventional services as the mainstay of the international communications business; (ii) such new services constitute a uniquely profitable line of commerce, the profits from which are essential to subsidize other necessary but unprofitable INTELSAT undertakings; and (iii) INTELSAT proves unable effectively to match new entrants, by, among other things, achieving end-user price reductions, broadening its service repertoire, and providing carriers and users direct access options. Virtually all of the Executive branch's analysis, however, indicates that these possibilities are remote.

According to INTELSAT forecasts (see Table I), in 1988 traffic on its trans-atlantic voice-grade circuits will continue to be composed overwhelmingly of message telephone service (MTS) and related public-switched services. Specifically, of 15,603 satellite voice-grade circuits to 18 major European countries planned in 1988, INTELSAT has forecast 14,000 will be used for MTS alone. Under the Executive branch approach, new entrants would thus be barred from providing services which are directly competitive with some 90 percent of INTELSAT's voice-grade offerings, according to INTELSAT's own estimates.

Table I

1988 INTELSAT TRAFFIC PROJECTIONS

INTELSAT has forecast the following breakdown of its 1988 voice-grade traffic to 18 major European countries:

14,185	MTS
113	Record Service
1,259	Alternate Voice Data (AVD)
46	Data
15,603	Total voice-grade (4 kHz) circuits

INTELSAT has also projected for 1988 the following numbers of channels for its International Business Service (IBS):

15	1.544 megabit per second (MBS) channels-K band
182	56/64 kilobit per second (KBS) channels-K band

For 1988, INTELSAT forecasts seven television transponder leases to Europe.

Source: INTELSAT Global Forecast (June 1982).

The impact of new entry on markets for other than public-switched services will depend on growth in demand for those customized services and users' evaluation of the relative merits of the rate and service options offered by the entrants and the incumbent, INTELSAT. Because of the dynamics of the international communications marketplace, uncertainties regarding user needs and preferences, and imperfect knowledge of the likely pricing strategies of entrants and INTELSAT alike, any forecast of market capture by the new entrants and possible revenue loss by INTELSAT, is subject to risk of wide error. Review of several market penetration and growth scenarios, however, indicates that substantial economic harm to INTELSAT from new entrants limited to private non-switched services is highly improbable. Any traffic diversion and loss of business revenue from INTELSAT to the entrants will almost certainly prove less than the expected growth in revenues from users of INTELSAT services. The total annual revenues most likely to be obtained by the proposed entrants, moreover, will not have significant adverse effects on INTELSAT or its rates for switched services. 40/

40/ See generally "Technical, Economic, and Institutional Feasibility of Customer Premises Earth Stations for INTELSAT Services," (NTIA: M/A-Com. DCC, Inc., May 1983); "Present and Projected Business Utilization of International Telecommunications" (NTIA, 1981).

Some further contend that new satellite system entry will result in widespread and substantial de-averaging of INTELSAT's prices, with the further consequence that "thin-route" prices will rise abruptly while "thick-route" prices rapidly fall. This, critics maintain, will result in sharp increases in communications costs for developing countries who today are said to benefit from internal, INTELSAT-devised and administered cross-subsidization schemes. Such pessimistic forecasts, of course, are comparable to those which were advanced when U.S. domestic competitive new entry was under consideration by the FCC.

Possible adverse effects on developing nations are of significant concern, given the increasingly important role communications plays as a catalyst for overall economic development and given the United States' longstanding commitment to improving the economic prospects of developing nations. Analysis indicates there is little possibility of significant adverse effects on INTELSAT, or, in turn, adverse effects on developing nations.

There are three reasons for this conclusion. First, by far a majority of INTELSAT's core revenues and its basic service functions would be "off-limits" to new entrants. Second, even assuming some significant cross-elasticity or interchangeability of demand between customized and conventional services, both markets currently are growing rapidly. Revenue "siphoning" is likely to occur, if at all, only when the markets at issue are static, which is not true here. INTELSAT's charges, moreover, typically constitute but part of end-user charges for communications circuits. Increases in INTELSAT's charges for public-switched offerings, which are unlikely, need not necessarily be reflected in higher end-user circuit prices. Third, INTELSAT is in a good position to compete. The organization has an extensive array of advanced spacecraft, a highly talented technical and managerial cadre, and enjoys global acceptance and presence. These are potential competitive advantages few entrants could hope to replicate.

In sum, while potential adverse effects of new entry on developing nations' communications prices is an issue, there are few foreseeable conditions, if any, under which the pessimistic forecasts advanced in opposition to new entry might conceivably materialize. In the unlikely event such problems develop, moreover, there are a number of corrective measures available other than pursuing unnecessary restrictive entry policies.

No Valid Spectrum Management Objections

Concern has been advanced that U.S. approval of additional international satellite systems could complicate international radio spectrum management programs. Such approval allegedly could be perceived as inimical to the goal of ensuring "equitable" access to and use of the geostationary orbit and associated radio spectrum, increasingly regarded as a scarce and valuable international resource, and thus compromise our efforts to ensure international acceptance of flexible orbit and spectrum regulation. These are not unreasonable concerns for study. Our review of the possible effects of such U.S. action, however, suggests little adverse impact on radio frequency management policies and programs.

The U.S. international satellite systems now being considered by the FCC propose to use current technology and to function in the frequency bands allocated internationally for such services. The proposed uses accord with applicable international radio regulations, as do the projected power flux density, "station keeping," and "pointing accuracy" features of the proposals. Engineering review of the proposed new systems indicates they would comply with pertinent international radio regulations.

Questions have been raised regarding the possible effect of U.S. approval of additional satellite systems on current and future international discussions of geostationary orbit use, previously discussed in the part of this report surveying foreign policy concerns. The orbital positions proposed by the new entrants will require technical coordination under the ITU Radio Regulations, and the systems must eventually be recorded by the International Frequency Registration Board. A preliminary review indicates all of the proposed positions can be accommodated through the current ITU process.

Since the advent of commercial satellite communications, there has been disagreement internationally between those favoring a flexible international regulatory approach, and those urging rigid, "a priori planning" of orbital resource use. The United States and other nations have favored a flexible approach to facilitate the evolution of satellite communications technology. Some foreign administrations, however, have pressed for a more rigid approach on the ground it

will ensure "equitable access" to the geostationary orbit, especially on the part of developing countries. 41/

International discussions regarding orbital "slot" utilization antedate current proposals to deploy additional U.S. international satellite systems. These discussions will be an important part of future Space WARCs regardless of the disposition of the pending U.S. satellite system applications. Granting these applications could provide those favoring a rigid approach some additional support for their views; they may contend that the United States is using more than its "fair share" of what is perceived to be a scarce international resource. Such arguments, however, are not compelling.

The orbital positions sought by applicants for new U.S. satellite systems are unlikely to interfere with the rights of other nations to make use of orbital resources. Additionally, experience gained through such new systems would be available to other administrations and thus afford them a means of better serving their own national communications needs. Several of the U.S. satellite system applicants, moreover, propose the sale or long-term lease of space segment capacity which could afford both U.S. and foreign users an opportunity to invest directly in, and secure the benefits of, advanced satellite communications. Under the Executive branch approach, both U.S. and foreign customers would be offered new, potentially valuable, service options.

The United States, by taking a flexible approach toward orbit use, has managed to foster the development of new communications techniques which, in turn, have made possible steadily more intensive use of the orbital arc. Spacing between U.S. domestic satellites has been steadily reduced from 5 degrees to 2 degrees over the past decade, and advances in technology should aid in achieving even more intensive use. Such gains in technical sophistication and effectiveness would not have been accomplished as readily, if at all, had the United States adopted the rigid approach some nations urge.

41/ See Robinson, Regulating International Airwaves: The 1979 WARC, 21 Va. J. of Int'l L. 1, 44 (1981).

These concerns on the part of some nations are being noted by policymakers in preparing for the 1985-88 Space WARC and international radio conferences generally. The restrained approach toward additional international satellite systems reflected in this report and in the President's determination, however, should ameliorate international concerns. It is possible to accommodate the interests of INTELSAT, new entrants, and, more importantly, the users of international communications both here and abroad, and thus to maximize the benefits afforded by space satellite technology.

Positive International Trade Effects.

Related contentions have been advanced concerning U.S. approval of additional international communications satellite systems. It has been contended, first, that U.S. approval will dissipate U.S. influence over INTELSAT and, second, diminish the significance of INTELSAT as a major purchaser of U.S. aerospace products. Third, it has been contended that U.S. action will trigger a further proliferation of regional and transoceanic satellite systems sponsored by other nations which will rely chiefly on indigenous aerospace firms, thus gradually eroding any technological and commercial edge the United States enjoys in the aerospace field. Finally, some maintain that communications administrations abroad will seek to influence procurement decisions made by new U.S. satellite system entrants.

INTELSAT scheduled 12 INTELSAT V and V-A satellite launchings between 1982 and 1985. The total number of satellites in the current expansion program is 15, with an estimated value of $1.3 billion (including launch costs). In March 1982, INTELSAT awarded Hughes Aircraft Company a $700 million contract for the purchase of the first five satellites of the next generation, INTELSAT VI. Each INTELSAT VI satellite will have the capability to handle more than 30,000 telephone circuits and several television programs -- more than twice the capacity of the latest INTELSAT V-A satellite --and a ten-year design life. INTELSAT will launch the first satellite in this series in 1986 aboard the U.S. Space Transportation System (Shuttle) and may use the European Space Agency's Ariane system for others. INTELSAT estimates the cost of this latest development program will reach $2.2 billion by 1992. U.S. aerospace firms anticipate participating in this program, and the Executive branch has no ground to assume this will not be the case.

It is not U.S. influence that currently affords U.S. aerospace producers a significant share of INTELSAT's procurement. The success U.S. producers enjoy is due chiefly to the superior quality of their products, the attractiveness of their prices, and the sophistication of their technology in what is increasingly a fiercely competitive world market. The INTELSAT Definitive Agreement, moreover, specifically mandates open and competitive procurement. It is unfair to imply the skilled professionals who comprise the INTELSAT Executive Organ would disregard the requirements for competitive bidding contained in the Agreement, overlook products offered by U.S. firms at competitive prices, and thus compromise a well-earned reputation for fair and business-like conduct of this important international enterprise.

At present, U.S. aerospace producers confront intensifying international competition from a diversity of high-caliber, multinational firms, and this trend is likely to continue independent of the decisions at issue here. U.S. firms enjoy some advantages in producing certain classes of spacecraft -- large capacity spin-stabilized satellites, for instance. While U.S. firms are preeminent in the international aerospace field, fewer and fewer free world aerospace projects rely exclusively on products supplied only by one nation's firms. Extensive joint venture and cross-licensing arrangements are increasingly characteristic of this field.

INTELSAT has purchased from a broad range of suppliers, and the percentage of its procurement awarded U.S. firms has declined as the commercial competence of non-U.S. firms has grown. The United States, however, should not fear this increased competition. In a free trade environment, such competition provides a necessary and highly desirable spur to greater efficiency, more rapid innovation, and improved customer responsiveness. Indeed, much of the rapid growth in the U.S. aerospace business is attributable to the competitiveness of this field generally and the resulting incentives to perform efficiently.

The intrinsic talents and abilities of U.S. aerospace firms should not be adversely affected by U.S. approval of additional international satellite systems. INTELSAT's professionals will continue to abide by the competitive procurement requirements contained in the Definitive Agreement. The importance of INTELSAT as a purchaser of aerospace products, both of U.S. and foreign manufacture, in sum, should not be impaired.

The Executive branch has also seriously considered contentions that U.S. approval of new satellite systems could have a "domino effect" and trigger additional entry by "state-subsidized" European and other systems that will adversely affect INTELSAT and not make use of U.S. aerospace products. While the details of all such additional satellite systems are not yet available, a number of satellite systems are now functioning or planned worldwide in addition to U.S. systems as earlier discussed. Extensive submarine cable facilities, moreover, are also under construction.

Available information does not indicate U.S. aerospace firms have been foreclosed from competing to supply existing and planned regional satellite systems. Ford Aerospace, for example, reportedly is a major subcontractor for both Arabsat and French satellite systems. Hughes Aircraft has supplied spacecraft for the Indonesian Palapa regional system and has longstanding relations with SPAR, the Canadian firm which is the prime contractor for the Brazilian domestic satellite system. Ford, Hughes, and RCA all have commercial arrangements with Japanese aerospace companies and thus stand to participate in any satellite systems which Japanese firms may propose in the Pacific region.

It is unsound to assume, moreover, that any sanctioning of new U.S.-based satellite systems will adversely affect INTELSAT since foreign entrants may not be subject to limitations such as those recommended for U.S. entrants. Having placed restrictions on the activities of U.S. entrants, the national interest would require comparable limitations on the services any foreign satellite system might provide to and from the United States. 42/

At present, the United States accounts for a majority of international telecommunications traffic and, indeed, is said to constitute some 40 percent of

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42/ Under the 1921 Cable Landing Act (47 U.S.C. 34, 35) and the delegation of Presidential authority to the FCC in Executive Order 10530 (3 CFR 189 (1954-58 comp.)), the FCC enjoys broad authority regarding the provision of international services by foreign entities directly or indirectly to the United States and has authority to take steps to ensure equality of opportunity among U.S. and non-U.S. carriers in the international telecommunications business. Section 308(c) of the Communications Act (47 U.S.C. 308(c)) empowers the FCC to place comparable requirements on those providing international services by radio.

the total world communications services and products market. 43/ Access to the U.S. market is thus commercially critical. Having taken appropriate steps to safeguard the economic integrity of INTELSAT, the United States would not sanction actions by foreign systems serving U.S. markets that would undermine our limitations and place U.S. firms at a competitive disadvantage.

Finally, the Executive branch has weighed the possibility some foreign governments might consider dictating procurement requirements in exchange for permitting non-INTELSAT satellite systems to access their markets. The United States would oppose any initiative by foreign administrations which would discriminate against U.S. aerospace firms. The United States does not wish to regulate the procurement decisions of noncommon carrier, satellite systems. The United States, nevertheless, would consider declining to consult on proposals involving unacceptable procurement provisions that could adversely affect competition in the aerospace industry. Such provisions might also raise questions under international trade agreements.

Not only is there little ground for concern that U.S. approval of limited entry into the international satellite field would adversely affect international trade, but there are also sound reasons to forecast positive consequences. International services today are priced considerably above domestic circuits of comparable length. At present, for example, MCI charges a minimum of $3,700 per month for a full-time, voice-grade private line between New York and London. A New York to Los Angeles private line circuit retails for from $1,507 (MCI), to $1,701 (Western Union) to $1,150 (RCA). International service, in short, costs between two and three times comparable U.S. domestic service. A U.S. firm offering international circuits at prices comparable to U.S. domestic prices should thus experience significant demand.

U.S. financial services and data processing companies constitute major factors in the international communications market, with annual communications bills amounting to tens of millions of dollars in several instances. Reductions in

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43/ See 1985 U.S. Industrial Outlook at p. 31-3.

these communications costs imply lower business -- and, ultimately, customer -- costs and an expansion in business activity. New entrants may also offer large users services more closely tailored to particular corporate needs. Worldwide credit card and electronic funds transfer operations, for example, may be heavily dependent on the availability of efficient, dedicated satellite communications networks. New communications service options and resulting efficiency gains should be reflected ultimately in lower costs to consumers and, in the case of U.S. firms, enhance the attractiveness of their products in international markets.

New communications satellite offerings should also have an affirmative effect on the U.S. services sector generally, which is of special importance given the contribution this sector makes to U.S. overall foreign trade. In recent years, the services sector has become a major source of export receipts in U.S. balance-of-payments accounts. Included in this diverse sector are enterprises including data processing, engineering, architectural, and construction services, advertising services, management consulting and accounting services, insurance services, and the provision of video programs, all of which are increasingly dependent on the availability of effective and efficient international communications. The market for U.S. programs is particularly important given the rapid development of cable television, commercial television, and other video services in Europe. In 1982, receipts from services exports were $40.4 billion, about one-fifth the amount of U.S. merchandise exports. Over the past decade, growth in U.S. services exports has partially offset losses in merchandise export accounts. Services constitutes a key component of U.S. international trade and expanding U.S. communications options should contribute to its growth. 44/

National Defense and Security Implications

International communications constitutes a critically important component of U.S. and allied defense and security programs. The U.S. Department of Defense is the largest single user of international communications services, spending more than $50 million annually for more than 220 commercial satellite channels.

44/ See generally 1984 U.S. Industrial Outlook at pp. 23 et seq.

Moreover, the Defense Department not only has extensive North Atlantic Basin communications requirements; it also needs to communicate globally to remote locales and has relied significantly on the INTELSAT system in this regard. The Defense Department is concerned, therefore, that additional competition in the international satellite communications business not impair the cost-effectiveness or service quality of the INTELSAT system. Approval of additional U.S. international satellite systems, subject to the limitations discussed in this report, will not adversely affect national defense.

A key interest of the Defense Department and the national security community is ensuring the effectiveness and survivability of international communications services through redundant routing and maintaining a broad mixture of international communications facilities. 45/ The Defense Department traditionally has favored the deployment of submarine cable facilities to complement satellite facilities. In addition, the Defense Department maintains extensive Government-owned facilities to provide international communications. Furthermore, current national security telecommunications policy assigns priority to the creation of a survivable telecommunications infrastructure to support the Federal Government's critical domestic and international telecommunications needs. Additional international satellite facilities would contribute to the "mix of media" national defense requires. Under the limitations proposed here, it is unlikely there would be any significant adverse effects on INTELSAT or other international communications facilities. Accordingly, overall national security telecommunications capability would benefit.

The Defense Department also has a strong interest in the continued strength and vitality of the U.S. satellite communications and aerospace industries. The Defense Department has expressed concern that the United States not become dependent on foreign-owned or controlled firms to provide necessary services and equipment. 46/ Approval of the satellite system applications now pending before

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45/ See Statement of Lieutenant General W.J. Hilsman, Director, Defense Communications Agency, Before the Senate Communications Subcommittee in Hearings on S. 2469, 97th Cong., 2d Sess. 96 (1982).

46/ Id. at 93-94.

the FCC, subject to limitations, would advance U.S. technology, and defense interests would benefit.

The Defense Department could benefit significantly from changes in FCC rules to facilitate cost-based access to INTELSAT. Access by firms other than Comsat has been authorized by the FCC in the past. 47/ Such access is a means by which international communications costs can be substantially reduced and service flexibility improved. Both would benefit the Defense Department as a major user.

In conclusion, the Defense Department and the other parts of the national defense and security community have a strong interest in the future economic strength and technological vitality of the INTELSAT system. Under the limited entry approach discussed here, those legitimate interests would be protected. Indeed, authorizing additional U.S.-owned and controlled international satellite systems could further defense interests by improving the survivability of the U.S. national telecommunications infrastructure and maintaining an effective and efficient aerospace industry.

Limitations on International Service are Sustainable

The President's national interest determination stated that certain criteria were necessary to ensure that the United States meets its international obligations and to further its telecommunications and foreign policy interests. The Secretaries of State and Commerce have informed the FCC that, in addition to INTELSAT consultation, final authorization of each system must restrict such licensee to providing services through the sale or long-term lease of transponders or space segment capacity for communications not interconnected with public-switched message networks (except for emergency restoration service).

While recognizing the public benefit of these restrictions, some industry participants have expressed concern that the FCC may not have the power to impose or maintain such limits. They point particularly to the reversal of the FCC in the

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47/ See Transiting Decision, 23 FCC 2d 9, 30 FCC 2d 513 (1971); see also ITT World Communications, Inc. v. FCC, 725 F.2d 732, 752 n. 48 (D.C. Cir. 1984).

so-called Execunet decisions. 48/ Their concern is misplaced, however, for if based on proper regulatory procedures and findings, FCC limitations on international service offerings by new satellite entrants are sustainable.

Applicants to construct and operate satellite systems are subject to Title III of the Communications Act as previously noted, and many of the provisions of that title broadly empower the FCC to take the actions required here. Section 301 prohibits persons from transmitting radio signals except in accordance with the Act and with a license granted under its provisions. Section 303(b) authorizes the Commission to prescribe the nature of the service to be rendered by each class of licensed station and each station within a class.

Under section 303(f), the FCC is authorized to adopt regulations necessary to carry out the provisions of the Act. Section 303(r) specifically authorizes the FCC to prescribe such restrictions and conditions as may be necessary to carry out the Act or U.S. obligations under treaties or conventions relating to radio or wire communications.

In addition, section 308(c) provides that in granting a radio license for commercial communication between the United States and any foreign country, the FCC may impose any terms, conditions, or restrictions authorized to be imposed under section 2 of the Submarine Cable Landing Act (47 U.S.C. 35). Again this empowers the Commission to withhold, revoke, or condition a license. 49/

Section 309(h) states that each license is subject to conditions, including that the licensee does not have a right to operate the station beyond the term of the license nor in any manner other than authorized therein.

48/ MCI Telecom. Corp. v. FCC, 561 F.2d 365, 580 F.2d 590 (D.C. Cir. 1977, 1978). See generally Hutton, The Proposed Deregulation of Domestic Common Carrier Telecommunications, 69 Cal. L. Rev. 455, 457 (1981); Warren, Intercity Telecommunications Competition After Execunet, 31 Fed. Com. B.J. 117, 129 (1978).

49/ Functions vested in the President by section 35 of the Cable Landing Act were delegated to the FCC by Executive Order 10530, 3 CFR 189 (1954-1958 Comp.).

With this extensive statutory support, 50/ the courts naturally have found a delegation of wide discretion to the Commission: "(I)t is clear that Congress meant to confer 'broad authority' on the Commission . . . so as 'to maintain, through appropriate administrative control, a grip on the dynamic aspects of radio transmission.'" 51/

Despite such underpinnings, some maintain that the FCC's ability to circumscribe the range of services offered by additional international satellite systems is limited, based on their reading of the Execunet rulings. In 1976, MCI began marketing a long-distance service called "Execunet." The FCC determined that Execunet was "message telephone" service (MTS) not "private line" service, that MCI had been limited to providing only specialized or private line services, and thus ordered the offering discontinued. The basis of the FCC's opinion was that there was an implied restriction in the license limiting MCI to specialized services, because the Commission had a written policy of prohibiting specialized carriers from providing MTS service. The court remanded the FCC's decision, because it had not made a specific determination in granting MCI's license that the public interest and necessity required such a restriction. In arriving at its ruling, the court discussed the authority of the FCC to restrict licenses:

> . . . the usual way in which a carrier becomes restricted in the services it may offer is for the Commission to write restrictions into the facilities authorizations that must be obtained pursuant to Section 214 of the Communications Act before any communications line may be built, operated, or extended. Accordingly, a carrier can usually tell if it is subject to service restrictions simply by examining the instruments of authorization issued to it by the Commission. 52/

50/ Similar authority has been granted to the FCC under title II of the Act with respect to common carriage. For example, "The Commission shall have the power to issue such certificate as applied for, to refuse to issue it, or to issue it . . . for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms or conditions as in its judgment the public convenience and necessity may require." 47 U.S.C. 214(c).

51/ FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 138 (1940), quoted in FCC v. Midwest Video Corp., 440 U.S. 689, 696 (1978).

52/ 561 F.2d at 373.

The court did not find the FCC lacked authority to prescribe the services MCI could offer, but only that when granting MCI its authorization the FCC had not followed proper procedures and made the requisite public interest finding that such service limits were appropriate. Assuming the FCC were to make proper findings in the case of each of the proposed new international satellite systems, new entrants can legally be circumscribed in the range of services they may offer. 53/ This is especially true since the President has determined that such limitations are required for foreign policy and related reasons, an area in which the courts have generally deferred. 54/

Opponents of the pending applications argue any limitations placed on new entrants ultimately might be relaxed domestically. Changed circumstances conceivably might lead to such reconsideration in the future; U.S. domestic common carrier regulations in general have tended to be liberalized over time. The same is not true abroad, however. Virtually all European PTTs currently enforce service restrictions, and there are few indications this will change. Enforcement measures include on-site monitoring of users' telecommunications centers, and use of facilities for unauthorized purposes is grounds for discontinuation of service. Most European PTTs also do not permit use of customer-premises earth stations at this time, nor the resale of communications circuits. U.S. international firms also often admonish their customers not to use facilities for impermissible services. 55/

53/ The FCC has successfully exercised similar authority a number of times, for example restricting the scope of AT&T and Comsat's participation in domestic satellite services (Domestic Communications-Satellite Facilities, 35 FCC 2d 844, 853 (1972)) and restricting the Satellite Business Systems (SBS) joint venture of IBM and Comsat (Satellite Business Systems, 62 FCC 2d 997, 1046, recon. denied, 64 FCC 2d 872, 873 (1977)).

54/ See, e.g., Dames & Moore v. Regan, 453 U.S. 654, 678 (1981); Haig v. Agee, 453 U.S. 280 (1981).

55/ One of the leading providers of international data processing services informs customers of its sophisticated "Cybernet Services," for example --

> Users of Control Data services should be aware that the rules and regulations of the United States and International Telecommunications Regulatory Agencies prohibit Control Data from using communications

(Continued on p. 49.)

Given the multilateral nature of international telecommunications and the fact customers of the proposed new U.S. satellite systems will be obliged generally to deal through local PTTs for the foreseeable future, we believe limitations on the services offered by new systems can be effective. If there were sufficient noncompliance with the FCC's restrictions to raise the prospect of significant economic harm to INTELSAT, such noncompliance would almost certainly be obvious to competitors and regulators alike. As indicated, no regulatory regime whether here or abroad can ever achieve 100 percent effectiveness nor be immune to further evolution. The limitations proposed here, however, will prove sufficiently effective to prevent any significant adverse impact on INTELSAT. If changes in the U.S. limitations are undertaken in the future, moreover, those will be accomplished consistent with our INTELSAT obligations.

"Predatory Pricing" and Related Concerns

Some have expressed concerns over possible pricing responses to competition by INTELSAT. Price competition, however, benefits consumers. Price reductions by an established firm with market power are not always or even usually "predatory," much less socially or economically undesirable. Too rigid or unbending a pricing standard may discourage price cutting, maintain prices in a market significantly above competitive levels, and also induce entry by less efficient firms. Too flexible a standard obviously could permit a firm with substantial market power to reduce price below actual cost and thus damage or inhibit competition. Nevertheless, we believe that concerns about possible predatory pricing are

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(Continued from previous page.)

> services it leases from domestic, international and foreign communications carriers to transmit information for its users which is not part of a 'single integrated' data processing service. All information transmitted must be directly related to the data processing applications or service provided by Control Data and unprocessed information shall not be allowed through the service between user terminals, either directly or on a store and forward basis. Noncompliance with these rules and regulations may force Control Data to discontinue the users' data processing service.

Cybernet Reference Manual (cover sheet) (1980, rev.).

premature. The economic and legal literature provides very little evidence predatory pricing has ever occurred. 56/

INTELSAT's ability to engage in predatory pricing, in any event, is dependent in large part on the willingness of the U.S. Government to overlook such conduct or to fail to take remedial steps if it occurs. Any such assumption, however, is obviously flawed. If it were shown, for example, that INTELSAT was charging rates for customized offerings which it could not cost-justify and which were significantly injuring U.S. competitors, the Government would necessarily reexamine the restrictions placed on U.S. entrants pursuant to the President's national interest determination and take appropriate remedial actions.

CONCLUSION.

The applications to establish additional international satellite systems now pending before the FCC presented four options. The Executive could have recommended (1) approval, (2) denial of the applications outright, (3) approval of the applications subject to specific qualifications, or (4) further study, with postponement of any decision for an indefinite period. The unanimous view among the member agencies represented on the SIG is that it would be in the U.S. national interest to allow new providers of international satellite facilities, provided INTELSAT were not exposed to significant economic harm. The President's determination reflects this view.

There is sufficient risk of significant adverse economic impact on INTELSAT to make blanket approval of unrestricted competition unwise. It would also be premature to take such a step until the results of cost-based access, new fiber optic cables, and new INTELSAT services are fully evaluated. Unrestricted entry could ultimately undermine the economic integrity of this important international enterprise, which would be inconsistent with the U.S. national interest.

56/ See, e.g., McGee, Predatory Price Cutting: The Standard Oil Company Case, 1 J. Law & Econ. 137 (1958); Telser, Cut-Throat Competition and the Long Purse, 9 J. Law & Econ. 259, 267 (1966). See also Berkey Photo, Inc. v. Eastman Kodak Co., 603 F.2d 262, 273, 294 (2d Cir. 1979); Northeastern Teleph. Co. v. AT&T, 651 F.2d 76, 93 (2d Cir. 1981).

The case has not been made for flatly disapproving the existing applications. The new entrants have made a threshold showing that services they propose are not now available on comparable terms. Limited entry along the lines recommended would further U.S. international trade interests, promote technological progress, and be consistent with national defense and security interests as well. Given these limitations, and the restrictions likely to be placed on any new satellite system by telecommunications authorities abroad, the risk of any significant adverse impact on INTELSAT is exceedingly small.

Further study and resulting delay is unlikely to further the national interest. Over a year of extensive study and review by the Executive branch has already taken place. This review has not resulted in the submission of credible information supplied by anyone, including INTELSAT and Comsat, which demonstrates plausible adverse effects. There is no basis to assume such information will be forthcoming.

Satellite systems entail significant lead time. Time is required to secure the requisite spacecraft, to reach launch agreements, and to secure operating arrangements. U.S. regulatory procedures are generally more time consuming than those abroad, where decisions can sometimes be reached and implemented without the regulatory proceedings and protracted court appeals characteristic of U.S. regulation. Consultation with INTELSAT is also required. Even were the pending applications approved by the FCC immediately, service would not be available for some time.

Government should not stifle private entrepreneurial initiatives absent sound and compelling public policy reasons. Such initiatives should not be discouraged when the services proposed could prove of value to customers, improve their productivity and efficiency, and thus enable American firms to compete more effectively both at home and abroad. The public policy case for continuing the status quo and flatly prohibiting additional international satellite systems is weak. Simply the pendency of U.S. applications has caused INTELSAT to accelerate plans for special business-oriented services and has precipitated a beneficial review of competitive conditions in the international satellite field generally. Further study and inevitable delay are unlikely to yield public dividends commensurate with the economic costs imposed.

It is the view of the Executive branch that the national interest will be furthered by approving additional international communications satellite systems subject to limitations designed to minimize adverse effects on INTELSAT. Specifically, additional systems should be restricted to providing services through the sale or long-term lease of transponders or space segment capacity for communications not interconnected with public-switched message networks (except for emergency restoration service). Consultation must be undertaken with INTELSAT pursuant to Article XIV(d) of the Definitive Agreement.

APPENDIX A

THE WHITE HOUSE

WASHINGTON

November 28, 1984

Presidential Determination
No. 85-2

MEMORANDUM FOR THE SECRETARY OF STATE
THE SECRETARY OF COMMERCE

By virtue of the authority vested in me by the Constitution and statutes of the United States, including Sections 102(d) and 201(a) of the Communications Satellite Act of 1962, as amended (47 U.S.C. 701(d), 721(a)), I hereby determine that separate international communications satellite systems are required in the national interest. The United States, in order to meet its obligations under the Agreement Establishing the International Telecommunications Satellite Organization (INTELSAT) (TIAS 7532), shall consult with INTELSAT regarding such separate systems as are authorized by the Federal Communications Commission. You are directed jointly to inform the Federal Communications Commission of criteria necessary to ensure the United States meets its international obligations and to further its telecommunications and foreign policy interests.

This determination shall be published in the Federal Register.

Ronald Reagan

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

November 30, 1984

Honorable George P. Shultz
Secretary of State
Washington, D.C. 20520

Dear George,

There are two matters regarding the President's determination on new international satellite systems that need to be clarified. First, the White House has directed our departments to examine the scope of INTELSAT's pricing flexibility. Second, our position on the related issue of direct access to INTELSAT should be made clear.

The executive agreement establishing INTELSAT generally requires uniform pricing for each service. Prices on heavily trafficked routes may now exceed costs while those on thin routes may be below costs. It is not clear whether INTELSAT could vary its prices under the agreement. If INTELSAT's prices on busy routes are artificially inflated, inefficient entry by new systems may be induced. INTELSAT should have pricing flexibility when confronted with actual or potential competition as long as the prices it charges cover its costs.

A related issue is direct, cost-based access to the INTELSAT space segment. Allowing users and carriers in addition to Comsat the option to deal with INTELSAT directly for competitive services would foster competition based on superior efficiency and foresight and tend to deter entry by inefficient systems.

We should express clear positions on these two important points in the filing we will soon be submitting jointly to the Federal Communications Commission. I have asked Dave Markey to work with Bill Schneider to ensure this is done.

Sincerely,

Secretary of Commerce

cc: Chairman Mark Fowler

412847

THE SECRETARY OF STATE

WASHINGTON

December 20, 1984

Dear Mac:

Thank you for your letter of November 30 relating to the President's determination on international satellite systems separate from INTELSAT. Your understanding conforms with ours that the White House is interested in having us examine the issues of pricing flexibility in INTELSAT and direct access to INTELSAT by users other than COMSAT.

We have received, and are reviewing, the draft paper prepared by NTIA which might be sent jointly to the FCC.

The Office of the Coordinator for International Communication and Information Policy, together with others concerned with the issue, are working with your staff on these and additional issues emanating from the Presidential determination.

Sincerely yours,

George

George P. Shultz

The Honorable
Malcolm Baldrige,
Secretary of Commerce.

cc: Chairman Mark Fowler

APPENDIX B

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

Honorable Mark S. Fowler
Chairman
Federal Communications Commission
Washington, D. C. 20554

November 28, 1984

Dear Mr. Chairman:

The President has determined that separate international communications satellite systems are required in the national interest. He has also directed that we inform the Federal Communications Commission of criteria necessary to ensure the United States meets its international obligations and to further its telecommunications and foreign policy interests. Prior to final authorization by the Commission of any systems, to assure that the United States meets its obligations as a Party to the Agreement Establishing the International Telecommunications Satellite Organization (INTELSAT) (TIAS 7532):

(1) each system is to be restricted to providing services through the sale or long-term lease of transponders or space segment capacity for communications not interconnected with public-switched message networks (except for emergency restoration service); and,

(2) one or more foreign authorities are to authorize use of each system and enter into consultation procedures with the United States Party under Article XIV(d) of the INTELSAT Agreement to ensure technical compatibility and to avoid significant economic harm.

The President's determination, its conditions, and these criteria are premised on our review of the issues prompted by the applications now before the Commission. If proposals substantially different are forthcoming, further Executive Branch review may be required.

The Commission should afford interested parties an opportunity to submit timely comments on the pending applications in view of these Executive Branch recommendations.

A memorandum of law concerning Article XIV of the INTELSAT Agreement is enclosed.

Sincerely,

George P. Shultz
Secretary of State

Malcolm Baldrige
Secretary of Commerce

Enclosure

United States Department of State

The Legal Adviser

Washington, D.C. 20520

MEMORANDUM OF LAW

The Orion Satellite Corporation and International Satellite, Inc. Applications for International Satellite Communication Facilities

BACKGROUND AND QUESTION PRESENTED

The Orion Satellite Corporation (Orion) and International Satellite, Inc. have applied to the FCC for authority to provide privately owned international satellite communications facilities to customers on a commercial basis. Orion argues that its system, which would sell or lease transponders to major business users on both sides of the Atlantic, is subject to coordination with INTELSAT only for technical compatibility with the INTELSAT system. The essence of its argument is that it does not propose common carrier services and only such services are "public international telecommunications services" which require coordination with INTELSAT for avoidance of significant economic harm as well. Although International Satellite, Inc. (ISI) argues that its system will not cause significant economic harm to INTELSAT, it does not explicitly concede that its system is subject to coordination under Article XIV(d) of the INTELSAT Agreement.

These applications present the following threshhold legal question under the INTELSAT Agreement of 1971, TIAS 7532:

> Do the Orion and ISI proposals involve the use of non-INTELSAT space segment facilities for international "public telecommunications services" within the meaning of Article XIV(d), requiring coordination with INTELSAT for both technical compatibility and the avoidance of significant economic harm, or do they propose "specialized telecommunications services" under Article XIV(e) which require coordination for only technical compatibility?

SUMMARY

While the issue is not free from doubt, the sounder view appears to be that Orion and ISI would provide public international satellite telecommunications services within the

meaning of the INTELSAT Agreement. A non-profit satellite system to be used for in-house international telecommunications by the owner might not involve public services, but neither Orion nor ISI is proposing such a system. Nor would their proposals seem to fall within the intended scope of "specialized services", the other category of services requiring only technical coordination with INTELSAT. Thus the United States may authorize Orion and ISI consistently with its obligations under the INTELSAT agreement if they are coordinated under Article XIV(d) for technical compatibility and to avoid significant economic harm to INTELSAT.

A contrary reading would permit any INTELSAT party to authorize a commercial non-INTELSAT satellite system for international telecommunications services despite serious anticipated economic harm to INTELSAT, provided all transponders were dedicated to users by lease or sale. This would undermine the basic purpose of INTELSAT: to maintain a single global commercial telecommunications satellite system to provide worldwide expanded public telecommunications services.

ANALYSIS

1. Authorization of a space segment to provide public international telecommunications services requires technical and economic harm coordination with INTELSAT.

Under the definitive INTELSAT arrangements, the United States has an obligation, set out in the Agreement's preamble and made operative by Article XIV, to help maintain a single global commercial international telecommunications system as part of an improved global telecommunications network. The obligations extend to what is defined in the Agreement as the "space segment" of INTELSAT. This includes the satellites and related facilities and equipment which are required to support the operation of the satellites.

While available for other purposes, the INTELSAT Agreement contemplates use of the INTELSAT space segment essentially for international public telecommunications. It expressly permits parties to use non-INTELSAT space segment facilities to provide public domestic services [Article XIV(c)] or specialized services [Article XIV(e)] after coordination with INTELSAT solely for technical compatibility. The use of non-INTELSAT space segment for international public telecommunications services [Article XIV(d)] is contemplated after consulation

with INTELSAT to ensure technical compatibility and to determine that the services will not cause significant economic harm to the INTELSAT system. Article XIV(g) totally excepts non-INTELSAT space segment facilities used solely for national security purposes. The XIV(d) and (e) provisions are the crux of the issue.

The coordination requirements of Article XIV are a key element of the general obligation of INTELSAT members to help maintain INTELSAT as a single global telecommunications network. The INTELSAT Agreement negotiating history shows that Article XIV was a compromise between the desire of certain European countries, led by France, that the Agreement allow for possible "regional" satellite systems, and the desire of the Unites States that other international satellite systems be precluded. France, in fact, proposed that INTELSAT be only a federation of regional systems. Several definitions of what would constitute a regional system were put forward, but none was adopted in the final text. It appears that the negotiators felt that the economic harm test incorprated in Article XIV(d) for international public telecommunication services made a definition unnecessary.

2. "Public telecommunications services" are not limited to "common carrier services".

The INTELSAT Agreement, Article I(k), defines public telecommunications services as follows:

> "Public telecommunication services" means fixed or mobile public telecommunication services which can be provided by satellite and which are available for use by the public, such as telephony, telegraphy, telex, facsimile, data transmission, transmission of radio and television programs between approved earth stations having access to the INTELSAT space segment for further transmission to the public, and leased circuits for any of these purposes; but excluding those mobile services of a type not provided under the Interim Agreement and the Special Agreement prior to the opening for signature of this Agreement, which are provided through mobile stations operating directly to a satellite which is designed, in whole or in part, to provide services relating to the safety or flight control of aircraft or to aviation or maritime radio navigation.

The applicable rules of international law governing the interpretation of international agreements do not sustain the view that the term "public telecommunications services" means

only services analogous to those considered "common carrier" in United States telecommunications law. In interpreting an international agreement, the general rule is that the terms of the agreement will be given their ordinary meaning in the context of the entire agreement and in light of its object and purpose, unless it can be established that the parties intended a special meaning to attach. The rules call for taking into account as well, inter alia, any subsequent practice in the application of the treaty. Secondary sources of interpretation can be resorted to in order to confirm the resulting interpretation or to resolve ambiguities. These secondary sources include the agreement's preparatory work and the circumstances of its conclusion. The purpose of all the rules is to establish the agreed intent of the parties, as reflected in the text. (See the Vienna Convention on the Law of Treaties, Articles 31 and 32, which the United States accepts as a generally accurate statement of the applicable international law on the interpretation of international agreements.)

Applying these rules, we note first that, while it was certainly contemplated that access in the United States to the INTELSAT space segment would be made through common carriers, there is nothing in the text of the INTELSAT Agreement which links or limits the concept of "available to the public" in the definition of "public telecommunications services" to the concept of common carriage, which is essentially a United States domestic regulatory concept. Nor is there anything in the text which links or limits that concept to the analogous term "public correspondence", used in the ITU Radio Regulations, where it is defined as: "any telecommunication which the offices and stations must, by reasons of their being at the disposal of the public, accept for transmission." Radio Regulations, Chapter I, Article 1, Section 5.1.

The text of the INTELSAT definition appears to be largely self-contained and susceptible of a reasonable meaning in context without resorting to the special meaning given the term in the regulatory framework of one of the participants or in a different agreement which defines an analogous term for a different object and purpose. Article I(k) defines "public international telecommunications services" by reference to types of services, e.g., telephony and telegraphy, which were services to which the public had access at the time of the INTELSAT negotiations. It appears to use the phrase "available for use by the public" to make clear that new telecommunications services which satellites could provide would fall under the

INTELSAT mandate as they came into public use. This construction of the phrase "available for use by the public" appears to be in accord with INTELSAT's practice in interpreting the concept of public telecommunications services over the years.

The definition itself appears to contemplate expressly that such services will be considered "public" even when offered via the leasing of a circuit by INTELSAT through one of its members. There is no requirement that the lease be only to a common carrier rather than an entity or small group of entities for their own communications needs.

The strongest argument for the interpretation put forth by Orion is that the concept "public telecommunications" and the analagous term "public correspondence" were in use at the time of the INTELSAT negotiations in both the U.S. domestic telecommunications field and in the ITU Radio Regulations, a broad multilateral telecommunications instrument with which all the participants in the INTELSAT negotiations were familiar. In both those settings it denoted, inter alia, availability to the public at large, not just selected customers, a key element of common carriage. However, that fact does not appear to be sufficient to establish legally that the parties to the INTELSAT Agreement intended to so link and limit it, in light of a number of factors:

First, there are many different definitions of "public".

Second, within the telecommunications authorities and administrations of most of the participants in the INTELSAT negotiations, provision of circuits dedicated to one user's own communications are considered part of the public network, and wholly "private" system are not a feature.

Third, the practice of the parties in the application of the INTELSAT Agreement includes the authorization of circuits dedicated to direct use by an end user, not merely circuits for use by a carrier offering telecommunications services to the public at large.

Fourth, it has not been U.S. practice under the INTELSAT Agreement to equate "public" with "common carrier". The FCC has held entities purchasing transponders not to be common carriers, yet the services they provided have been coordinated with INTELSAT as domestic public telecommunications services under Article XIV(c).

Fifth, the concept of common carriage, as it existed in the United States at the time of the INTELSAT Agreement, is itself shifting as formerly regulated services are deregulated and new services come on stream in a deregulatory climate. For example, in the Computer II decision, the FCC decided to forebear from regulating computer processing type services which, nevertheless, are services offered to the public and are not "private" services.

Finally, the theory that "public international telecommunications services" under the INTELSAT Agreement do not include the provision of a space segment on a commercial basis to users who own or lease individual transponders on the satellite would allow any INTELSAT member to authorize the establishment of such a space segment even if it were to do significant economic harm to INTELSAT. This would appear to run counter to the object and purpose of the Agreement, the maintenance of a "single global commercial satellite telecommunications system," to provide the space segment required for expanded "international public telecommunications services of high quality and reliability to be available...to all areas of the world." [Preamble, Article III and Article XIV(a)].

The Orion application cites INTELSAT's non-discrimination provision as an indication that "public telecommunications service" under INTELSAT means common carrier service. However, the "non-discrimination" clause cited by Orion, which occurs in the Preamble to the INTELSAT Agreement, clearly refers to the requirement of the Agreement that services be available on a non-discriminatory basis to the nations, large and small, developed and developing, who are members of INTELSAT. This is consistent with the non-discrimination policy in the Communications Satellite Act. It does not refer to a requirement that INTELSAT be restricted to services made available to all members of the potential user public in participating states on a non-discriminatory basis.

3. Although a private non-commercial space segment might not require economic harm coordination with INTELSAT, the proposals are not for such service.

There is no indication that the development of purely private space telecommunications systems was considered by the negotiators of the INTELSAT Agreement or that such limited satellite systems would, in any event, be likely to cause

signifcant economic harm. Nevertheless, from the INTELSAT Agreement's Article 1(k) reference to leased circuits and the overall object and purpose of INTELSAT as a single "commercial" telecommunication system, one might logically infer that the INTELSAT Agreement does not require economic harm coordination for a privately-owned satellite system in which all the capacity is dedicated to the communications needs of its owner. However, the proposals do not involve a privately-owned satellite for exclusive owner use.

While not necessarily dispositive of the INTELSAT interpretation issue, neither Orion nor ISI proposes a genuinely private facility even in U.S. regulatory terms. The FCC's regulations on private radio systems are found in 47 CFR Part 90. The services most analogous to those proposed to be provided by Orion and ISI are found in Subpart D, Industrial Radio Services. These are services which have been established by companies to satisfy their own communications needs. For example, a pipeline transmission company has been permitted to establish a private communications system to serve itself along its right of way. The Commission's regulations (Subpart M) permit companies operating these private systems to provide services to others, or permit any person to provide private services to any person eligible for licensing under Subpart D. However, the Subpart M regulations permit the arrangements only on a "not-for-profit, cost-shared basis." Both Orion and ISI intend to sell or lease satellite transponders, and to maintain satellite control centers and furnish telemetry, tracking, and control functions for a profit. Neither Orion nor ISI will therefore be a private system as those systems are defined in the FCC regulations.

4. <u>The proposals are not for the type of services which the "specialized services" category, requiring no economic harm coordination, was intended to include.</u>

The INTELSAT Agreement, Article I(l), defines "specialized telecommunications services" as:

> telecommunications services which can be provided by satellite, other than those defined in paragraph (k) of this Article ["public telecommunications services"], including, but not limited to, radio navigation services, broadcasting satellite services for reception by the general public, space research services, meteorological services, and earth resource services.

While the category of "specialized services" might be a catch-all to assure that any service which is not a public service would, nevertheless, be technically coordinated with INTELSAT under Article XIV(e), the drafters had certain kinds of exceptions in mind for its principal content. The negotiating history of the INTELSAT Agreement gives clear guidance that "specialized" as opposed to "public" services were intended to comprise principally those services, excluding generalized telecommunications, under the direct control of governments as a matter of special national policy (such as direct broadcasting) or services provided by governmental or inter-governmental entities incident to their functions. The negotiators intended to permit members and intergovernmental organizations full freedom to provide such services outside of and without regard to the economic well-being of INTELSAT. Numerous references in the negotiating history indicate that, before INTELSAT undertakes specialized services, it should consult with the U.N. specialized agencies already involved in providing such services, such as the International Civil Aviation Organization (ICAO) or the International Maritime Consultative Organization (IMCO).

The data and TV services that Orion and ISI propose to offer are not specialized services within the sense of that term as used in the INTELSAT Agreement.

CONCLUSION

While the issue is not free from doubt, the proposals would appear to contemplate providing public international telecommunications and require coordination with INTELSAT both to avoid economic harm and for technical compatibility.

Davis R. Robinson

L/EB:LH:11/21/83

UNITED STATES DEPARTMENT OF JUSTICE
REGISTRATION UNIT
CRIMINAL DIVISION
WASHINGTON, D. C. 20530

NOTICE

Please answer the following questions and return this sheet in triplicate with your supplemental statement:

1. Is your answer to Item 16 of Section V (Political Propaganda - page 7 of Form OBD-64 - Supplemental Statement):

Yes x or No _____

(If your answer to question 1 is "yes" do not answer question 2 of this form.)

2. Do you disseminate any material in connection with your registration:

Yes _____ or No _____

(If your answer to question 2 is "yes" please forward for our review copies of all such material including: films, film catalogs, posters, brochures, press releases, etc. which you have disseminated during the past six months.)

Akin, Gump, Strauss, Hauer & Feld
By: Daniel L. Spiegel, Power of Attorney
Attorney
Signature

7-24-85
Date

Akin, Gump, Strauss, Hauer & Feld
By: Daniel L. Spiegel, Power of Attorney
Please type or print name of signatory on the line above

Attorney
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