

SUBCHAPTER VI—COMMUNICATIONS
COMPETITION AND PRIVATIZATION

PART A—ACTIONS TO ENSURE PRO-COMPETITIVE
PRIVATIZATION

**§ 761. Federal Communications Commission li-
censing**

(a) Licensing for separated entities

(1) Competition test

The Commission may not issue a license or construction permit to any separated entity, or renew or permit the assignment or use of any such license or permit, or authorize the use by any entity subject to United States jurisdiction of any space segment owned, leased, or operated by any separated entity, unless the Commission determines that such issuance, renewal, assignment, or use will not harm competition in the telecommunications market of the United States. If the Commission does not make such a determination, it shall deny or revoke authority to use space segment owned, leased, or operated by the separated entity to provide services to, from, or within the United States.

(2) Criteria for competition test

In making the determination required by paragraph (1), the Commission shall use the licensing criteria in sections 763 and 763b¹ of this title, and shall not make such a determination unless the Commission determines that the privatization of any separated entity is consistent with such criteria.

**(b) Licensing for INTELSAT, Inmarsat, and suc-
cessor entities**

(1) Competition test

(A) In general

In considering the application of INTELSAT, Inmarsat, or their successor entities for a license or construction permit, or for the renewal or assignment or use of any such license or permit, or in considering the request of any entity subject to United States jurisdiction for authorization to use any space segment owned, leased, or operated by INTELSAT, Inmarsat, or their successor entities, to provide non-core services to, from, or within the United States, the Commission shall determine whether—

(i) after April 1, 2001, in the case of INTELSAT and its successor entities, INTELSAT and any successor entities have been privatized in a manner that will harm competition in the telecommunications markets of the United States; or

(ii) after April 1, 2000, in the case of Inmarsat and its successor entities, Inmarsat and any successor entities have been privatized in a manner that will harm competition in the telecommunications markets of the United States.

(B) Consequences of determination

If the Commission determines that such competition will be harmed or that grant of

such application or request for authority is not otherwise in the public interest, the Commission shall limit through conditions or deny such application or request, and limit or revoke previous authorizations to provide non-core services to, from, or within the United States. After due notice and opportunity for comment, the Commission shall apply the same limitations, restrictions, and conditions to all entities subject to United States jurisdiction using space segment owned, leased, or operated by INTELSAT, Inmarsat, or their successor entities.

(C) National security, law enforcement, and public safety

The Commission shall not impose any limitation, condition, or restriction under subparagraph (B) in a manner that will, or is reasonably likely to, result in limitation, denial, or revocation of authority for non-core services that are used by and required for a national security agency or law enforcement department or agency of the United States, or used by and required for, and otherwise in the public interest, any other Department or Agency of the United States to protect the health and safety of the public. Such services may be obtained by the United States directly from INTELSAT, Inmarsat, or a successor entity, or indirectly through COMSAT, or authorized carriers or distributors of the successor entity.

(D) Rule of construction

Nothing in this subsection is intended to preclude the Commission from acting upon applications of INTELSAT, Inmarsat, or their successor entities prior to the latest date set out in section 763(5)(A) of this title, including such actions as may be necessary for the United States to become the licensing jurisdiction for INTELSAT, but the Commission shall condition a grant of authority pursuant to this subsection upon compliance with sections 763 and 763a of this title.

(2) Criteria for competition test

In making the determination required by paragraph (1), the Commission shall use the licensing criteria in sections 763, 763a, and 763c¹ of this title, and shall determine that competition in the telecommunications markets of the United States will be harmed unless the Commission finds that the privatization referred to in paragraph (1) is consistent with such criteria.

(3) Clarification: competitive safeguards

In making its licensing decisions under this subsection, the Commission shall consider whether users of non-core services provided by INTELSAT or Inmarsat or successor or separated entities are able to obtain non-core services from providers offering services other than through INTELSAT or Inmarsat or successor or separated entities, at competitive rates, terms, or conditions. Such consideration shall also include whether such licensing decisions would require users to replace equip-

¹ See References in Text note below.

ment at substantial costs prior to the termination of its design life. In making its licensing decisions, the Commission shall also consider whether competitive alternatives in individual markets do not exist because they have been foreclosed due to anticompetitive actions undertaken by or resulting from the INTELSAT or Inmarsat systems. Such licensing decisions shall be made in a manner which facilitates achieving the purposes and goals in this subchapter and shall be subject to notice and comment.

(c) Additional considerations in determinations

In making its determinations and licensing decisions under subsections (a) and (b), the Commission shall construe such subsections in a manner consistent with the United States obligations and commitments for satellite services under the Fourth Protocol to the General Agreement on Trade in Services.

(d) Independent facilities competition

Nothing in this section shall be construed as precluding COMSAT from investing in or owning satellites or other facilities independent from INTELSAT and Inmarsat, and successor or separated entities, or from providing services through reselling capacity over the facilities of satellite systems independent from INTELSAT and Inmarsat, and successor or separated entities. This subsection shall not be construed as restricting the types of contracts which can be executed or services which may be provided by COMSAT over the independent satellites or facilities described in this subsection.

(Pub. L. 87-624, title VI, §601, as added Pub. L. 106-180, §3, Mar. 17, 2000, 114 Stat. 48.)

REFERENCES IN TEXT

Section 763b of this title, referred to in subsec. (a)(2), was repealed by Pub. L. 109-34, §2, July 12, 2005, 119 Stat. 377.

Section 763c of this title, referred to in subsec. (b)(2), was amended generally by Pub. L. 109-34, §3, July 12, 2005, 119 Stat. 377, and no longer relates to specific criteria for Inmarsat privatization.

PURPOSE

Pub. L. 106-180, §2, Mar. 17, 2000, 114 Stat. 48, provided that: "It is the purpose of this Act [see Short Title of 2000 Amendment note set out under section 701 of this title] to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat."

§ 761a. Incentives; limitation on expansion pending privatization

(a) Limitation

Until INTELSAT, Inmarsat, and their successor or separate entities are privatized in accordance with the requirements of this subchapter, INTELSAT, Inmarsat, and their successor or separate entities, respectively, shall not be permitted to provide additional services. The Commission shall take all necessary measures to implement this requirement, including denial by the Commission of licensing for such services.

(b) Orbital location incentives

Until such privatization is achieved, the United States shall oppose and decline to facili-

tate applications by such entities for new orbital locations to provide such services.

(Pub. L. 87-624, title VI, §602, as added Pub. L. 106-180, §3, Mar. 17, 2000, 114 Stat. 50.)

PART B—FEDERAL COMMUNICATIONS COMMISSION
LICENSING CRITERIA: PRIVATIZATION CRITERIA

§ 763. General criteria to ensure a pro-competitive privatization of INTELSAT and Inmarsat

The President and the Commission shall secure a pro-competitive privatization of INTELSAT and Inmarsat that meets the criteria set forth in this section and sections 763a through 763c¹ of this title. In securing such privatizations, the following criteria shall be applied as licensing criteria for purposes of part A:

(1) Dates for privatization

Privatization shall be obtained in accordance with the criteria of this subchapter of—

(A) INTELSAT as soon as practicable, but no later than April 1, 2001; and

(B) Inmarsat as soon as practicable, but no later than July 1, 2000.

(2) Independence

The privatized successor entities and separated entities of INTELSAT and Inmarsat shall operate as independent commercial entities, and have a pro-competitive ownership structure. The successor entities and separated entities of INTELSAT and Inmarsat shall conduct an initial public offering in accordance with paragraph (5) to achieve such independence. Such offering shall substantially dilute the aggregate ownership of such entities by such signatories or former signatories. In determining whether a public offering attains such substantial dilution, the Commission shall take into account the purposes and intent, privatization criteria, and other provisions of this subchapter, as well as market conditions. No intergovernmental organization, including INTELSAT or Inmarsat, shall have—

(A) an ownership interest in INTELSAT or the successor or separated entities of INTELSAT; or

(B) more than minimal ownership interest in Inmarsat or the successor or separated entities of Inmarsat.

(3) Termination of privileges and immunities

The preferential treatment of INTELSAT and Inmarsat shall not be extended to any successor entity or separated entity of INTELSAT or Inmarsat. Such preferential treatment includes—

(A) privileged or immune treatment by national governments;

(B) privileges or immunities or other competitive advantages of the type accorded INTELSAT and Inmarsat and their signatories through the terms and operation of the INTELSAT Agreement and the associated Headquarters Agreement and the Inmarsat Convention; and

(C) preferential access to orbital locations.

¹ See References in Text note below.