

(3) exercise his authority in a manner which seeks to obtain coordinated and efficient use of the electromagnetic spectrum and orbital space, and to ensure the technical compatibility of the space segment with existing communications facilities in the United States and in foreign countries; and  
 (4) omitted.

(b) to (d) Omitted.

(Pub. L. 87-624, title V, §504, as added Pub. L. 95-564, Nov. 1, 1978, 92 Stat. 2394.)

CODIFICATION

Subsecs. (a)(2), (4) and (c) of this section ceased to be effective Mar. 17, 2000, pursuant to section 765d(1) of this title. Subsec. (a)(2), (4) directed the Secretary of Commerce to ensure availability and utilization of the maritime satellite telecommunications services provided by INMARSAT for general governmental purposes and to determine the needs of users of the maritime satellite telecommunications system and to communicate that information to INMARSAT. Subsec. (c) assigned functions to the Commission.

Subsecs. (b) and (d) of this section ceased to be effective June 14, 2005, pursuant to section 765d(3) of this title. Subsec. (b) directed the President to supervise and issue instructions to the communications satellite corporation regarding activities with foreign governments, international entities, and INMARSAT. Subsec. (d) authorized the Federal Communications Commission to issue instructions to the corporation with respect to regulatory matters within the Commission's jurisdiction.

**§§ 754 to 756. Repealed. Pub. L. 103-414, title III, § 304(b)(5), Oct. 25, 1994, 108 Stat. 4298**

Section 754, Pub. L. 87-624, title V, §505, as added Pub. L. 95-564, Nov. 1, 1978, 92 Stat. 2395, related to study of structure and activities of corporation.

Section 755, Pub. L. 87-624, title V, §506, as added Pub. L. 95-564, Nov. 1, 1978, 92 Stat. 2395, related to study of public maritime coast station services.

Section 756, Pub. L. 87-624, title V, §507, as added Pub. L. 95-564, Nov. 1, 1978, 92 Stat. 2396, related to study of radio navigation systems.

**§ 757. Definitions**

For purposes of this subchapter—

(1) the term "person" includes an individual, partnership, association, joint stock company, trust, or corporation;

(2) the term "satellite earth terminal station" means a complex of communications equipment located on land, operationally interconnected with one or more terrestrial communications systems, and capable of transmitting telecommunications to, or receiving telecommunications from, the space segment;

(3) the term "space segment" means any satellite (or capacity on a satellite) maintained under the authority of INMARSAT, for the purpose of providing international maritime telecommunications services, and the tracking, telemetry, command, control, monitoring, and related facilities and equipment required to support the operation of such satellite; and

(4) the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(Pub. L. 87-624, title V, §505, formerly §508, as added Pub. L. 95-564, Nov. 1, 1978, 92 Stat. 2396; renumbered §505, Pub. L. 103-414, title III, §304(b)(6), Oct. 25, 1994, 108 Stat. 4298.)

PRIOR PROVISIONS

A prior section 505 of Pub. L. 87-624 was classified to section 754 of this title prior to repeal by Pub. L. 103-414, §304(b)(5).

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER VI—COMMUNICATIONS COMPETITION AND PRIVATIZATION

PART A—ACTIONS TO ENSURE PRO-COMPETITIVE PRIVATIZATION

**§ 761. Federal Communications Commission licensing**

**(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 763b<sup>1</sup> 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 successor 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,

<sup>1</sup> See References in Text note below.

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 763c<sup>1</sup> 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 equipment 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) of this section, 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 facilitate 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 763c<sup>1</sup> of this title. In securing such privatizations, the following criteria shall be applied as licensing criteria for purposes of part A of this subchapter:

**(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.

<sup>1</sup> See References in Text note below.

**(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.

Access to new, or renewal of access to, orbital locations shall be subject to the legal or regulatory processes of a national government that applies due diligence requirements intended to prevent the warehousing of orbital locations.

**(4) Prevention of expansion during transition**

During the transition period prior to privatization under this subchapter, INTELSAT and Inmarsat shall be precluded from expanding into additional services.

**(5) Conversion to stock corporations**

Any successor entity or separated entity created out of INTELSAT or Inmarsat shall be a national corporation or similar accepted commercial structure, subject to the laws of the nation in which incorporated, as follows:

- (A) An initial public offering of securities of any successor entity or separated entity—
  - (i) shall be conducted, for the successor entities of INTELSAT, on or about June 30, 2005, except that the Commission may extend this deadline in consideration of market conditions and relevant business factors relating to the timing of an initial public offering, but such extensions shall not permit such offering to be conducted later than December 31, 2005; and
  - (ii) shall be conducted, for the successor entities of Inmarsat, not later than June 30, 2005, except that the Commission may extend this deadline to not later than December 31, 2004.

(B) The shares of any successor entities and separated entities shall be listed for trading on one or more major stock exchanges with transparent and effective securities regulation.

(C) A majority of the members of the board of directors of any successor entity or separated entity shall not be directors, employees, officers, or managers or otherwise serve as representatives of any signatory or former signatory. No member of the board of directors of any successor or separated entity shall be a director, employee, officer or manager of any intergovernmental organization remaining after the privatization.

- (D) Any successor entity or separated entity shall—
  - (i) have a board of directors with a fiduciary obligation;