

TITLE 47 - TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS
CHAPTER 6 - COMMUNICATIONS SATELLITE SYSTEM
SUBCHAPTER VI - COMMUNICATIONS COMPETITION AND PRIVATIZATION
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 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.

(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:

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

- (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;
 - (ii) have no officers or managers who are officers or managers of any signatories or former signatories; and
 - (iii) have no directors, officers, or managers who hold such positions in any intergovernmental organization.
- (E) Any transactions or other relationships between or among any successor entity, separated entity, INTELSAT, or Inmarsat shall be conducted on an arm's length basis.
- (F) Notwithstanding subparagraphs (A) and (B), a successor entity may be deemed a national corporation and may forgo an initial public offering and public securities listing and still achieve the purposes of this section if—
- (i) the successor entity certifies to the Commission that—
 - (I) the successor entity has achieved substantial dilution of the aggregate amount of signatory or former signatory financial interest in such entity;
 - (II) any signatories and former signatories that retain a financial interest in such successor entity do not possess, together or individually, effective control of such successor entity; and
 - (III) no intergovernmental organization has any ownership interest in a successor entity of INTELSAT or more than a minimal ownership interest in a successor entity of Inmarsat;
 - (ii) the successor entity provides such financial and other information to the Commission as the Commission may require to verify such certification; and
 - (iii) the Commission determines, after notice and comment, that the successor entity is in compliance with such certification.
- (G) For purposes of subparagraph (F), the term “substantial dilution” means that a majority of the financial interests in the successor entity is no longer held or controlled, directly or indirectly, by signatories or former signatories.

(6) Regulatory treatment

Any successor entity or separated entity created after March 17, 2000, shall apply through the appropriate national licensing authorities for international frequency assignments and associated orbital registrations for all satellites.

(7) Competition policies in domiciliary country

Any successor entity or separated entity shall be subject to the jurisdiction of a nation or nations that—

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

- (A) have effective laws and regulations that secure competition in telecommunications services;
- (B) are signatories of the World Trade Organization Basic Telecommunications Services Agreement; and
- (C) have a schedule of commitments in such Agreement that includes non-discriminatory market access to their satellite markets.

Footnotes

¹ See References in Text note below.

(Pub. L. 87–624, title VI, § 621, as added Pub. L. 106–180, § 3, Mar. 17, 2000, 114 Stat. 51; amended Pub. L. 107–77, title VI, § 628, Nov. 28, 2001, 115 Stat. 804; Pub. L. 107–233, § 1, Oct. 1, 2002, 116 Stat. 1480; Pub. L. 108–39, § 2, June 30, 2003, 117 Stat. 835; Pub. L. 108–228, § 1, May 18, 2004, 118 Stat. 644; Pub. L. 108–371, § 1, Oct. 25, 2004, 118 Stat. 1752; Pub. L. 109–34, § 1, July 12, 2005, 119 Stat. 377.)

References in Text

Section 763b of this title, referred to in text, was repealed by Pub. L. 109–34, § 2, July 12, 2005, 119 Stat. 377.

Section 763c of this title, referred to in text, 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.

Amendments

2005—Par. (5)(D)(ii). Pub. L. 109–34, § 1(1), (2), struck out subcl. (I) designation after “managers who” and substituted “signatories; and” for “signatories, or (II) have any direct financial interest in or financial relationship to any signatories or former signatories, except that such interest may be managed through a blind trust or similar mechanism;”.

Par. (5)(D)(iii). Pub. L. 109–34, § 1(3), substituted “organization.” for “organization; and”.

Par. (5)(D)(iv). Pub. L. 109–34, § 1(4), struck out cl. (iv) which read as follows: “in the case of a separated entity, have no officers or directors, who (I) are officers or managers of any intergovernmental organization, or (II) have any direct financial interest in or financial relationship to any international organization, except that such interest may be managed through a blind trust or similar mechanism.”

2004—Par. (5)(A)(i). Pub. L. 108–228 substituted “June 30, 2005” for “December 31, 2003” and “December 31, 2005” for “June 30, 2004”.

Par. (5)(A)(ii). Pub. L. 108–371, § 1(1), substituted “June 30, 2005” for “June 30, 2004”.

Par. (5)(F), (G). Pub. L. 108–371, § 1(2), added subpars. (F) and (G).

2003—Par. (5)(A)(ii). Pub. L. 108–39 substituted “June 30, 2004” for “December 31, 2002” and “December 31, 2004” for “June 30, 2003”.

2002—Par. (5)(A)(i). Pub. L. 107–233 substituted “December 31, 2003,” for “October 1, 2001,” and “June 30, 2004;” for “December 31, 2002;”.

2001—Par. (5)(A)(ii). Pub. L. 107–77 substituted “not later than December 31, 2002, except that the Commission may extend this deadline to not later than June 30, 2003” for “on or about October 1, 2000, 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 to no later than December 31, 2001”.

Immigration Status of Alien Employees of INTELSAT after Privatization

Title III of Pub. L. 106–396, Oct. 30, 2000, 114 Stat. 1645, provided for maintenance of nonimmigrant and special immigrant status of alien employees of INTELSAT and their immediate family members after privatization, and for treatment of employment for purposes of obtaining immigrant status as a multinational executive or manager.