

paragraph (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 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), 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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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