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TELECOMMUNICATIONS LAW UPDATES

INMARSAT PRIVATIZATION

The mobile satellite service landscape is about to be transformed. As start-up ventures begin to reach the market with new worldwide service offerings, the International Mobile Satellite Organization ("Inmarsat") has made a long-awaited commitment to privatize its operations completely. On September 24, 1998, the Inmarsat Assembly of Parties adopted a "rapid implementation plan," under which the organization will restructure itself and privatize its commercial operations by April 1999. This landmark development culminates years of work by the United States to encourage the privatization of Inmarsat, making possible a fully competitive global marketplace for mobile satellite services. Achievement of a further U.S. objective — privatization of INTELSAT, now under consideration — would complete a transformation of the satellite service industry from government monopoly to private competition.

When the satellite industry was born in the 1960s, the risks associated with satellite ventures were generally deemed too high to attract significant private investment. Consequently, Inmarsat (like INTELSAT) was formed as a treaty-based intergovernmental organization ("IGO"), in order to harness cooperation among governments to bring the benefits of satellite technology to the world community. Developments in the ensuing decades have changed the paradigm by showing that competition in satellite services is feasible. In the United States, the Federal Communications Commission has responded by establishing a policy that favors competition in both domestic and international satellite services. See, e.g., *Domestic and International Satellite Coordination Order*, 11 FCC Rcd 2429 (1996). To further that policy, the United States has worked since at least 1993 within Inmarsat to persuade the other members that the organization should be

privatized in a manner that will encourage competition among multiple providers of mobile satellite services, while continuing to ensure that vital Inmarsat functions, including the provision of Global Maritime Distress and Safety System ("GMDSS") services, will be preserved. The Assembly's September decision is a clear triumph for that policy.

The restructuring plan arises from a complex and protracted negotiating process. While a majority of Inmarsat's 84 member countries had concluded by mid-1996 that there was an urgent need to restructure the organization, a broad consensus failed to emerge over the appropriate destination. Several major investors in Inmarsat, including COMSAT, were concerned about rapidly increasing competition from other satellite service providers and concluded that the cumbersome, treaty-based structure of an IGO made it infeasible for Inmarsat to compete with entrepreneurial, private entities. Moreover, the United States and a few other member governments sought to ensure a level playing field for the new, commercial satellite service providers by removing any perceived distortions in the market caused by the presence of an IGO. Consequently, these parties pushed for the complete privatization of Inmarsat's commercial operations. On the other hand, a host of Inmarsat member governments, particularly developing nations, felt strongly about the need to ensure that Inmarsat would continue to provide GMDSS services, a set of core public service obligations imposed by treaty. These countervailing pressures and the need to build consensus among the myriad interested parties made agreement on an acceptable restructuring plan a formidable task. Nevertheless, the restructuring plan appears to accommodate these conflicting concerns.

When the restructuring amendments to the current Inmarsat Convention are implemented (scheduled for April 1999), Inmarsat's new structure will comprise two entities: a public, for-profit corporation registered under English law that will operate all of the satellites; and a small, residual IGO whose job it will be to ensure that the new company will continue to provide public-interest services such as GMDSS, through an agreement with the new company. The initial shareholders of the corporation will be the government-designated Signatories of the current organization, including COMSAT, with natural dilution to occur over time through addition of strategic investors and an initial public offering to occur no later than April 2001. The new, for-profit entity will be stripped of Inmarsat's current treaty-based privileges and immunities. A "rapid implementation plan" will enable member governments to participate immediately in the restructured Inmarsat. Under the plan, all of Inmarsat's commercial operations will be transferred to the new corporation immediately on the April 1999 transition date, without waiting for the formal entry into force of the restructuring amendments through the national ratification procedures of the many member governments — a process that could take years.

Despite this historic progress toward privatization, it is not yet clear whether the United States will be on hand to celebrate the success of its efforts. In the U.S. Congress, Representative Thomas Bliley (R-Va.), Chairman of the House Commerce Committee, has taken the view that new implementing

legislation to replace the current Inmarsat Act will be required before the United States may legally participate in the rapid implementation plan. To that end, Chairman Bliley introduced legislation in June 1997 that, if passed, would have unilaterally directed the privatization of Inmarsat by prescribing detailed structural and operational criteria for any privatized entity; it would have closed the United States market to services offered by that entity if the criteria were not met within a specified timetable. The controversial bill (H.R. 1872), however, failed to pass the Congress. Unless the Congress enacts new legislation this year, the U.S. Government may be unable to participate in the residual IGO; but the restructuring will proceed nonetheless.

Absence of the U.S. Government from the party would be ironic. Adoption of the rapid implementation plan by the Inmarsat Assembly presents a considerable triumph for longstanding U.S. policy objectives. The conclusion of Inmarsat's privatization process should ensure a more competitive marketplace for international satellite services to the benefit of U.S. commercial service providers and telecommunications users throughout the world. At the same time, privatization may be the only way for Inmarsat to stay viable in an increasingly competitive market — by bringing greater operational flexibility and improved access to private capital. As Betty Alewine, CEO of COMSAT, said in recent testimony before Congress, Inmarsat "must change or go the route of the rotary telephone."

This letter is for general informational purposes only and does not represent our legal advice as to any particular set of facts, nor does this letter represent any undertaking to keep recipients advised as to all relevant legal developments. For further information on these or other telecommunications matters, please contact one of the lawyers listed below:

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