



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

March 18, 1970

~~C O N F I D E N T I A L~~

Dr. Clay T. Whitehead
Staff Assistant
Executive Office Building
Room 110
17th & Pennsylvania Avenue, N.W.
Washington, D. C. 20500

Re: Domestic Satellites

Dear Tom:

I have several basic difficulties with the proposed order you sent over.

(1) It gives no clear picture of which principles in the end are going to be controlling on the practical issues. Such vagueness will tend to discourage applications.

(2) It seems to rest on a number of implicit premises which may be open to question: (a) there is a recurring assumption of spectrum scarcity (see para. 7, 11, 30, 35); (b) the focus on "new and complementary services" (para. 10) and "economic incompatibility" (para. 23) suggest that competition of assisting carriers may not be allowed; (c) there is the implicit assumption that the Commission will make the determination of single purpose vs. multi purpose systems (para. 19); and (d) there are various random non-economic goals floating around (such as "the peoples' dividends" in para. 34(b)).

(3) The application procedure seems complex. A lot of the data would suggest a far more open-ended and subjective decision making process by the Commission than that which we advocated.

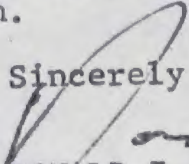
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E.O. 13526, Sec. 3.3h

By mw, NARA, Date 11/29/12

(4) There is some conflict between particular operational premises; thus there is a desire (para. 11) that earth stations be conveniently located and yet the application procedure suggests that applicants should "endeavor to find suitable locations for earth stations that present the least amount of potential interference problems" (para. 35). This suggests remote locations.

I am still marking up the order to try to cut down the open-ended application and inquiry process and thereby achieve some sort of market allocation.

Sincerely yours,


DONALD I. BAKER
Deputy Director of Policy Planning
Antitrust Division

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF TELECOMMUNICATIONS MANAGEMENT
WASHINGTON, D.C. 20504

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E.O. 13526, Sec. 3.3h

By mw, NARA, Date 11/29/72

March 11, 1969

Memorandum for the Record:

Subject: INTELSAT Conference

The purpose of this memorandum is to depict the general progress and trend of the INTELSAT Conference (February 24 - March 21, 1969) and to discuss some of the alternatives available to the United States Government in bringing the Conference to a meaningful conclusion.

The first week of the Conference was required to organize into four committees covering: (a) Structure and Functions (b) Legal (c) Financial and (d) Other Operational Arrangements. Extensive discussion and debate ensued during the second week. The United States tabled a proposed Intergovernmental Agreement and a companion Operating Agreement at the beginning of the second week (Conference document #10). A daily summary of Conference activities is provided the Secretary of State. In addition, a Summary Record of each Committee meeting is furnished to all delegates to the Conference.

The basic agenda of the Conference follows the general format of the ICSC report on Definitive Arrangements (Conference document #6 -- ICSC 36-58). The principal subjects treated in the Conference and the degree of support of the United States position are summarized in the attached enclosure 1.

The key policy issues on which there is considerable opposition to the United States position include the following:

- Nature of the INTELSAT Consortium - The United States position that the INTELSAT organization should continue as an unincorporated joint venture commercial business undertaking without legal personality is strongly opposed by other members who want to create an international intergovernmental organization with legal personality.

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- Internationalization of the INTELSAT Organization, Particularly the Manager - The United States position that the INTELSAT structure should remain essentially like that under the Interim Agreements is opposed by the Europeans who desire to establish International Secretariats and an International Management body.
- Role of the Assembly - The United States position to assign the Assembly a minimum role whereas many of the other members of INTELSAT favor an Assembly with significant functions serving as the supreme body. Also, the U. S. view that the Assembly should be represented by either a Government or a designated entity (signatory) is not supported by many other members.
- Role of COMSAT as Manager - The United States position that the Communications Satellite Corporation should be designated as Manager for INTELSAT in the Intergovernmental Agreement is opposed by many, particularly the European nations.
- Impact of Regional Systems on the Single Global System - The United States position that separate Regional Systems should not be established by INTELSAT or outside INTELSAT is strongly opposed by many of the developed nations.

Continued strong opposition by other members of INTELSAT could seriously jeopardize the reaching of agreement on Definitive Arrangements acceptable to the United States. Unfortunately, the logic and reasonableness of the United States position has not been fully understood and accepted by the other members. Although Ambassador Marks presented an overview of the United States contribution during his opening session talk, no subsequent comprehensive treatment of the "facts" concerning the truly significant United States contributions by NASA, Industry and COMSAT has been placed in the conference record. It is pertinent to note that the ICSC report did not contain information about the substantial role played by NASA in providing launch services for INTELSAT satellites. Furthermore, the United States has not supported its proposed Intergovernmental and Operating Agreement submission by fully explaining in detail the rationale for the nature, structure and functions of the INTELSAT organization, particularly the compelling arguments for keeping the Consortium form.

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Accordingly, the United States delegation has a real "sales" job to undertake in order that the other members are informed fully about the United States proposal.

A review of the above list of key policy issues indicates that each fit the category of a "vital" issue to the United States. Substantial study and analysis made by the United States Government and COMSAT have concluded that these "vital" issues are crucial to the continued success of the INTELSAT Consortium, particularly if the objectives established in the Preamble of the United States position (conference document #10) are to be met.

The acceptance of the majority view on any of the five "vital" issues listed above would create institutional arrangements that would be contrary, in the long-term, to United States interests and would be inconsistent with United States policy reflected in the Communications Satellite Act of 1962 and the President's message to the Congress of August 14, 1967. Accordingly, it is important that the United States Government, as a matter of urgent priority, formulate an appropriate positive strategy for concluding this Conference. Such an effort should likewise include an evaluation of practical alternatives for obtaining agreement with the INTELSAT partners and the preparation of guidelines for future United States participation in the INTELSAT Consortium.

Background on INTELSAT Agreements

The Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System and the related Special Agreement, both of which entered into force on August 20, 1964 are effective until entry into force of the Definitive Arrangements (Article XV). The INTELSAT Conference has as an objective pursuant to Article IX:

(c)... The Parties to this Agreement shall seek to ensure that the definitive arrangements will be established at the earliest practicable date, with a view to their entry into force by 1st January, 1970.

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The Agreement in Article IX also established basic criteria for the Definitive Arrangements as follows:

- (b) Regardless of the form of the definitive arrangements,
 - (i) their aims shall be consonant with the principles set forth in the Preamble to this Agreement;
 - (ii) they shall, like this Agreement, be open to all States members of the International Telecommunication Union or their designated entities;
 - (iii) they shall safeguard the investment made by signatories to the Special Agreement; and
 - (iv) they shall be such that all parties to the definitive arrangements may have an opportunity of contributing to the determination of general policy.

Also, the Conference must consider among other things: Whether the interim arrangements should be continued on a permanent basis or whether a permanent international organization with a General Conference and an international administrative and technical staff should be established.

With this general background for the present INTELSAT Interim Arrangements, an examination of potential alternative approaches for concluding the conference and for the future INTELSAT arrangements can begin.

Alternative Approaches -

In light of the strong positions taken by other INTELSAT members in the Conference to date, it is apparent that the United States Government will be faced with fundamental policy decisions as to what realistic alternative approaches would be acceptable to our INTELSAT partners. In searching for feasible alternatives, the U. S. Government needs to examine realistic fall-back positions which progressively move from the ideal full Definitive Arrangements position taken by the United States in Conference Document # 10.

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One politically attractive fall-back position could be based on the idea that, since our vital interests would be damaged by an undesirable and risky Definitive Arrangements, the U. S. Government would propose a new multilateral interim executive agreement to replace the August 20, 1964 Agreement. This alternative would contemplate "Transitional Arrangements" that would provide a basis for evolving toward Definitive Arrangements at some later date. Such an approach would have the further advantage of being able to allow enlightened institutional innovations when actual experience has been gained in the operation of the advanced series INTELSAT IV satellites. In fact, there are compelling arguments for avoiding premature Definitive Arrangements since INTELSAT has not either reached the full deployment of the Global System in the space segment sense, nor has the terrestrial plant been optimized in the sense of the advanced multiple access features which will become available by deployment of the INTELSAT IV satellite.

Various other fall-back positions can be postulated based upon extending the Interim Arrangements for a specified period of time and incorporating those amendments on which the conference members can agree.

Lastly, the other members of INTELSAT should appreciate the fact that United States initiative and enlightened policy enabled the multilateral approach to telecommunications to be realized in the INTELSAT Consortium and that there is not something irrevocable about the United States participation in the Consortium, particularly on terms opposed to "vital" U. S. interests. Accordingly, an alternative, although certainly undesirable politically, nevertheless albeit an option available to the United States, is the buying-out of those partners who do not desire to remain in the Consortium under terms acceptable to the United States and, if necessary, termination of the Interim Arrangements.

The following list of alternative approaches appear to be the options available to the United States Government:

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<u>Alternative</u>	<u>Description</u>	<u>Approach</u>
I	Adopt "Definitive Arrangements"	(1) Aggressive Effort to Obtain Agreement on "Vital" Issues During 1969. (2) Implement Agreements 1 Jan 1970.
II	Adopt "Transitional Arrangements" to Replace Interim Arrangements	(1) If Alternative I Fails. (2) Obtain Agreement on "Vital" Issues for Interim Period (Say 1975). (3) Schedule Definitive Arrangements Conference (Say 1974). (4) Implement Transition to Definitive Arrangements (During Period 1975 to 1980).
III	Amend "Interim Arrangements"	(1) If Alternative I and II Fails. (2) Obtain Agreement on Selected Changes to Modernize the Interim Arrangements. (3) Extend Period of Interim Arrangements Until (Say 1975). (4) Set new Objective for Definitive Arrangements Conference (Say 1974).
IV	Continue "Interim Arrangements"	(1) If Alternative I, II and III Are Not Feasible -- (2) Continue Existing Interim Arrangements. (3) Advise ICSC to Present Recommendations to States for Follow-up Conference.
V	Terminate "Interim Arrangements"	(1) Agree that "Vital" Issues cannot be Equitably Resolved. (2) U. S. Designated Entity "Buys-out" Partners Shares. (3) Dissolve Consortium, if Required (4) Establish Bi-lateral Arrangements.

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Evaluation of Alternative Approaches

A summary evaluation of the alternative approaches is shown in enclosure #2. The evaluation highlights the substantial and time consuming difficulties that would ensue if the United States were to give up on the five "vital" issues in order to obtain agreement on Definitive Arrangements. The evaluation further highlights the advantages and low risks involved in keeping some up-dated form of the Interim Arrangements or by replacement of the Interim Arrangements with a "Transitional Arrangements" agreement which would be consistent with United States policy. The evaluation also shows that the U. S. Government cannot discard the politically undesirable alternative whereby the Interim Agreement is terminated.

Proposed U. S. Government Strategy

The strategy to be used by the United States Government with regard to both the Conference issues, as well as long-term issues, should be formulated in keeping with the following objectives:

- (a) work toward the objectives stated in Article IX (b) of the Interim Arrangements agreement;
- (b) present a low-risk to the viability of the "going-concern" -- institutionally, technically and economically;
- (c) be consistent with established United States policy.

The proposed U. S. Government strategy for the INTELSAT Conference should be structured to be positive, constructive, but firm, and designed to adapt to strong forces by promoting an alternative approach from an unsatisfactory Definitive Arrangements.

A proposed United States Position Paper has been drafted to accomplish these objectives and is attached as enclosure 3. The key features of the proposed paper include the following:

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- Declaring the existing United States policy on satellite communications.
- Charging the U. S. Delegation to advise the Conference delegations of the significant contributions made by the United States, NASA, industry and COMSAT toward the successful deployment and operation of the Space Segment.
- Charging the U. S. Delegation to promote aggressively the proposed Definitive Arrangement Agreements tabled by the U. S. in conference document #10.
- Charging the U. S. Delegation to advise the conference delegations the degree of compromise contained in document #10, specifically with regard to the establishment of an Assembly, Voting in the Board of Governors, and provision for future change of Manager vis-a-vis the existing Interim Arrangements as well as the rationale for continuing the Consortium form of enterprise.
- Directing the U. S. Delegation to not compromise the "vital" issues of: Nature of the INTELSAT Consortium (legal personality); Internationalization of the INTELSAT Organization, particularly the Manager; Role of the Assembly; Role of COMSAT as Manager; and Impact of Regional Systems on the Single Global System.
- Providing guidance to the U. S. Delegation in the formulation of alternative back-off positions in order for the Conference to end in a meaningful manner.
- Providing guidance to the U. S. Government relating to INTELSAT activities subsequent to the present Conference.

W. T. Olsson
W. T. Olsson

cc: Mr. J. D. O'Connell

Encls. (3)

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CONFERENCE ISSUES

	Apparent Support of United States Position		
	Strong	Mixed	Weak or None
<u>Structure & Functions</u>			
<u>Objective & Purposes</u>	XXX		
<u>Scope of INTELSAT Activities</u>			
International Public	XXX		
International Specialized		XXX	
Domestic		XXX	
National Security Exclusion	XXX		
<u>Eligibility for Membership</u>			
<u>Structure</u>			
Interrelationships *			XXX
Assembly (few functions)			XXX
Board of Governors		XXX	
Management Body (COMSAT)			XXX
<u>Rights and Obligations</u>			
Regional Satellites (Separate)		XXX	
Domestic Satellites		XXX	
Specialized Satellites		XXX	
<u>Legal Status of INTELSAT</u>			
Legal Personality			XXX
<u>Financial Arrangements</u>			
Investment/Use	XXX		
Determining Investment Shares		XXX	
<u>Other Operational Arrangements</u>			
Procurement Policy		XXX	
Inventions, Data, Technical Information	XXX		

* Internationalization of the INTELSAT organization

~~CONFIDENTIAL~~INTELSAT CONFERENCE/
EXECUTIVE COMMITTEEDECLASSIFIED
E.O. 13526, Sec. 3.3hBRIEFING PAPER
FOR WHITE HOUSE MEETING
17 FEBRUARY 1969By mw, NARA, Date 11/29/12

My basic concern going into the INTELSAT Conference is with the lack of clearly stated United States objectives for the Conference and a tactical plan to achieve those objectives.

What I would like to do here this morning, is to start with a statement of basic U. S. objectives and develop a logical pattern of decisions and actions to achieve them; and, finally, suggest that the White House issue a set of policy guidelines to the Chairman of the U. S. delegation.

Basic U. S. objectives: The basic national policy underlying the Conference was established by Congress in Section 102 of the Communications Satellite Act of 1962. Congress there declared our national policy to be:

"to establish, in conjunction and in cooperation with other countries, as expeditiously as practicable a commercial communications satellite system, as part of an improved global communications network, which will be responsive to public needs and national objectives, which will serve the communication needs of the United States and other countries, and which will contribute to world peace and understanding.

"(b) The new and expanded telecommunication services are to be made available as promptly as possible and are to be extended to provide global coverage at the earliest practicable date. In effectuating this program, care and attention will be directed toward providing such services to economically less developed countries and areas as well as those more highly developed, toward efficient and economical use of the electromagnetic frequency spectrum, and toward the reflection of the benefits of this technology in both quality of services and charges for such services.

"(c) In order to facilitate this development and to provide for the widest possible participation by private enterprise, United States participation in the global system shall be in the form of a private

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corporation, subject to appropriate governmental regulation. It is the intent of Congress that all authorized users shall have non-discriminatory access to the system; that maximum competition be maintained in the provision of equipment and services utilized by the system; that the corporation created under this Act be so organized and operated as to maintain and strengthen competition in the provision of communications services to the public; and that the activities of the corporation created under this Act and of the persons or companies participating in the ownership of the corporation shall be consistent with the Federal antitrust laws."

This national policy was implemented by the creation of the Communications Satellite Corporation in 1963 and by the development of an International Agreement in 1964.

This International Agreement established the International Telecommunications Satellite Consortium (INTELSAT). The basic objective of INTELSAT was to maximize the advantages to be derived from communications satellites to provide the best service to the largest number of nations at the lowest cost.

It was generally recognized that the best service at the lowest cost could be achieved only through a single global commercial communications satellite system -- a joint commercial venture in which each country provided the necessary capital for the space segment in proportion to its use, or proposed use, of communications satellites. Political considerations were minimized -- and properly so. INTELSAT was conceived as a non-profit partnership.

As the President's most recent Annual Report to Congress has stated, under United States leadership the INTELSAT Consortium has grown from 11 members in 1964 to close to 70 members now. Of the 70 members,

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approximately 50 are developing nations.

As I mentioned earlier it was generally recognized that the single global system concept would provide the best service, for the most countries, at the lowest cost. There were, and are, a small number of countries led by France which considered this concept adverse to its own interest because it would provide direct access between its former colonies and the rest of the world. These nationalistic interests, plus the natural desire of some of the large communications entities throughout the world to develop satellites to serve their own particular needs at the lowest cost, seems to underlay the attempts which have been made over the past several years to undercut the single global system concept.

The attack on the single global system concept has taken two forms: First, criticism of United States "domination" and, second, requests for United States launch assistance for domestic and regional commercial systems outside of INTELSAT.

Up until now, the United States has taken a firm position opposed to regional systems outside of INTELSAT because there has been no way of defining a regional system in a way so as to eliminate the danger that such a system poses to the single global system concept.

At present, some thought is being given within the U. S. delegation to agreeing to a definition of regional systems which would permit a geographically compact group of countries, bound by economic or cultural ties, to deploy such a system.

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It is our opinion that such a definition cannot limit the proliferation of such systems, and such a concession would ultimately destroy the INTELSAT concept.

The Department of Defense has gone on record as being opposed to regional systems for national security, as well as economic reasons. We agree completely with the DOD position in this matter. In addition, the Japanese and others (the Australians, for example) have expressed considerable concern that the United States will make "a deal" with the Europeans which will permit Comsat to continue as Manager in exchange for the Europeans being given the right to deploy a regional system outside of INTELSAT.

It does not seem difficult to imagine that if the United States concedes the right to other members of INTELSAT to deploy independent regional systems, the Europeans will seek launch assistance from the United States for a system which will undoubtedly cover Western Europe and North Africa as a minimum; and the Japanese will undoubtedly give further thought to a regional system serving their own areas of interest. The repercussions that will develop in the Philippines and Australia as a result of the latter move have not been fully evaluated, but there is no doubt that there would be some adverse impact. The United States in attempting to solve one problem might well be creating a number of more difficult problems.

A great deal has been said about getting the Soviet Union into INTELSAT, and of course, this is desirable provided the cost to the United States is

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acceptable, and the Soviet Union itself is willing to make reasonable concessions. However, if regional systems are to be considered permissible, the Soviet Union could come into INTELSAT with the idea of utilizing the technology and other knowhow developed by the organization and at the same time make plans for its own regional system in the Indian Ocean area. The Pakistanis have already indicated interest in such a Soviet system. The implications of a Soviet dominated regional system with potential coverage throughout Eastern Europe, most of the Soviet Union, and East Africa, Southeast Asia, should be fully evaluated, before any U. S. position is developed.

One of the principal difficulties in developing a United States position against a regional sytem is rooted in FCC staff opposition to the United States taking domestic satellite service from INTELSAT satellites. Of course, the United States now places domestic satellite traffic in INTELSAT, and there seems to be no jaor problems.

The Commission's basic concern seems to be jurisdictional and legalistic. They have stated, without refinement, that placing United States domestic traffic in INTELSAT would create unacceptable distortions within INTELSAT, as well as legal and economic problems. The basis for these concerns has never been established.

If the United States goes outside of INTELSAT for its domestic service, the Canadians are certain to follow suit for their domestic service; and, if this occurs, the Europeans will complain that the United States having

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taken care of its problems satisfactorily outside of INTELSAT, should permit the Europeans to take care of theirs through a regional satellite.

While it might be difficult at this stage for the United States to take a position against domestic systems outside of INTELSAT, it could take a position of flat opposition to regional systems and state that as a matter of policy it will take its service for the domestic pilot program through INTELSAT. This will remove most, if not all, pressure for regional systems.

In my evaluation of the foregoing, I place the regional system question in the highest category of priority. It is my recommendation that the United States not take any position supporting such systems, but rather should place the burden on the proponents of those systems to show that those systems would not adversely affect INTELSAT.

As far as the domination argument is concerned, those who make it ought to be asked to articulate the reasons for their conclusion; for example, is it directed to the manner in which Comsat performs its role as manager, or is it directed to the United States Government, and its relationship to Comsat.

Steps have already been taken to lessen any appearance of domination through the adoption of ICSC procurement regulations, rotation of the chairmanship of the ICSC, and recruiting of the foreign nationals to serve on the ICSC. Additional things might be done, as appropriate.

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In conclusion I recommend that the following policy guidelines be transmitted to the chairman of the U. S. delegation:

- (1) It is not in the United States national interest to support the concept of regional commercial communications satellite systems independent of INTELSAT. This concept is not negotiable.
- (2) While the United States is not opposed to domestic systems outside of INTELSAT, it intends to provide its own service initially through INTELSAT and will decide after the pilot program has been evaluated whether it would be in its own interest to continue to have this service provided through INTELSAT.
- (3) Comsat has made a good record as INTELSAT Manager and the United States position is that the best interests of all the INTELSAT members would be served by retention of Comsat as Manager rather than going to an international organization. In defining the role of the manager, some latitude may be required, possibly by providing for a periodic review of the agreement at ten-year intervals, for example, At this Conference, however, we should take no action that would weaken the authority of Comsat as Manager.
- (4) It is not in the United States national interest to permit unconditional direct access to the INTELSAT system by non-member countries. The general principle should be enunciated that INTELSAT is a joint commercial venture, organized on a non-profit basis in which each member shares in the capitalization of the space segment.

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Permitting direct access by non-member countries essentially conflicts with this concept. While this matter may be subject to some negotiation, no concession can be made which would either seriously undercut the INTELSAT concept, or would permit the Soviet Union, for example, to utilize INTELSAT service only until it had reached a traffic level which would enable its to deploy its own independent regional system.

Addendum:

- (1) "The Concept of Regional Systems as Related to the Definitive Arrangements" (Confidential).

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ADDENDUM (1)

The Concept of Regional Systems as Related to the Definitive Arrangements

There has been much discussion of the U. S. position with respect to the proposal of certain members of the ICSC that the Definitive Arrangements provide for regional systems within the framework of INTELSAT.

U. S. acquiescence in the inclusion of provision for regional systems will open the way to eventual abandonment of the concept of a single global system contemplated by the Communications Satellite Act of 1962 and the Interim Agreement of August 1964. INTELSAT cannot be both a single global system and a federation of regional systems at the same time. The essential difficulty in qualifying our position against independent regional systems is that there seems to be no way to define regional systems that will eliminate the inherent danger to INTELSAT.

The indication of Soviet interest in INTELSAT, which is a reversal of previous attitudes, poses both a challenge and a threat to the future of INTELSAT. If the U. S. were to endorse and agree to the establishment of regional systems, it could certainly be within the scope of Soviet planning to join INTELSAT, not for the purpose of participation in the single global system, but to participate in the establishment of a Eurasian regional system (with an Indian Ocean satellite) in which the Soviets would have the dominant voice.

The present Molnya system which may be fairly useful within the Soviet Union is only marginally satisfactory as a system for communication with other countries of South Asia and Eastern Europe. Besides, the Soviets

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have had considerable technical trouble with maintaining three satellites operating successfully in any given time. If the Soviets could become sponsors of a regional system (within INTELSAT) with a satellite placed in the Indian Ocean by the Communications Satellite Corporation, as INTELSAT manager, the Soviets would have all the advantages of the synchronous system, the umbrella of INTELSAT in dealing with the INTELSAT members in the Eastern Europe-South Asia area, and would have what amounts to a completely Soviet dominated regional system. A similar opportunity would be open to the French.

While they all agree that Symphonie is not an economically viable proposal as a Europe-African regional system, there are many indications that viability is not the primary motive behind the French desire to establish a "regional" system. Under the circumstances, subsidy would be required by the French and other Europeans if they were to participate. There might be an inclination to impose higher rates on the handling of INTELSAT traffic to make up this deficit, thus working to the disadvantage of INTELSAT by both diversion of traffic and maintenance of higher rates.

All that is necessary to assure this state of affairs by the mid-70's is for the U. S. to agree to inclusion of the concept of regional systems within INTELSAT and insist upon fielding a "domestic" system for service to the continental United States, including Alaska and to Hawaii and Puerto Rico.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF TELECOMMUNICATIONS MANAGEMENT
WASHINGTON, D.C. 20504

OFFICE OF THE DIRECTOR

February 17, 1969

Lt. General Harold W. Grant, USAF (Ret)
Director of Telecommunications Policy
Office of the Assistant Secretary of Defense
Washington, D. C. 20301

Dear Harold:

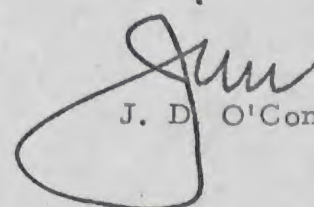
This is in response to your letter of 11 February 1969 regarding, first, a possible invitation from the Philippine Government to hold the thirty-eighth meeting of the Interim Communications Satellite Committee (ICSC) in the Philippines; and second, the nomination of Mr. Manuel Collantes to be the representative of the Philippine Government at the INTELSAT Conference which will commence here in Washington on February 24.

With regard to your first point, this is to advise that the ICSC, at its thirty-seventh meeting which concluded in 31 January 1969, decided to hold its thirty-eighth meeting in Washington from 16 to 23 April 1969; and to hold its thirty-ninth meeting in Rio de Janeiro from 25 June to 2 July 1969.

As far as the attendance of Mr. Collantes at the INTELSAT Conference is concerned, I am sure you understand that this is a matter primarily for the Philippine Government to decide. In any event, it is now so close to the Conference that it would be difficult to take any effective action on it. I will keep your views concerning Mr. Collantes in mind, however, in considering any statements or actions he may take if he attends the Conference.

Sincerely,

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E.O. 13526, Sec. 3.3h


J. D. O'Connell

By mw, NARA, Date 11/29/12

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DEPARTMENT OF STATE

Washington, D.C. 20520

February 17, 1969

MEMORANDUM

TO: INTELSAT - Ambassador Marks

FROM: E/TD - William K. Miller *WKM*

SUBJECT: Position Papers.

Attached are 12 proposed position papers for the U.S. Delegation as listed in the covering memo. The proposed positions do not include fall-backs. It is intended to distribute copies to the Executive Committee at the meeting of February 18 with a view to clearance or discussion at a subsequent meeting.

Attachment:

Position papers.

cc: Executive Committee

E/TD:WKM:sp

February 17, 1969

INTELSAT Conference
List of Position Papers

	<u>Date</u>	<u>Committee</u>
1. The Assembly	2/17/69	I-A
2. The Board of Governors	2/17/69	I-A
3. The Manager	2/17/69	I-A
4. Scope of Services	2/17/69	I-A
5. Access to the System	2/17/69	I-A
6. Regional Systems	2/17/69	I-A
7. Legal Personality	2/17/69	I-B
8. Privileges and Immunities	2/17/69	I-B
9. Financial Arrangements	2/17/69	II-A
10. Procurement Policy	2/17/69	II-B
11. Inventions and Data	2/17/69	II-B
12. Rules of Procedure - CETS Consensus Issue	2/12/69	Plenary

February 17, 1969

INTELSAT Conference

Position Paper

SUBJECT: The Assembly

U.S. Position:

1. There should be an Assembly of Parties or Signatories, meeting annually or biennially.
2. Representation in the Assembly (Party or Signatory) to be determined by each Party.
3. Voting in the Assembly should combine one nation-one vote with weighted voting - simple majority of members with 2/3 weighted majority required.
4. Except with respect to specified functions pertaining to possible replacement of the Manager, increase in the limit of the net contribution, and amendment of the agreements, the Assembly should not be the decision-making body (which should be the Governing Body).

Interim Agreements: No provision.

ICSC Report: Generally paras. 237-261; particularly 262-343.

Papers: Issues paper on "Major Organs of the Organization: The Governing Body and the Assembly" (State 11/15/68).

Executive Committee: Minutes of January 7, 1969, item 5 (b); January 30, 1969, item 4; February 7, 1969, items 4 B, C and E.

Draft Agreements: Principally Article IV.

E/TD:SEDoyle:sp

February 17, 1969

INTELSAT Conference

Position Paper

SUBJECT: The Board of Governors

U.S. Position:

1. The Board of Governors of INTELSAT should be the primary decision-making executive organ.

2. Voting in the Board of Governors should reflect the relative level of investment of the participating Signatories, except that no Signatory should cast a vote in excess of 50% of the total votes entitled to be represented in the Board.

3. Participation in the Board of Governors should be based upon the following criteria:

(a) Signatories with investment shares of % or more. (The proposed percentage is not specified at this time.)

(b) A representative from each of any two or more Signatories whose combined investment share is not less than the smallest investment share represented under (a) above.

(c) A representative from any five Signatories who have combined their investment shares, regardless of amount.

(d) Not more than three additional representatives as may be selected by the Assembly if the total number of representatives under the above provisions is less than 20.

Interim Agreements: Articles IV and V.

ICSC Report: Paragraphs 344-430, 481-486.

Papers: Issues paper on "Major Organs of the Organization: The Governing Body and the Assembly", State 11/15/68.

Executive Committee: Minutes of January 7, 1969, item 5 (b);
February 7, 1969, 4 (c).

Draft Agreements: Principally Articles V and VI.

E/TD:SEDoyle:sp

February 17, 1969

INTELSAT Conference

Position Paper

SUBJECT: The Manager

U.S. Position:

Our position remains as proposed in our October 1967 paper (ICSC 28-40), which included the following:

1. A single entity should be the Manager.
2. Appropriate international participation in the managerial function should be assured.
3. The Manager should function subject to general policies and specific determinations made by the Board of Governors.
4. Functions of the Manager should be set forth in the Agreements.
5. There should be a contract between the Manager and the Board of Governors.
6. The Manager could be changed on recommendation of the Board of Governors approved by the Assembly.
7. ComSat should continue as Manager for the foreseeable future.

Interim Agreements: Intergovernmental Agreement, Article VIII; Special Agreement, Articles 12, 13.

ICSC Report: For brief statement of current status see paras. 118-119; for definitive arrangements see paras. 431-477 and 487-488.

Papers: Issues paper - "Major Organs of the Organization: The Manager", State revision 12/19/68; State memorandum on "U.S. Position on INTELSAT Manager", Loy/Lorenz, 1/17/69; ComSat memorandum, 1/16/69; DTM memorandum, "Manager for INTELSAT", 1/16/69; FCC draft, "Manager - Fall Back Position", 1/31/69.

Executive Committee: Minutes of January 13, 1969, item 3; January 21, 1969, item 6.

Draft Agreements: Principally Article VII.

E/TD:SEDoyle:sp

February 17, 1969

INTELSAT Conference

Position Paper

SUBJECT: Scope of Services

U.S. Position:

1. Our basic position remains as stated in ICSC 28-40, October 1967, that INTELSAT should have authority to furnish all kinds of services, not only traditional long distance communications services, but all services that can be provided by means of communications satellites. This includes "specialized" and domestic services as well as international public telecommunications services.

2. As proposed in ICSC 28-40, INTELSAT should be authorized to provide the space segment for domestic services, either by regular INTELSAT satellites or by satellites established for the purpose (ICSC Report 205, 209, 212-214).

3. We can accept a qualification with respect to providing the space segment for specialized services to the effect that this will not adversely affect the provision of the space segment for international public telecommunication services (e.g. ICSC Report paragraph 197).

4. We do not advocate an INTELSAT monopoly for provision of specialized or domestic services (ICSC Report 614-616).

5. We oppose a provision (such as ICSC Report 227) to authorize INTELSAT to provide separate satellites solely to meet needs of a national security nature.

Interim Agreements: Preamble and Article I are pertinent but not explicit on the scope of services to be offered as the question is understood today.

ICSC Report: Section B, "Scope of Activities of the Organization", 188-227, and part of Section K on "Rights and Obligations of Parties", 606-617.

Papers: Issues paper on "Functional Competence of the Organization", State, 11/19/68; "Direct Broadcasting", State, 2/-/69.

Executive Committee: Minutes of January 7, item 5 (a); January 21, item 7.

Draft Agreements: Article I (j), (k) and (l) and Article VIII.

E/TD:WKMiller:sp

February 17, 1969

INTELSAT CONFERENCE

Position Paper

SUBJECT: Access to the System

U.S. Position:

In consistency with the concept of a universal system available to all nations, non-members, whether they are ITU members or not, should be permitted to have direct access to the INTELSAT space segment on a space available basis after the needs of members have been met. Such access should be by agreement with the organization, on terms and conditions, to be determined by the Governing Body. Such terms and conditions should be similar to those upon which services are provided to signatories, provided that appropriate allowance should be made for the fact that members have invested capital in the system and non-members have not.

Interim Agreements: The preamble to the Agreement is pertinent.

ICSC Report: Section I, 550-556.

Papers: Ward Allen's memorandum of January 24, 1969.

Executive Committee: Minutes of January 21 (item 8), January 30 (3), February 7 (5).

Draft Agreement: See Article VIII (d).

February 17, 1969

INTELSAT Conference

Position Paper

SUBJECT: Regional Systems

U.S. Position:

1. We have not proposed provision for regional satellites outside INTELSAT.

2. If the Europeans insist on provision for regionals they should be subject to:

- (a) a satisfactory area definition (such as the CETS definition, i.e. a compact area),
- (b) determination by the Governing Body that they are economically compatible with INTELSAT, and
- (c) determination by the Governing Body that they are technically compatible with INTELSAT (i.e. with respect to use of the spectrum and orbital space, adequate control and absence of harmful interference).

Interim Agreements: No provision.

ICSC Report: 606-611 in Section K. Also pertinent are the CETS definition of "regional" (162) and 220-222, relating to determination of technical compatibility for domestic satellites, which can also be applied to regional satellites.

Papers: Issues paper on "Regional Systems", State revised 12/12/68, ComSat 11/19/68.

Executive Committee: Minutes of January 7, 1969, item 5 (a).

Draft Agreements: No provision.

E/TD:WKMiller:sp

February 17, 1969

INTELSAT Conference

Position Paper

SUBJECT: Legal Personality

U.S. Position:

INTELSAT need not have a separate legal personality in order to function. The present joint venture nature of INTELSAT is sufficient and flexible enough to permit all desired organizational functions to be performed. Giving INTELSAT legal personality may give rise to certain administrative-operational problems and tax law questions which are avoidable in the joint venture configuration. At the present time the U.S. sees no need for INTELSAT to have a separate legal personality as long as either the Manager, some individual or other entity is accorded power to act for the organization.

Interim Agreements: No specific relevant provision. Organization, decision-making authority and ownership are treated without reference to legal personality in Articles I through IV.

ICSC Report: Paras. 231-236.

Papers: Issues papers on "Legal Personality", State 11/14/68; and ComSat "Legal Status of the Organization", 11/19/68; Legal Committee paper "Legal Status of INTELSAT Under Definitive Arrangements", 2/3/69.

Executive Committee: Minutes of February 6, 1969, item 4.

Draft Agreements: No provisions specifically address this question. See Article VII regarding definitions of functions the Manager is authorized to perform on behalf of the organization. (However, ComSat's capacity to act as a jural entity is derived from its corporate existence, not from anything in the Agreements.)

E/TD:SEDoyle:sp

February 17, 1969

INTELSAT Conference

Position Paper

SUBJECT: Privileges and Immunities

U.S. Position:

The U.S. position is reflected in Article XIII of the draft Agreement and includes the following:

1. INTELSAT, its assets, property and income should be immune in all Party states from national income and property taxes.

2. The host Government should negotiate a "headquarters" agreement with INTELSAT.

3. Additional privileges and immunities as appropriate should be obtained by agreement with other Parties.

Interim Agreements: No provision.

ICSC Report: Paragraphs 594-597.

Papers: Legal Committee report of 2/3/69 on "Privileges and Immunities Status Under the Definitive Arrangements"; issues papers on "Legal Personality", State, 11/14/68; and "Legal Status of the Organization", ComSat draft, 12/16/68.

Executive Committee: Minutes of February 6, item 5; February 13, 1969, item 4 (E).

Draft Agreements: Article XIII.

February 17, 1969

INTELSAT CONFERENCE

Position Paper

SUBJECT: Financial Arrangements

U.S. Position:

In our October 1967 paper (ICSC-28-40) we proposed investment related to use of the system, meaning use of the INTELSAT-financed space segment. We elaborated our proposals in ICSC-29-33 and supplemented them in ICSC-32-46 to provide for minimum investment shares of 0.05% instead of 0.025%. We suggested adjustment of shares annually in relation to the previous year's use, but have indicated that the adjustment interval could be longer. We also have supported compensation for use of capital in the intervals between adjustments.

The U.S. continues to advocate the investment/use approach as set forth in these papers. Our position is reflected in 498, 511 and 521 of the ICSC report.

Interim Agreements: Articles III, VI and XII(a) (ii) of the Agreement and Article 3 of the Special Agreement and the annex thereto are relevant.

ICSC Report: Section F (489-531) applies.

- Papers:
1. The pertinent issues paper is entitled "Criteria for Investment", State revised draft 1/2/69.
 2. ComSat is preparing a simplified explanation of the investment/use proposal.

Executive Committee: See minutes of January 13, 1969, item 5.

Draft Agreements: Articles II (b), III (b), IV (2) (iii), V (a) (iv) and (vii), VIII (c) and (d), and IX; Articles 3, 4, 5 and 6 of the Operating Agreement.

E/TD:WKM:sp

February 17, 1969

INTELSAT Conference

Position Paper

SUBJECT: Procurement Policy

U.S. Position:

We favor primary emphasis on considerations of price, quality and delivery (536) with distribution of contracts a secondary consideration. The following wording, incorporated in the draft agreement, reflects the U.S. position:

"The Governing Body shall endeavor to insure that all contracts are awarded on the basis of the best quality, best price, and timely performance. The Governing Body shall endeavor to insure the widest practicable international participation in contracts and subcontracts consistent with the foregoing principle."

Interim Agreements: Article X and Article 10 (a), (b) and (c) are pertinent.

ICSC Report: Section G (532-543) applies.

Papers: Issues paper on "Procurement Policy", State revision 12/27/68, ComSat 11/19/68.

Executive Committee: See minutes of January 13, 1969, item 4.

Draft Agreements: Article X; Article 7 of Operating Agreement.

E/TD:WKMiller:sp

February 17, 1969

INTELSAT Conference

Position Paper

SUBJECT: Inventions and Data

U.S. Position:

The definitive arrangements should include a policy provision along the lines of that proposed in the attached memorandum of the Legal Committee (February 3, 1969), with details of implementation left to the Governing Body.

Interim Agreements: Article 10(f) (g) of the Special Agreement.

ICSC Report: Section H (544-549).

Papers: 1. Legal Committee report, February 3, 1969 (attached).
2. Issues paper on "Data and Inventions", ComSat, November 19, 1968.

Executive Committee: Minutes of January 13, 1969, item 6; February 6, 1969, item 6.

Draft Agreements: Article 8 of the Operating Agreement.

Attachment:

Legal Committee memorandum.

E/TD:WKMiller:sp

February 3, 1969

MEMORANDUM TO: Ambassador Marks

FROM: Legal Committee on Definitive Arrangements*

SUBJECT: Inventions and Data

The Legal Committee has examined the attached provision relating to inventions and data which has been jointly prepared by Comsat and the Federal Communications Commission and is of the opinion that its inclusion in the definitive arrangements would pose no legal problems under U.S. law. Specifically, the General Counsel of the Federal Communications Commission has been informally advised by the Antitrust Division of the Department of Justice that it believes that a provision along the lines of the attached does not present any antitrust problems.

cc: Chairman Rosel H. Hyde
Mr. James McCormack
General James D. O'Connell
Mr. Frank E. Loy
Mr. John A. Johnson
Mr. Ward P. Allen
Mr. William K. Miller

* Comprised of representatives of the Department of State (Richard Frank, Asst. Legal Adviser); FCC (Henry Geller, General Counsel, and Asher Ende, Deputy Chief, Common Carrier Bureau); DTM (John O'Malley, Jr., Legal Counsel), and Comsat (William D. English, Asst. General Counsel).

PROPOSED COMSAT-FCC PATENT AND DATA ARTICLE
FOR OPERATING AGREEMENT
OF
DEFINITIVE ARRANGEMENTS

1/22/69

// 1. The Governing Body, taking into account the principles and objectives of Intelsat, as well as generally accepted industrial practices, shall acquire for Intelsat appropriate rights in inventions and technical data arising directly from any work performed on behalf of Intelsat.

" 2. Inventions and technical data to which Intelsat has acquired such rights:

(a) Shall be made available to any signatory or any person in the jurisdiction of a signatory, or the government which has designated that signatory:

- (i) on a royalty-free basis, for use in connection with the design, development, construction, establishment, operation, and maintenance of equipment and components for the Intelsat space segment;
- (ii) on fair and reasonable terms and conditions prescribed by the Governing Body, for use in

connection with other purposes, provided the Governing Body determines that the proposed use would not be incompatible with the principles and objectives of Intelsat;

- (b) May be made available to other persons and entities at the discretion of the Governing Body and under such terms and conditions as the Governing Body determines, provided the Governing Body determines that the proposed use would not be incompatible with the principles and objectives of Intelsat.

" 3. Except as it may otherwise determine, the Governing Body shall endeavor to have included in all contracts or other arrangements for design and development work appropriate provisions which will ensure that inventions and technical data owned by the contractor and its subcontractors which are directly incorporated in work performed under such contracts or other arrangements, may be used on fair and reasonable terms by each signatory or any person in the jurisdiction of a signatory or the Government which has designated that signatory, provided that such use is necessary, and to the

extent that it is necessary to use such inventions and technical data for the exercise of the rights obtained pursuant to Paragraph 1. of this Article."

~~CONFIDENTIAL~~
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF TELECOMMUNICATIONS MANAGEMENT
WASHINGTON, D.C. 20504

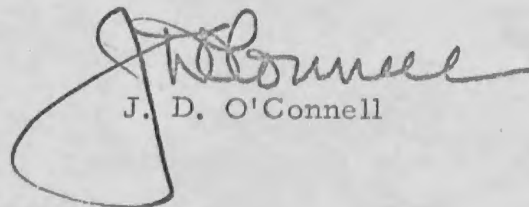
OFFICE OF THE DIRECTOR

February 12, 1969

MEMORANDUM FOR AMBASSADOR MARKS

I am forwarding herewith a copy of the letter dated February 12, 1969, which I have received from Mr. Paul H. Riley, Deputy Assistant Secretary of Defense, stating the positions of the Department of Defense on the matters of regional systems; Comsat as Manager; powers of the Assembly; access to the system; and changing the Interim Arrangements.

Apart from the access question which should be further discussed by the Executive Committee, I concur in the views of the Department of Defense on these matters; and I urge that they be fully considered before the Executive Committee reaches decisions on any of these issues.


J. D. O'Connell

Attachment

cc: Mr. Frank Loy
Mr. James McCormack
Mr. Rosel H. Hyde

DECLASSIFIED
E.O. 13526, Sec. 3. 3h

By mw, NARA, Date 11/29/12

~~CONFIDENTIAL~~



ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

INSTALLATIONS AND LOGISTICS

12 FEB 1969

Honorable J. D. O'Connell
Director of Telecommunications Management
Executive Office of the President
Washington, D.C. 20504

Dear Mr. O'Connell:

During your briefing on 4 February 1969 to representatives of the Department of Defense, you covered five major items with respect to the U. S. Executive Committee views on the forthcoming Definitive Arrangements for the International Global Communications Satellite System (INTELSAT). The purpose of this letter is to reaffirm comments made by representatives of the Department of Defense with respect to these items.

Item 1 - Change the Interim Arrangements as little as possible.

DoD Comment: We strongly support this concept as the primary objective of the U.S. in these meetings.

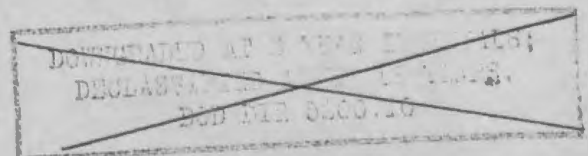
Item 2 - Access to the System.

DoD Comment: We concur that access to the space segment of the system be accommodated for members and non-members within the scope and intent of the system to provide a single global commercial communications satellite system.

Item 3 - Powers of the Assembly.

DoD Comment: We agree that the powers of the assembly should be limited to those primarily concerning political and economic salesmanship of the system and to provide a discussion forum particularly for those members who do not directly serve on the governing body. On this item, we strongly feel that the concept of as few changes as possible from the interim arrangement is in the best interest of the U. S.

~~CONFIDENTIAL~~



Item 4 - COMSAT as Manager.

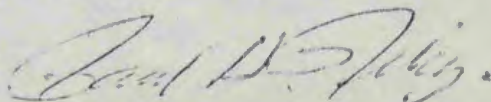
DoD Comment: We believe that no reasonable case has been developed for changing COMSAT as Manager. On the contrary, we should highlight the remarkable achievement and progress of INTELSAT under COMSAT management.

Item 5 - Regional Systems.

DoD Comment: We were surprised and concerned to note that the U.S. Executive Committee was even considering the acceptability of regional systems associated with INTELSAT. During the long course of Inter-agency development of U.S. views, it was always clear that Regional systems did not make sense. As a matter of fact, one of the primary objectives for establishing a single global system was to avoid Nationalistic and Regional prerogatives with their associated problems which have heretofore been and continue to be characteristic in International Communications. The positions drafted during the course of U.S. Inter-agency coordination recognized the possibility of domestic systems within the framework or cognizance of INTELSAT. Regional systems are entirely inconsistent with the hopes and objectives of the U.S. for a truly single global system.

The Department of Defense is particularly concerned with respect to the National Security aspects of Regional systems. Very briefly stated, we feel that Regional systems would not provide the maximum point-to-point variety and flexibility of communications required for National Security communications. The DoD, State Department, and other U.S. Government users would be dependent upon military and political agreements and sanctions covering access to and from Regional systems to separate members. Such systems would adversely affect spectrum conservation, result in increased rates, and inevitably detract from the economic viability of the single global system. The U.S. should not compromise our opposition to Regional systems. Compromise would only open up pandora's box and cause all kinds of problems, the most important being that it would be the first step in compromising the basic objectives and purposes of the single global system. We strongly urge that you advise the Executive Committee Group of the DoD concerns on this item.

Sincerely,



PAUL H. RILEY

Deputy Assistant Secretary of Defense
(Supply and Services)

~~CONFIDENTIAL~~

February 12, 1969

INTELSAT CONFERENCE

Position Paper

SUBJECT: Rules of Procedure - CETS Consensus Issue

Problem:

There is at least one potentially serious problem with regard to the U.S. proposed Provisional Rules of Procedure. In an Aide Memoire from The Netherlands, dated January 29, 1969, the sixteen member countries of the European Conference on Satellite Communications (CETS) urged that the Conference rules provide that decisions taken during the Conference be on the basis of consensus rather than voting.

U.S. Position:

In a circular message to our INTELSAT member posts we instructed the posts to inform host governments that we agree that maximum effort should be given to obtain agreement by consensus. However, at a negotiating conference, such as this one, there must be some provision for reaching decisions if efforts to obtain consensus prove futile. We mentioned the UN Conference on Road Traffic and on the Law of Treaties as examples of recent international conferences with two-thirds majority voting rules.

We should make quite clear that the U.S. takes the intention of seeking consensus seriously and has no intention of railroading any positions by means of voting, particularly not over the opposition of a major group of member countries, but that we cannot accept rules which have no provision for the ultimate resolution of issues and would permit one or a few members to block the conclusion of definitive arrangements.

References:

1. Conference Doc. No. 2 (Provisional Rules) Rule 8, para. 20.
2. Netherlands Embassy Aide Memoire of January 29 (attached).

Attachment.

E/TD:SEDoyle/WKMiller:sp

AIDE MEMOIRE

Duration of the Conference

The United States Government have proposed that the Conference be concluded on 21 March 1969. In the view of CETS Governments, the setting of such a deadline, if it be intended thereby to indicate the conclusion of the negotiations, would not be desirable. The CETS Governments naturally agree that it is essential that Definitive Arrangements be drawn up as soon as possible and that the negotiations should take as short a period of time as is reasonable. But, if agreement is to be reached on Definitive Arrangements of a satisfactory and lasting nature, it seems essential that opportunity be given for adequate discussion of all aspects of the Arrangements. It is envisaged by CETS Governments that the negotiations should begin with a general debate in a Plenary Meeting of the Conference to discuss the main points. This would presumably lead to the establishment of appropriate working groups to consider particular questions in more detail. The reports of these working groups or committees would then be submitted to the Plenary Conference; and this would lead to further negotiations there, of which there might be several rounds.

Procedure of the Conference.

The United States Government have proposed, in the provisional rules of procedure for the Conference, that although the Conference should endeavour to act unanimously, a formal vote could be taken on procedural and substantive questions and upon the text of the Definitive Arrangements themselves. The CETS Governments would favour a rather different approach. Their feeling is that it would be greatly preferable, at least in the initial rounds of negotiations, to make every endeavour to reach agreement on substantive questions, and indeed on the text of the Definitive Arrangements, by means of a consensus. It is their view that Parties to the Interim Arrangements, who have invested substantial sums of money in the system, should not be obliged, by the immediate adoption of formal voting procedures, to accept the re-deployment of their investments in a way contrary to their wishes. The Interim Arrangements are of indefinite duration, and it is laid down that they should continue in force until agreement is reached on the Definitive Arrangements. It seems important that the Definitive

Arrangements be drawn up and adopted in such a way that all Parties to the Interim Arrangements are in fact able to sign them. There is also the point that the consensus procedure, which is more flexible than any voting arrangement, might make it easier for Governments which are not Parties to the Interim Arrangements to indicate their views as to the contents of the Definitive Arrangements. If sustained endeavours during the early rounds of the negotiations do not lead to a consensus on all points, the CETS Governments do not rule out the possibility that formal voting procedures on substantive questions might be introduced at a later stage.

Washington D.C.
January 29, 1969.

MANAGER - FALL BACK POSITION

Possible Division of Managerial Functions. It has already been decided that the United States would, as an entry position, seek to have ComSat named as Manager for INTELSAT in the Definitive Arrangements. It is recognized, however, that we may not be successful in maintaining ComSat's present position as overall Manager performing all managerial functions. It is therefore necessary to develop a fall back position which would maintain the essential functions for ComSat, while at the same time granting other nations some of their desires for the performance of certain functions by an entity other than ComSat. It would appear that the most effective fall back position, and the one designed to do the least damage to the essential technical and operational functions which we feel it is vitally important that ComSat retain, would be a proposal to split the functions of the Manager into technical and operational on the one hand, to be retained by ComSat, and administrative on the other hand, to be given to an administrative entity or manager. Such a fall back position would propose that ComSat be named Operations Manager to perform essentially all of the functions outlined in the ComSat document setting forth the functions of the Manager, other than those set forth below, which would be performed by the Administrative Manager (ComSat's position as Operations Manager could be assured either by naming ComSat in the Definitive Arrangements

as Operations Manager with specific authority to perform the above-described functions or by including a provision authorizing the Governing Body to enter into a contract for the performance of these functions with an appropriate entity, with an understanding that ComSat would be selected as that entity). The administrative managerial function could be given to a staff which reports directly to the Governing Body or it could be contracted for with an independent entity. The following functions would be performed by the Administrative Manager:

- (1) Administer approved budgets within the limitations established for major categories of expenditure.
- (2) Maintain books of account and make them available for annual audit by an independent auditor and for review by the Governing Body.
- (3) Prepare monthly financial statements and billings to signatories and other entities, calculate and bill signatories for periodic adjustments in investment shares in order to relate investment in jointly financed facilities to use of such facilities.
- (4) Develop and maintain a system of accounts which shall record, measure, and report all operations, and transactions, in connection with the system.
- (5) Provide all administrative, secretarial, clerical, document reproduction, language and other necessary services

required by the Governing Body and the Assembly of Members for the conduct of their business.

- (6) Maintain on behalf of the Governing Body and all Members, data furnished by the Operations Manager relating to the usage, availability, outages, quality of service, performance characteristics, system effectiveness, operating costs and traffic trends.
- (7) Maintain data with respect to inventions, patents, management programs and procedures.
- (8) After appropriate consultation with the Operating Manager, make recommendations relating to the acquisition, evaluation, disclosure, distribution and protection of rights and inventions, and data required by INTELSAT. Pursuant to authorization by the Governing Body and subject to all applicable limitations, arrange for licensing of INTELSAT inventions and data to others and enter into licensing agreements on behalf of INTELSAT.
- (9) Advise the Governing Body, after appropriate consultation with the Operating Manager, on the economic aspects of members' requests to the Governing Body for INTELSAT financing and development of a Category "B" satellite for such member.

- (10) Advise the Governing Body, after appropriate consultation with the Operating Manager, on the economic aspects of any proposed independent regional satellite with the global system.
- (11) Provide information, upon the basis of data furnished by the Operating Manager, about Category "A" and INTELSAT-financed Category "B" satellites as may be required by the International Telecommunication Union.
- (12) Receive cash payments from signatories and other entities; make cash disbursements on behalf of INTELSAT; and advise the Governing Body of signatories in default on payments.
- (13) Invest any funded reserves or excess cash in such securities as are prescribed by the Governing Body for temporary investments; sell such securities as required to meet INTELSAT obligations.
- (14) Provide legal services in connection with the performance of its functions for INTELSAT.
- (15) Sign contracts, where appropriate, on behalf of INTELSAT.
- (16) Recommend to the Governing Body, pursuant to the principles contained in the Definitive Arrangements after appropriate consultation with the Operating Manager, procurement procedures and regulations.

- (17) Compile and maintain, upon the basis of data furnished by the Operating Manager, a world-wide bidders list for use in INTELSAT procurement.
- (18) Provide information services for INTELSAT (e.g., press releases, exhibits, films, periodicals, newspaper and magazine articles and demonstrations).



DELEGATION OF THE UNITED STATES OF AMERICA

Department of State
Washington, D. C.
January 24, 1969

MEMORANDUM FOR: Members of the Executive Committee

FROM: Wilson Dizard *WD*

I am enclosing a paper prepared by Mr. Ward Allen on the question of access to the INTELSTAT system. This subject is scheduled to be discussed at the January 30 Executive Committee meeting under Agenda item #4.



LIMITED OFFICIAL USE
DEPARTMENT OF STATE

Washington, D.C. 20520

January 24, 1969

Memorandum for the INTELSAT Conference Executive Committee

Recommended U.S. Position on Access to the System

1. The underlying philosophy as expressed in the Preamble to the Interim Arrangements, UNGA Resolution 1721 (XVI), relevant ICSC recommendations for the Preamble (166, 171, 183) and in President Johnson's public statements is the establishment of a universal system which will be available to all nations. The U.S. initially favored membership open to all states and has accepted the limitation of ITU membership as an eligibility criterion in deference to the views of others.

It is consistent with this philosophy, in our national interest and to our political advantage to favor the broadest possible access on a non-discriminatory basis with the minimum restrictions necessary to protect the other members and the Organization.

2. Access for Members

Direct Access: This is provided for (paragraph 554).

Indirect Access: This is not covered but it is submitted that non-discriminatory, indirect access should also be one of the benefits of membership. There should be a provision whereby each member with direct access undertakes to grant to neighboring members (who have no earth station) non-discriminatory indirect access through its earth station, subject to the adequacy of its facilities to meet its own needs and to a supplemental agreement to be concluded between or among the members directly involved. As pointed out, this would continue the desirable policy of encouraging several developing countries, whose

LIMITED OFFICIAL USE

individual traffic volumes or economic situations would not make separate stations feasible, to join in using one earth station, with resulting improved economies for the system.

If a direct-access member should refuse to carry out this obligation, the aggrieved member would be able to have recourse to the procedures of the Supplemental Arbitration Agreement. It might also be considered whether, as a preliminary step, the aggrieved member should be able to bring the matter before the Governing Body which would seek through consultation and recommendations to find an amicable solution.

3. Access for Non-Members

The right of access for non-members should, of course, be more restricted than for members and should be limited to states. However, as among the non-participating states themselves, no distinction should be made on the basis of whether they are members of the ITU or not.

Direct Access: Non-members should be permitted to have direct access to the space segment of the system on a non-discriminatory, space available basis after the needs of the members have been met and in accordance with an agreement to be concluded with the Organization, approved by both the Governing Body and the Assembly, which will

- (1) assure that the earth station meets the Organization's technical and compatibility standards and
- (2) contain special financial arrangements to compensate for the fact that members have invested their capital and non-members have not.

Indirect Access: A non-member should be permitted indirect access to the system on a non-discriminatory basis through an agreement on the terms and conditions

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concluded with a direct-access member, but subject to the priority needs of that Member and of any other members who may have the right of indirect access through that Member. However, this provision should be so worded that if the Member fails to conclude a satisfactory agreement with the non-member, the latter should not have any right of recourse to the Organization.

Ward P. Allen

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EXECUTIVE OFFICE OF
THE PRESIDENT

1969 JAN 27 AM 9 52

OFFICE OF EMERGENCY
PLANNING-MAIL ROOM
WASHINGTON 25, D.C.

Additional Notes on Access

Direct Access

Direct access, i.e. with a country's own earth station, is unanimously approved for all signatories (554) and the only question would appear to be the following: Should States not participating have direct access to the space segment only by agreement with INTELSAT (555), or should they have such direct access without any arrangement with INTELSAT (556). The second question is whether a country must be an ITU member in order to have direct access as a non-signatory.

Indirect Access

Everyone agrees that indirect access should be open to members and non-members (554). The difficult issue is defining INTELSAT's responsibility vis-a-vis the relationship between the earth station owning member and the indirect user.

There are three possible approaches: (1) The integrity of the system requires that INTELSAT establish technical standards for earth stations. What countries feed that station with land lines is a matter of no concern to INTELSAT nor is the question of the terms under which they use it.

(2) INTELSAT should make non-discriminatory access to the system one of the benefits of membership. This means not only that space segment charges would be non-discriminatory

but also that there be some INTELSAT responsibility for assuring that members which do not own earth stations have access to the stations in their neighboring member countries on a non-discriminatory basis. One advantage of this approach is to encourage several developing countries to use one earth station jointly, with resulting improved economics for the system. The disadvantage is that it potentially puts INTELSAT into a very delicate political arena - that to date has been considered a purely domestic issue.

(3) Widen the approach under (2) above to assure non-discriminatory access to non-members as well as members. This is the approach in 554.

(It is likely that even with the use of the term "non-discriminatory", under approaches 2 or 3, it would be possible to make some sort of allowance for the fact that members - as distinct from non-members - are using their capital to finance the system while non-members are not.)



DELEGATION OF THE UNITED STATES OF AMERICA

Department of State
Washington, D. C.
January 17, 1966

MEMORANDUM

TO : Members of Executive Committee

FROM : Wilson Dizard, ^{WD}Intelsat Delegation

SUBJECT: Documents

In preparation for our Tuesday, January 21, meeting, I enclose three sets of documents:

1. Submissions of draft language on the Manager issue, prepared by State and DTM, as requested at our last meeting. The FCC and Comsat submissions are being sent directly to addressees.
2. The FCC memo of May 29, 1968, discussing possible alternatives to the present Manager format.
3. Memorandum prepared by Mr. Ward Allen on the experience of various international organizations regarding functions of their Assemblies or General Conferences.

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U.S. Position on INTELSAT Manager

The following positions on the identity and staffing of the INTELSAT management body would appear to be acceptable to the U.S. if no better position is achievable. They would appear to meet the U.S. objectives (as described in State's issues paper) of "an efficient management body" and "the maximum degree of U.S. control of and through the Manager compatible with the views of our partners and the reputation of INTELSAT as a genuinely international organization, not excessively dominated by the U.S."

The definitive arrangements would provide for the establishment of an international Secretariat. The Secretariat would be subject to the control of the governing body and be internationally staffed. It would perform many of the administrative functions performed by ComSat under the interim arrangements, including certain budgetary and other financial functions and the execution of INTELSAT contracts.

The definitive arrangements would further provide that the technical and operational management functions for INTELSAT be performed under the terms of a contract to be negotiated between the Secretariat and ComSat, subject to the approval of the governing body. This contract would

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be for a term of years and thereafter could be either renewed or conceivably another organization could be substituted for ComSat.

If it appears that the reference to ComSat in the definitive arrangements is too difficult to obtain in the negotiations, the definitive arrangements could talk about a contract between the Secretariat and "an appropriate competent entity", so long as we had an appropriate side assurance that in fact the initial contract for a specified number of years would be with ComSat.

If agreement is not reachable on the above basis, the U.S. could accept a provision in the definitive arrangements that ComSat (or "the appropriate competent entity") would undertake to obtain the services of qualified personnel from member countries to bring about the maximum internationalization of technical and operational functions with a view to the eventual establishment of a single international management body performing all managerial functions. However, the consolidation into a single international body would not take place except after an explicit finding by the Governing Body and the Assembly that such action would not result in any loss of efficiency in the management of the organization.

E/TT:FELoy
IO/UNP:JLorenz:sp 1/17/69

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF TELECOMMUNICATIONS MANAGEMENT
WASHINGTON, D.C. 20504

OFFICE OF THE DIRECTOR

January 16, 1969

Memorandum for Ambassador Marks:

Subject: Manager for INTELSAT

This memorandum is in response to your request expressed during the executive session on January 13, 1969 for my views on the crucial policy issue concerning the institutional arrangements which would apply to the Manager for INTELSAT under the Definitive Arrangements.

Understandably, the Department of State issue paper states the issue in terms of a political problem. I view the matter as more basic in the sense of management competence and business viability for the continued growth and success of the Consortium. Accordingly, I feel the policy issue is:

What institutional arrangements for accomplishment of the Manager function should be established under the Definitive Arrangements which will maintain the successful momentum of the Consortium, protect the large investments to date and insure effective accomplishment of the "Manager for INTELSAT" role?

Areas of Competence Required by the "Manager"

The principal functions which require accomplishment by a Manager organization in the design, development, construction, establishment, operation and maintenance of the space segment include the following:

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- A system planning capability for integrating engineering, operational, economic and social factors bearing on the global communications satellite system and coordinating the development, design and deployment of the satellites constituting the space segment of the single global system as a major component of an improved network.
- An engineering capability covering the usual ranges of transmission; engineering economics; traffic engineering in the sense of future estimating, capacity studies, etc.; specialized satellite engineering; contract analysis in connection with procurement; a substantial systems engineering capability; and, at the minimum, R&D capability and current experience adequate to make competent judgments of the work of others.
- A financial and accounting capability to handle the allocation of shares among the participants, estimate future capital and operating fund requirements, bill and collect funds from the members, and handle the disbursement of funds in the form of payrolls, payments to contractors, and any repayments to members.
- A personnel capability for exercising the imagination and promotion necessary to recruit and retain a high caliber staff of a number of different disciplines with an adequate international nature to, as closely as possible, meet the desires of the members.
- A legal capability adequate to operate in the international environment in terms of defining the services to be provided using entities that constitute the customers and handle the complex problems of contracting, patent and associated proprietary rights connected therewith, as well as all the usual legal requirements on any common carrier.

- 3 -

- A customer relations and commercial capability of a very unusual nature. This group needs the technical capability of advising and counseling the carrier customers throughout the world in order to promote the use of satellite services and assist the carriers in making the most effective use of satellites. It can draw upon the engineering capability to a large extent, but the regular members of the customer relations department should have the technical and economic competence to conduct most of the relations with current and potential using entities.

The above functions to be carried out by the Manager, as the term "Manager" implies, include all the staff and system planning functions normally required of a major communications common carrier, the interdisciplinary systems engineering functions associated with the development of facilities utilizing the sophisticated space technology, and the development and dissemination of technological innovations through an ability to draw directly on the areas of maximum progress in technology. The responsibility for policy decisions and the approval of system plans rests with the Governing Body but, the Manager is required to integrate, interpret and recommend these decisions in terms of the foregoing functions. He is responsible for and expected to carry out adequately the study and analysis of the alternatives, make recommendations regarding choices to the Governing Body, and be prepared to put these decisions into action when they are made.

Basic Principles of Management Applicable to Sophisticated Enterprises such as the INTELSAT Consortium:

- Strong executive leadership (single head)
- Undivided responsibility
- Clearly defined functions
- Answerable and responsible to a Board of Directors for policy and adequate performance (Governing Body)
- An organization not subject to any national regulatory body.

- 4 -

Peculiar management competence required to accomplish
"Manager" functions:

- An organization which can generate close working relationship and operate effectively with the major sources of telecommunications research and development and space technology.
- An organization which has the capacity and legal authority to obtain launch services for the placing of commercial (INTELSAT) satellites in orbit under the most favorable conditions.

In evaluating the criteria outlined above, I can find no fundamental weakness in the current approach for the Manager under the Interim Arrangements. Although there have been verbal complaints of conflict of interest (apparent or real) between the U. S. designated entity (COMSAT Corporation) and the Manager for INTELSAT (COMSAT Corporation) case histories or evidence of this has not been stated. What is crucial in this issue remains: What is in the interest of the United States and the community of nations in light of stated objectives and in recognition of any realistic and feasible alternative?

Development of alternatives to generate a Manager competence outside COMSAT Corporation must address some important commercial business considerations to include (a) a long lead time (5 to 10 years or more) would be required to recruit and develop a functioning organization with comparable competence, (b) concluding arrangements to obtain launch services, (c) insuring the forward momentum of the Consortium is maintained during the transition period. Building a new Manager organization outside COMSAT would be an immense and difficult task because of the world's shortage of technically qualified people with the necessary experience. Furthermore, the need to establish effective working relationships between the Manager organization and other existing space and telecommunications organizations would require an extended period of time.

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In examining the criteria outlined above, I have also concluded that the institutional arrangements proposed by our European partners for the establishment of an International Secretariat to serve as "the Executive Body" is not a realistic or feasible international joint business venture for the INTELSAT Consortium. Examples of attempts to create multinational staff organizations e.g., ELDO/ESRO have proven ineffective in achieving success in technologically sophisticated endeavors. I cannot visualize the establishment of an International Secretariat consultative form of management as being effective in accomplishing the executive functions associated with the "Manager" role.

In addition to the practical difficulties involved in the development and operation of a truly International Secretariat performing the Management Body functions, there is a substantial legal question as to whether the United States (NASA) can provide launch services directly to an International (Consultative) Management Body, within the terms of the Communications Satellite Act of 1962, for commercial operational communications satellites.

It follows from this evaluation that the United States should not accept or promote the adoption of an ill-defined agreement calling for the creation of an International Secretariat which could through subsequent lack of competence cause the Consortium's business activities to fail or to deteriorate in efficiency.

Some candidate forms of United States accommodation were treated in the United States contribution to the ICSC 28-40, October 3, 1967. These included first, a proposal that the Manager (COMSAT) obtain services of additional qualified personnel from other member countries, second, a proposal for the introduction of a contract between the Governing Body and the Manager (COMSAT) to define the role of the Manager and the relationship of the Manager to the Governing Body, third and finally, a proposal whereby the Assembly would have authority to change the Manager, based upon approval of a Governing Body recommendation.

The second proposal represents a concession which, in my view, should not be offered by the United States since it represents a "first step" toward dilution of the workable institutional arrangements which have been so successful under the Interim Arrangements. I also feel the third proposal or anything similar thereto is unacceptable and should not be supported by the United States Government.

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The United States Government should structure its position for the INTELSAT Conference based on the demonstrated capability and performance achievement of the United States Government and COMSAT Corporation. The United States Government should insist on the preservation of COMSAT as "Manager" in the Government to Government agreement.

Based on the comments above, I have formulated a proposed statement of the United States position for the INTELSAT Conference as follows:

Proposed United States Position:

The Management Body will, pursuant to general policies of the Governing Body and in accordance with specific determinations which may be made by the Governing Body, accomplish executive functions as the Management Body in the design, development, construction, establishment, operation and maintenance of the space segment.

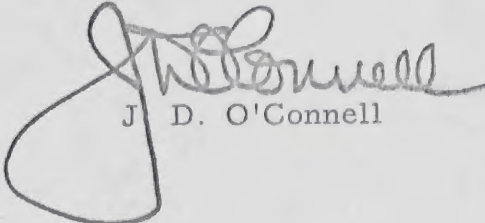
The Manager (COMSAT Corporation) designated in the Interim Arrangements is designated as the Management Body in the Definitive Arrangement.

uncompromising In negotiating this issue during the Conference, I feel the United States should adopt a position which highlights the success of the Consortium, the contribution of the United States Government, through NASA launch services and the achievements of COMSAT as Manager for INTELSAT. Our position should be an "offense oriented" viewpoint in which we are ready to listen to ideas for improvement after we're satisfied the complaints are truly substantive and not political. The United States Government should use its inherent strength in this issue and establish a firm and *essentially* ~~unnegotiable~~ position that there should be no change in the designation of the Manager under the Definitive Arrangements. The United States should place the burden on those countries which oppose continuation of COMSAT as "Manager" to show substantive cause that a change in Manager would be in the best interests of the INTELSAT Consortium. These showings should be definitive,

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based on past performance and not speculative, theoretical or political. Essentially the basic requirement is for producing businesslike, effective and progressive results.

Finally, I think the mid-term and long-term success of the INTELSAT Consortium is dependent uniquely on a strong and effective Manager who is coupled closely with the primary sources of technological innovation and launch capability. Therefore, the United States position should be clear and unequivocal on this point and that we should not depart from it. However, we may, of necessity, be faced with offering compensatory concessions of a less critical nature in other areas e.g., voting power and functions of the Governing Body.



J. D. O'Connell

JAMES MCCORMACK
Chairman

16 January 1969

MEMORANDUM FOR AMBASSADOR MARKS

Copies: Chairman Hyde
Mr. Loy
✓ Gen. O'Connell

Herewith is a restatement of Comsat's position on handling the matter of the Manager in the forthcoming negotiations. As you will see, it is concerned mainly with the rationale for maintaining the U.S. position as presented consistently in the ICSC for more than a year. After thorough consultation with Comsat officers and directors, I can report we believe that it would be imprudent to go further at this time in developing "fallback" possibilities.

One reason is that the entry of the Soviet Union into the picture could greatly change the nature of the negotiations. Another reason is that even in the absence of a Soviet perturbation we believe that any desired modulation of the U.S. position can be much more accurately accomplished in response to some proposal less arbitrary than those we have had in the ICSC, strongly influenced by the European "united front".

James McCormack

U.S. POSITION ON COMSAT AS MANAGER

The United States should press for adoption of the position advanced in ICSC-28-40, namely,

1. Designation of Comsat as Manager with provision for change of designation by the assembly on recommendation of the governing body.
2. A management contract to be concluded between Comsat as Manager and the governing body, such contract to be reviewed and renegotiated periodically.
3. The Manager's functions to be performed subject to the general policies and specific determinations of the governing body.
4. International participation in the management function to be achieved by retaining on Comsat's staff the services of qualified personnel from member countries.

In urging adoption of this point, the United States should stress the following factors:

1. The outstanding success of the INTELSAT program during the interim period and the indispensable contribution of Comsat as Manager to that achievement.
2. The comparatively poor record of accomplishment of other international organizations in advanced technological

fields which have relied on international management organizations of the type advocated by certain European members (e.g. ELDO and ESRO).

3. The size and professional quality of the staff which is required to provide effective management of the INTELSAT program.

4. The advantages of utilizing a private corporation for employment and management of such a staff and, conversely, the practical impossibility of assembling a comparable staff as employees of an international organization whose personnel and compensation policies would be subject to the rigidities which are characteristic of all such organizations.

5. The availability of United States Government assistance in carrying out INTELSAT programs, the unique relationship of Comsat to the United States Government under the 1962 Act, the benefits of that relationship to INTELSAT, and the uncertainty of a continuation of those benefits if a new management organization were to be substituted for Comsat.

6. The fact that what we now have is a partnership in which one entity is the managing partner, a rather common arrangement all around the world, and one which in the case of INTELSAT has produced no conflicts of interest which were not solved with reasonable ease.

There should be no retreat from the foregoing position before the final stage of the definitive arrangements negotiations. Against the distinct possibility that this stage will not be reached during the four-week conference beginning on February 24, it would be desirable to have a positive plan for using all of the time of the conference to educate the delegates on the practical aspects of this question as outlined above. If, however, it appears that the firmness of our position is the only remaining issue preventing a satisfactory conclusion of the negotiations, the United States should express its willingness to omit from the agreements the designation of Comsat as manager and to provide instead that the governing body shall be empowered to conclude appropriate agreements for performance of management functions with any entity it deems qualified, public or private. However, the United States should take this step only if it has adequate assurance from the necessary number of members that the governing body will conclude such a contract with Comsat for a minimum period of five years as its first order of business under the definitive arrangements.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

INTER-OFFICE MEMORANDUM

January 16, 1969

TO: Ambassador Leonard H. Marks, Chairman
Mr. Frank E. Loy, State
General James McCormack, Comsat
General James D. O'Connell, DTM
Mr. Ward Allen, State
Mr. Wilson Dizard, State

FROM: Chairman Hyde

SUBJECT: Draft Substitute for Article VIII -- Manager

In accordance with the agreement reached at the meeting of January 13, there is attached hereto a draft of the proposed substitute for Article VIII of the Interim Agreement regarding the appointment of the Manager.


Rosel H. Hyde
Chairman

Attachment

DRAFT SUBSTITUTE FOR ARTICLE VIII -- MANAGER

alternative

The Communications Satellite Corporation, incorporated under the laws of the District of Columbia, shall serve as Manager under a contract with the Governing Body which specifically sets forth the Manager's duties, functions and obligations. The Manager shall, among other things, pursuant to the general policies of the Governing Body and in accordance with specific determination which may be made by the Governing Body, be responsible for recommending the design and plans for the development of the space segment; shall oversee the construction and establishment of the space segment; and shall be responsible for its operation and maintenance. ~~In the performance of its managerial responsibilities, the Communications Satellite Corporation shall function through a separate staff which devotes all of its time solely to the managerial function. This staff shall be drawn from qualified personnel of the members and shall be as representative of the composition of the organization as is feasible.~~

The Governing Body may in its contract with the Communications Satellite Corporation provide for the performance of general housekeeping functions on behalf of the Governing Body by the Communications Satellite Corporation, or may establish a separate staff under the Governing Body's jurisdiction and control to perform such housekeeping functions.

Fall back.

Plus -- Par 1 COMSAT paper.

on Change of designation

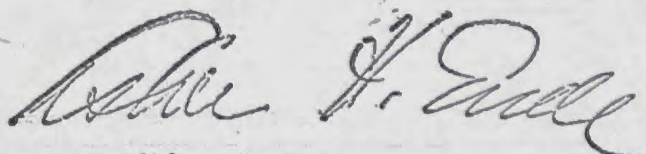
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

May 29, 1968

MEMORANDUM

TO: Members, Panel No. 4 (INTELSAT - 1969 Planning) of the
Ad Hoc Intra-Governmental Communication Satellite Policy
Coordination Committee

The attached draft paper regarding Intelsat Managership is being distributed directly to Panel Members at the request of Steve Doyle.



Asher H. Ende
Deputy Chief,
Common Carrier Bureau

Attachment:

Possible Alternatives to the Present Managership Format

Possible Alternatives to the Present Managership Format

Before considering the question of the structure and control of the manager, it is essential to have a clear understanding of the importance of this function. It is clear that with an organization like Intelsat, where the ICSC meets every six weeks or so and its major subcommittees also meet periodically to consider specified agenda items and detailed papers presented to them, the initiative for action rests with the manager and his full-time staff. These people do the continuous ongoing work, they prepare the specifications, evaluate proposals, suggest courses of action and prepare lengthy justifications for what they believe should be done. Such staff is essential to any operation and will continue to perform these functions no matter how the managership is structured or controlled in the future.

The success of the system, then, is dependent to a large degree on the initiative, imagination, technical skill and overall competence of the manager. Equally important is the confidence that Intelsat, and the ICSC in particular, have in the manager and the managerial staff. Intelsat and the ICSC must have confidence not only in the technical competence and skill of the manager and the managerial staff, but also, and perhaps more importantly, in their impartiality and full devotion to the best interests of all members of Intelsat. Any feeling or suspicion even if not justified, that the manager or staff have dual loyalties or that there is, or could be, a conflict of interest, could cause major problems.

Finally, the position of the manager is made difficult by the nature of Intelsat as an intergovernmental consortium. Considerations of national prestige became involved especially in a situation where Comsat is the major partner in Intelsat and also serves as manager. Since this is not a purely commercial venture, as for example, AT&T's role in TAT 5, other nations look at Comsat's dominance as the dominance of the U.S. Government.

and this exacerbates an already difficult situation.

We should bear in mind, however, that the problems resulting from Comsat dominance and control may be alleviated in the future as the total share of U.S. - worldwide traffic tends to fall below 50%. Forecasts of traffic indicate that in the next few years U.S. use of Intelsat facilities will decrease proportionately and that the U.S. share will be in the middle or upper portion of the 40 - 50% range. This should tend to alleviate the situation. However, as a concomitant our decreasing prominence will raise questions as to the validity of any claim we may make to being manager or exercising predominant control over the managership.

Turning now to the question of formulating or reformulating a U.S. position on the managership, this should begin with a clear analysis of the basic U.S. interests in this matter. It would appear that in essence they are threefold:

1. It is in our interest and also that of all Intelsat members that the manager, no matter who the entity or entities in control, be devoted to planning, designing, constructing and operating the most efficient and economical system which will serve all members, large and small, developed and developing, most effectively. In addition, the managing entity must have the technical competence to perform this function. Finally, the managing entity must conduct itself in such fashion as to gain and retain the confidence of the Interim Committee (or its successor) as well as that of the membership of Intelsat generally.

2. It is in our interest, because of our technical ability and competence, as well as the fact that the United States will for the foreseeable future be by far the largest user of Intelsat facilities

to see to it that the United States has a voice in management which is reasonably related to its interest in and use of the system. In addition, as the prime entity in the creation of Intelsat and in moving it as far and fast as it has moved, we have an obligation to all countries we urged and induced to join that the manager continue to function in their collective best interest.

3. We have an obligation to Comsat to consult with it and give careful consideration to its views and desires on this subject. Comsat, although a private corporation, is in the eyes of most of the world the official U.S. instrument for development of the satellite technology for handling international communications. We cannot permit it to be summarily downgraded or removed from a position of prominence without loss of prestige and influence in this field or having our action considered as an admission of Comsat's failure in this field.

There is no doubt that the managership question is perhaps the most controversial and difficult one confronting us in the renegotiation of the Interim Agreements. There is an undercurrent of dissatisfaction with the present organization of the managership which certain of its more vocal opponents will undoubtedly seek to exploit in an attempt to undermine Comsat's role in any future managerial activity. Upon analysis it appears there are several basic causes for the present situation. Some were completely unavoidable, others were exacerbated by Comsat's action.

The first cause is probably a natural resentment at the technical prominence of Comsat and the United States in the technology. Other nations know that without our contribution there would not be Intelsat satellites operating in geostationary orbits, nor the great advances that have been

made in a few short years. This attitude would be present no matter what we had done or not done with the managership.

Secondly, there is a legitimate concern about the dual role Comsat plays as manager and major owner of Intelsat. Comsat has done most of the technical work in its corporate guise. It translates its conclusions as Comsat into recommendations as manager and then supports them as 53% owner of Intelsat. Essentially many nations raise the question -- is what is good for Comsat necessarily good for Intelsat? It would appear that any restructuring of the managership must involve a clear separation or division between Comsat as a U.S. corporation and the major partner in Intelsat from the personnel, activities, research and recommendations of the manager. Unless this is done, the opponents of Comsat will be able to exploit the inter-relationship to foster suspicion, distrust and opposition to any meaningful role by Comsat in the managership.

Thirdly, there has been objection to the manner in which Comsat discharged its functions as manager. The impression exists that it informed others of its conclusions rather than consulted before reaching such conclusions; that it feels it knows what is best and does it; that there was no meaningful discussion or consideration, only a process of ratification of what was presented. The German representative put it most kindly when he indicated that Germany really had no objection to most, if not all of the manager's recommendations, however, it never participated meaningfully in the basic development of the recommendations. They were presented and since there was no objection, nor could there be any at that stage, they were accepted. This is what Germany wished to avoid in the future.

In general it appears there are five possible courses of action available:

1. Strive to maintain the status quo.
2. Support the Comsat proposal for the creation of an entirely separate subsidiary owned by Comsat to act as manager.
3. Support the Comsat proposal for a separate subsidiary, but provide for the evaluations of the subsidiary into an organization in which other members of Intelsat have an increasing voice and measure of control in future years. This could be accomplished by changing the character of the separate subsidiary, by establishing a small supervisory committee composed of members of Intelsat which would review proposed recommendations of the manager before they are submitted through other mutually acceptable means. The objective would be to retain Comsat position until the system matures and becomes reasonably profitable. Then the dominance could be relaxed to coincide with the decreasing share of Comsat's traffic in Intelsat and the growing technological sophistication of other members.
4. Create a separate entity controlled by the members in the same proportions as they own the space segment.
5. Create an international entity controlled by all members on a one nation, one vote basis.

The first alternative does not seem feasible or reasonable. An adamant stand on this issue in light of general dissatisfaction would embitter debate, probably could not be successful and might very well have carry over effect on other matters in the renegotiation to our disadvantage. Also it would not answer the legitimate objections of the other members to the impropriety of Comsat's dual role. Finally, Comsat, itself, has agreed that the status quo is not supportable. It is proceeding to create a separate subsidiary to serve as manager. Under these circumstances it does not appear that U.S. should even attempt to insist upon a continuation of the status quo.

The second alternative is the one which Comsat is now apparently seeking to implement. While this may alleviate some of the problems which now exist, it does not appear that it would fully resolve them. A subsidiary corporation fully controlled by Comsat would change form without really modifying substance. The officials of the entity would still be responsible solely to Comsat and the objections to 100% American dominance would not be removed. Similarly, the feelings expressed by the Germans would still have a basic foundation, i.e. the manager, although a separate subsidiary, would still be responsible to Comsat, the American corporation, and the fear and suspicion that recommendations reflect specific interest rather than world interest would persist. The only major benefit that could be derived would be that the particular individuals staffing the management subsidiary would be devoting their full time to managerial functions and would, in theory at least, not be involved with day to day Comsat operations. It would appear that for bargaining purposes this might be our entering position with the understanding that we should fall back to the third alternative discussed below if substantial opposition develops or if it appears that major gains can be made in other areas of the renegotiation in return for flexibility in this area. A final fall back position would be to the fourth alternative.

The third alternative is a half-way house between the second and fourth. It would relate the responsibility of Comsat to the stages of development of Intelsat and the technical ability of other members in the field of satellites and launch vehicles, as well as the share of total traffic handled by Comsat. It is vague in its present format but this could be an advantage in negotiating an agreement on the managership. The promise of future more prominent roles for others could soften the objectives to retention of the managership by Comsat and the timing, as well as the extent

of participation by others could be determined in the negotiating give and take either in relation to fixed time periods, or state of technology, i.e. production of sufficiently sophisticated satellites and launch vehicles or shares of total Intelsat traffic.

The fourth alternative appears to be most feasible as a final fall back position from two points of view. First of all, it would create a truly separate staff and, therefore, largely overcome the objections now voiced to the Comsat managership. Secondly, because of our major position in Intelsat, it would give us a sufficiently strong voice to insure efficiency of operation and adequate protection of American interests. This approach could also be supported on the premise that it parallels exactly the general structure of Intelsat by relating ownership and responsibility to actual use. Such an entity would almost certainly have American leadership, that is an American General Manager or one who is fully acceptable to us and whose views would coincide or parallel ours. At the same time it would give a meaningful voice to other major users as a matter of right rather than as a matter of Comsat's grace. Comsat would be required, because of the expected reduction of the shares below 50% in the early 1970's, to be particularly sensitive to the views of other nations in order to maintain effective control. This in turn should work to tie other countries to the approach and to help minimize the drive toward internationalization of either Intelsat or the managership.

Accordingly, it is felt that this alternative should be our final fall back position and one beyond which we should not go nor under presently foreseeable conditions.

The final alternative, the creation of a true international body to serve as manager which would carry with it the concept of one vote to each

member, should be resisted for several reasons. First of all, acceptance of such an approach with respect to the manager would make it extremely difficult, if not impossible, to resist over the long run a similar structure for Intelsat, itself. Furthermore, such dispersion of authority and responsibility would destroy our basic concept of Intelsat as an international business venture and enhance the opportunity for making most of the decisions political. Certainly experience in the General Assembly of the United Nations with the one nation, one vote concept even on basic political questions is not a very inviting precedent. Aside from this, the manager's function is essentially technical and it should be structured to maximize rather than minimize technical efficiencies and effectiveness.

SUMMARY: It would appear that there are legitimate bases for opposition to a continuation of the present structure of the manager. The U.S. should take the leadership in anticipating such objections but at the same time resisting proposals which could adversely affect the competence of the manager to discharge its assigned function. The panel should therefore consult with Comsat and procure its views. If convincing arguments are made against going into alternative 3 at once, we should prepare a contribution supporting the separate corporation owned by Comsat approach for submission and at the same time prepare a position paper encompassing alternatives 3 and 4. All such papers should make it clear that the U.S. supports staffing the managerial function as broadly as possible, provided that competent personnel are made available*, so that the total staff reflects generally the ownership shares of the various members of Intelsat with particular care taken to assure representation of the different world regions on the manager's staff in proportion to the ownership interests of such regions.

* In this connection see p. 164 of the International Telecommunication Convention (Montreux, 1965), which reads as follows:

The paramount consideration in the recruitment of staff and in the determination of the conditions of service shall be the necessity of securing for the Union the highest standards of efficiency, competence and integrity. Due regard must be paid to the importance of recruiting the staff on as wide a geographical basis as possible.



DEPARTMENT OF STATE

Washington, D.C. 20520

January 16, 1969

MEMORANDUM

TO: Members of the INTELSAT Conference Executive Committee

Attached is a memorandum setting out the statutory provisions of certain other international organizations relating to general or policy functions of their Assemblies or General Conferences. I suggest that those of the IAEA and ICAO offer useful precedents which might overcome the problems posed by the ICSC majority recommendation.

WPA
Ward P. Allen

Attachment.

COMPARISON OF POWERS OF ASSEMBLIES AND GENERAL CONFERENCES
OF INTERNATIONAL ORGANIZATIONS RELATING TO BROAD POLICY QUESTIONS

1. A majority of ICSC has proposed that an Assembly consisting of Parties (273-4) or an Assembly of either Parties or Signatories as determined before each meeting (297-8) be empowered

"To establish the general policy and scope of programs of the Organization, and to review the activities of the other organs."

"To lay down the Organization's broad policy and to take decisions of a political nature."

2. IAEA General Conference

"The General Conference may discuss any questions or any matters within the scope of this Statute or relating to the powers and functions of any organs provided for in this Statute, and may make recommendations to the membership of the Agency or to the Board of Governors or to both on any such questions or matters."

3. ICAO Assembly

"Deal with any matter within the sphere of action of the Organization not specifically assigned to the Council."

4. ITU Plenipotentiary Conference

"The Plenipotentiary Conference shall:

- a) determine the general policies for fulfilling the purposes of the Union prescribed in Article 4 of this Convention."

5. World Meteorological Congress

"The functions of the Congress shall be:

- (a) To determine general regulations, subject to the provisions of the present Convention, prescribing the constitution and the functions of the various bodies of the Organization;

- (e) To determine general policies for the fulfilment of the purposes of the Organization as set forth in Article 2 of the present Convention."

U.S. POSITION ON COMSAT AS MANAGER

The United States should press for adoption of the position advanced in ICSC-28-40, namely,

1. Designation of Comsat as Manager with provision for change of designation by the assembly on recommendation of the governing body.
2. A management contract to be concluded between Comsat as Manager and the governing body, such contract to be reviewed and renegotiated periodically.
3. The Manager's functions to be performed subject to the general policies and specific determinations of the governing body.
4. International participation in the management function to be achieved by retaining on Comsat's staff the services of qualified personnel from member countries.

In urging adoption of this point, the United States should stress the following factors:

1. The outstanding success of the INTELSAT program during the interim period and the indispensable contribution of Comsat as Manager to that achievement.
2. The comparatively poor record of accomplishment of other international organizations in advanced technological

fields which have relied on international management organizations of the type advocated by certain European members (e.g. ELDO and ESRO).

3. The size and professional quality of the staff which is required to provide effective management of the INTELSAT program.

4. The advantages of utilizing a private corporation for employment and management of such a staff and, conversely, the practical impossibility of assembling a comparable staff as employees of an international organization whose personnel and compensation policies would be subject to the rigidities which are characteristic of all such organizations.

5. The availability of United States Government assistance in carrying out INTELSAT programs, the unique relationship of Comsat to the United States Government under the 1962 Act, the benefits of that relationship to INTELSAT, and the uncertainty of a continuation of those benefits if a new management organization were to be substituted for Comsat.

6. The fact that what we now have is a partnership in which one entity is the managing partner, a rather common arrangement all around the world, and one which in the case of INTELSAT has produced no conflicts of interest which were not solved with reasonable ease.

There should be no retreat from the foregoing position before the final stage of the definitive arrangements negotiations. Against the distinct possibility that this stage will not be reached during the four-week conference beginning on February 24, it would be desirable to have a positive plan for using all of the time of the conference to educate the delegates on the practical aspects of this question as outlined above. If, however, it appears that the firmness of our position is the only remaining issue preventing a satisfactory conclusion of the negotiations, the United States should express its willingness to omit from the agreements the designation of Comsat as manager and to provide instead that the governing body shall be empowered to conclude appropriate agreements for performance of management functions with any entity it deems qualified, public or private. However, the United States should take this step only if it has adequate assurance from the necessary number of members that the governing body will conclude such a contract with Comsat for a minimum period of five years as its first order of business under the definitive arrangements.

FORCE FIELD ANALYSIS
INTELSAT DEFINITIVE ARRANGEMENTS

Pro's

:

Con's

Issue: COMSAT VS AN INTERNATIONAL CORPORATE PARTNERSHIP AS MANAGER

Need for change has not been demonstrated:

- COMSAT has performed well under difficult and trying circumstances in establishing and operating the global communication-satellite system.
- COMSAT has assembled an outstanding staff and developed expertise.
- COMSAT has access to U. S. launch facilities and U. S. Aerospace industry.

Retention of COMSAT as Manager would assure access to U. S. launch facilities and aerospace industry & NASA.

Continuation of COMSAT as Manager would avoid disruption and delay and assure earlier achievement of objectives; would assure a competent Manager in a curcial period.

Continuance of the U. S. in an influential position will assist the smaller and less developed countries.

Several States urge replacement of COMSAT as Manager:

- for reasons of national pride,
- desire to develop their national capability,
- desire to sell more equipment,
- fear of U. S. dominance.

Change in Manager would require recruiting and assembling a new staff and bringing the staff up to the essential proficiency - a long lead time would be required - it might prove to be impossible.

An International Manager would not be assured of access to U. S. launch facilities.

A change in Manager would be disruptive and cause delays during a crucial period and could prevent achievement of objectives.

Change in Manager could work to the disadvantage of smaller and less developed countries.

Whereas there are international legal entities there is no known precedent for such a body to conduct international operations - conduct of operations is left to States.

FORCE FIELD ANALYSIS
INTELSAT DEFINITIVE ARRANGEMENTS

Pro's

:

Con's

Issue: ITU Membership vs All States

ITU membership is open to:

- Any country listed in Annex 1 to the Montreux Convention upon signature and ratification thereof,
- Any Member of the UN which accedes to the Montreux Convention,
- Any other sovereign which applies to the ITU and receives a 2/3 vote of the ITU Members.

Countries not now ITU Members:

- China, Mainland
- East Germany
- Gambia (Member of UN)
- North Korea
- North Vietnam
- Madagascar (Member of UN)
- San Marino

Issue is not of great importance

Comments on the Manager organ for INTELSAT

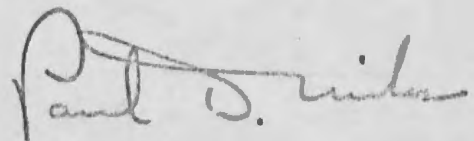
The majority of the Interim Committee has recommended that the present INTELSAT Manager be replaced by a permanent international body under the authority of a Director General, having due regard to the principle of equitable geographical distribution (as far as possible) in the recruitment of staff.

Based upon my experience with and within the ITU, I list below certain disadvantages of an international secretariat (regardless of its purpose or function), which tends to be cumbersome, inefficient and relatively expensive:

- (1) It is difficult to ensure that the Director General will be sufficiently competent.
- (2) The principle of "equitable geographical distribution" of staff can - and often does - lead to acquisition of persons not the best qualified for the positions to be filled.
- (3) Linguistic problems can result in a lack of adequate communication among all the staff, hence retarding efficiency.
- (4) While the principle of the independence of the personnel of any national entity is excellent in theory, many persons find it most difficult to divorce themselves from their National background, viewpoints and prejudices.
- (5) It is even more difficult for certain countries to refrain from attempting to influence the work of their nationals who are members of international staff.
- (6) Most persons are reluctant to live in another country for an indefinite period of time - hence staff turn over can be relatively high.
- (7) Special fringe benefits necessary to attract competent persons to an international staff can result in costs that would otherwise be unnecessary. Such benefits include --

repatriation allowance
education allowance (for children of personnel)
lengthy periodic home leave, in addition to
normal vacations
salary supplements to provide the equivalent of
a tax-free salary.

If the Conference refuses to accept COMSAT as the Manager under the new arrangements, I would support the present thinking in the Department of State that we try for the compromise of turning over administrative and financial responsibilities to an international secretariat, reserving to COMSAT the technical and operational functions. In fact, I can see no entity in sight, other than COMSAT, that could carry out effectively the technical and operational functions for at least the next several years.


Paul S. Miller



DEPARTMENT OF STATE
WASHINGTON

January 9, 1969

MEMORANDUM

TO: Members of the INTELSAT Conference Executive Committee.

Attached are summaries on the following subjects for the meeting of Monday, January 13:

Financial Matters

Procurement Policy

Data and Inventions

Access to the System

A summary on the Manager was distributed January 2.

An FCC staff draft article on data and inventions is being distributed today.

William K. Miller

Attachments.

Financial Matters

- I ICSC Report. Section F of ICSC 36-58, pp 74-77.
- II Interim Agreements. Articles III, VI and XII (a) (ii), and Article 3 of the Special Agreement with the annex thereto.
- III Issues Paper. The issues paper on this subject is entitled "Criteria for Investment (State Revised 1/2/69)."

IV ICSC Positions

- 1. A majority (10-13) recommends clearly separating investment by owners from use payment by users (493). UK, Asia/Pacific, Australia, Arab Group support. US opposes.
- 2. There is support (3-5) for financial arrangements based on combining roles as owners and users, perhaps eliminating space segment charges as such (495). Japan, Belgium-Netherlands, Arab Group support. This is essentially the US proposal (no user charges).
- 3. A substantial majority (14-17) recommends investment directly related, through periodic adjustment, to use of organization satellites, with a minimum investment share of 0.05% (498). Supported by Argentina, Asiatic/Pacific Group, and Arab Group.
- 4. There is substantial support (6-9) for two proposals that would give every member a base share and distribute only a portion of investment in relation to use (500,501). This would equalize investments more and eliminate substantial disparities in voting power based on investment. The motive is to eliminate US veto, not financial desirability. Support comes from Asia/Pacific Group, Arab Group, Colombia/Venezuela/Chile, Argentina and Brazil. US opposes.

Frequency of Adjustment

A majority (10-13) supports annual adjustment (511).
US, Arab Group and Canada support.

Compensation for use of capital

- A substantial majority (14-17) recommends compensation for use of capital at a rate equal to the cost of money during periods between adjustment (521). Asia/Pacific, Australia, Belgium-Netherlands, Brazil support.
- There is substantial support for the position that the compensation for use of capital be substantially below the 14% rate under the present arrangement (522). Belgium-Netherlands, Brazil, CVC support. Many countries oppose the reverse of this, i.e. near 14% (523). The US position is silent on this question.

Procurement Policy

- I ICSC Report. Section G, pp 81-82 of ICSC 36-58.
- II Interim Agreements. Article X, Article 10 (a), (b),
(c)
- III Issues Papers. ComSat paper of 11/19/68; State
revision of 12/27/68.
- IV Question. The basic question is how much weight should
be attached, on the one hand, to normal business
criteria (quality, price and timely delivery)
and, on the other hand, to distribution of contracts
among members.
- V ICSC Positions.
 - (1) Substantial majority (14-17) for procurement on
basis of best product at best price (536). Arab
Group, Asia/Pacific Group, Argentina, Australia,
Belgium-Netherlands, Brazil, Canada and Chile/
Venezuela/Colombia supported this according to
ComSat's notes.
 - (2) Majority (10-13) support the same formula with
a sentence added to give the Governing body freedom,
in cases where it would be impossible to fulfill
the preceding conditions, "to adopt a solution
taking into account the interests of the Parti-
cipating States" (537). The Arab Group and
Argentina opposed this.
 - (3) A substantial majority (14-17) recommends
 - protecting the interests of all states
and making possible development of
their technology (540) (CETS proposed,
Arab Group and Argentina oppose) and
 - all have the opportunity to participate
to extent of capacity (541)
 - (4) A majority (10-13) recommends procurement, in
principle, proportionate to investment shares (542).

Data and Inventions

- I ICSC Report. Section H, pp 83-84.
- II Interim Arrangements. Special Agreement, Article 10 (f) (g).
- III Issues Papers. The pertinent issues papers are the ComSat paper on "Data and Inventions" (11/19/68), and the draft article done by the FCC staff (circulated 1/9/69).
- IV ICSC Positions

1. The Committee unanimously endorsed the position that "the patent policy of the Organization be based on equitable arrangements, taking into account the interests of the Participating States and of the contractors" (545).
2. The Committee gave substantial support (6-9) to a proposal that rights to patents and inventions be left with the contractors with rights of use in the INTELSAT member countries (547). This was supported by Europeans generally with the Asiatic Pacific Group against. (See also pp 116 and 117 of the ICSC Report for Arab Group views on this topic.)
3. A second proposal receiving substantial support is that details of patent/data policy should not be set out in the agreement but should be left to the discretion of the Governing Body (548). Supported by Australia, Argentina and a limited number of small European countries.
4. There were only 3 to 5 members who favored continuation of the policies and practices under the interim arrangements (549). Asia/Pacific Group was for this position.

There is as yet no clear, agreed U.S. position.

Access to the System

I ICSC Report. Section I, part 1, pp 85-6 of ICSC 36-58.

II Interim Agreements. Preamble.

III Issues Papers. None

IV Questions

A. Do availability of the global system on a non-discriminatory basis and access to the space segment for all States in the sense of the Preamble and UN Resolution 1721 (XVI) imply direct access, or would indirect access suffice?

B. Should we favor or oppose, or do we have any objection to a provision for direct access?

V ICSC Positions

(1) Unanimous to permit indirect access (554).

(2) Substantial support (6-9) for direct access by agreement with the Organization. This involved the CETS countries and the Asian-Pacific group.

(3) Proposal (2) for unqualified direct access (France and Switzerland).

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF TELECOMMUNICATIONS MANAGEMENT
WASHINGTON, D.C. 20504

OFFICE OF THE DIRECTOR

January 16, 1969

Memorandum for Ambassador Marks:

Subject: Manager for INTELSAT

This memorandum is in response to your request expressed during the executive session on January 13, 1969 for my views on the crucial policy issue concerning the institutional arrangements which would apply to the Manager for INTELSAT under the Definitive Arrangements.

Understandably, the Department of State issue paper states the issue in terms of a political problem. I view the matter as more basic in the sense of management competence and business viability for the continued growth and success of the Consortium. Accordingly, I feel the policy issue is:

What institutional arrangements for accomplishment of the Manager function should be established under the Definitive Arrangements which will maintain the successful momentum of the Consortium, protect the large investments to date and insure effective accomplishment of the "Manager for INTELSAT" role?

Areas of Competence Required by the "Manager"

The principal functions which require accomplishment by a Manager organization in the design, development, construction, establishment, operation and maintenance of the space segment include the following:

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- 2 -

- A system planning capability for integrating engineering, operational, economic and social factors bearing on the global communications satellite system and coordinating the development, design and deployment of the satellites constituting the space segment of the single global system as a major component of an improved network.
- An engineering capability covering the usual ranges of transmission; engineering economics; traffic engineering in the sense of future estimating, capacity studies, etc.; specialized satellite engineering; contract analysis in connection with procurement; a substantial systems engineering capability; and, at the minimum, R&D capability and current experience adequate to make competent judgments of the work of others.
- A financial and accounting capability to handle the allocation of shares among the participants, estimate future capital and operating fund requirements, bill and collect funds from the members, and handle the disbursement of funds in the form of payrolls, payments to contractors, and any repayments to members.
- A personnel capability for exercising the imagination and promotion necessary to recruit and retain a high caliber staff of a number of different disciplines with an adequate international nature to, as closely as possible, meet the desires of the members.
- A legal capability adequate to operate in the international environment in terms of defining the services to be provided using entities that constitute the customers and handle the complex problems of contracting, patent and associated proprietary rights connected therewith, as well as all the usual legal requirements on any common carrier.

- 3 -

- A customer relations and commercial capability of a very unusual nature. This group needs the technical capability of advising and counseling the carrier customers throughout the world in order to promote the use of satellite services and assist the carriers in making the most effective use of satellites. It can draw upon the engineering capability to a large extent, but the regular members of the customer relations department should have the technical and economic competence to conduct most of the relations with current and potential using entities.

The above functions to be carried out by the Manager, as the term "Manager" implies, include all the staff and system planning functions normally required of a major communications common carrier, the interdisciplinary systems engineering functions associated with the development of facilities utilizing the sophisticated space technology, and the development and dissemination of technological innovations through an ability to draw directly on the areas of maximum progress in technology. The responsibility for policy decisions and the approval of system plans rests with the Governing Body but, the Manager is required to integrate, interpret and recommend these decisions in terms of the foregoing functions. He is responsible for and expected to carry out adequately the study and analysis of the alternatives, make recommendations regarding choices to the Governing Body, and be prepared to put these decisions into action when they are made.

Basic Principles of Management Applicable to Sophisticated Enterprises such as the INTELSAT Consortium:

- Strong executive leadership (single head)
- Undivided responsibility
- Clearly defined functions
- Answerable and responsible to a Board of Directors for policy and adequate performance (Governing Body)
- An organization not subject to any national regulatory body.

- 4 -

Peculiar management competence required to accomplish
"Manager" functions:

- An organization which can generate close working relationship and operate effectively with the major sources of telecommunications research and development and space technology.
- An organization which has the capacity and legal authority to obtain launch services for the placing of commercial (INTELSAT) satellites in orbit under the most favorable conditions.

In evaluating the criteria outlined above, I can find no fundamental weakness in the current approach for the Manager under the Interim Arrangements. Although there have been verbal complaints of conflict of interest (apparent or real) between the U. S. designated entity (COMSAT Corporation) and the Manager for INTELSAT (COMSAT Corporation) case histories or evidence of this has not been stated. What is crucial in this issue remains: What is in the interest of the United States and the community of nations in light of stated objectives and in recognition of any realistic and feasible alternative?

Development of alternatives to generate a Manager competence outside COMSAT Corporation must address some important commercial business considerations to include (a) a long lead time (5 to 10 years or more) would be required to recruit and develop a functioning organization with comparable competence, (b) concluding arrangements to obtain launch services, (c) insuring the forward momentum of the Consortium is maintained during the transition period. Building a new Manager organization outside COMSAT would be an immense and difficult task because of the world's shortage of technically qualified people with the necessary experience. Furthermore, the need to establish effective working relationships between the Manager organization and other existing space and telecommunications organizations would require an extended period of time.

-5-

In examining the criteria outlined above, I have also concluded that the institutional arrangements proposed by our European partners for the establishment of an International Secretariat to serve as "the Executive Body" is not a realistic or feasible international joint business venture for the INTELSAT Consortium. Examples of attempts to create multinational staff organizations e.g., ELDO/ESRO have proven ineffective in achieving success in technologically sophisticated endeavors. I cannot visualize the establishment of an International Secretariat consultative form of management as being effective in accomplishing the executive functions associated with the "Manager" role.

In addition to the practical difficulties involved in the development and operation of a truly International Secretariat performing the Management Body functions, there is a substantial legal question as to whether the United States (NASA) can provide launch services directly to an International (Consultative) Management Body, within the terms of the Communications Satellite Act of 1962, for commercial operational communications satellites.

It follows from this evaluation that the United States should not accept or promote the adoption of an ill-defined agreement calling for the creation of an International Secretariat which could through subsequent lack of competence cause the Consortium's business activities to fail or to deteriorate in efficiency.

Some candidate forms of United States accommodation were treated in the United States contribution to the ICSC 28-40, October 3, 1967. These included first, a proposal that the Manager (COMSAT) obtain services of additional qualified personnel from other member countries, second, a proposal for the introduction of a contract between the Governing Body and the Manager (COMSAT) to define the role of the Manager and the relationship of the Manager to the Governing Body, third and finally, a proposal whereby the Assembly would have authority to change the Manager, based upon approval of a Governing Body recommendation.

The second proposal represents a concession which, in my view, should not be offered by the United States since it represents a "first step" toward dilution of the workable institutional arrangements which have been so successful under the Interim Arrangements. I also feel the third proposal or anything similar thereto is unacceptable and should not be supported by the United States Government.

- 6 -

The United States Government should structure its position for the INTELSAT Conference based on the demonstrated capability and performance achievement of the United States Government and COMSAT Corporation. The United States Government should insist on the preservation of COMSAT as "Manager" in the Government to Government agreement.

Based on the comments above, I have formulated a proposed statement of the United States position for the INTELSAT Conference as follows:

Proposed United States Position:

The Management Body will, pursuant to general policies of the Governing Body and in accordance with specific determinations which may be made by the Governing Body, accomplish executive functions as the Management Body in the design, development, construction, establishment, operation and maintenance of the space segment.

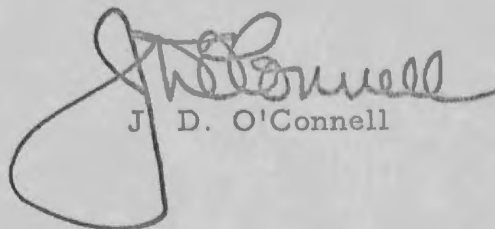
The Manager (COMSAT Corporation) designated in the Interim Arrangements is designated as the Management Body in the Definitive Arrangement.

In negotiating this issue during the Conference, I feel the United States should adopt a position which highlights the success of the Consortium, the contribution of the United States Government, through NASA launch services and the achievements of COMSAT as Manager for INTELSAT. Our position should be an "offense oriented" viewpoint in which we are ready to listen to ideas for improvement after we're satisfied the complaints are truly substantive and not political. The United States Government should use its inherent strength in this issue and establish a firm and unnegotiable position that there should be no change in the designation of the Manager under the Definitive Arrangements. The United States should place the burden on those countries which oppose continuation of COMSAT as "Manager" to show substantive cause that a change in Manager would be in the best interests of the INTELSAT Consortium. These showings should be definitive,

- 7 -

based on past performance and not speculative, theoretical or political. Essentially the basic requirement is for producing businesslike, effective and progressive results.

Finally, I think the mid-term and long-term success of the INTELSAT Consortium is dependent uniquely on a strong and effective Manager who is coupled closely with the primary sources of technological innovation and launch capability. Therefore, the United States position should be clear and unequivocal on this point and that we should not depart from it. However, we may, of necessity, be faced with offering compensatory concessions of a less critical nature in other areas e. g., voting power and functions of the Governing Body.



J. D. O'Connell



DEPARTMENT OF STATE

WASHINGTON

LIMITED OFFICIAL USE

January 2, 1969

Memorandum for the INTELSAT Conference Executive Committee

Mr. Dizard, Mr. Donahue and I were requested at the Executive Committee meeting of December 23 to prepare certain papers, based on the ICSC Report, in preparation for the meeting of January 7. The following papers are attached:

1. Table showing relationship of the Committee Report to the Interim Agreements.
2. Table showing relationship of issues papers to the Committee Report.
3. Summaries of issues and positions in the Committee on -
 - (a) Scope of Services of the Organization
 - (b) Structure of the Organization
 - (c) The Manager
4. Suggested assignments to Committees of Sections of ICSC Report.
5. Suggested Committee Structure, revised to include suggested assignment of Sections of ICSC Report.

The bracketed "recommendations" in item 3 are my suggestions and Mr. Dizard's and do not necessarily represent the views of Mr. Donahue.

William K. Miller

Attachments.

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(1)

RELATIONSHIP OF THE COMMITTEE REPORT TO THE INTERIM AND
SPECIAL AGREEMENTS AND THE SUPPLEMENTARY AGREEMENT ON
ARBITRATION

COMMITTEE REPORT	INTERIM AG.	SPECIAL AG.	SUPP. AG.
A. Objectives and Purposes of the Parties	Preamble		
B. Scope of Activities of the Organization	Art. I		
C. Eligibility for Membership	Art. XII (a) (b)		
D. Legal Form, Personality, and Capacity	-	-	-
E. Structure			
1. Assembly	-	-	-
2. Governing Body	Art. IV (a)		
a. eligibility for membership	Art. IV (b) (e)		
b. size	-	-	-
c. composition	Art. IV (b)		
d. functions	Art. IV (a) Art. V (c) (i)-(xiv) Art. VI (b) Art. IX (a) Art. X Art. XI (a) (b) (d) Art. XII (b)	Art. 4 (b) (d) Art. 7 (a) (b) Art. 8 (b) (c) Art. 9 Art. 10 (b) (c) (d) (g)	
e. voting	Art. V (a)		
1) determination of voting shares	-	-	-
2) voting power,	Art. V (c) (d) (e)		
3) majority requirement	Art. V (c)		
f. chairman	-	-	-

COMMITTEE REPORT	INTERIM AG.	SPECIAL AG. SUPP. AG.
E3. Management Body		
a. identity and staffing	Art. VIII	
b. designation	Art. VIII	
c. change of	-	-
d. functions	Art. X	Art. 4 (b) Art. 10 (b) (c) Art. 12
F. Financial Matters		
1. Principles underlying	Art. III	Art. 3
2. Principles for determ. investment shares	Art. VI (a) Art. XII (a) (ii)	Annex
3. methods for determ.	-	-
4. rights and obligations of onvestors		
a. property rights and interests	Art. III	
b. compens. for use of capital		Art. 9 (a) (b) (d)
c. contributions to main. and op. expense		Art. 9 (e)
d. conditions of use	Art. VII	Art. 4 (d) Art. 8
G. Procurement Policies	Art. X	Art. 10 (a) (b) (c) (d) (e)
H. Policies in Relation to Inventions, Data, Tech. Information		Art. 10 (f) (g)
I. Access to the System	Preamble Art. VII	Art. 8
J. The Agreements Constit. the Definitive Arrange.		
1. No. of Agreements	-	-

COMMITTEE REPORT	INTERIM AG.	SPECIAL AG.	SUPP. AG.
2. Signatories of the Agreements	Art. XII (a) (b)	Art. 1 (f)	
3. Duration	Art. XV	Art. 16	
4. Amendment		Art. 15	
5. Settlement of Disputes		Art. 14	All
6. Privileges, Immunities, Exemptions	-	-	-
K. Rights and Obligations of Parties	Art. VI (c) Art. XI	Art. 2 Art. 3 Art. 4 (a) (d)	
L. Withdrawal	Art. XI Art. XII (g) Art. V(c) (xi) (xi)	Art. 4 (d)	
M. Transition	Art. XV	Art. 16	

COMMITTEE REPORT - COUNTRY POSITIONS

A. SINGLE GLOBAL SYSTEM

OLD PARA.	NEW PARA.	COUNTRY POSITION
A. 203	166	All for
206	168	All for
207	169	All for
F. 605	493	UK, Asia/Pacific, Australia, Arab Group, for
606	495	Belgium/Netherlands, Japan, Arab Group for
607	496	Belgium/Netherlands, France, Switzerland for
609	498	Argentina, Asia/Pacific, Arab Group for
611	500	Asia/Pacific, Arab Group for
612	501	Colombia/Venezuela/Chile, Arab Group, Asia/Pacific, Brazil For
613	502	Mexico, Colombia/Venezuela/Chile, Argentina, Arab Group, Brazil, Asia/Pacific, for
614	504	Argentina, Mexico, Belgium/Netherlands for
616	505	Belgium/Netherlands for
617	506	Australia, Asia/Pacific for
620	509	Canada, Brazil, Belgium/Netherlands, Asia/Pacific, Arab Group for
622	511	Arab Group, Canada for

OLD PARA.	NEW PARA.	COUNTRY POSITION
626	515	Australia, Asia/Pacific for
627	512	Asia/Pacific, Brazil, Switzerland for
630	518	Arab Group, Argentina, Asia/Pacific, Australia, Belgium/Netherlands, Brazil, Canada, Colombia/Vene./Chile for
631	519	Belgium/Netherlands, France, Switzerland for
633	521	Asia/Pacific, Australia, Belgium/Netherlands, Brazil for
634	522	Colombia/Venezuela/Chile, Brazil, Belgium/Netherlands for
635	523	Arab Group, Asia/Pacific, Australia, Belgium/Netherlands, Brazil, Canada, Colombia/Venezuela/Chile, against
638 & 639	525	Asia/Pacific against
	527	Belgium/Netherlands for
640	529	Japan, Belgium/Netherlands, for
641	530	Arab Group, Belgium/Netherlands for
642	531	Belgium/Netherlands, France for
K. 802	600	Brazil, Canada, Colombia/Vene./Chile, Japan, UK, Spain, Australia for
805 & 806	603+	France, Switzerland, Belgium/Netherlands, Asia/Pacific for
	604	
807	605	France, Switzerland, Mexico, Arab Group, Asia/Pacific for
809	607	Asia/Pacific, Argentina, Arab Group against
810	608	France, Germany for

OLD PARA.	NEW PARA.	COUNTRY POSITION
813	610	All but Australia for
814	611	Australia, Brazil for
817	617	Australia, Brazil for
818	614	Asia/Pacific, Belgium/Netherlands, Brazil, Canada, Japan, Switzerland, UK for
819	616	Belgium/Netherlands, Switzerland for
820	615	Asia/Pacific, Belgium/Netherlands, Argentina, Brazil for
823	620	Asia/Pacific, Australia for
824	619	Belgium/Netherlands, Brazil, Canada, for
825	621	Arab Group for

B. MAJOR ORGANS - ASSEMBLY AND GOVERNING BODY

OLD PARA.	NEW PARA.	COUNTRY POSITION
E. 357	244	All for
447	357	All for
458	369	All for
459-478	370-389	All for
492	403	All for
500	412	All for
512	425	All for

C. MAJOR ORGANS - THE MANAGEMENT BODY

OLD PARA.	NEW PARA.	COUNTRY POSITION
E. 521 & 522	441+	Asia/Pacific for
523	434	
527	435	Italy for
543& 546	436	Asia/Pacific for
	454	
	457	Aisa/Pacific for
	457	
564- 570	478-	Germany, Belgium/Netherlands, France for
	484	
M. 904	630	Arab Group, Asia/Pacific, Argentina, Brazil, Belgium/Netherlands, Canada, Australia, Colom/Vene/Chile, for; Switzerland against
905	636	Japan for
907	635	Italy for
908	633	Asia/Pacific, Argentina, Arab Group, Australia, Belgium/Netherlands for
909	634	UK for
910	632	Arab Group, Brazil, Asia/Pacific, Canada, Colom/Vene/Chile, Australia, Switzerland for; Argentina against

D. FUNCTIONAL COMPETENCE OF THE ORGANIZATION

OLD PARA.	NEW PARA.	COUNTRY POSITION
B. 257	195	All for

Relationship of Issues Papers to the Committee Report

<u>State Department Paper</u>	<u>Committee Report Section</u>
1. Participation in the Conference	Not covered by Report
2. Rules of Procedure	Not covered by Report
3. How To Bring New Agreements into Effect	M - Transitional Arrangements J-1 No. of Agreements
4. Buying Out Non-Participants	Not covered by Report
5. Legal Personality	D - Legal Form, Personality, and Capacity; J-6, Privileges, Immunities and Exemptions
5. a.	
5.a.(1)	
5.b. Single Global System	A - Objectives and Purposes K - Rights and Obligations
5.c. Major Organs	E - Structure
5.d. The Manager	E - (5), The Manager
6. Functional Competence of the Organization	B - Scope of Activities K - Rights and Obligations
7. Regional Systems	I - Coordination Arrangements
7.a.	K - Rights and Obligations
8. Criteria for Investment	F - Financial Matters
9. Procurement Policy	G - Procurement Policy
10. Data and Inventions	H - Data and Inventions
11. The Fear of Cultural Subversion	Not covered by Report
12. Amendment Process	J-4, Amendment
13. Special Benefits for the LDCs	Not covered by Report

12/31/68

(a) Scope of Services of the Organization

I ICSC Report. The pertinent sections of the ICSC Report are Section B, "Scope of Activities of the Organization", pp 38-43 of ICSC-36-58 and Section K, "Rights and Obligations of Parties", pp 92-95 of ICSC-36-58.

II Interim Agreements. Article I is pertinent.

III Issues Papers. The pertinent USG issues paper is the paper on "Functional Competence of the Organization" (State draft of 11/19/68). The papers on regional systems also are related to the monopoly question which is involved (State, Revised 12/12/68; ComSat, 11/19/68).

IV Questions

A. What should be the scope of services offered by INTELSAT?

B. Should it have a monopoly on these services?

V ICSC Positions

A. International Services

1. Scope

(a) "Traditional" Public Services

Unanimous for providing international public telecommunication services (para. 195).

(b) Specialized Services

(i) Majority support (10 to 13 members) for authorizing specialized services subject to not adversely affecting public services (197). CETS countries oppose. U.S. position not clear.

(ii) Substantial support (6 to 9 members) for authorizing international services other than those above, i.e. specialized services, only by amendment of the definitive arrangements (198). CETS position. U.S. opposes.

(iii) Support (3-5) for less qualified authorization for specialized services (200-201). U.S. proposal.

[Recommendation: U.S. should support (i).]

2. Monopoly Question

Some of the pertinent paragraphs (in Section K) do not distinguish between traditional and specialized services.

- Majority (10-13) recommends obligation not to join in competition with INTELSAT (600). U.S. supported (?)
- Support (3-5) for a qualified version of the above (602-4) and for a broad exception (605).

The positions taken on regional satellites also are pertinent.

- Majority (10-13) recommends right to establish independent regional satellites, subject to consultation with INTELSAT (607). CETS favored, U.S. opposes.
- Support (3-5) for regional satellites without the consultation proviso (810). U.S. opposes.

(b) Specialized Services

- Majority (10-13) recommends right to establish satellites independently, or in conjunction with other states subject to consultation with INTELSAT, for specialized services (613-16).

The overall implication with respect to the monopoly question seems to be a rather confused picture. Probably a majority favor a monopoly in international traditional services, but with a regional exception. No one has specifically advocated a monopoly for specialized services and apparently a majority would oppose a monopoly.

[Recommendation: U.S. should support a monopoly on traditional international public services, subject to a qualified regional exception. U.S. should support authority to provide international specialized services, but not monopoly.]

B. Domestic Services

1. Scope

- Majority (10-13) recommends authority to provide any kind (205). U.S. supported.
- Substantial support (6-9) to provide domestic only by amendment of definitive arrangements (206). CETS supported, U.S. opposed.

2. Monopoly

A substantial majority (14-17) recommends each state have right to establish its own. A substantial majority supported this both with (610) and without (611) provision for consultation with INTELSAT. No one has advocated INTELSAT monopoly. U.S. advocated consultation with INTELSAT.

(b) Structure of the Organization

I ICSC Report. Section E, pp 46-66 of ICSC 36-58.

II Interim Agreements. Several articles of both interim agreements are pertinent. See table relating ICSC Report to Agreements.

III Issues Papers. Paper on the "Major Organs of the Organization: The Governing Body and the Assembly" (State: 11/15/68).

IV ICSC Positions

A. Assembly

1. Composition

(a) Majority (10-13) for Assembly composed of governments (246).

(b) Majority (10-13) for either governments or signatories as governments may decide (247).

(c) Substantial support (6-9) for Assembly composed of signatories (248).

[Recommendation: Should depend on functions of Assembly. (c) may be preferable, but (b) is acceptable.]

2. Functions

(a) There might be fairly serious differences as to the authority and functions of the Assembly. For example, there is majority support (10-13) for giving it authority to establish general policy and scope of programs (273, 297).

(b) There is substantial support (6-9) if governments are eligible to be in the Assembly and majority support (10-13) if they constitute the Assembly for giving it the function of electing members of the Governing Body (300, 271).

[Recommendation: This is acceptable if membership is not entirely automatic, e.g. on the basis of quotas.]

3. Voting

(a) Substantial support (6-9) and majority support (10-13) if governments constitute the Assembly for two-thirds majority for substantive matters, simple majority for other matters, each member one vote (283, 311, 335).

(b) Support (3-5) for all decisions requiring simple majority, each member one vote, and two-thirds majority of investment shares, only if the Assembly consists of signatories (336).

[Recommendation: Depends on authority of Assembly. We should insist on two-thirds weighted vote if Assembly has really significant authority.]

B. Governing Body

1. Composition

In addition to substantial (1.5%) quota holders, singly or in groups, the question is whether remaining members (a) should be elected by the Assembly (358) or (b) could represent any five members (361). A majority (10-13) favors (a); there is support (3-5), including the U.S., for (b).

[Recommendation: Either is acceptable.]

2. Voting

The principal question (stated bluntly) is how to limit the U.S. vote.

(a) There is a substantial majority (14-17) for assigning each Governing Body member a basic bloc of votes (393) and substantial support (6-9) for an unspecified means of reducing the disparity between the largest and smallest votes (395).

(b) A substantial majority (14-17) recommends that no three representatives should be able to impose or prevent a decision (405-6). CETS proposal.

(c) There is majority support (10-13) for a 50% limit for any three representatives (408).

(d) There is substantial support (6-9) for a 50% limit for one representative (419).
U.S. proposal.

C. Management Body. (See separate paper.)

(c) The Manager

- I ICSC Report. Section E, part 5, pp 66-73 of ICSC 36-58.
- II Interim Agreements. Article VIII et al. See table relating ICSC Report to Agreements.
- III Issues Papers. Paper on "The Manager" (State: Revised 12/19/68).
- IV ICSC Positions

A. Identity

(1) A majority (10-13) support the proposition that there should be an international Management Body separate from the participating entities (434). It also is provided that certain management functions could be transferred to national institutions on a project-by-project basis. This is the CETS proposal. U.S. opposes.

(2) There was substantial support (6-9) for separate Secretariat and technical and operations body (442).

(3) There was no support for the U.S. proposal that ComSat continue as Manager (444).

[Recommendation: U.S. could accept, with adequate transition provisions, an arrangement for a separate (i) international secretariat, with administrative and financial functions, and (ii) contract entity (presumably ComSat) to perform technical and operational functions.]

B. Manner of Designation

(1) A majority (10-13) favor designation in the definitive arrangements (447).

(2) There is substantial support (6-9) for appointment by the Assembly on the recommendation of the Governing Body (448).

(3) There is support (3-5) for appointment by the Governing Body (449, 452, 455).

C. Change

(1) A majority (10-13) recommends change by amending the Intergovernmental Agreement (460).

(2) Substantial support (6-9) for change by the Assembly on recommendation of Governing Body (461).

(3) Support (3-5) for change by the Governing Body (462).

Suggested Committee Assignments
(Sections of ICSC Report)

<u>ICSC Report</u>	<u>Committee and Subcommittee</u>
A. Objectives and Purposes	I - A
B. Scope of Activities	I - A*
C. Eligibility for Membership	I - A*
D. Legal form, personality and capacity	I - B*
E. Structure	I - A*
F. Financial Matters	II - A*
G. Procurement Policies	II - B*
H. Inventions and Data Policies	II - B*
I. Access to the System	I - A
J. Agreements Constituting Definitive Arrangements	I - B
K. Rights and Obligations of Parties	I - A
L. Withdrawal from the Organization	I - B*
M. Transition**	
Management Body	I - A
Financial Arrangements	II - A

* This assignment is indicated in suggested committee structure distributed earlier.

** Transition provisions cut across other subject matter and could be assigned to I - B or to a special group using substantive input of I - A and II - A.

12/31/68

INTELSAT Conference

Suggested Committee Structure

(Including suggested assignments of Sections
of ICSC Report)

Steering Committee

Credentials Committee

Editorial Committee

Committee I (Structure and Functions)

Subcommittee A (Membership, Scope of Services, and
Organizational Structure (including major organs,
their functions and voting); Sections A, B, C,
E, I and K and part of M)

Subcommittee B (Legal and Procedural Questions
(including definitions, legal status, entry
into force, duration, amendment, withdrawal,
settlement of disputes); Sections D, J and L)

Committee II (Operational Arrangements)

Subcommittee A (Financial Arrangements; Sections F
and part of M)

Subcommittee B (Management Arrangements (including
procurement policy, inventions and data,
technical and operational matters);
Sections G and H)



DEPARTMENT OF STATE

Washington, D.C. 20520

January 3, 1968

MEMORANDUM

TO: Members of the INTELSAT Conference Executive Committee.

Two papers prepared by ComSat supplementing those distributed with my memo of January 2.

William K. Miller

Attachments.

COMMITTEE REPORT - COUNTRY POSITIONS

OLD PARA.	NEW PARA.	COUNTRY POSITION
203	166	All for
206	168	All for
207	169	All for
252	190	All for
257	195	All for
357	244	All for
447	357	All for
458	369	All for
459-478	370-389	All for
492	403	All for
500	412	All for
512	425	All for
521&522	441&434	Asia/Pacific for
523	435	Italy for
527	436	Asia/Pacific for
543&546	454&457	Aisa/Pacific for
564-570	478-484	Germany, Belgium/Netherlands, France for
605	493	UK, Asia/Pacific, Australia, Arab Group for
606	495	Belgium/Netherlands, Japan, Arab Group for

OLD PARA.	NEW PARA.	COUNTRY POSITION
607	496	Belgium/netherlands, France, Switzerland for
609	498	Argentina, Asia/Pacific, Arab Group for
611	500	Asia/Pacific, Arab Group for
612	501	Colombia/Venezuela/Chile, Arab Group, Asia/Pacific, Brazil for
613	502	Mexico, Colombia/Venezuela/Chile, Argentina, Arab Group, Brazil, Asia/Pac. for
614	504	Argentina, Mexico, Belgium/Netherlands for
616	505	Belgium/Netherlands for
617	506	Australia, Asia/Pacific for
620	509	Canada, Brazil, Belgium/Netherlands, Asia/Pacific, Arab Group for
622	511	Arab Group, Canada, for
626	515	Australia, Asia/Pacific for
627	512	Asia/Pacific, Brazil, Switzerland for
630	518	Arab Group, Argentina, Asia/Pacific, Australia, Belgium/Netherlands, Brazil, Canada, Colombia/Venezuela/Chile for
631	519	Belgium/Netherlands, France, Switzerland for
633	521	Asia/Pacific, Australia, Belgium/Netherlands, Brazil for
634	522	Colombia/Venezuela/Chile, Brazil, Belgium/Netherlands for

OLD PARA.	NEW PARA.	COUNTRY POSITION
635	523	Arab Group, Asia/Pacific, Australia, Belgium/Netherlands, Brazil, Canada, Colombia/Venezuela/Chile, against
636	525	Asia/Pacific against
639	527	Belgium/Netherlands for
640	529	Japan, Belgium/Netherlands for
641	530	Arab Group, Belgium/Netherlands for
642	531	Belgium/Netherlands, France for
653	536	Arab Group, Argentina, Asia/Pacific, Australia, Belgium/Netherlands, Brazil, Canada, Colombia/Venezuela/Chile for
654&656	537&540	Arab Group and Argentina against
660	543	Argentina, Australia, Belgium/Netherlands for
671	545	All for
673	547	Arab Group, Asia/Pacific against
675	549	Asia/Pacific for
704	554	All for
705	555	Asia/Pacific and CETS for
706	556	France, Switzerland for
709	559	Italy against
711	561	Arab Group, Argentina, Asia/Pacific, Belgium/Netherlands, Brazil, Canada, Colombia/Venezuela/Chile for
712	563	Asia/Pacific, Japan UK for

OLD PARA.	NEW PARA.	COUNTRY POSITION
713	562	Asia/Pacific, Belgium/Netherlands for
715	565	Belgium/Netherlands, Switzerland for
717	567	France and Switzerland for
752	570	Germany against
753	571	France and Germany for
756	575	Mexico and UK against
757	574	All for
761	579	Brazil and Belgium/Netherlands against
765	583	Canada and Arab Group against
767	585	Australia and Asia/Pacific for
768	590	Italy for
769	586	Asia/Pacific and Belgium/Netherlands for
770	587	Asia/Pacific, Arab Group, Brazil, Canada for
772	589	UK, Italy, Asia/Pacific for
773	588	Asia/Pacific, UK, Spain, Japan for
776	593	All for
802	600	Brazil, Canada, Colombia/Venezuela/Chile, Japan, UK, Spain, Australia for
805&806	603&604	France, Switzerland, Belgium/Netherlands, Asia/Pacific for
807	605	France, Switzerland, Mexico, Arab Group, Asia/Pacific for

OLD PARA.	NEW PARA.	COUNTRY POSITION
809	607	Asia/Pacific, Argentina, Arab Group against
810	608	France, Germany for
813	610	All but Australia for
814	611	Australia, Brazil for
817	617	Australia, Brazil for
818	614	Aisa/Pacific, Belgium/Netherlands, Brazil, Canada, Japan, Switzerland, UK for
819	616	Belgium/Netherlands, Switzerland for
820	615	Asia/Pacific, Belgium/Netherlands, Argentina, Brazil for'
823	620	Aisa/Pacific, Australia for
824	619	Belgium/Netherlands, Brazil, Canada for
825	621	Arab Group for
851	624	All but Mexico for
852	625	Arab Group, Asia/Pacific, Argentina, Brazil, Belgium/Netherlands, Canada, Colombia/Venezuela/Chile for
904	630	Arab Group, Asia/Pacific, Argentina, Brazil, Belgium/Netherlands, Canada, Colombia/Venezuela/Chile for; Switz. against
905	636	Japan for
907	635	Italy for
908	633	Asia/Pacific, Argentina, Arab Group, Australia, Belgium/Netherlands for
909	634	UK for
910	632	Arab Group, Brazil, Asia/Pacific, Canada Col/Vene/Chile, Australia, Switzerland for; Argentina against

I. THE SINGLE GLOBAL SYSTEM

References: Sections A, F, and K of ICSC-36-58

The analysis of the several votes taken on proposals relating to the single global concept, sections A, F, and K of ICSC-36-58, indicate strong support for the U.S. position.

Within section A, Objectives and Purposes of the Definitive Arrangements, there are two relevant paragraphs, 177 and 181. Paragraph 177 which was recommended by a substantial majority of the Committee (14 members) states that one of the purposes and objectives to be served by the definitive arrangements should be to "maintain and further develop a single global commercial telecommunication satellite system on the basis of undivided ownership of the system by means of an Organization founded on a unitary basis." In addition, it should be noted that a substantial majority of the Committee (16 members) supported the proposal in paragraph 181 of section A, Objectives and Purposes of the Definitive Arrangements, which recommends that the principles in the first four paragraphs of the Preamble of the Interim Agreement be reiterated in the Preamble of the Inter-governmental Agreement. One of the principles stated in paragraph two of the Preamble is as follows: "desiring to establish a single global commercial satellite system..."

Section F, Financial Matters, has several important paragraphs regarding the single global concept. Paragraph 518 which was the recommendation of a substantial majority of the Committee (15 members), states that "the entire capital Organization-financed space segment be owned in undivided shares by the Signatories in proportion to their investment shares." The French proposal for divided ownership, paragraph 519, received the support of only 3 members.

Section K, Rights and Obligations of the Parties, touches upon the concept of the single global system in several areas. In paragraph 600 a majority of the Committee (12 members) recommends that "each participating state obligate itself not to establish, or join in the establishment of, a space segment in competition with the space segment of the Organization".

The size of the votes on these recommendations which relate to the single global concept shows strong support in the Committee including many of the CETS members for the single global concept and the concept of undivided ownership.

II. ORGANS OF THE ORGANIZATION

Reference: Sections E and M, ICSC-36-58

The United States proposal that the Organization consist of three organs, an Assembly, a Governing Body and a Manager received the unanimous recommendation of the Committee. However, in regard to the specifics of each organ there were variances between the action taken in the Committee and the United States proposals.

1. The Assembly

The United States position has been that the Assembly consist of "members" and have limited functions. Instead of determining which functions the Assembly should perform, and then determining its composition, the Committee first considered the Assembly's composition and then its functions. Two recommendations on composition received majority support:

-- That the Assembly should be composed of all Parties.

(10 members, paragraph 246).

-- That the Assembly should be composed either of Parties or of designated telecommunication entities as may be decided by the Parties prior to each meeting of the Assembly. (10 members, paragraph 247).

One received substantial support:

-- That the Assembly should be composed of all Signatories.

(7 members, paragraph 248)

The Committee recommended the following function for an Assembly to be composed of Parties or designated telecommunications entities: (paragraphs 295-298)

- To receive, consider and, in some instances, approve reports from the Governing Body.
- To determine that a Signatory shall be deemed to have withdrawn from the Organization for failure to comply with the obligations of membership.
- To establish the general policy and scope of programs of the Organization, and to review the activities of the other organs.
- To lay down the Organization's broad policy and to take decisions of a political nature.

For an Assembly consisting of all Parties an extra three functions received majority support:

- To act upon all matters referred to it by the Governing Body, including:
 - . proposals for increasing the capital investments of Signatories;
 - . recommendations for changes in designation of or arrangements with the Management Body, and for the appointment of the chief executive of the Management Body for a prescribed term of office.

-- To appoint Signatories to the Governing Body for a prescribed period, either because their past use of the system qualified them for such representation or because they were selected on some other basis, such as regional representation.

In regard to amending the Agreements, there was only substantial support in the Committee (6 members) that an Assembly which consists either of Parties or Signatories consider and approve amendments to the Second Agreement. Only three members would give this function to an Assembly of all Parties.

Regarding voting, a majority of the Committee (12 members) recommended that procedural decisions in an Assembly of all Parties be adopted by a simple majority, and important decisions of substance by a two-thirds majority with each member possessing one vote. For an Assembly of either Parties or Signatories, this proposal only received substantial support (9 members). The position paper prepared by the State Department states that an "Assembly without much real power should vote on a one-nation, one-vote basis," but if it takes more significant types of decisions, then a weighted majority or a weighted two-thirds vote in addition to a numerical majority might be sought.

The conclusion derived from the action taken in the Committee is that a great many members were unsure of what the Assembly should do, but that if it consisted of Governments, it could do more. There was majority support (10 members) that Governments not be precluded.

2. The Governing Body

Most of the proposals of the United States on the Governing Body received strong support. A majority of the Committee recommended that the Governing Body be composed of representatives of Signatories (paragraph 346) while a substantial majority recommended that it be of limited size. In addition, there was a unanimous recommendation that Signatories be entitled to seats in the Governing Body by virtue of possession individually, or as a group, of investment shares equalling or exceeding a requisite level, and a majority of the Committee recommended that this level be set at 1.5% of the total investment shares in the Organization. There was also, however, an obvious interest in additional ways to permit representation in the Committee as seen by the various proposals contained in paragraphs 358-366.

Two important issues concerned the functions of the Governing Body and voting therein. The Committee unanimously recommended two generalized functions:

- Functions assigned to the Governing Body be all those functions required to direct the business and carry out the purposes of the Organization (paragraph 369).
- The Governing Body be responsible for the design, development, construction, establishment, maintenance, and operation of the space segment (paragraph 370).

It did not, however, vote on individual functions, except for one proposed by France which received substantial support (6 members):

- That the Governing Body have the function of establishing, each time such establishment is deemed useful, regional groups or groups for specialized services, composed of a limited number of Signatories. The groups would be empowered to submit to the Governing Body, either at the request of the Governing Body, or on their own initiative, recommendations concerning their field of interest (paragraph 390).

It might be assumed that most members of the Committee could lend support to most of those listed in paragraphs 373-389, though there were no indications of support registered.

Regarding voting arrangements, the United States position calls for weighted voting on both procedural and substantive issues, with a simple majority needed for the former and a two-third majority for the latter. Voting shares would be directly related to investment shares. In addition, it was proposed to place a 50% limit on the voting power of any member.

A substantial majority of the Committee (14 members) recommended that voting shares be determined by directly relating voting shares to the investment shares held respectively by a Signatory or a group of Signatories with seats in the Governing Body, and in addition by assigning to each such Signatory or group of Signatories a basic bloc of votes (paragraph 393). Other proposals received substantial support, thus indicating an attempt to limit the voting power of the United States through the mechanism of the determination of the voting share. The United States proposal for a direct relation between voting and investment shares received support (5 members).

As for voting power, the category in which the United States envisages placing a voting limitation, the United States proposal (paragraph 410) that there be a 50% limit on the voting power of any representative received substantial support (9 members). However, one proposal received a substantial majority (14 members): "In no case should any one representative or a combination of three representatives having the largest voting shares on the Governing Body be able to prevent or impose a decision of the Governing Body solely because of the casting of its votes or their votes" (paragraph 405). Another received 14 votes: "The voting power of any representative be limited by providing that the Governing Body shall not fail to take a decision

solely because of the casting of a negative vote by any three representatives" (paragraph 406). It is important to recognize that paragraph 405 places a limitation on both the negative and affirmative voting strength of the three members, while paragraph 406 places the limit only on the negative voting strength of the three members. Another proposal following this same line of reasoning but limiting the restriction to the negative power of one member received majority support (12 members): "All decisions in the Governing Body be governed by the principle that no single entity should be able to block a decision. Voting rights should be suitably defined to meet this aim" (paragraph 409). The proposal in paragraph 405 was based on a German proposal and had support from most of the European nations. The votes in the Committee on the determination of voting shares and voting power confirm our appraisal that a strong effort to effectively reduce the United States voting strength in the Governing Body - and particularly to foreclose a veto, will be the initial negotiating position of the Europeans as well as many of the LDC's. They recognize our obvious political vulnerability in this area and will press their advantage if only to set up possible tradeoffs. It can be expected that the Europeans and probably many LDC's will push for a limitation through either the mechanism of the determination of voting shares or a limit on voting power itself.

The position paper prepared by the State Department recognizes the strength of the opposition to the United States veto (p. 6), and prefers a limit on the veto power - preventing one, two or any three members from vetoing a measure, rather than any limit on the United States' affirmative voting strength. Paragraph 405 goes further than this and places a limitation both on the negative and affirmative voting strength of the three members, as noted above. Paragraphs 406 and 409, however, would appear more in line with the reasoning presented in State's paper.

In regard to majority requirements, a majority of the Committee recommended that decisions on substantive questions be taken by a two-thirds majority of the total of the voting shares represented in the Governing Body. The United States paper of October 1967, ICSC-28-40, proposed that the majority requirement be two-thirds of the total voting power in the Organization; State's paper, page 5, does not make such a distinction, however. The recommendation of the Committee appears to be in line with United States thinking on the subject. As for procedural questions, the United States has proposed a simple majority of the total voting power of the Organization. During the thirty-sixth meeting, no support was indicated for a proposal that "decisions on procedural questions be taken by a simple majority of the total voting shares represented in the Governing Body," and it

was deleted in the final report. There was thus one proposal (paragraph 423) on procedural questions, and it received the support of a substantial majority of the Committee (17 members): That decisions on procedural questions be taken by a simple majority of the representatives present and voting.

3. The Management Body

In its October 1967 paper, ICSC-28-40, the United States proposed that Comsat be retained as Manager under a management contract to be entered into with the Governing Body. This remains the United States position. A majority of the Committee (12 members), supported a "permanent international Management Body under the authority of a Director-General...." (paragraph 434). There were other variations of this position which received various degrees of support in the Committee, with 12 members for paragraphs 434 and 438, eleven for paragraphs 435 and 436, and ten for paragraph 437. The United States proposal received the support of the United States only. A Japanese proposal (paragraph 250) under which the Management Body would be composed of an International Secretariat and a single entity appointed as Manager to engage in the daily work of the space segment under the directives of the Secretariat, received support from four members in the Committee. Specific functions were not voted upon.

Two proposals which received substantial support in the Committee are particularly worth noting. The first, contained in paragraph 476, stating that "the functions of the Management Body be

enumerated in a contract to be concluded between the Governing Body and the Management Body," received the support of 9 members. This is part of the original United States proposal. The second, in paragraph 477, (a French proposal) stating that the "Management Body not be authorized to sign contracts, and that this function be vested in the Director-General acting expressly on behalf of the Governing Body" received the support of 7 members.

Section M of the report also sheds light on the Committee's actions regarding the Manager. While dealing with the "Transition from the Interim Arrangements to Definitive Arrangements" this Section is particularly concerned with the Management Body. It clearly demonstrates the concern felt by many in the Committee that a hasty and ill-conceived change in the Manager might be dangerous to INTELSAT's well-being. This fear was particularly evidenced by the position of the United Kingdom.

The conclusions which may be made from the Committee's actions regarding the Manager are as follows: First, there is strong opposition to continuing the status quo; Second, there is recognition that a sudden change from the present arrangement could hurt INTELSAT and that therefore a carefully thought-out change would be needed; Third, most members did not have a completely thought-out or coherent plan for a new Management Body. That part of Section E of the Report dealing with the Manager shows only an opposition to the present arrangement, but presents no workable plan to change it.

III. FUNCTIONAL COMPETENCE OF THE ORGANIZATION

Reference: Section B, ICSC-36-58

The United States has taken the position that INTELSAT should not be restricted in the type of services for which it may provide satellite facilities. The Committee, however, considered INTELSAT's functional competence in relation to the types of service it may provide.

There was a unanimous recommendation that INTELSAT be authorized to provide the space segment for international public telecommunication services. However, in regard to specialized services including radionavigation, space research, and broadcasting services, there was a division in the Committee. A majority of the Committee (12 members) recommended that INTELSAT be authorized to provide facilities for specialized services if the provision of such facilities is acceptable from the technical and economic viewpoints and does not hinder the Organization's ability to provide facilities for international public telecommunication services (paragraph 197). However, there was substantial support for paragraph 198 which would preclude the Organization from providing facilities for any service other than international public telecommunication services without amendment of the definitive arrangements. This proposal which received the support of 8 members was a German contribution and was supported by CETS.

As for domestic services, a majority (13 members) recommended that INTELSAT be authorized to provide facilities at the request of any Signatory or group of Signatories (paragraph 205). There was, however, substantial support (7 members) for the proposal that this could be done only by amending the definitive agreements (paragraph 206). There was some division as to the type of domestic services - a majority (13 members) supported the proposal that they be for any kind of services (paragraph 205); there was support (3 members) that they be limited to public telecommunication services (paragraph 207).

A substantial majority (14 members) supported the United States position that global satellites could be used to meet domestic needs (paragraph 209).

Regarding the Organization's meeting domestic needs through separate, i. e., not global, satellites, a substantial majority recommended that this be authorized, subject to certain conditions (paragraphs 212-213). The United States proposal (paragraph 213) that the Organization be authorized to establish domestic satellites financed by a Signatory or group of Signatories requesting such establishment received majority support (14 members), though the proposal that the Organization finance such domestic satellites received only substantial support (8 members).

As for the conditions to be fulfilled prior to the establishment of a domestic satellite, the United States proposal that they be mandatory (paragraphs 220-222) received substantial support (6 members). However, a European proposal (paragraphs 218-219) calling merely for "consultation" with the Governing Body became a majority recommendation (13 members). The European proposal added an "economic compatibility test" to the two tests which the United States has proposed. This makes the recommendations on domestic and regional consistent, thus furthering the European argument that regional should be treated no differently than domestic and making it more difficult for the United States to remove the economic test from domestic without removing it from regional.

Finally, a majority (12 members) of the Committee recommended that INTELSAT be "authorized, at the request of a Signatory or group of Signatories, to provide separate satellites (financed by the Organization or by the Signatory or Signatories concerned, as the case may be) intended solely for the purpose of meeting needs of a national security nature."

The conclusion to be made from this analysis is that there is strong support in the Committee for giving INTELSAT broad competence, subject to certain qualifications, as for instance in regard to specialized services. It appears that moves to limit INTELSAT's competence will come mostly from Europe.

List of Papers on INTELSAT Conference Issues

(Drafting agencies and dates
of circulated papers in parentheses)

- ✓ 1. Participation in the Conference (State: 10/16/68)
- ✓ 2. Rules of Procedure - Voting (State: Revised 11/2/68)
- ✓ 3. How to Bring New Agreements into Effect (State: Revised 11/12/68)
4. Buying Out Non-Participants (ComSat)
5. Nature and Structure of the Organization
 - ✓ a. Legal Personality (State: 11/14/68)
 - ✓ a.(1) Legal Status of the Organization (ComSat: 11/19/68)
 - ✓ b. Single Global System or Federation of Independent Systems (State: 11/19/68)
 - ✓ c. Major Organs of the Organization: The Governing Body and the Assembly (State: 11/15/68)
 - ✓ d. Major Organs of the Organization: The Manager (State: 10/18/68) *Revised 12/19/68*
- ✓ 6. Functional Competence of the Organization (State: 11/19/68)
- ✓ 7. Regional Systems (State: 11/22/68) *Revised 12/12/68*
- ✓ 7.a. Regional Satellite Systems (ComSat: 11/19/68)
- ✓ 8. Criteria for Investment (State: 11/18/68) *(Revised 1/2/69)*
- ✓ 9. Procurement Policy (ComSat: 11/19/68) *(Revised 12/27/69)*
- ✓ 10. Data and Inventions (ComSat: 11/19/68)
- ✓ 11. The Fear of Cultural Subversion (State: 11/14/68)
- ✓ 12. Amendment Process (State: 11/18/68)
- ✓ 13. Special Benefits for the LDCs (State: 11/13/68)
 - ✓ a. INTELSAT and Telecommunications Financing (State: 11/13/68)
 - b. INTELSAT Advantages to LDCs (ComSat)