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Neal B. Freeman

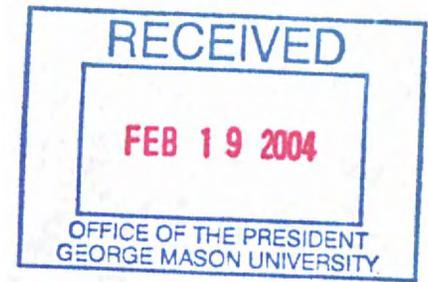
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One Last Win for the Gipper

Intelsat success.

By Neal B. Freeman

The *Washington Post* reported last week, in a routine business-section story, that Intelsat Ltd. will float a public-stock offering in the next few months. Just another garden-variety IPO, it would appear, except for the *Post's* throwaway line that Intelsat "has an unusual history."

Well, yes.

Born in the ebullient days of the Kennedy-Johnson Sixties — when the country was in full bear-any-burden, pay-any-price mode — Intelsat was conceived as a big idea. In those days, you couldn't just pick up a telephone and let your fingers do the walking from one end of the known world to the other. Networks for voice communication were a sometime-somewhere thing, and e-mail was a term not yet coined to describe a buzz notion that excited only the most fevered of technophiles. When you made a phone call, or transmitted alpha-numeric information, you could do so only along the prescribed pathways set by the great national telephone companies: along the famous "twisted pairs" that ran from one population center to another. If they didn't happen to connect to where you wanted to send your message, you had only one alternative. It tended to be slow, expensive, and of dubious reliability. It was called the United States Postal Service.

The Intelsat idea was thus infused with both grand aspirations and the power to unite on an intimate level. Suppose you could knit together the human family by building a global telecommunications system? Suppose you could allow information to flow freely across national borders so as to spread ideas, and open minds, and lift aspirations, and build communities? The Intelsat idea seemed to touch all of the New Frontier's hot buttons simultaneously — it was new, it was big, it was James Bondish, it would project American leadership, and — not all that incidentally — it would make the post-Sputnik Russians look like a bunch of techno-klutzes.

From Kennedy to Johnson to Nixon, a series of U.S. presidents made the global satellite system happen. It was a rare triumph of government-sponsored enterprise that, at the macro level, empowered businesses first to multinationalize and then to globalize, even as it permitted friends and families, at the micro level, to connect and reconnect. Looking back over the decades, the Intelsat system stands out as one of the more important public initiatives undertaken during that period.

But flash forward, if you will, to 1983. Ronald Reagan is now in the White House and feeling his ideological oats. His political sister, Margaret Thatcher, is shaking up the political economy across the pond with her campaigns for "privatization" of state-owned assets — with public housing, with Jaguar motor cars, and most pertinently with British Telecom, the U.K.'s version of Ma Bell. Intelsat, for its part, has by this time evolved into a very large and not very wieldy IGO — an Inter-Governmental Organization built along the lines of its bureaucratic brethren, the United Nations and the World Health Organization and the like. Intelsat board meetings lasted a full week, the organization's business was conducted in a Berlitz-catalog of languages, and the conflicting interests of more than 100 sovereign nations had to be carefully tended. Suffice it to say that at Intelsat in the '80's, cost-efficiency was not Job One.

It was against this background that Reagan appointed me to represent him in the international satellite system, asking me to look into "this privatization thing." I saluted, clicked heels, and strode off to shape up the international satellite business. That was 1983. As I remember it, I was young then. What the Great Communicator had failed to tell me was that the Intelsat organization was governed by a treaty and that privatization, accordingly, would require the approval of (ultimately) 146 signatories to that treaty. Some of these countries, I now confess, were new to me. Many of them were difficult. One was French.

Thus began the long, hard slog through the tangled jungles of diplomacy, bureaucracy, technology, and high finance that brought us to yesterday's little story in the *Washington Post*. (Along that path, I should stress, I never played a particularly heroic role; my distinction was that, at Day Last, I was the sole survivor of the hardy crew that had set out on Day First. A colleague described my functional role, somewhat uncharitably I thought, as "turning thousands of bureaucrats into hundreds of business people.") With its forthcoming IPO, Intelsat will be a profitable, fully competitive public company, with a market capitalization of \$2 billion-plus and a mandate to serve customers around the world with constantly improving communications services at free-market prices. Not bad for a day's work, or even a couple of decades'. As so many other people have come to conclude on so many other occasions: "What do you know? Reagan had it right."

— Neal B. Freeman, chairman of the Blackwell Corporation in Vienna, Va., has just retired as a director of Intelsat Ltd.



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Tom Kasper 72-76

Dick McClellan AAG 69-72

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"Robert Dwyer"
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10/25/2004 12:10 PM

To <msuzaki@softbank.co.jp>, <htsuda@softbank.co.jp>,
<yuochiai@softbank.co.jp>
cc <HGoldberg@G2W2.com>, <DBaker@bakerandmiller.com>,
"Christopher Boies" <cboies@BSFLLP.com>

bcc

Subject FW: 10/25 RCR Wireless News story

FYI: This is the story that Crain's ran.

-----Original Message-----

From: Jeff Silva [mailto:JSilva@crain.com]
Sent: Monday, October 25, 2004 12:05 PM
To: Robert Dwyer
Subject: 10/25 RCR Wireless News story

Thanks again for your help on story--JS.

Japanese carrier sues country over 3G plans
By Jeffrey Silva
Oct 22, 2004

WASHINGTON-While the Bush administration pursues a traditional carrot-and-stick approach to prod Japan into further liberalizing its wireless market, a Japanese telecom firm needing a wireless play is mounting an unorthodox challenge to the Japanese establishment by using high-powered American lawyers to sue the government in hopes of halting plans to give 800 MHz third-generation mobile-phone spectrum to NTT DoCoMo Inc. and KDDI Corp. Such a legal challenge is not necessarily common in Japan, where the business of government and industry has been governed for years by strict protocol.

continued below

But the lawsuit filed this month in Tokyo District Court by Softbank, which wants to add 3G service to its portfolio of landline telephone and broadband offerings, ironically may signal Japan is indeed on the road to recovery in making the kind of structural reforms that Prime Minister Koizumi believes are necessary for the country's economic rebirth.

The 3G 800 MHz spectrum proposal was announced by Japanese officials in August.

"This is a particularly critical time for the Japanese economy to benefit fully from the technological revolution that is taking place in telecommunications. Unless the competitive bonds are removed from industry, Japan will not have the benefit of the most advanced technology at the lowest cost," said Robert Dwyer, an attorney on Softbank's legal team in the United States.

Dwyer helped Kuwait file more than \$100 billion in claims against Iraq before the United Nations Compensation Commission as a result of damages from the Gulf War.

Joining Dwyer are his law partner, David Boies, who battled Microsoft Corp. in the government's antitrust suit against the software giant and represented Al Gore in the recount of the 2000 presidential contest; Henry Goldberg, a telecom lawyer who was general counsel in the old White House Office of Telecommunications Policy during the Nixon and Ford administrations; and Donald Baker, a former antitrust czar at the Justice Department who led efforts to break up AT&T Corp. two decades ago.

"It is important that government apply the principle of regulation," which means giving heavy weight to competition policy and consumer welfare in making decisions affecting new entry and technology," said Baker.

The Japanese Embassy did not have a comment on the Softbank suit.

To underscore what they believe is favoritism in the 3G 800 MHz spectrum allotments, Softbank's lawyers pointed to the Japanese practice of amakudari, the post-retirement of government bureaucrats in big business.

In this case, Softbank listed scores of officials from Japan's Ministry of Public Management, Home Affairs, Posts and Telecommunications who left for executive posts at NTT, NTT DoCoMo, NTT Data and KDDI.

"I have measured the regulatory process in Japan against the standards of fairness and openness that apply in the United States. I regret to say that the process of deciding the 800 MHz license issue is neither fair nor transparent," said Goldberg.

The Bush administration shares some of the same concerns.

Just over a week ago, the U.S. trade representative issued a 53-page report recommending regulatory reforms it wants to see in wireless, high-tech and other sectors in Japan. Without naming names, the USTR report called on Japan to promote competition in the wireless business.

"Given the high degree of concentration in Japan's mobile market and high consumer prices, the United States urges Japan to consider expanding opportunities for additional mobile operators to enter this market, including in the 2010 and 800 MHz bands," stated USTR. "Where incumbent operators are underutilizing spectrum, or are in the process of moving subscribers to new services in different spectrum, MIC [Ministry of Internal Affairs and Communications] should consider re-allocating older spectrum to other operators on a technology-neutral basis."

There are currently three cellular operators in Japan, DoCoMo, KDDI and Vodafone K.K. DoCoMo and Vodafone both offer W-CDMA services, while KDDI offers CDMA2000 service. In the United States, there are six nationwide wireless carriers. Softbank apparently embraces TD-CDMA for 3G in Japan.

USTR also said Japan should investigate whether NTT DoCoMo's mobile-phone termination rates are set at reasonable and competitive levels and that it ensures competitive neutrality in retail rate-setting. In addition, USTR urged Japan to make spectrum-management policies (licensing, allocation, testing and fees) more transparent and that it pursue flexible use of license spectrum as a means of fostering efficient and innovative use of the airwaves.

The Bush administration also wants Japan to make unlicensed spectrum available for radio frequency identification technology and to refrain from levying fees on license-exempt devices.

NTT DoCoMo declined to comment on the USTR report.

USTR appears to be trying to apply pressure on Japan, while giving it credit for progress made to date.

"An open, competitive market is critical for our trade relationship with Japan, and regulatory reform is key to achieving that," said Deputy U.S. Trade Representative Josette Sheeran Shiner. "Our continuing work with Japan

to clear away the thicket of regulations that has clo
hindered growth in that country has worked to create a significantly improved
business environment and expanded market access opportunities."