

CHAIRMAN DOCUMENT COMBINING ALL TERMS OF REFERENCE

As agreed by the WG, the coordinators for the Terms of Reference (TORs) were tasked to prepare a consolidated document including relevant recommendations, taking into account the contributions submitted and the comments made during the meetings. The coordinators' documents had to follow a report template circulated by the ITSO Secretariat and the secretariat provided support during the whole process. Based on the coordinators' documents, the Chair is pleased to present to the 6th Meeting of the WG the Chairman Document Combining all ToRs.

This document will be the basis of the Draft Report of the Chairman to the IAC, which will also include any additional elements and discussions from the 6th Meeting of the WG.

RELEVANT ELEMENTS TO TOR 1, 3 AND 5

The terms of reference in the first grouping generally focus on the importance of ITSO's relationship with what is expected to be a combined SES/Intelsat going forward, including those directly governed by the terms of the Public Services Agreement (PSA), as well as those potentially influenced by external events.

TOR 1: Consider the circumstances, expertise and experience of ITSO, to include a focus on strengths, weaknesses and opportunities in the formulation of recommendations for a more successful ITSO, while including mechanisms to ensure the Company provides the minimum required funding for ITSO.

1. Scope of TOR 1

Assessment of strengths, weaknesses and opportunities to ensure a more successful ITSO, including securing minimum funding levels.

2. Background Relevant for TOR 1

INTELSAT was originally created as an intergovernmental organization to provide a global satellite system that would bring affordable telecommunications services to all countries of the world. Following Intelsat's privatization in 2001 in which its commercial activities were transferred to a private company, the remaining international organization, thereafter known as ITSO, took on the responsibility for ensuring that Intelsat as a private company continued to meet its obligations under the "core principles" of universal service, global connectivity, and non-discriminatory access, with its activities to be funded on a good faith basis by Intelsat. However,

ITSO has had concerns in recent years about insufficient funding from Intelsat to support its mission and ensure that its oversight responsibilities are effectively carried out.¹

In April 2024, SES announced its intention to acquire Intelsat through a \$3.1 billion cash transaction, with additional contingent value rights. The merger aims to create a stronger multi-orbit satellite operator with enhanced global coverage, improved resiliency, and expanded capabilities. The deal is expected to deliver €2.4 billion in synergies (net present value), with 70% of these synergies to be realized within three years of closing².

The transaction has been unanimously approved by the boards of both companies and is subject to regulatory clearances, which are anticipated in the second half of 2025. Upon completion of the SES-Intelsat merger, ITSO will need assurances from SES addressing, among other things, the previously experienced funding difficulties.

3. Main Issues Addressed Under TOR 1

ToR 1 is focused on a number of higher-level considerations intended to better ensure ITSO's future success in fully meeting the needs of the Member States in light of a rapidly changing global telecom technologies and infrastructure.

In assessing **ITSO'S STRENGTHS**, key ITSO characteristics would include credibility/leadership, adaptability, creativity, and resiliency.

- **Credibility and Leadership.** ITSO's credibility on the world stage is a direct result of the complete support that it commands from all Parties. ITSO is unique in this regard in that it represents a clear voice and vision on satellite related matters reflecting the interests and desires of its 149 Member States as stipulated in an international treaty, the ITSO Agreement. That broad-based support and commitment provides it with a uniquely credible voice on various issues which will help shape the optimum global telecom environment in many positive ways. ITSO can therefore be a major asset for the operator in the current very competitive satellite environment. In addition, ITSO is the only global international satellite organization and can be a useful resource to the Parties when it comes to discussing and addressing emerging satellite issues. ITSO is uniquely positioned to play a critical role in shaping global communication policies to address emerging challenges and opportunities in satellite technology, including supporting greater collaboration among member states and private entities.
- **Adaptability.** ITSO throughout its existence has striven to be more efficient, cost effective and responsive to evolving Party needs. Looking forward, as the global telecommunications environment is rapidly evolving and ITSO's Parties face new challenges, ITSO's adaptability should position it well to further adjust its orientation in response to these developments.

¹ Communications Daily, 2024, at <https://communicationsdaily.com/news/2024/10/02/SESIntelsat-Deal-Sees-Suggestions-of-CBand-Conditions-2410010018>.

² Intelsat, 2024 at <https://www.intelsat.com/newsroom/ses-to-acquire-intelsat/>.

- **Creativity.** ITSO has striven to meet the needs of member States in a number of creative ways that were not necessarily specified in the ITSO Agreement. For example, ITSO has developed a number of capacity building measures and programs, including in person and virtual training, designed to assist Parties in taking greater advantage of the technical capabilities necessary to optimally utilize satellite capacity as well as to help guide the establishment of regulatory policies that will better enable Parties to ensure that the benefits of technology achievements can be fully realized within their countries.
- **Resiliency.** ITSO has proven to be extremely resilient in meeting serious challenges throughout its existence since the time of restructuring. Even in the absence of necessary funding for certain time periods, ITSO has found ways to continue to function and remain relevant, weathering a number of storms over the past few years, obviously with consequential intrinsic limitations.

Looking to the future, ITSO's greatest **OPPORTUNITY**, in building upon these strengths, is to reorient its mission and relationship with Intelsat and in the future with SES from one that is fundamentally characterized as primarily "supervisory" in nature to one that is more cooperative and collaborative in nature. Efforts were previously undertaken to move in this direction, particularly during the timeframe from 2016 through 2018, including the execution of two Cooperation Agreements between ITSO and Intelsat, but dissipated shortly thereafter for lack of continuing commitment or interest on Intelsat's part for reasons that remain unknown to ITSO. However, with the prospect of a new beginning on the horizon with SES as the owner of Intelsat, a real opportunity would appear to exist not only to revive but to significantly expand that reorientation process, similar to the nature of the relationship that IMSO and Eutelsat IGO each has with its respective restructured entity.

This optimum approach remains very much dependent on the outcome of SES acquisition of Intelsat, which may not occur until third quarter 2025 at the earliest. As such, this means that current efforts in this regard remain more aspirational rather than concrete in the short run, until the acquisition has been completed. Assuming it does occur, the desired transformation would take the form of a relationship built upon a joint commitment between ITSO and SES to cooperate in the successful fulfillment of the Core Principles set forth in the ITSO Agreement.

Regarding ITSO's **WEAKNESSES OR VULNERABILITIES**, the principal one is that the language of the Public Services Agreement which was signed at the time of the restructuring leaves room for negotiation of funding. Although the PSA states that the funding needs to be "*negotiated, in good faith, by the Director General of ITSO and the Chief Executive Officer of Intelsat, based upon the principles and financial expenditures of ITSO during the initial twelve period*", Intelsat refused to use this formula and decided on an arbitrary amount to fund ITSO much lower than what ITSO is entitled according to the PSA and also lower than the budget approved by the Assembly of Parties. Absent adequate funding, ITSO is hamstrung in achieving the purposes for which it has been established. Therefore, there might be a need to consider revising the PSA to include some important elements such as setting a minimum level of funding, having multiyear funding and replenishing the contingency fund.

There are four elements to the funding challenge that ITSO must overcome, each of which is addressed below.

Annual Operational Funding

Regarding ITSO's funding, the objective should be to secure SES's agreement minimally to provide funding at a level that is sufficient for ITSO to fully discharge its obligations under the ITSO Agreement. Ideally, this would include the establishment of a multi-year funding approach that will enable that objective to be achieved while avoiding the current difficulties associated with dealing with funding on a year-to-year basis. Such a multi-year funding approach offers advantages to both parties, which is why it would be so desirable to achieve. In the case of ITSO, it relieves the uncertainty associated with having to renegotiate funding on a year-to-year basis, which would afford ITSO greater flexibility in developing strategies and programs that are not limited to a single funding year in duration. This increased certainty and the accompanying flexibility that it would bring should also allow ITSO to function in a more efficient and cost-effective manner, which could have the salutary effect of reducing the funding levels that might otherwise be required when reliance is solely on year-to-year funding. These same considerations would also inure the benefit of SES in that SES would not have to deal with re-negotiations about funding every year and also potentially serve to reduce the overall funding levels that otherwise might be required. It should be noted in this regard that this is not a new or novel concept, nor would it be inconsistent with the existing PSA terms for funding, which would not restrict such flexibility. Indeed, Intelsat and ITSO had previously agreed to two sequential three-year funding agreements over the time period 2013-2019, with the benefits described above realized by both parties. But once again this approach ceased to be followed by Intelsat for reasons that still remain unknown to ITSO.

Funding to Address Possible Disputes

Funding to address potential expenses incurred in the event of invocation of the dispute resolution mechanism contained in Article 6 of the PSA was provided by the creation of a specific fund known as the Contingency Fund. The original amount of the Contingency Fund was set at \$500,000, which was fully funded at the time of restructuring, and the PSA allowed for a one-time replenishment and readjustment of the Contingency Fund in 2013, which resulted in the Contingency Fund amount being re-set at about \$620,000. At that time, through a spirit of cooperation, ITSO actually agreed that replenishment would not need to occur unless and until an actual dispute arose. This meant that from 2013 through 2019, Intelsat was effectively relieved of this replenishment obligation. Intelsat was only obligated to actually provide replenishment when ITSO was forced to invoke the dispute resolution mechanism late in 2019.

While the PSA did not provide opportunities for any further replenishment, further replenishment could still occur if ITSO prevailed in the arbitration proceeding and the arbitrator awarded reimbursement of costs to ITSO, which would be permissible if ITSO prevailed. Unfortunately, ITSO was prevented from securing a final judgement in its favor in the arbitration proceeding because Intelsat prevented a final resolution from being achieved as a result of its bankruptcy proceedings. Thus, while the PSA does not expressly allow for any further replenishment opportunity, from an equity perspective, particularly in light of what happened previously, some

mechanism that would allow for funding in the event of a future dispute, were one to occur, is absolutely necessary and appropriate. While actual replenishment in some amount would be the most desirable outcome, this would not be essential so long as a mechanism could be established that would cover the reasonable costs associated with invocation of Article 6 if that were to occur, perhaps similar to what happened in 2013 or an alternative that would cover ITSO's reasonable costs in bringing an arbitration proceeding. While ITSO would hope that with an improved relationship likely to emerge with SES it would never be necessary to again invoke the dispute resolution mechanism contained in Article 6, of the PSA, as a precautionary measure, some back-up funding arrangement remains essential.

Repayment of Past Debts

With regard to ITSO's debts to some Member States that supported ITSO when appropriate funding was not provided through the duration of the Intelsat bankruptcy, and which remain outstanding as of this time, this had continued to be an unresolved issue at this time. In the event that agreement cannot be reached for a one-time payment to cover such debts, at a minimum, an agreement spreading the recovery of an amount sufficient to discharge these debts over a multi-year period should be pursued.

Timing of ITSO Funding Payments

Although Intelsat used to agree to disburse funds in two installments, from 2013 to 2019, and then in 4 installments, starting in July 2025, Intelsat has decided to disburse funds in monthly installments, which leaves ITSO with even less stability. In the case of IMSO funding is disbursed in the beginning of the year in full. Ideally funding should be disbursed in full or in no more than two instalments.

Another weakness of ITSO is the lack of a mechanism for enforceability of the PSA obligations, including not only funding issues but also Intelsat's obligations to honor the Public Service Obligations and sharing information with ITSO. Although Article 6 of the PSA provides for arbitration, ITSO would need the funds to take Intelsat or the operator to arbitration if the need arises. It would be desirable to include appropriate language in the funding agreements to ensure that ITSO has the necessary funds in case it needs to start arbitration against the operator. In addition, it would be advisable to simplify the dispute resolution mechanism as suggested below under ToR 3.

4. Recommendations Under TOR 1

1. ITSO needs to secure agreements with SES that will resolve all outstanding funding issues, including reaching agreement with SES on multi-year funding agreements, on arrangements that would cover the costs of any future dispute resolution proceeding brought under Article 6 of the PSA, and on supporting ITSO's ability to reduce past indebtedness incurred during the pendency of the Intelsat bankruptcy proceeding as well as to cover any expenses for FY 2026 that Intelsat refuses to pay.

2. In preparing the Strategic Plan and the Goals and Objectives documents and other AP documents, ITSO should consider additional ways in which its strengths can be leveraged for the benefit of the Parties and the operator as well as potentially consider developing a broader vision statement focusing on what the organization should look like over the next 4 years, assuming that sufficient funding is provided.

TOR 3: Review and make recommendations on possible way to improve the PSA for better collaboration between Intelsat or any other operator and ITSO.

1. Scope of TOR 3

Potential Improvements in the Current Public Services Agreement (PSA) between ITSO and Intelsat; Development of a PSA framework if needed for entities other the Company (Intelsat/SES)

2. Background relevant for TOR 3

Amendment of the existing PSA

Considerable time, effort and thought were devoted to the formulation of the PSA when it was approved at AP-25 and for that reason proper respect should be accorded to the principal elements underlying the original formulation of that PSA. However, that approval was predicated on the belief that Intelsat would honor rather than seek to circumvent the obligations imposed upon it by the terms of the PSA and would conduct itself under the terms of the PSA in a good faith manner. Unfortunately, experience has demonstrated that it is impossible to rely on Intelsat's goodwill as the underpinning to the PSA.

The Director General presented a proposal of modifications to the PSA with Intelsat to the 39th Extraordinary Meeting of the Assembly of Parties in 2020 (document AP-39-10), proposing some limited modifications to the text of the original PSA, dealing primarily with the Preamble and to Articles 3, 6 and 14.7. This proposal was intended to address the many difficulties that ITSO was then facing with Intelsat, which hopefully will not be present when dealing with SES.

AP-39 DECIDED

- to note document AP-39-10 "Report of the Director General on Revisions Necessary for the Public Services Agreement (PSA) Between ITSO and Intelsat";
- to consider necessary revisions to the PSA at the next Assembly of Parties, taking into account Attachment No. 1 to AP-39-10.

New PSAs with Other Entities

The Thirty-First meeting (Extraordinary) of the Assembly of Parties, held during the period 20-23 March 2007 in Paris, France, approved an Amendment to Article XII, Paragraph (c)(ii) of the ITSO Agreement in order to protect the Parties' Common Heritage orbital locations and associated frequency assignments in case of adverse or unforeseen situations. The Amendment entered into force on 16 January 2017, in accordance with Article XV(e) of the Agreement.

Taking into consideration the importance of the Parties' Common Heritage and the urgency of protecting these frequency assignments associated with orbital locations that were made available by the Parties so that the Core Principles could be fulfilled, it is timely to consider the next steps to be taken with respect to implementation of the Amendment, in order to assure continued protection of the Parties' Common Heritage frequency assignments associated with orbital locations "in the event that the Company, or any future entity using the Common Heritage frequency assignments, waives such frequency assignment(s), uses such assignment(s) in ways other than those set forth in this Agreement, or declares bankruptcy".

The Director General presented a template PSA to the Thirty-Eighth meeting of the Assembly of Parties in 2018 (document AP-38-14).

AP-38 DECIDED:

- to request the Director General to further develop the template public services agreement, as contained in Attachment No. 1 to AP-38-14, in consultation with all ITSO Parties and the Notifying Administrations;
- to authorize the Director General to enter into public services agreements, consistent with the PSA template developed in accordance with paragraph 51, when and if needed, in those instances in which Intelsat has waived any of the Common Heritage frequency assignments;
- to request the Director General to report to the Assembly of Parties at its next ordinary meeting the status of the draft template PSA, any negotiations of or signatures of a PSA, and to present any revised draft template PSA to the Assembly;
- to authorize the Director General to convene an Extraordinary Assembly of Parties in the event that Intelsat uses Common Heritage frequency assignment(s) in ways other than those set forth in the ITSO Agreement or declares bankruptcy.
- to note that the recommendations regarding applicability of the laws of the District of Columbia and the preservation of ITSO's privileges and immunities will be considered in the further development of the template PSA.

3. Main issues addressed under TOR 3

ToR 3 focuses specifically on the relationship between ITSO and Intelsat as governed by the terms of the PSA, and the extent to which that relationship can be improved or strengthened forward.

Amendment of the Existing PSA. It should initially be noted that any formal changes to the PSA can only be adopted by the mutual agreement of ITSO and the Company; as such, formal amendments may be difficult to achieve. Having said that, in the case of Eutelsat IGO, due to the collaborative relationship between Eutelsat IGO and the operator, their PSA has been amended seven times since 2001. Therefore, in the future, once a better relationship has been established with the operator, amending the PSA could be feasible.

There is also the accompanying issue which AP-41 Working Group may wish to consider further, which is the role that the Assembly of Parties would need to play in reviewing and agreeing to any formal PSA amendments. Presumably, before any changes can be made to the existing PSA, those

changes would need to be approved by the Assembly of Parties. The question is whether proposed changes should be approved by the Assembly of Parties first, before proceeding with the amendment process, or whether the Assembly of Parties should approve the changes to the PSA, including the amendments, all at once. However, even in the absence of formal amendment of the PSA, many changes could be achieved through separate side agreements reached between ITSO and SES.

The primary open issues with respect to the PSA as currently in force, other than funding, which has already been addressed in connection with TOR-1, include the current relevance and need for certain aspects of Article 3 and for Article 4 in its entirety relating to the LCO Contract, which is no longer in force; the vagueness in Article 3 of the nature of the information that needs to be provided to ITSO by Intelsat and in the future by SES to enable ITSO to assess whether the Core Principles are being achieved; and a minor revision of the Article 6 dispute resolution mechanism dealing with the ability to utilize the Expedited Procedure Rules now contained within the Rules of Arbitration of the International Chamber of Commerce that did not exist when the PSA was originally executed in 2001.

In Article 3, certain provisions deal specifically with ITSO's role in reviewing petitions for eligibility to participate in the LCO contract (LCO eligibility and assisting LCO customers in the resolution of disputes with Intelsat (Articles 3.02(ii) and (iii)). Article 4 in its entirety deals with ITSO's role in resolving any disputes arising under the LCO Contract. Given that the LCO Contract in its entirety terminated at least three years ago, these provisions are no longer necessary at this time and their retention would no longer be necessary.

Article 3 also contains language requiring Intelsat to provide ITSO with sufficient information necessary to perform its assessment of whether the Core Principles are being achieved. The scope and nature of such information required has been the subject of ongoing concern at various times in the past. While an agreement was reached previously at AP-30 on this matter, it ceased to be honored by Intelsat in more recent times, reopening the prior controversy over the scope and nature of information that needed to be provided. The matter was also the subject of further deliberation by the Working Groups established by AP-40 and continues at present to be a matter of some concern. At the same time, if an improved relationship with SES can be established, given that SES, as a public company, has disclosure obligations that Intelsat currently does not, the nature and extent of information required by ITSO for these purposes may also be adjusted. This is a matter that will need to be addressed further in the ongoing discussions with SES once the acquisition has taken place. Ultimate resolution of this issue may also be affected by certain considerations arising under TOR-5, which relate to additional information that may be made available to ITSO by the two Notifying Administrations.

With respect to Article 6 dealing with dispute resolution matters, while the experience with the operation of the International Chamber of Commerce (ICC) procedures have raised a number of concerns as to how Article 6 was drafted, the Director General is sensitive to not seeking a major redrafting of Article 6 at this time, but would envision a proposed revision to just one element. Specifically, the Director General believes that adding specific language allowing for the Expedited Procedure Rules contained within the Rules of Arbitration of the International Chamber of Commerce ("ICC") to be utilized within Article 6 of the PSA would be advisable.

This provision in ICC Rules of Arbitration allowing for expedited arbitration is a recent development that took effect as of March 1, 2017. These expedited procedures, among other things, provide for a more streamlined arbitration with reduced scales of fees. In light of that, the Director General believes it would be appropriate to insert, as the first sentence in Article 6.04, the following text:

The parties agree, pursuant to Article 30(2)(b) of the Rules of Arbitration of the International Chamber of Commerce, that the Expedited Procedure Rules shall apply irrespective of the amount in dispute.

In addition, due to the lack of mechanisms for enforceability of non-performance by the operator of the Core Principles, it might be desirable to have some sort of penalties (preferably financial) for non-performance or partial performance imposed via appropriate provisions in the PSA.

Lastly, while not specifically tied to a particular Article in the PSA, should the overall relationship between ITSO and SES evolve away from a purely supervisory one to one based on collaboration and cooperation, this change could certainly be reflected in the terms of the PSA as well.

New PSAs with Other Entities. A detailed template for this was previously developed and presented at AP-38 ([AP-38-14](#)), and should serve as the basis for what would be considered by the AP-41 Working Group on this subject. That document addressed a number of revised provisions from the original PSA with Intelsat that would be needed in differentiating the PSA with an entity other than Intelsat from the existing PSA (whether or not amended as discussed above).

- The prefatory clauses would need to be modified, as much of the history of the Intelsat restructuring currently reflected therein would not be relevant in the case of a PSA with a new operator.
- It would be necessary to adjust the manner in which the Core Principles would be described, particularly where, for example, the PSA might apply only to a single satellite. For example, it would be necessary to adjust the obligation to provide global coverage and connectivity to one of contributing to the provision of global coverage and connectivity, although the obligation to provide nondiscriminatory access should definitely remain as stated in the PSA with Intelsat.
- The references in the current PSA to the specifics of the LCO arrangement would also no longer be necessary.
- With respect to dispute resolution, and much narrower and precisely tailored approach would be appropriate, where invocation of Article would only occur in the context of a determination by ITSO not to continue the PSA and the basis upon which this could be adjudicated through an arbitration proceeding.

- Lastly, the financial arrangements would need to be specific in nature, including the Contingency Fund, and also tied to the number of satellites to which the PSA would apply.

One issue that was not specifically addressed was how a new PSA with an entity other than Intelsat would relate to the current PSA with Intelsat, including a means for resolving any potential conflicts between the two operators and a determination of how joint funding would be handled with respect to satisfying minimum operational funding requirements.

Relevance of the Experience of Other International Government Organizations (“IGOs”). Consideration should also be given to potential benchmarking of ITSO’s relationship with Intelsat to the relationship established by IMSO and EUTELSAT IGO with the companies over which they have oversight and how those relationships have evolved over time. The existing Memorandum of Understanding between ITSO, IMSO and EUTELSAT IGO may provide a basis for facilitating this effort. For example, IMSO previously had oversight responsibilities over a single operator, but now has relationship with two additional satellite GMDSS providers that have been recognized by the International Maritime Organization – Iridium, and recently BeiDou and as a result have gone through a process of updating their respective service agreements analogous to the PSA between ITSO and Intelsat. IMSO has also had to adjust its funding mechanism to reflect its expanded oversight over multiple operators. IMSO also had to review the settlement of the different contribution from the different operators. Inmarsat has gone through an acquisition process by Viasat, which may be similar to the SES acquisition of Intelsat. And while Eutelsat has not been acquired by another company, its acquisition of One Web and how that has affected the role and responsibilities of EUTELSAT IGO could also be instructive to consider.

4. Recommendations under TOR 3

1. While there are some potential amendments to the PSA that could be undertaken, given the difficulties associated with formal amendment, ITSO should also explore alternative means for dealing with these matters, including entering into multi-year funding agreements and cooperation agreements.
2. The work previously done with regard to developing a template for a PSA with an operator other than Intelsat as contained in AP-38-14 should serve as the basis for formal adoption of such a PSA at AP-42.
3. ITSO should take account of the experiences of IMSO and Eutelsat IGO including how they deal with other entities in addition to the original operators for which they were created to oversee.

TOR 5: Identify and make recommendations on the various issues that may arise in connection with specific decisions that could be undertaken by Intelsat or any other operator which have a direct impact on the Common Heritage such as bankruptcy, mergers, change of ownership, etc.

1. Scope of TOR 5

Consider the issues affecting Common Heritage from bankruptcy, merger or change of control

2. Background relevant for TOR 5

During the negotiations in light of Intelsat's bankruptcy, Intelsat has made it clear that it believes the Public Services Agreement (PSA), which was entered into by ITSO and Intelsat in order for the restructuring to take place in 2001, is an executory contract and as such Intelsat has claimed that it has the ability to reject it in the bankruptcy proceeding. The immediate effect of that would be not only to entitle Intelsat to escape its obligation to fund ITSO, but more importantly, it would entitle Intelsat to escape altogether its obligation to honor its Public Service Obligations as embodied by the Core Principles set forth in the ITSO Agreement. It is clear therefore that, at such time that Intelsat exits bankruptcy, the continuing status of the Public Services Agreement must be addressed.

Intelsat's efforts to escape the PSA were ultimately unsuccessful, but the issue of whether the PSA constituted an executory contract was never resolved and Intelsat today continues to be subject to the terms of a Public Services Agreement with ITSO. This is mandated both by the terms of the ITSO Agreement and by the decision taken by the United States Federal Communications Commission (FCC) in 2008, acting pursuant to its obligations arising from its role as a Notifying Administration under Article XII of the ITSO Agreement. The critical importance of this obligation to the entire restructuring process that occurred in 2001 is further confirmed by the language of the Fourth Whereas Clause in PSA, where Intelsat has specifically acknowledged "that the Public Service Obligations must be maintained and the agreement of Intelsat in assuming the Public Service Obligations was a prerequisite to the agreement of ITSO in sanctioning the restructuring and the transfer of assets, and that the performance of the Public Service Obligations is the consideration for the transfer."

3. Main issues addressed under TOR 5:

ToR 5 focuses on certain external events or factors that can have an adverse impact on ITSO and on the Common Heritage, and the measures necessary to protect against such events.

Of paramount concern is the need to establish more formal protections from any possible adverse impacts of bankruptcy on ITSO's ability to function, including in particular the possibility that the PSA would be treated as an executory contract that could be rejected in its entirety by Intelsat in a bankruptcy proceeding, which would then serve as the basis for a bankruptcy court to restrict ITSO funding at least during the pendency of a bankruptcy proceeding.

In rebutting any contention that the PSA should be considered to be an executory contract, the following points are most relevant:

- The PSA was not the result of negotiation between two parties on an arms-length basis with equal bargaining power, which is normal for a contractual relationship that could be considered as an executory contract. Indeed, neither of the two parties to the PSA were involved in its negotiation at all, but its contents were determined through a political process involving the governments of 143 countries (the number of Member States at the time that the PSA was signed).
- The individual who signed the PSA on behalf of ITSO was Conny Kullman, who also signed the PSA on behalf of Intelsat, Ltd. Conny Kullman signed the PSA on behalf of ITSO in his capacity as Director General of INTELSAT, a position that terminated moments after he signed the PSA, from which point forward, he functioned solely as the CEO of Intelsat, Ltd.
- One of the parties to the PSA (ITSO) did not even exist in its current incarnation when the PSA was signed and did not come into existence until moments after it was signed. While theoretically the identity of the international organization did not change with restructuring, the responsibilities assigned to ITSO as reflected in the PSA did not come into force until the Treaty amendments took effect, which did not occur until after the PSA was signed. Indeed, if the Treaty amendments had already taken effect, Conny Kullman would not have had legal authority to sign for ITSO because he would no longer have been Director General of ITSO, but rather the proper ITSO signatory would have been Ahmed Toumi as the Director General of ITSO, but that did not occur.
- The PSA contains no express termination provision as would otherwise be standard in a contract that can be considered to be an executory contract; indeed, Intelsat has no right to terminate the PSA whatsoever under the terms of the PSA. The PSA can only be terminated at such time that the ITSO Parties decide to terminate the ITSO Agreement, a decisional process that is governed by the terms of that Treaty.
- An executory contract is one in which both parties have remaining obligations to perform (and presumably these would involve performance with respect to the counterparty). That is not the case with the PSA. While Intelsat has functions that it is required to perform for the benefit of ITSO under the PSA, ITSO has no functions that it is required to perform for the benefit of Intelsat.
- The PSA is not described in the ITSO Agreement as being a commercial contract. Indeed, for purposes of the ITSO Agreement, the Treaty defines the PSA as a “legally binding instrument through which ITSO ensures that the Company honors the Core Principles.” (ITSO Agreement, Article I(j).) As such, a more proper characterization for purposes of U.S. law would be that it is an instrument created pursuant to an international agreement to which the United States is a Party that imposes a series of obligations or conditions on Intelsat imposed pursuant to the provisions of an international treaty. It is entirely on this

basis that Intelsat as a company was created and allowed to go into business as a private company, and was therefore even eligible to be licensed by the FCC.

- Guidance provided by the U.S. Department of Justice regarding the characteristics of an executory contract include that an executory contract is one in which the failure to perform by one party would excuse the performance of the other party. However, a failure to perform by Intelsat would in no way relieve ITSO of its performance obligations under the PSA.

To assure further protection of ITSO's status in the case of a merger or other change of control events, it would be essential to confirm that any new controlling entity is clearly and fully subject to the PSA and the obligations imposed on it pursuant to the ITSO Agreement. This should also include recommitment from United States that the conditions it has imposed on the licenses for satellites deployed at Common Heritage orbital locations would remain in place in the case of merger or a change of control. With respect to any bankruptcy proceeding, these confirmations need to apply both in the case of a single reorganized entity emerging from bankruptcy, such as occurred in connection with Intelsat's recent bankruptcy proceeding, and in the case of a bankruptcy proceeding resulting in the Company's liquidation, including the dispersal of its assets, including satellites deployed at Common Heritage orbital locations, among a number of discrete entities, in which case each of those separate entities would be required to enter into a PSA with ITSO before commencing service from any Common Heritage orbital location.

Finally, in order to better position ITSO to be able to fully protect the Common Heritage, there are a number of matters that need to be included in the semi-annual reports from the two Notifying Administrations, including:

- Identification of licensed or authorized Intelsat satellite networks at each Common Heritage orbital location;
- Status of operational deployment of Intelsat satellites at each Common Heritage orbital location;
- Status of specific frequency assignments of Intelsat at each Common Heritage orbital location;
- Frequency assignments not in operation at each Common Heritage orbital location, and frequency assignments under suspension status at ITU and their risks of suppression at the ITU MIFR;
- Connectivity provided to each of the ITSO Regions as specified in the ITSO Agreement, evidenced for example by satellite footprint maps or by identification of the regions served from each satellite;
- Updating the use of each orbital position and satellites deployed at each orbital position;
- Identification of mechanisms to anticipate potential suspensions and suppressions and mitigate risks of subsequent potential suppressions of frequency assignments;
- Identification of scenarios under which suspension of frequency assignments could occur.

4. Recommendations under TOR 5

1. ITSO should prepare a document for AP-42 providing all the reasons why the PSA should never be considered to be an executory contract that can be rejected under U.S. bankruptcy law.
2. Firm confirmation needs to be provided whenever there is a change in control of Intelsat to ensure that the new controlling entity is fully subject to the obligations set forth in the ITSO Agreement and PSA with respect to satisfying the Core Principles as well as to the licensing conditions imposed by the U.S. Party via the FCC or to the mechanisms utilized by the UK Party with respect to its management of satellite filings for satellites deployed as Common Heritage orbital locations.³
3. The Notifying Administrations should provide in their semi-annual reports submitted to ITSO sufficient information to accurately reflect the current usage of the Common Heritage orbital locations and associated frequency assignments over which they have jurisdiction and possible risks to the continued availability of those resources to support Intelsat's (and SES's) ability to meet the Core Principles.

³ In the FCC's recent decision approving SES's acquisition of Intelsat, that decision confirmed that, in considering the proposed change in control of Intelsat, the new controlling entity, which would be SES, would be fully subject to the obligations set forth in the ITSO Agreement and PSA with respect to satisfying the Core Principles as well as to the licensing conditions imposed by the U.S. Party via the FCC. However, this issue still needs to be addressed by the UK, which needs to provide similar confirmation that in the case of any change in control of Intelsat, the new controlling entity would continue to be fully subject to the obligations set forth in the ITSO Agreement and PSA with respect to satisfying the Core Principles as well as the authorization provided by the UK Party with respect to its management of satellite filings for satellites deployed as Common Heritage orbital locations.

RELEVANT ELEMENTS TO TOR 2, 4 AND 6

The terms of reference in the second grouping are primarily concerned with issues arising with respect to proper protection of the Common Heritage as defined in the ITSO Agreement going forward, as governed by Article XII(c) of the ITSO Agreement, especially with respect to the interface that must occur in this regard between ITSO and the Notifying Administrations.

TOR 2: Taking into consideration recommendations of WG1 and WG2 approved by the AP-41, consider and make recommendations to enhance the collaboration between ITSO and the notifying administration that supports the implementation of Article XII (c) of the ITSO Agreement.

1. Scope of TOR 2

Provide recommendations to enhance the collaboration between ITSO and the Notifying Administrations that supports the implementation of Article XII(c) of the ITSO Agreement.

2. Background relevant for TOR2

Article XII(c) of the ITSO Agreement provides as follows:

- (c) Any Party selected to act as the Company's Notifying Administration shall, under applicable domestic procedure:
 - (i) Authorize the use of such frequency assignment by the Company so that the Core Principles may be fulfilled; and
 - (ii) In the event that the Company, or any future entity using the Common Heritage frequency assignments, waives such frequency assignment(s), uses such assignment(s) in ways other than those set forth in this Agreement, or declares bankruptcy, the Notifying Administrations shall authorize the use of such frequency assignment(s) only by entities that have signed a public services agreement, which will enable ITSO to ensure that the selected entities fulfill the Core principles.

While other aspects or measures needed to safeguard the Common Heritage are addressed in some other ToRs, for purposes of ToR-2, the primary focus is on means for enhancing the collaboration between ITSO and the Notifying Administrations.

Significant progress has been made in this regard, although further attention is necessary to ensure that lines of communication are established and remain open and the information that is required by ITSO is provided. AP-40 WG-2 had recommended that ITSO and Notifying Administrations implement a closer alignment for accessing the information on the usage of the Common Heritage. The current management of the Common Heritage is conducted by Notifying Administrations acting on the basis of the ITU procedures and their respective domestic procedures. Indeed, closer coordination between ITSO and Notifying Administrations would be helpful in order to anticipate potential changes in the regulatory procedures governing space services, which the ITU (via WRC modifications of the Radio Regulations) is continuously introducing at each WRC. These modifications are discussed in the context of Agenda Item 7 of each WRC. ITSO and the Notifying

Administrations may also consider sharing information and positions regarding efforts on matters related to the Common Heritage frequency assignments.

In addition to the requirements of Article XII(c), there are other requirements imposed on the Notifying Administrations in Article XII(e) of the ITSO Agreement, and these may warrant further consideration as well. Specifically, Article XII(e) requires each Party selected to act as a Notifying Administration to: *“(i) report at least on an annual basis to the Director General on the treatment afforded by such Notifying Administration to the Company, with particular regard to such Party's adherence to its obligations under Article XI(c); (ii) seek the views of the Director General, on behalf of ITSO, regarding actions required to implement the Company's fulfillment of the Core Principles; (iii) work with the Director General, on behalf of ITSO, on potential activities of the Notifying Administration(s) to expand access to lifeline countries; (iv) notify and consult with the Director General on ITU satellite system co-ordinations that are undertaken on behalf of the Company to assure that global connectivity and service to lifeline users are maintained; and (v) consult with the ITU regarding the satellite communications needs of lifeline users.”*

3. Main issues to be addressed under TOR 2

The main points which ToR 2 should address (noting that there are some synergies with other TORs) are:

- A. Further enhancing the collaboration between ITSO and the Notifying Administrations.
- B. Ensuring that the information that is required by ITSO is provided.
- C. Meeting the obligations under Article XII(e) which addresses the coordination between ITSO and NA under paragraphs (ii), (iii) and (v), below:
 - Art XII (e) (ii) seek the views of the Director General, on behalf of ITSO, regarding actions required to implement the Company's fulfillment of the Core Principles.
 - Art XII (e) (iii) work with the Director General, on behalf of ITSO, on potential activities of the Notifying Administration(s) to expand access to lifeline countries;
 - Art XII (e) (v) consult with the ITU regarding the satellite communications needs of lifeline users.
- D. Meeting the obligations under Article XII(e) which addresses the coordination between ITSO and NA, under paragraph (iv)
 - Art XII (e) (iv) notify and consult with the Director General on ITU satellite system co-ordinations that are undertaken on behalf of the Company to assure that global connectivity and service to lifeline users are maintained.

4. Recommendations under TOR 2

1. To further enhance the collaboration between ITSO and the Notifying Administrations, coordination should be established via several channels, including:
 - Periodic reporting, based on two semi-annual reports per year (September of the first half of the year and March following year for the second half of the previous year).
 - Following consultation with the Notifying Administrations, establishment of guidelines for NAs to respond to ITSO requests for specific information.
 - Consistent with the guidelines established between ITSO and the Notifying Administrations, timely notification to ITSO on any plans known to NAs regarding

- potential developments affecting Common Heritage: plans for suspensions of certain frequency assignments, plans for bringing back into use certain suspended assignments, etc.
- Consistent with the guidelines established between ITSO and the Notifying Administrations, timely notification to ITSO on any plans known to NAs regarding notifications to ITU or from the ITU.
2. To ensure that the information that is required by ITSO to be provided by Notifying Administrations, it is recommended to establish and formalize closer and periodical coordination between ITSO and Notifying Administrations. These contacts would allow regular exchange of information on all topics subject to reporting from NAs to ITSO and will also allow anticipating potential changes in the regulatory procedures governing space services, which the ITU (via WRC modifications of the Radio Regulations) is continuously introducing at each WRC. This could include:
- Scheduling regular meetings between ITSO and NAs to address all and any elements regarding the reporting requirements.
 - Sharing information with ITSO on NAs national plans and/or specific criteria regarding ITU positions which have the potential to impact on the CH.
 - To the extent permitted under the domestic rules of the Notifying Administrations, inviting ITSO, in its capacity as an international organization, to attend the national NAs preparatory meetings for ITU, CITEU, CEPT regarding agenda items of interest for ITSO CH.
 - NAs to take into consideration ITSO views on the potential impact of ITU decisions on the CH.
3. To meet the obligations under Article XII(e) which addresses the coordination between ITU and
- NA under paragraphs (ii), (iii) and (v) there are two sets of recommendations.

Firstly, as part of the regular periodic meetings of ITSO and NAs, consideration should be given to the views of the Director General, on behalf of ITSO, regarding actions required to implement the obligations derived from Art XII (e) (ii) and work with the Director General on potential activities of the Notifying Administration(s) to expand access to lifeline countries.

Secondly, given that the LCO contract is no longer in force, appropriate measures should be put in place to ensure that the Company continues to meet its obligations to serve its lifeline connectivity customers.

4. To meet the obligations under Article XII(e) (iv), it is recommended that the Notifying Administrations continue to follow the procedure approved at the Thirty-Third Meeting of the Assembly of Parties (AP-33) to supplement the implementation of Article XII (e)(iv) of the ITSO Agreement:

“a. The Notifying Administrations plan to continue to have Intelsat engage in frequency coordination discussions with other satellite operators on the same basis as other satellite

system operators of the Notifying Administration, based on applicable domestic procedures of the Notifying Administration.

b. Before completion of a frequency coordination process, when Intelsat requests the Notifying Administration to provide notification to the ITU regarding the frequency assignments associated with those orbital locations referenced within the defined term “Common Heritage” in the ITSO Agreement and referred to by Article XII (e)(iv) (“Common Heritage Frequency Assignments”), the Notifying Administration would evaluate, on the basis of the notification information available to it, whether such notification would likely adversely affect global connectivity or service to lifeline users.

c. Prior to its transmission to the ITU of any notification concerning the Common Heritage Frequency Assignments covered by paragraphs a and b above, the Notifying Administration would provide to the ITSO Executive Organ the information that would be provided to the ITU, pursuant to the ITU Radio Regulations, for such Common Heritage Frequency Assignments. The Notifying Administration shall also notify ITSO of the circumstances leading to its evaluation, whichever is the case: (1) that such notification would likely adversely affect global connectivity or service to lifeline users; (2) that such notification would likely not adversely affect global connectivity or service to lifeline users; or (3) that the notification information available to the Notifying Administration does not allow it to conclude on whether or not the notification would adversely affect global connectivity or service to lifeline users.

d. ITSO would have thirty (30) days from the receipt of the information provided pursuant to paragraph c above, to provide a response in writing to the Notifying Administration addressing concerns about potential adverse effects on global connectivity or service to lifeline users.

e. In the event that ITSO indicates that the information provided does not raise any question in regard to assuring the maintenance of global connectivity and service to lifeline users or fails to provide a written response within the specified timeframe, the Notifying Administration may complete the coordination process and provide the appropriate notification to the ITU.

f. In the event that ITSO raises specific concerns regarding the information provided with regard to assuring the maintenance of global connectivity and service to lifeline users, no later than five (5) days after providing such written response, ITSO also may request a meeting to consult on the matter with the Notifying Administration, such meeting to be held within ten (10) days of the ITSO request. Either ITSO or the Notifying Administration may request that Intelsat participate in the consultative meeting. The meeting would be for the sole purpose of discussing and clarifying issues previously raised.

g. The Notifying Administration would consider all of the pertinent facts and submissions, including any views expressed by ITSO either in writing or during any such meeting referenced in paragraph f above, and, in view thereof, then determine the manner in which it will respond to Intelsat’s request for notification of the frequency assignments to the ITU,

including if necessary, addressing the matter with other ITU administrations included in the coordination. The Notifying Administration may provide the appropriate notification to the ITU when it has reviewed the matters raised by ITSO and has determined that the matter can go forward to the ITU.

TOR 4: Asses the processes and mechanisms for the assignment and management of the Common Heritage, ensure its protection and make appropriate recommendations for closer alignment between the work of ITSO and the Notifying Administrations.

1. Scope of TOR 4

Provide recommendations to assess the processes and mechanisms for the assignment and management of the Common Heritage, ensure its protection and make appropriate recommendations for closer alignment between the work of ITSO and the Notifying Administrations

2. Background relevant for TOR 4

The annual Common Heritage report prepared by the ITSO Secretariat includes all relevant details concerning the notifications made by the Notifying Administrations to the ITU BR. The current annual report includes information on the evolution of the Common Heritage since 2001. The Common Heritage has evolved since 2001, notably the frequency assignments and orbital positions. This data is obtained by the DG consulting the Notifying Administrations and, when necessary, the ITU BR. The ITSO Secretariat monitors the notifications made to the ITU BR and, in case any modifications have been identified, such modifications are checked with the Notifying Administrations and with the ITU BR to ensure that nothing has been overlooked. Before 2015, the comparison was mostly made based on orbital locations registered by the Notifying Administrations. Since 2015, an additional high-level analysis has been prepared on the aggregated number of frequency assignments registered by the ITU for each Notifying Administration.

One particular area to address is with regard to the Common Heritage available resources. It would be desirable to update the status of the Common Heritage resources as of today. Note should be taken that when transferring the satellites at the Common Heritage locations to the Company, many of the orbit-spectrum resources were in the advanced publication or coordination procedures of the ITU, some of them being further notified as the Common Heritage while others did not complete such process. The current status of the Common Heritage resources should be aligned to the ITU registrations which indicate the corresponding notes of the ITU (G32 and USA276) as pertaining to the Common Heritage.

The AP-40 WG-2 identified additional data which could be further added to the annual report to show other complementary aspects such as:

- Level of utilization of each orbital position for each frequency band (effective utilization of the frequency assignments in comparison with the frequency assignments registered at MIFR).

- Level of connectivity of each orbital position with more details to show the level of connectivity between ITSO Regions, to help identifying the compliance against the requirement of global connectivity.
- Level of traffic and evolution of the technology to identify the efficiency related to the utilization and optimal use of the capacity:
 - development of systematic mechanisms for the reporting by National Administrations and Intelsat. These mechanisms would help ensuring that ITSO can monitor the level of compliance against:
 - global coverage;
 - serve its lifeline connectivity customers;
 - provide non-discriminatory access to the Intelsat's system;
 - updates on frequency coordination processes being followed with other administrations/operators.
 - allow for exploitation of these assignments by other operators.

For the above new benchmarking analysis, contribution and cooperation from Intelsat would be essential.

3. Main issues to be addressed under TOR 4

The main points which ToR 4 should address (noting that there are some synergies with other TORs) are:

- A. Monitoring the evolution of registration of frequency assignments at the MIFR of the ITU⁴.
- B. Completing and maintaining the record of the updated frequency assignments that are part of the CH, as registered in the MIFR of the ITU.
- C. Complementing periodic reports from NAs with relevant data to assess compliance against Core Principles, utilizing agreed templates for the semi-annual report.

It is important to note the scarcity of resources of ITSO to carry out such work, for example, difficulties to access to the weekly circulars or budget to allow monitoring of publications or impossibility to access to coverage maps included in the information of satellite networks. ITSO should seek for a proper budget to carry out this work and not relying on the friendly cooperation from several Parties who facilitate such work. ITSO should maintain its independent mechanism to review and monitor the information available at the ITU and consult, systematically, with NAs to confirm or request further clarification on any issue emerging from consultation to ITU.

4. Recommendations under TOR 4

1. To address the monitoring of the evolution of registration of frequency assignments at the MIFR of the ITU, it is recommended that ITSO continues with its obligations to develop periodic reports to the Parties regarding the evolution of the Common Heritage. In order for ITSO to perform such work, it is necessary to ensure that ITSO receives the proper budget, as approved by the Assembly of Parties.

2. To complete and maintain the record of the updated frequency assignments being part of the CH, as registered in the MIFR of the ITU there are two sets of recommendations. Firstly, ITSO and the NAs should maintain a clean and updated recording of the frequency assignments registered at the MIFR under the ITU labels USA276 and G32 which provide information on the association of satellite networks and ITSO. Such records should include the key data associated to each orbital position, like frequency bands, satellite network registered at the ITU, corresponding satellite network name as used by the Company, status of frequency bands (registered, suspended, suppressed), coverage and ITSO regions served.

Secondly, the current annual report elaborated by the DG on evolution of Common Heritage should evolve towards a simplified semi-annual report highlighting the key elements. The historic evolution of the CH should be left as a document highlighting the evolution, but such new updated semi-annual report should focus on the key elements modifying the Common Heritage and including additional data as far as needed towards helping DG to assess the compliance against the Core Principles.

3. To complement the periodic reports from NAs with additional relevant data to assess compliance against Core Principles, NAs should provide an extended, but simplified, semi-annual report (including the key information/data of relevance to help monitoring the evolution of the Common Heritage).

The AP-40 WG-2 identified additional data which could be further added to the semi-annual report to show other complementary aspects as indicated in the section 2 “Background relevant for TOR 4”.

AP-41 WG is of the view that the content of the semi-annual periodic report should take into account the level of details as suggested by previous WG 2 of AP-40. Consequently, the Director General should continue to engage with the Notifying Administrations to improve the content of the extended semi-annual report to be provided by NAs and when necessary, seeking relevant information from the Company. Such information should not include any type of confidential information associated with the commercial activities of the Company, but sufficient aggregated data to assess the compliance against the Core Principles. As an example of safeguarding confidential information, when reporting on level of connectivity or traffic, aggregated data (for example, indicating X countries in Region Y ITSO and ITSO Region Z are served at the light of the satellite coverage (footprints) and Q countries in ITSO Region W are effectively using the satellite). This aggregated data can satisfy the need for information from ITSO and the guarantees of no country individualization of such information. In addition to this, the reports could add a confidential exhibit under which more detailed information can be provided to the ITSO Director General to allow him/her to conclude on the compliance of the Core Principles, without further distribution of such confidential information.

TOR 6: Identify the circumstances under which unused Common Heritage orbital locations could be suppressed and make recommendations for re-assignment to other operators.

1. Scope of TOR 6

Provide recommendations to ensure that circumstances in which Common Heritage orbital locations and associated frequency assignments are in jeopardy of suppression are fully and timely disclosed to ITSO so as to afford the NA the ability to license or authorize another satellite operator to utilize those resources and ITSO the ability to enter into a PSA with that satellite operator in a manner consistent with Article XII(c)(ii) of the ITSO Agreement.

2. Background relevant for TOR 6

Keeping in mind the overall goal of global connectivity, the periodic reports from Intelsat and the Notifying Administrations should allow assessing the level of compliance of this objective when using the Common Heritage resources. Such reports should provide sufficient information to allow identifying which Common Heritage resources are used for the goal of global connectivity and setting priority orbital positions to preserve compliance of such goal. Having this information well depicted, it would be feasible to assess the further impact when some Common Heritage resources are suspended or ultimately suppressed.

When a given Common Heritage resource (consisting of the combination of frequency assignments and orbital position) is at risk of being suspended or suppressed, should this Common Heritage resource be crucial for the compliance of the goal of global connectivity, a procedure should be implemented by the Notifying Administration in cooperation with ITSO to trigger the possibility for other satellite operators to exploit such Common Heritage towards re-establishment of the goal of global connectivity in the regions facing the risk of non-compliance due to suspension or suppression of Common Heritage resources.

3. Main issues to be addressed under TOR 6

The main points which ToR 6 should address (noting that there are some synergies with other TORs) are:

- A. In the semi-annual reports, a distinction should be made regarding frequency assignments and orbital positions which are essential and in use for ensuring compliance against the Core Principles (i.e. global connectivity) and which other frequency assignments and orbital positions may risk being suspended or even suppressed.

The identification of whether a given frequency assignment is critical could be made before any risk is identified or any announcement from the Company on potential suspension procedure at the ITU or can be made at the time of such risk is announced by the Company.

- B. Establishment of procedures for allowing the operation of critical assignments (those which are required to ensure global connectivity) under suspension and risk of suppression to other satellite operators.

When a suspension is noticed, the Company may inform about plans to recover the situation and bring back into use the corresponding frequency assignments within a given period of time or, alternatively, the Company may inform about no plans to recover the

situation and risking to achieve the maximum time limit of three years suspension without having the possibility to bring back into use the suspended assignments.

4. Recommendations under TOR 6

1. Regarding the identification of critical frequency assignments, the periodic semi-annual reports provided by the NAs and, when necessary, supported by the Company, should allow identification of the critical frequency assignments and orbital positions which are necessary to maintain the compliance of the Core Principles (global coverage, global connectivity).

These reports would allow planning an identification of potential duplications of service in certain geographical areas where the impact of any suspension would have an administrative scope, because the suspension may have just an administrative procedure not impacting operationally on the availability of global coverage and global connectivity, or such suspension may lead to lack of service to certain geographical areas.

In addition, when any announcement is made by the Company, and notified by the NA, on a suspension procedure for certain frequency assignments in certain orbital positions, the same announcement from the Company should indicate the impact on connectivity and coverage. This announcement should include, for example, which regions would suffer lack of connectivity and for which frequency assignments, therefore, allowing to quantify the need of urgent actions to repair such risks.

2. Regarding the establishment of procedures for allowing the operation of critical assignments under suspension and risk of suppression to other satellite operators, it is recommended that when a suspension of frequency assignments at certain orbital locations is notified by the Company and NA, such notice should allow to immediately identify whether such suspension will affect global connectivity, if the assignment has been identified as essential. This means, the periodic reports will allow ITSO to keep a list of frequency assignments and orbital positions which are essential to ensure compliance with the Core Principles and associated frequency assignments at certain orbital positions which provide redundancies and therefore, a suspension process would have implied administrative impact but not immediate impacts on compliance with the Core Principles.

If a suspension is noticed when the recommendation regarding identification of essential frequency assignments is not yet fully implemented, the notification of suspension should include sufficient information to qualify the impact of the suspension in terms of affected regions and, consequently, the criticality of such suspension, recommending actions to recover the situation.

3. It is recommended to establish a procedure to allow the NA and ITSO to coordinate in the process of licensing/authorizing alternative satellite operators which may deploy a satellite network to replace the non-operational Company satellite network (or related frequency assignments) and which provoked suspension.

If the notification of suspension was accompanied by a plan to recover the service and bring back into use the suspended assignments, the NA and ITSO should monitor the evolution of such process and get evidence that such bringing into use step will be in fact implemented.

If the notification of suspension has not been accompanied by a plan to restore the service and bring the suspended assignments back into use on a timely basis, presenting the associated risk of later suppression of the frequency assignments at certain orbital positions, the NA should inform ITSO of the situation and the manner in which, under its domestic procedures, another satellite operator (Company 2) will be afforded the opportunity to be licensed or authorized to utilize the assignments in question, This will then allow ITSO the opportunity to enter into a PSA with Company 2 so as to ensure compliance with the Core Principles, the execution of which would then serve as a condition precedent to the actual licensing or authorization of the assigned frequencies and orbital location by the NA to Company 2. More details on the ways this situation would be tackled are provided in the recommendations associated to the ToR 8.

RELEVANT ELEMENTS TO TOR 7, 8 AND 9

The third grouping deals with specific challenges that may arise in circumstances in which actual suppression of Common Heritage filings appears likely to occur, and the specific measures that would then be required in order to avoid loss of those filings, as well as the request submitted by Parties in Region D, originally at AP-40 and subsequently at AP-41, to assess the feasibility of and/or circumstances in which designation of additional Notifying Administrations may be desired.

TOR 7: Mechanisms of transferring the non-exploited Common Heritage to another company that has undertaken to comply with PSA obligations, taking into account the ITSO Agreement.**1. Scope of TOR 7:**

ToR 7 addresses recommendations on mechanisms of transferring the non-exploited Common Heritage to another company that has undertaken to comply with PSA obligations, taking into account the ITSO Agreement. As formulated, this ToR largely replicates the subject matter previously addressed in ToR 6 and for that reason can be consolidated with the prior consideration of ToR 6.

2. Background relevant for TOR 7

ToR 7, as in the case of ToR 6, is intended to address circumstances in which the failure or inability of the Company to utilize Common Heritage resources would ultimately result in the suppression of the underlying filings, and the measures that the Notifying Administration could take to avoid that outcome by licensing or authorizing another satellite operator to utilize those filings, subject also to the requirement that the selected operator will have a properly executed PSA with ITSO regarding its use of those filings. This would then require the Notifying Administration to establish a national procedure to transfer, permanently or temporarily, the resources to be exploited by other Company (national or foreign) working under the rules of the Notifying Administration jurisdiction and clearly supporting the minimum objectives of such new Company to provide global connectivity.

3. Main issues to be addressed under TOR 7

Same as already identified for ToR 6.

4. Recommendations under TOR 7

Same as already identified for ToR 6.

TOR 8: Mechanisms to fill gaps that could lead to a replacement of suppressed Common Heritage filing by new filings from other administrations other than the Notifying administrations of the Common Heritage.

1. Scope of TOR 8

ToR 8 is intended to address the situation in which a Notifying Administration is unable or unsuccessful in licensing or authorizing another satellite operator to utilize the Common Heritage resources which the Company is otherwise unable or unwilling to utilize, as a result of which those Common Heritage resources would be subject to suppression before the ITU, and provide recommendations on mechanisms that could allow for replacement of suppressed Common Heritage filings by new filings from Administrations other than the Notifying Administration.

2. Background relevant for TOR 8

ToR 8 represents what may be the most challenging of the ToRs established at AP-41 for consideration by the AP-41 Working Group, in that it contemplates an arrangement that is outside the direct scope of Article XII(c)(ii) of the ITSO Agreement for preservation of Common Heritage resources, but nonetheless may prove invaluable in specific circumstances in which a potential loss of Common Heritage resources cannot be prevented through the direct invocation of the Article XII(c)(ii) mechanism. Specifically this is intended to address the situation in which Common Heritage frequency assignments and associated orbital locations about to be suppressed, or already suppressed, under applicable ITU procedures, but there is nonetheless an opportunity by which those resources can continue to support the Core Principles as enumerated in Article III through actions involving a Notifying Administration other than one of the two original Notifying Administrations to which Article XII otherwise applies. And while, as previously noted, this type of arrangement would fall outside the direct scope of Article XII(c)(ii), there is nothing in the ITSO Agreement that would preclude utilization of such an approach should the relevant Parties, specifically the involved Notifying Administration other than the U.S. or the U.K., be willing to allow the ITU filings that it would have been made to be treated as if they were part of the Common Heritage and willing to require whatever satellite operator is licensed to utilize those filings to commit to support the Core Principles and potentially even enter into a separate Public Services Agreement with ITSO for that purpose.

Thus, the purpose of ToR 8 is to specifically address the question of the extent to which anticipated suppression, or suppression, of Common Heritage filings before the ITU would adversely affect ITSO's ability to ensure that the Core Principles, including specifically, the objective of global connectivity and coverage, continue to be met and, whether, in such circumstances, it would be possible to offset this impact by having an Administration, other than the Notifying Administration, file for the potentially suppressed, or suppressed, frequency assignments. Specifically, the issue would be what measures would be appropriate to be undertaken when potentially suppressed, or suppressed, Common Heritage filings occur that would allow or encourage another Administration to file for Common Heritage resources and be prepared to make them available to further ensure the attainment of the Core Principles. This case would also apply to a new Notifying Administration which has already filed for a satellite network with the ITU and

such existing file may be offered by the new Administration to become part of the Common Heritage.

3. Main issues to be addressed under TOR 8

[Provisionally agreed but subject to further refinement based on additional discussions between the Secretariat and the USA Notifying Administration and between the Secretariat and the ITU.]

The main issues to be addressed under ToR 8 would include the following:

1. A determination of the circumstances in which it would be appropriate for Administrations other than the current ITSO Notifying Administrations to submit filings related to soon to be suppressed or suppressed, Common Heritage filings and what safeguards, if any, would be necessary to ensure that such new filings would not have an adverse impact on existing Common Heritage filings at any adjacent locations. Depending on the circumstances present, this could involve a situation in which the original Notifying Administration seeks agreement with an entirely new Administration, pursuant to which the new Administration would license or authorize the operation of these resources, or a situation in which an entirely new Administration independently submits filings to the ITU, based upon which it would be able to license or authorize the operation of these resources.
2. In the first case, which could arise with the original Notifying Administration declaring no national feasibility to transfer such resources to any other satellite operator, the new Notifying Administration should seek agreement from the original Notifying Administration to, permanently or temporarily, allow the new Administration to exploit such resources, potentially under the ultimate responsibility of the original Notifying Administration, with the Common Heritage being operationally exploited by another satellite operator, subject to the licensing or authorization procedures utilized by the new Notifying Administration. This new Administration should also ensure that the selected satellite operator is committed to meeting the objective of global connectivity and the other Core Principles. The new satellite operator would most likely need to sign a PSA with ITSO, with terms to be developed, reflecting the coordinated roles of the new and original Notifying Administrations. This procedure would not necessarily require a formal identification of new independent Notifying Administration to take unique responsibility over the new satellite operator without any control or intervention from the Notifying Administration. The Notifying Administration would continue being the overall supervisor under the agreement reached between the two administrations. However, the new Notifying Administration will be sovereign to act in front of the ITU.
3. In the second case, another Administration acting independently of the original Administration but in coordination with ITSO, would submit filings that would allow it to license or authorize a satellite operator other than Intelsat to utilize filings replicating what had previously been Common Heritage filings at one or more particular orbital locations and agreeing with ITSO that its licensing or authorization would be conditioned on the commitment of the licensed or authorized satellite operator to operate its satellite at that location in a manner consistent with and furthering the Core Principles. As under the first alternative above, this other Administration should also ensure that the selected satellite

operator is committed to meeting the objective of global connectivity. The new satellite operator would again most likely need to sign a PSA with ITSO, with appropriate terms to be developed.

4. Recommendations under TOR 8

Building upon the recommendations under ToR-6 and ToR-7, ToR-8 should additionally recommend:

1. Upon request from a new Notifying Administration, confirming ITSO's and the original Notifying Administration's desirability for allowing likely suppressed Common Heritage filings to be operated by a satellite operator other than the Company under the jurisdiction of the new Notifying Administration and determining whether it would be necessary or appropriate for the new satellite operator to sign a PSA with ITSO.
2. Interested ITSO Parties should be encouraged to consider submitting new filings to ITU, or to identify any existing filings that it may have already submitted, regarding Common Heritage resources for which potential suppression is anticipated as a means of ensuring the preservation of Common Heritage resources that would otherwise be lost if suppression were to occur.
3. Actions should be taken in front of ITU to support continued recognition of the ITSO Common Heritage resources under the auspices of a new Notifying Administration when appropriate, substituting the original Common Heritage filings managed by the existing Notifying Administrations, but allowing continuity of the priority of usage of the Common Heritage filings under the new jurisdiction in similar regulatory situation as the Common Heritage filings were previously recognized under the original Notifying Administration's jurisdiction.
4. In the event of a potential agreement between the original Notifying Administration and a new Notifying Administration with respect to transfer of or joint administration of Common Heritage filings from the original Notifying Administration to the new Notifying Administration, the desirability of seeking endorsement of such an arrangement at the ITU level, to be recognized as a valid regulatory step.

TOR 9: Further consider and make recommendations on the proposal that was submitted by Region D to AP-40 to have one Notifying Administration per region.

1. Scope of TOR 9

Provide recommendations to further consider and make recommendations on the proposal that was submitted by Region D to AP-40 to have one Notifying Administration per region and to address other considerations raised by Region D at AP-41 that AP-41 did not have the opportunity to fully consider.

2. Background relevant for TOR 9

The issue of identifying potential new Notifying Administrations had to some extent been previously considered within the two AP-40 Working Groups, but without formal resolution. While efforts could continue to assess the merits and potential liabilities associated with designating additional Notifying Administrations at this time, it may also be possible for the AP-41 Working Group to look towards identifying new Notifying Administrations from the viewpoint of serving as back-up Notifying Administrations, being prepared to assume the full responsibilities of a Notifying Administration in the event that a current Notifying Administration is unable or unwilling to continue to serve in that role or in the event of ITSO's termination at some future time.

The Working Group also took note of the ITSO Legal Advisor's opinion that implementation of the recommendation from Region D Parties on multiple Notifying Administrations as proposed, envisioning the actual transfer of Common Heritage frequency assignments, or recognizing new frequency assignments from new designated Notifying Administration to be part of the Common Heritage, from the existing Notifying Administrations to newly designated Notifying Administrations, would require amendment of Article XII(d) of the ITSO Agreement. Such a transfer of frequency assignments from the existing Notifying Administrations to newly designated Notifying Administrations is not permissible under Article XII(d), which would permit such transfers only in circumstances in which an existing Notifying Administration is no longer a Party to the ITSO Agreement. Article XII(d), however, would not preclude the identification of potential additional Notifying Administrations for other purposes, so long as that decision would not seek to authorize the actual transfer of Common Heritage frequency assignments in a manner otherwise inconsistent with Article XII(d).

The above identified issues, even if solved within Article XII(d), would not exempt the newly designated Notifying Administration to follow the applicable procedures governing the space services in front of ITU and, eventually, the need of high level decisions at the highest body of the ITU (WRCs).

Given the possibility that, at a future point in time, either of the current Notifying Administrations may decide not to continue in their role of Notifying Administration, in such a case, having already identified a suitable substitute Notifying Administration would avoid a period of uncertainty until a new Notifying Administration can be identified and appointed. Consequently, in order to speed up the work of identifying new Notifying Administrations, such identification should be assessed bearing in mind the scenario involving a future withdrawal from any of the existing Notifying Administrations, and the need of ITSO to be prepared to face such scenario should it happen.

It is worth noting the criteria for selection of Notifying Administrations previously used at the time of INTELSAT's restructuring was initially discussed at the INTELSAT Board of Governors (BG-134) held in June 2000. Document (BG-134-25), from where the final decision was taken regarding selection of the US and UK as the Notifying Administrations, included extensive consideration of the criteria used as well as the possibility of having multiple notifying administrations selected, which was rejected for various reasons. The BG's recommendations were

then accepted by AP-25 at the November 2000 meeting. Document AP-25-10 replicates much of what was contained in BG-134-25.

There were 14 criteria used to evaluate potential Notifying Administrations, which were as follows: 1. WTO membership; 2. Commitment to market access for satellite operators; 3. Commitment to accept Intelsat's existing USA-IT registrations; 4. Experience representing satellite operators at the ITU; 5. Commitment to license privatized Intelsat to use all of the transferred USA-IT registrations on a non-temporary basis; 6. Stable and predictable regulatory environment; 7. Ownership and governance requirements compatible with Intelsat's structure; 8. Ability to pursue market access on behalf of Intelsat; 9. Ability to obtain additional orbital locations for Intelsat; 10. Substantial commercial presence; 11. Significant trading nation; 12. Political and economic stability; 13. Tax efficiency; and 14. Flexible corporate governance requirements.

At AP-41 consideration was also given to a number of other recommendations submitted by the Parties from Region D, which were not specifically incorporated in any of the other ToRs established for consideration by AP-41 WG, but which AP-41 left open to the AP-41 Working Group to address to the extent that the AP-41 WG deemed necessary. Given the nature and source of those recommendations, it would make the most sense for those recommendations to be considered in connection with ToR 9. However, given the broad scope of those recommendations, and recognizing that many but not all did track the recommendations separately put forward by the two Working Groups that reported to AP-41, the Region D Parties that submitted the document to AP-41 should in the first instance indicate which of those recommendations might warrant further consideration at this time.

3. Main issues to be addressed under TOR 9

The main issues to be addressed include the following:

1. Whether ITSO should establish at this time a mechanism for identification of ITSO Parties that would have an interest in serving as a Notifying Administration, should a subsequent opportunity present itself, including the requirement that such Administrations provide information demonstrating their capability to do so, and by which the Assembly of Parties could evaluate such submissions for the purpose of identifying which such Administrations that would have the requisite capabilities to serve as an ITSO Notifying Administration in the future. The criteria developed by INTELSAT Board of Governors (BG-134) held in June 2000 should be taken into account when developing the criteria for ITSO Parties willing to serve as a potential Notifying Administration.
2. Determine with respect to the management of the Common Heritage in the event that the ITSO agreement is terminated, whether the Common Heritage resources should be proportionally distributed in some manner among the five ITSO Regions.

4. Recommendations under TOR 9

The following recommendations are identified:

1. ITSO should establish a process for identification of interested Administrations to act as Notifying Administrations in some, or each of the five, ITSO Regions.
2. Interested Administrations should submit proposals to ITSO on the resources available to their Administrations and the way the Administrations would commit to performing all the activities that would be required of an ITSO Notifying Administration in order to allow the Assembly of Parties to review such submissions and make determinations as to the suitability of those Administrations to serve as ITSO Notifying Administrations should an opportunity to do so arise in the future.
3. Regarding the allocation of CH resources in the event that the ITSO agreement is terminated, such scenario should be subject of further consideration on a case-by-case basis when approaching the time for such scenario. Note should be taken that some orbital positions and associated assignment may be required to continue playing a critical role of guaranteeing global connectivity while other orbital positions and associated assignments may not justify such consideration.