

**REPORT OF THE DIRECTOR GENERAL ON POSSIBLE REVISIONS TO THE
PUBLIC SERVICES AGREEMENT WITH SES****I. EXECUTIVE SUMMARY**

1. The AP-41 Working Group (WG) recommended under TOR-3 that the Director General identify potential improvements in the current Public Services Agreement (PSA) between ITSO and Intelsat for consideration at AP-42. At the time this recommendation was made ITSO had experienced significant difficulties for many years in dealing with Intelsat, which provided the impetus for consideration of potential improvements in the PSA with Intelsat. Since that time, SES completed its acquisition of Intelsat and has assumed all responsibilities covered by the existing PSA with Intelsat. In addition, SES has expressed willingness to deal with ITSO in a more cooperative and supportive fashion. While the recent developments have been positive, the practical implications of this change in ownership and the manner in which the relationship will develop overtime have yet to be determined. Therefore, the Director General believes it would be more prudent to allow the newly emerging relationship between ITSO and SES to develop over the near term, before pursuing specific proposals to amend the PSA.

II. DISCUSSION

2. One of the main objectives of TOR-3 was consideration of potential improvements in the current PSA between ITSO and Intelsat. When TOR-3 was formulated, there was considerable dissatisfaction with the attitude of Intelsat towards ITSO, given the recent history of Intelsat's failure to adhere to the terms of the PSA. At the same time, there was considerable uncertainty regarding the outcome of SES's proposed acquisition of Intelsat and the potential consequences for ITSO. It was against this backdrop that AP-41 concluded that identification of potential improvements in the current PSA between ITSO and Intelsat should be pursued, and tasked the AP-41 Working Party with considering this further.

3. It should be noted that a prior attempt at revising the PSA with Intelsat had been addressed at the Thirty-Ninth (Extraordinary) Meeting of the Assembly of Parties, in document AP-39-10. This Extraordinary Assembly of Parties was convened in August 2020 following the initiation of the Intelsat bankruptcy proceeding, occurring at a time when the relationship between ITSO and Intelsat was significantly strained, which directly influenced the nature of the revisions proposed in AP-39-10. However, the Assembly took no formal action on this document other than to note it, and there was no indication that Intelsat would even consider these changes had they been approved by the Assembly. In light of recent developments, including the completion of the SES acquisition of Intelsat, and SES's willingness to work in a more cooperative and supportive manner with ITSO, many of the measures previously considered in document AP-39-10 no longer appear to be warranted.

ITSO RESTRICTED

IAC-26-12E W/03/26

Page 2

4. While the emerging relationship between ITSO and SES appears to represent considerable improvement over the prior relationship between ITSO and Intelsat, it is still in early stages and it would be desirable for the relationship to have a chance to more fully mature, before meaningful consideration of possible improvement in the PSA terms should be addressed.

5. Indeed, even under the best of circumstances, formal amendment of the PSA may be difficult to achieve, given that any changes to the PSA can only be adopted by mutual agreement by the relevant parties (originally ITSO and Intelsat, and now ITSO and SES). Nor is there any compelling reason for SES to even consider amendment of the PSA at this time, since the existing PSA with Intelsat was automatically transferred to SES at the time of acquisition in accordance with Article 13 of the PSA. Per Article 13, the *“PSA shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns of Intelsat.”* However, even without formally amending the PSA, ITSO and SES may achieve significant progress through alternate means, including mutual understandings reached.

6. If an amended PSA directly with SES were to be considered at a future time, some of the changes that are recommended in the Template PSA with other entities (document IAC-26-11) might also make sense to consider, particularly those dealing with provisions in the current PSA that may be outdated due to the passage of time, such as matters directly pertaining to the LCO Contract and the need to more clearly articulate the continuing obligation to expand access to lifeline countries and assure that services to lifeline users are maintained. Additionally, including in Article 6 on dispute resolution a specific reference to the use of the ICC’s Expedited Procedure Rules would also seem to be appropriate.

7. However, the need to potentially improve other aspects of the PSA, including the identification of the type of information that ITSO may require to receive from SES to perform its oversight functions, as well as the precise nature of the financial arrangements between SES and ITSO, will ultimately be dependent upon the way in which the ITSO/SES relationship takes shape. For example, the scope of operations of the SES satellite systems today is considerably broader and more extensive than was the case for Intelsat in 2001 at the time that the PSA was originally drafted. Moreover, SES, as a public company, has disclosure obligations that Intelsat may not have had, particularly after emergence from bankruptcy. This could definitely affect the nature and scope of information that ITSO may require of SES, which would be considerably different than would have been the case if the relationship continued directly with Intelsat. Similarly, SES’s apparent willingness to address its financial obligations to ITSO in a more appropriate good faith manner would need to be taken into account in any possible revisions to the PSA on this subject. Overall, development of an improved relationship with SES over time should offer the opportunity to address these matters in a more meaningful way.

8. As regards to funding, the circumstances have improved considerably over the past year, although if the opportunity presented itself to formally revise the PSA, there are a couple of revisions to Article 14 that would be appropriate, including specific reference to the concept of the

minimum funding necessary for ITSO to perform its obligations under the ITSO Agreement, and confirmation that funding can be provided on a multi-year basis if the parties so agree.

9. As a separate matter, there is the issue of the respective roles of the Director General and the Assembly of Parties in the negotiation of and final agreement to any formal amendment of the PSA. If and when such negotiations were to occur, formal approval from the Assembly of Parties of any such changes would be required for any such revisions to take effect.

III. CONCLUSION

10. The Director General recommends that the Assembly of Parties note the Director General's intention to pursue ongoing evolution of the relationship between ITSO and SES in a positive manner and will continue to advise the Parties of subsequent developments and progress, leaving open the possibility of seeking formal amendment of the PSA directly with SES at some future time, should the opportunity present itself.