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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR - 2 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Application of)
)
INTELSAT LLC)
)
Amendment to Application to Modify Space)
Station Authorization to Operate the)
INTELSAT 702 Satellite at 54.85° E.L.)
_____)

File No. SAT-AMD-20031118-00331

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Policy Branch
International Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Intelsat LLC ("Intelsat") hereby opposes New Skies Satellites N.V.'s ("New Skies") Petition for Reconsideration of the International Bureau's ("Bureau") decision partially and conditionally to authorize operation of the INTELSAT 702 satellite at the 54.85° E.L orbital location ("Petition").¹ New Skies' Petition alleges that Intelsat's operation of INTELSAT 702 at 54.85° E.L. poses an interference risk to its NSS-703 satellite, located at 57.0° E.L. Intelsat's license, however, requires it to operate under specific conditions and on a non-harmful interference basis, and Intelsat has adequately demonstrated technically that it can do so. Furthermore, adequate ITU and FCC recourse exists in the unlikely event that harmful interference ultimately results. As such, New Skies' concerns do not merit reconsideration or deferral of the Bureau's decision.

I. INTELSAT'S OPERATIONS AT 54.85° E.L. WILL NOT CAUSE HARMFUL INTERFERENCE TO NSS-703.

New Skies repeatedly argues that Intelsat's proposed operations present a significant risk of causing harmful interference to NSS-703.² New Skies' concern is mooted, however, by the

¹ Petition for Reconsideration of New Skies Satellites N.V., File No. SAT-AMD-20031118-00331 (Mar. 23, 2004) ("*Petition*").

² See *Petition* at 2, 7-8.

very first condition of Intelsat's license. That condition requires Intelsat to operate at 54.85°

E.L. only on a non-harmful interference basis:

Intelsat LLC's operations shall be on a non-harmful interference basis, i.e., Intelsat LLC shall not cause harmful interference to, and shall not claim protection from interference caused to it by, any other lawfully operating satellites.³

Furthermore, Intelsat's calculations, as presented in its original application and in subsequent technical filings, show that its operations will not result in harmful interference to any other satellite, including NSS-703.⁴ New Skies attempts to cast doubt on Intelsat's technical demonstration by claiming that Intelsat's use of certain earth station antenna sizes is an "assumption[] highly favorable to the conclusion [Intelsat] obviously desired to reach."⁵ New Skies, however, loses sight of the fact that based on the Intelsat technical demonstration, the Commission in its license imposed specific technical conditions for Intelsat's operation at the 54.85° E.L. location. These conditions include limits on EIRP density from the satellite and on uplink power spectral density. These limits protect neighboring satellites from harmful interference and will dictate the minimum antenna size used to communicate with INTELSAT 702 at 54.85° E.L.

New Skies also alleges that Intelsat's operations at the maximum satellite EIRP density

³ See *Intelsat LLC; Amendment to Application to Modify Space Station Authorization to Operate the INTELSAT 702 Satellite at 54.85° E.L.*, File No. SAT-AMD-20031118-00331 (stamp grant from T. Tycz to Intelsat, Feb. 23, 2004) Condition 1 ("*Intelsat Feb. 23, 2004 License*"). ITU Radio Regulation 4.4 permits the FCC to license satellites without an ITU filing provided the license contains an express condition that the satellite "shall not cause harmful interference to, and shall not claim protection from harmful interference caused by, a station operating in accordance with the provisions of the Constitution, Convention and these Regulations." ITU Radio Regulation 4.4.

⁴ See *Submission of Supplemental Information; Further Amendment to Application of Intelsat LLC To Modify Authorization for INTELSAT 702; Call Sign S2388; File No. SAT-AMD-20031118-00331* (filed Feb. 20, 2004); *Further Amendment to Application of Intelsat LLC To Modify Authorization for INTELSAT 702; Call Sign S2388; File No. SAT-AMD-20031118-00331* (filed Nov. 18, 2003).

⁵ See *Petition* at 7.

level specified in the INTELSAT 7 ITU filings will result in an excess interference level of 24.0 dB.⁶ This simply will not happen. Under the conditions of its license at 54.85° E.L., Intelsat is not allowed to operate, and will not operate, at the maximum EIRP levels specified in the INTELSAT 7 ITU filings.

Even in the unlikely event that Intelsat's operations ultimately result in harmful interference to NSS-703, New Skies has adequate recourse mechanisms at its disposal. New Skies alleges that the mechanism for seeking an end to harmful interference is "not at all clear."⁷ Intelsat's license, however, specifically invokes the ITU's Radio Regulations.⁸ Article 15 of the ITU's Radio Regulations provides New Skies with an adequate and effective internationally recognized and accepted recourse mechanism.⁹ The Commission also retains full authority to enforce Intelsat's license conditions because Intelsat continues to be a U.S. licensee, subject to FCC oversight. Furthermore, Intelsat's license requires it to "cease operations immediately upon notification of [harmful] interference."¹⁰ Hence, New Skies will be able to obtain adequate recourse through the ITU, the FCC and Intelsat in the unlikely event that harmful interference occurs.

II. INTELSAT'S LICENSE CONFORMS WITH THE ITU FILINGS RELEVANT TO THIS ORBITAL SLOT.

Throughout its Petition, New Skies alleges that Intelsat's license violates various ITU filings and coordination agreements.¹¹ New Skies notes, correctly, that condition 5 of Intelsat's license requires it to "conform its operations to parameters agreed to in coordination agreements

⁶ See *id.* at 8.

⁷ See *id.* at 10.

⁸ See *Intelsat Feb. 23, 2004 License*, Condition 7.

⁹ Article 15 of the ITU Radio Regulations establishes a "procedure in case of harmful interference." ITU Radio Regulation, Article 15.

¹⁰ See *Intelsat Feb. 23, 2004 License*, Condition 2.

¹¹ See *Petition* at 1, 5-6.

between the Administration of India and other Administrations.”¹² New Skies then asserts that India’s ITU filings and India’s coordination agreement with the Netherlands do not contemplate operations outside of India, and that Intelsat’s planned operations are not in accordance with the existing coordination agreements and ITU filings.¹³

New Skies’ allegation with respect to the ITU filings is flatly incorrect. INSAT-AF55E C-band filings cover areas outside of India and the INSAT-10KU55E Ku-band API submitted to the ITU specifies the service area as the visible earth. These filings existed well before Intelsat filed its application to modify the license for INTELSAT 702 to operate at 54.85° E.L.¹⁴

New Skies is correct that coordination of these filings with respect to operations outside of India has not yet been completed and India’s current coordination agreement with the Netherlands, which was based on filings having only domestic Indian coverage, does not cover operations outside of India.¹⁵ These considerations, however, are **exactly** why Intelsat’s license was granted on a non-harmful interference basis and why numerous restrictions intended to minimize the risk of harmful interference to adjacent satellites were placed on Intelsat’s operations.¹⁶ Coordination agreements are not a pre-requisite when one provider agrees to

¹² See *id.* at 4-5; see also *Intelsat Feb. 23, 2004 License*, Condition 5.

¹³ See *Petition* at 1, 2, 5, 6.

¹⁴ As a result, contrary to New Skies’ assertion, Intelsat has never indicated that it intended to operate INTELSAT 702 “in an area outside that covered by the Indian administration’s ITU filings.” *Id.* at 4.

¹⁵ See *Petition* at 5, 6.

¹⁶ Indeed, the FCC routinely permits operation of U.S. licensed satellites in advance of coordination agreements subject to conditions that require operations to be on a non-harmful interference basis and future compliance with coordination agreements. See, e.g., *PanAmSat Licensee Corp., Application for Authority to Launch and Operate a Hybrid Communications Satellite Known at 68.5 E.L.*, Order and Authorization, DA 04-919, ¶ 20 (rel. Mar. 31, 2004) (“*PanAmSat 68.5 E.L. Order*”) (“PanAmSat is currently in coordination discussions with some adjacent satellite operators which may impact operations in the frequency bands we authorize today. Those frequencies where coordination has not yet been successfully completed are limited to operation on a non-harmful interference basis. That is, PanAmSat shall not cause harmful interference to, and shall not claim protection from interference caused to it by, any

operate solely on a non-interference basis.¹⁷ Intelsat is currently working with India to expedite completion of coordination agreements between India and the affected operators. Once this occurs, the operation of INTELSAT 702 will conform to those agreements as required by condition 5 of Intelsat's license.

Previously, Intelsat had entered into an agreement with India that permitted operation of INTELSAT 702 at 55.0° E.L for providing domestic FSS in India. On the basis of that agreement, Intelsat had also entered into an agreement with New Skies concerning the operation of INTELSAT 702 at 55.0° E.L. Neither of these agreements, however, is relevant to Intelsat's operations at 54.85° E.L. under the license issued by the Commission. Indeed, as New Skies concedes, Intelsat's agreement with New Skies for temporary operations at 55.0° E.L. expired at the end of February.¹⁸ Intelsat has reached a new agreement with India for INTELSAT 702's operations outside of India from 54.85° E.L., a copy of which Intelsat submitted to the Commission.¹⁹

III. GRANT OF THIS MODIFICATION IS IN THE PUBLIC INTEREST.

The FCC correctly found that grant of Intelsat's modification application would serve the public interest. As Intelsat explained in its original application, grant of the application provides Intelsat the flexibility needed to manage its system, meet the current customer demand for

(Continued . . .)

other lawfully operating satellite. In the event that any harmful interference occurs as a result of PanAmSat's operations on frequencies where coordination has not yet been completed, PanAmSat shall cease operations immediately upon notification of such interference and shall inform the FCC in writing immediately of such an event. Upon successful completion of coordination, PanAmSat shall be subject to any restrictions resulting from those agreements.”).

¹⁷ For these reasons, Intelsat opposes New Skies' request that the Bureau reconsider its decision until such time that a coordination agreement is put into place. *See Petition* at 2.

¹⁸ *See id.* at 2, 3, 5.

¹⁹ *See Intelsat LLC Request for Confidential Treatment Pursuant to 47 C.F.R. §§ 0.457 & 0.459; Further Amendment to Application of Intelsat LLC To Modify Authorization for INTELSAT 702*; Call Sign: S2388; File No. SAT-AMD-20031118-00331 (filed Feb. 21, 2004).

satellite services in the region, and operate the INTELSAT 702 spacecraft in a safe manner.

Contrary to New Skies' claim,²⁰ the effects of this modification will be felt in the United States. As noted by New Skies in its Petition, this license will be used to meet the requirements of a U.S. government contract.²¹ Moreover, the fact that the satellite likely does not provide service to, from or within the United States does **not** mean that the public interest can never be served by its licensing. The Commission regularly finds that the public interest is served by licensing satellites that carry traffic neither originating nor terminating in the United States.²² Hence, New Skies' allegation that the grant of this modification will in no way affect the United States is both patently erroneous and irrelevant.²³

IV. CONCLUSION

The conditions of Intelsat's license to operate INTELSAT 702 at 54.85° E.L. adequately protect all surrounding satellites, including NSS-703, from harmful interference. As noted above, Intelsat's license permits it to operate only on a non-harmful interference basis. In the extremely unlikely event that harmful interference occurs, however, New Skies has adequate remedies available to it under the FCC's and ITU's regulations. As such, New Skies is sufficiently protected from harmful interference, and Intelsat respectfully requests that the Commission dismiss New Skies' Petition for Reconsideration.

²⁰ See *Petition* at 10-11.

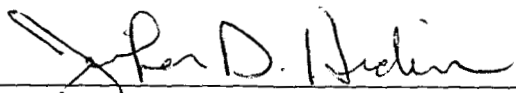
²¹ See *id.* at 5.

²² See, e.g., *PanAmSat 68.5° E.L. Order*, ¶ 2 (authorizing PanAmSat to operate a satellite at an "orbital location [that] affords interconnection between Far East, Asia, Africa and Europe").

²³ New Skies' allegation that Intelsat has not made a showing that other satellites lack the capacity to meet current consumer demands is entirely irrelevant. See *Petition* at 11. The Commission has never required a showing of lack of capacity on competing satellites as a condition of licensing additional capacity. Rather, the Commission has always properly concluded that licensing additional suppliers promotes competition.

Respectfully submitted,

INTELSAT LLC

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Dated: April 2, 2004

CERTIFICATE OF SERVICE

I, Christopher E. Ryan, a legal assistant at the law firm of Wiley Rein & Fielding, LLP,
do hereby certify that a true and correct copy of the foregoing Opposition to Petition for
Reconsideration was sent by first-class mail, postage prepaid, on this 2nd day of April 2004 to the
following:

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