

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

**RECEIVED**

JUN 24 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Loral Satellite, Inc. )  
(Debtor-in-Possession) and )  
Loral SpaceCom Corporation )  
(Debtor-in-Possession), Assignors, )  
)  
and )  
)  
Intelsat North America LLC, Assignee, )  
)  
Applications for Consent to Assignments )  
of Space Station Authorization )  
  
To: The Commission

**Received**  
JUN 29 2004  
Policy Branch  
International Bureau  
File Nos. SAT-ASG-20030728-00138  
SAT-ASG-20030728-00139

**Int'l Bureau**

JUN 28 2004

**Front Office**

**MOTION TO STRIKE**

SES AMERICOM, Inc. ("SES AMERICOM"), by its attorneys, hereby moves to strike the brief, in the form of a 22-page letter, that was filed by Intelsat North America LLC ("Intelsat") on June 4, 2004, in the above-referenced proceeding.<sup>1</sup> The Commission should strike Intelsat's Brief because the pleading cycle established by the Rules of the Federal Communications Commission (the "FCC" or the "Commission") long ago closed on SES AMERICOM's pending Application for Review in this proceeding.<sup>2</sup> Moreover, Intelsat's Brief is improper insofar as it presents arguments that are both untimely and extraneous to the Application for Review.

<sup>1</sup> Letter from Burt W. Rein and Jennifer D. Hindin, Counsel to Intelsat North America LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (the "Brief").

<sup>2</sup> SES AMERICOM, Inc., *Application for Review*, SAT-ASG-20030728-00138, SAT-ASG-20030728-00139 (the "Application for Review").

**I. INTELSAT’S EX PARTE LETTER SHOULD BE REJECTED AS AN IMPROPER SUPPLEMENTAL PLEADING.**

Although formally submitted to the Commission as a “written ex parte,” Intelsat’s Brief is indistinguishable from a pleading. By Intelsat’s own account, the Brief is intended to “supplement and clarify [Intelsat’s] Opposition to SES AMERICOM’s pending Application for Review.”<sup>3</sup> However, Intelsat is foreclosed from filing any additional pleading in response to SES AMERICOM’s pending Application for Review.

Section 1.115(d) of the Commission’s Rules dictates a discrete pleading cycle to govern argumentation in an application for review proceeding.<sup>4</sup> This pleading cycle allowed Intelsat to file a single Opposition to SES AMERICOM’s Application for Review, which Intelsat did in March 2004, nearly three months ago.<sup>5</sup> Beyond this Opposition, the Rules do not permit Intelsat to file other briefs to clarify or supplement Intelsat’s prior arguments.

The Commission should not permit Intelsat to use the *ex parte* process to circumvent the prescribed limits on the pleading cycle. These limits wisely are designed to expedite the review process, and to preclude exactly the sorts of unending, unstructured, and unnecessary rounds of argumentation that Intelsat has initiated here.

Intelsat has not requested a waiver of the FCC’s Rules, and in any event has not shown good cause for the Commission to waive its Rules to permit an additional brief in this case. Intelsat has not attempted to demonstrate any changed circumstance, any newly discovered information, or any other “special circumstance” that might justify the Commission’s deviation

---

<sup>3</sup> Brief at 1.

<sup>4</sup> *See* 47 C.F.R. § 1.115(d).

<sup>5</sup> *See Opposition of Intelsat North America LLC to Application for Review*, SAT-ASG-20030728-00138, SAT-ASG-20030728-00139 (filed Mar. 29, 2004) (the “Opposition”).

from the Rules.<sup>6</sup> Instead, Intelsat’s Brief largely repeats or expands upon the same arguments that Intelsat raised previously in its Opposition.

## **II. THE COMMISSION SHOULD STRIKE INTELSAT’S BRIEF BECAUSE IT PRESENTS ARGUMENTS THAT ARE UNTIMELY AND EXTRANEIOUS TO THE APPLICATION FOR REVIEW PROCEEDING.**

The Commission also should strike Intelsat’s Brief because it raises arguments that are untimely and extraneous to the Application for Review proceeding.

Although Intelsat characterizes its Brief as a supplemental response to SES AMERICOM’s Application for Review, Intelsat instead devotes much of the Brief to challenging, not what SES AMERICOM has said, but rather the International Bureau’s determination in the instant proceeding that Section 602(a) of the ORBIT Act prohibits Intelsat from offering “additional services” until such time as Intelsat conducts an initial public offering of equity (“IPO”) in accordance with the Act.<sup>7</sup>

Intelsat’s challenge is extraneous to this proceeding, because the Application for Review process must be focused on SES AMERICOM’s issues with the Bureau’s Order, not those of Intelsat. SES AMERICOM did not challenge the Bureau’s interpretation of

---

<sup>6</sup> See *In the Matter of Lockheed Martin Corp., COMSAT Gov’t Sys. LLC, and COMSAT Corp.*, Order on Reconsideration, 17 FCC Rcd. 13160, 13164 (2002).

<sup>7</sup> See *Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), Assignors and Intelsat North America, LLC, Assignee, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act of 1934*, Order and Authorization, DA-04-357 (rel. Feb. 11, 2004), at ¶ 58 (“Section 602 specifically prohibits any successor entity of INTELSAT from expanding to provide certain additional services in the transition period prior to privatization”); *id.* at ¶¶ 60-61 (holding that Intelsat remains subject to Section 602 until Intelsat fully privatizes by completing the IPO process) (the “Order”). See also Brief at 2-11 (challenging the Bureau’s interpretation as misreading the ORBIT Act, discriminating against similarly situated entities, and conflicting with controlling FCC precedent).

Section 602(a). To the contrary, SES AMERICOM argued that, in light of the Bureau's interpretation of Section 602(a), the Bureau had no valid basis under the Communications Act of 1934 for granting special temporary authority to Intelsat to provide "additional services" in advance of Intelsat's IPO.

If Intelsat wanted to contest the Bureau's Order, Intelsat could readily have done so, pursuant to the Commission's Rules, by filing a separate application for review or petition for reconsideration.<sup>8</sup> Intelsat chose not to do so, and thus long ago forfeited its opportunity to contest the Bureau's Order under the Commission's Rules. Indeed, by failing to file its own application for review or a petition for reconsideration within 30 days of the Order's release date,<sup>9</sup> Intelsat abandoned its right to raise arguments that attack the Bureau's interpretation of Section 602(a).

The Commission should not allow Intelsat to contaminate SES AMERICOM's Application for Review by injecting extraneous arguments that Intelsat no longer is entitled to make to the Commission. Accordingly, the Commission should strike Intelsat's Brief.

---

<sup>8</sup> 47 C.F.R. § 1.104 provides that "[a]ny person desiring Commission consideration of a final action taken pursuant to delegated authority shall file either a petition for reconsideration or application for review."

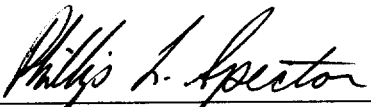
<sup>9</sup> *Id.* Intelsat did not first present arguments attacking the Bureau's Order until Intelsat filed its Opposition, on March 29, 2004, more than a month after the Commission released the Bureau's Order on February 11. *See* Opposition at 17-19. Thus, Intelsat's arguments are untimely. Intelsat furthermore failed to request a waiver of the time limits for filing an application for review, and has not sought to explain the lateness of its arguments to the Commission. *See In the Matter of Charles T. Crawford*, 17 FCC Rcd. 2014, 2018 (2002).

### III. CONCLUSION

For the foregoing reasons, SES AMERICOM respectfully requests that the Commission strike from the record of this proceeding, and decline to consider, the letter filed by Intelsat on June 4, 2004.

Respectfully submitted,

SES AMERICOM, Inc.

By: 

Phillip L. Spector  
Patrick S. Campbell  
Brett M. Kitt  
PAUL, WEISS, RIFKIND,  
WHARTON & GARRISON LLP  
1615 L Street, N.W., Suite 1300  
Washington, D.C. 20036  
(202) 223-7300

Nancy Eskenazi  
Vice President & Associate General Counsel  
SES AMERICOM, INC.  
4 Research Way  
Princeton, NJ 08540  
(609) 987-4000

*Attorneys for SES AMERICOM, Inc.*

June 24, 2004

## CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June, 2004, I caused a copy of the foregoing Opposition to Motion for Expedited Consideration, In Part, and Opposition to Cross-Motion to Dismiss to be served by U.S. First-Class Mail, postage prepaid, on the following:

Patrick J. Cerra  
Vice President  
Intelsat North America LLC  
3400 International Drive, N.W.  
Washington, D.C. 20008-3006

Bert W. Rein  
Carl R. Frank  
Jennifer D. Hindin  
Wiley Rein & Fielding LLP  
1776 K St., N.W., Suite 400  
Washington, D.C. 20006-2304

*Attorneys for Intelsat North America, LLC*

Laurence D. Atlas  
Vice President, Government Relations  
Loral Space and Communications Ltd.  
1755 Jefferson Davis Hwy., Suite 1007  
Arlington, VA 22202-3501

Pantelis Michalopoulos  
Chung Hsiang Mah  
Steptoe & Johnson LLP  
1330 Connecticut Avenue N.W.  
Washington, D.C. 20036-1795  
*Attorneys for EchoStar Satellite Corporation*

David K. Moskowitz  
Senior Vice President and General Counsel  
EchoStar Satellite Corporation  
5701 South Santa Fe  
Littleton, CO 80120

David R. Goodfriend  
Director, Legal and Business Affairs  
EchoStar Satellite Corporation  
1233 20th Street, N.W., Suite 701  
Washington, D.C. 20036

Philip L. Verveer  
Willkie Farr & Gallagher LLP  
1875 K Street, N.W.  
Washington, D.C. 20056

*Attorney for Loral Space and  
Communications, Ltd.*

Earl W. Comstock  
John W. Butler  
Sher & Blackwell LLP  
1850 M Street, N.W., Suite 900  
Washington, D.C. 20036  
*Attorneys for Starband Communications,  
Inc.*

Kenneth J. Wees  
Vice President/General Counsel  
StarBand Communications, Inc.  
1760 Old Meadow Road  
McLean, VA 22102

  
Kathleen Arnold