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Policy Branch
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Thomas S. Tycz
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Federal Communications Commission
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Re: Request for Technical Corrections to License Conditions; SAT-A/O-20000119-000002 to SAT-A/O-20000119-000018; SAT-AMD-20000119-00029 to SAT-AMD-20000119-00041; SAT-LOA-20000119-00019 to SAT-LOA-20000119-00028; SAT-ASG-20030728-00138/00139

Dear Mr. Tycz:

We are writing on behalf of Intelsat LLC and Intelsat North America LLC (collectively, "Intelsat") to request that the Federal Communications Commission ("FCC" or "Commission") conform the conditions on Intelsat's space station licenses to a recent amendment to Section 621(5) of the Open-Market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act" or "Act").¹

Intelsat's licenses are conditioned on, among on things, a Commission finding that Intelsat has conducted an initial public offering ("IPO") in accordance with Sections 621(2) and 621(5)(A)(i) of the ORBIT Act. Congress, however, recently amended the Act to provide that Intelsat may either conduct an IPO in accordance with Sections 621(2) and 621(5)(A)(i) or, under Section 621(5)(F)(i), certify that it has achieved substantial dilution of former signatory ownership, eliminated former signatory control, and has no intergovernmental organization ownership. Therefore, Intelsat respectfully requests that the Commission revise Intelsat's license conditions so that the licenses are conditioned on *either* a Commission finding that Intelsat has conducted an IPO consistent with Sections 621(2) and 621(5)(A) *or* a Commission determination that Intelsat is in compliance with its Section 621(5)(F)(i) certification. Prompt approval of this request will serve the public interest by ensuring U.S. consumers' access to an additional, competitive choice for DTH, DBS, and services in the Ka- and V-bands

¹ Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 (2000), *as amended*, Pub. L. No. 107-233 (2002), *as amended*, Pub. L. No. 108-228 (2004), *as amended*, Pub. L. No. 108-371 (2004).

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immediately upon a Commission determination that Intelsat is in compliance with its Section 621(5)(F)(i) certification.

I. BACKGROUND

Congress passed the ORBIT Act in 2000 to “promote a fully competitive global market for satellite communications services ... by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat.”² Since that time, the Commission granted space station authorizations to Intelsat LLC³ and approved the assignment of satellite licenses from Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession) (collectively, “Loral”) to Intelsat North America LLC.⁴ At the same time, however, the Commission conditioned Intelsat’s licenses on fulfilling its remaining obligations under the Act.

Specifically, Intelsat’s satellite authorizations are “subject to a future Commission finding that Intelsat, Ltd., has conducted an IPO consistent with the requirements of Sections 621(2) and 621(5)(A)(i) of the ORBIT Act and any actions the Commission may take in view of this finding under Section 601(b)(1)(B) of the Act.”⁵ In addition, Intelsat North America’s authorizations also contain a condition

² ORBIT Act, § 2. To this end, Sections 621 and 622 of the Act require INTELSAT or its successor entity to, among other things, “operate as [an] independent commercial entit[y]”, “have a pro-competitive ownership structure”, forgo all former IGO “privileges and immunities”, “conver[t] to [a] stock corporation[]”, “conduct an initial public offering” (“IPO”), and conduct “technical coordination ... under International Telecommunication Union procedures.” *Id.*, §§ 621, 622.

³ See *Applications of Intelsat LLC; For Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, Memorandum Opinion Order and Authorization, 15 FCC Rcd 15460, 15519 ¶ 160 (2000) (“*Licensing Order*”), *recon. denied*, 15 FCC Rcd 25234 (2000); *Applications of Intelsat LLC; For Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, Memorandum Opinion Order and Authorization, 16 FCC Rcd 12280, 12297, 12302, ¶¶ 51, 71 (2001) (“*ORBIT Act Compliance Order*”).

⁴ *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, 19 FCC Rcd 2404, 2430 (2004) (“*Intelsat/Loral Order*”).

⁵ *ORBIT Act Compliance Order*, 16 FCC Rcd at 12303, ¶ 76 (applying the condition to Intelsat LLC); *Intelsat/Loral Order*, 19 FCC Rcd at 2432, ¶ 72 (applying the condition to Intelsat North America).

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that “prohibits Intelsat North America from providing additional services until successful completion of the IPO process as required by the ORBIT Act.”⁶ In the text of the *Intelsat/Loral Order*, the Commission noted that Section 602 of the ORBIT Act prohibits expansion into “additional services” prior to privatization and expressed its view that “in order to meet the ORBIT Act’s requirements for privatization, Intelsat, Ltd. must complete its IPO procedures.”⁷

Effective October 25, 2004, Congress amended the Act to provide an alternative to the IPO requirement. Intelsat may conduct an IPO in accordance with Sections 621(2) and 621(5)(A)(i). Or, under Section 621(5)(F), Intelsat may forgo an IPO and public listing of securities if it otherwise achieves substantial dilution of former signatory ownership, eliminates former signatory control, and has no intergovernmental organization ownership. Section 621(5)(F) states:

a successor entity may be deemed a national corporation and may forgo an initial public offering and public securities listing and still achieve the purposes of this section if—

(i) the successor entity certifies to the Commission that—

(I) the successor entity has achieved substantial dilution of the aggregate amount of signatory or former signatory financial interest in such entity;

(II) any signatories and former signatories that retain a financial interest in such successor entity do not possess, together or individually, effective control of such successor entity; and

⁶ *Intelsat/Loral Order*, 19 FCC Rcd at 2429, ¶ 63. Section 681(12)(B) of the Act defines “additional services” to mean “for INTELSAT, direct-to-home (DTH) or direct broadcast satellite (DBS) video services, or services in the Ka or V bands.”

⁷ *Intelsat/Loral Order*, 19 FCC Rcd R 2427-28, ¶¶ 58-59. This condition applies only to Intelsat North America. *See id.*, 19 FCC Rcd at 2429, ¶ 63.

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(III) no intergovernmental organization has any ownership interest in a successor entity of INTELSAT or more than a minimal ownership interest in a successor entity of Inmarsat;

(ii) the successor entity provides such financial and other information to the Commission as the Commission may require to verify such certification; and

(iii) the Commission determines, after notice and comment, that the successor entity is in compliance with such certification.⁸

In light of this amendment, Intelsat plans to file a certification pursuant to Section 621(5)(F)(i).

II. THE COMMISSION SHOULD CORRECT INTELSAT'S LICENSE CONDITIONS TO CONFORM TO THE REQUIREMENTS OF THE ORBIT ACT, AS AMENDED.

The Commission should correct Intelsat's license conditions to conform to the requirements of the amended ORBIT Act. The licenses granted to Intelsat reflect the then-existing ORBIT Act requirement that Intelsat conduct an IPO and publicly list its securities. Today, however, the ORBIT Act no longer mandates an IPO and public listing of securities. As noted above, Congress, in Section 621(5)(F) of the Act, provided a "certification" alternative to the IPO requirement. The prior imposed license conditions, therefore, no longer accurately reflect Intelsat's current statutory obligations.

The need for corrective action created by this change in law is plain. Intelsat intends to satisfy its remaining ORBIT Act obligations by certifying that it has complied with Section 621(5)(F). Thereafter, Intelsat expects the Commission to determine that Intelsat is in compliance with such certification upon consummation of Intelsat's pending transaction with Zeus Holdings Limited. At such time, Intelsat would have fulfilled its remaining ORBIT Act obligations. Nonetheless, Intelsat's licenses would remain conditioned on completion of an IPO, which at that point,

⁸ *ORBIT Act*, § 621(5)(F).

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would be statutorily superfluous. A technical correction, therefore, is necessary to conform Intelsat's outdated license conditions to current law.

Specifically, Intelsat requests that the Commission revise Ordering Paragraph 76 of the May 29, 2001 *ORBIT Act Compliance Order* to include the italicized language:

IT IS FURTHER ORDERED that the authorizations issued in the *Licensing Order* [short citation is italicized in the original] are subject to *either* a future Commission finding that Intelsat, Ltd. has conducted an IPO consistent with the requirements of Sections 621(2) and 621(5)(A)(i) of the ORBIT Act and any actions the Commission may take in view of this finding under Section 601(b)(1)(B) of the Act, *or a Commission determination, after notice and comment, that Intelsat, Ltd. is in compliance with its certification under Section 621(5)(F)(i) of the ORBIT Act.*⁹

Relatedly, Intelsat requests that the Commission revise Ordering Paragraph 77 of the May 29, 2001 *ORBIT Act Compliance Order* to include the italicized language:

IT IS FURTHER ORDERED that *if Intelsat, Ltd. holds an IPO in satisfaction of Ordering Paragraph 76 of this order*, Intelsat LLC shall file with the Commission 30 days after conduct of its IPO a demonstration that the IPO is consistent with Section 621(2) and 621(5)(A)(i) of the ORBIT Act.¹⁰

In addition, Intelsat requests that the Commission update Ordering Paragraph 72 of the *Intelsat/Loral Order* to read:

⁹ *ORBIT Act Compliance Order*, ¶ 76. To the extent necessary, Intelsat also requests that the FCC update similar statements, for example, in paragraphs 19, 25-27, and 33 regarding the statutory requirement to hold an IPO.

¹⁰ *Id.*, ¶ 77. To the extent necessary, Intelsat also requests that the FCC update similar statements, for example, in paragraph 27 regarding the demonstration requirement.

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IT IS FURTHER ORDERED that, the authorizations granted to Intelsat North America herein are subject to *either* a future Commission finding that Intelsat, Ltd. has conducted an IPO consistent with the requirements of Sections 621(2) and 621(5)(A)(i) of the ORBIT Act and any actions the Commission may take in view of this finding under Section 601(b)(1)(B) of the Act, *or a Commission determination, after notice and comment, that Intelsat, Ltd. is in compliance with its certification under Section 621(5)(F)(i) of the ORBIT Act.*¹¹

Intelsat further requests that the Commission revise Sections IV.B.c and IV.B.d of the *Intelsat/Loral Order* to clarify that Intelsat may provide "additional services" upon a Commission determination, after notice and comment, that Intelsat North America is in compliance with its certification under Section 621(5)(F)(i) of the Act. For example, the Commission should change the last sentence of paragraph 63 to read:

Except to the extent discussed below pursuant to Special Temporary Authority, our grant of authority to Intelsat North America prohibits Intelsat North America from providing additional services until successful completion of the IPO process as required by the ORBIT Act, *or until the Commission determines after notice and comment, that Intelsat, Ltd. is in compliance with its certification under Section 621(5)(F)(i) of the ORBIT Act.*

This change to the text of the *Intelsat/Loral Order* would clarify that Intelsat, consistent with Ordering Paragraph 75, will "no longer be subject to the prohibition

¹¹ *Intelsat/Loral Order*, ¶ 72. To the extent necessary, Intelsat also requests that the FCC update similar statements, for example, in paragraphs 8 and 53-55 regarding the statutory requirement to hold an IPO and the demonstration requirement.

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under the ORBIT Act for providing such additional services" following the Commission's determination that Intelsat has complied with its certification.¹²

The requested corrections to conform to current law would be consistent with Commission precedent. For example, in a *Supplemental Order* released March 4, 2004, the Commission granted Intelsat North America's Request for Technical Correction of Ordering Paragraph 76 of the *Intelsat/Loral Order* in order to prevent customer confusion regarding the timing and nature of Intelsat's authority to provide "additional services".¹³ The Commission, on its own motion, also amended Ordering Paragraph 75 to clarify the effective date for Intelsat's Special Temporary Authority to provide "additional services".¹⁴ Similarly, the Commission has amended license conditions, on its own motion, to reflect rule changes,¹⁵ where an alternative approach would better achieve its original objective,¹⁶ or where the amendment would serve the public interest by providing licensees with greater flexibility.¹⁷

Granting this request will serve the public interest by remedying the current disparity between Intelsat's obligations under the ORBIT Act and its license conditions, which the Commission always intended to mirror Intelsat's statutory obligations. Such action also would eliminate any uncertainty regarding Intelsat's authority to provide a full range of services in the United States following its compliance with amended Section 621(5) of the ORBIT Act. Moreover, prompt action by the Commission to conform these conditions to the Act will provide U.S. consumers access to additional, competitive choice for DTH, DBS, and services in

¹² *Id.*, ¶ 75. To the extent necessary, Intelsat also requests that the FCC update similar statements, for example, in paragraphs 58, 59, 64 and 66 regarding the statutory requirement to hold an IPO.

¹³ *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*, Supplemental Order, 19 FCC Rcd 4029, 4031, ¶ 10 (2004) ("Supplemental Order").

¹⁴ *Id.*

¹⁵ *See, e.g., Black Hills Video Corp.; For Renewal of the License for Station KAR42*, Memorandum Opinion and Order, 1 F.C.C.2d 1032, 1037-38 ¶ 12 (1965).

¹⁶ *See, e.g., Applications of General Telephone and Electric Corporation to Acquire Control of Telenet Corp. and its Wholly-Owned Subsidiary Telenet Communications Corp.*, Memorandum Opinion and Order, 72 F.C.C.2d 516, 518 ¶ 6 (1979).

¹⁷ *See, e.g., Part 68 Waiver Request of Alameda Eng'g*, Order on Reconsideration, 15 FCC Rcd 1658, 1664 ¶ 13 (1999).

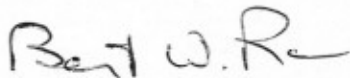
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the Ka- and V-bands immediately upon the effective date of a Commission determination that Intelsat is in compliance with its Section 621(5)(F)(i) certification. Grant of this request, therefore, would serve the public interest.

III. CONCLUSION

Intelsat respectfully requests that the Commission expeditiously revise Intelsat's license conditions as proposed herein to conform the conditions to the ORBIT Act, as amended.

Sincerely,



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