

COPY

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

RECEIVED - FCC

APR - 9 2004

Federal Communication Commission  
Bureau / Office

In the Matter of

Loral Satellite, Inc.  
(Debtor-in-Possession) and  
Loral SpaceCom Corporation  
(Debtor-in-Possession),

Assignors,

and

Intelsat North America LLC,  
Assignee,

Application for Consent to Assignments  
of Space Station Authorizations

File Nos. SAT-ASG-20030728-00138  
SAT-ASG-20030728-00139

Received

APR 13 2004

Policy Branch  
International Bureau

To the International Bureau:

**REQUEST FOR DEFERRAL OF NOTIFICATION**

Intelsat North America LLC ("Intelsat"), by its attorneys and pursuant to Section 1.41 of the rules of the Federal Communications Commission ("FCC" or "Commission"),<sup>1</sup> hereby requests a deferral of the requirement that it notify certain former customers of Loral that services defined as "additional services"<sup>2</sup> are being provided to them pursuant to a grant of

<sup>1</sup> 47 C.F.R. § 1.41 (2003) ("Except where formal procedures are required under the provisions of this chapter, requests for action may be submitted informally").

<sup>2</sup> Section 681(a)(12)(B) of the ORBIT 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." Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48, § 681(a)(12)(B) (2000) ("ORBIT Act"), as amended, Pub. L. No. 107-233, 116 Stat. 1480 (2002).

special temporary authority (“STA”).<sup>3</sup> Intelsat seeks deferral of this customer notice requirement until 10 days after the Commission resolves SES Americom’s (“SES”) pending *Application for Review*,<sup>4</sup> which challenges the grant of STA and has placed the issue of the ORBIT Act’s “additional services” restriction squarely before the full Commission.<sup>5</sup> Grant of this request will serve the public interest because Intelsat cannot provide affected customers with clear guidance regarding Intelsat’s authority to provide “additional services”—the intent of the notice requirement—until the Commission completes its review.

## I. BACKGROUND

In the *Loral/Intelsat Order*, the International Bureau (“Bureau”) granted Intelsat STA to continue providing direct-to-home (“DTH”) services to former customers of Loral following Intelsat’s acquisition of certain Loral satellites. In connection with the STA grant, the Bureau required Intelsat to notify such customers that Intelsat is providing service pursuant to STA:

IT IS FURTHER ORDERED that Intelsat North America must notify current customers of Loral who are providing DTH services (or other “additional services” as defined under the ORBIT Act), in writing, and within 30 days of the consummation of the transaction authorized by this Order and Authorization, that DTH service (or other “additional services” as defined under the ORBIT Act) is now being provided under a grant of Special Temporary Authority as specified in this Order and Authorization.<sup>6</sup>

---

<sup>3</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, ¶ 65 (Intl. Bur. rel. Feb. 11, 2004) (“*Loral/Intelsat Order*”), as amended, *Supplemental Order*, DA 04-612 (Intl. Bur. rel. Mar. 4, 2004).

<sup>4</sup> *SES AMERICOM, Inc., Application for Review*, File Nos. SAT-ASG-20030728-00138/00139 (filed Mar. 12, 2004) (“*Application for Review*”).

<sup>5</sup> Section 602(a) of the ORBIT Act prohibits Intelsat from providing additional services until it has “privatized in accordance with the requirements of [the ORBIT Act].” ORBIT Act, § 602(a).

<sup>6</sup> *Supplemental Order*, ¶ 10.

Intelsat and Loral consummated their transaction on March 17, 2004 and thus the deadline for Intelsat to send this customer notice currently is Friday, April 16, 2004.<sup>7</sup>

On March 12, 2004, SES filed an *Application for Review* challenging, *inter alia*, the lawfulness of the Bureau's decision to grant Intelsat STA. SES claimed that Section 602(a) of the ORBIT Act explicitly prohibits Intelsat's from providing "additional services," even on a temporary basis, until it completes its initial public offering ("IPO"). SES also sought expedited review, in part, of its *Application for Review* and immediate vacatur of Intelsat's STA.<sup>8</sup>

In its opposition to SES's *Application for Review*, Intelsat noted that the former intergovernmental organization, INTELSAT, has already "privatized" in accordance with the Act and thus Intelsat is fully qualified to provide "additional services" under Section 602(a).<sup>9</sup> Intelsat further explained that the full Commission properly has interpreted Section 602(a) of the ORBIT Act not to forbid pre-IPO "additional services" and has permitted Inmarsat full licensing authority to offer such services, subject to Inmarsat conducting a future IPO. As a result, the Bureau's prohibition on Intelsat's provision of "additional services" prior to conducting its IPO was *ultra vires*<sup>10</sup> and thus procedurally ineffective. Accordingly, Intelsat requested that the Commission remedy the Bureau's disparate treatment of Intelsat by granting Intelsat full and

---

<sup>7</sup> The *Loral/Intelsat Order* initially required Intelsat to provide such customer notice within 30 days of release of that order. See *Loral/Intelsat Order*, ¶ 65. The *Supplemental Order* amended the *Loral/Intelsat Order* to require Intelsat to provide notice 30 days after consummation of the transaction. See *Supplemental Order*, ¶ 9.

<sup>8</sup> See *Application for Review* at 20-24; see also *SES Americom Motion for Expedited Consideration in Part of Application for Review*, File Nos. SAT-ASG-20030728-00138/139 (filed Mar. 12, 2004).

<sup>9</sup> *Intelsat North America LLC, Opposition to Application for Review*, File Nos. SAT-ASG-20030728-00138/00139 (filed Mar. 29, 2004) ("*Opposition*").

<sup>10</sup> 47 C.F.R. §0.261(b)(1)(ii)-(iii).

non-temporary authority to use the Loral satellites for the provision of additional services subject to a subsequent IPO.<sup>11</sup>

Currently, thus, the full Commission has pending before it requests from Intelsat and SES that seek directly opposite action with respect to Intelsat's STA. There are at least three possible outcomes. The FCC could: (1) vacate Intelsat's STA as requested by SES; (2) uphold the Bureau's grant of STA to Intelsat; or (3) grant Intelsat full licensing authority to provide additional services. While Intelsat strongly believes that it will prevail on the merits, there is no way to predict the FCC's substantive decision. Furthermore, there is no established date for the FCC to issue its decision.

**II. THE COMMISSION SHOULD DEFER THE DEADLINE FOR INTELSAT TO NOTIFY CUSTOMERS BECAUSE SENDING THE NOTICE NOW WILL NOT OFFER CLEAR GUIDANCE TO CUSTOMERS**

The Commission should defer the deadline for Intelsat to notify certain "additional services" customers that it is offering service pursuant to STA until 10 days following resolution of SES's *Application for Review*. Any notice delivered prior to that time would not provide customers with clear guidance on the proper duration of Intelsat's authority to provide "additional services." On the other hand, deferring the notice requirement until the Commission resolves the legal uncertainty surrounding Intelsat's provision of "additional services" would better serve the original intent of the notice requirement.

The Bureau imposed the customer notice requirement on the understanding that Intelsat's STA would expire in 180 days, on September 13, 2004, and that Intelsat would have to cease providing "additional services" at that time, unless Intelsat successfully completed the IPO process required by the ORBIT Act. The ORBIT Act requires Intelsat to conduct an IPO by June

---

<sup>11</sup> See *Opposition* at 3. SES's reply is due April 13, 2004.

30, 2004—a date well in advance of the expiration of the STA. The purpose of the notice requirement was to ensure that affected customers were aware that the service might be time-limited. The notice thus would allow customers, if necessary, to transition to other service providers.

SES's *Application for Review*, however, has created legal uncertainty regarding the duration of Intelsat's authority to provide "additional services." Indeed, there are at least three possible outcomes of the Commission's review. First, the Commission could find that the Bureau's decision to limit Intelsat's license authority to provide "additional services" was *ultra vires* (because it did not conform to the Commission's prior interpretation of Section 602(a) of the ORBIT Act and Inmarsat precedent) and thus grant Intelsat full license authority to provide "additional services." Second, the Commission could find that the Bureau had "discretion" to grant less than full authority and thus uphold the STA. Third, as SES requested, the Commission could immediately vacate Intelsat's STA.

Given these various outcomes, requiring Intelsat to notify customers on April 16, 2004 that it is offering service pursuant to 180 day STA would not serve the public interest. Such requirement would either force Intelsat to guess on the duration of its STA—at the risk of being inaccurate—or to provide a complicated explanation of the legal process and multiple possible outcomes relating to Intelsat's STA—at the risk of confusing customers.

By sending a notice to customers on April 16, 2004 that "additional services" were being offered pursuant to STA expiring on September 13, 2004, Intelsat could be providing inaccurate information.<sup>12</sup> Importantly, if the FCC immediately vacates Intelsat's STA, then the notice

---

<sup>12</sup> The Bureau has already made clear that it "did not intend for the notice requirement" to result in "Intelsat providing inaccurate information." *Supplemental Order*, ¶ 4. The inaccuracy remedied by the Supplemental Order was the fact that Intelsat and Loral did not consummate

would have incorrectly led customers to believe that Intelsat could provide “additional services” at least until September 13, 2004. On the other hand, if the Commission grants Intelsat full authority in the *Application for Review* process then sending the notice may have incorrectly led customers to believe that the only means for Intelsat to offer “additional services” after September 13, 2004 was to hold an IPO pursuant to the ORBIT Act by June 30, 2004.

Indeed, customers receiving a notice on April 16, 2004 that Intelsat’s STA expires on September 13, 2004 might needlessly discontinue service. Such disruption in customer service would conflict with the Bureau’s underlying intent in granting the STA—to ensure continuity of service, which is particularly important to consumers in Alaska and Hawaii.<sup>13</sup> It would also disrupt the customer base and revenues that Intelsat intended to acquire from Loral and thus interfere with this commercial transaction.<sup>14</sup>

To avoid these inaccuracies and potentially unwarranted customer action, Intelsat’s notice would have to explain the Bureau’s grant of STA and the subsequent challenges before the Commission. Such a notice would be lengthy and highly complex. Customers receiving the notice would likely be confused and not know whether to seek alternative service providers immediately, in the future or not at all. Moreover, Intelsat likely would need to send a supplemental letter once the Commission completes its review.

Deferring the deadline for Intelsat to send the customer notice would eliminate any inaccuracy and customer confusion and in fact better serve the Bureau’s intended purpose of the notice requirement. A notice sent after the Commission determines the appropriate nature and

---

their transaction immediately upon release of the *Loral/Intelsat Order* and thus Intelsat was not offering service pursuant to STA 30 days after the release of the *Loral/Intelsat Order*.

<sup>13</sup> See *Loral/Intelsat Order*, ¶ 64.

<sup>14</sup> The Bureau previously expressed its “reluctance” to permit “governmental interference” with the Intelsat/Loral commercial transaction. *Id.*

duration of Intelsat's authority to provide "additional services" would offer customers clear guidance. Given that the STA—assuming it is upheld—does not expire until September 13, 2004, customers will have sufficient time to transition (if ultimately necessary) to other service providers even if they do not receive notice until 10 days after the Commission rules on the pending *Application for Review*.<sup>15</sup> Moreover, delaying notice until the Commission resolves the legal challenges will enable customers to make fully informed decisions based on complete and accurate information.<sup>16</sup> Therefore, grant of this deferral request will serve the public interest.

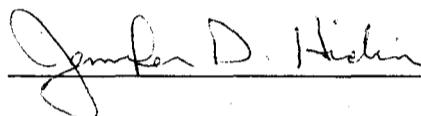
### III. CONCLUSION

Based on the foregoing, Intelsat respectfully requests that the Bureau act promptly to grant this Request for Deferral of Notification.

Respectfully submitted,

INTELSAT NORTH AMERICA LLC

By:



Bert W. Rein  
Carl R. Frank  
Jennifer D. Hindin  
WILEY REIN & FIELDING LLP  
1776 K Street, N.W.  
Washington, DC 20006  
202.719.7000

April 9, 2004

---

<sup>15</sup> Both parties have sought quick Commission resolution of the issues. SES has filed a motion for expedited consideration in part of its *Application for Review*. Intelsat has similarly requested immediate dismissal in part of SES's *Application for Review*.

<sup>16</sup> Indeed, no notice might even be required if Intelsat completes the IPO process required under the ORBIT Act before the FCC acts on SES's *Application for Review*.

## CERTIFICATE OF SERVICE

I, Christopher E. Ryan, a legal assistant at the law firm of Wiley Rein & Fielding, LLP, do hereby certify that copies of the foregoing Intelsat North America LLC **Request for Deferral of Notification** were served by first-class mail, postage prepaid on this 9<sup>th</sup> day of April 2004 to the following:

Marlene H. Dortch (hand delivery)  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Scott B. Tollefsen  
Nancy Eskenazi  
SES AMERICOM, INC.  
4 Research Way  
Princeton, NJ 08540

Phillip L. Spector  
Joseph J. Simons  
Patrick S. Campbell  
Paul, Weiss, Rifkind, Wharton  
& Garrison LLP  
1615 L Street, NW, Suite 1300  
Washington, DC 20036

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 20<sup>th</sup> Street, NW, Suite 701  
Washington, DC 20036

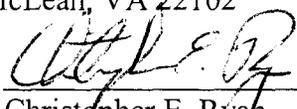
Pantelis Michalopoulos  
Chung Hsiang Mah  
Steptoe & Johnson LLP  
1330 Connecticut Avenue NW  
Washington, DC 20036-1795

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

Philip L. Verveer  
Willkie Farr & Gallagher LLP  
1875 K Street, NW  
Washington, DC 20056

Earl W. Comstock  
John W. Butler  
Sher & Blackwell LLP  
1850 M Street, NW  
Suite 900  
Washington, DC 20036

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

  
\_\_\_\_\_  
Christopher E. Ryan