

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

RECEIVED - FCC  
APR 16 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, )  
)  
Applications for Consent to Assignments )  
of Space Station Authorization )

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

Received  
APR 20 2004  
Policy Branch  
International Bureau

To: The International Bureau

**MOTION TO DISMISS AND OPPOSITION OF SES AMERICOM  
TO REQUEST FOR DEFERRAL OF NOTIFICATION**

SES AMERICOM, Inc. (“SES AMERICOM”), by its attorneys and pursuant to Sections 1.41 and 1.45(d) of the Rules of the Federal Communications Commission (the “FCC” or the “Commission”),<sup>1</sup> hereby moves for immediate dismissal of, and submits this Opposition to, the Request for Deferral of Notification<sup>2</sup> filed by Intelsat North America, LLC (“Intelsat”).

In its *Request for Deferral*, Intelsat asks the International Bureau (the “Bureau”) to defer enforcement of the portion of its Order and Authorization<sup>3</sup> that requires Intelsat, within

<sup>1</sup> 47 C.F.R. §§ 1.41, 1.45(d).

<sup>2</sup> Intelsat North America, LLC, *Request for Deferral of Notification*, SAT-ASG-20030728-00138, SAT-ASG-20030728-00139 (filed April 12, 2004) (the “Request” or “Request for Deferral”).

<sup>3</sup> 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

30 days of acquiring certain satellite assets of Loral Satellite, Inc. and Loral SpaceCom Corporation (collectively, "Loral"), to notify former Loral direct-to-home ("DTH") customers that Intelsat has been granted special temporary authority ("STA") to provide them with DTH satellite capacity for a maximum of 180 days, *i.e.*, until September 13, 2004.<sup>4</sup> Intelsat requests that this customer notification requirement -- which the Bureau imposed to give Loral's (now Intelsat's) DTH customers adequate notice that they will need to transition to alternate vendors of satellite capacity -- be deferred until 10 days after the Commission resolves the status of the STA, which SES AMERICOM has challenged in its *Application for Review and Motion for Expedited Consideration, In Part*.<sup>5</sup> Intelsat argues that deferral is necessary to avoid confusing customers while the Commission decides the legal status of the STA.<sup>6</sup>

Intelsat's *Request* should be dismissed by the Bureau as inexcusably belated and contrary to the public interest. Even if entertained by the Bureau, this *Request* should be

---

(rel. Feb. 11, 2004) ("*Loral/Intelsat Order*"), as amended, Supplemental Order, DA 04-612 (rel. Mar. 4, 2004) ("*Supplemental Order*").

<sup>4</sup> This STA may be superseded by a grant of full, permanent authority to Intelsat to provide "additional services" -- including DTH services -- to its customers if the Commission determines that Intelsat has conducted an initial public offering ("IPO") in accordance with the ORBIT Act by June 30, 2004. *See* 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, 116 Stat. 1480 (2002) (the "ORBIT Act").

<sup>5</sup> SES AMERICOM, Inc., *Application for Review*, SAT-ASG-20030728-00138, SAT-ASG-20030728-00139 (filed March 12, 2004) ("*Application for Review*"); SES AMERICOM, Inc., *Motion for Expedited Consideration In Part of Application for Review*, SAT-ASG-20030728-00138, SAT-ASG-20030728-00139 (filed March 12, 2004) ("*Motion for Expedited Consideration*"). The *Application for Review* and *Motion for Expedited Consideration* challenge the Bureau's grant of STA as being violative of the ORBIT Act's prohibition against the Commission licensing Intelsat to provide "additional services" prior to its IPO. SES AMERICOM has asked the Commission to immediately vacate the STA.

<sup>6</sup> *See Request for Deferral* at 5-7.

recognized for its substance as a motion for stay, and should be reviewed under the Commission's standards applicable to stay requests. When evaluated under such a standard, Intelsat fails in every respect to demonstrate its entitlement to a stay. The Bureau should therefore dismiss or deny Intelsat's *Request*, and require Intelsat immediately to notify its customers in accordance with the *Loral/Intelsat Order* and the *Supplemental Order*.

**I. INTELSAT'S REQUEST FOR DEFERRAL SHOULD BE IMMEDIATELY DISMISSED BY THE BUREAU.**

Intelsat's *Request for Deferral* is belated and insincere in its concern for the public interest. Its *Request* should be immediately dismissed by the Bureau, which should require Intelsat to certify its compliance as of today (April 16, 2004) with the plain terms of the Bureau's directive regarding DTH customer notification.<sup>7</sup>

Intelsat could have filed its *Request* at any time after SES AMERICOM filed its *Application for Review* on March 12, 2004. Inexplicably, however, Intelsat waited four weeks -- until one week before the arrival of the customer notification deadline -- before raising its concerns for the first time. By waiting till this late hour, Intelsat presumably hoped to force the Bureau's hand on the *Request* before the notification deadline arrived. The Bureau should immediately make clear that it will not countenance such "gaming of the system" by those subject to the Bureau's orders.

---

<sup>7</sup> The *Loral/Intelsat Order* required Intelsat to complete the customer notification process by 30 days after "consummation of the [Loral/Intelsat] transaction." *Supplemental Order*, at ¶ 10. According to Intelsat, the transaction closed "on March 17, 2004, and thus the deadline for Intelsat to send this customer notice currently is Friday, April 16, 2004." *Request for Deferral* at 3. Nothing about the *Request* would serve to stay, or otherwise give Intelsat any right to postpone compliance with, this Bureau-imposed deadline.

Intelsat's delay in filing its *Request* also exposes the insincerity of its claim to be acting in the public interest. Had Intelsat genuinely been concerned about customer confusion,<sup>8</sup> it presumably would not have waited to challenge the customer notification requirement until so close to the notification deadline. Likewise, had Intelsat been sincere about wishing to clarify the notification requirement and avoiding alleged "legal uncertainty,"<sup>9</sup> it would not have simultaneously asked to prolong this uncertainty by opposing SES AMERICOM's *Motion for Expedited Consideration*, which seeks a quick Commission resolution on the very STA question as to which Intelsat purports to desire certainty.<sup>10</sup>

At its core, Intelsat's *Request* is a transparent attempt by Intelsat to further its own private interests at the expense of the public. A deferral of customer notification would only diminish, if not eliminate entirely, the opportunities available to Intelsat's customers to transition to other satellite capacity providers within the remaining term of the STA – the clear reason why the Bureau imposed the notification requirement. To Intelsat's decided benefit, such deferral would thus diminish the chances that Intelsat will lose those DTH customers to other providers while Intelsat prepares to conduct its IPO. Indeed, by enabling Intelsat to leave its customers in the dark for an indefinite period of time, deferral would serve to transform the STA into a vehicle

---

<sup>8</sup> *Request for Deferral* at 6.

<sup>9</sup> *Id.* at 4.

<sup>10</sup> Although Intelsat argues that it sought "quick Commission resolution" of the *Application for Review* by requesting an immediate dismissal in part of the *Application*, see *Request for Deferral* at 7 n.15, Intelsat's motion to dismiss does nothing to help expedite the Commission's decision on the *Application*. Moreover, Intelsat's stated desire for quick resolution is inconsistent with its decision to wait until the last possible day to oppose the *Application for Review*.

for Intelsat to retain, rather than to divest itself of, its DTH customers. The Bureau cannot permit Intelsat to subvert FCC directives in this manner.

## II. INTELSAT FAILS TO DEMONSTRATE ITS ENTITLEMENT TO A STAY.

Intelsat's so-called "*Request for Deferral of Notification*" is really a thinly-disguised motion to stay the customer notification requirement of the *Loral/Intelsat Order* pending the outcome of the *Application for Review* proceeding.<sup>11</sup> The Bureau must not permit Intelsat to evade its burden of proving its entitlement to a stay by couching its motion as a request for informal action under Rule 1.41.

Accordingly, if the Bureau does not dismiss Intelsat's *Request* outright, the Bureau should reference the applicable stay requirements, and determine whether Intelsat has demonstrated: (i) a likelihood of success on the merits; (ii) irreparable harm if a stay is denied; (iii) a lack of harm to other interested parties if a stay is granted; and (iv) that the public interest favors a stay.<sup>12</sup> A review of these requirements indicates that Intelsat has failed in every respect to demonstrate its entitlement to a stay. Intelsat's *Request for Deferral of Notification* must therefore be denied.

---

<sup>11</sup> Because the *Request* is in fact a stay request, and because of the urgent deadline for Intelsat's customer notification (as discussed *supra*), SES AMERICOM is filing its Opposition to the *Request* within the period prescribed by the FCC's Rules for filing oppositions to requests for stay. See 47 C.F.R. § 1.45(d). Also, while Intelsat apparently felt no urgency about the impending deadline – serving counsel for SES AMERICOM by ordinary mail – Intelsat's outside counsel is being served on the date of filing of the instant pleading by e-mail and hand delivery.

<sup>12</sup> See *Paxson Communications Corporation v. DIRECTV, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 10944, 10945 (2002) (citing *Virgina Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (*per curium*), as modified by *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977)).

A. *Intelsat Cannot Succeed on the Merits of its Challenge to the Application for Review.*

Although Intelsat projects confidence that it will succeed on the merits of its challenge to SES AMERICOM's *Application for Review*, Intelsat will not, and indeed cannot, succeed as to the only element of its challenge that is of consequence to its Request. Intelsat's Request is predicated upon the notion that the Commission might hereafter grant it full and permanent authority – in lieu of STA – to provide capacity to its DTH customers prior to its IPO. Assuming the possibility that such authority will be granted, Intelsat argues that its customers could be misled if notified immediately that Intelsat will be required to discontinue its service to them within 180 days. There is, in fact, no possibility that the Commission will grant full authority to Intelsat, because the Commission has no proper occasion for doing so.

Intelsat has never filed its own application for review or a petition for reconsideration of the *Loral/Intelsat Order*, and in particular, it has never sought review or reconsideration of that portion of the Bureau's analysis rejecting Intelsat's claim that the ORBIT Act entitles it to full and permanent authority.<sup>13</sup> Although Intelsat informally discussed this issue in its Opposition to SES AMERICOM's *Application for Review*,<sup>14</sup> this discussion was irrelevant to the challenges brought by SES AMERICOM, and in any event did not suffice as a formal request for Commission action.<sup>15</sup> Because Intelsat has never made a formal request to the

---

<sup>13</sup> See *Loral/Intelsat Order* at ¶ 60.

<sup>14</sup> See Intelsat North America, LLC, *Opposition of Intelsat North America LLC to Application for Review*, SAT-ASG-20040728-00138, SAT-ASG-20040728-00139 (filed Mar. 29, 2004) at 17-19.

<sup>15</sup> 47 C.F.R. § 1.104 provides that persons desiring review of actions taken pursuant to delegated authority must file either an application for review or a petition for reconsideration within 30 days from the date of public notice of such action. The Bureau issued the *Loral/Intelsat Order* on February 11, 2004. Intelsat did not raise its challenge to that *Order* until March 29, 2004. Thus, Intelsat's challenge was untimely.

Commission to grant full and permanent authority, this issue is not cognizable in the *Application for Review* proceeding, and Intelsat cannot hope to win this outcome from the Commission.

B. *Intelsat Will Suffer No Harm – Irreparable or Otherwise – As a Consequence of Immediate Customer Notification.*

Without the prospect of Intelsat's receiving full and permanent authority to provide DTH service prior to its IPO, Intelsat cannot demonstrate that it will suffer harm – irreparable or otherwise -- as a result of immediately notifying its customers that they must transition to alternate DTH providers. There is no cognizable request pending before the Commission to replace the current STA with permanent authority, so there is no risk that immediate notification would cause Intelsat to lose DTH customers that the Commission might otherwise entitle it to retain.

C. *Other Interested Parties, Including SES AMERICOM, Will Suffer Injury if the Stay is Granted.*

Although Intelsat will not suffer harm if the stay is denied, other interested parties would likely be injured if the stay is granted. During the proposed deferral period, Intelsat's DTH customers would not be told about the STA, and these customers would have no impetus to seek alternate providers of satellite capacity. If notice is withheld from these customers, moreover, then SES AMERICOM and other providers of satellite capacity would be disadvantaged in competing for these customers' business during this time.

D. *Intelsat Fails to Demonstrate that Deferred Notification Will Serve the Public Interest.*

Intelsat fails to demonstrate that the public interest either requires, or would be served by granting, a stay in this matter. Intelsat exaggerates the extent to which immediate customer notification might mislead and confuse its DTH customers, and would thereby

necessitate a deferral of notification. Intelsat, for example, overstates the extent of the “legal uncertainty” associated with the *Application for Review* proceeding.<sup>16</sup> As noted earlier, the replacement of the STA with a grant of full and permanent licensing authority is not a realistic outcome of the *Application for Review* proceeding. As such, there is no risk that, by immediately notifying its customers of the STA, Intelsat might be misleading these customers to “needlessly discontinue service.”<sup>17</sup> In fact, the only remaining “uncertainty” regarding the *Application for Review* proceeding is whether Intelsat must cease providing DTH capacity by September 13, 2004, or whether it must do so sooner pursuant to a vacatur of the STA. Intelsat fails to demonstrate convincingly that these outcomes are too complex to explain to its customers.

To the extent that vacatur of the STA could cause a prior notice to have “incorrectly led customers to believe that Intelsat could provide ‘additional services’ at least until September 13, 2004,”<sup>18</sup> Intelsat fails to demonstrate that deferred notification would somehow protect its customers from having their expectations of future service frustrated by vacatur. Any customer frustrations might be lessened if customers are told in advance that Intelsat service is only intended to be temporary. With advance notification, moreover, Intelsat customers could succeed in transitioning to other providers before a vacatur is even issued by the Commission.<sup>19</sup> Absent such notice, however, these customers could be caught entirely off-guard by vacatur and

---

<sup>16</sup> See *Request for Deferral* at 4-5.

<sup>17</sup> *Id.* at 6.

<sup>18</sup> *Id.* at 5-6.

<sup>19</sup> Nothing prevents Intelsat -- if it were truly concerned about its customers -- from telling them that there is a request pending at the FCC that, if granted, could lead to a need to find alternative DTH capacity providers prior to September 13, 2004.



may be unprepared to transition quickly to alternate providers of satellite capacity. Thus, the risk of service disruption could actually increase if the Bureau grants Intelsat's *Request*.<sup>20</sup>

Deferred notification would in fact frustrate, rather than serve, the public policy objectives underlying the Bureau's grant of STA. The Bureau granted STA "in order to allow time for those customers of Loral that used capacity for the provision of additional services to transition to another service provider."<sup>21</sup> Because the transition deadline is just five months away (September 13, 2004), a delayed notice to customers would further shorten the time available to customers to make their transition. Moreover, as noted above, the failure to notify customers in advance of a vacatur that Intelsat's services are temporary would deprive those customers of an opportunity to either transition, or prepare to transition, to alternate satellite vendors in advance of the vacatur.

---

<sup>20</sup> SES AMERICOM still believes that the overall risk of service disruption resulting from vacatur would be minimal because customers would have little difficulty in finding alternate satellite providers, including SES AMERICOM, on an expedited basis. *See* SES AMERICOM, Inc., *Reply to Opposition to Motion for Expedited Consideration, In Part, and Opposition to Intelsat's Cross-Motion to Dismiss*, SAT-ASG-20030728-00138, SAT-ASG-20030728-00139 (filed Apr. 12, 2004) at 8.

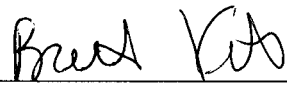
<sup>21</sup> *Supplemental Order* at ¶ 3 (citing *Loral/Intelsat Order* at ¶¶ 63-66).

### III. CONCLUSION

For the foregoing reasons, the Bureau should immediately dismiss or deny Intelsat's *Request for Deferral of Notification*, and should require Intelsat to certify that it has, as of April 16, 2004, complied with the notice requirements of the *Loral/Intelsat Order* and the *Supplemental Order*.

Respectfully submitted,

SES AMERICOM, Inc.

By:  \_\_\_\_\_

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

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

*Attorneys for SES AMERICOM, Inc.*

April 16, 2004

## CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of April, 2004, I caused a copy of the foregoing Opposition to Request for Deferral of Notification to be served by hand and by e-mail on the following marked with an asterisk (\*) and by U.S. mail on the others listed below:

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  
*Outside Counsel 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