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

In the Matter of	)	
	)	
Loral Satellite, Inc.	)	
(Debtor-in-Possession) and	)	
Loral SpaceCom Corporation	)	
(Debtor-in-Possession), Assignors,	)	File Nos. SAT-ASG-20030728-00138
	)	SAT-ASG-20030728-00139
and	)	
	)	
Intelsat North America LLC, Assignee,	)	
	)	
Applications for Consent to Assignments	)	
of Space Station Authorization	)	

To: The Commission

REPLY OF SES AMERICOM TO OPPOSITION TO MOTION FOR EXPEDITED CONSIDERATION IN PART, AND OPPOSITION OF SES AMERICOM TO CROSS-MOTION TO DISMISS

SES AMERICOM, Inc. ("SES AMERICOM"), by its attorneys and pursuant to Section 1.41 of the Rules of the Federal Communication Commission (the "FCC" or the "Commission"),[1] hereby submits this Reply to the Opposition of Intelsat to SES AMERICOM's Motion for Expedited Consideration in Part, and this Opposition to Intelsat's Cross-Motion to Dismiss in Part SES AMERICOM's Application for Review.[2]

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[1] 47 C.F.R. § 1.41.

[2] Intelsat North America, LLC, Opposition to SES's Motion for Expedited Consideration in Part and Cross-Motion to Dismiss In Part SES's Application for Review, File Nos. SAT-ASG-20030728-00138, SAT-ASG-20030728-00139 (filed Mar. 29, 2004) ("Opposition and Cross Motion").

On March 12, 2004, SES AMERICOM filed an Application for Review[3] in which it requested vacatur in part of an Order and Authorization[4] issued by the International Bureau (the "Bureau"). The requested vacatur concerned the Bureau's grant of special temporary authority ("STA") to Intelsat North America, LLC ("Intelsat") to provide "additional services," using satellites it acquired from Loral Satellite, Inc. and Loral SpaceCom Corporation (collectively, "Loral"), prior to the completion by Intelsat of its initial public offering ("IPO"). SES AMERICOM simultaneously filed a Motion for Expedited Consideration in Part to request that the Commission expedite its review of SES AMERICOM's request for vacatur.[5]

In its Opposition and Cross-Motion, Intelsat fails to address the substance of SES AMERICOM's requests, and instead advances specious arguments to distract the Commission's attention. First, Intelsat falsely asserts that the Motion for Expedited Consideration should be rejected out-of-hand as neither authorized nor governed by the Commission's Rules. Section 1.115 of the Rules, however,[6] explicitly permits Commission review of unauthorized Bureau actions, and Section 1.41 allows the Commission to address informal requests for relief, such as a request for expedited consideration.[7] Second, Intelsat mischaracterizes the Motion for

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[3] SES AMERICOM, Inc., Application for Review, SAT-ASG-20030728-00138, SAT-ASG-20030728-00139 ("Application for Review").

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

[5] SES AMERICOM, Inc., Motion for Expedited Consideration In Part of Application for Review, SAT-ASG-20030728-00138, SAT-ASG-20030728-00139 ("Motion for Expedited Consideration").

[6] 47 C.F.R. §1.115.

[7] *Id.* §1.41.

Expedited Consideration as a disguised motion to stay the *Loral/Intelsat Order*. SES AMERICOM did not request a stay, either in form or in substance, so Intelsat's protracted discussion of why SES AMERICOM would not meet the requirements for a stay is irrelevant, and indeed incorrect, particularly with respect to the discussion of the propriety of the STA. Finally, Intelsat raises baseless standing arguments in an effort to obtain the dismissal of the STA portion of the Application for Review. SES AMERICOM clearly has standing as an aggrieved competitor to challenge the *Loral/Intelsat Order*. SES AMERICOM was also justified in challenging the STA for the first time in its Application for Review because the possibility of an STA had not been raised prior to that Order.

I. THE COMMISSION IS AUTHORIZED TO CONSIDER SES AMERICOM'S MOTION FOR EXPEDITED CONSIDERATION.

SES AMERICOM's request that the Commission vacate the Bureau's grant of STA is clearly authorized by Section 1.115(b)(2)(i) of the Commission's Rules, which provides that a person may petition the Commission for review of an "action taken pursuant to delegated authority [that] is in conflict with statute, regulation, case precedent or established Commission policy."[8] In its Application for Review, SES AMERICOM stated with particularity why the Bureau's grant of STA represents both an abuse of its delegated authority under the Communications Act and a violation of Section 602(a) of the ORBIT Act.[9] Accordingly, there is no basis for Intelsat's claim that Commission cannot consider SES AMERICOM's request.

Moreover, the Commission is empowered to entertain SES AMERICOM's Motion for Expedited Consideration. Although the Commission's rules offer no formal

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[8] 47 C.F.R. § 1.115(b)(2)(i).

[9] *See* Application for Review at 20-24.

mechanism to grant expedited consideration of a request for relief, Section 1.41 allows the Commission to grant informal relief.[10] As explained in the Motion for Expedited Consideration, present circumstances clearly warrant expedited treatment in order to prevent SES AMERICOM's request for vacatur from becoming moot when Intelsat conducts its IPO within the next few months.[11] Expedited treatment is also required to protect the interests of SES AMERICOM and other competitors for Loral's former customers, and to ensure that the Bureau's misuse of its delegated authority, and the resulting violation of the ORBIT Act, are not permitted to stand unaddressed.

II. INTELSAT HAS MISCHARACTERIZED SES AMERICOM'S REQUEST FOR RELIEF AS A REQUEST FOR A STAY OF THE *LORAL/INTELSAT ORDER*.

Intelsat contends that irrespective of the propriety of SES AMERICOM's requests for relief as to the grant of the STA, these requests should be treated as, and reviewed under the rules applicable to, a stay of the *Loral/Intelsat Order*.[12] That is wrong. SES AMERICOM has neither in form nor substance requested a stay in this proceeding. Unlike a request for stay, the request for vacatur does not require the transaction to be enjoined or delayed, and this request can be granted even after the transaction has been closed. In fact, SES AMERICOM's request for expedited consideration was designed, in part, to ensure that the improprieties SES AMERICOM identified could be addressed after the transaction closed, but before the improprieties are mooted by the passage of time.

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[10] 47 C.F.R. § 1.41.

[11] *See* Motion for Expedited Consideration, at 2-3.

[12] Opposition and Cross-Motion at 3-7.

III. INTELSAT FAILS TO OFFER CREDIBLE EVIDENCE THAT THE BUREAU'S GRANT OF STA WAS A PROPER EXERCISE OF ITS AUTHORITY.

Although SES AMERICOM need not respond to Intelsat's analysis as to why SES AMERICOM's request fails to meet the standard for a stay, SES AMERICOM deems it necessary to correct that portion of Intelsat's analysis that misstates the propriety of the Bureau's grant of an STA. Intelsat argues that the Bureau was authorized to grant an STA because Section 602(a) of the Open-Market for the Betterment of International Telecommunications Act (the "ORBIT Act")[13] does not present an absolute bar to the provision of "additional services" prior to Intelsat's IPO.[14] The Bureau found, however, that such a bar does exist;[15] its resort to an STA represents nothing more than a flawed attempt to circumvent that bar.

As primary support for its claim that Section 602(a) does not act as an absolute impediment to pre-IPO "additional services," Intelsat curiously cites the very language of Section 602(a) that indicates the existence of such a restriction. According to Intelsat, the requirement of Section 602(a) -- that the Commission take "all necessary measures" to ensure that Intelsat "shall not be permitted to provide additional services" prior to Intelsat's IPO --

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[13] ORBIT Act, Pub. L. No. 106-180, 114 Stat. 48 (2000), as amended, Pub. L. No. 107-223, 116 Stat. 1480, § 602(a) (2002). Section 602(a) of the ORBIT Act provides:

> (a) LIMITATION. – Until INTELSAT, Inmarsat, and their successor or separate entities are privatized in accordance with the requirements of this title, INTELSAT, Inmarsat, and their successor or separated entities, shall not be permitted to provide additional services. The Commission shall take all necessary measures to implement this requirement, including denial by the Commission of licensing for such services.

[14] *See* Opposition and Cross Motion at 4.

[15] *Loral/Intelsat Order* at ¶¶ 63 (additional services "may not be provided until Intelsat completes the IPO process as required under the ORBIT Act"), 64 ("[a]s noted above, the ORBIT act prohibits the provision of 'additional services' until Intelsat has completed its IPO").

somehow imparts flexibility upon the Commission to determine "if, how, and when 'additional services' limitations should be imposed."[16] The language of this provision, however, indicates limitations on, rather than extensions of, the Commission's flexibility.

The language chosen to describe the Commission's obligation in Section 602(a) -- "shall" -- is a mandatory term.[17] Thus, contrary to Intelsat's suggestion, the Commission lacks the flexibility to determine "if" it will enforce the prohibition against "additional services"; by statute, it *must* enforce that prohibition. Further, although the phrase "all necessary measures" imparts some discretion on the Commission to determine "how" to conduct that enforcement, such discretion is circumscribed. According to Section 602(a), any measure chosen must be directed at implementing the requirement that Intelsat "shall not be permitted to provide additional services" pending its IPO. A conditional grant of authority to provide "additional services" would clearly not implement this directive.

Finally, Section 602(a)'s imposition of the restriction, "[u]ntil" Intelsat is privatized in accordance with the ORBIT Act, establishes that the Commission is restricted with respect to the timing of its enforcement actions. There is nothing in the phrase, "until . . . Intelsat is privatized," which supports Intelsat's suggestion that the Commission may suspend enforcement of Section 602(a) prior to full privatization.[18]

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[16] *See* Opposition and Cross-Motion at 4.

[17] *See* Application for Review at 21-22.

[18] This conclusion is bolstered by additional language in Section 602(a) that provides for "denial by the Commission of licensing for such [additional] services" as an acceptable measure to enforce the requirements of that Section.

Aside from its misinterpretation of Section 602(a), Intelsat also relies upon two prior Commission orders to support its arguments.[19] These orders, which authorized pre-IPO "additional services," did so by holding that Section 601(b)(1)(D) effectively trumps Section 602(a), granting discretion to the Commission to license such services on a provisional basis.[20] These orders simply cannot be reconciled with the text of the ORBIT Act. Section 601(b)(1)(D) merely provides that "nothing in this subsection" -- meaning subsection 601(b) -- "is intended to preclude the Commission from acting upon the application[]" of Intelsat prior to the IPO deadline.[21] Intelsat's cited orders failed to demonstrate how the language of this provision permits the Commission to circumvent a different subsection, Section 602(a), which is an unqualified and unwaivering prohibition on pre-IPO "additional services."

Because the ORBIT Act constitutes a bar to the FCC's licensing of pre-IPO "additional services," Intelsat's final point -- regarding the public interest grounds for STA authority -- is irrelevant. Section 309(f) of the Communications Act of 1934 delegates authority to the FCC to grant STA only where such grant, in addition to serving the public interest, "is

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[19] *See* Opposition and Cross Motion at 5-6 (citing *INTELSAT LLC, Application 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*, Order on Reconsideration, 15 FCC Rcd 25234, 25254 (2000) ("*Order on Reconsideration*"); *COMSAT CORPORATION, d/b/a COMSAT MOBILE COMMUNICATIONS*, Memorandum Opinion, Order and Authorization, 16 FCC Rcd 21661, 21694 (2001) (the "*Inmarsat Compliance Order*").

[20] Unlike the *Order on Reconsideration*, the *Inmarsat Compliance Order* offers no independent analysis of the "additional services" question or of the effect of Section 602(a). To the extent that any rationale can be discerned in the *Inmarsat Compliance Order* for its conclusion, it appears to be reliance on the interpretation of Section 601(b)(1)(D) provided for in the *Order on Reconsideration*. *Inmarsat Complaince Order*, 16 FCC Rcd at 21683-84.

[21] ORBIT Act, § 601(b)(1)(D).

otherwise authorized by law."[22] Where, as here, the STA is contrary to law, the public interest cannot serve as an independent basis for granting or retaining STA. Even if Section 309(f) allowed the public interest to serve as an independent basis for granting STA, the public interest would not necessitate its grant in this case. Although Intelsat warns that potential disruptions of service justify the STA, customers of Intelsat's direct-to-home service would have little difficulty in identifying alternative satellite providers, including SES AMERICOM, in a manner that would avoid service disruption.

IV. INTELSAT FAILS TO STATE A VALID BASIS TO DISMISS THE APPLICATION FOR REVIEW ON STANDING GROUNDS.

Intelsat concludes by arguing that the Commission should dismiss, for lack of standing, that portion of SES AMERICOM's Application for Review that seeks vacatur of Intelsat's STA. Specifically, Intelsat argues that SES AMERICOM has no standing as an aggrieved party to seek review of the *Loral/Intelsat Order* under Section 1.115 of the Commission's Rules. It also argues that SES AMERICOM is foreclosed from disputing the validity of the STA because it did not do so in its Comments preceding the *Loral/Intelsat Order*. The Commission should give short shrift to each of these arguments.

Contrary to Intelsat's assertion, SES AMERICOM is clearly a "person aggrieved" by the Bureau's actions under Section 1.115. The Bureau's grant of STA has inflicted economic harm upon SES AMERICOM by depriving it of an opportunity to compete for the business of Loral's former direct-to-home customers. SES AMERICOM's status as a would-be competitor for these customers is an unquestioned basis for its standing in this matter.[23]

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[22] 47 U.S.C. § 309(f).

[23] In fact, in both cases cited by Intelsat in which the FCC denied standing to applicants for review, the FCC intimated that the applicants would have had standing as competitors. *See*

Finally, Intelsat argues that SES AMERICOM lacks standing to challenge the Bureau's grant of STA because SES AMERICOM did not address the issue in its prior comments. This argument is absurd, because the issue of an STA did not arise until the Bureau raised it *sua sponte* in the *Loral/Intelsat Order*. SES AMERICOM, therefore, had no opportunity to address this issue at any time prior to its Application for Review.

In an attempt to circumvent this reality, Intelsat tries to characterize the Application for Review as a general request for the Commission to determine whether Section 602(a) of the ORBIT Act prohibits Intelsat from offering "additional services" prior to its IPO. SES AMERICOM is not, however, seeking a review of this issue, because in this proceeding the Bureau conclusively determined that Section 602(a) does not permit Intelsat to provide "additional services" pending its IPO.[24] SES AMERICOM is instead challenging the Bureau's determination that it can cast aside the acknowledged prohibitions of Section 602(a) by resorting to an STA. That issue, as noted, is one that SES AMERICOM could not have raised at any time earlier than in its Application for Review.

Applications of WINV, Inc. (Assignor) and WGUL-FM, Inc. (Assignee), Memorandum, Opinion and Order, 14 FCC Rcd 2032, 2033 (1998); *Hanford FM Radio*, Memorandum Opinion and Order, 11 FCC Rcd 8509, 8511 (1996).

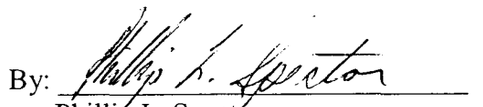
[24] *See* note 15 *supra.*

V. CONCLUSION

For the foregoing reasons, the Commission should reject Intelsat's Opposition to SES AMERICOM's Motion for Expedited Consideration, and deny Intelsat's Cross-Motion to Dismiss In Part SES AMERICOM's Application for Review.

Respectfully submitted,

SES AMERICOM, Inc.

By: 

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April 12, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 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:

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