

EX PARTE OR LATE FILED

ORIGINAL

WILKINSON) BARKER) KNAUER) LLP

RECEIVED

MAY 27 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

2300 N STREET, NW
SUITE 700
WASHINGTON, DC 20037
TEL 202.783.4141
FAX 202.783.5851
www.wbklaw.com
KATHRYN A. ZACHEM
202-383-3344
kzachem@wbklaw.com

May 27, 2004 **Received**

JUN 07 2004

Policy Branch
International Bureau

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 - 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: *Loral/Intelsat Order – File Nos. SAT-ASG-20030728-00138,
SAT-ASG-20030728-00139 – Notice of Ex Parte Presentation*

Dear Ms. Dortch:

On Wednesday, May 26, 2004, representatives of Intelsat Global Service Corporation (Tony A. Trujillo, Jr., Executive Vice President and Chief Administrative Officer; Susan H. Crandall, Assistant General Counsel; and Carl R. Frank, Wiley Rein & Fielding) and Lockheed Martin Corporation (Jennifer A. Warren, Senior Director, Trade and Regulatory Affairs, and the undersigned), met with representatives of the Commission's Office of General Counsel and International Bureau. The Commission representatives were as follows: John A. Rogovin, General Counsel, Linda I. Kinney, Deputy General Counsel; Jeffrey Dygert, Deputy Associate General Counsel; David Horowitz, Assistant General Counsel, Daniel E. Harrold, Attorney Advisor, Office of General Counsel; and Roderick K. Porter, Deputy Bureau Chief, International Bureau.

We summarized the FCC's statutory authority under the ORBIT Act to grant, in the first instance, and renew an STA for "additional services" as set forth in Attachment I hereto. We also discussed Intelsat North America, LLC's Opposition to SES AMERICOM, Inc.'s Application for Review of the Commission's Order and Authorization issued by the International Bureau on February 11, 2004¹

If you have any questions, please contact the undersigned.

Respectfully submitted,

Kathryn A. Zachem

cc: John A. Rogovin
Linda I. Kinney
Jeffrey Dygert
David Horowitz
Daniel E. Harrold
Roderick K. Porter

No. of Copies rec'd
List ABCDE

012

¹ *Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), and Intelsat North America, LLC, Applications for Consent to Assignment of Space Station Authorizations and Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act of 1934, as Amended, DA 04-357, File Nos. SAT-ASG-20030728-00138, SAT-ASG-20030728-00139, and Order and Authorization (Feb. 11, 2004).*

**THE FCC HAS STATUTORY AUTHORITY UNDER THE ORBIT ACT TO GRANT
AND RENEW AN STA FOR “ADDITIONAL SERVICES”**

SEC. 602. INCENTIVES; LIMITATION ON EXPANSION PENDING
PRIVATIZATION.

(a) LIMITATION. -- [1] Until INTELSAT, Inmarsat, and their successors or separate entities are *privatized in accordance with the requirements of this title*, INTELSAT, Inmarsat and their successor or separate entities respectively, shall not be permitted to provide additional services. [2] The Commission shall take all necessary measures to implement this requirement, including denial by the Commission of licensing for such services.

- Section 602(a) of ORBIT addresses the conditions under which Intelsat can offer “additional services.” That section requires only that Intelsat be (1) “privatized” and (2) “in accordance with the requirements of this title.”
- Section 621(1) of ORBIT requires “privatization” to have occurred as of April 1, 2001 (extended to July 18, 2001), and the FCC already has found Intelsat to be privatized. *See Intelsat Extension Order* 16 FCC Rcd 18185 ¶ 1 (2001); *FCC Report to Congress*, 18 FCC Rcd 12525, 12527 (2003).
 - “Privatization” requires independence, corporatization and elimination of privileges and immunities, but not an IPO. As the FCC confirmed (*Intelsat Compliance Order*, 16 FCC Rcd 12280, 12303 ¶¶ 72, 76 (2001)), the IPO requirement is a condition subsequent to the privatization date.
 - The provision of additional services does not require Intelsat to be “fully privatized,” that is, having had an IPO. “Fully privatized” is a separate statutory term found in Sections 2 and 681(a)(8) of ORBIT and is not used in Section 602(a).
- The phrase “in accordance with the requirements of this title” also should not be read to impose obligations earlier than required by the Act. ORBIT requires Intelsat to take a series of steps, not immediately or all at once. The first step is privatization. Then, Section 621(5) contemplates that a successor entity, already privatized, conduct an IPO. Because the IPO date has been extended until June 30, 2005 (which the FCC has statutory authority to extend until December 2005), Intelsat will continue to be in compliance (and thus be “in accordance with”) “the requirements of this title” even following the September 13th expiration date of the STA.
- Congress, the courts and the Commission all treat “in accordance with” and “consistent with” as interchangeable. Therefore, it follows that that the phrase “in accordance with” – just like the phrase “consistent with” – confers the FCC with flexibility and discretion when

regulating additional services under Section 602(a). The FCC already has found a July 2001 privatization “consistent with” the statutory April 2001 date. *Intelsat Compliance Order*, 16 FCC Rcd at 12298 ¶ 55.

- The heading of Section 602(a) states “Limitation,” not “Absolute Prohibition.” Reading the first sentence of Section 602(a) as an absolute bar to providing additional services would turn the second sentence into surplusage. To give the second sentence independent meaning, the FCC must have been granted authority to “limit” Intelsat’s pre-IPO additional services through “measures” other than denial of a permanent license, “including” an STA. Indeed, FCC precedent confirms that STAs are not full “licenses” and thus constitute a partial “denial . . . of licensing.”