

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

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<i>Application of</i>)	
)	
INTELSAT NORTH AMERICA LLC)	File No. SAT-MOD-20081124-00218
)	(S2401)
To Modify Authorization to Operate the)	
Intelsat 706 Satellite at 54.85° E.L.)	
_____)	

PETITION TO DENY OR CONDITION

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SUMMARY

Five years ago, Intelsat began providing service from the 54.85° E.L. orbital location pursuant to an unprecedented authorization under which its U.S.-licensed Intelsat 702 satellite purported to operate on a non-interference basis and/or pursuant to coordination agreements reached between India and other administrations. At the time, New Skies requested reconsideration of that authorization, based on the lack of any coordination agreement for services outside of India, the clear potential for Intelsat to cause interference to New Skies operations at the adjacent 57° E.L. location, and the lack of any clear avenue for seeking redress under the highly unusual structure of Intelsat's authorization. That petition remains pending.

In its current application, Intelsat seeks authority to operate the Intelsat 706 satellite at the 54.85° E.L. slot to provide service to Europe, Africa, Asia, and portions of Australia. Once again, it proposes to operate under coordination agreements negotiated by the Indian administration. But the fact remains that the existing coordination agreement between the Indian and Netherlands administrations only contemplates the Indian satellite providing services only in India.

Moreover, Intelsat is not proposing to operate Intelsat 706 on the same non-interference basis as required under the authorization for Intelsat 702. Indeed, its application makes clear that the satellite will be operating at power levels well above those that Intelsat's own prior analysis showed were required to protect neighboring satellite systems, and which the Commission embodied as conditions in the Intelsat 702 authorization. Unlike its filings five years ago, Intelsat's current application includes no analysis of potential interference to neighboring systems at all. This is particularly problematic given that New Skies expects to deploy the NSS-5 and NSS-12 satellites to

57° E.L. in the next six months, which have greater capabilities and coverage than the NSS-703 satellite considered in Intelsat's prior analysis.

In these circumstances, the Commission cannot grant Intelsat's application, at least to the extent it seeks authority for services inconsistent with those permitted under the coordination agreement between India and the Netherlands. Even if Intelsat were to supplement the record with a comprehensive interference analysis capable of withstanding scrutiny by affected operators, any grant must require that Intelsat 706 operate on a non-interference basis and observe specified power limitations – just as the current Intelsat 702 authorization does. Moreover, the Commission must establish a straightforward and reliable mechanism for addressing quickly any interference caused by Intelsat 706 so as to prevent disruption to New Skies' customers, including U.S. companies and U.S. government agencies.

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PETITION TO DENY OR CONDITION

New Skies Satellites B.V. (“New Skies”) hereby requests that the Commission deny the application of Intelsat North America LLC (“Intelsat”) to modify the license for the Intelsat 706 satellite to authorize its operation in the C- and Ku-bands at the 54.85° E.L. orbital location,¹ or condition any such authorization to address the significant potential for interference its operations would pose for New Skies’ operations at the adjacent 57° E.L. location. New Skies currently operates NSS-703 under Dutch authority at that location and is planning to replace that satellite with NSS-5 and NSS-12 both during the next six months. Intelsat’s proposal would extend and exacerbate an unprecedented arrangement under which it purports to operate a U.S.-licensed satellite in conformity with another administration’s coordination agreements, yet would primarily serve areas not covered by those agreements.

New Skies raised concerns about Intelsat’s existing arrangement at this location several years ago in a petition for reconsideration that the Commission has yet to

¹ See Application of Intelsat North America LLC to Modify Authorization for Intelsat 706, IBFS File No. SAT-MOD-20081124-00218 (filed Nov. 24, 2008) (“IS-706 Application”).

resolve.² These concerns are even more acute now for two reasons. First, Intelsat is *not* proposing to operate Intelsat 706 within the existing limitations applicable to its operation of Intelsat 702 at this slot. Second, New Skies is scheduled to deploy the NSS-5 and NSS-12 satellites to 57° E.L. in the next six months, where they will provide service over a larger area than does NSS-703 alone, which will result in a much greater likelihood of co-coverage, co-frequency, co-polarized operations with Intelsat 706. The Commission can no longer ignore these legitimate concerns, and should address them either by denying this application or – assuming Intelsat makes a sufficient technical showing – by imposing conditions sufficient to ensure that Intelsat’s operations will not create an unacceptable risk of harmful interference to New Skies’ services.

BACKGROUND

The Netherlands administration has authorized New Skies to operate a hybrid C-/Ku-band space station at the 57° E.L. orbital location. For the last several years, New Skies has operated the NSS-703 satellite at that location, where it has provided service in portions of Asia, the Middle East, and Europe. With the recent launch of NSS-9, NSS-5 will be freed up to be relocated to 57° E.L. and, in combination with NSS-703, will have the capability to provide enhanced service and coverage from that location. NSS-703 is scheduled to be replaced in the third quarter of this year with the new NSS-12 satellite, which has significantly greater capabilities and coverage than NSS-703. The Dutch have entered into a series of coordination agreements with other administrations that have licensed satellites in the nearby portion of the orbital arc, and these agreements govern both how New Skies may operate at 57° E.L. and also how other satellites must operate to protect New Skies. Thousands of users, including U.S. companies and U.S. government

² See Petition for Reconsideration, IBFS File No. SAT-AMD-20031118-00331 (filed Mar. 23, 2004) (“NSS Petition for Recon”).

agencies, depend on New Skies and its ability to operate from this slot without harmful interference from adjacent satellites.

In 2004, the International Bureau granted Intelsat a heavily conditioned, five-year authorization to operate the hybrid C-/Ku-band Intelsat 702 satellite at the 54.85° E.L. orbital location.³ Among other things, the authorization required Intelsat to operate on a non-interference basis, to conform its operations to parameters agreed to in coordination agreements between India and other administrations, and to observe strict limits on downlink EIRP density and uplink power spectral density in both the C- and Ku-bands that were based on Intelsat's analysis of potential interference to systems operating at neighboring orbital locations.⁴

This was an unprecedented authorization, granting a U.S. license to a space station that was specifically required to operate in conformance with another administration's coordination agreements.⁵ Even assuming that a coordination agreement covering operations from 55° E.L. can be extended to a nearby orbital location, neither Intelsat nor the Indian administration had reached any agreement of any kind with New Skies or the Netherlands administration for C- or Ku-band operations at the 54.85° E.L. orbital location for service outside of India. Yet, service outside of India was precisely what Intelsat intended to provide. Moreover, it is not at all clear where an affected operator could turn for relief from interference in the unprecedented situation in which one administration licenses a satellite for operation under coordination agreements negotiated by another administration. Noting these and other concerns, New Skies

³ See Public Notice, Rep. No. SAT-00204, 19 FCC Rcd. 5385 (Int'l Bur. 2004); Grant Stamp, IBFS File No. SAT-AMD-20040310-00029 (granted Mar. 19, 2004) ("IS-702 Authorization").

⁴ IS-702 Authorization, Conditions 1, 5, 12, and 15.

⁵ The U.S. has not coordinated the operation of any satellite – including Intelsat 702 and Intelsat 706 – at or near the 55° E.L. location.

sought reconsideration of the novel authorization granted to Intelsat.⁶ Although that petition has been pending for nearly five years, the Bureau has not yet ruled upon it.

In its current application, Intelsat again proposes to operate one of its satellites at the 54.85° E.L. location, to provide services to “Europe, Africa, Asia and a portion of Australia.”⁷ It proposes to comply with only one of the many conditions currently applicable to its operation of Intelsat 702. Specifically, Intelsat proposes to operate “in accordance with India’s existing coordination agreements regarding the [55° E.L.] location.”⁸ However, nowhere in its application does Intelsat propose to operate on a non-interference basis or to observe the power density limits on uplink and downlink transmissions imposed in its current authorization to operate at 54.85° E.L. In addition, it has not provided any analysis of interference its operations would cause to systems at adjacent orbital locations, preferring instead to refer generally to its willingness to observe “the FCC’s rules governing operations at the nominal 55° E.L. location vis-à-vis adjacent locations.”⁹

DISCUSSION

Intelsat’s latest application suffers from the same infirmities as its earlier application to operate the Intelsat 702 satellite at 54.85° E.L. – lack of coordination for service outside of India, grave potential for harmful interference to adjacent systems, and lack of any clear procedure for redress in the event of such interference. In fact, the potential for harmful interference is substantially worse in the case of Intelsat 706 because Intelsat is proposing to operate the satellite at power levels well above those that

⁶ See NSS Petition for Recon, *supra* note 2.

⁷ IS-706 Application, Engineering Statement at 1.

⁸ *Id.*, Narrative at 2.

⁹ *Id.*

Intelsat itself had determined to be necessary to protect neighboring systems back in 2004. This problem will only be exacerbated as New Skies seeks to deploy NSS-5 and NSS-12 to 57° E.L. later this year.

On the present record, the Commission must deny the application to the extent it seeks authority to operate in a manner inconsistent with India's coordination agreement with the Netherlands. Moreover, even if Intelsat were to supplement the record with appropriate technical analyses, any grant of authority would have to be heavily conditioned to ensure that neighboring satellite systems are not harmed by Intelsat 706's operations.

A. On the Present Record, the Commission Must Deny Intelsat's Application to the Extent It Seeks Authority to Operate in a Manner Inconsistent with India's Coordination Agreements

Intelsat proposes to operate Intelsat 706 at 54.85° E.L. "in accordance with India's existing coordination agreements regarding the location and the FCC's rules governing operations at the nominal 55° E.L. location vis-à-vis adjacent locations."¹⁰ The C- and Ku-band coordination agreement between India and the Netherlands presently covers only operations in Indian territory. Thus, the only operations of Intelsat 706 that could be "in accordance with India's existing coordination agreements" would be those within India.

Nonetheless, in this most recent application, Intelsat has made clear its intention to provide services to "Europe, Africa, Asia and a portion of Australia" from Intelsat 706.¹¹ Such services would in no way conform to India's coordination agreements with the Netherlands. Intelsat cannot have it both ways. It cannot commit to adhere to the

¹⁰ *Id.*, Narrative at 2.

¹¹ *Id.*, Engineering Statement at 1.

Indian coordination agreements while simultaneously proposing operations that are flatly inconsistent with them.

By the same token, Intelsat cannot operate at power levels in excess of those set out in India's coordination agreement with the Netherlands.¹² Yet it seems to be proposing to do just that. In fact, the proposed power levels are significantly higher than the power levels that Intelsat itself has determined would be necessary to protect adjacent satellites from interference from Intelsat 702. Of the 78 beams for which Intelsat has provided link budgets, only five would comply with these restrictions on both uplink and downlink transmissions, and the other beams would exceed the specified maximum levels by up to 12.2 dBW/Hz on the uplink and 10.8 dBW/Hz on the downlink.¹³ Thus, approximately 94% of the beams available for use on Intelsat 706 would exceed (in many cases, by very substantial amounts) the operational limitations that the Bureau deemed necessary – based on Intelsat's own interference analysis – for Intelsat 702 to protect adjacent satellite operators.

Intelsat attempts to rely upon the “FCC’s rules governing operations at the nominal 55° E.L. location vis-à-vis adjacent locations”¹⁴ as justification for its proposed operating parameters. While hardly self-explanatory, it appears that Intelsat is referring to the provisions in Section 25.212 of the Commission’s rules under which earth stations above a certain size are eligible for routine processing if they propose to communicate

¹² Coordination agreements are held in strict confidence by the administrations involved, and thus the Commission will have no basis for enforcing a condition requiring Intelsat to operate consistent with agreements negotiated by India with non-U.S. administrations. *See, e.g., Robert J. Butler*, 6 FCC Rcd. 5414, ¶ 14 (1991) (“foreign administrations expect that coordination meetings will be conducted in private and that the agreements reached will be held in confidence”).

¹³ *See* IS-706 Application, Engineering Statement, Exhibit 5.

¹⁴ *Id.*, Narrative at 2.

with space stations operating below specified power levels.¹⁵ These provisions are among those used by the Commission to define the two-degree spacing environment presumptively required for satellites serving the United States. They depend upon critical assumptions as to key characteristics of the earth stations used to communicate with satellites in the region, such as gain, sidelobe performance, and minimum diameter. The Commission can enforce these requirements for systems licensed by or seeking to provide service in the United States. As the Commission has recognized, however, the assumptions underlying the two-degree spacing policy are of limited utility for satellites operating *outside of* the domestic portion of the geostationary arc, where other administrations may have very different rules in place for earth stations communicating with those satellites.¹⁶ Thus, even if Intelsat 706 were two-degree-compliant, such compliance would not be sufficient to demonstrate compatibility with other networks of satellites and earth stations operating well outside the domestic arc and providing no service to the United States.

Intelsat's own applications demonstrate this very point. In its application for authority to operate Intelsat 702 at 54.85° E.L., Intelsat included analyses of potential interference to adjacent satellite systems, including NSS-703 at 57° E.L.¹⁷ Based on these analyses, the Commission imposed maximum downlink EIRP density and uplink

¹⁵ See 47 C.F.R. § 25.212(c) and (d) (discussed in IS-706 Application, Engineering Statement at 6).

¹⁶ See, e.g., *Intelsat, LLC*, 15 FCC Rcd. 15460, ¶ 81 and n.240 (2000) (explaining that Commission has “not applied our two-degree spacing policy when coordinating with satellite systems from other administrations that are not subject to two-degree spacing requirements within their respective licensing jurisdictions,” and instead confined its enforcement of these requirements to U.S.-authorized satellites and those non-U.S. satellites serving the U.S.).

¹⁷ See Letter from Jennifer D. Hindin to Marlene H. Dortch, IBFS File No. SAT-AMD-20031118-00331 (dated Feb. 20, 2004); Letter from Jennifer D. Hindin to Marlene H. Dortch, IBFS File No. SAT-AMD-20031118-00331 (dated Mar. 4, 2004).

power density levels for operations in both the C- and Ku-bands.¹⁸ In its current application, Intelsat did not provide a similar interference analysis. Instead, it explains that this impact “was not analyzed because the power levels of IS 706 transmissions will be limited to those levels contained in Section 25.212(c) and (d) of the FCC rules.”¹⁹ As discussed above, this is not a sufficient showing for a satellite to be operated well away from the U.S. domestic arc. More importantly, Intelsat’s current application makes clear that it intends to consistently exceed the power level restrictions imposed on the IS-702 Authorization based on Intelsat’s own prior analysis.

Accordingly, while the power levels Intelsat proposes for Intelsat 706 may be consistent with the Commission’s rules for the domestic arc, they are well above the levels Intelsat itself has argued would be necessary to protect neighboring systems. Compliance with the “FCC’s rules governing operations at the nominal 55° E.L. location vis-à-vis adjacent locations” is therefore clearly no basis for granting Intelsat the authorization it seeks.

B. Any Consideration of the Intelsat 706 Application Must Require Intelsat to Operate on a Non-Interference Basis and Be Based on a Rigorous Technical Showing

Intelsat would like to characterize its proposal as “replacing Intelsat 702” with Intelsat 706,²⁰ and indeed it does propose to operate Intelsat 706 under the same mishmash of authorizations – licensed by the U.S. but operating under coordination agreements negotiated by India. As the Commission has previously found, such an

¹⁸ For Ku-band operations, downlink EIRP density was limited to no more than -30.1 dBW/Hz and uplink power spectral density was limited to no more than -54.5 dBW/Hz. *See* IS-702 Authorization, Condition 12. The corresponding values for C-band operations were -45.0 dBW/Hz and -58.0 dBW/Hz, respectively. *See id.*, Condition 15.

¹⁹ IS-706 Application, Engineering Statement at 6.

²⁰ *Id.*, Narrative at 2.

arrangement is only possible under Article 4.4 of the ITU Radio Regulations, and Administrations licensing operations under that rule may only do so on a non-harmful interference basis.²¹ The Commission imposed just such restrictions when it authorized Intelsat 702.²² Yet Intelsat today is *not* proposing to operate Intelsat 706 under the same non-interference limitations that Intelsat 702 has been required to observe for the last five years. Intelsat's proposal therefore can hardly be described as a "replacement" for Intelsat 702.

Consistent with the requirements of ITU Radio Regulation Article 4.4, the first condition imposed in the IS-702 Authorization was the requirement that the satellite be operated "on a non-harmful interference basis."²³ Yet nowhere in the current application does Intelsat commit to operate Intelsat 706 on such a basis. Not surprisingly, it also does not commit to comply with the second condition, which requires Intelsat to "cease operations immediately upon notification of such interference," or the third condition, which requires Intelsat to inform its customers that it may have to cease operations if it causes such interference.²⁴ Indeed, Intelsat does not mention any of the conditions related to Article 4.4 imposed in the IS-702 Authorization.²⁵ At a minimum, any authorization granted in this proceeding must continue to impose those conditions.

²¹ See, e.g., *PanAmSat Licensee Corp.*, 19 FCC Rcd. 16642, ¶ 6 (Int'l Bur. 2004) (where the U.S. did not have relevant ITU filings, authorization would be on a non-harmful interference basis pursuant to Article 4.4); ITU Radio Regs., Art. 4.4 (providing that an administration may not authorize operations in derogation of the Table of Frequency Allocations or other provisions of the Radio Regulations except on the express condition that such a station shall not cause harmful interference to, and shall not claim protection from harmful interference caused by, a station operating in accordance with the ITU rules).

²² IS-702 Authorization, Condition 7 ("This authorization is issued on the understanding that . . . [Intelsat's] operations are pursuant to ITU Radio Regulation 4.4").

²³ *Id.*, Condition 1.

²⁴ *Id.*, Conditions 2 and 3.

²⁵ See *id.*, Conditions 7-10.

In addition, the Commission should require Intelsat to submit a comprehensive analysis of the interference risk its operation of Intelsat 706 would pose to satellite systems at neighboring orbital locations in order to demonstrate the conditions (if any) under which it could comply with a non-interference requirement. In the case of Intelsat 702, Intelsat belatedly submitted interference analyses in connection with its application to operate that satellite at 54.85° E.L., and thereby largely precluded rigorous scrutiny of its work by potentially affected parties. To avoid the same result, the Commission should refrain from acting upon the Intelsat 706 application until Intelsat has presented a full and proper showing of how it proposes to comply with the non-interference requirements, and until commenters have been given sufficient time to review that technical presentation and formulate an appropriate response. Only after such a process can the Commission impose effective conditions on the operational parameters of Intelsat 706 to protect satellite systems operating at neighboring orbital locations. The Commission took just such an approach with the IS-702 Authorization.

To be clear, New Skies does not concede that the operational limits put in place based on the interference analyses presented for Intelsat 702 are sufficient to protect New Skies' operations at 57° E.L. – especially as those services will soon be augmented by the arrival of NSS-5 and NSS-12 at that location later this year. As New Skies noted in seeking reconsideration,²⁶ even ignoring the areas outside of India where there is no coordination agreement, the operating levels authorized in the IS-702 Authorization exceed the downlink levels agreed to between India and the Netherlands to protect New Skies' operations at 57° E.L. A fresh analysis is required for Intelsat 706. Intelsat's analysis also fails to consider a case in which either Intelsat or New Skies relocates one

²⁶ See Reply to Opposition to Petition for Reconsideration, IBFS File No. SAT-AMD-20031118-00331, at 2-3 (filed Apr. 12, 2004).

or more of its spot beams to meet customer requirements,²⁷ which could result in co-coverage, co-frequency, and co-polarization transmissions by the two operators. Such interference is of particular concern, as it may arise unpredictably and without warning through Intelsat's decisions to steer one or more of its spot beam to cover different areas over time. This uncertainty constrains New Skies' ability to deploy new services under its ITU priority and ITU procedures. Unless Intelsat can demonstrate its ability to operate on a non-interference basis over the entire range of configurations in which its spot beams can be placed, it should at a minimum be required not to redirect any of its spot beams without coordinating with New Skies or seeking further Commission approval – or, absent that, to direct the spot beams only within the territory of India operating at levels consistent with the Netherlands-India coordination agreement.

The fact that Intelsat does not propose to operate Intelsat 706 in a manner that would afford neighboring systems even the level of protection currently in place is telling. It should be held to a rigorous standard of proof if it is to be authorized to operate on a non-interference basis.

C. If the Application is Granted, the Commission Must Provide a Clear Path for Enforcement of Conditions Imposed

As discussed above, the Commission's IS-702 Authorization requires Intelsat to operate on a non-interference basis, and to cease operations upon notification of such interference.²⁸ The current application shows no evidence that Intelsat proposes to continue to operate under those restrictions. Moreover, even if those conditions were imposed on Intelsat 706, the unique structure of the licensing and coordination responsibility in this case could render such requirements difficult to enforce. If harmful

²⁷ Intelsat 706 has three steerable Ku-band spot beams and one steerable C-band spot beam.

²⁸ IS-702 Authorization, Conditions 1 and 2.

interference or (assuming the transmissions at issue fall under a coordination agreement) a coordination dispute were to arise, it is not at all clear from whom New Skies would seek relief. Any time taken to sort out this issue after the fact would cause a significant disruption of service to New Skies' customers, including U.S. government agencies. That is an unacceptable outcome, but a predictable one under the novel licensing scheme Intelsat proposes to perpetuate. This shortcoming of the existing authorization must be addressed in any grant of the pending application.

In its Petition for Reconsideration, New Skies pointed out some of the potential complications created by the unique structure of the IS-702 Authorization should harmful interference arise. For example, the IS-702 Authorization states that "responsibility for both compliance with and enforcing compliance with [coordination] agreements is a matter which would arise under private law."²⁹ Does this mean that, were New Skies and Intelsat to disagree on whether harmful interference was caused by Intelsat's operations above allowable limits under the India-Netherlands coordination agreement, New Skies would have to await the outcome of litigation before gaining relief? Which country would have jurisdiction, and what law would control? As for interference experienced outside the coordinated territory of India, what showing of harmful interference would trigger Intelsat's obligation to cease operations? If Intelsat and New Skies disagreed about the cause or extent of interference, what would be the procedure for resolving that dispute at the Commission, and how long would it take?

It is precisely because of the overlapping and unprecedented jurisdictional issues arising from the IS-702 Authorization that New Skies is concerned that no single authoritative source for redress will be available or will have all of the pieces of the

²⁹ *Id.*, Condition 5.

puzzle necessary to act in a timely way. If it is to extend Intelsat's stay at 54.85° E.L., the Commission must ensure that enforcement of any operational conditions is swift and certain. New Skies submits that the best way to achieve that goal is to establish a presumption that any claim of harmful interference from an operator affected by the operation of Intelsat 706 at 54.85° E.L. is legitimate and must be respected by Intelsat until such time as it can demonstrate to the Commission either that such interference does not exist, or that Intelsat 706 is not responsible for it. This more appropriately allocates the risk to the party seeking to operate pursuant to a highly unusual authorization as opposed to those operating under a standard license.

CONCLUSION

The unprecedented arrangement that Intelsat proposes to extend and amplify raises a host of operational and legal issues. As a threshold matter, if Intelsat's application is to be taken at its word, it should be denied to the extent it seeks authority for operations outside the territory of India – the only area where coordination with the Netherlands has been completed. Before considering any authorization extending beyond India, the Commission should require Intelsat to submit a comprehensive analysis to demonstrate that its proposed operations will not cause harmful interference to adjacent satellites systems, and interested parties must be afforded adequate time to review and comment on that analysis. Any authorization ultimately issued must retain the non-interference and other conditions from the IS-702 Authorization related to operations under Article 4.4 of the ITU Radio Regulations, establish operational limits on Intelsat 706 for the necessary protection of adjacent satellite systems operating under ITU rules, and require prior notice and coordination should Intelsat choose to relocate one of its spot beams. Lastly, any authorization must clarify the mechanism for enforcing these

ENGINEERING CERTIFICATION

The undersigned hereby certifies to the Federal Communications Commission as follows:

- (i) I am the technically qualified person responsible for the engineering information contained in the foregoing Petition,
- (ii) I am familiar with Part 25 of the Commission's Rules, and
- (iii) I have either prepared or reviewed the engineering information contained in the foregoing Petition, and it is complete and accurate to the best of my knowledge and belief.

Signed:

/s/

Anthony Baker
Vice President, Space Development

February 23, 2009

Date

CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd day of February, 2009, a copy of the foregoing
Petition to Deny or Condition was served by hand delivery upon:

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