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

Application of **INTELSAT NORTH AMERICA LLC** For Modification of Authorization for the Galaxy 26 Space Station to Relocate to The 50.75º E.L. Orbital Location	File No. SAT-MOD-20090309-00034 (Call Sign S2469)

COMMENTS OF NEW SKIES SATELLITES B.V.

New Skies Satellites B.V. ("New Skies") hereby comments on the above referenced application by Intelsat North America LLC ("Intelsat") for modification of the license for Galaxy 26, a hybrid C-/Ku-band space station, to authorize relocation to and commercial operations at 50.75º E.L. New Skies does not oppose the requested modification. It does, however, believe that any grant should be conditioned, consistent with past precedent, to safeguard the rights of other satellite operators (including New Skies) with superior ITU date priority at the same and nearby orbital locations.

Galaxy 26 operates in the standard C- and Ku-bands used by satellite systems in ITU Region 2 (*i.e.,* 3700-4200 MHz, 5925-6425 MHz, 11.7-12.2 GHz, and 14.0-14.5 GHz). However, it does not appear that the United States has yet filed advanced publication information for any of these frequencies at the 50.75º E.L. slot. Indeed, Intelsat acknowledges that it is seeking to operate the satellite "pursuant to a new U.S.

filing at the [ITU]."[1] As a result, and consistent with the ITU Radio Regulations, Intelsat must coordinate with satellite networks in the same frequency bands near 50.75° E.L. that have higher ITU date priority. New Skies, and its sister company SES Satellites (Gibraltar) Ltd, are the beneficiaries of two such ITU filings in the relevant bands – the Netherlands-filed NSS-79 network at 50.75º E.L. (which includes the 3700-4200 MHz, 5925-6425 MHz, and 14.0-14.5 GHz bands) and the Gibraltar (UK)-filed AM-SAT AF3 network at 51º E.L. (which includes the ITU Region 1/3 BSS downlink band, 11.7-12.2 GHz). Although there is no satellite currently operating under either of these filings, New Skies has every expectation that one or both of them will be brought into use and fully operational well before their priority expires.

New Skies anticipates that at some point the U.S. Administration and Intelsat will pursue coordination for use of the slot by Galaxy 26. As a result, New Skies does not object to the grant of the requested modification at the present time, provided that such grant is subject to conditions for the protection of future satellite networks with higher ITU priority. The Commission's policy in this regard is clear:

> We would permit the lower priority network to access the U.S. market if the higher priority satellite has not been launched. In that case, the lower priority satellite would be authorized to access the U.S. market subject to proof of coordination with the higher priority satellite. Absent such a demonstration, the lower priority satellite would be required to cease service to the U.S. market immediately upon launch and operation of the higher priority satellite, or be subject to further conditions designed to address potential harmful interference to a satellite with ITU precedence.[2]

Accordingly, given this policy and the ITU priority of the Dutch and Gibraltar filings at the relevant orbital locations, New Skies requests that any grant of Intelsat's application

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[1] Application Narrative at 2, File No. SAT-MOD-20090309-00034 (filed Mar. 9, 2009).

[2] *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd. 10760, ¶ 296 (2003).

include conditions explicitly recognizing the rights of other satellite networks with ITU date priority and setting forth the consequences should such a network begin operations in the absence of a coordination agreement for Galaxy 26.

Such conditions would be consistent with the Bureau's past precedent when presented with a non-U.S. system with ITU priority at a nearby orbital location. In 1999, when PanAmSat sought to operate the HGS-1/PAS-22 satellite at 60° W.L., the Bureau imposed quite stringent conditions on the operations of that satellite to protect an Andean Community filing at 61° W.L. with higher ITU priority, including customer notification requirements.[3] More recently, the Bureau has dispensed with customer notification but has continued to require the lower priority satellite to protect the higher priority satellite. For example, the Bureau imposed the following conditions on what was then known as Loral's Telstar 13 satellite when it added that satellite to the Permitted List in 2003:

1. Loral SpaceCom Corp.'s operation of Telstar 13 shall be in compliance with applicable current and future operational requirements as a result of coordination agreements reached with other satellite systems.
2. In the absence of a coordination agreement with a satellite network with higher ITU priority, Telstar 13 must cease service to the U.S. market immediately upon launch and operation of the higher ITU priority satellite, or be subject to further conditions designed to address potential harmful interference to a satellite with ITU date precedence.
3. In the absence of a coordination agreement with a satellite network with higher ITU priority, earth station licensees communicating with Telstar 13 must terminate immediately any operations that cause harmful interference.[4]

Similarly, just last year, the Bureau imposed virtually identical conditions on the Star One C5 satellite, based in part upon the conclusion that "the public interest would be

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[3] *See PanAmSat Corp.*, 15 FCC Rcd 21802, ¶¶ 4, 11, 12 (1999).

[4] *Loral SpaceCom Corp.*, 18 FCC Rcd. 16374, ¶ 31(b)-(d) (Int'l Bur. 2003).

served by removing any uncertainty as to the applicability of Commission policy" where another system has ITU priority.[5]

For these reasons, New Skies requests that the Bureau condition any grant in this proceeding as follows:

1. Intelsat's operation of Galaxy 26 shall be in compliance with applicable current and future operational requirements as a result of coordination agreements reached with other satellite systems.
2. In the absence of a coordination agreement with a satellite network with higher ITU priority, Galaxy 26 must cease operations immediately upon launch and operation of the higher ITU priority satellite, or be subject to further conditions designed to address potential harmful interference to a satellite with ITU date precedence.
3. In the absence of a coordination agreement with a satellite network with higher ITU priority, earth station licensees communicating with Galaxy 26 must terminate immediately any operations that cause harmful interference.[6]

New Skies submits that explicitly including such conditions in any authorization issued regarding Galaxy 26 strikes an appropriate balance and will give all potentially interested parties (including earth station operators wishing to communicate with Galaxy 26) clear notice of the rules under which the satellite is authorized to operate and the consequences if a satellite with higher ITU priority is launched to a nearby location and international frequency coordination is not successfully completed.

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[5] *See Star One S.A.*, 23 FCC Rcd. 10896, ¶ 5 (Int'l Bur. 2008), *modifying* Stamp Grant, File No. SAT-PPL-20071113-00159 (granted Feb. 7, 2008).

[6] *Loral SpaceCom Corp.*, 18 FCC Rcd. 16374, ¶ 31(b)-(d) (Int'l Bur. 2003).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April 2009, a copy of the foregoing Comments of New Skies Satellites B.V. was served by hand delivery upon:

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