December 21, 2016

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Update on Use of C-band Frequencies at Nominal 33° E.L
Intelsat 702, Call Sign S2388; File No. SAT-MOD-20121001-00163
Intelsat 28, Call Sign S2751; File No. SAT-MOD-20101029-00228

Dear Ms. Dortch:

Intelsat License LLC ("Intelsat") files this letter to update the Federal Communications Commission ("FCC" or "Commission") on its use of C-band frequencies at the nominal 33° E.L. orbital location following the Intelsat 28 C-band antenna failure in 2011 and the earlier than anticipated deorbit of Intelsat 702 in September of this year. Specifically, Intelsat hereby informs the Commission that pursuant to Article XII of the International Telecommunications Satellite Organization ("ITSO") Agreement ("ITSO Agreement"), as amended for effectiveness as of January 16, 2017, Intelsat has not, and is not, waiving or otherwise relinquishing its C-band frequency assignment rights at the nominal 33° E.L. location so that these frequencies thus remain subject to Article XII(c)(i) of the ITSO Agreement and may not be relicensed to any other entity. For purposes of the Commission's satellite licensing rules and policies, Intelsat further notifies the Commission that it has a plan to bring a C-band satellite into operation at nominal 33° E.L. no later than early 2018. To the extent necessary, Intelsat requests that the Commission retain Intelsat's replacement expectancy at this location. In addition, to the extent a waiver of any Commission rules is required to enable Intelsat to use its 33° E.L. C-band authorization, Intelsat requests that such waiver be granted at this time or upon the filing of an application for authorization to bring a satellite into operation at this location, as appropriate.

I. FACTUAL BACKGROUND

In 2009, the FCC authorized Intelsat to launch and operate Intelsat 28 (Call Sign 2751), formerly known as Intelsat New Dawn, at the 32.8° E.L. orbital location.[1] The authorization permitted Intelsat 28 to operate using the 3625-4200 MHz and 5850-6500 MHz C-band frequencies as well as multiple frequencies in the Ku-band.[2] After Intelsat 28's launch on April 22, 2011, the C-

[1] Application of Intelsat License LLC to Launch and Operate Replacement Satellite New Dawn at 32.8 E.L., File No. SAT-LOA-20080509-00101 (stamp grant Jan. 9, 2009).

[2] *Id*. at 1.

band antenna experienced an unexpected failure and was unable to deploy. As a result, Intelsat was unable to operate the C-band frequencies on Intelsat 28.[3]

To address this anomaly, the Commission granted Intelsat authority in 2012 to drift Intelsat 702 to the 32.9° E.L. orbital location and operate it in inclined orbit utilizing C- and Ku-band frequencies.[4] With respect to the C-band frequencies, the Commission authorized Intelsat 702 in 2014 to operate as an emergency replacement for Intelsat 28.[5] The Intelsat 702 satellite was expected to operate at the nominal 33° E.L. orbital location until the first quarter of 2018.[6] Unfortunately, due to the malfunction of two gyroscopes and two momentum wheels, Intelsat was required to deorbit Intelsat 702 on September 22, 2016—approximately a year and a half before its anticipated end of maneuver life.[7]

II. DISCUSSION

A. The ITSO Agreement Prohibits the Commission from Re-Licensing Intelsat's Assigned C-Band Frequencies at the Nominal 33° E.L. Orbital Location.

Article XII(c)(i) of the ITSO Agreement obligates the United States, as transferee, to "authorize the use of such [transferred] frequency assignments by the Company [Intelsat] so that the Core Principles may be fulfilled."[8] The recent Columbia Amendment will provide the only exception to that international obligation:

> In the event that the Company, or any future entity using the Common Heritage frequency assignments, waives such frequency assignment(s), uses such assignment(s) in ways other than those set forth in this Agreement, or declares bankruptcy, the Notifying Administrations shall authorize the use of such frequency assignment(s) only by entities

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3 *See* Letter from Susan H. Crandall, Assistant General Counsel, Intelsat Corporation, to Marlene H. Dortch, Secretary, FCC, File No. SAT-MOD-20101029-00228 (July 14, 2011).

4 Request of Intelsat License LLC for Special Temporary Authority to Drift and Operate Intelsat 702, File No. SAT-STA-20121001-00164 (stamp grant Oct. 18, 2012).

5 Application of Intelsat License LLC to Modify Authorization for Intelsat 702, File Nos. SAT-MOD-20121001-00163 and SAT-AMD-20140204-0019, at 2 (stamp grant Feb. 25, 2014). The Commission noted that this action was consistent with precedent. *Id.* at 2 n.4 (citing *Loral Spacecom Corp*., Order and Authorization, 13 FCC Rcd 16438 (Sat. Div. 1998); *Volunteers in Technical Assistance,* Order, 12 FCC Rcd 3094 (Int'l Bur. 1997); *American Telephone and Telegraph Company*, Order and Authorization, DA 95-1972, 10 FCC Rcd 12132 (Int'l Bur. 1995); *Hughes Communications Galaxy, Inc.*, Memorandum Opinion, Order and Authorization, 8 FCC Rcd 5089 (1993); and *GE American Communications, Inc.* Order and Authorization, 7 FCC Rcd 3212 (Com. Car. Bur. 1992)).

6 Form 20-F, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Fiscal Year Ended December 31, 2015, of Intelsat S.A. (filed March 7, 2016), *available at* https://www.sec.gov/Archives/edgar/data/1525773/000119312516495452/d26989d20f.htm.

7 Letter from Susan H. Crandall, Associate General Counsel, Intelsat Corporation, to Marlene H. Dortch, Secretary, FCC, re: Intelsat 702, Call Sign: S2388 (Sept. 23, 2016).

8 ITSO Agreement, Article XII(c)(i).

that have signed a public services agreement, which will enable ITSO to ensure that the selected entities fulfill the Core Principles.[9]

With regard to the C-band frequencies at the nominal 33° E.L. orbital location, Intelsat has not: (1) "waive[d] such frequency assignment[]"; (2) "use[d] such frequency assignment[] in ways other than those set forth in [the ITSO Agreement]; or (3) "declare[d] bankruptcy." Accordingly, Article XII(c) of the ITSO Agreement does not permit the Commission, on behalf of the United States, to re-license these frequencies to an entity other than Intelsat.

B. To the Extent Required, Intelsat Seeks Continuation of Its Replacement Expectancy and/or Waiver of Relevant FCC Rules to Enable Continued C-Band Operations at the Nominal 33° E.L. Orbital Location.

In light of the premature deorbit of Intelsat 702, Intelsat is revising its satellite fleet deployment plan to continue C-band operations at the nominal 33° E.L. orbital location. Intelsat has entered into a contractual agreement with another satellite operator under which, subject to satisfaction of certain preconditions, Intelsat will acquire the right to relocate an in-orbit C-band satellite to, and operate said satellite at, 33° E.L. under U.S. license. Pursuant to this agreement, Intelsat expects to be able to bring the satellite into operation at the end of 2017 or beginning of 2018, which is approximately the same time as the original anticipated end of maneuverable life of Intelsat 702. Intelsat will file an application seeking to use these frequencies as soon as possible. To the extent necessary, Intelsat requests that the FCC continue Intelsat's replacement expectancy for these C-band frequencies pending the filing and grant of such application.

The retention of Intelsat's replacement expectancy for its authorized C-band frequencies at 33° E.L. is consistent with FCC rules and precedent. The Commission recently codified its longstanding policy to "grant[] applications by GSO satellite operators for authority to launch and operate replacement satellites and 'emergency' replacement satellites without considering competing applications."[10] Under revised Section 25.158, the Commission does not consider applications that would compete with an application to launch and operate a replacement satellite "that will be launched before the space station to be replaced is retired from service or within a reasonable time after loss of a space station during launch or due to premature failure in orbit."[11]

Here, Intelsat experienced an unexpected failure of the C-band antenna of the Intelsat 28 satellite and filled the corresponding gap within 20 months using Intelsat 702. Intelsat operated Intelsat 702 as an emergency replacement for Intelsat 28 for 45 months. Intelsat now plans to fill the gap caused by the earlier than expected deorbit of Intelsat 702. Intelsat respectfully requests that the Commission maintain Intelsat's replacement expectancy during the reasonable period of time necessary to develop a new deployment plan and file an application for continued use of the C-

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[9] *Id.* at subsection (c)(ii) (as amended).

[10] *Comprehensive Review of Licensing & Operating Rules for Satellite Servs.*, Second Report and Order, 30 FCC Rcd 14713, 14760-61 ¶ 131 (2015).

[11] 47 C.F.R. § 25.158(a)(2).

band frequencies at the nominal 33° E.L. orbital location. This outcome would be consistent with precedent in which the FCC found that satellite operators retained their replacement expectancy at orbital locations where they sought to fill service gaps filled by unexpected failures and at orbital locations from which operators moved space stations to meet gaps in service at other locations that experienced such failures.[12] Indeed, because Intelsat has established "a concrete plan to reinstate service" and will "timely implement[] its plan," retaining Intelsat's replacement expectancy at 33° E.L. will present "no conflicts with the Commission's policy against spectrum warehousing."[13]

To the extent the retention of Intelsat's replacement expectancy at the nominal 33° E.L. orbital location requires a waiver of the Commission's rules regarding replacement satellites, including Sections 25.165(e) (defining "replacement space station") and 25.158(a)(2) (exempting replacement space stations from queue processing),[14] Intelsat requests that the Commission grant the appropriate waiver(s) at this time or at such time as Intelsat seeks authorization to operate a C-band satellite at 33° E.L., whichever is appropriate.[15]

Please direct any questions to the undersigned at (703) 559-7848.

Sincerely,

/s/ Susan H. Crandall

Susan H. Crandall
Associate General Counsel
Intelsat Corporation

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[12] See *Petition of Panamsat Licensee Corp. for Specific Authority under Section 25.161(c) for C and Ku-band Frequencies at the Nominal 72° E.L. Orbital Location*, Memorandum Opinion and Order, 27 FCC Rcd 2479, 2479 (2012) (concluding that Intelsat retained its replacement expectancy for certain C- and Ku-band frequencies at the nominal 72° E.L. orbital location following a gap in service caused by an unexpected failure of the satellite operating at that location) ("*2012 Panamsat Order*"); Application *of Intelsat Licensee LLC to Suspend Operations at the 129° W.L. Orbital Location*, Memorandum Opinion and Order, 27 FCC Rcd 11234, 11238 (2012) (concluding that Intelsat retained its C-band replacement expectancy at 129° W.L. when it redeployed the satellite intended for 129° W.L. to 133° W.L. as an emergency replacement when the C-band satellite operating at 133° W.L. experienced a technical anomaly that rendered it incapable of providing service).

[13] *2012 Panamsat Order* at 2483-84 ¶ 12.

[14] 47 C.F.R. §§ 25.165(e); 25.158(a)(2).

[15] In past instances in which a satellite operator has sought to retain replacement expectancy following a gap in service caused by the deorbit of a satellite, the Commission has found that 47 C.F.R. § 25.161(c), which provides that a space station authorization is terminated upon the "removal or modification of the facilities which renders the station not operational for more than 90 days, unless specific authority is requested", is inapplicable. *See, e.g., 2012 Panamsat Order* at 2483 ¶ 11. Because Intelsat 702 was deorbited, Intelsat assumes that Section 25.161(c) does not apply in the present case. To the extent the Commission determines that Section 25.161(c) is applicable, Intelsat has filed this letter within 90 days of the deorbit of Intelsat 702, and hereby seeks the requisite authority to maintain its authorization for the C-band frequencies at the nominal 33° E.L. orbital location.