

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Intelsat License LLC)	File No. SAT-MOD-20140829-00097
)	
Application to Modify Authorization for Intelsat 5)	Call Sign: S2704
)	
)	

PETITION TO DENY OR DEFER OF ABS GLOBAL, LTD.

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ABS GLOBAL, LTD.

November 13, 2014

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PETITION TO DENY OR DEFER OF ABS GLOBAL, LTD.

ABS Global, Ltd. (“ABS”), pursuant to Section 25.154 of the Commission’s Rules, 47 C.F.R. § 25.154, submits this Petition to Deny or Defer the above-captioned application (the “Application”) of Intelsat License LLC (“Intelsat”) to relocate the Intelsat 5 satellite from the 50.15° E.L. orbital location to the 157.0° E.L. orbital location and to operate the satellite at 157.0° E.L.¹ The Commission accepted the Application for filing on October 17, 2014.²

Intelsat’s request to permanently operate Intelsat 5 at 157.0° E.L. should be denied, because grant of this request would cause substantial degradation to certain C-band services that ABS anticipates providing to customers using the ABS-6 satellite at the adjacent orbital location of 159.0° E.L., and would preclude ABS’s ability to offer services competitive with those that would be offered by Intelsat from 157.0° E.L.

¹ *Application of Intelsat License LLC to Modify Authorization for Intelsat 5*, File No. SAT-MOD-20140829-00097 (filed Aug. 29, 2014) (“Application”).

² *Policy Branch Information; Actions Taken*, Report No. SAT-01047, File No. SAT-STA-20140502-00047 (October 17, 2014) (Public Notice).

Alternatively, for reasons explained by ABS in its previous comments on the Application,³ the Commission should defer action on the Application to the extent that it requests authority for Intelsat to engage in non-TT&C transmissions in the C-band (and specifically, in the frequency bands 5925-6025 MHz and 3700-4000 MHz) using Intelsat 5 at 157° E.L. until such time as ABS and Intelsat jointly inform the Commission that they have reached a mutually satisfactory coordination agreement regarding the operations of the Intelsat 5 and ABS-6 satellites.

I. BACKGROUND

On May 2, 2014, Intelsat filed an application for Special Temporary Authority (STA) to relocate the Intelsat 5 satellite from the 50.15° E.L. orbital location to the 157.0° E.L. orbital location and to temporarily operate the satellite at 157.0° E.L.⁴ Despite objections from ABS,⁵ the Commission granted this STA on October 10, 2014.⁶ While the STA request was pending, Intelsat filed the Application, seeking permanent authority to operate the Intelsat 5 satellite at the 157.0° E.L. orbital location. If granted, the Application would provide Intelsat with a permanent license to continue to cause significant harm to operations of the ABS-6 satellite in the frequency bands 5925-6025 MHz and 3700-4000 MHz.

ABS began operating the ABS-6 satellite at the 159° E.L. orbital location earlier this year pursuant to an International Telecommunication Union (“ITU”) satellite network

³ See Comments of ABS Global, Ltd., File Nos. SAT-MOD-20140829-00097 and SAT-STA-20140502-00047 (filed Sept. 19, 2014); Reply of ABS Global, Ltd., File Nos. SAT-MOD-20140829-00097 and SAT-STA-20140502-00047 (filed Sept. 19, 2014) (“ABS Comments”).

⁴ *Request for 180-Day Special Temporary Authority to Drift and Operate Intelsat 5*, File No. SAT-STA-20140502-00047 (stamp grant Oct. 10, 2014) (“STA”).

⁵ See ABS Comments.

⁶ See STA.

filing of the Administration of Papua New Guinea (“PNG Administration”). ABS-6 is a multi-payload C-/Ku-band satellite with coverage of the Pacific Ocean region and East Asia. ABS uses the ABS-6 satellite to provide a wide range of critical telecommunications services to customers in its coverage area. ABS’s plans for future services using the C-band beams on ABS-6, which include vital lifeline services to remote and rural areas in the Asia-Pacific region, would potentially be disrupted by the Commission’s recent grant of the STA to Intelsat. Grant of the Application would render this disruption permanent and would preclude ABS from offering competitive services from the 159° E.L orbital location using the ABS-6 satellite’s C-band beams.

Intelsat has previously been made aware of the nature of ABS’s concerns with regards to the Intelsat 5 satellite and its predecessor at the 157° E.L. orbital location, the Intelsat 706 satellite. The two companies have conducted operator-to-operator coordination meetings with respect to the 157° E.L. and 159° E.L. orbital locations on no fewer than five occasions, dating back to 2009, and as recently as April 2014. The PNG Administration wrote to the FCC about certain of these matters in March 2014 and again in October 2014.

Critically, Intelsat’s analysis in support of its claim that the Intelsat 5 satellite will have “the same operating parameters” as the Intelsat 706 satellite⁷ is at best flawed, and at worst misleading. The proposed operations of Intelsat 5 ignore a key parameter – coverage area. Intelsat must be aware that, in terms of coverage area, the Intelsat 5 beams share little in common with those of Intelsat 706. Because Intelsat has not successfully completed coordination, its proposed technical parameters do not reflect the adjustments that would

⁷ *Id.* at 2.

be needed for Intelsat 5 to operate on a non-interference basis with the ABS-6 satellite.⁸

II. UNDER ITU PRECEDENT, A JUNIOR ITU FILING IS NOT TO BE TREATED DIFFERENTLY FOR COORDINATION PURPOSES.

The key objective of the ITU Radio Regulations is to provide procedural guidelines to facilitate coordination agreements and allow sharing of radiofrequency spectrum. Under the ITU Rules of Procedure, the priority date of a particular filing is intended to be used for administrative convenience and is not meant to confer any additional rights on the relevant filing party.⁹ Specifically, the ITU Rules of Procedure state that “the intent of Nos. 9.6 (9.7 to 9.21), 9.27 and Appendix 5 under Article 9 of the ITU Radio Regulations is to identify to which administration a request for coordination is to be addressed, and not to state an order of priorities for rights to a particular orbital position.”¹⁰ The ITU Rules of Procedure also make clear that “the coordination process is a two way process,” and that “no administration obtains any particular priority as a result of being the first to start either the advance publication phase . . . or the request for coordination procedure”¹¹

In the Intelsat Response, Intelsat argues that, due to its “superior ITU filing,” it is under no obligation to accommodate the “future plans of ABS” with respect to the ABS-6 satellite.¹² Further, Intelsat mistakenly points to Article 9 of the ITU Radio Regulations to

⁸ Intelsat’s statement that it is working in good faith to reach a mutually satisfactory coordination with ABS at the 157° E.L. and 159° E.L. orbital locations may further be questioned because of its insistence on maintaining operational constraints on ABS at 159° E.L. in non-overlapping frequency bands (Ku-band and extended C-band). As ABS has previously pointed out, Intelsat could show good faith by agreeing with ABS on the non-applicability of previously discussed operator-to-operator constraints on operations in these latter two bands. *See* ABS Comments.

⁹ *See* ITU Rules of Procedure for No. 9.6 of the ITU Radio Regulations. *See also* ITU Radio Regulations, Art. 9.

¹⁰ *See* ITU Rules of Procedure for No. 9.6 of the ITU Radio Regulations (emphasis added).

¹¹ *Id.*

¹² Intelsat Response at 3.

bolster its argument that the PNG Administration “junior” filing is to be treated differently than a more senior filing for coordination purposes, even though the ITU Rules of Procedure clearly recognize that a senior ITU filing is to be treated no differently than a junior filing with respect to “rights to a particular orbital position,” as noted above. Thus, while Intelsat is correct that, due to a junior filing, it is ABS “who must seek coordination with Intelsat for ABS’s new services,”¹³ Intelsat is mistaken in its assumption that the “junior” nature of ABS’s filing enables Intelsat to refuse to accommodate ABS’s planned operations on the ABS-6 satellite and to create a competitive imbalance in the region in Intelsat’s favor.¹⁴

III. THE APPLICATION FAILS TO COMPLY WITH THE FCC’S TECHNICAL REQUIREMENTS AND PRESENTS AN INADEQUATE INTERFERENCE ANALYSIS.

Section 25.140(a) of the Commission’s Rules is clear that those seeking FCC authorization for a space station must in their “interference analysis . . . demonstrate the compatibility of their proposed system with respect to authorized space stations within 2 degrees of any proposed satellite point of communication.”¹⁵ Intelsat has failed to meet this threshold requirement.

Intelsat does not acknowledge in the Application that Intelsat 5’s operations at the

¹³ *Id.*

¹⁴ It is also important to note that, as a factual matter, while the U.S. filings with the ITU at the 157° E.L. position pre-date the PNG filings at the 159° E.L. orbital position in some frequency bands, in other frequency bands they do not. Moreover, the validity of U.S. filings associated with Intelsat satellites at this orbital location was questioned in 2011 by the ITU’s Radio Bureau, which decided that the frequency assignments associated with the U.S. filings at the position should be suppressed because the orbital position was not being used by Intelsat. Although the ITU’s Radio Regulations Board later decided not to take away the slot from the United States (at least at that time), it should be noted that, since the reinstatement of the U.S. filings at 157°E.L in May 2012, Intelsat has failed to bring into use a number of the frequency bands specified in those filings.

¹⁵ 47 C.F.R. § 25.140(a).

157° E.L. orbital location would cause significant harm to the operations of the ABS-6 satellite in the frequency bands 5925-6025 MHz and 3700-4000 MHz in the C-Band, as specified above. The Application contains an “interference analysis” that purports to consider ABS-6,¹⁶ but in fact the analysis does not consider the earth station sizes that Intelsat knows are intended to be used in the C-band by ABS and its customers. Intelsat has inappropriately assumed in its analysis that ABS and its customers would use very large earth stations (5.5 meters or larger in diameter) to communicate in the C-band with the ABS-6 satellite. Even worse, Intelsat’s analysis assumes that ABS’s operations would protect Intelsat’s use of smaller earth stations in the C-band, thereby deliberately seeking to manipulate the regulatory process in Intelsat’s favor.¹⁷

Intelsat attempts to avoid this rule by arguing that it is “replacing technically equivalent satellites.”¹⁸ However, Section 25.140(a) of the FCC’s Rules carves out no such exception, and instead prescribes a rule of general applicability whenever an applicant is seeking (as Intelsat is seeking) a license for a geostationary space station in the Fixed-Satellite Service. Further, as noted above, Intelsat’s “technical equivalence argument” is inaccurate because it focuses narrowly on EIRP while ignoring coverage area.

When Intelsat filed its FCC application to place the Intelsat 706 satellite at 157° E.L., Intelsat based its link budget analysis on the existence of a hypothetical satellite at the 159° E.L. orbital location, because at that time there was no operating spacecraft at that

¹⁶ Application, Engineering Statement at 2 & Ex. 5.

¹⁷ In fact, according to the Commission’s rules, an application that is “defective with respect to completeness of answers to questions, informational showings . . .”, such as the Application should be returned to the applicant. *See* 47 C.F.R. § 25.112(a)(1) & (2).

¹⁸ Intelsat Response at 3-4.

location.¹⁹ It is manifestly inappropriate for Intelsat to attempt to bootstrap the analysis done then – in a hypothetical satellite context – into an argument for why it should be permitted now – in the context of an actual, adjacent, operating satellite at the 159° E.L. orbital location (ABS-6) – to continue to operate using the same parameters when it seeks to place another satellite at the 157° location.

Intelsat has also argued that “its current customers [would] receive degraded services” if it were “to accommodate the future plans of ABS.”²⁰ However, when the link analysis that Intelsat provided in the Intelsat 706 Application is compared against the link analysis in the Application, it is readily apparent that Intelsat had budgeted a higher level of interference for the Intelsat 706 satellite’s operations at the 159° E.L. orbital location than it has budgeted for the Intelsat 5 satellite’s operations at the same location. Specifically, in the Intelsat 706 Application, Intelsat had assumed a downlink interfering EIRP density of -32 dBW/Hz, whereas in the Application Intelsat has budgeted an EIRP density level of -42 dBW/Hz – a reduction of 10 dB.²¹ Clearly, Intelsat is able to maintain services to its customers in the presence of a much higher level of interference from the 159° E.L. orbital location than it is now claiming it can accept when Intelsat 5 replaces Intelsat 706.

IV. FCC PRECEDENT DICTATES THAT THE APPLICATION SHOULD NOT BE GRANTED UNTIL INTELSAT COORDINATES WITH ABS.

In 2012, Intelsat faced a situation similar to the present one, when it attempted to move a satellite in a manner that would have caused harmful interference to another small operator, Yahsat, in that case operating under the authority of the Administration of the

¹⁹ See Intelsat Application, File No. SAT-MOD-20121026-00188 (filed Oct. 26, 2012)(the “Intelsat 706 Application”), Engineering Statement, Sec. 6.0.

²⁰ Intelsat Response at 3.

²¹ See Intelsat 706 Application, Ex. 5; Application, Ex. 4.

United Arab Emirates. Yahsat informed the Commission that coordination had not been completed and that interference to Yahsat's operations would occur if Intelsat were permitted to move its satellite to the proposed location.

The Commission's International Bureau (the "Bureau") granted Intelsat's STA request, apparently because of extraordinary circumstances cited by Intelsat involving "a U.S. military customer in the Middle East region."²² But the Bureau, recognizing the need for Intelsat to complete coordination with Yahsat, kept Intelsat on a "short leash," giving it just a 30-day STA and taking the extraordinary step of requiring that Intelsat provide the FCC with weekly updates regarding the status of coordination discussions with Yahsat and whether a coordination agreement was likely.²³

Intelsat argued in its Response that the Yahsat precedent is "wholly misplaced because the ITU filing used by Yahsat had ITU priority over the ITU filing being used by Intelsat in the bands at issue in that proceeding".²⁴ However, in its order, the Bureau never discussed ITU priority in explaining its rationale for instructing Intelsat to coordinate with Yahsat.²⁵ The Bureau instead focused on Yahsat's claims that Intelsat's operations from the

²² See *Request for Further Extension of Special Temporary Authority for Galaxy 26*, File No. SAT-STA-20120125-00012 (stamp grant, Feb. 2, 2012).

²³ See *Application of Intelsat Licensee LLC to Modify Authorization for Galaxy 26*, File No. SAT-MOD-20110420-00073 (stamp grant, Mar. 2, 2012); *Request for Further Extension of Special Temporary Authority for Galaxy 26*, File No. SAT-STA-20120125-00012 (stamp grant, Feb. 2, 2012); Comments of Al Yah Satellite Communications Company PrJSC, File No. SAT-MOD-20110420-00073 (filed June 6, 2011) ("Yahsat Comments"); Reply Comments of Al Yah Satellite Communications Company PrJSC, File No. SAT-MOD-20110420-00073 (filed July 1, 2011); Letter from Kalpak Gude, Intelsat, to Robert G. Nelson, FCC, dated January 11, 2012; Letter from Susan Crandall, Intelsat, to Marlene Dortch, FCC, dated January 25, 2012. See also *Loral Orion Services*, 14 FCC Rcd 17665 (1999) (precluding commercial operations pending completion of coordination with adjacent operators).

²⁴ Intelsat Response at 3.

²⁵ See International Bureau Attachment to Grant, Intelsat Request for Further Extension of Special Temporary Authority for Galaxy 26, File No. SAT-STA-20120125-00012 (stamp grant, Feb. 3, 2012).

relevant U.S.-filed orbital slot “will result in harmful interference to space stations operating, or soon-to-be operating . . . at nearby orbital locations.”²⁶

The Bureau’s mention of “soon-to-be operating” satellites is instructive, because Intelsat appears to believe that it does not need to take into consideration ABS’s “future plans” for “new services” on an ABS satellite currently in orbit.²⁷ In the Yahsat case, however, the services of concern on the then-operating satellite were not current services, but rather ones that Yahsat said it “plan[ned] to provide” or “intend[ed] to provide” in the future.²⁸

Thus, because degradation to the services intended to be provided by ABS-6 will occur if the Application is granted, it is in the public interest for the Commission to defer action until Intelsat has completed coordination with ABS. As the Commission has recognized, the United States has an international obligation to “ensure that the operations of [U.S.] space stations do not cause harmful interference to the operations of another country’s radiocommunication network frequency assignments.”²⁹

V. CONCLUSION

For the foregoing reasons, ABS urges the Commission to deny the Application to the extent that it requests authority for Intelsat to engage in non-TT&C transmissions in the C-band (and specifically, in the frequency bands 5925-6025 MHz and 3700-4000 MHz) using the Intelsat 5 satellite at the 157° E.L. orbital location, or alternatively to defer action on the Application until such time as ABS and Intelsat jointly inform the Commission that

²⁶ *Id.* at 1 n.1.

²⁷ Intelsat Response at 2, 3.

²⁸ Yahsat Comments at 2, 5.

²⁹ See *17/24 GHz Reconsideration Order*, 25 FCC Rcd at 15722, ¶ 8.

they have reached a mutually satisfactory coordination agreement with respect to the operations of the Intelsat 5 and ABS-6 satellites. ABS is committed to engaging immediately in discussions with Intelsat with a view toward finding a mutually acceptable agreement with respect to the adjacent operations of these two satellites.

Respectfully submitted,

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By: /s/ Arlene Kahng

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November 13, 2014

CERTIFICATE OF SERVICE

I, Arlene Kahng, hereby certify that on this 13th day of November, 2014, I caused to be served a true copy of the foregoing “Petition to Deny of ABS Global, Ltd.,” by electronic mail upon the following:

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AFFIDAVIT

I, Arlene Kahng, hereby declare that I am General Counsel of ABS Global, Ltd. (“ABS”) and that I have reviewed the foregoing petition and that all the factual statements therein relating to ABS are true and correct to the best of my knowledge, information, and belief.

By: /s/ Arlene Kahng

Arlene Kahng
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November 13, 2014