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Before the
Federal Communications Commission
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of

Intelsat North America LLC

Request for Extension of Special
Temporary Authority

File No. SAT-STA-20040615-00116

Received

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Policy Branch
International Bureau

Int'l Bureau

SEP 15 2004

Front Office

To: The Commission

OPPOSITION TO APPLICATION FOR REVIEW

Intelsat North America LLC ("Intelsat"), by its attorneys, and pursuant to Section 1.115 of the rules of the Federal Communications Commission ("FCC" or "Commission"),¹ hereby opposes SES AMERICOM, Inc.'s ("SES") Application for Review² of the International Bureau's ("Bureau") July 30, 2004 order granting Intelsat's request for a 180-day extension of special temporary authority ("STA") to provide direct-to-home ("DTH") "additional services"³ to former customers of Loral SpaceCom Corporation and Loral Satellite Inc. (together "Loral").⁴

¹ See 47 C.F.R. § 1.115 (2003).

² SES AMERICOM, Inc., Application for Review, *Intelsat North America LLC, Request for Extension of Special Temporary Authority*, File No. SAT-STA-20040615-00116 (filed Aug. 30, 2004) ("Application for Review").

³ Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 (2000), § 681(a)(12)(B) ("additional services" defined as "for INTELSAT, direct-to-home (DTH) or direct broadcast satellite (DBS) video services, or services in the Ka or V bands."), *as amended*, Pub. L. No. 107-233, 116 Stat. 1480 (2002), *as amended*, Pub. L. No. 108-228, 118 Stat. 644 (2004).

⁴ *Intelsat North America LLC, Request for Extension of Special Temporary Authority*, DA 04-2445 (rel. July 30, 2004) ("Extension Order").

I. BACKGROUND AND SUMMARY

In the *Intelsat/Loral Order*,⁵ the Bureau assigned certain Loral satellite licenses to Intelsat subject to a condition on providing “additional services” and granted Intelsat STA to provide such “additional services” to former Loral customers until September 13, 2004. On March 12, 2004, SES filed an Application for Review of the *Intelsat/Loral Order* (“Initial Application for Review”)⁶ challenging, *inter alia*, the lawfulness of the Bureau’s decision to grant Intelsat the limited STA. Intelsat, in response, demonstrated that the Open-Market for the Betterment of International Telecommunications Act (“ORBIT Act”) does not prohibit the Commission from authorizing Intelsat’s provision of “additional services” prior to an Intelsat initial public offering and sought deletion of the relevant condition.⁷ This Initial Application for Review is pending.

On June 15, 2004, Intelsat requested extension, until March 12, 2005, of its STA to serve “additional services” customers, including Starband who, as the Bureau previously noted, would otherwise experience disruption or even discontinuance of service.⁸ SES filed a Petition to

⁵ *Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), Assignors and Intelsat North America, LLC, Assignee; Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934*, Order and Authorization, 19 FCC Rcd 2404 (2004) (“*Intelsat/Loral Order*”), as amended, Supplemental Order, 19 FCC Rcd 4029 (2004).

⁶ SES AMERICOM, Inc., Application for Review, File Nos. SAT-ASG-20030728-00138/00139 (filed Mar. 12, 2004) (“Initial Application for Review”). See also SES AMERICOM, Inc., Motion for Expedited Consideration in Part of Application for Review, File Nos. SAT-ASG-20030728-00138/139 (filed Mar. 12, 2004).

⁷ See Opposition of Intelsat North America LLC to Application for Review, File Nos. SAT-ASG-20030728-00138/139 (filed Mar. 29, 2004) (“Intelsat Opposition”); Intelsat North America LLC Opposition to SES’s Motion for Expedited Consideration In Part of Application for Review and Cross-motion to Dismiss in Part SES’s Application for Review, File Nos. SAT-ASG-20030728-00138/00139 (filed Mar. 29, 2004); Letter to Marlene H. Dortch, Secretary, FCC, from Bert W. Rein *et al.*, counsel to Intelsat, File Nos. SAT-ASG-20030728-00138/00139 (filed June 4, 2004) (“Additional Services Ex Parte”).

⁸ *Intelsat/Loral Order*, 19 FCC Rcd at 2429-30.

Deny⁹ on July 19, 2004 asserting that: (1) the Bureau lacked authority to grant the initial STA (which is part of the very issue pending in the Initial Application for Review); and (2) extension would be inconsistent with the Bureau's original purpose in granting STA. In its July 30, 2004 *Extension Order*, the Bureau acknowledged that the Commission is considering issues pertaining to Intelsat's provision of "additional services" and thus preserved the *status quo* by granting Intelsat's extension request "subject to, and conditioned upon, the Commission's findings on the pending [Initial] Application for Review."¹⁰

In the instant Application for Review, SES repeats the very same claims it made in its Petition to Deny and Initial Application for Review and argues that the Bureau should have denied the extension request. As shown below, however, such denial would have preempted the Commission's deliberations on the proper scope of Intelsat's authority to offer "additional services" and produced needless and costly service disruptions and discontinuance, adversely affecting the very customers and end-users the Bureau sought to protect through the STA. Because the Bureau's decision to grant STA pending further action by the full Commission was both proper and necessary, the Commission should deny SES' instant Application for Review.

II. THE BUREAU'S DECISION WAS PROPER BECAUSE IT PRESERVED THE STATUS QUO PENDING FULL COMMISSION ACTION ON SES' INITIAL APPLICATION FOR REVIEW

SES alleges that the Bureau should have denied Intelsat's extension request because the Bureau "lacked authority" under the ORBIT Act to grant STA for "additional services".¹¹ However, this issue—whether the ORBIT Act allows the Bureau to grant Intelsat authority,

⁹ See SES AMERICOM, Inc., Petition to Deny, File No. SAT-STA-20040615-00116 (filed July 19, 2004) ("Petition").

¹⁰ *Extension Order*, ¶ 6.

¹¹ Application for Review at 3.

whether by license or STA, to provide “additional services” at this time—currently is before the full Commission. Under these circumstances, the Bureau’s decision to extend the STA was the proper method for preserving the *status quo* pending full Commission resolution of the relevant legal issue.

A. The Bureau Properly Took Into Account the Commission’s Pending Review of the Initial Application for Review in Granting the Extension

SES claims that the pending Initial Application for Review provided no basis for extending the STA.¹² Specifically, SES argues that the “only” question pending on review is “whether the Bureau had authority to grant the STA.”¹³ However, the Commission’s scope of review is not as limited as SES claims. In order to determine whether the Bureau had authority to grant the STA, the Commission must decide whether the ORBIT Act prohibits Intelsat’s provision of any “additional services” at this time. As Intelsat explained in its opposition to the Initial Application for Review, Intelsat has privatized and thus the “additional services” limitation in Section 602(a) no longer applies.¹⁴ Even if the Commission finds that Section 602(a) still applies, the provision is not—as SES suggests—an absolute bar to Intelsat’s provision of “additional services”. Rather, the full Commission has discretion to determine that the initial grant of the STA—and the subsequent extension—is a “necessary measure” to implement the limitation given the circumstances surrounding Intelsat’s acquisition of “additional services” customers from Loral. Intelsat’s “additional services” *Ex Parte*, filed at the

¹² Application for Review at 6-7.

¹³ *Id.* at 7.

¹⁴ Intelsat Opposition at 17-18.

FCC's request,¹⁵ evidences the Commission's focus on the proper interpretation of Section 602(a) of the ORBIT Act.

Moreover, Commission precedent confirms that the Commission has broad discretion in reviewing a Bureau's decision. The Commission may consider both the specific challenges to the decision that are raised in an application for review, as well as other grounds for rejecting or upholding that decision.¹⁶ The Commission, therefore, could and should delete the "additional services" condition from the *Intelsat/Loral Order* on the grounds that the ORBIT Act does not bar Intelsat from providing such services. Thus, the pendency of the Initial Application for Review provides a sound legal basis for the Bureau's decision to preserve the *status quo* through STA extension.

B. The Bureau's Decision Preserved, Not Altered, the *Status Quo*

In the alternative, SES also argues that the Bureau erred because its decision did not preserve, but in fact, "drastically alter[ed] the *status quo*."¹⁷ This argument is based on the flawed premise that preserving the *status quo* requires termination of the first 180 day STA. In fact, the *status quo* refers to the continuation of "additional services" on Loral satellites to former Loral customers pending Commission action on the Initial Application for Review. Until then, the proper scope of Intelsat's authority to provide "additional services" will remain uncertain.

¹⁵ See 47 C.F.R. § 25.111(a) ("The Commission may request from any party at any time additional information concerning any application, or any other submission or pleading regarding an application, filed under this part.").

¹⁶ *RCA Global Communications, Inc.; Application for Authority to Lease and Operate Facilities for the Provision of Service to 6 New Points of Operation*, Memorandum Opinion and Order, 87 F.C.C.2d 526 (1981) (conducting *de novo* review of the Common Carrier Bureau's decision in response to an application for review); *S&L Teen Hospital Shuttle, Application to Modify and Reinstate the License for Business Radio Service Station WJL767, Montrose, California*, Memorandum Opinion and Order, 16 FCC Rcd 8153 (2001) (granting an application for review in order to engage in a *de novo* review of the merits).

¹⁷ Application for Review at 8.

Grant of the STA was the only action that the Bureau could have taken to ensure a neutral effect on the Commission's pending review and customers' commercial rights. In contrast, had the Bureau denied the STA extension, the Bureau would have preempted the Commission's practical ability to decide this issue to the benefit of the former Loral customers. Therefore, the only possible action the Bureau could have taken to avoid preempting full Commission review—and thus preserve the *status quo* for the former Loral customers—was to grant the extension “subject to, and conditioned upon, the Commission's findings on the pending Application for Review.”¹⁸

III. EXTENSION WAS NECESSARY AND PROPER TO PREVENT DISRUPTIONS AND DISCONTINUANCE OF SERVICE

SES also claims that the “limited rationale underlying the Bureau's original decision” cannot be read to accommodate an STA extension.¹⁹ On the contrary, the purpose for granting STA in the *Intelsat/Loral Order* was to protect customers and end-users from service disruptions and loss of service.²⁰ The same goal—continuity of service—was equally applicable to the extension request. Specifically, by granting the extension, the Bureau enabled the former Loral customers and, in turn, their end-user consumers to continue to receive the benefits of commercial agreements reached in the competitive global market.

Without an extension, these customers would have been compelled, absent a final legal determination, to seek new and potentially disadvantageous contracts in order to ensure the transfer of their services to another satellite provider. Failure to grant an extension, therefore, could have resulted in higher costs and significant disruption.²¹ And, if customers were unable

¹⁸ *Extension Order*, ¶ 6.

¹⁹ Application for Review at 4-7.

²⁰ *Intelsat/Loral Order*, 19 FCC Rcd at 2429-30.

²¹ Transitioning to another satellite operator, for example, would require re-pointing the antenna at the end-user's premises and a “truck roll” from a service provider. The end-user's

to obtain alternative capacity, such customers and the end-users these customers serve, would have faced discontinuance of service. For example, in the *Intelsat/Loral Order*, the Bureau recognized the “adverse consequence that may result if broadband service to Alaska and Hawaii is discontinued” as a result of one such customer — Starband — being forced off the Intelsat system.²²

Extension was particularly justified in light of the unusual circumstances created by a shortcoming of the ORBIT Act. Because the ORBIT Act did not expressly envision Intelsat’s acquisition of a satellite operator with existing “additional services” customers, failure to grant the extension would have forced such customers to abandon contracts entered into with Loral in an advantageous commercial environment. It would be antithetical to the ORBIT Act’s purposes to force customers to negotiate replacement capacity under an FCC-mandated timeframe, in a more concentrated satellite capacity market (*i.e.*, absent Loral and Intelsat).

SES nonetheless argues that the “marketplace uncertainty” created by its pending Initial Application for Review did not justify an STA extension because these customers knew they had to switch providers and had plenty of time to negotiate satisfactory arrangements.²³ This argument ignores the fact that customers may never need to switch providers given the likelihood that the full Commission, in the context of its pending review, will confirm Intelsat’s ability to fulfill these customers’ existing contracts beyond September 13, 2004. As such, it would make

inconvenience could range from waiting at home for the service technician to temporary service disruption to the purchase of new equipment (outdoor and indoor).

²² *Intelsat/Loral Order*, 19 FCC Rcd at 2421. Indeed, the Bureau noted that Intelsat had voluntarily committed to continue access to broadband service to those areas and customers in Alaska and Hawaii currently receiving such service from Starband and the Bureau “incorporated and [] rel[ied] on Intelsat’s commitments” in the order. *Id.* Of course, absent the extension Intelsat could not honor its commitment to continue access to broadband service to customers in Alaska and Hawaii beyond September 13, 2004. *Id.*

²³ Application for Review at 5-6.

little sense to require customers to switch providers only to find out later that it was unnecessary to do so. As demonstrated above, switching providers is a time consuming and costly endeavor. Thus, extension was a reasonable measure to avoid forcing these customers to negotiate new, costly, and potentially unnecessary arrangements, while the Commission considers the issue of the scope of the Intelsat's authority under the ORBIT Act to offer "additional services".

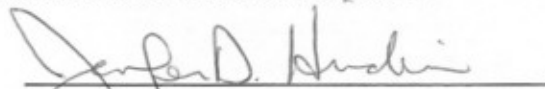
IV. CONCLUSION

For the foregoing reasons, Intelsat respectfully requests that the Commission deny SES' Application for Review.

Respectfully submitted,

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September 14, 2004

CERTIFICATE OF SERVICE

I, Christopher E. Ryan, a legal assistant at Wiley Rein & Fielding LLP, do hereby certify that a true and correct copy of the foregoing Opposition to Application for Review was sent by first-class mail, postage prepaid, this 14th day of September 2004, to the following:

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