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Front Office

Jul 22 2004

Int'l Bureau

July 21, 2004

By Hand

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W., TW-B204  
Washington, DC 20554

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JUL 21 2004

Federal Communications Commission  
Office of Secretary

Received

AUG 25 2004

Policy Branch  
International Bureau

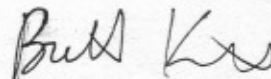
Re: *Intelsat North America LLC, Request for Extension of Special Temporary Authority; File No. SAT-STA-20040615-00116*

Dear Ms. Dortch:

On July 19, 2004, we filed, on behalf of SES AMERICOM, Inc., a Petition to Deny in the above-captioned proceeding. Such Petition to Deny (a copy of which is attached hereto) included a Declaration, which was submitted with a facsimile signature. By this letter, we hereby submit to the Commission the original signature page for this Declaration, which should be associated with the Petition to Deny that was filed on July 19.

Please refer any questions regarding this matter to the undersigned.

Very truly yours,



Brett M. Kitt  
Attorney for SES AMERICOM, Inc.

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

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JUL 21 2004

Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
Intelsat North America LLC, ) File No. SAT-STA-20040615-00116  
 )  
Request for Extension of )  
Special Temporary Authority )

**DECLARATION**

Nancy Eskenazi hereby states as follows:

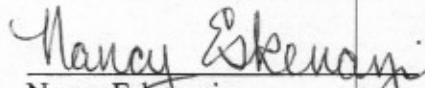
(1) I am Vice President and Associate General Counsel of SES AMERICOM,  
Inc.;

(2) I have read the foregoing Petition to Deny in the above-referenced matter.

The facts stated therein are true and correct to the best of my knowledge, information, and belief.

(3) I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of July, 2004.



Nancy Eskenazi  
Vice President and Associate General Counsel  
SES AMERICOM, Inc.

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

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Federal Communications Commission  
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In the Matter of )  
)  
Intelsat North America LLC, )  
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Request for Extension of )  
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File No. SAT-STA-20040615-00116

Int'l Bureau  
JUL 22 2004  
Front Office

To: The International Bureau

**PETITION TO DENY**

SES AMERICOM, Inc. ("SES AMERICOM"), by its attorneys, and pursuant to Section 25.154 of the Rules of the Federal Communications Commission (the "FCC" or the "Commission"),<sup>1</sup> hereby petitions to deny the request of Intelsat North America LLC ("Intelsat") to extend for 180 days the International Bureau's (the "Bureau's") grant of special temporary authority ("STA") to Intelsat to provide direct-to-home ("DTH") and other "additional services" to former customers of Loral SpaceCom Corporation and Loral Satellite Inc. (together, "Loral")<sup>2</sup>.

The Bureau should deny Intelsat's Extension Request insofar as it seeks to perpetuate an STA that was granted in error. Even assuming that the Bureau's grant of STA was lawful, an extension of STA nonetheless would contravene the limited purpose of the Bureau in granting STA in this instance, which merely was to provide a window of time for Loral's former DTH customers to transition to alternate providers of satellite capacity. Intelsat has advanced no persuasive arguments in support of its Extension Request; instead, Intelsat sets forth a weak appeal to the public interest that is insufficient to justify an extension of STA.

<sup>1</sup> 47 C.F.R. § 25.154.

<sup>2</sup> Intelsat North America LLC, *Request for Extension of Special Temporary Authority*, File No. SAT-STA-20040615-00116 (filed Jun 15, 2004) (the "Extension Request").

## I. BACKGROUND

On February 11, 2004, the Bureau issued an order (the "Loral-Intelsat Order"), approving the assignment of certain of Loral's space station licenses to Intelsat, and authorizing Intelsat to provide service using satellites it acquired from Loral.<sup>3</sup> The Bureau conditioned the authorizations contained in the Loral-Intelsat Order upon Intelsat's compliance with its remaining obligations under the ORBIT Act.<sup>4</sup> These remaining obligations include Intelsat's completion of an initial public offering ("IPO") that substantially dilutes the equity interests of Intelsat's former signatories.<sup>5</sup>

Also as part of the Loral-Intelsat Order, the Bureau recognized that Section 602(a) of the ORBIT Act "prohibits any successor entity of INTELSAT from expanding to provide certain additional services in the transition period prior to privatization."<sup>6</sup> Despite Intelsat's protestations that it had already "privatized" in accordance with the ORBIT Act (by satisfying the non-IPO criteria of the Act),<sup>7</sup> the Bureau held that Section 602(a) remains applicable to

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<sup>3</sup> See 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, DA-04-357.

<sup>4</sup> *Id.* at ¶ 49.

<sup>5</sup> See Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, §§ 621(2), 621(5), 114 Stat. 48 (2000) (the "ORBIT Act" or the "Act").

<sup>6</sup> Loral-Intelsat Order at ¶ 58. Section 602(a) of the ORBIT Act provides as follows:

(a) LIMITATION – Until INTELSAT, Inmarsat, and their successor or separate entities are privatized in accordance with the requirements of this title, INTELSAT, Inmarsat, and their successor or separate entities, respectively, shall not be permitted to provide additional services. The Commission shall take all necessary measures to implement this requirement, including denial by the Commission of licensing for such services.

<sup>7</sup> Loral-Intelsat Order at ¶ 60.

Intelsat,<sup>8</sup> and that “the ORBIT Act prohibits [Intelsat’s] provision of ‘additional services’ until Intelsat has completed its IPO.”<sup>9</sup>

Notwithstanding the Bureau’s acknowledgment of the significance of Section 602(a), the Bureau expressed concern that immediate enforcement of Section 602(a) might disrupt service to Loral’s customers.<sup>10</sup> The Bureau took it upon itself to address this concern by granting, *sua sponte*, STA to Intelsat to continue providing “additional services” to Loral’s former customers for up to 180 days. The Bureau intended its actions to allow Loral’s former customers to transition smoothly to other providers of satellite capacity.

On March 12, 2004, SES AMERICOM filed an Application for Review of the Loral-Intelsat Order.<sup>11</sup> Specifically, SES AMERICOM challenged the authority of the Bureau to grant STA in light of the Bureau’s interpretation of Section 602(a).<sup>12</sup> SES AMERICOM also requested expedited treatment of its Application for Review.<sup>13</sup> However, the Commission has yet to rule on this matter.

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<sup>8</sup> *Id.* at ¶¶ 60-61.

<sup>9</sup> *Id.* at ¶ 64. With respect to Intelsat, “additional services” refers to “direct-to-home (DTH) or direct broadcast satellite (DBS) video services, or services in the Ka or V bands”). ORBIT Act, § 681(a)(12)(B).

<sup>10</sup> *Id.*

<sup>11</sup> SES AMERICOM, Inc., *Application for Review*, File Nos. SAT-ASG-20030728-00138, SAT-ASG-20030728-00139 (the “Application for Review”). SES AMERICOM demonstrated in the Application for Review proceeding why it is a party in interest with respect to Intelsat’s STA. *See also Reply of SES AMERICOM to Opposition to Motion*, File Nos. SAT-ASG-20030728-00138, SAT-ASG-20030728-00139, at 8-9. To the extent that SES AMERICOM is required here to make a similar demonstration, *see* 47 C.F.R. § 25.154(a)(4), the discussion in the Application for Review proceeding is hereby incorporated by reference. *See also* text at & note 31 *infra*.

<sup>12</sup> *Id.* at 20.

<sup>13</sup> *See* SES AMERICOM, Inc., *Motion for Expedited Consideration in Part of Application for Review*, File Nos. SAT-ASG-20030728-00138, SAT-ASG-20030728-00139 (filed Mar. 12, 2004).

On May 18, 2004, Congress extended Intelsat's June 30, 2004 deadline to conduct an IPO until June 30, 2005, with the possibility of a further extension until December 31, 2005.<sup>14</sup> This deadline extension all but ensures that the Bureau's grant of STA will expire before Intelsat conducts its IPO. In order to enable Intelsat to continue providing "additional services," Intelsat filed this request to extend STA for another six months.

## II. THE BUREAU MUST NOT EXTEND STA THAT WAS GRANTED IN ERROR.

The Bureau must deny Intelsat's Extension Request to the extent that it would perpetuate an erroneous grant of STA. During the course of SES AMERICOM's Application for Review proceeding, SES AMERICOM demonstrated to the Commission that the Bureau exceeded its statutory authority in granting STA in the Loral-Intelsat Order.<sup>15</sup> As SES AMERICOM noted in its Application for Review, the Bureau may grant special temporary authority only where it is "authorized by law" to do so.<sup>16</sup> However, the Bureau itself made clear in the Loral-Intelsat Order that Section 602(a) of the ORBIT Act "specifically prohibits any successor entity of INTELSAT from expanding to provide certain additional services in the

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<sup>14</sup> Pub. L. No. 108-228, 118 Stat. 644 (2004).

<sup>15</sup> See Application for Review at 20-24; SES AMERICOM, Inc., *Reply of SES AMERICOM to Opposition to Motion for Expedited Consideration in Part, and Opposition of SES AMERICOM to Cross-Motion to Dismiss*, File Nos. SAT-ASG-20030728-00138, SAT-ASG-20030728-00139, at 5-8 (filed Apr. 12, 2004) (the "Reply").

<sup>16</sup> Application for Review at 20 (quoting 47 U.S.C. § 309(f)). Section 309(f) provides, in pertinent part:

When an application subject to . . . this section has been filed, the Commission . . . may, if the grant of such application is otherwise authorized by law and if it finds that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of such temporary operations would seriously prejudice the public interest, grant a temporary authorization . . . to permit such temporary operations for a period not exceeding 180 days . . .

transition period prior to privatization,”<sup>17</sup> that Intelsat cannot be “privatized” until it completes its IPO,<sup>18</sup> and that therefore, the “ORBIT Act prohibits the provision of ‘additional services’ until Intelsat has completed its IPO.”<sup>19</sup> The Bureau furthermore failed to identify any provision of the ORBIT Act that authorized the Bureau to circumvent the prohibitive language of Section 602(a), even for a limited period of time. Moreover, SES AMERICOM has demonstrated that no provision of the ORBIT Act could properly be construed to authorize the Bureau’s action under Section 309(f).<sup>20</sup> The Bureau’s grant of STA therefore was erroneous, and an extension of the invalid STA cannot be justified.

Intelsat argues that extension of STA would further the “purpose” of the ORBIT Act by allowing customers and end-user consumers to receive the benefits of their commercial agreements with Loral. It is obvious that an appeal to the “purpose” of a statute cannot justify an authorization that is inconsistent with the text of the statute. Moreover, Intelsat misstates the purpose of the ORBIT Act. Although the ORBIT Act certainly is intended to benefit consumers and service providers alike, it is intended to do so by “fully privatizing . . . INTELSAT.”<sup>21</sup> The legislative history of the Act provides:

S. 376 leverages access by INTELSAT to the most lucrative telecommunications market in the world – the United States market – as an incentive to achieve a rapid pro-competitive privatization. In doing so, the legislation withholds direct market access from INTELSAT until it is privatized, denying them the

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<sup>17</sup> Loral-Intelsat Order at ¶ 58.

<sup>18</sup> *Id.* at ¶¶ 59-61.

<sup>19</sup> *Id.* at ¶ 64.

<sup>20</sup> See Application for Review at 22-23; Reply at 5-8.

<sup>21</sup> ORBIT Act, § 2 (“[i]t is the purpose of this Act to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat”).

ability to expand their market presence and solidify a broader customer base.<sup>22</sup>

As SES AMERICOM explained in its Application for Review, the STA betrays the purpose of the ORBIT Act by giving to Intelsat precisely what Congress intended to hold in reserve: the ability to offer “additional services” to customers in the United States.<sup>23</sup>

### **III. THE BUREAU SHOULD DENY THE EXTENSION REQUEST BECAUSE AN EXTENSION WOULD CONTRAVENE THE PURPOSE OF STA.**

Even if the Bureau properly granted STA, the grant of an extension nonetheless would be contrary to the underlying purpose of the STA in this instance.

The Bureau intended STA, not to facilitate Intelsat’s ongoing provision of pre-IPO “additional services,” but instead to facilitate the orderly divestiture of Intelsat’s “additional service” customers. The Bureau explained in the Loral-Intelsat Order that it granted STA “in order to allow time for Loral’s existing DTH customers to transition to other service providers.”<sup>24</sup>

For avoidance of doubt, the Bureau reinforced the narrow basis for its action:

We emphasize that this Special Temporary Authority permits Intelsat North America to continue leasing capacity to Loral’s existing DTH customers *solely* for the purpose of allowing these customers time to transition to other providers.<sup>25</sup>

The Bureau was also explicit in indicating that it did not intend for Intelsat to provide “additional services” after the STA expires. The Bureau stated that, after expiration of the STA, “Intelsat North America must discontinue providing these services unless it is no longer subject to the prohibition under the ORBIT Act for providing such services.”<sup>26</sup> As noted

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<sup>22</sup> Sen Rep. No. 106-100 (1999).

<sup>23</sup> Application for Review at 23.

<sup>24</sup> Loral-Intelsat Order at ¶ 65.

<sup>25</sup> *Id.* (emphasis added).

<sup>26</sup> *Id.* at ¶ 76.



earlier, the Bureau determined that Intelsat no longer will be subject to Section 602(a) only when Intelsat conducts an IPO in accordance with the Act.<sup>27</sup>

The foregoing demonstrates that the Bureau did not intend for its grant of STA to become subject to extension, nor to serve as a vehicle for Intelsat to provide “additional services” to customers during the pendency of Intelsat’s IPO. The Bureau should remain faithful to its stated intentions, and require Intelsat on September 13, 2004 to cease providing “additional services” until such time as Intelsat fulfills its remaining obligations under the ORBIT Act.

#### **IV. INTELSAT FAILS TO ASSERT CONVINCING REASONS FOR THE BUREAU TO EXTEND STA.**

Intelsat asserts several public interest rationales for the Bureau to grant the Extension Request. Notwithstanding the fact that an appeal to the public interest cannot justify an otherwise unlawful grant of STA,<sup>28</sup> Intelsat’s arguments are unpersuasive.

First, Intelsat argues that an extension of the STA is required to protect the interests of Loral’s former customers, whom Intelsat asserts might otherwise be required to procure alternate satellite capacity on terms less favorable than they currently enjoy. Likewise, Intelsat argues that extension of the STA is required to protect end-users, whose service Intelsat argues might otherwise be disrupted if Loral’s former customers cannot procure replacement capacity by September 13, 2004. However, these concerns already are accounted for by the Bureau; indeed, they are the very concerns that the existing STA is designed to address.

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<sup>27</sup> *Id.* at ¶¶ 59-61. “Special Temporary Authority does not extend to additional services that are not currently being provided by Loral, and does not authorize Intelsat North America to acquire new customers that would provide such services.” *Id.* at ¶ 65.

<sup>28</sup> 47 U.S.C. § 309(f) authorizes the grant of STA only where there are extraordinary circumstances requiring temporary operations in the public interest *and* where such STA is otherwise authorized by law.

As noted above, the Bureau granted STA to provide a transition period for Loral's former customers to procure alternate satellite capacity on acceptable terms. In order to ensure that these customers were aware of their transition responsibilities in time to procure alternate capacity, the Bureau required Intelsat to notify these customers five months in advance of the expiration date of the STA.<sup>29</sup> Intelsat fails to demonstrate that this five-month period is inadequate to accomplish the Bureau's ends. To the contrary, Intelsat observes that Loral's former customers require only two or three months of advance notice in order to transfer their services to another system.<sup>30</sup> Based on this assessment, the timeframe of the existing STA should be ample to protect these customers.

Moreover, Intelsat fails to offer evidence that even a single one of Loral's former customers is experiencing difficulty in procuring acceptable replacement capacity. Even with respect to customers serving Hawaii and Alaska, Intelsat fails to demonstrate that other satellite operators with satellites serving those locations, including SES AMERICOM, cannot meet the needs of such customers.<sup>31</sup> In sum, Intelsat's arguments amount to mere supposition; they cannot serve as a valid basis to extend STA.

Finally, Intelsat argues that it would be unfair for the Bureau to deny an extension of STA, and thereby to force customers to contract with alternate providers of satellite capacity, because the Commission might later rule, in the Application for Review proceeding, that the

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<sup>29</sup> The Bureau required Intelsat to inform its customers of such STA on April 16, 2004, 30 days after the consummation of the Loral-Intelsat transaction. 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*, Supplemental Order, DA-04-612, ¶ 5 (rel. Mar. 4, 2004).

<sup>30</sup> See Extension Request at 4.

<sup>31</sup> SES AMERICOM presently has three satellites capable of providing DTH service to Alaska and/or Hawaii: AMC-1 (103° W.L.), AMC-3 (87° W.L.), and AMC-4 (101° W.L.).

Bureau should have granted Intelsat full licensing authority to offer “additional services” to its customers. This argument relies upon a fundamental mischaracterization of the Application for Review proceeding.

As explained earlier, the scope of SES AMERICOM’s Application for Review is limited to the question of whether the Bureau was authorized to grant STA in light of the Bureau’s determination that Section 602(a) of the ORBIT Act prohibits the Commission from allowing Intelsat to offer “additional services” in advance of Intelsat’s IPO. The Application for Review in no way is concerned with the issue of whether the Bureau was mistaken in not granting full licensing authority to Intelsat to provide “additional services” on a going-forward basis. The mere fact that Intelsat has floated this argument during the course of the Application for Review proceeding does not make this argument a proper object of the Commission’s consideration. To the contrary, Intelsat’s argument is extraneous to SES AMERICOM’s Application for Review, and it both is procedurally defective and untimely as an independent challenge to the Loral-Intelsat Order.<sup>32</sup> Intelsat therefore is wrong to assert that the Application for Review proceeding could result in Intelsat’s receiving full licensing authority to provide “additional services.” There is no reason for the Bureau to guard against such a scenario by granting an extension of STA.

**V. THE EXTENSION REQUEST SHOULD BE REFERRED TO THE FULL COMMISSION FOR CONSOLIDATION WITH THE APPLICATION FOR REVIEW PROCEEDING.**

Although SES AMERICOM seeks a prompt denial of the Extension Request, SES AMERICOM also recognizes that it may be imprudent for the Bureau to contemplate extending

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<sup>32</sup> Intelsat failed to raise its challenge to the Loral-Intelsat Order as either a separate petition for reconsideration or an application for review. Moreover, Intelsat failed to raise its challenge within 30 days of the release of Loral-Intelsat Order. Accordingly, Intelsat’s challenge is not cognizable under the Rules of the Commission. *See* 47 C.F.R. § 1.104.

the STA while the Commission separately is determining the validity of the STA. In order to avoid the confusion that would arise should the Bureau grant the Extension Request in advance of the Commission's ruling on the Application for Review, SES AMERICOM respectfully requests, as an alternative to denial, that the Bureau exercise its discretion to refer this proceeding to the Commission for consolidation with the Application for Review.

## VI. CONCLUSION

For the foregoing reasons, SES AMERICOM respectfully requests that the Commission either deny Intelsat's Extension Request, or refer the Extension Request to the Commission for consolidation with SES AMERICOM's pending Application for Review.

Respectfully submitted,

SES AMERICOM, Inc.

By: 

Nancy Eskenazi  
Vice President & Associate General Counsel  
SES AMERICOM, INC.  
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*Attorneys for SES AMERICOM, Inc.*

July 19, 2004

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

In the Matter of	)		
	)		
Intelsat North America LLC,	)	File No.	SAT-STA-20040615-00116
	)		
Request for Extension of	)		
Special Temporary Authority	)		

**DECLARATION**

Nancy Eskenazi hereby states as follows:

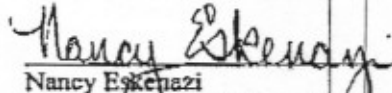
(1) I am Vice President and Associate General Counsel of SES AMERICOM, Inc.;

(2) I have read the foregoing Petition to Deny in the above-referenced matter.

The facts stated therein are true and correct to the best of my knowledge, information, and belief.

(3) I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of July, 2004.



Nancy Eskenazi  
Vice President and Associate General Counsel  
SES AMERICOM, Inc.

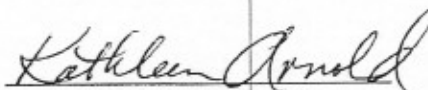
## CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2004, I caused a copy of the foregoing Petition to Deny to be served by U.S. First-Class Mail, postage prepaid, on the following:

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Kathleen Arnold