

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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-20040615-0016
)
)

To: The Commission

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Policy Branch
International Bureau

**REPLY OF SES AMERICOM TO INTELSAT'S
OPPOSITION TO APPLICATION FOR REVIEW**

SES AMERICOM, Inc. ("SES AMERICOM"), by its attorneys and pursuant to Section 1.115 of the Rules of the Federal Communications Commission (the "FCC" or the "Commission"),¹ hereby submits this Reply to the Opposition of Intelsat North America LLC ("Intelsat")² to SES AMERICOM's Application for Review.³ Intelsat's Opposition fails to present a single compelling justification for the order of the International Bureau (the "Bureau") as to which SES AMERICOM is seeking review.⁴ The Bureau's order extended until March 14, 2005, a grant of special temporary authority ("STA") to Intelsat to continue providing "additional services," as defined in the ORBIT Act.⁵

Most notably, Intelsat fails to address the glaring inconsistency between the Bureau's decision to extend the STA and the Bureau's initial rationale for granting the STA,

¹ 47 C.F.R. § 1.115.

² Intelsat North America LLC, Opposition to Application for Review, File No. SAT-STA-20040615-0016 (filed Sep. 14, 2004) (the "Opposition").

³ SES AMERICOM, Inc., Application for Review, File No. SAT-STA-20040615-0016 (filed Aug. 30, 2004) (the "Application for Review").

⁴ *Intelsat North America, LLC Request for Extension of Special Temporary Authority*, Order, DA-042445 (July 30, 2004).

⁵ Open-market Reorganization for the Betterment of International Telecommunications, Pub. L. No. 106-180, 114 Stat. 48 (2000), as amended, Pub. L. No. 107-233 § 1, 116 Stat. 1480, codified at 47 U.S.C. § 646 *et seq.* (2002) (the "ORBIT Act").

which was “solely for the purpose of allowing these [Loral’s former DTH] customers time to transition to other providers.”⁶ Intelsat’s silence on this issue is understandable, given that it has profited handily from the Bureau’s decision to allow Intelsat to continue offering services that the Bureau previously said that Intelsat must stop offering after September 13, 2004. However, the Bureau’s decision demands an explanation because the order granting STA -- regardless of its legitimacy in light of SES AMERICOM’s initial and still-pending Application for Review⁷ -- provides no basis whatsoever for an extension.

Rather than attempt to reconcile the inconsistency of the Bureau’s actions, Intelsat defends the STA extension on other grounds. First, Intelsat argues that the STA extension was necessary to preserve continuity of service and to prevent contractual disadvantages to customers.⁸ However, this defense fails to account for the fact that, by Intelsat’s own measure, as well as that of the Bureau, the initial 180-day period of the STA was ample for Loral’s former customers to secure adequate replacement capacity.⁹ Moreover, Intelsat’s warning of potential harm to customers remains purely speculative; Intelsat has not cited a single example of a

⁶ *Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), and Intelsat North America, LLC, Applications for Consent to Assignment of Space Station Authorizations and Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act of 1934, as Amended, Order and Authorization, DA 04-357, at ¶ 65 (Feb. 11, 2004) (the “Loral-Intelsat Order”)* (emphasis added).

⁷ SES AMERICOM, Inc., Application for Review, File Nos. SAT-ASG-20030728-00138/00139 (filed March 12, 2004) (the “Initial Application for Review”).

⁸ Opposition at 6.

⁹ In Intelsat’s Request for Extension of Special Temporary Authority, File No. SAT-STA-20040615-00116 (filed June 15, 2004), Intelsat noted that its customers typically require only two or three months to procure replacement capacity. *Id.* at 4. The Bureau, however, required Intelsat to notify its customers five months in advance of the STA expiration date. Loral Satellite, Inc. (Debtors-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 (Mar. 4, 2004).*

customer who experienced difficulty in finding replacement capacity during the initial 180-day period of the STA, or even who complained to Intelsat about the 180-day transition period.¹⁰

Intelsat further defends the STA extension as preventing customers from prematurely abandoning their relationships with Intelsat, in case the Commission later rules -- in the context of resolving the Initial Application for Review -- that Intelsat is entitled to full licensing authority under the ORBIT Act to provide "additional services."¹¹ This argument also is unavailing.

Even assuming *arguendo* that the Commission possesses the requisite discretion to rule on matters, such as full licensing authority for Intelsat, that were not properly raised by any party,¹² the exercise of this discretion nonetheless would be inappropriate. While Intelsat has attempted to mount a collateral challenge to the continued applicability of Section 602(a) of the ORBIT Act, this challenge was neither timely nor properly raised under the Rules of the

¹⁰ Intelsat itself concedes that its customers might be able "to obtain alternative capacity." Opposition at 7. As SES AMERICOM has pointed out in the instant proceeding, such alternative capacity is available on its and other satellite providers' networks. See SES AMERICOM Petition to Deny, File No. SAT-STA-20040615-0016, at 8 & n.31 (filed July 19, 2004).

¹¹ Opposition at 4.

¹² Although Intelsat argues that the Commission has had broad discretion to consider matters other than those specifically raised in an application for review, Opposition at 5 & n.16, the cases that Intelsat cites fail to support this argument. In *S&L Teen Hospital Shuttle*, 16 FCC Rcd. 8153 (2001), the Commission reviewed the Bureau's decision *de novo* because the applicant requested this in the application for review. In *RCA Global Communications, Inc.*, 87 F.C.C.2d 526 (1981), the Commission did not engage in a *de novo* review of the record, but merely referenced an instance in which it did so; even in the cited instance, moreover, the Commission reviewed the record *de novo* only to ensure that the challenged decision was not improper on grounds other than those specifically raised by the applicant, see *RCA Global Communications, Inc.*, 86 F.C.C.2d 338 (1981). Intelsat cites no instance in which the Commission has reviewed the record *de novo* in order to address a collateral challenge raised by a party that *opposed* an application for review.

Commission.¹³ Moreover, the Bureau already has spoken clearly as to the proper application of Section 602(a) to Intelsat.


In the Loral-Intelsat Order, the Bureau declared that Section 602(a) “specifically prohibits any successor entity of INTELSAT from expanding to provide certain additional services in the transition period prior to privatization,” that Intelsat cannot be “privatized” until it completes its IPO, and that therefore the “ORBIT Act prohibits the provision of ‘additional services’ until Intelsat has completed its IPO.”¹⁴ The Commission has not been asked by SES AMERICOM -- the only party that sought review of the Loral-Intelsat Order -- to review or reverse this Bureau finding.

CONCLUSION

For the foregoing reasons, the FCC should reject Intelsat’s Opposition and grant the relief requested in the Application for Review.

Respectfully submitted,

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September 29, 2004

¹³ See Application for Review at 7.

¹⁴ Loral-Intelsat Order at ¶¶ 58, 60-61, 64.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of September 2004, I caused a copy of the foregoing Reply to Intelsat's Opposition to Application for Review to be served by U.S. First-Class Mail, postage prepaid, on the following:

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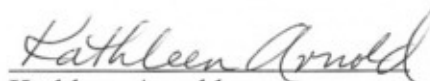
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