

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

AC BidCo LLC

Application for Special Temporary
Authority

File No. SES-STA-20170208-00140

Amendment to Application for
Modification of Blanket License for
Operation of Ku-Band Transmit/Receive
Earth Stations Aboard Aircraft

File No. SES-AFS-20170208-00139

REPLY OF INTELSAT LICENSE LLC

Intelsat License LLC (“Intelsat”) hereby replies to AC BidCo LLC’s (“AC BidCo”) response¹ to Intelsat’s objection² to the above captioned requests submitted by AC BidCo seeking temporary and permanent authority to communicate with the ARSAT-2 satellite with up to 200 earth stations aboard aircraft terminals (“AC BidCo Applications”).³ In its response, AC BidCo fails to justify why the Federal Communications Commission (“FCC” or “Commission”) should not deny the AC BidCo Applications until such time as the Argentine government upholds its obligation of reciprocal and prompt treatment of U.S.-licensed satellites seeking authorization to access the Argentine market.

AC BidCo claims that Intelsat’s arguments alleging that the Argentine administration has failed to timely act on Intelsat applications to serve Argentina have “no bearing on the

¹ See *Response of AC BidCo LLC*, File Nos. SES-STA-20170208-00140, SES-AFS-20170208-0013 (filed Feb. 23, 2017) (“AC BidCo Response”).

² See *Objection of Intelsat License LLC*, File No. SES-STA-20170208-00140, SES-AFS-20170208-0013 (filed Feb. 16, 2017) (“Intelsat Objection”).

considerations relevant to the Commission’s evaluation of the AC BidCo Applications.”⁴ The nexus between these matters, however, is quite clear. The FCC has a long-standing policy regarding market access that is based on reciprocal treatment by other countries of applications of U.S. operators seeking foreign market access. That policy – simply put – says that satellites licensed by World Trade Organization (“WTO”) member countries should be granted U.S. market access based on a rebuttable presumption that WTO member countries accord similar access to U.S.-licensed satellites.⁵ The FCC’s policy is based on the objective that “[p]roviding opportunities for foreign-licensed satellites to deliver services in the country should bring U.S. consumers the benefits of enhanced competition and afford greater opportunities for U.S. companies to enter previously closed foreign markets, thereby stimulating a more competitive global satellite services market.”⁶

The Commission’s grant of market access for the ARSAT-2 satellite,⁷ therefore, was predicated on the agency’s good faith belief that Argentina would uphold its international obligations for market access – particularly in light of Argentina’s explicit “promise to give effective treatment to the actions urged by [satellite] operators belonging [to] WTO member countries.”⁸ Argentina’s failure to provide such reciprocal treatment, despite its assurance to the

⁴ AC BidCo Response at 3.

⁵ *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, Report and Order, IB Docket No. 96-111, 12 FCC Rcd 24094, ¶ 30, 39-40 (1997) (“DISCO II Order”).

⁶ *Id.* at ¶ 10.

⁷ *See Policy Branch Information; Actions Taken*, Report No. SAT-01175, File No. SAT-PPL-20160304-00024 (July 22, 2016) (Public Notice).

⁸ Letter from Dr. Oscar Aguad, Ministerio de Comunicaciones, Argentina, to Ms. Marlene H. Dortch, FCC, File No. SAT-PPL-20160304-00024 (July 4, 2016) (“Ministry Letter”).

contrary, is thus a relevant consideration to AC BidCo's request to allow U.S. earth stations to access an Argentine satellite to be used for services in the United States.

AC BidCo further claims that "Intelsat did not challenge the Commission's decision [granting ARSAT-2 U.S. market access] when it was issued and has not presented any new evidence that would warrant a different conclusion now."⁹ To the contrary, Intelsat joined the Satellite Industry Association's filing expressing concern about granting ARSAT-2 U.S. market access.¹⁰ Intelsat did not further challenge the FCC's ARSAT-2 market access decision based on specific representations made by the Argentine regulator on the record that it would "take prompt action ... to ensure ... symmetrical treatment to foreign operators, both in its policies and in practice."¹¹ We now know, almost eight months later, that those representations appear not to have been made in good faith given that Intelsat and other U.S. satellite operators continue to have long-standing market access requests pending before the Argentine Administration. The eight-month inaction on the part of the Argentine Administration to grant the requests of U.S. satellite operators to serve Argentina, which have been pending with the Argentine authorities for several years, is in direct contravention to the representations made in the ARSAT-2 market access proceeding and constitutes "new evidence" to justify a "different conclusion" now with respect to access to ARSAT-2 by U.S. earth stations.¹²

⁹ AC BidCo Response at 3.

¹⁰ See Letter from Tom Stroup, President of the Satellite Industry Association, to Ms. Marlene H. Dortch, FCC, File No. SAT-PPL-20160304-00024 (June 27, 2016).

¹¹ Ministry Letter.

¹² The FCC revisits market access determinations when presented with changed circumstances. See, e.g., 47 C.F.R. 25.137(g) (changes in control of non-US licensed satellite operators provide a basis for the FCC to consider "whether the proposed transaction affects any of the considerations [it] made when [it] allowed the satellite operator to enter the U.S. market").

Finally, AC BidCo claims that grant of its application is consistent with the U.S.-Argentina bilateral agreement.¹³ The bilateral agreement, however, obligates both the United States *and Argentina* to provide reciprocal market access.¹⁴ Given that Argentina has failed to meet its obligations under the bilateral agreement, it would not be inconsistent for the Commission to defer action on the AC BidCo Applications pending Argentina’s compliance with its obligation to grant the long-pending U.S. satellite operators’ market access requests.

Accordingly, for the reasons set forth herein, the FCC should deny the AC BidCo Applications seeking authority to communicate with the ARSAT-2 satellite until such time as Argentina satisfies its obligation to accord reciprocal and prompt treatment to U.S.-licensed satellites seeking to serve the Argentine market.¹⁵ As previously noted, once those obligations have been met, Intelsat would have no further objection to grant of the AC BidCo Applications.

¹³ AC BidCo Response at 4.

¹⁴ *Protocol Concerning the Transmission and Reception of Signals From Satellites for the Provision to Direct-to-Home Satellite Services and Fixed-Satellite Services in the United States of America and the Argentine Republic* (June 5, 1998) at 4.

¹⁵ AC BidCo suggests that, given the Commission’s earlier grant of market access to ARSAT-2, denial of the AC BidCo Applications, as Intelsat requests, could not “be squared with the Commission’s obligation to accord similar treatment to similarly-situated applicants.” AC BidCo Response at 4. To the extent that the Commission is concerned about this, it could simply revoke its prior grant of market access to ARSAT-2. Intelsat believes, however, that denial of new applications – such as the AC BidCo Applications – until such time as Argentina provides reciprocal access, is a better remedy.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Derrick Johnson, do hereby certify that on this 27th day of February, 2017, a true copy of the foregoing "Reply of Intelsat License LLC" is being sent by electronic mail, to the following:

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