

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

In the Matter of)	File Nos:
Applications of Intelsat LLC for Authority)	SAT-A/O-20000119-00002 to
to Operate, and Further to Construct,)	SAT-A/O-20000119-00018;
Launch and Operate C-band and Ku-band)	SAT-AMD-20000119-00029 to
Satellites that Form a Global Communications)	SAT-AMD-20000119-00041;
System in Geostationary Orbit)	SAT-LOA-20000119-00019 to
		SAT-LOA-20000119-00028

ORDER ADOPTING PROTECTIVE ORDER

Adopted: January 26, 2001

Released: January 29, 2001

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we require Intelsat LLC. to disclose certain information it claims to be confidential pursuant to the protective order included as Attachment A to this Order. We also extend the deadline for filing reply comments and responses to reply comments in the above-captioned proceeding. By this action, we protect the confidentiality of presumptively sensitive business information, while enabling other parties to participate adequately in this rulemaking proceeding.

II. BACKGROUND

2. On August 8, 2000, the Commission released a *Licensing Order* granting applications of Intelsat LLC for licenses to operate 17 existing C-band and Ku-band satellites presently owned and operated by the International Telecommunications Satellite Organization (INTELSAT).¹ The *Licensing Order* also granted Intelsat LLC's applications requesting licenses to construct, launch, and operate 10 planned satellites and to relocate, among 22 orbit locations, certain currently operating satellites upon the launch of the 10 planned satellites.²

3. The *Licensing Order* stated that the licenses will become effective only upon privatization when Intelsat LLC is no longer owned and controlled by an international organization, and that operating authority would be conferred upon Intelsat LLC when INTELSAT transfers its satellites and associated assets to Intelsat LLC and its ITU network filings to the U.S. registry.³ The *Licensing Order* also

¹ *Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, Memorandum Opinion Order and Authorization, FCC 00-287 (rel. Aug. 8, 2000) (*Licensing Order*), Order on Reconsideration, FCC 00-437, (rel Dec. 14, 2000) (*Reconsideration Order*).

² *Id.*

³ *Licensing Order* at para. 38.

required Intelsat LLC to supplement its application following the November 2000 Assembly of Parties decision to provide the details of INTELSAT's privatization, as reflected in the Assembly decision.⁴ The supplemental filings are necessary for the Commission to determine whether INTELSAT's privatization is in compliance with the Open-Market Reorganization for the Betterment of International Telecommunications Act (the "ORBIT Act").⁵

4. On December 18, 2000 Intelsat LLC submitted its Supplemental Information, including the request for confidential treatment of Exhibits 4 and 5 of its filing (Shareholders Agreement and By-laws). The Supplemental Information was placed on Public Notice on December 22, 2000.⁶ On December 26, 2000 PanAmSat submitted an opposition to Intelsat LLC's request for confidential treatment. On January 3, 2001, Intelsat LLC submitted its reply and opposition to PanAmSat's opposition. On January 11, 2001, PanAmSat submitted a Motion to Defer Comment Date and require the Production of Additional Information. Intelsat LLC responded to PanAmSat's motion on January 23, 2001.

III. DISCUSSION

A. Request for Confidentiality and Motion for Submission of Additional Documents

5. We provide herein that parties seeking access to the information in the draft Shareholders Agreement and By-laws may have such access, provided they execute the protective order attached as Appendix A to this Order. As the Commission explained in the *Confidential Information Policy Order*, it generally does not afford confidential treatment to material submitted in licensing proceedings and expects that the need for confidential treatment would be relatively rare.⁷ Nevertheless, the Commission did acknowledge that a party should not necessarily be required to forego the protection of arguably confidential information as a condition of obtaining a license.⁸

6. PanAmSat argues that the documents for which Intelsat LLC seeks confidentiality are of a kind that are routinely filed with the Commission and that Intelsat LLC's claims regarding potential harm fall short of the showing that it would have to make to secure confidential status.⁹ Intelsat LLC argues that placing the documents in question on the public record at this time is not necessary for a finding of

⁴ *Licensing Order* at paras. 38 and 161.

⁵ Pub. L. 106-180, 114 Stat. 48 (2000). The licenses granted to Intelsat LLC in the *Licensing Order* were conditioned on a finding of compliance with the requirements of the ORBIT Act. *Licensing Order* at para. 160.

⁶ Public Notice Report No. SPB-161, December 22, 2000 (as corrected in Report No. SAT-00063 (January 5, 2000)).

⁷ *Confidential Information Policy Order*, 13 FCC Rcd 24839 (1998) para. 34.

⁸ *Id.*

⁹ Opposition to Request for Confidential Treatment, PanAmSat Corporation, (Dec. 26, 2000).

compliance with the ORBIT Act¹⁰ Intelsat LLC acknowledges that, when finalized, the documents will be publicly available.¹¹ It argues, however, that they merit protection under applicable precedent relating to previous disclosures or standards established to prevent public disclosure of the documents in the proceeding currently being undertaken by the European Commission.(EC)¹²

7. Although the Shareholder's Agreement and By-laws are documents that will be publicly available when complete, they have not been publicly released by INTELSAT in their present form. It is long standing Commission policy that internal, non-public INTELSAT documents typically qualify for confidential treatment.¹³ However, although the Bureau cannot prejudge what documents will be decisional for the Commission when it reviews the Supplemental Information, the documents in question appear to be important to the Commission's ability to determine whether Intelsat LLC has met the requirements of the ORBIT Act. While we are not bound by what the European Commission has decided with respect to these documents, we understand that the EC has responded to Intelsat LLC's request for confidential treatment by allowing interested third parties to view documents submitted by Intelsat LLC but only upon signature of a confidentiality agreement. We conclude that, while the Shareholders Agreement and By-laws submitted by Intelsat LLC with a request for confidentiality are still in a form that appears to be commercially sensitive, it is in the public interest to allow interested parties to view them for the purposes of commenting in this proceeding. This proceeding concerns compliance by Intelsat LLC with, among other things, the ORBIT Act. The actions, reflected in the documents at issue, while not absolutely final, are sufficiently developed to be useful to interested parties commenting on the Intelsat LLC application and to the Commission in making determinations under the ORBIT Act.

8. In its January 11 Motion, PanAmSat argues that Intelsat LLC should file all portions of any exhibit that relate in any way to privatization, as well as fifteen documents bearing upon privatization that were identified in the Assembly of Parties' record of decisions. PanAmSat also argues that Intelsat LLC should be required to file any relevant documents relating to privatization decisions arrived at in the December, 2000 Board of Governors' meeting and its December, 2000, Distribution Strategy Drafting Group (DSDG) meeting.¹⁴

9. We do not agree that all sections of all documents relating to privatization need to be submitted to the Commission. Through its participation as part of the U.S. Party to INTELSAT, and through the party/signatory relationship, the Commission has had access to the documents referenced by PanAmSat. Based on our review of the various documents, we conclude that only some of them fall within the

¹⁰ Reply to Opposition to Request for Confidential Treatment (Jan. 3, 2001), pp. 2 and 5.

¹¹ Request for Confidential Treatment (Dec. 18, 2000), fn. 7.

¹² Request for Confidential Treatment pp. 3-4. The EC gave public notice on January 12, 2001 and invited comments, pursuant to Article 4 of Council Regulation No. 17, on INTELSAT's notification of its proposed restructuring. See Official Journal of European Communities, Case Comp/c/137.995, January 12, 2001.

¹³ *Participation in INTELSAT's Planned Domestic Services*, 3 FCC Rcd 7108, 7109 (rel. Dec. 15, 1988).

¹⁴ Motion to Defer Comment Date and Require the Production of Additional Information, (Jan. 11, 2001), p. 5.

category of documents that must be submitted to the Commission for purposes of this proceeding. The ORBIT Act does not speak to all elements of INTELSAT's privatization. For instance, decisions made regarding payment of staff or future service offerings for the privatized company or progress reports on the privatization efforts are all items that relate to privatization. Input documents pertaining to these decisions, however, do not have to be reviewed by the Commission in order to address ORBIT Act compliance. Moreover, it is not the input documents or the debates on which the Commission will make its findings; it is the decisions. It is only in the unique circumstances, such as the one before us relating to the Shareholders Agreement and By-laws, that the Commission might need to consider documents that are not final decisions.

10. In the Order on Reconsideration of the *Licensing Order*, the Commission required Intelsat LLC to provide information as to the post privatization distribution arrangements.¹⁵ We now require Intelsat LLC to submit, pursuant to the most applicable Commission rules, the most recent versions of the Novation Agreement, Distribution Agreement, and any other relevant documents on the distribution issue. Intelsat LLC should file these documents within seven days following the March 2001 INTELSAT Board of Governors meeting where they are expected to be reviewed. We recognize that these documents may not be in final form and will make them subject to the same Protective Order adopted today. Furthermore, we recognize that such documents might include information, such as specific pricing terms, that might be both commercially sensitive and beyond the scope of the Commission's review. We will therefore accept a redacted version of those documents.

11. Consequently, pursuant to the policy set forth in the Commission's *Confidential Information Policy Order*, we require Intelsat LLC to provide copies of its complete Supplemental Information to all parties participating in this proceeding and executing the Protective Order attached to this Order. We do not require Intelsat LLC to file unredacted versions of its Supplemental Information, nor do we require Intelsat LLC to submit all of the documents referenced in the Assembly of Parties decision. We do, however, require Intelsat LLC to submit its Novation Agreement, Distribution Agreement, and any other appropriate document relating to the distribution issue as discussed above.

B. Pleading Cycle

12. Comments were due on January 23, 2001, reply comments on February 2, and responses to reply comments on February 7. In order to give interested parties adequate opportunity to respond to the information in Intelsat LLC's Supplemental Filing, we grant PanAmSat's request to extend the pleading cycle. Comments are now due on or before February 22, 2001, reply comments on or before March 5, 2001, and responses to reply comments on or before March 12, 2001.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that we will disclose the information that Intelsat LLC has requested to keep confidential only to parties who have executed the Protective Order adopted attached to this Order.

14. IT IS FURTHER ORDERED that interested parties in this proceeding MAY FILE comments on or before February 22, 2001, reply comments on or before March 5, 2001, and responses to reply comments

¹⁵ *Reconsideration Order* at para. 55.

on or before March 12, 2001.

15. IT IS FURTHER ORDERED that Intelsat LLC submit certain documents regarding novation and distribution of services within seven days following the March 2001 Board of Governors meeting.

16. IT IS FURTHER ORDERED THAT PanAmSat's Motion is GRANTED IN PART and DENIED IN PART.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau

ATTACHMENT A

Before the
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System in Geostationary Orbit)	SAT-LOA-20000119-00028

PROTECTIVE ORDER

Adopted:

Released:

This Protective Order is intended to facilitate and expedite the review of documents containing trade secrets and commercial or financial information obtained from Intelsat LLC and which is privileged or confidential. It reflects the manner in which "Confidential Information," as that term is defined herein, is to be treated. This Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 C.F.R. § 0.442.

1. Definitions.

a. Authorized Representative. "Authorized Representative" shall have the meaning set forth in paragraph seven.

b. Commission. "Commission" means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.

c. Confidential Information. "Confidential Information" means (i) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith constitutes trade secrets or commercial or financial information which is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4); (ii) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith falls within the terms of Commission orders designating the items for treatment as Confidential Information; and (iii) information that the Commission has allowed to be examined off-site and that otherwise complies with the requirements of this paragraph. Confidential Information includes additional copies of and information derived from Confidential Information.

d. Declaration. "Declaration" means Appendix A to this Protective Order.

- e. Reviewing Party. "Reviewing Party" means any interested party participating in the licensing application proceeding initiated with Applications of Intelsat LLC for Authority to Operate and Further to Construct, Launch and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, Memorandum Opinion Order and Authorization, FCC 00-287 (released August 8, 2000).
- f. Submitting Party. "Submitting Party" means Intelsat LLC.

2. Claim of Confidentiality. The Submitting Party may designate information as "Confidential Information" consistent with the definition of that term in Paragraph 1 of this Protective Order. The Commission may, *sua sponte* or upon petition, pursuant to 47 C.F.R §§ 0.459 & 0.461, determine that all or part of the information claimed as "Confidential Information" is not entitled to such treatment.

3. Procedures for Claiming Information is Confidential. Confidential Information submitted to the Commission shall be filed under seal and shall bear on the front page in bold print, "CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION - DO NOT RELEASE." Confidential Information shall be segregated by Intelsat LLC from all non-confidential information submitted to the Commission. To the extent a document contains both Confidential Information and non-confidential information, Intelsat LLC shall designate the specific portions of the document claimed to contain Confidential Information and shall, where feasible, also submit a redacted version not containing Confidential Information.

4. Storage of Confidential Information at the Commission. The Secretary of the Commission or other Commission staff to whom Confidential Information is submitted shall place the Confidential Information in a non-public file. Confidential Information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

5. Access to Confidential Information. Confidential Information shall only be made available to Commission staff, Commission consultants and to counsel to the Reviewing Party, or if the Reviewing Party has no counsel, to a person designated by the Reviewing Party. Before counsel to the Reviewing Party or such other designated person designated by the Reviewing Party may obtain access to Confidential Information, counsel or such other designated person must execute the attached Declaration. Consultants under contract to the Commission may obtain access to the Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement or if they execute the attached Declaration.

6. Counsel to the Reviewing Party or such other person designated pursuant to Paragraph 5 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of paragraph 7 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Order. In addition, before Authorized

Representatives may obtain access to Confidential Information, each Authorized Representative must execute the attached Declaration.

7. Authorized Representatives shall be limited to:
 - a. Counsel for the Reviewing Parties to this proceeding, including in-house counsel actively engaged in the conduct of this proceeding, and their associated attorneys, paralegals, clerical staff and other employees, to the extent reasonably necessary to render professional services in this proceeding;
 - b. Specified persons, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding; or
 - c. Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

8. Inspection of Confidential Information. Confidential Information shall be maintained by Intelsat LLC for inspection at two or more locations, at least one of which shall be in Washington, D.C. Inspection shall be carried out by Authorized Representatives upon reasonable notice (generally not to exceed one business day) during normal business hours.

9. Copies of Confidential Information. Intelsat LLC shall provide a copy of the Confidential Material to Authorized Representatives upon request and may charge a reasonable copying fee not to exceed twenty-five cents per page. Authorized Representatives may make additional copies of Confidential Information but only to the extent required and solely for the preparation and use in this proceeding. Authorized Representatives must maintain a written record of any additional copies made and provide this record to Intelsat LLC upon reasonable request. The original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times. Authorized Representatives having custody of any Confidential Information shall keep the documents properly secured at all times.

10. Filing of Declaration. Counsel for the Reviewing Party shall provide to Intelsat LLC and the Commission with a copy of the attached Declaration for each Authorized Representative within five (5) business days after the attached Declaration is executed.

11. Use of Confidential Information. Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review) unless otherwise ordered by the Commission or a court of competent jurisdiction, shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Order. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.

12. Pleadings Using Confidential Information. Intelsat LLC and the Reviewing Party may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

- a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings and filed under seal;
- b. The portions containing or disclosing Confidential Information must be covered by a separate letter referencing this Protective Order;
- c. Each page of any Party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked: "Applications of Intelsat LLC for Authority to Operate and Further to Construct, Launch and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, FCC 00-287;" and
- d. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, Intelsat LLC, and those Reviewing Parties that have signed the attached Declaration. Such confidential portions shall be served under seal. They shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to Intelsat LLC and an opportunity to comment on such proposed disclosure). If Intelsat LLC or the Reviewing Party file a pleading containing Confidential Information, they shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. Intelsat LLC or the Reviewing Party may provide courtesy copies of pleadings containing Confidential Information to Commission staff so long as the notation required by subsection c of this paragraph is not removed.

13. Violations of Protective Order. Should the Reviewing Party, after it has properly obtained access to Confidential Information under this Protective Order, violate any of its terms, it shall immediately convey that fact to the Commission and to Intelsat LLC. Further, should such violation consist of improper disclosure or use of Confidential Information, the Reviewing Party shall take all necessary steps to remedy the improper disclosure or use. The Reviewing Party shall also immediately notify the Commission and Intelsat LLC, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information through any such disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to Intelsat LLC at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.

14. Termination of Proceeding. Unless otherwise ordered by the Commission or a court of competent jurisdiction, within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of the Reviewing Party shall destroy or return to Intelsat LLC all Confidential Information as well as all copies and derivative materials made. Authorized Representatives shall certify in a writing served on the Commission and Intelsat LLC that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to the Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party and other attorney work product. Any confidential information contained in any copies of pleadings retained by counsel to the Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with paragraphs 9 and 11 of this Protective Order unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

15. No Waiver of Confidentiality. Disclosure of Confidential Information as provided herein shall not be deemed a waiver by Intelsat LLC of any privilege or entitlement to confidential treatment of such Confidential Information. The Reviewing Party, by viewing these materials: (a) agrees not to assert any such waiver; (b) agrees not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agrees that accidental disclosure of Confidential Information shall not be deemed a waiver of any privilege.

16. Additional Rights Preserved. The entry of this Protective Order is without prejudice to the rights of Intelsat LLC to apply for additional or different protection where it is deemed necessary or to the rights of the Reviewing Party to request further or renewed disclosure of Confidential Information.

17. Effect of Protective Order. This Protective Order constitutes an Order of the Commission and an agreement between the Reviewing Party executing the attached Declaration, and the Submitting Party, Intelsat LLC.

18. Authority. This Protective Order is issued pursuant to Sections 4(i) and 4(j) of the Communications Act as amended, 47 U.S.C. §§ 154(i), (j) and 47 C.F.R. § 0.457(d).

APPENDIX A

DECLARATION

In the Matter of)	File Nos:
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System in Geostationary Orbit)	SAT-LOA-20000119-00028

I, _____, hereby declare under penalty of perjury that I have read the Protective Order in the above referenced proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with Intelsat LLC, the Submitting Party.

 (Signed) (Date)

 (Printed name)

 (Representing)

 (Title)

 (Employer)

 (Address)

 (Phone)