

Intelsat License LLC
SES Americom, Inc.
Telesat Canada
C-Band Alliance

September 4, 2019

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: *Joint Objection to ACA Connects Request for Documents*, GN Docket No. 18-122, RM-11791, RM-11778

Dear Ms. Dortch,

On August 29, 2019, ACA Connects – America’s Communications Association (“ACA Connects”) filed Acknowledgments of Confidentiality and requested access to: (i) data submitted by satellite operators pursuant to the July 2018 Order in the C-band proceeding;¹ (ii) confidential and competitively sensitive information regarding the methods and tools Intelsat License LLC (“Intelsat”) and SES Americom, Inc. (“SES”) will use to groom existing customers out of spectrum coordinated for mobile use;² and (iii) Attachment B to the commitment letters sent by Intelsat and SES to their respective customers.³ As described further herein, Intelsat, SES, Telesat Canada (“Telesat”), and the C-Band Alliance (“CBA”) respectfully oppose receipt of Confidential and Highly Confidential Information by the individuals that ACA Connects has designated, aside from outside counsel, because there are serious questions as to whether some of these individuals are involved in “Competitive Decision-Making” and it does not appear that the remaining individuals qualify as “Outside Counsel of Record.”⁴

As an initial matter, neither item (ii) nor item (iii) have been filed with the Commission, either under the *Protective Order* or otherwise. Accordingly, Intelsat and SES are not in a position to provide them to ACA Connects now. However, if at any point Intelsat and/or SES do file either or both items, ACA Connects is invited to resubmit its request.

¹ *Expanding Flexible Use of the 3.7-4.2 GHz Band et al.*, GN Docket No. 18-122 et al., Order and Notice of Proposed Rulemaking, 33 FCC Rcd 6915 (2018)(“*C-band NPRM*”).

² Letter from Michele Farquhar, Counsel for the C-Band Alliance, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Nov. 19, 2018).

³ Letter from Henry Gola, Counsel for the C-Band Alliance, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Apr. 3, 2019).

⁴ Although ACA Connects only identified with specificity items (i), (ii), and (iii), the objections raised herein also would apply to requests for access to any other Confidential or Highly Confidential Information filed in this proceeding by Intelsat, SES, Telesat, and/or the CBA.

With respect to item (i), Intelsat, SES and Telesat intend to re-file under the *Protective Order* the data each submitted to the FCC pursuant to the July 2018 Order.⁵ Intelsat, SES and Telesat separately⁶ will provide authorized individuals representing ACA Connects access to the requested information within the timeframe and in the manner specified in the *Protective Order*.

However, Intelsat, SES, Telesat, and the CBA are unable to ascertain the extent to which Cartesian Inc. (“Cartesian”) employees Samuel Kornstein, Nikos Andrikogiannopoulos, Christopher Fergus, Simon Evans, Tunde Ibiyemi, or Vincent Merta are involved in “Competitive Decision-Making,” as that term is defined in the *Protective Order*. For example, those individuals all are identified as officers or consultants of Cartesian, whose website lists as a case study “Digital Satellite Strategy for a Broadcaster,” wherein “a broadcaster wanting to diversify its current portfolio of services was interested in evaluating the attractiveness of launching satellite services . . . [and] Cartesian produced a business plan for the launch of satellite; this involved quantifying the investment and the potential return, including savings from synergies with other platforms.”⁷ Based on these publicly available disclosures, Intelsat, SES, Telesat, and the CBA have serious questions as to whether individuals employed with or by Cartesian are truly divorced from “Competitive Decision-Making” as that term is used in the *Protective Order*. And if they are engaged in “Competitive Decision-Making,” then under the *Protective Order* they are ineligible to receive access to the documents in question.

Likewise, the *Protective Order* limits the disclosure of Highly Confidential Information to “Outside Counsel of Record” and other categories that are not relevant here. It is unclear whether Brian Hurley or Ross Lieberman, who are employees of ACA Connects, qualify as “Outside Counsel of Record” and treating them as such would raise competitive concerns. For example, ACA Connects proposes that “video programmers and [multichannel video programming distributors] would transition video programming backhaul from C-band delivery to terrestrial fiber video delivery.”⁸ This raises concerns that ACA Connects and its in-house counsel are involved with discussions about the viability of business decisions with respect to C-band service alternatives for members of ACA Connects.⁹

⁵ *Expanding Flexible Use of the 3.7-4.2 GHz Band et al.*, GN Docket No. 18-122 et al., *Protective Order*, DA 19-822 (rel. Aug. 26, 2019) (“*Protective Order*”); *C-band NPRM* at ¶¶ 23-24.

⁶ Access to SES’s materials should be coordinated through Michele Farquhar of Hogan Lovells US LLP. Access to Telesat’s materials should be coordinated through Joseph Godles of Goldberg, Godles, Wiener & Wright LLP.

⁷ Case Study: Digital Satellite Strategy for a Broadcaster, Cartesian, <https://www.cartesian.com/digital-satellite-strategy-for-a-broadcaster-2/> (last visited Sept. 3, 2019).

⁸ See Ex Parte Letter from Ross Lieberman *et al.*, Vice President, ACA Connects, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed July 2, 2019).

⁹ See *Protective Order* at ¶ 2 (“‘Competitive Decision-Making’ means a person’s activities, association, or relationship with any of his or her clients involving advice about or participation in the *relevant business decisions* or the *analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party* or with a Third-Party Interest Holder.”) (emphasis added).

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Accordingly, Intelsat, SES, Telesat, and the CBA respectfully object to the receipt of Confidential Information or Highly Confidential Information by the above listed individuals. Even if ACA Connects' in-house lawyers and business vendors are ineligible to review Confidential Information and Highly Confidential Information, ACA Connects will still have an adequate opportunity to participate in the proceeding and to access sensitive data through its outside law firm attorneys, whose designation is not challenged here.

Please contact the undersigned with any questions regarding this letter.

Sincerely,

/s/ Jennifer Hindin

Jennifer Hindin

Wiley Rein LLP

Counsel for Intelsat and the C-Band Alliance

/s/ Michele Farquhar

Michele Farquhar

Hogan Lovells LLP

Counsel for SES and the C-Band Alliance

/s/ Joseph Godles

Joseph Godles

Goldberg, Godles, Wiener & Wright LLP

Counsel for Telesat

Certificate of Service

I, Kathryn Dickerson, certify that a copy of the foregoing was served by electronic mail on the following on September 4, 2019:

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/s/ Kathryn Dickerson
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