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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

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In re: )  
 ) Chapter 11  
INTELSAT S.A., *et al.*,<sup>1</sup> )  
 ) Case No. 20-32299 (KLP)  
 )  
Debtors. ) (Jointly Administered)  
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**DEBTORS’ MOTION FOR ENTRY OF AN ORDER  
(A) AUTHORIZING AND APPROVING THE DEBTORS’ KEY  
EMPLOYEE INCENTIVE PLAN AND (B) GRANTING RELATED RELIEF**

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The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion (this “Motion”):<sup>2</sup>

**Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (respectfully, the “Order”), (a) authorizing and approving the Debtors’ proposed key employee incentive plan (the “KEIP”), (b) authorizing the Debtors to make payments to certain

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<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors’ claims and noticing agent at <https://cases.stretto.com/intelsat>. The location of the Debtors’ service address is: 7900 Tysons One Place, McLean, VA 22102.

<sup>2</sup> Capitalized terms used but not otherwise defined in this Motion shall have the meanings ascribed to them in the First Day Declaration or as later defined herein, as applicable.

management employees under the KEIP, if payments are earned, and (c) granting related relief. In support of this Motion, the Debtors submit the *Declaration of Zachary P. Georgeson in Support of Debtors' Motion for Entry of an Order (A) Authorizing and Approving the Debtors' Key Employee Incentive Plan and (B) Granting Related Relief* (the "Georgeson Declaration"), attached hereto as **Exhibit B**.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Eastern District of Virginia (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 363(b) and 503(c) of the Bankruptcy Code, Bankruptcy Rule 6004, and rule 6004-2 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the "Local Bankruptcy Rules").

5. On May 13, 2020 (the "Petition Date"), the Debtors commenced these chapter 11 cases. The Debtors are operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On May 15, 2020, the Court entered an order granting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). A detailed description of the Debtors and their business, and the facts and circumstances supporting the Debtors' chapter 11 cases, are set

forth in greater detail in the *Declaration of David Tolley, Executive Vice President, Chief Financial Officer, and Co-Restructuring Officer of Intelsat S.A., in Support of Debtors' Chapter 11 Petitions and First Day Motions* [Docket No. 6] (the "First Day Declaration").

### **Compensation Plans**

6. The Debtors (together with their non-Debtor affiliates, the "Company") operate one of the world's largest satellite services businesses, providing a critical layer in the global communications infrastructure. As the foundational architects of satellite technology, the Company operates the largest satellite fleet and connectivity infrastructure in the world.

7. Through its global and extra-terrestrial network of satellites and terrestrial network of teleports and points of presence, the Company provides diversified communications services to the world's leading media companies, fixed and wireless telecommunications operators, data networking service providers for enterprise and mobile applications in the air and on the seas, multinational corporations and internet service providers in the most challenging and remote locations across the globe. The Company is also the leading provider of commercial satellite communication services to the U.S. government and other select military organizations and their contractors. The Company has extensive, highly technical and, unique operations spanning across the North America, Europe, South America, Africa, the Middle East, and Asia.

8. Given its complex and global operations, the Company relies on the performance of its senior management team to lead and continue to provide superior communication services and operate the largest satellite fleet in the world. The Debtors' senior management team is highly experienced in the satellite industry and is irreplaceable. And in the period leading up to the Petition Date, the Debtors' management team was not only focused on their daily responsibilities of driving financial performance and managing global operations, they also spent significant time preparing the Debtors for these chapter 11 cases, and they continue to spend significant time

preparing the Debtors for a transformative, once-in-a-lifetime, C-band transition process and leading the Debtors through these chapter 11 cases. Without the steadfast and enhanced efforts of the management team, the Debtors would not have been able to transition seamlessly into operating in chapter 11 and negotiate the \$1 billion debtor-in-possession financing facility necessary to pursue and protect the critical anticipated revenue from clearing C-band spectrum in compliance with the FCC Order. More importantly, maintaining a properly incentivized senior management team is critical to continuing the Debtors' high level of business performance, which in turn minimizes disruption to customers, vendors, and employees. The senior management team's direction over the next year will be crucial to the Company's future, given the need to simultaneously maintain and improve business performance, execute the C-band transition program (which includes designing and procuring seven new satellites and corresponding launch vehicles, literally involving rocket science), and lead the Debtors through these chapter 11 cases, transforming the Debtors' capital structure to best position the Company for future success. Incentivizing the Debtors' senior management team will ultimately inure to the benefit of all stakeholders by facilitating a value-maximizing resolution to these chapter 11 cases.

9. Recognizing the importance of incentivizing their workforce in this challenging environment, the Debtors, at the direction of the Compensation Committee<sup>3</sup> and with the assistance of Willis Towers Watson U.S. LLC (the "Compensation Consultants"), Alvarez & Marsal North America LLC ("A&M"), PJT Partners LP ("PJT"), and Kirkland & Ellis LLP ("K&E" and, together with A&M and PJT, the "Restructuring Advisors") designed, approved, and now seek to

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<sup>3</sup> The members of the Compensation Committee of the Debtors' board of directors (the "Compensation Committee") include John Diercksen, Edward Kangas, and General Ellen Pawlikowski (retired). None of these individuals would be entitled to any compensation under the KEIP.

implement a compensation plan that is focused on maximizing the enterprise value of these estates for the benefit of all stakeholders.

10. The proposed KEIP provides opportunities to earn incentive payments to the extent the KEIP Participants are able to achieve certain challenging performance targets. Incentive opportunities are always a key part of the compensation package for senior management teams at companies like the Debtors. But now, more than ever, it is critical that the senior management team remain properly motivated and incentivized to handle the panoply of day-to-day responsibilities required to maintain strong operational performance of the Debtors' business, particularly in light of the additional workload resulting from the requirement to clear C-band spectrum and the impact of the COVID-19 global pandemic, while facilitating the execution of a comprehensive restructuring for the benefit of all stakeholders. The total compensation opportunities for the KEIP Participants are reasonable compared to relevant benchmarks in the broader telecommunications industry and, if the KEIP were not in place, the KEIP Participants' compensation opportunities would lag the market by a massive amount, rendering the Debtors uncompetitive.

### **Key Employee Incentive Plan**

#### **I. Overview of KEIP.**

11. The KEIP Participants are six members of the Debtors' management team, all of whom are considered "insiders" under the Bankruptcy Code (each a "KEIP Participant" and collectively, the "KEIP Participants"). These individuals are: (a) Stephen Spengler, Director and Chief Executive Officer; (b) David Tolley, Executive Vice President, Chief Financial Officer, and Co-Chief Restructuring Officer; (c) Michelle Bryan, Executive Vice President, General Counsel, Chief Administrative Officer, and Co-Chief Restructuring Officer; (d) Michael DeMarco, Executive Vice President and Chief Services Officer; (e) Samar Halawi, Executive Vice President

and Chief Commercial Officer; and (f) Bruno Fromont, Senior Vice President, Strategy and Planning. The KEIP Participants comprise the Debtors' Management Committee, which is responsible for the overall strategy and direction of the Debtors' business enterprise and have played, and will continue to play, a central role in the Debtors' restructuring.

12. In addition to their substantial day-to-day responsibilities running a highly complex enterprise, these individuals have seen their workloads expand significantly as the Debtors have transitioned their operations into chapter 11 while continuing to focus on clearing C-band spectrum in compliance with the FCC Order. The additional challenge these responsibilities pose, particularly during a global pandemic, should be factored into consideration of the KEIP Participants' ability to achieve targeted business performance.

13. The Debtors' business is extraordinarily complex. The pool of executives with the skills and experience needed to execute the required tasks is limited. And the present circumstances exacerbate the need for the Debtors to incentivize these specific employees. As a result of the FCC Order, the Debtors have a limited time frame to clear 60 percent of the C-band, a 500-megahertz band of spectrum that has been used for decades by the Company and others to beam content to video and audio broadcasters, cable systems, and other content distributors. The FCC's timeline is aggressive. To earn nearly \$5 billion in incentive payments, the Debtors must rearrange and reconfigure their satellites to operate in the upper portion of the C-band, leaving the lower portion of the C-band available for other uses—primarily for 5G services (the next generation of wireless technology) offered by terrestrial communication service providers.

14. This monumental endeavor will likely require, among other things, that the Debtors procure, configure, and launch seven additional satellites on an expedited timeframe; coordinate the transition of their U.S. media customers from current transponders to other transponders on the

same satellite or a different satellite while ensuring corresponding ground stations and antennas are properly configured to support this transition; ensure the limited free satellite capacity is effectively utilized to support existing customers, all while notifying and migrating customer contracts appropriately; install state of the art compression technologies at certain of their U.S. media customers to allow them to use less bandwidth while freeing up capacity to incorporate others; deploy certain frequency figures to minimize interference on approximately 35,000 earth stations in the continental United States; engage, contract with, and potentially deploy hundreds of technicians to gather site and antenna information from approximately 13,500 receiver sites registered with the FCC and to schedule site visits to perform installation services or ship equipment to the earth station operators; coordinate the installation of new antenna filters at every earth station that receives the Debtors' customers signals; and renegotiate and amend existing customer contracts to reflect new commitments and reduce the overall contracted backlog for each contract relative to the amount of spectrum each customer will no longer be using. All of this is in addition to the significant requirements of running the Debtors' business in the ordinary course and in addition to the immense efforts that will be required to consummate a successful restructuring. To say that these tasks are highly challenging, will require immense focus, and are only achievable by a high-quality management team performing at peak levels, is a massive understatement.

15. The Debtors are sensitive to concerns about executive compensation generally, and particularly in present economic circumstances. Many of the Debtors' customers are suffering and have experienced significant losses caused by the impact of the COVID-19 pandemic on their businesses. But the Debtors believe that appropriate, incentive-based compensation opportunities for their senior management team—goals that, if achieved, will ensure the KEIP Participants are

paid within the ballpark of the market, remain an important tool to drive performance, and will inure to the benefit of all of the Debtors' stakeholders. Thus, since the Petition Date, the Debtors have evaluated the need for a KEIP with the benefit of independent oversight and guidance from the Compensation Committee, the Compensation Consultants, and the Restructuring Advisors. The proposed award opportunities reflect the Compensation Consultants' benchmarking analysis versus the Debtors' industry peers, as well as a review of incentive-based compensation plans approved in other chapter 11 cases. The Debtors' proposed award opportunities (and performance targets) were also formulated and vetted by the Compensation Committee, the Compensation Consultants, the full Board of Directors, and the Debtors' management team and advisors, to ensure that the opportunities (if achieved) reflect the Debtors' business needs and goals.

16. The proposed KEIP contains the following primary design features:

- ***Eligible Participants.*** The KEIP is limited to the aforementioned KEIP Participants who are critical to the Debtors' day-to-day operations, financial performance, the C-band clearing process, and the success of the Debtors' restructuring.
- ***KEIP Awards.*** Each KEIP Participant will be eligible for certain cash awards (to the extent earned based on performance) provided at the end of each performance period set forth below. Potential payments are based on achievement of specified performance metrics for each such performance period and subject to continued employment of the participant through the end of each such performance period.
- ***Performance Periods.*** Performance will be measured for each of three independent performance periods during 2020 representing the second fiscal quarter of 2020, the third fiscal quarter of 2020, and the fourth fiscal quarter of 2020. Achievement of performance for each period will be considered independently of performance for other periods. Further, if performance cannot be measured for any fiscal quarter, the KEIP opportunity is automatically rolled ratably into the remaining fiscal quarters of 2020.
- ***Catch-up Feature.*** In addition to the measurement of performance for each quarterly performance period, performance will be measured on a cumulative basis at the end of the year and a "catch-up" payment will be made to the extent the Debtors' year-end performance achieves or exceeds cumulative performance goals for 2020.

- ***KEIP Payment Timing.*** Payments owed to KEIP Participants (if earned) will be paid on a fully-vested basis as soon as possible after the end of the applicable performance period, but in any event by (a) August 31, 2020 for the second quarter of 2020, (b) November 30, 2020 for the third quarter of 2020, and (c) February 28, 2021 for fourth quarter of 2020 and to the extent any catch-up payment is due.
- ***KEIP Payout Ranges.*** If the relevant performance metrics are met, the KEIP will provide for potential payments representing a range from 50 percent of target payment for threshold performance and up to 150 percent of target payment for maximum performance. Straight-line linear interpolation of the KEIP payment will be applied for achievement of certain performance metrics between the threshold, target, and stretch performance goals.
- ***Performance Targets.*** KEIP payouts, if earned, will be based on the achievement of three performance metrics set for each quarter. The three performance metrics are (a) adjusted EBITDA, (b) progressive targets for the C-band spectrum clearing process (the “C-Band Clearing Targets”), and (c) total end-to-end satellite and terrestrial network availability (“Total Network Availability”). Adjusted EBITDA is weighted at 75 percent for the second quarter and 40 percent for the third and fourth quarters. Total Network Availability is weighted at 25 percent for the second quarter and 20 percent for the third and fourth quarters. C-Band Clearing Targets is not weighted in the second quarter, but is weighted at 40 percent for the third and fourth quarters.
- ***Termination of Employment.*** If a participant’s employment is terminated by the Debtors without “cause,” by the participant for a “Good Reason” as defined in the KEIP, or upon death or disability, the participant will be entitled to a pro rata portion of the KEIP payment that would otherwise have been earned for such performance period based on (i) actual performance during the performance period and (ii) the percentage of the performance period that the participant was employed by the Debtors. If a participant’s employment is terminated for any other reason (including voluntary termination or termination by the Debtors for cause), any remaining unpaid portion of the KEIP payment will be forfeited.

17. If approved, the KEIP would provide the threshold, target, and maximum cumulative 2020 opportunities stated below. The individual award opportunities available to each KEIP Participant are summarized as follows:

<b>Cumulative 2020: Individual KEIP Values<sup>4</sup></b>			
<b>Participant's Title</b>	<b>Threshold Award Opportunity</b>	<b>Target Award Opportunity</b>	<b>Maximum Award Opportunity</b>
Director and Chief Executive Officer	\$2,324,700	\$4,649,400	\$6,974,100
Executive Vice President, Chief Financial Officer, and Co-Chief Restructuring Officer	\$1,066,000	\$2,132,000	\$3,198,000
Executive Vice President, General Counsel, Chief Administrative Officer, and Co-Chief Restructuring Officer	\$847,470	\$1,694,940	\$2,542,410
Executive Vice President and Chief Commercial Officer	\$595,320	\$1,190,640	\$1,785,960
Executive Vice President and Chief Services Officer	\$575,364	\$1,150,727	\$1,726,091
Senior Vice President, Strategy and Planning	\$287,000	\$574,000	\$861,000
<b>Total Award Values</b>	<b>\$5,695,854</b>	<b>\$11,391,707</b>	<b>\$17,087,561</b>

18. Such award opportunities represent a reasonable, market-based approach to incentivize the KEIP Participants in accordance with their performance and are justified under the circumstances of these chapter 11 cases. As set forth in the Georgeson Declaration, the compensation opportunities will result in KEIP Participants receiving compensation commensurate to the market, on average, assuming target payouts under the plan. As further set forth in the Georgeson Declaration, the KEIP's total cost at Threshold, Target, and Stretch levels is reasonable in light of the competitive market practice for companies that operate in the technology industry. Moreover, if achieved, with the KEIP's 2020 target incentive awards, total direct compensation for all participants in aggregate would be at the 50th percentile of executive compensation in the Debtors' peer group. *See* Georgeson Declaration ¶ 17.

## **II. The Performance Targets.**

19. The Debtors developed the terms of the KEIP to be commensurate with their prior incentive programs. The Debtors prior management incentive plans focused on a combination of revenue, adjusted EBITDA, and certain enterprise management objectives, including C-band related initiatives. The KEIP is designed with these metrics in similar focus. Moreover, in similar fashion to the proposed KEIP, the Debtors' prepetition management incentive plans have provided

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<sup>4</sup> The below threshold opportunity to each KEIP Participant is \$0.

for certain payouts that usually ranged from 50 percent of the target bonus if the threshold goal was achieved to 200 percent of the target bonus if the stretch goal was achieved, depending on the performance metric. Under the proposed KEIP, the KEIP Participants will receive quarterly cash payouts ranging from 50% of the target bonus upon achieving the Threshold Performance Level to 150% of the target bonus upon achieving the Stretch Performance Level. Under the proposed KEIP, awards are payable only upon the Debtors' achievement of certain financial and operational performance and C-band spectrum clearing targets during 2020. A summary setting forth the performance targets is attached hereto as **Exhibit C**.

20. Achievement of these targets will require substantial effort from the KEIP Participants. The Compensation Committee, consulting with the Restructuring Advisors, carefully developed the performance targets to ensure that they are an appropriate "reach" to drive performance, but will not present unrealistic or unattainable goals, which would frustrate the incentivizing nature of the plan.

### **The Need for a KEIP**

21. The Debtors' long term success is directly linked to the ability of their key employees to maintain strong operational performance and network availability for their customers, navigate a path toward clearing C-band spectrum as contemplated by the FCC Order, and work with key stakeholders to achieve a comprehensive restructuring. As the Debtors face severe business pressures due to the highly competitive satellite communications industry and in light of the chapter 11 filing, it is critical that the Debtors implement the KEIP as soon as practicable to ensure that the key employees remain incentivized during these chapter 11 cases.

22. In recent months, the KEIP Participants have seen a substantial increase in their workloads without any concomitant increase in their compensation. Notwithstanding the additional pressures placed on the KEIP Participants by the FCC Order and the COVID-19

pandemic, these chapter 11 cases have required the KEIP Participants to take on a much more proactive approach in engaging with their customers, vendors, and employees to ensure that such parties both understand and believe the “business as usual” message, allowing the Debtors to deliver successful results for the Debtors’ customers and stakeholders.

23. The KEIP Participants have met these challenges and have directly engaged with vendors, customers, and employees to maintain stability and seamless performance across the Debtors’ business. Certain KEIP Participants played a vital role in debtor-in-possession financing negotiations, which allowed the Debtors to secure a \$1 billion DIP Facility, and will continue to play a vital role in negotiations concerning a comprehensive restructuring as these chapter 11 cases progress. While the Debtors believe they can continue to meet the challenges that lay ahead, providing incentive opportunities, such as those contemplated by the KEIP, will enable the Debtors to not only achieve, but possibly exceed, their near-term operational goals. At a minimum, the performance targets require the KEIP Participants to continue to manage effectively through the Debtors’ chapter 11 cases, all while making significant efforts to comply with the FCC-mandated C-band relocation process.

24. Properly incentivizing and compensating the Debtors’ key employees at this critical juncture is in the best interests of the Debtors, the Debtors’ estates, and all parties in interest. As outlined in the Georgeson Declaration, achieving even a minimum award opportunity will mean that KEIP Participants have outperformed against these challenges for the benefit of all stakeholders in these chapter 11 estates.

### Basis for Relief

#### **I. The KEIP Is an Ordinary Course Transaction Under Section 363(c) of the Bankruptcy Code.**

25. Under section 363(c)(1) of the Bankruptcy Code, a debtor in possession may “enter into transactions . . . in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The Bankruptcy Code does not define “ordinary course of business.” *In re Cowin*, 2014 WL 1168714, at \*40 (Bankr. S.D. Tex. Mar. 21, 2014). Courts apply a two-part test to determine whether a transaction is in the ordinary course of a debtor’s business. *See In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in the Fourth Circuit and elsewhere have analyzed the transaction to determine whether the transaction is common to the debtor’s industry and whether the proposed transaction is consistent with the debtor’s prepetition practices. *See e.g., In re Fairmont Gen. Hosp., Inc.*, 510 B.R. 783, 787 (Bankr. N.D.W. Va. 2014); *In re Ohio Valley Amusement Co.*, 2008 WL 5062464, at \*3–4 (Bankr. N.D.W. Va. Dec. 1, 2008); *Cowin*, 2014 WL 1168714, at \*40 n.55 (noting that the “horizontal dimension test” is also known as the “comparable businesses” test and the “vertical dimension test” is also known as the “creditor expectation test”); *In re Patriot Place, Ltd.*, 486 B.R. 773, 793 (Bankr. W.D. Tex. 2013) (applying the “horizontal” and “vertical” tests); *In re Dana Corp.*, 358 B.R. 567. 576-77 (Bankr. S.D.N.Y. 2006).

26. Under the horizontal dimension test, the court analyzes whether the transaction is one that other businesses in the same industry “would engage in as ordinary business.” *Burlington N. R.R. Co. v. Dant & Russell, Inc. (In re Dant & Russell, Inc.)*, 853 F.2d 700, 704 (9th Cir. 1988)). Under the vertical dimension test, the court analyzes whether a hypothetical creditor would view the transaction as an ordinary or unusual business practice. *Cowin*, 2014 WL 1168714, at \*41. If

the transaction was ordinary, such hypothetical creditor would not expect notice and a hearing with the opportunity to object. *Id.*

27. **First**, the KEIP meets the horizontal dimension test because it is consistent to incentive-based compensation plans within the Debtors' industry. *See e.g., In re Blitz U.S.A. Inc.*, 475 B.R. 209, 215 (Bankr. D. Del. 2012) (approving incentive bonus plans under section 363(c)(1) of the Bankruptcy Code where the debtor sought to continue prepetition plans and incentive-based bonus plans that were common in the industry). The Compensation Committee, in consultation with the Compensation Consultants, examined the compensation practices of fourteen similarly-sized public peer companies to determine the reference point for the competitiveness of compensation for the KEIP Participants. *See* Georgeson Declaration ¶ 14. Furthermore, to measure the reasonableness of the total cost of the KEIP, the Compensation Consultants analyzed incentive plans approved in twenty comparable chapter 11 cases. *See id.* at ¶ 18. The total direct compensation available under the KEIP is consistent with the direct compensation available at both the Debtors' peer companies and plans approved in comparable chapter 11 cases. *See id.* Further, the proposed Performance Metrics are similar to those used by the Debtors' peer companies and in other chapter 11 cases.

28. **Second**, the KEIP meets the vertical dimension test because it is a continuation of the Debtors' prepetition compensation practices. *See Dana Corp.*, 358 B.R. at 580 (finding that a debtor's postpetition incentive program was a "refinement" of historical practices and therefore within the ordinary course of the debtor's business). The Debtors have historically offered incentive-based cash awards to their leadership team based on the achievement of certain performance targets. The targets for the KEIP represent a continuation of certain prepetition

incentive opportunities adjusted for the current situation in which clearing C-band spectrum and maintaining network reliability are of paramount importance to the Debtors' success.

29. The KEIP is consistent with both the Debtors' prepetition practice and industry practice for companies in and out of chapter 11. Thus, the Debtors request that the Court approve the KEIP as an ordinary course transaction pursuant to section 363(c) of the Bankruptcy Code.

**II. Implementing the KEIP Is a Proper Exercise of the Debtors' Sound Business Judgment Under Section 363(b) of the Bankruptcy Code.**

30. Section 363(b) of the Bankruptcy Code provides, in relevant part, that "[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to use property of the estate when such use has a "sound business purpose" and when the use of the property is proposed in good faith. *See In re W.A. Mallory Co.*, 214 B.R. 834, 836 (Bankr. E. D. Va. 1997); *In re WBQ P'ship*, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995).

31. Courts generally require a debtor to demonstrate that a valid business purpose exists for the use of estate property in a manner that is not in the ordinary course of business. *See In re Lionel Corp.*, 722 F.2d 1063, 1070-71 (2d Cir. 1983). Once the debtor has articulated a valid business justification, a presumption arises that the debtor's decision was made on an informed basis, in good faith and in the honest belief the action was in the best interest of the company. *See In re Integrated Res., Inc.*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992). Furthermore, once "the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *Johns-Manville*, 60 B.R. at 616. The business judgment rule has vitality in chapter 11 cases and shields a debtor's management from judicial second-guessing. *See Integrated Res.*, 147 B.R. at 656; *Johns-Manville*, 60 B.R. at 615-616 ("[T]he Code favors the continued operation of a business

by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.”). Thus, if a debtor's actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1).

32. Courts have found that a debtor's use of reasonable performance-based payments and other incentives for employees is a valid exercise of a debtor's business judgment. *See, e.g., In re Alpha Nat. Res., Inc.*, 546 B.R. 348, 363 (E.D. Va. 2016) (approving the KEIP as a valid exercise of business judgment); *In re Am. W. Airlines, Inc.*, 171 B.R. 674, 678 (Bankr. D. Ariz. 1994) (noting that it is the proper use of a debtor's business judgment to propose payments for employees who helped propel the debtor successfully through the bankruptcy process); *In re Interco Inc.*, 128 B.R. 229, 234 (Bankr. E.D. Mo. 1991) (stating that a debtor's business judgment was controlling in the approval of a “performance/retention program”).

33. Courts have approved employee payment programs to insiders as valid exercises of business judgment. *See, e.g., In re Velo Holdings, Inc.*, 472 B.R. 201, 209 (Bankr. S.D.N.Y. 2012) (noting that Bankruptcy Code section 503(c) does not “foreclose a chapter 11 debtor from *reasonably* compensating employees, including ‘insiders,’ for their contribution to the debtors’ reorganization”). While predominantly or purely retentive payments to insiders are expressly prohibited by the terms of section 503(c)(1), incentive payments that may have some retentive effect are permissible so long as they motivate senior management “to produce and increase the value of the estate.” *Dana Corp.*, 358 B.R. at 571.

34. The implementation of the KEIP is a proper exercise of the Debtors' sound business judgment and in the best interests of the Debtors' estates and all stakeholders in these chapter 11 cases. The KEIP results from an independent analysis undertaken by the Debtors, with the assistance of both the Compensation Consultants and the Debtors' restructuring advisors. The

KEIP was further subject to review and approval by the Compensation Committee, none of whose members are current KEIP Participants, prospective KEIP Participants, or employees of the Debtors. The KEIP properly incentivizes the KEIP Participants who possess the skills, knowledge, and experience critical to the Debtors' ability to operate in the ordinary course during these chapter 11 cases, generate value for the Debtors' creditors through clearing C-band spectrum, and achieve a comprehensive restructuring and confirmation of a chapter 11 plan of reorganization, all while managing through a global pandemic. The KEIP Participants hold positions that are integral to the Debtors' restructuring process and will face additional stress and demands during the chapter 11 process.

35. As discussed above, the KEIP sets a threshold award opportunity, a target award opportunity, and a maximum award opportunity that varies for each of the KEIP Participants. Thus, the Debtors' proposed metrics will drive performance at all levels where all parties will benefit if achieved. Absent the KEIP, the KEIP Participants may be undercompensated and under-incentivized at a critical juncture for the Debtors' business. For these reasons, the Debtors' decision to implement the KEIP is a valid exercise of the Debtors' sound business judgment and should be approved.

### **III. The KEIP is Justified by the Facts and Circumstances of These Chapter 11 Cases.**

36. Section 503(c)(3) of the Bankruptcy Code prohibits certain transfers made to managers, consultants, and others that are not justified by the facts and circumstances of a bankruptcy case. *See* 11 U.S.C. § 503(c)(3). A majority of courts agree that the requirement of section 503(c)(3) of the Bankruptcy Code that a transaction be "justified by the facts and circumstances of the case" is the same as the business judgment standard under section 363(b) of the Bankruptcy Code. *See, e.g., Alpha Nat.*, 546 B.R. at 356 (collecting cases applying the business judgment standard to approve an insider compensation program); *In re Patriot Coal Corp.*,

492 B.R. 518, 530–31 (Bankr. E.D. Mo. 2013) (using the business judgment test to analyze an incentive plan under section 503(c)(3)). In order to determine whether a compensation proposal meets the “sound business judgment test” courts consider the following six factors: (a) whether the plan is calculated to achieve the desired performance; (b) whether the cost of the plan is reasonable in the context of a debtor’s assets, liabilities, and earning potential; (c) whether the scope of the plan is fair and reasonable or discriminates unfairly among employees; (d) whether the plan is consistent with industry standards; (e) whether the debtor performed due diligence in investigating the need for the plan; and (f) whether the debtor received independent advice in performing due diligence, creating, and authorizing the plan. *See Dana Corp.*, 358 B.R. at 576–77.

37. No single factor is dispositive, and a court has discretion to weigh each of these factors based on the specific facts and circumstances before it. *See In re FirstEnergy Sols. Corp.*, 591 B.R. 688, 697 (Bankr. N.D. Ohio 2018) (stating the *Dana Corp.* factors are “neither exhaustive nor of inherently equal weight”). Even the total absence of a factor may be permissible, so long as the interests of the Debtors are sufficiently protected. *See In re Borders Grp. Inc.*, 453 B.R. 459, 477 (Bankr. S.D.N.Y. 2011) (finding that the lack of independent counsel was “not fatal” where the presence of other factors ensured “that the [d]ebtors’ interests were sufficiently protected”); *In re Glob. Aviation Holdings Inc.*, 478 B.R. 142, 154 (Bankr. E.D.N.Y. 2012) (noting that “the relatively modest size of the proposed bonus payouts made the retention of independent legal counsel economically inefficient”). The Debtors respectfully submit that the KEIP satisfies the standards set forth above, each as discussed more fully below.

38. The KEIP is a sound exercise of the Debtors’ business judgment and is justified by the facts and circumstances of these chapter 11 cases.

- a. ***The KEIP is Structured to Achieve the Desired Performance.*** The KEIP incentivizes the Debtors' leadership team to achieve value-driven operational and financial targets. Achieving the performance targets will require substantial outperformance from the KEIP Participants, which is directly tied to the stability and future success of the Debtors' business. Accordingly, the KEIP ensures the Debtors achieve near-term operating performance while successfully clearing C-band spectrum, affording the Debtors' the best opportunity to successfully restructure.
- b. ***The Cost of the KEIP is Reasonable.*** The estimated aggregate payout at target performance levels under the KEIP is \$11,391,707 for all participants to be earned only if the KEIP Participants meet or exceed target performance metrics. The KEIP Participants' 2020 target total direct compensation for all participants in aggregate would be at approximately the 50th percentile of the compensation peer group and at approximately the 75th percentile when compared with twenty chapter 11 cases between 2015 and 2019 with approximate revenues between \$1 billion and \$3 billion. Given the challenging performance metrics set by the KEIP, the requirement that senior management possess specialized skills, and the significant benefits to the estate if the performance metrics are achieved, the Debtors submit that the cost of the KEIP is reasonable and within market norms.
- c. ***The Scope of the KEIP is Reasonable.*** The scope of the KEIP is fair, reasonable, and does not discriminate unfairly among the KEIP Participants. The KEIP Participants are a carefully selected, narrow group of individuals who drive company performance and are critical to ensuring a successful outcome in these cases. The KEIP is reasonably limited to senior management whose efforts are critical to the Debtors' restructuring and maximizing the value of the Debtors' estates.
- d. ***The KEIP is Consistent with Industry Practices.*** To evaluate an appropriate compensation structure for the KEIP Participants, the Compensation Consultants gathered external market compensation data from several data sources, encompassing a representative database of compensation information for comparable industries and the labor market for executives. Absent the KEIP, the Compensation Consultants determined that KEIP Participants would be compensated well below industry standards for their positions. With the potential KEIP payouts the KEIP Participants' total compensation will be within the appropriate range of total compensation for the Debtors' industry, particularly considering the additional duties and challenges faced by the KEIP Participants and the difficult goals necessary to achieve the KEIP awards.

- e. ***The Debtors Performed Due Diligence in Developing the KEIP.*** The Debtors actively sought the advice of the Compensation Consultants in assessing and developing the KEIP. The Debtors have evaluated the KEIP and its metrics based on the input of the Debtors' management and their advisors. As a result of these efforts, the Debtors concluded that it was critical to implement the KEIP to ensure the competitiveness of the Debtors' compensation practices. Moreover, based on a review of the market and peer group data developed by the Compensation Consultants, the KEIP is reasonable and consistent with market practice and industry standards. The Debtors have set KEIP metrics that will be challenging for the Debtors' senior management team. The performance targets set by the KEIP are similarly consistent with incentive plans approved in other similar cases and appropriately tailored to incentivize high levels of financial and operational performance by the Debtors' management team, in addition to clearing C-band spectrum, thus positioning the Debtors for long-term success.
  
- f. ***The Debtors Received Independent Counsel in Developing the KEIP.*** The Debtors utilized the Compensation Consultants to evaluate a potential incentive plan. Further, the Debtors engaged their legal advisors regarding the development and implementation of the KEIP. The active involvement of the Debtors' advisors and the selection of objective targets in developing the KEIP serves to ensure it appropriately and fairly incentivizes the KEIP Participants.

39. Because implementing the KEIP will motivate the Debtors' employees to the ultimate benefit of all parties in interest, the implementation of the KEIP reflects a sound exercise of the Debtors' business judgment and is justified by the facts and circumstances of these chapter 11 cases, and therefore satisfies the requirements of Bankruptcy Code section 503(c)(3).

#### **IV. Section 503(c)(1) of The Bankruptcy Code Is Inapplicable to KEIP.**

40. Section 503(c)(1) of the Bankruptcy Code generally prohibits payments to "insiders" made for the sole or primary purpose of inducing the "insider" to remain with a debtor's business—*i.e.*, those insider plans that are essentially "pay to stay" plans. *See, e.g., Borders Grp.*, 453 B.R. at 471. Section 503(c)(1) of the Bankruptcy Code does not apply to performance-based incentive plans. *See, e.g., Velo Holdings*, 472 B.R. at 209 (finding that an incentive-based plan

alleviated the need for a section 503(c)(1) analysis); *Borders Grp.*, 453 B.R. at 471 (finding that “the Debtors [had] met their burden of establishing that the [compensation program was] incentivizing, thereby alleviating the need for a section 503(c)(1) analysis”).

41. In determining whether an employee bonus plan is primarily incentivizing, courts consider whether the plan is “designed to motivate insiders to rise to a challenge or merely report to work.” *In re Hawker Beechcraft, Inc.*, 479 B.R. 308, 313 (Bankr. S.D.N.Y. 2012). This analysis further recognizes that all compensation, to some degree, has a retentive element. *Glob. Home Prod.*, 369 B.R. at 786 (“The fact . . . that all compensation has a retention element does not reduce the Court’s conviction that [the] Debtors’ primary goal [is] to create value by motivating performance.”); *Dana Corp.*, 358 B.R. at 584 (“However, as noted, this Court also opined that incentivizing plans with some components that arguably have a retentive effect do not necessarily violate section 503(c).”). Rather, the focus remains on whether the plan is, on the whole, incentivizing in nature by demanding a “stretch” or a “reach” before an award opportunity is achieved. *Dana Corp.*, 358 B.R. at 581.

42. The Debtors recognize that all six KEIP Participants are likely “insiders” as defined under the Bankruptcy Code, however, because the KEIP is incentive-based, section 503(c)(1) of the Bankruptcy Code does not apply. The KEIP Participants are not paid merely for maintaining their employment for a certain time period. The KEIP provides award opportunities only if the KEIP Participants satisfy threshold levels of performance. The KEIP Participants will not be eligible to obtain any award simply as a result of merely “showing up.” *Cf. Hawker Beechcraft*, 479 B.R. at 315 (denying KEIP approval where lower threshold was attainable so long as debtor did not encounter “any ‘whoopsies.’”). Instead, the KEIP Participants must outperform in the face of seemingly insurmountable hurdles in order to earn an award opportunity.

**V. The KEIP is Consistent with Previously Approved Employee Incentive Plans.**

43. The KEIP is consistent with other programs of its type that have been approved by courts in cases following the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Many courts have approved of incentive programs that reward payments based on achieving performance thresholds. *See, e.g., In re Energy Future Holdings Corp.*, No. 14-10979 (CSS) (Bankr. D. Del. Oct. 15, 2014) (noting that the debtors' incentive plan based on EBITDA targets "define the gold standard"); *Dana Corp.*, 358 B.R. at 583 (approving an incentive program based on cutting costs and maximizing EBITDAR, despite not reaching past years' EBITDAR levels); *Borders Group, Inc.*, 453 B.R. at 472 (approving an incentive program based on cost reductions, increases in the distribution to unsecured creditors, and speed in exiting bankruptcy); *In re Mesa Air Group, Inc.*, 2010 Bankr. LEXIS 3334, 2-3 (Bankr. S.D.N.Y. Sept. 24, 2010) (approving an incentive program based on maintaining flight schedules and improving financial performance).

44. Courts regularly approve of incentive programs with graduated cash rewards. *See, e.g., Velo Holdings*, 472 B.R. at 210-211 (approving an incentive program for insiders based on meeting the terms of a DIP loan and selling businesses to third parties); *In re Nobex Corp.*, 2006 Bankr. LEXIS 417 (Bankr. D. Del. Jan. 19, 2006) (approving sale-related incentive pay for insiders); *In re Dewey & Leboeuf LLP*, 2012 Bankr. LEXIS 3484 at \*16-17 (approving an incentive plan linking payments to collection on receivables). The distinguishing characteristic of an appropriate KEIP is motivation: "when a plan is designed to motivate employees to achieve specified performance goals, it is primarily incentivizing, and thus not subject to section 503(c)(1)." *In re Residential Capital, LLC*, 478 B.R. 154, 172 (Bankr. S.D.N.Y. 2012).

45. The importance of properly incentivizing key employees has been repeatedly recognized by courts in this district, and such courts have granted relief similar to the relief

requested herein. *See, e.g., In re Gymboree Group Inc.*, No. 19-30258 (KLP) (Bankr. E.D. Va. Feb. 15, 2019) (approving a key employee incentive plan that involved an event-specific performance target); *In re Toys “R” Us, Inc.*, No. 17-34665 (KLP) (Bankr. E.D. Va. Dec. 8, 2017) (approving the debtors’ key employee incentive plan with payments based on the achievement of performance targets); *In re Alpha Nat. Res., Inc.*, No. 15-33896 (KRH) (Bankr E.D. Va. Jan. 27, 2016) (same); *In re Patriot Coal Corp.*, No. 15-32450 (KLP) (Bankr. E.D. Va. July 29, 2015) (same); *In re James River Coal Company*, No. 14-31848 (KRH) (Bankr. E.D. Va. June 12, 2014) (same).

46. In this case, the Debtors’ proposed KEIP has no guaranteed payments to the KEIP Participants. The KEIP Participants are eligible only if the Debtors meet challenging performance metrics. The KEIP is entirely incentivizing and designed to motivate the Debtors’ key employees. Accordingly, the Debtors have a “sound business purpose” for, and have properly exercised their business judgment in developing, the KEIP. In so doing, they have satisfied the standards of section 363(b) and the “facts and circumstances” test set forth in section 503(c)(3) of the Bankruptcy Code.

**Waiver of Bankruptcy Rule 6004(h)**

47. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Notice**

48. The Debtors will provide notice of this Application via first class mail, facsimile or email (where available) to: (a) the United States Trustee for the Eastern District of Virginia, Attn: Kenneth N. Whitehurst III, B. Webb King, Shannon F. Pecoraro, and Kathryn R. Montgomery; (b) the holders of the 40 largest unsecured claims against the Debtors

(on a consolidated basis); (c) the indenture trustee for the Intelsat S.A. Senior Convertible Notes and counsel thereto; (d) the indenture trustee for the Intelsat Luxembourg 7.75% Senior Notes and counsel thereto; (e) the indenture trustee for the Intelsat Luxembourg 8.125% Senior Notes and counsel thereto; (f) the indenture trustee for the Intelsat Luxembourg 12.5% Senior Notes and counsel thereto; (g) the indenture trustee for the Intelsat Connect Finance 9.5% Senior Notes and counsel thereto; (h) the indenture trustee for the Intelsat Jackson 5.5% Senior Notes and counsel thereto; (i) the indenture trustee for the Intelsat Jackson 9.75% Senior Notes and counsel thereto; (j) the indenture trustee for the Intelsat Jackson 8.5% Senior Notes and counsel thereto; (k) Pryor Cashman LLP as counsel to the indenture trustees for the Intelsat Jackson 9.5% First Lien Notes and the Intelsat Jackson 8.0% First Lien Notes; (l) Cahill Gordon & Reindel LLP as counsel to the administrative agent under the Intelsat Jackson credit agreement; Winston & Strawn LLP as counsel to the collateral trustee under the Intelsat Jackson credit agreement; (m) Akin Gump Strauss Hauer & Feld LLP as counsel to an ad hoc group of certain prepetition secured parties; (n) Jones Day as counsel to a crossover ad hoc group of term loan lenders and noteholders; (o) Paul, Weiss, Rifkind, Wharton & Garrison LLP and Loyens & Loeff Luxembourg Sarl as counsel to certain noteholders; (p) Davis Polk as counsel to the agent under the DIP Credit Agreement; (q) Orrick, Herrington & Sutcliffe LLP as counsel to an ad hoc group of noteholders; (r) Milbank LLP as counsel to the official committee of unsecured creditors (the “Committee”); (s) the United States Attorney’s Office for the Eastern District of Virginia; (t) the National Association of Attorneys General; (u) the Internal Revenue Service; (v) the offices of the attorneys general for the states in which the Debtors operate; (w) the Securities and Exchange Commission; (x) the Federal Communications Commission; and (y) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”). The

Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of page intentionally left blank]*

WHEREFORE, the Debtors respectfully request that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Richmond, Virginia  
Dated: June 9, 2020

*/s/ Jeremy Williams*

**KUTAK ROCK LLP**

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**Exhibit A**

**Proposed Order**

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

In re:	)	Chapter 11
	)	
INTELSAT S.A., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-32299 (KLP)
	)	
Debtors.	)	(Jointly Administered)
	)	

**ORDER (A) AUTHORIZING AND APPROVING THE DEBTORS’  
 KEY EMPLOYEE INCENTIVE PLAN AND (B) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), under sections 363(b) and 503(c)(3) of the Bankruptcy Code, (a) authorizing and approving the Debtors’ proposed key executive incentive plan (the “KEIP”), (b) authorizing the Debtors to make payments to certain management employees under the KEIP, (c) granting administrative expense priority status to all payment obligations of the Debtors under the KEIP, and (d) granting related relief, all as more fully set forth in the Motion; and the Court having considered the Georgeson Declaration; and this

<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors’ claims and noticing agent at <https://cases.stretto.com/intelsat>. The location of the Debtors’ service address is: 7900 Tysons One Place, McLean, VA 22102.

<sup>2</sup> Capitalized terms used in this Order but not immediately defined have the meanings given to them in the Motion.

Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion, the Georgeson Declaration, and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion, the Georgeson Declaration, and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The KEIP is authorized and approved in its entirety.
3. The Debtors are authorized, pursuant to sections 363(b), 363(c), and 503(c) of the Bankruptcy Code, to take all actions necessary to implement the KEIP on the terms and conditions set forth in the Motion, including making any payments that come due pursuant to the terms thereof during these chapter 11 cases and without the need for further Court approval.

4. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

5. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

6. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

7. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: \_\_\_\_\_  
Richmond, Virginia

\_\_\_\_\_  
United States Bankruptcy Judge

WE ASK FOR THIS:

/s/ Jeremy Williams

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Peter J. Barrett (VA 46179)

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy Williams

**Exhibit B**

**Georgeson Declaration**

Edward O. Sassower, P.C. (admitted *pro hac vice*)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

In re:	)	Chapter 11
INTELSAT S.A., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-32299 (KLP)
Debtors.	)	(Jointly Administered)

**DECLARATION OF ZACHARY P. GEORGESON  
 IN SUPPORT OF THE DEBTORS’ MOTION FOR ENTRY  
 OF AN ORDER (A) AUTHORIZING AND APPROVING THE DEBTORS’  
 KEY EMPLOYEE INCENTIVE PLAN AND (B) GRANTING RELATED RELIEF**

I, Zachary P. Georgeson, hereby declare under penalty of perjury:

1. I am a Senior Consulting Director at Willis Towers Watson U.S. LLC (“Willis Towers Watson”). In March 2020, Intelsat S.A., one of the above captioned debtors and debtors in possession in these chapter 11 cases (collectively, the “Debtors”), engaged Willis Towers Watson to provide compensation consulting services. I am familiar with the pre- and postpetition structure of the Debtors’ compensation plans and the proposed key executive incentive

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<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors’ claims and noticing agent at <https://cases.stretto.com/intelsat>. The location of the Debtors’ service address is: 7900 Tysons One Place, McLean, VA 22102.

plan (the “KEIP”), which is set forth in the *Debtors’ Motion for Entry of an Order (A) Authorizing and Approving the Debtors’ Key Employee Incentive Plan and (B) Granting Related Relief* (the “KEIP Motion”).<sup>2</sup>

2. I submit this declaration on behalf of Willis Towers Watson in support of the KEIP Motion. Except as otherwise indicated, the statements set forth in this declaration are based upon: my personal knowledge; my review of relevant documents and information concerning the Debtors’ operations, financial affairs, and restructuring initiatives; information obtained from members of the Debtors’ management team and other advisors; my review of the Debtors’ business and compensation practices; research conducted by myself and my team into compensation practices for companies in the technology industry; my research into the designs of retention and incentive-based plans approved in recent chapter 11 proceedings; my significant experience in developing such plans; and my experience with similarly situated companies that have sought relief under chapter 11. For the reasons described below, it is my opinion that the KEIP is reasonable and generally consistent with market practice and my experience with similarly-situated companies that have sought relief under chapter 11. I am over the age of eighteen, and, if called upon to testify, I could and would testify competently to the facts and opinions set forth in this declaration.

### **Background and Qualifications**

3. I received my Bachelor’s degree in Finance from Indiana University Bloomington in 2002. I have been employed by Willis Towers Watson since 2008 when I joined after working at Deloitte Consulting LLP and Capital H Group LLC.

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<sup>2</sup> Capitalized terms used but not immediately defined have the meanings given to them in the KEIP Motion.

4. Willis Towers Watson is an international professional services firm that offers a wide variety of services to public and private clients, including expert analysis of executive and management compensation. Services offered by Willis Towers Watson include actuarial, compensation, performance management, employee benefits design communication and administration, organizational communication, human resources effectiveness, and reinsurance and risk management.

5. My responsibilities at Willis Towers Watson have primarily involved providing consulting services to mid- and large-sized companies, specifically with regard to executive compensation. I routinely work with public and private companies in various industries regarding compensation philosophy, pay competitiveness, incentive plan design, and other compensation-related analyses. I have worked with numerous *Fortune 1000* companies and have participated in the development and design of over 100 management and employee incentive plans for companies in and outside of bankruptcy.

6. I am highly experienced in executive compensation with over seventeen years of experience in the field. During this time, I have worked closely with a range of companies undergoing financial restructurings to develop a variety of prepetition and postpetition compensation arrangements, including compensation programs and programs for senior executive and non-executive employees. Specifically, I have led or co-led the review and design of key employee incentive programs, key employee retention programs, and other similar programs in a number of recent chapter 11 cases, including Aegean Marine, American Airlines, American Tire Distributors, Appvion, Aspect Software, Avianca S.A., Bonanza Creek, Breitburn Energy, Caesars Entertainment Operating Company, Chaparral Energy, Cumulus Media, Dex Media, Dura Automotive, Energy Future Holdings, EXCO Resources, Frontier Communications, Full Beauty

Brands, Fairway Market, GenOn Energy, Gymboree, Hornbeck Offshore, Horsehead Holding Corp., iHeartMedia, JCPenney, Jones Energy, Keystone Automotive, McDermott, MolyCorp, OneWeb, Parker Drilling, Petroflow, Pier One, RadioShack, Republic Airways, Sabine Oil & Gas, Samson Resources, Sheridan Production, Southeastern Grocers, Takata, Tops Grocers, Westmoreland, and Windstream Holdings. I am also currently active in a variety of restructuring matters that are not yet in the public domain.

**Willis Towers Watson's Involvement with the Debtors**

7. Since Willis Towers Watson began working with the Debtors in March 2020, I have familiarized myself with the Debtors' operations and business and restructuring challenges. At the start of our engagement, Willis Towers Watson discussed with the Debtors and their advisors the Debtors' operational history, financial performance, restructuring process, and various issues regarding the Debtors' workforce and employee programs. Willis Towers Watson reviewed the structure of the Debtors' primary incentive programs, paying specific attention to various incentive programs' performance metrics, participating employees, payout frequency, and target payout levels.

8. The Debtors performed significant due diligence in developing the KEIP, and my team and I collaborated closely with the Debtors' management and other outside advisors in reviewing and advising on the KEIP. Specifically, my team and I provided input and advice on the design, structure, total cost, and award opportunities of the KEIP for reasonableness. Willis Towers Watson provided analyses of the reasonableness of various derivations of the proposed KEIP to certain members of the Debtors' senior management and the Compensation Committee. I have since updated my analysis to reflect the final designs, participants, and economics of the KEIP for purposes of this declaration. Willis Towers Watson's primary goal was to provide an

independent assessment of the Debtors' employee programs that drew directly upon relevant market data as well as my experience in designing comparable programs for similarly-situated companies.

### **Overview of the KEIP**

9. The purpose of the KEIP is to provide competitive incentive opportunities to six members of the Debtors' management team, all of whom I understand are considered "insiders" under the Bankruptcy Code (each a "KEIP Participant" and collectively, the "KEIP Participants"). The KEIP Participants are: (a) Stephen Spengler, Director and Chief Executive Officer; (b) David Tolley, Executive Vice President, Chief Financial Officer, and Co-Chief Restructuring Officer; (c) Michelle Bryan, Executive Vice President, General Counsel, Chief Administrative Officer, and Co-Chief Restructuring Officer; (d) Michael DeMarco, Executive Vice President and Chief Services Officer; (e) Samar Halawi, Executive Vice President and Chief Commercial Officer; and (f) Bruno Fromont, Senior Vice President, Strategy and Planning. I understand that these employees are responsible for the overall strategy and direction of the Debtors' business enterprise and have played, and will continue to play, a central role in the Debtors' restructuring. I further understand that these employees have historically participated in the Debtors' annual and long-term incentive programs.

10. In my experience, incentive programs are regularly used by similarly-situated companies to incentivize the performance of senior executives and create alignment with key economic stakeholders. I understand further that certain retention-based payments were pre-paid to KEIP participants in May 2020 subject to various recapture milestones in 2020 and 2021 (the "Pre-Paid Retention Awards"). As a result, while the KEIP Motion does not seek approval of these Pre-Paid Retention Awards, I would note that in my experience, the cash prepayment of

retention-based compensation to employees in advance of a potential restructuring scenario is common practice.

### **KEIP Design and Structure**

11. As further described in the KEIP Motion, the KEIP contains the following primary design features:

- ***Eligible Participants.*** The KEIP is limited to the aforementioned KEIP Participants who are critical to the Debtors' day-to-day operations, financial performance, and the success of the Debtors' restructuring.
- ***KEIP Awards.*** Each KEIP Participant will be eligible for certain cash awards (to the extent earned based on performance) provided at the end of each performance period set forth below. Potential payments are based on achievement of specified performance metrics for each such performance period and subject to continued employment of the participant through the end of each such performance period.
- ***Performance Periods.*** Performance will be measured for each of three independent performance periods during 2020 representing the second fiscal quarter of 2020, the third fiscal quarter of 2020, and the fourth fiscal quarter of 2020. Achievement of performance for each period will be considered independently of performance for other periods. Further, if performance cannot be measured for any fiscal quarter, the KEIP opportunity is automatically rolled ratably into the remaining fiscal quarters of 2020.
- ***Catch-up Feature.*** In addition to the measurement of performance for each quarterly performance period, performance will be measured on a cumulative basis at the end of the year and a "catch-up" payment will be made to the extent the Debtors' year-end performance achieves or exceeds cumulative performance goals for 2020.
- ***KEIP Payment Timing.*** Payments owed to KEIP Participants will be paid on a fully-vested basis as soon as possible after the end of the applicable performance period, but in any event by (a) August 31, 2020 for the second quarter of 2020, (b) November 30, 2020 for the third quarter of 2020, and (c) February 28, 2021 for fourth quarter of 2020 and to the extent any catch-up payment is due.
- ***KEIP Payout Ranges.*** Subject to the relevant performance metric, the KEIP will provide for potential payments representing a range from 50 percent of target payment for threshold performance and up to 150 percent of target payment for maximum performance. Straight-line linear interpolation of the KEIP payment will be applied for achievement of certain performance metrics

between the threshold, target, and stretch performance goals.

- **Performance Targets.** KEIP payouts will be based on a combination of financial, operational, and C-band spectrum clearing objectives.
- **Termination of Employment.** If a participant’s employment is terminated by the Debtors without “cause,” by the participant for a “Good Reason” as defined in the KEIP, or upon death or disability, the participant will be entitled to a pro rata portion of the KEIP payment that would otherwise have been earned for such performance period based on (i) actual performance during the performance period and (ii) the percentage of the performance period that the participant was engaged by the Debtors. If a participant’s employment is terminated for any other reason (including voluntary termination and termination by the Debtors for cause), any remaining unpaid portion of the KEIP payment will be forfeited.

12. If approved, the KEIP would provide cumulative threshold, target, and maximum KEIP opportunities of approximately \$5,695,854, \$11,391,707 and \$17,087,561 respectively. A summary of the individual award opportunities available to each KEIP Participant are summarized below:

<b>Cumulative 2020: Individual KEIP Values<sup>3</sup></b>			
<b>Participant’s Title</b>	<b>Threshold Award Opportunity</b>	<b>Target Award Opportunity</b>	<b>Maximum Award Opportunity</b>
Director and Chief Executive Officer	\$2,324,700	\$4,649,400	\$6,974,100
Executive Vice President, Chief Financial Officer, and Co-Chief Restructuring Officer	\$1,066,000	\$2,132,000	\$3,198,000
Executive Vice President, General Counsel, Chief Administrative Officer, and Co-Chief Restructuring Officer	\$847,470	\$1,694,940	\$2,542,410
Executive Vice President and Chief Commercial Officer	\$595,320	\$1,190,640	\$1,785,960
Executive Vice President and Chief Services Officer	\$575,364	\$1,150,727	\$1,726,091
Senior Vice President, Strategy and Planning	\$287,000	\$574,000	\$861,000
<b>Total Award Values</b>	<b>\$5,695,854</b>	<b>\$11,391,707</b>	<b>\$17,087,561</b>

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<sup>3</sup> The below threshold opportunity to each KEIP Participant is \$0.

**Analysis of KEIP Participant Total Direct Compensation**

13. In assessing the reasonableness of the KEIP, my team and I analyzed competitive target total direct compensation—an industry-standard benchmark that includes the sum of base salary, target annual bonus awards and long-term incentive grant values—for all KEIP Participants.

14. A critical initial step in this analysis was to define the relevant market for talent. As the primary reference point for the competitiveness of compensation to the KEIP Participants, my team and I referenced companies in the Debtors' peer group (the "Peer Group"). The Peer Group consists of 14 peer companies operating in the technology industry that the Debtors have historically used for executive compensation benchmarking purposes. The Peer Group includes: Akamai Technologies, Inc., Analog Devices, Inc., Ciena Corporation, EchoStar Corp., F5 Networks, Inc., Gogo Inc., GTT Communications, Inc., Iridium Communications Inc., Juniper Networks, Inc., Maxar Technologies Inc., Nielsen Holdings plc, Science Applications International Corp., Sirius XM Holdings Inc., and Viasat, Inc. The Debtors selected companies for the Peer Group based on a number of factors, including the scope and complexity of operations, industry relevance, and business model similarity. I reviewed the Peer Group and found its composition to be reasonable.

15. To analyze the reasonableness of the Debtors' total direct compensation levels under different performance scenarios, my team and I matched the five highest compensated KEIP Participants to the proxy disclosed executives at the Peer Group companies, and I matched the sixth KEIP Participant to survey data from a proprietary technology industry compensation survey provided to me by the Debtors (Peer Group proxy data was unavailable for this sixth executive because proxy disclosure is generally required only for the five highest paid executives). My team and I developed competitive target total direct compensation benchmarks from these data sources,

and compared the Debtors' annualized target and maximum total direct compensation (reflecting the sum of base salary, annualized Pre-Paid Retention Awards, and the target or maximum KEIP opportunities, respectively) for KEIP Participants to competitive target total direct compensation market levels.

16. If the Debtors do not receive approval from the Court to implement the KEIP, total direct compensation for the KEIP Participants will only reflect current base salaries and annualized Pre-Paid Retention Awards, and thus annualized maximum total direct compensation would fall 28 percent below the 25th percentile of market target total direct compensation, in aggregate. This outcome could significantly undermine the Debtors' ability to motivate their senior management to achieve desired business objectives. The KEIP is, in part, designed to reasonably address this shortfall.

17. Assuming the KEIP is approved, aggregate annualized target total direct compensation opportunities for KEIP Participants would fall approximately at the 50th percentile of the competitive market and 16 percent below the 75th percentile of the competitive market, on average, assuming target payouts under the program. The outcomes of my compensation analysis from a variety of different assumed KEIP payout scenarios are summarized in the table below:

<b>Annualized Total Direct Compensation (“TDC”) for KEIP Participants</b>			
<b>TDC Outcome</b>	<b>Relation to 25th Percentile of Market TDC</b>	<b>Relation to 50th Percentile of Market TDC</b>	<b>Relation to 75th Percentile of Market TDC</b>
Base Salaries plus Pre-paid Awards Only ( <i>i.e.</i> , “Current TDC”, with no KEIP)	- 28%	- 55%	- 62%
Current TDC Plus Threshold KEIP Payment	+ 16%	- 27%	- 39%
Current TDC Plus Target KEIP Payment	+ 60%	+ 0.3%	- 16%
Current TDC Plus Maximum KEIP Payment	+ 103%	+ 28%	+ 7%

**Analysis of KEIP’s Total Cost**

18. To measure the reasonableness of the total cost of the KEIP, my team and I analyzed incentive plans approved in the following twenty chapter 11 cases involving companies in various industries that filed petitions from 2015 through 2019 with approximate revenues between \$1.0 billion and \$3.0 billion: Avaya Inc., Bristow Group Inc., CJ Holding Co., Claire's Inc., Cumulus Media Inc., FirstEnergy Solutions Corp., FTD Companies, Inc., Gander Mountain Company Inc., GenOn Energy, H. H. Gregg, Inc., Linn Energy, Patriot Coal, Payless Inc., Purdue Pharma L.P., Quiksilver Inc., RadioShack (RS Legacy Corporation), Real Industry, Inc., Republic Airways Holdings Inc., SunEdison, and Westinghouse Electric Company LLC (collectively, the “Chapter 11 Peers”). In conducting this analysis, I also relied upon my significant consulting experience in the analysis and design of postpetition incentive and retention programs generally, having consulted in this capacity for dozens of other companies.

19. My team and I calculated the annualized KEIP cost as a percentage of the Debtors’ revenues, and compared this ratio to the similar ratios of court approved incentive plans of the Chapter 11 Peers. As shown in the table below and as compared to the Chapter 11 Peers, assuming the KEIP is approved and all of the performance goals are achieved at either the target

or maximum level, the Debtors’ target cost ratio would be positioned approximately at the 75th percentile, and the Debtors’ maximum cost ratio would be positioned between the 75th and 90th percentiles:

<b>Annualized KEIP Cost as a Percentage of Revenue</b>					
<b>Plan Cost</b>	<b>Intelsat</b>	<b>25<sup>th</sup> Percentile Market Practice</b>	<b>50<sup>th</sup> Percentile Market Practice</b>	<b>75<sup>th</sup> Percentile Market Practice</b>	<b>90<sup>th</sup> Percentile Market Practice</b>
Target Plan Cost	0.70%	0.19%	0.38%	0.67%	0.99%
Maximum Plan Cost	0.98%	0.25%	0.45%	0.93%	1.11%

20. In my opinion, this positioning relative to market practice is explainable given companies operating in the technology industry typically compensate senior executives at higher rates than among similarly-sized companies in the broader “general industry” (which is the best description of the Chapter 11 Peer company “market”). In fact, my team conducted an analysis of the empirical differences in total compensation levels provided to technology industry executives relative to general industry executives at similarly-sized organizations (as reported in Willis Towers Watson’s compensation surveys). This analysis found that for executives with similar roles, the technology industry executives generally earned targeted total direct compensation levels that were 15% to 25% higher than the comparable general industry executives.

21. Based on the results of these benchmarking analyses, and my experience in other incentive compensation arrangements implemented in chapter 11 cases, I believe the KEIP and the threshold, target, and maximum 2020 total direct compensation levels are reasonable in light of competitive market practice for companies, like the Debtors, that operate in the technology industry. Critically, the absence of an incentive opportunity for the KEIP Participants would significantly undermine the current competitiveness of the Debtors’ compensation structure, which in turn could negatively impact the Debtors’ ability to motivate current management to achieve desired business objectives and attract other skilled senior executives.

### **Analysis of the KEIP Structure**

22. The overall design and structure of the KEIP is consistent with market practice and reasonable in light of the Debtors' particular facts and circumstances. When reviewing the Debtors' various compensation plans, I recommended linking incentives to financial, operational and milestone-based metrics that would maximize value for the Debtors and their stakeholders. This approach aligns the incentives of these employees with the overall performance of the Company, which is particularly appropriate in light of the Debtors' particular circumstances and their restructuring process. To that end, the KEIP incentivizes the achievement of adjusted EBITDA, C-band clearing milestones, and network availability.

23. To assess the reasonableness of the design of the KEIP, my team and I analyzed the incentive plans of the two aforementioned groups of companies that are similarly situated to the Debtors. First, I analyzed annual incentive plans offered by the Peer Group, in keeping with the Debtors' and the Compensation Committee's historical use of peer group analysis. Second, I reviewed recently approved postpetition cash incentive plans of the Chapter 11 Peers. In conducting this analysis, I also relied upon my significant consulting experience in the analysis and design of postpetition incentive plans generally at dozens of other companies.

24. The overall structure of the KEIP comports with the findings of my review of incentive plans of the Peer Group and the Chapter 11 Peers that disclosed the details of such incentive plans. I would note the following key design features:

- Key employee incentive awards typically are paid in cash during a restructuring;
- 100 percent of the Peer Group and 75 percent of the Chapter 11 Peers use multiple performance metrics;
- 90 percent of the Chapter 11 Peers used non-annual performance metrics, with 40 percent adopting a quarterly model;

- Earnings-based financial metrics such as adjusted EBITDA are prevalent among both the Peer Group (86 percent of companies) and the Chapter 11 Peers (45 percent of companies);
- Operational, strategic or other industry-specific non-financial metrics such as network availability are common among both the Peer Group (50 percent of companies) and the Chapter 11 Peers (40 percent of companies);
- Milestone and/or timing-based metrics are frequently used within the context of a restructuring, being utilized by 35 percent of the Chapter 11 Peers;
- “Catch-up” provisions are observed in many recent complex restructuring cases, as well as among several of the Chapter 11 Peers (*e.g.*, Bristow Group, Cumulus Media, CJ Holding, and Linn Energy); and
- The concept of threshold and maximum payout levels (as a percentage of target) are reasonable and common design features among both the Chapter 11 Peers and the Peer Group. The median range of payouts for threshold to maximum for the Chapter 11 Peers was 50 percent to 150 percent of target and the median range of payouts for threshold to maximum for the Peer Group was 50 percent to 200 percent of target.

25. As detailed above, the vast majority of the Debtors’ peers in the technology industry and within the context of chapter 11 provide the type of incentives proposed by the Debtors to drive performance. Without these incentives for the KEIP Participants to meet quarterly performance metrics, the KEIP Participants would be under-compensated and under-incentivized as compared to the competitive market, which could have undesired, value destructive effects, as the KEIP Participants may be less incentivized to work toward these metrics in subsequent quarters. For these reasons, and based on my experience with incentive-based compensation programs employed by companies in chapter 11, I believe the design, structure, cost, and individual opportunities available under the Debtors’ KEIP are reasonable and consistent with market practice.

**Conclusion**

26. Based on my education, experience, and the work I have done in this case and in similar cases, I believe that the design, structure, cost, and award opportunities available under the KEIP are reasonable given the facts and circumstances of these chapter 11 cases.

*[Remainder of page intentionally left blank]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: June 9, 2020  
Chicago, Illinois

By: /s/ Zachary Georgeson  
Zachary P. Georgeson  
Senior Consulting Director  
Willis Towers Watson U.S. LLC

**Exhibit C**

**2020 KEIP Performance Metrics**

## 2020 KEIP Performance Metrics

Metric	Period	Weight	Threshold	Target	Stretch	
Adjusted EBITDA	Q2	75%	• \$311.2 mm	• \$320.8 mm	• \$330.4 mm	
	Q3	40%	• \$286.3 mm	• \$298.2 mm	• \$310.1 mm	
	Q4	40%	• \$268.9 mm	• \$283.0 mm	• \$297.2 mm	
Total Network Availability	Q2	25%	• 99.978%	• 99.985%	• 99.992%	
	Q3	20%	• 99.978%	• 99.985%	• 99.992%	
	Q4	20%	• 99.978%	• 99.985%	• 99.992%	
C-Band Clearing Targets	Q2	0%	• n/a	• n/a	• n/a	
	Q3	40%	<b>Regulatory</b>	• Submission of Full Remediation Plan	• Submission of Full Remediation Plan	• Submission of Full Remediation Plan
			<b>Space Network</b>	• Execution of Launch Contracts for G23-R, G17-R, G12-R, G15-R, G28-R, G3C-R	• Execution of Launch Contracts for G23-R, G17-R, G12-R, G15-R, G28-R, G3C-R • Execution of Build Contract for G13-R • Execution of Launch Vehicle Contract for G13-R	• Execution of Launch Contracts for G23-R, G17-R, G12-R, G15-R, G28-R, G3C-R • Execution of Build Contract for G13-R • Execution of Launch Vehicle Contract for G13-R
			<b>Customers</b>	• Migration of transponders for all customers scheduled through July 31, 2020" • Complete compression equipment installation for all customers scheduled through July 31, 2020	• Migration of transponders for all customers scheduled through August 31, 2020 • Complete compression equipment installation for all customers scheduled through August 31, 2020	• Migration of transponders for all customers scheduled through September 30, 2020 • Complete compression equipment installation for all customers scheduled through September 30, 2020
	Q4	40%	<b>Regulatory</b>	• Submission of Full Remediation Plan	• Submission of Full Remediation Plan	• Submission of Full Remediation Plan
			<b>Space Network</b>	• Execution of Launch Contracts for G23-R, G17-R, G12-R, G15-R, G28-R, G3C-R • Execution of Build Contract for G13-R • Execution of Launch Vehicle Contract for G13-R	• Execution of Launch Contracts for G23-R, G17-R, G12-R, G15-R, G28-R, G3C-R • Execution of Build Contract for G13-R • Execution of Launch Vehicle Contract for G13-R	• Execution of Launch Contracts for G23-R, G17-R, G12-R, G15-R, G28-R, G3C-R • Execution of Build Contract for G13-R • Execution of Launch Vehicle Contract for G13-R
			<b>Customers<sup>1</sup></b>	• Migration of transponders for all customers scheduled through October 31, 2020 • Complete compression equipment installation for all customers scheduled through October 31, 2020	• Migration of transponders for all customers scheduled through November 30, 2020 • Complete compression equipment installation for all customers scheduled through November 30, 2020	• Migration of transponders for all customers scheduled through December 31, 2020 • Complete compression equipment installation for all customers scheduled through December 31, 2020

<sup>1</sup> The customer list and dates are subject to revision to reflect the final Transition Plan approved by the FCC.