



**Relief Requested**

1. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”), authorizing the Debtors to enter into the SD Satellite Contract (as defined and described further below). The SD Satellite Contract falls squarely within the Debtors’ ordinary course of business; however, the Order is sought for the avoidance of doubt.

**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 section 363 of the Bankruptcy Code and rule 9013-1 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the “Local Bankruptcy Rules”).

**Background**

5. 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.

6. Through its global and extra-terrestrial network of satellites and teleports, 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 communications services to the U.S. government and other select military organizations and their contractors. The Company's administrative headquarters are in McLean, Virginia, and the Company has extensive operations spanning across the United States, Europe, South America, Africa, the Middle East, and Asia.

7. On the Petition Date, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. 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). On May 27, 2020, the U.S. Trustee appointed the Creditor's Committee pursuant to section 1102 of the Bankruptcy Code [Docket No. 193]. No request for appointment of a trustee or examiner has been made in these chapter 11 cases.

#### **The SD Satellite Contract**

8. The Company operates the largest satellite fleet and connectivity infrastructure in the world. The Company currently has in orbit approximately 50 satellites, of the approximately 150 satellites which it has built, launched, and operated since its inception. Satellites generally have a station-kept life of approximately 15 years. Accordingly, the Company is in a perpetual cycle of replacing older satellites as well as managing its fleet to meet projected market demand. The design and manufacture of satellites takes several years to accomplish, so the timing of

replacement satellites is important to coincide with the end-of-life of existing spacecraft and projected customer needs. In continuation of their prepetition business, the Debtors entered into a contract (the “SD Satellite Contract”) to manufacture two software defined satellites (the “SD Satellites”). The SD Satellites are expected to satisfy future customer demand primarily in the mobility market segment across the Continental United States, North Atlantic, and other western hemisphere regions. This expected customer demand is particularly acute following the Debtors’ acquisition of the Gogo Commercial Aviation business unit, combined with limited available capacity in the aforementioned geographies today. The SD Satellites will contain modern satellite technology, providing software-defined coverage that will allow the Debtors to adapt to market changes and customer needs by being able to dynamically adjust capacity configuration. The SD Satellites will enable the Debtors to continue to decrease critical input costs and respond to shifting business needs for satellite capacity.

9. The contract price for the SD Satellites is [REDACTED]. An initial milestone payment under the SD Satellite Contract of [REDACTED] is required to be made on January 8, 2021, with a second milestone payment of [REDACTED] to be made on February 21, 2021. The Debtors are entitled to terminate the SD Satellite Contract for convenience for a price (inclusive of all payments through the date of such termination) of approximately [REDACTED] through June 30, 2021, and of approximately [REDACTED] if terminated from July 1, 2021 through December 31, 2021.

10. The Debtors anticipated entering into this satellite contract during the course of these chapter 11 cases—consistent with the course of their business conduct over the last 55 years. Accordingly, amounts for projected capital expenditures for continuation of satellite construction

and associated launch costs have been budgeted in the Debtors' DIP Budget.<sup>3</sup> In addition, the SD Satellite Contract is part of a broader capital expenditure plan within the Debtors' go-forward business plan, which was shared with advisors to the various ad hoc groups of creditors and the official committee of unsecured creditors (the "Creditors' Committee") in mid-October.

11. The SD Satellites will allow the Debtors to adapt to the evolving market for diversified satellite communications services, and ensure the Debtors are competitive in the market against other satellite operators. The multi-year timeline for design, manufacture and launch of the SD Satellites necessitates starting the manufacture process as quickly as possible. The Debtors believe that entry into the SD Satellite Contract is within the ordinary course of business, and therefore is permitted without further court order by section 363(c) of the Bankruptcy Code. Even if court authority is needed, entering into the SD Satellite Contract is an exercise of the Debtors' sound business judgment and value-maximizing for their estates.

### **Basis for Relief**

#### **I. Entering into the SD Satellite Contract is within the Ordinary Course of the Debtors' Business**

12. Section 363(c) of the Bankruptcy Code provides that a trustee or debtor in possession "may enter into transactions including the sale or lease of property of the estate, 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).

13. When a court determines that a transaction is within the ordinary course of a debtor's business, "the Court will not entertain an objection to the transaction, provided that the

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<sup>3</sup> As defined in the *Final Order (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Superpriority Administrative Expense Claims, (D) Granting Adequate Protection to the Prepetition Secured Parties, (E) Modifying the Automatic Stay, and (F) Granting Related Relief* [Docket No. 285].

conduct involves a business judgment made in good faith upon a reasonable basis and within the scope of authority under the Bankruptcy Code.” *In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 797 (Bankr. D. Del. 2007).

14. While neither the Bankruptcy Code nor its legislative history provides a concrete definition of “ordinary course of business,” courts, including those in the Fourth Circuit, have adopted two commonly used tests to determine whether a transaction is in the ordinary course of business—the vertical test and the horizontal test. *See In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992) (citing Benjamin Weintraub & Alan Resnick, *The Meaning of “Ordinary Course of Business” Under the Bankruptcy Code—Vertical and Horizontal Analysis*, 19 UCC L.J. 364 (1987)); *see also In re Ohio Valley Amusement Co.*, 2008 WL 5062464, 3–4 (Bankr. N.D. W.Va. 2008) (applying the vertical and horizontal tests). “The ‘horizontal dimension’ test considers ‘whether from an industry-wide perspective, the transaction is of the sort commonly undertaken by companies in that industry.’ The ‘vertical dimension’ test considers the creditors’ expectations and whether the economic risk of the transaction is different from those accepted by creditors that extended credit to the debtor pre-petition.” *In re Fairmont Gen. Hosp., Inc.*, 510 B.R. 783, 787 (Bankr. N.D.W. Va. 2014) (internal citations omitted).

15. The ordinary course of business rule is “purposely not defined so narrowly as to deprive a debtor of the flexibility it needs to run its business and respond quickly to changes in the business climate. Title 11 procedures are not meant to straight jacket a debtor, and a debtor must be allowed to marshal assets on an ‘as needed’ basis. The policy behind the Code recognizes that the debtor needs a certain degree of freedom on its road to reorganization so that it might avoid precisely those pitfalls which brought it into bankruptcy initially.” *In re Dakota Drilling, Inc.*, 1991 WL 1301300, 3 (Bankr. D.N.D. 1991).

16. Generally, when a transaction is consistent with the debtor's pre-petition business practice, such transaction is in the ordinary course of a business. *See e.g., Citizens First Nat'l Bank v. Rumbold & Kuhn (In re Newton)*, 64 B.R. 790, 794 (Bankr. C.D. Ill. 1986) (farmer's sale of grain harvest to entity that purchased crops in previous transactions found to be in the ordinary course of business); *In re County Line Homes, Inc.*, 43 B.R. 440 (E.D. Mo. 1984) (where part of debtor's pre-petition business included sale of mobile homes, the debtor could continue to sell mobile homes in the ordinary course of business post-petition); *In re Coordinated Apparel, Inc.*, 179 B.R. 40 (Bankr. S.D.N.Y. 1995) (a hypothetical creditor could reasonably expect a debtor engaged in the business of manufacturing and distributing clothing to enter into a contract for the manufacture of clothing); *In re Johns-Manville Corp.*, 60 B.R. 612, 14 (Bankr. S.D.N.Y. 1986) (post-petition payments to lobbyists regarding asbestos-related legislation were made "in the ordinary course of business" by the debtor, an asbestos manufacturer, who had been lobbying in connection with asbestos-related legislation for more than 10 years).

17. The definition of what is within the debtor's prepetition practice can be broadly defined to include categories of activity into which new post-petition activity may fall. *See In re Atlanta Retail, Inc.*, 287 B.R. 849 (Bankr. N.D. Ga. 2002) (noting that opponent of debtor's proposed transaction took "too narrow of a view of ordinary course" transactions because transaction needed to be broadly defined to include all types of continuation of prepetition activity); *see also In re Git-N-Go, Inc.*, 322 B.R. 164 (Bankr. N.D. Okla. 2004) (court held that post-petition agreement covering a one-year period, compared to two- to three-year periods covered by pre-petition contracts, entered into by a convenience store chain debtor in possession and an armored truck security service, for transporting cash on a daily basis, was a transaction in the "ordinary course of business"). Although a transaction is more likely to be found in the

ordinary course of business if it is of a type occurring in the day-to-day operations of a debtor's business, more occasional transactions may also be found within the ordinary course. *In re Dant & Russell, Inc.*, 853 F.2d 700, 704–05 (9th Cir. 1988) (finding that the renewal of a lease was in the ordinary course “even though it occurs only occasionally.”).

18. Entering into the SD Satellite Contract and initiating the manufacture of the SD Satellites is within the ordinary course of the Debtors' business, under both the horizontal, industry-wide perspective, as well as the vertical, creditors'-perspective, tests. Maintaining and growing the Company's satellite fleet, by replacing and supplementing outdated and aging satellites with new and improved satellites, is the type of transaction commonly undertaken by the Debtors and other companies in the satellite industry to keep their satellites updated and well-functioning. Indeed, as part of its annual public guidance the Company informs investors of its expectation to build and replace satellites in the ordinary course of business.<sup>4</sup> The Company has entered into multiple satellite contracts or had satellites in production in each of the last five years (exclusive of the seven satellites contracted for in connection with the C-band clearance process). The approximately 15-year life span of each satellite requires continual and regular entry into contracts for the manufacture of new satellites, and changing customer and market demands require continual evaluation and management of the satellite fleet. If the Company did not build

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<sup>4</sup> See, e.g., Intelsat S.A., Annual Report (Form 10-K) (Feb. 20, 2020) (“We would expect to replace other existing satellites, as necessary, with satellites that meet customer needs and that have a compelling economic rationale. We periodically conduct evaluations to determine the current and projected strategic and economic value of our existing and any planned satellites and to guide us in redeploying satellite resources as appropriate. In early 2020, Intelsat selected SSL to manufacture Intelsat 40e, a next generation Intelsat Epic geostationary communications satellite that is scheduled to launch in 2022.”); Intelsat S.A., Annual Report (Form 20-F) (Feb. 20, 2019) (same, noting orders for Intelsat 39 and Galaxy 30 satellites); Intelsat S.A., Annual Report (Form 20-F) (Feb. 20, 2018) (same, noting orders for Intelsat 39 and Galaxy 30 satellites, as well as custom payloads being built as well as the joint venture satellite Horizons 3e in development); Intelsat S.A., Annual Report (Form 20-F) (Feb. 20, 2017) (same, noting orders for Intelsat 35e, 37e, 39, and EpicnG class, as well as custom payloads and Horizons 3e); Intelsat S.A., Annual Report (Form 20-F) (Feb. 20, 2016) (same, noting orders for Intelsat IS-31, 36, 33e, 35e, and 37e as well as custom payloads and Horizons 3e).

and launch new satellites, customers would be left without service, and revenue would decline (and the business would ultimately cease). Building new satellites was projected in the Debtors' budget for these chapter 11 cases and is included in their go-forward business plan.

19. In short, the SD Satellite Contract is precisely the sort of transaction the Debtors' creditors would reasonably expect the Debtors to engage in – being the activity the Debtors have been engaged in for the past 55 years. Therefore, entering into the SD Satellite Contract is in the ordinary course of the Debtors' business.

**II. Alternatively, Entering into the SD Satellite Contract is an Exercise of the Debtors' Sound Business Judgment and is in the Best Interest of the Debtors' Estates**

20. While the Debtors believe that the SD Satellite Contract is squarely within the ordinary course of their business, out of an abundance of caution, the Debtors seek Court approval to enter into the SD Satellite Contract as an exercise of their sound and reasonable business judgment.

21. Section 363(b)(1) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). It is well established that if a “sound business reason” exists, the court should approve the transaction. *See In re W.A. Mallory Co., Inc.*, 214 B.R. 834 (Bankr. E.D Va 1997); *see also In re ASARCO, L.L.C.*, 650 F.3d 593, 601 (5th Cir. 2011) (the “business judgment standard in section 363 is flexible and encourages discretion.”); *In re FCX, Inc.*, 60 B.R. 405 (E.D N.C 1986) (“Continued operation of the business and preservation of the debtor's assets are prime elements of the business judgment rule”).

22. Courts generally give great deference to a debtor's decisions when applying the business judgment standard, and hold that a debtor's business judgment should rarely be overridden. *See In re TM Village, Ltd.*, 598 B.R. 851 (Bankr. N.D. Tex. 2019) (“The business

judgment standard is highly deferential to the decisions of a debtor in possession . . . The possibility that an alternative course of action may result in higher sale proceeds alone will not support a finding that the Debtor's decision to assume was made in bad faith or a gross abuse of its business discretion"); *In re Global Crossing, Ltd.*, 295 B.R. 726, 744 (Bankr. S.D.N.Y. 2003) (“[T]he Court does not believe that it is appropriate for a bankruptcy court to substitute its own business judgment for that of the [d]ebtors and their advisors, so long as they have satisfied the requirements articulated in the caselaw.”). In fact, deference to a debtor’s business judgment is inappropriate only upon a showing “of bad faith or gross abuse of that judgment, and this rule extends to bankruptcy proceedings.” *Quality Inns Intern., Inc. v. L.B.H Associates Ltd. Partnership*, 911 F.2d 724 (4th Cir. 1990); *see also In re W.A. Mallory Co., Inc.*, 214 B.R. at 836) (“This element is similar to many states’ ‘business judgment rule,’ where great deference is given to a business in determining its own best interests.”). Once a debtor articulates its valid business justification, “then a strong presumption follows that the agreement at issue was negotiated in good faith and is in the best interests of the estate; the burden of rebutting that presumption falls to parties opposing the transaction.” *In re Filene’s Basement, LLC*, 2014 WL 1713416, 12 (Bankr. D. Del. 2014).

23. As set forth above, the Debtors have a sound business justification for entering into the SD Satellite Contract, which will allow them to maintain their satellite fleet and expand it with the up-to-date software-defined SD Satellites. Under the SD Satellite Contract, the Debtors will be able to deploy new technology and capture growth in the mobility market. They will also be able to add critical capacity to their existing satellite fleet that is necessary to meet projected customer demand. Accordingly, for the reasons set forth above, the Debtors respectfully request the Court to approve the Debtors’ execution of the SD Satellite Contract.

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

24. 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**

25. The Debtors will provide notice of this Motion via first class mail, facsimile or email (where available) to the Service List in accordance with the Notice Procedures as set forth in the *Order (A) Establishing Certain Notice, Case Management, and Administrative Procedures and (B) Granting Related Relief* [Docket No. 141].

26. 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, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Richmond, Virginia  
Dated: December 31, 2020

*/s/ Jeremy S. Williams*

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**Exhibit A**

**Proposed Order**

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**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 AUTHORIZING ENTRY INTO THE  
 SD SATELLITE CONTRACT AND 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”) authorizing the Debtors to enter into the SD Satellite Contract, and to take the actions contemplated therein, and granting related relief; and this Court having 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; 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

<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 herein have the meanings ascribed to them in the Motion.

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 that no other notice need be provided; and this Court having reviewed the Motion, 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 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 in this Order.
2. The Debtors' entry into the SD Satellite Contract is hereby authorized.
3. For the avoidance of doubt, notwithstanding any provision in this Order to the contrary, nothing in this Order shall authorize any party to take any action inconsistent with the DIP Order<sup>3</sup> or the DIP Documents (as defined in the DIP Order).
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 Bankruptcy Rules are satisfied by such notice.

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<sup>3</sup> "DIP Order" means the *Final Order (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Superpriority Administrative Expense Claims, (D) Granting Adequate Protection to the Prepetition Secured Parties, (E) Modifying the Automatic Stay, and (F) Granting Related Relief* [Docket No. 285].

5. Notwithstanding Bankruptcy Rule 6004(h), this Court, for good cause shown, orders that the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

6. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

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

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

WE ASK FOR THIS:

/s/ Jeremy S. Williams

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**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 S. Williams