

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
GENERAL ELECTRIC CAPITAL CORPORATION)	
)	
Transferor,)	File No.
)	
and)	
)	
SES GLOBAL S.A.)	
)	
Transferee,)	
)	
Application for Consent to Transfer of Control)	

APPLICATION FOR CONSENT TO TRANSFER OF CONTROL

Peter A. Rohrbach
Karis A. Hastings
Hogan & Hartson L.L.P.
555 Thirteenth Street, NW
Washington, D.C. 20004
(202) 637-5600

Attorneys for Transferor

Phillip L. Spector
Laura B. Sherman
Paul, Weiss, Rifkind,
Wharton & Garrison
1615 L Street, NW, Suite 1300
Washington, D.C. 20036
(202) 223-7300

Attorneys for Transferee

Table of Contents

I. COMPONENTS OF THE APPLICATION2

II. DESCRIPTION OF THE APPLICANTS4

 A. SES Global and Its Subsidiaries4

 B. GE Capital and the Americom Licensees.....7

III. DESCRIPTION OF THE TRANSACTION10

IV. THE PROPOSED TRANSACTION WILL SERVE THE PUBLIC INTEREST11

 A. The Proposed Transaction Will Enhance Competition.13

 B. The Transaction Complies with Section 310 of the Act.....20

 1. FCC Policies Implementing the WTO Agreement Create a Strong Presumption in Favor of the Proposed Transaction20

 2. Section 310(a) Does Not Prohibit SES Global’s Acquisition of the Americom Licensees.....22

 C. SES Global Is Qualified To Control Commission Licenses.....28

V. REQUEST FOR EXEMPTION FROM THE “CUT-OFF” RULE.....29

VI. CONCLUSION.....31

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
GENERAL ELECTRIC CAPITAL CORPORATION)	
)	
Transferor,)	File No.
)	
and)	
)	
SES GLOBAL S.A.)	
)	
Transferee,)	
)	
Application For Consent to Transfer of Control)	

APPLICATION FOR CONSENT TO TRANSFER OF CONTROL

General Electric Capital Corporation ("GE Capital") and SES Global S.A. ("SES Global" and, together with GE Capital, the "Applicants") hereby request authority of the Federal Communications Commission (the "FCC" or the "Commission") for the transfer of control of space station, earth station and microwave licenses and Section 214 authority held by GE American Communications, Inc. ("GE Americom") and Columbia Communications Corporation ("Columbia") (collectively, the "Americom Licensees").

The transfer of control will occur as a result of a merger of a wholly owned subsidiary of SES Global into GE Subsidiary, Inc. 22 ("GE Sub-22"), an indirect subsidiary of GE Capital, with GE Sub-22 surviving. The Americom Licensees are indirect, wholly owned subsidiaries of GE Sub-22. Subsequent to the transfer, the Americom Licensees will continue to operate as indirect, wholly owned subsidiaries of SES Global, under a name to be developed.

SES Global also is expected to own at least 80% of the voting interests of Société Européennes des Satellites, S.A. ("SES").

Grant of this Application will serve the public interest, convenience and necessity. The proposed transaction will combine the resources of the Americom Licensees, which primarily provide U.S. domestic and international satellite services, with those of SES, which primarily provides satellite-based radio, television and broadband services directly in Europe, and indirectly through affiliates, in Asia and Latin America. The Americom Licensees and SES will be able to compete more effectively in the global communications services market by creating integrated satellite networks with worldwide coverage. Consumers will benefit from the availability of a broad range of satellite services from a single source. The transaction also will lead to operational efficiencies and permit greater investment in facilities, customer services and technological innovation. In addition, the transaction will enable the Americom Licensees to deploy interactive, broadband multimedia services in the United States more rapidly, thereby supporting a Congressional and Commission goal of providing affordable, high-speed Internet access to all parts of the United States.¹

For these reasons and the other reasons set forth below, the Applicants respectfully ask the Commission to promptly grant the Application.

I. COMPONENTS OF THE APPLICATION

¹ See Telecommunications Act of 1996, § 706(a), Pub. L. No. 104-104, 110 Stat. 56, 153 (the Commission shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Second Report, 15 FCC Rcd 20913, 20915 (2000) (the Commission has already taken -- and will continue to take -- steps to ensure that consumers in all regions of the nation have access to advanced telecommunications capability in a reasonable and timely fashion).

This Application is filed pursuant to Sections 214 and 310 of the Communications Act of 1934, as amended (the "Act"),² and the Commission's Rules.³ The Application includes the following attachments:

1. Attachment A consists of one FCC Form 312, requesting consent to the transfer of control of various earth station licenses held by GE Americom.
2. Attachment B consists of five FCC Form 312's, requesting consent to the transfer of control of VSAT system licenses held by GE Americom.
3. Attachment C consists of one FCC Form 312, requesting consent to the transfer of control of various space station licenses held by GE Americom.
4. Attachment D consists of one FCC Form 312, requesting consent to the transfer of control of various space station licenses held by Columbia.
5. Attachment E consists of a request to transfer control of Section 214 authority held by GE Americom.

Each attachment contains the exhibits required pursuant to FCC Form 312 or Section 214 of the Act, as the case may be, and each attachment and its associated filing fee have been filed separately in accordance with Commission Rules. In addition, the Applicants have filed, with respect to microwave licenses held by GE Americom, a Form 603 transfer of control application and a Form 602 ownership report describing the anticipated post-transaction ownership interests in GE Americom.

² 47 U.S.C. §§ 214, 310.

³ *See, e.g.*, 47 C.F.R. §§ 1.948, 25.119, 63.18.

II. DESCRIPTION OF THE APPLICANTS

A. SES Global and Its Subsidiaries

SES Global. SES Global is a newly formed Luxembourg company. It will hold indirectly 100% of the shares of the Americom Licensees and directly a minimum of 80% of the shares of SES, as well as other non-European and non-U.S. satellite interests currently owned by SES and by GE Capital. SES Global's principal office is in Betzdorf, Luxembourg. At the closing of the transaction, which is described in Section III, SES Global will have three classes of voting shares. While all of the shares will have one vote each, each of the Class A and Class C shares will be entitled to a greater economic return per share than a Class B share, equaling in the aggregate 66 2/3% of the dividends and liquidation proceeds.

GE Capital will be the largest single shareholder of SES Global, holding approximately 15.4 million Class C shares, which will represent 25.1%⁴ of the economic interest and 20.1% of the voting interest in SES Global.⁵ Deutsche Telekom, A.G. ("Deutsche Telekom") is expected to be the largest holder of Class A shares of SES Global, owning an economic interest of 12.6% and a voting interest of 10.1% in SES Global.⁶ The remainder of the Class A shares will be held by certain institutions and by the public in the form of depositary receipts or shares ("International Depositary Shares") traded on the Luxembourg and Frankfurt Stock Exchanges. It is anticipated that Class A shares will also be offered to the public in the

⁴ All of the SES Global percentage interests in the Application are based on the assumption that SES Global will offer approximately 7.5-8% of its equity in a listing in the United States. If such a U.S. public offering does not occur and SES Global does not otherwise raise additional equity, GE Capital's ownership interest and the interest of each of the other SES Global shareholders (other than the Class B Shareholders) will increase.

⁵ GE Capital will hold all of SES Global's Class C shares with minor exceptions.

⁶ Deutsche Telekom currently holds a 20.83% economic interest and a 16.67% voting interest in SES, so its interest will be diluted by the transaction.

United States in the form of International Depositary Shares, which are expected to be traded on the New York Stock Exchange.

The Class B shares will be held by Banque et Caisse d'Epargne de l'Etat ("BCEE"), and Société Nationale de Crédit et d'Investissement ("SNCI"), each of which is an institution created by act of the Luxembourg Parliament and owned by the State of Luxembourg, and the State of Luxembourg (BCEE, SNCI and the State of Luxembourg in its role as a shareholder are referred to collectively as the "Class B Shareholders."). Together the Class B Shareholders are expected to hold a 16.67% economic interest and 33.33% voting interest in SES Global.⁷

The Board of Directors of SES Global is expected to be composed of 21 Directors, of whom 11 will be elected based on nominations by the holders of Class A shares, three will be elected based on nominations by the holders of Class C shares (that is, GE Capital) and seven based on nominations by the Class B Shareholders. The Board of Directors will establish a "Bureau" of the Board, which will prepare resolutions to be submitted for approval by the Board of Directors. It is expected that the Bureau will be composed of seven members, including the Chairman of the Board, one representative of GE Capital, two representatives of the Class B Shareholders and three representatives of the Class A Shareholders.

SES. SES, founded in 1985, provides transponder capacity and associated communications services through which television and radio broadcasters, as well as multimedia service providers, make available free and subscription programming and other services to the general public and closed user groups in Europe. Its principal office is in Betzdorf, Luxembourg.

⁷ BCEE and SNCI together currently hold a 16.67% economic interest and 33.33% voting interest in SES. These institutions and the State of Luxembourg are expected to acquire additional shares in connection with the transaction and thereby avoid dilution.

SES owns and operates the ASTRA satellite system, which consists of 11 geostationary satellites. Six Ku-band satellites and one Ku/Ka-band satellite are located at 19.2° E.L., three Ku-band satellites are located at 28.2° E.L. and one Ku-band satellite is located at 24.2° E.L. SES has contracted for the construction and delivery of two Ku-band satellites and one Ku/Ka-band satellite, all of which will be deployed before the end of 2002. Of these, one will be launched into 23.5° E.L, one into 19.2° E.L. and one into 28.2° E.L.

In addition to the provision of capacity for cable networks and direct-to-home ("DTH") transmissions and satellite master antenna television ("SMATV") transmissions, SES operates ASTRA-NET, a satellite platform for data and multimedia transmissions that enables service and content providers to transmit data, audio and video directly to high-end servers and personal computers in businesses and homes served by the ASTRA satellite system in Europe. SES also is planning to deploy the ASTRA Broadband Interactive System, a direct satellite return channel system designed to service the growing market for two-way asymmetric, high-speed broadband collection and delivery of multimedia services.

SES owns 50% of Nordic Satellite Company ("NSAB"), a Swedish provider of transponder capacity and associated services for television and radio broadcasting, as well as for data transmission, Internet and multimedia services. NSAB operates three geostationary satellites at the 5° E.L. and 13° W.L. orbital locations, covering Scandinavia, the Baltic states, Eastern Europe and western Russia.

SES also owns interests in two other satellite service providers. It holds 34.13% of Asia Satellite Telecommunications Holdings Ltd. ("AsiaSat"), which operates three geostationary satellites providing transmission capacity for broadcast and telecommunications services throughout Asia, located at 122° E.L., 105.5° E.L. and 100.5° E.L. SES also owns a 19.99% interest in Star One S.A., a satellite company owned primarily by Empresa Brasileira de

Telecomunicações S.A. Star One currently operates five satellites providing transmission capacity for telecommunications and audio-visual services in Latin America and is planning to provide broadband Internet services via satellite in the future, including to rural areas.

Thus, either directly or through its ownership interests in NSAB, AsiaSat and StarOne, SES provides services in Europe, Asia and Latin America. SES, NSAB, AsiaSat and Star One do not provide any services in the United States.⁸

B. GE Capital and the Americom Licensees

The Americom Licensees are owned by General Electric Company ("GE")⁹ through a number of intermediate subsidiaries. At the time of the proposed transaction, the common stock of GE Sub-22 will be owned by two holding companies, CFE, Inc., a Delaware corporation that is a wholly owned subsidiary of GE Capital, and a new, wholly owned subsidiary of CFE, Inc. that will be incorporated pursuant to the laws of Gibraltar.¹⁰ GE Capital provides a broad range of global financial services, including corporate financing, insurance,

⁸ Brasilsat A2, which is owned by Star One, was added to the list of non-U.S. licensed satellites authorized to serve the United States on January 21, 2001. See *Empresa Brasileira de Telecomunicações S.A.*, Order, DA 00-2818 (Int'l Bur. 2001). It is SES Global's understanding that Star One does not today derive any U.S. revenues from, or provide transmissions to or from the U.S. via Brasilsat A2 or any other Star One satellite.

⁹ GE is engaged in developing, manufacturing and distributing a wide variety of products for the generation, transmission, distribution, control and utilization of electricity and products and services developed from the application of related new technologies. Through affiliates, GE also engages in a broad spectrum of financial services, including distribution, sales financing, commercial and industrial financing, real estate, transportation and reinsurance. In addition, GE has majority and minority interests in a number of companies engaged primarily in manufacturing and distributing products outside the U.S. similar to those sold domestically. Finally, GE owns, through other subsidiaries, television broadcast station licenses in the U.S. and the NBC television network.

¹⁰ In connection with the formation of the Gibraltar corporation, GE Capital will be filing a separate set of applications with the Commission seeking authority for a *pro forma* transfer of control of the licenses held by the Americom Licensees.

equipment management, transportation, commercial credit cards, and computer and communications services.

GE Sub-22 is a corporation organized and existing under the laws of the State of Delaware, with its principal offices in Princeton, New Jersey. GE Sub-22 indirectly holds 100% of the issued and outstanding stock of the Americom Licensees.

GE Americom is a corporation organized and existing under the laws of the State of Delaware with its principal offices in Princeton, New Jersey. GE Americom is a leading provider of U.S. satellite telecommunications services. Since 1976, it has offered a wide variety of C-band and Ku-band satellite services, including providing capacity for the delivery of video and audio services to cable head-ends and home satellite dish users. GE Americom currently operates a fleet of fourteen satellites that provide primarily U.S. domestic and international services. GE Americom holds licenses for numerous earth stations and VSAT systems, as well as microwave facilities used to transport traffic to and from GE Americom earth stations, and Section 214 authorizations to provide international service.

GE Americom has authority to launch and operate a Ka-band global satellite system¹¹ and has an application pending before the Commission for authority to launch and operate a global satellite system to operate in the V-band.¹² An affiliate of GE Americom owns 28.75% of Nahuelsat S.A., an Argentinean corporation that operates the Nahuelsat-1 Ku-band

¹¹ See *GE American Communications, Inc.*, 12 FCC Rcd 6475 (Int'l Bur. 1997); *GE American Communications, Inc.*, DA 01-225 (Int'l Bur., rel. Jan. 31, 2001).

¹² In addition, GE Americom has filed other applications that are currently pending before the Commission.

spacecraft located at 71.8° W.L.¹³ An affiliate of GE Americom also owns half the transponders on NSAB's Ku-band Sirius 2 spacecraft at 5° E.L. and markets capacity on that satellite in Europe under the "GE-1E" name. GE Americom and Lockheed Martin Global Telecommunications have entered into a joint venture that owns and operates the GE-1A spacecraft at 108° E.L., which provides service to Asia. A subsidiary of GE Americom holds a 18.4% interest in Gilat Satellite Networks, Inc., an Israeli corporation that develops products and offers services using VSAT satellite network technology.

GE Americom further expanded its services to markets outside the United States when it acquired Columbia last year.¹⁴ Columbia was among the first to provide international satellite services in competition with intergovernmental satellite organizations. Almost a decade ago Columbia began offering video, voice and data communications using capacity on Tracking and Data Relay Satellite Service ("TDRS") satellites in the Atlantic and Pacific Ocean regions ("AOR" and "POR," respectively) through an arrangement with the National Aeronautics and Space Administration.

Columbia currently provides AOR service using Columbia 515 (formerly INTELSAT 515)¹⁵ and TDRS-6 at 47° W.L.;¹⁶ and POR service using TDRS-5 at 174.3° W.L.¹⁷

¹³ At present, the GE Americom affiliate owns 51.75% of Nahuelsat but has exercised an option to sell 23% of Nahuelsat subject to approval of the sale by the Comisión Nacional de Defensa de la Competencia, the Argentine antitrust authority.

¹⁴ See *GE American Communications, Inc.*, 15 FCC Rcd 11590 (Int'l Bur. 2000) ("*GE Americom / Columbia Order*").

¹⁵ See *Columbia Communications Corp.*, 13 FCC Rcd 17772 (Int'l Bur. 1998). Columbia 515 is nominally assigned to 37.5° W.L., but is being operated at 37.7° W.L.

¹⁶ See *Columbia Communications Corporation*, 11 FCC Rcd 8639 (Int'l Bur. 1996).

¹⁷ See *Columbia Communications Corporation*, 7 FCC Rcd 122 (1991).

Columbia recently received authority to launch and operate a replacement satellite for the TDRS-5 capacity at 174.3° W.L.¹⁸ Its application for a replacement for Columbia 515 is pending.¹⁹ Columbia also holds authorizations to launch and operate a new C- and extended C-band spacecraft at 47° W.L., and a new hybrid C- and Ku-band spacecraft at 172° E.L.²⁰ In addition, Columbia has filed other applications that are pending currently before the Commission.

III. DESCRIPTION OF THE TRANSACTION

SES, SES Global, GE Sub-22 and CFE, Inc. entered into a Business Combination Agreement, dated as of March 27, 2001 (the "Business Combination Agreement"), and related agreements. Under these agreements, SES Global will become the parent company of SES. Shareholders holding a minimum of 80% of the voting interests of SES must exchange their shares in SES for equivalent shares in SES Global in order for the transaction to proceed.

SES Global will acquire all of the outstanding stock of GE Sub-22. To accomplish this acquisition, SES Global will form a subsidiary Delaware corporation, which will be merged with and into GE Sub-22, with GE Sub-22 being the surviving company. GE Sub-22's indirect subsidiaries, the Americom Licensees, will not be affected by the merger; they will remain subsidiaries of GE Sub-22. GE Capital is expected to receive an aggregate of \$5 billion in consideration, of which \$2.3 billion will be in SES Global Class C shares and \$2.7 billion will be in cash.²¹

¹⁸ See *Columbia Communications Corporation*, DA 01-514, File No. SAT-LOA-20000414-00081 (Int'l Bur., rel. Feb. 27, 2001).

¹⁹ See Application of Columbia Communications Corporation, File No. SAT-LOA-20000407-00080.

²⁰ See *Columbia Communications Corporation*, 14 FCC Rcd 3318 (Int'l Bur. 1999).

²¹ The consideration payable under the Business Combination Agreement is subject to adjustment at closing, based upon the weighted average trading price of SES shares

Continued on next page

Following the closing of the transaction, the Applicants will supplement all pending applications of the Americom Licensees as necessary to reflect the new ownership structure. To the extent that any such pending applications, or any other applications for new facilities or for renewal or modification of existing facilities, are granted prior to the closing, the parties respectfully request that the Commission determine here that the transfer of control to SES Global of any such subsequently granted licenses would serve the public interest, convenience and necessity.

IV. THE PROPOSED TRANSACTION WILL SERVE THE PUBLIC INTEREST

The Commission considers multiple factors in evaluating whether a proposed merger is consistent with the public interest. Specifically, the Commission evaluates “four overriding questions” in its public interest analysis:

- (1) whether the transaction would result in a violation of the Act or any other applicable statutory provision;
- (2) whether the transaction would result in a violation of Commission rules;
- (3) whether the transaction would substantially frustrate or impair the Commission’s implementation or enforcement of the Act or interfere with the objectives of that and other statutes; and
- (4) whether the transaction promises to yield affirmative public interest benefits.²²

This transaction satisfies each of these elements.

The proposed transaction will provide substantial public interest benefits by enhancing the ability of the Americom Licensees and SES to compete effectively in the U.S. domestic and international communications services markets. Furthermore, because the current

Continued from previous page

immediately prior to closing. In addition, SES Global may elect at closing to increase the portion of the consideration paid in SES Global shares.

²² *Aerial Communications, Inc.*, 15 FCC Rcd 10089, 10093-94 (Wireless Tel. Bur. & Int’l Bur. 2000) (citations omitted).

operations of the Americom Licensees and SES do not overlap at all in the United States and do not overlap in any material way elsewhere, the transaction will not decrease competition in any relevant market.

The transaction satisfies the first three prongs of the Commission's analysis; it will not result in the violation or frustration of any statutory provision or the Commission's Rules. The only conceivable issue that could be raised, relating to SES Global's foreign ownership, should in fact not raise any questions here.

The Americom Licensees hold both non-common carrier and common carrier licenses. Other than Section 310(a) of the Act, there are no restrictions on foreign ownership of non-common carrier licenses; Section 310(b) of the Act applies only to common carrier radio licenses.²³ Section 310(b)(1), (2) and (3) do not bar this transaction because all foreign ownership would be held through U.S. subsidiaries. The transfer of the common carrier radio licenses is consistent with the requirement of Section 310(b)(4) that SES Global's greater-than-25% investment in the Americom Licensees is in the public interest; the transaction is pro-competitive and there are no offsetting public interest harms. Section 310(a) is not applicable to this transaction because (i) the language of Section 310(a) prohibits only direct foreign government ownership of a radio license, and (ii) in any event, the State of Luxembourg does not exercise control of SES Global either directly or through a representative.

²³ See *Orion Satellite Corporation*, Memorandum Opinion, Order and Authorization, 5 FCC Rcd 4937, 4940, ¶ 21 (1990) (the foreign ownership restrictions embodied in Section 310(b) do not apply to non-common carrier satellite systems). See also *Licensing under Title III of the Communications Act of 1934, as amended, of Non-Common Carrier Transmit/Receive Earth Stations Operating with the INTELSAT Global Communications Satellite System*, 8 FCC Rcd 1387, 1388 n.6 (1993) (Section 310(b) is not a bar to foreign ownership of non-common carrier radio facilities).

A. The Proposed Transaction Will Enhance Competition.

The acquisition of the Americom Licensees by SES Global will provide substantial public interest benefits by enhancing the ability of the Americom Licensees and SES to compete effectively in the U.S. domestic and international communications services markets. Currently, SES is a well-established provider of communications satellite services in Europe, and the Americom Licensees are well-established providers of U.S. domestic and international satellite services in North America and the Caribbean. The Americom Licensees also provide transoceanic services using facilities operated by Columbia.²⁴ SES and the Americom Licensees do not compete with one another in any U.S. market,²⁵ and have an insignificant amount of overlapping operations in non-U.S. markets.

The combination of SES' operations in Europe with the Americom Licensees' operations in North America and the Caribbean will allow SES Global to provide satellite communications services throughout most of the world. The combined operations will permit the Americom Licensees and SES to realize economies of scale and scope in areas such as satellite control operations, procurement and research and development. Furthermore, as providers of global services, the Americom Licensees and SES will be better able to offer "one-stop shopping" for satellite services in direct competition with such global satellite companies as Intelsat, New Skies, PanAmSat and Loral, which already offer such services. This increased competition will benefit consumers by encouraging satellite services providers to offer expanded service offerings and lower prices.

²⁴ See *GE Americom / Columbia Order*, 15 FCC Rcd 11590.

²⁵ As noted above, SES owns approximately 20% of Star One, which operates the Brasilsat satellites. See note 8 *supra*.

Consumers will also benefit because SES Global, unlike the present parent of the Americom Licensees, will have an exclusive business focus on the provision of communications satellite services. This sharpened focus should lead to efficiencies and synergies among the SES Global companies. Moreover, SES has given high priority to developing residential and business broadband services via satellite; it operates one of the first commercial Ka-band payloads, and provides Internet and related services to small dishes at customer premises in Europe. SES Global expects to bring this same customer-driven priority on providing innovative broadband services to the U.S. market through the proposed acquisition, thereby helping to achieve the Commission's goal of improving high-speed Internet access to under-served communities in the U.S.²⁶

The Commission has consistently recognized the procompetitive effects of mergers involving satellite services providers that offer mostly non-overlapping services, as is the case here. For example, in approving the transfer of control of PanAmSat to Hughes, the Commission determined that the transaction "would enhance competition in the satellite services market, reduce video distribution costs, and enhance services, including seamless global services, and would thereby serve the public interest."²⁷ More recently, the Commission concluded that Loral's acquisition of Orion would permit the combined entity "to compete more effectively in the global telecommunications market," leading to "wider service offerings and lower prices for consumers."²⁸ Similarly, in approving GE Americom's acquisition of

²⁶ See note 1 *supra*.

²⁷ *Hughes Communications, Inc.*, 12 FCC Rcd 7534, 7544 (1996) ("*Hughes / PanAmSat Order*").

²⁸ *Loral Space & Communications Ltd.*, 13 FCC Rcd 4592 (Int'l Bur. 1998) ("*Loral / Orion Order*").

Columbia, the Commission concluded that the transaction would allow the combined GE Americom / Columbia to “offer a wider range of services with greater efficiency,” and “enhance GE Americom’s ability to provide its customers with a full array of service options.”²⁹

The acquisition of the Americom Licensees by SES Global falls squarely within the foregoing precedents. By coordinating their operations, the Americom Licensees and SES will be able to make substantial progress toward their mutual goal of establishing a global presence to serve the global communications requirements of their customers. The desire of the Americom Licensees and SES to achieve this important goal is motivated in large part by anticipated future demand for global connectivity for new broadband multimedia and Internet data services. Only by establishing and maintaining a truly global presence can this anticipated demand for new services be fulfilled.

A specific assessment of the relevant markets supports the conclusion that the proposed transaction would be procompetitive. In evaluating the competitive effects of mergers of satellite services providers, the Commission focuses on the potential impacts in both the U.S. domestic and international markets.³⁰ The Commission has determined that the U.S. domestic telecommunications market includes “all interstate, domestic interexchange telecommunications

²⁹ *GE Americom / Columbia Order*, 15 FCC Rcd at 11594.

³⁰ *See id.* at 11593; *Loral / Orion Order*, 13 FCC Rcd at 4595. The Commission takes into consideration procompetitive effects such as cost reductions, productivity enhancements, improved incentives for innovation and new service offerings.

services with no relevant submarkets.”³¹ Furthermore, the Commission has found that the relevant geographic market is nationwide.³²

The international market consists of three relevant “product” markets: international message telephone service (“IMTS”), non-IMTS³³ and television service.³⁴ The Commission has further subdivided the television service market, distinguishing between full-time video services on the one hand, and occasional-use and short-term video services on the other hand.³⁵ Geographically, the Commission has assessed the potential competitive effects on international telecommunications on a country-by-country basis.³⁶

The transaction will enhance competition in all of the relevant product and geographic markets. For the U.S. domestic telecommunications market, the Commission has determined that a proposed merger that would result in a combined market share of less than one

³¹ See *Loral / Orion Order*, 13 FCC Rcd at 4595 (quoting *Competitive Common Carrier*, 95 FCC 2d 554, 564 (1983)).

³² See *id.*; *GE Americom / Columbia Order*, 15 FCC Rcd at 11593.

³³ “Non-IMTS services include telex, telegram, private line, high and low speed data and other enhanced service offerings.” *Loral / Orion Order*, 13 FCC Rcd at 4596.

³⁴ *Id.*

³⁵ *Id.* The Commission explained that:

Full-time video services generally are provided to transmit regularly scheduled television broadcasts over the densest traffic routes for periods greater than three months. Occasional-use and short-term video services, on the other hand, are provided for the short-term transmission (from one day to three months) of video programming, like a fast breaking news story, from different geographic origination and termination points from one day to the next.

Id.

³⁶ *Id.* (citing *International Competitive Carrier Policies*, 102 FCC 2d 812 (1985)).

percent does not raise competitive concerns.³⁷ SES does not offer U.S. domestic telecommunications services, and thus has no U.S. market share and no U.S. revenues. The Americom Licensees' total annual revenues constitute less than 1% of 1999 total reported U.S. domestic telecommunications revenues of \$268 billion.³⁸ Thus, even assuming all of their revenue was derived from U.S. domestic telecommunications services, the Americom Licensees' revenue would still constitute less than one percent of total U.S. domestic telecommunications revenue. As a result, the transfer of control does not raise any competitive concerns for the U.S. domestic telecommunications market.³⁹

Similarly, the transaction does not raise any competitive concerns for the IMTS and non-IMTS markets. SES and the Americom Licensees are non-dominant in those markets in every geographic region. SES does not provide U.S. domestic telecommunications services, or any international telecommunications services to or from the United States.⁴⁰

³⁷ See *Loral / Orion Order*, 13 FCC Rcd at 4596 (citing *Contel Corporation*, 9 FCC Rcd 5775 (Com. Car. Bur. 1994)).

³⁸ See *Trends in Telephone Service*, Table 16.2 (Com. Car. Bur., Dec. 2000).

³⁹ The conclusion reached here logically is no different from the conclusion that the Commission reached in the *GE Americom / Columbia Order* where the Commission concluded that the transaction raised no competitive concerns because the combined U.S. domestic telecommunications revenues of GE Americom and Columbia were less than one percent of the total market. See *GE Americom / Columbia Order*, 15 FCC Rcd at 11594. Adding the revenues of SES does not change the result because SES has no U.S. domestic telecommunications revenues.

⁴⁰ SES does not hold any authorizations to provide services in the U.S. market, nor has it applied for any such authorization.

The extent of the IMTS and non-IMTS services provided by GE Americom essentially was zero until it acquired Columbia,⁴¹ and continues to be *de minimis* relative to the overall size of the U.S. markets for such services.⁴² The Commission's own statistics show that, as of 1999, the IMTS and non-IMTS services provided by all satellite providers in the United States accounted for just seven percent of the total markets for IMTS and non-IMTS services.⁴³ Under these circumstances it is clear that the proposed transaction does not raise competitive concerns for the IMTS or non-IMTS markets.

Likewise, competition will not be harmed in the U.S. market for television and related broadcast distribution services. SES does not provide any television or related broadcast distribution services in the United States; as noted previously, SES has no U.S. revenues.

Additionally, with respect to each of the relevant markets, the combination of the operations of the Americom Licensees and SES will not adversely affect potential competition. Given that it is GE Capital's intention to sell its satellite business, the only real question is who will be the buyer. There are only a limited number of buyers for such a business, and many of these potential buyers have U.S. satellite or telecommunications operations. Among the universe of potential buyers, SES Global should clearly be preferred because it does not have any U.S. operations.

⁴¹ As of December 31, 1999, GE Americom had no idle or active IMTS, international private line or other international services circuits. See 1999 Section 43.82 Circuit Status Data (Int'l Bur., Dec. 2000) at 5.

⁴² In approving the GE Americom/Columbia transaction, the Commission recognized that that "Columbia's market share in the IMTS market is *de minimis*." *GE Americom / Columbia Order*, 15 FCC Rcd at 11594.

⁴³ The Commission's own statistics show that the share of the IMTS and non-IMTS markets served by satellite services providers has fallen steadily since 1996. See 1999 Section 43.82 Circuit Status Data (Int'l Bur., Dec. 2000) at 19.

Furthermore, the Commission should bear in mind the overall competitive landscape for satellite services. In the United States, which is the primary geographic market served by the Americom Licensees, both Loral and PanAmSat are, and will continue to be, formidable competitors. The Commission also permits a multitude of foreign-licensed satellite systems to provide services in the United States.⁴⁴ In Europe, which is the primary geographic market served by SES, the competition includes Eutelsat, Intelsat, New Skies, PanAmSat, Intersputnik, Europe*Star and Arabsat, as well as certain regional satellite systems.

In sum, the transaction will not harm competition, and instead will have overwhelmingly procompetitive effects. Allowing the Applicants to proceed could not possibly harm competition in the United States because SES does not provide any U.S. services. Furthermore, the combination of operations of SES and the Americom Licensees will permit consumers to benefit from new and enhanced services, lower prices and seamless global satellite services.

⁴⁴ These satellites include: ANIK E1, ANIK E2, ANIK F1, Brasilsat A2, EutelSat II-F2, Mabuhay, SatMex 5 and Solidaridad 2. *See Permitted Space Station List* <<http://www.fcc.gov/ib/srd/se/permitted.html#6>>.

B. The Transaction Complies with Section 310 of the Act

SES Global will acquire 100% of GE Sub-22 – and therefore will exert *indirect* control over the Americom Licensees. As a result, with respect to the common carrier licenses being transferred, the Commission must evaluate under Section 310(b)(4) of the Act whether the merger is in the public interest.⁴⁵

1. FCC Policies Implementing the WTO Agreement Create a Strong Presumption in Favor of the Proposed Transaction

In recognition of the U.S. Government's obligations pursuant to the Agreement on Basic Telecommunications⁴⁶ negotiated at the World Trade Organization ("WTO"), the Commission has adopted a strong presumption in favor of entry and investment by entities from WTO member countries.⁴⁷ The *Foreign Participation Order*, implementing the Commission's approach to applications from WTO members for transfers of control, states that, pursuant to the presumption noted above, the Commission will approve a merger between a U.S. carrier and one based in a WTO country unless "the proposed merger poses a *very high risk to competition* [in the United States], or raises national security or law enforcement concerns."⁴⁸ That strong presumption applies here, because SES Global's home country, Luxembourg, is a WTO member.

⁴⁵ See 47 U.S.C. § 310(b)(4).

⁴⁶ The results of the basic telecommunications services negotiations, which concluded in February 1997, are actually not an "agreement" but are incorporated into the General Agreement on Trade in Services ("GATS") by the Fourth Protocol to the GATS. 36 I.L.M. 366 (1997).

⁴⁷ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23935-23942, ¶¶ 97-118 (1997) ("*Foreign Participation Order*"), on recon., 15 FCC Rcd 18158 (2000).

⁴⁸ *Foreign Government Ownership of American Telecommunications Companies*, Hearing before House Commerce Committee, Subcommittee on Telecommunications, Trade and Consumer Protection (Sept. 7, 2000) (Statement of William E. Kennard, Chairman, FCC) (emphasis added). The Commission has found that "easing foreign investment in U.S.

Continued on next page

There is no basis on which to rebut this presumption. The types of anti-competitive harm of concern to the Commission are not present here; there is no risk to competition, much less the “very high risk” required to block a transfer of control of this type. In the *Foreign Participation Order*, the Commission expressed concern about the ability of foreign carriers entering the U.S. market to leverage their foreign bottlenecks in order to create advantages for affiliates in the United States.⁴⁹ In reviewing applications for transfer of control under the framework of the *Foreign Participation Order*, the Commission also has considered the ability to cross-subsidize operations in the United States. In *DISCO II*, the Commission found that its rule prohibiting exclusive arrangements would adequately address many competitive concerns.⁵⁰ It noted prospective circumstances that could give rise to competition concerns, such as market concentration, discrimination, below average variable cost pricing or monopoly supply of service, or where the applicant has market power and could use that power to raise prices and limit output in the U.S. satellite market.⁵¹

SES has no exclusive arrangements; no market power over, much less a monopoly on the provision of, any particular satellite service; and no control over bottleneck

Continued from previous page

common carrier wireless markets” will serve the public interest. *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24159, ¶ 151 (1997) (“*DISCO II*”). Therefore it will apply the rules articulated in the *Foreign Participation Order* to applications for earth station licenses serving the United States as a common carrier. *Id.*

⁴⁹ See *Foreign Participation Order*, 12 FCC Rcd at 23922, ¶ 69.

⁵⁰ *DISCO II*, 12 FCC Rcd at 24165-6, ¶ 41. This rule prohibits licensees from entering into arrangements with foreign countries to be the exclusive provider of a particular satellite service in that country.

⁵¹ *DISCO II*, 12 FCC Rcd at 24113, ¶ 41.

facilities in any market. SES does not control entry into any market. As discussed above, satellites operated by Eutelsat, Intelsat, New Skies, and PanAmSat, among others, provide significant competition in the satellite market in Europe.⁵² These are all well-funded companies with extensive fleets of satellites. In the market for broadband, multimedia services, SES faces competition not only from other satellite systems, but also from terrestrial wireline and wireless providers. Thus, there is no basis upon which to conclude that SES could use its operations in Europe to subsidize the operation of the Americom Licensees or to cause any other competitive harm in the U.S. market. Moreover, as described above, the combination of the operations of SES and the Americom Licensees likely will promote competition in the satellite services markets, both in the United States and internationally.

In addition to competition-related issues, the Commission's analysis under the public interest standard includes consideration of national security, law enforcement, foreign policy and trade policy issues.⁵³ The Commission consults "with the appropriate Executive Branch agencies regarding those concerns."⁵⁴ The parties will be filing notification of the transaction under the Exon-Florio Amendment,⁵⁵ and intend fully to address any questions raised by the Executive Branch.

2. Section 310(a) Does Not Prohibit SES Global's Acquisition of the Americom Licensees

Section 310(a) of the Act does not prohibit foreign government ownership of radio licenses except to the extent such licenses are held directly by a foreign government or its

⁵² See text immediately following note 42 *supra*.

⁵³ See *Foreign Participation Order*, 12 FCC Rcd at 23940, ¶ 113.

⁵⁴ *Id.*

⁵⁵ Defense Production Act of 1950, Title VII, § 721, 50 U.S.C. § 2710.

representative. In this case, the State of Luxembourg will have only an indirect ownership interest (through Luxembourg companies and U.S. companies) in the Americom Licensees. Moreover, even if Section 310(a) could be read to prohibit indirect foreign government *control* of a license, it is not an obstacle to this transaction because the State of Luxembourg will not have *de jure* control and will not exercise *de facto* control over the Americom Licensees.

Both the language of Section 310 and its legislative history support the conclusion that Section 310(a)'s prohibition relates only to direct ownership. Although the scope of the radio licenses covered by Section 310(a) is broader than that of Section 310(b), the operative language is identical. Section 310(a) states that a radio license "shall not be granted to or held by any foreign government or the representative thereof," while Sections 310(b)(1), (2) and (3) state that no radio license "shall be granted to or held by" any alien or representative of any alien (in the case of (b)(1)), any corporation organized under the laws of any foreign government (in the case of (b)(2)), or any corporation more than 20% owned by aliens, representatives of aliens, foreign governments, or foreign corporations (in the case of (b)(3)). Well-established principles of statutory construction dictate that these words ("granted to or held by") cannot mean different things in the same statute.⁵⁶ The Commission has never interpreted Sections 310(b)(1), (b)(2) and (b)(3) as prohibiting indirect foreign ownership.⁵⁷ It should not interpret Section 310(a) differently.

⁵⁶ See, e.g., *ICC Industries, Inc. v. United States*, 812 F.2d 694, 700 (Fed. Cir. 1987) ([i]dential words used twice in the same act are presumed to have the same meaning) (citing 2A Sutherland Statutory Construction § 46.06 (4th ed. 1984)).

⁵⁷ In fact, if the Commission thought the language in Sections 310(b)(1) and (2) prohibited indirect ownership, it never could have granted the numerous applications for foreign ownership that it has received over the years. See, e.g., *MCI Communications Corporation and British Telecommunications plc*, Memorandum Opinion, Order, Declaratory Ruling, Authorization and Certificate, 12 FCC Rcd 15351 (1997) ("*BT/MCI Order*"); *AirTouch*

Continued on next page

If Section 310(a)'s language prohibiting "any foreign government or the representative thereof" from holding a license were read to prohibit *indirect* ownership by a foreign government, then Section 310(b)(1)'s language prohibiting "any alien or the representative of an alien" should be read to prohibit indirect ownership by an alien. Yet the Commission has never so held, and the Commission has routinely authorized foreign control by non-U.S. nationals of common carrier radio licenses through U.S. subsidiaries.⁵⁸

Indeed, if Section 310(a) is held to prohibit *indirect* foreign government ownership, then the same reading of Section 310(b)(3) (prohibiting the holding of, *inter alia*, a common carrier radio license by "any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives") would render Section 310(b)(1) entirely unnecessary. In addition, if the language of Section 310(b)(3) were held to prohibit indirect control by the listed types of entities, Section 310(b)(4)'s additional discretionary prohibitions would be meaningless. Courts have held often that a statute should not be construed so as to render a portion of it meaningless.⁵⁹ Thus, to give meaning to each

Continued from previous page

Communications, Inc. and Vodafone Group plc, Memorandum Opinion and Order, 14 FCC Rcd 9430 (1999) ("*Vodafone/Airtouch Order*").

⁵⁸ See, e.g., *MAP Mobile Communications, Inc.*, Order, 12 FCC Rcd 6109 (1997); *GCI Liquidating Trust*, Memorandum Opinion and Order, 7 FCC Rcd 7641 (1992); *Cable & Wireless, Inc.*, Declaring Ruling and Authorization and Certificate, 10 FCC Rcd 13177 (1995); *Telefonica Data Licensing, Inc.*, File No. ISP-PDR-2000313-0001, *grtd.* by PN Rpt. No. TEL-00216, DA00-846 (Apr. 13, 2000); *Davnet, Inc.*, File No. ISP-PDR-2000313-000 *grtd.* by same PN); *STM Wireless, Inc.*, 15 FCC Rcd 5819 (2000). See generally *Foreign Participation Order*, 12 FCC Rcd at 23940-42, ¶¶ 111-118 (adopting a proposal to "presumptively allow any amount of indirect investment by investors whose home markets are in WTO Member countries").

⁵⁹ See, e.g., *Colautti v. Franklin*, 439 U.S. 379, 392 (1979) (an elementary canon of construction is that a statute should be interpreted so as not to render one part inoperative); *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 837 & n. 11 (1988) (courts should not interpret one provision of a statute in a manner that renders another provision superfluous).

provision of Section 310, Section 310(a), like Sections 310(b)(1), (b)(2) and (b)(3), must be limited to restricting direct grant of a radio license to a foreign government or its representative, or the actual holding by a foreign government or its representative of a radio license.

The legislative history confirms this interpretation of Section 310(a). The earliest statutory predecessor of Section 310 prohibited a foreign national or foreign company from being a U.S. radio licensee but did not restrict ownership by a foreign national or a foreign company of a U.S. radio licensee.⁶⁰ A statute adopted in 1927 expanded the scope of the foregoing restrictions by limiting direct foreign ownership in a U.S. licensee to 20%.⁶¹ The prohibition on indirect foreign ownership of any kind of radio license was established in 1934.⁶² It treated foreign government ownership the same as that of aliens and foreign corporations.

When Section 310 was split into two sections and Section 310(a) was enacted in its current form, the stated purpose was to remove the direct ownership restrictions on non-common carrier radio licenses, particularly amateur radio licenses.⁶³ There is no indication of any intent to broaden the scope of the prohibition on direct ownership by a foreign government. As revised, Section 310(b)(1) and (b)(2) retained the prohibition on direct ownership of common carrier radio licenses. Similarly, the Commission should reach the conclusion that Section 310(a) merely retained the prohibition on direct ownership of any kind of radio license.

⁶⁰ See Act of Aug. 13, 1912, ch. 287, § 2, 37 Stat. 302 (1912), repealed by Radio Act of 1927, ch. 169, § 39, 44 Stat. 1162 (1927).

⁶¹ See Radio Act of 1927, ch. 169, § 12, 44 Stat. 1162 (1927), repealed by Communications Act of 1934, ch. 652, § 602(a), 48 Stat. 1086 (1934).

⁶² See Communications Act of 1934, ch. 652, § 310, 48 Stat. 1086 (1934). See also 47 U.S.C. § 310.

⁶³ See H.R. Rep. No. 93-1423 (1974), reprinted in 1974 U.S.C.C.A.N. 6305-6.

In any event, the Commission has made clear that Section 310(a) does not prohibit foreign government investments that do not amount to "control."⁶⁴ Even by that standard, this proposed transaction is permissible because the State of Luxembourg will not exercise *de jure* or *de facto* control of SES Global and thus will not in any way control the Americom Licensees.

The Commission has defined *de jure* control as control of more than 50% of a corporation's shares.⁶⁵ Assuming for these purposes that BCEE and SNCI are representatives of the government of Luxembourg, their shareholdings in SES Global, when aggregated with those of the State of Luxembourg, will constitute substantially less than 50%.

Furthermore, the State of Luxembourg will not exercise *de facto* control of SES Global. The Commission considers a number of questions to determine whether *de facto* control exists.⁶⁶ In this case, these questions essentially ask whether the government of Luxembourg or its representative will be in "actual control" of SES Global or will be able to "dominate" the management of corporate affairs.⁶⁷ Again, assuming that BCEE and SNCI qualify as representatives of the government of Luxembourg, they do not manage SES Global. As Class B shareholders and directors, BCEE and SNCI will not be involved in the day-to-day operations of SES Global, nor will the State of Luxembourg as a result of its shareholding. None of them have

⁶⁴ See *INTELSAT LLC*, 15 FCC Rcd 15460, 15481-82, ¶ 48 (2000).

⁶⁵ See, e.g., *Starsys Global Positioning Inc.*, Declaratory Ruling, 10 FCC Rcd 9392, 9393, ¶ 9 (1995).

⁶⁶ These questions include: (1) does the licensee have unfettered use of all facilities and equipment; (2) who controls daily operations; (3) who determines and carries out policy decisions; (4) who is in charge of employment; (5) who is in charge of payment of financial obligations; and (6) who receives the revenue and profits from operations? *Intermountain Microwave*, 24 R.R. 983, 984 (1963); Public Notice, 1 FCC Rcd 802 (1986) (providing guidance regarding questions of control based on *Intermountain Microwave*)

⁶⁷ See *INTELSAT*, 15 FCC Rcd at 15482-83, ¶ 50.

any say over the use of facilities or equipment, daily operations, personnel matters (other than the appointment of top management) or financial matters. Nor do they receive any profits beyond the dividends received by all shareholders.

The powers of the Class B Shareholders are designed to protect their investment and, as such, do not permit *de facto* control.⁶⁸ As the Commission has held previously, a decision-making role (through supermajority provisions or similar mechanisms) in major corporate decisions that fundamentally affect one's interests as a shareholder is not by itself evidence of control.⁶⁹ In the *BT/MCI Order*, the Commission expressly found that covenants giving BT the ability to block a wide variety of corporate actions did not give BT control.⁷⁰ Although BT could block certain major transactions, it could not "compel MCI to engage in any major transaction."⁷¹

In this case, the Class B Shareholders have fewer blocking rights than those granted to BT. The Class B Shareholders must approve the following corporate actions: (i) the election of the directors and auditors; (ii) the determination of the directors' term of office, number and remuneration; and (iii) amendment to the Articles of Incorporation. In addition, the

⁶⁸ See Part II.A. See *Baker Creek Communications, L.P.*, Memorandum Opinion and Order, 13 FCC Rcd 18709, 18714-15, ¶ 9 (1998).

⁶⁹ See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403, 447-49, ¶ 81 (1994). See also *Request of MCI Communications Corporation, British Telecommunications plc, Joint Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) of the Communications Act of 1934, as amended*, Declaratory Ruling and Order, 9 FCC Rcd 3960, 3962, ¶ 14 (1994) ("*BT/MCI Joint Petition Order*") (covenants that give a party the power to block certain major transactions of a company do not in and of themselves represent the type of transfer of corporate control envisioned by Section 310(d)).

⁷⁰ *BT/MCI Joint Petition Order*, 9 FCC Rcd at 3960, ¶ 13.

⁷¹ *Id.* at ¶ 14.

approval of the Directors nominated by the Class B Shareholders is required to: (x) issue shares within the authorized capital, (y) to appoint and dismiss members of the Management Committee (the senior management); and (z) elect the Chairman of the Board.⁷² As in the BT/MCI situation, the Class B Shareholders cannot compel SES Global to act. Thus, the shareholdings of BCEE, SNCI and the State of Luxembourg do not constitute control by a foreign government or its representative for purposes of Section 310(a).

C. SES Global Is Qualified To Control Commission Licenses

Finally, the Commission's public interest analysis requires it to determine, under Section 310(d) of the Act, whether the proposed licensees are qualified to hold Commission licenses and whether grant of the application would result in the violation of any Commission rules.⁷³ Generally, in evaluating transfer of control applications, the Commission does not reevaluate the qualifications of the transferor unless it has otherwise designated issues relating to its qualifications for hearing.⁷⁴ In the context of applications for radio station licenses, the Commission also reviews compliance with its technical, financial and legal requirements.⁷⁵

In the proposed transaction, the Americom Licensees will retain the station licenses. In granting these licenses, the Commission found that the Americom Licensees

⁷² Because SES Global will control SES, a licensee of the government of Luxembourg, the government in its role as a regulator has the right to approve (i) the acquisition of more than 10% of the shares of SES Global by any one shareholder; (ii) the acquisition of more than 30% of SES Global shares by users of SES Global transmission capacity; and (iii) the acquisition of more than 30% of SES Global shares by manufacturers of satellites or launchers for satellites or satellite operators.

⁷³ See *AirTouch / Vodafone*, 14 FCC Rcd at 9433-34, ¶ 7 (1999).

⁷⁴ See *Global Crossing Ltd. and Frontier Corporation*, Memorandum Opinion and Order, 14 FCC Rcd 15911, 15915, ¶ 10 (1999).

⁷⁵ See *DISCO II*, 12 FCC Rcd at 24161-2, ¶¶ 154-159.

satisfied the technical, financial and legal requirements; no issues relating to the qualifications of the Americom Licensees have been designated by the Commission for hearing. As shown in response to the questions posed in the attached Form 312s, SES Global complies in all respects with the Commission's legal and financial qualifications requirements.

V. REQUEST FOR EXEMPTION FROM THE "CUT-OFF" RULE

The Applicants also request that the Commission waive application of any "cut-off" rules with respect to pending applications, to the extent such applications have been subject to an FCC cut-off notice prior to consummation of the proposed transaction.⁷⁶ The Commission has routinely granted such relief for pending applications in the context of other major mergers of satellite service providers.⁷⁷

In evaluating requests for exemption from the cut-off rules, the International Bureau has considered two factors: (1) whether the proposed transaction has a legitimate business purpose, and (2) whether the change in ownership otherwise serves the public interest.⁷⁸ This transaction satisfies both prongs of that test.

As discussed above, the purpose of the transaction is to enhance the ability of the Americom Licensees and SES to compete globally and to provide more comprehensive and efficient services to customers. The transaction involves operational and authorized satellites in

⁷⁶ Under Section 25.116(c) of the Commission's rules, any pending application will be considered "newly filed" and therefore may lose its place in the processing line if it is modified by a "major amendment." Amendments that specify a substantial change in beneficial ownership or control of the applicant are considered "major" under this provision. There is an exception, however, where the amendment reflects only a change in ownership or control found by the Commission to be in the public interest. In those circumstances, the Commission can grant an exemption from the cut-off date. *See* 47 C.F.R. § 25.116(c)(2).

⁷⁷ *See, e.g., Loral / Orion Order*, 13 FCC Rcd at 4598-4600, ¶¶ 14-19; *Hughes / PanAmSat Order*, 12 FCC Rcd at 7536-7, ¶¶ 7-8.

addition to the pending applications. Under these circumstances, there can be no question that the transaction serves an independent business purpose and was not entered into for the purpose of acquiring pending applications.⁷⁹ Furthermore, for the reasons discussed in the previous sections, the proposed transaction will serve the public interest. Accordingly, the Applicants submit that an exemption from the cut-off rule for pending applications is appropriate here.

Continued from previous page

⁷⁸ *Loral / Orion Order*, 13 FCC Rcd at 4599, ¶ 17 (citations omitted).

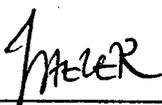
⁷⁹ *See id.* ¶ 18 (citing *Airsignal International Inc.*, 81 FCC 2d 472 (1980)).

VI. CONCLUSION

For the foregoing reasons, the Applicants respectfully request the Commission to grant this application for transfer of control of the space station, earth station and microwave licenses and Section 214 authority held by the Americom Licensees.

Respectfully submitted,

SES GLOBAL S.A.

By: 
Roland Jaeger
Director

GENERAL ELECTRIC CAPITAL
CORPORATION

By: _____
John Connelly
Vice President

Dated: April 2, 2001

VI. CONCLUSION

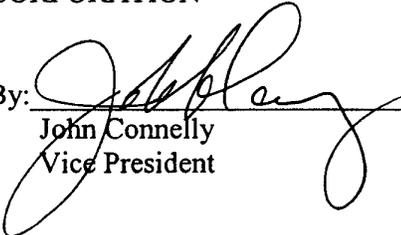
For the foregoing reasons, the Applicants respectfully request the Commission to grant this application for transfer of control of the space station, earth station and microwave licenses and Section 214 authority held by the Americom Licensees.

Respectfully submitted,

SES GLOBAL S.A.

By: _____
Roland Jaeger
Director

GENERAL ELECTRIC CAPITAL
CORPORATION

By:  _____
John Connelly
Vice President

Dated: April 2, 2001