



PUBLIC NOTICE

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AUTHORIZATIONS GRANTED

Applications of AmericaSky Corporation and Americatel Corporation to Transfer Control of Licenses and Authorizations and Request for a Declaratory Ruling on Foreign Ownership

WC Docket No. 05-40

By the Chief, International Bureau and Chief, Wireline Competition Bureau:

On January 25, 26 and 27, 2005, AmericaSky Corporation (“AmericaSky”), and Americatel Corporation (“Americatel” and collectively with AmericaSky, the “Applicants”) filed applications pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (the “Act”) and AmericaSky filed a petition for declaratory ruling under section 310(b)(4) of the Act.¹ The unopposed Applications seek Commission approval for the transfer of control of licenses and authorizations from Telecom Italia International N.V. (“TII”) to Almendral, S.A. (“Almendral”) pursuant to a Stock Purchase Agreement entered into by TII and Almendral. These applications pertain to a license for an earth station, and domestic and international section 214 authorizations. The Applicants also request to be reclassified as non-dominant carriers on the U.S.-Italy, U.S.-Argentina, U.S.-Austria, U.S.-Bolivia and U.S.-Cuba routes. In addition, AmericaSky requests a declaratory ruling that the proposed indirect foreign investment by Almendral would be consistent with the public interest.²

Upon consideration of the record, the International Bureau and the Wireline Competition Bureau find that grant of the Applications will serve the public interest, convenience and necessity.³ As a preliminary matter, there is no evidence in the record to suggest that Almendral,

¹ 47 U.S.C. §§ 214, 310(b)(4), 310(d). On February 11, 2005, the Commission placed the Applications and Petition for Declaratory Ruling on public notice as acceptable for filing. *Applications of AmericaSky Corporation and Americatel Corporation to Transfer Control of Licenses and Authorizations and Request for a Declaratory Ruling on Foreign Ownership*, WC Docket No. 05-40, Public Notice, DA 05-383 (rel. Feb. 11, 2005).

² A list of the applications and the petition for declaratory ruling filed in this proceeding is set forth in Appendix A of this Public Notice.

³ 47 U.S.C. §§ 214(a), 310(d).

a publicly-held Chilean corporation, lacks the basic qualifications to control the earth station license held by AmericaSky.⁴ Further, the record contains no evidence that the proposed transfer of control would harm competition in the relevant U.S. telecommunications markets.

AmericaSky, a Florida corporation, maintains and operates two earth station facilities licensed by the Commission for U.S. domestic and international satellite service.⁵ AmericaSky is 80 percent owned by ENTEL USA Holdings, Inc. (“ENTEL USA”), a U.S. corporation, and 20 percent owned by ENTEL International B.V.I. Corporation (“ENTEL BVI”), a company organized under the laws of the British Virgin Islands.⁶ Americatel is a Delaware corporation that provides U.S. domestic and international long distance services. Americatel is majority-owned (80%) by ENTEL BVI. ENTEL BVI and ENTEL USA are, respectively, direct and indirect, wholly-owned subsidiaries of Empresa Nacional de Telecomunicaciones, S.A. (“ENTEL-Chile”), a publicly-traded Chilean corporation that provides domestic and international long distance services in Chile.⁷ Currently, TII, a Netherlands corporation, holds a 54.76% voting interest in the stock of ENTEL-Chile. TII is a wholly-owned subsidiary of Telecom Italia S.p.A. (“Telecom Italia”), a joint stock company incorporated under the laws of Italy, which, along with its subsidiaries, provides fixed and mobile telecommunications services, data services, satellite telecommunications services, and information technology software and services throughout Europe and Latin America.

Pursuant to the Stock Purchase Agreement, Almendral will acquire a 54.76 percent voting interest in ENTEL-Chile from TII.⁸ As a result, Almendral will acquire an indirect controlling interest in AmericaSky and Americatel upon consummation of the proposed transaction.⁹ Under these circumstances, we find that granting the proposed transaction will not

⁴ According to the Applicants, Almendral is not currently a telecommunications provider. Additionally, Almendral and its direct and indirect owners do not currently provide any domestic telecommunications services and do not have an ownership interest in any company that provides domestic telecommunications services in the U.S. *See* Americatel Application at 4.

⁵ AmericaSky Earth Station Application at n.2 (File Nos. SES-MOD-19950804-00604 (KA407) and SES-MOD-19950804-00603 (KA412)).

⁶ *See, e.g.*, Petition for Declaratory Ruling at 3 & Exhibit A (Illustrative Chart of Transfer of Control).

⁷ *See* Americatel Application at 2-4.

⁸ The Applicants initially stated that under the terms of the Stock Purchase Agreement, “it is possible that all or part of the ENTEL-Chile shares to be acquired by Almendral will be held by a yet-to-be-formed Chilean wholly-owned subsidiary of Almendral (the “Subsidiary”).” According to the Applicants, the insertion of a wholly-owned subsidiary as the holder of all or part of the stock of ENTEL-Chile would not affect the ultimate control of AmericaSky and Americatel as described in the Application. To the extent any ownership interests of ENTEL-Chile would be ultimately held by such a Subsidiary, the Applicants agreed to promptly notify the Commission prior to the closing. Americatel Application at 4 n.3; AmericaSky Int’l 214 Application at 4 n.3. By letter dated March 14, 2005, the Applicants notified the Commission that Almendral has created an intermediate wholly-owned subsidiary, Inversiones Altel Limitada (“Inversiones”), to hold its shares of ENTEL-Chile. Inversiones is 99.99% owned by Almendral Telecomunicaciones S.A. (“Almendral Telecom”), which, in turn, is wholly-owned by Almendral. Almendral directly owns the other 0.01% of Inversiones. Accordingly, there are now two wholly-owned subsidiaries between Almendral and ENTEL-Chile. *See* Letter from Troy F. Tanner and Jean L. Kiddoo, Counsel to Americatel Corporation and AmericaSky Corporation, Swidler Berlin, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 14, 2005).

⁹ Pursuant to a shareholders agreement dated January 24, 2005, the following six shareholder groups (all owned and controlled by Chilean citizens) control approximately 75% of Almendral: the Fernandez Leon Group (15.036%); the Hurtado Vicuña Group (11.227%); the Matte Group (21.032%); the Izquierdo Group (12.749%); the Gianolli Group

harm competition in the relevant U.S. telecommunications markets. Further, we find that the approval of the transfers of control will serve the public interest and will have little impact on the day-to-day operations of AmericaSky and Americatel, but will produce efficiencies in the business and financial operations of the corporate structure above AmericaSky.

The International Bureau further finds that it would not serve the public interest to deny the applications on the basis of proposed indirect foreign ownership of AmericaSky in excess of the 25 percent benchmark in section 310(b)(4). AmericaSky requests a declaratory ruling that it is in the public interest to permit Almendral to hold an indirect, controlling ownership interest in AmericaSky, a satellite earth station licensee, through ENTEL-Chile and its subsidiaries, ENTEL BVI and ENTEL USA. AmericaSky asserts that Almendral (including its wholly-owned Chilean subsidiaries, Almendral Telecom and Inversiones), ENTEL-Chile, ENTEL BVI, and ENTEL USA have their principal places of business in the United States or Chile, a member of the World Trade Organization.¹⁰ Therefore, pursuant to the rules and policies established by the Commission's *Foreign Participation Order*,¹¹ AmericaSky asserts that indirect foreign ownership by Almendral in excess of the 25 percent benchmark in section 310(b)(4) of the Act is consistent with the public interest.

Pursuant to section 310(b)(4) of the Act and the Commission's "open entry" standard for investment by WTO Members in U.S. common carrier radio licensees,¹² and upon consideration of the record, the International Bureau finds that Almendral is entitled to a presumption that its 54.76 percent controlling investment in AmericaSky does not raise competitive concerns, and there is no evidence in the record that would rebut this presumption. We also note that the Executive Branch has not raised any national security, law enforcement, foreign policy, or trade policy concerns with respect to the proposed investment. Accordingly, we grant the petition for declaratory ruling filed by AmericaSky to permit Almendral to hold indirectly a controlling 54.76 percent voting interest and to hold indirectly a 43.81 percent equity interest in AmericaSky.¹³ We also continue to find that it is in the public interest to permit a variety of Chilean investors individually to have indirect interests in AmericaSky up to and including 25

(6.309%); and the Consorcio Group (8.208%). The remaining ownership interests are distributed among numerous minority shareholders, none of whom has a greater than 10% ownership interest in Almendral. Americatel Application at 12-13.

¹⁰ Petition for Declaratory Ruling, at 3-4; Letter from Jean L. Kiddoo and Ulises R. Pin, Counsel to AmericaSky Corporation, Swidler Berlin, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (Feb. 1, 2005); Letter from Jean L. Kiddoo and Ulises R. Pin, Counsel to AmericaSky Corporation, Swidler Berlin, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (Feb. 2, 2005); Letter from Troy F. Tanner and Jean L. Kiddoo, Counsel to Americatel Corporation and AmericaSky Corporation, Swidler Berlin, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 17, 2005).

¹¹ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, 15 FCC Rcd 18158 (2000).

¹² 47 U.S.C. ¶ 310(b)(4); see *Foreign Participation Order*, 12 FCC Rcd 23891, Order on Reconsideration, 15 FCC Rcd 18158.

¹³ Because ENTEL BVI holds its 20% ownership interest in AmericaSky directly pursuant to section 310(b)(3) of the Act, Almendral, in turn, would hold its remaining 10.95% equity interest in AmericaSky pursuant to that section of the Act. See Petition for Declaratory Ruling at Exhibit A (Illustrative Chart of Transfer of Control).

percent equity and voting interests, and in the aggregate up to 45.24 percent.¹⁴ Specifically, this ruling permits the indirect foreign ownership of AmericaSky by Almendral (including Almendral's Chilean shareholders identified in the petition), Almendral Telecom, Inversiones, ENTEL-Chile, and ENTEL USA, in an amount up to and including a controlling 54.76 percent voting interest and a 43.81 percent equity interest. This ruling also permits 45.24 percent of the equity and voting interests in AmericaSky to be held indirectly by a variety of Chilean investors so long as no single Chilean investor's equity or voting interest exceeds 25 percent. AmericaSky shall seek additional approval before it accepts additional indirect foreign equity or voting interests, other than that specifically approved here, from Almendral, Almendral Telecom, Inversiones, ENTEL-Chile, and ENTEL USA. AmericaSky may acquire up to and including an additional, aggregate 25 percent indirect equity and/or voting interests from other foreign individuals and entities, including Almendral's Chilean shareholders identified in the petition, without seeking further Commission approval under section 310(b)(4) subject to the condition that no single foreign investor (with the exception of Almendral, Almendral Telecom, Inversiones, ENTEL-Chile, and ENTEL USA) may acquire indirect equity or voting interests in AmericaSky in excess of 25 percent. We emphasize that the specific ruling we issue to AmericaSky will require that the licensee and its parent companies continue to monitor AmericaSky's attributable foreign equity and voting interests and to calculate these interests consistent with the attribution principles enunciated by the Commission.¹⁵

The Applicants are currently regulated as dominant on the U.S.-Italy, U.S.-Argentina, U.S.-Austria, U.S.-Bolivia, and U.S.-Cuba routes pursuant to section 63.10 of the rules¹⁶ because each is, or in the case of Austria was, affiliated with foreign carriers deemed to possess market power in the destination country on those routes.¹⁷ Following the transaction, however, AmericaSky and Americatel will no longer be affiliated with a foreign carrier with market power in Italy, Argentina, Bolivia or Cuba; and currently they are no longer affiliated with a foreign carrier with market power in Austria.¹⁸ Accordingly, we grant the requests from AmericaSky and Americatel to be reclassified as non-dominant on the U.S.-Italy, U.S.-Argentina, U.S.-Austria, U.S.-Bolivia, and U.S.-Cuba routes.

¹⁴ See *International Authorizations Granted*, Public Notice, DA 01-2304 (rel. Oct. 4, 2001) (prior section 310(b)(4) ruling granted in File No. ISP-PDR-20010817-00036).

¹⁵ See *Vodafone Americas Asia Inc. (Transferor) and Globalstar Corporation (Transferee)*, Order and Authorization, 17 FCC Rcd 12,849, 12,857- 858, ¶¶ 23-26 (IB 2002) (citing *Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended*, Declaratory Ruling, FCC 85-295, 103 F.C.C.2d 511 (1985), *recon. in part*, 1 FCC Rcd 12 (1986); *BBC License Subsidiary L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968 (1995)).

¹⁶ 47 C.F.R. § 63.10.

¹⁷ According to the Applicants, Telecom Italia divested its interest in Telecom Austria A.G. in 2004. Americatel Application at 8-10; AmericaSky Int'l 214 Application at 7-9.

¹⁸ Applicants state that, although Americatel and AmericaSky are presently affiliated with foreign carriers that the Commission presumes to possess market power on the foreign ends of their respective routes (Italy, Argentina, Bolivia, and Cuba), the affiliations result from TII's ownership interest in ENTEL-Chile and will cease to exist once the proposed transaction is consummated. Applicants also provide information for the record to demonstrate that the foreign carriers with which Americatel and AmericaSky will be affiliated after closing lack market power in their respective foreign markets. Americatel Application at 9-10, 14-15; AmericaSky Int'l 214 Application at 8-9, 13-14.

The transaction shall be completed within 60 days from the date of authorization.¹⁹ Within 30 days after consummation, the Commission shall be notified by letter of the date of consummation and the file numbers of the applications involved in the transaction.²⁰ Failure to comply with all relevant Commission rules, policies, or any specific condition to the grant of these Applications will result in automatic rescission of the Commission's approval, dismissal of the underlying applications, and could subject the Applicants to enforcement action, including but not limited to the imposition of forfeitures.

Pursuant to section 1.103 of the Commission's rules, the grant is effective upon release of this Public Notice.²¹ Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within 30 days of this Public Notice.²²

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¹⁹ 47 C.F.R. § 25.119(f).

²⁰ 47 C.F.R. § 25.119(f), 63.24(e)(4).

²¹ 47 C.F.R. § 1.103.

²² 47 C.F.R. §§ 1.106, 1.115.

Appendix A

Section 310 Applications

Part 25 – Satellite Communications

<u>File Number</u>	<u>Transferor</u>	<u>Transferee</u>	<u>Licensee</u>	<u>Call Sign</u>
SES-T/C-20050128-00114	Telecom Italia International, N.V.	Almendral, S.A.	AmericaSky Corporation	KA407 E940470

International Section 214 Authorizations

<u>File Number</u>	<u>Transferor</u>	<u>Transferee</u>	<u>Licensee</u>	<u>Authorization Number</u>
ITC-T/C-20050128-00035	Telecom Italia International, N.V.	Almendral, S.A.	Americatel Corporation	ITC-214-19970312-00146 ITC-214-19970421-00220 ITC-96-263, ITC-94-514 ITC-94-321, ITC-93-160-TC, ITC-92-166, and ITC-92-165
ITC-T/C-20050128-00036	Telecom Italia International, N.V.	Almendral, S.A.	AmericaSky Corporation	ITC-214-19941020-00007

Petition for Declaratory Ruling

File Number

ISP-PDR-20050126-00003

Domestic Section 214 Authorizations

Domestic Section 214 application filed for transfer of control of Americatel Corporation from Telecom Italia International N.V. to Almendral, S.A.