

**Before the  
Federal Communications Commission  
Washington, D.C.**

In re Application of	)	
	)	
GENERAL ELECTRIC CAPITAL	)	
CORPORATION,	)	File Nos. SAT-T/C-20010402-00030,
Transferors,	)	SAT-T/C-20010402-00031,
	)	SES-T/C-20010402-00736,
and	)	SES-T/C-20010402-00740,
	)	SES-T/C-20010402-00741,
SES GLOBAL, S.A.	)	SES-T/C-20010402-00742,
Transferees,	)	SES-T/C-20010402-00743,
	)	SES-T/C-20010402-00744,
for Consent to Transfer Control of	)	ITC-T/C-20010402-00178,
Licenses and Authorizations Pursuant	)	0000413466, and
to Sections 214(a) and 310(d) of the	)	ISP-PDR-20010402-00017
Communications Act	)	
and	)	
Petition for Declaratory Ruling	)	
Pursuant to Section 310(b)(4)	)	
of the Communications Act	)	

**ORDER AND AUTHORIZATION**

**Adopted:** October 1, 2001

**Released:** October 2, 2001

By the Chief, International Bureau and the Chief, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this Order, we grant the applications of General Electric Capital Corporation (GE Capital) and SES Global S.A. (SES Global) (collectively Applicants) for consent to transfer control of GE American Communications, Inc. (GE Americom) and Columbia Communications Corporation (Columbia) (collectively Americom Licensees) to SES Global.<sup>1</sup> In accordance with the terms of the proposed transaction, and with our Order authorizing the transaction, the Americom Licensees, which currently operate as indirect, wholly owned subsidiaries of GE Capital, will become indirect, wholly owned subsidiaries of SES Global.

2. As discussed below, we find that the proposed transfer is in the public interest, pursuant to our review under Sections 214(a) and 310(d) of the Communications Act of 1934, as amended,

<sup>1</sup> General Electric Capital Corporation and SES Global S.A., *Application for Consent to Transfer Control*, Application File No. SAT-T/C-20010402-00030 (filed April 2, 2001) (*Transfer Application*). The *Transfer Application* was placed on public notice on April 20, 2001. Public Notice, Report No. SAT-00071, April 20, 2001. No petitions to deny were filed in this proceeding. On August 30, 2001, a letter from the Honorable W.J. "Billy" Tauzin was received by the Commission regarding the *Transfer Application*. This letter has been placed in the record and made part of this proceeding.

(Communications Act or Act).<sup>2</sup> Our approval will allow SES Global to combine the operations of the Americom Licensees, which are well-established providers of fixed satellite services in North America and the Caribbean and providers of transoceanic services between the United States and Asia and Europe, with other satellite operations that provide primarily direct-to-home satellite services in Europe, Asia, and Latin America. We find that the combination of these satellite operations and networks has the potential to create economies of scale and scope that will enhance competition in both the U.S. domestic and international communications services markets and thereby encourage lower prices and expanded service offerings. These services include the deployment of interactive, broadband multimedia services, and high speed Internet access to the residential and business markets in the United States. In addition, pursuant to our review under Section 310(b)(4) of the Act, we find that it will not serve the public interest to prohibit the proposed indirect foreign ownership of GE Americom by SES Global in excess of the statutory 25 percent benchmark.<sup>3</sup> Finally, we grant the Applicants' request for an exemption from Section 25.116(c) of the Commission's rules in order to preserve the filing status of its pending satellite applications.<sup>4</sup>

## II. BACKGROUND

### A. The Applicants

#### 1. GE Capital and the Americom Licensees

3. GE Capital, based in Stamford, Connecticut, is a wholly owned subsidiary of GE Capital Services, Inc., a wholly owned subsidiary of General Electric Company.<sup>5</sup> GE Capital provides a broad range of global financing services, and, through a number of intermediate subsidiaries, owns the Americom Licensees.<sup>6</sup> Specifically, GE Subsidiary 22, Inc. (GE Sub-22), a GE Capital company, indirectly holds 100 percent of the issued and outstanding stock of the Americom Licensees.<sup>7</sup> The common stock of GE Sub-22, in turn, is directly owned by two holding companies – CFE, Inc., a Delaware corporation, wholly owned by GE Capital, and a wholly owned subsidiary of CFE, Inc., GE Capital Luxembourg Holdings Limited, incorporated under the laws of Gibraltar.<sup>8</sup>

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<sup>2</sup> 47 U.S.C. §§ 214(a), 310(d).

<sup>3</sup> 47 U.S.C. § 310(b)(4).

<sup>4</sup> 47 C.F.R. § 25.116(c).

<sup>5</sup> General Electric Company (GE) is a U.S. corporation engaged in developing, manufacturing and marketing 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 offers an array of products and services, including aircraft engines, major appliances, lighting, transportation systems, industrial systems, plastics, power systems, medical systems, financing and insurance services, network television services, satellite communications, and information technology products and services. *See Transfer Application* at 7. *See also* General Electric Company, SEC Form 10-K, Annual Report for the fiscal year ended December 31, 2000 (*GE 10-K 2000 Annual Report*).

<sup>6</sup> GE Capital is a wholly owned subsidiary of GE Capital Services Corporation, Inc., which in turn is directly owned by GE. GE Capital Services Corporation, Inc. is a global, diversified financial services company providing a broad range of services to consumers and businesses, including consumer credit cards, life and auto insurance, commercial and industrial financing, real estate financing, asset management and leasing, mortgage services, consumer and specialty insurance service, and satellite communications. *See Transfer Application* at 7-8. *See also GE 10-K 2000 Annual Report* at 7-9.

<sup>7</sup> GE Sub-22 is a Delaware corporation with headquarters in Princeton, New Jersey. It wholly owns other GE subsidiaries that have equity interests in the Americom Licensees.

<sup>8</sup> The Commission recently approved a *pro forma* transfer of control of the Americom Licensees to the Gibraltar

4. As described below, the Americom Licensees – GE Americom and Columbia – hold numerous Commission licenses and authorizations that permit the operation of communications satellites and other supporting network facilities.<sup>9</sup> Through these holdings, and those in which the Americom Licensees have partnership or investment interests, the Americom Licensees provide satellite capacity and transmission service, including supporting network facilities and services, to broadcast and cable television programmers, broadcast radio programmers, government and commercial customers, and private enterprises<sup>10</sup> primarily in North America and the Caribbean.<sup>11</sup> Their service offerings include cable programming access, broadcast television, and radio program distribution, high-speed Internet access, video teleconferencing, private business data networks, and spacecraft management services such as telemetry, tracking, and control for domestic and international satellites.<sup>12</sup> The Americom Licensees do not provide Direct-to-Home satellite services, Direct Broadcast Satellite Service, or Digital Audio Radio Services.<sup>13</sup>

5. GE Americom, a Delaware corporation with headquarters in Princeton, New Jersey, holds Commission licenses to operate fourteen communications satellites on a non-common carrier basis using frequencies in the C- and Ku-bands to provide U.S. domestic and international satellite services.<sup>14</sup> GE Americom also holds common carrier and non-common carrier licenses for various earth stations and Very Small Aperture Terminal (VSAT) networks,<sup>15</sup> licenses for microwave facilities used to transport traffic to

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subsidiary. See Letter from Cassandra C. Thomas, Deputy Chief, Satellite and Radiocommunication Division, International Bureau to Peter A. Rohrbach, Hogan & Hartson, June 25, 2001. See also Public Notice, Report No. SES-00301, June 27, 2001.

<sup>9</sup> A list of current licenses and authorizations held by the Americom Licensees is provided in Appendix A. A list of pending requests for licenses and authorizations is provided in Appendix B.

<sup>10</sup> Television companies, for example, use GE Americom satellites for one-way video traffic. Included in this traffic are network feeds that are distributed to local television stations for subsequent retransmission to the public, and cable television programming services that are distributed to cable headends for retransmission to subscribers. Telecommunications carriers also use GE Americom's satellite facilities and services to form a portion of their telecommunications networks. See Letter from Mark R. O'Leary, Senior Vice President and General Counsel, GE American Communications, Inc., to James Lovelace, Supervisory Special Agent, Office of the General Counsel, Federal Bureau of Investigation, June 4, 2001 (*GE/FBI June 4 Letter*).

<sup>11</sup> The Americom Licensees also provide transoceanic services in the Atlantic and Pacific Ocean Regions using facilities operated by Columbia. See *Transfer Application* at 13. According to the parties, key customers of the Americom Licensees include ABC Radio Networks, AT&T Alascom, British Telecom, Cidera, Deutsche Welle, Discovery, Disney, Gannett, ICG, Merlin, NBC, the New York Times, NHK, PaxNet, PBS, TELE Greenland, TV Europa, Viacom and AOL/TimeWarner. See Joint Statement Announcing the Proposed Transaction between GE Capital and SES Global, released March 28, 2001. See <<http://www.gecapital.com/news/press/03282001.html>>.

<sup>12</sup> See <[www.geamericom.com](http://www.geamericom.com)> providing information on GE Americom's services and its global satellite fleet. See also *Transfer Application* at 8-10, 13.

<sup>13</sup> *Transfer Application* at 8-10. See also Letter from Phillip L. Spector, Laura B. Sherman, Attorneys for SES Global S.A., to Magalie Roman Salas, Secretary, Federal Communications Commission, September 12, 2001 (*SES Global September 12 Letter*) at 4, and attached Declaration of Mark R. O'Leary, Senior Vice President and General Counsel, GE Americom.

<sup>14</sup> *Transfer Application* at 8, and Attachment C. The conventional C-band generally refers to space-to-Earth (or downlink) frequencies at 3.7-4.2 GHz and corresponding Earth-to-space (or uplink) frequencies at 5.925-6.425 GHz. The conventional Ku-band generally refers to space-to-Earth frequencies at 11.7 -12.2 GHz and corresponding Earth-to-space frequencies at 14.0-14.5 GHz.

<sup>15</sup> *Transfer Application*, Attachments A and B. GE Americom currently holds 159 earth station licenses; 64 on a common carrier basis and 95 on a non-common carrier basis. Subsequent to filing the *Transfer Application*, GE Americom surrendered certain earth station licenses and obtained new earth station licenses. See Public Notice,

and from GE Americom earth stations,<sup>16</sup> and Section 214 authorizations for telecommunication services.<sup>17</sup> In addition, GE Americom has Commission authority to launch and operate a Ka-band global satellite system<sup>18</sup> and has submitted an application to the Commission for authority to launch and operate a global satellite system to operate in the V-band.<sup>19</sup>

6. GE Americom also holds ownership interests in satellite operations outside the United States. An affiliate of GE Americom holds a 28.75 percent ownership interest in Nahuelsat S.A., an Argentinean corporation that operates the Nahuelsat-1 Ku-band satellite located at 71.8° W.L., which provides service in Latin America.<sup>20</sup> Through a joint venture with Lockheed Martin Global Telecommunications, GE Americom owns and operates the GE-1A satellite at 108° E.L., which provides service to Asia.<sup>21</sup> An affiliate of GE Americom co-owns satellite transponders with Nordic Satellite AB (NSAB) on the Ku-band Sirius 2 satellite located at 5° E.L., which provides service to Europe.<sup>22</sup> In

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Report No. SES-00291, May 23, 2001; Public Notice, Report No. SES-00297, June 13, 2001; Public Notice, Report No. SES-00305, July 11, 2001; Public Notice, Report No. SES-00309, July 25, 2001; Public Notice, Report No. SES-00317, August 22, 2001. GE Americom holds 12 VSAT licenses; seven on a common carrier basis and five on a non-common carrier basis. Appendix A reflects the earth station and VSAT licenses now held by GE Americom.

<sup>16</sup> *Transfer Application*, FCC Form 603. GE Americom holds 11 microwave licenses on a common carrier basis. Subsequent to filing the *Transfer Application*, GE Americom surrendered certain microwave licenses. See FCC File Nos. 0000562270, 0000562276, and 0000562277, cancellation letter, August 17, 2001.

<sup>17</sup> *Transfer Application*, Attachment E. Effective June 26, 2001, GE Americom relinquished two unused international Section 214 authorizations to serve the U.S.-Luxembourg route. See Letter from Mark R. O'Leary, Senior Vice President and General Counsel, GE American Communications, Inc. to Magalie Roman Salas, Secretary, Federal Communications Commission, June 26, 2001 (*GE Americom June 26 Letter*). See also Letter from Phillip L. Spector and Laura B. Sherman, Attorneys for SES Global, S.A., to Magalie Roman Salas, Secretary, Federal Communications Commission, August 28, 2001 (*SES Global August 28 Letter*). GE Americom's domestic interstate telecommunications services are posted on its web site pursuant to Commission requirements. See GE Americom Service Schedule at <[www.geamericom.com/services/index.html](http://www.geamericom.com/services/index.html)>.

<sup>18</sup> Generally, Ka-band refers to space-to-Earth frequencies at 17.7-20.2 GHz and corresponding Earth-to-space frequencies at 27.5-30.0 GHz. GE Americom is authorized to launch and operate a geostationary satellite system consisting of nine satellites in five orbital locations of 56° E.L., 114.5° W.L., 105° W.L., 85° W.L., and 17° W.L., using downlink frequencies in the 19.7-20.2 GHz band and uplink frequencies in the 28.35-28.6 GHz and 29.25-30.0 GHz bands. See GE American Communications, Inc., Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed Satellite Service, *Order and Authorization*, 12 FCC Rcd 6475 (1997); modified in *Order and Authorization*, 16 FCC Rcd 2461 (2001).

<sup>19</sup> See Application For Authorization to Launch and Operate a System of Eleven V/Ku-band Satellites at Nine Orbital Locations, filed September 27, 1997. File Nos. 139 through 147-SAT-P/LA-97; IBFS File Nos. SAT-LOA-19970925-00110/118. Generally, the V-band refers to frequencies in the 36.0-51.4 GHz band. GE Americom seeks authorization to operate downlink frequencies in the 39.5-42.5 GHz band and uplink frequencies in the 47.2-50.2 GHz band. GE Americom also seeks to operate 500 MHz within the extended Ku-band, using downlink frequencies in the 10.7-10.95 GHz, 11.20-11.45 GHz, and uplink frequencies in the 12.75-13.25 GHz bands.

<sup>20</sup> *Transfer Application* at 8-9. Nahuelsat provides service primarily to Latin American countries. Prior to exercising its option to sell 23 percent of Nahuelsat in July 2001, the GE Americom affiliate held 51.75 percent.

<sup>21</sup> *Transfer Application* at 9. Americom Asia-Pacific (AAP), headquartered in Singapore, is a 50/50 joint venture company of Lockheed Martin Global Telecommunications and GE Americom. AAP provides high-powered capacity and advanced services to Internet companies and their customers, programmers, and telecommunications carriers throughout the Asia-Pacific region.

<sup>22</sup> *Transfer Application* at 9. Sirius 2 is owned by Nordiska Satellitaktiebolaget, Nordic Satellite, AB (NSAB) and provides service to Scandinavian countries, the Baltic states, Poland, and Russia. Capacity on the satellite is

addition, a subsidiary of GE Americom holds an 18.4 percent interest in Gilat Satellite Networks, Inc., an Israeli corporation that develops products and offers services using VSAT satellite network technology.<sup>23</sup>

7. Columbia, a wholly owned subsidiary of GE Americom, is a Delaware corporation with headquarters in Bethesda, Maryland.<sup>24</sup> Columbia holds Commission licenses to operate six communications satellites on a non-common carrier basis and provides video, voice, and data communications through its operations in the Atlantic Ocean Region (AOR) and the Pacific Ocean Region (POR). In the AOR, Columbia holds Commission licenses to provide service over the Columbia 515 satellite located at 37.7° W.L.,<sup>25</sup> and is authorized to lease capacity from the National Aeronautics and Space Administration's (NASA's) Tracking and Data Relay Satellite (TDRS) System using the TDRS-6 satellite located at 47° W.L.<sup>26</sup> In addition, Columbia holds authorizations to launch and operate a C-band and extended C-band satellite at 47° W.L. in the AOR and a hybrid C/Ku-band satellite (including frequencies in the extended C-band and extended Ku-band) at 172° E.L. in the POR.<sup>27</sup> Also, in the POR, Columbia is authorized to provide service over NASA's TDRS-5 satellite located at 174.3° W.L. and holds authority to launch and operate a replacement satellite for the TRDS-5.<sup>28</sup>

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marketed in Europe under GE-1E. *See also infra* note 33.

<sup>23</sup> *Transfer Application* at 9.

<sup>24</sup> The Commission approved the transfer of Columbia's authorizations to GE Americom in June 2000. *See* GE American Communications, Inc., CCC Merger Sub, Inc., and Columbia Communications Corporation, Application for Consent to Transfer of Space Station and Earth Station Licenses of Columbia Communication Corporation, *Order and Authorization*, 15 FCC Rcd 11590 (2000) (*GE Americom/Columbia Order*).

<sup>25</sup> Columbia Communications Corporation, *Memorandum Opinion, Order and Authorization*, 13 FCC Rcd 17772 (1998). Columbia holds authority to operate the Columbia 515 at 37.7° W.L. in the conventional C-band. Columbia has also been granted temporary authority to provide Ku-band service in the Southern Hemisphere using the downlink frequency bands of 11.7-11.95 GHz in ITU Region 2 and 12.5-12.75 GHz in ITU Region 1, and the uplink frequency band of 14.0-14.5 GHz in both Regions. *See* Columbia Communications Corporation, *Memorandum Opinion and Order*, DA 01-1426 (June 19, 2001). An application seeking a replacement for Columbia 515 is currently pending. *See* Application for Authorization to Launch and Operate a C-band Replacement Satellite at 37.5° W.L., File No. SAT-LOA-20000407-00080, filed April 7, 2000.

<sup>26</sup> Columbia Communications Corporation, *Order*, 11 FCC Rcd 8639 (1996). Columbia has regular authority to lease C-band capacity on NASA's TDRS-6 satellite until the Columbia satellite licensed to that location is launched. *See* Columbia Communications Corporation, *Order and Order on Reconsideration*, DA 01-1241 (May 22, 2001). *See also infra* note 27.

<sup>27</sup> Columbia Communications Corporation, *Order and Authorization*, 14 FCC Rcd 3318 (1999). Columbia is authorized to launch and operate a geostationary satellite at 47° W.L. to provide services in the conventional C-band, and in the extended C-band using uplink frequencies of 6.425-6.725 GHz and downlink frequencies of 3.4-3.7 GHz. (This satellite will replace Columbia's use of transponders on TDRS-6.) Columbia is also authorized to launch and operate a geostationary satellite at 172° E.L. to provide services in the conventional C-band; the extended C-band using uplink frequencies of 6.425-6.725 GHz and the downlink frequencies of 3.4-3.7 GHz; and the Ku-band using uplink frequencies of 14.0-14.5 GHz and the downlink frequencies of 11.7-12.2 GHz in Region 2, and downlink frequency bands of 10.95-11.2 GHz, 11.45-11.7 GHz, and 12.25-12.75 GHz in Region 3. Both authorizations require that Columbia not permit any earth station in the United States and its possessions to operate with these satellites in the 3.4-3.6 GHz frequency band and requires that Columbia inform customers and operators in foreign territories using this band of the potential for interference from U.S. Government operations worldwide. For frequencies in the 3.6-3.7 GHz band in the United States, Columbia is subject to compliance with applicable rules, e.g., footnotes US245, US348 and NG169 to the U.S. Table of Frequency Allocations. *See* 47 C.F.R. § 2.106.

<sup>28</sup> Columbia Communications Corporation, *Memorandum Opinion, Order and Authorization*, 7 FCC Rcd 122 (1991). Columbia has authority to provide service in the conventional C-band on NASA's TDRS-5 satellite.

## 2. SES Global

8. SES Global is a newly formed Luxembourg company with its principal office in Betzdorf, Luxembourg. According to the Applicants, SES Global was created to acquire and indirectly hold 100 percent of the shares of the Americom Licensees.<sup>29</sup> In addition to its acquisition of the Americom Licensees, SES Global will acquire and directly hold a minimum of 80 percent of the shares of Société Européenne des Satellites S.A. (SES).<sup>30</sup>

9. SES, created in 1985, is a Luxembourg company with its principal offices in Betzdorf, Luxembourg. Its principal business is the provision of satellite communication services. SES operates the ASTRA fleet of satellites providing transponder capacity and associated communications services through which television and radio broadcasters, and multimedia service providers, make available free and subscription programming, Internet services, multimedia services, and other telecommunications services to consumers in Europe.<sup>31</sup> The ASTRA system is a direct-to-home satellite system consisting of 11 active geostationary satellites. Of the 11 geostationary satellites, six Ku-band satellites and one Ku/Ka-band hybrid satellite are co-located at 19.2° E.L., and four Ku-band satellites are co-located at 28.2° E.L. Three additional ASTRA satellites, two Ku-band satellites and one Ku/Ka-band hybrid satellite, are under construction and due to be deployed before mid-2002.<sup>32</sup>

10. SES also holds ownership interests in satellite companies based in Europe, Asia, and Latin America. SES owns 50 percent of NSAB, a Scandinavian provider of transponder capacity and associated services for television and radio broadcasting, data transmission, Internet, and multimedia services.<sup>33</sup> SES also holds 34.13 percent of Asia Satellite Telecommunications Holdings Limited (AsiaSat) which operates three geostationary satellites providing transmission capacity for broadcast and telecommunication services throughout Asia.<sup>34</sup> SES also owns a 19.99 percent interest in Star One, S.A., a satellite company owned

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Columbia also has authority to launch and operate a replacement satellite for the TDRS-5 satellite at 174.3° W.L. using the conventional C-band frequencies in the United States and extended C-band frequencies elsewhere. Columbia may transmit in the frequency band 3.4-3.6 GHz to earth stations in foreign territories, but must inform customers receiving such downlink transmissions of the potential for interference from U.S. Government operations worldwide. Columbia is not authorized to transmit in the frequency band 3.4-3.6 GHz to any earth station in the United States. See Columbia Communications Corporation, *Order and Authorization*, 16 FCC Rcd 4725 (2001).

<sup>29</sup> According to the Applicants, SES, SES Global, GE Sub-22, and CFE, Inc. entered into a Business Combination Agreement, dated March 27, 2001, and related agreements, pursuant to which SES Global is to hold indirectly 100 percent of the Americom Licenses, and is to become the parent company of SES conditioned upon approval by shareholders representing 80 percent of the voting rights of SES. See *Transfer Application* at 10. See *infra* para. 12.

<sup>30</sup> *Transfer Application* at 4, 10.

<sup>31</sup> *Id.* at 5-6.

<sup>32</sup> *Id.* at 6. Of these, one will be located at 23.5° E.L., one at 19.2° E.L., and one at 28.2° E.L.

<sup>33</sup> *Id.* See also <www.nsab.se.> NSAB is owned 50 percent by SES and 50 percent by Swedish Space Corporation, a state-owned limited company with operations in Stockholm and Kiruna, Sweden. NSAB operates three geostationary satellites, SIRIUS 1, SIRIUS 2, and SIRIUS W, at the 5° E.L. and 13° W.L. orbital locations, providing VSAT, audiovisual, multimedia, and other telecommunications services in Scandinavia, the Baltic states, Poland, and western Russia.

<sup>34</sup> *Transfer Application* at 6. See also <www.asiasat.com.> AsiaSat's two major shareholders are China International Trust and Investment Corporation (CITIC) and SES. AsiaSat has three operational satellites: AsiaSat, located at 122° E.L.; AsiaSat 2, located at 105.5° E.L.; and AsiaSat 3S located at 100.5° E.L. In the first half of 2002, AsiaSat plans to launch AsiaSat 4, to the orbital location presently occupied by AsiaSat 1. AsiaSat 4 will offer extensive C-band coverage across the Asia Pacific region and focused Ku-band service in selected areas.

primarily by Empresa Brasileira de Telecomunicações S.A. (Embratel).<sup>35</sup> Star One operates five satellites that primarily provide transmission capacity for telecommunications and audio-visual services in Latin America.<sup>36</sup>

11. SES wholly owns SES Multimedia, the entity that operates the ASTRA-NET platform. The ASTRA-NET platform enables service and content providers to transmit data directly, via satellite, to high-end servers and personal computer customers served by the ASTRA satellite system in Europe.<sup>37</sup> SES is also planning to deploy the ASTRA Broadband Interactive System, a direct satellite return channel system designed to serve the market for two-way asymmetric, high-speed broadband collection and delivery of multimedia services.<sup>38</sup>

## B. The Proposed Transaction

12. On March 27, 2001, SES Global, SES, GE Sub-22, and CFE, Inc. entered into a Business Combination Agreement and other related agreements concerning, among other things, the transfer of control of the Americom Licensees to SES Global.<sup>39</sup> These agreements provide for SES Global, a new Luxembourg entity created to facilitate the proposed transaction, to acquire 100 percent of GE Sub-22, which indirectly wholly owns the Americom Licensees.<sup>40</sup> In turn, GE Capital, which indirectly wholly owns GE Sub-22, will receive an aggregate of \$5 billion in consideration – approximately \$2.7 billion in cash and \$2.3 billion in SES Global stock.<sup>41</sup> The Americom Licensees will remain wholly owned subsidiaries of GE Sub-22, and thus, following the acquisition of GE Sub-22 by SES Global, will operate as indirect, wholly owned subsidiaries of SES Global.<sup>42</sup> Parallel to its acquisition of the Americom Licensees, SES Global will acquire SES, including SES Astra, SES Multimedia, and all other ownership interests and holdings of SES.<sup>43</sup>

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<sup>35</sup> *Transfer Application* at 6-7. See also <www.starone.com.br>. Star One is based in Rio de Janeiro, Brazil and is owned by Embratel (approximately 80 percent ownership interest) and SES/Astra (approximately 20 percent ownership interest). The controlling shareholder of Embratel is Embratel Participações S.A., created in May 1998 as a result of the privatization of Telebrás. The controlling shareholder of Embratel Participações SA is WorldCom, Inc., a U.S. company incorporated in Georgia and headquartered in Mississippi. WorldCom operates in more than 65 countries, providing facilities-based and fully integrated local, long distance, international, and Internet services.

<sup>36</sup> Star One operates the Brasilsat fleet of satellites over Latin America providing audiovisual broadcasts primarily to customers in Brazil. Star One is currently planning to provide broadband Internet services via satellite to all areas in Latin America. *Id.*

<sup>37</sup> *Transfer Application* at 6.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 10.

<sup>40</sup> *Id.* To accomplish the acquisition of GE Sub-22, SES Global will create a Delaware subsidiary corporation, which will be merged with and into GE Sub-22, with GE Sub-22 surviving.

<sup>41</sup> *Id.* The consideration payable under the Business Combination Agreement is subject to adjustment at closing, based upon the weighted average trading price of SES shares immediately prior to closing. In addition, SES Global may elect at closing to increase the portion of the consideration paid in SES Global shares. *Id.* at 10-11, n. 21.

<sup>42</sup> *Id.* at 10.

<sup>43</sup> *Id.* Under the Business Combination Agreement, SES Global will become the parent company of SES. Shareholders holding a minimum of 80 percent of the voting interest of SES must exchange their shares in SES for equivalent shares of SES Global in order for the transaction to proceed.

13. Upon consummation of the proposed transaction, it is anticipated that non-U.S. holdings will constitute a large percent of the equity and voting interests in SES Global.<sup>44</sup> As discussed in detail below, these non-U.S. interests include: the State of Luxembourg and two Luxembourg government-owned financial institutions -- the Banque et Caisse D'Epargne de L'Etat (BCEE) and Société Nationale de Crédit et d'Investissement (SNCI) -- which combined will hold an equity interest of 16.67 percent and a voting interest of 33.33 percent in SES Global;<sup>45</sup> Deutsche Telekom, A.G. (Deutsche Telekom), a corporation organized under the laws of Germany, which will hold an equity interest of 12.6 percent and a voting interest of 10.1 percent in SES Global;<sup>46</sup> and other non-U.S. entities and individuals.<sup>47</sup> The only significant U.S. holding will be GE Capital, which will hold an equity interest of 25.1 percent and a voting interest of 20.1 percent in SES Global.<sup>48</sup> The proposed transaction contemplates that while all the SES Global shares will have one vote, Class A and C shares will be entitled to a greater economic return than Class B shares.<sup>49</sup>

14. The Board of Directors of SES Global is expected to consist of 21 Directors, of whom 11 will be elected by Class A shareholders, seven by Class B shareholders, and three by Class C 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. The Bureau is to consist of seven members, including the Chairman of the Board, three representatives of Class A shareholders, two representatives of Class B shareholders, and one representative of Class C shareholders.<sup>50</sup>

15. The Applicants state that the proposed acquisition of the Americom Licensees by SES Global will enhance the ability of the Americom Licensees and SES to compete effectively in the U.S. domestic and international communications services markets by creating integrated satellite networks with worldwide coverage.<sup>51</sup> According to the Applicants, the combined operations of the Americom Licensees and SES will permit economies of scale and scope in areas such as satellite control operations, procurement, and research and development, and will provide SES Global with the ability to better offer "one-stop shopping" for satellite services in direct competition with existing global satellite companies, thus

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<sup>44</sup> *Id.* at 4. SES Global will issue Class A, B, and C shares. As noted in the *Transfer Application*, the percentage interests of Class A and Class C shareholders are based on the assumption that SES Global will offer for sale approximately 7.5-8 percent of its equity in a U.S. public offering. If the public offering does not occur, the percentage interests of Class A and Class C shareholders will increase. *Id.* at n. 4.

<sup>45</sup> *Id.* at 5. The combined Luxembourg interests will hold all Class B shares.

<sup>46</sup> *Id.* at 4, n. 6. Deutsche Telekom is expected to be the largest shareholder of Class A shares. It currently holds a 20.83 percent equity and 16.67 percent voting interest in SES Astra, so its interest will be diluted by the transaction.

<sup>47</sup> *Id.* at 4-5. The Class A shares not held by Deutsche Telekom are expected to be held by certain institutions and by the public in the form of depository receipts or shares traded on the Luxembourg and Frankfurt Stock Exchanges. It is also anticipated that shares will be traded on the New York Stock Exchange.

<sup>48</sup> *Id.* at 4, n. 5. GE Capital will hold all of the Class C shares with minor exceptions.

<sup>49</sup> *Id.* at 4, 5. Following the proposed transaction, GE Capital will own approximately 15.4 million Class C shares; Deutsche Telekom will own approximately 7.8 million Class A shares; SNCI will own approximately 7.8 million Class B shares; BCEE will own approximately 7.8 million Class B shares; and the State of Luxembourg will own approximately 1.1 million Class B shares. See Ownership Disclosure Information Form, FCC Form 602, filed in conjunction with the *Transfer Application*. In addition, SES Global will publicly offer shares on two foreign exchanges and may also make a U.S. public offering. *Id.* at 4.

<sup>50</sup> *Id.* at 5.

<sup>51</sup> *Id.* at 13-19.



encouraging expanded service offerings and lower prices.<sup>52</sup> Moreover, the Applicants state that SES Global will bring SES's customer-driven priority residential and business broadband services to the U.S. markets, thereby helping to achieve the Commission's goal of deploying interactive, broadband multimedia services and high speed Internet access to under-served communities in the United States.<sup>53</sup> The Applicants assert that, because the 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 proposed transaction will not decrease competition in any relevant market.<sup>54</sup> Thus, the Applicants contend that the proposed transaction will serve the public interest, convenience, and necessity and request that we approve the transfer of control of the Americom Licensees to SES Global.

### III. PUBLIC INTEREST ANALYSIS

#### A. Framework For Analysis

16. In considering the proposed transfer of control, the Commission must determine, pursuant to Section 214(a) and Section 310(d) of the Act, whether the proposed transfer will serve the public interest.<sup>55</sup> In addition, because of the foreign ownership interests presented in this case, we must also determine whether SES Global's ownership of the Americom Licensees is permissible under the foreign ownership requirements of Section 310.<sup>56</sup>

17. The legal standards that govern our public interest analysis for transfers of licenses and authorizations under Sections 214(a) and 310(d) require that we weigh the potential public interest harms against the potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest, convenience, and necessity.<sup>57</sup> Our analysis considers the likely competitive effects of the proposed transfer and whether such transfer raises significant anti-competitive issues.<sup>58</sup> In addition, we consider the efficiencies and other public interest benefits that are likely to result from the proposed

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<sup>52</sup> *Id.* at 13. The Applicants state that as providers of integrated global satellite services, they will directly compete with companies such as INTELSAT, New Skies, PanAmSat, and Loral.

<sup>53</sup> *Id.* at 14. The Applicants state that the combined operations will provide SES Global with a global presence which is necessary for the anticipated future demand for global connectivity for new broadband multimedia and Internet data services. *Id.* at 15.

<sup>54</sup> *Id.* at 16-19.

<sup>55</sup> 47 U.S.C. §§ 214(a) and 310(d).

<sup>56</sup> 47 U.S.C. §§ 310(a), (b)(1)-(4).

<sup>57</sup> See e.g., Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and for Declaratory Ruling Pursuant to Section 310 of the Communications Act, *Memorandum Opinion and Order*, 16 FCC Rcd 9779, 9789 (2001) (*VoiceStream/Deutsche Telekom Order*). See also AT&T Corp., British Telecommunications, plc, VLT Co. L.L.C., Violet License Co. LLC, and TNV [Bahamas] Limited Applications For Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection with the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, plc, FCC 99-313, *Memorandum Opinion and Order*, 14 FCC Rcd 19140, 19147 (1999) (*AT&T/BT Order*).

<sup>58</sup> See e.g., *AT&T/BT Order*, 14 FCC Rcd at 19148.

transfer.<sup>59</sup> Further, we consider whether the transaction raises issues of national security, law enforcement, foreign policy and trade policy, including such concerns that may be raised by the Executive Branch.<sup>60</sup>

## B. Qualifications of the Applicants

18. As a threshold matter, we must determine whether the Applicants meet the requisite qualifications to hold and transfer licenses under Section 310(d) of the Act and our rules. In general, when evaluating transfers of control under Section 310(d), we do not re-evaluate the qualifications of the transferor (GE Capital).<sup>61</sup> The exception to this rule occurs where issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.<sup>62</sup> This is not the case here and no issues have been raised that would require us to re-evaluate the basic qualifications of GE Capital.

19. As to the qualifications of the transferee (SES Global), Section 310(d) requires that the Commission consider the qualifications of the proposed transferee as if the transferee were applying for the license directly under Section 308 of the Act.<sup>63</sup> We note that no party has challenged the basic qualifications of SES Global and our independent review finds no evidence to suggest that SES Global lacks financial, technical, legal or other basic qualifications necessary to qualify as the transferee in this case.<sup>64</sup> Thus, we find SES Global possesses the requisite basic qualifications as the transferee. As discussed below, however, because of the foreign ownership interests in SES Global, we further examine whether the proposed transfer of control to SES Global is permissible under the foreign ownership provisions of Section 310 of the Act.

## C. Foreign Ownership

20. Sections 310(a), (b)(1), and (b)(2) of the Act prohibit radio licenses from being “granted to or held by” foreign governments and their representatives, aliens and their representatives, and foreign corporations.<sup>65</sup> After the closing of the proposed transaction, the Americom Licensees will be wholly owned by GE-Sub 22, a U.S. company, which in turn will be wholly owned by SES Global, a foreign corporation organized under the laws of Luxembourg.<sup>66</sup> SES Global will be owned in excess of 25 percent

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<sup>59</sup> See e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9789.

<sup>60</sup> See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order and Order on Reconsideration*, 12 FCC Rcd 23891, 23919-21 (1997) (*Foreign Participation Order*); *Order on Reconsideration*, 15 FCC Rcd 18158 (2000). See also Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, *Report and Order*, 12 FCC Rcd 24094, 24170 (1997) (*DISCO II Order*).

<sup>61</sup> See e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9790.

<sup>62</sup> *Id.*

<sup>63</sup> Section 308 requires that applicants for Commission licenses set forth such facts as the Commission may require as to citizenship, character, and financial, technical, and other qualifications. See 47 U.S.C § 308. Our rules implementing the provisions of Section 308 regarding an applicant's qualifications to hold Commission licenses are set forth in Parts 25 and 101. See 47 C.F.R. Part 25, Part 101.

<sup>64</sup> With respect to foreign eligibility requirements, see *infra* Section III. C.

<sup>65</sup> See 47 U.S.C. §§ 310(a), 310(b)(1) and (b)(2). Specifically, Section 310(a) prohibits foreign governments and their representatives from holding any U.S. license, while Sections 310(b)(1)-(b)(2) prohibit aliens and their representatives and foreign corporations from holding any broadcast, common carrier, aeronautical fixed or en route license.

by non-U.S. individuals and entities, including the governments of Germany and Luxembourg.<sup>67</sup> However, SES Global will not hold any radio licenses directly, nor will any foreign government or other foreign entity.<sup>68</sup> Thus, we find that the proposed transaction is not inconsistent with the foreign ownership provisions of Sections 310(a), (b)(1) and (b)(2) of the Act.<sup>69</sup>

21. The proposed transaction, under which the Americom Licensees will become indirect wholly owned subsidiaries of SES Global, entails indirect alien, foreign corporate, and foreign government ownership of the common carrier licenses held by GE Americom. As such, the Applicants have requested that we find permissible, under Section 310(b)(4) of the Act, the indirect foreign ownership of the common carrier radio licenses held by GE Americom.<sup>70</sup> The Applicants' request to exceed the foreign ownership benchmark in Section 310(b)(4) was placed on public notice.<sup>71</sup> Representative W.J. "Billy" Tauzin submitted a letter requesting vigorous Commission review of the proposed transaction and of the applicable foreign ownership framework under Section 310 of the Act.<sup>72</sup>

22. As a threshold matter, Representative Tauzin urges the Commission to re-examine the conclusion that proposed transfers of control that involve indirect foreign ownership interests in a common carrier licensee should be considered only under Section 310(b)(4) and to consider whether it would be more appropriate to examine SES Global's proposed acquisition of GE Americom under other subsections of Section 310.<sup>73</sup> The full Commission recently undertook an extensive review of these precise issues in the *VoiceStream/Deutsche Telekom Order*.<sup>74</sup> First, the Commission specifically considered the proper relationship between the different subsections of Section 310.<sup>75</sup> After extensive analysis of the legislative history and congressional policies underlying Sections 310(a) and 310(b) of the Act, the Commission ultimately concluded that Section 310(b)(4) was designed to address indirect ownership and control situations that were not covered by the prohibitions of Section 310(a) or 310(b)(1)-(3).<sup>76</sup> The Commission

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<sup>66</sup> *Transfer Application* at 7, 10.

<sup>67</sup> *Id.* at 4-5.

<sup>68</sup> *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9808, n.142 (noting that Section 310(a) was not intended to govern matters specifically addressed by Section 310(b)(4), but reserving the right to consider under Section 310(a) a variety of issues related to *de facto* control in factual settings that do not implicate the provisions of Section 310(b)(4)).

<sup>69</sup> In addition, because the proposed transaction does not involve direct foreign ownership of GE Americom, it does not trigger Section 310(b)(3) of the Act which places a 20 percent limit on direct alien, foreign corporate, or foreign government ownership of entities that hold common carrier, broadcast and aeronautical fixed or en route Title III licenses. *See* 47 U.S.C. § 310(b)(3).

<sup>70</sup> *Transfer Application* at 20.

<sup>71</sup> *See supra* note 1.

<sup>72</sup> *See* Letter from W. J. "Billy" Tauzin, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, to The Honorable Michael K. Powell, Chairman, Federal Communications Commission, August 29, 2001 (*Representative Tauzin Letter*).

<sup>73</sup> *Representative Tauzin Letter* at 2.

<sup>74</sup> In the *Deutsche Telekom* proceeding, the transfer of control of licenses from VoiceStream and Powertel to Deutsche Telekom resulted in indirect foreign and government ownership of common carrier wireless licensees. *See VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9800-01.

<sup>75</sup> *Id.* at 9800.

<sup>76</sup> *Id.* at 9804-05 (explaining the rationale for declining to adopt the view that Section 310(a) is an absolute

also noted that when presented with the facts of a particular case the public interest provisions of the Act allow the Commission to balance concerns about national security and competition against the benefits of allowing foreign investment.<sup>77</sup> In light of this transfer's analytical similarities to the Deutsche Telekom proceeding—there, as here, foreign entities will have only *indirect* interests in a U.S. licensee—we believe that a similar foreign ownership framework should apply.

23. Therefore, we have considered the Applicants' request under Section 310(b)(4).<sup>78</sup> We have also conducted a general public interest review of the competitive effect of the proposed transfer under Section 310(d) of the Act.<sup>79</sup> For the reasons discussed below, we conclude that it will not serve the public interest to prohibit the proposed indirect foreign ownership at issue here.

24. Section 310(b)(4) states that:

- (b) No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by –
  - (4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government, or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest would be served by the refusal or revocation of such license.<sup>80</sup>

25. Our review under Section 310(b)(4) takes into consideration the policies the Commission adopted in the *Foreign Participation Order*. In that proceeding, the Commission concluded that the public interest would be served by permitting greater investment by entities from World Trade Organization (WTO) Members in U.S. common carrier and aeronautical fixed and en route licensees.<sup>81</sup> Therefore, with respect to indirect foreign investment from WTO Members, the Commission replaced its “effective competitive opportunities,” or ECO, test with a rebuttable presumption that such investment generally raises no competitive concerns.<sup>82</sup> However, in cases where entry by a foreign carrier would pose a high risk to

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prohibition against any indirect control by a foreign government or its representatives as well as the argument that the plain language of Section 310(a) only prohibits a government or its representative from actually holding a license in its own name).

<sup>77</sup> *Id.* at 9809.

<sup>78</sup> We note that Section 310(b)(4) governs only common carrier, broadcast, and aeronautical en route or fixed radio licenses. Therefore, we do not consider the proposed transfer of non-common carrier licenses, other than aeronautical licenses, under Section 310(b)(4). There is no evidence in the record that raises national security concerns (*see infra* Section III. F), and we have determined that the proposed transaction does not pose risks to competition in the United States (*see infra* Sections III. D and E). Further, under Section 310(b)(4), we have made a public interest determination for the common carrier licenses (*see infra* paras. 30-41). These findings, we believe, collectively suffice to resolve any public interest implications, outside our review under 310(b)(4), to the extent there are any, for the non-common carrier licenses.

<sup>79</sup> *See infra* paras. 43-49, and 52.

<sup>80</sup> 47 U.S.C. § 310(b)(4).

<sup>81</sup> *See Foreign Participation Order*, 12 FCC Rcd at 23896, 23913, and 23940.

<sup>82</sup> *Id.*

competition in the U.S. market, the Commission may impose conditions.<sup>83</sup> The Commission uses the “principal place of business” test to determine the nationality or “home market” of foreign investors when evaluating an applicant’s request for approval of indirect, non-U.S. ownership interests in U.S. licensees.<sup>84</sup> Thus, in light of the policies adopted in the *Foreign Participation Order*, our evaluation of the proposed transaction under Section 310(b)(4) begins with an examination of the indirect foreign investments in GE Americom and a determination of whether those investments are attributable to entities from WTO Member countries.

26. According to the Applicants, SES Global, a company incorporated in Luxembourg, will own indirectly 100 percent of the capital stock of GE Americom.<sup>85</sup> SES Global, in turn, will have three classes of voting shares at the closing of the transaction: Class A, Class B, and Class C.<sup>86</sup> GE Capital will be the primary holder of Class C shares.<sup>87</sup> Deutsche Telekom, a German company, is expected to be the largest holder of Class A shares, holding an equity interest of 12.6 percent and a voting interest of 10.1 percent in SES Global.<sup>88</sup> The German government holds a 45 percent interest in Deutsche Telekom, which gives it an attributable 5.67 percent equity interest and a 4.54 percent voting interest in SES Global (based on multiplying the 45 percent German government interest in Deutsche Telekom by Deutsche Telekom’s 12.6 percent equity interest and 10.1 percent voting interest, respectively, in SES Global).<sup>89</sup> The remainder of the Class A shares will be held by certain institutions and by the public, and will be traded on the Luxembourg, Frankfurt, and New York Stock Exchanges.<sup>90</sup> The Applicants further represent that Class B shares will be held by the State of Luxembourg and two Luxembourg financial institutions, BCEE and SNCI (collectively referred to as “Class B shareholders”).<sup>91</sup> BCEE and SNCI are institutions created by acts of the Luxembourg Parliament and owned by the State of Luxembourg.<sup>92</sup> Together the Class B shareholders will hold a 16.67 percent equity interest and a 33.33 percent voting interest in SES Global.<sup>93</sup>

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<sup>83</sup> *Id.* at 23914, para. 52.

<sup>84</sup> *Id.* at 23941, para. 116.

<sup>85</sup> *Transfer Application* at 4.

<sup>86</sup> *Id.* at 4. GE Capital, a U.S. corporation, will be the largest single shareholder of SES Global, holding 25.1 percent of the equity interest and 20.1 percent of the voting interest.

<sup>87</sup> *Id.* at 4-5.

<sup>88</sup> *Id.* at 4.

<sup>89</sup> Assuming *arguendo* that the German government’s interest in Deutsche Telekom constitutes *de facto* control, an issue we need not decide, the German government would have a 5.67 percent equity interest in SES Global (based on attributing Deutsche Telekom’s entire interest in SES Global to the German government). See BBC License Subsidiary, L.P., *Memorandum Opinion and Order*, 10 FCC Rcd 10968, 10973-74 (1995). See also *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9815 (finding that the Commission need not decide the issue of whether the German government interest in Deutsche Telekom is controlling).

<sup>90</sup> *Transfer Application* at 4-5.

<sup>91</sup> *Id.* at 5.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* The percentage ownership interests in SES Global are based on the assumption that SES Global will offer for sale approximately 7.5-8 percent of its equity in a U.S. public offering. If the public offering does not occur, GE Capital’s ownership interest and the interest of the other SES Global shareholders (other than the Class B Shareholders) will increase. *Id.* at 4, n. 4. We note that the foreign ownership ruling herein permits GE Americom to accept up to and including an additional 25 percent indirect foreign ownership from various identified entities,

Based on this information, we calculate SES Global's total proposed aggregate foreign ownership by particular named investors (Deutsche Telekom (including the German government), BCEE, SNCI and the State of Luxembourg) to be 29.27 percent of equity interests and 43.43 percent of voting interests.

27. We next determine the home market of SES Global and each of the particular foreign named investors to assess whether the investment should be afforded WTO Member status. Our review applies the five factors of the Commission's principal place of business test.<sup>94</sup> We base our findings, set forth below, on representations made by the Applicants.<sup>95</sup>

28. Turning first to SES Global, we find that it has its principal place of business in Luxembourg, a WTO Member. The record demonstrates that it is incorporated in Luxembourg and has its world headquarters there.<sup>96</sup> The directors of SES Global are all Luxembourg nationals, as will be its chief executive officer.<sup>97</sup> The principal shareholders of SES Global, as specified above, include the State of Luxembourg and its financial institutions SNCI and BCEE.<sup>98</sup> To the extent SES Global itself holds property directly (rather than through subsidiaries), all of the property and most of the employees will be located in Luxembourg.<sup>99</sup> The source of most of SES Global's revenue will be from sales by its operating subsidiaries to customers located in WTO Member countries.<sup>100</sup>

29. Next, we find that because the State of Luxembourg is a member of the WTO itself, it too entitled to treatment as a WTO Member. With respect to SNCI and BCEE, we also find that the home market of these entities is Luxembourg. The Applicants state that each institution was created by act of the Luxembourg Parliament and is owned by the State of Luxembourg.<sup>101</sup> SNCI specializes in supporting financing of investment in Luxembourg and exports by companies established in Luxembourg.<sup>102</sup> It has a

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which should provide considerable flexibility in the event that foreign ownership levels are higher because a public offering does not occur as anticipated. *See infra* para. 42.

<sup>94</sup> Specifically, in determining a foreign entity's home market for purposes of the public interest determination under Section 310(b)(4), the Commission will identify and balance the following factors: (1) the country of its incorporation, organization or charter; (2) the nationality of all investment principals, officers, and directors; (3) the country in which its world headquarters is located; (4) the country in which the majority of its tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which it derives the greatest sales and revenues from its operations. *See Foreign Participation Order*, 12 FCC Rcd at 23941, para. 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities, Report and Order*, 11 FCC Rcd 3873, 3951, para. 207 (1995)); *see also* *DiGiPH PCS, Inc. and Eliska Wireless Ventures License Subsidiary I, L.L.C., Memorandum Opinion and Order*, 15 FCC Rcd 24501, 24506-07 (2000) (citing *Global Crossing Ltd. and Frontier Corporation, Memorandum Opinion and Order*, 14 FCC Rcd 15911, 15918-19 (1999) (applying the five-factor "principal place of business" test)).

<sup>95</sup> Applicants' demonstration is supported by reference to publicly available documents as well as a certified statement provided for the record by Roland Jaeger, the Chairman of the Board of Directors of SES Global. *See SES Global September 12 Letter, supra* note 13, at 1-3.

<sup>96</sup> *See SES Global September 12 Letter* at 2, and attached Certificate of SES Global S.A.

<sup>97</sup> *Id.*

<sup>98</sup> *See supra* paras. 13 and 26.

<sup>99</sup> *SES Global September 12 Letter* at 2, and attached Certificate of SES Global S.A.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 2; *Transfer Application* at 5.

<sup>102</sup> *SES Global September 12 Letter* at 3 (citing <www.snci.lu/instruments>).

staff of eight persons, all located in Luxembourg.<sup>103</sup> SNCI currently has loans outstanding to more than 1,800 Luxembourg companies.<sup>104</sup> Similarly, BCEE provides banking and other financial services in Luxembourg only,<sup>105</sup> and has 96 branches in Luxembourg, with 1,742 employees.<sup>106</sup> Applicants further represent that all of the directors and officers of SNCI and BCEE are Luxembourg nationals.<sup>107</sup> Finally, we accord WTO status to Deutsch Telekom based on the Commission's recent findings in its order approving DT's acquisition of VoiceStream Wireless Corporation.<sup>108</sup>

30. Under the *Foreign Participation Order*, therefore, SES Global, the Class B shareholders, Deutsche Telekom, and the German government, all entities from WTO Member countries, are entitled to a rebuttable presumption that no competitive concerns are raised by their proposed indirect foreign ownership of GE Americom. The Commission carefully considers any relevant factors and evidence that might tend to rebut the presumption. In this regard, Representative Tauzin asserts that the proposed transaction raises a broad range of competitive issues, noting the "particular sensitivity of foreign government involvement in this nation's multi-channel video programming marketplace."<sup>109</sup> After careful review of the competitive issues raised by this transaction, we do not believe that the indirect foreign government ownership of GE Americom (through Luxembourg and Germany's partial ownership of SES Global) poses an anti-competitive threat in the provision of any satellite services to U.S. consumers, including fixed satellite services used to distribute cable programming and television broadcast services.<sup>110</sup>

31. We first address Representative Tauzin's concern that the government of Luxembourg could exercise *de facto* control of SES Global. Specifically, Representative Tauzin contends that the Luxembourg government both owns a special class of shares that has supermajority veto power over major corporate actions and regulates SES.<sup>111</sup> As the Commission recently acknowledged in the *VoiceStream/Deutsche Telekom Order*, the existence of *de facto* control is relevant along with other factors in determining the public interest under Section 310(b)(4).<sup>112</sup>

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<sup>103</sup> *Id.* (citing Thomas Bank Directory, World: J-Z, p. 2627 (June-November 2001)).

<sup>104</sup> *Id.* (citing April 26, 2001 Press Release at <[www.gouvernement.lu/gouv/fr/act/0104/26snci/26snci.html](http://www.gouvernement.lu/gouv/fr/act/0104/26snci/26snci.html)>).

<sup>105</sup> *Id.* (citing Banque et Caisse d'Epargne de l'Etat, as published in The Banker's Almanac, c. 2000, Reed Business Information Ltd., available at Lexis/Nexis, Company Library, All Company File).

<sup>106</sup> *Id.* (citing <[www.bank.lu/html-en/banks/id.list](http://www.bank.lu/html-en/banks/id.list)>).

<sup>107</sup> *Id.*, and attached Certificate of SES Global S.A.

<sup>108</sup> See *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9789, 9810, 9818, paras. 18, 51, 66 (applying to Deutsche Telekom's proposed acquisition of VoiceStream the rebuttable presumption, adopted in the *Foreign Participation Order*, that competitive concerns are not raised by common carrier wireless applications that propose indirect ownership by entities from WTO Members).

<sup>109</sup> *Representative Tauzin Letter* at 2.

<sup>110</sup> We note that the United States' market-opening commitments in the WTO Basic Telecom Agreement do not cover Direct-to-Home (DTH), Direct Broadcast Satellite (DBS), and Digital Audio Radio Service (DARS), (*DISCO II Order*, 12 FCC Rcd at 24104), and the rebuttable presumption in favor of foreign entry does not apply to these services. Our review in this case does not encompass these services – the transferors do not provide such services (*supra* note 13) and the Applicant's have not requested such authorization. SES Global is therefore not authorized to provide these services to, from, or within the United States without first obtaining further Commission authorization.

<sup>111</sup> *Representative Tauzin Letter* at 2.

<sup>112</sup> *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9813.

32. In this case, the Applicants generally acknowledge the existence of supermajority provisions, but assert that the provisions are standard investor protections designed to protect all shareholders and, therefore, do not give *de facto* control to the Class B shareholders or any other shareholder group.<sup>113</sup> In fact, the Applicants represent that the State of Luxembourg, SNCI and BCEE ultimately have limited governance rights in SES Global.<sup>114</sup> At the Commission's request, the Applicants submitted SES Global's Articles of Incorporation, which ultimately govern the rights of its shareholders.

33. Pursuant to the SES Global Articles of Incorporation, the votes of more than two-thirds of its shareholders, and in other cases, of its directors, are required to approve particular corporate actions.<sup>115</sup> In addition, Article 9 of the Articles of Incorporation allows the Board of Directors to delegate its powers, including the daily management of the company, to one or more directors.<sup>116</sup> Based on this authority, the Board of SES Global is expected to establish a management committee, composed of the chief executive officer, chief financial officer and other senior officials.<sup>117</sup> Under Article 12, the vote of more than two thirds of directors is required to appoint or to terminate the members of this management committee.<sup>118</sup>

34. The Applicants primarily contend that these provisions protect all minority shareholders,<sup>119</sup> are consistent with investor protections that the Commission has approved in other contexts,<sup>120</sup> and do not enable the Class B shareholders, or any other group of minority investors, to compel any particular corporate action or to dominate the management of corporate affairs.<sup>121</sup> As the Commission has recently stressed, "there is no exact formula for determining control and . . . questions of control turn on the specific circumstances of the case . . . [t]hus . . . we examine the totality of the circumstances."<sup>122</sup> In this case, while

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<sup>113</sup> Letter from Phillip L. Spector and Laura B. Sherman, Attorneys for SES Global, S.A. to Magalie Roman Salas, Secretary, Federal Communications Commission, September 17, 2001 (*SES Global September 17 Letter*) at 5.

<sup>114</sup> *SES Global September 12 Letter* at 3. The Applicants further represent that the role of the Luxembourg government as the licensing authority for the orbital positions and associated frequencies held by SES Global's subsidiary, SES, is similar to the role of the FCC as a licensing authority, noting that both the FCC and Luxembourg government must approve direct and indirect transfers of control in a satellite licensee. *Id.* As the licensing authority, the Luxembourg government also has the right to participate in SES Global's shareholder and Board of Directors meetings, but has no voting rights. *Id.*

<sup>115</sup> Specifically, the vote of more than two thirds of the SES Global shareholders is required to (i) elect new directors; (ii) determine the directors' terms of office, number and remuneration; and (iii) amend the Articles of Incorporation. *SES Global Articles of Incorporation*, Articles 23 and 24. The vote of more than two thirds of SES Global directors is required to (i) issue shares within the authorized capital; (ii) elect the Chairman of the Board; and (iii) for certain transfers of shares of SES Global. *SES Global Articles of Incorporation*, Article 12.

<sup>116</sup> *SES Global September 17 Letter*, Declaration of Roland Jaeger, Director and Chairman of the Board of SES Global S.A.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* See also *SES Global Articles of Incorporation*, Article 12.

<sup>119</sup> *SES Global September 17 Letter* at 4.

<sup>120</sup> *Id.* at 5 (citing 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 (1994)).

<sup>121</sup> *Id.* at 6.

<sup>122</sup> *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9815, para. 59 (citing *In re Application of Ellis Thompson Corporation, Memorandum Opinion and Order and Hearing Designation Order*, 9 FCC Rcd 7138, 7139



we acknowledge that the State of Luxembourg, which holds a 33.33 percent voting interest, may be able to manipulate these supermajority provisions to its advantage, we need not decide whether it could exercise *de facto* control. Even assuming *arguendo* that the State of Luxembourg would control SES Global, we find, as explained below, that such control would not pose a high risk to competition in U.S. markets that would warrant special conditions.

35. First, the Commission stated in the *Foreign Participation Order* that, generally, the commitments made by WTO Members, the Commission's regulatory safeguards, and antitrust law should be sufficient to address competitive concerns resulting from investment by entities from WTO Members in the U.S. telecommunications market.<sup>123</sup> In this regard, the Commission made no distinction between government and private foreign ownership.<sup>124</sup> Thus, the same presumption in favor of market entry for private entities from WTO Member countries also applies in the instant analysis of whether denial of the investment by the governments of Luxembourg and Germany, through SES Global, in GE Americom would serve the public interest. We note that neither Representative Tauzin nor any commenters have alleged specific anti-competitive practices or harms.

36. Second, there is no evidence in the record suggesting that SES Global receives any special benefits, subsidies, grants, loans or loan guarantees as a result of its relationship with the governments of Luxembourg and Germany.<sup>125</sup> We note that the governments of Luxembourg and Germany are bound by the law of the European Union, which prohibits "any aid granted by a member state or through state resources in any form whatsoever which distorts or threatens to distort competition" by favoring certain companies.<sup>126</sup> While we recognize that a government-controlled company in a private sector market may choose for reasons other than commercial profit-maximization, *i.e.*, political, nationalistic, or other reasons, to engage in predatory or other anti-competitive behavior as a strategic trade initiative, we note that no such allegations have been made in this case.

37. Third, even if SES Global enjoyed special financial advantages because of its foreign government ownership, the current levels of actual and potential competition in the relevant satellite markets as well as the fundamental characteristics of those markets would likely frustrate any predatory strategy to drive out rivals or exercise market power. As we discuss in greater detail in our evaluation of the competitive effects of the proposed transaction, the acquisition of GE Americom by SES Global poses no increase in concentration in the market for telecommunications services in the United States.<sup>127</sup> It is also highly unlikely that the combined entity could achieve market power in the provision of any satellite services in the United States.

38. In this regard, we note that many authorized satellite systems are capable of carrying numerous types of signals, including those used for video, telephone, Internet, or data transmission in the United States. Geographic coverage and use of authorized frequency bands are the only limitations on the

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(1994) and *In re Application of Baker Creek Communications, L.P.*, *Memorandum Opinion and Order*, 13 FCC Rcd 18709, 18715 (1998)).

<sup>123</sup> *Foreign Participation Order*, 12 FCC Rcd at 23905-09.

<sup>124</sup> *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9811.

<sup>125</sup> *SES Global September 17 Letter* at 3 (noting that SES Global will not enjoy any special financial advantages and that the Luxembourg government has never guaranteed SES' borrowings).

<sup>126</sup> Consolidated Version of the Treaty Establishing the European Community, Art. 87(1) (ex Art. 92(1)).

<sup>127</sup> *See infra* Sections III. D and E (discussing the competitive effects of the transaction and the applicability of dominant carrier safeguards).

types of transmission services such as satellite systems may provide. In fact, we understand that there is currently an abundance of satellite capacity.<sup>128</sup>

39. GE Americom currently is licensed to operate fourteen C- and Ku-band satellites within the United States and is authorized to operate a global Ka-band system. GE Americom also has applied to operate a global V-band system.<sup>129</sup> As Representative Tauzin suggests, many of the transponders on GE Americom satellites are currently used for the carriage of national cable television networks.<sup>130</sup> We note, however, that users of satellite services, including national cable television networks, have a choice of competing providers. Indeed, PanAmSat, Loral, and New Skies Satellites each currently provide such services in the United States.<sup>131</sup> A number of additional companies operate systems that are capable of providing similar services in the United States as well. The Commission recently authorized the newly privatized INTELSAT to provide domestic service into the United States.<sup>132</sup> The Commission has also added certain foreign satellites licensed to countries such as Canada, Mexico and Brazil to the satellite "permitted list," which allows U.S.-licensed earth stations with an ALSAT license to access those satellites.<sup>133</sup> The Commission has also recently authorized additional systems in the Ka-band which eventually may provide such services.<sup>134</sup> Accordingly, we believe that competitive pressure by existing firms that already offer such services and by newly authorized systems that could offer similar services would likely prevent SES Global from exercising market power.

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<sup>128</sup> According to a recent report, "satellite operators [have] booked only 55 percent of their fixed service satellite capacity, compared with 68 percent last year." *Communications Daily*, September 19, 2001.

<sup>129</sup> See *supra* para. 5.

<sup>130</sup> *Representative Tauzin Letter* at 2. We note that the GE Americom is not itself a supplier of video content. Representative Tauzin also states that SES is currently the leading satellite distribution company in Europe and enjoys a 79 percent share of the European digital satellite television market. *Id.* While we recognize that the proposed transaction could potentially affect the market power of SES Global in foreign markets, our competitive analysis is limited to the impact of the merger on U.S. customers. In this case, we do not see how the indirect ownership of GE Americom by SES Global would give it additional market power in the U.S. market.

<sup>131</sup> See *e.g.*, PanAmSat SEC Form 10K, Item 1, Business, and <http://www.panamsat.com/sat/system.htm>; see also [www.loral.com](http://www.loral.com); New Skies Satellites N.V., *Prospectus*, dated October 3, 2000, at 1.

<sup>132</sup> See Applications of INTELSAT LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, *Memorandum Opinion Order and Authorization*, FCC 00-287 (rel. Aug. 8, 2000), *Order on Reconsideration*, FCC 00-437 (rel. Dec. 14, 2000). See also In the Matter of the Applications of INTELSAT LLC For Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, *Memorandum Opinion Order and Authorization*, FCC 01-181 (rel. May 29, 2001).

<sup>133</sup> Originally, "ALSAT" was an abbreviation for "all U.S.-licensed satellites." Under an ALSAT earth station license, an earth station operator providing fixed-satellite service in the conventional C- and Ku-bands could access any U.S.-licensed satellite without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth station license. See 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, *First Order on Reconsideration*, 15 FCC Rcd 7207, 7210-11 (1999) (*DISCO II First Reconsideration Order*). The *DISCO II First Reconsideration Order* expanded ALSAT earth station licenses to permit ALSAT-designated earth stations to access any satellite on the Permitted Space Station List. *Id.* at 7215-16. See also Permitted Space Station List, at <[www.fcc.gov/ib/srd/se/premited.html](http://www.fcc.gov/ib/srd/se/premited.html)>.

<sup>134</sup> See *e.g.*, Pegasus Development Corp., Application for Authority to Construct, Launch and Operate a Ka-band Satellite System in the Fixed Service, *Order and Authorization*, DA 01-1652 (rel. Aug. 3, 2001); Echostar Satellite Corporation, Application for Authority to Construct, Launch and Operate a Ka-band Satellite System in the Fixed Service, *Order and Authorization*, DA 01-1684 (rel. Aug. 3, 2001).

40. Moreover, as we have acknowledged in other cases involving indirect foreign government investment, a predation strategy is likely to be unprofitable and inconsistent with SES Global's fiduciary responsibility to private stockholders.<sup>135</sup> Given the unique characteristics of the satellite services industry, any company seeking to drive out rivals by lowering its price must have sufficient supply capacity to provide services to the bulk of its rivals' customers. Without such capacity, the company's rivals would not need to match price reductions to preserve their respective customer bases. Radio frequency spectrum and satellite capacity are essential elements in the provision of fixed satellite services. As noted above, the supply of these inputs is dispersed among a number of competitors. Any attempt to consolidate spectrum or transponder capacity that accesses the United States would be subject to oversight and approval by the Commission, as well as antitrust review by the appropriate authorities. Further, satellite technology is characterized by high sunk costs related to the design, manufacture, and launch of satellites and relatively low operating costs.<sup>136</sup> Therefore, rivals are unlikely to exit in response to a predatory price cut.

41. We also note that the Executive Branch has not raised any national security, law enforcement, foreign policy, or trade concerns with the proposed transfer of control.<sup>137</sup> We therefore conclude, pursuant to Section 310(b)(4) of the Act and the Commission's open entry standards for indirect investment by WTO Members in U.S. common carrier licensees as set forth in the *Foreign Participation Order*, that it will not serve the public interest to prohibit the proposed indirect foreign ownership of GE Americom in excess of the statutory 25 percent benchmark.

42. Specifically, this ruling permits the requested indirect foreign ownership of GE Americom by SES Global (100 percent); Deutsche Telekom and its German shareholders (12.6 percent of equity and 10.1 percent of voting shares); BCEE, SNCI, and the State of Luxembourg (16.67 percent of equity and 33.33 percent of voting shares, which aggregate shares may be held in any amount by any one or more of these named Luxembourg entities). GE Americom may accept up to and including an additional, aggregate 25 percent indirect equity and/or voting interests from the above foreign investors or other non-U.S. investors and entities, including investors that receive shares in SES Global pursuant to the exchange offer or that purchase shares of SES Global in the public markets, without seeking further Commission approval under Section 310(b)(4).<sup>138</sup> However, no single non-U.S. investor or entity, including Deutsche Telekom and its German shareholders, as well as BCEE, SNCI, and the State of Luxembourg, may acquire indirect ownership in excess of 25 percent without further Commission approval under Section 310(b)(4). Moreover, GE Americom shall seek approval under Section 310(b)(4) before it accepts any additional indirect interest by BCEE, SNCI and the State of Luxembourg in excess of the permitted 33.33 percent voting interest.

#### D. Competitive Effects

43. Our public interest analysis under Section 214(a) and 310(d) includes an evaluation of the competitive effects of the proposed transaction in both the relevant product markets and the relevant geographic markets. For telecommunications service providers, the Commission has determined that the

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<sup>135</sup> *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9821, para. 72.

<sup>136</sup> Sunk costs are the costs of plant and other investments that cannot be recovered by firms that cease operations. Operating costs, on the other hand, are the day-to-day costs of serving customers that can be terminated by firms that cease operation. The operating costs establish an operator's pricing floor, because any price above such costs defrays the day-to-day costs of doing business and makes at least some contribution to sunk costs, which would be unrecoverable if the operator ceased operations.

<sup>137</sup> See *infra* Section III. F.

<sup>138</sup> For this purpose, non-U.S. ownership of GE Capital and non-German foreign ownership of Deutsche Telekom would be included in the total indirect foreign ownership of GE Americom.

relevant product markets can include both service to U.S. domestic telecommunications markets and service between the United States and foreign telecommunications markets.<sup>139</sup>

44. SES Global does not provide any domestic telecommunications services within the United States,<sup>140</sup> either directly or through its ownership interests in SES, NSAB, AsiaSat and Star One.<sup>141</sup> Thus, SES Global's acquisition of the Americom Licensees would not increase concentration or market power in the provision of communication services within the United States.

45. With respect to U.S. international telecommunications markets, the Commission has evaluated the competitive effects on a country-by-country basis, for service between the United States and specific foreign countries, where U.S. billed service<sup>142</sup> between the United States and each foreign country from the United States represents a separate geographic market.<sup>143</sup> In those analyses, we considered whether the proposed transaction would lessen or enhance competition in the provision of international services to or from the United States. We need not analyze the impact of the proposed transaction on competition in the provision of satellite services to foreign countries that do not involve service to or from the United States.

46. After reviewing the record, we find that there does not appear to be any significant overlap in the provision of services in the same product and geographic markets in, to or from the United States by SES Global and the Americom Licensees. As noted above, SES Global, either directly or through its ownership interests in SES, NSAB, AsiaSat, and Star One, provides services in Europe, Asia and Latin America. SES Global does not provide service to or from the United States.<sup>144</sup> Since these SES Global investments do not involve services in, to or from the United States, we conclude that competition for

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<sup>139</sup> See e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9824, 9833 (citing Application of WorldCom, Inc., and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 18025, 18070-71 (1998) (*MCI/WorldCom Order*)). See also *MCI/WorldCom Order* at 13 FCC Rcd 18038-39; and Lockheed Martin Corporation, COMSAT Government Systems, LLC, and COMSAT Corporation, Application for Transfer of Control of COMSAT Corporation and its Subsidiaries, Licensees of Various Satellite, Earth Station Private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214 Authorizations, *Order and Authorization*, 15 FCC Rcd 22910, 22915 (2000) (*Lockheed/COMSAT Order*).

<sup>140</sup> Although SES Global's acquisition of SES will not occur until the closing of the transaction (and parallel to its acquisition of the Americom Licensees), we have considered SES Global's anticipated affiliation with SES for purposes of our competitive analysis. See e.g., *Transfer Application* at 10.

<sup>141</sup> SES is based in Luxembourg and provides service in Europe; NSAB is based in Sweden and provides service in Scandinavia, the Baltic States, Poland and Russia; AsiaSat is based in Hong Kong and provides service throughout Asia and the Pacific; StarOne is based in Brazil, and provides service in Latin America. See *supra* paras. 9-10.

<sup>142</sup> The Commission has stated that U.S. international services comprise all U.S. -billed services, including calls that originate in the United States and terminate at a foreign point and calls that originate at a foreign point but are billed by a U.S. carrier, such as international calling card calls. See e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9833, n. 283.

<sup>143</sup> See *Lockheed/COMSAT Order*, 15 FCC Rcd at 22916. See also Comsat Corporation Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier, *Order and Notice of Proposed Rulemaking*, 13 FCC Rcd 14083, 14099 (1998).

<sup>144</sup> Brasilsat A2, which is owned by StarOne, was added to the list of non-U.S. licensed satellites authorized to serve the United States on January 21, 2001. According to the Application, 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 United States via Brasilsat A2 or any other Star One satellite." *Transfer Application* at 7.

services in, to or from the United States in relevant product or geographic markets would not be lessened by the combination of these SES Global interests with the Americom Licensees' business operations.

### E. Dominant Carrier Safeguards

47. As part of our public interest analysis under Section 214(a), we also consider whether, as a result of its acquisition by SES Global, GE Americom will become affiliated with a foreign carrier that has market power on the foreign end of a U.S. international route served by GE Americom.<sup>145</sup> Under rules adopted in the *Foreign Participation Order*, we classify a U.S. carrier as a "dominant" international carrier on a particular route if it is affiliated with a foreign carrier that controls essential facilities on that route.<sup>146</sup> A U.S. carrier presumptively is classified as non-dominant on an affiliated route if the U.S.-authorized carrier demonstrates that its foreign carrier affiliate lacks 50 percent market share in the international transport and local access markets on the foreign end of that route.<sup>147</sup>

48. A carrier classified as dominant is subject to dominant carrier safeguards.<sup>148</sup> These safeguards are designed to address the possibility that a foreign carrier with control over facilities or services that are essential inputs for the provision of U.S. international services could discriminate against rivals of its U.S. affiliates (*i.e.*, vertical harms). In the *Foreign Participation Order*, the Commission concluded that these safeguards, in conjunction with our generally applicable international safeguards, are sufficient to protect against vertical harms by carriers from WTO Member countries in virtually all circumstances.<sup>149</sup> In the exceptional case where an application poses a very high risk to competition in the U.S. market, and where our standard safeguards and additional conditions would be ineffective, the Commission reserves the right to deny the application.<sup>150</sup> In circumstances where an affiliated foreign carrier possesses market power in a non-WTO Member country, the Commission applies the effective competitive opportunities (ECO) test as part of its public interest inquiry under Section 214(a).<sup>151</sup>

49. As a result of the proposed transaction, GE Americom will acquire affiliations with SES, AsiaSat, NSAB, and Luxembourg PTT.<sup>152</sup> Because GE Americom is not authorized to provide U.S. international service on the U.S.-Luxembourg route, we need not examine whether Luxembourg PTT possesses sufficient market power to adversely affect competition in the U.S. market.<sup>153</sup> The Applicants

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<sup>145</sup> See Appendix A, which lists GE Americom's current international Section 214 authorizations. Subsequent to the filing of the *Transfer Application*, GE Americom relinquished its authority to provide service on the U.S.-Luxembourg route effective June 26, 2001. See *GE Americom June 26 Letter*. See also *supra* note 17.

<sup>146</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23987, 23991-99. SES Global is affiliated with Luxembourg PTT, a foreign carrier in Luxembourg. See *SES Global August 28 Letter*.

<sup>147</sup> See 47 C.F.R. § 63.10(a)(3). In the *Foreign Participation Order*, the Commission determined that the relevant markets on the foreign end of a U.S. international route generally include: international transport facilities or services, inter-city facilities or services, and local access facilities or services on the foreign end of the route. See *Foreign Participation Order*, 12 FCC Rcd at 23959, n. 312.

<sup>148</sup> See 47 C.F.R. § 63.10(c), (e).

<sup>149</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23913-14.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 23944-45.

<sup>152</sup> See *Transfer Application*, Attachment E at 6. See also *SES Global August 28 Letter* (certifying that SES Global is affiliated with Luxembourg PTT). We note that because SES Global's ownership interest in Star One does not exceed 25 percent, GE Americom would not be considered "affiliated" with Star One within the meaning of Section 63.09(e) of our rules, 47 C.F.R. § 63.09(e). See also 47 C.F.R. § 63.10(a).

assert that SES, AsiaSat and NSAB do not possess market power in the international transport and local access markets in any of the countries they serve.<sup>154</sup> In addition, as previously discussed, SES, AsiaSat, and NSAB, currently have no presence in the international transport market on the foreign end of any U.S. international route.<sup>155</sup> The carriers' international transport facilities and services are provided only on routes within Europe, Asia and Latin America. Thus, these carriers do not control essential inputs for the provision of U.S. international service that can be used to discriminate against rivals of GE Americom. Based on our review of the record, including the certified statements made by the Applicants, we conclude that the foreign carriers with which GE Americom will become affiliated as a result of the proposed acquisition do not possess sufficient market power in any relevant foreign telecommunications market to affect competition adversely in the United States. Accordingly, we find that GE Americom may continue to hold its current Section 214 authorizations as a non-dominant U.S. international carrier on the routes it is currently authorized to serve after the proposed transfer of control is consummated.<sup>156</sup>

#### **F. National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns**

50. In acting on transfer of control applications that involve issues of foreign ownership, we also consider any national security, law enforcement, foreign policy and trade policy concerns raised by the Executive Branch.<sup>157</sup> We recognize that there are significant national security and law enforcement issues that are uniquely within the expertise of the Executive Branch, and in addition to our own independent public interest review, we take into account the legitimate concerns raised by the Executive Branch regarding these issues.<sup>158</sup>

51. In exchanges between the Applicants and the Executive Branch on matters relevant to law enforcement and national security issues surrounding the proposed transfer, GE Americom provided information to the Executive Branch about its service offerings and Commission authorizations. It further made certain commitments to the Executive Branch.<sup>159</sup> Specifically, GE Americom stated that it does not provide common carrier *switched* services either in its international offerings or in its domestic offerings.

<sup>153</sup> GE Americom has relinquished its Section 214 authority on this route. *See supra* notes 17 and 145.

<sup>154</sup> As discussed earlier, SES provides satellite communications services throughout Europe; AsiaSat provides satellite communications services throughout Asia and the Pacific; and NSAB provides satellite communications services in Scandinavia, the Baltic States, Poland and Russia. *See supra* note 141. The Applicants note that not all the countries served by these foreign carriers are WTO Member countries. *Transfer Application*, Attachment E at 6. *See also SES Global August 28 Letter* (certifying that these carriers do not control local access facilities on the foreign end of any U.S. international route that GE Americom is authorized to serve).

<sup>155</sup> *See supra* Section III. D (discussing the competitive effects of the transaction) and *supra* Section III. E (discussing the applicability of dominant carrier safeguards).

<sup>156</sup> GE Americom also provides domestic common carrier service within the United States. *See e.g., supra* note 17. In a letter to the Federal Bureau of Investigation (FBI), GE Americom provided information about its domestic common carrier services, stating that "GE Americom provides domestic dedicated private line service via satellite, but does not itself provide any domestic switched services." *See GE/FBI June 4 Letter* at 1. According to GE Americom, it "simply provides its customers with access to satellite transponders." *Id.* at 2. For domestic common carrier services that GE Americom provides via satellite using microwave facilities under Title III of the Act, a separate Title II, Section 214(a) public interest finding is not necessary.

<sup>157</sup> *Foreign Participation Order*, 12 FCC Rcd at 23918-21. These factors are relevant public interest factors in evaluating applications from parties affiliated with foreign entities when considering whether to grant or deny Section 214 and Section 310(b)(4) applications.

<sup>158</sup> *Id.* at 23919. *See also Disco II Order*, 12 FCC Rcd at 24170.

<sup>159</sup> *GE/FBI June 4 Letter*, *supra* note 10.

Moreover, GE Americom stated that it does not provide, and has no plans to provide, *switched* communications services via equipment authorized under its current or anticipated future Title III (radio) licenses.<sup>160</sup> GE Americom has, moreover, made a commitment to notify the Executive Branch at least 30 days before providing *switched* services, including any such provision of services via equipment authorized under Title III (radio) licenses.<sup>161</sup> Based on these statements and the commitments made by GE Americom, the Executive Branch has not filed comments or objections to the proposed transaction. Rather, the FBI states that in reliance on representations made by GE Americom and SES Global in the *GE/FBI June 4 Letter*, the FBI and the Department of Justice “have decided not to file an objection or other comments” concerning the FCC applications filed in connection with the proposed transfer of control.<sup>162</sup> No other party has raised national security or law enforcement concerns. Thus, based on the record before us and the commitments made by the Applicants to the Executive Branch, we conclude that the proposed transaction poses no national security, law enforcement, foreign policy or trade concerns.

#### G. Public Interest Benefits

52. In evaluating the public interest benefits of the proposed transaction, we consider the Applicants’ claims that the proposed acquisition will provide the merged entity with efficiencies and enhanced opportunities to compete more effectively in U.S. domestic and international communications markets.<sup>163</sup> The combination of SES’s operations with the Americom Licensees’ operations will provide SES Global with the ability to provide satellite communications services throughout most of the world and could potentially enable the merged entity to realize economies of scale and scope in areas such as satellite control operations and research and development. The combination may also provide the merged entity with resources to better compete with other operators that can offer services throughout the world, and thus, strengthen competition in the satellite telecommunications services industry. Therefore, we find that the proposed transaction will likely not result in harm to competition in any relevant market and will likely yield tangible public interest benefits to U.S. consumers.

### IV. OTHER ISSUES

53. **Waiver of Cut-Off Rules.** The proposed transaction includes the transfer of current, as well as pending applications for, earth and space station licenses. GE Americom has pending before the Commission an application in a space station processing round that was established pursuant to a public notice in which the Commission set filing deadlines for applications to be considered simultaneously.<sup>164</sup> In that processing round, applications filed after the stated cut-off date are not entitled to comparative consideration with other applications filed by the established deadline.

54. Section 25.116(c) of the Commission’s rules provides generally that if a pending application is amended by a “major amendment” after a cut-off date, the application will be considered to be a newly filed application.<sup>165</sup> This means the application would lose its status in the processing group. Section 25.116(b)(3) specifies that an amendment to an application will be considered “major” if it involves

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<sup>160</sup> *GE/FBI June 4 Letter* at 1-3.

<sup>161</sup> *Id.* at 3.

<sup>162</sup> See Letter from Patrick W. Kelley, Deputy General Counsel, U.S. Department of Justice, to Mark R. O’Leary, Senior Vice President and General Counsel, GE American Communications, Inc., June 12, 2001.

<sup>163</sup> *Transfer Application* at 13-19. See also *supra* para. 15.

<sup>164</sup> *Public Notice*, Applications Accepted for Filing: Cut-Off Established for Additional Space Station Applications and Letters of Intent in the 36-51.4 GHz Frequency Band. DA-97-1551, Report No. SPB-89 (July 22, 1997).

<sup>165</sup> 47 C.F.R. § 25.116(c).

a “substantial change in beneficial ownership or control.”<sup>166</sup> Section 25.116(c)(2) provides an exception to this approach, however, where the amendment reflects a change in ownership found by the Commission to serve the public interest and for which a requested exemption from the “cut-off” date is granted.<sup>167</sup>

55. The proposed transfer of control in this case constitutes a major amendment involving a significant change in ownership of the Americom Licensees. Consistent with Section 25.116(c)(2), the Applicants have requested exemption from the cut-off dates with respect to their pending application in order to preserve the status of their application in the processing group.<sup>168</sup> They ask that we find that the proposed transfer of control is in the public interest and grant their request for exemption from the “cut-off” rules.

56. In previous decisions where we considered whether to grant an exception to the cut-off rules, we have consider two factors: (1) whether the proposed transaction has a legitimate business purpose; and (2) whether the change in ownership otherwise serves the public interest.<sup>169</sup> We find that both these factors are met in this case. First, the Applicants state that the business purpose of the proposed acquisition is to permit the Applicants “to compete more effectively in the global communications services market by creating integrated satellite networks with worldwide coverage,”<sup>170</sup> and also note that the acquisition involves satellites already licensed. We find that the acquisition of the Americom Licensees by SES Global serves an independent business purpose, and is not primarily being undertaken for the purpose of acquiring pending applications.<sup>171</sup> Second, as discussed above, under Sections 214(a) and 310(d) of the Act, we have determined that the proposed transaction serves the public interest, convenience and necessity.

57. Accordingly, the change in control and ownership of the Americom Licenses falls within the provisions of Section 25.116(c)(2). Thus, we will exempt GE Americom’s pending application from our cut-off rules, and will continue to consider this application concurrently with others in the processing group. GE Americom should amend its pending application to reflect the transaction approved by this Order and Authorization consistent with Section 1.65 of our rules.<sup>172</sup>

## V. CONCLUSION

58. In view of the forgoing, we find that granting the *Transfer Application* will serve the public interest, convenience, and necessity by increasing competition in the satellite services market to the benefit of U.S. consumers. Accordingly, we grant the application of GE Capital and SES Global for consent to the transfer of control of the Americom Licensees’ space and earth station licenses, VSAT licenses, microwave licenses, and Section 214 authorizations to SES Global. We also find that the transfers of control are consistent with Section 310(b)(4) and grant the petition for declaratory ruling regarding foreign ownership of GE Americom in excess of the 25 percent foreign ownership benchmark in Section 310(b)(4). Finally, we grant the Applicants’ request for waiver of Section 25.116(c) of the Commission’s rules.

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<sup>166</sup> 47 C.F.R. § 25.116(b)(3). Section 25.116(b)(3) states that an amendment specifying a substantial change in beneficial ownership of an applicant that requires an application under Section 310(d) of the Act is a major amendment.

<sup>167</sup> 47 C.F.R. § 25.116(c)(2).

<sup>168</sup> *Transfer Application* at 29-30.

<sup>169</sup> See *Loral/Orion Order*, 13 FCC Rcd at 4599.

<sup>170</sup> See *supra* para. 15.

<sup>171</sup> See *Loral/Orion Order*, 13 FCC Rcd at 4599, citing *Airsignal International Inc.*, 81 FCC 2d 472 (1980).

<sup>172</sup> 47 C.F.R. § 1.65.



**VI. ORDERING CLAUSES**

59. Accordingly, IT IS ORDERED that, pursuant to Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), the application for transfer of control of licenses held by GE Americom and Columbia from GE Capital to SES Global IS GRANTED to the extent specified in this Order and Authorization.

60. IT IS FURTHER ORDERED that, pursuant to Section 214(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(a), the application for transfer of the Section 214 authorizations for the provision of international and domestic telecommunications services held by GE Americom from GE Capital to SES Global IS GRANTED to the extent specified in this Order and Authorization.

61. IT IS FURTHER ORDERED that, pursuant to Section 214(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(a), and Section 63.10 of the Commission's rules, 47 C.F.R. § 63.10, GE Americom shall continue to be regulated as a non-dominant international carrier on its authorized routes after the transfer of control is consummated in accord with this Order and Authorization.

62. IT IS FURTHER ORDERED that, pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4), that GE Americom is authorized to accept indirect foreign ownership in excess of the 25 percent benchmark in Section 310(b)(4) of the Act only to the extent specified in this Order and Authorization.

63. Accordingly, having reviewed the applications, the petitions and the record in this matter, IT IS ORDERED that, pursuant to Sections 4(i) and (j), 214(a) and (c), 309, and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 214(a) and (c), 309, and 310(b) and (d), that the applications filed by GE Capital for authority to transfer control of licenses and authorizations to SES Global, and the petitions for declaratory ruling filed by the Applicants ARE GRANTED, to the extent specified in this Order and Authorization.

64. IT IS FURTHER ORDERED that the Applicants are exempt from our cut-off rules under Section 25.116(c), 47 C.F.R. § 25.116(c), for applications that are currently pending and considered in connection with the instant Transfer Application.

65. IT IS FURTHER ORDERED that pursuant to Section 1.65 of the Commission's Rules, 47 C.F.R. § 1.65, GE Capital and SES Global are afforded thirty days from the date of release of this Order and Authorization to amend all such pending applications in connection with the instant Transfer Application to reflect the new ownership structure approved in this Order and Authorization.

66. This action is taken under delegated authority pursuant to Sections 0.51, 0.261, 0.131, 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.51, 0.261, 0.131, 0.331, and SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson  
Chief, International Bureau

Thomas J. Sugrue  
Chief, Wireless Telecommunications Bureau

**Appendix A**  
**List of GE Americom and Columbia Licenses and Authorizations**  
**Subject to Transfer by GE Capital**

**I. Space Station Licenses: Held on Non-Common Carrier Basis**

<u>GE Americom</u>		<u>Ka-Band</u>	<u>Columbia</u>
139°W.L., C-band - GE-8	87°W.L., C/Ku-band - GE-3	<u>Authorization</u>	
137°W.L., C-band - GE-7	85°W.L., C/Ku-band- GE-2	(Orbital Locations)	174.3°W.L., C-band - TDRS-5
135°W.L., C-band – Satcom C-4	81°W.L., Ku-band – Satcom K-2	105° W.L.	174.3°W.L., C-band - TDRS-5R
131°W.L., C-band – Satcom C-3	79°W.L., Ku-band – GE-5	85° W.L.	47°W.L., C-band - TDRS-6
105°W.L., Ku-band – GSTAR 4	79°W.L., C-band – Satcom C-1	17° W.L.	47°W.L., C-band - GE-1i
103°W.L., C/Ku-band – GE-1	72°W.L., C/Ku-band - GE-6	56° E.L.	37.7°W.L., C-band - Columbia 511
101°W.L., C/Ku-band – GE-4	172°E.L., C-band – Satcom SN-4	114.5° E.L.	172°E.L., C-band - GE-2i

**II. GE Americom Earth Station Licenses: Held on Common Carrier\* or Non-Common Carrier Basis**

*Call Signs:*

<u>Transmit/</u>	E4321*	E873912*	E940106*	E980008	KA288	<u>Transmit</u>	E4242	E8876
<u>Receive</u>	E4411*	E880958*	E940141*	E980086	KA292*	<u>Only</u>	E4243	E890393
E000056	E4630	E881180*	E940156*	E980162	KA293*	E870007*	E4788	E9006
E000268	E5005*	E881303*	E940471*	E980313	KA314*	E870904*	E4789	E920169
E000275	E6399*	E8832	E940472*	E980315	KA315*	E873357*	E5040	E920244
E000289	E6572*	E890383	E9494*	E980347	KA318	E910283*	E6068	E930055
E000313	E7169	E890537	E950006	E980352	KA377*	E910284*	E6079	E930104
E000322	E850154*	E890950*	E950373	E980490	KB27*	E920354*	E6494	E940032
E000323	E859658*	E900448	E950496	E990136	KD26*	E930451*	E6860	E9435
E000324	E859726*	E910001	E960034	E990401	KD42*	E980164	E7368	E950331
E000664	E860317*	E920683*	E960207	E990421	KE27*	WE60*	E7532	E950332
E2037*	E860942*	E920698	E960490	E990427	KF24*	<u>Receive</u>	E8331	E970057
E2594*	E861056*	E930073*	E960491	E010093	KF40*	<u>Only</u>	E859718	E980209
E2643	E872122*	E930090*	E960492	E010094	KG72*	E000267	E860551	E980283
E2672*	E872652*	E930289*	E970142	E010097	KH80*	E3524	E860951	E980489
E3206*	E873528	E930436*	E970198	E010142	KM57*	E3660	E8671	E980491
E3389*			E970336*	KA204*	WB74*	E3920	E870014	E990015
E3554			E970428*	KA272	WB81*	E3939	E880114	E990016
					WE87*	E3940	E880115	E990017
					WP75*		E881145	KA367*

**III. GE Americom VSAT Licenses: Held on Common Carrier\* or Non-Common Carrier Basis**

*Call Signs:*

E871856*	E880973*	E890533	E890254	E900004*	E900006*
E871857*	E890531	E890253	E890255	E900005*	E900007*

**IV. GE Americom Microwave Licenses: Held on a Common Carrier\* Basis, Fixed Point-to-Point**

*Call Signs:*

WLB201*	WBA835*	WBA837*	WDU471*	WAS488*	WAS490*
WAH584*	WBA836*	WFY662*	WAS487*	WAS489*	

**V. GE Americom Section 214 Authorizations: Held on a Common Carrier\* Basis**

<u>Int'l. File No.</u>	<u>Routes Between:</u>	<u>Domestic Service</u>
ITC-83-029*	Colorado Springs, Co. and Thule, Greenland	
ITC-86-176*	Satcom K-2 and terrestrial stations in Canada and Mexico	Offerings posted at
ITC-88-119*	U.S. and Bahamas	www.geamericom.com
ITC-85-147*	U.S. and points in Caribbean and Latin America	
ITC-92-187*	U.S. and Bermuda	

\* denotes Common Carrier Basis

**Appendix B**  
**List of GE Americom and Columbia Pending Applications**

**Pending Space Station Applications****GE Americom**

Application for authorization to construct, launch and operate a satellite system consisting of two extended Ku-band communications satellites at 85°W.L. and 87°W.L. and one ground spare, filed November 3, 1995. File Nos. 18/19-SAT-P/LA-96 & 20-SAT-P-96 (IBFS File Nos. SAT-LOA-19951103-00176/177 & SAT-A/O-19951103-00175). *See* Public Notice dated January 24, 1996 (Report No. SPB-34).

Application for authorization to launch and operate a system of eleven V/Ku-band satellites at nine orbital locations, filed September 27, 1997. File Nos. 139 through 147-SAT-P/LA-97; IBFS File Nos. SAT-LOA-19970925-00110/118.

Application for special temporary authority to operate GE-6 at 80.95°W.L., filed February 2, 2001. File No. SAT-STA-20010202-00007.

**Columbia**

Application for authorization to launch and operate a C-band replacement satellite at 37.5°W.L., filed April 7, 2000. File No. SAT-LOA-20000407-00080.

**Pending Earth Station Applications:****GE Americom**

Application for authorization to modify station WB81 to add authority for extended C-band operations, filed November 29, 2000. File No. SES-MOD-20001129-02219.