

Description, Public Interest Statement and Request for Waiver of Section 25.119(f)

DG Consents Sub, Inc., a Delaware corporation (“DG Consents Sub”), is the licensee of a non-geostationary orbit satellite system that operates under Call Sign S2129 in the Earth Exploration Satellite Service (“EESS”).¹ DG Consents Sub is also the licensee of two fixed-satellite service earth stations authorized under Call Signs E950499 and E040264.² DG Consents Sub is a wholly-owned subsidiary of DigitalGlobe, Inc., a Delaware corporation (“DigitalGlobe” or “Company”), which is a leading global provider of commercial high resolution earth imagery products and services. In this application, DG Consents Sub requests Commission approval for the transfer of control of the space and earth station licenses held by DG Consents Sub from Morgan Stanley³ to the shareholders of DigitalGlobe.⁴

At present, no stockholder holds a 50 percent or more interest in DigitalGlobe. There are two stockholders that hold equity interests of 10 percent or more in DigitalGlobe.⁵ These stockholders are listed in Table 1 below:

TABLE 1

<u>Name of Shareholder</u>	<u>Address</u>	<u>Citizenship</u>	<u>Ownership Percentage</u>
Morgan Stanley	1585 Broadway New York, NY 10036	U.S.	31.96%
Beach Point Capital Management Ltd ⁶	11755 Wilshire Boulevard, Suite 1400 Los Angeles, CA 90025	U.S.	10.57%

In connection with a pair of transfer of control applications that were granted in November 2003 – *see* File Nos. SAT-T/C-20030909-00294 and SES-T/C-20030909-01235 – for FCC purposes, Morgan Stanley currently controls DigitalGlobe and its license-holding

¹ The EESS satellite system is comprised of three operational satellites.

² The subject earth stations provide tracking, telemetry and control for the space stations in the applicant’s EESS system.

³ For purposes of this description, “Morgan Stanley” shall include references to two of Morgan Stanley’s wholly-owned subsidiaries, Morgan Stanley & Co. Incorporated and Morgan Stanley Principal Investments, Inc.

⁴ On the FCC Form 312 application to which this exhibit is attached, DG Consents Sub has listed DigitalGlobe, Inc. as the transferee in lieu of the shareholders of DigitalGlobe because the latter do not have an FCC Registration Number, which is required to be used when indicating the transferee on the electronic transfer of control form available through IBFS.

⁵ These equity interests reflect the dilution that resulted from a May 2009 Initial Public Offering (“IPO”) of DigitalGlobe shares. The IPO encompassed roughly 30 percent of the shares in DigitalGlobe, but did not alter control of the Company.

⁶ In January 2009, Beach Point Capital Management Ltd assumed certain rights and obligations from Post Advisory Group and now serves as investment manager of certain funds that hold stock in the Company.

subsidiary. Even though Morgan Stanley is a minority shareholder in DigitalGlobe, and there is no single majority shareholder of DigitalGlobe, Morgan Stanley is viewed as having control over the Company pursuant to a July 2003 Stockholders Agreement that accorded Morgan Stanley the ability to designate a majority of the members of DigitalGlobe's Board of Directors.

In April 2009, Morgan Stanley and DigitalGlobe entered into an Investor Agreement in connection with the DigitalGlobe IPO that granted Morgan Stanley the continued ability to designate for nomination a majority of the members of the DigitalGlobe Board of Directors, provided that Morgan Stanley is the record and beneficial owner of at least 25 percent of the outstanding common stock. The April 2009 Investor Agreement specifies that if Morgan Stanley is the record and beneficial owner of less than 25 percent of the outstanding common stock, Morgan Stanley will no longer have the right to designate for nomination a majority of the members of DigitalGlobe's Board of Directors. Each non-independent director Morgan Stanley has nominated to the DigitalGlobe Board of Directors will resign his directorship at the DigitalGlobe annual meeting of stockholders subsequent to Morgan Stanley ownership falling below the relevant threshold. After Morgan Stanley no longer has the right to designate for nomination a majority of the DigitalGlobe Board of Directors, control of the licenses held by DG Consents Sub will transfer from Morgan Stanley to the shareholders of DigitalGlobe as a group.

Timing of Proposed Transfer

There is no specific date on which Morgan Stanley intends to reduce its equity holdings in DigitalGlobe to less than 25 percent. The timing of the triggering stock sale will depend on market conditions and other economic factors. The earliest potential date for such a reduction is November 27, 2009 (*i.e.*, upon expiration of the IPO lock-up agreements), but no sale that would result in Morgan Stanley owning less than 25 percent of Digital Globe's common stock will occur before Commission approval is obtained pursuant to this application. DG Consents Sub hereby respectfully requests that the Commission act favorably upon this application at the earliest possible time.

To accommodate the possibility that the economic conditions conducive to the relinquishment by Morgan Stanley of its controlling interest in DigitalGlobe may not materialize within the 60-day period after grant of the instant transfer of control application, DG Consents Sub requests a limited and contingent waiver of the requirement in Section 25.119(f) of the Commission's rules that a transfer of control be completed within 60 days from the date of authorization. DG Consents Sub requests below that the consummation deadline be set at 180 days from the date of the grant.

Public Interest Considerations

Commission approval of this application will serve the public interest. It is a matter of national policy that U.S. companies build and operate "a next generation remote sensing system that meets the future imagery needs of the United States for military, intelligence, foreign policy,

homeland security and civil uses.”⁷ The proposed transfer of control reflects the fact that DigitalGlobe has arrived at the point where it is a mature, financially stable, and contributing participant in the critically important U.S. commercial remote sensing industry. The relinquishment by Morgan Stanley of the right to designate for nomination the majority of Directors to the Board per the contractual terms of the Investor Agreement will facilitate alignment of the DigitalGlobe governance structure with the conventional corporate model, in which a shareholder’s right to vote for directors on the company’s board is proportionate to the shareholder’s equity ownership.

Request for Waiver

DG Consents Sub requests a limited waiver of Section 25.119(f) of the Commission’s rules, 47 C.F.R. § 25.119(f), which requires that a transfer of control be completed within 60 days from the date of authorization. In lieu of a 60-day consummation period, DG Consents Sub seeks up to 180 days to complete the transfer of control proposed herein.

Commission rules may be waived for good cause shown, 47 C.F.R. § 1.3. Grant of a waiver request is appropriate if the relief requested would not undermine the policy objective of the rule in question, and would otherwise serve the public interest.⁸ Here, extending the 60-day consummation period will not undermine policy objectives because the Commission already provides for 180-day consummation periods in connection with transfers not involving satellite services. *See* 47 C.F. R. § 1.948(d) (wireless radio service). Moreover, the Commission has previously extended the consummation period in cases where satellite licensees do not intend to close their transaction until after the 60-day period established by Section 25.119(f).⁹ As noted above, DG Consents Sub anticipates that its proposed transfer of control will occur within the next six months. It cannot be certain, however, whether it will occur within the 60 days required under Section 25.119(f), due to the fluctuation of ownership interests in the now publicly-traded DigitalGlobe that will ultimately determine Morgan Stanley’s ownership percentage. Granting DG Consents Sub the relief it seeks is therefore appropriate given the prior recognition under the Commission’s rules and decisions that 60 days is not necessarily a sufficient amount of time within which to consummate.

Granting the instant waiver request will also serve the public interest. In the absence of the requested waiver, if the transfer of control triggering event (*i.e.*, Morgan Stanley’s common stock ownership interest falling below 25 percent) does not occur within the 60 days established under 25.119(f), DG Consents Sub would need to submit a follow-on transfer of control application or a modification application, which the Commission staff would in turn be required

⁷ *U.S. Commercial Remote Sensing Policy*, White House, April 25, 2003.

⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

⁹ *See, e.g.*, Robert M. Franklin, Transferor and Inmarsat, plc, Transferee, 24 FCC Rcd 449, 484 (IB 2009) (granting Inmarsat’s request to complete transaction within 180 days to permit a consolidated closing of all authorization types).

to process. Preparing, filing and processing this second, largely duplicative request would be a wasteful and inefficient use of limited Commission resources. The public interest will be better served by extending the consummation deadline at the outset to encompass the full period within which DG Consents Sub expects the transfer of control to occur.

For the foregoing reasons, DG Consents Sub requests a waiver of Section 25.119(f) to allow for up to 180 days to close on the transfer of control requested herein.