

ORIGINAL

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

In the Matter of)
)
AmericaSky Corporation)
)
Petition for Determination of the Public)
Interest under Section 310(b)(4) of the)
Communications Act of 1934, as)
Amended, to permit certain Indirect Foreign)
Ownership in Satellite Earth Station Licenses)
_____)

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Federal Communication Commission
Bureau / Office

To: Chief, International Bureau

**PETITION FOR DECLARATORY RULING
UNDER SECTION 310(B)(4) OF THE
COMMUNICATIONS ACT OF 1934, AS AMENDED**

AmericaSky Corporation (“AmericaSky” or “Petitioner”), a corporation organized under the laws of the State of Florida, pursuant to and for the specific purposes of Section 310(b)(4) of the Communications Act of 1934, as amended, (the “Act”), 47 U.S.C. §310(b)(4), hereby petitions the Commission to issue a declaratory ruling that it is in the public interest to permit Almendral, S.A. (“Almendral”) to hold an indirect, controlling ownership interest, in AmericaSky Corporation, a satellite earth station licensee, through ENTEL-Chile and its subsidiaries ENTEL International BVI Corporation and ENTEL USA Holdings, Inc.¹

¹ Concurrent with this petition, applications are being filed with respect to the Commission licenses of AmericaSky and of AmericaSky’s affiliate, Americatel Corporation, in connection with this potential change in control. They include applications for potential transfers of control of: Americatel Corporation’s international Section 214 authorization and domestic Section 214 authorization and AmericaSky Corporation’s international Section 214 authorization and earth station licenses.

AmericaSky, a U.S. corporation, maintains and operates two earth station facilities licensed by the Commission for domestic and international satellite service.² AmericaSky uses its earth stations to provide satellite earth station capacity for international traffic of other Commission-authorized carriers. This waiver request is filed in connection with the transfer of control of AmericaSky from its ultimate parent company, Telecom Italia International, N.V. (“TII”) to Almendral. As described in greater detail below, the transaction and the resulting indirect foreign ownership in AmericaSky would serve the public interest.³

I. PUBLIC INTEREST STANDARD

Section 310(b)(4) of the Act requires the Commission to deny or revoke a common carrier license if: (1) more than 25 percent of any entity that controls the licensee is owned of record or voted by aliens, foreign governments or their representatives, or foreign corporations; and (2) the Commission finds that denial or revocation would serve the public interest. In the *Foreign Participation Order*,⁴ the Commission stated that, because additional foreign investment can promote competition in the U.S. market, the public interest would be served by permitting more open investment by foreign entities whose home market is a Member of the World Trade Organization (“WTO”). In such a case, the Commission has concluded that there is a strong presumption that no competitive concerns are raised by indirect foreign investment by such

² File No. SES-MOD-19950804-00604 (Callsign KA407); and File No. SES-MOD-19950804-00603 (Callsign KA412). Under separate cover, Applicant is relinquishing its authority under earth station license File No. SES-LIC-19940829-00744 (Callsign E940470).

³ Attached as Exhibit A is a chart that illustrates the corporate structure of the parties immediately following consummation of the proposed transaction.

⁴ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration*, 12 FCC Rcd 23891 (1997) (“*Foreign Participation Order*”).

entities. The Commission expressed its reluctance to rebut this presumption except in exceptional circumstances where it is shown that entry into the U.S. market by a foreign telecommunications carrier from a WTO Member country poses a very high risk to competition in the U.S market.

II. THE TRANSACTION

AmericaSky is 80% owned by Entel USA Holdings, Inc., a U.S. corporation (“ENTEL-USA”); and 20% owned by Entel International B.V.I. Corporation, a company organized under the laws of the British Virgin Islands (“ENTEL-BVI”). ENTEL-USA and ENTEL-BVI, in turn, are wholly-owned subsidiaries of ENTEL-Chile, a domestic and international long distance carrier in Chile organized under the laws of Chile.

Through a stock purchase agreement dated January 24, 2005 (the “Stock Purchase Agreement”) Almendral will acquire a 54.76 percent voting interest in ENTEL-Chile from TII. As a result of the transaction, Almendral will hold a direct or indirect controlling interest of 54.76 percent in ENTEL-Chile.⁵ Therefore, as shown graphically on Exhibit A, Almendral will acquire an indirect controlling interest in AmericaSky once the Transaction is consummated.

III. THE “PRINCIPAL PLACES OF BUSINESS” ARE WTO SIGNATORIES

In applying the analytical framework established by the *Foreign Participation Order*, the Commission uses a “principal place of business” test to determine whether a foreign entity’s

⁵ Under the terms of the Stock Purchase Agreement, it is possible that all or part of the ENTEL-Chile shares to be acquired by Almendral, will be held by a yet-to-be-formed wholly-owned Chilean subsidiary of Almendral (the “Subsidiary”). The insertion of a wholly-owned subsidiary as the holder of all or part of the stock of ENTEL-Chile will not affect the ultimate control of AmericaSky as described in this Petition. To the extent any ownership interests of ENTEL-Chile will be ultimately held by such a Subsidiary, Petitioner will promptly notify the Commission prior to the Closing.

home market is a Member of the WTO.⁶ The five factors balanced under that test, as they apply to Almendral are as follows:

1. Place of incorporation: Almendral is incorporated under the laws of Chile.
2. Nationality of investment principals, officers and directors: All of Almendral's principal investors, executive officers and directors are Chilean. Almendral is directly and indirectly owned and controlled by a group of Chilean investors as described in detail in Exhibit B. There are no other 10% or greater stockholders of Almendral.
3. Country in which its world headquarters is located: Almendral's headquarters is located in Chile.
4. Country in which the majority of its tangible property is located: The majority of Almendral's tangible property is located in Chile.
5. Country from which it derives the greatest sales and revenues from its operations: Almendral derives its greatest sales and revenues from its operations in Chile.

Based on the foregoing, Almendral's principal place of business on balance should be considered Chile, which is a member of the WTO. Therefore, although Almendral's proposed indirect ownership of AmericaSky, exceeds the 25 percent benchmark under the Commission's *Foreign Participation Order*, there is a strong presumption that no competitive concerns arise from this indirect foreign ownership interest because Almendral's home market is Chile, a WTO Member country. Further, there is no countervailing risk to competition in the U.S. market to rebut this presumption. Therefore, the proposed indirect ownership is in the public interest.

IV. CONCLUSION

⁶ *Foreign Participation Order* ¶ 116; *Market Entry and Regulation of Foreign-Affiliated*

For the foregoing reasons, indirect transfer of control of AmericaSky will advance the public interest by furthering competition among U.S. carriers. Accordingly, the Petitioner respectfully requests that the Commission grant its Section 310(b)(4) waiver request and find that it is in the public interest for Almedral to hold indirectly a controlling interest in AmericaSky.

Respectfully submitted,

AMERICASKY CORPORATION

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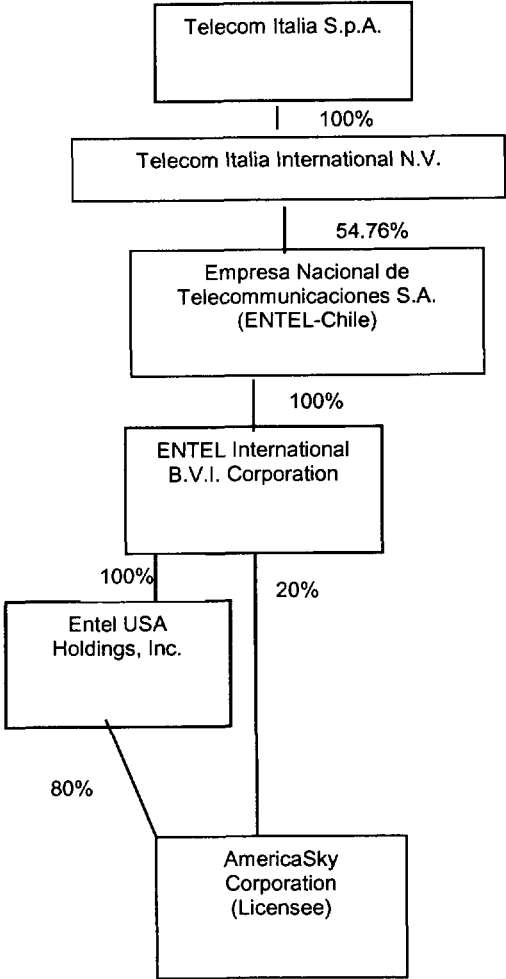
Dated: January 26, 2005

Entities, IB Docket 95-22, 11 FCC Rcd 3873 (1995) (“*Foreign Carrier Entry Order*”) ¶ 207.

EXHIBIT A

Illustrative Chart of Transfer of Control

**AmericaSky Corporation Ownership
Pre-Transaction**



AmericaSky Corporation Ownership Post-Transaction

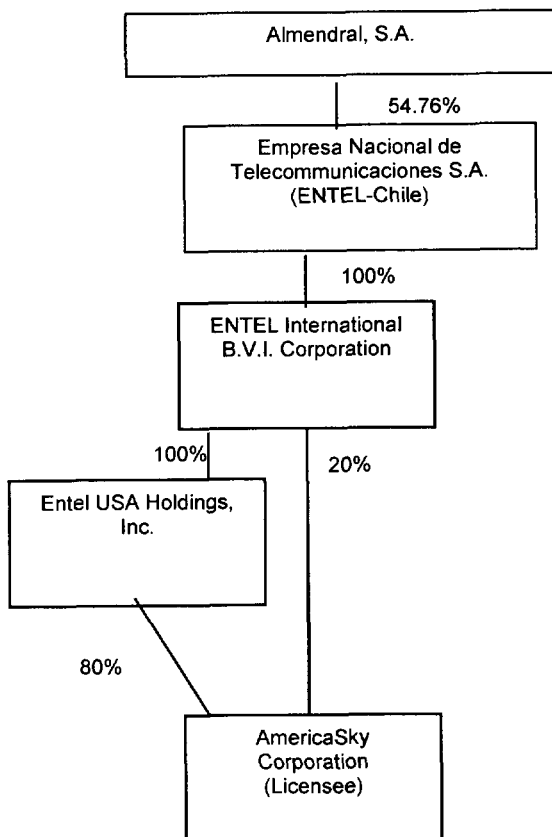


EXHIBIT B

ALMENDRAL OWNERSHIP INFORMATION

Almendral, S.A., is controlled by a group of its shareholders through a shareholders agreement dated as of January 24, 2005. The groups of shareholders that are parties to the shareholders agreement hold the following percentage of ownership interest in Almendral.

<u>Shareholders Group</u>	<u>Percentage of Ownership</u>
Fernandez Leon Group	15.036%
Hurtado Vicuña Group	11.227%
Matte Group	21.032%
Izquierdo Group	12.759%
Gianolli Group	6.309%
Consortio Group	8.208%
TOTAL MAJOR SHAREHOLDERS	74.571%

The remaining shares representing 24.429% of Almendral are distributed among numerous minority shareholders, none of which has a greater than ten percent (10%) ownership interest in Almendral.

Each of the shareholder groups are owned and controlled by the following persons:

<u>Name/Address</u>	<u>% Held</u>	<u>Citizenship</u>	<u>Principal Business</u>
FERNANDEZ LEON GROUP			
Fernandez Leon Family ⁷ Isidora Goyenechea 3642, Piso 7 Las Condes Santiago, Chile	15.036%	Chile	Investment
HURTADO VICUÑA GROUP			
Hurtado Vicuña Family ⁸ Avenida El Bosque Norte No. 130, Piso 14 Las Condes Santiago, Chile	11.227%	Chile	Investment

⁷ The Fernandez Leon family is formed by Mr. Eduardo Fernandez Leon, his wife Valeria Mac Auliffe Granello, and their children Eduardo Fernandez Mac Auliffe and Tomas Fernandez Mac Auliffe.

⁸ The Hurtado Vicuña family is formed by Mesrs. Jose Ignacio Hurtado Vicuña, Maria Mercedes Hurtado Vicuña, Maria Victoria Hurtado Vicuña, Juan Jose Hurtado Vicuña, Jose Nicolas Hurtado Vicuña, and Pedro Jose Hurtado Vicuña.

MATTE GROUP Matte Family ⁹ Teatinos No. 220, Piso 9 Santiago, Chile	21.032%	Chile	Investment
IZQUIERDO GROUP Izquierdo Family ¹⁰ Mar del Plata No. 2111 Providencia, Chile	12.759%	Chile	Investment
GIANOLLI GROUP Gianolli Family ¹¹ Isidora Goyenechea 3642, Piso 7 Las Condes Santiago, Chile	6.309%	Chile	Investment
CONSORCIO GROUP ¹² Avenida El Bosque No. 180 Las Condes Santiago, Chile	8.208%	Chile	Investment

⁹ The Matte Family is formed by Messrs. Patricia Matte Larrain, Eliodoro Matte Larrain and Berdardo Matte Larrain.

¹⁰ The Izquierdo Family is formed by Messrs. Vicente Izquierdo Taboada, Fracisco Rodrigo Izquierdo Valdes, Jose Manuel Izquierdo Valdes, Luis Eduardo Izquierdo Valdes, Maria Josefina Izquierdo Valdes, Maria Teresa Izquierdo Valdes and Roberto Izquierdo Valdes.

¹¹ The Gianolli Family is formed by Messrs. Elina Patricia Gianolli Gainza and Sergio Pedro Gianolli Gainza.

¹² The Consorcio Group is formed by two principal shareholders: (i) Consorcio Corredores de Bolsa, S.A. and (ii) Compañía de Seguros de Vida Consorcio Nacional de Seguros, S.A. Each of these companies is owned in equal parts by (a) the Hurtado Vicuña Family, on the one part; and (b) Messrs. Eduardo Fernandez Leon and Jose Antonio Garces Silva.