

Before the
Federal Communications Commission
Washington, D.C.

In re Application of
LOCKHEED MARTIN GLOBAL
TELECOMMUNICATIONS, INC.
and TRW, INC.
Transferors
and
LOCKHEED MARTIN GLOBAL
TELECOMMUNICATIONS, INC.,
TRW, INC., LSAT ASTRO LLC AND
TELESPAZIO LUXEMBOURG, S.A.
Transferees
For Authority to Transfer Control of
ASTROLINK International. LLC, Licensee
of the Astrolink™ System

File No.SAT-T/C-20010321-00027

Order and Authorization

Adopted: November 20, 2001

Released: November 21, 2001

By the Chief, International Bureau:

I. Introduction

1. In this Order, we grant Lockheed Martin Global Telecommunications, Inc. (LMGT) and TRW Inc. (TRW) (Transferors) authority to transfer control of ASTROLINK International LLC (Astrolink), licensee of the Ka-band Astrolink™ System (Astrolink System), to LMGT, TRW, LSAT Astro LLC (LSAT Astro) and Telespazio Luxembourg, S.A. (Telespazio) (Transferees). We find that the proposed transfer of control of Astrolink is in the public interest pursuant to our review under Section 310 of the Communications Act of 1934, as amended (Act). Our approval should facilitate the construction, launch and operation of the Astrolink System and lead to efficiencies that will permit the earliest deployment of the Astrolink System network, and thus expedite the delivery of broadband satellite services to consumers.

1 Astrolink International LLC, Application for Transfer of Control of Ka-Band satellite authorizations from Lockheed Martin Global Telecommunications, Inc. and TRW Inc. to Lockheed Martin Global Telecommunications, TRW Inc., LSAT Astro LLC and Telespazio Luxembourg, S.A., Application File No. SAT-T/C-20010321-00027 (filed March 21, 2001)(Transfer Application). The Transfer Application was placed on public notice on April 6, 2001. Public Notice, Report No. SAT-00068, April 6, 2001. No comments or oppositions were filed in this proceeding.

2 47 U.S.C. § 310.

## II. Background

### A. The Astrolink System

2. In May 1997, the Commission granted Lockheed Martin Corporation, the sole owner of LMGT,<sup>3</sup> authority to launch and operate a global satellite network, known as the Astrolink System, on a non-common carrier basis.<sup>4</sup> The Astrolink System will consist of nine interconnected geostationary-satellite orbit ("GSO") satellites assigned to five orbital locations<sup>5</sup> and is authorized to provide fixed-satellite services (FSS) in the Ka-band.<sup>6</sup> Once operational, the Astrolink network will be capable of providing a variety of advanced broadband communications services to businesses and consumers, including services such as global Internet service, videoconferencing, distance learning, telemedicine, high-speed data networks and "bandwidth on demand."<sup>7</sup>

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<sup>3</sup> Lockheed Martin Corporation was the original licensee of the Astrolink System. In August 1998, Lockheed Martin formed LMGT to hold the Astrolink authorizations. See Lockheed Martin Corporation, Assignor, and LMGT Astro License, LLC, Assignee, *Consent to Assignment*, File No. SAT-ASG-1990107-00008 (February 25, 1999) (granting *pro forma* assignment of the Astrolink System to LMGT).

<sup>4</sup> See Lockheed Martin Corporation Application for Authority to Construct, Launch and Operate a Ka-band Satellite System in the Fixed-Satellite Service, *Order and Authorization*, 12 FCC Rcd 23014 (Int'l Bur., May 1997) (*May 1997 Order*). This authorization was granted pursuant to the assignment plan adopted in the Commission's first Ka-band processing round in which the Commission assigned orbit locations and authorized the launch and operation of thirteen GSO FSS systems in the Ka-band, comprising 73 satellites. See Assignment of Orbital Locations to Space Stations in the Ka-Band, *Order*, 13 FCC Rcd 1030 (Int'l Bur., May 1997) (*First Round Assignment Order*); revised in Assignment of Orbital Locations to Space Stations in the Ka-Band, *Order*, 12 FCC Rcd 22004 (Int'l Bur., Dec. 1997) (*First Round Reassignment Order*).

<sup>5</sup> *Id.* The five orbital locations are 97° W.L., 21.5° W.L., 2° E.L., 130° E.L. and 175.25° E.L. The Commission modified the original orbital location assignment to conform to the *First Round Reassignment Order*, substituting the 2° E.L. location for the 38° E.L. location. See Astrolink International, LLC, Application to Modify the Astrolink System Authorization, *Order and Authorization*, 15 FCC Rcd 23738 (Int'l Bur., Nov. 2000) (*Nov 2000 Order*).

<sup>6</sup> The term "Ka-band" generally refers to the space-to-Earth (downlink) frequencies at 17.7-20.2 GHz and the corresponding Earth-to-space (uplink) frequencies at 27.5-30.0 GHz, or the "28 GHz band." Astrolink has authority to operate in a portion of these frequencies for uplink and downlink transmissions, and also has authority to use certain frequencies for inter-satellite link (ISL) service and for tracking, telemetry, and control (TT&C) functions. See *May 1997 Order*, 12 FCC Rcd at 23025; *Nov 2000 Order*, 15 FCC Rcd at 23742; Astrolink International LLC, Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, *Order and Authorization*, 16 FCC Rcd 2421, 2429 (Int'l Bur., Jan 2001) (*Jan 2001 Order*); and Astrolink LLC, Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, *Order and Authorization*, DA 01-2613, (Int'l Bur, rel. November 13, 2001) (*Nov 2001 Order*).

<sup>7</sup> *May 1997 Order*, 12 FCC Rcd at 23015; *Nov 2000 Order*, 15 FCC Rcd at 23739; *Jan 2001 Order*, 16 FCC Rcd at 2429; and *Nov 2001 Order* at para. 3. The Commission has established a milestone schedule, consistent with the International Telecommunications Union (ITU) requirements, for the construction, launch and operation of the Astrolink System. Under this schedule, Astrolink is required to begin construction on its first satellite by January 2002, and begin construction on the remaining satellites by January 2003. The milestone dates for Astrolink to launch and operate the satellites are as follows: October 10, 2004 for the 175.25° E.L. orbit location, June 25, 2004 for the 97° W.L. orbit location, July 9, 2005 for the 21.5° W.L. and 2° E.L. orbit locations, and July 23, 2005 for the 130° E.L. orbit location. Co-located satellites in the 97° W.L., 21.5° W.L., 2° E.L., and 130° E.L. orbit locations must be launched by the appropriate ITU "bringing into use" date or will be required to operate on the same frequencies that are used by the first satellite that met the ITU deadline. See *Jan 2001 Order* at 2430.

## B. Ownership Interests in the Astrolink System

3. In October 1999, the Commission granted LMGT's request for authority to assign its Astrolink System authorizations to Astrolink, which was to be owned by LMGT, TRW, and Telespazio (*1999 Astrolink Assignment*).<sup>8</sup> The Commission found that the assignment to Astrolink met the public interest requirements under Section 310(d) of the Act. The Commission found that the assignment to Astrolink would not increase market concentration or reduce the current level of competition in relevant U.S. product markets and that the combined expertise of Astrolink's principals could lead to efficiencies and increased competition, which would facilitate the deployment of an advanced Ka-band network and hasten the delivery of new broadband satellite services for the benefit of domestic and international businesses and consumers.<sup>9</sup>

4. Developments during the course of, and subsequent to, the *1999 Astrolink Assignment*, have resulted in changes to the original ownership interests initially contemplated in the *1999 Astrolink Assignment*. At the time of the *1999 Astrolink Assignment*, Astrolink was to be owned by three Members, namely LMGT, TRW, and Telespazio.<sup>10</sup> During the pendency of the *1999 Astrolink Assignment*, Telespazio, an indirect, wholly owned subsidiary of Telecom Italia, S.p.A (Telecom Italia), was acquired by Olivetti S.p.A. (Olivetti), which in turn, has recently been acquired in part by Pirelli, S.p.A. (Pirelli).<sup>11</sup> In December 1999, LSAT Astro, which is indirectly owned and controlled by Liberty Media Corporation ("Liberty Media"), joined Astrolink as a strategic partner and equity investor.<sup>12</sup> Consequently, the equity and voting interests in Astrolink, which reflect the respective contributions of each Member, are as follows: LSAT Astro, 31.479 percent; LMGT, 31.109 percent; TRW, 18.895 percent; and Telespazio, 18.517 percent.<sup>13</sup> In addition, Astrolink has an eleven-member Board of Directors, which consists of three directors appointed by LMGT, three directors appointed by LSAT Astro, two directors appointed by

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<sup>8</sup> LMGT Astro License, LLC, Assignor, and ASTROLINK International, LLC, Assignee, *Order and Authorization*, 15 FCC Rcd 21777 (Int'l Bur., Oct 1999) (*1999 Astrolink Assignment*). Astrolink is a limited liability company with principal offices in Bethesda, Maryland.

<sup>9</sup> *Id.* at 21779.

<sup>10</sup> *Id.* at 21778. The three Member owners of Astrolink held the following equity interests: LMGT, 45.652 percent; TRW, 27.174 percent; and Telespazio (formerly Telespazio Luxembourg Holdings, S.A.), 27.174 percent.

<sup>11</sup> In mid-1999, Olivetti, a company organized under the laws of Italy, acquired control of Telecom Italia, the indirect owner of Telespazio. See Letter from Raymond G. Bender, Jr., Counsel for LMGT Astro License, LLC and Astrolink International LLC, to Magalie Roman Salas, Secretary, Federal Communications Commission (October 29, 1999). In July 2001, Pirelli, a company organized under the laws of Italy, indirectly acquired a 27 percent controlling interest in Olivetti, thereby affording Pirelli indirect control over Telecom Italia and, in turn, Telespazio. See Letter from Raymond G. Bender, Counsel for Astrolink International LLC, to Magalie Roman Salas, Secretary, Federal Communications Commission, August 17, 2001. See also *infra* para. 10.

<sup>12</sup> LSAT Astro is a majority-owned indirect subsidiary of Liberty Media. In December 1999, Liberty Media made a commitment to contribute \$425 million to Astrolink in exchange for an equity interest in the company. See *Transfer Application*, Exhibit E, p. 1. Up until August 10, 2001, Liberty Media was an indirect, wholly owned subsidiary of AT&T Corp. ("AT&T") and a member of a separately-managed business group, Liberty Media Group ("LMG"). On August 10, 2001, AT&T completed a spin-off of LMG, and Liberty Media is now an independent publicly held company that owns, directly or indirectly, the assets included in LMG. See *infra* para. 9.

<sup>13</sup> See *Transfer Application*, Exhibit B at 1; and Letter from Raymond G. Bender, Jr., Counsel for Astrolink International LLC, to Magalie Roman Salas, Secretary, Federal Communications Commission, October 24, 2001.

TRW, and two directors appointed by Telespazio.<sup>14</sup> The eleventh director is the Chief Executive Officer of Astrolink.<sup>15</sup>

### C. The Proposed Transaction

5. Because the Commission's *1999 Astrolink Assignment* did not rule on the qualifications of LSAT Astro or Telespazio (as controlled by Olivetti, and now by Pirelli), LMGT and TRW (the two Astrolink Members whose qualifications have been reviewed and passed upon by the Commission) state that they have to retained control and governance over Astrolink. The Applicants further state that the two Members that have not received Commission authorization, LSAT Astro and Telespazio, are currently restricted from participating on the Astrolink Board for all purposes, and thus are precluded from full participation in the management of the company in a manner commensurate with their equity investments.<sup>16</sup> Thus, the Applicants seek Commission approval to transfer control of Astrolink to LMGT, TRW, LAST Astro and Telespazio in order to provide all Members with full participation in the governance and management of Astrolink.

6. The ownership and control of Astrolink, if approved, would consist of equity and voting interests being held by LSAT Astro, 31.479 percent; LMGT, 31.109 percent; TRW, 18.895 percent; and Telespazio, 18.517 percent.<sup>17</sup> The management of Astrolink would be vested in its eleven-member Board of Directors, with LSAT Astro and LMGT each entitled to appoint three directors and TRW and Telespazio each entitled to appoint two directors. Each director would be entitled to one vote for all purposes, including the selection of the eleventh director.<sup>18</sup> Below is a discussion of each of the four proposed transferees and description of relevant ownership interests that each hold in other telecommunications entites.

#### 1. LMGT

7. LGMT, a Delaware corporation headquartered in Bethesda, Maryland, is a wholly owned subsidiary of Lockheed Martin Corporation, a company incorporated in Maryland and headquartered in Bethesda, Maryland.<sup>19</sup> In addition to its ownership interest in Astrolink, Lockheed Martin owns other

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* To date, the eleventh director has either been one disclosed in connection with the *1999 Astrolink Assignment*, or one appointed by a Board controlled by LMGT and TRW, the two Astrolink Members on which the Commission passed in the *1999 Astrolink Assignment*.

<sup>16</sup> For instance, the Applicants explain that recently the CEO/eleventh director of the Astrolink Board resigned and an interim director was appointed by a Board controlled by LMGT and TRW. The Applicants state that LSAT Astro and Telespazio are restricted from participating in the selection of the eleventh director because their participation would result in fifty percent or more of the voting power represented on the Astrolink Board being in the hands of parties not previously approved by the Commission, and as such, would effectuate a transfer control of Astrolink from LMGT and TRW to LMGT, TRW, LSAT Astro and Telespazio. *Transfer Application*, Exhibit C at 1.

<sup>17</sup> These percentages of equity and voting interests reflect each Members' financial commitment and contribution. *See e.g., supra* para. 4.

<sup>18</sup> *See Transfer Application*, Exhibit B at 1; and Letter from Raymond G. Bender, Jr., Counsel for Astrolink International LLC, to Magalie Roman Salas, Secretary, Federal Communications Commission, October 24, 2001.

<sup>19</sup> *See* <[www.lockheedmartin.com/investor/index.html](http://www.lockheedmartin.com/investor/index.html)>.

satellite interests, including ownership of COMSAT Corporation, which owns approximately 20 percent of INTELSAT.<sup>20</sup> Lockheed Martin also owns, either directly or indirectly, approximately 14 percent of the issued and outstanding shares of New Skies Satellites, N.V., a company formed under the laws of the Netherlands.<sup>21</sup> Lockheed Martin Investments, Inc., a wholly owned subsidiary of Lockheed Martin, holds approximately 15 percent of the common stock in Loral Space and Communications Ltd. (Loral Space).<sup>22</sup> In addition, in the recent second Ka-band processing round, Lockheed Martin received new assignments for orbit locations and authority to launch and operate FSS systems in the Ka-band.<sup>23</sup> Lockheed Martin also has pending an application in the V-band processing round (the Q/V-Band System).<sup>24</sup>

## 2. TRW

8. TRW, a company incorporated and headquartered in Ohio, is a global technology company that provides products and services to the automotive, space, defense and information systems markets.<sup>25</sup> In addition to Astrolink's Ka-band authorizations, TRW has received assignments for orbit locations and authority to launch and operate FSS systems in the second Ka-band processing round.<sup>26</sup> TRW has an application pending in the V-band processing round.<sup>27</sup>

## 3. LSAT Astro

9. LSAT Astro is a majority-owned indirect subsidiary of Liberty Media. Liberty Media is a member of the Liberty Media Group ("LMG"), an independent publicly held company recently spun-off by AT&T Corp.<sup>28</sup> Liberty Media is owned by two classes of shareholders, Class A and Class B.<sup>29</sup>

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<sup>20</sup> See *Transfer Application*, Exhibit D at 1.

<sup>21</sup> *Id.*

<sup>22</sup> Lockheed Martin has plans to divest its interest in Loral Space and a shareholders agreement between Lockheed Martin and Loral Space restricts the ability of Lockheed Martin to exercise any influence or control over Loral Space. See *Transfer Application*, Exhibit D at n. 2.

<sup>23</sup> *Second Round Assignment Order* at para. 31. Lockheed Martin is assigned to five orbit locations: 129° W.L., 51° W.L., 52° W.L., 99° E.L., and 151.5° E.L.

<sup>24</sup> *Transfer Application*, Exhibit D at 2.

<sup>25</sup> *Id.* See also <[www.trw.com/investor/main/0,,8\\_876^2^876^876,00.html](http://www.trw.com/investor/main/0,,8_876^2^876^876,00.html)>.

<sup>26</sup> *Second Round Assignment Order* at para. 31. TRW is assigned to four orbit locations: 119° W.L., 79° W.L., 15° E.L., and 116.5° E.L.

<sup>27</sup> See *Transfer Application*, Exhibit D at 3.

<sup>28</sup> See *Transfer Application*, Exhibit D, Attachment 1. See also Letter from Raymond G. Bender, Jr., Counsel for Astrolink International LLC, to Magalie Roman Salas, Secretary, Federal Communications Commission, August 13, 2001. AT&T Corp. voted to spin off LMG by redeeming the outstanding share of LMG tracking stock in exchange for shares in Liberty Media, which would then become an independent publicly held company that owns, directly or indirectly, all the assets of LMG.

<sup>29</sup> *Id.* The Class A and Class B LMG Tracking Stock was exchanged for Liberty Media shares following the spin-off in proportion to their ownership interest in AT&T. The Class A shareholders holding 5 percent or more interest in Liberty Media are: Alliance Capital Management L.P. (10.4 percent), Putman Investment Management (7.7 percent), and Janus Capital Corporation (5.7 percent). The remaining 76 percent of Class A shares are held by

Liberty Media, through its ownership in Liberty Satellite LLC,<sup>30</sup> holds a 19 percent equity interest in WildBlue Communications, Inc.<sup>31</sup> and indirectly holds a 21.3 percent interest in DirectCom Networks, Inc.<sup>32</sup> Both WildBlue Communications and DirectCom Networks received orbital locations and construction and launch authorizations in the second Ka-band processing round.<sup>33</sup> Liberty Media also has a 2 percent interest in XM Satellite Radio Holdings, Inc., and less than a 1 percent interest in Hughes Electronics Corporation.<sup>34</sup> In addition, Liberty Media holds 48 percent interest in Aerocast.com, Inc., which plans to provide streaming media to businesses and customers using terrestrial and/or satellite networks.<sup>35</sup> Liberty Media also holds a 21 percent interest in Sprint PCS Group, with less than 1 percent voting power, and 4 percent equity interest in Omnipoint Communications, Inc.<sup>36</sup>

#### 4. Telespazio

10. Telespazio, a company organized under the laws of Luxembourg, is an indirect, wholly owned subsidiary of Telecom Italia, a company organized under the laws of Italy, which in turn is owned 54 percent, either directly or indirectly, by Olivetti, a company also organized under the laws of Italy.<sup>37</sup> Pirelli, holds an indirect 27 percent controlling equity interest in Olivetti, and thus has indirect control over Telecom Italia and, in turn, Telespazio.<sup>38</sup> Telecom Italia, a large integrated telecommunications company, owns approximately 3.4 percent of INTELSAT and 4 percent of New Skies Satellites, N.V.<sup>39</sup>

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approximately 6,842 shareholders of record. Class B shares are held by: Dr. John C. Malone (48.3 percent), estate of Bob Magness (32.7 percent), and Magness Securities LLC (10.0 percent). The remaining 9 percent of Class B shares are held by approximately 370 shareholders of record. Class A shares are entitled to one vote per share and Class B shares are entitled to ten votes per share. Based on his ownership of Class B shares, and irrevocable proxy (Dr. Malone has an irrevocable proxy, under certain circumstances to vote the Class B shares or any super voting class of equity securities held by Kim Magness, Gary Magness, the estate of Bob Magness and Magness Securities, LLC.), Dr. Malone holds approximately 44 percent total voting interest in Liberty Media. *Id.* at 2.

<sup>30</sup> Liberty Satellite LLC is owned indirectly by Liberty Media (89 percent) and by Liberty Satellite & Technology, Inc. (LSAT). LSAT is indirectly owned by Liberty Media (in the aggregate 98.22 percent voting and 9.99 percent equity). *Id.*

<sup>31</sup> WildBlue was founded as KaSTAR Satellite Communications in Colorado in April 1995. *See* [www.wildblue.com/ab/index.htm](http://www.wildblue.com/ab/index.htm).

<sup>32</sup> *Transfer Application*, Exhibit D at 2. News Corp. and Liberty Media recently announced a series of transactions in which News Corp. will acquire Liberty Media's 21.3 percent interest in DirectCom Networks, which will increase News Corp.'s interest in DirectCom to approximately 43 percent, and which will raise Liberty Media's interest in News Corp. to approximately 18 percent.

<sup>33</sup> WildBlue Communications, or KaSTAR Com, is assigned to the 111° W.L orbit location and DirectCom Networks is assigned to 127° W.L and 123° W.L. orbit locations. *See Second Round Assignment Order* at para. 31.

<sup>34</sup> *See e.g.*, [www.libertymedia.com/our\\_affiliates/satellite\\_communications.htm](http://www.libertymedia.com/our_affiliates/satellite_communications.htm).

<sup>35</sup> *Id.* *See also* [www.aerocast.com/company.html](http://www.aerocast.com/company.html) and *Transfer Application*, Exhibit D at 1.

<sup>36</sup> *See* [www.libertymedia.com/our\\_affiliates/cable\\_telephony.htm](http://www.libertymedia.com/our_affiliates/cable_telephony.htm).

<sup>37</sup> *Transfer Application*, Exhibit D at 3.

<sup>38</sup> *See* Letter from Raymond G. Bender, Jr., Counsel for Astrolink International LLC, to Magalie Roman Salas, Secretary, Federal Communications Commission, August 17, 2001.

<sup>39</sup> *Transfer Application*, Exhibit D at 3.

In addition, Telecom Italia also owns approximately 20.5 percent of EUTELSAT, which recently began providing service in the United States.<sup>40</sup> Telecom Italia has no substantial ownership interest in any other telecommunications operator that provides service in the United States.<sup>41</sup> Olivetti is a diversified telecommunications company providing telecommunications services, information technology, network services and other lines of business.<sup>42</sup> Olivetti holds no substantial ownership interests in any telecommunications operator that provides service in the United States.<sup>43</sup> Pirelli is a global company in the business of manufacturing tires, energy and telecommunications cables and systems.<sup>44</sup> It holds no substantial interest in any telecommunications operator that provides service in the United States.

11. The Applicants state that the Commission's approval of the proposed transfer of control to all Members of Astrolink will effect a legitimate business purpose and serve the public interest for several reasons. The Applicants claim that Commission approval will permit full participation by all Members in the management and governance of Astrolink in a manner commensurate with their equity investments in the company, and thus provide ongoing financial commitments that will facilitate construction and launch of the Astrolink System at the earliest possible time.<sup>45</sup> The Applicants also claim that involvement of LSAT Astro and Telepazio in the management and governance of Astrolink will enhance the public interest benefits that the Commission found in the *1999 Astrolink Assignment*.<sup>46</sup> Further, the Applicants contend that the proposed transfer is pro-competitive because it will enhance Astrolink's ability to provide advanced communications services to its customers, and, as a result, strengthen competition in the satellite telecommunications services market.<sup>47</sup> Finally, the Applicants contend that the proposed transaction will have no negative effects on the current competitive landscape in the United States, and will have no adverse effects on competition in the future.<sup>48</sup>

### III. Public Interest Analysis

#### A. Framework for Analysis

12. Section 310(d) of the Act requires that the Commission authorize the assignment or transfer of control of Commission licenses only upon finding that the public interest, convenience, and necessity will be served.<sup>49</sup> The legal standards that govern our public interest analysis under Section

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* See also <[www.olivetti.com/group](http://www.olivetti.com/group)>.

<sup>43</sup> *Transfer Application*, Exhibit D at 3.

<sup>44</sup> *Id.* The controlling shareholder of Pirelli is Mr. Marco Tronchetti Provera, Chairman and Managing Director of Pirelli. See also <[www.na.pirelli.com](http://www.na.pirelli.com)> and <[www.olivetti.com](http://www.olivetti.com)>.

<sup>45</sup> *Transfer Application*, Exhibit E at 6.

<sup>46</sup> *Id.* at 4. For instance, the Applicants contend that participation by these Members will afford Astrolink an even broader business perspective and will further enhance its technical and marketing experience and expertise.

<sup>47</sup> *Id.* at 5.

<sup>48</sup> *Id.*

<sup>49</sup> 47 U.S.C. § 310(d).

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>50</sup> Our analysis considers the likely competitive effects of the proposed transfer and whether such transfer raises significant anti-competitive issues.<sup>51</sup> We also consider the efficiencies and other public interest benefits that are likely to result from the proposed transfer.<sup>52</sup> Additionally, because of the foreign ownership interests presented in this case, we examine the applicability of the foreign ownership provisions of Section 310 of the Act<sup>53</sup> and whether there are other public interest concerns that would warrant further review of such ownership.

## B. Qualifications of the Applicants

### 1. Transferors

13. 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.<sup>54</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>55</sup> This is not the case here and no issues have been raised that would require us to re-evaluate the basic qualifications of the transferors, LMGT and TRW.<sup>56</sup>

### 2. Transferees

14. As to the qualifications of the transferees, 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>57</sup> The basic qualification requirements for FSS space station

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<sup>50</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>51</sup> See e.g., *AT&T/BT Order*, 14 FCC Rcd at 19148.

<sup>52</sup> See e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9789.

<sup>53</sup> See 47 U.S.C. §§ 310(a), (b)(1)-(4).

<sup>54</sup> See e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9790.

<sup>55</sup> *Id.*

<sup>56</sup> LMGT and TRW have met the Commission's qualification requirements to hold licenses for the Astrolink system. See *May 1997 Order*, 12 FCC Rcd at 23017-19; *1999 Astrolink Assignment*, 15 FCC Rcd at 21779-80.

<sup>57</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.



licenses are contained in Section 25.140 of our rules.<sup>58</sup> These rules describe the legal, technical, and financial criteria we use to evaluate an applicant's qualifications to hold FSS space station licenses. We note that no party has challenged the basic qualifications of the transferees in this case (*i.e.*, LMGT, TRW, LSAT Astro, and Telespazio). We have already determined that LMGT and TRW are qualified to hold Commission licenses, and there have been no material changes in the facts that gave rise to that determination. Further, we find no evidence to suggest that LSAT Astro and Telespazio lack the legal, technical, and financial qualifications required to hold FSS space station licenses.<sup>59</sup> Therefore, we find that LMGT, TRW, LSAT Astro and Telespazio, are qualified transferees in this case.

### C. Foreign Ownership Interests

15. The proposed transaction concerns the transfer of control of Commission-assigned orbital locations and authorizations to launch and operate the Astrolink System, a fleet of GSO FSS satellites that will provide service in the Ka-band on a private carrier basis. Under the proposal, Astrolink (which will hold the authorizations) will be owned by four Members: LSAT Astro (U.S.), at 31.479 percent equity and voting interest; LMGT (U.S.), at 31.109 percent equity and voting interest; TRW (U.S.), at 18.895 percent equity and voting interest; and Telespazio (Italy), at 18.517 percent equity and voting interest.<sup>60</sup>

16. After reviewing the foreign ownership interests, we find that the proposed transaction does not trigger Section 310(a) of the Act.<sup>61</sup> Astrolink, which will directly hold the Commission authorizations and licenses, is a commercial U.S. enterprise.<sup>62</sup> In addition, because the proposed transfer of control does not involve broadcast, common carrier, aeronautical fixed or en route licenses, it is not subject to review under Section 310(b)(4) of the Act.<sup>63</sup> We also find that there is no evidence in the record of national security, law enforcement, or other public interest concerns that warrants further review of the foreign ownership interests in this case.

### D. Competitive Effects

17. Our analysis of the proposed transaction under Section 310(d) of the Act considers the effects on competition in relevant markets and potential efficiencies and public interest benefits that may

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<sup>58</sup> See 47 C.F.R. § 25.140. The Commission established qualification requirements and service rules for GSO FSS systems in the Ka-band in conjunction with the first Ka-band processing round. See Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed-Satellite Services, Third Report and Order, 12 FCC Rcd 22310 (1997) (*Ka-Band FSS Rules Order*).

<sup>59</sup> With respect to the issue of foreign eligibility requirements, see *infra* paras. 15-16.

<sup>60</sup> See *Transfer Application*, Exhibit B at 1; and Letter from Raymond G. Bender, Jr., Counsel for Astrolink International LLC, to Magalie Roman Salas, Secretary, Federal Communications Commission, October 24, 2001.

<sup>61</sup> Section 310(a) of the Act provides that "[t]he station license required under this Act shall not be granted to or held by any foreign government or the representative thereof." 47 U.S.C. § 310(a). See also, *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9807-09 (construing "representative" to apply to "individuals acting on behalf of" or "in conjunction with" a foreign government).

<sup>62</sup> See *supra* notes 8 and 10. See also <www.astrolink.com>.

<sup>63</sup> See General Electric Capital Corporation, Transferors, and SES Global, S.A, Transferees, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Section 214(a) and 310(d) of the Communications Act, *Order and Authorization*, DA 01-2100 (IB and WTB, rel. Oct. 2, 2001), para. 23, n.78.

likely result from the proposed transaction.<sup>64</sup> In assessing the competitive effects of the proposed transfer, we examined the ownership interest held by each transferee in the relevant U.S. markets and considered the extent to which the proposed transfer would increase market concentration in these markets.

18. Our analysis considers the relevant markets in which GSO FSS systems using frequencies in the Ka-band participate.<sup>65</sup> These satellite systems have the potential to provide a wide variety of broadband interactive, direct-to-home, and digital services to all areas of the United States, including under-served and rural areas, and around the world. In this regard, we note that many authorized satellite systems operating in the C and Ku-bands are capable of carrying numerous types of signals, including those used for video, telephone, Internet, or data transmission in the United States. Thus, our analysis considers the authorized GSO FSS Ka-band and current C and Ku-band satellite services markets.<sup>66</sup> Inasmuch as terrestrial and other satellite operators also provide these services, we consider whether other telecommunications interests of LSAT Astro and Telespazio might raise competitive concern.

19. We find that the proposed transferees, LSAT Astro and Telespazio, have ownership interests in various telecommunications markets, including markets that are likely to be served by the Ka-band satellites. However, we note that, in addition to the licenses granted in the first Ka-band licensing round, the Commission has recently granted authorizations to eleven applicants in the second Ka-band processing round.<sup>67</sup> Given that there are a large number of other Ka-band licenses, that there are a large number of other satellite licensees that can provide services that might be offered by the Ka-band over similar geographic areas, and given that the new members do not have any substantial investments in terrestrial operators with market power in any relevant market, we find that the proposed transaction will not lessen competition in any relevant market.

#### **E. Public Interest Benefits**

20. We also find that a grant of the instant application will further the public interest benefits that we encouraged in the *1999 Astrolink Assignment*.<sup>68</sup> The proposed transferees have committed substantial capital investment in Astrolink, which in the aggregate amounts to approximately \$1.33 billion in committed funds – substantially all of the company’s initial equity objective.<sup>69</sup> The financial commitments made, as well as ongoing financial commitments, by the four Astrolink Members provides Astrolink with substantial capital and incentive to meet construction, launch and implementation milestone dates. In addition, each of the Transferees has experience and expertise in areas that,

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<sup>64</sup> See *supra* para. 12.

<sup>65</sup> In this respect, we have granted authorizations to 13 applicants to launch and operate GSO FSS systems in a first Ka-band processing round (First Round), and have recently granted authorizations to 11 applicants in a second processing round (Second Round). See *supra* note 4, *First Round Reassignment Order*, 12 FCC Rcd 22004; and *Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed-Satellite Service Space Stations in the Ka-Band*, *Order*, DA 01-1693 (rel. August 3, 2001) (*Second Round Assignment Order*).

<sup>66</sup> In our initial grant of authorization to Astrolink (then held solely by Lockheed Martin), we noted that the Astrolink System was designed to provide a variety of advanced broadband communications services to businesses and consumers around the world, including services such as global Internet service, videoconferencing, distance learning, telemedicine, high-speed data networks and ‘bandwidth on demand.’ See 12 FCC Rcd 23015.

<sup>67</sup> See *supra* note 69.

<sup>68</sup> See 12 FCC Rcd 21779.

<sup>69</sup> *Transfer Application* at Exhibit E at 2.

combined, should provide beneficial efficiencies and accelerate the deployment of an advanced Ka-band system.<sup>70</sup> The combination of equity funding, expertise, and experience, should provide Astrolink with the incentive and capability to achieve rapid deployment of the Astrolink System. Implementation of the Astrolink System will provide new and advanced broadband satellite services telecommunications to customers, both domestically and internationally, at the earliest possible time. Thus, we find that granting this application will serve the public interest.

#### IV. Conclusion and Ordering Clauses

21. For the reasons stated above, we find the proposed transfer of control of Astrolink's authorizations from LMGT and TRW to LMGT, TRW, Telepazio, and LSAT Astro serves the public interest, convenience and necessity.

22. Accordingly, pursuant to authority delegated by Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, IT IS ORDERED that the transfer of control application, File No. SAT-ASG-19990527-00059, filed by LMGT and TRW, Inc., LSAT Astro, and Telespazio IS GRANTED.

23. IT IS FURTHER ORDERED that pursuant to Section 25.119(f) of the Commission's Rules, 47 C.F.R. § 25.119(f), the transfer of control of Astrolink from LMGT and TRW to LMGT, TRW, LSAT Astro, Telepazio must be completed within 60 days from the date of authorization, and within 30 days of consummation Astrolink must notify the Commission by letter of the date of consummation.

24. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson  
Chief, International Bureau

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<sup>70</sup> *Id.* at 4. For instance, in addition to the expertise in satellite manufacturing and provisioning of satellite services noted in the *1999 Astrolink Assignment*, the proposed transferees have experience in video programming, Internet businesses, information technology, as well as marketing experience and participation in European markets.