

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

DA 02-307

In re Applications of)	
)	
SPACE STATION SYSTEM LICENSEE, INC.,)	File No. SAT-ASG-20010319-00025;
Assignor,)	
)	
and)	
)	
IRIDIUM CONSTELLATION LLC,)	
Assignee,)	
)	
for Consent to Assignment of License)	
Pursuant to Section 310(d) of the)	
Communications Act)	
)	
)	
MOTOROLA SATELLITE)	File Nos. SES-ASG-20010319-00585;
COMMUNICATIONS, INC.,)	SES-ASG-20010319-00586;
Assignor,)	
)	
and)	
)	
IRIDIUM CONSTELLATION LLC,)	
Assignee,)	
)	
for Consent to Assignment of License)	
Pursuant to Section 310(d) of the)	
Communications Act)	
)	
)	
WIRELESS SP, INC.,)	File Nos. SES-ASG-20010319-00600;
Assignor,)	ISP-PDR-20010319-0015;
)	
and)	
)	
IRIDIUM CARRIER SERVICES LLC,)	
Assignee,)	
)	
and)	
)	
IRIDIUM SATELLITE LLC,)	
Assignee,)	
)	
for Consent to Assignment of License)	
Pursuant to Sections 214 and 310(d))	
of the Communications Act)	

WIRELESS SP, INC.,)
Assignor,) File No. SES-ASG-20010319-00601
)
)
and)
)
IRIDIUM SATELLITE LLC,)
Assignee,)
)
)
for Consent to Assignment of License)
Pursuant to Section 310(d) of the)
Communications Act)
)
)
IRIDIUM U.S., L.P.,) File No. ITC-ASG-20010319-00166
Assignor,)
)
)
and)
)
IRIDIUM CARRIER SERVICES LLC,)
Assignee,)
)
)
for Consent to Assignment of Authorization)
to Provide Global Facilities-Based and Resale)
Services Pursuant to Section 214 of the)
Communications Act and Part 63 of the)
Commission's Rules)
)
)
U.S. LEO SERVICES, INC.) File No. 1044-DSE-AL-98
)
)
and)
)
IRIDIUM U.S., L.P.)
)
)
for Consent to Assignment of a Blanket)
Earth Station License Pursuant to Section 310(d))
of the Communications Act)
)
)
IRIDIUM LLC) File No. SAT-ASG-20010914-00084
)
)
and)
)
IRIDIUM CONSTELLATION LLC)
)
)
for Consent to Assignment of License)
Pursuant to Section 310(d) of the)
Communications Act)

MEMORANDUM OPINION, ORDER AND AUTHORIZATION**Adopted:** February 8, 2002**Released:** February 8, 2002

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we grant six applications for consent to assignment of licenses and authorizations (the "Assignment Applications") pertaining to the operation of the IRIDIUM Mobile-Satellite Service System ("the IRIDIUM System") from affiliates or wholly-owned subsidiaries of Motorola, Inc. ("the Motorola Licensees"), to various affiliated companies to which we refer collectively as "New Iridium."¹ (We will refer collectively to all of these parties as "the Applicants.") The IRIDIUM System provides continuous global coverage for two-way voice and data communications either directly between hand-held Iridium mobile terminals ("handsets"), or between Iridium handsets and the public switched telephone network or other terrestrial networks. The IRIDIUM System consists of four basic components: a constellation of sixty-six satellites in low Earth orbit and up to fourteen in-orbit spare satellites, user-operated mobile transceivers, ground-based satellite control facilities, and gateway earth stations. Each of these components of the IRIDIUM System operates pursuant to one or more FCC authorizations. We also grant an ancillary application for permission to assign a license for an unbuilt 2 GHz Mobile-Satellite Service system ("IRIDIUM 2 GHz System")² and dismiss a petition for reconsideration of an order granting permission for a pro forma assignment of the Iridium handset license.

2. As discussed below, we conclude, pursuant to review under Sections 214(a) and 310(d) of the Communications Act of 1934, as amended, ("the Communications Act" or "the Act"),³ that approval of the applications at issue, subject to conditions specified herein, will serve the public interest. With regard to the application for consent to assignment of a blanket handset license to Iridium Carrier Services LLC, we conclude that the public interest would not be served by denying that application because of proposed indirect foreign ownership in excess of 25 percent.⁴ As requested in a petition filed by the U.S. Department

¹ Space Station System Licensee, Inc. and Iridium Constellation LLC, Application for Consent to Assignment of License Pursuant to Section 310(d) of the Communications Act, File No. SAT-ASG-20010319-00025 (filed Mar. 19, 2001) ("Space Station Application"); Motorola Satellite Communications, Inc. and Iridium Constellation LLC, Application for Consent to Assignment of License Pursuant to Section 310(d) of the Communications Act, File Nos. SES-ASG-20010319-00585 and 00586 (filed Mar. 19, 2001) ("TT&C Earth Station Applications"); Wireless SP, Inc. and Iridium Carrier Services LLC, Application for Consent to Assignment of License Pursuant to Sections 214 and 310(d) of the Communications Act, File Nos. SES-ASG-20010319-00600 and ISP-PDR-20010319-0015 (filed Mar. 19, 2001) ("Blanket Handset Application"); Wireless SP, Inc. and Iridium Satellite LLC, for Consent to Assignment of License Pursuant to Section 310(d) of the Communications Act, File No. SES-ASG-20010319-00601 (filed Mar. 19, 2001) ("Gateway Earth Station Application"); and Iridium Satellite LLC and Iridium U.S., L.P., and Iridium Carrier Services LLC, for Consent to Assignment of Authorization to Provide Global Facilities-Based and Resale Services Pursuant to Section 214 of the Communications Act and Part 63 of the Commission's Rules, File No. ITC-ASG-20010319-00166 (filed Mar. 19, 2001) ("Section 214 Application"). Each of these applications includes identical exhibits describing the transaction and providing related information. The uniform attachment, which is also referenced in the 2 GHz assignment application, is referred to hereafter as the "Assignment Application."

² Iridium LLC and Iridium Constellation LLC, for Consent to Assignment of License Pursuant to Section 310(d) of the Communications Act, SAT-ASG-20010914-00084 (filed Sept. 14, 2001).

³ 47 U.S.C. §§ 214(a), 310(d).

⁴ 47 U.S.C. § 310(b)(4).

of Justice and the Federal Bureau of Investigation, the license conditions we prescribe include a requirement that the Applicants operate the IRIDIUM System in compliance with an agreement that they negotiated with those agencies regarding national security, law enforcement, and public safety issues.

II. BACKGROUND

A. The Applicants

3. **Motorola Licensees.** The IRIDIUM System's licenses and Section 214 authorizations are currently held by wholly-owned subsidiaries or affiliates of Motorola, Inc. The Commission granted Motorola Satellite Communications authority to construct, launch, and operate the IRIDIUM System in January 1995 ("the Space Station License").⁵ This license was later assigned to Space Segment Licensee, Inc., another Motorola subsidiary.⁶ Motorola Satellite Communications holds authorizations to operate two transmit-receive fixed Earth station facilities located near Chandler, Arizona and Sunset Beach, Hawaii for purposes of telemetry, tracking and control for the IRIDIUM System satellites ("the TT&C Earth Station Licenses").⁷ Another Motorola subsidiary, Iridium U.S., L.P. ("Iridium U.S."), holds the IRIDIUM System's commercial gateway earth station license ("the Gateway Earth Station License"),⁸ an authorization to provide global facilities-based and resale communications ("the Section 214 Authorization"),⁹ and a blanket license to operate 200,000 handsets for use with the IRIDIUM System ("the Blanket Handset License").¹⁰

4. **"New Iridium."** New Iridium is comprised of two holding companies – Iridium Holdings LLC ("Iridium Holdings") and Iridium Carrier Holdings LLC ("Iridium Carrier Holdings") – and three subsidiaries. The voting and equity interests in the two holding companies are separately held by a common set of investors. Iridium Holdings is the sole direct owner of Iridium Satellite LLC ("Iridium Satellite"), which, in turn, is the sole direct owner of Iridium Constellation LLC ("Iridium Constellation"). Iridium Carrier Holdings is the sole direct owner of Iridium Carrier Services, LLC ("Iridium Carrier Services"). All of the New Iridium companies are Delaware limited liability companies.

B. The Proposed Transaction and Plans for Further Operation

5. These applications result from a protracted bankruptcy proceeding. The process began in August 1999, when the principal corporate owner of the IRIDIUM System's assets defaulted on loans in an

⁵ *Motorola Satellite Communications, Inc.* (Order and Authorization), 10 FCC Rcd 2268 (Int'l Bur. 1995), erratum, 10 FCC Rcd 3915 (1995), modification granted, 11 FCC Rcd 13953 (1996); recon. denied, 11 FCC Rcd 18502 (1996), further modification granted, 14 FCC Rcd 9829 (1999) (increasing the number of authorized in-orbit spare satellites).

⁶ Letter from Chief, Satellite and Radiocommunication Division, International Bureau, to Counsel for Motorola (Jan. 17, 1998), *modified*, 14 FCC Rcd 9829.

⁷ *Motorola Satellite Communications, Inc.* (Order and Authorization), 12 FCC Rcd 1456 (Int'l Bur. 1997).

⁸ See Public Notice, File Nos. SEC-T/C-20001115/02172, Report No. SES-00239 (Nov. 29, 2000) (approving *pro forma* transfer of control). The Gateway Earth Station license was originally granted to U.S. Leo Services in Order and Authorization, 11 FCC Rcd 13962 (Int'l Bur. 1996). The license was later assigned to Iridium U.S., L.P. (dba "Iridium North America" or "INA"). File No. 1043-DSE-AL-98, Report No. 1863 (July 22, 1998).

⁹ File No. ITC-97-967 (Int'l Bur. 1998); see also Public Notice, File Nos. SEC-T/C-2001115-2171/02172, Report No. SES-00239 (Nov. 29, 2000).

¹⁰ Order and Authorization, 11 FCC Rcd 20474 (Int'l Bur. 1996); see also File No. 1044-DSE-AL-98, Report No. 1868 (Aug. 5, 1998); Public Notice, File Nos. SEC-T/C-20001115-02171/02172, Report No. SES-00239 (Nov. 29, 2000).

amount in excess of \$1.5 billion and filed for protection from creditors pursuant to Chapter 11 of the Bankruptcy Code.¹¹ As no acceptable bids for the IRIDIUM assets were submitted to the Bankruptcy Court during the fall of 1999, the IRIDIUM System ceased commercial operations in the spring of 2000, and Motorola, Inc., which managed and operated the system under contract, prepared to de-commission the IRIDIUM satellites.¹² Shortly before the satellite de-commissioning was to commence, however, Iridium Satellite submitted a bid to purchase the IRIDIUM assets. The Bankruptcy Court approved Iridium Satellite's bid in November 2000.¹³

6. On March 19, 2001, the Applicants filed the Assignment Applications.¹⁴ The Applicants propose to assign the Space Segment License currently held by Space System Licensee, Inc. and the TT&C Earth Station Licenses held by Motorola Satellite Communications, Inc. to Iridium Constellation. The Applicants propose to assign the Gateway Earth Station License held by Iridium U.S. to Iridium Satellite and to assign the Section 214 Authorization held by Iridium U.S. to Iridium Carrier Services. The Applicants propose to split the Blanket Handset License currently held by Iridium U.S. between Iridium Carrier Services and Iridium Satellite, so that Iridium Carrier Services will have authority for operation of up to 150,000 handsets and Iridium Satellite will have authority for operation of up to 50,000 handsets for use primarily by the U.S. Department of Defense ("DoD").¹⁵

7. New Iridium intends to operate primarily as a carrier's carrier, selling wholesale minutes to IRIDIUM resellers around the world through Iridium Satellite. It expects that the resellers will focus their marketing efforts on emergency service providers and commercial users in the aviation, maritime, oil and gas, and forestry industries that require reliable, secure communications to and from remote areas of the globe.¹⁶ The Applicants report, moreover, that New Iridium has entered into a contract with the DoD Defense Information Systems Agency for provision of unlimited usage on the IRIDIUM System for up to 20,000 users per month.¹⁷

8. On April 17, 2001, the International Bureau released a Public Notice seeking comment on the proposed transactions.¹⁸ L/Q Licensee, Inc. and Globalstar, L.P. jointly filed an opposition to the Applicants' request for simultaneous grant of the pending application to modify the IRIDIUM System's Space Station Authorization to include AMS(R)S service.¹⁹ The Applicants filed a reply to the Opposition²⁰ and L/Q Licensee and Globalstar filed a joint response to the Applicants' reply.²¹ The U.S. Department of

¹¹ 11 U.S.C. § 1101 *et seq.*

¹² *Assignment Application*, Exhibit B, at 1-2.

¹³ *In re Iridium Operating LLC et al.*, Chapter 11 case No. 99-B-45005-cb (Bankr. S.D.N.Y, Nov. 2000). Two other companies submitted bids in competition with Iridium Satellite but failed to meet a court-established deadline for tendering a down payment.

¹⁴ *See* n.1, *supra*.

¹⁵ *Assignment Application*, Exhibit A at 4, Exhibit B at 2 and n.5.

¹⁶ *Id.*, Exhibit B at 6.

¹⁷ *Id.*, Exhibit C at 3.

¹⁸ Public Notice, Report No. SAT-00070 (Apr. 17, 2001).

¹⁹ "Opposition," filed May 17, 2001. See discussion in ¶¶ 52-53, *infra*.

²⁰ "Reply to Joint Opposition of L/Q Licensee and Globalstar," filed May 29, 2001.

²¹ "Response," filed June 1, 2001.

Justice (“DOJ”) and the Federal Bureau of Investigation (“FBI”) jointly filed a petition requesting that the Commission postpone disposition of the assignment applications pending negotiation of a DOJ/FBI agreement with New Iridium pertaining to national security, law enforcement, and public safety issues.²² Those agencies subsequently notified the Commission that they had reached an agreement with New Iridium and recommended that any grant of the Assignment Applications be conditioned on compliance with its terms. We received no further comments on the assignment applications from third parties.

III. PUBLIC INTEREST ANALYSIS

A. Framework For Analysis

9. In considering the proposed assignments, the Commission must determine, pursuant to Section 214(a) and Section 310(d) of the Act, whether grant of the applications would serve the public interest, convenience, and necessity.²³ In addition, because of the foreign ownership interests presented in this case, we must also determine whether Iridium Carrier Services’ proposed ownership of a common carrier license is permissible under the foreign ownership requirements of Section 310(b).²⁴

10. The legal standards that govern public interest analysis for assignment 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 determine whether, on balance, the proposed transaction will serve the public interest, convenience, and necessity. Our analysis considers the likely competitive effects of the proposed assignment and whether such assignment raises significant anti-competitive issues.²⁵ In addition, we consider the efficiencies and other public interest benefits that are likely to result from the proposed assignment.²⁶ Further, we consider whether the proposal presents national security, law enforcement, foreign policy, or trade policy concerns.²⁷

B. Basic Qualifications

11. As a threshold matter, we must determine whether the New Iridium applicants are basically qualified to hold licenses under Section 310(d) of the Act and the Commission’s rules. In general, when considering assignment applications under Section 310(d), the Commission does not re-evaluate the qualifications of the assignors.²⁸ 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

²² “Petition to Defer” filed May 17, 2001. See discussion in ¶¶ 35-39, *infra*.

²³ 47 U.S.C. §§ 214(a) and 310(d).

²⁴ See 47 U.S.C. §§ 310(b)(1)-(4).

²⁵ See, e.g., *AT&T Corp., British Telecommunications, plc, VLT Co. L.L.C., Violet License Co. LLC, and TNV [Bahamas] Limited* (Memorandum Opinion and Order), 14 FCC Rcd 19140, 19147 (1999) (“*AT&T/BT Order*”).

²⁶ See, e.g., *Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee* (Memorandum Opinion and Order), 16 FCC Rcd 9779, 9789 (2001) (“*VoiceStream/Deutsche Telekom Order*”).

²⁷ 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*”), on further reconsideration, 15 FCC Rcd 18158 (2000).

²⁸ See, e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9790.

petitions to warrant the designation of a hearing.²⁹ This is not the case here and no issues have been raised that would require us to re-evaluate the basic qualifications of the Motorola Licensees.

12. As to the basic qualifications of the assignees, Section 310(d) requires that the Commission consider the qualifications of a proposed assignee as if the assignee were applying for the license directly under Section 308 of the Act.³⁰ No party has challenged the basic qualifications of the assignees in this case, and we find no evidence that they lack financial, technical, legal or other basic qualifications necessary to hold Commission licenses. Therefore, we conclude that Iridium Constellation, Iridium Satellite, and Iridium Carrier Services are qualified to hold the respective licenses and authorizations at issue in this proceeding.³¹

C. Foreign Ownership

13. The Applicants propose indirect alien and foreign corporate ownership of both common carrier and non-common carrier Title III licenses. Specifically, after the closing of the proposed transaction, the Iridium licensees – Iridium Carrier Services (the common carrier licensee) as well as Iridium Satellite and Iridium Constellation (the non-common carrier licensees) – will be wholly owned, respectively, by Iridium Carrier Holdings and Iridium Holdings, two Delaware limited liability companies.³² In turn, non-U.S. individuals and entities will have substantial ownership interests in these Delaware companies.³³ Section 310(a) of the Act prohibits any radio license from being “granted to or held by” a foreign government or its representative.³⁴ Section 310(b)(1)-(2) of the Act prohibits common carrier, broadcast and aeronautical fixed or *en route* radio licenses from being “granted to or held by” aliens, or their representatives, or foreign corporations.³⁵ The ownership structure proposed by the Applicants is such that no foreign government or

²⁹ *Id.*

³⁰ 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.

³¹ Insofar as it pertains to the qualifications of Iridium Carrier Services to receive a license for provision of common carrier services, this conclusion is based on the following discussion herein concerning foreign ownership.

³² *Assignment Application*, Exhibit B at 1-2. Iridium Carrier Services, which will hold a blanket license for 150,000 handsets, proposes to operate as a common carrier. Iridium Satellite, which will hold a blanket license for 50,000 handsets, does not propose to operate as a common carrier. *Id.* Iridium Constellation will hold a space segment license and two telemetry, tracking and control earth station licenses on a non-common carrier basis. *Id.* *See* ¶ 45, *infra*.

³³ Although the voting and equity interests in the two holding companies are separately held by a common set of investors, the aggregate level of foreign equity investment differs. Aggregate foreign equity interest in Iridium Holdings is 56.533 percent, while the aggregate level in Iridium Carrier Holdings is 51.582 percent. Aggregate foreign voting interests in the two companies are virtually the same: 61.538 percent in Iridium Holdings and 60 percent in Iridium Carrier Holdings. Based on the particular provisions of the Iridium Carrier Holdings LLC Agreement, we have calculated member voting interests in that company based on the reported apportionment of board-of-directors voting rights among the members. *See Assignment Application*, Exhibit B at 6 and 10-11 and Attachments 1 and 2 (control of each holding company is vested in certain Class A members by virtue of their exclusive authority to appoint directors); letter from Thomas P. Van Wazer, Counsel for Iridium Carrier Services LLC and Iridium Satellite LLC, to Magalie Roman Salas, Secretary, Federal Communications Commission, November 27, 2001 (“*November 27 Supplemental Amendment*”), Exhibit 2; letter from Thomas P. Van Wazer, Counsel for Iridium Carrier Services LLC and Iridium Satellite LLC, to Magalie Roman Salas, Secretary, Federal Communications Commission, October 1, 2001 (“*October 1 Supplemental Amendment*”) at 4 (reporting changes in Iridium Holdings’ board representation); and letter from Thomas P. Van Wazer to Magalie Roman Salas, Secretary, Federal Communications Commission filed January 24, 2002.

³⁴ *See* 47 U.S.C. § 310(a).

³⁵ *See* 47 U.S.C. §§ 310 (b)(1), (2).

representative, alien, or foreign corporation will hold any of the Iridium radio licenses directly.³⁶ Rather, the licenses will be held by Iridium Carrier Services, Iridium Satellite, and Iridium Constellation, each of which is a Delaware limited liability company. Accordingly, 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.³⁷ In addition, because the proposed transaction does not involve direct foreign investment in Iridium Carrier Services, it does not trigger Section 310(b)(3) of the Act, which places a 20 percent limit on direct alien, foreign corporate or government ownership of entities that hold common carrier, broadcast and aeronautical fixed or *en route* Title III licenses.³⁸ We must consider the proposed assignment of the common carrier handset license to Iridium Carrier Services under Section 310(b)(4), however, because the Applicants propose *indirect* foreign ownership of Iridium Carrier Services in excess of the 25 percent benchmark in Section 310(b)(4). The Applicants request that we find this level of indirect foreign ownership permissible under that provision of the Act.

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

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.³⁹

15. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment in U.S. common carrier and aeronautical fixed and *en route* radio licensees by entities from World Trade Organization (“WTO”) Member countries.⁴⁰ 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.⁴¹ With respect to non-WTO countries, the Commission continues to apply the ECO test in order to preserve the international public policy goals of (i) promoting effective competition in the global market for communications services, (ii) preventing anti-competitive conduct in the provision of international services or facilities and (iii) encouraging foreign governments to open their communication markets.⁴² In evaluating an applicant’s request for approval of non-U.S. ownership interests under Section

³⁶ *Assignment Application*, Exhibit B at 13 (stating that none of the named foreign investors is the representative of a foreign government).

³⁷ See *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9799-9800, ¶¶ 38-48 (issues related to indirect foreign ownership of common carrier licensees are addressed under Section 310(b)(4)).

³⁸ 47 U.S.C. § 310(b)(3).

³⁹ 47 U.S.C. § 310(b)(4).

⁴⁰ *Foreign Participation Order*, 12 FCC Rcd at 23896, ¶9.

⁴¹ See *id.* at 23913, ¶ 50, and 23940, ¶¶ 111-12.

⁴² *Id.* at 23898, ¶15, and 23897, ¶11.

310(b)(4), the Commission uses a “principal place of business” test to determine the nationality or “home market” of foreign investors.⁴³

16. In light of these policies, our review under Section 310(b)(4) first examines the indirect foreign investment in Iridium Carrier Services to determine whether those investments are attributable to entities from WTO Member countries. According to the Applicants, Iridium Carrier Services, the Delaware limited liability company that will hold the - common carrier handset license, is a wholly owned subsidiary of Iridium Carrier Holdings, another Delaware limited liability company.⁴⁴ The Applicants further represent that Iridium Carrier Holdings will have two classes of membership units at the closing of the transaction, Class A and Class B. The Class A units represent both equity and voting interests in Iridium Carrier Holdings, as specified in the company’s limited liability agreement.⁴⁵ The non-U.S. Class A members are Bareena Holdings Pty, Ltd. (“Bareena”); Millport Associates, S.A. (“Millport”); and Baralonco, N.V. (“Baralonco”).⁴⁶ The Class B units represent non-voting equity interests in Iridium Carrier Holdings. Non-U.S. entities identified by the Applicants as holding Class B units are Baralonco and VRT

⁴³ 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, ¶116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873, 3951, ¶207 (1995) (“*Foreign Carrier Entry Order*”). For examples of cases applying the five-factor “principal place of business” test, see *Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation* (Order and Authorization), FCC 01-369 (rel. Dec. 18, 2001); *Motient Services, Inc. and TMI Communications and Company LP* (Order and Authorization), DA 01-2732 (Int’l Bur., rel. Nov. 21, 2001); *In re Application of General Electric Corp.* (Order and Authorization), DA 01-2100 (Int’l & Wireless Telecommunications Burs., rel. Oct. 2, 2001), Supplemental Order, DA 01-2482 (Int’l & Wireless Telecommunications Burs., rel. Oct. 26, 2001); *DiGiPH PCS, Inc. and Eliska Wireless Ventures License Subsidiary I, L.L.C.*, Memorandum Opinion and Order, 15 FCC Rcd 24501, 24506-07 (Wireless Telecommunications and Int’l Burs. 2000) (citing *Global Crossing Ltd. and Frontier Corporation*, Memorandum Opinion and Order, 14 FCC Rcd 15911, 15918-19 (Wireless Telecommunications, Int’l, and Com. Car. Burs. 1999)).

⁴⁴ *Assignment Application*, Exhibit B at 10.

⁴⁵ *Id.*, Exhibit B at 10-12. See also *November 27 Supplemental Amendment*, Exhibit 3 (Iridium Carrier Holdings LLC, Amended and Restated Limited Liability Company Agreement), Section 6.1. The overall authority and responsibility for the conduct of the business and affairs of the company is vested in the Board of Directors. Five of the class A unit holders are entitled to appoint one director, and each director will be entitled to one vote on the Iridium Carrier Holdings Board. *Id.* Thus, we will calculate member voting interests in Iridium Carrier Holdings on the basis of board representation, with each of the five members that are entitled to board representation having a 20 percent voting interest in the company. We note that, under section 6.2 of the Iridium Carrier Holdings LLC Agreement, certain decisions require the approval of all, or a lesser specified percentage of all, the Class A members. We discuss this provision further in ¶¶ 24-28, *infra*.

⁴⁶ *Assignment Application*, Exhibit B at 14-15 and Attachment 2. See also *November 27 Supplemental Amendment*, Exhibit 2. The remaining Class A units that have been issued to date are held by U.S. entities and individuals—Syncom-Iridium Holdings Corp. (Syncom-Iridium), Syndicated Communications, Inc. (Syncom I), Dan A. Colussy, and Tyrone Brown. *Assignment Application* at 11 and Attachment 2; *November 27 Supplemental Amendment*, Exhibit 2. Syncom I is a privately held U.S. corporation that is owned by four individuals, each of whom is a U.S. citizen. Syncom-Iridium also is a U.S. corporation, which is wholly owned by Syndicated Communications Venture Partners IV, L.P. (Syncom IV). Syncom IV is a privately held U.S. limited partnership. Its general partner, WJM Partners IV, LLC, is owned by three of the individuals that own Syncom I. *Assignment Application*, Exhibit B at 13. Syncom IV has 9 limited, non-voting partners, each of which is a U.S. citizen. See *October 1 Supplemental Amendment* at 4.

Telecommunications GmbH & Co. (“VRT”).⁴⁷ The remaining Class B units that have been issued to date are held by U.S. entities and individuals. These named investors are Motorola, Inc., a Delaware corporation, the bankruptcy estate of Iridium LLC, Dan A. Colussy, Gino O. Picasso, and Tyrone Brown.⁴⁸

17. The non-U.S. investors have the following equity and voting interests in Iridium Carrier Holdings.⁴⁹ Bareena, an Australian company, will hold a 20.996 percent equity interest and 20 percent voting interest.⁵⁰ Bareena is a wholly owned subsidiary of Quadrant Australia Limited (“Quadrant”).⁵¹ Quadrant is an Australian company that is publicly traded on the Australian stock exchange.⁵² Millport, a Panamanian corporation, will hold an 9.948 percent equity interest and 20 percent voting interest.⁵³ Millport is a wholly owned subsidiary of Inepar Administracao de Bens Servicos e Participacoes, S.A. (“Inepar”). Inepar is a privately held Brazilian corporation controlled by Brazilian citizens.⁵⁴ Baralonco, a Netherlands Antilles corporation, holds a 19.538 percent equity interest and 20 percent voting interest.⁵⁵ Baralonco is owned and controlled by Khalid bin Abdullah bin Abdulrahman, an individual who is a resident and subject of the Kingdom of Saudi Arabia.⁵⁶ VRT is a German company with a Class B equity interest of 1.1 percent.⁵⁷

⁴⁷ See *November 27 Supplemental Amendment* at 2, note 3, and Exhibit 2.

⁴⁸ *Id.*, Exhibit 2. See also *October 1 Supplemental Amendment* at 4 (stating that Gino O. Picasso, who is also the company’s new Chief Executive Officer, is a U.S. citizen). The Applicants represent that the bankruptcy estate of Iridium LLC holds a five percent Class B equity interest in Iridium Carrier Holdings. *Assignment Application*, Exhibit B at 12. Iridium LLC’s creditors have been issued a \$18.5 million note that is convertible into Class A units of Iridium Holdings at any time up to June 30, 2002. *Id.* If the creditors exercise this option, they will simultaneously receive a corresponding number of Class A units in Iridium Carrier Holdings. *Id.* The Applicants further represent that the identity of the Iridium LLC creditors that ultimately will receive portions of the five percent equity interest will not be known until the estate makes a distribution to the creditors. *October 1 Supplemental Amendment* at 3. The Applicants also state that no date for such distribution is currently set and such distribution may not occur for another year or two. *Id.* Based on the information currently available and the contingent nature of the interest, the foreign ownership ruling herein does not approve any foreign investment that may result from the exercise of this option. We further clarify that this contingent interest and any resulting indirect foreign ownership is subject to the conditions outlined in the foreign ownership ruling herein. See *infra* ¶29 (allowing Iridium Carrier Services to accept up to and including an additional, aggregate 25 percent indirect equity and/or voting interests, subject to certain conditions).

⁴⁹ As explained *supra* n.45, we calculate member voting interests in Iridium Carrier Holdings on the basis of board representation, with each of the five members that are entitled to board representation having a 20 percent voting interest in the company. These members are: Bareena, Millport, Baralonco, Syncom-Iridium and Dan A. Colussy. See *November 27 Supplemental Amendment*, Exhibit 3 (Iridium Carrier Holdings LLC, Amended and Restated Limited Liability Company Agreement), Attachment A.

⁵⁰ *November 27 Supplemental Amendment*, Exhibit 2.

⁵¹ Bareena and Quadrant merged in June 2001. *October 1 Supplemental Amendment* at 3. Mr. Michael Boyd, an Australian citizen that wholly owned Bareena prior to the merger, retains *de facto* control of Quadrant and, directly or indirectly, owns 50 percent of the Quadrant shares issued. *Assignment Application*, Exhibit B, at 15; *November 27 Supplemental Amendment* at 3-4.

⁵² *Assignment Application*, Exhibit B at 15; *November 27 Supplemental Amendment* at 3.

⁵³ *November 27 Supplemental Amendment*, Exhibit 2.

⁵⁴ *Assignment Application*, Exhibit B at 14; *October 1 Supplemental Amendment* at 2-3.

⁵⁵ *November 27 Supplemental Amendment*, Exhibit 2.

⁵⁶ *Assignment Application* at 14; *November 27 Supplemental Amendment* at 1-2. The Iridium Carrier Holdings

18. Based on this information, we calculate Iridium Carrier Holdings' total proposed aggregate ownership by particular named foreign investors (Bareena, Quadrant, Millport, Inepar, VRT, Baralonco, and Khalid bin Abdullah bin Abdulrahman) to be 51.582 percent equity and 60 percent voting. With the exception of the 19.538 percent equity and 20 percent voting interests of Baralonco, we find that the remaining foreign ownership interests in Iridium Carrier Holdings (32.044 percent equity and 40 percent voting) are attributable to entities that have their principal place of business or "home market" in WTO Member countries.⁵⁸

19. Specifically, we find that the home market of Bareena and Quadrant is Australia, a WTO Member country. At the time the initial application was filed, Bareena was a privately held Australian company principally located in Victoria, Australia and wholly owned by an Australian citizen, Mr. Michael Boyd. Bareena has since merged with and become a wholly owned subsidiary of Quadrant.⁵⁹ Quadrant is incorporated in Australia and has its world headquarters there.⁶⁰ A portion of its shares also are publicly traded on the Australian stock exchange.⁶¹ Mr. Boyd directly, or indirectly with his wife, also an Australian citizen, owns 50 percent of the Quadrant shares issued, and Mr. Boyd exercises *de facto* control over Quadrant.⁶² Quadrant's investment principals, officers and directors are primarily Australian citizens.⁶³ Finally, Quadrant derives the majority of its revenues from Australia and has most of its tangible personal property there.⁶⁴

20. We find that the home market of Millport and Inepar is Brazil, which is also a WTO Member country. The Applicants state that Millport is incorporated in the Republic of Panama.⁶⁵ Millport is wholly owned by Inepar, a privately held Brazilian corporation. Millport was created in 1997 solely to invest in the former Iridium companies.⁶⁶ Inepar and its subsidiaries primarily provide services and equipment for

Limited Liability Company Agreement grants Baralonco an option to acquire a quantity of additional Class A units that would increase its percentage interest in Iridium Carrier Holdings to equal its equity share in Iridium Holdings. The Agreement adds, however, that the option is "subject to any conditions or restrictions imposed by the FCC or [U.S.] telecommunications laws and the receipt of all required Government Approvals" *November 27 Supplemental Amendment*, Exhibit 3 (Iridium Carrier Holdings LLC, Amended and Restated Limited Liability Company Agreement), Section 7.4.

⁵⁷ See letter from Thomas P. Van Wazer, Counsel for Iridium Carrier Services LLC and Iridium Satellite LLC, to Magalie Roman Salas, Secretary, Federal Communications Commission, November 15, 2001 (*November 15 Supplemental Amendment*).

⁵⁸ We apply the Commission's five factor test for determining a foreign entity's principal place of business and rely on the representations made by the Applicants. See *supra* note 43. See also *Market Entry and Regulation of Foreign-Affiliated Entities*, 11 FCC Rcd 3873, 3951-52 ¶207 (noting that the Commission will balance the five factors under a totality of the circumstances test).

⁵⁹ *October 1 Supplemental Amendment* at 3.

⁶⁰ *Assignment Application*, Exhibit B, at 15.

⁶¹ *October 1 Supplemental Amendment* at 3-4.

⁶² *November 27 Supplemental Amendment* at 3-4 and Exhibit 5.

⁶³ *October 1 Supplemental Amendment* at 4.

⁶⁴ *Id.* (noting that in addition to several mining tenements in Australia that it plans to divest, Quadrant's main asset is its investment in New Iridium through Bareena).

⁶⁵ *Assignment Application*, Exhibit B, at 14.

⁶⁶ *Id.*

infrastructure, energy and telecommunications, including satellite communications, paging and access to and content for the Internet.⁶⁷ The Applicants represent that Inepar and Millport have their world headquarters and majority of their tangible property in Brazil.⁶⁸ The Applicants state further that Inepar and Millport's investment principals, officers, and directors are primarily Brazilian citizens.⁶⁹ Finally, Inepar and Millport derive the majority of their revenues from Brazil.⁷⁰ Therefore, while Millport is incorporated in Panama, after balancing the five factors under a totality of the circumstances standard, we conclude that the principal place of business of both Millport and Inepar is Brazil.

21. We find that the home market of VRT is Germany, a WTO Member country. VRT is organized under the laws of Germany and has its world headquarters in Duesseldorf, Germany.⁷¹ The Applicants state that all of VRT's investment principals, officers, and directors are German citizens.⁷² VRT derives the majority of its sales revenue from, and maintains the majority of its tangible property in, Germany.⁷³

22. We further find that the home market of Baralonco is Saudia Arabia, a non-WTO Member country. Baralonco is a privately held Netherlands Antilles corporation with principal offices located in Curacao, Netherlands Antilles.⁷⁴ Baralonco is an investment holding company which currently holds investments only in publicly traded United States securities. Baralonco is owned and controlled by Khalid bin Abdullah bin Abdulrahman, an individual who is a resident and subject of the Kingdom of Saudi Arabia. The directors of Baralonco are an Australian citizen, a U.S. citizen and an Antillean management company.⁷⁵ Because Baralonco is owned and controlled by a citizen and resident of Saudi Arabia for the purpose of investing in U.S. securities, we find that Saudi Arabia is its principal place of business.

23. Under the *Foreign Participation Order*, therefore, Bareena, Quadrant, Millport, Inepar, and VRT, 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 Iridium Carrier Services. There is no evidence in the record that would rebut this presumption, and as we explain more fully below, the proposed transaction does not pose a high risk to competition in any U.S. market.⁷⁶

24. As to the non-WTO ownership interest of Khalid bin Abdullah bin Abdulrahman (through his investment in Baralonco), the Commission stated in the *Foreign Participation Order* that it will "deny an application if we find that more than 25 percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations

⁶⁷ *Id.*

⁶⁸ *October 1 Supplemental Amendment* at 2.

⁶⁹ *Id.* (noting that one of Inepar's investment principals is an Italian citizen).

⁷⁰ *Id.*

⁷¹ *See November 15 Supplemental Amendment* at 1.

⁷² *Id.* at 1-2 (representing that VRT is ultimately owned by six named companies, each with its principal place of business in Germany).

⁷³ *Id.* at 2.

⁷⁴ *Assignment Application*, Exhibit B at 14.

⁷⁵ *Id.*

⁷⁶ *See* ¶¶ 33-34, *infra*.

outweigh that finding.”⁷⁷ We also read the Commission’s decisions in the *Foreign Participation Order* and the *Foreign Carrier Entry Order* to require that the Commission apply ECO in circumstances where a non-WTO investor proposes to acquire a *de facto* controlling interest in the parent company of a common carrier licensee, even where the equity interest does not exceed 25 percent.⁷⁸ In this case, Applicants represent that Baralongo’s equity and voting interests in Iridium Carrier Holdings are both under 25 percent (19.538 percent and 20 percent, respectively). We are concerned, however, that the unanimous consent provision in section 6.2(c) of the Iridium Carrier Holdings LLC Agreement will afford Baralongo with 100 percent negative control over business and policy decisions affecting the operations of Iridium Carrier Services.

25. Section 6.2(c) of the Iridium Carrier Holdings LLC Agreement requires the unanimous consent of all of the Class A members for “any entry into a contract with an entity not controlled by [Iridium Carrier Holdings] or Iridium Holdings that (i) is outside the ordinary course of business or (ii) requires payments by [Iridium Carrier Holdings] in excess of \$1 million in the aggregate.”⁷⁹ Given the potential size and scope of Iridium Carrier Services’ operations, we find that Baralongo, or any other Class A member, could use the \$1 million threshold to prevent the company from making necessary expenditures and, as such, exercise an impermissible level of *de facto* control over Iridium Carrier Holdings and its licensee-subsiary, Iridium Carrier Services. We are not convinced that this unanimous consent provision, or an earlier version of this provision, is limited to “[c]ertain typically extraordinary actions,” as represented by the Applicants.⁸⁰ This provision, in the context of the Iridium Carrier Services’ proposed business, appears to reach beyond a permissible minority investment protection.

26. Investment protections typically give the minority shareholder a decision-making role, through supermajority or similar mechanisms, in major corporate decisions that fundamentally affect its investment.⁸¹ Such decisions may include: (1) issuance or reclassification of stock; (2) setting compensation for senior management; (3) expenditures that significantly affect market capitalization; (4) incurring significant corporate debt or otherwise encumbering corporate assets; (5) sale of major corporate assets; and (6) fundamental changes in corporate structure.⁸² Investment protection provisions may confer actual control upon the minority owner where they give it the power to determine the licensee’s policies and operation, or to dominate corporate affairs.⁸³ The analysis of whether an investment protection provision grants the minority owner the power to control is a fact-based inquiry with no precise formula for evaluating

⁷⁷ See *Foreign Participation Order*, 12 FCC Rcd 23946, ¶131.

⁷⁸ See *id.* (maintaining the ECO test, as adopted in the *Foreign Carrier Entry Order*, as part of the public interest analysis under Section 310(b)(4) for indirect foreign investment in U.S. common carrier radio licensees by entities from non-WTO countries). See also *Foreign Carrier Entry Order*, 11 FCC Rcd at 3954 ¶¶ 214-215 (determining that, under the ECO test, the Commission would permit a foreign investor to obtain any level of ownership, including a controlling interest, in a common carrier radio licensee so long as the Commission finds that U.S. interests are allowed to own up to a controlling level in a provider of the relevant service in the relevant home market of the foreign investor).

⁷⁹ See *November 27 Supplemental Amendment*, Exhibit 3 (Iridium Carrier Holdings LLC, Amended and Restated Limited Liability Company Agreement), Section 6.2(c).

⁸⁰ See *November 27 Supplemental Amendment* at 2 (noting that the earlier version of the unanimous consent provision, which was the subject of a written inquiry by Commission staff, required unanimous consent before the company could enter into *any* contract with any entity not affiliated with the company or Iridium Holdings).

⁸¹ See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403, 447-49 (1994) (“*Competitive Bidding Fifth Report and Order*”).

⁸² *Id.*

⁸³ See *News International, PLC* (Memorandum Opinion and Order), 97 FCC 2d 349, 355-56 (1984).

all factors.⁸⁴ In the context of common carrier authorizations, the Commission traditionally has determined the existence of *de facto* control by analyzing the facts of a particular case in light of the six factors enumerated in *Intermountain Microwave*.⁸⁵ The control of finances is a factor that warrants particular scrutiny.⁸⁶

27. We find, on the basis of the information before us, that the unanimous consent provision in section 6.2(c) of the Iridium Carrier Holdings LLC Agreement provides each Class A member with the ability to exercise negative control over operational and policy decisions, given the the potential scope of operations in conjunction with that of Iridium Holdings.⁸⁷ We find the unanimous consent provision to be inconsistent with the Applicants' representation that, "[u]nder the Iridium Carrier Holdings LLC Agreement, no class A investor will have de jure or de facto control."⁸⁸ As applied to Baralonco specifically, it also is inconsistent with Commission policy generally to disallow indirect, controlling investments in common carrier radio licensees without a finding that the "home market" of the non-WTO investor allows U.S. entities to make a similar investment.⁸⁹ Applicants in this case have submitted no such showing.

28. We therefore require, as a condition of authorization in this case, that Iridium Carrier Holdings amend section 6.2(c) of its LLC Agreement to require unanimous consent of the Class A members only for entry into a contract with an entity not controlled by Iridium Carrier Holdings or Iridium Holdings that (i) is outside the ordinary course of business or (ii) requires payments by Iridium Carrier Holdings in an amount in excess of 10 percent of the annual, aggregate operating budgets of Iridium Carrier Holdings and Iridium Holdings. Applicants shall submit the revised LLC Agreement within 90 days of release of this order. If circumstances arise in the future that demonstrate that, in the absence of prior Commission approval, any individual Class A member exercises effective control over the licensee's business and policy decisions, the Commission will take appropriate enforcement action.⁹⁰ Further, any change to the Iridium Carrier Holdings LLC Agreement that effectively provides any Class A Member with the ability to exercise *de facto* control, including negative control, requires prior Commission approval pursuant to sections 310(d) and 214(a) of the Act.⁹¹ As conditioned, we also find no basis to conclude that the particular investment by

⁸⁴ *Id.*

⁸⁵ *Intermountain Microwave*, 24 Rad. Reg. (P&F) 983 (1963) ("*Intermountain Microwave*"). The six factors are as follows: (1) Who controls daily operations?; (2) Who is in charge of employment, supervision, and dismissal of personnel?; (3) Does the licensee have unfettered use of all facilities and equipment?; (4) Who is in charge of the payment of financing obligations, including expenses arising out of operating?; (5) Who receives monies and profits from the operation of the facilities?; and (6) Who determines and carries out the policy decisions, including preparing and filing applications with the Commission? *See also Application of Ellis Thompson Corporation*, 10 FCC Rcd 12554, 12556-57 ¶14 (ALJ 1994) (the *Intermountain Microwave* factors must be construed in light of the current realities of the industry involved).

⁸⁶ *See, e.g., Heitmeyer v. FCC*, 95 FCC 2d 91, 99 (D.C. Cir. 1937) ("It is well known that one of the most powerful and effective methods of control of any business, organization, or institution, and one of the most potent causes of involuntary assignment of its interests, is the control of its finances").

⁸⁷ *See* Assignment Application, Exhibit C (Public Interest Statement).

⁸⁸ *Id.*, Exhibit B at 17.

⁸⁹ *See supra* ¶24.

⁹⁰ *See* 47 U.S.C. § 312(a).

⁹¹ In the event of any uncertainty on the part of the licensee as to the legal effect of a particular change to the governing documents of the licensee or its controlling parent, the licensee may bring the facts to the Commission's attention and request a declaratory ruling before the contemplated change. *See, e.g., WHDH, Inc.*, 17 FCC 2d 856, 864 (1969), *aff'd sub nom. Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971).

Baralonco in Iridium Carrier Holdings poses a risk to competition in any U.S. market.⁹² We note that, although the Executive Branch raised concerns, these concerns relate to national security, law enforcement, and public safety and are addressed by the agreement between the Applicants and the Department of Justice and Federal Bureau of Investigation.⁹³

29. Based on the foregoing findings and conditioned on the required modification of the Iridium Carrier Holdings LLC Agreement, we conclude, pursuant to Section 310(b)(4) and the Commission's "open entry" standard for indirect investment by WTO members in U.S. common carrier licensees, that it will not serve the public interest to prohibit the proposed indirect foreign ownership of Iridium Carrier Services, which is in excess of 25 percent. We also conclude, pursuant to Section 310(b)(4) and the Commission's entry standard for indirect investment by entities or individuals from non-WTO countries, and subject to the required modification of the Iridium Carrier Holdings LLC Agreement, that it will not serve the public interest to prohibit the proposed indirect foreign ownership of Iridium Carrier Services by Baralonco and its principal investor. Specifically, this ruling permits the requested indirect foreign ownership of Iridium Carrier Services by Bareena, Quadrant and Quadrant's Australian shareholders (20.996 percent of equity and 20 percent of voting units); Millport and Inepar and their Brazilian and Italian shareholders (9.948 percent equity and 20 percent voting units); VRT and its German shareholders (1.1 percent of equity); and Baralonco and Khalid bin Abdullah bin Abdulrahman, through his investment in Baralonco (19.538 percent equity and 20 percent voting units). Iridium Carrier Services 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, subject to the following conditions.⁹⁴ First, no single non-U.S. investor or entity may acquire an indirect equity or voting interest in Iridium Carrier Services in excess of 25 percent without prior Commission approval under Section 310(b)(4). Second, Iridium Carrier Services shall seek approval under Section 310(b)(4) before it accepts any additional indirect investment from any investor from a non-WTO country that, when aggregated with Baralonco's interests, exceeds 25 percent.

30. Finally, we address the proposed indirect foreign ownership of the non-common carrier subsidiaries, Iridium Satellite and Iridium Constellation. As found above, Section 310(a) does not bar grant of the assignment applications.⁹⁵ The Department of Justice and the Federal Bureau of Investigation have raised national security, law enforcement and public safety concerns relating to the indirect foreign ownership of all the New Iridium subsidiaries, but these concerns are addressed by an agreement between the Applicant and the agencies.⁹⁶ No other comments were filed concerning New Iridium's indirect foreign ownership. We have also determined pursuant to Section 310(b)(4) that the indirect foreign ownership of Iridium Carrier Services does not warrant denial of its application to obtain a common carrier license. While the level of indirect foreign ownership in Iridium Constellation and Iridium Satellite would exceed that in Iridium Carrier Services,⁹⁷ we find no basis in this record for concluding that their foreign ownership, including the non-controlling 29.506 percent investment by Baralonco, raises competition concerns under section 310(d) or otherwise contravenes the public interest.

D. Dominant Carrier Safeguards

⁹² See ¶¶ 31-34, *infra*.

⁹³ See *infra* ¶¶ 35-39 (discussing national security, law enforcement, foreign policy and trade policy concerns).

⁹⁴ Foreign ownership of Motorola's capital stock shall be included for purposes of calculating this aggregate amount. See *November 27 Supplemental Amendment* at 4.

⁹⁵ See *supra* ¶13.

⁹⁶ See *infra* ¶¶ 35-39.

⁹⁷ See *supra* n.33.

31. As part of our public interest analysis under Section 214(a), we also consider whether Iridium Carrier Services is, or is affiliated with, a foreign carrier that has market power on the foreign end of a U.S. international route that Iridium Carrier Services seeks to serve through assignment of the authorizations currently held by Iridium U.S. Under rules adopted in the *Foreign Participation Order*, the Commission classifies a U.S. carrier as a “dominant” international carrier on a particular route if it is, or is affiliated with, a foreign carrier that controls essential facilities on the foreign end of that route.⁹⁸ A U.S. carrier is presumptively classified as non-dominant if it has no affiliations with, and itself is not, a foreign carrier in a particular country to which it provides service.⁹⁹

32. Iridium Carrier Services certifies that it is not a foreign carrier and is not affiliated with any foreign carrier.¹⁰⁰ It therefore requests classification as a non-dominant carrier on all its U.S. international routes. Based on our review of the certified statements made by the Applicants, we find that upon consummation of the proposed assignment of authorizations, Iridium Carrier Services will be a non-dominant U.S. international carrier on all its authorized U.S. international routes.

E. Competitive Effects

33. Our public interest analysis under Section 214(a) and 310(d) includes an evaluation of the competitive effects of the proposed transaction in relevant markets. For satellite telecommunications service providers, the Commission has determined that the relevant product markets include domestic and international telecommunications markets.¹⁰¹ In cases involving such service providers, the Commission considers whether the proposed transaction will lessen or enhance competition in the provision of communications services in, to or from the United States.¹⁰² Inasmuch as the major investors in New Iridium hold no significant investments in firms that provide telecommunications services in, to or from the United States, we have determined that the proposed transaction will not lessen competition in any relevant market.¹⁰³

34. Because this transaction permits the Iridium system to emerge from bankruptcy and continue operations, the competitive impact is likely to be beneficial. The major investors in New Iridium hold no significant investments in firms that currently provide telecommunications services in, to or from the United

⁹⁸ See *Foreign Participation Order*, 12 FCC Rcd at 23987, 23991-99, ¶¶ 215, 221-39. A carrier classified as dominant is subject to dominant carrier safeguards. See 47 C.F.R. § 63.10(c) and (e). 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 generally applicable international safeguards, are sufficient to protect against vertical harms by carriers from WTO countries in virtually all circumstances. In the exceptional case where an application poses a very high risk to competition in the U.S. market, and where the standard safeguards and additional conditions would be ineffective, the Commission reserves the right to deny the application. *Foreign Participation Order*, 12 FCC Rcd at 23913-14, ¶51. In circumstances where an affiliated foreign carrier possesses market power in a non-WTO Member country, the Commission applies the ECO test as part of its public interest inquiry under Section 214(a). *Id.* at 23944, ¶124.

⁹⁹ See 47 C.F.R. § 63.10(a)(1).

¹⁰⁰ *Section 214 Application* at 9.

¹⁰¹ See *Application of WorldCom, Inc., and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, 13 FCC Rcd 18025 (1998) at ¶¶ 23 and 78; *GE Americom/Columbia Merger Order*, 15 FCC Rcd at 11593, ¶7.

¹⁰² *Lockheed/COMSAT Merger Order*, FCC 00-277, at ¶18.

¹⁰³ See *Assignment Application*, Exhibit B at 13-17; *October 1 Supplemental Amendment* at 5; and *November 27 Supplemental Amendment* at 4.

States. We therefore find that competition for services in, to or from the United States in relevant product or geographic markets would not be lessened by the proposed transaction.

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

35. In acting on assignment applications that involve issues of foreign ownership, the Commission also considers any national security, law enforcement, foreign policy, and trade policy concerns raised by the Executive Branch.¹⁰⁴ In this case, the DOJ and FBI raised concerns and requested that the Commission defer approval of the transaction until such time as an agreement could be reached between the Applicants and those agencies resolving their concerns.¹⁰⁵

36. On August 17, 2001, the Department of Justice and the Federal Bureau of Investigation entered into such an agreement with the New Iridium entities (“Iridium/DOJ/FBI Agreement”). On August 20, 2001, the Department of Justice and the Federal Bureau of Investigation filed a Petition to Adopt Conditions to Authorization and Licenses (“Petition to Adopt Conditions”).¹⁰⁶ The Petition to Adopt Conditions requests that the Commission condition the grant of the instant applications on compliance with the terms of the Iridium/DOJ/FBI Agreement.¹⁰⁷

37. The Iridium/DOJ/FBI Agreement provides, *inter alia*, that New Iridium shall: (i) direct its officials, agents, and employees in the United States to comply with U.S. legal process;¹⁰⁸ (ii) make certain call and subscriber data available in the United States, if New Iridium stores such data;¹⁰⁹ (iii) take responsible measures to monitor the use of facilities used in domestic telecommunications (specifically with respect to personnel holding sensitive positions), information storage and access to foreign entities;¹¹⁰ and (iv) not disclose domestic communications, transactional data, classified or sensitive information to any foreign government, agent, component or subdivision thereof without the express written consent of the Department of Justice or a court of competent jurisdiction.¹¹¹

38. In assessing the public interest, we take into account the record and afford the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues.¹¹² We recognize that, separate from the licensing process, the entities referred to as New Iridium have entered into the Iridium/DOJ/FBI Agreement, and that such agreement expressly states that these agencies will not

¹⁰⁴ *Foreign Participation Order*, 12 FCC Rcd at 23918-21.

¹⁰⁵ *Petition to Defer* at 4.

¹⁰⁶ Department of Justice and Federal Bureau of Investigation, Petition to Adopt Conditions to Authorizations and Licenses in the Matter of IRIDIUM CONSTELLATION LLC, IRIDIUM SATELLITE LLC, and IRIDIUM CARRIER SERVICES LLC; Applications Pursuant to Section 214 for Consent to assignment of Authorizations pertaining to the Operation of the IRIDIUM Mobile Satellite Services System (File Nos. SAT-ASG-20010319-00025; SES-AGC-20010319-00585, and 86; SES-AGC-20010319-00600, and 01; SAT-LOA-1997-0926-00147; ITC-AGC-2001-00319-00166; and ISP-PDR-20010319-00015) (filed August 20, 2001) (“*Petition to Adopt Conditions*”) (attaching the Iridium/DOJ/FBI Agreement).

¹⁰⁷ *Id.* at 3-4.

¹⁰⁸ *Iridium/DOJ/FBI Agreement* at Art. 2.3.

¹⁰⁹ *Id.* at Art. 2.3.

¹¹⁰ *Id.* at Art. 3.6-3.12.

¹¹¹ *Id.* at Art. 3.3-3.5.

¹¹² See *Foreign Participation Order*, 12 FCC Rcd at 23919-21.

object to grant of the pending Assignment Applications, provided that the Commission approves the agreement and conditions the grant of the Assignment Applications on compliance with it.¹¹³

39. The Iridium/DOJ/FBI Agreement contains provisions that might not be appropriate for other satellite systems or in connection with other transactions. The Commission considers agreements between the DOJ/FBI and FCC license applicants on a case-by-case basis. In this case we see no reason to modify or disturb the agreement of the parties on this matter. Therefore, in accordance with the request of the Department of Justice and the Federal Bureau of Investigation, in the absence of any objection from the Applicants,¹¹⁴ and given the discussion above, we condition our grant of the Iridium Assignment Applications on compliance with the Iridium/DOJ/FBI Agreement.

G. Public Interest Benefits

40. The Applicants contend that the proposed license assignments will yield several public interest benefits. First, they submit that allowing New Iridium to make productive use of the IRIDIUM System is itself a public interest benefit.¹¹⁵ The Applicants stress in this regard that under the terms of the bankruptcy purchase agreement New Iridium is to acquire the IRIDIUM System at a significantly reduced price, compared with the amount originally invested, and will consequently have reduced operating expenses.¹¹⁶ They maintain that the improved cost structure will allow New Iridium to offer competitive pricing.¹¹⁷

41. Second, the Applicants submit that granting the Assignment Applications will serve vital national defense needs. They report that New Iridium has entered into a contract with the Department of Defense's Defense Information Systems Agency, which permits unlimited usage on the IRIDIUM System for up to 20,000 users per month.¹¹⁸ The Applicants contend that this use of the IRIDIUM System will help to alleviate the shortage of capacity on the satellite communications system currently used by the Department of Defense.¹¹⁹ The Applicants also state that the IRIDIUM System is "particularly well-suited" to the purposes for which the Department of Defense will use its services, because it can offer fully secure communications and ubiquitous global coverage.¹²⁰

42. Third, the Applicants claim that granting the Assignment Applications will facilitate provision of telecommunication service to users in remote and underserved regions of the world. New Iridium attests that it has received unsolicited correspondence from former subscribers confirming that the IRIDIUM System has provided vital service to users in remote areas.¹²¹ New Iridium also states that it has had "favorable preliminary discussions" with officials at the World Bank, the Overseas Private Investment Corporation, and agencies of the U.S. government regarding provision of reliable and affordable IRIDIUM

¹¹³ *Petition to Adopt Conditions* at 3-4.

¹¹⁴ *Id.* at 4 ("[t]he DOJ and FBI are authorized to state that Iridium does not object to the grant of this petition.").

¹¹⁵ Assignment Application, Exhibit C, Public Interest Statement at 2.

¹¹⁶ *Id.* at 2-3.

¹¹⁷ *Id.* at 3.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 3-4.

¹²⁰ *Id.* at 4. More specifically, the Applicants contend that the IRIDIUM System is particularly well-suited for use by the Department of Defense because it can route calls via inter-satellite links to the Department's Hawaiian gateway facility from mobile handsets anywhere in the world without relying on interconnection with terrestrial facilities in foreign countries.

¹²¹ *Id.* at 5 and Attachment A.

telecommunication services in sub-Saharan Africa and other underserved regions.¹²² New Iridium maintains that the availability of such services in those regions will facilitate economic assistance and humanitarian efforts.¹²³

43. Finally, the Applicants assert that granting the Assignment Applications will allow New Iridium to facilitate valuable scientific research.¹²⁴ The Applicants maintain that scientists are able to study electric currents in space using the IRIDIUM System, and that magnetic field data obtained from the use of the IRIDIUM satellites allow scientists to study the effects of solar wind on radio signals, power grids and satellites.¹²⁵

44. We agree that continued provision of IRIDIUM service to the Department of Defense will serve the public interest. We also agree that provision of IRIDIUM services at competitive rates, continued provision of IRIDIUM voice service to users in remote and underserved regions, and further use of the IRIDIUM System for gathering scientific data will serve the public interest. By enabling the Applicants to consummate the court-approved IRIDIUM bankruptcy sale for the benefit of creditors, moreover, granting the Assignment Applications will serve the public interest by furthering the equitable purposes of the Federal Bankruptcy Act.¹²⁶ Accordingly, we conclude that granting the Assignment Applications will yield substantial public interest benefits.

H. Scope of Authorization

45. As noted previously, Iridium Satellite and Iridium Constellation, the proposed recipients of the Gateway Earth Station License, the Space Station License, and the TT&C Earth Station Licenses, propose to serve resellers rather than end users. The Applicants contend that such operation would not constitute provision of commercial mobile radio service (“CMRS”) because it would not involve provision of service directly to the public.¹²⁷ They similarly maintain that Iridium Satellite’s proposed provision of handsets under a 50,000-unit Handset Earth Station License for users obtaining service through a gateway facility controlled by DoD would not involve provision of CMRS. The Applicants accordingly request that the licenses to be held by Iridium Satellite and Iridium Constellation be assigned as “non common carrier” authorizations – *i.e.*, as excluding authority for provision of CMRS. They request, however, that the 150,000-unit handset license to be assigned to Iridium Carrier Services include authority for that company to offer service directly to end users pursuant to common carrier regulation “in any market segment not properly served” by Iridium resellers.¹²⁸ As the Applicants have not requested authority for Iridium Satellite

¹²² *Id.* at 5-6.

¹²³ *Id.* at 6.

¹²⁴ *Id.* at 6-7.

¹²⁵ *Id.*

¹²⁶ We note in this regard the Bankruptcy Court’s findings that “consummation of the [IRIDIUM Asset Purchase] Agreement presents the best opportunity to realize the value of the Iridium Assets and avoid further decline and devaluation thereof” and that the Agreement “presents the best opportunity for the Debtors’ estates to realize the highest distribution possible to creditors.” *In re Iridium Operating LLC et al.*, *supra*, at ¶12.

¹²⁷ Section 332(d)(1) of the Communications Act, 47 U.S.C. § 332(d)(1), defines CMRS as any mobile radiocommunication service that affords interconnection with the public switched network and is provided for profit to the public at large or classes of eligible users comprising a substantial portion of the public. Section 332(c) states that CMRS “shall ... be treated as common carri[age] for purposes of this Act” and that “private mobile service” – *i.e.*, any mobile radio service other than CMRS or a functional equivalent thereof – shall *not* be treated as common carriage. 47 U.S.C. § 332(c)(1) and (2). Section 332(c)(5) grants discretion to the Commission, however, to determine the regulatory status of provision of “space segment capacity” to providers of CMRS. *See also* 47 U.S.C. § 153(44).

¹²⁸ *Space Station Application*, Exhibit A, p.9.

or Iridium Constellation to offer CMRS, the licenses to be assigned to those companies pursuant to this order shall not include such authority.

I. Other Issues

46. **Orbital Debris and Reentry Risk Showing.** In its application, New Iridium submitted a showing concerning orbital debris mitigation for its Big LEO system. New Iridium includes with its showing copies of the procedures developed for satellites at the end of their useful lives. The procedures provide for notifications to and, as necessary, coordination with U.S. Government agencies concerning end-of-life procedures. New Iridium's submission also outlines the procedures used as part of this process to deplete all sources of stored energy on board the Iridium satellites, and other methods of addressing the criteria for orbital debris mitigation outlined in NASA Safety Standard 1740.14.¹²⁹ New Iridium also submitted as an exhibit to its application a study prepared by the National Aeronautics and Space Administration, addressing technical aspects of disposing of Iridium Big LEO satellites.

47. The Iridium Big LEO constellation was designed from the outset to mitigate orbital debris by removing spacecraft from orbit at the end of their useful lives.¹³⁰ The showing indicates that, as each satellite reaches the end of its useful life, it will be lowered through a series of maneuvers to an orbit with a perigee of approximately 250 kilometers. During the orbit-lowering maneuvers, New Iridium will coordinate with United States Space Command, and, if notified by Space Command of a potential close approach to other spacecraft, will take any necessary actions, including modifying its maneuver schedule. According to New Iridium's application, after the spacecraft reaches an orbit with a 250 kilometer perigee, all stored energy sources on board the satellite will be discharged, by venting any excess propellant, discharging batteries, etc. At that point, the spacecraft will no longer be controlled from the Earth. The natural force of drag from the upper reaches of the Earth's atmosphere will gradually lower the spacecraft's orbit. The spacecraft will reenter the Earth's atmosphere within a few months. The NASA study concluded that much of the material in the spacecraft will burn up as the spacecraft reenters the Earth's atmosphere, but some portions of the spacecraft would likely survive reentry. The study estimated a 1 in 18,406 chance of a human casualty from the re-entry of an individual Iridium space vehicle. This casualty risk is consistent with NASA and U.S. Government guidelines.¹³¹

48. Iridium Satellite LLC has secured an insurance policy that provides two forms of coverage. One form of coverage, with a term of three years, relates to the operation and maintenance of the system, including the planned de-orbiting of up to eight space vehicles per year. The second form of coverage, which has an 18-month term once triggered, covers activities related to any planned de-orbiting of the entire constellation. The United States, the People's Republic of China, the Republic of Kazakhstan, and the Russian Federation are listed as additional insured parties on the policy.

49. Taken together, the materials submitted present a reasonable approach for end-of-life disposal of the Iridium Big LEO spacecraft, based on the current state of the art in debris mitigation. The risks associated with the plan are within the acceptable range defined by the U.S. Government Orbital Debris Mitigation Standard Practices. The amount of mass reentering the earth's atmosphere as a result of Iridium operations is only a small fraction of the total mass of debris normally entering the earth's atmosphere each year. Suitable insurance arrangements are in place. Spacecraft de-orbiting has been and will be coordinated with U.S. Space Command and other appropriate government agencies. Accordingly, this Order includes

¹²⁹ *NASA Safety Standard 1740.14*, available at <http://sn-callisto.jsc.nasa.gov/mitigate/mitigation.html>.

¹³⁰ Robert E. Penny, Jr., "Iridium Debris Mitigation Practices" *Proceedings of the First European Conference on Space Debris* (Darmstadt, Germany, 5-7 April 1993).

¹³¹ See *NASA Safety Standard 1740.14*, *supra*, and *U.S. Government Orbital Debris Mitigation Standard Practices*, both available at <http://sn-callisto.jsc.nasa.gov/mitigate/mitigation.html>.

authorization, consistent with the procedures outlined in New Iridium's application, for de-orbiting of Iridium Big LEO satellites.¹³² We are conditioning this authority, however, on New Iridium submitting 75 days advanced notice of any planned de-orbiting of the entire constellation. Such notice shall be in the form of a letter to the FCC Secretary with copies to the Chief, International Bureau. In addition, in connection with de-orbiting of individual satellites as a part of routine operations, New Iridium will be required to provide notice within 30 days after any individual satellite is removed from its operational orbit for the purpose of end-of-life disposal.¹³³

50. **2 GHz License.** In July, 2001 the International Bureau granted a license for a 2 GHz MSS system to Iridium LLC, the Debtor-in-Possession in the Iridium bankruptcy proceeding.¹³⁴ Iridium LLC subsequently applied for permission to assign the 2 GHz license to Iridium Constellation.¹³⁵ In a supplemental filing, counsel for both applicants stated that the parties to the IRIDIUM Asset Purchase Agreement approved by the bankruptcy court intended that all assets pertaining to the IRIDIUM 2 GHz system would be assigned to Iridium Constellation in conjunction with the assignment of the Iridium Big LEO licenses.¹³⁶ Thus, according to counsel, no separate consideration was paid for assignment of the 2 GHz interest, apart from the payment specified in the IRIDIUM Asset Purchase Agreement approved by the Bankruptcy Court. The Applicants therefore maintain that the proposed assignment of the 2 GHz license would not violate the "anti-trafficking" restriction in the Commission's rules that prohibits sale of a "bare" 2 GHz license for profit.¹³⁷

51. The "anti-trafficking" rule was adopted to deter speculators from filing license applications in order to profit from selling licenses for unbuilt facilities. We agree with the Applicants that the rule does not bar assignment of the Iridium 2 GHz license pursuant to a bankruptcy sale for the benefit of creditors.¹³⁸ As it appears that the agreement to assign the 2 GHz license is an integral aspect of the bankruptcy sale, we conclude that the public-interest considerations on which we base our approval for assignment of the other Iridium licenses pursuant to that agreement also support grant of the 2 GHz assignment application.¹³⁹

¹³² This authorization does not address nor is it intended to alter any liability of Iridium, Motorola, or any other private company in connection with the commissioning, operation, and decommissioning of the Iridium satellite system.

¹³³ Removal of the satellite from orbit occurs at the beginning of deboost operations. *See Iridium Application, Exhibit E, Attachment 2, Page 3, Item 6.2.2.* The satellite end of life procedures also contemplate periodic review and revision based on experience gained by Iridium. This approach is reasonable. However, Iridium must report in the event there are substantial and material changes to the satellite end of life procedures, and seek a license modification if required under the Commission's rules. *See* 47 C.F.R. § 25.117.

¹³⁴ *Application of Iridium LLC*, DA 01-1636 (rel. July 17, 2001).

¹³⁵ *See* Public Notice No. SAT-00086 (Sept. 28, 2001).

¹³⁶ Letter from Jeffrey H. Olson, Counsel for Iridium LLC and Iridium Constellation LLC, to Magalie Roman Salas, Secretary, Federal Communications Commission, October 25, 2001.

¹³⁷ 47 C.F.R. § 25.143(g). *See also Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band* (Report and Order), 15 FCC Rcd 16127 (2000) at ¶128.

¹³⁸ All of the proceeds of the bankruptcy sale will go to reimburse creditors. Under the Asset Purchase Agreement, \$25 million is to be paid for all the IRIDIUM assets. Iridium LLC's net liability to creditors is approximately \$813 million, according to an attested schedule filed in the bankruptcy proceeding. *See* attachment to letter from Jeffrey H. Olson, Attorney for Iridium LLC, to Magalie Roman Salas, Secretary, Federal Communications Commission, January 7, 2002.

¹³⁹ The restrictions on foreign ownership in Section 310(b) have no bearing on the application for consent to assign the 2 GHz license, which does not grant authority for common-carrier, broadcast, or aeronautical operation. *Application of Iridium LLC, supra*, at ¶6.

52. **AMS(R)S Application.** In Exhibit G to the Space Station Application, New Iridium requested a ruling regarding procedural consequences of amending a pending Motorola application for authority to provide Aeronautical Mobile-Satellite Route Service (“AMS(R)S”) via the IRIDIUM System. New Iridium asked us to rule that amending that application to designate Iridium Satellite as the party in interest would not trigger the public notice requirement in Section 25.151 of the Commission’s rules. New Iridium also requested that the AMS(R)S application be granted simultaneously with the Assignment Applications, but subsequently withdrew that request.¹⁴⁰

53. We are not prepared at this time to dispose of the AMS(R)S application. We agree with the Applicants, however, that an amendment of that application in accordance with the Commission’s rules to reflect the transaction we are approving here would not trigger the public notice requirement in Section 25.151, because it would not be a “major amendment,” as defined in Section 25.116 of the rules.¹⁴¹

54. **USGPS Petition for Reconsideration** The U.S. GPS Industry Council (“USGPS”) filed a petition for reconsideration of the summary grant, in 1998, of an application for permission to assign the blanket license for Iridium handsets from a subsidiary of Motorola, Inc. to another corporation in which Motorola held a controlling interest.¹⁴² USGPS argued that deployment of Iridium handsets should be halted pending adoption of new rules to protect reception of GPS signals from out-of-band emissions from MSS mobile terminals. In requesting such relief, USGPS was, in effect, requesting reconsideration of the order that had originally granted the blanket license, released in 1996.¹⁴³ Although USGPS had not previously raised any objection to the original license application or the application for assignment, it did not contend that it had been unable to do so. We therefore dismiss the petition as untimely and for failure to show good reason for prior non-participation, as required by Section 1.106 of the Commission’s rules.¹⁴⁴

III. CONCLUSION

55. We have found that the proposed license assignments would be consistent with statutory restrictions on foreign ownership and related Commission policies, that those transactions would not harm competition or compromise national security, and that New Iridium has submitted a satisfactory showing with regard to orbital debris and reentry risk. We agree with the Applicants, moreover, that the proposed assignments would afford important public-interest benefits, by facilitating continued operation of the IRIDIUM System for provision of valuable services at competitive prices to the Department of Defense and other users and by furthering the equitable purposes of the Bankruptcy Act. We therefore conclude that granting the Assignment Applications (conditioned on compliance with the Iridium/DOJ/FBI agreement) will serve the public interest, convenience, and necessity, consistent with Section 310(d) of the Communications Act.

IV. ORDERING CLAUSES

¹⁴⁰ Letter from Thomas P. Van Wazer, counsel for Iridium Constellation LLC, to Magalie Roman Salas, Secretary, Federal Communications Commission, August 17, 2001.

¹⁴¹ See 47 C.F.R. § 25.116(a)(3).

¹⁴² File No. 1044-DSE-AL-98, granted July 31, 1998.

¹⁴³ *U.S. Leo Services, Inc.* (Order and Authorization), 11 FCC Rcd 20474 (Int’l Bur. 1996). The Bureau issued the license subject to a condition requiring compliance with whatever emission limits the Commission might later adopt for protection of aeronautical radionavigation but did not preclude operation in the interim.

¹⁴⁴ 47 U.S.C. § 1.106. Paragraph (b)(1) of Section 1.106 requires a petitioner for reconsideration who is not a party to the proceeding to show good reason why he could not have participated earlier. Paragraph (f) of the same section requires a petition for reconsideration of a non-rulemaking order to be filed within 30 days of the order’s release.

56. Accordingly, IT IS ORDERED, 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), and pursuant to authority delegated in Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, that the applications for authority to assign licenses and authorizations held by the Motorola Licensees to the New Iridium companies ARE GRANTED to the extent specified in this Order and Authorization, subject to the conditions prescribed in Paragraphs 28, 29, and 49, above, and with the limitation noted in Paragraph 45.

57. IT IS FURTHER ORDERED, pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4), that Iridium Carrier Services is authorized to accept indirect foreign ownership in excess of the 25 percent benchmark in Section 310(b)(4) of the Act to the extent specified in Paragraph 29 of this Order and Authorization and subject to the condition specified in Paragraph 28 herein.

58. IT IS FURTHER ORDERED, 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, 310(b) and (d), that the Petition to Adopt Conditions to Authorizations and Licenses filed by the Department of Justice and the Federal Bureau of Investigation on August 20, 2001, IS GRANTED, and that the licenses and related authorizations which are to be assigned as a result of this Order are subject to compliance with the provisions of the Agreement between Iridium Holdings LLC, Iridium Carrier Holdings LLC, Iridium Carrier Services LLC, and Iridium Satellite LLC, on the one hand, and the Department of Justice and the Federal Bureau of Investigation, on the other, dated August 17, 2001 and attached hereto as Appendix A, which Agreement is designed to address national security, law enforcement, and public safety concerns of the Department of Justice and the Federal Bureau of Investigation regarding the authority granted herein. Nothing in the Agreement is intended to limit any obligation imposed by Federal law or regulation, including, but not limited to, 47 U.S.C. §§ 222(a) and (c)(1) and the Commission's implementing regulations.

59. IT IS FURTHER ORDERED that the request of Iridium Satellite LLC for declaratory ruling regarding the effect of an ownership amendment on the processing status of the "MACROCELL" 2 GHz application IS DISMISSED AS MOOT and that the same party's request for a declaratory ruling concerning procedural consequences of amending the pending application to add AMS(R)S authority to the IRIDIUM System space-station license IS GRANTED.

60. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by the U.S. GPS Industry Council on August 31, 1998 IS DISMISSED.

61. IT IS FURTHER ORDERED that pursuant to Section 1.65 of the Commission's Rules, 47 C.F.R. § 1.65, Iridium Satellite LLC and Iridium LLC are afforded thirty days from the date of release of this Order and Authorization to amend pending applications to reflect the new ownership approved in this Order and Authorization.

62. IT IS FURTHER ORDERED that this Order and Authorization shall be effective upon release. Petitions for reconsideration of this action under Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the release date.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau

Appendix A

AGREEMENT

This AGREEMENT is effective as of the date of the last signature affixed hereto by and between Iridium Holdings LLC, Indium Satellite LLC ("ISLLC"), Indium Carrier Holdings LLC, and Iridium Carrier Services, LLC, collectively referred to as "Iridium", the U.S. Department of Justice ("DOJ"), and the Federal Bureau of Investigation ("FBI") (collectively with all other parties hereto, "the Parties").

RECITALS

WHEREAS, the U.S. communications system is essential to U.S. national security, law enforcement, and public safety;

WHEREAS, the U.S. Government considers it critical to maintain the viability, integrity, and security of that system;

WHEREAS, protection of Classified, Controlled Unclassified, and Sensitive Information is critical to U.S. national security;

WHEREAS, Iridium operates a celestial based commercial satellite communication system that provides customers mobile telephone and other services;

WHEREAS, ISLLC acquired the assets of the bankrupt Iridium LLC satellite communications system, which operated under FCC licenses held by Motorola, Inc., its subsidiaries or affiliates;

WHEREAS, Iridium has filed applications seeking FCC consent to assign various Iridium Mobile Satellite Service system licenses and authorizations from subsidiaries or affiliates of Motorola, Inc. to various Iridium entities;

WHEREAS, said applications include a proposal to transfer one space segment license and two telemetry, tracking and control earth stations to Iridium Constellation LLC, a wholly owned subsidiary of Iridium Satellite LLC; a transfer of a commercial gateway earth station to Iridium Satellite LLC; an application to assign international Section 214 authority to Iridium Carrier Services LLC, a wholly owned subsidiary of Iridium Carrier Holdings LLC; and a blanket handset earth station license to be split between Iridium Carrier Services LLC and Iridium Satellite LLC;

WHEREAS, foreign Corporations owned or controlled by citizens of Australia, Brazil, and Saudi Arabia hold equity interests in Iridium, some of which interests exceed 25%;

WHEREAS, such non-U.S. citizen owners of Iridium have invested in Iridium in their private capacities and no foreign government has any ownership interest in Iridium;

NOW THEREFORE, the Parties are entering into this Agreement to address the DOJ's and FBI's national security, law enforcement and public safety concerns.

ARTICLE I: DEFINITION OF TERMS

As used in this Agreement:

1.1 "Affiliate" means any entity that Indium Controls.

1.2 "Call-Associated Data," or "CAD," means any information related to a Domestic Communication or related to the sender or recipient of that Domestic Communication and, to the extent maintained by Iridium in the normal course of business, includes without limitation subscriber identification, called party number, calling party number, start time, end time, call duration, feature

invocation and deactivation, feature interaction, registration information, user location, diverted to number, conference party numbers, dual tone multifrequency (dial digit extraction), in-band and out-of-band signaling, and party add, drop and hold.

1.3 "Classified Information" means any information that has been determined pursuant to Executive Order 12958, or any predecessor or successor order, or the Atomic Energy Act of 1954, or any statute that succeeds or amends the Atomic Energy Act. to require protection against unauthorized disclosure.

1.4 "Control" and "Controls" means the power, direct or indirect, whether or not exercised, and whether or not exercised or exercisable through the ownership of a majority or a dominant minority of the total outstanding voting securities of an entity, or by proxy voting, contractual arrangements, or other means, to determine, direct, or decide matter¹. affecting an entity; in particular, but without limitation, to determine, direct, take, reach or cause decisions regarding:

- (a) The sale, lease, mortgage, pledge, or other transfer of any or all of the principal assets of the entity, whether or not in the ordinary course of business;
- (b) The dissolution of the entity;
- (c) The closing and/or relocation of the production or research and development facilities of the entity;
- (d) The termination or non-fulfillment of contracts of the entity;
- (e) The amendment of the articles of incorporation or constituent agreement of the entity with respect to the matters described in paragraphs (i) through (iv) above; or
- (f) The matters covered by this Agreement.

1.5 "Controlled Unclassified Information" means unclassified information the export of which is controlled by the International Traffic in Arms Regulations (ITAR), 22 C.F.R, Chapter I, Subchapter M, or the Export Administration Regulations (EAR), 15 C.F.R., Chapter VII, Subchapter C.

1.6 "De Facto" and "de jure" control have the meanings provided in 47 CFR §1.2110.

1.7 "Domestic Communications" means (i) Wire Communications or Electronic Communications (whether stored or not) originating at one U.S. location and terminating at another U.S. location and (ii) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the U.S.

1.8 "Domestic Communications Infrastructure" means (a) transmission and switching equipment (including software and upgrades) used to provide, process, direct, control, supervise or manage Domestic Communications, (b) facilities and equipment that are physically located in the United States, and (c) facilities located in the U.S. used to control the equipment described in (a) and (b) above.

1.9 "Electronic Communication" has the meaning given it in 18 U.S.C. §2510(12).

1.10 "Electronic Surveillance" means (i) the interception of wire, oral, or electronic communications as defined in 18 U.S.C. §§2510(1), (2), (4) and (12), respectively, and electronic surveillance as defined

in 50 U.S.C. §1801(f); (ii) access to stored wire or electronic communications, as referred to in 18 U.S.C. §2701 et seq.; (iii) acquisition of dialing or signaling information through pen register or trap and trace devices or other devices or features capable of acquiring such information pursuant to law as defined in 18 U.S.C. §3121 et seq. and 50 U.S.C. §1841 et seq.; (iv) acquisition of location-related information concerning a subscriber whose call is serviced through Indium's U.S. gateway; (v) preservation of any of the above information pursuant to 18 U.S.C. §2703(f); and (vi) access to, or acquisition or interception of, Domestic Communications or information as described in (i) through (v) above and comparable State law.

1.11 "Foreign" where used in this Agreement, whether capitalized or lower case, means non-U.S.

1.12 "Homed on the U.S. Gateway" means that an Indium phone has been registered for the U.S. Gateway to handle call set up for that Indium phone. In addition to the U.S. Gateway, Indium utilizes Gateways in other locations to which an Indium phone may be registered. Regardless of the Gateway to which an Indium phone is registered, the Gateway that services a particular communication will be determined by the physical location of the Iridium phone at the time of the communication.

1.13 "Intercept" or "Intercepted" has the meaning defined in 18 U.S.C. §2501(4).

1.14 "Lawful U.S. Process" means U.S. federal, state or local Electronic Surveillance orders or authorizations, and other orders, legal process, statutory authorizations, and certifications for access to or disclosure of Domestic Communications, and Call Associated Data, Transactional Data or Subscriber Information, authorized by U.S. federal, state or local law.

1.15 "Parties" has the meaning given it in the Preamble.

1.16 "Pro Forma assignments or pro forma transfers of control" are transfers or assignments that do not "involve a substantial change in ownership or control" of the licenses as provided in 47 U.S.C. §309(c)(2)(B).

1.17 "Sensitive Information" means unclassified information regarding (i) the persons or facilities that are the subjects of Lawful U.S. Process, (ii) the identity of the government agency or agencies serving such Lawful U.S. Process, (iii) the location or identity of the line, circuit, transmission path, or other facilities or equipment used to conduct Electronic Surveillance, (iv) the means of carrying out Electronic Surveillance, (v) the type(s) of service, telephone number(s), records, communications, or facilities subjected to Lawful U.S. Process, and (vi) other unclassified information designated in writing by an authorized official of a federal, state or local law enforcement agency or a U.S. intelligence agency as "Sensitive Information."

1.18 "Subscriber Information" means information of the type referred to and accessible subject to procedures specified in 18 U.S.C. §2703(c) or (d) or 18 U.S.C. §2709. Such information shall also be considered Subscriber Information when it is sought pursuant to the provisions of other Lawful U.S. Process.

1.19 "Transactional Data" means:

- (a) "Call-identifying information," as defined in 47 U.S.C. §1001(2), including without limitation the telephone number or similar identifying designator associated with a communication;
- (b) Internet address or similar identifying designator associated with a Domestic Communication;
- (c) The time, date, size, and duration of a Domestic Communication;
- (d) Any information possessed by Indium relating to identity and physical address of a subscriber, user, or account payer of a providers Domestic Communications services;
- (e) To the extent associated with such subscriber, user, or account payer, any information possessed

by Iridium relating to all telephone numbers, Internet addresses, or similar identifying designators; the physical location of equipment, if known and if different from the location information provided under (f) below; types of services; length of service; fees; and usage, including billing records; and

- (f) As to any mode of transmission (including without limitation mobile transmissions), and to the extent permitted by U.S. laws, any information indicating as closely as possible the physical location to or from which a communication is transmitted.

The term does not include the content of any communication

1.20 "United States" means the United States of America including all of its States, districts, territories, possessions, commonwealths, and the special maritime and territorial jurisdiction of the United States.

1.21 "U.S. Gateway" refers to the Iridium Gateway located in Tempe, Arizona, or any other Gateway operated by Iridium in the U.S., other than the DOD Gateway, which services communications to or from Iridium phones located in the United States.

1.22 "Wire Communication" has the meaning given it in 18 U.S.C. §2510(1).

1.23 Other capitalized terms used in this Agreement and not defined in this Article shall have the meanings assigned them elsewhere in this Agreement. The definitions in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Whenever the words "include," "includes," or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

ARTICLE II: INFORMATION STORAGE AND ACCESS

2.1 Except to the extent and under conditions concurred in by the FBI and the DOJ in writing:

- (a) Except for strictly bona fide commercial reasons, all Domestic Communications Infrastructure that is owned, operated or controlled by Iridium shall at all times be located in the United States and will be directed, controlled, supervised and managed in the United States by Iridium; and
- (b) All Domestic Communications except for communications handled by the DOD Gateway shall pass through a facility under the control of Iridium and physically located in the U.S., from which Electronic Surveillance may be conducted. Iridium will provide technical or other assistance to facilitate such Electronic Surveillance.

Except for Iridium phones registered to the DOD Gateway, all communications to or from an Iridium phone which is capable of functioning in the United States and which is physically located in the United States at the time of the communication will be serviced by the U.S. Gateway. In the future, one or more self-contained overseas regional systems may be established that will utilize Iridium phones that will not be capable of functioning in the United States. Such local regional system Iridium phones that are not capable of functioning in the U.S. are not covered by this agreement.

2.3 Indium shall take all practicable steps to ensure that at all times its network is configured such that Indium will be capable of complying in an effective, efficient, and unimpeded fashion, and that Iridium officials, agents and employees in the United States will have unconstrained authority to comply with:

- (a) Lawful U.S. Process;

- (b) The orders of the President in exercise of his/her authority under § 706 of the Communications Act of 1934, as amended, (47 U.S.C. § 606), § 302(e) of the Aviation Act of 1958 (49 U.S.C. §40107(b)) and Executive Order 11161 (as amended by Executive Order 11382); and
- (c) National Security and Emergency Preparedness rules, regulations and orders issued pursuant to the Communications Act of 1934, as amended (47 U.S.C. § 151 *et seq.*).

2.4 Iridium shall make available in the United States:

- (a) Stored Domestic Communications if such communications are stored by Iridium or by a contractor engaged to store such communications on its behalf for any reason;
- (b) Any Wire Communications or Electronic Communications (including any other type of wire, voice or electronic communications not covered by the definitions of Wire Communication or Electronic Communication) received by, intended to be received by, or stored in the account of Iridium customers or subscribers whose phones are Homed on the U.S. Gateway, as well as any communication serviced by the U.S. Gateway, if such communications are stored by Iridium or by a contractor engaged to store such communications on its behalf for any reason;
- (c) Transactional Data and Call-Associated Data relating to Domestic Communications, if such information is stored by Iridium or by a contractor engaged to store such communications on its behalf for any reason;
- (d) Subscriber Information concerning Iridium customers and subscribers whose phones are Homed on the U.S. Gateway, who are U.S. domiciled, or who hold themselves out as being U.S. domiciled, as well as Subscriber Information related to any phones serviced by the U.S. Gateway, if such information is stored by Iridium or by a contractor engaged to store such information on its behalf for any reason;

and

- (e) Billing Records relating to Iridium customers and subscribers whose phones are Homed on the U.S. gateway, who are U.S. domiciled or who hold themselves out as being U.S. domiciled, as well as any communication serviced by the U.S. Gateway, for so long as such records are kept, and at a minimum, for so long as such records are required to be kept pursuant to applicable law or this Agreement.

2.5 Iridium shall not store the data and communications described in Sections 2.4(a)-(e) above outside of the United States unless such storage is based strictly on bona fide commercial considerations. Iridium shall ensure that data and communications described in section 2.4(a)-(e) of this agreement are stored in a manner not subject to mandatory destruction under any foreign laws, if such data and communications are stored for any reason.

2.6 Iridium shall store for at least two years all billing records described in section 2.4(e) above and shall make such records available in the United States.

2.7 Upon a request made pursuant to 18 U.S.C § 2703(f) by a governmental entity within the United States to preserve any information in the possession or custody of Iridium described in 2.4(a) - (e) above, Iridium shall store such preserved records or other evidence in the United States.

2.8 Nothing in this Agreement shall excuse Iridium from any obligation it may have to comply with U.S. legal requirements for the retention, preservation or production of information, records or data.

2.9 Domestic Communications shall not be routed outside the U.S. except strictly for bona fide

commercial reasons.

2.10 Iridium shall comply with all applicable FCC rules and regulations governing access to and storage of Customer Proprietary Network Information ("CPNI"), as defined in 47 U.S.C. §222(h)(l).

ARTICLE III: SECURITY

3.1 Iridium shall maintain a security office within the United States.

3.2 Iridium shall take all reasonable measures to prevent the use of or access to Domestic Communications Infrastructure to conduct Electronic Surveillance in violation of any U.S. federal, state, or local law or the terms of this agreement. These measures shall take the form of detailed technical organizational, personnel-related policies and written procedures, and necessary implementation plans and physical security measures.

3.3 Iridium shall not directly or indirectly disclose or provide access to Domestic Communications, and/or Call Associated Data, Transactional Data, or Subscriber Information stored in the United States to any person if the purpose of such access is to respond to the legal process or the request of or on behalf of a foreign government, identified representative, component or subdivision thereof without the express written consent of the DOJ or the authorization of a court of competent jurisdiction in the United States. Any such requests or submissions of legal process for access to U.S. Domestic Communications shall be reported to the DOJ as soon as possible and in no event later than five business days after such request. Iridium shall take reasonable measures to ensure that it will learn of all such requests or submission of legal process.

3.4 Indium shall not, directly or indirectly, disclose or permit disclosure of, or provide access to:

- (a) Classified or Sensitive Information, or
- (b) Domestic Communications, and/or Call Associated Data, Transactional Data Subscriber Information, or a copy of any wire communications or electronic communications intercepted or acquired pursuant to Lawful U.S. process, to any person without satisfying all applicable U.S. federal, state and local legal requirements, and obtaining the express written consent of the DOJ or the authorization of a court of competent jurisdiction in the United States. Any requests or any legal process submitted by a foreign government, agent, component or subdivision thereof to Indium for the communications, data or information identified in this Section that is maintained by Indium shall be referred to the DOJ as soon as possible and in no event later than five business days after such request unless the disclosure of the request or legal process would be in violation of an order of a court of competent jurisdiction within the United States. Iridium shall take reasonable measures to ensure that it will learn of all such requests or submission of legal process described in this section.

3.5 Iridium shall notify DOJ in writing within 90 days of receipt of legal process or request by foreign non-governmental entities for access to or disclosure of Domestic Communications, unless the disclosure of the legal process or requests would be in violation of an order of a court of competent jurisdiction within the United States.

3.6 Within 15 days of the execution of this Agreement, Iridium shall designate points of contact within the United States with the authority and responsibility for accepting and overseeing the carrying out of Lawful U.S. Process. The points of contact shall be assigned to a Iridium office in the U.S., will be available 24 hours per day, 7 days per week and shall be responsible for accepting service and maintaining the security of Classified Information and any Lawful U.S. Process for Electronic

Surveillance in accordance with the requirements of U.S. law. Iridium shall immediately notify in writing the DOJ and the FBI of the identity and contact information for each point of contact, as well as immediately notify in writing the DOJ and the FBI of any change in such designation or contact information. The points of contact shall be U.S. citizens who are eligible for appropriate U.S. security clearances. Iridium shall comply with any request by a government entity within the U.S. that a background check and/or security clearance process be completed for a designated point of contact.

3.7 Iridium shall protect the confidentiality and security of all Lawful U.S. Process served upon it and the confidentiality and security of Classified Information and Sensitive Information in accordance with U.S. Federal and state law or regulation.

3.8 Indium shall, within security office(s) within the United States:

- (a) Take appropriate measures to prevent unauthorized access to data or facilities that might contain Classified Information or Sensitive Information;
- (b) Assign U.S. citizens who meet high standards of trustworthiness for maintaining the confidentiality of Sensitive Information to positions that handle or regularly deal with information identifiable to such person as Sensitive Information;
- (c) Upon written request from the DOJ or the FBI, provide the name, social security number and date of birth of each person who handles or regularly deals with Sensitive Information;
- (d) Require that personnel handling Classified Information shall be eligible for and shall have been granted appropriate U.S. security clearances;
- (e) Provide that the points of contact described in Section 3.6 shall have sufficient authority over any of Indium's employees who may handle Classified Information or Sensitive Information to maintain the confidentiality and security of such information in accordance with applicable U.S. legal authorities and the terms of this Agreement; and
- (f) Maintain appropriately secure facilities (e.g., offices) for the handling and storage of any Classified Information and Sensitive Information.

3.9 In response to reasonable requests made by the FBI or the DOJ, Indium shall provide access to information concerning technical, physical, management, or other security measures and other information needed by the FBI or the DOJ to assess compliance with this Agreement.

3.10 The FBI and the DOJ may visit any communications facility of Indium in the United States and may inspect any part of the Domestic Communications Infrastructure for the purpose of verifying compliance with the terms of this Agreement. Such inspections shall be reasonable in number and be conducted during normal business hours upon reasonable notice, which shall ordinarily be no less than 24 hours in advance of the visit.

3.11 Upon reasonable notice from the FBI or the DOJ, Iridium shall make available for interview any officers or employees of Iridium, and will seek to require contractors to make available appropriate personnel, located in the United States, who are in a position to provide information to verify compliance with the terms of this Agreement.

3.12 Iridium shall instruct its appropriate officers, employees, contractors and agents as to Indium's obligations under this Agreement and their duty to report any violation of this Agreement of which they become aware, and shall issue periodic reminders to them of such obligations.

3.13 If Indium contracts out its functions covered by this Agreement to a third party, Indium shall take reasonable steps to ensure that third parties comply with the applicable terms of this Agreement.

**ARTICLE IV: DISPUTES AND NON-IMPACT ON OTHER
GOVERNMENT ACTIONS**

4.1 Nothing contained in this Agreement shall limit or affect the authority of a United States Government agency to deny, limit or revoke access by Iridium or any of its officers, employees, contractors or agents to Classified, Controlled Unclassified, and Sensitive Information under its jurisdiction.

4.2 The Parties shall use their best efforts to resolve any disagreements that may arise under this Agreement. Disagreements shall be addressed, in the first instance, at the staff level by the Parties' designated representatives. Any disagreement that has not been resolved at that level, shall be submitted promptly to higher authorized officials, unless the DOJ or the FBI believes that important national interests can be protected, or Iridium believes that paramount commercial interests can be resolved, only by resorting to the measures set forth in Section 4.3 below. If, after meeting with higher authorized officials, either party determines that further negotiation would be fruitless, then either party may resort to the remedies set forth in Section 4.3 below. If resolution of a disagreement requires access to Classified Information, the Parties shall designate a person possessing the appropriate security clearances for the purpose of resolving that disagreement.

4.3 Subject to section 4.2 of this Agreement, if any Party believes that any other Party has breached or is about to breach this Agreement, that Party may bring an action against the other Party for appropriate judicial relief. Nothing in this Agreement shall limit or affect the right of a U.S. Government agency to seek revocation by the FCC of any license, permit or other authorization granted or given by the FCC to Iridium or to seek any other action by the FCC regarding Iridium.

4.4 The availability of any civil remedy under this Agreement shall not prejudice the exercise of any other civil remedy under this Agreement or under any provision of law, nor shall any action taken by a Party in the exercise of any remedy be considered a waiver by that Party of any other rights or remedies. The failure of the DOJ or the FBI to insist on strict performance of any of the provisions of this Agreement, or to exercise any right they grant, shall not be construed as a relinquishment or future waiver. Rather, the provision or right shall continue in full force. No waiver by the DOJ or the FBI of any provision or right shall be valid unless it is in writing and signed by the DOJ or the FBI.

4.5 It is agreed by and between the Parties that a civil action for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement shall be brought, if at all, in the United States District Court for the District of Columbia.

4.6 Indium agrees that if for any reason it fails to perform any of its respective obligations under this Agreement, irreparable injury to the United States would be caused as to which money damages would not be an adequate remedy. Accordingly, Indium agrees that, in seeking to require Indium to fulfill its obligations under this Agreement, the FBI and the DOJ shall be entitled, in addition to any other remedy available at law or equity, to specific performance and injunctive or other equitable relief.

- 4.7 Nothing in this Agreement shall limit or affect the right of a U.S. government agency to:
- a. seek civil sanctions for any violation by Iridium of any U.S. law or regulation or term of this Agreement, or
 - b. pursue criminal sanctions against Iridium, or any director, officer, employee, representative, or agent of Iridium, or against any other person or entity, for

violations of the criminal laws of the United States.

ARTICLE V: OTHER REPRESENTATIONS AND OBLIGATIONS OF THE PARTIES

5.1 Iridium represents that, to the best of its knowledge, it has and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform its obligations hereunder and that this Agreement is a legal, valid, and binding obligation of Iridium enforceable in accordance with its terms.

5.2 Iridium shall provide to the DOJ and FBI written notice and copies of any applications or petitions relating to the Control of Iridium filed with the FCC or any other governmental agency concurrently with such filing.

5.3 Iridium shall provide to the DOJ and FBI 30 days advance written notice if Iridium plans to provide, direct, control, supervise or manage Domestic Communications through any facilities located outside the United States. Such notice shall, at a minimum, (a) include a description of the facilities to be located outside the United States, and a description of the functions of the facilities, (b) identify the location where the facilities are to be located, and (c) identify the factors considered in making the determination.

5.4 Iridium shall provide to the DOJ and FBI 30 days advance notice if Iridium plans to store or engage a contractor to store on its behalf any Domestic Communications, or Call Associated Data, Transaction Data or Subscriber Information related to such Domestic Communications, outside the United States. Such notice shall, at a minimum, (a) include a description of the type of information to be stored outside the United States, (b) identify the custodian of the information if other than Iridium and (c) identify the location where the information is to be located, and (d) identify the factors considered in deciding to store the information outside of the United States.

5.5 Effective upon the execution of this Agreement by all Parties, Iridium shall provide to the FBI and the DOJ written notice within 14 days of learning that any single foreign entity or individual, other than the current owners of Iridium, has or will likely obtain an ownership interest in Iridium above 25%, or if any single foreign entity or individual has or will likely otherwise gain *de facto* or *de jure* control of Iridium. Notice under this Section shall, at a minimum:

- (a) Identify the entity or individual(s) (specifying the name, addresses and telephone numbers of the entity),
- (b) Identify the beneficial owners of the increased or prospective increased interest in Iridium by the entity or individual(s) (specifying the name, addresses and telephone numbers of each beneficial owner), and
- (c) Quantify the amount of ownership interest in Iridium that has resulted in or will likely result in the entity or individual(s) increasing the ownership interest in or control of Iridium.

5.6 Upon execution of this Agreement, the DOJ and the FBI shall promptly notify the FCC that, provided the FCC adopts a condition substantially the same as set forth in Exhibit A (the "Condition to FCC Licenses"), the DOJ and the FBI have no objection to the grant of the assignments and authorizations of the license applications referenced in the "Recitals" section of this Agreement to Iridium.

5.7 Iridium shall report promptly (not more than 10 calendar days) to the DOJ and FBI any

information Iridium acquires regarding:

- (a) a breach of this Agreement;
- (b) Electronic Surveillance in violation of federal, state or local law or regulation;
- (c) access to or disclosure of CPNI or Subscriber Information in violation of federal, state or local law or regulation (except for violations of FCC regulations relating to improper use of CPNI); or
- (d) improper access to or disclosure of Classified Information or Sensitive Information. Iridium need not report information where disclosure of such information would be in violation of an order of a court of competent jurisdiction.

5.8 Iridium may enter into joint ventures or other arrangements under which a joint venture or another entity may provide domestic communications services. If Iridium has the power or authority to exercise *de facto* or *de jure* control over such entity, then that entity shall fully comply with the terms of this Agreement to the extent the activities of such entity are covered by this Agreement. To the extent Iridium does not have such power or authority over such an entity, Iridium shall in good faith endeavor to have such entity comply with this Agreement, and shall consult with the FBI or the DOJ about the activities of such entity. Nothing in this section relieves or shall be construed to relieve Indium of its obligations under sections 2.4 and 2.5.

5.9 On or before the last day of January of each year, the Chief Gateway Officer or a designated senior corporate officer of Indium shall submit to the FBI and the DOJ a report assessing Indium's compliance with the terms of this Agreement for the preceding calendar year. The report shall include:

- (a) A copy of the policies and procedures adopted to comply with this Agreement,
- (b) A summary of the changes, if any, to the policies or procedures, and the reasons for those changes;
- (c) A summary of any known acts of noncompliance with the terms of this Agreement, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future; and
- (d) Identification of any other issues that will or could affect the effectiveness or compliance with this Agreement.

5.10 Unless otherwise specified in this Agreement, the provisions of this Agreement shall take effect immediately upon the effective date.

5.11 If Iridium makes any filings with the FCC or any other governmental agency relating to the *de jure* or *de facto* control of Indium, except for filings with the FCC for assignments or transfers of control to any U.S. subsidiary of Indium that are *pro forma*. Indium shall promptly provide to the FBI and DOJ written notice and copies of such filing.

ARTICLE VI: FREEDOM OF INFORMATION ACT

6.1 The DOJ and FBI shall take all reasonable measures to protect from public disclosure all information submitted by Iridium to the DOJ or FBI in connection with this Agreement and clearly marked with the legend "Confidential; Subject to Protection Under 5 U.S.C section 553 (b); Not to be Released Without Notice to Iridium" or similar designation. Such markings shall signify that it is Iridium's position that the information so marked constitutes "trade secrets" and/or "commercial or financial information obtained from a person and privileged or confidential," or otherwise warrants protection within the meaning of 5 U.S.C. §552(b)(4). If a request is made under 5 U.S.C. §552(a)(3) for information so marked, and disclosure of any information (including disclosure in redacted form) is contemplated, the DOJ or FBI, as appropriate, shall notify Iridium of the intended disclosure as provided by Executive Order 12600, 52 Fed. Reg. 23781 (June 25, 1987). If Iridium objects to the intended disclosure and its objections are not sustained, the DOJ or FBI, as appropriate shall notify Iridium of its intention to release (as provided by Section 5 of E.O. 12600) not later than five business days prior to disclosure of the challenged information.

6.2 Nothing in this Agreement shall prevent the DOJ or the FBI from lawfully disseminating information as appropriate to seek enforcement of this Agreement, provided that the DOJ and the FBI take all reasonable measures to protect from public disclosure the information marked as described in Section 6.1.

ARTICLE VII: MISCELLANEOUS

7.1 All written communications or other written notice relating to this Agreement, such as a proposed modification, shall be deemed given (1) when delivered personally, (2) if by facsimile upon transmission with confirmation of receipt by the receiving Party's facsimile terminal, (3) if sent by documented overnight courier service on the date delivered, (4) if sent by mail, five (5) business days after being mailed by registered or certified U.S. mail, postage prepaid, addressed to the Parties' designated representatives at the addresses shown below, or to such other representatives at such other addressee as the Parties may designate in accordance with this Section 7.1:

Gino Picasso CEO and President Iridium
Satellite LLC 44330 Woodridge Parkway
Leesburg, VA 20176

Michael Deutschman Chief Administrative
Officer Iridium Satellite LLC . 44330
Woodridge Parkway Leesburg, VA 20176

Department of Justice
Assistant Attorney General
Criminal Division
Main Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Federal Bureau of Investigation Office of
General Counsel 935 Pennsylvania Avenue,
N.W. Washington, D.C. 20535

With a copy to:
Assistant Director National Security
Division

7.2 Nothing in this Agreement is intended to limit or constitute a waiver of (1) any obligation imposed by any U.S. laws on the Parties or by U.S. state or local laws on Iridium, (2) any enforcement authority available under any U.S. or state laws, (3) the sovereign immunity of the United States, or (4) any authority over Iridium activities or facilities located within or outside the United States that the U.S. Government may possess.

7.3 All references in this Agreement to statutory provisions shall include any future amendments to such statutory provisions.

7.4 Nothing in this Agreement is intended to confer or does confer any rights on any Person other than the Parties or on any U.S. governmental authorities entitled to effect Electronic Surveillance pursuant to Lawful U.S. Process.

7.5 This Agreement may be modified only by written agreement signed by all of the Parties. The DOJ and the FBI agree to consider in good faith possible modifications to this Agreement if Iridium believes that the obligations imposed on it under this Agreement are substantially more restrictive than those imposed on other U.S. and foreign licensed service providers in like circumstances in order to protect U.S. national security, law enforcement, and public safety concerns. Any substantial modification to this Agreement shall be reported to the FCC within 30 days after approval in writing by the Parties.

7.6 If any portion of this Agreement is declared invalid by a U.S. court of competent jurisdiction, this Agreement shall be construed as if such portion had never existed, unless such construction would constitute a substantial deviation from the Parties' intent as reflected in this Agreement.

7.7 The DOJ and the FBI agree to negotiate in good faith and promptly with respect to any request by Iridium for relief from application of specific provisions of this Agreement to future Iridium activities or service if those provisions become unduly burdensome or adversely affect Iridium's competitive position.

7.8 If after the date that all the Parties have executed this Agreement, the DOJ or the FBI finds that the terms of this Agreement are inadequate to address national security, law enforcement or public safety concerns, then Iridium will negotiate in good faith to modify this Agreement to address those concerns.

7.9 This Agreement may be executed in one or more counterparts, each of which shall together constitute one and the same instrument.

7.10 This Agreement shall inure to the benefit of, and shall be binding upon, the Parties, and their respective successors and assigns. This Agreement shall also be binding on all Affiliates of Iridium.

7.11 Nothing in this Agreement is intended to or is to be interpreted to require the Parties to violate any applicable U.S. law.