

BEFORE THE  
Federal Communications Commission  
Washington, D.C. 20554

In re Application of	)	
	)	
Orbital Communications Corporation and	)	
ORBCOMM Global, L.P. (Assignors)	)	File No. SAT-ASG-20010726-00068
	)	
	)	
For Consent to Assign Non-Common Carrier	)	
Earth and Space Station Authorizations,	)	
Experimental Licenses, and VSAT Network to	)	
	)	
ORBCOMM License Corp. and ORBCOMM	)	
LLC (Assignees)	)	

ORDER AND AUTHORIZATION

Adopted: March 8, 2002

Released: March 11, 2002

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we grant the Application for the authority to assign various non-common carrier earth and space station authorizations, experimental licenses, and a VSAT network related to the ORBCOMM non-voice, non-geostationary mobile satellite system (“ORBCOMM System”) from Orbital Communications Corporation (“OCC”) and ORBCOMM Global, L.P. (“ORBCOMM Global” and, together with OCC, the “Assignors”) to ORBCOMM License Corp. (“OLC”) and ORBCOMM LLC (the “Assignees” and, together with the “Assignors,” the “Applicants”)<sup>1</sup> pursuant to section 310(d) of the

<sup>1</sup> Orbital Communications Corporation and ORBCOMM License Corporation, *Application for Consent to Assignment of License Pursuant to Section 310(d) of the Communications Act*, File No. SAT-ASG-20010726-00068 (filed July 25, 2001) (*Space Segment Application*); Orbital Communications Corporation and ORBCOMM License Corporation, *Application for Consent to Assignment of License Pursuant to section 310(d) of the Communications Act*, File No. SES-ASG-20010726-01401 (filed July 30, 2001) (*Blanket Mobile Earth Station License Application*); Orbital Communications Corporation and ORBCOMM License Corporation, *Application for Consent to Assignment of License Pursuant to section 310(d) of the Communications Act*, File Nos. 0050-EX-AL-2001 and 0053-EX-AL-2001 (filed July 30, 2001) (*Experimental Radio Service Application*); ORBCOMM Global, L.P. and ORBCOMM LLC, *Application for Consent to Assignment of License Pursuant to section 310(d) of the Communications Act*, File No. SES-ASG-20010726-01397 (filed July 30, (2001) (*C-Band Fixed Satellite Service Earth Station License Application*). Each of these applications, with the exception of the Experimental Radio Service License Application, include identical exhibits describing the transaction and providing related information. The applications and uniform attachments are collectively referred to hereafter as the “*Assignment Application*.”

Communications Act of 1934, as amended (the “Communications Act” or “Act”).<sup>2</sup> We conclude that approval of the Application will serve the public interest, convenience, and necessity. We find that the successful reorganization of the ORBCOMM System, in light of ORBCOMM Global’s bankruptcy, and the consolidation of the ORBCOMM System’s authorizations and licenses will ensure that globally accessible low-cost mobile data services will continue to be available to current and future users in the United States. Moreover, the ORBCOMM System will continue to be able to provide unserved and underserved markets with efficient communications capabilities.

## II. BACKGROUND

### A. The Transferors

#### 1. Orbital Communications Corporation

2. OCC, a Delaware corporation headquartered in Dulles, Virginia, is a wholly-owned subsidiary of Orbital Sciences Corporation (“OSC”), a Delaware publicly-traded corporation.<sup>3</sup> In 1994, the Commission authorized OCC to construct, launch, and operate a non-voice, non-geostationary (“NVNG”) mobile satellite system.<sup>4</sup> OCC provides global data services, similar to two-way paging or e-mail, via Low-Earth Orbit (“LEO”) satellites and ground infrastructure.<sup>5</sup> OCC operates worldwide, and its international service providers cover 179 countries and dependent territories.<sup>6</sup> The Commission has previously determined that LEO satellite services provide substantial cost savings compared to other existing satellite data systems and offer an affordable way to meet the growing demand for low-cost mobile communications services.<sup>7</sup> The Applicants also note that its LEO services will reach unserved and underserved markets.<sup>8</sup> As described below, OCC holds numerous Commission licenses and authorizations that permit the operation of communications satellites and other supporting network

---

<sup>2</sup> The Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.* The Telecommunications Act of 1996 (the “1996 Act”) amends the Communications Act of 1934. Hereinafter, all citations to the Communications Act will be to the relevant section of the United States Code unless otherwise noted. The Communications Act of 1934, as amended, will be referred to herein as the Communications Act or the Act. *See* 47 U.S.C. §310(d).

<sup>3</sup> According to Applicants, OSC maintains its principal place of business in the United States. The 5% or greater owners in OSC are as follows: Fidelity Management & Research (12.65%), Wallace R. Weitz & Company (7.92%), David J. Greene & Company, LLC (6.74%), Schneider Capital Management, L.P. (6.71%). Applicants represent that all 5% or greater shareholders of OSC are U.S. companies. *See* Letter from Walter Sonnenfeldt, Attorney for ORBCOMM License Corporation and ORBCOMM LLC, to Magalie Roman Salas, Secretary, Federal Communications Commission, December 4, 2001 (*Supplemental Showing*) at Exhibit 1.

<sup>4</sup> *In the Matter of Application of Orbital Communications Corporation*, Order and Authorization, 9 FCC Rcd 6476 (1994).

<sup>5</sup> *See* <http://www.orbcomm.com/faq.htm> (visited Jan. 22, 2002).

<sup>6</sup> *See* <http://www.orbcomm.com/license.cfm> (visited Jan. 22, 2002).

<sup>7</sup> *See Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum to the Fixed-Satellite Service and the Mobile-Satellite Service for Low-Earth Orbit Satellites*, Report and Order, 8 FCC Rcd 1812 (1993).

<sup>8</sup> *See Space Segment Application*, File No. SAT-ASG-20010726-00068, Exhibit C.

facilities.<sup>9</sup>

## 2. ORBCOMM Global, L.P.

3. ORBCOMM Global is a limited partnership, headquartered in Dulles, Virginia.<sup>10</sup> ORBCOMM Global holds authority to operate a VSAT Network utilizing C-Band fixed satellite service earth station licenses the Commission granted in 1999.<sup>11</sup> ORBCOMM Global and affiliated companies filed for Chapter 11 bankruptcy on September 15, 2000.<sup>12</sup> The United States Bankruptcy Court for the District of Delaware approved the transfer of ORBCOMM Global's assets to ORBCOMM LLC on April 23, 2001.<sup>13</sup>

### B. The Transferees

#### 1. ORBCOMM License Corporation

4. OLC is a newly-formed Delaware corporation, headquartered in Dulles, Virginia and is a wholly-owned subsidiary of ORBCOMM LLC.<sup>14</sup> OLC was established, by its parent company, ORBCOMM LLC, for the purpose of consolidating the transfer of ownership and control of the various FCC authorizations issued in connection with the development, construction, launch and operation of the ORBCOMM System.<sup>15</sup> OLC has no interest in any other FCC licensees.<sup>16</sup> As sole owner, ORBCOMM LLC exercises exclusive control over OLC's voting shares.<sup>17</sup> Additionally, ORBCOMM LLC has the ability to add and remove directors from the OLC board.<sup>18</sup> Currently, OLC's board of directors consists of four members: three U.S. citizens and a South Korean citizen.<sup>19</sup> Each board member is afforded one

---

<sup>9</sup> A list of the licenses currently held by OCC that are the subject of this proceeding are contained in Appendix A.

<sup>10</sup> *C-Band Fixed Satellite Service Earth Station License Application*, File No. SES-ASG-20010726-01397 (filed July 30, (2001).

<sup>11</sup> See Public Notice, Report No. SES-00123 (Oct. 20, 1999). A list of the licenses currently held by ORBCOMM Global that are the subject of this proceeding are contained in Appendix A.

<sup>12</sup> *Assignment Application*, Exhibit C at note 1.

<sup>13</sup> *Id.* See also Case Nos. 00-3636 through 00-3643.

<sup>14</sup> *Assignment Application*, Exhibit A at 1 and Exhibit B at 1.

<sup>15</sup> *Id.*

<sup>16</sup> *Supplemental Showing*, Exhibit 1 at 11.

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 3-4. The current OLC Board members are Don Franco, a U.S. citizen, Jerome B. Eisenberg, a U.S. citizen, James C. Eagan, a U.S. citizen, and Hyung Jin Song, a South Korean citizen.

vote.<sup>20</sup>

## 2. ORBCOMM LLC

5. ORBCOMM LLC is a newly-formed Delaware limited liability company, headquartered in Dulles, Virginia.<sup>21</sup> ORBCOMM LLC is a 91.84%-owned subsidiary of ORBCOMM Holdings LLC (“ORBCOMM Holdings”).<sup>22</sup> The bankruptcy estate of ORBCOMM Global owns the remaining 8.16% of ORBCOMM LLC.<sup>23</sup> Control of ORBCOMM LLC is vested exclusively in its board of directors and its officers.<sup>24</sup> Currently, ORBCOMM LLC’s board of directors consists of four members: three U.S. citizens and a South Korean citizen.<sup>25</sup> Each board member is entitled to one vote.<sup>26</sup> ORBCOMM LLC presently does not hold any ownership interest in any other FCC licensee.<sup>27</sup>

## 3. ORBCOMM Holdings, LLC

6. ORBCOMM Holdings, formerly known as International Licensees, LLC, is a Delaware limited liability company, headquartered in Paramus, New Jersey.<sup>28</sup> The ownership interests in ORBCOMM Holdings are held as follows:<sup>29</sup> 1) ORBCOMM Asset Holdings Limited (“ORBCOMM Asset Holdings”), an exempt limited company incorporated under the laws of the Cayman Islands with its principal place of business in the United States, holds a 49.42% interest;<sup>30</sup> 2) ORBCOMM Asia Limited

---

<sup>20</sup> *Supplemental Showing*, Exhibit 1 at 3.

<sup>21</sup> *Assignment Application*, Exhibit B at 1.

<sup>22</sup> *Supplemental Showing*, Exhibit 1 at 4. See Letter from Walter Sonnenfeldt, Attorney for ORBCOMM License Corporation and ORBCOMM LLC, to Mr. George Li, Deputy Chief, Telecommunications Division, International Bureau, Federal Communications Commission, February 25, 2002 (*2<sup>nd</sup> Supplemental Showing*) at Exhibit 1.

<sup>23</sup> *2<sup>nd</sup> Supplemental Showing* at Exhibit 1.

<sup>24</sup> *Supplemental Showing*, Exhibit 1 at 4.

<sup>25</sup> *Id.* at 4-5; The current ORBCOMM LLC board members are Don Franco, a U.S. citizen, Jerome B. Eisenberg, A U.S. citizen, James C. Eagan, a U.S. citizen, and Hyung Jin Song, a South Korean citizen.

<sup>26</sup> *Supplemental Showing*, Exhibit 1 at 4.

<sup>27</sup> *Id.* at 11.

<sup>28</sup> *Id.* at 6, International Licensees, LLC changed its name to ORBCOMM Holdings, LLC on August 23, 2001. See *Supplemental Showing*, Exhibit 2.

<sup>29</sup> We note that the Applicants amended the ownership information contained in the original Application in their *Supplemental Showing* and in the *2<sup>nd</sup> Supplemental Showing*. According to the Applicants, voting rights in ORBCOMM Holdings are reflected by the amount of equity held. See *Supplemental Showing*, Exhibit 1 at 7. See also Public Notice Report No. SAT-00097 (January 10, 2002) and Public Notice Report No. SAT-00103 (March 7, 2002).

<sup>30</sup> *2<sup>nd</sup> Supplemental Showing*, Exhibit 1. Applicants note that ORBCOMM Asset Holdings maintains its principal place of business in the United States. According to the Applicants, the directors and shareholders of (continued....)

(“ORBCOMM Asia”), a privately-held corporation organized under the laws of the Cayman Islands with its principal place of business in South Korea, holds a 10.98% interest;<sup>31</sup> 3) OHB Teledata, AG (“OHB”), a publicly traded corporation organized under the laws of the Federal Republic of Germany, holds a 7.69% interest;<sup>32</sup> 4) ORBCOMM Deutschland, A.G. (“ORBCOMM Deutschland”), a privately held corporation organized under the laws of the Federal Republic of Germany, holds a 1.10% interest;<sup>33</sup> 5) Don Franco, a U.S. citizen, holds a 12.56% interest; 6) Jerome Eisenberg, a U.S. citizen holds a 7.07% interest; and 7) Hyung Jin Song, a South Korean citizen holds a 1.66% interest.<sup>34</sup> Currently, ORBCOMM Holdings’ board of directors consists of five members: three U.S. citizens, a German citizen, and a South Korean citizen.<sup>35</sup> Each board member is entitled to one vote.<sup>36</sup> ORBCOMM Holdings does not presently hold any ownership interest in any other FCC licensee.<sup>37</sup>

### C. Description of the Transactions

7. The proposed assignment of authorizations and licenses are part of a comprehensive arrangement relating to the resolution of the Chapter 11 bankruptcy of ORBCOMM Global and affiliated companies, as approved by the United States Bankruptcy Court for the District of Delaware.<sup>38</sup> Pursuant

(Continued from previous page) \_\_\_\_\_

ORBCOMM Asset Holdings are identical to those of ORBCOMM Holdings. The current ownership of ORBCOMM Asset Holdings is as follows: ORBCOMM Asia (22.28%), OHB (10.14%), ORBCOMM Deutschland (2.03%), Don Franco (29.89%), J. Eisenberg (16%) and Hyung Jin Song (4.08%). The remaining 17.58% interest in ORBCOMM Asset Holdings is not attributable to non-U.S. or 10% or greater shareholders.

<sup>31</sup> According to Applicants, ORBCOMM Asia maintains its principal place of business in South Korea. Mr. Hyung Jin Song, a South Korean citizen, owns 81.58% of ORBCOMM Asia and the remaining 18.42% is owned by Kwang Nam Industry, a South Korean investment company owned by members of Mr. Song’s family. *See Supplemental Showing*, Exhibit 1 at 7-8.

<sup>32</sup> According to Applicants, the principal place of business for OHB is Germany. OHB’s stock is publicly-traded on the Frankfurt Stock Exchange. Shareholders possessing a 10% or greater interest in OHB are as follows: Manfred Johannes Fuchs (22.9%), Christa Fuchs (11.3%), Centennium Venture Fund No. 1 GmbH & Co KG (14.5%). *See Supplemental Showing*, Exhibit 1 at 9.

<sup>33</sup> According to Applicants, ORBCOMM Deutschland maintains its principal place of business in Germany. ORBCOMM Deutschland is owned by citizens of the Federal Republic of Germany, as follows: Marco Romed Fuchs (35%), Romana Mayrhofer Fuchs (22.5%), Manfred Johannes Fuchs (30%), Christa Fuchs (12.5%). *See Supplemental Showing*, Exhibit 1 at 10.

<sup>34</sup> *2<sup>nd</sup> Supplemental Showing*, Exhibit 2. In the *Supplemental Showing* and *2<sup>nd</sup> Supplemental Showing*, ORBCOMM Holdings disclosed all 10% or greater shareholders *or* any non-U.S. investors. Therefore, we attribute the remaining 9.52% ownership in ORBCOMM Holdings as U.S.-owned.

<sup>35</sup> *Supplemental Showing*, Exhibit 1 at 6-7. The current ORBCOMM Holdings Board members are Don Franco, a U.S. citizen, Jerome B. Eisenberg, a U.S. citizen, James C. Eagan, a U.S. citizen, Mr. Hans E. W. Hoffman, a German citizen who is in the process of becoming a U.S. naturalized citizen, and Hyung Jin Song, a South Korean citizen.

<sup>36</sup> *Supplemental Showing*, Exhibit 1 at 6.

<sup>37</sup> *Id.* at 11.

<sup>38</sup> *See supra* note 13.

to this arrangement, assets relating to the ORBCOMM System formerly owned by ORBCOMM Global, have been transferred to ORBCOMM LLC.<sup>39</sup> Applicants now seek authority to consolidate the ownership and control of FCC authorizations and licenses issued in connection with the construction, launch and operation of the ORBCOMM system and United States' ground segment.<sup>40</sup> Specifically, OCC proposes to assign its non-common carrier earth and space station authorizations and experimental licenses to OLC, and ORBCOMM Global proposes to assign its VSAT network to ORBCOMM LLC.<sup>41</sup>

8. Specifically, OCC requests authority to assign to OLC: 1) two experimental radio service licenses, which support ongoing experimental, technology development activities relating to the ORBCOMM System;<sup>42</sup> 2) space segment authorizations and a Special Temporary Authority, relating to the construction, launch, and operation of the ORBCOMM System;<sup>43</sup> and 3) a NVNG MSS blanket mobile earth station license and four gateway earth station licenses, relating to the United States ground segment operations of the ORBCOMM System.<sup>44</sup> ORBCOMM Global requests authority to assign to ORBCOMM LLC the C-band fixed satellite earth station licenses that are utilized to provide a VSAT network.<sup>45</sup>

9. Applicants also disclose that, subject to certain terms and conditions of the various agreements relating to the pending Chapter 11 bankruptcy of ORBCOMM Global, there will be certain ownership and structural changes to ORBCOMM LLC. Applicants contemplate that OSC will be entitled to obtain a 40% ownership interest in ORBCOMM LLC at such time as the ORBCOMM Global consensual 'Debtor's Plan of Liquidation' (the "Plan") and the transactions contemplated thereby, are finalized.<sup>46</sup> Moreover, OSC will then be entitled to appoint three new members, currently undesignated, to the ORBCOMM LLC board of directors, thus expanding the number of ORBCOMM LLC directors from four to seven.<sup>47</sup> As anticipated in the *Supplemental Showing*, certain principal unsecured creditors of ORBCOMM Global, yet to be designated, have acquired a 8.16% interest in ORBCOMM LLC.<sup>48</sup> ORBCOMM Holdings will retain the remaining 51.84% interest in ORBCOMM LLC, thereby, according

---

<sup>39</sup> *Assignment Application*, Exhibit A at 1.

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

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

<sup>42</sup> *Experimental Radio Service Application*, Exhibit D at 1.

<sup>43</sup> *Space Segment Application*, Exhibit A at 1. The Special Temporary Authority is effective through May 28, 2002. See File No. SAT-STA-20011113-00100.

<sup>44</sup> *Blanket Mobile Earth Station License Application*, Exhibit A at 1.

<sup>45</sup> *C-Band Fixed Satellite Service Earth Station License Application*, Exhibit C at 1.

<sup>46</sup> *Assignment Application*, Exhibit B at 2-3. Applicants made no mention in their 2<sup>nd</sup> *Supplemental Showing* that there has been any alteration in this contingent right.

<sup>47</sup> See Letter from Stephen L. Goodman, Attorney for Orbital Science Corporation, to George Li, and Jacquelynn Ruff, Acting Chiefs, Federal Communications Commission (filed December 4, 2001) (*Supplemental Letter*) at 3.

<sup>48</sup> *Supplemental Showing*, Exhibit 1 at 3; 2<sup>nd</sup> *Supplemental Showing*, Exhibit 1.

to the Applicants, maintaining *de facto* and *de jure* control by ORBCOMM Holdings of ORBCOMM LLC.<sup>49</sup> Applicants commit that they will inform the Commission of any changes in the ownership structure of ORBCOMM LLC resulting from the contemplated equity distributions in accordance with the Commission's rules and policies.<sup>50</sup>

10. On September 10, 2001, the International Bureau ("Bureau") issued a public notice announcing that the applications in this proceeding were accepted for filing and establishing a pleading cycle to permit interested parties an opportunity to comment on the proposed assignments.<sup>51</sup> We received no comments. The Bureau subsequently requested additional information and the Applicants provided supplementary responses.<sup>52</sup> Subsequent to the filing of its supplemental responses, the Applicants informed the Bureau on January 23, 2002 of further ownership changes in the proposed licensees.<sup>53</sup> On February 25, 2002, Applicants filed a supplement with the Bureau regarding the amended ownership information in order for the Bureau to finalize its review of the proposed assignment. On March 4, 2002, the Department of Justice/FBI filed a letter stating that they have decided not to file an objection or other comments with the Commission regarding the ORBCOMM applications.<sup>54</sup>

### III. PUBLIC INTEREST ANALYSIS

#### A. Framework for Analysis

11. The legal standards that govern our public interest analysis for the assignment of licenses and authorizations under section 310(d) require that we weigh the potential public interest harms against the potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest, convenience, and necessity.<sup>55</sup> First, our analysis examines whether the Applicants are qualified to hold and assign licenses pursuant to section 310(d).<sup>56</sup> Second, we consider the likely

---

<sup>49</sup> *Id.* at 5.

<sup>50</sup> *Id.* at 7.

<sup>51</sup> Public Notice, Report No. SAT-00083 (Sept. 10, 2001).

<sup>52</sup> *See Supplemental Showing.*

<sup>53</sup> *See 2<sup>nd</sup> Supplemental Showing.*

<sup>54</sup> *See* Letter from Patrick W. Kelley, Deputy General Counsel, Federal Bureau of Investigation, to William F. Caton, Secretary, FCC (March 4, 2002) (*DOJ/FBI Letter*).

<sup>55</sup> *See, e.g., Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and for Declaratory Ruling Pursuant to Section 310 of the Communications Act*, Memorandum Opinion and Order, 16 FCC Rcd 9779 (2001) (*VoiceStream/Deutsche Telekom Order*) at 9789. *See also AT&T Corp., British Telecommunications, plc, VLT Co. L.L.C., Violet License Co. LLC, and TNV [Bahamas] Limited Applications For Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection with the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, plc*, Memorandum Opinion and Order, 14 FCC Rcd 19,140 (1999) (*AT&T/BT Order*) at 19,147.

<sup>56</sup> *See infra* Part B.

competitive effects of the proposed assignment, and whether such assignment raises significant anti-competitive issues.<sup>57</sup> In evaluating the competitive effects, we also consider the efficiencies and other public interest benefits that are likely to result from the proposed assignment.<sup>58</sup> Finally, we consider issues related to national security, law enforcement, foreign policy, and trade policy raised by the Executive Branch.<sup>59</sup>

## **B. Qualifications of Applicants**

### **1. Assignors**

12. As a threshold matter, we must determine whether the Applicants meet the requisite qualifications to hold and assign licenses under section 310(d) of the Act and our rules. In general, when evaluating assignments under section 310(d), we do not re-evaluate the qualifications of the assignor.<sup>60</sup> The exception to this rule occurs where issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.<sup>61</sup> This is not the case here, and no issues have been raised that would require us to re-evaluate the basic qualifications of the assignors, OCC and ORBCOMM Global.

### **2. Assignees**

13. As to the qualifications of the assignees, Section 310(d) requires that the Commission consider the qualifications of the proposed assignees as if the assignees were applying for the license directly under section 308 of the Act.<sup>62</sup> We note that no party has challenged the basic qualifications of OLC and ORBCOMM LLC, and our independent review finds no evidence to suggest that OLC and ORBCOMM LLC lack financial, technical, legal, or other basic qualifications necessary to qualify as the assignees in this case. Thus, we find that OLC and ORBCOMM LLC possess the requisite basic qualifications as the assignees.

## **C. Competitive Analysis**

14. To evaluate the competitive effects of the proposed transaction, the Commission first identifies the relevant product and geographic markets.<sup>63</sup> For satellite service providers, the Commission

---

<sup>57</sup> See *infra* Part C. See, e.g., *AT&T/BT Order*, 14 FCC Rcd at 19,148.

<sup>58</sup> See *infra* Part C. See, e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9789.

<sup>59</sup> See *infra* Part D.

<sup>60</sup> See *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9790, para. 19.

<sup>61</sup> *Id.*

<sup>62</sup> Section 308 requires that applicants for Commission licenses set forth such facts as the Commission may require as to citizenship, character, and financial, technical, and other qualifications. See 47 U.S.C. § 308. Our rules implementing the provisions of section 308 regarding an applicant's qualifications to hold Commission licenses are set forth in Parts 5 and 25 of the Commission's rules. See 47 C.F.R. Parts 5, 25.

<sup>63</sup> See, e.g., *AT&T/BT Order*, 14 FCC Rcd 19,410 (1999); *Voicestream/Deutsche Telekom Order*, 16 FCC Rcd 9779 (2001).



has determined that the relevant product markets include domestic and international telecommunications markets.<sup>64</sup> In examining these product markets, we consider whether the proposed transaction will lessen or enhance competition in the provision of communications services within the geographic markets in, to or from the United States and foreign points.<sup>65</sup> Inasmuch as the major investors in the proposed ORBCOMM licensees 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 product or geographic markets.<sup>66</sup>

15. Because this transaction permits the ORBCOMM system to emerge from bankruptcy and continue operations, the competitive impact will be beneficial. The proposed license assignments arise in connection with the resolution of the Chapter 11 bankruptcy of ORBCOMM Global, L.P. and affiliated companies. Successful emergence from bankruptcy is critical to the continued operation and expansion of the ORBCOMM system. Absent a successful emergence from bankruptcy, the U.S. and international telecommunications markets may lose a competitor that is able make available efficient telecommunications services to much of the world's served, unserved and underserved markets.<sup>67</sup> Since we find that the proposed transaction will not harm competition and will permit ORBCOMM's assets to remain in the market and to continue to provide service to U.S. consumers, we find that the proposed assignment is in the public interest.

#### **D. Foreign Ownership Analysis**

16. As described above, non-U.S. citizens and entities will have significant ownership interests in the proposed ORBCOMM licensees, OLC and ORBCOMM LLC.<sup>68</sup> Approximately 37% of the ownership and voting interests in OLC and ORBCOMM LLC may be owned indirectly by non-U.S. citizens and entities.<sup>69</sup> Because the Application involves foreign ownership interests, and as part of our public interest analysis, we examine the applicability of the provisions of section 310 of the Act to

---

<sup>64</sup> See *Application of WorldCom, Inc., and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025 (1998) at 18,039, para. 23 and 18,070, para. 78; ; *In re Application of General Electric Capital Corporation and SES Global, S.A.*, Order and Authorization, DA 01-2100 (rel. October 2, 2001) (*GE/SES*) at para. 43.

<sup>65</sup> See, e.g., *Lockheed Martin Corporation, COMSAT Government Systems, LLC, and COMSAT Corporation, Application for Transfer of Control of COMSAT Corporation and its Subsidiaries, Licensees of Various Satellite, Earth Station Private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214 authorizations*, Order and Authorization, 15 FCC Rcd 22910, 22916, para. 18 (2000).

<sup>66</sup> *Supplemental Showing*, Exhibit 1 at 13. OLC, ORBCOMM LLC, and ORBCOMM Holdings state that Mr. Don Franco, an owner of ORBCOMM Holdings, also owns a 3.736% interest in GigaTel Wireless, L.L.C. of which he is also a Managing Member. In addition his wife, Nancy Franco, wholly-owns Wireless Telco that holds a FCC license in the 39 GHz Microwave Radio Service frequency.

<sup>67</sup> See *Space Segment Application*, File No. SAT-ASG-20010726-00068, Exhibit C.

<sup>68</sup> See *supra* para. 6.

<sup>69</sup> If OSC, a U.S. corporation with no attributable foreign ownership, acquires a 40% interest in ORBCOMM LLC, the total amount of foreign ownership held in the proposed licensees through ORBCOMM Holdings will further decrease.

determine whether the proposed transaction raises concerns that may affect our public interest determination under section 310(d) of the Act.<sup>70</sup>

17. Section 310 of the Communications Act places foreign ownership restrictions on radio station licenses.<sup>71</sup> In this case, the foreign ownership restrictions embodied in sections 310(a) and 310(b) of the Communications Act do not apply because, pursuant to section 310(a), no foreign government or representative of a foreign government seeks to hold a license, and section 310(b) does not apply to non-common carrier satellite systems such as the ORBCOMM system.<sup>72</sup> Specifically, the benchmarks set forth in section 310(b) only restrict the level of direct and indirect interests in licensees that aliens or their representatives, foreign companies, or foreign governments or their representatives may hold in *broadcast, common carrier, or aeronautical* radio station licenses.<sup>73</sup> The Commission does not review foreign ownership under section 310(b) for purposes of private radio station licenses.<sup>74</sup>

18. The Commission has taken foreign ownership into account in determining that there may be potential public interest benefits resulting from foreign investment in private satellite systems.<sup>75</sup> The

---

<sup>70</sup> 47 U.S.C. § 310.

<sup>71</sup> *Id.*

<sup>72</sup> *See Voicestream/Deutsch Telekom Order*, 16 FCC Rcd at 9808, note 142. *In the Matter of Orion Satellite Corporation*, 5 FCC Rcd 4937 (1990) (*Orion*) at 4940, para. 21.

<sup>73</sup> 47 U.S.C. §§ 310(a) and (b). Section 310(b) of the Communications Act provides that:

- (b) No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by –
- (1) any alien or the representative of any alien;
  - (2) any corporation organized under the laws of any foreign government;
  - (3) any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country;
  - (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 will be served by the refusal or revocation of such license.

47 U.S.C. §§ 310(b)(1)-(4).

<sup>74</sup> *Orion*, 5 FCC Rcd at 4940, para. 21.

<sup>75</sup> In the 1995 *Foreign Carrier Entry Order*, the Commission stated that, with respect to section 214 market entry, it would continue its current policy of not imposing an ECO test on non-common carriers seeking U.S. authorization. The Commission cited *Orion* for the proposition that the absence of limitations on foreign investment in U.S. satellite systems helped carriers secure needed equity for non-common carrier systems. *See Market Entry and Regulation of Foreign Affiliated Entities*, IB Docket No. 95-22, Report and Order, 11 FCC Rcd 3873 (1995) (*Foreign Carrier Entry Order*) at 3939, paras. 171-172.

Commission has found that such investment may enable prospective licensees to obtain necessary equity capital investment, as well as aid in gaining commercially successful entry into key markets.<sup>76</sup> Conversely, by the same token, the Commission may, in an appropriate case, take foreign ownership into account to determine whether there are public interest harms resulting from foreign investment. Foreign investment in private satellite systems has generally been commonplace.<sup>77</sup>

19. Since the Application at issue does not involve broadcast, common carrier, or aeronautical fixed or *en route* licenses, we will not review the foreign ownership of the proposed licensees under section 310(b) of the Act. Regardless, though, of the applicability of section 310(b) to foreign investments involving non-common carrier wireless licenses, the Commission maintains a responsibility pursuant to section 310(d) to examine and make a finding as to whether a specific transfer or assignment involving any Title III license will serve the public interest, convenience, and necessity.<sup>78</sup> Accordingly, one factor in our examination of the present application is an analysis of whether the proposed foreign ownership of the ORBCOMM licensees may adversely affect the public interest, convenience, and necessity.<sup>79</sup>

20. In addition to the competition analysis we conduct pursuant to section 310(d), we will accord deference to Executive Branch agencies that raise concerns relating to national security, law enforcement, foreign policy and trade policy with respect to foreign ownership of private licensees.<sup>80</sup> We note that the Executive Branch has previously raised national security and law enforcement concerns associated with the proposed use of non-common carrier wireless

---

<sup>76</sup> *Orion*, 5 FCC Rcd at 4940, para. 21 (the Commission stated that gaining access to key foreign markets is in the public interest, so long as no exclusive arrangements are developed to preclude the entry of other satellite operators).

<sup>77</sup> *Orion*, 5 FCC Rcd at 4940, para. 21 (noting that foreign participation in the ownership of international transmission facilities, such as in common carrier and private submarine cables, INTELSAT, and INMARSAT, was the norm, rather than the exception). See, e.g., *In the Matter of the Applications of Satcom Systems, Inc.*, 14 FCC Rcd 20,798 (1999) (*TMI*).

<sup>78</sup> 47 U.S.C. § 310(d).

<sup>79</sup> *In re Application of Lockheed Martin Global Telecommunications, Inc. and TRW, Inc. Transferors and Lockheed Martin Global Telecommunications, Inc., TRW, Inc., LSAT Astro LLC and Telespazio Luxembourg, S.A. Transferees*, Order and Authorization, DA 01-2733 (rel. November 21, 2001) (*Astrolink*) at para. 12. See also 47 U.S.C. § 151 (stating that the Commission has the authority and responsibility to regulate U.S. communications “for the purpose of the national defense.”).

<sup>80</sup> See, e.g., *TMI*, 14 FCC Rcd at 20,824, para. 57 (The Commission will accord to other Executive Branch agencies that possess specific expertise in matters that may be relevant in particular cases, such as the Department of Justice and Federal Bureau of Investigation, deference “in identifying and interpreting issues of concern related to national security, law enforcement, and foreign policy that are relevant to an application pending before us.”). Similarly, in *DISCO II*, with respect to foreign satellite providers’ requests to serve the U.S. market, we stated that “[t]he Commission will make an independent decision on applications to be considered and will evaluate concerns raised by the Executive Branch agencies in light of all the issues raised (and comments in response) in the context of a particular application.” See *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24,094 (1997) (*DISCO II Order*) at 24,172, para. 182.

licenses in conjunction with facilities located outside the U.S.<sup>81</sup>

21. Here, we examine whether the proposed foreign ownership of the ORBCOMM system raises Executive Branch concerns relating to national security, law enforcement, foreign policy and trade policy that may present public interest harm.<sup>82</sup> We note that the Executive Branch has not raised objections to the proposed foreign ownership of the ORBCOMM system. In particular, the Department of Justice and Federal Bureau of Investigation state that, based upon the representations made to them by the Applicants, they decided not to file an objection or other comments in this matter.<sup>83</sup> In addition, no other party has raised any concerns regarding the foreign ownership of the proposed licensees. As a result of this determination, we find that there is no evidence in the record of the ORBCOMM application regarding national security, law enforcement, or other public interest concerns that warrants further review of the foreign ownership interests in this case.

#### IV. CONCLUSION

22. For the reasons stated above, we find the proposed assignment of licenses from OCC and ORBCOMM Global to OLC and ORBCOMM LLC, on balance, serves the public interest, convenience and necessity. Accordingly, we grant the applications of OCC and ORBCOMM Global for the authority to assign non-common carrier earth and space station authorizations, experimental licenses, and a VSAT network related to the ORBCOMM system to OLC and ORBCOMM LLC.

---

<sup>81</sup> For example, the Executive Branch expressed concerns in the *TMI* proceeding regarding TMI's ability to use a Canadian gateway to switch, control, and route U.S. communications to impair:

the U.S. government's ability to: (1) carry out lawfully-authorized electronic surveillance of domestic U.S. calls or calls that originate or terminate in the United States; (2) prevent and detect foreign-based electronic surveillance and espionage conducted in violation of U.S. law; and (3) satisfy the National Security Emergency Preparedness and U.S. infrastructure protection requirements." *TMI*, 14 FCC Rcd at 20,823, para. 55.

<sup>82</sup> The Bureau has routinely examined potential Executive Branch concerns associated with applications involving non-common carrier wireless licenses. *See e.g., Astrolink*, DA 01-2733 at para. 16; *Orion*, 5 FCC Rcd at 4939, para. 20; *GE/SES*, DA 01-2100 at note 78; *TMI*, 14 FCC Rcd at 20,824, para. 57.

<sup>83</sup> *See DOJ/FBI Letter*.

**V. ORDERING CLAUSES**

23. Accordingly, IT IS ORDERED that, pursuant to section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), the applications for assignment of licenses held by Orbital Communications Corporation and ORBCOMM Global, L.P. ARE GRANTED.

24. IT IS FURTHER ORDERED that pursuant to section 25.119(f) of the Commission's rules, 47 C.F.R. 25.119(f), assignment of the U.S. licenses herein must be completed within 60 days from the date of the authorization, and within 30 days of consummation, ORBCOMM License Corporation and ORBCOMM LLC must notify the Commission by letter of the date of consummation.

25. Accordingly, having reviewed the applications and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 309, and 310(d), the applications filed by Orbital Communications Corporation and ORBCOMM Global, L.P., File Nos. SAT-ASG-20010726-00068, SES-ASG-20010726-01401, 0050-EX-AL-2001 and 0053-EX-AL-2001, for authority to assign licenses and authorizations to ORBCOMM License Corporation and ORBCOMM LLC ARE GRANTED, to the extent specified in this Order and Authorization.

26. This action is taken under delegated authority pursuant to sections 0.51 and 0.261 of the Commission's rules, 47 C.F.R. §§ 0.51 and 0.261, and SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson  
Chief, International Bureau

**APPENDIX A****LIST OF ORBCOMM COMMUNICATIONS CORP. AND ORBCOMM GLOBAL, L.P. LICENSES  
SUBJECT TO ASSIGNMENT****1) LICENSES HELD BY ORBCOMM COMMUNICATIONS CORP.**

- a) Space segment authorizations and Special Temporary Authority: FCC Call Sign S2103
- b) A MSS blanket mobile earth station license and four gateway earth station licenses: FCC Call Signs E940534, E940535, E940536, E940537, and E940538
- c) Experimental radio service authorizations: FCC Call Signs WB2XDL and WB2XGL.

**2) LICENSES HELD BY ORBCOMM GLOBAL, L.P.**

- a) E990057
- b) E990058
- c) E990059
- d) E990060
- e) E990061