



PUBLIC NOTICE

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March 29, 2006

**Application of New Skies Satellites Holdings Ltd., Transferor, and SES GLOBAL S.A.,
Transferee, to Transfer Control of Authorizations Held by New Skies Networks, Inc., and
Notification of Change to Permitted Space Station List**

International Authorizations Granted

IB Docket No. 06-23

By the Chief, International Bureau:

On January 6, 2006, New Skies Satellites Holdings Ltd. (“New Skies Holdings” or “Transferor”) and SES GLOBAL S.A. (“SES GLOBAL” or “Transferee”) filed an application pursuant to section 310(d) of the Communications Act of 1934, as amended (“Act”),¹ seeking approval to transfer control of Commission authorizations held by New Skies Networks, Inc. (“NSN”) to SES GLOBAL.² Specifically, SES GLOBAL and New Skies Holdings seek approval for the transfer of control of licenses held by NSN for six non-common carrier earth stations for communication with non-U.S. licensed satellites that have been added to the Commission’s Permitted Space Station List (“Permitted List”).³

In addition, SES GLOBAL and NSN’s parent New Skies Satellites B.V. (“New Skies” and, together with SES GLOBAL and New Skies Holdings, “Applicants”) seek approval for the transfer of control of three non-U.S. satellites operated by New Skies that the Commission has authorized to provide service to the United States pursuant to the Commission’s Permitted List.⁴

¹ 47 U.S.C. § 310(d).

² File No. SES-T/C-20060106-00013, as amended by File No. SES-AMD-20060320-00471 (“Transfer of Control Application”). *See also* Letter from Peter A. Rohrbach and Karis A. Hastings, Counsel for SES GLOBAL, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 06-23 (filed Mar. 21, 2006) (providing revised Exhibit E to File No. SES-T/C-20060106-00013 (“March 21 Section 1.65 Letter”)).

³ *See* Permitted List, *available at* <http://www.fcc.gov/ib/sd/se/permitted.html>.

⁴ File No. SAT-PPL-20060106-00003, as amended by File No. SAT-AMD-20060317-00026 and updated by March 21 Section 1.65 Letter (providing revised Exhibit B (“Notification Application” and, together with Transfer of

Although section 25.137(g) of the Commission's rules does not require prior approval for proposed changes of ownership of satellites on the Permitted List,⁵ Applicants ask the Commission to consider the change in ownership of the three Permitted List satellites concurrently with the transfer of control of the six associated earth stations.⁶

SES GLOBAL, the Transferee, is a Luxembourg company headquartered in Betzdorf, Luxembourg.⁷ Through its wholly-owned operating subsidiaries SES AMERICOM and SES ASTRA, SES GLOBAL provides satellite services around the world to enterprise, government, and residential users.⁸ SES AMERICOM operates a fleet of Commission-licensed spacecraft optimized for service to the United States and other parts of North America, with some satellites also offering coverage of South America and having transoceanic capabilities.⁹ SES ASTRA operates a fleet of Luxembourg-licensed satellites optimized for service to Europe and Africa.¹⁰ New Skies, which operates the three non-U.S. spacecraft on the Commission's Permitted List, is a Netherlands company.¹¹ NSN, the earth station licensee, is a Delaware company.¹²

Control Application, "Applications"). *See also* 47 C.F.R. § 25.137, Application Requirements for Earth Stations Operating with Non-U.S. Licensed Space Stations.

⁵ *See* 47 C.F.R. § 25.137(g) (affording interested parties an opportunity to comment on whether a proposed transfer of control or assignment of license affects any of the considerations the Commission made when it allowed a satellite operator to enter the U.S. market).

⁶ Notification Application, Form 312, Exhibit A at 3-4; Transfer of Control Application, Form 312, Exhibit F at 1. SES GLOBAL and New Skies state that the terms of the acquisition agreement preclude consummation of the transaction until the Commission acts with respect to both the space and earth stations. *Id.* at 4. They ask the Commission to notify them and the public that the Permitted List will be updated to reflect SES GLOBAL as the new ultimate owner and operator of the three New Skies satellites upon receipt of the Applicants' notice of consummation. *Id.*

⁷ Transfer of Control Application, Form 312, Exhibit F at 1; Notification Application, Form 312, Exhibit A at 4.

⁸ Transfer of Control Application, Form 312, Exhibit F at 1-2; Notification Application, Form 312, Exhibit A at 4.

⁹ Transfer of Control Application, Form 312, Exhibit F at 2; Notification Application, Form 312, Exhibit A at 4.

¹⁰ *Id.* SES GLOBAL also holds investments in other satellite operators: (1) a 75% interest in European provider SES Sirius; (2) a 34.1% interest in Asia-Pacific provider AsiaSat; (3) a 19.99% interest in Latin American provider Star One; and (4) an interest of approximately 7.5% in Orbcomm, a provider of Low-Earth Orbit messaging service. *Id.* SES AMERICOM is an investor in Ciel and QuetzSat, which provide broadcasting satellite services in, respectively, Canada and Mexico. *Id.* SES GLOBAL no longer holds any interest in the Latin American satellite operator NahuelSat. File Nos. SES-AMD-20060320-00471, Form 312, Exhibit A at 1, SAT-AMD-20060317-00026, Form 312, Exhibit A at 1.

¹¹ Notification Application, Form 312, Exhibit A at 2, 5. New Skies operates five satellites, with a sixth satellite, NSS-8, due for launch in 2006. Three satellites are on the Commission's Permitted List (NSS-7 at 22° W.L., NSS-5 at 177° W.L., and NSS-806 at 40.5° W.L.). The other two satellites are NSS-6 at 95° E.L and NSS-703 at 57° E.L. *Id.* at 2, 5.

¹² *See, e.g.,* Transfer of Control Application, Form 312, Exhibit F at 2. The wholly-owned subsidiaries of SES GLOBAL in the proposed chain of ownership of New Skies and NSN are organized in Luxembourg, The Netherlands, and Bermuda. *See infra* Exhibit B to this Public Notice, which sets out the two alternative post-consummation chains of ownership proposed by SES GLOBAL in its Applications, as amended. Applicants ask the Commission to consent to the acquisition under either the ownership structure described in the Applications filed on January 6, 2006 or the alternative ownership structure described in the March, 2006 amendments. Applicants state that SES GLOBAL will advise the Commission of the final ownership structure when it notifies the Commission of

The International Bureau finds, upon consideration of the record, that grant of the Applications, subject to the conditions set forth in this Public Notice and its exhibits, will serve the public interest, convenience, and necessity.¹³ Based on our review of the record, we find no evidence to suggest that SES GLOBAL lacks the basic qualifications to control NSN and New Skies.¹⁴ Further, the record contains no evidence that the proposed transfer would harm competition in any relevant product or geographic market. There is little overlap in the services provided by the two companies.¹⁵ The foreign ownership of SES GLOBAL and, in turn, of NSN and New Skies, is not in itself likely to create competitive distortions in the U.S. market.¹⁶

consummation of the proposed transaction. File Nos. SES-AMD-20060320-00471, Form 312, Exhibit A at 1; SAT-AMD-20060317-00026, Form 312, Exhibit A at 1. Each of Luxembourg, The Netherlands, and Bermuda is a World Trade Organization Member country. See http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_3.htm; see also *Cable & Wireless USA, Inc., Application for Authority to Operate as a Facilities-Based Carrier in Accordance with the Provisions of Section 63.18(e)(4) of the Rules Between the United States and Bermuda*, Order, Authorization and Certificate, DA 00-311, 15 FCC Rcd 3050, 3052, ¶ 7 (Int'l Bur. 2000) (relying on an opinion provided by the U.S. Department of State that the 1994 Marrakesh Agreement Establishing the World Trade Organization applies to Bermuda, a dependent territory of the United Kingdom).

¹³ See 47 U.S.C. § 310(d).

¹⁴ Moreover, as noted above, SES GLOBAL already is the parent of SES AMERICOM, a Commission licensee. See *General Electric Capital Corporation and SES GLOBAL S.A.*, Order and Authorization, 16 FCC Rcd 17575, Supplemental Order, 16 FCC Rcd 18878 (Int'l Bur. & Wireless Tel. Bur. 2001) (“*GE-SES GLOBAL Orders*”).

¹⁵ SES AMERICOM, a wholly-owned subsidiary of SES GLOBAL, operates a fleet of Commission-licensed spacecraft optimized for service to the United States and North America, with some satellites also offering coverage of South America and trans-oceanic capabilities. Transfer of Control Application, Form 312, Exhibit F at 2. The New Skies fleet provides data, video, Internet, and voice communications services to telecommunications carriers, broadcasters, large corporations, Internet service providers, and government entities around the world. Notification Application, Form 312, Exhibit A at 5. The majority of New Skies’ services are delivered abroad. *Id.* at 1. None of the New Skies satellites has 50-state U.S. coverage, and New Skies provides almost no domestic U.S. services. *Id.* The three New Skies satellites that serve the United States – NSS-7, NSS-5 and NSS-806 – have partial U.S. coverage and are authorized to provide service to the United States pursuant to the Commission’s Permitted List. *Id.* Of New Skies’ 324 transponders worldwide, 221 have no useable coverage of the continental United States, and approximately 40 transponders are capable of U.S. domestic service although typically are not used to provide it. *Id.* at 7. Of the 103 New Skies transponders with some coverage of the continental United States, 33 are designated for transatlantic service, 34 for transpacific service, and 36 for Latin America service. *Id.*

¹⁶ We note that section 310(a) and (b) is not applicable to the licenses and authorizations involved in the transfers of control. See 47 U.S.C. § 310(a), (b)(1)-(4). Regardless of the applicability of section 310(a) and (b), Commission review under section 310(d) considers, where appropriate, whether public interest harms are likely to result from foreign investment in Title III licensees. See, e.g., *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, MB Docket No. 03-124, 19 FCC Rcd 473, 491, ¶ 33 (2004). Since 2001, SES GLOBAL has been the parent of SES AMERICOM, a Commission licensee whose satellites are optimized for service to the United States. See *GE-SES GLOBAL Orders*, *supra* note 14. Further, the International Bureau, in granting SES AMERICOM’s subsequent application to provide capacity for the delivery of Direct-To-Home (“DTH”) services, found no basis to conclude that SES GLOBAL’s ownership interest in SES AMERICOM provided SES AMERICOM with any competitive advantages in the provision of DTH service in the United States. *SES AMERICOM, Inc., Applications for Modification of Fixed-Satellite Service Space Station Licenses*, Order and Authorization, 18 FCC Rcd 16589, 16597, ¶ 17 (Int'l Bur. 2003). We have reviewed the ownership information in the instant record, including information on entities holding 10% or greater voting interests in SES GLOBAL. See March 21 Section 1.65 Letter, providing revised Exhibit E to File No. SES-T/C-20060106-00013 and revised Exhibit B to File No. SAT-PPL-20060106-00003. We find no basis to conclude that SES GLOBAL’s proposed acquisition of NSN and New Skies would provide either NSN or New Skies with competitive advantages in the U.S. market because of SES GLOBAL’s foreign ownership.

Moreover, the Executive Branch has reached agreement with the Applicants with respect to resolving any network security and law enforcement questions.¹⁷ Finally, the Applications are unopposed.¹⁸

Therefore, pursuant to section 310(d) of the Act and section 0.261 of the Commission's rules,¹⁹ the International Bureau hereby grants the Applications listed in Exhibit A to this Public Notice, effective upon release of this Public Notice.

Pursuant to section 25.137(g) of the Commission's rules, we allow a change of ownership of the non-U.S. licensed satellites NSS-5, NSS-7 and NSS-806. The Permitted List will be updated to reflect the transfer of control of the New Skies satellites upon receipt of the notice of consummation.²⁰

Consistent with Commission precedent, the Bureau accords deference to Executive Branch expertise on national security and law enforcement issues.²¹ According to the Petition submitted by the Executive Branch, the SES GLOBAL Commitment Letter addresses the Executive Branch's stated concerns regarding national security, law enforcement, and public safety.²² Accordingly we grant the Executive Branch Petition and condition our grant of the

¹⁷ See Petition to Adopt Conditions to Authorizations and Licenses, IB Docket No. 06-23 (dated Feb. 21, 2006) ("Petition"), which attaches as Exhibit 1 a February 21, 2006 letter from Peter A. Rohrbach, Counsel for SES GLOBAL, to Laura H. Parsky, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice, Stewart A. Baker, Assistant Secretary for Policy, U.S. Department of Homeland Security, and Elaine N. Lammert, Deputy General Counsel, Federal Bureau of Investigation ("SES GLOBAL Commitment Letter"). The Petition states that the U.S. Department of Justice, the Federal Bureau of Investigation, the U.S. Department of Homeland Security, and the U.S. Department of Defense have no objection to the Commission granting the Applications, provided that the Commission conditions the grant on SES GLOBAL abiding by the commitments and undertakings contained in the SES GLOBAL Commitment Letter. Petition at 1-2.

¹⁸ On January 20, 2006, the Commission placed the Applications on public notice as acceptable for filing. See *New Skies Satellites Holdings Ltd. and SES GLOBAL S.A. Seek Consent to Transfer Control of Authorizations Held by New Skies Networks, Inc.*, Public Notice, IB Docket No. 06-23, DA 06-118 (Int'l Bur. Jan. 20, 2006). Pursuant to the Commission's rules, we find that the minor amendments to the Applications, inserting a new wholly-owned Netherlands subsidiary into the proposed ownership chain, did not require additional public notice. See 47 C.F.R. §§ 25.116, 25.151. The insertion of the new wholly-owned Netherlands subsidiary into the previously-proposed chain of ownership that involved other Netherlands subsidiaries is a non-substantial change to each of the Applications.

¹⁹ 47 U.S.C. § 310(d), 47 C.F.R. § 0.261.

²⁰ See 47 C.F.R. § 25.137(g).

²¹ The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing a transfer of control or assignment application in which foreign investment is involved. *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, IB Docket Nos. 97-142 and 95-22, 12 FCC Rcd 23891, 23918, ¶ 59, 23919-21, ¶¶ 61-66 (1997), recon. denied, 15 FCC Rcd 18158 (2000); *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24170, ¶ 178 (1997).

²² Petition at 2-3.

Applications on SES GLOBAL abiding by the commitments and undertakings contained in the SES GLOBAL Commitment Letter, attached here as Exhibit C.

The transfers of control shall be completed within 60 days from the date of authorization.²³ Following consummation of the transaction, the Applicants shall update any pending applications to reflect the transaction approved by this Public Notice.²⁴ Within 30 days of consummation, the Commission shall be notified by letter of the date of consummation and the docket number and file numbers of the Applications involved in the transaction.²⁵

Petitions for reconsideration under section 1.106 and applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

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²³ See 47 C.F.R. § 25.119(f).

²⁴ See 47 C.F.R. § 1.65.

²⁵ See 47 C.F.R. § 25.119(f). The consummation letter shall advise the Commission which of the two alternative ownership structures, set out in Exhibit B, that SES GLOBAL has selected.

Exhibit A – Licenses and Authorizations

File Number	Licensee	Call Signs
SES-T/C-20060106-00013; SES-AMD-20060320-00471	New Skies Networks, Inc.	E000102, E000152, E000696, E000726, E020071, E980076
SAT-PPL-20060106-00003; SAT-AMD-20060317-00026	New Skies Satellites B.V.	NSS-7, NSS-5, NSS-806

Exhibit B – Post-Consummation Ownership Charts²⁶

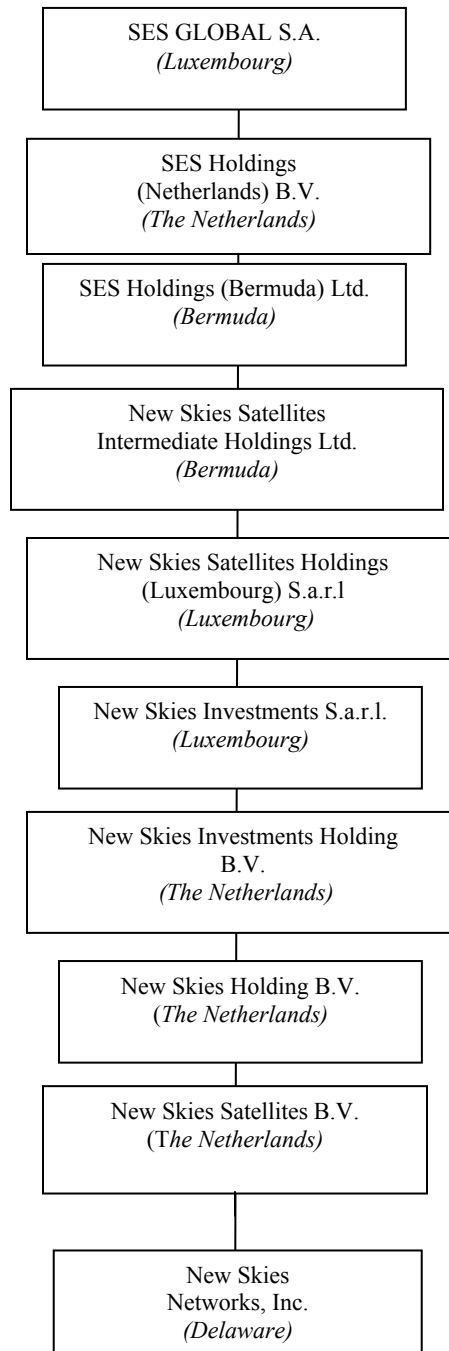
POST-CONSUMMATION OWNERSHIP OF NEW SKIES & NSN



²⁶ See File Nos. SAT-PPL-20060106-00003, Form 312, Exhibit B at 4, SES-T/C-20060106-00013, Form 312, Exhibit E at 4.

Exhibit B – Post-Consummation Ownership Charts (Continued)²⁷

ALTERNATIVE POST-CONSUMMATION OWNERSHIP CHART



²⁷ See File Nos. SAT-AMD-20060317-00026 and SES-AMD-20060320-00471, Form 312, Exhibit A at 2.

Exhibit C – Executive Branch Petition and SES GLOBAL Commitment Letter