



# PUBLIC NOTICE

**Federal Communications Commission**  
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**Washington, D.C. 20554**

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**DA 07-2163**  
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## **AUTHORIZATIONS GRANTED**

### **TELENOR ASA, TRANSFEROR, AND INCEPTUM 1 AS, TRANSFEE, SEEK FCC CONSENT TO TRANSFER CONTROL OF LICENSES AND AUTHORIZATIONS AND A DECLARATORY RULING ON FOREIGN OWNERSHIP**

**IB Docket No. 06-225**

By the Chief, International Bureau; Chief, Wireless Telecommunications Bureau; Chief, Office of Engineering and Technology:

Telenor ASA (“Telenor” or the “Transferor”), Inceptum 1 AS (“Inceptum” or the “Transferee”), and Telenor Satellite Services AS (“TSS” and, together with the Transferor and the Transferee, the “Applicants”) filed a series of applications pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (the “Act”), and a petition for declaratory ruling under section 310(b)(4) of the Act.<sup>1</sup> In these applications, the Applicants seek Commission approval to transfer control of Commission licenses and authorizations held by subsidiaries of TSS to Inceptum. TSS is the indirect parent of Telenor Satellite Inc. (“TSI”), Telenor Satellite Services, Inc. (“TSSI”), GMPCS Personal Communications, Inc., and Marlink, Inc. (collectively, the “TSS Subsidiaries”). TSI holds international section 214 authorizations, fixed and mobile earth station licenses, experimental authorizations, and a business radio license. TSI, GMPCS Personal Communications, Inc. and Marlink, Inc. each hold international section 214 authorizations. TSI and TSSI each have pending applications for authority to provide Broadband Global Area Network (“BGAN”) service.<sup>2</sup> The Applicants also request a declaratory ruling that the public interest would not be served by denying approval of Inceptum’s indirect foreign ownership in TSI.<sup>3</sup>

Upon consideration of the record, we find the Applicants have met their burden and that grant of the Applications and the petition for declaratory ruling, as conditioned herein, will serve the public

<sup>1</sup> 47 U.S.C. §§ 214(a), 310 (b)(4), 310(d). On December 21, 2006, the Commission placed the Applications on public notice as acceptable for filing. *Telenor ASA, Transferor, and Inceptum AS, Transferee, Seek FCC Consent to Transfer Control of Licenses and Authorizations and Request a Declaratory Ruling on Foreign Ownership*, IB Docket No. 06-225, Public Notice, DA 06-2565, 21 FCC Rcd 14726 (IB/WTB/OET 2006).

<sup>2</sup> TSSI: ITC-214-20061213-00559 (BGAN service and other Inmarsat services); TSI: SES-LFS-20050930-01352, ITC-214-20051005-00395, and subsequent amendments.

<sup>3</sup> A list of the applications and petition filed in this proceeding is set forth in Appendix A of this Public Notice. Grant of these applications and petition is without prejudice to Commission action on any related pending applications.

interest, convenience and necessity.<sup>4</sup> There is no evidence in the record to suggest that Inceptum lacks the basic qualifications to be the transferee of the licenses and authorizations held by TSI.<sup>5</sup> Nor does the record contain persuasive evidence that the proposed transfer of control would harm competition in the relevant U.S. telecommunications markets.<sup>6</sup> We also find that it would not serve the public interest to prohibit the indirect foreign ownership of TSI in excess of the 25% benchmark in section 310(b)(4).<sup>7</sup>

Telenor is a Norwegian company that provides mobile communications services worldwide as well as wireline and broadcast services in the Nordic region. The government of Norway is the single largest Telenor shareholder, with a 53.99% voting and equity interest in the company. Through its subsidiaries, TSS offers a range of satellite services, including fixed, mobile and hybrid offerings to enterprise and government users.

Inceptum is a Norwegian company that is currently indirectly owned by Apax France VI FCPR (Apax France) (72%), Amboise Investissement SCA (Amboise) (20%), and Altamir & Cie SCA (Altamir) (8%) (Apax France, Amboise and Altamir are together referred to as the “Apax Funds”). Apax France is a *fonds commun de placement à risques* (an investment fund) organized under French law. Amboise and Altamir are each organized in France as *Société en Commandite par Action*, entities equivalent to limited partnerships in the United States (limited partnership with shares). The Apax Funds hold their ownership interests in Inceptum through Mobsat Group Holding Sarl, a Luxemburg company, and its direct and indirect wholly-owned subsidiaries, Mobsat Holding 2 BV and Mobsat Holding 1 BV, both of which are organized in the Netherlands.<sup>8</sup> Inceptum anticipates that, at closing of the proposed transaction, GEAM International Private Equity Fund, L.P. (“GEAM International”) will acquire an indirect ownership interest in Mobsat Group Holding Sarl through several newly-formed holding companies.<sup>9</sup> GEAM International is a private equity fund organized in Delaware that is sponsored by GE Asset Management, Inc. According to Inceptum, although the details of GEAM International’s co-investment are still being decided, the parties expect GEAM International to acquire indirectly between 15% and 18% of the ownership interests in Mobsat Group Holding Sarl, which will dilute the ownership interests of the Apax Funds.<sup>10</sup> Thus, the indirect ownership interests in Inceptum are expected to be as follows upon closing: Apax France (59.0% to 61.2%), Amboise (16.4% to 17.0%), Altamir (6.6% to 6.8%) and GEAM International (15% to 18%).<sup>11</sup>

Pursuant to a Share Purchase Agreement, Inceptum has agreed to acquire all of the outstanding shares of capital stock of TSS. Once Inceptum acquires TSS, the shares of Telenor Satellite Services

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<sup>4</sup> 47 U.S.C. §§ 214(a), 310(b)(4), 310(d).

<sup>5</sup> See 47 U.S.C. § 308(b).

<sup>6</sup> See *infra* at 4.

<sup>7</sup> 47 U.S.C. § 310(b)(4).

<sup>8</sup> See Letter from Peter A. Rohrbach and Karis A. Hastings, Counsel for Inceptum 1 AS and Mobsat S.A.S., to Marlene H. Dortch, Secretary, FCC, dated March 12, 2007 at 12 (March 12 Letter); see also Letter from Peter A. Rohrbach and Karis A. Hastings, Counsel for Inceptum 1 AS and Mobsat S.A.S., to Marlene H. Dortch, Secretary, FCC, dated March 30, 2007 (March 30 Letter).

<sup>9</sup> See Letter from Peter A. Rohrbach and Karis A. Hastings, Counsel for Inceptum 1 AS and Mobsat S.A.S., to Marlene H. Dortch, Secretary, FCC, dated April 16, 2007 (April 16 Letter); see also Letter from Peter A. Rohrbach and Karis A. Hastings, Counsel for Inceptum 1 AS and Mobsat S.A.S., to Marlene H. Dortch, Secretary, FCC, dated April 30, 2007 (April 30 Letter).

<sup>10</sup> An organization chart showing the post merger structure and ownership is attached to this Public Notice in Appendix B.

<sup>11</sup> The grant of these applications is conditioned on the Applicants notifying the Commission in writing of the precise ownership interests of the parties prior to closing.

Holdings, Inc. (“TSSH”), the immediate parent of the TSS Subsidiaries, will be merged into Mobsat Holding US, Inc. (“Mobsat Holding”), a wholly-owned, direct subsidiary of Inceptum. Thus, the TSS Subsidiaries will become indirectly wholly owned by Inceptum through Mobsat Holding.<sup>12</sup>

Two parties submitted comments on the applications: Mobile Satellite Ventures Subsidiary LLC (“MSV”), and Inmarsat Global Ltd. (“Inmarsat”). In addition, the Department of Homeland Security (“DHS”), with the concurrence of the Department of Justice (“DOJ”) and the Federal Bureau of Investigation (“FBI,” and together with DHS and DOJ, the “Executive Branch Agencies”) petitioned the Commission to defer action on the applications pending resolution of potential national security, law enforcement, and public safety issues.

#### MSV and Inmarsat Comments:

MSV requests that the Commission limit the aggregate number of BGAN terminals authorized under Special Temporary Authority (“STA”) to Telenor and FTMSC US LLC (“FTMSC”), which would be under the same ultimate ownership as Telenor if the proposed transaction is approved, to no more than 5,000 terminals, rather than 5,000 each (for a total of 10,000 terminals).<sup>13</sup> MSV argues that limiting the number of authorized BGAN terminals will serve the public interest by mitigating interference to MSV and its customers.<sup>14</sup> Applicants respond that this is not the appropriate proceeding to address MSV’s concerns, but rather those issues should be dealt with in connection with the relevant BGAN applications.<sup>15</sup> They further argue that the STAs for the BGAN terminals are expressly subject to a non-interference condition, and MSV has never claimed the BGAN terminal operations are resulting in actual harmful interference to its services.<sup>16</sup> MSV replies that, given the sluggish demand for BGAN service, the Commission has authorized an excessive number of BGAN terminals under STA, and Telenor and FTMSC will not need authority for 5,000 or 10,000 BGAN terminals.<sup>17</sup>

Inmarsat argues that the proposed transaction would undermine the Inmarsat privatization by allowing the consolidation of two of the full-service, global distributors of Inmarsat mobile satellite services (MSS) – Telenor and FTMSC. According to Inmarsat, Telenor and FTMSC account for approximately 40% of all Inmarsat global services.<sup>18</sup> Inmarsat contends that the effect of this consolidation would harm end users and resellers of Inmarsat services as well as Inmarsat and competitive choices available to U.S. businesses, local, state, and federal governments and the U.S. military.<sup>19</sup> Inmarsat also maintains that consolidation of the two distributors is not consistent with the goals of the ORBIT ACT, which mandates privatization in a manner that fosters competition.<sup>20</sup> Inmarsat asks the Commission to examine the proposed consolidation and associated impact on access to Inmarsat

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<sup>12</sup> March 12 Letter at 12.

<sup>13</sup> MSV comments at 4.

<sup>14</sup> *Id* at 5.

<sup>15</sup> Applicants response at 6-7.

<sup>16</sup> *Id.* at 7.

<sup>17</sup> MSV reply at 2.

<sup>18</sup> Inmarsat comments at 1-2.

<sup>19</sup> *Id* at 3.

<sup>20</sup> Inmarsat comments at 2 and 8. *See* Open-Market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act), 47 U.S.C. §§ 701 et. Seq. at § 701(6)(1)(c), Pub. L. No. 106-180, 114 Stat. 48 (2000), *as amended*, Pub. L. No. 107-233, 116 Stat. 1480 (2002), *as amended* Pub. L. No. 108-228, 118 Stat. 644 (2004), *as amended*, Pub. L. No. 108-371, 118 Stat. 1752 (2004).

services by U.S. businesses and government users.<sup>21</sup> Applicants respond that Inmarsat's concerns relate to purely private contractual matters arising out of its commercial agreements with its distributors and that the Commission should not address those issues in the context of this transaction.<sup>22</sup> Applicants also argue that because BGAN service is the only Commission-authorized service provided by FTMSC in the United States, which has a very small market at this time, the common affiliation of FTMSC and Telenor will not adversely affect competition in the United States.<sup>23</sup> Inmarsat replies that the anti-competitive incentives created by the common affiliation of FTMSC and Telenor limit the choices available to U.S.-based users of Inmarsat service even when they are outside the United States.<sup>24</sup>

Based on our review of the record, we conclude that the comments of MSV and Inmarsat do not merit denial of the applications or the imposition of conditions on the grant. The issues raised by MSV and Inmarsat in their comments are not directly related to the proposed transaction, and as we explain below there are more appropriate avenues for them to seek redress.

With respect to the MSV comments, the Commission has before it applications from Telenor and FTMSC, among others, to provide BGAN service.<sup>25</sup> It is in the context of such applications that it is appropriate for MSV to raise issues regarding the number of authorized BGAN terminals and potential interference issues.

We find that Inmarsat has failed to raise a substantial material question of fact with respect to the alleged adverse effect on competition. Inmarsat concedes that it faces vibrant competition from a wide range of other satellites services.<sup>26</sup> Inmarsat's arguments regarding any adverse competitive affect of the transaction in the U.S. market are speculative, particularly given the small presence that FTMSC currently has in the U.S.-market.<sup>27</sup> Inmarsat's concern derives from the distribution structure which was imposed on it during privatization. Inmarsat states that the problem presented by the transaction arises from the remaining vestiges of an anachronistic and inflexible distribution structure perpetuated by former Inmarsat signatories from Inmarsat's pre-privatization days that requires distribution of Inmarsat service through "middlemen" and severely restricts appointment of additional distributors.<sup>28</sup> In this respect, we note that Congress contemplated in the ORBIT Act that certain types of Inmarsat services that may be used for national security, law enforcement, health and safety purposes would be available directly from a privatized Inmarsat as well as indirectly from distributors and other entities.<sup>29</sup> Inmarsat does not provide specific information that its post-privatization distribution arrangements are an impediment to realizing Congressional expectations on the availability of services for such purposes.<sup>30</sup> Should this circumstance

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<sup>21</sup> Inmarsat comments at 8-9. *See also* Letter from Diane Cornell, Vice President, Government Affairs, Inmarsat, to Marlene H. Dortch, Secretary, FCC, dated May 3, 2007.

<sup>22</sup> Applicants response at 2.

<sup>23</sup> *Id.* at 4-5.

<sup>24</sup> Inmarsat reply at 3.

<sup>25</sup> *See* SES-LFS-20050930-01352, ITC-214-20051005-00395, and subsequent amendments (TSI's BGAN applications); SES-LFS-20051011-01396, ITC-214-20051012-00406, and subsequent amendments (FTMSC's BGAN applications).

<sup>26</sup> Inmarsat reply at 3.

<sup>27</sup> We note that on May 4, 2007 the Office of Fair Trading, United Kingdom, requested that the European Commission examine the merger. *See* <http://www.londonstockexchange.com/LSECWS/IFSPages/MarketNewsPopup.aspx?id=1477284&source=RNS>

<sup>28</sup> Inmarsat comments at 2, 4.

<sup>29</sup> ORBIT Act, 47 U.S.C.701(b)(1)(c).

<sup>30</sup> Inmarsat references a 2000 Commission proceeding examining direct access to Intelsat as directed by the Orbit Act. *See* 47 U.S.C. 765. That provision, however, is directed to Intelsat and not Inmarsat. *See Availability of*

arise, any Commission examination of Inmarsat's post-privatization distribution arrangements in view of Congress' expectations expressed in the ORBIT Act would be separate from this proceeding.

#### National Security and Law Enforcement Issues:

Applicants initially requested that the Commission condition grant of the authorizations and transfer of control applications on compliance with their existing Network Security Agreement and Implementation Plan ("2001 Network Security Agreement").<sup>31</sup> On March 9, 2007, the Executive Branch Agencies filed a Petition to Adopt Conditions to Authorizations and Licenses ("Petition"). The Petition states that the Executive Branch Agencies have no objection to the grant of the applications provided that the Commission conditions its approval on Inceptum abiding by the commitments and undertakings in its February 26, 2007 letter to the Executive Branch agencies.<sup>32</sup> 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. Under Commission precedent, we defer to the Executive Branch's expertise on national security and law enforcement issues.<sup>33</sup> In accordance with the request of the Executive Branch agencies, we condition the grant of the applications and petition on compliance with the 2001 Network Security Agreement and the commitments and undertakings in the February 26, 2007 Letter.

#### Section 310(b)(4) Foreign Ownership Declaratory Ruling:

We find, subject to certain conditions, that the public interest would be served by allowing the proposed indirect foreign ownership of TSI in excess of the 25 percent benchmark under section 310(b)(4) of the Act. We examine in Appendix B the citizenship or "principal place of business" of the foreign individuals and entities that will hold, directly or indirectly, equity or voting interests in Mobsat Holding, the Delaware corporation that will wholly own TSI, a common carrier licensee. Based on our review of the record, as reflected in the analysis in Appendix B, we find that the majority of these equity and voting interests are properly ascribed to individuals or entities that are citizens of, or that principally conduct business in, countries that are Members of the World Trade Organization ("WTO"). Accordingly, TSI is entitled to a rebuttable presumption that its proposed indirect foreign ownership through MobSat Holding would not pose a risk to competition in the U.S. market,<sup>34</sup> and we find no credible evidence in the record to rebut this presumption. Further, we find that the Petition to Adopt Conditions to Authorizations and Licenses filed by the Executive Branch Agencies addresses any national

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*INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, IB Docket No. 00-91, Report and Order, 15 FCC Rcd 19160 (2000).

<sup>31</sup> See *Lockheed Martin Global Telecommunications, Comsat Corp., and Comsat General Corp., Assignor, and Telenor Satellite Mobile Satellite Services, Inc. and Telenor Satellite Inc., Assignee, Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses, Experimental Licenses, and Earth Station Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, 16 FCC Rcd 22897 (2001).

<sup>32</sup> Letter from Peter A. Rohrbach and Jeremy B. Zucker, Counsel for Inceptum 1 AS, to the Executive Branch Agencies, dated February 26, 2007 (February 26, 2007 Letter). The Petition and the February 26, 2007 Letter are publicly available on the FCC web site by searching the record for this proceeding, IB Docket No. 06-225, through the Electronic Comment Filing System (ECFS).

<sup>33</sup> *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) (*Foreign Participation Order*), 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).

<sup>34</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23896, 23913 ¶¶ 9, 50, 111-112.



security or law enforcement concerns.<sup>35</sup> We therefore conclude, pursuant to section 310(b)(4) of the Act, that it would not serve the public interest to prohibit the proposed indirect foreign ownership of TSI, subject to the conditions set forth below.

Generally, the section 310(b)(4) rulings the Commission issues to common carrier licensees under the *Foreign Participation Order* approve specific indirect equity and/or voting interests made by named foreign investors from WTO Member countries and provide an allowance for an additional, aggregate 25 percent amount of unidentified foreign equity and/or voting interests. As explained in Appendix B, we find that France is the principal place of business of MobSat Holding's 100% direct parent, Inceptum, and of all the other foreign-organized holding companies situated above Inceptum in the vertical ownership chain through which the Apax Funds and GEAM International will hold their indirect equity and voting interests in Inceptum (*i.e.*, MobSat Group Holding Sarl, MobSat Holding 2 BV, and MobSat Holding 1 BV). In addition, we find that France is the principal place of business of the foreign-organized Apax Funds and of the foreign-organized entities that manage or have a direct or indirect controlling interest in the funds.<sup>36</sup> We further find that the shareholders of these controlling interest holders are all citizens of France, the United Kingdom, and the United States. Thus, we ascribe to WTO Member countries the foreign equity and voting interests that will be held indirectly in MobSat Holding by the Apax Funds and their controlling interest holders. The holding company structure that will be used to facilitate the GEAM International co-investment requires that we calculate for these investing entities additional indirect foreign equity and voting interests in MobSat Holding. All of these interests, however, represent WTO Member investment. We also find it reasonable to conclude that, upon closing of the proposed transaction, investors from the United States and other WTO Members countries will hold indirectly at least 75% of the equity and voting interests in MobSat Holding as a result of the passive equity investment in the Apax Funds and GEAM International. We treat as non-WTO investment 20.14% of the equity and voting interests that will be held indirectly in MobSat Holding by limited partners of Amboise and Altamir (two of the Apax Funds) whose citizenship is not clear from the record. We also treat as non-WTO investment a 0.004% equity and 1.8% voting interest that will be held indirectly in MobSat Holding by foreign shareholders of General Electric Company, due to insufficient information in the record as to their citizenship. We therefore treat 20.144% of the equity interests (20.14% + 0.004%) and 21.94% of the voting interests (20.14% + 1.8%) in MobSat Holding as non-WTO ownership for purposes of the foreign ownership ruling below.<sup>37</sup>

Accordingly, this ruling permits TSI to be owned indirectly by: (1) MobSat Group Holding Sarl, MobSat Holding 2 BV, MobSat Holding 1 BV, and Inceptum (individually, up to and including 100% of the equity and voting interests); (2) Maurice Tchenio (up to and including 100% of the voting interests); (3) Apax France (up to and including 61.20% of the equity and voting interests); (4) through Apax France, Apax Partners SA ("APSA") (individually) and its named direct and indirect shareholders (collectively) (up to and including a less-than-one percent equity interest and 61.20% voting interest); (5) the Apax France passive foreign investors identified in the record (collectively, up to and including 43.78% of the equity and 71.53% of the voting interests); (6) Amboise (up to and including 17.00% of the

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<sup>35</sup> Id. at 23918, ¶ 59 and 23919, ¶ 61-66.

<sup>36</sup> Like the Apax Funds, all of these controlling interest holders are organized under the laws of France.

<sup>37</sup> Thus, based on the information provided for the record, the proposed transfer of control will not result in more than 25% of the equity or voting interests in MobSat Holding being held by investors from non-WTO Member countries. The Commission has stated that it will deny an application if it finds 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 outweigh that finding. See *Foreign Participation Order*, 12 FCC Rcd at 23946, ¶ 131 ("We conclude that our goals of increasing competition and opening foreign markets would continue to be served by opening the U.S. market to investors from non-WTO Member countries only to the extent that the investors' home markets are open to U.S. investors.").

equity and voting interests); (7) Apax Partners et Compagnie Gerance II SAS and Societe Europeenne Iena SAS (individually) and their named direct and indirect shareholders (collectively) (up to and including 17.00% of the voting interests); (8) Altamir (up to and including 6.8% of the equity and voting interests); (9) Apax Partners & Cie Gerance SA (individually) and its named direct and indirect shareholders (collectively) (up to and including 6.8% of the voting interests); (10) as “floating limited partners” of Amboise or Altamir: MMG SAS, other named entities and individuals that manage or control Amboise and Altamir, and funds managed by subsidiaries of Fidelity International Limited and FMR Corp. (collectively, up to and including 3.66% of the equity and voting interests); (11) Apax Parallel Investment V, L.P. and Summer Street Satellite Holding Company, Ltd. (individually, up to and including 18% of the equity and voting interests); (12) through Apax Parallel Investment V, L.P., Apax Satellite, LLC and APSA (individually) and APSA’s named direct and indirect shareholders (collectively) (up to and including a less-than-one percent equity interest and 18.0% voting interest); and (13) the GEAM International foreign limited partners identified in the record (collectively, up to and including 6.10% of the equity and voting interests).

TSI may accept up to and including an additional aggregate 25% indirect foreign equity and/or voting interests from these foreign investors and other foreign investors without seeking prior Commission approval under section 310(b)(4) subject to two conditions. First, for purposes of calculating the aggregate 25% amount, TSI shall include all equity and voting interests held by foreign investors of Amboise and Altamir, with the exception of the shareholdings approved in the foregoing paragraph;<sup>38</sup> and the foreign equity and voting interests held in General Electric Company. Second, TSI shall seek prior approval before any foreign individual or entity other than Apax Partners SA and its named direct and indirect shareholders acquires individually an indirect equity and/or voting interest in TSI that exceeds 25%. In order to account for fluctuations in the trading of shares in Amboise and Altamir, this ruling shall also permit TSI to accept up to and including an additional aggregate 3.0% indirect foreign equity and/or voting interests from the Apax Funds’ controlling interest holders and from their respective named direct and indirect foreign shareholders.<sup>39</sup>

Notwithstanding the provisions of this ruling, TSI shall at all times comply with the separate requirement for Commission consent to transfer or assign licenses under section 310(d) of the Act. We emphasize that, as a Commission licensee, TSI has an affirmative duty to monitor its foreign equity and voting interests and to calculate these interests consistent with the attribution principles enunciated by the Commission.

#### Foreign Carrier Affiliations:

The Applicants state that, upon consummation of the proposed transaction, the TSS Subsidiaries will no longer be affiliated with the incumbent carrier in Norway, or with any other carrier that possesses market power on the foreign end of U.S. international routes.<sup>40</sup> Therefore, pursuant to section 63.10 of the Commission’s rules, we classify the TSS Subsidiaries as non-dominant international carriers between the U.S. and all international points, including Norway, effective upon closing.

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<sup>38</sup> To the extent the approved limited partners of Amboise and/or Altamir sell part or all of their investments in these funds, the percentage of unidentified indirect foreign equity and voting interests in MobSat Holding may increase. Any such increases must be included in the 25% aggregate amount provided in this ruling for additional indirect foreign investment in MobSat Holding.

<sup>39</sup> See *Verizon Communications, Inc., Transferor, and America Movil S.A. de C.V., Transferee*, WT Docket No. 06-113, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195 (2007) at ¶ 67.

<sup>40</sup> See International Section 214 Transfer of Control Applications, File Nos. ITC-T/C-20061129-00529 through -00531, ITC-T/C-20061215-00575, Attachment 1 at 7-8. See also Letter from Peter A. Rohrbach and Karis A. Hastings, Counsel for Inceptum 1 AS and Mobsat S.A.S., and Nancy J. Victory and Catherine M. Hilke, Counsel for Telenor ASA and Telenor Satellite Services, Inc., to Marlene H. Dortch, Secretary, FCC, dated April 17, 2007 (April 17 Letter).

Procedural Issues:

The grant of these applications is conditioned on the Applicants notifying the Commission in writing, prior to the consummation of this transaction, of the precise ownership interests of each person or entity that will acquire directly or indirectly at least 10 percent of the equity or voting interests in MobSat Holding US, Inc.

Grant of this application is without prejudice to any enforcement action by the Commission for non-compliance with the Commission's rules.

The consummation of this transaction shall be completed within 60 days from the date of authorizations.<sup>41</sup> Within 30 days of consummation, the Commission shall be notified by letter of the date of consummation and the file numbers of the applications involved in the transaction.<sup>42</sup> Failure to comply with all relevant Commission rules and policies, and any specific conditions of this grant, could result in the imposition of fines and forfeitures.

Pursuant to section 1.103 of the Commission's rules, the grant is effective upon release of this Public Notice.<sup>43</sup> Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within 30 days of this Public Notice.<sup>44</sup>

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<sup>41</sup> 47 C.F.R. § 25.119(f).

<sup>42</sup> *Id.*; *see also* 47 C.F.R. § 1.948(d).

<sup>43</sup> 47 C.F.R. § 1.103.

<sup>44</sup> 47 C.F.R. §§ 1.106, 1.115.



## APPENDIX A

### SECTION 214 APPLICATIONS

#### *Part 63 – International Section 214 Authorizations*

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20061129-00529	Telenor Satellite Inc.	ITC-214-20020926-00462, <i>et al.</i>
ITC-T/C-20061129-00531	GMPCS Personal Communications, Inc.	ITC-214-20001219-00728
ITC-T/C-20061129-00530	Marlink, Inc.	ITC-214-20010529-00341
ITC-T/C-20061215-00575	Telenor Satellite Services, Inc.	ITC-214-20061213-00558

<u>File No.</u>	<u>Applicant</u>	<u>Application Number</u>
ITC-T/C-20061215-00575	Telenor Satellite Services, Inc.	ITC-214-20061213-00559

### SECTION 310(b)(4) PETITION FOR DECLARATORY RULING

<u>File No.</u>	<u>Applicant</u>
ISP-PDR-20061129-00017	Inceptum 1AS

### SECTION 310(d) APPLICATIONS

#### *Part 25 – Satellite Earth Station Authorization Applications*

<u>File No.</u>	<u>Licensee</u>	<u>Type of Station Authorization</u>	<u>Lead Call Sign</u>
SES-T/C-20061129-02062	Telenor Satellite Inc.	Fixed earth stations	E890649, <i>et al.</i>
SES-T/C-20061129-02063	Telenor Satellite Inc.	Mobile earth stations	E000280, <i>et al.</i>

#### *Part 90 – Wireless Radio Services Application*

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0002817301	Telenor Satellite Inc.	KB42877

#### *Part 5 – Experimental Application*

<u>File No.</u>	<u>Licensee</u>	<u>Call Signs</u>
0030-EX-TU-2006	Telenor Satellite Inc.	WC2XNE, WC2XRT, WD2XLH.

## APPENDIX B

### SECTION 310(b)(4) ANALYSIS

The following analysis of the ownership information provided for the record by Inceptum, the transferee, provides the basis for our findings and conclusions under section 310(b)(4) of the Act.<sup>45</sup> The calculation of foreign ownership interests below is consistent with the methodology described and undertaken by the Commission in other decisions in which it has issued declaratory rulings under Section 310(b)(4).<sup>46</sup>

TSI's U.S. parent, MobSat Holding, will be a direct, wholly-owned subsidiary of Inceptum, a holding company organized under the laws of Norway. Inceptum is wholly owned by MobSat Holding 1 BV, which, in turn, is wholly owned by MobSat Holding 2 BV, both of which are Netherlands private limited liability companies. MobSat Holding 2 BV is wholly owned by MobSat Group Holding Sarl, a Luxembourg limited liability company that is currently owned by Apax France (72% equity and voting interests), Amboise (20% equity and voting interests) and Altamir (8% equity and voting interests) (collectively, the "Apax Funds"). Each of the Apax Funds is organized under the laws of France. Inceptum anticipates that, at closing of the proposed transaction, GEAM International Private Equity Fund, L.P. (GEAM International) will acquire an indirect ownership interest in MobSat Group Holding Sarl through several newly-formed holding companies.<sup>47</sup> GEAM International is a private equity fund organized in Delaware that is sponsored by GE Asset Management. According to Inceptum, although the details of GEAM International's co-investment are still being decided, the parties expect GEAM International to acquire between 15% and 18% of the ownership interests in MobSat Group Holding Sarl, which will dilute the ownership interests of the Apax Funds. Thus, the indirect ownership interests in Inceptum are expected to be as follows upon closing: Apax France (59.0% to 61.2%), Amboise (16.4% to 17.0%), Altamir (6.6% to 6.8%) and GEAM International (15% to 18%).

Because the exact equity ownership interest to be held by the Apax Funds and GEAM International have not yet been finalized, we base our calculations of the foreign equity and voting interests that will be held in TSI's U.S. parent, MobSat Holding, on the maximum proposed level of ownership by each Apax Fund and by GEAM International.<sup>48</sup>

**Foreign Equity and Voting Interests to be Held By Inceptum and its Parent Companies.** At the outset, we calculate that Inceptum and each of its above-named 100% direct and indirect parent companies (collectively, the "Inceptum Parent Companies") will hold, directly or indirectly, up to and including a 100% equity and voting interest in MobSat Holding. We also find that Inceptum, MobSat Holding 1 BV, MobSat Holding 2 BV, and MobSat Group Holding Sarl each has its principal place of business in France, a WTO Member country.<sup>49</sup> Accordingly, we find that these indirect foreign equity

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<sup>45</sup> We recommend use of the ownership chart attached to this Appendix as a roadmap for the calculation of foreign ownership interests that will be held in MobSat Holding by and through Inceptum.

<sup>46</sup> See, e.g., *Intelsat Ltd., Transferor, and Zeus Holdings Limited, Transferee*, IB Docket No. 04-366, Order and Authorization, 19 FCC Rcd 24820 ¶¶ 19-24 (IB/WTB/OET 2004); see also Foreign Ownership Guidelines 19 FCC Rcd 22612 (IB 2004), erratum 21 FCC Rcd 6884 (2006).

<sup>47</sup> See April 16 Letter.

<sup>48</sup> Applicants must notify the Commission in writing of the precise ownership interests of the parties prior to closing.

<sup>49</sup> See March 12 Letter, Annex 3 (Five Factor "Principal Place of Business Test" Chart for Inceptum's Direct and Indirect Shareholders) (revising Attachment 3 of the Consolidated Application) at 1. The Consolidated Application cited in this Appendix is attached to each of the transfer of control applications filed in this proceeding. These applications are listed by File Number in Appendix A.

and voting interests in MobSat Holding are properly ascribed to a WTO Member country for purposes of our public interest analysis under Section 310(b)(4) and the Commission's foreign ownership policies for common carrier licensees.

**Foreign Equity and Voting Interests to be Held By and Through the Apax Funds.** We next calculate the foreign equity and voting interests that will be held indirectly in MobSat Holding by and through the Apax Funds. Ultimate control of the Apax Funds is held by Maurice Tchenio, a French citizen.<sup>50</sup> The vast majority of the equity interests in the Apax Funds are held by investors that have no control or right to control the management or voting of shares held indirectly by the Apax Funds in MobSat Holding.<sup>51</sup>

We analyze first the foreign equity and voting interests that will be held indirectly in MobSat Holding by and through Apax France. As noted above, Apax France will hold between 59.0% and 61.20% of the indirect equity and voting interests in MobSat Holding (through the Inceptum Parent Companies). Apax France is controlled by its Investment Fund Manager, Apax Partners SA (APSA).<sup>52</sup> APSA's controlling, majority shareholder is MMG SAS, which is, in turn, owned indirectly by Maurice and Romain Tchenio, both French citizens.<sup>53</sup> APSA holds a *de minimis* equity interest in Apax France that rounds to 0.00%.<sup>54</sup> Individuals involved in the management of Apax France hold an aggregate 0.89% equity interest in Apax France.<sup>55</sup> Passive investors hold the remaining equity interests in Apax France.

Consistent with our foreign ownership case precedent, we calculate that Apax France will hold indirectly up to a 61.20% equity and voting interest in MobSat Holding. We also calculate that APSA, which controls Apax France, and the named direct and indirect shareholders of APSA in the aggregate, will hold indirectly up to a less-than-one percent (rounding to 0.00%) equity interest and a 61.20% voting interest in MobSat Holding. We also attribute to Maurice Tchenio individually, because he controls Apax France, up to a 61.20% indirect voting interest in MobSat Holding. We find that each of these named individuals and entities is a citizen of, or has its principal place of business in, France, the United Kingdom or the United States.<sup>56</sup> Accordingly, we find that these indirect equity and voting interests in MobSat Holding are properly ascribed to WTO Member countries for purposes of our public interest analysis under Section 310(b)(4) and the Commission's foreign ownership policies for common carrier licensees.

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<sup>50</sup> See March 12 Letter, Appendix at 6-7.

<sup>51</sup> See Consolidated Application at 6; *see also id.*, Attachment 2 at 1; March 30 Letter at 6. For ease of reference, we refer to these investors as the funds' passive investors.

<sup>52</sup> See March 12 Letter, Appendix at 2-3.

<sup>53</sup> Maurice Tchenio and his son Romain jointly own 100% of Apax Partners SNC (SNC), which, in turn, owns a controlling 62.25% interest in MMG SAS (with the remaining 37.75% interest in MMG SAS held directly by Mr. Tchenio). MMG SAS holds a controlling 54.48% interest in APSA. *See id.*, Appendix at 2-5. Applicants represent that Romain's ownership interest in SNC is non-controlling, with his voting rights in SNC limited to shareholder decisions to amend the company's articles of association. All other matters are determined by Maurice Tchenio, who is the sole manager of SNC and can be removed from that position only by a unanimous vote of the shareholders (including himself). *Id.*, Appendix at 2-3. Thus, based on the record, we find that Maurice Tchenio controls Apax France through his successive controlling interests in SNC, MMG SAS, and APSA, which manages Apax France. SNC, MMG SAS and APSA are all organized under the laws of France. *Id.*, Appendix at 2-5.

<sup>54</sup> *See id.*, Appendix at 2.

<sup>55</sup> See March 30 Letter, Appendix at 4, n.7; Consolidated Application, Attachment 2 at 4. To simplify our calculations, we include the 0.89% investment in our calculation of passive foreign investment in Apax France.

<sup>56</sup> See March 12 Letter, Annex 3 (Five Factor "Principal Place of Business Test" Chart for Inceptum's Direct and Indirect Shareholders) (revising Attachment 3 of the Consolidated Application) at 2-3. *See also id.*, Appendix at 3-4 (providing citizenship of SNC, MMG SAS and other APSA shareholders).

We also find that 71.53% of the equity interests in Apax France are held by foreign investors, all of which are citizens of, or have their principal places of business in, WTO Member countries.<sup>57</sup> Consistent with our foreign ownership case precedent, we apply the multiplier to calculate the percentage of indirect foreign equity that will be held in MobSat Holding through Apax France. Thus, we calculate that foreign investors from WTO Member countries will hold indirectly up to 43.78% of the equity interests in MobSat Holding (71.53% x 61.20%). Consistent with our foreign ownership case precedent, we also calculate a voting interest for these passive foreign investors. Because Apax France holds indirectly a majority, controlling interest in MobSat Holding, we do not apply the multiplier to calculate the voting interest of these Apax France foreign investors. We attribute to them an indirect 71.53% voting interest in MobSat Holding (71.53% x 100%). We find that the remaining 28.47% equity interest held by passive investors in Apax France is properly ascribed to U.S. citizens and to entities that are both organized in and have their principal places of business in the United States. Thus, we find that U.S. investors will hold, through Apax France, up to an indirect 17.42% equity interest (28.47% x 61.20%) and 28.47% voting interest (28.47% x 100%) in MobSat Holding.

We next analyze the foreign equity and voting interests that will be held indirectly in MobSat Holding by and through Amboise. As noted above, Amboise will hold between 16.4% and 17.0% of the indirect equity and voting interests in MobSat Holding (through the Inceptum Parent Companies). Amboise is controlled by its managing general partner, Apax Partners et Compagnie Gerance II SAS (APCG II). Amboise's non-managing general partner is Societe Europeenne Iena SAS (SEI). Amboise, APCG II and SEI are organized in France and have their principal places of business in France. All individuals and entities that have a direct or indirect equity or voting interest in APCG II and SEI are citizens of, or have their principal places of business in, France, the United Kingdom or the United States.<sup>58</sup> Maurice Tchenio ultimately controls both APCG II and SEI, neither of which has any equity interest in Amboise.<sup>59</sup> All equity investment in Amboise is held in the form of limited partnership interests.

Consistent with our foreign ownership case precedent, we calculate that Amboise will hold indirectly up to 17.0% of the equity and voting interests in MobSat Holding. We also calculate that Amboise's general partners, APCG II and SEI, and their named direct and indirect shareholders in the aggregate, will hold indirectly up to a 17.0% voting interest in MobSat Holding. We also attribute to Maurice Tchenio individually, because he controls Amboise, up to a 17.00% indirect voting interest in MobSat Holding. We find that these indirect voting interests in MobSat Holding are properly ascribed to WTO Member countries for purposes of our public interest analysis under Section 310(b)(4) and the Commission's foreign ownership policies for common carrier licensees. As noted above, all equity investment in Amboise is held in the form of limited partnership interests. All equity investment in Altamir is held in the same manner. We analyze the Amboise limited partnership interests below, together with our calculation of foreign investment in Altamir.

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<sup>57</sup> See March 30 Letter, Appendix at 2-5. As discussed above, effectively all of this equity represents passive investment. See *supra* note 55 and accompanying text.

<sup>58</sup> A principal place of business showing for SEI, APCG II and each entity that holds a direct or indirect ownership interest in APCG II, as illustrated in the ownership chart attached to this Appendix, is contained in the March 12 Letter, Annex 3 (Five Factor "Principal Place of Business Test" Chart for Inceptum's Direct and Indirect Shareholders) (revising Attachment 3 of the Consolidated Application) at 2-4. The March 12 letter also lists SEI's shareholders (all of whom are citizens of France), and the individuals that have an ownership interest in APCG II or in the entities that are invested directly or indirectly in APCG II. All of these individuals are citizens of France, the United Kingdom, or the United States. See *id.*, Appendix at 3-4.

<sup>59</sup> See March 12 Letter, Appendix at 2.

Altamir will hold between 6.6% and 6.8% of the indirect equity and voting interests in MobSat Holding (through the Inceptum Parent Companies). Altamir is controlled by its sole general partner, Apax Partners & Cie Gerance SA (APCG). Altamir and APCG are organized in France and have their principal places of business in France. All individuals and entities that have a direct or indirect equity or voting interest in APCG are citizens of, or have their principal places of business in, France, the United Kingdom or the United States.<sup>60</sup> Maurice Tchenio ultimately controls APCG, which does not hold any equity interest in Altamir.<sup>61</sup> All equity investment in Amboise is held in the form of limited partnership interests.

Consistent with our foreign ownership case precedent, we calculate that Altamir will hold indirectly up to 6.8% of the equity and voting interests in MobSat Holding. We also calculate that Altamir's general partner, APCG, and its named direct and indirect shareholders in the aggregate, will hold indirectly up to a 6.8% voting interest in MobSat Holding. We also attribute to Maurice Tchenio individually, because he controls Altamir, up to a 6.8% indirect voting interest in MobSat Holding. We find that these indirect voting interests in MobSat Holding are properly ascribed to WTO Member countries for purposes of our public interest analysis under Section 310(b)(4) and the Commission's foreign ownership policies for common carrier licensees.

Shares of Amboise and Altamir are publicly traded in France on the Euronext exchange. Applicants states that Amboise and Altamir have limited information regarding the shareholders that have identified themselves as owning an interest in the companies in excess of the applicable thresholds that trigger notification to the authorities in France, which is also released to the public. Inceptum has identified the entities that have made declarations of ownership in Amboise and Altamir and provided publicly available information on these entities. MMG SAS holds a 7.25% interest in Amboise.<sup>62</sup> In addition, Inceptum states that other entities and individuals that manage Amboise collectively hold approximately 1-1.5% of its capital.<sup>63</sup> Funds managed by subsidiaries of Fidelity International Limited and FMR Corp. (better known as Fidelity Investments), hold an aggregate 10.86% interest in Amboise.<sup>64</sup> Based on this information, it is reasonable to conclude that investors with a principal place of business in the United States or other WTO Member countries hold at least 19.11% of the equity investment in Amboise (7.25% + 1% + 10.86%).<sup>65</sup> Applying the multiplier, this amount represents a 3.25% equity and

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<sup>60</sup> A principal place of business showing for each entity that holds a direct or indirect ownership interest in APCG, as illustrated in the ownership chart attached to this Appendix, is contained in the March 12 Letter, Annex 3 (Five Factor "Principal Place of Business Test" Chart for Inceptum's Direct and Indirect Shareholders) (revising Attachment 3 of the Consolidated Application) at 2-4. The March 12 letter also lists the individuals that have an ownership interest in APCG or in the entities that are invested directly or indirectly in APCG. All of these individuals are citizens of France, the United Kingdom, or the United States. *See id.*, Appendix at 3-5.

<sup>61</sup> *See* March 12 Letter, Appendix at 2. Maurice Tchenio holds a 0.37% equity interest in Altamir. *See* April 16 Letter, Annex 1 (updating and correcting the ownership chart submitted as Figure 1 in the Consolidated Application and the March 12 Letter). To simplify our calculations, we include this 0.37% investment in our calculation of passive foreign investment in Altamir.

<sup>62</sup> *See* March 12 Letter, Appendix at 9. As explained *supra* note 53, MMG SAS is the controlling, majority shareholder of APSA and is ultimately controlled by Maurice Tchenio. MMG SAS has its principal place of business in France. *See* March 12 Letter, Annex 3 (Five Factor "Principal Place of Business Test" Chart for Inceptum's Direct and Indirect Shareholders) (revising Attachment 3 of the Consolidated Application) at 3.

<sup>63</sup> *See* Consolidated Application, Attachment 2 at 4.

<sup>64</sup> *See* March 12 Letter, Appendix at 9.

<sup>65</sup> As explained above, *supra* note 63, we find that MMG SAS has its principal place of business in France. We also find on the basis of publicly available information that the Fidelity Investment interests in Amboise and Altamir are properly ascribed to the United States or another WTO Member country. *See* <http://www.sec.gov/Archives/edgar/data/315066/000031506607002611/0000315066-07-002611.txt>. *See also* March 30 Letter, Appendix at 6-7. In the absence of additional information with regard to the place of organization



voting interest in MobSat Holding through Amboise (19.11% x 17.00%). The record also indicates that Maurice Tchenio holds a 0.37% interest in Altamir and that funds managed by subsidiaries of Fidelity International Limited and FMR Corp. hold a 5.68% interest in Altamir. Based on this information, it is reasonable to conclude that investors from the United States or other WTO Member countries hold at least 6.05% of the equity investment in Altamir (5.68% + 0.37%). Applying the multiplier, this amount represents a 0.41% equity and voting interest in MobSat Holding through Altamir (6.05% x 6.8%). Thus, we calculate that investors from the United States or other WTO Member countries will hold indirectly up to 3.66% (3.25% + 0.41%) of the equity and voting interests in MobSat Holding as a result of their limited partnership interests in Amboise and Altamir. The record does not support further conclusions about the limited partner investment in Amboise and Altamir without additional information from the Applicants, such as the results of a survey of the companies' limited partners. Accordingly, consistent with our foreign ownership case precedent, we treat as non-WTO investment 80.89% of the equity and voting interests in Amboise (100% - 19.11%), which amounts to an indirect 13.75% equity and voting interest in MobSat Holding (80.89% x 17%). We also treat as non-WTO investment 93.95% of the equity and voting interests in Altamir (100% - 6.05%), which amounts to an indirect 6.39% equity and voting interest in MobSat Holding (93.95% x 6.8%). Thus, for purposes of our public interest analysis under Section 310(b)(4) of the Act and the Commission's foreign ownership policies adopted in the *Foreign Participation Order*, we treat as non-WTO investment the 20.14% indirect equity and voting interests that will be held indirectly in MobSat Holding by foreign limited partners of Amboise and Altamir (13.75% + 6.39%).

#### **Foreign Equity and Voting Interests to be Held Through GEAM International and API V.**

According to Inceptum, at closing of the proposed transaction, GEAM International will acquire indirectly between 15% and 18% of the indirect equity and voting interests in MobSat Holding (through the Inceptum Parent Companies). The GEAM International investment will be structured as follows: GEAM International, a Delaware limited partnership, will wholly own Summer Street Satellite Holding Company, Ltd. ("Summer Street"), a company organized in the Cayman Islands.<sup>66</sup> Summer Street, in turn, will invest in a Delaware limited partnership called Apax Parallel Investment V, L.P. ("API V"). API V will be the entity that makes the 15% to 18% investment in the MobSat Group Holding Sarl. Summer Street will be the sole limited partner of API V and will have an ownership interest in API V of nearly 100%. API V will have no officers or directors but will act through its general partner. The general partner of API V will be Apax Satellite, LLC ("Apax Satellite"), a special-purpose limited liability company organized in Delaware. Apax Satellite will be managed by its sole member, APSA, and will have an ownership interest in API V of less-than-one percent.<sup>67</sup>

GEAM International is a private equity fund organized in Delaware that is sponsored by GE Asset Management. The general partner of GEAM International is GE International Management Incorporated (GEIM), a Delaware corporation. GEIM is an indirect wholly-owned subsidiary of the General Electric Company (GE), a New York corporation.<sup>68</sup> Shares of GE are widely held and publicly traded. Based on periodic surveys, GE estimates its total foreign ownership is 10% or less.<sup>69</sup> GEIM

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of the Fidelity funds, or the number of foreign investors in the funds, we consider the Fidelity funds to be foreign investors, albeit with a principal place of business in the United States or another WTO Member country.

<sup>66</sup> See April 30 Letter at 2.

<sup>67</sup> See April 30 Letter at 2.

<sup>68</sup> All entities in the vertical chain of ownership between GEIM and GE are U.S.-organized companies. See April 17 Letter at 3.

<sup>69</sup> See April 16 Letter at 2; see also April 30 Letter at 2.

holds a 0.20% general partnership interest in GEAM International. The remaining equity investment is held by limited partners that are passive fund investors.<sup>70</sup>

Consistent with our foreign ownership case precedent, we attribute to each of API V and Summer Street up to an 18.0% indirect equity and voting interest in MobSat Holding.<sup>71</sup> The record supports a finding that foreign-organized Summer Street, like its U.S.-organized direct and indirect controlling interest holders (GEAM International, GEIM, and their ultimate parent company, GE) has its principal place of business in the United States.<sup>72</sup> Based on the record, we find that U.S.-organized API V is properly considered to have its principal place of business in France or the United States.<sup>73</sup> We therefore find that the 18% indirect equity and voting interests to be held by each of API V and Summer Street in MobSat Holding are properly ascribed to WTO Member countries for purposes of our public interest analysis under Section 310(b)(4) and the Commission's foreign ownership policies for common carrier licensees.

We also attribute to each of Apax Satellite (the general partner of API V) and to APSA (the sole member of Apax Satellite) up to a less-than-one percent (rounding to 0.00%) indirect equity and 18.0% voting interest in MobSat Holding. We attribute these same equity and voting interests ultimately, and in the aggregate, to the named direct and indirect shareholders of APSA. We also attribute to Maurice Tchenio individually, because he controls APSA, up to an 18.0% indirect voting interest in MobSat Holding. We find that each of these named individuals and entities is a citizen of, or has its principal place of business in, France, the United Kingdom or the United States.<sup>74</sup> Accordingly, we find that these indirect equity and voting interests in MobSat Holding are properly ascribed to WTO Member countries for purposes of our public interest analysis under Section 310(b)(4) and the Commission's foreign ownership policies for common carrier licensees.

Foreign limited partners of GEAM International hold up to 33.88% of its equity and voting interests.<sup>75</sup> GEAM International will hold up to 18% of the indirect equity and voting interests in MobSat

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<sup>70</sup> See April 17 Letter.

<sup>71</sup> As noted above, API V will invest between 15% and 18% in MobSat Group Holding Sarl. Summer Street will own nearly 100% of API V in the form of limited partnership interests. To simplify our analysis, we treat Summer Street's ownership interest in API V as 100%.

<sup>72</sup> Summer Street will have no officers and will have as its sole director a U.S. citizen employed by GE Asset Management, Inc. Summer Street is being set up solely as an intermediate holding company for the GEAM International investment and will have no other material property or assets. See April 30 Letter at 2. See also *id.* at 2-3 (providing a principal place of business showing for GE).

<sup>73</sup> Although API V and its general partner Apax Satellite are organized in Delaware, API V is ultimately controlled by APSA, which we find has its principal place of business in France. See March 12 Letter, Annex 3 (Five Factor "Principal Place of Business Test" Chart for Inceptum's Direct and Indirect Shareholders) (revising Attachment 3 of the Consolidated Application) at 2. See also *supra* note 56 and accompanying text. API V is being set up solely as an intermediate holding company for the GEAM International investment and will have no other material property or assets. See April 30 Letter at 2.

<sup>74</sup> See March 12 Letter, Annex 3 (Five Factor "Principal Place of Business Test" Chart for Inceptum's Direct and Indirect Shareholders) (revising Attachment 3 of the Consolidated Application) at 2-3. See also *id.*, Appendix at 3-4 (providing citizenship of SNC, MMG SAS and other APSA shareholders). See also *supra* note 53. Although it is organized in Delaware, Apax Satellite is wholly owned and controlled by APSA, which we have found to have its principal place of business in France. It appears from the record that Apax Satellite is being formed solely to serve as the general partner of API V. See *supra* note 73. As explained *supra* note 72, API V itself is being set up solely as an intermediate holding company for the GEAM International investment and will have no other material property or assets. See April 30 Letter at 2. Based on this information, we find that U.S.-organized Apax Satellite is properly considered to have its principal place of business in France or the United States.

<sup>75</sup> See April 16 Letter at 3.

Holding.<sup>76</sup> We therefore calculate that GEAM International's foreign investors will hold indirectly up to 6.10% of the equity and voting interests in MobSat Holding (33.88% x 18%). We find that all of these indirect foreign equity and voting interests are properly ascribed to WTO Member countries for purposes of our public interest analysis under Section 310(b)(4) and the Commission's foreign ownership policies for common carrier licensees.<sup>77</sup> In addition, because GEIM holds a 0.2% general partnership interest (presumably, a controlling interest) in GEAM International, and up to 10% of GE's shareholders may be foreign, we calculate that foreign citizens may hold indirectly up to an additional 0.004% foreign equity interest (10% x 0.2% x 18.0%) and 1.8% foreign voting interest (10% x 100% x 18%) in MobSat Holding. Because Inceptum has not provided information for the record as to the citizenship of GE's foreign shareholders, we treat these small equity and voting interests as non-WTO investment.

**Summary of Findings.** We find that France is the principal place of business of MobSat Holding's 100% direct parent, Inceptum, and of all the other foreign-organized holding companies situated above Inceptum in the vertical ownership chain through which the Apax Funds and GEAM International will hold their indirect equity and voting interests in Inceptum (*i.e.*, MobSat Group Holding Sarl, MobSat Holding 2 BV, and MobSat Holding 1 BV).

We also find that France is the principal place of business of the Apax Funds and of the entities that manage or have a direct or indirect controlling interest in the funds. We further find that the shareholders of these controlling interest holders are all citizens of France, the United Kingdom, and the United States. Thus, we ascribe to WTO Member countries the total equity and voting interests that will be held indirectly in MobSat Holding by the foreign-organized Apax Funds (up to 85% of the equity and voting interests), by their foreign-organized controlling interest holders (up to a less-than-one percent, rounding to 0.00%, equity interest and 85% voting interest), and by the funds' controlling principal, Maurice Tchenio (up to an 85% voting interest). Mr. Tchenio and one of the Apax Fund controlling interest holders, APSA, will acquire additional indirect equity and voting interests in MobSat Holding as a result of the GEAM International co-investment.

Turning to the GEAM International co-investment, we find that U.S.-organized API V and foreign-organized Summer Street are properly considered to have their principal places of business in the United States or France (in the case of API V). Thus, we ascribe to WTO Member countries the equity and voting interests that will be held indirectly in MobSat Holding by API V and Summer Street (individually, up to an 18% equity and voting interest). We also find that U.S.-organized Apax Satellite, foreign-organized APSA, and the named direct and indirect shareholders of APSA, are all citizens of, or have their principal places of business in, France, the United Kingdom, or the United States. We therefore ascribe to WTO Member countries the equity and voting interests that will be held indirectly in MobSat Holding as a result of the GEAM International co-investment as follows: Apax Satellite and its sole member APSA (individually, up to a less-than-one percent (rounding to 0.00%) equity and 18.0% voting interest); the named direct and indirect shareholders of APSA (collectively, up to a less-than-one percent (rounding to 0.00%) equity and 18% voting interest); and Maurice Tchenio, the ultimate controlling shareholder of APSA (up to an 18% voting interest).

We also find it reasonable to conclude that, upon closing of the proposed transaction, investors from the United States and other WTO Member countries will hold indirectly at least 75% of the equity and voting interests in MobSat Holding as a result of the passive equity investment in the Apax Funds and GEAM International.<sup>78</sup> As we have found above, all of the passive investment in Apax France and

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<sup>76</sup> Because GEAM International will wholly own Summer Street, we calculate that GEAM International, through Summer Street, will acquire indirectly up to 18% of the equity and voting interests in MobSat Holding (through the Inceptum Parent Companies). See *supra* note 72 and accompanying text.

<sup>77</sup> See April 17 Letter at 2-3.

<sup>78</sup> As explained above, effectively all of the equity investment in the Apax Funds represents passive investment. Similarly, all of the equity investment in GEAM International is held by passive investors with the exception of a

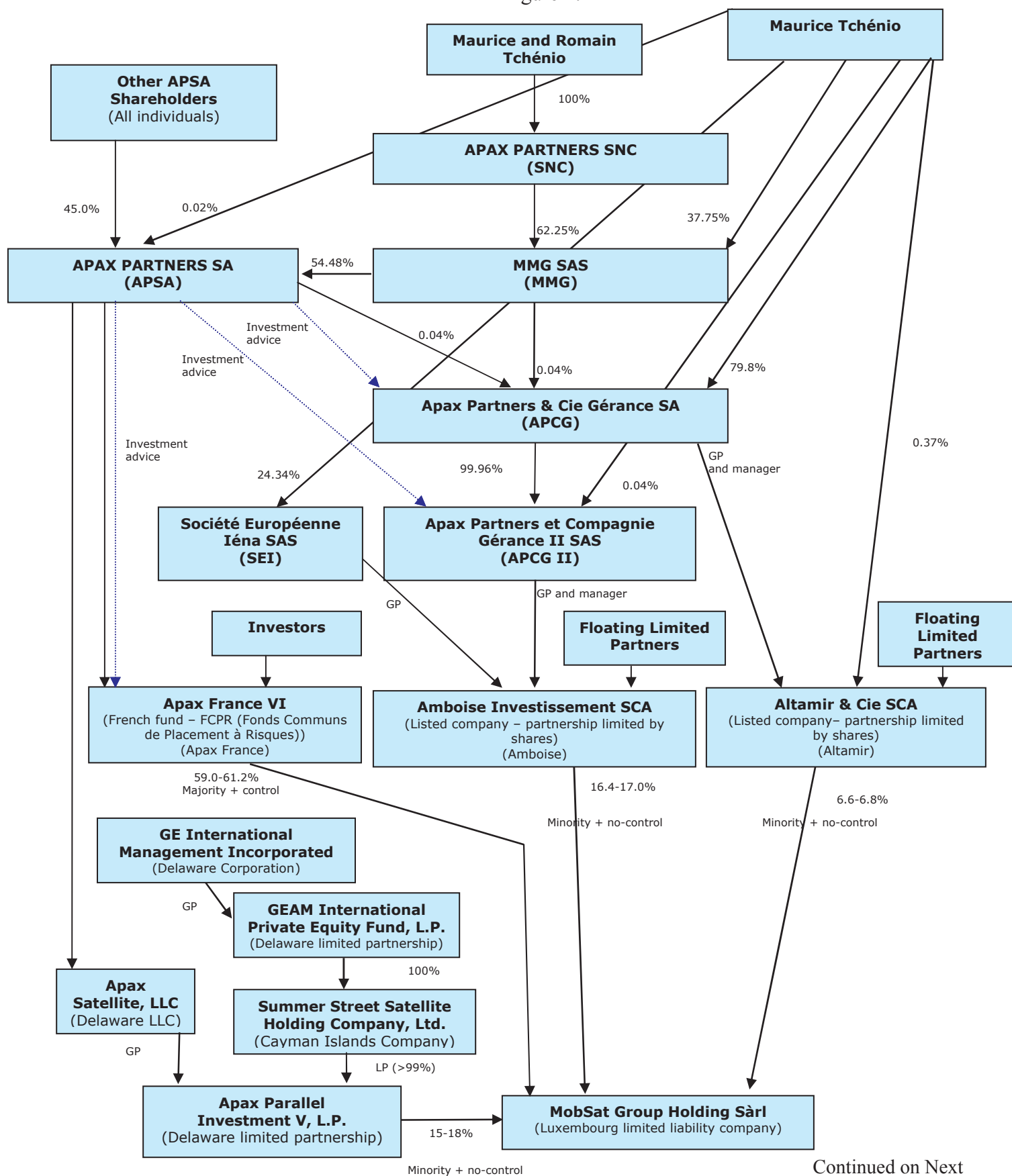
GEAM International is properly ascribed to the United States and other WTO Member countries. Passive investment in Amboise and Altamir that is not sufficiently identified for the record, and that we therefore treat as non-WTO investment, will not exceed 20.14% of the indirect equity and voting interests in MobSat Holding. While we have attributed an additional *de minimis* non-WTO equity and voting interest to MobSat Holding due to foreign shareholdings in GE, the ultimate parent of GEAM International's general partner, these interests account for only an indirect 0.004% equity and 1.8% voting interest in MobSat Holding. Accordingly, we treat 20.144% of the indirect equity interests (20.14% + 0.004%) and 21.94% of the indirect voting interests (20.14% + 1.8%) in MobSat Holding as non-WTO ownership for purposes of our foreign ownership ruling.

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less-than-one percent equity interest held by APSA, and a 0.2% equity interest held by GEAM International's general partner, which is ultimately wholly owned and controlled by GE.

## Attachment to Appendix B

Figure 1:



Continued on Next



Figure 1 (continued):

