



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, S.W.
WASHINGTON, D.C. 20554

DA 11-1488

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Released: August 31, 2011

APPLICATIONS FILED FOR THE TRANSFER OF CONTROL OF VIZADA, INC. AND MARLINK, INC. AND REQUEST FOR A DECLARATORY RULING ON FOREIGN OWNERSHIP

IB Docket No. 11-143

PLEADING CYCLE ESTABLISHED

Petitions Due: September 30, 2011
Oppositions Due: October 11, 2011
Replies Due: October 17, 2011

INTRODUCTION

Chrysaor S.a.r.l. (Chrysaor) and Astrium Holding S.A.S. (Astrium) (together, the “Applicants”) have filed applications for transfer of control pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (the Act).¹ Applicants seek Commission consent to transfer control of subsidiaries of Mobsat Group Holdings S.a.r.l. (MGH) that hold FCC authorizations and licenses – Vizada, Inc. (Vizada) and Marlink, Inc. (Marlink) (together MGH Subsidiaries) – from the current shareholders of Chrysaor to Astrium. The applications pertain to fixed land earth station licenses, blanket mobile earth station licenses, an experimental license, a private land mobile radio license, and international section 214 authorizations. Applicants also seek a declaratory ruling allowing the indirect foreign ownership of Vizada in excess of the 25 percent benchmark established under section 310(b)(4) of the Act.²

PARTIES

Applicants state that Chrysaor, a holding company, is a *societe a responsabilite limitee* under Luxembourg law, the equivalent of a limited liability company. MGH is also a Luxembourg limited liability company. Chrysaor holds directly 83.3% of the shares of MGH, and indirectly controls Vizada and Marlink. The remaining shares of MGH are held by two minority owners: MobSat Management S.a.r.l., a Luxembourg *societe a responsabilite limitee* (9.3%) and Glenridge Trust, an irrevocable family trust established in the U.K. (2.4%).

Neither Chrysaor nor MGH directly hold any FCC licenses or authorizations. Vizada holds fixed land earth station licenses, blanket mobile earth station licenses, an experimental license, a private land

¹ 47 U.S.C. §§ 214, 310(d).

² 47 U.S.C. § 310(b)(4).

mobile radio license, and international section 214 authorizations. Marlink holds an international section 214 authorization.

Vizada and Marlink, both Delaware corporations, are indirect wholly-owned subsidiaries of MGH. Mobsat Holding US Corp, a Delaware corporation and a wholly-owned subsidiary of MobSat Holding Norway AS, f/k/a Inceptum 1 AS (MH Norway), a Norwegian entity, is the direct parent of Vizada and Marlink. In turn, MH Norway is a wholly-owned, direct subsidiary of MobSat Holding 1 BV (MH1), a Netherlands private limited liability company. MH1 is a wholly-owned, direct subsidiary of MobSat Holding 2 BV, a Netherlands private limited liability company that is a wholly-owned, direct subsidiary of MGH.

Astrium, a French corporation, is a wholly-owned subsidiary of EADS Astrium N.V. (EADS Astrium), a Dutch corporation. EADS Astrium is wholly owned by European Aeronautic Defence and Space Company EADS N.V. (EADS), a publicly traded Dutch corporation. The general public holds approximately 49.16% of the equity of EADS, representing approximately 49.35% of the voting interest, which includes the 2.0% equity and corresponding voting rights held by EADS employees. Three shareholders of EADS, however, have pooled their respective shares in the company to collectively hold approximately 50.39% equity interest in EADS' share capital, and approximately 50.59% of the voting interest. These shareholders have pledged the voting rights pertaining to the pooled shares over to a contractual partnership managed by EADS Participations B.V. (EADS Participations), a Dutch private company.

The shareholders that have pooled their EADS shares and pledged their voting rights to EADS Participations are:

Société de Gestion de L'Aeronautique, de la Défense et de l'Espace (SOGEADE), a French limited partnership, holds approximately 22.46% equity interest in EADS representing approximately 22.55% of the voting interest. SOGEADE is 66.67% owned by Société de Gestion de Participations Aeronautiques (SOGEPA), a French state holding company that is wholly owned by the French Government, and 33.33% owned by Désirade, a French corporation which is wholly owned by Lagardère SCA (Lagardère), a French publicly traded company. The general partner and manager of SOGEADE is SOGEADE Gérance, a French partnership, the share capital of which is split equally between SOGEPA and Lagardère. Through its indirect interest in SOGEADE, the French Government owns indirectly approximately 14.97% of EADS' shares, and approximately 15.03% of its voting interest. Lagardère owns approximately 7.49% of the EADS shares, and approximately 7.52% of the voting interest.

Daimler Aerospace GmbH & Co. KG (DASA), a German corporation, holds approximately 22.46% of the share capital of EADS representing approximately 22.55% of the voting interest. DASA is 67.67% owned by Daimler Luft-und Raumfahrt Holding AG (DLRH), a German corporation, which is 99.9% owned by Daimler AG (Daimler), a German publicly traded company. DASA is 33.33% owned by a consortium of private and public-sector investors. Through its indirect equity interest in DASA, Daimler owns approximately 14.96% of the shares of EADS, and the consortium of private and public-sector investors owns approximately 7.49% of the EADS shares. Daimler controls the voting rights of the entire 22.46% of EADS shares held by DASA, which amounts to approximately 22.55% of the total EADS voting interests, pursuant to an agreement with the investors.

Sociedad Estatal de Participaciones Industriales (SEPI), a Spanish entity that is controlled by the Spanish Government, holds approximately 5.47% of the share capital of EADS representing approximately 5.49% of the voting interest.

The Board of Directors of EADS (Board) is composed of a maximum of eleven members, of which seven are from the Board of Directors of EADS Participation. These seven directors exercise the exclusive voting rights attached to the pledged shares of DASA, SOGEADE, and SEPI. Unless otherwise agreed, Daimler and SOGEADE each nominate two directors, and the elected directors jointly have the right to nominate and remove a Chairman and a CEO, each of whom are also directors. SEPI has the right to elect a director as long as it maintains at least a 5 percent or more beneficial ownership interest in EADS. All decisions of the EADS Participations Board of Directors require the vote of at least four directors, including the unanimous approval from all SOGEADE and Daimler directors, giving SOGEADE and Daimler equal nominating rights in respect to the majority of the directors of EADS Participations and without either controlling its affairs. The four remaining directors of EADS are independent directors jointly proposed by the Chairman and CEO and individually approved by the Board. The French Government has indirect limited veto power or defensive blocking rights relating to four specific actions within EADS Participations due to EADS Participations' majority interest within EADS, but it cannot unilaterally block decisions of the EADS Board of Directors.

PROPOSED TRANSACTION

Pursuant to a Share Purchase Agreement, executed between Chrysaor, MGH Shareholders, and Astrium, on July 30, 2011, Astrium will acquire all of the outstanding shares of capital stock of MGH, thereby replacing the three entities that presently own MGH. Upon closing, MGH and its subsidiaries, including Vizada and Marlink, will become indirect, wholly-owned subsidiaries of Astrium. Consequently, Astrium will indirectly control Vizada and Marlink.

Applicants state that the proposed transaction is in the public interest. They assert that Astrium's acquisition will enhance competition in the satellite services market by giving MGH, Vizada and Marlink the benefit of the robust operational expertise and strong financial position of EADS. Astrium plans to ensure continued compliance with the terms of the existing Network Security Agreement (NSA) and Implementation Plan applicable to MGH and the MGH affiliates. Astrium requests that the FCC condition grant of the applications on compliance with the terms and conditions of the NSA.³

APPLICATIONS

The following applications for consent to transfer control have been assigned the file numbers listed below:

Wireless Licenses (Part 90)

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign</u>
0004827475	Vizada, Inc.	KB42877

Experimental Licenses (Part 5)

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign</u>
0023-EX-TU-2100	Vizada, Inc.	WC2XRT

³ The NSA is publicly available as Appendix C to *VIZADA Services LLC Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as amended, to Permit Indirect Foreign Ownership Exceeding 25 Percent in Radio Common Carrier Licensee VIZADA Services LLC and Vizada, Inc. Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, File Nos. ISP-PDR-20060804-00010 and ISP-PDR-20080501-00011, Order and Declaratory Ruling, 25 FCC Rcd 2029, 2052 (IB 2010)

Earth Station Licenses (Part 25)

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
SES-T/C-20110818-00979	Vizada, Inc.	E040390
SES-T/C-20110818-00998	Vizada, Inc.	E000280

International Section 214 Authorizations (Part 63)

<u>File No.</u>	<u>Authorization Holder</u>	<u>Lead Authorization</u>
ITC-T/C-20110818-00265	Marlink, Inc.	ITC-214-20010529-00341
ITC-T/C-20110818-00266	Vizada, Inc.	ITC-214-20061213-00558

PETITION FOR DECLARATORY RULING

Applicants have filed a petition pursuant to section 310(b)(4) for a declaratory ruling that it is in the public interest to allow Astrium to hold up to and including 100 percent indirect foreign ownership of Vizada.

As discussed above, Astrium is a French corporation that is wholly-owned by EADS Astrium, a Dutch corporation, which is in turn wholly-owned by EADS, a Dutch company that is publicly traded on the Paris and Frankfurt stock exchanges and on stock exchanges in Madrid, Bilbao, Barcelona and Valencia, Spain. Shareholders participating in EADS Participations contractual partnership collectively hold approximately 50.39% of the equity and 50.59% of the voting interests. The general public holds approximately 49.16% of the equity and 49.35% of the voting interests, of which approximately 2.0% of the share capital and voting rights is held by EADS employees.

Astrium states that the shareholders that participate in the EADS Participation contractual partnership are the French Government which holds 15.03% of EADS shares and corresponding 15.09% of the vote; the Spanish Government which holds 5.4% of EADS shares and corresponding 5.49% of the vote; Lagardère, a French publicly traded company, which holds 7.49% of EADS shares and corresponding 7.52% of the vote; and DASA, ultimately owned by Daimler, a German publicly traded company, which holds 22.46% of EADS shares and corresponding 22.55% of the vote. Daimler holds an indirect 66.67% ownership interest in DASA, and a consortium of seven private banks and eight public entities that are banks or investment funds hold a 33.33% ownership interest in DASA. Approximately 97% of Daimler's shares are held by entities or individuals from World Trade Organization (WTO) countries. The only shareholders that hold more than 5 percent ownership interest in Daimler are Aabar Investments, owned by the Government of Abu Dhabi of the United Arab Emirates (9.0%), and the State of Kuwait (6.9%).

Astrium states that all of these companies, including the consortium banks and funds, are incorporated and located in WTO member countries, and the respective stock of the publicly traded companies are traded on stock exchanges located in WTO member countries. Astrium states that the vast majority of the publicly traded EADS shares, consisting of more than 75 percent of EADS stock, are owned by entities and individuals, which are from the United States or other WTO member countries. The governments of France and Spain, which are indirect shareholders in EADS, hold a combined ownership interest of over 20% of EADS, and are themselves WTO member countries. Astrium states that, to its knowledge, the only non-WTO member country entity that holds a significant interest in EADS is the Vneshekonombank, a Russian state-owned entity that holds 5.04% of the share capital of EADS, but does not hold any voting rights to elect officers or in the governance of EADS. Based on this record,

Astrium states that the presumption that foreign ownership in excess of the benchmark, up to and including 100 percent indirect ownership of MGH Subsidiaries, is applicable here and thus its proposed foreign ownership in the public interest.

The Petition for Declaratory Ruling has been assigned File Nos. ISP-PDR-20110818-00009.

PENDING APPLICATIONS AND CUT-OFF RULES

Applicants request that action on these applications include authority for Astrium to acquire control with respect to any and all authorizations issued or assigned to any of the MGH Subsidiaries prior to consummation of the instant proposed transaction, all applications, petitions, or other filings pending at the time of consummation, and all special temporary authorizations (STA) held by the MGH Subsidiaries or applications for STAs that are pending at the time of consummation. Applicants state that, following the closing of the proposed transaction, the MGH Subsidiaries will supplement their pending applications as required under the Commission's rules, 47 C.F.R. § 1.65, to reflect the new ownership structure.⁴ Applicants also request, pursuant to sections 1.927(h), 1.929(a)(2), and 25.116(b)(4) of the Commission's rules,⁵ a blanket exemption from applicable cut-off rules in matters where the MGH subsidiaries file amendments to pending applications to reflect consummation of the proposed transfer of control.

EX PARTE STATUS OF THIS PROCEEDING

This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁶ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

GENERAL INFORMATION

The transfer of control applications referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or

⁴ 47 C.F.R. § 1.65.

⁵ 47 C.F.R. §§ 1.927(h), 1.929(a)(2), and 25.116(b)(4) of the Commission's rules, 47 C.F.R. §§ 1.927(h), 1.929(a)(2), 25.116(b)(4).

⁶ 47 C.F.R. §§ 1.1200 *et seq.*

policies. Final action on these applications will not be taken earlier than thirty-one days following the date of this Public Notice.⁷

Interested parties must file petitions to deny no later than **September 30, 2011**. Persons and entities that file timely petitions to deny may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order (subject to the restrictions contained in the protective order) and seeking reconsideration of decisions. Oppositions to such pleadings must be filed no later than **October 11, 2011**. Replies to such pleadings must be filed no later than **October 17, 2011**. All filings concerning matters referenced in this Public Notice should refer to **DA 11-1488** and **IB Docket No. 11-143**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

Under the Commission's current procedures for the submission of filings and other documents,⁸ submissions in this matter may be filed electronically (*i.e.*, though ECFS) or by hand delivery to the Commission.

- **If filed by ECFS,**⁹ comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail.
- **If filed by paper,** the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to the Commission's duplicating contractor, Best Copy and Printing, Inc., at FCC@BCPIWEB.COM or (202) 488-5563 (facsimile).

Additionally, filers must deliver courtesy copies by email to the following Commission staff:

- 1) Jeff Tobias, Mobility Division, Wireless Telecommunications Bureau, at jeff.tobias@fcc.gov;

⁷ See 47 U.S.C. § 309(b).

⁸ See Implementation of Interim Electronic Filing Procedures for Certain Commission Filings, *Order*, 16 FCC Rcd 21483 (2001); FCC Announces Change in Filing Location for Paper Documents, *Public Notice*, 24 FCC Rcd 14312 (2009).

⁹ See Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, *Report and Order*, 13 FCC Rcd 11322 (1998).

- 2) Douglas Young, Electromagnetic Compatibility Division, Office of Engineering and Technology, at douglas.young@fcc.gov;
- 3) Lynne Montgomery, Satellite Division, International Bureau, at Lynne.Montgomery@fcc.gov;
- 4) David Krech, Policy Division, International Bureau, at david.krech@fcc.gov;
- 5) Sumita Mukhoty, Policy Division, International Bureau, at sumita.mukhoty@fcc.gov.

Copies of the Applications and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at fcc@bcpweb.com. The Applications and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The Applications also are available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

People with Disabilities: To request this Public Notice in accessible formats (computer diskette, large print, audio recording, and Braille), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

For further information, contact Lynne Montgomery, Satellite Division, International Bureau, at (202) 418-2229; David Krech or Sumita Mukhoty, Policy Division, International Bureau, at (202) 418-1460.

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