

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of )
)
Lockheed Martin Global Telecommunications, )
Comsat Corporation, and Comsat General ) File Nos. SES-ASG-20010504 00896
Corporation, Assignor ) ITC-ASG-20010504-00302
) ISP-PDR-20010510-00025
and ) ULS-0000449956
) 41-EX-AL-2001
Telenor Satellite Mobile Services, Inc. and ) 42-EX-AL-2001
and Telenor Satellite, Inc., Assignee ) 43-EX-AL-2001
) 44-EX-AL-2001
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

Adopted: December 14, 2001

Released: December 18, 2001

By the Commission: Commissioner Copps dissenting and issuing a statement and Commissioner Martin issuing a statement.

I. INTRODUCTION

1. In this Order, we grant the applications filed by Lockheed Martin Global Telecommunications (LMGT), Comsat Corporation, and Comsat General Corporation (Comsat General) (collectively, Assignor or Comsat), together with Telenor Satellite Services Holdings, Inc. (TSSH),<sup>1</sup> Telenor Satellite Inc. (Telenor Satellite), and Telenor Broadband Services AS (Telenor Broadband) (collectively, Assignee)<sup>2</sup> (herein Assignor and Assignee are collectively referred to as

1 Telenor Satellite Mobile Services, Inc. was the original party filing in this proceeding. Effective October 17, 2001, the company changed its name to Telenor Satellite Services Holdings, Inc. See Letter from George Klienfeld, Counsel for Telenor, to Magalie Roman Salas, Secretary, Federal Communications Commission, October 30, 2001 (October 30, 2001 Supplemental Filing). As explained in the letter, the corporate name change was made for marketing reasons and does not affect the structure of the proposed transaction. Therefore, throughout this Order, we refer to the original party, Telenor Satellite Mobile Services, Inc., as Telenor Satellite Services Holdings, Inc.

2 As described in Section II. A. below, the ultimate corporate parent of the Telenor companies named as the Assignee in this proceeding is Telenor ASA. See infra paras. 5-8.

Applicants) to assign certain Title II common carrier authorizations and Title III radio licenses held by Comsat to Telenor Satellite.<sup>3</sup> The proposed assignment is in connection with TSSH's proposed acquisition of Comsat Mobile Communications (CMC), a business unit of Comsat Corporation. The acquisition involves the assignment of various satellite earth station licenses, private land mobile radio licenses, experimental licenses, and Section 214 authorizations held by Comsat Corporation, through its business unit CMC,<sup>4</sup> to Telenor Satellite (CMC-related FCC licenses and authorizations).<sup>5</sup>

2. We find that the proposed assignment of the CMC-related FCC licenses and authorizations to Telenor Satellite and the operation of CMC's business by TSSH's subsidiary, Telenor Satellite Services Inc., is in the public interest pursuant to our review under Sections 214(a) and 310(d) of the Communications Act of 1934, as amended (the Act).<sup>6</sup> Our approval, which will allow for the combination of CMC's business with Telenor ASA's,<sup>7</sup> will enhance competition and consumer choice in the global satellite telecommunications markets and thereby promote wider and more varied service offerings at competitive prices for consumers in the United States and abroad. In addition, pursuant to our review under Section 310(b)(4),<sup>8</sup> we find that it will not serve the public interest to prohibit the proposed indirect foreign ownership of the CMC-related FCC licenses by Telenor Satellite in excess of the statutory 25 percent foreign ownership benchmark.

## II. BACKGROUND

### A. The Applicants

#### 1. Comsat

3. Comsat Corporation, incorporated in the District of Columbia, is a wholly owned subsidiary of LMGIT, a Delaware limited liability company, which in turn is a wholly owned

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<sup>3</sup> See *Application for Approval of Assignments and Petition for Declaratory Ruling*, Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation (Assignor) and Telenor Satellite Services Holdings, Inc., and Telenor Satellite, Inc. (Assignee), May 4, 2001 (*Assignment Application*).

<sup>4</sup> As noted in the *Assignment Application*, one of the licenses that Comsat proposes to assign to Telenor Satellite is held by Comsat General, a subsidiary of Comsat Corporation. See *Assignment Application* at 2, n. 2.

<sup>5</sup> The *Assignment Application* included the requisite FCC forms and supporting exhibits and are assigned the following file numbers: SES-ASG-20010504-00896 (Form 312, Earth Station Licenses), ULS-0000449956 (Form 603, Private Land Mobile Radio), File Nos. 41-EX-AL-2001, 42-EX-AL-2001, 43-EX-AL-2001, 44-EX-AL-2001, and Call Sign WA9XBL (Form 702/Form 442, Experimental Licenses), ITC-ASG-20010504-00302 (Section 214 Authority); and ISP-PDR-20010510-00025 (Section 310(b)(4) Petition for Declaratory Ruling). See Public Notice, Report No. SPB-169, May 25, 2001. The Applicants filed an Amended Description of Transaction for File No. ULS-0000449956 (Private Land Mobile Radio) on May 15, 2001 and filed additional information to update and supplement the *Assignment Application* on June 20, 2001, September 12, 2001, and October 30, 2001 (respectively, *June 20, 2001 Supplemental Filing*, *September 12, 2001 Supplemental Filing*, and *October 30, 2001 Supplemental Filing*). Appendix A lists the licenses and authorizations subject to the proposed assignment.

<sup>6</sup> 47 U.S.C. §§ 214(a) and 310(d).

<sup>7</sup> See *supra* note 2. Telenor ASA is the ultimate corporate parent of the proposed Assignee in this proceeding. See also *infra* paras. 5-8.

<sup>8</sup> 47 U.S.C. § 310(b)(4).

subsidiary of Lockheed Martin Corporation, a publicly-traded company incorporated in Maryland.<sup>9</sup> Comsat Corporation previously served as the U.S. Signatory to the International Mobile Satellite Organization (Inmarsat) prior to Inmarsat's privatization from an intergovernmental organization on April 15, 1999. Inmarsat is now a publicly traded company, Inmarsat Ventures, plc (Inmarsat Ventures), incorporated and headquartered in England.<sup>10</sup> LMG T owns approximately 14 percent equity interest in Inmarsat Ventures<sup>11</sup> and Comsat, which has a market share of approximately 12 percent in Inmarsat,<sup>12</sup> is among the 28 land earth station operators (LESOs) that provide mobile-originated services via Inmarsat.<sup>13</sup>

4. CMC, a business unit of Comsat Corporation, is a facilities-based telecommunications operator, providing mobile satellite services to maritime, aeronautical, and land mobile customers, utilizing space segment capacity on the Inmarsat satellite system.<sup>14</sup> CMC uses a combination of its own land earth stations located in the United States (Connecticut and California) and certain foreign-owned land earth stations (located at Kuantan, Malaysia, Perth, Australia, and Fucino, Italy) to provide services that include voice, data, fax, telex and information services. In addition, CMC also provides C-band services to cruise ship customers using space segment capacity on the INTELSAT satellite system.<sup>15</sup>

## 2. Telenor Companies

5. Telenor ASA, a Norwegian company publicly traded on the Oslo and NASDAQ exchanges, is the ultimate corporate parent of the proposed Assignee.<sup>16</sup> Prior to its initial public offering (IPO) in December 2000, Telenor ASA was owned 100 percent by the Kingdom of Norway. The December 2000 IPO resulted in 21 percent ownership by the public (including approximately 14 percent ownership by non-Norwegian nationals) and 79 percent ownership by the Kingdom of Norway.<sup>17</sup>

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<sup>9</sup> *Assignment Application* at 7, and *Assignment Application*, 214 *Application* at 3-4.

<sup>10</sup> *See, e.g., Assignment Application* at 3, *Assignment Application*, Form 312 at Exhibit III. In anticipation of conducting an Initial Public Offering, Inmarsat Ventures, Ltd. was converted to a public limited company, Inmarsat Ventures, plc. *See* Letter from Kelly Cameron on behalf of Inmarsat Ventures, plc, to Secretary, Federal Communications Commission, March 21, 2001.

<sup>11</sup> *Assignment Application* at 3, n. 3. In September 2000, LMG T sold Telenor Broadband a portion of its Inmarsat Ventures shares. As a result, Telenor Broadband holds 15 percent of Inmarsat shares, the maximum level of ownership permitted under Inmarsat Venture's Articles of Incorporation. *Id.*

<sup>12</sup> *See* Inmarsat Ventures plc, Annual Report & Accounts 2000 at 42. Market share in Inmarsat is based on revenue paid to Inmarsat for use of its system, not on investment in the system.

<sup>13</sup> *Assignment Application* at 3.

<sup>14</sup> *Id.* at 7.

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

<sup>16</sup> *Id.* at 8. Telenor ASA was incorporated in 1994 as a result of Norway's restructuring of its public telecommunications carrier. Norway at that time converted its public telecommunications carrier into a company limited by shares owned 100 percent by the Kingdom of Norway.

<sup>17</sup> *Id.* The Applicants state that on June 15, 2001, the Norwegian parliament authorized a further offering of shares held by Norway's government in Telenor ASA which in effect will permit the dilution of the Kingdom of Norway's majority ownership in Telenor ASA to a minority stake of as little as 34 percent. *See Applicants'*

6. Telenor ASA currently has four core areas of business: mobile communications, fixed network telecommunications service, Internet services, and broadband services.<sup>18</sup> Through its wholly owned subsidiaries, Telenor ASA provides fixed network services and mobile services in Norway, and provides mobile communications, broadcasting and satellite services, and Internet and associated services in European and other markets worldwide.<sup>19</sup> Telenor ASA, through its wholly owned subsidiary, Telenor Broadband, is an active participant in the Inmarsat system and is one of 28 LESOs that currently provide Inmarsat services.<sup>20</sup> Telenor Broadband currently holds 15 percent equity in Inmarsat Ventures, the maximum level of ownership permitted under the Inmarsat Ventures Articles of Incorporation<sup>21</sup> and has a market share in Inmarsat of approximately 12 percent.<sup>22</sup>

7. Telenor ASA recently established TSSH, a Delaware corporation, as a U.S. holding company specifically for the purpose of acquiring the CMC business unit.<sup>23</sup> TSSH is a wholly owned subsidiary of Telenor Satellite Mobile AS, which in turn is a wholly owned subsidiary of Telenor Satellite Mobile Ventures AS, both of which are entities organized under the laws of Norway and wholly owned by Telenor Broadband.<sup>24</sup> Telenor Broadband, a company organized under the laws of Norway, is a direct, wholly owned subsidiary of Telenor Communications AS, an entity organized under the laws of Norway, which in turn is a direct, wholly owned subsidiary of Telenor ASA.<sup>25</sup>

8. TSSH wholly owns two other Delaware corporations: Telenor Satellite, created specifically for the purpose of holding the CMC-related FCC licenses and authorizations contemplated by the proposed acquisition of the CMC line of business; and Telenor Satellite Services, Inc., a separately incorporated operating subsidiary, which will operate the business and own other assets.<sup>26</sup>

## **B. The Proposed Transaction**

9. According to the Applicants, the proposed transaction is pursuant to a March 27, 2001 Asset Purchase Agreement between Comsat, TSSH, and Telenor Broadband (as guarantor).<sup>27</sup>

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*Opposition to Petition to Deny* at 4.

<sup>18</sup> *Assignment Application* at 8.

<sup>19</sup> *Id.* at 6-8. In Norway, Telenor Telecom and Telenor Global Services provide fixed line services; Telenor Mobile provides mobile wireless services. *See September 12, 2001 Supplemental Filing* at 3. *See also infra* para. 44.

<sup>20</sup> *Id.* at 9. According to the Applicants, Telenor provides Inmarsat services through 36 different land earth stations located around the globe.

<sup>21</sup> *Id.* at 9 and 3, n. 3.

<sup>22</sup> *See Inmarsat Ventures plc, Annual Report & Accounts 2000* at 42.

<sup>23</sup> *Assignment Application* at 7; *Assignment Application*, 214 Application at 5; *Assignment Application*, Form 603 at Exhibit 1.

<sup>24</sup> *Assignment Application* at 7, 15-16. *See also October 30, 2001 Supplemental Filing*, Attachment 1.

<sup>25</sup> *Id.*

<sup>26</sup> *Assignment Application*, Form 312 at Exhibit IV.

As described in the *Assignment Application*, the proposed transaction entails the acquisition by TSSH of substantially all the assets of the CMC business from Comsat and the assignment of CMC-related FCC licenses and authorizations to Telenor Satellite.<sup>28</sup> The proposed transaction contemplates that Telenor Satellite will hold the licenses and authorizations required to operate the business, and Telenor Satellite Services, Inc. will operate the business and own other assets.<sup>29</sup> According to the Applicants, the proposed transaction does not involve the sale of LMGT's shares in Inmarsat Ventures.<sup>30</sup>

10. The Applicants state that the proposed transaction would combine the strengths and capabilities of their respective operations, resulting in a satellite services company that can compete more effectively in the international mobile satellite services marketplace.<sup>31</sup> The Applicants maintain that grant of the *Assignment Application* will serve the public interest by enhancing competition and consumer choice in the U.S. mobile satellite services marketplace.<sup>32</sup> The Applicants also state that the transaction poses no risk of harm to competition in an already competitive marketplace.<sup>33</sup> Thus, the Applicants request Commission approval of Comsat's assignment of certain CMC-related FCC licenses and authorizations to Telenor Satellite and request a declaratory ruling that the acquisition of CMC-related FCC licenses and authorizations by Telenor Satellite and operation of the CMC business line by Telenor Satellite Services, Inc., both wholly owned by TSSH, is consistent with Section 310 of the Act and will serve the public interest.<sup>34</sup>

11. The International Bureau accepted the *Assignment Application* for filing and placed it on public notice on May 25, 2001.<sup>35</sup> Four parties filed letters in support of the transaction.<sup>36</sup> One party, Litigation Recovery Trust (LRT) filed in opposition to the proposed

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<sup>27</sup> *Assignment Application* at 15; *Assignment Application*, Form 312 at Exhibit IV. See also *October 30, 2001 Supplemental Filing* at 2 and Attachment 1. The Applicants provide a revised chart that shows the corporate relationships between Telenor's Norwegian and U.S. Companies.

<sup>28</sup> *Id.* Appendix A of this Order lists the Section 214 authorizations and the earth station, private land mobile radio, and experimental licenses that are part of the proposed transaction. See *September 12, 2001 Supplemental Filing* providing update of licenses and authorizations associated with the proposed assignment. The licenses and authorizations listed are classified as common carrier with the exception of the private land mobile radio license. See *June 20, 2001 Supplemental Filing* at 3. One earth station license application was designated as non-common carrier during the pendency of its application, but was designated common carrier upon grant of the license.

<sup>29</sup> *Assignment Application*, Form 312 at Exhibit IV.

<sup>30</sup> See *Assignment Application* at 3, n. 3; *Applicants' Opposition to Petition to Deny*, July 10, 2001 at 9.

<sup>31</sup> *Assignment Application* at 4-5.

<sup>32</sup> *Id.* at 2.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See Public Notice, Report No. SPB-169, May 25, 2001.

<sup>36</sup> See Letters to Magalie Roman Salas, Secretary, Federal Communications Commission from: Jim Jensen, CEO Satcom Direct, Inc., June 8, 2001; Jan Jacobs, Director of Government Affairs, American Seafoods Company, June 13, 2001; Nene Foxhall, Vice President State & Civic Affairs, Continental Airlines, June 19, 2001; and Carl Wheatley, Director, GLOBALink InFlight Communications, ARINC Incorporated, June 25, 2001 (collectively *Support Letters*).

transaction.<sup>37</sup> On August 23, 2001, LRT submitted a filing outside the established pleading cycle (*Supplement to Petition to Deny*), along with a motion for waiver requesting that the Commission accept its August 23, 2001 filing (*Waiver Request*).<sup>38</sup> Under Section 1.3 of the Commission's rules, we are authorized to grant waivers "if good cause therefor is shown."<sup>39</sup> As interpreted by the courts, this requires that a petitioner demonstrate that "special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest."<sup>40</sup> The LRT *Supplement to Petition to Deny* largely concerns a newspaper article that has limited relevance to the proposed transaction under review in this case. Based upon the newspaper article, LRT raises general concerns about foreign government ownership of telecommunications companies and requests the Commission to postpone action on the *Assignment Application*. We do not regard a newspaper article of the nature referenced by LRT as an occasion to open the pleading cycle in this proceeding. LRT fails to explain why it could not raise in its previous filings, the issues and arguments it poses and the additional relief it requests in its *Supplement to Petition to Deny*. Based on the above stated standards for granting a waiver, and our general policy not to routinely grant extensions of time to file in rulemaking proceedings,<sup>41</sup> we find that LRT has not demonstrated that good cause exists for the Commission to grant the requested waiver. Thus, we will deny LRT's *Waiver Request* for failure to establish good cause to accept its additional filing.

### III. PUBLIC INTEREST ANALYSIS

#### A. Framework for Analysis

12. In considering the proposed transaction, the Commission must determine, pursuant to Section 214(a) and Section 310(d) of the Act, whether the proposed transfer or assignment of Commission licenses and authorizations will serve the public interest.<sup>42</sup> In addition, because of the foreign ownership interests presented in this case, we must also determine whether the assignment of licenses to Telenor Satellite is permissible under the foreign ownership provisions of Section 310 of the Act.<sup>43</sup>

13. The legal standards that govern our public interest analysis for transfers or

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<sup>37</sup> *Provisional Petition to Deny and Petition for Protective Orders*, Litigation Recovery Trust, June 22, 2001 (*LRT Provisional Petition*) and *Reply to Opposition to Petition to Deny*, LRT, July 19, 2001 (*LRT Reply to Opposition*).

<sup>38</sup> Supplement to Petition to Deny, LRT, August 23, 2001 (*LRT Supplement to Petition to Deny*) and Motion for Waiver to Accept Pleading, LRT, August 23, 2001 (*Waiver Request*). The Applicants filed an opposition to LRT's Waiver Request stating that there was no justification for waiving the Commission's rules and that LRT's filing was based on information that was irrelevant to the instant proceeding. (*Applicants' Opposition to Motion for Waiver to Accept Pleading*, August 31, 2001). LRT filed a response to Applicants' opposition (*Response to Opposition of Telenor and Comsat to Motion for Waiver to Accept Pleading*, September 9, 2001).

<sup>39</sup> 47 C.F.R. § 1.3.

<sup>40</sup> See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1970) (indicating need for articulation of special circumstances beyond those considered during regular rulemaking).

<sup>41</sup> See 47 C.F.R. § 1.46.

<sup>42</sup> 47 U.S.C. §§ 214(a) and 310(d).

<sup>43</sup> 47 U.S.C. § 310.

assignments of licenses and authorizations under Sections 214(a) and 310(d) of the Act require that we weigh the potential public interest harms against the potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest, convenience, and necessity.<sup>44</sup> Our analysis considers the likely competitive effects of the proposed transfer or assignment and whether such transfer or assignment raises significant anti-competitive issues.<sup>45</sup> In addition, we consider the efficiencies and other public interest benefits that are likely to result from the proposed transaction.<sup>46</sup> Further, we consider whether the proposed transaction raises issues of national security, law enforcement, foreign policy and trade policy, including such concerns that may be raised by the Executive Branch.<sup>47</sup>

## B. Qualifications

### 1. Assignor

14. As a threshold matter, we must determine whether the Applicants meet the requisite qualifications to hold and assign licenses under Section 310(d) of the Act and our rules. It is Commission policy to review the qualifications of the assignor if issues have been sufficiently raised in the pleadings that relate to the basic qualifications of the assignor (Comsat, in this case).<sup>48</sup> LRT raises such issues.<sup>49</sup>

15. LRT alleges that if the proposed transaction goes forward, Comsat's actions would violate the Open-Market Reorganization for the Betterment of International Telecommunications (ORBIT) Act.<sup>50</sup> LRT contends that the Congressional intent of the ORBIT

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<sup>44</sup> See, e.g., Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and for Declaratory Ruling Pursuant to Section 310 of the Communications Act, *Memorandum Opinion and Order*, 16 FCC Rcd 9779, 9789 (2001) (*VoiceStream/Deutsche Telekom Order*). See also AT&T Corp., British Telecommunications, plc, VLT Co. L.L.C., Violet License Co. LLC, and TNV [Bahamas] Limited Applications For Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection with the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, plc, FCC 99-313, *Memorandum Opinion and Order*, 14 FCC Rcd 19140, 19147 (1999) (*AT&T/BT Order*).

<sup>45</sup> See, e.g., *AT&T/BT Order*, 14 FCC Rcd at 19148.

<sup>46</sup> See, e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9789.

<sup>47</sup> See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order and Order on Reconsideration*, 12 FCC Rcd 23891, 23919-21 (1997) (*Foreign Participation Order*); *Order on Reconsideration*, 15 FCC Rcd 18158 (2000). See also Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, *Report and Order*, 12 FCC Rcd 24094, 24170 (1997) (*DISCO II Order*).

<sup>48</sup> *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9789, para. 19.

<sup>49</sup> LRT represents claims by William L. Whitley, Scott Robb, John T. Whitely and William H. Hallenbeck, and includes the Committee to Restructure the International Satellite Organizations (CRISCO) and Belcom Minority Shareholders and Claimants Committee (Belcom Committee). The core of petitioners' dispute with Comsat concerns Comsat's operation of Belcom Inc., in which petitioners are former shareholders. Comsat had successfully brought legal action against one of the shareholders in Delaware Chancery Court for breach of his fiduciary duty to Belcom. *Belcom, Inc. v. Scott Robb*, 1998 WL 229527, Del. Civil. Action. No. 14663 (April 28, 1998), *aff'd Scott Robb v. Belcom, Inc.*, 725 A.2d 443, (Jan. 20, 1999), *rehearing denied* (Feb. 11, 1999).

<sup>50</sup> The ORBIT Act was enacted in March 2000 to promote a competitive market for satellite communications services through a fully privatized INTELSAT and Inmarsat. 47 USC § 761 *et seq.*

Act was to allow Lockheed Martin Corporation to acquire Comsat Corporation as a way to shore up a financially troubled Comsat Corporation.<sup>51</sup> As such, LRT argues, Congress did not intend that Comsat Corporation's assets should be divested.<sup>52</sup>

16. In enacting the ORBIT Act, Congress permitted the acquisition of Comsat Corporation by Lockheed Martin Corporation through provisions that eliminated restrictions on the ownership of Comsat Corporation in the Communications Satellite Act of 1962 (1962 Satellite Act).<sup>53</sup> We do not agree with LRT that the ORBIT Act, or the expectations of Congress in enacting the ORBIT Act, intended that the government have an ongoing interest, control, or involvement in Lockheed Martin Corporation's management of Comsat Corporation's assets. Such intent cannot be found in either the statutory language or in the statements LRT cites from members of Congress in passing the ORBIT Act. Indeed, the ORBIT Act demonstrates Congress' intent to terminate government's special oversight role of Comsat Corporation. The ORBIT Act provides for the privatization of both Inmarsat and INTELSAT, ending Comsat Corporation's former role as the U.S. Signatory to these organizations. Section 645 of the ORBIT Act provides for the staged termination of those sections of the 1962 Satellite Act relating to U.S. government oversight of the structure and regulation of Comsat Corporation in its former status.<sup>54</sup>

17. LRT also argues that the proposed transaction would increase Telenor ASA's market position in Inmarsat, and as such, the sale of the CMC assets and CMC-related FCC licenses and authorizations to Telenor ASA would violate Section 621(2) of the ORBIT Act. Section 621(2) states, in part, that:

“(2) INDEPENDENCE. -- . . . The successor entities and separated entities of INTELSAT and Inmarsat shall conduct an initial public offering . . . to achieve such independence. Such offering shall substantially dilute the aggregate ownership of such entities by such signatories or former signatories.”<sup>55</sup>

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<sup>51</sup> *LRT Provisional Petition* at 18-21.

<sup>52</sup> One of the arguments that LRT raised regarding Comsat's alleged violations of the ORBIT Act is its allegation that Comsat's Inmarsat and INTELSAT ownership interests should be regarded as assets of the United States and not commercial assets belonging to Comsat and, therefore, LMGT. As LRT notes, this matter was originally raised in a 1998 proceeding in which the Commission denied a variety of petitions and complaints filed against Comsat by LRT or the individuals or LRT entities that comprise LRT. *LRT Provisional Petition* at 15-16; *In re Comsat Corporation*, 13 FCC Rcd 2714, 2728-2730 (1998)(*Consolidated Order*). LRT appealed the denial to the United States Court of Appeals for the Second Circuit, and the court dismissed the appeal. *Whitely, et al. v. FCC*, Case No. 4207 (the court dismissed the petition for review on June 1, 2001 for failure to prosecute, and then dismissed a motion to reinstate on June 25, 2001, and a petition for reconsideration of the dismissal of the motion to reinstate on August 24, 2001 (*see William L. Whitley, et al. v. Federal Communications Commission*, Case No. 00-4207 (2d Cir., *Order* dated June 1, 2001). In its final dismissal, the court also granted the Commission's request for a sanction in the nature of an award of attorney's fees). Consequently we will not address the claim again here.

<sup>53</sup> *See Lockheed Martin Corporation, Comsat Government Systems, LLC, and Comsat Corporation, Applications for Transfer of Control of Comsat Corporation and its Subsidiaries, Licensees of Various Satellite, Earth Station, Private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214 Authorizations, Order and Authorization*, FCC 00-277, 15 FCC Rcd 22910, 22914. (rel. July 31, 2000).

<sup>54</sup> 47 U.S.C. § 765(d).

<sup>55</sup> 47 U.S.C. § 763(2).



18. LRT states that this section prohibits any actions that would increase the interests of former INTELSAT and Inmarsat signatories in INTELSAT and Inmarsat.<sup>56</sup> LRT contends that the proposed transaction would increase the ownership interest of Telenor ASA (an Inmarsat Signatory) in Inmarsat and, thus, would run counter to the intent of Congress.<sup>57</sup> We do not agree with LRT that Section 621(2) of the ORBIT Act is implicated in this review. The proposed transaction, *i.e.*, the proposed sale of CMC's assets to Telenor and the assignment of CMC-related FCC licenses and authorizations, does not involve any change in ownership of Inmarsat by former signatories of Inmarsat. The Applicants have specifically stated that the holdings of LMGT in Inmarsat are not part of the proposed transaction.<sup>58</sup> Thus, the proposed transaction will not result in an increase in Telenor ASA's ownership interest in Inmarsat.<sup>59</sup>

19. The proposed transaction does not violate the ORBIT Act. We find that LRT has raised no substantial and material fact as to Comsat's qualifications as assignor of Commission licenses and authorizations. Thus, we find that Comsat is qualified as the assignor of Commission licenses and authorizations in this proceeding.

## 2. Assignee

20. Pursuant to Section 310(d), the Commission must review the application as if the assignee (Telenor Satellite, in this case) were applying under Section 308 for the authorizations and licenses in question.<sup>60</sup> Section 308 requires that all applications present facts as to the legal, financial, technical, and other qualifications of the applicant to operate under the licenses involved.<sup>61</sup> No parties raised concerns regarding Telenor Satellite's basic qualifications as a potential FCC licensee.<sup>62</sup> Our review of the information provided raises no concerns regarding Telenor Satellite's qualifications. Consequently, we conclude that Telenor Satellite is qualified to hold the licenses and authorizations at issue in this proceeding.

## C. Foreign Ownership

21. Sections 310(a), (b)(1), and (b)(2) of the Act prohibit radio licenses from being

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<sup>56</sup> LRT Provisional Petition at 23.

<sup>57</sup> *Id.*

<sup>58</sup> According to the Applicants, the proposed transaction does not involve the sale of an investment interest in Inmarsat Ventures, and therefore has no effect on the ownership interest held by former Inmarsat signatories. See *Assignment Application* at 3, n. 3, and *Applicants' Opposition to Petition to Deny* at 9.

<sup>59</sup> LRT also suggests that the sale of Inmarsat shares to Telenor in September 2000 implicates Section 621(2) of the ORBIT Act. LRT Provisional Petition at 18, 23. The September 2000 transaction is not part of the proposed transaction, and thus is not subject to review in this proceeding. Moreover, Section 621(2) imposes on Inmarsat a requirement to substantially dilute former signatory ownership, but does not restrict former signatory sale of shares pending such dilution. The Commission has taken action to implement Section 621(2) with respect to Inmarsat. See *In the Matter of Comsat Corporation d/b/a Comsat Mobile Communications, et al., Memorandum Opinion, Order and Authorization*, File No. ITC-97-222, *et al.*, FCC 01-272 (rel. October 9, 2001).

<sup>60</sup> 47 U.S.C. § 310(d).

<sup>61</sup> 47 U.S.C. § 308(b).

<sup>62</sup> LRT raised issues concerning the foreign ownership interests held in Telenor Satellite and issues related to such foreign ownership. These issues and foreign eligibility requirements are discussed *infra* at paras. 21-53.

“granted to or held by” foreign governments and their representatives, aliens and their representatives, and foreign corporations.<sup>63</sup> The Applicants propose indirect alien, foreign corporate and foreign government ownership of common carrier and non-common carrier Title III licenses. Specifically, after the closing of the proposed transaction, the CMC-related FCC licenses will be held by Telenor Satellite, a U.S. company, and operation of the CMC business line will be undertaken by Telenor Satellite Services, Inc., a U.S. company. Both Telenor Satellite and Telenor Satellite Services, Inc. are wholly owned by TSSH, which is indirectly owned by Telenor ASA, a publicly-traded company incorporated in Norway.<sup>64</sup> As discussed above, Telenor ASA is owned substantially in excess of 25 percent by non-U.S. individuals and entities, including a controlling interest by the government of Norway.<sup>65</sup> Neither the Norwegian government nor any other foreign entity, however, will hold the CMC radio licenses directly.<sup>66</sup> We therefore find that the transaction is consistent with Sections 310(a), (b)(1) and (b)(2) of the Act.<sup>67</sup>

22. The Applicants also request that the Commission permit the resulting indirect foreign ownership of the common carrier wireless licenses pursuant to Section 310(b)(4) of the Act. The International Bureau placed the Applicants’ request to exceed the foreign ownership benchmark in Section 310(b)(4) on public notice and received comments from one party opposing grant of the request.<sup>68</sup> As the proposed assignment involves only indirect foreign ownership interests, we have considered the Applicants request under Section 310(b)(4).<sup>69</sup> We have also conducted a general public interest review of the competitive effects of the proposed transfer under Section 310(d) of the Act.<sup>70</sup> For the reasons discussed below, we find that it will not serve the

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<sup>63</sup> 47 U.S.C. §§ 310(a), (b)(1), and (b)(2). Specifically, Section 310(a) prohibits foreign governments and their representatives from holding any U.S. license, while Sections 310(b)(1)-(2) prohibit aliens and their representatives and foreign corporations from holding any broadcast, common carrier, aeronautical fixed or *en route* license.

<sup>64</sup> *Assignment Application* at 7.

<sup>65</sup> *Id.* at 7-8.

<sup>66</sup> *See, e.g., VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9807-08, para. 46 n.142 and accompanying text (noting that Section 310(a) was not intended to govern matters specifically addressed by Section 310(b)(4), but reserving the right to consider under Section 310(a) a variety of issues related to *de facto* control in factual settings that do not implicate the provisions of Section 310(b)(4)).

<sup>67</sup> 47 U.S.C. §§ 310(a), 310(b)(1), and (b)(2). Because the proposed transaction does not involve direct foreign ownership of Telenor Satellite, it does not trigger Section 310(b)(3) of the Act, which places a 20 percent limit on direct alien, foreign corporate or foreign government ownership of Title III licensees. 47 U.S.C. § 310(b)(3).

<sup>68</sup> *See supra* para. 11. LRT generally opposes grant of the request. LRT asks the Commission to consider whether there are special risks to competition in the United States associated with the Norwegian government’s ownership of Telenor and also to determine whether Telenor’s control of the licenses and authorizations at issue raises concerns relating to national security, law enforcement, public safety and the public interest. *See LRT Provisional Petition* at 8. Ultimately, LRT takes the position that the Assignment Application as presently constituted must be denied as violative of applicable statutory and regulatory authority. *LRT Reply to Opposition to Petition to Deny* at 2. We note that four other parties also filed in this proceeding. These parties generally support the proposed transaction, but none directly addressed the Applicants’ request to exceed the foreign ownership benchmark in Section 310(b)(4). *See supra* para. 11, note 36, *Support Letters*.

<sup>69</sup> In the *VoiceStream/Deutsche Telekom Order*, the Commission stated: “Pursuant to the terms of the statute, indirect ownership of a licensee by a foreign government, foreign corporation, and aliens resulting from the proposed transaction should be addressed only under Section 310(b)(4).” *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9799-9800, para. 33.

<sup>70</sup> *See infra* Sections III. D and G.

public interest to prohibit the proposed level of indirect foreign ownership of Telenor Satellite.<sup>71</sup>

23. Section 310(b)(4) of the Act prohibits broadcast, common carrier, or aeronautical *en route* or aeronautical fixed radio station licenses from being granted to or held by:

any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government, or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest would be served by the refusal or revocation of such license.<sup>72</sup>

24. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by entities from World Trade Organization (WTO) Members in U.S. common carrier and aeronautical fixed and *en route* licensees.<sup>73</sup> Therefore, with respect to indirect foreign investment from WTO Members, the Commission replaced its “effective competitive opportunities,” or ECO, test with a rebuttable presumption that such investment generally raises no competitive concerns.<sup>74</sup> The Commission uses the “principal place of business” test to determine the nationality or “home market” of foreign investors.<sup>75</sup> As noted in the *Foreign Participation Order*, however, the Commission may impose conditions in cases where entry by a foreign carrier would pose a high risk to competition in the U.S. market.<sup>76</sup>

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<sup>71</sup> 47 U.S.C. § 310(b)(4). We note that Section 310(b)(4) governs only common carrier, broadcast, and aeronautical *en route* or fixed radio licenses. Therefore, we do not consider here the proposed transfer of non-common carrier licenses under Section 310(b)(4). The Executive Branch’s concerns about national security, law enforcement and public safety have been addressed (*see infra* Section III. F), and we have determined that the proposed transaction does not pose risks to competition in the United States (*see infra* Section III. D). Further, under Section 310(b)(4), we have made a public interest determination for the common carrier licenses (*see infra* paras. 23-36). These findings, we believe, collectively suffice to resolve any public interest implications, outside our review under Section 310(b)(4), to the extent there are any, for the non-common carrier licenses.

<sup>72</sup> 47 U.S.C. § 310(b)(4).

<sup>73</sup> *See Foreign Participation Order*, 12 FCC Rcd 23891.

<sup>74</sup> *Id.* at 23913, 23940, paras. 50, 111-12.

<sup>75</sup> Specifically, in determining a foreign entity’s home market for purposes of the public interest determination under Section 310(b)(4), the Commission will identify and balance the following factors: (1) the country of its incorporation, organization or charter; (2) the nationality of all investment principals, officers, and directors; (3) the country in which its world headquarters is located; (4) the country in which the majority of its tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which it derives the greatest sales and revenues from its operations. *See Foreign Participation Order*, 12 FCC Rcd at 23941, para. 116 (citing Market Entry and Regulation of Foreign-Affiliated Entities, *Report and Order*, 11 FCC Rcd 3873, 3951, para. 207 (1995)). *See also* DiGiPH PCS, Inc. and Eliska Wireless Ventures License Subsidiary I, L.L.C., *Memorandum Opinion and Order*, 15 FCC Rcd 24501, 24506-07 (2000) (citing Global Crossing Ltd. and Frontier Corporation, *Memorandum Opinion and Order*, 14 FCC Rcd 15911, 15918-19 (1999) (applying the five-factor “principal place of business” test)).

<sup>76</sup> *Foreign Participation Order*, 12 FCC Rcd at 23913-14, paras. 51-52. In an exceptional case where an application poses a very high risk to competition in the U.S. market, where our standard safeguards and additional conditions would be ineffective, the Commission reserves the right to deny the application. *Id.*

25. In light of these policies, our review under Section 310(b)(4) first examines the indirect foreign investments in Telenor Satellite to determine whether those investments are attributable to entities from WTO Member countries. According to the Applicants, the CMC-related FCC licenses will be held by Telenor Satellite, which will be a wholly-owned subsidiary of TSSH.<sup>77</sup> As discussed above, Telenor Satellite and TSSH are U.S. corporations organized under the laws of Delaware. TSSH will be a wholly-owned subsidiary of Telenor Satellite Mobile AS, which in turn will be wholly-owned by Telenor Satellite Mobile Ventures AS, both of which are new Norwegian holding companies that will be 100 percent owned by Telenor Broadband.<sup>78</sup> Telenor Broadband, a company organized under the laws of Norway, is wholly-owned by Telenor Communications AS, a Norwegian company, which in turn is wholly owned by Telenor ASA, a publicly-traded company incorporated in Norway and based in Oslo.<sup>79</sup> Telenor ASA is owned 21 percent by the general public and 79 percent by the Kingdom of Norway.<sup>80</sup>

26. Applying the five factors of the Commission's principal place of business test, we find that the home market of Telenor ASA, Telenor Communications, Telenor Broadband, Telenor Satellite Mobile Ventures AS, and Telenor Satellite Mobile AS is Norway, a WTO Member country. In this regard, the Applicants represent that all these Telenor companies have the same base of operations and principal place of business – Norway.<sup>81</sup> The Applicants further represent that all these companies are incorporated in Norway and have their world headquarters there.<sup>82</sup> In addition, Telenor ASA's investment principals, officers, and directors are predominantly Norwegian.<sup>83</sup> The majority of the employees of Telenor ASA and its above-named subsidiary companies work in Norway, and the majority of Telenor ASA's tangible property is located in Norway.<sup>84</sup> Finally, the Applicants state that these Telenor companies derive the greatest portion of their sales and revenues from operations in Norway.<sup>85</sup> Similarly, we find that because the Kingdom of Norway is a Member of the WTO, it is entitled to treatment as a WTO Member.

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<sup>77</sup> *Assignment Application* at 7, 15.

<sup>78</sup> *Id.* at 16.

<sup>79</sup> *Id.* at 7, 16.

<sup>80</sup> Twenty-one percent of the stock of Telenor ASA is publicly traded on the Oslo and NASDAQ Stock Exchanges. Approximately 14 percent of this publicly traded stock is owned by non-Norwegians. *See id.* at 8. The Norwegian Government began privatizing Telenor ASA in 1994, and the Norwegian Parliament has recently authorized a further reduction in Norway's ownership share in Telenor ASA, diluting the Kingdom of Norway's ownership interest to as little as 34 percent. *Id. See also Applicants' Opposition to Petition to Deny* at 4.

<sup>81</sup> *See September 12, 2001 Supplemental Filing* at 2, n. 1. *See also Assignment Application* at 8 for a description of Telenor ASA's core businesses, which include mobile communications in Norway and other countries, fixed network telecommunications service in Norway, as well as internet and broadband services.

<sup>82</sup> *September 12, 2001 Supplemental Filing* at 2, n. 1. *See also Assignment Application* at 16; and *Assignment Application, 214 Application* at 5.

<sup>83</sup> *September 12, 2001 Supplemental Filing* at 2, n. 1.

<sup>84</sup> *Id.* (representing that in 1999, Telenor ASA and its affiliated companies together had 21,968 full time employees, 18,818 of which work in Norway).

<sup>85</sup> *Id.* (representing that in the year 2000, approximately NOK 33,269,000,000 of the Telenor group's consolidated revenue of approximately NOK 36,602,000,000 was generated in Norway).

27. Under the *Foreign Participation Order*, therefore, Telenor ASA, Telenor Communications, Telenor Broadband, Telenor Satellite Mobile Ventures AS, Telenor Satellite Mobile AS, and the Kingdom of Norway are entitled to a rebuttable presumption that no competitive concerns are raised by their proposed indirect foreign ownership of the CMC-related FCC licenses. The Commission carefully considers any relevant factors and evidence that might tend to rebut the presumption. In this case, LRT filed a *Petition to Deny* and other pleadings that urge the Commission to deny or condition its approval of the proposed transaction in order to safeguard competition in U.S. markets.<sup>86</sup> Upon review of the competitive issues raised by this transaction, we conclude that LRT has not provided sufficient evidence to rebut the presumption favoring investment by WTO Members.<sup>87</sup> We also find no basis to conclude that the indirect foreign corporate and government ownership of Telenor Satellite poses an anti-competitive threat in any U.S. international market.<sup>88</sup>

28. Specifically, we note LRT's claim that the Norwegian government's *de jure* control of Telenor ASA and ultimately over the licensee, Telenor Satellite, may create special risks to competition in the United States.<sup>89</sup> In the *VoiceStream/Deutsche Telekom Order*, the Commission stated that the existence and degree of control by a foreign government is relevant in determining the public interest under Section 310(b)(4).<sup>90</sup> In that case, there was no *de jure* government control post-merger, but the Commission, assuming *arguendo* that the German government would exercise *de facto* control over Deutsche Telekom, found that the German government's ownership of Deutsche Telekom did not confer unique financial advantages or otherwise create a high risk to competition or consumers in the United States that warranted special conditions.<sup>91</sup> Here, we likewise conclude that the Norwegian government's 79 percent ownership interest in Telenor does not confer unique financial advantages or otherwise create a high risk to competition or consumers in the United States that warrants special conditions.

29. LRT contends that "serious attention must be given to the market power which can result from the participation in and control of Telenor by the Kingdom of Norway."<sup>92</sup> Specifically, LRT alleges that Telenor has access to a "limitless supply of capital either through direct investment or loans, or direct or indirect operating subsidies" and reasons that the Kingdom

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<sup>86</sup> See *supra* note 37.

<sup>87</sup> As a threshold matter, LRT asserts that the Applicants should be required to submit additional information regarding the precise level of Telenor ASA's U.S. investment. *LRT Provisional Petition* at 3; *LRT Reply to Opposition* at 2. We disagree and find that, in this case, we have sufficient information to make the necessary public interest findings under Section 310(b)(4) of the Act. LRT also asserts that Telenor ASA is a totally foreign owned company, of which 79 percent is owned by a foreign government, and that without certain safeguards, such as mandated divestiture, trustee supervision, and specific safeguards, the *Assignment Application* must be denied. *LRT Reply to Opposition* at 3, 11-17. The Commission recently rejected this blanket approach in favor of a case-by-case analysis. In the *VoiceStream/Deutsche Telekom Order*, the Commission confirmed that the "language in section 310(b)(4) permits the Commission, without implied limitation, to find that the public interest would not be served by denying indirect foreign government ownership that amounts to control of a licensee." *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9809, para. 48.

<sup>88</sup> See *infra* Section III. D (discussing competitive effects of proposed transaction).

<sup>89</sup> See *LRT Provisional Petition* at 11-12; *LRT Reply to Opposition* at 6-7.

<sup>90</sup> *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9813, para. 56.

<sup>91</sup> *Id.* at 9815, para. 59.

<sup>92</sup> *LRT Provisional Petition* at 11.

of Norway could subsidize services provided by the merged entity at below-cost prices, thereby adversely impacting other competitors in the United States and other countries.<sup>93</sup> LRT further argues that the Kingdom of Norway could undertake such actions for various reasons, which may not be marketplace-related.<sup>94</sup> Ultimately, LRT urges the Commission to deny the applications or to adopt protective orders or impose special safeguards to protect the U.S. market for mobile satellite services.<sup>95</sup> For the reasons outlined below, we decline to adopt special conditions in this case.

30. First, the Commission stated in the *Foreign Participation Order* that the commitments made by WTO Members, the Commission's regulatory safeguards, and antitrust law should adequately address competitive concerns resulting from participation by foreign carriers from WTO Members in the U.S. telecommunications market.<sup>96</sup> In this regard, the Commission has made no distinction between indirect government and private foreign ownership.<sup>97</sup> Therefore, the same presumption in favor of market entry for private entities from WTO Member countries also applies in the instant analysis of whether denial of the investment by the government of Norway, through Telenor ASA, in Telenor Satellite would serve the public interest. The record indicates that Telenor ASA is a publicly-traded company, operated on a for-profit basis without government subsidies.<sup>98</sup> The Applicants also contend that Telenor ASA's corporate structure, should help ensure, through various mechanisms and safeguards, a pro-competitive environment.<sup>99</sup> These representations have not been contradicted by LRT or other commenters and we are aware of no evidence that would negate their accuracy.<sup>100</sup>

31. Second, we are not persuaded that the indirect foreign corporate and government

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<sup>93</sup> *Id.* at 12. LRT argues that governments have unique powers to raise and spend monies, far different from the capabilities of private sector entities. *Id.* at 11. For example, LRT reasons that it is possible for the Kingdom of Norway to increase its spending for communications services and facilities ordered and received from Telenor at price levels that could operate as a type of subsidy to Telenor. *Id.* at 12.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* See also, *LRT Reply to Opposition* at 2 (proposing mandatory divestiture and trustee conditions) and 17 (stating that the *Assignment Application* in its present state must be denied).

<sup>96</sup> *Foreign Participation Order*, 12 FCC Rcd at 23905-09, paras. 33-41.

<sup>97</sup> See *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd 9810-11, para. 51.

<sup>98</sup> See *Assignment Application* at 10-14.

<sup>99</sup> *Id.* at 10-11. The Applicants represent that Telenor ASA's corporate structure is comprised entirely of private citizens, designed to insulate Telenor ASA's officers from potential government influence. *Id.* at 10-12. Applicants further represent that Telenor has a three-tiered corporate structure: a Corporate Assembly, Board of Directors, and a management team also comprised exclusively of private citizens, selected and supervised by the Board of Directors. *Id.* The Applicants then contend that this structure is designed to preclude the Ministry of Trade and Industry, representing the government's shareholder rights, from interfering with the daily management, business activity, and strategic direction of Telenor ASA. See *id.* Specifically, the government's shares in Telenor ASA, the Applicants assert, are administered by the Ministry of Trade and Industry, a separate agency from Norway's telecommunications regulator, the Post and Telecommunications Authority. *Id.* We note in passing that the Commission has construed "representative" of an alien or foreign government to apply to *individuals* "acting on behalf of" or "in conjunction with" the foreign entity. See *e.g.*, *VoiceStream/Deutsche Telekom Order*, at 16 FCC Rcd at 9808, para. 47; see also *Russell G. Simpson*, Letter, 2 FCC 2d 640 (1966).

<sup>100</sup> The Applicants also note that neither the Department of Justice nor the Federal Trade Commission elected to request additional information following notification of the proposed transaction pursuant to the Hart-Scott-Rodino Antitrust Improvement Act. *Applicants' Opposition to Petition to Deny* at 5.

ownership of Telenor Satellite raises competitive concerns with respect to the provision of mobile satellite services to U.S. consumers. Currently, there are many competing mobile satellite services systems, including the Inmarsat LESOs and other carriers.<sup>101</sup> Rather than decreasing competition, given the synergies discussed below, the proposed acquisition will likely result in an additional strong, global telecommunications competitor. Moreover, there is no evidence in the record suggesting that Telenor ASA currently receives any special benefits as a result of its ownership by the Kingdom of Norway or has preferential access to capital by virtue of government ownership, such as subsidies, grants, loans, or loan guarantees.<sup>102</sup> We note that the government of Norway is a member of the European Free Trade Association and subject to the Agreement on the European Economic Area, which incorporates the European Union's prohibitions on aid by a "member state or through state resources in any form whatsoever which distorts or threatens to distort competition" by favoring certain companies.<sup>103</sup>

32. As we note in the following Competitive Effects section, the Applicants assert that Telenor currently does not originate or provide international mobile satellite service from the United States and, thus, the combination of CMS and Telenor will not lessen competition for such services.<sup>104</sup> We agree that with respect to the provision of such service, the combination will not reduce competition within the U.S. market. We also note below that CMC and Telenor each provide Inmarsat maritime services, but that Telenor provides service to the Indian Ocean Region where CMC does not, and CMC provides service to the Pacific Ocean Region where Telenor does not. While the acquisition would reduce the number of LESOs providing Inmarsat service from 28 to 27, it would also provide global seamless service. Hence, it would not have any adverse impact on the level of competition in maritime services.

33. Given these realities, it is highly unlikely that Telenor Satellite could achieve market power in the provision of mobile satellite services generally, and any attempt by the government of Norway to aid Telenor Satellite in such an endeavor would be likely to fail. Anti-competitive activity can succeed only if the market that is the object of such activity is susceptible to the consolidation and maintenance of market power. To consolidate and maintain market power in the provision of mobile satellite services, a company would need to force the exit of these competitors from the market and prevent the entry of new competitors.

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<sup>101</sup> See *Assignment Application* at 3-4, 36-38 and *Applicants' Opposition to Petition to Deny* at 5-6 listing competitors in the provision of mobile satellite services (including Stratos Global Corporation, Xantic, and alternative global mobile satellite systems such as Iridium and Globalstar). As of December 31, 2000, CMC's and Telenor ASA's market share of Inmarsat services was each less than 12 percent. See Inmarsat Ventures plc, Annual Report & Accounts 2000 at 42. After the proposed assignment, Telenor Satellite's market share would be less than 24 percent. In fact, Xantic claims to be the leading provider of global mobile services over the Inmarsat platform with a market share of more than 25 percent. See <[www.station12.com/ws?pg=pressarticle.html&SID=199874&anr=21164](http://www.station12.com/ws?pg=pressarticle.html&SID=199874&anr=21164)> (visited 11/15/2001). Therefore, Telenor Satellite, post-transaction, likely would not be largest provider of global mobile satellite services over the Inmarsat platform."

<sup>102</sup> *Assignment Application* at 13 (representing that Telenor ASA receives no grants, loans, loan guarantees, or other subsidies from the government and noting that the only compensation paid by the government is to offset Telenor ASA's incremental cost of providing certain defense-related services, coastal radio, and services for the Arctic island of Spitsbergen).

<sup>103</sup> Agreement on the European Economic Area, Art. 61-62 (1992).

<sup>104</sup> See *infra* Section III. D; *Assignment Application* at 2.

34. Attempts at such exclusion in the provision of mobile satellite services would be unlikely to succeed. First, any company seeking to drive out competitors by lowering price must have sufficient supply capacity to provide services to the bulk of its rivals' customers. Otherwise rivals will not need to match price reductions to preserve their customer base. Radio frequency spectrum and satellite capacity are essential elements in the provision of mobile satellite services. A limited supply will be available to the merged entity and, as noted above, the remaining supply is dispersed among many competitors.<sup>105</sup> Second, mobile satellite technology is characterized by high sunk costs related to design, manufacture, and launch of satellites, and relatively low operating costs.<sup>106</sup> When sunk costs are high and operating costs are low, as they are in the provision of facilities-based mobile satellite services, carriers are willing to cut prices substantially as an alternative to going out of business. Thus, faced with even steep price cuts, Telenor Satellite's competitors would likely remain in business and provide service at reduced rates. For these reasons, we believe that any attempt by Telenor Satellite to act anti-competitively in the provision of mobile services would be unlikely to succeed.

35. Accordingly, we cannot find that Telenor Satellite's acquisition of the CMC business and related FCC licenses and authorizations presents a high risk to competition that warrants special conditions. We also find that the Executive Branch's sole concern regarding national security, law enforcement, and public safety have been addressed by the agreement between the Applicants and the Department of Justice and Federal Bureau of Investigation.<sup>107</sup> We therefore conclude, pursuant to Section 310(b)(4) and the Commission's "open entry" standard for indirect investment by WTO Members in U.S. common carrier licensees, that it will not serve the public interest to prohibit the proposed indirect foreign ownership of Telenor Satellite in excess of the statutory 25 percent benchmark.

36. Specifically, this ruling permits the requested indirect foreign ownership of Telenor Satellite by Telenor Satellite Mobile (100 percent), Telenor Satellite Mobile Ventures (100 percent); Telenor Broadband (100 percent); Telenor Communications (100 percent); and Telenor ASA and its Norwegian shareholders (up to 100 percent), with the exception of the Kingdom of Norway; and the Kingdom of Norway through its investment in Telenor ASA (up to and including 79 percent). Telenor Satellite may accept up to and including an additional, aggregate 25 percent indirect equity and/or voting interests from other unnamed non-U.S. investors, including non-Norwegians who may own Telenor ASA shares, subject to the following conditions. First, no single non-U.S. investor or entity – with the exception of Telenor Satellite Mobile, Telenor Satellite Mobile Ventures, Telenor Broadband, Telenor Communications, Telenor ASA, and the Kingdom of Norway – may acquire indirect ownership of Telenor Satellite in excess of 25 percent without Commission approval under Section 310(b)(4). Second, Telenor Satellite shall seek approval under Section 310(b)(4) before it accepts any additional indirect investment by the Kingdom of Norway in excess of the permitted 79 percent.

#### **D. Competitive Effects**

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<sup>105</sup> See *supra* para. 31.

<sup>106</sup> Sunk costs are the costs of plant and other investments that cannot be recovered by firms that cease operations. Operating costs, on the other hand, are the day-to-day costs of serving customers and can be terminated by firms that cease operation. The operating costs establish an operator's pricing floor, because any price above such costs defrays the day-to-day costs of doing business and makes at least some contribution to sunk costs, which would be unrecoverable if the operator ceased operation.

<sup>107</sup> See *infra* Section III. F.



37. Our public interest analysis under Section 214(a) and 310(d) includes an evaluation of the competitive effects of the proposed transaction in both the relevant product and geographic markets. For telecommunications service providers, the Commission has determined that the relevant geographic markets can include both service in U.S. domestic telecommunications markets and service between the U.S. and foreign telecommunications points.<sup>108</sup> For the international telecommunications markets, the Commission has evaluated the competitive effects on a country-by-country basis, for service between the U.S. and specific foreign countries, where service to each foreign country from the U.S. represents a separate geographic market.<sup>109</sup> In those analyses, we considered whether proposed transactions would lessen or enhance competition in the provision of communications services in, to, or from the United States. We need not analyze the impact of the transaction on competition in the provision of satellite services to foreign countries if that service does not involve service to or from the United States. However, we do consider the effects of global consolidation to the extent that it affects U.S. customers.<sup>110</sup>

38. After reviewing the record, we find that there does not appear to be any significant overlap in the provision by Telenor ASA and the Comsat CMC business unit of services in the product and geographic markets in, to, or from the United States. Telenor ASA provides services in Europe, Asia, Africa and the Americas.<sup>111</sup> The Telenor entities considered in this proceeding do not currently provide any telecommunications services within the United States.<sup>112</sup> Thus, Comsat's assignment of the CMC-related FCC licenses and authorizations to Telenor Satellite would not increase concentration or market power in any market involving the provision of communication services domestically. Except for mobile satellite services provided by Telenor ASA, where a customer with a mobile earth station terminal outside the United States initiates a call to a fixed receiver or cellular telephone in the United States, Telenor ASA does not provide service to or from the United States.<sup>113</sup> Since Telenor ASA has no U.S. facilities, Telenor ASA does not terminate that traffic over its own facilities in the United States. Also, as Telenor ASA currently provides minimal service in, to, or from the United States and Telenor ASA has no appreciable U.S.-originated revenues,<sup>114</sup> we conclude that competition for services in, to or from the United States in relevant product or geographic markets would not be lessened by the proposed assignment of the CMC-related FCC licenses and authorizations to Telenor Satellite.

39. We also note that Telenor Broadband offers a range of Inmarsat maritime services

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<sup>108</sup> See, e.g., Application of WorldCom, Inc., and MCI Communications Corporation for Transfer of Control of MCI to WorldCom, *Report and Order*, 13 FCC Rcd 18025, 18039, 18070 (1998).

<sup>109</sup> Comsat Corporation Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier, *Order and Notice of Proposed Rulemaking*, 13 FCC Rcd 14083, 14099 (1998).

<sup>110</sup> See *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9836-37, paras. 103-114.

<sup>111</sup> *Assignment Application* at 9.

<sup>112</sup> *Id.* at 35.

<sup>113</sup> *Id.* at 35, n. 58.

<sup>114</sup> *Id.* at 10.

covering the Indian Ocean, Atlantic Ocean East and the Atlantic Ocean West. CMC's earth stations cover the Pacific Ocean Region and the Atlantic Ocean Region but do not provide coverage of the Indian Ocean Region.<sup>115</sup> Thus the Applicants assert that the combined facilities would allow them to provide seamless, global service. Moreover, the Applicants assert that there are 28 LESOs that provide mobile-originated services using the Inmarsat system.<sup>116</sup> Consequently, to the extent that the proposed acquisition will reduce the number of operators providing service through the Inmarsat system from 28 to 27, we do not find that this could have any significant impact on competition in the provision of maritime services.

40. In its *Provisional Petition to Deny*, LRT raises the possibility that after the acquisition, Telenor Satellite will grow to "exercise market dominance" through the introduction of new services and the realization of significant efficiencies.<sup>117</sup> We find nothing anti-competitive about efficiencies achieved through global expansion such as economies of scale, seamless service through standardization, reduction of risk through geographic diversification, and speed in disseminating innovations.<sup>118</sup>

41. LRT also asserts that additional information is required to assess whether the proposed transaction would promote competition.<sup>119</sup> We find that no additional information is necessary to reach this finding. Given that we find no harm to competition in any relevant market and that, as discussed below, there are significant synergies associated with the combination of Telenor ASA's and CMC's operations, there is sufficient information in the record to support a finding that the transaction is in the public interest.<sup>120</sup>

#### **E. Dominant Carrier Safeguards**

42. Under Section 214(a), we next consider whether Telenor Satellite is affiliated with a foreign carrier that has market power on the foreign end of a U.S. international route that Telenor Satellite seeks to serve through assignment of the authorizations currently held by Comsat Corporation/CMC.<sup>121</sup> Under rules adopted in the *Foreign Participation Order*, we classify a U.S. carrier as a "dominant" international carrier on a particular route if it is affiliated with a foreign carrier that controls essential facilities on that route.<sup>122</sup> A U.S. carrier presumptively is classified

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<sup>115</sup> *Id.* at 26.

<sup>116</sup> *Id.* at 3.

<sup>117</sup> *LRT Provisional Petition* at 10-11.

<sup>118</sup> *See VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd 9787-88, para. 13.

<sup>119</sup> *See, e.g., LRT Provisional Petition* at 9-10 (stating that although data is presented with respect to new and expanded services which will be able to be offered by the combined new entity, no projections and other relevant market information is presented to permit a proper assessment of the competitive effects of this transaction. *See also LRT Reply to Opposition* at 2.

<sup>120</sup> *See infra* Section III. G.

<sup>121</sup> *See Assignment Application*, 214 Application at Exhibit 1, which contains a list of the COMSAT/CMC international Section 214 authorizations that the Applicants seek to assign to Telenor Satellite. We note that TSSH had originally requested Section 214 authority to operate as a global facilities-based and resale carrier under Sections 63.18(e)(1) & (e)(2). *Id.* at 5. The Applicants subsequently refiled this request as a separate Section 214 application, which the International Bureau granted on July 19, 2001. *See International Authorizations Granted*, DA 01-1726, , Report No. TEL-00421, 16 FCC Rcd 14040, rel. July 19, 2001.

as non-dominant on an affiliated route if the U.S.-authorized carrier demonstrates that its foreign carrier affiliate lacks 50 percent market share in the international transport and local access markets on the foreign end of that route.<sup>123</sup>

43. A carrier classified as dominant is subject to dominant carrier safeguards.<sup>124</sup> These safeguards are designed to address the possibility that a foreign carrier with control over facilities or services that are essential inputs for the provision of U.S. international services could discriminate against rivals of its U.S. affiliates (*i.e.*, vertical harms). In the *Foreign Participation Order*, the Commission concluded that these safeguards, in conjunction with our generally applicable international safeguards, are sufficient to protect against vertical harms by carriers from WTO countries in virtually all circumstances.<sup>125</sup> In circumstances in which an affiliated foreign carrier possesses market power in a non-WTO Member country, the Commission applies the ECO test as part of its public interest inquiry under Section 214(a).<sup>126</sup>

44. Telenor Satellite is affiliated with many foreign carriers.<sup>127</sup> The Applicants assert that, except in Norway, the affiliated foreign carriers lack market power and no combination of the affiliated foreign carriers has greater than 50 percent market share in the international transport and local access markets in any country in which they operate.<sup>128</sup> Based on our review and on the certified statements made by the Applicants, we find that, with the exception of the U.S.-Norway route, Telenor Satellite warrants classification as a non-dominant international carrier. The Applicants state that in Norway the foreign carrier affiliates of Telenor Satellite include Telenor Telecom and Telenor Global Services, each of which is a provider of fixed line services, and Telenor Mobile, a provider of mobile wireless services.<sup>129</sup> We also find that Telenor Broadband, as a provider of mobile satellite service in Norway, is a foreign carrier affiliate of Telenor Satellite within the meaning of Section 63.09 of our rules.<sup>130</sup> We find no evidence in the record to conclude, however, that Telenor Broadband or Telenor Mobile possesses market power in any relevant market in Norway. As the Commission observed in its *1998 Section 214 Streamlining Order*, a foreign carrier with only mobile wireless facilities (and no wireline facilities) is unlikely to have sufficient market power to affect competition adversely in the U.S. market.<sup>131</sup> We find no basis to

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<sup>122</sup> *Foreign Participation Order*, 12 FCC Rcd at 23987, 23991-99, paras. 215, 221-239.

<sup>123</sup> 47 C.F.R. § 63.10(a)(3). In the *Foreign Participation Order*, the Commission determined that the relevant markets on the foreign end of a U.S. international route generally include: international transport facilities or services, inter-city facilities or services, and local access facilities or services on the foreign end of the route. *See Foreign Participation Order*, 12 FCC Rcd at 23959, n. 312.

<sup>124</sup> 47 C.F.R. § 63.10(c), (e).

<sup>125</sup> *Foreign Participation Order*, 12 FCC Rcd at 23913-14, para. 51.

<sup>126</sup> *Id.* at 23944-45, paras. 124-128.

<sup>127</sup> *Assignment Application*, 214 Application at 6-7; *September 12, 2001 Supplemental Filing* at 3-5 (noting affiliations with foreign carriers in Norway, Russia, Denmark, Montenegro, Ukraine, Hungary, Bangladesh, Malaysia, Sweden and Thailand).

<sup>128</sup> *Assignment Application*, 214 Application at 7-8; *September 12, 2001 Supplemental Filing* at 2, n. 1.

<sup>129</sup> *Id.* at 6-7. *See also September 12, 2001 Supplemental Filing* at 3.

<sup>130</sup> *See* 47 C.F.R. § 63.09(d),(e) (defining “foreign carrier” and “affiliated,” respectively).

<sup>131</sup> *See* In the Matter of 1998 Biennial Regulatory Review – Review of International Common Carrier

conclude otherwise in this particular case.<sup>132</sup>

45. With respect to its fixed line affiliates, the Applicants do not contend that either Telenor Telecom or Telenor Global lacks market power. Indeed, Telenor Satellite has agreed to comply with the Commission's dominant carrier regulations in its provision of service between the United States and Norway. Accordingly, consistent with this commitment, but taking into account our market power finding for its mobile affiliates, we will classify Telenor Satellite as a dominant international carrier on the U.S.-Norway route. We require that, in its provision of service on this route, Telenor Satellite: (1) maintain separate books of account from Telenor Telecom and Telenor Global Services; (2) not jointly own transmission or switching facilities with these carriers; (3) file quarterly reports of revenue and traffic; (4) file quarterly reports summarizing the provisioning and maintenance of all basic network facilities and services procured from these carriers; and (5) file quarterly circuit status reports.<sup>133</sup>

46. The requirements described above are designed to make a carrier's interaction with its affiliated foreign carrier transparent and thereby guard against discriminatory conduct.<sup>134</sup> We believe that imposition of our dominant carrier safeguards, including the benchmark settlement rate condition,<sup>135</sup> and the no special concessions rule,<sup>136</sup> are sufficient to prevent vertical harms by the Telenor carriers. In addition, some of the dominant carrier safeguards – such as the requirement to maintain separate books and the prohibition on joint ownership of facilities – provide additional confidence that the Telenor carriers will not have the ability to cross-subsidize the international services provided by Telenor Satellite. We therefore find that the requested assignment of the listed international Section 214 authorizations will not create risks to competition in the U.S. international services markets that would warrant the imposition of additional competitive safeguards.<sup>137</sup>

## **F. National Security, Law Enforcement, Foreign Policy, and Trade Policy**

47. In acting on applications that involve issues of foreign ownership, we also consider any national security, law enforcement, foreign policy, and trade policy concerns raised by the Executive Branch.<sup>138</sup> We recognize that there are national security, law enforcement, foreign policy and trade policy issues that are uniquely within the expertise of the Executive Branch, and in addition to our own independent public interest review, we take into account the legitimate

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Regulations, IB Docket No. 98-118, *Report and Order*, 14 FCC Rcd 4909 (1998) (*1998 Section 214 Streamlining Order*) at 4922, para. 29 (noting that the Commission reserves the right to revisit this conclusion should mobile wireless units in foreign markets expand so rapidly that foreign wireless carriers may be able to exercise bottleneck control over terminating international telecommunications).

<sup>132</sup> See *supra* paras. 37-41.

<sup>133</sup> 47 C.F.R. § 63.10(c).

<sup>134</sup> See *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9835-36, para. 102 (citing *Foreign Participation Order*, 12 FCC Rcd at 23991-24022, paras. 221-292).

<sup>135</sup> 47 C.F.R. § 63.10(e).

<sup>136</sup> 47 C.F.R. § 63.14.

<sup>137</sup> *Foreign Participation Order*, 12 FCC Rcd at 23913, para. 51.

<sup>138</sup> *Foreign Participation Order*, 12 FCC Rcd at 23918, para. 59. LRT also urges the Commission to review carefully the national security implications of the proposed transaction. *LRT Provisional Petition* at 12.

concerns raised by the Executive Branch regarding these issues.<sup>139</sup>

48. On June 21, 2001, the Department of Justice, Federal Bureau of Investigation, and the Applicants filed a *Joint Petition to Defer*.<sup>140</sup> In the *Joint Petition to Defer*, the Department of Justice and Federal Bureau of Investigation expressed concerns relating to national security, law enforcement, and public safety, noting in particular the foreign government ownership of Telenor ASA.<sup>141</sup> The *Joint Petition to Defer* asked the Commission to defer approval of the proposed transaction until such time as an appropriate agreement could be reached between the Applicants and the Department of Justice and Federal Bureau of Investigation resolving all such concerns.<sup>142</sup> On November 29, 2001, the Department of Justice and the Federal Bureau of Investigation entered into such an agreement with TSSH, Telenor Satellite Inc., Telenor Satellite Services, Inc., and Telenor Broadband (*Telenor/DOJ/FBI Agreement*). On November 30, 2001, the Department of Justice and Federal Bureau of Investigation filed a Petition to Adopt Conditions to Authorization and Licenses (*Petition to Adopt Conditions*).<sup>143</sup> The *Petition to Adopt Conditions* requests that the Commission condition grant of the *Assignment Application* on compliance with the terms of the *Telenor/DOJ/FBI Agreement*.<sup>144</sup>

49. The *Telenor/DOJ/FBI Agreement* provides for an Implementation Plan that includes, *inter alia*, provisions for information storage and access, security, and auditing reporting and notice. The specific requirements of the *Telenor/DOJ/FBI Agreement* are set forth in Appendix B.<sup>145</sup>

50. In assessing the public interest, we take into account the record and accord an appropriate level of deference to Executive Branch expertise on national security and law enforcement issues.<sup>146</sup> We recognize that, separate from our licensing process, TSSH, Telenor Satellite Inc., Telenor Satellite Services, Inc., and Telenor Broadband, have entered into the

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<sup>139</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23919; *Disco II Order*, 12 FCC Rcd at 24170.

<sup>140</sup> See Lockheed Martin Global Telecommunications, COMSAT Corporation, and COMSAT General Corporation and Telenor Satellite Mobile Services, Inc., and Telenor Satellite, Inc., File No. SES-ASG-20010504-00896, *Joint Petition to Defer* (filed June 21, 2001) (noting that “[b]ecause Telenor Satellite is subject to the ultimate control of a corporation of which approximately 79% is owned by a foreign government, the FBI and DOJ have concerns that the proposed assignment of COMSAT’s licenses and authorizations to Telenor Satellite could, absent an appropriate agreement, impair the ability of authorized governmental agencies in the U.S. to satisfy their obligations to preserve the national security, enforce the laws and protect public safety.”) (*Joint Petition to Defer*).

<sup>141</sup> *Id.* at 2.

<sup>142</sup> *Id.* at 1-3.

<sup>143</sup> Department of Justice and Federal Bureau of Investigation, Petition to Adopt Conditions to Authorizations and Licenses in the Matter of Lockheed Martin Global Telecommunications, COMSAT Corporation, and COMSAT General Corporation, Assignor and Telenor Satellite Mobile Services, Inc., and Telenor Satellite, Inc., Assignee, Applications for Assignment of Section 214 Authorizations and Earth Station Licenses, File No. SES-ASG-20010504-00896 (dated Nov. 30, 2001) (*Petition to Adopt Conditions*) (attaching the *Telenor/DOJ/FBI Agreement*).

<sup>144</sup> *Petition to Adopt Conditions* at 4-5.

<sup>145</sup> See attached Appendix B, *Telenor/DOJ/FBI Agreement*.

<sup>146</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23919-21.

*Telenor/DOJ/FBI Agreement*, and that such agreement expressly states that these agencies will not object to grant of the pending *Assignment Application*, provided that the Commission approves the agreement and conditions the grant of the *Assignment Application* on compliance with it.<sup>147</sup> This resolution of the Executive Branch's sole filing regarding national security and law enforcement concerns addresses LRT's allegations that foreign government control of a U.S. carrier would pose a threat to our nation's security.<sup>148</sup>

51. We note that the *Telenor/DOJ/FBI Agreement* contains certain provisions relevant to this transaction that, if broadly applied, would have significant consequences for the telecommunications industry. These provisions, if viewed as precedent for other service providers and potential investors, would warrant further inquiry on our part, and we will consider any subsequent agreements on a case-by-case basis. Notwithstanding these concerns about the broader implications of the *Telenor/DOJ/FBI Agreement*, however, we see no reason to modify or disturb the agreement of the parties on this matter. Therefore, in accordance with the request of the Department of Justice and the Federal Bureau of Investigation, in the absence of any objection from the Applicants,<sup>149</sup> and given the discussion above, we condition our grant of the *Assignment Application* on compliance with the *Telenor/DOJ/FBI Agreement*.

#### **G. Public Interest Benefits**

52. In evaluating public interest benefits, we consider the Applicants' claim that the proposed transaction would facilitate competition in U.S. and international telecommunications services by enhancing the ability of the combined entity to compete effectively in U.S. domestic and international communications markets.<sup>150</sup> Neither Telenor ASA nor CMC, individually, provides Inmarsat services in all of the four Inmarsat ocean regions. Currently, Telenor ASA cannot provide service in the Pacific Ocean Region and CMC cannot provide service in the Indian Ocean Region unless it does so through contractual relationships with other LESOs.<sup>151</sup> The combination of Telenor ASA's operations with CMC's two U.S. earth stations and its mobile satellite services network will provide Telenor ASA with the ability to provide Inmarsat services through its own facilities in each of the Inmarsat regions. This expanded coverage will allow Telenor ASA to realize economies of scale. The acquisition will also allow Telenor ASA to optimize the routing of its traffic over the expanded network, which can result in significant savings and provide for additional flexibility and redundancy, thereby improving the quality of service. In addition, through the acquisition, Telenor ASA can introduce services that it currently offers, such as

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<sup>147</sup> *Petition to Adopt Conditions* at 5.

<sup>148</sup> See *LRT Provisional Petition* at 12-14 (urging that the Commission, in coordination with the Executive Branch, carefully study and assess the possible effects the proposed transaction can have on national security and asserting that, as a result of the proposed sale of the CMC assets to Telenor, ready and continuing access to the CMC facilities and information will be provided by a company controlled by a sovereign government).

<sup>149</sup> *Petition to Adopt Conditions* at 5.

<sup>150</sup> *Assignment Application* at 13.

<sup>151</sup> Telenor currently offers Inmarsat services, with coverage of three of the four Inmarsat ocean regions: Indian Ocean, Atlantic Ocean East and Atlantic Ocean West, while CMC provides Inmarsat service in the Pacific Ocean Region, but does not provide coverage of the Indian Ocean Region. *Id.* at 26.

SeaLink, a permanent satellite link for data communications, beyond its current system to the benefit of U.S.-based customers whom Telenor ASA currently does not serve.<sup>152</sup>

53. Given that we have found no evidence of potential harm to competition resulting from the proposed transaction, and in view of these stated benefits, we find that based on the claimed benefits, the proposed transaction would be in the public interest. In doing so, we rely on the representations made by the Applicants in this proceeding. Specifically, we rely on statements by the Applicants that control of the licenses and authorizations will rest with Telenor Satellite and that control of the assets relating to the licenses and authorizations will rest with Telenor Satellite or will be under common control of Telenor Satellite's parent company. Should control of either be transferred to another entity, the Applicants represent Telenor Satellite and its relevant parent companies would submit appropriate filings to the Commission.

#### IV. ADDITIONAL AUTHORIZATIONS AND WAIVER OF CUT-OFF RULES

54. The Applicants request that grant of the *Assignment Application* include authority for assignment to Telenor Satellite of (1) any authorizations that might be issued during the pendency of this proceeding, and (2) any applications that may have been filed by Comsat/CMC and that are still pending at the time of the effective date of this Order.<sup>153</sup> The Applicants also request a blanket exemption from any applicable cut-off rules in cases where amendments are filed to pending Part 25 or other applications to reflect the consummation of the assignments.<sup>154</sup>

55. We conclude that any authorizations issued during the pendency of this proceeding or filed after the initial application and still pending at the time of the release of this Order and Authorization should be deemed to be covered by this Order and Authorization to the extent that the pending applications are listed in Appendix A. The Applicants should amend any current pending applications to reflect the transaction approved by this Order and Authorization consistent with Section 1.65 of the Commission's rules.<sup>155</sup>

56. The waiver request did not identify, nor are we aware of, any pending applications that are subject to a cut-off deadline. Therefore, under these circumstances, no waiver is necessary. Accordingly, the waiver request is rendered moot.

#### V. CONCLUSION

57. In view of the foregoing, we find that granting the applications to assign the licenses and authorizations listed in Appendix A to Telenor Satellite will serve the public interest, convenience, and necessity consistent with Sections 214(a) and 310(d) of the Communications Act of 1934, by increasing competition in the satellite services markets to the benefit of U.S. consumers. We also conclude that assignment of the listed international Section 214 authorizations will not create risks to competition in the U.S. international services markets that would warrant the imposition of additional competitive safeguards. Finally, pursuant to Section 310(b)(4) and the

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<sup>152</sup> *Id.* at 29.

<sup>153</sup> *Id.* at 17.

<sup>154</sup> *Id.* at 17-18.

<sup>155</sup> 47 C.F.R. § 1.65.

Commission's "open entry" standard for indirect investment by WTO Members in U.S. common carrier licenses, we conclude that it will not serve the public interest to prohibit the proposed indirect foreign ownership of Telenor Satellite in excess of the statutory 25 percent benchmark. On this basis and for the reasons described in this Order and Authorization, we grant the Applicants' requests to the extent described above.

## VI. ORDERING CLAUSES

58. Accordingly, IT IS ORDERED that, pursuant to Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), the application for assignment of licenses listed in Appendix A, IS GRANTED to the extent specified in this Order and Authorization.

59. IT IS FURTHER ORDERED that, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, the application for assignment of Section 214 authorizations listed in Appendix A, IS GRANTED to the extent specified in this Order and Authorization.

60. IT IS FURTHER ORDERED that, the Petition for Protective Orders filed by Litigation Trust Recovery is DENIED.

61. IT IS FURTHER ORDERED that, the Motion for Waiver to Accept Pleading filed by Litigation Trust Recovery is DENIED.

62. IT IS FURTHER ORDERED that, pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended, the petition for declaratory ruling filed by Applicants IS GRANTED to the extent specified in the order. Accordingly, Telenor Satellite is authorized to accept indirect foreign ownership in excess of the twenty-five percent benchmark in Section 310(b)(4) of the Act, as specified in this Order and Authorization.

63. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and (j), 214(a) and (c), 309 and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), and (j), 214(a) and (c), 309, 310(b) and (d), the Petition to Adopt Conditions to Authorizations and Licenses filed by the Department of Justice and the Federal Bureau of Investigation on November 30, 2001, IS GRANTED, and that the authorizations and licenses related thereto which are to be assigned as a result of this Order and Authorization are subject to compliance with provisions of the Agreement between with Telenor Satellite Services Holdings, Inc., Telenor Satellite Inc., Telenor Satellite Services, Inc., and Telenor Broadband AS, and the Department of Justice and the Federal Bureau of Investigation dated November 29, 2001 and attached hereto as Appendix B, which Agreement is designed to address the national security, law enforcement, and public safety concerns of the Department of Justice and the Federal Bureau of Investigation regarding the authority granted herein, is fully binding upon and those subsidiaries, successors and assigns thereof that provide telecommunications services within the United States. Nothing in the Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. §§ 222(a) and (c)(1) and the Commission's implementing regulations.

64. IT IS FURTHER ORDERED that, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and Section 63.10 of the Commission's rules, 47 C.F.R. § 63.10, that Telenor Satellite shall be regulated as a dominant



international carrier on the U.S.-Norway route, and as a non-dominant international carrier on its other authorized routes.

65. IT IS FURTHER ORDERED that, pursuant to Section 1.65 of the Commission's Rules, 47 C.F.R. § 1.65, the Applicants are afforded 30 days from the date of consummation of the transaction approved in this Order and Authorization to amend pending applications listed in Appendix A to reflect the new ownership structure approved in this Order and Authorization.

66. IT IS FURTHER ORDERED that, pursuant to Section 1.4(b)(2) of the Commission's rules, 47 C.F.R. § 1.4(b)(2), this Order and Authorization is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Romas Salas  
Secretary

## APPENDIX A

CALL SIGN/FILE NO.	CLASS OF STATION
ITC-86-087	214
ITC-86-149	214
ITC-87-027	214
ITC-87-111	214
ITC-88-084	214
ITC-89-076	214
ITC-90-129	214
ITC-89-119	214
ITC-92-030, ITC-92-031	214
ITC-90-085	214
ITC-90-133	214
ITC-92-063	214
ITC-91-228	214
ITC-92-076	214
ITC-92-075	214
ITC-91-088; ITC-91-089	214
ITC-91-139; ITC-91-088; ITC-91-089; ITC-91-228; ITC-92-030, 031, 032	214
ITC-94-016	214
ITC-94-025	214
ITC-94-077	214
ITC-214-19960501-00176 (ITC-96-278)	214
CC Docket 87-75	214
*ITC-214-19931105-00009 (ITC-94-039)	214
*42-SAT-STA-97	214
*ITC-214-19950511-00019 (ITC-95-341)	214
SES-MS-19990331-02474	214
*SAT-ITC-19970710-00059 (000103-SAT-ITC-97)	214
*SAT-ITC-19990609-00063	214
*SAT-ITC-20000605-00103	214
ITC-97-222; ITC-214-19970414-000206	214
<sup>(s)</sup> SAT-STA-19990609-00064	214
ITC-94-063	214
ITC-95-422	214
ITC-93-266	214
SES-STA-20010719-1338	214

CALL SIGN/FILE NO.	CLASS OF STATION
WB36 (SES-LIC-20010530-01007)	Fixed Earth Station
KB34	Fixed Land Earth Station
KA305	Fixed Earth Station
KA304	Fixed Earth Station
KA313	Fixed Land Earth Stations
KA312	Fixed Land Earth Stations
KA31	Fixed Land Earth Station
<sup>(s)</sup> WA28	Fixed Earth Station
E990027	Fixed Land Earth Station
E990034	Fixed Land Earth Station
E990032	Fixed Land Earth Station
E980136	Fixed Land Earth Station
E930320	Fixed Earth Station
E980137	Fixed Land Earth Station
E990422	Fixed Earth Station
E890649	Fixed Earth Station
KA249	Fixed Land Earth Station
E000280	Mobile Earth Station
E000282	Mobile Earth Station
E000283	Mobile Earth Station
<sup>(i)</sup> E000284 (SES-LIC-20000609-00948)	Mobile Earth Station
E000285	Mobile Earth Station
SES-STA-20010907-01723	Mobile Earth Station
<sup>(s)</sup> STA	Test and Demo
SES-STA-20010530-01007	Mobile Earth Station
SES-STA-20010308-00523	Mobile Earth Station
SES-STA-20010508-00909	Mobile Earth Station
SES-STA-2001-628-01230	Mobile Earth Station
WC2XRT	Aero Station at Southbury, CT
WC2XNE	Developmental (Fixed)
WC2XMG	Developmental (Fixed)
<sup>(r)</sup> KA2XHN	Developmental (Fixed)
WA2XGG	Developmental (Fixed)
<sup>+(CG)</sup> KB42877	Industrial Business

<sup>+</sup> Non-Common Carrier

\* Application Pending

<sup>(i)</sup> Authorization granted;

awaiting issuance of license

<sup>(r)</sup> Renewal Application Pending

<sup>(s)</sup> STA Extension Request Pending

<sup>(CG)</sup> Comsat General Corporation

**APPENDIX B – Telenor/DOJ/FBI Agreement****AGREEMENT**

This AGREEMENT is made as of the date of the last signature affixed hereto (the "Effective Date"), by and between: TELENOR SATELLITE SERVICES HOLDINGS, INC. ("TSSH"), a Delaware Corporation; its wholly-owned subsidiaries, TELENOR SATELLITE, INC. ("TSI"), a Delaware Corporation, and TELENOR SATELLITE SERVICES, INC. ("TSS"), a Delaware Corporation, (with TSSH, TSI, and TSS collectively referred to as "Telenor USA"); and their Norwegian indirect sole owner and guarantor, TELENOR BROADBAND SERVICES AS ("TBS"), a limited liability company established pursuant to the laws of the Kingdom of Norway and headquartered in Oslo, Norway (with Telenor USA and TBS collectively referred to as "Telenor") on the one hand; and the FEDERAL BUREAU OF INVESTIGATION (the "FBI") and the UNITED STATES DEPARTMENT OF JUSTICE (the "DOJ") on the other, (with each of the foregoing referred to individually as a "Party" and collectively as the "Parties").

**RECITALS**

WHEREAS, U.S. communications systems are essential to the ability of the U.S. government to fulfill its responsibilities to the public to preserve the national security of the United States, to enforce the laws, and to maintain the safety of the public;

WHEREAS, the U.S. government has an obligation to the public to ensure that U.S. communications and related information are secure in order to preserve the national security of the United States, to protect the privacy of U.S. persons and to enforce the laws of the United States;

WHEREAS, it is critical to the well being of the nation and its citizens to maintain the viability, integrity, and security of the communication system of the United States (see, e.g., Presidential Decision Directive 63 on Critical Infrastructure Protection);

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

WHEREAS, Telenor filed with the Federal Communications Commission (the "FCC" or "Commission") on May 4, 2001, a set of applications (the "Application") under Sections 214 and 310(d) of the Communications Act of 1934, as amended (the "Act"), seeking FCC approval for the assignment to TSI of certain Title II common carrier authorizations and Title III licenses (collectively, the "Licenses") of COMSAT Corporation and COMSAT General Corporation, both owned by Lockheed Martin Global Telecommunications Corporation (collectively "COMSAT"), in connection with the proposed acquisition by TSSH of the assets of COMSAT Mobile Communications ("CMC"), a business unit of COMSAT (with the proposed transaction referred to as the "CMC Acquisition", and to be fully consummated only upon approval by the FCC of COMSAT's assignment of the Licenses to TSI (the "FCC Approval"));

WHEREAS, as part of the Application, Telenor has also requested of the FCC a declaratory ruling that TSI's holding of the Licenses would serve the public interest and in all other respects be consistent with Section 310(b)(4) of the Act (the "Declaratory Ruling"), which ruling will reflect the current ownership by the Kingdom of Norway of approximately 79% of the shares of Telenor ASA, a Norway-incorporated, Oslo-based company that is publicly-listed on the

NASDAQ and Oslo stock exchanges and that is the ultimate parent of TBS, TSSH, TSI, TSS and other wholly-owned subsidiaries through which Telenor ASA would own the CMC business once its proposed acquisition by TSSH is complete;

WHEREAS, the Application also requests authorization for the assignment of (1) any licenses or authorizations issued to COMSAT for the benefit of CMC during the pendency of the Commission's consideration of the Application or during the period required for consummation of the assignments following the FCC Approval; and (2) applications that will have been filed by COMSAT for the benefit of CMC and that are pending at the time of consummation of the proposed assignments;

WHEREAS, on June 21, 2001, the Parties submitted to the FCC a joint Petition to Defer the Application pending the negotiation and execution of an Agreement to address U.S. national security, law enforcement and public safety issues in connection with the CMC Acquisition;

WHEREAS, by Executive Order 12661, the President, pursuant to Section 721 of the Defense Production Act, as amended, authorized the Committee on Foreign Investment in the United States ("CFIUS") to review, for national security purposes, foreign acquisitions of U.S. companies;

WHEREAS, Telenor and COMSAT intend to submit or have submitted a voluntary notification (the "Notification") to CFIUS of the proposed CMC Acquisition, and Telenor has agreed to enter into this Agreement to resolve any national security or law enforcement issues that the DOJ and the FBI might have in their consideration of the Notification or any other process of U.S. government review of the CMC Acquisition, consistent with Article 6.3 below;

WHEREAS, Telenor represents that Telenor ASA is subject to the same rules and regulations under the Norwegian Public Limited Companies Act as all other corporations whose shares are traded on the Oslo Stock Exchange, and Telenor further represents that its operation of the CMC business will be fully insulated from Norwegian government involvement;

WHEREAS, in the course of reaching this Agreement, representatives of Telenor have represented to the DOJ and the FBI that (a) it has no present plans, and is aware of no present plans of any other entity, as a result of which Telenor USA will provide communications, or Telenor will provide Domestic Communications, through facilities located outside the United States except for *bona fide* commercial reasons, (b) no government has, as a direct or indirect shareholder of Telenor, special voting or veto rights concerning the actions of Telenor other than those that would apply to a similarly-situated non-government shareholder under applicable U.S. and Norwegian securities laws, and Telenor is aware of no plans the result of which would confer such rights to a government concerning the actions of Telenor, and (c) the CMC business, including any future provision of Inmarsat services related to U.S.-Licensed MESs, will be operated, on or after the Consummation Date, exclusively by or on behalf of Telenor USA; and

WHEREAS, Telenor represents that it will have no officers or directors directly appointed or nominated by the Kingdom of Norway and that Telenor will continue to be directed, operated and managed on a day to day basis by its board of directors and officers in accordance with regular commercial practices;

NOW THEREFORE, the Parties are entering into this Agreement to address U.S. national

security, law enforcement and public safety issues in connection with the CMC Acquisition.

### ARTICLE 1: DEFINITION OF TERMS

As used in this Agreement:

- 1.1 "Call-Associated Data" or "CAD" means any information relating to a communication or relating to the sender or recipient of that communication and may include, without limitation, subscriber identification, called party number, calling party number, start time, end time, call duration, feature invocation and deactivation, feature interaction, registration information, user location, diverted to number, conference party numbers, post cut-through dual-tone multifrequency (dial digit extraction), in-band and out-of-band signaling, party add, drop and hold, and any other call-identifying information, as defined in 47 U.S.C. § 1001(2).
- 1.2 "Classified Information" means any information that has been determined pursuant to Executive Order 12958, or any predecessor or successor order, or the Atomic Energy Act of 1954, or any statute that succeeds or amends the Atomic Energy Act, to require protection against unauthorized disclosure.
- 1.3 "Consummation Date" means the date of final consummation (*i.e.*, closing) of the CMC Acquisition.
- 1.4 "Control" and "Controls" mean the power, direct or indirect, whether or not exercised, and whether or not exercised or exercisable through the ownership of a majority or a dominant minority of the total outstanding voting securities of an entity, or by proxy voting, contractual arrangements, or other means, to determine, direct, or decide matters affecting an entity or facility; in particular, but without limitation, to determine, direct, take, reach or cause decisions regarding:
  - a. The sale, lease, mortgage, pledge, or other transfer of any or all of the principal assets of the entity, whether or not in the ordinary course of business;
  - b. The dissolution of the entity;
  - c. The closing and/or relocation of the production or research and development facilities of the entity;
  - d. The termination or non-fulfillment of contracts of the entity;
  - e. The amendment of the articles of incorporation or constituent agreement of the entity with respect to the matters described in paragraphs (a) through (d) above; or
  - f. Rights or obligations under this Agreement.
- 1.5 "Controlled Unclassified Information" means unclassified information, the export of which is controlled by the International Traffic in Arms Regulations (ITAR), 22 C.F.R. Chapter I, Subchapter M, or the Export Administration Regulations (EAR), 15 C.F.R. Chapter VII, Subchapter C.
- 1.6 "De facto" and "de jure" control have the meanings provided in 47 C.F.R. § 1.2110.
- 1.7 "Domestic Communications" means (i) Wire Communications or Electronic Communications (whether stored or not) originating at one U.S. location and terminating

- at another U.S. location and (ii) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates from or terminates at a U.S.-Licensed MES.
- 1.8 "Domestic Communications Infrastructure" means (a) transmission and switching equipment (including software and upgrades) subject to Control by Telenor and in use to provide, process, direct, control, supervise or manage Domestic Communications, and (b) facilities and equipment in use by or on behalf of Telenor that are physically located in the United States, and (c) facilities in use by or on behalf of Telenor USA to control the equipment described in (a) and (b).
- 1.9 "Effective Date" has the meaning given it in the Preamble.
- 1.10 "Electronic Communication" has the meaning given it in 18 U.S.C. § 2510(12).
- 1.11 "Electronic Surveillance" means (i) the interception of wire, oral, or electronic communications as defined in 18 U.S.C. §§ 2510(1), (2), (4) and (12), respectively, and electronic surveillance as defined in 50 U.S.C. § 1801(f); (ii) access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701 et seq.; (iii) acquisition of information through pen register or trap and trace devices or other devices or features capable of acquiring such information pursuant to law as defined in 18 U.S.C. § 3121 et seq. and 50 U.S.C. § 1841 et seq.; (iv) acquisition of location-related information concerning a service subscriber; (v) preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and (vi) access to, or acquisition or interception of, communications or information as described in (i) through (v) above and comparable State laws.
- 1.12 "Foreign" where used in this Agreement, whether capitalized or lower case, means non-U.S.
- 1.13 "Governmental Authority" or "Governmental Authorities" mean any government, any governmental, administrative, or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision and any court, tribunal, judicial or arbitral body.
- 1.14 "Intercept" or "Intercepted" has the meaning defined in 18 U.S.C. §2510(4).
- 1.15 "Lawful U.S. Process" means U.S. federal, state or local Electronic Surveillance orders or authorizations, and other orders, legal process, statutory authorizations, and certifications for interception of, access to or disclosure of Domestic Communications, Call Associated Data, Transactional Data or Subscriber Information authorized by U.S. federal, state or local law.
- 1.16 "MES" means a mobile earth station (*i.e.*, a hand-held, portable or other mobile terminal capable of receiving and/or transmitting Wire Communications or Electronic Communications by satellite).
- 1.17 "Non U.S.-Licensed MES" means an Inmarsat MES other than a U.S.-Licensed MES.

- 1.18 "Party" or "Parties" have the meaning given in the Preamble.
- 1.19 "Pro forma assignments" or "pro forma transfers of control" are transfers or assignments that do not "involve a substantial change in ownership or control" of the licenses as provided in 47 C.F.R. 63.24.
- 1.20 "Sensitive Information" means unclassified information regarding (i) the persons or facilities that are the subjects of Lawful U.S. Process, (ii) the identity of the government agency or agencies serving such Lawful U.S. Process, (iii) the location or identity of the line, circuit, transmission path, or other facilities or equipment used to conduct Electronic Surveillance, (iv) the means of carrying out Electronic Surveillance, (v) the type(s) of service, telephone number(s), records, communications, or facilities subjected to Lawful U.S. Process, and (vi) other unclassified information designated in writing by an authorized official of a federal, state or local law enforcement agency or a U.S. intelligence agency as Sensitive Information.
- 1.21 "Subscriber Information" means information of the type referred to and accessible subject to procedures specified in 18 U.S.C. § 2703(c) or (d) or 18 U.S.C. § 2709. Such information shall also be considered Subscriber Information when it is sought pursuant to the provisions of other Lawful U.S. Process.
- 1.22 "Telenor" has the meaning given to it in the Preamble. It includes all successors and assigns of Telenor.
- 1.23 "Telenor Broadband Services AS" or "TBS" has the meaning given to it in the Preamble, and also encompasses its directly or indirectly wholly-owned Norway-incorporated subsidiaries, Telenor Satellite Mobile Ventures AS and Telenor Satellite Mobile AS, including all of their successors, assigns and subsidiaries.
- 1.24 "Telenor USA" has the meaning given to it in the Preamble. It includes all successors, assigns and subsidiaries of Telenor USA.
- 1.25 "Transactional Data" means:
- a. Call-identifying information, as defined in 47 U.S.C. § 1001(2), including without limitation the telephone number or similar identifying designator associated with a communication;
  - b. Internet address or similar identifying designator associated with a communication;
  - c. The time, date, size, and duration of a communication;
  - d. Any information relating to identity and physical address of a Telenor USA subscriber, user, or account payer;
  - e. To the extent associated with such a subscriber, user, or account payer, any information relating to all telephone numbers, Internet addresses, or similar identifying designators; the physical location of equipment, if known and if different from the location information provided under (f) below; types of services; length of service; fees; and usage, including billing records; and
  - f. any information indicating as closely as possible the physical location to or from which communication is transmitted.

The term does not include the content of any communication.

- 1.26 "United States," "US" or "U.S." means the United States of America including all of its States, districts, territories, possessions, commonwealths, and the special maritime and territorial jurisdiction of the United States.
- 1.27 "U.S. LES" means a land earth station facility located in any state of the United States that is involved with the transmission of satellite communications and meets all other applicable requirements of this Agreement and the Implementation Plan.
- 1.28 "U.S.-Licensed MES" means an MES licensed by the Federal Communications Commission to or on behalf of Telenor.
- 1.29 "U.S. POP" or "POP" means a Point of Presence through which communications are routed for purpose of switching and at which Electronic Surveillance can be conducted, and meeting all other applicable requirements of this Agreement and the Implementation Plan.
- 1.30 "Wire Communication" has the meaning given it in 18 U.S.C. § 2510(1).
- 1.31 Other Definitional Provisions. Other capitalized terms used in this Agreement and not defined in this Article 1 shall have the meanings assigned them elsewhere in this Agreement. The definitions in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Whenever the words "include," "includes," "including" or "such as" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

## ARTICLE 2: INFORMATION STORAGE AND ACCESS

- 2.1 Implementation Plan. Certain of the rights and obligations of the Parties are set forth in further detail in an Implementation Plan, which is executed by Telenor and is incorporated in and constitutes an integral part of this Agreement. Telenor shall comply with the Implementation Plan, subject to possible modifications in accordance with Article 9 of this Agreement. The Implementation Plan and all provisions of this Agreement related to it, unless otherwise specified herein, shall take effect on the Consummation Date.
- 2.2 Domestic Communications Infrastructure. Except to the extent and under conditions concurred in by the FBI and the DOJ in writing:
- 2.2.1 Location and Operation. Except strictly for *bona fide* commercial reasons weighing in favor of using foreign-located Domestic Communications Infrastructure, all Domestic Communications Infrastructure shall at all times be located in the United States and will be directed, controlled, supervised and managed in the United States by Telenor USA or its agent.
- 2.2.2 Point of Presence. As specified in the Implementation Plan, all Domestic Communications shall either be transmitted through a U.S. LES or routed through



a POP that includes a network switch under the control of Telenor USA and is physically located in the United States, from which Electronic Surveillance can be conducted pursuant to Lawful U.S. Process. Telenor USA will provide technical or other assistance to facilitate such Electronic Surveillance.

- 2.2.3 Communications of a U.S.-Licensed MES. Domestic Communications from a U.S.-Licensed MES shall not be routed outside the United States by Telenor except strictly for *bona fide* commercial reasons.
- 2.2.4 Communications of a Non U.S.-Licensed MES. Telenor shall configure its network such that pursuant to Lawful U.S. Process, Electronic Surveillance of a Non U.S.-Licensed MES can be conducted in accordance with the Implementation Plan.
- 2.3 Compliance with Lawful U.S. Process. Telenor shall take all practicable steps to configure its Domestic Communications Infrastructure to be capable of complying in an effective, efficient, and unimpeded fashion, and shall ensure that its employees in the United States will have unconstrained authority to comply, with:
- a. Lawful U.S. Process;
  - b. Presidential orders issued under § 706 of the Communications Act of 1934, as amended, (47 U.S.C. § 606), § 302(e) of the Aviation Act of 1958 (49 U.S.C. § 40107(b)) and Executive Order 11161 (as amended by Executive Order 11382); and
  - c. National Security and Emergency Preparedness rules, regulations and orders issued pursuant to the Communications Act of 1934, as amended (47 U.S.C. § 151 et seq.).
- 2.4 Information Storage and Access. Effective upon the Consummation Date, Telenor USA shall make available in the United States:
- a. stored Domestic Communications, if such communications are stored by or on behalf of Telenor for any reason;
  - b. any Wire Communications or Electronic Communications (including any other type of wire, voice or electronic communications not covered by the definitions of Wire Communication or Electronic Communication) received by, intended to be received by, or stored in the account associated with a U.S.-Licensed MES, or transmitted through a Telenor U.S. LES or routed through a Telenor POP to or from a customer or subscriber of Telenor USA, if stored by or on behalf of Telenor for any reason;
  - c. Transactional Data and Call Associated Data relating to Domestic Communications, if such information is stored by or on behalf of Telenor for any reason;
  - d. Subscriber Information concerning the customers and subscribers of services using U.S.-Licensed MESs, or Telenor customers and subscribers who to Telenor's knowledge are domiciled in the United States or are holding themselves

out as being domiciled in the United States, as well as Subscriber Information related to any Domestic Communication transmitted through a Telenor U.S. LES or routed through a Telenor POP, if such information is stored by or on behalf of Telenor for any reason; and

- e. Billing records relating to customers and subscribers of services using U.S.-Licensed MESs, or Telenor customers and subscribers who to Telenor's knowledge are domiciled in the United States or are holding themselves out as being domiciled in the United States, as well as billing records related to any Domestic Communication transmitted through a Telenor U.S. LES or routed through a Telenor POP, for so long as such records are kept, and at a minimum, for so long as such records are required to be kept, by or on behalf of Telenor USA, pursuant to applicable U.S. law or this Agreement.
- 2.5 Mandatory Destruction. Effective upon the Consummation Date, Telenor shall ensure that the data and communications described in Articles 2.4(a) – (e) of this Agreement are stored in a manner not subject to mandatory destruction under any foreign laws, if such data and communications are stored by or on behalf of Telenor for any reason. Telenor shall ensure that the data and communications described in Articles 2.4(a) – (e) of this Agreement are not stored outside of the United States unless such storage is based strictly on *bona fide* commercial reasons weighing against storage in the United States.
- 2.6 Billing Records: Telenor USA shall store for at least eighteen (18) months all billing records relating to customers and subscribers of services using U.S.-Licensed MESs, and shall make such records available in the United States. Nothing in this paragraph shall obligate Telenor USA to store such records for longer than eighteen (18) months.
- 2.7 Storage Pursuant to 18 U.S.C. § 2703(f): Upon a request made pursuant to 18 U.S.C. § 2703(f) by a Governmental Authority within the United States to preserve any information enumerated in Article 2.4, Telenor USA shall store such preserved records or other evidence in the United States.
- 2.8 Compliance with U.S. Law: Nothing in this Agreement shall excuse Telenor from any obligation it may have to comply with U.S. legal requirements for the retention, preservation or production of information, records or data.
- 2.9 CPNI: With respect to Domestic Communications, Telenor USA shall comply with all applicable FCC rules and regulations governing access to and storage of Customer Proprietary Network Information ("CPNI"), as defined in 47 U.S.C. § 222(h)(1).

### ARTICLE 3: SECURITY

- 3.1 Measures to Prevent Improper Use or Access: Telenor shall take all practicable measures to prevent the use of or access to Telenor's equipment or facilities to conduct Electronic Surveillance of Domestic Communications in violation of any U.S. federal, state, or local laws or the terms of this Agreement. These measures shall include written technical, organizational, and personnel-related policies and procedures, necessary implementation plans, and physical security measures.

3.2 Access by Foreign Government Authorities: Without the prior written consent of the DOJ, or the authorization of a court of competent jurisdiction in the United States, Telenor shall not, directly or indirectly, disclose or permit disclosure of, or provide access, to any Domestic Communications or any Call Associated Data, Transactional Data or Subscriber Information related to Domestic Communications that are stored in the United States to any person if the purpose of such disclosure or access is to respond to the legal process or the request of a foreign government, identified representative, or a component or subdivision thereof. Any such requests or submissions of legal process described in this paragraph shall be reported to the DOJ as soon as possible and in no event later than five (5) business days after such request or legal process is received by and known to Telenor. Telenor shall take reasonable measures to ensure that it will promptly learn of all such requests or submission of legal process described in this Article 3.2.

3.3 Disclosure to Foreign Government Authorities: Telenor shall not, directly or indirectly, disclose or permit disclosure of, or provide access to

- a. Classified or Sensitive Information, or
- b. Subscriber Information, Transactional Data, or Call Associated Data or a copy of any Wire Communications or Electronic Communication, if the foregoing was intercepted or acquired pursuant to Lawful U.S. Process;

to any foreign government, identified representative, component or subdivision thereof without first satisfying all applicable U.S. federal, state and local legal requirements pertinent thereto, and obtaining the express written consent of the DOJ or the authorization of a court of competent jurisdiction in the United States. Any requests or any legal process submitted by a foreign government, identified representative, component or subdivision thereof to Telenor for the communications, data or information identified in this paragraph shall be referred to the DOJ as soon as possible, and in no event later than five (5) business days after such request or legal process is received by and known to Telenor, unless the disclosure of the request or legal process would be in violation of an order of a court of competent jurisdiction within the United States. Telenor shall take reasonable measures to ensure that it will promptly learn of all such requests or submission of legal process described in this paragraph.

Without limiting the obligations of Telenor under Article 3.2, above, nothing in this Article 3.3 shall impose any obligations on Telenor with respect to its compliance with foreign government information requests or orders that are unrelated to Lawful U.S. Process and to which Telenor can and does respond without disclosing, directly or indirectly, any Classified or Sensitive Information or other information revealing that interceptions or acquisitions have occurred pursuant to Lawful U.S. Process.

3.4 Notification of Access or Disclosure Requests from Foreign Non-Governmental Entities: Telenor shall notify DOJ in writing of any legal process or requests by foreign non-governmental entities, for access to or disclosure of Domestic Communications, except that no such notification is required with respect to such information if the disclosure of the legal process or request would violate an order of a court of competent jurisdiction within the United States. Telenor shall provide such notice to the DOJ no later than ninety (90) days after such request or legal process is received by Telenor.

- 3.5 Points of Contact: Within thirty (30) days after the Consummation Date, Telenor USA shall designate points of contact within the United States with the authority and responsibility for accepting and overseeing the carrying out of Lawful U.S. Process. The points of contact shall be assigned to a Telenor USA office in the U.S., and will be available twenty-four (24) hours per day, seven (7) days per week and shall be responsible for accepting service and for maintaining the security of Sensitive, Controlled Unclassified, and Classified Information and any Lawful U.S. Process for Electronic Surveillance in accordance with the requirements of U.S. law and regulation. Telenor USA shall immediately notify the FBI and the DOJ in writing of the points of contact, and thereafter shall promptly notify the FBI and the DOJ of any change in such designation. The points of contact shall be U.S. citizens who are eligible for appropriate U.S. security clearances. Telenor USA shall cooperate with any U.S. government request that a background check and/or security clearance process be completed for a designated point of contact.
- 3.6 Security of Lawful U.S. Process: Telenor USA shall protect the confidentiality and security of all Lawful U.S. Process served upon it and the confidentiality and security of Classified, Controlled Unclassified, and Sensitive Information in accordance with U.S. Federal and state law or regulation.
- 3.7 Access to Classified, Controlled Unclassified or Sensitive Information: Nothing contained in this Agreement shall limit or affect the authority of a United States Government agency to deny, limit or revoke Telenor's access to Classified, Controlled Unclassified, and Sensitive Information under that agency's jurisdiction.
- 3.8 Location of Secure Facility: Effective upon the Consummation Date, Telenor USA shall maintain an appropriately secure facility within the United States within which Telenor USA shall:
- a. Take appropriate measures to prevent unauthorized access to data or facilities that might contain Classified, Controlled Unclassified or Sensitive Information;
  - b. Assign U.S. citizens, who meet high standards of trustworthiness for maintaining the confidentiality of Sensitive Information, to positions that handle or regularly deal with information identifiable to such person as Sensitive Information;
  - c. Upon request from the DOJ or the FBI, provide the name, social security number and date of birth of each person who handles or regularly deals with Sensitive Information;
  - d. Require that personnel handling Classified Information, if any, shall have been granted appropriate U.S. security clearances;
  - e. Provide that the points of contact described in Article 3.5 shall have sufficient authority over any of Telenor USA's employees who may handle Classified, Controlled Unclassified or Sensitive Information to maintain the confidentiality and security of such information in accordance with applicable U.S. legal authority and the terms of this Agreement; and
  - f. Maintain appropriately secure facilities (*e.g.*, offices or areas) for the handling and storage of any Classified, Controlled Unclassified and Sensitive Information.

#### **ARTICLE 4: AUDITING, REPORTING, and NOTICE**

- 4.1 Access to Information: In response to reasonable requests made by the FBI or the DOJ, Telenor shall provide in the United States access to information concerning technical, physical, management, or other security measures and other reasonably available information needed by the FBI or the DOJ to assess compliance with this Agreement.
- 4.2 Visits and Inspections: The FBI and the DOJ may visit any communications facility of Telenor in the United States and may inspect any part of the Domestic Communications Infrastructure in the United States for the purpose of verifying compliance with the terms of this Agreement. Such inspections shall be reasonable in number and be conducted during normal business hours upon reasonable notice, which shall ordinarily be no less than twenty-four (24) hours in advance of the visit. Telenor may have appropriate employees accompany the FBI and the DOJ representatives during any such inspection.
- 4.3 Access to Personnel: Upon reasonable notice from the FBI or the DOJ, Telenor shall make available for interview during normal business hours any officers or employees of Telenor in the U.S. and will seek to require contractors to make available appropriate personnel, located in the United States, who are in a position to provide information to verify compliance with the terms of this Agreement.
- 4.4 Notice of Obligations: Telenor shall instruct appropriate officials and employees of Telenor and certain contractors and agents as to the obligations of Telenor under this Agreement and their duty to report any violation of this Agreement of which the officials, employees, contractors and agents become aware, and shall issue periodic reminders to them of such obligations.

**ARTICLE 5: DISPUTES AND NON-IMPACT ON  
OTHER GOVERNMENT ACTIONS**

- 5.1 Informal Resolution: The Parties shall use their best efforts to resolve any disagreements that may arise under this Agreement. Disagreements shall be addressed, in the first instance, at the staff level by the Parties' designated representatives. Any disagreement that has not been resolved at that level shall be submitted promptly to higher authorized officials, unless the DOJ or the FBI believes that important national interests can be protected, or Telenor believes that its paramount commercial interests can be resolved, only by resorting to the measures set forth in Article 5.2 below. If, after meeting with higher authorized officials, any of the Parties determines that further negotiation would be fruitless, then that Party may resort to the remedies set forth in Article 5.2 below. If resolution of a disagreement requires access to Classified Information, the Parties shall designate a person or persons possessing the appropriate security clearances.
- 5.2 Enforcement of Agreement and Implementation Plan: Subject to Article 5.1 of this Agreement, if any Party believes that any other Party has breached or is about to breach this Agreement, that Party may bring an action against the other Party for appropriate judicial relief. Subject to Article 6, nothing in this Agreement shall limit or affect the right of a U.S. Government Authority to:
- a. seek revocation by the FCC of any license, permit or other authorization granted or given by the FCC to Telenor USA or any other sanction by the FCC against Telenor USA.
  - b. seek civil sanctions for any violation of any U.S. law or regulation or term of this Agreement; or
  - c. pursue criminal sanctions against Telenor or any of their respective directors, officers, employees, representatives or agents, or against any other person or entity, for violations of the criminal laws of the United States.
- 5.3 Waiver: The availability of any civil remedy under this Agreement shall not prejudice the exercise of any other civil remedy under this Agreement or under any provision of U.S. law, nor shall any action taken by a Party in the exercise of any remedy be considered a waiver by that Party of any other rights or remedies. The failure of any Party to insist on strict performance of any of the provisions of this Agreement, or to exercise any right they grant, shall not be construed as a relinquishment or future waiver. Rather, the provision or right shall continue in full force. No waiver by any Party of any provision or right shall be valid unless it is in writing and signed by the Party.
- 5.4 Forum Selection: Any civil action for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement shall be brought, if at all, in the United States District Court for the District of Columbia.
- 5.5 Irreparable Injury: Telenor agrees that if for any reason Telenor fails to perform any significant obligations under this Agreement, irreparable injury to the United States would be caused as to which money damages would not be an adequate remedy. Accordingly, Telenor agrees that, in seeking to enforce this Agreement, the FBI and the DOJ shall be entitled, in addition to any other remedy available at law or equity, to specific performance

and injunctive or other equitable relief.

- 5.6 Sovereign Immunity: Telenor agrees that, to the extent that it or any of its property (including FCC licenses and authorizations and intangible property) is or becomes entitled at any time to any immunity on the ground of sovereignty or otherwise based upon a status as an agency or instrumentality of government from any legal action, suit or proceeding or from setoff or counterclaim relating to this Agreement from the jurisdiction of any competent court or FCC, from service of process, from attachment prior to judgment, from attachment in and of execution of a judgment, from execution pursuant to a judgment or arbitral award, or from any other legal process in any jurisdiction it, for itself and its property, expressly, irrevocably and unconditionally waives, and agrees not to plead or claim, any such immunity with respect to matters arising with respect to this Agreement or the obligations herein (including any obligation for the payment of money) in any proceeding brought by any U.S. federal, state, or local Governmental Authority. Telenor agrees that the waiver in this provision is irrevocable and is not subject to withdrawal in any jurisdiction or under any statute, including the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 et seq. The foregoing waiver shall constitute a present waiver of immunity at any time any action is initiated by a U.S. federal, state or local Governmental Authority with respect to or relating to this Agreement.

#### **ARTICLE 6: NON-OBJECTION BY DOJ AND FBI**

- 6.1 FCC Approval: Upon execution of this Agreement by all Parties and execution of the Implementation Plan by Telenor, the DOJ and the FBI shall promptly notify the FCC that provided the FCC adopts a condition substantially the same as set forth in Exhibit A attached hereto (the "Condition to FCC Licenses"), the DOJ and the FBI have no objection to the granting of the FCC Approval, including the Declaratory Ruling.
- 6.2 Future Applications: The FBI and DOJ agree not to object to any Telenor application or petition, filed with the FCC after the Effective Date, for a license or other authority under Titles II and III of the Communications Act of 1934, as amended, to provide service to and operate MESs in the United States for communications utilizing the Inmarsat system, provided that such application or petition makes clear that the terms and conditions of this Agreement apply to any license or other authority issued pursuant to that application or petition. Nothing in this Agreement or the Implementation Plan shall preclude the DOJ or the FBI from opposing, formally or informally, any FCC application by Telenor USA to transfer its license(s) to a third party or for other authority.
- 6.3 CFIUS: Provided that the FCC adopts the Condition to FCC Licenses, and provided that Telenor complies with the terms of this Agreement, the Attorney General shall not make any objection concerning the foreign ownership of Telenor USA, or any other aspect of the CMC Acquisition, to CFIUS or the President. This commitment, however, does not extend to any objection the Attorney General may wish to raise with the CFIUS or the President in the event (1) that the Attorney General learns that the representations of Telenor recited herein are untrue or materially incomplete, or (2) of any material change in the circumstances associated with the CMC Acquisition.

**ARTICLE 7: OTHER REPRESENTATIONS AND  
OBLIGATIONS OF THE PARTIES**

- 7.1 Right to Make and Perform Agreement: Telenor represents that, to the best of its knowledge, TBS, TSSH, TSI, and TSS have and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform their obligations hereunder and that this Agreement is a legal, valid, and binding obligation enforceable in accordance with its terms.
- 7.2 De jure or de facto control of Telenor USA: Telenor USA shall promptly provide the DOJ and FBI written notice and copies of any filing with the FCC or any other U.S. Governmental Authority relating to changes in the *de jure* or *de facto* control of Telenor USA, except for filings with the FCC for assignments or transfers of control involving Telenor USA that are *pro forma*. Written notice and copies of such filings shall be provided concurrently with such filing.
- 7.3 Joint Ventures: If Telenor enters into joint ventures under which a joint venture or another entity may provide Domestic Communications, and if Telenor has the power or authority to exercise *de facto* or *de jure* control over such entity, then Telenor will ensure that entity shall fully comply with the terms of this Agreement and the Implementation Plan. To the extent Telenor does not have such power or authority over such an entity, Telenor shall in good faith endeavor to have such entity comply with this Agreement and the Implementation Plan and shall consult with the FBI or the DOJ about the activities of such entity.
- 7.4 Notice of Decision to Store Information Outside of the United States: Telenor shall provide to the DOJ and FBI thirty (30) days advance notice if it plans to store or have stored on its behalf outside the United States any Domestic Communications or, if related to Domestic Communications, any Call Associated Data, Transactional Data, Subscriber Information or billing records maintained by or on behalf of Telenor USA. Such notice shall, at a minimum, (a) include a description of the type of information to be stored outside the United States, (b) identify the custodian of the information if other than Telenor USA and (c) identify the location where the information is to be located, and (d) identify the factors considered in deciding to store the information outside of the United States (See Article 2.5).
- 7.5 Control of Telenor USA: Telenor shall provide to the FBI and the DOJ written notice within fourteen (14) days of learning that any single foreign entity or individual, other than Telenor or a Telenor affiliate that is wholly owned by Telenor ASA, has acquired, or is in the process of acquiring Control of Telenor USA. To the extent known to Telenor, such notice shall, at a minimum,
- a. identify the entity or individual(s) (specifying the name, addresses and telephone numbers of the entity),
  - b. identify the beneficial owners of the increased or prospective increased interest in Telenor USA by the entity or individual(s) (specifying the name, addresses and telephone numbers of each beneficial owner), and
  - c. quantify the amount of ownership interest in Telenor USA acquired in the



transaction that has resulted in or will likely result in the entity or individual(s) increasing their ownership interest in or Control of Telenor USA.

7.6 Control by Board of Directors: If any member of Telenor's Board of Directors or member of Telenor's senior management including a Chief Executive Officer, President, General Counsel, Chief Technical Officer, Chief Financial Officer or other senior officer) learns that any foreign government:

- a. plans to exercise or has exercised, as a direct or indirect shareholder of Telenor, any Control of Telenor in such a way that interferes with or impedes Telenor's performance of its duties and obligations under the terms of this Agreement, interferes with or impedes Telenor's exercise of its rights under the terms of this Agreement or foreseeably concerns matters addressed in this Agreement, or
- b. plans to participate or has participated in any aspect of the day-to-day management of Telenor in such a way that interferes with or impedes the performance by Telenor of its duties and obligations under the terms of this Agreement, or interferes with or impedes the exercise by Telenor of its rights under the Agreement,

then such member shall promptly notify the General Counsel of TSSH or other appropriate representative of Telenor USA located in the United States, who in turn shall promptly notify the FBI and the DOJ in writing of the timing and the nature of the foreign government's plans and/or actions.

7.7 Reporting of Incidents: Telenor shall take all practicable steps to ensure that if any Telenor official or employee or a contractor or agent retained by Telenor who acquires any information that reasonably indicates:

- a. a breach of this Agreement,
- b. Electronic Surveillance of Domestic Communications conducted in violation of federal, state or local law or regulation,
- c. access to or disclosure of CPNI or Subscriber Information for Domestic Communications under Telenor's Control in violation of federal, state or local law or regulation (except for violations of FCC regulations relating to improper use of CPNI), or
- d. improper access to or disclosure of Classified, Controlled Unclassified or Sensitive Information in Telenor's possession,

then the individual shall notify the General Counsel of TSSH or other appropriate representative of Telenor USA located in the United States, who in turn shall notify the FBI and DOJ in writing. This report shall be made promptly and in any event no later than ten (10) calendar days after Telenor acquires such information. Such information need not be disclosed where disclosure of such information would be in violation of an order of a U.S. court of competent jurisdiction.

7.8 Effective Date of Agreement: Unless otherwise specified in this Agreement, the provisions of this Agreement shall take effect immediately upon the Effective Date.

7.9 Annual Report: On or before the last day of June 2002 or of January of each subsequent year, the General Counsel of TSSH shall submit to the FBI and the DOJ a report assessing

Telenor's compliance with the terms of this Agreement for the preceding calendar year (or since the Effective Date in the case of the first such report). The report shall include:

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

- 7.10 Outsourcing Third Parties: If Telenor outsources functions covered by this Agreement to a third party, Telenor shall take reasonable steps to ensure that the third party complies with the terms of this Agreement applicable to the outsourced function. Such steps shall include: (a) Telenor shall include in the contracts of such third parties written provisions requiring that such third parties comply with all applicable terms of the Agreement (or take other reasonable, good-faith measures to ensure that such third parties are aware of, agree to comply with and are bound by the applicable obligations under this Agreement), (b) if Telenor learns that an outsourcing third party or the outsourcing third party's employee has violated a provision of this Agreement, Telenor will notify the DOJ and the FBI promptly, and (c) with consultation with the DOJ and the FBI, Telenor will take the steps necessary to rectify the situation, which steps may (among others) include terminating the arrangement with the outsourcing third party, initiating and pursuing litigation or other remedies at law and equity, and/or assisting and cooperating with the DOJ and the FBI in pursuing legal and equitable remedies.

#### **ARTICLE 8: FREEDOM OF INFORMATION ACT**

- 8.1 Protection from Disclosure: The DOJ and FBI shall take all reasonable measures to protect from public disclosure all information submitted by Telenor to the DOJ or FBI in connection with this Agreement and clearly marked with the legend "Confidential; Subject to Protection Under 5 U.S.C. Section 553(b); Not to be Released Without Notice to Telenor" or other designation of confidentiality or proprietary sensitivity. Such markings shall signify that it is Telenor's position that the information so marked constitutes trade secrets and/or commercial or financial information obtained from a person and privileged or confidential, or otherwise warrants protection within the meaning of 5 U.S.C. § 552(b). For purposes of 5 U.S.C. § 552(b)(4), the Parties agree that information so marked is voluntarily submitted. If a request is made under 5 U.S.C. § 552(a)(3) for information so marked, and disclosure of any information (including disclosure in redacted form) is contemplated, the DOJ or FBI, as appropriate, shall notify Telenor USA of the intended disclosure as provided by Executive Order 12600, 52 Fed. Reg. 23781 (June 25, 1987). If Telenor USA objects to the intended disclosure and its objections are not sustained, the DOJ or FBI, as appropriate shall notify Telenor USA of its intention to release (as provided by Section 5 of E.O. 12600) not later than ten (10) business days prior to disclosure of the challenged information.
- 8.2 Use of Information for U.S. Government Purposes: Nothing in this Agreement shall prevent the DOJ or the FBI from lawfully disseminating information as appropriate to seek

enforcement of this Agreement, provided that the DOJ and the FBI take all reasonable measures to protect from public disclosure the information marked as described in Article 8.1.

#### ARTICLE 9: OTHER

9.1 Notices: All written communications, or other written notices relating to this Agreement, such as a proposed modification, shall be in writing and shall be deemed to have been duly given or made as of the date of receipt and shall be:

- a. delivered personally;
- b. sent by facsimile;
- c. sent by documented overnight courier service; or
- d. sent by registered or certified mail, postage prepaid, and

addressed to the Parties' designated representatives at the addresses shown below or to such other representatives at such other addresses as the Parties may designate in accordance with this Article.

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

Federal Bureau of Investigation  
Assistant Director  
National Security Division  
935 Pennsylvania Avenue, N.W.  
Washington, D.C. 20535

General Counsel  
Telenor Satellite Services Holdings, Inc.  
12001 Piney Glen Lane  
Potomac, MD 20854

and

Director  
Telenor Broadband Services AS  
P.O. Box 6914, St. Olavs plass  
N-0130 Oslo, Norway

9.2 Headings: The article and section headings and numbering in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

9.3 Other Laws: Nothing in this Agreement is intended to limit or constitutes a waiver of (1)

- any obligations or rights imposed by any U.S. federal, state, or local law, or regulation on the Parties, (2) any enforcement authority available under any U.S. federal, state or local law, or regulation, (3) the sovereign immunity of the United States, or (4) any authority over Telenor's activities or facilities located within or outside the United States that the U.S. Government may possess. Nothing in this Agreement is intended to or is to be interpreted to require the Parties to violate any applicable U.S. law.
- 9.4 Statutory Reference: All references in this Agreement to statutory provisions and executive orders shall include any future amendments to such statutory provisions and executive orders.
- 9.5 Non-Parties: Nothing in this Agreement is intended to confer or does confer any rights or obligations on any Person other than the Parties and any Governmental Authorities within the United States entitled to effect Electronic Surveillance pursuant to Lawful U.S. Process.
- 9.6 Exemption: None of the terms of this Agreement shall apply to (a) any carrier-to-carrier or wholesale carrier services that a Telenor entity other than Telenor USA provides in the United States exclusively pursuant to Section 214 of the Communications Act of 1934, or (b) any noncommunications services provided by Telenor unrelated to the provision of Domestic Communications.
- 9.7 Modification: This Agreement may be modified only by written agreement signed by all of the Parties. The DOJ and the FBI agree to consider in good faith possible modifications to this Agreement if the obligations imposed on Telenor under this Agreement become unduly burdensome, adversely affect Telenor's competitive position or are materially more restrictive than those imposed on other U.S. and foreign licensed service providers in like circumstances in order to protect U.S. national security, law enforcement, and public safety concerns. If the DOJ or the FBI find that the terms of this Agreement are inadequate to address national security, law enforcement, and public safety concerns presented by an acquisition by Telenor in the United States after the date that all the Parties have executed this Agreement, Telenor shall negotiate in good faith to modify this Agreement to address those concerns. Any substantial modification to this Agreement shall be reported to the FCC within thirty (30) days after approval in writing by the Parties.
- 9.8 Partial Invalidity: If any portion of this Agreement is declared invalid by a U.S. court of competent jurisdiction, this Agreement shall be construed as if such portion had never existed, unless such construction would constitute a substantial deviation from the Parties' intent as reflected in this Agreement.
- 9.9 Counterparts: This Agreement may be executed in one or more counterparts, including by facsimile, each of which shall together constitute one and the same instrument.
- 9.10 Successors and Assigns: This Agreement shall inure to the benefit of, and shall be binding upon, the Parties, and their respective successors and assigns. This Agreement shall apply in full to any entity or asset, whether acquired before or after the Effective Date, over which Telenor USA, including its successors or assigns, has the power or authority to exercise *de jure* or *de facto* control.

9.11 Termination of Agreement: This Agreement shall be null and void in its entirety if Telenor fails to receive the FCC Approval, including the Declaratory Ruling, or for any other reason fails to successfully and fully consummate the CMC Acquisition.

This Agreement is executed on behalf of the Parties:

United States Department of Justice

Date: 11/29/01

By: s/\_\_\_\_\_  
John G. Malcolm  
Deputy Assistant Attorney General

Federal Bureau of Investigation

Date: 11/29/01

By: s/\_\_\_\_\_  
Larry R. Parkinson  
General Counsel

Telenor Satellite Services Holdings, Inc.  
Telenor Satellite, Inc.  
Telenor Satellite Services, Inc.

Date: 11/29/01

By: s/\_\_\_\_\_  
Britt Carina Horncastle  
12001 Piney Glen Lane  
Potomac, Maryland 20854  
Sole Director

Telenor Broadband Services AS

By: s/\_\_\_\_\_  
Stig Eide Sivertsen  
P.O. Box 6914, St. Olavs plass  
N-0130 Oslo, Norway  
Chairman of the Board

**EXHIBIT A**  
**CONDITION TO FCC LICENSES**

IT IS FURTHER ORDERED, that the authorizations and the licenses related thereto are subject to compliance with the provisions of the Agreement attached hereto between Telenor Satellite Services Holdings, Inc., Telenor Satellite, Inc., Telenor Satellite Services, Inc. and Telenor Broadband Services AS and the Department of Justice (the "DOJ") and the Federal Bureau of Investigation (the "FBI"), dated November 29, 2001, which Agreement is designed to address national security, law enforcement, and public safety concerns of the DOJ and the FBI regarding the authorizations and licenses granted herein. Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. § 222(a) and (c)(1) and the FCC's implementing regulations.

**DISSENTING STATEMENT OF COMMISSIONER  
MICHAEL J. COPPS**

*RE: Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor, and Telenor Satellite Mobile Services, Inc., and Telenor Satellite, Inc. Assignee, Order and Authorization, SES-ASG-20010504 00896, et al.*

The transaction proposed by this application will result in 79% indirect foreign government ownership of U.S. licenses. This represents the highest level of government control of a U.S. license allowed by the Commission in its history, insofar as I have been able to determine. It is a full 34% more indirect foreign government ownership than our previous high of 45%. For me, 79% foreign government control represents a serious potential threat to competition, because of the fundamental difference between companies that operate in a free market and state-run industries that may act counter to free market forces. In order to meet the statutory requirement that transactions be in the public interest, the benefits of a transaction with such high foreign government ownership must be significant enough to overcome the potential harm to competition. In this instance, I do not find such public interest benefits.

*De jure* control of U.S. licenses by a foreign government is a threat not only to competition, but also to the public interest. Such control threatens competition because companies controlled by foreign governments have many increased incentives and enhanced abilities to cross-subsidize their American licensee. These include the ability to channel revenues earned from monopoly services in home markets and to shift costs incurred by their US licensee to their customers who pay for monopoly services.

Liberalization of Norway's telecommunications laws recently eliminated Telenor's legal monopoly over all telecommunications services in Norway. This should, over time, represent a significant advance in making competition possible in that country. In addition, recent legislation authorizes Telenor to reduce government ownership. However, this legislation has not yet resulted in any substantial reduction in government control, and authorization is a long way from privatization. Telenor, furthermore, is still considered by the Norwegian government to have significant market power in the markets for voice telephony (both fixed and mobile), transmission capacity, and interconnection (both fixed and mobile operations). Revenues for mobile and fixed telephony for the first three quarters of 2001 represented approximately 76% of Telenor's total profits.<sup>1</sup>

Telenor's significant market power can be used to cross-subsidize competitive services that their US licensee will provide here. Such cross-subsidization makes a "price squeeze" strategy possible – where the company keeps prices for monopoly inputs well above true economic costs, and at the same time artificially reduces costs in competitive markets in order to drive out competitors. This could undermine competition here in the

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<sup>1</sup> See Telenor ASA Third Quarter 2001 Quarterly Report, p. 12.

U.S. and present a direct threat to the public interest. The relatively small number of licenses involved in this transaction, and the nature of the overall satellite services market, do not mean that this strategy would not be employed in particular segments of the satellite service market, or for a particular class of customers.

I believe that the public interest is served by continuation of the global trend toward telecommunications industry privatization. Privatization brings choices for consumers, competition for providers, and incentives for technology development. Approval of this particular transaction, at such a high and unprecedented rate of government ownership, flies in the face of the historic transition to privatization that has done so much to transform global business in recent years.

It is also worthy of note that this proposed transaction does not promise even to bring a new competitor to the satellite services market. One is left to wonder what pro-competitive benefits such an agreement confers. Given the absence of pro-competitive and public interest benefits to outweigh the potential negative impact of this agreement's massive foreign government ownership, I must respectfully dissent.



**STATEMENT OF COMMISSIONER  
KEVIN MARTIN**

**RE: Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor, and Telenor Satellite Mobile Services, Inc., and Telenor Satellite, Inc. Assignee, Order and Authorization, SES-ASG-20010504 00896, et al.**

Although I vote in support of this item, the high level of foreign government ownership implicated in this transaction does give me some pause. I believe this decision is correct under our precedent, and I applaud the International Bureau for their hard work in analyzing these complex issues. I am concerned, however, that levels of foreign government ownership appear to be going in the wrong direction. History teaches us that when the regulator and operator are independent, competition is more robust, there is greater confidence in the market, higher levels of investment, increased incentive for technical innovation, and a more rapid expansion of network infrastructure and services. I am encouraged, generally, by the pace of privatization of the telecommunications industry worldwide. I look forward to working with the International Bureau and foreign regulators in pursuing pro-competitive policies and initiatives across the globe.