

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
New Skies Satellites, N.V. Continuing Access
the U.S. Market
File Nos. SAT-PDR-20001031-00146 and
SAT-MS-C-20021101-00236

ORDER

Adopted: September 9, 2003

Released: September 9, 2003

By the Deputy Chief, Satellite Division, International Bureau:

1. By this Order, we deny PanAmSat Corporation's (PanAmSat) request to open a proceeding to determine whether New Skies Satellites, N.V. (New Skies) plans to buy back up to 13 million of its shares violates the conditions under which New Skies was authorized to access the U.S. market.

2. New Skies is the Netherlands-based satellite company spun-off from the International Telecommunications Satellite Organization (INTELSAT). In 1999, the Commission adopted the New Skies Market Access Order, which granted U.S. earth station operators limited three-year authorizations to operate with New Skies in the U.S. market pending New Skies' taking certain actions to become independent of INTELSAT.

3. Subsequent to the Commission's adoption of the News Skies Market Access Order, Congress adopted the Open-Market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act). The ORBIT Act, among other things, established a legislative criteria for Commission review of applications to serve the U.S. market by privatized governmental organizations such as INTELSAT, and spin-offs such as New Skies. In particular, under the ORBIT Act, New Skies is required, through an initial public offering (IPO), to achieve substantial dilution of the aggregate ownership in New Skies of signatories and former signatories of INTELSAT.

4. New Skies conducted its IPO in October 2000. In March 2001, the Commission granted New Skies' request to provide satellite services to, from, and within the United States on a full-time basis. In taking this action, the Commission found, among other things, that New Skies met the criteria, specified

1 In the Matter of New Skies Satellites, N.V. for Authorization to Access the U.S. Market, Order and Authorization, 14 FCC Rcd 13003 (1999).

2 Pub. L. 106-180, 114 Stat 48 (2000).

3 See In the Matter of New Skies Satellites, N.V. Request for Unconditional Authority to Access the U.S. Market, Memorandum Opinion and Order, FCC 01-107, 16 FCC Rcd 7284, ¶15, (March 29, 2001) ("New Skies Market Access"). See also, Pub. L. 106-180, §§ 621, 623.

in Sections 621 and 623 of the ORBIT Act and required by the *New Skies Market Access Order*, for achieving independence from INTELSAT, including conducting an IPO that resulted in substantial dilution of INTELSAT signatory ownership.

5. On October 29, 2002, New Skies announced its intention to buy back, at prevailing market prices when trades are executed, up to 13 million or 10 percent of its shares.<sup>4</sup> The announcement stated that share repurchases were expected to begin no earlier than mid-November 2002, and that the repurchased shares would be held by New Skies as treasury stock.

6. On November 1, 2002, PanAmSat filed an Emergency Request for Inquiry into the Continuing Qualifications of New Skies to Access the U.S. Market.<sup>5</sup> In its filing, PanAmSat requested that the Commission determine whether, by decreasing the dilution of Signatory ownership, the announced plans of New Skies to buy back up to 13 million shares would violate the conditions under which it was granted access to the U.S. market, under the ORBIT Act. New Skies, Intelsat LLC and Intelsat Global Service Corporation (Intelsat) filed comments in response to PanAmSat's Request. PanAmSat filed a reply.

7. In its comments, New Skies states that none of its competitors had ever alleged that New Skies had engaged in any anticompetitive behavior, before or after its IPO. New Skies also notes that it is the only entity subject to the ORBIT Act that has conducted an IPO and complied with all the other conditions for market access. Intelsat states that PanAmSat seeks to place continuing regulatory constraints on its competitors that are subject to the ORBIT Act. In response, PanAmSat claims that Intelsat's statement would imply that it is sufficient for the entities that are subject to the ORBIT Act to be in compliance with its terms for only one day. PanAmSat also maintains that the status of the Intelsat and Inmarsat IPOs is not relevant to the evaluation of New Skies' compliance with the ORBIT Act. New Skies, however, notes that the share buy-back program is a reasonable response to market conditions, including the limited liquidity of the stock and the "overhang," i.e., the market perception that some shareholders, and in particular former Signatories, are interested in selling large blocks of stock.

8. On April 28, 2003, New Skies reported that it had completed the share buy-back program. Specifically, New Skies stated that they had reacquired a total of 12,042,407 ordinary shares, 92% of the total authorized buy-back program. They further stated that over 11.6 million or over 96% of those shares were purchased from former INTELSAT Signatories, including the stakes held by Deutsche Telekom, KDDI Corporation, Sing Tel Optus, Singapore Telecom, and Teleglobe.<sup>6</sup>

9. As of October 2000 -- when the Commission granted market access -- 29.3% of New Skies shares were held by non-Signatories.<sup>7</sup> Over 96% of the shares purchased through the buyback program were purchased from former signatories, and fewer than 4% of the shares were held by other investors. Through the buy-back program, New Skies purchased a significantly higher percentage of the shares held by former Signatories than of the shares held by the general public. Thus, the share repurchase program had the effect of further diluting the combined interest of the former INTELSAT Signatories in New

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<sup>4</sup> The share buy-back program announced on October 29, 2002, was for up to 10 percent of the then outstanding shares. New Skies Press Release, "*New Skies Reports Third Quarter 2002 Earnings and Announces Share Buyback*," The Hague, Netherlands, October 29, 2002, <http://www.newskies.com/pbnews/pdfs/PRQ32002.pdf>.

<sup>5</sup> See Emergency Request for Inquiry into the Continuing Qualifications of New Skies Satellites, N.V. to Access the U.S. Market (filed November 1, 2002) ("PanAmSat Emergency Request").

<sup>6</sup> Letter from Andrew R. D'Uva, Vice President & Associate General Counsel, New Skies Satellites N.V., to Secretary, Federal Communications Commission, dated April 28, 2003.

<sup>7</sup> See *New Skies Market Access*, ¶17.

Skies. Based on this information, we conclude that the repurchase program could not have had the effect of reducing the dilution achieved through the IPO. Therefore, we see no reason to further investigate New Skies' share buy-back plan.<sup>8</sup>

10. The PanAmSat Emergency Request for Inquiry Into the Continuing Qualifications of New Skies Satellites, N.V. to Access the U.S. Market, File No. SAT-MS-20021101-00236, is DENIED.

11. This action is taken under delegated authority pursuant to Sections 0.51 and 0.261 of the Commission's Rules, 47 C.F.R. §0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules 47 C.F.R. §§ 1.106, 1.115 may be filed within 30 days of the date of release of this Order. (See 47 C.F.R. § 1.4(b)(2).)

FEDERAL COMMUNICATIONS COMMISSION

Cassandra C. Thomas  
Deputy Chief, Satellite Division  
International Bureau

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<sup>8</sup> In this Order, we do not address questions raised about review of continuing compliance with the ORBIT Act.