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

In the matter of	)	
	)	
Intelsat, Ltd., Transferor, and	)	
Zeus Holdings Limited, Transferee	)	IB Docket No. 04-366
	)	
Consolidated Application for Consent to Transfers of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling under Section 310 of the Communications Act of 1934, as Amended	)	

ORDER AND AUTHORIZATION

Adopted: December 22, 2004 **Released: December 22, 2004**

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

I. INTRODUCTION

1. In this Order and Authorization, we grant, subject to certain conditions, the Applications of Intelsat, Ltd. ("Intelsat" or "Transferor") and Zeus Holdings Limited ("Zeus" or "Transferee" and, with Intelsat, the "Applicants") to transfer control of certain Title II and Title III authorizations from Intelsat to Zeus.[1] As discussed below, we conclude, pursuant to our review under sections 214(a) and 310(d) of the Communications Act of 1934, as amended (the "Communications Act" or "Act"),[2] that approval of the Applications will serve the public interest, convenience, and necessity. In addition, subject to the limitations specified herein, we find that the public interest would not be served by prohibiting the identified, proposed indirect foreign ownership of Intelsat LLC, Intelsat North America LLC, and Intelsat MTC LLC (the "Intelsat Title III Licensees") in excess of the 25 percent benchmark set by section 310(b)(4) of the Act.[3] We treat Intelsat USA License Corp., Intelsat General Corporation, and Intelsat MTC LLC, the international section 214 authorization holders, as "dominant" in their provision of transmission capacity for common carrier switched voice and private line service on "thin" routes.[4] We

[1] *See* Intelsat, Ltd., Transferor, and Zeus Holdings Limited, Transferee, Consolidated Application for Consent to Transfers of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling under Section 310 of the Communications Act of 1934, as Amended, IB Docket No. 04-366 (erratum and conformed copy filed Sept. 10, 2004) (the "Consolidated Application"); File Nos. SAT-T/C-20040903-00166, SAT-T/C-20040903-00167, SES-T/C-20040903-01328, SES-T/C-20040903-01330, SES-T/C-20040903-01331, SES-T/C-20040903-01332, SES-T/C-20041119-01718, ITC-T/C-20040907-00356, ITC-T/C-20040907-00357, ITC-T/C-20041119-00458, 0001855699, 0030-EX-TU-2004 (the "Transfer Applications"); and File No. ISP-PDR-20040907-00008 (the "Petition for Declaratory Ruling" and, together with the Consolidated Application and the Transfer Applications, the "Applications").

[2] 47 U.S.C. §§ 151 *et seq.*, 214(a), 310(d).

[3] 47 U.S.C. § 310(b)(4). *See infra* ¶¶ 17-27 and Appendix B to this Order and Authorization.

[4] *See infra* ¶¶ 34-36.

condition this grant on compliance with the network security commitments that the Applicants have made to certain Executive Branch agencies.[5] Finally, the Title III licenses and authorizations transferred in this Order and Authorization remain subject to the ORBIT Act until a future Commission finding that Intelsat has complied with the privatization provisions of the ORBIT Act.[6]

II. BACKGROUND

2. The Applications seek Commission approval to transfer control of five subsidiaries of Intelsat – Intelsat LLC, Intelsat North America LLC, Intelsat USA License Corp., Intelsat General Corporation,[7] and Intelsat MTC LLC (together, the "Intelsat Licensees") – from Intelsat, the ultimate parent of the Intelsat Licensees, to Zeus. The Intelsat Licensees hold Commission licenses for space, earth and private land mobile radio stations, authorizations for experimental earth stations, and section 214 authority to provide international common carrier services. As noted, Zeus also requests a declaratory ruling that the proposed indirect foreign investment in the Intelsat Title III Licensees is consistent with the public interest.[8] The Applications ask the Commission to defer grant, without delaying the Commission's consideration of the Applications in any other respect, until the Commission receives notice that all national security, law enforcement, and public safety concerns regarding the proposed transaction have been resolved with the Executive Branch.[9]

3. On September 21, 2004, the Commission placed the Applications on public notice.[10] No parties petitioned against the Applications. On October 21, 2004, the U.S. Department of Justice and the Federal Bureau of Investigation (the "DOJ/FBI") filed a letter asking the Commission to maintain its deferral of final action on the Applications until the relevant Executive Branch agencies advised the Commission that all national security, law enforcement, and public safety concerns had been addressed.[11] On November 24, 2004, the DOJ/FBI, U.S. Department of Homeland Security, and Defense Information

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[5] *See infra* ¶¶ 37-40.

[6] Title VI of the Communications Satellite Act of 1962, as amended, 47 U.S.C. §§ 701 *et seq*., which was added by the Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. Law 106-180, 114 Stat. 48 (2000), most recently amended by Pub. Law 108-371, 118 Stat. 1752 (2004) ("ORBIT Act"). *See infra* ¶¶ 41, 47.

[7] On November 12, 2004, Intelsat Government Solutions Corporation officially changed its name to Intelsat General Corporation. *See* Letter from Counsel to Intelsat to Secretary, Federal Communications Commission, File No. ITC-20040528-00213 (filed Nov. 17, 2004). In this Order and Authorization, we refer to the company by its current name, Intelsat General Corporation.

[8] Consolidated Application at 23; Amendment to Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, as Amended, IB Docket No. 04-366 (Intelsat-Zeus), File No. ISP-PDR-20040907-00008 (filed Nov. 18, 2004) ("Amendment to Petition for Declaratory Ruling"), at 1.

[9] Consolidated Application at 29 n.62.

[10] *Intelsat, Ltd., Transferor, and Zeus Holdings Limited, Transferee, Seek FCC Consent to Transfer Control of Licenses and Authorizations and a Declaratory Ruling on Foreign Ownership, Pleading Cycle Established*, IB Docket No. 04-366, Public Notice, DA 04-3018, 19 FCC Rcd 18580 (Int'l Bur., Wireless Tel. Bur. & OET 2004). *See also Intelsat MTC LLC, Filing to Amend Transfer of Control Applications of Intelsat Ltd. to Zeus Holdings Ltd.*, File No. SES-T/C-20041119-01718, Informative Public Notice, Report No. SES-00662 (Int'l Bur. Nov. 24, 2004), at 5; *Zeus Holdings Limited, Transfer of Control of Intelsat MTC LLC from Intelsat, Ltd. to Zeus Holdings Limited*, File No. ITC-T/C-20041119-00458, and *Zeus Holdings Limited, Amendment to Petition for Declaratory Ruling on Foreign Ownership*, File No. ITC-PDR-20040907-00008, Informative Public Notice, Report No. TEL-00854S (Int'l Bur. Nov. 26, 2004), at 3-4.

[11] Letter from Laura Parsky, Deputy Assistant Attorney General, and Patrick W. Kelley, Deputy General Counsel, FBI, U.S. Department of Justice, to George Li, Deputy Chief, Policy Division, International Bureau, Federal Communications Commission, IB Docket No. 04-366 (filed Oct. 21, 2004). *See also supra* note 9.

Systems Agency, U.S. Department of Defense (the "Executive Branch agencies") filed a Petition to Adopt Conditions that attaches a letter setting out certain network security commitments.[12]

A. The Transferor

4. Intelsat is a Bermuda entity that owns and operates a global satellite system providing space segment capacity used for voice, video, data and Internet connectivity.[13] As noted above, the Commission has issued various licenses and authorizations to the Intelsat Licensees, five wholly-owned U.S. subsidiaries of Intelsat. Intelsat's fleet of satellites offers service in more than 200 countries, serving large telecommunications carriers, broadcasters, corporate networks, Internet service providers, distributors that resell capacity, and customers that purchase capacity for their own use.[14]

5. Intelsat indirectly controls and holds its interests in the five Intelsat Licensees through two Delaware entities, Intelsat Holdings LLC and Intelsat USA Sales Corp.[15] As noted above, the five Intelsat Licensees are Intelsat LLC, Intelsat North America LLC, Intelsat USA License Corp., Intelsat General Corporation, and Intelsat MTC LLC. Intelsat LLC, a Delaware limited liability company, is the indirect wholly-owned subsidiary of Intelsat that holds the majority of Intelsat's satellite and earth station licenses, as well as certain experimental earth station authorizations and private land mobile radio licenses.[16] Intelsat LLC also recently acquired from Comsat General Corporation a private land mobile radio license, a space station license for the Marisat satellite, and six earth station licenses.[17] Intelsat North America LLC, a Delaware limited liability company wholly owned and controlled by Intelsat LLC, holds space station licenses recently acquired from Loral Satellite, Inc. and Loral SpaceCom Corporation.[18] Intelsat USA License Corp. and Intelsat General Corporation, Delaware corporations indirectly wholly owned by Intelsat, hold Title II international common carrier authorizations.[19] Finally, Intelsat MTC LLC, a Delaware limited liability company wholly owned and controlled by Intelsat General Corporation, is the holder of an international section 214 authorization and two earth station

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[12] Petition to Adopt Conditions to Authorizations and Licenses, IB Docket No. 04-366 (filed Nov. 24, 2004) ("Petition to Adopt Conditions").

[13] Consolidated Application at 4.

[14] *Id.*

[15] Intelsat, a Bermuda entity, wholly owns Intelsat (Bermuda), Ltd., also a Bermuda entity. Intelsat (Bermuda), Ltd. wholly owns Intelsat Holdings LLC, which itself wholly owns Intelsat LLC, itself the parent of Intelsat North America LLC. Intelsat (Bermuda), Ltd. also wholly owns Intelsat Global Sales & Marketing Ltd., an entity organized under the laws of England and Wales, which itself wholly owns Intelsat USA Sales Corp. Intelsat USA Sales Corp. is the parent of Intelsat USA License Corp. and of Intelsat General Corporation, which in turn wholly owns Intelsat MTC LLC. *See* Consolidated Application at 7. *See infra* Appendix C (ownership charts).

[16] Consolidated Application at 5.

[17] *Authorizations Granted, Applications of Comsat General Corporation, Lockheed Martin Global Telecommunications LLC, Comsat New Services, Inc., Intelsat LLC, and Intelsat MTC LLC to Assign Licenses and Authorizations and Request for a Declaratory Ruling on Foreign Ownership,* IB Docket No. 04-235, Public Notice, DA 04-3418 (Int'l Bur. & Wireless Tel. Bur. Oct. 27, 2004) ("*Comsat General Public Notice*"), at Appendix A, *Erratum* (Int'l Bur. Nov. 24, 2004) (correcting file number).

[18] *Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), Assignors, and Intelsat North America, LLC, Assignee, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act of 1934, As Amended,* Order and Authorization, DA 04-357, 19 FCC Rcd 2404 (Int'l Bur. 2004) ("*Loral/Intelsat Order*"), *recon. pending*. *See also* Consolidated Application at 6.

[19] Consolidated Application at 6-7.

authorizations recently acquired from Lockheed Martin Global Telecommunications, LLC.[20]

B. The Transferee

6. Zeus, organized under Bermuda law, will acquire 100 percent of the equity and voting interests of Intelsat.[21] Zeus is wholly owned by 20 entities (collectively, the "Investing Funds") ultimately controlled by four private equity fund groups: (1) Apax Excelsior VI and Apax Europe V (together, "Apax"); (2) Apollo V ("Apollo"); (3) Madison Dearborn ("MDP"); and (4) Permira Europe III ("Permira" and, together with Apax, Apollo, and MDP, the "Private Equity Funds").[22] The Applicants state that two of the Private Equity Funds (Apollo and MDP) ultimately are controlled by U.S. citizens and the other two (Apax and Permira) ultimately are controlled by citizens of the United States and other World Trade Organization ("WTO") Members.[23]

7. *Apax*. Apax is a private investment firm that makes investments through private equity funds on behalf of itself and its investors.[24] Apax holds its 25 percent interest in Zeus through 13 Investing Funds that are divided into two fund groups controlled by two different groups of Apax principals.[25] Four of the Investing Funds are organized into a commonly controlled fund group, Apax Excelsior VI, which holds a five percent interest in Zeus.[26] This fund group includes two Delaware limited partnerships (Apax Excelsior VI, L.P. and Patricof Private Investment Club III, L.P.) and two Dutch partnerships (Apax Excelsior VI-A, CV and Apax Excelsior VI-B, CV).[27] Nine of the Investing Funds are organized into a separate commonly controlled fund group, Apax Europe V, which holds a 20 percent interest in Zeus.[28] This second fund group includes a Delaware limited partnership (Apax Europe V-A, L.P.), five United Kingdom limited partnerships (Apax Europe V-B, L.P., Apax Europe V-D, L.P., Apax Europe V-E, L.P., Apax Europe V-1, L.P., and Apax Europe V-2, L.P.), a German limited partnership (Apax Europe V-C GmbH & Co. KG), and two Dutch partnerships (Apax Europe V-F, CV and Apax Europe V-G, CV).[29]

8. *Apollo*. Apollo holds its 25 percent interest in Zeus through AIF V Euro Holdings, L.P., a Cayman Islands limited partnership.[30]

9. *MDP*. MDP is a Chicago-based private equity firm that focuses on management buyout and other private equity investments in several industries, including communications.[31] MDP holds its 25 percent share in Zeus through MDCP IV Global Investments, L.P., a Cayman Islands limited

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[20] *Comsat General Public Notice* at Appendix A.

[21] Consolidated Application at 8.

[22] *Id.* Attachment 3, as supplemented by Letter from Counsel to Applicants to Secretary, Federal Communications Commission, IB Docket No. 04-366 (filed Saturday, Nov. 6, 2004 and received Nov. 8, 2004 in IB Docket No. 04-366) ("Nov. 8 Letter").

[23] Consolidated Application at 8.

[24] *Id.* Attachment 3 at 2.

[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] *Id.* Attachment 3 at 3.

[29] *Id.* Attachment 3 at 3-4.

[30] *Id.* Attachment 3 at 5.

[31] *Id.* Attachment 3 at 9.

partnership.[32]

10. *Permira*. Permira holds its 25 percent share in Zeus through five Investing Funds organized into a commonly controlled fund group. The funds include two Guernsey limited partnerships (Permira Europe III L.P. 1 and Permira Europe III L.P. 2), a German limited partnership (Permira Europe III GmbH & Co. KG), a Guernsey company (Permira Investments Limited), and a Guernsey-organized Permira executive and employee co-investment plan (Permira Europe III Co-Investment Scheme).[33]

C. The Transaction

11. On August 16, 2004, Intelsat and its wholly-owned subsidiary Intelsat (Bermuda), Ltd. entered into a transaction agreement and plan of amalgamation ("Transaction Agreement") with Zeus, Zeus' wholly-owned subsidiary Zeus Merger One Limited, a Bermuda limited liability company, and Zeus Merger Two Limited, a Bermuda limited liability company that is wholly owned by Zeus Merger One Limited.[34] Pursuant to the Transaction Agreement, the four Private Equity Funds indirectly will acquire 100 percent of the outstanding capital stock of Intelsat.[35] Because each of the four funds holds 25 percent of the equity interests in Zeus, and Zeus will own 100 percent of the outstanding capital stock of Intelsat, each of the Private Equity Funds indirectly will own 25 percent of the equity interests in Intelsat and its direct and indirect wholly-owned subsidiaries, including the Intelsat Licensees.[36]

12. The proposed transaction will take place in two phases. In Phase One, Intelsat and Zeus Merger One Limited will amalgamate and continue as a Bermuda exempted company.[37] Each qualifying outstanding ordinary share of Intelsat will convert into the right to receive $18.75 in cash per share.[38] Each ordinary share of Zeus Merger One Limited will convert into an ordinary share of the amalgamated entity.[39] After consummation of Phase One, the amalgamated entity will be a wholly-owned subsidiary of Zeus.[40] In Phase Two, Intelsat (Bermuda), Ltd. and Zeus Merger Two Limited will amalgamate and continue as a Bermuda exempted company.[41] Each outstanding ordinary share of Zeus Merger Two Limited will be cancelled without any conversion or payment of any consideration.[42] Each issued and outstanding share of Intelsat (Bermuda), Ltd. will convert into an ordinary share of the sub-amalgamated entity.[43] After consummation of Phase Two, the sub-amalgamated entity will be a wholly-owned

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[32] *Id*.

[33] *Id*. Attachment 3 at 7.

[34] Consolidated Application at 9.

[35] *Id*.

[36] *Id*. The approximate aggregate value of the proposed transaction, including the assumption by Zeus of approximately $2 billion of outstanding Intelsat debt, is $5 billion. *Id*.

[37] Consolidated Application at 10. Under Bermuda law, an exempted company is defined as a company that, although incorporated in Bermuda, is owned predominantly by non-Bermudians and normally carries on business within Bermuda only in connection with transactions and activities external to Bermuda. *See* www.bma.bm/bmawww.nsf/WebPages/ExemptedCompanies?OpenDocument (web site of the Bermuda Monetary Authority) (visited Dec. 15, 2004).

[38] Consolidated Application at 10.

[39] *Id*. at 10-11.

[40] *Id*. at 11.

[41] *Id*.

[42] *Id*.

[43] *Id*.

subsidiary of the amalgamated entity resulting from Phase One.[44] The Applications note that the amalgamated companies likely will retain the names "Intelsat" and "Intelsat (Bermuda), Ltd."[45]

13. The board of directors of Zeus will consist of four individuals elected by the affirmative vote of three-fourths of the votes of all issued and outstanding shares of Zeus entitled to vote on the election of directors.[46] Each Private Equity Fund, however, will have the right to appoint one board member.[47] All approvals or actions of Zeus require approval by three of the four directors, with the exception of any act that treats any one of the Investing Funds differently from the treatment of the other Investing Funds, which requires the approval of the differently-treated Investing Fund.[48]

III. DISCUSSION

A. Framework for Analysis

14. In considering the Applications, the Commission must determine, pursuant to section 214(a) and section 310(d) of the Act, whether the proposed transfers of control will serve the public interest.[49] Additionally, because of the foreign ownership interests presented in this case, we also must determine whether the proposed transfer of control of Intelsat LLC, Intelsat North America LLC, and Intelsat MTC LLC, the Title III licensees, is permissible under the foreign ownership provisions of section 310 of the Act.[50]

15. The legal standards that govern our public interest analysis for transfer of control of authorizations and licenses under sections 214(a) and 310(d) 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.[51] Our analysis considers the likely competitive effects of the proposed transfers and whether such transfers raise significant anti-competitive issues.[52] In addition, we consider the efficiencies and other public interest benefits that are likely to result from the proposed transfers of control of the licenses and authorizations.[53] Further, we consider any

[44] *Id*.

[45] *Id*. at 12.

[46] *Id*. at 14.

[47] Consolidated Application Attachment 3 at 2; Letter from Counsel for Zeus to Secretary, Federal Communications Commission, IB Docket No. 04-366 (filed Dec. 9, 2004), at 1 ("Dec. 9 Letter").

[48] Consolidated Application at 14.

[49] 47 U.S.C. §§ 214(a), 310(d).

[50] 47 U.S.C. § 310(a), (b).

[51] *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, FCC 01-142, 16 FCC Rcd 9779, 9789, ¶ 17 (2001) ("*VoiceStream/Deutsche Telekom Order*"). *See also AT&T Corp., British Telecommunications, PLC, VLT Co. LLC, 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*, Memorandum Opinion and Order, FCC 99-313, 14 FCC Rcd 19140, 19147, ¶ 15 (1999) ("*AT&T/BT Order*"); *Motient Services Inc. and TMI Communications and Company, LP, Assignors, and Mobile Satellite Ventures Subsidiary LLC, Assignee*, Order and Authorization, DA 01-2732, 16 FCC Rcd 20469, 20473, ¶ 11 (Int'l Bur. 2001).

[52] *See, e.g., AT&T/BT Order*, 14 FCC Rcd at 19148, ¶ 15.

[53] *See, e.g., VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9789, ¶ 17.

national security, law enforcement, foreign policy or trade policy concerns brought to our attention by the Executive Branch.[54]

B. Qualifications of Applicants

16. As a threshold matter, we must determine whether the Applicants have the requisite qualifications to hold and transfer control of licenses under section 310(d) of the Act and Commission rules.[55] In making this determination, we do not, as a general rule, re-evaluate the qualifications of a transferor unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.[56] We conclude that no such issues have been raised here that would require us to designate a hearing to re-evaluate the basic qualifications of the transferor, Intelsat. Conversely, the analysis of every transfer application requires that we determine whether the proposed transferee is qualified to hold Commission licenses.[57] Section 310(d) requires the Commission to consider the qualifications of the proposed transferee as if the transferee were applying for the license directly under section 308 of the Act.[58] No one has challenged the basic qualifications of the transferee in this transaction, Zeus, and our independent review finds no evidence to suggest that Zeus lacks the requisite financial, technical, legal, or other basic qualifications to control the Intelsat Licensees. Thus, we find that Zeus possesses the basic qualifications to control the Intelsat Licensees.

C. Foreign Ownership Review

17. In this section, we address issues relevant to our public interest inquiry under the foreign ownership provisions of section 310 of the Act. Zeus requests a ruling, pursuant to section 310(b)(4) of the Act, that would permit the Intelsat Title III Licensees to have indirect foreign ownership of up to and including 100 percent, in excess of the 25 percent benchmark of section 310(b)(4).[59] Specifically, Zeus seeks a declaratory ruling permitting: (i) Zeus to hold 100 percent indirect equity and voting interests in Intelsat LLC, Intelsat North America LLC, and Intelsat MTC LLC; (ii) seventeen Investing Funds (all organized under the laws of non-U.S., WTO-Member countries) to hold up to an aggregate 100 percent voting interest and an 83.08 percent equity interest in Zeus; (iii) non-U.S. limited partners with direct interests in the Investing Funds to hold an aggregate 35.76 percent indirect equity interest in Zeus; and (iv) non-U.S. principals of the Private Equity Funds that hold ultimate control of Zeus to hold an aggregate 48.2 percent voting interest for the election of the Zeus board of directors and a 45 percent

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[54] *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891, 23919-21, ¶¶ 61-66 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, FCC 00-339, 15 FCC Rcd 18158 (2000).

[55] 47 U.S.C. § 310(d); 47 C.F.R. § 1.948 (transfer of control of wireless licenses); 47 C.F.R. § 25.119 (transfer of control of space and earth stations); 47 C.F.R. § 63.24 (transfer of control of international section 214 authority); 47 C.F.R. § 5.79 (transfer of control of experimental authorizations).

[56] *See, e.g., VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9790, ¶ 19.

[57] 47 U.S.C. §§ 310(d), 308(b) (applications must set forth such facts as the Commission may require as to citizenship, character, and financial, technical and other qualifications); *see also Applications of AirTouch Communications, Inc., Transferor, and Vodafone Group, PLC, Transferee, For Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order, File Nos. 0000003690 *et al.*, DA 99-1200, 14 FCC Rcd 9430, 9432-34, ¶¶ 5-9 (Wireless Tel. Bur. 1999).

[58] 47 U.S.C. § 310(d).

[59] Consolidated Application at 23.

indirect voting interest on all other matters.[60]

18. Based on the record before us, we conclude that it would not serve the public interest to deny the transfer of control of the licenses held by the Intelsat Title III Licensees because of the proposed indirect foreign ownership interests that would be held *by* and *through* Zeus. We therefore grant Zeus's petition for declaratory ruling under section 310(b)(4) to the extent specified below. Relying on Commission precedent, we find that the proposed transfers of control do not raise any issues under section 310(a) and 310(b)(1)-(b)(3) of the Act.[61]

1. Legal Standard for Foreign Ownership of Radio Licenses

19. Section 310(b)(4) of the Act establishes a 25 percent benchmark for indirect investment by foreign individuals, corporations, and governments in entities that control U.S. common carrier radio licensees, but grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.[62] The calculation of foreign ownership interests under section 310(b)(4) is a two-pronged analysis in which the Commission examines separately the equity interests and the voting interests in the licensee's parent.[63] The Commission calculates the equity interest of each foreign investor in the parent and then aggregates these interests to determine whether the sum of the foreign equity interests exceeds the statutory benchmark. Similarly, the Commission calculates the voting interest of each foreign investor in the parent and aggregates these voting interests.[64] The presence of aggregated alien equity or voting interests in a common carrier licensee's parent in excess of 25 percent triggers the applicability of section 310(b)(4)'s statutory benchmark.[65] Once the benchmark is triggered, section 310(b)(4) directs the Commission to determine

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[60] *Id.* at 23-24; Amendment to Petition for Declaratory Ruling at 1; Letter from Counsel to Applicants to Secretary, Federal Communications Commission, IB Docket No. 04-366 (filed Nov. 30, 2004) ("Nov. 30 Letter"), at 3 (revising non-U.S. limited partner interests to 35.76%).

[61] Section 310(a) of the Act prohibits any radio license from being "granted to or held by" a foreign government or its representative. 47 U.S.C. § 310(a). The ownership structure proposed by Zeus is such that no foreign government or its representative will hold any of the radio licenses. Section 310(b)(1)-(2) of the Act prohibits common carrier, broadcast and aeronautical fixed or *en route* radio licenses from being "granted to or held by" aliens, or their representatives, or foreign corporations. 47 U.S.C. § 310(b)(1), (b)(2). According to the Applications, no alien, representative, or foreign corporation will hold any of the common carrier licenses. Accordingly, we find that the proposed transaction is not inconsistent with the foreign ownership provisions of section 310(a) and 310(b)(1)-(b)(2) of the Act. *See, e.g., VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9804-9809, ¶¶ 38-48. Additionally, because the proposed transaction only involves foreign investment in and through U.S. holding companies that control the three Intelsat Title III Licensees, it does not trigger section 310(b)(3) of the Act, which places a 20% limit on alien, foreign corporate or foreign government ownership of entities that hold common carrier, broadcast and aeronautical fixed or *en route* Title III licenses. *Contrast* 47 U.S.C. § 310(b)(3) with § 310(b)(4). *See Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended*, Declaratory Ruling, FCC 85-295, 103 F.C.C. 2d 511 (1985) ("*Wilner & Scheiner I*"), *recon. in part*, FCC 86-406, 1 FCC Rcd 12 (1986).

[62] 47 U.S.C. § 310(b)(4) (providing that "No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be 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.").

[63] *See BBC License Subsidiary L.P.*, Memorandum Opinion and Order, DA 95-364, 10 FCC Rcd 10968, 10973, ¶ 22 (1995) ("*BBC License Subsidiary*").

[64] *See id.* at 10972, ¶ 20, & 10973-74, ¶¶ 22-25.

whether the "'public interest will be served by the refusal or revocation of such license.'"[66]

20. As discussed in Section II.B, Zeus is organized under the laws of a foreign country, as is Intelsat and, in turn, Intelsat's wholly-owned subsidiary Intelsat (Bermuda), Ltd., which is the direct parent of Intelsat Holdings LLC. In addition, Intelsat (Bermuda), Ltd.'s wholly-owned subsidiary Intelsat Global Sales & Marketing Ltd., which is the direct parent of Intelsat USA Sales Corp., is a foreign-organized company. Thus, the 100 percent direct and indirect ownership interests that would be held by Intelsat (Bermuda), Ltd., Intelsat, and Zeus in Intelsat Holdings LLC, and the 100 percent direct and indirect ownership interests that would be held by Intelsat Global Sales & Marketing Ltd., Intelsat (Bermuda), Ltd., Intelsat, and Zeus in Intelsat USA Sales Corp. would exceed the 25 percent benchmark set by section 310(b)(4). Applicants also identify proposed indirect foreign ownership of Intelsat Holdings LLC and Intelsat USA Sales Corp. that would exceed 25 percent resulting from foreign ownership interests that are held directly and indirectly in Zeus by and/or through the 20 Investing Funds that collectively hold 100 percent of the equity and voting interests in Zeus.[67] We therefore must consider the transfer of control to Zeus of the common carrier licenses held by the Intelsat Title III Licensees under section 310(b)(4) of the Act.

21. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from WTO Member countries in U.S. common carrier and aeronautical fixed and en route radio licensees.[68] 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.[69] In evaluating an applicant's request for approval of foreign ownership interests under section 310(b)(4), the Commission uses a "principal place of business" test to determine the nationality or "home market" of foreign investors.[70]

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[65] *See, e.g., Sprint Corporation, Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended,* Declaratory Ruling and Order, FCC 95-498, 11 FCC Rcd 1850, 1857, ¶ 47 (1995) ("*Sprint Ruling*"). *See also BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶ 25.

[66] *Sprint Ruling*, 11 FCC Rcd at 1857, ¶ 47 (quoting section 310(b)(4)). It is the licensee's obligation to inform the Commission before its indirect foreign ownership exceeds the 25% benchmark set forth in section 310(b)(4). *See Fox Television Stations, Inc.,* Order, FCC 95-188, 10 FCC Rcd 8452, 8474, ¶ 52 (1995).

[67] *See* Consolidated Application at 7. *See also infra* Appendix C (ownership charts). Intelsat LLC, Intelsat North America LLC, and Intelsat MTC LLC hold common carrier licensees. *See* Appendix A (file numbers and call signs). 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 specifically in our discussion here the proposed transfer of the private radio and experimental licenses held by Intelsat LLC. Our findings with respect to competitive effects, *see infra* ¶¶ 28-33, our public interest determination for the common carrier licenses, *see infra* ¶¶ 17-27 and Appendix B to this Order and Authorization, and the Executive Branch's resolution of any national security and law enforcement concerns, *see infra* ¶¶ 37-40, 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.

[68] *Foreign Participation Order*, 12 FCC Rcd at 23896, ¶ 9, 23913, ¶ 50, & 23940, ¶¶ 111-12.

[69] *Id.* at 23896, ¶ 9, 23913, ¶ 50, & 23940, ¶ 111-12.

[70] To determine 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 a foreign entity's incorporation, organization or charter; (2) the nationality of all investment principals, officers, and directors; (3) the country in which the world headquarters is located; (4) the country in which the majority of the tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which the foreign entity derives the greatest sales and revenues from its operations. *Foreign Participation Order*, 12

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22. In light of the policies adopted in the *Foreign Participation Order*, we begin our evaluation of the proposed transaction under section 310(b)(4) by calculating the proposed foreign equity and voting interests in Intelsat Holdings LLC and Intelsat USA Sales Corp., the U.S. parents, respectively, of the Intelsat Title III Licensees. We then determine whether these foreign interests properly are ascribed to individuals or entities that are citizens of, or have their principal places of business in, WTO Member countries. The Commission has stated, in the *Foreign Participation Order*, that it will deny an application if it finds that more than 25 percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding.[71]

23. In this case, the foreign equity and voting interests in Intelsat Holdings LLC and Intelsat USA Sales Corp. would be held by and through Zeus, Intelsat, Intelsat (Bermuda), Ltd., and Intelsat Global Sales & Marketing Ltd. In *Wilner & Scheiner* and its progeny, the Commission has set forth a standard for calculating both alien equity and voting interests held in a licensee, or, as here, in the licensees' parents Intelsat Holdings LLC and Intelsat USA Sales Corp., where such interests are held through intervening entities.[72] In calculating attributable alien equity interests in a parent company, the Commission uses a multiplier to dilute the percentage of each investor's equity interest in the parent company when those interests are held through intervening companies. The multiplier is applied to each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier.[73] Once the *pro rata* equity interests of each alien investor are calculated, these interests then are aggregated to determine whether the sum of the interests exceeds the statutory benchmark.[74]

24. By contrast, in calculating alien voting interests in a parent company, the multiplier is not applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier.[75] In circumstances where voting interests in the U.S. parent of a common carrier licensee are held through intervening partnerships, the multiplier is not applied to dilute a general partnership interest or uninsulated limited partnership interest held by a foreign individual or entity. A general partner is considered to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. Similarly, in the absence of a specific demonstration that a limited partner effectively is insulated from active involvement in

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FCC Rcd at 23941, ¶ 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, FCC 95-475, 11 FCC Rcd 3873, 3951, ¶ 207 (1995)). For examples of cases applying the five-factor "principal place of business" test, *see 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, 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, FCC 01-369, 16 FCC Rcd 22897 (2001), *erratum*, DA 02-266, 17 FCC Rcd 2147 (Int'l Bur. 2002), *recon. denied*, FCC 02-207, 17 FCC Rcd 14030 (2002); *Space Station System Licensee, Inc., Assignor, and Iridium Constellation LLC, Assignee, et al.*, Memorandum Opinion, Order and Authorization, DA 02-307, 17 FCC Rcd 2271 (Int'l Bur. 2002).

[71] *See Foreign Participation Order*, 12 FCC Rcd at 23946, ¶ 131.

[72] *See generally Wilner & Scheiner I*, 103 F.C.C. 2d 511; *BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶¶ 22-25.

[73] *See BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶¶ 24-25.

[74] *See id.* at 10973-74, ¶ 25.

[75] *See id.* at 10973, ¶ 23; *see also Wilner & Scheiner I*, 103 F.C.C. 2d at 522, ¶ 19.

partnership affairs, a limited partner will be deemed to hold the same voting interest as the partnership holds in the company in the next lower tier of the vertical ownership chain.[76] Thus, when evaluating foreign voting interests in the U.S. parent company of a common carrier licensee, it is possible that multiple investors will be treated as holding the same voting interest in a U.S. parent company where, as in the instant case, the investment is held through multiple intervening holding companies or partnerships. Our purpose in identifying the citizenship of the specific individuals or entities that hold these interests is not to increase the aggregate level of foreign investment, but rather to determine whether any particular interest that a foreign investor proposes to acquire raises potential risks to competition or other public interest concerns, such as national security or law enforcement concerns.[77]

2. Attribution of Foreign Ownership Interests

25. Appendix B to this Order and Authorization sets out our calculation of the foreign ownership interests attributable to the proposed transaction. Based on our analysis in Appendix B, we conclude that virtually all of the indirect foreign equity and voting interests that would be held in Intelsat Holdings LLC and Intelsat USA Sales Corp. *by* and *through* Zeus, Intelsat, Intelsat (Bermuda), Ltd. and Intelsat Global Sales & Marketing Ltd. are properly ascribed to individuals and entities from WTO Member countries.

26. Therefore, Applicants are entitled to a rebuttable presumption that the proposed indirect foreign ownership of Intelsat LLC, Intelsat North America LLC, and Intelsat MTC LLC would not pose a risk to competition in the U.S. market that would justify denial of the applications seeking to transfer control of the Title III common carrier licenses and authorizations held by these three licensees.[78] As discussed above, there is no credible evidence in the record that would rebut this presumption and, as we explain more fully in Section III.D below, the proposed transaction does not raise any significant competitive concerns.[79] We also determine in Section III.F below that the Petition to Adopt Conditions filed by the Executive Branch addresses any national security and law enforcement concerns.[80]

27. Specifically, this ruling permits Intelsat LLC, Intelsat North America LLC, and Intelsat MTC LLC to be owned indirectly by: (1) Zeus (through Intelsat, Intelsat (Bermuda), Ltd. and, for Intelsat MTC LLC, also through Intelsat Global Sales & Marketing Ltd.) (up to and including 100 percent of the equity and voting interests); (2) eighteen Investing Funds (either organized under foreign laws or having their principal places of business in a foreign country) (up to and including 95.58 percent of the equity interests and 100 percent of the voting interests); (3) foreign limited partners with direct or indirect equity and voting interests in the Investing Funds (up to and including an aggregate 35.15 percent equity and voting interest); and (4) foreign citizens or entities with a direct or indirect controlling interest in the Investing Funds (up to and including an aggregate 98.2 percent voting interest for the election of the Zeus board of directors and a 95 percent voting interest on all other matters).[81] Intelsat LLC, Intelsat North America

[76] *See, e.g., XO Communications, Inc., Applications for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, IB Docket No. 02-50, Memorandum Opinion, Order and Authorization, DA 02-2512, 17 FCC Rcd 19212, 19222, ¶ 24 (Int'l Bur., Wireless Tel. Bur. & Wireline Comp. Bur. 2002) ("*XO Communications*").

[77] *See Foreign Participation Order*, 12 FCC Rcd at 23940-41, ¶¶ 111-15.

[78] *See* Appendix A to this Order and Authorization for a list of the Title III authorizations held by Intelsat LLC, Intelsat North America LLC, and Intelsat MTC LLC.

[79] *See infra* ¶¶ 28-33.

[80] *See infra* ¶¶ 37-40.

[81] Our calculations of foreign ownership differ from those of the Applicants for several reasons. First, we find that eighteen, rather than seventeen, Investing Funds should be treated as foreign entities for purposes of our ruling. Although this additional fund is organized in the United States, it has its principal place of business in a foreign country. *Compare* Consolidated Application at 24-25 with Appendix B to this Order and Authorization, ¶¶ 11, 14.

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LLC, and Intelsat MTC LLC may accept up to and including an additional aggregate 25 percent indirect equity and/or voting interest from Zeus's current foreign investors and from other foreign investors, without seeking prior Commission approval under section 310(b)(4), subject to the condition that Intelsat LLC, Intelsat North America LLC, and Intelsat MTC LLC shall obtain prior approval before any foreign individual or entity other than Zeus (through Intelsat, Intelsat (Bermuda), Ltd., and Intelsat Global Sales & Marketing Ltd.) acquires individually a greater-than-25-percent indirect equity and/or voting interest in Intelsat LLC, Intelsat North America LLC, or Intelsat MTC LLC. For purposes of calculating the aggregate 25 percent amount, Intelsat LLC, Intelsat North America LLC, and Intelsat MTC LLC shall include any additional equity or voting interests acquired by Zeus's current direct and indirect foreign investors, as well as any additional equity or voting interests acquired by new investors. We will permit, however, the addition or substitution of directors for RBC Trustees, provided the new directors are U.K. citizens.[82] We emphasize that, as Commission licensees, Intelsat LLC, Intelsat North America LLC, and Intelsat MTC LLC have an affirmative duty to continue to monitor their foreign equity and voting interests and to calculate these interests consistent with the attribution principles enunciated by the Commission.[83]

D. Competitive Effects

28. Our public interest analysis includes an evaluation of the competitive effects of the proposed transaction in both the relevant product markets and the relevant geographic markets. For telecommunications service providers, the Commission has determined that the relevant product and geographic markets can include both U.S. domestic telecommunications services markets and telecommunications services between the United States and foreign points.[84] We determine that the

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Second, where an Investing Fund's foreign general partner or other foreign controlling entity holds a direct or indirect equity interest in the Investing Fund, we attribute that equity interest to its ultimate owners, which may be U.S. citizens. This methodology eliminates double counting equity interests in the Investing Funds and allows us to identify the citizenship of the ultimate equity investors. By contrast, our calculation of foreign voting interests held directly or indirectly in the Investing Funds includes the voting rights held by any intermediate foreign general partner or other controlling foreign entity situated in the vertical ownership chain between the Investing Fund and the ultimate principals of the fund. *See* Appendix B to this Order and Authorization. Thus, while the Applicants measure aggregate foreign voting interests only at the level of ultimate control of the Investing Funds (*i.e.*, with the ultimate principals of the funds), we calculate foreign voting interests at any level of the vertical ownership chain where a foreign entity is situated. *Compare* Consolidated Application at 24 n.47 *with* Appendix B to this Order and Authorization, ¶ 5. *See, e.g.*, Appendix B, ¶¶ 17-18, 25-26, 31-32, 39-40.

[82] Although our ruling permits new directors of RBC Trustees to be citizens of countries other than the United Kingdom, the new voting interests held by those non-U.K. directors would count against the additional aggregate 25% voting interest permitted by our declaratory ruling. Consistent with Commission precedent, our ruling does not allow the alienation of interests, which we have specifically approved, to foreign citizens of *any* WTO Member country. *See, e.g., VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9849, ¶ 128 (approval of Deutsche Telekom's ("DT") indirect investment in U.S. licensees is stated in terms of "DT and DT's German shareholders"). This restriction is particularly applicable in this case in light of the limited information on the record with regard to the trust, the fiduciary obligations of the trust directors, or the limits, legal or otherwise, on the nationality of the trust directors.

[83] *See, e.g., Vodafone Americas Asia Inc., Transferor, and Globalstar Corporation, Transferee, Consent to Transfer Control of Licenses and Section 214 Authorizations and Petition for Declaratory Ruling Allowing Indirect Foreign Ownership*, Order and Authorization, DA 02-1557, 17 FCC Rcd 12849, 12866, ¶ 53 (Int'l Bur. 2002) ("*Globalstar Order*").

[84] *See, e.g., VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9823, ¶ 78, 9825, ¶ 81, & 9833, ¶ 97. *See also Application of WorldCom, Inc., and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, FCC 98-225, 13 FCC Rcd 18025 (1998); *Lockheed Martin Corporation, Comsat Governmental Systems, LLC, and Comsat Corporation*,
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proposed transfer is not likely to result in harm to competition in any relevant market and likely will yield tangible public interest benefits.

29. Applicants contend that the proposed transaction serves the public interest because it will reenergize Intelsat's business by providing new investment and by providing Intelsat with a more flexible capital structure.[85] They assert that control of Intelsat by the Private Equity Funds will enable Intelsat to expand its customer base and product offerings to become a more rigorous competitor in the Fixed Satellite Service ("FSS") market.[86] Applicants also contend that the proposed transaction will not result in any consolidation in the market for domestic and international FSS capacity for the provision of switched voice, private line, video, and earth station services to customers in the United States and that this market will remain highly competitive following the proposed transaction.[87] Applicants assert that there is vibrant competition in the earth station component of the FSS market.[88] Finally, Applicants state that the Private Equity Funds do not hold significant interests in companies that directly compete with Intelsat.[89] Applicants note that there will be a degree of common ownership between Inmarsat, a provider of Mobile Satellite Service ("MSS") and Intelsat, but contend that the common ownership does not pose any significant competitive concerns because the two companies serve distinct markets.[90]

30. After reviewing the holdings of each of the investment funds controlled by Apax, Apollo, Primera, and MDP, we find that there does not appear to be any significant overlap in the actual provision of services. The investment funds have a significant interest in a number of firms that provide communications services.[91] Intelsat does not provide any services in, to or from the United States in any of the markets served by these firms.

31. However, Apax Europe V and Permira each hold a 25.8 percent interest in Inmarsat Holdings Limited, a provider of mobile satellite communications services to the maritime, land and aeronautical sectors.[92] Although Intelsat currently does not provide services in any market in which Inmarsat competes, we consider whether the proposed transaction will lessen competition in any of those markets.

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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, File Nos. SAT-T/C-20000323-00078 and SAT-STA-20000323-00078, FCC 00-277, 15 FCC Rcd 22910, 22915, ¶ 16 (2000), *erratum*, DA 00-1789, 15 FCC Rcd 23506 (Int'l Bur. 2000), *recon. denied*, FCC 02-197, 17 FCC Rcd 13160 (2002); and *Application of General Electric Capital Corporation and SES Global S.A. for Consent to Transfer Control of Licenses and Authorizations Pursuant to Section 214(a) and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, DA 01-2100, 16 FCC Rcd 17575 (Int'l Bur. & Wireless Tel. Bur. 2001), Supplemental Order, DA 01-2482, 16 FCC Rcd 18878 (Int'l Bur. & Wireless Tel. Bur. 2001).

[85] Consolidated Application at 18.

[86] *Id.* at 18.

[87] *Id.* at 19.

[88] *Id.* at 21.

[89] *Id.*

[90] *Id.* at 22.

[91] *See* Nov. 8 Letter at 3-5. The funds have substantial interests in Inmarsat, a provider of mobile satellite communications services; Tropolys GmbH, a German competitive local exchange carrier ("CLEC"); Equinox Converged Solutions Ltd., a U.K.-based provider of terrestrial managed bandwidth connectivity and other services in the London area; SkyTerra Communications, Inc.; Comcorp of Texas License Corp. and Council Tree Hispanic Broadcasters II, LLC, two U.S. broadcasting companies; and iplan LLC, an Argentinean CLEC. *See id.*

[92] *See* Nov. 8 Letter at 3 & 5.

To evaluate whether the proposed transaction would have a negative effect on competition in any market involving mobile satellite communications services, it is necessary to determine whether the transaction will either eliminate a significant present competitive threat or eliminate the possibility of entry by Intelsat in a more pro-competitive manner in any markets in which Inmarsat participates.[93] To determine whether there would be a reduction in perceived potential competition or actual potential competition, it is necessary to evaluate Intelsat's entry advantage and determine whether other firms have the same or comparable advantage in entering markets in which Inmarsat participates.[94]

32. Inmarsat currently operates MSS satellite systems that have customer service links in the L-band at 1525-1559 MHz (space-to-Earth) and 1626.5-1660.5 MHz (Earth-to-space). Intelsat operates FSS satellite systems in the C- and Ku-bands at 3400-4200 MHz (space-to-Earth), 5850-6425 MHz (Earth-to-space), 10.95-12.7 GHz (space-to-Earth), and 13.75-14.5 GHz (Earth-to-space). The predominant user terminal for communication with the Inmarsat system utilizes an antenna that has limited directivity, whereas communication with the Intelsat system requires highly directional equipment. Conversion from Inmarsat to Intelsat would require replacement or additional antennas and transmitting/receiving equipment.[95] For these reasons, we find that Intelsat does not have a unique comparative advantage in entering any of the markets in which Inmarsat participates, and therefore find no harm relating to perceived or actual potential competition. Since there is no significant overlap in the actual provision of services, and since there would be no reduction in potential competition associated with the proposed transaction, we conclude that competition will not be lessened by the proposed transaction.

33. In summary, our review finds that the proposed transaction does not raise anti-competitive issues. Moreover, the proposed transaction will result in Zeus' acquisition of the interests in Intelsat currently held by former signatories and by, among others, those current Intelsat investors that the Commission has found to possess market power in foreign telecommunications markets.[96] Additionally, as noted in Section III.E below, Intelsat's subsidiaries that hold international common carrier authorizations are non-dominant in their provision of space segment capacity for switched voice and private line services on most routes, and, at the same time, will continue to be classified as "dominant" in their provision of such capacity on non-competitive routes and thus subject to alternative rate regulation for those routes.[97] Given these results, and as there is no reduction in competition associated with the proposed transaction, we find that the proposed transaction is in the public interest.

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[93] Non-Horizontal Merger Guidelines, *U.S. Department of Justice Merger Guidelines*, Section 4 (June 14, 1984), at § 4.1, available at http://www.usdoj.gov/atr/public/guidelines/2614.htm (visited Dec. 7, 2004).

[94] § 4.133.

[95] Although the costs of this equipment currently are not trivial, new Earth Stations on Vessels ("ESVs") operating at C- and Ku-band are capable of providing communications between maritime vessels with the potential of higher bandwidths than currently available at L-band. Intelsat, and other FSS providers, can provide the C- and Ku-band capacity used for this service.

[96] *See* Consolidated Application at 19 & 30 (Zeus will acquire all of the interests former signatories currently hold in Intelsat); *infra* ¶ 41 & note 116 (former signatories to INTELSAT currently hold shares in Intelsat). *See also, e.g., Loral/Intelsat Order*, 19 FCC Rcd at 2435, Appendix B (listing current foreign ownership in Intelsat); *The International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers that Are Presumed to Possess Market Power in Foreign Telecommunications Markets*, Public Notice, DA 04-1584 (Int'l Bur. May 28, 2004) (listing carriers with market power in foreign markets, including certain carriers that are current owners of Intelsat). Applicants also state that Zeus will reduce the current ultimate non-U.S. ownership in Intelsat (from 75% to approximately 37%) and non-WTO ownership in Intelsat (from 6% to less than 1%) and replace this foreign ownership with U.S. ownership. *See* Consolidated Application at 28 & 30.

[97] *See infra* ¶¶ 34-36.

E. Foreign Carrier Affiliation

34. As part of our public interest analysis under section 214(a) of the Act, we also consider whether, upon consummation of the proposed transfers of control, the international section 214 authorization holders will become affiliated with a foreign carrier that has market power on the foreign end of a U.S. international route that the international section 214 authorization holders have authority to serve pursuant to the international section 214 authorizations that will be transferred.[98] Under rules adopted in the *Foreign Participation Order*, the Commission classifies a U.S. carrier as "dominant" on a particular route if it is, or is affiliated with, a foreign carrier that has market power on the foreign end of that route.[99]

35. The Applicants certify that Zeus is not a foreign carrier and that it is not affiliated with any foreign carrier within the meaning of section 63.09(d) of the Commission's rules.[100] Thus, the Applicants state that, following the consummation of the proposed transaction, Intelsat USA License Corp., Intelsat General Corporation, and Intelsat MTC LLC would qualify for a presumption of non-dominance under section 63.10(a)(3) of the Commission's rules with respect to the provision of service on all authorized routes except "thin" routes.[101] With respect to "thin" routes, Zeus agrees to have Intelsat USA License Corp., Intelsat General Corporation, and Intelsat MTC LLC continue to be classified as "dominant" pursuant to the *Comsat Non-Dominance Order* and *Comsat Alternative Rate Regulation Order*.[102]

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[98] *See* 47 U.S.C. § 214(a).

[99] *Foreign Participation Order,* 12 FCC Rcd at 23987, ¶ 215 & 23991-99, ¶¶ 221-39. A carrier classified as dominant on a particular U.S. international route due to an affiliation with a foreign carrier that has market power on the foreign end of the route is subject to specific international dominant carrier safeguards set forth in section 63.10 of the rules. *See* 47 C.F.R. § 63.10(c), (e). 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 generally applicable international safeguards, are sufficient to protect against vertical harms by carriers from WTO Member countries in virtually all circumstances. In the exceptional case where an application poses a very high risk to competition in the U.S. market -- where the standard safeguards and additional conditions would be ineffective -- the Commission reserves the right to deny the application. *See Foreign Participation Order*, 12 FCC Rcd at 23913-14, ¶ 51. In circumstances where an affiliated foreign carrier possesses market power in a non-WTO Member country, the Commission applies the ECO test, *see supra* ¶ 21, as part of its public interest inquiry under section 214(a). *See Foreign Participation Order*, 12 FCC Rcd at 23944, ¶ 124.

[100] *See, e.g.,* Intelsat, Ltd., Transferor, and Zeus Holdings Limited, Transferee, Application for Consent to Transfer of Control Pursuant to Section 214 of the Communications Act of 1934, as Amended, File No. ITC-T/C-20040907-00357, at 10.

[101] Consolidated Application at 20 n.35; File Nos. ITC-T/C-20040907-00356, at 10-11 (Intelsat USA License Corp.), ITC-T/C-20040907-00357, at 10-11 (Intelsat General Corporation), and ITC-T/C-20041119-00458, at 7 (erratum filed Dec. 1, 2004) (Intelsat MTC LLC).

[102] Consolidated Application at 20 n.35; File Nos. ITC-T/C-20040907-00356, at 10-11, ITC-T/C-20040907-00357, at 10-11, and ITC-T/C-20041119-00458, at 7 (erratum filed Dec. 1, 2004) (agreeing to accept regulatory status and adopt all applicable tariffs and amendments). *See 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*, IB Docket No. 98-60, Order and Notice of Proposed Rulemaking, FCC 98-78, 13 FCC Rcd 14083, 14107, ¶ 42 (1998) ("*Comsat Non-Dominance Order*") (defining "thin" route switched voice and private line markets as routes not linked to the United States by cable and where Comsat was the dominant provider of service); *Comsat Corporation, Policies and Rules for Alternative Incentive Based Regulation of Comsat Corporation*, IB Docket 98-60, Report and Order, FCC 99-17, 14 FCC Rcd 3065 (1999) ("*Comsat Alternative Rate Regulation Order*") (adopting incentive-based price regulation of Comsat's provision of capacity for switched voice and private line services in non-competitive, or "thin," geographic markets served only by

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36. Based on the representations in the record, we find that Intelsat USA License Corp., Intelsat General Corporation, and Intelsat MTC LLC are not affiliated with a foreign carrier within the meaning of the Commission's rules. We therefore conclude that, upon closing, Intelsat USA License Corp., Intelsat General Corporation, and Intelsat MTC LLC shall be classified as non-dominant international carriers, pursuant to section 63.10 of the rules, on all authorized U.S. international routes. As a separate matter, however, these three subsidiaries will be treated as "dominant" in their provision of Intelsat space segment capacity for switched voice and private line service on non-competitive, or "thin," U.S. international routes and therefore, on those routes, will be subject to the alternative rate regulation set forth in the *Comsat Alternative Rate Regulation Order.*

F. National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns

37. When analyzing a transfer of control or assignment application in which foreign investment is an issue, we also consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the Executive Branch.[103] In their Applications, the Applicants stated that they had initiated discussions with the Executive Branch to address any national security, law enforcement, and public safety issues and asked the Commission to defer grant of the Applications until "the Commission receives notice that all national security, law enforcement, and public safety concerns regarding the Proposed Transaction have been resolved with the Executive Branch agencies."[104] In addition, as noted, on October 21, 2004, the DOJ/FBI filed a letter asking the Commission to maintain its deferral of final action on the Applications until the Executive Branch agencies advised the Commission that all national security, law enforcement, and public safety concerns had been addressed.[105]

38. The Executive Branch agencies now advise that they have no objection to grant of the Applications provided that the Commission conditions the grant on compliance with the terms of a commitment letter from Zeus and Intelsat ("the Zeus/Intelsat Commitment Letter"). Specifically, as noted above, on November 24, 2004, the DOJ/FBI, together with the U.S. Department of Homeland Security ("DHS") and the Defense Information Systems Agency, U.S. Department of Defense ("DOD"),

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satellite systems and where Comsat had market power); *Lockheed Martin Corporation, COMSAT Corporation, and COMSAT Digital Teleport, Inc., Assignors, and Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC and Intelsat USA License Corp., Application for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petition for Declaratory Ruling,* IB Docket No. 02-87, Order and Authorization, DA 02-2254, 17 FCC Rcd 27732, 27755, ¶¶ 35-46 (Int'l Bur. & Wireless Tel. Bur. 2002) ("*Lockheed/Comsat/Intelsat Order*") (treating Intelsat USA License Corp., the Intelsat entity created to hold the assigned international section 214 authorizations, as "dominant" in its provision of space segment capacity for switched voice and private line service on "thin" routes); *Intelsat Government Solutions Corporation,* Grant of Authority, File No. ITC-214-20040528-00213, Public Notice, Report No. TEL-00814, DA 04-2251, 19 FCC Rcd 13312 (Int'l Bur. 2004) (treating Intelsat Government Solutions Corporation, now Intelsat General Corporation, as a dominant international carrier on "thin routes" in its provision of space segment capacity for switched voice and private line services); *Comsat General Public Notice* at 3 (treating Intelsat MTC LLC, the Intelsat entity created to hold the assigned international section 214 authorization, as "dominant" in its provision of Intelsat space segment capacity for switched voice and private line service on non-competitive, or "thin," U.S. international routes).

[103] *Foreign Participation Order,* 12 FCC Rcd at 23918, ¶ 59; *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States,* IB Docket No. 96-111, Report and Order, 12 FCC Rcd 24094, 24170-72, ¶¶ 178-182 (1997) ("*DISCO II Order*").

[104] Consolidated Application at 29 n.62.

[105] *See supra* ¶ 3.

filed a Petition to Adopt Conditions that attaches the Zeus/Intelsat Commitment Letter.[106] The Petition to Adopt Conditions states that the Executive Branch agencies have concluded that the commitments set forth in the Zeus/Intelsat Commitment Letter are sufficient to ensure that the DOJ/FBI, DHS, DOD, and other entities with responsibility for enforcing the law, protecting the national security, and preserving public safety can proceed in a legal, secure, and confidential manner to satisfy these responsibilities.[107] The Executive Branch agencies represent that the Applicants do not object to the grant of the petition.[108]

39. In the Zeus/Intelsat Commitment Letter, Zeus and Intelsat undertake to: (1) continue the commitments Intelsat made to DOJ/FBI and DHS regarding a proxy agreement covering Intelsat General Corporation and a security committee appointed by Intelsat Global Service Corporation;[109] (2) notify DOJ/FBI and DHS before Intelsat provides common carrier switched services, even where no additional Commission authorization or license would be required; and (3) notify DOJ/FBI and DHS of the initial composition of, and of any changes to, the boards of directors of Zeus, Intelsat, and Intelsat (Bermuda), Ltd.[110] Zeus and Intelsat state that Intelsat does not plan to provide common carrier switched services either before the proposed transaction or under Zeus' ownership.[111] Based on their undertakings and the fact that Intelsat does not plan to provide common carrier switched services, the Applicants state that they consider it unlikely that law enforcement or other U.S. government authorities would find it useful to work through Zeus and Intelsat to address surveillance concerns and related matters.[112] In the event that there is a need to use Intelsat's facilities to conduct lawfully authorized surveillance, Zeus and Intelsat state that they will take all reasonable measures to assist and support federal, state or local agencies with law enforcement or national security responsibilities to conduct, in a secure and efficient manner, lawfully authorized electronic surveillance.[113]

40. In assessing the public interest, we take into account the record and afford the appropriate

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[106] *See supra* ¶ 3; Petition to Adopt Conditions at Exhibit 1, enclosing Letter from Counsel to Zeus and Intelsat to Laura H. Parsky, Deputy Assistant Attorney General, U.S. Department of Justice, Tina W. Gabbrielli, Director of Intelligence Coordination and Special Infrastructure Protection Programs, U.S. Department of Homeland Security, and Patrick W. Kelley, Deputy General Counsel, Federal Bureau of Investigation (dated Nov. 24, 2004) ("Zeus/Intelsat Commitment Letter"). The Petition to Adopt Conditions and Zeus/Intelsat Commitment Letter are set out *infra* in Appendix D.

[107] Petition to Adopt Conditions at 2. *See also id*. at 2 (stating that transactions involving foreign ownership or operation of part of the U.S. communications system, or use of foreign-located facilities to provide domestic telecommunications services to U.S. customers, could impair the ability of the U.S. government to satisfy its obligations to protect the national security, enforce the laws, and preserve the safety of the public).

[108] Petition to Adopt Conditions at 3.

[109] *Comsat General Public Notice* Appendix B (regarding proxy agreement); *Loral/Intelsat Order*, 19 FCC Rcd at 2442-2455, Appendix C (regarding security committee). Intelsat Global Service Corporation, organized in Delaware, is a direct subsidiary of Intelsat (Bermuda), Ltd. *See infra* Appendix C (ownership charts).

[110] Zeus/Intelsat Commitment Letter at 2; *see also id*., *e.g*., at 4 & 7 (parties to proposed transaction will maintain a proxy agreement for Intelsat General Corporation and work with U.S. Defense Security Service, or "DSS," to modify the existing proxy agreement to obtain the approval of DSS); 5 & 7-8 (proposed transaction will not alter commitment to maintain security committee as contemplated in the *Loral/Intelsat Order* and Intelsat/Comsat General transaction); 5 & 7-8 (Intelsat does not plan to provide common carrier switched services either before or after the proposed transaction and Intelsat will notify the Executive Branch agencies before providing common carrier switched services); 8 (Zeus will notify Executive Branch agencies of initial composition of, and of changes to, boards of directors of Zeus, Intelsat, and Intelsat (Bermuda), Ltd.).

[111] Zeus/Intelsat Commitment Letter at 2, 5 & 7.

[112] *Id*. at 2.

[113] *Id*. at 7.

level of deference to Executive Branch expertise on national security and law enforcement issues.[114] As the Commission stated in the *Foreign Participation Order*, foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch.[115] Therefore, in accordance with the request of the Executive Branch agencies, in the absence of any objection from the Applicants, and given the discussion above, we grant the Petition to Adopt Conditions and condition our grant of the Applications on compliance with the terms of the Zeus/Intelsat Commitment Letter.

G. The ORBIT Act

41. At this time, Intelsat remains subject to the requirements of the ORBIT Act, as amended. Specifically, Intelsat remains subject to the privatization requirements of the ORBIT Act under section 621(5), which requires that any successor entity or separated entity created out of INTELSAT must be deemed a national corporation or similar accepted commercial structure, subject to the laws of the nation in which it is incorporated.[116] Under the ORBIT Act, a successor entity may meet this requirement by conducting an initial public offering ("IPO") as required under sections 621(2) and (5)(A) of the ORBIT Act, as amended.[117] In its most recent amendment, Congress provided a process by which Intelsat may forgo an IPO if Intelsat provides certain certifications as to its privatization and, after notice and comment, the Commission determines that Intelsat is in compliance with the certification.[118] The Applications, filed and placed on public notice before the most recent amendment to the statute, do not attempt to address the amended requirements of the ORBIT Act. Thus, our grant of the Applications is subject to a future Commission decision that the transaction is consistent with the requirements of the ORBIT Act, as amended. Until such time as the Commission finds that Intelsat is in full compliance with the ORBIT Act, as amended, the transferred authorizations are subject to the condition set out in paragraph 47, below.[119]

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[114] *Foreign Participation Order*, 12 FCC Rcd at 23919-21, ¶¶ 61-66; *DISCO II Order*, 12 FCC Rcd at 24170-72, ¶¶ 178-182.

[115] *Foreign Participation Order*, 12 FCC Rcd at 23919, ¶ 62.

[116] 47 U.S.C. §§ 763(2), 763(5). The Communications Satellite Act defines the term "INTELSAT" to mean the International Telecommunications Satellite Organization established pursuant to the Agreement Relating to the International Telecommunications Satellite Organization (INTELSAT). *See* 47 U.S.C. § 769(a)(1). Intelsat is a successor entity to INTELSAT. *See* 47 U.S.C. § 769(a)(7) ("successor entity" includes any privatized entity created from the privatization or assets of INTELSAT). INTELSAT privatized on July 18, 2001 and, upon privatization, former INTELSAT signatories and non-signatory investing entities received shares in Intelsat. *See Loral/Intelsat Order*, 19 FCC Rcd at 2407 n.21.

[117] 47 U.S.C. §§ 763(2), 763(5)(A)(i).

[118] *See* 47 U.S.C. §§ 763(5)(F), (G).

[119] On November 24, 2004, Intelsat LLC and Intelsat North America LLC filed a "Request for Technical Corrections to License Conditions; SAT-A/O-20000119-000002 to SAT-A/O-20000119-000018; SAT-AMD-20000119-00029 to SAT-AMD-20000119-00041; SAT-LOA-20000119-00019 to SAT-LOA-20000119-00028; SAT-ASG-20030728-00138 to SAT-ASG-20030728-00139" requesting the Commission to revise the conditions on their licenses to reflect the recent amendment to the ORBIT Act. In their request, Intelsat LLC and Intelsat North America LLC state that their licenses currently are conditioned on, among other things, a Commission finding that Intelsat LLC and Intelsat North America LLC have conducted an IPO in accordance with Sections 621(2) and 621(5)(A(i) of the ORBIT Act ("IPO condition"). Congress recently amended the ORBIT Act by adding Section 621(5)(F) and (G), which generally provide that Intelsat may forgo an IPO and public securities listing through a certification process if Intelsat certifies to the Commission that it (1) has achieved substantial dilution of former signatory ownership, (2) has eliminated former signatory control, and (3) has no intergovernmental organization ownership. Pub. Law 108-371, 118 Stat. 1752 (2004). Thus, Intelsat LLC and Intelsat North America LLC request that the Commission revise the IPO condition on their licenses to reflect the certification process under the amended

(continued....)

H. Pending Applications

42. Applicants request that grant of the Applications include authority for Zeus, upon consummation of the proposed transaction, to acquire control of the following authorizations and filings: (1) all authorizations issued or assigned to Intelsat or any of its subsidiaries subsequent to the filing of the Applications but prior to consummation of the proposed transfers (the "Interim Period"); (2) all construction permits, if any, held by such companies that mature into licenses during the Interim Period; and (3) all applications pending at the time of consummation of the proposed transaction.[120] We conclude that any authorizations issued during the pendency of this proceeding, any licenses that have been constructed and are operational by the time the transfer is consummated, and any applications pending at the time of consummation should be deemed to be covered by this Order and Authorization to the extent that they are listed in Appendix A. Consistent with section 1.65 of the Commission's rules, Applicants should amend any current pending applications to reflect the transactions approved by this Order and Authorization.[121]

IV. CONCLUSION

43. Based on the foregoing findings, we conclude, pursuant to section 310(b)(4) of the Act and Commission's precedent for indirect investment by WTO Members in U.S. common carrier licensees, that it would not serve the public interest to prohibit the proposed indirect foreign ownership, by and through Zeus, in the three Intelsat Title III Licensees. Specifically, this ruling permits Intelsat LLC, Intelsat North America LLC, and Intelsat MTC LLC to be owned indirectly by: (1) Zeus (through Intelsat, Intelsat (Bermuda), Ltd. and, for Intelsat MTC LLC, also through Intelsat Global Sales & Marketing Ltd.) (up to and including 100 percent of the equity and voting interests); (2) eighteen Investing Funds (either organized under foreign laws or having their principal places of business in a foreign country) (up to and including 95.58 percent of the equity interests and 100 percent of the voting interests); (3) foreign limited partners with direct or indirect equity and voting interests in the Investing Funds (up to and including an aggregate 35.15 percent equity and voting interest); and (4) foreign citizens or entities with a direct or indirect controlling interest in the Investing Funds (up to and including an aggregate 98.2 percent voting interest for the election of the Zeus board of directors and a 95 percent voting interest on all other matters).

(...continued from previous page)
ORBIT Act. *See, e.g., Loral/Intelsat Order*, 19 FCC Rcd at 2432, ¶ 72 (Int'l Bur. 2004) (imposing IPO condition). As discussed in the *Loral/Intelsat Order*, this condition is similar to the condition previously placed on the Intelsat LLC licenses. *See Loral/Intelsat Order*, 19 FCC Rcd at 2426, ¶ 55. *See also Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, Memorandum Opinion Order and Authorization, 15 FCC Rcd 15460, 15482, ¶ 51 (2000), *recon. denied*, 15 FCC Rcd 25234 (2000) (granting Intelsat and Intelsat LLC authorizations for space station licenses subject to condition that Intelsat's predecessor intergovernmental organization, INTELSAT, privatize consistent with ORBIT Act); *Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, Memorandum Opinion Order and Authorization, 16 FCC Rcd 12280, 12288, ¶ 24 (2001) (finding privatization consistent with all non-IPO conditions of ORBIT Act, and conditioning Intelsat LLC's licenses on Intelsat carrying out IPO consistent with ORBIT Act requirements). The condition set out at paragraph 47 responds to the November 24, 2004 request and includes all Commission licenses and authorizations held by the Intelsat Title III Licensees. It does not amend other conditions in the underlying orders, including the "additional services" condition. *See Loral/Intelsat Order*, 19 FCC Rcd at 2432, ¶ 75, Supplemental Order, DA 04-612, 19 FCC Rcd 4029, 4031, ¶ 10, STA Extension Order, DA 04-2445, 19 FCC Rcd 14807 (Int'l Bur. 2004).

[120] Consolidated Application at 31-32.

[121] 47 C.F.R. § 1.65.

44. We also conclude, pursuant to sections 214(a) and 310(d) of the Act, that the transfers of control are not likely to result in harm to competition in any relevant markets and likely will result in public interest benefits. We determine that the Petition to Adopt Conditions addresses any national security and law enforcement concerns related to foreign investment in the transferee.

45. Accordingly, we approve the requested transfer of the licenses and authorizations listed in Appendix A, subject to the requirements and conditions specified in this Order and Authorization.

V. ORDERING CLAUSES

46. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214(a), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 309, 310(d), the Applications ARE GRANTED to the extent specified in this Order and Authorization.

47. IT IS FURTHER ORDERED that the licenses and authorizations held by the Intelsat Title III Licenses and transferred in this Order and Authorization, remain subject to the ORBIT Act, and as discussed above at paragraph 41, are conditioned on a future Commission finding that Intelsat has fully complied with the privatization requirements under section 621 of the ORBIT Act, as amended, by either conducting an initial public offering in accordance with sections 621(2) and 621(5)(A)(i) of the ORBIT Act, as amended, or making a certification to the Commission pursuant to section 621(5)(F) of the ORBIT Act, as amended, and that the Commission has determined, after notice and comment, that Intelsat is in compliance with the certification requirements of section 621(5)(F) of the ORBIT Act, as amended, 47 U.S.C. §§ 763(2), 763(5)(A)(i), 763(5)(F).

48. IT IS FURTHER ORDERED that, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4), the petition for declaratory ruling IS GRANTED to the extent specified in paragraph 27 of this Order and Authorization.

49. 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), 154(j), 214(a), (c), 309, 310(b), (d), the Petition to Adopt Conditions to Authorizations and Licenses filed by the U.S. Department of Justice, Federal Bureau of Investigation, U.S. Department of Homeland Security, and U.S. Department of Defense on November 24, 2004, IS GRANTED, and the declaratory ruling, authorizations and licenses granted herein are SUBJECT TO COMPLIANCE WITH the provisions of the Zeus/Intelsat Commitment Letter, dated November 24, 2004, and attached hereto as Appendix D.

50. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and the Commission's decisions in the *Comsat Non-Dominance Order* and the *Comsat Alternative Rate Regulation Order*, Intelsat USA License Corp., Intelsat General Corporation, Intelsat MTC LLC, and any successor entity to these three entities shall be regulated as "dominant" international carriers on thin routes in their provision of capacity for switched-voice and private line services, subject to the alternative rate regulation set out in the *Comsat Alternative Rate Regulation Order*, and as non-dominant international carriers in their provision of all other common carrier services, as specified in paragraphs 34-36 of this Order and Authorization.

51. IT IS FURTHER ORDERED that, pursuant to section 25.119(f) of the Commission's rules, 47 C.F.R. § 25.119(f), Applicants SHALL COMPLETE the proposed transaction within 60 days from the release date of this Order and Authorization. Pursuant to sections 25.119(f) and 63.24(e)(4) of the Commission's rules, 47 C.F.R. §§ 25.119(f), 63.24(e)(4), within 30 days of consummation, the Applicants shall notify the Commission, by letter, of the date of the consummation, giving reference to the file numbers of the Applications involved in the transaction.[122] Failure to comply with all relevant

[122] *See also* 47 C.F.R. § 1.948(d).

Commission rules, policy, or any specific conditions of the grant of these Applications will result in automatic recission of the Commission's approval and dismissal of the underlying Applications, and could subject the Applicants to enforcement action, including but not limited to the imposition of forfeitures.

52. 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 release of this Order and Authorization to amend all pending applications in connection with the instant Applications to reflect the transfer of control approved in this Order and Authorization.

53. This Order and Authorization is issued pursuant to authority delegated by sections 0.241, 0.261, and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.241, 0.261, 0.331, 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 the release of this Order and Authorization. *See* 47 C.F.R. § 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson, Chief
International Bureau

John Muleta, Chief
Wireless Telecommunications Bureau

Edmond J. Thomas, Chief
Office of Engineering and Technology

Appendix A

List of File Numbers and Call Signs

Part 25 – Satellite Communications

The following file numbers have been assigned to the earth and space station applications:

File Number	Licensee	Call Signs
SAT-T/C-20040903-00166	Intelsat North America LLC	T-402, S2154, T-403, S2159, S2160
SAT-T/C-20040903-00167	Intelsat LLC	S2392, S2389, S2399, S2390, S2394, S2400, S2388, S2397, S2395, S2401, S2398, S2396, S2391, S2402, S2403, S2404, S2405, S2406, S2407, S2408, S2409, S2410, S2411, S2414, KS-35
SES-T/C-20040903-01328	Intelsat LLC	E030051, E030071, E030082, E030100, E030101, E030103, E040125, E040140, E040141, E900992, E980510, KA25, KA58, KA251, KA259, KA260, KA261, KA262, KA264, KA265, KA266, KA267, KA268, KA269, KA270, KA275, WA22, WA27, WN52 (dual carrier fixed)
SES-T/C-20040903-01330	Intelsat LLC	E000296, E000355, E010104, E010206, E020169, E020191, E020314, E020315, E020126, E970168, E980200, E980526, E990131, E990320, E990551, KA263, KB26, E980015, E980016, E980019, E980217, E990303 (non-common carrier fixed)
SES-T/C-20040903-01331	Intelsat LLC	E920519, E970091, E970319, E970325, E970326, E970330 (non-common carrier temporary fixed)
SES-T/C-20040903-01332	Intelsat LLC	E980485, E970053 (common carrier fixed)
SES-T/C-20041119-01718	Intelsat MTC LLC	E960186, E960187 (common carrier fixed)

Part 90 – Private Land Mobile Licenses

The following file number has been assigned to the Private Land Mobile Radio Service application:

File Number	Licensee	Call Signs
0001855699	Intelsat LLC	WII902, WPAG761, WPAM980, WPRR963, WPYJ473

Part 5 – Experimental Radio Service Authorizations

The following file number has been assigned to the Experimental Radio Service application:

File Number	Licensee	Call Signs
0030-EX-TU-2004	Intelsat LLC	WB2XDE, WD2XEJ, WD2XHU

Part 63 – International Section 214 Authorizations

The following file numbers have been assigned to the International Section 214 applications:

File Number	Authorization Holder	Authorization Number
ITC-T/C-20040907-00356	Intelsat USA License Corp.	IPC-50, CSS-81-003-P, IPC-83-008 (Transmittal Nos. 428 & 431), CSS-82-001-P, ITC-84-150, ITC-85-086, ITC-85-160, ITC-86-025, ITC-86-109, ITC-88-006, ITC-88-207 (CSG-88-090-P/L), CSS-88-005, CSS-89-004, ITC-87-097, ITC-91-024, ITC-91-215-A (ITC-92-041, ITC-92-047, ITC-92-074), CSS-90-001, ITC-92-144, ITC-92-141, ITC-93-046, ITC-93-134, CSS-92-004, ITC-94-272, ITC-94-351, ITC-95-310, ITC-95-407, ITC-96-173, CSS-95-002, CSS-93-009(4)-A (9/19/97), CSS-93-009(4)-A (5/22/98), 10010-CSS-MP-80, ITC-MSC-20011101-00550
ITC-T/C-20040907-00357	Intelsat General Corporation	ITC-214-20040528-00213
ITC-T/C-20041119-00458	Intelsat MTC LLC	ITC-214-20001016-00636 (ITC-ASG-20040528-00235)

Section 310(b)(4) – Petition for Declaratory Ruling[123]

The following file number has been assigned to the Petition for Declaratory Ruling:

File Number	Petitioner
ISP-PDR-20040907-00008	Zeus Holdings Limited

[123] The Consolidated Application that includes the Petition for Declaratory Ruling is also an exhibit to each of the 12 transfer or control applications.

Appendix B

Calculation of Foreign Ownership Interests

I. ZEUS AND ITS FOREIGN SUBSIDIARIES

1. As discussed in Section II of this Order and Authorization, upon consummation of the proposed transaction, Zeus will own 100 percent of the outstanding capital stock of Intelsat.[1] The assets of Intelsat, through its subsidiaries Intelsat (Bermuda) Ltd. and Intelsat Global Sales & Marketing Ltd., include 100 percent of the equity and voting interests of Intelsat Holdings LLC, a Delaware corporation that wholly owns Intelsat LLC, which itself wholly owns Intelsat North America LLC, and 100 percent of the equity and voting interests of Intelsat USA Sales Corp., a Delaware corporation that indirectly wholly owns Intelsat MTC LLC.[2]

2. We find that Zeus, post-amalgamation Intelsat and Intelsat (Bermuda), Ltd., and Intelsat Global Sales & Marketing Ltd. will conduct their business in and from Bermuda, the United Kingdom, and other countries that are World Trade Organization ("WTO") Members. The Commission has previously found, in the *Lockheed/Comsat/Intelsat Order*[3] and in the *Loral/Intelsat Order*,[4] that Intelsat and Intelsat (Bermuda), Ltd. principally conduct business in and from Bermuda and other WTO Member countries,[5] and the Applicants certify that, post-amalgamation, the principal place of business of these two

[1] Order and Authorization ¶ 11-12.

[2] Consolidated Application at 7; *see* Order and Authorization at note 14. We note that although each of Intelsat, Intelsat (Bermuda), Ltd., and Intelsat Global Sales & Marketing Ltd. has an indirect 100% equity interest in Intelsat MTC LLC, they will not exercise a voting interest in Intelsat MTC LLC because of a proxy agreement that Intelsat has negotiated with the U.S. Defense Security Service ("DSS"), an agency of the U.S. Department of Defense, and has committed to modify with respect to Intelsat MTC LLC. The proxy agreement is intended to ensure that no impermissible foreign ownership, control, or influence is exercised over the U.S. government contracts acquired by Intelsat MTC LLC's parent, Intelsat General Corporation, in the *Comsat General Public Notice*. *See Comsat General Public Notice* Appendix B at 4-5; Letter from Counsel to Zeus and Intelsat to Laura H. Parsky, Deputy Assistant Attorney General, U.S. Department of Justice, Tina W. Gabbrielli, Director of Intelligence Coordination and Special Infrastructure Protection Programs, U.S. Department of Homeland Security, and Patrick W. Kelley, Deputy General Counsel, Federal Bureau of Investigation, IB Docket No. 04-366 (dated Nov. 24, 2004) ("Zeus/Intelsat Commitment Letter"), at 4. The Zeus/Intelsat Commitment Letter states that, under the proxy agreement, three proxy holders, all resident U.S. citizens, will serve as directors of Intelsat General Corporation and exercise all of the voting power in Intelsat's shares of Intelsat General Corporation and in Intelsat General Corporation's shares of its subsidiaries. Zeus/Intelsat Commitment Letter at 4. The Zeus/Intelsat Commitment Letter further states that the parties to the proposed transaction will maintain a proxy agreement for Intelsat General Corporation and work with DSS to modify the existing proxy agreement to obtain DSS approval. *Id.* Thus, although the three foreign parents have *de jure* control of Intelsat MTC LLC, the three U.S. proxy holders will exercise *de facto* control. Notwithstanding the proxy agreement, we calculate foreign voting interests for Intelsat MTC LLC's ultimate U.S. parent, Intelsat USA Sales Corp., and require that Intelsat MTC LLC comply fully with the foreign ownership ruling adopted in this order.

[3] *Lockheed Martin Corporation, COMSAT Corporation, and COMSAT Digital Teleport, Inc., Assignors, and Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC and Intelsat USA License Corp., Application for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petition for Declaratory Ruling*, IB Docket No. 02-87, Order and Authorization, 17 FCC Rcd 27732, 27755, ¶¶ 35-46 (Int'l Bur. & Wireless Tel. Bur. 2002) ("*Lockheed/Comsat/Intelsat Order*").

[4] *Loral/Intelsat Order*, 19 FCC Rcd at 2414-15, ¶ 24.

[5] *Lockheed/Comsat/Intelsat Order*, 17 FCC Rcd at 27757, ¶ 38.

entities will not change.[6] Applicants also provide information to demonstrate that Intelsat Global Sales & Marketing Ltd., which is organized under the laws of England and Wales, principally conducts its business in and from the United Kingdom.[7] Like Intelsat and Intelsat (Bermuda), Ltd., Zeus is organized under the laws of Bermuda, a WTO Member.[8] Based on information in the record, we find that Zeus will also principally conduct its business in and from Bermuda and other countries that are WTO Members.[9]

3. Therefore, pursuant to the *Foreign Participation Order*, Zeus, Intelsat, Intelsat (Bermuda), Ltd., and Intelsat Global Sales & Marketing Ltd. are entitled to a rebuttable presumption that their proposed foreign ownership of Intelsat Holdings LLC and Intelsat USA Sales Corp., the U.S. parents of the Title III licensees, does not pose a risk to competition in the U.S. market that would justify denial of the Applications. This presumption could be rebutted only if we were to find that grant of the Applications would pose a very high risk to competition in the U.S. market, where our general safeguards and other conditions would be ineffective at preventing harm to U.S. consumers.[10]

II. THE INVESTING FUNDS

4. We next calculate the foreign equity and voting interests in Intelsat Holdings LLC and Intelsat USA Sales Corp. that would be held *by* and *through* the 20 Investing Funds that hold, collectively, 100 percent of the ownership interests in Zeus. As discussed in Section II.B. of this Order and Authorization, these Investing Funds are ultimately controlled by the principals of four Private Equity Funds, Apax, Apollo, MDP, and Permira,[11] each of which controls indirectly 25 percent of the capital stock interests in Zeus. Because Zeus would hold 100 percent of the outstanding capital stock of Intelsat, the foreign equity and voting interests in Zeus that would be held *by* and *through* the 20 Investing Funds would flow through in their entirety to Intelsat and its indirect wholly-owned subsidiaries, Intelsat Holdings LLC and Intelsat USA Sales Corp., the U.S. parent companies of the Intelsat Title III Licensees.[12] Thus, the percentage of foreign equity and voting interests that would be held in Zeus *by* and *through* the Investing Funds is the same as the percentage of foreign equity and voting interests that would be held in Intelsat Holdings LLC and Intelsat USA Sales Corp. *by* and *through* the Investing Funds. For ease of reference, we refer to Zeus, rather than to Intelsat Holdings LLC and Intelsat USA Sales Corp. as we compute these percentage interests and analyze the foreign equity and voting interests for each of the four Private Equity Funds.

5. In order to determine when it is appropriate to use the "multiplier" in calculating foreign voting interests,[13] we rely, in this case, on certain critical attributes of the organizational agreement of each of the Investing Funds, as characterized by the Applicants in their Petition for Declaratory Ruling. Although the vast majority of the equity interest in the Investing Funds is held directly by the numerous

[6] Nov. 30 Letter at 3-4.

[7] Consolidated Application at 7; Amendment to Petition for Declaratory Ruling Attachment 1 (providing principal place of business showing for Intelsat Global Sales & Marketing Ltd.).

[8] Consolidated Application at 26. *See also Cable & Wireless USA, Inc., Application for Authority to Operate as a Facilities-Based Carrier in Accordance with the Provisions of Section 63.18(e)(4) of the Rules Between the United States and Bermuda*, Order, Authorization and Certificate, 15 FCC Rcd 3050, 3052, ¶ 7 (Int'l Bur. 2000) ("*Cable & Wireless*") (relying on an opinion provided by the U.S. Department of State that the 1994 Marrakesh Agreement Establishing the World Trade Organization applies to Bermuda, a dependent territory of the United Kingdom).

[9] *See* Consolidated Application Attachment 4 at 1.

[10] *See Foreign Participation Order*, 12 FCC Rcd at 23913-14, ¶ 51

[11] Order and Authorization ¶¶ 6-10.

[12] *Id*. ¶ 11.

[13] *Id*. ¶ 23.

limited partners of those funds, the Applicants state that the limited partners do not hold any voting rights in the Investing Funds.[14] According to the Applicants, the only parties with direct interests in the Investing Funds that hold voting rights effectively are intermediate holding companies for the Private Equity Fund principals that ultimately control the funds' respective capital stock interests in Zeus.[15] Such voting rights in the Investing Funds ultimately are held by these Private Equity Fund principals through an often complex chain of ownership between the Investing Funds and the Private Equity Fund principals.[16] The Applicants also state that these limited partners have no ability to control or be involved in the day-to-day business operations, activities and decisions or to manage the day-do-day operations of the Investing Funds or Zeus.[17] Thus, the Applicants do not calculate voting interests for the limited partners. Consistent with our foreign ownership case precedent, however, we will calculate, for the foreign limited partners, a voting interest that matches their respective equity interests in the Investing Funds.[18] We will then use the multiplier to calculate their respective voting interests in Zeus, diluting the limited partners' voting interests in each Investing Fund by that fund's voting interest in Zeus. We make these calculations in recognition of the potential influence these foreign limited partners may have over partnership affairs.

A. Apax

6. We first calculate the foreign equity and voting interests held in Zeus (and, therefore, in the U.S. parent companies of the Title III licensees) *by* and *through* the Apax Investing Funds and determine whether these interests properly are ascribed to WTO Member countries. As discussed below, the total foreign equity interest held in Zeus *by* the Apax Investing Funds is 20.58 percent, all of which is ascribed to WTO Member countries (including the United States in the case of two of the Apax Investing Funds that are organized under foreign law). With respect to the election of the Zeus board of directors, the total foreign voting interest held in Zeus *by* the Apax Investing Funds is 25 percent, also ascribed to WTO Member countries (including the United States in the case of two of the Apax Investing Funds that are organized under foreign law). With respect to all other matters, the total foreign voting interest held in Zeus by the Apax Investing Funds is 20.58 percent. The total foreign equity and voting interest held in Zeus *through* the Apax Investing Funds, by their direct and indirect limited partners, is 11.61 percent, almost all of which is ascribed to WTO Member countries.[19] The total foreign voting interest held in Zeus through the Apax Investing Funds, *by* and *through* their general partners and other controlling interest holders, is 23.20 percent with respect to the election of the Zeus board of directors, and 20 percent with respect to all other matters. We ascribe these voting interests held in Zeus *through* the Apax Investing Funds to the United Kingdom, a WTO Member country.

7. ***Equity and Voting Interests Held By Apax*.** According to the Applicants, the 13 Apax Investing Funds are divided into two fund groups that are controlled by two different groups of Apax principals. The Apax Excelsior VI group consists of four Investing Funds that collectively hold five percent of the equity interests in Zeus: (1) Apax Excelsior VI, L.P., a Delaware limited partnership

[14] Consolidated Application at 24 n.47.

[15] *Id*

[16] We recommend the use of the ownership charts in Appendix C as a roadmap for our particularly complex calculations and analyses of the foreign ownership interests held in Zeus *by* and *through* the Private Equity Funds.

[17] Consolidated Application at 8.

[18] *See XO Communications*, 17 FCC Rcd at 19221, ¶ 25.

[19] Of the 11.61% indirect foreign equity interests held in Zeus *through* the Apax Investing Funds, 11.60% is ascribed to investors from WTO Member countries. The remaining 0.01% equity interest is held by a limited partner that has its principal place of business in Saudi Arabia, a non-WTO Member country. *See* Consolidated Application Attachment 3 at 2-5; Nov. 30 Letter Attachment 1 at 1-2. *See infra* ¶¶ 16-17.

(4.27%); (2) Apax Excelsior VI-A, CV, a Dutch partnership (0.35%); (3) Apax Excelsior VI-B, CV, also a Dutch partnership (0.23%); and (4) Patricof Private Investment Club III, L.P., a Delaware limited partnership (0.15%).

8. The voting rights of the principals of Apax Excelsior VI are held through two intervening entities. The managing general partner of each of the Apax Excelsior VI Investing Funds is Apax Excelsior VI Partners, L.P., a Delaware limited partnership that exercises exclusive control over the funds. Apax Excelsior VI Partners, L.P. holds a one percent general partnership interest in each fund.[20] The sole general partner of Apax Excelsior VI Partners, L.P. is Apax Managers, Inc., a New York corporation that exercises exclusive control over Apax Excelsior VI Partners, L.P. Apax Managers, Inc. holds a 0.01 percent general partnership interest in Apax Excelsior VI Partners, L.P. The outstanding capital stock of Apax Managers, Inc. is held by seven U.S. citizens.

9. Two of the four Apax Excelsior VI Investing Funds, Apax Excelsior VI-A, CV and Apax Excelsior VI-B, CV, are organized in the Netherlands. Together, these funds account for a 0.58 percent foreign equity interest in Zeus. However, we find that all four of the Apax Excelsior VI Investing Funds have their principal places of business in the United States. The officers and directors of each fund are U.S. citizens and the world headquarters of each fund is in the United States. None of these private equity funds has any tangible properties or sales and revenues. Moreover, each of these funds ultimately is controlled by the shareholders of Apax Managers, Inc., all of whom are U.S. citizens.[21] Thus, while two of the Apax Excelsior VI Investing Funds are foreign entities, we find that their 0.58 percent equity interest in Zeus is properly ascribed to the United States for purposes of our public interest analysis under section 310(b)(4) of the Act and the Commission's foreign ownership policies adopted in the *Foreign Participation Order*.[22]

10. The voting interest of each Apax Investing Fund is the same as its equity interest, except with respect to the election of the Apax director to the Zeus board of directors.[23] The three Apax Investing Funds that are organized in the United States (including two of the four Apax Excelsior VI funds) have no right to vote for Apax's director on the Zeus board of directors. The director will be appointed by Apax's other Investing Funds, which will vote *pro rata* based on their respective percentage ownership of Zeus. As a result, the Apax Excelsior VI Investing Funds will have an aggregate voting interest of 1.8 percent with respect to the election of Zeus' directors, and this interest will be held entirely by the two Dutch partnerships that we have found have their principal places of business in the United States. These two partnerships will hold a 0.58 percent voting interest (the same as their equity interest) in Zeus with respect to all other matters. Therefore, we attribute to the Apax Excelsior VI Investing Funds a 1.8 percent foreign voting interest with respect to the election of the Zeus board of directors and a 0.58 percent foreign voting interest with respect to all other matters. We find that these voting interests are properly ascribed to the United States for purposes of our public interest analysis under section 310(b)(4) of the

[20] Consolidated Application Attachment 3 at 3. The two Dutch investing funds have a second general partner that is a foundation organized under Dutch law and that is responsible for carrying out various ministerial functions required under Dutch law. *Id*. Because of its minimal involvement in these two funds, we will not calculate any voting interest for this entity, which also holds no equity interest in either fund.

[21] Consolidated Application Attachment 3 at 3. We also find, in ¶ 15 below, that Apax Managers, Inc. has its principal place of business in the United States.

[22] *See Foreign Participation Order*, 12 FCC Rcd 23891. *See, e.g., Globalstar Order*, 17 FCC Rcd at 12864-65, ¶¶ 47-50 (finding that, because Loral Space, a Bermuda corporation, has its principal of place of business in the United States, it is entitled to a rebuttable presumption that no competitive concerns are raised by its foreign equity and voting interests in Globalstar).

[23] *See* Consolidated Application Attachment 3 at 10.

Act and the Commission's foreign ownership policies adopted in the *Foreign Participation Order*.[24]

11. Turning next to Apax Europe V, this group consists of nine Investing Funds that collectively hold a 20 percent equity interest in Zeus: (1) a Delaware limited partnership, Apax Europe V-A, L.P. (12.5%); (2) five United Kingdom limited partnerships, Apax Europe V-B, L.P. (2.25%), Apax Europe V-D, L.P. (1.68%), Apax Europe V-E, L.P. (1.68%), Apax Europe V-1, L.P. (0.01%), and Apax Europe V-2, L.P. (0.01%); (3) a German limited partnership, Apax Europe V-C GmbH & Co. KG (1.28%); and (4) two Dutch partnerships, Apax Europe V-F, CV (0.3%) and Apax Europe V-G, CV (0.3%).[25]

12. The voting rights of the principals of Apax Europe V are held through a complex ownership chain between the Apax Europe V Investing Funds and the private equity fund principals. The general partner of each of the Apax Europe V Investing Funds is Apax Europe V GP, L.P., a Delaware limited partnership that holds a 1.13 percent general partnership interest in the funds.[26] The sole general partner of Apax Europe V GP, L.P. is Apax Europe V GP Co. Ltd., a Guernsey company, which exercises sole control over Apax Europe V GP, L.P.[27] Apax Europe V GP Co., Ltd. is wholly owned by the Hirzell Trust, a Guernsey charitable discretionary, irrevocable trust. The trustee of the Hirzell Trust is RBC Trustees (Guernsey) Limited ("RBC Trustees"), a Guernsey limited company that is ultimately owned by the Royal Bank of Canada. The Royal Bank of Canada, however, exerts no control over RBC Trustees.[28] The decisions of RBC Trustees are controlled entirely by its seven directors, each of whom is a U.K. citizen.[29] The seven directors of RBC Trustees have the ultimate authority to appoint and dismiss the directors of RBC Trustees, including the appointment of additional directors. Decisions of RBC Trustees are made by majority vote of its directors.[30] Therefore, no single director of RBC Trustees has *de jure* or *de facto* control, including negative control, of the voting interest held by Apax Europe V in Zeus.

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[24] *Foreign Participation Order*, 12 FCC Rcd 23891. *See, e.g.*, *Globalstar Order*, 17 FCC Rcd 12849.

[25] Consolidated Application Attachment 3 at 3-4.

[26] Nov. 30 Letter at 3 n.3; Nov. 8 Letter at 6. *See* Consolidated Application Attachment 3 at 4-5. The named general partner of Apax Europe V-C GmbH & Co. KG ("Apax Europe V-C") is a German corporation, Apax Verwaltungsgesellschaft Beta GmbH ("Beta GmbH"). Consolidated Application Attachment 3 at 5. The sole shareholder of Beta GmbH, however, is Apax Europe V GP, L.P. In addition, the partnership agreement for Apax Europe V-C assigns to Apax Europe V GP, L.P. the management rights and responsibilities normally assigned to the general partner. *Id*. Beta GmbH appears to be minimally involved in the affairs of Apax Europe V-C. Moreover, the principals of Beta GmbH are all citizens of WTO Member countries. Accordingly, to simplify our foreign ownership ruling, we will not calculate any voting interest for this entity, which also holds no equity interest in Apax Europe V-C. Nov. 8 Letter Attachment 1 at 2. We also note that Apax Europe V-F, CV and Apax Europe V-G, CV each have a second general partner that is a Dutch corporation. *Id*. That corporation is wholly owned by Apax Europe V GP, L.P. and it is responsible only for carrying out various ministerial functions required under Dutch law. *Id*. Because of its minimal involvement in these two funds, we will not calculate any voting interest for this entity (which also holds no equity interest in either fund). *Id.*

[27] Consolidated Application Attachment 3 at 5. *See also* Nov. 8 Letter at 6. Apax Europe V GP Co., Ltd. holds no equity interest in Apax Europe V GP, L.P. Nov. 8 Letter Attachment 2.

[28] *See* Nov. 8 Letter at 6-7. We also note that, because Apax Europe V GP Co., Ltd. holds no equity interest in Apax Europe V GP, L.P., neither RBC Trustees nor the Royal Bank of Canada holds an equity interest in the Apax Europe V Investing Funds in its capacity as a direct or indirect owner of Apax Europe V GP Co., Ltd. *See* Nov. 8 Letter Attachment 2. *See also* Consolidated Application Attachment 3 at 5. Because the Royal Bank of Canada has no beneficial interest in Zeus though its ownership of RBC Trustees, we find no basis to conclude that the Bank would in fact attempt to exert control or wield influence over RBC Trustees with respect to RBC Trustees' investment decisions related to Zeus. We, therefore, will not calculate any voting interest for the Royal Bank of Canada.

[29] Nov. 8 Letter at 7. RBC Trustees does not have any trustees. Rather, it has directors, which control the decisions of RBC Trustees. *Id.* at 7 n.2.

[30] Nov. 8 Letter at 7.

13. Although Apax Europe V GP, L.P. is the general partner of each of the Apax Europe V Investing Funds, it has delegated control of the investment activity of these funds, including authority to vote the shares of Zeus held by these funds, to Apax Partners Europe Managers Limited ("Apax Managers"), a U.K. company.[31] One hundred percent of the shares of Apax Managers are held directly or indirectly by six U.K. citizens.[32] Decisions by the Apax Managers shareholders are made by majority vote, including the appointment and removal of the directors of Apax Managers.[33] Therefore, no shareholder has the right to control the actions of Apax Managers or the Apax Europe V Investing Funds.

14. Based on the information provided by the Applicants, we find that each of the Apax Europe V Investing Funds has its principal place of business in the United Kingdom. Although the funds are organized under the laws of the United States, the Netherlands, the United Kingdom or Germany, the officers and directors of each fund are U.K. citizens, and the world headquarters of each fund is in Guernsey.[34] We also find that each fund principally is owned and controlled, directly and indirectly, by entities that have their principal places of business in the United Kingdom (Apax Europe V GP, L.P., Apax Europe V GP Co. Ltd., the Hirzell Trust, RBC Trustees (Guernsey) Limited as trustee of the Hirzell Trust, and Apax Managers), and, ultimately, by principals that are citizens of the United Kingdom (i.e., the U.K. directors of RBC Trustees and the U.K. shareholders of Apax Managers).[35] Accordingly, we find that the total foreign equity interest to be held in Zeus *by* the Apax Europe V Investing Funds is 20 percent and that this interest is properly ascribed to the United Kingdom, a WTO Member country. We also calculate as being held *by* the Apax Europe V Investing Funds a collective foreign voting interest of 23.20 percent with respect to the election of Zeus' directors, and a 20 percent foreign voting interest with respect to all other matters,[36] and we ascribe these interests to the United Kingdom, a WTO Member country. Based upon our calculations above, we find that the total foreign equity interest held in Zeus *by* the Apax Investing Funds is 20.58 percent, all of which is ascribed to WTO Member countries. With respect to the election of the Zeus board of directors, the total foreign voting interest held in Zeus *by* the Apax Investing Funds is 25 percent, also ascribed to WTO Member countries. With respect to all other matters, the total foreign voting interest held in Zeus *by* the Apax Investing Funds is 20.58 percent.

15. ***Equity and Voting Interests Held Through Apax.*** As for the foreign equity interests held in Zeus *through* the Apax Investing Funds, the Applicants state that 99 percent of the equity of each of the four Apax Excelsior VI Investing Funds is held in the form of limited partnership interests.[37] The Applicants state that these limited partners have no ability to control or be involved in the day-to-day business operations, activities or decisions of any of the Apax Excelsior VI Investing Funds or, after completion of the proposed transaction, Zeus.[38] The Applicants have submitted information for the

[31] *See* Consolidated Application Attachment 3 at 3-4; Nov. 8 Letter at 7. Apax Managers does not hold any equity interest, directly or indirectly, in the Apax Europe V Investing Funds. *See* Nov. 8 Letter Attachment 1 at 2.

[32] Nov. 8 Letter at 7.

[33] Nov. 30 Letter at 2.

[34] The Bailiwick of Guernsey is a British Crown Dependency within the jurisdiction of the United Kingdom.

[35] *See* Consolidated Application Attachment 4 at 8-10.

[36] As explained in ¶ 10 above, the voting interest of each Apax Investing Fund is the same as its equity interest, except with respect to the election of the Apax director to the Zeus board of directors. Three of the Apax Investing Funds (including one of the Apax Europe V Investing Funds) will have no right to vote for Apax's director on the Zeus board of directors. The director will be appointed by Apax's other Investing Funds, which will vote *pro rata* based on their respective percentage ownership of Zeus. As a result, the Apax Europe V Investing Funds will have a voting interest for the Zeus board of directors that is slightly higher than its voting interest on all other matters. *See* Consolidated Application Attachment 3 at 10.

[37] *See* Nov. 8 Letter Attachment 1 at 1.

[38] *See* Consolidated Application Attachment 3 at 3.

record to demonstrate that 32 limited partners, which hold 24.09 percent of the equity interests in the Apax Excelsior VI Investing Funds, have their principal places of business in named WTO Member countries;[39] and that 155 limited partners, which hold 74.91 percent of the equity interests in the Apax Excelsior VI Investing Funds, have their principal places of business in the United States.[40] One percent of the equity of each Apax Excelsior VI Investing Fund is held in the form of a general partnership interest by Apax Excelsior VI Partners, L.P., a Delaware limited partnership with its principal place of business in the United States.[41] According to the Application, the limited partners and special limited partners of Apax Excelsior VI Partners, L.P. hold in the aggregate 99.99 percent of the equity interests in Apax Excelsior VI Partners, L.P. and are all U.S. citizens.[42] The remaining 0.01 percent of the equity in Apax Excelsior VI Partners, L.P. is held by its sole general partner, Apax Managers, Inc., a New York corporation that is wholly owned by U.S. citizens and that has its principal place of business in the United States.[43] Accordingly, we find that the total foreign equity interest held in the Apax Excelsior VI Investing Funds is 24.09 percent. This amount represents a 1.20 percent indirect foreign equity interest in Zeus (24.09% x 5.0% = 1.20%). We also find, based on the information provided by the Applicants, that all of the foreign equity interests held indirectly in Zeus *through* the Apax Excelsior VI Investing Funds are properly ascribed to WTO Member countries.[44]

16. Turning to the Apax Europe V Investing Funds, we find that nearly 99 percent of the equity of these funds is held in the form of limited partnership interests. The Applicants state that the limited partners have no ability to control the day-to-day business operations and decisions of any of the funds or, after completion of the proposed transaction, Zeus.[45] The Applicants have submitted information for the record to demonstrate that 132 limited partners, which hold 51.02 percent of the equity interests in the Apax Europe V Investing Funds, have their principal places of business in WTO Member countries,[46] and that 86 limited partners, which hold 47.81 percent of the equity interests in the Apax Europe V Investing

[39] The 24.09% equity interest in Apax Excelsior VI consists of interests held by: (1) high net worth individuals who are citizens of Germany, Switzerland, and the United Kingdom (0.10%); (2) banks, pension/employee benefit plans, and insurance companies organized in Japan, the Netherlands, Switzerland, and the United Kingdom (18.35%); (3) foundations/endowments/trusts organized in Guernsey, Iceland, Jersey and the United Kingdom (1.48%); and (4) other institutional investors with principal places of business in the British Virgin Islands, Guernsey, Italy, Japan and the Netherlands (3.16%). Nov. 30 Letter Attachment 1 at 3-4.

[40] The 74.91% equity interest held in Apax Excelsior VI consists of interests held by: (1) high net worth U.S. citizens (2.07%); (2) banks, pension/employee benefit plans, and insurance companies that are organized in the United States (47.28%); (3) foundations/endowments/trusts that are organized in the United States (1.08%); and (4) other institutional investors from the United States (24.48%). Nov. 30 Letter Attachment 1 at 3-4.

[41] Nov. 8 Letter Attachment 1 at 1 & Attachment 3.

[42] Consolidated Application Attachment 3 at 3.

[43] *See* Nov. 8 Letter Attachment 1 at 1 & Attachment 3.

[44] *See* Nov. 30 Letter Attachment 1 at 3-4.

[45] Consolidated Application Attachment 3 at 4.

[46] The 51.02% equity interest held in Apax Europe V consists of interests held by: (1) high net worth individuals who are citizens of France, Germany, Israel, and the United Kingdom (0.62%); (2) government agencies (non-pension fund) controlled by the Canadian government (0.11%); (3) banks, pension/employee benefit plans, and insurance companies that are organized in Australia, Austria, Canada, Denmark, Finland, France, Germany, Israel, Japan, Netherlands, Singapore, Sweden, Switzerland, and the United Kingdom (34.22%); (4) foundations/endowments/ trusts that are organized in Bermuda, Ireland, Sweden, and the United Kingdom (4.61%); and (5) other institutional investors from Belgium, British Virgin Islands, Cayman Islands, Channel Islands, Denmark, Germany, Italy, the Netherlands, Norway, Sweden Switzerland, and the United Kingdom (11.46%). Nov. 30 Letter Attachment 1 at 1-2.

Funds, have their principal places of business in the United States.[47] Only one limited partner, which holds 0.05 percent of the equity interests in the Apax Europe V Investing Funds, does not have its principal place of business in a WTO Member country.[48] As discussed in paragraph 12 above, the sole general partner of each of the Apax Europe V Investing Funds is Apax Europe V GP, L.P., a Delaware limited partnership that has its principal place of business in the United Kingdom and holds a 1.13 percent general partnership interest in the Apax Europe V Investing Funds.[49] One hundred percent of this economic interest is held indirectly by the limited partners of Apax Europe V GP, L.P. Foreign limited partners, all of whom are individual citizens of WTO Member countries, account for approximately 93.7 percent of the ownership of Apax Europe V GP, L.P. and therefore an approximately 1.0 percent equity interest in the Apax Europe V Investing Funds (93.7% x 1.13% = 1.0%).[50] Thus, we find that the total foreign equity interest from WTO Member countries held in Zeus *through* the Apax Europe V Investing Funds is 52.02 percent (51.02% + 1.00% = 52.02%), representing a 10.40 percent indirect foreign equity interest in Zeus (52.02% x 20% = 10.40%). We also find, based on the information provided by the Applicants, that 0.5 percent of the equity interests in the Apax Europe V Investing Funds is not properly ascribed to a WTO Member country. This amount represents a 0.01 percent non-WTO interest held indirectly in Zeus *through* the Apax Europe V Investing Funds (0.05% x 20% = 0.01%). Based on our calculations above, the total foreign equity interest held in Zeus *through* the Apax Investing Funds is 11.61 percent (1.20% + 10.40% + 0.01% = 11.61%).

17. We next calculate the foreign voting interests held by the Apax Investing Funds' limited partners and its controlling interest holders. Consistent with our foreign ownership case precedent, we calculate a voting interest for the foreign limited partners that is equal to their respective equity interests in the Investing Funds because we find that their interests are properly insulated.[51] We then use the multiplier to calculate their respective voting interests in Zeus, multiplying each limited partner's voting interest in the relevant Apax Investing Fund group by the group's voting interest in Zeus. As described earlier, we attribute to the Apax Excelsior VI foreign limited partners from WTO Member countries a 24.09 percent equity interest in these funds.[52] Using the multiplier, we find that the limited partners from WTO Member countries hold an indirect 1.20 percent foreign voting interest in Zeus *through* the Apax Excelsior VI Investing Funds (24.09% x 5.0% = 1.20%).[53] With respect to the Apax Europe V Investing

[47] The 47.81% equity interest held in Apax Europe V consists of interests held by: (1) high net worth individuals who are U.S. citizens (0.20%); (2) banks, pension/employee benefit plans, and insurance companies that are organized in the United States (31.96%); (3) foundations/endowments/trusts that are organized in the United States (5.70%); and (4) other institutional investors from the United States (9.95%). Nov. 30 Letter Attachment 1 at 1-2.

[48] This investor is a British Virgin Islands corporation with its principal place of business in Saudi Arabia. Nov. 30 Letter Attachment 1 at 2.

[49] *See* Consolidated Application Attachment 3 at 4; Nov. 30 Letter Attachment 1 at 1-2. Apax Europe V GP, L.P. holds a 1.8% equity interest in Apax Europe V-A, L.P., which accounts for 62.5% of Apax Europe V's equity interest in Zeus. Apax Europe V GP, L.P. therefore holds, in total, a 1.13% equity interest in the Apax Europe V Investing Funds (1.8%x 62.5%). Nov. 30 Letter at 3 n.3.

[50] *See* Consolidated Application Attachment 3 at 4. *See also* Dec. 9 Letter. For purposes of our ruling, where an investing fund's general partner, or other controlling entity, holds a direct or indirect equity interest in the investing fund, we attribute that equity interest to its ultimate owner. This methodology eliminates double counting equity interests in the funds and allows us to identify the citizenship of the ultimate equity investors. By contrast, our calculation of foreign voting interests held directly or indirectly in the investing funds includes the voting rights held by any intermediate foreign general partner or other controlling foreign entity situated in the vertical ownership chain between the investing fund and the ultimate principals of the fund.

[51] *See supra* ¶ 5.

[52] *See supra* ¶ 15.

[53] *See id*. We also note that, as discussed in ¶ 10, *supra*, each Apax Investing Fund's voting interest with respect to the election of the Zeus board of directors differs from its voting interest on all other matters. We find that the

(continued....)

Funds described above, we attribute to the foreign limited partners from WTO Member countries a 52.02 percent equity interest in these funds.[54] We also attribute a 0.05 percent equity interest in the Apax Europe V Investing Funds to a foreign limited partner that does not have its principal place of business in a WTO Member country.[55] Using the multiplier, we find that the foreign limited partners from WTO Member countries hold an indirect 10.40 percent foreign voting interest in Zeus *through* the Apax Europe V Investing Funds (52.02% x 20% = 10.40%).[56] We further find that the foreign limited partner from a non-WTO Member country holds a 0.01 percent voting interest indirectly in Zeus *through* the Apax Europe V Investing Funds. Based on our calculations above, the total foreign voting interest held in Zeus *through* the Apax Investing Funds by their direct and indirect limited partners is 11.61 percent (1.20% + 10.40% + 0.01% = 11.61%).

18. With respect to the controlling interest holders of the Apax Investing Funds, we do not apply the multiplier to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier.[57] As explained previously, the controlling interest holders in the Apax Excelsior VI Investing Funds are Apax Excelsior VI Partners, L.P. and, in turn, Apax Managers, Inc., and its shareholders. We have determined that Apax Excelsior VI Partners, L.P. and Apax Managers, Inc. each is organized and has its principal place of business in the United States,[58] and that each of the seven shareholders of Apax Managers, Inc. is a U.S. citizen.[59] Accordingly, we find that no portion of Apax Excelsior VI's 1.80 percent voting interest for the Zeus board of directors or its 5.0 percent voting interest on all other matters is held by a foreign principal or intermediate controlling entity. Turning next to Apax Europe V, the controlling interest holders of these Investing Funds are Apax Europe V GP, L.P., Apax Europe V GP Co. Ltd., RBC Trustees (Guernsey) Limited as trustee of the Hirzell Trust, and Apax Managers, each of which has its principal place of business in the United Kingdom; and the principals of RBC Trustees (collectively, its directors) and Apax Managers (collectively, its shareholders), all of whom are U.K. citizens. We therefore attribute to *each* of these controlling interest holders of the Apax Europe V Investing Funds a foreign voting interest of 23.20 percent with respect to the election of Zeus' board of directors, and a 20 percent foreign voting interest with respect to all other matters.[60] We ascribe each of these interests to the United Kingdom, a WTO Member country.

(...continued from previous page)
general voting interest we have calculated for the foreign limited partners of the Apax Investing Funds, which equals their respective equity interests in the funds, provides a sufficient measure of their potential influence over partnership affairs. We therefore will not undertake to calculate for the Apax foreign limited partners a separate voting interest with respect to the Zeus board of directors.

[54] *See supra* ¶ 16.

[55] *See id.*

[56] *See also supra* note 53 (explaining that we will not undertake to calculate for the Apax foreign limited partners a separate "voting" interest with respect to the Zeus board of directors).

[57] *See* Order and Authorization ¶ 24.

[58] *See supra* ¶ 15

[59] *See supra* ¶ 9.

[60] As explained in ¶ 10 above, the voting interest of each Apax Investing Fund is the same as its equity interest, except with respect to the election of the Apax director to the Zeus board of directors. Three of the Apax Investing Funds (including one of the Apax Europe V Investing Funds) will have no right to vote for Apax's director on the Zeus board of directors. The director will be appointed by Apax's other Investing Funds, which will vote pro rata based on their respective percentage ownership of Zeus. As a result, the Apax Europe V Investing Funds will have a voting interest for the Zeus board of directors that is slightly higher than its voting interest on all other matters. *See* Consolidated Application Attachment 3 at 10.

B. Apollo

19. Next, we calculate the foreign equity and voting interests held in Zeus *by* and *through* the sole Apollo Investing Fund, AIF V Euro Holdings, L.P. ("AIF Euro Holdings"), and determine whether these interests are properly ascribed to WTO Member countries. Based upon our review of the record, we find that: (1) the total foreign equity and voting interest held in Zeus *by* AIF Euro Holdings is 25 percent; (2) the total foreign equity interest held in Zeus *through* AIF Euro Holdings is 6.32 percent, and (3) the total foreign voting interest held in Zeus *through* AIF Euro Holdings is as follows: 6.32 percent (held in the form of direct limited partnership interests in AIF Euro Holdings) and 25 percent (held by the direct and indirect foreign general partners of AIF Euro Holdings). We ascribe these foreign equity and voting interests held in Zeus *by* and *through* AIF Euro Holdings to WTO Member countries. We also determine that U.S. citizens ultimately control the 25 percent voting interest that we attribute to the direct and indirect foreign general partners of AIF Euro Holdings.

20. ***Equity and Voting Interests Held By Apollo.*** AIF Euro Holdings is a Cayman Islands limited partnership that holds a 25 percent equity interest in Zeus.[61] According to the Applicants, 99.976 percent of the equity interest in AIF Euro Holdings is held by limited partners that have no ability to control or be involved in the day-to-day business operations, activities or decisions of AIF Euro Holdings or, after completion of the proposed Transaction, Zeus.[62] The remaining 0.24 percent equity interest in AIF Euro Holdings is held by its sole general partner, Apollo Advisors V (EH Cayman), L.P. ("Apollo EH Cayman"), also a Cayman Islands limited partnership.[63] Pursuant to a management agreement, Apollo EH Cayman has delegated to Apollo Management V, L.P., a Delaware limited partnership, the day-to-day management of AIF Euro Holdings.[64] Apollo EH Cayman's sole general partner is Apollo Advisors V (EH), LLC, an Anguillan limited liability company that has no equity interest in Apollo EH Cayman.[65] Apollo Advisors (EH), LLC, in turn, is controlled by its members and managers, i.e. two Apollo executives, both of whom are U.S. citizens.[66] Apollo Management V, L.P.'s sole general partner is AIF V Management, Inc., a Delaware corporation. AIF V Management, Inc., in turn, is controlled by its shareholder and directors, all of whom are U.S. citizens.[67]

21. One hundred percent of the equity in Apollo EH Cayman and Apollo Management V, L.P. is

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[61] Consolidated Application at 12, 23 & Attachment 3 at 5-7.

[62] Nov. 8 Letter at 8.

[63] Nov. 8 Letter at 8-9; Nov. 8 Letter Attachment 1 at 3.

[64] Consolidated Application Attachment 3 at 6; Nov. 8 Letter at 8-9 & Attachment 1 at 3. Apollo EH Cayman has nominal control over AIF Euro Holdings. Notwithstanding the structural control relationship of Apollo EH Cayman (as the general partner of AIF Euro Holdings) with respect to Zeus, day-to-day management and investment related matters are subject to the approval and consent of Apollo Management V, L.P. Nov. 8 Letter at 9 & Attachment 1 at 3.

[65] Nov. 8 Letter at 8-9 & Attachment 1 at 3.

[66] *Id.*

[67] According to the application, Leon Black, a U.S. citizen, is the sole shareholder of AIF V Management, Inc. and Leon Black and John Hannan, both of whom are U.S. citizens, are the only directors of AIF V Management, Inc. In that capacity, they exercise control over Apollo Management V, L.P. and, indirectly, the shares of Zeus held by AIF Euro Holdings. The partnership agreement of Apollo Management V, L.P., however, requires that the Investment Committee of Apollo Management V, L.P. approve any action taken by Apollo Management V, L.P. with respect to the transfer, exchange, disposition or any other restructuring of AIF Euro Holdings' interest in Zeus or any other matter than requires voting by AIF Euro Holdings of its shares in Zeus. Thus, Leon Black and John Hanna, on the one hand, and the Investment Committee, on the other hand, each exercise negative control with respect to AIF Euro Holdings' shares in Zeus. Nov. 8 Letter at 9-10 & Attachment 1 at 3. *See infra* ¶ 21.

held by their limited partners, all of whom are U.S. citizens and their estate planning vehicles.[68] All of the limited partners of Apollo EH Cayman and some of the limited partners of Apollo Management V, L.P are also members of Apollo Management V, L.P.'s Investment Committee.[69] Under the partnership agreement, the Investment Committee of Apollo Management V, L.P. must approve any action taken by Apollo Management V, L.P. with respect to the transfer, exchange, disposition, or any other restructuring of AIF Euro Holdings' interest in Zeus or any other matter that requires voting by AIF Euro Holdings of its shares in Zeus.[70]

22. Based upon our review of the record, we find that AIF Euro Holdings, Apollo EH Cayman, and Apollo Advisors V (EH), LLC have their principal places of business in the United States, the Cayman Islands, or Anguilla, which are all WTO Member countries.[71] We also find that Apollo Management V, L.P. and AIF V Management, Inc, which are organized in the United States, also have their principal places of business in the United States. At the outset, the record indicates that the investment principals, officers, and directors of these entities are all citizens of the United States.[72] The record also indicates that AIF Euro Holdings is organized in the Cayman Islands and the British West Indies and that its world headquarters is located in Cayman Islands.[73] Further, Apollo EH Cayman is organized and has its world headquarters in the Cayman Islands.[74] The record also shows that Apollo Advisors V (EH), LLC is organized in Anguilla and the British West Indies, and has its world headquarters in the Cayman Islands.[75] Apollo Management V, L.P. and AIF V Management, Inc., in turn, are organized in and have their world headquarters in the United States. Based upon the record evidence, we find that AIF Euro Holdings' 25 percent equity investment in Zeus is properly treated as investment from WTO Member countries for purposes of our public interest analysis under Section 310(b)(4) of the Act and the Commission's foreign ownership polices adopted in the *Foreign Participation Order*.[76] Further, as the voting interest of AIF Euro Holdings in Zeus is the same as its equity interest in Zeus and consistent with our foreign ownership precedent, we attribute to AIF Euro Holdings a 25 percent voting interest in Zeus.

23. ***Equity and Voting Interests Held Through Apollo***. We next calculate the foreign equity interests held in Zeus *through* AIF Euro Holdings. As we explained in paragraph 20, 99.976 percent of

[68] Nov. 8 Letter at 8-9 & Attachment 1 at 3.

[69] *Id.* The applications state that the Investment Committee consists of no fewer than eleven members, all of whom are limited partners of Apollo EH Cayman and some of whom are also limited partners of Apollo Management V, L.P., and none of whom has a 10% or greater vote with respect to any decision taken or approval granted by the Investment Committee. Nov. 8 Letter at 9.

[70] Nov. 8 Letter at 8-9 & Attachment 1 at 3.

[71] *See Bell Atlantic New Zealand Holdings, Inc., Transferor, and Pacific Telecom, Transferee, Applications for Consent to Transfer Control of a Submarine Cable Landing License, International and Domestic Section 214 Authorizations, a Cellular Radiotelephone License, Common Carrier and Non-Common Carrier Satellite Earth Station License, and a Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, 18 FCC Rcd 23140, 23152, n.80 (Int'l Bur., Wireline Comp. Bur., and Wireless Tel. Bur. 2003) ("*BANZHI Order*") (citing *Cable & Wireless*,15 FCC Rcd at 3052, ¶ 7) (relying on an opinion provided by the U.S. Department of State to conclude that the 1994 Marrakesh Agreement Establishing the World Trade Organization applies to the United Kingdom's overseas territories)).

[72] Consolidated Application Attachment 4 at 1-3.

[73] *See id.* at 1.

[74] *See id.* at 2.

[75] *See id.*

[76] *Foreign Participation Order*, 12 FCC Rcd 23891.

the equity interest in AIF Euro Holdings is held by its limited partners and the remaining 0.024 percent equity is held by Apollo EH Cayman.[77] One hundred percent of this remaining economic interest is held indirectly by Apollo EH Cayman's limited partners, all of whom are U.S. citizens and their estate planning vehicles. Apollo EH Cayman, in turn, is controlled by Apollo Advisors V (EH), LLC, an Anguillan limited liability company that has no equity interest in Apollo EH Cayman.

24. We find that all of the foreign equity interests held indirectly in Zeus *through* AIF Euro Holdings are properly ascribed to WTO Member countries. The Applicants have submitted information for the record showing that 19 limited partners, which hold 25.26 percent of the equity interest in AIF Euro Holdings, have their principal places of business in WTO Member countries[78] and that 101 limited partners, which hold 74.72 percent of the equity of AIF Euro Holdings, have their principal places of business in the United States.[79] Additionally, the Applicants have shown that Apollo EH Cayman, which holds 0.024 percent of the equity interest in AIF Euro Holdings, has its principal place of business in a WTO Member country and that 100 percent of this economic interest is held indirectly by its U.S. limited partners. Accordingly, we find, based upon a review of the record, that the total foreign equity interest to be held in AIF Euro Holdings is 25.26 percent.[80] This amount represents a 6.32 percent indirect equity interest in Zeus (25.26% x 25% = 6.32%). We find, based upon the record evidence, that this 6.32 percent indirect equity interest in Zeus is properly treated as investment from WTO Member countries for purposes of our public interest analysis under Section 310(b)(4) of the Act and the Commission's foreign ownership polices adopted in the *Foreign Participation Order*.[81]

25. Next, we calculate the foreign voting interests held by the limited partners and controlling interest holders of AIF Euro Holdings. With respect to the indirect voting interests held by limited partners in Zeus *through* AIF Euro Holdings, we have previously determined that limited partners from WTO Member countries hold a 25.26 percent equity interest in AIF Euro Holdings. Consistent with our foreign ownership case precedent, we calculate a voting interest for them that is equal to their respective equity interests in the Investing Funds because we find that their interests are properly insulated.[82] In this case, we find, using the multiplier, that AIF Euro Holdings' foreign limited partners from WTO Member

[77] Nov. 8 Letter at 8-9 & Attachment 1 at 3. *See supra* ¶ 20.

[78] The 25.26% equity interest in AIF Euro Holdings consists of: (1) banks, pensions/employee benefit plans, insurance companies that are organized in Belgium, Canada, Japan, and the United Kingdom (5.13%); (2) foundations/endowments/trusts that are organized in Luxembourg and the United Kingdom (0.83%); and (3) other institutional investors that have their principal places of business in Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Germany, and the United Kingdom (19.30%). Nov. 30 Letter Attachment 1 at 5-6.

[79] Specifically, the 74.72% equity interest in AIF Euro Holdings consists of interests held by: (1) banks, pension/employee benefit plans, and insurance companies that are organized in the United States (52.54%); (2) foundations/endowments/trusts that are organized in the United States (3.34%); and (3) other institutional investors with a principal place of business in the United States (18.84%). Nov. 30 Letter Attachment 1 at 5-6.

[80] This amount represents the equity interests held by the foreign limited partners of AIF Euro Holdings. We treat as U.S. investment the entire 0.024% equity interest held in AIF Euro Holdings by Apollo EH Cayman. Although Apollo EH Cayman is organized under foreign law, its U.S. limited partners hold indirectly its entire equity interest in AIF Euro Holdings. For purposes of our ruling, where an investing fund's general partner or other controlling entity holds a direct or indirect equity interest in the investing fund, we attribute that equity interest to its ultimate owner(s). This methodology eliminates double counting equity interests in the investing funds and allows us to identify the citizenship of the ultimate equity investors. By contrast, our calculation of foreign voting interests held directly or indirectly in the investing funds includes the voting rights held by any intermediate foreign general partner or other controlling foreign entity situated in the vertical ownership chain between the investing fund and the ultimate principals of the fund.

[81] *Foreign Participation Order*, 12 FCC Rcd 23891.

[82] *See supra* ¶ 5.

countries hold an indirect 6.32 percent voting interest in Zeus *through* AIF Euro Holdings (25.26% x 25% = 6.32%).

26. As before, we do not apply the multiplier to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier with respect to the controlling interest holders of AIF Euro Holdings.[83] In this case, Apollo EH Cayman, Apollo Management V, L.P., the Investment Committee of Apollo Management V, L.P., Apollo Advisors V (EH), LLC, AIF V Management, Inc., and the members, managers, and shareholders of Apollo Advisors V (EH), LLC and AIF V Management, Inc. are the controlling interest holders in AIF Euro Holdings. As we stated in paragraph 22, Apollo EH Cayman and Apollo Advisors V (EH), LLC – the direct and indirect foreign general partners of AIF Euro Holdings – each has its principal place of business in a WTO Member country. Accordingly, we attribute to each of these foreign entities the 25 percent voting interest held by AIF Euro Holdings in Zeus, and we treat such investment as investment from WTO Member countries for purposes of our public interest analysis under section 310(b)(4) of the Act and the Commission's foreign ownership policies adopted in the *Foreign Participation Order*.[84] We also determine that the 25 percent voting interest we attribute to each of these foreign entities is ultimately controlled by U.S. citizens.[85]

C. MDP

27. We next calculate the foreign equity and voting interests held in Zeus *by* and *through* the sole MDP Investing Fund, MDCP IV Global Investments, L.P. ("MDCP Global"), and determine whether these interests are properly ascribed to WTO Member countries. As discussed below, we find that (1) the total foreign equity and voting interest held in Zeus *by* MDCP Global is 25 percent; (2) the total foreign equity interest held in Zeus *through* MDCP Global is 1.57 percent; and (3) the total foreign voting interest held in Zeus *through* MDCP Global is as follows: 1.57 percent (held in the form of direct limited partnership interests in MDCP Global) and 25 percent (held by each of the direct and indirect foreign general partners of MDCP Global). Based upon our review of the record, we determine that all these equity and voting interests are properly ascribed to WTO Member countries. We also determine that U.S. citizens and one domestic estate ultimately control the 25 percent voting interest that we attribute to the intermediate foreign general partners of MDCP Global.

28. ***Equity and Voting Interests Held By MDP***. MDCP Global is a Cayman Islands limited partnership that holds a 25 percent equity interest in Zeus.[86] According to the Applicants, 96.77 percent of the equity interest in MDCP Global is held by numerous limited partners, all of whom are citizens of, or are organized in, the United States or other WTO Member countries.[87] The remaining 3.23 percent of the equity interest in MDCP Global is held by its sole general partner, MDP IV Global GP, L.P., a limited partnership organized under the laws of the Cayman Islands. MDP IV Global GP, L.P. exercises

[83] *See* Order and Authorization ¶ 24.

[84] *Foreign Participation Order*, 12 FCC Rcd 23891.

[85] Apollo Management V, L.P. and AIF V Management, Inc. are organized in the United States and have their principal places of business in the United States. The members of the Investment Committee of Apollo Management V, L.P. and the members, managers, and shareholders of Apollo Advisors V (EH), LLC and AIF V Management, Inc. are all U.S. citizens. *See supra* ¶¶ 20-22.

[86] Consolidated Application Attachment 3 at 9.

[87] *Id*. The Applicants further state that these limited partners have no ability to control or be involved in the day-to-day business operations, activities and decisions of MDCP Global or, after completion of the proposed transaction, Zeus. Further, the applicants note that non-U.S. limited partners in MDCP Global account for approximately 9.49% of the equity in MDCP Global, which represents a 2.37% indirect equity and general voting interest in Zeus. *Id*; Nov. 30 Letter at 3.

exclusive control over MDCP Global.[88] The Applicants further state that 99.5 percent of the equity interests in MDP IV Global GP, L.P. is held by numerous limited partners – all of which are U.S. citizens, domestic estate planning vehicles, and a Delaware limited liability company, Madison Dearborn Partners, LLC.[89] The limited partners of Madison Dearborn Partners, LLC are all U.S. citizens.[90] The remaining 0.5 percent equity interest in MDP IV Global GP, L.P., in turn, is held by its sole general partner, MDP Global Investors Limited, a company organized under the laws of the Cayman Islands. MDP Global Investors Limited is owned and controlled by 13 U.S. citizens, each an MDP principal and one domestic estate.[91]

29. Based upon the information provided by the Applicants, we find that MDCP Global has its principal place of business in the United States or the Cayman Islands, which is a WTO Member country.[92] We also find that MDP IV Global GP, L.P. and MDP Global Investors Limited, which directly and indirectly control MDCP Global, have their principal places of business either in the United States or the Cayman Islands. The Applicants state that MDCP Global is organized in and has its world headquarters in the Cayman Islands,[93] and that its investment principals, officers and directors are citizens of the United States.[94] MDP IV Global GP, L.P. and MDP Global Investors Limited, which directly and indirectly control MDCP Global, likewise are organized in and have their world headquarters in the Cayman Islands.[95] Their officers and directors are U.S. citizens, and, ultimately, they are controlled by the U.S. shareholders of MDP Global Investors Limited.[96] We, therefore, find that the 25 percent equity interest held in Zeus by MDCP Global, a foreign limited partnership, is properly treated as WTO investment from either the United States or the Cayman Islands for purposes of our public interest analysis under section 310(b)(4) of the act and the Commission's foreign ownership policies adopted in the *Foreign Participation* Order.[97] Further, as the voting interest of MDCP Global is the same as its equity interest in Zeus, we attribute to MDCP Global a 25 percent voting interest in Zeus.

30. ***Equity and Voting Interests Held Through MDP***. The Applicants have submitted information for the record showing that 29 limited partners, which hold 6.26 percent of the equity interests in MDCP Global, have their principal places of business in WTO Member countries[98] and that

[88] Consolidated Application Attachment 3 at 9.

[89] Nov. 8 Letter at 15. The Applicants further state that these limited partners have no ability to control or be involved in the day-to-day business operations, activities, and decisions of MDP IV Global, L.P. Consolidated Application Attachment 3 at 9.

[90] *See* Consolidated Application Attachment 3 at 9.

[91] *See id*.; Nov. 8 Letter at 15-17. The principals of MDP Global Investors Limited also hold equity stakes in the MDP Private Equity Fund as limited partners of Madison Dearborn Partners, LLC, a limited partner of MDP IV Global GP, L.P. *See* Consolidated Application Attachment 3 at 9.

[92] *BANZHI Order*, 18 FCC Rcd at 23152, n.80 (citing *Cable & Wireless*,15 FCC Rcd at 3052, ¶ 7) (relying on an opinion provided by the U.S. Department of State to conclude that the 1994 Marrakesh Agreement Establishing the World Trade Organization applies to the United Kingdom's overseas territories)).

[93] *See* Consolidated Application Attachment 4 at 15.

[94] *See id*. MDCP Global has no tangible property or sales and revenues. *Id*.

[95] Consolidated Application Attachment 4 at 16.

[96] As we found in ¶ 28 above, the shareholders of MDP Global Investors Limited are citizens of the United States and one domestic estate.

[97] *Foreign Participation Order*, 12 FCC Rcd 23891.

[98] According to the Applicants, the 6.26% equity interest in MDCP Global consists of interests held by: (1) non-U.S. banks, pension/employee benefit plans, insurance companies organized in Denmark, Sweden, Switzerland, and the United Kingdom (2.35%); (2) non-U.S. foundations/endowments/trusts organized in Canada and the United

(continued....)

255 limited partners, which hold 90.51 percent of the equity interests in MDCP Global have their principal places of business in the United States.[99] Additionally, the Applicants have submitted information showing that MDP IV Global GP, L.P. holds a 3.23 percent general partnership interest in MDCP Global.[100] We attribute the entire 3.23 percent equity stake held by MDP IV Global GP, L.P. to U.S. investors for purposes of our ruling.[101] MDP IV Global GP, L.P.'s limited partners hold, indirectly, 99.5 percent of its 3.23 percent equity interest in MDCP Global. All of these limited partners are U.S. citizens. The remaining 0.5 percent equity interest in MDP IV Global GP, L.P. is held by its general partner, MDP Global Investors Limited. The shareholders of MDP Global Investors Limited hold, indirectly, 100 percent of its indirect economic interest in MDCP Global, and all of these shareholders are U.S. citizens.[102] Accordingly, we find that the total foreign equity interest in MDCP Global is 6.26 percent and that all this investment is properly ascribed to WTO Member countries. Using the multiplier, we find that 1.57 percent (6.26% x 25% = 1.57%) of the equity interests in Zeus are held by foreign investors from WTO Member countries *through* MDCP Global.

31. We next calculate the foreign voting interest to be held by the limited partners and controlling interest holders of MDCP Global. As described earlier, 6.26 percent of the equity interests in MDCP Global are held by numerous limited partners from WTO Member countries.[103] Because these limited partners do not have the ability to control or be involved in the day-to-day business operations, activities, or decisions of MDCP Global,[104] we calculate a voting interest for the foreign limited partners that is equal to their equity interest in MDCP Global. We then use the multiplier to calculate their voting interests in Zeus, diluting the foreign voting interest (6.26%) by MDCP Global's voting interest in Zeus (25%). We find that the foreign limited partners of MDCP Global hold a 1.57 percent voting interest in Zeus *through* MDCP Global (6.26% x 25% = 1.57%). We consider this 1.57 percent indirect foreign voting interest in Zeus as investment from WTO Member countries.

32. With respect to MDCP Global's controlling interest holders, we do not use the multiplier to calculate their voting interests in Zeus.[105] As we explained earlier, MDCP IV Global GP, L.P. is the

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Kingdom (1.39%); and (3) other institutional investors that have their principal place of business in Australia, Bermuda, Canada, Cayman Islands, Ireland, Switzerland, Singapore, and the United Kingdom (2.52%). Nov. 30 Letter Attachment 1 at 7-8.

[99] According to the Applicants, the 90.51% equity interest in MDCP Global consists of interests held by: (1) high net worth individuals who are U.S. citizens (1.33%); (2) banks, pension/employee benefit plans, and insurance companies organized in the United States (52.46%); (3) foundations/endowments/trusts that are organized in the United States (20.11%); and (4) other institutional investors with the principal place of business in the United States (16.61%). Nov. 30 Letter Attachment 1 at 7.

[100] *See supra* ¶ 28.

[101] For purposes of our ruling, where an investing fund's general partner or other controlling entity holds a direct or indirect equity interest in the investing fund, we attribute that equity interest to its ultimate owner(s). This methodology eliminates double counting equity interests in the investing funds and allows us to identify the citizenship of the ultimate equity investors. By contrast, our calculation of foreign voting interests held directly or indirectly in the investing funds includes the voting rights held by any intermediate foreign general partner or other controlling foreign entity situated in the vertical ownership chain between the investing fund and the ultimate principals of the fund.

[102] *See supra* ¶ 28.

[103] *See supra* ¶ 30.

[104] *See* Consolidated Application Attachment 3 at 9.

[105] *See* Order and Authorization ¶ 24.

general partner of and holds a 3.23 percent general partnership interest in MDCP Global.[106] MDP IV Global GP, L.P., in turn, is wholly owned and controlled by its sole general partner, MDP Global Investors Limited, which also holds a 0.5 percent general partnership interest in MDCP IV Global GP, L.P. MDP Global Investors Limited is owned and controlled by 13 citizens of the United States and one domestic estate.[107] Because MDCP IV Global GP, L.P. and MDP Global Investors Limited hold direct and indirect controlling interests in MDCP Global, we attribute to each of these foreign entities the full 25 percent voting interest held by MDCP Global in Zeus. As we previously stated in paragraph 29, we find that these entities have their principal places of business in the Cayman Islands or the United States. Accordingly, we find that the 25 percent voting interests held individually by MDP IV Global GP, L.P., by MDP Global Investors Limited, and, ultimately, by the U.S. shareholders of MDP Global Investors Limited are properly treated as investment from WTO Member countries for purposes of our public interest analysis under section 310(b)(4) of the Act and the Commission's foreign ownership policies adopted in the *Foreign Participation Order*.[108]

D. Permira

33. Finally, we calculate the foreign equity and voting interests held in Zeus *by* and *through* the Permira Investing Funds and determine whether these interests are properly ascribed to WTO Member countries. As discussed below, we find that (1) the total foreign equity and voting interest held in Zeus through the Permira Investing Funds is 25 percent; (2) the total foreign equity interest held in Zeus *through* the Permira Investing Funds is 15.65 percent;[109] and (3) the total foreign voting interest held in Zeus *through* the Permira Investing Funds is as follows: 15.26 percent (held in the form of direct and indirect limited partnership and other passive investment interests in the Permira Investing Funds)[110] and 25 percent (held by and through the intermediate general partners and other controlling interest holders of the investing funds). We ascribe the 25 percent voting interest held in Zeus by and through the intermediate general partners and other controlling interest holders of the Permira Investing Funds to the United Kingdom, a WTO Member country.

34. ***Equity and Voting Interests Held By Permira***. According to the Applicants, the Permira Investing Funds is comprised of five investing funds that collectively hold 25 percent[111] of the equity interests in Zeus: (1) Permira Europe III L.P. 1, a Guernsey[112] limited partnership (6.22%); (2) Permira Europe III L.P. 2, also a Guernsey limited partnership (17.95%); (3) Permira Europe III GmbH & Co. KG, a German limited partnership (0.23%); (4) Permira Europe III Co-Investment Scheme, a Guernsey employee investment plan (.15%); and (5) Permira Investments Limited, a Guernsey limited liability

[106] *See supra* ¶¶ 28 and 30.

[107] Consolidated Application Attachment 3 at 9. Applicants further note that no investor of MDP Global Investors Limited holds an interest of greater than 10% in, and no single investor has the ability to exercise positive control or negative control over, MDP Global Investors Limited. *Id*.

[108] *Foreign Participation Order*, 12 FCC Rcd 23891.

[109] Of the 15.65% indirect foreign equity interest held in Zeus *through* the Permira Investing Funds, 15.57% are ascribed to investors from WTO Member countries. The remaining 0.08% is ascribed to interests held in the Permira Investing Funds by a limited partner from Saudi Arabia, a non-WTO Member country. Nov. 30 Letter Attachment 1 at 10.

[110] Of the 15.26% indirect foreign voting interest held in Zeus *through* the Permira Investing Funds, 15.18% are ascribed to investors from WTO Member countries. The remaining 0.08% is ascribed to interests held in the funds by a limited partner from Saudi Arabia, a non-WTO member country. *See id*.

[111] The sum of the equity interests from these five funds is 24.99%. For ease of calculation, we rounded 24.99% to 25%.

[112] *See supra* note 34.

company (0.44%).[113]

35. The voting rights of the principals of the Permira Investing Funds are held through a complex ownership chain between the Permira Investing Funds and the private equity fund principals. The sole general partner of Permira Europe III L.P. 1 and Permira Europe III L.P. 2 is Permira Europe III G.P., L.P. ("Permira Europe III G.P."), a Guernsey limited partnership, which exercises exclusive control over these two funds.114 Specifically, Permira Europe III G.P. holds: (1) a non-economic general partnership interest and a *de minimis* special limited partnership interest in Permira Europe III L.P.1,[115] and (2) a 0.15 percent general partnership interest and *de minimis* special limited partnership interest in Permira Europe III L.P. 2.[116] Permira Europe III G.P. is controlled exclusively by its sole general partner, Permira Europe III GP Limited, a Guernsey limited company, which, in turn, is wholly owned by Permira Holdings Limited, a Guernsey limited company.[117] Permira Holdings Limited is widely held and ultimately controlled by 27 Permira shareholders and/or their estate planning vehicles, all of whom are U.S. citizens or citizens of WTO Member countries, and /or their estate planning vehicles or entities controlled by them or of which they are beneficiaries.[118] These shareholders are all U.S. citizens or citizens of WTO Member countries. The decisions of the Permira shareholders are made by majority vote. No single shareholder has *de jure* or *de facto* control, including negative control, of the voting interest held by Permira in Zeus.[119] Permira Europe III G.P. is also the managing limited partner of Permira Europe III GmbH and Co. KG.[120] Approximately 90 percent of the outstanding capital stock of Permira Investments Limited is held by Permira Holdings Limited, which exercises exclusive control over Permira Investments Limited.[121] Finally, the Permira Co-Investment Scheme is administered by Permira Europe III GP Limited.[122]

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[113] Consolidated Application at 13-14; Consolidated Application Attachment 3 at 7-9.

[114] Consolidated Application Attachment 3 at 7; Nov. 8 Letter Attachment 1 at 4.

[115] Nov. 8 Letter Attachment 1 at 4. The Applicants state that a special limited partner of a limited partnership is a limited partner that is entitled to a certain portion of the profit interests accruing to the limited partnership. In its capacity as a special limited partner of a limited partnership, a special limited partner has no ability to control or be involved in the day-to-day business operations, activities, or decisions of the limited partnership. Nov. 8 Letter at 11.

[116] Consolidated Application Attachment 3 at 7; Nov. 8 Letter Attachment 1 at 4. Applicants calculate a 0.00% interest for holdings they identify as *de minimis*. *See* Nov. 30 Letter Attachment 1 at 4.

[117] Consolidated Application Attachment 3 at 7-8; Nov. 8 Letter Attachment 1 at 4.

[118] Consolidated Application Attachment 3 at 8; Nov. 8 Letter at 10-11 & Attachment 1 at 4.

[119] Consolidated Application Attachment 3 at 7-8; Nov. 8 Letter at 11; Nov. 30 Letter at 1-2.

[120] Permira Europe III Verwaltungs GmbH ("Verwaltungs GmbH") is the sole general partner of Permira Europe III GmbH and Co. KG. The sole shareholder of Verwaltungs GmbH, however, is Permira Europe III G.P. The management rights and responsibilities for Permira Europe III GmbH and Co. KG, which are normally assigned to the general partner, are, in this case assigned to Permira Europe III G.P. pursuant to a partnership agreement. *See* Consolidated Application Attachment 3 at 8; Nov. 8 Letter Attachment 1 at 4. Verwaltungs GmbH appears to be minimally involved in the affairs of Permira Europe III GmbH and Co. KG. Moreover, the principals of Verwaltungs GmbH are all citizens of WTO Member countries. Accordingly, to simply our foreign ownership ruling, we will not calculate any voting interest for this entity, which also holds no equity interest in Permira Europe III GmbH and Co. KG. Nov. 8 Letter Attachment 1 at 4.

[121] Consolidated Application Attachment 3 at 8. The remaining 10% of the outstanding capital stock of Permira Investments Limited is held by non-partner executives and employees of Permira, all of whom are citizens of WTO Member countries. *Id.*

[122] The Permira Europe III Co-Investment Scheme is a passive investment vehicle for Permira partners, non-partner executives, and employees and/or vehicles or entities ultimately owned or controlled by them and/or their families or

(continued....)

36. Based upon our review of the information provided by the Applicants, we find that each of these Permira Investment Funds has its principal place of business in the United Kingdom, which is a WTO Member country. Four of the investing funds (Permira Europe III L.P. 1, Permira Europe III L.P. 2, Permira Europe III Co-Investment Scheme, and Permira Investments Limited) are organized and have their tangible properties in Guernsey.[123] Although Permira Europe III GmbH is organized in Germany, its tangible property is located in Guernsey.[124] Moreover, we find that each fund is owned and controlled, directly and indirectly, by entities that have their principal places of business in the United Kingdom (Permira Europe III G.P., Permira Europe III GP Limited, and Permira Holdings Limited) and, ultimately, by the 27 shareholders of Permira Holdings Limited, which are all citizens of, or entities organized in, WTO Member countries or the United States.[125] Accordingly, we find that the Permira Investment Funds' collective 25 percent equity investment in Zeus is properly treated as investment from a WTO Member country for purposes of our public interest analysis under section 310(b)(4) of the Act and the Commission's foreign ownership policies adopted in the *Foreign Participation* Order.[126] Further, as the voting interest of each of the Permira Investing Funds is the same as its equity interest in Zeus, we attribute to the Permira Investing Funds a collective 25 percent voting interest in Zeus.[127]

37. ***Equity and Voting Interests Held Through Permira.*** With respect the foreign equity interests held in Zeus *through* the Permira Investing Funds, we find that the vast majority of the investment interests in the funds are held by numerous limited partners or other passive investors that have no ability to control or be involved in the day-to-day business operations, activities, or decisions of any of the Permira Investing Funds, or after completion of the proposed transaction, Zeus.[128] The Applicants state that 100 percent of the equity interests in Permira Europe III L.P. 1 and 99.85 percent of the equity interests in Permira Europe III L.P. 2 are held in the form of limited partnership interests.[129] The remaining 0.15 percent equity interest in Permira Europe III L.P. 2 is held in the form of a general partnership interest by Permira Europe III G.P.[130] Additionally, 100 percent of the equity interests in Permira Europe III GmbH & Co. KG are held in the form of limited partnership interests.[131] Similarly,

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(...continued from previous page)
of which they and/or their families are beneficiaries, who have no ability to control or be involved in the day-to-day business activities, or decisions of the Permira Europe III Co-Investment Scheme. The ultimate investors in or beneficiaries of the Permira Europe III Co-Investment Scheme are all citizens of WTO Member countries. Consolidated Application Attachment 3 at 8-9.

[123] *See* Consolidated Application Attachment 4 at 4-8. The Applicants further provide that the investment principals, officers, and directors of Permira Investments Limited are British and Irish citizens. *See* Consolidated Application Attachment at 5.

[124] *See* Consolidated Application Attachment 4 at 5.

[125] *See* Consolidated Application Attachment 3 at 7-8; Nov. 8 Letter at 10-11; Nov. 30 Letter at 1.

[126] *See Foreign Participation Order,* 12 FCC Rcd 23891.

[127] *See supra* ¶ 5.

[128] *See* Consolidated Application at 23-30.

[129] Nov. 8 Letter Attachment 1 at 3.

[130] *Id.* at 4. The limited partners of Permira Europe III G.P. hold, indirectly, 100% of Permira Europe III G.P.'s 0.15% economic interest in Permira Europe III L.P. 2. *See id*. According to the Applicants, all the limited partners of Permira Europe III G.P. are citizens of WTO Member countries or are vehicles or entities ultimately owned or controlled by, or whose ultimate beneficiaries are citizens of, WTO Member countries. The Applicants represent that none of the limited partners has the ability to control or be involved in the day to day business operations, activities, or decisions of Permira Europe III G.P. or, after completion of the proposed transaction, Zeus. Consolidated Application Attachment 3 at 7.

[131] Nov. 30 Letter Attachment 3 at 8.

100 percent of the equity interests in Permira Europe III Co-Investment Scheme are held by Permira partners, non-partner executives, and employees and/or vehicles ultimately controlled by them and/or their families or of which they and/or their families are beneficiaries.[132] Finally, the Applicants state that 90 percent of the outstanding capital stock of Permira Investments Limited is held by Permira Holdings Limited, which exercises control over Permira Investments Limited. The remaining 10 percent outstanding capital stock of Permira Investments Limited is held by non-partner executives and employees of Permira, all of whom are citizens of WTO Member countries.[133]

38. We find, based upon a review of the record, that almost all of the foreign equity interests to be held indirectly in Zeus *through* the Permira Investing Funds are properly ascribed to WTO Member countries.[134] The Applicants have submitted information for the record showing that 211 limited partners, which hold 60.59 percent of the equity interests in the Permira Investing Funds, have their principal places of business in WTO Member countries,[135] and that 68 limited partners, which hold 37.42 percent of the equity interests in the Permira Investing Funds, have their principal places of business in the United States.[136] One limited partner from Saudi Arabia, a non-WTO Member country, holds a 0.3 percent equity interest in the Permira Investing Funds. Additionally, the Applicants have submitted information showing that two of the investing funds' controlling interest holders, Permira Europe III G.P. and Permira Holdings Limited, collectively hold 1.69 percent of the equity interests of the Permira Investing Funds.[137] One hundred percent of this economic interest is ultimately held, indirectly, by the limited partners of Permira Europe III G.P. and the 27 shareholders of Permira Holdings Limited, all of whom are from the United States (in the case of one Permira Holdings Limited shareholder) or other WTO Member

[132] The Applicants represent that all of these entities are citizens of WTO Member countries and that none of these entities has the ability to control or be involved in the day to day business operations, activities, or decisions of Permira Europe III Co-Investment Scheme. Permira Europe III Co-Investment Scheme is administered by Permira Europe III GP Limited. Consolidated Application Attachment 3 at 8-9.

[133] Consolidated Application Attachment 3 at 8.

[134] *See* Consolidated Application Attachment 3 at 7-9; Nov. 8 Letter at 14-15; Nov. 30 Letter at 1-4.

[135] According to the Applicants, this 60.59% interest in the Permira Investing Funds consists of interests held by: (1) high net worth individuals who are citizens of Australia, Belgium, Canada, Finland, France, Germany, Guernsey, Ireland, Italy, New Zealand, Norway, Spain, Sweden, Switzerland, and the United Kingdom (0.80%); (2) government agencies (non-pension) or entities controlled by agencies of the governments of Abu Dhabi (UAE), Canada, Kuwait, Oman, and Singapore (10.16%); (3) non-U.S. banks, pension/employee benefit plans, insurance companies organized in Austria, Belgium, Bermuda, Cayman Islands, Denmark, Finland, France, Germany, Italy, Japan, Luxembourg, Netherlands, Switzerland, and the United Kingdom (24.80%); non-U.S. foundations/endowments/trusts organized in Bermuda, Germany, Guernsey, Liechtenstein, Luxembourg, Panama, and Switzerland (2.29%); and (4) other institutional investors from Bermuda, Canada, Cayman Islands, Finland, Guernsey, Ireland, Isle of Man, Japan, Luxembourg, Netherlands, Switzerland, and the United Kingdom (22.45%). Nov. 30 Letter Attachment 1 at 9-10.

[136] According to the Applicants, this 37.42% equity interest in the Permira Investing Funds consists of interests held by: (1) high net worth individuals who are U.S. citizens (0.06%); (2) banks, pensions/employee benefit plans, and insurance companies that are organized in the United States (29.89%); (3) foundations/endowments/trusts that are organized in the United States (1.08%); and (4) other institutional investors with principal places of business in the United States (6.39%). Nov. 30 Letter Attachment 1 at 9.

[137] Permira Europe III G.P., the general partner of Permira Europe III L.P. 2, holds a 0.15% interest in Permira Europe III L.P. 2, which accounts for 71.8% of Permira's interest in Zeus. Additionally, Permira Holdings Limited holds 90% of the equity in Permira Investments Limited, which accounts for 1.76% of Permira's interest in Zeus. Permira Europe III G.P. and Permira Holdings Limited, therefore, hold a total 1.69% equity interest in the Permira Fund Group ([0.15% x 71.8%] + [90% x 1.76%] = [0.11% + 1.58%] = 1.69%). Nov. 30 Letter at 3 n.5. Both Permira Europe III G.P. and Permira Holdings Limited have their principal places of business in the United Kingdom, a WTO Member country. *See supra* ¶ 36.

countries.[138] Accordingly, we find that the total foreign equity interest from WTO Member countries to be held in the Permira Investing Funds is 62.28 percent.[139] This amount represents a 15.57 percent indirect foreign equity interest in Zeus (62.28% x 25% = 15.57%). We also find based on the information provided by the Applicants that 0.3 percent of the equity interests in the Permira Investing Funds does not have its principal place of business in the United States or a WTO Member country. This amount represents 0.08 percent of the foreign equity interests held indirectly in Zeus *through* the Permira Investing Funds (0.03% x 25% = 0.08%). Based on our calculations above, we find that the total foreign equity interest held in Zeus *through* the Permira Investing Funds is 15.65 percent (15.57% + 0.08% = 15.65%).

39. We next calculate the foreign voting interests to be held by the limited partners, other passive investors and controlling interest holders of the Permira Investing Funds. With respect to the limited partners and other passive investors that hold direct or indirect equity interests in the Permira Investing Funds, consistent with our foreign ownership case precedent, we calculate a voting interest for them that is equal to their respective equity interests in the Investing Funds because we find that their interests are properly insulated.[140] We then use the multiplier to calculate their respective voting interest in Zeus, multiplying each investor's voting interest in the Permira Investing Fund group by that group's voting interest in Zeus. As described earlier, we calculated for the funds a 62.28 percent equity interest held directly or indirectly by investors from WTO Member countries. The vast majority of this amount, 60.70 percent, is held directly or indirectly by the funds' limited partners and other passive investors.[141] We also attributed a 0.3 percent equity interest in the funds to a limited partner that does not have its principal place of business in the United States or a WTO Member country. Using the multiplier, we find that these foreign limited partners or other passive investors from WTO Member countries hold an indirect 15.18 percent (60.70% x 25% = 15.18%) voting interest in Zeus *through* the Permira Investing Funds. We further find that the foreign limited partner from a non-WTO Member country holds a 0.08 percent voting interest in Zeus *through* the Permira Investing Funds (0.03% x 25% = 0.08%). Accordingly, we find that the total foreign voting interest held in Zeus *through* the Permira Investing Funds is 15.26 percent held in the form of direct and indirect limited partnership and other passive investment interests in the Permira Investing Funds (15.18% + 0.08% = 15.26%).

40. With respect to the controlling interest holders of the Permira Investing Funds, we do not apply the multiplier to any link in the vertical ownership chain that constitutes a controlling interest in the

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[138] Nov. 8 Letter at 15 & Attachment 1 at 4. For purposes of our ruling, where an investing fund's general partner or other controlling entity holds a direct or indirect equity interest in the investing fund, we attribute that equity interest to its ultimate owner(s). This methodology eliminates double counting equity interests in the investing funds and allows us to identify the citizenship of the ultimate equity investors. By contrast, our calculation of foreign voting interests held directly or indirectly in the investing funds includes the voting rights held by any intermediate foreign general partner or other controlling foreign entity situated in the vertical ownership chain between the investing fund and the ultimate principals of the fund.

[139] This amount represents the sum of the foreign equity interests held in the Permira Investing Funds both directly, by the Investing Funds' foreign limited partners (60.59%), and indirectly, through the Investing Funds' controlling interest holders (1.69%), for a total 62.28% foreign equity interest (60.59% + 1.69% = 62.28%). All of this investment is properly ascribed to the United States (in the case of one Permira shareholder) or other WTO Member countries. *See supra* note 136 and accompanying text. For ease of calculation, we treat the entire 1.69% equity interest held through the Investing Funds' controlling interest holders as foreign, WTO investment.

[140] *See supra* ¶ 5.

[141] The remaining 1.58% equity interest in the Permira Investing Funds is held by Permira Holdings Limited, which ultimately controls each of the Permira Investing Funds and whose voting interest we will count in its entirety as a controlling interest holder in the fund. *See supra* note 137 (calculating the equity interest held in the Permira Investing Funds by Permira Holdings Limited).

company positioned in the next lower tier.[142] As explained previously in paragraph 35, the controlling interest holders in the Permira Investing Funds are Permira Europe III G.P., Permira Europe III GP Limited, and, in turn, Permira Holdings Limited and its 27 shareholders.[143] Consistent with our foreign ownership policies and precedent, we attribute to Permira Europe III G.P. a 24.4 percent voting interest, which is the sum of the voting interests held by Permira Europe III L.P. 1 (6.22%), Permira Europe III L.P. 2 (17.95%), and Permira Europe III Verwaltungs GmbH (0.23%) in Zeus. We also attribute to Permira Europe III G.P. Limited a 24.55 percent voting interest, which is the sum of the indirect foreign voting interests held by or attributed to Permira Europe III G.P. (24.4%), and Permira Europe III Co-Investment Scheme (0.15%). We next attribute to Permira Holdings Limited and its 27 shareholders the indirect voting interests attributed to or held by Permira Europe III GP Limited (24.55%) and Permira Investments Limited (0.44%). Accordingly, the total indirect voting interest attributed to Permira Holdings Limited and its 27 shareholders is 24.99 percent, which rounds to 25 percent (24.55% + 0.44% = 24.99%). As we found previously in paragraph 36, Permira Europe III G.P., Permira Europe III GP Limited, and Permira Holdings Limited each has its principal place of business in the United Kingdom, and each Permira Holdings Limited shareholder is from the United States or another WTO Member country. Accordingly, we find that the voting interests held individually by Permira Europe III G.P., by Permira Europe III GP Limited, and by Permira Holdings Limited and its shareholders are properly treated as investment from WTO Member countries for purposes of our public interest analysis under Section 310(b)(4) of the Act and the Commission's foreign ownership policies adopted in the *Foreign Participation Order*.[144]

III. SUMMARY OF CALCULATIONS

	Apax	Apollo	MDP	Permira
Foreign Interests Held *By* the Investing Funds in Zeus				
Equity	20.58%	25.00%	25.00%	25.00%
Voting	25.00%*	25.00%	25.00%	25.00%
	20.58%†			
Foreign Interests Held in Zeus *Through* the Investing Funds				
Equity	11.61%	6.32%	1.57%	15.65%
Voting (Limited Partnerships and Other Passive Investors)	11.61%	6.32%	1.57%	15.26%
Voting (Controlling Interest Holders)	23.20%*	25.00%‡	25.00%‡	25.00%
	20.00%†			

**With respect to the election of Zeus Board of Directors, see ¶¶ 6, 10, 14.*
† *With respect to all other matters, see ¶¶ 6, 17.*
‡ *Note: U.S. citizens ultimately control the voting interests attributed to the intermediate foreign controlling interest holders of these funds.*

[142] *See* Order and Authorization ¶ 24.

[143] *See supra* ¶ 35. Consolidated Application Attachment 3 at 7-8; Nov. 8 Letter at 15 (noting that the Permira principals are citizens of the following WTO Member countries: United Kingdom, Germany, Italy, Belgium, Finland, France, Singapore, and the United States).

[144] *See Foreign Participation Order*, 12 FCC Rcd 23891.

Federal Communications Commission

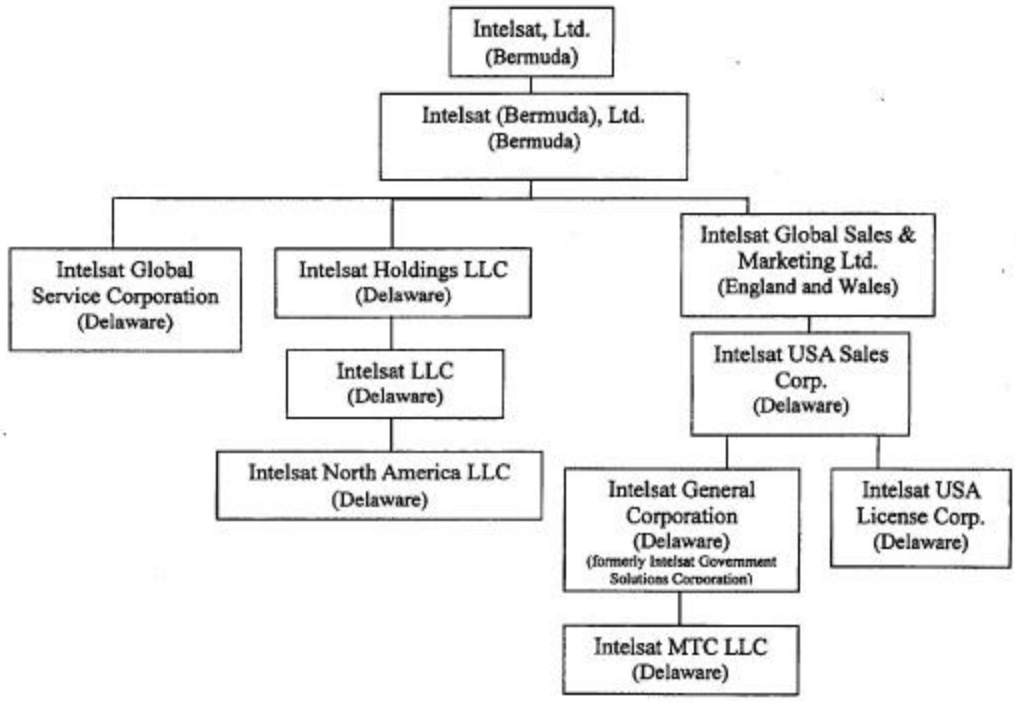
Appendix C

Ownership Charts

See November 30 Letter, at 5; Consolidated Application, at Attachment 3, Annex A, 1; and November 8 Letter, at Attachment 1, 1-5.

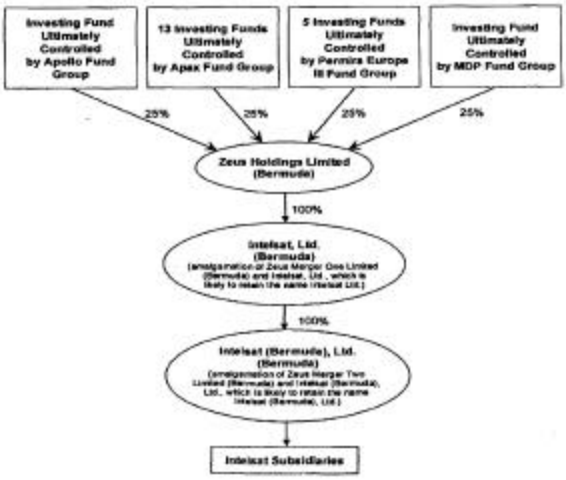
Ms. Marlene Dortch
November 30, 2004
Page 5

INTELSAT CORPORATE STRUCTURE



Annex A to Attachment 3

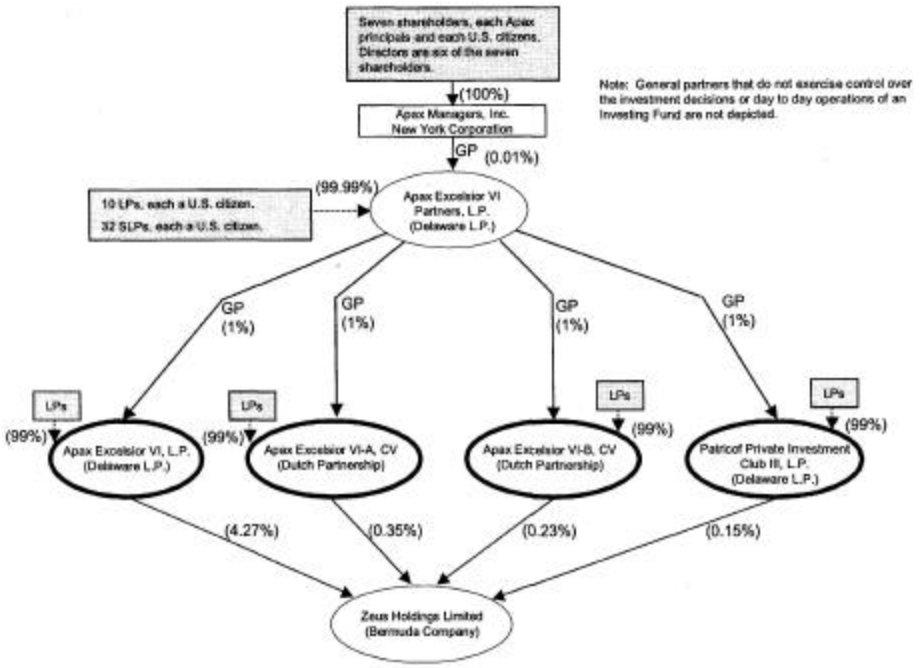
OWNERSHIP, MANAGEMENT AND CONTROL OF THE PROPOSED TRANSFEREES



1

Attachment 1

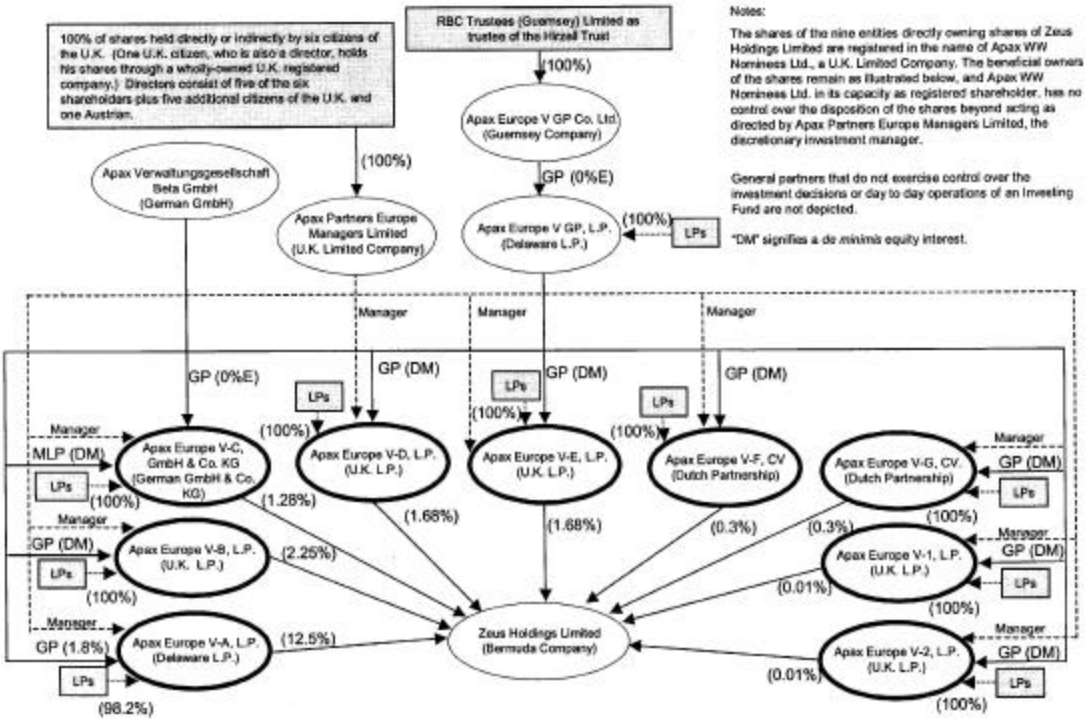
Apax Excelsior VI



1

Attachment 1

Apax Europe V



Notes:

The shares of the nine entities directly owning shares of Zeus Holdings Limited are registered in the name of Apax WW Nominees Ltd., a U.K. Limited Company. The beneficial owners of the shares remain as illustrated below, and Apax WW Nominees Ltd. in its capacity as registered shareholder, has no control over the disposition of the shares beyond acting as directed by Apax Partners Europe Managers Limited, the discretionary investment manager.

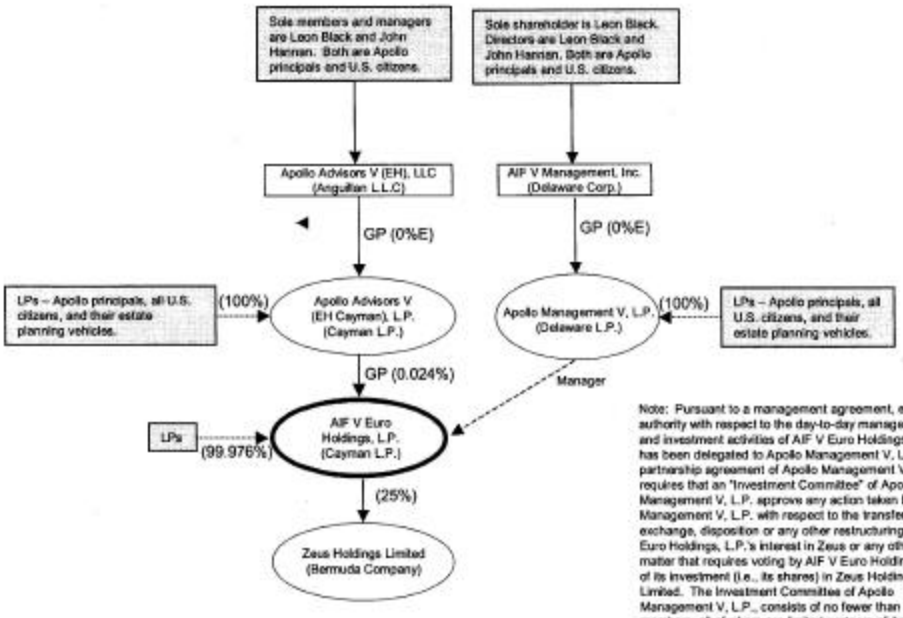
General partners that do not exercise control over the investment decisions or day to day operations of an investing Fund are not depicted.

"DM" signifies a de minimis equity interest.

2

Attachment 1

Apollo



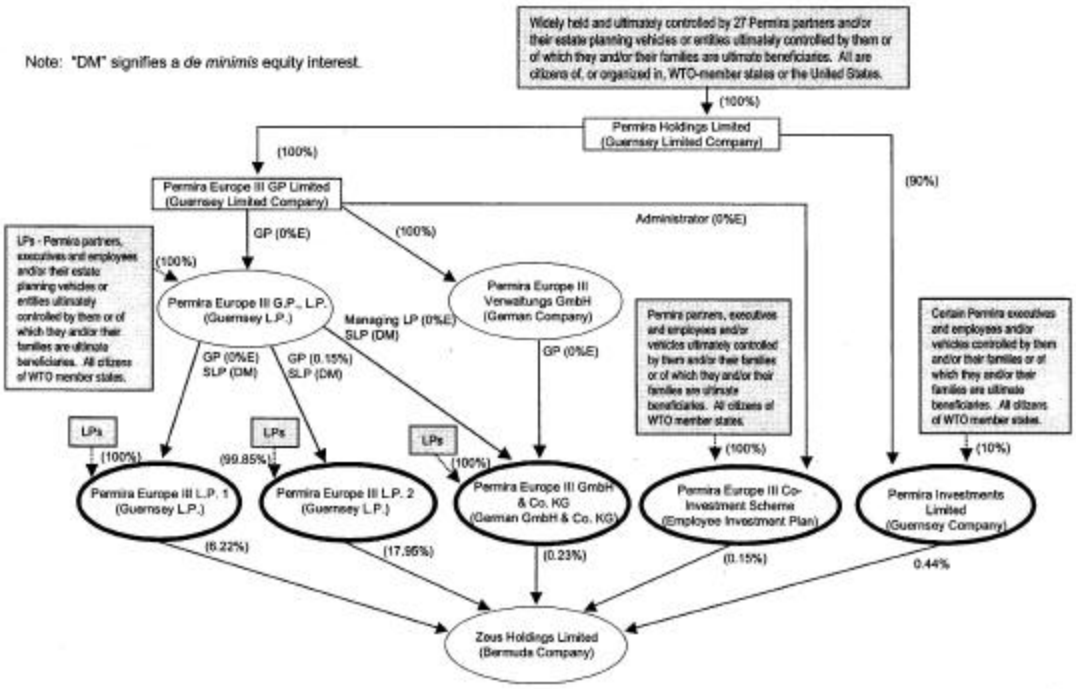
Note: Pursuant to a management agreement, exclusive authority with respect to the day-to-day management and investment activities of AIF V Euro Holdings, L.P. has been delegated to Apollo Management V, L.P. The partnership agreement of Apollo Management V, L.P. requires that an "Investment Committee" of Apollo Management V, L.P. approve any action taken by Apollo Management V, L.P. with respect to the transfer, exchange, disposition or any other restructuring of AIF V Euro Holdings, L.P.'s interest in Zeus or any other matter that requires voting by AIF V Euro Holdings, L.P. of its investment (i.e., its shares) in Zeus Holdings Limited. The Investment Committee of Apollo Management V, L.P., consists of no fewer than eleven members, all of whom are limited partners of Apollo EH Cayman and some of whom are also limited partners of Apollo Management V, L.P., and none of whom have a 10% or greater vote with respect to any decision taken or approval granted by the Investment Committee.

3

Attachment 1

Permira

Note: "DM" signifies a *de minimis* equity interest.



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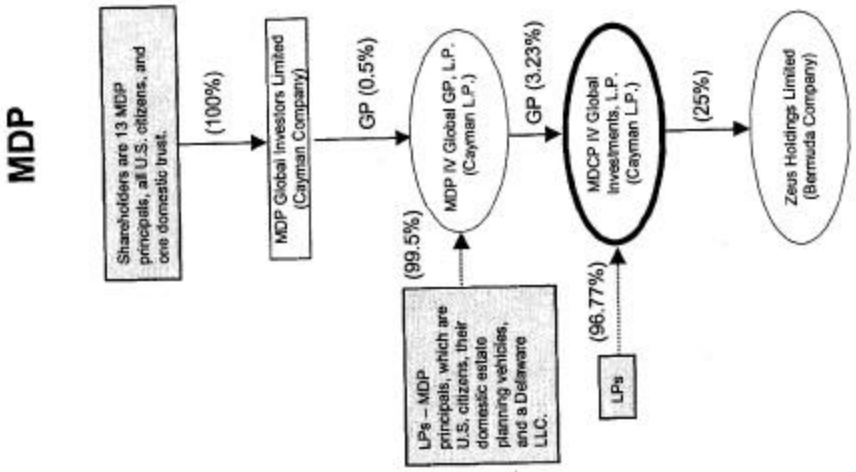
Attachment 1



5

Federal Communications Commission

Appendix D

Executive Branch Petition to Adopt Conditions and Zeus/Intelsat Commitment Letter

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	
Intelsat, Ltd., Transferor	IB Docket No. 04-366
and	IB File Nos. SAT-T/C-20040903-00167; SES-T/C-20040903-01332; SES-T/C-20040903-01331; SES-T/C-20040903-01330; SES-T/C-20040903-01328; SAT-T/C-20040903-00166; ITC-T/C-20040907-00357; ITC-T/C-20040907-00356; ISP-PDR-20040907-00008
Zeus Holdings Limited, Transferee	
Consolidated Application for Consent to Transfers of Control of Holders of Title II and Title III Authorizations	
and	
Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, As Amended	WTB File No. 0001855699
	OET File No. 0030-EX-TU-2004

PETITION TO ADOPT CONDITIONS TO AUTHORIZATIONS AND LICENSES

The United States Department of Justice ("DOJ"), including the Federal Bureau of Investigation ("FBI"), together with the United States Department of Homeland Security ("DHS"), and the United States Department of Defense, (collectively, the "Agencies"), respectfully submit this Petition to Adopt Conditions to Authorizations and Licenses ("Petition"), pursuant to Section 1.41 of the Federal Communications Commission's ("FCC" or "Commission") rules.[1] Through this Petition, the Agencies advise the Commission that they have no objection to the Commission granting the applications filed in the above-referenced

[1] 47 C.F.R. § 1.41.

proceeding, provided that the Commission conditions the grant of the applications on Intelsat, Ltd. ("Intelsat") and Zeus Holdings Limited ("Zeus") (jointly, the "Applicants") abiding by the commitments and undertakings contained in their November 24, 2004 letter to Laura H. Parsky, Tina W. Gabbrielli, and Patrick W. Kelley ("Letter") attached hereto as Exhibit 1.

In the above-captioned proceeding, the Applicants filed a consolidated application with the FCC seeking consent to transfer control of Intelsat's FCC-licensed subsidiaries, which hold Title II and Title III authorizations, from Intelsat to Zeus.[2] The Applicants also sought a declaratory ruling that the foreign ownership of Intelsat following consummation of the proposed transaction will serve the public interest under Section 310 of the Communications Act of 1934, as amended.[3]

As the Commission is aware, the Agencies have taken the position that their ability to satisfy their obligations to protect the national security, enforce the laws, and preserve the safety of the public could be impaired by transactions in which foreign entities will own or operate a part of the U.S. telecommunications system, or in which foreign-located facilities will be used to provide domestic telecommunications services to U.S. customers. After discussions with the Applicants' representatives in connection with the proposed acquisition and transfer of control, the Agencies have concluded that the commitments set forth in the Letter are sufficient to ensure that the Agencies and other entities with responsibility for enforcing the law, protecting the national security, and preserving public safety can proceed in a legal, secure, and confidential manner to satisfy these responsibilities. Accordingly, the Agencies hereby advise the

[2] *Intelsat, Ltd. and Zeus Holdings Limited, Consolidated Application for Consent to Transfer of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, As Amended*, IB Docket No. 04-366 (filed Sept. 3, 2004).

[3] *Id.*

Commission that they have no objection to the Commission granting the above-referenced applications for consent to transfers of control, provided that the Commission conditions its consent on compliance by the Applicants with the commitments set forth in the Letter.

The Agencies are authorized to state that the Applicants do not object to the grant of this Petition.

Respectfully submitted,

John R. LeBlebe for

Laura H. Parsky
Deputy Assistant Attorney General
Office of the Assistant Attorney General
Criminal Division – Room 2113
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 616-3928

Patrick W. Kelley
Deputy General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20532
(202) 324-6829

Tina W. Gabbrielli
Director of Intelligence Coordination and
Special Infrastructure Protection Programs
Office of Infrastructure Protection
U.S. Department of Homeland Security
Washington, D.C. 20528
(202) 282-8582

Carl Wayne Smith
General Counsel
Defense Information Systems Agency
P.O. Box 4502
Arlington, VA 22204-4502
(703) 607-6091

November 24, 2004

Commission that they have no objection to the Commission granting the above-referenced applications for consent to transfers of control, provided that the Commission conditions its consent on compliance by the Applicants with the commitments set forth in the Letter.

The Agencies are authorized to state that the Applicants do not object to the grant of this Petition.

Respectfully submitted,

Laura H. Parsky
Deputy Assistant Attorney General
Office of the Assistant Attorney General
Criminal Division – Room 2113
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 616-3928

Patrick W. Kelley
Deputy General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20532
(202) 324-6829

Tina W. Gabbrielli
Director of Intelligence Coordination and
Special Infrastructure Protection Programs
Office of Infrastructure Protection
U.S. Department of Homeland Security
Washington, D.C. 20528
(202) 282-8582

Carl Wayne Smith
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Defense Information Systems Agency
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November 24, 2004

Commission that they have no objection to the Commission granting the above-referenced applications for consent to transfers of control, provided that the Commission conditions its consent on compliance by the Applicants with the commitments set forth in the Letter.

The Agencies are authorized to state that the Applicants do not object to the grant of this Petition.

Respectfully submitted,

Patrick W. Kelley /FOP

Laura H. Parsky
Deputy Assistant Attorney General
Office of the Assistant Attorney General
Criminal Division – Room 2113
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 616-3928

Patrick W. Kelley
Deputy General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20532
(202) 324-6829

Tina W. Gabbrielli
Director of Intelligence Coordination and
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November 24, 2004

Commission that they have no objection to the Commission granting the above-referenced applications for consent to transfers of control, provided that the Commission conditions its consent on compliance by the Applicants with the commitments set forth in the Letter.

The Agencies are authorized to state that the Applicants do not object to the grant of this Petition.

Respectfully submitted,

Laura H. Parsky
Deputy Assistant Attorney General
Office of the Assistant Attorney General
Criminal Division – Room 2113
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 616-3928

Patrick W. Kelley
Deputy General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20532
(202) 324-6829

Tina W. Gabbrielli
Director of Intelligence Coordination and
Special Infrastructure Protection Programs
Office of Infrastructure Protection
U.S. Department of Homeland Security
Washington, D.C. 20528
(202) 282-8582

Carl Wayne Smith
General Counsel
Defense Information Systems Agency
P.O. Box 4502
Arlington, VA 22204-4502
(703) 607-6091

November 24, 2004

EXHIBIT 1

November 24, 2004

Ms. Laura H. Parsky
Deputy Assistant Attorney General
Office of the Assistant Attorney General
Criminal Division – Room 2113
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Ms. Tina W. Gabbrielli
Director of Intelligence Coordination and
Special Infrastructure Protection Programs
Office of Infrastructure Protection
U.S. Department of Homeland Security
Washington, DC 20528

Mr. Patrick W. Kelley
Deputy General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535

Re: Proposed Acquisition of Intelsat, Ltd. by Zeus Holdings Limited

Dear Ms. Parsky, Ms. Gabbrielli and Mr. Kelley:

On behalf of our clients, Zeus Holdings Limited ("Zeus") and Intelsat, Ltd. ("Intelsat"), we appreciate the opportunity to confer with representatives of the Federal Bureau of Investigation ("FBI"), the Department of Justice ("DOJ"), and the Department of Homeland Security ("DHS") (collectively, the "Agencies") about Zeus' proposed acquisition of Intelsat (the "Proposed Transaction"). This letter responds to your request for certain information about the Proposed Transaction and the Federal Communications Commission ("FCC") authorizations that Zeus intends to acquire.

I. Introduction

On September 3, 2004, Intelsat and Zeus filed a consolidated application with the FCC for: (i) consent to transfer control of the Intelsat subsidiaries that hold Title II and Title III authorizations; and (ii) a declaratory ruling that the foreign ownership

of Intelsat following consummation of the proposed transaction will serve the public interest under Section 310 of the Communications Act of 1934, as amended.[1] This transfer of control will be carried out in connection with the proposed amalgamation of Intelsat with Zeus. As further discussed below, upon closing of the Proposed Transaction, Zeus undertakes to: (1) continue the commitments made to the Agencies by Intelsat in previous Intelsat transactions regarding the Proxy Agreement covering Intelsat General Corporation ("Intelsat General")[2] and the Security Committee appointed by the Board of Directors of Intelsat Global Service Corporation ("IGSC");[3] (2) notify the Agencies prior to Intelsat providing common carrier switched services, even where no additional FCC authorization or license would be required; and (3) notify the Agencies of the initial composition of the boards of directors of Zeus, Intelsat, Ltd., and Intelsat (Bermuda) Ltd. and any subsequent changes in the membership of those companies' boards of directors. Based on these undertakings and the fact that Intelsat does not plan to provide common carrier switched services either before the Proposed Transaction or under Zeus' ownership, the parties to the Proposed Transaction consider it unlikely that law enforcement or other U.S. government authorities would find it useful to work through Zeus and Intelsat to address surveillance concerns and related matters.

II. Overview of the Parties

A. Intelsat

Intelsat is a Bermuda company that owns and operates a global satellite system that provides bulk space segment capacity to other companies for a wide array of

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[1] *Intelsat, Ltd. and Zeus Holdings Limited, Consolidated Application for Consent to Transfer of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, As Amended*, IB Docket No. 04-366 at 32 (filed Sept. 3, 2004).

[2] *Applications of Comsat General Corporation, Lockheed Martin Global Telecommunications LLC, Comsat New Services, Inc., Intelsat LLC, and Intelsat MTC LLC to Assign Licenses and Authorizations and Request for a Declaratory Ruling on Foreign Ownership*, Public Notice, DA 04-3418 at App. B (rel. Oct. 27, 2004) (the "Intelsat/ComGen Transaction"). Effective November 12, 2004, Intelsat Government Solutions Corporation changed its name to Intelsat General Corporation.

[3] *Id. See Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), Assignors and Intelsat North America, LLC, Assignee, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934*, Order and Authorization, 19 FCC Rcd 2404 at Exh. 1 (Int'l Bur. 2004) ("*Intelsat/Loral Order*").

communications services, including voice, video, data, and Internet connections. The Intelsat fleet of satellites offers this capacity in approximately 200 countries and territories, serving customers that range from large telecommunications carriers and broadcasters to corporate networks and Internet service providers. These customers include distributors that resell bulk satellite capacity, as well as customers that lease satellite capacity for their own use.

B. Zeus

Zeus is a Bermuda company formed by a consortium of four private equity funds (each a "Private Equity Fund" and, collectively, the "Private Equity Funds"). The Private Equity Funds are ultimately controlled by individuals (and in some cases their estate planning vehicles) (hereinafter referred to collectively as "Principals") affiliated with the following private equity fund firms: Apax Partners Worldwide, LLP and Apax Partners, Inc. (together, "Apax"), Apollo Management V, L.P. ("Apollo"), Madison Dearborn Partners ("MDP"), and Permira Advisors LLC and other advisory entities ("Permira"). Apax, Apollo, MDP and Permira are among the world's leading private equity investment firms, which collectively manage an aggregate of approximately $47 billion in equity capital investments in a variety of industries, both domestically and internationally.

III. Description of the Proposed Transaction

On August 16, 2004, Intelsat and its wholly owned subsidiary, Intelsat (Bermuda), Ltd., entered into a transaction agreement and plan of amalgamation (the "Transaction Agreement") with Zeus, its wholly owned subsidiary, Zeus Merger One Limited, a Bermuda company, and Zeus Merger Two Limited, a Bermuda company that is wholly owned by Zeus Merger One Limited. Pursuant to the Transaction Agreement, the Private Equity Funds indirectly will acquire 100% of the outstanding capital stock of Intelsat, Ltd. Each of the Private Equity Funds holds 25% of the equity interests in Zeus. Zeus, in turn, will own 100% of the outstanding capital stock of Intelsat, Ltd, and thus, each of the Private Equity Funds will indirectly own 25% of the equity interests in Intelsat, Ltd. The Proposed Transaction will be funded with a combination of debt and equity financing for which commitment letters are in place. The aggregate value of the Proposed Transaction, including the assumption by Zeus of approximately $2 billion of outstanding Intelsat debt, is approximately $5 billion.

The Proposed Transaction will take place in two phases, which will occur upon shareholder approval and satisfaction of other closing conditions set forth in the

Transaction Agreement. In Phase One, Intelsat, Ltd. and Zeus Merger One Limited will amalgamate (the "Amalgamation") and will continue as a Bermuda exempted company.[4] After consummation of the Amalgamation, the amalgamated entity will be a wholly owned subsidiary of Zeus. In Phase Two, Intelsat (Bermuda), Ltd. and Zeus Merger Two Limited will amalgamate (the "Sub-Amalgamation") and will continue as a Bermuda exempted company. The Sub-Amalgamation may occur concurrently with or after the Amalgamation, at the election of Zeus. After consummation of the Sub-Amalgamation, the sub-amalgamated entity resulting from Phase Two will be a wholly owned subsidiary of the amalgamated entity resulting from Phase One.

Importantly, the parties to the Proposed Transaction have undertaken to continue to administer Intelsat General, a U.S. subsidiary of Intelsat that acquired the majority of U.S. government and certain other customer contracts associated with the Intelsat/ComGen Transaction, pursuant to a proxy agreement with the U.S. Defense Security Service ("DSS"), a Department of Defense agency. Specifically, in conjunction with its acquisition of the COMSAT General Business assets, Intelsat negotiated a proxy agreement (the "Proxy Agreement") with DSS to ensure that no impermissible foreign ownership, control, or influence is exercised over the U.S. government contracts acquired. Under the Proxy Agreement, three Proxy Holders, who are resident U.S. citizens and have no past or present affiliation with Intelsat, will serve as directors of Intelsat General, and will exercise all of the voting power in Intelsat's shares of Intelsat General and Intelsat General's shares in its subsidiaries. The parties to the Proposed Transaction will maintain a proxy agreement for Intelsat General and work with DSS to modify the existing Proxy Agreement to obtain DSS approval.

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[4] Under Bermuda law, an amalgamation is a process, similar to a merger, in which two companies combine and become a single company via an amalgamation agreement approved by the companies' boards of directors and shareholders. Although a single company emerges as the surviving entity, Bermuda law imputes that both amalgamating companies continue to "survive" in the amalgamation. The amalgamation becomes effective upon the issuance of a certificate of amalgamation by the Bermuda Registrar. Upon issuance of the certificate, the amalgamated company has the following characteristics under Bermuda law: (i) the property of each amalgamating company becomes the property of the amalgamated Company; (ii) the amalgamated company continues to be liable for the obligations of each amalgamating company; (iii) an existing claim against, or liability of, an amalgamating company shall be unaffected; (iv) civil, criminal, or administrative actions or proceedings pending by or against an amalgamating company may continue to be prosecuted by or against the amalgamated company; and (v) a conviction against, or judgment in favor of (or against), an amalgamating company may be enforced by, or against, the amalgamated company. The amalgamated company is likely to keep the name Intelsat, Ltd.

In addition, in connection with its acquisition of certain assets of Loral Satellite, Inc. and Loral SpaceCom Corporation (jointly, "Loral"), Intelsat established a security committee (the "Security Committee") in IGSC, a U.S. subsidiary.[5] The Security Committee, which is composed exclusively of U.S. citizens, has sole jurisdiction over security issues. By agreement among Intelsat, Ltd., IGSC, and the Agencies, the Security Committee also serves as the locus for U.S. government requests for cooperation on any law enforcement, national security, public safety, or infrastructure protection issues, including issues involving any of the assets acquired from the COMSAT General Businesses. The Proposed Transaction will not alter the commitment to maintain the Security Committee as contemplated by the *Intelsat/Loral Order* and the Intelsat/ComGen Transaction.

The Proposed Transaction also will not change Intelsat's plans with respect to the provision of common carrier switched services. Intelsat does not plan to provide common carrier switched services either before or after the Proposed Transaction, and Zeus has no plans to change this arrangement post-transaction. Moreover, as agreed in the Intelsat/ComGen Transaction, Intelsat will notify the Agencies before providing common carrier switched services, even where no additional FCC authorization or license would be required to provide such service.

IV. Ownership Structure Post-Transaction

Zeus is wholly owned by twenty entities (including U.S., Cayman Islands, Dutch, German, Guernsey, and U.K. limited partnerships, a German corporation, a Guernsey company, and a Guernsey employee investment plan) (collectively, the "Investing Funds").[6] The Investing Funds are directly owned by: (i) several hundred limited partners ("Limited Partners") or other passive investors, each of which has solely an economic interest in the Investing Funds and none of which has any ability to control an Investing Fund, Zeus or, upon completion of the Proposed Transaction, Intelsat; and (ii) general partners ("General Partners") or similar entities which are responsible for managing each of the Investing Funds.[7] No

[5] *Intelsat/Loral Order* at Exh. 1. Exhibit 1 of the *Intelsat/Loral Order* contains the text of an amendment to IGSC's by-laws to establish the Security Committee. *See id.* The IGSC by-laws have been modified to account for the Proposed Transaction and are attached as Attachment 1 to this letter.

[6] The chart appended as Attachment 2 illustrates relevant portions of the post-transaction ownership structure.

[7] The economic interests held by General Partners are usually in *de minimis* amounts, and in no case does the economic interest of a General Partner in an Investing Fund exceed 1.8%, except for MDP

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Limited Partner in any of the twenty Investing Funds will hold an equity interest in any of the Investing Funds which, when diluted by the Investing Funds' respective interests in Zeus, is equivalent to an equity interest of five percent or greater in Zeus. Limited Partners of the Investing Funds that are organized in the United States hold a total indirect equity interest in Zeus of approximately 63.64%, and non-U.S. Limited Partners in the Investing Funds hold a total indirect equity interest in Zeus of approximately 36.36%. Non-U.S., non-WTO Limited Partners in the Investing Funds hold a total indirect equity interest in Zeus of less than one percent. As noted above, none of the Limited Partners is in a position to control Zeus or Intelsat.

Control over the Investing Funds and, ultimately, control over the voting rights inherent in the shares of Zeus, rests with Principals affiliated with the fund management companies that are the Investing Funds' promoters or sponsors. Specifically, the Investing Funds are managed and ultimately controlled by four private equity fund groups: (i) the Apax Europe V and Apax Excelsior VI fund groups, which are advised respectively by Principals of Apax Partners Worldwide, LLP and Apax Partners, Inc.; (ii) the Apollo V fund group, which is advised by Principals of Apollo Management V, L.P.; (iii) the MDP Global Investors Limited fund group, which is advised by Principals of Madison Dearborn Partners; and (iv) the Permira Europe III fund group, which is advised by Principals of Permira Advisors LLC and other advisory entities.

Through their control of the Investing Funds, the Principals of each Private Equity Fund will indirectly control 25% of the outstanding capital stock of Zeus and will effectively have the right to appoint one of the four members of the Zeus board of directors.[8] The board of directors manages the business of Zeus and exercises the powers of the company, generally. Decisions by the Zeus directors require approval by three of the four directors, with the exception of any act that will treat any one of the Investing Funds differently from the treatment of the other Investing Funds, which shall require the approval of the Private Equity Fund that controls the

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(Continued . . .)
IV Global GP, L.P., which holds a 3.23% interest in MDCP IV Global Investments, L.P., and Permira Holdings Limited, which holds a 90% interest in Permira Investments Limited, which represents an indirect interest in Zeus of 0.40%.

[8] There are three classes of shares of stock in Zeus, each of which has different voting rights with respect to the election of directors. Ultimately, however, each Private Equity Fund holds a 25% voting interest with respect to both the election of directors and other matters.

differently treated Investing Fund. Thus, the two directors appointed by the Private Equity Funds controlled by foreign persons are unable to take any action with respect to Zeus without the vote of at least one of the directors appointed by the Private Equity Funds controlled by U.S. persons (or vice versa).[9]

V. FCC Authorizations

Several of Intelsat's U.S. subsidiaries hold Title II common carrier authorizations. In addition, several of Intelsat's U.S. subsidiaries also hold Title III licenses, including space station authorizations, earth station licenses, and wireless licenses.[10] Intelsat does not currently provide and has no plans to provide common carrier switched services using the Title II authorizations or the equipment authorized under the Title III licenses either before or after the Proposed Transaction. Zeus has no plans to change these service arrangements post-closing. Moreover, Intelsat will notify the Agencies before providing such services, even where no further FCC authorization is required. Therefore, Intelsat and Zeus consider that they would be unlikely candidates for requests to assist U.S. law enforcement agencies with electronic surveillance.

* * *

In the event that there is a need to use Intelsat's facilities to conduct lawfully authorized surveillance, Intelsat and Zeus will take all reasonable measures to assist and support the FBI or any other United States federal, state or local agency with law enforcement or national security responsibilities in conducting, in a secure and efficient manner, lawfully authorized electronic surveillance. Such assistance shall include, but not be limited to, disclosure, if necessary, of technical and engineering information relating to the design, maintenance or operation of Intelsat's systems. Intelsat and the agency seeking the cooperation will work together in determining what is reasonable, taking into account the investigative needs of the agency and Intelsat's commercial interests. Zeus and Intelsat agree to maintain the Security Committee's authority pursuant to the IGSC By-laws attached hereto, and to operate

[9] With respect to other actions requiring the voting of Zeus shares, 55% of the shares that are entitled to vote are ultimately controlled by U.S. persons.

[10] Intelsat also holds a U.S. Permitted Space Station List approval to serve the United States using the IA-13 satellite it acquired from Loral.

under a proxy agreement, as described above. Within 60 days of the consummation of the Proposed Transaction, Zeus will provide the Agencies copies of the policies and procedures implemented by the Security Committee appointed by the IGSC board of directors.

In addition, Zeus agrees to notify the Agencies of the initial composition of the Boards of Directors of Zeus, Intelsat, Ltd., and Intelsat (Bermuda) Ltd. ("Directors") and of subsequent changes to the Directors. Zeus will inform the Agencies, by letter addressed to each of you, of the names and nationalities of the Directors within fourteen (14) days of consummation of the Proposed Transaction. Zeus will continue to notify you, or individuals that you designate, within ten (10) days of the election or designation of new Directors until exempted from doing so by operation of law or agreement with the Agencies, and will supply such other information regarding the Directors as may be reasonably requested by the Agencies.

Going forward, Zeus and Intelsat undertake that Intelsat will provide the Agencies with advance notice of Intelsat's provision of common carrier switched services, even if no further FCC authorization is required. For any future service requiring an additional Section 214 authorization, Intelsat will provide the Agencies a copy of any application filed with the FCC. For any future common carrier switched service, like domestic U.S. switched service, that may be provided without obtaining a new Section 214 authorization, Intelsat will notify the Agencies 30 days before offering any such service. Similarly, Intelsat will notify the Agencies 30 days in advance of beginning to use any of the equipment subject to transferred Title III licenses for the provision of common carrier switched services.

Please contact the undersigned if you require any further information. Thank you for your attention to this matter.

November 24, 2004
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Sincerely,

Tom W. Davidson / by jbr

Edward L. Rubinoff
Tom W. Davidson
Akin Gump Strauss Hauer & Feld, LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
202-887-4026
Counsel to Zeus Holdings Limited

John B. Reynolds, III
Wiley Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006
202-719-7000
Counsel to Intelsat, Ltd.

cc: John R. LoGalbo, DOJ
Jon D. Pifer, FBI
Lou W. Brenner, Jr., DHS

Attachment 1

UNANIMOUS CONSENT
IN LIEU OF MEETING
OF THE BOARD OF DIRECTORS
OF INTELSAT GLOBAL SERVICE CORPORATION

The undersigned, being all of the directors of Intelsat Global Service Corporation, a Delaware corporation (the "Corporation"), do hereby consent to the adoption of and do hereby adopt the following resolutions, and do hereby direct that this consent be filed with the minutes of the proceedings of the Board of Directors of the Corporation (the "Board").

By-Law Amendment

RESOLVED, that Section 3.3 of the By-laws of the Corporation be and hereby is amended by inserting at the end of the first sentence of clause (f), "(f) any decision by the Corporation relating to compliance with lawful U.S. process where Foreign laws or requests from a Foreign government or other Foreign entity may be a factor," the following text:

> ", provided, however, that nothing herein shall preclude (i) the members of the Board of Directors of Zeus Holdings Ltd from exercising their lawful authority to alter, affect, or obtain information about the operations, security, personnel or infrastructure of the domestic communications network, or (ii) the natural persons (or their designees) who are the ultimate controlling principals of the Apax Europe V and Apax Excelsior VI fund groups, the Permira Europe III fund group, the Madison Dearborn fund group, and the Apollo V fund group from also lawfully obtaining such information, so long as such actions in either case do not violate policies promulgated by the Security Committee to address U.S. national security, law enforcement, public safety or infrastructure protection concerns."

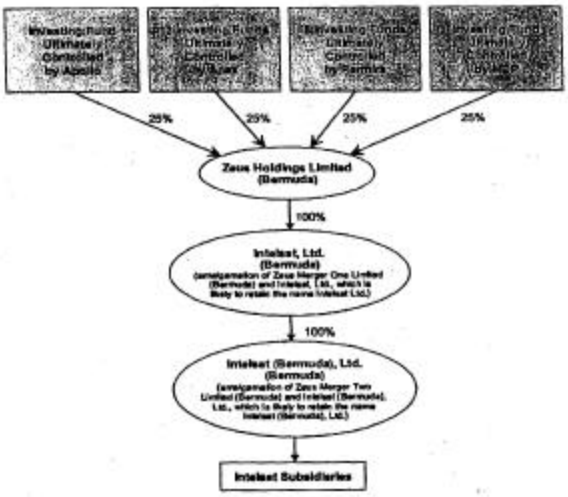
[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, we have hereunto executed this consent as of 22 November 2004

David B. Meltzer

Kevin Mulloy

OWNERSHIP, MANAGEMENT AND CONTROL OF THE PROPOSED TRANSFEREES



Attachment 2

CERTIFICATE OF SERVICE

I, Christopher E. Ryan, hereby declare that copies of the foregoing Petition to Adopt Conditions to Authorizations and Licenses were delivered either by hand or electronic mail, this day, November 24, 2004, to the following:

Marlene H. Dortch (hand delivery)
Secretary
Federal Communications Commission
445 Twelfth Street, S.W
Washington, D.C. 20554

James Ball (hand and email delivery)
Policy Division
International Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
James.Ball@fcc.gov

Neil Dellar (hand and email delivery)
Transaction Team
Office of the General Counsel
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
Neil.Dellar@fcc.gov

Kathleen Collins (hand and email delivery)
Policy Division
International Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
Kathleen.Collins@fcc.gov

Jeff Tobias (hand and email delivery)
Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
Jeff.Tobias@fcc.gov

JoAnn Lucanik (hand and email delivery)
Satellite Division
International Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
JoAnn.Lucanik@fcc.gov

Susan O'Connell (hand and email delivery)
Policy Division
International Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
Susan.O'Connell@fcc.gov

John Kennedy (hand and email delivery)
Experimental Licensing Branch
Office of Engineering and Technology
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
Neil.Dellar@fcc.gov

Best Copy and Printing, Inc. (email delivery)
445 Twelfth Street, SW
Room CY-B402
Washington, D.C. 20554
fcc@bcpiweb.com

Christopher E. Ryan