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

In the Matter of	)	
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New Skies Satellites, N. V.	)	File Nos.: SAT-MSC-20000526-0093
Request for an Extension Under Section	)	
623(l) of the ORBIT Act	)	
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MEMORANDUM OPINION AND ORDER

Adopted: June 27, 2000 **Released:** June 30, 2000

By the Commission:

1. New Skies Satellites N. V. (New Skies) has requested a six-month extension of the July 1, 2000 deadline set forth in Section 623(l) of the Open-Market Reorganization for the Betterment of International Telecommunications Act (the ORBIT Act) for conducting an initial public offering (IPO).[1] Section 623(l) requires an INTELSAT "separated entity" that serves the U.S. market to conduct a public offering no later than July 1, 2000.[2] The Commission is allowed to extend this deadline "in consideration of market conditions and relevant business factors relating to the timing of an initial public offering" to no later than July 31, 2001.

2. The Commission placed New Skies' request on public notice on May 31, 2000.[3] Comsat, Inmarsat and Lockheed Martin support New Skies request.[4] PanAmSat opposes the request for a six-month extension, but would support a three-month extension.[5]

3. New Skies is the Netherlands-based INTELSAT spin-off created in 1998 as INTELSAT's first step toward privatization. In 1999, the Commission granted U.S. earth station operators limited,

[1] Letter to Donald Abelson, Chief, International Bureau, from Andrew R. D'Uva, Associate General Counsel, New Skies Satellites, N. V., dated May 26, 2000.

[2] Pub. L. 106-180, 114 Stat. 48 (2000) § 623(l).

[3] Public Notice Report No. SAT-00044, May 31, 2000.

[4] Letter to Secretary, Federal Communications Commission, from Robert Mansbach, Comsat Corporation, dated June 7, 2000; Letters to Secretary, Federal Communications Commission, from Kelly Cameron and Robert Galbreath, Counsel for Inmarsat, Ltd., dated June 7, and June 14, 2000; Letter to Secretary, Federal Communications Commission, from Gerald Mussara, Lockheed Martin Corporation, dated June 12, 2000.

[5] Opposition of PanAmSat Corporation, dated June 7, 2000; *See also* Letter to Secretary, Federal Communications Commission, from Henry Goldberg, Counsel for PanAmSat, dated June 19, 2000.

three-year authorizations to operate with New Skies in the U.S. market pending New Skies' fulfillment of a number of actions to become independent of INTELSAT.[6] One such action is undertaking an IPO in order to achieve substantial non-signatory ownership in the company, as anticipated by the 1998 INTELSAT Assembly of Parties decision to create New Skies.[7]

4. The subsequently enacted ORBIT Act establishes criteria for Commission review of applications to serve the U.S. market by "separated entities" of INTELSAT. New Skies meets the definition of a "separated entity."[8] It therefore now is subject to the requirement in Section 623(l) that it conduct an IPO by July 1, 2000, unless the Commission extends this deadline. New Skies states that it has made all appropriate preparations for an initial public offering and is prepared to go forward pending improvement of market conditions. It requests an extension of six months in order to give it the certainty needed for a successful offering and the flexibility to act rapidly when market conditions improve.

DISCUSSION

5. Section 623(l) of the ORBIT Act provides:

> "(1) DATE FOR PUBLIC OFFERING.—Within one year after any decision to create any separated entity, a public offering of the securities of such entity shall be conducted. In the case of a separated entity created before January 1, 1999, such public offering shall be conducted no later than July 1, 2000, except that the Commission may extend this deadline in consideration of market conditions and relevant business factors relating to the timing of an initial public offering, but such extensions shall not permit such offering to be conducted later than July 31, 2001.

The purpose of this requirement is to ensure that New Skies becomes an independent commercial entity with a pro-competitive ownership structure.[9] The Act anticipates that independence will be achieved

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

[7] *See* INTELSAT Assembly of Parties, *Record of Decisions of the Twenty-Second (Extraordinary) Meeting,* (AP-22-3E Final) Salvador, Brazil, March 31, 1998 ("Assembly Decision").

[8] *See* Pub. L. 106-180, § 681(a)(8) which defines a "separated entity" as "a privatized entity to whom a portion of the assets owned by INTELSAT or Inmarsat are transferred prior to full privatization of INTELSAT or Inmarsat, including in particular the entity whose structure was under discussion by INTELSAT as of March 25, 1998." New Skies is that entity.

[9] *See* Pub. L. 106-180, § 621(2), which provides, in part:

> "(2) INDEPENDENCE.—The privatized successor entities and separated entities of INTELSAT and Inmarsat shall operate as independent commercial entities, and have a pro-competitive ownership structure. The successor entities and separated entities of INTELSAT and Inmarsat shall conduct an initial public offering in accordance with paragraph (5) to achieve such independence. Such offering shall substantially dilute the aggregate ownership of such entities by such signatories or former signatories. In determining whether a public offering attains such substantial dilution, the Commission shall take into account the purposes and intent, privatization criteria, and other provisions of this title, as well as market conditions.

through substantial dilution of the aggregate ownership in New Skies held by INTELSAT signatories or former signatories.[10] Thus, our consideration of any request for an extension must consider whether the proposed extension would serve to achieve the underlying purpose of the requirement for an IPO.

6. We conclude that a grant of the extension requested by New Skies would serve to achieve the purpose of the ORBIT Act and be in the public interest. We grant New Skies a six-month extension, noting that New Skies should make all good faith efforts to conduct its IPO as soon as practicable based on market conditions and business factors.

7. We find that New Skies has demonstrated diligence in preparing for an IPO to be conducted within the timeframe provided in the Act. New Skies states that it began working with investment bankers in October 1999 to prepare a draft prospectus for an IPO. The draft prospectus was submitted to the Securities and Exchange Commission (SEC) on January 27, 2000. The SEC fully cleared the prospectus in mid-April, following submissions of new drafts based on SEC comments and changes in New Skies business. New Skies states that it was poised to begin its "road show" in mid-April to discuss its offering to investors, but delayed this process based on the advice of its underwriters.

8. The delay was based on the view of the underwriters against moving forward with an IPO under then-current market conditions because of "the tremendously adverse conditions that have faced most companies that have attempted to conclude a public offering and, in particular, an initial public offering, in the past two months"[11]. New Skies states that it has revisited these recommendations three times and will do so again in mid-June. New Skies also states that it may conduct its IPO in mid-July if, "based on this assessment and the advice of its underwriters, it can conclude that reasonable market stability, investor interest and market strength exist."[12] New Skies further states that it, together with its underwriters, "continually have reevaluated the market to see whether it would support an offering at a size and under terms that are reasonable and that would lead to a substantial dilution in New Skies' existing shareholding base." [13]

9. Additionally, we find that New Skies has acted reasonably in delaying its IPO based on the advice of its investment bankers. In support of its request, New Skies has provided opinions from its investment bankers that are unambiguous and unequivocal as to the need to delay the IPO pending more favorable market conditions.[14] New Skies also has provided significant support for its view of current

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[10] *Id.*

[11] Letter to Donald Abelson, Chief, International Bureau, from Goldman Sachs International, dated May 26, 2000 at 1. "{W}e are well aware of both New Skies' diligent efforts to complete its IPO and the market conditions that have prevented it from achieving this objective. . . In addition, we confirm that we have advised New Skies on several occasions against proceeding with its IPO under current market conditions and concur with New Skies' assessment of the potential adverse consequences of proceeding with an IPO against this advice." *See also* New Skies May 26 letter at 2.

[12] *See* New Skies May 26 letter at 3.

[13] *Id* at 2.

[14] *See* Goldman Sachs International May 26 letter; *See also* letter to Chief, International Bureau, from ABN Amy Rothschild, dated June 9, 2000; and Letter to Chief, International Bureau, from Morgan Stanley Dean Witter, dated June 9, 2000.

market conditions.[15] While opinions may differ as to the receptiveness of the market to an IPO at any given time, recent market fluctuations are a well known fact that have affected the prospects of companies such as New Skies. New Skies shows that other technology companies have delayed planned IPOs recently because of market conditions.[16] We are unpersuaded by PanAmSat's argument that New Skies is still capable of conducting an IPO now and should do so even though New Skies' investment banker "may be correct in its assessment that there have been better times to release an IPO."[17]

10. There is no evidence, as PanAmSat suggests, that New Skies has the ulterior motive of delaying its IPO so that it can continue to enjoy the advantages afforded by close relationships with INTELSAT signatories.[18] The evidence in fact demonstrates the New Skies is exercising reasonable business judgment in scheduling an IPO that will achieve the goals of the ORBIT Act as well as support the business needs of the company. We agree with New Skies and those commenters that support grant of its requested extension that forcing New Skies to conduct an IPO at this time against the advice of its investment bankers, under current market conditions, may not achieve substantial dilution contemplated by the ORBIT Act.

11. We disagree with PanAmSat that this extension should be limited to three months. The best timing for conducting an IPO cannot be accurately forecast. More importantly, limiting such an IPO by mandating narrow time constraints could have the effect of decreasing the market value of the offering because potential investors could be positioned to offer only a low price to purchase the available shares. Such an outcome would be counter to the intended purpose of obtaining substantial dilution in the ownership of New Skies, while also supporting the business needs of the company. No purpose is served by revisiting this issue on a quarterly basis to reassess New Skies' efforts. New Skies has shown that it is poised to conduct its IPO. We believe that a six-month extension will give New Skies a clear opportunity to do so at a time that will achieve the purpose of the ORBIT Act. New Skies has incentive to move forward to assure its continued access to the U.S. market.[19] As market conditions improve, any New Skies failure to move forward would become self-evident.

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[15] *See* New Skies May 26 letter; s*ee also* Letter to Secretary, Federal Communications Commission, from New Skies Satellites N. V., dated June 12, 2000.

[16] New Skies June 12 letter, citing Jeffrey R. Hirschborg, *May 2000 IPO Cadets Face Rough Seas*, IPOCom (June 6, 2000); *IPOs Withdrawn or Postponed*, located at www.ipo.com/ipoinfo/withdrawn.asp?p=IPO; Raymond Hennessey, *Underwriters Say IPO May Take Until End of Summer*, Wall Street Journal (May 30, 2000). *See also* Elizabeth Lazarwitz, *Blue Chips Cling to Gains Tehs Say* (June 14, 2000) and Steve Gelsi, *CBS Market Watch*, www.cbsmarketwatch.com, Julie Rannazzisi, CBS Market Watch *Market Snapshot*: Dow, *Nasdeq Perky* (last visited June 15, 2000)http://www.cbsmarketwatch.com,Dow Jones Co.,*Stocks Turn Modestly Higher As Technology Shares Strengthen* (last visited June 15, 2000)http://www.quicken.com/investments/news_center/story, Tara Murphy, The Street.Com *Market Comes Off Lows, Treads Cautiously Into the Green* (last visited June 15, 2000)http://www.quicken.com/investments/thestreet.

[17] PanAmSat Opposition at 8.

[18] *Id*. at 9.

[19] *See* Pub. L. 106-180, §§ 601(a), (c), 621 and 623.

12. We therefore conclude that New Skies has made a sufficient showing of market conditions and relevant business factors relating to the timing of an IPO so as to warrant an extension for six months.

13. Accordingly, IT IS ORDERED, pursuant to Sections 623(2) and 623(1) of the Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. 106-180, 114 Stat. 48 (2000), §§ 621(2) and 623(1), that the New Skies Satellites, N. V., request for an extension of the July 1, 2000 deadline to conduct an IPO IS GRANTED, and the deadline for New Skies to conduct its IPO consistent with the ORBIT Act is January 1, 2001.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary