

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

In the Matter of
Hughes Network Systems, Limited,
Assignor,
and
HNS Licensee Sub, LLC
Consolidated Application for Consent for
Assignment of Earth Station Licenses
and Associated Special Temporary
Authorizations
File Nos. SES-ASG-20041223-01892
SES-ASG-20041223-01893
SES-ASG-20041223-01882

ORDER AND AUTHORIZATION

Adopted: April 18, 2005

Released: April 18, 2005

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we grant Hughes Network Services (UK), Ltd. (HNS, Ltd.) authority to assign several space station licenses and associated Special Temporary Authorizations (STAs) to its wholly-owned subsidiary, HNS License Sub, LLC (License Sub). We also grant authority to SkyTerra Communications, Inc. (SkyTerra) to obtain a 50 percent interest in HNS, LLC, while HNS, Inc. retains ownership of the other 50 percent of HNS, LLC. As a result of this transaction, HNS, LLC will obtain access to alternative sources of capital for its very small aperture terminal (VSAT) business, upon consummation of the proposed transaction, and will be able to expand its customer base and develop new products and services.

II. BACKGROUND

2. HNS, Ltd., a subsidiary of Hughes Network Systems, Inc. (HNS, Inc.), is the licensee for the nine earth stations listed in Appendix A. HNS, Ltd., is incorporated in Delaware with its principle office in Maryland. HNS, Ltd.'s parent company, HNS, Inc., is in turn a subsidiary of

1 License Sub is a wholly-owned subsidiary of HNS Limited, which is a wholly-owned subsidiary of HNS Europe Limited, which in turn is a wholly-owned subsidiary of HNS, LLC. See SES-ASG-20041223-01892 (Assignment Application). In this Order, we also grant two other assignment applications, listed in the caption, which are in all substantive respects identical to the Assignment Application except for the earth station licenses and STAs requested to be assigned. The earth station licenses and STAs that are the subject of this transaction are listed in Appendix A.

2 Assignment Application, Exh. E at 1.

the DIRECTV Group.³ The DIRECTV Group is a subsidiary of News Corp.⁴ HNS, Ltd. uses the earth stations at issue in this proceeding primarily to provide VSAT service. SkyTerra is incorporated in Delaware with its principle office in New York.⁵ The Apollo Investment Fund and three affiliated entities (together, Apollo) together own 64.57 percent of SkyTerra.⁶ No other entity has an interest greater than 10 percent in SkyTerra.⁷ Apollo also owns approximately 25 percent of Intelsat, LLC (Intelsat).⁸ Under the proposed transaction, License Sub, the wholly-owned subsidiary of HNS, Ltd., would be the licensee of the earth stations listed in Appendix A.⁹ HNS, Inc. and SkyTerra will each own 50 percent of HNS, Ltd.¹⁰ SkyTerra would have responsibility for the management, operation, and control of the business and affairs of HNS, Ltd.¹¹

3. We placed the Assignment Applications on public notice on January 26, 2005.¹² One party, ViaSat, Inc. (ViaSat), filed comments and a motion to accept late-filed pleadings on March 16, 2005. SkyTerra and HNS, Inc. filed a joint reply on March 22, 2005.¹³ For the reasons discussed below, we dismiss ViaSat's comments as untimely filed. We also find that, if we were to reach the merits of ViaSat's arguments, ViaSat has not provided any basis for concluding that the proposed transaction does not serve the public interest, convenience, and necessity.

³ See Application of General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control, *Memorandum Opinion and Order*, MB Docket No. 03-124, 19 FCC Rcd 473 (2004) (*Hughes-News Corp. Merger Order*).

⁴ See *Hughes-News Corp. Merger Order*.

⁵ Assignment Application, Exh. E at 2.

⁶ In the Assignment Application, SkyTerra's ownership interest was reported as 72.89 percent. Assignment Application, Exh. E at 2. In January 2005, License Sub and SkyTerra filed a letter updating the Assignment Application, which stated that SkyTerra's ownership interest had been reduced to 64.57 percent. See Letter from Tom W. Davidson, Counsel for SkyTerra, and John P. Janka, Counsel for HNS, Inc., to Marlene H. Dortch, Secretary, FCC (dated Jan. 10, 2005) (*January 10 Letter*).

⁷ Assignment Application, Exh. E at 2.

⁸ 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, *Order and Authorization*, IB Docket No. 04-366, 19 FCC Rcd 24820 (Int'l Bur., Wireless Bur., and OET, 2004).

⁹ Assignment Application, Exh. B at 1.

¹⁰ Assignment Application, Exh. B at 1.

¹¹ Assignment Application, Exh. B at 1.

¹² Satellite Communications Services Re: Satellite Radio Applications Accepted for Filing, *Public Notice*, SES-00680 (Jan. 26, 2005).

¹³ HNS, Inc. and/or its subsidiaries and SkyTerra also filed updates to their assignment applications pursuant to Section 1.65 of the Commission's rules, 47 C.F.R. § 1.65, on January 10, February 24, and March 16, 2005.

III. DISCUSSION

A. Late-Filed Comments

4. Comments on the assignment applications pending before us were due 30 days after they were placed on public notice, February 25, 2005. ViaSat filed its Comments, together with a motion for leave to file late-filed comments, on March 16, 2005, 19 days after the due date. As stated in the Section 1.46(a) of the Commission's rules, it is the policy of the Commission that motions to accept late-filed pleadings are not to be granted routinely.¹⁴ ViaSat does not address the Commission's policy on this issue. Therefore, we find that ViaSat does not provide an adequate basis for making an exception to the Commission's policy.

5. Instead of addressing the Commission's policy regarding motions for extension of time to file pleadings, ViaSat seeks a waiver of the comment-filing deadline pursuant to Section 1.3 of the Commission's rules.¹⁵ ViaSat has not provided "good cause" for a waiver as required by Section 1.3. For example, ViaSat states that the transaction proposed in the assignment applications before us raise "complex cross-ownership issues," and that it took ViaSat time to identify those issues.¹⁶ However, all the information regarding the ownership of the parties involved in this transaction was publicly available at the time the applications were filed, and at the time they were placed on public notice. ViaSat does not provide any reason, let alone "good cause," for its inability to identify the cross-ownership issues within the 30 days scheduled for filing comments. ViaSat also asserts that late-filed comments can be treated as "informal objections," and then are treated the same as timely filed pleadings under the Commission's rules.¹⁷ ViaSat's interpretation of the Commission's rules, that we must treat all pleadings the same regardless of whether they are timely filed, would make the comment filing deadline in the rules irrelevant. Thus, we cannot grant a waiver on this basis because it would clearly undermine the policy objective of the rule in question.¹⁸

6. Finally, ViaSat asserts that we should grant its waiver request because we have considered late-filed pleadings in other proceedings.¹⁹ ViaSat is correct that we have the discretion to grant motions to accept late-filed pleadings, and we have exercised that discretion when we find that the information in the late-filed pleading is particularly helpful in resolving one or more issues in the proceeding. ViaSat is mistaken, however, in assuming that it has provided

¹⁴ 47 C.F.R. § 1.46(a). *See also, e.g.,* RCA Global Communications, Inc., *Memorandum Opinion, Order, and Authorization*, 3 FCC Rcd 2814, 2816 n.3 (Com. Car. Bur., 1988)(denying petition to accept late-filed pleading). *See also* National Science And Technology Network, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 365 (2001) (refusing to consider late-filed comments in response to application for review).

¹⁵ 47 C.F.R. § 1.3. *See also* WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969) (*WAIT Radio*); Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁶ ViaSat Motion at 3-4.

¹⁷ ViaSat Motion at 3.

¹⁸ *WAIT Radio*, 418 F.2d at 1157; Dominion Video Satellite, Inc., *Order and Authorization*, 14 FCC Rcd 8182, 8185 (para. 5) (Int'l Bur., 1999) (*Dominion Video*).

¹⁹ ViaSat Motion at 4-5.

helpful and sufficient information in its late-filed comments before us here. This is because, for reasons explained further below, if we were to reach the merits of ViaSat's arguments, we would still find that ViaSat has not provided an adequate basis for denying the assignment applications filed by HNS, Ltd. and SkyTerra. Accordingly, we grant the assignment applications captioned above.²⁰

B. Legal Standard

7. Under Section 310(d) of the Communications Act, we must find that the proposed assignment serves the public interest, convenience, and necessity before we can approve the assignment of authorizations or licenses.²¹ To make this finding, we must weigh any potential public interest harms against any potential public interest benefits, considering competitive effects and other public interest factors such as rapid delivery of service to the public.²² As the Commission explained in the *TCI/AT&T Order*:

[O]ur public interest analysis is not, however, limited by traditional antitrust principles It also encompasses the broad aims of the Communications Act. . . . To apply our public interest test, then, we must determine whether the merger violates our rules, or would otherwise frustrate our implementation or enforcement of the Communications Act and federal policy. That policy is, of course, shaped by Congress and deeply rooted in a preference for competitive processes and outcomes.²³

8. In evaluating the competitive effects of proposed transactions, the Commission considers both the relevant product market and geographic market. For the earth station licenses and STAs at issue here, the relevant product market and geographic market is the U.S. VSAT market. We find that HNS, Ltd. does not have a dominant position in the market for VSAT services. Similarly, SkyTerra does not have a dominant position in the market for VSAT services, either directly or through its minority ownership in Intelsat. Furthermore, the

²⁰ HNS, Inc. and SkyTerra also maintain that ViaSat's Comments were procedurally defective because those were not supported by an affidavit. HNS-SkyTerra Reply at 3. On March 25, 2005, ViaSat filed a letter providing an affidavit. Letter from Pantelis Michalopolous, Counsel for ViaSat, to Marlene H. Dortch, Secretary, FCC (dated Mar. 25, 2005) (*March 25 Letter*). We need not reach the issue of whether the failure to provide an affidavit in ViaSat's Comments renders those Comments unacceptable, or, if so, whether the *March 25 Order* cured any defect. This is because we reject ViaSat's Comments as late-filed, and find that they are unpersuasive on their merits.

²¹ 47 U.S.C. § 310(d).

²² Applications for Consent to the Transfer of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corp., Transferor, to SBC Communications, Inc., Transferee, *Memorandum Opinion and Order*, CC Docket No. 98-25, 13 FCC Rcd 21292, 21298 (para. 13) (1998) (*SNET/SBC Order*); Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., *Memorandum Opinion and Order*, CC Docket No. 97-211, 13 FCC Rcd 18025, 18030-31 (paras. 8-9) (1998) (*MCI/WorldCom Order*).

²³ Applications for Consent to the Transfer of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee, *Memorandum Opinion and Order*, CS Docket No. 98-178, 14 FCC Rcd 3160, 3169 (para. 14) (1999) (*TCI/AT&T Order*). See also Application of MCI Telecommunications Corporation, Assignor, and Echostar 110 Corporation, Assignee, *Order and Authorization*, 16 FCC Rcd 21608 (1999) (*MCI/Echostar Order*).

assignment of the 14 earth station licenses and 8 STAs listed in Appendix A from HNS, Ltd. to an entity that is owned jointly by HNS, Ltd. and SkyTerra is not likely to increase the market power of either HNS or SkyTerra. Accordingly, we find that the proposed transaction in this proceeding poses few if any potential public interest harms or adverse effects on competition. For reasons discussed below, we find that none of the substantive arguments raised by ViaSat in opposition to the HNS-SkyTerra transaction proposed here cause us to question this conclusion.

C. Vertical Foreclosure

1. VSAT Services

9. ViaSat claims that the proposed assignment considered in this Order could raise vertical foreclosure concerns in the market for VSAT services, because the transaction would result in Apollo owning an interest in both SkyTerra and Intelsat.²⁴ In evaluating potential competitive harm, through vertical foreclosure, in the markets for VSAT services to businesses, we consider whether, as a result of the transaction, the Applicants will have an increased incentive and ability to engage in anticompetitive foreclosure strategies with respect to satellite capacity for use in the provision of VSAT services. We find that, with respect to these vertical foreclosure concerns, the change in ownership of HNS, Ltd. does not raise competitive concerns with respect.

10. Upon consummation of this transaction, Apollo funds will hold a direct equity interest of 64.57 percent in SkyTerra, which will have a 50 percent interest in HNS, Ltd. The Apollo funds have less than a 25 percent interest in Intelsat. Apollo does not control Intelsat and could not implement a vertical foreclosure strategy without the approval of the other Intelsat investors. If Apollo were to compensate the other major Intelsat investors for the cost of a vertical foreclosure strategy, Apollo would bear the full cost of the strategy, while receiving only a fraction of any increased profits that might be realized by HNS, Ltd. Further, other VSAT service providers can purchase more of their capacity from other FSS operators, impeding Apollo's ability to implement such a strategy. We find that Apollo does not have the incentive or ability to engage in anticompetitive foreclosure strategies with respect to FSS capacity.

2. Broadband Services

11. ViaSat also asserts that the HNS-SkyTerra transaction may raise concerns regarding vertical disclosure in the market for broadband services, in part because the Liberty Media Corporation (Liberty Media) is a shareholder in the parent company of HNS, Ltd. and the DIRECTV Group, News Corp. In addition, ViaSat observes that Liberty Media's corporate affiliate and Intelsat together have a controlling interest in WildBlue Communications, Inc. (WildBlue), a satellite licensee planning to provide broadband services.²⁵

12. With respect to equipment for consumer broadband access by satellite, we find that the proposed transaction does not present vertical foreclosure concerns. Liberty Media has a 9.1 percent voting interest in News Corp.,²⁶ which will retain a 50 percent interest in HNS, and Apollo has less than a 25 percent interest in Intelsat. While Liberty and Intelsat in combination

²⁴ ViaSat Comments at 2-4.

²⁵ ViaSat Comments at 4-5.

²⁶ Assignment Application, Exh. E at 7.

have a controlling interest in Wildblue, given that Apollo does not control Intelsat and that Liberty has only a small interest in HNS, the proposed transaction would not result in an incentive to change the Wildblue contract for ground segment equipment in order to implement a vertical foreclosure strategy. Further, there is no evidence that a change in the Wildblue contract would have a negative impact on competition in equipment for Ka-band consumer broadband access by satellite.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to Section 25.119 of the Commission's rules, 47 C.F.R. § 25.119, that File Nos. SES-ASG-20041223-01892, SES-ASG-20041223-01893, and SES-ASG-20041223-01882, ARE GRANTED.

14. IT IS FURTHER ORDERED, pursuant to Section 1.46(a) and 1.3 of the Commission's rules, 47 C.F.R. §§ 1.46(a), 1.3, that the Motion to Accept Late-Filed Comments, filed by ViaSat, Inc. on March 16, 2005, IS DENIED.

15. This Order is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau

APPENDIX A

**Earth Station Licenses and STAs That Are
Subject to the Assignment Transaction in this Order**

A. SES-ASG-20041223-01892Earth Station Licenses

1. E020208
2. E020205
3. E020195
4. E000362
5. E040382
6. E020207
7. E040436
8. E010187
9. E020206

STAs

1. SES-STA-20040929-01472 (E040382)
2. SES-STA-20041112-01676 (E040436)

B. SES-ASG-20041223-01893Earth Station Licenses

1. E990170
2. E030008
3. E030007
4. E940460
5. E000166

STAs

1. SES-STA-20040728-01126 (E000166)
2. SES-STA-20040728-01123 (E940460)
3. SES-STA-20041001-01482 (E940460)
4. SES-STA-20040728-01125 (E990170)
5. SES-STA-20041117-01710 (E000166)

Pending Modification Applications

1. SES-MOD-20040930-01478 (E000166)
2. SES-MOD-20040930-01476 (E940460)

C. SES-ASG-20041223-01882STAs

1. SES-STA-20040803-01089