

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

In the Matter of)	
)	
Vodafone Americas Asia Inc. (Transferor))	SES-T/C-20020117-00042
Globalstar Corporation (Transferee))	SES-T/C-20020117-00043
)	SES-T/C-20020117-00044
Consent to Transfer Control of Licenses and)	ITC-T/C-20020117-00061
Section 214 Authorizations and)	ITC-T/C-20020117-00062
)	ITC-T/C-20020117-00063
Petition for Declaratory Ruling Allowing Indirect)	ISP-PDR-20020117-00003
Foreign Ownership)	

ORDER AND AUTHORIZATION

Adopted: July 1, 2002

Released: July 1, 2002

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order we grant the applications of Vodafone Americas Asia Inc., as transferor, and Globalstar Corporation, as transferee, to transfer control of non-common carrier earth station licenses, a blanket common carrier license for up to 500,000 mobile earth terminals (“METs”), and international section 214 authorizations presently held by Globalstar USA, LLC (“GUSA”) and Globalstar Caribbean Ltd. (“GCL”) from Vodafone Americas Asia Inc. to Globalstar Corporation.¹ As discussed below, we conclude, pursuant to our review under sections 214(a) and 310(d) of the Communications Act of 1934,

¹ Globalstar Corporation and Vodafone Americas Asia Inc., Application for Transfer of Control of a Company Holding Section 214 Authorizations, File Nos. ITC-T/C-20020117-00061, ITC-T/C-20020117-00062, ITC-T/C-20020117-00063 (filed Jan. 17, 2002) (“International 214 Applications”); Globalstar Corporation and Vodafone Americas Asia Inc., Application for Transfer of Control of Fixed Earth Station Authorizations, File No. SES-T/C-20020117-00042 (filed Jan. 14, 2002) (“Cabo Rojo Application”); Globalstar Corporation and Vodafone Americas Asia Inc., Application for Transfer of Control of Fixed Earth Station Authorizations, File No. SES-T/C-20020117-00043 (filed Jan. 14, 2002) (“Clifton Application”); Globalstar Corporation and Vodafone Americas Asia Inc., Application for Transfer of Control of Blanket Mobile Earth Terminal Authorization, File No. SES-T/C-20020117-00044 (filed Jan. 14, 2002) (“Blanket Mobile Application”); Globalstar Corporation, Petition for Determination of the Public Interest Under Section 310(b)(4) of the Communications Act of 1934, as amended, to Permit Indirect Foreign Ownership in Common Carrier Mobile Satellite Service Earth Station License, File No. ISP-PDR-20020117-00003 (filed Jan. 14, 2002) (“Petition for Declaratory Ruling”) (together, “Applications”). Subsequent to filing the Applications, Vodafone Americas Asia Inc. has received the Commission’s prior approval for the pro forma assignment of the Clifton gateway and MET licenses from GUSA, Inc. to GUSA. *See Public Notice, Satellite Communications Services Information Regarding Actions Taken*, Report No. SES-00373 (rel. Mar. 6, 2002). Pursuant to 47 C.F.R. § 63.24(b), a pro forma assignee of international section 214 authorizations is not required to seek prior Commission approval for the transaction. *See* 47 C.F.R. § 63.24(b). GUSA, Inc. assigned the international section 214 authorizations and earth station and MET licenses to GUSA on March 28, 2002. *See* Letter from Timothy Cooney to Marlene Dortch, Secretary, Federal Communications Commission (Apr. 17, 2002) (earth station and MET); Letter from Timothy Cooney to Marlene Dortch, Secretary, Federal Communications Commission (Apr. 24, 2002) (international 214).

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 GUSA in excess of the 25 percent benchmark set by section 310(b)(4) of the Act.³

II. BACKGROUND

A. The Globalstar Mobile-Satellite System

2. Globalstar L.P. (“GLP”), the parent of transferee Globalstar Corporation, owns and operates the global Mobile-Satellite Service (“MSS”) business provided over the Globalstar MSS Above 1 GHz network.⁴ The Globalstar MSS system provides voice, data and other telecommunications services globally through a constellation of 48 non-geostationary satellites.⁵ GLP sells space segment capacity to individual service providers that in turn sell service to retail customers.⁶

3. In North America, AirTouch Communications, Inc. (“AirTouch”), through various subsidiaries, was the original service provider for the Globalstar MSS system and held the licenses and authorizations at issue in this proceeding.⁷ Accordingly, AirTouch applied for certain fixed and mobile earth station licenses as well as associated section 214 certificates that are the subject of the Applications.⁸ Vodafone Group PLC (“Vodafone”) subsequently acquired AirTouch. Today, Vodafone’s indirect wholly-owned subsidiary Vodafone Americas Asia Inc. (“VAAI”), the transferor, owns GUSA and GCL, which provide service in, respectively, the United States and the Caribbean.⁹

4. The Globalstar MSS system commenced commercial service in 2000 and, as of September 2001, served 109 countries, including the United States, through 25 gateway earth stations operated by Globalstar MSS service providers.¹⁰ With two years experience in operating the global MSS business, GLP now has determined that it can manage the delivery of service to end users more efficiently by consolidating management of the space and earth station segments, rather than having these two functions

² The Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.* The Telecommunications Act of 1996 (the “1996 Act”) amends the Communications Act of 1934. Hereinafter, all citations to the Communications Act will be to the relevant section of the United States Code unless otherwise noted. The Communications Act of 1934, as amended, will be referred to herein as the Communications Act or the Act. *See* 47 U.S.C. §§ 214(a), 310(d).

³ 47 U.S.C. § 310(b)(4).

⁴ In 1995, the Commission licensed Loral/Qualcomm Partnership, L.P. to launch and operate the space segment constellation on a non-common carrier basis. *See Application of Loral/Qualcomm Partnership, L.P. for Authority to Construct, Launch, and Operate Globalstar, a Low Earth Orbit Satellite System to Provide Mobile Satellite Services in the 1610-1626.5 MHz/2483.5-2500 MHz Bands*, 10 FCC Rcd 2333 (IB 1995). Pursuant to an agreement with Loral/Qualcomm Partnership, L.P., GLP owns and operates the satellite constellation and manages the international MSS business. *See, e.g.*, Clifton Application, *supra* n. 1, at Exhibit F at 1-2.

⁵ *See, e.g.*, Clifton Application, *supra* n. 1, at Exhibit F at 1.

⁶ *Id.* at 1-2.

⁷ *Id.*

⁸ *Id.* *See also AirTouch Satellite Services US, Inc.*, 14 FCC Rcd 17328 (IB 1999) (blanket MET license); *AirTouch Satellite Services US, Inc.*, File No. SES-LIC-19970710-00928 (initial Clifton, Texas gateway earth station authorization), File No. ITC-214-19990728-00484 (section 214 certificate for Clifton gateway earth station).

⁹ *See* Clifton Application, *supra* n. 1, at 1-2. *See also* Report No. SES-00327 (rel. Sept. 26, 2001) (File Nos. SES-T/C-20010906-01705, SES-T/C-20010906-01706, SES-T/C-20010906-01707, authorizing the transfer of control of GUSA and GCL to Vodafone Americas Asia Inc., granted Sept. 25, 2001).

¹⁰ *See* International 214 Applications, *supra* n. 1, at 3.

managed by separate entities.¹¹ Thus, contingent upon approval of the applications in this proceeding, GLP's subsidiary Globalstar Corporation plans to acquire GUSA and GCL from VAAI, and GLP plans to consolidate the provision of both space and earth station services in a more vertically integrated operation under GLP.¹² GLP's goal is to improve and facilitate delivery of MSS services to customers.¹³

B. The Transferor

5. VAAI, the transferor, is a Delaware corporation that owns GUSA, which holds three international section 214 authorizations, five non-common carrier earth station licenses, and a common carrier MET license, and GCL, which holds three non-common carrier earth station licenses.¹⁴

C. The Transferee

6. Transferee Globalstar Corporation, incorporated in Delaware, is a wholly-owned subsidiary of GLP, a Delaware limited partnership. As noted above, GLP owns and operates the Globalstar MSS system. GLP has two general partners, Loral Qualcomm Satellite Services ("LQSS"), a Delaware limited partnership, and Globalstar Telecommunications Ltd. ("GTL"), a publicly traded Bermuda company, as well as a number of limited partners.

7. According to the Applications, LQSS is the managing general partner of GLP and holds 27.3 percent of the ordinary partnership interests in GLP. LQSS ultimately is controlled by Loral Space & Communications Ltd. ("Loral Space"), a Bermuda company.¹⁵ Loral Space holds its controlling interest in LQSS through a series of wholly-owned subsidiaries that directly or indirectly hold general partnership interests in Loral/Qualcomm Partnership, L.P. ("LQP"), which, in turn, is the sole general partner of LQSS.¹⁶ The Loral Space subsidiaries that hold the general partnership interests in LQP are: Loral General Partner, Inc., a Delaware corporation that has a one percent managing general partnership interest in LQP;¹⁷ and LGP (Bermuda) Ltd., a Bermuda company that holds a one percent general partnership interest in LQP.¹⁸ Applicant represents that Loral Space ultimately controls GLP through the general

¹¹ See *id.* at 3-4.

¹² *Id.* at 4.

¹³ See Petition for Declaratory Ruling, *supra* n. 1, at 3.

¹⁴ See, e.g., Clifton Application, *supra* n. 1, at Exhibit A at 1.

¹⁵ See Petition for Declaratory Ruling, *supra* n. 1, at 3.

¹⁶ Attached to this order as Appendix A is a chart illustrating the ownership interests in, and organizational structure of, the transferee, Globalstar Corporation. The chart and accompanying transmittal letter were submitted by GLP in response to a staff request for this information. GLP states in the transmittal letter that the minor changes in ownership information reflected in the chart are current to date. See Letter from William D. Wallace, Attorney for GLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed June 21, 2002) ("June 21 Letter").

¹⁷ Loral General Partner, Inc. is wholly owned by Loral Space & Communications Corporation ("Loral Corporation"), which, in turn, is wholly owned by Loral Space.

¹⁸ In addition to the one percent general partnership interests in LQP held by Loral General Partner, Inc. and LGP (Bermuda) Ltd., LGP (Bermuda) Ltd. also holds a 49 percent limited partnership interest in LQP. The remaining 49 percent partnership interest in LQP is held by Qualcomm China, Inc., a U.S. corporation that is wholly owned by Qualcomm Incorporated, also a domestic corporation. See Letter from William D. Wallace, Counsel to GLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Apr. 23, 2002) ("April 23 Letter"), at 3. Qualcomm China, Inc. holds its interest in LQP as a limited partner. The limited partnership interests held by various entities in LQSS are detailed in section III.D, *infra*, where we discuss the attribution of all direct and indirect partnership interests in Globalstar Corporation under section 310(b)(4) of the Act.

partnership interests in LQSS, which is the managing general partner of GLP.¹⁹ On February 15, 2002, GLP, LQSS, LQP, and Loral General Partner, Inc. filed for Chapter 11 bankruptcy protection.²⁰

8. GTL, which is the non-managing general partner of GLP, holds 42.45 percent of the ordinary partnership interests in GLP. GTL is publicly traded on the NASDAQ OTC Bulletin Board.²¹ The applicants identify the following entities as holding interests of five percent or more: Loral Space owns 8.76 percent of GTL's voting stock.²² A U.S. entity, Private Capital Management, Inc., holds an 8.6 percent interest.²³

9. GLP's limited partners and their respective equity interests in GLP are: (1) DACOM Corporation of South Korea, with 0.14 percent; (2) Hyundai Corporation of South Korea with 0.28 percent; (3) Hynix Semiconductor, Inc. of South Korea with 1.94 percent; (4) TeleSat Limited of China, with 1.42 percent; (5) Vodafone Satellite Service, Ltd. of the U.K., with 2.78 percent; (6) TE.SA.M of France, with 2.78 percent; (7) San Giorgio S.p.A. of Italy, with 0.92 percent; (8) Vodafone Satellite Services, Inc., a Delaware company owned by transferee Globalstar Corporation, with 4.55 percent; (9) Loral/DASA Globalstar, L.P., itself 73.34 percent owned by Loral Space and 26.66 percent indirectly owned by Daimler-Chrysler Aerospace of Germany, with 4.55 percent; and (10) LGP (Bermuda) Ltd., a wholly-owned direct subsidiary of Loral Space, with 10.89 percent.²⁴

D. The Transaction

10. Pursuant to an agreement with VAAI, Globalstar Corporation plans to complete a stock purchase of GUSA, a Delaware corporation, and GCL, a corporation organized in the Cayman Islands.²⁵ GUSA and GCL would become wholly owned subsidiaries of Globalstar Corporation.²⁶ GUSA holds five non-common carrier earth station licenses for the Clifton, Texas, gateway earth station, a blanket common carrier license for up to 500,000 METs, and three international section 214 authorizations to provide facilities-based and resold telecommunications services.²⁷ GCL holds three non-common carrier earth station licenses for the Cabo Rojo, Puerto Rico gateway earth station.²⁸ Applicants state that no unfunded liabilities or overdue debts are associated with the earth station facilities and thus GLP is not acquiring any new debt.²⁹ After the proposed acquisition, Globalstar Corporation plans to continue to operate the Clifton and Cabo Rojo gateway earth stations on a non-common carrier basis, and to use the MET license to provide end user MSS services through GUSA on a common carrier basis as a

¹⁹ See Petition for Declaratory Ruling, *supra* n. 1, at 6.

²⁰ See Letter from William D. Wallace, Counsel for Globalstar Corporation, to William F. Caton, Acting Secretary, Federal Communications Commission (filed Feb. 25, 2002).

²¹ See April 23 Letter, *supra* n. 18, at 5.

²² *Id.* at 3, 5.

²³ *Id.*

²⁴ See Petition for Declaratory Ruling, *supra* n. 1, at Exhibit A at 2, 4; April 23 Letter, *supra* n. 18, at 3-4; June 21 Letter, *supra* n. 16; and Appendix A to this order.

²⁵ See Cabo Rojo Application, *supra* n. 1, at Exhibit F at 3-4.

²⁶ *Id.*

²⁷ See Clifton Application, *supra* n. 1, at Exhibit A at 1; Blanket Mobile Application, *supra* n. 1, at Exhibit A at 1; International 214 Applications, *supra* n. 1, at 1-2.

²⁸ See, e.g., Cabo Rojo Application, *supra* n. 1, at Exhibit A at 1.

²⁹ See Cabo Rojo Application, *supra* n. 1, at Exhibit F at 4; Clifton Application, *supra* n. 1, at Exhibit F at 4; Blanket Mobile Application, *supra* n. 1, at Exhibit F at 4.

Commercial Mobile Radio Service operator.³⁰

11. According to Applicants, acquisition by Globalstar Corporation of the earth station authorizations that are the subject of the Applications is a first step in restructuring the business of the Globalstar MSS system.³¹ Applicants state that the current business model has not generated enough subscribers or sufficient revenues to allow the Globalstar MSS business to achieve financial equilibrium, and in January 2001 GLP defaulted on various debt instruments, credit facilities and vendor financing agreements to conserve cash for operations.³² Applicants further state that the business plan to restructure GLP's debt assumes the consolidation of certain Globalstar MSS gateways and the operation of all non-consolidated gateways by independent gateway operators under a standard agreement that will ensure globally uniform products and services at the lowest possible rates.³³ According to Applicants, consolidation of the service provider functions with the space segment function is intended to bring additional efficiencies to the operation of the Globalstar MSS network and allow for increased coordination in Globalstar MSS service offerings and pricing, in part by reducing operating expenses associated with billing and customer service and with maintenance of the gateways.³⁴ Finally, Applicants state that additional consolidation negotiations are under way with service providers in other countries.³⁵

12. Applicants advise that, following the proposed transfer of control, indirect foreign ownership of GUSA, a common carrier licensee, may be as high as 100 percent and thus would exceed the 25 percent benchmark for indirect foreign ownership of common carrier licensees set by section 310(b)(4) of the Act.³⁶ Globalstar Corporation requests that the Commission find this level of foreign ownership in GUSA to be permissible.³⁷

13. On February 27, 2002, the International Bureau issued a public notice, announcing that the Applications were accepted for filing and establishing a pleading cycle to permit interested parties an opportunity to comment on the Applications.³⁸ We received no comments.

III. PUBLIC INTEREST ANALYSIS

A. Framework for Analysis

14. In considering the transfer of control applications, the Commission must determine, pursuant

³⁰ Globalstar Corporation also is acquiring VAAI's existing inventory of 15,000 METs. *See* Petition for Declaratory Ruling, *supra* n. 1, at 1-2; Cabo Rojo Application, *supra* n. 1, at Exhibit F at 4-5; Clifton Application, *supra* n. 1, at Exhibit F at 4-5; Blanket Mobile Application, *supra* n. 1, at Exhibit F at 4-5.

³¹ *See, e.g.*, Clifton Application, *supra* n. 1, at Exhibit F at 1. According to Applicants, the restructuring process likely will result in a new ownership structure for GLP, with the current creditors becoming owners of new equity in the Globalstar MSS system and GLP becoming a U.S. corporation. Applicants state that the parties will file any additional applications once a new ownership structure is confirmed by the U.S. Bankruptcy Court. *See, e.g.*, Clifton Application, *supra* n. 1, at Exhibit F at n. 5; *see also* Petition for Declaratory Ruling, *supra* n. 1, at n. 3.

³² *See, e.g.*, Cabo Rojo Application, *supra* n. 1, at Exhibit F at 1, 3.

³³ *Id.* at 3.

³⁴ *Id.*

³⁵ *Id.*

³⁶ 47 U.S.C. § 310(b)(4).

³⁷ *See* Petition for Declaratory Ruling, *supra* n. 1, at 1.

³⁸ *See Public Notice, Globalstar Corporation and Vodafone Americas Asia Inc. Seek FCC Consent to Transfer Control of Licenses and Section 214 Authorizations and Request Declaratory Ruling Allowing Indirect Foreign Ownership*, DA 02-465 (rel. Feb. 27, 2002).

to section 214(a) and section 310(d) of the Act, whether the proposed transfers of control will serve the public interest.³⁹ In addition, because of the foreign ownership interests presented in this case, we also must determine whether the proposed transfer of control to Globalstar Corporation of GUSA, the common carrier licensee, is permissible under the foreign ownership provisions of section 310(b)(4).⁴⁰

15. The legal standards that govern our public interest analysis for transfers of control of licenses and authorizations 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.⁴¹ Our analysis considers the likely competitive effects of the proposed transfers of control and whether such transfers of control raise significant anti-competitive issues.⁴² In addition, we consider the efficiencies and other public interest benefits that are likely to result from the proposed transfers of control.⁴³ Further, we consider whether the proposed transactions present national security, law enforcement, foreign policy or trade policy concerns.⁴⁴

B. Qualifications

16. As a threshold matter, we must determine whether the Applicants are qualified to hold and transfer control of licenses under section 310(d) of the Act and Commission rules. In making this determination, we do not, as a general rule, re-evaluate the qualifications of the transferors 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.⁴⁵ No such issues have been raised here that would require us to re-evaluate the basic qualifications of VAAI.

17. Conversely, the analysis of every transfer of control application requires that we determine whether the proposed transferee is qualified to hold Commission licenses.⁴⁶ Section 310(d) requires that the Commission consider the qualifications of the proposed transferee as if the transferee were applying for the license directly under section 308 of the Act.⁴⁷ In this case, no party has challenged the

³⁹ 47 U.S.C. §§ 214(a) and 310(d).

⁴⁰ See 47 U.S.C. § 310(b)(4).

⁴¹ See, e.g., *Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and for Declaratory Ruling Pursuant to Section 310 of the Communications Act*, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9789, para. 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, 14 FCC Rcd 19140, 19147, para. 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, 16 FCC Rcd 20469, 20473, para. 11 (IB 2001) (“*Motient Services Order*”).

⁴² See, e.g., *AT&T/BT Order*, 14 FCC Rcd at 19148, para. 15.

⁴³ See, e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9789, para. 17.

⁴⁴ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21, paras. 61-66 (1997) (“*Foreign Participation Order*”), Order on Reconsideration, 15 FCC Rcd 18158 (2000).

⁴⁵ See, e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9790, para. 19.

⁴⁶ See 47 U.S.C. § 308; see also *AirTouch Communications, Inc.*, 14 FCC Rcd 9430, 9432-34, paras. 5-9 (WTB 1999).

⁴⁷ 47 U.S.C. § 308.

qualifications of Globalstar Corporation as transferee. Based on our review of the transferee's ownership, we conclude that Globalstar Corporation is qualified under our rules to acquire control of the respective licenses held by GUSA and GLC and at issue in this proceeding.

C. Regulatory Status

18. Globalstar Corporation plans to continue operating the Clifton and Cabo Rojo gateway stations on a non-common carrier basis.⁴⁸ Applicants state that the blanket mobile earth station license (Call Sign E970381) held by GUSA is used to provide common carrier services.⁴⁹ In light of our conclusions below in our discussion of foreign ownership, we permit GUSA to continue to provide common carrier service via these METs after the closing of the proposed transfer of control of GUSA to Globalstar Corporation.⁵⁰

D. Foreign Ownership

19. Globalstar Corporation requests a ruling that the indirect foreign ownership in GUSA that would result from Globalstar Corporation's proposed acquisition of GUSA is consistent with the public interest pursuant to section 310(b)(4) of the Act.⁵¹ Specifically, Globalstar Corporation seeks a ruling that the public interest does not prohibit its acquisition of GUSA with the current level of Globalstar Corporation's own indirect foreign ownership: that is, up to 100 percent of the partnership interests in Globalstar Corporation's parent, GLP, are ultimately held by or through foreign companies.⁵² In support of its requested ruling, Globalstar Corporation asserts that all of its indirect foreign investment is attributable to entities with home markets in the United States or other WTO Member countries and, therefore, it is entitled to a presumption that such indirect foreign investment in GUSA, a common carrier radio licensee, is consistent with the public interest.⁵³ Further, Globalstar Corporation asks the Commission to make an allowance for up to 25 percent indirect ownership from non-WTO countries before Globalstar Corporation would need to seek Commission approval, given potential fluctuation in stock ownership in publicly traded Loral Space and GTL.⁵⁴

20. We placed Globalstar Corporation's request to exceed the foreign ownership benchmark in section 310(b)(4) on public notice and received no comments opposing the proposed ownership structure.⁵⁵ Based on the record before us, we conclude that it would not serve the public interest to deny the application to transfer control of GUSA because of the identified indirect foreign ownership that would result from its acquisition by Globalstar Corporation. Our foreign ownership ruling, by necessity, is based on the specific information submitted for the record by Globalstar Corporation and GLP. We

⁴⁸ See Clifton Application, *supra* n. 1, at Exhibit F at 4-5; Cabo Rojo Application, *supra* n. 1, at Exhibit F at 4-5.

⁴⁹ See Blanket Mobile Application, *supra* n. 1, at Exhibit F at 4.

⁵⁰ See *Satcom Systems, Inc. and TMI Communications and Co.*, 14 FCC Rcd. 20798 (1999), *aff'd* *AMSC Subsidiary Corporation v. FCC*, 216 F.3d 1154 (D.C. Cir. 2000).

⁵¹ 47 U.S.C. § 310(b)(4).

⁵² See Petition for Declaratory Ruling, *supra* n. 1, at 4.

⁵³ See *id.* at 8.

⁵⁴ *Id.* at n. 11.

⁵⁵ See Public Notice, *Globalstar Corporation and Vodafone Americas Asia Inc. Seek FCC Consent to Transfer Control of Licenses and Section 214 Authorizations and Request Declaratory Ruling Allowing Indirect Foreign Ownership*, DA 02-465 (rel. Feb. 27, 2002). We sought additional information by letter and oral request. See Letter from James Ball, Chief, Policy Division, International Bureau, to William D. Wallace, Counsel to Globalstar Corporation (rel. April 17, 2002).

therefore grant Globalstar Corporation's request for declaratory ruling under section 310(b)(4) only to the extent specified below.⁵⁶

1. Legal Standard For Foreign Ownership

21. Section 310(b)(4) of the Act establishes a 25 percent benchmark for indirect, attributable investment by foreign individuals, corporations, and governments in 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 consistent with the public interest.⁵⁷ Globalstar Corporation identifies in its petition proposed indirect foreign investment in GUSA that would exceed the 25 percent benchmark set by section 310(b)(4). We therefore must consider the proposed transfer of control of GUSA under this section of the Act.⁵⁸

22. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by entities from World Trade Organization ("WTO") Members in U.S. common carrier and aeronautical fixed and en route licensees.⁵⁹ 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.⁶⁰ With respect to non-WTO Members, the Commission continues to apply the ECO test in order to preserve the international public policy goals of: (i) promoting effective competition in the global market for communications services; (ii) preventing anti-competitive conduct in the provision of international services or facilities; and (iii) encouraging foreign governments to open their communications markets.⁶¹ 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.⁶² Thus, in light of the policies adopted in the

⁵⁶ See *infra* paras. 51-53.

⁵⁷ See 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.>").

⁵⁸ Section 310(a) of the Act prohibits any radio license from being "granted to or held by" a foreign government or its representative. See 47 U.S.C. § 310(a). The ownership structure proposed by Globalstar Corporation is such that no foreign government or representative will directly hold any of the GUSA or GCL 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. See 47 U.S.C. § 310(b)(1), (2). According to the Applications, no alien, or representative, or foreign corporation will hold the blanket MET license of GUSA, the common carrier licensee. Accordingly, the proposed transaction does not trigger the foreign ownership provisions of section 310(a), (b)(1)-(b)(2) of the Act. See *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9799-9800, paras. 38-48 (issues related to indirect foreign ownership of common carrier licensees addressed under section 310(b)(4)). In addition, because the proposed transaction does not involve direct foreign investment in GUSA, the common carrier licensee, it does not trigger section 310(b)(3) of the Act, which places a 20 percent limit on direct alien, foreign corporate or government ownership of entities that hold common carrier, broadcast and aeronautical fixed or en route Title III licenses. See 47 U.S.C. § 310(b)(3).

⁵⁹ *Foreign Participation Order*, 12 FCC Rcd at 23896, para. 9, 23913, para. 50, and 23940, paras. 111-12.

⁶⁰ *Id.* at 23896, para. 9, 23913, para. 50, 23940, paras. 111-12.

⁶¹ *Id.* at 23894-95, para. 5.

⁶² Specifically, in determining a foreign entity's home market for purposes of the public interest determination under section 310(b)(4), the Commission will identify and balance the following factors: (1) the

(continued....)

Foreign Participation Order, we begin our evaluation of the proposed transaction under section 310(b)(4) by calculating the proposed attributable, indirect foreign equity and voting interests in GUSA. We then determine whether these foreign interests properly are ascribed to individuals or entities having their principal places of business in WTO Member countries.

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

24. In this case, the indirect foreign equity and voting interests in GUSA will be held through its corporate parent, Globalstar Corporation, and, in turn, through Globalstar Corporation's own parent, GLP. GLP is a domestically organized limited partnership through which various foreign and domestic entities will hold their ownership interests in GUSA. Included among these entities is a series of domestically organized partnerships. In *Wilner & Scheiner* and its progeny, the Commission set forth a standard for calculating both alien equity and voting interests held in a licensee, or, as here, in the licensee's parent, where such interests are held through intervening entities, including partnerships.⁶⁷

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country of its incorporation, organization or charter; (2) the nationality of all investment principals, officers, and directors; (3) the country in which its world headquarters is located; (4) the country in which the majority of its tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which it derives the greatest sales and revenues from its operations. See *Foreign Participation Order*, 12 FCC Rcd at 23941, para. 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873, 3951, para. 207 (1995) ("*Foreign Carrier Entry Order*"). For examples of cases applying the five-factor "principal place of business" test, see *Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses, Experimental Licenses, and Earth Station Licenses*, Order and Authorization, FCC 01-369 (rel. Dec. 18, 2001); *Space Station System Licensee, Inc. (Assignor) and Iridium Constellation LLC (Assignee)*, Memorandum Opinion, Order and Authorization, DA 02-307 (IB rel. Feb. 8, 2002).

⁶³ *BBC License Subsidiary L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973, para. 22 (1995).

⁶⁴ See *id.* at 10972, para. 20.

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, 11 FCC Rcd 1850, 1857, para. 47 (1995) ("*Sprint*"). See also *BBC License Subsidiary*, 10 FCC Rcd at 10972, para. 20; *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, 103 FCC 2d 511, 520, para. 16, 523, para. 21 (1985) ("*Wilner & Scheiner I*"), *recon. in part*, 1 FCC Rcd 12 (1986) ("*Wilner & Scheiner II*").

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

⁶⁷ See generally *Wilner & Scheiner I*, 103 FCC 2d 511; *Wilner & Scheiner II*, 1 FCC Rcd 12; *BBC License Subsidiary*, 10 FCC Rcd at 10973-74, paras. 22-25; *Amendment of Parts 20, 21, 22, 24, 26, 80, 87, 90, 100, and 101*

(continued...)

25. In calculating attributable foreign 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.⁶⁸ For example, if foreign individuals or entities hold a 20 percent equity interest in Company A and Company A, in turn, holds a 40 percent equity interest in Company B, *but* has voting control of Company B, the percentage of Company B's equity capital supplied by Company A is 40 percent even if Company A controls Company B. The Commission has stated that, in these circumstances, "the percentage of that 40 percent equity capital reasonably attributable to aliens is proportionate to the alien contribution to Company A. The use of the multiplier (40% x 20% = 8%) properly discounts the alien participation in Company B."⁶⁹ Once the *pro rata* equity interests of each alien investor are calculated, these interests are then aggregated to determine whether the sum of the interests exceeds the statutory benchmark.⁷⁰

26. 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. Thus, in the example above, the 20 percent foreign voting interest in Company A, which has voting control of Company B, would flow entirely to the next tier, and be attributed to Company B (100% x 20%). Counting all of Company A's foreign voting interest is appropriate, because, as the Commission has found, "actual control over the business ... is unlikely to be significantly attenuated through intervening companies."⁷¹ Similarly, where alien voting interests in a parent company are held through one or more intervening partnerships, the Commission does not apply the multiplier to dilute any general partnership interest or any limited partnership interest in a company positioned in the next lower tier of the vertical ownership chain, *unless* the licensee can demonstrate, in the case of a limited partner, that the partner effectively is insulated from active involvement in partnership affairs.⁷² That is, in the example above, if Company A holds a general partnership interest or an uninsulated limited partnership interest in Company B, the 20 percent foreign voting interest in Company A would flow entirely to Company B (100% x 20%).

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of the Commission's Rules to Implement Section 403(k) of the Telecommunications Act of 1996, Order, 11 FCC Rcd 13072 (1996) ("Citizenship Requirements Order").

⁶⁸ See *BBC License Subsidiary*, 10 FCC Rcd at 10973-74, paras. 23-25, in which the Commission overruled *Wilner & Scheiner II* "insofar as it established a method of calculating alien equity ownership or contributed capital interests which directly tracked that used to determine alien voting interests. 1 FCC Rcd at paras. 11-12." *BBC License Subsidiary*, 10 FCC Rcd at 10973, para. 24.

⁶⁹ *BBC License Subsidiary*, 10 FCC Rcd at 10974, para. 25.

⁷⁰ See *id.*

⁷¹ *Id.* at 10973, para. 23. See also *Wilner & Scheiner I*, 103 FCC 2d at 522, para. 19.

⁷² See *Wilner & Scheiner I*, 103 FCC 2d at 522-23, paras. 20-21. The Commission has stated that, while a licensee has flexibility in the manner in which it chooses to demonstrate insulation, an alien limited partner will be deemed to be effectively insulated from partnership affairs if the licensee can demonstrate that the alien limited partner conforms to the insulation criteria for exemption from attribution under the Commission's media cross-ownership rules. See *id.* at 522, para. 20 n.50. The insulation criteria for limited partners under the cross-ownership rules are described in *Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities*, MM Docket No. 83-46, Memorandum Opinion and Order, FCC 85-252 (rel. June 24, 1985), as modified on reconsideration in MM Docket No. 83-46, Memorandum Opinion and Order, FCC 86-410 (rel. Nov. 28, 1986). See, e.g., 47 C.F.R. § 21.912, Note 1 para. (g) (codifying the insulation criteria for purposes of attributing ownership and other interests in Multipoint Distribution Service licensees or cable television systems).

2. Description of Foreign Ownership Interests in Globalstar Corporation

27. Globalstar Corporation's petition for declaratory ruling identifies the following foreign investors as holding direct or indirect partnership interests in GLP: (1) Loral Space, a publicly traded Bermuda company, through a number of intermediate subsidiaries and partnerships; (2) GTL, also a publicly traded Bermuda company; and (3) eight entities organized under the laws of a foreign country. Because GLP holds all of the equity and voting interests in Globalstar Corporation, all of the foreign equity and voting interests in GLP "flow through" to Globalstar Corporation.⁷³

28. According to the petition for declaratory ruling, foreign investment in GLP is held both directly, by GTL and the eight named foreign entities, and indirectly, through a vertical ownership chain through which Loral Space holds partnership interests in GLP.⁷⁴ We begin our calculation of GLP's and, in turn, Globalstar Corporation's attributable foreign investment with a detailed description of GLP's ownership structure. As noted, we also include, as an attachment to this order, an ownership chart supplied by GLP.⁷⁵

29. The managing general partner of GLP is Loral/Qualcomm Satellite Services, L.P. ("LQSS"), a domestically organized limited partnership that holds 27.3 percent of GLP's partnership interests.⁷⁶ GTL, the publicly traded Bermuda company, is the non-managing general partner of GLP and holds 42.45 percent of GLP's partnership interests. Ten entities, eight of which are organized under the laws of a foreign country, hold limited partnership interests of 30.25 percent, in the aggregate, in GLP.

30. The sole general partner of LQSS (which itself is the managing general partner of GLP) is Loral/Qualcomm Partnership, L.P. ("LQP"), a domestically organized limited partnership. LQP holds 42.25 percent of the partnership interests of LQSS. LGP (Bermuda) Ltd., which is organized in Bermuda and wholly owned by Loral Space, holds a 42.69 percent limited partnership interest in LQSS. The remaining partnership interests in LQSS are held by the following limited partners: Alenia, Inc., a U.S. corporation wholly-owned by Alenia ESpace, which is organized under the laws of Italy (1.73 percent); Space Systems Loral, Inc., a U.S. corporation that is an indirect, wholly-owned subsidiary of Loral Space (11 percent); and DASA Globalstar Limited, a U.S. company that is wholly-owned by Daimler-Chrysler Aerospace, a company organized under the laws of Germany, with 2.33 percent.

31. Two subsidiaries of Loral Space each hold a one percent general partnership interest in LQP: Loral General Partner, Inc., a U.S. corporation that is an indirect, wholly-owned subsidiary of Loral Space; and LGP (Bermuda) Ltd., which, as noted in paragraph 30, is organized in Bermuda and is a direct, wholly-owned subsidiary of Loral Space. LGP (Bermuda) Ltd. also holds a 49 percent limited partnership interest in LQP. The remaining 49 percent partnership interest in LQP is held by Qualcomm China, Inc., a U.S. corporation that is wholly owned by Qualcomm Incorporated, also a domestic corporation. Qualcomm China, Inc. holds its interest in LQP as a limited partner.

3. Calculation of Foreign Equity and Voting Interests in GLP

32. We note at the outset that GLP's ownership structure is extremely complicated. In such

⁷³ See *supra* paras. 25-26.

⁷⁴ See Petition for Declaratory Ruling, *supra* n. 1, at Exhibit A at 2, 4; April 23 Letter, *supra* n. 18, at 3-4; June 21 Letter, *supra* n. 16, at 1.

⁷⁵ See June 21 Letter, *supra* n. 16, at 2.

⁷⁶ For purposes of calculating foreign equity interests under section 310(b)(4), the relevant measure of equity interests in a partnership is the percentage of capital contributed by each partner. See *Wilner & Scheiner I*, 103 FCC 2d at 520, para. 16 n.42, *recon. denied in pertinent part in Wilner & Scheiner II*, 1 FCC Rcd at 14, para. 17.

circumstances, it is particularly important that applicants give full and complete ownership information in their foreign ownership showings in accordance with the Commission's attribution criteria. Pursuant to section 310(b)(4) of the Act, we must calculate the foreign equity and voting interests attributable to GLP and, in turn, to Globalstar Corporation. We apply the attribution principles enunciated by the Commission specifically for purposes of calculating attributable foreign equity and voting interests in parent companies of common carrier licensees under section 310(b)(4).⁷⁷ The Commission's purpose in doing this calculation is to determine whether the aggregate amounts exceed the statutory 25 percent benchmark and to determine whether more than 25 percent of the attributable foreign equity or voting interests represent investment from non-WTO Member countries. The Commission has stated, in the *Foreign Participation Order*, that it will "deny an application if we find 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."⁷⁸

a. Loral Space

33. Loral Space, a publicly traded Bermuda company, has attributable equity and voting interests in GLP that total 40.24 percent and 56.05 percent, respectively. We arrive at these amounts through the following calculations, which are most easily followed by referring to the chart in Appendix A to this order.

34. Loral Space's Attributable Equity Interest in GLP. We first calculate Loral Space's total attributable equity interest in GLP by aggregating the numerous indirect equity interests that it holds in GLP. These interests include: (1) a 10.89 percent equity interest held as a limited partnership interest in GLP by Loral Space's direct, wholly-owned subsidiary LGP (Bermuda) Ltd.; (2) a 3.34 percent equity interest held through Loral Space's 73.34 percent general partnership interest in Loral/DASA Globalstar, L.P., which holds a 4.55 percent limited partnership interest in GLP ($4.55\% \times 73.34\% = 3.34\%$); and (3) a 3.72 percent equity interest held through Loral Space's 8.76 percent share ownership of GTL, which holds a 42.45 percent limited partnership interest in GLP ($42.45\% \times 8.76\% = 3.72\%$). These three indirect equity interests in GLP, which we attribute to Loral Space, together constitute 17.95 percent of GLP's total equity interests.

35. We next calculate the percentage of equity in GLP that is attributable to Loral Space through its indirect ownership interests in LQSS, which holds a 27.3 percent general partnership interest in GLP. We attribute to Loral Space an aggregate 21.55 percent equity interest in GLP through LQSS. We derive this amount by calculating first the attributable indirect equity interests held by Loral Space through its indirect equity interests in LQP, the limited partnership that holds a 42.25 percent general partnership interest in LQSS. Loral Space's indirect, wholly-owned subsidiary, Loral General Partner, Inc., holds a one percent general partnership interest in LQP; Loral Space's direct, wholly-owned subsidiary LGP (Bermuda) Ltd. also holds a one percent general partnership interest in LQP as well as a 49 percent limited partnership interest in LQP. Adding these amounts ($1\% + 1\% + 49\% = 51\%$), we attribute to Loral Space a 51% equity interest in LQP. Because LQP holds a 42.25 equity interest (as a general partner) in LQSS, we find Loral Space's attributable equity interest in LQSS through LQP to be 21.55 percent ($42.25\% \times 51\% = 21.55\%$).

36. Loral Space has additional indirect equity interests in LQSS that we add to the 21.55 percent interest it holds through LQP. We attribute to Loral Space the 42.69 percent equity interest in LQSS that

⁷⁷ See *supra* paras. 23-26.

⁷⁸ *Foreign Participation Order*, 12 FCC Rcd at 23946, para. 131.

is held as a general partnership interest by Loral Space's direct wholly-owned subsidiary LGP (Bermuda) Ltd. We also attribute to Loral Space the 11 percent equity interest held in LQSS as a limited partnership interest by Space Systems Loral, Inc., an indirect, wholly-owned subsidiary of Loral Space. Adding all of Loral Space's indirect equity interests in LQSS (21.55% + 42.69% + 11%), we attribute to Loral Space a 75.24 percent equity interest in LQSS. Because LQSS holds a 27.3 percent equity interest in GLP as a general partner, we attribute to Loral Space a 20.54 percent equity interest in GLP through Loral Space's interests in LQSS ($27.3\% \times 75.24\% = 20.54\%$). Adding this 20.54 percent equity interest to the 17.95 percent equity interest attributable to Loral Space as a result of investments in GLP by GTL, LGP (Bermuda) Ltd. and Loral/DASA Globalstar, L.P.,⁷⁹ we calculate thus far a 38.49 percent equity interest in GLP that is attributable to Loral Space.

37. We complete our calculation of Loral Space's attributable equity interest in GLP by adding an additional 1.75 percent that is attributable to Globalstar Corporation's own indirect investment in GLP. A direct, wholly-owned subsidiary of Globalstar Corporation, Vodafone Satellite Services, Inc., holds a 4.55 percent limited partnership interest in GLP. Because, as we have calculated, Loral Space has an attributable 38.49 percent equity interest in GLP, which indirectly wholly owns Vodafone Satellite Services, Inc., we attribute to Loral Space 38.49 percent of the 4.55 percent interest held by Vodafone Satellite Services, Inc. in GLP for a total attributable equity interest of 1.75 percent ($4.55\% \times 38.49\% = 1.75\%$). Adding this 1.75 percent equity interest to the 38.49 percent equity interest in GLP that is attributable to Loral Space, we calculate a total attributable equity interest of 40.24 percent in GLP by Loral Space.

38. Loral Space's Attributable Voting Interests in GLP. We next calculate Loral Space's total attributable voting interests in GLP. As discussed in paragraph 26 above, the Commission does not apply the multiplier to dilute any general partnership interest or any limited partnership interest in a company positioned in the next lower tier of the vertical ownership chain, *unless* the licensee can demonstrate, in the case of a limited partner, that the partner effectively is insulated from active involvement in partnership affairs. We here find that Globalstar Corporation has not met its burden demonstrating that the limited partners or limited partnerships that hold direct or indirect interests in Globalstar Corporation's parent GLP effectively are insulated from partnership affairs. Specifically, no showing is made that any of the limited partnership agreements restrict the limited partners from communicating with the general partner(s) on matters pertaining to the day-to-day operations of the partnership business.⁸⁰ Therefore, in calculating GLP's attributable foreign voting interests, we do not apply the multiplier to dilute the general or limited partnership interests held indirectly in GLP. To the extent those partnership interests are held by or otherwise attributable to foreign individuals or entities, they are attributed in their entirety to GLP and, in turn, to Globalstar Corporation.

39. In this case, Loral Space, a foreign company, holds indirectly both general and uninsulated limited partnership interests in LQP, which is the sole general partner of LQSS, which, in turn, is the managing general partner of GLP.⁸¹ Accordingly, for purposes of calculating GLP's indirect foreign ownership under section 310(b)(4), we count as foreign voting interests held by Loral Space any general or limited partnership interest in GLP that is held directly or indirectly by LQSS. These foreign voting

⁷⁹ See *supra* para. 34.

⁸⁰ See, e.g., Letter from William D. Wallace, Attorney for GLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed May 16, 2002) ("May 16 Letter") at 4 n.1 (acknowledging, but not addressing specifically in the circumstances of this case, the requirement that limited partners not communicate with the general partners on matters pertaining to day-to-day operations of the FCC-regulated activity).

⁸¹ Loral Space also holds an attributable indirect voting interest in LQSS itself through the limited partnership interest in LQSS held by Loral Space's indirect wholly-owned subsidiary, Space Systems Loral, Inc. See *supra* paras. 30 and 36.

interests are as follows: the 27.3 percent general partnership interest in GLP held by LQSS and the 4.55 percent voting interest in GLP, held as an uninsulated limited partnership interest, by Vodafone Satellite Services, Inc.⁸² In addition, we count Loral Space's 8.76 percent voting interest in GTL, the non-managing general partner of GLP (100% x 8.76%); the 4.55 percent limited partnership interest in GLP held by Loral/DASA Globalstar, L.P., because Loral Space is the general partner of Loral/DASA Globalstar, L.P. (100% x 4.55%); and the 10.89 percent limited partnership interest in GLP held indirectly by Loral Space through its direct wholly-owned subsidiary LGP (Bermuda) Ltd. Aggregating all these interests, we find that Loral Space has a 56.05 percent attributable voting interest in GLP.

b. GTL

40. As the holder of a 42.45 percent general partnership interest in GLP, GTL has an attributable 42.45 percent equity and voting interest in GLP and, in turn, in Globalstar Corporation.

c. Foreign Limited Partners

41. We also include in our calculation of GLP's foreign equity and voting interests the limited partnership interests held by seven foreign limited partners⁸³ as well as a portion of one limited partnership interest held by a U.S. company, Loral/DASA Globalstar, L.P., which is owned in part by a U.S. subsidiary of Daimler-Chrysler Aerospace of Germany. We do not apply a multiplier to dilute Daimler-Chrysler Aerospace's attributable voting interest because the Petition for Declaratory Ruling does not contain a showing that GLP's limited partners effectively are insulated from active involvement in the partnership affairs of GLP.⁸⁴ The foreign limited partnership interests attributable to GLP are as follows: DACOM Corporation, Hyundai Corporation and Hynix Semiconductor, Inc., each organized under the laws of South Korea, with 0.14 percent, 0.28 percent, and 1.94 percent equity and voting interests, respectively; San Georgio S.p.A. of Italy, with 0.92 percent equity and voting; TeleSat Limited of China, with 1.42 percent equity and voting; Vodafone Satellite Service, Ltd. of the United Kingdom, with 2.78 percent equity and voting; TE.SA.M of France, with 2.78 percent equity and voting; and Daimler-Chrysler Aerospace of Germany (through Loral/DASA Globalstar, L.P.), with 1.21 percent equity interest (26.66% x 4.55%) and 4.55 percent voting interest.⁸⁵

d. Other Attributable Foreign Interests

42. Based on information submitted by GLP in response to staff request,⁸⁶ we also have calculated additional attributable foreign equity and voting interests in GLP. The first of these identifiable interests derives from uninsulated limited partnership interests in LQSS held by U.S. subsidiaries of two foreign companies. Alenia, Inc., wholly owned by Alenia ESpace of Italy, holds a 1.73 percent limited partnership interest in LQSS. DASA Globalstar Limited, wholly owned by Daimler-

⁸² This attribution follows from the fact that Vodafone Satellite Services, Inc. itself is indirectly wholly owned by GLP, whose managing general partner is LQSS.

⁸³ We've taken account of GLP's eighth foreign limited partner, LGP (Bermuda) Ltd., in our discussion and calculation of the direct and indirect ownership interests in GLP by Loral Space, which wholly owns LGP (Bermuda) Ltd. *See supra* paras. 33-39.

⁸⁴ *See supra* para. 26.

⁸⁵ Loral Space holds a 73.34 percent general partnership interest in Loral/DASA Globalstar, L.P., a Delaware partnership. DASA Globalstar Limited, a U.S. company that is wholly owned by Daimler-Chrysler Aerospace of Germany, holds a 26.66 percent limited partnership interest in Loral/DASA Globalstar, L.P. *See* April 23 Letter, *supra* n. 18, at 3; *see also* June 21 Letter, *supra* n. 16, and Appendix A to this order.

⁸⁶ *See* April 23 Letter, *supra* n. 18; *see also* May 16 Letter, *supra* n. 80; June 21 Letter, *supra* n. 16, and Appendix A to this order.

Chrysler Aerospace of Germany, holds a 2.33 percent limited partnership interest in LQSS. Based on these holdings, we attribute to GLP a 0.47 percent equity interest (27.3% x 1.73%) and 1.73 percent voting interest (100% x 1.73%) by Alenia ESpace. We attribute to GLP a 0.64 percent equity interest (27.3% x 2.33%) and a 2.33 percent voting interest (100% x 2.33%) by Daimler-Chrysler Aerospace.

43. GLP also has informed us that the only known foreign investor holding a five percent or greater interest in Loral Space is the AXA group of companies, which, it asserts, is based in France, with an aggregate interest of 6.2 percent in Loral Space.⁸⁷ GLP also states that, according to the records of Loral Space as of March 29, 2002, 1.26 percent of the outstanding shares of Loral Space are registered to foreign entities with addresses in WTO Member countries.⁸⁸ GLP provides no further information as to foreign ownership of Loral Space capital stock, but notes that Lockheed Martin, a U.S. corporation, is Loral Space's largest shareholder, with a 15.3 percent ownership interest. Based on this information, we attribute to GLP a 2.49 percent foreign equity interest by AXA (40.24% x 6.2%) and a 6.2 percent voting interest (100% x 6.2%). AXA's 6.2 percent interest in Loral Space flows through to GLP as an attributable voting interest in its entirety because Loral Space holds its ownership interests in GLP through a series of general and unincorporated limited partnership interests that together constitute a controlling interest in GLP.⁸⁹

44. GLP and Globalstar provided additional information as to foreign ownership interests in GTL as of March 31, 2002. GLP and Globalstar have identified the following foreign shareholdings in GTL (in addition to the 8.76 percent interest in GTL held by Loral Space):⁹⁰ TE.S.A.M. (one percent); Vodafone Satellite Service, Ltd. (one percent); and certain other interests of less than one percent. Included among these interests are those held by two of GLP's limited partners, San Giorgio S.p.A. of Italy and DACOM Corporation of South Korea, and two of GTL's directors, each of whom is a citizen of the United Kingdom (Sir Ronald Grierson and John Peett).⁹¹ These interests flow through in their entirety to GLP as foreign voting interests because GTL holds a general partnership interest in GLP. These interests also are attributable to GLP as foreign equity interests but, by contrast, each of these foreign equity interests is diluted by GTL's own 42.45 percent equity interest in GLP.

e. Summary of Foreign Equity and Voting Interests in GLP

45. Applying the Commission's attribution principles to the ownership information submitted for the record by GLP and Globalstar Corporation, we find that the foreign entities identified below have the following attributable equity and voting interests in GLP:⁹²

Interest Holder	Equity Interests (%)	Voting Interests (%)
Loral Space	40.24	56.05
GTL	42.45	42.45
DACOM Corporation	00.14	00.14
Hyundai Corporation	00.28	00.28
Hynix Semiconductor, Inc.	01.94	01.94
San Giorgio S.p.A.	00.92	00.92

⁸⁷ See April 23 Letter, *supra* n. 18, at 4-5.

⁸⁸ See May 16 Letter, *supra* n. 80, at 4.

⁸⁹ See *supra* para. 26.

⁹⁰ See *supra* paras. 34, 39.

⁹¹ See May 16 Letter, *supra* n. 80, at 2.

⁹² This chart of foreign ownership interests does not include interests of less than one percent held in GTL by San Giorgio S.p.A., DACOM Corporation, Sir Ronald Grierson and John Peett.

TeleSat Limited	01.42	01.42
Vodafone Satellite Service, Ltd.	03.20	03.78
TE.SA.M	03.20	03.78
Daimler-Chrysler Aerospace	01.85	06.88
AXA	02.49	06.20
Alenia ESpace	00.47	01.73

4. Home Market Determination for GLP's Foreign Investors

46. As discussed above, there is a rebuttable presumption that foreign investment by entities having their "home markets" in WTO Member countries raises no competitive concerns. After calculating the amount of attributable, indirect foreign equity and voting interests, we determine whether these foreign interests properly are ascribed to individuals or entities having their principal places of business, or home markets, in WTO Member countries.

47. We find that the foreign equity and voting interests in GLP are held by investors that have their principal place of business or "home market" either in the United States or another WTO Member country.⁹³ Specifically, we continue to find that Loral Space, which is chartered in Bermuda, has its principal place of business in the United States. In 1997, the International Bureau found Loral Space, a company chartered in the Islands of Bermuda, to have its principal place of business in the United States.⁹⁴ Globalstar Corporation asserts that this finding remains correct and that the Commission should continue to deem the United States to be the home market of Loral Space, such that its indirect investment in Globalstar Corporation, the transferee, would present no concern under section 310(b)(4).⁹⁵ We find no reason on the record to change our 1997 determination. Loral Space remains headquartered in New York.⁹⁶ Its corporate governance continues to be dominated by U.S. nationals.⁹⁷ Loral Space is publicly traded on the New York Stock Exchange.⁹⁸ Its principal operating subsidiaries -- including Loral Corporation, Space Systems Loral, Inc., and Loral/DASA Globalstar, L.P. -- are organized under U.S. law.⁹⁹ Thus, we conclude that Loral Space's home market, for purposes of our section 310(b)(4) analysis, is the United States.

48. We find that GTL has its principal place of business in the United States or Bermuda. GTL currently has five directors and one officer, four of whom are U.S. citizens and two of whom are U.K.

⁹³ We apply the Commission's five-factor test for determining a foreign entity's principal place of business and rely on the representations made by the petitioner, Globalstar Corporation. *See supra* note 62. *See also Foreign Carrier Entry Order*, 11 FCC Rcd at 3951-52, para. 207 (noting that the Commission will balance the five factors under a totality of the circumstances test).

⁹⁴ *See AT&T Corp., Assignor, and Loral Spacecom Corporation, Assignee, Application for Authority to Assign the Licenses for Telstars 302, 303, 401, 402R, 5, and 6, and Associated Earth Station and Common Carrier Authorizations*, Order and Authorization, 12 FCC Rcd 925, 928, para. 9 (IB 1997) (concluding that Loral Space's home market, for purposes of section 310(b)(4), is the United States because: (1) Loral Space is headquartered in New York; (2) its corporate governance is dominated by U.S. nationals; (3) its principal operating subsidiaries are organized under Delaware law, indicating that tangible property, sales and revenues are substantially tied to business concerns in the United States; and (4) it and its subsidiaries are the product of the reorganization of a New York corporation for which the United States was the home market).

⁹⁵ Petition for Declaratory Ruling, *supra* n. 1, at 6-7.

⁹⁶ *Id.* at 6.

⁹⁷ *Id.*

⁹⁸ *See* April 23 Letter, *supra* n. 18, at 4.

⁹⁹ *Id.* at 2-4.

citizens.¹⁰⁰ GLP states that GTL, chartered in Bermuda, was created solely to permit public equity ownership in GLP and has no separate operations, facilities, or personnel.¹⁰¹ GLP states that GTL has no capacity to act independently, provide any services, participate in any business activities, or manage any business activity for another company.¹⁰² GTL is publicly traded on the NASDAQ OTC Bulletin Board.¹⁰³ Furthermore, GLP advises that GLP's Chapter 11 filing and subsequent financial restructuring likely will leave little or no value in GTL shares, and, accordingly, there is substantial doubt that GTL will continue as a going concern upon completion of the restructuring plan.¹⁰⁴ We conclude, based on this information, that GTL has its principal place of business in Bermuda or the United States. Bermuda is a self-governing Dependent Territory of the United Kingdom that the Commission treats as a WTO Member.¹⁰⁵

49. We also find, based on the representations of Globalstar Corporation and GLP, that each of the foreign entities that hold limited partnership interests in GLP has its principal place of business or "home market" in a WTO Member country as follows: DACOM Corporation, Hyundai Corporation and Hynix Semiconductor, Inc. (South Korea); San Giorgio S.p.A. (Italy); TeleSat Limited (China); Vodafone Satellite Service, Ltd. (United Kingdom); TE.SA.M (France); and LGP (Bermuda) Ltd. (United States).¹⁰⁶ We also rely on representations made in the record in finding that the home market of Daimler-Chrysler Aerospace is Germany;¹⁰⁷ the home market of the AXA group of companies is France; and the home market of Alenia ESpace is Italy,¹⁰⁸ each of which is a WTO Member country.

50. Under the *Foreign Participation Order*, because each of the foreign investors named above has its home market in the United States or another WTO Member country, each is entitled to a rebuttable presumption that no competitive concerns are raised by its proposed indirect foreign ownership of GUSA. There is no evidence in the record that would rebut this presumption, and, as we explain more fully below, the proposed transaction does not pose a high risk to competition in any U.S. market.¹⁰⁹

5. Foreign Ownership Ruling

51. We conclude, pursuant to Section 310(b)(4) and the Commission's "open entry" standard for indirect investment by WTO Members in U.S. common carrier licensees, that it will not serve the public interest to prohibit Globalstar Corporation's proposed acquisition of GUSA *provided* indirect foreign ownership of GUSA, upon closing and thereafter, complies with the ruling issued herein. Specifically, this ruling permits GUSA to be owned indirectly by: (1) Loral Space and its wholly owned subsidiary

¹⁰⁰ See May 16 Letter, *supra* n. 80, at 2.

¹⁰¹ *Id.* at 3.

¹⁰² *Id.*

¹⁰³ See April 23 Letter, *supra* n. 18, at 5.

¹⁰⁴ See May 16 Letter, *supra* n. 80, at 3.

¹⁰⁵ See *Cable & Wireless USA, Inc.*, 15 FCC Rcd 3050, 3052, para. 7 (IB 2000).

¹⁰⁶ LGP (Bermuda) Ltd., which is chartered in Bermuda, is a wholly-owned direct subsidiary of Loral Space. We have counted LGP (Bermuda) Ltd.'s limited partnership interest in GLP in our aggregate count of ownership interests held in GLP by Loral Space. See *supra* paras. 33-39.

¹⁰⁷ Daimler-Chrysler Aerospace has attributable equity and voting interests in GLP through Daimler-Chrysler Aerospace's indirect, partial ownership of Loral/DASA Globalstar, L.P., which holds a limited partnership interest in GLP, and through Daimler-Chrysler Aerospace's wholly-owned subsidiary, DASA Globalstar Limited, which holds a limited partnership interest in LQSS. See *supra* paras. 41 n. 85, 42.

¹⁰⁸ See April 23 Letter, *supra* n. 18, at 2, 4-5.

¹⁰⁹ See *infra* paras. 54-55.

LGP (Bermuda) Ltd. (up to and including an aggregate 40.24 percent equity and 56.05 percent voting interests); (2) GTL and its Bermuda shareholders (42.45 percent equity and voting interests); (3) San Giorgio S.p.A. and its Italian shareholders (0.92 percent equity and voting interests); (4) TeleSat Limited and its Chinese shareholders (1.42 percent equity and voting interests), (5) Vodafone Satellite Service, Ltd. and its U.K. shareholders (3.20 percent equity and 3.78 percent voting interests); (6) DACOM Corporation and its South Korean shareholders (0.14 percent equity and voting interests); (7) Hyundai Corporation and its South Korean shareholders (0.28 percent equity and voting interests); (8) Hynix Semiconductor, Inc. and its South Korean shareholders (1.94 percent equity and voting interests); (9) TE.SA.M and its French shareholders (3.20 percent equity and 3.78 percent voting interests); (10) Daimler-Chrysler Aerospace and its German shareholders (1.85 percent equity and 6.88 percent voting interests); (11) the AXA group of companies and their French shareholders (2.49 percent equity and 6.2 percent voting interests); and (12) Alenia ESpace and its Italian shareholders (0.47 percent equity and 1.73 percent voting interests). We also approve the additional interests attributable to GLP through investments of less than one percent in GTL held by San Giorgio S.p.A.; DACOM Corporation; and Sir Ronald Grierson and John Peett (each of whom is a citizen of the United Kingdom, a WTO Member country).

52. GUSA also may accept up to and including an additional, aggregate 25 percent indirect equity and/or voting interests from the above named foreign investors, or other foreign investors, without seeking further Commission approval under section 310(b)(4), subject, however, to the following conditions: First, no single foreign investor, including those named above (with the exception of Loral Space, LGP (Bermuda) Ltd., and GTL) may acquire an indirect equity or voting interest in GUSA in excess of 25 percent without prior Commission approval under section 310(b)(4). Second, GUSA shall seek approval under section 310(b)(4) before it accepts any additional indirect investment, other than that approved here, from Loral Space, LGP (Bermuda) Ltd., and GTL. We note that compliance with this ruling requires GUSA to count, as part of the additional, aggregate 25 percent foreign ownership amount, any foreign ownership not specifically identified in this ruling. Thus, for example, unless GUSA obtains prior Commission approval, it may not accept non-WTO investment in the future, if, when aggregated with any existing non-WTO investment and new WTO Member country investment, the aggregate amount of these unidentified investments exceeds 25 percent.

53. We emphasize that the specific ruling we issue to GUSA will require that the licensee and its parent companies, Globalstar Corporation and GLP, continue to monitor GLP's attributable foreign equity and voting interests, and calculate attributable interests consistent with the attribution principles enunciated by the Commission. For example, we are concerned that there remains a possibility that Loral's recordkeeping is such that it does not accurately reflect all its foreign ownership, due to the fact that stock is often purchased through brokerage houses and held in street name, which does not necessarily reflect actual ownership. We also note that Globalstar Corporation has not identified for the record any foreign ownership interests in Qualcomm Incorporated, a Delaware corporation that, through its wholly-owned domestic subsidiary Qualcomm China, Inc., holds a 49 percent limited partnership interest in LQP, the general partner of LQSS, which itself is the general partner of GLP. Globalstar Corporation also has not demonstrated effective insulation for Qualcomm China, Inc.'s limited partnership interest in LQP. Accordingly, while foreign equity interests in Qualcomm Incorporated are subject to significant dilution as a result of the chain of intervening partnerships through which Qualcomm Incorporated has invested in GLP, foreign voting interests in Qualcomm Incorporated flow entirely to GLP. We also note that Qualcomm Incorporated remains one of GLP's largest creditors.¹¹⁰ Therefore, we may need to revisit GUSA's attributable foreign ownership in the future, particularly once a new GLP ownership structure is confirmed by the U.S. Bankruptcy Court.¹¹¹

¹¹⁰ See May 16 Letter, *supra* n. 80, at 7.

¹¹¹ See *supra* note 31.

E. Competitive Effects

54. Our public interest analysis under sections 214(a) and 310(d) 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 markets can include both service to U.S. domestic telecommunications markets and service between the United States and foreign telecommunications points.¹¹² For the international telecommunications market, the Commission has evaluated the competitive effects on a country-by-country basis, for service between the United States and specific foreign countries, where service to each foreign country from the United States represents a separate geographic market.¹¹³ In those analyses, we considered whether proposed transactions would lessen or enhance competition in the provision of communications services in, to, or from the United States. We need not analyze a transaction's impact on competition in the provision of satellite services between the United States and foreign countries if that service does not involve service to or from the United States. However, we do consider the effects of global consolidation to the extent that it affects U.S. customers.¹¹⁴

55. After reviewing the record, we find that there does not appear to be any significant overlap in the provision by GLP and GUSA and GCL of services in the product and geographic markets in, to, or from the United States. GLP owns and manages the MSS space segment services, while GUSA and GCL operate MSS gateway earth stations. Thus, transfer of GUSA and GCL to Globalstar Corporation would not increase concentration or market power in any market involving the provision of communication services domestically. Moreover, there are several other mobile satellite services systems that compete with Globalstar MSS in the United States.¹¹⁵ These include Inmarsat, Iridium, Mobile Satellite Ventures, and Orbcomm.¹¹⁶ Thus, rather than decreasing competition, the proposed acquisition likely will result in a stronger global telecommunications competitor. Given that there are a number of other firms offering MSS services, we find that the proposed transaction raises no significant competitive concerns.

F. Dominant Carrier Safeguards

56. As part of our public interest analysis under section 214(a), we also consider whether, pursuant to the proposed transaction, GUSA will be, or will be affiliated with, a foreign carrier that has

¹¹² See, e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9823, para. 78, 9825, para. 81, 9833, para. 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, 13 FCC Rcd 18025 (1998) (“*MCI/WorldCom Order*”). See also *Lockheed Martin Corporation, COMSAT Government Systems, LLC, and COMSAT Corporation, Application 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, 15 FCC Rcd 22910, 22915, para. 16 (2000) (“*Lockheed/COMSAT Order*”); 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, 16 FCC Rcd 17575 (IB & WTB, 2001), Supplemental Order, 16 FCC Rcd 18878 (IB & WTB, 2001).

¹¹³ *Lockheed/COMSAT Order*, 15 FCC Rcd at 22916, para. 18.

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

¹¹⁵ 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*, Order and Authorization, 16 FCC Rcd 22897, 22911, para. 31 (2001).

¹¹⁶ See, e.g., *Motient Services Order*, 16 FCC Rcd at 20477-78, para. 24.

market power on the foreign end of a U.S. international route that GUSA has authority to serve.¹¹⁷ Under rules adopted in the *Foreign Participation Order*, the Commission classifies a U.S. carrier as a “dominant” international carrier on a particular route if it is, or is affiliated with, a foreign carrier that controls essential facilities on the foreign end of that route.¹¹⁸ As explained below, we conclude that GUSA warrants classification as a non-dominant carrier on all authorized routes.

57. Globalstar Corporation certifies that it is affiliated within the meaning of section 63.09(e) of the Commission’s rules with three authorized Globalstar service providers: (1) Globalstar do Brasil, S.A., in Brazil; (2) Globalstar Canada Co., in Canada; and (3) GlobalTel JSC, in Russia.¹¹⁹ Loral Space has a 73.3 percent general partnership interest in Loral/DASA Globalstar, L.P., a U.S. company that indirectly wholly owns Globalstar do Brasil, S.A.¹²⁰ GLP holds 49 percent of GlobalTel JSC.¹²¹ Loral Space has an indirect 49.9 percent interest in Globalstar Canada Satellite Co., the retail service provider in Canada, which indirectly owns 46.66 percent of Globalstar Canada Co., the Canadian gateway operator associated with the Globalstar MSS system.¹²² In December 2001, Globalstar Corporation acquired a 50.1 percent interest in Globalstar Canada Satellite Co. and a 23.38 percent interest in Globalstar Canada Co.¹²³

58. Globalstar Corporation also certifies that it is affiliated with the following entities in which Loral Space has an ownership interest: (1) Loral CyberStar de Argentina SRL, holder of a network service provider license in Argentina; (2) Loral CyberStar do Brasil, Ltda, holder of a network service provider license in Brazil; (3) Loral Skynet do Brasil Ltd., a fixed satellite service provider in Brazil; (4) Loral CyberStar GmbH, a network service provider in Germany; (5) Enlaces Integra S.R.L. de C.V., a network service provider in Mexico; and (6) Satelites Mexicanos S.A. de C.V. (“SatMex”), a fixed satellite service provider in Mexico.¹²⁴ Globalstar Corporation further certifies that it controls Globalstar Canada Satellite Co., Loral CyberStar de Argentina SRL, Loral CyberStar do Brasil, Ltda, Loral Skynet do Brasil Ltd., and Loral CyberStar GmbH.¹²⁵

59. Globalstar Corporation certifies that it is not a foreign carrier in any destination market and that its affiliates in Argentina, Brazil, Canada, Germany, Mexico, and Russia all are relatively new

¹¹⁷ GUSA holds three international section 214 authorizations to provide facilities-based and resold telecommunications services. *See* International 214 Applications, *supra* n. 1, at 4, 6.

¹¹⁸ *See Foreign Participation Order*, 12 FCC Rcd at 23987, 23991-99, paras. 215, 221-39. A carrier classified as dominant is subject to dominant carrier safeguards. *See* 47 C.F.R. § 63.10(c) and (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, and where the standard safeguards and additional conditions would be ineffective, the Commission reserves the right to deny the application. *Foreign Participation Order*, 12 FCC Rcd at 23913-14, para. 51. In circumstances where an affiliated foreign carrier possesses market power in a non-WTO Member country, the Commission applies the ECO test as part of its public interest inquiry under section 214(a). *Id.* at 23944, para. 124.

¹¹⁹ *See* International 214 Applications, *supra* n. 1, at 7.

¹²⁰ *Id.*

¹²¹ *Id.* at n. 5.

¹²² *Id.* at 7-8.

¹²³ *Id.* at 8.

¹²⁴ *Id.*

¹²⁵ *Id.* at 8-9.

entrants with insignificant shares of the domestic or international telecommunications markets in their respective countries, and that none of the affiliates holds a 50 percent or more share of the international transport or local access markets in these destination countries.¹²⁶ We find no basis on this record to conclude that Globalstar Corporation's affiliates in Argentina, Brazil, Canada, Germany, Mexico, and Russia have market power in the provision of international transport and local access services on the foreign end of these routes. Therefore, based on our review and on the certified statements made by Applicants, we find that, upon consummation of the proposed transfer of control of GUSA to Globalstar Corporation, GUSA warrants classification as a non-dominant U.S. international carrier on all of its authorized U.S. international routes.

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

60. When analyzing any transfer of control or assignment application in which foreign ownership is an issue, we also consider any national security, law enforcement, foreign policy, and trade policy concerns raised by the Executive Branch.¹²⁷

61. In assessing the public interest, we take into account the record and accord the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues.¹²⁸ One of the three section 214 authorizations held by GUSA, File No. ITC-214-19991229-00795, grants GUSA authority to provide global or limited global facilities-based and resale service associated with gateway earth stations located in Canada. This authorization is expressly conditioned upon GUSA's compliance with a Transition Agreement executed among GUSA, GUSA's ultimate parent Vodafone AirTouch Plc (now known as Vodafone Group PLC), the U.S. Department of Defense ("DOD"), the U.S. Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI").¹²⁹ Globalstar Corporation acknowledges the importance of GUSA's continued compliance with this agreement, pledges its cooperation with DOD, DOJ, and the FBI, and affirms its intention to assume and fully comply with the obligations of the agreement.¹³⁰

IV. CONCLUSION

62. In evaluating the public interest benefits of the proposed transaction, we consider the Applicant's claims that the proposed transfers of control will yield several tangible public interest

¹²⁶ *Id.* at 10. Globalstar Corporation advises that it holds a 49 percent non-controlling interest in its affiliate GlobalTel JSC, the Russian Globalstar MSS service provider, which is 51 percent owned by Rostelecom, the government-controlled carrier in Russia that manages GlobalTel JSC. *See id.* at n. 5. Rostelecom appears on the Commission's "List of Foreign Telecommunications Carriers That are Presumed to Possess Market Power in Foreign Telecommunications Markets," DA 99-809 (IB rel. June 18, 1999). Under the Commission's definition of "affiliate," however, Globalstar Corporation and Rostelecom are not affiliated, *see* 47 C.F.R. § 63.09(e).

¹²⁷ *Foreign Participation Order*, 12 FCC Rcd 23891 at 23918-21, paras. 59-66. *See also 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 (1997) ("*DISCO II*") (identifying these concerns as part of the public interest analysis for determining whether a non-U.S.-licensed satellite should be permitted to provide service in the U.S. market); *In re Application of Orbital Communications Corporation and OrbComm Global, L.P.*, Order and Authorization, 17 FCC Rcd 4496 (2002) (taking into account, under the public interest analysis of Section 310(d), whether the proposed foreign ownership of non-common carrier radio licenses may result in public interest harms such as national security or law enforcement concerns).

¹²⁸ *Foreign Participation Order*, 12 FCC Rcd 23891 at 23919, paras. 61-66.

¹²⁹ *See* International 214 Application, *supra* n. 1, at 2.

¹³⁰ *Id.*

benefits. Applicant submits that granting the Applications, and thus allowing GLP to combine its MSS space station assets with the MSS earth station licenses and international section 214 authorizations held by GUSA and GLC, should bring additional efficiencies to the operation of the Globalstar MSS network and allow for increased coordination in Globalstar MSS offerings and pricing, in part by reducing operating expenses associated with billing and customer service and maintenance of the earth station gateways.¹³¹ Applicant further represents that the business plan to restructure GLP's debt assumes the consolidation of certain Globalstar MSS gateways and the operation of all non-consolidated gateways by independent gateway operators under a standard agreement that will ensure globally uniform products and services at the lowest possible rates.¹³² We agree that the proposed consolidation should bring the additional efficiencies identified by the Applicant to the operation of the Globalstar MSS network. In particular, we find compelling Applicant's representation that the current business model, under which individual service providers sell the mobile satellite service to retail customers, has failed to generate sufficient subscribers or revenues to meet its financial obligations. Given that we have found no evidence of potential harm to competition resulting from the proposed transaction, and in view of the stated benefits of consolidating the Globalstar MSS system, we find that granting the Applications will be in the public interest.

V. ORDERING CLAUSES

63. IT IS ORDERED that, pursuant to section 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 filed by Vodafone Americas Asia Inc. and Globalstar Corporation in the above-captioned proceeding ARE GRANTED to the extent specified in this Order and Authorization.

64. 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 filed by Globalstar Corporation IS GRANTED to the extent specified in the Order. In addition, Globalstar Corporation is authorized to accept indirect foreign ownership in excess of the 25 percent benchmark in section 310(b)(4) of the Communications Act to the extent specified in this Order.

65. 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. 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. *See* 47 C.F.R. § 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson, Chief
International Bureau

¹³¹ *See supra* para. 11 (citing Cabo Rojo Application at Exhibit F at 3).

¹³² *Id.*

APPENDIX A

Letter from William D. Wallace, Attorney for GLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed June 21, 2002)