

IB 06-23

S2691 SAT-PPL-20060106-00003  
SES Global S.A.

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APPLICATION FOR SATELLITE SPACE STATION AUTHORIZATIONS FCC 312 MAIN FORM FOR OFFICIAL USE ONLY	FCC Use Only
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**APPLICANT INFORMATION**

Enter a description of this application to identify it on the main menu:  
Change of Ownership of Permitted List Satellites - SES Global S.A.

<b>1-8. Legal Name of Applicant</b>			
Name:	SES Global S.A.	Phone Number:	11352710725276
DBA Name:		Fax Number:	11352710725532
Street:	L-6815 Chateau de Betzdorf	E-Mail:	Pierre.Margue@ses-global.com
	Luxembourg		
City:		State:	
Country:	Luxembourg	Zipcode:	-
Attention:	Mr. Pierre Margue		

9-16. Name of Contact Representative

Name:	Karis A. Hastings	Phone Number:	202-637-5767
Company:	Hogan & Hartson L.L.P.	Fax Number:	202-637-5910
Street:	555 Thirteenth Street, NW	E-Mail:	KAHastings@HHLaw.com
City:	Washington	State:	DC
Country:	USA	Zipcode:	20004 -1109
Attention:		Relationship:	Legal Counsel

CLASSIFICATION OF FILING

17. Choose the button next to the classification that applies to this filing for both questions a. and b. Choose only one for 17a and only one for 17b.

a.

- (N/A) a1. Earth Station  
 a2. Space Station

b.

- b1. Application for License of New Station  
(N/A) b2. Application for Registration of New Domestic Receive-Only Station  
(N/A) b3. Amendment to a Pending Application  
(N/A) b4. Modification of License or Registration  
(N/A) b5. Assignment of License or Registration  
(N/A) b6. Transfer of Control of License or Registration  
(N/A) b7. Notification of Minor Modification  
(N/A) b8. Application for License of New Receive-Only Station Using Non-U.S. Licensed Satellite
- b9. Letter of Intent to Use Non-U.S. Licensed Satellite to Provide Service in the United States  
 b10. Replacement Satellite Application - no new frequency bands  
 b11. Replacement Satellite Application - new frequency bands (Not eligible for streamlined processing)  
 b12. Petition for Declaratory Ruling to be Added to the Permitted List  
(N/A) b13. Other (Please specify)

17c. Is a fee submitted with this application?

If Yes, complete and attach FCC Form 159.

If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114).

Governmental Entity     Noncommercial educational licensee

Other (please explain): Permitted List Filing – No Fee Required

17c. Fee Classification    BNY – Space Station (Geostationary)

18. If this filing is in reference to an existing station, enter:

(a) Call sign of station:

Not Applicable

19. If this filing is an amendment to a pending application enter:

(a) Date pending application was filed:

Not Applicable

(b) File number of pending application:

Not Applicable

TYPE OF SERVICE

20. NATURE OF SERVICE: This filing is for an authorization to provide or use the following type(s) of service(s): Select all that apply:

- a. Fixed Satellite
- b. Mobile Satellite
- c. Radiodetermination Satellite
- d. Earth Exploration Satellite
- e. Direct to Home Fixed Satellite
- f. Digital Audio Radio Service
- g. Other (please specify)

21. STATUS: Choose the button next to the applicable status. Choose only one.

- Common Carrier     Non-Common Carrier

22. If earth station applicant, check all that apply.  
Not Applicable

23. If applicant is providing INTERNATIONAL COMMON CARRIER service, see instructions regarding Sec. 214 filings. Choose one. Are these facilities:

- Connected to a Public Switched Network     Not connected to a Public Switched Network     N/A

24. FREQUENCY BAND(S): Place an "X" in the box(es) next to all applicable frequency band(s).

- a. C-Band (4/6 GHz)     b. Ku-Band (12/14 GHz)  
 c. Other (Please specify upper and lower frequencies in MHz.)

Frequency Lower:    Frequency Upper: (Please specify additional frequencies in an attachment)

**TYPE OF STATION**

25. CLASS OF STATION: Choose the button next to the class of station that applies. Choose only one.

(N/A) a. Fixed Earth Station  
(N/A) b. Temporary-Fixed Earth Station  
(N/A) c. 12/14 GHz VSAT Network  
(N/A) d. Mobile Earth Station  
 e. Geostationary Space Station.  
 f. Non-Geostationary Space Station  
 g. Other (please specify)

26. TYPE OF EARTH STATION FACILITY: Not Applicable

**PURPOSE OF MODIFICATION**

27. The purpose of this proposed modification is to: (Place an "X" in the box(es) next to all that apply.) Not Applicable

**ENVIRONMENTAL POLICY**

28. Would a Commission grant of any proposal in this application or amendment have a significant environmental impact as defined by 47 CFR 1.1307? If YES, submit the statement as required by Sections 1.1308 and 1.1311 of the Commission's rules, 47 C.F.R. §§ 1.1308 and 1.1311, as an exhibit to this application. A Radiation Hazard Study must accompany all applications for new transmitting facilities, major modifications, or major amendments.  Yes  No

**ALIEN OWNERSHIP**  
Earth station applicants not proposing to provide broadcast, common carrier, aeronautical en route or aeronautical fixed radio station services are not required to respond to Items 30-34.

29. Is the applicant a foreign government or the representative of any foreign government?  Yes  No

30. Is the applicant an alien or the representative of an alien?  Yes  No  N/A

31. Is the applicant a corporation organized under the laws of any foreign government?  Yes  No  N/A

32. Is the applicant a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?  Yes  No  N/A

33. Is the applicant a 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?  Yes  No  N/A

34. If any answer to questions 29, 30, 31, 32 and/or 33 is Yes, attach as an exhibit an identification of the aliens or foreign entities, their nationality, their relationship to the applicant, and the percentage of stock they own or vote.

#### BASIC QUALIFICATIONS

35. Does the Applicant request any waivers or exemptions from any of the Commission's Rules?  
If Yes, attach as an exhibit, copies of the requests for waivers or exceptions with supporting documents.

Yes  No

36. Has the applicant or any party to this application or amendment had any FCC station authorization or license revoked or had any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission? If Yes, attach as an exhibit, an explanation of circumstances.

Yes  No

37. Has the applicant, or any party to this application or amendment, or any party directly or indirectly controlling the applicant ever been convicted of a felony by any state or federal court? If Yes, attach as an exhibit, an explanation of circumstances.

Yes  No

38. Has any court finally adjudged the applicant, or any person directly or indirectly controlling the applicant, guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement or any other means or unfair methods of competition? If Yes, attach as an exhibit, an explanation of circumstances

Yes  No

39. Is the applicant, or any person directly or indirectly controlling the applicant, currently a party in any pending matter referred to in the preceding two items? If yes, attach as an exhibit, an explanation of the circumstances.

Yes  No

40. If the applicant is a corporation and is applying for a space station license, attach as an exhibit the names, address, and citizenship of those stockholders owning a record and/or voting 10 percent or more of the Filer's voting stock and the percentages so held. In the case of fiduciary control, indicate the beneficiary(ies) or class of beneficiaries. Also list the names and addresses of the officers and directors of the Filer.

41. By checking Yes, the undersigned certifies, that neither applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Act of 1988, 21 U.S.C. Section 862, because of a conviction for possession or distribution of a controlled substance. See 47 CFR 1.2002(b) for the meaning of "party to the application"; for these purposes.  Yes  No

42a. Does the applicant intend to use a non-U.S. licensed satellite to provide service in the United States? If Yes, answer 42b and attach an exhibit providing the information specified in 47 C.F.R. 25.137, as appropriate. If No, proceed to question 43.  Yes  No

42b. What administration has licensed or is in the process of licensing the space station? If no license will be issued, what administration has coordinated or is in the process of coordinating the space station? Netherlands, Permitted List Satellites Only

43. Description. (Summarize the nature of the application and the services to be provided). (If the complete description does not appear in this box, please go to the end of the form to view it in its entirety.)

Notification of change of ownership of Permitted List satellites NSS-5, NSS-7 and NSS-806 to SES Global S.A.

Exs. A & B

#### CERTIFICATION

The Applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. The applicant certifies that grant of this application would not cause the applicant to be in violation of the spectrum aggregation limit in 47 CFR Part 20. All statements made in exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The undersigned, individually and for the applicant, hereby certifies that all statements made in this application and in all attached exhibits are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.

44. Applicant is a (an): (Choose the button next to applicable response.)

- Individual
- Unincorporated Association
- Partnership
- Corporation
- Governmental Entity
- Other (please specify) Foreign Entity

45. Name of Person Signing  
Pierre Margue

46. Title of Person Signing  
Vice President Legal and Corporate Affairs

47. Please supply any need attachments.

1:

2:

3:

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND / OR IMPRISONMENT  
(U.S. Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION AUTHORIZATION  
(U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

**FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT**

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**THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.**

**Exhibit A**

**NOTIFICATION OF PROPOSED CHANGE OF OWNERSHIP OF  
PERMITTED SPACE STATION LIST SATELLITES:  
NSS-7, NSS-5 & NSS-806**

SES GLOBAL S.A. ("SES GLOBAL") and New Skies Satellites B.V. ("New Skies" and together with SES GLOBAL, the "Applicants") hereby notify the Commission of a proposed change in the ultimate ownership and control of New Skies' NSS-7, NSS-5, and NSS-806 spacecraft (collectively, the "New Skies Satellites"). The transfer of control will occur pursuant to the amalgamation of New Skies' indirect corporate parent with a wholly-owned subsidiary of SES GLOBAL.

This transaction has a limited nexus to the United States because the vast majority of New Skies' services are delivered abroad. None of the New Skies satellites has 50-state U.S. coverage, and New Skies provides almost no domestic U.S. services. Instead, New Skies has a strong presence in the Middle East, Asia, South America and Africa. SES GLOBAL intends to operate New Skies as the third satellite infrastructure pillar of the SES organization, alongside SES ASTRA in Europe and SES AMERICOM in North America.

The three New Skies Satellites identified above, which are licensed by the Kingdom of the Netherlands, have partial U.S. coverage and are authorized to provide service to the United States via the Permitted Space Station List ("Permitted List"). In the *Space Station Reform Order*,<sup>1</sup> the Commission established procedures, now codified in Section 25.137(g) of the Commission's rules, 47 C.F.R. § 25.137(g), requiring notification to the Commission in the event of a proposed transfer of control of satellites on the Permitted List. This application is submitted pursuant to those procedures. The Applicants are concurrently filing an application for Commission consent to the transfer of control of the U.S. earth stations licensed to New Skies' wholly-owned subsidiary New Skies Networks, Inc., and the Applicants respectfully request that the Commission conduct a consolidated review of this Notification and the earth station application.

The proposed acquisition of New Skies by SES GLOBAL will serve the public interest, convenience and necessity. It will have no material impact on

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<sup>1</sup> *Amendment of the Commission's Space Station Licensing Rules and Policies, First Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 10760, 10880 (¶¶ 326-327) (2003) ("*Space Station Reform Order*").

competition in the U.S. because New Skies' operations do not overlap significantly with those of SES AMERICOM. As discussed below, to the extent New Skies provides services to the United States, it does so offering international capacity over its Atlantic Ocean Region ("AOR") (NSS-7), Pacific Ocean Region ("POR") (NSS-5), and Latin America (NSS-806) satellites. SES AMERICOM has a limited position in this market, and New Skies primarily competes with Intelsat, PanAmSat, and other satellite operators as well as with transoceanic fiber systems.

To the extent SES GLOBAL's acquisition impacts U.S. consumers at all, that impact will be positive. The transaction will permit New Skies to compete more effectively by giving it access to SES GLOBAL's financial strength and technical expertise, and end users will be able to purchase a broader range of satellite services from a single source. New Skies' customers will benefit from the expansion capacity, redundancy and service offerings provided by the larger SES GLOBAL fleet and organization. The transaction will also lead to operational efficiencies and permit greater investment in facilities, customer services and technological innovation.

## I. REGULATORY FRAMEWORK

New Skies currently operates three Permitted List satellites: NSS-7 at 22° W.L., NSS-5 at 177° W.L., and NSS-806 at 40.5° W.L. The procedure for reviewing changes in the ownership of Permitted List satellites is "very simple."<sup>2</sup> Upon receipt of a notification, the agency issues a public notice inviting comment limited to "whether the transaction affects any of the considerations made when the original satellite operator was allowed to enter the U.S. market." *Id.* Such a truncated procedure is a "reasonable framework for considering any issues that might be raised by such a transfer." *Id.* at ¶ 327. The FCC has determined that:

[b]ecause non-U.S.-licensed satellites are not subject to many of the requirements of the Communications Act, such as the foreign ownership requirements of Section 310, it may not be necessary to subject transfers of control and assignments of non-U.S.-licensed satellites on the

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<sup>2</sup> *Space Station Reform Order*, 18 FCC Rcd at 10880 (¶ 326).

Permitted List to the same level of review as transfer of U.S.-licensed satellites.<sup>3</sup>

The Commission added the New Skies Satellites to the Permitted List with conditions on the following dates: NSS-806 on March 29, 2001;<sup>4</sup> NSS-5 on March 29, 2001, as amended on May 28, 2002,<sup>5</sup> and NSS-7 on May 28, 2002, as amended on November 15, 2002.<sup>6</sup> Each time, the FCC considered the impact on competition in the U.S. telecommunications market, reviewed New Skies' financial, legal, and technical qualifications, and concluded that placing the New Skies Satellites on the Permitted List was in the public interest. As shown below, the proposed change in ownership of New Skies' parent does not affect any of those initial considerations.

The Commission has already concluded that SES GLOBAL is entitled to the presumptions in favor of market entry accorded to entities from WTO member countries.<sup>7</sup> As a result, no additional showing is required under Section 25.137(a). 47 C.F.R. § 25.137(a). SES GLOBAL, through its subsidiaries, will operate the three NSS Satellites in accordance with the conditions associated with their entry on the Permitted List.

The Commission's Permitted List rule does not require prior approval for changes in ownership. However, the Applicants request here that the Commission concurrently consider the change in ownership of the Permitted List

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<sup>3</sup> *Amendment of the Commission's Space Station Licensing Rules and Policies*, Notice of Proposed Rulemaking and First Report and Order, 17 FCC Rcd 3847, 3894 (¶ 136) (2002).

<sup>4</sup> *New Skies Satellites N.V.; Petition for Declaratory Ruling*, Order, 16 FCC Rcd 6740 (2001) ("2001 Permitted List Order").

<sup>5</sup> *Id.*; 2002 Permitted List Order.

<sup>6</sup> 2002 Permitted List Order; *Revision of Permitted List Entry for the NSS-7 Satellite to Remove Coordinate Conditions*, Public Notice, 17 FCC Rcd 22969 (2002) ("NSS-7 Public Notice"). NSS-7 is a new satellite built and launched subsequent to New Skies' commercial inception.

<sup>7</sup> *See General Electric Capital Corporation and SES GLOBAL S.A.*, Order and Authorization, 16 FCC Rcd 17575, 17588-89 (IB & WTB 2001) (SES GLOBAL and its principal shareholders are all entities from WTO Member countries).

satellites with the transfer of control of the associated earth stations, for which prior consent is required. Under the terms of Applicants' agreement, consummation cannot occur until the Commission has acted with respect to both the space and earth stations. In any event, the transfer of control of the satellites and the earth station licenses are inseparable parts of a single transaction, and consolidated review would be the most efficient use of Commission resources. As a result, the Applicants further request that the FCC notify the Applicants and the public that the Permitted List will be updated to reflect SES GLOBAL as the new ultimate owner and operator of the New Skies Satellites upon receipt of the Applicants' notice of consummation.

## **II. THE APPLICANTS AND THE PROPOSED TRANSACTION**

### **A. SES GLOBAL**

SES GLOBAL is a Luxembourg company with its headquarters in Betzdorf, Luxembourg. Through its wholly-owned operating subsidiaries SES AMERICOM and SES ASTRA, SES GLOBAL provides satellite services around the world to enterprise, government, and residential users. SES AMERICOM operates a fleet of Commission-licensed spacecraft optimized for service to the U.S. and North America, with some satellites also offering coverage of South America and trans-oceanic capabilities. SES ASTRA operates a fleet of Luxembourg-licensed spacecraft optimized for service to Europe and Africa. SES GLOBAL also holds the following investments in other satellite operators: a 75% interest in European provider SES Sirius, a 34.1% interest in Asia-Pacific provider AsiaSat, interests in Latin American providers NahuelSat (28.75%) and Star One (19.99%), and an interest in global Low-Earth orbit messaging service provider Orbcomm.<sup>8</sup> SES AMERICOM is an investor in Ciel and QuetzSat, new entrants in the broadcasting satellite markets in Canada and Mexico, respectively.

Information regarding ownership of SES GLOBAL and a chart showing the New Skies' ownership structure following consummation of the proposed transaction are provided in Exhibit B to this application.

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<sup>8</sup> SES GLOBAL's interest in Orbcomm has been diluted to approximately 7.5% by a recent round of financing conducted by the company in which SES GLOBAL did not participate, and further dilution of SES GLOBAL's interest may occur as the financing proceeds.

## **B. New Skies**

New Skies is a Netherlands company with its headquarters in The Hague, The Netherlands. New Skies operates five spacecraft, with an additional satellite due for launch in 2006. In addition to the three Permitted List spacecraft, New Skies operates NSS-6 at 95° E.L. and NSS-703 at 57° E.L. Once NSS-8 replaces NSS-703, the latter spacecraft will be redeployed to another orbital position.

The New Skies fleet provides data, video, Internet and voice communications services to a range of telecommunications carriers, broadcasters, large corporations, Internet service providers and government entities around the world. New Skies is an indirect wholly-owned subsidiary of Hamilton, Bermuda based New Skies Satellites Holdings Ltd. ("New Skies Holdings"), a publicly-traded company (NYSE:NSE). New Skies has offices in Hong Kong, New Delhi, Sao Paulo, Singapore, Sydney and Washington, D.C.

## **C. The Proposed Transaction**

On December 14, 2005, SES GLOBAL and New Skies Holdings entered into an agreement pursuant to which, subject to regulatory approvals, SES GLOBAL will acquire 100% of New Skies by way of a merger under Bermudian law (an amalgamation). Under the terms of the agreement, New Skies Holdings will amalgamate with SES Holdings (Bermuda) Limited, a Bermuda company and wholly owned subsidiary of SES GLOBAL. SES GLOBAL will acquire New Skies for \$22.52 per share in cash. After the merger, New Skies will be a wholly-owned subsidiary of SES GLOBAL. Service to New Skies' existing customers will continue without interruption.

## **III. SES GLOBAL IS QUALIFIED TO ACQUIRE NEW SKIES**

SES GLOBAL is legally, financially, and technically qualified to provide satellite services in the United States. The Commission considered and approved SES GLOBAL's qualifications when it acquired SES AMERICOM (then GE Americom) in 2001.<sup>9</sup> Thus, there is no legal impediment to SES GLOBAL as ultimate owner of New Skies.

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<sup>9</sup> See *General Electric Capital Corporation and SES GLOBAL S.A.*, Order and Authorization, 16 FCC Rcd 17575 (IB & WTB 2001); *General Electric Capital Corporation and SES GLOBAL S.A.*, Supplemental Order, 16 FCC Rcd 18878 (IB & WTB 2001).

The Commission no longer imposes financial qualifications on its satellite licensees,<sup>10</sup> and in any case never applied those requirements to New Skies because each satellite was fully operational when added to the Permitted List. Finally, the proposed change in New Skies' ultimate ownership will not alter the technical operation of U.S.-licensed earth stations communicating with New Skies satellites. SES GLOBAL will remain subject to all operating conditions contained in the applicable Netherlands and Netherlands-U.S. frequency coordination agreements.<sup>11</sup>

As set forth in New Skies' Permitted List conditions for the New Skies Satellites, SES GLOBAL represents that it does not now possess, nor will it acquire or enjoy the exclusive right of handling telecommunications to or from the United States, its territories or possessions, and any other country or territory, by reason of any concession, contract, understanding or working arrangement to which the satellite operator or any persons or companies controlling or controlled by the operator are parties. SES GLOBAL also acknowledges that the transfer of the Permitted List authorization will not authorize it to provide any Direct-to-Home (DTH) service, Direct Broadcast Satellite (DBS) service, or Digital Audio Radio Service (DARS) to, from, or within the United States using the Permitted List Satellites.

Finally, the transaction presents no national security or law enforcement issues. The Applicants will be discussing these matters with the Department of Justice, including the Federal Bureau of Investigation, the Department of Homeland Security, and the Department of Defense, and will advise the Commission regarding the outcome of those discussions.

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<sup>10</sup> *Space Station Reform Order*, 18 FCC Rcd at 10824 (¶ 164).

<sup>11</sup> In particular, NSS-5 and NSS-806 will continue to operate on a non-harmful interference basis relative to any future two-degree compliant satellites providing U.S. services located within two degrees, if coordination agreements have not been reached with such satellites. *See 2001 Permitted List Order*, 16 FCC Rcd at 6749 (¶ 24). The non-harmful interference condition on NSS-7 was lifted on November 15, 2002. *See NSS-7 Public Notice*, 17 FCC Rcd at 22970.

**IV. SES GLOBAL'S ACQUISITION OF NEW SKIES  
WILL SERVE THE PUBLIC INTEREST**

**A. The Large Majority of New Skies' Business Is Outside the U.S.**

As noted above, New Skies' operations are predominantly non-U.S. Of New Skies' 324 transponders worldwide, 221 have no useable coverage of the continental United States. Approximately 40 transponders, mainly hemispheric beams on NSS-806, are capable of U.S. domestic service, although typically not used to provide it. Of the 103 New Skies transponders with some coverage of the continental United States, 33 are designated for trans-Atlantic service, 34 for trans-Pacific service, and 36 for Latin America service. Thus, the bulk of New Skies' capacity and New Skies' marketing and service emphases are directed elsewhere than North America.

Two of New Skies' satellites have no U.S. coverage. NSS-6 at 95° East has six Ku-band beams interconnecting Europe, Africa, the Middle East, the Indian subcontinent, Asia and Australia. NSS-703 at 57° East (to be replaced in 2006 by NSS-8) provides capacity interconnecting Europe, Africa, the Middle East, India and Asia. None of the spacecraft in the New Skies fleet has 50-state U.S. coverage.

The remaining three satellites have only partial U.S. coverage and while the Commission has authorized them to serve the U.S. market, they are used heavily for other purposes as well. Of these, NSS-806 is used primarily for video distribution to cable headends in Latin America. The satellite also features a spot beam covering Mercosur (Argentina, Brazil, Paraguay, Uruguay and Chile) with high-powered Ku-band coverage for data communications. NSS-7 provides trans-Atlantic capacity that can be accessed by users in the eastern portion of the U.S., but also has spot beams focused on Europe/Middle East, the Caribbean and South America, and Western and Southern Africa. NSS-5 can serve the West Coast of the U.S. for trans-Pacific services, with steerable spot beams that can be positioned over Australia and New Zealand, South East and North East Asia, or North America.

As a result, most of New Skies' revenue results from services provided outside the U.S., although U.S. entities with operations abroad are often customers of New Skies. Because of the coverage of its fleet, New Skies provides almost no domestic U.S. service. By acquiring New Skies, SES GLOBAL seeks to supplement the services of AMERICOM and ASTRA by adding a third operator with substantial revenues derived from services in the Middle East, Asia, Latin America, and Africa.

**B. The Transaction Will Benefit U.S. Customers by  
Combining Complementary Fleets and Resources**

To the extent that New Skies does provide service in the U.S., the acquisition of the company by SES GLOBAL will have pro-competitive effects. Because there is no material overlap between the U.S. services of New Skies and SES AMERICOM, the merger will not diminish competition. Instead, U.S. customers of New Skies will reap significant rewards. They will benefit from the additional reliability and redundancy afforded by New Skies' access to the fleets of SES GLOBAL's other operating subsidiaries. SES GLOBAL's financial assets, technical expertise, and marketing resources will make New Skies a stronger competitor against Intelsat, PanAmSat, and other global and regional satellite operators.

In the *2001 Permitted List Order*,<sup>12</sup> the Commission considered New Skies' request for full market access pursuant to the framework established in *DISCO II*, which established a presumption that market entry by operators from WTO-member countries:

will help ensure the presence and advancement of competition in the satellite services market and yield the benefits of a competitive marketplace to consumers in the United States and other countries.<sup>13</sup>

The Commission determined that granting New Skies' request for access to the U.S. market was consistent with these policies, and placed all then-existing New Skies satellites on the Permitted List. The instant transaction will strengthen New Skies' ability to compete by giving the company access to the financial, technical, and marketing resources of SES GLOBAL, and the transaction raises no new competitive concerns.

New Skies and SES AMERICOM do not materially compete today. SES AMERICOM's fleet has full 50-state domestic coverage but limited trans-oceanic capacity. The overwhelming majority of SES AMERICOM's orbital

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<sup>12</sup> *2001 Permitted List Order*, 16 FCC Rcd at 6744-45 (¶¶ 9-11).

<sup>13</sup> *Id.* at 6744, citing *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites to Provide Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24112 (1997) ("*DISCO II*").

locations were assigned to it under Commission policies that restricted "domsats" like AMERICOM from providing more than incidental international services.

SES AMERICOM has just recently taken steps to begin providing material AOR and POR services.<sup>14</sup> SES AMERICOM operates only one Atlantic Ocean Region spacecraft, AMC-12, which commenced operations in April 2005. That satellite has C-band capacity with coverage of the eastern U.S., South America, Western Europe and Africa. AMC-12 is capable of providing trans-Atlantic service, but the majority of the capacity on the spacecraft has been purchased by SES ASTRA for service to Europe and Africa, and by Star One for service to South America.

SES AMERICOM's presence in the POR is even more limited. In late 2000 Satcom SN-4 was moved to 172° E.L. pending construction and launch of a replacement satellite. Satcom SN-4 has been in inclined orbit since late 2003 and does not currently carry significant commercial service. SES AMERICOM will be introducing its first significant POR operations when commercial services commence on AMC-23, which was launched last week and will have coverage of the U.S. West Coast, Northeast and Southeast Asia, Australia, New Zealand and the South Pacific. The Ku-band capacity on AMC-23 has been tailored for the requirements of Connexions by Boeing, which plans to use AMC-23 capacity over the Pacific Ocean for its broadband service offerings to aircraft on trans-Pacific routes.

In any event, the proposed merger will have no material impact on competition for trans-Atlantic and trans-Pacific services because there are numerous other operators serving those routes. Satellite competitors in the AOR include Intelsat, PanAmSat, Eutelsat, Hispasat, and Loral, and in the POR include Intelsat, PanAmSat, Loral, and Mabuhay. In both regions, undersea fiber optic cables are another source of significant competition. Thus, even to the limited extent that the New Skies and AMERICOM fleets offer competing services in the

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<sup>14</sup> Columbia Communications Corp., which SES AMERICOM's predecessor acquired in 2000, had limited international capacity. It operated a C-band AOR satellite acquired from Intelsat that was nearing its end of life and was using C-band capacity leased on two TDRS spacecraft controlled by NASA. *See GE American Communications, Inc., CCC Merger Sub, Inc., and Columbia Communications Corp., Application for Consent to Transfer of Space Station Licenses of Columbia Communications Corporation, Order and Authorization, 15 FCC Rcd 11590, 11591-91 (Int'l Bur. 2000).*

AOR and POR today, the proposed acquisition will not significantly increase concentration in these markets.

To the contrary, New Skies customers will derive important benefits from the proposed transaction, including greater redundancy and enhanced back-up capability. Its relatively small satellite fleet makes New Skies more vulnerable to service disruptions in the event of a failure of part or all of a spacecraft. Access to the fleets operated by SES GLOBAL will permit greater flexibility in restoring service to affected users.

In addition, the proposed transaction will enhance the efficiency of New Skies' operations. After the acquisition, New Skies will be able to rely on SES GLOBAL personnel for additional sales, technical, and management support; combination of the companies will permit reductions in overhead expenses.

The acquisition of New Skies by SES GLOBAL will also promote investment in product development and innovation. Since the company's founding, New Skies has endeavored to expand and upgrade its satellite fleet and introduce advanced service offerings.<sup>15</sup> SES GLOBAL's operating entities also are market leaders in service development and infrastructure investment.<sup>16</sup> SES AMERICOM significantly upgraded and expanded its fleet in 2004-2005, launching five satellites in a twelve-month period. These included AMC-15 and AMC-16, SES AMERICOM's first spacecraft with Ka-band payloads. By entering the SES GLOBAL family, New Skies will benefit from this culture of innovation and investment. The transaction will strengthen the combined companies' ability to invest in and deploy new services and facilities to better serve satellite customers.

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<sup>15</sup> For example, under its IPsys® services line, New Skies provides high-speed, secure and reliable satellite-delivered Internet backbone capacity to ISPs throughout the world. New Skies also augmented its spacecraft constellation by investing almost \$1 billion to construct and launch three new satellites: NSS-6, NSS-7 and NSS-8, which is scheduled for launch in 2006.

<sup>16</sup> In the fourth quarter of 2005 alone, SES AMERICOM began the roll-out of its new IP-PRIME™ distribution platform to enable small telephone companies to distribute hundreds of television channels to subscribers over the same DSL line that brings them voice and high-speed Internet access and launched IP-Connect®, a centralized distribution platform designed to serve key enterprise markets with a powerful suite of satellite-delivered, IP-based voice, video and data solutions.

V. CONCLUSION

In sum, SES GLOBAL is fully qualified to hold Permitted List approvals, and the acquisition by SES GLOBAL of ownership and control of the New Skies Satellites will enhance competition and serve the public interest. The Applicants therefore request that the Commission modify the Permitted List to specify SES GLOBAL as the controlling entity, subject to receipt of the Applicants' notice of consummation. In view of the simplicity and clear lawfulness of the proposed acquisition, the Applicants request speedy approval, which is particularly warranted in the satellite arena:

In this dynamic and technologically innovative industry, a proposed venture may become obsolete in just a few years....To delay a proposed project six months will increase capital cost and diminish technological advantage; to delay it a year or more may destroy its attractiveness as an investment.<sup>17</sup>

Accordingly, SES GLOBAL and New Skies ask that the FCC review and affirmatively authorize transfer of the New Skies Permitted List authorizations (and non-common carrier earth station licenses).

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<sup>17</sup> *United States v. FCC*, 652 F.2d 72, 95 (D.C. Cir. 1980) (en banc).

**Exhibit B****OWNERSHIP AND CONTROL OF SES GLOBAL**

As described in Exhibit A, SES GLOBAL has agreed to acquire the parent of New Skies, which operates three spacecraft on the Commission's Permitted Space Station List. New Skies' wholly-owned subsidiary New Skies Networks, Inc. ("NSN") holds Commission licenses to operate six non-common carrier earth stations.

This transaction does not implicate the foreign ownership restrictions in Sections 310(a) and 310(b) of the Communications Act. Neither New Skies nor NSN holds any common carrier authorizations, and no foreign government will hold any radio license following the transaction. The Commission routinely grants applications for new licenses for space and earth stations filed by SES GLOBAL's wholly-owned subsidiary, SES AMERICOM. Nevertheless, the Applicants provide the following information on the ownership and control of SES GLOBAL out of an abundance of caution and to assist the Commission in its evaluation of the proposed transaction.

Specifically, under the terms of the agreement between the Applicants, New Skies Satellites Holdings Ltd. ("New Skies Holdings") will amalgamate with SES Holdings (Bermuda) Limited, a newly-formed Bermuda company that is a direct, wholly-owned subsidiary of SES GLOBAL. Both New Skies and NSN are indirect, wholly-owned subsidiaries of New Skies Holdings. Thus, the effect of the transaction will be to make New Skies and NSN indirect, wholly-owned subsidiaries of SES GLOBAL. A chart depicting the ownership of New Skies and NSN subsequent to the transaction is attached to this Exhibit. All the entities on the chart with the exception of New Skies and NSN are holding companies, and the jurisdictions in which they are organized are shown on the chart. All the entities will be wholly owned by SES GLOBAL following consummation.

SES GLOBAL is a Luxembourg company with its headquarters in Betzdorf, Luxembourg. SES GLOBAL has three classes of shares (A, B, and C). All shares have one vote each, but the Class B shares carry 40% of the economic rights of shares of Classes A and C.

The sole holders of Class C shares of SES GLOBAL are GE-CFE Luxembourg, S. à r.l. ("GE-CFE") and GE Capital Equity Holdings, Inc. ("GECEH"). GE-CFE and GECEH (the "GE Entities") are wholly-owned indirect subsidiaries of General Electric Company ("GE"). The combined holdings of the GE Entities

represent an effective economic interest of 25.125% and effective voting power of 20.10%. GE is a widely-held, publicly traded U.S. corporation. No person or entity holds an interest in GE sufficient to represent a 10% or greater indirect economic or voting interest in SES GLOBAL.

The Etat du Grand Duché de Luxembourg (the "State of Luxembourg") -- and Banque et Caisse d'Epargne de l'Etat ("BCEE") and Société Nationale de Crédit et d'Investissement ("SNCI"), each of which is an institution created by act of the Luxembourg Parliament and 100% owned by the State of Luxembourg -- are the sole holders of Class B shares of SES GLOBAL. The Class B shareholdings represent an effective economic interest of 16.67% and effective voting power of 33.33%.<sup>1</sup>

The Class A shares are held by non-U.S. companies and by the public in the form of Fiduciary Deposit Receipts ("FDRs") that are publicly traded on the Luxembourg and Euronext exchanges. The Class A shares collectively represent an effective economic interest of 58.21% and effective voting power of 46.57%; the publicly-traded FDRs (the "free float") collectively represent an effective economic interest of 46.10% and effective voting power of 36.88%. As of December 8, 2005, the Class A shareholders with an interest of greater than 0.05% in SES GLOBAL were all companies organized under the laws of Luxembourg or Belgium. SES GLOBAL does not have current information regarding the identity or citizenship of the FDR holders. However, to SES GLOBAL's knowledge, no person or entity holds

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<sup>1</sup> The Commission previously considered whether the foreign government ownership position in SES GLOBAL presented any public interest concerns in the context of the acquisition by SES GLOBAL of what is now SES AMERICOM. In that proceeding, SES GLOBAL presented extensive information regarding the rights associated with the Class B shares, and compared those rights to common minority shareholder protections. SES GLOBAL also discussed the regulatory licensing policies of Luxembourg applicable to SES ASTRA. The Commission found that even assuming the State of Luxembourg would control SES GLOBAL, "such control would not pose a high risk to competition in U.S. markets that would warrant special conditions." See *General Electric Capital Corporation and SES GLOBAL S.A.*, Order and Authorization, 16 FCC Rcd 17575, 17591 (IB & WTB 2001). Since 2001, foreign government ownership and control of SES GLOBAL has decreased. Deutsche Telekom (which is partially owned by the German government) sold its shares in SES GLOBAL in 2004. In addition, the rights of the Luxembourg government with respect to consent to significant share acquisitions have been narrowed.

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*Exhibit B*

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FDRs representing a 10% or greater voting or economic interest in SES GLOBAL. Under Luxembourg law, any person acquiring FDRs representing a 10% or greater voting interest would be required to notify SES GLOBAL, and the company has received no such notification.

**POST-CONSUMMATION OWNERSHIP OF NEW SKIES & NSN**

