



Federal Communications Commission
Washington, DC 20554

International Bureau

October 5, 2001

Via Telefax

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Re: General Electric Capital Corporation, Transferors, and SES Global,
S.A., Transferees, *Order and Authorization*, DA 01-2100 (IB and WTB,
October 2, 2001)

Dear Counsel:

This letter concerns your October 3, 2001, telephone inquiry to Federal Communications Commission (Commission or FCC) staff regarding the foreign ownership ruling in the Order and Authorization (Order) in the above-referenced proceeding.¹ During this call you stated for the first time that some investors in SES Global S.A. (SES Global), the transferee in the proceeding, are non-U.S. institutions whose identities and percentage interests were not specifically disclosed in the Application. You further explained that these institutions and other investors holding publicly-traded securities would have, in the aggregate, indirect ownership interests in SES Global in excess of 25 percent. Thus, you specifically asked whether the Order approved this indirect foreign ownership in SES Global.

¹ Peter Rohrbach, Counsel for GE Capital, and Laura Sherman, Counsel for SES Global, initiated and participated in the October 3, 2001 telephone call to the FCC. The following Commission staff members were on the telephone phone call: JoAnn Lucanik of the Satellite Radiocommunications Division, International Bureau; Karen Edwards Onyeije of the Telecommunications Division, International Bureau; and Kimberly Reindl of the Office of General Counsel.

First, we note that the Order was based on the information provided in the public record in this proceeding. The Commission relied on the information in the record to fulfill its statutory mandate under the Communications Act to determine whether grant of the Application would serve the public interest. Specifically, section 310(b)(4) of the Act requires that we determine whether it would serve the public interest to prohibit the proposed indirect foreign ownership.

Second, the foreign ownership ruling in the Order "permits the requested indirect foreign ownership of GE Americom by SES Global (100 percent); Deutsche Telekom and its German shareholders (12.6 percent of equity and 10.1 percent of voting shares); BCEE, SNCI and the State of Luxembourg (16.67 percent of equity and 33.33 percent of voting shares, which aggregate shares may be held in any amount by any one of more of these named Luxembourg entities)."² The ruling also allows GE Americom to accept up to and including an additional, aggregate 25 percent indirect equity and/or voting interests from these investors or other unidentified foreign entities or individuals, subject to certain conditions.³ Therefore, based on the new information you provided, closing the proposed transaction with unidentified foreign investment in excess of 25 percent would be inconsistent with the Order and with section 310(b)(4) of the Act.

If, as a result of the proposed transaction, SES Global will have additional foreign investment beyond the aggregate 25 percent foreign investment that our ruling permits, the Applicants will need to seek further Commission approval and will need to submit a filing that includes the following information:

- (i) the percentage of indirect foreign ownership held as publicly-traded securities;
- (ii) the identity and percentage of indirect voting and equity interests in SES Global held by the institutional investors who will receive SES Global shares as a result of the exchange offer to SES shareholders, and any foreign investment in those entities;
- (iii) the investors' nationality (in the case of individual investors), or the principal place of business (in the case of institutional investors), using the five-factor test for determining the nationality or "home market" of foreign investors as set forth in the *Foreign Carrier Entry Order*;⁴
- (iv) the foreign investors, if any, that are from non-WTO member countries, and, if the ownership interests attributable to non-WTO members exceeds 25 percent, information that would allow the Commission to conduct the required effective competitive opportunities analysis; and

² *Order and Authorization*, at para. 42.

³ *Id.*

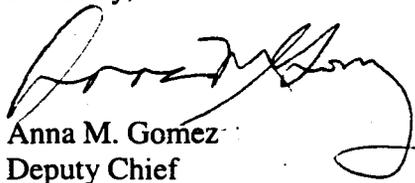
⁴ See *Market Entry and Regulation of Foreign Affiliated Entities*, Report and Order, 11 FCC Rcd 3873, 3948-52, paras. 199-208 (1995); see also *Global Crossing Ltd. And Frontier Corporation*, 14 FCC Rcd 15911, 15918-19, paras. 15-17 (WTB, IB and CCB 1999) (applying the five-factor "principal place of business" test).

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- (v) any additional direct or indirect foreign ownership, including foreign government ownership, that may be relevant to the determination required under section 310(b)(4) of the Act and a principal place of business showing for these investors.

We note that, under section 1.65(a) of the Commission's rules, the parties remain "applicants" and, as such, are "responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application."⁵ Furthermore, under Commission rules this is a restricted proceeding and therefore any written communications must be made part of the record and served simultaneously on all parties. Consistent with prior practice in this proceeding, we are serving a copy of this letter on Representative Tauzin. Please let us know if you would like us to arrange a meeting with all parties to discuss these issues further.

Sincerely,



Anna M. Gomez
Deputy Chief

cc: Representative W.J. "Billy" Tauzin

⁵ 47 C.F.R. §1.65.