555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: (202) 637-2200 Fax: (202) 637-2201
www.lw.com

LATHAM&WATKINS LLP

October 15, 2004

BY HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Petition of Paradise MergerSub, Inc. for a Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended

Resubmission of Petition with Minor Corrections

Dear Secretary Dortch:

Enclosed please find an original and four copies of the above-captioned Petition of Paradise MergerSub, Inc. ("Paradise MergerSub") filed on October 6, 2004, which corrects minor inadvertent errors included in the original filing. For the Commission's convenience, Paradise MergerSub provides herein the complete original filing with replacement pages that include the minor corrections.

Please stamp and return to me the additional copy provided for that purpose. If you have any questions regarding this matter, please contact me at (202) 637-2120.

Very truly yours,

Jeffrey A. Marks

Enclosures

555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: (202) 637-2200 Fax: (202) 637-2201
www.lw.com

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October 6, 2004

BY HAND DELIVERY

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OCT - 6 2004

Federal Communications Commission
Office of Secretary

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Petition of Paradise MergerSub, Inc. for a Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended

Dear Secretary Dortch:

Enclosed please find an original and four copies of the above captioned Petition. Please stamp and return to me the additional copy provided for that purpose. If you have any questions regarding this matter, please contact the undersigned at (202) 637-2200.

Very truly yours,

Karen Brinkmann
Jeffrey A. Marks
Thomas A. Allen

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Petition of Paradise MergerSub, Inc. for a Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act of 1934, as Amended

William E. Kennard
Managing Director
The Carlyle Group
1001 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20004
(202) 347-2626

Karen Brinkmann
Jeffrey A. Marks
Thomas A. Allen
LATHAM & WATKINS, LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004
(202) 637-2200

Attorneys for Paradise MergerSub, Inc.

October 6, 2004

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Petition of Paradise MergerSub, Inc. for a Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended

Paradise MergerSub, Inc. ("Paradise MergerSub") hereby seeks a declaratory ruling that the public interest will not be served by prohibiting indirect foreign ownership of a common carrier licensee in excess of the 25 percent benchmark set forth in Section 310(b)(4) of the Communications Act of 1934, as amended (the "Act"), when Paradise MergerSub consummates the acquisition of Verizon Hawaii, Inc. ("Verizon Hawaii"). The proposed ruling will permit Paradise MergerSub to increase investment levels of passive foreign investors from 25 percent to as much as 47.20 percent, without in any way affecting control of the day-to-day operations of Paradise MergerSub or Verizon Hawaii.

I. BACKGROUND AND SUMMARY

On May 21, 2004, GTE Corporation and Verizon HoldCo LLC ("Verizon HoldCo") entered into an agreement of merger (the "Merger Agreement") with Paradise HoldCo, Inc. ("Paradise HoldCo") and Paradise MergerSub. GTE Corporation currently owns 100 percent of the stock of Verizon Hawaii and 100 percent of the membership interest of Verizon HoldCo. Paradise MergerSub is a holding company wholly-owned by Paradise HoldCo which is itself wholly-owned by investment funds associated with The Carlyle Group (together with its affiliates, "Carlyle").

Prior to the effective time of the merger, GTE Corporation will transfer the stock of Verizon Hawaii, an incumbent LEC, to Verizon HoldCo. Pursuant to the Merger Agreement, through a stock transfer of Verizon HoldCo to Paradise Holdco, Verizon Holdco will be merged with Paradise MergerSub, and Paradise MergerSub will be the sole surviving company and

succeed to and assume all the rights and obligations of Verizon HoldCo (including owning all of the stock of Verizon Hawaii).[1]

The Commission found that the above-described transfer of control will serve the public interest, and it granted the petitioner's applications for consent to transfer control of Verizon Hawaii pursuant to Section 310(d) of the Act.[2] In the process, the Commission consented to up to 25 percent indirect, attributable foreign ownership in Paradise MergerSub, which holds certain common carrier radio licenses.[3] This level of foreign ownership readily accommodated the level of foreign ownership anticipated by the parties at the time of the Section 310(d) application.

However, several characteristics of the Hawaii Public Utilities Commission approval process, including unexpected participation by multiple intervenors, an intense discovery process, and a public hearing schedule announced after the FCC's approval of the radio license transfers, now make it increasingly likely that Carlyle will need access to indirect, foreign capital exceeding 25 percent. This potential increase in the level of foreign investment requires a ruling under Section 310(b)(4) of the Act, as foreign investment may be as much as 47.20 percent of the aggregate ownership interest in Paradise MergerSub. As is shown below,

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1 *See* Attachment A for an organizational chart depicting the proposed merger.

2 *Wireless Telecommunications Bureau, Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Action*, 0001778004, Public Notice, Rep. No. 1921 (rel. Aug. 25, 2004); *Streamlined Domestic Section 214 Application Granted*, Public Notice, WC Docket No. 04-234, DA 04-2541 at 2 (rel. Aug. 17, 2004) ("*Domestic 214 Application Grant*"); *International Authorizations Granted*, ITC-ASG-20040630-00255 E, Public Notice, Rep. No. TEL-00821, DA 04-2520 (rel. Aug. 12, 2004).

3 *See Application for Assignments of Authorization and Transfer of Control of Verizon Hawaii, Inc., FCC Wireless Telecommunications Bureau*, File No. 0001778004, Exhibit 1 at 2 (subm. Jun. 24, 2004) ("Alien limited partners of the Carlyle Partnerships will in no event own more than 25 percent of Transferee...") ("*Original Transfer Application*").

the characteristics of the additional foreign ownership, including its insulated and passive nature and its wide dispersal among hundreds of investors, each with very small shares of the total equity, situated overwhelmingly in World Trade Organization ("WTO") Member countries, raise no public interest concerns under Section 310(b)(4). No change in control will occur as a result of this proposed increase in foreign ownership – all of the controlling parties approved by the Commission will remain as disclosed and approved, and Paradise Mergersub will continue to be owned, controlled, and managed by U.S. individuals and entities.[4] Further, the anticipated foreign ownership raises no competitive concerns nor does it raise any national security concerns. Therefore, it would not serve the public interest to prohibit the proposed indirect foreign ownership of Paradise MergerSub in excess of the 25 percent benchmark set forth in Section 310(b)(4) of the Act.

II. OWNERSHIP OF PARADISE MERGERSUB

As set forth in the *Original Transfer Application*, Paradise MergerSub is owned and controlled by an investment fund associated with Carlyle, a global private equity firm with more than $18 billion under management across 23 funds. Since its founding in 1987, Carlyle has invested in excess of $10.5 billion of equity in more than 300 transactions. Carlyle has a proven track record of successful investments in the telecommunications sector and has enabled many of the companies in its portfolio to access efficient sources of capital over time. Carlyle is committed to the success of the local and long-distance businesses that it proposes to acquire from Verizon.

Paradise MergerSub is a wholly-owned subsidiary of Paradise HoldCo. Carlyle Partners III Hawaii, L.P. ("CP III Hawaii") and the affiliated investment partnerships (Carlyle

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[4] *See Original Transfer Application* at Attachment A.

Partners III Hawaii A, L.P., Carlyle Hawaii Partners, L.P., and Carlyle Hawaii Partners II, L.P., collectively, the "Carlyle Partnerships") at closing will collectively hold 100 percent of Paradise HoldCo.[5] A corporate organization chart is attached hereto as Attachment A. Although the exact equity ownership to be held by each of the Carlyle Partnerships is not yet finalized, it is anticipated that CP III Hawaii and, potentially, Carlyle Hawaii Partners II, L.P., each will have greater than 10 percent equity and voting interests in Paradise HoldCo, and that no other entity will hold a 10 percent or greater equity and voting interests in Paradise HoldCo. Carlyle Partners III Hawaii A, L.P. and Carlyle Hawaii Partners, L.P., each will hold less than a 10 percent equity and voting interest in Paradise HoldCo.

Each of the Carlyle Partnerships is controlled by TC Group III, L.P., a Delaware limited partnership, as its sole general partner. The sole general partner of TC Group III, L.P. is TC Group III, L.L.C., a Delaware limited liability company. TC Group III, L.P. also has one limited partner, a U.S. citizen. The sole member of TC Group III, L.L.C. is TC Group, L.L.C., a Delaware limited liability company. The sole managing member of TC Group, L.L.C. is TCG Holdings, L.L.C. ("TCG Holdings").[6]

TCG Holdings is organized under Delaware law and it is headquartered in Washington, D.C. TCG Holdings is managed by a committee comprised of three managing members, each a citizen of the United States: William E. Conway, Jr., Daniel A. D'Aniello and David M. Rubenstein. In addition, thirty individuals (or domestically organized entities owned by U.S. citizens) are members (but not managing members) of TCG Holdings and hold equity interests in TCG Holdings. Four of these non-managing members are individuals who are not

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[5] Carlyle Partners III Hawaii A, L.P. is also known as CP III Coinvestment, L.P.

[6] TC Group, L.L.C. is 94.19 percent owned by TCG Holdings. A U.S.-organized, state pension fund owns 5.56 percent of TC Group, L.L.C. The remaining 0.25 percent is owned by another Carlyle affiliate company.

United States citizens – two are citizens of France, one is a citizen of Australia and one is a citizen of Japan (each WTO-member countries). All other members of TCG Holdings are U.S. citizens.

The vast majority of equity in Paradise MergerSub will be raised from over 400 U.S. and non-U.S. limited partners of the Carlyle Partnerships, each holding an individually insubstantial interest in their respective partnerships.[7] It is anticipated that only one limited partner of the Carlyle Partnerships, a U.S.-organized state pension fund, will hold an interest of 5 percent or more in Paradise MergerSub, and fewer than 25 investors will hold interests exceeding 1 percent.[8] In addition, as described below, Paradise MergerSub seeks the flexibility to have additional U.S. and foreign (all WTO) investment which could result in a limited number of additional investors with greater than one percent, but less than 10 percent investment in Paradise MergerSub. Regardless, the average limited partner will ultimately hold an interest in Paradise MergerSub of less than 0.25 percent.

All of these limited partners, including foreign limited partners, are insulated from the day-to-day management of the partnerships. The limited partners all are insulated in accordance with Commission insulation criteria, and thus have no authority regarding the day-to-day management of Paradise MergerSub, and hence of Verizon Hawaii.[9] No limited partner

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[7] A description of the holdings of individual investors is set forth in Attachment D.

[8] This U.S.-organized, state pension fund will hold a voting interest of between 7.73 and 9.43 percent in Paradise MergerSub. Depending on the final mix of investors, there is a possibility that a second U.S.-organized pension fund will hold up to a 5.16 percent equity interest in Paradise MergerSub.

[9] *Corporate Ownership Reporting and Disclosure by Broadcast Licensees*, 58 Rad. Reg. 2d (P & F) 604, ¶ 27 (1985); *recon.* 1 FCC Rcd 802 (1986). Although these criteria were developed in the context of media multiple ownership rules, they have been applied in the context of transfers of control of telecommunications carriers. *See, e.g., Application of XO Communications, Inc. for Consent to Transfer Control*, 17 FCC Rcd 19212, n. 66 (2002)

may, among other limitations, "become actively involved, directly or indirectly, in the management or operation of any F.C.C. Regulated Entity or any media businesses in which the Partnership holds an Investment."[10]

Similarly, the limited liability company agreement of TCG Holdings explicitly vests full "power and authority to manage, direct and control the Company" in its managing committee which is made up of the three managing members named above, all U.S. citizens. As already mentioned, four of the 30 non-managing members in TCG Holdings are non-U.S. individuals all from WTO Member countries. These non-managing members hold very small individual investments, which aggregate to less than 2.20 percent in TCG Holdings, and similar to the limited partners of the Carlyle Partnerships, they have no control over the day-to-day operation of TCG Holdings. Therefore, the indirect foreign investment in Paradise MergerSub will be insulated, passive, and diffuse.

As discussed below, Paradise MergerSub requests a declaratory ruling that the public interest would not be served by prohibiting up to and including 45 percent indirect investment (calculated under the Commission's equity test) and 47.20 percent indirect foreign investment (calculated under the Commission's "voting" test)[11] of Paradise MergerSub by the Carlyle Partnerships, including up to approximately 2.20 percent ownership by entities with their principal place of business in non-WTO Member countries or individuals who are citizens of non-WTO Member countries. Paradise MergerSub also requests that such a ruling include the

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("*XO Order*"). The insulating language contained in the limited partnership agreement of each of the Carlyle Partnerships is set forth in Attachment B.

[10] *Id.*

[11] As stated, all foreign ownership in Paradise MergerSub will be passive. The word "voting" is used only to describe the Commission's method of using "multipliers" to calculate ownership interest, based on the language of the statute, 47 U.S.C. § 310(b)(4). *See* Attachment D, Section B.

flexibility for any individual U.S. or WTO investor to hold up to approximately 9.99 percent ownership in Paradise MergerSub (total non-WTO ownership will not exceed an aggregate 2.20 percent). Thereby, grant of the proposed declaratory ruling will permit Paradise MergerSub to raise capital from the investors described herein.

III. THE PROPOSED TRANSACTION SERVES THE PUBLIC INTEREST

At the closing of the proposed transaction, Paradise MergerSub will wholly-own Verizon Hawaii, a common carrier licensee.[12] As stated above, the Commission already found this transfer of control to be in the public interest. For the reasons stated below, the Commission should find the public interest will not be served by disallowance of the transaction or the revocation of Verizon Hawaii's Title III common carrier licenses merely because of an increase in foreign investment from 25 to at most 47.20 percent. All of the foreign investors are passive, non-controlling investors and will not threaten either competition or national security interests.

A. Foreign Interests In Paradise MergerSub Are Passive And Insubstantial

Section 310(b)(4) of the Act sets a 25 percent threshold for indirect, attributable investment by foreign individuals and corporations in U.S. common carrier radio licensees.[13] Before such ownership may surpass the 25 percent threshold, the Commission must determine

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[12] Affected Title III licenses are common carrier microwave licenses and rural radiotelephone licenses used in Verizon Hawaii's operations. *See* Attachment C.

[13] Section 310(b)(4) provides, "No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by ... (4) 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." By its terms, Section 310(b)(4) applies to Verizon Hawaii's Title III (radio) common carrier licenses, but not to its Section 214 authorizations, nor to any of its private radio licenses.

whether the "public interest will be served by the refusal or revocation of such license."[14] The calculation of foreign ownership for purposes of Section 310(b)(4) is a two-pronged analysis requiring the calculation of the percentage indirect ownership of the potential foreign investors using the Commission's equity and "voting" interest tests.[15] Additionally, in the *Foreign Participation Order*, the Commission found that the public interest is served by permitting open investment in U.S. telecommunications companies by entities from WTO Member countries.[16] Therefore, a key component of this analysis is whether the foreign investors have their "home markets" in WTO or non-WTO Member countries.

For determining the "home market" of an entity, the Commission uses its five-factor "principal place of business" test. These factors include: (i) place of incorporation, (ii) nationality of investment principals, officers, and directors, (iii) country in which its world headquarters is located, (iv) country in which the majority of its tangible property is located, and (v) country from which it derives the greatest sales and revenues from its operations.[17] The

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[14] *Id. See also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order on Reconsideration, 12 FCC Rcd 23891 (rel. Nov. 26, 1997) ("*Foreign Participation Order*").

[15] *XO Order* at 19218 (¶ 17).

[16] *Foreign Participation Order* at 23940. *See also In the Matter of Bell Atlantic New Zealand Holdings, Inc., Transferor, and Pacific Telecom Inc., Transferee, Applications for Consent to Transfer Control of a Submarine Cable Landing License, International Domestic Section 214 Authorizations, a Cellular Radiotelephone License, Common Carrier and* Non-*Common Carrier Satellite Earth Station Licenses, and a Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, 18 FCC Rcd 23140, 23151-23152 (¶ 23) (rel. Nov. 6, 2003) ("*Pacific Telecom Order*") ("In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from World Trade Organization ("WTO") Member countries in U.S. common carrier and aeronautical fixed and en route licenses.").

[17] *In re Applications of VoiceStream Wireless Corporation or Omnipoint Corporation, et al, For Consent to Transfer of Control and Assignment of Licenses and Authorizations*, Memorandum Opinion and Order, FCC 00-53, ¶ 17 (rel. Feb. 15, 2000).

Commission balances these factors to reach its "home market" determination. A detailed description of the ownership of Paradise MergerSub is attached hereto as Attachment D.

The following sections summarize the alien ownership of Paradise MergerSub calculated under the Commission's equity and "voting" interest analyses.

1. Ownership Under The Commission's Equity Calculation

As already discussed, pursuant to the proposed transaction, Verizon Hawaii will be wholly owned by Paradise MergerSub, which is wholly owned by Paradise HoldCo. Paradise HoldCo is wholly owned by the four Carlyle Partnerships. TC Group III, L.P. is the general partner of the Carlyle Partnerships, but it has only a negligible equity interest in each of the partnerships (at most 0.10 percent), and hence contributes a negligible amount to the attributable alien equity interest in Paradise MergerSub (at most 0.0022 percent).[18] Therefore, the Carlyle Partnerships contribute approximately 100 percent of the attributable alien equity interest in Paradise MergerSub.

Application of the "home market" test to the Carlyle Partnerships indicates that each of these entities has its principal place of business in the U.S., or alternatively, that the Carlyle Partnerships are entitled to application of the Commission's WTO standards. Each of the Carlyle Partnerships is a limited partnership formed under Delaware law. With respect to the "investment principals, officers, and directors" of the Carlyle Partnerships, these entities are each ultimately controlled by TCG Holdings. TCG Holdings is organized under Delaware law and is headquartered in Washington, D.C. TCG Holdings is managed by a committee comprised of

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[18] As discussed in Attachment D, this negligible contribution of attributable alien equity interest in Paradise MergerSub is rounded down to 0 percent for purposes of this analysis, without any loss of analytical force. Therefore, this analysis assumes that 100 percent of Paradise MergerSub's indirect foreign ownership is derived through the Carlyle Partnerships.

three managing members, each a citizen of the United States: William E. Conway, Jr., Daniel A. D'Aniello and David M. Rubenstein.[19]

The limited partners of the Carlyle Partnerships are either domestic individuals and entities or else individuals residing or entities organized in WTO Member countries, with very minor exceptions. The following table sets forth the expected ownership of the Carlyle Partnerships:

Carlyle Partners III Hawaii, L.P.	54.06% to 96.50%	55.61%	42.11 %	2.28%
Carlyle Hawaii Partners, L.P.	0% to 7.14%	100%	0%	0%
Carlyle Partners III Hawaii A, L.P.	2% to 5.40%	95.46%	4.46%	0.08%
Carlyle Hawaii Partners II, L.P.	0% to 35.71%	0% to 100%	0% to 100%	0%
Total Ownership in Paradise MergerSub:	100%	55% to 75.76%	22.90% to 43.76%	1.24% to 2.20%

As set forth above, the U.S. domestic limited partners of CP III Hawaii, Carlyle Partners Hawaii, L.P., and Carlyle Partners III Hawaii A, L.P. each hold a majority ownership interest in their respective partnerships. Only Carlyle Partners Hawaii II, L.P. could potentially be majority owned by foreign limited partners, with any and all foreign investment exclusively

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[19] In addition, thirty individuals (or domestically organized entities owned by U.S. citizens) are members (but not managing members) of TCG Holdings and hold equity interests in TCG Holdings. As noted above and in the *Original Transfer Application*, four of the individual non-managing members of TCG Holdings are not United States citizens – two are citizens of France, one is a citizen of Australia and one is a citizen of Japan (each WTO-member countries). All other members of TCG Holdings are U.S. citizens. The members of TCG Holdings that are not U.S. citizens hold, in the aggregate, less than 2.20 percent of the equity interest of TCG Holdings. *See Original Transfer Application* at n.5.

[20] This assumes that TC Group III, L.P. holds a negligible interest of approximately 0.0022 percent.

from passive, insulated limited partners organized in WTO Member countries.[21] But that entity will not, in any event, hold more than a 35.71 percent indirect interest in Paradise MergerSub. Moreover, depending on the response from the equity markets, Paradise MergerSub may not require any investment from Carlyle Partners Hawaii II, L.P. at all (i.e., zero percent ownership).

Therefore, the "investment principals, officers, and directors" of the Carlyle Partnerships are overwhelmingly domestic individuals or entities, or entities based in WTO Member countries. As for the remaining elements of the "home market" test, each of the Carlyle Partnerships is organized under Delaware law and headquartered in the U.S. The partnerships have no tangible property. Finally, the vast majority of partnership revenues will be derived through the Carlyle Partnerships' investment in Paradise MergerSub.

In sum, these factors indicate that the Carlyle Partnerships should be viewed as domestic entities or, in the case of one minority investor partnership, a U.S. controlled entity with potentially a majority of equity owned by WTO Member country investors. Paradise MergerSub respectfully submits that under the "home market" test, the Carlyle Partnerships are U.S. entities. Paradise MergerSub should be deemed U.S.-owned and controlled.

If the Commission imputes to the Carlyle Partnerships the alien ownership of their respective limited partners, then these entities contribute, conservatively speaking, up to 45 percent attributable alien equity ownership to Paradise MergerSub. The overwhelming majority of this foreign ownership will be based in WTO Member countries, with a maximum approximately 2.20 percent of the total domestic and foreign equity ownership based in non-WTO Member countries. Therefore, Paradise MergerSub will be nearly 98 percent owned by individuals and entities based in the U.S. or in WTO Member countries.

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[21] *See* Attachment D.

2. Ownership Under The Commission's "Voting" Interest Calculation

The attributable alien interest of Paradise MergerSub under the Commission's "voting" interest test is slightly greater than its attributable alien equity interest described above. Whereas the alien equity interest attributable to Paradise MergerSub through TC Group III, L.P. and its ultimate parent, TCG Holdings, is negligible, TC Group III, L.P.'s contribution to Paradise MergerSub's alien "voting" interest is non-negligible. Hence, although no foreign investor actually has a "vote" regarding the day-to-day operations of Paradise MergerSub, potential foreign ownership under the Commission's voting interest calculation (47.20 percent) is 2.20 percent higher than under the equity interest calculation (45 percent).

Carlyle Partnerships. Where the limited partners of a partnership are insulated in accordance with Commission insulation criteria and have no authority regarding the day-to-day management of their partnership, the Commission has found that the alien voting interest attributable to such partners is the same as the alien equity interest attributable to such partners.[22] The limited partners of the Carlyle Partnerships fit squarely in this category – all are insulated in accordance with Commission insulation criteria, and have no authority over the day-to-day management of their partnerships, nor over Paradise MergerSub or its operation of Verizon Hawaii.[23] Therefore, the aggregate alien "voting" interest attributable to Paradise MergerSub through the Carlyle Partnerships is at most 45 percent, with approximately 2.20 percent based in non-WTO Member countries.

TCG Holdings. As the general partner of the Carlyle Partnerships, TC Group III, L.P. controls the Carlyle Partnerships. Applying the Commission's rules for the attribution of "voting" interests to TC Group III, L.P. and its parent entities leads to the conclusion that TCG

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[22] *XO Order* at 19223-19224 (¶ 26), n.71.

[23] *Supra* note 7.

Holdings, the ultimate parent of TC Group III, L.P., has a 100 percent attributable voting interest in Paradise MergerSub, less than 2.20 percent of which is attributable to foreign investment.

As previously noted, TCG Holdings is managed by a committee comprised of three managing members, each a citizen of the United States. Of the remaining thirty non-managing members, there are four non-managing members based outside the United States, each an individual citizen of a WTO Member country (two are citizens of France, one is a citizen of Australia and one is a citizen of Japan). All other members of TCG Holdings are U.S. citizens.

These four non-managing members of TCG Holdings hold, in the aggregate, less than 2.20 percent of the equity interest of TCG Holdings, and they have no control over the day-to-day operations of TCG Holdings. Therefore, the alien "voting" interest attributable to Paradise MergerSub from these non-managing members is at most 2.20 percent and this entire interest is attributable to citizens of WTO Member countries.

Adding this contribution to the contribution attributable through the Carlyle Partnerships yields a maximum attributable alien interest in Paradise MergerSub of 47.20 percent under the Commission's "voting" interest test. Less than 2.20 percent is held by individuals or entities based in non-WTO Member countries. The remaining 97.80 percent is held by U.S. or WTO investors.

B. Paradise MergerSub Is Entitled To The Strong Presumption That Its Indirect Foreign Ownership Does Not Raise Competitive Concerns And Is In the Public Interest

In the *Foreign Participation Order*, the Commission found that the public interest is served by permitting open investment in U.S. telecommunications companies by entities from WTO Member countries.[24] The Commission adopted a rebuttable presumption that "competitive

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[24] *Supra* note 13.

concerns are not raised by...indirect ownership by entities from WTO Members of common carrier...licensees under Section 310(b)(4) of the Act."[25] Paradise MergerSub is entitled to the WTO presumption.

To apply the rebuttable presumption, the Commission must find either that the relevant entities, those contributing to the attributable alien equity or "voting" interests in Paradise MergerSub, have their principal place of business in a WTO Member country, or that the policies set forth in the *Foreign Participation Order* justify application of the WTO standard.[26] For either determination, the Commission utilizes the five-part "home market" test, balancing the relevant factors to reach its conclusion regarding the applicability of the rebuttable presumption.

As already discussed, the vast majority of Paradise MergerSub's attributable alien ownership interests are held by individuals or entities based in WTO Member countries. At most, 43.76 percent of the 45 percent total equity interest in Paradise MergerSub will be from investors based in WTO Member countries, while up to 45.96 percent of the total 47.20 percent "voting" interest will be similarly based in WTO Member countries. In other words, up to 97 percent of foreign ownership in Paradise MergerSub, both equity and "voting", will be WTO. Moreover, the Carlyle Partnerships are either U.S. domestic entities or are entitled to the WTO

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[25] *Foreign Participation Order* at 23913.

[26] *Id.* at 23941 (citing *Market Entry and Regulation of Foreign-Affiliated Entities, Report and Order*, 11 FCC Rcd 3873, 3951 (1995)). *See also, In the Matter of Global Crossing Ltd. and Frontier Corporation, Applications for Transfer of Control Pursuant to Sections 214 and 310(d) of the Communications Act, as amended,* Memorandum Opinion and Order, 14 FCC Rcd 15911, 15919 (¶ 17) (rel. Sept. 21, 1999) (applying the "home market" test to Global Crossing and balancing the five factors to determine that the policies adopted in the *Foreign Participation Order* were best served by applying the Commission's WTO standard to Global crossing's indirect ownership of common carrier licensees) ("*Global Crossing Order*").

standard.[27] Thereby, in accordance with Commission precedent, Paradise MergerSub is entitled to the rebuttable presumption that its attributable, indirect foreign investment raises no competitive concerns and serves the public interest.

The applicability of the rebuttable presumption is not affected by attributable alien ownership held by entities organized in non-WTO Member countries. Only approximately 2.20 percent of the equity indirectly attributable to Paradise MergerSub will come from alien investors organized in non-WTO countries and no single investor from a non-WTO country will contribute more than 0.70 percent of that amount. The Commission will deny an application only if the non-WTO Member based foreign investment exceeds 25 percent and the non-WTO Member countries fail the Commission's effective competitive opportunities test, unless other public interest considerations prevail.[28] In the present case, since aggregate foreign equity and "voting" interests held by entities from non-WTO Member countries is approximately 2.20 percent, well below the 25 percent threshold, this ownership does not factor into the Commission's analysis regarding the rebuttable presumption.

This conclusion is consistent the Commission's recent order approving the assignment of certain dual-use non-common carrier and common carrier space station authorizations from Loral Satellite to Intelsat North America.[29] In the *Intelsat Order*, non-WTO based foreign investors held indirect, attributable ownership interests accounting for

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[27] *See Global Crossing Order* at 15919 (¶ 17). *See also* Section III.A.1.

[28] *Foreign Participation Order* at 23946.

[29] *In the Matter of Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), Assignors and Intelsat North America, LLC, Assignee, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Order and Authorization, 19 FCC Rcd 2404, 2408, 2432 (¶¶ 9, 10, 71) (rel. Feb. 11, 2004) (the "*Intelsat Order*").

approximately 6 percent of the equity and voting interests of the common carrier licensees.[30] The Commission disregarded this foreign ownership in performing its public interest analysis since it was far below the 25 percent threshold for non-WTO based foreign ownership set forth in the *Foreign Participation Order*.[31]

Similarly, the approximately 2.20 percent foreign ownership held by entities based in non-WTO countries in this case should have no influence on the Commission's application of the rebuttable presumption regarding WTO-based foreign investment. That no single alien investor from a non-WTO Member country holds more than 0.70 percent of the equity makes this analysis simple for the Commission. Such insubstantial passive investments will have no effect on the licensee's operations or competition.

C. Commission Precedent Demonstrates That This Petition Raises No Novel Issues Of Fact Or Law

Paradise MergerSub is entitled to the presumption that its 47.20 percent indirect foreign ownership raises no competitive concerns and is consistent with the public interest. As discussed below, Commission precedent confirms that this Petition raises no novel issues of fact or law, and should be granted without delay.

1. The Commission Has Approved Up To 100 Percent Indirect, Foreign Ownership

The Commission has set no limit on the amount of aggregate indirect foreign ownership it will approve for purposes of Section 310(b)(4). In fact, the Commission has approved 100 percent indirect foreign ownership of common carrier licensees on several

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[30] *Id.* at 2415, n.81.

[31] *Id.* at 2415-2416 (¶ 25) ("Intelsat North America also represents that the collective foreign equity and voting interests held by entities from countries that are non-WTO Members is still well below the 25 percent threshold established by the *Foreign Participation Order* for non-WTO Member investment in U.S. common carrier radio licensees.").

occasions. Most recently, in the *Pacific Telecom Order*, the Commission approved 100 percent indirect foreign ownership of GTE Pacific Inc., both equity and voting interests, by a holding company with its principal place of business in the Philippines, a WTO Member country.[32] The Commission gave this approval in spite of the fact that the equity and voting interests were highly concentrated in just two foreign individuals.[33] Other recent cases where the Commission approved significantly higher percentages of indirect foreign ownership than contemplated herein include the acquisition of Comsat Mobile Communications by Telenor Satellite (79 percent indirect foreign ownership by the Kingdom of Norway) and the acquisition of VoiceStream and Powertel by Deusche Telecom AG (77 percent indirect foreign ownership, including 45 by the German government).[34] Each of these cases involved foreign *control* of a Commission licensee, not mere passive investment

Given such precedent, the 47.20 percent indirect foreign investment in Paradise MergerSub is by no means extraordinary. The proposed foreign ownership interests in Paradise MergerSub are passive investments. Additionally, the interests are widely-held by hundreds of investors. If the rebuttable presumption in favor of grant applies at the 100 percent foreign ownership (and control) level, it certainly should apply to the 47 percent passive, indirect foreign investment in Paradise MergerSub.

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[32] *Pacific Telecom Order* at 23153 (¶ 28).

[33] *Id.*

[34] *See Lockheed Martin Global Telecommunications, et al, Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses, Experimental Licenses, and Earth Station Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, FCC 01-369 at ¶ 36 (rel. Dec. 18, 2001); *Applications of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG ("DT"), Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310 of the Communications Act, et al*, 16 FCC Rcd 9779, 9810, 9845 (¶¶ 48, 49, 125) (rel. Apr. 27, 2001).

2. The Commission Has Approved Similar Increases Of Indirect Foreign Ownership

As discussed above, the Commission already has approved Carlyle's acquisition of Paradise MergerSub. The fact that Paradise MergerSub has filed this Petition to increase its foreign investment (all passive) from 25 to 47.20 percent is unremarkable. The SES Americom line of decisions featured a similar increase in indirect foreign ownership following on the heels of a Commission order approving indirect foreign ownership exceeding the 25 percent threshold. In the initial SES Americom order (the "*Initial SES Americom Order*"), the Commission approved an aggregate alien equity interest of 29.27 percent and alien voting interest of 43.43 percent to be held by foreign investors with their principal places of business in WTO Member countries.[35] Due in part to changes in the financing of the proposed transaction and in part to further disclosures regarding certain shareholders, the petitioners asked that the Commission approve aggregate 50.11 percent equity and 62.90 percent voting interests to be held by the foreign investors.[36] The Commission approved these additions of approximately 20 percent foreign ownership based on the lack of any risk to competition, evidenced in large part by the wide dispersal of equity, and small percentage amount (less than 3 percent) of each individual foreign investor's interest.[37]

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[35] *See Application of General Electric Capital Corporation, Transferors, and SES Global, S.A., Transferees, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 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, DA 01-2100 ¶ 42 (rel. Oct. 2, 2001).

[36] *Application of General Electric Capital Corporation, Transferors, and SES Global, S.A., Transferees, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214(a) and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Supplemental Order, DA 01-2482 at ¶¶ 4-5 (rel. Oct. 26, 2001) ("*SES Americom Supplemental Order*").

[37] *Id.* at ¶¶ 2, 10.

The present case similarly represents an addition of roughly 20 percent in the anticipated indirect foreign ownership of Paradise MergerSub. However, the aggregate foreign ownership of Paradise MergerSub is at most 47.20 percent, substantially below the levels of aggregate foreign ownership at stake in the SES Americom decisions. As was the case in the SES Americom decisions, Paradise MergerSub is entitled to the strong presumption that its proposed indirect foreign ownership in Paradise MergerSub raises no competitive concerns.[38]

3. The Commission Has Approved The Ownership Of Incumbent Local Exchange Carriers ("ILECs") By Foreign Entities

The status of Verizon Hawaii as the ILEC in the State of Hawaii does not alter the applicability of the rebuttable presumption that grant of this Petition would serve the public interest. In at least two recent cases, the Commission has approved the ownership of an ILEC by foreign entities whose aggregate ownership interests vastly exceeded the levels of foreign ownership that Paradise MergerSub proposes. For instance, the *Pacific Telecom Order* approved 100 percent indirect, controlling foreign ownership of the ILEC for the Commonwealth of the Northern Mariana Islands.[39] The Commission saw no threat to competition especially since Pacific Telecom did not compete with the ILEC, there was no evidence that local competition would decrease, and local service would continue without interruption.[40]

The Commission considered similar factors in its 1999 approval of Global Crossing's acquisition of Frontier Corporation, including the transfer of control of certain of Frontier's common carrier licensee subsidiaries to Global Crossing.[41] At the time, Frontier

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[38] *Id.* at ¶ 8.

[39] *Pacific Telecom Order* at 24142-24143 (¶ 3).

[40] *Id.* at 23154-23155 (¶ 31).

[41] *Global Crossing Order* at 15917 (¶ 13).

provided incumbent local exchange services in 13 states.[42] The Commission determined that the proposed transaction posed no threat to competition through the application of its rebuttable presumption for indirect foreign investment based in WTO Member countries. There was no evidence to rebut this presumption of no competitive harm, a conclusion which the Commission juxtaposed with its analysis of potential competitive concerns with respect to domestic and international services: Global Crossing did not compete in Frontier's domestic markets, the parties did not intend to enter as competitors each other's markets, and they were not potential competitors in each other's markets.[43] Hence, there was no risk of loss of "any significant potential market participants in their respective market sectors."[44]

Similarly, in the present case, Verizon Hawaii's ILEC status raises no competitive concerns. Again, the foreign ownership in Paradise MergerSub will be widely dispersed and passive. Neither Paradise MergerSub nor the Carlyle Partnerships intended to enter the Hawaiian local exchange services market separately from the proposed transaction, nor were they a potential market entrant prior the proposal of this transaction. Paradise MergerSub, through Verizon Hawaii, will continue to offer local exchange service in Hawaii with no interruption in service.[45] None of the foreign investors in the Carlyle Partnerships is a competitor of Verizon Hawaii nor do any of these investors have the ability to affect the day-to-day operations of Verizon Hawaii (or Paradise MergerSub).

D. There Is No Evidence To Rebut The Strong Presumption That The Proposed Transaction Serves The Public Interest

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[42] *Id.* at 15912 (¶ 2).

[43] *Id.* at 15920 (¶ 17-18).

[44] *Id.* at 15920-15921 (¶ 19).

[45] *See Domestic Section 214 Application Grant* at 2.

Under Commission precedent, the only way to rebut the strong presumption that the proposed transaction serves the public interest is for there to be evidence that there is a "very high risk to competition in the U.S." where the Commission's "safeguards and conditions would be ineffective."[46] Such evidence will exist only in "the exceptional case."[47] As the discussion above illustrates, this is not "the exceptional case."

The proposed transaction poses no risk to competition. As already noted, equity ownership of Paradise MergerSub will be widely-dispersed among over 400 domestic and foreign limited partners. These investors will hold passive investments, insulated in accordance with Commission insulation criteria, and hence alien limited partners will have no authority regarding the day-to-day management of Paradise MergerSub. None of these investors is a foreign dominant carrier. There is no risk of foreign dominant carriers gaining competitive advantage on any U.S. route, and there is no risk of U.S. carriers being disadvantaged on any route.

There also is no danger of losing a potential competitor in the relevant markets. Paradise MergerSub never intended to enter the Hawaiian telecommunications market other than through the proposed transaction. It was not a potential entrant into such market prior to the proposed transaction. Further, Paradise MergerSub, through Verizon Hawaii, will continue to offer local exchange service in Hawaii with no interruption in service.

Paradise MergerSub is owned by a private equity firm with extremely limited interests in the telecommunications industry, none of which provides services in the State of

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[46] *Foreign Participation Order* at 23913-23914.

[47] *Id.*

Hawaii.[48] Therefore, the planned merger will not increase concentration in any market for telecommunications services. There is no evidence to rebut the presumption that the proposed transaction raises no competitive concerns.

As the Commission has already found, the proposed transaction will serve the public interest. Through Verizon Hawaii, Paradise MergerSub will continue providing service with all of the property, rights, privileges, powers and franchises that Verizon Hawaii held in Hawaii to provide local exchange and exchange access service prior to the transfer. The planned transfer of control will have no known immediate or substantial adverse effect on the service provided to customers in Hawaii.

Moreover, this increase in passive foreign ownership does not present national security concerns. The Commission already conferred with the Executive Branch regarding the

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[48] Paradise MergerSub is affiliated with WCI Cable, Inc. ("WCI"), an FCC licensee that owns and operates a submarine fiber-optic cable connecting Alaska with the continental U.S. as well as certain terrestrial facilities in Alaska, all of which it operates on a non-common-carrier basis. WCI does not have any facilities in Hawaii. Paradise MergerSub's affiliation with WCI stems from TC Group, L.L.C., which is the 100 percent indirect owner of the general partner of Carlyle Venture Partners II, L.P. and its parallel investment partnership, which in turn collectively hold an 85 percent equity interest in WCI. Paradise MergerSub and its affiliates are not domestic telecommunications providers. WCI is not a "telecommunications carrier" as defined in the Act (47 U.S.C. § 153(44)) because WCI provides its services on a non-common carrier basis. *See Alaska Northstar Communications, L.L.C. Transferor, and WCI Cable, Inc. Transferee; Application for Modification of Submarine Cable Landing Licenses*, 12 FCC Rcd 20330, ¶¶ 2-3 (1997) (describing WCI's facilities as non-common carrier). Additionally, the Commission recently consented to transfer of control of PanAmSat Licensee Corp. (a non-common carrier Title III licensee) to Carlyle Partners III Telecommunications, L.P. *In re Applications of the News Corporation Limited and the DIRECTV Group, Inc. (Transferors) and Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC and PEOP PAS, LLC (Transferees) for Authority to Transfer Control of PanAmSat Licensee Corp.*, Public Notice, IB Docket No. 04-209, DA 04-2509 (rel. Aug. 11, 2004) (the "*PanAmSat Consent*"). Further, on June 21, 2004, Carlyle announced that Carlyle affiliates entered an agreement to acquire a 60 percent interest in DDI Pocket, a provider of wireless voice and data services in Japan and roaming agreements in Taiwan and Thailand, with closing of the transaction anticipated in the fourth quarter 2004.

national security implications of the proposed transaction and the Executive Branch did not ask the Commission to remove it from streamlined processing. Moreover, the Commission and the Executive Branch have already considered the national security implications of CP III investments.[49] Paradise MergerSub is certain that the proposed transaction raises no national security concerns, and the proposed increase of passive foreign investment will have no impact on this analysis. Paradise MergerSub will fully cooperate with the Commission and various executive agencies to resolve any potential national security issues.

Carlyle is committed to the success of the businesses that it proposes to acquire from Verizon. Carlyle has a proven track record of successful investments in the telecommunications sector and has enabled many of the companies in its portfolio to access efficient sources of capital over time. Carlyle will use its financial, managerial, and industry expertise to ensure continued success in providing high quality telecommunications services to the residents of Hawaii. Thus, the proposed transaction is in the public interest, a fact which the Commission has recognized and that increased, passive foreign investment does not change.[50]

IV. REQUESTED RELIEF

Paradise MergerSub requests a declaratory ruling that the public interest would not be served by prohibiting up to (and including) 45 percent indirect foreign equity and 47.20 percent indirect foreign "voting" ownership of Paradise MergerSub by the Carlyle Partnerships, including up to approximately 2.20 percent ownership by entities with their principal place of business in non-WTO Member countries or individuals who are citizens of non-WTO Member countries. Paradise MergerSub also requests that such a ruling include the flexibility for any

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[49] *See PanAmSat Consent* at 1, n. 1 ("Moreover, we received no comment from the Executive Branch after advising it of the Applications.").

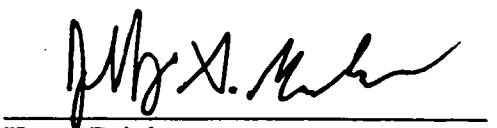
[50] *Domestic 214 Application Grant* at 1.

individual U.S. or WTO investor to hold up to approximately 9.99 percent ownership in Paradise MergerSub (total non-WTO ownership will not exceed an aggregate 2.20 percent). Additionally, Paradise MergerSub requests any further relief that the Commission deems reasonable and appropriate under these circumstances.

V. CONCLUSION

The Commission has already found that the proposed transaction will serve the public interest. The passive and widely-dispersed nature of the foreign investment, with its overwhelming origin in WTO Member countries, raises no concerns that should alter this conclusion. Paradise MergerSub is entitled to the strong presumption that the increased foreign investment will serve the public interest, and there is no evidence to rebut this presumption. Therefore, Paradise MergerSub respectfully requests that the Commission issue a declaratory ruling that the public interest will not be served by prohibiting indirect foreign ownership of Paradise MergerSub in excess of the 25 percent benchmark set forth in Section 310(b)(4).

Respectfully submitted,



William E. Kennard
Managing Director
The Carlyle Group
1001 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20004
(202) 347-2626

Karen Brinkmann
Jeffrey A. Marks
Thomas A. Allen
LATHAM & WATKINS, LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004
(202) 637-2200
karen.brinkman@lw.com
jeffrey.marks@lw.com
thomas.allen@lw.com

Attorneys for Paradise MergerSub, Inc.

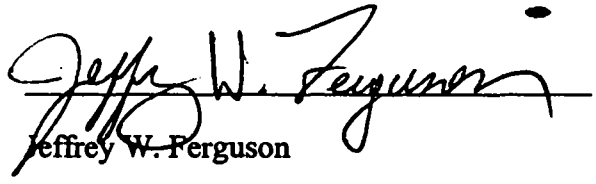
Dated: October 6, 2004

DECLARATION OF JEFFREY W. FERGUSON

Declarant, under penalty of perjury, hereby states as follows:

1. I, Jeffrey W. Ferguson, am General Counsel for The Carlyle Group.

2. I have read the foregoing Petition of Paradise MergerSub, Inc. for a Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act of 1934, as Amended, and I have knowledge of the matters set forth therein. The facts contained in the foregoing are true and correct to the best of my knowledge, information, and belief.

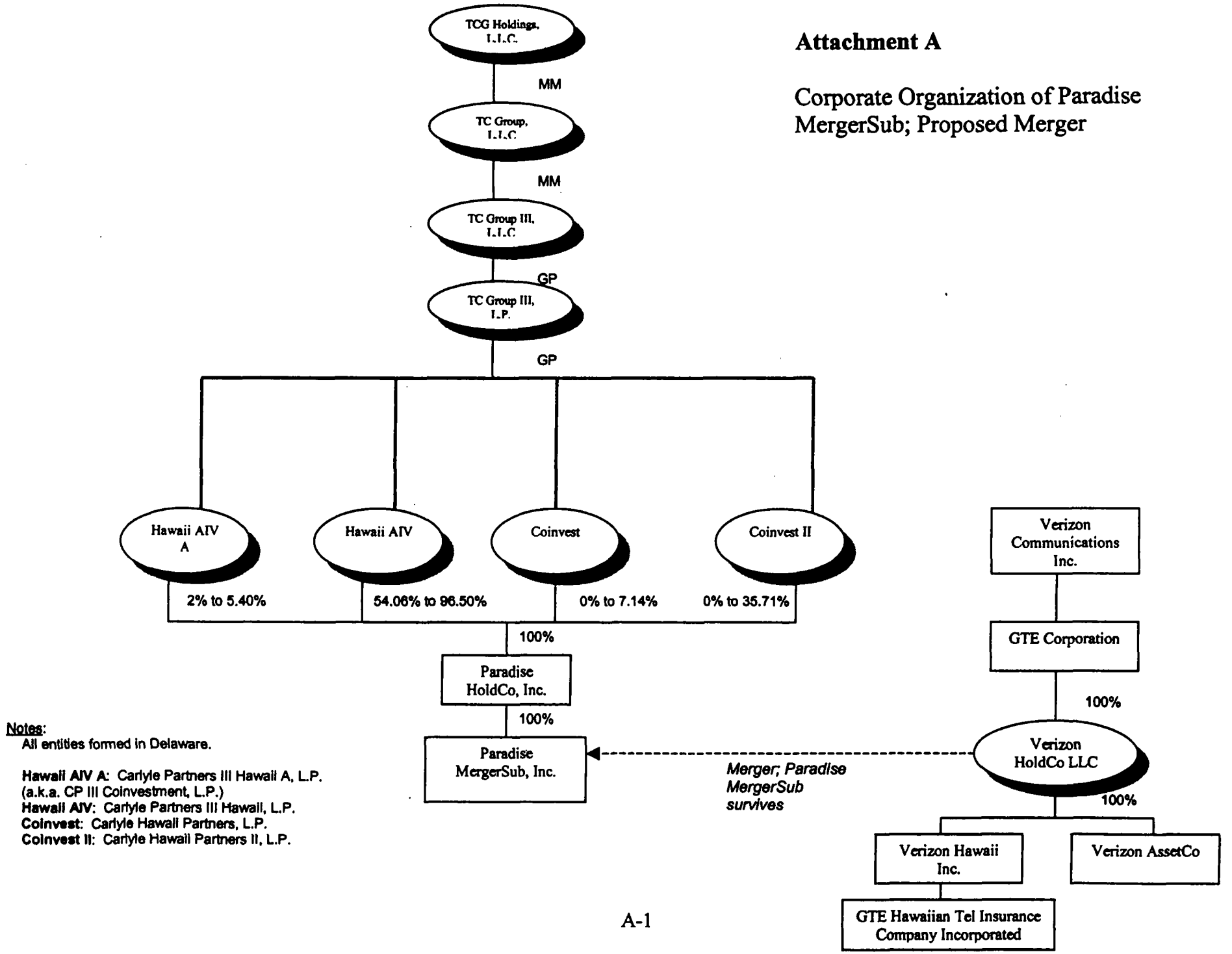


Jeffrey W. Ferguson

Date: October 6, 2004

Attachment A

Corporate Organization of Paradise MergerSub; Proposed Merger



Notes:
All entities formed in Delaware.

Hawaii AIV A: Carlyle Partners III Hawaii A, L.P. (a.k.a. CP III Coinvestment, L.P.)
Hawaii AIV: Carlyle Partners III Hawaii, L.P.
Coinvest: Carlyle Hawaii Partners, L.P.
Coinvest II: Carlyle Hawaii Partners II, L.P.

Attachment B

Insulation Language

Each of the Carlyle Partnerships includes in its respective limited partnership agreement language prohibiting its limited partners from the following:

(i) acting as an employee of, or provide services to, the Partnership, or any Investment of the Partnership or of the Fund in any F.C.C. Regulated Entity, if such Non-U.S. Limited Partner's functions directly or indirectly relate to the media enterprises of the Partnership or such Investment;

(ii) serving, in any material capacity, as an independent contractor or agent with respect to the media enterprises of the Partnership or any Investment of the Partnership;

(iii) communicating with the General Partner or any F.C.C. Regulated Entity in which the Partnership has an Investment on matters pertaining to the day-to-day operations of the business of any such F.C.C. Regulated Entity;

(iv) voting to admit any additional general partners of the Partnership unless such vote may be vetoed by the General Partner;

(v) voting on the removal of the General Partner unless the General Partner is (a) subject to bankruptcy, insolvency, reorganization or other proceedings relating to the relief of debtors, (b) adjudicated insane or incompetent by a court of competent jurisdiction (provided that this clause (b) shall apply only to a general partner that is a natural person), or (c) otherwise removed for cause, as determined by a neutral arbiter;

(vi) performing any services for the Partnership, or any F.C.C. Regulated Entity in which the Partnership has invested, materially relating to the media activities of the Partnership or the activities of any such F.C.C. Regulated Entity, other than acting as lender or surety to the extent permissible without triggering attribution under the F.C.C. Rules; or

(vii) becoming actively involved, directly or indirectly, in the management or operation of any F.C.C. Regulated Entity or any media businesses in which the Partnership holds an Investment.

Attachment C

List of Authorizations To Be Assigned Or Transferred

Call Sign	Radio Service
KNLW639	CB
KNLW640	CB
KCG66	CF
KFJ76	CF
KUP41	CF
KUQ75	CF
KUQ76	CF
KUQ80	CF
KUQ84	CF
KUQ97	CF
KUQ98	CF
KUQ99	CF
KUR61	CF
KUR62	CF
KUR96	CF
KUR98	CF
KUR99	CF
KUS20	CF
KUS21	CF
KUS23	CF
KUV78	CF
KUV79	CF
KUV80	CF
KUV81	CF
KUV83	CF
KUV84	CF
KUV85	CF
KUV86	CF
KUV87	CF
KUV88	CF
KUV93	CF
KUV95	CF
KVH83	CF
KXR49	CF
KXR51	CF
KZS32	CF
KZS94	CF
WAY90	CF
WAY91	CF
WBB245	CF

WCF950	CF
WCU202	CF
WCU406	CF
WCU407	CF
WCU551	CF
WDD39	CF
WDD40	CF
WDU332	CF
WFY583	CF
WFY699	CF
WGW546	CF
WGX408	CF
WHE593	CF
WHE594	CF
WLK450	CF
WLL655	CF
WLM266	CF
WLM502	CF
WMI730	CF
WMI731	CF
WMI732	CF
WMI799	CF
WMI800	CF
WPNH328	CF
WPNK702	CF
KNKL826	CR
KNKL881	CR
KNKL912	CR
KNKP640	CR
WPQZ275	CR
KK6231	CT

Attachment D

Indirect Foreign Ownership Of Paradise MergerSub

The following discussion calculates the aggregate attributable alien ownership interests of Paradise MergerSub, Inc. ("Paradise MergerSub") under the Commission's equity and "voting" interest analyses, as well as indicates the "home markets" of these investors.[1]

A. **Ownership Under The Commission's Equity Calculation**

To calculate the attributable equity interests of foreign individuals and entities, the Commission applies *pro rata* ownership multipliers at each link in the ownership chain to determine each investor's diluted interest.[2] For the computation of equity interests, these multipliers always apply regardless of insulation or control characteristics.[3]

Pursuant to the proposed transaction, Verizon Hawaii, Inc. ("Verizon Hawaii") will be wholly owned by Paradise MergerSub which is wholly owned by Paradise HoldCo, Inc. ("Paradise HoldCo"). Paradise HoldCo is wholly-owned by Carlyle Partners III Hawaii, L.P. ("CP III Hawaii") and the affiliated investment partnerships (Carlyle Partners III Hawaii A, L.P., Carlyle Hawaii Partners, L.P., and Carlyle Hawaii Partners II, L.P., collectively, the "Carlyle Partnerships").[4] TC Group III, L.P. is the general partner of the Carlyle Partnerships, but it has only a negligible equity interest in each of the partnerships (at most 0.10 percent). A chart

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1 As discussed below, all foreign ownership in Paradise MergerSub will be passive. The word "voting" is used only to describe the Commission's method of using "multipliers" to calculate ownership interest, based on the language of the statute, 47 U.S.C. § 310(b)(4).

2 *In re Applications of XO Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Memorandum Opinion, Order and Authorization, 17 FCC Rcd 19221 (¶ 21) (rel. Oct. 3, 2002) ("*XO Order*").

3 *Id.*

4 Carlyle Partners III Hawaii A, L.P. is also known as CP III Coinvestment, L.P.

illustrating the corporate organization is attached at Attachment A. Taking into account the intervening entities between TC Group III, L.P., and its ultimate parent, TCG Holdings, L.L.C. and the fact that TCG Holdings only has four foreign non-managing member (all citizens of WTO-Member countries) holding less than 2.20 percent passive equity interests (in the aggregate),[5] the alien equity interest attributable to Paradise MergerSub through TC Group III, L.P., is approximately 0.0022 percent (0.10 percent x 2.20 percent). This means that approximately 99.9978 percent of the alien equity interest attributable to Paradise MergerSub arises through the Carlyle Partnerships. For purposes of this analysis, the ownership interest attributable through these partnerships is rounded to 100 percent with no loss of analytical accuracy, since such an assumption actually inflates the alien ownership calculation for Paradise MergerSub.[6]

Application of the "home market" test to the Carlyle Partnerships indicates that each of these entities has its principal place of business in the U.S., or alternatively, that the minority ownership by foreign investors in the Carlyle Partnerships is entitled to application of the Commission's rebuttable presumption that ownership by citizens with their "home markets" in WTO Member countries does not raise public interest concerns.[7] Each of the Carlyle

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[5] *See Application of Verizon Hawaii, Inc., et al, For Consent to Transfer Control of Verizon Hawaii Inc. and Certain Assets and Long Distance Customer Relationships Related to Interstate Interexchange Telecommunications Service in the State of Hawaii*, Consolidated Application for Consent to Transfer Control, Docket No. 04-234, at 6, n.6. (subm. Jun. 21, 2004) ("Alien limited partners of the Carlyle Partnerships will in no event own more than 25 percent of Transferee...") ("*Original Transfer Application*").

[6] The Carlyle Partnerships will, on average, have greater than 2.20 percent attributable alien ownership; thereby, the assumption leads to an overstatement of the aggregate attributable alien equity interest.

[7] For determining the "home market" of an entity, the Commission uses its five-factor "principal place of business" test. These factors include: (i) place of incorporation, (ii) nationality of investment principals, officers, and directors, (iii) country in which its world

Partnerships is a limited partnership formed under Delaware law. With respect to the "investment principals, officers, and directors" of the Carlyle Partnerships, these entities are each ultimately controlled by TCG Holdings. TCG Holdings is organized under Delaware law and is headquartered in Washington, D.C. TCG Holdings is managed by a committee comprised of three managing members, each a citizen of the United States: William E. Conway, Jr., Daniel A. D'Aniello and David M. Rubenstein.[8]

The limited partners of the partnerships are either domestic individuals and entities, or else individuals residing or entities organized in WTO Member countries, with very minor exceptions. The following table sets forth the expected ownership of the Carlyle Partnerships:

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headquarters is located, (iv) country in which the majority of its tangible property is located, and (v) country from which it derives the greatest sales and revenues from its operations. *In re Applications of VoiceStream Wireless Corporation or Omnipoint Corporation, et al, For Consent to Transfer of Control and Assignment of Licenses and Authorizations*, Memorandum Opinion and Order, FCC 00-53, ¶ 17 (rel. Feb. 15, 2000). The relevant entities for analyzing whether the rebuttable presumption applies in this case are the Carlyle Partnerships, in their capacity as owners of Paradise MergerSub. The limited partners of the Carlyle Partnerships themselves are not relevant for both practical and legal reasons. The sheer number of limited partners alone render in-depth analysis of their individual characteristics impractical. Moreover, the passive and insulated nature of the limited partnerships, combined with their small individual ownership interests, make their atomistic characteristics irrelevant. Despite these facts, a more detailed discussion of these partners is included in this discussion to provide as complete a disclosure as possible at this early stage in the capital raising process.

[8] In addition, thirty individuals (or domestically organized entities owned by U.S. citizens) are members (but not managing members) of TCG Holdings and hold equity interests in TCG Holdings. As noted in the *Original Transfer Application*, four of the individual non-managing members of TCG Holdings are not United States citizens – two are citizens of France, one is a citizen of Australia and one is a citizen of Japan (each WTO-member countries). All other members of TCG Holdings are U.S. citizens. The members of TCG Holdings that are not U.S. citizens hold, in the aggregate, less than 2.20 percent of the equity interest of TCG Holdings. *See Original Transfer Application* at n.5.

Carlyle Partners III Hawaii, L.P.	54.06% to 96.50%	55.61%	42.11 %	2.28%
Carlyle Hawaii Partners, L.P.	0% to 7.14%	100%	0%	0%
Carlyle Partners III Hawaii A, L.P.	2% to 5.40%	95.46%	4.46%	0.08%
Carlyle Hawaii Partners II, L.P.	0% to 35.71%	0% to 100%	0% to 100%	0%
Total Ownership in Paradise MergerSub:	100%	55% to 75.76%	22.90% to 43.76%	1.24% to 2.20%

Carlyle Partners III Hawaii, L.P. ("CP III Hawaii"). It is anticipated that CP III Hawaii will indirectly own between 54.06 and 96.50 percent of Paradise MergerSub. The limited partners of CP III Hawaii consist of almost 250 domestic and foreign limited partners. They include a variety of institutional investors, pension funds, other private equity funds, and individuals. Only one limited partner of CP III Hawaii – a U.S.-organized pension fund – holds an interest of 5 percent or more in CP III Hawaii – about 5.35 percent.

The largest foreign limited partner of CP III Hawaii holds an interest of approximately 3.84 percent in CP III Hawaii and is organized in a WTO Member country. Only eight foreign investors hold between 1 and 2 percent each, and the remaining foreign entities, numbering over one hundred, hold equity interests smaller than 1 percent. Classification of the foreign limited partners into broad categories yields the following breakdown by equity ownership of CP III Hawaii: High Net Worth (individual wealth or entities representing individual or family wealth) (16.19%, among 60 investors); Government Agency (non Pension) (5.91%, among 4 investors); Bank (4.14%, among 10 investors); Fund of Funds (4.01%, among

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[9] This assumes that TC Group III, L.P. holds a negligible interest of approximately 0.0022 percent in Paradise MergerSub.

12 investors); Insurance (3.94%, among 11 investors); Corporate or Public/Government Pension (4.25%, among 8 investors); Private Bank (1.18%, among 1 investor); and, Foundation, Endowment, University, Trust (0.90%, among 2 investors).[10]

Approximately 95 percent of foreign limited partners of CP III Hawaii are entities organized in WTO Member countries. These investors make up 42.11 percent of the 44.39 percent alien equity investment in CP III Hawaii. Investors based in non-WTO Member countries make up only 2.28 percent of this total alien investment. Those investors from WTO Member countries holding at least an aggregate 1 percent equity interest in CP III Hawaii are from the following countries: Bermuda (United Kingdom), Cayman Islands, Denmark, Netherlands, Singapore, Sweden, Switzerland, and United Arab Emirates. Investors situated in non-WTO countries (Bahamas, Liberia, Monaco, and Saudi Arabia) each hold well under 1 percent equity in CP III Hawaii, and in the aggregate hold just 2.28 percent in CP III Hawaii.

Carlyle Hawaii Partners, L.P. ("CHP"). It is anticipated that CHP will indirectly own between zero and 7.14 percent of Paradise MergerSub. The limited partners of CHP will consist entirely of individual citizens of the United States residing in the state of Hawaii. There will be no foreign limited partners in CHP.

Carlyle Partners III Hawaii A, L.P. ("CP III Hawaii A"). It is anticipated that CP III Hawaii A will indirectly own between 2.00 and 5.40 percent of Paradise MergerSub. CP III Hawaii A consists almost entirely of individual investors, and over 95 percent of equity is held by citizens of the United States. The entire foreign ownership interest of CP III Hawaii A, 4.54 percent, is held by individual investors. Only one of these investors is a citizen of a non-WTO Member country (the Ukraine), with an interest of 0.08 percent. The remaining foreign equity

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[10] Paradise MergerSub could not determine the appropriate category for a small percentage of investment (3.89 percent, with each investor holding well under 1 percent).

holders are all citizens of WTO Member countries. None of these foreign investors holds an equity interest in CP III Hawaii A exceeding 0.70 percent.

Carlyle Hawaii Partners II, L.P. ("CHP II"). Depending on the response of the equity markets near the time of closing, Paradise MergerSub may not seek *any* investment from CHP II (i.e., zero percent ownership). In its place, CP III Hawaii will make the additional required investment. However, there is a small chance that CHP II will participate in the proposed transaction, in which case it will indirectly own between zero and 35.71 percent of Paradise MergerSub. While the precise identities of the limited partners of CHP II are not yet known, Carlyle has set certain boundaries on the attributes of these limited partners. *First*, all of these investors will be insulated in accordance with Commission insulation criteria, and thus have no authority regarding the day-to-day management of Paradise MergerSub. The insulation provision provided in each partnership agreement is attached hereto as Exhibit B. Like all other limited partner investors, all of the investors in CHP II will hold passive investments, with no control over the Carlyle Partnerships, and hence no control over Paradise MergerSub. *Second*, no entity, including those entities already holding limited partnership interests, will hold 10 percent or more of the total ownership in Paradise MergerSub, aggregating ownership interests across all four Carlyle Partnerships. *Third*, any foreign investment in CHP II will come only from limited partners with their "home markets" in WTO Member countries. There will be no non-WTO Member country investment in CHP II. *Fourth*, total indirect, attributable alien ownership in Paradise MergerSub, from all four Carlyle Partnerships, including any additional foreign equity arising through CHP II, will be capped at 45 percent.[11]

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[11] As discussed below, this level of equity investment equates to an aggregate alien "voting" interest in Paradise MergerSub of 47.20 percent, under the Commission's "voting" interest analysis.

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As set forth above, the U.S. domestic limited partners of CP III Hawaii, Carlyle Partners Hawaii, L.P., and Carlyle Partners III Hawaii A, L.P. each hold a majority ownership interest in their respective partnerships. Only Carlyle Partners Hawaii II, L.P. could potentially be majority owned by foreign limited partners, with any and all foreign investment exclusively from passive, insulated limited partners organized in WTO Member countries. But that entity will not, in any event, hold more than a 35.71 percent indirect interest in Paradise MergerSub, and may hold a far smaller interest, as little as zero percent.

Therefore, the "investment principals, officers, and directors" of the Carlyle Partnerships are overwhelmingly domestic individuals or entities, or entities based in WTO Member country. As for the remaining elements of the "home market" test, each of the Carlyle Partnerships is organized under Delaware law and has its world headquarters in the U.S. The partnerships have no tangible property. Finally, the vast majority of partnership revenues will be derived through their investment in Paradise MergerSub.

In sum, these factors indicate that the Carlyle Partnerships should be viewed as either U.S. domestic entities or, in the case of one minority investor partnership, as a U.S. controlled entity with potentially a majority of equity owned by WTO Member country investors. Paradise MergerSub respectfully submits that under the "home market" test, Paradise MergerSub should be deemed U.S.-owned and controlled.

If the Commission imputes to the Carlyle Partnerships the alien ownership of their respective limited partners, then these entities contribute, conservatively speaking, up to 45 percent attributable alien equity ownership to Paradise MergerSub. The overwhelming majority of this foreign ownership will be based in WTO Member countries, with only approximately

2.20 percent of the total domestic and foreign equity ownership based in non-WTO Member countries. Therefore, Paradise MergerSub will be nearly 98 percent owned by individuals and entities based in the U.S. or in WTO Member countries.

B. Ownership Under The Commission's "Voting" Calculation

As with equity interests, the Commission calculates attributable "voting" interests of foreign individuals and entities by applying *pro rata* ownership multipliers at each link in the ownership chain to determine each investor's diluted interest.[12] However, a multiplier of 100 percent is "applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier."[13] For limited partnerships, a multiplier of 100 percent applies to general partners and to limited partners, except a *pro rata* multiplier is used for limited partners that are "effectively insulated from active involvement in partnership affairs."[14]

This attribution rule implies that TC Group III, L.P. contributes a non-negligible alien "voting" interest to Paradise MergerSub's. Consequently, although no foreign investor actually has a "vote" regarding the day-to-day operations of Paradise MergerSub, potential foreign ownership under the Commission's "voting" interest calculation (47.20 percent) is 2.20 percent higher than under the equity interest calculation (45 percent).

Carlyle Partnerships. The limited partners of the Carlyle Partnerships all are insulated in accordance with Commission insulation criteria, and thus have no authority

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[12] *XO Order* at 19221 (¶ 21).

[13] *Id.* at 19221 (¶ 22).

[14] *Id.*

regarding the day-to-day management of Paradise MergerSub, and hence of Verizon Hawaii.[15] In such circumstances, the Commission has found that the attributable alien "voting" interest is the same as the attributable alien equity interest.[16] Therefore, the aggregate "voting" interest attributable to Paradise MergerSub through the Carlyle Partnerships is at most 45 percent, with a maximum of approximately 2.20 percent based in non-WTO Member countries and remainder based in WTO Member countries.

TCG Holdings. As already noted, multipliers are not used for general partners or controlling entities, or stated another way, a multiplier of 100 percent is used in such cases. As the general partner of the Carlyle Partnerships, TC Group III, L.P. controls the Carlyle Partnerships and a 100 percent multiplier applies to this link in the ownership chain. Similarly, TC Group III, L.L.C. controls TC Group III, L.P., and TC Group, L.L.C. controls TC Group III, L.L.C. Finally, TCG Holdings controls TC Group, L.L.C., and the 100 percent multiplier applies to these three links in the ownership chain as well.[17] Therefore, TCG Holdings, the ultimate parent of TC Group III, L.P., has a 100 percent attributable "voting" interest in Paradise MergerSub, less than 2.20 percent of which is attributable to foreign investment.

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[15] *Corporate Ownership Reporting and Disclosure by Broadcast Licensees*, 58 Rad. Reg. 2d (P & F) 604, ¶ 27 (1985); *recon.* 1 FCC Rcd 802 (1986). Although these criteria were developed in the context of media multiple ownership rules, they have been applied in the context of transfers of control of telecommunications carriers. *See, e.g., XO Order* at 19212, n. 66. The insulating language contained in the limited partnership agreement of each of the Carlyle Partnerships is set forth in Attachment B.

[16] *XO Order* at 19223-19224 (¶ 26), n.71.

[17] More precisely, TC Group, L.L.C. is 94.19 percent owned by TCG Holdings. A U.S.-organized, state pension fund owns 5.56 percent of TC Group, L.L.C. The remaining 0.25 percent is owned by a Carlyle affiliate company. The nature of these small ownership interests, held by domestic entities, make them irrelevant for the purposes of this attributable *alien* ownership analysis.

As previously noted, TCG Holdings is managed by a committee comprised of three managing members, each a citizen of the United States. Of the remaining thirty non-managing members, there are four non-managing members based outside the United States, each an individual citizen of a WTO Member country (two are citizens of France, one is a citizen of Australia and one is a citizen of Japan). All other members of TCG Holdings are U.S. citizens. These four non-managing members of TCG Holdings hold, in the aggregate, less than 2.20 percent of the equity interest of TCG Holdings, and they have no control over the day-to-day operations of TCG Holdings. Application of the Commission's rules and precedent to these interests indicate that these non-managing members likewise contribute less than 2.20 percent to the attributable alien "voting" interest of Paradise MergerSub.

While the Commission has not defined the precise treatment of limited liability corporations ("LLC") for purposes of attribution under Section 310(b)(4), it has commented, "LLCs are, in general, unincorporated associations that possess attributes of both corporations and partnerships.[18] This line of reasoning has led the Commission to the conclusion that LLCs should receive the same treatment under the Commission's attribution rules as limited partnerships, at least with respect to broadcast, cable, and MDS ownership interests.[19] In the common carrier context, this result suggests that LLCs should be treated either as corporations, using the standard *pro rata* multiplier method for computing attribution, or as limited partners, imposing some form of insulation requirement prior to the applicability of *pro rata* multipliers.

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[18] *In the Matter of Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, Reexamination of the Commission's Cross-Interest Policy*, Report and Order, 14 FCC Rcd 12559, 12617-12618 (¶ 134) (rel. Aug. 6, 1999) ("*Attribution Order*").

[19] *Id.* at 12618-12619 (¶ 138).

In this case, the foreign members of TCG Holdings all are *non*-managing members and have no control over the day-to-day operations of the LLC. The limited liability corporation agreement explicitly vests full "power and authority to manage, direct and control the Company" in the managing committee which is made up of the managing members. Moreover, the agreement provides, "No Member other than a Managing Member shall have any right to vote or consent with respect to any matter at any meeting of the Managing Committee (or with respect to any action taken without a meeting)." Finally, no non-managing member may act or enter into any contract or agreement on behalf of TCG Holdings without the managing committee's approval. These characteristics of TCG Holdings justify application of the *pro rata* multipliers to the foreign non-managing members' ownership interests, especially given that these interests aggregate to less than 2.20 percent.[20]

Therefore, the alien "voting" interest attributable to Paradise MergerSub from non-managing members of TCG Holdings is 2.20 percent and this entire "voting" interest is attributable to citizens of WTO Member countries. Adding this contribution to the contribution attributable through the Carlyle Partnerships yields a maximum attributable alien interest in Paradise MergerSub of 47.20 percent under the Commission's "voting" interest test. Of this interest, 45 percent is held by individuals or entities based in WTO Member countries outside of the U.S. and a scant 2.20 percent is held by individuals or entities based in non-WTO Member countries. The remaining 52.80 percent is held by U.S. investors.

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[20] *Cf. Applications of Algreg Cellular Engineering for facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A*, 12 FCC Rcd 8148, 8171 (¶¶ 55, 56) (rel. June 3, 1997) (concluding that a foreign controlled general partner's interest of 2.29 percent was sufficiently low as to not raise any public interest concerns).