

**STAMP AND RETURN**

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

**RECEIVED**

**FEB 16 2005**

**Federal Communications Commission  
Office of Secretary**

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In the Matter of )  
TelCove Inc. )  
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**Application File No.  
ISP-PDR-20041115-00013**

To: The Commission

**JOINT PETITION TO DEFER**

The Department of Homeland Security (“DHS”), for itself and for the Department of Justice (“DOJ”) and the Federal Bureau of Investigation (“FBI”), and TelCove Inc. (“TelCove”) (collectively the “Parties”), through concurrence and by their undersigned attorneys, respectfully request that the Federal Communications Commission (“Commission”) defer action on the above-captioned application pending attempted resolution of potential national security, law enforcement, and public safety issues.

In this matter, TelCove, a U.S. based telecommunications provider, filed a Petition for a Declaratory Ruling under Section 310(b)(4) seeking Commission permission to: 1) allow, *nunc pro tunc*, foreign ownership of 51.5% of TelCove, and 2) grant advance authorization for up to 25% foreign ownership in a subsidiary, TelCove Long Haul, L.P, that currently holds Commission licenses.

TelCove represents that TelCove Long Haul, L.P. is the holder of FCC licenses for facilities authorized but not yet operating in the LMDS and 39 GHz band. According to the petition, it holds 177 licenses in the 39 GHz band and 193 LMDS licenses. These licenses were

initially issued to TelCove Long Haul, L.P.'s predecessor, Adelpia Business Solutions Long Haul, L.P.

According to its petition, TelCove, the successor to Adelpia Business Solutions, Inc., emerged from bankruptcy. TelCove is a privately held company incorporated in Delaware with its headquarters in Canonsburg, Pennsylvania. TelCove currently provides business critical telecommunications services to enterprise companies and carriers in approximately 50 U.S. markets.

Upon its emergence from bankruptcy protection on April 7, 2004, TelCove's debt was converted to equity. TelCove acknowledges that 51.5% of its shares are either directly or indirectly foreign owned for purposes of this proceeding.

The *Foreign Participation Order*<sup>1</sup> provides that, in evaluating proposed foreign ownership of U.S. common carriers, the Commission must accord deference to the Executive Branch with respect to any national security or law enforcement concerns identified by Executive Branch agencies in connection with a transaction.<sup>2</sup> TelCove has held preliminary discussions with the DHS, and other Executive Branch Agencies (the DOJ, FBI and DHS are collectively referred to herein as the "Executive Agencies"), and understands that there are law enforcement, national security, and public safety issues that the Executive Agencies want to review in connection with this application. TelCove anticipates that any such issues can be fully addressed through an agreement with the Executive Agencies and appropriate further action by the Commission.

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<sup>1</sup> *In the Matter of Rules and Policies of Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23,891, ¶ 61 (Nov. 1997). The Commission gives consideration to concerns relating to national security, law enforcement, and public safety independent of any competitive concerns presented by the transaction.

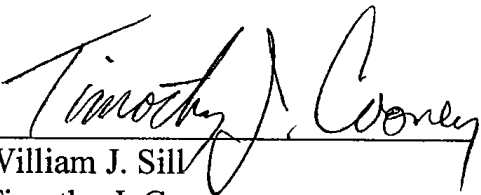
<sup>2</sup> *Foreign Participation Order*, at ¶¶ 59, 63, *et seq.* See also 47 U.S.C. § 310(b)(4).

Accordingly, in view of the foregoing, the Parties respectfully request that the Commission accept for filing the instant Petition to Defer with regard to the captioned application and defer grant of the above-captioned application pending an agreement among the Parties to resolve the concerns addressed herein.

Respectfully submitted,

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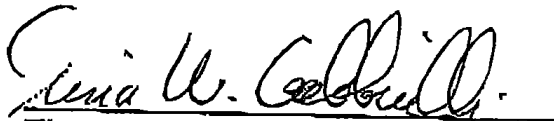
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Dated: February 16, 2005

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Dated: February 15, 2005