

STAMP AND RETURN

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RECEIVED

DEC 20 2005

Federal Communications Commission
Office of Secretary

December 20, 2005

Marlene H. Dortch, Secretary
Federal Communications Commission
445 – 12th Street, S.W.
Washington, DC 20554

Re: ISP-PDR-20041115-00013

Dear Ms. Dortch:

As discussed in previous filings submitted by TelCove, Inc. (“TelCove”) in the above-referenced pending proceeding (in which TelCove seeks Section 310(b)(4) *nunc pro tunc* foreign ownership authorization), TelCove indirectly holds numerous FCC common carrier licenses that have not yet been built out.¹ At the time of TelCove’s prior filings in this proceeding, all these licenses were held in the name of TelCove’s indirect wholly-owned subsidiary, TelCove Long Haul, LP (“TelCove LH”).

On December 7, 2006, however, TelCove LH engaged in a *pro forma* assignment of all its FCC licenses to a newly created wholly-owned subsidiary, TelCove FWL, Inc., a Delaware corporation.² This was a *pro forma* assignment within the meaning of Section 1.948(c)(i) of the Commission’s rules since the assignment does not affect any change in the ultimate ownership or control of the FCC licenses.³ FCC Form 602 and Form 603 were filed electronically December 12, 2005, to provide notice to the Commission of the *pro forma* assignment; and these filings are accessible in the FCC’s ULS database (File Nos. 0002406364 and 0002406597, respectively).

TelCove submits that the *pro forma* assignment should not have any effect on the Commission’s analysis in the pending Section 310(b)(4) proceeding because the new licensee (TelCove FWL, Inc.), its direct parent (TelCove LH), and TelCove LH’s direct and indirect

¹ TelCove Long Haul, LP held 193 LMDS licenses and 177 39 GHz licenses.

² Prior to the completion of the *pro forma* assignment, counsel for TelCove discussed the *pro forma* assignment with FCC Staff several times and explained that to meet contractual obligations with its lender, the *pro forma* assignment needed to be effectuated before the end of the year.

³ No unjust enrichment issues are raised by the *pro forma* assignment because the licenses were acquired at auction without the use of bidding credits.

Marlene H. Dortch
December 20, 2005
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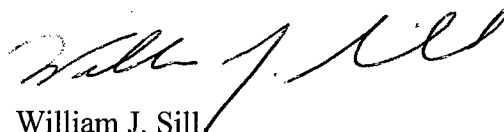
parent corporations are all U.S.-domiciled entities wholly-owned by TelCove, Inc. No additional foreign ownership results from the *pro forma* assignment, nor do any changes in ultimate control.

Although not required to do so, prior to the *pro forma* assignment TelCove notified a representative of the U.S. Department of Homeland Security of the *pro forma* assignment; and no objection was raised.⁴ Copies of this submission also are being served on representatives of each of the Executive Branch Agencies party to TelCove's network security agreement (filed in this proceeding by letter dated September 15, 2005). See attached service list.

Finally, in response to staff inquiries regarding the rounding of percentages, please find revisions to Sections I.C, II, and III of the text and Appendices A, D, E, F, G and H of TelCove's September 2, 2005, submission in this proceeding. These revisions do not reflect substantive changes or other transactions; rather the revised materials provide ownership percentages to additional decimal places (the revisions to the text also are limited only to the more precise percentage numbers). The percentages listed in the attachments supersede any prior rounding of percentages in the September 2, 2005, submission.⁵

TelCove looks forward to FCC disposition of its pending Section 310(b)(4) petition in the near future. Please contact TelCove's undersigned attorneys if you have any questions.

Respectfully submitted,



William J. Sill
Timothy J. Cooney

cc: Susan O'Connell
Cara Grayer
Francis Gutierrez
Attached Service List

⁴ Under Section 5.11 of TelCove's agreement with the U.S. Department of Homeland Security, the U.S. Department of Justice and the Federal Bureau of Investigation, TelCove is required to notify and seek consent for substantive assignment of its licenses. However, Section 5.11 exempts *pro forma* assignment from this procedure.

⁵ Appendices A and D also have been revised to add TelCove FWL, Inc. to the ownership diagrams.

Revised Text From September 20, 2005 Filing (rev. 12/05)

C. The Bay Harbour – Controlled Investment Vehicles That Own Shares In TelCove Directly Should Be Considered U.S. Under The FCC’s Home Market Analysis

Bay Harbour manages and controls, via management agreements, the investment vehicles listed in the chart on the following page:

	1	2	3	4	5	6	7	8
Bay Harbor-Related Entity	Tower Investment Group, Inc.	Unity NV	Bay Harbour Management LC	Bay Harbour 90-1 Ltd.	Trophy Hunter Investments Ltd.	d. Quant Fund, LLC	Bay Harbour Partners, Ltd.	Institutional Benchmark Master Fund, Ltd.
Direct Ownership Interest in TelCove	N/A	N/A	NA	17.3945838%	6.3439639%	2.2155299%	20.3675091%	1.1266893%
Country of Organization	USA	Netherlands Antilles	USA	USA	USA	USA	Cayman Islands	Bermuda
Nationality of Investment Principals, Officers and Directors	2 of 2 USA	3 USA, 1 Netherlands Antilles trust	3 of 3 USA	3 of 3 USA	3 of 3 USA	1 of 1 USA	1 Netherlands 1 Bahamas	1 USA 1 Austria 1 U.K.
World Headquarters	USA	USA	USA	USA	USA	USA	USA	USA
Country of Majority of Tangible Property	USA	USA	USA	USA	USA	USA	USA	USA
Country of Greatest Sales and Revenues	USA	USA	USA	USA	USA	USA	USA	USA
Percent Foreign Investors	0%	0%	10% direct by Netherlands Antilles corp., ultimately 100% U.S.-owned	0%	0%	54% by single Bahamas feeder fund managed by U.S. citizen	9% Cayman Islands and Switzerland	17% Swiss, French, Japanese

Of the five investment funds controlled by Bay Harbour (see columns 4-8 above) that own shares directly in TelCove, the chart indicates that the first three listed (column 4-6) are legally organized in the U.S. For these three investment vehicles, all of the other home market factors (nationality of directors, world headquarters, country of majority of tangible property and greatest sales and revenues from operations) also point to the U.S. Moreover, 100 percent of the investors in Bay Harbour 90-1 Ltd. (17.3945838 percent owner of TelCove) and in Trophy Hunter Investments, Ltd. (6.3439639 percent owner of TelCove) are U.S. citizens or entities. At least 46 percent of the investors in d. Quant Fund, LLC (2.2155299 percent owner of TelCove) are U.S. citizens. The remaining 54 percent is held by a single “feeder fund” incorporated in the Bahamas, d. Quant Fund, Ltd. The citizenship of the ultimate investors in the feeder fund is unknown; but as its name implies, the feeder fund is affiliated with and controlled by the same U.S. individual who manages d. Quant Fund, LLC.

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Two of the Bay Harbour-controlled investment vehicles (Bay Harbour Partners, Ltd. and Institutional Benchmark Master Fund, Ltd., columns 7 and 8, respectively) are legally organized offshore. To the extent a single “home market” for each fund must be identified, TelCove believes that it is appropriate for the Commission to find that each offshore fund’s home market is the U.S.

Specifically, Bay Harbour Partners, Ltd. is incorporated in the Cayman Islands, an offshore territory of the United Kingdom. Nevertheless, the country in which Bay Harbour Partners’ world headquarters is located, where the majority of its tangible property is found, and where the greatest amount of its sales revenues is generated is the U.S. Additionally, over 90 percent of the fund’s “owners” (that is, investors) are U.S. entities or citizens. The two directors of Bay Harbour Partners Ltd. are citizens of the Netherlands and the Bahamas, respectively.

Institutional Benchmarks Master Fund, Ltd. is incorporated in Bermuda.¹ Nevertheless, the country in which its world headquarters is located, where the majority of its tangible property is found, and where the greatest amount of its sales and revenues are generated is the U.S. Additionally, over 80 percent of the funds’ “owners” (that is, investors) are U.S. corporate or institutional investors. One of the three directors of the fund is a U.S. citizen, while the other two are Austrian and British citizens.

Even if the Commission determines that the home market of each offshore Bay Harbour fund is its country of incorporation or charter, this will not preclude the Commission from granting the Petition. The Cayman Islands and Bermuda are both overseas territories of the United Kingdom, a World Trade Organization member.

For additional information concerning the underlying investors in each Bay Harbour-controlled fund, please review Appendix C. Appendix C consists of charts that categorize the investors in each Bay Harbour-controlled fund in terms of citizenship and type of investor (for example, high net worth individual, trust or IRA, corporation, etc.).

II. The Shares Of TelCove Not Held By Bay Harbour Entities Are An Amalgam Of Unrelated Shareholders That Do Not Exercise Control Over TelCove

The shares of TelCove that are not held by Bay Harbour-controlled entities are held by an amalgam of unrelated individuals, corporations, and investment institutions. Over 75 percent of the 155 total shareholders as of January 27, 2005 held less than one percent of TelCove’s shares; and the International Bureau staff agreed that it would not be necessary to conduct a home market analysis for those shareholders that hold less than

¹ This letter corrects TelCove’s March 4, 2005, filing to the extent that the latter identified the Institutional Benchmarks Master Fund Ltd. as a 0.3 percent shareholder in TelCove and the Zurich Institutional Benchmarks Master Fund Ltd. as a 0.8 percent shareholder. Institutional Benchmarks Master Fund Ltd., a Bermuda – domiciled investment, is a 1.1266893 percent shareholder in TelCove.

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one percent each of TelCove.² TelCove, however, sent foreign ownership/home market questionnaires to each shareholder holding or controlling 1.0 percent or more of TelCove stock. The results of the survey responses are summarized below:

1. Credit Suisse First Boston LLC (“CSFB”) is a U.S. corporation that holds 10.2485453 percent of TelCove stock. Although CSFB’s immediate corporate parents are also U.S. corporations, its ultimate corporate parents are Swiss entities. CSFB reported that all of its officers and directors are U.S. citizens located in the U.S. and that the majority of CSFB’s financial holdings, asset value, tangible property and investments are located in the U.S. The world headquarters of CSFB’s parents is Switzerland. See Appendix D for a corporate diagram and Appendix E for a home market analysis of CSFB.
2. JGD Management Corp. d/b/a York Capital Management controls (but does not own) nine investment vehicles that hold a total of 7.875796 percent of TelCove shares (Lyxor/York Fund Ltd. 0.6656625%; York Global Value Partners, L.P. 0.8391982%; HFR Ed Select Fund IV Master Trust 7/16/01 0.1043998%; York Select, L.P. 1.8633825%; Rossburn Internatioal, Inc. 0.0547146%; York Select Unit Trust DTD 12/15/00 1.0574131%; York Capital Management, L.P. 1.6602907%; York Credit Opportunities Fund, L.P. 0.4424300%; York Investment Limited 1.1883046%). As indicated on Appendix F, for all nine investment vehicles the home market factors point to the U.S., even though only four of the nine funds are organized in the U.S.³ Even if the FCC determined that the home country of each York investment vehicle is its country of legal organization, each foreign country at issue is a WTO member (Canada) or affiliated with a WTO member (the United Kingdom).
3. Harvard & Co. holds 1.1749008 percent of TelCove’s shares and is an arm of Harvard University, a wholly-U.S. entity (see Appendix G).
4. TelCove also sent home market analysis questionnaires to Storms & Co. (4.6828194 percent of TelCove shares), L C Capital (4.0567600 percent of TelCove shares), Fernwood Associates (3.2225911 percent of TelCove shares),⁴ Amroc Investments LLC (1.4444384 percent of TelCove

² Thus, TelCove did not send a questionnaire to the RCG Carpathia funds, which TelCove’s transfer agent identified as offshore investment vehicles, because those funds collectively hold less than one percent of TelCove’s shares.

³ The Commission has held that a company’s “home market” may be a country different than its country of incorporation. *See, e.g., Global Crossing Ltd. and Frontier Corporation*, 14 FCC Rcd 15911, 15917-19 (1999).

⁴ Although Fernwood Associates (“Fernwood”) did not respond to TelCove’s request to complete a home market questionnaire, Fernwood earlier had informed TelCove that

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shares), and Goldman Sachs (a total of 15.5947815 percent of TelCove shares, as explained below) in March 2005. None of these shareholders responded to the home market questionnaires. Because of the amount of shares held by Goldman Sachs (“Goldman”), TelCove renewed its request to Goldman for home market information in both June and July of 2005. After again receiving no substantive response, TelCove contacted a representative of Goldman’s Central Compliance group via telephone who orally confirmed that the legal domicile of Goldman was the United States and that its world headquarters is New York City. Goldman’s Central Compliance representative, however, declined to answer any of the other questions in the home market questionnaire including even the names of the funds that directly own TelCove shares, on the basis that, in cases when Goldman did not have a substantial investment in the company, Goldman does not routinely disclose information about its investment vehicles or its investors. The only information TelCove has been provided by its transfer agent is that, of the 15.5947815 percent of TelCove’s stock held by Goldman, 3.0337686 percent is held by a U.S. - domiciled investment vehicle and 12.5610129 percent is held by investment vehicles legally domiciled in the British Virgin Islands and Cayman Islands. It is TelCove’s belief that further attempts by TelCove to request information from this group of investors will prove fruitless.

III. Conclusion

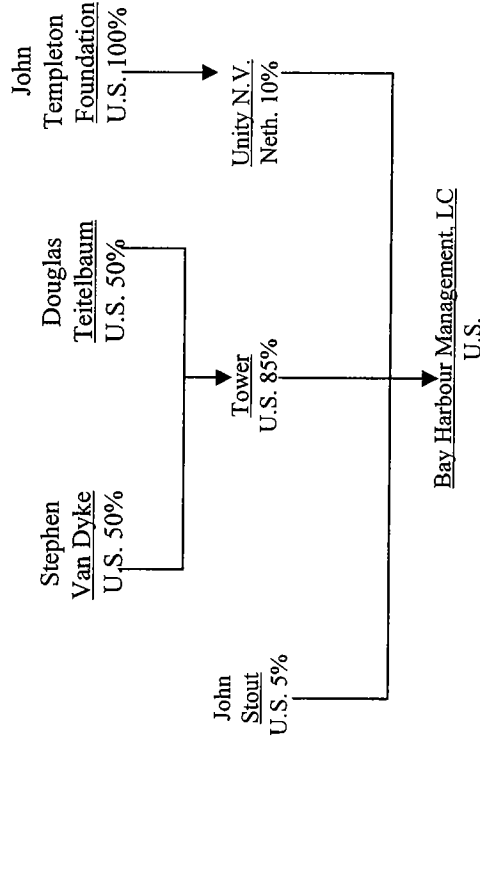
As described above, TelCove has obtained detailed home market and underlying investor information for all the shareholders that are part of the group that controls TelCove’s board of directors. Although TelCove has not been able to obtain home market information from all of its minority shareholders, TelCove submits that the Commission has sufficient information to issue a declaratory ruling that the public interest would be served by allowing as much as 54.0064665 percent indirect WTO foreign ownership and 9.2421392 percent indirect ownership of unidentified citizenship in FCC licensee TelCove Long Haul, L.P. (see Appendix H).⁵ Because the 54.0064665 percent in known foreign ownership is all attributable to WTO member countries (and the 9.2421392 percent ownership of unidentified citizenship is significantly less than the statutory benchmark of 25 percent), no international trade issues are implicated.

2.0476903 percent of TelCove’s shares are held in a British Virgin Island investment vehicle (Fernwood Restructuring Ltd.) and 1.1749008 percent in a U.S.-incorporated entity (Fernwood Associates), both for Fernwood’s own account. (An additional 0.1 percent is held by Fernwood Foundation Fund LP.; but since its domicile and ownership was not provided, it is classified as of unknown citizenship.)

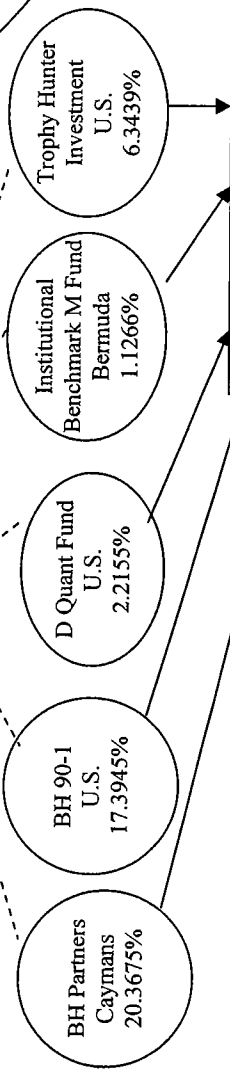
⁵ TelCove assumes that grant of the requested Petition would not restrict TelCove in the future from effecting a *pro forma* assignment of the relevant licenses from TelCove Long Haul, L.P. to another wholly-owned subsidiary of TelCove, Inc. in accordance with generally applicable Commission rules in effect at the time.

CONTROL

**BAY HARBOUR ("BH")
CONTROLS 47.448 % OF SHARES AND
MAJORITY OF TELCOVE BOARD**



Controls Funds Listed Below

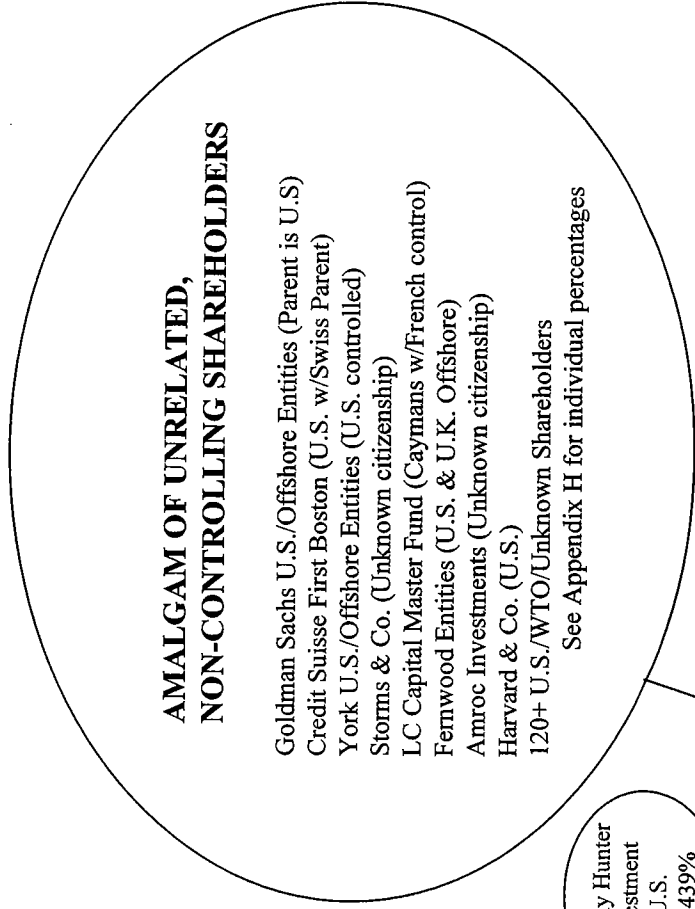


TelCove Board (all U.S.)
 Stephen Van Dyke (BH)
 Douglas Teitelbaum (BH)
 John Stout (BH)
 Kurt Cellar (BH)
 Robert Guth (CEO)
 Dale Booth (Independent)
 Eugene Davis (Independent)

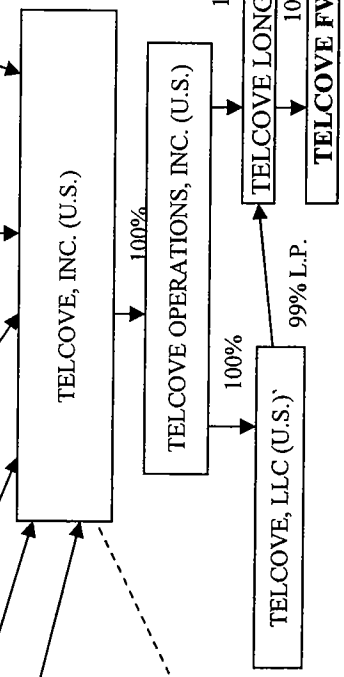
TELCOVE, INC.

(FCC License Holder TelCove FWL, Inc.)

NON-CONTROLLING



**FOREIGN OWNERSHIP
PRIOR TO HOME MARKET ANALYSIS**
 See Appendix H for detail
 54.0064665% WTO
 9.2421392% Unknown
 36.7513942% U.S.

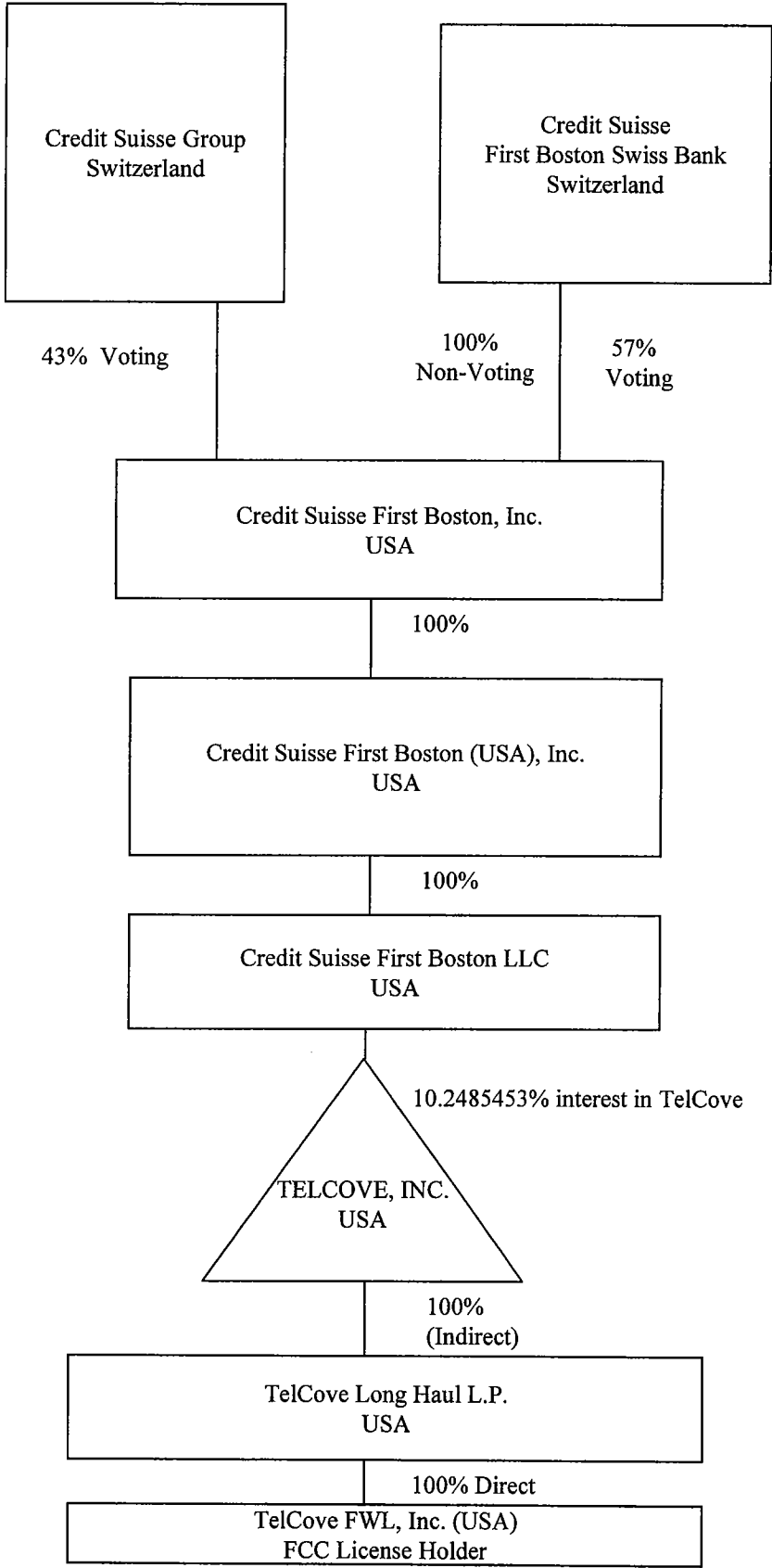


Legend

Ownership Interest —————>
 Controls but does not own - - - - -

CREDIT SUISSE
FIRST BOSTON LLC

Appendix D (rev. 12/05)



Appendix E (rev. 12/05)

	Credit Suisse Group	Credit Suisse First Boston, LLC
Direct Ownership Interest in TelCove	N/A	10.2485453%
Country of Organization	Switzerland	USA
Nationality of Investment Principals, Officers, and Directors	Switzerland	USA
World Headquarters	Switzerland	Switzerland
Country of Majority of Tangible Property	Not Provided	USA
Country of Greatest Sales and Revenues	Not Provided	USA
Percent Foreign Investors	100% Swiss	100% Swiss

Appendix G (rev. 12/05)

	Harvard & Co.
Direct Ownership Interest in TelCove	1.1749008%
Country of Organization	USA
Nationality of Investment Principals, Officers, and Directors	USA
World Headquarters	USA
Country of Majority of Tangible Property	USA
Country of Greatest Sales and Revenues	USA
Percent Foreign Investors	0%

APPENDIX H (rev. 12/05)
CITIZENSHIP OF TELCOVE SHAREHOLDERS
PRIOR TO HOME MARKET ANALYSIS¹

<u>Foreign-Domiciled Holders or Parent</u>	<u>Percent</u>	<u>Foreign-Domicile or Parent</u>
Bay Harbour Partners, Ltd.	20.3675091	Cayman Islands (WTO)
Goldman Sachs Entities ²	12.5610129	British Virgin Islands and Cayman Islands (WTO)
Credit Suisse First Boston	10.2485453	Parent based in Switzerland (WTO)
LC Capital Master Fund Ltd. ³	4.0567600	Cayman Islands (WTO)
Fernwood Restructuring Ltd. ⁴	2.0476903	British Virgin Islands (WTO)
York Investment Limited	1.1883046	Bahamas (WTO)
Institutional Benchmarks Master Fund	1.1266893	Bermuda (WTO)
York Select Unit Trust DTD 12/15/00	1.0574131	Cayman Islands (WTO)
Lyxor/York Fund Ltd.	0.6656625	Isle of Jersey (WTO)
RCG Carpathia Master Fund, LP ⁵	0.3264510	Cayman Islands (WTO)
RCG Carpathia Master Fund, Ltd.	0.1635822	Cayman Islands (WTO)
HFR Ed Select Fund IV Master Fund DTD	0.1043998	Bermuda (WTO)
Rosburn International, Inc.	0.0547146	Canada (WTO)
RBC Dain	0.0377318	Canada (WTO)
Total WTO	54.0064665	
<u>U.S.-Domiciled Holders</u>	<u>Percent</u>	
Bay Harbour 90-1 Ltd.	17.3945838	
Trophy Hunter Investment Ltd.	6.3439639	
Goldman Sachs-controlled Fund	3.0337686	
d.Quant Fund, LLC	2.2155299	
York Select, L.P.	1.8633825	
York Capital Management, LP	1.6602907	
Fernwood Associates	1.1749008	
Harvard & Co.	1.1749008	
York Global Value Partners, L.P.	0.8391982	
York Credit Opportunities Fund, L.P.	0.4424300	
<u>Individual U.S. Citizens (collectively)</u>	<u>0.6084450</u>	
Total U.S.	36.7513942	
<u>Holdings of Unidentified Citizenship</u>	<u>Percent</u>	
Storms & Co.	4.6828194	
Amroc Investment	1.4444384	
Numerous Miscellaneous Entities each <1.0%	(collectively) 3.1148814	
Total Unidentified	<u>9.2421392</u>	
Total TelCove Shareholders	99.9999999%	

¹ As a result of FCC staff inquiries regarding rounding discrepancies in the September 2, 2005 filing, this table has been revised to provide ownership percentages to the fourth decimal place. The listed percentages are from the shareholder survey referenced in the September 2, 2005 filing.

² As noted below, Goldman Sachs holds an additional 3.0337686 percent through a U.S.-domiciled investment vehicle.

³ LC did not respond to home market questionnaire; prior Internet search indicated a Caymans fund controlled by French entities.

⁴ Fernwood Associates did not respond to home market questionnaire, but previously indicated that Fernwood Restructuring Ltd. is domiciled in the Cayman Islands, while Fernwood Associates is domiciled in U.S., and that the shares are held for its own account.

⁵ Because the RCG Carpathia entities listed collectively hold less than 1.0 percent of TelCove's shares, TelCove did not request that these funds complete a home market questionnaire.

CERTIFICATE OF SERVICE

I, Ernestine M. Screven, do hereby certify that on this 20th day of December, 2005, a copy of the foregoing letter in the matter of Petition of TelCove, Inc. For Declaratory Ruling, FCC File No. ISP-PDR-20041115-00013, was served by U.S. mail, first-class postage prepaid to the following:

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Information Analysis and Infrastructure
Protection Directorate
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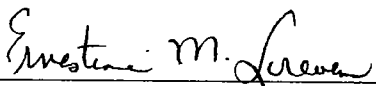
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Ernestine M. Screven