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Federal Communications Commission
Office of Secretary

March 21, 2005

Marlene H. Dortch, Secretary
Federal Communications Commission
c/o Natek, Inc.
236 Massachusetts Avenue, N.E., Suite 110
Washington, DC 20002

**Attention: International Bureau**

**Re: eLandia Technologies, Inc.**
**Petition for Declaratory Ruling under Section 310(b)(4)**

Dear Ms. Dortch:

Transmitted herewith are the original and two copies of a Petition for Declaratory Ruling under Section 310(b)(4) of eLandia Technologies, Inc. Also enclosed is an additional copy that we request be date-stamped and return to us.

Should additional information be necessary in connection with this matter, kindly communicate with the undersigned.

Respectfully submitted,

James A. Stenger

cc: Susan O'Connell, Esq. (via email)
Jon Pifer, Esq. (via email)

DC #188236 v1

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

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| **In the Matter of**<br><br>**eLandia Technologies, Inc.**<br><br>**Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act of 1934** |

**To: International Bureau**

# PETITION FOR DECLARATORY RULING

## I. INTRODUCTION

eLandia Technologies, Inc. ("eLandia") hereby petitions the International Bureau ("Bureau") of the Federal Communications Commission ("Commission"), pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended (the "Act"), [1] and Section 1.2 of the Commission's rules,[2] for a declaratory ruling that it is in the public interest to allow a privately held corporation organized under the laws of Antigua and Barbuda but wholly-owned by a U.S. citizen to be an indirect 100% owner of eLandia, a personal communications service ( "PCS") licensee.[3]

[1] 47 U.S.C. §310(b)(4) (2005).
[2] 47 C.F.R. § 1.2 (2002).
[3] eLandia holds two broadband PCS licenses, a Block C license (WPOJ804) for the U.S. Virgin Islands Basic Trading Area ("BTA") and a Block C license (WPOK680) for the Bloomington, IL (the "PCS Licenses"). eLandia also holds an authorization to provide global resale and facilities-based telecommunications services ("the 214 Authorization"). *See* 47 U.S.C. §214 (2002). *See* File No. ITC-214-20040824-00350.

## II. BACKGROUND AND DESCRIPTION OF TRANSACTION

eLandia is 100% owned by eLandia Solutions, Inc., a U.S. corporation, ("ESI"). ESI currently is majority owned and controlled by Stanford Venture Capital Holdings ("SVCH"), a privately held U.S. corporation. This Petition effectively seeks approval to transfer the shares of ESI from SVCH to Stanford International Bank Limited ("SIBL"), a privately held corporation organized under the laws of Antigua and Barbuda.[4] Both SVCH and SIBL are owned and controlled by R. Allen Stanford, a U.S. citizen.[5] Thus, the underlying transaction would replace a current intermediate U.S. subsidiary with the foreign subsidiary where both subsidiaries are wholly-owned and controlled by the same U.S. citizen shareholder.

Section 310(b)(4) of the Act prohibits a PCS license to be "granted to or held by . / . / . / 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 . / . / . / any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license."[6] The replacement of SVCH with SIBL in the chain of ownership of eLandia is merely a *pro forma* transfer of control because the ultimate controlling shareholder remains unchanged. This *pro forma* transfer of control would normally not require the prior approval of the Commission and, accordingly, the parties are not filing an

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[4] Before and after charts are attached hereto as Exhibits A and B respectively.

[5] Mr. Stanford also holds citizenship of Antigua and Barbuda. Mr. Stanford owns 100% of SIBL indirectly through his ownership of the Stanford Financial Group ("SFG") and its wholly owned subsidiaries. The immediate parent company of SIBL is Stanford International Bank Holdings Limited ("SIBHL"), incorporated in Antigua and Barbuda. SIBHL is the only foreign corporation in the chain of ownership between Mr. Stanford and SIBL. Information about SFG is available at www.stanfordfinancial.com.

[6] 47 U.S.C. §310(b)(4) (2005).

application for Commission consent to the subject pro forma transfer of control.[7] However, because SIBL is organized under the laws of a foreign country, the parties request approval of the foreign ownership element of the transaction pursuant to Section 310(b)(4). Although Section 310(b)(4) does not specifically except situations where the foreign corporation is 100% owned by a U.S. citizen, the parties respectfully submit that such situations were not contemplated by the drafters and were not intended to be subject to the limitations of that section. A grant of this Petition is the only regulatory approval needed for the Parties to consummate the transaction. Upon grant of this Petition and consummation of the transaction, a *post-facto* notification of the *pro forma* transfer of control would be filed with the Commission.

## III. CONSUMMATION OF THE PROPOSED TRANSACTION WILL NOT VIOLATE THE ACT OR THE COMMISSIONS RULES, REGULATIONS OR POLICIES AND WILL NOT BE DETRIMENTAL TO THE PUBLIC INTEREST.

### A. The Commission Should Find that the Grant of This Petition Will Serve the Public Interest.

In considering the proposed foreign ownership under Section 310(b) of the Act, the Commission must determine whether grant of this Petition serves the public interest. Traditionally, the Commission considers the benefits of grant as compared to the possible detrimental effect on the public interest. In this case, the ultimate controlling shareholder remains a U.S. citizen. This Petition only seeks consent for a U.S. citizen to insert a privately held foreign corporation into the chain of ownership of the licensee for business reasons.

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[7] FCC Form 603 and Instructions.

In the *Foreign Participation Order*,[8] the Commission adopted an open entry standard, including a presumption that indirect foreign ownership above the 25% level specified in Section 310(b)(4) serves the public interest when the investing company is from a World Trade Organization ("WTO") member country.[9] Specifically, the Commission stated:

> Because additional foreign investment can promote competition in the U.S. market, we conclude that the public interest will be served by permitting more open investment by entities from WTO Member countries in U.S. common carrier wireless licensees.[10]

As noted, the foreign corporation being inserted into the chain of ownership, SIBL, is organized under the laws of Anigua and Barbuda, a country which is a member of the WTO.[11] Thus, the Commission's normal public interest presumption fully applies.[12] Moreover, in the instant case, there is no indirect foreign investment. The controlling shareholder remains a U.S. citizen and an alien corporation is merely being inserted into the chain of ownership for business reasons.

The prompt grant of this Petition will serve the public interest as it will enable the Licensee and its ultimate owner to structure the ownership of the PCS licenses in the preferred manner from a business standpoint. This will facilitate investment in and operation of the licenses and authorization and thereby promote competition in the U.S. market.

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[8] *See* Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order*, 12 FCC Rcd. 23891 (1997) ("Foreign Participation Order").

[9] *Id,* 12 FCC Rcd 23913, 23940.

[10] *Id,* 12 FCC Rcd 23940.

[11] *See* http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (indicating that Antigua and Barbuda became a member of the WTO on January 1, 1995).

[12] The Commission specifically notes that the presumption applies to "petitions for declaratory rulings by existing or prospective licensees that the public interest would be served by allowing them to exceed 25 percent indirect foreign ownership." Foreign Participation Order, at 23940.

**b. The Executive Branch Is Expected to Support the Grant of this Petition.**

The *Foreign Participation Order* provides that, in evaluating proposed foreign ownership under Section 310(b), the Commission must accord deference to the Executive Branch with respect to any national security or law enforcement concerns identified by Executive Agencies in connection with a proposed transaction.[13] eLandia has held preliminary discussions with a representative of the Executive Branch and understands that the Executive Branch does not expect to require an exchange of letters or a security agreement in connection with this matter because the ultimate controlling shareholder remains a U.S. citizen. Based on the discussions with a representative of the Executive Branch, eLandia expects the concurrence of the Executive Branch with this Petition.

**c. Declaration**

Attached hereto is a Declaration verifying the information set forth herein and containing the anti-drug abuse certification.

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[13] *See* Foreign Participation Order, at 23918, 23920-23921; *see also* 47 U.S.C. § 310(b)(4).

## III. <u>CONCLUSION</u>

For the foregoing reasons, eLandia respectfully requests that the Commission declare that the insertion of SIBL, a corporation organized under the laws of Antigua and Barbuda but owned by a U.S. citizen, into the chain of ownership of eLandia, a PCS licensee, is in the public interest.

Respectfully submitted,

**eLandia Technologies, Inc.**

Richard Rubin

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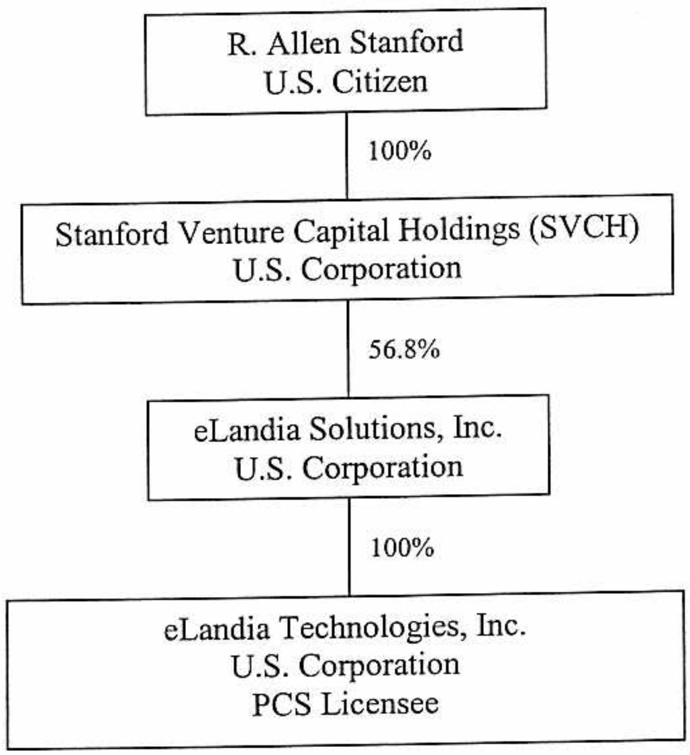
***Counsel for eLandia Technologies, Inc.***

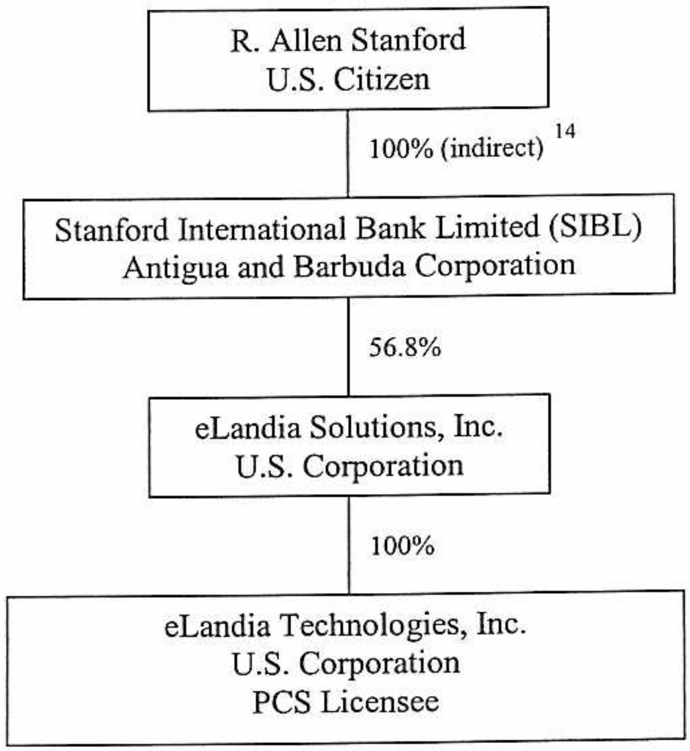
# EXHIBIT A

## Current Ownership Structure of eLandia Technologies, Inc.



## EXHIBIT B

### Proposed Ownership Structure of eLandia Technologies, Inc.




[14] *See* Note 5.

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**Washington, D.C. 20554**

**In the Matter of**

**eLandia Technologies, Inc.**

**Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act of 1934**

**To: International Bureau**

**DECLARATION**

I am the President of eLandia Technologies, Inc. I have reviewed the foregoing Petition and the facts stated therein are true and correct to the best of my knowledge, information and belief.

I hereby certify that no party to the Petition has been denied federal benefits pursuant to the Anti-Drug Abuse Act.

Sydney D. Camper, III
President
eLandia Technologies, Inc.

Dated: 3/21/2005