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June 24, 2005

BY HAND

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

RECEIVED
JUN 24 2005
Federal Communications Commission
Office of Secretary

Re: Petition Of Choice Holdings LLC For Declaratory Ruling
Under Section 310(b)(4) Of The Communications Act Of 1934, As Amended

Dear Ms. Dortch:

Enclosed for filing herewith is an original plus four (4) copies of the Petition of Choice Holdings LLC for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended.

Please acknowledge receipt of this letter by file-stamping and returning the extra copy in the self-addressed, stamped envelope provided for that purpose. If you have any questions regarding this matter, please to contact the undersigned.

Sincerely,



Thomas K. Crowe
Gregory E. Kunkle,
Counsel for Choice Holdings LLC

Enclosure

cc: Erin McGrath, Wireless Telecommunications Bureau
Susan Singer, Wireless Telecommunications Bureau

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

In the Matter of)	
)	
Choice Holdings LLC)	
)	Docket No.
Petition for Declaratory)	
Ruling Under Section 310(b)(4))	File No.
of the Communications Act of 1934, as)	
Amended, to Permit Indirect)	
Foreign Ownership Exceeding 25)	
Percent In Common Carrier)	
Licensees Choice Phone LLC and Wave)	
Runner LLC)	

**PETITION OF CHOICE HOLDINGS LLC
FOR DECLARATORY RULING UNDER SECTION 310(b)(4) OF THE
COMMUNICATIONS ACT OF 1934, AS AMENDED**

Choice Holdings LLC (“Choice Holdings”) hereby petitions the Commission for a declaratory ruling that indirect foreign investment of up to 35 percent in Commission common carrier radio licensees Choice Phone LLC (“Choice Phone”) and Wave Runner LLC (“Wave Runner”) from a citizen of a World Trade Organization (“WTO”) member country, is consistent with the public interest standard under Section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”).

I. THE PARTIES

A. Choice Holdings LLC

Choice Holdings is a limited liability company organized under the laws of the U.S. Territory of Guam (“Guam”). Choice Holdings holds an approximate 100 percent

direct ownership in Choice Phone and Wave Runner.¹ Both Choice Phone and Wave Runner are limited liability companies organized under the laws of Guam. Both Choice Phone and Wave Runner provide wireless telecommunications services to consumers in Guam and the Commonwealth of the Northern Mariana Islands (“CNMI”).²

B. Ronnie S. Lim

Ronnie S. Lim is the current 25 percent direct owner of Choice Holdings. Through his ownership of Choice Holdings, Ronnie Lim holds an approximate 25 percent indirect ownership in Choice Phone and Wave Runner. Ronnie Lim does not exercise control over the day-to-day operations of Choice Phone or Wave Runner. Ronnie Lim is a citizen of the Philippines, which is a WTO member country. He does not hold any attributable ownership interest in any foreign telecommunications company or any other domestic telecommunications company.

C. Richard C. Yu

Richard C. Yu is the current 28 percent direct owner of Choice Holdings. Through his ownership of Choice Holdings, Richard Yu holds an approximate 28 percent indirect ownership in Choice Phone and Wave Runner. He additionally holds a less than one percent direct ownership in Choice Phone and Wave Runner. Richard Yu is also the managing member of Choice Phone and Wave Runner. He is a citizen of the U.S.

¹ As explained herein, an individual, Richard C. Yu, holds a less than 1 percent direct interest in both Choice Phone and Wave Runner.

² Choice Phone is the holder of an international 214 authorization granted in file no. ITC-214-20030514-00256 and the holder of wireless licenses bearing the following call signs: WNDJ438, WNSS346, WPRQ765, WPRQ766, WPSH546, WPSJ754, WPSJ757, WPSJ758, WPSJ759, WPSJ763, WPSJ764 and WPSJ765. Wave Runner is the holder of an international 214 authorization granted in file no. ITC-214-20040506-00193 and the holder of wireless licenses bearing the following call signs: WPSJ967, WPSJ968.

II. THE TRANSACTION

Under the proposed transaction, Ronnie Lim would purchase an additional 10 percent direct ownership in Choice Holdings from Richard Yu. This would result in Ronnie Lim acquiring approximately an additional 10 percent indirect ownership interest in Choice Phone and Wave Runner. Thus, after the transaction, Ronnie Lim, a non U.S. citizen, would hold approximately a 35 percent indirect ownership in Choice Phone and Wave Runner. Ronnie Lim would assume no other ownership interest over Choice Phone and Wave Runner. Richard Yu would continue to function as managing member of Choice Phone and Wave Runner and Ronnie Lim would not perform any day-to-day managerial functions regarding either of these companies.

III. THE PROPOSED TRANSACTION SATISFIES BOTH THE STATUTORY STANDARD AND COMMISSION POLICY TO ENCOURAGE INVESTMENT FROM WTO MEMBER COUNTRIES

Indirect foreign ownership of a common carrier radio licensee is governed by the benchmark limits contained in Section 310(b)(4) of the Act. Specifically, Section 310(b)(4) of the Act states as follows:

- (b) 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 therefore, or 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 of revocation of such license.

In its *Foreign Participation Order*, the Commission held that allowing indirect foreign investment in common carrier radio licensees beyond the 25 percent benchmark

established by Section 310(b)(4) of the Act could promote competition in the U.S. market, thereby promoting the public interest.³ The Commission stated that it would analyze proposed indirect foreign investments in radio licenses “guided... by the U.S. Government’s commitment under the WTO Basic Telecommunications Agreement, which seeks to promote global markets for telecommunications so that consumers may enjoy the benefits of competition.”⁴ Furthermore, the Commission has stated 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.”⁵ Based on these principles, the Commission has adopted a “strong presumption that no competitive concerns are raised by [up to and including 100 percent] indirect foreign investment” from entities from WTO member countries.”⁶

The Commission has frequently endorsed indirect foreign ownership of up to 100 percent by entities from WTO member countries. Shortly before the release of the *Foreign Participation Order*, the Commission approved 100 percent indirect foreign ownership of common carrier radio licenses by Telecom Finland Ltd., a wholly-owned subsidiary of PT Finland, Ltd., a private holding company of the Government of Finland.⁷ Since the adoption of the *Foreign Participation Order*, the Commission

³ See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order on Reconsideration*, 12 FCC Rcd 23891, 23940 (1997), (2000) (“*Foreign Participation Order*”), *Order on Reconsideration*, FCC 00-339, 15 FCC Rcd 18158 (2000).

⁴ *Id.*

⁵ Aerial Communications, Inc. and Voicestream Wireless Holdings Corp., 15 FCC Rcd 10089, 10093-94 (2000).

⁶ Voicestream Wireless Corp., 15 FCC Rcd 3341, 3348 (2000).

⁷ See Telecom Finland, Ltd., Petition for Determination of the Public Interest under 47 U.S.C. Sec. 310(b)(4) to Permit LMDS and PCS Licensing, *Order*, 12 FCC Rcd 17648 (1997).

approved 100 percent indirect foreign ownership of Telenor Satellite by Telenor ASA, a Norwegian company, which is 79 percent owned by the Kingdom of Norway; 100 percent indirect foreign ownership of GE Americom by SES Global, a Luxembourg company, which is 75.11 percent foreign-owned; and 100 percent indirect foreign ownership of VoiceStream Wireless by Deutsche Telekom AG, a German company, which is 77 percent foreign-owned, including 45 percent held by the German government; and 100 percent of Andesat Teleport by investor shareholders from Bolivia, Colombia, Ecuador, Peru and Venezuela.⁸

More recently, and directly applicable to the present case, the Commission authorized 100 percent indirect foreign ownership by a Philippine entity over the Micronesian Telecommunications Corporation ("MTC") and GTE Pacifica Inc. ("GTE"), two carriers providing service in the Commonwealth of the Northern Mariana Islands.⁹ In *Pacific Telecom*, a Philippine entity requested Commission authority to purchase, through a U.S. based holding company, 100 percent ownership of GTE and MTC. The

⁸ See Lockheed Martin Global Telecommunications, Comsat Corp., and Comsat General Corp. and Telenor Satellite Mobile Services, Inc. and Telenor Satellite, Inc., 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, *Order and Authorization*, 16 FCC Rcd 22897 (2001); Application of General Electric Corp. and SES Global, For Consent to Transfer Control of Licenses and Authorizations Pursuant to Section 310(b)(4) of the Communications Act, *Supplemental Order*, 16 FCC Rcd 18878 (2001); Application of General Electric Corp. and SES Global, For Consent to Transfer Control of Licenses and Authorizations Pursuant to Section 310(b)(4) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act, *Order and Authorization*, 16 FCC Rcd 17575 (2001); VoiceStream Wireless Corp., Powertel, Inc. and Deutsche Telekom AG, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Section 214 and 310(d) of the Communications Act, *Memorandum Opinion and Order*, 16 FCC Rcd 9779 (2001); *FCC Public Notice*, DA 03-422, February 13, 2003, page 4 of 9.

⁹ See 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 and 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 (2003) ("*Pacific Telecom*").

transaction, which was approved by the Commission, resulted in 100 percent indirect ownership by a Philippine entity of GTE and MTC.¹⁰ The Commission held that the indirect foreign ownership of GTE and MTC would serve the public interest.¹¹

The proposed transaction between Richard Yu and Ronnie Lim would serve the public interest as outlined in the Commission's decisions discussed above. The Philippines is a WTO member country. Thus, there is a strong presumption that competition would be increased and the public interest would be served by Philippine investment in U.S. telecommunications companies. Furthermore, the Commission has, within the past twelve months, authorized 100 percent Philippine ownership over a company serving the same region of the U.S. as Choice Phone and Wave Runner serve. Here, authority for only 35 percent foreign ownership is being requested. Furthermore, there is significant competition for wireless services in the Guam/CNMI region.¹²

¹⁰ *Id.* at para. 3.

¹¹ *Id.* at para. 49.

¹² The Commission's Universal Licensing System indicates that there may be as many as ten competitors operating in Guam and the CNMI for the services offered by Wave Runner and Choice Phone including, IT&E Overseas, Inc., GTE Pacifica Inc., and Nextel.

IV. CONCLUSION

For the reasons discussed above, Choice Holdings hereby requests that the Commission issue a declaratory ruling that indirect foreign investment of up to 35 percent in Commission licensees Choice Phone and Wave Runner from a citizen of a WTO member country, is consistent with the public interest standard under Section 310(b)(4) of the Act.

Respectfully submitted,



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June 24, 2005