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

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Federal Communications Commission  
Office of Secretary

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 In re Application of )  
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 Guam Cellular and Paging, Inc., )  
 Transferor and Assignee, )  
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 and )  
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 Guam Wireless Telephone Company, L.L.C., )  
 Assignor, )  
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 and )  
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 NTT DoCoMo, Inc. )  
 Transferee )  
 )  
 Application for Assignment, Transfer of )  
 Control, and Petition for Declaratory Ruling )  
 \_\_\_\_\_ )

Docket No. \_\_\_\_\_

**APPLICATION FOR ASSIGNMENT, TRANSFER OF CONTROL,  
AND PETITION FOR DECLARATORY RULING**

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## SUMMARY

NTT DoCoMo, Inc. (“DoCoMo”) has entered into separate agreements with each of Guam Cellular and Paging, Inc. (“Guam Cellular”) and Guam Wireless Telephone Company, L.L.C. (“Guam Wireless”) that will give DoCoMo ultimate control of Guam Cellular and certain assets of Guam Wireless. In order to effectuate the agreements, direct control of Guam Cellular will be transferred to DoCoMo Guam Holdings, Inc. (“DoCoMo Guam”), a wholly-owned subsidiary of DoCoMo organized under the laws of Guam, and the assets of Guam Wireless will be assigned to Guam Cellular. The parties request the Federal Communications Commission (“FCC” or “Commission”) to find that the proposed transfer and assignment, which will be closed simultaneously, will serve the public interest because they will deliver substantial pro-competitive benefits for consumers that will not be offset by any anti-competitive benefits.

Guam Cellular and Guam Wireless each provide commercial mobile radio service (“CMRS”) in Guam and the Commonwealth of the Northern Mariana Islands (the “CNMI”), both of which are unincorporated territories of the United States and are classified by the Commission as rural service areas. Despite the rural nature of Guam and the CNMI, they enjoy a highly robust and competitive wireless market. Ten different entities hold CMRS licenses in Guam and the CNMI and utilize a wide variety of wireless standards (*e.g.*, CDMA, GSM, iDEN). Other Guam and CMNI mobile operators provide local fixed, long distance, international and broadband services in addition to competitive wireless services.

DoCoMo’s acquisition (through DoCoMo Guam) of Guam Cellular and the assets of Guam Wireless will promote the public interest by enhancing the competitive capabilities of the current CDMA (and eventually W-CDMA) and GSM operations through the infusion of significant additional economic and management resources and wireless expertise. These

resources will allow Guam Cellular post-transaction to compete more efficiently and effectively against multiple other mobile operators in Guam and the CNMI that also are expanding and enhancing their networks and services and that have access to significant financial resources.

DoCoMo's leadership in providing advanced wireless services in Japan will provide additional service-related benefits to Guam and CNMI consumers. DoCoMo, a corporation organized under the laws of Japan (a member of the World Trade Organization), provides mobile wireless and data communications to more than 50 million subscribers in Japan. DoCoMo is a market leader, launching the world's first 3G mobile service in 2001 and providing a wide variety of mobile multimedia services, including mobile Internet and other data services. Enhancing wireless competition through the strengthening of Guam Cellular's operations post-transaction will produce tangible benefits for consumers by increasing product choice and service quality at affordable prices.

The transaction's substantial pro-competitive benefits will not be offset by any anti-competitive effects. DoCoMo currently expects to continue operating two separate networks in Guam and the CNMI, with distinct licenses, networks, technologies, service offerings and customer bases, and to enhance the quality of Guam Wireless' GSM network by adding GPRS capability and in the future to deploy a W-CDMA network for 3G services over Guam Cellular's cellular licenses. Therefore, the proposed transaction does not raise significant subscriber transition issues near term or present a significant competitive concern regarding the reduction of mobile operators in the Guam and CNMI market. Furthermore, DoCoMo's indirectly holding of 55 MHz of CMRS spectrum in Guam and the CNMI is well below the 70 MHz threshold that the Commission has established in other wireless transactions.

Moreover, the proposed indirect foreign investment in Guam Cellular raises no competitive concerns and is consistent with Section 310(b)(4) of the Communications Act, as amended (the “Act”). DoCoMo, a publicly traded Japanese mobile operator, will hold a 100 percent ownership interest in Guam Cellular through DoCoMo Guam. Nippon Telegraph and Telephone Corporation (“NTT”), a publicly traded Japanese communications provider, holds a 61.96 direct voting and equity interest in DoCoMo. The Japanese government holds a 38.37 percent direct voting and equity ownership interest in NTT.

DoCoMo operates in a robustly competitive telecommunications market in Japan. The domestic and insular nature of the Guam and CNMI market also ensure that neither DoCoMo nor NTT can possibly leverage its market share or control of facilities in Japan to provide Guam Cellular with an unfair competitive advantage in the Guam and CNMI market. Further, the Japanese government’s ownership interest will confer no competitive advantage on Guam Cellular in the Guam and CNMI market. Neither NTT nor DoCoMo benefits from government subsidies, preferential access to capital, or favorable regulatory treatment. Accordingly, the Commission should determine that the public interest would not be served by denying approval of DoCoMo’s indirect foreign ownership of Guam Cellular pursuant to Section 310(b)(4) of the Act.

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**APPLICATION FOR ASSIGNMENT, TRANSFER OF CONTROL,  
AND PETITION FOR DECLARATORY RULING**

NTT DoCoMo, Inc. (“DoCoMo”), Guam Cellular and Paging, Inc. (“Guam Cellular”), and Guam Wireless Telephone Company, L.L.C. (“Guam Wireless”) (collectively, the “Applicants”), pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended (the “Act”),<sup>1</sup> request Commission consent for DoCoMo, through its wholly-owned domestic subsidiary, to acquire all ownership shares of Guam Cellular and certain wireless assets of Guam Wireless. Specifically, control of Guam Cellular would be transferred to DoCoMo Guam Holdings, Inc. (“DoCoMo Guam”), a wholly-owned subsidiary of DoCoMo organized

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<sup>1</sup> See 47 U.S.C. §§ 214, 310(d).

under the laws of Guam, and the assets of Guam Wireless would be assigned to Guam Cellular.<sup>2</sup> Upon consummation, Guam Cellular would be the surviving licensee and would continue to hold certain Section 214 and Title III authorizations, in addition to the Section 214 and Title III authorizations now held by Guam Wireless. The Applicants also seek a declaratory ruling that upon consummation of the transaction, the public interest would not be served by denying approval of DoCoMo's indirect foreign ownership (through DoCoMo Guam) of Guam Cellular pursuant to Section 310(b)(4) of the Act.<sup>3</sup>

On March 20, 2006, DoCoMo entered into separate agreements with each of Guam Cellular and Guam Wireless that, upon consummation, will give DoCoMo ultimate control of Guam Cellular and certain assets of Guam Wireless. Guam Cellular and Guam Wireless provide commercial mobile radio service ("CMRS") in Guam and the Commonwealth of the Northern Mariana Islands (the "CNMI"), both of which are classified as rural service areas and which collectively have a population of less than 225,000 people. Currently, DoCoMo expects to retain most of the managerial officers and employees of both companies and expects to continue operating, for the time being, two separate networks in Guam and the CNMI. DoCoMo will enhance the quality of Guam Wireless' GSM network near term by adding General Packet Radio Service ("GPRS") capability and in the future expects to deploy a wideband spread-spectrum 3G mobile telecommunications air interface (W-CDMA) network for third generation ("3G") services over Guam Cellular's cellular licenses.

As set forth below, this transaction will deliver substantial pro-competitive benefits. Further, these pro-competitive benefits will not be offset by any anti-competitive effects. The

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<sup>2</sup> A list of the FCC authorizations held by Guam Cellular and Guam Wireless is attached as Exhibit A.

<sup>3</sup> See 47 U.S.C. § 310(b)(4).

transaction will enhance the existing operations of Guam Cellular and Guam Wireless, providing the resources for Guam Cellular to finance upgrades for the networks and to introduce new and innovative service offerings and products. The transaction also will help ensure that Guam Cellular can continue to compete in the robust wireless market in Guam and the CNMI. Thus, the transaction will produce tangible benefits for consumers by increasing product choice and service quality at affordable prices.

DoCoMo's foreign ownership of Guam Cellular will not impair competition or otherwise harm U.S. interests. DoCoMo, a publicly-traded Japanese mobile carrier, operates in a robustly competitive telecommunications market in Japan. At least 75 percent of DoCoMo's shares are held by investors from World Trade Organization ("WTO") member countries. At least 75 percent of the shares of Nippon Telegraph and Telephone Corporation ("NTT"), which holds a 61.96 direct voting and equity interest in DoCoMo, also are held by investors from WTO member countries. Thus, the transaction is overwhelmingly in the public interest and is fully consistent with the Act and Commission rules.

The parties are filing concurrently a series of applications to effectuate the proposed transaction. Specifically, two FCC Form 603 applications are being submitted, one which seeks Commission consent to assign Guam Wireless' PCS license to Guam Cellular (as controlled by DoCoMo Guam) and one which seeks Commission consent to transfer control of Guam Cellular to DoCoMo Guam.<sup>4</sup> The parties also are filing an application seeking Commission consent to assign Guam Wireless' international Section 214 authorization to Guam Cellular (as controlled by DoCoMo Guam). In addition, the parties are filing a joint international/domestic Section 214

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<sup>4</sup> The technical parameters of the Commission's electronic Universal Licensing System ("ULS") require that the assignment application be filed first, followed by the transfer of control application. The transfer of control application will not, however, list the call sign of Guam Wireless' PCS license because it will be the subject of the assignment application.



application seeking Commission consent to transfer control of Guam Cellular to DoCoMo Guam.

## **I. DESCRIPTION OF THE APPLICANTS**

### **A. Guam Cellular**

Guam Cellular, a corporation organized under the laws of Guam, is the licensee of the cellular A block licenses in Guam and the CNMI. It also holds several other licenses, including paging, common carrier fixed point-to-point microwave, industrial/business pool, wireless communications service, and 700 MHz lower band licenses.<sup>5</sup> In addition, Guam Cellular holds two international Section 214 licenses authorizing it to provide international telecommunications services on a global resale and facilities basis. Guam Cellular is owned by a group of individuals through their respective investment entities. The largest single shareholder is Lyons Community Property Trust (“Lyons Trust”), which holds a majority ownership interest in Guam Cellular. The Lyons Trust is a U.S. trust whose beneficiaries are Philip and Mary Lyons, both of whom are U.S. citizens.

Guam Cellular has provided high quality mobile wireless services, based upon the CDMA wireless standard, to residents of and visitors to Guam and the CNMI since 1992. It provides service under the brand names Guamcell Communications in Guam and Saipancell Communications in the CNMI. Guam Cellular provides a host of telecommunications and enhanced services, including mobile voice services, paging services, business and residential

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<sup>5</sup> Guam Cellular’s two cellular licenses have been fully constructed, and its other Title III licenses are in compliance with applicable build out requirements. Guam Cellular acquired a 700 MHz lower band license (WPYG242) less than five years ago in Auction No. 44 pursuant to the Commission’s designated entity program. DoCoMo Guam does not qualify for designated entity status. Pursuant to Section 1.2112(d) of the Commission’s rules, the appropriate percentage of the bidding credit associated with the license will be repaid shortly before the transaction closes.

wireline domestic long distance (via direct dial and calling card) and international services, and dial-up and DSL Internet access services.

Guam Cellular also is a designated “eligible telecommunications carrier” or “ETC” under the Commission’s universal service program for Guam and the CNMI. Guam Cellular was designated an ETC by the Commission for the entire area of Guam.<sup>6</sup> Under Section 214(e)(6) of the Act, the qualifications for ETC status are specific to the individual ETC in the “service area” designated by the Commission, and because Guam Cellular will continue as the operating entity on Guam following the transfer of control to DoCoMo, it should retain its ETC status.

#### **B. Guam Wireless**

Guam Wireless, a limited liability company organized under the laws of the Commonwealth of Virginia, is the licensee of the PCS B block license for the Guam-Northern Mariana Islands Major Trading Area (“MTA”).<sup>7</sup> Guam Wireless holds an international Section 214 license authorizing it to provide international telecommunications services on a global resale and facilities basis. The managing member of the company is John K. Wu, who is a resident of Guam and a U.S. citizen. Guam Wireless’ largest single shareholder is Benson Wu, also a resident of Guam and a U.S. citizen, who holds a 32.48 percent ownership interest in Guam Wireless. The other individuals or entities that hold a ten percent or greater direct ownership interest in Guam Wireless are Pacific Sunny (Saipan) Inc. (13.98 percent) and Kairos Fund Limited Partnership (22.35 percent), both of which are U.S. companies. Guam Wireless

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<sup>6</sup> See *Guam Cellular and Paging, Inc. d/b/a Guamcell Communications Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, 17 FCC Rcd 1502 (2002).

<sup>7</sup> The required build out notifications for the Guam Wireless’ PCS license have been approved by the Commission. See ULS File Nos. 0000174902 (five-year build out) and 0002230332 (ten-year build out). Guam Wireless’ PCS license was granted more than ten years ago and is not subject to the Commission’s rules regarding bidding credits or installment payments.

provides high quality mobile wireless services under the brand name HafaTEL to residents of and visitors to Guam and the CNMI using the GSM wireless standard.

### **C. DoCoMo**

DoCoMo, a corporation organized under the laws of Japan, a WTO country, is a mobile communications company that provides wireless voice and data communications to more than 50 million subscribers in Japan. These services are provided by DoCoMo and eight wholly-owned regional subsidiaries.<sup>8</sup> DoCoMo's wireless service area covers approximately 99 percent of Japan's population.

DoCoMo is a market leader, providing a wide variety of mobile multimedia services, including i-mode<sup>®</sup>, a mobile Internet service that provides email and Internet access to more than 45 million subscribers, and FOMA<sup>®</sup>, the world's first 3G mobile service that was launched in 2001 and is based on W-CDMA technology. In addition to voice services, DoCoMo offers services that include audio and video capabilities, games, data communications (*e.g.*, to receive: news, stock quotes and weather reports; mobile banking and other financial services; restaurant guides, locations, and reservations; concert and sporting event tickets; travel reservations; telephone directories; and classified ads), remote monitoring services (*e.g.*, for construction sites or daycare centers), and remote learning systems via videophones. DoCoMo's services include several advanced features that are not yet available, or of limited availability, in the United States. DoCoMo also provides wireless LAN, Wi-Fi, paging, satellite, and Personal Handyphone System ("PHS") services (a digital cordless phone system that operates on a digitalized microcell network).

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<sup>8</sup> DoCoMo's wholly-owned regional subsidiaries are: NTT DoCoMo Hokkaido, Inc.; NTT DoCoMo Tohoku, Inc.; NTT DoCoMo Tokai, Inc.; NTT DoCoMo Hokuriku, Inc.; NTT DoCoMo Kansai, Inc.; NTT DoCoMo Chugoku, Inc.; NTT DoCoMo Shikoku, Inc.; and NTT DoCoMo Kyushu, Inc.

DoCoMo's long term business strategy focuses on three market elements – multimedia, ubiquity, and globalization. Multimedia refers to the development and deployment of increasingly sophisticated non-voice services, including 3.5 and 4G technologies and services. Ubiquity refers to adding communicative ability to all mobile products, such as intelligent home appliances and telematics for automobiles. Through globalization DoCoMo seeks to enhance subscribers' wireless usage and convenience by expanding the use of W-CDMA technology outside of Japan. DoCoMo has made it a priority to trade and compete fairly, openly, and freely in the Japanese and other markets, and has incorporated this commitment into its corporate Code of Ethics.<sup>9</sup>

DoCoMo has had a minimal presence in the United States to date. NTT DoCoMo USA, Inc. ("DoCoMo USA"), a wholly-owned subsidiary of DoCoMo, was established in 1999 and is headquartered in New York, New York. DoCoMo USA has offices in New York and Washington, D.C. DoCoMo USA oversees DoCoMo's interests in the United States, including developing and enhancing DoCoMo's relationships with its existing business partners, conducting research in the technology and wireless industries, and supporting DoCoMo's public relations efforts in the United States.

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<sup>9</sup> Other policies emphasized in DoCoMo's Code of Ethics include: (1) complying with legal requirements and ethical standards; (2) adhering to a "customer-first" model for products and services; (3) respecting customers' rights and protecting personal information; (4) safeguarding corporate proprietary and confidential information; (5) disclosing company information to keep shareholders informed and to enhance the transparency of the company's business activities; (6) participating in and contributing to social causes; (7) preserving the environment; (8) respecting the rights and individuality of employees; and (9) pledging to maintain and foster awareness of the company's Code of Ethics. See NTT DoCoMo Code of Ethics, *available at* <http://www.nttdocomo.com/about/code/> (last visited Apr. 3, 2006).

In November 2004, DoCoMo USA launched a wireless LAN access service called “Namikiteru” for Japanese-speaking residents in the United States.<sup>10</sup> Namikiteru provides subscribers with high-speed Internet access over public wireless LAN access points, access to Japanese-language portal sites operated by DoCoMo USA, and technical support in Japanese. Through its own Wi-Fi network and a roaming arrangement with T-Mobile USA, Inc. (“T-Mobile”), Namikiteru is available in New York, certain airports, and at T-Mobile “Hot Spots” throughout the United States.

In November 2000 DoCoMo established DoCoMo Communications Laboratories USA, Inc., a research lab facility in San Jose, California. In May 2005 DoCoMo also acquired a 49 percent equity interest in Telargo, Inc., a mobile assets management service provider in the United States.<sup>11</sup> In addition, July 2005 DoCoMo established DoCoMo Capital, Inc., a wholly-owned U.S. subsidiary based in San Jose, California to invest in venture companies that develop advanced mobile communication technologies.<sup>12</sup> In July 2005 DoCoMo also established an indirect subsidiary, inter-touch (USA), Inc., that will offer broadband services to hotels. Neither DoCoMo nor any of its U.S. subsidiaries holds FCC authorizations.<sup>13</sup> Accordingly, the proposed acquisition of Guam Cellular and the assets of Guam Wireless represents the first time that

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<sup>10</sup> DoCoMo USA Press Release, *NTT DoCoMo USA to Launch Public Wireless LAN Access Service “namikiteru”* (Oct. 18, 2004), available at [http://www.docomo-usa.com/news/news\\_bn1.html](http://www.docomo-usa.com/news/news_bn1.html).

<sup>11</sup> DoCoMo Press Release, *NTT DoCoMo to Acquire Stake in Telargo, US Mobile Assets Management Company* (June 29, 2005), available at <http://www.nttdocomo.com/pr/2005/000674.html>.

<sup>12</sup> DoCoMo Press Release, *NTT DoCoMo to Establish Investment Subsidiary in California* (May 9, 2005), available at <http://www.nttdocomo.com/pr/2005/000659.html>.

<sup>13</sup> DoCoMo’s former minority equity interest in AT&T Wireless Services, Inc. (“AT&T Wireless”) was purchased as part of the 2005 merger between AT&T Wireless and Cingular Wireless Corporation.

DoCoMo would hold FCC authorizations and would control a regulated U.S. telecommunications company.

DoCoMo is a publicly traded company listed on the Tokyo, London and New York stock exchanges. As of December 2005, Nippon Telegraph and Telephone Corporation (“NTT”) holds a 61.96 percent direct voting and equity ownership interest in DoCoMo. The amount of NTT’s ownership interest in DoCoMo has fluctuated, but generally has decreased over time since DoCoMo became a publicly traded company. NTT is further described in Section I(D) below. As of December 2005, the Japanese government holds a 38.37 direct voting and equity percent ownership interest in NTT and derivatively, a 23.77 percent indirect ownership interest in DoCoMo. No other entity holds more than a five percent direct or indirect ownership interest in DoCoMo. To the best of DoCoMo’s knowledge, more than 75 percent of DoCoMo’s outstanding stock is held by shareholders from WTO member countries, including Japan, the United States, and the United Kingdom.<sup>14</sup>

DoCoMo’s day-to-day operations are conducted independently of NTT and NTT’s other subsidiaries.<sup>15</sup> Neither NTT nor any other entity that holds DoCoMo common stock possesses special or preferential voting rights. As a majority shareholder, however, NTT has the ability to influence certain business decisions of DoCoMo, including the right to appoint directors.<sup>16</sup> For example, the following matters are discussed directly with or reported to NTT: (1) subjects that “are required to be voted on at shareholders’ meetings, including amendments to DoCoMo’s Articles of Incorporation, mergers and consolidations, assignments and transfers of business,

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<sup>14</sup> A chart listing the top ten DoCoMo shareholders is attached as Exhibit B.

<sup>15</sup> See DoCoMo SEC Form 20-F at 12 (June 27, 2005) (“DoCoMo 20-F”).

<sup>16</sup> See *id.*

election and removal of directors and corporate auditors, and appropriation of profits; (2) increases in share capital; (3) investments, including international investments; (4) loans and guarantees; and (5) establishment of businesses plans.”<sup>17</sup> As further discussed below, DoCoMo, NTT, and NTT’s other subsidiaries are legally prohibited from providing each other with preferential treatment.<sup>18</sup> All negotiations and business transactions conducted between DoCoMo, NTT, and other NTT subsidiaries are on an arm’s-length basis.<sup>19</sup>

As noted above, the Japanese government holds an indirect interest in DoCoMo through its ownership in NTT. The government has no special or preferential voting rights with regard to DoCoMo’s operations. Any ability to affect DoCoMo’s business decisions originates solely from the government’s capacity as a major shareholder of NTT. As further described below, however, the government has not used its shareholder position to direct the management of NTT or any of NTT’s subsidiaries, including DoCoMo. Moreover, the government’s ownership interest in DoCoMo has steadily declined as the government has decreased its ownership interest in NTT, and, as noted above, NTT has decreased its ownership interest in DoCoMo. Further, the government’s indirect ownership of DoCoMo confers no special subsidies, tax preferences, employment rights, or any other benefits on DoCoMo.

DoCoMo’s Articles of Incorporation provide for a maximum of fifteen members on its board of directors. The DoCoMo board currently consists of thirteen members, each of whom is serving a two year term. Directors can serve consecutive terms. There are no interlocking directorates between DoCoMo and NTT. No director or officer serving on DoCoMo’s board of

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<sup>17</sup> *See id.* at 56.

<sup>18</sup> *See* NTT SEC Form 20-F at 12 (June 30, 2005) (“NTT 20-F”).

<sup>19</sup> *See* DoCoMo 20-F at 55.

directors is a government official. DoCoMo's Articles of Incorporation also provide for a maximum of five corporate auditors, one of whom is required to be independent. DoCoMo's audit team consists of five auditors, three of whom are not affiliated with DoCoMo.

DoCoMo operates in a highly competitive telecommunications market in Japan. In 1985 the Japanese government implemented significant changes to its legislative and regulatory framework for the country's telecommunications industry. Specifically, the Japanese legislature (the Diet) introduced the Telecommunications Business Law ("TB Law"), which opened the telecommunications market to competition. DoCoMo and other mobile operators in Japan are generally subject to the Telecommunications Business Law, which sets forth various directives applicable to the entire Japanese telecommunications industry, and the Radio Law, which addresses the management and use of spectrum. The Ministry of Internal Affairs and Communications (the "MIC," formerly known as the Ministry of Public Management, Home Affairs, Posts and Telecommunications) is the primary regulatory body in Japan with responsibility for the country's telecommunications market and implementation of Japan's telecommunications-related laws.

The Diet and the MIC on a regular basis review the competitive conditions in Japan's telecommunications market and take steps to promote competition and encourage market entry. For example, the United States recently commended Japan for stimulating competition by issuing spectrum licenses to three new entrants into the wireless market, which is further discussed below.<sup>20</sup> Key aspects of Japan's pro-competitive regulatory environment include:

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<sup>20</sup> See Annual Reform Recommendations from the Government of the United States the Government of Japan under the U.S.-Japan Regulatory Reform and Competition Policy Initiative at 2 (Dec. 7, 2005), *available at* [http://www.ustr.gov/assets/World\\_Regions/North\\_Asia/Japan/Regulatory\\_Reform\\_Initiative/asset\\_upload\\_file168\\_8516.pdf](http://www.ustr.gov/assets/World_Regions/North_Asia/Japan/Regulatory_Reform_Initiative/asset_upload_file168_8516.pdf).



- **Foreign Ownership.** All restrictions against foreign ownership of telecommunications companies have been eliminated, except for foreign ownership of NTT. As further discussed below, foreign ownership of NTT is limited to one-third of the company's outstanding shares.<sup>21</sup>
- **No Structural Market Entry Barriers.** All telecommunications and information markets are open to competition, and no carrier is automatically precluded from entering any particular market. Japan has replaced a classification system that previously required facilities-based carriers to acquire MIC approval before providing services with a registration and/or notification requirement.<sup>22</sup>
- **Liberal Licensing.** The Japanese government does not have special licensing rules for foreign carriers.
- **Interconnection.** All telecommunications carriers are required to allow other carriers to interconnect their facilities, unless there are legitimate reasons for refusing interconnection. If a carrier refuses an interconnection request, the MIC has authority to order the carrier refusing interconnection to start or reopen negotiations.<sup>23</sup>
  - DoCoMo's mobile termination rates have declined by approximately 25 percent over the last four years to levels currently among the lowest in developed countries that employ a "calling party pays" regime.<sup>24</sup>
- **Regulations For Companies With Market Power.** Specific laws and regulations are in place to prevent dominant telecommunications carriers from abusing their market power.
  - The MIC has authority to designate a carrier whose total revenue from a particular type of telecommunications service within the same geographic area exceeds 25 percent of the market as "Category I" (fixed line carriers) or "Category II" (mobile carriers). To ensure proper competition, Category I and Category II carriers are prohibited from acting anti-competitively, such as by abusing or disclosing proprietary information obtained from competitors, unduly favoring certain carriers or intervening in the businesses of other carriers, manufacturers, or suppliers of equipment. They also must make interconnection agreements publicly available and disclose financial

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<sup>21</sup> See NTT 20-F at 11, 44.

<sup>22</sup> See DoCoMo 20-F at 48-49.

<sup>23</sup> See *id.* at 49; see also NTT 20-F at 11.

<sup>24</sup> See Fourth Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative at 3 (Nov. 2, 2005) ("U.S.-Japan Report"), available at [http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2005/asset\\_upload\\_file560\\_8292.pdf?ht=](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2005/asset_upload_file560_8292.pdf?ht=).

statements pertaining to their telecommunications businesses. NTT and its telecommunications subsidiaries, including DoCoMo, have been classified as Category I and Category II carriers.<sup>25</sup>

- Japan's Law Concerning Nippon Telegraph and Telephone Corporation, Etc. (the "NTT Law"), which is further discussed below, imposes various obligations on NTT. DoCoMo is not subject to the provisions of the NTT Law.<sup>26</sup>
- DoCoMo is required to establish its own transmission lines for its network independent of NTT. To the extent DoCoMo uses NTT transmission lines, such use must be on the same terms and conditions offered to competitors. Similarly, the terms and conditions of DoCoMo's use of NTT's utility poles, network, and research and development must be available to competitors. DoCoMo also is prohibited from engaging in joint procurement with NTT.<sup>27</sup>
- **Other Developments.** The Law Concerning the Protection of Personal Information was implemented in April 2005, which requires telecommunications carriers to protect the personal information of subscribers. The MIC commenced a revised universal service fund system on April 1, 2006, for which it reviewed the scope of universal service, cost calculation methodology and contributions methodology.<sup>28</sup>

As further evidence of Japan's continued focus on promoting competition, in 2001 President George W. Bush and Prime Minister Junichiro Koizumi, under the U.S.-Japan Economic Partnership for Growth, launched the Regulatory Reform and Competition Policy Initiative to promote economic growth and open markets in Japan. Under this initiative, Japan has taken important steps each year to improve its regulatory environment, resulting in increased consumer choice, lower prices, more innovative goods and services, and expanded opportunities for U.S. companies doing business with Japan.<sup>29</sup> For example, to create a climate that better

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<sup>25</sup> See DoCoMo 20-F at 50.

<sup>26</sup> See *id.* at 48.

<sup>27</sup> See *id.* at 56.

<sup>28</sup> See Tariff Division, Telecommunications Bureau, Ministry of Internal Affairs and Communications, *The Review of the Universal Service Fund System* (Nov. 2005), available at [http://www.soumu.go.jp/joho\\_tsusin/eng/features/universal\\_service\\_fund\\_system.pdf](http://www.soumu.go.jp/joho_tsusin/eng/features/universal_service_fund_system.pdf).

<sup>29</sup> U.S.-Japan Report at 1.

encourages competition and increases transparency, the Japanese government amended its Antimonopoly Act to strengthen enforcement capabilities of the Japan Fair Trade Commission (“JFTC”), modified JFTC procedures to be more transparent and fair, and strengthened Japan’s Public Comment Procedures.<sup>30</sup>

In addition to increased competition within discrete segments of the Japanese telecommunications market, the growth of bundled services – such as mobile, local, long distance, Internet access, IP telephony, and video distribution services – is fostering additional competition. Companies continue to expand their product and service offerings, better positioning themselves to respond to consumer demands and intermodal competitors. Consequently, competition will continue to thrive and end user rates will continue to drop in Japan.

**Wireless.** DoCoMo operates in an increasingly robust competitive mobile market in Japan. In addition to DoCoMo, two additional operators provide nationwide cellular mobile phone services in Japan – KDDI and Vodafone K.K. Softbank Corp. (“Softbank”), one of the largest Internet service providers (“ISP”) in Japan which also holds interests in the fixed line telecommunications, e-commerce, and broadband market segments, recently announced its intention to acquire Vodafone K.K.<sup>31</sup>

The MIC recently issued licenses to provide nationwide mobile services to three new mobile competitors – Softbank, eAccess Ltd. (“eAccess”), and IPMobile Inc. (“IPMobile”) – all

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<sup>30</sup> *See id.* at 33.

<sup>31</sup> Softbank Corp. Press Release, *SOFTBANK to acquire Vodafone K.K., to establish mobile communications business alliance with Yahoo! JAPAN* (Mar. 17, 2006), available at [http://www.softbank.co.jp/en/news/release/2006/060317\\_0001.html](http://www.softbank.co.jp/en/news/release/2006/060317_0001.html).

of which are expected to launch services between the fall of 2006 and spring of 2007.<sup>32</sup> Softbank and eAccess, which are widely-held companies and traded on the Tokyo Stock Exchange, will hold spectrum in the 1.7 GHz band, while privately held IPMobile will use spectrum in the 2 GHz band to focus on data mobile broadband services.<sup>33</sup> Softbank's proposed acquisition of Vodafone K.K. will provide it with a significant edge in developing its wireless business. Softbank also can use its vast ISP customer base and networks and other communications holdings to support its wireless services, as well as generate significant revenue through providing content. eAccess can build on its existing ADSL network and rely on existing relationships with ISPs and other outsourcing partners to increase subscribers. IP Mobile intends to use a technology called TDD/TD-CDMA, which reportedly has better frequency characteristics than W-CDMA.<sup>34</sup> To advance additional competition quickly, the MIC requires each new entrant to launch service within two years and achieve 50 percent national network coverage within five years of being licensed.<sup>35</sup>

Mobile operators in Japan compete vigorously for subscribers for voice and data services, which has prompted significant technological and network innovation and the introduction of new mobile services. For example, DoCoMo launched the world's first commercial 3G service over a W-CDMA system in 2001. Shortly thereafter in early 2002, KDDI launched a CDMA2000 1xRTT-based system and in late 2003 launched 1xEVDO services.

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<sup>32</sup> See World Markets Research Center, *World Markets Analysis, Three New Competitors for Japanese Mobile Market* (Nov. 10, 2005) ("World Markets Analysis").

<sup>33</sup> See *Japan Opens Spectrum to New Players*, RCR Wireless News – Tokyo, Nov. 14, 2005, at 23.

<sup>34</sup> See JPMorgan, *Asia Pacific Equity Research, Telecommunications Industry Report at 2* (Nov. 9, 2005).

<sup>35</sup> See *World Markets Analysis*.

The number of mobile wireless subscribers in Japan is rapidly increasing. By the fall of 2005, there were more than 91.47 million mobile subscribers in Japan, representing a penetration rate of 71.6 percent.<sup>36</sup> By 2012, those numbers are expected to grow to 118 million mobile subscribers and a penetration rate of more than 92 percent.<sup>37</sup> These figures may be conservative given the increased competition from new entrants that likely will have a positive impact on service rates and subscriber growth.<sup>38</sup> Even if the rate of subscriber growth eventually slows due to high penetration, fewer new subscribers will intensify competition as mobile operators attempt to retain subscribers and meet consumer demand for new, innovative, and affordable services.

Wireless local number portability is expected to be introduced in Japan in late 2006 or early 2007.<sup>38</sup> As demonstrated in the United States, local number portability is projected to increase competition further in Japan's mobile market. In April 2004, the MIC estimated that as many as 30 percent of Japanese mobile end users may take advantage of local number portability to switch mobile operators.<sup>39</sup>

The MIC has taken additional steps to create a flexible regulatory structure to accommodate new technologies and services and create an environment to promote advanced wireless broadband services. For example, within the past year the MIC adopted a registration

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<sup>36</sup> See DoCoMo 20-F at 7, 62; *see also* World Markets Analysis.

<sup>37</sup> See World Markets Analysis.

<sup>38</sup> See *id.*

<sup>38</sup> See Morgan Stanley Equity Research, Japan, Telecommunications Industry Report at 4 (Aug. 17, 2005).

<sup>39</sup> See DoCoMo 20-F at 47.

system, rather than a licensing system, for spectrum sharing devices such as Wi-Fi.<sup>40</sup> The MIC also has confirmed that users of Wi-Fi spectrum will not be charged spectrum usage fees and has stated that it is considering future frequency allocations for new wireless broadband technologies (e.g., WiMax). This relaxed registration system will facilitate easier entry into the Wi-Fi and WiMax markets by providers planning to utilize voice over Internet Protocol (“VoIP”) and other technologies.<sup>41</sup>

**Fixed Line:** Japan has taken significant steps within the last several years to increase competition in the wireline market by authorizing additional carriers to provide services. Japan Telecom and KDDI entered into the local (intra-prefecture) telephone market in December 2004 and February 2005, respectively.<sup>42</sup> Several other entities also compete for local services, such as Poweredcom in Tokyo and QTNet in Kyushu, depending on the geographic market. NTT, KDDI, Japan Telecom, and other smaller carriers also provide long distance (inter-prefecture) and international services. The introduction of competition in the fixed line market already has triggered rate reductions by NTT. Competition continues to increase as the number of VoIP service providers increases.

**Other Sectors:** The market for Internet access and broadband services is highly competitive, with significant market players from the telecommunications sector, major electrical utilities, and several other large service providers. The MIC reported in 2004 that the Internet

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<sup>40</sup> See JPMorgan, Asia Pacific Equity Research, Telecommunications Industry Report at 1 (Dec. 9, 2005).

<sup>41</sup> See *id.*

<sup>42</sup> See Morgan Stanley Equity Research, Japan, Telecommunications Industry Report at 5 (Feb. 16, 2005).

connection market does not allow any particular provider to exercise market dominance.<sup>43</sup> The government also has indicated its intent to support the development of a nationwide broadband infrastructure by 2010 and is reviewing its universal service program to assist in that deployment.<sup>44</sup> Broadband subscriptions are steadily growing. In particular, fiber-to-the-home (“FTTH”) has become popular, with net additions overtaking the rate of expansion of DSL in 2005. FTTH is attractive because a proportion of Japanese households are located in high-rise condominiums where they can share FTTH at a lower cost.

#### **D. NTT**

NTT is the holding company of the NTT group of companies that together form Japan’s largest telecommunications company. The five primary lines of business of the NTT group are: (1) regional communications services; (2) long distance/international services; (3) mobile services; (4) data services; and (5) other services (*e.g.*, billing, research and development, marketing, etc.).

NTT was incorporated as a limited liability, joint stock corporation in April 1985. Prior to that, NTT was wholly-owned by the Japanese government. NTT’s shares are listed on the Tokyo, New York and London stock exchanges and the Osaka, Nagoya, Fukuoka, and Sapporo stock exchanges in Japan.

Initially, wireless telecommunications operations were conducted by a division within NTT. In 1991, however, DoCoMo was incorporated as a subsidiary of NTT, and in 1992 DoCoMo took over NTT’s wireless businesses. In 1999, NTT reorganized itself into a holding company structure. Nippon Telegraph and Telephone East Corporation (“NTT East”) and

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<sup>43</sup> See NTT SEC Form 20-F at 12 (June 30, 2004).

<sup>44</sup> See JPMorgan, Asia Pacific Equity Research, Telecommunications Industry Report at 1 (Feb. 24, 2006).

Nippon Telegraph and Telephone West Corporation (“NTT West”), each of which is a wholly-owned subsidiary of NTT, operate regional telecommunications services in eastern and western Japan, respectively. NTT Communications Corporation (“NTT Communications”), also a wholly-owned subsidiary of NTT, operates domestic and international long distance and other network services throughout Japan.

NTT, NTT East and NTT West are subject to the NTT Law, which sets forth various provisions regarding NTT’s structure and business. DoCoMo and NTT Communications are not subject to the provisions of the NTT Law.<sup>45</sup> The NTT Law requires that the Japanese government own one-third or more of the total number of issued shares of NTT.<sup>46</sup> As of December 2005, the government holds a 38.37 percent direct voting and equity ownership interest in NTT, which is administered through Japan’s Ministry of Finance. No other entity holds more than a five percent direct or indirect ownership interest in NTT. To the best of DoCoMo’s knowledge, more than 75 percent of NTT’s outstanding shares are held by shareholders from WTO member countries, including Japan and the United States.<sup>47</sup> Neither the government nor any other holder of NTT’s stock possesses special or preferential voting rights. Prior to 1992, foreign nationals and corporations were prohibited from owning NTT shares. Currently, foreign nationals and corporations may own up to one-third of NTT’s total voting rights.<sup>48</sup>

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<sup>45</sup> See DoCoMo 20-F at 48; NTT 20-F at 44.

<sup>46</sup> See NTT 20-F at 23.

<sup>47</sup> A chart listing the top ten NTT shareholders is attached as Exhibit B.

<sup>48</sup> See NTT 20-F at 44-45.



Under the NTT Law, the issuance of new shares generally requires government approval.<sup>49</sup> Appointment of NTT's directors and corporate auditors (all of whom must be Japanese), changes to NTT's Articles of Incorporation, and the disposition of profits also require government approval.<sup>50</sup> In addition, NTT annually must submit to the government a description of its business operating plan for approval.<sup>51</sup> Although the government has the ability to affect NTT's business decisions in its role as a major shareholder, a government official stated in 1997 before the Diet that the government did not intend to use its position as a shareholder of NTT to direct the management of NTT. The government to date has not used its power as a shareholder to direct NTT's management.<sup>52</sup> Moreover, to the extent that any NTT group companies transact business with departments or agencies of the Japanese government, those departments or agencies are treated as separate customers, and all transactions are negotiated on an arm's-length basis.<sup>53</sup>

NTT's Articles of Incorporation limit the company's board of directors to fifteen members. Currently, the board has twelve members, nine of whom also are executive officers of the company. The government does not hold a position on NTT's board of directors. The company also has four corporate auditors, two of whom are independent. Directors and auditors serve two and four year terms, respectively.

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<sup>49</sup> *See id.*

<sup>50</sup> *See id.*

<sup>51</sup> *See id.*

<sup>52</sup> *See id.* at 14.

<sup>53</sup> *See id.* at 24.

## II. DESCRIPTION OF THE TRANSACTION

On March 20, 2006, DoCoMo entered into: (1) a Share Purchase Agreement with the shareholders of Guam Cellular; and (2) an Asset Purchase Agreement with Guam Wireless. The transactions have a combined value of approximately \$71.8 million and involve only the Guam and CNMI market, which, together, have a smaller population than Washington, D.C.<sup>54</sup> The parties intend to close the Share Purchase Agreement and the Asset Purchase Agreement simultaneously.<sup>55</sup>

To effectuate the Share Purchase Agreement, DoCoMo has formed DoCoMo Guam, a wholly-owned subsidiary organized under the laws of Guam. Under the Share Purchase Agreement, DoCoMo, through DoCoMo Guam, will acquire 100 percent of the common shares of Guam Cellular for cash consideration. Following DoCoMo Guam's acquisition of the shares, Guam Cellular will continue in existence and become an indirect wholly-owned subsidiary of DoCoMo.

Under the Asset Purchase Agreement, DoCoMo will acquire for cash consideration certain assets, properties, goodwill and rights of Guam Wireless used to provide wireless voice and data communications products and services in Guam and the CNMI. To effectuate the acquisition, Guam Wireless will assign its FCC authorizations and certain other assets, properties, goodwill and rights to Guam Cellular. Upon closing, Guam Cellular will hold Guam Wireless' wireless-related assets and will continue to operate the business of Guam Wireless.

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<sup>54</sup> DoCoMo Press Release, *NTT DoCoMo to Acquire Guam Cellular and Guam Wireless* (Mar. 20, 2006), available at <http://www.nttdocomo.com/pr/2006/001249.html> ("DoCoMo Press Release").

<sup>55</sup> A chart depicting the ownership structure of Guam Cellular after consummation of the proposed transaction is attached as Exhibit C.

Currently, DoCoMo expects to retain most of the managerial officers and employees of both companies and to continue operating, for the time being, two separate networks in Guam and the CNMI. DoCoMo's plans include enhancing the quality of Guam Wireless' GSM network by adding GPRS capability and in the future deploying a W-CDMA network for third generation ("3G") services over Guam Cellular's cellular licenses.

### **III. THE PROPOSED TRANSACTION SERVES THE PUBLIC INTEREST**

Pursuant to Sections 310(d) and 214 of the Act, control of Guam Cellular may not be transferred and the assets of Guam Wireless may not be assigned unless the Commission finds "that the public interest, convenience and necessity will be served thereby."<sup>56</sup> In conducting its review in other similar transactions, the Commission typically first evaluates the qualifications of the transferee/assignee. As discussed below, DoCoMo is qualified to manage and operate Guam Cellular and the assets of Guam Wireless.

The Commission's public interest analysis also involves a review of the benefits and competitive impact of the proposed transaction.<sup>57</sup> This determination requires both an evaluation of competitive effects of the transaction and a broader public policy analysis that includes "a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license

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<sup>56</sup> 47 U.S.C. §§ 214, 310(d).

<sup>57</sup> See, e.g., *Western Wireless Corp. and ALLTEL Corp.*, 20 FCC Rcd 13053, 13064 (2005) ("ALLTEL/WWC Order"); *AT&T Wireless Services, Inc. and Cingular Wireless Corp.*, 19 FCC Rcd 21522, 21542-43 (2004) ("Cingular/AWS Order"); *Global Crossing Ltd. (Debtor-in-Possession) and GC Acquisition Limited*, 18 FCC Rcd 20301, 20315-16 (IB, WTB, WCB 2003) ("Global Crossing Order"); *VoiceStream Wireless Corp., Powertel, Inc., and Deutsche Telekom AG*, 16 FCC Rcd 9779, 9789 (2001) ("VoiceStream/DT Order").

holdings, and generally managing the spectrum in the public interest.”<sup>58</sup> Specifically, the Commission considers whether the transaction: (1) would result in a violation of the Act or any applicable statutory provisions; (2) would result in a violation of the Commission’s rules; (3) would substantially frustrate or impair the Commission’s implementation or enforcement of the Act or interfere with the objectives of that and other statutes; and (4) promises to yield affirmative public interest benefits.<sup>59</sup>

Assessing the last prong first, the proposed transaction will yield substantial public interest benefits because it will promote competition in the U.S. wireless market, and specifically the wireless market in Guam and the CNMI, which in turn will benefit consumers. The competitive benefits will not be offset by any anti-competitive effects. The proposed transaction also satisfies the first three prongs of the Commission’s analysis because it would not result in the violation or frustration of any statutory provision or the Commission’s rules. Because the transaction is pro-competitive and there are no offsetting public interest harms, the transaction meets the requirement of Section 310(b)(4) of the Act that DoCoMo’s 100 percent investment in Guam Cellular be in the public interest.<sup>60</sup> Moreover, because the wireless licenses involved in this transaction will be held by a U.S. entity upon consummation, the transaction raises no issues under Sections 310(b)(1)-(3) of the Act.<sup>61</sup> Further, notwithstanding the Japanese government’s ownership interest in NTT, because the wireless licenses will be held by an indirect wholly-

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<sup>58</sup> *ALLTEL/WWC Order*, 20 FCC Rcd at 13064; *Cingular/AWS Order*, 19 FCC Rcd at 21542-44; *see also Global Crossing Order*, 18 FCC Rcd at 20315; 47 U.S.C. § 157(a).

<sup>59</sup> *See Ameritech Corp. and SBC Communications Inc.*, 14 FCC Rcd 14712, 14738-39 (1999) (“*Ameritech/SBC Order*”); *see also ALLTEL/WWC Order*, 20 FCC Rcd at 13063-66; *Cingular/AWS Order*, 19 FCC Rcd at 21542-46.

<sup>60</sup> 47 U.S.C. § 310(b)(4).

<sup>61</sup> *Id.* §§ 310(b)(1)-(3).

owned subsidiary of DoCoMo, this transaction also raises no issues under Section 310(a) of the Act.<sup>62</sup>

**A. The Transaction Will Produce Substantial Pro-Competitive Benefits And Poses No Threat To Competition.**

DoCoMo's acquisition of Guam Cellular and the assets of Guam Wireless will serve the public interest by promoting vigorous competition in the U.S. mobile telephony market. As discussed below, the proposed transaction will provide Guam Cellular the financial resources it needs to expand, upgrade, and strengthen the existing networks of Guam Cellular and Guam Wireless. The transaction will create significant economies of scale and scope and will improve Guam Cellular's ability to compete against multiple other wireless operators in Guam and the CNMI.

The Commission typically begins its assessment of a transaction's competitive effects by defining the relevant markets, both in terms of relevant products or services and geographic scope.<sup>63</sup> The Commission next identifies current and potential participants in these markets.<sup>64</sup> The Commission then considers the pro-competitive benefits and any anti-competitive effects of the proposed transaction. Regarding pro-competitive benefits, the Commission examines "merger-specific efficiencies such as cost reductions, productivity enhancements, or improved incentives for innovation, and whether the merger will support the general policies of market-opening and barrier-lowering that underlie the [Telecommunications Act of 1996]."<sup>65</sup> This

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<sup>62</sup> *Id.* § 310(a); *VoiceStream/DT Order*, 16 FCC Rcd at 9805-06.

<sup>63</sup> *See e.g., ALLTEL/WWC Order*, 20 FCC Rcd at 13067; *Cingular/AWS Order*, 19 FCC Rcd at 21552; *VoiceStream/DT Order*, 16 FCC Rcd at 9825-26; *NYNEX Corp. and Bell Atlantic Corp.*, 12 FCC Rcd 19985, 20008 (1997) ("*NYNEX/Bell Atlantic Order*").

<sup>64</sup> *See id.*

<sup>65</sup> *NYNEX/Bell Atlantic Order*, 12 FCC Rcd at 20009.

portion of the “public interest analysis may also entail assessing whether the merger will affect the quality of telecommunications services or will result in the provision of new or additional services to consumers.”<sup>66</sup> With respect to anti-competitive effects, the Commission evaluates “whether the merger is likely to result in either unilateral or coordinated effects that enhance or maintain the market power of the merging parties.”<sup>67</sup> As demonstrated below, this transaction will produce substantial pro-competitive benefits and will pose no threat to competition.

### **1. The Relevant Markets And Competitive Landscape.**

Guam Cellular and Guam Wireless provide service in two relevant “product” markets – mobile telephony and international services.<sup>68</sup> DoCoMo does not provide service in either of these markets in the United States.

#### **a. Mobile Telephony**

*Product and Geographic Markets.* Guam Cellular and Guam Wireless operate cellular and broadband PCS systems throughout Guam and the CNMI. Cellular and broadband PCS operators are considered CMRS providers and fall within the mobile telephony segment of the larger CMRS market. The Commission has defined the mobile telephony segment to include

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<sup>66</sup> *SBC/Ameritech Order*, 14 FCC Rcd at 14739.

<sup>67</sup> *NYNEX/Bell Atlantic Order*, 12 FCC Rcd at 20009.

<sup>68</sup> As noted above, Guam Cellular also provides domestic direct dialing and calling card interexchange service. These services are de minimis in comparison to Guam Cellular’s wireless service business. Further, it has been long established that the U.S. interexchange market is highly competitive, with hundreds of service providers. *See Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 11 FCC Rcd 20730 (1996), *aff’d*, *MCI WorldCom, Inc. v. Competitive Telecommunications Association* (2000) (ordering the detariffing of the interexchange market because of the highly competitive nature of the market).

cellular, broadband PCS, and digital specialized mobile radio (“SMR”) services.<sup>69</sup> In addition to analog cellular networks, domestic mobile telephony operators have deployed digital networks based on four primary technical standards – CDMA, TDMA, iDEN and GSM.

This mobile telephony market segment has a geographic scope of Guam and the CNMI, both unincorporated territories of the United States.<sup>70</sup> Guam covers a land area of approximately 212 square miles and has a population of approximately 154,805 people. The CNMI is a chain of fourteen volcanic islands that stretches more than 375 miles north to south, with a land area of approximately 175 square miles. There are three major inhabited islands of the CNMI – Saipan, Tinian and Rota – and the vast majority of the CNMI’s 69,221 population resides on Saipan. Saipan, Tinian and Rota have total land areas of approximately 46, 39 and 33 square miles, respectively. Guam and the CNMI collectively have a population of 224,026, which, as a reference point, is approximately 39 percent of the population of Washington, D.C. Guam and the CNMI’s three major islands cover a collective land area of 330 square miles, which is more than five times the size of Washington, D.C.<sup>71</sup> Accordingly, Guam and the CNMI are considered rural service areas.

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<sup>69</sup> See *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Tenth Report, 20 FCC Rcd 15908, 15934 (2005) (“*Tenth CMRS Report*”).

<sup>70</sup> See *Cingular/AWS Order*, 19 FCC Rcd at 21562 (stating that “the proper geographic market is a local one, not national” for purposes of the Commission’s competitive analysis).

<sup>71</sup> The population figures provided above are based upon the U.S. 2000 Census. The U.S. Department of Interior also estimates that the population of Guam and the CNMI as of 2006 is approximately 171,019 and 82,459 people, respectively. The population figures refer to resident population only.

**Significant Market Participants.** Despite the rural nature of Guam and the CNMI, residents enjoy robust competition in the mobile telephony market. The following chart sets forth the ten different entities that hold CMRS licenses in Guam and the CNMI.<sup>72</sup>

	<b>Guam</b>	<b>The CNMI</b>
<b>Cellular A</b>	Guam Cellular	Guam Cellular
<b>Cellular B</b>	Pulse Mobile	GTE Pacifica d/b/a Pacific Telecom
<b>PCS A</b>	Bell Atlantic New Zealand (Pacific Telecom)*	Bell Atlantic New Zealand (Pacific Telecom)*
<b>PCS B</b>	Guam Wireless	Guam Wireless
<b>PCS C</b>	IT&E Overseas	IT&E Overseas
<b>PCS D</b>	IT&E Overseas	IT&E Overseas
<b>PCS E</b>	Pulse Mobile	none
<b>PCS F</b>	Wave Runner	Wave Runner
<b>SMR</b>	Sprint Nextel Choice Phone L.P. Ganacias Enterprises, Inc.	Sprint Nextel Choice Phone L.P. Ganacias Enterprises, Inc.

\* An application is pending to assign the PCS A block license for the Guam-CNMI MTA from Bell Atlantic New Zealand, a wholly-owned indirect subsidiary of Verizon Wireless, to Pacific Telecom.

Numerous other participants in the mobile telephony market in Guam and the CNMI are providing competitive services, and several have stated their intent to increase investment and improve the quality of their services. Several mobile operators also offer a full menu of competitively priced communications services, including local fixed and mobile, long distance, international, and broadband services, further strengthening their position in the larger communications market. Upon consummation of the proposed transaction, DoCoMo will hold indirectly 55 MHz of CMRS spectrum in Guam and the CNMI. Other market competitors hold comparable amounts of spectrum. Moreover, the upcoming auction of Advanced Wireless Service (“AWS”) spectrum will provide opportunities for existing licensees and new entrants to

<sup>72</sup> The information set forth in the chart is based on a search of the CMRS licensing and application records in the Commission’s ULS database as of March 27, 2006.



acquire an additional 90 MHz of spectrum, further enhancing the competitive landscape of the wireless market in Guam and the CNMI.

- **IT&E Overseas.** IT&E Overseas holds 40 MHz of PCS spectrum in Guam and the CNMI and has provided wireless services since the mid-1990s. The carrier operates a CDMA network, although it has announced that it also will deploy a GSM network in the very near future.<sup>73</sup> IT&E Overseas offers long distance, Internet, DSL, Wi-Fi, voice and other wireless services in the Guam and CNMI market.
- **Pacific Telecom.** Pacific Telecom holds 25 MHz of cellular spectrum in the CNMI and has a pending application before the Commission to acquire an additional 30 MHz of PCS spectrum in Guam and the CNMI. Assuming the pending application is granted, Pacific Telecom will hold 30 MHz and 55 MHz of CMRS spectrum in Guam and the CNMI, respectively. Pacific Telecom provides a variety of wireless services using CDMA technology, Internet service, and long distance service, and is affiliated with a local wireline carrier. It also is a retailer for Verizon Wireless and sells services under the Verizon Wireless brand name. Pacific Telecom has stated its intention to increase its existing wireless services in Guam and the CNMI, including building additional cell sites and deploying 3G services within 24 months of consummating the acquisition.<sup>74</sup>

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<sup>73</sup> See IT&E Overseas, *GSM Coming Soon from ITE& Wireless*, available at [http://www.itepcs.net/ads/gsm\\_teaser.php](http://www.itepcs.net/ads/gsm_teaser.php).

<sup>74</sup> See FCC Form 603, Application to Assign License From Bell Atlantic New Zealand Holdings, Inc. to GTE Pacifica, Inc., Public Interest Statement and Description of Transaction, ULS No. 0002401623 (filed Dec. 12, 2005); Pacific Telecom Inc., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, to Permit Indirect Foreign Ownership Exceeding 25 Percent in Common Carrier Licensee GTE Pacifica Inc., IB Docket 03-115 (Apr. 18, 2003).

- **Pulse Mobile.** Pulse Mobile (a/k/a MPULSE) holds 35 MHz of CMRS spectrum in Guam. Together with its parent company, Teleguam Holdings, Pulse Mobile provides wireless services as well as wireline local, long distance and DSL services. Teleguam Holdings recently purchased the Guam Telephone Authority, the former government owned and operated wireline incumbent carrier. Teleguam Holdings has indicated that it will invest significant capital to improve service quality and offerings to compete more effectively in the marketplace.<sup>75</sup> For example, although Pulse Mobile has a TDMA network, it recently activated a new GSM network and rolled out new GSM-based mobile services.<sup>76</sup> It also is building additional cell towers on Guam.<sup>77</sup>
- **Wave Runner.** Wave Runner holds 10 MHz of PCS spectrum and in Guam and the CNMI. It has announced plans to initiate GSM service in mid-2006.<sup>78</sup>
- **Choice Phone.** Choice Phone (also known as iConnect) holds several SMR frequencies in Guam and the CNMI. It offers iDEN-based digital cellular, push-to-talk, and text messaging services.
- **Other Licensees.** The Commission's database shows that Sprint Nextel holds several SMR licenses in Guam and the CNMI and, according to the company's website, it has

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<sup>75</sup> See GTA News and Events, *available at* [http://www.gta.net/about\\_GTA.asp?lnc=about\\_gta\\_news](http://www.gta.net/about_GTA.asp?lnc=about_gta_news) (last visited Apr. 3, 2006).

<sup>76</sup> See GTA Press Release, *GTA Launches Guam's All-New GSM Mobile Network -- Wireless Operation Now Re-named MPULSE™ Tamuning* (Jan. 14, 2006), *available at* [http://www.gta.net/about\\_GTA.asp?lnc=about\\_gta\\_news](http://www.gta.net/about_GTA.asp?lnc=about_gta_news) (follow the News Archives hyperlink for the Year 2006 and select January).

<sup>77</sup> See *id.*

<sup>78</sup> See GSM World, Wave Runner LLC (Guam) Network Information, *available at* [http://www.gsmworld.com/roaming/gsminfo/net\\_guwg.shtml](http://www.gsmworld.com/roaming/gsminfo/net_guwg.shtml).

one retailer (Radioshack) located in Guam. LP Ganacias Enterprises d/b/a Radiocom also holds several SMR frequencies to provide wireless services in Guam and the CNMI. Accordingly, consumers in Guam and the CNMI have multiple choices of mobile operators, services, and technologies.

**b. International Services**

***Product and Geographic Markets.*** Guam Cellular and Guam Wireless participate in the international services “product” market, which entails the transmission of calls to and from the United States and to and from other countries. The Commission has identified three categories of international services: (1) facilities-based services, which are those provided over facilities that the carrier owns in whole or in part; (2) facilities-resale services, which are those provided over circuits leased from other international carriers; and (3) pure resale service, which resale carriers provide by switching traffic to, and reselling the switched services of, underlying facilities-based carriers. The relevant geographic markets for international services consist of the routes between the United States (specifically Guam and the CNMI) and other countries.

***Significant Market Participants.*** Guam Cellular and Guam Wireless both provide either international facilities-resale services over leased lines or pure resold international services. Both are very small participants in the U.S. international telecommunications market and specifically on the international route between Guam and the CNMI and Japan. Guam serves as a telecommunications trans-Pacific hub between the United States and Asia via undersea fiber optic cables. The larger U.S. international carriers, including AT&T, Sprint, MCI and IT&E Overseas operate cable landing stations in Guam. In addition to these larger carriers, many other telecommunications carriers provide international telecommunications services between Guam and the CNMI and Japan on a facilities, facilities-resale, or resold basis. For example, Pacific

Telecom is authorized to provide facilities-based and resold international service from the CNMI and operates an undersea fiber optic cable connecting the CNMI to Guam.

Guam Cellular's and Guam Wireless' total billed revenues for international services are a small fraction of the total billed revenues for U.S.-international services and of the total billed revenues for all U.S. carriers serving the route between Guam and the CNMI and Japan.

DoCoMo currently has no authorization to provide international telecommunications services on the U.S.-Japan route. NTT Communications, with which DoCoMo is affiliated through their parent company NTT, owns capacity on fiber optic cables between the mainland United States, Guam, and Japan, which primarily is used as backbone capacity for its global data communications services. As noted above, DoCoMo operates independently of NTT and NTT's other service provider affiliates. Japanese law requires that any transactions between and among them cannot be based on preferential rates, terms and conditions and must be negotiated on an arms-length basis.

## **2. The Transaction Will Produce Substantial Pro-Competitive Benefits.**

DoCoMo's acquisition of Guam Cellular and the assets of Guam Wireless will promote the public interest by enhancing the competitive capabilities of each of Guam Cellular's CDMA (and eventually W-CDMA) and GSM operations through the infusion of significant additional economic and management resources and wireless expertise. DoCoMo's leadership in providing advanced wireless services in Japan will provide additional service-related benefits to Guam and CNMI consumers. The transaction also will create economies of scale and scope long term and improve Guam Cellular's ability to compete against the array of carriers in the highly competitive Guam and CNMI market. Moreover, Guam Cellular will be able to deploy advanced wireless services throughout this rural service area far more quickly than it and Guam Wireless could provide absent the capital, wireless experience and management skills afforded

by DoCoMo. Finally, with DoCoMo's substantial investment, Guam Cellular will ensure the expanded availability of global roaming capability for international travelers.

Guam Cellular holds two cellular licenses, one for the Guam rural service area ("RSA") and the other for the CNMI RSA, and has built a network of cell sites throughout its licensed service areas. Similarly, Guam Wireless has provided sufficient coverage on its broadband PCS license for the Guam-CNMI MTA to meet all build out requirements. As discussed above, each carrier has operated a successful business and offered a variety of wireless voice and data services to its customers with consistent quality and affordability. Nonetheless, Guam Wireless has faced financial and/or managerial constraints that have prevented it from engaging in the robust development of its network necessary to provide seamless coverage and a full array of advanced services in all populated areas of the markets. The competitive potential of each carrier, however, will not be fully realized without significant additional capital and expertise. The proposed transaction is key to allowing these cellular and PCS operations to reach their maximum productivity.

Upon consummation of the proposed transaction, DoCoMo anticipates providing additional funds of up to approximately \$6.5 million to strengthen Guam facilities and infrastructure. The majority of these expenditures will be for installation of GPRS packet switching technology on Guam Wireless's current GSM PCS network and for the installation of W-CDMA on Guam Cellular's cellular network. DoCoMo also is considering utilizing Guam Cellular's 700 MHz and 2.3 GHz licenses for wireless broadband applications. These installations will enable an enhanced menu of new advanced wireless services for end users, including mobile broadband Internet. Additionally, DoCoMo plans to make other improvements to the networks for enhanced service quality (resulting in such benefits as fewer dropped calls and improved sound quality) and to offer more services to roaming customers.

The transaction offers the potential for further price reductions as a result of improved economies of scale and scope long term. DoCoMo's acquisition will provide Guam Cellular with the opportunity to procure handsets and infrastructure equipment at attractive prices and to drive down other costs after deploying a W-CDMA network. The resulting savings would benefit consumers. Moreover, as equipment purchase volumes go up, equipment manufacturers are more willing to customize handsets and other device interfaces to match a carrier's service offerings. Thus, DoCoMo will be better positioned to deliver a more attractive customer experience by offering its cellular and PCS subscribers customized handsets. Furthermore, by consolidating functions such as technological research, system development and marketing, DoCoMo will be able to lower these costs and pass the savings on to consumers as well. Finally, by consolidating the best practices of Guam Cellular, Guam Wireless and DoCoMo, the combined companies can be more responsive to subscribers' needs.

Guam Cellular's and Guam Wireless' competitive positions would be enhanced at a time when other wireless carriers in the Guam and CNMI market are becoming increasingly competitive. As described above, IT&E Overseas (40 MHz in Guam and the CNMI), Pacific Telecom (30 MHz in Guam and 55 MHz in the CNMI),<sup>79</sup> Wave Runner/iConnect/Choice Phone (more than 10 MHz in Guam and the CNMI), and Pulse Mobile (35 MHz in Guam) hold significant amounts of spectrum to provide wireless services in Guam and the CNMI. The aggregate spectrum held by some of these competitors would allow them to launch spectrum-intensive 3G services that carriers with less spectrum (such as current Guam Cellular and Guam Wireless) would be hard-pressed to match.

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<sup>79</sup> As previously noted, Pacific Telecom holds 25 MHz of spectrum in the CNMI and has a pending application before the Commission to acquire an additional 30 MHz of spectrum in Guam and the CNMI.

In addition, existing mobile operators in the Guam and CNMI market also have access to substantial revenue flow from other communications service offerings, including local exchange and DSL services. For example, Teleguam Holdings owns both Pulse Mobile and Guam Telephone Authority, the dominant provider of local exchange service in Guam. Pacific Telecom, in addition to providing cellular service in the CNMI, also is the dominant local exchange carrier in the CNMI. Further, during its acquisition of GTE Pacifica, Pacific Telecom in 2003 indicated that it planned new capital expenditures of more than \$16 million to expand coverage and deploy 3G services.<sup>80</sup>

With the imminent auction of 90 MHz of AWS licenses in 1720-1755 MHz and 2110-2155 MHz bands in the Guam and CNMI market and the future availability of significant additional broadband spectrum in the 700 MHz band, carriers will have access to substantial amounts of additional spectrum to support an ever-widening array of advanced services. Guam Cellular and Guam Wireless would have limited ability to acquire additional spectrum or to undertake technological advancements and improvements without an infusion of capital from DoCoMo.

It is widely accepted that the dramatic increase in wireless competition since the days of the cellular duopoly set the stage for dramatic technological breakthroughs and led to more diversified service options and dramatic reduction in prices. Strengthening the competitiveness of Guam Cellular's operations and the introduction of W-CDMA will produce tangible benefits for consumers by increasing product choice and service quality at affordable prices.

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<sup>80</sup> See Pacific Telecom Inc., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, to Permit Indirect Foreign Ownership Exceeding 25 Percent in Common Carrier Licensee GTE Pacifica Inc., IB Docket 03-115 (Apr. 18, 2003). Pacific Telecom did not consummate this transaction until September 2005.

The incentive to deploy new advanced services and technology is even greater when combined with the enhanced scale and efficiency of the combined companies, which reduces the cost of acquiring the equipment required for the provision of advanced services. Accelerating deployment of advanced wireless services will promote competition not only in the Guam and CNMI wireless market but also in mass-market, high-speed data services, some of which today are provided either over telephone lines through xDSL services or over cable lines through cable modems (to the extent they are available at all). Guam Cellular's advanced wireless services will provide consumers with another technological means of obtaining high-speed data services.

Several features offered in Japan by DoCoMo have not yet been introduced in Guam and the CNMI. DoCoMo customers currently enjoy a wide variety of multimedia and data services, such as video, games, mobile banking, ticket purchasing, travel information, and remote learning. These and other services are becoming far more robust as a result of the introduction of the W-CDMA standard. The development of additional leading-edge services in Japan will continue to accelerate with the further implementation of next-generation services. DoCoMo's extensive experience with such advanced features, and its ongoing investments in research and development, will facilitate DoCoMo's ability to deliver these and other promising new advanced services to Guam and CNMI residents and visitors.

These various service enhancements and potential price reductions are not likely to be limited to Guam Cellular and Guam Wireless's subscribers. Other wireless operators in Guam and the CNMI will come under competitive pressure to improve their own services, and therefore *all* wireless subscribers will benefit.<sup>81</sup> As Guam Cellular becomes an early provider of

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<sup>81</sup> See, e.g., *Tenth CMRS Report*, 20 FCC Rcd at 15911 (“competitive pressure continues to compel carriers to introduce innovative pricing plans and service offerings, and to match the pricing and service innovations introduced by rival carriers”).



certain advanced services, other carriers will be forced to upgrade their own service offerings in order to remain competitive. Just as the introduction of 2.5 and 3G services pressured 2G operators to overhaul their networks and service offerings, DoCoMo's operational experience with technologies that have yet to be introduced in Guam and the CNMI will benefit Guam and the CNMI consumers generally.

**3. The Transaction Will Not Cause Any Anti-Competitive Effects In Either Relevant Market.**

The transaction's substantial pro-competitive benefits will not be offset by any anti-competitive effects in the domestic wireless telephony or international services market. Guam Cellular and Guam Wireless's mobile telephony services do not overlap with any DoCoMo service in the United States, including Guam and the CNMI, and any overlap of the two carriers' international services will have no significant impact on competition. DoCoMo today provides no mobile telephony services anywhere in the United States.<sup>82</sup>

*Mobile Telephony.* DoCoMo currently expects to continue operating two separate networks in Guam and the CNMI, with distinct licenses, networks, technologies, service offerings and customer bases, and to enhance the quality of Guam Wireless' GSM network by adding GPRS capability and in the future to deploy a W-CDMA network for 3G services over Guam Cellular's cellular licenses. Therefore, the proposed transaction does not raise significant subscriber transition issues near term or present a significant competitive concern regarding the reduction of mobile operators in the Guam and CNMI market. Moreover, the Guam and CNMI wireless market is intensively competitive, as discussed above, with several carriers currently

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<sup>82</sup> As noted previously, DoCoMo USA provides unregulated Wi-Fi service in the United States to Japanese-speaking U.S. residents. It also recently established a wholly-owned U.S. subsidiary to invest in venture companies that develop advanced mobile communications technologies and acquired an interest in a U.S. mobile assets management service provider.

providing service and planning to increase their presence in the market through additional investment. DoCoMo will be able to parlay its experience as an innovator and market leader in Japan into developing and deploying new and innovative technologies and services in Guam and the CNMI. Even in cases involving the absorption of a significant nationwide mobile telephony operator into another carrier and elimination of the separate operations of the acquired entity – unlike the current proposed transaction – the Commission has found that the pro-competitive benefits of the transaction outweighed any potential anticompetitive effect.<sup>83</sup> In this case, no anticompetitive effects are presented, and instead substantial pro-competitive benefits will be available to consumers.<sup>84</sup>

As further discussed in Section III(B) below, the indirect foreign investment by DoCoMo, NTT and the Japanese government in Guam Cellular raises no competitive concerns and provides no ability to harm competition in the Guam and CNMI market. The domestic and insular nature of the Guam and CNMI market ensure that DoCoMo or NTT cannot possibly leverage their market share or control of facilities in Japan to provide Guam Cellular with an unfair competitive advantage in the Guam and CNMI market. Further, the Japanese government's ownership interest will confer no competitive advantage on Guam Cellular in the Guam and CNMI market. Neither NTT nor DoCoMo benefits from government subsidies, preferential access to capital, or favorable regulatory treatment. Accordingly, the government's indirect minority interest in Guam Cellular will not provide it with an unfair competitive advantage in the Guam and CNMI market.<sup>85</sup>

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<sup>83</sup> See *Cingular/AWS Order*, 19 FCC Rcd at 21599-611.

<sup>84</sup> See *infra* Section III(A)(3).

<sup>85</sup> See *VoiceStream/DT Order*, 16 FCC Rcd at 9813-23.

The Commission routinely studies the impact of transactions involving license overlays on market concentration to determine whether potential anticompetitive effects could result.<sup>86</sup>

The Commission typically first distinguishes between: (1) overlap areas that would not raise concentration to a level that would raise competitive concerns, and (2) overlap areas that potentially raise competitive concerns and require a more detailed competitive analysis.<sup>87</sup> The Commission has determined that overlaps do not potentially raise competitive issues *unless*:

- The transaction would increase the applicant's spectrum holdings in a relevant geographic market to 70 MHz or more;
- The transaction would increase the Herfindahl-Hirschman Index ("HHI") by 100 or more *and* the post-transaction HHI would be greater than 2800; or
- The transaction would increase HHI by 250 or more.<sup>88</sup>

The Commission, however, has made clear that this threshold determination merely indicates that further Commission review of a particular market is required, not that a *per se* competitive issue results:

For many markets where the facts of a high subscriber-based HHI and a high change in HHI might seem to suggest a potential competitive problem, there is in fact little likelihood of harm. We find that *the presence and capacity of other firms matter more for future competitive conditions than do current subscriber-based market shares.*<sup>89</sup>

Under the first criterion above, the proposed transaction will result in DoCoMo indirectly holding 55 MHz of CMRS spectrum in Guam and the CNMI, a level well below the 70 MHz

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<sup>86</sup> See *ALLTEL/WWC Order*, 20 FCC Rcd at 13071-75; *Cingular/AWS Order*, 19 FCC Rcd at 21564-69.

<sup>87</sup> See *ALLTEL/WWC Order*, 20 FCC Rcd at 13074; *Cingular/AWS Order*, 19 FCC Rcd at 21564-65, 21568-69.

<sup>88</sup> See *ALLTEL/WWC Order*, 20 FCC Rcd at 13073; *Cingular/AWS Order*, 19 FCC Rcd at 21568-69.

<sup>89</sup> *Cingular/AWS Order*, 19 FCC Rcd at 21579 (emphasis added).

threshold that the Commission has established in other transactions involving wireless licenses.<sup>90</sup> This aggregated spectrum level must also be considered in the context of DoCoMo's current intentions to continue operating the separate CDMA (or W-CDMA) and GSM networks. Other market competitors hold comparable amounts of spectrum, and the upcoming AWS auction will provide further opportunities for existing licensees and new entrants to acquire additional spectrum. Accordingly, there are no anti-competitive effects created by DoCoMo's control of 55 MHz of CMRS spectrum in this market.

Under the second and third criteria, the Commission typically calculates HHIs using Numbering Resource Utilization Forecast ("NRUF") data and other confidential information supplied by wireless carriers. DoCoMo lacks sufficient data to determine the market share of individual operators in the market and thus to apply the final two criteria.<sup>91</sup> As demonstrated in Section III(A)(1)(a), however, available information confirms that post-transaction, Guam Cellular will face competition from multiple, well financed facilities-based operators in Guam and the CNMI.

***International Services.*** The transactions will have no significant impact on competition in the U.S., and particularly the Guam and CNMI market for originating or terminating international calls. Because neither Guam Cellular nor Guam Wireless owns any significant international transport facilities, this transaction will not eliminate any significant potential participant in the provision of international services.<sup>92</sup> The *de minimis* nature of Guam Cellular's

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<sup>90</sup> The Commission also has permitted carriers to hold up to 80 MHz in one market. *See, e.g., ALLTEL/WWC Order; Cingular/AWS Order.*

<sup>91</sup> In the *ALLTEL/WWC Order* and *Cingular/AWS Order*, the Commission calculated HHIs using NRUF data and confidential information supplied by CMRS carriers. *See ALLTEL/WWC Order*, 20 FCC Rcd at 13072; *Cingular/AWS Order*, 19 FCC Rcd at 21566-67.

<sup>92</sup> *See VoiceStream/DT Order*, 16 FCC Rcd at 9834.

and Guam Wireless' international services precludes a finding of anticompetitive effects.

Neither of the two carriers nor DoCoMo controls any bottleneck facility in the United States on which other carriers rely to provide service.<sup>93</sup>

In reviewing the competitive effects of a transaction on the international market, the Commission also considers whether the transferee/assignee will become affiliated with a foreign carrier, in order to determine whether to classify the merged entity as a dominant carrier on certain international routes.<sup>94</sup> Here, Guam Cellular will become an indirect wholly-owned subsidiary of DoCoMo and will become an "affiliate" of DoCoMo under the Commission's rules. As a result, as noted in the accompanying section 214 applications, Guam Cellular will be subject to dominant carrier regulation with respect to the U.S.-Japan route. Specifically, under the Commission's rules, Guam Cellular will be required to: (1) maintain separate books of account from DoCoMo; (2) abstain from joint ownership of transmission or switching facilities with DoCoMo; (3) file quarterly reports of revenue and transmission; (4) file quarterly reports summarizing the provisioning and maintenance of all basic network facilities and services procured from DoCoMo; and (5) file quarterly circuit status reports.<sup>95</sup> These requirements are designed to make a carrier's interaction with its affiliated foreign carrier transparent and to guard against discriminatory conduct. In the unlikely event that Guam Cellular's relationship with DoCoMo poses any potential threat of such conduct, the Commission's dominant-carrier regulations will serve as an adequate safeguard.<sup>96</sup>

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<sup>93</sup> *Id.*

<sup>94</sup> *See id.* at 9812-13, 9834-36.

<sup>95</sup> *See* 47 C.F.R. § 63.10(c).

<sup>96</sup> *See VoiceStream/DT Order*, 16 FCC Rcd at 9834-36.

The Japanese market is open to competition by U.S. carriers. Moreover, Guam Cellular and Guam Wireless are incapable of discriminating against other international carriers. To the contrary, as primarily resellers, each is dependent on other carriers to transport its customers' calls. Guam Cellular's and Guam Wireless' de minimis presence in the U.S. international market will preclude the competitive threat that exists when a carrier can exercise bottleneck control.

In sum, the net impact of the proposed transaction on competition will be overwhelmingly positive. This transaction easily satisfies the Commission's standard of review for approving transfers of control and assignments.

**B. The Transaction Is Consistent With Section 310(b)(4) Of The Act.**

Section 310(b)(4) of the Act<sup>97</sup> allows foreign individuals, corporations, and governments to own indirectly, in the aggregate, more than 25 percent of the capital stock of a common carrier wireless licensee, if the Commission finds that such ownership serves the public interest. Under its foreign ownership policy, the Commission generally presumes that indirect foreign investments in common carrier wireless licensees by entities from WTO member countries raise no competitive concerns and serve the public interest, unless the foreign investment is shown to pose a "very high risk" to competition.<sup>98</sup> Moreover, in the absence of countervailing public interest considerations, the Commission generally prohibits more than 25 percent of the capital stock of a common carrier wireless licensee from being indirectly owned, in the aggregate, by

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<sup>97</sup> 47 U.S.C. § 310(b)(4).

<sup>98</sup> See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23891, 23896, 23913, 23940 (1997) ("*Foreign Participation Order*").

investors from non-WTO countries that do not offer “effective competitive opportunities” to U.S. investors.<sup>99</sup>

As discussed in Section I above, through its direct, 100 percent ownership of DoCoMo Guam, DoCoMo, a Japanese company, indirectly will own 100 percent of the capital stock of Guam Cellular. As previously noted, DoCoMo is a publicly traded company listed on the Tokyo, London, and New York stock exchanges. NTT, a Japanese company, owns approximately 61.96 percent of each of the equity and voting interests of DoCoMo. The remaining 38.04 percent of the capital stock of DoCoMo is held by Japanese and overseas corporations and individuals, none of which individually holds a five percent or greater ownership interest. As discussed above, at least 75 percent of DoCoMo’s outstanding shares are held by entities from WTO member countries (including Japan, the United States and the United Kingdom).

As further discussed in Section I above, NTT is a publicly traded company listed on the Tokyo, London, and New York stock exchanges and several stock exchanges in Japan. The Japanese government owns approximately 38.37 percent of each of the equity and voting interests of NTT, and thus indirectly holds a 23.77 percent ownership interest in DoCoMo. The remaining 61.63 percent of the capital stock of NTT is held by Japanese and overseas corporations and individuals, none of which individually holds a five percent or greater ownership interest. As previously discussed, at least 75 percent of NTT’s outstanding shares are held by entities from WTO-member countries (including Japan and the United States).

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<sup>99</sup> *Id.* at 23946 (The Commission will “deny an application if we find that more than 25 percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding.”).

Based upon the Commission’s principal place of business test, the home market of both DoCoMo and NTT is Japan.<sup>100</sup> Moreover, at least 75 percent or more of the equity and voting interests in each of DoCoMo and NTT is held by investors from WTO member countries (Japan, the United States and the United Kingdom). Accordingly, the Applicants request that the Commission find that the indirect foreign ownership of Guam Cellular serves the public interest under Section 310(b)(4) of the Act and is consistent with the Commission’s policies. The Applicants also request that the Commission authorize Guam Cellular to accept aggregate equity or voting interests of up to 25 percent from existing and new non-U.S. investors, in addition to their existing equity and voting interests, without seeking further Commission approval.<sup>101</sup>

**1. No Evidence Rebutts The Strong Presumption In Favor Of DoCoMo’s And NTT’s Proposed Indirect Ownership Of Guam Cellular.**

Under the Commission’s foreign ownership policy, because the home market of both DoCoMo and NTT is Japan, a WTO member country, their proposed indirect ownership of Guam Cellular is presumed to serve the public interest, unless the foreign ownership is shown to pose a “very high risk” to competition. To pose a very high risk to competition, “an applicant

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<sup>100</sup> Under the principal place of business, the following factors are considered in determining the home market or nationality of a foreign entity: (1) the country of the foreign entity’s incorporation, organization or charter; (2) the nationality of all investment principals, officers, and directors; (3) the country in which its world headquarters is located; (4) the country in which the majority of its tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which it derives the greatest sales and revenues from its operations. *See Foreign Participation Order*, 12 FCC Rcd at 23941. Both DoCoMo and NTT are Japanese companies, the majority of whose investment principals, officers, and directors also are Japanese. Additionally, DoCoMo’s and NTT’s world headquarters and the majority of their tangible properties are located in Japan, and each company derives the greatest sales and revenues from its operations in Japan.

<sup>101</sup> Notwithstanding the requested foreign ownership allowance of an additional, aggregate 25 percent, Guam Cellular will seek Commission approval under Section 310(b)(4) before accepting additional investments from any non-WTO investor that, when aggregated with existing investments from non-WTO investors, are expected to exceed 25 percent.



must possess the ability to harm competition in the U.S. market in addition to the ability to exercise its foreign market power.”<sup>102</sup> In this case, neither DoCoMo nor NTT possesses any ability to harm competition in the Guam and CNMI wireless market through its indirect ownership interest in Guam Cellular. The Commission has acknowledged that “[b]ecause [wireless] markets are, for the most part, wholly domestic, there is *no possibility* of leveraging foreign bottlenecks in order to create advantages for some competitors in U.S. [wireless] markets.”<sup>103</sup> Thus, given the domestic nature of the Guam and CNMI wireless market, the possibility that either DoCoMo or NTT could leverage its market share or control of facilities in Japan to enable Guam Cellular to gain an unfair competitive advantage in the Guam and CNMI wireless market is nonexistent. As discussed in Section III(A) above, far from diminishing competition in the United States, DoCoMo’s and NTT’s ownership interests in Guam Cellular will enhance competition significantly.

Moreover, the Japanese government’s minority ownership interest in NTT and its even smaller, indirect minority ownership interest in DoCoMo are not a valid basis for rebutting the strong presumption in favor of approval of the proposed transaction. In fact, when the Commission adopted the presumption favoring market entry by applicants from WTO member countries, it “made no distinction between government and private foreign ownership.”<sup>104</sup> Thus, the Commission does not view government foreign ownership as raising any greater risk of harm to competition than private foreign ownership for purposes of rebutting the strong presumption favoring market entry by applicants from WTO member countries.

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<sup>102</sup> *Foreign Participation Order*, 12 FCC Rcd at 23914.

<sup>103</sup> *Id.* at 23940 (emphasis added).

<sup>104</sup> *See VoiceStream/DT Order*, 16 FCC Rcd at 9810-11.

To the extent that the Japanese government exercises any *de facto* control of NTT or DoCoMo, the Commission has found that any degree of control that a foreign government may exercise over a parent company of a U.S. licensee is irrelevant, particularly if the foreign government's ownership "does not confer unique financial advantages or otherwise create a high risk to competition or consumers in the United States that warrants special conditions."<sup>105</sup> As shown below, the Japanese government's minority ownership interests in NTT and, indirectly, DoCoMo will not confer any unique advantages that would pose a risk to competition in the Guam and CNMI wireless market. The Japanese government does not provide any state assistance or other special treatment to either NTT or DoCoMo. Moreover, neither NTT nor DoCoMo enjoys superior access to capital by virtue of the Japanese government's minority ownership interest.

***The Japanese Government Does Not Subsidize NTT or DoCoMo Services.*** NTT and DoCoMo are both private corporations subject to applicable Japanese laws such as Japanese corporate and tax laws. Thus, NTT and DoCoMo have the same rights and responsibilities as any other private enterprise in Japan. Since NTT's privatization, neither NTT nor DoCoMo has received any assistance from the Japanese government, whether in the form of direct subsidies, preferential tax treatment, or any other special benefit. Far from conferring any special advantages, such as subsidies, tax preferences, or licensing benefits, the Japanese government is limited to the same shareholder rights as other NTT shareholders, and NTT, in turn, is limited to the same shareholder rights as other DoCoMo shareholders.

***Neither NTT nor DoCoMo Enjoys Preferential Access to Capital.*** Since NTT's privatization, the Japanese government has not provided any guarantee of the debts or liabilities

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<sup>105</sup> See *id.* at 9815.

of NTT or DoCoMo. Furthermore, NTT's weighted average cost of capital ("WACC") is 7.22 percent and DoCoMo's WACC is 8.72 percent, both of which are comparable to or even higher than the WACCs of other carriers such as KDDI (7.87 percent).<sup>106</sup> This demonstrates that neither NTT nor DoCoMo has easier access to capital than other telecommunications carriers as a result of the Japanese government's minority ownership interests.

***Neither NTT nor DoCoMo Enjoys Favorable Regulatory Treatment in Japan.*** Both NTT (including its wholly-owned telecommunications operating companies) and DoCoMo generally are subject to the same Japanese laws and regulations, including the TB Law, as other telecommunications carriers. Neither NTT nor DoCoMo receives favorable Japanese regulatory treatment that would enable them to finance anticompetitive behavior in the Guam and CNMI wireless market.

Since 1985, the Japanese government has initiated significant changes in the legislative and regulatory framework for telecommunications in Japan. At the same time that NTT was incorporated as a private company in 1985, the TB Law, which opened the Japanese telecommunications services industry to competition, became effective. Since then, the Japanese government has adopted various deregulatory and other measures to promote competition in the Japanese telecommunications market.

For example, under the prohibited activities provisions of the TB Law, NTT's wholly owned telephone operating companies and DoCoMo are prohibited from granting preferential treatment to another carrier. NTT's wholly owned telephone operating companies and DoCoMo also are prohibited from the improper handling of interconnection information and the use of that information for reasons other than its intended purpose. Furthermore, as discussed in Section

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<sup>106</sup> The WACC percentages provided above are current as of after trading hours on March 30, 2006, based upon information gathered from Bloomberg.com.

I(C) above, the Diet and the MIC on a regular basis review the competitive conditions in Japan's telecommunications market and act to promote competition and encourage market entry. As further discussed in Section I(C) above, under the Regulatory Reform and Competition Policy Initiative, Japan has taken important steps each year to improve its regulatory environment, resulting in increased consumer choice, lower prices, more innovative goods and services, and expanded opportunities for U.S. companies doing business with Japan. As a result of these various legislative and regulatory measures, NTT and DoCoMo face increasing competition in many of their business sectors from a large number of companies that have entered or are about to enter the market.

Consequently, the wireless and wireline telecommunications markets in Japan are fully competitive, and neither NTT nor DoCoMo exercises market power to sustain price increases in their respective markets that would allow them to implement an anticompetitive strategy, such as predatory pricing, in the Guam and CNMI wireless market. Even assuming that NTT or DoCoMo could cause Guam Cellular to engage in predatory pricing in the Guam and CNMI wireless market, the Commission has acknowledged that the likelihood that a foreign carrier would engage in that behavior is "low."<sup>107</sup> Specifically, in the *VoiceStream Order*, the Commission found that "[p]redatory tactics work only in markets in which incumbents and entrants are financially weak and/or have poor access to capital markets."<sup>108</sup> The Commission further concluded that "[b]ecause the U.S. wireless and U.S. international markets are characterized by strong incumbents and potential entrants with access to the world's deepest capital markets, predation is highly unlikely to be a sustainable strategy, even if [the foreign

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<sup>107</sup> See *VoiceStream/DT Order*, 16 FCC Rcd at 9820.

<sup>108</sup> *Id.*

carrier] did receive favorable regulatory treatment in [its home country].”<sup>109</sup> Likewise, as discussed in Section II(A) above, the Guam and CNMI wireless market includes a number of strong, well-financed competitors, thus rendering the possibility that the Applicants could engage in predatory pricing extremely unlikely.

**2. Any Executive Branch Concerns Will Be Addressed Through Cooperation With Relevant Agencies And Adoption Of Appropriate Safeguards.**

In addition to competition-related issues, the Commission’s analysis under the public interest standard includes consideration of any potential threats to national security, law enforcement, foreign policy, and trade.<sup>110</sup> The Commission consults “with the appropriate Executive Branch agencies regarding those concerns.”<sup>111</sup> The Applicants already have begun discussions with Executive Branch officials and are receptive to agreements with the Department of Justice and Federal Bureau of Investigation, and other agencies if necessary, that will fully address any concerns raised by the Executive Branch.<sup>112</sup> The applicants do not object to making the Commission’s approval of the transaction contingent on their compliance with any agreement reached with the Executive Branch departments.

**C. The Applicants Possess The Requisite Qualifications To Hold And Control Commission Licenses.**

The Commission’s public interest analysis requires it to determine whether “the parties meet the requisite qualifications to hold and transfer licenses under Section 310(d) of the Act and

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<sup>109</sup> *Id.*

<sup>110</sup> *See Foreign Participation Order*, 12 FCC Rcd at 23940.

<sup>111</sup> *Id.*

<sup>112</sup> *See VoiceStream/DT Order*, 16 FCC Rcd at 9821-23; *Bell Atlantic New Zealand Holdings, Inc. and Pacific Telecom Inc.*, 18 FCC Rcd 23140, 23158-60 (IB, WCB, WTB 2003).

the Commission's rules."<sup>113</sup> In the proposed transaction, Guam Cellular will be the surviving entity that holds all Commission licenses. As previously explained, Guam Cellular will retain the majority of Guam Cellular's and Guam Wireless' management employees and will continue operating separate CDMA (or W-CDMA) and GSM networks under common DoCoMo management. The Commission has already determined that Guam Cellular and Guam Wireless are qualified to hold their wireless licenses, and there is no reason to alter that assessment. Moreover, as previously discussed, the licenses will be indirectly controlled by DoCoMo, a leading provider of telecommunications and information services, including wireless services. Accordingly, the Applicants possess the financial and other qualifications necessary to hold and control the licenses.

#### **IV. REQUEST FOR APPROVAL OF ADDITIONAL AUTHORIZATIONS**

As set forth above and in the related applications, Guam Cellular and Guam Wireless hold numerous Commission licenses and other authorizations. Although the applications are intended to include all such authorizations, the licensees involved in the proposed transaction may now have on file, and may subsequently file, additional requests for authorizations for new or modified facilities, which may be granted while the applications are pending.

Accordingly, the Applicants request that the grant of the applications include authority for DoCoMo to obtain control of any authorizations that are acquired by Guam Cellular or obtain any authorizations that are acquired by Guam Wireless during the Commission's consideration of this transaction or any applications that may be pending at the time of consummation. Specifically, the Applicants request that the grant of this transaction include authority for DoCoMo to acquire:

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<sup>113</sup> *Cingular/AWS Order*, 19 FCC Rcd at 21546; *see also ALLTEL/WWC Order*, 20 FCC Rcd at 13063-64.

- (1) any authorization issued to Guam Cellular or Guam Wireless during the Commission's consideration of this transaction and the period required for consummation following Commission approval;
- (2) construction permits held by Guam Cellular or Guam Wireless that mature into licenses after closing and that may have been omitted from the applications; and
- (3) applications that may be filed by Guam Cellular or Guam Wireless after the date of the instant applications and that are pending at the time the proposed transaction is consummated.

Such action would be consistent with Commission precedent.<sup>114</sup>

In addition, pursuant to Section 1.925 of the Commission's rules,<sup>115</sup> the Guam Cellular and DoCoMo request an exemption from Sections 1.927(h) and 1.929(a)(2) of the Commission's rules,<sup>116</sup> to be exempt from any applicable cut-off rules where the Guam Cellular files amendments to pending Part 22, Part 24, Part 90, or Part 101 of the Commission's rules (or to any other applications) to reflect the consummation of the proposed transaction. The exemption is requested so that amendments to pending applications to report the change in ownership resulting from this transaction would not be treated as major amendments requiring a second public notice period. The scope of this transaction demonstrates that any ownership changes are not made for the acquisition of any particular pending application, but are part of a larger agreement undertaken for legitimate business purposes. Grant of such exemption is consistent with previous Commission decisions routinely granting a blanket exemption in cases involving a larger transaction.<sup>117</sup>

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<sup>114</sup> See, e.g., *PacifiCorp Holdings, Inc. and Century Telephone Enterprises, Inc.*, 13 FCC Rcd 8891, 8915-16 (1997) ("*Century/PTI Order*"); *Bell Atlantic/NYNEX*, 12 FCC Rcd at 20097; *Pacific Telesis Group and SBC Communications, Inc.*, 12 FCC Rcd 2624, 2665 (1997).

<sup>115</sup> 47 C.F.R. § 1.925.

<sup>116</sup> *Id.* §§ 1.927(h), 1.929(a)(2).

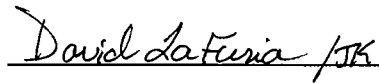
<sup>117</sup> See, e.g., *Ameritech/SBC Order*, 14 FCC Rcd at 14955; *Century/PTI Order*, 13 FCC Rcd at 8915; *Craig O. McCaw and AT&T Co.*, 9 FCC Rcd 5836, 5909 (1994); *Centel Corp. and Sprint Corp.*, 8 FCC Rcd 1829, 1833 (CCB 1993).

**V. CONCLUSION**

For the reasons set forth above and in each application related to this transaction, the proposed transfer of control of Guam Cellular to DoCoMo and the proposed assignment of Guam Wireless' authorizations to Guam Cellular are strongly in the public interest.

Accordingly, the Applicants request that the Commission expeditiously approve this transaction and its related applications and petition for declaratory ruling.

Respectfully submitted,



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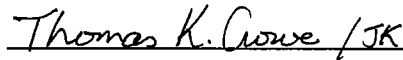
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Company, L.L.C.*

April 4, 2006

dc-445464



## EXHIBIT A

### Title III Authorizations

<b>Call Sign</b>	<b>Licensee</b>	<b>Radio Service</b>
KNLF300	Guam Wireless Telephone Company, L.L.C.	PCS Broadband MTA050 – Guam-Northern Mariana Islands
KNKN828	Guam Cellular and Paging, Inc.	Cellular CMA732 – Guam
KNKQ367	Guam Cellular and Paging, Inc.	Cellular CMA734 – Northern Mariana Islands
KNLB309	Guam Cellular and Paging, Inc.	Wireless Communications Service MEA049 – Guam & Northern Mariana Islands
WPYG242	Guam Cellular and Paging, Inc.	Lower 700 MHz CMA732 – Guam
KNKI654	Guam Cellular and Paging, Inc.	Paging and Radiotelephone
WWA347	Guam Cellular and Paging, Inc.	Paging and Radiotelephone
WXS403	Guam Cellular and Paging, Inc.	Paging and Radiotelephone
WMJ485	Guam Cellular and Paging, Inc.	Common Carrier Fixed Point-to-Point Microwave
WMJ486	Guam Cellular and Paging, Inc.	Common Carrier Fixed Point-to-Point Microwave
WMJ487	Guam Cellular and Paging, Inc.	Common Carrier Fixed Point-to-Point Microwave
WMJ488	Guam Cellular and Paging, Inc.	Common Carrier Fixed Point-to-Point Microwave
WMR771	Guam Cellular and Paging, Inc.	Common Carrier Fixed Point-to-Point Microwave
WPOR267	Guam Cellular and Paging, Inc.	Common Carrier Fixed Point-to-Point Microwave
WPOR268	Guam Cellular and Paging, Inc.	Common Carrier Fixed Point-to-Point Microwave
WPOR269	Guam Cellular and Paging, Inc.	Common Carrier Fixed Point-to-Point Microwave
WPOR270	Guam Cellular and Paging, Inc.	Common Carrier Fixed Point-to-Point Microwave
WPOR271	Guam Cellular and Paging, Inc.	Common Carrier Fixed Point-to-Point Microwave
WPTR768	Guam Cellular and Paging, Inc.	Common Carrier Fixed Point-to-Point Microwave
WPIP335	Guam Cellular and Paging, Inc.	Industrial/Business Pool, Commercial, Conventional
WPMK901	Guam Cellular and Paging, Inc.	Industrial/ Business Pool, Commercial, Conventional

**Section 214 Authorizations**

<b>File No.</b>	<b>Licensee</b>	<b>Authorization</b>
ITC-214-20000507-00304	Guam Wireless Telephone Company, L.L.C.	Authorization to provide global facilities-based and resold telecommunications services
ITC-214-19961120-00583	Guam Cellular and Paging, Inc.	Authorization to provide global resold telecommunications services
ITC-214-20040517-00201	Guam Cellular and Paging, Inc.	Authorization to provide global facilities-base telecommunications services
Domestic Blanket Authority	Guam Cellular and Paging, Inc.	Blanket domestic authorization to provide domestic interstate telecommunications service

## EXHIBIT B

### Top Ten DoCoMo Shareholders<sup>1</sup>

Shareholder	Country	Shares Held (000's)	Percentage
Nippon Telegraph and Telephone Corporation	Japan	27,640	61.96%
The Master Trust Bank of Japan, Ltd. (Trust Account)	Japan	1,568	3.52%
Japan Trustee Services Bank, Ltd. (Trust Account)	Japan	1,553	3.48%
State Street Bank and Trust company 505103	US	402.844	0.90%
Harris Associates L.P.	US	318.75	0.71%
Japan Trustee Services Bank, Ltd. (Trust Account 4)	Japan	258.331	0.58%
BNP Paribas Securities (Japan) Limited	Japan	225.183	0.50%
State Street Bank and Trust Company	US	201.654	0.45%
Chase Manhattan Bank, N.A. London S.L. Omnibus Account	UK	198.066	0.44%
Mitsubishi Trust and Banking Co Ltd.(Trust Account)	Japan	190.36	0.43%

Total: 72.98%

### Top Ten NTT Shareholders<sup>2</sup>

Shareholder	Country	Shares Held (000's)	Percentage
Japan Minister of Finance	Japan	5,304	38.37%
Japan Trustee Services Bank, Ltd	Japan	670.978	4.85%
The Master Trust Bank of Japan Ltd	Japan	475.315	3.44%
Moxley & Co	US	384.439	2.78%
Chase Manhattan Bank, N.A. London	UK	241.157	1.74%
State Street Bank and Trust Company 505103	US	162.145	1.17%
NTT Employee Share-Holding Association	Japan	137.065	0.99%
Nippon Life Insurance Company	Japan	95.954	0.69%
Sumitomo Trust & Banking Co Ltd	Japan	90.917	0.66%
Trust and Custody Service Bank, Ltd	Japan	86.349	0.62%

Total: 55.33%

<sup>1</sup> DoCoMo has approximately 44,608,604 outstanding shares, excluding shares held by the company treasury. The ownership information set forth above is based upon publicly available financial information, including filings made with U.S. Securities and Exchange Commission.

<sup>2</sup> NTT has approximately 13,822,436 outstanding shares, excluding shares held by the company treasury. The ownership information set forth above is based upon publicly available financial information, including filings made with U.S. Securities and Exchange Commission

**EXHIBIT C**

