

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C. 20554

**RECEIVED**  
SEP 19 2006  
Federal Communications Commission  
Office of Secretary

In the Matter of )  
)  
Trident Global Communications LLC and )  
PetroCom License Corporation )  
Petition for Declaratory Ruling )  
Pursuant to Section 310(b)(4) of the )  
Communications Act of 1934 )

To: Chief, International Bureau

**PETITION FOR DECLARATORY RULING**

Trident Global Communications LLC ("Trident") and PetroCom License Corporation ("PetroCom") (collectively, the "Petitioners") through their undersigned counsel and pursuant to Section 1.2 of the Federal Communications Commission's ("FCC" or "Commission") rules,<sup>1</sup> hereby petition the Commission for a declaratory ruling under Section 310(b)(4) of the Communications Act of 1934, as amended (the "Act"),<sup>2</sup> that it is in public interest to allow Kactus Investment Corporation ("Kactus"), a privately-held corporation organized under the laws of the Cayman Islands, to acquire an indirect 40 percent "voting" interest in PetroCom, that would result from Trident's proposed acquisition of PetroCom's parent corporation.<sup>3</sup> Specifically, Petitioners seek a ruling that the public interest does not prohibit Trident's acquisition of PetroCom, with the current level of indirect foreign ownership in Trident held by Kactus through intervening companies.

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<sup>1</sup> 47 C.F.R. § 1.2.

<sup>2</sup> 47 U.S.C. § 310(b)(4).

Consistent with Commission precedent, Petitioners also request authority to allow investors named in this petition or other unnamed investors to hold an additional, aggregate 25 percent foreign equity and voting interest in PetroCom, without seeking additional Commission approval.<sup>4</sup>

Section 310(b)(4) of the Act provides, *inter alia*, that no common carrier radio station license shall be granted to or held by any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens or by any corporation organized under the laws of a foreign country, if the FCC finds that the public interest will be served by the refusal or revocation of such license. For the reasons demonstrated below, Petitioners submit that it would not serve the public interest for the Commission to prohibit Kactus Investment Corporation's indirect foreign ownership interest in PetroCom in excess of the 25 percent benchmark.

## **I. BACKGROUND**

### **A. Description of Transaction**

This petition for declaratory ruling is filed in conjunction with applications requesting authority to transfer control of PetroCom from the current shareholders of its parent company, S&P Cellular Holding Company, LLC ("S&P Cellular"), to Trident.<sup>5</sup>

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<sup>3</sup> As stated, the foreign non-managing membership equity interest held by Kactus will be passive. The word "voting" is used only to describe the FCC's method of using multipliers to calculate ownership interest, based on the language of the statute, 47 U.S.C. § 310(b)(4).

<sup>4</sup> See *Vodafone Americas Asia Inc. (Transferor), Globalstar Corporation (Transferee), Consent to Transfer Control of Licenses and Section 214 Authorizations and Petition for Declaratory Ruling Allowing Indirect Foreign Ownership*, Order and Authorization, 17 FCC Rcd 12849, 12866, ¶ 52 (2002) ("*Vodafone/Globalstar Order*").

<sup>5</sup> Attached hereto is a Declaration verifying the information set forth herein (attached as Exhibit A).

PetroCom holds a number of FCC licenses, including Cellular Radiotelephone and 800 MHz Specialized Mobile Radio ("SMR"). PetroCom also holds a number of Domestic Fixed Satellite transmit/receive earth station licenses and Very Small Aperture Terminal ("VSAT") licenses. PetroCom is currently a wholly owned subsidiary of S&P Cellular, a holding company formed solely to hold the ownership interests in PetroCom and PetroCom's operating affiliate, PetroCom, LLC. S&P Cellular does not hold any FCC authorizations, except indirectly through its ownership interest in PetroCom. PetroCom, LLC, does not hold any FCC authorizations.

Trident has entered an agreement with the current shareholders of S&P Cellular whereby all of the issued and outstanding stock of S&P Cellular will be transferred to Trident, to be effective following the grant of FCC consent to the transfer of control. In addition, the transaction will simultaneously involve all of the issued and outstanding stock of PetroCom being assigned to PetroCom, LLC, its corporate affiliate, such that PetroCom will become a wholly-owned subsidiary of PetroCom, LLC. Trident will have indirect control of PetroCom by virtue of its control of S&P Cellular, which in turn will control PetroCom, LLC, and in turn, PetroCom.

As illustrated in the attached ownership chart for this proposed transaction (attached as Exhibit B), Trident is 91 percent majority owned and controlled by H.I.G. Communications, L.L.C. ("H.I.G. Communications"), a privately-held U.S. investment company. H.I.G. Communications is a wholly-owned subsidiary of H.I.G. Bayside Opportunity Fund, L.P. ("Bayside Opportunity Fund"), a domestically organized limited partnership. Bayside Opportunity Fund is controlled by a sole U.S.-based general partner, H.I.G. Bayside Advisors, LLC ("Bayside Advisors"), which also holds a 0.28 percent equity interest in Bayside Opportunity Fund. Bayside Advisors is organized in the U.S., and is controlled by a managing member, H.I.G.-GP II, Inc. ("H.I.G.-GP II"), a Delaware corporation which has two officers and

directors who are both U.S. citizens. H.I.G.-GP II has no equity ownership interest in Bayside Advisors. There are four non-managing members that hold the equity interest, but no voting interest, in Bayside Advisors.

The limited liability company agreement of Bayside Advisors appoints HIG-GPII to be Manager of the LLC, with the sole authority to control all decisions of the LLC. In particular, the LLC agreement of Bayside Advisors provides that “all material Company decisions and determinations will be made by the Manager in its sole discretion, including all Company decisions and determinations relating to (a) the acquisition and disposition of Fund investments, (b) distributions by the Fund of cash and/or securities, (c) amendments to the Fund Agreement, (d) distributions of Company cash and securities, (e) distributions of cash and securities from escrow accounts, (f) the borrowing of money, (g) hiring, terminating and establishing the compensation of employees and agents of the Fund or Portfolio Companies and (h) the incurring of expenses on behalf of the Company.” Similar to an insulated limited partner, the non-managing members have no control over the day-to-day operations of Bayside Advisors. Therefore, the indirect equity investment of the non-managing members of Bayside Advisors will be insulated and passive.

One of these non-managing members, Kactus, holds a 40 percent non-managing (*i.e.*, non-voting) membership equity interest in Bayside Advisors, and is incorporated in the Cayman Islands. Kactus is a wholly-owned subsidiary of the Tamer Family Trust, a U.S.-based trust that is controlled by a U.S. citizen, Anthony Tamer, the sole trustee.<sup>6</sup> Mr. Tamer is also the President and sole Director of Kactus.

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<sup>6</sup> As discussed herein, the stock interest held by the Tamer Family Trust in Kactus is managed and voted by the trustee, Mr. Tamer, who is a U.S. citizen. The trustee’s management of the Tamer Family Trust and its investments is irrevocable. The Tamer Family Trust has one

## **B. Calculation of Foreign Ownership**

Pursuant to the FCC's foreign ownership guidelines, the calculation of foreign ownership interests under Section 310(b)(4) is a two-pronged analysis in which the Commission examines separately the equity interests and the voting interests in the licensee's parent company. The FCC calculates the equity interest of each foreign investor in the parent and then aggregates these interests to determine whether the sum of the foreign equity interest exceeds the 25 percent benchmark. Similarly, the FCC calculates the voting interest of each foreign investor in the parent company and then aggregates these voting interests.

The FCC has established a standard for calculating both foreign equity and voting interests held in the licensee's parent company where, as in this case, the interests are held through intervening entities.<sup>7</sup> In calculating the attributable foreign equity interests in the licensee's parent company, the FCC uses a multiplier to dilute the percentage of each investor's equity interest in the parent company when those interests are held through intervening companies. The multiplier is applied to each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier.

As stated above, the Tamer Family Trust holds a 100 percent equity interest in Kactus, which in turn holds a 40 percent non-managing membership interest in Bayside Advisors. Bayside Advisors holds a 0.28 percent equity interest in Bayside Opportunity Fund. Bayside Opportunity Fund, through its wholly-owned subsidiary H.I.G. Communications, holds a 91

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beneficiary, a citizen of Lebanon, who holds no voting interest, but merely receives profit from the trust.

<sup>7</sup> See *Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (b)(4) of the Communications Act, as amended*, Declaratory Ruling, 103 FCC

percent equity interest in Trident. Trident, through S&P Cellular, will hold a 100 percent equity interest in PetroCom, LLC, which will be the licensee's parent company as a result of this transaction. Applying the FCC's attribution principles, Kactus is attributed with a 0.1019 percent equity interest in PetroCom (.40 x .0028 x .91).<sup>8</sup> Thus, the total foreign equity interest held in PetroCom through intervening companies is well below the 25 percent benchmark and does not raise any public interest concerns.<sup>9</sup>

In calculating the foreign voting interests in the parent company, the multiplier is not applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier.<sup>10</sup> The FCC will consider a general partner to hold the same voting interest as the partnership holds in the next lower tier of the vertical ownership chain.<sup>11</sup> Because Bayside Advisors holds a general partnership interest in Bayside Opportunity

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2d 511 (1985) (*Wilmer & Scheiner I*), recon. In part, 1 FCC Rcd 12 (1986) (*Wilmer & Scheiner II*).

<sup>8</sup> See e.g., *Petition of Paradise MergerSub, Inc. for a Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act, as amended*, Order and Declaratory Ruling, 20 FCC Rcd 1576, 1586 n. 68 (2005) (*Paradise MergerSub*).

<sup>9</sup> As discussed earlier, the trustee of the Tamer Family Trust is a U.S. citizen who exercises legal title and control over the ownership interest held in Kactus for the benefit of the trust's sole beneficiary, a citizen of Lebanon. While the beneficiary has no voting interest, the Commission has indicated that the beneficiary of a trust must be attributed with an equity interest in the licensee for purposes of a Section 310(b) analysis. See e.g., *PrimeMedia Broadcasting, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 4293, 4294-95 (1988); *Teleport Transmission Holdings, Inc.*, Memorandum Opinion and Order and Authorization, 8 FCC Rcd 3063, 3064 (1993). Therefore, the equity interest attributable to Kactus and the beneficiary of the trust, which holds 100% of the stock of Kactus, will be 0.1019 percent (.100 x .40 x .0028 x .91), which is well below the 25 percent benchmark and does not raise any public interest concerns.

<sup>10</sup> See *BBC License Subsidiary, L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973, ¶ 23 (1995) (*BBC License Subsidiary*) (citing *Wilner & Scheiner I*, 103 FCC 2d at 13).

<sup>11</sup> See *Applications of XO Communications, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 19212, 19222, ¶ 24 (2002) (*XO Communications*).

Fund, it is considered to hold a 100 percent voting interest in H.I.G. Communications. Similarly, H.I.G. Communications is considered to hold a 100 percent voting interest in Trident because it holds a controlling interest in Trident. Applying the FCC's rules for attribution of "voting" interests, Bayside Advisors has a 100 percent attributable voting interest in PetroCom (through its control of Trident), of which 40 percent is attributable to the foreign equity investment by Kactus.<sup>12</sup> Although Kactus does not actually have a "vote" regarding Bayside Advisors or PetroCom, the 40 percent non-managing membership interest held by Kactus in Bayside Advisors could be a considered "voting" interest and attributed all the way down the ownership chain to PetroCom since each company in the ownership chain below Bayside Advisors exercises voting control over the next lower company in the chain.<sup>13</sup> Accordingly, Kactus could be attributed with a 40 percent indirect voting interest in PetroCom, and would therefore exceed the 25 percent benchmark established in Section 310(b)(4) of the Act.<sup>14</sup>

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<sup>12</sup> See *Paradise MergerSub*, 20 FCC Rcd at 1585-86.

<sup>13</sup> Although the beneficiary of the Tamer Family Trust is attributed with the equity ownership interest held by the trust in Kactus, the voting interest held by the trustee is irrevocable, and the beneficiary holds no voting interest and has no voting or management authority regarding the trust or its investments. Therefore, there is no current or future voting interest held by the beneficiary that will be attributed to PetroCom, and the indirect 40 percent voting interest in PetroCom attributed to Kactus does not extend up the vertical ownership chain to the beneficiary of the trust. See *PrimeMedia Broadcasting*, 3 FCC Rcd at 4294-95; *Teleport Transmission Holdings*, 8 FCC Rcd at 3064.

<sup>14</sup> See *Telemetrix Inc. Petition for Declaratory Ruling*, Grant of Authority, FCC Report No. TEL-01055, DA No. 06-1614 (rel. Aug. 10, 2006); *eLandia Technologies, Inc. Petition for Declaratory Ruling*, Grant of Authority, FCC Report No. TEL-00929, DA No. 05-2049 (rel. July 21, 2005).

## II. THE PUBLIC INTEREST WILL NOT BE SERVED BY REFUSAL TO APPROVE THE PROPOSED TRANSACTION

### A. Investment by WTO Member Countries

In the *Foreign Participation Order*,<sup>15</sup> the Commission adopted an open entry standard, including a rebuttable presumption that the public interest will be served if indirect foreign ownership above the 25 percent benchmark specified in Section 310(b)(4) is by individuals or entities from World Trade Organization (“WTO”) Member countries. In evaluating an applicant’s request for approval of foreign ownership interests under Section 310(b)(4), the FCC uses a “principal place of business” test to determine the nationality or “home market” of foreign investors.<sup>16</sup>

Where the ownership interest will be held by a foreign corporation, the principal place of business of that corporation depends upon the following factors: (1) the country of incorporation; (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 operations.<sup>17</sup>

While Kactus is incorporated in the Cayman Islands, Petitioners submit that its home market should properly be considered as the United States for the following reasons: (1) its

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<sup>15</sup> See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order, 12 FCC Rcd 23891 (1997) (“*Foreign Participation Order*”).

<sup>16</sup> See *Petition of TelCove, Inc. for a Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended*, Order and Declaratory Ruling, 21 FCC Rcd 2982 (2006) (“*TelCove*”).

<sup>17</sup> *Foreign Participation Order*, 12 FCC Rcd at 23941-42, ¶ 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873 (1995) (“*Foreign Carrier Entry Order*”).



world headquarters and all of its tangible property are located in Miami, Florida; (2) it is an investment company whose business operations are conducted entirely within the United States and all of its revenues are generated from those U.S. operations; (3) its president and sole director is a U.S. citizen and resident of the U.S.; (4) all of the intervening companies in the vertical ownership chain are domestically organized; (5) it is a wholly-owned subsidiary of the Tamer Family Trust, which is based in the U.S. and controlled by a U.S. citizen; and (6) it merely acts as a holding company for U.S. investors and U.S. assets. Therefore, the 40 percent indirect non-managing membership interest held in Bayside Advisors by Kactus should be treated as investment from the United States for purposes of the public interest analysis under Section 310(b)(4) of the Act.

Alternatively, even if the FCC determines that the home market of Kactus is the Cayman Islands, Petitioners are entitled to a rebuttable presumption that this indirect foreign ownership would serve the public interest because the Cayman Islands is a territory of the United Kingdom, a WTO-member country.<sup>18</sup>

#### **B. Grant of This Petition Will Serve the Public Interest**

Grant of FCC consent to the proposed indirect foreign “voting” interest of Kactus in PetroCom will serve the public interest. As stated above, the foreign voting interest will be held by a privately-held corporation with its principal place of business in the United States although incorporated in the Cayman Islands, a WTO member country. Furthermore, the proposed foreign interest in PetroCom will be held by a passive investor that is a non-managing member of a limited liability company, which in turn will have an indirect voting interest in PetroCom. As a non-managing member, Kactus has no voting interest in or authority to control Bayside

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<sup>18</sup> See *TelCove*, 21 FCC Rcd at ¶ 181; *Teligent, Inc. Petition for Declaratory Ruling*, Grant of Authority, FCC Report No. TEL-00797, DA No. 04-1534 (rel. May 27, 2004).

Advisors, and will have no control over the day-to-day operations of PetroCom. The FCC has previously found that it would not serve the public interest to prohibit the indirect foreign ownership of a common carrier licensee by a privately-held foreign corporation, based on ownership structures similar to the present case, where the foreign investor is a non-managing member or is wholly-owned by a U.S. entity or citizen.<sup>19</sup>

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Approval of this transaction will enable PetroCom to continue its business operations, which rely heavily on licensed radio facilities. PetroCom provides communications services, project management, engineering, and network management services, primarily in the Gulf of Mexico, but also along the Gulf Coast region, to a variety of customers. It is anticipated that with the additional financial resources available to PetroCom from Trident, PetroCom will be better able to remain a viable provider of communications and related services to the Gulf region and thereby promote competition in the U.S. market.

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<sup>19</sup> See *eLandia Technologies, Inc. Petition for Declaratory Ruling*, Grant of Authority, FCC Report No. TEL-00929, DA No. 05-2049 (rel. July 21, 2005); *American Samoa License, Inc. Petition for Declaratory Ruling*, Grant of Authority, FCC Report No. TEL-00933, DA No. 05-2254 (rel. August 4, 2005); *Paradise SubMerger*, 20 FCC Rcd 1576.

### III. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the FCC declare that the indirect 40 percent "voting" interest in PetroCom proposed to be held by Kactus is in the public interest. Petitioners also request that the FCC allow current or future investors named in this petition or other unnamed investors to hold or acquire an additional, aggregate 25 percent foreign equity and voting interest in PetroCom, without seeking additional Commission approval.

Respectfully submitted,

**Trident Global Communications LLC**

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Its Attorney

**PetroCom License Corporation**

By: /s/ Russell H. Fox  
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Its Attorney

Dated: September 19, 2006

**Petition for Declaratory Ruling  
Exhibit A**

**BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C. 20554**

**In the Matter of**

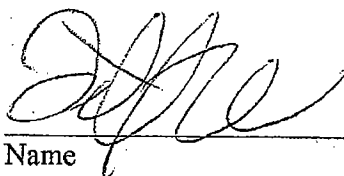
**Trident Global Communications LLC and  
PetroCom License Corporation  
Petition for Declaratory Ruling  
Pursuant to Section 310(b)(4) of the  
Communications Act of 1934**

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**To: Chief, International Bureau**

**DECLARATION**

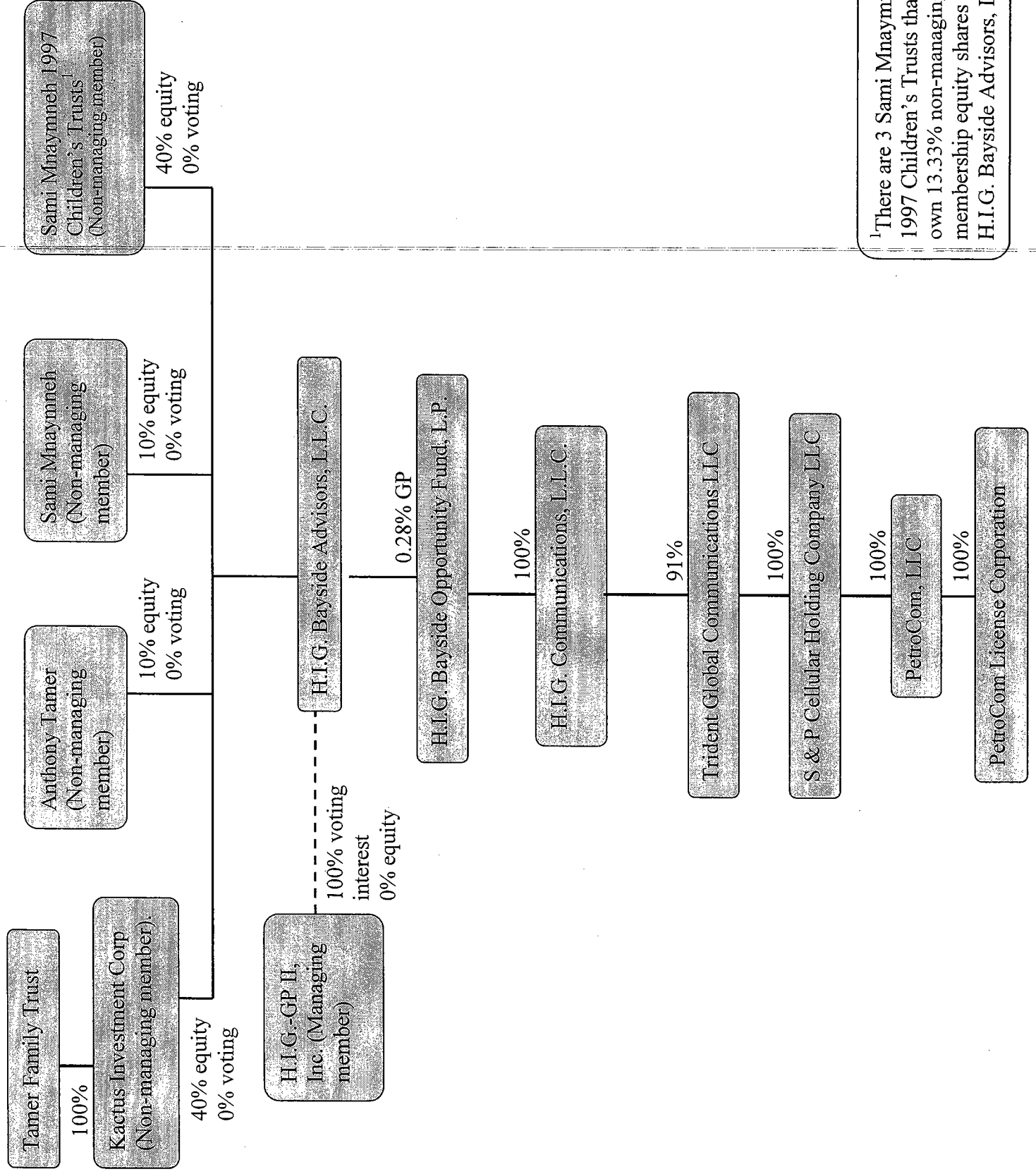
I, Anthony Tamer, hereby declare under penalty of perjury that I am the President of Kactus Investment Corporation, that I have reviewed the foregoing Petition for Declaratory Ruling, and, except as to those matters of which official notice may be taken, the facts stated therein are true and correct to the best of my knowledge, information, and belief.

  
Name

President  
Title

September 18, 2006  
Date

# Exhibit B: Post-Closing PetroCom Ownership Structure



# McDermott Will & Emery

Boston Brussels Chicago Düsseldorf London Los Angeles Miami Munich  
New York Orange County Rome San Diego Silicon Valley Washington, D.C.

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September 19, 2006

VIA HAND DELIVERY

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
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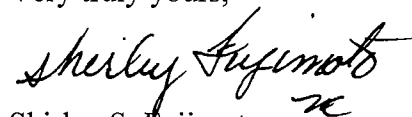
Re: Petition for Declaratory Ruling Pursuant to Section 310(b) of the Communications Act;  
Trident Global Communications LLC and PetroCom License Corporation

Dear Ms. Dortch:

On September 18, 2006, Trident Global Communications LLC and PetroCom License Corporation (collectively, the "Petitioners") filed a Petition for Declaratory Ruling Pursuant to Section 310(b) of the Communications Act that inadvertently omitted the final page of the Petition, an ownership structure chart to be included as Exhibit B. We ask that the original Petition be replaced with the enclosed complete copy of the Petition for Declaratory Ruling, including the attached Exhibit B.

If you have any questions regarding this matter, please do not hesitate to contact us.

Very truly yours,

  
Shirley S. Fujimoto

Enclosure