

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

In the Matter of)
)
Able Infosat Communications, Inc.)
Petition for Declaratory Ruling)
Pursuant to Section 310(b)(4) of the)
Communications Act of 1934)

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JAN 19 2007

Federal Communications Commission
Bureau / Office

To: Chief, International Bureau

PETITION FOR DECLARATORY RULING

For the reasons stated below, it is respectfully requested that the Commission make a declaratory ruling, pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended,¹ permitting indirect foreign ownership of Able Infosat Communications, Inc. in excess of 25%.

Legal Standard

Section 310(b)(4) limits the ownership interests that foreign investors may have in any corporation that controls the licensee of a common carrier radio station. Under Section 310(b)(4), no more than 25% of the capital stock of the corporation controlling the licensee may be owned or voted by foreign citizens and their representatives, foreign governments and their representatives, and corporations organized under the laws of a foreign country.² However, Section 310(b) authorizes the Commission to permit foreign investment in excess of this 25% limit if the Commission determines that the foreign investment is not inconsistent with the public interest.³

The Commission has adopted a presumption that foreign investment by individuals or entities from WTO Member countries should be permitted without limit under Section 310(b)(4).⁴ It uses a "principal place of business" test to determine whether the nationality or "home market" of a foreign investor is a WTO Member. In

¹ 47 U.S.C. § 310(b)(4).

² *Id.*

³ *Id.*

⁴ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891, 23896 ¶ 9, 23913 ¶ 50, and 23940 ¶¶ 111-112 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, FCC 00-339, 15 FCC Rcd 18158 (2000).

applying the principal place of business test, the Commission balances the following factors:

- (1) the country of a foreign entity's incorporation, organization or charter;
- (2) the nationality of all investment principals, officers, and directors;
- (3) the country in which the world headquarters is located;
- (4) the country in which the majority of the tangible property, including production, transmission, billing, information, and control facilities, is located; and
- (5) the country from which the foreign entity derives the greatest sales and revenues from its operations.⁵

Discussion

An application is being filed on FCC Form 603 seeking the Commission's consent to a *pro forma* transfer of control of Able Infosat Communications, Inc. ("Able Infosat") to Infosat Able Holdings, Inc. ("Infosat Able Holdings"). Able Infosat is the licensee of 15 wireless licenses, 14 of which are private radio licenses and one of which (WPDG659) is a CMRS (*i.e.*, common carrier) license. In connection with the *pro forma* transfer of control of Able Infosat's CMRS license, the parties must, by virtue of the fact that Infosat Able Holdings has indirect foreign ownership in excess of 25%,⁶ request a finding by the Commission under Section 310(b)(4).

The foreign investors in Infosat Able Holdings are entitled to the presumption under Section 310(b)(4) that investment by individuals or entities from WTO Member countries is in the public interest, because they are unmistakably Canadian. Infosat Able Holdings is a wholly-owned subsidiary of Infosat Communications, Inc. ("Infosat Canada"). Infosat Canada is a wholly-owned subsidiary of Telesat Canada, which is a wholly-owned subsidiary of BCE Inc. The Commission recently found that Telesat Canada and BCE Inc. have their principal place of business in Canada.⁷ The

⁵ *Foreign Participation Order*, 12 FCC Rcd at 23941 ¶ 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, FCC 95-475, 11 FCC Rcd 3873, 3951 ¶ 207 (1995)).

⁶ Able Infosat is a wholly-owned subsidiary of Infosat Able Holdings, a holding company whose sole asset is the stock of Able Infosat. For reasons that are explained in the transfer of control application, the *pro forma* transfer of control of Able Infosat to Infosat Able Holdings already has been consummated.

⁷ *Motient Corporation and Subsidiaries, Transferors, and SkyTerra Communications, Inc., Transferee*, Memorandum Opinion and Order and Declaratory Ruling, DA 06-1872 (Sept. 15, 2006) at n. 119.

information relating to Infosat Canada⁸ under the Commission's five part principal place of business test is as follows:

Country of a foreign entity's incorporation, organization or charter. Infosat Canada is a corporation organized under the laws of Canada.

Nationality of all investment principals, officers, and directors. All of Infosat Canada's officers and two of its three directors are Canadian citizens (the third director is a U.S. citizen).

Country in which the world headquarters is located. The world headquarters of Infosat Canada is in Canada.

Country in which the majority of the tangible property, including production, transmission, billing, information, and control facilities, is located. The majority of the tangible property of Infosat Canada is located in Canada.

Country from which the foreign entity derives the greatest sales and revenues from its operations. Infosat Canada derives its greatest sales and revenues from Canada.

⁸ It is noteworthy that the Commission already has determined that Infosat Canada (as owned and controlled by Telesat Canada and BCE Inc.) is qualified to be the parent of a U.S. company holding a Title III radio license. *See Infosat Communications, Inc.*, DA 02-199 (Jan. 25, 2001).

Conclusion

The principal place of business of each of the foreign investors in Infosat Able Holdings is Canada, a WTO Member. Accordingly, the Commission should make a declaratory ruling under Section 310(b)(4) that the indirect foreign ownership of Able Infosat Communications, Inc. is not inconsistent with the public interest.

Respectfully submitted,

ABLE INFOSAT COMMUNICATIONS, INC.

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January 17, 2007

Before the
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DECLARATION

I, Roland Sartorius, hereby declare under penalty of perjury that I am the Chief Financial Officer of Able Infosat Communications, Inc., that I have reviewed a "to be filed" version of 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.



Roland Sartorius
Chief Financial Officer

Date: January 17, 2007