

**PETITION FOR DECLARATORY RULING UNDER SECTION 310(B)(4)**

Able Infosat Communications Inc. ("Able Infosat") is the licensee of 15 wireless licenses, 14 of which are private radio licenses and one of which (*see* Call Sign WPDG659) is a CMRS (*i.e.*, common carrier) license. In connection with the proposed transfer of control of Able Infosat and its CMRS license, 4363205 Canada Inc. ("Holdco") hereby respectfully requests that the Commission grant a petition for declaratory ruling that the proposed indirect foreign ownership structure of Able Infosat in excess of the 25% benchmark set forth in Section 310(b)(4) of the Communications Act is in the public interest.<sup>1</sup> Holdco also respectfully requests that the Commission allow Able Infosat's indirect foreign ownership to increase up to 100% by entities from Canada without requesting new public interest rulings in the future.

In the Foreign Participation Order, the Commission found that "additional foreign investment can promote competition in the U.S. market," and that "the public interest will be served by permitting more open investments by entities from World Trade Organization ("WTO") member countries in U.S. common carrier wireless licenses."<sup>2</sup> In light of these findings, the Commission replaced its equivalent competitive opportunities analysis with a

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<sup>1</sup> 47 U.S.C. § 310(b)(4); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23891, 23939, ¶ 111 (1997) ("*Foreign Participation Order*").

<sup>2</sup> *Foreign Participation Order*, 12 FCC Rcd at 23939, ¶ 111.

rebuttable presumption in favor of entry for applicants from WTO-member countries.<sup>3</sup> The Commission has subsequently affirmed that policy on several occasions.<sup>4</sup>

While the proposed transaction will result in a change in the ultimate ownership and control of Able Infosat, the nationality of that control will not change. Able Infosat is a wholly owned, indirect subsidiary of Infosat Able Holdings Inc., a U.S. corporation. Infosat Able Holdings Inc. is a wholly owned subsidiary of Infosat Communications Inc. (“Infosat”), which is itself a wholly owned subsidiary of Telesat Canada (“Telesat”), which is in turn presently wholly owned by BCE (“BCE”). Each of Infosat, Telesat and BCE are corporations organized under the laws of Canada.<sup>5</sup> As described in the foregoing application, upon consummation of the

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<sup>3</sup> *Id.* at 23913, ¶ 50.

<sup>4</sup> *See, e.g., Aerial Communications, Inc.*, DA 00-730 (IB/WTB rel. Mar. 31 2000), ¶ 9. (when analyzing proposed foreign investment in common carrier licensees, the Wireless and International Bureaus are “guided . . . by the U.S. Government’s commitment under the World Trade Organization (“WTO”) Basic Telecommunications Agreement, which seeks to promote global markets for telecommunications so that consumers may enjoy the benefits of competition”); *VoiceStream Wireless Corp.*, FCC 99-53 (rel. Feb 15, 2000), ¶ 16 (the FCC has adopted a “strong presumption that no competitive concerns are raised by . . . indirect foreign investment[s] from WTO member countries.”).

<sup>5</sup> Able Infosat recently filed a Petition for Declaratory Ruling under Section 310(b)(4) to permit the ownership structure as it exists today. *See Able Infosat Communications, Inc. Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act of 1934*, filed on Jan. 19, 2007 and also attached to ULS File No. 0002865620 (“*Able Infosat Petition*”). The instant Petition for Declaratory Ruling seeks to permit the ownership structure proposed by Holdco to take effect upon consummation of the transaction. The Commission has already found that Infosat Communications (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 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 (“*Motient Order*”).

transaction, Telesat and its subsidiaries will become wholly owned subsidiaries of Holdco. The shareholders of Holdco are Loral Space and Communications Inc. (“Loral”), the Public Sector Pension Investment Board (“PSP”), John P. (Jack) Cashman (“Mr. Cashman”), and Colin D. Watson (“Mr. Watson”, and together with Mr. Cashman, the “TPIs”). The voting interests held by Holdco’s shareholders are depicted in the following table:

Shareholder	Participating Equity	Shares with voting rights for directors	Shares with voting rights on all other matters
PSP <sup>6</sup>	36%	30%	66⅔%
Loral	64%	33⅓%	33⅓%
TPIs (aggregate)	--	36⅔%	--
Total shares	100%	100%	100%

The shareholders of Holdco will enter into a unanimous shareholders agreement that will effectively make Holdco a company controlled by its Board of Directors. Holdco will have a board of directors comprising 10 directors, 8 of whom must be Canadian citizens. Each of PSP and Loral will have the right to nominate three directors, and two directors will be the TPIs. The remaining two directors also will be independent of PSP and Loral and will be nominated by a committee comprising one PSP nominee, one Loral nominee and Mr. Cashman. The second third party investor, Mr. Watson, who also will be a director, was selected by the nominating

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<sup>6</sup> PSP also will hold CAD\$173.6 (US\$150) million worth of non-voting senior preferred shares in Holdco or an affiliate of Holdco.

committee. The unanimous shareholders agreement will provide that the shareholders entitled to vote for the directors will vote for the directors nominated as described above.

Under the “principal place of business” analysis adopted by the Commission in the *Foreign Carrier Entry Order*<sup>7</sup> and affirmed in the *Foreign Participation Order*,<sup>8</sup> the “home market” for each of Able Infosat’s parent companies upon consummation of the proposed transaction—Infosat, Telesat and Holdco—is Canada. Infosat is a corporation organized under the laws of Canada and headquartered in Canada; a majority of its directors and officers are Canadian nationals; the majority of its tangible property is located in Canada; and Infosat derives its greatest sales and revenues from Canada.<sup>9</sup> The same analysis holds true for Telesat, which directly holds 100% of the equity of and controls Infosat.<sup>10</sup> Indeed, the Commission recently found that Telesat (and its current owner BCE) have their principal places of business in

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<sup>7</sup> 11 FCC Rcd 3873, 3948-52, ¶¶ 199-208 (1995) (“Therefore, in determining an alien entity’s home market for purposes of our public interest determination under Section 310(b)(4), we will identify: (1) the country of its 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. If all five of these factors indicate that the same country should be considered to be the entity’s home market, it will be presumed to be so, subject only to rebuttal based on clear and convincing evidence to the contrary.”).

<sup>8</sup> *Foreign Participation Order*, 12 FCC Rcd at 23941-42, ¶ 116.

<sup>9</sup> *See Able Infosat Petition*, *supra* note 5, at 2-3.

<sup>10</sup> *See id.*

Canada.<sup>11</sup> The proposed owner of Telesat, Holdco, also qualifies as a Canadian company. Holdco is a corporation organized under the Canada Business Corporations Act and will be headquartered in Canada, and a majority of its directors (8 out of 10) will be Canadian citizens. Except for property located in the U.S., the majority of its tangible property will be located in Canada. In addition, all but one of its satellites will be licensed in Canada or in the U.S.<sup>12</sup> Thus, Holdco's revenues primarily will be derived through assets located or licensed in Canada or the U.S.

Finally, the majority of the voting shareholders of Holdco are Canadian. PSP is fully described in the Ownership Exhibit also attached to the foregoing application. PSP is a Canadian Crown corporation, established by the Canadian Parliament through the Public Sector Pension Investment Board Act, S.C. 1999, c.34 ("PSP Act"). The mandate of PSP is to manage employer and employee contributions made after April 1, 2000, to the Canadian federal Public Service, the Canadian Forces and the Royal Canadian Mounted Police pension funds. PSP assets are invested in fixed income instruments and Canadian and foreign equity investments, real estate, infrastructure, private equity and other permissible investments. All of its directors are Canadian

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<sup>11</sup> See *Motient Order*, *supra* note 5, at n. 119.

<sup>12</sup> Following the consummation of the transfer of certain of the Loral Skynet Corporation assets to Skynet Satellite Corporation in a separate transaction that will occur contemporaneous with or after the acquisition of Telesat, Holdco will also indirectly own a satellite licensed by Brazil.

citizens.<sup>13</sup> Moreover, both Mr. Cashman and Mr. Watson are Canadian citizens.<sup>14</sup> The only other shareholder of Holdco, Loral, is a U.S. entity.

Moreover, the Applicants can report that they have no direct or indirect foreign government ownership. Thus, Section 310(a) is not implicated by the proposed indirect ownership of Able Infosat by Holdco because Holdco is not a representative of any foreign government.<sup>15</sup> Thus, the proposed foreign ownership interests of Able Infosat are mainly Canadian entities that are entitled to a rebuttable presumption that their indirect ownership above 25% in Able Infosat is in the public interest, based upon Canada's membership in the WTO. The Commission has previously approved ownership up to 100% by entities from WTO member countries, and Able Infosat respectfully requests the same treatment here.<sup>16</sup> Accordingly, Holdco

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<sup>13</sup> One of PSP's directors, Mr. Tony Gage, is also a citizen of the United Kingdom.

<sup>14</sup> Mr. Cashman is also a citizen of Ireland.

<sup>15</sup> 47 U.S.C. § 310(a). PSP is not a representative of the Canadian government and thus these applications are consistent with Section 310(a) of the Communications Act, 47 U.S.C. §310(a). See PSP Act, Section 3(2) ("The Board is not an agent of Her Majesty." Under Canadian constitutional law, the use of the term "Her Majesty" here is equivalent to a reference to the Government of Canada.).

<sup>16</sup> See *Applications of VoiceStream Wireless Corporation, PowerTel, Inc. and Deutsche Telekom AG*, Memorandum Opinion and Order, 16 FCC Rcd 9779 (2001). Shortly before the release of the *Foreign Participation Order*, the Commission approved 100% indirect foreign ownership of common carrier radio licenses by Telecom Finland Ltd., a wholly owned subsidiary of PT Finland, Ltd., a private holding company of the Government of Finland. See *Telecom Finland, Ltd., Petition for Determination of the Public Interest under 47 U.S.C. Sec. 310(b)(4) to permit LMDS and PCS Licensing*, Order, 12 FCC Rcd 17648 (1997). More recently, the Commission approved 100% indirect foreign ownership of Telenor Satellite by Telenor ASA, a Norwegian company, which is 79% owned by the Kingdom of Norway and 100% indirect foreign ownership of GE Americom by SES Global, a Luxembourg company, which is 75.11% foreign owned.

respectfully request that the Commission issue a ruling that the indirect foreign ownership interest in Able Infosat as proposed and up to 100% by entities from Canada is in the public interest.

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*See Lockheed Martin, etc.*, 16 FCC Rcd 22897 (2001); *Application of General Electric Corp. and SES Global*, 16 FCC Rcd 18878 (2001) (supplemental order); 16 FCC Rcd 17575 (2001).