

LAW OFFICES OF THOMAS K. CROWE, P.C.
1250 24th STREET, N.W.
SUITE 300
WASHINGTON, D.C. 20037

TELEPHONE (202) 263-3640
FAX (202) 263-3641
E-MAIL firm@tkcrowe.com

January 2, 2008

BY HAND

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

Re: Petition of Choice Holdings LLC for Clarification or, in the Alternative,
Declaratory Ruling under Section 310(b)(4) of the Communications
Act of 1934, as Amended

Dear Ms. Dortch:

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

Please acknowledge receipt of this letter by file-stamping and returning the extra copy. If you have any questions regarding this matter, please contact the undersigned.

Respectfully submitted,



Cheng-yi Liu,
Counsel for Choice Holdings LLC

Enclosure

cc: Francis Gutierrez, International Bureau
Lynne Milne, Wireless Telecommunications Bureau

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

In the Matter of)
)
Choice Holdings LLC)
)
Petition for Determination of the Public)
Interest under Section 310(b)(4) of the)
Communications Act of 1934, as Amended)

FILED/ACCEPTED

JAN - 2 2008

Federal Communications Commission
Office of the Secretary

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

Choice Holdings LLC (“Choice Holdings”) hereby submits this request for clarification or, in the alternative, for declaratory ruling, pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”), the *Foreign Participation Order*, and the Commission’s streamlined procedures.¹ Choice Holdings requests clarification that it is authorized to have the same level of indirect foreign ownership interest in any license that it may acquire in the auction of 700 MHz band licenses, as the Commission has granted for Choice Holdings, Choice Phone LLC (“Choice Phone”), and Wave Runner LLC (“Wave Runner”) in a prior foreign ownership ruling.² In the alternative, should the Commission find that the prior foreign ownership ruling does not

¹ See 47 U.S.C. § 310(b)(4); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order on Reconsideration, 12 FCC Rcd 23891, 24033 ¶ 323 (1997) (“*Foreign Participation Order*”); 47 C.F.R § 63.12.

² See FCC Public Notice, *International Authorizations Granted*, Report No. TEL-01172, DA 07-3402 (Int’l Bur. rel. July 26, 2007) (granting authorization for Choice Phone and Wave Runner to be owned indirectly by Ronnie S. Lim, a citizen of the Philippines, in an amount up to and including 35% of their equity and voting interest, and also granting an additional, aggregate 25% indirect foreign equity and/or voting interests from other foreign investors without seeking further Commission approval under section 310(b)(4)); See also, *In re Choice Holdings LLC*, International Bureau File No. ISP-PDR-20050624-00008.

apply to newly acquired licenses in the 700 MHz band, out of an abundance of caution Choice Holdings requests a new declaratory ruling to permit the same level of indirect foreign ownership in licenses which may be acquired through Choice Phone's participation in the auction of 700 MHz band licenses.³

As the Commission is aware, Choice Holdings, Choice Phone, and Wave Runner received a prior FCC declaratory ruling approving indirect foreign ownership in excess of the 25% benchmark set forth in Section 310(b)(4).⁴ Choice Holdings believes that the Commission's prior ruling clearly should cover Choice Phone's acquisition of 700 MHz band licenses.

First, the prior ruling did not limit or condition the proposed increase in indirect foreign ownership interest to any specific types of licenses currently held by Choice Phone or Wave Runner. Since there is currently no new or increased indirect foreign ownership in Choice Phone or Wave Runner, additional Commission approval, under Section 310(b)(4), for acquiring 700 MHz band licenses should not be necessary.⁵

Second, the Commission found that foreign indirect investment in Choice Phone and Wave Runner in excess of the 25% benchmark set forth in Section 310(b)(4) was consistent with the public interest. The public interest considerations that supported the Commission's approval of the proposed increase in indirect foreign ownership of Choice

³ Choice Holdings holds an approximate 100 percent direct ownership in Choice Phone and Wave Runner. Choice Phone is planning to participate in, at the minimum, Auction 73 and Auction 76. The requested clarification or ruling would include 700 MHz band licenses to any level of geographic coverage, including a nationwide footprint.

⁴ *See supra*, note 2.

⁵ The proposed increase in indirect foreign ownership which was previously requested by Choice Holdings has not yet been consummated, and indirect foreign ownership of Choice Phone and Wave Runner currently remains at the 25% benchmark. However, once the increase in indirect foreign ownership is consummated, the amount of increase would remain within the parameters previously approved by the Commission.

Phone and Wave Runner should apply with equal force to Choice Phone's potential acquisition of 700 MHz band licenses.

Finally, it should be noted that Choice Holdings entered into an agreement with the Department of Justice (DOJ), Department of Homeland Security (DHS), and the Federal Bureau of Investigation (FBI), in connection with the proposed foreign ownership increase, to ensure national security, law enforcement, and public safety concerns are adequately addressed.⁶ This agreement remains in effect, and Choice Holdings intends to continue its compliance with the conditions established therein with respect to any newly acquired licenses. Accordingly, a new declaratory ruling should not be needed to allow Choice Phone to acquire 700 MHz band licenses.

In the alternative, out of an abundance of caution, to the extent that the Commission's prior ruling does not cover the acquisition of 700 MHz band licenses, Choice Holdings requests a new ruling specifically authorizing the acquisition of 700 MHz band licenses by Choice Phone. Just as the Commission previously found that the proposed indirect foreign ownership of Choice Phone and Wave Runner in excess of the 25% benchmark was consistent with the public interest, a proposed indirect foreign ownership in excess of the 25% benchmark of potentially acquired 700 MHz band licenses is also consistent with the public interest.

⁶ See Petition to Adopt Conditions to Authorizations and Licenses, IB File No. ISP-PDR-20050624-00008 (July 24, 2007).

I. BACKGROUND OF THE PROPOSED TRANSACTION

Ronnie S. Lim is the current 25 percent direct owner of Choice Holdings. Through his ownership of Choice Holdings, Ronnie Lim holds an approximate 25 percent indirect ownership in Choice Phone and Wave Runner.⁷ Ronnie Lim does not exercise control over the day-to-day operations of Choice Phone or Wave Runner. Ronnie Lim is a citizen of the Philippines, which is a WTO member country. He does not hold any attributable ownership interest in any foreign telecommunications company or any other domestic telecommunications company.

Richard C. Yu, a citizen of the U.S., is the current 28 percent direct owner of Choice Holdings. Through his ownership of Choice Holdings, Richard Yu holds an approximate 28 percent indirect ownership in Choice Phone and Wave Runner. He additionally holds a less than one percent direct ownership in Choice Phone and Wave Runner. Richard C. Yu currently serves as Managing Member of, and holds *de facto* control over, Choice Holdings, Choice Phone and Wave Runner. No other individual holds *de facto* control, and no change is expected to be made to the current control of the companies.

Under the proposed transaction, Ronnie Lim would purchase an additional 10 percent direct ownership in Choice Holdings from Richard Yu. This would result in Ronnie Lim acquiring approximately an additional 10 percent indirect ownership interest in Choice Phone and Wave Runner. Thus, after the transaction, Ronnie Lim, a non U.S.

⁷ Choice Holdings holds an approximate 100 percent direct ownership in Choice Phone and Wave Runner. Richard C. Yu, a citizen of the U.S., holds a less than 1 percent direct interest in both Choice Phone and Wave Runner. Jeselyn T. Yu, a citizen of the U.S., holds an 18% direct ownership interest in Choice Holdings. Angelie C. Ong, a citizen of the U.S., holds a 29% direct ownership interest in Choice Holdings.

citizen, would hold approximately a 35 percent indirect ownership in Choice Phone and Wave Runner. Ronnie Lim would assume no other ownership interest over Choice Phone and Wave Runner. Richard Yu would continue to function as managing member of Choice Phone and Wave Runner and Ronnie Lim would not perform any day-to-day managerial functions regarding either of these companies.

II. PUBLIC INTEREST STATEMENT

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

(b) No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by ...
(4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative therefore, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal of revocation of such license.

In its *Foreign Participation Order*, the Commission held that allowing indirect foreign investment in common carrier radio licensees beyond the 25 percent benchmark established by Section 310(b)(4) of the Act could promote competition in the U.S. market, thereby promoting the public interest.⁸ The Commission stated that it would analyze proposed indirect foreign investments in radio licenses “guided... by the U.S. Government’s commitment under the WTO Basic Telecommunications Agreement, which seeks to promote global markets for telecommunications so that consumers may

⁸ See *Foreign Participation Order*, 12 FCC Rcd 23891.

enjoy the benefits of competition.”⁹ Furthermore, the Commission has stated that “the public interest will be served by permitting more open investment by entities from WTO member countries in U.S. common carrier wireless licensees.”¹⁰ Based on these principles, the Commission has adopted a “strong presumption that no competitive concerns are raised by [up to and including 100 percent] indirect foreign investment” from entities from WTO member countries.”¹¹

The Commission has already determined that the public interest would be served by allowing Ronnie S. Lim, a citizen of the Philippines, a WTO member country, to hold up to a 35% interest in the licenses held by Choice Phone and Wave Runner. The same public interest rationale that applied in that decision should apply to the potential acquisition of 700 MHz band licenses by Choice Phone. The Commission should therefore issue a declaratory ruling pursuant to its streamlined processing rules if it determines that a new declaratory ruling is needed.

⁹ *Id.*

¹⁰ *Aerial Communications, Inc. and Voicestream Wireless Holdings Corp.*, 15 FCC Rcd 10089, 10093-94 (2000).

¹¹ *Voicestream Wireless Corp.*, 15 FCC Rcd 3341, 3348 (2000).

III. CONCLUSION

For the reasons stated above, and to the extent not already covered by its prior ruling, Choice Holdings respectfully requests that the Commission find that acquisition of 700 MHz band licenses by Choice Phone, with geographic coverage up to a nationwide footprint, is permissible under Section 310(b)(4) of the Act, is consistent with the Commission's prior ruling, and is in the public interest.

Respectfully submitted,



Thomas K. Crowe
Cheng-yi Liu
**LAW OFFICES OF THOMAS K.
CROWE, P.C.**
1250 24th Street, N.W.
Suite 300
Washington, D.C. 20037
firm@tkcrowe.com
(202) 263-3640

**COUNSEL FOR CHOICE
HOLDINGS LLC**

January 2, 2008