

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

FILED/ACCEPTED

APR - 4 2008

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
UNITED WIRELESS HOLDINGS 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)
Lessee United Spectrum Management)
Services LLC and subsidiary)
SkyTel Spectrum LLC)

IB Docket No.

File No. ISP-

PETITION OF UNITED WIRELESS HOLDINGS INC.
FOR DECLARATORY RULING UNDER SECTION 310(b)(4) OF
THE COMMUNICATIONS ACT OF 1934, AS AMENDED

United Wireless Holdings Inc. ("Holdings") hereby requests a declaratory ruling that foreign investment of up to 100 percent in United Spectrum Management Services LLC ("United Spectrum") and its subsidiary, SkyTel Spectrum LLC ("United Sub"), from an individual who is a citizen of a World Trade Organization ("WTO") member country is consistent with the public interest standard under Section 310(b)(4) of the Communications Act of 1934, as amended (the "Act"). United Spectrum operates as a spectrum lessee pursuant to a long-term de facto control lease filed with the Commission pursuant to Section 1.9030 of the Commission's Rules.¹ United Spectrum is currently eighty percent owned, and controlled, by an individual who is a citizen of the United States. The remaining twenty percent of United Spectrum's membership interests are

¹ 47 C.F.R. § 1.9030. See FCC Lease Nos. L000003609-L000003659.

held by Holdings, a Delaware corporation that is 100 percent foreign owned. Holdings now seeks to acquire 100 percent ownership of United Spectrum, subject to FCC consent. In addition, United Spectrum recently formed a new subsidiary, United Sub. United Sub, as the designee of Velocita Wireless LLC (“Velocita”), an entity that shares certain common owners with United Sub, proposes to acquire wireless radio service licenses, subject to FCC consent, from Bell Industries, Inc. (“Bell Industries”) pursuant to an agreement between Velocita and Bell Industries. Thus, Holdings seeks the declaratory ruling requested herein in connection with the proposed transfer of control of United Spectrum and acquisition of licenses by United Sub.

I. THE PARTIES

A. Current Controlling Interest Holder of United Spectrum: Gregory Mark Kleinsorgen

Gregory Mark Kleinsorgen is a United States citizen. He presently owns eighty percent of the membership interests of United Spectrum. Mr. Kleinsorgen is the transferor in the proposed transfer of control of United Spectrum, as he intends to sell to Holdings his eighty percent interest in United Spectrum.

United Spectrum is the spectrum lessee under a long-term de facto lease. Pursuant to the lease, United Spectrum provides wholesale data services (*e.g.*, field force automation, automated vehicle tracking, point of sale transactions, monitoring and control, and others) to customers through a stand-alone, national network operating in the 900 MHz band (896-901/935-940 MHz). Pursuant to the FCC’s rules, lessees are required to comply with eligibility restrictions related to the service at issue, including the foreign ownership limitations set forth in Section 310(b)(4) of the Act.²

² 47 C.F.R. § 1.9030(d)(2)(ii).

United Sub is a subsidiary of United Spectrum, and is the proposed assignee of wireless service licenses from Bell Industries. United Sub proposes to use the licenses to provide paging and narrowband personal communication services to the public.

B. Current Controlling Interest Holder of United Spectrum: United Wireless Holdings Inc.

Holdings is a privately held corporation incorporated under the laws of Delaware.

Andrew Fitton, a citizen of the United Kingdom, holds 100 percent of the equity of Holdings.

II. THE PROPOSED TRANSACTIONS SATISFY BOTH THE STATUTORY STANDARD AND COMMISSION POLICY TO ENCOURAGE INVESTMENT FROM WTO MEMBER COUNTRIES

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 thereof, 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 or revocation of such license.

In its *Foreign Participation Order*, the Commission concluded 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 U.S. public interest.³ The Commission analyzes proposed indirect foreign investments in common carrier licensees “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

³ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23891, 23940 (1997) (“Foreign Participation Order”).

benefits of competition.”⁴ In particular, the Commission found 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.”⁵ Based on this principle, 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.”⁶

The Commission has routinely endorsed indirect foreign investment of 100 percent by entities from WTO member countries. Shortly before the release of the *Foreign Participation Order*, the Commission approved 100 percent 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.⁷ The Commission approved 100 percent indirect foreign ownership of Telenor Satellite by Telenor ASA, a Norwegian company, which is 79 percent owned by the Kingdom of Norway; 100 percent indirect foreign ownership of GE Americom by SES Global, a Luxembourg company, which is 75.11 percent foreign-owned; and 100 percent indirect foreign ownership of VoiceStream Wireless by Deutsche Telekom AG, a German company, which is 77 percent foreign-owned, including 45 percent held by the German government; and 100 percent of Andesat Teleport by investor shareholders from Bolivia, Colombia, Ecuador, Peru and Venezuela.⁸ More recently, the Commission approved 100

⁴ *Id.*

⁵ *Aerial Communications, Inc. and Voicestream Wireless Holdings Corp.*, 15 FCC Rcd 10089, 10093-94 (2000).

⁶ *Voicestream Wireless Corp.*, 15 FCC Rcd 3341, 3348 (2000).

⁷ *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).

⁸ *See Lockheed Martin Global Telecommunications, Comsat Corp., and Comsat General Corp. and Telenor Satellite Mobile Services, Inc., and Telenor Satellite, Inc., Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses, Experimental Licenses, and Earth Station Licenses, and Petition for Declaratory Ruling*

percent indirect foreign ownership of Guam Cellular and Paging, Inc. by NTT DoCoMo, Inc., a Japanese company which is approximately 62.15 percent owned by Nippon Telegraph and Telephone, a Japanese company which is approximately 38.53 percent owned by the Japan Ministry of Finance and which, pursuant to Japanese law, must be at least two-thirds owned by Japanese citizens or entities.⁹

Since Mr. Fitton is a citizen of a WTO member country, Holdings is entitled to the presumption that foreign investment from Mr. Fitton would serve the U.S. public interest.

III. PUBLIC INTEREST CONSIDERATIONS

The proposed transactions would result in the transfer of control of de facto lessee United Spectrum and the assignment of licenses to its subsidiary United Sub. Holdings proposes to acquire all of Mr. Kleinsorgen's membership interests in United Spectrum. Holdings is technically and financially qualified to acquire control over United Spectrum and, indirectly, United Sub. Presently, United Spectrum has a services agreement with Velocita, for the provision of management, technical and consulting services related to United Spectrum's

Pursuant to Section 310(b)(b)(4) of the Communications Act, Order and Authorization, 16 FCC Rcd 22897 (2001) ("Lockheed Martin"); Application of General Electric Corp. and SES Global, For Consent to Transfer Control of Licenses and Authorizations Pursuant to Section 310(b)(4) of the Communications Act, Supplemental Order, 16 FCC Rcd 18878 (2001) ("SES Global"); Application of General Electric Corp. and SES Global, For Consent to Transfer Control of Licenses and Authorizations Pursuant to Section 310(b)(4) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act, Order and Authorization, 16 FCC Rcd 17575 (2001); VoiceStream Wireless Corp., Powertel, Inc. and Deutsche Telekom AG, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310 of the Communications Act, Memorandum Opinion and Order, 16 FCC Rcd 9779 (2001) ("VoiceStream Wireless"); FCC Public Notice, DA 03-422, February 13, 2003, page 4 of 9.

⁹ *Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc. for Consent to Transfer of Control of Licenses and Authorizations and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, Memorandum Opinion and Order and Declaratory Ruling, 21 FCC Rcd 13580 (2006).*

provision of data services using the 900 MHz leased spectrum. United Sub will have a similar agreement with respect to its provision of paging and narrowband PCS services. Velocita is owned in part by several members of the management team who were previously employed by the licensee of the spectrum being leased to United Spectrum in connection with the licensee's provision of these data services. The availability of this seasoned management team, which is technically proficient in the operation of the 900 MHz system at issue, has enabled United Spectrum to provide continuous, uninterrupted service to customers of the network from the outset of its lease arrangement. Holdings intends to continue this relationship, and thus will be utilizing the same experienced management team for both the United Spectrum 900 MHz operations and United Sub's paging and narrowband PCS operations. In addition, Holdings owns the remaining interests in Velocita along with the management team. As a result, the proposed acquisition by Holdings of Mr. Kleinsorgen's membership interest in United Spectrum will permit the more efficient management and operation of the spectrum and coordination between United Spectrum, United Sub and Velocita. Holdings also is financially qualified to acquire control over United Spectrum and United Sub. Holdings has the financial resources to acquire Mr. Kleinsorgen's membership interest and to own and operate the network related to the leased spectrum and the wireless licenses. Further, the proposed acquisition will not reduce the number of competitors in the subject markets.

Holdings requests that the Commission commence its review and processing of this Petition, and that the Wireless Telecommunications Bureau commence processing the associated transfer of control application and assignment application (the "Applications"), including placing the Applications on Public Notice for public comment, but that dispositive action by the Commission concerning the Petition and the Applications be deferred pending notification to the

Commission that any issues identified by the U.S. Department of Justice and other Executive Branch agencies (“Executive Agencies”) have or have not been resolved and requesting appropriate action by the Commission.¹⁰ If any issues identified by the Executive Agencies can be resolved through a letter commitment or a national security agreement (“NSA”) between Holdings and the Executive Agencies, Holdings anticipates that such letter commitment or NSA would be filed with the Commission along with a request that the terms of the letter commitment or NSA be adopted by the Commission as conditions to any authority granted by the Commission concerning the Petition and the Applications.

For the foregoing reasons, Holdings respectfully submits that the proposed transfer of control of United Spectrum, the resultant foreign ownership of United Spectrum and United Sub, and the assignment of licenses to United Sub, would serve the public interest.

IV. REQUESTED RULINGS

Holdings requests a declaratory ruling pursuant to Section 310(b)(4) of the Act that the public interest would be served by allowing the 100 percent ultimate indirect foreign ownership of de facto lessee United Spectrum and proposed licensee United Sub by Andrew Fitton, a citizen of the United Kingdom.

V. CONCLUSION

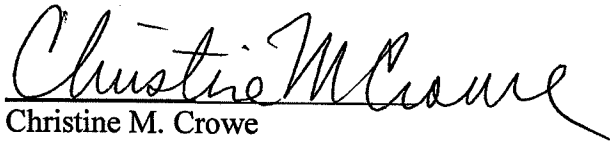
Holdings is technically and financially qualified to acquire control over United Spectrum, the de facto lessee of the 900 MHz leased spectrum, and indirectly over United Sub. The proposed acquisition would permit the more efficient management and operation of the 900 MHz leased spectrum at issue and the wireless licenses to be acquired by United Sub. U.S. national security interests will be protected through close cooperation with the appropriate Executive

¹⁰ Holdings is providing a copy of this Petition to the U.S. Department of Homeland Security simultaneous with its submission to the FCC.

Branch agencies. Moreover, the proposed transfer and assignment will not decrease the number of competitors in the relevant markets. For these and the other reasons described above, Holdings urges the Commission to issue the declaratory rulings requested in the preceding section pursuant to Section 310(b)(4).

Respectfully submitted,

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