

May 26, 2009

**VIA HAND DELIVERY**

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

**FILED/ACCEPTED**

**MAY 26 2009**

Federal Communications Commission  
Office of the Secretary

**Re: Pride Network, Inc.  
Streamlined Petition For Declaratory Ruling Under Section 310(b)(4) to  
Permit Indirect Foreign Ownership in Pride Network, Inc.**

Dear Ms. Dortch:

On behalf of Pride Network, Inc. ("Pride Network"), transmitted herewith are an original and four (4) copies of a Petition for Declaratory Ruling to permit indirect foreign ownership in Pride Network in excess of the foreign ownership benchmark applicable to common carrier radio licensees under Section 310(b)(4) of the Communications Act of 1934, as amended. Because the foreign nationals identified in the Petition are citizens of World Trade Organization members, streamlined processing of this Petition is appropriate.

Please date-stamp the extra copy of this filing, which is included for this purpose. Should you have any questions with respect to this matter, please do not hesitate to contact the undersigned at (202) 344-8065.

Respectfully submitted,



James U. Troup  
Tony S. Lee

Counsel for Pride Network, Inc.

Enclosures

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

In the Matter of )  
 )  
**Pride Network, Inc.** )  
 )  
Petition for Declaratory Ruling under ) File No. ISP - \_\_\_\_\_  
Section 310(b)(4) of the Communications Act )  
of 1934, as Amended, for Authority to Exceed )  
the Foreign Ownership Benchmark Applicable )  
to Common Carrier Radio Licensees )

**PETITION FOR DECLARATORY RULING**

Pride Network, Inc. (“Pride Network” or “Petitioner”), by its undersigned attorneys and pursuant to the Federal Communications Commission’s (“FCC” or “Commission”) streamlined processing procedures set forth in the *Foreign Participation Order*<sup>1</sup> and Section 1.2 of the Commission’s Rules,<sup>2</sup> hereby petitions the FCC for a declaratory ruling under Section 310(b)(4) of the Communications Act, as amended (the “Act”),<sup>3</sup> that indirect foreign ownership of Petitioner’s U.S. parent company in excess of the 25 percent foreign ownership benchmark applicable to common carrier radio licensees is in the public interest. In support hereof, the following is respectfully shown:

**I. INTRODUCTION**

**A. Pride Network (“Petitioner”)**

Pride Network, a Texas corporation, currently holds no radio station licenses under the Act, but intends to file an application for initial authority to provide Wireless Broadband

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<sup>1</sup> See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23940 (1997) (“*Foreign Participation Order*”).

<sup>2</sup> 47 C.F.R. § 1.2.

<sup>3</sup> 47 U.S.C. § 310(b)(4).

Services in the 3650-3700 MHz band.<sup>4</sup> As further detailed below, a waiver of Section 310(b)(4) of the Act is necessary for Pride Network to hold a Wireless Broadband Services license. Pride Network is a wholly owned subsidiary of NTS Communications, Inc. (“NTS”), a Texas corporation. NTS holds authority pursuant to Section 214 of the Act to provide domestic and international telecommunications services, as granted in File No. ITC-214-19971024-00657. NTS is a wholly owned subsidiary of Xfone, Inc. (“Xfone”). A diagram depicting Pride Network’s current ownership structure is attached hereto as Exhibit A.

**B. Xfone, Inc., the Ultimate Parent of Petitioner**

Xfone is a publicly traded Nevada holding and managing company (NYSE Amex and TASE: XFN) that offers a wide range of communications services through its operating subsidiaries. In the U.S., Xfone provides domestic and international telecommunications services pursuant to Section 214 authorizations held by NTS and another wholly owned subsidiary, Xfone USA, Inc., a Nevada corporation.<sup>5</sup> Because Xfone is a publicly traded company, its constituent shareholder makeup can change on a daily basis. Petitioner does not have any information regarding other foreign investments in Xfone other than that of the officers and directors of its ultimate parent. As detailed below, the aggregate indirect foreign ownership interests of Xfone’s officers and directors equal 39.71%, which exceeds the foreign ownership benchmark.

Name:	Abraham Keinan Chairman of the Board, Xfone, Inc.
Address:	4 Wycombe Gardens London NW11 8AL, United Kingdom
Citizenship:	Israeli and British
Principal Business:	Telecommunications
Ownership (percent):	24.19%

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<sup>4</sup> See 47 C.F.R. § 90.1301 *et seq.*

<sup>5</sup> See File No. ITC-214-20040706-00251.

Name: Guy Nissenson  
 President, Chief Executive Officer, and Director  
 Address: 3A Finchley Park  
 London N12 9JS, United Kingdom  
 Citizenship: British and Argentinian  
 Principal Business: Telecommunications  
 Ownership (percent): 14.16%

The six Xfone directors identified in the table below each hold an ownership interest in Xfone, as reflected in the table, and may be contacted at NTS's address: NTS Communications, Inc., 5307 W. Loop 289, Lubbock, TX 79414-1610. The total of the ownership interests of these directors equals 1.36%.

Name	Percent Interest	Citizenship
Eyal J. Harish	0.41	Israeli
Shemer S. Schwartz	0.45	Israeli
Aviu Ben-Horin	0.14	Israeli
Itzhak Almog	0.14	Israeli
Morris Mansour	0.11	Israeli
Israel Singer	0.11	Israeli
<b>Total</b>	<b>1.36</b>	

Accordingly, Pride Network respectfully requests that the Commission declare that it is consistent with the public interest that foreign ownership of Petitioner's ultimate U.S. parent company exceeds the 25 percent foreign ownership benchmark applicable to common carrier radio licensees to permit Petitioner to hold a Wireless Broadband Services license. Pride Network will file via the ULS system a copy of this Petition with its application for a Wireless Broadband Services license in the 3650-3700 MHz band.

## II. DISCUSSION

### A. The FCC's Foreign Participation Order Favors Additional Investment by Companies from WTO Member Countries

Section 310(b)(4) of the Act establishes a 25 percent benchmark for indirect, attributable investment by foreign individuals, corporations and governments in U.S. common carrier radio licensees, but grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.<sup>6</sup> Section 310(b)(4) provides that:

No broadcast or common carrier or aeronautical en route or aeronautical fixed 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, 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 would be served by the refusal or revocation of such license.<sup>7</sup>

In the *Foreign Participation Order*, the Commission found that applying an “open entry” standard under Section 310(b)(4) would better achieve the Act’s pro-competitive goals, and concluded that the public interest would be served by permitting greater investment by individuals or entities from WTO Member countries in U.S. common carrier licensees. With respect to such foreign investment from WTO Member countries, the Commission replaced its “effective competitive opportunities,” or “ECO,” test with a rebuttable presumption that such investment generally raises no competitive concerns.

Mr. Keinan holds both Israeli and British citizenship. The Commission generally considers a foreign individual’s home market to be his country of citizenship. Both Israel and

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<sup>6</sup> 47 U.S.C. § 310(b)(4).

<sup>7</sup> *Id.*

the United Kingdom are WTO Member countries. As such, Mr. Keinan is afforded the rebuttable presumption that his indirect investment in Petitioner does not raise competitive concerns. Mr. Nissenson holds both Israeli and Argentinian citizenship. Both Israel and Argentina are WTO Member countries. As such, Mr. Nissenson, too, is afforded the rebuttable presumption that his indirect investment in Petitioner does not raise competitive concerns. Similarly, Mssrs. Harish, Schwartz, Ben-Horin, Almog, Mansour, and Singer, each being a citizen of Israel, are afforded the rebuttable presumption that their respective indirect investment in Petitioner does not raise competitive concerns. Accordingly, streamlined processing under the *Foreign Participation Order* and grant of the instant Petition is appropriate.

**B. Public Interest**

The *Foreign Participation Order* requires the Commission to perform a public interest analysis under Section 310(b)(4).<sup>8</sup> The *Foreign Participation Order* also provides that, because additional foreign investment can promote competition in the U.S. market, the public interest would be served by permitting more open investment by foreign entities whose home market is a member of the WTO. There is a strong presumption that no competitive concerns are raised by indirect foreign investment.<sup>9</sup>

Pride Network seeks to be a vigorous competitor providing high quality wireless service in its proposed service areas in Texas and New Mexico. Specifically, Pride Network intends to provide fiber to the premises (“FTTP”) services to primarily rural areas that are unserved or underserved by broadband services providers. In order to extend the reach of its FTTP services to customers that are not proximally located to its FTTP network, Pride Network intends to use

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<sup>8</sup> *Foreign Participation Order*, 12 FCC Rcd at 23,935, ¶ 97.

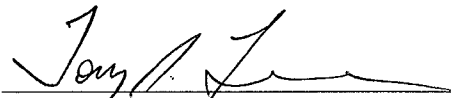
<sup>9</sup> *Id.* at 23,913, 23,941-23,942, ¶¶ 50, 113, 116; *In the Matter of STM Wireless, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 5819, 5820, ¶¶ 4-5 (2000).

its Wireless Broadband Services license to provide service to these customers. Grant of the instant Petition will enable Pride Network to leverage its FTTP-based offerings through wireless last-mile links, which will make broadband services more quickly available to a greater number of potential subscribers. Moreover, the low density of subscribers in these areas makes it especially important that Pride Network be able to provide service since other broadband providers may be less committed to serving these markets given that higher returns can be made for less investment in urban areas. Approval of this Petition, therefore, is in the public interest.

### III. CONCLUSION

WHEREFORE, for the foregoing reasons, Pride Network respectfully requests that the FCC issue a declaratory ruling that indirect foreign ownership of Petitioner's U.S. parent company in excess of the 25 percent foreign ownership benchmark, so that Pride Network may proceed expeditiously with its application for a common carrier radio license. Approval of the instant petition is in the public interest because such approval will allow Pride Network to proceed with plans to offer high-speed, competitive and affordable broadband services in its proposed service areas.

Respectfully submitted,



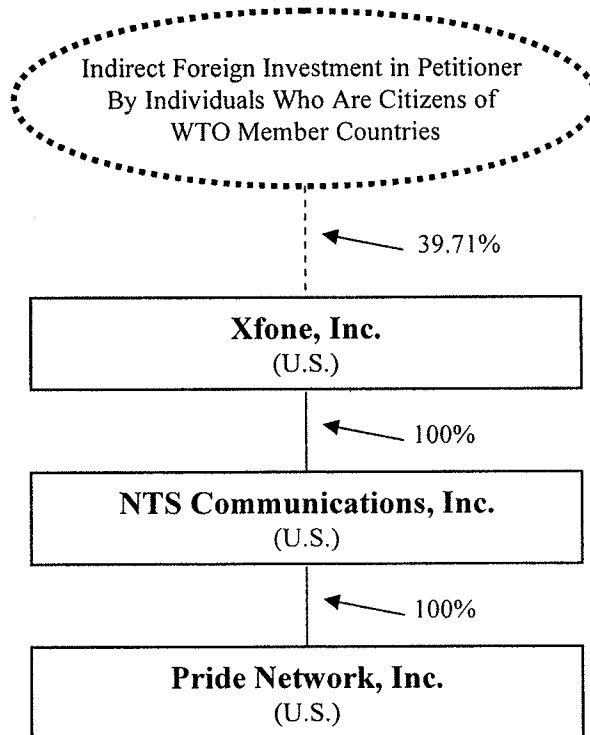
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Counsel for Pride Network, Inc.

Dated: May 26, 2009

**Exhibit A**


**Corporate Structure of Petitioner  
Pride Network, Inc.**





**CERTIFICATION**

I, Brad Worthington, hereby certify under penalty of perjury that I am Executive Vice President of NTS Communications, Inc, the parent company of Pride Network, Inc.; that Pride Network, Inc. is the Petitioner identified in the foregoing petition; that I am authorized to make this certification on behalf of Petitioner; that I have read the foregoing document and know the contents therefore, and that the same are true of my own knowledge, except as to those matters therein stated on information and belief, and as to those matters I believe them to be true.



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Brad Worthington  
Executive Vice President  
NTS Communications, Inc.

Dated: May 22, 2009