

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

In re Request of)
)
Telecom North America Mobile, Inc.)
)
For a Declaratory Ruling Under Section)
310(b)(4) of the Communications Act)

To: Chief, International Bureau

PETITION FOR DECLARATORY RULING

Telecom North America Mobile, Inc. (“TNA-Mobile”), by its Attorney and pursuant to Section 5(d) of the Administrative Procedure Act¹ and Section 1.2 of the FCC Rules and Regulations,² hereby requests a declaratory ruling under Section 310(b)(4) of the Communications Act of 1934, as amended,³ respectfully showing the following in support:

A. Introduction

1. In a separate application, TNA-Mobile seeks Commission consent, pursuant to Section 310(d) of the Communications Act,⁴ to take assignment of a Broadband Personal Communications Service (“PCS”) authorization. Broadband PCS is classified as a Commercial Mobile Radio Service (“CMRS”) and treated as “common carrier” for regulatory purposes, including the foreign ownership restrictions.⁵ Section 310(a)-(c) of the Act restricts the restricts in various ways the Commission’s authority to issue broadcast, common carrier, or aeronautical en route or aeronautical fixed radio station licenses to foreign governments, aliens, and/or their

¹ 5 U.S.C. § 554.

² 47 C.F.R. § 1.2.

³ Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b) (hereinafter referred to as the “Communications Act” or the “Act”).

⁴ 47 U.S.C. § 310(d).

⁵ *Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1461-1462 (1994).

representatives.⁶ This petition is concerned specifically with Section 310(b)(4) of the Act, governing the indirect foreign ownership of subject licenses.⁷ Specifically, the Commission is asked to declare that TNA-Mobile is not disqualified from holding common carrier radio licenses by reason of its being 100% indirectly owned by two permanent U.S. residents who are citizens of two World Trade Organization (“WTO”) member countries.

B. The Legal Standard for Indirect Foreign Ownership

2. Section 310(b)(4) of the Communications Act provides:

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.⁸

Thus, up to 25% indirect foreign ownership is permitted unconditionally, and greater levels are prohibited only in cases where the public interest so requires.⁹ “Congress chose not to adopt an absolute prohibition [of indirect foreign ownership]. Instead, it barred the entities described in sections 310(a), (b)(1) and (b)(2) from owning more than 25 percent of such a holding company only if the FCC found such restrictions to be in the public interest in the particular case.”¹⁰

⁶ 47 U.S.C. § 310(a)-(c). The statute prohibits the issuance of subject licenses to foreign governments or their representatives, 47 U.S.C. § 310(a); to aliens or their representatives, 47 U.S.C. § 310(b)(1); to foreign corporations (interpreted to include various types of business entities), 47 U.S.C. § 310(b)(2); or to domestic entities in which any of the foregoing directly hold a more than 20% aggregate ownership interest, 47 U.S.C. § 310(b)(3). These restrictions are absolute, but a more flexible approach applies to the indirect foreign ownership interests in licensee entities. 47 U.S.C. § 310(b)(4). See ¶ 2 of this petition.

⁷ 47 U.S.C. § 310(b)(4).

⁸ *Id.*

⁹ The burden is on the Commission to establish that greater than 25% indirect foreign ownership of a subject licenses is contrary to the public interest. See *Report from the Committee on Commerce on H.R. 1555*, H. Rep. 104-204, at 120-121 (1995).

¹⁰ *VoiceStream Wireless Corp., Powertel, Inc., and Deutsche Telekom AG*, 16 FCC Rcd 9779, 9803 (2001).

3. The Commission has generally concluded that foreign investment in the U.S. telecommunications markets has public interest benefits, including encouraging greater openness and flexibility by foreign governments, fostering better trade relations, promoting competition, and economic stimulation.¹¹ The Commission will typically not proscribe a greater than 25% indirect foreign ownership unless it poses a significant risk of adverse competitive harm. For purposes of evaluation under Section 310(b), the Commission has adopted a rebuttable presumption that greater than 25% indirect foreign ownership of Title III authorizations by entities from countries that are members of the WTO is in the public interest and does not raise competitive concerns under Section 310(b)(4).¹² This presumption is rebutted only in very rare cases where it is determined that such foreign ownership will pose a very high risk to competition in the U.S. market that cannot be addressed by conditions, something the Commission anticipates will be extremely rare.¹³

4. The determination whether the foreign owner is from a WTO member country, and therefore entitled to the rebuttable presumption, is based the “home market” of the entity as determined by a “principal place of business” test.¹⁴ This involves the identification and balancing of the following factors: (a) the country of a foreign entity's organization; (b) the nationality of all principals; (c) the country in which the world headquarters is located; (d) the country in which the tangible property is located; and (e) the country from which the greatest sales and revenues is derived, and (f) any other particularly relevant information.¹⁵

¹¹ *Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, Report and Order on Further Reconsideration (hereinafter, “*Foreign Participation Order*”), 12 FCC Rcd 23896 (1997); and *Market Entry and Regulation of Foreign-affiliated Entities*, IB Docket No. 95-22, Report and Order (hereinafter, “*Foreign Entry Order*”), 11 FCC Rcd 3873 (1995).

¹² *Foreign Participation Order*, 12 FCC Rcd at 23913 & 23940.

¹³ *Id.*, 12 FCC Rcd at 23913-23914.

¹⁴ *Id.*, 12 FCC Rcd at 23941-23942.

¹⁵ *Market Entry Order*, 11 FCC Rcd at 3951-3952.

C. Application of the Standard to TNA-Mobile

5. TNA-Mobile is a Nevada corporation, owned 100% by Telecom North America, Inc. (“TNA”), also a Nevada corporation. TNA is owned by two individuals, as follows: 50% by Mr. Johannes Gottschalk, German citizen, and 50% by Herve R. Andrieu, French citizen. Each gentleman is, however, a permanent legal resident of the United States, and the companies that they own directly (TNA) and indirectly (TNA-Mobile) or organized in the United States. Perhaps more significantly, the headquarters, operations, and assets of both companies are all located in the United States. Each of the United States, Germany, and France is a WTO member state. Thus, citizens of countries that are WTO signatories together own 100% of TNA. Based on these simple and straightforward facts, there is a rebuttable presumption that the 100% indirect foreign ownership as described herein poses no impediment to TNA-Mobile holding common carrier radio licenses.¹⁶ The Commission is respectfully asked to so declare.

Respectfully submitted,

Telecom North America Mobile, Inc.



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Dated: August 18, 2009

¹⁶ TNA-Mobile does not and will not have “market power” in the mobile telecommunications marketplace. TNA-Mobile is proposing to take assignment of a single PCS authorization serving a single county in Missouri.

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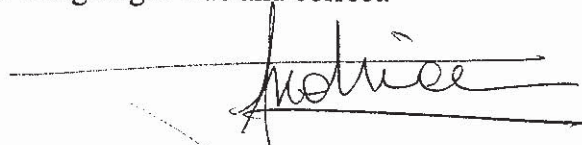
DECLARATION OF HERVE R. ANDRIEU

I, Herve R. Andrieu, hereby depose and state as that:

- (a) I am Secretary and Treasurer of Telecom North America Mobile, Inc.;
- (b) I am familiar with the factual matters asserted in the *Petition for Declaratory Ruling* to be filed on behalf of Telecom North America Mobile, Inc., in the captioned matter;
- (c) I assisted in the preparation and reviewed the final draft of the *Petition for Declaratory Ruling*; and
- (d) all such factual assertions contained in such petition, save and except matters of which official notice may be taken, are true, accurate, and offered in good faith.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 17, 2009.



Herve R. Andrieu, Secretary/ Treasurer
Telecom North America, Inc.

Note: This is a facsimile image of the declaration as signed by the affiant. The original is being sent to counsel for the applicant and will be made available to Commission staff upon request.