

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In re Application of)
)
Software Cellular Network (North America) Ltd)
)
And)
)
Software Cellular Network Ltd)
)
)
Request for Declaratory Ruling Under Section)
310(b)(4) of the Communications Act of 1934, as)
Amended)

To: The International Bureau

REQUEST FOR A DECLARATORY RULING

Software Cellular Network (North America) Ltd (“SCN”) and its parent company, Software Cellular Network Ltd (“SCN UK”) (collectively, “the Petitioners”), through their undersigned counsel and pursuant to Section 1.2 of the Rules of the Federal Communications Commission (“Commission”), 47 CFR §1.2, and the streamlined processing procedures as set forth in the *Foreign Participation Order*,¹ hereby petition the Commission for a declaratory ruling under Section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”), that it is in the public interest to allow SCN UK, a corporation formed under the laws of England and Wales, to indirectly acquire 100 percent interest in SmartCall, LLC (“SmartCall”), and its wholly-owned subsidiary, iSmart Mobile LLC (“iSmart”). This interest will be obtained through SCN UK’s wholly-owned subsidiary, SCN, a domestic company organized under the laws of

¹ 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*”), modified by Order on Reconsideration, 15 FCC Rcd 18158 (2000).

Delaware, acquiring 100 percent of the outstanding membership interests in SmartCall, iSmart's parent company. Specifically, the Petitioners seek a ruling that the public interest does not prohibit SCN's acquisition of SmartCall.

Section 310(b)(4) of the Act provides, *inter alia*, that no common carrier radio station license shall be granted to or held by a 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 or by any corporation organized under the laws of any foreign country, if the Commission finds that such approval is contrary to the public interest. The Petitioners submit that Commission approval of this transaction and the indirect foreign ownership in SmartCall, and ultimately in iSmart, is not contrary the public interest.

I. BACKGROUND

A. Description of the Transaction

This Petition for Declaratory Ruling is being filed in anticipation of an application requesting authority for a transaction whereby SCN will acquire 100 percent of the outstanding membership interests in SmartCall, which will result in the indirect transfer of control of its subsidiary, iSmart ("SCN Transaction"). As stated above, SCN is a wholly-owned subsidiary of SCN UK. A chart outlining this transaction is included as *Exhibit A*.

SmartCall is currently a spectrum lessee under spectrum manager leases with Leap Wireless International, Inc. Liquidating Trust ("Leap") and NTCH, Inc.

(“NTCH”).² The applicable call signs and serving areas of the underlying licenses are outlined in *Exhibit B*. The Leap Lease and NTCH Lease agreements each give Smart Call an option to acquire on its own, or through an affiliate, the underlying PCS licenses associated with each lease. Contemporaneously with the SCN Transaction, in a separate, but related transaction, iSmart will acquire the PCS license associated with the Leap Lease.

On September 8, 2009, SmartCall exercised its option, to purchase Leap’s PCS license (“Leap License”) and have this license assigned directly to its new subsidiary, iSmart following receipt of all required governmental approvals. Upon consummation of the SCN Transaction, for which FCC approval will be sought, SmartCall will be acquired by SCN, iSmart will become the licensee of the Leap License and the Leap Lease will be cancelled. Smart Call has not yet exercised its option to acquire NTCH’s spectrum licenses but will, as part of the SCN Transaction, be requesting FCC consent to transfer control of the NTCH Lease to iSmart. SCN UK and SCN request that any ruling granted pursuant to this Petition also take into account the future exercise of the option contained in the NTCH Lease and related assignment of the NTCH Licenses to iSmart upon exercise of the NTCH option.

SmartCall is in negotiations to purchase Get Mobile, Inc., a corporation formed under the laws of Michigan that holds a spectrum license, as outlined in *Exhibit B*. It is unclear at this time if SmartCall will acquire Get Mobile, however in an abundance of

² See L000005334 (“Leap Lease”) and File No. 0003908774 (“NTCH Lease”). SmartCall is in the process of assigning its interest in these leases to its wholly-owned subsidiary iSmart and will be filing new lease notifications to reflect iSmart as the lessee within 30 days following consummation of this *pro forma* assignment. Upon acceptance of the iSmart lease notifications by the Commission, the SmartCall leases will be cancelled.

caution, SCN and SCN UK are including this potential acquisition in its Petition for Declaratory Ruling.

SCN UK anticipates that the application reflecting the foregoing acquisition that will result in its indirect acquisition of SmartCall and iSmart will be filed immediately following the filing of this Petition.

B. The Parties in the Transaction

1. Software Cellular Network Ltd

Software Cellular Network Ltd is a privately-held corporation formed under the laws of England and Wales. A list of its shareholders who control 10% or more of SCN UK is contained in *Exhibit C*. All of the shareholders outlined in *Exhibit C* are citizens of the United Kingdom. SCN UK is headquartered at:

Software Cellular Network Ltd.
4 Royal Mint Court
London EC3N 4HJ
United Kingdom

And has its registered office at:

Software Cellular Network Ltd.
3 New Street Square
London EC4A 3TW
United Kingdom

2. Software Cellular Network (North America) Ltd

Software Cellular Network (North America) Ltd is a Delaware corporation. SCN was granted International 214 authority from the Commission earlier this year.³ SCN is a wholly-owned subsidiary of SCN UK, and therefore, has the same ownership as SCN UK as outlined in *Exhibit C*. SCN is headquartered at:

³ See File No. ITC-214-20081112-00494, March 26, 2009.

12 Williams Road
Chatham, NJ 07928 USA

SCN has not begun providing service in the United States as of this filing.

3. SmartCall, LLC

SmartCall, LLC is a Delaware Limited Liability Company headquartered at:

23500 Mercantile Road
Beachwood, Ohio 44122

SmartCall is privately held and currently has four members, as outlined in *Exhibit D*. All of the members of SmartCall plan to sell their interest to SCN upon receipt of Commission approval. As discussed above, SmartCall currently holds spectrum leases acquired from Leap and NTCH outlined in *Exhibit B* and is in the process of assigning these spectrum leases to iSmart.

4. iSmart Mobile LLC

iSmart Mobile LLC is a wholly-owned subsidiary of SmartCall, LLC and was formed under the laws of Delaware. Its headquarters are located at:

23500 Mercantile Road
Beachwood, Ohio 44122

SmartCall will be assigning the spectrum license it acquires from Leap and the spectrum lease it acquires from NTCH to iSmart upon Commission approval.

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.⁴ 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 stocked 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 refusal or revocation of such license.⁵

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 licenses. The Commission replaced its “effective competitive opportunities” test with a rebuttable presumption that such investment from WTO member countries generally raises no competitive concerns. Further, 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 licenses.”⁶

SCN UK is a corporation formed under the laws of England and Wales, with its shareholders domesticated in the United Kingdom. The Commission generally considers a company’s home market to be its country of citizenship. The United Kingdom is a WTO member country. Accordingly, SCN UK and its shareholders are accorded the rebuttable presumption that their indirect investment in iSmart does not raise competitive concerns.

⁴ 47 U.S.C. §310(b)(4)

⁵ *Id.*

⁶ *Aerial Communications, Inc. and Voicestream Wireless Holdings Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 10089, 10093-94 (2000).

B. The Commission Has Allowed Indirect Investments of 100 Percent in U.S. Common Carrier Radio Licenses From Entities in WTO Member Countries

The Commission has frequently endorsed indirect foreign ownership of 100 percent by entities from WTO member countries. Indeed the Commission has adopted a “strong presumption that no competitive concerns are raised by [up to and including 100 percent] foreign investment” from entities that are WTO countries.⁷ 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.⁸ By way of example, since the adoption of the *Foreign Participation Order*, the Commission approved 100 percent indirect foreign ownership of VoiceStream Wireless by Deutsche Telecom AG, a Germany Company and 100 percent foreign ownership of GE Americom by SES Global, a Luxembourg company.⁹

In this instance, the Petitioners are requesting approval on a transaction that will result in 100 percent indirect foreign ownership of iSmart. As demonstrated above, such foreign ownership falls well within the Commission’s established precedent.

⁷ See *Foreign Participation Order*, 12 FCC Rcd 23891, 23940 (1997).

⁸ See *Telecom Finland, Ltd., Petition for Determinate of the Public Interest under 47 U.S.C. Section 310(B)(4) to Permit KMDS and PCS Licensing*, Order, 12 FCC Rcd 17648 (1997)

⁹ See *VoiceStream Wireless Corp., Powertel, Inc. and Deutsche Telekom AG, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Section 214 and 310(d) of The Communications Act*, Memorandum and Opinion and Order, 16 FCC Rcd 9779 (2001); FCC Public Notice, DA 03-422, February 13, 2003, page 4 of 9; *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*, Order and Authorization, 16 FCC Rcd 18878 (2001); *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).

C. Public Interest

The *Foreign Participation Order* requires the Commission to perform a public interest analysis under Section 310(b)(4).¹⁰ 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.¹¹ SCN UK's home market is the United Kingdom, which is a WTO member country. Thus, there is a strong presumption that competition will be increased and the public interest would be served by United Kingdom investment in U.S. telecommunications companies. SCN has already been issued an International 214 by this Commission earlier this year. Approval of this Declaratory Ruling will further SCN's acquisition of SmartCall and, in turn, iSmart, which will allow SCN to get its innovative wireless services to U.S. market faster and more efficiently.

III. CONCLUSION

WHEREFORE, Software Cellular Network Ltd. and Software Cellular Network (North America) Ltd. respectfully request the Commission to declare that the acquisition of 100 percent interest in SmartCall, LLC and, in turn, its wholly-owned subsidiary, iSmart Mobile, LLC, is in the public interest and to allow current or future investors named in this Petition or other unnamed investors to hold or acquire an additional, aggregate 25

¹⁰ *Foreign Participation Order*, 12 FCC Rcd 23,935, ¶ 97

¹¹ *Id.* At 23,913, 24, 942, ¶¶ 50, 113, 116; *In the Matter of STM Wireless, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 5819, 5820 ¶¶ 4-5 (2000).

percent foreign equity and voting interest in SmartCall, LLC without seeking additional Commission approval.

Respectfully submitted,

**Software Cellular Network Ltd. and
Software Cellular Network (North
America) Ltd.**

By: *Jonathan E. Barker Marshall*

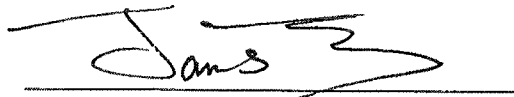
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Its Attorneys

Dated: October 1, 2009

CERTIFICATION

I, James Tagg, hereby certify under penalty of perjury that I am Chief Technology Officer of Software Cellular Network Ltd., parent company of Software Cellular Network (North America) Ltd; that both Software Cellular Network Ltd. and Software Cellular Network (North America) Ltd. are the Petitioners identified in the foregoing petition; that I am authorized to make this certification on behalf of the Petitioners; that I have read the foregoing document and believe the contents to be true to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'James Tagg', is written over a horizontal line.

James Tagg
Chief Technology Officer
Software Cellular Network Ltd.

Dated: October 1, 2009

Exhibit A

Pre-Transaction Corporate Structure

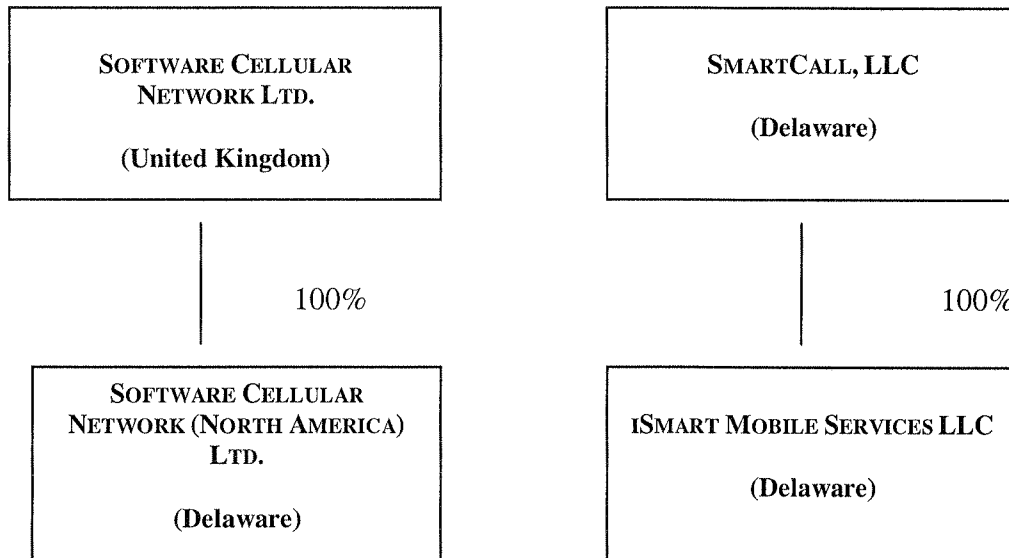


Exhibit A

Post-Transaction Corporate Structure

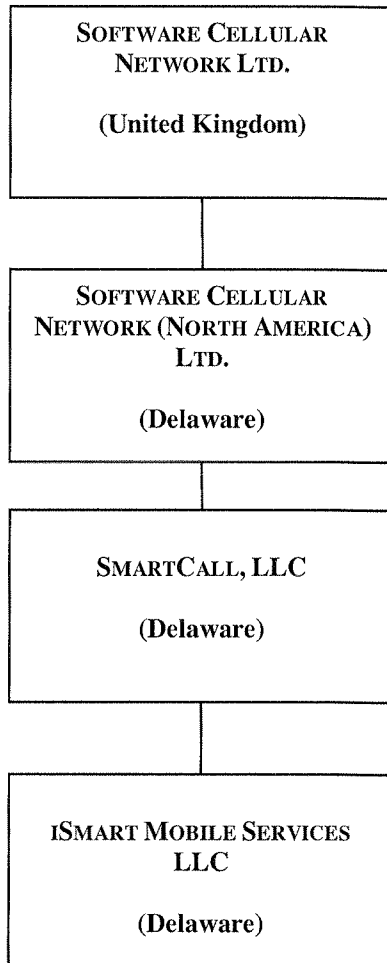


Exhibit B

Affected Spectrum Licenses

Call Sign	Location	Current Owner
WPOK576	Bozeman, MT	Leap
WPUR878	Bozeman, MT	NTCH
WPSJ976	Butte, MT	NTCH
WQBI768	Bozeman, MT	Get Mobile, Inc.

Exhibit C

10% or More Shareholders of Software Cellular Network Ltd.

The following entities hold 10% or more control over Software Cellular Network Ltd.:

Eden One LP
1, Windcombe Crescent
Bath BA2 6AH
Ownership: 16.2%
Principal Business: Venture Capital
Citizenship: UK

Independent News and Media Investments Ltd.
191 Marsh Wall
London E14 9RS UK
Ownership: 12.64%
Citizenship: UK

George Robinson
SRPE LLP
20 St. Dunstan's Hill
London, EC3r 8HL UK
Ownership: 11.83%
Citizenship: British

Wellington Partners III Technology Fund, L.P.
c/o Aztec Financial Services
PO Box 730
Commercial Street
St. Helier
Jersey JE4 0QH
Channel Islands
Ownership: 9.65%
Citizenship: Wellington Partners is based in Munich, Germany, however the Fund is run from London UK, and administered in Jersey, Channel Islands.

Exhibit D

Current Members of SmartCall, LLC

The following individuals plan to transfer their membership interests to Software Cellular Network (North America) Ltd. upon Commission approval:

Yehiel BenShoshan
23500 Mercantile Road
Beachwood, Ohio 44122
Ownership: 44.0965%
Citizenship: United States

Flank Real Estate, LLC
5553 Broadview Road
Parma, OH 44134
Ownership: 44.0965%
Citizenship: United States

Haim Keren
24765 Greenwich Lane
Beachwood, OH 44122
Ownership: 9.0050%
Citizenship: United States

Steve Smith
2042 N. Ridge Road
Elyria, OH 44035
Ownership: 2.8020%
Citizenship: United States