

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

<b>In the Matter of</b>	)	
	)	
<b>PACIFIC TELECOM INC.</b>	)	
	)	
	)	
<b>Petition for Declaratory</b>	)	<b>File No. ISP-PDR - _____</b>
<b>Ruling Under Section 310(b)(4)</b>	)	
<b>of the Communications Act of 1934</b>	)	
	)	

**PETITION OF PACIFIC TELECOM INC.  
FOR DECLARATORY RULING UNDER SECTION 310(b)(4) OF  
THE COMMUNICATIONS ACT OF 1934, AS AMENDED**

Pacific Telecom Inc. (“Pacific Telecom” or “PTI”), by its attorneys, hereby requests a declaratory ruling under Section 310(b)(4) of the Communications Act of 1934, as amended (the Act”), that the public interest would not be served by prohibiting PTI from accepting up to and including an additional non-controlling 15 percent in foreign equity and voting interests from its current non-controlling, minority investors Sumitomo Corporation and Sumitomo Corporation’s wholly-owned U.S. subsidiary, which collectively currently hold a 25 percent interest in PTI.

**BACKGROUND**

PTI is incorporated in the Commonwealth of the Northern Mariana Islands (“CNMI”), a self-governing commonwealth in political union with and under the sovereignty of the United States of America. PTI is ultimately 100% foreign-owned. PTI is majority-owned (75%) by Prospector Investments Ltd. (“Prospector”), a company

organized under the laws of the Cayman Islands, British West Indies. Prospector is owned by two individuals: (1) Ricardo C. Delgado, a citizen of the Philippines, holds a 60% equity and voting interest in Prospector; and (2) his son Jose Ricardo Delgado, also a citizen of the Philippines, holds a 40% equity and voting interest in Prospector. The remaining 25% ownership interest in PTI is held as follows: 20% by Sumitomo Corporation, a company organized under the laws of Japan; and 5% by Sumitomo Corporation's wholly-owned U.S.-incorporated subsidiary Sumitomo Corporation of America (collectively, "Sumitomo").

A diagram of PTI's current ownership structure is attached as Exhibit A.

### **REQUEST FOR DECLARATORY RULING**

PTI is the 100% direct owner of Micronesian Telecommunications Corporation ("MTC"), a CNMI corporation. MTC in turn is the 100% direct owner of PTI Pacifica Inc., a CNMI corporation that holds common carrier cellular, PCS, LMDS and earth station licenses in CNMI and Guam that are governed by the indirect foreign ownership restrictions of Section 310(b)(4) of the Communications Act.<sup>1</sup> The FCC on four occasions has authorized PTI Pacifica Inc. to acquire FCC common carrier licenses. The FCC's first decision, issued in 2003, covered a cellular license and a common carrier earth station license in the CNMI.<sup>2</sup> The second decision in 2006 approved a PCS license

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<sup>1</sup> Both Guam and CNMI are U.S. territories and are subject to the jurisdiction of the FCC. Subsequent to PTI's purchase of certain assets of IT&E Overseas, MTC and PTI Pacifica Inc. now do business under the name IT&E, although they retain their corporate names. See *IT&E Overseas, Inc., Transferor and PTI Pacifica Inc., Transferee*, DA 09-1054, 24 FCC Rcd 5466 (2009) ("2009 IT&E Order").

<sup>2</sup> *Bell Atlantic New Zealand Holdings, Inc., Transferor and Pacific Telecom Inc., Transferee, Applications for Consent to Transfer Control of a Submarine Cable Landing License, International and Domestic Section 214 Authorizations, a Cellular Radiotelephone License, Common Carrier and Non-Common Carrier Satellite Earth Station Licenses, and a Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, IB Docket No. 03-115, DA 03-3563, 18 FCC Rcd 23140 (2003) ("2003 Acquisition Order").

covering both CNMI and Guam.<sup>3</sup> The third decision in 2008 approved the acquisition at auction of a 700 MHz license covering CNMI and Guam.<sup>4</sup> The fourth decision in 2009 approved the acquisition of common carrier LMDS and earth station licenses in CNMI and Guam.<sup>5</sup>

When it first authorized Pacific Telecom to be indirectly owned 100% by foreign-controlled Prospector, the Commission stated that, consistent with its “usual policy,” it “will permit Pacific Telecom to accept up to and including an aggregate 25 percent indirect equity and/or voting interest from other foreign investors without obtaining prior Commission approval under section 310(b)(4) of the Act.”<sup>6</sup> In accordance with this ruling, Pacific Telecom accepted 25 percent investment from Sumitomo; and in the 2009 *IT&E Order* granting PTI’s Section 310(b)(4) petition the Commission expressly approved PTI’s current ownership structure, including Sumitomo’s current 25 percent investment.<sup>7</sup>

Prospector and Sumitomo are currently in discussions to increase Sumitomo’s ownership interest in PTI beyond the 25 percent previously authorized. Sumitomo Corporation is a Japanese company that is engaged in a wide range of business activities on a global basis and is publicly traded on the Tokyo Stock Exchange with no single shareholder holding a 10 percent or more interest.<sup>8</sup> Because Sumitomo’s principal place

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<sup>3</sup> *Application of Bell Atlantic New Zealand Holdings, Inc., Assignor, and GTE Pacifica, Inc., Assignee, for the Assignment of Personal Communications Service (PCS) License WQCV808 (MTA 050)*, DA 06-2197, 21 FCC Rcd 12097 (2006) at ¶ 17.

<sup>4</sup> File No. ISP-PDR-20071203-00017 (granted May 28, 2008). See Public Notice Report No. TEL-01273, DA 08-1223 (May 29, 2008).

<sup>5</sup> 2009 *IT&E Order* at ¶ 65.

<sup>6</sup> 2003 *Acquisition Order* at ¶ 28.

<sup>7</sup> 2009 *IT&E Order* at ¶ 65.

<sup>8</sup> See <http://www.sumitomocorp.co.jp/english/>.

of business is Japan,<sup>9</sup> a WTO member country, there is a “strong presumption that no competitive concerns are raised by indirect foreign investment” and the public interest would be served by such investment.<sup>10</sup>

Accordingly, Pacific Telecom requests a Commission declaratory ruling that it would not serve the public interest to prohibit PTI from accepting up to and including an additional 15 percent in foreign equity and voting interests from Sumitomo.

### **REQUEST FOR NATIONAL SECURITY AGREEMENT CONDITION**

PTI requests that the Commission condition grant of the requested authority on PTI’s continued compliance with the national security agreement between PTI and certain Executive Branch agencies, an agreement that was incorporated as an appendix to the *2003 Acquisition Order*.<sup>11</sup> A copy of this request is being submitted to the Executive Branch agencies.

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<sup>9</sup> In determining an investing entity’s home market for purposes of the public interest determination under Section 310(b)(4), the Commission will balance five factors: (1) the country of the entity’s incorporation, organization or charter; (2) the nationality of all investor principals, officers, and directors; (3) the country where the world headquarters is located; (4) the country in which the majority of tangible property is located; and (5) the country from which the entity derives the greatest sales and revenues from its operations. See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23891 at ¶ 116 (1997) (citing *Market Entry and Regulation of Foreign-Affiliated Entities, Report and Order*, 11 FCC Rcd 3873 at ¶¶ 199-208 (1995)). As applied to Sumitomo Corporation, each of these factors points to Japan, a WTO member country.

<sup>10</sup> See *Voicestream Wireless Corp.*, 15 FCC Rcd 3341 at ¶ 16 (2000).

<sup>11</sup> See *Bell Atlantic New Zealand Holdings, Inc., Transferor and Pacific Telecom Inc., Transferee, Applications for Consent to Transfer Control of a Submarine Cable Landing License, International and Domestic Section 214 Authorizations, a Cellular Radiotelephone License, Common Carrier and Non-Common Carrier Satellite Earth Station Licenses, and a Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, IB Docket No. 03-115, DA 03-3563, 18 FCC Rcd 23140 at 23167 *et sequens*.

**CONCLUSION**

For the foregoing reasons, the Commission should issue a declaratory ruling that the public interest would not be served by prohibiting PTI from accepting up to and including an additional non-controlling 15 percent in foreign equity and voting interests from its current non-controlling investor Sumitomo.

Respectfully submitted,

**PACIFIC TELECOM INC.**

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# Pacific Telecom Inc. Ownership Structure

