

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

In the Matter of)
Digicel USA MW LLC)
Petition for Declaratory Ruling Under)
Section 310(b)(4) of the Communications)
Act of 1934, as Amended, to permit)
Certain Indirect Foreign Ownership in)
a Fixed Microwave Licensee)
_____)

File No. _____
FILED/ACCEPTED
OCT 21 2010
Federal Communications Commission
Office of the Secretary

To: Chief, International Bureau

**PETITION FOR DECLARATORY RULING
UNDER SECTION 310(B)(4) OF THE
COMMUNICATIONS ACT OF 1934, AS AMENDED**

Digicel USA MW LLC ("Digicel USA" or "Petitioner"), a corporation organized under the laws of the State of Delaware, pursuant to and for the specific purposes of Section 310(b)(4) of the Communications Act of 1934, as amended, (the "Act"), 47 U.S.C. §310(b)(4), hereby petitions the Commission to issue a declaratory ruling that it is in the public interest to permit a greater than 25% indirect foreign ownership interest in Digicel USA as described below. Digicel USA is an applicant for a common carrier fixed microwave license.

Digicel USA, a U.S. corporation, has applied for authority to operate a fixed microwave link in order to interconnect existing commercial mobile radio service ("CMRS") network facilities operated by an affiliated company in the British Virgin Islands ("B.V.I.") with telecommunications infrastructure in St. Thomas in the United States Virgin Islands ("U.S.V.I."), including submarine cables that land in St. Thomas that are not readily accessible in the B.V.I.

As described in greater detail below, the grant of the fixed microwave application would serve the public interest.

I. DESCRIPTION OF FOREIGN OWNERSHIP

Digicel USA is a wholly owned subsidiary of a U.S. carrier (Digicel USA, Inc.) that holds international Section 214 authority to offer global facilities-based and resale services.¹

Digicel USA has the following foreign ownership:

<u>Name/Address</u>	<u>% Held</u>	<u>Citizenship</u>	<u>Principal Business</u>
Digicel USA, Inc. 265 Madison Avenue, Floor 4 New York, NY 10016	100%	U.S.	Telecommunications

Information regarding Digicel USA, Inc.'s 10% or greater direct or indirect shareholders is as follows:

Digicel (Jamaica) Limited 10-16 Grenada Way Kingston 5, Jamaica	100%	Jamaica	Telecommunications
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Information regarding Digicel (Jamaica) Limited's 10% or greater direct or indirect shareholders is as follows:

Digicel Caribbean Limited (St. Lucia) IBC Pointe Seraphine Castries, St. Lucia	100%	St. Lucia	Telecommunications
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Information regarding Digicel Caribbean Limited (St. Lucia) IBC's 10% or greater direct or indirect shareholders is as follows:

Digicel International Finance Limited Pointe Seraphine Castries, St. Lucia	100%	St. Lucia	Telecommunications
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Information regarding Digicel International Finance Limited's 10% or greater direct or indirect shareholders is as follows:

¹ See FCC File No. ITC-214-20031031-00520, granted Dec. 12, 2003.

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<u>Name/Address</u>	<u>% Held</u>	<u>Citizenship</u>	<u>Principal Business</u>
Digicel Holdings (Bermuda) Ltd 7 Church Street Hamilton, Bermuda	100%	Bermuda	Telecommunications

Information regarding Digicel Holdings (Bermuda) Ltd's 10% or greater direct or indirect shareholders is as follows:

Digicel Limited 7 Church Street Hamilton, Bermuda	100%	Bermuda	Telecommunications
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Information regarding Digicel Limited's 10% or greater direct or indirect shareholders is as follows:

Digicel Group Limited 7 Church Street Hamilton, Bermuda	100%	Bermuda	Telecommunications
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Information regarding Digicel Group Limited's 10% or greater direct or indirect shareholders is as follows:

Digicel Investments Limited 7 Church Street Hamilton, Bermuda	99.9%	Bermuda	Telecommunications
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Information regarding Digicel Investments Limited's 10% or greater direct or indirect shareholders is as follows:

Mr. Denis O'Brien Flat 6, Suite F, 60 Tigne St Sliema, SLM 3172 Malta	100%	Irish	Telecommunications
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II. GRANT OF THIS PETITION IS IN THE PUBLIC INTEREST

In its *Foreign Participation Order*, the Commission adopted an open entry standard for investors from World Trade Organization ("WTO") member states and a presumption that

investment from such entities is in the public interest.² The open entry standard applies to common carrier fixed microwave licenses, among other licenses.³

Under the open entry standard there is a strong presumption that indirect foreign ownership by entities whose home markets are in countries that are members of the WTO serves the public interest.⁴ The Commission determined that the public interest would be served by permitting such foreign ownership, in part, because:

[R]emoving barriers to entry and focusing on competitive safeguards will promote effective competition in the U.S. telecommunications services market by removing unnecessary regulation and barriers to entry that can stifle competition and deprive U.S. consumers of the benefits of lower prices, improved service quality, and service innovations.⁵

If an entity that controls common carrier licensees, among other authorizations, is owned in part by entities from non-WTO member states, the Commission still permits up to 100% foreign ownership, unless the interest attributable to entities from non-WTO member states exceeds 25%.⁶

In the instant case, all above referenced investors are WTO member state entities, with 99.9% of attributable ownership in Digicel USA ultimately held indirectly by Mr. Denis O'Brien, an Irish citizen. Ireland is a WTO member. Given the affirmative WTO status of all

² *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891, 23919-23921, at ¶¶ 33 *et seq.*; ¶¶ 50 *et seq.*; ¶¶ 61-66 (1997) (“*Foreign Participation Order*”), Order on Reconsideration, 15 FCC Rcd 18158 (2000).

³ *Id.* at ¶ 29.

⁴ *Id.* at 23913 (“We therefore adopt, as a factor in our public interest analysis, a rebuttable presumption that applications for Section 214 authority from carriers from WTO Members do not pose concerns that would justify denial of an application on competition grounds. We also adopt a rebuttable presumption that such competitive concerns are not raised by applications to land and operate submarine cables from WTO Members or by indirect ownership of entities from WTO Members of common carrier and aeronautical radio licenses under Section 310(b)(4) of the Act.”).

⁵ *Id.* at 23897.

⁶ *Id.* at 23940.


foreign investors, the indirect foreign ownership of Digicel USA addressed herein should not raise any competitive concerns with the Commission.

III. CONCLUSION

Petitioners respectfully requests that a declaratory ruling be issued that it is in the public interest for Digicel USA to have indirect foreign ownership as specified herein in excess of the 25% benchmark under Section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4), as such foreign ownership pertains to the above investors subject to standard conditions.

Respectfully submitted,

DIGICEL USA MW LLC

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