

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

In the Matter of)
)
Bloosurf, LLC)
)
)
)
Petition for Declaratory Ruling Under)
Section 310(b)(4) of the Communications)
Act of 1934, as Amended)
)
_____)

File No. _____

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

Bloosurf, LLC (“Bloosurf” or “Petitioner”), 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 Federal Communications Commission (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 Bloosurf as described below. Specifically, the Commission is asked to declare that Bloosurf is not disqualified from leasing common carrier Educational Broadband Service (“EBS”) channels by reason of its being 49% owned by a World Trade Organization (“WTO”) member company. Bloosurf also requests that the Commission permit it to accept additional indirect foreign ownership of up to 25% beyond the interests held by the

foreign company identified herein to accommodate shifts in ownership that may occur as a result of minor changes in the holdings of the company or individuals in the ownership chain.

I. DESCRIPTION OF THE TRANSACTION

Background. In 2003, the Commission adopted new policies to facilitate development of secondary markets in spectrum usage rights.¹ Shortly thereafter the Commission revised its policies regarding Instructional Television Fixed Service, renaming it Educational Broadband Service (“EBS”) to reflect the broader scope of services that can be provided under that authorization.² The *Secondary Markets Order* permits holders of EBS channels to lease the channels and associated spectrum to a third party as long as that party abides by the substantive requirements applicable to EBS. In addition, all lessees are subject to all relevant FCC rules, including the foreign ownership rules applicable to wireless common carrier licenses.

The Commission authorized numerous EBS channels in 2004, including to three public institutions of higher education on the eastern shore of Maryland: the University of Maryland, Eastern Shore,³ Salisbury University,⁴ and Wor-Wic Community College⁵ (collectively, the “Universities”). The build-out deadline for each University is May 1, 2011.

The Transaction. In December 2010, the Universities entered into a Lease Agreement with Bloosurf pursuant to which Bloosurf would lease a portion of the channels to provide state of the art mobile 4G wireless broadband services to the students, faculty and staff of the

¹ See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order*, 19 FCC Rcd 17503 (2003) (“*Secondary Markets Order*”).

² Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Order*, 19 FCC 14165 (2004).

³ Call sign WCN 437 (Sept. 23, 2004), available at <http://wireless2.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=2592353>.

⁴ Call sign WCN 436 (Sept. 28, 2004), available at <http://wireless2.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=2586671>.

⁵ Call sign WCN 463 (Sept. 24, 2004) <http://wireless2.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=2586680>.

Universities at a discounted rate. The lease agreement has been approved by the Universities in consultation with the Attorney General of the State of Maryland.

In recognition of the absence of broadband services on Maryland's Eastern Shore, Bloosurf was awarded a grant/loan under the American Recovery and Reinvestment Act of 2009 ("ARRA") through the Department of Agriculture's Rural Utilities Services Broadband Initiative Program ("BIP"). Using the EBS channels leased from the Universities, Bloosurf will provide the businesses and residents of Somerset, Wicomico and Worcester Counties in Maryland, as well as the Universities' population, with a broadband, open wireless last mile network that will enable the Universities and those counties to bridge the digital divide.

Concurrently with this Petition for a Declaratory Ruling, or shortly after the filing of this petition, Bloosurf will submit FCC Form 608 (FCC Application or Notification for Spectrum Leasing Arrangement or Private Commons Arrangement: Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau) to seek FCC authorization to become the *de facto* lessee of the Universities' spectrum.

II. DESCRIPTION OF OWNERSHIP

Bloosurf is a U.S. limited liability company, formed in Delaware, with its principal place of business at 1731 Broad Street, Pocomoke, Maryland 21851-1513. Bloosurf is 100 percent owned by Pocomoke Holdings, LLC ("PH") and Naimat Mughal, a U.S. citizen. A chart showing the chain of ownership of Bloosurf is included as Exhibit A.

PH is a limited liability company formed in Delaware with its principal place of business at 3653 Upton Street, NW, Washington, DC, 20008. PH has a 95% direct ownership interest in Bloosurf. Mr. Mughal owns the remaining five percent of Bloosurf.

PH has four shareholders, of which three are U.S. nationals: Vincent Sabathier, Robbie Sabathier and the Paul Carliner 2009 Irrevocable Trust, organized under the laws of the state of Nevada, and owned 100% by Paul Carliner, a U.S. citizen. Combined, these three shareholders own 51% of PH. The fourth shareholder in PH is Alsatis SAS of France.

Alsatis SAS, a French corporation, with its principal place of business at 11, avenue de l'Europe, Parc Technologique du Canal, 31520, Ramonville, Saint Agne, owns the remaining 49% of PH. Alsatis was formed in 2004 to provide advanced telecommunications services, including internet services, in rural and suburban parts of France. The founder, Chief Executive Officer and main shareholder in Alsatis is Vincent Sabathier, who holds a 50.58% interest in Alsatis. Vincent Sabathier is a U.S. citizen. Xavier Prisker, a French citizen and Chief Operating Officer of Alsatis, holds a 16.44% interest in Alsatis. The remaining shares of Alsatis are held by six individuals, all citizens of France, none of whom own more than 8.75% each of Alsatis. Exhibit B sets out the names and shareholdings of these individuals. Applying the multiplier,⁶ the indirect ownership by foreign individuals in Bloosurf is just under 25%. Exhibit C sets out direct and indirect investor interests in Bloosurf.

III. GRANT OF THIS PETITION IS IN THE PUBLIC INTEREST

The Commission stated in the *Secondary Markets Order* that, it would require that spectrum lessees meet applicable foreign ownership eligibility requirements, including those in Section 310(b) if they are common carriers.⁷ Section 310(b)(4) requires the Commission to make a public interest determination of whether to deny a license to an entity which has more than 25% indirect foreign ownership.

⁶ International Bureau, Foreign Ownership Guidelines for FCC Common Carriers and Aeronautical Radio Licenses, DA 04-3610 (2004) at 16-17.

⁷ Secondary Markets Order at ¶ 110.

In its implementation of Section 310(b)(4) of the Act, the Commission established a presumption that foreign ownership or control of greater than 25 percent of a U.S. carrier is in the public interest where the entity or entities holding that interest are from WTO members.⁸ This presumption is supported by the commitments that the United States made in the context of the WTO Basic Telecom Agreement, increased competition in the market, and the Commission's improved regulatory tools.⁹ This approach benefits U.S. consumers by encouraging additional investment and competition in the U.S. market, allowing the Commission to prevent anticompetitive conduct in the provision of international services and facilities more effectively, and promoting further opening to U.S. carriers in foreign markets.¹⁰ Further, 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.¹¹ 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.¹²

⁸ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration*, 12 FCC Rcd 23891, 23896-98, 23913 (1997) (“*Foreign Participation Order*”).

⁹ *Id.* at 23896.

¹⁰ *Id.* at 23896-97.

¹¹ *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.”).

¹² *Id.* at 23897.

As outlined above, Alsatis is a French company, and seven of its eight investors are French citizens. Given France's membership in the WTO, the indirect foreign ownership of Bloosurf addressed herein should not raise any competitive concerns with the Commission.

Consistent with its "open entry standard," the Commission also found that the public interest presumption could be overcome only in "exceptional circumstances" where control of a U.S. carrier by a foreign carrier would pose a risk to competition by virtue of the foreign carrier's ability to exercise market power to favor its U.S. affiliate.¹³ In this particular case, Alsatis is not a major foreign telecommunications service provider. Rather it is an alternative common carrier and internet service provider that has contributed to open competition for high speed internet in rural and suburban France. Alsatis' operations in France have benefited French consumers and promoted wireless competition by introducing competitive rates, expanding coverage into rural markets, and developing new and innovative services. Alsatis intends to do the same in rural Maryland.

Alsatis will not pose any risk to competition in the United States. In fact, Alsatis will be transferring its know-how from seven years of operations in rural markets in France to assist Bloosurf in developing affordable, sustainable and competitive broadband solutions for rural Maryland. Consistent with the requirements of the ARRA and regulations promulgated by the USDA, Bloosurf will operate an open network in its service area thereby fostering competition in rural markets.

Bloosurf's ARRA grant/loan depends on the availability of the spectrum at stake and the know-how from Alsatis to deploy the 4G wireless last mile network in rural Maryland. The successful deployment of Bloosurf's wireless 4G last mile network will help to implement the FCC's National Broadband Plan and the national goal of providing broadband service to 98

¹³ *Id.* at 23913-14.

percent of Americans within five years as set forth by the President of the United States in his State of the Union address January 25, 2011. Without question, grant of this petition is in the public interest.

Given the deadline for build-out in the Universities' licenses, Bloosurf requests the Commission to act as soon as possible on this petition.

IV. CONCLUSION

Petitioner respectfully requests that a prompt declaratory ruling be issued that it is in the public interest for Bloosurf to have indirect foreign ownership as specified herein plus an additional 25%. Grant of this petition will provide high-speed broadband services to currently unserved and under-served communities, helping the United States to achieve its national broadband goals.

Respectfully submitted,



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Exhibit A
Organizational Chart

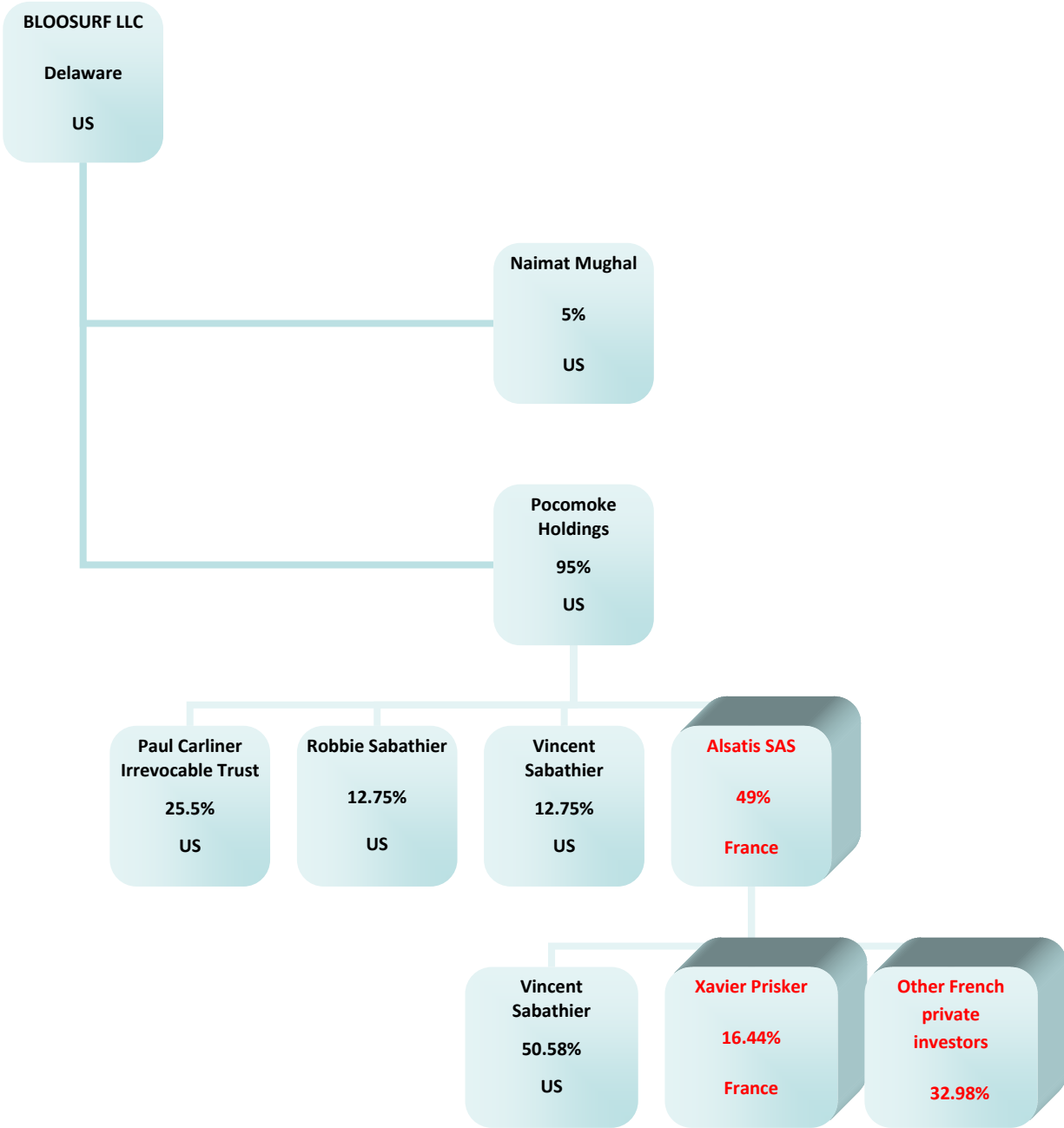


Exhibit B**Non-U.S. Shareholders in Alsatis**

Alsatis	Interest in Alsatis	Country of Citizenship
Xavier Prisker	16.44%	France
Thibout Girard	8.75%	France
Philippe Girard	8.43%	France
Romain Bucelle	6.85%	France
Estelle Prisker	4.21%	France
Raymonde Sabathier	4.21%	France
Thomas Mignien	0.53%	France

Exhibit C**Investor Interests in Bloosurf, LLC**

Investor	% Direct Ownership Interest in Bloosurf	Country of Citizenship/Country of Organization/Principal Place of Business
Pocomoke Holdings, LLC	95	United States
Naimat Mughal	5	United States
Investors	% Indirect Ownership Interest in Bloosurf	Country of Citizenship/Country of Organization/Principal Place of Business
Vincent Sabathier	35.65	United States
Robbie Sabathier	12.12	United States
Paul Carliner 2009 Irrevocable Trust	24.23	United States
Alsatis non-US investors	23	France