

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

In the Matter of)
)
Choice Holdings LLC)
)
Petition for Determination of the Public)
Interest under Section 310(b)(4) of the)
Communications Act of 1934, as Amended)

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

Choice Holdings LLC (“Choice Holdings” or “Company”) hereby submits this petition for declaratory ruling pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”), and the *Foreign Participation Order*.¹ Choice Holdings’ subsidiary, Choice Phone, LLC (“Choice Phone”), has entered into an Asset Purchase Agreement under which it plans to acquire the Wireless Communications Service (“WCS”) license (Call Sign KNLB242) currently held by Cellutec (FRN 0002147668). Accordingly, Choice Holdings respectfully requests that the Federal Communications Commission (“FCC” or “Commission”) extend its existing declaratory ruling under Section 310(b)(4) of the Act to cover any WCS license that the Company or its subsidiaries, Choice Phone, LLC and Wave Runner LLC (“Wave Runner”), may potentially acquire.²

¹ See 47 U.S.C. § 310(b)(4); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order on Reconsideration, 12 FCC Rcd 23891, 24033 ¶ 323 (1997) (“*Foreign Participation Order*”).

² The requested ruling would include licenses to any level of geographic coverage, including a nationwide footprint.

I. BACKGROUND

In 2007 the Commission issued a declaratory ruling which granted Choice Holdings authorization to have indirect foreign ownership in excess of the twenty-five percent (25%) benchmark of Section 310(b)(4) of the Act with respect to licenses held or acquired by its subsidiaries, Choice Phone and Wave Runner.³ The Commission subsequently extended the declaratory ruling to cover licenses that Choice Phone acquired in Auction No. 73 and Auction No. 78.⁴ Choice Holdings believes that the same factors supporting the Commission's prior rulings also support extending the same indirect foreign ownership levels to any WCS licenses to be acquired by Choice Phone.⁵ The public interest considerations that supported the Commission's prior declaratory rulings should apply with equal force to Choice Phone's potential acquisition of WCS licenses.

Choice Holdings entered into an agreement with the Department of Justice (DOJ), Department of Homeland Security (DHS), and the Federal Bureau of Investigation (FBI), in connection with the Company's initial proposed foreign ownership increase, to ensure that national security, law enforcement, and public safety concerns are adequately addressed.⁶ This agreement remains in effect, and Choice Holdings intends to continue its compliance with the conditions established therein with respect to any newly acquired licenses.

³ See *International Authorizations Granted*, Public Notice, Report No. TEL-01172, DA 07-3402, File No. ISP-PDR-20050624-00008 (Int'l Bur. rel. July 26, 2007) (granting authorization for Choice Phone and Wave Runner to be owned indirectly by Ronnie S. Lim, a citizen of the Philippines, in an amount up to and including 35% of their equity and voting interest, and also granting an additional, aggregate 25% indirect foreign equity and/or voting interests from other foreign investors without seeking further Commission approval under section 310(b)(4)).

⁴ See *International Authorizations Granted*, Public Notice, Report No. TEL-01273, DA 08-1223, File No. ISP-PDR-20080102-00008 (Int'l Bur. rel. May 29, 2008); *International Authorizations Granted*, Public Notice, Report No. TEL-01361, DA 09-1114, File No. ISP-PDR-20080702-00017 (Int'l Bur. rel. May 21, 2009).

⁵ The increase in indirect foreign ownership which was previously requested by Choice Holdings was consummated through a sales agreement executed on September 17, 2009.

⁶ See *Petition to Adopt Conditions to Authorizations and Licenses*, IB File No. ISP-PDR-20050624-00008 (July 24, 2007).

II. FOREIGN OWNERSHIP INFORMATION

Choice Holdings holds an approximate 100% direct ownership in both Choice Phone and Wave Runner.⁷ Jeselyn T. Yu, a citizen of the U.S., holds an 18% direct ownership interest in Choice Holdings. Angelie C. Ong, a citizen of the U.S., holds a 29% direct ownership interest in Choice Holdings.

Ronnie S. Lim, a citizen of the Philippines (a WTO member country), holds a 35% direct ownership interest in Choice Holdings. Through his ownership of Choice Holdings, Ronnie Lim holds an approximate 35% indirect ownership in Choice Phone and Wave Runner. Ronnie Lim does not exercise control over the day-to-day operations of Choice Phone or Wave Runner. He does not hold any attributable ownership interest in any foreign telecommunications company or any other domestic telecommunications company.

Richard C. Yu, a citizen of the U.S., holds an 18% direct ownership interest in Choice Holdings. Through his ownership of Choice Holdings, Richard Yu holds an approximate 18% indirect ownership interest in Choice Phone and Wave Runner. He additionally holds a less than 1% direct ownership interest in Choice Phone and Wave Runner. Richard C. Yu currently serves as Managing Member of, and holds *de facto* control over, Choice Holdings, Choice Phone and Wave Runner. No other individual holds *de facto* control, and no change is expected to be made to the current control of the companies.

⁷ Richard C. Yu, a citizen of the U.S., holds a less than 1% direct interest in both Choice Phone and Wave Runner. Accordingly, percentages of ownership used herein for Choice Phone and Wave Runner are identified as “approximate” to the nearest whole percentage.

III. PUBLIC INTEREST STATEMENT

Indirect foreign ownership of a common carrier radio licensee is governed by the benchmark limits contained in Section 310(b)(4) of the Act. Specifically, Section 310(b)(4) of the Act states as follows:

(b) 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 therefore, 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 of revocation of such license.

In its *Foreign Participation Order*, the Commission held that allowing indirect foreign investment in common carrier radio licensees beyond the 25 percent benchmark established by Section 310(b)(4) of the Act could promote competition in the U.S. market, thereby promoting the public interest.⁸ The Commission stated that it would analyze proposed indirect foreign investments in radio licenses “guided... by the U.S. Government’s commitment under the WTO Basic Telecommunications Agreement, which seeks to promote global markets for telecommunications so that consumers may enjoy the benefits of competition.”⁹ Furthermore, 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 licensees.”¹⁰ Based on these principles, the Commission has adopted a “strong presumption that no competitive concerns are raised by [up to and including 100 percent] indirect foreign investment” from entities from WTO member countries.”¹¹

⁸ See *Foreign Participation Order*, 12 FCC Rcd 23891.

⁹ *Id.*

¹⁰ *In re Aerial Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 10089, 10093-94 (2000).

¹¹ *In re Voicestream Wireless Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 3341, 3348 (2000).

The Commission has already determined that the public interest would be served by allowing Ronnie S. Lim, a citizen of the Philippines, a WTO member country, to hold up to a 35% indirect interest in the licenses held by Choice Phone and Wave Runner. The same public interest rationale should apply to the potential acquisition of WCS licenses by Choice Phone, and the Commission should extend its prior declaratory ruling accordingly.

IV. CONCLUSION

For the reasons stated above, Choice Holdings respectfully requests that the Commission extend its prior declaratory ruling to find that indirect foreign ownership of over 25% in WCS licenses to be acquired by Choice Phone, with geographic coverage up to a nationwide footprint, is permissible under Section 310(b)(4) of the Act, is consistent with the Commission's prior rulings, and is in the public interest.

Respectfully submitted,

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