

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of)
)
DOCOMO PACIFIC, INC.)
)
Request for Declaratory Ruling Under Section)
310(b)(4) of the Communications Act of 1934,) File No. ISP-PDR-_____
as amended)
)
)

To: The International Bureau

AMENDED REQUEST FOR DECLARATORY RULING

DoCoMo Pacific, Inc. (“DoCoMo”) hereby submits this request for declaratory ruling, pursuant to Section 310(b)(4) of the Communications Act and the *Foreign Participation Order*, to be incorporated with its applications in the above-captioned proceeding.¹ DoCoMo requests that the Commission extend its current Section 310(b)(4) authority to hold interests in common carrier licenses and authorizations to encompass the Advanced Wireless Services (“AWS”) license it is acquiring in the secondary market². The Commission previously approved DoCoMo’s foreign ownership structure pursuant to Section 310(b)(4) of the Communications Act.³ No material changes have occurred in DoCoMo’s foreign ownership since that

¹ See 47 U.S.C. § 310(b)(4); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 24033 ¶ 323 (1997) (“*Foreign Participation Order*”); 47 C.F.R. § 63.12.

² See ULS File Nos. 0004819444 and 0004840781 (the “Applications”).

³ Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc., WT Docket No. 06-96, FCC 06-167, *Memorandum Opinion and Order and Declaratory Ruling*, 21 FCC Rcd 13580 (2006)(“*DoCoMo Declaratory Ruling*”).

authorization was granted.⁴ Thus, there are no new foreign ownership issues, and the Commission can and should extend the previous Section 310(b)(4) authorization to the AWS licenses being acquired by DoCoMo in the Applications.

I. DOCOMO'S FOREIGN OWNERSHIP

DoCoMo is a corporation organized under the laws of Guam. Through its direct, 100 percent ownership of DoCoMo Guam Holdings, Inc., a U.S. Corporation, NTT DoCoMo, Inc. ("DoCoMo"), a Japanese company, indirectly owns 100 percent of the capital stock of DoCoMo. DoCoMo is a publicly traded company listed on the Tokyo, London, and New York stock exchanges. Nippon Telegraph and Telephone Corporation ("NTT"), a Japanese company, owns approximately 63.41 percent of each of the equity and voting interests of DoCoMo. The remaining 37.59 percent of the capital stock of DoCoMo is held by Japanese and overseas corporations and individuals, none of which individually holds a five percent or greater ownership interest. *See* Exhibit A, which sets forth DoCoMo's foreign ownership. At least 75 percent of DoCoMo's outstanding shares are held by entities from WTO member countries (including Japan, the United States and the United Kingdom).

NTT is a publicly traded company listed on the Tokyo, London, and New York stock exchanges and several stock exchanges in Japan. The Japanese government owns approximately 38.41 percent of each of the equity and voting interests of NTT, and thus indirectly holds 24.35 percent ownership interest in DoCoMo. The remaining 61.59 percent of the capital stock of NTT is held by Japanese and overseas corporations and individuals, none of which individually

⁴ DoCoMo Pacific changed its corporate name from Guam Cellular and Paging, Inc. to DoCoMo Pacific, Inc. in 2008. There was no change in ownership or corporate structure at the time of the name change.

holds a five percent or greater ownership interest. At least 75 percent of NTT's outstanding shares are held by entities from WTO-member countries (including Japan and the United States).

Based upon the Commission's principal place of business test, the home market of both DoCoMo and NTT is Japan.⁵ Moreover, at least 75 percent or more of the equity and voting interests in each of DoCoMo and NTT is held by investors from WTO member countries (Japan, the United States and the United Kingdom).

II. THE COMMISSION HAS PREVIOUSLY GRANTED SECTION 310(b)(4) AUTHORITY TO DOCOMO

The Commission previously determined that the public interest would be served by permitting "the indirect foreign ownership of Guam Cellular by DoCoMo and its Japanese shareholders (up to and including 100 percent of the equity and voting interests), with the exception of NTT; by NTT and its Japanese shareholders, through NTT's investment in DoCoMo (up to and including 62.15 percent of the equity and voting interests), with the exception of the Japan Ministry of Finance; and by the Japan Ministry of Finance, through its investment in NTT (up to and including 23.95 percent of the equity interests and 38.53 percent of the voting interests)."⁶ Thus, the Commission granted the transfer of control of DoCoMo, which

⁵ Under the principal place of business, the following factors are considered in determining the home market or nationality of a foreign entity: (1) the country of the foreign entity's incorporation, organization or charter; (2) the nationality of all investment principals, officers, and directors; (3) the country in which its world headquarters is located; (4) the country in which the majority of its tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which it derives the greatest sales and revenues from its operations. See Foreign Participation Order, 122 FCC Rcd at 23941. Both DoCoMo and NTT are Japanese companies, the majority of whose investment principals, officers, and directors also are Japanese. Additionally, DoCoMo's NTT's world headquarters and the majority of their tangible properties are located in Japan, and each company derives the greatest sales and revenues from its operations in Japan.

⁶ *DoCoMo Declaratory Ruling*, 21 FCC Rcd at 13,614, ¶ 68.

holds numerous common carrier licenses including cellular, PCS, WCS, Lower 700 MHz Band, and microwave authorizations in the Guam and Commonwealth of the Northern Mariana Islands (“CNMI”) markets.⁷

III. THE TRANSACTION IS CONSISTENT WITH SECTION 310(b)(4) OF THE ACT

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

(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 by record or voted by aliens, their representative, 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 will be served by the refusal or revocation of such license.⁸

In the *Foreign Participation Order*,⁹ the Commission determined that allowing indirect foreign investment in a common carrier radio licensee beyond the 25 percent benchmark established by Section 310(b)(4) of the Act would promote competition in the U.S. market, thereby promoting the public interest. The Commission adopted a “strong presumption that no competitive concerns are raised by...indirect foreign ownership” from entities from WTO member countries,¹⁰ unless granting the application would pose a “very high risk to competition”

⁷ *Id.* at 13,617, ¶ 77.

⁸ 47 U.S.C. § 301(b)(4).

⁹ Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997) (“*Foreign Participation Order*”).

¹⁰ *VoiceStream Wireless Corp. or Omnipoint Corp, Transferors, and VoiceStream Wireless Holding Company, Cook Inlet/VS GSM II PCS, LLC, or Cook Inlet/VS GSM III PCS, LLC, Transferees, and Various Subsidiaries and Affiliates of Omnipoint Corp., Assignor, and Cook* (continued on next page)

in a U.S. market that cannot be addressed by existing conditions the Commission places on U.S. international carriers considered dominant under its rules.¹¹ The Commission determined that this open entry standard also applies to foreign investment in entities that hold authority pursuant to Section 214 of the Act.¹² Since the adoption of the *Foreign Participation Order*, the Commission has repeatedly permitted WTO foreign interests in FCC License and authorization holders, including 100 percent foreign ownership.¹³

As previously stated, the Commission has already determined that the public interest would be served by allowing indirect foreign ownership to exceed the benchmarks specified in Section 310(b)(4) of the Act with respect to the common carrier licenses held by DoCoMo. Therefore, approval to permit DoCoMo to acquire the AWS Licenses in Guam and the CNMI set forth in the Applications is warranted for the same reasons applicable to the *DoCoMo Declaratory Ruling* noted above. In addition, DoCoMo will continue to be subject to the Agreement entered into by and between DoCoMo, DoCoMo Guam Holdings, Inc., on the one hand, and the Federal Bureau of Investigation (“FBI”), the U.S. Department of Justice (“DOJ”),

Inlet/VS GSM II PCS, LLC or Cook Inlet/VS GSM III PCS, LLC, Assignees, For Consent to Transfer of Control and Assignment of Licenses and Authorizations, Memorandum Opinion & Order, 15 FCC Red 3341, 3348 (2000).

¹¹ *Foreign Participation Order* at ¶¶ 50-52.

¹² *Id.* at ¶ 29.

¹³ See, e.g., *Intelsat, Ltd., Transferor, and Zeus Holdings Limited, Transferee, Consolidated Application for Consent to Transfers of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, as amended*, IB Docket No. 04-366, Order and Authorization, DA No. 04-4034, 19 FCC Red 24820 (2004); *Applications of Comsat General Corporation, Lockheed Martin Global Telecommunications LLC, Comsat New Services, Inc. Intelsat LLC, and Intelsat MTC LLC to Assign Licenses and Authorizations and Request for a Declaratory Ruling on Foreign Ownership*, Authorizations Granted, IB Docket No. 04-235, Public Notice, DA 04-3418 (rel. Oct. 26, 2004).

and the U.S. Department of Homeland Security (“DHS”), on the other hand, that was incorporated as part of the *DoCoMo Declaratory Ruling*.

IV. COMPETITION ANALYSIS

There are no competitive concerns raised by permitting DoCoMo to acquire additional licenses in the AWS spectrum band. In the *DoCoMo Declaratory Ruling*, the Commission concluded that because the vast majority of foreign equity and voting interests will be held by WTO member countries, DoCoMo is “entitled to a rebuttable presumption that...the indirect foreign ownership in Guam Cellular would not pose a risk to competition in the U.S. market.”¹⁴ The Commission explained that it “found no evidence in the record that rebuts this presumption and...we find no basis to conclude that the proposed transaction is likely to cause harm to competition.”¹⁵ The Commission also found that there is sufficient competition in the Guam CMA based on the fact there are four CMRS providers and each of these providers “has spectrum holdings and network coverage sufficient to continue to compete vigorously in the provision of mobile telephony services.”¹⁶ Since adoption of the *DoCoMo Declaratory Ruling*, DoCoMo believes the competitive landscape in Guam and the CNMI has not changed to the extent that would require any further competition analysis.

¹⁴ *DoCoMo Declaratory Ruling*, 21 FCC Rcd at 13,613-14, ¶ 67.

¹⁵ *Id.*

¹⁶ *Id.* at 13,600, ¶ 31.

V. CONCLUSION

For the reasons stated herein, and to the extent necessary, DoCoMo respectfully requests that the Commission extend its current Section 310(b)(4) authority to hold interest in common carrier licenses and authorizations to encompass the AWS licenses acquired by DoCoMo in the Applications.

DOCOMO PACIFIC, INC.

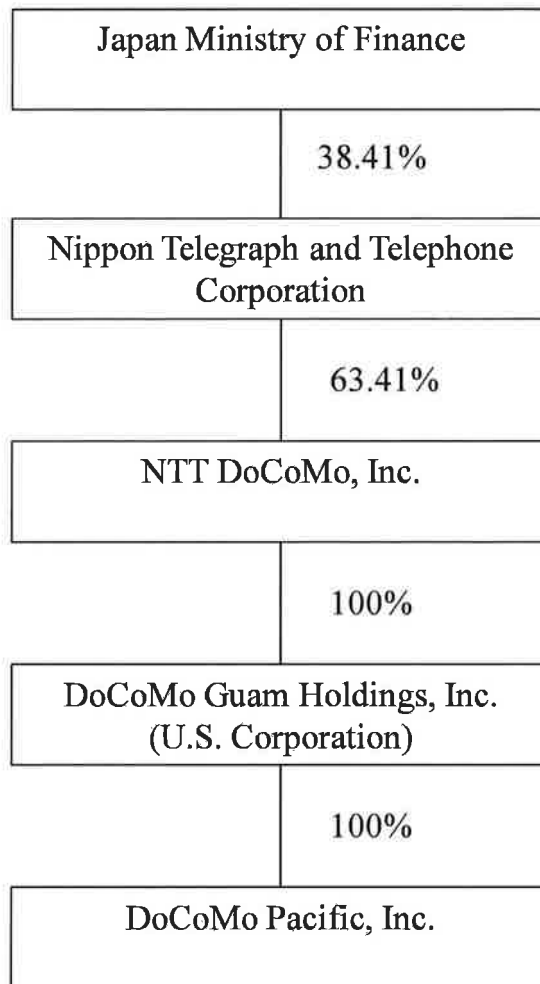
By: 

David A. LaFuria
Todd Slamowitz
Lukas, Nace, Gutierrez & Sachs, Chartered
8300 Greensboro Drive, Suite 1200
McLean, VA 22102
(703) 584-8678

Counsel for DoCoMo Pacific, Inc.

May 1, 2012

Exhibit A



* % is outstanding voting share basis