

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Petition of)
)
Software Cellular Network (North America) Ltd.)
)
And)
)
Truphone Limited)
)
To Modify Declaratory Ruling)
ISP-PDR-20091001-00009 to)
Permit Additional Foreign Investment)
)
To: The International Bureau)

PETITION TO MODIFY DECLARATORY RULING ISP-PDR-20091001-00009

Software Cellular Network (North America) Ltd. (“SCN”) and its parent company, Truphone Limited (“Truphone”), formerly known as Software Cellular Network Ltd.,¹ (collectively, “Petitioners”), through their undersigned counsel, hereby respectfully request that the FCC modify Declaratory Ruling ISP-PDR-20091001-00009 (“Declaratory Ruling”) to permit Truphone to accept certain foreign investment in excess of the 25 percent benchmark established in the Declaratory Ruling. As noted below, the new foreign investment is the result of an emergency rights issue undertaken to secure additional funding for Truphone. Information regarding the investment transaction and the new foreign interest holder is set forth below.

¹ Truphone previously was named Software Cellular Network Ltd. (“SCN UK”). SCN UK, as the parent company of SCN, was one of the petitioners for the Declaratory Ruling.

BACKGROUND

The Petitioners' original Request for Declaratory Ruling ("Request") described the transaction in which SCN-UK would acquire, through SCN, 100 percent of the membership interests in SmartCall, LLC ("SmartCall"), which wholly-owns iSmart Mobile Service LLC ("iSmart"). The FCC found that "it would not serve the public interest to prohibit the indirect foreign ownership of SmartCall and iSmart in excess of the 25 percent benchmark set forth in Section 310(b)(4)" of the Communications Act, as amended. *See* Declaratory Ruling. Thus, the Declaratory Ruling permitted the "indirect foreign ownership of SmartCall and iSmart by SCN-UK (individually) and its foreign shareholders identified in the petition (collectively) (up to and including 100 percent equity and voting interests)." *Id.*

The Declaratory Ruling allowed an additional, aggregate 25 percent indirect equity and/or voting interests from SCN UK's foreign investors identified in the petition and new foreign investors without seeking prior FCC approval subject to the condition that SmartCall and iSmart obtain prior FCC approval before any foreign individual acquires individually an indirect equity or voting interest in excess of 25 percent.²

INVESTMENT TRANSACTION

Truphone has recently undergone a change in executive management and, as part of Truphone's management transition, it was concluded that the company should secure additional funding. Truphone therefore undertook an emergency rights issue to raise additional capital. Truphone presently is concluding that rights issue. The Petitioners anticipate that the funding transaction will conclude on October 25, 2011. The Petitioners further anticipate that, upon

² The Declaratory Ruling also required SmartCall and iSmart to obtain prior approval before their indirect foreign equity or voting interests from non-WTO countries exceeds 25 percent. However, as set forth in this Petition, the new investor in Truphone is an entity organized in a WTO country.

the conclusion of the funding transaction, Vollin Holdings Limited (“Vollin Holdings”), a venture capital fund organized under the laws of the British Virgin Islands, will hold an ownership interest of 58 percent in Truphone. Information regarding Vollin Holdings is set forth below:

Vollin Holdings Limited
Geneva Place
Waterfront Drive
P.O. Box 3469, Road Town, Tortola
British Virgin Islands
Telephone: (357) 22 555000
Facsimile: (357) 22 675446

The British Virgin Islands is a WTO jurisdiction.

The 100% shareholder of Vollin Holdings is Whiteclif Enterprises Limited, which also is organized under the laws of the British Virgin Islands. Information regarding Whiteclif Enterprises Limited is set forth below:

Whiteclif Enterprises Limited
Trident Chambers
P.O. Box 146, Road Town, Tortola
British Virgin Islands

PUBLIC INTEREST SHOWING

The Petitioners recognize the Declaratory Ruling’s requirement to obtain prior FCC approval before a new investor acquires an indirect equity or voting interest in SmartCall and iSmart in excess of 25 percent. However, as noted above, Truphone has undertaken the emergency funding transaction in response to the new executive management’s conclusion that the company should raise additional capital. Petitioners moved expeditiously to submit this filing after determining that Vollin Holdings would obtain a 58 percent interest in Truphone upon conclusion of the emergency funding round.

In its recently issued Notice of Proposed Rulemaking, the FCC recognized that foreign investment is an important source of equity financing for U.S. telecommunications companies, fostering technical innovation, economic growth and job creation. *See Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act, as Amended*, MB Docket No. 11-133, FCC 11-121 (rel. Aug. 9, 2011). The Vollin Holdings investment will provide an important new source of capital to support iSmart's operations in the U.S. Finally, by supporting iSmart's operations, the Vollin Holdings investment ultimately will benefit U.S. consumers. Thus, the Petitioners respectfully submit that the Vollin Holdings investment will serve the public interest.

CONCLUSION

The Petitioners respectfully request that the FCC modify the Declaratory Ruling to permit the additional indirect foreign investment in SmartCall and iSmart set forth above.

Respectfully submitted,

Truphone Limited and
Software Cellular Network (North
America) Ltd.

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Their Attorneys

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