

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

In the Matter of:)
)
)
Indirect Foreign Investments in) File No. ISP-PDR-2013-_____
Common Carrier Licensee,)
AB License Co LLC)
)

To: International Bureau

PETITION FOR DECLARATORY RULING

AB License Co LLC (“AB License”), pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended, and relevant Commission rules, orders, and policies, requests that the Commission issue a Declaratory Ruling permitting AB License to exceed the indirect foreign ownership limits of Section 310(b)(4), primarily to accommodate an investment by Future Fund Board of Guardians, an Australian entity, through its wholly-owned subsidiary Future Fund Investment Company No.3 Pty Ltd (“Future Fund Investment”).

The Parties

AB License is a Delaware limited liability company. It is a wholly owned subsidiary of AB Spectrum LLC (“AB Spectrum”), a Delaware limited liability company.

Telcom Ventures, LLC (“Telcom”) is a Florida limited liability company controlled by Dr. Rajendra Singh and his wife, Neera. The Singhs were instrumental in the design of the first generation of cellular systems in the United States. Telcom currently holds a 50% interest in AB Spectrum.

Columbia Capital Equity Partners V (QP) LP (“CCEP”) is a Delaware limited partnership. CCEP holds a 31.29% interest in AB Spectrum.

Columbia AB Spectrum, LLC (“Columbia AB”) is a Delaware limited liability company. Columbia AB holds an 18.71% interest in AB Spectrum.

Future Fund Investment Company No. 3 Pty Ltd (“Future Fund Investment”) is a proprietary limited company incorporated in Victoria, Australia.¹ Future Fund Investment has made an escrow deposit for the benefit of AB Spectrum.² Additionally, another subsidiary of Future Fund Board of Guardians indirectly holds approximately 13.5% of the equity of AB Spectrum through Columbia AB.

CCEP and Columbia AB (collectively, the “Columbia Parties”) are affiliates, commonly controlled by Columbia Capital, a U.S. venture capital firm founded in 1989 with headquarters in Alexandria, Virginia. Columbia Capital manages approximately \$2.5 billion and specializes in investments in communications, media, and technology companies.

¹ Future Fund Investment has appointed the Future Fund Board of Guardians’ custodian (The Northern Trust Company) to hold legal title to investment assets to ensure the safekeeping of those assets. The Northern Trust Company in its capacity as custodian will hold the legal title of the assets comprising Future Fund Investment’s interest in AB Spectrum. Future Fund Investment and its parent, Future Fund Board of Guardians, hold the beneficial interests and make all decisions related to the investment. Following Commission precedent, in cases where record and beneficial interests are not identical, such as investment advisors holding stock in their own names for the benefit of customers, the party having the right to determine how the stock will be voted is considered to own it. 47 CFR § 73.3555, Note 3. In relation to the investment in AB Spectrum, The Northern Trust Company functions as custodian only and has no power or authority in respect of the investments except to the extent it is specifically directed to take action by Future Fund Investment. The Northern Trust Company is a company incorporated in the State of Illinois. Although the interest in this case is non-voting, Future Fund Investment has the right to order the custodian to acquire or divest investments and the custodian has no independent authority to take such actions.

² All funds deposited pursuant to a third-party escrow agreement are to be applied to the purchase price following Commission approval of the instant petition. Upon consummation, the funds would be released from escrow and would comprise a fraction of the 49% equity interest for which Future Fund Investment seeks consent.

Future Fund Investment is wholly owned by Future Fund Board of Guardians, a statutory body corporate established by the *Future Fund Act 2006* (Commonwealth of Australia) (the “Act”).³ The Future Fund Board of Guardians, supported by the Future Fund Management Agency has responsibility for investing and managing the assets of the Future Fund. While the Future Fund Board of Guardians holds the Future Fund’s assets for and on behalf of the Commonwealth of Australia, the Future Fund Board of Guardians is responsible for specific investment decisions and any control exercised in respect of those investments within the framework of the Act is exercised by the Future Fund Board of Guardians independently of the Government of Australia. As of March 31, 2013 Future Fund had assets of A\$85.17 billion⁴ and approximately 37% of Future Fund’s physical investments were in the United States.⁵ Future Fund Board of Guardians operates independently from the Government of Australia,⁶ which is a World Trade Organization (“WTO”) member nation.

Because it is a wholly owned direct subsidiary, the indirect ownership interests in AB License are identical to the direct ownership interests in AB Spectrum. AB License seeks a

³ The Future Fund meets the definition of a Sovereign Wealth Fund as adopted by the International Forum of Sovereign Wealth Funds (IFSWF), of which the Future Fund is a member (as is the Alaska Permanent Fund Corporation, a Sovereign Wealth Fund created by the United States). IFSWF defines Sovereign Wealth Funds as special purpose investment funds or arrangements, owned by the general government. Created by the general government for macroeconomic purposes, Sovereign Wealth Funds hold, manage, or administer assets to achieve financial objectives, and employ a set of investment strategies which include investing in foreign financial assets. See the “Santiago Principles” available at www.ifswf.org.

⁴ See, http://www.futurefund.gov.au/__data/assets/pdf_file/0018/5418/2013_May_Portfolio_update_to_March_2013.pdf

⁵ See, Future Fund Annual Report 2011/2012, available at http://www.futurefund.gov.au/annual_reports.

⁶ *Id.* at 11.

declaratory ruling that an increase in Future Fund Investment's ownership to 49% of AB Spectrum's equity will serve the public interest.

The Licenses

Through two separate applications, Cox TMI, a wholly owned subsidiary of Cox Communications, Inc. ("Cox"), has applied to assign ten A-Block 700 MHz licenses, listed in Attachment A to this petition (the "Licenses"), to AB Spectrum or AB License. Cox purchased these licenses through Auction No. 73 in 2008, but had not been able to construct facilities or serve subscribers. The Licenses provide authority to offer common carrier services. The Commission approved the assignment of three of the Licenses, and AB Spectrum consummated the purchase of those Licenses on June 26, 2013. AB Spectrum assigned its three Licenses to AB License in a *pro forma* transaction on July 2, 2013.⁷ Cox is applying to assign the other seven Licenses to AB License on the day this petition is being filed. AB License intends to close on the remaining seven Licenses following Commission grant of that assignment application and this petition.

The Future Fund Investment

AB License, which will hold the Licenses at the time of the proposed investment by Future Fund Investment, is wholly owned by AB Spectrum. AB Spectrum is managed and controlled by its Board, consisting of four directors: two appointed by Telcom and two by the Columbia Parties. Upon grant of a declaratory ruling, Future Fund Investment will make an investment that will increase its ownership to 49.0% of the equity of AB Spectrum and will have

⁷ See FCC File No. 0005844557 (application for Commission consent to a *pro forma* license assignment, filed July 2, 2013).

the authority to appoint one Board Observer. The Board Observer will have the right to attend Board and committee meetings, speak on matters presented by others, and meet and consult with officers of AB Spectrum, but Future Fund Investment will not have a vote on matters before the Board.

Following a declaratory ruling by the Commission that the investment by Future Fund Investment will serve the public interest, equity ownership of AB Spectrum will be:

Columbia Capital Equity Partners V (QP), LP	15.95%
Columbia AB Spectrum, LLC	9.55%
Telcom Ventures LLC	25.5%
Future Fund Investment Company No. 3 Pty Ltd	49.0%

All investors in Telcom are U.S. citizens or entities. CCEP is a managed fund with foreign investors holding 17.68% of its equity. Foreign entities currently hold 95.10% of the equity in Columbia AB.⁸ These foreign investors are insulated and do not have a voting interest in AB Spectrum. Following the proposed additional investment by Future Fund Investment, the foreign interests through the Columbia Parties will be reduced to approximately 11.9% and the aggregate foreign ownership of the licensee will be approximately 60.90%.⁹

⁸ Future Fund Investment Company No. 4, also a wholly owned subsidiary of Future Fund Board of Guardians, holds an approximately 13.5% interest in Columbia AB. Prior to the investment that is the subject of this petition, Future Fund Board of Guardians through its wholly-owned subsidiaries will adjust its holdings so that its aggregate share of AB Spectrum equity remains less than 50%.

⁹ The investment by Future Fund Investment will not create an issue under Section 310(a). The Commission analyzes foreign interests in a U.S.-organized parent that controls the licensee, such as here, under Section 310(b)(4). *See, e.g., Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licenses under Section 310(b)(4) of the Communications Act of 1934, as Amended*, FCC 13-50 ¶ 9 n.31 (Second Report and Order in IB Docket No. 11-133, released April 18, 2013) (“Second Report and Order”). Although Future Fund Board of Guardians holds the assets of the Future Fund (a special purpose investment fund) for and on behalf of the Commonwealth of

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The Investment by Future Fund Investment is in the Public Interest

The Commission has recognized that wireless networks are critical components of the nation's telecommunications infrastructure and that demand for wireless broadband services and the network capacity needed to support those services is surging.¹⁰ Taking advantage of the conversion of broadcast television from analog to digital, the Commission converted the former television channels 52 and 57 (698-704 MHz and 728-734 MHz) to use for services that can include mobile data and telecommunications applications. The bands were auctioned off over a two-month period in 2008 including to new entrants in the mobile telecommunications field, Cox among them. In addition to intense competition from incumbent mobile carriers, the new entrants faced unexpected problems including spectrum incompatibility with end-user equipment.¹¹ These challenges forced newcomers to change business plans and look for successors with other ideas and firm financial underpinnings, such as AB License.

The Commission has found that foreign investment has been and will continue to be an important source of financing for U.S. telecommunications companies, fostering technical innovation, economic growth, and job creation.¹² In its *Foreign Participation Order of 1997*,¹³

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Australia, Future Fund Board of Guardians is responsible for specific investment decisions and any control in respect of those investments within the framework of the Act is exercised by Future Fund Board of Guardians independently of the Government of Australia, and, in any event, its interests are not controlling. See, e.g., *Application of VoiceStream Wireless Corporation and Deutsche Telekom AG*, 16 FCC Rcd 9779, ¶ 41-42 (2001).

¹⁰ Second Report and Order, ¶ 2.

¹¹ See *Promoting Interoperability in the 700 MHz Commercial Spectrum*, 27 FCC Rcd 3521, ¶ 18 (Notice of Proposed Rulemaking, 2012) (recognizing reports that a lack of interoperability in the Lower 700 MHz band has cut off meaningful access to equipment necessary for a viable commercial service).

¹² Second Report and Order, ¶ 3

the Commission adopted a presumption that foreign investment from WTO member companies in U.S. common carrier licensees poses no competitive concerns in the U.S. market.¹⁴ As a WTO member and longstanding trade partner of the U.S. with strong shared cultural backgrounds and a history of cooperation, Australia merits this presumption for its investment companies. There is nothing about the proposed investment by Future Fund Investment that would disturb this presumption.

Earlier this year, the Commission adopted new rules that revise and simplify its regulatory framework for decisions under Section 310(b), reducing the costs and burdens of applicants and thus promoting foreign investment in U.S. telecommunications carriers and our nation's telecommunications infrastructure.¹⁵ These new rules, which will not go into effect until after the filing date of this petition,¹⁶ would not materially alter the form or substance of this request, but specify information that will aid the Commission's consideration of petitions. In an effort to streamline processing of this petition, AB License is providing the information that will be required by new Sections 1.990 and 1.991 (when they become effective), as Attachment B to this petition.

The Commission has expressed the need to facilitate greater investment in mobile networks as a critical component of economic growth.¹⁷ This petition meets all of the requirements of Section 310 and the Commission's rules and policies, including those adopted in

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¹³ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market: Market Entry and Regulation of Foreign-Affiliated Entities*, 12 FCC Rcd 23891 (1997).

¹⁴ *Id.*, ¶¶ 51-54.

¹⁵ Second Report and Order, ¶¶ 4-6 and 140.

¹⁶ *See* Second Report and Order ¶ 148.

¹⁷ *Id.* ¶¶ 2-3 and Statement of [Acting Chairwoman] Mignon L. Clyburn in support of the order.

the Second Report and Order. Accordingly, the Commission should provide streamlined processing for this request.

Respectfully submitted,

/s/

Counsel for AB License Co LLC

Trey Hanbury
Hogan Lovells US LLP
555 13th St., NW
Washington, DC 20004
Phone: 202-637-5534
Fax: 202-637-5910

/s/

Counsel for Future Fund Board of Guardians

David H. Pawlik
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005
Phone: 202-371-7044
Fax: 202-661-9022

July 2, 2013

**Before the
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Washington, D.C.**

In the Matter of:)
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Indirect Foreign Investments in) File No. ISP-PDR-2013-_____
Common Carrier Licensee,)
AB License Co LLC)
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**PETITION FOR DECLARATORY RULING
CERTIFICATION OF
AB LICENSE CO LLC**

I, Monish Kundra, Authorized Signatory for AB Spectrum LLC, the sole member of AB License Co LLC, certify under penalties of perjury that the facts contained in the foregoing Petition are true and correct. AB License Co LLC has calculated the ownership interests disclosed in this Petition based upon its review of the Commission’s rules. These disclosures satisfy each of the pertinent standards and criteria set forth in the rules.

AB License Co LLC further certifies that neither it nor any party to this application is subject to denial of federal benefits by federal and/or state courts under authority granted in 21 U.S.C. § 862.

By: AB Spectrum LLC, its Member

/s/ Monish Kundra

Monish Kundra, Authorized Signatory

Executed on July 2, 2013