

**BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C. 20554**

In the Matter of )  
 )  
**Great American Broadband, Inc.** ) File No. ISP-PDR-\_\_\_\_\_ )  
 )  
Petition for Declaratory Ruling Under )  
Section 310(b)(3) of the Communications Act of )  
1934, as Amended )

To: Chief, International Bureau

**PETITION FOR DECLARATORY RULING**

Great American Broadband, Inc. (“GAB”), pursuant to Section 1.990(a)(2) of the Commission’s Rules and the Commission’s *Forbearance Order*,<sup>1</sup> hereby petitions the Commission for a declaratory ruling that the indirect non-controlling ownership of more than 20 percent of the shares of GAB by a foreign individual through a Delaware limited liability company is consistent with the public interest.

GAB holds three 700 MHz licenses that are subject to the foreign ownership restrictions of Section 310(b)(3) of the Communications Act of 1934, as amended (the “Act”).<sup>2</sup> Significantly, GAB has neither constructed the facilities authorized by these licenses nor operated as a common carrier. Accordingly, GAB’s failure to timely seek and obtain approval for its indirect minority foreign ownership has had no potential for harmful effect on the public interest. In addition, the Commission has approved GAB’s assignment of the 700 MHz

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<sup>1</sup> *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, 27 FCC Rcd 9832, 9837 (2012) (“*Forbearance Order*”).

<sup>2</sup> Call Signs WQKH494, WQKH496 and WQKH497.

Service licenses to AT&T Mobility Spectrum LLC (“AT&T”).<sup>3</sup> The grant of this Petition will facilitate the closing on the assignment of the licenses to AT&T.

## **I. STATEMENT OF FACTS**

### **a. GAB’s Business**

GAB was formed on May 11, 2007 as a Delaware corporation by Robert L. Schmidt. Mr. Schmidt is a seasoned communications entrepreneur who co-founded C-SPAN and has operated cable and wireless communications systems in the United States, the Soviet Union, Ireland, the Philippines and Argentina. From 1975 until 1979, Mr. Schmidt served as President of the National Cable Telecommunications Association. In the 1980s, Mr. Schmidt served as President of the Wireless Cable Association International.

In 2008, GAB acquired wireless Internet service providers (“WISPs”) in Indiana with a goal of creating a large regional footprint that would provide fixed wireless broadband services to consumers in rural America. Originally financed with funds from friends and business associates of Mr. Schmidt, in 2008 GAB began to seek funds from other sources to help finance acquisition of WISPs and spectrum for future development as well as for ongoing and expanded WISP operations. Today, using unlicensed and “lightly licensed” spectrum in the 3650-3700 MHz band, GAB serves approximately 2,800 subscribers in rural areas near Fort Wayne, Indiana, many of whom have no other choice for terrestrial broadband access. The unlicensed and “lightly licensed” spectrum used by GAB to provide fixed broadband service is not the subject of the foreign ownership limitations of Section 310(b)(3) of the Act.

Information required by Sections 1.990(c)(1) and 1.991 is set forth below and in the attached Declaration of Robert L. Schmidt (Appendix A).

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<sup>3</sup> File No. 0005744542.

### **b. Ownership of GAB When the Licenses Were Granted**

On December 3, 2007, GAB filed a short-form application with the Commission to participate in Auction 73.<sup>4</sup> At that time, and at all times since GAB's inception, Mr. Schmidt was Chairman and Chief Executive Officer of GAB. Mr. Schmidt held an initial 91 percent ownership interest in GAB. Mr. Schmidt is a United States citizen. The owners of the remaining nine percent are also U.S. citizens.

GAB was the successful bidder for four 700 MHz licenses:

<b>Market</b>	<b>Call Sign</b>
Indiana 3 - Huntington	WQKH495
California 6 - Mono	WQKH494
Nevada 4 - Mineral	WQKH496
Wyoming 5 - Converse	WQKH497

On April 3, 2008, GAB filed a long-form application<sup>5</sup> and ownership report (Form 602).<sup>6</sup> Among other things, GAB reported that Mr. Schmidt's ownership interest had decreased to 85 percent as the result of additional equity investments by other shareholders, all of whom are U.S. citizens.

A little over a year later, on May 20, 2009, the Commission granted GAB the four 700 MHz Service licenses identified above. In the meantime, the U.S. financial markets had collapsed. For example, Lehman Brothers filed for bankruptcy protection on September 15, 2008.

### **c. The Pearl Capital Transaction**

On May 29, 2008, Pearl Capital Holdings LLC ("Pearl Capital") agreed to lend GAB \$1 million pursuant to a Loan Agreement and Convertible Promissory Note ("Note"). These funds were used almost exclusively to help fund the operations of GAB's fixed wireless

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<sup>4</sup> File No. 0003247040.

<sup>5</sup> File No. 0003383406.

<sup>6</sup> File No. 0003383367.

broadband business in Indiana. GAB received the funds on or about June 20, 2008. Copies of the Loan Agreement and Note can be provided to the Commission upon request.

Pearl Capital is a Delaware limited liability company. Its sole member is The Amethyst Trust (the "Trust"). The administrative trustee of the Trust is J.P. Morgan Trust Company and the investment trustee and sole beneficiary is Mr. Iftikhar Shirazi. Mr. Shirazi is a citizen of Pakistan, but was educated in the United States and resides in New Jersey.

The Note provided that the loan would automatically convert into an interest in GAB upon the approval by the United States Department of Homeland Security of Mr. Shirazi's application for an EB-5 visa. The Note recites that based upon a \$30 million valuation of GAB, the Note would convert into approximately three percent of the equity of GAB, but expressly provided that the ultimate valuation would be subject to future adjustment.

On November 9, 2009, following grant of the 700 MHz licenses, the Department of Homeland Security granted Mr. Shirazi an EB-5 visa. The grant of the visa triggered the "automatic" conversion of the Note to equity. However, GAB did not issue stock to Pearl Capital at that time because GAB and Pearl Capital did not agree on the value of GAB, which had declined dramatically in light of the collapse of the financial markets and GAB's related decision to not develop the 700 MHz Licenses.

Not until March 31, 2011 did GAB and Pearl Capital agree that the Note would convert into 39.3 percent of the stock of GAB. A copy of GAB's letter to Pearl Capital evidencing this agreement is attached hereto as Appendix B.<sup>7</sup>

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<sup>7</sup> The conversion also resulted in a dilution of Mr. Schmidt's ownership interest in GAB from 85 percent to 43.02 percent. By separate application, GAB is requesting the Wireless Telecommunications Bureau's consent *nunc pro tunc* to the *pro forma* transfer of GAB caused by the conversion of the Note.

At that time, GAB overlooked that it still held 700 MHz licenses because it no longer had any intention to use the licenses in its business. In addition, GAB has never provided common carrier service.

The ownership of GAB has remained unchanged since March 31, 2011. Mr. Schmidt remains GAB's largest shareholder with 43.02 percent ownership in GAB. Mr. Shirazi, through his interest in the Trust and Pearl Capital, indirectly owns 39.3 percent of GAB. A diagram of GAB's ownership is attached hereto as Appendix C. Other than Mr. Shirazi, all of GAB's owners are United States citizens.

In 2012, GAB received an offer from AT&T to purchase one of its licenses. On July 11, 2012, GAB and AT&T filed an application for assignment of the license for the Indiana 3-Huntington market (Call Sign WQKH495).<sup>8</sup> No question was raised about the ownership of GAB in connection with that transaction.

After receiving approval to assign the remaining three licenses to AT&T, however, GAB realized in preparation for the closing with AT&T that it should not have issued the 39.3 percent interest to Pearl Capital in 2011 without the prior approval of the Commission. GAB is filing this Petition to rectify that oversight.

**d. Information Required by Section 1.991**

GAB provides the following additional information in accordance with Section 1.991:

Name of Licensee:	Great American Broadband, Inc.
FRN:	0017176173
Mailing Address:	360 N Main Street, Suite G Bluffton, Indiana 46714
Place of Organization:	Delaware
Email Address:	rschmidt@greatamericanbroadband.com
Type of Business Organization:	Limited Liability Company
Name and Title of Certifying Officer:	Robert L. Schmidt, Chairman/CEO
Type of Radio Service Authorized:	700 MHz Service

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<sup>8</sup> File No. 0005300675.

Holders of 10 Percent or More of GAB:      Robert L. Schmidt – 43.02%  
   Pearl Capital Holdings LLC – 39.3%  
   Otto Hoernig, Jr. – 11%

## II. GRANT OF THE DECLARATORY RULING IS IN THE PUBLIC INTEREST

Section 310(b)(3) of the Act provides that no common carrier license shall be held by any corporation of which more than 20 percent of the shares is owned of record or voted by a foreign individual. In the *Forbearance Order*, the Commission decided to:

forbear from applying section 310(b)(3) to the class of common carrier licenses in which foreign governments, individuals, and/or entities would hold over 20 percent of the ownership interests of the licensee through intervening U.S.-organized entities that do not control the licensee, to the extent we determine such foreign ownership is consistent with the public interest under the policies and procedures we use for assessing foreign ownership under section 310(b)(4).<sup>9</sup>

By this Petition, GAB seeks a ruling permitting Pearl Capital, as indirectly controlled by Mr. Shirazi, a citizen of Pakistan, to hold its 39.3 percent indirect ownership interest in GAB. The grant of this Petition will facilitate the sale of GAB's 700 MHz licenses to AT&T. Upon consummation of the sale, GAB will no longer hold licenses subject to Section 310(b) of the Act.

Grant of this petition would be consistent with the public interest. First, GAB never constructed or operated common carrier facilities that implicate the Commission's foreign ownership restrictions. GAB did not use any of the funds raised from Pearl Capital to construct or operate common carrier facilities because GAB decided, shortly after acquiring the 700 MHz licenses, that it would focus on operating and expanding its WISP activities, and used the Pearl Capital funds for those purposes.

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<sup>9</sup> *Forbearance Order* at 9837.

Second, upon consummation of the assignment of GAB's remaining 700 MHz licenses – a transaction the Commission already has approved – GAB will hold no common carrier licenses that would implicate Section 310(b)(3) of the Act.

No adverse circumstances exist with respect to the proposed transaction. Operation of GAB should pose no national security or law enforcement concerns. In addition, neither GAB, Mr. Shirazi nor any entity that Mr. Shirazi controls is a foreign carrier, or is controlled by or under common control with a foreign carrier. The Pearl Capital investment therefore has not resulted and will not result in any increased concentration in any market for telecommunications services in the United States and will not otherwise result in a foreign carrier being able to exercise market power to favor a U.S. affiliate.

GAB's omissions resulted from a single transaction – the Pearl Capital loan – that involved a great degree of uncertainty in the amount of equity Pearl Capital would obtain upon conversion. Over time, that investment changed from a preliminary valuation of three percent to, ultimately, a valuation of 39.3 percent. At the time of the conversion, the valuation of GAB had changed dramatically, in part because of the determination that the 700 MHz licenses had no operational value to GAB, and also because of the collapse of the financial markets.

Grant of GAB's request is consistent with precedent. The International Bureau ("Bureau") has approved requests for foreign ownership after consummation of the transaction, even where the foreign interest was controlling. For example, the Bureau approved after-the-fact the acquisition by Vollin Holdings Limited ("Vollin"), an entity organized in the British Virgin Islands, of a 75.39 percent indirect interest in iSmart Mobile, LLC ("iSmart"), which held broadband PCS licenses.<sup>10</sup> The Bureau also approved the assignment of a Section 214

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<sup>10</sup> See *Public Notice*, Report No. TEL-01576, DA 12-1445 (rel. Sept. 6, 2012), at 2.

authorization two years after the fact to another entity that had 25 percent foreign ownership and after the assignee was providing service to the assignor's customers.<sup>11</sup>

### III. CONCLUSION

For the foregoing reasons, Great American Broadband, Inc. respectfully requests that a declaratory ruling be issued that Pearl Capital's 39.3 percent ownership interest in GAB is in the public interest.

Respectfully submitted,

**GREAT AMERICAN BROADBAND, INC.**

By:  \_\_\_\_\_

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*Counsel to Great American Broadband, Inc.*

December 4, 2013

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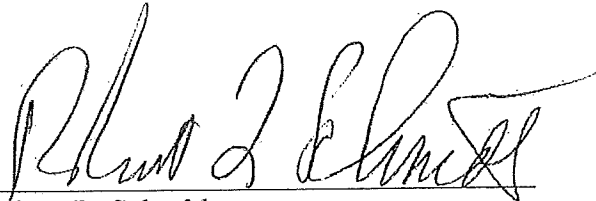
<sup>11</sup> See *Public Notice*, Report No. TEL-01554, DA 12-543 (rel. Apr. 5, 2012), at 3. See also *Public Notice*, Report No. TEL-01588, DA 12-1842 (rel. Nov. 15, 2012), at 3 (approving increased foreign investment in Verscom LLC).



### **Declaration of Robert L. Schmidt**

My name is Robert L. Schmidt. I am the Chairman/CEO of Great American Broadband, Inc. ("GAB"). I have read the foregoing Petition for Declaratory Ruling. GAB has calculated the ownership interests for Pearl Capital Holdings LLC and its owners, The Amethyst Trust and Ifikhar Shirazi based on my review of the Commission's rules, and the interests disclosed in the foregoing Petition satisfy the standards and criteria set forth in those rules.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 4, 2013.

  
Robert L. Schmidt