

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

In re Request of )  
 )  
**Telecom North America Mobile, Inc.** )  
 )  
For a Declaratory Ruling Under Section )  
310(b)(4) of the Communications Act )

To: Chief, International Bureau

**PETITION FOR DECLARATORY RULING**

Telecom North America Mobile, Inc. (“TNA-Mobile”), by its Attorney and pursuant to Section 5(d) of the Administrative Procedure Act<sup>1</sup> and Section 1.2 of the FCC Rules and Regulations,<sup>2</sup> hereby requests a declaratory ruling under Section 310(b)(4) of the Communications Act of 1934, as amended,<sup>3</sup> respectfully showing the following in support:

**A. Introduction**

1. In a separate application (File No. 0005459553), TNA-Mobile seeks Commission consent, pursuant to Section 310(d) of the Communications Act,<sup>4</sup> to lease (via a spectrum manager lease agreement) a portion of a cellular radio authorization. Cellular radio is classified as a Commercial Mobile Radio Service (“CMRS”) and treated as “common carrier” for regulatory purposes, including the foreign ownership restrictions.<sup>5</sup> Section 310(a)-(c) of the Act restricts the restricts in various ways the Commission’s authority to issue broadcast, common carrier, or aeronautical en route or aeronautical fixed radio station licenses to foreign

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<sup>1</sup> 5 U.S.C. § 554.

<sup>2</sup> 47 C.F.R. § 1.2.

<sup>3</sup> Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b) (hereinafter referred to as the “Communications Act” or the “Act”).

<sup>4</sup> 47 U.S.C. § 310(d).

<sup>5</sup> *Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1461-1462 (1994).

governments, aliens, and/or their representatives.<sup>6</sup> This petition is concerned specifically with Section 310(b)(4) of the Act, governing the indirect foreign ownership of subject licenses.<sup>7</sup> Specifically, the Commission is asked to declare that TNA-Mobile is not disqualified from holding common carrier radio licenses by reason of its being 89% indirectly owned by two permanent U.S. residents who are citizens of two World Trade Organization (“WTO”) member countries, and upon whose qualifications this Commission already has passed.

TNA-Mobile has already sought and obtained a virtually identical declaratory ruling from this Commission, in connection with its acquisition of another CMRS authorization, specifically, the broadband PCS authorization licensed under call sign WQLF750. *See* Public Notice, Report No. TEL-01481, *International Authorizations Granted*, 26 FCC Rcd 1359, 1362 (Int’l. Bur., 2011) (“*TNA-Mobile P*”). TNA-Mobile agrees herein to accept all conditions which were imposed upon it in connection with the grant of the prior declaratory ruling request.

**B. The Legal Standard for Indirect Foreign Ownership**

2. Section 310(b)(4) of the Communications Act provides:

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 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.<sup>8</sup>

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<sup>6</sup> 47 U.S.C. § 310(a)-(c). The statute prohibits the issuance of subject licenses to foreign governments or their representatives, 47 U.S.C. § 310(a); to aliens or their representatives, 47 U.S.C. § 310(b)(1); to foreign corporations (interpreted to include various types of business entities), 47 U.S.C. § 310(b)(2); or to domestic entities in which any of the foregoing directly hold a more than 20% aggregate ownership interest, 47 U.S.C. § 310(b)(3). These restrictions are absolute, but a more flexible approach applies to the indirect foreign ownership interests in licensee entities. 47 U.S.C. § 310(b)(4). See ¶ 2 of this petition.

<sup>7</sup> 47 U.S.C. § 310(b)(4).

<sup>8</sup> *Id.*

Thus, up to 25% indirect foreign ownership is permitted unconditionally, and greater levels are prohibited only in cases where the public interest so requires.<sup>9</sup> “Congress chose not to adopt an absolute prohibition [of indirect foreign ownership]. Instead, it barred the entities described in sections 310(a), (b)(1) and (b)(2) from owning more than 25 percent of such a holding company only if the FCC found such restrictions to be in the public interest in the particular case.”<sup>10</sup>

3. The Commission has generally concluded that foreign investment in the U.S. telecommunications markets has public interest benefits, including encouraging greater openness and flexibility by foreign governments, fostering better trade relations, promoting competition, and economic stimulation.<sup>11</sup> The Commission will typically not proscribe a greater than 25% indirect foreign ownership unless it poses a significant risk of adverse competitive harm. For purposes of evaluation under Section 310(b), the Commission has adopted a rebuttable presumption that greater than 25% indirect foreign ownership of Title III authorizations by entities from countries that are members of the WTO is in the public interest and does not raise competitive concerns under Section 310(b)(4).<sup>12</sup> This presumption is rebutted only in very rare cases where it is determined that such foreign ownership will pose a very high risk to competition in the U.S. market that cannot be addressed by conditions, something the Commission anticipates will be extremely rare.<sup>13</sup>

4. The determination whether the foreign owner is from a WTO member country, and therefore entitled to the rebuttable presumption, is based the “home market” of the entity as

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<sup>9</sup> The burden is on the Commission to establish that greater than 25% indirect foreign ownership of a subject licenses is contrary to the public interest. See *Report from the Committee on Commerce on H.R. 1555*, H. Rep. 104-204, at 120-121 (1995).

<sup>10</sup> *VoiceStream Wireless Corp., Powertel, Inc., and Deutsche Telekom AG*, 16 FCC Rcd 9779, 9803 (2001).

<sup>11</sup> *Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, Report and Order on Further Reconsideration (hereinafter, “*Foreign Participation Order*”), 12 FCC Rcd 23896 (1997); and *Market Entry and Regulation of Foreign-affiliated Entities*, IB Docket No. 95-22, Report and Order (hereinafter, “*Foreign Entry Order*”), 11 FCC Rcd 3873 (1995).

<sup>12</sup> *Foreign Participation Order*, 12 FCC Rcd at 23913 & 23940.

<sup>13</sup> *Id.*, 12 FCC Rcd at 23913-23914.

determined by a "principal place of business" test.<sup>14</sup> This involves the identification and balancing of the following factors: (a) the country of a foreign entity's organization; (b) the nationality of all principals; (c) the country in which the world headquarters is located; (d) the country in which the tangible property is located; and (e) the country from which the greatest sales and revenues is derived, and (f) any other particularly relevant information.<sup>15</sup>

**C. Application of the Standard to TNA-Mobile**

5. TNA-Mobile is a Nevada corporation, owned 100% by Telecom North America, Inc. ("TNA"), also a Nevada corporation. TNA is owned by three individuals, as follows: 44.5% by Mr. Johannes Gottschalk, a German citizen and permanent U.S. resident, 44.5% by Hervé R. Andrieu, a French citizen and permanent U.S. resident, and 11% by Michael Choupak, a U.S. citizen. The headquarters, operations, and assets of both TNA and TNA-Mobile are all located in the United States. Each of the United States, Germany, and France is a WTO member state. Thus, citizens of countries that are WTO signatories together own 89% of TNA. Based on these simple and straightforward facts, there is a rebuttable presumption that the 89% indirect foreign ownership as described herein poses no impediment to TNA-Mobile holding common carrier radio licenses.<sup>16</sup> The Commission already has declared in the past that this indirect foreign ownership poses no impediment to TNA-Mobile holding common carrier licenses, at a time when that foreign ownership was 100%, not the current 89%. *See TNA-Mobile I, supra*. The Commission is respectfully asked to so declare once again.

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<sup>14</sup> *Id*, 12 FCC Rcd at 23941-23942.

<sup>15</sup> *Market Entry Order*, 11 FCC Rcd at 3951-3952.

<sup>16</sup> TNA-Mobile does not and will not have "market power" in the mobile telecommunications marketplace. TNA-Mobile is proposing to PCS spectrum in Nevada, but not covering either of the two major metro areas in that state, Las Vegas or Reno. Only rural areas are contained in the proposed geographic area.

Respectfully submitted,

**Telecom North America Mobile, Inc.**



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