

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

In re Request of)
)
Telecom North America, 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, Inc. (“TNA”), by its attorney and pursuant to Section 5(d) of the Administrative Procedure Act, 5 U.S.C. § 554, and Section 1.2 of the FCC Rules and Regulations, hereby requests a declaratory ruling under Section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. §310(b)(4). Further, TNA requests that the Commission consolidate the instant request (“TNA-Petition”) with the pending Petition for Declaratory Ruling, as amended (“TNA-Mobile-Petition”), File No. ISP-PDR-20131213-00012, filed by TNA’s wholly-owned CMRS subsidiary, Telecom North America Mobile, Inc. (“TNA-Mobile”). Both Petitions present the exact same issue – whether TNA’s proposed foreign ownership comports with the public interest.¹ In support whereof, TNA shows the following.

A. Introduction

Section 310(b)(4) of the Act governs the indirect foreign ownership of subject licenses. Specifically, the Commission is asked to declare that TNA-Mobile, a wholly-owned subsidiary of TNA, is not disqualified from holding common carrier radio licenses by reason of TNA being

¹ In the TNA-Mobile Petition, TNA-Mobile seeks the declaratory ruling in connection a spectrum manager spectrum lease application for certain cellular spectrum in rural Nevada, FCC File No. 0005459553. Cellular radio is classified as a Commercial Mobile Radio Service (“CMRS”) and treated as “common carrier” for regulatory purposes, including the foreign ownership restrictions. *See Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, 1461-1462 (1994).

100% foreign-owned. Although the Commission has previously approved TNA being 100% foreign-owned,² that approval pertained to TNA's two founders, Messrs. Johannes (Jean) Gottschalk and Herve Andrieu, each of which is a permanent U.S. resident, and whose respective countries of citizenship are World Trade Organization ("WTO") member countries. Although Messrs. Gottschalk and Andrieu will continue to be officers, directors, and key management personnel of TNA, they will be diluted down to 50% ownership and control under the transaction proposed herein.

The other 50% of TNA will be held by Knowroaming Ltd. ("Knowroaming"), a Canadian corporation, which will infuse additional working capital into TNA and thereby put it (and its wholly-owned subsidiary, TNA-Mobile) onto a stronger financial footing. This TNA-Petition describes Knowroaming and its owners, and demonstrates that these specific new owners raise no public interest questions.³

In *TNA-Mobile, supra*, TNA and TNA-Mobile agreed to a number of conditions requested by the U.S. Department of Justice. They hereby agree to accept all of those conditions as a condition for receipt of the approval requested herein and in the pending TNA-Mobile Petition. (For convenience, a copy of the redacted version of the previous TNA letter listing those conditions is attached hereto as Exhibit 1.)

B. The Legal Standard for Indirect Foreign Ownership

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

² See Public Notice, Report No. TEL-01481, *International Authorizations Granted*, 26 FCC Rcd 1359, 1362 (Int'l. Bur., 2011) ("*TNA-Mobile*").

³ Knowroaming has already acquired a 24.99% minority interest in TNA, which TNA reported in a new Form 602 filing made on May 1, 2014. See File No. 0006264098. In this TNA-Petition and in a new Form 603 being filed concurrently herewith, the parties seek to increase Knowroaming's ownership to 50%, which would put it beyond the 25% threshold set forth in Section 310(b)(4).

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.

Thus, up to 25% indirect foreign ownership is permitted unconditionally, and greater levels are prohibited only in cases where the public interest so requires.⁴ “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.”⁵

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.⁶ 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

⁴ 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).

⁵ *VoiceStream Wireless Corp., Powertel, Inc., and Deutsche Telekom AG*, 16 FCC Rcd 9779, 9803 (2001).

⁶ *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).

competitive concerns under Section 310(b)(4).⁷ 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.⁸

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 determined by a “principal place of business” test.⁹ 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.¹⁰

C. Application of the Standard to TNA

TNA is a Nevada corporation. TNA is proposed to be owned as follows: 25% by Mr. Johannes Gottschalk, a German citizen and permanent U.S. resident, 25% by Hervé R. Andrieu, a French citizen and permanent U.S. resident, and 50% by Knowroaming, Ltd., a Canadian corporation. The headquarters, operations, and assets of both TNA and TNA-Mobile are all located in the United States. The headquarters, operations and assets of Knowroaming are all located in Canada.

Knowroaming, in turn, is owned: 25% by Mr. Gregory Gundelfinger, a dual citizen of Germany and South Africa, and a permanent resident of Canada;¹¹ 25% by Mr. Mathew Stein, a

⁷ *Foreign Participation Order*, 12 FCC Rcd at 23913 & 23940.

⁸ *Id.*, 12 FCC Rcd at 23913-23914.

⁹ *Id.*, 12 FCC Rcd at 23941-23942.

¹⁰ *Market Entry Order*, 11 FCC Rcd at 3951-3952.

¹¹ The ULS software only allows for the inclusion of one country of citizenship in the Form 602 main form, so Germany was listed. However, in an exhibit to the Form 602, it is stated that Mr. Gundelfinger is a dual German/South African citizen.

citizen of South Africa and a permanent resident of Canada; and 50% by Carlyle, Kft., a Hungarian corporation (“Carlyle”). Carlyle, in turn, is owned Ki Corporation Limited, a Jersey (Channel Islands) corporation (“Ki”).¹² Ki, in turn, is controlled, through several foreign trusts/holding companies established for the benefit of himself and his family, by Mr. Nathan Kirsh, a citizen of Swaziland and a foreign national of the United Kingdom.

Each of the United States, Germany, France, Canada, South Africa, Hungary, the United Kingdom and Swaziland is a WTO member state. While Jersey is not separately a WTO member state, there is no entity in Jersey that is presumed by this Commission to have any market power,¹³ and there has never been any finding of any absence of effective competition in telecommunications in Jersey. In summary, all *direct* owners of both TNA and Knowroaming are citizens of countries that are WTO signatories, as are all the direct and ultimate beneficial owners of Knowroaming. (Only in the case of one intermediate indirect owner of Knowroaming, *i.e.*, Ki, is there an apparent absence of WTO-member status. Mr. Kirsh, who controls Ki, and through Ki, Carlyle, is a citizen of Swaziland, a WTO-member country. Carlyle itself is a citizen of a WTO-member country, Hungary.)

¹² Ki is listed in the Form 602 main form as being a corporation organized in the United Kingdom. This is due to a shortcoming in the ULS software, which has a country drop-down menu that does not list either Jersey or the Channels Islands, but also does not have any category for “other” that would allow the insertion of Jersey as the jurisdiction. Because Queen Elizabeth II is the Jersey head of state, because the United Kingdom controls the foreign affairs of Jersey, and because, under the laws of the United Kingdom, individuals who are citizens of Jersey are also citizens of the United Kingdom (*see British Nationality Act 1981*), that jurisdiction was listed. In the exhibit to the Form 602, it was expressly stated that Ki is a Jersey corporation.

¹³ *See International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers That Are Presumed to Possess Market Power in Foreign Telecommunications Markets*, 22 FCC Red 945 (IB, 2007).

Based on these simple and straightforward facts, there is a rebuttable presumption that the 100% foreign ownership as described herein poses no impediment to TNA continuing to own TNA-Mobile, the holder of common carrier radio licenses.¹⁴

Respectfully submitted,
Telecom North America, Inc.



By: David J. Kaufman, Its Attorney
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Rini O'Neil, PC
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Washington, DC 20036

May 2, 2014

¹⁴ TNA-Mobile does not and will not have “market power” in the mobile telecommunications marketplace. In File No. 0005459553 (*see n.1, supra*), TNA-Mobile is proposing to lease 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. TNA-Mobile’s existing CMRS authorization, call sign WQLF750, is a PCS license for the Cedar County, Missouri, CMA, as defined by this Commission. It is similarly rural and remote.

Telecom North America, Inc.
Section 310(b)(4) Petition for
Declaratory Ruling
May, 2014

EXHIBIT 1

**JANUARY 21, 2011 LETTER TO
DEPARTMENT OF JUSTICE**



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Suite 05-143
Henderson, NV 89052
Phone: (702) 777 2500
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www.telna.com
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Telecom North America Inc.
2654 W. Horizon Ridge Parkway • Suite 05-143 • Henderson, NV 89052

Mr. David Kris
Assistant Attorney General
National Security Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
telecom@usdoj.gov

Henderson, January 21, 2011

Re: Pending FCC application for consent to transfer of control, ITC-T/C-
20090908-00409, and petition for declaratory ruling, ISP-PDR-20090820-00007

Dear Mr. Kris:

This letter outlines the commitments made by Telecom North America, Inc. ("TNA") to the U.S. Department of Justice ("DOJ"), in order to address national security, law enforcement and public safety concerns regarding the above-referenced matters pending before the Federal Communications Commission ("FCC").

TNA, formerly named 3U Telecom, Inc., was founded in 2002 by Johannes Gottschalk (a German citizen) and Herve R. Andrieu (a French citizen). They partnered with 3U Telecom AG (3UAG), a publicly-traded German telecommunications company. When TNA was incorporated in Nevada, Messrs. Gottschalk and Andrieu each owned 15% of the stock and 3UAG owned 70% of the stock. TNA obtained a Section 214 authorization in 2003, and has since operated as a reseller of domestic and international long distance telephone services.

On December 15, 2008, Messrs. Gottschalk and Andrieu acquired the 70% interest previously held by 3UAG, so that they each now hold 50% of TNA. The FCC's consent is required when foreign equity ownership changes. Therefore, the above-referenced pending FCC application, ITC-T/C-200908-00410, requests FCC consent to this transfer of control.

TNA is the 100% parent of Telecom North American Mobile, Inc. (TelNA-Mobile). TelNA-Mobile filed a petition for declaratory ruling, ISP-PDR-20090820-00007, in connection with its application for consent to partial assignment to TelNA-Mobile of the license for Broadband Personal Communications Service (PCS) Station WQJR795. Broadband PCS is classified as a Commercial Mobile Radio Service. The portion of the licensed geographic area to be assigned to TelNA-Mobile is defined as Cedar County, Missouri.

TNA agrees that all customer billing records, subscriber information, or any other related information used, processed, or maintained in the ordinary course of business

relating to communications services offered to U.S. persons ("U.S. Records"), will be made available in the U.S. in response to lawful U.S. process. For these purposes, U.S. Records shall include information subject to disclosure to a U.S. Federal or state governmental entity under the procedures specified in Sections 2703(c) and (d) and Section 2709 of Title 18 of the United States Code.

Within thirty (30) days after the FCC's consent to the above-referenced transfer of control, TNA agrees to provide DOJ an up-to-date description of its physical, technical, and logical security architectures, to include a complete enterprise architecture context, inter-connect, and flow diagrams for the U.S. Domestic Communications Infrastructure (DCI), architecture descriptions of controlled interfaces to remote Network Operations Centers (NOCs), and a description of security policies, procedures, and standards, to prevent unauthorized access to or disclosure of the contents of U.S. communications or records.

Within thirty (30) days after the FCC's consent to the above-referenced transfer of control, TNA also agrees to provide DOJ an up-to-date concept of operations (CONOPS) for domestic and remote NOC operations that describes user personnel, services, products, and locations of data centers that hosts U.S. customer data used by the NOCs. The CONOPS will include contingency plans for NOC services when the primary NOC and/or when key personnel are not available. These documents will be updated on an annual basis and submitted to DOJ for comment.

TNA agrees to ensure that U.S. records are not made subject to mandatory destruction under any foreign laws. TNA agrees to take all practicable measures to prevent unauthorized access to, or disclosure of the content of communications or U.S. records, in violation of any U.S. Federal, state, or local laws or of the commitments set forth in this letter. If TNA learns of any unauthorized disclosure with respect to U.S. records, they will deliver a written notification containing all the known details concerning each such incident to DOJ within five (5) days.

TNA agrees that it will not, directly or indirectly, disclose or permit disclosure of or access to U.S. Records, Domestic Communications (as defined below), or any information (including the content of communications) pertaining to a wiretap order, pen/trap order, subpoena or other lawful demand by a U.S. law enforcement agency for U.S. Records, to any person if the purpose of such disclosure or access is to respond to the legal process or request on behalf of a non-U.S. government without first satisfying all pertinent requirements of U.S. law and obtaining the express written consent of DOJ or the authorization of a court of competent jurisdiction in the United States. The term "non-U.S. government" means any government, including an identified representative, agent, component or subdivision thereof, that is not a local, state or federal government in the United States. Any such requests or legal process submitted by a non-U.S. government to TNA shall be referred to DOJ as soon as possible, and in no event later than five (5) days after such request or legal process is received by or known to TNA, unless the disclosure of the request or legal process would be in violation of U.S. law or an order of a court in the United States. For the purposes of this letter, "Domestic Communications" means: (a) Wire Communications or Electronic Communications (whether stored or not) from one U.S. location to another U.S. location; and (b) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the United States. "Electronic Communication" has the meaning given it in 18 U.S.C. § 2510(12). "Wire Communication" has the meaning given it in 18 U.S.C. § 2510(1).

TNA has designated Mr. Johannes Gottschalk, Company President and 50% shareholder, as a point of contact and agrees to maintain one or more points of contact

within the United States with the authority and responsibility for accepting and overseeing compliance with a wiretap order, pen/trap order, subpoena or other lawful demand by U.S. law enforcement authorities for the content of communications or U.S. Records. TNA shall ensure that the points of contact are officers or employees of TNA who are located in the U.S. and who are legal U.S. resident aliens or U.S. citizens. TNA will notify DOJ of any change in these points of contact within five (5) days of such change. TNA shall cooperate with any request by DOJ that a background check or security clearance process be completed for a designated point of contact(s).

TNA agrees to notify DOJ within thirty (30) days if there are any material changes in any of the facts as represented in this letter or in notices submitted pursuant to this letter. TNA agrees to notify DOJ within thirty (30) days of any material changes to their ownership structure. Material changes to ownership structure are those that would require a substantive transfer of control application or pro forma notification to the FCC, and those that would involve any material increase or decrease in foreign government control. TNA agrees to notify DOJ of the following, also within thirty (30) days of occurrence:

- Any material changes to either security policies, procedures, or network monitoring and analysis Standard Operating Procedures (SOP) used for the U.S. domestic communications infrastructure;
- Any material changes to the telecommunication services provided within the U.S. domestic communications infrastructure;
- Any material changes to established procedures to prevent unauthorized access to, or disclosure of, the content of communications of U.S. records; and,
- Any material changes to personnel that have access to the [REDACTED] switch, CPNI, PII, and/or CDR.

Within thirty (30) days of occurrence, TNA agrees to provide DOJ a description of any material changes or upgrades to the existing network architecture and telecommunications architecture within the U.S. domestic communications infrastructure.

TNA agrees to notify DOJ within five (5) days of any malicious cyber-security attacks detected on systems used to provide services within the U.S. domestic communications infrastructure.

TNA agrees to notify DOJ within five (5) days of any change in the overseas personnel, physical addresses, and/or network operations (hardware or software) used to monitor and/or provision U.S. network and/or gateway elements. Currently, TNA has appointed Mr. [REDACTED] located at [REDACTED] to serve as the [REDACTED] switch programmer and remote NOC manager. The [REDACTED] switch is located in the United States. Mr. [REDACTED]'s hours of operations are from [REDACTED] Eastern Daylight Time (EDT), Monday through Friday, and as needed during other times in cases of network emergencies. Currently, Mr. Gottschalk and/or Mr. Andrieu provide backup to Mr. [REDACTED] when he is not available. However, within thirty (30) days after the FCC's approval of the above-referenced application, TNA agrees to provide DOJ documented contingency plans to follow when Mr. [REDACTED] is not available to perform his work, as well as protection schemes used by Mr. [REDACTED] for applications/files/data necessary for effective monitoring and provisioning of the [REDACTED] switch.

TNA agrees that Mr. [REDACTED] does not (and will not) have access to U.S. Customer Proprietary Network Information (CPNI), Personal Identifiable Information (PII) related to U.S. customers and/or telecommunications carriers, or access to U.S. based network elements beyond the [REDACTED] switch. TNA agrees to cooperate with any request by DOJ that a background check or security clearance process be completed for all individuals that assess or use assets within the U.S.

TNA agrees to notify DOJ within five (5) days of any security incidents.

TNA agrees that DOJ may visit with forty-eight (48) hours' advance notice any part of their domestic facilities, and conduct on-site reviews concerning the implementation of the commitments in this letter. TNA agrees to negotiate in good faith with DOJ to resolve any national security, law enforcement and public safety concerns that DOJ may raise.

TNA agrees that, in the event the commitments set forth in this letter are breached, in addition to any other remedy available at law or equity, DOJ may request that the FCC modify, condition, revoke, cancel, or render null and void any relevant license, permit, or other authorization granted by the FCC to TNA, or any successor-in-interest to either. TNA acknowledges and agrees that the obligations in this letter apply not only to itself, but also to any subsidiary or affiliate of TNA that provides Domestic Communications, or its subsidiaries.

Nothing in this letter is intended to excuse TNA from any obligation it may have to comply with U.S. legal requirements for the retention, preservation, or production of information, records or data, or from any applicable requirements of the Communications Assistance for Law Enforcement Act, 47 U.S.C. § 1001, et seq., nor shall it constitute a waiver of: (a) any obligation imposed by any U.S. Federal, state or local laws; (b) any enforcement authority available under any U.S. or state laws; (c) the sovereign immunity of the United States; or (d) any authority the U.S. government may possess (including without limitation authority pursuant to the International Emergency Economic Powers Act) over the activities of TNA located within or outside the United States. Nothing in this letter is intended to or is to be interpreted to require TNA violate any applicable U.S. law. Likewise, nothing in this letter limits the right of the U.S. government to pursue criminal sanctions or charges against TNA, and nothing in this letter provides TNA with any relief from civil liability.

.....

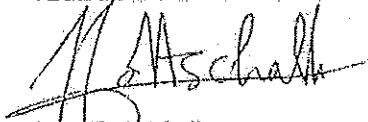
All correspondence to DOJ under this LOA will be directed to the addressee at the address provided on the first page of the LOA. In addition, a courtesy electronic copy of all notices and communications will be forwarded to telecom@usdoj.gov.

TNA understands that, upon execution of this letter by authorized representatives or attorneys for TNA, TNA will file petitions with the FCC that expressly request the FCC to condition its grant of the above-referenced transfer of control and petition for declaratory ruling on compliance with the terms of this LOA by TNA and TelNA-Mobile. Based on

TNA's petitions, DOJ will notify the FCC that it has no objection to the FCC's grant of the transfer of control and petition for declaratory ruling.

Best regards,

TELECOM NORTH AMERICA INC.

A handwritten signature in black ink, appearing to read "J. Gottschalk". The signature is written in a cursive style with a large initial "J" and "G".

Jean Gottschalk
President