

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

In the Matter of:)
)
)
Indirect Foreign Investments in) File No. ISP-PDR-2016-_____
Common Carrier Licensee,)
Channel 51 License Co LLC)
)

To: International Bureau

PETITION FOR DECLARATORY RULING

Channel 51 License Co LLC (“Channel 51 License Co”), 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 Channel 51 License Co to exceed the indirect foreign ownership limits of Section 310(b)(4), primarily to accommodate an investment by Future Fund Board of Guardians (“Future Fund Guardians”), an Australian entity, through its wholly-owned subsidiary Future Fund Investment Company No.5 Pty Ltd (“FFIC5”).

BACKGROUND

A. The Parties

1. Controlling Structure

Channel 51 License Co, a Delaware limited liability company, will participate in Auction 1002, and upon winning licenses at auction, will be an applicant. Channel 51 License Co is a wholly-owned subsidiary of Channel 51, LLC (“Channel 51”), a Delaware limited liability company.

Paul Chisholm, an experienced telecommunications executive, is the sole managing member of Channel 51 and is a United States citizen. Mr. Chisholm is vested with exclusive and full operational control over Channel 51, and holds 1% of Class A equity.

2. Passive Investors

Channel 51 has recruited passive investors to provide financing for the licenses on which Channel 51 License Co intends to bid. Channel 51 has created a “waterfall” investment structure, described below, with three classes of investors: Class A, Class B, and Class C. Because of the uncertainty inherent in the auction and the particulars of the contingent investment structure, each investor’s final equity portion will not be determined until after the auction is completed. The “current” percentage interests disclosed in this section reflect the capital contribution to the auction upfront payment and through the end of the quiet period.

Telcom Channel 51 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 holds 49.7% of the Class A equity and currently holds a 4% interest in Channel 51. The Singhs are United States citizens.

Columbia Capital Equity Partners VI (QP), L.P. (“CCEP”) is a Delaware limited partnership. CCEP holds 42% of the Class A equity and currently holds a 4% interest in Channel 51.

Columbia Capital Equity Partners VI, L.P. (“CCEP VI”) is a Delaware limited partnership. CCEP VI serves as the general partner of CCEP.

Columbia Capital VI, LLC (“Columbia VI”) is a Delaware limited liability company. Columbia VI serves as the general partner of CCEP VI.

Columbia Spectrum Partners I-A, L.P. (“Columbia Spectrum I-A”) is a Delaware limited partnership. Columbia Spectrum I-A holds 95% of the Class C equity and currently holds a 19% interest in Channel 51.

Columbia Spectrum Partners GP, L.P. (“Columbia Spectrum Partners”) is a Delaware limited partnership. Columbia Spectrum Partners serves as the general partner of Columbia Spectrum I-A.

Columbia Spectrum, LLC (“Columbia Spectrum”) is a Delaware limited liability company. Columbia Spectrum serves as the general partner of Columbia Spectrum Partners.

Columbia VI and Columbia Spectrum (collectively with the entities they control, the “Columbia Parties”) are affiliates and are commonly controlled by Columbia Capital, a U.S. venture capital firm founded in 1989 with headquarters in Alexandria, Virginia. Columbia Capital manages approximately \$3 billion and specializes in investments in communications, media, and technology companies. Columbia Capital has two managing members: James B. Fleming, Jr. and John T. Siegel, Jr., who are both U.S. citizens.

Future Fund Investment Company No.5 Pty. Ltd. (“FFIC5”) is a proprietary limited company registered in Victoria, Australia.¹ FFIC5 is a wholly owned subsidiary of the Future

¹ FFIC5 has appointed its custodian (The Northern Trust Company) to hold legal title to its 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 FFIC5’s interest in Channel 51. FFIC5 holds the beneficial interest in relation to the investment and FFIC5 and its parent, Future Fund Guardians, 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 Channel 51, The Northern Trust Company functions as custodian only and has no power or authority in respect of the investment except to the extent it is specifically directed to take action by FFIC5. The Northern Trust Company is a company incorporated in the State of Illinois. Although the interest in this case is non-voting, FFIC5 has the right to order the custodian to acquire or divest investments and the custodian has no independent authority to take such actions.

Fund Board of Guardians (“Future Fund Guardians”), a statutory body corporate established by the *Future Fund Act 2006* (Commonwealth of Australia) (the “Act”).² Future Fund Guardians, supported by the Future Fund Management Agency, has responsibility for investing and managing the assets of the Future Fund. While Future Fund Guardians holds the Future Fund’s assets for and on behalf of the Commonwealth of Australia, Future Fund 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 Future Fund Guardians independently of the Government of Australia.³ As of December 31, 2015, Future Fund had assets of A\$118.4 billion⁴ and approximately 36% of Future Fund’s physical investments were in the United States.⁵ Future Fund Guardians operates independently from the Government of Australia.⁶

² 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.

³ The investment by Future Fund Investment will not create an issue under 47 U.S.C. § 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*, Second Report and Order, FCC 13-50 ¶ 9 n.31 (rel. April 18, 2013)(*Foreign Ownership Second R&O*); *Application of VoiceStream Wireless Corporation and Deutsche Telekom AG*, 16 FCC Rcd 9779, ¶ 41-42 (2001).

⁴ See, Future Fund, *Portfolio update at 31 December 2015*, http://www.futurefund.gov.au/__data/assets/pdf_file/0015/7134/2016_Portfolio_update_to_31_December_2015_released_Jan_2016.pdf.

⁵ See, Future Fund Annual Report 2014/2015 at 38, available at http://www.futurefund.gov.au/__data/assets/pdf_file/0013/7015/2014-15_Annual_Report.pdf.

⁶ *Id.* at 2.

Separate from the direct investment that FFIC5 has made in Channel 51, another subsidiary of Future Fund Guardians indirectly holds approximately 23% of the equity in CCEP, corresponding to 10% of Class A equity and currently less than 1% indirect interest in Channel 51.

Because it is a wholly-owned, direct subsidiary, the indirect ownership interests of all entities in Channel 51 License Co are identical to the direct ownership interests in Channel 51. Channel 51 License Co seeks a declaratory ruling that Channel 51's foreign ownership is in the public interest.

B. The Waterfall Investment Structure

Channel 51 License Co is a "very small business" and will be bidding in Auction 1002 as a designated entity.⁷ As with all designated entities, Channel 51 License Co and its parent Channel 51 were required to raise a large and flexible amount of financing in order to participate effectively in the auction. Accordingly, Channel 51 has recruited the passive investors named above and others with interests below the reporting threshold. While the passive investors possess the majority of the non-voting equity in Channel 51, exclusive and full operational control is vested in the sole managing member, Paul Chisholm.

The ultimate quantity of funding necessary to participate in an auction, especially one predicted to be as large as Auction 1002, is uncertain. Channel 51 has thus implemented an investment structure that allows it such flexibility and the freedom to bid on licenses, while avoiding the prospect of having to raise more money in a short time frame after the auction. Specifically, Channel 51 has implemented a waterfall investment structure divided between three classes of passive investors: Class A, Class B, and Class C. Depending on the quantity of

⁷ See 47 CFR § 1.2110.

financing ultimately required, Channel 51 will draw on the resources from Class A first, then when Class A is exhausted, will draw on Class B, followed by draws from Class C.

Each class is made up of passive investors with a fixed proportion of assets in that class. Thus, before the auction, each investor knows its fixed percentage in that class. For example, an investor could know it has 30% of Class A or 5% of Class C. What changes with the auction results is the total equity each investor has in Channel 51. Suppose the ultimate price of the licenses Channel 51 License Co wins equates to the pool of funding in all of Class A and 40% of Class B. In that case, Class A's investors will be fully invested, *each* of Class B's investors will be invested at 40% of their overall commitment, and Class C investors will contribute nothing. Within each class, each investor will own a *pro rata* portion of the overall investment made by its class, according to the fixed percentages in the agreement.⁸ The percentage held by any individual investor will not change during the quiet period.

Investors will make an initial capital contribution on a *pro rata* basis in accordance with their committed capital, sufficient to make the upfront payment. After the auction results are determined, if Channel 51's down payment does not exceed the upfront payment, the down payment will be made from the upfront payment. If the down payment exceeds the upfront payment, investors will purchase from Channel 51 convertible notes sufficient to satisfy the down payment, according to the waterfall structure: first Class A, then Class B as needed.⁹ No equity in Channel 51 will change at this point. After the down payment has been made and the

⁸ There is one deviation from this overall structure: The total contribution of FFIC5, a Class B investor, is limited to 49.9 percent of the equity of Channel 51. There is a range of total license values for which FFIC5 would otherwise be over the 49.9% threshold, and if those are the ultimate financing requirements, FFIC5's contribution would rest at 49.9% exactly, while the remaining financing would revert to the waterfall structure. Note that Future Fund Guardians as a whole will potentially have greater than 49.9% equity due to its indirect investment in CCEP.

⁹ Class C will not be drawn upon because the 20% down payment will not exhaust Class B's resources.

quiet period has expired, the final payment, if necessary, will be made via capital contributions in accordance with the waterfall structure, taking into account the prior capital contributions and convertible notes. Following the final payment, the equity in Channel 51 will be reorganized according to the waterfall structure, taking into account the conversion of the notes into shares of Channel 51. When the final payment is due to the Commission, Channel 51 will report on its resulting equity structure.

Because of the uncertainty in the opportunities that will present themselves at auction, Channel 51 will not know before the conclusion of the auction which passive investors hold greater than 10% direct or indirect interest. In the interests of providing maximum disclosure, however, this petition discloses all possible interest holders with greater than 10% interest, under any potential outcome. Along with their names and other information required by 47 C.F.R. § 1.991(g), this petition discloses each investor's current equity position in Channel 51, which is its fully diluted equity percentage, the percentages each investor possesses within its funding class, and the maximum possible equity interests it can hold in Channel 51 in any scenario. In the interest of clarity, Exhibits B and C describe the ownership interests in three funding scenarios that correspond to the exhaustion of Class A funds, Class B funds, and Class C funds, respectively.¹⁰ The third scenario—exhaustion of Class C funds—represents full dilution and the current equity makeup of Channel 51. A narrative description is provided in Exhibit B, and Exhibit C provides the organizational charts corresponding to each scenario.

Control over Channel 51 License Co, which will hold any licenses won in the Incentive Auction, will be unchanged in all scenarios. It is wholly owned by Channel 51, which is

¹⁰ These are not the only possible results, as the auction could dictate the use of only a portion of Class B or C funds, as in the hypothetical 40% scenario above. But these three scenarios should illustrate the fundamental workings of the waterfall structure.

managed and controlled by its sole managing member, Paul Chisholm. Regardless of how equity is distributed following the results of the auction and the waterfall structure, operational control over Channel 51 License Co will always rest with the sole managing member.

I. INFORMATION REQUIRED BY SECTION 1.991

Pursuant to section 1.991 of the Commission rules,¹¹ Channel 51 License Co submits the following information in support of the instant Petition for Declaratory Ruling (“Petition”):

(a) Name, FRN, Contact Information, Place of Organization, Type of Business, and Certification Information of Applicant

Name: Channel 51 License Co LLC
FRN: 0025259565
Place of Organization: Delaware, United States
Type of Organization: Corporation
Certifying Officer: Paul Chisholm, Managing Member of Channel 51
Mailing Address: Channel 51 License Co LLC
c/o Alexander Maltas
Hogan Lovells US LLP
555 13th St., NW
Washington, DC 20004
Phone: 781-526-2005
Email: paul@pchisholmco.com

(b) Contact Information for Applicant’s Legal Counsel

Name: Alexander Maltas
Firm: Hogan Lovells US LLP
Mailing Address: Alexander Maltas
Hogan Lovells US LLP
555 13th St., NW
Washington, DC 20004

¹¹ 47. C.F.R. § 1.991.

Phone: 202-637-5651
Fax: 202-637-5910
Email: alexander.maltas@hoganlovells.com

(c) Type of Radio Service Authorization and Associated Application

Channel 51 License Co intends to bid on various licenses in Auction 1002 and files this Petition in anticipation of its short form application (Form 175), pursuant to the auction application procedures.¹²

(d) Type of Declaratory Ruling

Channel 51 License Co seeks a declaratory ruling under 47 C.F.R. § 1.990(a)(1).

(e)/(g) Information About Holders of Controlling Interests or Direct Interests of 10% or More in Channel 51 (Controlling U.S. Parent of Applicant)

The interests disclosed here and in the next section are the entities' current (fully diluted) interests, the percentages they possess within their funding classes, and the maximum possible equity interests they can hold in Channel 51 in any scenario. The disclosed maximum interests are mutually exclusive, however. The Columbia Parties, Telcom, and Future Fund Guardians cannot hold a greater than 40% equity interest in the applicant at the same time, yet there are different scenarios in which each of these entities may individually hold a greater than 40% equity interest in the applicant. Exhibits B and C demonstrate examples of these different investment scenarios.¹³ In particular, the Class A investors—the Columbia Parties and

¹² *Application Procedures for Broadcast Incentive Auction Scheduled to Begin on March 29, 2016*, Public Notice, ¶ 116 (rel. Oct. 15, 2015) (*Application Procedures PN*).

¹³ The Commission has contemplated mutually exclusive contingent ownership interests before, and has stated that disclosures should be made only in possible combinations. *See Amendment of Part 1 of Commission's Rules-Competitive Bidding Procedures*, 17 F.C.C. Rcd. 2962, 2967 (2002) (“For each combination [of mutually exclusive interests], the ownership interests will be considered to have been fully exercised, and each combination will be reviewed for its effect on control of the applicant or licensee.”); 47 C.F.R. § 1.2110 (c)(2)(ii)(A) (note). Accordingly, this petition addresses three possible scenarios in the Appendices, each representing the state of affairs at the exhaustion of each class of funds.

Telcom—will retain a greater than 10% interest only if no more than a small amount of Class B funding proves necessary.

(1) Name: Paul Chisholm

Interests Held: 100% voting interest in Channel 51
0.5% current equity in Channel 51
1% Class A investor
1% maximum equity in Channel 51

Citizenship: USA

(2) Name: Columbia Capital Equity Partners VI (QP), L.P.

Interests Held: 0% voting interest in Channel 51
4% current equity in Channel 51
42% Class A investor
42% maximum equity in Channel 51

Place of Organization: Delaware, USA

Type of Organization: Limited Partnership

(3) Name: Telcom Channel 51 LLC

Interests Held: 0% voting interest in Channel 51
4% current equity in Channel 51
49.7% Class A investor
49.7% maximum equity in Channel 51

Place of Organization: Delaware, USA

Type of Organization: Limited Liability Company

(4) Name: Future Fund Investment Company No.5 Pty Ltd

Interests Held: 0% voting interest in Channel 51
45% current equity in Channel 51
62% direct Class B investor, capped at 49.9% total equity
in Channel 51
1% indirect Class B investor
51% maximum equity in Channel 51

Place of Organization: Australia

Type of Organization: Proprietary Limited Company

(5) Name: Columbia Spectrum Partners I-A, L.P.

Interests Held: 0% voting interest in Channel 51
19% current equity in Channel 51
95% Class C investor
19% maximum equity in Channel 51

Place of Organization: Delaware, USA

Type of Organization: Limited Partnership

(f)/(g) Information About Holders of Indirect Interests of 10% or More in Channel 51 (Controlling U.S. Parent of Applicant)

(1) Name: Columbia Capital Equity Partners VI, L.P.

Interests Held: General Partner of CCEP
General Partner of interests below the reporting threshold holding 7% Class A shares
0% voting interest in Channel 51
4% current indirect equity in Channel 51
49.7% indirect Class A investor
49.7% maximum indirect equity in Channel 51

Place of Organization: Delaware, USA

Type of Organization: Limited Partnership

(2) Name: Columbia Capital VI, LLC

Interests Held: General Partner of Columbia Capital Equity Partners VI, L.P.
Manager of Columbia C51 II, LLC, which holds 6% of Class B equity.
0% voting interest in Channel 51
9% current indirect equity in Channel 51
49.7% indirect Class A investor
6% indirect Class B investor
49.7% maximum indirect equity in Channel 51

Place of Organization: Delaware, USA

Type of Organization: Limited Partnership

(3) Name: The Rajendra Singh 2008 Family Trust

Interests Held: 50% voting and equity interest in Telcom Channel 51 LLC
0% voting interest in Channel 51

4% current indirect equity in Channel 51
49.7% indirect Class A investor
49.7% maximum indirect equity in Channel 51

Place of Organization: Florida, USA

Type of Organization: Trust

- (4) Name: The Rajendra Singh 2011 Florida Trust For The Benefit of Hersh Raj Singh

Interests Held: 25% voting and equity interest in Telcom Channel 51 LLC
0% voting interest in Channel 51
4% current indirect equity in Channel 51
49.7% indirect Class A investor
49.7% maximum indirect equity in Channel 51

Place of Organization: Florida, USA

Type of Organization: Trust

- (5) Name: The Rajendra Singh 2011 Florida Trust For The Benefit of Samir Raj Singh

Interests Held: 25% voting and equity interest in Telcom Channel 51 LLC
0% voting interest in Channel 51
4% current indirect equity in Channel 51
49.7% indirect Class A investor
49.7% maximum indirect equity in Channel 51

Place of Organization: Florida, USA

Type of Organization: Trust

- (6) Name: Rajendra and Neera Singh

Interests Held: Trustees or grantors of The Rajendra Singh 2008 Family Trust, The Rajendra Singh 2011 Florida Trust For The Benefit of Samir Raj Singh, and The Rajendra Singh 2011 Florida Trust For The Benefit of Samir Raj Singh
0% voting interest in Channel 51
4% current indirect equity in Channel 51
49.7% indirect Class A investor
49.7% maximum indirect equity in Channel 51

Citizenship: USA

- (7) Name: Future Fund Board of Guardians

Interests Held: Sole beneficial member of FFIC5
0% voting interest in Channel 51
46% current indirect equity in Channel 51
23% indirect equity in CCEP
10% indirect Class A investor through CCEP
51% maximum indirect Class B investor through FFIC5
52% maximum indirect equity in Channel 51

Place of Organization: Australia

Type of Organization: Statutory Corporation

(8) Name: Columbia Spectrum Partners G.P, L.P.

Interests Held: General partner of Columbia Spectrum I-A
General partner of interests below the reporting threshold
holding 5% of Class C equity
0% voting interest in Channel 51
20% current indirect equity in Channel 51
100% indirect Class C investor
20% maximum equity in Channel 51

Place of Organization: Delaware, USA

Type of Organization: Limited Partnership

(10) Name: Columbia Spectrum, LLC

Interests Held: General partner of Columbia Spectrum Partners
0% voting interest in Channel 51
20% current indirect equity in Channel 51
100% indirect Class C investor, through Columbia
Spectrum Partners
20% maximum equity in Channel 51

Place of Organization: Delaware, USA

Type of Organization: Limited Liability Company

(11) Name: James B. Fleming, Jr.

Interests Held: Managing member of Columbia VI and Columbia
Spectrum
0% voting interest in Channel 51
29% current indirect equity in Channel 51
49.7% indirect Class A investor
6% indirect Class B investor

100% indirect Class C investor
49.7% maximum indirect equity in Channel 51

Citizenship: USA

(12) Name: John T. Siegel, Jr.

Interests Held: Managing member of Columbia VI and Columbia Spectrum
0% voting interest in Channel 51
29% current indirect equity in Channel 51
49.7% indirect Class A investor

6% indirect Class B investor
100% indirect Class C investor
49.7% maximum indirect equity in Channel 51

Citizenship: USA

(h)(1) Estimate of Aggregate Foreign Ownership

As required by 47 C.F. R. § 1.991(h)(1), Exhibit D provides a percentage estimate of the aggregate indirect foreign equity interests in Channel 51, for each of the three possible scenarios described by Exhibits B and C. This Exhibit also provides a general description of the methods used to determine the percentage foreign interests.

A statement addressing the circumstances that prompted filing of this petition and demonstrating that the public interest would be served by grant of the petition is set forth in Exhibit A.

(h)(2) Narrative Description of Ownership and Control Structure

As required by 47 C.F. R. § 1.991(h)(2), Exhibit B provides a narrative description of the ownership and control structure of Channel 51, under each of the scenarios mentioned above: where Class A is exhausted (Scenario 1), where Classes A and B are exhausted (Scenario 2), and where Classes A, B and C are exhausted, and the interests are fully diluted (Scenario 3).

Exhibit C provides organizational charts for all three scenarios.

(i)/(j) Requests for Specific Approval

(1) Name: Future Fund Investment Company No.5 Pty Ltd

Interests Held: 0% voting interest in Channel 51
45% current equity in Channel 51
62% direct Class B investor, capped at 49.9% total equity in Channel 51
1% indirect Class B investor
51% maximum equity in Channel 51

Place of Organization: Australia

Type of Organization: Proprietary Limited Company

Principal Business: Investment company

(2) Name: Future Fund Board of Guardians

Interests Held: Sole beneficial member of FFIC5
0% voting interest in Channel 51
46% current indirect equity in Channel 51
23% indirect equity in CCEP
10% indirect Class A investor through CCEP
51% maximum indirect Class B investor through FFIC5
52% maximum indirect equity in Channel 51

Place of Organization: Australia

Type of Organization: Statutory Corporation

Principal Business: Investment fund

II. CONCLUSION

Channel 51 License Co respectfully requests that the Commission issue a declaratory ruling finding that it is in the public interest for Channel 51 License Co to have indirect foreign ownership in excess of the 25% benchmark under 47 U.S.C. 310(b)(4).

Respectfully submitted,

/s/

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/s/

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February 10, 2016

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

In the Matter of:)
)
)
Indirect Foreign Investments in) File No. ISP-PDR-2016-_____
Common Carrier Licensee,)
Channel 51 License Co LLC)
)
)

**PETITION FOR DECLARATORY RULING
CERTIFICATION OF
CHANNEL 51 LICENSE CO LLC**

I, Paul Chisholm, Authorized Signatory for Channel 51, LLC, the sole member of Channel 51 License Co LLC, certify under penalties of perjury that the facts contained in the foregoing Petition are true and correct. Channel 51 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.

Channel 51 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: Channel 51 LLC, its Managing Member

/s/ Paul Chisholm

Paul Chisholm, Authorized Signatory

Executed on February 10, 2016