

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

*In the Matter of*

DOCOMO PACIFIC, INC.  
*Petitioner/Licensee*

Petition for Declaratory Ruling Under  
Section 310(b)(4) of the Communications  
Act of 1934, as Amended

File No. ISP-PDR-2021-\_\_\_\_\_

**PETITION FOR DECLARATORY RULING**

Pursuant to 47 C.F.R. § 1.5000 *et seq.*, Petitioner DOCOMO Pacific, Inc. (“DPAC”), respectfully requests that the Commission issue a declaratory ruling confirming (a) approval for 100-percent aggregate foreign investment (voting and equity) in DPAC’s immediate parent, DOCOMO Guam Holdings, Inc. (“DGH”), a Guam corporation (and thus 100-percent indirect aggregate foreign investment (voting and equity) in DPAC); (b) specific approval for (i) the increase in indirect equity and voting interests in DPAC held by its indirect, controlling parent, Nippon Telegraph and Telephone Corporation (“NTT”), to 100 percent and (ii) the increase in the indirect equity and voting interests in DPAC held by the Japan Ministry of Finance (“JMOF”) to 33.93 percent; and (c) advance specific approval for any future increase in the indirect equity and voting interest in DPAC held by the JMOF, up to 49.9 percent. As described more fully below, these approvals are consistent with Commission policy and precedent finding that foreign investment serves the public interest by encouraging reciprocal investment opportunities for U.S. companies in countries around the world.

## **I. DPAC's Foreign Ownership**

DPAC, a Guam corporation, is a provider of voice (including mobile) and Internet service in Guam and the Commonwealth of Northern Mariana Islands ("CNMI"). DPAC offers personal, residential, and enterprise connectivity, as well as entertainment services in Guam and the CNMI.

DPAC is wholly-owned by DGH. DGH is a wholly-owned subsidiary of NTT DOCOMO, INC. ("DOCOMO"), a Japanese corporation. Until the delisting necessitated by the Transaction (as defined below), DOCOMO was a publicly traded company listed on the Tokyo Stock Exchange.<sup>1</sup> Prior to the Transaction, DOCOMO was majority-owned by NTT, also a Japanese corporation, and the remainder of its capital stock was also mostly foreign-owned and held by diverse interest holders from Japan and other countries (including the United States), none of which held a 10-percent-or-greater ownership interest or held more than a 5-percent interest and was not exempt from specific approval requirements of the Commission's rules ("DOCOMO Public Minority Shareholders").

NTT is also a publicly traded company listed on the Tokyo Stock Exchange. JMOF owns 33.93 percent of the capital stock of NTT.<sup>2</sup> The remaining shares of the capital stock of NTT is also mostly foreign-owned and held by diverse interest holders from Japan and other countries (including the United States),<sup>3</sup> none of which holds a 10-percent-or-greater ownership interest or

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<sup>1</sup> On December 25, 2020, DOCOMO shares were delisted from the Tokyo Stock Exchange pursuant to the Exchange's rules.

<sup>2</sup> As of September 30, 2020, the date of NTT's latest quarterly report.

<sup>3</sup> By statute, the proportion of voting rights held by foreign nationals and corporations must be less than one-third.

holds more than a 5-percent interest and is not exempt from specific approval requirements of the Commission's rules ("NTT Public Minority Shareholders").<sup>4</sup>

On November 9, 2006, the Commission held that the public interest would be served by permitting the transfer of control of DPAC (then Guam Cellular)<sup>5</sup> to DGH and approved DPAC's 100-percent aggregate foreign ownership and the indirect interests then held by DOCOMO, NTT, and JMOF.<sup>6</sup> Specifically, the Commission approved "the indirect foreign ownership of Guam Cellular by DoCoMo and its Japanese shareholders (up to and including 100 percent of the equity and voting interests), with the exception of NTT; by NTT and its Japanese shareholders, through NTT's investment in DoCoMo (up to and including 62.15 percent of the equity and voting interests), with the exception of the Japan Ministry of Finance; and by the Japan Ministry of Finance, through its investment in NTT (up to and including 23.95 percent of the equity interests<sup>7</sup> and 38.53 percent of the voting interests)."<sup>8</sup> The Commission further approved DPAC "may accept up to and including an additional aggregate 25 percent indirect foreign equity and/or voting interests from these foreign investors and other foreign investors,

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<sup>4</sup> See 47 C.F.R. § 1.5001(i)(3), exempting from specific approval investors that hold no more than a 10 percent interest and the interest held is non-controlling, such as interests held by institutional investors.

<sup>5</sup> DPAC changed its corporate name from Guam Cellular and Paging, Inc. to DOCOMO Pacific, Inc. in 2008. There was no change in ownership or corporate structure at the time of the name change.

<sup>6</sup> *Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd. 13580 (Wireless Tel. Bur. 2006) ("2006 Order").

<sup>7</sup> JMOF's indirect equity interest in DPAC was calculated using the multiplier, pursuant to the Commission's rules. 47 C.F.R. § 1.5002; See also 2006 Order at n. 224.

<sup>8</sup> *Id.* at 13614.

including non-Japanese investors who may own shares in DOCOMO and/or in NTT, without seeking prior Commission approval ...” subject to certain conditions, including the requirement that DPAC “shall obtain prior Commission approval before any foreign individual or entity, with the exception of NTT and the Japan Ministry of Finance, acquires individually an indirect equity and/or voting interest in Guam Cellular that exceeds 25 percent.”<sup>9</sup>

In 2015, the Commission extended DPAC’s 310(b)(4) authority to cover additional licenses for which DPAC was the winning bidder in Auction 97, and further authorized a 3-percentage point increase in the interests then held by NTT and JMOF to 62.70 percent and 33.33 percent, respectively to account for fluctuations in publicly-traded shares (the “2015 Declaration”).<sup>10</sup>

On December 29, 2020, NTT completed a series of transactions that resulted in the company owning 100 percent of the equity and voting interests of DOCOMO. This series of transactions, described in this paragraph, is referred to collectively as the “Transaction.” NTT commenced a tender offer for outstanding DOCOMO shares on September 30, 2020. On November 24, NTT acquired such tendered shares, which increased its indirect ownership interests in DPAC to 91.46 percent. On November 27, 2020, NTT made a cash-out demand, which DOCOMO approved. As a result, NTT acquired the shares of DOCOMO’s common stock held by the remaining minority shareholders and completed the Transaction as of December 29, 2020, and now owns 100 percent of the equity and voting interests of DOCOMO.

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<sup>9</sup> *Id.* at 13614.

<sup>10</sup> *See International Authorizations Granted*, Public Notice, 30 FCC Rcd. 7403 (Int’l Bur. 2015). *See also International Authorizations Granted*, Public Notice, 27 FCC Rcd. 5266 (Int’l Bur. 2012) (including Advanced Wireless Services within the scope of DPAC’s Section 310(b)(4) approvals).

By virtue of the Transaction, JMOF, which holds 33.93 percent of NTT's issued and outstanding shares, now indirectly owns the same percentage of DPAC's capital stock, while NTT Public Minority Shareholders indirectly own DPAC to the same extent of their respective ownership interests in NTT by virtually replacing DOCOMO Public Minority Shareholders (who had an indirect ownership interest in DPAC prior to the Transaction). Both minority shareholder bases consisted of diverse interest holders from Japan and other countries, including the United States, while most of the shares of NTT and DOCOMO were already foreign-owned prior to the Transaction.

Accordingly, the Transaction did not result in any foreign individual or entity (except NTT, which has already indirectly held a controlling ownership interest in DPAC as approved by the 2006 Order), acquiring individually an indirect equity and/or voting interest in DPAC that exceeds 25 percent. Because the Transaction resulted in the increases of the indirect interests in DPAC held by NTT and JMOF above those affirmed by the 2015 Declaration, however, DPAC is seeking a declaratory ruling from the Commission as described in this Petition.

## **II. INFORMATION REQUIRED BY 47 C.F.R. § 1.5001**

Pursuant to 47 C.F.R. § 1.5001, Petitioner submits the following information in support of this Petition:

### **A. Name, FRN, Contact Information, Place of Organization, Type of Business Organization, and Certification Information of Petitioner<sup>11</sup>**

The name, FRN, contact information, place of organization, type of business organization, and certification information for the Petitioner is as follows:

<i>Licensee:</i>	<b>DOCOMO Pacific, Inc.</b>
<i>FRN:</i>	0004242723
<i>Place of Organization:</i>	Guam

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<sup>11</sup> 47 C.F.R. § 1.5001(a).

*Type of Business Organization:* Corporation  
*Certifying Officer:* James W. Hofman, II, Chief Legal Officer  
*Address:* 890 South Marine Corps Drive, Suite 206,  
Tamuning, GU 96913  
*Telephone:* (671) 688-2355  
*Email:* jhofman@docomopacific.com

**B. Legal Counsel Contact Information<sup>12</sup>**

Counsel for DOCOMO Pacific, Inc.:

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Colleen Sechrest  
Harris, Wiltshire & Grannis LLP  
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**C. Type of Radio Service Authorization and Associated Applications<sup>13</sup>**

Petitioner seeks a declaratory ruling to authorize NTT's 100 percent indirect foreign ownership in DPAC, which holds the following types of radio authorizations to which Section 310(b) is applicable:

- AWS-3
- AWS-1
- Cellular (CL)
- Paging (CD)
- Common Carrier Fixed Point to Point Microwave (CF)
- PCS Broadband (CW)
- 700 MHz Lower Band
- Wireless Communications Service (WS)

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<sup>12</sup> *Id.* § 1.5001(b).

<sup>13</sup> *Id.* § 1.5001(c).

**D. Type of Declaratory Ruling<sup>14</sup>**

Petitioner seek a declaratory ruling under 47 C.F.R. § 1.5000(a)(1).

**E. Direct and Indirect Equity and Voting Interests of 10 Percent or More<sup>15</sup>**

DPAC has the following 10-percent-or-greater direct and indirect equity and voting interest holders:

Direct ownership in DPAC:

Name: DOCOMO Guam Holdings, Inc. (“DGH”)  
Address: 1399 New York Avenue, NW, Suite 450, Washington, DC 20005  
Place of Organization: Guam  
Principal Business: Holding company  
Type of Business Organization: Corporation  
Interest Held: 100-percent direct equity and voting interest in DPAC  
Role: DGH will have no direct role in the management of operations of DPAC.

Indirect ownership in DPAC:

Name: NTT DOCOMO, INC. (“DOCOMO”)  
Address: 2-11-1 Nagata-cho, Chiyoda-ku, Toyko, Japan 100-6150  
Place of Organization: Japan  
Principal Business: Telecommunications  
Type of Business Organization: Corporation  
Interest Held: 100-percent direct equity and voting interest in DOCOMO Guam  
Attributable Interest: 100-percent indirect equity and voting interest in DPAC  
Role: DOCOMO will have no direct role in the management or operations of DPAC.

Name: Nippon Telephone and Telegraph Corporation (“NTT”)  
Address: 5-1 Otemachi 1-Chrome, Chiyoda-ku, Toyko, Japan 100-8116  
Place of Organization: Japan  
Principal Business: Telecommunications  
Type of Business Organization: Corporation  
Interest Held: 100-percent direct equity and voting interest in DOCOMO  
Attributable Interest: 100-percent indirect equity and voting interest in DPAC  
Role: NTT will have no direct role in the management or operations of DPAC.

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<sup>14</sup> *Id.* § 1.5001(d).

<sup>15</sup> *Id.* § 1.5001(e), (f) & (g).

Name: Japan Ministry of Finance (“JMOF”)  
Address: 3-1-1 Kasumigaseki, Chiyoda-ku, Tokyo, Japan 100-8940  
Place of Organization: Japan  
Principal Business: Public finance and oversight  
Type of Business Organization: Government entity  
Interest Held: 33.93-percent direct equity and voting interest in NTT  
Attributable Interest: 33.93-percent indirect equity interest and [100-percent] indirect voting interest in DPAC  
Role: JMOF will have no direct role in the management or operations of DPAC.

No other individual or entity holds a 10-percent-or-greater direct or indirect equity or voting interest in DPAC.

**F. Estimate of Aggregate Foreign Ownership; Statement of Circumstances and Public Interest<sup>16</sup>**

Petitioner estimates that the aggregate indirect foreign ownership in DPAC remains 100 percent. This estimate is based upon direct inquiry of the entities that hold such indirect interests. Please see Exhibit A for a statement addressing the circumstances prompting the filing of this Petition and demonstrating that the grant of the petition would serve the public interest.

**G. Description of Ownership and Control Structure<sup>17</sup>**

As described in part I and paragraph E above, DPAC is a wholly-owned subsidiary of DGH, itself indirectly wholly-owned by NTT through NTT’s direct, 100-percent equity and voting interest in DOCOMO. NTT’s largest shareholder is JMOF, which is a government entity and holds a 33.93-percent equity and voting interest in NTT. However, as explained in the 2006 Order, the Japanese government has not used its shareholder position to direct the management of NTT, or of any NTT subsidiary, and its interest in NTT has generally decreased over time

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<sup>16</sup> *Id.* § 1.5001(h)(1).

<sup>17</sup> *Id.* § 1.5001(h)(2).

except for fluctuations in publicly-traded shares.<sup>18</sup> DPAC seeks advance specific approval for a further increase in JMOF's indirect equity and voting interest in DPAC to 49.9 percent only in an abundance of caution—to avoid any need to seek further authorization while ensuring that JMOF's shareholding would not exceed the level affirmed by the Commission due to its changes not resulting in JMOF's controlling interest in NTT.

Please see Exhibit B for a depiction of DPAC's ownership and control structure.

#### **H. Requests for Specific Approval<sup>19</sup>**

As explained in part I, in 2006 the Commission previously granted specific approval for each of DPAC's indirect foreign investors with attributable interests to hold indirect interests in DPAC (through DGH) as follows: DOCOMO (up to 100 percent equity and voting); NTT (up to 65.15 percent equity and voting); and JMOF (up to 26.95 percent equity and 41.53 percent voting). The Commission further approved that DPAC could accept up to and including an additional aggregate 25 percent indirect foreign equity and/or voting interests from foreign investors (including NTT), without seeking prior Commission approval, subject to certain conditions, including the requirement that any foreign individual or entity, with the exception of NTT and JMOF, shall not acquire individually an indirect equity and/or voting interest in DPAC in excess of 25 percent. In 2015, in connection with DPAC's request to expand the scope of its foreign ownership authorization (and reflecting a change in the Commission's rules), the Commission approved a 3-percent increase in the interests then held by NTT and JMOF, to 62.70 percent and 33.33 percent, respectively.

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<sup>18</sup> See Application filed by Guam Cellular and Paging, Inc. and DOCOMO Guam Holdings, Inc., for Assignment, Transfer of Control and Petition for Declaratory Ruling, FCC File Nos. 002553437, ITC-ASG-20060404-00084, WT 06-167, ISP-PDR 20050404-00005 (Apr. 4, 2006).

<sup>19</sup> 47 C.F.R. § 1.5001(i) & (k).

Petitioner now seeks a declaratory ruling confirming 100-percent aggregate foreign investment in DGH and the specific interests held by NTT (100-percent indirect equity and voting interest in DPAC) and JMOF (33.93-percent indirect equity and voting interest in DPAC).<sup>20</sup> Further, to avoid the need to seek further approval while ensuring that DPAC does not exceed its existing authority due to fluctuations in JMOF's direct interests in NTT, Petitioner requests advance authorization pursuant to 47 C.F.R. § 1.5001(k) for any increase in JMOF's equity and voting interest in NTT (and indirectly in DPAC), up to 49.9 percent.

### **I. Team Telecom Considerations**

Petitioner acknowledges that it is subject to that certain agreement dated October 10, 2006 by and between Guam Cellular and Paging, Inc. and DGH (then DoCoMo Guam Holdings, Inc.) on the one hand, and the Federal Bureau of Investigation, the U.S. Department of Justice, and the U.S. Department of Homeland Security, on the other hand ("Agreement"). Pursuant to Section 7.2 of the Agreement, Petitioner requests that the Commission condition its approval of this Petition on continued compliance with that Agreement.

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<sup>20</sup> Calculated pursuant to 47 C.F.R. § 1.5002.

### III. CONCLUSION

Petitioner respectfully requests that the Commission issue a declaratory ruling confirming that it is in the public interest to allow 100-percent aggregate foreign investment in DPAC's immediate parent, DGH (100-percent indirect foreign investment in DPAC), and further confirming specific approval for (a) NTT to hold an indirect 100-percent equity and voting interest in DPAC, (b) JMOF to hold an indirect 33.93-percent equity and voting interest in DPAC, and (c) a future increase in JMOF's indirect equity and voting interest in DPAC, up to 49.9 percent.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul Margie", is written over a horizontal line.

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*Counsel for DOCOMO Pacific, Inc.*

January 28, 2021

## DECLARATION OF DOCOMO PACIFIC, INC.

I, James W. Hofman, II, state that I am Chief Legal Officer of DOCOMO Pacific, Inc. ("DPAC"), and that I am authorized to make this declaration on behalf of DPAC. I certify that to the best of my knowledge and belief the information contained in the foregoing Petition for Declaratory Ruling is true and correct and that the disclosures satisfy each of the pertinent standards and criteria set forth in the Commission's rules at 47 C.F.R. § 1.5001 *et seq.*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

  
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James W. Hofman, II  
Chief Legal Officer  
DOCOMO Pacific, Inc.

Dated: January 28, 2021

**EXHIBIT A:**  
**STATEMENT OF CIRCUMSTANCES**  
**AND**  
**PUBLIC INTEREST**

**1. STATEMENT OF CIRCUMSTANCES**

This Petition is submitted in connection with the completion of a tender offer and subsequent proceedings to acquire the interests of remaining minority shareholders (the “Transaction”) effective as of December 29, 2020 by Nippon Telephone and Telegraph Corporation (“NTT”) for the shares of common stock of NTT DOCOMO, INC. (“DOCOMO”), the indirect parent of DOCOMO Pacific, Inc. (“DPAC”) through its 100-percent interest in DOCOMO Guam Holdings, Inc. (“DOCOMO Guam”). As a result of the completion of the Transaction, NTT now owns 100 percent of the equity and voting interests of DOCOMO. Consequently, following the consummation of the Transaction, NTT has an indirect 100-percent equity and voting interest in DPAC, and the Japanese Ministry of Finance (“JMOF”) has an indirect 33.93-percent equity and voting interest in DPAC (as calculated pursuant to the Commissions’ rules), interests that are above the percentages previously approved—giving rise to the filing of this Petition.

**2. GRANT OF THIS PETITION WOULD SERVE THE PUBLIC INTEREST**

The Commission has previously determined that allowing indirect foreign investment in a common carrier radio license above the 25-percent benchmark set forth in 47 U.S.C. § 310(b)(4) serves the public interest, by promoting competition in the U.S. market, thereby promoting the

U.S. public interest,<sup>21</sup> and made that specific determination with respect to DPAC in 2006 when it approved the transfer of control of DPAC to DOCOMO Guam and aggregate indirect foreign ownership in DPAC of 100 percent.<sup>22</sup> In particular, the Commission specifically determined that the public interest would be served by permitting 100-percent indirect foreign ownership of DPAC by DOCOMO, a Japanese corporation, and further approved the controlling interest in both DPAC and DOCOMO held by NTT, also a Japanese corporation, and JMOF.<sup>23</sup>

The completion of the Transaction did not result in a change of control of DPAC and raises no significant foreign ownership or control issues that would be of interest to the U.S. government with respect to national security, law enforcement, foreign policy, or trade policy concerns, and is in the public interest. Indeed, Petitioner remains subject to that certain agreement by and between Guam Cellular and Paging, Inc. and DOCOMO Guam (then DoCoMo Guam Holdings, Inc.) on the one hand, and the Federal Bureau of Investigation, the U.S. Department of Justice, and the U.S. Department of Homeland Security, on the other hand, which agreement the parties entered into in 2006 to address the national security and law enforcement concerns of those agencies.

This Petition meets all of the requirements of 47 U.S.C. §310(b)(4) and the Commission's rules and policies. Therefore, Petitioner respectfully requests that the Commission grant this Petition and find the increased indirect foreign ownership of NTT in

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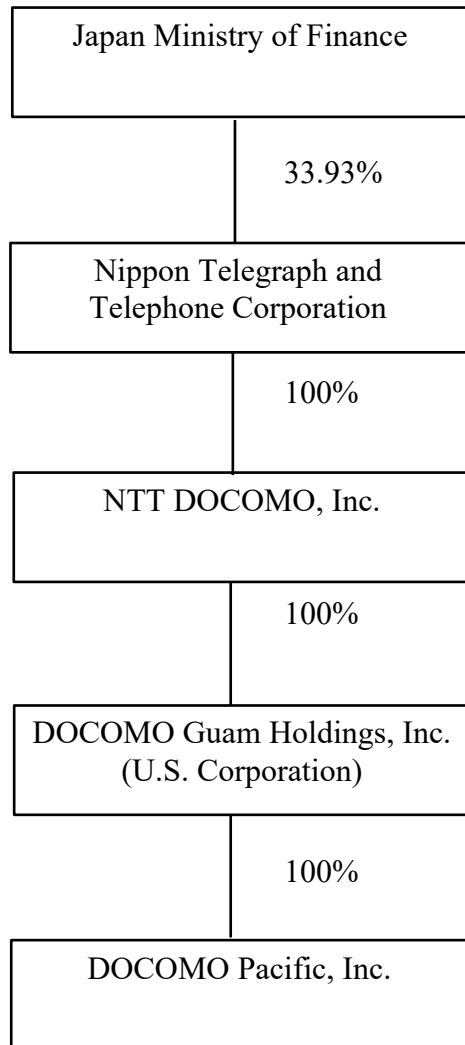
<sup>21</sup> *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Second Report and Order, 28 FCC Rcd. 5741 (2013).

<sup>22</sup> *2006 Order*.

<sup>23</sup> *Id.* at 13614, ¶ 68.

DPAC, and the requested advance approval for a potential increase in the indirect interest held by JMOF, as described herein, to be in the public interest.

**EXHIBIT B:**



All stated interests are equity and voting