



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, S.W.
WASHINGTON, D.C. 20554

DA 02-3229

News media information 202/418-0500 Fax-On-Demand 202/418-2830 Internet: <http://www.fcc.gov> <ftp.fcc.gov>

Released: November 22, 2002

NEWCOMM WIRELESS SERVICES, INC., CLEARCOMM, L.P., AND TEM PUERTO RICO, INC. SEEK FCC CONSENT TO TRANSFER CONTROL OF LICENSES

WT Dkt. No. 02-366

PLEADING CYCLE ESTABLISHED

Petitions/Comments Due:	December 23, 2002
Oppositions Due:	January 6, 2003
Replies Due:	January 13, 2003

I. THE TRANSACTION

NewComm Wireless Services, Inc. ("NewComm"), ClearComm, L.P. ("ClearComm"), and TEM Puerto Rico, Inc. ("TEM") have filed applications pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended (the "Act"),¹ seeking Commission approval of the transfer of control of licenses and authorizations presently held by NewComm and ClearComm to TEM. This transfer of control would occur as the result of TEM acquiring a majority voting ownership interest in NewComm. As listed below, these applications pertain to licenses for the Personal Communications Services ("PCS"), Fixed Microwave Services, and to an international Section 214 authorization. Additionally, TEM has filed a petition for a declaratory ruling that indirect foreign ownership of NewComm, which would exceed twenty-five percent as a result of the proposed transfer of control, is consistent with the public interest pursuant to section 310(b)(4) of the Act.²

II. PARTIES

NewComm holds two PCS and 131 Fixed Microwave Services licenses, and an authorization to provide international global resale and facilities-based telecommunications services pursuant to Section 214 of the Act. NewComm is currently majority owned and controlled by ClearComm, a Delaware limited partnership, which holds 87.9% of NewComm's equity. NewComm has minority investors, Syndicated Communications Venture Partners IV, L.P. ("Syncom") and Fleet Development Ventures Group ("Fleet"), which hold an 8.02% interest and a 4.08% interest, respectively. TEM, a corporation organized under the laws of the Commonwealth of Puerto Rico, is wholly-owned by Telefónica Móviles, S.A. ("Móviles"), a publicly-traded Spanish corporation controlled by Telefónica, S.A. ("Telefónica"), also a publicly-traded Spanish corporation.

¹ 47 U.S.C. §§ 214, 310(d).

² *Id.* § 310(b)(4).

In March 1999, ClearComm entered into a Joint Venture Agreement with Telefónica Larga Distancia de Puerto Rico, Inc. (“TLD”), an indirect Telefónica subsidiary, forming NewComm. Under the terms of the Joint Venture Agreement, ClearComm assigned its licenses to NewComm, and TLD loaned working capital to NewComm. As evidence of its loan, TLD received promissory notes secured by a TLD right to convert those notes, as well as certain subsequent non-dilution promissory notes, into approximately 49.9% of the equity and 25% of the voting rights of NewComm.

The parties state that the proposed transfer of control of NewComm to TLD’s affiliate, TEM, will occur in three steps. First, TLD will assign its promissory notes with their attendant conversion rights to TEM, in exchange for 100% of the voting interests in TEM. TLD also will assign to TEM its rights under a Contribution Agreement, between ClearComm, TLD, and NewComm, which provides TLD with the right to convert the 49.9% equity interest in NewComm into a 49.9% voting ownership interest upon conversion of the promissory notes. Additionally, TLD will assign to TEM its rights under a Stock Purchase Agreement, between TLD and ClearComm, to acquire additional shares in NewComm in order to obtain a total voting and ownership interest of 50.1%. Second, control of TEM will be transferred from TLD to Móviles. Third, after Commission consent is obtained, TEM will exercise the rights pursuant to the promissory notes, Contribution Agreement, and the Stock Purchase Agreement to acquire the 50.1% majority interest in NewComm. Due to certain non-dilution provisions associated with the Syncom and Fleet investments, their interests will remain unchanged. Upon conversion of the promissory notes and consummation of the Stock Purchase Agreement, NewComm will be owned 50.1% by TEM, 37.8% by ClearComm, 8.02% by Syncom and 4.08% by Fleet. Ultimately, NewComm will be controlled by TEM, and ultimately, through Móviles, by Telefónica.

III. APPLICATIONS

The following are applications for consent to transfer control of licenses in the PCS and Fixed Microwave Services, and of an international Section 214 authorization from ClearComm to TEM.

A. SECTION 310(d) APPLICATIONS

1. Part 24 – PCS

The following application for consent to transfer control of licenses granted pursuant to Part 24 of the Commission’s rules has been assigned the file number below:

<u>File Number</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0001049003 ³	NewComm Wireless Services, Inc.	KNLF736

³ File No. 0001049003 has been designated as the lead application in this transaction, and all pleadings and other submissions filed in this matter that pertain generally to the transaction and not to a particular application will be available through this file number.

2. Part 101 – Fixed Microwave Services

The following application for consent to transfer control of licenses granted pursuant to Part 101 of the Commission's rules has been assigned the file number below:

<u>File Number</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0001048972	NewComm Wireless Services, Inc.	WPQN608

B. INTERNATIONAL SECTION 214 APPLICATION

The following application for consent to transfer control of an international Section 214 authorization from ClearComm to TEM has been assigned the following file number:

<u>Authorization Holder</u>	<u>Authorization Number</u>	<u>File Number</u>
ClearComm, L.P.	ITC-214-19990615-00426	ITC-T/C-20021015-00512

IV. SECTION 310(b)(4) DECLARATORY RULING

TEM seeks a declaratory ruling that indirect foreign ownership of NewComm, which would exceed twenty-five percent as a result of the proposed transfer of control to TEM, is consistent with the public interest pursuant to section 310(b)(4) of the Act. Specifically, upon consummation of the proposed transaction, NewComm, a U.S. corporation, will be 50.1% owned and controlled by TEM, also a U.S. corporation. TEM, in turn, will be wholly-owned by Móviles, a publicly-traded Spanish corporation that is controlled by Telefónica, also a publicly-traded Spanish corporation. Telefónica owns 92.7% of Móviles with the remaining 7.3% traded on the Spanish continuous market and the Madrid, Barcelona, Bilbao and Valencia stock exchanges, as well as the New York Stock Exchange. Petitioner states that Telefónica's shares also are publicly traded in Spain on the Madrid, Barcelona, Bilbao and Valencia stock exchanges, as well as on the stock exchanges in London, Paris, Frankfurt, Tokyo, New York, Lima, Buenos Aires, Sao Paulo, and the SEAQ International Exchange in London. Telefónica's two largest shareholders are Chase Manhattan Bank, N.A., which holds 8.131% of Telefónica's shares, and Bilbao Vizcaya Argentina, S.A., which currently holds 5.19% of its shares. Petitioner asserts that, pursuant to the rules and policies established in the Commission's Foreign Participation Order, 12 FCC Rcd. 23891 (1997), Order on Reconsideration, 15 FCC Rcd. 18158 (2000), the "home market" of each of the named foreign investors is Spain, which is a World Trade Organization member.

This petition for declaratory ruling under section 310(b)(4) of the Act has been assigned File No. ISP-PDR-20021015-00035.

V. DESIGNATED ENTITY AND ENTREPRENEURIAL ELIGIBILITY ISSUES

ClearComm and TEM state that this transaction will include the transfer of C and F Block PCS licenses to TEM. The Commission's Rules state that "[n]o assignment or transfer of control of a license for frequency Block C or frequency Block F won in closed bidding pursuant to the eligibility requirements of § 24.709 will be granted," except when, among other instances, "[t]he application for assignments or transfer of control is filed on or after the date the licensee has notified the Commission

pursuant to § 24.203(c) that its five-year construction requirement has been satisfied.”⁴ ClearComm and TEM state that five-year build-out notifications have been filed for all of the wireless licenses implicated in the transfer of control applications to TEM.

Additionally, ClearComm and TEM acknowledge that any remaining debt under the installment payment plan will be paid prior to or upon consummation of the transfer of control of the PCS licenses to TEM.

VI. GENERAL INFORMATION

The applications referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission’s rules or policies.

Final action on these applications will not be taken earlier than 31 days following the date of this Public Notice.⁵ Interested parties may file petitions to deny or comments no later than **December 23, 2002**. Persons and entities that file petitions to deny become parties to the proceeding. They may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order, seeking reconsideration of decisions, and filing appeals of a final decision to the courts. Persons and entities that file comments will have those comments considered but do not become parties to the proceeding and may not be able to participate as fully as petitioners. Oppositions to comments or petitions to deny may be filed no later than **January 6, 2003**. Replies to oppositions may be filed no later than **January 13, 2003**. All filings concerning matters referenced in this Public Notice should refer to **DA 02-3229** and **WT Docket No. 02-366**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

Under the Commission’s current procedures for the submission of filings and other documents,⁶ submission in this matter may be filed electronically (*i.e.*, by the Commission’s Electronic Comment Filing System (ECFS)) or by hand delivery to the Commission’s Massachusetts Avenue location.

- **If filed by ECFS,**⁷ comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, “get form <your e-mail address>.” A sample form and directions will be sent in reply.

⁴ 47 C.F.R. § 24.839(a), (a)(6).

⁵ See 47 U.S.C. § 309(b).

⁶ See *In the Matter of Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, Order, FCC 01-345 (rel. Nov. 29, 2001); see also FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, DA 01-2919 (rel. Dec. 14, 2001).

⁷ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

- **If filed by paper**, the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings) to: (1) the Commission's duplicating contractor, Qualex International, at qualexint@aol.com or (202) 863-2898 (facsimile); (2) Lauren Kravetz Patrich, Commercial Wireless Division, Wireless Telecommunications Bureau, at lkravetz@fcc.gov, or (202) 418-7447 (facsimile); (3) Erin McGrath, Commercial Wireless Division, Wireless Telecommunications Bureau, at emcgrath@fcc.gov or (202) 418-7447 (facsimile); (4) Rita Cookmeyer, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at rcookmey@fcc.gov or (202) 418-2923 (facsimile), (5) Jeff Tobias, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, at jtobias@fcc.gov or (202) 418-2643 (facsimile), (6) Cynthia Bryant, Telecommunications Division, International Bureau, at cbryant@fcc.gov or (202) 418-2824 (facsimile), and (7) Neil Dellar, Transaction Team, Office of General Counsel, at ndellar@fcc.gov or (202) 418-7540 (facsimile).

Copies of the applications and any subsequently-filed documents will be available electronically on the Commission's Electronic Comment Filing System ("ECFS") under WT Docket No. 02-366. Additionally, a fully indexed, unofficial listing and electronic copies of all materials filed in this docket will be available from the website of the Transaction Team at <http://www.fcc.gov/transaction/>.

For further information, contact Lauren Kravetz Patrich or Erin McGrath, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418-7240, or Rita Cookmeyer, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418-0660 (Part 24 only); Jeff Tobias, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, at (202) 418-1617 (Part 101 only); or Cynthia Bryant, Telecommunications Division, International Bureau, at (202) 418-8164 (International Section 214 authorization and petition for declaratory ruling only).

-FCC-