

**SECTION 214 T/C APPLICATION  
TRANSFER OF CONTROL OF  
TELECOM NORTH AMERICA, INC.**

**ATTACHMENT 1**

**Answer to Question 10.**

The Section 214 Authorization holder is Telecom North America, Inc. (“Applicant”), 2564 W. Horizon Ridge Parkway, Henderson, NV 89052. That is also the information for the “transferor” and “transferee”, since post-transaction, no single entity will have positive control of Applicant. The persons who currently control Applicant, Messrs. Jean Gottschalk (“Gottschalk”) and Herve Andrieu (“Andrieu”), will continue to collectively hold 50% of Applicant and exercise negative control of Applicant. Their address and contact information is the same as for Applicant.

A new entity, a Canadian corporation named Knowroaming, Ltd. (“KRL”), will acquire a 50% ownership in applicant and also hold negative control of Applicant. KRL’s address and telephone are: 150 Eglinton Ave. E, Suite 807, Toronto, Ontario, M4P 1E8, Canada; +1-416-577-8338.

**Please direct all questions and correspondence concerning this application to legal counsel: David J. Kaufman, Rini O’Neil, PC, 1200 New Hampshire Ave. NW, Washington, DC 20036; tel. 202-955-5516; e-mail [dkaufman@rinioneil.com](mailto:dkaufman@rinioneil.com)**

**Answer to Question 11.**

The post-transaction ownership of Applicant will be as follows.

**Direct Ownership in Applicant.** Applicant will be owned: 25% by Gottschalk; 25% by Andrieu; and 50% by KRL (addresses shown in Answer to Question 10 above).

Messrs. Gottschalk and Andrieu are the founders of Applicant, and will continue to be employed full-time as key management personnel of Applicant. KRL’s principal business is the sale of international roaming services.

**Indirect Ownership in Applicant. (a) Knowroaming Direct Ownership.** Knowroaming, in turn, is owned: 25% by Gregory Gundelfinger (“Gundelfinger”); 25% by Mathew Stein; and 50% by Carlyle, Kft. (“Carlyle”). Their respective addresses and contact information are the same as for KRL.

Messrs. Gundelfinger and Stein are the founders of, and key management personnel for, KRL. Carlyle's principal business is to hold ownership interests in other companies, including, among others, KRL.

**(b) Carlyle Ownership.** Carlyle is owned by Ki Corporation Limited ("Ki"), a corporation domiciled in the Isle of Jersey. Ki's address is: Elizabeth House, 9 Castle Street, St. Helier, Jersey JE4 2QP. However, for purposes of this Application, all correspondence should go to Ki either via the above-reference legal counsel to Applicant, or via KRL.

Ki's principal business is to hold ownership interests in various other companies, including, among others, Carlyle.

**Ki Ownership.** Through certain intervening entities controlled by him, Ki is ultimately controlled by Mr. Nathan Kirsh ("Kirsh"). Mr. Kirsh owns various businesses in multiple industries around the world, although none of them would fall within the definition of "foreign carrier" as set forth in 47 CFR §63.09(d). Typical of Mr. Kirsh's various business interests is his existing interest in RD America, LLC d/b/a Restaurant Depot ("Restaurant Depot"). Restaurant Depot is one of the largest wholesale restaurant supply chains in the United States, with sales locations in 27 states across the country. *See* <http://www.restaurantdepot.com/locations>.

All correspondence for purposes of this application should go to Mr. Kirsh either via the above-referenced counsel to the Applicant or via KRL.

### **Answer to Question 13.**

Currently, Applicant is owned as follows: 37.505% by Mr. Gottschalk; 37.505% by Mr. Andrieu; and 24.99% by KRL, with Messrs. Gottschalk and Andrieu collectively thereby holding 75.01% of Applicant and controlling Applicant. In the proposed transaction, Applicant would issue new shares to KRL in return for a capital infusion into the company, which would dilute the interests of Messrs. Gottschalk and Andrieu, and result in the following post-transaction ownership percentages: 25% by Mr. Gottschalk; 25% by Mr. Andrieu; and 50% by KRL.

### **Additional Discussion of Public Interest.**

#### **A. The Legal Standard**

Although not directly applicable to Section 214 authorizations, which are not regulated by Title III of the Communications Act of 1934 as amended ("Act"), the cases involving determinations of the public interest involving foreign ownership of title III entities are helpful in assessing the public policy considerations that underlie all determinations involving foreign ownership. Section 310(b)(4) of the 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.

Thus, up to 25% indirect foreign ownership is permitted unconditionally under Title III, and greater levels are prohibited only in cases where the public interest so requires.<sup>1</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>2</sup>

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>3</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>4</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>5</sup>

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.<sup>6</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

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<sup>1</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>2</sup> *VoiceStream Wireless Corp., Powertel, Inc., and Deutsche Telekom AG*, 16 FCC Rcd 9779, 9803 (2001).

<sup>3</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>4</sup> *Foreign Participation Order*, 12 FCC Rcd at 23913 & 23940.

<sup>5</sup> *Id.*, 12 FCC Rcd at 23913-23914.

<sup>6</sup> *Id.*, 12 FCC Rcd at 23941-23942.

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>7</sup>

**B. Application of the Standard to Applicant**

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, 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.)

Allowing this transaction to go forward will result in the infusion of needed additional working capital into the operations of Applicant, and enable Applicant and its subsidiaries to enhance the quality of their services to the public. Accordingly, this transaction is in the public interest.

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<sup>7</sup> *Market Entry Order*, 11 FCC Rcd at 3951-3952.