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

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In the Matter of)
)
Implementation of Sections)
3(n) and 332 of the)
Communications Act)
Regulatory Treatment of)
Mobile Services -- Foreign)
Ownership Waiver Petitions)

GN Docket No. 93-252
DA 95-1303

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PETITION FOR PARTIAL RECONSIDERATION

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SUMMARY

Geotek's foreign ownership waiver granted under Section 332(c)(6), among other things, permits its license subsidiaries to retain foreign officers otherwise prohibited by Section 310(b)(3). The Commission, however, limited this waiver to *licenses* held or acquired by Geotek or its subsidiaries prior to August 10, 1996 rather than the person or entity. Unless the Commission reconsiders its narrow interpretation of the scope of the Section 332 waiver, Geotek through its subsidiaries will be statutorily prohibited from acquiring additional common carrier licenses after August 10, 1996 that are necessary to support its SMR network because the Commission lacks discretion to waive Section 310(b)(3).

Under the Commission's prior waiver practice, foreign ownership waivers have unquestionably applied to the licensee rather than the individual licenses. Nothing in the statute itself or the legislative history suggests that the Commission should treat waivers under Section 332(c)(6) any differently. Geotek therefore requests that the Commission reconsider its narrow interpretation of Section 332 waivers and instead apply the waiver to the licensee provided that foreign ownership existing as of May 24, 1993 remains unchanged or else is decreased.

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To: Chief, Wireless Telecommunications Bureau

PETITION FOR PARTIAL RECONSIDERATION

Geotek Communications, Inc. ("Geotek"), by its attorneys and pursuant to Section 405 of the Communications Act of 1934, as amended (the "Act"), and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, hereby petitions for partial reconsideration of the decision of the Chief of the Wireless Telecommunications Bureau (the "Wireless Bureau") as set forth in Order, DA 95-1303 (released June 12, 1995), in the above-captioned proceeding. Specifically, Geotek requests that the Wireless Bureau reconsider its decision to limit the foreign ownership waiver granted pursuant to Section 332(c)(6) to only those

licenses acquired on or before August 10, 1996 and instead apply the waiver to the subject person or entity covered by the waiver provided that the conditions set forth in Sections 332(c)(6)(A) and (B) are met.¹

I. BACKGROUND

Geotek, through its affiliates and subsidiaries, indirectly holds licenses or has options to acquire additional licenses in the Specialized Mobile Radio ("SMR") service. Geotek's foreign ownership waiver, among other things, permits its subsidiaries to retain their foreign officers that existed as of May 24, 1993. As it continues to build out its SMR network in order to deliver dispatch services over a wide geographic area to both fleet operators and small users, Geotek, through its subsidiaries, plans to acquire additional common carrier licenses and to participate in the 900 MHz MTA license auction. The Commission, however, limited the scope of the foreign ownership waiver to the *licenses* held or acquired prior to August 1996. Thus, absent reconsideration, the Commission's narrow interpretation of Section 332(c)(6) would prohibit these licensees from acquiring additional licenses after August 10, 1996 because to do so

¹ Geotek has also filed a petition seeking reconsideration of the Commission's decision to grandfather foreign ownership pursuant to Section 332(c)(6) only for MTA licenses filed by an incumbent within the MTA. See Geotek's Petition for Reconsideration of the *Second Report and Order and Second Further Notice of Proposed Rule Making*, FCC 95-159, in PR Docket No. 89-553, PP Docket No. 93-253, and GN Docket No. 93-252 (released April 17, 1995), filed June 5, 1995.

would require additional waivers of Section 310(b)(3) of the Act, which the Commission lacks authority to waive. The Commission, therefore, should use its authority under Section 332 and apply the waiver to the specific person or entity rather than the individual licenses.

Prior to enactment of the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act"),² Geotek was regulated as a private land mobile radio service ("PLMRS") provider and therefore was not subject to the foreign ownership provisions of Section 310(b) of the Act. In order to achieve regulatory parity among mobile radio services, Congress in the Budget Act specified criteria for reclassifying certain categories of PLMRS providers as commercial mobile radio service ("CMRS") providers. As the result of the Commission's implementation of this Congressionally mandated reclassification, Geotek and other reclassified CMRS providers became subject to the foreign ownership restrictions imposed on common carriers pursuant to Section 310(b).

To avoid forcing divestiture of foreign ownership, Congress provided a mechanism whereby the existing foreign ownership, including foreign officers and directors, of such reclassified CMRS providers would be

² Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 (1993).

grandfathered.³ In accordance with procedures set forth by the Commission, Geotek timely filed a petition seeking waiver of Sections 310(b)(3) and (b)(4) of the Act to permit it, its subsidiaries, and its affiliates to retain certain foreign officers and/or directors.⁴ On June 12, 1995, the Wireless Bureau granted Geotek's petition for waiver of foreign ownership existing as of May 24, 1993 but only with respect to those licenses already held by Geotek or additional licenses in the same service that may be acquired by Geotek prior to August 10, 1996.⁵ Geotek now seeks reconsideration of this limitation on the scope of the foreign ownership waiver.

³ See 47 U.S.C. § 332(c)(6); see also Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, First Report and Order, 9 FCC Rcd 1056 (1994) (setting forth procedure for filing waiver petitions to retain existing foreign ownership) [hereinafter First Report and Order].

⁴ See Commercial Mobile Radio Service Foreign Ownership Waiver Petition, filed by Geotek Industries, Inc., dated February 9, 1994. In its petition, Geotek Industries, Inc. (which was subsequently renamed Geotek Communications, Inc.) requested waiver of only the Section 310(b) restrictions on foreign officers and directors. Geotek, as well as its subsidiaries and affiliates, are, and have been, in full compliance with the restrictions on the amount of capital stock that may be owned of record or voted by aliens.

⁵ See Order ¶¶ 7-10. Geotek notes that, although the Commission granted its request for waiver, the ordering clause neglected to list Geotek along with the other applicants. Accordingly, Geotek respectfully requests that the Commission correct this oversight in its order on reconsideration.

II. ARGUMENT

A. **Neither the Plain Language Nor the Legislative History of Section 332(c)(6) Limits the Grandfathering of Foreign Ownership to Specific Licenses.**

Section 332(c)(6) of the Act provides that the Commission "may waive the application of Section 310(b) to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier" ⁶ The statute itself imposes only two conditions on such grandfathered waivers granted by the Commission. First, the waiver can cover only "the extent of foreign ownership interest [in the reclassified provider] . . . which existed on May 24, 1993." ⁷ Second, the waiver cannot "permit the subsequent transfer of ownership to any other person in violation of Section 310(b)." ⁸

These statutory conditions, however, in no way limit the waiver granted under Section 332(c)(6) to a specific license. Rather, as the Commission itself has previously concluded, these conditions simply make clear that the waiver covers "only the particular *person* or *entity* that held the ownership

⁶ 47 U.S.C. § 332(c)(6).

⁷ 47 U.S.C. § 332(c)(6)(A).

⁸ 47 U.S.C. § 332(c)(6)(B).

interest on May 24, 1993,"⁹ The plain language of Section 332(c)(6) thus suggests that the foreign ownership waiver granted to a reclassified CMRS provider should remain valid and apply to any additional licenses that may be acquired so long as the extent of foreign ownership existing as of May 24, 1993 remains unchanged or else is decreased.

Indeed, the legislative history of the Budget Act supports this interpretation. The origin of the Section 332(c)(6) waiver provision stems from a Senate amendment that provided for the unconditional waiver of lawful foreign ownership in a reclassified CMRS provider. Specifically, this Senate amendment provided that "the foreign ownership restrictions of Section 310(b) shall not apply to any lawful foreign ownership in a provider of [CMRS] prior to May 24, 1993, if that provider was not regulated as a common carrier prior to the date of enactment of [the Budget Act]"¹⁰

At Committee Conference, the Senate waiver provision was adopted with modifications designed to limit the scope of its application. These modifications consisted of (1) the requirement that affected CMRS providers take the affirmative step of filing with the Commission foreign ownership waiver peti-

⁹ First Report and Order, 9 FCC Rcd at 1058, ¶10 (emphasis added); see also Order ¶ 21 (recognizing the right of foreign *entities* to nominate board members).

¹⁰ H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess., at 494 (1993), reprinted in 1993 U.S.C.C.A.N. 1088, 1183 [hereinafter Conference Report].

tions and (2) the addition of the two conditions discussed above which are codified in Sections 332(c)(6)(A) and (B). The Conference Report explains that the conditions were designed to "'grandfather[]" only the *particular person* who holds the foreign ownership on May 24, 1993; the 'grandfathering' does not transfer to any future *owners*."¹¹ Thus, Congress expressly considered the scope of the grandfather provision and chose to limit its application to only those particular foreign ownership interests existing as of May 24, 1993. It did not limit the grandfather provision or the Commission's authority thereunder to specific licenses.

Quite the contrary, the legislative history clearly reflects a deliberate judgment on the part of Congress to permit reclassified CMRS providers to continue to hold and acquire licenses without being "forced to divest themselves of any foreign ownership"¹² The Wireless Bureau's decision to limit the foreign ownership waiver granted pursuant to Section 332(c)(6) to only those licenses acquired on or before August 10, 1996 thus contravenes the express Congressional intent to avoid forcing divestiture of previously lawful foreign ownership. Under the Wireless Bureau's restrictive interpretation, divestiture would not be avoided, but rather merely postponed. For example, under this re-

¹¹ Conference Report at 495.

¹² Id.

strictive interpretation, Geotek would be prohibited from acquiring additional common carrier licenses incidental to its SMR network after August 10, 1996 because its foreign ownership includes officers in the licensee companies which, absent a waiver, violates Section 310(b)(3). In order for these licensees to acquire additional licenses after August 1996, they will be required to remove the foreign officers because the Commission lacks authority to waive Section 310(b)(3).¹³ Congress clearly intended to avoid -- not merely postpone -- this type of harm. Thus, the only reasonable interpretation of Section 332(c)(6) is that the foreign ownership waiver attaches to the reclassified CMRS provider, not specific licenses held by such provider.¹⁴

¹³ See Wilner & Scheiner, 103 F.C.C.2d 511, 517-18 (1985), recon. in part, 1 FCC Rcd 12 (1986) (recognizing the Commission's lack of statutory discretion to waive Section 310(b)(3)); see also Order ¶ 23 (recognizing previous waivers granted to Comcast to permit foreign officers of any subsidiary that controls common carrier licensees, but is not itself a common carrier licensee).

¹⁴ Indeed, legislation recently approved by the Senate provides further support that the broader interpretation of the intended scope of the Section 332(c)(6) waiver provision does not contravene Congressional mindset regarding foreign ownership. See S. 652, 104th Cong., 1st Sess. 56-58 (June 23, 1995)(eliminating application of Section 310(b) to common carrier licenses if the foreign country in question provides equivalent market opportunities for U.S. citizens); see also H.R. 1555, 104th Cong., 1st Sess. § 302 (1995)(eliminating Section 310(b) foreign ownership restrictions with respect to common carrier licenses if the foreign country in question is party to an agreement requiring most-favored nation treatment or if the Commission determines that such action would serve the public interest).

B. Narrowly Limiting the Scope of the Section 332(c)(6) Waiver Is Inconsistent with the Commission's Prior Foreign Ownership Waiver Practice.

Applying the foreign ownership waiver to the person or entity rather than specific licenses is consistent with past Commission waivers under Section 310(b)(4) of the Act. In those instances in which the Commission has exercised its discretion and authorized foreign ownership beyond the statutory benchmarks, it has limited the waiver to the degree of foreign ownership existing at the time of grant of the waiver -- not the specific licenses held at the time of grant.¹⁵

In fact, in response to a request for declaratory ruling under Section 310(b)(4), the Commission emphasized the continuing nature of a foreign ownership waiver stating that the "public interest determination [is made] on the basis of undisputed facts presented by the licensee, which determination would have continuous validity in the absence of new or changed circumstances of

¹⁵ See, e.g., MCI Communications Corp., 9 FCC Rcd 3960 (1994); Teleport Transmission Holdings, Inc., 8 FCC Rcd 3063 (Com. Car. Bur. 1993); IDB Communications Group, Inc., 6 FCC Rcd 4652 (Com. Car. Bur. 1991). But see Business Men's Assurance Co. of Am., 31 R.R.2d 1333 (1974) (suggesting that further Commission consent would be unnecessary in the case of additional foreign officers having no responsibilities with respect to licensed operations (*i.e.*, no broadcast responsibilities)).

substantial materiality."¹⁶ In IDB Communications Group, Inc., the corporate parent expressly sought and was granted "a declaratory ruling that the proposed 26.2 percent level of foreign ownership . . . [would] not result in the . . . refusal to license . . . applications which *may be filed* by [the] subsidiaries."¹⁷ The Commission's longstanding practice of granting declaratory rulings regarding foreign ownership in excess of the Section 310(b)(4) benchmarks is inherently prospective in nature and thus permits the acquisition of additional licenses without further Commission action as long as the foreign ownership is not increased.

Similarly, in granting recent waiver requests under Section 310(b)(4), the Common Carrier Bureau has unquestionably demonstrated that the foreign ownership waiver applies not only to those licenses currently held, but also to any application for licenses which may subsequently be filed.¹⁸ Nothing

¹⁶ International Telephone & Telegraph, 67 F.C.C.2d 604, 605 (1978) (quoting Avco Broadcasting Corp., 23 F.C.C.2d 659 (1970)); see also R. Russell Eagan, Esq., 30 R.R.2d 734 (1974); Tribune Co., 47 F.C.C.2d 522 (1974); Avco Broadcasting Corp., 25 R.R.2d 1059 (1972). Both ITT and Avco Broadcasting involved waivers under Section 310(a)(5) of the Act. The relevant portion of Section 310(a)(5), however, was redesignated as 310(b)(4) by Pub. L. No. 93-505, 88 Stat. 1576 (1974).

¹⁷ IDB Communications Group, Inc., 6 FCC Rcd at 4652, ¶¶ 4, 10-11 (emphasis added).

¹⁸ See, e.g., Cablevision Systems Corp., 9 FCC Rcd 4448, ¶ 8 (Dom. Fac. Div. 1994) (holding that the Commission has no objection under Section 310(b)(4) to the *continued* appointment of a foreign officer); Atlantic Tele-
Network, Inc., 7 FCC Rcd 6634, ¶ 7 (Mob. Serv. Div. 1992) (finding that
(continued...))

in Section 332(c) or the legislative history suggests that the Commission should treat waivers granted thereunder any differently. The modifications added by the Conference Committee to the Senate version of the provision that ultimately became Section 332(c)(6) reflect, if not mimic, this waiver practice. By requiring reclassified providers to file a waiver request rather than simply granting an unconditional blanket waiver, Congress was effectively mandating that the Commission make the waiver determinations on a case-by-case basis. Further, the conditions of Section 332(c)(6)(A) and (B) simply reiterate the conditions implicit in every Commission waiver granted under Section 310(b)(4) -- that the foreign ownership waiver determination has continuing validity so long as the degree of foreign ownership remains unchanged.

¹⁸(...continued)

the public interest does not require that the Commission *refuse to license* or revoke licenses as the consequence of foreign nationals holding more than 25% of the board seats); IDB Communications Group, Inc., 6 FCC Rcd 4652, ¶ 11 (Com. Car. Bur. 1991) (finding that the public interest does not require revocations or *refusal to license applications* due to foreign ownership in excess of the 25% benchmark); Millicom, Inc., 4 FCC Rcd 4846, ¶¶ 16-17 (Com. Car. Bur. 1989) (finding that the public interest does not require *refusal to license* as a consequence of foreign board membership in excess of the 25% benchmark); Contel Corp., 3 FCC Rcd 5795, ¶ 9 (Com. Car. Bur. 1988) (finding that appointment of a foreign officer would not warrant refusal or revocations of authorizations held by *or applied for* by the subsidiary licensees).

C. Failure To Implement the Grandfather Provision to the Full Extent Contemplated by Congress Is Disruptive and Contrary to the Public Interest.

Section 332(c)(6) provides for the grandfathering of all foreign ownership, not merely foreign ownership prohibited by Section 310(b)(4). Obviously, the waiver precedent cited in Section II.B. above only pertains to waiver of the Section 310(b)(4) restrictions because the Commission lacks jurisdiction to grant waivers of any of the other foreign ownership restrictions. Nevertheless, this inability to grant waiver of the restrictions contained in Sections 310(b)(1), (b)(2), and (b)(3) is precisely why the Commission must implement the grandfather provision of Section 332(c)(6) to the full extent contemplated by Congress. To do otherwise would blatantly thwart the clear Congressional intent to avoid, not merely postpone, forced divestiture of foreign ownership of reclassified CMRS providers -- which in Geotek's case includes ownership prohibited by Section 310(b)(3) and which the Commission lacks statutory discretion to waive.

Under the Wireless Bureau's current interpretation, absent foreign ownership divestiture or corporate restructuring, Geotek would be statutorily prohibited from acquiring additional common carrier licenses, including Part 21 microwave or other licenses, necessary to link base station facilities and support those licenses for which foreign ownership has been grandfathered. Forcing Geotek to expend its resources on corporate restructuring rather than on develop-

ing innovative mobile technology or, in the alternative, hamstringing Geotek's ability to supplement its network with additional facilities, simply would not serve the public interest. Moreover, interpreting the waiver provision more broadly, as clearly was intended by Congress, promotes administrative efficiency by eliminating the need for the waiver recipients to request a declaratory ruling regarding foreign ownership in excess of the Section 310(b)(4) benchmarks in connection with licenses acquired after August 10, 1996.

Finally, this broader interpretation of the waiver provision will not open the flood gates to foreign ownership of domestic common carrier facilities. The foreign ownership waiver available under Section 332(c)(6) is available to only those few reclassified CMRS providers that timely filed waiver petitions. Moreover, within this limited group of CMRS providers, the waivers would retain continuing validity only to the extent that the precise foreign ownership existing as of May 24, 1993 is maintained (or else decreased through divestiture of the interest to a domestic person or entity). Public interest considerations simply do not warrant the Wireless Bureau's limited interpretation of the Section 332(c)(6) grandfather provision.

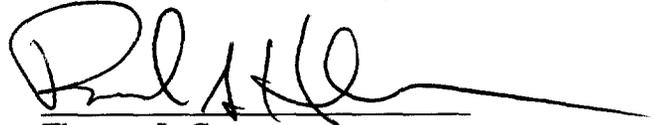
III. CONCLUSION

For the reasons discussed above, Geotek respectfully requests that the Wireless Bureau reconsider its decision to limit the foreign ownership waivers granted pursuant to Section 332(c)(6) to only those licenses in the same service held or acquired by reclassified CMRS providers prior to August 10, 1996.

Respectfully submitted,

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Dated: July 12, 1995

Certificate of Service

I, Tracey M. DeVaux, do hereby certify that copies of the foregoing Petition for Partial Reconsideration were sent via first-class mail on Wednesday July 12, 1995 to the following:

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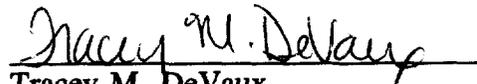
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