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JUN - 9 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 9, 2003

BY HAND

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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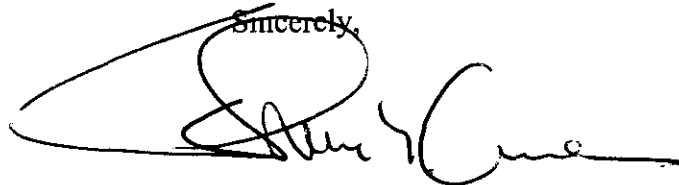
Re: IB Docket No. 03-115; No. ISP-PDR-20030418-00012

Dear Ms. Dortch:

Enclosed for filing herewith is an original plus four (4) copies of the Petition of the Office of the Governor of the Commonwealth of the Northern Mariana Islands To Deny, or, In the Alternative, To Designate For Hearing filed in the above referenced proceeding.

If you have any questions regarding this matter, please to contact the undersigned.

Sincerely,



Thomas K. Crowe
Gregory E. Kunkle,
Counsel for the Office of the Governor of the
Commonwealth of the Northern Mariana
Islands

Enclosures

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

RECEIVED

JUN - 9 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Applications for Consent to)
Transfer Control Filed by)
)
BELL ATLANTIC NEW ZEALAND)
HOLDINGS, INC.)
)
And)
)
PACIFIC TELECOM INC.)
)
Petition of Pacific Telecom Inc.)
for Declaratory Ruling Under 310(b)(4))
of the Communications Act of 1934, as)
Amended, to Permit Indirect Foreign)
Ownership Exceeding 25 Percent In)
Common Carrier Licensee GTE Pacifica Inc.)

IB Docket No. 03-115

File No. ISP-PDR-20030418-00012

PETITION OF THE OFFICE OF THE GOVERNOR OF THE COMMONWEALTH OF
THE NORTHERN MARIANA ISLANDS TO DENY, OR, IN THE ALTERNATIVE, TO
DESIGNATE FOR HEARING

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June 9, 2003

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Summary Of Petition

The Office of the Governor of the Commonwealth of the Northern Mariana Islands (“Commonwealth”) petitions the Commission to deny the Petition filed on April 18, 2003 by Pacific Telecom Inc. (“PTI”) for a declaratory ruling under Section 310(b)(4) of the Communications Act of 1934, as amended (“1934 Act”), to permit indirect foreign ownership exceeding 25% in GTE Pacifica Inc. (“GTE Pacifica”). The Commonwealth also petitions the Commission to deny the applications filed on the same day for consent to transfer control of the Title II and Title III licenses held by Micronesian Telecommunications Corporation (“MTC”) and its wholly-owned subsidiary, GTE Pacifica, to PTI (“Applications”), or alternatively, to designate the matter for hearing.

A. PTI Should Be Disqualified From Holding The Authorizations At Issue.

As shown below, in a related proceeding (IB Dkt. No. 02-111) involving substantially the same transaction, PTI committed intentional misstatements of material fact and withheld information relevant to its applications from the Commission, breaching its duty of candor before the Commission. Such intentional misrepresentations and omission violate Section 1.17 of the Commission’s Rules and cast doubt over the ability and willingness of PTI (and its ultimate controlling shareholders) to candidly disclose facts and circumstances surrounding the instant transaction as well as comply with U.S. law. As such, PTI should be disqualified from acquiring the authorizations at issue and the Applications should be denied.

B. The Applications Must Be Denied As PTI Fails To Show That It Is Qualified To Operate The Commonwealth’s Telecommunications Network.

PTI fails to demonstrate that it is qualified under Sections 310(d) and 308 of the 1934 Act to assume the monopoly operations of MTC and GTE Pacifica, and thus, that the proposed transfers would be in the public interest.

As shown, the Applications fall well short of satisfying the requisite burden of proof with respect to technical or financial qualification. Specifically, PTI offers four justifications to show technical qualification, each of which is rebutted below. Further, the information offered to show financial ability is vague and sketchy at best, and useless in allowing meaningful public comment or Commission review.

The Applications also fail to supply critical information regarding Citadel Holdings Inc. (“Citadel”), Prospector Investment Holdings Inc. (“Prospector”) and unrelated third parties, as well as the trust arrangement. Since the Applicants’ attempt to base their financial qualifications on the assets of Citadel, further information on this company and its financial ability, *inter alia*, must be disclosed. Since Prospector wholly-owns PTI, additional information regarding Prospector and its apparently complex ownership structure is necessary. Additional information, as shown below, also needs to be disclosed regarding the proposed trust fund for the benefit of MTC’s employees. Given the important national security and public safety issues that this proceeding raises as well as the underlying character issues that were brought to light in the context of the Applicants’ prior filings in IB Dkt. No. 02-111 to acquire the same target corporations, it is crucial that the Commission not approve the Applications absent complete and full disclosure with respect to all of these issues.

C. *National Security And Public Safety Concerns Compel Denial Of The Petition Seeking A Waiver Under Section 310(b)(4).*

In light of our Nation’s ongoing war against global terror, now is not the time to authorize 100% foreign control over a monopoly telecommunications network in a distant Pacific insular area which is of major strategic importance to the U.S. In short, foreign control over the Commonwealth’s monopoly network has the potential to jeopardize U.S. national security and public safety, and therefore is not in the public interest.

As shown below, the Commonwealth telecommunications market is a monopoly market dominated by MTC. In stark contrast to the competitive markets which prevail in the mainland U.S, both the small population and physical size of the Commonwealth have historically served to sustain a monopoly telecommunications environment. Since the instant transaction seeks approval for 100% foreign ownership of a monopoly incumbent local exchange carrier in a distant insular area, a Section 310(b)(4) waiver would be inappropriate.

As shown below, MTC is the only wireline local service provider and only provider of exchange access services operating in the Commonwealth. Despite PTI's efforts to show the contrary, MTC is well established as the dominant cellular provider and off-island 1+ long distance provider in the Commonwealth. MTC is also the predominant supplier of backbone Internet services and the dominant Internet service provider in the Commonwealth.

Critical infrastructure services, including 911 emergency services and many private sector services, depend upon the Commonwealth telecommunications network. The U.S. military as well as the International Broadcasting Bureau ("IBB"), which oversees both the Voice of America and Radio Free Asia, also at least in part depend upon the network. Allowing PTI to acquire MTC would place the Commonwealth monopoly network under complete foreign control. Such foreign control would render the Commonwealth network and, in turn, critical infrastructure services as well as U.S. military and IBB activities that utilize the network, potentially vulnerable in a time of war or national crisis.

In addition, the proposed transaction is not in the public interest due to the Commonwealth's distant and strategic geographic location. The U.S. depends, for purposes of national defense, upon the strategic location of the Commonwealth, situated within 2000 miles of North Korea, mainland China, the Philippines, and Taiwan. Moreover, the Commonwealth's

distant location from the mainland U.S. renders it more difficult to defend during a time of war or national crisis (in accordance with U.S. obligations under the “Covenant to Establish a Commonwealth Northern Mariana Islands in Political Union with the United States” which was approved by Congress in 1976). In light of the Nation’s ongoing war against terrorism, it would be improper and unlawful to grant the Petition at this time.

D. The Proposed Transaction Could Undermine Rate Integration In The Commonwealth.

The proposed transaction, if approved in its current form, has the very real potential to result in the loss of important products and services as well as comparatively lower per minute pricing, thereby undermining rate integration in the Commonwealth in violation of Section 254(g) of the 1934 Act. Since PTI lacks corresponding operations in the mainland U.S. through which rates could be systematically integrated, the proposed transaction would mean the loss of the benchmark integration rate, potentially undermining existing low rates. The sale of MTC to PTI could also mean the loss of attractive calling plans which had resulted from the integration of Verizon products and services. Were this to occur, Section 254(g) would be compromised; thus, the proposed transaction is not in the public interest.

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

In the Matter of)	
)	
Applications for Consent to Transfer Control Filed by)	IB Docket No. 03-115
)	
BELL ATLANTIC NEW ZEALAND HOLDINGS, INC.)	
)	
And)	
)	
PACIFIC TELECOM INC.)	
)	
Petition of Pacific Telecom Inc. for Declaratory Ruling Under 310(b)(4) of the Communications Act of 1934, as Amended, to Permit Indirect Foreign Ownership Exceeding 25 Percent In Common Carrier Licensee GTE Pacifica Inc.)	File No. ISP-PDR-20030418-00012

**PETITION OF THE OFFICE OF THE GOVERNOR OF THE COMMONWEALTH OF
THE NORTHERN MARIANA ISLANDS TO DENY, OR, IN THE ALTERNATIVE, TO
DESIGNATE FOR HEARING**

The Office of the Governor of the Commonwealth of the Northern Mariana Islands (“Commonwealth”) hereby petitions the Commission to deny the Petition filed on April 18, 2003, by Pacific Telecom Inc. (“PTI”), for a declaratory ruling under Section 310(b)(4) of the Communications Act of 1934, as amended (“1934 Act”), to permit indirect foreign ownership exceeding 25% in GTE Pacifica Inc. (“GTE Pacifica”).¹ Additionally, the Commonwealth

¹ *In re Pacific Telecom Inc., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, to Permit Indirect Foreign Ownership Exceeding 25 Percent in Common Carrier Licensee GTE Pacifica Inc.* (Apr. 18, 2003) (hereinafter, “Petition”).

petitions the Commission to deny the applications filed on April 18, 2003 for consent to transfer control of the licenses held by Micronesia Telecommunications Corporation (“MTC”)² and its wholly-owned subsidiary, GTE Pacifica, from Bell Atlantic New Zealand Holdings, Inc. (“BANZHI”) to PTI,³ or, alternatively, to designate the matter for hearing.

As demonstrated below, the Applications must be denied due to previous intentional, material misrepresentations made to the Commission by PTI in a related docket, IB Dkt. No. 02-111, in violation of Section 1.17 of the Commission’s Rules. The Applications must also be denied as PTI has failed to show that the transfers of control are in the public interest by, *inter alia*, failing to demonstrate that PTI is technically and financially qualified to operate the Commonwealth’s telecommunications network. Additionally, the request of a ruling allowing foreign ownership in excess of the Section 310(b)(4) statutory limit should be denied, as this would jeopardize U.S. national security as well as public safety in the Commonwealth. Finally, the Applications, if granted, would jeopardize rate integration in the Commonwealth.⁴

The Commonwealth fully comprehends that BANZHI and its parent company, Verizon Communications, Inc. (“Verizon”) wish to exit the Commonwealth market. The proposed transaction, however, does not present an acceptable means by which to accomplish this.

² As used herein, “MTC” generally refers to both MTC and its wholly-owned subsidiary, GTE Pacifica.

³ Applications were jointly filed by PTI and BANZHI (“Applicants”) seeking authorization 1) under Section 310 of the 1934 Act to transfer satellite earth station and cellular telephone authorizations held by GTE Pacifica; 2) under “An Act Relating to Landing and Operation of Submarine Cables in the United States” (“Cable Landing License Act”), 47 U.S.C. §§ 34-39, to transfer a cable landing license held by GTE Pacifica; and 3) under Section 214 of the 1934 Act to transfer Section 214 international and blanket domestic authorizations held by both MTC and GTE Pacifica (“Applications”). See Commission Seeks Comment on Applications for Consent to Transfer Control Filed by Bell Atlantic New Zealand Holdings, Inc. and Pacific Telecom Inc., *Public Notice*, DA 03-1532, (May 9, 2003).

⁴ An affidavit in support hereof is attached as Exhibit A.

I. INTRODUCTION

A. The Petition And Applications.

PTI, the proposed transferee, is a privately held corporation organized under the laws of the Commonwealth. PTI was formed as an investment vehicle to purchase the assets of MTC and its wholly-owned subsidiary, GTE Pacifica. MTC and GTE Pacifica are affiliates of Verizon. PTI is wholly-owned by Prospector Investment Holdings Inc. (“Prospector”). Prospector is incorporated under the laws of the Cayman Islands, British West Indies, however, Prospector is 100% owned by Philippine interests.

Section 310(b) of the 1934 Act prohibits foreign ownership of a radio license by any corporation directly or indirectly controlled by any other corporation of which more than 25% of the stock is foreign held, absent a waiver from the Commission.⁵ The Commission may grant a waiver of the 25% foreign indirect ownership limit upon a finding that it is in the public interest. In this case, PTI has petitioned for a waiver of the foreign ownership ceiling requesting a declaratory ruling that it is in the public interest to allow indirect foreign ownership of GTE Pacifica in an amount up to 100%. The Applicants additionally seek Commission consent to the transfer of various Title II and III licenses held by MTC and GTE Pacifica to PTI.

B. The Commonwealth.

The Commonwealth is a self-governing commonwealth in political union with and under the sovereignty of the United States. Consisting of 14 islands strategically located in the North Pacific Ocean, the Commonwealth is approximately 3,300 miles west of Honolulu, 1,272 miles southeast of Tokyo and 50 miles north of the Territory of Guam. The relationship between the Commonwealth and the United States is governed by the “Covenant to Establish a

⁵ See 47 U.S.C. §310(b)(4).

Commonwealth of the Northern Mariana Islands in Political Union with the United States of America” (“Covenant”).⁶ The Commonwealth is part of the North American Numbering Plan⁷ and is encompassed under the Commission’s rate integration policy.⁸ The Commission has ruled that the Telecommunications Act of 1996 (“1996 Act”) applies to the Commonwealth, as the term “State” is defined in the 1996 Act to include all U.S. territories and possessions, including the Commonwealth.⁹ For more detailed background information on the Commonwealth, see Exhibit B.

II. PTI SHOULD BE DISQUALIFIED FROM HOLDING THE LICENSES AT ISSUE DUE TO VIOLATIONS OF SECTION 1.17 OF THE COMMISSION’S RULES.

Since PTI breached its duty of candor by violating Section 1.17 of the Commission’s Rules in related IB Dkt. No. 02-111, it should be disqualified from holding the authorizations which are the subject of this proceeding.

Applicants previously filed transfer of control applications and a petition for waiver under Section 310(b)(4) of the 1934 Act for the same authorizations at issue in the instant

⁶ See Exhibit B at 1. The Commission should be mindful of Section 904(a) of the Covenant which provides in part, as follows; “[t]he Government of the United States will give sympathetic consideration to the views of the Government of the Northern Mariana Islands on international matters directly affecting the Northern Mariana Islands....” Covenant § 904.

⁷ See Exhibit B at 3.

⁸ *Id.* at 3.

⁹ See, e.g., *In re* Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, *Report and Order*, 11 FCC Rcd. 9564, para. 55 (1996) (“*Geographic Rate Averaging Order*”); *In re* Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Second Report and Order* in CC Dkt. No. 96-149, and *Third Report and Order* in CC Dkt. No. 96-61, FCC 97-142, para. 174 (1997).

proceeding on April 11, 2002.¹⁰ These filings, submitted under IB Dkt. No. 02-111, were withdrawn on March 19, 2003 after being closely scrutinized for many months by the Commission.¹¹ The Applications and Petition filed in the instant proceeding involve the same transaction as the one covered under IB Dkt. No. 02-111, including the same purchase and sale agreement¹² and the same parties (i.e., applicants, assignor/transferor and assignee/transferee). Except for a partial modification to the ownership of PTI, nothing has changed with respect to the proposed transfer.

As described below, during the previous proceeding in IB Dkt. No. 02-111, several serious, material misstatements were made by PTI to the Commission. The Applicants should not now be allowed to avoid the consequences of such misstatements merely by having withdrawn their prior filings in IB Dkt. No. 02-111, only to resubmit those very same filings several weeks later in the instant new proceeding. To allow this would defeat the purpose of Section 1.17 of the Commission's Rules.

Section 1.17 provides, in pertinent part, as follows:

No applicant, permittee or licensee shall in any response to Commission correspondence or inquiry or in any application, pleading, report or any other written statement submitted to the Commission, make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission.¹³

¹⁰ See Commission Seeks Comment on Applications for Consent to Transfer Control Filed by Bell Atlantic New Zealand Holdings, Inc. and Pacific Telecom, Inc., DA 01-1173, May 16, 2002.

¹¹ See Petition at 1 n.1.

¹² *Id.* at 2 n.3.

¹³ 47 C.F.R. § 1.17. The Commission recently amended Section 1.17 to more clearly articulate the standards for truthful statements. See *in re* Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission, 18 FCC Rcd 4016 (March 10, 2003). The facts described below constitute a violation under both the old and new revisions of the Rule. The new rule took effect on March 28, 2003. See 68 Fed. Reg. 15,069 (March 28, 2003).

Lack of candor and failure to disclose relevant information in a proceeding such as this is a serious matter before the Commission.¹⁴ The Commission has the ability to disqualify an applicant for violations of Section 1.17.¹⁵

In the previous proceeding, Applicants committed several intentional misstatements of material fact and withheld information relevant to their applications in violation of Section 1.17. In particular, PTI failed to reveal then affiliate L&T International Corporation's ("L&T") *nolo contendere* plea to felony charges of making materially false representations to the Federal government¹⁶, a violation of an Applicant's duty of candor under Rule 1.17. PTI's then Chairman, George Chiu, in a sworn declaration filed with the Commission, attempted to explain PTI's omission by claiming he believed that the actions of L&T were not relevant to PTI.¹⁷

¹⁴ See, e.g., SBC Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 19091, 19115 (2001) ("*We consider misrepresentation to be a serious violation, as our entire regulatory scheme rests upon the assumption that applicants will supply [the Commission] with accurate information.*") (internal citations omitted); For Private Operational Fixed Microwave Service Authorization and Modifications; New York, New York, Decision, 15 FCC Rcd 25050, 25071 (2000) ("*[T]he duty of candor requires applicants to be fully forthcoming as to all facts and information that may be decisionally significant to their applications*"); Fox River Broad. Inc., 93 FCC 2d 127, 130 (1983) ("*Our concern with misrepresentation and lack of candor stems from the necessity of relying on licensees' representations to the Commission.*"); and RKO v. FCC, 670 F. 2d 215 at 229 (D.C. Cir. 1981) ("*As a licensing authority, the commission is not expected to 'play procedural games with those who come before it in order to ascertain the truth.'*") (internal citation omitted).

¹⁵ See Garden State Broad. Ltd. P'ship. v. FCC, 996 F. 2d 386, 393 (D.C. Cir. 1993) ("*[D]eliberate failures to produce information can result in disqualification for lack of candor.*"). See also Swan Creek Communications v. FCC, 39 F.3d 1217 at 1222 (D.C. Cir. 1994) ("*Direct misrepresentations or omissions to the Commission can result, by themselves, in disqualification*").

¹⁶ See letter from Thomas K. Crowe and Gregory E. Kunkle, Attorneys for the Office of the Governor of the Commonwealth of the Northern Mariana Islands, to Marlene H. Dortch, Secretary, FCC, dated August 28, 2002, available at http://svartifoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513290298 (visited May 29, 2003).

¹⁷ See Letter from Kenneth D. Patrich and Timothy J. Cooney, Attorneys for PTI, to Marlene H. Dortch, Secretary, FCC, dated July 17, 2002, Attachment A (Declaration of George Chiu), available at http://svartifoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513282304 (visited May 29, 2003).

However, this explanation was shown to be disingenuous since, in 1998, the U.S. Department of Transportation (“DOT”) expressly chastised Tan’s subsidiary Asia Pacific Airlines (“Asia Pacific”), a company for which, at the time, Mr. Chiu served as Vice President, for failing to disclose the same *nolo contendere* plea in an application to the DOT.¹⁸ Applicant’s misleading statements, including Mr. Chiu’s sworn declaration, constitute clear violations of Section 1.17 of the Commission’s Rules.

Additionally, PTI previously failed to disclose the fact that part owners of the company had been under active investigation by the U.S. Department of Labor (“DOL”), and that the DOL had reached investigative findings that those companies had recently breached a consent judgment entered into in 1992.¹⁹ PTI withheld these facts while at the same time representing to the Commission that no further actions had been taken with respect to the consent judgment.²⁰ Such a material omission and misstatement directly contravenes Rule 1.17.

Although the character questions originally involved the actions of companies affiliated with Tan Holdings Corp. (“Tan”), a former minority-owner of PTI, it was PTI and not Tan which was before the Commission as an applicant. Rule 1.17 places the responsibility on the “applicant” to refrain from misrepresentations and lack of candor to the Commission.

¹⁸ See Joint Opposition to Petitions to Deny and Informal Opposing Comment, IB Dkt. 02-111, (July 1, 2002), Exhibit F (Applications of Aero Micronesia, Inc. d/b/a Asia Pacific Airlines, Order to Show Cause Proposing Issuance of Certificate Authority), available at http://svartifoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513200336 (visited May 29, 2003).

¹⁹ See Letter from Kenneth D. Patrich and Timothy J. Cooney, Attorneys for PTI, to Marlene H. Dortch, Secretary, FCC, dated November 8, 2002, available at http://svartifoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513406036 (visited June 6, 2003). See also 47 C.F.R. § 1.65 (“each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceeding involving a pending application.”)

²⁰ See Letter from Kenneth D. Patrich and Timothy J. Cooney, Attorneys for PTI, to David Strickland and Gardner Foster, FCC, dated November 8, 2002, at 3, attached as Exhibit C.

Additionally, since the misrepresentations were made to serve the interests of PTI, the intent behind those misrepresentations is fully attributable to PTI. As the Commission has previously stated, "those who control the corporation must be held accountable for the conduct of those who have been delegated the authority to act in its name."²¹ Significantly, at the time of these misrepresentations and omission, Prospector was a controlling 50% shareholder of PTI.

The foregoing intentional misrepresentations and omission violate Section 1.17 of the Commission's Rules and cast doubt over the ability and willingness of PTI (and those who control it) to candidly disclose facts and circumstances surrounding the instant transaction as well as comply with U.S. law. As such, PTI should be disqualified from acquiring the authorizations at issue and the Applications should be denied.

III. THE APPLICATIONS MUST BE DENIED SINCE PTI FAILS TO SHOW THAT IT IS QUALIFIED TO OPERATE THE COMMONWEALTH'S TELECOMMUNICATIONS NETWORK.

The Applicants fail to demonstrate that they are qualified to assume the operations of MTC, and thus, that the proposed transfers would further the public interest, convenience, and necessity.

Section 310(d) of the 1934 Act requires the Commission to dispose of applications for transfers of control "as if the proposed transferee or assignee were making application under section 308 for the permit or license in question."²² Section 308 provides criteria under which applications are reviewed, including, under Section 308(b), factual showings regarding the

²¹ See *Northwestern Indiana Broadcasting Corp.*, Initial Decision, 65 FCC 2d 73 (ALJ 1976).

²² See 47 U.S.C. § 310(d). See also *Application of WorldCom, Inc., and MCI Communications Corporation for Transfer of Control of MCI to WorldCom*, *Report and Order*, 13 FCC Rcd. 18025, 18139 (1998) ("*MCI/WorldCom Order*").

applicant's citizenship, character, financial, technical, and other qualifications.²³ Section 309(a) directs the Commission to determine whether the public interest, convenience and necessity will be served "in the case of each application...to which section 308 applies."²⁴ Applicants bear the burden of proof and must demonstrate, by a preponderance of the evidence, that the proposed transactions serve the public interest.²⁵

Given that the Commonwealth market is a monopoly market for substantially all telecommunications services, and virtually no competitive alternatives exist, it is critical that PTI be determined, on the record, to be qualified to operate the network. Anything less could harm ratepayers in the Commonwealth, and may have an adverse impact upon critical infrastructure services and U.S. strategic interests in the Commonwealth.²⁶ However, as demonstrated below, the Applications fall well short of satisfying the requisite burden of proof with respect to a range

²³ See 47 U.S.C. §§ 310(d), 308, and 308(b). See also Application of Ameritech Corporation, Transferor, and GTE Consumer Services Incorporated, Transferee, for Consent to Transfer Control of Licenses and Authorizations, *Memorandum Opinion and Order*, 15 FCC Rcd. 6667, 6669 n.9, (1999) ("Ameritech/GTE Order").

²⁴ See 47 U.S.C. § 309(a).

²⁵ See 47 U.S.C. § 309(e) *MCI/WorldCom Order* at 18032. As outlined in the *MCI/WorldCom Order*, applications under Section 214(a) of the 1934 Act must also be shown, by a preponderance of the evidence, to be in the public interest, with the burden of proof resting on the applicant. See *MCI/WorldCom Order* at 18030-18031. The transfer of the cable landing license must also be found to be in the public interest and consistent with the Cable Landing License Act, which provides, in part "The President may withhold or revoke such license when he shall be satisfied...that such action...will promote the *security* of the United States, or may grant such license upon such terms as shall be necessary to assure just and *reasonable rates* and *service* in the operation and use of cables so licensed." See 47 U.S.C. § 35 (emphasis added). As discussed *infra*, the transaction is also not in the public interest as it threatens national security (see *infra* at 17-31), threatens to raise rates in the Commonwealth (see *infra* at 31-34), and threatens service quality in the Commonwealth (see *infra* at 15-17). Thus, the transfer of the cable landing license should be denied as it is not consistent with the Cable Landing License Act.

²⁶ See *infra* at 17-31.

of issues, including technical and financial qualification. For these reasons, the Applications must be denied.

A. Applicants Have Failed To Supply Adequate Information Regarding Citadel, Prospector And Unrelated Third Parties, As Well As The Trust Arrangement.

The Applications leave more questions than answers.

1. Citadel, Prospector and Unrelated Third Parties

The relationship of PTI to Citadel Holdings Inc. (“Citadel”) and other third parties seems to be intentionally obscured so as to serve PTI’s interests. For instance, PTI states that it is wholly-owned by Prospector which, in turn, is owned 60 percent by Ricardo C. Delgado (father) and 40 percent by Jose Ricardo Delgado (son). PTI also states that the same two individuals own a separate corporation, Citadel, through “a series of closely held corporations”²⁷ and offer the assets of that separate corporation to demonstrate that PTI has the necessary financial qualifications to operate MTC. What is Citadel’s relationship to PTI and Prospector (other than being another corporation controlled by the Delgados)?²⁸ Do the Delgados own Prospector directly or through intermediary companies?

Due to these questions and PTI’s insistence on basing its financial qualifications on the assets of Citadel, further information must be disclosed by Applicants. The Commission must be provided with information that demonstrates that the assets of Citadel are actually available to be used to provide for operation of MTC. In addition to showing that the Citadel assets are not encumbered, Applicants must disclose whether other third party interests (other than the

²⁷ Petition at 3.

²⁸ A credit report prepared by International Company Profile shows that Citadel reported being involved in a deal in the purchase of controlling shares of MTC in 2002.

Delgados) hold any shares, board of director seats or officer positions in Citadel or have any ability to exercise control over the affairs of Citadel (including negative control).

As alluded to above, PTI states that Citadel is controlled by the Delgados through a series of intermediary companies.²⁹ Given that the subsidiaries and parent companies of Citadel are assets of the Delgados', PTI must disclose the identities of all Citadel subsidiaries and parent companies, as well as the primary business and citizenship of each as well as similar information for all other corporate assets the Delgados claim. PTI states that the majority of the Delgados' property is located in the Philippines and that the Delgados derive their greatest sales and revenues from operations in the Philippines.³⁰ Countries other than the Philippines where property is located and revenue is derived must also be identified since property located there and revenue derived there is being relied upon for financial qualification. PTI needs to disclose this additional information to the Commission given 1) their reliance upon Citadel for financial qualification; 2) the character issues that were brought to light in the previous PTI transfer proceeding (IB Dkt. No. 02-111) stemming from actions of related-companies; and 3) the important national security and public safety issues that this proceeding raises.

2. *Trust Arrangement*

Additional information needs to be disclosed regarding the proposed trust fund for the benefit of MTC's employees. PTI states that the details of the trust arrangement are not the subject of the instant proceeding, however, PTI's Petition specifically requests Commission approval of the possible foreign ownership of MTC that would result from the trust

²⁹ Petition at 3 n.7.

³⁰ *Id.* at 8.

arrangement.³¹ Thus, details of the trust need to be disclosed before the Commission can act on the proposed transaction. For example, answers to the following questions should be obtained:

- Since the description provided by PTI separately alludes to “ownership incentives” and “a trust fund for the benefit of MTC employees”,³² what will the employees’ legal interest constitute (i.e., equity shareholders, trust beneficiaries, etc.)?
- PTI states that 10% of PTI’s stock will be assigned to the trust,³³ and seeks authorization for 2% indirect ownership by unidentified foreign individuals. Is the 2% indirect foreign ownership confined to the trust arrangement such that up to 20% of the trust arrangement could be indirectly foreign owned?
- PTI states that the trust will be for the benefit of the employees of MTC but makes no mention as to whether all employees will be included or covered. Does PTI have specific individual employees in mind or are all eligible?
- Will MTC employees be required to purchase their interest in the trust or will employees be granted their interest according to other criteria?
- If the trust is not legally established until after the transaction is consummated, will the Applicants agree to file a copy of the legally operative document with the Commission in this docket?

PTI’s Petition leaves many unanswered questions with respect to Citadel, Prospector, unrelated third parties and the trust arrangement. Only when such information is obtained can the Commission meaningfully assess the proposed transaction.

B. PTI Fails To Show That It Is Financially Qualified To Operate The Telecommunications Network In The Commonwealth.

PTI offers only vague information and no specific details regarding its financial ability to assume MTC’s extensive operations. What little information it does provide is useless in allowing meaningful public comment or Commission review.

³¹ Petition at 15.

³² *Id.* at 3 n.6.

³³ *Id.* at 15.

No financial information with respect to either PTI or Prospector has been supplied. Instead, Applicants base their financial qualifications primarily on PTI sister company Citadel's financial condition, leaving mention of the assets of the true ultimate shareholders of PTI to a footnote in their Petition.³⁴ Presumably, this is since the holdings of Citadel account for the majority of the assets of the two ultimate individual shareholders of PTI, Ricardo C. Delgado and Jose Ricardo Delgado. However, only a brief description (including no actual financial figures) of Citadel's financial status is provided.

First, the Commission should not approve the Applications based on the assets of a company, Citadel, which, presumably, does not have an ownership interest in PTI.³⁵ Second, even assuming arguendo, Citadel's financial condition was somehow relevant to PTI, the Applicants have failed to provide audited financials for Citadel.³⁶

Applicants state that they have filed "letters" with the Commission from financial institutions attesting to the value of accounts held by Ricardo C. Delgado and Jose Ricardo Delgado.³⁷ However, these letters have not been placed in the public record, effectively depriving interested parties of any ability to assess and comment on the financial qualifications of the Applicant.³⁸

³⁴ Petition at 10 n.20.

³⁵ *See supra* at 10.

³⁶ A credit report prepared by International Company Profile shows that Citadel suffered losses in the amount of 534,929,865 Pesos in the year 2000 (which, based on the exchange rate as of June 4, 2003, is \$10,064,531.82 USD), recouping only approximately 10 percent of that total with 2001's before tax profits.

³⁷ Petition at 3 n.7.

³⁸ As the Commission has stated "[i]t is incumbent upon the Commission to include in the public record documents or evidence of decisional significance". *In re* for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee, *Order*, 17 F.C.C.R. 22633, para. 7 (November 6, 2002).

Furthermore, the individual assets of Ricardo C. Delgado and Jose Ricardo Delgado are of little value in determining the financial capability of PTI to operate the telecommunications network in the CNMI. The Delgados operate a large number of business ventures,³⁹ each with its own assets and debts. It is just as likely that assets acquired in the instant transaction may be diverted away from MTC for the benefit of other under-performing assets in the Delgados' business portfolio. Moreover, a significant portion of the Delgados' personal assets may be earmarked for personal use, and not intended for either the benefit of MTC, or any other business venture. Because of this, the Commission has no way to legitimately discern what assets are truly available to fund the operation of MTC.

Given the fact that virtually no competitive alternatives exist for local telecommunications services in the Commonwealth, it is critically important that PTI demonstrate its financial qualifications to ensure that it will be able to undertake MTC's operations, particularly its local services operations (on which public safety and 911 communications rely). Moreover, given the fact that the Applicants, in part, base their technical ability to maintain the telecommunications network on contracted support from third parties,⁴⁰ financial qualification deserves careful attention in this proceeding. If PTI is unable to maintain local operations and service quality due to financial difficulties or inadequacies, customers will be harmed by either degraded service,⁴¹ or possibly discontinued services (including emergency and 911 services), within the Commonwealth.

³⁹ Petition at 10.

⁴⁰ Specifically, Applicants rely, in part, upon a technical services agreement with BANZHI. *See infra* at 16.

⁴¹ *See infra* note 48.

In short, the Commission, the Office of the Governor and the public have been left entirely in the dark on the issue of financial ability. The Applicants must make financial information available in order to meet their burden under Sections 214 and 310 of the 1934 Act.

C. PTI Fails To Demonstrate That It Is Technically Qualified To Operate The Commonwealth's Telecommunications Network.

Applicants have not shown that PTI has either the technical experience or expertise to operate the monopoly telecommunications network in the Commonwealth. PTI offers four justifications for its technical qualifications to assume operations of the telecommunications network in the Commonwealth. As shown below, each of these fails to demonstrate technical qualification. For this reason the Applications should be denied.

First, PTI claims that it is technically qualified to assume operations of MTC because it intends to retain MTC's current managerial staff.⁴² However, this reasoning is circular. If all that was required for an acquiring company to demonstrate its technical competence was a showing of the technical competence of the acquired company, technical qualification would be irrelevant to transfer of control proceedings.

Second, PTI offers its intention to hire Robert Anderson as MTC's new CEO as further evidence of its technical qualification in this proceeding.⁴³ The Commission must reject any technical experience PTI claims based on the experience of an individual whom PTI concedes is not yet an employee of the company. Further, PTI makes no attempt to describe Mr. Anderson's experience with the diverse systems (*i.e.*, landline, wireless, cable and satellite) currently in use in the Commonwealth.

⁴² Petition at 8.

⁴³ *Id.* at 9.

Third, PTI offers, as a further basis of its technical qualification to operate the telecommunications network in the Commonwealth, a claim to have executed a technical services agreement with BANZHI.⁴⁴ Once again, PTI has failed to provide any details on which to base a determination of technical merit. The fact that PTI has found it necessary to enter into a technical services agreement demonstrates, if anything, that it – absent third party support – lacks the necessary technical qualification to operate the facilities at issue. Without the ability to review the specific agreement with BANZHI, the Commission has no way to ensure that the contracted support will completely substitute for this lack of technical expertise. In short, if it is to be relied upon, the agreement must be produced and placed into the public record.⁴⁵

Fourth, the only direct telecommunications experience that anyone currently associated with PTI has is through Prospector, whose interests in a Philippine-based provider named Isla Communications, Inc. (“Islacom”) were divested in 1999.⁴⁶ Any expertise the owners of Islacom previously had almost certainly does not cover the wide range of facilities and services encompassed within MTC’s broad-based operations.⁴⁷ Further, as Prospector’s involvement in

⁴⁴ Petition at 9.

⁴⁵ *See supra* note 38.

⁴⁶ *See, e.g.*, Petition at 9. The Commonwealth is also concerned with the facts surrounding the divestiture as they pertain to technical and possibly financial qualifications. For instance, according to the 1999 Regional Development Report issued by the National Economic and Development Authority, Regional Office Number 7, a Philippine governmental agency responsible for central planning and infrastructure, Islacom fell short of its commitments to the Philippine government in terms of service coverage due to internal and external problems associated with the company. The company’s service coverage commitment with the Philippine government was to be completed by 1998, but, due to its failure to comply, was extended under a “catch-up” program allowing a timeframe of between 1999-2003. *See* <http://www.neda7.net.ph/RDR99/Chapter4.htm> (visited May 30, 2003).

⁴⁷ As outlined below, MTC is the dominant provider in the Commonwealth of the following range of telecommunications services utilizing diverse technologies: local exchange and local access, wireless, off-island long distance and international calling, Internet and Internet backbone capability. *See infra* at 21-23.

Islacom appeared to cease in 1999 -- approximately four years ago -- the knowledge which any remaining employees may have derived from the operations is likely outdated in today's marketplace, as communications technology has changed substantially since 1999. In short, PTI's technical expertise is almost certain to be outdated and even if it is not, is insufficient to assume the operations of MTC's wide-reaching network.

If PTI -- given its lack of actual demonstrated technical competence -- is allowed to purchase MTC, service quality is likely to suffer in the Commonwealth.⁴⁸

IV. THE PETITION SEEKING A WAIVER TO ALLOW UP TO 100% FOREIGN OWNERSHIP SHOULD BE DENIED.

In view of the ongoing war against global terror, this is not the time to authorize 100% foreign control over a monopoly telecommunications network in a distant Pacific insular area which is of major strategic importance to the U.S. Foreign control over the Commonwealth's monopoly network has the potential to jeopardize U.S. national security and public safety, and therefore is not in the public interest.

As shown below, the Commonwealth telecommunications market differs drastically from the mainland U.S. competitive market. Virtually all segments of the Commonwealth telecommunications market are dominated by the monopoly provider, MTC. Critical Commonwealth infrastructure services, including 911 emergency services, depend upon that network. U.S. military and International Broadcasting Bureau ("IBB") facilities also, in part, depend upon the network. Permitting PTI to acquire MTC would place the Commonwealth

⁴⁸ The importance of service quality issues in the context of this transaction cannot be understated. In his opening statements at the Commission's December 14, 1998 *En Banc* hearing regarding telecommunications mergers, former Chairman William K. Kennard repeatedly emphasized the importance of a merger's impact on telephone service quality. He further indicated that a merger's impact on service quality should be one of the primary questions addressed in analyzing a proposed merger under the public interest standard.