

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

In the Matter of:)
)
)
Applications for Consent to)
Transfer Control filed by)
)
BELL ATLANTIC NEW ZEALAND)
HOLDINGS, INC.)
)
and) **IB Docket No. 03-115**
)
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.)
)

To: The Commission

**PETITION TO ADOPT CONDITIONS TO
AUTHORIZATIONS AND LICENSES**

The Department of Justice (“DOJ”) and the Federal Bureau of Investigation (“FBI”), with the concurrence of the Department of Homeland Security (“DHS”) and the Department of Defense (“DOD”) (hereinafter collectively referred to as the “Executive Agencies”), respectfully submit this Petition to Adopt Conditions to Authorizations and Licenses (“Petition”), pursuant to 47 C.F.R. § 1.41.

Through this Petition, the Executive Agencies hereby advise the Federal Communications Commission (“FCC” or “Commission”) that they have no objection to the FCC granting the relief requested in the applications filed in the above-referenced matter (herein referred to as “requested relief”), provided that the Commission conditions the grant of the requested relief on the compliance by The Micronesian Telecommunications Corporation (“MTC”) and Pacific Telecom Inc. (“PTI”) (collectively, the “Applicants”) with the terms of the Agreement (attached hereto as Exhibit 1) reached between the Applicants and the Executive Agencies.

On April 18, 2003, Bell Atlantic New Zealand Holdings, Inc. (“BANZHI”) and PTI filed joint applications with the Commission pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended (“Communications Act”), seeking Commission approval for the proposed transfer of control from BANZHI to PTI of MTC and MTC’s wholly-owned subsidiary GTE Pacifica, Inc. (which is the holder of several FCC radio licenses subject to Section 310 of the Communications Act). Specifically, BANZHI owns all of the shares of MTC and proposes to sell to PTI its entire stock holdings of MTC. PTI also filed on April 18, 2003, a petition seeking a declaratory ruling that its proposed indirect ultimate foreign ownership interest in FCC license holder GTE Pacifica, Inc. is in the public interest under Section 310(b)(4) of the Communications Act.

As the Commission is aware, the DOJ, FBI and DOD have taken the position that their ability to satisfy their obligations to protect the national security, to enforce the laws and preserve the safety of the public could be significantly impaired by transactions in which foreign entities will own or operate a part of the U.S. communications system, or in which foreign-

located facilities will be used to provide domestic communications services to U.S. customers. In such cases, the DOJ, FBI and DOD have stated that foreign involvement in the provision of U.S. communications must not be permitted to impair the U.S. government's ability to satisfy its obligations to U.S. citizens to (1) carry out lawfully-authorized electronic surveillance of domestic U.S. calls or calls that originate or terminate in the United States; (2) prevent and detect foreign-based espionage and electronic surveillance of U.S. communications, activities which if allowed to occur undetected would jeopardize the security and privacy of U.S. communications and undermine prosecution of individuals involved in such activities; and (3) satisfy U.S. critical infrastructure protection requirements. To address these concerns, the DOJ, the FBI, and the DOD have entered into agreements with the appropriate parties. The agreements reached in the past have been filed by stipulation among the parties with the Commission, and the Commission has conditioned its grant of approvals of the requested transfers of control on compliance with the terms of the agreements.¹

¹ See, e.g., Memorandum Opinion and Order, *Merger of MCI Communications Corp. and British Telecommunications, plc*, 12 FCC Rcd 15,351 (1997) (agreement adopted by the Commission, but the merger did not take place); Memorandum Opinion and Order, *AirTouch Communications*,

In their April 18, 2003 applications and PTI's petition for declaratory ruling, BANZHI and PTI requested that action by the Commission be deferred pending notification to the Commission that any law enforcement, national security, and public safety issues identified by the Executive Agencies have or have not been resolved and requesting appropriate action by the Commission. BANZHI and PTI observed that, if the issues identified by the Executive Agencies can be resolved through an agreement between the Applicants and the Executive Agencies, BANZHI and PTI anticipated that such agreement would be filed with the Commission along with a request that the terms of the agreement be adopted by the Commission as conditions to

Inc. and Vodafone Group, plc, DA No. 99-1200, 1999 WL 413237 (rel. June 22, 1999); Memorandum Opinion and Order, *AT&T Corp., British Telecommunications, plc, VLT Co. L.L.C., Violet License Co., LLC and TNV [Bahamas]*, 14 FCC Rcd (Oct. 29, 1999); Memorandum Opinion and Order, *Vodafone AirTouch PLC and Bell Atlantic Corp.*, DA No. 99-2415, 2000 WL 332670 (rel. Mar. 30, 2000); Memorandum Opinion and Order, *Aerial Communications, Inc. and VoiceStream Wireless Holding Corp.*, 15 FCC Rcd 10,089 (2000); Memorandum Opinion and Order, *DiGiPH PCS, Inc. and Eliska Wireless Ventures License Subsidiary I, L.L.C.*, No. 15639 (rel. Dec. 13, 2000); Memorandum Opinion and Order, *VoiceStream Wireless Corporation, Powertel, Inc., et al. and Deutsche Telekom AG*, IB Docket No. 00-187, 2001 WL 431689 (F.C.C.) (rel. April 27, 2001); Memorandum Opinion, Order and Authorization, *XO Communications, Inc.*, 17 FCC Rcd 19,212, 2002 WL 31235646 (F.C.C.) (2002) (agreement adopted by the Commission, but the transaction was not consummated).

any authority granted by the Commission concerning the applications. The parties were then in discussions to reach an agreement that would ensure that national security, law enforcement and public safety concerns are adequately addressed.

During the course of discussions between the DOJ, FBI, and DOD and the Applicants, the Department of Homeland Security assumed its responsibilities under the Homeland Security Act of 2002. In addition, by Executive Order dated March 1, 2003, the Secretary of Homeland Security became a member of the Committee on Foreign Investment in the United States. *See* the Defense Production Act, 50 U.S.C. App. § 2170. DHS thereafter joined the DOJ, FBI, and DOD in discussions with the Applicants in connection with the proposed acquisition and transfers of control.

On October 6, 2003, the Executive Agencies entered into the Agreement with the Applicants. The Agreement is intended to ensure that the Executive Agencies and other entities with responsibility for enforcing the law, protecting the national security and preserving public safety can proceed in a legal, secure and confidential manner to satisfy these responsibilities.

Accordingly, the DOJ and the FBI, with the concurrence of the DOD and DHS, hereby advise the Commission that they have no objection to the FCC granting the proposed transfers of control and petition for declaratory ruling in IB Docket No. 03-115, provided that the Commission conditions its consent to the transfer of control of MTC and grant of a declaratory ruling on compliance with the terms of the Agreement between the Executive Agencies, on the one hand, and the Applicants, on the other.

The DOJ and FBI are authorized to state that the Applicants and BANZHI do not object to the grant of this Petition.

Respectfully submitted,

/s/ JOHN G. MALCOLM

/s/ PATRICK W. KELLEY

John G. Malcolm

Patrick W. Kelley

Deputy Assistant Attorney General

Deputy General Counsel

Criminal Division

Federal Bureau of Investigation

950 Pennsylvania Avenue, N.W.

935 Pennsylvania Avenue, N.W.

Washington, DC 20530

Washington, DC 20532

(202) 616-3928

(202) 324-6829

October 10, 2003

CERTIFICATE OF SERVICE

I, Myla Saldivar-Trotter, hereby certify that a true and correct copy of the foregoing Petition to Defer in IB Docket No. 03-115 was served on this 10th day of October 2003 on the individuals in the following list delivered via First-Class U.S. Mail and/or Electronic mail:

Kenneth D. Patrich, Esq.
Timothy J. Cooney, Esq.
Wilkinson Barker Knauer LLP
2300 N Street, N.W., Suite 700
Washington, D.C. 20037

kpatrich@wbklaw.com
tcooney@wbklaw.com

Counsel for Transferee Pacific Telecom Inc.

Peter D. Shields, Esq.
Jennifer D. Hindin, Esq.
Wiley Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

pshields@wrf.com
jhindin@wrf.com

Counsel for Transferor Bell Atlantic
New Zealand Holdings, Inc.

John Branscome
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-A161
Washington, D.C. 20554

john.branscome@fcc.gov

Tracey Wilson
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5-C437
Washington, D.C. 20554

tracey.wilson@fcc.gov

Thomas K. Crowe
President, Law Offices of Thomas K. Crowe, P.C.
1250 24th Street, N.W., Suite 300
Washington, D.C. 20037

www.tkcrowe.com

Qualex International
445 12th Street, S.W.,
Room CY-B402
Washington, D.C. 20554

Gardner Foster
Policy Division, International Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-A625
Washington, D.C. 20554

gardner.foster@fcc.gov

Susan O'Connell
Policy Division, International Bureau
Federal Communications Commission
445 12th Street, S.W., Room 6-A847
Washington, D.C. 20554

susan.o'connell@fcc.gov

Erin McGrath
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-B454
Washington, D.C. 20554

erin.mcgrath@fcc.gov

Neil A. Dellar
Transaction Team
Office of General Counsel
Federal Communications Commission
445 12th Street, S.W., Room 8-C818
Washington, D.C. 20554

neil.dellar@fcc.gov

Senator Pete D. Reyes
House of Representatives
Thirteenth Northern Marianas
Commonwealth Legislature
Commonwealth of the Northern
Mariana Islands

P.O. Box 500586
Saipan, MP 96950-0586

Hon. Gloria Dlc. Cabrera
Hon. Pedro P. Castro
Hon. Oscar M. Babauta
Hon. Stanley T. Torres
Hon. Joe P. Deleon Guerrero
Hon. Martin B. Ada
House of Representatives
Thirteenth Northern Mariana
Commonwealth Legislature
Commonwealth of the Northern Mariana Islands
P.O. Box 500586
Saipan, MP 96950-0586

/s/ MYLA R. SALDIVAR-TROTTER
Myla R. Saldivar-Trotter