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

In the Matter of the Application of	)	
Guam Cellular and Paging, Inc., Transferor and Assignee	)	
and	)	
Guam Wireless Telephone Company LLC, Assignor,	)	
and	)	WT Docket No. 06-96 DA No. 06-947
NTT DoCoMo, Inc., Transferee	)	
Application for Assignment, Transfer of Control, and Declaratory Ruling	)	

PETITION TO DENY AND COMMENTS OF TELEGUAM HOLDINGS, LLC

TeleGuam Holdings, LLC ("TeleGuam") hereby submits to the Commission this Petition to Deny and Comments on the above-captioned Application for Assignment, Transfer of Control, and Declaratory Ruling ("Application") filed by Guam Cellular and Paging, Inc. ("Guam Cellular"), Guam Wireless Telephone Company, LLC ("Guam Wireless") and NTT DoCoMo, Inc. ("NTT DoCoMo"). As discussed below, the proposed foreign ownership of the leading wireless provider in Guam raises significant competitive issues and, because of the major military presence on Guam, presents a risk to national security. Accordingly, the Commission should deny the proposed assignment and transfer of control. Should the Commission determine to approve the transaction, it must impose safeguards to protect the public interest and to prevent the proposed transaction from having adverse effects on national security and competition in Guam.

I. THE PROPOSED TRANSACTION WOULD MARK THE FIRST TIME A DOMINANT WIRELESS PROVIDER IN A U.S. MARKET WOULD HAVE SUCH SIGNIFICANT FOREIGN OWNERSHIP.

TeleGuam, through its wholly-owned subsidiaries, GTA Telecom, and GTA Services, currently offers local landline and long distance services on Guam. Using spectrum which the former Guam Telephone Authority held for many years, TeleGuam has made significant network improvements and is offering wireless services in Guam through its wholly owned subsidiary, Pulse Mobile, LLC ("Pulse Mobile").

NTT DoCoMo's acquisition of Guam Cellular and Guam Wireless raises particularly significant concerns because of market conditions in Guam. As a result of the proposed transaction, NTT DoCoMo will acquire both Guam Cellular, which holds 25 MHz of commercial mobile radio service ("CMRS") spectrum in Guam and has a market share of approximately 40-45 percent, and Guam Wireless, which holds 30 MHz of CMRS spectrum in Guam and has a market share of approximately 15-20 percent. This will position NTT DoCoMo as the dominant wireless carrier in the Guam market, with a combined 55 MHz of CMRS spectrum – the most spectrum of any Guam CMRS licensee – and a 55-65 percent market share. Approval of this transaction by the Commission would result in NTT DoCoMo becoming the dominant wireless provider in Guam; the first time a foreign-government owned is permitted to become the dominant wireless carrier in a U.S. telecommunications market.[1]

---

[1] *See In the Matter of the Applications of VoiceStream Wireless Corp., Powertel, Inc. and Deutsche Telekom AG*, 16 FCC Rcd 9779 (2001). In this case, the Commission did not address the competitive effects of the proposed transaction on any particular domestic wireless market. The NTT DoCoMo transaction proposes not only to consolidate two Guam carriers to make the largest Guam carrier, but also seeks to bring them under foreign ownership and control.

Moreover, Guam is much different than any other U.S. telecommunications market. Guam is home to vitally important Navy and Air Force installations. The CIA World Factbook describes Guam as "one of the most strategically important U.S. bases in the Pacific."[2] Guam was also named to a list of the six most important U.S. military bases worldwide, and is the only facility on that list in the U.S. and not on foreign soil.[3] Guam's strategic location and key military installations require the Commission to consider whether the foreign ownership proposed in the Application is in the public interest. TeleGuam submits that it is not and urges the Commission to deny the Application or, at a minimum, to impose safeguards to ensure the protection of U.S. national security.

II. THE PROPOSED TRANSACTION REQUIRES THE HIGHEST LEVEL OF SCRUTINY.

The proposed transaction exceeds the foreign ownership limits set forth in Section 310 of the Communications Act of 1934, as amended (the "Act").[4] Under Section 310(b)(4), the public interest inquiry to be undertaken within the context of reviewing applications for foreign participation in U.S. telecommunications markets involves several factors.[5] In addition to its public interest analysis, in acting on petitions for declaratory ruling pursuant to Section 310(b)(4), the Commission is obligated to review any national security, law enforcement, foreign

---

2 http://www.cia.gov/cia/publications/factbook/geos/gq.html (visited June 8, 2006).

3 http://www.foreignpolicy.com/story/cms.php?story_id=3460 (visited June 8, 2006).

4 47 U.S.C. § 310.

5 *See, e.g.*, *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, 12 FCC Rcd 23891 (1997), ¶¶ 50, 61, 65, 113 ("*Foreign Participation Order*").

policy, or trade policy concerns.[6] Although the *Foreign Participation Order* creates a presumption that allowing entrants from WTO countries such as Japan to own U.S. common carriers is in the public interest,[7] the Commission's analysis of foreign ownership issues is fact-dependent.[8] The facts presented here are precisely the type of "rare circumstance" that warrants denial of foreign ownership.[9]

The level of ownership and control by the Japanese government in NTT DoCoMo calls for heightened scrutiny by the Commission and other agencies charged with protecting national security interests. Disturbingly, the Application downplays the Japanese government's interest in NTT DoCoMo, describing the interest as "minority."[10] This is misleading. The Japanese government's ownership raises the question of whether the Japanese government has *de facto* control of Nippon Telegraph and Telephone Corporation ("NTT"), and by extension, NTT DoCoMo.

NTT has *de jure* control of NTT DoCoMo by virtue of its 61.96 percent stake in the company. The next largest NTT DoCoMo shareholder holds a mere 3.52 percent interest, solidifying NTT's dominance and control over NTT DoCoMo. The Japanese government through the Japan Minister of Finance owns 38.37% of NTT and is by far NTT's largest shareholder. The next largest shareholder of NTT holds a meager 4.85 percent interest.[11] The

---

6 *Foreign Participation Order*, ¶¶ 59 – 66.

7 *Foreign Participation Order*, ¶ 50.

8 *Foreign Ownership Guidelines for Aeronautical and Radio Common Carrier Licensees*, DA 054-3610 (rel. Nov. 17, 2004), p.4

9 *Foreign Participation Order*, ¶ 50.

10 *See, e.g.*, Application at pp. 37, 44.

11 Application at Exhibit B.

rest of NTT's shares are widely held, affording the Japanese government substantially greater influence and power than that of a "minority" shareholder.

Additional information is needed to determine what degree of control the Japanese government may be able to exercise over NTT DoCoMo and Guam Cellular and Guam Wireless' assets through this transaction. Substantial control by a foreign government raises additional public interest considerations. As Commissioner Copps observed, such ownership

> represents a serious potential threat to competition, because of the fundamental difference between companies that operate in a free market and state-run industries that may act counter to free market forces. In order to meet the statutory requirement that transactions be in the public interest, the benefits of a transaction with such high foreign government ownership must be significant enough to overcome the potential harm to competition.[12]

Here, serious harms to national security and competition warrant denial of the Application. In the event the Commission concludes to approve the transaction, additional protections are necessary in several areas -- government contracts, roaming, and technology licensing – to overcome harms to competition and national security interests that would otherwise result from the proposed transaction.

III. NATIONAL SECURITY ISSSUES WARRANT DENIAL OR, AT A MINIMUM, CONDITIONS ON THE PROPOSED TRANSACTION.

As part of its consideration of Section 310(b)(4) rulings, the Commission is required to review any national security issues presented by a proposed transaction. Here, the Application proposes to create a new dominant wireless provider on Guam that is foreign-owned, where the

---

[12] *Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor and Telenor Satellite Mobile Services, Inc. and Telenor Satellite, Inc., Assignee, Applications for Assignment of Section 214 Authorizations, Private Land MobileRadio Licenses, Experimental Licenses, and Earth Station Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act, Order and Authorization,* 16 FCC Rcd 22897 (2001) (Dissenting Statement of Commissioner Michael J. Copps).

primary ultimate shareholder is a foreign government whose interest may amount to *de facto* control. This creates obvious national security concerns. There are considerable risks to having the largest wireless provider on Guam controlled by any foreign-owned carrier, even by one from an ally such as Japan.

In light of the key military installations on Guam and their strategic importance, denial of the Application is appropriate to protect national security interests. Should the Commission grant the Application notwithstanding these issues, the significant foreign government ownership and control present in NTT DoCoMo dictates that, at a minimum, it, and Guam Cellular, be restricted from entering into government contracts to provide telecommunications and other related services in the United States. The prohibition on government contracts should extend not only to all contracts with agencies and instrumentalities of the federal government, but also to contracts with agencies and instrumentalities of the Government of Guam ("GovGuam"). Further, to the extent that either Guam Cellular or Guam Wireless is presently providing telecommunications services to either the federal government or GovGuam, the companies should be required to divest their respective interests in such contracts. These steps are necessary to protect national security interests.

The Commission must also fulfill its charge to carefully and thoughtfully examine national security issues presented by the unique facts of the proposed transaction, and consider whether additional safeguards are needed.

IV. ROAMING CONDITIONS ARE NECESSARY TO PREVENT NTT DOCOMO FROM ACTING ANTI-COMPETITIVELY.

The proposed acquisition also risks harming competition with respect to roaming between Guam and Japan. As an island territory with a population of approximately 170,000 far removed from the continental United States, Guam wireless carriers derive significant revenues from international roaming by tourists from nearby countries such as Japan and Korea. In fact, one of the reasons NTT DoCoMo entered the transaction is to improve the roaming experience of Japanese subscribers in Guam. Guam subscribers also value the ability to use their wireless phones internationally.

The Commission has recognized the importance of automatic roaming to smaller carriers in this era of increased market consolidation,[13] as well as the need to examine roaming availability as part of the public interest analysis in merger transactions.[14] Because small carriers have limited service areas, the availability of roaming services is critical to their ability to compete. Each merger transaction requires a case-by-case review of the particular circumstances and market conditions at issue that could adversely affect consumer wireless services. The unique market conditions in Guam clearly dictate the importance of ensuring roaming on non-discriminatory terms and conditions with Japan.

NTT DoCoMo is the dominant carrier in Japan. In Japan, NTT DoCoMo has 51.4 million customers and enjoys a 56 percent market share. Recent regulatory initiatives intended to level the competitive playing field in Japan, such as local number portability, have not affected NTT DoCoMo's dominance.[15] Should the proposed transaction move forward, other Guam carriers including TeleGuam stand to be frozen out of the Guam-Japan roaming market.

---

13 The Commission opened a proceeding last year to examine numerous small and mid-sized carriers claims that larger carriers are engaging in a variety of anti-competitive behaviors with respect to roaming. *See In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, WT Docket No. 05-265 (rel. Aug. 24, 2005).

14 *See Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 04-70, Memorandum Opinion and Order, 19 FCC Rcd. 21522, ¶¶ 167-182 (2004).

15 Wall Street Journal, DoCoMo Catches a Webwave, Yukuri Iwantani Kane, C8 (June 5, 2006).

Currently, NTT DoCoMo does not allow roaming into Japan. For roaming on GSM networks such as TeleGuam's in Guam, NTT DoCoMo offers two options: (1) a dual-mode handset with both NTT DoCoMo technology and GSM technology built into it, but this handset is not available for sale outside of Japan; (2) a so-called "plastic roaming" arrangement where the Japanese customer removes the SIM card out of his handset and puts it in a GSM handset in Guam. TeleGuam is currently negotiating a "plastic roaming" agreement with NTT DoCoMo.[16] In order to instill a level competitive playing field, the Commission should require NTT-DoCoMo to enter into reasonable, reciprocal "plastic roaming" agreements at reasonable rates and at reasonable and non-discriminatory terms and conditions with Guam carriers. Further, because "plastic roaming" is obviously more inconvenient for the customer than is roaming on a single dual-mode handset, it is discriminatory for NTT DoCoMo to preclude Guam carriers from acquiring dual-mode handsets. The Commission, therefore, should also require NTT DoCoMo to make available to Guam carriers its dual-mode handset at reasonable rates and at reasonable and non-discriminatory terms and conditions.

V. TO THE EXTENT NTT DOCOMO BRINGS NEW TECHNOLOGIES TO GUAM, IT MUST BE REQUIRED TO LICENSE SUCH TECHNOLOGIES TO OTHER GUAM CARRIERS.

As stated in the Application, "[NTT] DoCoMo's services include several advanced features that are not yet available … in the United States."[17] "Several features offered in Japan by [NTT] DoCoMo have not yet been introduced in Guam…."[18] These features include mobile

---

16 The "plastic roaming" agreement TeleGuam is negotiating with NTT DoCoMo would allow Guam customers to roam in Japan.

17 Application at p. 6.

18 Application at p. 35.

banking, ticket purchasing, travel information, and remote learning.[19] TeleGuam is concerned the proposed transaction will enable NTT DoCoMo to act anti-competitively by introducing these features exclusively in Guam through its Guam subsidiaries, while shutting out unaffiliated Guam carriers.

Protections are needed to prevent NTT DoCoMo from acting anti-competitively. Should the proposed transaction move forward, NTT DoCoMo should be required to enter into licensing agreements with other Guam carriers, at reasonable rates and on reasonable terms and conditions, to make available all of the voice and data features NTT DoCoMo offers to its own subscribers in Guam.

VI. CONCLUSION

TeleGuam welcomes vigorous competition in the wireless telecommunications marketplace. TeleGuam recognizes there are benefits to competition by allowing new entrants into the U.S. market. However, the critical military importance of Guam should create a strong presumption against allowing foreign ownership of Guam's largest wireless provider. Moreover, the proposed ownership by NTT DoCoMo presents additional concerns because it is the dominant wireless carrier in Japan and because it is ultimately controlled by the government of Japan. Accordingly, the Commission should deny the proposed assignment and transfer of control. Should the Commission determine to approve the transaction, it must impose safeguards to protect the public interest and to prevent the proposed transaction from having adverse effects on national security and competition in Guam. Specifically, should the Commission approve the Application notwithstanding the significant issues the Application presents, the Commission

---

19 *Id.*

must adopt the conditions set forth herein on government contracts, roaming, and technology licensing to protect the public interest.

Respectfully submitted,

Richard J. Metzger

Richard J. Metzger
Vice President - Regulatory
TeleGuam Holdings, LLC
2629 North Florida Street
Arlington, Virginia 22207
202-256-6377
dmetzger@gta.net

Dated: June 9, 2006

VERIFICATION

I, Richard J. Metzger am Vice President – Regulatory for TeleGuam Holdings, LLC. I hereby certify under penalty of perjury that the statements contained in the foregoing Petition are true, complete, and correct.

Executed on June 9, 2006

Richard J. Metzger (signature)

CERTIFICATE OF SERVICE

I, Jeanne W. Stockman, hereby certify that true and correct copies of the foregoing Petition to Deny and Comments of TeleGuam Holdings, LLC were served by electronic mail or first-class mail, postage pre-paid, upon the following individuals this 9th day of June, 2006:

Erin McGrath*
Mobility Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20554
erin.mcgrath@fcc.gov

Susan Singer*
Spectrum and Competition
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20554
susan.singer@fcc.gov

David Krech*
Policy Division
International Bureau
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20554
david.krech@fcc.gov

Susan O'Connell*
Policy Division
International Bureau
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20554
susan.oconnel@fcc.gov

Tracey Wilson-Parker*
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20554
tracey.wilson-parker@fcc.gov

Kimberly Jackson*
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20554
kimberly.jackson@fcc.gov

Neil Dellar*
Office of General Counsel
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20554
neil.dellar@fcc.gov

Best Copy and Printing, Inc.*
Federal Communications Commission
445 12th Street, N.W., Room CY-B402
Washington, DC 20554
fcc@bcpiweb.com

David LaFuria**
Lukas Nace Gutierrez & Sachs
1650 Tysons Blvd.
Suite 1500
McLean, VA 22102

Thomas K. Crowe**
Law Offices of Thomas K. Crowe, PC
1250 24th Street, N.W.
Suite 300
Washington, DC 20037

Cheryl A. Tritt**
Doane F. Kiechel
Jennifer L. Kostyu
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, DC 20006

Jeanne W. Stockman

*Delivered via Electronic Mail
**Delivered via First Class Mail

9295178v1