

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

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

OPPOSITION TO PETITION TO DENY OF TELEGUAM HOLDINGS, LLC

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SUMMARY

NTT DoCoMo, Inc. (“DoCoMo”), Guam Cellular and Paging, Inc. (“Guam Cellular”), and Guam Wireless Telephone Company, L.L.C. (“Guam Wireless”) (collectively, the “Applicants”) oppose the TeleGuam Holdings, LLC (“TeleGuam”) petition to deny DoCoMo’s proposed acquisition of all ownership shares of Guam Cellular and certain wireless assets of Guam Wireless. TeleGuam, the only entity to oppose the proposed transaction, fails to refute the Applicants’ showing that the transaction will serve the public interest and provide significant benefits for Guam consumers. TeleGuam, whose wireless subsidiary is a new entrant into the Guam market and whose wireline subsidiary is the monopoly incumbent local exchange carrier in Guam, apparently seeks to forestall enhanced competition in the Guam telecommunications market to protect and improve its own position.

The proposed transaction will provide for the infusion of significant economic and management resources and wireless expertise from DoCoMo, a leader in the wireless market. DoCoMo’s investment will enhance the capabilities of Guam Cellular post-transaction to compete against multiple other Guam wireless carriers that are expanding their networks and services and that have access to significant financial resources. Existing wireless voice and data services will be improved significantly and consumers will have increased product choices, including GPRS data services and advanced third generation wireless broadband Internet services. TeleGuam does not even attempt to contest these benefits.

Further, TeleGuam’s speculative and unsupported assertions to the contrary, the wireless market in Guam will continue to be highly competitive post-transaction. As many as six facilities-based wireless carriers will operate in Guam after consummation of the proposed transaction, providing consumers a wide range of carriers and services. TeleGuam provides no

evidence or support that Guam Cellular's spectrum holdings or market share post-transaction will raise competitive issues in the Guam wireless market.

In addition, TeleGuam fails to rebut the Commission's longstanding presumption that DoCoMo's foreign ownership of Guam Cellular does not pose a risk to competition in the Guam wireless market. The investment by DoCoMo – a Japanese carrier from a World Trade Organization member country and a close ally to the United States – will provide precisely the results that the Commission envisioned when it adopted its open entry standard for foreign entities, including additional competition and new, innovative services and technologies. Moreover, the indirect, minority ownership interest of the Japanese government raises no competitive or national security concerns that invalidate the application of the Commission's open entry presumption in this case.

TeleGuam's proposed remedy – denying the transaction or, in the alternative, imposing unprecedented and unnecessary regulatory conditions on DoCoMo and Guam Cellular – is self-serving and contrary to longstanding Commission and U.S. trade policies to promote competition and open entry into the U.S. telecommunications market. The Applicants amply demonstrated that the proposed transaction, in fact, will foster competition and bring significant benefits to Guam consumers and will not produce anti-competitive effects in the Guam market. The Commission should summarily dismiss TeleGuam's petition and promptly approve this transaction.

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OPPOSITION TO PETITION TO DENY OF TELEGUAM HOLDINGS, LLC

Pursuant to Section 1.939(f) of the Commission’s rules,¹ NTT DoCoMo, Inc. (“DoCoMo”), Guam Cellular and Paging, Inc. (“Guam Cellular”), and Guam Wireless Telephone Company, L.L.C. (“Guam Wireless”) (collectively, the “Applicants”) oppose the TeleGuam Holdings, LLC (“TeleGuam”) petition (“Petition”)² to deny DoCoMo’s proposed

¹ 47 C.F.R. § 1.939(f). *See also* FCC Public Notice, *NTT DoCoMo, Inc., Guam Cellular and Paging, Inc., and Guam Wireless Telephone Company, L.L.C. Seek FCC Consent to Assign and Transfer Control of Licenses and Authorizations and Request a Declaratory Ruling on Foreign Ownership*, WT Docket No. 06-96, DA No. 06-947 (rel. May 10, 2006).

² Petition to Deny and Comments of TeleGuam Holdings, LLC, WT Docket No. 06-96 (filed June 9, 2006) (the “Petition”). The Petition was served on the Applicants by U.S. Mail. Accordingly, the Applicants are afforded three additional days to file their response pursuant to Section 1.4(h) of the Commission’s rules, 47 C.F.R. § 1.4(h).

acquisition of all ownership shares of Guam Cellular and certain wireless assets of Guam Wireless.³

TeleGuam, the only entity to oppose the proposed transaction, fails to refute the Applicants' showing that the transaction will serve the public interest. TeleGuam, which controls the monopoly incumbent local exchange carrier ("ILEC") in Guam and whose subsidiary Pulse Mobile is a new entrant into the Guam wireless market, apparently seeks to forestall competition in the Guam telecommunications market to protect its own position.⁴ TeleGuam's proposed remedy – denying the transaction or, in the alternative, imposing unprecedented and unnecessary regulatory conditions on DoCoMo and Guam Cellular – is contrary to longstanding Commission and U.S. trade policies to promote competition and open entry into the U.S. telecommunications market and would serve only TeleGuam's private interests rather than those of the affected public.

The Applicants amply demonstrated that the proposed transaction, in fact, will foster competition and bring significant benefits to Guam consumers and will not produce anti-competitive effects in the Guam market. The Commission should summarily dismiss the Petition and promptly approve this transaction.⁵

³ Under the proposed transaction, certain wireless assets of Guam Wireless will be assigned to Guam Cellular and control of Guam Cellular will be transferred to DoCoMo Guam Holdings, Inc., a wholly-owned U.S. subsidiary of DoCoMo. Unless otherwise indicated, references to "Guam Cellular" in this Opposition refer to the post-transaction company.

⁴ Neither TeleGuam nor any other party opposes DoCoMo's acquisition of Guam Cellular's and Guam Wireless' operations in the Commonwealth of the Northern Mariana Islands.

⁵ The Department of Justice ("DOJ"), on behalf of itself, the Federal Bureau of Investigation and the Department of Homeland Security (collectively, the "Executive Agencies"), has requested that the Commission defer action regarding this transaction until certain national security, law enforcement and public safety issues can be addressed. *See* Letter from Laura H. Parsky, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-96 (filed June 8,

I. TELEGUAM FAILS TO REFUTE THAT THE PROPOSED TRANSACTION IS IN THE PUBLIC INTEREST AND WILL PROVIDE SIGNIFICANT BENEFITS TO GUAM CONSUMERS.

TeleGuam does not challenge any of the multiple public interest benefits described by the Applicants that will result from DoCoMo's proposed acquisition of Guam Cellular's and Guam Wireless' operations.⁶ Specifically, the transaction will enhance Guam Cellular's competitive capabilities through the initial infusion of \$6.5 million and additional economic and management resources and wireless expertise. DoCoMo, a leading wireless carrier in Japan, has considerable skills and experience in the development and deployment of advanced wireless services and in meeting customer expectations and demand. Several advanced features offered by DoCoMo in Japan have not yet been introduced in Guam. DoCoMo's extensive experience with such advanced features, and its ongoing investments in research and development, will facilitate Guam Cellular's ability to deliver these and other promising new advanced services to Guam consumers.

The transaction will create economies of scale and scope long term and improve Guam Cellular's ability to compete against the wide array of other carriers in Guam. Furthermore, existing wireless voice and data services will be improved significantly and consumers will have increased product choices. DoCoMo intends to install GPRS packet switching technology in Guam Wireless' existing GSM personal communications service ("PCS") network. When deployed, GPRS will provide Guam consumers with the opportunity to utilize Blackberry or similar wireless devices for the first time. DoCoMo also intends in the future to introduce W-

2006) ("Executive Agencies Letter"). DoCoMo is actively engaged in discussions with the Executive Agencies to address those issues.

⁶ Guam Cellular and Paging, Inc., Guam Wireless Telephone Company, L.L.C., and NTT DoCoMo, Inc., Application for Assignment, Transfer of Control, and Petition for Declaratory Ruling, WT Docket No. 06-96, at 31-36 (filed Apr. 4, 2006) (the "Application").

CDMA technology on Guam Cellular's existing cellular network by utilizing available excess capacity on Guam Cellular's 850 MHz spectrum. Therefore, CDMA and W-CDMA technology will coexist for the time being. Other network improvements also will be made to enhance service quality (e.g., fewer dropped calls and better sound quality). Federal and local government personnel, military personnel, and emergency responders located in or visiting Guam will have the ability for the first time to use these advanced services to help them more efficiently carry out their duties. All of these benefits will be realized much more quickly than either Guam Cellular or Guam Wireless could achieve on their own without DoCoMo's infusion of capital and experience.

Homeland security, law enforcement and public safety efforts in Guam also will be improved because Guam Cellular will have additional resources for the technical upgrades necessary to satisfy Enhanced 911 requirements, obligations under the Communications Assistance for Law Enforcement Act ("CALEA"), and other similar responsibilities.

Moreover, DoCoMo's proposed acquisition will create significant indirect benefits for the Guam economy. Guam's location makes it a popular destination spot for Japanese and other Asian tourists. Japanese tourists account for approximately 80 percent of the travelers to Guam, Saipan, and other Pacific islands and are Guam's main source of tourism revenue.⁷ Post-transaction, Japanese travelers will find it easier to obtain wireless roaming services when traveling to Guam, which could boost the local tourism industry. As the president of the Guam Hotel and Restaurant Association and Guam Visitors' Bureau board member was recently quoted, "we will now be able to join forces with [Guam Cellular] to gain access to the Japanese visitor directly, and what better and more inexpensive way is there to do it than through cellular

⁷ See *DoCoMo Takes New Tack in Tie-Ups*, *The Nikkei Weekly* (Japan), Apr. 17, 2006.

communication. This bodes well for all of us here.”⁸ Similarly, the local press reported that Governor Benigno Fitial of the Commonwealth of the Northern Mariana Islands (“CNMI”) has endorsed the proposed transaction because it would bring additional competition, reduced costs and better services to consumers and would benefit the CNMI’s tourism industry.⁹

II. THE WIRELESS MARKET IN GUAM WILL CONTINUE TO BE HIGHLY COMPETITIVE AFTER CONSUMMATION OF THE PROPOSED TRANSACTION.

TeleGuam’s speculative and unsupported assertions notwithstanding, the Guam wireless market will be strengthened by the proposed transaction. Although the rural Guam market has a population of only approximately 154,800 people,¹⁰ post-transaction Guam consumers will continue to enjoy robust competition in the mobile telephony market.

Post-transaction, six wireless providers will be operating in Guam, allowing consumers to choose from a wide range of wireless carriers and services. Five facilities-based wireless carriers are currently providing commercial mobile radio service (“CMRS”) in Guam – Guam Cellular, Guam Wireless, TeleGuam (through its subsidiary Pulse Mobile), IT&E Overseas and Choice Phone d/b/a iConnect.¹¹ Two additional carriers – Wave Runner and Pacific Telecom, Inc. d/b/a PTI (“Pacific Telecom”) – intend to deploy CMRS services in Guam in the very near future.¹²

⁸ See Mark-Alexander Pieper, *Japan Firm to Buy Local Cell Phone*, Pacific Daily News (Hagatna, Guam), Mar. 21, 2006, at 1A.

⁹ See Agnes Donato, *Fitial Backs DoCoMo Telecom Purchase Bid*, Saipan Tribune, June 22, 2006, available at <http://www.saipantribune.com/newsstory.aspx?cat=1&newsID=58663>

¹⁰ See Application at 26.

¹¹ See *id.* at 27-30.

¹² See *id.* Sprint Nextel and LP Ganacias Enterprises d/b/a Radiocom also hold SMR frequencies in Guam, although it is uncertain whether they are providing or intend to provide CMRS services.

The Federal Trade Commission (“FTC”) and DOJ recently concluded in their Commentary on the Horizontal Merger Guidelines that, absent unusual circumstances, anti-competitive effects are unlikely when a transaction leaves four or more competing firms in a particular market.¹³ Similarly, the Commission has found that a transaction is unlikely to have anti-competitive effects when there will be five or more competitors in a market post-transaction.¹⁴ Even in markets in which only three or four competitors will remain post-transaction, the Commission has found that the recent entry of additional carriers in those markets should preclude anti-competitive effects.¹⁵ In this case, post-transaction four to six well capitalized, facilities-based carriers will provide service in Guam, a market environment that is unlikely to present opportunities for Guam Cellular or any other Guam wireless carrier to act anti-competitively.

In fact, competition in the wireless market in Guam should be *stronger* post-transaction. Other wireless competitors in Guam are receiving significant infusions of capital and are actively expanding and upgrading their operations. TeleGuam and Pacific Telecom each has been recently acquired by firms that have provided them with significant economic resources. Shamrock Holdings, a leading private equity investor in the media, entertainment and communications industries, acquired TeleGuam in December 2004.¹⁶ TeleGuam operates both a

¹³ See U.S. Department of Justice and the Federal Trade Commission, *Commentary on the Horizontal Merger Guidelines*, at 20 (Mar. 2006).

¹⁴ See, e.g., *AT&T Wireless Services, Inc. and Cingular Wireless Corp.*, 19 FCC Rcd 21522, 21595-96 & n.473 (2004) (“*Cingular/AWS Order*”).

¹⁵ See *id.*

¹⁶ See Shamrock Holdings, SCGF I Investments, Domestic Private Equity: GTA, http://www.shamrock.com/pages/domestic/domestic_present_TeleGuam.asp (last visited June 21, 2006) (“Shamrock/GTA Information Webpage”); Shamrock Holdings Press Release, Shamrock in the News, *Affiliate of Shamrock Holdings to Acquire Guam Telephone Company* (Sept. 9, 2004) available at http://www.shamrock.com/pages/media/media_press_9_9_04.asp.

TDMA and a GSM network (and possibly an AMPS network) and has announced that it is investing significant capital to improve service quality and offerings to compete more effectively.¹⁷ TeleGuam also owns the prior government-owned monopoly ILEC in Guam, Guam Telephone Authority (“GTA”).¹⁸

Similarly, Pacific Telecom was acquired in August 2005 by Prospector Investment Holdings, Inc., a private investment holding company for certain Philippine individuals.¹⁹ Pacific Telecom provides wireless services in the CNMI and has announced its intention to deploy a new wireless network and services in Guam, including third generation (“3G”) services.²⁰ IT&E Overseas, which operates a CDMA network, also has announced that it will deploy a GSM network in the very near future.²¹ In addition, as noted above, Wave Runner has announced plans to initiate GSM service in Guam in 2006.

Furthermore, Commission precedent supports the Applicants’ position that Guam Cellular’s post-transaction spectrum holdings will not be excessive and will not produce anti-competitive effects in the market. The Commission recently held that an applicant acquiring

¹⁷ See Application at 29; Petition at 2.

¹⁸ Shamrock/GTA Information Webpage.

¹⁹ See *Bell Atlantic New Zealand Holdings, Inc. and Pacific Telecom Inc.*, 18 FCC Rcd 23140 (IB, WCB, WTB, 2003) (“*Pacific Telecom*”); see Letter from Timothy J. Cooney, Counsel to Pacific Telecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 03-115 (Sept. 28, 2005) (notifying the Commission that Pacific Telecom’s acquisition of certain wireless and wireline operations had been consummated).

²⁰ See FCC Form 603, Application to Assign License From Bell Atlantic New Zealand Holdings, Inc. to GTE Pacifica, Inc., Public Interest Statement and Description of Transaction, ULS No. 0002401623 (filed Dec. 12, 2005); 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., IB Docket 03-115 (Apr. 18, 2003).

²¹ See Application at 28.

overlapping licenses, as in this case, typically does not raise competitive issues unless the aggregate spectrum holdings total 70 MHz or more.²² The Commission previously approved other transactions in which carriers would control 55 MHz or more spectrum in a geographic market, the same amount that would be held by Guam Cellular, and has permitted carriers to hold up to 80 MHz in one market.²³ With 55 MHz of spectrum held after consummation of the transaction, Guam Cellular is well below the Commission's threshold for closer examination of a prospective licensee's spectrum holdings.

Moreover, the Advanced Wireless Service ("AWS") auction, scheduled to begin August 9, 2006, will introduce 90 MHz of additional spectrum into the marketplace for existing licensees and new entrants, further diluting the ability of existing carriers to control the marketplace and intensifying the competitiveness of the wireless market in Guam.²⁴ DoCoMo would control only 55 MHz of approximately 290 MHz of available CMRS spectrum, or less than 20 percent of available CMRS spectrum in Guam.

²² See *Western Wireless Corp. and ALLTEL Corp.*, 20 FCC Rcd 13053, 13073-74 (2005) ("ALLTEL/WWC Order"); *Cingular/AWS Order*, 19 FCC Rcd at 21568-69. As explained in the Application, the Commission also may review the Herfindahl-Hirschman Index ("HHI") for the relevant geographic market, but data to calculate Guam's HHI is not publicly available. See Application at 38-39.

²³ See, e.g., *ALLTEL/WWC Order*, 20 FCC Rcd at 13081 n.190 (approving the spectrum aggregation of 70 MHz); *Cingular/AWS Order*, 19 FCC Rcd at 21598 (approving the spectrum aggregation of 80 MHz); FCC Public Notice, *Wireless Telecommunications Bureau Grants Consent for the Assignment of Licenses to AT&T Wireless Services, Inc., Cingular Wireless LLC, Meriwether Communications LLC, and Skagit Wireless, LLC*, 18 FCC Rcd 9975 (WTB 2003) (approving the spectrum aggregation of 65 MHz).

²⁴ See FCC Public Notice, *Auction of Advanced Wireless Services Licenses Schedule for June 29, 2006*, AU Docket No. 06-30, FCC 06-47 (rel. Apr. 12, 2006); FCC Public Notice, *Auction of Advanced Wireless Services Licenses Rescheduled for August 9, 2006*, AU Docket No. 06-30, FCC 06-71 (rel. May 19, 2006).

The Commission also should disregard TeleGuam's claim, unsupported by any evidence or analysis, that post-transaction Guam Cellular will hold 55 to 65 percent of the subscriber market share in Guam. Carriers generally treat their subscriber data as highly confidential and the Applicants cannot verify whether TeleGuam's numbers are accurate, particularly in the absence of any analysis or facts. Therefore, the Commission should give no weight to TeleGuam's bald assertion regarding wireless market shares in Guam.

Even if TeleGuam's market share estimates are accurate, however, they do not demonstrate the likelihood of anti-competitive effects in the post-transaction wireless market. TeleGuam provides no evidence to show that Guam Cellular will have the incentive or the ability to raise prices, restrict output, or prevent competitors from obtaining access to additional spectrum.²⁵ Furthermore, estimates regarding market share generally are a backward-looking snapshot in time. The Commission's competitive analysis, however, is properly focused on whether the proposed transaction will adversely affect competition in the future. Recent events and currently developing trends in Guam demonstrate that earlier market shares do not accurately capture current and future competitive dynamics.²⁶ Many factors are in play to ensure that the Guam wireless market remains competitive. Importantly, TeleGuam, following its acquisition by Shamrock Holdings, a prominent investment firm, touts its intention to become a much more aggressive market participant.²⁷ In addition, several Guam competitors are

²⁵ See, e.g., *Cingular/AWS Order*, 19 FCC Rcd at 21556, 21596.

²⁶ See U.S. Department of Justice and Federal Trade Commission, *Horizontal Merger Guidelines* § 1.521 (Apr. 1997) ("Market concentration and market share data of necessity are based on historical evidence. However, recent or ongoing changes in the market may indicate that the current market share of a particular firm either understates or overstates the firm's future competitive significance.").

²⁷ See Petition at 2.

increasing capital expenditures to develop and deploy new services and new competitors plan to begin operations in Guam in the very near future, including Pacific Telecom and Wave Runner. An additional 90 MHz of spectrum also will be made available in the AWS auction later this year. The availability of number portability ensures that consumers will not be prevented from changing wireless service providers.²⁸ Taken as a whole, these market factors ensure that DoCoMo's acquisition of Guam Cellular will serve to energize competition for the relatively small number of consumers in Guam and will not create any anti-competitive effects.

III. DOCOMO'S FOREIGN OWNERSHIP DOES NOT PRESENT ANTI-COMPETITIVE OR NATIONAL SECURITY CONCERNS.

The Commission's longstanding presumption is that foreign ownership of U.S. licenses by companies from World Trade Organization ("WTO") home markets does not pose a risk to competition in the U.S. mobile telephony market. TeleGuam fails utterly to rebut that presumption. Moreover, Commission precedent is clear that the mere fact of the Japanese government's indirect, minority interest in Guam Cellular does not present a risk to competition or national security. The Commission should dismiss TeleGuam's unsupported and erroneous assertions regarding the market effects of DoCoMo's acquisition on Guam Cellular.

A. TeleGuam Fails To Rebut The *Foreign Participation Order* Presumption That DoCoMo Can Control Guam Cellular.

In the *Foreign Participation Order* the Commission found that U.S. consumers will benefit significantly from the removal of obstacles to the entry into all telecommunications service markets, including barriers to the U.S. telecommunications market.²⁹ In light of the

²⁸ TeleGuam does not yet offer local number portability, and its customers cannot port their wireline numbers to competitive wireless carriers.

²⁹ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23894-95 (1997) ("*Foreign Participation Order*").

market access commitments that had been undertaken by WTO member countries and the Commission's increasingly deregulatory policies, the Commission determined that it served the public interest to ease market entry requirements into the U.S. market for foreign companies.³⁰ Accordingly, the Commission adopted the presumption that indirect foreign investment in common carrier licensees by entities from WTO member countries raises no competitive concerns and serves the public interest, unless the foreign investment is shown to pose a "very high risk" to competition.³¹

TeleGuam fails to refute the Commission's presumption that the public interest is served by allowing DoCoMo, a Japanese carrier from a WTO member country that is a close ally to the United States, to indirectly control Guam Cellular. As noted in the Application, the proposed transaction benefits U.S. consumers and the public interest. DoCoMo's investment will provide precisely the results the Commission intended when it adopted its open entry standard in the *Foreign Participation Order* – additional competition and new, innovative services and technologies.

Paradoxically, TeleGuam claims that these market benefits are anti-competitive. TeleGuam acknowledges that DoCoMo's investment will bring to Guam consumers many services and wireless features that are not yet available in the United States, but claims that DoCoMo will be able "to act anti-competitively by introducing those features exclusively in Guam through its Guam subsidiaries."³² Technological innovation and the offering of new services, however, are the essence of a competitive market. In order to maintain existing

³⁰ *See id.* at 23983-94.

³¹ *See id.* at 23896, 23913, 23940.

³² *See* Petition at 8-9.

customers and to attract new subscribers, carriers must continuously innovate in order to remain competitive, all to the benefit of U.S. consumers. The Commission affirmed this analysis in the order approving the acquisition by Deutsche Telekom AG (“DT”) of VoiceStream Corporation (“VoiceStream”) and Powertel, Inc. (“Powertel”). The Commission found that the acquisition similarly enabled the merged company to “deploy additional wireless services, including services that DT provides in Europe but are not yet available in the United States.”³³

TeleGuam also is wrong that the proposed transaction will have an anti-competitive effect on the roaming market between Guam and Japan.³⁴ As discussed in more detail below, DoCoMo’s investment may lead to reduced roaming charges for U.S. consumers and expanded availability of global roaming capability for U.S. and international travelers.³⁵ As the Commission previously concluded regarding DT’s foreign investment in a U.S. carrier, U.S. consumers will benefit from “new services, new features, and potentially reduced roaming charges to consumers [that] will result from the merger.”³⁶

B. The Japanese Government’s Ownership Interest In DoCoMo Does Not Raise Competitive Or National Security Concerns.

TeleGuam baselessly asserts that the proposed transaction should be denied because the Japanese government, through Japan’s Ministry of Finance, would hold an indirect, minority ownership interest in Guam Cellular through DoCoMo. The Commission has held repeatedly,

³³ *VoiceStream Wireless Corp., Powertel, Inc., and Deutsche Telekom AG*, 16 FCC Rcd 9779, 9843 (2001) (“*VoiceStream/DT Order*”).

³⁴ *See* Petition at 7-8.

³⁵ *See* Application at 32.

³⁶ *VoiceStream/DT Order*, 16 FCC Rcd at 9844.

however, that no distinction is to be made between indirect government and private foreign ownership under its open entry standard:

The Commission stated in the *Foreign Participation Order* that the commitments made by WTO Members, the Commission's regulatory safeguards, and antitrust law should adequately address competitive concerns resulting from participation by foreign carriers from WTO Members in the U.S. telecommunications market. *In this regard, the Commission has made no distinction between indirect government and private foreign ownership.* Therefore, the same presumption in favor of market entry for private entities from WTO Member countries also applies in the instant analysis.³⁷

The presumption in favor of entry into the U.S. telecommunications market similarly applies in this case.

TeleGuam also claims that the Japanese Ministry of Finance's 38.37 percent equity and voting interest in Nippon Telegraph and Telephone Corporation ("NTT") and its indirect 23.77 percent ownership interest in DoCoMo raises questions regarding whether the Japanese government holds *de facto* control over DoCoMo (and thus Guam Cellular) through NTT.³⁸ Again, TeleGuam is wrong on the facts and the law.³⁹

The Commission applies a "totality of the circumstances" test in order to determine whether a foreign government exercises control over a U.S. licensee.⁴⁰ As the Application

³⁷ *Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General, Corporation and Telenor Satellite Mobile Services, Inc. and Telenor Satellite, Inc.*, 16 FCC Rcd 22897, 22910 (2001) ("*Lockheed/Telenor Order*") (emphasis added). *See also VoiceStream/DT Order*, 16 FCC Rcd at 9810-11; *Global Crossing Ltd. (Debtor-in-Possession) and GC Acquisition Limited*, 18 FCC Rcd 20301, 20325-26 (IB, WTB, WCB 2003) ("*Global Crossing Order*").

³⁸ As noted in the Application, NTT holds a 61.96 percent equity and voting ownership interest in DoCoMo. The Ministry of Finance holds a 38.37 percent equity and voting interest in NTT and an indirect 23.77 percent ownership interest in DoCoMo.

³⁹ *See* Petition at 4-5.

⁴⁰ *See VoiceStream/DT Order*, 16 FCC Rcd at 9814 n.171.

describes in detail,⁴¹ DoCoMo's day-to-day operations are conducted independently of NTT and NTT's other subsidiaries. NTT does not possess special or preferential voting rights and by Japanese law, NTT and its subsidiaries are prohibited from providing each other with preferential treatment. The Japanese government also has no special or preferential voting rights with regard to DoCoMo's operations. Any ability to affect DoCoMo's business decisions originates solely from the government's capacity as a minority shareholder of NTT, but the government has never used its shareholder position to direct the management of NTT or any of its subsidiaries. No director or officer serving on DoCoMo's board of directors is a government official. TeleGuam fails to acknowledge, much less refute, the overwhelming evidence presented by the Applicants that the Japanese government does not have *de facto* control of DoCoMo.

In any event, the Commission has found that indirect control by a foreign government over a parent company of a U.S. licensee can be in the public interest, particularly if the foreign government's ownership "does not confer unique financial advantages or otherwise create a high risk to competition or consumers in the United States that warrants special conditions."⁴² For example, upon DT's acquisition of VoiceStream and Powertel, the German government held a 45 percent indirect ownership interest in the merged company.⁴³ No other shareholder held more than five percent of the merged company.⁴⁴ The Commission concluded that the partial government ownership in DT did not lower DT's cost of capital or create other financial advantages because government ownership did not provide DT with easier access to capital,

⁴¹ See Application at 9-11, 18-20.

⁴² *VoiceStream/DT Order*, 16 FCC Rcd at 9815.

⁴³ See *id.* at 9813-14.

⁴⁴ See *id.*

higher bond ratings, tax benefits, subsidies or state aid.⁴⁵ The Commission also found remote “the possibility of discriminatory regulatory treatment in the German market sufficient to enable DT to finance anti-competitive behavior in U.S. markets” or “the likelihood of the Applicants engaging in predatory behavior in U.S. markets.”⁴⁶

Similarly, the Singapore government acquired a 61.5 voting and equity interest in GC Acquisition Limited, the post-bankruptcy acquisition vehicle for Global Crossing Ltd.⁴⁷ No other entity was expected post-transaction to hold a ten percent or more share in the company.⁴⁸ The Commission concluded that Singapore’s government ownership did not confer subsidies, grants, preferential access to capital or other special benefits to its affiliate, and would not influence the commercial policies of the affiliate.⁴⁹ In addition, the Kingdom of Norway acquired a 79 percent ownership interest in Telenor Satellite Mobile Services, Inc., a publicly traded company.⁵⁰ According to the Commission, “the Norwegian government’s 79 percent ownership interest in Telenor does not confer unique financial advantages or otherwise create a high risk to competition or consumers in the United States.”⁵¹

Even if the Japanese government were to exercise some level of control over NTT or DoCoMo, TeleGuam provides no evidence that government ownership confers any unique

⁴⁵ *See id.* at 9816-18.

⁴⁶ *Id.* at 9818, 9820.

⁴⁷ *See Global Crossing Order*, 18 FCC Rcd at 20304, 20323.

⁴⁸ *See id.* at 20308.

⁴⁹ *See id.* at 20325-26.

⁵⁰ *See Lockheed/Telenor Order*, 16 FCC Rcd at 22899.

⁵¹ *Id.* at 22910.

advantages that are likely to pose a risk to competition in the U.S. or Guam telecommunications market. To the contrary, as outlined in the Application, the Japanese government's minority ownership interest in NTT and, indirectly, DoCoMo, confers no unique advantages that would pose a risk to competition in the Guam wireless market.⁵² Specifically, the Japanese government does not provide any state assistance or other special treatment to either NTT or DoCoMo. Moreover, neither NTT nor DoCoMo enjoys superior access to capital or enjoys favorable regulatory treatment in Japan by virtue of the Japanese government's minority ownership interest. TeleGuam does not even attempt to refute these facts. The Applicants have demonstrated convincingly that the Japanese government's indirect, minority ownership interest does not confer unique financial advantages, favorable regulatory treatment, or otherwise create a risk to competition or U.S. consumers that warrants special conditions.⁵³ Accordingly, the Commission should conclude that the public interest will not be served by denying DoCoMo's indirect foreign ownership of Guam Cellular.

C. Commission Safeguards And Executive Agency Security Requirements Will Address Any Remaining Issues.

To the extent any issues remain regarding DoCoMo's proposed foreign ownership in this case, they will be resolved through compliance with the Commission's dominant carrier safeguards and negotiations with the Executive Agencies. DoCoMo has already agreed that post-transaction Guam Cellular will comply with the Commission's rules and policies regarding dominant carriers for the U.S.-Japan international route.⁵⁴ The Commission's dominant carrier

⁵² See Application at 46-48.

⁵³ See *VoiceStream/DT Order*, 16 FCC Rcd at 9815-21; *Global Crossing Order*, 18 FCC Rcd at 20323-26; *Lockheed/Telenor*, 16 FCC Rcd at 22909-10.

⁵⁴ See Application at 40. The Commission's dominant safeguards include: (1) maintaining separate books of account; (2) abstaining from joint ownership of transmission or switching

safeguards “are designed to make a carrier’s interaction with its affiliated foreign carrier transparent and thereby guard against discriminatory conduct.”⁵⁵ As the Commission has concluded in other transactions, these safeguards, along with other relevant rules, will protect sufficiently against any potential harms to U.S. customers on the U.S-Japan route.⁵⁶

Furthermore, DoCoMo is in discussions with the Executive Agencies to address any national security, law enforcement and public safety issues related to this transaction.⁵⁷ Contrary to TeleGuam’s assertions, the U.S. military presence on Guam and proximity to Japan and other Asian countries is no basis to deny the Application or impose additional conditions on the transaction beyond the terms of any agreement with the Executive Agencies. The Commission previously rejected substantially the same argument when it approved Pacific Telecom’s acquisition of the ILEC and a wireless operator in the CNMI, located in the same relative geographic area as Guam and host to significant U.S. military operations. Specifically, a party had argued that 100 percent foreign ownership of the CNMI carriers:

posed national security and public safety risks because: (1) competition is minimal in the CNMI, leaving few alternatives for service; (2) Pacific Telecom would control critical infrastructure services such as 911; (3) the U.S. military and residing U.S. federal agencies would be utilizing a telecommunications network that would be under ‘foreign control;’ and (4) the CNMI is in a remote, yet strategic location.⁵⁸

facilities; (3) filing quarterly reports of revenue and transmission; (4) filing quarterly reports summarizing the provisioning and maintenance of all basic network facilities and services procured from foreign affiliates; and (5) filing quarterly circuit status reports. *See* 47 C.F.R. § 63.10(c).

⁵⁵ *VoiceStream/DT Order*, 16 FCC Rcd at 9836 (citation omitted).

⁵⁶ *See, e.g., Global Crossing Order*, 18 FCC Rcd at 20337-39; *VoiceStream/DT Order*, 16 FCC Rcd at 9834-36; *Lockheed/Telenor Order*, 16 FCC Rcd at 22916-17.

⁵⁷ *See* Executive Agencies Letter.

⁵⁸ *Pacific Telecom*, 18 FCC Rcd at 23159-60.

The Commission, however, concluded that “in view of the Executive Branch’s scrutiny of the transaction, and the resolution of its concerns” through the execution of a security agreement with the applicant, there was no basis to deny the transaction based on the arguments above.⁵⁹

The Commission typically accords deference to the Executive Agencies’ expertise in matters of national security, law enforcement and public safety, and TeleGuam provides no basis for deviating from this established policy.⁶⁰

IV. TELEGUAM’S PROPOSED CONDITIONS ARE ANTI-COMPETITIVE, UNNECESSARY AND NOT IN THE PUBLIC INTEREST.

TeleGuam provides no reasonable rationale for the conditions that it proposes be placed upon DoCoMo’s acquisition of Guam Cellular. The proposed conditions would “single Applicants out for special treatment unwarranted by any likely adverse consequences of the transaction” and “would leave Applicants in a worse position following the transaction than they are today.”⁶¹ The conditions are a transparent attempt by TeleGuam to protect its own interests through regulatory fiat rather than to promote consumer welfare generated by fair competition in the marketplace.

A. Restricting DoCoMo’s Government Contract Opportunities Would Disserve Government Consumers’ Interests.

The Commission should reject TeleGuam’s proposal to prohibit DoCoMo and Guam Cellular from entering into service contracts with federal or local government entities going

⁵⁹ *Id.* at 23160.

⁶⁰ *See, e.g., VoiceStream/DT Order*, 16 FCC Rcd at 9823; *Lockheed/Telenor*, 16 FCC Rcd at 22918; *Global Crossing Order*, 18 FCC Rcd at 20341.

⁶¹ *General Motors Corp., Hughes Electronics Corp. and News Corp. Ltd.*, 19 FCC Rcd 473, 534 (2003) (declining to adopt unnecessary conditions on the transfer of control of certain FCC authorizations).

forward and divesting any existing government contracts. TeleGuam argues that such restrictions are necessary “[i]n light of the key military installations on Guam and their strategic importance.”⁶² TeleGuam fails to explain how a restriction on government contracts that would deny government entities the benefits of new data and advanced wireless services could be in the public interest.

All U.S. and Guam consumers – including government entities – should have the opportunity to choose among competing carriers for the best telecommunications services and products that meet their individual needs. TeleGuam cites no case in which the Commission has imposed a restriction that effectively limits the ability of a specific group of consumers to choose their own telecommunications carrier and services. This result is the antithesis of a normally functioning competitive marketplace. Moreover, government entities can decide on their own and under existing policies and regulations whether to award contracts to DoCoMo, Guam Cellular, or any other company, regardless of whether they are foreign controlled. TeleGuam’s proposed condition constitutes an unreasonable prohibition against foreign investment, a result that not only is contrary to longstanding United States trade policies and treaty obligations, but is draconian and self-defeating.

The only conclusion that can reasonably be drawn from TeleGuam’s proposal is that it is concerned about the stability of its own relationships with government entities. As previously noted, TeleGuam recently acquired the former government-owned GTA, the ILEC which holds a monopoly position in Guam’s local exchange market, in addition to GTA’s wireless operations. As the only local wireline carrier and former government operator, the federal and local governments potentially make up a significant portion of TeleGuam’s customer base. It appears

⁶² See Petition at 6.

that TeleGuam seeks to ensure that another competitor does not have the opportunity to better serve potentially dissatisfied customers.⁶³

B. TeleGuam’s Proposed Roaming Conditions Would Require Unnecessary Commission Intervention In Commercial Negotiations.

TeleGuam’s suggestion that the Commission require DoCoMo to enter into reciprocal roaming agreements with all Guam carriers so that TeleGuam and other carriers are not “frozen out of the Guam-Japan roaming market”⁶⁴ is nothing more than an attempt to use this proceeding to gain advantage in ongoing roaming negotiations between TeleGuam and DoCoMo. As an initial matter, TeleGuam’s proposed condition would have the Commission exceed its authority by regulating DoCoMo’s Japanese operations. It has long been recognized that the Commission has authority over the operations of U.S. carriers, not the operations of foreign carriers in foreign markets.⁶⁵

In any event, adopting such a roaming condition would require the Commission to unnecessarily and inappropriately intervene in private commercial negotiations. As TeleGuam noted, it and DoCoMo are in active negotiations for a roaming arrangement. Contrary to TeleGuam’s suggestions, DoCoMo has no reason to believe that the parties will not reach a reasonable, mutually-beneficial roaming arrangement.

⁶³ See, e.g., Tammy Anderson, *Phone Service to Government Agencies to Resume Today*, Pacific Daily News (Hagatna, Guam), Feb. 17, 2006, at 9A (reporting that GTA had disconnected telephone service to several government agencies, including some that deal with public safety issues, due to a billing dispute).

⁶⁴ Petition at 7.

⁶⁵ See *International Settlement Rates*, Report and Order, 12 FCC Rcd 19806, 19951 (1997) (“We at no time in this *Order* assert that we have the authority to compel directly a foreign carrier to charge a certain rate for terminating U.S.-originated traffic.”), *aff’d sub nom. Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224, 1230 (D.C. Cir. 1999) (“We thus hold that the Commission’s *Order* does not regulate foreign carriers or foreign telecommunications services and therefore does not violate the Communications Act.”).

Negotiations between DoCoMo and TeleGuam were recently opened after TeleGuam's wireless subsidiary, Pulse Mobile, started GSM operations in January 2006. Contrary to TeleGuam's description of the negotiations, the proposed agreement does not restrict the type of roaming to "plastic roaming."⁶⁶ Rather the agreement would encompass both "plastic roaming" and "dual-mode handset roaming."⁶⁷ Importantly, the roaming agreement under negotiation is substantially similar to the roaming agreement that DoCoMo has entered into with Guam Wireless, the only other Guam carrier that currently is operating a GSM network.⁶⁸

Furthermore, the "dual-mode handset" referenced by TeleGuam is available only in Japan because it is customized for Japanese subscribers. Specifically, it is configured to operate on DoCoMo's 2 GHz W-CDMA network, so there is no commercial reason to market the handset at this time in Guam or the U.S. Moreover, exporting dual-mode handsets to the United States is at the discretion of handset manufacturers, not DoCoMo. If a significant market develops in Guam or elsewhere for such dual-mode handsets, the manufacturers would likely also make them available in the United States.

In addition, TeleGuam's assumption that DoCoMo's market share in Japan will prevent TeleGuam from obtaining international roaming services is groundless. As explained in the

⁶⁶ "Plastic roaming" occurs when a Japanese customer removes the SIM card from his or her existing handset and places it in a GSM handset that may be used in Guam.

⁶⁷ CDMA technology generally is not compatible with W-CDMA technology. However, carriers with a W-CDMA network may be able to support GSM technology because W-CDMA technology is an extension of GSM technology. W-CDMA operators, including DoCoMo, typically have "dual-mode handsets" that allow their customers to roam on networks utilizing GSM technology. DoCoMo has several dual-mode handsets available to consumers who require such roaming capability, although most of DoCoMo's wireless handsets are not dual-mode.

⁶⁸ Although TeleGuam proposes that DoCoMo provide roaming arrangements to "all Guam carriers," such a requirement effectively applies only to TeleGuam because only two Guam carriers currently are operating GSM networks – Guam Wireless and TeleGuam's subsidiary, Pulse Mobile – and DoCoMo and Guam Wireless have entered into a roaming agreement.

Application, wireless carriers in Japan compete on a level playing field.⁶⁹ A number of other wireless carriers provide service in Japan, and several more are expected to roll out services in the near future. Wireless number portability, which all carriers must implement by November 1, 2006, will further increase competition in Japan's wireless market. There is no evidence that DoCoMo's investment in Guam will preclude TeleGuam or any other Guam carrier from seeking out and obtaining domestic or international roaming arrangements with DoCoMo, Guam Cellular, or other U.S. and/or Japanese carriers.⁷⁰ Thus, TeleGuam provides no reasonable rationale for imposing a roaming condition on DoCoMo.⁷¹

C. TeleGuam's Proposed Technology Licensing Condition Is Self-Serving And Anti-Competitive.

The Commission should reject outright TeleGuam's proposal to require DoCoMo to license the use of all of its voice and data services to TeleGuam and other Guam carriers. The proposal suggests that TeleGuam is alarmed that DoCoMo's innovative capabilities will challenge its competitive position in the marketplace. Rather than developing its own innovative services in order to compete more effectively against other wireless operators, TeleGuam asks the Commission to require DoCoMo to hand its advancements to TeleGuam. This extreme regulatory condition would in fact discourage innovation and many of the benefits of a competitive market would disappear. In the end this result would disserve consumers by

⁶⁹ Application at 14-17.

⁷⁰ See, e.g., *VoiceStream/DT Order*, 16 FCC Rcd at 9839-40 ("DT's ownership of VoiceStream does not leave other U.S. mobile telephony service providers without options for roaming partners in Germany and other countries where DT's T-Mobile has a subsidiary.").

⁷¹ The Commission currently is considering whether it should adopt new requirements regarding roaming arrangements. *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, 20 FCC Rcd 15047 (2005). Guam Cellular, of course, would be subject to any new roaming rules adopted in that proceeding.

denying them the lower prices and better, advanced services that innovation brings. TeleGuam cites no case in which the Commission has found that such a licensing requirement serves the public interest.⁷² The better course is to permit the competitive marketplace to drive TeleGuam to innovate and compete.

Furthermore, simply because Guam Cellular may be able to offer new technologies and services to Guam consumers that currently are unavailable from existing Guam carriers does not somehow require sharing access to proprietary technologies and services with competitors. “A mere finding that a firm has certain advantages over its competitors... is not a basis for concluding that the firm has engaged in or will engage in anti-competitive behavior because the development of unique competitive advantages is the essence of the competitive process.”⁷³ It is a longstanding legal and economic principle that companies have “no duty to aid competitors.”⁷⁴ The Commission should reject TeleGuam’s proposed licensing condition.

V. CONCLUSION.

TeleGuam has failed to demonstrate that approval of DoCoMo’s proposed acquisition of Guam Cellular and Guam Wireless is not in the public interest. The record overwhelmingly

⁷² The Commission “will impose conditions only to remedy harms that arise from the transaction (i.e., transaction-specific harms) and that are fairly related to the Commission’s responsibilities under the Communications Act and related statutes.” *Nextel Communications, Inc. and Sprint Corporation*, 20 FCC Rcd 13967, 13979 (2005).

⁷³ *VoiceStream/DT Order*, 16 FCC Rcd at 9838.

⁷⁴ *Verizon v. Trinko*, 540 U.S. 398, 411 (2004).

shows that this transaction will foster competition and bring significant benefits to U.S. and Guam consumers. The Commission should summarily dismiss the Petition and promptly approve this transaction.

Respectfully submitted,

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June 22, 2006

CERTIFICATION

I, Michiya Shinagawa, Executive Director of the Global Business Department of NTT DoCoMo, Inc., hereby certify under penalty of perjury that I have personal knowledge, or have spoken with those that have personal knowledge, of the statements of fact contained in the foregoing Opposition to Petition to Deny TeleGuam Holdings, LLC and that to the best of my knowledge, information and believe, all such statements are true and accurate.

A handwritten signature in cursive script, reading "Michiya Shinagawa", is written over a horizontal line.

Name: Michiya Shinagawa
Title: Executive Director, Global Business Department
NTT DoCoMo, Inc.

Date: June 22, 2006

CERTIFICATE OF SERVICE

I, Theresa Rollins, hereby certify that I am on this 22nd day of June, 2006, delivering copies of the foregoing **OPPOSITION TO PETITION TO DENY OF TELEGUAM HOLDINGS, LLC** to the following via electronic mail:

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