

provider on Guam in light of its key military installations and strategic importance. In light of these serious issues, 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.

I. THE PROPOSED TRANSACTION WOULD CAUSE COMPETITIVE HARM.

In their Opposition, the Applicants challenge the market share estimates provided in TeleGuam's Petition and attempt to dismiss market share generally as an indicator of competition.² This is misleading and ignores fundamental tenets of the Commission's competitive review process. In this case, market share is an especially critical indicator of the dominance NTT DoCoMo would have in the Guam market should the proposed transaction move forward. Market share is the core figure in the calculation of the Herfindahl-Hirschman Index ("HHI") screen that is used by the Commission to determine whether a proposed transaction requires additional competitive review in light of potential undue horizontal concentration.³ Here, based on the market share estimates provided by TeleGuam, the proposed transaction exceeds the thresholds used by the Commission. This and other factors indicate that the transaction will cause competitive harms and should be denied, or at a minimum, conditioned as discussed in TeleGuam's Petition.

As recognized by the Applicants, a market is identified as requiring further competitive review if the post-transaction HHI would be greater than 2800 and the change in HHI would be

² Opposition at p. 9.

³ See, e.g., *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum Opinion and Order, rel. Aug. 8, 2005, p. 16 & n. 99 ("*Sprint-Nextel Order*").

100 or greater; or if the change in HHI would be 250 or greater regardless of the level of the HHI; or if, post-transaction, the parties would hold 70 megahertz or more of spectrum.⁴ Based on TeleGuam's estimates, which indicate that combined entities would control approximately 55 – 65 percent of the Guam wireless market, the combined entity alone would have an HHI of 3025 and the HHI change as a result of the transaction would be 1200 when viewed most conservatively.⁵ Significantly, the competitive impact may even be more severe than these figures suggest. NTT DoCoMo has a long history of being a very profitable venture. Data released in March 2006 indicates that NTT DoCoMo had a net profit of \$5.1 billion.⁶ NTT DoCoMo is surely not undertaking the proposed transaction because it believes it will lose market share and revenue to other Guam carriers. Thus, the competitive impact is likely to be even more substantial than these HHI figures indicate. Accordingly, the Commission must afford this transaction heightened scrutiny to fully understand the competitive harms it poses.

Even more disconcerting is that various mitigating factors that the Commission has found to counter high HHI indices are simply not present on Guam. NTT DoCoMo intends to introduce a variety of new advanced services not currently available on Guam.⁷ This may cause consumers to view NTT DoCoMo-controlled services not comparable or substitutable with those of other Guam carriers, suggesting NTT DoCoMo will be in a prime position to increase its

⁴ Application at pp. 38-39; *see also Sprint-Nextel Order* at p. 27.

⁵ This is based on Guam Cellular and Guam Wireless having a combined market share of 55 percent, of which 40 percent is attributed to Guam Cellular and 15 percent is attributed to Guam Wireless. *See* Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at §§ 1.5 - 1.51 & nn. 17-18 (Apr. 2, 1992, revised Apr. 8, 1997).

⁶ *See* <http://moneycentral.msn.com/investor/invsb/results/statemnt.asp?Symbol=us%3ADCM> (visited June 28, 2006).

⁷ Application at p. 35; Opposition at pp. 3-4.

market power and control pricing. Significantly, it will likely take time for other Guam carriers to introduce similar new services or make comparable network upgrades, enabling NTT DoCoMo to exercise its dominance uncontested for a long period.

Anti-competitive effects are not limited to Guam, they are also present in CNMI. For example, the Commission has determined that competitive harm is unlikely in each market in which there will be four or more competitors present post-transaction with thoroughly built-out networks, adequate bandwidth, and the ability to offer competitive nationwide service plans.⁸ It appears there will be only three facilities-based carriers meeting this criteria on CNMI post-transaction -- Guam Cellular / Guam Wireless (counted together due to common control), Pacific Telecom and Choice Mobile. It is unclear whether IT&E Overseas is offering publicly available commercial service in CNMI at this time and whether IT&E Overseas has thoroughly built out its network.⁹

TeleGuam urges the Commission to issue confidential data requests to Guam and CNMI wireless carriers to enable the Commission not only to determine the market share of the combined NTT DoCoMo entities, but also to undertake a thorough examination of the competitive impact and harms the proposed transaction is likely to cause. The instant transaction is distinguishable from large transactions, where potential competitive harms in isolated markets

⁸ *Sprint-Nextel Order* at p. 44.

⁹ Various licensees cited by the Applicants (Application at pp. 27-29) are not providing CMRS service and will not mitigate the anti-competitive effects of the proposed transaction in the near-term. Pacific Telecom has not even been granted a license to provide service on Guam. Wave Runner does not presently offer service in Guam or CNMI, and is under common control as Choice Phone so does not constitute an independent service provider. Based on interactive coverage maps available online (www.sprint.com and www.nextel.com), Sprint Nextel neither has coverage nor offers service in either Guam or CNMI. L.P. Ganacias Enterprises, Inc. also is not currently offering CMRS-type services.

can be mitigated by a lack of harms in a majority of other affected markets. That cannot be said here. The competitive harms that would result demonstrate why the Application should be denied, or at a minimum, conditioned as discussed in TeleGuam's Petition.

II. THE COMMISSION SHOULD RESTRICT NTT DOCOMO AND THE GUAM CARRIERS IT CONTROLS FROM ENTERING GOVERNMENT CONTRACTS.

In its Petition, TeleGuam urges the Commission to restrict NTT DoCoMo and Guam Cellular from entering into government contracts to provide telecommunications and other related services in the United States. TeleGuam also recommends that Guam Cellular and Guam Wireless divest any government contract interests they currently have should the proposed transaction move forward.¹⁰

Applicants suggest that because TeleGuam did not cite a case in which the Commission took such action, that the Commission should not or cannot take this step.¹¹ First, it is not at all unusual for foreign-owned companies to be restricted from participating in government contracts as part of the CFIUS process in order to protect national security. Second, 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 policy, or trade policy concerns.¹² Even though the government contracts issue may be considered in the CFIUS review, the Commission has a separate obligation to review national security issues including government contracts, particularly because they may involve classified

¹⁰ Petition at pp. 5-6.

¹¹ Opposition at p. 19.

¹² 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), ¶¶ 59-66 (“*Foreign Participation Order*”).

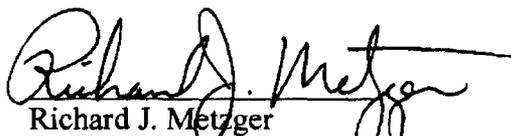
or other sensitive information. As TeleGuam explained in its Petition, because of Guam's key military installations and strategic importance, there are considerable national security risks to having the largest wireless provider on Guam controlled by any foreign-owned carrier, even by one from an ally such as Japan. Thus, should the Commission allow the proposed transaction to move forward, the Commission must ensure that NTT DoCoMo and the Guam-based carriers it controls are prohibited from entering into government contracts and continuing to provide service under any existing government contracts.

IV. CONCLUSION

The Commission must conduct a thorough competitive review of the proposed transaction. This review is expected to show that competitive harms are likely to occur on Guam and CNMI as a result of the proposed transaction that warrant denial of the Application. This outcome is further supported by the critical strategic importance of Guam and the concomitant national security risks of creating a dominant Guam wireless provider that is owned and controlled by the dominant wireless carrier in Japan. Should the Commission determine to approve the transaction, as discussed herein and in TeleGuam's Petition, the

Commission must impose safeguards to protect the public interest and to prevent the proposed transaction from having adverse effects on national security and competition.

Respectfully submitted,



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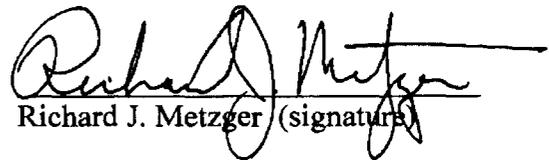
Dated: June 29, 2006

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 Reply are true, complete, and correct.

Executed on June 29, 2006


Richard J. Metzger (signature)

CERTIFICATE OF SERVICE

I, Jeanne W. Stockman, hereby certify that true and correct copies of the foregoing Reply of TeleGuam Holdings, LLC were served by electronic mail or first-class mail, postage pre-paid, upon the following individuals this 29th day of June, 2006:

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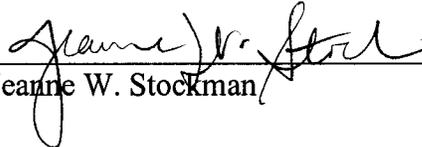
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