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December 1, 2008

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VIA HAND DELIVERY

Helen Domenici
Chief
International Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Wireless Alliance, L.L.C.

Dear Ms. Domenici:

This letter is submitted on behalf of Verizon Wireless, in connection with the International Bureau's October 17, 2008, letter to T-Mobile USA Inc. ("T-Mobile") concerning T-Mobile's ownership interest in Wireless Alliance, L.L.C. ("Wireless Alliance"). T-Mobile, which is ultimately owned by a German company, Deutsche Telekom AG, indirectly owns a 30 percent interest in Wireless Alliance; Verizon Wireless indirectly holds the remaining 70 percent. Verizon Wireless thus has an interest in this matter.

In the letter, the Bureau states, "We recognize that in approving the *DT/VoiceStream* transaction, the Commission conducted the foreign ownership analysis under section 310(b)(4) of the [Communications] Act, and listed Wireless Alliance among the properties considered. It appears, however, that the Commission should have conducted its analysis of Wireless Alliance under section 310(b)(3)." Letter at 1.¹ The Bureau thus asks T-Mobile how it "intends to come into compliance with section 310(b)(3), or, to the extent you disagree with this conclusion, please explain the basis for this disagreement." *Id.* at 2.

On November 25th, Wireless Alliance filed with the Wireless Telecommunications Bureau a notification of the *pro forma* assignment of the two PCS licenses it holds

¹ See Letter from H. Domenici, Chief, Int'l Bureau, FCC to T. Sugrue, VP of Gov't Affairs, T-Mobile USA Inc. (Oct. 17, 2008). In *DT/VoiceStream*, the FCC granted the applications of T-Mobile USA (then named VoiceStream Wireless Corporation) for authority to transfer control of its licensee subsidiaries to a wholly-owned U.S. subsidiary of Deutsche Telekom AG, to effect a merger between VoiceStream and Deutsche Telekom. *VoiceStream Wireless Corp., Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, Memorandum Opinion and Order, 16 FCC Rcd 9779 (2001).

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to its direct wholly-owned subsidiary, WALLC License, LLC. The transaction is *pro forma* under Commission rules and Wireless Telecommunications Bureau procedures because there is no change in the respective indirect ownership interests of Verizon Wireless and T-Mobile. The PCS licenses are now held by a new entity that is fully owned and controlled by Wireless Alliance, the entity in which Verizon Wireless and T-Mobile in turn hold their indirect interests. It is our understanding that the assignment of the licenses resolves the International Bureau's concern because the licensee is now "controlled" by another entity through which T-Mobile's 30 percent interest is held, and the licensee thereby complies with section 310(b).

We submit, however, that the previous ownership structure of Wireless Alliance also complied with section 310(b) of the Communications Act, as the full Commission held in *DT/VoiceStream*. Wireless Alliance is a limited liability company organized under the laws of the United States and both of its members are also U.S. companies. Any foreign ownership in that licensee is indirect – that is held through intervening entities – and was previously reviewed and approved by the Commission.

The underlying question raised by the International Bureau's letter is how section 310(b) applies to an indirect, non-controlling ownership interest held by a foreign corporation in a Commission licensee. The Bureau, disagreeing with the full Commission's decisions in *DT/VoiceStream* and other cases,² asserts that section 310(b)(3) applies to such indirect, non-controlling interests. But a plain reading of Section 310(b) and its legislative history, as well as the application of common sense analysis, make clear that section 310(b)(3) restricts only direct foreign interests in licensees.

Section 310(b) provides:

(b) No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by—

(1) any alien or the representative of any alien;

² See, e.g., *Bell Atlantic New Zealand Holding, Inc.*, 18 FCC Rcd 23140, n.70 (2003) ("because the proposed transaction does not involve direct foreign investment in GTE Pacifica, it does not trigger section 310(b)(3) of the Act"); *Lockheed Martin Corporation*, 17 FCC Rcd 27732, n.127 (2002) (same).

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(2) any corporation organized under the laws of any foreign government;

(3) any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country;

(4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

A plain reading of the language of section 310(b)(3) makes clear that it applies only to direct foreign interests in covered licensee entities.³ Nowhere does the language of this provision mention indirect interests or attributable interests or suggest any need to look beyond the direct interests in the licensee to determine compliance. Rather, the provision refers only to record ownership or voting of shares in a licensee.⁴ In contrast, section 310(b)(4) on its face plainly is intended to cover indirect interests in licensees. The language specifically references "direct[]" or "indirect[]" ownership in a licensee, unlike section 310(b)(3) or any other provision of this statute.⁵

³ As required by the canons of statutory construction, words must be taken at their ordinary meaning unless they are technical terms or words of art. 2A Norman J. Singer, Sutherland Statutory Construction § 46:01, at 124 (6th ed. 2000); see also *FDIC v. Meyer*, 510 U.S. 471, 476 (1994) (“[i]n the absence of such a definition, [a court] construe[s] a statutory term in accordance with its ordinary or natural meaning.”).

⁴ “[I]n interpreting a statute a court should always turn first to one cardinal canon before all others...[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). Indeed, “[w]hen the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’” 2A Norman J. Singer, Sutherland Statutory Construction § 46:01 (6th ed. 2000); *Ex Parte McCard*, 74 U.S. (7 Wall) 506 (1868).

⁵ See *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 452 (2002) (“[I]t is a general principle of statutory construction that when Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is presumed that Congress acted intentionally and purposely in the disparate inclusion or exclusion (quoting *Russello v. United States*, 464 U.S. 16, 23

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That section 310(b)(4) alone covers indirect interests in a licensee is reinforced by section 310(b)'s legislative history. The four provisions of section 310(b) were not enacted all at once. Rather, subsections (1) and (2) were adopted first, then subsection (3). The legislative history demonstrates that subsection (4) was added to address indirect ownership and control situations that were not considered covered by the prohibitions in then current sections 310(b)(1)-(3). The Conference Report expressly noted with regard to the precursor of sections 310(b)(1)-(3), "Section 12 of the Radio Act restricting alien control of radio-station licenses does not apply to holding companies."⁶ This limited scope of the existing subsections was explained further by the Secretary of Commerce in a memorandum to the President of the United States during that period:

In 1927 when the Radio Act was made law, Congress . . . went to a great length in section 12 of that act to prevent foreign influence from entering our communication system. They were unsuccessful, to some extent, as a loophole in the law permits a foreign-dominated holding company to own United States communication companies. This flaw in the law has already been utilized for that very purpose and . . . now is the time to remedy the defect.⁷

Thus, it is clear that the reason section 310(b)(4) was enacted was because section 310(b)(3) did not reach indirect ownership in a licensee. Congress' explanation of section 310(b)(3)'s boundaries is fully consistent with the language it adopted, and

(Continued . . .)

(1983)) quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972); *United States v. Juvenile No. 1*, 118 F.3d 298, 305 (5th Cir. 1997)" cert. denied 522 U.S. 976 (1997), and cert. denied 522 U.S. 988 (1997) ("Where Congress includes particular language in one section of a statute, but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion."); *Sundance Land v. Cm'ty First Fed. Savings & Loan*, 840 F.2d 653, 663 (9th Cir. 1988) ("Where Congress has carefully employed a term in one place and excluded it in another, it should not be implied where excluded.") (quoting *Pena Cabamillas v. United States*, 394 F.2d 785, 789 (9th Cir. 1968).

⁶ See H.R. Rep. No. 1918, 73d Cong., 2d Sess., 48.

⁷ Letter from the President of the United States to the Chairman of the Committee on Interstate Commerce transmitting a Memorandum from the Secretary of Commerce Relative to a Study of Communications by an Interdepartmental Committee, S. Comm. Print, 73d Cong. 2d Sess. 6 (1934); see also *Federal Communications Commission: Hearings on S. 2910 Before the Sen. Comm. on Interstate Commerce, 73d Cong., 2d Sess. 166-68 (1934) (1934 Senate Hearings)*.

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undermines the International Bureau's view that section 310(b)(3) restricts indirect, non-controlling foreign ownership in a licensee to no more than 20 percent.

Further, to interpret section 310(b)(3) as the International Bureau suggests would result in the truly bizarre outcome that a non-controlling indirect interest in a licensee by a foreign entity would be restricted to no more than 20 percent,⁸ while a controlling (even a 100 percent) indirect interest by the same foreign entity would be permitted.⁹ This plainly makes no sense and is not supportable by any public interest rationale.

Indeed, a plain reading of the statute reveals that Congress imposed progressively less onerous restrictions on foreign ownership the more removed it was from the licensee. Thus, foreign entities are strictly forbidden from holding FCC licenses. Direct foreign ownership in a licensee is permitted up to 20 percent and then strictly prohibited above that amount. Indirect foreign ownership is expressly permitted up to 25 percent and then prohibited above that amount only "if the Commission finds that the public interest will be served by the refusal or revocation of such license." The Bureau's interpretation would turn Congress' prudent sliding scale approach on its head.

The Bureau appears to take the position that section 310(b)(4) applies only to foreign interests held through an entity that controls a licensee. Again, however, the Bureau is at odds with the full Commission. The Commission has repeatedly approved foreign interests held through an entity with a non-controlling interest in a licensee under section 310(b)(4).¹⁰ Even were the Commission to change its

⁸ It has long been the position of the Commission that general partner interests, no matter how small and regardless of whether or not they have *de facto* control, are classified as having *de jure* control. See *Pueblo MSA Ltd. P'ship*; *Platte River Cellular Ltd. P'ship*; *Colo. 4 -- Park Ltd. P'ship*; *Smoky Hill Cellular of Colo. Ltd. P'ship*; *Colo. 7 -- Saguache Ltd. P'ship*; *San Isabel Cellular of Colo. Ltd. P'ship*; *Iowa 15 -- Dickinson Ltd. P'ship*; *Wyo. 1 -- Park Ltd. P'ship*; *For Consent to Transfer of Control*, Memorandum Opinion and Order, 15 FCC Rcd 5439 (2000). Accordingly, foreign ownership through indirectly held general partner interests in a licensee must necessarily fall within section 310(b)(4).

⁹ It is a basic tenet of statutory construction that controlling legislative intent should be presumed to be consonant with reason and good discretion. 2A Norman J. Singer, *Sutherland Statutory Construction* § 46:02, at 133 (6th ed. 2000).

¹⁰ See *DT/Voicestream* at ¶ 39 ("Nothing in the language of section 310(b)(4) limits its application to holdings that amount to less than control.").

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longstanding interpretation and rule that section 310(b)(4) does not cover non-controlling, indirect interests, this would not mean that such interests must be subject to section 310(b)(3). As discussed above, there is no basis for interpreting section 310(b)(3) as extending to indirect interests at all and no foundation for concluding Congress intended non-controlling, indirect interests to be subject to a stricter standard than controlling, indirect interests.

In 2004, the International Bureau issued "Guidelines" which set out its own interpretation of section 310(b)(3) for the first time.¹¹ The Bureau stated at the time that these were non-binding interpretations of the law, and the Guidelines were not adopted by the full Commission (as noted herein, the Guidelines are in conflict with full Commission decisions). Nonetheless, a timely petition for reconsideration of the Guidelines¹² was filed and was placed on public notice,¹³ and comments were received.

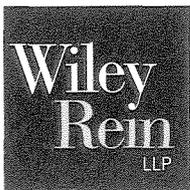
The petition for reconsideration sets forth the above arguments, among others, as to why the Bureau's interpretation is incorrect. It provides additional support for applying section 310(b)(3) only to direct interests in licensees, and applying section 310(b)(4) to indirect interests. It also notes the conflict between the Bureau's interpretation and the United States' WTO commitments.¹⁴ It asks that "the Bureau revise the Guidelines to reflect the Commission's current practice of permitting foreign investment up to 100 percent (where such investment is in the public

¹¹ Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses, 19 FCC Rcd 22,612 (2004).

¹² Petition for Reconsideration of Wilkinson Barker Knauer LLP (filed Dec. 17, 2004) ("Petition").

¹³ "International Bureau Seeks Comment on Petition for Reconsideration of the Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses," Public Notice, IB Docket No. 05-55, DA 05-384 (released Feb. 11, 2005).

¹⁴ The World Trade Organization (WTO) Basic Telecommunications Agreement commits signatories to open their markets for basic telecommunications services. See General Agreement on Trade in Services (GATS) by the Fourth Protocol to the GATS, Apr. 30, 1996, 36 I.L.M. 354, 366 (1997). As the Commission has previously noted, "[u]nder the terms of the Agreement, the United States has committed to allow foreign suppliers to provide a broad range of basic telecommunications services in the United States." *Rules and Policies on Foreign Participation in the U.S. Telecomms. Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23894 (1997). However, the Bureau's interpretation appears to conflict directly with these commitments.

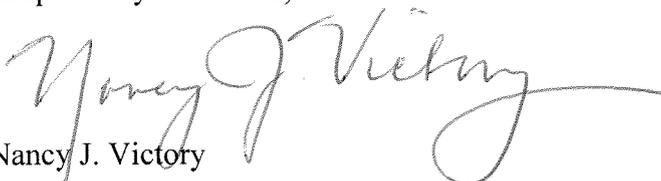


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interest) in a U.S. company that in turn owns a Commission licensee under the standards established in section 310(b)(4) of the Act.” Petition at 3. The Bureau, however, has never acted on the petition for reconsideration.

Verizon Wireless submits that the Bureau should not further delay acting on the four-year-old petition for reconsideration. Verizon Wireless requests that the Bureau grant the petition and clarify that section 310(b)(3) does not apply to indirect non-controlling interests in licensees. Otherwise, the Bureau should refer this issue to the full Commission.

Respectfully submitted,


Nancy J. Victory