

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

In the Matter of )  
)  
Trident Global Communications LLC )  
Petition for Declaratory Ruling )  
Pursuant to Section 310(b)(4) of the )  
Communications Act of 1934 )

FILED/ACCEPTED

NOV 18 2009

Federal Communications Commission  
Office of the Secretary

To: Chief, International Bureau

**PETITION FOR DECLARATORY RULING**

Trident Global Communications LLC ("Trident") through its undersigned counsel and pursuant to Section 1.2 of the Federal Communications Commission's ("FCC" or "Commission") rules,<sup>1</sup> hereby petitions the Commission for a declaratory ruling under Section 310(b)(4) of the Communications Act of 1934, as amended (the "Act"),<sup>2</sup> that it is in public interest to allow Trident to acquire a Broadband Radio Service ("BRS") license in FCC Auction 83.

Kactus Investment Corporation ("Kactus"), a privately-held corporation organized under the laws of the Cayman Islands, holds an indirect ownership interest in Trident through intervening companies. The FCC previously found that the public interest would be served by permitting Trident to have indirect foreign voting interests in excess of the 25% benchmark set forth in Section 310(b)(4) of the Act in connection with Trident's acquisition of another company holding common carrier radio licenses. Specifically, the FCC issued a declaratory ruling on January 3, 2007, finding that it would not be in the public interest to prohibit Trident's acquisition of PetroCom License Corporation ("PetroCom"), based on the level of indirect

---

<sup>1</sup> 47 C.F.R. § 1.2.

<sup>2</sup> 47 U.S.C. § 310(b)(4).

foreign ownership in Trident held by Kactus through intervening companies.<sup>3</sup> The FCC authorized Kactus to hold up to and including a 40 percent indirect voting interest in PetroCom, and PetroCom to accept up to and including an additional aggregate 25 percent indirect equity and/or voting interest from any of the foreign investors named in Trident's Petition for Declaratory Ruling (with the exception of Kactus as to voting interests) as well as any other foreign investors without seeking prior Commission approval, and subject to certain routine conditions.

Subsequently, the FCC granted consent to the transfer of control of PetroCom from the shareholders of its then parent company, S&P Cellular Holding Company, LLC, ("S&P") to Trident. As a result of the consummation of the transfer of control, PetroCom is indirectly wholly-owned by Trident through Trident's 100 percent direct and indirect ownership of S&P and PetroCom LLC, respectively, each of which is a U.S.-organized company. The transfer of control applications approved by the FCC included PetroCom's licenses for Cellular Radiotelephone, 800 MHz Specialized Mobile Radio ("SMR"), Advanced Wireless Services ("AWS"), Domestic Fixed Satellite transmit/receive earth stations, and Very Small Aperture Terminal ("VSAT") stations.<sup>4</sup>

On October 30, 2009, the FCC completed the auction of 78 licenses for unassigned BRS spectrum. Trident submitted the winning bid for a Basic Trading Area ("BTA") license in the Gulf of Mexico.<sup>5</sup> Accordingly, Trident hereby requests a declaratory ruling approving the same

---

<sup>3</sup> Trident Global Communications LLC, *Petition for Declaratory Ruling, Grant of Authority*, FCC Report No. TEL-01101, DA No. 07-9 (rel. Jan. 4, 2007).

<sup>4</sup> FCC File No. 0002734993, IBFS File No. SES-T/C-20060920-01757, and IBFS File No. SES-T/C-20060920-01758.

<sup>5</sup> Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Public Notice, DA 09-2378, Attachment A (rel. Nov. 6, 2009)

level of indirect foreign ownership interest in any licenses it acquires in the BRS auction that the FCC previously approved when Trident acquired PetroCom. The FCC has already issued a declaratory ruling finding that it would not serve the public interest to prohibit Kactus' indirect foreign ownership in Trident and PetroCom. Given that the FCC previously approved Kactus' indirect ownership interest in PetroCom, the FCC should approve the same level of indirect foreign ownership for Trident's acquisition of a BRS license.

#### **I. DESCRIPTION OF FOREIGN OWNERSHIP**

There have been no significant changes to Trident's ownership structure since the FCC granted Trident's and PetroCom's Petition for Declaratory Ruling to allow Kactus' indirect foreign ownership interest in PetroCom. There is no new or increased indirect foreign ownership in Trident. As discussed in Trident's current FCC Form 602 ownership disclosure statement, the only differences involve changes to the officers and directors of Trident and the officers of H.I.G. Communications, L.L.C. ("H.I.G. Communications"), all of whom are U.S. citizens.<sup>6</sup>

Trident is 91 percent owned and controlled by H.I.G. Communications, a privately-held U.S. investment company. H.I.G. Communications is a wholly-owned subsidiary of H.I.G. Bayside Opportunity Fund, L.P. ("Bayside Opportunity Fund"), a domestically organized limited partnership. Bayside Opportunity Fund is controlled by a single U.S.-based general partner, H.I.G. Bayside Advisors, LLC ("Bayside Advisors"), which also holds a 0.28 percent equity interest in Bayside Opportunity Fund. None of the limited partners in Bayside Opportunity Fund holds a 10 percent or greater interest in Bayside Opportunity Fund. Bayside Advisors is organized in the U.S., and is controlled by a managing member, H.I.G.-GPII, Inc. ("H.I.G.-GPII"), a Delaware corporation which has two officers and directors who are both U.S. citizens.

---

<sup>6</sup> FCC File No. 000402945 (filed Nov. 11, 2009).

H.I.G.-GPII has no equity ownership interest in Bayside Advisors. There are four non-managing members that hold the equity interest, but no voting interest, in Bayside Advisors.

The limited liability company agreement of Bayside Advisors appoints HIG-GPII to be Manager of Bayside Advisors, with the sole authority to control all decisions of Bayside Advisors. In particular, the LLC agreement of Bayside Advisors provides that "all material Company decisions and determinations will be made by the Manager in its sole discretion, including all Company decisions and determinations relating to (a) the acquisition and disposition of Fund investments, (b) distributions by the Fund of cash and/or securities, (c) amendments to the Fund Agreement, (d) distributions of Company cash and securities, (e) distributions of cash and securities from escrow accounts, (f) the borrowing of money, (g) hiring, terminating and establishing the compensation of employees and agents of the Fund or Portfolio Companies and (h) the incurring of expenses on behalf of the Company." Similar to an insulated limited partner, the non-managing members have no control over the day-to-day operations of Bayside Advisors. Therefore, the indirect equity investment of the non-managing members of Bayside Advisors will be insulated and passive.

One of these non-managing members, Kactus, holds a 40 percent non-managing (*i.e.*, non-voting) membership equity interest in Bayside Advisors, and is incorporated in the Cayman Islands. Kactus is a wholly-owned subsidiary of the Tamer Family Trust, a U.S.-based trust that is controlled by a U.S. citizen, Anthony Tamer, the sole trustee.<sup>7</sup> Mr. Tamer is also the President and sole Director of Kactus.

---

<sup>7</sup> As discussed herein, the stock interest in Kactus held by the Tamer Family Trust is managed and voted by the trustee, Mr. Tamer, who is a U.S. citizen. The trustee's management of the Tamer Family Trust and its investments is irrevocable. The Tamer Family Trust has one beneficiary, a citizen of Lebanon, who holds no voting interest, but merely receives profit from the trust.

## II. THE PUBLIC INTEREST WILL BE SERVED BY APPROVING THE PROPOSED TRANSACTION

### A. Investment by WTO Member Countries

In the *Foreign Participation Order*,<sup>8</sup> the Commission adopted an open entry standard, including a rebuttable presumption that the public interest will be served if indirect foreign ownership above the 25 percent benchmark specified in Section 310(b)(4) is by individuals or entities from World Trade Organization ("WTO") Member countries. In evaluating an applicant's request for approval of foreign ownership interests under Section 310(b)(4), the FCC uses a "principal place of business" test to determine the nationality or "home market" of foreign investors.<sup>9</sup>

Where the ownership interest will be held by a foreign corporation, the principal place of business of that corporation depends upon the following factors: (1) the country of incorporation; (2) the nationality of all investment principals, officers, and directors; (3) the country in which its world headquarters is located; (4) the country in which the majority of its tangible property, including production, transmission, billing, information, and control facilities is located; and (5) the country from which it derives the greatest sales and revenues from operations.<sup>10</sup>

As the FCC noted when it granted Trident's and PetroCom's Petition for Declaratory Ruling in 2007, Kactus has its principal place of business in the United States and is wholly

---

<sup>8</sup> See *Rules and Polices on Foreign Participation in the U.S. Telecommunications Market*, Report and Order, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*").

<sup>9</sup> See *Petition of TelCove, Inc. for a Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended*, Order and Declaratory Ruling, 21 FCC Rcd 2982 (2006) ("*TelCove*").

<sup>10</sup> *Foreign Participation Order*, 12 FCC Rcd at 23941-42, ¶ 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873 (1995) ("*Foreign Carrier Entry Order*").

owned by the Tamer Family Trust, a U.S.-based trust that is controlled by a U.S. citizen, Anthony Tamer, its sole trustee. The trustee's management of the Tamer Family Trust and its investments is irrevocable and the trust has one beneficiary, a citizen of Lebanon who holds no voting interest but merely receives profit from its trust.

Therefore, the indirect non-managing membership interest held in Bayside Advisors by Kactus should be treated as investment from the United States for purposes of the public interest analysis under Section 310(b)(4) of the Act. Alternatively, Trident is entitled to a rebuttable presumption that this indirect foreign ownership would serve the public interest because the Cayman Islands is a territory of the United Kingdom, a WTO-member country.<sup>11</sup>

**B. Grant of This Petition Will Serve the Public Interest**

Extension of the FCC's prior ruling on Trident's foreign ownership to encompass Trident's ability to acquire a BRS license will serve the public interest. As stated above, the foreign voting interest will be held by a privately-held corporation with its principal place of business in the United States although incorporated in the Cayman Islands, a WTO member country. Furthermore, the foreign interest in Trident is held by a passive investor that is a non-managing member of a limited liability company, which in turn will have an indirect voting interest in Trident. As a non-managing member, Kactus has no voting interest in or authority to control Bayside Advisors, and will have no control over the day-to-day operations of Trident.

The FCC has already found that the public interest is served by allowing Trident to control PetroCom, based on the same level of indirect foreign ownership. In similar cases, the FCC has found that it would serve the public interest to extend an existing declaratory ruling

---

<sup>11</sup> *TelCove*, 21 FCC Rcd at ¶ 181; *Teligent, Inc. Petition for Declaratory Ruling*, Grant of Authority, FCC Report No. TEL-00797, DA No. 04-1534 (rel. May 27, 2004).

under Section 310(b)(4) to cover a different type of wireless service license obtained at auction, where the ownership structure did not significantly change.<sup>12</sup>

Because Trident's ownership is essentially the same as when the FCC approved Trident's acquisition of common carrier licensee PetroCom in 2007, Trident respectfully submits that no new foreign ownership issues are raised by Trident's participation in Auction 68. Trident therefore requests that the FCC extend its previous Section 310(b)(4) findings to any BRS licenses Trident acquires.

---

<sup>12</sup> Cellco Partnership, *Petition for Declaratory Ruling*, Grant of Authority, FCC Report No. TEL-01329, DA No. 08-2577 (rel. Nov. 26, 2008) (extending an existing foreign ownership ruling for Verizon Wireless with respect to cellular, PCS, WCS and microwave licenses to cover 700 MHz licenses it won in FCC Auction No. 73); Choice Holdings LLC, *Petition for Declaratory Ruling*, Grant of Authority, FCC Report No. TEL-01273, DA No. 08-1223 (rel. May 29, 2008) (extending an existing foreign ownership ruling with respect to SMR and PCS licenses held by Choice Holdings' subsidiaries to cover the 700 MHz licenses won by a different subsidiary in FCC Auction No. 73); Pacific Telecom Inc., *Petition for Declaratory Ruling*, Grant of Authority, FCC Report No. TEL-01273, DA No. 08-1223 (rel. May 29, 2008) (extending an existing foreign ownership ruling with respect to cellular, common carrier earth station, and PCS licenses to cover a 700 MHz license won in FCC Auction No. 73).

### III. CONCLUSION

For the foregoing reasons, Trident respectfully requests that the FCC find permissible Trident's acquisition of a BRS license, based on the same level of indirect ownership interest in Trident held by Kactus as the FCC previously approved for Trident's acquisition of common carrier licensee PetroCom.

Respectfully submitted,

**Trident Global Communications LLC**

By: 

Jeffrey L. Sheldon  
Kevin M. Cookler  
McDERMOTT WILL & EMERY LLP  
600 Thirteenth Street, N.W.  
Washington, DC 20005-3096  
T: 202.756.8000  
F: 202.756.8087

Raul Magallanes  
The Law Office of Raul Magallanes, PLLC  
PO Box 1213  
Houston, TX 77549  
T: 281.317.1397  
F: 281.271.8085

Its Attorneys

Dated: November 18, 2009

# McDermott Will & Emery

Boston Brussels Chicago Düsseldorf Houston London Los Angeles Miami Milan  
Munich New York Orange County Rome San Diego Silicon Valley Washington, D.C.  
Strategic alliance with MWE China Law Offices (Shanghai)

Jeffrey L. Sheldon  
Attorney at Law  
jsheldon@mwe.com  
+1 202 756 8082

November 18, 2009

VIA HAND DELIVERY

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: Petition for Declaratory Ruling Pursuant to Section 310(b) of the Communications Act;  
Trident Global Communications LLC

Dear Ms. Dortch:

On behalf of Trident Global Communications LLC ("Trident" or "Petitioner"), we hereby file the original and four copies of the enclosed Petition for Declaratory Ruling Pursuant to Section 310(b) of the Communications Act. Petitioner requests that the Federal Communications Commission extend its existing declaratory ruling to cover the Broadband Radio Service ("BRS") license for which Trident was the high bidder in Auction No. 83.

If you have any questions regarding this matter, please do not hesitate to contact undersigned counsel.

Very truly yours,



Jeffrey L. Sheldon

Enclosures