

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of)	
)	
DiGiPH PCS, Inc. and)	File No. 0000151639
Eliska Wireless Ventures License)	
Subsidiary I, L.L.C.)	
)	
For Consent to Assign Eight C Block)	
Personal Communications Services)	
Licenses)	
)	
and)	
)	
Petition for Declaratory Ruling)	File No. ISP-PDR-20000614-00014
Under Section 310(b)(4) of the)	
Communications Act of 1934,)	
As Amended)	
)	
and)	
)	
For Consent to Assign an International)	File No. ITC-ASG-20000829-00514
Section 214 authorization)	

MEMORANDUM OPINION AND ORDER

Adopted: December 13, 2000

Released: December 13, 2000

By the Chief, Wireless Telecommunications Bureau, and Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we grant the application filed by DiGiPH PCS, Inc. (“DiGiPH”) and Eliska Wireless Ventures License Subsidiary I, L.L.C. (“Eliska”) (collectively, “Applicants”) for assignment of eight C block Personal Communications Services (“PCS”) licenses, subject to compliance with: (1) the attached agreement between Eliska, Sonera Holding B.V. (“Sonera Holding”), and the U.S. Department of Justice (“DoJ”) and Federal Bureau of Investigation (“FBI”) regarding foreign ownership and national security issues; and (2) the Commission’s rules for the assignment and assumption of installment financing. We also grant, to the extent specified in this Order: (1) Eliska’s petition for a declaratory ruling that the public interest would be served by allowing the proposed indirect foreign ownership of Eliska in excess of the twenty-five-percent statutory benchmark; and (2) the application for authority to assign the international section 214 authorization held by DiGiPH to Eliska, subject to the conditions specified below.

We also grant the joint petition filed by the DoJ and the FBI to condition grant of the applications on compliance with the attached agreement.

II. BACKGROUND

2. DiGiPH is an Alabama corporation and a wholly owned subsidiary of DiGiPH Communications, Inc. (“DiGiPH Comm”), a Delaware corporation. DiGiPH Comm is a wholly owned subsidiary of DiGiPH Holding Company, Inc. (“DiGiPH Holding”), also an Alabama corporation, which is ultimately controlled by Millry Management Corporation (“Millry”), an Alabama corporation.¹

3. DiGiPH acquired the eight PCS licenses that are the subject of this Order through its participation in the original C block PCS auction (FCC Auction No. 5).² In that auction, DiGiPH received a twenty-five-percent bidding credit as an entrepreneur qualifying as a small business. Currently, DiGiPH is serving approximately 78,900 mobile voice subscribers, with its system covering over 1.6 million people in portions of Alabama, Florida, and Mississippi.³

4. Eliska is a Delaware limited liability company and a wholly owned subsidiary of Eliska Wireless Ventures I, Inc. (“Eliska Ventures I”), a Delaware corporation, which is to be wholly owned by a newly created corporation, EWV Holding Company, Inc. (“EWV Holding”),⁴ a Delaware corporation. EWV Holding, in turn, will be controlled by Eliska Wireless Investors I, L.P. (“Eliska Investors I”), an Alabama limited partnership.⁵ Eliska is not currently providing wireless services, having been created specifically to acquire the DiGiPH licenses.⁶

5. On May 30, 2000, Eliska Ventures I, DiGiPH, DiGiPH Comm, DiGiPH Holding, and Millry entered into an Asset Purchase Agreement (“Agreement”) under which Eliska Ventures I agreed to purchase DiGiPH’s assets, including PCS network equipment and FCC

¹ See DiGiPH PCS, Inc. and Eliska Wireless Ventures License Subsidiary I, L.L.C., Application for Consent to Assignment, File No. 0000151639 (filed June 14 and 22, 2000) (“Application”), Exhibit 1 at 2. Our references in this Order to the Application refer to the amended application filed on June 26, 2000.

² DiGiPH participated in Auction No. 5 under the name Mobile Tri-States L.P. The eight licenses were subsequently assigned to DiGiPH on a *pro forma* basis. See FCC File No. 50075-CW-AL-97.

³ See Application, Exhibit 1 at 2.

⁴ On November 17, 2000, Applicants filed a minor amendment reflecting the intent to add EWV Holding as a new intermediate holding company in Eliska’s ownership structure. EWV Holding will hold 100 percent of the stock of Eliska Ventures I and will be the sole owner of Eliska Ventures I upon consummation of the proposed transaction. See Supplement to Description of Transaction, File No. 000151639 (filed Nov. 17, 2000).

⁵ See Application, Exhibit 1 at 2.

⁶ See Application, Exhibit 1 at 10. Affiliates of Eliska hold PCS licenses won in Auction No. 22; these licenses are not yet in service. See Application, Exhibit 2 at 6.

licenses, and assume certain of DiGiPH's liabilities. DiGiPH agreed to sell such assets and liabilities to Eliska Ventures I.⁷

6. On June 14, 2000, DiGiPH and Eliska filed the Application under section 310(d) of the Communications Act of 1934, as amended,⁸ ("the Act") seeking Commission approval to assign eight C block PCS licenses from DiGiPH to Eliska. On June 26, 2000, DiGiPH and Eliska filed an amendment revising the Public Interest Statement of the Application.⁹ Eliska also filed a Petition for Declaratory Ruling under section 310(b)(4) of the Act requesting that the Commission issue a declaratory ruling that it is in the public interest to permit Sonera to hold an indirect ownership interest of up to 49.9 percent in Eliska.¹⁰

7. On July 3, 2000, the Wireless Telecommunications Bureau ("WTB") and the International Bureau ("IB") (collectively, "Bureaus") issued a public notice announcing that the Application and Petition were accepted for filing and establishing a pleading cycle to permit interested parties an opportunity to comment on the proposed transaction.¹¹ We received no comments.

8. To finance a portion of the proposed transaction, EWV Holding, the proposed indirect corporate parent of the proposed assignee, has entered into separate stock purchase agreements with Eliska Investors I, Powertel, Inc. ("Powertel"), and Sonera Holding. Under these agreements, each of these three companies has agreed to purchase shares of EWV Holding. These stock purchases will take place concurrently with consummation of the proposed assignment of the FCC licenses, and will result in these investors holding the following equity and voting interests in Eliska, indirectly through Eliska Ventures I and EWV Holding:

⁷ See Application, Exhibit 1 at 2. Because the licenses were granted through competitive bidding more than three years ago, the parties are not required under section 1.2111(a) of the Commission's rules to file the Agreement. See 47 C.F.R. § 1.2111(a).

⁸ See 47 U.S.C. § 310(d).

⁹ See Letter from Jonathan Cohen, Esq. and David Judelsohn, Esq., Wilkinson Barker Knauer LLP, to Lauren Kravetz, Esq., Commercial Wireless Division, Federal Communications Commission (dated June 26, 2000).

¹⁰ See Sonera Holding B.V. and Eliska Wireless Ventures License Subsidiary I, L.L.C., Petition for Determination of the Public Interest under Section 310(b)(4) of the Communications Act of 1934, as amended, to permit certain Indirect Foreign Ownership in Personal Communications Services Licenses, File No. ISP-PDR-20000614-00014 ("Petition") (filed June 14, 2000) at 1.

¹¹ See DiGiPH PCS, Inc. and Eliska Wireless Ventures License Subsidiary I, L.L.C. Seek FCC Consent for Assignment of Eight C Block Broadband Personal Communications Services Licenses and Declaratory Ruling Pursuant to Section 310(b)(4) Allowing Indirect Foreign Ownership, *Public Notice*, DA 00-1461 (rel. July 3, 2000) ("Acceptance Public Notice"). On August 29, 2000, DiGiPH filed an application to assign its international section 214 authorization to Eliska. See *infra* ¶¶ 22-23.

Eliska Investors I:	Equity: 20 percent (Common Stock) Voting: 60 percent
Powertel:	Equity: 49.9 percent (Series A Preferred Stock) Voting: 24.95 percent
Sonera Holding:	Equity: 30.1 percent (Series B Preferred Stock) Voting: 15.05 percent

III. DISCUSSION

A. Eliska's Qualifications To Hold C Block PCS Licenses

9. Eliska qualifies as the assignee of C block PCS licenses under section 24.839(a)(2) of the Commission's rules because it meets the eligibility criteria of section 24.709(a).¹² Eliska certified in the Application that its gross revenues combined with those of its affiliates do not exceed \$125 million in each of the last two years, and its total assets combined with those of its affiliates do not exceed \$500 million at the time of the filing of the Application.¹³ Furthermore, Eliska qualifies to hold the eight C block licenses at the same level of bidding credit and with the same installment financing as was applicable to DiGiPH because the current total assets and revenues of Eliska and its affiliates are less than \$40 million.¹⁴

10. The Applicants propose that Eliska's qualifying investors will hold twenty percent of the total equity in the licensee and will have sixty percent of the voting rights in the licensee.¹⁵ Because the licenses were granted more than three years ago and neither of the non-qualifying investors (Powertel and Sonera Holding) will hold more than 49.9 percent of the voting rights in the licensee, we agree that the proposed equity structure is permitted under section 24.709(b)(4)(i) of the Commission's rules.¹⁶ As a result, the gross revenues and total assets of Powertel and Sonera Holding are not attributed when determining Eliska's eligibility under section 24.709. Accordingly, we determine Eliska to be qualified to hold entrepreneurs' block licenses.

¹² 47 C.F.R. §§ 24.839(a)(2) and 24.709(a).

¹³ See Application at Schedule A.

¹⁴ *Id.*; see also 47 C.F.R. §§ 24.711(b)(3) (applicants with revenues of less than \$40 million in the last two years are eligible for small business financing) and 24.720 (applicants with revenues of less than \$40 million in the last two years are eligible for bidding credit as a small business).

¹⁵ Application, Exhibit 1 at 2.

¹⁶ 47 C.F.R. § 24.709(b)(4)(i). We note that although the Commission adopted a uniform attribution rule effective October 30, 2000, with respect to C and F block PCS licenses, the eligibility of proposed assignees will be determined based on the attribution rules in effect at the time of filing an application for transfer or assignment. See Amendment of Part 1 of the Commission's Rules – Competitive Bidding, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making, WT Docket No. 97-82, 15 FCC Rcd 15293, 15327 ¶ 67 (2000); Erratum, DA 00-2475, ¶ 1 (rel. Nov. 3, 2000); see also 47 C.F.R. § 1.2110.

B. Foreign Ownership

11. Eliska seeks a declaratory ruling that the public interest would be served by allowing the proposed indirect foreign ownership of the common carrier radio licenses it seeks to acquire.¹⁷ Specifically, Eliska seeks approval for certain indirect, noncontrolling foreign investments in Eliska by Sonera Holding and Sonera Corporation (“Sonera”). Sonera Holding is a corporation organized under the laws of the Netherlands and is a wholly owned subsidiary of Sonera, a limited liability company organized under the laws of Finland. Sonera is a wholly owned subsidiary of Sonera, Ltd., a private holding company of the Government of Finland. The Government of Finland holds a 53.3-percent controlling interest in Sonera, Ltd.¹⁸ Sonera, formerly known as Telecom Finland, Ltd. (“TFL”), provides wireline and wireless voice, data, and media telecommunications services to residential and business consumers in Finland. The International Bureau previously granted a declaratory ruling sought by TFL to allow it to indirectly own PCS and LMDS common carrier radio licenses.¹⁹

12. Section 310(b)(4) of the Act establishes a twenty-five-percent benchmark for indirect, attributable investment by foreign individuals, corporations, and governments in U.S. common carrier radio licensees, but grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is consistent with the public interest.²⁰ After the proposed assignment of these common carrier radio licenses, Sonera Holding will hold 30.1 percent of the total equity of EWV Holding, constituting a 30.1-percent, indirect, attributable interest in the licensee. Sonera Holding will also hold a 2.7-percent interest in Powertel, which, when multiplied by Powertel’s proposed 49.9-percent interest in the licensee, constitutes an additional 1.35-percent, indirect, attributable interest of Sonera Holding in the licensee. Therefore, the total proposed, indirect attributable foreign ownership in the licensee requiring a section 310(b)(4) ruling is 31.45 percent (*i.e.*, excluding the convertible shares described below).

13. Sonera also holds non-voting preferred shares in Powertel which, upon conversion into common stock, will constitute a 9.1 interest.²¹ The Application characterizes

¹⁷ See Petition at 1.

¹⁸ See Application, Exhibit 1 at 8; *see also* Supplement to Petition for Declaratory Ruling, File No. ISP-PDR-20000614-00014 (“Supplement”) (filed July 18, 2000) at 1 (stating that the Finnish Parliament has recently passed legislation authorizing the complete privatization of Sonera Corp.).

¹⁹ See *Telecom Finland*, 12 FCC Rcd 17648, 17657, ¶ 26 (IB 1997) (concluding that there are significant public interest reasons to allow TFL to invest in LMDS and PCS licenses in excess of the statutory 25 percent benchmark).

²⁰ See 47 U.S.C. § 310(b)(4) (providing that “No broadcast or common carrier . . . radio station license shall be granted to or held by . . . 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.”).

²¹ For purposes of calculating foreign ownership, convertible future interests do not constitute capital stock until converted or exercised. *See, e.g., Applications of NextWave Personal Communications, Inc. for Various C-Block Broadband PCS Licenses*, Memorandum Opinion and Order, 12 FCC Rcd 2030, 2050-51, ¶¶ 46 (WTB 1997); *accord Univision Holdings, Inc.*, 7 FCC Rcd 6672, 6674, ¶ 8 (1992), *recon. denied*, 8 FCC Rcd 3931 (1993).

conversion of these shares as one of the transactions contemplated in the Application.²² Assuming conversion, Sonera's 9.1-percent ownership interest in Powertel, when multiplied by Powertel's proposed 49.9-percent interest in the licensee, will constitute an additional 4.54-percent, indirect, attributable interest of Sonera in the licensee. Therefore, upon consummation of all of the transactions contemplated in this application, Sonera and Sonera Holding will hold a total indirect, attributable interest of 35.99 percent in the licensee.²³

14. In the *Foreign Participation Order*, the Commission found that foreign investment can promote competition in the U.S. market.²⁴ The Commission concluded that the public interest would be served by permitting more open investment by entities from World Trade Organization ("WTO") Members in U.S. common carrier wireless licensees.²⁵ Therefore, with respect to indirect foreign investment from WTO Members, the Commission replaced its "effective competitive opportunities," or ECO, test with a rebuttable presumption that such investment raises no competitive concerns.²⁶

15. The Commission uses the "principal place of business" test to determine the nationality or "home market" of foreign investors.²⁷ In *Telecom Finland*, the International Bureau determined that Finland was the home market of TFL.²⁸ TFL is now known as Sonera, and its present ownership structure includes Sonera Holding, a holding company organized under the laws of the Netherlands with its sole offices in Rotterdam. Based on information in the record, we find that the principal place of business of Sonera Holding is either the Netherlands or

²² See Application, Exhibit 1 at 10 n.3 (stating that "Sonera and its affiliates will hold an 11.8 percent fully-diluted (*i.e.*, assuming all outstanding convertible shares of Powertel have been converted into voting stock) ownership interest in Powertel, Inc. upon consummation of the transactions contemplated in this application.").

²³ Given the 53.3-percent ownership interest of the Government of Finland in Sonera Ltd., the proposed 30.1-percent equity and the 15.05-percent voting interest of Sonera Holding in the licensee, the 2.7-percent ownership interest of Sonera Holding in Powertel, and the 9.1-percent ownership interest of Sonera in Powertel, the indirect, attributable equity interest of the Government of Finland upon consummation of all of the transactions contemplated in the Application will be 19.2 percent, and its indirect attributable voting interest will be 18.0 percent. See *BBC License Subsidiary, L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973-74, ¶¶ 22-26 (1995).

²⁴ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23940, ¶ 111 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, FCC 00-339 (rel. Sept. 19, 2000).

²⁵ *Id.*

²⁶ *Id.*

²⁷ See, e.g., *Global Crossing Ltd., and Frontier Corporation*, 14 FCC Rcd 15911, 15918-19, ¶¶ 15-17 (WTB, IB, and CCB 1999) (applying the five-factor "principal place of business" test) ("*Global Crossing*"); see also *Foreign Participation Order*, 12 FCC Rcd at 23941, ¶ 116.

²⁸ See *Telecom Finland*, 12 FCC Rcd at 17653, ¶ 15.

Finland.²⁹ We need not decide the issue, however, because both Finland and the Netherlands are Members of the WTO.³⁰ Therefore, we apply a rebuttable presumption that no competitive concerns are raised by the proposed indirect foreign ownership structure. We see no reason to rebut that presumption here. We received no comments in response to the Acceptance Public Notice, other than those addressed below regarding national security. We therefore conclude, pursuant to section 310(b)(4) and the Commission's *Foreign Participation Order*, that the public interest is served by allowing the proposed indirect foreign ownership of Eliska.

16. We are authorizing the level of foreign ownership encompassed by all of the transactions contemplated by the Application, which allows Sonera to convert its shares of non-voting, preferred stock in Powertel to common stock. This ruling allows Eliska to be indirectly owned up to 35.99 percent by any of the following entities: Sonera Holding, Sonera and Sonera Ltd. (collectively, "the Sonera entities").³¹ Eliska would need additional Commission authority under section 310(b)(4) before any of the Sonera entities could increase investment above this authorized level. Additional authority also would be required before any other foreign entity or entities acquire, in the aggregate, a greater-than-twenty-five-percent, indirect interest in Eliska.³²

²⁹ Sonera Holding is incorporated in the Netherlands. It has three directors, two of whom are citizens of Finland and the third, the Managing Director, is a citizen of the Netherlands. Its sole offices and all of its tangible property are located in the Netherlands. As a holding company, it has no sales or revenues. *See* Petition at 4-5.

³⁰ The web site of the World Trade Organization lists its Members. *See* <http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm> <visited on August 30, 2000>; *see also* *Global Crossing*, 14 FCC Rcd 15911, 15919 ¶ 17 (finding that Global Crossing principally conducts its business in WTO Members and therefore applying the Commission's WTO standard to Global Crossing's indirect ownership of common carrier radio licenses).

³¹ This ruling is consistent with Eliska's representation to the FBI and DoJ that no single foreign entity shall hold, upon consummation of the proposed license transfers and assignments, more than 36 percent of the total equity of Eliska, including the Sonera investment. *See* Agreement between Eliska Wireless Ventures I, Inc. and Sonera Holding B.V. and the U.S. Department of Justice and the Federal Bureau of Investigation ("DoJ/FBI Agreement") at 2 (copy attached).

³² *See Foreign Participation Order*, 12 FCC Rcd at 23941, ¶ 114.

C. Executive Branch Concerns

17. The Executive Branch has raised concerns regarding national security and law enforcement in this proceeding, which, pursuant to the public interest analysis articulated in the Commission's *Foreign Participation Order*, we must consider.³³ On September 18, 2000, Eliska, Sonera Holding, DoJ, and the FBI filed a Joint Petition to Defer Action ("Petition to Defer") in this proceeding.³⁴ Despite the late-filed nature of the Petition to Defer,³⁵ we exercise our authority pursuant to Section 1.3 of our Rules to waive the thirty-day filing deadline because of the importance of the issues raised.³⁶

18. The Petition to Defer noted concerns of the DoJ and FBI that granting the requested authority would present significant impediments to the ability of the U.S. government to preserve national security, enforce the laws, and protect the public safety.³⁷ The Petition to Defer requested that the Commission defer approval of the proposed transaction until such time as an agreement could be reached between the Applicants and the DoJ and FBI resolving all such concerns.³⁸ On December 5, 2000, the DoJ and FBI filed a joint Petition to Adopt Conditions to Authorization and Licenses ("Petition to Adopt").³⁹ The Petition to Adopt requested that the Commission: (1) approve an agreement effective December 4, 2000, reached between Eliska, Sonera Holding and the DoJ and FBI; and (2) condition grant of the instant application on compliance with the terms of the DoJ/FBI Agreement.

19. The DoJ/FBI Agreement provides, *inter alia*, that Eliska and/or Sonera Holding shall: (1) ensure that its network is configured so as to be capable of complying with lawful U.S. process;⁴⁰ (2) make available in the United States certain call and subscriber data, if Eliska stores such data;⁴¹ (3) take reasonable measures to monitor the use of facilities used in domestic telecommunications (specifically, with respect to personnel holding sensitive positions), information storage, and access to foreign entities;⁴² and (4) not disclose classified or sensitive

³³ See *id.* at 23918, ¶ 59.

³⁴ See Sonera Holding B.V. and Eliska Wireless Ventures License Subsidiary I, L.L.C., File No. 0000151639, Joint Petition to Defer Action (filed Sept. 18, 2000) ("Petition to Defer").

³⁵ See Acceptance Public Notice at 1 (setting August 2, 2000 as the deadline for filing Petitions/Comments).

³⁶ See 47 C.F.R. § 1.3 (providing that "Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.").

³⁷ See Joint Petition at 1-2.

³⁸ See Joint Petition at 2.

³⁹ See Sonera Holding B.V. and Eliska Wireless Ventures License Subsidiary I, L.L.C., File No. 0000151639, Petition to Adopt Conditions to Authorization and Licenses (filed Dec. 5, 2000)

⁴⁰ See DoJ/FBI Agreement at 6, ¶ 2.2.

⁴¹ See DoJ/FBI Agreement at 6, ¶ 2.3.

⁴² See DoJ/FBI Agreement at 7, ¶ 3.1.

information to any foreign government, agent, component or subdivision thereof without obtaining the written consent of the DoJ.⁴³

20. In fulfilling our public interest mandate, we take into account the record and afford the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues.⁴⁴ We recognize that, separate from our licensing process, Eliska and Sonera Holding have entered into a voluntary agreement with the DoJ and FBI, and that this agreement expressly states that the DoJ and FBI will not object to grant of the pending applications, provided that the Commission approves the agreement and conditions grant of the instant applications on compliance with it.⁴⁵

21. We note that the DoJ/FBI Agreement contains certain provisions relevant to this transaction that, if broadly applied, would have significant consequences for the telecommunications industry. These provisions, if viewed as precedent for other service providers and potential investors, would warrant further inquiry on our part, and we will consider any subsequent agreements on a case-by-case basis. However, notwithstanding these concerns about the broader implications of the DoJ/FBI Agreement, we see no reason to modify or disturb the agreement of the parties on this matter. Therefore, in accordance with the request of Eliska, Sonera Holding, the DoJ and FBI, and the discussion above, we condition our grant of the application to assign certain licenses and authorizations in connection with the proposed acquisition on compliance with the DoJ/FBI Agreement.

D. International Section 214 Assignment

22. On June 27, 2000, the Commission granted DiGiPH authority under Section 214 of the Act to provide global international resale services.⁴⁶ On August 29, 2000, DiGiPH filed an application to assign its international section 214 authorization to Eliska.⁴⁷ On September 8, 2000, the International Bureau placed DiGiPH's assignment application on streamlined public notice.⁴⁸ On September 22, 2000, pursuant to section 63.12(c)(4) of the Commission's Rules,⁴⁹ we reclassified DiGiPH's assignment application as non-streamlined in order to consolidate

⁴³ See DoJ/FBI Agreement at 8, ¶ 3.3.

⁴⁴ See *Foreign Participation Order*, 12 FCC Rcd at 23919-21, ¶¶ 61-66.

⁴⁵ See DoJ/FBI Agreement at 17, ¶ 7.1.

⁴⁶ See *International Authorizations Granted*, File No. ITC-214-20000627-00370, Report No. TEL-00265 (rel. July 27, 2000).

⁴⁷ See DiGiPH PCS, Inc., Assignor and Eliska Wireless Ventures License Subsidiary I, L.L.C. and Eliska Wireless Ventures I, Inc., Assignee, Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, to Assign Section 214 Authorization and Receive Global Resale International Telecommunications Services Authority, File No. ISP-ASG-20000829-00514 ("International 214 Assignment Application") (filed Aug. 29, 2000) at 1.

⁴⁸ See *Streamlined International Applications Accepted for Filing*, File No. ITC-ASG-20000829-00514, Report No. TEL-00285S (rel. Sept. 8, 2000).

⁴⁹ See 47 C.F.R. § 63.12(c)(4).

action on the international section 214 assignment application with action on the Application and the Petition.⁵⁰

23. Upon consummation of the proposed transaction, Eliska states that it will be affiliated with Sonera Oy, a foreign carrier in Finland.⁵¹ In connection with the proposed assignment of international section 214 authority, Eliska committed to provide services on the U.S.-Finland route solely through the resale of unaffiliated U.S. facilities-based carriers' international switched services, either directly or indirectly through the resale of another U.S. resale carrier's international switched services.⁵² We note that Eliska's original section 214 authorization is limited to the provision of switched services solely through the resale of unaffiliated U.S. facilities-based carriers international switched services.⁵³ Under our international service rules, Eliska is, and will continue to be, presumptively classified as non-dominant in its provision of the above-referenced service to Finland.⁵⁴

E. Competitive Concerns

24. The services at issue involve the provision of mobile voice telephony, and after the transaction, for purposes of the Commission's CMRS spectrum aggregation limit, Eliska will be attributed not only with the DiGiPH licenses and the Auction No. 22 licenses of Eliska's affiliate, but also with Powertel's licenses.⁵⁵ The proposed transaction will result in overlaps between Powertel's 30 MHz PCS license for the Memphis MTA and DiGiPH's 15 MHz licenses for the Columbus-Starkville and Meridian, Mississippi BTAs. These overlaps do not, however, run afoul of the CMRS spectrum aggregation limit because the combined amount of spectrum does not exceed the limits of the rule. In addition, analysis of the transaction reveals no other competitive issues. Therefore, the proposed transaction does not raise competitive concerns.

IV. CONCLUSION

25. Based upon our reviews under sections 214(a), 310(b)(4), and 310(d), we determine that grant of the Application and the International 214 Assignment Application, subject to the conditions specified herein, is in the public interest. Accordingly, we hereby grant (1) the Petition for Declaratory Ruling to the extent specified herein; and (2) the Application, conditioned on Eliska's completion of the appropriate steps to assume the installment payment obligations on the licenses and conditioned on compliance with the attached agreement between Eliska, Sonera Holding, the DoJ, and the FBI; and (3) the International 214 Assignment Application, subject to Eliska's commitments to the conditions specified herein.

⁵⁰ See *Non-streamlined International Applications Accepted for Filing*, File No. ITC-ASG-20000829-00514, Report No. TEL-00291NS (rel. Sept. 22, 2000).

⁵¹ See International 214 Assignment Application at 8.

⁵² See *id.*

⁵³ See *International Authorizations Granted*, File No. ITC-214-20000801-00444, Report No. TEL-00282 (rel. Aug. 31, 2000).

⁵⁴ See 47 C.F.R. § 63.10(a)(4). Eliska states that it will file the quarterly traffic reports as required by Section 43.61(c) of the Commission's rules. See International 214 Assignment Application at 8.

⁵⁵ See 47 C.F.R. § 20.6.

V. ORDERING CLAUSES

26. Accordingly, having reviewed the Application, the International 214 Assignment Application, the Petition for Declaratory Ruling and the record in this matter, IT IS ORDERED, pursuant to sections 4(i) and (j), 214(a) and (c), 309, and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 214(a) and (c), 309, and 310(b) and (d), that the Application filed by DiGiPH PCS, Inc. and Eliska Wireless Ventures License Subsidiary I, L.L.C., in File No. 0000151639, the International 214 Assignment Application filed by DiGiPH PCS, Inc. and Eliska Wireless Ventures License Subsidiary I, L.L.C. in File No. ITC-ASG-20000829-00514, and the Petition for Declaratory Ruling filed by Eliska Wireless Ventures License Subsidiary I, L.L.C. in File No. ISP-PDR-20000614-00014, in the above-captioned proceeding ARE GRANTED, subject to the conditions specified below.

27. Accordingly, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require a grant of the above-captioned Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, As Amended, 47 U.S.C. § 310(b)(4). Therefore, IT IS ORDERED that Eliska is authorized to accept indirect foreign ownership in excess of the twenty-five-percent benchmark of section 310(b)(4) of the Communications Act of 1934, as amended, to the extent specified in this Order.

28. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, DiGiPH is authorized to assign its international section 214 authorization to Eliska, subject to the following conditions: (1) Eliska will provide services on the U.S.-Finland route solely through the resale of unaffiliated U.S. facilities-based carriers' international switched services (either directly or indirectly through the resale of another U.S. resale carrier's international switched services); and (2) Eliska will file the quarterly traffic reports required by section 43.61(c) of the Commission's rules.

29. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 214(a) and (c), 309 and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 214(a) and (c), 309, 310(b) and (d), that the Petition to Adopt Conditions to Authorization and Licenses filed by the U.S. Department of Justice and the Federal Bureau of Investigation, on December 5, 2000, IS GRANTED, and that the authorizations and licenses related thereto which are to be assigned or transferred as a result of this Order are subject to compliance with provisions of the Agreement between Eliska Wireless Ventures I, Inc. and Sonera Holding, B.V. on the one hand, and the Department of Justice ("DoJ") and the Federal Bureau of Investigation ("FBI") on the other, effective December 4, 2000, which Agreement is designed to address the national security, law enforcement, and public safety concerns of the FBI and the DoJ regarding the authority granted herein, is fully binding upon Eliska and Sonera Holding B.V. and those subsidiaries, successors and assigns of both companies that provide telecommunications services within the United States. Nothing in the Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. §§ 222(a) and (c)(1) and the Commission's implementing regulations.

30. IT IS FURTHER ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), the approval of the assignment of DiGiPH's licenses to Eliska is conditioned upon the execution by DiGiPH, Eliska, and the Commission of all Commission loan documents, unless the licenses being assigned have been paid in full. Unless the licenses that DiGiPH will assign to Eliska have been paid in full, this approval is conditioned upon Eliska's execution of the applicable financing statements (*i.e.*, the UCC-1 Forms) and payment, on or before the consummation date, of all costs associated with the

preparation and recordation of the financing statements. In addition, all installment payments must be current on the consummation date. To be current, the installment payment may not be in the non-delinquency period or grace period. In addition, there must be no outstanding fees, including late fees, due to the Commission. No licenses will be issued to the assignee until the Commission receives notification pursuant to section 24.839(b)(4) of the Commission's rules, 47 C.F.R. § 24.839(b)(4), that all conditions that must be met at or before consummation have been satisfied, including execution of the appropriate financing documents. Failure of the parties to comply with any of the financial obligations described above will result in automatic cancellation of the Commission's approval hereunder and in dismissal of the Application.

31. This Order is issued pursuant to authority delegated by sections 0.261 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.261, 0.331, and is effective upon release. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within thirty days of the date of public notice of this order.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Sugrue
Chief, Wireless Telecommunications Bureau

Donald Abelson
Chief, International Bureau