

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

In the Matter of
Bell Atlantic New Zealand Holdings, Inc.,
Transferor,
and
Pacific Telecom Inc., Transferee,
Applications for Consent to Transfer Control of a
Submarine Cable Landing License, International
and Domestic Section 214 Authorizations, a
Cellular Radiotelephone License, Common Carrier
and Non-Common Carrier Satellite Earth Station
Licenses, and a Petition for Declaratory Ruling
Pursuant to Section 310(b)(4) of the
Communications Act
IB Docket No. 03-115

ORDER AND AUTHORIZATION

Adopted: November 6, 2003

Released: November 6, 2003

By the Chiefs, International Bureau, Wireline Competition Bureau, and Wireless Telecommunications
Bureau:

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**I. INTRODUCTION**

1. In this Order, we grant, subject to the conditions identified below, the applications (“Transfer Applications”) filed by Bell Atlantic New Zealand Holdings, Inc. (“BANZHI” or the “Transferor”) and Pacific Telecom Inc. (“Pacific Telecom” or the “Transferee,” and together with the Transferor, the “Applicants”) for approval to transfer control from BANZHI to Pacific Telecom of licenses and authorizations held by The Micronesian Telecommunications Corporation (“MTC”) and GTE Pacifica Inc. (“GTE Pacifica”). These licenses and authorizations include a cellular radiotelephone license, common carrier and non-common carrier earth station licenses, a submarine cable landing license, and various domestic and international section 214 authorizations which MTC and GTE Pacifica use in their provision of telecommunications services in the Commonwealth of the Northern Mariana Islands (“CNMI”),<sup>1</sup> a U.S. territory.<sup>2</sup>

<sup>1</sup> See Pacific Telecom Inc. and Bell Atlantic New Zealand Holdings, Inc., Application for Consent to Transfer License Pursuant to Section 310(d) of the Communications Act, File No. SES-T/C-20030418-00502 (filed April 18, 2003) (*Common Carrier Earth Station Application*); Pacific Telecom Inc. and Bell Atlantic New Zealand Holdings, Inc., Application for Consent to Transfer License Pursuant to Section 310(d) of the Communications Act, File No. SES-T/C-20030418-00501 (filed April 18, 2003) (*Non-Common Carrier Earth Station Application*); Pacific Telecom Inc. and Bell Atlantic New Zealand Holdings, Inc., Application for Consent to Transfer License Pursuant to Section 310(d) of the Communications Act, File No. 0001236852 (filed April 18, 2003) (*Cellular Radiotelephone Service Application*); Pacific Telecom Inc. and Bell Atlantic New Zealand Holdings, Inc., Joint Application for Transfer of Control of Cable Landing License, File No. SCL-T/C-20030418-00008 (filed April 18, 2003) (*Submarine Cable Application*); Pacific Telecom Inc. and Bell Atlantic New Zealand, Inc., Joint Application for Transfer of Control of Holder of International Section 214 Authorizations, File No. ITC-T/C-20030418-00204 (filed April 18, 2003) (*International Section 214 Application*); Pacific Telecom Inc. and Bell Atlantic New Zealand Holdings Inc., Joint Application for Transfer of Control of Domestic 214 Authority (filed April 18, 2003) (*Domestic 214 Application*). See also Petition of Pacific Telecom Inc. for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended (filed April 18, 2003) (*Petition for Declaratory Ruling*). Each of these applications includes identical exhibits describing the transaction and providing related information.

<sup>2</sup> The Applicants note that the CNMI is under the sovereignty of the United States and that, with few exceptions, CNMI citizens are U.S. citizens. *Petition for Declaratory Ruling* at 2 n.2 (citing Presidential

(continued...)

2. As discussed below, we conclude, pursuant to our review under sections 214(a) and 310(d) of the Communications Act of 1934, as amended (“Act”),<sup>3</sup> and under section 2 of the Cable Landing License Act<sup>4</sup> that approval of the Transfer Applications will serve the public interest, convenience, and necessity. In addition, subject to the limitations specified herein, we grant Pacific Telecom’s Petition for Declaratory Ruling that the public interest would not be served by prohibiting the proposed indirect foreign ownership of GTE Pacifica in excess of the 25 percent benchmark set by section 310(b)(4) of the Act.<sup>5</sup> We also grant the Petition to Adopt Conditions to Authorizations and Licenses filed by the Department of Justice and Federal Bureau of Investigation, with the concurrence of the Department of Defense and the Department of Homeland Security.<sup>6</sup> Finally, we deny the petition to deny, or in the alternative, to designate for hearing filed by the Governor of the CNMI (“Governor”) and the petitions to deny filed by Mr. Herman Guerrero and the House of Representatives of the Commonwealth of the Northern Mariana Islands.<sup>7</sup>

## II. BACKGROUND

### A. The Applicants

#### 1. The Transferor

3. BANZHI is a wholly-owned, indirect subsidiary of Verizon Communications Inc. (“Verizon”), a publicly-held corporation that is organized under the laws of the State of Delaware.<sup>8</sup> BANZHI wholly owns MTC, which in turn wholly owns GTE Pacifica. MTC is the incumbent carrier providing local exchange and exchange access service in the CNMI with approximately 25,000 access lines.<sup>9</sup> MTC is incorporated in the CNMI and holds a blanket, domestic section 214 authorization.<sup>10</sup> GTE Pacifica, also a CNMI corporation, provides commercial mobile radio service as well as domestic long distance and international telecommunications services in the CNMI through the use of cellular radiotelephone, terrestrial fiber optic, satellite and submarine cable facilities.<sup>11</sup> GTE Pacifica connects the CNMI’s three primary islands, Saipan, Tinian and Rota, to Guam by an undersea fiber optic cable and

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Proclamation No. 5564, 51 Fed. Reg. 40399 (November 7, 1986)). *See also* 47 U.S.C. § 3(51) (defining “United States” to include states, territories, the District of Columbia, and possessions of the United States); *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, Report and Order, 11 FCC Rcd 9564, 9589, n.118 (1996) (*Rate Integration Order*) (stating that “the 1996 Act extends rate integration to U.S. territories and possessions, including Guam and the [CNMI] . . .”).

<sup>3</sup> The Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.* Hereinafter, all citations to the Communications Act will be to the relevant section of the United States Code unless otherwise noted. 47 U.S.C. §§ 214(a), 310(d).

<sup>4</sup> *See* An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (“Cable Landing License Act”), at § 35.

<sup>5</sup> 47 U.S.C. § 310(b)(4).

<sup>6</sup> *See infra* note 112.

<sup>7</sup> *See infra* note 28.

<sup>8</sup> *Petition for Declaratory Ruling* at 2.

<sup>9</sup> *Petition for Declaratory Ruling* at 2.

<sup>10</sup> *Domestic 214 Application* at 5.

<sup>11</sup> *Petition for Declaratory Ruling* at 2.

provides cellular service pursuant to the B-Block cellular radiotelephone license for the CNMI Rural Service Area. In addition to the cellular radiotelephone license,<sup>12</sup> GTE Pacifica holds one common carrier satellite earth station license,<sup>13</sup> a non-common carrier satellite earth station license,<sup>14</sup> a submarine cable landing license to land and operate the common carrier MTC Interisland Cable System,<sup>15</sup> a blanket, domestic section 214 authorization,<sup>16</sup> an international, limited global facilities-based and global resale section 214 authorization, and an international section 214 authorization to construct and operate the MTC Interisland Cable System.<sup>17</sup>

## 2. The Transferee

4. Pacific Telecom is a privately-held corporation organized under the laws of the CNMI.<sup>18</sup> Pacific Telecom was formed as the vehicle to purchase the entire outstanding capital stock and voting interests of MTC.<sup>19</sup> Pacific Telecom is a direct, wholly-owned subsidiary of Prospector Investment Holdings Inc. (“Prospector”), a privately-held corporation incorporated in the Cayman Islands, British West Indies.<sup>20</sup> Prospector’s principal business is to hold the investment in Pacific Telecom.<sup>21</sup> Prospector is owned by two, related individuals: (1) Ricardo C. Delgado, a citizen of the Philippines, holds a 60 percent equity and voting interest in Prospector; and (2) Jose Ricardo Delgado, also a citizen of the Philippines, holds a 40 percent equity and voting interest in Prospector.<sup>22</sup>

## B. The Transaction

5. On April 18, 2003, BANZHI and Pacific Telecom filed the Transfer Applications and the Petition for Declaratory Ruling seeking Commission approval of the proposed transfer of control of licenses and authorizations held by MTC and its wholly-owned subsidiary GTE Pacifica.<sup>23</sup> After consummation of the proposed transaction, Pacific Telecom will wholly own MTC, which, in turn, wholly owns GTE Pacifica, and both will continue to offer the services they currently offer under existing service arrangements.<sup>24</sup> According to the Applicants, Pacific Telecom’s guiding principles for the

<sup>12</sup> *Cellular Radiotelephone Service Application*. Call Sign “KNKN616.”

<sup>13</sup> *Common Carrier Earth Station Application*. Call Sign “E000164.”

<sup>14</sup> *See Non-Common Carrier Earth Station Application*. Call Sign “KA-34.”

<sup>15</sup> *See Submarine Cable Application*. File No. SCL-92-003-AL.

<sup>16</sup> *See Domestic 214 Application*.

<sup>17</sup> *See International Section 214 Application* at 5. File Nos. ITC-214-19970502-00247, ITC-ASG-10071211-00776, ITC-ASG-19971211-00778.

<sup>18</sup> *See Petition for Declaratory Ruling* at 7.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *See Letter from Kenneth D. Patrich and Timothy J. Cooney, Attorneys for Pacific Telecom, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated September 9, 2003).*

<sup>23</sup> Previously, Pacific Telecom had filed an application to acquire MTC and GTE Pacifica, but subsequently withdrew that application. *See Letter from Peter Shields, Jennifer Hindin, Kenneth Patrich, and Timothy Cooney, Attorneys for Applicants, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated March 19, 2003) (withdrawing the transfer of control applications filed in IB Docket No. 02-111) (Applicants’ Letter to Withdraw).*

<sup>24</sup> *See International Section 214 Application* at 3.

companies are to: “(1) preserve and enhance the existing wireline voice business; (2) accelerate development of wireline communications; (3) aggressively expand data (DSL) and other broadband services; (4) pursue opportunities in international telecommunications; and (5) maintain and further develop a highly-trained employee base.”<sup>25</sup>

6. Pacific Telecom also requests a declaratory ruling that it would not serve the public interest, convenience, and necessity for the Commission to deny the resulting indirect foreign ownership and voting interests in MTC and its subsidiary, GTE Pacifica, the holder of common carrier radio licenses, in excess of the 25 percent benchmark set forth in section 310(b)(4) of the Act.<sup>26</sup>

7. On May 9, 2003, the International Bureau released a public notice, announcing that the Transfer Applications and the Petition for Declaratory Ruling were accepted for filing and establishing a pleading cycle to permit interested parties an opportunity to comment.<sup>27</sup> In response to the public notice, the Governor, the CNMI House of Representatives, and Mr. Herman Guerrero filed petitions to deny and the Governor of Guam filed comments.<sup>28</sup> The Applicants filed an opposition to the petitions to deny.<sup>29</sup> The Applicants and the Governor subsequently filed a series of replies.<sup>30</sup>

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<sup>25</sup> *Petition for Declaratory Ruling* at 10-11.

<sup>26</sup> *See Petition for Declaratory Ruling*; 47 U.S.C. § 310(b)(4).

<sup>27</sup> *See Commission Seeks Comment on Applications for Consent to Transfer Control Filed by Bell Atlantic New Zealand Holdings, Inc. and Pacific Telecom Inc.*, Public Notice, DA 03-1532 (rel. May 9, 2003) (*Public Notice*).

<sup>28</sup> *See* Petition of the Office of the Governor of the Commonwealth of the Northern Mariana Islands to Deny, or, in the Alternative, to Designate for Hearing (filed June 9, 2003) (*Governor of CNMI's Opposition*); Comments of the Governor of Guam (filed June 9, 2003) (*Governor of Guam's Comments*); Letter from Stanley T. Torres, Martin B. Ada, Joseph P. Deleon Guerrero, Herman T. Palacios, Oscar M. Babauta, Gloria DLC Cabrera, and Pete P. Reyes, House of Representatives, Northern Mariana Islands Commonwealth Legislature, to Michael K. Powell, Chairman, Federal Communications Commission (dated June 6, 2003) (*CNMI House of Representatives' Letter*); Letter from Herman Q. Deleon Guerrero, Resident, CNMI, to Michael K. Powell, Chairman, Federal Communications Commission (dated May 31, 2003) (*Herman Guerrero's Letter*).

<sup>29</sup> *See* Joint Opposition to Petitions to Deny and Informal Comments (filed June 24, 2003) (*Joint Opposition*).

<sup>30</sup> Letter from Thomas K. Crowe, Attorney for the Governor of the Commonwealth of the Northern Mariana Islands, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated July 2, 2003) (*Governor's Reply to Joint Opposition*); Letter from Peter Shields, Jennifer Hindin, Kenneth Patrich, and Timothy Cooney, Attorneys for Applicants, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated July 18, 2003) (*Response to Governor's July 2 Letter*); Letter from Thomas K. Crowe, Attorney for the Governor of the Commonwealth of the Northern Mariana Islands, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated August 1, 2003) (*Governor's Reply to July 18 Letter*); Letter from Peter Shields, Jennifer Hindin, Kenneth Patrich, and Timothy Cooney, Attorneys for Applicants, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated August 15, 2003) (*Response to Governor's August 1 Letter*); Letter from Thomas K. Crowe, Attorney for the Governor of the Commonwealth of the Northern Mariana Islands, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated September 12, 2003) (*Governor's Reply to August 15 Letter*); Letter from Kenneth Patrich, and Timothy Cooney, Attorneys for Pacific Telecom, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated September 24, 2003) (*Response to Governor's September 12 Letter*); Letter from Thomas K. Crowe, Attorney for the Governor of the Commonwealth of the Northern Mariana Islands, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated October 20, 2003) (*Governor's October 20 Letter*); Letter from Peter Shields, Jennifer Hindin, Kenneth Patrich, and Timothy Cooney, Attorneys for Applicants, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated October 23, 2003) (*Response to Governor's October 20 Letter*); Letter from Thomas K. Crowe, Attorney for the Governor of the Commonwealth of the Northern Mariana Islands, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated October 31, 2003) (*Governor's October 31 Letter*).

### III. PUBLIC INTEREST ANALYSIS

#### A. Framework for Analysis

8. In considering the Transfer Applications, the Commission must determine, pursuant to sections 214(a) and 310(d) of the Act, whether the proposed transfers of control will serve the public interest.<sup>31</sup> In addition, because Pacific Telecom seeks to transfer control of a cable landing license, we review the proposed transaction under the Cable Landing License Act.<sup>32</sup> Finally, because of the foreign ownership interests presented in this case, we also must determine whether the proposed transfer of control of GTE Pacifica is permissible under the foreign ownership provisions of section 310(b) of the Act.<sup>33</sup>

9. The legal standards that govern our public interest analysis for transfer of control of licenses and authorizations under sections 214(a) and 310(d) require that we weigh the potential public interest harms against the potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest, convenience, and necessity.<sup>34</sup> Our analysis considers the likely competitive effects of the proposed transfers and whether such transfers raise significant anti-competitive issues.<sup>35</sup> In addition, we consider the efficiencies and other public interest benefits that are likely to result from the proposed transfers of control of the licenses and authorizations.<sup>36</sup> Further, we consider whether the proposed transaction presents national security, law enforcement, foreign policy or trade policy concerns.<sup>37</sup> If the Executive Branch raises national security, law enforcement, foreign policy or trade policy concerns, we accord deference to its expertise on these matters.<sup>38</sup> Similarly, our review pursuant to

<sup>31</sup> 47 U.S.C. §§ 214(a), 310(d).

<sup>32</sup> 47 U.S.C. §§ 34-39. See also Executive Order No. 10530, Exec. Ord. No. 10530, § 5(a), *reprinted as amended* in 3 U.S.C. §301 (“Executive Order 10530”); *Review of Commission Consideration of Applications under the Cable Landing License Act*, Report and Order, IB Docket No. 00-106, FCC 01-332, 16 FCC Rcd 22167, 22169-70, ¶ 5 (2001) (*Submarine Cable Report and Order*); 47 C.F.R. § 1.767(b) (2003); *Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests*, Media Note (Revised) (Dec. 20, 2001), available at [www.state.gov/r/pa/prs/ps/2001](http://www.state.gov/r/pa/prs/ps/2001) (visited March 28, 2003). Pursuant to section 1.767(b) of the Commission’s rules, the Cable Landing License Act, and Executive Order 10530, we informed the Department of State of the Submarine Cable Application.

<sup>33</sup> 47 U.S.C. § 310(b).

<sup>34</sup> See, e.g., *Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and for Declaratory Ruling Pursuant to Section 310 of the Communications Act*, Memorandum Opinion and Order, FCC 01-142, 16 FCC Rcd 9779, 9789, ¶ 17 (2001) (*VoiceStream/Deutsche Telekom Order*). See also *AT&T Corp., British Telecommunications, PLC, VLT Co. LLC, Violet License Co. LLC, and TNV (Bahamas) Limited, Applications For Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection with the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, PLC*, Memorandum Opinion and Order, FCC 99-313, 14 FCC Rcd 19140, 19147, ¶ 15 (1999) (*AT&T/BT Order*); *Motient Services Inc. and TMI Communications and Company, LP, Assignors, and Mobile Satellite Ventures Subsidiary LLC, Assignee*, Order and Authorization, DA 01-2732, 16 FCC Rcd 20469, 20473, ¶ 11 (Int’l Bur. 2001).

<sup>35</sup> See, e.g., *AT&T/BT Order*, 14 FCC Rcd at 19148, ¶ 15.

<sup>36</sup> See, e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9789, ¶ 17.

<sup>37</sup> See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891, 23919-21, ¶¶ 61-66 (1997) (*Foreign Participation Order*), Order on Reconsideration, FCC 00-339, 15 FCC Rcd 18158 (2000).

<sup>38</sup> *Id.*

the Cable Landing License Act considers the competitive effects and public interest benefits of the proposed transaction, as well as any national security, law enforcement, foreign policy, or trade policy concerns.<sup>39</sup>

## B. Qualifications of Applicants

10. As a threshold matter, we must determine whether the Applicants have the requisite qualifications to hold and transfer control of licenses under section 310(d) of the Act and Commission rules.<sup>40</sup> We do not, as a general rule, re-evaluate the qualifications of the transferors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.<sup>41</sup> We conclude that no such issues have been raised with regard to the Transferor that would require us to designate a hearing to re-evaluate BANZHI's basic qualifications.

11. Conversely, the analysis of the Transfer Applications requires that we determine whether the Transferee is qualified to hold Commission licenses. Under section 310(d), we consider the qualifications of the Transferee as if the Transferee were applying for the license directly under section 308 of the Act.<sup>42</sup> In this case, two parties have challenged the qualifications of Pacific Telecom to acquire control of the Commission licenses held by GTE Pacifica.<sup>43</sup> Based on our review of the record, we conclude that Pacific Telecom is legally and otherwise qualified to acquire control of the licenses at issue in this proceeding.<sup>44</sup>

### 1. Financial Qualifications

12. The Commission does not have specific financial requirements for applicants seeking approval to transfer control of the licenses and authorizations that are the subject of the Transfer Applications. However, we consider Pacific Telecom's financial qualifications as part of our public interest analysis under section 310(d) of the Act.

13. The Governor alleges that Pacific Telecom failed to make available sufficient financial information to demonstrate that it possesses the requisite financial qualifications to operate the telecommunications network in the CNMI.<sup>45</sup> According to the Governor, reliance on the individual assets

<sup>39</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23933-35, ¶¶ 93-96, 23919-21, ¶¶ 61-66.

<sup>40</sup> 47 C.F.R. § 310(d), 47 C.F.R. § 1.948 (transfer of control of wireless licenses).

<sup>41</sup> See, e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9790, ¶ 19.

<sup>42</sup> 47 U.S.C. § 308.

<sup>43</sup> See generally, *Governor of CNMI's Opposition; Herman Guerrero's Letter*.

<sup>44</sup> See 47 C.F.R. § 1.945(c)(2) (2003); see also 47 C.F.R. § 1.903(b) (2003); *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9798, ¶ 30.

<sup>45</sup> See *Governor of CNMI's Opposition* at 12. The Governor also finds problematic Pacific Telecom's reliance on the financial condition of Citadel Holdings, Inc. (Citadel), another Delgado company, as a basis for showing that Pacific Telecom is financially qualified. *Id.* at 13; see also *Governor's Reply to August 15 Letter* at 4. The Governor claims that the Commission should not rely on Citadel's financial condition because it has no apparent ownership interest in Pacific Telecom and because the Transfer Applications provide little financial information about Citadel. *Governor of CNMI's Opposition* at 13; see also *Governor's Reply to August 15 Letter* at 4. We do not address this issue because, as Applicants note, given the other financial information provided, they do not need to rely on Citadel to demonstrate Pacific Telecom's financial qualifications. See *Joint Opposition* at 5. We also reject the Governor's argument that the record warrants further inquiry into whether Citadel and Prospector are in fact the same company. The Governor presents no persuasive evidence that these two companies are not legally

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of the Delgados is not useful because the Commission is unable to determine which of those assets are readily available for operating MTC's telecommunications network.<sup>46</sup> In addition, the Governor argues that the only true basis for Pacific Telecom's financial qualifications is a *pro forma* balance sheet that is insufficient because it only reflects projected funding and not the financial condition of the underlying shareholders.<sup>47</sup>

14. We find that the information provided in the record is sufficient to demonstrate that Pacific Telecom and its principals have the ability to finance the acquisition of MTC's facilities and, therefore, we reject the Governor's arguments. Based on the representations made to us by Pacific Telecom in the form of a *pro forma* balance sheet, we find that the Delgados will contribute a substantial amount of capital to make an equity investment in Pacific Telecom.<sup>48</sup> In addition, Pacific Telecom provided a letter from a financial institution that states that the Delgados have the funds to purchase MTC and that the Delgados qualify for a loan, if needed, to acquire MTC.<sup>49</sup> Pacific Telecom further provided a second letter from a financial institution that offers to partially fund the acquisition.<sup>50</sup> Accordingly, we find that the information in the record demonstrates that Pacific Telecom and its principals, the Delgados, have the financial resources needed to fund Pacific Telecom's acquisition of MTC.

## 2. Technical Qualifications

15. Second, the Governor argues that Pacific Telecom does not have the requisite technical qualifications or expertise to operate the CNMI's telecommunications network. Specifically, the Governor argues that Pacific Telecom cannot claim it is technically qualified based on: (1) reliance on MTC's existing managerial staff; (2) intentions to hire a particular person experienced in telecommunications; (3) an executed technical services agreement with the Transferor, BANZHI, because it demonstrates that Pacific Telecom lacks the requisite technical knowledge; and (4) the Delgado family's experience operating telecommunications carrier Isla Communications, Inc. ("ISLACOM") in the Philippines because any knowledge gained would be insufficient to cover MTC's (and GTE

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separate entities or that Prospector, through Pacific Telecom, will not maintain control of MTC. *See Governor's October 31 Letter* at 3-4, Exhibit C, Report of Independent Public Accountants, J.B. Santos & Associates, at Section 13, and at Exhibit D, General Information Sheet, Stock Corporation, at 4.

<sup>46</sup> *Governor of CNMI's Opposition* at 14. We note, however, that the Governor subsequently obtained access to the *pro forma* balance sheet and other confidential documents pursuant to a Protective Order. *See Application of Bell Atlantic New Zealand Holdings, Inc. and Pacific Telecom Inc.*, Disclosure Order, DA 03-3010 (rel. October 1, 2003) (*Pacific Telecom Protective Order*).

<sup>47</sup> *Governor's Reply to August 15 Letter* at 4-5. The Governor also argues that Pacific Telecom cannot rely on confidential letters from financial institutions confirming the value of the Delgados' accounts because interested parties are unable to review those letters and provide comments. *Governor of CNMI's Opposition* at 13-14. This argument is moot because the Governor has access to all confidential documents filed in this proceeding. *See generally Pacific Telecom Protective Order*.

<sup>48</sup> *See* Letter from James Ball, Chief, Policy Division, International Bureau, to Kenneth D. Patrich and Timothy J. Cooney, Attorneys for Pacific Telecom (dated August 18, 2003). *See also* Letter from Kenneth D. Patrich and Timothy J. Cooney, Attorneys for Pacific Telecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated August 27, 2003 (requesting that the attached materials be withheld from public inspection) (*August 27 Response*).

<sup>49</sup> *See Joint Opposition* at 5, Exhibit B, Letter from Lorenzo V. Tan, President and Chief Executive Officer, Philippine National Bank, to Adam Turner, Executive Director, Commonwealth Telecommunications Commission (dated June 23, 2003).

<sup>50</sup> *See August 27 Response*.



Pacifica's) broad operations and would be largely outdated since the Delgado family sold ISLACOM in 1999.<sup>51</sup> The Governor further argues that Pacific Telecom lacks the requisite technical qualifications because ISLACOM failed to meet its obligation to roll out a certain number of lines in the Philippines by the end of 2000.<sup>52</sup>

16. We conclude that Pacific Telecom has the requisite technical expertise to take over MTC's and GTE Pacifica's operations and to continue providing telecommunications services to consumers in the CNMI. First, we agree with the Applicants that the expertise gained by the Delgados from operating ISLACOM is sufficient to demonstrate that Pacific Telecom will be able to maintain MTC's and GTE Pacifica's operations.<sup>53</sup> As stated in Applicants' *Joint Opposition*, ISLACOM offered a wide range of services, from local exchange services to paging and wireless services, and ISLACOM's coverage included rural areas in the Philippines.<sup>54</sup> Additionally, Applicants point out that ISLACOM was one of the largest telecommunications companies in the Philippines and, in 1997, had ten times the assets of MTC.<sup>55</sup> Applicants also point out that ISLACOM was the first company to establish GSM digital service in the Philippines and introduced the wireless local loop in Asia with the assistance of Lucent Technologies.<sup>56</sup> Thus, the investors' extensive experience demonstrates that Pacific Telecom has the technical capability needed to operate and/or expand a telecommunications company.<sup>57</sup> Furthermore, we find acceptable Pacific Telecom's plan to hire MTC's existing managers, hire an experienced telecommunications employee as its CEO, and sign a Transition Services Agreement in which Verizon

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<sup>51</sup> *Governor of CNMI's Opposition* at 15-17. According to the Applicants, Pacific Telecom plans to hire Robert Anderson, a former employee of Verizon with several years of telecommunications experience, as MTC's CEO. See *Petition for Declaratory Ruling* at 9.

<sup>52</sup> *Governor's Reply to August 15 Letter* at 1-2, Exhibit A, Assessment of the Implementation of Service Area Scheme (SAS Report). The Philippine National Telecommunications Commission (NTC) released the SAS Report on March 4, 2002. See *id.* at 2. The SAS Report is available at <http://www.ntc.gov.ph/whatsnew-frame.html>.

<sup>53</sup> We disagree with the Governor's contention that ISLACOM's failure to roll out the number of lines required under a commitment to the Philippine government, as of the year 2000, indicates that Pacific Telecom does not have the requisite technical qualifications. See *id.* First, we note that the Delgados sold their interest in ISLACOM as of May 1999, so the relevancy of the Governor's argument is questionable. See *Response to Governor's September 12 Letter* at 3. Even if it is relevant, we find that other factors - not any alleged inadequate technical qualifications - played a significant role. In particular, according to the SAS Report cited by the Governor, installed lines far outstripped subscribership for those lines, prompting the SAS Report to conclude that the Philippines was experiencing depressed market conditions due to factors such as the Asian economic crisis and a market shift to cellphone usage. See SAS Report at E.2; see also *Response to Governor's September 12 Letter* at 2-3. In addition, we find that the record provides insufficient information to support the Governor's allegations that ISLACOM operated without a relevant license during the time the Delgados owned the company and that the NTC refused to renew ISLACOM's license because it failed to provide local service in accordance with the terms of that license. See *Governor's October 31 Letter* at 1-3, Exhibit A, Report of Independent Public Accountants at Section 2 (dated January 22, 2002). Further, in the absence of adjudicatory findings, we are unable to attach much significance to the fact that an administrative hearing involving ISLACOM by the NTC has been pending since September 21, 1999. See *Governor's October 20 Letter* at 2, Attach. A, Certification; see also *Governor's October 31 Letter* at 2-3.

<sup>54</sup> *Joint Opposition* at 3.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 4.

<sup>57</sup> Although the Governor provides documentation of auditor comments regarding ISLACOM's past due liabilities and bank loans, the record as a whole does not support the Governor's contention that the Delgados mismanaged ISLACOM. See *Governor's October 31 Letter* at 2, Exhibit B, Report of Independent Public Accountants at Section 1 (dated January 31, 2000). Businesses can fail for a number of reasons other than mismanagement. See *supra* n.53.

will assist with technical issues.<sup>58</sup> Pacific Telecom's plan demonstrates that it has made the necessary preparations to transition and implement operations in the CNMI.

### 3. Character Qualifications

17. The Governor claims that Pacific Telecom failed to disclose in its initial transfer applications in the prior proceeding (IB Docket No. 02-111)<sup>59</sup> a *nolo contendere* plea to felony charges entered by a company affiliated with Tan Holdings Corp. ("Tan Holdings"), a former investor in Pacific Telecom in the prior proceeding.<sup>60</sup> The Governor also cites to an investigation by the Department of Labor ("DOL") and claims that Pacific Telecom withheld information about this investigation in the prior proceeding.<sup>61</sup> The Governor asserts that, although the *nolo contendere* plea and DOL investigation involved companies affiliated with Tan Holdings, it was Pacific Telecom and not Tan Holdings that was before the Commission as an applicant and the misstatements were made to serve Pacific Telecom's interests.<sup>62</sup> The Governor therefore would have us find in this case a violation of section 1.17 based on Pacific Telecom's alleged failure in the prior proceeding to respond fully and accurately to questions raised in that proceeding.

18. We find that the Governor's allegations, which are based on conduct in the prior proceeding, do not provide a sufficient basis to conclude that Pacific Telecom violated section 1.17 of the Commission's rules or otherwise lacks the character qualifications required to become a Commission licensee. We accept Applicants' unrefuted explanation that, prior to the proceeding in IB Docket No. 02-111, the Applicants had no knowledge that a Tan affiliate in an unrelated business had entered a *nolo contendere* plea more than ten years before the filing of the initial application.<sup>63</sup> Applicants further state that, in the prior proceeding, Pacific Telecom clarified its certifications and fully disclosed all relevant facts to the Commission.<sup>64</sup> While Pacific Telecom, as a distinct legal entity, properly is viewed as the applicant in the prior proceeding, we will not in these circumstances impute to the current 100 percent owners of Pacific Telecom, as a basis for denial of this application, alleged intentional misrepresentations or omissions about conduct engaged in by affiliates of their former investment partner, which no longer has any ownership or management interest in the transferee.<sup>65</sup> We therefore reject the Governor's argument that the Transferee here violated section 1.17 of the rules and therefore lacks the requisite character qualifications to be a Commission licensee.

19. Finally, Herman Guerrero argues that Pacific Telecom made contradictory statements about the nature of a proposed trust arrangement to be established for employees after the proposed transfer of control. Mr. Guerrero states that in the Marianas Variety newspaper, Jose Ricardo Delgado stated on behalf of Pacific Telecom that MTC employees would have a 10 percent interest in Pacific Telecom. According to Mr. Guerrero, Pacific Telecom contradicted itself because, in the Petition for

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<sup>58</sup> *Joint Opposition* at 3-4.

<sup>59</sup> *See supra* note 23.

<sup>60</sup> *Governor of CNMI's Opposition* at 6-7. Questions 37 and 75 of FCC Forms 312 and 603, respectively, ask: "Has the applicant, or any party to this application or amendment, or any party directly or indirectly controlling the applicant ever been convicted of a felony by any state or federal court?"

<sup>61</sup> *Governor of CNMI's Opposition* at 6. *See also Governor's Reply to Joint Opposition* at 4.

<sup>62</sup> *Governor of CNMI's Opposition* at 6-7. *See also Governor's Reply to Joint Opposition* at 2-3.

<sup>63</sup> *See Joint Opposition* at 12.

<sup>64</sup> *Id.* There is no evidence in the record demonstrating that the Delgados intended to mislead the Commission.

<sup>65</sup> *See id.* at 12.

Declaratory Ruling filed in this proceeding, Applicants indicated that they would reserve only a 2 percent interest for MTC employees.<sup>66</sup> Similarly, Mr. Guerrero alleges that Jose Ricardo Delgado stated that no MTC employees has ever owned shares in MTC when, in fact, Mr. Guerrero owned shares in MTC while he was employed as a vice president of MTC.<sup>67</sup> According to Mr. Guerrero, each of these statements provides evidence of bad character.

20. We disagree. Pacific Telecom has not made contradictory statements to the Commission with regard to its request that we approve, pursuant to section 310(b)(4), an additional two percent indirect foreign ownership in Pacific Telecom for MTC employees. It appears that Mr. Guerrero misunderstood Pacific Telecom's request in the Petition for Declaratory Ruling. As Applicants note, their request is intended to cover ownership interests that would be attributable to current MTC employees who are non-U.S. citizens, and not to all MTC employees.<sup>68</sup> In other words, the trust would allow MTC employees to have a 10 percent beneficial ownership stake in Pacific Telecom.<sup>69</sup> A portion of those MTC employees accounting for a 2 percent ownership stake in Pacific Telecom are foreign nationals. Similarly, it appears that Mr. Guerrero misunderstood Mr. Delgado's statements about employee ownership of MTC. While Mr. Guerrero, as an MTC employee, may have held shares in the company *as an individual*, we find Mr. Delgado's statement addressed Pacific Telecom's desire to establish a trust on behalf of MTC employees as a group. We therefore find that Pacific Telecom has not made contradictory statements to the Commission, and reject Mr. Guerrero's argument that Pacific Telecom lacks the requisite character qualifications to be a Commission licensee.

### C. Foreign Ownership Review

21. In this section, we address issues relevant to our public interest inquiry under the foreign ownership provisions of section 310 of the Act. Pacific Telecom requests a declaratory ruling, pursuant to section 310(b)(4) of the Act, that the public interest would be served by allowing 100 percent indirect foreign ownership of GTE Pacifica, a common carrier radio licensee, by Ricardo C. Delgado and Jose Ricardo Delgado, each of whom is a citizen of the Philippines. Pacific Telecom also seeks advance authorization for an additional 2 percent indirect ownership by unidentified foreign individuals, to take into account potential future foreign ownership interests attributable to a proposed trust arrangement to be established for company employees after the proposed transfer of control is consummated. Based on the record before us, we conclude that it would not serve the public interest to deny the application to transfer control of the common carrier radio licenses held by GTE Pacifica because of indirect foreign ownership interests that would be held by the Delgados through their foreign subsidiary holding company, Prospector. We therefore grant the Petition for Declaratory Ruling under section 310(b)(4) of the Act to the extent specified below.<sup>70</sup>

<sup>66</sup> *Herman Guerrero's Letter* at 1-2.

<sup>67</sup> *Herman Guerrero's Letter* at 1. Specifically, according to Mr. Guerrero, the April 17, 2003 issue of the Marianas Variety quotes Mr. Delgado as saying, "127 employees of Verizon will become owners of the company under the purchase deal. . . . This has never happened before in the CNMI, where employees would also own the companies they work for." *Id.*

<sup>68</sup> *See Joint Opposition* at ii.

<sup>69</sup> *See Petition for Declaratory Ruling* at 3 n.6 (stating that, once the transfer of control is completed, Prospector intends to create a trust fund for MTC employees and to assign 10% of Pacific Telecom's stock to that trust).

<sup>70</sup> The proposed transaction does not raise foreign ownership issues under section 310(a) or (b)(1)-(3) of the Act. Section 310(a) prohibits any radio license from being "granted to or held by" a foreign government or its representative. *See* 47 U.S.C. § 310(a). No foreign government or its representative would hold any of the subject radio licenses. Section 310(b)(1)-(2) of the Act prohibits common carrier, broadcast, aeronautical fixed or

(continued....)

## 1. Legal Standard for Foreign Ownership of Radio Licensees

22. Section 310(b)(4) of the Act establishes a 25 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 not inconsistent with the public interest.<sup>71</sup> The calculation of foreign ownership interests under section 310(b)(4) is a two-pronged analysis in which the Commission examines separately the equity interests and the voting interests in the licensee's parent.<sup>72</sup> The Commission calculates the equity interest of each foreign investor in the parent and then aggregates these interests to determine whether the sum of the foreign equity interests exceeds the statutory benchmark. Similarly, the Commission calculates the voting interest of each foreign investor in the parent and aggregates these voting interests.<sup>73</sup> The presence of aggregated alien equity or voting interests in a common carrier radio licensee's parent in excess of 25 percent triggers the applicability of section 310(b)(4)'s statutory benchmark.<sup>74</sup> Once the benchmark is exceeded, section 310(b)(4) directs the Commission to determine whether the “public interest will be served by the refusal or revocation of such license.”<sup>75</sup>

23. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from World Trade Organization (“WTO”) Member countries in U.S. common carrier and aeronautical fixed and en route licensees.<sup>76</sup> 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

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aeronautical en route radio licenses from being “granted to or held by” aliens, or their representatives, or foreign corporations. See 47 U.S.C. § 310(b)(1), (b)(2). According to the Transfer Applications, no alien, representative, or foreign corporation will hold any of the common carrier licenses. Additionally, because the proposed transaction does not involve direct foreign investment in GTE Pacifica, it does not trigger section 310(b)(3) of the Act, which places a 20% limit on direct alien, foreign corporate or foreign government ownership of entities that hold common carrier, broadcast and aeronautical fixed or en route Title III licenses. See 47 U.S.C. § 310(b)(3). See *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9804-9809, ¶¶ 38-48 (issues related to indirect foreign ownership of common carrier licensees are addressed under section 310(b)(4)). Accordingly, we find that the proposed transaction is not inconsistent with the foreign ownership provisions of section 310(a) or 310(b)(1)-(3) of the Act.

<sup>71</sup> See 47 U.S.C. § 310(b)(4) (providing that “No broadcast or common carrier or aeronautical en route or aeronautical fixed 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 would be served by the refusal or revocation of such license.”).

<sup>72</sup> See *BBC License Subsidiary L.P.*, Memorandum Opinion and Order, FCC 95-364, 10 FCC Rcd 10968, 10973, ¶ 22 (1995) (*BBC License Subsidiary*).

<sup>73</sup> See *id.* at 10972, ¶ 20, 10973-74, ¶¶ 22-25.

<sup>74</sup> See, e.g., *Sprint Corporation, Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended*, Declaratory Ruling and Order, FCC 95-498, 11 FCC Rcd 1850, 1857, ¶ 47 (1995) (*Sprint Ruling*). See also *BBC License Subsidiary*, 10 FCC Rcd at 10972-73, ¶ 25.

<sup>75</sup> See *Sprint Ruling*, 11 FCC Rcd at 1857, ¶ 47 (quoting section 310(b)(4)). It is the licensee's obligation to inform the Commission before its indirect foreign ownership exceeds the 25% benchmark set forth in section 310(b)(4). See *Fox Television Stations, Inc.*, Order, FCC 95-188, 10 FCC Rcd 8452, 8474, ¶ 52 (1995).

<sup>76</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23896, ¶ 9, 23913, ¶ 50, and 23940, ¶¶ 111-12.

investment generally raises no competitive concerns.<sup>77</sup> In evaluating an applicant's request for approval of foreign ownership interests under section 310(b)(4), the Commission uses a "principal place of business" test to determine the nationality or "home market" of foreign investors.<sup>78</sup>

24. In light of the policies adopted in the *Foreign Participation Order*, we begin our evaluation of the proposed transaction under section 310(b)(4) by calculating the proposed attributable foreign equity and voting interests in Pacific Telecom, the U.S. parent of GTE Pacifica. We then determine whether these foreign interests properly are ascribed to individuals or entities that are citizens of, or have their principal places of business in, WTO Member countries. The Commission has stated, in the *Foreign Participation Order*, that it will deny an application if it finds that more than 25 percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding.<sup>79</sup>

## 2. Attribution of Foreign Ownership Interests

25. In this case, 100 percent of the equity and voting interests in Pacific Telecom would be held by and through Prospector, a holding company incorporated in the Cayman Islands, a territory of the United Kingdom, which, in turn, is a WTO Member country.<sup>80</sup> However, the investment principals,

<sup>77</sup> See *id.* at 23896, ¶ 9, 23913, ¶ 50, 23940, ¶ 111-12.

<sup>78</sup> To determine a foreign entity's home market for purposes of the public interest determination under section 310(b)(4), the Commission will identify and balance the following factors: (1) the country of a foreign entity's incorporation, organization or charter; (2) the nationality of all investment principals, officers, and directors; (3) the country in which the world headquarters is located; (4) the country in which the majority of the tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which the foreign entity derives the greatest sales and revenues from its operations. See *Foreign Participation Order*, 12 FCC Rcd at 23941, ¶ 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, FCC 95-475, 11 FCC Rcd 3873, 3951, ¶ 207 (1995)). For examples of cases applying the five-factor "principal place of business" test, see *Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor, and Telenor Satellite Mobile Services, Inc., and Telenor Satellite, Inc., Assignee, Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses, Experimental Licenses, and Earth Station Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, FCC 01-369, 16 FCC Rcd 22897 (2001), *erratum*, DA 02-266, 17 FCC Rcd 2147 (Int'l Bur. 2002), *recon. denied*, FCC 02-207, 17 FCC Rcd 14030 (2002) (*Telenor Order*); *Space Station System Licensee, Inc., Assignor, and Iridium Constellation LLC, Assignee, et al.*, Memorandum Opinion, Order and Authorization, DA 02-307, 17 FCC Rcd 2271 (Int'l Bur. 2002).

<sup>79</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23946, ¶ 131. In addition to holding common carrier cellular radiotelephone and common carrier satellite earth station licenses, GTE Pacifica holds a non-common carrier satellite earth station license. We note that section 310(b)(4) governs only common carrier, broadcast, and aeronautical en route or fixed radio licenses. Therefore, we do not consider here the proposed foreign ownership as it relates to the non-common carrier earth station license. Our findings in this Order and Authorization with respect to competitive effects, our public interest determination for the common carrier licenses, and the Executive Branch's resolution of any national security and law enforcement concerns, collectively suffice to resolve any public interest implications, outside of our review under section 310(b)(4), to the extent there are any, for the non-common carrier license.

<sup>80</sup> See *Petition for Declaratory Ruling* at 7-8 (citing *Cable & Wireless USA, Inc., Application for Authority to Operate as a Facilities-Based Carrier in Accordance with the Provisions of Section 63.18(e)(4) of the Rules Between the United States and Bermuda*, Order, Authorization and Certificate, DA 00-311, 15 FCC Rcd 3050, 3052, ¶ 7 (Int'l Bur. 2000) (relying on an opinion provided by the U.S. Department of State to conclude that the 1994 Marrakesh Agreement Establishing the World Trade Organization applies to the United Kingdom's overseas territories).

directors and officers of Prospector are from the Philippines; the world headquarters of its owners is located in the Philippines; a majority of the owners' tangible property is in the Philippines; and the owners derive a majority of their sales and revenues from operations in the Philippines.<sup>81</sup> Therefore, we find that, on balance, Prospector principally conducts its business in the Philippines, also a WTO Member country.

26. Because Prospector's principal place of business is in a WTO Member country, Prospector is entitled to a rebuttable presumption that its proposed foreign ownership of Pacific Telecom, the U.S. parent of the Title III licensee, does not pose a risk to competition in the United States that would justify denial of the Transfer Applications.<sup>82</sup> As explained more fully in Section III.D, we find no evidence in the record of any competitive concerns that would rebut this presumption.

27. The Governor opposes the proposed indirect foreign ownership and control of MTC and GTE Pacifica "given the national security and public safety issues raised by [the CNMI's] distant and strategic geographic location."<sup>83</sup> In particular, the Governor argues that prior orders cited by the Applicants in support of the proposed indirect foreign ownership fail to justify a grant of the Petition for Declaratory Ruling.<sup>84</sup> The Governor claims that, although the Commission approved 100 percent indirect foreign ownership in those orders, most involved the competitive continental United States where "compelling national security and public safety concerns did not exist."<sup>85</sup> We reject the Governor's contentions and deal with this aspect of the transaction in Section III.F below.

28. We conclude that it will not serve the public interest to prohibit the proposed indirect foreign ownership of GTE Pacifica in excess of the 25 percent statutory benchmark set by section 310(b)(4) of the Act. Specifically, this ruling permits GTE Pacifica to be owned indirectly by Prospector (up to and including 100 percent of the equity and voting interests) and by Prospector's shareholders Ricardo C. Delgado (up to and including 60 percent of the equity and voting interests) and Jose R. Delgado (up to and including 40 percent of the equity and voting interests). In addition, Pacific Telecom seeks advanced authorization for two percent indirect foreign ownership by foreign individuals in relation to a trust arrangement being established for MTC and GTE Pacifica employees.<sup>86</sup> In accordance with our usual policy, we will permit Pacific Telecom to accept up to and including an aggregate 25 percent indirect equity and/or voting interest from other foreign investors without obtaining prior Commission approval under section 310(b)(4) of the Act.<sup>87</sup>

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<sup>81</sup> See *Petition for Declaratory Ruling* at 8.

<sup>82</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23913-14, ¶ 51.

<sup>83</sup> *Governor of CNMI's Opposition* at 29. The Governor argues that there is little competition in the CNMI and, therefore, without such competitive alternatives, foreign ownership of MTC and GTE Pacifica poses significant national security and public safety risks. See *id.* at 21-29. Additionally, Herman Guerrero opposes the proposed indirect foreign ownership because CNMI/U.S. citizens will hold no significant ownership interests in Pacific Telecom. See *Herman Guerrero's Letter* at 2. See also *CNMI House of Representatives' Letter* at 2 (generally opposing foreign ownership of the CNMI's telecommunications network).

<sup>84</sup> *Governor of CNMI's Opposition* at 30-31.

<sup>85</sup> *Id.*

<sup>86</sup> See *Petition for Declaratory Ruling* at 15-16.

<sup>87</sup> See *XO Communications Inc. for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Memorandum Opinion, Order and Authorization, DA 02-2512, 17 FCC Rcd 19212, 19223 n.77 (Int'l Bur., WTB and WCB 2002). In doing so, we reject the Governor's argument that we need more information about the trust arrangement before making a decision. See *Governor of CNMI's Opposition* at 11- (continued....)

## D. Competitive Effects

29. Our public interest analysis includes an evaluation of the competitive effects of the proposed transaction in both the relevant product and geographic markets. For telecommunications service providers, the Commission has determined that the relevant product and geographic markets can include both U.S. domestic telecommunications services markets and telecommunications services between the United States and foreign points.<sup>88</sup> We determine that the proposed transfer will not likely result in harm to competition in any relevant market and will likely yield tangible public interest benefits.

### 1. Competition in the Relevant Product Markets in the CNMI

30. Based on our review of the record, we conclude that the proposed transfer is not likely to reduce the number of potential competitors in any relevant product or geographic market served by MTC or GTE Pacifica. MTC serves the local exchange market and GTE Pacifica serves the domestic and international telecommunications services market in the CNMI through the use of cellular radiotelephone, terrestrial fiber optic, satellite, and submarine cable facilities.

31. We find that acquisition of MTC by Pacific Telecom does not pose any risk to competition in the local services market in the CNMI. In particular, the proposed transaction involves a transfer of control of one local exchange carrier with a relatively small number of lines in a very limited geographic area, the CNMI, to an entity that does not currently compete or, based on our review of the record, intend to enter into the relevant local market on its own.<sup>89</sup> There is no evidence in the record that the proposed transaction would diminish local competition, or reduce the possibility that competitive local exchange carriers will enter the local services market in the future.<sup>90</sup> In fact, Pacific Telecom's entrance into the market should result in continued service without interruption.<sup>91</sup> Thus, given the present

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12. Based on our review of the record, we can make a determination regarding this transaction without further information about the trust arrangement.

<sup>88</sup> See, e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9823, ¶ 78, 9825, ¶ 81, 9833, ¶ 97. See also *Application of WorldCom, Inc., and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, FCC 98-225, 13 FCC Rcd 18025 (1998) (*WorldCom/MCI Order*); *Lockheed Martin Corporation, Comsat Governmental Systems, LLC, and Comsat Corporation, Applications for Transfer of Control of Comsat Corporation and Its Subsidiaries, Licensees of Various Satellite, Earth Station, Private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214 Authorizations*, Order and Authorization, File Nos. SAT-T/C-20000323-00078 and SAT-STA-20000323-00078, FCC 00-277, 15 FCC Rcd 22910, 22915, ¶ 16 (2000) (*Comsat/Lockheed Order*), *erratum*, DA 00-1789, 15 FCC Rcd 23506 (Int'l Bur. 2000), *recon. denied*, FCC 02-197, 17 FCC Rcd 13160 (2002); and *Application of General Electric Capital Corporation and SES Global S.A. for Consent to Transfer Control of Licenses and Authorizations Pursuant to Section 214(a) and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, DA 01-2100, 16 FCC Rcd 17575 (Int'l Bur. & WTB 2001), Supplemental Order, DA 01-2482, 16 FCC Rcd 18878 (Int'l Bur. & WTB 2001).

<sup>89</sup> Indeed, neither Prospector, Citadel, nor the Delgados hold any equity interests in any U.S. telecommunications common carrier. See *Petition for Declaratory Ruling* at 3-4, n.8; see also *Cellular Radiotelephone Service Application* Attach. C, FCC Ownership Disclosure Information for the Wireless Telecommunications Services.

<sup>90</sup> In particular, Pacific Telecom states that the local market is, and post-transaction will continue to be, open to competition. See *Joint Opposition* at 7.

<sup>91</sup> See generally *Petition for Declaratory Ruling* Attach. B, Pacific Telecommunications, Inc., a Pacific Powerhouse (Pacific Telecom Presentation) (indicating that the transfer of telecommunications operations in the CNMI from BANZHI to Pacific Telecom will be seamless).

market conditions, we conclude that the proposed transaction will not pose a risk of harm to local competition in the CNMI.

32. We also conclude that the proposed transfers of control will not harm competition in the domestic mobile telephony services market or the domestic and international long distance services markets. First, with respect to the domestic mobile telephony services market, the proposed transaction involves a transfer of control of GTE Pacifica's mobile telephone operations to an entity that does not provide domestic mobile services in the CNMI, or, based on our review of the record, intend to otherwise enter that market. Thus, the transaction will not increase GTE Pacifica's current market share in the domestic mobile telephony services market or result in the loss of a significant competitor. With regard to domestic and international long distance services, we agree with the Applicants that competition is not as minimal as the commenters suggest.<sup>92</sup> More than half of the long distance minutes originating in the CNMI are provided through other service providers.<sup>93</sup> Moreover, the transaction will not increase the concentration in these markets or result in the loss of a significant competitor because Pacific Telecom does not currently compete in, or, based on our analysis of the record, does not intend to enter into these markets on its own. With specific regard to international services, we find no evidence that the proposed transfers of control would adversely impact competition in any input market that is essential for the provision of international services, including the market for international transport services.

## 2. Rate Integration

33. The Governor and the CNMI House of Representatives contend that the Commission should deny the proposed transaction because it may reduce the availability of affordable telephone service to customers in the CNMI.<sup>94</sup> Specifically, the Governor argues that the proposed transaction would violate the public interest because, unlike the Transferor, which is affiliated with carriers providing service in U.S. states and territories, Pacific Telecom would not have other low-cost points with which it would be required to average the high costs of providing service to the CNMI as would otherwise be required by section 254(g) of the Act, thus allowing the Transferee to raise long distance rates.<sup>95</sup>

34. Although the continuation of universal service is a goal the Commission considers in its public interest analysis, we reject these claims based on the record before us. In reaching our decision, we need not determine whether section 254(g) should be interpreted as a *de facto* requirement that transferees of long distance service in high cost areas must provide telecommunications service in other U.S. territories to ensure the preservation of rate integration. Rather, we consider the impact the transaction would have on universal service as part of our broader analysis as to whether the proposed

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<sup>92</sup> See, e.g., *Governor of CNMI's Opposition* at 22 (stating that MTC/GTE Pacifica is the dominant cellular, long distance, and Internet provider, and there is little overall competition).

<sup>93</sup> See *Joint Opposition* at 7 n.14.

<sup>94</sup> *Governor of CNMI's Opposition* at 31-34; *CNMI House of Representatives' Letter* at 2. See *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 19987 (stating that the public interest standard includes, *inter alia*, the broad aim of "preserving and advancing universal service").

<sup>95</sup> *Governor of CNMI's Opposition* at 32-34 (stating that after the implementation of rate integration, MTC had reduced outbound long distance calling rates to the mainland substantially and that the loss of rate integration would harm consumers and businesses, and set back the close commercial ties which integrated rates have facilitated between the Commonwealth and mainland U.S.). Pursuant to the Commission's rate integration policy, a provider of interstate interexchange services is required to charge a rate in one U.S. state that is no higher than the rate it charges in other U.S. states. 47 C.F.R. § 64.1801(b); see also *Rate Integration Order*, 11 FCC Rcd at 9588-90, ¶¶ 52-55.



transaction is in the public interest.<sup>96</sup> In this case, we believe that the proposed transaction will not necessarily raise long distance rates. We note that equal access will continue to be in place in the CNMI after closing of the transaction and that several other carriers currently provide long distance service in the CNMI.<sup>97</sup> In fact, the Applicants state that due to downward market pressure on rates, GTE Pacifica currently offers rates via Optional Calling Plans (“OCPs”) and Prepaid Cards that are lower than the integrated rates dictated by section 254(g) in order to maintain its 11 percent market share.<sup>98</sup> In doing so, Applicants note that presubscribed 1+ long distance calling constitutes only a small percentage of all originating long distance minutes, thereby highlighting the availability and competitiveness of alternative calling options.<sup>99</sup>

35. Second, after the completion of the proposed transaction, customers in the CNMI will continue to benefit from rate integration. Specifically, four carriers, including WorldCom,<sup>100</sup> which has almost 30 percent of the long distance market for calls originating in the CNMI,<sup>101</sup> provide interexchange service in both the CNMI and continental U.S., and thus their rates will remain integrated and serve as a competitive benchmark.<sup>102</sup> Moreover, we note that Pacific Telecom intends to sign a rate integration agreement to provide originating long distance service in the CNMI at a rate not exceeding “Verizon’s rate integrated long distance domestic message toll service rates for customer dialed direct station-to-station calls for a five year period.”<sup>103</sup> Based on the evidence in the record, we find that consumers have meaningful opportunities to choose a long distance provider and that sufficient market forces exist to ensure that competition will continue in the foreseeable future. Accordingly, we conclude that the competitive effects component of our public interest analysis has been satisfied.

#### **E. Dominant Carrier Safeguards**

36. As part of our public interest analysis under section 214(a) of the Act, we also consider

<sup>96</sup> See *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 19987 (stating that universal service is a goal the Commission considers in its public interest analysis, among many others).

<sup>97</sup> *Petition for Declaratory Ruling* at 12.

<sup>98</sup> *Joint Opposition* at 9, Attach. D, Summary of Current Rate Integrated Rates, Optional Calling Plan (OCP) Rates and Prepaid Rates for Calls Originating in the CNMI; *Petition for Declaratory Ruling* at 12, Attach. C Long Distance Market Share in the CNMI for Presubscribed 1+ Originating Minutes and for Originating Access Minutes. We note that the Governor asserts that Pacific Telecom has monopoly control over the long distance market. *Governor of CNMI’s Opposition* at 22-23. However, we are persuaded by data provided by the Applicants that the transferor’s market share of presubscribed 1+ originating minutes is 71.28% and, as stated above, for all originating minutes is only 17.11%. *Joint Opposition*, Attach. C, Long Distance Market Share in the CNMI for Presubscribed 1+ Originating Minutes and for Originating Access Minutes (CNMI Long Distance Market Summary for 2003). Based on the record, we reject the Governor’s criticism of the market share data provided by Pacific Telecom. *Governor of CNMI’s Opposition* at 23. Specifically, the Governor provides no specific data or persuasive rationale on which to base a conclusion that the five months of data Pacific Telecom provides are unreliable or insufficient.

<sup>99</sup> *Petition for Declaratory Ruling* at 12, 13.

<sup>100</sup> WorldCom has recently been renamed MCI. See, e.g., Thor Olavsrud, *Judge OKs WorldCom Settlement*, ASP News, July 7, 2003, available at [http://www.aspnews.com/news/weekly/article/0,,4271\\_2232051,00.html](http://www.aspnews.com/news/weekly/article/0,,4271_2232051,00.html).

<sup>101</sup> See CNMI Long Distance Market Summary for 2003.

<sup>102</sup> *Petition for Declaratory Ruling* at 12-13.

<sup>103</sup> *Id.* at 11. Given our competitive analysis above and the evidence in the record, we need not base our conclusion on on-going negotiations between the parties and thus reject claims that we should include the agreement in the record or condition our approval on a requirement that Pacific Telecom provide service at a set or benchmarked rate for any period of time immediately following the transaction. See *Governor of CNMI’s Opposition* at 32; see also Governor of Guam’s Comments at 2-3.

whether, upon consummation of the proposed transfers of control, the international section 214 authorization holder, in this case, GTE Pacifica, will become affiliated with a foreign carrier that has market power on the foreign end of a U.S. international route to be served by the international section 214 authorization holder.<sup>104</sup> In addition, under sections 1.767(a)(8) and (a)(11) of the Commission's rules, a submarine cable licensee that proposes to transfer control of an interest in a submarine cable landing license granted pursuant to the Cable Landing License Act and Executive Order 10530 is required to disclose if it will become affiliated with a foreign carrier as a result of the transfer of control.<sup>105</sup> Under rules adopted in the *Foreign Participation Order*, the Commission classifies a U.S. carrier as "dominant" on a particular route if it is, or is affiliated with, a foreign carrier that has market power on the foreign end of that route.<sup>106</sup> With respect to submarine cable licensees, the Commission similarly applies competitive safeguards to a licensee that is, or is affiliated with, a carrier with market power in foreign input markets that could result in harm to competition in the U.S. market.<sup>107</sup>

37. GTE Pacifica will continue to qualify for non-dominant classification on all authorized U.S. international routes because Pacific Telecom certifies that it is not a foreign carrier and is not affiliated with any foreign carrier.<sup>108</sup> Accordingly, and taking into account our findings below with respect to national security, law enforcement, foreign policy and trade policy concerns, we conclude that the proposed transfers of control of the international section 214 authorizations and submarine cable landing license from BANZHI to Pacific Telecom are consistent with our foreign affiliation rules.

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<sup>104</sup> 47 U.S.C. § 214(a).

<sup>105</sup> 47 C.F.R. §§ 1.767(a)(8), (a)(11); *see also* 47 U.S.C. §§ 34-39; Exec. Order No. 10530, § 5(a), *reprinted as amended* in 3 U.S.C. § 301.

<sup>106</sup> *See Foreign Participation Order*, 12 FCC Rcd at 23987, ¶ 215, 23991-99, ¶¶ 221-39. A carrier classified as dominant on a particular U.S. international route due to an affiliation with a foreign carrier that has market power on the foreign end of the route is subject to specific international dominant carrier safeguards set forth in section 63.10 of the rules. *See* 47 C.F.R. § 63.10(c), (e). These safeguards are designed to address the possibility that a foreign carrier with control over facilities or services that are essential inputs for the provision of U.S. international services could discriminate against rivals of its U.S. affiliates (*i.e.*, vertical harms). In the *Foreign Participation Order*, the Commission concluded that these safeguards, in conjunction with generally applicable international safeguards, are sufficient to protect against vertical harms by carriers from WTO Member countries in virtually all circumstances. In the exceptional case where an application poses a very high risk to competition in the U.S. market, and where the standard safeguards and additional conditions would be ineffective, the Commission reserves the right to deny the application. *See Foreign Participation Order*, 12 FCC Rcd at 23913-14, ¶ 51. In circumstances where an affiliated foreign carrier possesses market power in a non-WTO Member country, the Commission applies the ECO test as part of its public interest inquiry under section 214(a). *See Foreign Participation Order*, 12 FCC Rcd at 23944, ¶ 124.

<sup>107</sup> *See Submarine Cable Report and Order*, 16 FCC Rcd at 22180, ¶ 25. Relevant foreign carrier input markets include those facilities or services necessary for the landing, connection, or operation of submarine cables. *See id.* at 22180, ¶ 23. In the *Submarine Cable Report and Order*, the Commission found that these competitive safeguards should be sufficient in all but the most exceptional of circumstances to detect and deter any anti-competitive behavior associated with market power in WTO Member markets where U.S.-licensed cable systems land and operate. *See id.*; *see also id.* at 22174, ¶ 12, n. 32 (noting that pursuant to the *Foreign Participation Order*, 12 FCC Rcd at 23944-46, ¶¶ 124-130, an applicant proposing to acquire an interest in a U.S. cable landing license that is affiliated with a foreign carrier that possesses market power in a non-WTO destination market of the cable is required to meet the ECO test as a prerequisite to grant of the cable landing license application). *See also* 47 C.F.R. § 1.767 Note ("The terms 'affiliated' and 'foreign carrier,' as used in this section, are defined as in § 63.09 of this chapter except that the term 'foreign carrier' also shall include any entity that owns or controls a cable landing station in a foreign market.").

<sup>108</sup> *International Section 214 Application* at 7-8. A U.S. carrier is presumptively classified as non-dominant if it has no affiliations with, and itself is not, a foreign carrier in a particular country to which it provides service. *See* 47 C.F.R. § 63.10(a)(1).

**F. National Security, Law Enforcement, Foreign Policy, and Trade Policy Concerns**

38. When analyzing a transfer of control or assignment application in which foreign investment is an issue, we also consider national security, law enforcement, foreign policy or trade policy concerns presented. If the Executive Branch raises national security, law enforcement, foreign policy or trade policy concerns, we accord deference to its expertise on such matters.<sup>109</sup> As noted above, these concerns are addressed as part of our public interest analysis.

39. In their Petition for Declaratory Ruling, the Applicants state that, prior to the filing of the Transfer Applications, Pacific Telecom and its representatives approached certain Executive Branch agencies regarding the transaction.<sup>110</sup> The Applicants also request, with the concurrence of the Executive Branch agencies, that the Commission defer action on the Transfer Applications until issues identified by the Executive Branch agencies “have or have not been resolved” and appropriate action is requested.<sup>111</sup> The Department of Justice and the Federal Bureau of Investigation (collectively referred to as “DOJ/FBI”) now advise that the Executive Branch agencies involved here have no objection to a grant of the Transfer Applications or the Petition for Declaratory Ruling provided that the Commission conditions the grant on compliance with the terms of a network security agreement between the Department of Justice, Federal Bureau of Investigation, Department of Defense and Department of Homeland Security, and Pacific Telecom and MTC (“Pacific Telecom/Executive Branch Agreement” or “Agreement”). Specifically, on October 10, 2003, the DOJ/FBI filed, with the concurrence of the Department of Defense and Department of Homeland Security, a Petition to Adopt Conditions to Authorizations and Licenses (“Petition to Adopt Conditions”) that attaches the Pacific Telecom/Executive Branch Agreement.<sup>112</sup>

40. The Petition to Adopt Conditions states that the Pacific Telecom/Executive Branch Agreement “is intended to ensure that the Department of Justice, Federal Bureau of Investigation, Department of Defense, the Department of Homeland Security, and other entities with responsibility for enforcing the law, protecting the national security and preserving public safety can proceed in a legal, secure and confidential manner to satisfy these responsibilities.”<sup>113</sup> The Pacific Telecom/Executive Branch Agreement includes provisions regarding access to and protection of facilities, visitation, information storage and security, disputes, audits, reports, notice, and treatment of information submitted by Pacific Telecom to the Executive Branch agencies. In particular, the Agreement requires, *inter alia*, (1) the domestic communications companies to comply with the U.S. legal process, Executive Orders and National Security and Emergency Preparedness rules, regulations and orders,<sup>114</sup> (2) the domestic communications companies to take reasonable measures to prevent improper use of or access to the

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<sup>109</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23918-21, ¶¶ 59-66.

<sup>110</sup> *Petition for Declaratory Ruling* at 14.

<sup>111</sup> See *id.* at 14-15.

<sup>112</sup> See generally, *Petition to Adopt Conditions*, IB Docket No. 03-115 (filed October 10, 2003). Appendix B to this Order and Authorization attaches the Pacific Telecom/Executive Branch Agreement. We have received no comments or oppositions to the Petition to Adopt Conditions or the Pacific Telecom/Executive Branch Agreement.

<sup>113</sup> See *id.* at 5. As stated in the Petition to Adopt Conditions, “[d]uring the course of discussions between the DOJ, FBI and DOD and the Applicants, the U.S. Department of Homeland Security was established and became a member of the Committee on Foreign Investment in the United States.” *Id.*

<sup>114</sup> See Pacific Telecom/Executive Branch Agreement at Art. 2.3. See also *id.* at Art. 1.11 (which defines “domestic communications company” to mean all subsidiaries, branches, departments, divisions and other components of MTC, and any other entity over which MTC exercises *de facto* or *de jure* control) and at Art. 1.6 (defining *de facto* and *de jure* control).

“domestic communications infrastructure” or to “data centers;”<sup>115</sup> and (3) MTC to promptly notify the Department of Justice, Federal Bureau of Investigation, Department of Defense and Department of Homeland Security of any foreign entity or individual, other than Pacific Telecom, that obtains or likely will obtain a direct or indirect ownership interest above 10 percent in MTC or a domestic communications company, or gains or likely will gain “control” of MTC or a domestic communications company.<sup>116</sup>

41. In assessing the public interest, we consider the record and accord the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues.<sup>117</sup> As the Commission stated in the *Foreign Participation Order*, foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch.<sup>118</sup> Although the Commission presumes that an application from a WTO Member applicant does not pose a risk of anti-competitive harm that would justify denial of the application, the Commission does not presume that an application poses no national security, law enforcement, foreign policy, or trade concerns.<sup>119</sup> In the context of this particular proceeding, we considered these concerns independent of our competition analysis, and, at the request of the Applicants, with the concurrence of the Executive Branch agencies, we deferred action on the Transfer Applications until resolution of the Executive Branch agencies’ concerns. As indicated in the Petition to Adopt Conditions, the Executive Branch agencies have addressed their concerns with respect to national security or law enforcement concerns through the negotiation of the Pacific Telecom/Executive Branch Agreement. We recognize that, separate from our licensing process, Pacific Telecom has entered into the Pacific Telecom/Executive Branch Agreement, and expressly states that the Department of Justice, Federal Bureau of Investigation, Department of Defense, and Department of Homeland Security will not object to grant of the pending Transfer Applications, provided that the Commission conditions grant of the Transfer Applications and the Petition for Declaratory Ruling on compliance with the Pacific Telecom/Executive Branch Agreement.<sup>120</sup> The Executive Branch has not otherwise commented in this proceeding.

42. In addition, the Governor and the CNMI House of Representatives raise public safety and/or national security concerns in this proceeding.<sup>121</sup> The Governor argues that 100 percent foreign ownership of the CNMI’s telecommunications network would pose national security and public safety

<sup>115</sup> See *id.* at Art. 3.1. The Agreement requires, *inter alia*, MTC’s board of directors (“MTC Board”) to establish a security committee to oversee security matters. See *id.* at Art. 3.15. Half (50%) of the MTC Board’s members nominated by Pacific Telecom must be security directors, that is, directors who are U.S. citizens, have or acquire U.S. security clearances, and satisfy the independent director requirements of the New York Stock Exchange. See *id.* at Art. 3.15-3.16. Within 30 days of receiving notice of the proposed appointment of an individual as a security director, the Department of Justice, Federal Bureau of Investigation, Department of Defense, or Department of Homeland Security may object to the appointment, requiring rescission of the appointment and appointment of another candidate. See *id.* at Art. 3.16. See also *id.* at Art. 1.5 (defining “data centers”) and at Art. 1.12 (defining “domestic communications infrastructure”).

<sup>116</sup> See *id.* at Art. 5.2. See also *id.* at Art. 1.3 (which defines “control” to include the power to reach certain decisions as well as *de facto* and *de jure* control).

<sup>117</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23919-21, ¶¶ 61-66.

<sup>118</sup> See *id.* at 23919, ¶ 62.

<sup>119</sup> See *id.* at 23920-21, ¶ 65.

<sup>120</sup> See Petition to Adopt Conditions at 5.

<sup>121</sup> See *CNMI House of Representatives’ Letter* at 2 (stating that “foreign ownership of the [CNMI] telecommunications infrastructure is antithetical to the efforts by the United States to ensure the security of our borders and our communications systems . . . in terms of defense security . . .”); *Governor of CNMI’s Opposition* at 17-31; *Governor’s Reply to August 15 Letter* at 3.

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.<sup>122</sup> As explained above, the Executive Branch’s national security, law enforcement and public safety concerns are addressed by the Agreement and the Commission’s conditioning of the grant of the Transfer Applications and Petition for Declaratory Ruling on compliance with the Agreement. As further explained, we accord deference to the expertise of the Executive Branch on national security, law enforcement, foreign policy or trade policy issues that it raises in a particular proceeding. Therefore, in view of the Executive Branch’s scrutiny of the transaction, and the resolution of its concerns, we find no basis in the arguments raised by the Governor or CNMI House of Representatives to deny the Transfer Applications or Petition for Declaratory Ruling as conditioned.

43. We note that the Pacific Telecom/Executive Branch 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. Notwithstanding these concerns about the broader implications of the Pacific Telecom/Executive Branch Agreement, we see no reason to modify or disturb the Agreement. Therefore, in accordance with the request of the DOJ/FBI, in the absence of any objection from the Applicants, and given the discussion above, we condition our grant of the Transfer Applications on compliance with the Pacific Telecom/Executive Branch Agreement.

#### **G. Public Interest Benefits**

44. We find that granting the Transfer Applications will likely yield public interest benefits because Pacific Telecom plans to provide expanded and innovative telecommunications services to consumers in the CNMI and to invest in equipment and infrastructure. The Governor attempts to argue that the proposed transaction will result in a reduction of services currently provided by BANZHI.<sup>123</sup> We reject this argument. Pacific Telecom has represented that it intends to continue providing existing telecommunications services as well as expand and increase investment in those services in the CNMI.<sup>124</sup> For instance, according to Pacific Telecom, it plans to: (1) introduce third generation wireless services; (2) increase the capacity and coverage of wireless services; (3) rollout broadband services on a mass market basis;<sup>125</sup> (4) increase broadband capacity to support such services as video on demand; and (5) compete with Guam as a regional hub by investing in fiber optic capacity from the continental United States.<sup>126</sup> In addition, Pacific Telecom represents that it intends to expand wireline services and retain and further develop the existing employee base.<sup>127</sup> Pacific Telecom also states that the public switched telephone network will continue to operate at a 99.9 percent reliability rate and will be upgraded as necessary to keep it “state of the art.”<sup>128</sup> As a result, customers in the CNMI should continue to have reliable access to existing services while likely having access to improved and/or new services. Thus, we

<sup>122</sup> *Governor of the CNMI’s Opposition* at 21-30; *see also Governor’s Reply to August 15 Letter* at 3.

<sup>123</sup> *See, e.g., Governor of CNMI’s Opposition* at 31.

<sup>124</sup> *Petition for Declaratory Ruling* at 10.

<sup>125</sup> *Id.* at 10-11.

<sup>126</sup> *Petition for Declaratory Ruling* Attach. B, Pacific Telecommunications, Inc., a Pacific Powerhouse at 4 (Pacific Telecom Presentation).

<sup>127</sup> *Petition for Declaratory Ruling* at 10-11, Pacific Telecom Presentation at 4. Pacific Telecom projects that capital expenditures will be \$16.1 million. *See Petition for Declaratory Ruling* at 11.

<sup>128</sup> *Id.*, Pacific Telecom Presentation at 4.

find that grant of the Transfer Applications will serve the public interest, convenience and necessity.

#### IV. REQUEST FOR HEARING

45. We deny the Governor's request to designate the Transfer Applications for an evidentiary hearing pursuant to sections 309(d) and 214(b) of the Act to determine whether approval of the transfer of control request would serve the public interest.<sup>129</sup> Parties challenging an application to transfer control by means of a petition to deny and seeking a hearing on the matter must satisfy a two-step test established in section 309(d).<sup>130</sup> A protesting party seeking to compel an evidentiary hearing must: (1) allege specific facts demonstrating that "a grant of the application would be *prima facie* inconsistent with [the public interest],"<sup>131</sup> and (2) present "a substantial and material question of fact."<sup>132</sup> If the Commission concludes that the protesting party has met both prongs of the test, or if it cannot, for any reason, find that grant of the application would serve the public interest, the Commission must designate the application for a hearing in accordance with section 309(e) of the Act.<sup>133</sup>

46. In evaluating whether a petitioner has satisfied the two-part test established in section 309(d), the D.C. Circuit has indicated that where petitioners assert only "legal and economic conclusions concerning market structure, competitive effect, and the public interest," such assertions "manifestly do not" require a live hearing.<sup>134</sup> Moreover, in determining whether the specific claims of a petitioner raise substantial and material questions of fact, "the Commission may consider the entire record, weighing the petitioner's evidence against facts offered in rebuttal."<sup>135</sup> The determination as to the adequacy of the record is, in the first instance, a decision that must be made by the Commission in light of its public interest responsibility.<sup>136</sup>

47. The Governor alleges that he has set forth a *prima facie* case pursuant to section 309(d)(1) because Pacific Telecom has failed to demonstrate that it possesses the requisite financial and technical qualifications; Pacific Telecom's foreign ownership of the telecommunications facilities in the CNMI poses significant national security and public safety concerns; rate integration may be compromised in the CNMI; and Pacific Telecom made intentional misrepresentations and omissions with

<sup>129</sup> See *Governor of CNMI's Opposition* at iii; *Governor's Reply to Joint Opposition* at 1-2; *Governor's Reply to July 18 Letter* at 1-3; *Governor's Reply to August 15 Letter* at 5. On October 20, 2003, the Governor also requested a 14-day extension of time (until November 3, 2003) to potentially submit information from the Philippine government regarding, *inter alia*, the operating record of ISLACOM and the Delgados in the Philippines. See *Governor's October 20 Letter*. Because this Order and Authorization has been released after the 14-day time period, we consider this request moot.

<sup>130</sup> 47 U.S.C. § 309(d).

<sup>131</sup> 47 U.S.C. § 309(d)(1); *Gencom Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); see *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1562 (D.C. Cir. 1988) (*Astroline*).

<sup>132</sup> 47 U.S.C. § 309(d)(2); *Gencom*, 832 F.2d at 181; see *Astroline*, 857 F.2d at 1562.

<sup>133</sup> 47 U.S.C. § 309(e). See also *WorldCom/MCI Order*, 13 FCC Rcd at 18139-40, ¶ 202.

<sup>134</sup> *SBC Communications, Inc. v. FCC*, 56 F.3d 1484, 1496-97 (D.C. Cir. 1995) (quoting *United States v. FCC*, 652 F.2d at 89-90) (affirming the Commission's decision in the *AT&T/McCaw Order* not to hold a full evidentiary hearing before approving the merger). See *AT&T/McCaw Order*, 9 FCC Rcd 5836 at 5927-28, ¶¶ 172-74.

<sup>135</sup> *Astroline*, 857 F.2d at 1561. Ultimately the Applicants bear the burden of proof to demonstrate, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest. See, e.g., *WorldCom/MCI Order*, 13 FCC Rcd at 18031-32, ¶ 10, 18144-45, ¶ 209.

<sup>136</sup> *United States v. FCC*, 652 F.2d at 90-91.

regard to the activities of its former partner from the prior proceeding.<sup>137</sup> The Governor also argues that, if the Transfer Applications are not denied, a hearing should be granted as a matter of right pursuant to section 1.763(b) of the Commission's rules and section 214(b) of the Act.<sup>138</sup>

48. We conclude that the Governor has failed to raise a substantial and material question of fact that would require an evidentiary hearing under section 309(d). The issues raised by the Governor involve primarily legal and economic conclusions concerning market structure, competitive effect, and the public interest, including the potential impact of the proposed transfers of control on national security and law enforcement. Where the Governor has drawn into dispute facts relevant to Pacific Telecom's basic qualifications, we find his assertions speculative and not substantially supported by the evidence.<sup>139</sup> Our review of the entire record, including the multiple filings by the Governor and the confidential material we have inspected, convinces us that we have sufficient evidence to determine, without conducting an evidentiary hearing, that the grant of the Transfer Applications serves the public interest, convenience and necessity. We also agree with Pacific Telecom that the Governor does not have a "right" to a hearing under section 214(b) of the Act and section 1.763(b) of the Commission's rules.<sup>140</sup> As the Commission noted in the *AT&T Order*, the term "heard" is not defined in section 214 or in the relevant legislative history, and a trial-type hearing is not required by the Administrative Procedures Act.<sup>141</sup> Accordingly, we deny the Governor's request for a hearing.

## V. CONCLUSION

49. Based on the foregoing findings, we conclude, pursuant to sections 214(a) and 310(d) of the Act, and section 2 of the Cable Landing License Act, that the proposed transfers of control are not likely to result in harm to competition in any relevant market and likely will result in public interest benefits. We also conclude, pursuant to section 310(b)(4) of the Act and the Commission's "open entry" standard for indirect investment from WTO Member countries in U.S. common carrier licensees, that it would not serve the public interest to prohibit the proposed indirect foreign ownership of GTE Pacifica, the Title III licensee. We also grant the Petition to Adopt Conditions filed by the Department of Justice and Federal Bureau of Investigation, with the concurrence of the Department of Defense and the Department of Homeland Security. This foreign ownership ruling permits GTE Pacifica to be owned indirectly by: Prospector (up to and including 100 percent of the equity and voting interests); Prospector's shareholders Ricardo C. Delgado (up to and including 60 percent equity and voting interests) and Jose R. Delgado (up to and including 40 percent equity and voting interests). In addition to these approved interests, GTE Pacifica may accept up to and including an aggregate 25 percent indirect equity and/or voting interest from other foreign investors, without seeking prior Commission approval under section

<sup>137</sup> See *supra* Section III.B.3.

<sup>138</sup> See *Governor's Reply to Joint Opposition* at 2; *Governor's Reply to July 18 Letter* at 1-2; *Governor's Reply to August 15 Letter* at 5. Section 214(b) requires a copy of the section 214 application to acquire common carrier lines to be sent to the "Governor of each State" in which the lines will be located and that those parties notified have a right to be heard. 47 U.S.C. § 214(b). Section 1.763(b) requires that a copy of the section 214 application be forwarded to the Secretary of Defense, Secretary of State and the Governor of each State that is affected and allows a hearing to be held if any of these parties "desires to be heard or if the Commission determines that a hearing should be held . . ." 47 C.F.R. § 1.763(b).

<sup>139</sup> See *supra* Section III.B.

<sup>140</sup> See *Response to Governor's August 1 Letter* at 1-3.

<sup>141</sup> See *American Telephone and Telegraph Company Acquisition of ITT Communications Services, Inc. Subsidiaries et. al.*, Memorandum Opinion and Order, DA 87-825, 2 FCC Rcd 3948, 3952, ¶¶ 22, 23 (1987) (*AT&T Order*). The Commission has allowed a hearing in "circumstances involving a conflict over material questions of fact where witness credibility is critical to resolving the controversy." *Id.* at 3952-53, ¶ 24.

310(b)(4). We emphasize that, as a Commission licensee, GTE Pacifica has an affirmative duty to monitor attributable foreign equity and voting interests and to calculate attributable interests consistent with the attribution principles enunciated by the Commission.

50. Accordingly, we approve the requested transfer of the international section 214 authorizations, the domestic section 214 authority, the cellular radiotelephone license, common carrier and non-common carrier satellite earth station licenses, and the submarine cable landing license listed in Appendix A, subject to the requirements and conditions specified in this Order and Authorization.

## VI. ORDERING CLAUSES

51. ACCORDINGLY, IT IS 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), and section 2 of the Cable Landing License Act, 47 U.S.C. § 35, and Executive Order 10530, the applications filed by Pacific Telecom and BANZHI in the above-captioned proceeding ARE GRANTED to the extent specified in this Order and Authorization.

52. IT IS FURTHER ORDERED that, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310 (b)(4), the Petition for Declaratory Ruling filed by Pacific Telecom IS GRANTED to the extent specified in this Order and Authorization.

53. 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), and section 2 of the Cable Landing License Act, 47 U.S.C. § 35, and Executive Order 10530, the Petition to Adopt Conditions to Authorizations and Licenses filed by the Department of Justice and the Federal Bureau of Investigation on October 10, 2003 IS GRANTED, and that consent to the transfer of control of the authorizations and licenses listed in Appendix A and grant of the referenced Petition for Declaratory Ruling are subject to compliance with the provisions of the Agreement between Pacific Telecom and MTC, and the Department of Justice, Federal Bureau of Investigation, Department of Defense and Department of Homeland Security dated October 6, 2003 and attached hereto as Appendix B, which Agreement is designed to address the national security, law enforcement, and public safety issues of the Department of Justice, Federal Bureau of Investigation, Department of Defense and Department of Homeland Security regarding the licenses and authority granted herein. Nothing in this 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.

54. 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), and section 2 of the Cable Landing License Act, 47 U.S.C. § 35, and Executive Order 10530, the petitions to deny filed by the Governor of the Commonwealth of the Northern Mariana Islands, Herman Guerrero, and the House of Representatives of the Commonwealth of the Northern Mariana Islands and the hearing requested by the Governor of the Commonwealth of the Northern Mariana Islands ARE DENIED.

55. This Order and Authorization is issued pursuant to the authority delegated by sections 0.261, 0.291, and 0.331, 47 C.F.R. §§ 0.261, 0.291, 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 30 days of the date of the release of this Order and Authorization. See 47 C.F.R. § 1.4(b)(2).



FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson, Chief  
International Bureau

John Muleta, Chief  
Wireless Telecommunications Bureau

William F. Maher, Jr., Chief  
Wireline Competition Bureau

## APPENDIX A

## FILE NOS., LICENSES AND AUTHORIZATIONS

**Petition for Declaratory Ruling**

ISP-PDR-20030418-00012	Pacific Telecom Inc.
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**Transfer of Control of International Section 214 Authorizations**

File No.	Authorization Holder	Authorization
ITC-T/C-20030418-00204	GTE Pacifica Inc.	ITC-214-19970502-00247 (formerly ITC-97-288) ITC-ASG-19971211-00776 (formerly ITC-97-779-AL) ITC-ASG-19971211-00778 (formerly ITC-97-778-AL)

**Transfer of Control of Domestic Section 214 Authorizations**

Micronesian Telecommunications Corporation (for local exchange carrier operations)
GTE Pacifica Inc. (for domestic interstate, interexchange operations)

**Transfer of Control of the Submarine Cable Landing License**

File No.	Licensee	License
SCL-T/C-20030418-00008	GTE Pacifica Inc.	SCL-92-003-AL

**Transfer of Control of Common Carrier and Non-Common Carrier Earth Station Licenses Held by GTE Pacifica Inc.**

File No.	Call Sign/License Number
SES-T/C-20030418-00502	E000164 (common carrier) SES-LIC-20000414-00563
SES-T/C-20030418-00501	KA-34 (non-common carrier) SES-RWL-20001006-01900

**Transfer of Control of the Cellular Radiotelephone License Held by GTE Pacifica Inc.**

File No.	Call Sign
0001236852	KNKN616

**APPENDIX B**

**PACIFIC TELECOM/EXECUTIVE BRANCH AGREEMENT**