

II. BACKGROUND

2. TelCove, a Delaware corporation, is a facilities-based CLEC that offers local and long-distance voice, dedicated data, ATM, frame relay, and Internet services via fiber optic facilities in approximately 50 markets in the eastern part of the United States.⁵ Its indirect wholly-owned subsidiary,⁶ TelCove FWL, a Delaware corporation, holds FCC licenses for facilities that are authorized, but not yet operating, in the Local Multipoint Distribution Service and the 39 GHz bands.⁷ These licenses are classified as common carrier licenses.⁸

3. TelCove filed a Petition seeking approval to exceed the 25 percent foreign ownership benchmark for common carrier licenses set forth in section 310(b)(4) of the Act.⁹ According to the Petition, TelCove and certain of its subsidiaries filed separate petitions for protection under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of New York in March and June of 2002. Upon emergence from bankruptcy in 2004, TelCove became a privately-held company whose shareholders include former bondholders and creditors, as well as their successors-in-interest.¹⁰ Post bankruptcy, five investment vehicles controlled by Bay Harbour Management, L.C., a U.S. based investment advisory firm, hold an aggregate 47.45 percent equity and voting interest in TelCove.¹¹ Two of these, Bay Harbour Partners Ltd. (20.37%) and Institutional Benchmark Master Fund (1.13%) are organized overseas in the Cayman Islands and Bermuda, respectively.¹² According to the Petition, other foreign shareholders (including shareholders of unknown nationality) hold an additional aggregate 41.74 percent of the equity and voting interests in TelCove.¹³ Thus, according to the Petition, the total foreign investment in TelCove is 63.24 percent. The Petitioner asserts, however, that of the 63.24 percent foreign equity and voting interests in TelCove, 54 percent are held by entities from WTO Member countries and the remaining 9.24 percent are held by shareholders of unknown nationality.¹⁴ Accordingly, TelCove requests a declaratory ruling, *nunc pro tunc*, that the public interest would not be served by prohibiting TelCove FWL's 54 percent indirect foreign ownership by entities from WTO Member countries and 9.24 percent indirect ownership by unidentified foreign investors.¹⁵ TelCove also requests that the

⁵ Petition at 2.

⁶ TelCove FWL is 100% owned by TelCove Long Haul, L.P., a U.S. limited partnership. TelCove Long Haul, L.P. is held as follows: (1) TelCove Operations Inc., a Delaware corporation (1% general partnership interest) and (2) TelCove, LLC, a Delaware limited liability company that is a wholly-owned subsidiary of TelCove Operations Inc., (99% limited partnership interest). TelCove Operations Inc., in turn, is wholly owned by TelCove. December 20 Letter 1-2; *see* Petition at 2-3.

⁷ December 20 Letter at 2; *see* File No. 0002406597.

⁸ Petition at 5 (noting that TelCove holds 193 LMDS and 177 39 GHz licenses).

⁹ On March 4, 2005, September 2, 2005, and December 20, 2005, TelCove submitted letters supplementing information previously provided on November 15, 2004. *See* March 4 Letter; September 2 Letter; December 20 Letter.

¹⁰ Petition at 3.

¹¹ September 2 Letter at Attachments A & H. TelCove is controlled by its seven-member board of directors, four members of whom are owners of, or are employed by, Bay Harbour Management, L.C. TelCove's directors are all U.S. citizens. September 2 Letter at 2 & Appendix A (Diagram of Ownership and Control of TelCove, Inc.); December 20 Letter.

¹² September 2 Letter at Attachments A & H; December 20 Letter at Revised Attachments A & H.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ September 2 Letter at 6; December 20 Letter at 7. We address the merits of TelCove's request for *nunc pro tunc* treatment in paragraph 30 of this order.

Commission grant authorization for an additional 25 percent foreign ownership as long as (1) no more than 25 percent of its total ownership is attributable to entities from non-WTO countries and/or (2) no more than 25 percent is attributable to a single previously unidentified entity from a WTO Member country.¹⁶

4. On January 19, 2005, the Commission released a public notice that found the Petition acceptable for filing and requested comment on the Petition.¹⁷ No comments were filed in response to the public notice.

5. On February 16, 2005, the United States Department of Homeland Security (“DHS”) requested, on behalf of itself, the United States Department of Justice (“DOJ”), the Federal Bureau of Investigation (“FBI”), and TelCove, that the Commission defer acting on TelCove’s Petition until the resolution of potential national security, law enforcement, and public safety issues.¹⁸

6. On June 15, 2005, TelCove entered into an agreement with DHS and DOJ (including FBI) that was intended to ensure that DHS, DOJ and FBI and other entities with responsibilities 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. This agreement was adopted as a condition to the Commission’s grant of an unrelated application by TelCove and covers all domestic communications infrastructure of TelCove, including the licenses subject to the Petition.¹⁹

7. On September 15, 2005, the Petitioner submitted a Joint Petition to Adopt Conditions to Authorizations and Licenses Executed by DHS, DOJ, FBI and TelCove.²⁰ The Joint Petition advised that DHS, DOJ, and FBI have no objection to the Commission granting TelCove’s Petition, provided that the Commission conditions its grant on TelCove’s compliance with the terms of the June 15, 2005 Agreement between and among DHS, DOJ, FBI, and TelCove.²¹

III. DISCUSSION

8. We consider the indirect foreign ownership of TelCove FWL pursuant to our public interest analysis under section 310(b)(4) of the Act and the Commission’s foreign ownership policies adopted in the *Foreign Participation Order*.²² As part of that analysis, we consider any national security,

¹⁶ September 2 Letter at 7; December 20 Letter at 7.

¹⁷ *Non Streamlined International Applications Accepted for Filing*, Public Notice, Rep. No. TEL-00872NS (rel. Jan. 19, 2005).

¹⁸ Department of Homeland Security, Department of Justice and the Federal Bureau of Investigation, and TelCove, Inc., Joint Petition to Defer, File No. ISP-PDR-20041115-00013 (filed Feb. 16, 2005).

¹⁹ *Authorizations Granted Applications Filed for Acquisition of Assets of KMC Operating Companies by TelCove, Inc.*, Public Notice, WC Docket No. 05-90, 20 FCC Rcd 11125 (2005).

²⁰ Department of Homeland Security, Department of Justice and the Federal Bureau of Investigation, and TelCove, Inc., Joint Petition to Adopt Conditions to Authorizations and Licenses, File No. ISP-PDR-20041115-00013 (filed Sept. 15, 2005) & Agreement.

²¹ *Id.*; see also September 15 Letter at Attachment A (Joint Petition to Adopt Conditions to Authorizations and Licenses Executed by DHS, DOJ, FBI and TelCove).

²² 47 U.S.C. § 310(b)(4); 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 (1997) (“*Foreign Participation Order*”), Order on Reconsideration, FCC 00-339, 15 FCC Rcd 18158 (2000).

law enforcement, foreign policy, or trade policy concerns raised by the indirect foreign investment.²³

9. Section 310(b)(4) of the Act establishes a 25 percent benchmark for investment by foreign individuals, corporations, and governments in entities that control U.S. common carrier radio licensees. This section also grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.²⁴

10. 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.²⁵ 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.²⁶ The presence of aggregated alien equity or voting interests in a common carrier licensee's parent in excess of 25 percent triggers the applicability of section 310(b)(4)'s statutory benchmark.²⁷ Once the benchmark is triggered, section 310(b)(4) directs the Commission to determine whether the "public interest will be served by the refusal or revocation of such license."²⁸ In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from WTO Member countries in U.S. common carrier and aeronautical fixed and en route radio licensees.²⁹ Therefore, with respect to indirect foreign investment from WTO Members, the Commission replaced its "effective competitive opportunities," or "ECO," test with a rebuttable presumption that such investment generally raises no competitive concerns.³⁰ 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.³¹

²³ The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing a petition for declaratory ruling pursuant to section 310(b)(4). *Foreign Participation Order*, 12 FCC Rcd at 23918-21, ¶¶ 59-66.

²⁴ 47 U.S.C. § 310(b)(4).

²⁵ See *BBC License Subsidiary L.P.*, Memorandum Opinion and Order, DA 95-364, 10 FCC Rcd 10968, 10973, ¶ 22 (1995) ("*BBC License Subsidiary*").

²⁶ See *id.* at 10972, ¶ 20, & 10973-74, ¶¶ 22-25.

²⁷ See *id.* at 10973-74, ¶ 25.

²⁸ *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, 1857-58, ¶ 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 *Application of Fox Television Stations, Inc. for Renewal of License of Station WNYW-TV, New York, New York*, Memorandum Opinion and Order, FCC 95-188, 10 FCC Rcd 8452, 8474-75, ¶ 52 (1995) ("*Fox Television Stations, Inc.*").

²⁹ *Foreign Participation Order*, 12 FCC Rcd at 23896, ¶ 9, 23913, ¶ 50, & 23940, ¶¶ 111-12.

³⁰ *Id.*

³¹ 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. *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

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11. In light of the policies adopted in the *Foreign Participation Order*, we begin our evaluation of TelCove FWL's indirect foreign ownership under section 310(b)(4) by calculating the foreign equity and voting interests in TelCove, the indirect U.S. parent of TelCove FWL, the common carrier licensee. 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 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.³²

12. In *Wilner & Scheiner* and its progeny, the Commission has set forth a standard for calculating both alien equity and voting interests held in a licensee or in the licensee's parents where such interests are held through intervening entities.³³ In calculating attributable alien equity interests in a parent company, the Commission uses a multiplier to dilute the percentage of each investor's equity interest in the parent company when those interests are held through intervening companies. The multiplier is applied to each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier.³⁴ Once the *pro rata* equity interests of each alien investor are calculated, these interests then are aggregated to determine whether the sum of the interests exceeds the statutory benchmark.³⁵

13. By contrast, in calculating alien voting interests in a parent company, the multiplier is not applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier.³⁶ In circumstances where voting interests in the U.S. parent of a common carrier licensee are held through intervening partnerships, the multiplier is not applied to dilute a general partnership interest or unincorporated limited partnership interest held by a foreign individual or entity. A general partner is considered to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. Similarly, in the absence of a specific demonstration that a limited partner effectively is insulated from active involvement in partnership affairs, a limited partner will be deemed to hold the same voting interest as the partnership

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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); *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).

³² See *Foreign Participation Order*, 12 FCC Rcd at 23946, ¶ 131.

³³ See generally *Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended*, Declaratory Ruling, FCC 85-295, 103 F.C.C. 2d 511 (1985) ("*Wilner & Scheiner I*"), *recon. in part*, FCC 86-406, 1 FCC Rcd 12 (1986); *BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶¶ 22-25.

³⁴ See *BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶¶ 24-25.

³⁵ See *id.* at 10973-74, ¶ 25.

³⁶ See *id.* at 10973, ¶ 23; see also *Wilner & Scheiner I*, 103 F.C.C. 2d at 522, ¶ 19.

holds in the company in the next lower tier of the vertical ownership chain.³⁷ Thus, when evaluating foreign voting interests in the U.S. parent company of a common carrier licensee, it is possible that multiple investors will be treated as holding the same voting interest in a U.S. parent company where the investment is held through multiple intervening holding companies or partnerships. Our purpose in identifying the citizenship of the specific individuals or entities that hold these interests is not to increase the aggregate level of foreign investment, but rather to determine whether any particular interest that a foreign investor proposes to acquire raises potential risks to competition or other public interest concerns, such as national security or law enforcement concerns.³⁸

14. For the reasons set forth below, we find that it would not serve the public interest to prohibit the indirect foreign ownership of TelCove FWL under section 310(b)(4) of the Act, and we grant TelCove's Petition.³⁹ We find that the majority of the foreign equity and voting interests identified in the record that are held indirectly in TelCove FWL are properly ascribed to individuals and entities from WTO Member countries, including the United States. Accordingly, the Petitioner is entitled to a rebuttable presumption that the indirect foreign ownership of TelCove FWL would not pose a risk to competition in the U.S. market, and there is no evidence to rebut this presumption. Further, under the Commission's precedent, we accord the appropriate level of deference to the Executive Branch's expertise on national security and law enforcement issues, and the Joint Petition to Adopt Conditions to Authorizations and Licenses is granted. Pursuant to section 310(b)(4) of the Act and the Commission's precedent for indirect investment by WTO Members in U.S. common carrier radio licensees, we therefore conclude that it would not serve the public interest to prohibit the indirect foreign ownership of TelCove FWL.

A. Attribution of Foreign Ownership Interests

15. The Petitioner sent a detailed, eight-page "home market" questionnaire to the parent organizations of each of its shareholders that hold more than one percent interest in TelCove. The Petitioner obtained detailed home market and underlying investor information for institutional investors that are controlled by Bay Harbour Management, L.C. ("Bay Harbour"), which in turn controls TelCove's board of directors.⁴⁰ TelCove, however, did not obtain home market information from certain minority

³⁷ See, e.g., *XO Communications, Inc., Applications for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, IB Docket No. 02-50, Memorandum Opinion, Order and Authorization, DA 02-2512, 17 FCC Rcd 19212, 19222, ¶ 24 (Int'l Bur., Wireless Tel. Bur. & Wireline Comp. Bur. 2002) ("*XO Communications*").

³⁸ See *Foreign Participation Order*, 12 FCC Rcd at 23940-41, ¶¶ 111-15.

³⁹ The indirect foreign ownership of TelCove FWL does not raise any issues under section 310(a) and 310(b)(1)-(b)(3) of the Act. Section 310(a) of the Act prohibits any radio license from being "granted to or held by" a foreign government or its representative. 47 U.S.C. § 310(a). In this case, no foreign government or its representative holds any of the radio licenses. Section 310(b)(1)-(2) of the Act prohibits common carrier, broadcast and aeronautical fixed or *en route* radio licenses from being "granted to or held by" aliens, or their representatives, or foreign corporations. 47 U.S.C. § 310(b)(1), (b)(2). According to the Petition, no alien, representative, or foreign corporation holds any of the common carrier licenses. Accordingly, TelCove FWL's indirect foreign ownership is not inconsistent with the foreign ownership provisions of section 310(a) or 310(b)(1)-(b)(2) of the Act. See *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9804-9809, ¶¶ 38-48. Additionally, because the foreign investment in TelCove FWL is held through TelCove Long Haul, L.P., TelCove Operations, Inc., and TelCove, the direct and indirect U.S.-organized parent companies that control TelCove FWL, it does not trigger section 310(b)(3) of the Act, which places a 20% limit on alien, foreign corporate or foreign government ownership of entities that themselves hold common carrier, broadcast and aeronautical fixed or *en route* Title III licenses. Compare 47 U.S.C. § 310(b)(3) with § 310(b)(4). See *Wilner & Scheiner I*, 103 F.C.C. 2d 511.

⁴⁰ December 20 Letter at 4-7.

shareholders.⁴¹ We calculate below the foreign equity and voting interests held in TelCove, the indirect U.S. parent of TelCove FWL, *by and through* the various investment vehicles that directly hold shares in TelCove based on the information in the record. We first calculate the foreign equity and voting interests held *by and through* the investment vehicles controlled by Bay Harbour. Next, we calculate the foreign equity and voting interests held *by and through* TelCove's minority shareholders. Based on our review of the record, we find that the majority of the foreign equity and voting interests in TelCove constitute investment from the United States or another WTO Member country and that 9.24 percent are unidentified ownership interests, which we treat as investments from non-WTO Member countries.⁴²

16. ***Foreign Equity and Voting Interests Held By and Through Investment Vehicles Controlled by Bay Harbour Management, LC.*** According to the Petitioner, the following five investment vehicles, which are managed and controlled by Bay Harbour,⁴³ collectively hold approximately 47 percent equity and voting interests in TelCove: (1) Bay Harbour Partners, Ltd. ("BHP") (20.37%), (2) Institutional Benchmark Master Fund, Ltd. ("IBMF") (1.13%), (3) Bay Harbour 90-1 Ltd. (17.39%) ("BH 90-1"), (4) Trophy Hunter Investments Ltd. (6.34%) ("Trophy"), and (5) d Quant Fund, LLC (2.22%) ("Quant"). Bay Harbour, in turn, is owned by: (1) John Stout, a U.S. citizen (5%),⁴⁴ (2) Tower Investment Group, Inc., a U.S. company ("Tower") (85%), and (3) Unity N.V., a Netherlands Antilles limited liability company ("Unity") (10%). Tower is owned by two U.S. citizens, each of whom holds 50 percent ownership interest in Tower.⁴⁵ Unity is wholly-owned by the John Templeton Foundation, a Tennessee non-profit foundation.⁴⁶

17. As an initial matter, we find that the principal place of business or "home market" of Bay Harbour, BH 90-1, Trophy, Quant, Tower, and Unity is the United States. According to the Petition, Bay Harbour, BH 90-1, Trophy, Quant, and Tower are legally organized in the United States.⁴⁷ Moreover, their investment principals, officers, and directors are U.S. citizens, and they have their world headquarters and derive the greatest sales and revenues from operations in the United States. Additionally, 100 percent of the investors in BH 90-1 and Trophy are U.S. citizens or entities, and, as noted above, two U.S. citizens own and control Tower. Although only 46 percent of Quant is held in the aggregate by U.S. citizens, and the remaining 54 percent is held by a single "feeder fund" incorporated in the Bahamas, the Petitioner asserts that the feeder fund is affiliated with and controlled by the same U.S. individual who manages Quant.⁴⁸ As for Unity, although it is organized in the Netherlands Antilles, it is wholly-owned by the John Templeton Foundation, a Tennessee non-profit foundation, and three of its four managing directors are U.S. citizens.⁴⁹ Moreover, the majority of Unity's financial holdings,

⁴¹ September 2 Letter at 1.

⁴² We recommend the use of the ownership chart in Appendix A to this order, and the list of TelCove shareholders referenced in the ownership chart, which is included as Appendix B to this order, as a roadmap for the calculations and analyses of the foreign ownership interests held in TelCove by and through its shareholders.

⁴³ Petition at 3. According to the Petition, Bay Harbour itself does not own any equity interest in TelCove directly or indirectly. September 2 Letter at 2.

⁴⁴ Mr. Stout is also a member of TelCove's board of directors. September 2 Letter at 2; December 20 Letter at Revised Appendix A.

⁴⁵ Each of Tower's 50% shareholders is a member of TelCove's board of directors. September 2 Letter at 2; December 20 Letter at Revised Appendix A.

⁴⁶ Unity has acknowledged that it exercises "no control" over Bay Harbour. September 2 Letter at 2.

⁴⁷ Petition at 11.

⁴⁸ The citizenship of the ultimate investors in the feeder fund is unknown. September 2 Letter at 3; December 20 Letter at 4.

⁴⁹ The remaining managing director is a Netherlands Antilles Trust, ING Trust (Antilles) N.V. September 2 Letter at 2.

tangible property, sales and revenues and Unity's world headquarters are all in the United States.⁵⁰ Based on the record, we find that Bay Harbour, BH 90-1, Trophy, Quant, Tower, and Unity have their principal places of business in the United States. Although we find that Unity has its principal place of business in the United States, we count the 10 percent interest it holds in TelCove *through* Bay Harbor as part of our foreign ownership calculations in paragraph 19. Similarly, we count the 54 percent "feeder fund" investment held *through* Quant as part of our foreign ownership calculations in paragraph 19.

18. We also find that the United States is the home market of BHP and IBMF, which in the aggregate hold 21.5 percent equity and voting interests in TelCove.⁵¹ The Petition contends that, while BHP is incorporated in the Cayman Islands, its home market is properly ascribed to the United States because its world headquarters and the majority of its tangible property is in the United States, it derives the greatest amount of its sales revenues from U.S. operations, over 90 percent of the fund's investors are U.S. entities, and BHP's two directors are citizens of the Netherlands and the Bahamas, respectively.⁵² Likewise, the Petition argues that, even though the IBMF is incorporated in Bermuda, its home market should be ascribed to the United States because that is where its world headquarters is located, where the majority of its tangible property is found, and where the greatest amount of its sales revenues is generated.⁵³ In addition, over 80 percent of its investors are U.S. corporate or institutional investors, and one of the three directors of the fund is a U.S. citizen, while the other two are Austrian and British citizens. Notwithstanding the presence of foreign directors in BHP and IBMF and their organization in the Cayman Islands and Bermuda, respectively, we find on balance that the 21.5 percent indirect equity and voting interest held by these entities in TelCove FWL is properly treated as investment from the United States for purposes of our public interest analysis under section 310(b)(4) of the Act and the Commission's foreign ownership policies adopted in the *Foreign Participation Order*.

19. We find that the foreign equity and voting interests held indirectly in TelCove FWL *through* BHP, IBMF, and Quant are properly ascribed to WTO Member countries. As noted above, BHP, IBMF, and Quant respectively hold 20.37 percent, 1.13 percent, and 2.22 percent equity and voting interests in TelCove. According to the record, three institutional investors organized in the Cayman Islands and Switzerland hold a nine percent equity and voting interest in BHP, which itself is a foreign-organized entity. Five institutional investors organized in Switzerland, France, and Japan hold a 17 percent interest in IBMF, which also is a foreign-organized entity. One entity organized in the Bahamas holds 54 percent interest in Quant, which is a U.S.-organized entity.⁵⁴ The remaining equity and voting interest in these three funds, in turn, are held by citizens of or entities from the United States.⁵⁵ Consistent with our rules and policies, we use the multiplier to dilute the percentage of each foreign investor's equity and non-controlling voting interest in TelCove when those interests are held through intervening companies.⁵⁶ In this case, the three foreign investors in BHP and the five foreign investors in IBMF collectively hold 2.02 percent indirect interest in TelCove *through* BHP and IBMF.⁵⁷ Based on the representations of TelCove, we find that this 2.02 percent indirect foreign equity and voting interest in TelCove is properly ascribed to WTO Member countries and is counted as part of the 21.5 percent foreign

⁵⁰ September 2 Letter at 2

⁵¹ September 2 Letter at 2-4.

⁵² *Id.*

⁵³ September 2 Letter at 3-4; December 20 at 5.

⁵⁴ September 2 Letter at Appendix C (Characteristics of Investors in Bay Harbour Investment Vehicles).

⁵⁵ *Id.*

⁵⁶ See *BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶¶ 24-25.

⁵⁷ The 3 foreign investors in BHP hold 1.83% (20.37% x 9%), and the 5 foreign investors in IBMF hold indirectly a 0.19% equity and voting interest in TelCove (1.13% x 17%).

(albeit WTO) equity and voting interest calculated for BHP and IBMF in paragraph 18 above. Although Quant is a U.S.-organized entity that also has its principal place of business in the United States, we count as part of our foreign ownership calculation a 1.20 percent foreign (albeit WTO) equity and voting interest in TelCove as a result of the 54 percent “feeder fund” investment held *through* Quant.⁵⁸ We also include as part of the foreign ownership calculation for TelCove the 10 percent foreign (albeit WTO) voting interest that Unity holds in Bay Harbor. Unity’s 10 percent voting interest in Bay Harbor flows through in its entirety to TelCove because Bay Harbor controls TelCove.⁵⁹

20. ***Foreign Equity and Voting Interests Held By and Through Other Entities Not Controlled by Bay Harbour Management, L.C.*** We next calculate the foreign equity and voting interests that will be held in TelCove *by* and *through* the following unrelated individuals, corporations, and investment institutions: (1) Harvard & Co. (1.17%), (2) Credit Suisse First Boston LLC (“CSFB”) (10.25%), (3) JGD Management Corp. d/b/a York Capital Management (“JGD Management”) through nine investment vehicles⁶⁰ (7.88%), (4) Goldman Sachs (15.59%), (5) Fernwood Associates (1.17%), (6) L C Capital Master Fund Ltd. (L C Capital) (4.06%), (7) Fernwood Restructuring, Ltd. (2.05%), (8) RCG Carpathia Master Fund, L.P. (0.33%), (9) RCG Carpathia Master Fund, Ltd. (0.16%), (10) Storms & Co. (4.68%), (11) Amroc Investments LLC (1.44%), (12) Unidentified Miscellaneous Entities (3.11%), and (13) Individual U.S. citizens (0.61%). We examine the foreign ownership interests held by and through each of these entities below.⁶¹

21. Based upon the record, we find that Harvard & Co. (1.17%), CSFB (10.25%), JGD Management and its nine investment vehicles (7.88%), Goldman Sachs (15.59%), and Fernwood Associates (1.17%) have their principal places of business in the United States or another WTO Member country. According to the Petition, Harvard & Co. is an arm of Harvard University, a U.S. entity.⁶² Moreover, the Petitioner states that Harvard & Co.’s country of organization, the nationality of its investment principals, officers and directors, its world headquarters, the country where the majority of its tangible property is located, and the country where it derives its greatest sales and revenues is the United States.⁶³ We also find that CSFB has its principal place of business in Switzerland, a WTO Member country.⁶⁴ Although CSFB’s country of organization, the nationality of its investment principals, officers and directors, the country where the majority of its tangible property is located, and the country where it

⁵⁸ The Quant foreign feeder fund holds indirectly 1.20% equity and voting interest in TelCove (2.22% x 54%).

⁵⁹ See *supra* paragraph 13 and note 36 (in calculating alien voting interests in a parent company, the multiplier is not applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier). We do not calculate a foreign equity interest in TelCove *through* Unity because Bay Harbor does not itself hold any equity interest in TelCove. See *supra* paragraph 16, note 43.

⁶⁰ These 9 investment vehicles are: (1) Lyxor York Fund Ltd. (0.67%), (2) York Global Value Partners, L.P. (0.84%), (3) HFR Ed Select Fund IV Master Fund DTD 7/16/01 (0.10%), (4) York Select, L.P. (1.86%), (5) Rossburn International, Inc. (0.05%), (6) York Select Unit Trust DTD 12/15/00 (1.06%), (7) York Capital Management, L.P. (1.66%), (8) York Credit Opportunities Fund, L.P. (0.44%), and (9) York Investment Limited (1.18%). September 2 Letter at 5 & Appendix F (Home Market Analysis of TelCove Shareholder York Funds).

⁶¹ September 2 Letter at 4, n.5 & Appendix H (Summary of TelCove Shares Treated as Foreign Prior to Home Market Analysis); December 20 Letter at Revised Appendix H. RBC Dain holds 0.04% of TelCove’s shares, which we treat as 0.00%. December 20 Letter.

⁶² See September 2 Letter at 5.

⁶³ *Id.* at Appendix G (Home Market Analysis of TelCove Shareholder Harvard & Co.); December 20 Letter at Revised Appendix G.

⁶⁴ September 2 Letter at 5 & Appendix D (Corporate Diagram of TelCove Shareholder Credit Suisse First Boston, LLC); December 20 Letter at Revised Appendix D; December 20 Letter at Revised Appendix E.

derives its greatest sales and revenues is the United States, its world headquarters is Switzerland.⁶⁵ Moreover, we find that its ultimate corporate parents, Credit Suisse Group and Credit Suisse First Boston Suisse Bank both have their world headquarters in Switzerland and are 100 percent Swiss-owned.⁶⁶ Based upon these representations, we find that CSFB's home market is properly ascribed to Switzerland.

22. As for JGD Management and the nine investment vehicles that it controls but does not own, we find that JGD Management and York Global Value Partners, L.P. (0.84 %), York Select, L.P. (1.86%), York Capital Management, L.P. (1.66%), and York Credit Opportunities Fund, L.P. (0.44%) have their principal places of business in the United States.⁶⁷ According to the Petition, JGD Management and these investment vehicles are all organized and derive their greatest sales and revenues from operations in the United States. Additionally, their world headquarters and the majority of their tangible property are located in the United States. Moreover, almost all of their investment principals, officers and directors are U.S. citizens.⁶⁸ Thus, we find that the equity and voting interests held *by* and *through* these entities are properly ascribed to the United States. We also find that the home markets of the remaining York investment vehicles are as follows: (1) Lyxor/York Fund Ltd. (0.67%) (Jersey, Channel Islands), (2) HFR Ed Select Fund IV Master Fund DTD 7/16/01 (0.10%) (Bermuda), (3) Rossburn International, Inc. (0.05%) (Canada), (4) York Select Unit Trust DTD 12/15/00 (1.06%) (Cayman Islands), and (5) York Investment Limited (1.19%) (Bahamas).⁶⁹ All of these foreign markets are WTO Members.

23. We find that Goldman Sachs's 15.59 percent equity and voting interest in TelCove is properly ascribed to the United States or another WTO Member country.⁷⁰ According to the Petition, TelCove contacted a representative of Goldman's Central Compliance group via telephone who orally confirmed that the legal domicile of Goldman was the United States and that its world headquarters is in New York City. No other additional information was provided because, according to the Petition, Goldman does not routinely disclose information about its investment vehicles or its investors in cases when Goldman does not have a substantial investment in a company. TelCove further states that the only information it has been provided by its transfer agent is that, of the 15.59 percent of TelCove's shares held by Goldman Sachs, 3.03 percent is held by a U.S. domiciled investment vehicle and 12.56 percent is held by investment vehicles legally domiciled in the British Virgin Islands and the Cayman Islands.⁷¹ Based on the representations of the Petitioner, including its statement that Goldman Sachs is U.S.-

⁶⁵ September 2 Letter at Appendix E (Home Market Analysis of TelCove Shareholder Credit Suisse First Boston, LLC); December 20 Letter at Revised Appendix E.

⁶⁶ September 2 Letter at 5 & Appendix D (Corporate Diagram of TelCove Shareholder Credit Suisse First Boston, LLC); December 20 Letter at Revised Appendix D.

⁶⁷ September 2 Letter at Appendix F (Home Market Analysis of TelCove Shareholder York Funds); December 20 Letter at Revised Appendix F. We note, however, that the Petition did not identify the number of foreign investors in the York Funds.

⁶⁸ The sole non-U.S. citizen is an investment principal, officer, or director of JGD Management who is a Canadian citizen but holds a U.S. green card. September 2 Letter at Appendix F (Home Market Analysis of TelCove Shareholder York Funds).

⁶⁹ With regard to these entities, the Petition states that their respective investment principals, officers, and directors are U.S. citizens and that their world headquarters is in the United States, the majority of their tangible property is in the United States, and they derive their greatest sales and revenues from the United States. September 2 Letter at Appendix F; December 20 Letter at Revised Appendix F. Nonetheless, as noted above, these entities are organized overseas. In the absence of additional information with regard to the number of foreign investors in these funds, we consider these funds to be foreign entities, albeit from WTO Member countries.

⁷⁰ September 2 Letter at 5-6.

⁷¹ *Id.*

controlled,⁷² we find that 3.03 percent of Goldman Sachs's shares in TelCove are from the United States and that the remaining 12.56 percent are from WTO Member investors.

24. We will also treat Fernwood Associates' 1.17 percent equity and voting interest in TelCove as investment from the United States. We do so because of the small interest that Fernwood Associates holds in TelCove as a result of TelCove's Chapter 11 reorganization and in view of Fernwood Associates' domicile in the United States. We are concerned, however, that Fernwood Associates, and Goldman Sachs, did not respond to TelCove's questionnaire. We will therefore treat any future investment in TelCove by Fernwood Associates and Goldman Sachs, and by any fund in which they hold a controlling interest, as unidentified interests, unless and until Goldman Sachs and Fernwood Associates demonstrate the equity and voting interests held *by* and *through* these entities are properly ascribed to the United States or another WTO Member country.

25. We accept TelCove's representations that L C Capital (4.06%) and Fernwood Restructuring Ltd. (2.05%) have their home markets, respectively, in the Caymans Islands and the British Virgin Islands, both of which are WTO Member countries.⁷³ We also accept Petitioner's representations that RCG Carpathia Master Fund, L.P. (0.33%) and RCG Carpathia Master Fund, Ltd. (0.16%), which hold less than one percent of TelCove's shares, have their home markets in the Cayman Islands, a WTO Member country.

26. We also find that the interests held by and through Storms & Co. (4.68%), Amroc Investments, LLC (1.44%), and Numerous Miscellaneous Entities (3.11%) constitute unidentified interests because TelCove did not provide sufficient home market information for these entities.⁷⁴ The total indirect ownership interest held by and through these entities is approximately 9.24 percent.⁷⁵

27. In summary, we find that the majority of foreign equity and voting interests identified in the record are held by investors that have their principal places of business in the United States or another WTO Member country (55.20 percent equity and 65.20 voting interests)⁷⁶ for purposes of our public interest analysis under section 310(b)(4) of the Act and the Commission's foreign ownership policies adopted in the *Foreign Participation Order*.⁷⁷ We also find that 9.24 percent of TelCove's investors are unidentified. Accordingly, the Commission treats those interests as investments from non-WTO Member countries.

⁷² Petition at 4, n.7.

⁷³ LC Capital did not respond to TelCove's questionnaire. LC Capital's website indicates it is a Cayman Island fund controlled by French entities. September 2 Letter at Appendix H (Summary of TelCove Shares Treated as Foreign Prior to Home Market Analysis). As noted *supra* in paragraph 24, Fernwood Associates also did not respond to the TelCove questionnaire. It had previously informed TelCove, however, that 2% of TelCove's shares are held in Fernwood Restructuring Ltd., a British Virgin Island investment vehicle, and 1.2% of TelCove shares are held by Fernwood Associates, with both interests held for Fernwood Associate's own account. September 2 Letter at 5 & Appendix H, n.4 (Citizenship of TelCove Shareholders Prior to Home Market Analysis); December 20 Letter at Revised Appendix H.

⁷⁴ September 2 Letter at 5-6 & Appendix H (Citizenship of TelCove Shareholders Prior to Home Market Analysis).

⁷⁵ See September 2 Letter at Appendix H (Citizenship of TelCove Shareholders Prior to Home Market Analysis).

⁷⁶ The 55.20% foreign equity calculation represents the sum of the equity interests held in TelCove *by* the "Foreign-Domiciled Holders or Parent" entities identified in Appendix B to this order (54%) and the equity interest held in TelCove *through* Quant (1.20%). See *supra* ¶¶ 17-19, 21-23 and 25. The 65.20% foreign voting calculation represents the sum of the voting interests held in TelCove *by* the "Foreign-Domiciled Holders or Parent" entities identified in Appendix B to this order (54%), the voting interest held in TelCove *through* Quant (1.20%), and the voting interest held in TelCove *through* Bay Harbor (10%). See *supra* ¶¶ 17-19, 21-23, and 25.

⁷⁷ See *supra* n.21.

B. National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns

28. In acting on petitions for declaratory ruling pursuant to section 310(b)(4), the Commission also considers any national security, law enforcement, foreign policy, or trade policy concerns.⁷⁸ We take into account the record and afford the appropriate level of deference to Executive Branch expertise on national security, law enforcement, foreign policy and trade policy issues.⁷⁹ 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.⁸⁰ As noted above, DHS, DOJ, and FBI advised the Commission in the Joint Petition to Adopt Conditions to Authorizations and Licenses⁸¹ that they have no objection to the Commission granting TelCove's Petition, provided that the Commission conditions its grant on TelCove's compliance with the terms of the June 15, 2005 Agreement between and among DHS, DOJ, FBI, and TelCove.⁸² In accordance with this request, we grant the Joint Petition to Adopt Conditions to Authorizations and Licenses, and we condition our grant of the Petition on compliance with the terms and conditions of the June 15, 2005 Agreement between and among DHS, DOJ, FBI, and TelCove.

IV. DECLARATORY RULING

29. This Declaratory Ruling permits TelCove FWL to be owned indirectly by: (1) the named foreign investors identified in the record (up to and including 55.20 percent equity and 65.20 voting interests) and (2) the unidentified foreign investors (up to and including 9.24 percent equity and voting interests). TelCove FWL may accept up to and including an additional 25 percent indirect equity and voting interest from the foreign investors of TelCove named in the Petition and from other foreign investors without seeking prior Commission approval under section 310(b)(4) of the Act, subject to the following conditions. First, TelCove shall obtain prior approval before any foreign individual or entity acquires individually a greater-than-25-percent indirect equity or voting interest in TelCove FWL. Second, TelCove shall obtain prior approval before its total indirect foreign equity or voting interests from non-WTO investors, including TelCove's unidentified foreign investors, exceeds 25 percent. For purposes of calculating the additional, aggregate 25 percent amount, TelCove shall include any additional equity or voting interests acquired by its current foreign investors as well as by any new foreign investors. TelCove shall also treat as unidentified foreign investment any future investment by Goldman Sachs and Fernwood Associates and by any fund in which they hold a controlling interest, unless and until Goldman Sachs and Fernwood Associates demonstrate the equity and voting interests held *by* and *through* these entities are properly ascribed to the United States or another WTO Member country. Finally, as a Commission licensee, TelCove FWL has an affirmative duty to continue to monitor its foreign equity and voting interests and to calculate these interests consistent with the attribution principles enunciated by the Commission.

30. We deny TelCove's request for *nunc pro tunc* grant of its petition for declaratory ruling.

⁷⁸ *Foreign Participation Order*, 12 FCC Rcd at 23918, ¶ 59. The Commission stated that 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. *Id.* at 23919, ¶ 62.

⁷⁹ *Id.* at 23919-21, ¶¶ 61-66.

⁸⁰ *Id.* at 23919, ¶ 62.

⁸¹ Department of Homeland Security, Department of Justice and the Federal Bureau of Investigation, and TelCove, Inc., Joint Petition to Adopt Conditions to Authorizations and Licenses, File No. ISP-PDR-20041115-00013 (filed Sept. 15, 2005) & Agreement.

⁸² *Id.*; see September 15 Letter at Attachment A (Joint Petition to Adopt Conditions to Authorizations and Licenses Executed by DHS, DOJ, FBI and TelCove).

The Commission has granted applications and other requests for Commission action on a *nunc pro tunc* basis only under limited circumstances: 1) when an application has been dismissed in error, so as to enable the applicant to retain its comparative rights in a mutually exclusive situation, or 2) when exceptional public interest considerations justify the relief requested or when substantial equities favor the applicant.⁸³ We recognize that TelCove's foreign investors acquired their shares as a result of TelCove's reorganization and emergence from bankruptcy. Licensees have a continuing obligation, however, to remain in compliance with the foreign ownership provisions of section 310 of the Act. The statute provides no exception to this requirement.⁸⁴ Notwithstanding TelCove's apparent violation of the statute, TelCove has acted diligently to obtain from its new shareholders the information required for the Commission to determine whether the public interest would be served by revoking TelCove FWL's LMDS and 39 GHz common carrier licenses due to its indirect foreign ownership in excess of the 25 percent benchmark set forth in section 310(b)(4) of the Act.⁸⁵ Based on the information provided by TelCove, we conclude that it would not serve the public interest to revoke TelCove FWL's common carrier licenses. We take this opportunity to caution all common carrier licensees, however, that bankruptcy does not excuse them from complying with the foreign ownership requirements of the Act. Licensees filing for bankruptcy protection must obtain prior Commission approval before consummating a plan of reorganization that would otherwise result in a violation of section 310 of the Act.

V. CONCLUSION

31. Based on the foregoing findings and pursuant to section 310(b)(4) of the Act and the Commission's precedent for indirect investment by WTO Members in U.S. common carrier licensees, we conclude that it would not serve the public interest to prohibit the indirect foreign ownership of TelCove FWL, subject to the limitations specified in paragraphs 29-30.

VI. ORDERING CLAUSES

32. Accordingly, IT IS 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 IS GRANTED to the extent specified in this Order and Declaratory Ruling. Failure to comply with all relevant Commission rules, policy, or the specific conditions of the grant of the Petition for Declaratory Ruling could subject the Petitioner to enforcement action, including but not limited to the imposition of forfeitures.

33. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(b), 310(d), the Joint Petition to Adopt Conditions to Authorizations and Licenses filed by the U.S. Department of Homeland Security, U.S. Department of Justice, Federal Bureau of Investigation, and TelCove on September 15, 2005 IS GRANTED. Grant of TelCove's Petition is conditioned upon compliance with the terms of the June 15, 2005 Agreement between and among DHS, DOJ, FBI, and TelCove, which is

⁸³ See, e.g., *Aeronautical Radio*, 4 FCC Rcd 6067 ¶15; *Mobile Telecommunications Corp.*, 49 Rad. Reg.2d 1506 (1981); see generally *Jackson Signal Co.*, 74 FCC 2d 514 (1979).

⁸⁴ 47 U.S.C. § 310(a)-(b); see *Fox Television Stations, Inc.*, 10 FCC Rcd at 8474-75, ¶ 52 (1995).

⁸⁵ 47 U.S.C. § 310(b)(4) ("No . . . common carrier . . . 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.*") (emphasis added).

attached to this Order and Declaratory Ruling as Appendix C.⁸⁶

34. IT IS FURTHER ORDERED that, pursuant to section 1.65 of the Commission's rules, 47 C.F.R. § 1.65, the Petitioner is afforded 30 days from the date of release of this Order and Declaratory Ruling to amend any pending applications in connection with the instant Petition to reflect the approval in this Order and Declaratory Ruling.

35. This Order and Declaratory Ruling is issued pursuant to authority delegated by section 0.261 of the Commission's rules, 47 C.F.R. § 0.261 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 Declaratory Ruling. *See* 47 C.F.R. § 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson, Chief
International Bureau

⁸⁶ September 15 Letter at Attachment A (Joint Petition to Adopt Conditions to Authorizations and Licenses Executed by DHS, DOJ, FBI and TelCove).

Appendix A

Appendix A From September 2, 2005
As Revised December 2005

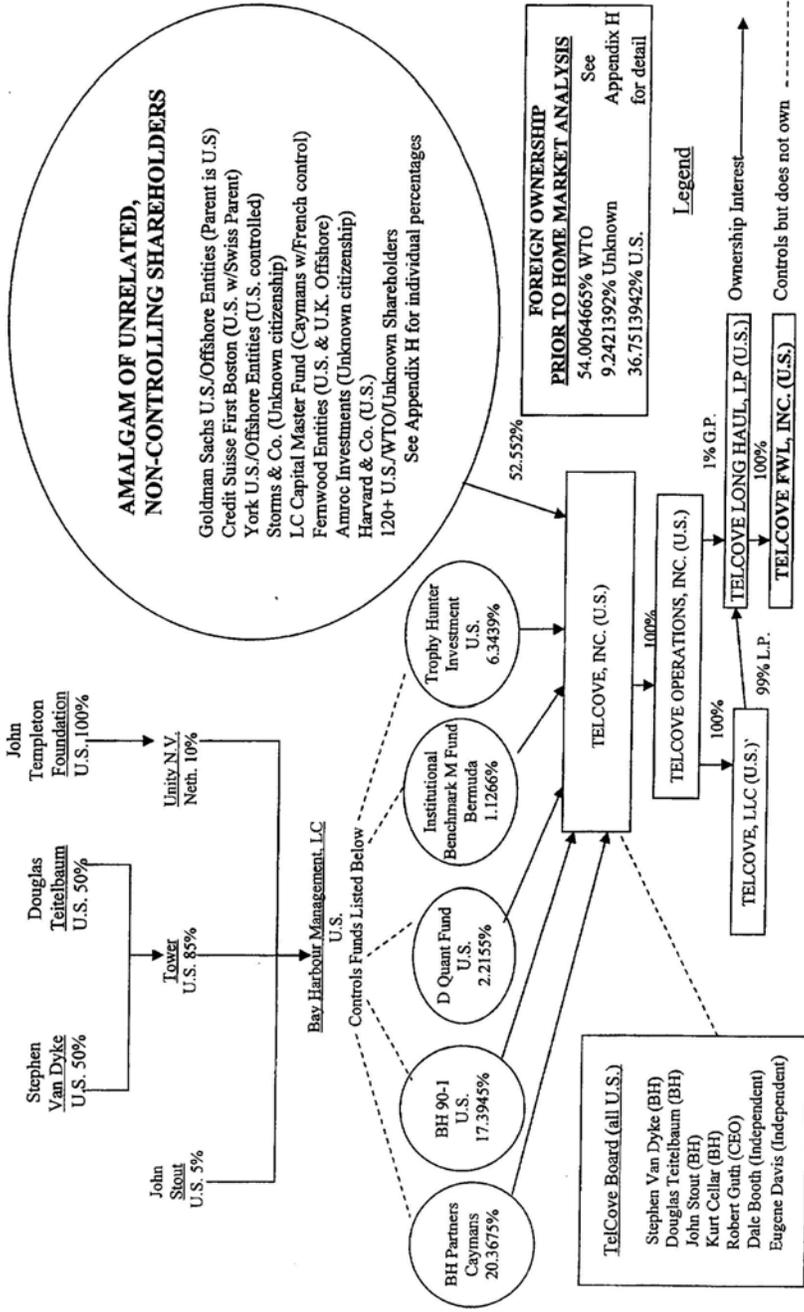
CONTROL

**BAY HARBOUR ("BH")
CONTROLS 47.448 % OF SHARES AND
MAJORITY OF TELCOVE BOARD**

TELCOVE, INC.

(FCC License Holder TelCove FWL, Inc.)

NON-CONTROLLING



Appendix B

APPENDIX H (rev. 12/05)
CITIZENSHIP OF TELCOVE SHAREHOLDERS
PRIOR TO HOME MARKET ANALYSIS¹

<u>Foreign-Domiciled Holders or Parent</u>	<u>Percent</u>	<u>Foreign-Domicile or Parent</u>
Bay Harbour Partners, Ltd.	20.3675091	Cayman Islands (WTO)
Goldman Sachs Entities ²	12.5610129	British Virgin Islands and Cayman Islands (WTO)
Credit Suisse First Boston	10.2485453	Parent based in Switzerland (WTO)
LC Capital Master Fund Ltd. ³	4.0567600	Cayman Islands (WTO)
Fernwood Restructuring Ltd. ⁴	2.0476903	British Virgin Islands (WTO)
York Investment Limited	1.1883046	Bahamas (WTO)
Institutional Benchmarks Master Fund	1.1266893	Bermuda (WTO)
York Select Unit Trust DTD 12/15/00	1.0574131	Cayman Islands (WTO)
Lyxor/York Fund Ltd.	0.6656625	Isle of Jersey (WTO)
RCG Carpathia Master Fund, LP ⁵	0.3264510	Cayman Islands (WTO)
RCG Carpathia Master Fund, Ltd.	0.1635822	Cayman Islands (WTO)
HFR Ed Select Fund IV Master Fund DTD	0.1043998	Bermuda (WTO)
Rosburn International, Inc.	0.0547146	Canada (WTO)
RBC Dain	0.0377318	Canada (WTO)
Total WTO	54.0064665	
<u>U.S.-Domiciled Holders</u>	<u>Percent</u>	
Bay Harbour 90-1 Ltd.	17.3945838	
Trophy Hunter Investment Ltd.	6.3439639	
Goldman Sachs-controlled Fund	3.0337686	
d.Quant Fund, LLC	2.2155299	
York Select, L.P.	1.8633825	
York Capital Management, LP	1.6602907	
Fernwood Associates	1.1749008	
Harvard & Co.	1.1749008	
York Global Value Partners, L.P.	0.8391982	
York Credit Opportunities Fund, L.P.	0.4424300	
Individual U.S. Citizens (collectively)	0.6084450	
Total U.S.	36.7513942	
<u> Holders of Unidentified Citizenship</u>	<u>Percent</u>	
Storms & Co.	4.6828194	
Amroc Investment	1.4444384	
Numerous Miscellaneous Entities each <1.0%	(collectively) 3.1148814	
Total Unidentified	9.2421392	
Total TelCove Shareholders	99.9999999%	

¹ As a result of FCC staff inquiries regarding rounding discrepancies in the September 2, 2005 filing, this table has been revised to provide ownership percentages to the fourth decimal place. The listed percentages are from the shareholder survey referenced in the September 2, 2005 filing.

² As noted below, Goldman Sachs holds an additional 3.0337686 percent through a U.S.-domiciled investment vehicle.

³ LC did not respond to home market questionnaire; prior Internet search indicated a Caymans fund controlled by French entities.

⁴ Fernwood Associates did not respond to home market questionnaire, but previously indicated that Fernwood Restructuring Ltd. is domiciled in the Cayman Islands, while Fernwood Associates is domiciled in U.S., and that the shares are held for its own account.

⁵ Because the RCG Carpathia entities listed collectively hold less than 1.0 percent of TelCove's shares, TelCove did not request that these funds complete a home market questionnaire.

Appendix C

Agreement Between DHS, DOJ, FBI, and TelCove (June 15, 2005)