



# PUBLIC NOTICE

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## PETITION FOR DECLARATORY RULING GRANTED

### VERIZON COMMUNICATIONS INC. ON BEHALF OF ITS SUBSIDIARIES HOLDING FCC COMMON CARRIER RADIO LICENSES SEEKS FOREIGN OWNERSHIP RULING PURSUANT TO SECTION 310(b)(4) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED

IB Docket No. 13-230

By the Chief, International Bureau:

Verizon Communications Inc. (“Verizon”), on behalf of its subsidiaries holding common carrier radio licenses (“Joint Petitioners”), filed a petition for declaratory ruling (“Petition” or “Verizon Petition”) requesting that the Commission find, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”),<sup>1</sup> that it would not serve the public interest to prohibit a widely dispersed body of shareholders from holding aggregate foreign ownership in Verizon in excess of the 25 percent benchmark in section 310(b)(4), with no single foreign shareholder holding more than a five percent interest.<sup>2</sup> Upon consideration of the record, we grant the Petition as set forth below.

Verizon filed the Petition in connection with its planned acquisition of the non-controlling 45 percent general partnership interest in Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) that is indirectly held by Vodafone Group Plc (“Vodafone”), a public limited company organized in England.<sup>3</sup> Verizon is currently the indirect owner of a controlling 55 percent general partnership interest in Verizon Wireless.<sup>4</sup> According to the Petition, part of the consideration for the planned acquisition will

<sup>1</sup> 47 U.S.C. § 310(b)(4). The rules applicable to foreign ownership of common carrier, aeronautical en route and aeronautical fixed radio station licensees and common carrier spectrum lessees are set forth in sections 1.990 through 1.994 of the Commission’s rules, 47 C.F.R. §§ 1.990-1.994. *See also Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IB Docket No. 11-133, Second Report and Order, FCC 13-50, 28 FCC Rcd 5741 (2013) (*Foreign Ownership Second Report and Order*).

<sup>2</sup> The Petition has been assigned File No. ISP-PDR-20130906-00005 (filed Sept. 6, 2013). Verizon supplemented its Petition by letter dated September 17, 2013. *See* Letter from Katherine R. Saunders, Assistant General Counsel, Verizon, to Marlene H. Dortch, FCC, File No. ISP-PDR-20130906-00005 (filed Sept. 17, 2013) (“Sept. 17 Verizon Letter”).

<sup>3</sup> Petition at 1-2, 7.

<sup>4</sup> *Id.* Verizon will acquire Vodafone’s 45 percent interest in Verizon Wireless by acquiring all of the common stock of Vodafone Americas Finance 1 Inc. (“VAF1”), a U.S.-organized subsidiary of Vodafone which indirectly holds, through a series of intermediate U.S.-organized holding companies, all of Vodafone’s minority partnership interest

be in the form of Verizon stock that will be distributed to Vodafone's shareholders. Verizon explains that the share distribution may increase the aggregate percentage of Verizon shares held by non-U.S. investors from the current approximately 8.24 percent to an estimated aggregate 24.3-25.3 percent.<sup>5</sup> This range includes both the pre-transaction stock held outside the United States by existing Verizon shareholders, as well as the additional shares that will be distributed to Vodafone's shareholders once the transaction closes.<sup>6</sup> Verizon states that, because it is publicly traded and widely held, the percentage of foreign ownership will necessarily vary somewhat over time as shares are traded on the open market.<sup>7</sup>

Verizon is a publicly traded Delaware corporation. According to the Petition, the Verizon subsidiaries that hold FCC licenses – including the common carrier licenses that are the subject of the Petition<sup>8</sup> – are authorized to provide telecommunications services throughout the United States, including offering wireline and wireless telecommunications services to mass market, business, government, and wholesale customers. Verizon itself does not hold any FCC licenses or authorizations.<sup>9</sup> Verizon's stock will continue to be publicly traded and widely held after closing, and Verizon states that no non-U.S. person or entity will hold a greater than five percent equity and/or voting interest, or a controlling interest, in the outstanding Verizon shares.<sup>10</sup> Additionally, it states that no U.S. individual or entity will hold, directly or indirectly, more than ten percent of the equity and/or voting interests, or a controlling interest, in Verizon.<sup>11</sup>

Verizon Wireless is a Delaware general partnership formed by Verizon and Vodafone, and controlled by Verizon. Verizon Wireless holds a variety of authorizations and licenses to provide common carrier fixed and mobile services, private radio services, and other services. After consummation of the proposed transaction, Verizon Wireless will continue to be controlled by Verizon.<sup>12</sup>

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in Verizon Wireless. Verizon will also acquire the intermediate holding companies in the direct ownership chain between VAF1 and Verizon Wireless, excluding any assets other than the interest in Verizon Wireless and a cash balance at one of the companies. All other assets in the companies being acquired will be removed in the reorganization to be completed prior to the close of the transaction. *Id.* at 3. *See also* [http://www.vodafone.com/content/index/media/group\\_press\\_releases/2013/vodafone\\_to\\_realiseus130billionforits45interestinverizonwireless.html](http://www.vodafone.com/content/index/media/group_press_releases/2013/vodafone_to_realiseus130billionforits45interestinverizonwireless.html) (last visited Sept. 17, 2013).

<sup>5</sup> Petition at 2-3. The precise amount of stock to be transferred will be based on a pre-closing averaged share price subject to a price collar. *Id.* at 3, note 2. Verizon explains that, based on calculations of existing foreign ownership in both Verizon and Vodafone, as discussed in the Petition, an estimated aggregate 24.3-25.3 percent of Verizon shares may be owned by foreign individuals or entities following the transaction, with no foreign shareholder owning more than five percent of Verizon stock. *Id.* at 3. Post-transaction foreign ownership of Verizon could be reduced should Verizon elect to pay an additional portion of the consideration in cash rather than stock, or if additional non-U.S. stockholders in Vodafone dispose of the Verizon shares they receive due to an inability to invest in U.S. companies or for other reasons. *Id.*; *see also id.* at 8, note 10.

<sup>6</sup> *Id.* at 8.

<sup>7</sup> *Id.*

<sup>8</sup> *See* Sept. 17 Verizon Letter at Exhibit 1 (listing entities identified in Appendix A to the Petition that hold common carrier licenses for which a declaratory ruling is sought).

<sup>9</sup> Petition at 4.

<sup>10</sup> *Id.* at 3, 8. *See also* 47 C.F.R. § 1.991(i).

<sup>11</sup> Petition at 8, note 11. *See also* 47 C.F.R. §§ 1.991(e), (f).

<sup>12</sup> Petition at 5-6. Verizon states that it is separately submitting applications seeking prior approval, and will later submit notifications for licenses subject to post-closing notification, of the *pro forma* transfer of control of licenses

## Comments

We placed the Petition on public notice on September 20, 2013.<sup>13</sup> NTCH, Inc. filed comments,<sup>14</sup> and Verizon filed a reply.<sup>15</sup>

NTCH states that it has “no objection per se” to the foreign ownership ruling requested by Verizon, subject to “three provisos.”<sup>16</sup> NTCH first asserts that the Commission should act on NTCH’s pending petition for reconsideration of the *Verizon Wireless-SpectrumCo Order*<sup>17</sup> before ruling on Verizon’s Petition. Second, NTCH urges the Commission to make clear that its action here does not apply to any subsidiaries of Verizon that may have alien ownership in excess of the 20 percent limit in section 310(b)(3) of the Act.<sup>18</sup> Finally, NTCH asks the Commission to rescind the foreign ownership ruling issued in the *2000 Bell Atlantic-Vodafone Order*, which “permitted Vodafone to own up to 65.1% of Verizon Wireless,”<sup>19</sup> and to specify in any new foreign ownership ruling issued to Verizon “a reasonable time-delimited duration” for exceeding the section 310(b)(4) 25 percent benchmark.<sup>20</sup>

Verizon replies that NTCH’s petition for reconsideration of the foreign ownership ruling issued to Verizon Wireless in the *Verizon Wireless-SpectrumCo Order* must be addressed in the proceeding in which it was raised.<sup>21</sup> Verizon also finds irrelevant NTCH’s request that the Commission make clear its action here does not apply to any subsidiaries of Verizon that may have alien ownership in excess of the limit in section 310(b)(3) of the Act, and states that the Petition raises issues only under section 310(b)(4).<sup>22</sup> Finally, Verizon asserts that NTCH’s request that the Commission limit the duration of any

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held by Verizon Wireless and its subsidiaries and partnerships affected by the proposed transaction. *Id.* at 4, note 3. See also ULS File Nos. 0005919278, 0005919281, 0005919284, 0005919288, 0005919293, 0005919300, 0005919301, 0005919302 (applications for consent to *pro forma* transfer of control of private wireless radio licenses); File No. 0048-EX-TU-2013 (application for consent to *pro forma* transfer of control of experimental radio license).

<sup>13</sup> Verizon Communications Inc. on Behalf of Its Subsidiaries Holding FCC Common Carrier Radio Licenses Seeks Foreign Ownership Ruling Pursuant to Section 310(b)(4) of the Communications Act of 1934, as Amended, IB Docket No. 13-230, DA 13-1948, 28 FCC Rcd 13760 (Int’l Bur. 2013).

<sup>14</sup> Comments of NTCH, Inc. (filed Oct. 25, 2013) (“NTCH Comments”).

<sup>15</sup> Reply in Support of Verizon’s Petition for Declaratory Ruling (filed Oct. 30, 2013) (“Verizon Reply”).

<sup>16</sup> NTCH Comments at 1.

<sup>17</sup> *Id.* (citing *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses*, WT Docket Nos. 12-4, 12-275, Memorandum Opinion and Order and Declaratory Ruling, FCC 12-95, 27 FCC Rcd 10698 (2012) (*Verizon Wireless-SpectrumCo Order*), *pet. for recon. pending*).

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.* (citing *Applications of Vodafone AirTouch, Plc and Bell Atlantic Corporation for Consent to Transfer Control or Assignment of Licenses and Authorizations*, Memorandum Opinion and Order, DA 00-721, 15 FCC Rcd 16507 (WTB/Int’l Bur. 2000) (*2000 Bell Atlantic-Vodafone Order*)).

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

<sup>21</sup> Verizon Reply at 2-3.

<sup>22</sup> *Id.* at 3.

new ruling issued to Verizon is “just an argument that the Commission should change its current rules and its long-standing practice under which it has granted foreign ownership rulings of unlimited duration.”<sup>23</sup>

### Discussion

We grant the Verizon Petition. We received no comments objecting to grant of the Petition. The relevant Executive Branch agencies with expertise on issues related to national security, law enforcement, foreign policy and trade policy have not filed any objection to issuance of the declaratory ruling or requested that we impose any conditions on the grant.<sup>24</sup> The information that Verizon has provided for the record satisfies the requirements of the Commission’s rules, and grant is consistent with the policies the Commission established in the *Foreign Ownership Second Report and Order*.<sup>25</sup> The Petition identifies each Joint Petitioner and the common carrier radio services it is licensed to provide; specifies that the Joint Petitioners seek a ruling under section 310(b)(4) of the Act; and describes the methodology Verizon used to estimate its post-transaction aggregate foreign ownership and the circumstances that prompted the filing of the Petition.<sup>26</sup> The Petition contains the required public interest statement and an ownership diagram for each Joint Petitioner, and certifies that, following the transaction, no non-U.S. person or entity will hold a greater than five percent equity and/or voting interest or a controlling interest in the outstanding Verizon shares.<sup>27</sup> We thus find that there are no Verizon shareholders that would require specific approval under the rules.<sup>28</sup>

There is no persuasive reason to delay acting on the Verizon Petition as requested by NTCH. As Verizon points out, its petition concerns solely its prospective level of foreign ownership following the proposed transaction.<sup>29</sup> Our action today does not prejudice any action the Commission may take regarding the NTCH petition for reconsideration of the *Verizon Wireless-SpectrumCo Order*. As to NTCH’s other requests, the Verizon Petition only seeks a ruling related to Verizon’s possible foreign ownership in excess of the 25 percent benchmark in section 310(b)(4),<sup>30</sup> and the ruling we give herein only addresses section 310(b)(4) and not section 310(b)(3). Finally, as Verizon notes, the Commission

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<sup>23</sup> Verizon further states that the Commission’s recent revision to its foreign ownership rules reaffirmed its established practice, and expressly provided for foreign ownership approvals that contemplate changes in foreign ownership at an indeterminate future time. *Id.* (citing *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5745-46, ¶ 5).

<sup>24</sup> In reviewing proposed foreign investment in U.S. common carrier applicants, licensees and spectrum lessees, the Commission considers whether the foreign investment raises concerns with respect to potential effects on competition as well as any national security, law enforcement, foreign policy, or trade policy concerns. *See Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5760, ¶ 31.

<sup>25</sup> 28 FCC Rcd 5741.

<sup>26</sup> *See* 47 C.F.R. § 1.991(a)-(d), (h).

<sup>27</sup> *Id.* § 1.991(h)-(i); *id.* § 1.990(c) (certification requirement). Verizon also states that no person or entity will hold, directly or indirectly, more than 10 percent of Verizon’s equity and/or voting interests, or a controlling interest. Petition at 8, n.11. *See also id.* § 1.991(e)-(f).

<sup>28</sup> 47 C.F.R. § 1.991(i).

<sup>29</sup> Verizon Reply at 2.

<sup>30</sup> Petition at 1 (petition filed pursuant to 47 C.F.R. § 1.990(a)(1)). *See also* 47 C.F.R. § 1.990(d)(1) (requiring petitioner to state whether it is requesting a declaratory ruling under § 1.990(a)(1) and/or § 1.990(a)(2)).

has a long-standing practice of issuing foreign ownership rulings of unlimited duration,<sup>31</sup> which is now reflected in the rules it adopted in the *Foreign Ownership Second Report and Order*. Accordingly, it would be inappropriate to revisit that practice here, and NTCH provides no basis for doing so.<sup>32</sup> The Commission's new rules prescribe the conditions under which the Joint Petitioners are required to file a new petition for declaratory ruling with the Commission.<sup>33</sup>

#### Declaratory Ruling

Pursuant to the rules and policies established by the Commission's *Foreign Ownership Second Report and Order*, we find that the public interest would not be served by prohibiting foreign ownership of the Joint Petitioners in excess of the 25 percent benchmark in section 310(b)(4) of the Act. Specifically, this ruling permits aggregate foreign equity and voting interests in the Joint Petitioners' controlling U.S. parent company, Verizon, to exceed 25 percent of its equity and/or voting interests, subject to the terms and conditions set forth in section 1.994 of the Commission's rules.<sup>34</sup>

The Joint Petitioners have an affirmative duty to monitor their foreign equity and voting interests, calculate these interests consistent with the attribution principles enunciated by the Commission, including the standards and criteria set forth in sections 1.992 through 1.993 of the Commission's rules, 47 C.F.R. § 1.992-1.993, and otherwise ensure continuing compliance with the provisions of section 310(b) of the Act.<sup>35</sup>

#### Procedural Matters

This declaratory ruling is issued pursuant to sections 0.51 and 0.261 of the Commission's rules, 47 C.F.R. §§ 0.51 and 0.261.

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<sup>31</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*, IB Docket No. 00-187, Memorandum Opinion and Order, FCC 01-142, 16 FCC Rcd 9779 (2001); *Verizon Communications, Inc., Transferor, and América Móvil, S.A. de C.V., Transferee, Applications for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI)*, WT Docket No. 06-113, Memorandum Opinion and Order and Declaratory Ruling, FCC 07-43, 22 FCC Rcd 6195 (2007); *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc.*, Order and Declaratory Ruling, FCC 08-77, 23 FCC Rcd 4436 (2008); *Robert M. Franklin, Transferor and Inmarsat, plc, Transferee*, IB Docket No. 08-143, Memorandum Opinion and Order and Declaratory Ruling, DA 09-117, 24 FCC Rcd 449 (Int'l Bur. 2009); *Vizada Services LLC and Vizada, Inc.*, Order and Declaratory Ruling, DA 10-357, 25 FCC Rcd 2029 (Int'l Bur. 2010).

<sup>32</sup> To the extent that NTCH believes we should change our practice, it may file a petition for rulemaking.

<sup>33</sup> The terms and conditions set out in the Commission's *Foreign Ownership Second Report and Order* provide, *inter alia*, that Verizon may be 100 percent owned, directly and/or indirectly through one or more U.S.- or foreign-organized entities, on a going-forward basis by other foreign investors without prior Commission approval, subject to the requirement of prior Commission approval before any foreign individual, entity or "group" as defined by the Commission's rules acquires, directly and/or indirectly, more than five percent of Verizon's (or any other U.S. parent's) outstanding capital stock (equity) and/or voting stock, or a controlling interest, except as provided in the rules. See 47 C.F.R. § 1.994(a)(1). Subject to the certification requirements of the rules, the instant ruling will also apply to any U.S.-organized subsidiary and affiliate of any of the Joint Petitioners that remains in compliance with this ruling and the Commission's rules. *Id.* § 1.994(b).

<sup>34</sup> 47 C.F.R. § 1.994.

<sup>35</sup> See 47 C.F.R. § 1.994(a) note.

Issuance of this declaratory ruling is without prejudice to the Commission's action on any other related pending application(s).

Pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, the consent granted herein is effective upon the release of this Public Notice. 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 this Public Notice.

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