

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
SPRINT CORPORATION )  
 ) File No. ISP-96-003  
Petition for Declaratory Ruling )  
Concerning Section 310(b)(4) and (d) )  
of the Communications Act of 1934, )  
as amended )

DECLARATORY RULING AND ORDER

Adopted: September 17, 1996

Released: September 18, 1996

By the Chief, International Bureau:

Introduction

1. On March 5, 1996, Sprint Corporation (Sprint) filed a petition for declaratory ruling seeking approval for an increase in the foreign ownership of Sprint's capital stock from 28 to 35 percent. Specifically, Sprint seeks a ruling that such an increase of foreign ownership is consistent with the public interest under Section 310(b)(4) of the Communications Act (the Act).<sup>1</sup> We grant Sprint's petition. As the Commission indicated when it approved up to 28 percent foreign ownership in Sprint in December 1995, additional foreign equity contributions will enhance Sprint's ability to expand and improve its network services and products to the benefit of U.S. consumers.<sup>2</sup>

Background

2. Sprint is a publicly-traded U.S. corporation that owns or controls subsidiaries that hold domestic common carrier microwave licenses, international facility authorizations, cable landing licenses, and other Commission licenses and authorizations. Sprint conducts its businesses through subsidiaries. Sprint's long distance subsidiary is the third largest U.S. carrier of long distance services, providing voice, data and video services over a nationwide digital, fiber optic network. Sprint provides a broad spectrum of domestic and international

<sup>1</sup> 47 U.S.C. §310(b)(4), (d) (1994).

<sup>2</sup> *Sprint Declaratory Ruling and Order*, 11 FCC Rcd 1850 (1996) (*Sprint Declaratory Ruling*).

voice and data services.<sup>3</sup>

3. Last year in the *Sprint Declaratory Ruling*, the Commission granted Sprint's request for a declaratory ruling that 10 percent equity investments each by France Telecom (FT) and Deutsche Telekom (DT) (20 percent total) in Sprint would not result in a transfer of control of Sprint to FT and DT. The Commission also granted, subject to strict conditions, Sprint's request for rulings that the proposed alien ownership in Sprint of up to 28 percent was consistent with Section 310(b)(4) of the Communications Act, and that the proposed transaction was otherwise consistent with the public interest.

4. In reaching these conclusions, the Commission found that France and Germany did not offer effective competitive opportunities to U.S. carriers, as mandated by the Commission's rules under Sections 214 and 310(b)(4),<sup>4</sup> because FT and DT were monopoly providers of basic international telecommunications facilities in their respective countries. The Commission concluded, however, that two other important public interest factors weighed in favor of granting approval: (1) the current and planned liberalization of the French and German telecommunications markets; and (2) the competitive benefits for U.S. telecommunications markets of the FT and DT investment in Sprint.

5. The Commission's public interest finding, however, is subject to strict conditions to address: (1) the potential for FT and DT to use their current *de jure* and *de facto* monopoly market power to engage in anticompetitive conduct affecting the U.S. international services market; and (2) the possibility that the committed telecommunications liberalization in France and Germany may not occur on the anticipated schedule.<sup>5</sup>

6. The Commission also concluded that the French and German investment in

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<sup>3</sup> *Id.* at 1851.

<sup>4</sup> See *Market Entry and Regulation of Foreign-affiliated Entities, Report and Order*, 11 FCC Rcd 3873 (1995) (*Foreign Carrier Entry Order*).

<sup>5</sup> The following five conditions apply: (1) Sprint is regulated as a dominant carrier on the France and Germany routes; (2) Sprint is not allowed to operate newly acquired circuits on the U.S.-France and U.S.-Germany routes until alternative infrastructure to provide already-liberalized services and basic switched voice resale competition is available in France and Germany; (3) Sprint is prohibited from accepting special concessions from any foreign carrier and must file certain periodic reports; (4) Sprint must obtain a written commitment from FT to lower the accounting rate between the United States and France to the same range as the U.S.-U.K. and U.S.-Germany; and (5) Sprint must file a report with this Commission no later than March 31, 1998 detailing how France and Germany have implemented effective competitive opportunities and whether the anticipated liberalization has occurred. If it has not, the Commission indicated it would take further action, including designating for hearing the issue of whether the public interest continues to be served by Sprint's holding of Section 214 facilities authorizations on the U.S.-France and U.S.-Germany routes. See *Sprint Declaratory Ruling* at 1850-51.

Sprint did not result in a transfer of control of Sprint to FT or DT under Section 310(d) of the Act. It found that FT's and DT's consent rights regarding matters such as issuance of new equity, the sale of assets, certain business combinations, and entry into telecommunications and non-telecommunications businesses, as well as certain voting rights, did not rise to the level of a transfer of control. The Commission further noted that FT and DT expressed intent not to control Sprint and no evidence was presented to the contrary.<sup>6</sup>

### Sprint's Petition

7. In its petition, Sprint asserts that the increase in its foreign ownership from 28 percent to 35 percent will result from passive, widely dispersed investors whose individual equity positions will not exceed one percent of Sprint's capital stock. Sprint argues these investors will have neither the interest nor the ability to control Sprint. Sprint also emphasizes that FT's and DT's ownership interests in Sprint are not expected to increase, and Sprint will continue to be bound by the terms of the *Sprint Declaratory Ruling*. It also asserts that Sprint's Board of Directors and management will continue to be comprised predominantly of U.S. citizens. Sprint states that, because these factors have remained unchanged since the *Sprint Declaratory Ruling*, no finding regarding transfer of control is necessary. Sprint also states that, given these factors, an increase of foreign ownership in Sprint up 35 percent is consistent with the Commission precedent. It cites in particular the Bureau's decision last year that granted MCI's request to increase its foreign ownership from 28 percent to 35 percent.<sup>7</sup> Sprint asserts that all of the findings and conclusions made by the Bureau in the *MCI Declaratory Ruling (35 Percent)* are relevant in this case and mandate grant of its petition.<sup>8</sup>

### Comments

8. Sprint's petition was placed on public notice, and Vebacom GmbH (Vebacom) was the only party to file comments.<sup>9</sup> Although Vebacom does not object to the proposed increase in the level of foreign ownership of Sprint, it argues that the reporting requirements imposed on Sprint in the *Sprint Declaratory Ruling* are insufficient. It asks the Commission to require more detailed reports on the progress of liberalization in the German and French telecommunications markets. Vebacom asserts that, absent more detailed reporting requirements, there is no way for the Commission to ensure that the proposed level of increased foreign investment in Sprint actually will benefit U.S. consumers and the U.S.

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

<sup>7</sup> See *MCI Communications Corporation*, 10 FCC Rcd 8697 (1995) (*MCI Declaratory Ruling (35 Percent)*).

<sup>8</sup> Sprint petition at 3-4.

<sup>9</sup> Public Notice, Report No. I-8157 (rel. Mar. 15, 1996).

economy. In addition, Vebacom contends that Sprint has failed to provide absolute assurance that FT's and DT's investment will not increase. Finally, Vebacom disagrees with Sprint that the Bureau's decision to allow MCI to achieve up to 35 percent foreign ownership is similar to this case. Vebacom states that Sprint's case raises more concerns than in the case of MCI because of Sprint's alliance with FT and DT, both monopoly carriers in their home markets. Vebacom seeks assurances that unaffiliated U.S. carriers will not be permanently disadvantaged by Sprint's affiliation with DT and FT.<sup>10</sup>

9. In response, Sprint opposes Vebacom's request for additional reporting requirements. Sprint states that since ownership by FT and DT will not increase above the 10 percent ownership levels currently authorized by Commission, further reporting requirements (beyond those imposed in the *Sprint Declaratory Ruling*) on Sprint's U.S.-France and U.S.-Germany routes are unwarranted. Sprint argues that Vebacom's request is simply a duplication of an earlier request it made in response to the Sprint Declaratory Ruling. Sprint emphasizes that an additional seven percentage points above the current level of 28 percent is needed to accommodate daily fluctuations in the level of foreign ownership of Sprint's publicly traded capital stock.<sup>11</sup>

### Discussion

10. Foreign ownership greater than 25 percent in Sprint, the parent corporation of Title III common carrier radio licensees, triggers the applicability of Section 310(b)(4) of the Act. Under Section 310(b)(4), "[n]o . . . common carrier . . . license shall be . . . held by . . . any corporation directly or indirectly controlled by any corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens . . . if the Commission finds that the public interest will be served by the . . . revocation of such license."<sup>12</sup> As stated above, the Commission has the discretion under Section 310(b)(4) to disallow foreign ownership along a vertical ownership chain that exceeds the 25 percent benchmark.

11. We conclude that permitting Sprint to increase its foreign ownership by seven percent from 28 to 35 percent is not inconsistent with the public interest under Section 310(b)(4). The increased foreign ownership will come from passive investors, who will each own less than one percent of Sprint's capital stocks.<sup>13</sup> These passive investors are widely dispersed and will have neither the interest nor the ability to control Sprint. As Sprint affirmed in its reply, FT's and DT's ownership in Sprint will not change as a result of the proposed increase in Sprint's foreign ownership. Allowing an additional seven percent

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<sup>10</sup> Vebacom comments at 1, 3-5.

<sup>11</sup> Sprint petition at 2.

<sup>12</sup> 47 U.S.C. § 310(b)(4).

<sup>13</sup> Sprint petition at 4.

foreign ownership in Sprint under these circumstances is consistent with prior Commission and Bureau actions, including the *MCI Declaratory Ruling (35 Percent)*.<sup>14</sup> Because of the dispersed nature of this additional foreign ownership, we do not apply an effective competitive opportunities analysis in our public interest determination under Section 310(b)(4) to the seven percent foreign ownership at issue in this petition.<sup>15</sup> We also conclude that, given that no foreign carrier will own more than one percent of the increased foreign ownership in Sprint, there is no basis to apply our effective competitive opportunities analysis under Section 214.<sup>16</sup>

12. We agree with Sprint that increased, widely dispersed foreign ownership in Sprint will serve the public interest by benefiting U.S. consumers and the U.S. economy.<sup>17</sup> As Sprint notes, the Commission has previously found that such foreign investment provides capital that can fuel investment in state-of-the-art infrastructure that leads to economic growth and job formation in the U.S. economy and facilitates competition among U.S. carriers both at home and abroad.<sup>18</sup> Thus, we conclude that these additional foreign equity contributions are not inconsistent with the public interest under Section 310(b)(4). We note, however, that Sprint continues to be bound by the conditions and requirements imposed by the Commission in the *Sprint Declaratory Ruling*, which requires prior Commission approval of any increase in Sprint's voting or ownership interests.<sup>19</sup>

13. We also agree with Sprint that we need not address whether the proposed increase in foreign ownership in Sprint will result in a transfer of control. As we noted above, the increased foreign ownership will come from passive investors, no single new foreign investor will own more than one percent of Sprint's stock, and these investors will not acquire a right to determine Sprint policy or to dominate Sprint management. Moreover, Sprint's Board of Directors and its manner of conducting business, factors considered previously in the *Sprint Declaratory Ruling*, will remain unchanged. As a result, we need not consider again, in this proceeding, whether the proposed increased foreign ownership will result in a transfer of control.

14. Finally, we decline to impose further reporting requirements on Sprint, as urged

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<sup>14</sup> See, e.g., *GRC Cablevision, Inc.*, 47 F.C.C.2d 467, 30 R.R.2d 827 (1974); *Teleport Transmission Holdings*, 8 FCC Rcd 3063 (Com. Car. Bur. 1993); *IDB Communications Group, Inc.*, 6 FCC Rcd 4652 (Com. Car. Bur. 1991); *MCI Declaratory Ruling (35 Percent)*, 10 FCC Rcd at 8701.

<sup>15</sup> See *Foreign Carrier Entry Order* at 3879-83.

<sup>16</sup> See *id.* at 3881.

<sup>17</sup> See Sprint petition at 4.

<sup>18</sup> *Id.* at 4; see also *MCI Declaratory Ruling (35 Percent)* at 8698.

<sup>19</sup> See *Sprint Declaratory Ruling* at 1872-74.

by Vebacom. In the *Sprint Declaratory Ruling*, the Commission imposed strict conditions and safeguards designed to protect against anticompetitive behavior and other potential anticompetitive effects from the investment by FT and DT in Sprint. These safeguards include reporting requirements to monitor the progress of telecommunications liberalization in France and Germany. Given that FT's and DT's ownership interests in Sprint will not increase beyond the 20 percent considered by the Commission in the *Sprint Declaratory Ruling*, we do not believe it is necessary or appropriate to impose additional reporting requirements in this proceeding. We will, however, require Sprint to notify the Commission if a foreign investor acquires more than a one percent equity interest in Sprint.

### **Conclusion**

15. We conclude that the public interest will be served by granting this declaratory ruling. Based on Sprint's representations that the increased foreign investment will be passive and no foreign investor (other than FT and DT) will own more than one percent, we find that the proposed increase in foreign ownership of Sprint from 28 percent to 35 percent is not inconsistent with the public interest under Section 310(b)(4) of the Act. Given that the ownership interest of Sprint's foreign carrier affiliates, FT and DT, will not increase, we decline to impose any additional reporting requirements upon Sprint.

### **Ordering Clauses**

16. Accordingly, IT IS ORDERED that the petitioner's request for a declaratory ruling IS GRANTED. The level of 35 percent foreign ownership in Sprint, as described in the petition, is not inconsistent with the public interest Section 310(b)(4) of the Act.

17. IT IS FURTHER ORDERED that Sprint shall continue to conduct periodic surveys of its public shareholders to ensure compliance with the 35 percent maximum level of foreign ownership in Sprint found to be not inconsistent with the public interest pursuant to Section 310(b)(4) of the Act.

18. IT IS FURTHER ORDERED that Sprint shall notify the Commission if the ownership interest of any foreign investor exceeds one percent.

19. This order is effective upon adoption. Petitions for reconsideration under Section 1.106 may be filed within 30 days of the date of the public notice of this order. (See Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Ruth Mulkman".

*for*  
Donald H. Gips  
Bureau Chief  
International Bureau