

GHz to support non-voice systems known as Little LEOs and an adjustment to the existing 2 GHz allocation necessary to accommodate multiple competing global MSS systems, including those known as Big LEOs. The Report also addresses the simplification of the international Radio Regulations and other issues on the WRC-95 agenda, including space services, international satellite orbit allotment plans, high frequency broadcasting and future conference agendas.

4. The Commission's recommended proposals are based on the work of the WRC-95 Industry Advisory Committee, comments received from the public in response to two Notices of Inquiry, and participation in international preparatory activities for WRC-95, including the 1995 Conference Preparatory Meeting (CPM-95).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95-19195 Filed 8-4-95; 8:45 am]

BILLING CODE 6712-01-M

[GN Docket No. 93-252, DA 95-1303]

Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services; Foreign Ownership Waiver Petitions

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: As a result of legislation which reclassified certain licensees, waivers were filed to request retention of existing foreign ownership that would otherwise not be permitted. This order resolves those requests for waiver of the foreign ownership rules filed pursuant to the Omnibus Budget Reconciliation Act of 1993 and the First Report and Order in this docket.

EFFECTIVE DATE: September 6, 1995.

FOR FURTHER INFORMATION CONTACT:

Sue McNeil, Wireless Telecommunications Bureau, (202) 418-0660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in GN Docket No. 93-252, DA 95-1303, adopted June 12, 1995 and released June 12, 1995. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor,

International Transcription Service, Inc., (202) 857-3800, 2100 M Street NW., Washington, DC 20037.

Summary of the Order

Introduction

1. This order resolves thirty-three requests for waiver of the foreign ownership rules filed pursuant to the Omnibus Budget Reconciliation Act of 1993 (Budget Act) and the First Report and Order in this docket (CMRS First and Order) 59 Fed. Reg. 1285 (Jan. 10, 1994). As discussed herein, we (1) grant the petitions filed by MAP Mobile Communications, Geotek Corporation, Nextel Corporation, Pittencrieff Communications, RACOM, and Uniden; (2) dismiss the waiver petition filed by Comcast Corporation as moot; and (3) deny the remaining petitions.

Background

2. Prior to the enactment of the Budget Act, petitioners were regulated as private land mobile radio service providers and therefore were not subject to the foreign ownership restrictions contained in Section 310(b) of the Communications Act (the Act). In the Budget Act, Congress reclassified certain categories of private land mobile radio providers as commercial mobile radio service (CMRS) providers, and provided that they would be treated as common carriers under the Act. As a result of this statutory change, reclassified CMRS providers will become subject to the foreign ownership restrictions applicable to common carriers.

3. To alleviate the potential burden on reclassified licensees of complying with the foreign ownership restrictions, the Budget Act provided for limited grandfathering of existing foreign interests in such licensees. Specifically, Congress provided that any private land mobile service licensee subject to reclassification as a CMRS provider could petition the Commission by February 10, 1994 for waiver of the application of Section 310(b) to any foreign ownership that lawfully existed as of May 24, 1993. The statute further stated that the Commission could grant such waivers to eligible petitioner only upon certain conditions: (a) the extent of foreign ownership interest could not be increased beyond May 24, 1993 levels; and (b) the waiver could not allow any subsequent transfers in violation of Section 310(b).¹ In the

¹ The legislative history accompanying the Budget Act provides that a waiver can extend only to the particular person or entity who holds the foreign ownership on May 24, 1993 and does not transfer to any future foreign owners. H.R. Conf. Rep. No.

CMRS First Report and Order, we indicated that we also would apply the waiver provisions to foreign officers and directors.

4. In the CMRS First Report and Order, the Commission established a petition procedure for affected licensees to request waiver of the foreign ownership restrictions. The Commission acknowledged that because of the February 10, 1994 filing deadline, petitioners might be required to file their waiver requests prior to a final determination of whether they were subject to reclassification. Accordingly, the Commission stated that the filing of a petition would not prejudice a licensee's right at a later date to assert that it should not be reclassified as a CMRS provider. Thirty-three timely-filed requests were received by the February 10 statutory deadline.

5. Following the filing of the petitions, the Commission adopted the Second Report and Order in this docket (CMRS Second Report and Order) 59 Fed. Reg. 18,493 (Apr. 19, 1995), which specified those services that would be regulated as CMRS (and thereby subject to the foreign ownership restrictions). In that Order, the Commission defined CMRS as a mobile service that is: (a) provided for profit, *i.e.*, with the intent of receiving compensation or monetary gain; (b) an interconnected service; and (c) available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public. A mobile service that does not meet that definition is presumed to be PMRS.

6. On May 24, 1994, the Land Mobil and Microwave Division of the Private Radio Bureau asked all petitioners to provide supplemental information regarding their waiver requests. In particular, the Division asked each petitioner to certify whether, in light of the guidelines set forth in the CMRS Second Report and Order, it was subject to reclassification as a CMRS provider and would therefore qualify for statutory relief from the restrictions contained Section 210(b).

Discussion

A. Waiver Requests of Geotek, MAP Mobile, RACOM, and Uniden

7. In their initial and follow-up filings, petitioners Geotek, MAP Mobile, RACOM and Uniden indicate that they are subject to reclassification as CMRS providers and accordingly request waiver of the foreign ownership restrictions. No opposition to any of these petitions were filed.

8. We conclude that the petitions filed by Geotek, MAP Mobile, RACOM, and Uniden meet the statutory requirements for grant of the requested waivers. Each of these petitioners has satisfied the informational showings and certifications required by the Budget Act, the CMRS First Report and Order, and our May 24 request for information. Moreover, allowing these petitioners to retain foreign ownership that existed as of May 23, 1993, will help ensure a smooth transition as these entities and/or their subsidiaries become subject to CMRS regulation.

9. We therefore exercise our authority to grandfather all foreign ownership that lawfully existed in each of these petitioners as of May 24, 1993. Consistent with the Budget Act, we also impose the following conditions on each waiver: (a) The extent of foreign ownership interest cannot be increased beyond May 24, 1993 levels; and (b) any subsequent transfers in violation of Section 310(b) are prohibited. Licensees operating in violation of the terms of these waivers will be subject to appropriate enforcement action.

10. We also clarify that, while petitioners may not increase their level of foreign ownership above May 24, 1993 levels, the waivers granted by this Order do apply to additional licenses granted to petitioners in the same service after May 24, 1993 and prior to August 10, 1996, provided the same ownership structure is maintained. We believe that this is consistent with Congressional intent in grandfathering the foreign ownership interests of reclassified licensees. In the CMRS Second Report and Order 59 FR 18,493 (Apr. 19, 1995), we provided that grandfathered licensees who acquired new licenses in the same service during the 3-year statutory transition period could extend grandfathered PMRS status to such new licenses until August 10, 1996. We believe the same flexibility should be extended to petitioners with respect to the waivers granted by this Order. Accordingly, until August 10, 1996, petitioners may acquire additional licenses in the same service using the ownership structure approved by this waiver. The requirements of Section 310(b) will apply, however, to any licenses awarded to petitioners after August 10, 1996.

B. Waiver Request of Pittencrieff

11. In its initial petition and May 24 supplemental filing, Pittencrieff stated that as of May 24, 1993, it was 100 percent foreign owned, but that its level of foreign ownership had declined to 54.4 percent as of the date of the petition. Subsequently, in a September

26, 1994 letter, Pittencrieff stated that after the initial petition was filed, it had undergone a corporate reorganization involving the *pro forma* transfer of its licenses to a newly-created wholly-owned subsidiary. Pittencrieff indicated that while the formal chain of ownership of the licenses had been altered by the transaction, the identity of the foreign interest holders did not change. Pittencrieff also noted that it has further reduced its foreign ownership level to 23.8 percent.

12. The Bureau concludes that Pittencrieff is entitled to a waiver applicable to any foreign individual or entity who held an interest in Pittencrieff's licenses as of May 24, 1993. Pittencrieff's September 26, 1994 letter indicates that as a result of its corporate reorganization, such foreign interest holders now hold their interests through a new entity created since the petition was filed. Nevertheless, we believe that the waiver policy established by Congress extends to such interests, provided that the petitioner certifies that (1) the identify of the foreign interest holders has not changed, and (2) the percentage interest in the licenses held by such interest holders has not increased since May 24, 1993. We therefore grant Pittencrieff's waiver request provided that it certifies to the above conditions within 60 days after publication of this Order in the **Federal Register**. As discussed in paragraph 10, *supra*, we also extend this waiver to additional licenses acquired by Pittencrieff through August 10, 1996, in services where it held licenses as of May 24, 1993, so long as its ownership structure remains in place.

C. Waiver Request of Nextel

13. Nextel states in its petition and follow-up filings that it is subject to reclassification as a CMRS provider and accordingly requests waiver of the foreign ownership restrictions. Nextel explains that a waiver is needed because Matsushita, a Japanese corporation, acquired a 1.38 percent equity interest in Nextel in 1992 and has the right to designate one member of Nextel's nine person Board of Directors. Nextel also notes that the identity of the board member designated by Matsushita has changed since May 24, 1993. Nextel maintains that in the case of a corporate directorship interest, the Budget Act grandfathers the interest itself, not the individual representing the corporate interest. Therefore, Nextel argues, the Commission should grandfather Matsushita's corporate directorship interest and grant the waiver.

14. In addition, Nextel notes that it has executed an agreement with another

Japanese corporation, Nippon Telephone and Telegraph Company (NTT), which will permit NTT to acquire a 0.7 percent interest in Nextel and to be represented by a director on Nextel's Board. Nextel states that in connection with the transaction, it has undertaken a corporate restructuring and has filed applications for the *pro forma* assignment of all licenses held by Nextel to its wholly-owned subsidiaries. Once these *pro forma* applications are granted, Nextel states that the Matsushita and NTT interests in Nextel will be within the limitations of Section 310(b)(4) and the waiver requested here no longer will be necessary.

15. Nextel's waiver request is opposed by Kevin Lausman, who filed an Opposition and a number of related documents. In his Opposition, Lausman alleges that Nextel mischaracterized the nature of the Matsushita's interest in Nextel. Specifically, Lausman maintains that Nextel's representation that Matsushita's right to "designate" one member of the board is inconsistent with an SEC filing showing that Matsushita could "nominate" a board member, provided its ownership remained at a certain level. Lausman also alleges that Nextel attempted to mislead the Commission when its petition only identified licenses held by Nextel and not those of its subsidiaries. Moreover, Lausman maintains that Nextel is ineligible for the relief it requests on the grounds that it improperly executed an agreement to increase its level of foreign ownership and permitted Matsushita to change its representative on the Board of Directors. Finally, Lausman argues that granting Nextel's waiver is inconsistent with public policy in view of Japan's unfair trade practices.

16. We are not persuaded by Lausman's arguments.² At the outset, we observe that Lausman's opposition was not timely filed and thereby is procedurally defective. Pursuant to Section 1.45(a) of the Commission's Rules, Lausman should have filed his opposition by February 18, 1994, but did not in fact file with the Commission until March 11. Moreover, Lausman did not provide any basis why the Commission should accept its opposition out-of-time.

17. While we have sufficient reason to dismiss Lausman's opposition as untimely on its face, we also find Lausman's substantive allegations to be without merit. We disagree with Lausman's allegation that Nextel

² For the reasons set forth below, we also dismiss all subsequently-filed pleadings related to Lausman's Opposition.

misrepresented or failed to disclose information material to our consideration of the waiver requested in Nextel's petition. Nextel's petition and supplemental filings fully comply with the informational requirements set forth in the CMRS First Report and Order. In its petition, Nextel states that Matsushita is a foreign entity that holds an equity interest in Nextel that does not exceed the Section 310(b)(3) benchmark. Nextel also disclosed that, based on that interest, Matsushita has the right to designate one member of Nextel's Board of Directors. Nextel also explains that, due to personnel changes in Matsushita, the individual serving as Matsushita's representative on Nextel's Board has changed subsequent to May 24, 1993. Lausman has failed to show how any of these disclosures are incomplete or misleading. The purported discrepancy between Nextel's waiver petition and its SEC filing is a minor difference in terminology that has not substantive significance.

18. In addition, we find that Nextel did not act improperly in identifying only those licenses held by Nextel (and not by its subsidiaries) for purposes of its waiver request. Nextel's waiver request is expressly limited to those licenses that it holds directly and which otherwise would be subject to Section 310(b)(3). Nextel was not required to identify its indirect interest in other licenses for which no waiver either was required or sought.

19. Finally, we do not believe the agreement with NTT makes Nextel ineligible for the relief it requested. While Lausman correctly observes that the statute prohibits increases in foreign ownership subsequent to May 24, 1993, we note that Nextel has not requested such relief with respect to NTT's prospective interest. Instead, Nextel properly has taken separate steps to comply with the Section 310(b)(4) foreign ownership restrictions.

20. Accordingly, we grandfather all foreign ownership in Nextel that lawfully existed as of May 24, 1993, subject to the following conditions: (a) The extent of foreign ownership interest cannot be increased beyond May 24, 1993 levels; and (b) any subsequent transfers in violation of Section 310(b) are prohibited. As discussed *supra*, we construe the statute to extend the waiver to the acquisition of new licenses in services that Nextel provided as of May 24, 1993, so long as the same ownership structure remains in place.

21. We also grandfather Matsushita's designee on the Nextel Board of Directors, regardless of the fact that the identity of the individual serving as Matsushita's representative changed

after May 24, 1993. While the statute prohibits changes in the identity of foreign owners of grandfathered licensees, it does not expressly address the issue of directors. We further note that individual or corporate shareholders commonly seek to protect their investment by obtaining the right to nominate representatives to the board of directors. We conclude that in allowing foreign entities who held ownership interests in reclassified licensees prior to May 24, 1993 to retain those interests, Congress did not intend to deprive such entities of pre-existing rights to nominate members of the board of directors based on such ownership. So long as the entity controlling the directorship remains unchanged, we believe a change in the identity of the individual director is permissible. Accordingly, we conclude that Matsushita's corporate directorship interest should be grandfathered along with its ownership interest, and that the change in the identity of the individual serving as Matsushita's representative does not vitiate the waiver.

D. Waiver Request of Comcast

22. Comcast notes that the Commission previously has granted it a waiver of the foreign ownership restrictions to permit an Australian citizen to serve as an officer of the corporation. Nevertheless, Comcast requests a waiver to the extent necessary to allow this officer to remain once certain of its private land mobile subsidiaries are reclassified as CMRS providers.

23. The Bureau agrees with Comcast that the Commission's prior order allowing Comcast to have a foreign corporate officer under Section 310(b)(4) of the Act obviates the need for a separate, statutory waiver. In that Order, the Commission determined that the appointment of John Alchin, an Australian citizen, to the corporate officer of senior Vice President and Treasurer of Comcast would not adversely affect the public interest. The Commission subsequently has extended the scope of this waiver to permit Alchin to serve as an officer of any subsidiary of Comcast that directly or indirectly controls common carrier licensees but is not itself a common carrier licensee. Because the Commission has determined that Alchin's service as a corporate officer is in the public interest, and thereby has granted Comcast a waiver pursuant to Section 310(b)(4), the Bureau concludes that the additional waiver relief requested is unnecessary. Accordingly, Comcast's petition is dismissed as moot.

E. Other Waiver Requests

24. In responses to the Land Mobile and Microwave Division's May 24 supplemental information request, the remaining petitioners stated that, based on the Commission's rules, they would not be reclassified and thereby declined to certify that they would become CMRS licensees. Noting that the Commission has stated that "the filing of a [Section 310(b)] petition would not prejudice a licensee's future arguments as to whether it should be reclassified," these petitioners stated that, based on their current understanding of the Commission's rules, their radio operations are private. The petitioners nevertheless requested waiver of the foreign ownership restriction in the event that future Commission interpretations suggested they would be reclassified as CMRS providers. The petitioners otherwise failed to provide the information requested in the May 24 letters.

25. The Bureau declines to grant waivers to petitioners who have stated they will remain private mobile radio service providers. Under the Budget Act, waiver of the foreign ownership restrictions is only available to licensees that will be reclassified as CMRS. Because petitioners maintain that their radio operations remain private under the criteria set forth in the CMRS Second Report and Order, the relief requested neither is available nor required. Petitioners' argument that the CMRS First Report and Order affords the flexibility to obtain waiver relief in the future should the Commission clarify its CMRS definition is erroneous. Rather, the language cited by petitioners was intended to protect licensees that could not determine whether they would be reclassified until the CMRS Second Report and Order was released. Based on the standards set forth in the CMRS Second Report and Order, petitioners had sufficient information to determine whether they would be reclassified.

Ordering Clauses

26. Pursuant to our authority under 47 U.S.C. §§ 155(c)(1) and 332(c)(6), *it is ordered* that the requests for waiver filed by Geotek, MAP Mobile, Nextel, RACOM, and Uniden are hereby granted subject to the conditions described above.

27. *It is further ordered* That the waiver request filed by Pittencrieff *is granted*, provided that Pittencrieff certifies within 60 days after this Order is published in the **Federal Register** that (1) The identity of the foreign interest holders has not changed, and (2) the

percentage interest in the licenses held by such interest holders has not increased since May 24, 1993.

28. *It is further ordered* That the waiver request filed by Comcast IS DISMISSED as moot.

29. *It is further ordered* That the waiver requests filed by ADT, ADT Mid-South, ADT Mountain West, ADT Northeast, ADT Southwest, ADT West, Amerchol, Big Sky, BP Chemicals, Eastern Associated, Hanson, North Antelope, NuEast, Peabody, Praxair, Rhone-Poulenc, Rochelle, Seadrift, Timken, UCAR, UCAR Carbon, UCAR Resinas, UCC&P, UMETCO, Union Carbide, and Union Carbide Caribe are denied.

30. *It is further ordered* That the Opposition, Petition, for an Order to Cease and Desist, Motion for Summary Judgment, Petition for an Order to Show Cause Why All Radio Station Licenses Held or Controlled by Nextel Communications, Inc. Should Not Be Revoked, Supplement to Opposition, Motion for Deferral of Action, and Motion to Accept Unauthorized Pleading filed by Kevin Lausman are dismissed.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95-19301 Filed 8-4-95; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

YachtShip CruiseLine, Inc. (d/b/a American West Steamboat Company) and Sternwheeler Boat Company, 520 Pike Street, Suite 1610, Seattle, Washington 98101.

Vessel: QUEEN OF THE WEST

Dated: July 31, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95-19409 Filed 8-4-95; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Carnival Corporation, 3655 N.W. 87th Avenue, Miami, Florida 33178-2428

Vessels: CELEBRATION, ECSTASY, FANTASY, FASCINATION, FESTIVALE, HOLIDAY, IMAGINATION, INSPIRATION, JUBILEE, SENSATION and TROPICALE

Dated: July 31, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95-19304 Filed 8-4-95; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Carnival Corporation, 3655 N.W. 87th Avenue, Miami, Florida 33178-2428

Vessels: ECSTASY, FANTASY, FASCINATION and SENSATION

Carnival Corporation and Celebration Cruises, Inc., 3655 N.W. 87th Avenue, Miami, Florida 33178-2428

Vessel: CELEBRATION

Carnival Corporation and Festivale Maritime Limited, 3655 N.W. 87th Avenue, Miami, Florida 33178-2428

Vessel: FESTIVALE

Carnival Corporation and Sunbury Assets Limited, 3655 N.W. 87th Avenue, Miami, Florida 33178-2428

Vessel: HOLIDAY

Carnival Corporation and Tropicale Cruises, Inc., 3655 N.W. 87th Avenue, Miami, Florida 33178-2428

Vessel: TROPICALE

Carnival Corporation and Jubilee Cruises, Inc., 3655 N.W. 87th Avenue, Miami, Florida 33178-2428

Vessel: JUBILEE.

Dated: July 31, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95-19305 Filed 8-4-95; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Century South Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 31, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Century South Banks, Inc.*, Dahlonega, Georgia; to acquire 100 percent of the voting shares of Peoples Bank, Lavonia, Georgia.

2. *First Commerce Corporation*, New Orleans, Louisiana; to acquire 9 percent of the voting shares of First United Bank of Farmerville, Farmerville, Louisiana.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Madison Holdings Limited Partnership*, Madison Heights, Michigan; to become a bank holding company by acquiring 49.23 percent of the voting shares of Madison Bancorp, Inc., Madison Heights, Michigan, and