

In Reply Refer To:
2-A842

September 17, 1999

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Re: Application for Transfer of Control of Authorizations for the Multipoint
Distribution Service ("MDS") held or controlled by American Telecasting, Inc. to
Sprint Corporation
File No. BMDTC990521WQ

Dear Counsel:

This is in reference to an application to transfer control of numerous MDS station licenses and Basic Trading Area ("BTA") authorizations located throughout the United States from the shareholders of the controlling entity American Telecasting, Inc. ("ATI") to Sprint Corporation ("Sprint").¹ A petition to deny this application, among others, was filed on June 28, 1999, by Wireless Ventures Enterprises ("WVE").² On July 13, 1999, oppositions to the

¹ See Attachment A for a complete list of the authorizations involved in this transaction.

² WVE's petition to deny referenced the following additional transfer of control applications: 50318-CM-TC(7)-99; 50319-CM-TC(1)-99; 50320-CM-TC(1)-99; 50321-CM-TC(32)-99; 50323-CM-TC(12)-99; 50324-CM-TC(2)-99; and BMDTC990514WP. These applications are addressed under separate letter rulings released concurrently with this letter.

petition to deny were filed by Sprint and ATI; WVE replied on July 20, 1999. For the reasons explained below, we will grant the transfer of control application and deny WVE's petition.

Discussion. As an initial matter, we conclude that WVE lacks standing. A petition to deny may only be filed by a party in interest. *See* 47 U.S.C. . 309(d)(1) and 47 C.F.R. . 21.30(a)(3). Party in interest status is deemed to exist when a petitioner demonstrates that grant of the petitioned application will cause the petitioner a direct injury. *See Sierra Club v. Morton*, 405 U.S. 727, 733 (1972); *see also National Broadcasting Co.*, 37 FCC 2d 897, 898 (1972), *Lawrence N. Brandt and Krisar, Inc.*, 3 FCC Rcd. 4082 (Dom. Fac. Div.1988). A causal link between the injury and the challenged action must be shown by the petitioner. *See Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 72, 78 (1978). (*Duke Power*). This causal link is established when the injury is "fairly traceable" to the challenged action and the injury would be prevented or remedied by grant of the petition. *Duke Power*, 438 U.S. at 74, 81.

In establishing standing, the petition must contain specific factual allegations demonstrating that the petitioner is a party in interest and that grant of the application would be inconsistent with the public interest, convenience and necessity. 47 U.S.C. . 309(d)(1) and 47 C.F.R. . 21.30(a)(3). Moreover, the allegations must be supported by an affiant with personal factual knowledge, except for those allegations of which official notice may be taken. *Id.* In contrast to the Act's specific evidentiary requirements, the sum of WVE's standing argument, with respect to ATI, is based on a vague assertion that "WVE is a wireless cable operator and MDS/ITFS channel lessee in *numerous markets covered by the Applications* [which Sprint is seeking control of] . . . and will therefore be a direct economic competitor to Sprint . . ." Reply at 2. (emphasis added).³ Not only is this singular statement not supported by an affidavit containing specific factual allegations by one with personal knowledge, it fails to provide any specific factual allegations demonstrating party in interest status *vis-a-vis* the ATI-Sprint transfer application.⁴ WVE's reliance on *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940) (*Sanders*) for the proposition that economic competitors may have standing, is equally unavailing. In *Sanders*, the basis for the potential competitive injury was clear: Sanders was a radio station licensee serving the same market as the challenged application proposed to serve. Here, however, according to Commission records, WVE does not hold an MDS license in any market. Rather, WVE relies on its status as a channel lessee, but as noted above, it fails to enumerate its status as a lessee in at least one particular market that overlaps with ATI's holdings.⁵

³ WVE also references an MDS transfer of control application of which it was the proposed transferee. *See* Application to Transfer Control of Southern Wireless Video, Inc. to Wireless Video Enterprises, Inc., File No. BMDTC990119UF. This application was dismissed on July 27, 1999.

⁴ In its consolidated pleadings, WVE does make some allegations of harm with respect to markets served by another proposed transferor. Petition at 6-8. However, these allegations do not involve the ATI-Sprint proposed transaction.

⁵ Similarly, as we find that WVE has failed to demonstrate the direct competitive injury it will suffer if the ATI-Sprint transfer application is granted, we reject WVE's reliance on *BTMI, Inc.*, 9 FCC Rcd 2856 (1994), and *Knox Broadcasting, Inc.*, 12 FCC Rcd 3337 (1997), as establishing that an applicant's competitors have standing when a proposed licensee's ownership qualifications issues are raised, as inapposite.

In light of WVE's failure to meet its burden in establishing standing pursuant to 47 U.S.C. . 309(d) and 47 C.F.R. . 21.30(a)(3), we will treat WVE's pleadings as an informal objection. 47 C.F.R. . 21.30(b). Pursuant to Section 21.30(c), the Commission is required to consider informal objections, but is not required to discuss them specifically in formal opinions. Hence, while we have fully considered WVE's informal objection, apart from the issue of Sprint's foreign ownership which raises public interest issues, we decline to discuss the issues raised in detail as we find them to be without merit.⁶

First, we reject WVE's contention that the Bureau must undertake a *de novo* review of Sprint's foreign ownership despite Commission rulings that Sprint's equity structure is consistent with the public interest. Sprint, in the transfer application, lists two corporations organized under foreign laws, France Telecom (France) and Deutsche Telekom (Germany) as each holding approximately ten percent interest in Sprint. Transfer Application at Exh. 3. In addition, Sprint indicated that its foreign ownership may be as high as 35 percent. *Id.* WVE asserts that Sprint's level of foreign investment violates 47 U.S.C. . 310(b)(4)⁷ and 47 C.F.R. . 21.4.⁸

To the extent that Section 310(b)(4) of the Act and Section 21.4 of the Commission's rules apply, the Commission has already determined that foreign equity interests exceeding

⁶ WVE questions the right of ATI to transfer the developmental authorization, File No. 50236-CM-P-98, for WHT656 (E2-4 channels) and KN5C460 (2A channel) in Seattle, Washington. However, we find that ATI has rights to transfer this developmental authorization. Initially, the developmental authorization for the above channels was granted to American Telecasting of Seattle, Inc. ("ATSI" an ATI controlled entity), the lessee of the stations, based on the consent of the licensees. *See* 47 C.F.R. . 21.400 (permitting third parties to hold developmental authorizations). When ATSI filed for renewal of the authorization, it requested that the two stations be given separate developmental authorizations, so that the current licensee for KN5C460, Southern Wireless Video, is the holder of the developmental authorization for KN5C460, while ATSI would remain holder of the developmental authorization for WHT656. This renewal request is currently pending.

⁷ Section 310(b)(4) of the Act provides, in pertinent part, that:

No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by . . .

(4) 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 . . . any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

⁸ Section 21.4 provides, in pertinent part, that:

A station license may not be granted to or held by: . . .

(e) 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 or their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign government, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

twenty five percent in Sprint are in the public interest. *See 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*, 11 FCC Rcd 1850 (1996) (*Sprint I*). Specifically, in *Sprint I*, the Commission found that alien ownership in Sprint of up to twenty eight percent was in the public interest due to: "(1) the current and planned liberalization of the French and German telecommunications markets; and (2) the competitive benefits for the U.S. telecommunications market of FT and DT investment in Sprint." *Sprint I*, 11 FCC Rcd at 1850.

Contrary to WVE's contentions, the Commission, in reviewing Sprint's holdings, did not limit its decision to a specific class of licenses, but rather applied its decision to Sprint as an entity.⁹ In fact, the Commission noted that Sprint held a wide range of interests: "domestic common carrier microwave licenses,¹⁰ international facility authorizations, cable landing licenses, and other Commission licenses and authorizations." *Sprint I*, 11 FCC Rcd at 1851 (footnote omitted) (emphasis added). The Commission did not state, as WVE asserts, that future public interest analyses may be necessary to determine if the public interest is served by allowing Sprint to own specific classes of licenses. Reply at 14-15. In *Sprint I*, the Commission noted: "This grant is based on large part upon commitments made by the French and German governments; . . . [If] there are serious questions . . . [whether the commitments were kept] we will designate 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" *Id.* at 1872. Therefore, in order to address these concerns, the Commission imposed a number of conditions on Sprint which have since been removed. *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, 12 FCC Rcd 23891, 23923 (1997); *Application to Operate Additional Facilities on the U.S.-Germany Route Pursuant to Section 214 of the Communications Act of 1934, as amended*, 12 FCC Rcd 8430 (Intl. Bur. 1997); *Application to Operate Additional Facilities on the U.S.-France Route Pursuant to Section 214 of the Communications Act of 1934, as amended*, 13 FCC Rcd 7367 (Intl. Bur. 1998).

Subsequently, the International Bureau, following the Commission's precedent, found that an increase in Sprint's foreign ownership to thirty five percent was not inconsistent with the public interest under the Act. *Sprint Corporation, Petition for Declaratory Ruling Concerning*

⁹ Since the Commission applied its decision to Sprint as an entity, we do not need to address WVE's industry specific arguments, such as the European Community's video program content requirements. Reply at 16-17.

¹⁰ Although the Commission subsequently consolidated common carrier microwave licenses under Part 101 rules, we note that at the time of *Sprint I*, common carrier licenses were regulated under Part 21 rules. *See Reorganization of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services*, 11 FCC Rcd 13449 (1996). Section 21.4 was not raised as an independent barrier to Sprint's foreign ownership, rather the Commission referenced Section 310(b)(4) of the Act. *Sprint I*, 11 FCC Rcd at 1850.

Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended, 11 FCC Rcd 11354 (Intl. Bur. 1996) (*Sprint II*). Sprint, in the transfer application has affirmed that its current foreign ownership interests are consistent with these decisions. Transfer Application at Exh. 3. Accordingly, following *Sprint I* and *Sprint II*, we find Sprint's foreign equity interests are within permissible levels.

Conclusion. In light of the foregoing, the informal objection filed by Wireless Video Enterprises IS HEREBY DENIED and the application for transfer of control, File No. BMDTC990521WQ, of MDS authorizations held by or controlled by American Telecasting, Inc. to Sprint Corporation IS GRANTED.¹¹

Sincerely,

Charles E. Dziejic
Assistant Chief, Video Services Division
Mass Media Bureau

¹¹ With respect to the ATI subsidiary, American Telecasting of Cincinnati, Inc., File No. 00001-CM-P-99, concurrent with this Letter Ruling, we are granting an additional extension of time to come into compliance with the cable television/MDS cross-ownership restrictions. In addition, for the following stations, appropriate information concerning license renewal must be submitted within thirty days from the release of this letter: WLW976; WNTL629; and WNTF638.