

Before the  
**Federal Communications Commission**  
Washington, DC 20554

In the Matter of

NewComm Wireless Services, Inc. and  
ClearComm, L.P.

and

TEM Puerto Rico, Inc.

Applications for Consent to Transfer Control of PCS  
Licenses, Fixed Microwave Licenses, and an  
International Section 214 Authorization, and Petition  
for Declaratory Ruling Pursuant to Section 310(b)(4)  
of the Communications Act of 1934

WT Docket No. 02-366

**PETITION TO ADOPT CONDITIONS TO  
AUTHORIZATIONS AND LICENSES**

The United States Department of Justice, including the Federal Bureau of Investigation (“FBI”) (collectively, the “DOJ”), and the United States Department of Homeland Security (“DHS”) respectfully submit this Petition to Adopt Conditions to Authorizations and Licenses (“Petition”), pursuant to Section 1.41 of the rules of the Federal Communications Commission (“FCC” or “Commission”).<sup>1</sup> Through this Petition, the DOJ and DHS advise the Commission that they have no objection to the Commission granting the proposed transfers of control and the petition for declaratory ruling filed in the above-referenced docket, provided that the Commission conditions its grant on compliance by NewComm Wireless Services, Inc. (“NewComm”), TEM Puerto Rico, Inc. (“TEM PR”), and Telefónica Móviles, S.A. (“Móviles”) with the terms of the

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<sup>1</sup> 47 C.F.R. § 1.41.

Agreement (attached hereto as Exhibit 1) reached between NewComm, TEM PR and Móviles, on the one hand, and the DOJ (including the FBI) and DHS, on the other.

NewComm, ClearComm, L.P., and TEM PR have filed, pursuant to Sections 214 and 310(d) of the Communications Act of 1934 (“Act”), as amended, applications for consent to transfer from ClearComm, L.P. to TEM PR control of (1) licenses for Personal Communications Services and Fixed Microwave Services, held by NewComm, and (2) an international Section 214 authorization.<sup>2</sup> Upon completion of the transaction and receipt of all regulatory approvals, TEM PR will acquire a controlling 50.1% equity and voting ownership interest in NewComm from ClearComm, L.P. While TEM PR is a U.S. company, incorporated under the laws of Puerto Rico, Móviles, which controls TEM PR, and Telefónica, S.A., the ultimate parent of these companies, are organized under the laws of Spain. Thus, TEM PR also has filed a petition for declaratory ruling that the indirect foreign ownership of NewComm, which would exceed twenty-five percent as a result of the transaction, is consistent with the public interest pursuant to section 310(b)(4) of the Act.<sup>3</sup>

As the Commission is aware, the DOJ and DHS maintain that their ability to satisfy their obligations to protect the national security, enforce the laws, and preserve the safety of the public could be significantly impaired by transactions in which foreign entities will own or operate a part of the U.S. communications system, or in which foreign-located facilities will be used to provide domestic communications services to U.S. customers. In such cases, the DOJ and DHS have stated that foreign involvement in the provision of U.S. communications must not be permitted to impair the U.S. government’s ability to satisfy its obligations to U.S. citizens to

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<sup>2</sup> 47 U.S.C. §§ 214, 310(d).

<sup>3</sup> 47 U.S.C. § 310(b)(4).

(1) carry out lawfully-authorized electronic surveillance of domestic U.S. calls or calls that originate or terminate in the United States; (2) prevent and detect foreign-based espionage and electronic surveillance of U.S. communications, activities which if allowed to occur undetected would jeopardize the security and privacy of U.S. communications and undermine prosecution of individuals involved in such activities; and (3) satisfy U.S. critical infrastructure protection requirements. To address these concerns, the DOJ, the FBI, and other federal agencies have entered into agreements with the appropriate parties. The agreements reached in the past have been filed by stipulation among the parties with the Commission, and the Commission has conditioned its grants of approvals of the requested authorizations or transfers of control on compliance with the terms of the agreements.<sup>4</sup>

On May 14, 2004, the DOJ, FBI and DHS entered into the Agreement attached hereto with NewComm, TEM PR and Móviles. This Agreement is intended to ensure that the DOJ, FBI, DHS and other entities with responsibility 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.

Accordingly, the DOJ and DHS hereby advise the Commission that they have no objection to the Commission granting the applications for consent to transfer control and petition

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<sup>4</sup> See, e.g., Memorandum Opinion, Order and Authorization, *Loral Satellite, Inc. and Intelsat North America, LLC*, 19 FCC Rcd. 2404, 2004 WL 253309 (F.C.C.) (2004); Memorandum Opinion, Order and Authorization, *Bell Atlantic New Zealand Holdings, Inc. and Pacific Telecom Inc.*, 18 FCC Rcd. 23,140, 2003 WL 22517694 (F.C.C.) (2003); Memorandum Opinion, Order and Authorization, *Global Crossing Ltd. and GC Acquisition Limited*, 18 FCC Rcd. 20,301, 2003 WL 22309107 (F.C.C.) (2003); Memorandum Opinion, Order and Authorization, *XO Communications, Inc.*, 17 FCC Rcd 19,212, 2002 WL 31235646 (F.C.C.) (2002) (agreement adopted by the Commission, but the transaction was not consummated); Memorandum Opinion and Order, *VoiceStream Wireless Corporation, Powertel, Inc., and Deutsche Telekom AG*, 16 FCC Rcd 9779, 2001 WL 476559 (2001).

for declaratory ruling filed in WT Docket No. 02-366, provided that the Commission conditions its grant on compliance by NewComm, TEM PR, and Móviles with the terms of the Agreement.

The DOJ and DHS are authorized to state that NewComm, TEM PR and Móviles do not object to the grant of this Petition.

Respectfully submitted,

UNITED STATES DEPARTMENT OF JUSTICE

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UNITED STATES DEPARTMENT OF HOMELAND SECURITY

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May 25, 2004

**CERTIFICATE OF SERVICE**

I, Myla R. Saldivar-Trotter, Federal Bureau of Investigation, hereby certify that on this 26th day of May, 2004, caused copies of the foregoing **Petition to Adopt Conditions**, with attachments, to be delivered via electronic mail (indicated by \*) or by first-class postage pre-paid mail to the following:

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