

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
STM Wireless, Inc., Pequot Capital
Management Inc., SkyOnline, Inc.,
And SkyOnline Communications, Inc.
File No. ISP-PDR-1999-1223-00014
Application Pursuant to Sections 214 and
310(b)(4) of the Communications Act, as
Amended, to Transfer Control of SkyOnline,
Inc, and to Exceed the Indirect Foreign
Ownership Benchmark in SkyOnline
Communications, Inc.

MEMORANDUM OPINION AND ORDER

Adopted: March 21, 2000

Released: March 22, 2000

By the Chief, Telecommunications Division:

I. INTRODUCTION

1. In this Order, we grant STM Wireless, Inc. (STM), Pequot Capital Management, Inc. (Pequot), SkyOnline, Inc. (SkyOnline) and SkyOnline Communications, Inc. (SkyOnline Communications) (collectively, Applicants) approval, pursuant to Section 310(b)(4) of the Communications Act (the Act), for Telfin S.A. (Telfin) and Nouvel Investissement en Technologie S.A. (NIT) to exceed the indirect foreign ownership benchmark in the specific amounts proposed in SkyOnline Communications, the wholly owned subsidiary of SkyOnline. The Applicants' request for a waiver of 310(b)(4) was filed in the context of an application filed by SkyOnline requesting approval on a pro forma basis for SkyOnline to assign its earth station authorization to SkyOnline Communications. The application also requested authority to then transfer control of SkyOnline Communications and SkyOnline from STM and Pequot to SkyOnline itself.

1 See Application at p. 2.

2 See Application at p. 2. We note that, as a result of changes in the ownership structure of SkyOnline, STM and Pequot will relinquish negative control of SkyOnline. Consequently, control of SkyOnline Communications and SkyOnline will be held by SkyOnline's shareholders, collectively. As discussed in paragraph 2, infra, SkyOnline currently holds an international 214 authorization. The application to transfer control of this authorization was

II. BACKGROUND

2. SkyOnline is a Delaware corporation that holds an earth station authorization under Title III of the Act to provide services via Intelsat and Solidaridad, the Mexican satellite system. SkyOnline also holds an international Section 214 authorization to provide global facilities-based and resale services.

3. Under the proposed transaction, two foreign entities, NIT (Luxembourg) and Telfin (Belgium), propose to invest in SkyOnline in an amount that, with respect to SkyOnline Communications (to which, as noted, SkyOnline will assign its earth station authorization), will exceed the 25 percent indirect foreign ownership benchmark contained in section 310(b)(4).³ Upon Commission approval of the transaction, SkyOnline will be owned and controlled by several unrelated entities as follows: NIT and Telfin will each have a 28.31 percent interest; STM, a California corporation, which currently owns 45 percent of SkyOnline, will retain a 16.57 percent interest; Pequot, a Delaware corporation, which currently owns 35 percent will retain a 16.08 percent interest; and Remec Inc., a California corporation, which currently owns 20 percent, will have a 10.73 percent interest. As a result, according to the Applicants, SkyOnline will not be owned or controlled by any one corporation or alliance of corporations.

III. DISCUSSION

4. Section 310(b)(4) of the Act requires the Commission to deny or revoke a common carrier radio license if: (1) more than 25 percent of any entity that controls the applicant or licensee is owned of record or voted by aliens, foreign governments or their representatives, or foreign corporations, and (2) the Commission finds that denial or revocation would serve the public interest.⁴ The Commission most recently refined this public interest inquiry in its *Foreign Participation Order*. As a result of the transaction, NIT, a Luxembourg corporation, and Telfin, a Belgian corporation, will each hold a 28.31 percent interest in SkyOnline.⁵ Therefore, a public interest analysis under Section 310(b)(4) is required.⁶

granted by Public Notice on March 16, 2000. The International Bureau will take action on the related application to assign and transfer control of the earth station authorization by separate Public Notice.

³ 47 U.S.C. §310 (b)(4).

⁴ 47 U.S.C. §310 (b)(4); *see also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order, 12 FCC Rcd 23,890, 23,935 ¶ 97 (1997), *recon. pending* (“*Foreign Participation Order*”).

⁵ *See Application* at p. 2.

⁶ *Foreign Participation Order*, 12 FCC Rcd at 23,935 ¶ 97.

5. In the *Foreign Participation Order*, the Commission stated that, because additional foreign investment can promote competition in the U.S. market, the public interest would be served by permitting more open investment by foreign entities whose home market is a member of the World Trade Organization (“WTO”).⁷ In such a case, there is a strong presumption that no competitive concerns are raised by the indirect foreign investment.⁸ The Commission also stated in the *Foreign Participation Order* that parties who have already received approval to exceed the 25 percent benchmark up to a certain level of indirect foreign ownership must continue to seek further Commission approval in order to increase that level of ownership.⁹

6. As part of our analysis in determining whether a foreign entity’s home market is a member of the WTO, we evaluate whether the entity’s “principal place of business” is in a WTO member country. Here, balancing the five factors of the Commission’s “principal place of business” test,¹⁰ we find that NIT principally conducts its business in Luxembourg and Telfin principally conducts its business in Belgium:

A. NIT

(1) *Place of incorporation*: Luxembourg¹¹

(2) *Nationality of investment principals, officers, and directors*: NIT’s officers and directors are French. NIT is ultimately controlled by two French individuals, Roland de Kergolay (de Kergolay) and Thais d’Annoux (d’Annoux). de Kergolay and d’Annoux control NIT through two Panamanian corporations, Gariston Investments, Inc. (Gariston), and Melkan Properties S.A (Melkan).¹²

⁷ See *Foreign Participation Order*, 12 FCC Rcd at 23940 ¶ 111.

⁸ *Id.* at 23,913, 23,941-42 ¶¶ 50, 113, 116.

⁹ See *Foreign Participation Order*, 12 FCC Rcd at 23,941 ¶ 114 (accepting the FBI’s assertion that increases in foreign ownership or influence may present concerns that Executive Branch agencies may need an opportunity to evaluate before the Commission allows an increased level of foreign ownership).

¹⁰ See *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873, 3951 ¶ 207 (listing five factors) (1995) (“*Foreign Carrier Entry Order*”). See also, e.g., *AT&T Corp. and Loral Spacecom Corporation*, Order and Authorization, 12 FCC Rcd 925 (1997) (applying the principal place of business test); *Melbourne International Communications Ltd.*, 12 FCC Rcd 898 (1997); *Global Crossing Ltd. and Frontier Corporation*, Memorandum Opinion and Order, DA 99-1930 ¶¶ 16-17 (rel. Sept. 21, 1999).

¹¹ See Letter from Alfred M. Mamlet, Counsel for Applicants, to Magalie Roman Salas, Secretary, Federal Communications Commission, filed Mar. 7, 2000 (“*SkyOnline March 7 Ex Parte Letter*”).

- (3) *Country in which its world headquarters is located:* Luxembourg¹³
- (4) *Country in which the majority of its tangible property is located:* Luxembourg¹⁴
- (5) *Country from which it derives the greatest sales and revenues from its operations:* The Applicants assert that NIT is a new company that was formed for the purpose of investing in SkyOnline and has no preexisting sales or revenues.¹⁵

B. Telfin

- (1) *Place of incorporation:* Belgium¹⁶
- (2) *Nationality of investment principals, officers, and directors:* Telfin's officers and directors are Belgian. Telfin is directly and indirectly owned by several Belgian entities and is ultimately owned by Suez Lyonnaise des Eaux, a French corporation.¹⁷
- (3) *Country in which its world headquarters is located:* Belgium.¹⁸
- (4) *Country in which the majority of its tangible property is located:* Belgium¹⁹
- (5) *Country from which it derives the greatest sales and revenues from its operations:* Belgium²⁰

¹² *Id.* at Attachment B. NIT is held 49.5 percent each by Melkan and Gariston. Melkan is owned 99 percent by de Kergolay and Gariston is owned 99 percent by d'Annoux.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at Attachment A.

¹⁷ *Id.* Suez Lyonnaise des Eaux (France) owns 99.4 percent of Societe Generale de Belgique (Belgium), which owns 98.18 percent of Tractabel (Belgium), which owns 99.9 percent of Telfin.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

7. Under the *Foreign Participation Order*, NIT and Telfin are entitled to a strong presumption that no competitive concerns are raised by their respective investments of 28.31 percent in SkyOnline. We see no reason to rebut that presumption. Accordingly, we conclude, pursuant to section 310(b)(4) and the Commission's *Foreign Participation Order*, that the public interest would be served by allowing the proposed direct foreign ownership of SkyOnline (and the resulting indirect ownership of SkyOnline Communications) by Telfin and NIT. We also approve the direct foreign ownership of SkyOnline by Melkan and Gariston, the two Panamanian entities that jointly own NIT, and by de Kergolay and d'Annoux, the French owners of NIT. In addition, we approve the indirect foreign ownership of Telfin by its direct and indirect owners from France and Belgium. We approve all direct and indirect foreign ownership at their current levels.²¹ We note that SkyOnline would need additional Commission authority under section 310(b)(4) to increase its current foreign investment above the levels authorized here. SkyOnline would also need additional authority before any other foreign entity or entities acquire, in the aggregate, a greater-than-25 percent indirect interest in its licensee subsidiary.

IV. CONCLUSION

8. Based upon our review under section 310(b)(4) of the Act, we conclude that the public interest would be served by allowing the proposed indirect foreign ownership by NIT and Telfin in SkyOnline Communications. Accordingly, we grant Applicants' request for waiver of the 25 percent benchmark contained in section 310(b)(4).

V. ORDERING CLAUSE

9. IT IS ORDERED, pursuant to sections 4(i) and (j), and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 310(b), that the application requesting waiver of section 310(b)(4) filed by STM Wireless, Inc., Pequot Capital Management, Inc., SkyOnline, Inc., and SkyOnline Communications, Inc. in the above-captioned proceeding IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca Arbogast
Chief, Telecommunications Division
International Bureau

²¹ See n. 12 and n. 17, *supra*.