



PUBLIC NOTICE

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DA 02-773
Released: April 5, 2002

WIRELESS TELECOMMUNICATIONS BUREAU AND INTERNATIONAL BUREAU GRANT CONSENT FOR TRANSFER OF CONTROL OF LICENSES AND AUTHORIZATIONS FROM MCLEOD USA, INC., DEBTOR-IN-POSSESSION, TO FORSTMANN LITTLE AND CO.

CC Docket No. 02-44

On February 21 and 22, 2002, McLeodUSA, Inc. (“McLeod”), McLeodUSA, Inc., Debtor-in-Possession (“McLeod DIP”), and Forstmann Little and Co. (“Forstmann Little”)¹ (collectively, “Applicants”) filed applications pursuant to sections 214, 310(b), and 310(d) of the Communications Act of 1934, as amended (“Communications Act”), 47 U.S.C. §§ 214, 310(b), 310(d), requesting Federal Communications Commission (“Commission”) approval to transfer control to Forstmann Little of Commission licenses and authorizations held by McLeod DIP and its subsidiaries to provide domestic and international communications services pursuant to parts 22, 25, 27, 63, 90, and 101 of the Commission’s rules.² Specifically, Applicants request Commission approval to transfer control of wireless licenses and domestic and international authorizations held by McLeod DIP and its subsidiaries.³

¹ For purposes of this Public Notice, Forstmann Little is defined to include: Forstmann Little & Co. Equity Partnership-VII, L.P.; Forstmann Little & Co. Subordinated Debt and Equity Management Buyout Partnership-VIII, L.P.; Forstmann Little & Co. Equity Partnership-V, L.P.; Forstmann Little & Co. Subordinated Debt and Equity Management Buyout Partnership-VI, L.P.; and Forstmann Little & Co. Subordinated Debt and Equity Management Buyout Partnership-VII, L.P.

² See Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Indirect Control of Authorized U.S. Domestic Interstate Carriers, CC Docket No. 02-44 (filed Feb. 22, 2002); Applications of McLeodUSA, Inc., Debtor-in-Possession, for Consent to Transfer Control, ULS File Nos. 0000780266, 0000780484, 0000780578, 0000780722, and 0000780857 (filed Feb. 22, 2002); Applications of McLeodUSA, Inc., Debtor-in-Possession, for Consent to Transfer Control, File Nos. SES-T/C-20020225-00222, SES-T/C-20020225-00223, SES-T/C-20020225-00229, SES-T/C-20020225-00256 (filed Feb. 22, 2002). On March 13, 2002, a separate application, along with a request for Special Temporary Authority (“STA”), was filed by CapRock Communications Corp. (a subsidiary of McLeod DIP) seeking to transfer certain authorizations and licenses held by IWL Communications, Inc. d/b/a CapRock Services Corp., and its subsidiary Spacelink Systems, Inc. to CapRock Holdings, Inc.

³ The McLeod subsidiaries include: McLeodUSA Telecommunications Services, Inc.; CapRock Telecommunications Corp.; IWL Communications, Inc. d/b/a CapRock Services Corp.; McLeodUSA Telecom

On April 4, 2002, the Wireline Competition Bureau granted consent for the transfer of control of a domestic section 214 authorization from McLeod to Forstmann Little, subject to the approval we grant in this Public Notice.⁴

Pursuant to sections 310(b) and 310(d) of the Communications Act of 1934, as amended,⁵ and sections 0.261 and 0.331 of the Commission's rules,⁶ the International Bureau and Wireless Telecommunications Bureau approve the following applications requesting Commission consent to transfer control of licenses and authorizations currently held by McLeod DIP to Forstmann Little.⁷ No comments or petitions to deny were received in response to the Public Notice announcing that the applications had been accepted for filing.⁸

I. SECTION 310 APPLICATIONS

The Wireless Telecommunications Bureau and International Bureau find, upon consideration of the record, that grant of the proposed transfers will serve the public interest, convenience, and necessity.⁹ The following applications for consent to transfer control of licenses and authorizations from McLeod DIP to Forstmann Little are hereby granted.

Parts 22, 27, 90, and 101 – Wireless Services

<u>File Number</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0000780266	Greene County Partners	WPJA949

Development, Inc.; McLeodUSA Public Services, Inc.; and Spacelink Systems, Inc. (collectively, the “McLeod Operating Companies”).

⁴ See *Wireline Competition Bureau Grants Consent for Transfer of Control of Domestic Section 214 Authorization from McLeod, USA, Inc. to Forstmann Little and Co.*, Public Notice, CC Docket No. 02-44, DA 02-766 (rel. Apr. 4, 2002).

⁵ 47 U.S.C. §§ 310(b), 310(d).

⁶ 47 C.F.R. §§ 0.261, 0.331.

⁷ The International Bureau granted the transfer of control for the international section 214 authorizations (authorization numbers ITC-T/C-20020225-00087, ITC-T/C-20020301-00088, and ITC-T/C-20020301-00089) held by McLeodUSA Telecommunications Services, Inc., CapRock Telecommunications Corp., and IWL Communications, Inc. d/b/a CapRock Services Corp. on March 21, 2002, subject to the approval we grant in this Public Notice. See *International Authorizations Granted*, Public Notice, DA 02-682, Report No. TEL-00511, at 5 (rel. Mar. 21, 2002); see also Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Indirect Control of Authorized U.S. International Carriers (filed Feb. 22, 2002) (*International 214 Application*).

⁸ See *Commission Seeks Comment on Applications for Consent to Transfer Control Filed by McLeod USA Inc.*, Public Notice, CC Docket No. 02-44, 17 FCC Rcd 3731 (CB/IB/WTB, Mar. 1, 2002).

⁹ See 47 U.S.C. § 310(d).

0000780484	McLeod Community Telephone, Inc.	KRK754
0000780578	McLeodUSA, Inc., Debtor-in-Possession	WPOL244
0000780722	McLeodUSA, Telecommunications Services, Inc.	KWH311
0000780857	IWL Communications, Inc.	WPNI627

Part 25 – Satellite Communications

<u>File Number</u>	<u>Licensee</u>	<u>Call Sign(s)</u>
SES-T/C-20020225-00222	IWL Communications, Inc.	E980249
SES-T/C-20020225-00223	IWL Communications, Inc.	E860151, E960242, E960243, E990073
SES-T/C-20020225-00229	McLeodUSA Telecom Development, Inc.	E000255, E000260 E970192
SES-T/C-20020225-00256	Spacelink Systems, Inc.	E910605, E910607, E910608, E910609, E910610, E910611, E910606

II. SECTION 310(B)(4) DECLARATORY RULING

Petitioners request that the Commission find permissible the indirect foreign ownership and voting interest of Forstmann Little general partner Mr. Gordon Holmes, a citizen of Ireland, a WTO Member country, in excess of the 25 percent benchmark in Section 310(b)(4) of the Communications Act of 1934, as amended. The Commission will consider both the ownership and voting interests of aliens when making a determination under Section 310(b)(4). Petitioners state that proposed level of foreign ownership is in the public interest.

McLeod, a publicly traded Delaware corporation, filed for Chapter 11 bankruptcy protection on January 31, 2001. McLeod’s Chapter 11 reorganization plan proposes, upon consummation, that entities ultimately owned and controlled by Forstmann Little will own approximately 57 percent of the McLeod common stock post-reorganization. The entities of Forstmann Little that will collectively control McLeod are members of a family of affiliated private investment limited partnership funds. As part of the proposed transaction, Gordon A. Holmes, a citizen of Ireland, a WTO Member country, will be a general partner in three U.S. limited partnerships that in turn will serve as general partners to four of the five entities seeking approval to acquire ultimate control of McLeod, owning collectively 46.84 percent of McLeod.

Due to his position as one of the general partners of four of the five Forstmann Little entities, we will assume that Mr. Holmes effectively has voting control over the entire ownership interests of those partnerships that indirectly own, in the aggregate, 46.84 percent of McLeod.¹⁰ In accordance with the Commission's *Foreign Participation Order*, Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order*, 12 FCC Rcd 23890 (1997), Mr. Holmes' proposed indirect voting interest is entitled to a strong presumption that no competitive concerns arise as a result of his interest. There is no countervailing risk to competition in the U.S. market to rebut this presumption. Accordingly, the Policy Division finds that it would not serve the public interest to prohibit the indirect voting interest of Mr. Holmes in excess of the 25 percent benchmark of Section 310(b)(4). Specifically, this ruling permits the 46.84 percent indirect foreign voting interest of Mr. Gordon A. Holmes, a citizen of Ireland, a WTO Member country.

In addition, no single non-U.S. investor or entity may acquire indirect interest in McLeod in excess of 25 percent without further Commission approval. McLeod must also seek approval under Section 310(b)(4) before it accepts any additional indirect interest from Mr. Holmes in excess of that permitted here.

II. PROCEDURAL MATTERS

Pursuant to section 1.103 of the Commission's rules,¹¹ the consent granted herein is effective upon release of this Public Notice. Pursuant to sections 1.106(f) and 1.115(a) of the Commission's rules,¹² petitions for reconsideration and applications for review may be filed within thirty days of the release of this Public Notice. By this approval, the parties are authorized to consummate the transactions described in their applications. With respect to the wireless licenses at issue, section 1.948(d) of the Commission's rules provides that "the transaction must be consummated and notification provided to the Commission within 180 days of public notice of approval, and notification of consummation must occur no later than 30 days after actual consummation."¹³ With respect to the earth station licenses at issue, section 25.119(f) of the Commission's rules provides that "transfers of controls shall be completed within 60 days from the date of authorization. Within 30 days of consummation, the Commission shall be notified by letter of the date of consummation and the file numbers of the applications involved in the transaction."¹⁴

For further information, contact Imani Ellis-Cheek, Policy Division, International

¹⁰ We are not aware of how the governance structure of Forstmann Little operates and will therefore assume, in the absence of any evidence in the record to the contrary, that each general partner can exercise total control independent of the other general partners.

¹¹ 47 C.F.R. § 1.103.

¹² *Id.* §§ 1.106(f), 1.115(a).

¹³ *Id.* § 1.948(d).

¹⁴ *Id.* § 25.119(f).

Bureau, at (202) 418- 1028 (Section 310(b)(4)); JoAnn Lucanik, Satellite Division, International Bureau, at (202) 418-0873 (Part 25); Brian O'Donnell or Jeff Tobias, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, at (202) 418-0680 (Parts 90 and 101); Lauren Kravetz Patrich or John Branscome, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418-0620 (Parts 22 and 27).