

DESCRIPTION OF TRANSACTION, PUBLIC INTEREST STATEMENT, AND REQUEST FOR CONSENT, *NUNC PRO TUNC*, TO TRANSFER CONTROL

Pursuant to Section 310(d) of the Communications Act of 1934, as amended (the “Act”), and Section 1.948(c) of the Federal Communications Commission’s (“Commission”) rules,¹ this application is one of a series of filings (the “Applications”) seeking Commission consent, *nunc pro tunc*, for the transfer of control of the non-common carrier licenses and authorizations held or controlled by Starwood Hotels & Resorts Worldwide, Inc. (“Starwood”) to Marriott International, Inc. (“Marriott” and together, “Applicants”). As discussed below, the transfer of control satisfies the Commission’s standard for approval, gives rise to no competitive harms or foreign ownership concerns, and serves the public interest. So as to ensure the seamless operation of private communications networks supporting hotel management and operation, Applicants respectfully request Commission approval.

Description of the Parties

Starwood was a publicly traded Maryland corporation listed on the New York Stock Exchange. With nearly 1,300 properties, Starwood provides approximately 370,000 rooms in approximately 100 countries. Starwood conducts its hotel business both directly and through its subsidiaries. Starwood also manages hotel businesses owned by third parties pursuant to various management services agreements.²

Marriott, a Delaware corporation, also is a publicly traded company listed on the NASDAQ Global Select Market and the Chicago Stock Exchange. Marriott is one of the world’s leading lodging companies. Marriott is a worldwide operator, franchisor, and licensor of hotels and timeshare properties in 85 countries and territories under 19 brand names. Marriott also operates, markets, and develops residential properties and provides services to home and condominium owner associations. Consistent with its focus on management, franchising, and licensing, Marriott owns very few of its lodging properties.

Description of the Transaction

On November 15, 2015, Applicants entered into an Agreement and Plan of Merger (the “merger agreement”). Pursuant to the terms of the merger agreement, Starwood agreed to combine with Marriott in a series of transactions, with the result that Starwood became a wholly owned indirect subsidiary of Marriott. The transaction, which resulted in a transfer of ultimate control of all of the licenses and authorizations held or controlled by Starwood to Marriott, was completed on September 23, 2016.

Public Interest Statement

The transfer of control of Starwood’s non-common carrier licenses and authorizations to Marriott serves the public interest and causes no offsetting public interest harms. Under Section 310(d) of the Communications Act, control of a Commission license may be transferred where

¹ 47 U.S.C. § 310(d); 47 C.F.R. § 1.948(c).

² Starwood also manages FCC licenses held by third party owners pursuant to the terms of its management services agreements.

the Commission finds “that the public interest, convenience, and necessity will be served thereby.”³ This standard involves a balancing process that weighs the potential public interest benefits of the proposed transfer against any potential harm.⁴ Applications that demonstrate on their face that a transfer of control will yield affirmative public interest benefits and will neither violate the Act or Commission rules, nor frustrate or undermine policies and enforcement of the Act by reducing competition or otherwise, do not require extensive review and expenditure of considerable resources by the Commission.⁵ In fact, where, as in this case, a transaction will not reduce competition and the parties possess the requisite qualifications to control the licenses in question,⁶ “a demonstration that benefits will arise from the transfer is not...a prerequisite to [Commission] approval, provided that no foreseeable adverse consequences will result from the transfer.”⁷ The proposed transfer of control meets this standard for prompt approval.

Approval of the Applications is in the public interest because it will ensure the continued and uninterrupted use of wireless communications in support of the safe and efficient operation and management of hotel and lodging properties following a transaction involving U.S. and substantial non-U.S. assets. Since consummation of the transaction, Applicants have continued to operate in all respects as they operated prior to the transaction. Commission approval of the Applications will support the day-to-day operations of the combined company, promoting operational efficiency and safety of employees and guests.

In addition, Marriott’s acquisition of Starwood benefits the public. The transaction has enabled the combined company to expand the scope of its distribution and portfolio while deploying its larger scale to realize cost efficiencies in its corporate and property operations. Marriott anticipates that the combined company can achieve \$250 million in annual corporate cost synergies, and that additional synergies at the property level will come in the form of leveraging scale in operations and sharing best practices. These enhanced efficiencies will improve the combined company’s operations and encourage new hotel development.

Finally, these Applications raise no competition, foreign ownership, or unjust enrichment-related concerns. Neither the U.S. Department of Justice nor the U.S. Federal Trade

³ 47 U.S.C. § 310(d).

⁴ See, e.g., *Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company*, Memorandum Opinion and Order, 27 FCC Rcd 16459, 16463-64 (2012); *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC*, Memorandum Opinion and Order and Declaratory ruling, 27 FCC Rcd 10698, 10710 (2012); *Application of AT&T Inc. and Qualcomm Incorporated*, Order, 26 FCC Rcd 17589, 17598-99 (2011).

⁵ See *Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules*, Memorandum Opinion and Order, 14 FCC Rcd 14712, at 14740-42 (1999).

⁶ Marriott, both directly and through its subsidiaries, is the licensee of Commission licenses authorized under Part 90 of the Commission’s rules. As such, its qualifications to hold Commission licenses are a matter of record.

⁷ *Applications of Pacific Telesis Group and SBC Communications Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 2624, 2626-27 (1997); see also *Comcast Cellular Holdings, Inc. and SBC Communications, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 10604, 10608-09 (WTB 1999).

Commission challenged the transaction during the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. As the Commission has held, “[t]ransactions that do not significantly increase concentration or result in a concentrated market ordinarily require no further competitive analysis.”⁸ This transaction plainly fits that description.

Request for Waiver

Applicants respectfully seek Commission consent for the transfer of control of the licenses and authorizations referenced herein. In furtherance of this request, pursuant to Section 1.925 of the Commission’s rules, Applicants also seek a waiver of the Commission’s rules to the extent necessary to allow acceptance and grant of the Applications *nunc pro tunc* relating back to the effective date of the transfer of control on September 23, 2016.⁹ Applicants did not timely file applications seeking prior Commission consent due to an administrative oversight that occurred during a larger transaction involving both U.S. and substantial non-U.S. assets. Upon discovering the oversight, Applicants took steps to prepare and file the instant Applications. The licenses at issue are incidental to the operations of Applicants’ business and are used for private, non-common carrier communications to support hotel operation and management.

Section 1.925 of the Commission’s rules provides that the Commission may grant a request for waiver if it is shown that “the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that grant of the requested waiver would be in the public interest” or if “in view of unique and unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.” The Applicants submit that these standards are met in this case.

First, pursuant to Section 90.159, the private Industrial/Business Pool (“IG”) licenses under 470 MHz at issue in the Applications were eligible for immediate consummation upon the filing of a Form 603 application.¹⁰ As such, grant of the waiver in this case would not frustrate the underlying purpose of the Commission’s rules, which otherwise require Commission consent prior to consummation.

Second, the Applications seeks the Commission’s consent for the transfer of control *nunc pro tunc*. Thus, acceptance and grant of the Applications again would not frustrate the underlying purposes of the relevant rules.

Third, grant of the waiver request and the Applications would serve the public interest. The Applicants will continue to operate in all respects as they currently operate, and will continue to use their wireless facilities to support the safe and efficient management and

⁸ *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, 20 FCC Rcd 13967, ¶31 (2005). See also *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, 19 FCC Rcd 21522, ¶69 (2004).

⁹ 47 C.F.R. § 1.925.

¹⁰ See 47 C.F.R. § 90.159.

operation of hotel and lodging properties. And, the Applicants will be able to realize cost efficiencies in corporate and property operations as a result of the transaction.

Finally, there is no reasonable alternative that would permit the seamless operation of the wireless facilities at issue. Unwinding control of the non-common carrier licenses and authorizations—if it could be accomplished at all—would be immensely disruptive to the business and operations of the Applicants and their affiliates and would be inequitable, unduly burdensome, and contrary to the public interest. Under these circumstances, the Applicants submit that a waiver is warranted and request that the Commission consent to the transaction *nunc pro tunc*.

Procedural Considerations

Additional Authorizations. The list of call signs and file numbers included in the Applications is intended to include all of the licenses held or controlled by Starwood or its subsidiaries. The Applicants request that any Commission approval of the Applications filed for this transfer of control include Commission consent, *nunc pro tunc*, for Marriott to acquire control of any licenses or authorizations which may have been inadvertently omitted.

Exemption from Cut-off Rules. Pursuant to Sections 1.927(h), 1.929(a)(2), and 1.933(b) of the Commission's Rules,¹¹ to the extent necessary,¹² the Applicants request a blanket exemption from any applicable cut-off rules in cases where the licensee in this transaction files amendments to pending applications in order to reflect consummation of the proposed transaction. This exemption is requested to prevent amendments to pending applications that report the change in ultimate ownership of the licenses involved in these Applications from being treated as major amendments. The nature of the proposed transaction demonstrates that the ownership changes would not be made for the acquisition of any particular pending application, but as part of a larger transaction undertaken for an independent and legitimate business purpose. Grant of this request would be consistent with prior Commission decisions that have routinely granted a blanket exemption in cases involving multiple-license transactions, such as this one.¹³

Unconstructed Facilities. To the extent any authorizations for unconstructed systems are covered by this transaction, these authorizations are merely incidental, with no separate payment

¹¹ 47 C.F.R. §§ 1.927(h), 1.929(a)(2), 1.933(b).

¹² With respect to cut-off rules under Sections 1.927(h) and 1.929(a)(2), the Commission previously has found that the public notice announcing the transaction will provide adequate notice to the public with respect to the licenses involved, including for any license modifications pending. In such cases, it determined that a blanket exemption of the cut-off rules was unnecessary. See *Applications of Ameritech Corp. and GTE Consumer Services Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 15 FCC Rcd 6667, 6668 ¶ 2 n.6 (1999); *Comcast Cellular Holdings, Inc. and SBC Communications, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 10604, 10605, ¶ 2 n.3 (WTB 1999).

¹³ See, e.g., *Applications of PacifiCorp Holdings, Inc., and Century Tel. Enters., Inc. for Consent to Transfer Control of Pac. Telecom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 8891, 8915-16, ¶ 47 (1997); *Applications of NYNEX Corp. and Bell Atlantic Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 19985, 20091-92 ¶ 234 (1997).

being made for any individual authorization or facility. Accordingly, there is no reason to review the transaction from a trafficking perspective.¹⁴

Environmental Impact. As required by Section 1.923(e) of the Commission’s rules,¹⁵ the Applicants state that the assignment of licenses, authorizations, and leases involved in this transfer of control will not have a significant environmental effect, as defined by Section 1.1307 of the Commission’s rules.¹⁶ A transfer of control of licenses does not involve any engineering changes and, therefore, cannot have a significant environmental impact.

Conclusion

For the reasons set forth above, Applicants respectfully request that the Commission grant the necessary approvals, *nunc pro tunc*, to permit the transfer of control of the licenses and authorizations held by Starwood to Marriott.

¹⁴ See 47 C.F.R. § 1.948(i) (noting that the Commission may request additional information regarding trafficking if it appears that a transaction involves unconstructed authorizations that were obtained for the principal purpose of speculation); *id.* at § 101.55(c)-(d) (permitting transfers of unconstructed microwave facilities that are “incidental to a sale of other facilities or merger of interests”). See also *In the Matter of Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless; For Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, Order, 25 FCC Rcd. 8704, 8769, ¶ 153 (2010).

¹⁵ 47 C.F.R. § 1.923(e).

¹⁶ 47 C.F.R. § 1.1307.