

November 23, 2006

Via Hand Delivery

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, DC 20554

FILED/ACCEPTED

NOV 22 2006

Federal Communications Commission
Office of the Secretary

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Re: Petition for Declaratory Ruling of T-Mobile USA, Inc.
IBF File No. ISP-PDR-20060510-00013

Dear Ms. Dortch:

Pursuant to Section 1.65 of the Commission's Rules, 47 C.F.R. § 1.65, T-Mobile USA, Inc. ("T-Mobile") hereby further amends its Petition for Clarification or, in the Alternative, Declaratory Ruling under Section 310(b)(4) of the Communications Act of 1934, as Amended, and Request for Streamlined Processing filed on May 10, 2006 (the "Petition"), and amended June 19, 2006 and as further amended September 15, 2006, a date stamped copy of which is attached hereto, as follows:

Request for Conditional Grant in Compliance with FBI/DOJ Agreement

T-Mobile requests that the Commission condition the grant of the Petition on compliance with the provisions of the January 12, 2001 Agreement with the Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI") ("DOJ/FBI Agreement")¹ upon which the approval of the merger between T-Mobile and DT was based.² The requirements of the DOJ/FBI Agreement are binding on DT and DT's subsidiaries, including T-Mobile. Section 7.2 of the DOJ/FBI Agreement provides:

DT agrees that in its applications or petitions to the FCC for licensing or other authority filed with the FCC after the Effective Date [of the DT/VoiceStream merger], except with respect to *pro forma* assignments or *pro forma* transfers of control, it shall request that the

¹ See Agreement between Deutsche Telekom AG, VoiceStream Wireless Corporation, VoiceStream Wireless Holding Corporation, the Department of Justice and the Federal Bureau of Investigation (Jan. 12, 2001), which was appended by the Commission to the *VoiceStream-DT Order*.

² See *supra* *VoiceStream-DT Order*.

Marlene H. Dortch
November 23, 2006
Page Two

FCC condition the grant of such licensing or other authority on DT's compliance with the terms of this Agreement³

The DOJ/FBI Agreement (at Exhibit A) prescribed the following specific language for the conditional grant of interests in FCC licenses in the specific context of the DT/VoiceStream merger:

IT IS FURTHER ORDERED, that the authorizations and the licenses related thereto are subject to compliance with the provisions of the Agreement attached hereto between DEUTSCHE TELEKOM AG, VoiceStream Wireless Corporation, VoiceStream Wireless Holding Corporation on the one hand, and the Department of Justice (the "DOJ") and the Federal Bureau of Investigation (the "FBI") on the other, dated [January 12], 2001, which Agreement is designed to address national security, law enforcement, and public safety issues of the FBI and the DOJ regarding the authority granted herein. Nothing in the Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. § 222(a) and (c)(1) and the FCC's implementing regulations.⁴

T-Mobile hereby requests that the FCC impose a similar condition on the grant of the Petition.

Please contact the undersigned with any questions concerning this notification.

Respectfully submitted,



Doane F. Kiechel
Counsel for T-Mobile USA, Inc.

Attachment

cc:	John Giusti	Susan O'Connell	David Krech
	Paul D'Ari	Paul Murray	Cathy Seidel
	Francis Gutierrez	Margaret Weiner	Joe Springsteen (DOJ)

³ DOJ/FBI Agreement at § 7.2. The Commission has included compliance with the FBI/DOJ Agreement as a condition to the Commission's consent in the context of every application for assignment or transfer of control of licenses to T-Mobile's subsidiaries that has postdated the FBI/DOJ Agreement.

⁴ DOJ/FBI Agreement at Exhibit A.

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September 15, 2006

Via Hand Delivery

Marlene H. Dortch
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RECEIVED

SEP 15 2006

Federal Communications Commission
Office of Secretary

Re: Petition for Declaratory Ruling of T-Mobile USA, Inc.

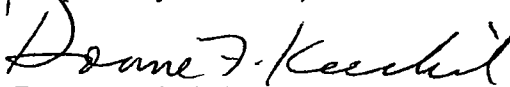
Dear Ms. Dortch:

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In Footnote 11 of the Petition, T-Mobile lists the level of the Federal Republic of Germany's ownership interest in DT (Deutsche Telekom) or, indirectly, in T-Mobile as 31.25 percent (as amended by the June 19, 2006 amendment from the 32.92 percent stated in the May 10, 2006 filing). As of September 11, 2006, that level has increased slightly from 31.25 percent to 31.70 percent (although the number of shares held directly or indirectly by DT has not changed).

Please contact the undersigned with any questions concerning this notification.

Respectfully submitted,



Doane F. Kiechel
Counsel for T-Mobile USA, Inc.

Enclosure

cc: John Giusti Susan O'Connell
Paul D'Ari Paul Murray
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June 19, 2006

Via Hand Delivery

Marlene H. Dortch
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JUN 19 2006

Federal Communications Commission
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Re: Petition for Declaratory Ruling of T-Mobile USA, Inc.

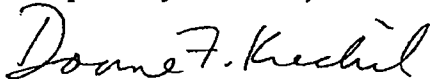
Dear Ms. Dortch:

Pursuant to Section 1.65 of the Commission's Rules, 47 C.F.R. § 1.65, T-Mobile USA, Inc. ("T-Mobile") hereby amends its "Petition for Clarification or, in the Alternative, Declaratory Ruling under Section 310(b)(4) of the Communications Act of 1934, as Amended, and Request for Streamlined Processing filed on May 10, 2006 (the "Petition"), a date stamped copy of which is attached hereto, as follows:

In Footnote 11 of the Petition, T-Mobile lists the level of the Federal Republic of Germany's ownership interest in DT (Deutsche Telekom) or, indirectly, in T-Mobile as 32.92 percent. Since the May 10, 2006 date of the filing of the Petition, that level has decreased from 32.92 percent to 31.25 percent.

Please contact the undersigned with any questions concerning this notification.

Respectfully submitted,



Doane F. Kiechel
Counsel for T-Mobile USA, Inc.

Enclosure

cc: John Giusti
Susan O'Connell
Paul D'Ari
Paul Murray
Francis Gutierrez
Margaret Weiner

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

In the Matter of)

MAY 10 2006

T-Mobile USA, Inc.)

**Federal Communications Commission
Office of Secretary**

Petition for Determination of the Public Interest)
under Section 310(b)(4) of the Communications)
Act of 1934, as Amended)

To: The Commission

**PETITION FOR CLARIFICATION OR, IN THE ALTERNATIVE,
DECLARATORY RULING UNDER SECTION 310(b)(4)
OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED,
AND REQUEST FOR STREAMLINED PROCESSING**

T-Mobile USA, Inc. ("T-Mobile")¹ is the U.S. operations of T-Mobile International AG & Co. K.G., the mobile communications subsidiary of Deutsche Telekom AG ("DT").² DT acquired VoiceStream Wireless Corporation ("VoiceStream") in May of 2001. VoiceStream subsequently changed its corporate name to "T-Mobile USA, Inc." Prior to the acquisition, the Commission issued an order granting VoiceStream's applications to transfer

¹ As a national wireless provider, T-Mobile owns licenses covering 268 million people in 46 of the top 50 U.S. markets. T-Mobile currently serves more than 21.7 million customers in the United States. Via its HotSpot service, T-Mobile also provides Wi-Fi (802.11b) wireless broadband Internet access in about 6,800 convenient U.S. locations, such as Starbucks coffee houses, Hyatt hotels, airports, and airline clubs, making it the largest carrier-owned Wi-Fi network in the world.

² DT is an AKTIENGESELLSCHAFT organized and existing under the laws of the Federal Republic of Germany. The Federal Republic of Germany is a World Trade Organization Member ("WTO Member").

control of its licensee subsidiaries to DT's wholly-owned U.S. subsidiary.³ In granting these applications, the Commission found that the transfer of control was consistent with the public interests requirements regarding foreign ownership of radio licenses of Section 310(b)(4) of the Communications Act of 1934, as amended (the "Act")⁴

T-Mobile petitions (this "Petition") the Commission to clarify that these prior foreign ownership rulings permit T-Mobile to acquire Advanced Wireless Services ("AWS") licenses in any combination from a single market to a nationwide footprint, whether through initial grants following an auction, license assignments or transfers of control, spectrum leasing, or any other means without obtaining new or supplemental rulings.⁵ In the alternative, should the Commission find that the prior rulings do not apply to AWS licenses, out of an abundance of caution T-Mobile requests a new declaratory ruling to permit acquisition of AWS licenses as described above.⁶

³ See *VoiceStream Wireless Corp., Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, 16 FCC Rcd 9779 (2001) ("*VoiceStream-DT Order*"). The transfer of control of T-Mobile to DT was consummated on May 31, 2001. DT continues to hold 100 percent of the ownership interests in T-Mobile (through DT's wholly owned subsidiary, T-Mobile International Holding GmbH, which in turn holds all of the interests in T-Mobile International AG & Co. KG, which in turn holds all of the interests in T-Mobile Global Holding GmbH, which in turn holds all of the interests in T-Mobile) and, indirectly, in the T-Mobile licensee subsidiaries (*see infra* note 8).

⁴ See 47 U.S.C. § 310(b)(4). Section 310(b)(4) of the Act establishes a 25 percent benchmark for indirect investment by foreign individuals, corporations, and governments in U.S. common carrier radio licensees, but grants the Commission the discretion to allow higher levels of foreign ownership if it determines that such ownership is consistent with the public interest.

⁵ T-Mobile filed a Petition for Reconsideration or, in the Alternative, Clarification in the Secondary Markets proceeding, WT Docket No. 00-230 (Jan. 27, 2005), which addresses similar issues to those covered in the instant Petition as well as certain additional issues. T-Mobile intends to withdraw the Petition for Reconsideration once it has addressed all of the relevant issues through other filings.

⁶ T-Mobile qualifies for streamlined processing of this Petition. See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23891, 23940 (continued...)

To begin, T-Mobile believes that the Commission's prior rulings on T-Mobile's foreign ownership clearly should cover its acquisition of AWS licenses.⁷ First, each of T-Mobile's wholly-owned licensee subsidiaries (collectively, the "T-Mobile Companies")⁸ has received a prior FCC declaratory ruling approving its current indirect foreign ownership in excess of the 25 percent benchmark set forth in Section 310(b)(4).⁹ The current foreign ownership of T-Mobile and each of the T-Mobile Companies remains within the parameters approved in those prior rulings.¹⁰

Second, the percentage of foreign ownership in T-Mobile and the T-Mobile Companies is consistent with the Commission's prior rulings. The Commission found that DT's indirect investment in VoiceStream and its licensee subsidiaries in excess of the 25 percent benchmark set forth in Section 310(b)(4) was consistent with the public interest. Specifically, the Commission authorized up to 100 percent indirect foreign investment in T-Mobile and its licensee subsidiaries by DT and its German shareholders and by the German government through its investment in DT. The Commission subsequently approved 100 percent indirect foreign

(1997) (applying an open entry policy to Section 310(b)(4) requests involving indirect investments by World Trade Organization members to exceed the 25 percent benchmark) (the "Foreign Participation Order").

⁷ The requested clarification or ruling would include AWS licenses to any level of geographic coverage, including a nationwide footprint.

⁸ T-Mobile's current wholly-owned licensee subsidiaries include: Omnipoint NY MTA License, LLC, Powertel Memphis Licenses, Inc., T-Mobile License LLC (f/k/a VoiceStream PCS BTA I License Corporation), T-Mobile West Corporation (f/k/a VoiceStream Houston, Inc.), VoiceStream Pittsburgh, L.P. and Cook Inlet/VS GSM IV PCS, LLC.

⁹ See *VoiceStream-DT Order*, 16 FCC Rcd at 9850.

¹⁰ See *id.*

investment in several other T-Mobile licensee subsidiaries.¹¹ Indeed, since the merger there has been a *decrease* in the Federal Republic of Germany's ownership interest in DT and, indirectly, in T-Mobile.¹²

Third, the public interest considerations that supported the Commission's approval of T-Mobile's current level of indirect foreign ownership within the context of its acquisition of PCS, point-to-point microwave, and other wireless licenses should apply with equal force to T-Mobile's anticipated acquisition of AWS licenses. Both PCS and AWS are types of Commercial Mobile Radio Service (CMRS) and T-Mobile Companies would use both types of licenses to provide complementary wireless service offerings.

Finally, it should also be noted that T-Mobile entered into an agreement with the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) in connection with the VoiceStream-DT merger to insure national security, law enforcement, and public safety concerns are adequately addressed.¹³ This agreement remains in effect.

Accordingly, because this Petition is consistent with prior Commission rulings allowing T-Mobile's indirect foreign ownership of radio licenses and would otherwise serve the public interest, a new declaratory ruling should not be needed to allow T-Mobile to acquire AWS licenses.

¹¹ See, e.g., FCC Public Notice, *International Authorizations Granted*, 18 FCC Rcd 5014, 5015 (IB 2003) (granting indirect foreign ownership in Cook Inlet/VS GSM VI PCS, LLC in excess of the twenty-five percent benchmark of Section 310(b)(4)).

¹² The level of the Federal Republic of Germany's ownership interest in DT or, indirectly, in T-Mobile has decreased from 45.7 percent to 32.92 percent since the consummation of the DT/VoiceStream merger.

¹³ See Petition to Adopt Conditions to Authorizations and Licenses, IB Docket No. 00187, DA 00-2251 (Jan. 24, 2001).

In the alternative, out of an abundance of caution, to the extent that the Commission's prior rulings do not subsume the acquisition of AWS spectrum, T-Mobile requests a new ruling specifically authorizing the acquisition of AWS licenses by the T-Mobile Companies. Just as the Commission's earlier findings that T-Mobile's indirect foreign ownership of radio licenses in excess of the 25 percent benchmark was consistent with the public interest, T-Mobile's anticipated acquisition of AWS licenses is also consistent with the public interest.

The Commission noted in its *VoiceStream-DT Order* that "foreign investment can promote competition in U.S. markets and that the public interest is served by permitting more open investment in U.S. common carrier radio licenses by entities from WTO Member countries."¹⁴ The Commission adopted a rebuttable presumption that no competitive concerns are raised by the indirect foreign investment in licensees by entities from WTO Member countries.¹⁵ In the context of PCS and other licenses, there was no evidence of competitive concerns to rebut this presumption in the case of T-Mobile. Similarly, in the context of AWS, T-Mobile's prior approved levels of foreign ownership should be entitled to the same presumption that no competitive concerns are raised and that the public interest would be served. The current foreign investment in T-Mobile serves to bolster the resources available to T-Mobile for the development and operation of its wireless network should it win licenses in the AWS auction or, subsequent to the auction, acquire AWS licenses in secondary market transactions.

T-Mobile's operations in the U.S. have benefited American consumers and wireless competition by introducing competitive rates, expanding coverage into new markets,

¹⁴ *VoiceStream-DT Order*, 16 FCC Rcd at 9790 (citing *Foreign Participation Order* at 23940).

¹⁵ *See id.*

and developing new and innovative services. Especially in a time of some consolidation in the wireless marketplace, T-Mobile's presence is important. The growth of the company has experienced is a testament to its success in the U.S. market. Indeed, T-Mobile had fewer than 6 million customers and 8,200 employees in the United States in 2001. Today, T-Mobile is one of the fastest growing nationwide wireless service providers with more than 21.7 million customers and over 30,000 employees in the U.S. T-Mobile can only improve and expand its existing service with new AWS spectrum, which will benefit competition and innovation in the marketplace. T-Mobile has also distinguished itself as the most consumer-friendly wireless carrier. It ranked highest among wireless carriers in overall customer satisfaction in every region of the country surveyed by J.D. Power and Associates. T-Mobile also ranked highest among wireless carriers for call quality in three of the six regions surveyed. Finally, T-Mobile was the highest ranking carrier in the 2006 Wireless Customer Care Performance Study, repeating its success from 2004 and 2005. Without a doubt, T-Mobile has been and will continued to be a positive force in the U.S. wireless marketplace, to the benefit of the public.

Ruling that the T-Mobile Companies, with the current levels of previously-approved indirect foreign ownership, are permitted to acquire AWS licenses will serve the public interest by facilitating T-Mobile's development of a more efficient and competitive wireless network that offers consumers a choice from among a variety of advanced mobile services. Additionally, grant of this Petition will benefit not only users of T-Mobile's future systems, but also users of other carriers' networks that will enjoy the lower prices and innovative service offerings that will naturally flow from increased competition.

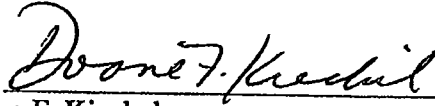
Thus, for the reasons stated above, to the extent not already included in its prior rulings, the Commission should find that acquisition of AWS licenses by the T-Mobile

Companies, with geographic coverage up to a nationwide footprint, is permissible under Section 310(b)(4) of the Act, is consistent with the Commission's prior decisions, and is in the public interest. Moreover, because Germany, DT's home country, is a WTO Member, T-Mobile is entitled to streamlined processing under the *Foreign Participation Order*.¹⁶

Respectfully submitted,

T-Mobile USA, Inc.

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Counsel to T-Mobile USA, Inc.

Dated: May 10, 2006

¹⁶ See *supra*, note 6.