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May 22, 2006

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VIA HAND DELIVERY

Federal Communications Commission
Office of Secretary

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, N.E.; Suite 110
Washington, DC 20002

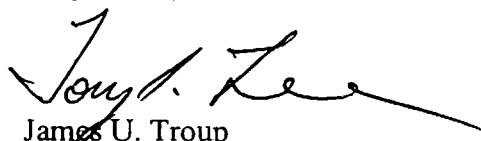
**Re: Iowa Wireless Services Holding Corporation
Streamlined Petition For Declaratory Ruling Under Section 310(b)(4) to
Permit Indirect Foreign Ownership Exceeding 49.9%**

Dear Ms. Dortch:

On behalf of Iowa Wireless Services Holding Corporation ("Iowa Wireless"), transmitted herewith are an original and four (4) copies of a Petition for Declaratory Ruling to permit Deutsche Telekom AG ("DT") to increase its indirect foreign ownership in Iowa Wireless in excess of previously authorized amounts under Section 310(b)(4) of the Communications Act of 1934, as amended. Specifically, Iowa Wireless requests that the Commission declare that it is not contrary to the public interest for DT to indirectly acquire up to and including a 60 percent interest in Iowa Wireless. Because Germany is a World Trade Organization Member, streamlined processing of this petition is appropriate.

Please date-stamp the extra copy of this filing, which is included for this purpose. Should you have any questions with respect to this matter, please do not hesitate to contact the undersigned at (202) 857-1707.

Respectfully submitted,


James U. Troup
Tony S. Lee

Counsel for Iowa Wireless Services
Holding Corporation

Enclosures

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MAY 22 2006

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
Federal Communications Commission
Office of Secretary

In the Matter of)
)
Iowa Wireless Services Holding Corporation) File No. ISP-PDR-_____
)
Petition for Declaratory Ruling Under)
Section 310(b)(4) of the Communications)
Act of 1934, as Amended, to Permit Indirect)
Foreign Ownership Exceeding 49.9 percent)

PETITION FOR DECLARATORY RULING

Iowa Wireless Services Holding Corporation (“Iowa Wireless” or “Petitioner”), by its undersigned attorneys, pursuant to the Federal Communications Commission’s (“FCC” or “Commission”) streamlined processing procedures set forth in the *Foreign Participation Order*¹ and Section 1.2 of the Commission’s rules,² hereby petitions the FCC for a declaratory ruling that it is not contrary to the public interest for Deutsche Telekom AG (“DT”) to increase its indirect foreign ownership in Iowa Wireless in excess of previously authorized amounts under Section 310(b)(4) of the Communications Act of 1934, as amended (“Act”),³ and specifically, up to and including a 60 percent ownership interest in Iowa Wireless. In support hereof, the following is respectfully shown:

¹ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23940 (1997) (“*Foreign Participation Order*”).

² 47 C.F.R. § 1.2.

³ See 47 U.S.C. § 310(b)(4). That section provides, in relevant part, that “No . . . common carrier . . . radio station license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government, or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest would be served by the refusal or revocation of such license.”

I. Background

Iowa Wireless, a Delaware corporation, is a wholly owned subsidiary of Iowa Wireless Services, LLC (“IWS-LLC”). Iowa Wireless is an FCC licensee that holds the following broadband PCS authorizations: WPOH984 (MTA032 – Des Moines-Quad Cities), KNLH743 (BTA086 – Clinton, IA-Sterling, IL), KNLH741 (BTA061 – Burlington, IA), KNLG770 (BTA285 – Mason City, IA), and KNLH769 (BTA286 – Marshalltown, IA).

IWS-LLC is comprised of two members: INS Wireless, Inc. (“INSW”) (a wholly owned subsidiary of Iowa Network Services, Inc.), and VoiceStream PCS I Iowa Corporation (“VoiceStream PCS”). DT, through a series of intermediate subsidiaries, holds a 100 percent ownership interest in T-Mobile USA, Inc. (“T-Mobile”, f/k/a VoiceStream Wireless Corporation), and T-Mobile holds a 100 percent direct ownership interest in VoiceStream PCS. DT currently is authorized by the Commission to hold up to a 49.9 percent indirect ownership interest in Iowa Wireless.⁴ A diagram depicting Iowa Wireless’s current ownership structure is attached hereto as Exhibit A.

On January 5, 2001, Iowa Wireless filed a petition for declaratory ruling under Section 310(b)(4) of the Act, and requested that the Commission find that it was in the public interest to permit DT to hold an indirect ownership interest of up to 38 percent in Iowa Wireless.⁵ The FCC granted Iowa Wireless’ petition, and authorized Iowa Wireless to be indirectly owned

⁴ See FCC Public Notice, *International Authorizations Granted*, 19 FCC Rcd 7116, 7117 (IB 2001) (“*Iowa Wireless Restructuring Notice*”) (granting Iowa Wireless Petition for a Declaratory Ruling Pursuant to Section 310(b)(4) of the Act).

⁵ See *Iowa Wireless Services Holding Corp., et al.: Petition for a Declaratory Ruling Pursuant to Section 310(b)(4) of the Act and for a Ruling that the Transfer of a Minority Ownership Interest in the Licensee Does Not Constitute a Transfer of Control Under Section 310(b)*, 16 FCC Rcd 9779 (2001) (“*Iowa Wireless Order*”).

up to 38 percent by DT and DT's German shareholders.⁶ The Commission further stated that Iowa Wireless would need additional FCC authority under Section 310(b)(4) before DT or DT's German shareholders could increase investment above 38 percent.⁷

Subsequently, on March 5, 2004, Iowa Wireless filed a second petition for declaratory ruling under Section 310(b)(4) of the Act, requesting that the Commission approve DT's indirect ownership interest of up to 60 percent in Iowa Wireless in connection with the restructuring of the company. The FCC partially granted the petition by authorizing DT and DT's German shareholders to own indirectly up to 49.9 percent of Iowa Wireless.⁸

As authorized by the *Iowa Wireless Order* and the *Iowa Wireless Restructuring Notice*, DT currently holds an indirect interest in Iowa Wireless of 38 percent. DT is a company organized and existing under the laws of the Federal Republic of Germany. Because Germany is a World Trade Organization ("WTO") Member, streamlined processing of this petition is appropriate.⁹ Accordingly, Iowa Wireless now requests that the Commission declare that it is not contrary to the public interest for DT to increase its previously authorized foreign ownership level of Iowa Wireless from 49.9 percent up to and including 60 percent.

⁶ *Id.* at 9848-49.

⁷ *Id.* at 4849.

⁸ *Iowa Wireless Restructuring Notice*, 19 FCC Rcd at 7117. On January 25, 2005, IWS-LLC filed a third Petition for Declaratory Ruling under Section 310(b)(4) of the Act in connection with certain contemplated spectrum leasing transactions, which are not relevant to the instant transaction. This petition was granted by the FCC. See FCC Public Notice, *International Authorizations Granted*, 20 FCC Rcd 5985 (IB 2005) ("*IWS-LLC PDR Notice*").

⁹ *Foreign Participation Order* at 23906, 23940 (concluding that the public interest will be served for purposes of Section 310(b)(4) of the Act by adopting an open entry policy to permit entities from WTO Member countries to exceed the 25 percent ownership interest limit in U.S. common carrier wireless licensees).

II. Description of the Transaction

In order to finance the construction of Iowa Wireless' PCS system and to pay for operational costs, on August 20, 1998, IWS-LLC's predecessor-in-interest, Iowa Wireless Services, L.P. ("IWS-LP"), entered into an initial credit agreement with certain lenders for a credit facility ("Credit Agreement"). As of February 11, 2004, in order to cure certain outstanding defaults, to refinance the initial Credit Agreement and to provide for additional working capital, IWS-LP and the lenders entered into an Amended and Restated Credit Agreement ("ARC Agreement"), which provided that, among other things, IWS-LP would be converted from a limited partnership to a limited liability company (IWS-LLC), and that the supervising oversight of the company, and therefore, of Iowa Wireless, would be vested in a newly established board of directors pursuant to a limited liability company agreement. These events subsequently occurred, following Commission consent.

Pursuant to the ARC Agreement, IWS-LP issued subordinated promissory notes to INSW and VoiceStream PCS in the amounts of \$1,500,000 and \$2,500,000, respectively, in exchange for additional cash infusions of the same amounts by INSW and VoiceStream PCS. At the time of conversion of IWS from a limited partnership to a limited liability company, INSW and VoiceStream PCS contributed the promissory notes to IWS-LLC as a capital contribution, which changed the relative capital accounts of INSW and VoiceStream PCS but did not change the percentage interests. INSW and VoiceStream PCS have agreed that contribution of the promissory notes will not affect their respective percentage interests in the company, but the contribution of the promissory notes did change the relative capital accounts of INSW and VoiceStream PCS.

The ARC Agreement provides that certain convertible junior notes may be repaid in cash rather than converted into equity by the lenders. Any repayment will result in half of the equity interest that would have vested in the lenders (if the lenders were to convert the junior notes) being allocated to VoiceStream PCS. The ARC Agreement further provides that the interest on the junior notes may be paid to the lenders in cash, or in “PIK Notes” either to be repaid at a later date or to be converted into equity by the lenders. The junior notes mature February 11, 2026. If the interest is paid in PIK Notes that are subsequently converted into equity by the lenders, no change in VoiceStream PCS’ relative ownership interest will occur. However, if the interest on the junior notes which was originally paid in PIK Notes later is repaid to the lenders in cash, then INSW’s ownership interest in IWS-LLC will decrease, while VoiceStream PCS’ ownership interest will increase.

Under the terms of the ARC Agreement and the IWS-LLC limited liability company agreement, if the junior notes are repaid and all of the PIK interest on the junior notes is paid to the lenders in cash, then VoiceStream PCS’ ownership interest in IWS-LLC could approach 60 percent over time. The actual total ownership will largely depend on whether the junior notes are ultimately repaid or converted into equity, and on whether IWS-LLC decides to pay the interest on the junior notes in cash or in PIK Notes, or any combination thereof. In order to accommodate the long-term nature of IWS-LLC’s payment obligations, and to avoid repetitive and substantially similar applications to request Commission authority to incrementally increase DT’s indirect foreign ownership interest in Iowa Wireless, Petitioner requests that the FCC find that it will not be in the public interest to prohibit DT from indirectly holding an ownership interest in Iowa Wireless of up to and including 60 percent.

The transfer of control of the company (*i.e.*, for DT's indirect foreign ownership of Iowa Wireless to exceed 50 percent) is the subject of two separate applications before the Commission (one on FCC Form 603 for wireless licenses, and the other pursuant to Section 214 for an international authorization for global resale service) that will be filed concurrently with this petition, and the transfer of control will not occur until after FCC approval is obtained on both applications.

III. Discussion

A. The FCC's *Foreign Participation Order* Favors Additional Investment by Companies from WTO Member Countries

Section 310(b)(4) of the Act establishes a twenty-five percent benchmark for indirect, attributable investment by foreign individuals, corporations, and governments in U.S. common carrier radio licensees, but grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.¹⁰ In the *Foreign Participation Order*, the Commission found that applying an "open entry" standard under Section 310(b)(4) would better achieve the Act's pro-competitive goals,¹¹ and that the public interest would be served by permitting greater investment by individuals or entities from WTO Member countries in U.S. common carrier licensees.¹² With respect to indirect foreign investment from WTO Members, the Commission replaced its "effective competitive opportunities," or "ECO," test with a rebuttable presumption that such investment generally raises no competitive concerns.¹³

¹⁰ 47 U.S.C. § 310(b)(4).

¹¹ *Foreign Participation Order*, 12 FCC Rcd at 23897-98.

¹² *Foreign Participation Order*, 12 FCC Rcd at 23896, 23913, and 23940.

¹³ *Id.* at 23940

DT is based in Germany, a WTO Member country. As such, DT is afforded the rebuttable presumption that its investment in FCC licensees does not raise competitive concerns. The FCC approved an application for DT and its German shareholders to increase DT's indirect ownership interest up to 100 percent in an FCC broadband PCS licensee pursuant to the Commission's streamlined procedures.¹⁴ This demonstrates that the Commission has considered and determined that investments in FCC broadband PCS licensees by German-based companies, and in particular, by DT, does not raise any competitive concerns. Thus, streamlined processing under the *Foreign Participation Order* and grant of the instant Petition are appropriate.

B. The Commission Has Previously Approved DT's Foreign Ownership in Iowa Wireless in Excess of the Section 310(b)(4) Benchmark

The Commission has previously reviewed and approved DT's indirect foreign ownership interest in Iowa Wireless on multiple occasions, and the FCC's prior analysis continues to be valid for the instant Petition. In the *Iowa Wireless Order*, the FCC analyzed the German government's ownership in DT, and concluded that pursuant to the analysis required by the *Foreign Participation Order*, DT's partial government ownership would not pose a high risk of harm to competition in the U.S. market.¹⁵ The FCC did not find any evidence to rebut the presumption that DT's indirect foreign investment in Iowa Wireless would not raise competitive concerns from such investment.¹⁶ However, the Commission deferred to the expertise of the Executive Branch regarding national security and law enforcement concerns, and conditioned the FCC's grant on compliance by DT with the agreement with the Department of Justice ("DOJ")

¹⁴ FCC Public Notice, *International Authorizations Granted*, 19 FCC Rcd 1453, 1454 (IB 2004) ("*T-Mobile PDR Notice*") (granting T-Mobile USA, Inc. f/k/a VoiceStream Wireless Corporation Petition for Declaratory Ruling).

¹⁵ *Iowa Wireless Order*, 16 FCC Rcd at 9845.

¹⁶ *Id.* at 9813.

and the Federal Bureau of Investigation (“FBI”),¹⁷ as further discussed in Section C below. With respect to DT’s ownership in Iowa Wireless specifically, the FCC determined that pursuant to Section 310(b)(4), the public interest would be served by allowing DT to have an indirect ownership interest in Iowa Wireless of up to 38 percent. Subsequently, in the *Iowa Wireless Restructuring Notice*, the FCC reaffirmed its findings and determined that the public interest would be served by allowing DT to have increased indirect ownership interest in Iowa Wireless of up to 49.9 percent.¹⁸

In the intervening period between the issuance of the *Iowa Wireless Restructuring Notice* and the filing of the instant Petition, there have been no events that would suggest an alternate conclusion to that already reached by the Commission with regard to DT’s indirect ownership of Iowa Wireless. The Commission has continued to apply the framework established by the *Foreign Participation Order* to requests for declaratory rulings to permit companies from WTO Member countries to exceed the 25 percent foreign ownership benchmark under Section 310(d)(4). Germany continues to be a WTO member, and the FCC has found that high levels of foreign ownership by DT in an FCC licensee is not contrary to the public interest. Indeed, the FCC has determined that 100 percent indirect foreign ownership by DT in an FCC licensee is permissible and in the public interest.¹⁹ Moreover, the FCC has made similar determinations for companies based in WTO Member countries to hold ownership interests greater than that

¹⁷ *Id.* at 9845.

¹⁸ The FCC examined the foreign ownership of Iowa Wireless a third time and determined that the public interest would be served by allowing DT to have a 49.9 percent indirect interest in IWS-LLC, specifically in the context of spectrum leasing. *See IWS-LLC PDR Notice*, 20 FCC Rcd at 5986.

¹⁹ *See Iowa Wireless Restructuring Notice*, 19 FCC Rcd at 7117; *T-Mobile PDR Notice*, 19 FCC Rcd at 1954.

requested herein.²⁰ The current foreign ownership of DT and T-Mobile remain within the parameters approved in the prior rulings. Also, since the merger, there has been a *decrease* in the Federal Republic of Germany's ownership in DT and, indirectly, in T-Mobile from 45.7 to 32.92 percent. Accordingly, the FCC should grant the instant request for DT to hold an indirect ownership interest in Iowa Wireless up to and including 60 percent.

C. Conditions Imposed Pursuant to the Agreement with DOJ and FBI

In the *Iowa Wireless Order*, the FCC conditioned its grant of the transfer of control of certain licenses on DT's compliance with the January 12, 2001 agreement with the DOJ and the FBI ("DOJ/FBI Agreement") regarding future requests for authorization from the FCC.

Specifically, Section 7.2 of the agreement provides, in pertinent part, that:

DT agrees that in its applications or petitions to the FCC for licensing or other authority filed with the FCC after the Effective Date, except with respect to pro forma assignments or pro forma transfers of control, it shall request that the FCC condition the grant of such licensing or other authority on DT's compliance with the terms of this Agreement.²¹

Because this Petition involves a request to the FCC for "other authority" for DT to acquire an indirect foreign ownership interest in Iowa Wireless of up to and including 60 percent, Petitioner requests that grant of this Petition be conditioned on compliance with the DOJ/FBI Agreement.

D. Public Interest

Iowa Wireless is a vigorous competitor providing high quality wireless service in rural areas. Even though it contemplates acquiring control of Iowa Wireless, T-Mobile intends to

²⁰ See, e.g., *T-Mobile PDR Notice*, 19 FCC Rcd at 1954 (granting T-Mobile's PDR for 100 percent indirect foreign ownership by DT); FCC Public Notice, *International Authorizations Granted*, 19 FCC Rcd 275, 276 (IB 2004) (granting Skywave Mobile Communications, Corp.'s Petition for Declaratory Ruling for 100 percent indirect foreign ownership by Canadian company); FCC Public Notice, *International Authorizations Granted*, 18 FCC Rcd 10734, 10735 (IB 2003) (granting Richtec Inc.'s Petition for Declaratory Ruling for 100 percent indirect foreign ownership by UK company).

²¹ See *Iowa Wireless Order*, 16 FCC Rcd at 9871; see also *id.* at 9853-76 (for the complete text of the DOJ/FBI Agreement).

maintain Iowa Wireless as a separate wireless service provider, with its own customer base and using its current management, and not to integrate Iowa Wireless' assets or operations into those of T-Mobile. The low density of subscribers in these areas makes it especially important that Iowa Wireless continue to be able to provide service, since other wireless carriers may be less committed to serving these markets given that higher returns can be made for less investment in urban areas. As discussed, the ARC Agreement allowed the company to refinance its obligations to continue operations, avoiding the termination of service to thousands of subscribers.

IV. Conclusion

WHEREFORE, for the foregoing reasons, Iowa Wireless respectfully requests that the FCC issue a declaratory ruling that it is not contrary to the public interest for DT to acquire an indirect foreign ownership interest in excess of the 25 percent benchmark in Section 310(b)(4) of the Act, and specifically, for DT to acquire indirectly, through intermediate companies, up to and including a 60 percent ownership interest in Iowa Wireless. The instant Petition does not require the FCC to break new ground as the FCC has previously issued multiple declaratory rulings pursuant to Section 310(b)(4) to permit DT's foreign ownership interest in Iowa Wireless to exceed the statutory benchmark, and the Commission has previously authorized DT to hold an indirect interest in a U.S. common carrier that far exceeds that requested in the instant Petition. Approval of the instant Petition is in the public interest because such approval will permit the repayment of the junior notes pursuant to the ARC Agreement. Moreover, grant of the Petition

will enable the company to receive new financing, which will foster competition and expand innovative and high quality wireless services to rural underserved areas.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tony S. Lee", written over a horizontal line.

James U. Troup

Tony S. Lee

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Counsel for Iowa Wireless Services
Holding Corporation

Dated: May 22, 2006

EXHIBIT A

Corporate Structure

(All links indicate 100 percent ownership unless otherwise stated)

