

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

In the Matter of)
)
Cook Inlet GSM IV PCS Holdings, LLC)
)
Petition for Determination of the Public Interest)
Under Section 310(b)(4) of the Communications)
Act of 1934, As Amended)

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Federal Communications Commission
Office of Secretary

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

I. INTRODUCTION

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 control of its licensee subsidiaries to DT's wholly-owned U.S. subsidiary.³ In granting these applications, the

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 22 million customers in the United States. Via its HotSpot service, T-Mobile also provides Wi-Fi (802.11b) wireless broadband Internet access in about 7,000 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").

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 (continued...))

Commission found that the transfer of control was consistent with the public interest 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 now petitions the Commission to clarify that these prior foreign ownership rulings also permit indirect foreign ownership in Cook Inlet GSM IV PCS Holdings, LLC, an indirect wholly-owned subsidiary of T-Mobile (“Cook IV”), in excess of the twenty-five percent statutory benchmark, without obtaining new or supplemental rulings.⁵ In the alternative, should the Commission find that the prior rulings do not extend to Cook IV (despite the fact that it is wholly-owned by T-Mobile), out of an abundance of caution, T-Mobile requests that the

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) (the “*Petition for Reconsideration*”), which (among other issues) seeks clarification that a new declaratory ruling is unnecessary in the event that the particular entity involved in the subject transaction is, or will become, a wholly-owned direct or indirect subsidiary of the parent whose foreign ownership levels have already been cleared by the Commission (and any other relevant Executive Branch agencies), even if the particular entity has not received its own declaratory ruling. See *Petition for Reconsideration* at 8-9. T-Mobile cited to an order in the secondary markets docket in which the Commission acknowledged the burdens imposed by requiring separate declaratory rulings for each licensee subsidiary and attempted to strike a “balance between the concerns raised by T-Mobile, reducing transaction costs, including unnecessary regulatory delay, and the concerns raised by the Executive Branch in numerous licensing proceedings before the Commission.” *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 17503, 17515 and n.55 (2004). T-Mobile intends to withdraw the *Petition for Reconsideration* once it has addressed all of the relevant issues through other filings.

Commission issue a new declaratory ruling allowing up to 100 percent foreign ownership in Cook IV under its streamlined processing procedures.⁶

This request for consent to such indirect foreign ownership is filed in connection with late-filed notifications for the *pro forma* assignment of certain Personal Communications Services (PCS) licenses (collectively, the “Licenses”) to Cook IV as of January 1, 2006 as part of an internal consolidation and simplification of T-Mobile’s wholly-owned licensee subsidiaries,⁷ as follows:

1. From CIVS IV License Sub I, LLC (then a wholly-owned indirect subsidiary of T-Mobile): KNLF504, KNLF510, KNLF517 and KNLF519.
2. From BCN Communications, LLC (then a wholly-owned indirect subsidiary of T-Mobile): WPOJ697, WPOJ698 and WPOJ699.
3. From Cook Inlet/VS GSM IV PCS, LLC (then a wholly-owned indirect subsidiary of T-Mobile): KNLG361, KNLG365, KNLG729, KNLG749, KNLG751 and WPOJ819.

Following consummation, T-Mobile timely filed *pro forma* notifications on FCC Form 603 pursuant to Section 1.948(d) for the *pro forma* license assignments described in items 1 and 2 above⁸ but inadvertently named the incorrect entity (Cook Inlet/VS GSM IV PCS, LLC instead of Cook Inlet GSM IV PCS Holdings, LLC) in the notifications. T-Mobile did not file consummation notifications for the *pro forma* license assignments described in item 3 above, on

⁶ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23891, 23940 (1997) (applying an open entry policy to Section 310(b)(4) requests involving indirect investments by World Trade Organization members to exceed the twenty-five percent benchmark) (the “*Foreign Participation Order*”).

⁷ Concurrently with the filing of this petition, T-Mobile is filing with the WTB consummation notifications on FCC Form 603. Because control of the Licenses remain with T-Mobile and will not result in a substantial change in the ownership or control of the License, T-Mobile is filing the *pro forma* assignment notifications under the Commission’s forbearance policies.

⁸ See FCC File Nos. 0002431484 filed January 4, 2006, and granted January 6, 2006 (for *pro forma* assignments from CIVS IV License Sub I, LLC) and 0002432110 filed January 4, 2006, and granted January 6, 2006 (for *pro forma* assignments from BCN Communications, LLC).

the mistaken belief that the then-current licensee would remain the licensee following the internal consolidation and simplification of T-Mobile's wholly-owned licensee subsidiaries. Having recently discovered its error, T-Mobile is requesting a waiver from WTB of the 30 day notice requirement allowing T-Mobile to file (i) the corrected consummation notifications *nunc pro tunc* for the *pro forma* assignments described in items 1 and 2 above and (ii) the new consummation notifications *nunc pro tunc* for the *pro forma* assignments described in item 3. T-Mobile also realized that Cook IV had not received its own prior ruling on foreign ownership. Out of an abundance of caution (despite the facts that Cook IV is wholly-owned by T-Mobile and that the instant *pro forma* assignments do not change the real party in interest associated with the Licenses), T-Mobile seeks a ruling that the prior Commission rulings relating to indirect foreign ownership in T-Mobile's licensee subsidiaries should be extended to Cook IV. T-Mobile regrets its ministerial error, which resulted from the close similarity of the names of the two relevant T-Mobile wholly-owned subsidiaries.

As described below, the resulting 100 percent indirect foreign ownership in Cook IV is consistent with prior Commission rulings related to indirect foreign ownership in T-Mobile's licensee subsidiaries and would otherwise serve the public interest, convenience, and necessity.⁹

II. THE COMMISSION'S PRIOR DECISIONS AUTHORIZING INDIRECT FOREIGN OWNERSHIP IN T-MOBILE IN EXCESS OF TWENTY-FIVE PERCENT SHOULD APPLY TO THE PRO FORMA ASSIGNMENTS

Cook IV, a Delaware limited liability company, is a wholly owned subsidiary of T-Mobile Central LLC ("TMO Central"), a Delaware limited liability company. TMO Central is

⁹ Indirect foreign ownership in Cook IV exceeding the twenty-five percent benchmark of Section 310(b)(4) complies with other Commission decisions with respect to other T-Mobile licensee subsidiaries. *See, e.g., International Authorizations Granted*, 18 FCC Rcd 5014, 5015 (IB 2003) ("*CIVS VI Order*") (continued...)

a direct, wholly owned subsidiary of T-Mobile. T-Mobile is a Delaware corporation and an indirect, wholly owned subsidiary of DT, a publicly traded German corporation. As stated above, the Commission has previously approved indirect foreign ownership of T-Mobile and its licensee subsidiaries beyond the twenty-five percent benchmark prescribed in Section 310(b)(4) of the Act in an order released on April 27, 2001.¹⁰ 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 (up to and including forty-three percent).¹¹ T-Mobile, moreover, certifies that it is in compliance with the Commission's foreign ownership orders.¹²

The Commission's reasoning in the *VoiceStream-DT Order*, authorizing the 100 percent indirect foreign ownership interest in T-Mobile's licensee subsidiaries, is applicable to this case. In granting the amount of T-Mobile's foreign ownership, the Commission examined "whether the proposed foreign government ownership would pose a high risk of harm to competition in the U.S. market and ha[s] concluded that it would not."¹³ More recently, the Commission has granted indirect foreign ownership of other T-Mobile licensee subsidiaries such as CIVS VI,

(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)).

¹⁰ See *VoiceStream-DT Order*.

¹¹ See *id.* at 9785-87, 9850-51. 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 31.25 percent since the consummation of the DT/VoiceStream merger.

¹² See *Foreign Participation Order; VoiceStream-DT Order*, at 9779, 9845, 9850-51; see also, e.g., *CIVS VI Order*, at 5015.

¹³ See *VoiceStream-DT Order* at 9845.

after finding “that it would not serve the public interest to prohibit the indirect foreign ownership of CIVS VI in excess of the 25 percent benchmark of Section 310(b)(4).”¹⁴

Certainly, the same public interest rationales that applied to the Commission’s approval of the current level of indirect foreign ownership in T-Mobile’s other licensee subsidiaries should apply with equal force to indirect foreign ownership in Cook IV. The Commission in the *VoiceStream-DT Order* noted 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.”¹⁵ The Commission accordingly adopted the rebuttable presumption that indirect foreign investments by entities from WTO Member countries raise no competitive concerns.¹⁶ Indirect foreign ownership in Cook IV resulting from these *pro forma* assignments should be entitled to the same presumption.

T-Mobile’s operations in the U.S. have benefited American consumers and wireless competition by introducing competitive rates, expanding coverage into new markets, 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 22 million customers and over 30,000 employees in the U.S. T-Mobile has also distinguished itself as the most consumer-friendly wireless carrier. In May 2006, J.D. Power and Associates announced

¹⁴ See *CIVS VI Order* at 5015.

¹⁵ See *id.* at 9790 (citing *Foreign Participation Order* at 23940).

¹⁶ See *id.*

that T-Mobile had earned highest honors in the 2006 Wireless Retail Sales Satisfaction Performance Study--Volume I, building on the highest honors in the same study in 2004 and highest honors in a tie in 2005. In April 2006, T-Mobile ranked highest among wireless carriers in overall customer satisfaction in every region of the country surveyed by J.D. Power and Associates. In March, T-Mobile also ranked highest among wireless carriers for call quality in three of the six regions surveyed. Finally, in January, 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 continue to be a positive force in the U.S. wireless marketplace, to the benefit of the public.

If a separate foreign ownership ruling is necessary, T-Mobile contends that indirect foreign ownership in Cook IV is consistent with the public interest, convenience, and necessity.¹⁷ Attributable indirect foreign investment in Cook IV will facilitate the development of a competitive national wireless GSM network that offers consumers a variety of advanced mobile services and seamless national and international roaming. Furthermore, the *pro forma* assignments will not change, and will have no impact upon, the current indirect foreign ownership in T-Mobile.

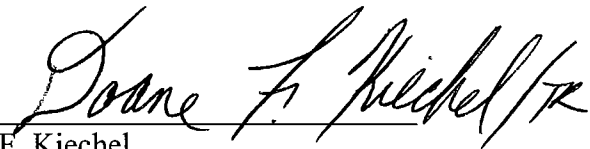
¹⁷ An FCC Form 602 providing a detailed analysis of T-Mobile's current foreign ownership is on file with the Commission.

III. CONCLUSION

For the above reasons, indirect foreign ownership in Cook IV by DT and its German shareholders, and by the German government through its investment in DT is permissible under Section 310(b)(4) of the Act, is in the public interest, and is consistent with the Commission's prior decision.

Respectfully submitted,

T-Mobile USA, Inc.

By: 

Doane F. Kiechel
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888
(202) 887-1500

Counsel to T-Mobile USA, Inc.

Thomas J. Sugrue, Vice President-
Government Affairs
Kathleen O'Brien Ham, Managing
Director-Federal Regulatory Affairs
T-Mobile USA, Inc.
401 Ninth Street, NW
Suite 550
Washington, D.C. 20004
(202) 654-5900

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