

STAMP AND RETURN

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

FILED/ACCEPTED
OCT - 1 2007
Federal Communications Commission
Office of the Secretary

In the Matter of)
)
SunCom Wireless Holdings, Inc.)
)
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") and SunCom Wireless Holdings, Inc. ("SunCom Holdings") submit this petition in connection with T-Mobile's proposed acquisition of SunCom Holdings and its wholly-owned licensee subsidiaries, SunCom Wireless License Company, LLC and SunCom Wireless Puerto Rico License Co., LLC (collectively, the "SunCom Licensees"). SunCom Holdings and each of the SunCom Licensees will become wholly-owned subsidiaries of T-Mobile.

T-Mobile has entered into an agreement to acquire all of the stock of SunCom Holdings, which holds all of the membership interests in the SunCom Licensees.¹ The SunCom Licensees hold 27 Personal Communications Services (PCS) licenses, a single Cellular Radiotelephone license, multiple point-to-point microwave licenses, and two international Section 214 authorizations. The SunCom Licensees operate a facilities-based wireless network across North

¹ Concurrently with the filing of this petition, T-Mobile is filing with the Wireless Telecommunications Bureau two separate FCC Form 603 applications to transfer control of the wireless licenses and two separate applications with the International Bureau to transfer control of the Section 214 international authorizations. FCC Form 603 File Number 0003178152 has been designated the "Lead Application."

and South Carolina, in northern Georgia, parts of eastern Tennessee and southwestern Virginia, Puerto Rico, and in the U.S. Virgin Islands.

T-Mobile² comprises the U.S. operations of T-Mobile International AG, the mobile communications subsidiary of Deutsche Telekom AG (“DT”).³ 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.⁴ In granting these applications, the 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”).⁵

² As a national wireless provider, T-Mobile currently serves more than 27 million customers in the United States with a wireless network reaching more than 244 million people (excluding roaming). Via its HotSpot service, T-Mobile also provides Wi-Fi (802.11b) wireless broadband Internet access in about 8,000 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.

³ 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”).

⁴ 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 AG, 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). The Commission conditioned DT’s acquisition of T-Mobile on, among other things, compliance with the January 12, 2001 National Security Agreement (“Security Agreement”) between DT, T-Mobile, the Department of Justice (“DOJ”) and the Federal Bureau of Investigation (“FBI”), appended by the Commission to the *VoiceStream-DT Order*.

⁵ 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.

T-Mobile and SunCom Holdings now petition the Commission to clarify that T-Mobile’s prior foreign ownership rulings also permit the proposed indirect foreign ownership in each of the SunCom Licensees, each as an indirect wholly-owned subsidiary of T-Mobile, in excess of the twenty-five percent statutory benchmark, without obtaining new or supplemental rulings. In the alternative, should the Commission find that the prior rulings do not extend to the SunCom Licensees (despite the fact that each is proposed to be wholly-owned by T-Mobile), out of an abundance of caution, T-Mobile and SunCom Holdings request that the Commission issue a new declaratory ruling allowing up to 100 percent foreign ownership in the SunCom Licensees under its streamlined processing procedures.⁶ The proposed transfers of control will not change, and will have no impact upon, the current indirect foreign ownership in T-Mobile. SunCom Holdings also request that the Commission condition the grant of this petition on compliance with the provisions of the Security Agreement between DT and T-Mobile, and the DOJ and the FBI.⁷

I. THE ACQUISITION WILL BENEFIT THE PUBLIC INTEREST

There are numerous public interest benefits to T-Mobile’s acquisition of the SunCom Licensees, with no adverse effects on competition. The SunCom Licensees’ areas of operation will expand T-Mobile’s footprint into key markets in the continental United States and the

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 See Section 7.2 of the National Security Agreement. Exhibit A of the National Security Agreement prescribed specific language for the conditional grant of the interests in FCC licenses in the specific context of the VoiceStream-DT merger, and T-Mobile and SunCom Holdings hereby request that the Commission impose a similar condition on the grant of this petition. See also “Description of Transaction, Public Interest Statement, and Related Requests and Showings,” Section III.C., attached to Lead Application.

Caribbean by providing immediately usable spectrum and operating networks in these markets.⁸ The SunCom Licensees' markets encompass a population of nearly 15 million people in the continental United States and more than four million people in Puerto Rico and the U.S. Virgin Islands. The minimal geographic overlap between the operations of T-Mobile and the SunCom Licensees ensures that there will be no harmful effects from the transaction. T-Mobile's entrance into these markets will result in substantial investment in these local economies and facilitate T-Mobile's roll-out of high-speed UMTS text, voice, data and multimedia services and other broadband services, including to rural areas. Consumers in these communities will have access to a wider variety of high quality voice, messaging and data services under T-Mobile service plans and to the national footprint that T-Mobile will bring to former SunCom customers. T-Mobile expects to realize estimated synergies with a net present value of approximately \$1 billion through reduced roaming costs and other operating expenses with the expansion of T-Mobile's facilities-based network.

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

In April 2001, the Commission authorized up to 100 percent indirect foreign investment in T-Mobile and its licensee subsidiaries by DT, a publicly traded German corporation, and its German shareholders, and by the German government through its investment in DT (up to and

⁸ Although T-Mobile purchased spectrum in these markets in the Advanced Wireless Services ("AWS") auction, it cannot fully access that spectrum until incumbent government and commercial operators relocate out of the 1.7 and 2.1 GHz frequency bands.

including forty-three percent).⁹ T-Mobile has remained in compliance with the Commission’s foreign ownership orders.¹⁰

The Commission’s findings in the *VoiceStream-DT Order*, authorizing the 100 percent indirect foreign ownership interest in T-Mobile’s licensee subsidiaries, are equally applicable in this transaction. In approving the level 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.”¹¹ On multiple occasions since the initial VoiceStream-DT merger, the Commission has granted indirect foreign ownership of other T-Mobile licensee subsidiaries, such as CIVS VI, 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).”¹² Most recently, the Commission granted indirect foreign ownership of T-Mobile licensee subsidiaries to acquire nationwide AWS spectrum, finding “that the public interested would be served by . . . extend[ing] the existing foreign ownership ruling for T-Mobile USA to cover licenses in the Advanced Wireless Services.”¹³

⁹ See *VoiceStream-DT Order*, 16 FCC Rcd at 9785-87, 9850-51. The level of the Federal Republic of Germany’s attributable ownership interest in DT or, indirectly, in T-Mobile has decreased from 45.70 percent to 31.70 percent since the consummation of the DT/VoiceStream merger.

¹⁰ See *Foreign Participation Order; VoiceStream-DT Order*, 16 FCC Rcd at 9779, 9845, 9850-51; see also, e.g., *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)) (“*CIVS VI Order*”).

¹¹ See *VoiceStream-DT Order*, 16 FCC Rcd at 9845.

¹² See *CIVS VI Order*, 18 FCC Rcd at 5015.

¹³ See FCC Public Notice, *International Authorizations Granted*, 21 FCC Rcd 14062, 14063 (2006) (granting indirect foreign ownership in T-Mobile License LLC in excess of the twenty-five percent benchmark of Section 310(b)(4) to cover AWS licenses).

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.”¹⁴ The Commission accordingly adopted the rebuttable presumption that indirect foreign investments by entities from WTO Member countries, such as Germany, raise no competitive concerns.¹⁵ Indirect foreign ownership in the SunCom Licensees resulting from the proposed transfers of control 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 providing new and innovative services. In 2001, T-Mobile had fewer than 6 million customers and 8,200 employees in the United States. Today, T-Mobile is one of the fastest growing nationwide wireless service providers with more than 27 million customers and approximately 35,000 employees in the U.S. T-Mobile operates 22 call centers across the country, which employ approximately 15,000 people.

T-Mobile's commitment to customer satisfaction and quality service is evident after earning year-after-year high rankings from J.D. Power and Associates (“JDPA”), the leading conductor of independent customer satisfaction and product quality surveys. T-Mobile, for the sixth time in a row, recently was named the highest ranking wireless carrier in JDPA's 2007 Wireless Customer Care Performance Study – Volume 2, in which T-Mobile's overall customer

¹⁴ See *VoiceStream-DT Order*, 18 FCC Rcd at 9790 (citing *Foreign Participation Order*, 12 FCC Rcd at 23940).

¹⁵ See *id.*

care score was significantly higher than any other wireless carrier.¹⁶ T-Mobile has also received in 2007 the highest rank in a JDPA study measuring overall customer satisfaction, for the fifth consecutive reporting period, ranking ahead of all other wireless carriers in the Northeast, West and Southwest regions and highest in a tie in the Mid-Atlantic, Southeast and North Central regions.¹⁷ T-Mobile also received this year JDPA's highest rank in wireless retail satisfaction for the fifth consecutive reporting period, and the highest rank in business wireless satisfaction for service offerings, promotions, cost and customer care.¹⁸

Similarly, T-Mobile has been a leader in technological innovation, a prime example of which is its recently launched T-Mobile Hotspot@Home product – a hybrid CMRS/WiFi service with seamless handoff between the two technologies. T-Mobile has been and will continue to be an independent, competitive force in the U.S. wireless marketplace, to the benefit of the public.¹⁹

¹⁶ See J.D. Power and Associates Press Release, *Wireless Carriers Show Steady Improvement in Timeliness of Resolving Customer Care Issues - T-Mobile Ranks Highest in Wireless Customer Care Performance for a Sixth Consecutive Reporting Period*, July 25, 2007, available at www.jdpower.com/press-releases/pressrelease.aspx?id=2007118.

¹⁷ See J.D. Power and Associates Press Release, *Call Quality Plays an Increasingly Important Role in Customer Satisfaction With the Wireless Phone Experience - T-Mobile Continues to Lead the Regional Customer Satisfaction Rankings*, Apr. 19, 2007, available at www.jdpower.com/press-releases/pressrelease.aspx?id=2007058.

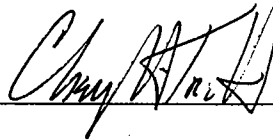
¹⁸ See J.D. Power and Associates, Press Release, *Satisfaction with the Wireless Retail Sales Experience Declines Considerably When Customers Are Not Greeted within 30 Seconds of Entering the Store - T-Mobile Ranks Highest in Wireless Retail Sales Satisfaction for a Fifth Consecutive Time*, May 10, 2007, available at www.jdpower.com/press-releases/pressrelease.aspx?id=2007070; J.D. Power and Associates, Press Release, *Business Customers are Highly Likely to Switch Providers to Get All Telecommunications Services from One Company - T-Mobile Ranks Highest in Satisfying Business Customers with Wireless Service*, May 17, 2007, available at www.jdpower.com/press-releases/pressrelease.aspx?id=2007074.

¹⁹ An FCC Form 602 providing a detailed analysis of T-Mobile's current foreign ownership is on file with the Commission.

III. CONCLUSION

Indirect foreign investment in the SunCom Licensees 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. T-Mobile and SunCom Holdings request that the Commission find that indirect foreign ownership in each of the SunCom Licensees 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,

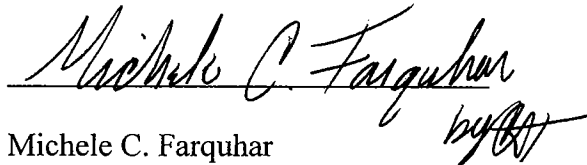


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