

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

In the Matter of)

WALLC License, LLC)

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

File No. ISP-PDR-2009_____

To: The Commission

**PETITION FOR 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”), pursuant to Section 1.2 of the Commission’s rules and the *Foreign Participation Order*,¹ requests that the Commission issue a declaratory ruling under Section 310(b)(4) of the Communications Act, as amended (the “Act”),² allowing up to 100 percent indirect foreign ownership in WALLC License, LLC (“WALLC License Sub”). Specifically, T-Mobile requests a ruling that it is not contrary to the public interest for Deutsche Telekom AG (“DT”) and its German shareholders to increase their indirect foreign ownership in WALLC License Sub in excess of previously authorized amounts under Section 310(b)(4) of the Act. For the reasons discussed below, grant of this petition is consistent with Commission

¹ See 47 C.F.R. §1.2; *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23891 (1997) (“*Foreign Participation Order*”).

² 47 U.S.C. § 310(b)(4).

precedent and is in the public interest. T-Mobile also requests that the petition be processed under the Commission's streamlined approval procedures.³

I. INTRODUCTION

Rural Cellular Corporation ("RCC") and T-Mobile Central LLC ("T-Mobile Central"), the successor in interest to APT Minneapolis, Inc. and wholly-owned subsidiary of T-Mobile, entered into an agreement dated November 14, 1996, wherein RCC owns a 70 percent equity interest in and controls Wireless Alliance, LLC ("WALLC") with the remaining 30 percent equity interest owned by T-Mobile. WALLC's wholly-owned subsidiary WALLC License Sub holds two 20 MHz B block broadband PCS licenses that cover portions of Minnesota, North Dakota and South Dakota.⁴

T-Mobile is the U.S. operations branch of T-Mobile International AG, the mobile communications subsidiary of DT.⁵ DT acquired VoiceStream Wireless Corporation ("VoiceStream") in May 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

³ See *Foreign Participation Order*, 12 FCC Rcd at 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).

⁴ The PCS licenses, previously held by WALLC, were assigned to WALLC License Sub on November 24, 2008 on a *pro forma* basis. See File No. 0003660033.

⁵ 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 ("WTO") member.

U.S. subsidiary.⁶ 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 Act. The *VoiceStream-DT Order* also granted a petition for declaratory ruling authorizing WALLC to be indirectly owned up to 30 percent by DT and DT's German shareholders.⁷

T-Mobile and Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless"), of which RCC is a wholly-owned subsidiary, executed an Exchange Agreement dated as of August 5, 2009 (the "Agreement"). Under the terms of the Agreement, T-Mobile will cause its licensee subsidiaries to assign certain PCS spectrum located in Oklahoma, Georgia, South Carolina and West Virginia to Verizon Wireless' designated licensee subsidiary. In return, Verizon Wireless will cause RCC to transfer all of its membership interests in WALLC to T-Mobile. Thus, upon consummation WALLC and WALLC License Sub will become wholly-owned subsidiaries of T-Mobile.

T-Mobile and Verizon Wireless are filing a concurrent FCC Form 603 application to transfer control of WALLC License Sub from Verizon Wireless to T-Mobile. The transfer of control, however, will not occur until after Commission approval is obtained for the Form 603 application and the instant petition.

⁶ 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 Global Holding GmbH) and, indirectly, in T-Mobile's licensee subsidiaries.

⁷ See *VoiceStream-DT Order*, 16 FCC Rcd at 9848.

II. THE COMMISSION'S PRIOR DECISIONS AUTHORIZING INDIRECT FOREIGN OWNERSHIP IN T-MOBILE IN EXCESS OF 25 PERCENT SUPPORT THE INSTANT PETITION

As illustrated in Exhibit A, upon consummation of the proposed transaction WALLC License Sub, a _____ limited liability company, will become an indirect wholly-owned subsidiary of T-Mobile Central, a Delaware limited liability company. TMO Central is 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 25 percent benchmark prescribed in Section 310(b)(4) of the Act in the *VoiceStream-DT Order*.⁸ 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 43 percent).⁹ T-Mobile, moreover, certifies that it is in compliance with the Commission's foreign ownership orders.¹⁰

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

⁸ See *VoiceStream-DT Order*, 16 FCC Rcd at 9850-51.

⁹ See *id.* at 9785-87, 9850-51. Since the consummation of the transfer of control of T-Mobile to DT on May 31, 2001, there has been a *decrease* in the Federal Republic of Germany's ownership interest in DT and, indirectly, in T-Mobile, from 45.7 percent to 31.7 percent.

¹⁰ See *Foreign Participation Order; VoiceStream-DT Order*, 16 FCC Rcd at 9845, 9850-51; see also, e.g., FCC Public Notice, *International Authorizations Granted*, 18 FCC Rcd 5014, 5015 (2003) ("*CIVS VI Order*").

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 More recently, the Commission has granted indirect foreign ownership of other T-Mobile licensee subsidiaries after finding “that it would not serve the public interest to prohibit the indirect foreign ownership of [the subsidiary] in excess of the 25 percent benchmark of Section 310(b)(4).”¹²

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 WALLC License Sub. 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 licensees by entities from WTO member countries.”¹³ The Commission accordingly adopted the rebuttable presumption that indirect foreign investments by entities from WTO member countries raise no competitive concerns.¹⁴ Indirect foreign ownership in WALLC License Sub resulting from the pending transfer 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

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

¹² See *CIVS VI Order*, 18 FCC Rcd at 5015; see also FCC Public Notice, *International Authorizations Granted*, 21 FCC Rcd 14062, 14063 (2006); *Applications of T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc.*, 23 FCC Rcd 2515, 2523 (2008).

¹³ See *VoiceStream-DT Order*, 16 FCC Rcd at 9790 (citing *Foreign Participation Order*, 12 FCC Rcd at 23940).

¹⁴ See *id.*

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 32.8 million wireless subscribers, with a wireless network reaching more than 288 million people, excluding roaming coverage. T-Mobile also provides Wi-Fi access at more than 10,000 public locations throughout the country. T-Mobile's network is based upon the Global System for Mobile Communications ("GSM") platform and also utilizes General Packet Radio Service ("GPRS"), Enhanced Data Rates for GSM Evolution ("EDGE") technologies, and third generation ("3G") Universal Mobile Telecommunications System ("UMTS") technologies in the United States. T-Mobile's innovative wireless products and services help customers to connect effortlessly to others. Multiple independent research studies consistently rank T-Mobile highest in wireless customer service and satisfaction throughout the United States.¹⁵ T-Mobile, based in Bellevue, Washington, has approximately 43,000 employees. 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.

¹⁵ See J.D. Power and Associates Press Release, *Customer Satisfaction with the Wireless Retail Sales Experience Decreases Due to Issues with Product Information and Promotional Incentives: T-Mobile Ranks Highest in Wireless Retail Sales Satisfaction*, May 8, 2008, available at <http://www.jdpower.com/corporate/news/releases/pressrelease.aspx?ID=2008048>, and J.D. Power and Associates Press Release, *T-Mobile Ranks Highest in Wireless Customer Care Performance for a Seventh Consecutive Time*, Jan. 31, 2008, available at <http://www.jdpower.com/corporate/news/releases/pressrelease.aspx?ID=2008018>.

Increasing the indirect foreign ownership in WALLC License Sub to 100 percent is consistent with the public interest, convenience, and necessity.¹⁶ Such indirect foreign investment will facilitate the further development of a competitive national wireless GSM network that offers consumers a variety of advanced mobile services and seamless national and international roaming. Furthermore, T-Mobile's acquisition of WALLC License Sub will not change, and will have no impact upon, the current indirect foreign ownership in T-Mobile.

III. COMPLIANCE WITH NATIONAL SECURITY AGREEMENT

T-Mobile requests that the Commission condition its grant of this petition on compliance with the provisions of the National Security Agreement entered into on January 12, 2001, as amended, between DT and the Department of Justice ("DOJ"), the Federal Bureau of Investigation ("FBI"), and the Department of Homeland Security ("DHS").¹⁷ The requirements of the National Security Agreement are binding upon DT and DT's wholly-owned subsidiaries, including, post-consummation, WALLC License Sub. Section 7.2 of the National Security 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, 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....

¹⁶ An FCC Form 602 providing a detailed analysis of T-Mobile's current foreign ownership is on file with the Commission.

¹⁷ See Agreement between DT, VoiceStream, VoiceStream Wireless Holding Corporation, the DOJ and the FBI (Jan. 12, 2001), which was appended by the Commission to the *VoiceStream-DT Order*. The National Security Agreement was amended in January 2008 to add DHS as party.

The National Security Agreement (Exhibit A) prescribed that the following specific language be included in 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 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 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.

Accordingly, T-Mobile requests that the Commission impose a similar condition of the grant of the proposed transfer of control of WALLC to T-Mobile.

IV. CONCLUSION

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

Respectfully submitted,

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Dated: August 26, 2009

EXHIBIT A

Post-Consummation Ownership
(All ownership interests are 100 percent unless otherwise indicated.)

