

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

In the Matter of)
)
Iowa Wireless Services Holding Corporation)
)
Petition for Declaratory Ruling under)
Section 310(b)(4) of the Communications)
Act of 1934, as Amended, to Permit Indirect)
Foreign Ownership in and Leasing of)
Advanced Wireless Service Licenses.)
_____)

File No. ISP - _____

FILED/ACCEPTED

JUN - 1 2010

Federal Communications Commission
Office of the Secretary

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

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 under Section 310(b)(4) of the Communications Act of 1934, as amended (“Act”),³ for Deutsche Telekom AG (“DT”) to hold an indirect foreign ownership interest of up to and including 60 percent in Iowa Wireless with regard to Advanced

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.”

Wireless Services (“AWS”) licenses that Iowa Wireless intends to acquire and lease from T-Mobile License LLC (“T-Mobile”). In support hereof, the following is respectfully shown:

I. Background

Iowa Wireless, a Delaware corporation, 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), KNLH769 (BTA286 – Marshalltown, IA), and WQJJ983 (BTA332 – Omaha, NE). Iowa Wireless is a wholly owned subsidiary of Iowa Wireless, LLC (“IWS-LLC”), which is composed 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, a German company, holds a 54 percent indirect foreign ownership interest in IWS-LLC and its affiliate, Iowa Wireless. Specifically, through a series of intermediate subsidiaries, DT holds a 100 percent ownership interest in T-Mobile USA, Inc. (f/k/a VoiceStream Wireless Corporation), which in turn indirectly holds a 100 percent ownership interest in VoiceStream PCS. INSW and VoiceStream PCS each holds a 46 percent and 54 percent interest in IWS-LLC, respectively. A diagram of Iowa Wireless’ current corporate structure is attached hereto as Exhibit A.

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

⁴ See *Iowa Wireless Services Holding Corporation, et al., Petition for a Declaratory Ruling Pursuant to Section 310(b)(4) of the Act*, Memorandum Opinion and Order, 16 FCC Rcd 9779 (2001) (“*Iowa Wireless Order*”).

and DT's German shareholders.⁵ In 2006, the Commission granted a second petition filed by Iowa Wireless under Section 310(b)(4) for permission for DT to increase its indirect ownership stake in Iowa Wireless up to and including 60 percent.⁶ DT's indirect ownership interest in Iowa Wireless is within that limit, and DT and Iowa Wireless are in compliance with all requirements of the 2001 and 2006 Declaratory Rulings.

Although the FCC has declared that it is in the public interest for DT to hold indirect foreign ownership in Iowa Wireless with regard to PCS licenses, the Commission has not issued a comparable ruling for Iowa Wireless with regard to AWS licenses. Accordingly, Iowa Wireless now requests that the Commission declare that it is not contrary to the public interest for DT to hold an indirect foreign ownership interest in Iowa Wireless with regard to the AWS spectrum that Iowa Wireless intends to lease and acquire from T-Mobile. DT is a company organized and existing under the laws of the Federal Republic of Germany. As Germany is a World Trade Organization ("WTO") Member, streamlined processing of this petition is appropriate.⁷

II. Description of the Transaction

Iowa Wireless and T-Mobile operate complementary mobile wireless systems, and have agreements that permit their subscribers to roam on each others' networks. In order to deploy additional advanced broadband services utilizing the AWS spectrum to primarily rural areas, the parties have entered into two agreements whereby Iowa Wireless will lease and acquire 10 MHz

⁵ *Id.* at 9849.

⁶ *Iowa Wireless Services Holding Corporation, Petition for Declaratory Ruling*, Public Notice, 21 FCC Rcd 14739 (2006).

⁷ *Foreign Participation Order*, 12 FCC Rcd 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).

of AWS spectrum licensed to T-Mobile. Under the leasing agreement, Iowa Wireless will lease 10 MHz of AWS spectrum held by T-Mobile under call sign WQGB376 in the following eight (8) counties in Iowa: Clarke, Dallas, Decatur, Jasper, Madison, Polk, Story, and Warren.⁸ Pursuant to the parties' license purchase agreement, T-Mobile will partition and assign 10 MHz of spectrum from WQGB376 in ninety-seven (97) counties in Illinois, Iowa, Missouri, Nebraska, South Dakota and Wisconsin to Iowa Wireless.⁹ T-Mobile will also partition, disaggregate, and assign to Iowa Wireless 10 MHz of spectrum from call sign WQGB378 in eleven (11) counties in Iowa.¹⁰

III. Discussion

A. The Proposed Transaction Does Not Raise Any Competitive Concerns Because the FCC's *Foreign Participation Order* Favors Investment in U.S. Entities by Companies from WTO Member Countries

Section 310(b)(4) of the Act establishes a 25 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.¹¹ 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,¹² and that the public interest would be served by permitting greater investment by individuals or entities from WTO

⁸ See FCC File No. 0004227232.

⁹ See FCC File No. 0004235536 for a complete list of the counties that will be partitioned to Iowa Wireless.

¹⁰ See *id.*, for a list of the counties and spectrum that will be partitioned and disaggregated to Iowa Wireless.

¹¹ *Supra*, n.3.

¹² *Foreign Participation Order*, 12 FCC Rcd at 23897-98, ¶ 13.

Member countries in U.S. common carrier licensees.¹³ 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.¹⁴

As noted above, DT is headquartered in Germany, a WTO Member country. As such, DT is afforded the rebuttable presumption that its indirect interest in FCC licensees does not raise competitive concerns. The FCC has approved applications for DT and its German shareholders to have indirect ownership interests of up to 100 percent in FCC cellular, broadband PCS, and common carrier fixed point-to-point microwave licensees pursuant to the Commission’s streamlined procedures.¹⁵ The Commission has also approved the 100 percent indirect foreign ownership of an AWS licensee (*i.e.*, T-Mobile) by DT.¹⁶ This demonstrates that the Commission has considered and determined that investments in FCC common carrier wireless licenses, including AWS, by German-based companies, and in particular, by DT, does not raise any competitive concerns. Accordingly, streamlined processing under the *Foreign Participation Order* and grant of the instant Petition is appropriate.

¹³ *Id.* at 23896, ¶ 9, 23913, ¶ 50, and 23940, ¶¶ 111-112.

¹⁴ *Id.*

¹⁵ *See, e.g., VoiceStream-DT Order*, IB Docket No. 00-187, FCC 01-142, 16 FCC Rcd 9779 (2001); *T-Mobile USA, Inc. f/k/a VoiceStream Wireless Corporation, Petition for Declaratory Ruling*, Public Notice, DA 04-216, FCC File No. ISP-PDR-20031224-00025, 19 FCC Rcd 1453 (2004); *Applications of T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc., Petition for Declaratory Ruling*, 23 FCC Rcd 2515 (2008).

¹⁶ *T-Mobile USA, Inc., Petition for Declaratory Ruling*, Public Notice, DA 06-2441, FCC File No. ISP-PDR-20060510-00013, 21 FCC Rcd 14062 (2006).

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

As discussed in Section I above, the Commission has previously reviewed and approved DT's indirect foreign ownership interest in Iowa Wireless, 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.¹⁷ 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.¹⁸ 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") and the Federal Bureau of Investigation ("FBI"),¹⁹ as further discussed in Section III.C below. With respect to DT's ownership in Iowa Wireless specifically, the FCC had determined that pursuant to Section 310(b)(4), the public interest would be served by allowing DT to hold an indirect ownership interest in Iowa Wireless of up to and including 60 percent.

In the intervening period between the issuance of the *Iowa Wireless Order* 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

¹⁷ *Iowa Wireless Order*, 16 FCC Rcd at 9845, ¶ 125.

¹⁸ *Id.* at 9813, ¶ 55.

¹⁹ *Id.* at 9845, ¶ 125.

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 are not contrary to the public interest. As discussed above, the FCC has determined that 100 percent indirect foreign ownership by DT in an FCC licensee is permissible and in the public interest.²⁰ Moreover, the FCC has made similar determinations for companies based in WTO Member countries to hold ownership interests greater than that requested herein.²¹

Importantly, as discussed in Section I above, the FCC issued a declaratory ruling allowing DT to increase its indirect ownership interest in Iowa Wireless up to and including 60 percent, and, as discussed in Section III.A above, the FCC has approved 100 percent indirect ownership by DT in T-Mobile with regard to AWS licenses. Accordingly, the FCC should similarly grant the instant request for DT to hold an indirect ownership interest in Iowa Wireless up to and including 60 percent with regard to AWS licenses.

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 Department of Justice and the Federal Bureau of Investigation ("DOJ/FBI Agreement") regarding future requests for authorization from the FCC. Specifically, Section 7.2 of the agreement provides, in pertinent part, that:

²⁰ See n.15, *supra*.

²¹ *Id.* See, also, *Skywave Mobile Communications, Corp., Petition for Declaratory Ruling*, Public Notice, DA 04-45, FCC File No. ISP-PDR-20030311-00006 (2004) (100 percent indirect foreign ownership by Canadian company); *Richtec Incorporated, Petition for Declaratory Ruling*, Public Notice DA 03-1814, FCC File No. ISP-PDR-20030422-00013 (2003) (100 percent indirect foreign ownership by UK company).

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.²²

The DOJ/FBI Agreement 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 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.

Because this Petition involves a request to the FCC for "other authority" for DT, through its indirect foreign ownership interest in Iowa Wireless, to hold an indirect interest in AWS licenses and leases, Petitioner requests that the FCC impose a similar condition on the grant of the proposed AWS license assignments and spectrum lease from T-Mobile to Iowa Wireless.

D. Grant of the Petition Would Serve the Public Interest

Iowa Wireless is a vigorous competitor providing high quality wireless service in rural areas. The low density of subscribers in those areas makes it especially important that Iowa Wireless continue to be able to provide, expand, and improve 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. Favorable action on the Petition will allow Iowa Wireless to expand the company's wireless telecommunications network and its ability to provide high

²² See *Iowa Wireless Order*, Appendix B, for the complete text of the DOJ/FBI Agreement.

quality, advanced wireless broadband services throughout the areas in which its customers live and work, and to provide such services in historically underserved rural areas. Grant of the instant Petition will not only enhance competition in the subject market areas, but will also further the Commission's stated objective of expediting the provision of advanced technologies to rural areas.²³

IV. Conclusion

For the foregoing reasons, Iowa Wireless respectfully requests that the FCC issue a declaratory ruling pursuant to Section 310(b)(4) that it is not contrary to the public interest for DT to hold an indirect foreign ownership interest of up to and including 60 percent in Iowa Wireless with regard to AWS spectrum that Iowa Wireless intends to acquire and lease from T-Mobile. The instant Petition does not require the Commission to break new ground, as the FCC has previously issued similar declaratory rulings to permit DT's indirect foreign ownership interest of up to 60 percent in Iowa Wireless with regard to PCS spectrum, and the Commission has previously authorized DT to indirectly hold a 100 percent interest in T-Mobile, another U.S. common carrier, far exceeding the level requested in the instant Petition. Moreover, the FCC has also authorized DT to indirectly hold a 100 percent interest in AWS licenses, which is the same service involved in the instant Petition. Grant of the Petition will enable the company to expand its wireless broadband services and capabilities, which will foster competition and increase innovative and high quality wireless services to rural underserved areas.

²³ See *In the Matter of Implementation of Section 309(j) of the Communications Act, Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, ¶¶ 149-153 (1994).

Respectfully submitted,



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EXHIBIT A

Corporate Structure
(All links indicate 100% ownership unless otherwise stated)

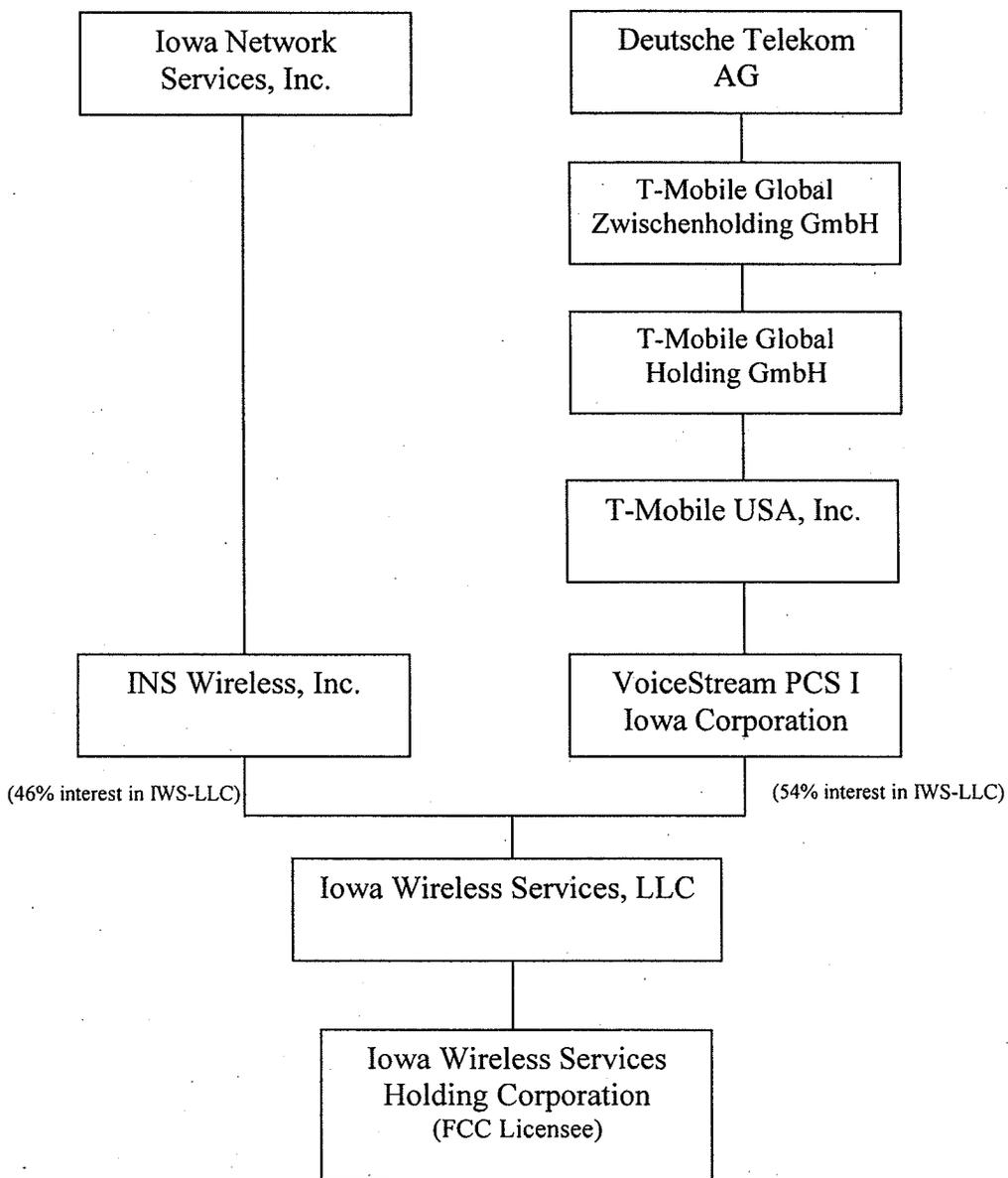


EXHIBIT B

FCC Form 603 – Assignment Application

and

FCC Form 608 – De Factor Transfer Lease Application

(Both Currently Pending)

CERTIFICATION

I, Michael Haskins, hereby certify under penalty of perjury that I am the Chief Operating Officer of Iowa Wireless Services Holding Corporation; that I have read the foregoing document and know the contents thereof; and that the same are true of my own knowledge, except to those matters therein stated upon information and belief, and as to those matters I believe them to be true.



Michael Haskins
Chief Operating Officer
Iowa Wireless Services Holding Corporation

5/21/2010

Date