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January 7, 2013

VIA ECFS AND IBFS

James L. Ball, Chief  
Policy Division  
International Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: *Applications of Deutsche Telekom AG, T-Mobile USA, Inc. and MetroPCS Communications, Inc.*;  
WT Docket No. 12-301; File No. ISP-PDR-20121018-00006

Dear Mr. Ball:

MetroPCS Communications, Inc. ("MetroPCS"), by its attorney, hereby provides additional information to the Commission regarding the foreign ownership of its voting common stock, par value \$0.001 per share ("Common Stock"), in connection with the above-referenced applications (the "Applications").<sup>1</sup>

Background

MetroPCS is a publicly traded corporation listed on the New York Stock Exchange. MetroPCS is organized in the United States (the "US") under the laws of the state of Delaware. MetroPCS has its principal place of business in Richardson, Texas. MetroPCS is a facilities-based provider of broadband mobile communications services (the "Services") in select major metropolitan areas in the US. MetroPCS does not own or operate facilities outside of the US. All of MetroPCS' Services are provided through wholly owned indirect corporate subsidiaries or limited liability company subsidiaries, each of which is organized in the US under the laws of the state of Delaware.

MetroPCS has a single class of voting Common Stock. The MetroPCS Common Stock is widely held and disbursed. As of September 30, 2012, MetroPCS had 364,103,435 shares of outstanding Common Stock held by over 30,000 shareholders. As of September 30, 2012, only five shareholders held more than a 5% interest in the company.<sup>2</sup> Notably, all of the current executive officers responsible for the day-to-day

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<sup>1</sup> MetroPCS holds no FCC authorizations directly. All of the license holding entities are wholly owned indirect subsidiaries of MetroPCS. This means that the foreign ownership interests in MetroPCS represent indirect ownership interests in the FCC licensees and, thus, are properly analyzed under the 25% indirect foreign ownership benchmark set forth in Section 310(b)(4) of the Communications Act, 47 U.S.C. Section 310(b)(4).

<sup>2</sup> In making these determinations, MetroPCS has relied upon its own shareholder records and upon the Forms 13G and F filed by shareholders as of October 31, 2012.

operations of MetroPCS and its subsidiaries (the “Senior Executive Officers”), and all of the current directors of MetroPCS and the directors or managing members of all of its subsidiaries (the “Directors”), are US citizens. This conclusion is based upon informational questionnaires filled out by the Senior Executive Officers and Directors of MetroPCS which, among other things, solicit information concerning each individual’s citizenship. These questionnaires indicate that 100% of the Senior Executive Officers and Directors of MetroPCS are US citizens. Company records also show that, collectively, these Senior Executive Officers and Directors hold directly an estimated 3% of the issued and outstanding shares of the company.<sup>3</sup>

MetroPCS routinely certifies to the Commission in its FCC applications that it is in compliance with the foreign ownership restrictions set forth in Section 310 of the Communications Act, as amended (the “Act”). MetroPCS has based these certifications upon periodic surveys of its shareholders conducted by a proxy solicitation firm with experience in conducting foreign ownership surveys for US communications companies. Each survey was designed to provide a statistically valid assessment of the extent of foreign ownership of MetroPCS in accordance with the rules, regulations and policies of the FCC. The surveys have uniformly indicated that indirect foreign ownership in MetroPCS was far below the 25% threshold set forth in Section 310(b) of the Act. As a consequence, MetroPCS has never previously needed nor sought a declaratory ruling to allow it to exceed the indirect foreign ownership limits in the Act.

### The Pending Transaction

The transaction, for which approval is sought in the pending Applications, proposes a combination between T-Mobile USA, Inc. (“T-Mobile”), which is an indirect wholly owned subsidiary of Deutsche Telekom AG (“DT”), and MetroPCS. Following consummation of the proposed transaction, DT or its designee will hold a controlling 74% ownership interest in the company, which the applicants refer to as “Newco” in the Applications.<sup>4</sup> The existing public shareholders of MetroPCS will hold the remaining non-controlling 26% interest in Newco. Pursuant to a governing Shareholder’s Agreement, as a result of DT’s ownership of 74% of the shares of the Common Stock of Newco, DT will appoint a majority of the directors of Newco.

DT is a publicly traded German company<sup>5</sup> and Germany is a member country of the World Trade Organization (“WTO”) by virtue of its having signed the Basic Agreement on Telecommunications. In the

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<sup>3</sup> This percentage is based upon the company’s report to the Securities and Exchange Commission (the “SEC”) as of September 30, 2012 in accordance with Section 16 of the Securities Exchange Commission Act of 1934, 15 U.S.C. Section 78p(b). The percentage relates to shares held individually and does not include shares held by funds with which the individual is associated. The Preliminary Proxy Statement filed by MetroPCS with the SEC in connection with the proposed transaction showed that the Directors and Named Executive Officers of MetroPCS (a group of 10 persons identified in the Proxy) beneficially own 14.63% of the MetroPCS Common Stock. This beneficial ownership information was presented in accordance with SEC rules and is not necessarily indicative of beneficial ownership for other purposes. For example, this percentage includes for director James N. Perry shares held by the various Madison Dearborn funds of which Mr. Perry is a Managing Director. Mr. Perry has disclaimed beneficial ownership of these shares except through his interest in the funds.

<sup>4</sup> The existing publicly traded company now known as MetroPCS Communications, Inc. will survive, but the name will be changed. The applicants refer to it as Newco to distinguish the post transaction entity from the existing company.

<sup>5</sup> As noted in the Applications, the Federal Republic of Germany (the “FRG”) holds approximately a direct 15% interest in DT, and KfW, a development bank that is 80% owned by the FRG and 20% owned by the German federal states, owns approximately a 17% interest in DT.

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*Foreign Participation Order*, the Commission concluded that allowing additional foreign investment in common carrier wireless licenses beyond the 25% benchmark of Section 310(b)(4) will promote competition in the US market and serve the public interest.<sup>6</sup> Pursuant to this authority, the Commission determined that the public interest would be served by allowing up to 100% indirect foreign investment in T-Mobile by DT.<sup>7</sup> In connection with the Applications, the parties are seeking *inter alia*, a declaratory ruling that the public interest would be served by allowing up to 100% indirect foreign ownership in the combined company by DT.

#### The International Bureau Information Request

Following its review of the Applications, the International Bureau (“IB”) of the Commission requested further information from the applicants with respect to the citizenship of individuals and entities that hold equity and/or voting interests in MetroPCS and DT. In response to this request, MetroPCS respectfully submits the following:

In 2009, a foreign ownership survey was conducted for MetroPCS by Georgeson, Inc. (“Georgeson”). Georgeson is one of the world’s foremost providers of strategic shareholder consulting services. Georgeson also is a preeminent proxy solicitation firm which regularly helps companies identify shareholders and has experience conducting foreign ownership surveys for telecommunications companies in the US. Georgeson formulated a survey to ascertain the percentage of MetroPCS’ shareholders that were US citizens using statistically valid sampling techniques in accordance with methodology previously accepted by the FCC. Ultimately, Georgeson concluded that US citizens held 319,873,361, or 90.6%, of the issued and outstanding shares of MetroPCS as of April 29, 2009. The margin of error on this finding was 2.86% at the 97.5% confidence level. *See* Attachment 1.

Between 2009 and the present, MetroPCS monitored the holdings of its largest shareholders and found no reason to believe that there had been any material change in the extent of foreign ownership of MetroPCS since the Georgeson survey was conducted in 2009. For example, as indicated on Attachment 2 hereto, all individual shareholders reported as holding 5% or more of the MetroPCS Common Stock from 2009 through the latest annual report date were US citizens, and all entities reported as holding 5% or greater of the MetroPCS Common Stock in this period were organized and headquartered in the US. *See* Attachment 2.

Based upon the request of the IB for additional information, MetroPCS conducted a further review of its current shareholders of record to confirm that at least 75% of its Common Stock still is held and voted by US citizens or by institutions or entities considered to be US entities under applicable precedent. Rather than using a sampling technique to respond to the IB’s request, MetroPCS engaged the international law firm K&L Gates LLP (“K&L Gates”) to conduct a thorough review of the MetroPCS shareholder list as of September 30, 2012. K&L Gates is a full service global law firm with extensive experience in the representation of public companies in a wide range of securities and capital market matters. The latest *US*

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<sup>6</sup> *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 2389, 23940, para. 111 (1997).

<sup>7</sup> *See, e.g., VoiceStream Wireless Corp., Powertel and Deutsche Telekom AG*, Memorandum Opinion and Order, 16 FCC Rcd 9779 (2001). The Commission has reaffirmed this ruling in later transactions. *See* Public Notice, International Authorizations Granted, ISP-PDR-20090826-00008, DA No. 09-2631 (Dec. 24, 2009).

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*News – Best Lawyers* survey ranks K&L Gates as a national first tier law firm in the areas of Securities/Capital Markets Law and Securities Regulation. *Corporate Board Member* magazine and FTI Consulting, Inc. rank the K&L Gates US corporate practice among the top 25 national corporate law firms in their 2012 “America’s Best Corporate Law Firms” survey of nearly 2,000 general counsel of US public companies. Significantly, K&L Gates acts as counsel to MetroPCS with respect to its reporting, compliance and governance as a publicly traded company and, as a result, is intimately familiar with the MetroPCS corporate ownership structure.

Attached hereto as Attachment 1 is the report prepared by K&L Gates in response to this engagement. The report indicates that K&L Gates expended in excess of 140 hours consulting a variety of sources<sup>8</sup> to determine the identity and citizenship of a sufficient number of MetroPCS shareholders to ascertain whether greater than 75% of the MetroPCS stock is held by “U.S. Shareholders,” as defined in the report. Significantly, the report concludes that more than 75% of the issued and outstanding shares of MetroPCS Common Stock are held by U.S. Shareholders taking into consideration:

- i) Common Stock held by or on behalf of individuals that are citizens of the United States;
- ii) Common Stock held by banks, insurance companies, pension plans; and, foundations/endowments organized in the United States and controlled by US citizens; and
- iii) Common Stock held by private equity funds and management investment companies (*i.e.*, closed end funds and mutual funds) that are organized in the United States and that have their principal places of business in the United States, taking into consideration for each investing entity: the country of its world headquarters; tax jurisdiction; the citizenship or principal place of business of its controlling principals, directors and/or investment managers; and country(ies) from which the funds being managed were contributed.

K&L Gates ceased its research when it reached the 75% threshold of U.S. Shareholders under the specified criteria. MetroPCS has no reason to conclude that the percentages would be materially different with respect to the remaining shareholders and, thus, is of the view that a significant number of the remaining shareholders also are U.S. Shareholders.

Notably, in the course of doing this research, K&L Gates made note of the non-US jurisdictions which arose and caused the researchers to conclude that the entity should not be considered a U.S. Shareholder based upon the information available. The non-US jurisdictions which gave rise to these determination were the United Kingdom, Canada, Switzerland, Germany, Ireland, France, Australia, Japan, Norway, Italy, the Netherlands, Sweden, British Columbia, and South Korea, all of which are WTO member countries.<sup>9</sup>

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<sup>8</sup> K&L Gates consulted information provided by MetroPCS, Investment Adviser Public Disclosure, Schedule 13Gs, Form ADVs, the Federal Reserve National Information Center, Secretary of State websites, Bloomberg Financial, Securities Mosaic, Capital IQ, Hoovers, Accurint, Westlaw, Lexis, PitchBook, and responses by individual shareholders to reach its conclusions..

<sup>9</sup> Because the researchers discontinued their research into shareholders which appeared unlikely to be U.S. Shareholders, the K&L Gates report does not reach definitive conclusions regarding the country of citizenship of non-U.S. Shareholders. Nonetheless, MetroPCS submits that the Commission can take comfort in the fact that the non-US jurisdictions which the {00038530;v1}

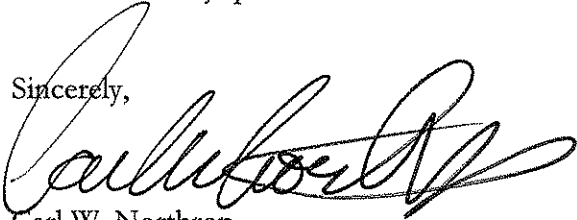
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Based on all of the available information, MetroPCS hereby respectfully submits that the IB must find that the public interest will be served by issuing the declaratory ruling request by the applicants in the Applications. In addition to permitting DT to hold up to 100% of Newco, the declaratory ruling should provide that Newco need not seek further relief so long as 75% or more of the public shares are held by U.S. Shareholders and/or citizens of WTO member countries.

Please direct any questions about this matter to the undersigned.

Sincerely,



Carl W. Northrop  
of TELECOMMUNICATIONS LAW PROFESSIONALS PLLC

cc: David Krech  
Susan O'Connell  
Best Copying and Printing  
David Hu  
Kathy Harris  
Kate Matraves  
Jim Bird

# **Attachment 1**

**MetroPCS Corporation, Inc.**

**FOREIGN OWNERSHIP SURVEY RESULTS**

**Georgeson Inc. ascertained that MetroPCS Corporation, Inc.'s U.S. ownership level was 90.6% of the total shares outstanding.**

**Survey**

As of the April 29, 2009 record date, MetroPCS had 353,098,442 outstanding shares. Citizenship was known U.S. for no shares, or 0.0%. Citizenship was known non-U.S. for no shares, or 0.0% percent. The balance of MetroPCS's outstanding shares (353,098,442) made up the population of unknown shares for the survey.

Using statistically valid sampling techniques, we surveyed a sample of the unknown population. Our survey response rate was 90.3%. 90.6% of the respondents were U.S. citizens.

We combined the shares of known U.S. and non-U.S. citizenship with the projected shares of U.S. and non-U.S. citizenship. We concluded that U.S. citizens held 90.6% of the shares and non-U.S. citizens held 9.4% of the shares.

The margin of error is 2.86% at the 97.5% confidence level. In other words, we are confident at the 97.5% level that the actual number of shares held by U.S. citizens differs by no more than plus or minus 2.86% percentage points from 90.6%.

# **Attachment 2**



**MetroPCS Shareholders with 5% or Greater Interests  
(2009 to the Present)**

**2009:**

Annual Report DEF 14A filed 4/15/09

**C. Kevin Landry- 8.52%**

**James N. Perry, Jr.- 10.99%**

**M/C Venture Partners, et al- 7.28%**

75 State Street

Boston, MA 02109

**Madison Dearborn Capital Partners IV, L.P.- 10.94%**

Three First National Plaza, Suite 4600

Chicago, IL 60602

**TA Associates, et al- 8.52%**

John Hancock Tower — 56th Floor

200 Clarendon Street

Boston, MA 012116

**T. Rowe Price Associates, Inc.- 11.49%**

100 East Pratt Street

Baltimore, Maryland 21202

**Wellington Management Company, LLP- 9.16%**

75 State Street

Boston, MA 02109

1Q 13F Report filed 5/26/09

**J.P. Morgan Chase Bank- 6.33**

**M/C Venture Partners- 7.30**

**Madison Dearborn Partners, Inc.- 10.97**

**TA Associates, Inc.- 8.50**

**T. Rowe Price Associates, Inc.- 10.10**

**Wellington Management Company, LLP- 8.02**

2Q 13F Report filed 8/18/09

**J.P. Morgan Chase Bank- 6.32**

**M/C Venture Partners- 7.29**

**Madison Dearborn Partners, Inc.- 10.95**

**TA Associates, Inc.- 8.33**

**T. Rowe Price Associates, Inc.- 6.83**

3Q 13F Report filed 11/18/09

**J.P. Morgan Chase Bank- 6.32**

**M/C Venture Partners- 7.28**

**Madison Dearborn Partners, Inc.- 10.95**

**TA Associates, Inc.- 8.32**

**T. Rowe Price Associates, Inc.- 5.45**

4Q 13F Report filed 3/9/10

**M/C Venture Partners- 7.28**

**Madison Dearborn Partners, Inc.- 10.94**

**TA Associates, Inc.- 8.32**

**T. Rowe Price Associates, Inc.- 6.35**

2010:

Annual Report DEF 14A filed 4/19/10

**C. Kevin Landry- 8.30%**

**James N. Perry, Jr.- 10.90%**

**M/C Venture Partners, et al-7.21%**

75 State Street

Boston, MA 02109

**Madison Dearborn Capital Partners IV, L.P.- 10.84%**

Three First National Plaza, Suite 4600

Chicago, IL 60602

**TA Associates, et al- 8.30%**

John Hancock Tower — 56th Floor

200 Clarendon Street

Boston, MA 02116

**T. Rowe Price Associates, Inc.- 6.13%**

100 East Pratt Street

Baltimore, MD 21202

1Q 13F Report filed 5/20/10

**M/C Venture Partners- 7.27**

**Madison Dearborn Partners, Inc.- 10.92**

**TA Associates, Inc.- 8.30**

**T. Rowe Price Associates, Inc.- 5.54**

2Q 13F Report filed 8/17/10

**M/C Venture Partners- 7.25**

**Madison Dearborn Partners, Inc.- 10.90**

**TA Associates, Inc.- 8.12**

3Q 13F Report filed 11/19/10

**M/C Venture Partners- 7.24**

**Madison Dearborn Partners, LLC- 10.89**

**TA Associates, Inc.- 7.09**

4Q 13F Report filed 3/22/11

**M/C Venture Partners- 5.04**

**Madison Dearborn Partners, LLC- 10.82**

**TA Associates, Inc.- 5.52**

**2011:**

Annual Report DEF 14A filed 4/19/11

**James N. Perry, Jr.- 10.74%**

**BlackRock Inc.- 6.57%**

40 East 52nd Street

New York, New York 10022

**Madison Dearborn Capital Partners IV, L.P.- 10.68%**

Three First National Plaza, Suite 4600

Chicago, IL 60602

1Q 13F Report filed 5/23/11

**Capital Research Global Investors- 5.83**

**M/C Venture Partners- 5.01**

**Madison Dearborn Partners, LLC- 10.75**

2Q 13F Report filed 9/12/11

**Capital Research Global Investors- 6.62**

**Madison Dearborn Partners, LLC- 10.66**

3Q 13F Report filed 11/29/11

**Capital Research Global Investors- 12.24**

**Jennison Associates LLC- 5.88**

**Madison Dearborn Partners, LLC- 10.65**

4Q 13F Report filed 2/27/12

**Capital Research Global Investors- 12.24**

**Madison Dearborn Partners, LLC- 10.65**

**Jennison Associates LLC- 6.13**

**2012:**

Annual Report DEF 14A filed 4/16/12

**James N. Perry, Jr.- 8.39%**

**BlackRock Inc.- 8.50%**

40 East 52nd Street

New York, New York 10022

**Capital Research Global Investors- 12.07%**

333 South Hope Street

Los Angeles, CA 90071

**Madison Dearborn Capital Partners IV, L.P.- 8.33%**

Three First National Plaza, Suite 4600

Chicago, IL 60602

**Prudential Financial, Inc.- 6.71%**

751 Broad Street

Newark, New Jersey 07102-3777

1Q 13F Report filed 6/21/12

**BlackRock Institutional Trust Company, N.A.- 10.13**  
**Capital Research Global Investors- 12.21**  
**Jennison Associates LLC- 5.88**  
**Madison Dearborn Partners, LLC- 8.42**  
**Wellington Management Company, LLP- 5.94**

2Q 13F Report filed 9/17/12

**Capital Research Global Investors- 12.20**  
**Madison Dearborn Partners, LLC- 8.41**  
**Jennison Associates LLC- 6.53**  
**Vanguard Group, Inc.- 5.49**

3Q 13F Report filed 11/26/12

**Capital Research Global Investors- 5.32**  
**Jennison Associates LLC- 5.30**  
**Madison Dearborn Partners, LLC- 8.40**  
**Paulson & Co. Inc.- 6.54**  
**Vanguard Group, Inc.- 5.62**

**Information Regarding Citizenship, Headquarters and  
Jurisdiction of Incorporation of 5% or Greater Shareholders**

1. C. Kevin Landry – (Director) US Citizen
2. James N. Perry, Jr. – (Director) US Citizen
3. M/C Venture Partners
  - Incorporated in Delaware
  - Headquartered in Boston
4. Madison Dearborn Capital Partners IV, L.P.
  - Organized in Delaware
  - Headquartered in Chicago (only office)
5. TA Associates, et al
  - Organized in Delaware
  - Headquartered in Boston
6. T. Rowe Price Associates, Inc.
  - Incorporated in Maryland
  - Headquartered in Baltimore
7. Wellington Management Company, LLP
  - Organized in Massachusetts
  - Headquartered in Boston
8. J.P. Morgan Chase Bank
  - Organized in Delaware
  - Headquartered in New York
9. BlackRock Inc.
  - Incorporated in Delaware
  - Headquartered in New York

10. Capital Research Global Investors
  - Organized in Delaware
  - Headquartered in California
11. Jennison Associates LLC
  - Organized in New York
  - Headquartered in New York
12. Prudential Financial, Inc.
  - Incorporated in New Jersey
  - Headquartered in Newark
13. Vanguard Group, Inc.
  - Incorporated in Pennsylvania
  - Headquartered in Valley Forge, PA
14. Paulson & Co. Inc.
  - Incorporated in Delaware
  - Headquartered in New York

# **Attachment 3**

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**MEMORANDUM**

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**To** MetroPCS Communications, Inc.  
**From** K&L Gates LLP  
**Date** January 7, 2013  
**Re** U.S. Shareholders

**SCOPE**

MetroPCS Communications, Inc., a Delaware corporation (the "Company"), has requested that we determine whether at least seventy-five percent (75%) of the shares of the Company's common stock, par value \$0.0001 per share ("Common Stock"), are held by United States shareholders. For purposes of this analysis, the following shareholders were considered "U.S Shareholders":

1. Any individual if he or she is a U.S. citizen;
2. Any bank, insurance company, pension plan and foundation/endowment if it is organized in the United States and controlled by U.S. citizens; and
3. Any private equity fund and management investment company if (a) it is organized in the U.S. and (b) it has its principal place of business in the U.S., taking into consideration: (i) the country of its world headquarters, (ii) tax jurisdiction, (iii) the citizenship or principal place of business of its controlling principals, directors and/or investment managers, and (iv) countries from which the funds being managed were contributed.

**OUR EXPERIENCE**

K&L Gates LLP is a full service global law firm with extensive experience in the representation of public companies in a wide range of securities and capital market matters. The latest *US News – Best Lawyers* survey ranked K&L Gates as a national first tier law firm in the areas of Securities/Capital Markets Law and Securities Regulation. *Corporate Board Member* magazine and FTI Consulting, Inc. ranked the K&L Gates U.S. corporate practice among the top 25 national corporate law firms in its 2012 "America's Best Corporate Law Firms" survey of nearly 2,000 general counsel of U.S. public companies. Significantly, K&L Gates acts as counsel to the Company with respect to its reporting, compliance and governance as a publicly traded

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company and, as a result, is intimately familiar with the Company's corporate ownership structure.<sup>1</sup>

## OUR INVESTIGATION

The Company provided us a chart containing the following information about each of its shareholders holding more than .03% of the Company's outstanding shares of Common Stock: (i) legal name of such shareholder; (ii) Common Stock ownership percentage of such shareholder as of September 30, 2012; (iii) number of shares of Common Stock held by such shareholder as of September 30, 2012; (iv) type of shareholder (e.g., private equity fund, hedge fund or bank); and (v) city location of such shareholder (collectively, the "Company Information"). According to the Company, the Company Information is primarily derived from the Company's own records, and Schedule 13Gs and 13Fs filed by institutional investment managers with the U.S. Securities and Exchange Commission ("SEC"). Based on such information provided by the Company, we sought to determine which of these shareholders can be considered U.S. Shareholders.

1. In connection with our investigation and with respect to individual shareholders, we have primarily relied on information from the following sources:

- Information about the Company's directors and officers derived from the Company's Director & Officer Questionnaires and other information collected by the Company; and
- Public Record sources reflecting personal data filed by individuals and companies which note address, phone and employment history, as well as partial social security numbers and birth dates. These sources were searched using the LexisNexis Accurint service, as well as Westlaw public record databases.

2. With respect to shareholders constituting banks, insurance companies, pension plans and foundations/endowments, we have primarily relied on information from the following sources:<sup>2</sup>

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<sup>1</sup> For more information about K&L Gates, please see: <http://www.klgates.com>

<sup>2</sup> We did not rely on this information in any particular order.



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- State Secretary of State web sites to determine state of incorporation and headquarters locations for such entities;
- Public Record sources reflecting corporate data submitted in official filings to determine the issuance of Federal Employer Identification Numbers (FEIN) for each entity. These sources were searched using the LexisNexis Accurint service, as well as Westlaw public record databases; and
- Corporate filings submitted to the SEC by publicly-traded companies for parent/subsidiary relationships, details on publicly-traded companies, and further shareholder details. Both the SEC EDGAR database and the commercially available Securities Mosaic were consulted.

3. With respect to shareholders constituting private equity funds and management investment companies, we have primarily relied on information from the following sources:<sup>3</sup>

- For a vast majority of the U.S. Shareholders, we have primarily relied on information in Form ADVs filed by private equity fund and management investment company shareholders with the SEC. Form ADV is the uniform registration form used by investment advisers to register with both the SEC and state securities authorities, and the form requires, among other items, information about the investment adviser's business, ownership, and affiliations, including direct and indirect beneficial owners, executive officers, and controlling persons (see below under our assumptions). In particular, we have reviewed and relied in the information provided in Form ADVs under Item 1 (Identifying Information), Item 3 (Form of Organization), Schedule A (Information about Direct Owners and Executive Officers) and Schedule B (Indirect owners). Form ADVs were retrieved on the Security and Exchange Commission's Investment Adviser Public Disclosure (IAPD).

4. For U.S. Shareholders holding more than five percent (5%) of the Company's shares of Common Stock, we have also reviewed their required filings with the SEC on Schedule 13Gs, including in particular information provided about principal business office and

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<sup>3</sup> We also relied on certain information from the sources outlined under item 2 above, but not in any particular order.

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citizenship under Item 2 thereof, ownership under Item 4 and ownership of more than 5 percent on behalf of another person under Item 6.<sup>4</sup>

5. In addition to the above sources, we have as secondary and back-up sources relied on information from the following sources:<sup>5</sup>

- The Federal Reserve National Information Center;
- Bloomberg Financial;
- Capital IQ;
- Hoovers;
- Lexis;
- PitchBook; and
- Responses by a principal of one of the shareholders to certain questions.

As of the date hereof, we have spent approximately 140 hours to conduct the investigation described in this memorandum.

## OUR ASSUMPTIONS

For the purposes of our investigation, we have assumed the following:

- That the information obtained from the above sources is accurate and, as such, we have not independently established any of the information so relied on;
- Any person with a U.S. social security number is deemed a U.S. citizen;
- Any person or entity organized in the U.S., with its principal place of business in the U.S. or an employee identification number issued by the U.S. Internal Revenue Service, is deemed subject to U.S. tax jurisdiction; and
- For purposes of determining “controlling persons”, we have used the definition provided by the SEC in its instructions to Form ADV (Uniform Application for

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<sup>4</sup> Shareholders holding approximately thirty-one percent (31%) of the Company’s shares Common Stock have filed Schedule 13Gs with the SEC. None of the Company’s shareholders have filed Schedule 13Ds with the SEC.

<sup>5</sup> In the course of our investigation, we came across a number of non-U.S. shareholders appearing to be organized and have their principal place of business in countries which are members of the World Trade Organization.

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Investment Adviser Registration).<sup>6</sup> If the shareholder is organized in the U.S. and has its principal place of business in the U.S. or filed a Form ADV with the SEC, then the funds contributed were deemed managed in the U.S.

Although we have not independently verified any of the foregoing information or assumptions, we have not come across any material information that would cause us to believe that our conclusion below is incorrect.

## CONCLUSION

According to the Company's latest quarterly report on Form 10-Q for the period ending September 30, 2012 and as filed with the SEC, the Company had then 364,103,435 shares of Common Stock outstanding. Seventy-five percent (75%) of such outstanding shares is equal to 273,077,576 shares.

Based on, and subject to, the foregoing, we conclude that, as of September 30, 2012, at least seventy-five percent (75%) of the Company's shares of Common Stock are held by U.S. Shareholders.

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<sup>6</sup> Under such instructions, "control" means the "power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise. Each of [a] firm's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control [such] firm. A person is presumed to control a corporation if the person: (i) directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or (ii) has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities. A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership." A person is presumed to control a limited liability company ("LLC") if the person: (i) directly or indirectly has the right to vote 25 percent or more of a class of the interests of the LLC; (ii) has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or (iii) is an elected manager of the LLC. A person is presumed to control a trust if the person is a trustee or managing agent of the trust."