

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

In the Matter of)
)
Cook Inlet/VS GSM VII PCS, LLC) File No. ISP-PDR-2013_____)
)
Petition for Determination of the Public)
Interest Under Section 310(b)(4) of the)
Communications Act of 1934, as Amended)
)

**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 USA”), 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 Cook Inlet/VS GSM VII PCS, LLC (“CIVS VII”). This petition is being submitted in connection with an application seeking the Commission’s consent to the transfer of control of CIVS VII to T-Mobile USA. Specifically, in connection with that pending transaction, T-Mobile USA requests a ruling that it is not contrary to the public interest for CIVS VII and its broadband personal communications service (“PCS”) and advanced wireless service (“AWS”) wireless licenses to be 100 percent owned indirectly by T-Mobile Global Zwischenholding GmbH (“T-Mobile Global”) and T-Mobile Global Holding

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).

GmbH (“T-Mobile Holding”), by Deutsche Telekom AG (“DT”), and by DT’s shareholders, subject to certain conditions set forth in the *T-Mobile – MetroPCS Order*.³ For the reasons discussed below, grant of this petition is consistent with Commission precedent and is in the public interest. T-Mobile USA also requests that the petition be processed under the Commission’s streamlined approval procedures.⁴

I. INTRODUCTION AND BACKGROUND

The Commission previously approved up to 100 percent indirect foreign ownership of T-Mobile USA’s licensee subsidiaries by DT⁵ and its shareholders when DT acquired VoiceStream Wireless Corporation in 2001.⁶ On March 12, 2013, the Commission approved the combination of T-Mobile USA and MetroPCS Communications, Inc. (“MetroPCS”).⁷ In approving that transaction, the Commission found that the level of foreign ownership by T-Mobile Global, T-

³ See *Applications of Deutsche Telekom AG, T-Mobile USA, Inc. and MetroPCS Communications, Inc.*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 12-301, DA 13-384 (rel. Mar. 12, 2013) (“*T-Mobile – MetroPCS Order*”).

⁴ 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).

⁵ DT, T-Mobile Holding and T-Mobile Global are organized and existing under the laws of the Federal Republic of Germany. The Federal Republic of Germany is a World Trade Organization (“WTO”) member.

⁶ See *VoiceStream Wireless Corp., Powertel, Inc., and Deutsche Telekom AG*, 16 FCC Rcd 9779 (2001) (“*VoiceStream-DT Order*”). VoiceStream Wireless Corporation subsequently changed its corporate name to T-Mobile USA, Inc.

⁷ The T-Mobile – MetroPCS transaction has not yet been consummated, but it is anticipated that it will close prior to consummation of the instant transaction concerning CIVS VII. Accordingly, this Petition reflects the final ownership structure of T-Mobile USA as described and approved in the *T-Mobile – MetroPCS Order*.

Mobile Holding, DT, and DT's shareholders was consistent with the public interest requirements regarding foreign ownership of common carrier radio licenses of Section 310(b)(4) of the Act.⁸

CIVS VII is a wireless licensee of certain PCS and AWS licenses managed and controlled by Cook Inlet Voice and Data Services, Inc. ("CIVDS"), which in turn is wholly-owned and controlled by Cook Inlet Region, Inc., ("CIRI"), an Alaska Native Corporation. T-Mobile USA holds an indirect non-controlling equity interest in CIVS VII. CIRI has caused CIVDS to exercise its right under an Exchange Rights Agreement by and between T-Mobile USA and CIVDS, dated December 21, 2010 and amended as of February 28, 2013, by which CIVDS would exchange its ownership rights in CIVS VII for cash, subject to Commission approval. Accordingly, upon consummation of the proposed transaction, CIVS VII will become a wholly-owned and controlled indirect subsidiary of T-Mobile USA.

The T-Mobile – MetroPCS transaction has not yet been consummated, but it is anticipated that it will close prior to consummation of the instant transaction. Accordingly, this Petition requests Section 310(b)(4) approval based upon the final ownership structure of T-Mobile USA (or any successor entity) as described and approved in the *T-Mobile – MetroPCS Order*.⁹ Specifically, upon consummation of the T-Mobile – MetroPCS merger and the instant transaction, CIVS VII will become an indirect wholly-owned subsidiary of T-Mobile License LLC. T-Mobile License LLC in turn will be a direct wholly-owned subsidiary of T-Mobile

⁸ *T-Mobile – MetroPCS Order*, ¶ 96.

⁹ As explained in the *T-Mobile – MetroPCS Order*, DT's indirect, wholly-owned subsidiary T-Mobile Holding will transfer all of its ownership interests in T-Mobile USA to MetroPCS, and MetroPCS will then issue stock to T-Mobile Holding or its designee. MetroPCS Wireless, Inc. will merge with and into T-Mobile USA, with T-Mobile USA as the surviving corporation. T-Mobile USA will be a wholly-owned direct subsidiary of T-Mobile US, Inc. See *T-Mobile – MetroPCS Order*, ¶¶ 6-7.

USA, and an indirect wholly-owned subsidiary of T-Mobile US, Inc. (“TMUS”).¹⁰ DT, through T-Mobile Holding and T-Mobile Global, will have a 74 percent ownership interest in TMUS and indirectly CIVS VII, and the existing public shareholders of MetroPCS will hold the remaining 26 percent ownership interest in TMUS. The Federal Republic of Germany (“FRG”) holds approximately a 15 percent direct interest in DT. Kreditanstalt für Wiederaufbau (“KfW”), a bank organized in Germany that is 80 percent owned by the FRG and 20 percent owned by the German federal states, holds approximately a 17 percent direct interest in DT. The ownership structure of CIVS VII post-transaction also is depicted in Exhibit 1.

The parties also are filing a concurrent FCC Form 603 application to transfer control of CIVS VII from CIRI to T-Mobile USA. The transfer of control, however, will not occur until after Commission approval is obtained for the Form 603 application and the instant Petition.

II. THE COMMISSION’S PRIOR DECISION AUTHORIZING INDIRECT FOREIGN OWNERSHIP IN T-MOBILE USA AND ITS LICENSEE SUBSIDIARIES IN EXCESS OF 25 PERCENT SUPPORT THE INSTANT PETITION

As stated above, the Commission has previously approved indirect foreign ownership of T-Mobile USA and its licensee subsidiaries beyond the 25 percent benchmark prescribed in Section 310(b)(4) of the Act, first in the *VoiceStream-DT Order*, and most recently in the *T-Mobile – MetroPCS Order*. In the *T-Mobile – MetroPCS Order*, the Commission permitted T-Mobile USA’s licensees to be 100 percent owned indirectly, as a result of foreign ownership interests held in their controlling U.S. parent, by T-Mobile Global and T-Mobile Holding

¹⁰ CIVS VII, T-Mobile License LLC and T-Mobile USA are organized under the laws of the state of Delaware.

(individually), by DT (individually), and by DT’s shareholders (collectively), subject to certain conditions regarding the need to secure prior Commission approval before certain additional foreign equity or voting interests may be acquired in T-Mobile USA’s licensee subsidiaries.¹¹

The Commission’s reasoning in the *VoiceStream-DT Order*, and then in the *T-Mobile – MetroPCS Order*, authorizing the 100 percent indirect foreign ownership interest in T-Mobile USA’s licensee subsidiaries, is applicable to this case. In approving the level of foreign ownership, the Commission concluded that the company is “entitled to a rebuttable presumption that the post-closing foreign ownership of [TMUS and its licensee subsidiaries] does not pose a risk to competition in the U.S. market,” that it found “no evidence in the record that rebuts this presumption,” and there was “no basis to conclude that the proposed transaction is likely to harm competition.”¹²

The same public interest rationales that applied to the Commission’s approval of the current level of indirect foreign ownership in T-Mobile USA’s other licensee subsidiaries should apply with equal force to indirect foreign ownership in CIVS VII. As the Commission noted in the *VoiceStream-DT Order*, and then confirmed in the *T-Mobile – MetroPCS Order*, “foreign investment can promote competition in U.S. markets and ... [] ... the public interest is served

¹¹ See *T-Mobile – MetroPCS Order*, ¶¶ 95-96. First, the licensees must obtain prior Commission approval before any foreign individual or entity acquires a direct or indirect equity and/or voting interest in TMUS in excess of 25 percent, with the exception of the equity and voting interests held currently by the FRG and KfW. Second, the licensees must obtain prior Commission approval before the ownership interests held collectively in DT by the FRG and KfW exceed 32 percent equity and/or voting interests plus an aggregate three percent to account for fluctuations in publicly-traded shares. Third, the licensees must obtain prior Commission approval before TMUS’s direct or indirect equity and/or voting interests from non-WTO Member countries (including interests from unknown countries) exceeds 25 percent.

¹² *Id.* ¶ 95.

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 CIVS VII resulting from the pending transfer of control should be entitled to the same presumption.

T-Mobile USA’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. The growth the company has experienced is a testament to its success in the U.S. market. Indeed, T-Mobile USA had fewer than 6 million customers in the United States in 2001, but following the T-Mobile – MetroPCS transaction, T-Mobile USA will have approximately 42 million wireless subscribers. T-Mobile USA’s innovative wireless products and services help customers to connect effortlessly to others. Like in the T-Mobile – MetroPCS transaction, consumers will benefit from the facilitation of LTE deployment and “the development of a more robust, national network, improved quality of service, and the strengthening of the fourth largest nationwide service provider’s ability to compete in the mobile broadband services market.”¹⁵ T-Mobile USA has been and will continue to be a positive force in the U.S. wireless marketplace, to the benefit of the public.

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

¹⁴ See *id.*

¹⁵ *T-Mobile – MetroPCS Order*, ¶ 2.

Increasing the indirect foreign ownership in CIVS VII to 100 percent is consistent with the public interest, convenience, and necessity. Such indirect foreign investment will facilitate the further development of a competitive national wireless network that offers consumers a variety of advanced mobile services and seamless national and international roaming. Moreover, T-Mobile USA's acquisition of CIVS VII will not change, and will have no impact upon, the indirect foreign ownership in T-Mobile USA approved in the *T-Mobile – MetroPCS Order*.

III. COMPLIANCE WITH NATIONAL SECURITY AGREEMENT

T-Mobile USA 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, T-Mobile USA and MetroPCS, on the one hand, and the U.S. Department of Justice, the Federal Bureau of Investigation, and the Department of Homeland Security on the other.¹⁶ 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....¹⁷

The National Security Agreement prescribed that the following specific language be included in the conditional grant of interests in FCC licenses in the context of the DT/VoiceStream merger:

¹⁶ See National Security Agreement, which was appended by the Commission to *Applications of VoiceStream Wireless Corporation, Powertel, Inc. and Deutsche Telekom AG*, Memorandum Opinion and Order, 16 FCC Rcd 9779 (2001). The National Security Agreement was amended in 2008 and 2013. See *Applications of T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 2515 (2008) (appending amendment) and *T-Mobile – MetroPCS Order* (appending amendment).

¹⁷ National Security Agreement at § 7.2

It is further ordered, that 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 Agreement 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 this 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.¹⁸

T-Mobile USA hereby requests that the Commission impose a similar condition on the grant of the instant Petition.

IV. CONCLUSION

For the above reasons, increasing the indirect foreign ownership in CIVS VII up to 100 percent consistent with the approvals set forth in the *T-Mobile – MetroPCS Order* is in the public interest under Section 310(b)(4) of the Act and consistent with the Commission’s prior decisions.

Respectfully submitted,

Kathleen O’Brien Ham
Joshua Roland
T-Mobile USA, Inc.
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 654-5900

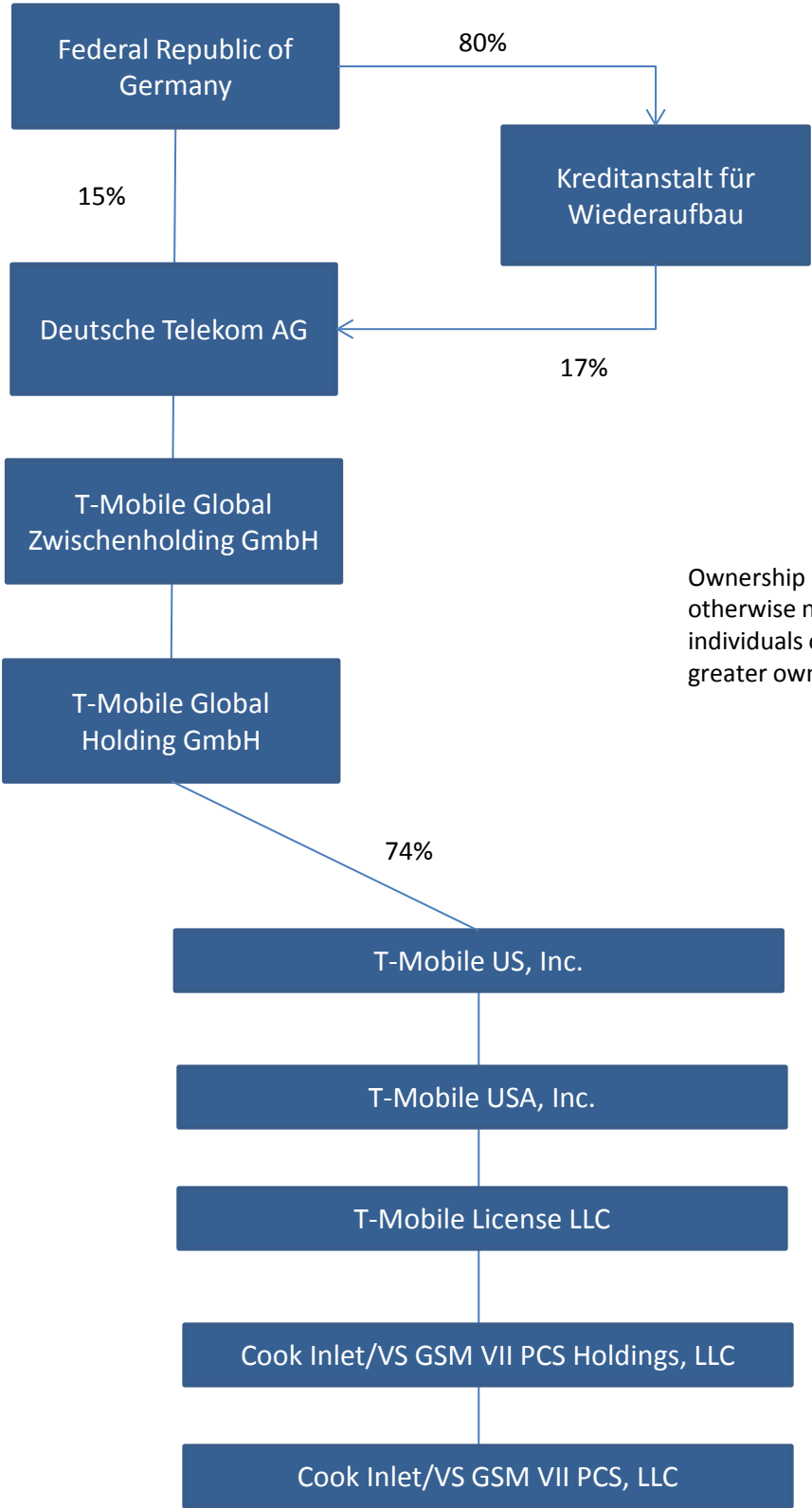
By: /s/ Christine M. Crowe
Christine M. Crowe
Jennifer L. Kostyu
Wilkinson Barker Knauer LLP
2300 N Street, N.W.
Suite 700
Washington, D.C. 20037
(202) 783-4141

Counsel to T-Mobile USA, Inc.

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¹⁸ *Id.* at Exhibit A.

Exhibit 1



Ownership interests are 100% unless otherwise noted. No other individuals or entities hold a 10% or greater ownership interest.