

`Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Applications of T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc.)	WT Docket No. 07-237
)	
For Consent to Transfer Control of Licenses and Authorizations)	File Nos. 0003178152, 0003178835, ITC- T/C-20071001-00404 and ITC-T/C- 20071001-00405
)	
and)	
)	
Petition for Declaratory Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act)	File No. ISP-PDR-20071001-00013
)	

MEMORANDUM OPINION AND ORDER

Adopted: February 08, 2008

Released: February 08, 2008

By the Commission: Commissioner Copps issuing a statement.

I. INTRODUCTION

1. In this Order, we consider applications (“Applications”) filed by T-Mobile USA, Inc. (“T-Mobile”) and SunCom Wireless Holdings, Inc. (“SunCom,” and together with T-Mobile, the “Applicants”), pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (“Communications Act”).¹ In these Applications, T-Mobile and SunCom seek consent to the transfer of control of the wireless licenses² and international section 214 authorizations³ held by subsidiaries of SunCom – SunCom Wireless License Company, LLC and SunCom Wireless Puerto Rico License Co., LLC (“SunCom Subsidiaries”) – to T-Mobile. Additionally, the Applicants have filed a Petition requesting a clarification that T-Mobile’s prior foreign ownership rulings permit the indirect foreign

¹ 47 U.S.C. §§ 214, 310(d).

² See Application to Transfer Control of Licenses Held by SunCom Wireless License Company, LLC to T-Mobile USA, Inc., File No. 0003178152 (filed Oct. 1, 2007) (“Application”); Application to Transfer Control of Licenses Held by SunCom Wireless Puerto Rico License Co., LLC to T-Mobile USA, Inc., File No. 0003178835 (filed Oct. 1, 2007, amended Jan. 10, 2008). File No. 0003178152 has been designated the lead Application. The other application contains an exhibit referring to the exhibits attached to File no. 0003178152. Thus, for convenience, when referring to these applications, we only cite to the lead Application.

³ See Application to Transfer Control of International Section 214 Authorizations Held by SunCom Wireless License Company, LLC to T-Mobile USA, Inc., File No. ITC-T/C-20071001-00404, at 1 (filed Oct. 1, 2007); Application to Transfer Control of International Section 214 Authorizations Held by SunCom Wireless Puerto Rico License Co., LLC to T-Mobile USA, Inc., File No. ITC-T/C-20071001-00405, at 1 (filed Oct. 1, 2007) (collectively, the “214 Applications”). The authorization numbers associated with these file numbers are ITC-214-20010308-00124 (SunCom Wireless) and ITC-214-20070626-00246 (SunCom Wireless Puerto Rico).

ownership of the SunCom Subsidiaries,⁴ or, in the alternative, that the Commission extend T-Mobile's prior foreign ownership rulings to include the SunCom Subsidiaries by issuing a Declaratory Ruling that it is in the public interest for the SunCom Subsidiaries to have indirect foreign ownership in excess of the 25 percent benchmark under section 310(b)(4) of the Communications Act.⁵

2. As discussed below, we conclude, pursuant to our review under sections 214 and 310(d) of the Communications Act that approval of these applications as conditioned and grant of the petition for declaratory ruling will serve the public interest, convenience, and necessity.

II. BACKGROUND

3. T-Mobile is a national provider of wireless voice, messaging, and data services.⁶ It provides wireless services to more than 27 million customers and has a wireless network covering an aggregate population ("POPs") of more than 244 million people.⁷ T-Mobile provides service on its network using Global System for Mobile Communications ("GSM"), General Packet Radio Service ("GPRS") technology, and Enhanced Data rates for GSM Evolution ("EDGE") technologies.⁸ T-Mobile states that it is preparing to deploy a Universal Mobile Telecommunications System ("UMTS") network in the United States.⁹ T-Mobile also provides Wi-Fi access to more than 8000 public locations throughout the country.¹⁰

4. T-Mobile, incorporated in Delaware and headquartered in Bellevue, Washington,¹¹ is an indirect, wholly-owned subsidiary of Deutsche Telekom AG ("DT"), a corporation organized under the laws of Germany.¹² The two wholly-owned intermediate subsidiaries, between T-Mobile and DT – T-

⁴ 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, File No. ISP-PDR-20071001-00013, at 3 (filed Oct. 1, 2007) ("Petition for Declaratory Ruling") (citing Applications of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 FCC Rcd 9779, 9845, 9850-51 (2001) ("*DT-VoiceStream Order*"); International Authorizations Granted, File No. ISP-PDR-20060510-00013, Public Notice, DA No. 06-2441, 21 FCC Rcd 14062 (IB 2006) (extending T-Mobile's 310(b)(4) ruling to cover the AWS services); International Authorizations Granted, File No. ISP-PDR-20021231-00004, Public Notice, DA No. 03-829, 18 FCC Rcd 5014 (IB 2003) (allowing T-Mobile/DT ownership in Cook Inlet/VIS GSM VI PCS, LLC)).

⁵ Petition for Declaratory Ruling at 3.

⁶ Application, Description of Transaction at 4; T-Mobile Agrees to Acquire SunCom Wireless to Expand Network and Industry-Leading Customer Service to the Southeastern United States, Puerto Rico and U.S. Virgin Islands, Press Release, at 2 (Sept. 17, 2007) ("Merger Press Release"), available at http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20070917&title=T-Mobile%20Agrees%20to%20Acquire%20SunCom%20Wireless (last visited Jan. 30, 2008); T-Mobile, Company Information, http://www.t-mobile.com/Company/CompanyInfo.aspx?tp=Abt_Tab_CompanyOverview (last visited Jan. 30, 2008) ("T-Mobile Company Information").

⁷ Application, Description of Transaction at 2.

⁸ *Id.* at 3.

⁹ *Id.* at 3.

¹⁰ *Id.* at 2-3.

¹¹ SunCom Wireless Holdings, Inc., 10-Q, at 8 (Nov. 1, 2007) ("SunCom 10-Q"), available at <http://www.sec.gov/Archives/edgar/data/1091973/000089322007003500/w41407e10vq.htm> (last visited Jan. 30, 2008).

¹² Application, Description of Transaction at 3; Petition for Declaratory Ruling at 2.

Mobile International AG (“T-Mobile International”) and T-Mobile Global Holding GmbH (“T-Mobile Global”) – are also organized under the laws of Germany.¹³ The Federal Republic of Germany (“FRG”) holds an approximately 14.83 percent direct interest and 16.87 percent indirect interest in DT.¹⁴

5. SunCom is a regional wireless service provider based in Berwyn, Pennsylvania.¹⁵ It provides digital wireless communications services in North Carolina, South Carolina, Tennessee, Georgia, Virginia, Puerto Rico, and the U.S. Virgin Islands.¹⁶ Suncom provides service using one Part 22 Cellular Radiotelephone Service license, 27 Part 24 Personal Communications Service licenses, and multiple Part 101 Common Carrier Fixed Point-to-Point Microwave Service licenses, as well as two international section 214 authorizations.¹⁷ SunCom has launched service in 27 markets including 11 of the top 100 markets in the United States.¹⁸ SunCom provides wireless services, under the SunCom Wireless brand name,¹⁹ to more than 1.1 million customers and its licenses cover nearly 15 million people in the continental US and more than 4 million people in Puerto Rico and the U.S. Virgin Islands.²⁰ Like T-Mobile, SunCom utilizes GSM, GPRS, and EDGE technologies to provide wireless services to its customers.²¹

6. Pursuant to an Agreement and Plan of Merger executed on September 16, 2007, T-Mobile would acquire control of Suncom and the SunCom Subsidiaries, including their customers, network assets and licenses,²² for approximately \$2.4 billion in cash and assumed debt.²³ To effectuate the transfer of control, Tango Merger Sub, Inc., a newly formed, wholly-owned subsidiary of T-Mobile, will merge with and into SunCom.²⁴ Upon closing the proposed transaction, SunCom would continue as the surviving

¹³ Petition for Declaratory Ruling at 2.

¹⁴ See T-Mobile USA, Inc., Form 602 (filed Oct. 1, 2007) (“T-Mobile Form 602”); see also Application, Description of Transaction at 3 (stating that “[the FRG] holds an approximate 31.70 percent attributable ownership interest” in T-Mobile). Kreditanstalt für Wiederaufbau (“KfW”), a bank organized under the laws of, and controlled by, the FRG, holds an approximately 16.87 percent direct interest in DT. The FRG holds an approximately 80 percent interest in KfW. See T-Mobile Form 602 at Attachment.

¹⁵ Application, Description of Transaction at 4; SunCom, Investor Relations, http://www.suncom.com/investor_relations/investor_relations.shtml (last visited Jan. 30, 2008) (“SunCom Investor Relations”).

¹⁶ Application, Description of Transaction at 4; Petition for Declaratory Ruling at 1-2; Merger Press Release at 2; SunCom, Market Area, http://www.suncom.com/investor_relations/market_area.shtml (last visited Jan. 30, 2008) (“SunCom Market Area”) (providing service in North Carolina, South Carolina, northern Georgia, and parts of eastern Tennessee and southwestern Virginia).

¹⁷ Application, Description of Transaction at 4; Petition for Declaratory Ruling at 1.

¹⁸ SunCom Investor Relations at 1.

¹⁹ SunCom Wireless Holdings, Inc., 10-K, at 1 (filed Mar. 9, 2007) (“SunCom 10-K”), available at <http://www.sec.gov/Archives/edgar/data/1091973/000089322007000680/w30813e10vk.htm> (last visited Jan. 30, 2008).

²⁰ Application, Description of Transaction at 4; Merger Press Release at 1; SunCom Investor Relations at 1; SunCom 10-K at 1; SunCom 10-Q at 14; SunCom Market Area at 1.

²¹ Application, Description of Transaction at 4; Merger Press Release at 1.

²² Application, Description of Transaction at 4.

²³ There will be a cash payment of \$1.6 billion and the assumption of approximately \$0.8 billion in net debt. Application, Description of Transaction at 4; Merger Press Release at 1.

²⁴ Application, Description of Transaction at 4; SunCom 10-Q at 8; SunCom 10-K at 1.

corporation.²⁵ The SunCom Subsidiaries will remain indirect, wholly-owned subsidiaries of SunCom and will become indirect, wholly-owned subsidiaries of T-Mobile.²⁶

7. On October 1, 2007, the Applicants filed applications seeking consent to the proposed transfer of control of licenses and authorizations held by the SunCom Subsidiaries from SunCom to T-Mobile. The Applicants also filed a petition requesting a declaratory ruling that it is in the public interest for the SunCom Subsidiaries to have indirect foreign ownership in excess of the 25 percent benchmark under section 310(b)(4) of the Communications Act.²⁷ The Applicants request a declaratory ruling allowing up to 100 percent indirect foreign ownership in SunCom and the SunCom Subsidiaries.²⁸ The applications and petition for declaratory ruling were placed on Public Notice on October 23, 2007.²⁹ Petitions to Deny were due on November 23, 2007.³⁰

8. In response to the Public Notice, the Commission received a letter filed by the Department of Homeland Security (“DHS”), with the concurrence of the Department of Justice (“DOJ”) and the Federal Bureau of Investigation (“FBI,” and together with DHS and DOJ, the “Executive Branch Agencies”), requesting that the Commission defer action on this matter to allow them the opportunity to complete their review of this matter for any national security, law enforcement, and public safety issues.³¹ On January 9, 2008, the Executive Branch Agencies filed a Petition to Adopt Conditions to Authorizations and Licenses (“Executive Branch Petition”),³² advising the Commission that they have no objection to this matter, provided that the Commission condition the grant on compliance with the commitments and undertakings contained in an Agreement dated January 12, 2001 (“2001 Agreement”)³³ and amended January 4, 2008 (“2008 Amendment”).³⁴ The Commission also received, in response to the Public Notice, a letter from a consumer.³⁵

²⁵ Application, Description of Transaction at 4; SunCom 10-Q at 8; SunCom 10-K at 1.

²⁶ Application, Description of Transaction at 4; SunCom 10-Q at 8; SunCom 10-K at 1. A chart showing the post-transaction organization is contained in Appendix A.

²⁷ 47 U.S.C. § 310(b)(4). Applicants also filed a letter, dated January 10, 2008, providing additional ownership information as requested by the International Bureau. See Letter from Michele C. Farquhar, Counsel to SunCom Wireless Holding, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 10, 2008)

²⁸ Petition for Declaratory Ruling at 3.

²⁹ T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc. Seek FCC Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-237, *Public Notice*, DA 07-4372, at 1 (WTB rel. Oct. 23, 2007) (“Public Notice”).

³⁰ *Id.*

³¹ Letter from Gregory Pinto, Director, Regulatory Policy, United States Department of Homeland Security, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Nov. 23, 2007).

³² The Executive Branch Petition was originally filed on January 7, 2008, but an amended version was filed on January 9, 2008.

³³ See *DT-VoiceStream Order*, 16 FCC Rcd at 9853.

³⁴ Petition to Adopt Conditions to Authorizations and Licenses (January 7, 2008); Petition to Adopt Conditions to Authorizations and Licenses (January 9, 2008) (attaching the January 4, 2008 amendment as an attachment to the Executive Branch Petition). The 2008 Amendment is dated January 4, 2007, but it was intended to be January 4, 2008. Executive Branch Petition at 1-2. The Executive Branch Petition and 2008 Amendment are attached in Appendix B.

³⁵ Letter from Charles Waldie, Jr., to Federal Communications Commission (Nov. 19, 2007) (*Waldie Letter*).

III. DISCUSSION

A. Public Interest Analysis

9. Pursuant to sections 214 and 310(d) of the Communications Act,³⁶ we must determine whether the Applicants have demonstrated that the proposed transfer of control of SunCom's licenses and authorizations would serve the public interest, convenience, and necessity. In applying our public interest test, we must assess whether the proposed transaction complies with the specific provisions of the Communications Act,³⁷ the Commission's rules, and federal communications policy.³⁸ If a proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.³⁹ The Commission then employs a balancing test weighing any potential public interest harms of a proposed transaction against any potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest.⁴⁰

10. We believe that the proposed transaction would serve the public interest by promoting competition in the wireless marketplace and increasing the availability of voice, data and advanced wireless services benefiting consumers. Specifically, the proposed transaction would enable T-Mobile to expand its wireless footprint in the Southeast United States, Puerto Rico and the U.S. Virgin Islands.⁴¹ It would also provide customers of both companies access to seamless in-network services across a broader geographic area, including through T-Mobile's plans for expanding and upgrading SunCom's network.⁴² Because of the similarities in technologies utilized by T-Mobile and SunCom, T-Mobile should be able to integrate the two networks quickly with minimal disruption to customers, and many customers should be able to use their existing handsets.⁴³ Finally, we find no evidence that T-Mobile lacks the requisite financial, legal, technical, or other basic qualifications under the Communications Act to be the transferee

³⁶ 47 U.S.C. § 310(d).

³⁷ Section 310(d), 47 U.S.C. § 310(d), requires that we consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Communications Act, 47 U.S.C. § 308. *See, e.g.*, Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control, WT Docket No. 07-153, *Memorandum Opinion and Order*, 22 FCC Rcd 20295, 20301 ¶ 10 (2007) ("AT&T-Dobson Order").

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 20302 ¶ 10.

⁴¹ *Id.* at i, 6, 7; Merger Press Release at 1 ("The acquisition will further enhance T-Mobile's network coverage in the southeastern United States and the Caribbean through the complementary addition of SunCom's markets and customers in North Carolina, South Carolina, Tennessee, Georgia, Puerto Rico, and the U.S. Virgin Islands."). T-Mobile has no commercial operations throughout most of these areas and relies heavily on SunCom for roaming services. Application, Description of Transaction, at 7. The Applicants state that this transaction will round out T-Mobile's domestic footprint by allowing it to serve 98 of the top 100 markets in the United States and expanding its nationwide coverage from 244 million persons to 259 million persons. *Id.* at i-ii, 7; Merger Press Release at 1.

⁴² Application, Description of Transaction, at ii, 6-8. The Applicants state that the proposed transaction would facilitate T-Mobile's continued deployment of advanced wireless services and bring those services to SunCom customers more quickly. *Id.* at ii. The Applicants state that T-Mobile is preparing to roll out a UMTS network using the Advanced Wireless Service spectrum it acquired in Auction No. 66. This spectrum provides T-Mobile with sufficient capacity to introduce new broadband services into SunCom's license area, which SunCom may not be able to do with its existing spectrum holdings. Additionally, T-Mobile's efforts to deploy UMTS will be aided by the ability to overlay this technology on SunCom's existing network rather than building a new network. *Id.* at 11.

⁴³ *Id.* at 12.

of the licenses and authorizations currently held by SunCom.⁴⁴

11. Consistent with our practice when reviewing proposed wireless transactions affecting the mobile telephony market, we next consider the potential competitive effects that might result from increased concentration.⁴⁵ We find that the proposed transaction would not have an adverse effect on competition in the mobile telephony market. When examining the effect of proposed transactions, we have first applied a three-part initial “screen” that identifies those local markets in which there is clearly no competitive harm arising from the transaction. Two parts of the screen utilize changes in the measures of the Herfindahl-Hirschman Index (“HHI”) market concentration. The final part of this screen examines the input market for spectrum available on a nationwide basis for the provision of mobile telephony services.⁴⁶ It identifies the markets in which a proposed transaction would result in spectrum aggregation in amounts of 95 megahertz or more.⁴⁷ This transaction did not trigger either of our HHI screens and will not result in T-Mobile holding 95 or more megahertz of spectrum in any market. Post-transaction, T-Mobile would hold only 20 to 65 MHz of cellular, PCS, SMR, and 700 MHz spectrum in the overlap counties, well below the 95 MHz initial screen threshold. Thus, we find that it is unlikely that the proposed transaction would result in competitive harm.

B. Foreign Ownership

12. The Applicants request a declaratory ruling that would allow the indirect foreign ownership of the SunCom Subsidiaries in excess of the 25 percent benchmark under section 310(b)(4) of the Communications Act.⁴⁸ They note that T-Mobile has an existing 310(b)(4) ruling allowing up to 100 percent indirect ownership by DT,⁴⁹ and represent they are in compliance with that and their other rulings.⁵⁰ They request that we extend that ruling to cover the SunCom Subsidiaries.

13. We examine the foreign ownership interests that will be held in the SunCom Subsidiaries as a result of this transaction, pursuant to our public interest analysis under sections 310(b)(4) and 310(d) of the Communications Act and the Commission’s foreign ownership policies adopted in the *Foreign*

⁴⁴ Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite “citizenship, character, financial, technical, and other qualifications.” 47 U.S.C. §§ 308, 310(d). See also *AT&T-Dobson* Order, 22 FCC Rcd 20302 ¶ 11. We have considered the arguments made in the *Waldie Letter* with respect to the quality of T-Mobile’s service provision in his November 6, 2007 letter but they do not persuade us that it would be in the public interest to deny or condition our approval of these transfer of control applications.

⁴⁵ See, e.g., *AT&T-Dobson* Order, 22 FCC Rcd 20306 ¶ 15; Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at § 0.1, n.6. (Apr. 2, 1992, revised Apr. 8, 1997) (“*DOJ/FTC Merger Guidelines*”).

⁴⁶ See, e.g., *AT&T-Dobson* Order, 22 FCC Rcd 20307 ¶ 16.

⁴⁷ *Id.* at 20312-14 ¶¶ 30-31. This initial spectrum aggregation screen of 95 megahertz is approximately one-third of the 280 megahertz of cellular, broadband Personal Communications Service, Specialized Mobile Radio, and 700 MHz spectrum suitable for mobile telephony. *Id.*

⁴⁸ See Petition for Declaratory Ruling, File No. ISP-PDR-20071001-00013.

⁴⁹ Petition for Declaratory Ruling (citing *DT-VoiceStream* Order, 16 FCC Rcd 9779; International Authorizations Granted, File No. ISP-PDR-20060510-00013, *Public Notice*, DA No. 06-2441, 21 FCC Rcd 14062 (IB 2006) (extending T-Mobile’s 310(b)(4) ruling to cover the AWS services); International Authorizations Granted, File No. ISP-PDR-20021231-00004, *Public Notice*, DA No. 03-829, 18 FCC Rcd 5014 (IB 2003) (allowing T-Mobile/DT ownership in Cook Inlet/VS GSM VI PCS, LLC)).

⁵⁰ Petition for Declaratory Ruling at 5; Application at 29.

Participation Order.⁵¹ As part of that analysis, we consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the foreign investment.⁵² Relying on Commission precedent, we find that the proposed transfer of control does not raise any issues under sections 310(a) and 310(b)(1)-(b)(3) of the Communications Act.⁵³ Our analysis focuses on issues raised under section 310(b)(4). Based on the record before us, we conclude for the reasons stated below that it would not serve the public interest to deny consent to the proposed transaction because of the indirect foreign equity and voting interests that will be held indirectly in the SunCom Subsidiaries by their foreign investors.

14. Section 310(b)(4) of the Communications Act establishes a 25 percent benchmark for investment by foreign individuals, corporations, and governments in entities that control U.S. common carrier radio licensees. This section also grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.⁵⁴ The calculation of foreign ownership interests under section 310(b)(4) is a two-pronged analysis in which the Commission examines separately the equity interests and the voting interests in the licensee's direct or indirect parent.⁵⁵ The Commission calculates the equity interest of each foreign investor in the parent and then aggregates these interests to determine whether the sum of the foreign equity interests exceeds the statutory benchmark.⁵⁶ Similarly, the Commission calculates the voting interest of each foreign investor in the parent and aggregates these voting interests.⁵⁷ The presence of aggregated alien equity or voting interests in a common carrier licensee's parent in excess of 25 percent triggers the applicability of section 310(b)(4)'s statutory benchmark. Once the benchmark is triggered, section 310(b)(4) directs the Commission to determine whether the "public interest will be served by the refusal or revocation of such

⁵¹ 47 U.S.C. § 310(b)(4), (d); *see* Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order and Order on Reconsideration*, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*"), *Order on Reconsideration*, 15 FCC Rcd 18158 (2000).

⁵² The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing foreign investment pursuant to sections 310(b)(4) and 310(d). *Foreign Participation Order*, 12 FCC Rcd at 23918-21 ¶¶ 59-66. *See also infra* Section III.D (National Security, Law Enforcement, Foreign Policy, and Trade Concerns).

⁵³ Section 310(a) of the Communications Act prohibits any radio license from being "granted to or held by" a foreign government or its representative. 47 U.S.C. § 310(a). In this case, no foreign government or its representative holds any of the radio licenses. Section 310(b)(1)-(2) of the Communications Act prohibits common carrier, broadcast and aeronautical fixed or *en route* radio licenses from being "granted to or held by" aliens, or their representatives, or foreign corporations. 47 U.S.C. § 310(b)(1)-(2). We find that no alien, representative, or foreign corporation holds any of the common carrier licenses in this case. Accordingly, we find that the proposed transaction is not inconsistent with the foreign ownership provisions of section 310(a) or 310(b)(1)-(2) of the Communications Act. *See DT-VoiceStream Order*, 16 FCC Rcd at 9804-9809 ¶¶ 38-48. Additionally, because the foreign investment in the SunCom Subsidiaries is held through a controlling U.S. parent company, T-Mobile, the proposed transaction does not trigger section 310(b)(3) of the Communications Act, which places a 20% limit on alien, foreign corporate or foreign government ownership of entities that themselves hold common carrier, broadcast and aeronautical fixed or *en route* Title III licenses. *Compare* 47 U.S.C. § 310(b)(3) *with* § 310(b)(4). *See* Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended, *Declaratory Ruling*, 103 F.C.C. 2d 511 (1985) ("*Wilner & Scheiner P*"), *recon. in part*, 1 FCC Rcd 12 (1986).

⁵⁴ 47 U.S.C. § 310(b)(4).

⁵⁵ *See* BBC License Subsidiary L.P., *Memorandum Opinion and Order*, 10 FCC Rcd 10968, 10973 ¶ 22 (1995) ("*BBC License Subsidiary*").

⁵⁶ *See id.* at 10972, 10973-74 ¶¶ 20, 24-25.

⁵⁷ *See id.* at 10972, 10973 ¶¶ 20, 23.

license.”⁵⁸

15. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from World Trade Organization (“WTO”) Member countries in U.S. common carrier and aeronautical fixed and en route radio licensees.⁵⁹ Therefore, with respect to indirect foreign investment from WTO Members, the Commission replaced its “effective competitive opportunities” test with a rebuttable presumption that such investment generally raises no competitive concerns.⁶⁰ In evaluating an applicant’s request for approval of foreign ownership interests under section 310(b)(4), the Commission uses a “principal place of business” test to determine the nationality or “home market” of foreign investors.⁶¹

16. We evaluate the indirect foreign ownership under section 310(b)(4) by calculating the foreign equity and voting interests in T-Mobile, the proposed U.S. parent of the SunCom Subsidiaries. We then determine whether these foreign interests properly are ascribed to individuals or entities that are citizens of, or have their principal places of business in, WTO Member countries.⁶²

1. Attribution of Foreign Ownership Interests

17. As stated above, as a result of the proposed transaction, SunCom Subsidiaries will be indirect wholly-owned subsidiaries of T-Mobile, a U.S. company that is wholly owned by T-Mobile Global.⁶³ T-Mobile Global is wholly owned by T-Mobile International, which in turn is wholly-owned by DT. T-Mobile Global, T-Mobile International, and DT are all organized under the laws of the Germany, a WTO Member country. The FRG holds a 14.83 percent direct interest in DT. Kreditanstalt für Wiederaufbau (“KfW”), a bank organized under the laws of the Germany and controlled by the FRG, holds a 16.87

⁵⁸ 47 U.S.C. § 310(b)(4).

⁵⁹ *Foreign Participation Order*, 12 FCC Rcd at 23896, 23913, 23940 ¶¶ 9, 50, 111-112.

⁶⁰ *Id.* The Commission stated, in the *Foreign Participation Order*, that it will deny an application if it finds that more than 25 percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding. *See id.*, 12 FCC Rcd at 23946 ¶ 131.

⁶¹ To determine a foreign entity’s home market for purposes of the public interest determination under section 310(b)(4), the Commission will identify and balance the following factors: (1) the country of a foreign entity’s incorporation, organization or charter; (2) the nationality of all investment principals, officers, and directors; (3) the country in which the world headquarters is located; (4) the country in which the majority of the tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which the foreign entity derives the greatest sales and revenues from its operations. *Foreign Participation Order*, 12 FCC Rcd at 23941 ¶ 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities, Report and Order*, 11 FCC Rcd 3873, 3951 ¶ 207 (1995)).

⁶² In calculating attributable alien equity interests in a parent company, the Commission uses a multiplier to dilute the percentage of each investor’s equity interest in the parent company when those interests are held through intervening companies. The multiplier is applied to each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier. *See BBC License Subsidiary*, 10 FCC Rcd at 10973-74 ¶¶ 24-25. By contrast, in calculating alien voting interests in a parent company, the multiplier is not applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier. *See id.* at 10973 ¶ 23; *see also Wilner & Scheiner I*, 103 F.C.C.2d at 522 ¶ 19.

⁶³ A chart showing the post-transaction organization is contained in Appendix A.

percent direct interest in DT. The FRG holds an 80 percent interest in KFW.

18. The record indicates that the majority of the foreign equity and voting interests that will be held indirectly in the SunCom Subsidiaries are properly ascribed to Germany, a WTO Member country. According to the Applications, DT will hold indirectly 100 percent of the equity and voting interests in the SunCom Subsidiaries. As noted by the Applicants, the Commission has previously granted a declaratory ruling approving the 100 percent indirect foreign ownership of T-Mobile by DT for other common carrier wireless services.⁶⁴ Moreover, according to the Applicants, the proposed transaction will not change, and will have no impact upon, the current indirect foreign ownership in T-Mobile. Applicants therefore are entitled to a rebuttable presumption that, following consummation of the proposed transaction, the indirect foreign ownership in the SunCom Subsidiaries would not pose a risk to competition in the U.S. market. We find no evidence in the record that rebuts this presumption and, as we explain above, we find no basis to conclude that the proposed transaction is likely to harm competition.⁶⁵ We therefore find it is in the public interest to extend the T-Mobile section 310(b)(4) foreign ownership rulings to cover the SunCom Subsidiaries.

2. Declaratory Ruling

19. Accordingly, this declaratory ruling permits the indirect foreign ownership of SunCom Wireless License Company, LLC and SunCom Wireless Puerto Rico License Co., LLC by: (1) T-Mobile Global Holding GmbH and T-Mobile International AG(individually), 100 percent equity and voting interests, (2) Deutsche Telekom AG (individually) and its German shareholders (collectively), 100 percent equity and voting interests. SunCom Wireless License Company, LLC and SunCom Wireless Puerto Rico License Co., LLC may have up to and including an additional, aggregate 25 percent indirect equity and/or voting interests from other foreign individuals and entities without seeking further Commission approval, subject to the following conditions: any additional investment shall not cause the amount attributable to a single foreign individual or entity to exceed 25 percent of SunCom Wireless License Company, LLC and SunCom Wireless Puerto Rico License Co., LLC indirect equity or voting interests, and SunCom Wireless License Company, LLC and SunCom Wireless Puerto Rico License Co., LLC shall seek Commission approval before they accept additional indirect investment from Germany in excess of the amount permitted through its investment in DT. We emphasize that, as Commission licensees, SunCom Wireless License Company, LLC and SunCom Wireless Puerto Rico License Co., LLC have an affirmative duty to monitor their foreign equity and voting interests and to calculate these interests consistent with the attribution principles enunciated by the Commission.⁶⁶

C. Dominant Carrier Safeguards

20. The Applicants seek consent to transfer control of the international section 214

⁶⁴ See *DT-VoiceStream Order*, 16 FCC Rcd 9779. The Commission has also extended this ruling to cover the AWS services, see *International Authorizations Granted*, File No. ISP-PDR-20060510-0013, Public Notice, DA No. 06-2441, 21 FCC Rcd 14062 (IB 2006), and issued rulings allowing T-Mobile/DT ownership in other common carriers, see, e.g., ; *International Authorizations Granted*, File No. ISP-PDR-20060522-00009, Public Notice, DA No. 06-2567, 21 FCC Rcd 14739 (IB 2006) (allowing T-Mobile/DT ownership in Iowa Wireless); *International Authorizations Granted*, File No. ISP-PDR-20021231-00004, Public Notice, DA No. 03-829, 18 FCC Rcd 5014 (IB 2003) (allowing T-Mobile/DT ownership in Cook Inlet/VIS GSM VI PCS, LLC).

⁶⁵ See discussion *supra* ¶ 11. As the Commission stated in the *Foreign Participation Order*, the commitments made by WTO Members, such as Germany, the Commission's regulatory safeguards, and antitrust law should adequately address competitive concerns resulting from participation by foreign carriers from WTO Member countries in the U.S. telecommunications market. *Foreign Participation Order*, 12 FCC Rcd at 23905-09 ¶¶ 33-41.

⁶⁶ See, e.g., *Foreign Ownership Guidelines*, 19 FCC Rcd 22612 (2004), *erratum*, 21 FCC Rcd 6484 (2006).

authorizations held by the SunCom Subsidiaries to T-Mobile.⁶⁷ Pursuant to section 63.10 of the Commission's rules, the T-Mobile and the SunCom Subsidiaries request "non-dominant" status upon consummation of the transaction on all routes between the United States and countries listed in their section 214 Applications except on the U.S.-Croatia, U.S.-Germany, U.S.-Hungary, U.S.-Macedonia, U.S.-Montenegro, and U.S.-Slovakia routes.⁶⁸

21. As part of our public interest analysis under section 214(a) of the Communications Act, we consider whether, upon consummation of the proposed transaction, the international section 214 authorization holders, the SunCom Subsidiaries, will become affiliated with a foreign carrier that has market power on the foreign end of a U.S. international route that the SunCom Subsidiaries have authority to serve pursuant to the international section 214 authorizations that will be transferred.⁶⁹ Under rules adopted in the *Foreign Participation Order*, the Commission classifies a U.S. carrier as "dominant" on a particular route if it is, or is affiliated with, a foreign carrier that has market power on the foreign end of that route.⁷⁰

22. Following consummation of the proposed transaction, the SunCom Subsidiaries will become affiliated, within the meaning of section 63.09 of the Commission's rules, with DT and other foreign carrier service providers.⁷¹ We find that, except for DT and its subsidiaries and affiliates that provide service in Croatia, Germany, Hungary, Macedonia, Montenegro, and Slovakia, none of the foreign carriers with which the SunCom Subsidiaries will be affiliated is a monopoly provider of communications services or has a 50 percent market share in the international transport or local access market on the foreign end of a U.S. international route. Therefore, we will classify the Sun Com Subsidiaries as non-dominant on all U.S. international routes except the U.S.-Croatia, U.S.-Germany, U.S.-Hungary, U.S.-Macedonia, U.S.-Montenegro, and U.S.-Slovakia routes.

23. With respect to the U.S.-Croatia, U.S.-Germany, U.S.-Hungary, U.S.-Macedonia, and U.S.-Slovakia routes, the SunCom Subsidiaries agree to be classified as dominant and comply with the dominant carrier safeguards set forth in section 63.10 of the Commission's rules for those routes.⁷² According to the Applicants, the SunCom Subsidiaries will relinquish their existing authority under section 214 to serve the U.S.-Montenegro route upon consummation of this transaction.⁷³ We find that the dominant carrier safeguards in section 63.10 will protect sufficiently against any potential vertical harms to U.S. customers on these routes. Accordingly, pursuant to section 214(a) of the Communications Act and section 63.10 of the Commission's rules, we condition our grant of the international section 214 transfer applications on the classification of SunCom Wireless License Company, LLC and SunCom Wireless Puerto Rico License Co., LLC as dominant carriers on the U.S.-Croatia, U.S.-Germany, U.S.-Hungary, U.S.-Macedonia, and U.S.-Slovakia routes and that they relinquish their existing authority under section 214 to serve the U.S.-Montenegro route effective upon closing of the proposed transaction.

⁶⁷ See 214 Applications, File Nos. ITC-T/C-20071001-00404 and ITC-T/C-20071001-00405.

⁶⁸ See 214 Applications, Attachment 1 at 4-9 (citing 47 C.F.R. § 63.10).

⁶⁹ 47 U.S.C. § 214(a).

⁷⁰ *Foreign Participation Order*, 12 FCC Rcd at 23987, 23991-99 ¶¶ 215, 221-39. A carrier classified as dominant on a particular U.S. international route due to an affiliation with a foreign carrier that has market power on the foreign end of the route is subject to specific international dominant carrier safeguards set forth in section 63.10 of the rules. 47 C.F.R. § 63.10(c), (e).

⁷¹ 47 C.F.R. § 63.09. See 214 Applications, Attachment 1 at 4-9.

⁷² 47 C.F.R. § 63.10.

⁷³ See 214 Applications, Attachment 1 at 8-9.

D. National Security, Law Enforcement, Foreign Policy, and Trade Concerns

24. When analyzing a transfer of control or assignment application in which foreign investment is involved, we also consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the Executive Branch.⁷⁴ On November 23, 2007, the Executive Branch Agencies requested that the Commission defer action on this matter to allow them the opportunity to complete their review of this matter for any national security, law enforcement, and public safety issues.⁷⁵ On January 9, 2008, the Executive Branch Agencies filed a the Executive Branch Petition, advising the Commission that they have no objection to this matter, provided that the Commission condition the grant on compliance by DT, T-Mobile, and SunCom with the commitments and undertakings contained in the 2001 Agreement and the 2008 Amendment.⁷⁶

25. The Executive Branch Petition states that the Executive Branch Agencies have taken the position that their ability to satisfy their obligations to protect the national security, enforce the laws, and preserve the safety of the public could be impaired by transactions in which foreign entities will own or operate a part of the U.S. telecommunications system, or in which foreign-located facilities will be used to provide domestic telecommunications services to U.S. customers.⁷⁷ After discussions with representatives of DT, T-Mobile, and SunCom, the Executive Branch Agencies have concluded that the commitments set forth in the 2001 Agreement and 2008 Amendment will help ensure that the Executive Branch Agencies and other entities with responsibility for enforcing the law, protecting the national security, and preserving public safety can proceed in a legal, secure, and confidential manner to satisfy these responsibilities. Accordingly, the Executive Branch Agencies withdrew their Petition to Defer, and they ask the Commission to condition the grant on DT's and T-Mobile's compliance with the commitments set forth in the 2001 Agreement and 2008 Amendment.⁷⁸

26. In assessing the public interest, we take into account the record and accord deference to Executive Branch expertise on national security and law enforcement issues.⁷⁹ As the Commission stated in the *Foreign Participation Order*, foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch.⁸⁰ We conclude that adoption of the network security condition sought by the Executive Branch Agencies addresses these concerns.⁸¹ In accordance with the request of the Executive Branch Agencies and in the absence of any objection from the Applicants, we condition our grant on compliance by DT, T-Mobile, and SunCom with the commitments set forth in the 2001 Agreement and the 2008 Amendment.

⁷⁴ *Foreign Participation Order*, 12 FCC Rcd at 23918 ¶ 59; Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, IB Docket No. 96-111, *Report and Order*, 12 FCC Rcd 24094, 24170 ¶ 178 (1997).

⁷⁵ Letter from Gregory Pinto, Director, Regulatory Policy, United States Department of Homeland Security, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Nov. 23, 2007).

⁷⁶ Executive Branch Petition at 1-2.

⁷⁷ *Id.* at 2.

⁷⁸ *Id.*

⁷⁹ See *Foreign Participation Order*, 12 FCC Rcd at 23919-21 ¶¶ 61-66.

⁸⁰ *Id.* at 23919 ¶ 62.

⁸¹ See *infra* ¶ 33.

IV. CONCLUSION

27. In conclusion, based on the record before us, we find that the Applicants have demonstrated that the proposed transaction would serve the public interest, convenience, and necessity; and that granting consent to the proposed assignment application would further the public interest, subject to the conditions discussed above.

V. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 310(d), the above-referenced applications for the transfer of control of licenses from SunCom Wireless Holdings, Inc. to T-Mobile USA, Inc. are GRANTED, subject to the conditions set forth herein.

29. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and sections 63.04 and 63.24 of the Commission's rules, 47 C.F.R. §§ 63.04, 63.24, the applications to transfer international section 214 authorizations from SunCom Wireless Holdings, Inc. to T-Mobile USA, Inc. are GRANTED, subject to the conditions set forth herein.

30. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.10 of the Commission's rules, 47 C.F.R. § 63.10, SunCom Wireless Licensee Company, LLC and SunCom Wireless Puerto Rico License Co., LLC SHALL BE CLASSIFIED as a dominant international carriers in their provision of service on the U.S.-Croatia, U.S.-Germany, U.S.-Hungary, U.S.-Macedonia, and U.S.-Slovakia routes effective upon consummation of the transfers of the international section 214 authorizations specified in this Memorandum Opinion and Order and Declaratory Ruling.

31. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, SunCom Wireless Licensee Company, LLC and SunCom Wireless Puerto Rico License Co., LLC SHALL RELINQUISH their existing authority under section 214 to serve the U.S.-Montenegro route effective upon consummation of the transfers of the international section 214 authorizations specified in this Memorandum Opinion and Order and Declaratory Ruling.

32. IT IS FURTHER ORDERED that pursuant to section 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b), the petition for declaratory ruling filed by T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc. IS GRANTED to the extent specified in this Memorandum Opinion and Order and Declaratory Ruling,

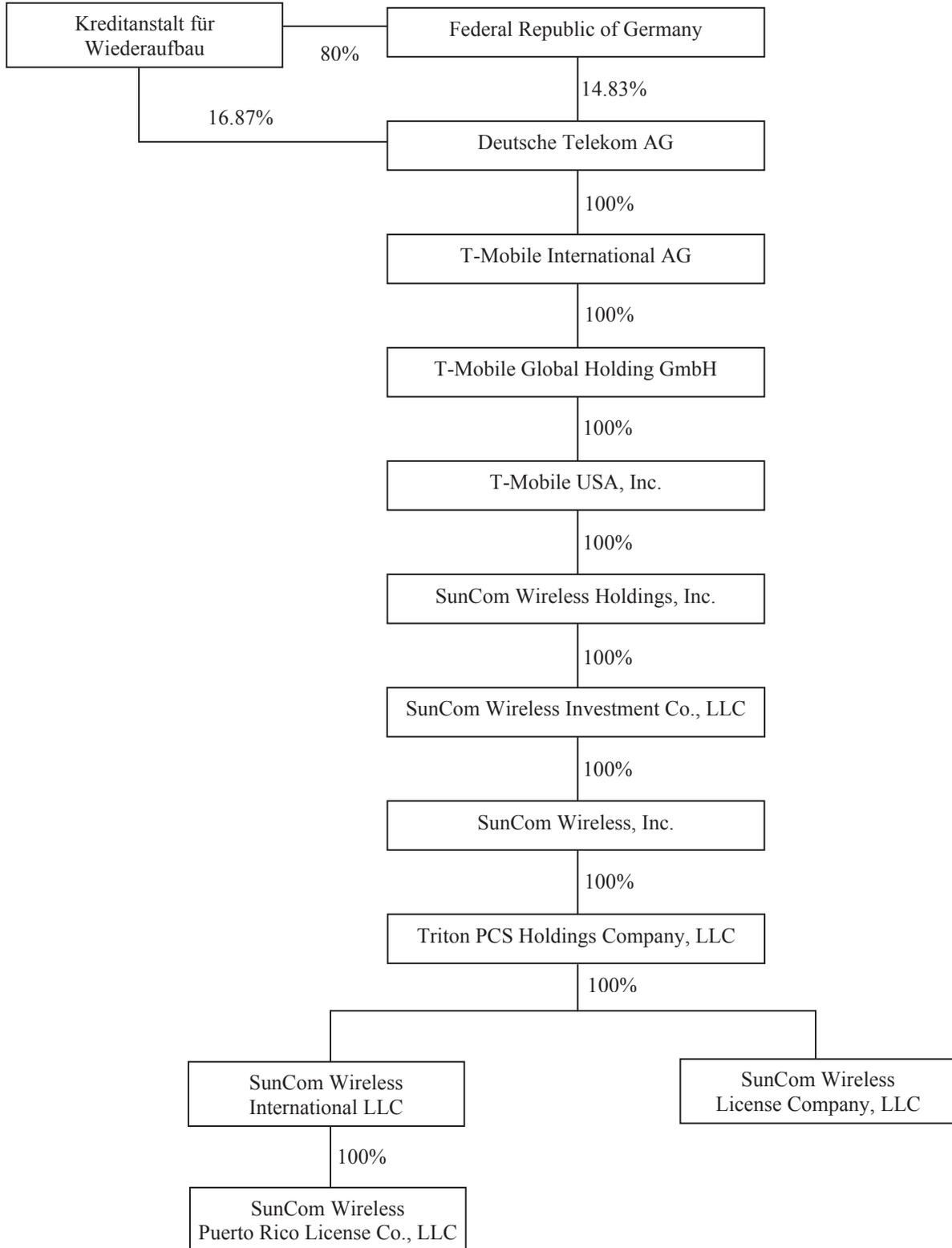
33. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 309, 310(b), 310(d), the Petition to Adopt Conditions to Authorizations and Licenses filed jointly by the U.S. Department of Homeland Security, U.S. Department of Justice, and the Federal Bureau of Investigation on January 7, 2008 and amended on January 9, 2008 IS GRANTED. Grant of the applications and the declaratory ruling IS CONDITIONED UPON compliance with the commitments set forth in the Executive Branch Agreements.

34. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A
Post-Transaction Organizational Chart



APPENDIX B

Executive Branch Petition and 2008 Amendment

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of
SunCom Wireless Holdings, Inc.,
Transferor,
and
T-Mobile USA, Inc.
Transferee
for Consent to Transfer Control of
Licenses and Authorizations Pursuant to
Sections 214 and 310(d) of the
Communications Act
WT Docket No. 07-237

PETITION TO ADOPT CONDITIONS TO
AUTHORIZATIONS AND LICENSES

Pursuant to Section 1.41 of the Federal Communications Commission’s (“FCC” or
“Commission”) rules,⁸² the Department of Homeland Security (“DHS”), with the Department of
Justice (“DOJ”) and the Federal Bureau of Investigation (“FBI”) (collectively, the “Agencies”),
respectfully submit this Petition to Adopt Conditions to Authorizations and Licenses (“Petition”).
Through this Petition, the Agencies advise the Commission that they have no objection to the
Commission granting its consent in the above-referenced proceeding, provided that the
Commission condition the grant on compliance by Deutsche Telekom AG (“DT”), T-Mobile
USA, Inc. (“T-Mobile”) and SunCom Wireless Holdings, Inc. (“SunCom”) with the

⁸² 47 C.F.R. § 1.41.

commitments and undertakings contained in the Agreement dated as of January 12, 2001 (“Agreement”) and amended as of January 4, 2007 (so in original, intended to be January 4, 2008, “Amendment”) between DT, T-Mobile and SunCom and the Agencies. The Agreement is attached to the Commission’s decision consenting to DT’s acquisition of VoiceStream Wireless Corporation (FCC 01-142, released Apr. 27, 2001), of which T-Mobile is the successor-in-interest. The Amendment is attached as Exhibit 1.

In the above-captioned proceeding, T-Mobile and SunCom (together, the “Applicants”) have sought Commission consent to transfer control of SunCom’s wholly-owned, indirect licensee subsidiaries and their FCC licenses and authorizations to T-Mobile.⁸³ Upon consummation of the proposed transaction, SunCom and its licensee subsidiaries will become wholly-owned, indirect subsidiaries of T-Mobile, and thus wholly-owned, indirect subsidiaries of DT.

As the Commission is aware, the Agencies have taken the position that their ability to satisfy their obligations to protect the national security, enforce the laws, and preserve the safety of the public could be impaired by transactions in which foreign entities will own or will operate a part of the U.S. telecommunications system, or in which foreign-located facilities will be used to provide domestic telecommunications services to U.S. customers. After discussions with representatives of DT, T-Mobile and SunCom in connection with the proposed request, the Agencies have concluded that the commitments set forth in the Agreement and Amendment will help ensure that the Agencies and other entities with responsibility for enforcing the law, protecting the national security, and preserving public safety can proceed in a legal, secure, and

⁸³ See FCC File Nos. 0003178152, 0003178835, ITC-T/C-20071001-00404, ITC-T/C-20071001-00405 and ISP-PSR-20071001-00013.

confidential manner to satisfy these responsibilities. Accordingly, the Agencies hereby advise the Commission that they withdraw the request to defer action of November 23, 2007, and that they have no objection to the Commission granting the above-referenced applications, provided that the Commission conditions its consent on DT's and T-Mobile's compliance with the commitments set forth in the Agreement and Amendment.

The Agencies are authorized to state that the Applicants do not object to the grant of this Petition.

Respectfully submitted,

/S/ STEWART A. BAKER
Mr. Stewart A. Baker
Assistant Secretary of Policy
United States Department of Homeland
Security
3801 Nebraska Ave., N.W.
Washington, D.C. 20528

/S/ KENNETH L. WEINSTEIN
Mr. Kenneth L. Weinstein
Assistant Attorney General for National Security
United States Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

/S/ ELAINE N. LAMMERT
Ms. Elaine N. Lammert
Deputy General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

AMENDMENT

T-MOBILE USA, INC. ("T-Mobile"), SUNCOM WIRELESS HOLDINGS, INC. ("SunCom") and DEUTSCHE TELEKOM AG ("Deutsche Telekom"), on the one hand, and THE U.S. DEPARTMENT OF JUSTICE ("DOJ"), THE FEDERAL BUREAU OF INVESTIGATION ("FBI"), and THE U.S. DEPARTMENT OF HOMELAND SECURITY ("DHS" and, together with DOJ and FBI, the "USG Parties"), on the other (referred to individually as a "Party" and collectively as the "Parties"), hereby agree as follows:

Recitals

Whereas, Deutsche Telekom, VoiceStream Wireless Corporation, and VoiceStream Wireless Holding Corporation ("VoiceStream Holdings"), on the one hand, and the FBI and DOJ, on the other, entered into an Agreement dated as of January 12, 2001, with respect to the acquisition of VoiceStream Holdings by a wholly-owned subsidiary of Deutsche Telekom ("the Agreement"); and

Whereas, T-Mobile is the successor in interest to VoiceStream Holdings under the Agreement referenced above; and

Whereas, T-Mobile remains a 100% indirect subsidiary of Deutsche Telekom; and

Whereas, T-Mobile plans to purchase a 100% interest in SunCom and to make SunCom a wholly-owned subsidiary of T-Mobile, subject to approval by the Federal Communications Commission ("FCC") and the DOJ and the Federal Trade Commission, as well as shareholder approval; and

Whereas, T-Mobile and SunCom have filed applications with the FCC seeking approval for the transfer of control of SunCom to, and merger with, T-Mobile (WT Docket No. 07-237, ULS File Nos. 0003178512 and 0003178835, IBFS File Nos. ITC-T/C-20071001-00404, ITC-T/C-20071001-00405 and ISP-PDR-20071001-00013) ("the Applications"); and

Whereas, in accordance with Section 7.2 of the Agreement, T-Mobile and SunCom have requested the FCC to condition the grant of the Applications on compliance with the terms of the Agreement;

Now therefore, T-Mobile, Deutsche Telekom, SunCom and the USG Parties hereby agree that the Agreement referenced above shall be amended as follows:

Agreement

1. The first paragraph of the Agreement shall hereby be amended by replacing "THE FEDERAL BUREAU OF INVESTIGATION ("FBI") and THE U.S. DEPARTMENT OF JUSTICE ("DOJ")" with "THE FEDERAL BUREAU OF INVESTIGATION ("FBI"), THE U.S. DEPARTMENT OF JUSTICE ("DOJ"), and THE U.S. DEPARTMENT OF HOMELAND SECURITY ("DHS")."

2. The Recitals of the Agreement shall hereby be amended by deleting "and" at the end of the fourteenth recital, adding "and" at the end of the fifteenth recital, and adding as the sixteenth recital: "WHEREAS, the Parties acknowledge that the provisions of this Agreement will apply to SunCom Wireless Holdings, Inc. following its acquisition by T-Mobile USA, Inc., successor in interest to VoiceStream Holdings and an indirect, wholly owned subsidiary of Deutsche Telekom AG, and that SunCom Wireless Holding, Inc. will be a 'U.S. Subsidiary' pursuant to Section 1.21 of this Agreement;"

3. Section 5.12 of the Agreement shall hereby be amended to add the following notice/contact information for DHS as the fifth paragraph thereof, immediately prior to the paragraph beginning "Deutsche Telekom AG":

U.S. Department of Homeland Security
Assistant Secretary for Policy
3801 Nebraska Ave., N.W.
Washington, D.C. 20528

4. Sections 1, 2 and 3 of this Amendment shall become effective concurrently with the closing of T-Mobile's acquisition of SunCom. In the event that such closing does not occur, Sections 1, 2 and 3 of this Amendment shall be void and of no force or effect.

5. Upon the execution of this Amendment by all the Parties, the USG Parties shall promptly notify the FCC that, provided the FCC adopts a condition substantially the same as set forth in Section 7.2 of the Agreement, the USG Parties have no objection to the FCC's grant of the pending Applications described in the Recitals to this Agreement.

This Amendment is executed on behalf of the Parties:

UNITED STATES DEPARTMENT OF JUSTICE

by C. Steele, Chief of Staff

By: Kenneth L. Weinstein Date: 12-17-07
Kenneth L. Weinstein
Assistant Attorney General for National Security
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

U.S. DEPARTMENT OF HOMELAND SECURITY

By: *[Signature]* Date: Jan 4, 2007
Stewart A. Baker
Assistant Secretary of Policy
3801 Nebraska Avenue, N.W.
Washington, D.C. 20528

FEDERAL BUREAU OF INVESTIGATION

By: *Elaine N. Lammert* Date: 12/21/07
Ms. Elaine N. Lammert
Deputy General Counsel
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

DEUTSCHE TELEKOM AG

By: _____ Date: _____
Dr. Ulrich Zwach, L.L.M.
Vice President Regulatory and Public Law
Group Legal Affairs
Friedrich-Ebert-Allee 140
53113 Bonn, Germany

T-MOBILE USA, INC.

By: _____ Date: _____
Brian Kirkpatrick
Executive Vice President and Chief Financial Officer
12920 SE 38th Street
Bellevue, WA 98006

SUNCOM WIRELESS HOLDINGS, INC.

By: *Eric Haskell* Date: 12/17/07
Eric Haskell
Executive Vice President and Chief Financial Officer
1100 Cassatt Road
Berwyn, PA 19312

FEDERAL BUREAU OF INVESTIGATION

By: _____ Date: _____
Ms. Elaine N. Lammert
Deputy General Counsel
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

DEUTSCHE TELEKOM AG

By: U. Zwach Date: 7 Dec 2007
Dr. Ulrich Zwach, LL.M.
Vice President Regulatory and Public Law
Group Legal Affairs
Friedrich-Ebert-Allee 140
53113 Bonn, Germany

T-MOBILE USA, INC.

By: _____ Date: _____
Brian Kirkpatrick
Executive Vice President and Chief Financial Officer
12920 SE 38th Street
Bellevue, WA 98006

SUNCOM WIRELESS HOLDINGS, INC.

By: _____ Date: _____
Eric Haskell
Executive Vice President and Chief Financial Officer
1100 Cassatt Road
Berwyn, PA 19312

FEDERAL BUREAU OF INVESTIGATION

By: _____ Date: _____
Ms. Elaine N. Lammert
Deputy General Counsel
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

DEUTSCHE TELEKOM AG

By: _____ Date: _____
Dr. Ulrich Zwach, L.L.M.
Vice President Regulatory and Public Law
Group Legal Affairs
Friedrich-Ebert-Allee 140
53113 Bonn, Germany

T-MOBILE USA, INC.

By:  _____ Date: 12/7/2007
Brian Kirkpatrick
Executive Vice President and Chief Financial Officer
12920 SE 38th Street
Bellevue, WA 98006

SUNCOM WIRELESS HOLDINGS, INC.

By: _____ Date: _____
Eric Haskell
Executive Vice President and Chief Financial Officer
1100 Cassatt Road
Berwyn, PA 19312

FEDERAL BUREAU OF INVESTIGATION

By: _____ Date: _____
Ms. Elaine N. Lammert
Deputy General Counsel
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

DEUTSCHE TELEKOM AG

By: _____ Date: _____
Dr. Ulrich Zwach, L.L.M.
Vice President Regulatory and Public Law
Group Legal Affairs
Friedrich-Ebert-Allee 140
53113 Bonn, Germany

T-MOBILE USA, INC.

By: _____ Date: _____
Brian Kirkpatrick
Executive Vice President and Chief Financial Officer
12920 SE 38th Street
Bellevue, WA 98006

SUNCOM WIRELESS HOLDINGS, INC.

By: Eric Haskell Date: 12/17/07
Eric Haskell
Executive Vice President and Chief Financial Officer
1100 Cassatt Road
Berwyn, PA 19312

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Applications of T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc. for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-237.

Today's decision allows the smallest of the four nationwide carriers to acquire spectrum and wireless customers in five states, as well as Puerto Rico and the U.S. Virgin Islands. The unopposed transaction does not trigger the 70 MHz spectrum screen that the FCC applied until several months ago (when, over my strong objection, it raised that cap to 95 MHz). Nor should it decrease competition in any part of the United States because the company being acquired does business almost entirely outside the existing footprint of the acquiring company. Instead, this transaction has strong potential to accelerate the deployment of new high-speed services to customers of the acquired company. Accordingly, I am pleased to approve this item.