

## DESCRIPTION OF THE TRANSACTION AND PUBLIC INTEREST STATEMENT

This application seeks the Commission's approval for the assignment of various Advanced Wireless Service ("AWS-1") licenses held by two subsidiaries of AT&T Inc. (collectively, with its subsidiaries and affiliates, "AT&T") to T-Mobile License LLC ("T-Mobile License"), a wholly owned subsidiary of T-Mobile USA, Inc. (collectively, "T-Mobile USA" and, together with AT&T, the "Applicants"). As discussed in more detail below, the proposed license assignments will serve the public interest and are fully consistent with the provisions of the Communications Act of 1934, as amended (the "Act"). The proposed assignments will help T-Mobile USA address its spectrum needs in the subject markets to enable it to better address the growing demands of consumers for wireless data and content services.

### I. DESCRIPTION OF TRANSACTION

The proposed license assignments are part of the break-up provision of the agreement between AT&T and Deutsche Telekom AG ("DT"), for the sale of T-Mobile USA from DT to AT&T. That agreement has now been terminated, triggering the requirement for AT&T to assign in full or in part certain AWS-1 licenses held by two of its subsidiaries to T-Mobile License.

Specifically, under the terms of the proposed license assignments:

- New Cingular Wireless PCS, LLC will assign seven AWS-1 licenses in full and four in part to T-Mobile License; and
- AT&T Mobility Spectrum LLC will assign 13 AWS-1 licenses in full and 23 in part to T-Mobile License.

These licenses (or portions thereof) being assigned to T-Mobile License are detailed in the accompanying FCC Forms 603. T-Mobile USA is not acquiring other assets, facilities or customers through this transaction. In addition, no international Section 214 authorizations will be assigned through the proposed transaction.

### II. DESCRIPTION OF THE APPLICANTS

#### A. AT&T

AT&T is a leading provider in the United States of wireless, Wi-Fi, high-speed Internet, local and long distance voice, mobile broadband, and advanced TV services, as well as worldwide wireless coverage and IP-based business communications services. The Commission has concluded repeatedly that AT&T has the necessary qualifications required by the Act, and nothing has changed to disturb this conclusion.<sup>1</sup>

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<sup>1</sup> See, e.g., *Application of AT&T Inc. and Qualcomm Incorporated For Consent to Assign Licenses and Authorizations*, Order, FCC 11-188 (2011); *Applications of AT&T Inc. and Cellco*

**B. T-Mobile USA**

T-Mobile USA, a wholly owned subsidiary of DT, is headquartered in Bellevue, Washington and offers nationwide wireless voice and data services to residential and business customers. The Commission has previously concluded that T-Mobile USA has the requisite character and qualifications to hold Commission authorizations.<sup>2</sup>

Through DT, foreign entities and persons hold 100 percent of the attributable ownership interests in T-Mobile USA. As detailed in *Exhibit 2*, DT's interest in T-Mobile USA and its qualifications as a foreign corporation to hold indirect ownership interests in common carrier licenses have been previously authorized by the FCC under the Act.<sup>3</sup> In that order, the Commission approved a petition for declaratory ruling under Section 310(b)(4) of the Act authorizing up to 100 percent foreign investment in T-Mobile USA and its licensee subsidiaries by DT and its German shareholders, and by the German government through its investment in DT.<sup>4</sup>

**III. THE PROPOSED LICENSE ASSIGNMENTS ARE CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY.**

Section 310(d) of the Act requires that the Commission determine whether the proposed license assignments are consistent with the public interest, convenience and necessity.<sup>5</sup> In reviewing license-assignment applications, the Commission first assesses whether the proposed

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*Partnership d/b/a Verizon Wireless*, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8720 ¶ 29 (2010) (“*AT&T/Verizon Order*”); *Applications of AT&T Inc. and Centennial Communic’ns Corp.*, Memorandum Opinion and Order, 24 FCC Rcd 13915, 13931 ¶ 33 (2009) (“*AT&T Centennial Order*”).

<sup>2</sup> See *Applications of T-Mobile USA, Inc. and Suncom Wireless Holdings, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 2515, 2519-20 ¶ 10 (2008).

<sup>3</sup> On April 27, 2001, the Commission issued an order granting the applications and Section 310(b)(4) petition of VoiceStream Wireless Corporation (later renamed T-Mobile USA) for the authority to transfer control of its licensee subsidiaries to a wholly-owned U.S. subsidiary of DT to effect a merger between VoiceStream and DT. See *Applications of VoiceStream Wireless Corp., Powertel, Inc. and Deutsche Telekom AG*, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9799 (2001) (“*VoiceStream/DT Order*”).

<sup>4</sup> See *id.* at 9845. The transfer of control of T-Mobile USA to DT was consummated on May 31, 2001. The FCC recently approved DT's foreign investment in connection with the transfer of control of WALLC License, LLC to T-Mobile USA. FCC Public Notice, *International Authorizations Granted*, ISP-PDR-20090826-00008, DA No. 09-2631 (rel. Dec. 24, 2009). Since that time, no changes inconsistent with the authority granted by the Commission have taken place with respect to T-Mobile USA's foreign ownership.

<sup>5</sup> Section 310(d) provides that “no construction permit, or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any matter . . . to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.” 47 U.S.C. § 310(d).

transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules. The Commission then weighs any potential public interest harms of the proposed transaction against the potential public interest benefits.

Where license assignment/transfer applications demonstrate on their face that they will not result in harms to competition and will not violate the Act or Commission rules or frustrate or undermine policies and enforcement of the Act, the Commission has determined that such applications do not require extensive review.<sup>6</sup> Put another way, where a transaction will not reduce competition and the acquiring party possesses the requisite qualifications to control the licenses at issue, and "where, as here, potential harms are unlikely, Applicants' demonstration of potential benefits need not be as certain."<sup>7</sup>

The proposed license assignments meet this standard. The assignments would comply with all Commission rules and regulations, would require no waivers, and would not result in any violation of the Act or any other applicable statutory provision. The proposed assignee is fully qualified to hold the licenses, having previously been found qualified by the Commission. Nor does the transaction present any competitive issues. As such, the proposed license assignments would not frustrate or impair the Commission's implementation and enforcement, or the objectives, of the Act or other statutes. Finally, as discussed below, the proposed assignments would further the public interest by enabling T-Mobile USA to acquire spectrum to enable it to better address the growing demands of consumers for wireless data and content services.

**A. The Proposed License Assignments Comply with the Communications Act and Associated Regulations.**

The proposed license assignments comply fully with the Act and FCC regulations. No waivers are being requested or are necessary to complete the transaction. None of the licenses to be assigned is subject to any bidding credits or restrictions on ownership based on designated entity status, and none is currently subject to installment financing. Thus, the proposed transactions do not implicate unjust enrichment payments and no amounts are due to the

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<sup>6</sup> See *Applications of Tele-Communications, Inc. and AT&T Corp.*, Memorandum Opinion and Order, 14 FCC Rcd 3160, 3170 (1999); *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee*, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14740-41 (1999).

<sup>7</sup> *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor To SBC Communications, Inc., Transferee*, Memorandum Opinion and Order, 13 FCC Rcd 21292, 21315 (1998) (quoting *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18138 (1998)); see also *Applications of Pacific Telesis Group and SBC Communications Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 2624, 2626-27 (1997); *Comcast Cellular Holdings, Inc. and SBC Communications, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 10604, 10608-09 (WTB 1999).

Commission or the U.S. Treasury with respect to any of the licenses to be assigned. Further, none of the licenses was awarded through competitive bidding within the past three years.

T-Mobile USA and its licensee subsidiaries, including T-Mobile License, are also qualified to hold the licenses. T-Mobile USA, through its subsidiaries, currently holds numerous FCC licenses, having previously been found qualified by the Commission.<sup>8</sup>

**B. The Proposed License Assignments Raise No Competitive Concerns.**

The proposed transaction seeks only to assign spectrum licenses and no other assets. The proposed assignments will not result in a combination of the Applicants' businesses or the transfer of customers or facilities or any other assets. AT&T will retain spectrum in each of the affected markets and will continue to serve customers in each of these markets. As such, the proposed transaction will in no way reduce the number of wireless competitors or choices available to consumers in any market.

In evaluating the potential competitive effects of license assignments/transfers, the Commission has applied a two-part initial screen that identifies local markets in which no competitive harm clearly arises from the transaction. The first part of the screen is based on the size of the post-transaction Herfindahl-Hirschman Index ("HHI") market concentration and the change in HHI; the second part of the screen examines the input market for spectrum available for the provision of mobile telephony/broadband services.<sup>9</sup> Because the proposed transaction would effect no change in customer market share, the first prong of the screen is plainly not triggered. In addition, the second part, or "spectrum screen," is also not triggered here as T-Mobile USA will not exceed the applicable spectrum screen in any CMA where it is acquiring spectrum.<sup>10</sup>

**C. The Proposed License Assignments Will Benefit the Public.**

Exponential growth in consumers' wireless usage and the accompanying spectrum crunch facing the wireless industry are both well-documented.<sup>11</sup> The volume of wireless traffic is

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<sup>8</sup> See *Applications of T-Mobile USA, Inc. and Suncom Wireless Holdings, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd 2515, 2519-20 ¶ 10 (2008).

<sup>9</sup> *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, Memorandum Order and Opinion and Declaratory Ruling, 23 FCC Rcd 17444, ¶ 41 (2008).

<sup>10</sup> Consistent with informal guidance from Commission staff in other recent transactions, attached hereto as *Exhibit 3* is a chart depicting T-Mobile USA's CMRS spectrum holdings in each of the subject markets both before and subsequent to the consummation of the license assignments described herein. Also attached hereto as *Exhibit 4* is a chart depicting the identity of the various terrestrial-based wireless competitors holding spectrum in each market subject to the instant transaction.

<sup>11</sup> See, e.g., *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Fifteenth Report, 26 FCC Rcd 9664, 9617, 9779-81 (discussing increase in the number of

expanding rapidly as data-intensive mobile applications are proliferating, consumers have a growing appetite for streaming video and social networking sites, and cloud-based computing services are fast emerging. Cisco has estimated that global mobile traffic will increase 26-fold between 2010 and 2015.<sup>12</sup> CTIA reported that data usage on wireless networks more than doubled during 2010,<sup>13</sup> and that the average user's data usage grew 132 percent to over 350 megabytes per month.<sup>14</sup> As consumer demand for high speed wireless data has exploded in recent years, carriers face the challenge of ensuring they have sufficient spectrum to meet the rapidly expanding needs of consumers.

T-Mobile USA is well aware of this challenge. As the company has previously stated, T-Mobile USA is facing spectrum constraints in many markets, despite substantial investments in spectrum and network facilities. In particular, T-Mobile USA is experiencing rapidly rising demand for data services. At the end of the third quarter of 2011, 10.1 million T-Mobile USA customers were using 3G/4G smartphones, up 40 percent as compared to the end of the third quarter of 2010.<sup>15</sup> As the voice-centric customer migrates to data-centric services provided over HSPA+, T-Mobile USA has found:

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mobile wireless connections and number of mobile devices used by consumers, and noting significant growth in mobile data traffic from 2008-2009); Julius Genachowski, Chairman, Federal Communications Commission, Remarks as Prepared for Delivery, Department of Commerce, at 5 (Oct. 14, 2011) (describing additional demands being placed on networks by smartphones and tablets and the need to address the spectrum crunch); FCC Staff Technical Paper, Mobile Broadband the Benefits of Additional Spectrum (Oct. 2010) *available at* <http://download.broadband.gov/plan/fcc-omnibus-broadband-initiative-%28obi%29-technical-paper-mobile-broadband-benefits-of-additional-spectrum.pdf> (finding that wireless data usage is increasing substantially and “spectrum will become an increasingly scarce resource in the near term . . . .”); Julius Genachowski, Chairman, Federal Communications Commission, Remarks as Prepared for Delivery, CTIA Wireless 2011, at 5-6 (Mar. 22, 2011) (today’s “explosion in demand for mobile services places unsustainable demands on our invisible infrastructure—spectrum . . . And the coming spectrum crunch threatens American leadership in mobile and the benefits it can deliver to our country.”).

<sup>12</sup> Cisco, *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2010-2015* at 2 (Feb. 1, 2011) (“*Cisco 2010-2015 Forecast*”), [http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white\\_paper\\_c11-520862.pdf](http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.pdf).

<sup>13</sup> ROBERT F. ROCHE AND LIZ DALE, CTIA’S WIRELESS INDUSTRY INDICES 10 (May 2011) (“CTIA’S WIRELESS INDUSTRY INDICES”) (providing year-end 2010 results) (“Wireless carriers reported carrying 226.5 billion MB of data traffic in the last six months of 2010, up 110 percent from 107.8 billion MB in the last half of 2009.”); see Robert Roche, *Wireless Data Traffic Grew 110% from 2009-2010*, CTIA: THE WIRELESS ASSOCIATION® BLOG, May 31, 2011, <http://blog.ctia.org/2011/05/31/wireless-data-traffic-grew-110-from-2009-2010> (finding 110 percent growth rate year-over-year from 2009 to 2010).

<sup>14</sup> CTIA’S WIRELESS INDUSTRY INDICES at 227-28.

<sup>15</sup> *T-Mobile USA Reports Third Quarter 2011 Results*, at 1 (Nov. 10, 2011), [http://s.tmocache.com/Company/pdf/English/TMUS\\_Q3\\_2011\\_Press\\_Release.pdf](http://s.tmocache.com/Company/pdf/English/TMUS_Q3_2011_Press_Release.pdf).

- increased per user data usage as mobile applications proliferate and develop;
- increased load from mobile applications, which typically involve frequent interaction with the web;
- significant growth of mobile video and streaming media traffic; and
- additional data traffic as voice-centric communications become supplanted by data-centric messaging, including the use of VoIP.<sup>16</sup>

All of this translates into a significant increase in demand for spectrum across T-Mobile USA's market areas.

To cope with this growing demand from its customers, T-Mobile USA requires access to additional spectrum. Although T-Mobile USA has employed, and will continue to employ, ways to use its existing spectrum efficiently and avoid spectrum exhaust, access to additional spectrum will enhance the company's ability to compete in the wireless marketplace in the future. This spectrum will assist T-Mobile USA in coping with consumers' increasing demands for more bandwidth-intensive wireless data and content services in the relevant markets.

#### IV. COMPLIANCE WITH DOJ/FBI/DHS AGREEMENT

T-Mobile USA requests that the Commission condition its grant of the assignments from AT&T on compliance with the provisions of the National Security Agreement entered into on January 12, 2001, as amended, between DT and the Department of Justice, the Federal Bureau of Investigation, and the Department of Homeland Security.<sup>17</sup> 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 . . . .

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

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<sup>16</sup> Acquisition of T-Mobile USA, Inc. by AT&T, Inc., Declaration of Dr. Kim Kyllesbech Larsen, WT Docket No. 11-65, at 6-7 (April 21, 2011).

<sup>17</sup> See Agreement between DT, VoiceStream, VoiceStream Wireless Holding Corp., the DOJ and the FBI (Jan. 12, 2001), which was appended by the Commission to the *VoiceStream-DT Order*. The National Security Agreement was amended in 2008 to add DHS as a party. The requirements of the National Security Agreement are binding upon DT and DT's wholly owned subsidiaries, including T-Mobile USA.

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 is designed to address national security law enforcement, and public safety issues of the FBI and DOJ regarding the authority granted herein. Nothing in the Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. § 222(a) and (c)(1) and the FCC's implementing regulations.

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

## **V. CONCLUSION**

For the foregoing reasons, the Commission should conclude that the proposed license assignments serve the public interest, convenience and necessity. Given the absence of competitive concerns, the Applicants respectfully request that the Commission expeditiously grant the subject applications.