

## DESCRIPTION OF TRANSACTION AND PUBLIC INTEREST STATEMENT

The parties to this application request Federal Communications Commission (“FCC” or the “Commission”) consent to the assignment of the licenses for 700 MHz Lower Band Service (“700 MHz”) stations WPWU903, WQIZ362 and WPWU904, Broadband Personal Communications Services (“PCS”) station WPTK619, and Advanced Wireless Service (“AWS”) stations WQGA699 and WQGA700 from BEK Communications Cooperative (“BEK” or “Assignor”) to T-Mobile License LLC (“T-Mobile License” or “Assignee” and, together with Assignor, the “Parties”), as described herein.

The underlying license assignment transaction involves only the transfer of spectrum and not the transfer of network, other assets or customers. This transaction will allow Assignee to augment its spectrum holdings, by expanding its system capacity and thereby benefiting consumers. For the reasons set forth below, the Parties submit that Commission approval of the proposed assignments is consistent with the public interest, convenience and necessity.

### Description of the Parties

Assignee is a wholly-owned subsidiary of T-Mobile USA, Inc. (“T-Mobile USA”) and, indirectly, T-Mobile US, Inc. (“T-Mobile US”), a publicly traded company, and part of the family of companies that operate under the T-Mobile® brand names. Deutsche Telekom AG, a publicly-traded German company based in Bonn, Germany (“DT”), holds a 66.21 percent interest in T-Mobile US through its wholly-owned subsidiary T-Mobile Global Zwischenholding GmbH (“T-Mobile Global”). This subsidiary owns all of the equity and voting interests of T-Mobile Global Holding GmbH (“T-Mobile Holding”), which owns all of the equity and voting interests of Deutsche Telekom Holding B.V. (“DT Holding B.V.”),<sup>1</sup> which in turn holds the 66.21 percent interest in T-Mobile US. The remaining 33.79 percent interest in T-Mobile US is held by public shareholders. Led by a management team with decades of collective experience in the telecommunications industry, T-Mobile US is headquartered in Bellevue, Washington, offers nationwide wireless voice and data services to consumer and business customers and provides service to over 50 million subscribers. The Commission has repeatedly found that Assignee and its controlling companies have the requisite character and qualifications to hold Commission authorizations.<sup>2</sup> An FCC Form 602 providing current ownership information for

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<sup>1</sup> On December 30, 2013, the Commission granted the request to add a new direct parent company, DT Holding B.V., into T-Mobile US’s ownership chain. DT Holding B.V. is a limited liability company organized in the Netherlands. See File No. ISP-PDR-20130924-00006 (filed Sept. 24, 2013 and supplemented Oct. 24, 2013); *Non Streamlined International Applications/Petitions Accepted for Filing*, Public Notice, Report No. TEL-01639NS (rel. Oct. 28, 2013).

<sup>2</sup> See, e.g., *Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 2322, ¶ 19 (WTB/IB 2013) (“*T-Mobile-MetroPCS Order*”); *Applications of T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 2515, 2519-20 ¶ 10 (2008).

Assignee is on file with the Commission.<sup>3</sup>

Assignor is an independent provider of telecommunications and other technology-based services to residential and commercial customers in rural North Dakota. The cooperative was created in 1952 as a local rural telephone cooperative and has expanded its operations to include Internet-related services, long distance and other telecommunications services. Assignor's financial, technical, and legal qualifications to hold and control FCC licenses are matters of public record. An FCC Form 602 providing current ownership information for Assignor is on file with the Commission.

### **Description of the Transaction**

Each of the Parties is a party to a License Purchase Agreement dated as of November 3, 2014 (the "Purchase Agreement"). Assignor currently holds the Broadband 700 MHz, AWS, and PCS licenses described in Attachment A hereto (the "Licenses"). Pursuant to the Purchase Agreement, Assignor has agreed to assign to Assignee, and Assignee has agreed to accept, the full spectrum bandwidth in the full license areas covered by the Licenses.

### **Transition Issues**

The transaction involves only the assignment of spectrum and does not include the transfer of any other assets, facilities or customers. There will be no loss of an existing service provider in any of the market areas subject to the transaction at issue. Assignor is not providing service utilizing the Licenses to end-user customers of its own. Thus, there will be no discontinuance, reduction, loss or impairment of service to its end-user customers.

The Parties intend to consummate the subject transaction promptly following Commission consent by "Final Order" (unless finality is waived by Assignee) and the satisfaction of certain contractual conditions.

### **Public Interest Statement**

Section 310(d) of the Communications Act of 1934, as amended (the "Act"), requires that the Commission determine whether the transaction presented herein is consistent with the public interest, convenience and necessity.<sup>4</sup> To make that assessment, the Commission generally

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<sup>3</sup> Based on prior guidance from the Wireless Telecommunications Bureau, the Form 602 filing for T-Mobile USA satisfies the ownership reporting requirements of Sections 1.919 and 1.2112(a) of the Commission's rules for its wholly-owned subsidiaries. See 47 C.F.R. §§ 1.919, 1.2112(a); see also *Wireless Telecommunications Bureau Answers Frequently Asked Questions Concerning Reporting of Ownership Information on FCC Form 602*, Public Notice, 14 FCC Rcd 8261, 8264-65 (WTB 1999) ("Form 602 FAQ's").

<sup>4</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).

considers four factors: “(1) whether the transaction would result in the violation of the Act or any other applicable statutory provision; (2) whether the transaction would result in a violation of Commission rules; (3) whether the transaction would substantially frustrate or impair the Commission’s implementation or enforcement of the Act or interfere with the objectives of that and other statutes; and (4) whether the transaction promises to yield affirmative public interest benefits.”<sup>5</sup> As part of its public interest analysis, the Commission reviews whether the transaction will have anti-competitive effects and, if so, whether there are overriding public interest benefits that would support a grant.

The Commission has determined that transfer and assignment applications that demonstrate on their face that a transaction will yield affirmative public interest benefits and will neither violate the Act or Commission rules nor frustrate or undermine policies and enforcement of the Act do not require extensive review and expenditures of considerable resources by the Commission.<sup>6</sup> The instant application meets this standard.<sup>7</sup>

The assignment of licenses from Assignor to Assignee will yield clear public interest benefits by allowing Assignee to offer improved wireless broadband services to its customers. Specifically, the assignment of licenses will expand Assignee’s 700 MHz footprint and augment Assignee’s AWS spectrum holdings within the North Dakota 5 – Kidder Cellular Market Area (CMA584) and Bismarck, North Dakota Cellular Market Area (CMA298) and augment Assignee’s PCS spectrum holdings within the Bismarck, North Dakota Basic Trading Area (BTA045), allowing greater capacity and throughput, thereby enabling Assignee to become a stronger competitor in these markets and nationwide. Thus, Commission approval of this application will enhance competition and improve the quality of services in the wireless marketplace.

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<sup>5</sup> *SBC Communications Inc. and BellSouth Corp.*, 15 FCC Rcd 25459, 25464 (WTB/IB 2000) (citation omitted); *Ameritech Corp. and SBC Communications Inc.*, 14 FCC Rcd 14712, 14737-38 (1999) (“*Ameritech-SBC Order*”); see also *EchoStar Communications Corp., (a Nevada Corp.), Gen. Motors Corp., and Hughes Electronics Corp (Delaware Corp.) (Transferors) and EchoStar Communications Corp. (a Delaware Corp.) (Transferee)*, 17 FCC Rcd 20559, 20574 (2002); *WorldCom, Inc. and MCI Communications Corp.*, 13 FCC Rcd 18025, 18030-32 (1998); *Merger of MCI Communications Corporation and British Telecommunications plc*, 12 FCC Rcd 15351, 15367-68 (1997).

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

<sup>7</sup> The Commission has emphasized that a detailed showing of benefits is not required for transactions where there are no anti-competitive effects. The Commission stated in *Southern New England Telecomm. Corp. and SBC Communications Inc.*, 13 FCC Rcd 21292, 21315 (1998), that, in the absence of anti-competitive effects, a detailed showing of benefits is not necessary in seeking approval of a merger. Similarly, as the Commission stated in its approval of the SBC/Pacific Telesis merger, where it found that the merger would not reduce competition and that SBC possessed the requisite qualifications to control the licenses in question, “[a] demonstration that benefits will arise from the transfer is not . . . a prerequisite to our approval, provided that no foreseeable adverse consequences will result from the transfer.” *Pacific Telesis Group and SBC Communications Inc.*, 12 FCC Rcd 2624, 2626-27 (1997); see also *Comcast Cellular Holdings, Inc. and SBC Communications, Inc.*, 14 FCC Rcd 10604, 10608-09 (WTB 1999).

The assignment of licenses proposed herein will not result in any violation of the Act or any other applicable statutory provision. Moreover, the assignments fully comply with all Commission rules and regulations and require no waivers. Therefore, they do not frustrate or impair the Commission's implementation, enforcement, or objectives of the Act or other statutes.

Finally, the Licenses were initially licensed by the Commission more than three years ago, and none currently is subject to any installment financing. Additionally, the Licenses are not subject to any bidding credits or restrictions on ownership based on designated entity status; therefore, Commission approval of the assignments would not result in any unjust enrichment concerns.<sup>8</sup>

### **Spectrum Aggregation/Competition Analysis**

As discussed below, these assignments -- which will not reduce the number of competitors, service offerings or customer choices in any market -- do not raise any spectrum aggregation or competitive concerns.

Spectrum Aggregation and Competitive Analysis. Because Assignee, post-consummation, will hold only between 30 and 74 MHz of attributable spectrum in the 16 counties subject to the instant assignments and the assignment of an undefined area within North Dakota 5-Kidder under WQHV782 (AWS-A Block) contemplated from Dakota Central Cooperative, Inc. to Assignee,<sup>9</sup> Assignee's spectrum aggregation will be well below current levels requiring further competitive review (*see Exhibit 2*).<sup>10</sup>

These license assignments do not raise any competitive or other public interest concerns. As discussed above, there will be no loss of an existing service provider in any of the market areas subject to the transaction at issue. Assignor has not yet completed construction of its 700 MHz and AWS operations, and the deadline for doing so has not yet passed. For its PCS operation, Assignor does not currently have customers and is in the process of retiring its system due to its age and limited functionality compared to newer technologies since its construction. Thus, there will be no discontinuance, reduction, loss or impairment of service to end-user customers of its own or a reduction in the number of actual competitors providing service. Moreover, there are numerous other carriers holding CMRS spectrum in the markets in which Assignee is acquiring spectrum (*see Exhibit 3*), which will ensure that a high degree of competition continues to exist.

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<sup>8</sup> See 47 C.F.R. § 1.2111.

<sup>9</sup> Spectrum aggregation and competitor data for both transactions are included in Exhibit 2 and Exhibit 3 attached hereto, because the market area of WQHV782 and the market area of WQGA700, when aggregated, comprise the A Block AWS spectrum in the entirety of CMA584-North Dakota 5-Kidder.

<sup>10</sup> See *Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, FCC 14-63, ¶¶ 70-135 (rel. June 2, 2014).

### Foreign Ownership of Assignee

As noted above, Assignee is a wholly-owned subsidiary of T-Mobile USA. T-Mobile USA in turn is a wholly owned direct subsidiary of T-Mobile US, a U.S.-organized entity. DT, a publicly-traded German corporation,<sup>11</sup> holds a 66.21 percent interest in T-Mobile US and, indirectly, in T-Mobile USA through the intermediate companies described above.

On December 30, 2013, the Commission granted, subject to certain conditions, T-Mobile US's Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act on behalf of its subsidiaries and affiliates holding common carrier radio licenses that it would not serve the public interest to prohibit more than 25 percent foreign ownership in T-Mobile US.<sup>12</sup> That ruling also specifically permitted: (i) the specific foreign entities with a non-controlling interest in T-Mobile US (*i.e.*, Kreditanstalt für Wiederaufbau and the Federal Republic of Germany), to increase their equity and/or voting interests, at some future time up to and including a non-controlling indirect 49.99 percent equity and/or voting interest; and (ii) the specific foreign entities with a controlling interest in T-Mobile US (*i.e.*, DT Holding B.V., T-Mobile Holding, T-Mobile Global and DT) to increase their interests, at some future time, up to and including 100 percent of T-Mobile US's equity and/or voting interests.<sup>13</sup> T-Mobile US's petition was filed in connection with an internal corporate reorganization that resulted in the insertion of a new direct parent company, DT Holding B.V., a limited liability company organized in the Netherlands, into T-Mobile US's ownership chain. That declaratory ruling includes all authority available under the rules, including the standard terms and conditions set forth in Section 1.994 of the rules, and thus extends to Assignee (among other licensee subsidiaries of T-Mobile USA) and the types of wireless service licenses that are the subject of the instant transaction. The foreign ownership in the licensees as approved has not materially changed since December 30, 2013 and will not be affected by the instant transaction.

### Compliance with DOJ/FBI/DOD Agreement by Assignee

Assignee also requests that the Commission condition its grant of the assignment of the Licenses on compliance with the provisions of the Agreement entered into on January 12, 2001, as amended, between DT, VoiceStream Wireless Corporation and VoiceStream Wireless Holding Corporation, on the one hand, and the Department of Justice and the Federal Bureau of Investigation, on the other (the "Agreement").<sup>14</sup> The Agreement prescribed that the following

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<sup>11</sup> Germany is a signatory to the World Trade Organization ("WTO") Basic Agreement on Telecommunications.

<sup>12</sup> See File No. ISP-PDR-20130924-00006 (filed Sept. 24, 2013 and supplemented Oct. 24, 2013); *International Authorizations Granted*, Public Notice, Report No. TEL-01650, DA 14-24 (rel. Jan. 9, 2014).

<sup>13</sup> *Id.*

<sup>14</sup> See *Applications of VoiceStream Wireless Corp., Powertel, Inc. and Deutsche Telekom, AG*, Memorandum Opinion and Order, 16 FCC Rcd 9779, Appendix B (2001) (Agreement between DT, VoiceStream

specific language be included in the conditional grant of interests in FCC licenses in the specific context of the Agreement:

It is further ordered, that the authorizations and the licenses related thereto are subject to compliance with the provisions of the Agreement attached hereto 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 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.<sup>15</sup>

Assignee hereby requests that the Commission impose a similar condition on the grant of the assignment of the Licenses to it.

### **Conclusion**

The Parties respectfully submit that Assignee is qualified to obtain the Licenses and that Commission approval of the requested assignments will serve the public interest, convenience and necessity.<sup>16</sup> Accordingly, the Parties respectfully request that the Commission grant the instant application.

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Wireless Corporation, VoiceStream Wireless Holding Corporation, the Department of Justice and the Federal Bureau of Investigation dated Jan. 12, 2001). The Agreement was amended in 2008 to add the Department of Homeland Security as a party and also amended in 2013 in connection with license transfers associated with the T-Mobile/MetroPCS transaction. *See Applications of T-Mobile USA, Inc. and SunCom Wireless Holding, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 2515, Appendix B (2008); *T-Mobile/MetroPCS Order*, 28 FCC Rcd at Appendix B, Amendment No. 2.

<sup>15</sup> *Applications of VoiceStream Wireless Corp., Powertel, Inc. and Deutsche Telekom, AG*, 16 FCC Rcd at Appendix B, Exhibit A (Condition to FCC Licenses) at Exhibit A.

<sup>16</sup> *See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, 18 FCC Rcd 20604 (2003).

ATTACHMENT A

BEK LICENSES

FCC Call Sign	Area	Market Name	Channel Block
WPWU903	CMA298, Sub Market 5	Bismarck, North Dakota	700 MHz – C
WQIZ362	CMA584, Sub Market 3	North Dakota 5 – Kidder	700 MHz – B
WPWU904	CMA584, Sub Market 3	North Dakota 5 – Kidder	700 MHz – C
WQGA699	CMA298, Sub Market 0	Bismarck, North Dakota	AWS – A
WQGA700	CMA584, Sub Market 1	North Dakota 5 – Kidder	AWS – A
WPTK619	BTA045, Sub Market 2	Bismarck, North Dakota	PCS – C4