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

In the Matter of	)	
	)	
Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc.	)	WT Docket No. 12-301
	)	
For Consent To Transfer of Control of Licenses and Authorizations	)	

MEMORANDUM OPINION AND ORDER AND DECLARATORY RULING

Adopted: March 12, 2013 **Released: March 12, 2013**

By the Chief, Wireless Telecommunications Bureau, and Chief, International Bureau:

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I. INTRODUCTION

1. In this Order, we consider the applications of Deutsche Telekom, T-Mobile USA and MetroPCS (together, the "Applicants") for Commission consent to the transfer of control of a number of Personal Communications Service ("PCS") and Advanced Wireless Services ("AWS-1") licenses and leases, and one lower 700 MHz license to a newly combined entity, ultimately to be named T-Mobile US, Inc.[1] Further, the Applicants also seek Commission approval to the transfer of control of international Section 214 authorizations held by T-Mobile USA and MetroPCS to Newco.

2. Based on the record before us and our review of the competitive effects of the proposed transaction, we find that approval of the transaction will serve the public interest. In considering the applications before us, we evaluate the likely competitive effects of the proposed transaction at both the local and national levels. The proposed transaction raises horizontal competition issues because it would result in the combination of overlapping mobile wireless coverage and services in various markets, as well as the transfer of customers of two current competitors to the newly combined entity, referred to by the Applicants as "Newco."[2] On these issues, we find that the transaction is not likely to result generally in competitive or other public interest harms. In addition, to the extent there may be some possible competitive harms in selected geographic areas, we find that these possible competitive harms are outweighed by certain public interest benefits likely to result from the proposed transaction. Such benefits include the facilitation of Long Term Evolution ("LTE") deployment, the expansion of the MetroPCS brand into new geographical markets, the development of a more robust, national network, improved quality of service, and the strengthening of the fourth largest nationwide service provider's ability to compete in the mobile broadband services market. In summary, we find that any potential public interest harms would be outweighed by the resulting public interest benefits and we conclude that,

[1] Deutsche Telekom has the right to select a name other than T-Mobile US, Inc. prior to the closing. *See* Deutsche Telekom AG Application, ULS File No. 0005446627, Exhibit 1, Description of Transaction and Public Interest Statement at 3 n.5 ("Public Interest Statement"). The Applicants designated ULS File No. 0005446627 as the lead wireless application for this transaction.

[2] Whereas the Applicants indicate that T-Mobile US, Inc. will be the name of the newly combined entity, the Applicants explain in the Public Interest Statement that they are using the term "Newco" instead as a convenience to distinguish the restructured entity from the existing companies. *See* Public Interest Statement at 3, n. 6. The Applicants use the term "Newco" throughout their filings in the record. *See, e.g.*, Public Interest Statement, Joint Opposition, and the Applicants Motion.

on balance, the transaction is in the public interest. Accordingly, we approve it for the reasons discussed below.

II. BACKGROUND

A. Description of Applicants

1. T-Mobile USA

3. T-Mobile USA, Inc. ("T-Mobile USA") is a wholly-owned, indirect subsidiary of Deutsche Telekom AG ("Deutsche Telekom"), a publicly-traded German corporation. T-Mobile USA states that, through Deutsche Telekom, foreign entities and persons indirectly hold 100 percent of the attributable ownership interests in T-Mobile USA.[3] T-Mobile USA notes the Commission has previously authorized Deutsche Telekom's interest in T-Mobile USA and its licensee subsidiaries pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended (the "Communications Act").[4]

4. T-Mobile USA, headquartered in Bellevue, Washington, is the fourth largest wireless service provider in the United States in terms of network coverage, number of subscribers, and revenues.[5] As of the third quarter of 2012, its network covered approximately 283 million people and approximately 1.2 million square miles.[6] At the end of the fourth quarter of 2012, T-Mobile USA reported a total of 33.4 million U.S. subscribers, and service revenues totaling $4.1 billion.[7] At the beginning of 2012, T-Mobile USA announced plans to invest $4 billion towards network modernization and its 4G evolution effort, including the planned launch of LTE technology in 2013.[8]

2. MetroPCS

5. MetroPCS Communications, Inc. ("MetroPCS") is a publicly-traded corporation listed on the New York Stock Exchange and headquartered in Richardson, Texas.[9] MetroPCS describes itself as a facilities-based mobile broadband communications provider offering wireless services in certain major metropolitan areas in the United States predominantly on an unlimited, flat-rate, no-long-term-contract basis.[10] MetroPCS is the fifth largest wireless service provider in the United States in terms of network coverage, number of subscribers, and revenues.[11] As of the third quarter of 2012, its network covered

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[3] *See* Public Interest Statement at 7.

[4] 47 U.S.C. § 310(b)(4). *See* Public Interest Statement at 56-57 (citing VoiceStream Wireless Corporation, Powertel, Inc., and Deutsche Telekom AG, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 FCC Rcd 9779 (2001) ("*DT-VoiceStream Order*")).

[5] *See* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services, WT Docket No. 10-133, *Fifteenth Annual Mobile Wireless Competition Report*, 26 FCC Rcd 9664, 9695-97, Tables 1-4 (2011) ("*Fifteenth Annual Competition Report*").

[6] *See UBS Investment Research, US Wireless 411, Version 44.0*, 16 November 2012, Table 9 at 14. We derived our measures of network coverage from Mosaik and U.S. Census data.

[7] T-Mobile Release, *T-Mobile USA Reports Fourth Quarter 2012 Operating Results* (Feb. 27, 2013), available at http://newsroom.t-mobile.com/articles/t-mobile-2012-fourth-quarter-operating-results (last visited Mar. 4, 2013).

[8] T-Mobile Release, *T-Mobile USA Announces Reinvigorated Challenger Strategy*, available at http://newsroom.t-mobile.com/articles/ReinvigoratedChallengerStrategy (last visited Mar. 4, 2013).

[9] *See* Public Interest Statement at 2.

[10] *See id*. MetroPCS states that all of its broadband wireless communications services are provided through wholly-owned indirect subsidiaries. *Id.*

approximately 107 million people and approximately 118 thousand square miles.[12] At the end of the fourth quarter of 2012, MetroPCS reported annual service revenues totaling $4.5 billion,[13] and approximately 8.9 million subscribers.[14]

B. Description of Transaction

6. On October 18, 2012, T-Mobile USA and MetroPCS filed applications (collectively, the "Applications") pursuant to Sections 214 and 310(d) of the Communications Act[15] seeking Commission consent to the transfer of control of PCS and AWS-1 licenses and leases, one lower 700 MHz license, and international Section 214 authorizations, held by T-Mobile USA and its wholly-owned and controlled subsidiaries and by MetroPCS and its wholly-owned and controlled subsidiaries to a newly combined entity, Newco.[16]

7. Pursuant to the terms of the Business Combination Agreement,[17] Deutsche Telekom's indirect, wholly-owned subsidiary, T-Mobile Global Holding GmbH ("T-Mobile Holding"), would transfer all of its ownership interests in T-Mobile USA to MetroPCS, and MetroPCS would then issue stock to T-Mobile Holding or its designee. Consummation of the transaction would result in Deutsche Telekom holding 74 percent of the ownership interests in Newco and existing MetroPCS shareholders holding the remaining 26 percent. Both the MetroPCS brand and the T-Mobile brand would be retained, offered through separate business units.

8. According to the Applicants, the proposed transaction would combine complementary spectrum portfolios that, in some markets, would result in larger blocks of contiguous spectrum to allow for higher speeds, greater throughput rates, and increased capacity, and in other markets, would augment the spectrum holdings of the combined company to enable broader and more robust LTE deployment.[18]

(Continued from previous page)

[11] *See Fifteenth Annual Competition Report*, 26 FCC Rcd at 9695-97, Tables 1-4.

[12] *See UBS Investment Research, US Wireless 411, Version 44.0*, 16 November 2012, Table 9 at 14. We derived our measures of network coverage from Mosaik and U.S. Census data.

[13] MetroPCS Press Release, *MetroPCS Reports Fourth Quarter and Year End 2012 Results* (Feb. 26, 2013), available at http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&id=1751461 (last visited Mar. 4, 2013).

[14] MetroPCS Press Release, *MetroPCS releases Fourth Quarter 2012 Subscriber Results* (Jan. 7, 2013), available at http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&ID=1771515&highlight= (last visited Mar. 4, 2013).

[15] 47 U.S.C. §§ 214, 310(d).

[16] The Applicants maintain that the public interest would be served by also granting Section 310(b)(4) authority with respect to MetroPCS's common carrier licenses. *See* Public Interest Statement at 56-57. Deutsche Telekom requests that the Commission condition its grant of the transfer of control applications on compliance with the provisions of the National Security Agreement ("NSA") entered into on January 12, 2001, as amended, between Deutsche Telekom and the Department of Justice, the Federal Bureau of Investigation and the Department of Homeland Security, which is appended to the *DT-Voicestream Order*, 16 FCC Rcd 9779 (2001). *See* Public Interest Statement at 61-62. *See also* Applications of T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc. For Consent to Transfer Control of Licenses and Authorizations and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 07-237, *Memorandum Opinion and Order*, 23 FCC Rcd 2515 (2008) ("*T-Mobile-SunCom Order*") (appending the NSA amendment).

[17] The Business Combination Agreement, dated as of October 3, 2012, is attached as Exhibit 5 to ULS File No. 0005446627.

[18] *See* Public Interest Statement at iii-iv, 12, 27-34.

The Applicants also argue that the proposed transfers would allow the newly combined company to make more efficient use of the spectrum and offer improved services to consumers across the country.[19]

9. As proposed, T-Mobile USA and MetroPCS would combine their AWS-1 and PCS spectrum, as well as one lower 700 MHz license, in 248 Cellular Market Areas ("CMAs") across the nation. Post-transaction, in markets in which there is geographical overlap, Newco would hold a maximum of 110 megahertz of spectrum covering approximately 141 million people, or 46 percent of the population of the mainland United States.

C. Transaction Review Process

10. On October 3, 2012, Deutsche Telekom, MetroPCS, and T-Mobile USA announced the agreement under which T-Mobile USA and MetroPCS would be combined.[20] On October 17, 2012, the Wireless Telecommunications Bureau ("WTB" or the "Bureau") released a public notice establishing a docket for the proposed transaction, WT Docket No. 12-301, and designated the *ex parte* status of the Applications as permit-but-disclose under the Commission's rules.[21] On October 17, 2012, the Bureau also issued protective orders, as requested by the Applicants, to ensure that any confidential or proprietary documents submitted to the Commission would be adequately protected from public disclosure, and to announce the process by which interested parties could gain access to confidential information filed in the record.[22]

11. After the Applications were filed on October 18, 2012, WTB released a public notice announcing that the applications were accepted for filing and sought comment on the proposed transaction.[23] Petitions to deny were due November 26, 2012, oppositions were due December 6, 2012, and replies were due December 17, 2012. In response to the public notice, the Commission received four comments, a Joint Opposition from the Applicants, and two replies.[24]

12. On November 30, 2012, the Bureau released a public notice announcing that Numbering Resource Utilization and Forecast ("NRUF") reports and local number portability ("LNP") data would be

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[19] *See id.*

[20] *See* T-Mobile Release, *T-Mobile USA and MetroPCS to combine, creating Value Leader in US Wireless Marketplace* (Oct. 3, 2012), available at http://newsroom.t-mobile.com/articles/t-mobile-metropcs-combine (last visited Mar. 4, 2013).

[21] Commission Opens Docket for Proposed Transfer of Control of MetroPCS Communications, Inc. to Deutsche Telekom AG, WT Docket No. 12-301, *Public Notice*, DA-12-1663 (rel. Oct. 17, 2012).

[22] *See* Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. For Consent To Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 12-301, *Protective Order*, DA 12-1664 (rel. Oct. 17, 2012), Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. For Consent To Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 12-301, *Second Protective Order*, DA 12-1665 (rel. Oct. 17, 2012).

[23] *See* Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. For Consent To Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 12-301, *Public Notice*, DA 12-1730 (rel. Oct. 26, 2012).

[24] *See* Appendix A *infra*. The Greenlining Institute's January 22, 2013 comments were filed after the comment period closed ("Greenlining Opening Comments"). The Applicants filed a motion responding to the Greenlining's comments on January 24, 2013 ("Applicants Motion"). We will treat Greenlining's late-filed comments as informal comments to the Commission. *See* 47 C.F.R. § 1.41.

placed into the record and adopted a protective order pursuant to which the Applicants and third parties would be allowed to review the specific NRUF reports and LNP data placed into the record.[25]

13. On December 20, 2012, pursuant to 308(b) of the Communications Act, the Bureau requested a number of documents and additional information from T-Mobile USA and MetroPCS.[26]

III. STANDARD OF REVIEW, PUBLIC INTEREST FRAMEWORK AND OVERVIEW

14. Pursuant to Sections 214(a) and 310(d) of the Communications Act, we must determine whether the Applicants have demonstrated that the proposed transfer of control of licenses, authorizations, and spectrum leasing arrangements will serve the public interest, convenience, and necessity.[27] In making this assessment, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act,[28] other applicable statutes, and the Commission's rules.[29] If the transaction does not violate a statute or rule, we next consider whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.[30] We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.[31] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.[32]

15. Our public interest evaluation also necessarily encompasses the "broad aims of the Communications Act," which include, among other things, a deeply rooted preference for preserving and

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[25] *See* Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. For Consent To Assign or Transfer Control of Licenses and Authorizations, Numbering Resource Utilization and Forecast Reports and Local Number Portability Reports to be Placed Into the Record, Subject to Protective Order, WT Docket No. 12-301, *Public Notice*, DA 12-1934 (rel. Nov. 30, 2012); Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. For Consent To Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 12-301, *NRUF/LNP Protective Order*, DA 12-1935 (rel. Nov. 30, 2012).

[26] *See* Letters from Ruth Milkman, Chief, WTB, FCC, to Dan Menser, T-Mobile License LLC, Deutsche Telekom AG, and Mark A. Stachiw, MetroPCS Communications, Inc., WT Docket No. 12-301 (Dec. 20, 2012).

[27] *See* 47 U.S.C. §§ 214(a), 310(d).

[28] Section 310(d) requires that we consider the application as if the proposed assignee were applying for the licenses directly under Section 308 of the Act, 47 U.S.C. § 308. *See, e.g.*, Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses, WT Docket No. 12-4, *Memorandum Opinion and Order and Declaratory Ruling*, 27 FCC Rcd 10698, 10710 ¶ 28 (2012) ("*Verizon Wireless-SpectrumCo Order*").

[29] *See, e.g.*, Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company For Consent to Assign and Transfer Licenses, WT Docket No. 12-240, *Memorandum Opinion and Order*, 27 FCC Rcd 16459, 16463-64 ¶ 10 (2012) ("*AT&T-WCS Order*"); *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710 ¶ 28; Application of AT&T Inc. and Qualcomm Incorporated For Consent to Assign Licenses and Authorizations, WT Docket No. 11-18, *Order*, 26 FCC Rcd at 17589 ¶ 23 (2011) ("*AT&T-Qualcomm Order*"); Applications of AT&T Inc. and Cellco Partnership d/b/a/ Verizon Wireless, WT Docket No. 09-104, *Memorandum Opinion and Order*, 25 FCC Rcd 8704, 8716 ¶ 22 (2010) ("*AT&T-Verizon Wireless Order*").

[30] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16463-64 ¶ 10; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710 ¶ 28; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17598-99 ¶ 23; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8716 ¶ 22.

[31] *Id.*

[32] *Id.*

enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.[33] Our public interest analysis also can entail assessing whether the proposed transaction will affect the quality of communications services or result in the provision of new or additional services to consumers.[34] In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.[35]

16. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.[36] The Commission and the Department of Justice ("DOJ") each have independent authority to examine the competitive impacts of proposed communications mergers and transactions involving transfers of Commission licenses, but the standards governing the Commission's competitive review differ somewhat from those applied by the DOJ.[37] Like the DOJ, the Commission considers how a transaction will affect competition by defining a relevant market, looking at the market power of incumbent competitors, and analyzing barriers to entry, potential competition and the efficiencies, if any, that may result from the transaction.[38] The DOJ, however, reviews telecommunications mergers pursuant to Section 7 of the Clayton Act, and if it wishes to block a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.[39] The DOJ's review is also limited solely to an examination of the competitive effects of the acquisition, without reference to diversity, localism, or other public interest considerations.[40] Under the Commission's review, the Applicants must show that the transaction will serve the public

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[33] *See, e.g.*, Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements, WT Docket No. 08-246, *Memorandum Opinion and Order*, 24 FCC Rcd 13915, 13928 ¶ 28 (2009) ("*AT&T-Centennial Order*"); Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements and Petition For Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444, 17461 ¶ 27 (2008) ("*Verizon Wireless-ALLTEL Order*"); Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order*, 23 FCC Rcd 17570, 17580 ¶ 20 (2008) ("*Sprint Nextel-Clearwire Order*").

[34] *See, e.g.*, *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10752 ¶ 143; *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20.

[35] *See, e.g.*, *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 24; *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20.

[36] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16464-65 ¶ 12; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 25; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8717 ¶ 24.

[37] *See, e.g.*, *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599-17600 ¶ 25; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8717 ¶ 24.

[38] *See, e.g.*, *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 29; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 28; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 21.

[39] 15 U.S.C. § 18.

[40] *See, e.g.*, *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 29; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 28; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 21.

interest; otherwise the application is set for hearing.[41] Thus, the Commission's competitive analysis under the public interest standard is somewhat broader, for example, considering whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market.[42] If the Commission is unable to find that the proposed transaction serves the public interest for any reason or if the record presents a substantial and material question of fact, we must designate the application(s) for hearing.

IV. QUALIFICATIONS OF APPLICANTS

17. As noted previously, when evaluating applications for consent to assign or transfer control of licenses and authorizations, Section 310(d) of the Communications Act requires the Commission to determine whether the proposed transaction will serve "the public interest, convenience and necessity."[43] 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."[44] Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transaction meet the requisite qualifications requirements to hold and transfer licenses under Section 310(d) and the Commission's rules.[45] Section 310(d) also obligates the Commission to consider whether the proposed assignee is qualified to hold Commission licenses.[46]

18. *Discussion*. As an initial matter, we note that no parties have raised issues with respect to the basic qualifications of T-Mobile USA or MetroPCS. The Commission generally does not reevaluate the qualifications of assignors unless issues related to basic qualifications have been sufficiently raised in petitions to warrant designation for hearing.[47] We find that there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Communications Act and our rules, regulations, and policies, of T-Mobile USA or MetroPCS.

19. In addition, no issues have been raised with respect to the basic qualifications of the

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[41] 47 U.S.C. § 309(e); *see also AT&T-WCS Order*, 27 FCC Rcd at 16464-65 ¶ 12; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 25; Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, *Memorandum Opinion and Order and Report and Order*, 23 FCC Rcd 12348, 12364 ¶ 30 (2008) ("*Sirius-XM Order*"); News Corp. and DIRECTV Group, Inc. and Liberty Media Corp. for Authority to Transfer Control, *Memorandum Opinion and Order*, 23 FCC Rcd 3265, 3277 ¶ 22 (2008) ("*Liberty Media-DIRECTV Order*").

[42] *See, e.g.*, *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 25; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8717 ¶ 24; *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 29.

[43] 47 U.S.C. § 310(d).

[44] 47 U.S.C. §§ 308, 310(d); *see also, e.g.*, *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10712 ¶ 33; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17600 ¶ 27; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8718 ¶ 26.

[45] *See* 47 U.S.C. §§ 214(a), 310(d); 47 C.F.R. § 1.948; *see also, e.g.*, *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10712 ¶ 33; *AT&T-Qualcomm Order*, 26 FCC Rcd at 175600-01 ¶ 27; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8718 ¶ 26.

[46] *See, e.g.*, *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10712 ¶ 33; *AT&T-Qualcomm Order*, 26 FCC Rcd at 175601 ¶ 28; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8720 ¶ 29.

[47] *See, e.g.*, Applications for the Assignment of License from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc., WT Docket No. 06-114, *Memorandum Opinion and Order*, 21 FCC Rcd 14863, 14872 ¶ 16 (2006); Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc., WT Docket No. 06-96, *Memorandum Opinion and Order*, 21 FCC Rcd 13580, 13589-90 ¶ 14 (2006).

proposed assignee, T-Mobile USA.[48] Moreover, T-Mobile USA has previously and repeatedly been found qualified to hold Commission licenses,[49] we therefore find that there is no reason to evaluate their basic qualifications further. We examine the foreign ownership of T-Mobile USA in Section VII., *infra*.[50]

V. POTENTIAL PUBLIC INTEREST HARMS

A. Competitive Overview and Market Definitions

1. Competitive Overview

20. T-Mobile USA is a nationwide service provider whose network currently covers approximately 283 million people, or approximately 92 percent of the population of the mainland United States.[51] MetroPCS is a multi-metro service provider whose network currently covers approximately 101 million people, or approximately 33 percent of the population of the mainland United States.[52] The geographical overlap of the two providers' spectrum assets would encompass 248 CMAs covering approximately 141 million people, or approximately 46 percent of the population of the mainland United States. In those markets, Newco would hold a maximum of 110 megahertz of spectrum post-transaction. Post-transaction, Newco would have approximately 42 million subscribers,[53] and would be the fourth largest service provider in the United States.

21. Horizontal transactions such as the proposed transaction raise potential competitive concerns when the merged entity has the incentive and the ability, either by itself or in coordination with other service providers, to raise prices, lower quality, or otherwise harm competition in a relevant market. We examine the likelihood of competitive harm first through assessing the extent to which horizontal market concentration, as measured by the Herfindahl-Hirschman Index ("HHI"), would increase as a result of the proposed transaction.[54] Secondly, we assess whether any substantial increases in horizontal market concentration would provide the combined entity with the ability to act anti-competitively, either unilaterally or in concert with other service providers, at the local or national level.

22. In addition, the Commission undertakes a case-by-case review of the competitive effects of an increase in spectrum holdings on the marketplace.[55] Spectrum is an essential input in the provision

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[48] Newco would indirectly wholly own and control (through T-Mobile USA) the T-Mobile USA/MetroPCS licenses. *See* Section VII.A.1. *infra*.

[49] We note that the Commission has previously evaluated the qualifications of T-Mobile USA to hold Commission licenses. *See, e.g., Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10712 ¶ 33; *T-Mobile-SunCom Order*, 23 FCC Rcd at 2520-21 ¶ 10.

[50] *See* Section VII. *infra*.

[51] *See* Section II.A.1. *supra*.

[52] *See* Declaration of Douglas S. Glen, Attachment 3 to Public Interest Statement ("Glen Declaration"), at ¶ 3. Further, we note that T-Mobile USA's 4G HSPA+ network currently covers 224 million people, while MetroPCS covers approximately 97 million people with its 4G LTE network. *See* Public Interest Statement at 34.

[53] As of the end of the fourth quarter of 2012, T-Mobile USA had 33.4 million subscribers, and MetroPCS had 8.9 million subscribers. *See* Section II.A. *supra*.

[54] To assess whether the increase in horizontal market concentration is significant or not, we consider the absolute level of the post-transaction HHI, which is a widely utilized measure of market concentration, as well as the change in the HHI. *See* Section V.B.1. *infra*.

[55] *See, e.g., Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31; *AT&T-Centennial Order*, 24 FCC Rcd at 13938 ¶ 50; *Biennial Review of CMRS Spectrum Aggregation Limits*, 16 FCC Rcd at 22693-94 ¶ 50.

of mobile wireless services, and ensuring that sufficient spectrum is available for incumbent licensees as well as potential new entrants is critical to promoting effective competition and innovation in the marketplace.[56] In our analysis below, we therefore also evaluate the competitive implications of an increase in spectrum holdings arising from the proposed transaction. In previous transactions, the Commission has used an initial screen to help identify those markets that provide particular reason for further competitive analysis.[57] However, the Commission is not limited in its consideration of potential competitive harms solely to markets identified by its initial screen.[58]

23. In considering the applications before us, as detailed below, we find that the transaction is not likely to result generally in competitive or other public interest harms in the provision of mobile wireless services.

2. Market Definitions

24. We begin our competitive analysis by determining the appropriate market definitions for this transaction,[59] including a determination of the product market, geographic markets, the input market for spectrum suitable and available for the provision of mobile wireless services, and the market participants.

a. Product Market

25. In its most recent transaction orders, the Commission has used in its competitive analysis a combined "mobile telephony/broadband services" product market[60] that is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).[61]

26. The Greenlining Institute asserts that the Commission should, in addition to examining the proposed transaction's effects on the market for wireless services as a whole, consider the market for "value wireless services" as a separate market.[62] Greenlining contends that it is likely that consumers

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[56] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16467 ¶ 20; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17601-02 ¶ 30; *see also Fifteenth Annual Competition Report*, 26 FCC Rcd at 9820 ¶ 266.

[57] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16467 ¶ 21; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

[58] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16467 ¶ 21; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; *see also, e.g.*, *AT&T-Qualcomm Order*, 26 FCC Rcd at 17609-10 ¶¶ 49-50; *AT&T-Centennial Order*, 24 FCC Rcd at 13946-48 ¶¶ 71-74, ¶ 85.

[59] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 23; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 52; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 32.

[60] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 24; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10717 ¶ 53; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17603 ¶ 33; *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37. The Commission has previously determined that there are separate relevant product markets for interconnected mobile voice and data services, and also for residential and enterprise services, but found it reasonable to analyze all of these services under a combined mobile telephony/broadband services product market. *See, e.g.*, *AT&T-Qualcomm Order*, 26 FCC Rcd at 17603 ¶ 33; *AT&T-Verizon Wireless Order* 25 FCC Rcd at 8721 ¶ 35; *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37.

[61] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 24; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10717 ¶ 53; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602-03 ¶¶ 32-33; *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37.

[62] Greenlining Institute ("Greenlining") Opening Comments at 5.

view "value" wireless services as one set of products and "premium" wireless services as another set of products.[63] They further assert that the Applicants describe T-Mobile USA and MetroPCS as two value wireless providers who will be able to more effectively compete against high-cost, premium providers, such as the other three nationwide providers.[64]

27. The Applicants contend that "all wireless services" is the appropriate product market for reviewing the proposed transaction.[65] In addition, the Applicants argue that Greenlining does not offer a basis for departing from the Commission's well-established precedent.[66]

28. We do not find sufficient evidence in the record to support Greenlining's contention that there is a separate product market for "value wireless services." Rather, we find that T-Mobile USA and MetroPCS provide services in the combined mobile telephony/broadband services product market and therefore use the product market definition that the Commission has applied in recent transactions: a combined "mobile telephony/broadband services" product market that is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).[67]

b. Geographic Markets

29. The Commission has found that the relevant geographic markets for wireless transactions generally are "local"[68] and also has evaluated a transaction's competitive effects at the national level where a transaction exhibits certain national characteristics that provide potential cause for concern.[69]

30. The Applicants analyze the competitive effects of the proposed transaction using both a local market and a national market.[70] Greenlining argues that the Commission should consider the impact of this transaction at both a local and national level.[71] Greenlining also contends that, in analyzing the local markets, the Commission should examine the proposed transaction's competitive effects within the regional markets that MetroPCS serves.[72]

31. Because most consumers use their mobile telephony/broadband services at or close to

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[63] Greenlining Opening Comments at 5.

[64] Greenlining Opening Comments at 5.

[65] *See* Public Interest Statement at 46-47; Applicants Motion at 7.

[66] *See* Applicants Motion at 7.

[67] *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 24; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10717 ¶ 53; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602-03 ¶¶ 32-33; *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37.

[68] *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 25; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 54; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604 ¶ 34. In addition, the *AT&T-Centennial Order* concluded that with respect to the continental United States, the most appropriate geographic level for market analysis was the local level. However, that order also found that Puerto Rico and the U.S. Virgin Islands were each a separate relevant geographic market because of their unique characteristics, including their limited geographic scope and isolated nature. *See also AT&T–Centennial Order*, 24 FCC Rcd at 13934 ¶¶ 41-42.

[69] *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 25; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 54; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604-05 ¶¶ 34-37.

[70] Public Interest Statement at 45-52.

[71] Greenlining Opening Comments at 6.

[72] Greenlining Opening Comments at 6.

where they live, work, and shop, they purchase mobile telephony/broadband services from service providers that offer and market services locally.[73] Service sold in distant locations is generally not a good substitute for service near a consumer's home or work.[74] In addition, service providers compete at the local level in terms of coverage and service quality.[75] Consistent with past transactions, we will primarily use CMAs as the local geographic markets in which we analyze the potential competitive harms arising from spectrum aggregation as a result of these transactions.[76]

32. However, as the Commission has previously recognized, two key competitive variables – monthly prices and service plan offerings – do not vary for most providers across most geographic markets.[77] The four nationwide mobile telephony/broadband service providers (AT&T, Verizon Wireless, Sprint, and T-Mobile), as well as some other providers, including MetroPCS, set the same rates for a given plan everywhere and advertise nationally.[78] In addition, certain key elements in the provision of mobile wireless services, such as the development and deployment of mobile broadband equipment and devices, are done largely on a national scale.[79]

33. For purposes of evaluating the competitive effects of the proposed transaction, we use both local and national markets. Although the proposed transaction does not cover all markets in the United States, it does span 248 CMAs that are geographically dispersed throughout the United States, 45 of which are Top 100 markets.[80] Moreover, T-Mobile USA is currently the fourth largest nationwide service provider in the United States, and MetroPCS, a multi-metro service provider, is the fifth largest, and as a result of this transaction, Newco would combine spectrum from T-Mobile USA and MetroPCS in markets covering close to 50 percent of the population.[81] We therefore find it appropriate to consider any potential national competitive effects that may result from this transaction.

c. Input Market for Spectrum

34. When assessing spectrum aggregation in its review of wireless transactions, the

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[73] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 56; *AT&T-Centennial Order*, 24 FCC Rcd at 13934 ¶ 41; *see also Fifteenth Annual Competition Report*, 26 FCC Rcd at 9693 ¶¶ 23-24.

[74] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 56; *AT&T-Centennial Order*, 24 FCC Rcd at 13934 ¶ 41.

[75] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 56; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8728 ¶ 50.

[76] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 56; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604 ¶ 34.

[77] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 27; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 57; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604-05 ¶¶ 34-37.

[78] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 27; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718-19 ¶ 57; *Fifteenth Annual Competition Report*, 26 FCC Rcd at9724-33 ¶¶ 80-102, 9748-50 ¶¶ 129-36.

[79] *See AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 27; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 57.

[80] In those 248 CMAs, MetroPCS holds 10 to 60 megahertz of spectrum, including 10 to 40 megahertz of spectrum in the Top 100 markets. In addition, MetroPCS has a substantial market presence in 76 CMAs, primarily in the Northeast, Michigan, Georgia, Texas, Florida, and California, including 31 Top 100 markets (as ranked by 2010 population).

[81] *See* Sections II.A. and V.A..1 *supra*.

Commission evaluates the current spectrum holdings of the acquiring firm that are "suitable" and "available" in the near term for the provision of mobile telephony/broadband services.[82] The Commission has previously determined that cellular, PCS, Specialized Mobile Radio ("SMR"), and 700 MHz band spectrum, as well as AWS-1 and Broadband Radio Service ("BRS") spectrum where available,[83] and most recently, WCS spectrum, all meet this definition.[84] The Commission has traditionally applied an initial screen to help identify local markets where a proposed transaction might raise particular concerns with respect to spectrum holdings.[85] The current screen identifies local markets where, after the transaction, an entity would hold more than approximately one-third of the total spectrum suitable and available for the provision of mobile telephony/broadband services.[86] No party in this proceeding has challenged the Commission's current evaluation of what spectrum meets the definition of suitability and availability.

35. We note that the Commission recently initiated a review of its policies toward mobile spectrum holdings. In the *Mobile Spectrum Holdings NPRM*, the Commission noted, though, that during the pendency of the rulemaking proceeding, it would continue to apply its current case-by-case approach to evaluate mobile spectrum holdings in secondary market transactions and initial spectrum licensing after auctions.[87] Our analysis of the proposed transaction therefore employs the recently modified spectrum screen, as fully described in the *AT&T-WCS Order*.[88]

d. Market Participants

36. The Applicants claim additional sources of competition continue to emerge, including mobile virtual network operators ("MVNOs").[89] The Applicants claim that Newco will continue to face competition from nationwide MVNOs and resellers that compete successfully on the strength of voice and data services that are sold at relatively low prices under their own proprietary brand names.[90] The Applicants conclude that because of the transformative role that MVNOs play in local markets, the Commission should consider these providers to be market participants.[91]

37. As in previous transactions, we exclude MVNOs and resellers from consideration when computing initial concentration measures, although we acknowledge that non-facilities-based service

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[82] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16469-70 ¶ 29; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17605-06 ¶ 38; *AT&T-Centennial Order*, 24 FCC Rcd at 13933 ¶ 39.

[83] *See, e.g.*, *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591-92 ¶ 53.

[84] *See AT&T-WCS Order*, 27 FCC Rcd at 16470-71 ¶ 31. In the *AT&T-WCS Order*, we found that 20 megahertz of WCS spectrum – comprised of the paired A and B Blocks – are suitable and available for the provision of mobile telephony/broadband services.

[85] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16469-70 ¶ 29; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

[86] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16469-70 ¶ 29; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17473 ¶ 54.

[87] *See* Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269, *Notice of Proposed Rulemaking*, 27 FCC Rcd 11710, 11718 ¶ 16 n.59 (2012) ("*Mobile Spectrum Holdings NPRM*"). *See also AT&T-WCS Order*, 27 FCC Rcd at 16470 ¶ 30.

[88] *See generally AT&T-WCS Order*, 27 FCC Rcd 16459.

[89] *See* Public Interest Statement at 55.

[90] *See id.*

[91] *See id.*

options may have an impact in the marketplace and in some instances may provide additional constraints against anticompetitive behavior.[92] Accordingly, we will consider only facilities-based entities providing mobile telephony/broadband services using cellular, broadband PCS, SMR, 700 MHz, AWS-1, BRS and WCS spectrum to be market participants, but continue to assess the effect of MVNOs and resellers in our competitive evaluation.

B. Competitive Effects of Transaction

1. Initial Screen

38. As discussed above, we first apply a two-part screen to help identify local markets where competitive concerns are more likely.[93] The first part of the screen is based on the size of the post-transaction HHI, and the change in the HHI.[94] The second part of the screen identifies local markets where an entity would acquire more than approximately one-third of the total spectrum suitable and available for the provision of mobile telephony/broadband services.[95]

39. For purposes of determining HHIs in this transaction, we use our December 2011 NRUF database, which tracks phone number usage by all telecommunications service providers.[96] Consistent with our discussion of the local geographic market definition above, in calculating market shares and market concentration, we analyze wireless provider data for CMAs. Our initial HHI screen identifies 19 CMAs, covering approximately 36 million people, or 12 percent of the population of the mainland United States,[97] 13 of which are Top 100 markets.[98] Therefore, we focus our analysis of the competitive effects

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[92] *See, e.g., AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8722 ¶ 41; *AT&T-Centennial Order*, 24 FCC Rcd at 13936 ¶ 45; Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 04-70, Applications of Subsidiaries of T-Mobile USA, Inc. and Subsidiaries of Cingular Wireless Corporation For Consent and Long-Term *De Facto* Lease of Licenses, WT Docket No. 04-254, Applications of Triton PCS License Company, LLC, AT&T Wireless PCS, LLC, and Lafayette Communications Company, LLC, For Consent to Assignment of Licenses, WT Docket No. 04-323, *Memorandum Opinion & Order*, 19 FCC Rcd 21522, 21563 ¶ 92 (2004) ("*Cingular-AT&T Wireless Order*").

[93] *See, e.g., AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8720-21 ¶ 32; *AT&T-Centennial Order*, 24 FCC Rcd at 13935 ¶ 43.

[94] Our initial HHI screen identifies, for further case-by-case market analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI would be 100 or greater; or (2) the change in HHI would be 250 or greater, regardless of the level of the HHI. *See, e.g., AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8724-25 ¶ 42.

[95] *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16469-70 ¶ 29; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17473 ¶ 54.

[96] These data indicate the number of assigned phone numbers that a wireless service provider has in a particular wireline rate center. Rate centers are geographic areas used by local exchange carriers for a variety of reasons, including the determination of toll rates. *See* HARRY NEWTON, NEWTON'S TELECOM DICTIONARY: 19TH EXPANDED & UPDATED EDITION 660 (July 2003). All mobile wireless providers must report to the FCC the quantity of their phone numbers that have been assigned to end users, thereby permitting the Commission to calculate the total number of mobile subscribers. For purposes of geographical analysis, the rate center data can be associated with a geographic point, and all of those points that fall within a county boundary can be aggregated together and associated with much larger geographic areas based on counties.

[97] These 19 markets are CMA 5: Detroit-Ann Arbor, MI; CMA 6: Boston-Brockton-Lowell, MA-NH; CMA 7: San Francisco-Oakland, CA; CMA 9: Dallas-Fort Worth, TX; CMA 12: Miami-Fort Lauderdale, FL; CMA 22: Tampa-St. Petersburg, FL; CMA 27: San Jose, CA; CMA 60: Orlando, FL; CMA 72: West Palm Beach-Boca Raton, FL; CMA 97: Bakersfield, CA; CMA 107: Stockton, CA; CMA 111: Vallejo-Fairfield-Napa, CA; CMA 126: Salinas-
(continued….)

that may result from a reduction in the number of facilities-based service providers on these 19 markets. In addition, we also calculate a national HHI (weighted by CMA population) and the change in the national weighted average HHI. Based on the number of connections, the post-transaction national weighted average HHI would increase **[REDACTED].**

40. We also apply our spectrum screen on a county-by-county basis to help identify particular markets for further analysis of any possible competitive effects resulting from an increase in mobile spectrum holdings. Application of the initial spectrum screen results in no local markets being triggered. Nonetheless, we examine any potential competitive effects of this spectrum combination in some specific local markets because, post-transaction, Newco would hold a substantial amount of AWS-1 spectrum.[99]

2. Competitive Analysis

41. The market for mobile telephony/broadband services in the United States is differentiated. Service providers compete not only on the basis of price but also on other variables such as plan features, call quality, geographic coverage, and customer service.[100] Competition may be harmed either through unilateral actions by the merged entity, or through coordinated interaction among service providers competing in the relevant market. We analyze below the likelihood of competitive harm at both the local and national level.

42. Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by increasing its price or otherwise harming competition.[101] In the case of the provision of mobile telephony/broadband services, in addition to increasing prices this might take the form of delaying improvements in service quality, adversely adjusting the features of a pricing plan without changing the price of the plan, or reducing the rate of new product development or other innovation in a relevant market. Incentives for such unilateral anticompetitive actions will vary with the nature of competition in the relevant markets.

43. Coordinated effects arise when competing firms, on recognizing their interdependence,

(Continued from previous page)
Seaside-Monterey, CA; CMA 137: Melbourne-Titusville, FL; CMA 142: Modesto, CA; CMA 146: Daytona Beach, FL; CMA 370: Florida 11 – Monroe; CMA 372: Georgia 2 – Dawson; CMA 375: Georgia 5 – Haralson.

[98] The 13 CMAs are CMA 5 (Detroit-Ann Arbor, MI); CMA 6 (Boston-Brockton-Lowell, MA-NH); CMA 7 (San Francisco-Oakland, CA); CMA 9 (Dallas-Fort Worth, TX); CMA 12 (Miami-Fort Lauderdale, FL); CMA 22 (Tampa-St. Petersburg, FL); CMA 27 (San Jose, CA); CMA 60 (Orlando, FL); CMA 72 (West Palm Beach-Boca Raton, FL); CMA 97 (Bakersfield, CA); CMA 107 (Stockton, CA); CMA 111 (Vallejo-Fairfield-Napa, CA); CMA 137 (Melbourne-Titusville, FL).

[99] Specifically, Newco would hold 70 megahertz of AWS-1 spectrum in one rural county, Whatcom County, in Washington State; 60 megahertz of AWS-1 spectrum in 6 CMAs, covering approximately 3% of the population; and 50 megahertz of AWS-1 spectrum in in 84 CMAs, covering approximately 29% of the population.

[100] While service providers can change some of these conduct variables, for example, price, relatively quickly, other variables – particularly non-price variables such as quality and coverage – require investments in spectrum or infrastructure and are not easily modified. *See, e.g.*, *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 116.

[101] *See, e.g.*, Horizontal Merger Guidelines, U.S. Department of Justice and the Federal Trade Commission, August 19, 2010, at § 6, p. 20 ("*2010 DOJ/FTC Horizontal Merger Guidelines*"). "A merger between firms selling differentiated products may diminish competition by enabling the merged firm to profit by unilaterally raising the price of one or both products above the pre-merger level." *See, e.g.*, *AT&T-Centennial Order*, 24 FCC Rcd at 13939-40 ¶ 54; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 84.

take actions that are profitable for them only as a result of the accommodating reactions of the others.[102] Accordingly, one way in which a transaction may create or enhance market power or facilitate its exercise is by making coordinated interaction among firms more likely, more successful, or more complete.[103] In markets where only a few firms account for most of the sales of a product, those firms may be able to exercise market power by either explicitly or tacitly coordinating their actions[104] and the ability to successfully coordinate will depend on the strength and predictability of rivals' responses to a price increase or other anti-competitive action.[105]

44. We examine at both a local and a national level, whether this proposed transaction would increase the incentive and ability for Newco to raise its quality-adjusted prices post-transaction,[106] either on the T-Mobile USA brand or the MetroPCS brand or both. In addition, we evaluate whether its post-transaction spectrum holdings would be likely to lead to competitive harm. Further, we consider how existing service providers might reposition in response to any anticompetitive action on the part of Newco.[107] Finally, the reduction in the number of service providers may make it easier for other firms to coordinate their price responses, and we therefore also evaluate the likelihood of coordinated effects.

45. *Record*: The Applicants contend that the proposed transaction would not harm, but rather would enhance national competition and would not raise competitive concerns at the local level.[108] The Applicants further argue that the proposed transaction reduces, rather than increases, market concentration at the national level.[109] Specifically, the Applicants maintain that MetroPCS's customers are not currently considered by the Commission to be customers of a nationwide service provider, but after the transaction they would be customers of a nationwide Newco.[110] In addition, the Applicants argue that post-transaction, the combined entity would continue to be constrained by the full range of competitors and

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[102] *See, e.g., 2010 DOJ/FTC Horizontal Merger Guidelines*, at § 7, p. 24. A merger may diminish competition by enabling or encouraging post-merger coordinated interaction among firms in the relevant market that harms customers. *See, e.g., Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17491 ¶ 101; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 114.

[103] *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 59; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17486 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150.

[104] *See, e.g., Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17491 ¶ 101; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 114.

[105] *See, e.g., 2010 DOJ/FTC Horizontal Merger Guidelines*, at § 7, p. 25.

[106] The quality adjusted price is defined as the price paid by consumers divided by the product quality. If, post-transaction, Newco would keep its prices constant, but exercise its market power by delaying the introduction of a new technology, say, then the quality adjusted price would increase, and consumers would be worse off. On the other hand, if Newco were to keep its price constant, but current MetroPCS consumers would have access to the higher quality T-Mobile USA network (*see* Section VI.B.1. *infra*), then the quality adjusted price would fall, and consumers would be better off.

[107] Rival service providers may find it profitable to alter their behavior as a result of the merger – by, for example, repositioning their products, changing capacity, or changing their own prices. These reactions can alter the total effect on the market and should be taken into account when evaluating potential unilateral effects. *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13939-40 ¶ 54 n.209; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 n.306; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.

[108] *See* Public Interest Statement at 49-54; *see also* Applicants Motion at 5.

[109] *See* Public Interest Statement at 51.

[110] *See id*.

products available at the local level.[111]

46. Greenlining argues, however, that the proposed transaction could result in reduced competition in the value market because T-Mobile USA could reduce or completely discontinue its value offers.[112] In addition, Greenlining contends that in areas where Newco has severe spectrum constraints, it may eliminate the MetroPCS brand and devote Newco's spectrum to the T-Mobile USA brand,[113] which would harm low-income consumers who cannot afford more expensive "premium" service offerings.[114]

47. *Discussion*: In undertaking a market-by-market analysis of the 19 local markets identified by our initial screen, we consider competitive variables that help to predict the incentive and ability of service providers to successfully restrict competition. These competitive variables include, but are not limited to, the total number of rival service providers; the number of rival firms that can offer competitive nationwide service plans; the coverage of the firms' respective networks; the rival firms' market shares; the combined entity's post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers.[115]

48. After carefully evaluating the 19 CMAs we have identified for particular focus, we find that competitive harm is unlikely, with the possible exception of two markets in south Florida. We have closely examined these markets, which with one exception are non-rural,[116] and have carefully evaluated the various market characteristics that would allow rival service providers to provide an effective competitive constraint in these local markets.[117] We find that Newco is not likely to have the ability to increase the quality adjusted price by reducing the quality of its service offerings or pushing back the introduction of new advanced technologies, in any of these local markets, with the possible exception of two markets in south Florida.

49. Post-transaction, Newco would hold an approximate **[REDACTED]** market share across these 19 local markets. There are two markets in south Florida in which Newco would hold an approximate **[REDACTED]** market share, post-transaction, and would become the leading service provider in the market. [118]

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[111] *See* Public Interest Statement at 54; *see also* Applicants Motion at 5.

[112] *See* Greenlining Opening Comments at 7-8.

[113] *See* Greenlining Opening Comments at 8.

[114] *See* Greenlining Opening Comments at 9-12. We address Greenlining's concerns in Section VI.D. *infra*.

[115] We derive market shares and HHIs from our analysis of data compiled in our NRUF database. We derive network coverage from Mosaik and 2010 U.S. Census data, and we obtain spectrum holdings from our licensing databases and the Application. In addition, we examine data from our LNP database, which includes each instance of a customer porting a phone number from one mobile provider to another, and indicates both the origin and destination provider. We also utilized and analyzed the data as provided through our information requests.

[116] The population density is measured by the number of people per square mile using 2010 Census data. Only one market (CMA 370: Florida 11 – Monroe) is characterized as rural, with less than 100 people per square mile.

[117] *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16472 ¶ 34; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10725-26 ¶ 72.

[118] Generally, service providers with market shares of less than 30% are unlikely to be able to successfully raise price or otherwise behave unilaterally in an anticompetitive manner. *See AT&T–Verizon Wireless Order*, 25 FCC Rcd at 8733 ¶ 65. In the 19 markets we examined, Newco would have a combined market share of more than 30%, post-transaction, in just two markets: CMA12: Miami-Fort Lauderdale, FL and CMA 370: Florida 11 – Monroe.

50. In Miami-Fort Lauderdale (CMA 12), a market with a population of approximately 4.2 million people and a population density of 1344, the number of service providers with a substantial market presence would be reduced from five to four. T-Mobile USA currently holds **[REDACTED]** of the market and MetroPCS holds **[REDACTED]** of the market. The post-merger HHI would be **[REDACTED]** points from the current value. In this market, the three other nationwide service providers all have market shares of at least **[REDACTED]**. Post-transaction, Newco would hold 90 megahertz of spectrum, and the three other nationwide service providers would hold an average of 101.5 megahertz of spectrum, and all three have sufficient coverage.[119]

51. In Florida 11 – Monroe (CMA 370), a market with a population of approximately 73,000 people and a population density of 49, the number of service providers with a substantial market presence would be reduced from five to four. T-Mobile USA currently holds **[REDACTED]** of the market and MetroPCS holds **[REDACTED]** of the market. The post-merger HHI would be **[REDACTED]** points from the current value. In this market, the three other nationwide service providers all have market shares of at least **[REDACTED]**. Post-transaction, Newco would hold 90 megahertz of spectrum, and the three other nationwide service providers would hold an average of 95 megahertz of spectrum, and all three have sufficient coverage in terms of population.[120] We find with respect to these two markets that any possible competitive harms are far outweighed by the public interest benefits of this transaction, as discussed below.

52. In the remaining 17 non-rural markets identified, Newco's market share would be less than 30 percent post-transaction, and there would be at least three other service providers with a substantial market presence. Further, with the exception of one local market, three rival service providers have sufficiently built out their networks and have the ability to offer competitive services.[121] The market presence and capacity of rival service providers are such that they would be able to effectively respond to deter any unilateral anticompetitive actions by Newco, such as delaying the introduction of a new advanced technology. Given their relative spectrum positions, and taking into account that their networks are already built out, we find that they could likely respond to any reduction in service quality or delay in introducing new technologies quickly and sufficiently.[122]

53. In addition, we also evaluate the potential competitive effect of the proposed transaction on those local markets where Newco would hold a substantial amount of AWS-1 spectrum post-

[119] The Commission has previously used 70% population coverage and 50% land area coverage as "sufficient." *See AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8733 ¶ 65. AT&T, Verizon Wireless, and Sprint Nextel each cover 100% of the population. AT&T also covers 100% of the land area, while Verizon Wireless and Sprint Nextel cover 57% and 91%, respectively.

[120] AT&T, Verizon Wireless, and Sprint Nextel each cover over 90% of the population, and while Sprint Nextel covers 58% of the land area, AT&T and Verizon Wireless cover 47% and 22%, respectively. In addition, we note that neither T-Mobile USA nor MetroPCS currently has sufficient coverage in this CMA in terms of land area covered.

[121] In CMA 126: Salinas-Seaside-Monterey, CA, a market of approximately 415,000 people, all three rival service providers have sufficient coverage in terms of population. However, while both AT&T and Verizon Wireless cover at least 75% of the land area and thus also have sufficient coverage in terms of land area, Sprint Nextel covers approximately 40% of the land area. Post-transaction, Newco would hold 85 megahertz of spectrum, while AT&T holds 136 megahertz, Verizon Wireless holds 99 megahertz, and Sprint Nextel holds 98.35 megahertz of spectrum.

[122] In addition, to the extent that MVNOs would exert competitive pressure on Newco in the "value" segment of the market, the incentive to raise price or otherwise harm competition is further lessened.

transaction.[123] Specifically, we assess the likelihood and extent to which competitors' costs may be raised or competitors and/or potential new entrants may be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market, such that consumer choice or service quality would be reduced.[124] We find that although Newco would hold a substantial amount of a certain frequency of spectrum post-transaction, as independent service providers T-Mobile USA and MetroPCS are likely to face spectrum constraints in their respective LTE deployment, and moreover the spectrum at issue in this transaction is not unencumbered greenfield spectrum.[125] As in the *AT&T-WCS Order*,[126] we find that the transfer of the spectrum at issue is unlikely to raise rivals' costs or to foreclose entry, expansion, or the deployment of advanced mobile broadband technologies in any of these local markets, or lead to anticompetitive effects through the increase in Newco's spectrum holdings at the national level.[127]

54. Furthermore, consistent with recent orders, we analyze the potential competitive effects on the national market that would result from the proposed transaction. Given the combination of spectrum from T-Mobile USA and MetroPCS in this transaction, along with the increase in market share for Newco at the national level, national effects on price are possible. We examine the incentive and ability of rival service providers to reposition[128] if Newco were to attempt to exercise market power post-transaction.[129] Further, we consider competitive characteristics that help predict the likelihood of

[123] In two recent orders, the Commission assessed the likely competitive effects of spectrum holdings on the market, where, post-transaction, the acquirer would hold a substantial amount of a certain frequency of spectrum. In the *AT&T-WCS Order*, we evaluated the assignment of WCS spectrum to AT&T, and in the *Verizon Wireless-SpectrumCo Order*, we evaluated the assignment of AWS-1 spectrum to Verizon Wireless. *See generally AT&T-WCS Order*, 27 FCC Rcd at 16459; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd 10698.

[124] *See AT&T-WCS Order*, 27 FCC Rcd at 16472 ¶ 34; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10725, 10726-27 ¶¶ 72, 74 nn.186, 187.

[125] In the discussion in Section VI., *infra*, we address the capacity constraints of T-Mobile USA and MetroPCS as well as their respective ability to provide advanced mobile broadband technologies if they were to remain independent. *See* TMUS-DEN-00016226, Sept. 18, 2012, at 20, which **[REDACTED]**; *see also* TMUS-DEN-00118281, Nov. 15, 2012.

[126] *See AT&T-WCS Order*, 27 FCC Rcd at 16473 ¶¶ 36-37.

[127] In the *Verizon-Wireless-SpectrumCo Order*, we found that the proposed assignment of AWS-1 spectrum to Verizon Wireless, absent mitigating measures, was likely to lead to competitive harm through foreclosure or raising of rivals' costs, because the AWS-1 spectrum at issue in those transactions was, at the time, the lone large block of unencumbered near-nationwide spectrum with a well-developed ecosystem immediately available for the provision of mobile broadband service, and further because, nationwide, Verizon Wireless had the most substantial total spectrum holdings of any mobile telephony/broadband service provider. *See Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10699 ¶ 2, 10717 ¶ 50, 10724-25 ¶ 70, 10727 ¶ 77.

[128] *See 2010 DOJ/FTC Horizontal Merger Guidelines*, at § 6.1, p. 21. When considering "entry," which is analogous to repositioning, we examine the timeliness, likelihood, and sufficiency of the "entry efforts," defined as the actions the firm must undertake to produce and sell in the market, including: planning, design, licensing or other approvals, construction and operation of production facilities, promotion, marketing, distribution, etc.

[129] If rival service providers can likely reposition their service offerings in a timely and sufficient manner to be able to offer close substitutes for the products offered by the merging firms, then such repositioning could potentially be sufficient to deter or counteract what otherwise could potentially be significant anticompetitive effects. *See, e.g., 2010 DOJ/FTC Horizontal Merger Guidelines*, at § 6, p. 22.

successful coordinated interaction among rival service providers.[130]

55. Post-transaction, Newco would continue to be the smallest service provider of the four nationwide providers, with approximately 42 million subscribers, as compared to approximately 115 million for Verizon Wireless, approximately 106 million for AT&T, and approximately 56 million for Sprint Nextel.[131] In addition, we find that incumbent service providers could readily reposition their service offerings in response to any potential quality adjusted unilateral price increase on the part of Newco.[132] Given the relative spectrum positions and market shares of other service providers vis-à-vis Newco in the mainland United States, we find it unlikely that Newco would have the ability to unilaterally raise price or otherwise harm competition at the national level. In addition, we find it unlikely that the transaction would result in coordinated effects at the national level. Both T-Mobile USA and MetroPCS have a history of being disruptive influences or "mavericks,"[133] and moreover, Newco would have an economic incentive to continue to play this role. As the smallest of the nationwide service providers, it would benefit less from coordination than its significant rivals (the three other nationwide service providers) and it can expand output relatively inexpensively.[134] Finally, we note that, as an additional screen to assess the potential for unilateral competitive effects, Commission staff also conducted certain analyses consistent with the most recent *Horizontal Merger Guidelines*,[135] which yielded results in line with our other analyses.

VI. POTENTIAL PUBLIC INTEREST BENEFITS

56. After assessing the potential public interest harms of the proposed transaction, we also consider whether the proposed transfer of control of the subject wireless licenses and related authorization is likely to generate verifiable, transaction-specific public interest benefits.[136] In doing so, we ask whether Newco or the Applicants would be able and likely to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that would not be pursued but for the transaction.[137] As discussed below, we anticipate that the proposed transaction likely would result in certain transaction-specific public interest benefits. In particular, we anticipate that the proposed transaction could facilitate the deployment of LTE and accelerate the provision of mobile broadband in markets where the Applicants overlap.

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[130] These competitive characteristics include, but are not limited to, the degree to which service offerings are differentiated, the ease with which rival service providers could expand capacity in order to quickly punish deviation, the availability and transparency of information in the marketplace on, for example, prices, and the presence of maverick service providers in the market who would be less likely to engage in coordinated interaction.

[131] *See UBS Investment Research, US Wireless 411, Version 44.0*, 16 November 2012, Table 10 at 15. The subscriber data are reported as of the end of the third quarter of 2012.

[132] *See Fifteenth Annual Competition Report*, 26 FCC Rcd at 9731-33 ¶¶ 97-102.

[133] *See* Declaration of Peter Ewens, Attachment 1 to Public Interest Statement ("Ewens Declaration") at ¶¶ 9-10. *See also* TMUS-DEN-00008630, Dec. 5, 2012, at 4, TMUS-DEN-00008243, Oct. 3, 2012, at 15, 27.

[134] *See generally* Jonathan B. Baker, *Mavericks, Mergers, and Exclusion: Proving Coordinated Competitive Effects Under the Antitrust Laws*, 77 NYU L Rev 135, 175-77 (2002).

[135] *See 2010 DOJ/FTC Horizontal Merger Guidelines*, at § 6.1, p. 21.

[136] *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16474 ¶ 40; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 95; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17622-23 ¶ 81.

[137] *Id.*

A. Analytical Framework

57. The Commission has recognized that "[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality of service, enhanced service or new products."[138] Under Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms.[139]

58. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms. First, the claimed benefit must be transaction-specific. Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a transaction is in the sole possession of the applicants, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude.[140] In addition, "the magnitude of benefits must be calculated net of the cost of achieving them."[141] Furthermore, as the Commission has explained, "benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present."[142] Third, the Commission has stated that it "will more likely find marginal cost reductions to be cognizable than reductions in fixed cost."[143] The Commission has justified this criterion on the ground that, in general, reductions in marginal cost are more likely to result in lower prices for consumers.[144]

59. Finally, the Commission applies a "sliding scale approach" to evaluating benefit claims.[145] Under this sliding scale approach, where potential harms appear "both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand."[146] Conversely, where potential harms appear less likely and less substantial,

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[138] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16474-75 ¶ 41; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 96; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 83.

[139] *Id.*

[140] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 84.

[141] *Id.*

[142] *See, e.g.*, *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 84; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8737 ¶ 75.

[143] *Id.*

[144] *Id.*

[145] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 98; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 85.

[146] *See, e.g.*, *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 98; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 85; *cf. 2010 DOJ/FTC Horizontal Merger Guidelines* at § 10, p. 31 ("The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.").

as is the case here, we will accept a lesser showing.[147]

B. Description of Applicants' Claims

60. The Applicants assert that the proposed transaction will benefit customers of both T-Mobile USA and MetroPCS by giving them access, in many cases soon after the proposed transaction closes, to an expanded and more robust network and improved services and features.[148] These network and service improvements, the Applicants claim, also will make Newco a stronger competitor in the mobile wireless services market than either T-Mobile USA or MetroPCS, operating alone.[149]

1. Expanded and Improved Services and Features

61. *Expanded Network Coverage.* The Applicants claim that MetroPCS's ability to compete against other, larger wireless service providers is limited currently by its lack of a nationwide spectrum footprint.[150] MetroPCS must provide its nationwide service to customers through a combination of its own regional network and a series of strategic voice and data roaming agreements with its larger competitors[151] which makes it significantly more expensive and difficult for MetroPCS to provide nationwide service than it is for providers that possess their own nationwide network.[152] According to the Applicants, this transaction would enhance the ability of MetroPCS customers to roam nationally on-network resulting in a major cost saving that ultimately will benefit customers.[153] Also, post-merger, MetroPCS customers would be able to retain MetroPCS-branded services when moving out of MetroPCS's current footprint, which they are not able to do today.[154] According to the Applicants, Newco plans not only to continue the MetroPCS business model, brand, and distributions channels post-merger, but also to extend the MetroPCS brand to new metropolitan areas[155] so that this expansion would serve both new and existing customers nationwide.[156] The Applicants assert that both the T-Mobile USA and MetroPCS brands will be maintained as separate business units post-transaction[157] and that the two

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[147] *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 85; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8737 ¶ 76.

[148] *See* Public Interest Statement at i-ii.

[149] See *id.*

[150] *See* Public Interest Statement at 18; Glen Declaration at ¶ 12.

[151] *See* Glen Declaration at ¶ 12.

[152] *See Id.*

[153] *See* Public Interest Statement at 7; Declaration of Douglas S. Glen, Attachment 3 to Public Interest Statement ("Glen Declaration"), at ¶ 12. *See also* MPCS-FCC-00000542 Oct. 1, 2012 at 13.

[154] *See* Public Interest Statement at 7; Glen Declaration at ¶ 16. *See also* TMUS-DEN-00005733 Sept. 9, 2012 at 15.

[155] *See* Public Interest Statement at *iii*, 20, 22; *see also* Letter from Nancy J. Victory, Counsel for Deutsche Telekom AG and T-Mobile USA, Inc., to Marlene Dortch, FCC, WT Docket No. 12-301, filed Jan. 15, 2013 at Presentation Attachment, page 3 ("T-Mobile USA Jan. 15, 2013 *Ex Parte*").

[156] Glen Declaration at ¶¶ 15, 20.

[157] Public Interest Statement at iii. The Applicants claim that Deutsche Telekom and T-Mobile USA are fully behind the MetroPCS expansion plans and that Newco's proposed management has already indicated that it plans to both maintain and introduce the MetroPCS brand in other metropolitan areas across the country. Public Interest Statement at 20.

distribution networks of retail stores and dealer franchises will also be retained.[158] Because T-Mobile USA has an existing nationwide network infrastructure, the Applicants maintain that Newco will be positioned and indeed plans to establish the MetroPCS brand "where the population density would not otherwise justify the capital requirements of building a new stand-alone, greenfield network."[159] As a result, the Applicants assert that consumers in those areas will gain access to a variety of additional offerings that they cannot access today.[160] The Applicants contend that these improved offerings will not only benefit current T-Mobile USA and MetroPCS customers but also likely spur responsive offerings from Newco's competitors, thus increasing competition in the wireless market as a whole.[161]

62. As current MetroPCS subscribers upgrade to new LTE and HSPA+ devices, the Applicants maintain that these subscribers would gain the ability to roam internationally via internationally aligned technology bands.[162] The Applicants assert that MetroPCS's customers would have access to a broader array of devices, applications and plan options, be able to purchase and use MetroPCS services more widely across the country,[163] and "receive the benefits of an expanded and enhanced network without an increase in price of their existing service plans."[164]

63. *Improved Quality of Service.* The Applicants contend that MetroPCS's relatively limited spectrum holdings and high network utilization severely limit its ability to compete against competitors with greater access to spectrum and resources.[165] According to the Applicants, MetroPCS has been experiencing capacity problems[166] to the point where it was forced to reassign spectrum back from LTE to CDMA/EV-DO in order to meet customer needs, reducing the size of its LTE channels[167] to relatively narrow blocks of spectrum, such as 1.4 x 1.4 or 3.0 x 3.0 megahertz.[168] The Applicants assert that this has limited MetroPCS to offering far less capacity and much lower speeds than those offered over larger blocks of spectrum by its more spectrum-rich competitors.[169] The proposed transaction would, according to the Applicants, offer MetroPCS customers immediate access to T-Mobile USA's faster, broader and more reliable HSPA+ network.[170]

64. The Applicants claim that the proposed transaction also would benefit T-Mobile USA

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[158] *See* T-Mobile USA Mar. 7, 2013 *Ex Parte* at 3. Moreover, the Applicants assert that the synergies model assume no reductions in retail stores or retail store positions. *Id*.

[159] Public Interest Statement at iii.

[160] *Id.*

[161] Public Interest Statement at 22.

[162] *See* Declaration of Mark McDiarmid, Attachment 2 to Public Interest Statement ("McDiarmid Declaration"), at 14 ¶ 26. *See also* TMUS-DEN-00005733 Sept. 9, 2012 at 15.

[163] *See* Public Interest Statement at 22-24; *see also* TMUS-DEN-00016703 Nov. 21, 2012 at 16.

[164] Public Interest Statement at 24; *see also* Deutsche Telekom AG and T-Mobile USA Interrogatory Response to Information Request at 16.

[165] Public Interest Statement at 16.

[166] *Id.*

[167] *Id.*

[168] Public Interest Statement at 17.

[169] *Id.*

[170] *See* Public Interest Statement at 21.

customers, by ultimately providing them access to a larger network with fewer capacity constraints, better in-building coverage, and access to a deeper LTE roll-out.[171] According to the Applicants, T-Mobile USA customers would see service coverage and quality improvements from the integration of MetroPCS's cell sites and its Distributed Antenna Systems ("DAS") into the existing T-Mobile USA network.[172] The Applicants suggest that as a result, coverage in key urban markets would improve, and T-Mobile USA customers would experience fewer dropped and blocked calls and faster data speeds.[173]

65. *Wider Variety of Devices.* The Applicants contend that the larger providers can leverage their more significant scale when negotiating handset and device purchases with manufacturers.[174] The Applicants explain that the need for lower cost handsets and its CDMA technology choice has limited MetroPCS's handset and device line-up historically compared to that offered by its larger competitors and MetroPCS does not currently offer certain iconic handsets and devices.[175] The Applicants assert that MetroPCS's customers will benefit from Newco's greater purchasing and negotiating power, which will make a broader range of handsets and devices available and more affordable.[176]

2. Deployment of LTE

66. As noted above, the Applicants claim as a public interest benefit of the proposed transaction deployment of enhanced LTE service sooner, via a more robust network, and over a larger geographic area available to more customers than would be possible by T-Mobile USA alone without the use of MetroPCS's spectrum and network.[177]

67. *Address Spectrum Congestion and Network Performance Degradation.* T-Mobile USA's current spectrum capacity modeling and exhaust projection anticipate that it could experience spectrum congestion and significant performance degradation in just a few years in the absence of additional spectrum.[178] T-Mobile USA states that it is particularly constrained in **[REDACTED]**, where it is projected to experience significant performance degradation in just a few years in the absence of additional spectrum.[179] T-Mobile USA claims that to address spectrum constraints in its network, it has employed numerous techniques[180] to use its existing spectrum more efficiently but nonetheless requires additional spectrum to compete effectively.[181] Furthermore, the Applicants explain, in order to address

[171] *See* Ewens Declaration at 10 ¶ 22. *See also* McDiarmid Declaration at 8 ¶ 16; TMUS-DEN-00005733 Sept. 9, 2012 at 15.

[172] *See* Public Interest Statement at 25; *see also* TMUS-DEN-00008630 Dec. 5, 2012 at 20.

[173] *See* Ewens Declaration at 10 ¶ 22.

[174] *See* Ewens Declaration at 3 ¶ 6, 11 ¶ 25; Glen Declaration at ¶ 13.

[175] *See* Glen Declaration at ¶ 10.

[176] *See* Ewens Declaration at 10-11 ¶ 23; *see also* TMUS-DEN-00008630 Dec. 5, 2012 at 24.

[177] *See* Public Interest Statement at 26-27.

[178] *See* McDiarmid Declaration at 6 ¶ 11; *see also* TMUS-DEN-00095624 Dec. 21, 2012 at 22.

[179] *See* McDiarmid Declaration at 6 ¶ 11.

[180] T-Mobile USA has implemented improved versions of HSPA+ in the U.S. that offer improvements over second generation GSM technology but do not match the capabilities and efficiencies of LTE. McDiarmid Declaration at 7-8 ¶14. It has also deployed a dense cell infrastructure in urban markets to provide additional capacity using the same spectrum assets and used unlicensed Wi-Fi frequencies to offload network traffic from its licensed frequencies to meet customers demand. *Id*. at 8 ¶¶ 14-15.

[181] *See* McDiarmid Declaration at 7-8 ¶ 14.

increasing utilization of T-Mobile USA's network, it will need to implement greater cell density, particularly in urban areas.[182]

68. The Applicants assert that the proposed transaction will assist that process. T-Mobile USA has approximately **[REDACTED]** cell sites within the areas in which MetroPCS currently provides coverage. The Applicants explain that as a result of this transaction, T-Mobile USA is planning on retaining approximately **[REDACTED]** MetroPCS cell sites and substantially all of MetroPCS's **[REDACTED]** DAS radiating nodes with HSPA+/LTE capability.[183] The MetroPCS cell sites that will be retained in the Newco network are primarily located in urban areas, such as **[REDACTED]**, where T-Mobile USA otherwise faces capacity constraints.[184] The Applicants assert that MetroPCS also faces capacity constraints in the near term that, absent the proposed transaction, may significantly curtail its ability to compete against larger rivals with access to greater spectrum and resources.[185] As stated above, the Applicants claim that in many metropolitan areas, MetroPCS has been forced to deploy its LTE network over a mere 1.4 x 1.4 megahertz or 3.0 x 3.0 megahertz of spectrum, which in several cases required concurrent re-farming of existing spectrum since it did not have unused spectrum.[186] As a result, according to the Applicants, MetroPCS's LTE network currently offers data speeds and capacity that are significantly lower than that of its competitors.[187]

69. The Applicants assert that neither T-Mobile USA nor MetroPCS alone is positioned to provide a robust and deep LTE network due to lack of available spectrum.[188] They report that T-Mobile USA has faced significant spectrum challenges in deploying LTE that have caused delays and that there are areas in its footprint that will be limited to a 5 x 5 megahertz LTE deployment.[189] The Applicants contend that T-Mobile USA and MetroPCS hold substantial amounts of contiguous spectrum that will enable Newco to produce a high-performing LTE service that will be less complex to deploy than one relying on several smaller spectrum blocks and the aggregation technology between different spectrum blocks.[190] According to the Applicants, being able to use contiguous spectrum also will simplify device and network equipment, which will lead to better battery life, provide greater uniformity in service and data speed, and improved spectral efficiency.[191] The Applicants submit that this transaction would enable Newco to deploy a more robust LTE network in a substantial majority of top markets, including cities such as Boston, Dallas, Las Vegas, Los Angeles, New York, and Philadelphia, resulting in significantly

[182] *See* McDiarmid Declaration at 8 ¶ 16.

[183] *See* McDiarmid Declaration at 9 ¶ 16; *see also* TMUS-DEN-00095624 Dec. 21, 2012 at 4; TMUS-DEN-00008630 Dec. 5, 2012 at 20.

[184] *See* McDiarmid Declaration at 9 ¶ 16.

[185] *See* Glen Declaration at ¶ 9.

[186] *See id.*

[187] *See id*.

[188] *See* McDiarmid Declaration at 6 ¶ 8.

[189] *See* Public Interest Statement at 10.

[190] *See* McDiarmid Declaration at 11 ¶ 19. *See also* MPCS-FCC-00000472 Sept. 18, 2012 at 21; TMUS-DEN-00008630 Dec. 5, 2012 at 19; TMUS-DEN-00016703 Nov. 21, 2012 at 17.

[191] *See* McDiarmid Declaration at 8 ¶ 15, 12 ¶ 20; *see also* TMUS-DEN-00121578 Oct. 13, 2012 at 4-5.

improved quality of service, improved speed, and lower latency in both the uplinks and downlinks.[192] This deployment would address spectrum constraints faced by T-Mobile USA and help mitigate the increasing utilization of T-Mobile USA's network by enhancing density in key areas, therefore establishing Newco as a stronger competitor in the wireless market.[193]

70. *Rapid Network and Customer Migration.* The Applicants claim that Newco plans to achieve rapid expansion of network capacity and quickly provide benefits to customers by implementing a straightforward network and customer migration plan. Specifically, Newco would accommodate MetroPCS's existing LTE customers on the T-Mobile USA network with their existing handsets soon after the transaction closes and distribute MetroPCS-branded GSM/HSPA+ handsets that will operate on the T-Mobile USA network to new and upgrading customers promptly after the closing.[194] According to Applicants, the latter would migrate customers with the highest data usage onto Newco's broader and deeper LTE network[195] and provide new and existing MetroPCS customers with access to T-Mobile USA's nationwide network, improved coverage quality, higher performing devices, and a broader choice of handsets.[196] The Applicants assert that the network benefits of retained MetroPCS capacity sites and upgraded DAS would improve coverage and service quality satisfaction for both T-Mobile USA and migrating MetroPCS customers.[197] The Applicants suggest that Newco expects to fully migrate MetroPCS customers onto the T-Mobile USA network by the second half of 2015,[198] based on the steady handset upgrade and the refresh rate historically associated with MetroPCS customers,[199] which in turn allows Newco to decommission MetroPCS's CDMA network, securing significant financial savings and freeing up the spectrum for more efficient use.[200]

3. Network and Non-Network Synergies

71. The Applicants claim that the proposed transaction would allow Newco to realize significant projected network synergies generating savings of approximately $5 to 6 billion on a net present value basis.[201] These synergies would come from Newco's rationalization of T-Mobile USA's and MetroPCS' LTE networks into a single network, decommissioning of overlapping cell sites, the

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[192] *See* McDiarmid Declaration at 4 ¶ 8, 13 ¶¶ 24-25. *See also* TMUS-DEN-00019046 Nov. 10, 2012 at 6. The quality of video-based communications, for example, will be greatly enhanced with the higher fidelity video coding enabled by higher LTE throughputs. *See* McDiarmid Declaration at 13 ¶ 24.

[193] *See* TMUS-DEN-00015446 Dec. 5, 2012 at 19. The efficiencies realized from a wider channel LTE configuration would be achieved through improved ratio of control channel overhead to user channel bandwidth, elimination of guard bands, and statistical multiplexing gains. *See* McDiarmid Declaration at 4 ¶ 8. *See also* TMUS-DEN-00121578 Oct. 13, 2012 at 4-5; TMUS-DEN-00016703 Nov. 21, 2012 at 17, 45.

[194] *See* McDiarmid Declaration at 9-10 ¶ 17. *See also* TMUS-DEN-00008630 Dec. 5, 2012 at 18, TMUS-DEN-00016703 Nov. 21, 2012 at 16.

[195] *See* McDiarmid Declaration at 10 ¶ 17.

[196] *See id.*

[197] *See id.*

[198] *See* TMUS-DEN-00111391 Sept. 16, 2012. *See also* TMUS-DEN-00016703 Nov. 21, 2012 at 16.

[199] *See* McDiarmid Declaration at 10-11 ¶ 18; Glen Declaration at ¶ 19. *See also* TMUS-DEN-00148094 Dec. 3, 2012 at 14.

[200] *See* McDiarmid Declaration at 11 ¶ 18.

[201] *See* Ewens Declaration at 7 ¶ 15. *See also* MPCS-FCC-00000542 Oct. 1, 2012 at 13, MPCS-FCC-00000424 Mar. 5, 2012 at 18.

eventual decommissioning of MetroPCS's CDMA/EV-DO network, elimination of overlapping functions, and reduction in duplicative network-based capital expenditures.[202] The Applicants also assert that MetroPCS's transition to Newco's network would reduce MetroPCS's roaming costs, for a projected run-rate saving per year of **[REDACTED]**.[203]

72. The Applicants claim that another synergy benefit from the proposed transaction would be significantly reduced backhaul costs for both T-Mobile USA's and MetroPCS's operations.[204] According to the Applicants, Newco will reduce its costs by combining the currently separate, T-Mobile USA and MetroPCS backhaul facilities because the cost of adding MetroPCS's traffic to T-Mobile USA's backhaul would be incremental and the backhaul cost per megabyte of data generally declines when a service provider increases the capacity purchased.[205]

73. The Applicants assert in general that non-network synergies, projected at approximately $1 billion net present value, would arise from Newco's enhanced scale and integrated administrative operations and handset cost savings from the migration of MetroPCS customers to a GSM-compatible network.[206] The Applicants claim that the transaction-specific savings would free up significant financial resources that could be invested back into its network and operations, allowing Newco to grow, thereby potentially increasing employment opportunities, bolstering the long-term viability of both the MetroPCS and T-Mobile USA brands, and strengthening them as competitors.[207]

C. Discussion

74. We find, based on the record before us and the Applicants' descriptions discussed above, that the proposed combining of T-Mobile USA and MetroPCS likely would result in meaningful public interest benefits that support approval of the proposed transaction. We find that the Applicants have demonstrated that many of the claimed benefits are feasible and likely to be put into effect soon after the proposed transaction is concluded. In particular, we anticipate that the combination of T-Mobile USA and MetroPCS would enable the deployment of a substantial LTE network nationally that would enhance competition and provide important benefits for consumers. By merging the two companies, and their network assets and spectrum, we find that the resulting Newco would provide for a broader, deeper, and faster LTE deployment than either company could accomplish on its own.[208] Existing MetroPCS customers would have access to a more robust, national network and a broader array of service and handset options. Consumers outside of MetroPCS's current limited service area will have the benefit of the MetroPCS service plans becoming available as an additional option. T-Mobile USA customers would experience improved service quality, particularly in major metropolitan markets in which the existing T-Mobile USA and MetroPCS networks would be combined. We expect that these public interest benefits may significantly enhance the competitiveness of Newco, as the fourth largest nationwide service provider, to the top three providers than T-Mobile USA could achieve alone.

75. As discussed above, we find that, with the possible exception of two markets in south Florida, the proposed transaction is not likely to result in competitive or other public interest harms in the

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[202] *See* Ewens Declaration at 7 ¶ 15.

[203] *See* Ewens Declaration at 7 ¶ 15; TMUS-DEN-00005733 Sept. 9, 2012 at 27.

[204] *See* Glen Declaration at ¶ 17. *See also* MPCS-FCC-00000542 Oct. 1, 2012 at 13.

[205] *See* Glen Declaration at ¶ 17.

[206] *See* Public Interest Statement at 42-44.

[207] *See id.*

[208] *See* McDiarmid Declaration at 1-2.

provision of mobile wireless services. Further, on the basis of the record, using the sliding-scale approach, we find the expected magnitude of the public interest benefits, as described herein, to be sufficiently large or imminent to outweigh any potential public interest harms in certain individual markets.

D. Other Issues Raised by Commenters

76. *Potential Job Loss.* CWA, Greenlining, and certain Public Interest Organizations[209] ask the Commission to impose conditions on the proposed transaction to protect U.S. jobs and preserve service quality.[210] They argue that the transaction may harm the public interest by causing the loss of many jobs and lowering the combined company's quality of service.[211] CWA, Greenlining, and the Public Interest Organizations allege that T-Mobile USA and MetroPCS have in the past eliminated or outsourced jobs outside the U.S. in order to reduce costs.[212] These commenters are concerned that the Applicants' intent to pursue a business strategy that involves "network and non-network synergies" and "efficiencies" will lead to net job losses and a reduction in employment standards.[213] Specifically, CWA contends that the proposed transaction could directly result in the loss of as many as 10,000 jobs.[214]

77. In an ex parte filed on March 4, 2013, CWA estimated that a range of **[REDACTED]** jobs would be eliminated, citing to a document provided to the Commission by the Applicants in response

[209] The AFL-CIO, NAACP, Service Employees International Union, Sierra Club, Alliance for Retired Americans, Center for Community Change, National Consumers League, Jobs with Justice, and USAction filed reply comments collectively as "Public Interest Organizations." *See generally* Public Interest Organizations Reply Comments.

[210] *See* CWA Comments at 2, 8; CWA Reply Comments at 6; Greenlining Opening Comments at 12-14; Public Interest Organizations Reply Comments at 4. CWA and the Public Interest Organizations urge the Commission to impose the following conditions in order to protect the public interest: No U.S. employees will lose their jobs as a result of the proposed transaction; network maintenance will continue to be provided by U.S. employees; and work previously sent offshore by T-Mobile USA and MetroPCS will be returned to the U.S. *See* CWA Comments at 2, 8; CWA Reply Comments at 6; Public Interest Organizations Reply Comments at 4; *see also* Letter from Debbie Goldman, Telecommunications Policy Director for CWA, to Marlene Dortch, FCC, WT Docket No. 12-301, filed Feb. 11, 2013 at 3 ("CWA Feb. 11, 2013 *Ex Parte*").

[211] *See* CWA Comments at 1-4; CWA Reply Comments at 3-5; Greenlining Opening Comments at 12-14; Public Interest Organizations Reply Comments at 1-2, 4. .

[212] *See* CWA Comments at 6-7; CWA Reply Comments at 3; Greenlining Opening Comments at 12; Public Interest Organizations Reply Comments at 2-3. *See also* Letter from Monica S. Desai, Counsel to CWA, to Marlene Dortch, FCC, WT Docket No. 12-301, filed Dec. 20, 2012 at 2 ("CWA Dec. 20, 2012 *Ex Parte*"). The mayors of three cities and certain state representatives filed letters expressing concerns about the future of T-Mobile USA employees in their cities. *See, e.g.*, Letter from Mayor Joseph P. Riley, City of Charleston, SC at 1 (Dec. 5, 2012); Letter from Rep. Sherry Jones, 59th Legislative District in Tennessee, at 1 (Feb. 5, 2013). Other state representatives and senators, however, filed letters urging the Commission to approve the merger because it would likely lead to continued employment opportunities. *See, e.g.*, Letter from Sen. Reginald Tate, 33rd Senatorial District in Tennessee, at 1 (Feb. 22, 2013).

[213] *See* CWA Comments at 4-6; CWA Reply Comments at 2-5; Greenlining Opening Comments at 12; Public Interest Organizations at 1-3. *See also* CWA Feb. 11, 2013 *Ex Parte* at 2; CWA Dec. 20, 2012 *Ex Parte* at 2. In addition to job losses, Greenlining also expresses concern that the proposed transaction could adversely affect access to mobile wireless services for low-income consumers. Greenlining Opening Comments at 7-11; *see* Section V.B.2. *supra*.

[214] *See* CWA Comments at 3.

to our information request.[215] In particular, CWA cites to a MetroPCS slide presentation that describes preliminary projections of potential cost savings from **[REDACTED]**.[216] CWA also cites to a number of additional T-Mobile USA documents and requests that the Commission require Applicants to provide explanations for their projected synergies.[217] CWA requests that the Commission require the Applicants to explain further the basis for their reference to a "relatively small number of job reductions" that would exist as a consequence of redundancies post-transaction.[218] CWA also contends that the Commission should require the Applicants to support their assertion that they do not plan to move call centers offshore.[219]

78. The Applicants contend that CWA's claims are not supported by facts and that there is no basis in law or Commission precedent for the imposition of the conditions they seek.[220] The Applicants argue that the "vast majority of the synergies" described in their Public Interest Statement are based not on jobs, but on service quality improvements for customers created by combining their networks.[221] Further, they insist that the companies have not made such decisions on post-merger integration and that outsourcing is not included in any currently projected synergies.[222] In a more recent response on these issues, the Applicants assert that they have no plans to move existing T-Mobile USA call centers offshore and that T-Mobile USA has, in the past several months, hired several thousand employees for its domestic call centers.[223]

79. In response to CWA's March 4 *Ex Parte* filing, the Applicants filed a letter addressing CWA's assertion that the record suggests the proposed transaction will result in significant job losses, stating that "the Applicants' goal in pursuing the proposed transaction is the growth of the combined

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[215] *See generally* Letter from Monica S. Desai, Counsel to CWA, to Marlene Dortch, FCC, WT Docket No. 12-301, filed Mar. 4, 2013 at 4 ("CWA Mar. 4, 2013 *Ex Parte*").

[216] *See* CWA Mar. 4, 2013 *Ex Parte* at 3-5, 7 (citing to MPCS-FCC-00000424, March 5, 2012). *See also* Letter from Monica S. Desai, Counsel to CWA, to Marlene Dortch, FCC, WT Docket No. 12-301, filed Mar. 11, 2013 at 4-6 ("CWA Mar. 11, 2013 *Ex Parte*").

[217] *See* CWA Mar. 4, 2013 *Ex Parte* at 5-8. For example, CWA cites to TMUS-DEN-00128365, August 2012; TMUS-DEN-00005733, Sept. 10, 2012; and TMUS-DEN-00006241, Sept. 18, 2012. *See also* CWA Mar. 11, 2013 *Ex Parte* at 9.

[218] *See* CWA Mar. 4, 2013 *Ex Parte* at 1-2. *See also* CWA Mar. 11, 2013 *Ex Parte* at 1. .

[219] *See C*WA Mar. 4, 2013 *Ex Parte* at 9. *See also* CWA Mar. 11, 2013 *Ex Parte* at 8.

[220] *See* Joint Opposition at 3-8.

[221] *See* Joint Opposition at 5; *see also* Applicants Motion at 7; Public Interest Statement at 39-44.

[222] *See* Joint Opposition at 5; *see also* Applicants Motion at 7.

[223] *See* Letter from Nancy J. Victory, Counsel for Deutsche Telekom AG and T-Mobile USA, Inc., to Marlene Dortch, FCC, WT Docket No. 12-301, filed Mar. 8, 2013 at 3 ("T-Mobile USA Mar. 8, 2013 *Ex Parte*"); s*ee also* Letter from Nancy J. Victory, Counsel for Deutsche Telekom AG and T-Mobile USA, Inc., and Carl W. Northrop, Counsel for MetroPCS Communications, Inc., to Marlene Dortch, FCC, WT Docket No. 12-301, filed Feb. 21, 2013 at 1-2 ("T-Mobile USA Feb. 21, 2013 *Ex Parte*"). The Applicants argue that the impact of the merger on U.S. employment should not be a part of the Commission's public interest analysis and that the Commission has not previously identified potential job losses from a transaction as a public interest harm. S*ee* Joint Opposition at 6-8. The Applicants maintain that the Commission has investigated potential job losses in connection with transactions where job creation is cited as a merger benefit and they contend that because of such asserted benefits, the parties invited the Commission to evaluate the claim in its public interest analysis. *See* Joint Opposition 7-8.

company – growth that could result in increased employment opportunities."[224] Contrary to CWA's assertions that there would be thousands of job losses post-transaction, the Applicants cite to synergies/planning documents submitted to the Commission in the record, and assert that the projected job reductions would number in the hundreds.[225] Applicants also state that the MetroPCS slide presentation cited by CWA was a preliminary planning document prepared by MetroPCS without due diligence for a counteroffer that was rejected by Deutsche Telekom and not pursued rather than the proposed transaction before the Commission.[226] In addition, the Applicants claim that the synergies model assumes no reductions in retail stores or retail store positions, in keeping with their post-merger plans to keep the two brands as separate lines of business and to maintain the two distribution networks of retail stores and dealer franchises.[227] The Applicants also reiterate that they have no plans to move call centers offshore or to reduce employment levels at those call centers and point out that the document cited to by CWA on this issue is not merger-specific, is unrelated to the proposed transaction, and was prepared without MetroPCS input.[228]

80. We find that the record suggests that the proposed transaction would enhance the competitiveness of the combined provider, as the fourth largest nationwide service provider by allowing it to strengthen its network and expand its product line, thereby enabling increased employment and bolstering the long-term viability of the combined provider.[229] As noted above, the Applicants have consistently maintained that they have no plans to move call centers offshore or to reduce employment levels at those call centers.[230] In addition, according to T-Mobile USA, over the last six months, the company has hired more than 3,600 employees in its 17 domestic call centers, and plans to continue hiring in those call centers, increasing the number of overall U.S. positions, to support its customers.[231] The Applicants also assert that their synergy model assumes no reductions in retail stores or retail store positions and that their plans post-merger are to keep the two brands as separate lines of business and to maintain two distribution networks of retail stores and dealer franchises.[232] Based on our careful review of the record, we are not persuaded by the commenters' arguments that any employment effect of the

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[224] Letter from Nancy J. Victory, Counsel for Deutsche Telekom AG and T-Mobile USA, Inc., and Carl W. Northrop, Counsel for MetroPCS Communications, Inc., to Marlene Dortch, FCC, WT Docket No. 12-301, filed Mar. 7, 2013 at 2 ("T-Mobile USA Mar. 7, 2013 *Ex Parte*"). The Applicants' March 7 *Ex Parte* was supported by declarations by corporate officers from T-Mobile USA and MetroPCS made under penalty of perjury. *See* 47 U.S.C. § 1.16.

[225] *See* T-Mobile USA Mar. 7, 2013 *Ex Parte* at 2. The Applicants assert that CWA's claims of 10,000 job losses in some filings is "particularly outlandish" given that MetroPCS only has 3,700 employees currently and that Newco plans not only to retain but expand the MetroPCS brand. *Id.* at 5-6. *See also* Ewens Declaration at 1-2 ¶ 3. Moreover, the Applicants assert that the synergies model actually overstated the number of job reductions following the completion of network integration in 2015 and that many of the reductions will be handled through attrition or transfer. *See* T-Mobile USA Mar. 7, 2013 *Ex Parte* at 5.

[226] *See* T-Mobile USA Mar. 7, 2013 *Ex Parte* at 3-4.

[227] *See* T-Mobile USA Mar. 7, 2013 *Ex Parte* at 3.

[228] *See* T-Mobile USA Mar. 7, 2013 *Ex Parte* at 3, 6-7; T-Mobile USA Feb. 21 *Ex Parte* at 1. *See also* T-Mobile USA Mar. 8, 2013 *Ex Parte* at 3.

[229] *See* Section VI.B.3. *supra*.

[230] T-Mobile USA Mar. 7, 2013 *Ex Parte* at 6; T-Mobile USA Feb. 21 *Ex Parte* at 1; Joint Opposition at 5.

[231] T-Mobile USA Mar. 8, 2013 *Ex Parte* at 3. *See also* T-Mobile USA Feb. 21, 2013 *Ex Parte* at 2; *see generally* T-Mobile USA Mar. 7, 2013 *Ex Parte*.

[232] *See* T-Mobile USA Mar. 7, 2013 *Ex Parte* at 3.

transaction warrants the imposition of the conditions requested.

81. *Access to mobile wireless services.* As described above,[233] Greenlining contends that in areas where Newco has severe spectrum constraints, it may eliminate the MetroPCS brand and devote Newco's spectrum to the T-Mobile USA brand,[234] which would harm low-income consumers who cannot afford more expensive "premium" service offerings.[235] Greenlining requests that the Commission deny the application or impose conditions such as requiring Newco to maintain the T-Mobile USA and MetroPCS brands as separate brands for five years, to ensure that Newco devotes staff and resources to maintain a viable MetroPCS brand, to mitigate job losses and store closures, and to promote diversity in the new company's suppliers, board and senior management.[236] T-Mobile responds that imposing these or similar conditions would diminish Newco's ability to compete in the wireless market.[237]

82. Because MetroPCS customers would be migrated onto the T-Mobile USA national network, which would provide MetroPCS customers with improved network quality, we are not persuaded that Greenlining's concerns that low-income consumers of MetroPCS "value" service would suffer reduced quality of service support placing conditions on approval of the transaction. Moreover, MetroPCS customers would be able to retain their existing MetroPCS service plans.[238] With respect to Greenlining's concerns regarding access to mobile wireless service for low-income consumers generally, we find that the record before us suggests that ongoing repositioning by other service providers and the continued introduction of new service plan offerings in the mobile wireless marketplace would ensure continued access to affordable service options.[239]

VII. FOREIGN OWNERSHIP AND DECLARATORY RULING

A. Foreign Ownership

83. Deutsche Telekom requests Section 310(b)(4) authority to hold indirect controlling

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[233] *See* Section V.B.2. *supra*.

[234] *See* Greenlining Opening Comments at 8.

[235] *See* Greenlining Opening Comments at 9-12.

[236] *See* Letter from Paul S. Goodman, Legal Counsel to Greenlining, *et. al.*, to Marlene Dortch, FCC, WT Docket No. 12-301, filed Mar. 8, 2013, at 3-6 ("Greenlining Mar. 8, 2013 *Ex Parte*"). *See also* Greenlining Opening Comments at 14.

[237] Letter from Nancy J. Victory, Counsel for Deutsche Telekom AG and T-Mobile USA, Inc., and Carl W. Northrop, Counsel for MetroPCS Communications, Inc., to Marlene Dortch, FCC, WT Docket No. 12-301, filed Mar. 11, 2013 at 6 ("T-Mobile USA Mar. 11, 2013 *Ex Parte*").

[238] *See* Ewens Declaration at 11 ¶ 24, 12 ¶ 27.

[239] *See* T-Mobile USA Jan. 15, 2013 *Ex Parte* at Presentation Attachment, pages 5-7. We also find nothing in the record to support imposing any of the other conditions requested by Greenlining.

Finally, Greenlining asks for more time to submit comments and refers to the fact that the Commission's informal clock has not yet reached 180 days. *Id*. at 8. As the Applicants correctly point out, the clock is informal and is not designed to ensure that applications will not be decided earlier than 180 days. T-Mobile USA Mar. 11, 2013 *Ex Parte* at 4. To the contrary, where possible, applications will be granted as expeditiously as possible. Greenlining has been analyzing this transaction since shortly after it was announced, *see* Letter from Paul S. Goodman, Legal Counsel to Greenlining, *et. al.*, to Marlene Dortch, FCC, WT Docket No. 12-301, filed Jan. 17, 2013 at 1; has reviewed various confidential documents the Applicants submitted to the California PUC, *see id.* at 3; and has been able to review the confidential documents Applicants filed here for more than one month, Greenlining Mar. 8, 2013 *Ex Parte* at 2. Accordingly, we find no reason to delay adopting and releasing this order.

interests in the common carrier licenses and authorizations issued to MetroPCS and its subsidiaries.[240] Deutsche Telekom states that the Commission has already determined that the public interest is served by allowing up to 100 percent indirect foreign investment in T-Mobile USA and its licensed subsidiaries by Deutsche Telekom and its German shareholders, including interests held by the German government through its investment in Deutsche Telekom.[241] Deutsche Telekom asserts that the same rationale should also apply to allow it to control MetroPCS and its licensed subsidiaries.

84. On November 29, 2012, the International Bureau sought additional ownership information from the Applicants regarding the citizenship and principal places of business of individuals and entities that hold equity and/or voting interests in Deutsche Telekom and MetroPCS.[242] On January 9, 2013, Deutsche Telekom provided supplemental ownership information and stated that it is seeking a declaratory ruling under Section 310(b)(4) of the Act to hold an indirect controlling interest of up to 100 percent in the licenses and authorizations and licensees/authorization holders included in the Applications (collectively, "the T-Mobile USA/MetroPCS Common Carrier Licensees").[243] MetroPCS submitted supplemental ownership information on January 7, 2013 and January 22, 2013.[244]

1. Review of Foreign Ownership Issues

85. Section 310(b)(4) of the Act establishes a 25 percent benchmark for investment by foreign individuals, governments, and corporations in U.S.-organized entities that directly or indirectly control U.S. common carrier wireless licensees.[245] This section of the Act also grants the Commission discretion to allow higher levels of foreign ownership in a licensee's controlling U.S.-organized parent unless the Commission finds that the public interest will be served by refusing to permit such foreign ownership.[246] The presence of aggregated alien equity or voting interests in a common carrier licensee's controlling U.S-organized parent in excess of 25 percent triggers the applicability of section 310(b)(4)'s statutory benchmark.[247] 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 license."[248]

86. 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 aeronautical en route radio licensees.[249] Therefore, with respect to indirect foreign investment from WTO Member

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[240] 47 U.S.C. § 310(b)(4). *See* Public Interest Statement at 56.

[241] *See* Public Interest Statement at 56-57 (citing *DT-VoiceStream Order*).

[242] Letter from James Ball, Chief, Policy Division, International Bureau, FCC, to Nancy J. Victory, Wiley Rein, Counsel for Deutsche Telekom AG (Nov. 29, 2012).

[243] Letter from Nancy J. Victory, Wiley Rein, Counsel for Deutsche Telekom AG, to James L. Ball, Chief, Policy Division, International Bureau, FCC (Jan. 9, 2013) ("*DT Foreign Ownership Letter*").

[244] Letter from Carl W. Northrop, Telecommunications Law Professionals PLLC, Counsel for MetroPCS, to James L. Ball, Chief, Policy Division, International Bureau, FCC (Jan. 7, 2013) ("*MetroPCS Jan. 7 Foreign Ownership Letter*"); Letter from Carl W. Northrop, Counsel for MetroPCS, to James L. Ball, Chief, Policy Division, International Bureau, FCC (Jan. 22, 2013) ("*MetroPCS Jan. 22 Foreign Ownership Letter*").

[245] 47 U.S.C. § 310(b)(4).

[246] *Id*.

[247] *See* Applications of BBC License Subsidiary L.P. (Assignor) and SF Honolulu Subsidiary, Inc. (Assignee), *et al.*, *Memorandum Opinion and Order*, 10 FCC Rcd 10968, 10973-74 ¶ 25 (1995).

[248] 47 U.S.C. § 310(b)(4).

[249] Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket Nos. 97-142 and (continued….)

countries, the Commission adopted a rebuttable presumption that such investment generally raises no competitive concerns.[250] The Commission's public interest analysis under Section 310(b)(4) also considers any national security, law enforcement, foreign policy, or trade policy concerns raised by the proposed foreign investment.[251] With respect to foreign investment from countries that are not WTO Members, the Commission stated in the *Foreign Participation Order* that it would deny an application if it found 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.[252]

87. The Commission has previously authorized, in the *DT-VoiceStream Order*, up to 100 percent foreign ownership of T-Mobile USA and its licensed subsidiaries by Deutsche Telekom, including interests held by the German government.[253] In this proceeding, we consider whether the public interest would similarly be served by permitting Deutsche Telekom to acquire a controlling, 74 percent equity and voting interest in T-Mobile US, Inc., the U.S-organized entity that would indirectly wholly own and control (through T-Mobile USA) the T-Mobile USA/MetroPCS Common Carrier Licensees. We also consider Deutsche Telekom's request that we approve prospectively its acquisition of 100 percent indirect ownership of the T-Mobile USA/MetroPCS Common Carrier Licensees. Based on the ownership information Deutsche Telekom and MetroPCS have submitted for the record, which we review below, we find it reasonable to conclude that, upon consummation of the proposed transaction, at least 75 percent of T-Mobile US, Inc.'s equity and voting interests would be held, directly and indirectly, by individuals and entities that are citizens of, or have their principal places of business in, the United States, Germany and other WTO Member countries.

88. *Deutsche Telekom Foreign Ownership*. Deutsche Telekom is a publicly-traded German company with over 4.3 billion shares outstanding.[254] According to the Applicants, Deutsche Telekom will hold its interests in T-Mobile US, Inc. through its wholly owned, direct and indirect German subsidiaries, T-Mobile Global Zwischenholding GmbH ("T-Mobile Global") and T-Mobile Holding, respectively.[255] In response to the International Bureau's request for additional ownership information,

(Continued from previous page)
95-22, *Report and Order and Order on Reconsideration*, 12 FCC Rcd 23891, 23896, 23913, 23940 ¶¶ 9, 50, 111-112 (1997), *Order on Reconsideration*, 15 FCC Rcd 18158 (2000) ("*Foreign Participation Order").*

[250] *Id*. at 23913, 23940 ¶¶ 50, 111-112.

[251] *Id.* at 23913-15 ¶¶ 59-66. In assessing the public interest, we take into account the record developed in each particular case and accord deference to Executive Branch agencies on issues related to national security, law enforcement, foreign policy and trade policy. *Id*. at 23918 ¶ 59, 23919 ¶¶ 61-66.

[252] *Id.* at 23946 ¶ 131.

[253] *DT-VoiceStream Order*, 16 FCC Rcd 9779. The foreign ownership ruling was issued in the *DT-VoiceStream Order* to T-Mobile USA's predecessor in interest, VoiceStream Wireless Corporation. The Commission extended that ruling in 2006 to cover licenses in the Advanced Wireless Services. *See International Authorizations Granted*, File No. ISP-PDR-20060510-00013, *Public Notice*, DA 06-2441, 21 FCC Rcd 14062 (Int'l Bur., 2006). The Commission has also authorized, under Section 310(b)(4), T-Mobile USA's acquisition of interests in other common carrier licensees. *See, e.g.*, *T-Mobile-SunCom Order*, 23 FCC Rcd 2515.

[254] *DT Foreign Ownership Letter* at 1-3.

[255] Public Interest Statement at 5. This is the same holding company structure through which Deutsche Telekom currently holds its ownership interests in T-Mobile USA. *See* International Authorizations Granted, File No. ISP-PDR-20081001-00020, *Public Notice*, DA 10-2200, 25 FCC Rcd 16030 (Int'l Bur., 2010) (approving holding company structure of T-Mobile USA and its wholly-owned subsidiaries).

Deutsche Telekom provided information to show that approximately 91 percent of its shares are held by shareholders whose citizenship, principal place of business, or mailing address are in WTO Member countries.[256] In particular, Deutsche Telekom provided ownership information for the following categories of shareholders and their approximate aggregate shareholdings: (1) beneficial owners of three percent or more of Deutsche Telekom stock (32 percent); (2) beneficial owners listed in Deutsche Telekom's Share Register (15 percent); (3) institutional investors (44 percent); and (4) unknown shareholders (9 percent). We discuss these categories below.

89. Deutsche Telekom states that two beneficial owners hold three percent or more of its stock: (1) the Federal Republic of Germany ("FRG"), which holds approximately a 15 percent direct interest in DT and (2) Kreditanstalt für Wiederaufbau ("KfW") – a bank organized in Germany that is 80 percent owned by the FRG and 20 percent owned by the German federal states – which holds approximately a 17 percent direct interest in Deutsche Telekom.[257] With regard to beneficial owners listed in its Share Register, Deutsche Telekom states that, as of October 1, 2012, the Share Register shows that individuals in Germany holding shares on an individual basis, *i.e.*, retail positions, held approximately 15.37 percent of DT's shares.[258] According to Deutsche Telekom, although the Share Register does not contain the citizenship of these shareholders, it does record their mailing addresses, all of which are in Germany. Deutsche Telekom contends that based on Commission precedent, it would be reasonable to consider these shareholders as German citizens, especially given the very large number of shares outstanding and the company's numerous shareholders.[259]

90. Deutsche Telekom states that institutional investors that are organized and have their principal places of business in WTO Member countries collectively hold 43.65 percent of its stock,[260]

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[256] *DT Foreign Ownership Letter* at 5.

[257] Deutsche Telekom states that the German Securities Trading Act requires shareholders that have an aggregate 3% or greater voting interest in a publicly listed company to disclose their voting rights to the company. *DT Foreign Ownership Letter* at 1-2. *See* Federal Financial Supervisory Authority, Securities Trading Act (Wertpapierhandelsgesetz – WpHG) (last visited Feb. 21, 2013), *available at* http://www.bafin.de/SharedDocs/Aufsichtsrecht/EN/Gesetz/wphg_101119_en.html. *See also* Public Interest Statement at 2. DT states that in late December 2012, it was notified that Blackrock, Inc., a company that has its principal place of business in the United States, increased its ownership interest to hold a slightly greater than 3% interest in DT. *Id*. at 2. DT also states that as of September 2012, the Blackstone Group, which is organized and has its principal place of business in the United States, held a greater than 3% interest in DT, although its ownership interest in DT has since fallen below the 3% threshold. *Id*. at 2, n.9.

[258] *DT Foreign Ownership Letter* at 3.

[259] *DT Foreign Ownership Letter* at 3, n.10 (citing Iridium Holdings LLC and Iridium Carrier Holdings LLC, Transferors and GHL Acquisition Corp., Transferee Applications for Consent to Transfer Control of Iridium Carrier Services LLC, Iridium Satellite LLC, and Iridium Constellation LLC, *Memorandum Opinion and Order and Declaratory Ruling*, 24 FCC Rcd 10725, 10743-44 ¶¶ 41-42 (Int'l Bur. 2009) ("*2009 Iridium Order*"); Applications of Rural Cellular Corporation and Cellco Partnership d/b/a Verizon Wireless for Transfer of Control, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 12463, 12525-26 ¶149 (2008) ("*Verizon Wireless-RCC Order*"); Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended and Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P., Petition for Expedited Action for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, IBFS File Nos. ISP-PDR-20070314-00004 and ISP-PDR-20080111-00001, *Order and Declaratory Ruling*, 23 FCC Rcd 4436 (2008) ("*2008 MSV Order*")).

[260] *DT Foreign Ownership Letter* at 4 and Exhibit 1 (noting the breakdown of DT's institutional investors as follows: United States (10.28%), United Kingdom (9.99%), Germany (6.71%), France (4.94%), Switzerland (2.11%), Norway (1.93%), Netherlands (1.51%), Canada (1.65%), China (0.96%), Japan (0.79%), Spain (0.67%), (continued….)

while institutional investors from non-WTO Member countries collectively hold 0.30 percent.[261] Deutsche Telekom ascertained this information through Ipreo, a third-party vendor specializing in shareholder identification. Deutsche Telekom states that it retains Ipreo in the ordinary course to assist Deutsche Telekom in identifying its institutional investors (*i.e.*, banks, insurance companies, pension plans, foundations/endowments, private equity funds and institutional investment companies).[262] Ipreo analyzes the share register, obtains information from Deutsche Telekom's Investor Relations department, reviews public filings, and makes direct inquiries to institutional investors who hold Deutsche Telekom shares. Ipreo then periodically provides Deutsche Telekom with a comprehensive breakdown of its institutional investor shareholders, including information regarding such shareholders' location of organization and principal place of business. Deutsche Telekom states that Ipreo's most recent analysis is based on September 30, 2012 as the recording date. Deutsche Telekom does not provide ownership information for approximately nine percent of its shareholders because neither citizenship nor address information is available for them.[263]

91. In accordance with Commission precedent,[264] we calculate the following indirect equity and voting interests would be held in T-Mobile US, Inc. upon closing as a result of Deutsche Telekom's 74 percent equity and voting interest in T-Mobile US, Inc.: (1) the FRG and KfW (collectively, 23.68 percent equity and 32 percent voting interests);[265] (2) beneficial owners listed in Deutsche Telekom's

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Italy (0.52%), and Other WTO Member countries (1.59%)).

[261] *DT Foreign Ownership Letter* at Exhibit 1.

[262] *DT Foreign Ownership Letter* at 4, n.11 ("DT retains Ipreo for this purpose because it is otherwise limited in its ability to obtain information regarding shares held by institutional investors and non-German brokers, money managers, traders and individuals. German law does not have a law or regulation similar to the United Kingdom Companies Act, which gives public companies the right to investigate beneficial owners of shares. Nor does Germany require the mailing of proxy solicitations to all shareholders as is required in the United States.")

[263] *DT Foreign Ownership Letter* at 4. DT also notes that some of these shares are held in street name or through American depositary receipts, where the underlying beneficial owner information is not currently available to DT.

[264] 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. *Id.* at 10973, ¶ 23; *see also* 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, 522 ¶ 19 (1985) ("*Wilner & Scheiner I*"), *recon. in part*, 1 FCC Rcd 12 (1986). In circumstances where the voting interests in the U.S. parent of a common carrier licensee are held through intervening partnerships, a general partner is considered to hold the same voting interest as the partnership holds in the company positioned below it. Similarly, in the absence of a demonstration that a limited partner effectively is insulated from active involvement in partnership affairs, a limited partner will be deemed to hold the same voting interest as the partnership holds in the company positioned below it. *See* Applications of XO Communications, Inc., IB Docket No. 02-50, *Memorandum Opinion, Order and Authorization*, 17 FCC Rcd 19212, 19221-23 ¶¶ 22, 25 (Int'l Bur., WCB, and WTB 2002) ("*XO Communications*").

[265] We derive the 23.68% equity interest by multiplying the sum of the FRG's and KfW's equity interests in Deutsche Telekom (32%) by Deutsche Telekom's proposed equity interest in T-Mobile US, Inc. (74%) (32.00% x 74.00% = 23.68%). *See supra* note 264 (describing use of the "multiplier" to calculate foreign equity interests when they are held through intervening companies). By contrast, we treat the FRG's and KfW's 32% voting interest in Deutsche Telekom as a 32% voting interest in T-Mobile US, Inc. because Deutsche Telekom's proposed 74% interest in T-Mobile US, Inc. would constitute a controlling interest. *Id*. We also find that, because the FRG holds a controlling interest in KfW, the FRG is properly treated as holding the entire 32% voting interest in its own right. (continued….)

Share Register (11.37 percent equity and 15.37 percent voting interests); (3) institutional investors (32.52 percent equity and 43.95 percent voting interests); and unknown shareholders (6.66 percent equity interests and 9.00 percent voting interests).[266] Based on the record before us and pursuant to Section 310(b)(4) of the Act and the Commission's foreign ownership policies adopted in the *Foreign Participation Order*,[267] we find that the foreign ownership interests identified by Deutsche Telekom in its filings are properly treated as investment from WTO Member countries except for the following: (1) 6.66 percent equity and 9.00 percent voting interests that would be held in T-Mobile US, Inc. by unknown shareholders; and (2) 0.22 percent equity interests and 0.30 percent voting interests that would be held by institutional investors from non-WTO Member countries.[268] Accordingly, we ascribe to non-WTO shareholders of Deutsche Telekom (including unknown shareholders) an aggregate 6.88 percent equity interest and a 9.30 percent voting interest in T-Mobile US, Inc.[269]

92. *MetroPCS Foreign Ownership.* As noted above, MetroPCS is a publicly-traded Delaware corporation listed on the New York Stock Exchange and headquartered in Texas.[270] MetroPCS states it routinely certifies to the Commission in its FCC applications that it is in compliance with the foreign ownership restrictions set forth in Section 310 of the Act. MetroPCS based these certifications upon periodic surveys of its shareholders conducted by a proxy solicitation firm with experience in conducting foreign ownership surveys for U.S. telecommunications firms.[271] For example, in 2009 Georgeson, Inc. ("Georgeson") conducted a foreign ownership survey for MetroPCS to ascertain the percentage of MetroPCS shareholders that were U.S. citizens using statistically valid sampling techniques.[272] Georgeson concluded that U.S. citizens held 319,873,361, or 90.6 percent of the issued and

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This amount, as Deutsche Telekom notes, represents a decrease from the German government's approximately 46% ownership interest in Deutsche Telekom at the time of the Commission's decision in the *DT-VoiceStream Order*. *See* Public Interest Statement at 57.

[266] We again employ a "multiplier" to calculate the equity interests (but not the voting interests) that would be held indirectly in T-Mobile US, Inc. by Deutsche Telekom's shareholders – that is, we multiply the percentage of their equity interests in Deutsche Telekom by the 74% equity interest Deutsche Telekom would hold in T-Mobile US, Inc. upon closing. *See supra* notes 264 and 265. The relevant calculations are as follows: beneficial owners listed in DT's Share Register (15.37% x 74.00% = 11.37% equity); institutional investors (43.95% x 74.00% = 32.52% equity); and unknown shareholders (9.00% x 74.00% = 6.66% equity).

[267] *See, e.g.*, *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17541-46 ¶¶ 221-32, *pet. for recon. denied*, FCC 11-122, 26 FCC Rcd 11763 (2011); *Verizon Wireless-RCC Order*, 23 FCC Rcd at 2525-26 ¶149, *pet. for recon. dismissed*, FCC 11-122, 26 FCC Rcd 11763 (2011); *2009 Iridium Order*, 24 FCC Rcd at 10743-45 ¶¶ 41-43.

[268] *DT Foreign Ownership Letter* at Exhibit 1. We calculate the 6.66% equity interest that would be held in T-Mobile US, Inc. by Deutsche Telekom's unknown shareholders by multiplying their aggregate 9% equity interest in Deutsche Telekom by the 74% equity interest that Deutsche Telekom would hold in T-Mobile US, Inc. (9.00% x 74.00% = 6.66%). We treat the unknown shareholders' aggregate 9% voting interest in Deutsche Telekom as a 9% voting interest in T-Mobile US, Inc. because Deutsche Telekom's proposed 74% interest in T-Mobile US, Inc. would constitute a controlling interest. We calculate in the same manner the interests that Deutsche Telekom's non-WTO institutional investors would hold in T-Mobile US, Inc. as a result of their aggregate 0.30% shareholdings in Deutsche Telekom: a 0.22% equity interest (0.30% x 74.00% = 0.22%) and an undiluted 0.30% voting interest.

[269] *See, e.g.*, *2008 MSV Order*, 23 FCC Rcd at 4442 ¶ 14 ("[W]e treat the 0.02 percent equity and voting interest held indirectly in MSV by the non-U.S., non-Canadian shareholders of BCE, Inc. as non-WTO investment because we do not have adequate information as to their citizenship or principal places of business.").

[270] Public Interest Statement at 2; *MetroPCS Jan. 7 Foreign Ownership Letter* at 3.

[271] *MetroPCS Jan. 7 Foreign Ownership Letter* at 3.

[272] *Id*. MetroPCS states that Georgeson is a preeminent proxy solicitation firm that regularly helps companies identify shareholders and has experience conducting foreign ownership surveys for telecommunications companies (continued….)

outstanding shares of MetroPCS as of April 29, 2009.[273] MetroPCS asserts that between 2009 and the present, it monitored the holdings of its largest shareholders and found no reason to believe there has been a material change regarding its foreign ownership since the Georgeson survey was conducted in 2009.[274]

93. In response to a request from the International Bureau for more recent ownership information, MetroPCS reports that it retained K&L Gates LLP ("K&L Gates") to review its shareholder list of September 30, 2012 to verify that at least 75 percent of its common stock is held and voted by U.S. citizens or by institutions or entities considered to be U.S. entities under applicable precedent. During its review, K&L Gates used the following criteria to determine whether a shareholder is a U.S. shareholder: (1) any individual if he or she is a U.S. citizen; (2) any bank, insurance company, pension plan, and foundation/endowment if it is organized in the United States and controlled by U.S. citizens; and (3) any private equity fund and management investment company if (a) it is organized in the United States *and* (b) it has its principal place of business in the United States, taking into consideration: (i) the country of its world headquarters, (ii) tax jurisdiction, (iii) the citizenship or principal place of business of its controlling principals, directors and/or investment managers, and (iv) countries from which the funds being managed were contributed.[275] K&L Gates concluded that at least 75 percent of the issued and outstanding shares of MetroPCS common stock are held by U.S. shareholders. K&L Gates ceased its research once it reached the 75 percent threshold for U.S. shareholders. MetroPCS did not provide definitive ownership information for the remaining 25 percent of its shareholders.[276]

94. Based on the record before us and pursuant to Section 310(b) (4) of the Act and the Commission's foreign ownership policies adopted in the *Foreign Participation Order*,[277] we find that MetroPCS' s U.S. shareholders would hold a 19.5 percent equity and voting interest (75 percent x 26 percent) in T-Mobile US, Inc. We also find that unidentified MetroPCS shareholders would hold a 6.5 percent equity and voting interest (25 percent x 26 percent) in T-Mobile US, Inc.[278] Consistent with

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in the United States.

[273] *Id*. at 3 and Attachment 1. According to MetroPCS, it has a single class of voting Common Stock, which is widely held and disbursed. It reports that as of September 30, 2012, MetroPCS had 364,103,435 shares of outstanding Common Stock held by over 300,000 shareholders, and that only five shareholders held more than a 5% interest in the company. *Id.* at 1. The margin of error for its 2009 survey was 2.86% at the 97.5% confidence level. *Id*. at 3 and Attachment 1.

[274] *Id*. at 3.

[275] *MetroPCS Jan. 7 Foreign Ownership Letter* at 4 and Attachment 3. According to MetroPCS, K&L Gates used information made available by MetroPCS, the SEC's EDGAR database (including SEC Schedule 13Gs), Form ADVs (retrieved from the SEC's Investment Advisor Public Disclosure database), the Federal Reserve National Information Center, Secretary of State websites, Bloomberg Financial, Securities Mosaic, Capital IQ, Hoovers, Accurint, Westlaw, Lexis, PitchBook, and individual shareholder response to reach its conclusions. *Id.* at 4, n.8. For details on the methodology used by K&L Gates, *see MetroPCS Jan. 7 Foreign Ownership Letter* at Attachment 3.

[276] K&L Gates reached the 75% U.S. shareholder threshold by researching 101 shareholders of MetroPCS whose aggregate holdings represent 89.4% of the company's outstanding shares of common stock. *MetroPCS Jan. 22 Foreign Ownership Letter* at 2. In the course of its research, K&L Gates made note of investors from non-U.S. jurisdictions, *i.e.*, the United Kingdom, Canada, Switzerland, Germany, Ireland, France, Australia, Japan, Norway, Italy, the Netherlands, Sweden, and South Korea, all of which are WTO Member countries. However, K&L Gates did not reach definitive conclusions regarding the citizenship of these non-U.S. investors once the 75% threshold for U.S. shareholders was reached. *MetroPCS Jan. 7 Foreign Ownership Letter* at 4, n.9.

[277] *See, e.g.*, *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17541-46 ¶¶ 221-232; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 2525-26 ¶149; *2009 Iridium Order*, 24 FCC Rcd at 10743-45 ¶¶ 41-43.

[278] We multiply by 26% the equity interests and the voting interests held in MetroPCS by its U.S. shareholders (continued….)

Commission precedent, we treat such unidentified interests as investment from non-WTO Member countries.[279] Accordingly, we treat as non-WTO Member investment an aggregate 6.5 percent equity and voting interest in T-Mobile US, Inc. as a result of unidentified ownership interests in MetroPCS.

2. Declaratory Ruling

95. Based on our analysis of the information that Deutsche Telekom and MetroPCS have submitted for the record, we find that at least 75 percent of the equity and voting interests that would be held directly and indirectly in T-Mobile US, Inc. upon closing are properly ascribed to individuals or entities that are citizens of, or that principally conduct business in, WTO Member countries for purposes of our public interest analysis under Section 310(b)(4) of the Act and the policies adopted in the *Foreign Participation Order*.[280] Applicants are therefore entitled to a rebuttable presumption that the post-closing foreign ownership of T-Mobile US, Inc. and the T-Mobile USA/MetroPCS Common Carrier Licensees does 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 explained above, we find no basis to conclude that the proposed transaction is likely to harm competition.[281]

96. Pursuant to the rules and policies established by the Commission's *Foreign Participation Order*, we find that it would not serve the public interest to prohibit the indirect foreign ownership of the T-Mobile USA/MetroPCS Common Carrier Licensees in excess of the 25 percent benchmark in section 310(b)(4) of the Act. Specifically, this ruling permits the T-Mobile USA/MetroPCS Common Carrier Licensees to be 100 percent owned indirectly, as a result of foreign ownership interests held in their controlling U.S. parent, by T-Mobile Global and T-Mobile Holding (individually), by Deutsche Telekom (individually), and by Deutsche Telekom's shareholders (collectively), subject to the following conditions. First, the T-Mobile USA/MetroPCS Common Carrier Licensees shall obtain prior Commission approval before any foreign individual or entity acquires a direct or indirect equity and/or voting interest in T-Mobile US, Inc. in excess of 25 percent, with the exception of the equity and voting interests held currently by the FRG and KfW. Second, the T-Mobile USA/MetroPCS Common Carrier Licensees shall obtain prior Commission approval before the ownership interests held collectively in Deutsche Telekom by the FRG and KfW exceed 32 percent equity and/or voting interests plus an aggregate three percent to account for fluctuations in publicly-traded shares.[282] Finally, the T-Mobile USA/MetroPCS Common Carrier Licensees shall obtain prior Commission approval before T-Mobile US, Inc.'s direct or indirect equity and/or voting interests from non-WTO Member countries (including interests from unknown countries) exceeds 25 percent. The T-Mobile USA/MetroPCS Common Carrier

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(75%) and its unidentified shareholders (25%) to derive the equity and voting interests they would hold indirectly in T-Mobile US, Inc. *See supra* note 264.

[279] *See, e.g.*, *2008 MSV Order*, 23 FCC Rcd at 4442 ¶ 14.

[280] *See supra* note 249 and accompanying text. As discussed above, we ascribe to non-WTO shareholders of Deutsche Telekom (including unknown shareholders) an aggregate 6.88% equity interest and 9.30% voting interest in T-Mobile US, Inc. Adding the 6.5% equity and voting interests that we calculate would be held in T-Mobile US, Inc. by unidentified shareholders of MetroPCS, we calculate total non-WTO investment in T-Mobile US, Inc. as 13.38% of its equity interests and 15.80% of its voting interests.

[281] *See* discussion at Sections V and VI *supra*; *see also Foreign Participation Order*, 12 FCC Rcd at 23905-09 ¶¶ 33-41.

[282] *See* Verizon Communications, Inc., Transferor, and América Móvil, S.A. de C.V., Transferee, Application for Authority to Transfer Control of Telecommunicaciones de Puerto Rico, Inc. (TELPRI), WT Docket No. 06-113, *Memorandum Opinion and Order and Declaratory Ruling*, 22 FCC Rcd 6195, 6225 ¶ 67 (2007) ("*America Movil Order*").

Licensees have an affirmative duty to monitor their foreign equity and voting interests, calculate these interests consistent with the attribution principles enunciated by the Commission, and otherwise ensure continuing compliance with the provisions of Section 310(b)(4) of the Act.[283]

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

97. When analyzing a transfer of control or assignment application in which foreign investment is an issue, we also consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the Executive Branch.[284] Deutsche Telekom requested that the Commission condition its grant of the transfer of control of the MetroPCS authorizations on compliance with the provisions of the National Security Agreement entered into on January12, 2001, as amended between Deutsche Telekom and the Department of Justice, the Federal Bureau of Investigation, and the Department of Homeland Security.[285]

98. On March 8, 2013, the Department of Justice (DOJ), with the concurrence of the Department of Homeland Security (DHS), filed a Petition to Adopt Conditions to Authorizations and Licenses (DOJ/DHS Petition).[286] DOJ and DHS state that they have no objection to the Commission granting the applications and petition for declaratory ruling "provided that the Commission condition its approval of the assurance of T-Mobile/MetroPCS to abide by the commitments and undertakings set forth in the Agreement dated January 12, 2001 and the Amendment No. 2, dated March 5, 2013 . . ."[287]

99. In accordance with the request of Deutsche Telekom and the DOJ and DHS, we condition grant of the instant applications on Deutsche Telekom AG, T-Mobile USA, Inc. and MetroPCS Communications Inc. compliance with the provisions of the National Security Agreement entered into on January 12, 2001, as amended, between Deutsche Telekom AG, T-Mobile USA, Inc. and MetroPCS Communications Inc., on the one hand, and the U.S. Department of Justice, the Federal Bureau of Investigation and the U.S. Department of Homeland Security, on the other, which is appended to the *DT-VoiceStream Order*[288] and the Amendment No. 2, dated March 5, 2013, which is in Appendix B of this Order.

VIII. CONCLUSION

100. In considering the applications, we evaluated the likely competitive effects of the proposed transaction at both the local and national levels. The proposed transaction raises horizontal competition issues because it would result in the combination of overlapping mobile wireless coverage and services in various markets, as well as the transfer of customers of two current competitors to Newco. We find that the proposed transaction is not likely to result generally in competitive or other public

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[283] *See* Applications of Cellco Partnership d/b/a Verizon Wireless and AT&T, Inc., WT Docket No. 09-121, *Memorandum Opinion and Order and Declaratory Ruling*, 25 FCC Rcd 10985, 11024 ¶ 99 (IB/WTB 2010); Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc., Petition for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as Amended, File No. ISP-PDR-20070314-00004, *Order and Declaratory Ruling*, 23 FCC Rcd 4436, 4443 ¶ 16 (2008); *America Movil Order*, 22 FCC Rcd at 6225 ¶ 68.

[284] *Foreign Participation Order*, 12 FCC Rcd at 23918 ¶ 58.

[285] Public Interest Statement at 61-62 (citing *DT-VoiceStream Order*, 16 FCC Rcd 9779).

[286] DOJ/DHS, Petition to Adopt Conditions to Authorizations and Licenses, WT Docket No. 12-301 (filed March 8, 2013).

[287] DOJ/DHS Petition at 1.

[288] *See* Section XIII., Ordering Clauses, *infra*. The National Security Agreement is contained in the *DT-VoiceStream Order*, Appendix B, 16 FCC Rcd at 9853. *See also T-Mobile-SunCom Order*, 23 FCC Rcd at 2532 (appending the NSA amendment).

interest harms, and, to the extent that it may result in public interest harms in selected markets, we find that the likely public interest benefits are greater. The combination of spectrum assets as a result of this transaction will allow Newco to actively put this spectrum to use in the deployment of the latest-generation mobile wireless services. Moreover, the transaction will enhance the ability of Newco to compete against the top three nationwide service providers by enabling it to expand the MetroPCS brand into new geographical markets, improve service quality, and deploy a more robust network nationally. Because these potential public interest benefits outweigh any potential public interest harms, we conclude that consent to the proposed transaction would serve the public interest.

IX. ORDERING CLAUSES

101. ACCORDINGLY, having reviewed the Applications and the record in these matters, IT IS ORDERED that, pursuant to Sections 4(i) and (j), 214, 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 303(r), 309, 310(b), 310(d), the applications for the transfer of control of PCS and AWS-1 licenses and leases, one lower 700 MHz license, as well as international Section 214 authorizations from MetroPCS and T-Mobile USA to T-Mobile US, Inc. are GRANTED, to the extent specified in this Memorandum Opinion and Order and Declaratory Ruling and subject to the conditions specified herein.

102. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), and 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 310(b)(4), and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, the petition for declaratory ruling filed by Deutsche Telekom is GRANTED to the extent specified in this Memorandum Opinion and Order and Declaratory Ruling.

103. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 4(j), 303(r), 309, 310(b) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(b), 310(d), grant of the applications and associated petition for declaratory ruling IS CONDITIONED UPON compliance by Deutsche Telekom AG, T-Mobile USA, Inc. and MetroPCS Communications Inc. with the terms contained in the National Security Agreement entered into on January 12, 2001, and the Amendment No. 2, dated March 5, 2013, between Deutsche Telekom AG, T-Mobile USA, Inc. and MetroPCS Communications Inc., on the one hand, and the U.S. Department of Justice, the Federal Bureau of Investigation, and the U.S. Department of Homeland Security, on the other.

104. IT IS FURTHER ORDERED that this Memorandum Opinion and Order and Declaratory Ruling 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 Memorandum Opinion and Order and Declaratory Ruling.

105. This action is taken under delegated authority pursuant to sections 0.51, 0.131, 0.261, and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.51, 0.131, 0.261, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Ruth Milkman
Chief
Wireless Telecommunications Bureau

Mindel De La Torre
Chief
International Bureau

APPENDIX A

Commenters in WT Docket No. 12-301

Comments:

Communications Workers of America

The Free State Foundation

HyperCube Telecom, LLC

The Greenlining Institute

Opposition:

Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc.

Replies:

AFL-CIO, NAACP, Service Employees International Union, Sierra Club, National Consumers League, Center for Community Change, Alliance for Retired Americans, USAction, Jobs with Justice

Communications Workers of America

APPENDIX B

Petition to Adopt Conditions to Authorizations and Licenses and Amendment No. 2 to the National Security Agreement with Deutsche Telekom

The Petition to Adopt Conditions to Authorizations and Licenses and Amendment No. 2 to the National Security Agreement with Deutsche Telekom are attached as PDF files to this document.

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

	)	
	)	
	)	
In the Matter of	)	File Nos: WC DK 12-301
	)	(DA 12-1730 rel. October 26, 2012)
Deutsche Telekom AG, T-Mobile USA, INC.,	)	ITC-T/C-20121018-00264
and MetroPCS Communications, Inc.	)	ITC-T/C-20121018-00265
(T-Mobile/MetroPCS)	)	ITC-T/C-20121018-00266
	)	ITC-T/C-20121018-00267
	)	ITC-PDR-20121018-00006
	)	
	)	

PETITION TO ADOPT CONDITIONS TO AUTHORIZATIONS AND LICENSES

The Department of Justice ("DOJ"), The Federal Bureau of Investigation ("FBI"), and The U.S. Department of Homeland Security ("DHS"), (the "USG Parties") submits this Petition to Adopt Conditions to Authorizations and Licenses (Petition), pursuant to Section 1.41 of the Federal Communications Commission ("Commission") rules.[1] Through this Petition, the USG Parties advise the Commission that it has no objection to the Commission approving the authority sought in the above-referenced proceedings, provided that the Commission conditions its approval on the assurance of T-Mobile/MetroPCS to abide by the commitments and undertakings set forth in the Agreement dated January 12, 2001 and the Amendment No. 2, dated March 5, 2013 ("Amendment"), which is attached hereto. In the above-referenced proceedings, the Applicants requests Commission consent to the transfer of *de jure* control of section 214 authorizations (WC-DK 12-301) held by MetroPCS. After discussions with representatives of the Applicants in connection with the above-referenced proceedings, the

[1] 47 C.F.R. § 1.41.

USG Parties have concluded that the additional commitments set forth in the Amendment will help ensure that the USG Parties with responsibility for enforcing the law, protecting the national security, and preserving public safety, can proceed appropriately to satisfy those responsibilities. Accordingly, the USG Parties advise the Commission that it has no objection to the Commission granting the application in the above-referenced proceedings, provided that the Commission conditions its consent on compliance by T-Mobile/MetroPCS with the Amendment.

Respectfully submitted,

/S/ Tyrone Brown
Attorney Advisor
Foreign Investment Review Staff
National Security Division
U.S. Department of Justice

cc: Best Copy and Printing, Inc. (via email at fcc@bcpiweb.com)
Tracey Wilson-Parker (via email at tracey.wilson-parker@fcc.com)
David Krech (via email at david.krech@fcc.gov)
Jim Bird (via email at jim.bird@fcc.gov)
Jodie May (via email at jodie.may@fcc.gov)
George Li (via email at george.li@fcc.gov)

AMENDMENT No. 2

DEUTSCHE TELEKOM AG ("Deutsche Telekom"), T-MOBILE USA, INC. ("T-Mobile"), and METROPCS COMMUNICATIONS, INC. ("MetroPCS"), 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 ("Agreement"); and

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

Whereas, T-Mobile, SunCom Wireless Holdings, Inc., and Deutsche Telekom, on the one hand, and the USG Parties, on the other, entered into an Amendment of the Agreement effective as of February 22, 2008; and

Whereas, MetroPCS, Deutsche Telekom, and T-Mobile, among others, have entered into a Business Combination Agreement, dated as of October 3, 2012, under which, among other things, upon approval of the Federal Communications Commission ("FCC") and the DOJ, as well as shareholder approval, Deutsche Telekom will transfer all of the capital stock of T-Mobile to MetroPCS and MetroPCS will issue and deliver to a subsidiary of Deutsche Telekom shares of MetroPCS common stock equal to an approximate 74% of the fully-diluted shares of MetroPCS common stock outstanding on a pro forma basis and, on the next business day, MetroPCS, Inc. (a wholly owned direct subsidiary of MetroPCS) will merge with MetroPCS Wireless, Inc. (a wholly owned indirect subsidiary of MetroPCS)("Wireless") with Wireless surviving and thereafter Wireless will merge with T-Mobile with T-Mobile surviving (the "Transaction," and MetroPCS after such transactions, "Newco"); and

Whereas, as a result of the Transaction, all of the subsidiaries of Wireless and T-Mobile will be subsidiaries of Newco; and

Whereas, Deutsche Telekom, T-Mobile and MetroPCS have filed applications with the FCC seeking approval for the transfer of control of MetroPCS to Deutsche Telekom (WT Docket No. 12-301, ULS File No. 0005446627 (lead application), IBFS File Nos. ITC-T/C-20121018-00264, ITC-T/C-20121018-00265, ITC-T/C-20121018-00266, ITC-T/C-20121018-00267 and ISP-PDR-20121018-00006) ("the Applications"); and

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

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

Agreement

1. The Recitals of the Agreement shall hereby be amended by deleting "and" at the end of the fifteenth recital, adding "and" at the end of the sixteenth recital, and adding as the seventeenth recital: "WHEREAS, the Parties acknowledge that the provisions of this Agreement will apply to "Newco," formerly known as MetroPCS Communications, Inc., and that Newco will be a 'U.S. Subsidiary' pursuant to Section 1.21 of this Agreement;"

2. Section 5.11 of the Agreement shall hereby be amended by adding "DHS," in the opening clause prior to the words "FBI and the DOJ," by deleting "and" at the end of Section 5.11(c), adding "and" at the end of 5.11(d), and adding as 5.11(e) "an updated list of Principal Equipment, as defined in Section 5.13."

3. Section 5.13 shall be added to the Agreement as follows:

   "5.13 Principal Equipment List

   Within 60 days of the execution of this Agreement, as amended, and thereafter within 30 days upon request from the DOJ or DHS, DT shall provide an updated list of Principal Equipment. For purposes of this Agreement, "Principal Equipment" means the primary components of the Domestic Communications Infrastructure, including, but not limited to, routers, switches, Home Location Registers, Home Subscriber Servers, voicemail servers, multimedia messaging service systems, short message service systems, firewall systems, load balancers, base stations controllers and radio network controllers, as applicable, and any non-embedded software necessary for the proper monitoring, administration and provisioning thereof. This list should include available information on each item's manufacturer and the model and/or version number of any hardware or software. In addition, the list should identify vendors or contractors for the Principal Equipment, including those performing functions that would otherwise be performed by DT personnel to install, operate, manage, or maintain the Principal Equipment. Where a new vendor or contractor for Principal Equipment does not appear on any list of Principal Equipment previously disclosed by DT pursuant to this Agreement, DT shall provide at least 30 days' advance written notice to DOJ and DHS of the installation of Principal Equipment made by the new vendor or the initiation of work by the new contractor. DT need not comply with the advance notice requirement for any action that is undertaken pursuant to a bona fide emergency and is necessary to ensure the continued operability of the network; however, in such circumstances, DT shall provide advance notice of a new vendor or contractor for Principal Equipment if practicable, and if impracticable, within five business days after the installation of Principal Equipment made by a new vendor or

the initiation of work by a new contractor, as applicable. DT shall negotiate in good faith to resolve any national security, law enforcement or public safety concerns DOJ or DHS may raise in response to any disclosure made by DT pursuant to this section."

4. Sections 1, 2 and 3 of this Amendment shall become effective concurrently with the closing of the Transaction. 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, and Newco and MetroPCS shall not be bound by the Agreement.

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: _____ Date: 3/5/13

Ms. Lisa Monaco
Assistant Attorney General for National Security
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

U.S. DEPARTMENT OF HOMELAND SECURITY

By: _____ Date: _____

Mr. David Heyman
Assistant Secretary, Office of Policy
3801 Nebraska Avenue, N.W.
Washington, D.C. 20528

FEDERAL BUREAU OF INVESTIGATION

By: _____ Date: 3/7/13

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

the initiation of work by a new contractor, as applicable. DT shall negotiate in good faith to resolve any national security, law enforcement or public safety concerns DOJ or DHS may raise in response to any disclosure made by DT pursuant to this section."

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UNITED STATES DEPARTMENT OF JUSTICE

By: _____ Date: _____

Ms. Lisa Monaco
Assistant Attorney General for National Security
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

U.S. DEPARTMENT OF HOMELAND SECURITY

By: _____ Date: 1-Mar-2013

Mr. David Heyman
Assistant Secretary, Office of Policy
3801 Nebraska Avenue, N.W.
Washington, D.C. 20528

FEDERAL BUREAU OF INVESTIGATION

By: _____ Date: _____

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

DEUTSCHE TELEKOM AG

By: i.V. _____ Date: 27/02 13

Mr. Axel Petri
Senior Vice President
Group Security Policy and Public Safety
Friedrich-Ebert-Allee 140
Bonn, Germany 53113

By: ppa. _____ Date: 27/02/13

Dr. Claus-Dieter Ulmer
Senior Vice President
Group Data Protection Officer
Friedrich-Ebert-Allee 140
Bonn, Germany 53113

T-MOBILE USA, INC.

By: _____ Date: _____

Mr. David A. Miller
Executive Vice President and General Counsel
T-Mobile USA, Inc.
12920 S.E. 38th Street
Bellevue, WA 98006

METROPCS COMMUNICATIONS, INC.

By: _____ Date: _____

Mr. Roger D. Linquist
Chairman and Chief Executive Officer,
MetroPCS Communications, Inc.
2250 Lakeside Boulevard
Richardson, TX 75082-4304

DEUTSCHE TELEKOM AG

By: _____ Date: _____

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By: _____ Date: _____

Dr. Claus-Dieter Ulmer
Senior Vice President
Group Data Protection Officer
Friedrich-Ebert-Allee 140
Bonn, Germany 53113

T-MOBILE USA, INC.

By: _____ Date: 2/26/13

Mr. David A. Miller
Executive Vice President and General Counsel
T-Mobile USA, Inc.
12920 S.E. 38th Street
Bellevue, WA 98006

METROPCS COMMUNICATIONS, INC.

By: _____ Date: _____

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MetroPCS Communications, Inc.
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Richardson, TX 75082-4304