

ORIGINAL

ORIGINAL

EX PARTE OR LATE FILED
RECEIVED

FEB 14 2001

February 14, 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

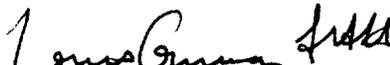
Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Presentation in IB Docket No. 00-187

Dear Ms. Salas:

On January 18, 2001, Mark D. Schneider of Commissioner Ness' office asked the VoiceStream Wireless Corporation and Deutsche Telekom AG to submit a collection of the parties' comments in the above-referenced matter, organized by issue. We are sending those materials to Mr. Schneider today and enclose an original and two copies of the materials for filing with the Commission pursuant to its rules.

Sincerely,



Louis Gurman
MORRISON & FOERSTER
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 887-1500



John H. Harwood II
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

Counsel for VoiceStream Wireless Corp.

Counsel for Deutsche Telekom AG



John T. Nakahata
HARRIS, WILTSHIRE & GRANNIS LLP
1200 Eighteenth St., N.W.
Washington, D.C. 20036
(202) 730-1300

Counsel for VoiceStream Wireless Corp.

No. of Copies rec'd
List A B C D E

04/21

cc (w/encl.): attached service list

**Issues Presented to the Commission in
VoiceStream Wireless Corporation-Powertel, Inc.-Deutsche Telekom AG
License Transfer Proceeding**

**I. THE PROPOSED TRANSACTIONS WILL DELIVER SUBSTANTIAL
PROCOMPETITIVE BENEFITS..... Tab A**

- A. **Application:** The Application demonstrates that the proposed transactions will benefit consumers by enabling VoiceStream to expand its footprint and introduce new services more quickly, leading to more price competition, more innovation, and better services.

Application by VoiceStream Wireless Corp. and Deutsche Telekom AG for Transfer of Control and Petition for Declaratory Ruling, filed Sept. 18, 2000, at 18-29 ("VoiceStream-DT App.")..... Tab A-1

- B. **Opposing Comments:** None.

- C. **Supporting Comments/Reply Comments:** Commenters supporting the merger speak with a single voice about increased competition and innovation, accelerated deployment, greater choice and lower prices, job creation, and capital investment. No commenters dispute these important procompetitive benefits.

Comments of Organization for International Investment ("OFII") at 9;
Comments of Institute for International Economics ("IE"),
Attachment at 4; Comments of National Consumers League ("NCL") at 1;
Comments of Communications Workers of America ("CWA") at 3-6;
Comments of Alliance for Public Technology ("APT") at 3-4; Comments
of Kugell..... Tab A-2

Applicants' Reply confirms the strongly procompetitive nature of the transactions.

Reply in Support of Applications For Consent to Transfer of Control, filed Jan. 8, 2001, at 3-7 ("Applicants' Reply")..... Tab A-3

**II. THE COMMISSION SHOULD GRANT THE APPLICATIONS UNDER
SECTION 310(B)(4) BECAUSE THE STRONG PRESUMPTION IN FAVOR OF
DT'S ENTRY CANNOT BE REBUTTED Tab B**

- A. **Application:** The Application shows that neither DT's foreign ownership nor its position in the German telecommunications market poses any threat to competition in the United States, much less the "very high risk" to competition required under the *Foreign Participation Order*.

VoiceStream-DT App. at 29-33 Tab B-1

Because the Powertel-DT Application contains substantially the same arguments as the VoiceStream-DT application, Applicants include only excerpts of the VoiceStream-DT Application.

- B. Opposing Comments in General:** A few commenters assert without factual support or even analysis that the transactions threaten competition in the United States (see Part II.D below).

Yet one of these commenters expressly concedes that the proposed transactions do not pose a “very high risk” to competition in this country.

Comments of Novaxess at 3..... **Tab B-2**

No other commenter comes close to providing any basis for denying the Applications or imposing any conditions.

- C. Reply Comments in General:** Applicants’ Reply confirms that the mergers would not pose any risk to competition in the United States.

Applicants’ Reply at 7-12 **Tab B-3**

- D. Specific Assertions in Opposing Comments and Responses in Reply**

1. Cross-subsidization

- a. Opposing Comments:** Two commenters make conclusory allegations that DT will be able to engage in improper cross-subsidization of VoiceStream’s U.S. wireless operations.

Comments of Senator Hollings at 10-12;

Comments of Novaxess at 10..... **Tab B-4**

- b. Reply Comments:** The Reply and the accompanying Declaration of J. Gregory Sidak both make clear that DT could not improperly cross-subsidize VoiceStream’s wireless operations in the United States due to the competitiveness of the U.S. and German markets, statutory and regulatory safeguards, and the separation between VoiceStream’s and DT’s operations.

VoiceStream-DT Reply at 12-19 and accompanying Declaration of J. Gregory Sidak (“Sidak Decl.”) at 15-28. **Tab B-5**

- c. Ex Parte Submission:** Applicants’ responses to the Feb. 2, 2001 letter from Donald Abelson (“Abelson Letter”) also demonstrate that the regulatory structure and market conditions in Germany ensure that DT could not improperly cross-subsidize VoiceStream’s wireless operations in the United States.

Responses to Supplemental Requests for Information
(Feb. 9, 2001) (“Applicants’ Supplemental Responses”)

at 1-6..... **Tab B-6**

2. Leveraging of Bottleneck Control

- a. Opposing Comments:** Three commenters assert without factual support or analysis that DT will be able to leverage its position in wireline local telecommunications markets in Germany to impede competition in the U.S. wireless market.

Comments of Senator Hollings at 10-12; Comments of Global TeleSystems (“GTS”) at 25; Comments of Novaxess at 10..... **Tab B-7**

- b. **Reply Comments**: The Reply shows that DT could not leverage any “bottleneck” control to undermine competition in the United States because both DT and VoiceStream will be subject to strict regulatory oversight in Germany and the United States.

VoiceStream-DT Reply at 19-20..... **Tab B-8**

3. **Access to Capital**

- a. **Opposing Comments**: Two commenters make unsupported assertions that DT has preferential access to capital as a result of its partial governmental ownership, which in turn would give VoiceStream a competitive advantage vis-à-vis other U.S. wireless carriers.

Comments of Senator Hollings at 6; Comments of Novaxess at 7 **Tab B-9**

- b. **Supporting Comments/Reply Comments**: Applicants’ Reply, the Sidak Declaration, and two supporting comments demonstrate that DT does not have superior access to capital. DT’s credit rating is comparable to many fully privatized carriers and is much lower than that of the German government. In addition, cost of capital figures fail to show a meaningful advantage for government-owned firms.

VoiceStream-DT Reply at 21-24; Sidak Decl. at 10-14; Comments of Securities Industry Association (“SIA”) at 2-3; Comments of IIE, attachment at 1 **Tab B-10**

- c. **Ex Parte Submission**: Applicants’ response to the Abelson Letter confirms that DT does not have any superior access to capital.

Applicants’ Supplemental Responses at 6 **Tab B-11**

III. **GRANT OF THE APPLICATIONS IS FULLY CONSISTENT WITH SECTION 310 OF THE ACT** **Tab C**

A. **Section 310(b)(4)**

- 1. **Application**: The Application demonstrates that section 310(b)(4), and not section 310(a), properly applies to the transactions.

VoiceStream-DT App. at 18..... **Tab C-1**

- 2. **Opposing Comments**: Senator Hollings alone argues that section 310(b)(4) does not give the Commission the authority to permit foreign governments to indirectly control a U.S. wireless license.

Comments of Senator Hollings at 8-10..... **Tab C-2**

3. **Supporting Comments/Reply Comments**: At least four commenters agree that section 310(b)(4) does not limit indirect foreign ownership of common carrier radio licenses and that reading section 310 to bar the mergers would violate the U.S. commitments to the WTO Basic Telecom Agreement.

Comments of Chamber of Commerce at 3-6; Comments of SIA at 1;
Comments of OFII at 2-5; Comments of CWA at 11-12..... **Tab C-3**

Applicants' Reply rebuts Senator Hollings argument, showing that the mergers are fully consistent with sections 310(a) and 310(b)(4). Because DT will exert only *indirect* control of the licenses through its U.S. subsidiary VoiceStream, section 310(b)(4), and not section 310(a), properly applies to these transactions and permits the Commission to approve the merger if in the public interest.

VoiceStream-DT Reply at 25-37..... **Tab C-4**

Former USTR Michael Kantor's Statement firmly establishes that accepting Senator Hollings' interpretation of section 310 would violate the U.S. commitment to the WTO.

Kantor Statement at 5-6..... **Tab C-5**

4. **U.S. Offer to the WTO**: In its commitments to the WTO, the United States expressly agreed that it would maintain no restrictions on indirect foreign ownership of U.S. common carrier licenses.

United States of America, Schedule of Specific Commitments, Fourth Protocol to the General Agreement on Trade in Services, GATS/SC/90/Suppl.2, at 2 (Apr. 11, 1997); World Trade Organization, Communications from the United States, Draft Offer on Basic Telecommunications, Revision, at 1-3 (Feb. 26, 1996) **Tab C-6**

B. Section 310(a)

1. **Application**: The Application shows that section 310(a) does not apply to the transactions in any event because DT is not a "foreign government or the representative thereof."

VoiceStream-DT App. at 18..... **Tab C-7**

2. **Specific Assertions in Opposing Comments and Responses in Reply**

a. De Jure Control

- i. **Opposing Comments**: Senator Hollings argues that the mergers are barred by section 310(a) because the German government will exercise *de jure* control over the licenses.

Comments of Senator Hollings at 4 **Tab C-8**

- ii. **Supporting Comments/Reply Comments**: Applicants' Reply demonstrates that the German government's interest in DT will be reduced to approximately 45 percent after the mergers. Therefore, the German will lack any *de jure* control over DT.

VoiceStream-DT Reply at 37-38..... **Tab C-9**

iii. **Ex Parte Submission**: Applicants' responses to the Abelson Letter confirm that, after the VoiceStream-DT merger is consummated, the total German government share of DT will decrease to approximately 45 percent.

Applicants' Supplemental Responses at 12-13 **Tab C-10**

b. De Facto Control

i. **Opposing Comments**: Senator Hollings argues that the mergers are barred by section 310(a) because the German government also has *de facto* control over DT.

Comments of Senator Hollings at 4-8 **Tab C-11**

ii. **Supporting Comments/Reply Comments**: Applicants' Reply shows that the German government does not have *de facto* control over DT because it does not control DT's management or operations and DT does not act "in behalf of" the German government.

VoiceStream-DT Reply at 37-41 **Tab C-12**

iii. **Management of DT**

(a) **Opposing Comments**: Senator Hollings and Novaxess argue that the German government, through its role as a shareholder, controls DT's board of directors.

Comments of Senator Hollings at 5-6; Comments of Novaxess at 4-7 **Tab C-13**

(b) **Supporting Comments/Reply Comments**: Applicants' Reply shows that the German government cannot appoint a majority of DT's Supervisory Board, has appointed only one member to that board, has not appointed any members to DT's Management Board, and has always voted with other shareholders.

VoiceStream-DT Reply at 38-39 **Tab C-14**

(c) **Ex Parte Submission**: Applicants' responses to the Abelson Letter demonstrate that the German government has no special rights or preferential role in DT's management as compared to other shareholders of DT.

Applicants' Supplemental Responses at 8-12 **Tab C-15**

iv. **DT's Guaranteed Debt**

(a) **Opposing Comments**: Senator Hollings argues that the fact that the German government still guarantees some of DT's old debt demonstrates the government's *de facto* control over DT.

Comments of Senator Hollings at 6 **Tab C-16**

(b) **Supporting Comments/Reply Comments:**

Applicants' Reply shows that only DT's pre-1995 debt is guaranteed by the German Government and that the guarantee is simply a by-product of DT's former status as a government entity.

VoiceStream-DT Reply at 42..... **Tab C-17**

(c) **Ex Parte Submission:** Applicants' response to the Abelson Letter shows that 97 percent of DT's government-backed debt will be paid off by the year 2004.

Applicants' Supplemental Responses at 7 **Tab C-18**

v. **Benefit Protections for Former German Civil Servants**

(a) **Opposing Comments:** Senator Hollings argues that the civil service-like benefits extended to some of DT's employees shows that these employees are part of the German government's workforce.

Comments of Senator Hollings at 6-7 **Tab C-19**

(b) **Supporting Comments/Reply Comments:**

Applicants' Reply demonstrates that the individuals reviewing such benefits are employees of DT and are not controlled in any way by the German government.

VoiceStream-DT Reply at 42-43..... **Tab C-20**

(c) **Ex Parte Submission:** Applicants' responses to the Abelson Letter show that DT does not receive any financial advantage as a result of the remaining DT employees having civil service status.

Applicants' Supplemental Responses at 4 **Tab C-21**

vi. **German Slave Labor Fund**

(a) **Opposing Comments:** Senator Hollings argues that DT's voluntary 100 million DM contribution to the German forced-labor foundation shows that DT is an arm of the German government because the government has claimed that the contribution should count towards the government obligation to the foundation.

Comments of Senator Hollings at 8 **Tab C-22**

(b) **Supporting Comments/Reply Comments:**

Applicants' Reply shows that this is merely a political question and has no bearing on DT's business operations or management.

VoiceStream-DT Reply at 43-44..... **Tab C-23**

- vii. **The VoiceStream-DT Merger Agreement**
 - (a) **Opposing Comments**: Senator Hollings argues that DT’s waiver of any sovereign immunity rights in the VoiceStream-DT merger agreement indicates that DT acknowledged that it is an arm of the German government.
Comments of Senator Hollings at 7-8 **Tab C-24**
 - (b) **Supporting Comments/Reply Comments**:
Applicants’ Reply demonstrates that the waiver was simply a routine precautionary measure included in all mergers where a government entity has any ownership interest and does not establish that DT has sovereign immunity rights or is controlled by the German government.
VoiceStream-DT Reply at 44..... **Tab C-25**
- viii. **VoiceStream’s Auction Strategy**
 - (a) **Opposing Comments**: Senator Hollings argues that VoiceStream’s agreement to work with DT in developing an auction plan is evidence that the German government is already controlling VoiceStream.
Comments of Senator Hollings at 5 **Tab C-26**
 - (b) **Supporting Comments/Reply Comments**:
Applicants’ Reply shows that the agreement by VoiceStream’s management to work with DT is a routine investor safeguard and in no way gives DT or the German government day-to-day control over VoiceStream.
VoiceStream-DT Reply at 40..... **Tab C-27**
 - (c) **Ex Parte Submission**: Applicants’ response to the Abelson Letter demonstrates that the auction agreement merely prevents significant changes to VoiceStream’s market capitalization and that such provisions have been consistently upheld by the Commission.
Applicants’ Supplemental Responses at 20-24 **Tab C-28**

IV. THE COMMISSION SHOULD REJECT COMMENTERS’ IRRELEVANT AND MISLEADING REQUESTS TO IMPOSE CONDITIONS RELATING TO DT’S INTERACTION WITH NEW ENTRANTS IN GERMANY Tab D

- A. **Application**: The Application shows that the *Foreign Participation Order* limits the scope of the Commission’s analysis to competition in the U.S. market. As a result, any concerns regarding DT’s position in the German market are irrelevant to this proceeding.

VoiceStream-DT App. at 33-42 **Tab D-1**

- B. **Opposing Comments:** A few of DT’s competitors in Germany (the “German Competitors”) ask the Commission to reverse its decision in the *Foreign Participation Order* and impose a wide-ranging set of conditions on the mergers to remedy alleged anticompetitive practices by DT in Germany.

Comments of GTS at 4-5; Comments of Novaxess at 2-9; Comments of QS Communications at 25-29 **Tab D-2**

- C. **Reply Comments:** Applicants’ Reply shows that accepting the German Competitors’ conditions would cause the Commission to violate its own decisions, the Administrative Procedure Act, and the U.S. commitments to the WTO. In addition, Applicants’ Reply demonstrates that the German Competitors’ statements regarding DT’s alleged anticompetitive practices in Germany are exaggerated and misleading.

VoiceStream-DT Reply at 44-52, Appendix A..... **Tab D-3**

V. **ANY NATIONAL SECURITY AND LAW ENFORCEMENT CONCERNS HAVE BEEN ADDRESSED BY THE APPLICANTS’ RECENT AGREEMENT WITH DOJ AND THE FBI** **Tab E**

- A. **Application:** Applicants acknowledge that the Commission’s public interest analysis includes consideration of potential threats to national security, law enforcement, foreign policy, and trade and stated that these concerns would be addressed through ongoing discussions with Executive Branch officials.

VoiceStream-DT App. at 42-43 **Tab E-1**

- B. **Opposing Comments:** No commenter raises any significant concerns in these areas.

- C. **Reply Comments:** Applicants’ Reply confirms that Applicants are fully prepared to work with the relevant agencies in order to address any specific national security and law enforcement concerns.

VoiceStream-DT Reply at 24-25..... **Tab E-2**

- D. **DOJ/FBI Agreement:** Applicants concluded an agreement with DOJ and the FBI that addresses potential issues relating to U.S. national security and law enforcement. The agreement has been filed with the Commission and the Applicants have agreed that the Commission should condition its approval of the transactions on the parties’ compliance with the terms of that agreement.

In the Matter of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, Petition to Adopt Conditions to Authorization and Licenses, IB Docket No. 00-187 (Jan. 25, 2001)..... **Tab E-3**

VI. **MISCELLANEOUS**..... **Tab F**

A. **Application**: Applicants show that there are no other barriers to granting the Applications.

B. **Opposing Comments**: UTStarcom raises issues concerning the allocation of spectrum in rural areas.

Comments of UTStarcom.....**Tab F-1**

C. **Reply Comments**: Applicants' Reply demonstrates that these issues are far outside the scope of this proceeding and are being addressed by the Commission in any event.

VoiceStream-DT Reply at 52-53.....**Tab F-2**

RECEIVED

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

SEP 18 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
VOICESTREAM WIRELESS)
CORPORATION,)
)
Transferor,)
)
and)
)
DEUTSCHE TELEKOM AG,)
)
Transferee,)
)
Application for Consent to Transfer of Control)

No. _____

**APPLICATION FOR TRANSFER OF CONTROL
AND PETITION FOR DECLARATORY RULING**

Cheryl A. Tritt
Louis Gurman
Doane F. Kiechel
Nina A. Mrose
Christa M. Parker
MORRISON & FOERSTER
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006

John T. Nakahata
Karen L. Gulick
Samuel L. Feder
HARRIS, WILTSHIRE & GRANNIS LLP
1200 Eighteenth St., N.W.
Washington, D.C. 20036

David A. Miller
Brian T. O'Connor
Robert A. Calaff
VOICESTREAM WIRELESS CORP.
1300 Pennsylvania Ave., N.W., Suite 700
Washington, D.C. 20004

Counsel for VoiceStream Wireless Corp.

William T. Lake
John H. Harwood II
William R. Richardson, Jr.
Matthew A. Brill
Julie A. Veach
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037

Hans-Willi Hefekäuser
Wolfgang Kopf
Andreas Tegge
DEUTSCHE TELEKOM, INC.
1020 Nineteenth Street, N.W., Suite 850
Washington, D.C. 20036

Counsel for Deutsche Telekom AG

Nor is section 310(a) implicated here, because DT is not the “representative” of a foreign government.^{53/} The Commission has interpreted the phrase “representative of a foreign government” to mean a party acting “in behalf of” or “in connection with” a foreign government.^{54/} As shown below, DT does not act in behalf of or in connection with the German government. (See *infra* Part III.B.1.) In any event, “Section 310(b)(4) creates an exception to Section 310(a) to permit a foreign government to hold *indirectly* a U.S. license, so long as the Commission does not find that denying such control would serve the public interest.”^{55/} Thus, because DT’s control of VoiceStream’s licenses will be indirect, section 310(b)(4) is the only applicable statutory provision.

A. The Merger Will Produce Substantial Procompetitive Benefits And Pose No Threat to Competition.

The merger of DT and VoiceStream will serve the public interest by promoting vigorous competition in the U.S. mobile telephony market. In approving VoiceStream’s recent mergers with Omnipoint and Aerial, the Commission recognized that expanding VoiceStream’s coverage area is critical to the company’s ability to compete with larger nationwide mobile telephony providers — Verizon Wireless, AT&T Wireless, Sprint PCS, Nextel Communications, and SBC/BellSouth. The transaction with DT will give VoiceStream the financial resources it needs to build out its existing licenses and strengthen its existing networks. The transaction also will enable VoiceStream to acquire additional licenses to expand its licensed footprint and to provide

^{53/} See *id.* § 310(a).

^{54/} See *QVC Network, Inc.*, 8 FCC Rcd 8485 ¶ 21 (1993); *Russell G. Simpson*, 2 F.C.C.2d 640 (1966); see also *Fox Television Stations, Inc.*, 10 FCC Rcd 8452 ¶ 175 (1995).

^{55/} *Telecom Finland, Ltd.*, Order, 12 FCC Rcd 17648, 17651 ¶ 7 (1997) (“*Telecom Finland*”) (emphasis added); see also *Applications of Intelsat LLC*, Memorandum Opinion and Order, FCC 00-287, File Nos. SAT A/O 2000119-00002, et al., ¶¶ 44-55 (rel. Aug. 8, 2000).

next-generation wireless services. Expanding VoiceStream's geographic reach and enhancing its existing networks will strengthen its position as a competitor in both local markets and the market for national "one-rate" service plans. In turn, the merger will result in more choice, improved services, and better prices for all wireless consumers. In contrast to a transaction that eliminates an existing wireless competitor, these substantial procompetitive benefits will not be offset by any reduction in competition: The merging parties have no overlapping wireless operations, and DT could not enter the U.S. wireless marketplace other than through an acquisition of an existing licensed carrier such as VoiceStream.^{56/} The competitive balance therefore strongly supports approval of this application.

The Commission begins its assessment of a transaction's competitive effects by defining the relevant markets, both in terms of relevant products (or services) and geographic scope.^{57/} The Commission next identifies current and potential participants in these markets.^{58/} The Commission then considers the procompetitive benefits and any anticompetitive effects of the merger. On the procompetitive side, the Commission examines "merger-specific efficiencies such as cost reductions, productivity enhancements, or improved incentives for innovation, and whether the merger will support the general policies of market-opening and barrier-lowering that

^{56/} See *infra* n.88.

^{57/} See *Application of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee*, Memorandum Opinion and Order, 12 FCC Rcd 19985, 20008 ¶ 37 (1997) ("Bell Atlantic-NYNEX"). For recent applications of the Commission's competitive analysis in the wireless context, see, e.g., *Applications of Vodafone AirTouch, Plc and Bell Atlantic Corp.*, Memorandum Opinion and Order, DA 99-2451, DA 00-721, ¶ 25 (rel. Mar. 30, 2000) ("Vodafone-Bell Atlantic"); *VoiceStream-Aerial* ¶ 30; *VoiceStream Omnipoint* ¶ 21; *Applications of AirTouch Communications, Inc., Transferor, and Vodafone Group, Plc, Transferee*, Memorandum Opinion and Order, DA 99-1200, ¶ 11 (rel. June 22, 1999).

^{58/} See *id.*

underlie the 1996 Act.”^{59/} This portion of the “public interest analysis may also entail assessing whether the merger will affect the quality of telecommunications services or will result in the provision of new or additional services to consumers.”^{60/} With respect to anticompetitive effects, the Commission evaluates “whether the merger is likely to result in either unilateral or coordinated effects that enhance or maintain the market power of the merging parties.”^{61/} For many of the same reasons that prompted the Commission to approve VoiceStream’s recent mergers with Omnipoint and Aerial, this merger “is likely to enhance competition in the relevant markets” and therefore is in the public interest.^{62/}

1. The Relevant Markets and Competitive Landscape

VoiceStream provides service in two relevant “product” markets: mobile telephony and international services. DT provides service in the United States (through DTI) only in the latter of these markets. The merger will be procompetitive with respect to both markets.

a. Mobile Telephony

Product and Geographic Markets. VoiceStream operates broadband PCS systems in many areas throughout the United States. Broadband PCS operators are considered commercial

^{59/} *Id.* See also *SBC/Ameritech*, 14 FCC Rcd at 14739 ¶ 50 (public interest evaluation encompasses the broad aims of the Communications Act, “which include . . . the implementation of Congress’s pro-competitive, deregulatory national policy framework designed to open all telecommunications markets to competition . . . and the acceleration of private sector deployment of advanced services”).

^{60/} *SBC/Ameritech*, 14 FCC Rcd at 14739 ¶ 50.

^{61/} See *Bell Atlantic-NYNEX*, 12 FCC Rcd at 20008 ¶ 37. Where one or both of the merging parties possess market power in a relevant market, the Commission also considers the effect of the merger on the Commission’s ability to constrain that power until competition is able to accomplish that feat. See *id.* That test has no application here, because neither party comes close to possessing market power in any relevant market, as discussed below.

^{62/} *VoiceStream-Omnipoint* ¶ 21. See also *id.* ¶ 51; *VoiceStream-Aerial* ¶ 48.

mobile radio service ("CMRS") providers, and in particular fall within the mobile telephony segment of the larger CMRS market. The Commission has defined the mobile telephony segment to include cellular, broadband PCS, and digital specialized mobile radio ("SMR") services.^{63/} This market segment has a national geographic scope; while regional carriers may retain some consumer appeal, the emergence of national "one-rate" plans and the resulting industry consolidation have produced a distinct national market.^{64/}

In addition to analog cellular networks, mobile telephony operators have deployed digital networks based on four primary technical standards: CDMA, TDMA, iDEN, and GSM.^{65/} As of the end of 1999, TDMA systems had been launched in areas containing 207 million people, or 81.6 percent of the population.^{66/} CDMA was close behind, having been launched in areas containing 204 million people (80.8 percent of the population), followed by iDEN (185 million people, 73.3 percent of the population).^{67/} GSM — the technology employed by VoiceStream — had been launched in areas containing 165 million people, or 65.3 percent of the population.^{68/}

^{63/} See *Fifth CMRS Report* at 9; see also *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Fourth Report*, 14 FCC Rcd 10145, 10152 (1999) ("*Fourth CMRS Report*").

^{64/} See *Fifth CMRS Report* at 10-12; *Fourth CMRS Report*, 14 FCC Rcd at 10159-60. To the extent that regional markets remain for mobile telephony, that is irrelevant to this proceeding: Because DT has no attributable interest in any provider of mobile service anywhere in the United States, there are no overlaps to consider in any particular region.

^{65/} *Fifth CMRS Report* at 23-24.

^{66/} *Id.* at 24.

^{67/} *Id.*

^{68/} *Id.* While GSM systems currently are the least prevalent of the digital systems in the United States, GSM is the prevailing technology throughout much of the world with 133 countries having built systems on that platform. See *VoiceStream-Omnipoint* ¶ 6.

As of December 1999, the U.S. mobile telephony market had nearly 86 million subscribers, representing more than a quarter of the nation's population.^{69/} Total revenues in this market were over \$40 billion in 1999.^{70/}

Significant Market Participants. The market is led by five carriers with nationwide or near-nationwide footprints: Verizon Wireless, SBC/BellSouth, AT&T Wireless, Sprint PCS, and Nextel Communications.^{71/} These carriers have thrived by offering national one-rate price plans that have the following attributes: "bundles of large quantities of minutes for a fixed monthly rate that translated into . . . a low per-minute price; no long distance charges when used on the operator's network; no roaming charges when used on the operator's network; reduced roaming charges when off the operator's network; and, in some cases, no extra roaming charges anywhere."^{72/} Consumers have signed up in droves following the introduction of such plans.^{73/}

Following its mergers with Omnipoint and Aerial, VoiceStream became the eighth-largest provider of mobile telephony.^{74/} But its footprint still falls short of national reach. In particular, VoiceStream currently has gaps in its footprint in California, Nevada, the Chicago metropolitan area, and the southeastern United States, among other places.^{75/} Moreover,

^{69/} *Fifth CMRS Report* at 5-6.

^{70/} *Id.* at 5.

^{71/} *See id.* at 10-11, App. B-5, Table 3.

^{72/} *Fourth CMRS Report*, 14 FCC Rcd at 10155.

^{73/} *See id.* at 10156; *Fifth CMRS Report* at 22.

^{74/} *See Fifth CMRS Report* at App. B-5, Table 3.

^{75/} VoiceStream is attempting to fill these gaps. VoiceStream has entered into a joint venture with Cook Inlet to provide PCS service in Chicago, and the recently announced agreements of VoiceStream and DT to merge with Powertel, Inc. would, if approved, address the

VoiceStream has built out only 45 percent of its licensed areas — which is far less extensive than the build-outs by more established competitors such as AT&T and Verizon. As a result, VoiceStream does not enjoy the same economies of scale, increased efficiencies, and other cost advantages as its larger competitors.^{16/} The Commission has recognized that the “most important variable affecting [a carrier’s] ability to compete in the mobile telephone market is coverage.”^{17/}

b. International Services

Product and Geographic Markets. Both VoiceStream and DT participate in the international services “product” market, which entails the transmission of calls from the United States to other countries. The Commission has identified three categories of international services: (1) “facilities-based services,” which are those provided over facilities that the carrier owns in whole or in part; (2) “facilities-resale services,” which are those provided over circuits leased from other international carriers; and (3) “pure resale services,” which resale carriers provide by switching traffic to (and reselling the switched services of) underlying facilities-based U.S. carriers.^{18/}

The geographic markets for international services consist of the routes between the United States and other countries. For example, DTI provides the majority of its international services between the United States and Germany, and thus competes within that geographic market, among others.

need for licenses in the southeastern United States (VoiceStream and Powertel have entered into an agreement to merge in the event that DT and Powertel do not consummate their agreement).

^{16/} See *Fifth CMRS Report* at 10.

^{17/} *Fourth CMRS Report*, 14 FCC Rcd at 10175.

^{18/} See 1998 Section 43.61 *International Telecommunications Data*, FCC Common Carrier Bureau, Industry Analysis Division, at 2-3 (Jan. 2000) (“*International Services Report*”).

Significant Market Participants. In 1998, total billed revenues for all U.S. facilities-based and facilities-resale services were more than \$15 billion.^{29/} The carriers with the highest billed revenues were AT&T (more than \$8 billion), MCI WorldCom (more than \$4.75 billion), and Sprint (more than \$1.5 billion).^{30/} DTI, which provides facilities-resale service over leased lines, is a very small participant in providing the U.S. end of U.S.-Germany telecommunications. DTI's total billed revenues for international services were less than \$5 million in 1999. Even with respect to DTI's most significant route, U.S.-Germany, DTI's billed revenues amounted to well under one percent of the total billed revenues for all U.S. carriers serving that route.^{31/} VoiceStream, which provides pure resale services, also is a very minor participant in the international services market, including with respect to the U.S.-Germany route.

2. The Merger Will Produce Substantial Procompetitive Benefits.

The merger will enhance competition and deliver important consumer benefits with respect to both current- and next-generation wireless services.

Current-Generation Wireless Services. VoiceStream's recent acquisitions of the PCS systems of Omnipoint and Aerial have transformed the company from a regional operator to one with a "near-nationwide footprint."^{32/} But VoiceStream has built out only 45% of its licensed areas. Its competitive potential will not be fully realized until that build-out is much more

^{29/} *Id.* at 25. Net revenues (billed revenues less settlement amounts owed to foreign carriers and plus settlement amounts due from foreign carriers) amounted to more than \$10 billion, with AT&T taking in nearly \$5.8 billion, MCI WorldCom more than \$3.25 billion, and Sprint more than \$1 billion. *Id.* at 26. The Commission does not report carriers' pure resale revenues.

^{30/} *Id.* at 25.

^{31/} *Id.*, Table Switched Services 1 (showing billed revenues of approximately \$643 million for the U.S.-Germany route).

^{32/} See *VoiceStream-Aerial* ¶ 44; *VoiceStream-Omnipoint* ¶ 46.

extensive. And unlike its larger competitors, VoiceStream cannot finance its expansion from a steady cash flow from local telephone services (as Verizon, SBC/BellSouth, and Sprint can), long-distance telephone services (as AT&T and Sprint can), or cable television (as AT&T can). The merger, therefore, is key to hastening the arrival of VoiceStream as a national competitor by providing the resources needed to accelerate the build-out of VoiceStream's existing licenses.

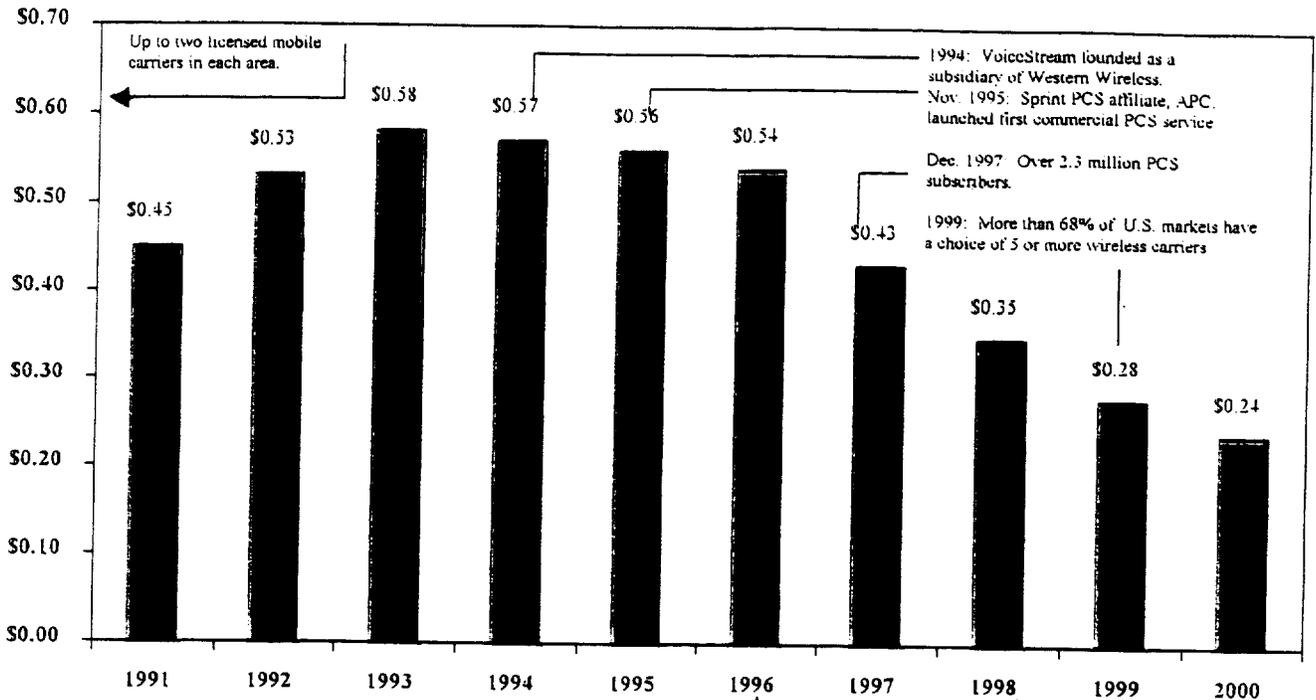
These resources enable VoiceStream not only to build out its existing licenses, but also to acquire additional licenses, either from other licensees or as licenses are put up for auction. Acquiring new licenses would further expand VoiceStream's footprint and give it the spectrum necessary to make its service more robust and to deploy additional wireless services. The Commission has recognized the importance of a having a nationwide footprint to a carrier's ability to compete,^{23/} as well as the strongly procompetitive nature of a transaction that provides the capital needed to attain such a nationwide presence.^{24/}

The introduction of new wireless competition will produce tangible benefits for consumers by driving down prices and increasing choice and service quality. As the following chart illustrates, the increase in wireless competition since the original cellular duopoly has driven prices down by nearly 60% since 1993:

^{23/} See *id.*; *Fourth CMRS Report*, 14 FCC Rcd at 10159-60, 10175; *Applications of Motorola, Inc. for Consent to Assign 800 MHz Licenses to Nextel Communications, Inc.*, Order, 10 FCC Rcd 7783, 7785 (1995).

^{24/} See *Sprint Corp.*, Declaratory Ruling and Order, 11 FCC Rcd 1850, 1863 ¶ 82 (1996). ("We agree with Sprint that this capital infusion to its wireless activities is an important procompetitive effect of the proposed transaction.")

Historical and Projected Average Price Per Minute for U.S. Mobile Telephone Service



Sources: FCC CMRS Reports; The Strategis Group, 2000

Telecommunications Act of 1996

February 1998: Implementation of the WTO Agreement on Basic Telecommunications Services

Adding VoiceStream as a competitor in many new markets and strengthening VoiceStream as a competitor in existing markets will continue this process of lowering consumer prices.

The merger also will reduce the roaming charges incurred by VoiceStream's subscribers by accelerating VoiceStream's build-out and thereby increasing the coverage area it serves.

VoiceStream incurs roaming fees, which must be passed on to customers in some form,

whenever its customers roam off VoiceStream's network. Because the build-out of

VoiceStream's systems is more limited than that of its larger competitors (particularly those that own extensive analog cellular networks), VoiceStream is more likely to incur roaming charges

than these competitors. Accelerating the build-out of VoiceStream's networks will hasten the reduction of the roaming charges VoiceStream pays, and VoiceStream in turn will be able to offer even more aggressively priced wireless service plans.

Moreover, the merger will present opportunities for seamless, single-handset services throughout the world that will make VoiceStream's use of the GSM standard a key asset in the United States. This seamless network will offer travelers such features as worldwide voicemail access numbers and transferable prepaid calling plans. The Commission relied on such procompetitive benefits in approving VoiceStream's transactions with Omnipoint and Aerial.⁸⁹

DT's leadership in providing advanced wireless services in Europe will provide additional service-related benefits to U.S. consumers. Several features offered there by DT have not yet been introduced in the United States. As noted above, T-Mobile customers can dial short codes to access an array of value-added services, such as emergency automobile service, travel assistance, shopping, or concierge/secretarial services. These and other services are becoming far more robust as a result of the introduction of the GPRS standard. The development of additional leading-edge services in Europe will continue to accelerate with the planned introduction of next-generation services. DT's experience with such advanced features, and its ongoing investments in research and development, will facilitate VoiceStream's ability to deliver these and other promising new services, including next-generation applications, to U.S. consumers.

In addition to enhancing consumer choice and innovation, the merger offers the potential for further price reductions as a result of improved economies of scale and scope. Currently, VoiceStream is dwarfed by its five large national competitors. By merging with DT,

⁸⁹ See *VoiceStream-Aerial* ¶ 44; *VoiceStream-Omnipoint* ¶ 46.

VoiceStream will achieve the scale necessary to procure handsets and infrastructure equipment at attractive prices, and to drive down other costs. The resulting savings could be passed on to consumers. Furthermore, by consolidating functions such as technological research and system development, DT-VoiceStream may be able to lower these costs and pass those savings on to consumers as well. Moreover, by combining the best practices of VoiceStream and T-Mobile, the combined company can be more responsive to subscribers' needs.

These various service enhancements and potential price reductions are not likely to be limited to VoiceStream's subscribers. Other wireless operators in the United States will come under competitive pressure to improve their own services, and therefore *all* wireless subscribers will benefit.^{26/} For example, as VoiceStream becomes an early provider of GPRS-based services, other carriers will be forced to upgrade their own service offerings. Just as the introduction of broadband PCS services pressured analog cellular operators to overhaul their networks, DT's operational experience with technologies that have yet to be introduced in the United States will redound to the benefit of U.S. consumers generally. Likewise, if VoiceStream is able to translate efficiencies from the merger with DT into reduced prices over time, as the companies expect, other wireless operators likely will be forced to keep pace, thereby delivering the benefits of price competition to all Americans.

Next Generation Wireless Services. The merger with DT also will provide VoiceStream with additional financial backing necessary to speed deployment of next-generation wireless services. Just as VoiceStream's competitors will be able to draw on the lessons they learn in Europe and elsewhere in deploying next-generation wireless services, merging with DT

^{26/} See, e.g., *Fourth CMRS Report*, 14 FCC Rcd at 10173 (carriers have responded to competition in recent years by "increas[ing] their capacity and expand[ing] their service offerings").

will give VoiceStream access to DT's experience as it deploys next-generation services in other markets.

Accelerating deployment of next-generation wireless services promotes competition not only in U.S. wireless markets but also in mass-market, high-speed data services, which today are provided either over telephone lines through xDSL services or over cable lines through cable modems. VoiceStream's next-generation wireless services will provide consumers with another technological means of obtaining high-speed data services.

3. The Merger Will Not Cause Any Anticompetitive Effects in Either Relevant Market.

The merger's substantial procompetitive benefits will not be offset by any anticompetitive effects in the wireless telephony or international services market. VoiceStream's mobile telephony services do not overlap with any DT service in the United States, and the overlap of the two carriers' international services will have no significant impact on competition.

Mobile Telephony. DT does not presently provide any mobile telephony services in the United States.²⁷ Nor can DT be characterized as a potential entrant (apart from this merger or a similar transaction). Even if building a new network from the ground up were a viable competitive strategy, allocated and unassigned spectrum necessary to do so simply does not

²⁷ DT owns an interest of approximately 9 percent in Sprint PCS, with no rights to elect or nominate any members of Sprint's Board. DT receives the same information about the operations of Sprint PCS as any other shareholder. Under the Commission's rules, DT's interest in Sprint PCS is nonattributable. See 47 C.F.R. § 20.6(d); *1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers*, 15 FCC Rcd 9219, ¶ 86 (1999). Because the Commission considers only attributable interests in conducting its public interest analysis, see, e.g., *VoiceStream-Omnipoint* ¶ 23, DT's interest in Sprint PCS is irrelevant to this proceeding. In any event, DT plans to dispose of its Sprint shares in an orderly manner, taking into account market conditions and any applicable legal and contractual restrictions. See Deutsche Telekom AG, SEC Form 20-F, at 34 (filed Apr. 19, 2000).