

VIA ELECTRONIC COMMENT FILING SYSTEM

January 8, 2001

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

RE: IB Docket No. 00-187

Dear Ms. Salas:

Enclosed for filing in the above captioned proceeding is the Statement of the Honorable Michael Kantor, which addresses the importance of U.S. trade interests, including the World Trade Organization's Basic Telecommunications Agreement, to the FCC's review of the applications for consent to transfer of control of licenses held by VoiceStream Wireless Corporation and Powertel, Inc. to Deutsche Telekom AG. Copies of Ambassador Kantor's Statement have also been served to the individuals listed in the attached Service List. Please do not hesitate to contact me with any questions.

Sincerely,



Robert A. Calaff
Corporate Counsel –
Governmental & Regulatory Affairs

Enclosures

MAYER, BROWN & PLATT

1909 K STREET, N.W.

WASHINGTON, D.C. 20006-1101

MICHAEL KANTOR
DIRECT DIAL (202) 263-3295
DIRECT FAX (202) 263-3460
MKANTOR@MAYERBROWN.COM

MAIN TELEPHONE
202-263-3000
MAIN FAX
202-263-3300

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

In the Matter of)	
)	
VoiceStream Wireless Corporation and)	IB Docket No. 00-187
Powertel, Inc., Transferors and)	
)	
Deutsche Telekom AG, Transferee)	
)	
Application for Consent to Transfer of Control)	
and Petition for Declaratory Ruling)	

STATEMENT OF MICHAEL KANTOR

I have been asked by VoiceStream Wireless Corporation (“VoiceStream”) to address the importance of U.S. trade interests, including the World Trade Organization (“WTO”) Basic Telecommunications Agreement (“BTA”), to the FCC’s review of the application (the “DT Application”) for approval of the purchase of VoiceStream and Powertel, Inc. by Deutsche Telekom AG (“DT”).

My professional qualifications are set forth at Exhibit A, attached hereto. Briefly summarized, I am a partner in the law firm of Mayer, Brown & Platt. From 1996 to 1997, I was the U.S. Secretary of Commerce and, from 1993 to 1996, I was the U.S. Trade Representative (“USTR”). As the USTR, I oversaw U.S. efforts to establish the WTO and to commence negotiation of the BTA.

The United States must retain its credibility on market access in reviewing the DT Application.

This FCC proceeding is about more than the acquisition of a U.S. common carrier by a foreign company. It is a test of the United States' compliance with binding international legal obligations which were negotiated and entered into in good faith. Action by the FCC that calls into doubt the United States' commitment to adhere to its international commitments could establish an unwelcome legal precedent and adversely affect U.S. domestic economic and employment interests in the telecom and all other sectors comprising U.S. trade. Such outcomes are not in the public interest.

The United States maintains the single largest telecommunications services market which accounts for roughly one-quarter of all telecommunications services consumed world wide each year. The U.S. telecommunications sector is also one of the most open and competitive markets in the world. It is because of this openness and competitiveness that U.S. telecom services providers have become an engine for growth and innovation in the U.S. economy and job market. Because of our openness and competitiveness, U.S. telecom services providers have flourished; they have and continue to attract capital from domestic and international sources, they have become world leaders in researching, developing and deploying state-of-the-art communications technologies. Today, more than a million Americans are employed in the telephone communications sector and hold jobs that pay wages which exceed the national average for private industry employment.¹ Total employment in the telecommunications sector is expected to grow by 23 percent during the 1998-2008 time frame, which is significantly faster than the 15 percent increase projected for general private industry employment. Because an open and stable regulatory environment is critical to the continued growth and innovativeness, availability of capital, and creation of high-wage jobs in the telecommunications services sector, it is important that the FCC does not inadvertently create uncertainty in the telecom

¹ See BUREAU OF LABOR STATISTICE, U.S. DEP'T OF LABOR, CAREER GUIDE TO INDUSTRIES: TELECOMMUNICATIONS (VISITED Jan. 4, 2001) <<http://stats.bls.gov/oco/cg/cgs020.htm>>.

sector by departing from the otherwise clear BTA rules. Therefore, U.S. commitments under the BTA should be faithfully implemented and this Application should be approved.

As noted, the Commission's consideration of this Application also has important implications in terms of the integrity of the multilateral trade rules governing basic telecommunications and could result in initiation of a binding WTO dispute settlement action against the United States. The United States was the driving force behind the establishment of the World Trade Organization and the creation of the WTO's binding system and procedures for the resolution of dispute arising under WTO agreements. Since inception of the WTO in 1995, the United States has used the WTO dispute resolution process more actively than any other WTO Member.² The United States also played an indefatigable role during several years of negotiations which produced the BTA. These actions – coupled with enactment of the 1996 Telecom Act – underscore the U.S. Government's commitment to the importance of international trade rules and the domestic economic and employment benefits of an open telecom market.

In responding to the DT-VoiceStream Application, it is imperative that the Commission act in a manner that is consistent with its BTA obligations and its role as a champion in liberalizing international telecom markets. Failure to do so could invite initiation of a WTO dispute settlement action against the U.S. Government, and would establish for other WTO Members an unwelcome precedent of non-compliance. Each of these outcomes is not in the public or U.S. Government's interest. The promise of access to the lucrative U.S. telecom market motivated a critical mass of our most important trading partners to participate meaningfully in the BTA negotiations and to accept international rules that will open foreign markets to U.S. companies. In addition, the scope of sanctions under the General Agreement on Trade In Services ("GATS") is not limited to the sector in which a violation occurred: if

² See World Trade Organization, overview of the state-of-play of WTO disputes (LAST UPDATED Dec. 13, 2000) (visited Jan. 4, 2001) <http://www.wto.org/English/tratop_e/dispu_e.htm>.

the United States were adjudged to have violated the GATS, it could be liable for trade sanctions in any sector.

Clearly, it was in these countries' interests to cooperate with the United States to establish new multilateral legal disciplines affecting trade in basic telecom services; but the United States was the biggest winner. Our telecom market prior to the BTA was comparatively more open to foreign investors, and the BTA negotiations provided the much needed incentive to obtain the collective opening of previously closed foreign markets. However, if the United States does not abide fully by its BTA obligations, U.S. telecom workers and companies could be disadvantaged in foreign markets, as well as in the U.S. telecom sector. As stated, the disadvantages to the United States would not be limited to the telecom sector. As noted, WTO sanctions and unofficial retaliation could occur in any area of U.S. trade. The BTA is mandatory, not permissive. Violation of the United States' international trade-related telecom commitments may prompt other WTO Members to slow the pace of their own market-opening and pro-competitive reforms or back track on BTA-mandated commitments. Indeed, unjustified delay in acting on the DT-VoiceStream Application could cast doubt over the U.S. Government's adherence to its BTA commitments, even if such action does not constitute an affirmative breach of the United States' obligations under the BTA and the GATS.

Finally, any action suggesting that the United States may renege on its trade commitments could damage U.S. negotiating positions in current negotiations, including the GATS services negotiations, and on the Free Trade Area of the Americas. It could also give U.S. trading partners justification to make less favorable offers in those negotiations, thereby reducing the value of any resulting trade liberalization. Damaging U.S. credibility now would harm U.S. prospects in any forthcoming trade negotiations.

Denial of the DT Application because of DT's partial government ownership would breach U.S. obligations under the BTA and the GATS.

The binding U.S. schedule of commitments in the BTA clearly permits entry by foreign-government owned carriers. Common sense indicates that we would not have a BTA if the United States had insisted on full privatization as a prior condition to entry into the U.S. market. This common sense observation is born out by the history of BTA negotiations. After submitting its first offer for the BTA, on July 31, 1995, and having this offer rejected, the United States subsequently submitted a second, revised offer on February 26, 1996. This offer states in part as follows:

The revision also sets out the U.S. offer regarding foreign ownership of common carrier radio licenses in response to requests for clarification from our negotiating partners. The United States offers up to 100% foreign indirect ownership of common carrier radio licenses – there will be no limits on indirect ownership of such licenses by foreign governments (including government-owned corporation), non-U.S. nationals or non-U.S. corporations or other business entities.³

Consequently, the final U.S. commitment to the BTA, dated February 12, 1997, states simply “None” when addressing whether there would be limits on indirect foreign ownership of U.S. common carrier wireless licenses. The USTR’s communication with Congress clarified that the U.S. commitment permits a foreign government to indirectly own a U.S. common carrier radio licensee. In response to written questions from Senator Trent Lott, then acting USTR Barshefsky stated the following:

[t]he offer places no new restrictions on indirect foreign ownership of a U.S. corporation holding a radio license. Section 310(b)(4) allows such indirect foreign ownership unless the Federal Communications Commission finds that the public interest will be served by the refusal to grant such a license. The U.S. offer is to allow indirect foreign ownership, up to 100%, under this provision. The U.S. offer permits a foreign government indirectly to own a radio license, unless the FCC finds that such ownership is not in the public interest.⁴

³ COMMUNICATION FROM THE UNITED STATES, Draft Offer on Basic Telecommunications, World Trade Organization, February 26, 1996 (emphasis added).

⁴ Written Responses of Acting U.S. Trade Representative Charlene Barshefsky to Questions from Senator Lott (undated), reprinted in 143 Cong. Rec. S1945, S1962 (daily ed. Mar. 5, 1997) (emphasis added).

The United States would breach its BTA commitment if the FCC were to deny the DT Application merely because DT is partially owned by the German government, or to impose a substantial privatization requirement as a condition precedent to entry. Were the FCC to impose such a restriction, the United States would breach its market access, national treatment and most favored nation obligations under the GATS.

In negotiating the BTA, the USTR consulted with other federal agencies, including especially the FCC with respect to the foreign ownership provisions of the Communications Act of 1934, as amended (the "Act"). The FCC would have resisted any attempt to submit an offer to the WTO that results in a violation of the Act. Instead, the Commission assisted in negotiations and fully endorsed the final U.S. commitment in the BTA. The Commission thereby participated in the U.S. Government's commitment to the WTO, which the DT Application now calls on the U.S. Government to honor. Therefore, we may presume that the binding schedule of commitments in the BTA is consistent with the Act and that the FCC, the expert agency, will interpret and enforce the Act in a manner that comports with the BTA.

The FCC must exercise its public interest authority in compliance with the BTA.

As the FCC has recognized in its order implementing the BTA, the FCC may unilaterally use its public interest authority to remedy a very high likelihood of harm to competition in a U.S. market. However, it may not do so in the case of conduct unrelated to competition in the United States: any unilateral FCC action to restrict entry because of conduct unrelated to competition in a U.S. market risks violating the BTA and the GATS.⁵ The FCC has recognized the importance of limiting its public interest review in order to ensure that the United States complies with the BTA:

discriminating among foreign applicants based on the quality of their WTO commitment or the extent of the implementation of their commitment could raise GATS concerns. Adopting such a policy could damage relations with our trading partners and serve as a poor example to other countries also implementing their market opening commitments. . .

⁵ See Reply Comments of the Office of the United States Trade Representative, Oct. 17, 1997, 9, submitted in *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142.

. The United States must lead the way in prompt, effective implementation of our commitments. If the United States is perceived as failing to implement its commitment, other countries would likely limit implementation of their own commitment.⁶

Consequently, the Commission has ruled that the public interest is served by the open entry standard for carriers from WTO member countries, embodied in the U.S. commitments under GATS, in order to open the U.S. market to competition in parallel with our trading partners, and that “it will no longer be necessary or appropriate to engage in the detailed, in-depth analysis of foreign markets that the [effective competitive opportunities] test required.”⁷ These well-considered rulings are consistent with the BTA and apply to the DT Application.

The FCC has recognized that the USTR, not the FCC, should handle complaints of alleged BTA violations that do not affect competition in the United States: “if a dominant carrier provided interconnection to U.S. carriers on less favorable terms than it provides to its own affiliates or to carriers from a third country, the United States could take to the WTO a dispute against the dominant carrier’s government for failing to maintain measures to ensure nondiscriminatory interconnection.”⁸ The USTR is the Executive Branch agency primarily responsible for enforcing the U.S. trade laws and U.S. rights under international trade agreements, including the BTA and the GATS, and for interpreting those agreements.⁹

Under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, the USTR conducts an annual review – including a public comment process – of U.S. trading partners’ compliance with telecommunications trade agreements. In the last three years alone, the USTR has undertaken major initiatives to encourage the following countries to implement their telecommunications trade

⁶ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order on Reconsideration, 12 FCC Rcd 23891, 23908-09 (1997).

⁷ *Id.*, 23893, 23906.

⁸ *Id.*, 23903.

⁹ See Reply Comments of the Office of the United States Trade Representative, 1-2, *supra* n5.

commitments: Canada, the European Union, Germany, Israel, Japan, Mexico, Peru, South Africa, Taiwan (bilateral agreement), and the United Kingdom. These initiatives have resulted in tangible benefits to U.S. carriers competing in those countries.¹⁰ Indeed, even the mere mention of a trading partners' practices in this annual review is enough to prompt greater compliance with these agreements.

Where more extensive USTR involvement is required, however, USTR has vigorously pursued compliance issues. In the 1377 reviews for 1999 and 2000, the USTR received complaints against Germany making allegations with respect to German wireline – but not wireless – market conditions that are similar to those made to the FCC in this proceeding.¹¹ As a result, the USTR has maintained an intense focus on the German regulator. In April 2000, the USTR set a deadline of June 15, 2000 to decide whether to file a formal complaint with the WTO's Dispute Settlement Body regarding the failure of Germany, South Africa and the United Kingdom to abide by their BTA commitments. In June 2000, the USTR decided not to file formal complaints but instead to continue to monitor these markets. The USTR stated that each of the three countries has shown progress.

The FCC should not unilaterally restrict access based on market conditions in other countries that do not affect competition in the United States. The binding schedule of U.S. commitments in the BTA is not contingent upon other countries' commitments or implementation thereof. Therefore, restricting access based on the implementation of these commitments would violate GATS. The FCC should be especially cautious where, as here, two other federal agencies have investigated the same issues and taken no formal action. First, in conducting its review under Section 1377, as noted above, the USTR received substantially the same complaints about competition in Germany that the FCC has received.

¹⁰ *Foreign Government Ownership of American Telecommunications Companies: Hearing Before the Subcomm. on Telecommunications, Trade and Consumer Protection of the House Commerce Comm.* 106th Cong. (statement of Richard W. Fisher, Deputy U.S. Trade Representative) (Sept. 7, 2000).

¹¹ *Annual Review of Telecommunications Trade Agreements Highlights Concerns Regarding Mexico, South Africa, and Other Countries*, Office of the United States Trade Representative, April 4, 2000. <<http://ustr.gov/releases/2000/04/00-25.html>> (visited January 4, 2001).

MAYER, BROWN & PLATT

The USTR has monitored, consulted with the German government and decided to take no formal action at this time. The BTA does not contemplate that the FCC would take unilateral action on BTA-related complaints where there is no effect on competition in the United States. Second, the U.S. Department of Justice, one of the principal enforcers of the U.S. antitrust laws, reviewed the proposed merger and concluded that it would not substantially lessen competition in the United States.¹² These federal agency actions “raise the bar” for the FCC’s public interest review. As the FCC’s rules implementing the BTA acknowledge, the FCC would have to make an extraordinarily persuasive showing of potential harm to competition in a U.S. market to justify the unilateral imposition of restrictions.

The United States must honor its commitment and grant prompt access to its own market without imposing conditions that are not permitted by the BTA. Such action is necessary to comply with U.S. obligations under the GATs, and to preserve U.S. credibility in enforcing its rights under international trade agreements and in seeking further market access for U.S. companies. I urge the FCC to consult the USTR and promptly approve the DT Application.

* * * * *

¹² Letter of Robert Raben, Asst. Attorney General, to Billy Tauzin, Chairman, Subcommittee on Telecommunications, Trade, and Consumer Protection of the House Committee on Commerce (Sept. 14, 2000).

DECLARATION

I hereby declare to the Federal Communications Commission under penalty of perjury that, except for those facts of which administrative notice may be taken, the foregoing STATEMENT OF MICHAEL KANTOR is true and correct to the best of my knowledge. Executed this 8th day of January, 2001.


Michael Kantor

**MICKEY
KANTOR**

Mickey Kantor, formerly Secretary of Commerce and United States Trade Representative, is a partner in Mayer, Brown and Platt, the international law firm headquartered in Chicago. Mr. Kantor represents companies in corporate and financial transactions on a worldwide basis. Mr. Kantor is based in the firm's Washington office.

Mr. Kantor serves as a member of the Board of Directors of Pharmacia Corporation, Monsanto Company and Korea First Bank. He serves as a Senior Advisor to Morgan Stanley Dean Witter Discover and Company. He is a member of the Board of Visitors for Georgetown University Law Center and a trustee of the International Commercial Diplomacy Project. Mr. Kantor is also a member of the Board of the National Association of Public Interest Lawyers.

Mr. Kantor is a Distinguished Advisor at the Council for Biotechnology; he serves as a member of the International Advisory Board of the Federation of Korean Industries and is a Visiting Scholar at the University of Southern California's Annenberg School for Communication.

In November 1997, Mr. Kantor delivered the Elihu Root Lecture at the Council on Foreign Relations entitled "U.S. Trade Negotiations: Lessons Learned, Lessons Applied." In January 2001, Mr. Kantor received the Order of the Southern Cross from the Brazilian Government.

Mr. Kantor joined the President's first cabinet on January 21, 1993 as the United States Trade Representative. He was the President's chief advisor on international trade policy within the United States government.

Among the successful initiatives were negotiations resulting in the NAFTA and its side agreements on labor and the environment, helping to work with Congress for the passage of the NAFTA implementing legislation, serving as chief negotiator to the 117-nation Uruguay Round to create the world's largest trade pact, convening three successful APEC meetings of leaders of the Asia-Pacific region containing the world's fastest growing markets, leading trade initiatives as part of the Summit of the Americas in Miami in 1994 which resulted in the creation of the Free Trade Area of the Americas, and working with the European Commission to establish the trans-Atlantic market and the trans-Atlantic business dialogue.

Mickey Kantor worked with President Clinton to conclude more than 200 agreements to expand trade, including an auto and auto parts agreement with Japan and bilateral agreements in areas ranging from textiles to the protection of intellectual property rights.

Mr. Kantor was sworn in as the 31st United States Secretary of Commerce on April 12, 1996. As Secretary of Commerce, Mickey Kantor carried forward President Clinton's mandate to provide economic opportunity for American workers and businesses. At the helm of the Department of Commerce, former Secretary Kantor worked to generate new jobs through increased exports and

**MICKEY
KANTOR**

[continued]

expanded markets abroad, to create a strong civilian technology infrastructure to promote sustainable development, to spur entrepreneurship, to stimulate the economic development of distressed communities throughout the nation, and - through the regular reporting of vital statistical information, economic data and census data - to assist the private sector in keeping America strong and competitive.

Mr. Kantor's prior law practice includes 17 years at the firm of Manatt, Phelps, Phillips & Kantor in Los Angeles. He also practiced for several years as a legal services attorney.

Former Secretary Kantor served as National Chair for the Clinton/Gore '92 Campaign and as a member of the Transitional Board of Directors. He has a long history of public service, including membership on the Christopher Commission which was formed in the aftermath of the Rodney King beating in Los Angeles. During the Carter Administration he was on the board of the Legal Services Corporation. Mr. Kantor has been a board member of the Center for the Study of Democratic Institutions, the Mexican American Legal Defense and Education Fund, the Center for Law in the Public Interest, the California Commission on Campaign Financing, and was the founder of the Los Angeles Conservation Corps. Former Secretary Kantor has also served as consultant to the American Bar Association Special Committee on Crime Prevention and Control, the White House Conference on Children and the National Legal Aid and Defender Association.

Among the numerous awards given to former Secretary Kantor have been the William O. Douglas Award, the Thomas Jefferson Distinguished Public Service Medal from the Center for the Study of the Presidency, the Albert Schweitzer Leadership Award from the Hugh O'Brien Youth Foundation, the San Francisco Bay Area World Trade Center's 1996 Excellence in Trade Award and Robert Sargent Shriver Jr. Award for Equal Justice.

Born in Nashville, Tennessee, on August 7, 1939, former Secretary Kantor received a bachelor's degree from Vanderbilt University in 1961. After four years of service as a naval officer, he went on to study law at the Georgetown University Law Center, and received his degree in 1968.

Former Secretary Kantor is married to Heidi Schulman and has three children, Leslie, Douglas and Alix.

CERTIFICATE OF SERVICE

I, Michael D. Nilsson, do hereby certify that on this 8th day of January, 2001, I caused true and correct copies of the foregoing Statement of Michael Kantor in Support of Applications for Consent to Transfer of Control to be served by first-class mail, postage pre-paid upon the following parties:

Lauren Kravetz
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-A163
Washington, DC 20554

John Branscome
Commercial Wireless Division
Wireless Telecommunication Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-A234
Washington, DC 20554

Office of Media Relations
Reference Operations Division
Federal Communications Commission
445 12th Street, SW
Room CY-A257
Washington, DC 20554

Jamison Prime
Public Safety and Private Wireless Division
Wireless Telecommunication Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-A734
Washington, DC 20554

Claudia Fox
Policy and Facilities Branch
Telecommunications Division
International Bureau
Federal Communications Commission
445 12th Street, SW, Room 6-A848
Washington, DC 20554

Carl Huie
Experimental Licensing Branch
Electromagnetic Compatibility Division
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, SW, Room 7-A361
Washington, DC 20554

Justin Connor
Policy and Facilities Branch
Telecommunications Division
International Bureau
Federal Communications Commission
445 12th Street, SW, Room 6-A832
Washington, DC 20554

James Bird
Office of General Counsel
Federal Communications Commission
445 12th Street, SW, Room 8-C818
Washington, DC 20554

Senator Ernest F. Hollings
United States Senate
Committee on Commerce, Science,
and Transportation
558 Dirksen Senate Office Building
Washington, DC 20510

Christine E. Enemark
Counsel for Cook Inlet Region, Inc.
Covington & Burling
1201 Pennsylvania Ave., NW
Washington, DC 20004-2401

Susan Grant
National Consumers League
1701 K Street NW, Suite 1200
Washington, DC 20006

Howard Frisch
UTStarcom
33 Wood Avenue South, 8th Floor
Iselin, NJ 08830

Edward M. Graham
Institute for International Economics
11 Dupont Circle, NW
Washington, DC 20036-1207

Andrew D. Lipman
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007

Debbie Goldman
Communications Workers of America
501 Third St., NW
Washington, DC 20001

Steve Judge
Securities Industry Association
1401 Eye Street, NW
Washington, DC 20005

Todd Malan
Organization for International Investment
1901 Pennsylvania Ave., NW
Suite 807
Washington, DC 20006

Troy F. Tanner
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007

Thomas J. Donohue
United States Chamber of Commerce
1615 H Street, NW
Washington, DC 20062

Pace A. Duckenfield
The Alliance for Public Technology
919 Eighteenth Street, NW
Suite 900
Washington, DC 20006

Gary C. Hufbauer
Institute for International Economics
11 Dupont Circle, NW
Washington, DC 20036-1207

Jason Mahler
Computer & Communications Industry
Association
666 Eleventh Street NW, Sixth Floor
Washington, DC 20001

International Transcription Services, Inc.
445 12th Street, SW
Room CY-B402
Washington, DC 20554

Gerald Schulmeyer
Siemens Corporation
153 East 53rd Street
New York, NY 10022

/s/ Michael D. Nilsson

