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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
POWERTEL, INC.,	)	
Transferor,	)	No. _____
and	)	
DEUTSCHE TELEKOM AG,	)	
Transferee,	)	
Application for Consent to Transfer of Control.	)	

APPLICATION FOR TRANSFER OF CONTROL AND PETITION FOR DECLARATORY RULING

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APPLICATION FOR TRANSFER OF CONTROL AND PETITION FOR DECLARATORY RULING

Powertel, Inc. ("Powertel") and Deutsche Telekom AG ("DT"), pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (the "Act"),[1/] hereby request the Commission's consent to the transfer of control to DT of Powertel's interests in various section 214 and Title III authorizations. The applicants also seek a declaratory ruling that DT's indirect foreign ownership of Powertel's interests in wireless common carrier licenses is consistent with the public interest, as required under section 310(b)(4).

On August 26, 2000, Powertel and DT entered into an Agreement and Plan of Merger that, on consummation, will give DT ultimate control of Powertel. DT and VoiceStream Wireless Corporation ("VoiceStream") earlier entered into a separate merger agreement and are filing a separate application for transfer of control ("*DT-VoiceStream Application*") with the Commission simultaneously with this Application. As noted below, the Powertel-DT merger is

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1/ *See* 47 U.S.C. §§ 214, 310(d).

intended to complement the VoiceStream-DT merger, and will occur only if DT and VoiceStream consummate their proposed merger. If DT and VoiceStream do not do so, VoiceStream itself intends to acquire Powertel.[2] After the DT-VoiceStream and the DT-Powertel mergers, the parties anticipate that Powertel's services will be provided under the VoiceStream brand.

As set forth below, this transaction will deliver substantial proconsumer and procompetitive benefits. The acquisition of Powertel will fill one of the remaining substantial gaps in VoiceStream's footprint, the southeastern United States. Moreover, consumers of wireless services in areas licensed to but not yet served by Powertel will see their choices expand as a strengthened and combined VoiceStream-Powertel accelerates its build-out. This seamless network also will offer global travelers such features as worldwide voicemail access numbers and transferable prepaid calling plans. Moreover, DT's expertise with advanced wireless features will enable the Powertel systems to bring innovative services to the U.S. market more quickly than they could on their own.

These procompetitive benefits will not be counterbalanced by any cognizable anticompetitive effects in U.S. wireless markets, because there are no operating overlaps between Powertel and VoiceStream, and the few license overlaps are not inconsistent with the Commission's CMRS spectrum cap.[3] The merger also will have no adverse effect on the market for international services provided from the United States. Nor will DT's ownership impair competition or otherwise harm U.S. interests. This transaction will not be consummated unless

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[2] VoiceStream and Powertel are filing with the Commission an Application for Transfer of Control ("*VoiceStream-Powertel Application*") for that alternative transaction simultaneously with this Application.

[3] *See infra* Part III.A.3 for a discussion of overlaps between Powertel and VoiceStream interests.

and until the Commission approves DT's acquisition of VoiceStream, and the addition of Powertel's coverage areas in the southeast to VoiceStream's network has no additional section 310(b)(4) implications. The transaction is overwhelmingly in the public interest, and is fully consistent with the Communications Act and the Commission's rules.

Below, this application sets forth (I) a description of the applicants, (II) a description of the transaction, (III) the public interest showing, and (IV) a request for additional authorizations.[4/]

I. DESCRIPTION OF THE APPLICANTS

A. Powertel

Powertel is a publicly traded Delaware corporation, headquartered at 1239 O.G. Skinner Drive, West Point, GA 31833. Using the global system for mobile communications ("GSM") standard, Powertel, through its various wholly owned subsidiaries, is licensed to provide wireless PCS service in 12 states in the southeastern United States. As of June 30, 2000, Powertel had approximately 727,000 customers and year-to-date total revenues of $212.3 million. The company's core markets are in 34 metropolitan areas and along more than 3,000 miles of highway. Among the markets in Powertel's licensed service area are Athens, Atlanta, Augusta, Columbus, Birmingham, Chattanooga, Jackson, Jacksonville, Knoxville, Lexington, Louisville, Macon, Memphis, Nashville and Savannah, and its total licensed service area has a combined population of more than 25 million people.

4/ In addition to this application, the merging parties are separately filing eight electronic transfer applications on FCC Form 603 (through the Commission's universal licensing system) and an application to transfer control of the international section 214 authorization held by Powertel.

In addition to its wholly owned subsidiaries, Powertel will be a 49.9% non-controlling equity investor in Eliska Wireless Ventures I, Inc. ("Eliska"), which has applied to acquire (through a subsidiary) eight C Block PCS licenses held by DiGiPH PCS, Inc. in Alabama, Florida, and Mississippi.[5] That application is currently pending.

Powertel is also authorized to provide global international resale services.[6] Powertel does not provide any facilities-based international services.

B. Deutsche Telekom[7] and VoiceStream

DT is a corporation organized and existing under the laws of the Federal Republic of Germany, with its headquarters in Bonn, Germany. Within Germany, DT provides local and long distance services, Internet services, data and IP system solutions, ISDN services, and cable television distribution services, among other telecommunications and information services.

DT also provides mobile telephony services in Germany and throughout Europe through operating subsidiaries held by T-Mobile International AG.[8] T-Mobile's largest subsidiary is Germany's second-largest wireless carrier, with approximately 13.4 million subscribers or 39 percent of the market as of June 2000 (behind Vodafone AirTouch (formerly Mannesmann Mobilfunk), which had approximately 13.8 million subscribers, or 41 percent of the market at

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5/ Powertel's interest is not attributable for purposes of the Commission's designated entity rules.

6/ Powertel received authority to provide global resale services in FCC File No. ITC-214-20000727-00441 (effective August 18, 2000). Powertel is filing today a letter notifying the Commission that its operating subsidiaries will provide service under their parent's authorization pursuant to section 63.21(i) of the Commission's rules.

7/ A more detailed description of DT is provided in the *DT-VoiceStream Application.*

8/ Although T-Mobile International AG is a holding company that does not directly provide service, for sake of simplicity the applicants refer below to the various operating subsidiaries collectively as "T-Mobile."

that time).[9] T-Mobile serves another 7.6 million subscribers in other European countries through majority-controlled operations. T-Mobile's PCS systems use the GSM platform and provide voice and data services, including advanced features that are not yet available in the United States. For example, T-Mobile customers can access voicemail in numerous international markets by dialing a universal number. T-Mobile also provides various value-added services — such as emergency automobile service, travel assistance, shopping, or concierge/secretarial services — that are accessible through consumer-friendly, four-digit "short codes." These and other services offered by T-Mobile in Europe are becoming far more robust as DT deploys the general package radio service ("GPRS") standard, which enables data transmission rates of more than 128 kbps. The planned deployment of next-generation wireless systems will further facilitate the deployment of advanced data services.

DT's existing operations in the United States are minimal. Deutsche Telekom, Inc. ("DTI"), a wholly owned subsidiary of DT that is headquartered in New York, is DT's only operating subsidiary in the United States. DTI is authorized to provide international services between the United States and numerous countries throughout the world.[10] To date, its revenues

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9/ *See* Federal Republic of Germany, Regulatory Authority for Telecommunications and Posts, *Mid-Year Report 2000*, at 20 *available at* <http://www.regtp.de/en/market/start/fs_15.html> ("*RegTP Mid-Year Report*").

10/ DTI received authority to provide facilities-based service between the United States and Germany in File No. ITC-214-19991217-00788 (action taken January 12, 2000), and resale services between the United States and Germany in File No. ITC-214-19991217-00789 (action taken January 12, 2000). DTI also received authority to operate as a facilities-based carrier and a resale carrier between the United States and all other permissible locations except Croatia and Uzbekistan (for which it did not seek authorization) in File No. ITC-214-19991217-00787 (action taken January 12, 2000). DTI is subject to dominant-carrier treatment on the U.S.-Germany, U.S.-Hungary, and U.S.-Slovakia routes, and otherwise is regulated as nondominant.

from such services are small. In 1999, DTI earned less than $5 million from international services, including an Internet Protocol telephony trial and facilities-based resale service.[11/]

Upon consummation of the merger between DT and VoiceStream, which is a condition precedent to the DT-Powertel merger, DT will provide U.S. wireless telephony services through VoiceStream. As described in the *VoiceStream-Powertel Application*,[12/] VoiceStream constructs and operates broadband PCS systems throughout most of the United States. Currently the eighth-largest mobile telephony provider in the United States, VoiceStream — like DT in Europe and Powertel in the United States — uses the GSM communications standard. Through various wholly owned subsidiaries holding FCC licenses, VoiceStream constructs and operates broadband PCS systems throughout much of the United States. VoiceStream subsidiaries are also licensed to operate point-to-point microwave, local multipoint distribution service, and specialized mobile radio systems in various markets throughout the United States. Formerly a subsidiary of Western Wireless Corporation, VoiceStream was spun off in its entirety to shareholders of that company on May 3, 1999.

VoiceStream is the fastest-growing wireless carrier in the United States and has received industry awards for innovation. It owns and operates the most substantial network in the United States using the GSM standard. In February and May 2000, VoiceStream successfully completed mergers with Omnipoint and Aerial, two other GSM-based PCS operators. Even with the Omnipoint and Aerial transactions, VoiceStream remains only the eighth-largest mobile telephony operator in the United States, behind Verizon Wireless, the SBC/BellSouth joint

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11/ DTI also earned approximately $7 million in 1999 from the sale of German domestic services (such as ISDN services and system solutions) to U.S.-based multinational corporations.

12/ *See VoiceStream-Powertel Application* Part I.B.

venture, AT&T Wireless, Sprint PCS, ALLTEL, Nextel Communications, and U.S. Cellular.[13] VoiceStream (including Omnipoint and Aerial) served approximately 2.2 million customers as of the end of 1999 — only 2.6 percent of the mobile telephony market.[14] The market leaders dwarf VoiceStream in terms of subscribership and market share. The respective subscribership totals and market shares at the end of 1999 for providers with nationwide (or near-nationwide) footprints were: Verizon - 25.8 million subscribers, 30 percent market share; SBC/BellSouth - 16.5 million subscribers, 19.2 percent market share; AT&T Wireless - 10.0 million subscribers, 11.6 percent market share; Sprint PCS - 5.7 million subscribers, 6.6 percent market share; and Nextel Communications.

With Powertel and its related GSM interests, VoiceStream will have access to a licensed GSM network covering a population of nearly 250 million. Moreover, with the addition of the Atlanta market, VoiceStream will control or have ownership interests in licenses to serve 24 of the top 25 markets in the United States.

In addition to broadband PCS services, VoiceStream is authorized to provide global international resale services.[15] VoiceStream and its subsidiaries do not provide any facilities-based international services.

13/ *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 Commercial Mobile Services,* Fifth Report, FCC 00-289, at App. B-5, Table 3 (rel. Aug. 18, 2000) ("*Fifth CMRS Report*").

14/ *Id.*

15/ *See* File No. ITC-214-19960930-00473 (effective November 12, 1996). Pursuant to Section 63.24(b) of the Commission's rules, 47 C.F.R. § 63.24(b), this authorization was assigned from Omnipoint Communications, Inc. to VoiceStream Wireless Corporation by letter dated March 20, 2000. *See* Letter from Louis Gurman, Counsel to VoiceStream Wireless Corporation, to Magalie Roman Salas, Secretary, Federal Communications Commission, filed March 20, 2000. For information on the authorizations of VoiceStream's subsidiaries, see the *DT-VoiceStream Application* at 6-7.

II. DESCRIPTION OF THE TRANSACTION

On August 26, 2000, DT and Powertel entered into an Agreement and Plan of Merger. In this transaction, DT will acquire 100 percent of the outstanding common stock of Powertel. To accomplish this acquisition, DT has incorporated a wholly owned merger subsidiary, pursuant to Delaware law. This merger subsidiary will be merged with Powertel, after which the former will cease to exist and Powertel (which will remain a Delaware corporation) will be the surviving entity. Holders of Powertel common stock will receive 2.6353 shares of DT's stock; holders of Powertel Series A and B Preferred Shares will receive 121.9294 shares of DT's stock; holders of Powertel Series D Preferred Shares will receive 93.0106 shares of DT's stock; and holders of Powertel Series E and F Preferred Shares will receive 179.5979 shares of DT's stock (plus 2.6353 shares of DT's stock for each share of Powertel common stock that such preferred shareholders are owed as dividends). DT also will assume approximately $1.2 billion of Powertel's debt.

III. THE PROPOSED MERGER IS DEMONSTRABLY IN THE PUBLIC INTEREST

As the Commission has found in the past, the public interest is served when smaller mobile telephony carriers, such as VoiceStream, augment their national footprint and enhance their ability to provide nationwide, one-rate service to consumers in competition with larger carriers. The proposed merger with Powertel serves this procompetitive purpose and will advance the public interest.

In assessing whether a proposed merger serves the public interest, the Commission considers whether the transaction (1) would result in a violation of the Act or any other applicable statutory provisions; (2) would result in a violation of the Commission's rules; (3) would substantially frustrate or impair the Commission's implementation or enforcement of the

Act or interfere with the objectives of that and other statutes; and (4) promises to yield affirmative public interest benefits.[16]

The merger of Powertel and DT, following the merger of VoiceStream and DT, will yield substantial public interest benefits, because it will benefit consumers by increasing their choices and lowering their prices and will promote competition in the U.S. wireless market. The competitive benefits will not be offset by any anticompetitive effects, because as noted below there are very few overlaps between Powertel and VoiceStream's PCS licenses. None of those overlaps involves an operational overlap, none implicates the Commission's spectrum cap, and all of the overlap areas are well served by multiple broadband CMRS providers.[17]

This transaction also satisfies the first three prongs of the Commission's analysis, because it would not result in the violation or frustration of any statutory provision or the Commission's rules. For the same reasons set forth in the *DT-VoiceStream Application*,[18] because the transaction is proconsumer and procompetitive and there are no offsetting public interest harms, the transfer meets the requirement in section 310(b)(4) that DT's greater-than-25% investment in Powertel be in the public interest.[19]

16/ *See, e.g.*, *Applications of Aerial Communications, Inc., Transferor, and VoiceStream Wireless Holding Corp., Transferee*, Memorandum Opinion and Order, WT Docket No. 00-3, DA 00-730, ¶ 9 (rel. Mar. 31, 2000) ("*VoiceStream-Aerial*"); *Applications of Ameritech Corp. and SBC Communications Inc. for Consent to Transfer of Control*, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14738-39 ¶¶ 49-50 (rel. Oct. 8, 1999) ("*SBC-Ameritech*"); *Application of WorldCom, Inc., and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18030-33 ¶¶ 9-12 (1998).

17/ *See infra* Part III.A.3.

18/ *See DT-VoiceStream Application* Part III.B.

19/ *See* 47 U.S.C. § 310(b)(4).

A. The Merger Will Produce Substantial Proconsumer and Procompetitive Benefits and Poses No Threat to Competition.

The merger of Powertel, following DT's merger with 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 "GSM subscribers will benefit from the expanded footprint to be offered by VoiceStream, and . . . all mobile phone users needing access throughout the nation will benefit significantly from the creation of another competitor with a near-nationwide footprint."[20/] Moreover, the Commission concluded that the mergers "will also provide more U.S. consumers with the opportunity to subscribe to a carrier that accommodates international roaming access, where GSM . . . prevails."[21/] This transaction will permit VoiceStream-Powertel to offer that expanded footprint and international access to more consumers and to compete effectively with larger nationwide mobile telephony providers (such as Verizon Wireless, AT&T Wireless, Sprint PCS, Nextel Communications, and SBC/BellSouth) by filling in one of the remaining substantial gaps in VoiceStream's footprint — the southeastern United States. Moreover, the transaction with DT will give Powertel the financial resources it needs to provide additional wireless services. DT's resources also will enable the combined VoiceStream-Powertel to acquire additional licenses, including those necessary for next generation wireless services. In turn, the merger will result in more choice, improved services, and better prices to consumers.

20/ *VoiceStream-Aerial* ¶ 44; *Applications of VoiceStream Wireless Corp. or Omnipoint Corp., Transferors, and VoiceStream Wireless Holding Co., Cook Inlet/VS GSM II PCS, LLC, or Cook Inlet/VS GSM III PCS, LLC, Transferees,* Memorandum Opinion and Order, FCC 00-53, DA 99-1634 & 99-2737, ¶ 46 (rel. Feb. 15, 2000) ("*VoiceStream-Omnipoint*").

21/ *VoiceStream-Aerial* ¶ 44; *see also VoiceStream-Omnipoint* ¶ 46.

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.[22] The Commission next identifies current and potential participants in these markets.[23] 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 underlie the 1996 Act."[24] 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."[25] 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."[26]

22/ *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) ("*AirTouch-Vodafone*").

23/ *See id.*

24/ *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").

25/ *Id.*

26/ *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

When it applied this competitive analysis to VoiceStream's recent mergers with Omnipoint and Aerial, the Commission found that those mergers were "likely to enhance competition in the relevant markets" by expanding VoiceStream's coverage area and improving VoiceStream's ability to compete with larger carriers.[27] As the discussion below explains more fully, the proposed merger between VoiceStream and Powertel has the same proconsumer and procompetitive rationale and justifies the same result. Specifically, expansion of VoiceStream's coverage area continues to be critical to the company's ability to compete with larger mobile telephony providers such as Verizon Wireless, AT&T Wireless, Sprint PCS, Nextel Communications, and SBC/BellSouth. The proposed transaction will give VoiceStream the more complete national footprint it needs to meet increasing consumer demand for its wireless services. Strengthening VoiceStream's position as a competitor in the market for national "one-rate" service plans, in turn, will deliver more choice, improved services, and better prices to consumers. What is more, these substantial proconsumer and procompetitive benefits will not be offset by any significant reduction in competition.

1. The Relevant Markets and Competitive Landscape

Powertel provides service in two relevant "product" markets: mobile telephony, and international services from the United States to other countries. DT currently provides service in the United States (through DTI) only in the latter of these markets; on consummation of the VoiceStream transaction, DT (through DTI and VoiceStream) will provide services in both. The merger will be procompetitive with respect to both markets.

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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.

27/ *VoiceStream-Omnipoint* ¶ 21. *See also id.* ¶ 51; *VoiceStream-Aerial* ¶ 48.

a. Mobile Telephony

Product and Geographic Markets. On consummation of the DT-VoiceStream transaction, DT (through VoiceStream) and Powertel will operate broadband PCS systems in many areas throughout the United States. Broadband PCS operators are considered 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.[28] 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.[29]

In addition to analog cellular networks, mobile telephony operators have deployed digital networks based on four primary technical standards: CDMA, TDMA, iDEN, and GSM.[30] As of the end of 1999, TDMA systems had been launched in areas containing 207 million people, or 81.6 percent of the population.[31] CDMA was close behind, having been launched in areas containing 204 million people (80.8 percent of the population), followed by iDEN (185 million

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28/ *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*").

29/ *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: Powertel's CMRS interests are centered in the southeastern United States, an area that is largely absent from VoiceStream's existing service area.

30/ *Fifth CMRS Report* at 23-24.

31/ *Id.* at 24.

people, 73.3 percent of the population).[32] GSM — the technology employed by VoiceStream and Powertel — had been launched in areas containing 165 million people, or 65.3 percent of the population.[33]

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.[34] Total revenues in this market were over $40 billion in 1999.[35] Powertel had approximately $212.3 million in revenue for the year ended June 30, 2000.

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.[36] 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."[37] Consumers have signed up in droves following the introduction of such plans.[38]

32/ *Id.*

33/ *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.

34/ *Fifth CMRS Report* at 5-6.

35/ *Id.* at 5.

36/ *See id.* at 10-11, App. B-5, Table 3.

37/ *Fourth CMRS Report*, 14 FCC Rcd at 10155.

38/ *See id.* at 10156; *Fifth CMRS Report* at 22.

VoiceStream is at present the eighth largest provider of mobile telephony in the United States. Powertel is currently a regional provider of mobile telephony services, and only the twelfth largest such provider in the country.[39] A combined VoiceStream-Powertel, however, would still be only the seventh largest provider of mobile telephony services but would more closely approach having the national coverage needed to be able to compete with the largest mobile telephony providers.[40] The Commission has recognized that the "most important variable affecting [a carrier's] ability to compete in the mobile telephone market is coverage."[41]

b. International Services

Product and Geographic Markets. At present, Powertel and DT's subsidiary DTI participate in the international services "product" market, which entails the transmission of calls from the United States to other countries. After DT's merger with VoiceStream, DT will also participate in this market through VoiceStream. 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.[42]

The geographic markets for international services consist of the routes between the United States and other countries.

39/ *See Fifth CMRS Report* at App. B-5, Table 3.

40/ *See id.*

41/ *Fourth CMRS Report*, 14 FCC Rcd at 10175.

42/ *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.[43] 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).[44]

DTI, which provides facilities-resale service over leased lines, is a very small participant in this market. 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.[45] Powertel, which provides pure resale services, is a tiny participant in the international services market, including with respect to the U.S.-Germany route. VoiceStream likewise provides pure resale services and is a very minor participant in this market.

2. The Merger Will Produce Substantial Proconsumer and Procompetitive Benefits.

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

Current-Generation Wireless Services. DT's acquisition of Powertel will extend all the same consumer benefits of its acquisition of VoiceStream to Powertel's current subscribers and service area. As a small, regional operator, Powertel does not have access to a steady cash flow from local services (as Verizon, SBC/BellSouth, and Sprint can), long-distance telephone

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43/ *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.

44/ *Id.* at 25.

45/ *Id.*, Table Switched Services 1 (showing billed revenues of more than $643 million for the U.S.-Germany route).

services (as AT&T and Sprint can), or cable television (as AT&T can). DT's acquisition of Powertel will provide access to the capital necessary to accelerate the build-out and upgrade of Powertel's network and acquire new licenses, thus filling out the remaining gaps in VoiceStream's footprint and permitting the merged entity to deploy additional wireless services. The Commission has recognized the importance of having a nationwide footprint to a carrier's ability to compete,[46] as well as the strongly procompetitive nature of a transaction that provides the capital needed to attain such a nationwide presence.[47]

The introduction of new wireless competition will produce tangible benefits for consumers by driving down prices and increasing choice and service quality. As shown in the *DT-VoiceStream Application*,[48] the increase in wireless competition beyond the original cellular duopoly has driven prices down by nearly 60% since 1993. Adding the combined VoiceStream-Powertel as a competitor in many new markets and strengthening it as a competitor in existing markets will continue this process of lowering consumer prices. The merger also will reduce the roaming charges incurred by Powertel's subscribers by giving Powertel access to VoiceStream's network, thereby increasing the coverage it serves. Powertel incurs roaming fees, which must be passed on to customers in some form, whenever its customers roam off Powertel's regional network. Because it is a smaller, regional carrier, Powertel is more likely to incur roaming charges than its larger competitors.

46/ *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).

47/ *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.").

48/ *See DT-VoiceStream Application* at 25-26.

Moreover, just as with the DT-VoiceStream merger, this merger will present opportunities for seamless, single-handset services throughout the world that will make Powertel'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.[49] In addition, DT's leadership in providing advanced wireless services in Europe will benefit U.S. consumers in this transaction, just as in the DT-VoiceStream transaction.[50] And to an even greater degree than DT-VoiceStream, a combined DT-VoiceStream-Powertel will enjoy improved economies of scope and scale and the ability to procure handsets and infrastructure equipment at attractive prices; both kinds of savings could be passed onto consumers. *All* U.S. mobile telephony consumers will benefit from these changes, as the combined entity puts increased competitive pressure on other U.S. wireless operators to improve their services, upgrade their networks, and operate more efficiently.

Next Generation Wireless Services. The merger with DT also will provide Powertel with additional financial backing necessary to speed deployment of next-generation wireless services. Just as Powertel'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 will give Powertel 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

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49/ The Commission relied on such procompetitive benefits in approving VoiceStream's transactions with Omnipoint and Aerial. *See VoiceStream-Aerial* ¶ 44; *VoiceStream-Omnipoint* ¶ 46.

50/ *See DT-VoiceStream Application* at 27.

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

Mobile Telephony. The proposed DT/Powertel merger will not have any anticompetitive effect on the wireless telephony services market. As noted above, there is no significant overlap of the service areas of Powertel and those proposed to be acquired by DT through its VoiceStream merger; rather, this transaction is intended to plug an important gap in VoiceStream's national footprint that will substantially advance its ability to meet consumer demand and compete with truly national competitors in this market.

VoiceStream has an attributable interest in, and has proposed to acquire complete ownership of, Cook Inlet/VoiceStream GSM II PCS, LLC ("CIVS II"),[51/] which holds nine non-operational F block (10 MHz) BTA licenses in areas that overlap with Powertel's 30 MHz service areas in Savannah, Macon, Albany, Augusta (GA), Birmingham, Huntsville, Gadsden, and Decatur (AL), and with Powertel's two 10 MHz (D and E block) licenses in Nashville.[52/]

51/ On September 14, 2000, VoiceStream filed applications to acquire ultimate control of these CIVS II licenses.

52/ As noted above, Powertel will have a 49.9% interest in Eliska, which has pending an application to acquire certain licenses from DiGiPH. There is no overlap between the Eliska-DiGiPH licenses and those held by VoiceStream.

The overlaps in these nine markets will not cause DT/VoiceStream to exceed the 45 MHz spectrum cap and pose no realistic threat to competition.

In *VoiceStream-Omnipoint*, the Commission ruled that, even though that merger involved overlaps with a relatively significant regional mobile telephony operator, the merger would "not likely result in harm to competition in any relevant market."[53] First, the Commission noted that "in none of these markets do VoiceStream and Omnipoint presently compete against each other for business."[54] The same is true here with respect to VoiceStream and Powertel. Second, while the Commission recognized the possibility of potential future competition between Omnipoint and VoiceStream, it noted that "Our general policy . . . has been to permit the aggregation of CMRS spectrum and interests therein up to the limits permitted under the spectrum cap rule, provided that such aggregation neither reduces actual competition nor stymies the development of competition in any market."[55] The merger of DT-VoiceStream and Powertel will satisfy that policy.

Indeed, that policy has particularly compelling force here. The resources and experience of DT will enable VoiceStream-Powertel to build out its systems more quickly in order to promote competition with the larger firms currently providing service in all of the VoiceStream-Powertel markets. Moreover, even in those nine markets where VoiceStream and Powertel have or will have overlapping PCS licenses, four or more alternative broadband CMRS providers already are operating in all but two of them. In the remaining two, there are three such alternative providers already in operation. In one of these two (Albany, GA), the additional

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53/ *VoiceStream-Omnipoint* ¶ 51.

54/ *Id.* ¶¶ 24-25.

55/ *Id.* ¶ 26. *See also VoiceStream-Aerial* ¶ 32.

licensees yet to initiate operations include AT&T, BellSouth, and Nextel; in the other (Decatur, AL), they include Sprint, Alltel, and AT&T.

International Services. As with the mobile telephony market, we analyze the market for international services assuming that the DT-VoiceStream merger has been approved and consummated. Even then, the merger will have no significant impact on competition in the U.S. market for originating or terminating international calls. Because Powertel does not own any international transport facilities, this transaction will not "eliminate any significant potential participant in the provision of international services."[56] The *de minimis* nature of Powertel's international services to date precludes a finding of anticompetitive effects, in particular because neither Powertel, VoiceStream nor DTI controls any bottleneck facility in the United States on which other carriers rely to provide service.[57] In fact, the combination of the three tiny competitors will only strengthen their ability to chip away at the dominance of market leaders AT&T, WorldCom, and Sprint, and therefore will *promote* competition in the international services market.

In reviewing the competitive effects of a merger on the international market, the Commission also considers whether the transferee will become affiliated with a foreign carrier, in order to determine whether to classify the merged entity as a dominant carrier on certain international routes.[58] Here, Powertel will become a subsidiary of T-Mobile, and therefore an "affiliate" of DT under the FCC's rules. As a result, as noted in the accompanying section 214 application, Powertel (like VoiceStream and DTI) will be subject to dominant carrier regulation

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56/ *See VoiceStream-Aerial* ¶ 39; *VoiceStream-Omnipoint* ¶ 33.

57/ *Id.*

58/ *See, e.g.*, *VoiceStream-Omnipoint* ¶ 34.

with respect to three European routes: U.S.-Germany, U.S.-Slovakia, and U.S.-Hungary.[59] To the extent that Powertel's relationship with DT poses any potential threat of discriminatory conduct, the Commission's dominant-carrier regulations are an adequate safeguard.[60]

As explained in detail in the *DT-VoiceStream Application*, there is no need for additional safeguards, even on the U.S.-Germany route, because resellers such as Powertel (even combined with VoiceStream's small resale operation) lack any means of discriminating against other international carriers; to the contrary, as a pure reseller, Powertel is entirely dependent on other carriers to transport its customers' international calls. Even in combination with DTI's small facilities-resale operations, the diminutive scale of the merged entity's presence in the U.S. international market will preclude the sort of competitive threat that exists where a carrier can exercise bottleneck control.[61]

In sum, the net impact of the proposed merger on competition will be overwhelmingly positive. Therefore, this transaction easily satisfies the standard adopted in *Bell Atlantic-NYNEX* and applied in subsequent orders.[62]

B. The Merger Is Consistent with Section 310(b)(4), Because DT's Foreign Ownership Poses No Threat to Competition, and Any Concerns Regarding National Security or Law Enforcement Will Be Addressed in Cooperation with Executive Branch Officials.

Because DT will acquire 100 percent of Powertel through the merger — and therefore *indirect* control over Powertel's licensee subsidiaries and its minority interest in Eliska — the

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59/ *See supra* note 10.

60/ Moreover, the existence of any such threat would not be a result of the merger, because the combined international operations of Powertel, VoiceStream, and DTI are no more significant than DTI's alone. *See International Services Report* at 25.

61/ *Cf. Sprint Corp.*, Declaratory Ruling and Order, 13 FCC 17223, 17228 ¶ 14 (1998).

62/ *See supra* note 22.

applicants seek a declaratory ruling under section 310(b)(4) of the Act that the merger is in the public interest.[63] For the reasons set forth more fully in the *DT-VoiceStream Application*, such a declaratory ruling with respect to VoiceStream would be fully consistent with the public interest and with Commission precedent.[64] The Commission is "guided . . . by the U.S. Government's commitment under the World Trade Organization ("WTO") Basic Telecommunications Agreement, which seeks to promote global markets for telecommunications so that consumers may enjoy the benefits of competition."[65] The Commission accordingly adheres to the principles that "additional foreign investment can promote competition in the U.S. market," and that "the public interest will be served by permitting more open investment by entities from WTO Member countries in U.S. common carrier wireless licensees."[66] Based on these principles, the Commission has adopted a "strong presumption that no competitive concerns are raised by . . . indirect foreign investment[s]."[67]

That strong presumption applies here for all the same reasons as given in the *DT-VoiceStream Application*. No new or different issues are raised by DT's further acquisition of Powertel, or by its acquisition of Powertel's minority interest in Eliska. And the presumption cannot be rebutted in light of the overwhelmingly procompetitive nature of the transaction and

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63/ *See* 47 U.S.C. § 310(b)(4).

64/ *See DT-VoiceStream Application* Part III.B.

65/ *VoiceStream-Aerial* ¶ 9; *Vodafone AirTouch-Bell Atlantic*, 12 FCC Rcd at 20008-09 ¶ 13.

66/ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23939, ¶ 111 (1997) ("*Foreign Participation Order*").

67/ *VoiceStream-Omnipoint* ¶ 16.

the utter absence of anticompetitive effects.[68] Accordingly, the Commission should determine under section 310(b)(4) of the Act that the merger is in the public interest.

C. Powertel and DT Respectively Possess the Requisite Qualifications To Hold and Indirectly Control Commission Licenses.

Finally, the Commission's public interest analysis requires it to determine under section 310(d) "whether the proposed licensees are qualified to hold Commission licenses and whether grant of the application would result in the violation of any Commission rules."[69] The Commission has already approved Powertel's qualifications to hold its existing licenses. Moreover, DT, which will indirectly control the licensees, is one of Europe's leading providers of telecommunications and information services, including wireless services. *See supra* Part I.B. DT possesses the financial and other qualifications to exercise such indirect control.[70]

IV. REQUEST FOR APPROVAL OF ADDITIONAL AUTHORIZATIONS

As set forth in each of the applications for transfer of control, Powertel controls entities that hold numerous Commission licenses and other authorizations. While the applications are intended to list all such authorizations, the licensees involved in this proposed transaction may now have on file, and may hereafter file, additional requests for authorizations, which may be granted during the pendency of the transfer-of-control applications.

68/ To the extent that the Executive Branch may raise concerns relating to national security, law enforcement, or other matters, the parties will address those concerns in an agreement similar to the ones adopted in *VoiceStream-Omnipoint* and *VoiceStream-Aerial*.

69/ *See VoiceStream-Omnipoint* ¶ 13

70/ To the best of DT's knowledge, none of the parties to the application has been denied any federal benefits pursuant to the Anti-Drug Abuse Act of 1998 or been a party to relevant adverse litigation. DT is in the process of confirming this understanding with all other parties to the application and will amend its applications promptly to report any necessary supplemental information.

Powertel and DT accordingly request that the grant of the transfer-of-control applications include authority for DT to acquire control of (1) any interest in any application of or authorization issued to Powertel's subsidiaries during the Commission's consideration of the transfer-of-control applications and the period required for consummation of the transaction following approval; (2) construction permits held by such licensees that mature into licenses after closing; and (3) applications that are filed after the date of these applications and that are pending at the time of consummation. Such action would be consistent with Commission precedent.[71] In addition, the applicants request a blanket exemption from any applicable cut-off rules in cases where Powertel or its subsidiaries, in order to reflect the consummation of the proposed transfer of control, file amendments to any applications. Any change of control that results with respect to any particular pending application will be part of the larger merger and be undertaken for a legitimate business purpose. An exemption from the cut-off rules would be consistent with Commission precedent.[72]

CONCLUSION

For the above reasons, and for the reasons set forth in the individual applications filed under separate cover, the proposed merger is strongly in the public interest. Powertel and DT accordingly request that the Commission grant these applications and grant the requested declaratory ruling.

71/ *See Bell Atlantic-NYNEX*, 12 FCC Rcd at 20097; *Applications of Pacific Telesis Group and SBC Communications, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 2624, 2665 (1997); *Applications of Craig O. McCaw, Transferor, and AT&T, Transferee*, Memorandum Opinion and Order, 9 FCC Rcd 5836, 5909 n.300 (1994) ("*McCaw-AT&T*").

72/ *See, e.g.*, *McCaw-AT&T*, 9 FCC Rcd at 5909 n.300.

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