

April 2, 2001

EX PARTE - Via Electronic Filing

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: Applications of VoiceStream, Powertel, and Deutsche Telekom,
IB Docket No. 00-187

Dear Ms. Salas:

Attached is a copy of a letter that we have delivered today to Adam Krinsky, Legal Advisor to Commissioner Tristani, regarding the above-captioned proceeding.

In accordance with the Commission's rules, a copy of this letter is being filed electronically in the above-captioned docket.

Sincerely,

/s/ John T. Nakahata (by JHH)

John T. Nakahata
Karen L. Gulick
Samuel L. Feder
HARRIS, WILTSHIRE & GRANNIS LLP
1200 18th Street, N.W.
Washington, D.C. 20036
(202) 730-1300



William T. Lake
John H. Harwood II
William R. Richardson, Jr.
Matthew A. Brill
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

Ms. Magalie Roman Salas
April 2, 2001
Page 2 of 2

/s/ Louis Gurman (by JHH)

Cheryl A. Tritt
Louis Gurman
Doane F. Kiechel
Christa M. Parker
MORRISON & FOERSTER LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-1500

Counsel for VoiceStream Wireless Corp.

cc: Attached service list

April 2, 2001

EX PARTE - Via Electronic Filing

Adam Krinsky, Esquire
Legal Advisor to Commissioner Tristani
Federal Communications Commission
The Portals
445 12th Street, SW - 8C302
Washington, D.C. 20554

Re: Applications of VoiceStream, Powertel, and Deutsche Telekom,
IB Docket No. 00-187

Dear Mr. Krinsky:

We are writing to follow up on our discussion last week of Commission decisions concluding that subsection (b)(4) is the only portion of section 310 that applies to the Applications in the above-referenced proceedings. Senator Hollings has argued that that subsection applies only where a foreign government's 25 percent or greater interest in a common carrier radio licensee does not confer control, and that instead section 310(a) applies to -- and prohibits -- any indirect foreign government interest that confers control. The Senator argues that, even if section 310(b)(4) would otherwise apply, section 310(a) trumps whenever a foreign government has indirect control of a radio licensee.

As we discussed, if the Senator's interpretation were correct, the Commission could not have approved the Vodafone-Airtouch or BT-MCI mergers or the Vodafone-Bell Atlantic joint venture. Sections 310(b)(1) and (2) prohibit direct holdings of common carrier radio licenses by aliens and foreign corporations, respectively, using the same language ("granted to or held by") that section 310(a) uses to bar direct holdings of radio licenses by foreign governments. Yet the Commission approved the Vodafone-Airtouch, BT-MCI, and Vodafone-Bell Atlantic deals under section 310(b)(4), all of which involved ownership by foreign corporations. Section 310(b)(2) did not trump.

The Commission's decision in the *Foreign Carrier Entry Order*, its NPRM leading to the *Foreign Participation Order*, and that order itself also cannot be reconciled with the interpretation urged by Senator Hollings. In the section of the *Foreign Carrier Entry Order* captioned "Section 310(b)(4) Standard for Indirect Foreign Ownership of Radio Licenses," implementing the now-superseded effective competitive opportunities test, the Commission made clear that section 310(b)(4) applies whether an "alien enterprise" indirectly holds a controlling or non-controlling interest:

“214. . . . If we determine that U.S. interests are allowed to hold a controlling interest in a provider of the relevant service in the relevant home market, then the effective competitive opportunities test would justify placing *no limit* on the level of alien ownership in the U.S. service provider . . .

“215. . . . [W]ere we to . . . apply the effective competitive opportunities test only when an alien enterprise seeks to acquire a *controlling interest* in a U.S. company, we would greatly decrease the incentive for foreign governments to open their communications markets to U.S. participation . . . We will therefore apply this test to *any proposed foreign ownership above the 25 percent benchmark level.*”

Report and Order, *Market Entry Regulation of Foreign-Affiliated Entities*, 11 FCC Rcd 3873, 3954 ¶ 214-215 (1995) (emphasis added). The Commission could not have reached these conclusions in the *Foreign Carrier Entry Order* if section 310(a), (b)(1), or (b)(2) prohibited indirect (or *de facto*) control by foreign entities.

In its NPRM for the *Foreign Participation Order*, the Commission articulated the same principle, in describing its proposal to replace the ECO test in the wake of the Basic Telecom Agreement, under the caption “Section 310 Standard for Foreign Ownership of Radio Licenses”: “Under the plain language of Section 310(b)(4), the Commission has the authority to allow indirect foreign ownership to exceed 25 percent, *up to and including 100 percent.*” Order and Notice of Proposed Rule Making, *In the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 7847, 7873-4 ¶67 (1997) (emphasis added). The NPRM also cites half a dozen earlier decisions in which the Commission had allowed indirect foreign control under section 310(b)(4). *See id.* at 7874, note 59. Finally, in the *Foreign Participation Order* itself the Commission confirmed that interpretation of section 310(b)(4), noting that in the NPRM it had “proposed to simplify our review of such foreign investment and to presumptively allow *any amount of indirect investment* by investors whose home markets are in WTO Member countries.” Report and Order and Order on Reconsideration, *In the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunication Market, Market Entry and Regulation of Foreign-Affiliated Entities*, 12 FCC Rcd 23891, ¶98 (1997) (emphasis added). Again, the Commission could not have enunciated this position if section 310(a), (b)(1), or (b)(2) prohibited indirect control by foreign entities where the Commission concludes under section 310(b)(4) that the public interest is served.

In short, the Commission has consistently interpreted section 310(b)(4) as applying to indirect foreign interests whether or not those interests confer control. Therefore, the major premise of Senator Hollings’ proposed interpretation of that section not only is unsupported by the plain language of the statute but also is directly contrary to the Commission’s own longstanding implementation of that provision. Quite simply, as the Commission recognized in *Intelsat* last year, and the International Bureau did in *Telecom Finland*, where a foreign ownership structure falls within the scope of section 310(b)(4), that section and that section alone -- exclusive of section 310(a) or (b)(1)-(3) -- governs.

Finally, as noted, section 310(a) and sections 310(b)(1)-(3) establish *per se* rules against certain types of foreign entity ownership; all other proposed transfers of control remain subject to

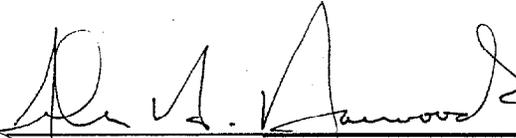
the Commission's public interest test -- a test that permits the Commission to exercise reasonable discretion to protect competition, national security, and other areas of public interest. As a matter of statutory interpretation, sections 310(a) and (b)(1)-(3), like all *per se* rules, should be narrowly construed because of the risk of prohibiting transactions, such as this one, that are clearly in the procompetitive and present no national security or foreign policy concerns.

Sincerely,

/s/ John T. Nakahata (by JHH)

John T. Nakahata
Karen L. Gulick
Samuel L. Feder
HARRIS, WILTSHIRE & GRANNIS LLP
1200 18th Street, N.W.
Washington, D.C. 20036
(202) 730-1300

Counsel for VoiceStream Wireless Corp.



William T. Lake
John H. Harwood II
William R. Richardson, Jr.
Matthew A. Brill
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

Counsel for Deutsche Telekom AG

/s/ Louis Gurman (by JHH)

Cheryl A. Tritt
Louis Gurman
Doane F. Kiechel
Christa M. Parker
MORRISON & FOERSTER LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-1500

Counsel for VoiceStream Wireless Corp.

cc: Attached service list

CERTIFICATE OF SERVICE

I, John Meehan, do hereby certify that on this 2nd day of April, 2001, I caused true and correct copies of the foregoing Ex Parte in IB Docket 00-187 to be served by first class mail, postage prepaid, 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

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

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

Donald Abelson
Chief, International Bureau
Federal Communications Commission
445 12th Street, SW, Room 6-C750
Washington, DC 20554

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

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

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

Jacquelynn Ruff
Associate Division Chief
Telecommunications Division
Federal Communications Commission
445 12th Street, SW, Room 6-A844
Washington, DC 20554

Rebecca Arbogast
Chief, Telecommunications Division
International Bureau
Federal Communications Commission
445 12th Street, SW, Room 6-A763
Washington, DC 20554

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

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

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

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

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

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

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

Ari Fitzgerald
Deputy Bureau Chief, International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

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

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

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

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

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

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

Michael Bartholomew
ETNO
33 Boulevard Bischoffsheim
1000 Brussels, Belgium

Michael Kantor
Mayer, Brown & Platt
1909 K Street, NW
Washington, DC 20006

Richard J. Callahan
Callahan Associates International LLC
3200 Cherry Creek South Drive
Suite 650
Denver, CO 80209

Marc Keilworth
KKF.net AG
Stiftsallee 60
32425 Minden, Germany

Joachim G. Feiler
Broadnet Deutschland GmbH
Am Kronberger Hang 2a
D-65824 Schwalbach, Germany

Patrick Helmes
NetCologne GmbH
Maarwegcenter
Maarweg 163
50825 Köln, Germany

James G. Lovelace
Office of the General Counsel
Federal Bureau of Investigations
935 Pennsylvania Avenue, NW
Room 7435
Washington, DC 20535

A. Michael Knoll, PhD.
58 Baker Street
Stirling, NJ 07980


John Meehan