

February 21, 2001

EX PARTE – Via Electronic Filing

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: Applications of VoiceStream Wireless, Powertel and Deutsche  
Telecom  
for Transfer of Control, IB Docket No. 00-187

Dear Ms. Salas:

On February 16, 2001, John Harwood of Wilmer, Cutler & Pickering (representing Deutsche Telekom ("DT")), and John Nakahata (representing VoiceStream Wireless ("VoiceStream")), met with Ms. Jane Mago, Ms. P. Michelle Ellison, Mr. Jim Bird, Mr. Neil Dellar and Mr. Joel Rabinovitz, all of the Office of the General Counsel, regarding the above-captioned matter.

During the meeting, Messrs. Harwood and Nakahata presented arguments on three issues, the substance of which are fully set forth in the applicants' Reply in Support of Applications for Consent To Transfer Control (filed January 8, 2001) ("Reply") and their letter to Donald Abelson, Chief, International Bureau, responding to Supplemental Requests for Information (filed February 9, 2001) ("Responses"): (1) the appropriate interpretation of sections 310(a) and 310(b)(4) as reflected in analysis set forth in *Telecom Finland*,<sup>1</sup> the implementation of that same analysis in the WTO Basic Telecommunications Agreement, and the absence of any exercise of control over DT by the German government (Reply at 25-44); (2) the appropriate standard for calculating the percent of DT's equity interest in VoiceStream resulting from DT's initial investment, including why the method used in *Fox* was necessary to evaluate alien ownership in that case, but would be misleading and inappropriate when applied to

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<sup>1</sup> *In the Matter of Telecom Finland, Ltd.*, 12 FCC Rcd 17648 (Int'l Bur. 1997).

DT's investment in VoiceStream (Reply at 26 n.88; Response # 22 at 13-20); and (3) the absence of any de facto control by DT of VoiceStream arising from DT's right to approve ceilings on the levels of VoiceStream's bids in the recently completed C-F block reauction (Response # 23 at 20-22). We confirm that VoiceStream established and the Acquisition Committee ratified, both in

writing, the initial bid ceilings. We also clarify that during the auction VoiceStream proposed, orally and later in writing, to increase the bid ceilings for 13 markets and to enter bids in 6 new markets, and that DT orally ratified that proposal as well. At all times during the auction, VoiceStream made the final decisions as to the actual amounts bid.

Finally, we stated that one way in which the Commission can speed its consideration of future transfer applications would be vigorously to enforce its previously articulated requirement that alleged public interest harms raised by commenters must be merger-specific and, with respect to foreign carrier entry into the United States, claims of competitive harm must be related to competition in the United States. The justifications for conditions related to DT's conduct in Germany offered by DT's German competitors fail entirely to meet these two threshold requirements.

Please contact John Harwood, (202) 663-6333, or John Nakahata, (202) 730-1320, if you have any questions.

Sincerely,

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

/s/ John H. Harwood (by JTN)  
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*

/s/ Lou Gurman (by JTN)  
Cheryl A. Tritt  
Louis Gurman  
Doane F. Kiechel  
Christa M. Parker  
MORRISON & FOERSTER LLP  
2000 Pennsylvania Ave., N.W.  
(202) 887-1500

*Counsel for VoiceStream Wireless Corp.*

c: attached service list

## CERTIFICATE OF SERVICE

I, Karen R. Stephens, do hereby certify that on this 21st day of February 2001, I caused true and correct copies of the foregoing Ex Parte to be served via 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

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

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

Richard J. Callahan

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

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

VIA AIR MAIL

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

European Telecommunications  
Network Operators Association  
33 Boulevard Bischoffsheim  
1000 Brussels  
Belgium

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

/s/ Karen R. Stephens  
Karen R. Stephens