



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON
December 8, 2000

OFFICE OF
THE CHAIRMAN

The Honorable Ernest F. Hollings
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
558 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Hollings:

This is in response to your letter of November 30, 2000, in which you request that the Commission issue a declaratory ruling regarding whether VoiceStream Wireless may participate in the December 12, 2000, C and F block broadband Personal Communications Services (PCS) spectrum auction (Auction 35). I appreciate your concern related to the initial \$5 billion investment by Deutsche Telekom in VoiceStream, and I want to assure you that the Commission's rules and procedures provide for an opportunity to consider carefully the issue of foreign ownership prior to an entity being awarded a license. Additionally, a licensee has a continuing obligation to comply with section 310 foreign ownership requirements and to seek the Commission's public interest approval prior to exceeding the statutory ownership benchmark of section 310(b)(4).

Pursuant to section 1.2105(a)(2)(vi) of the Commission's rules, an auction applicant must provide certification that it is in compliance with the foreign ownership provisions of section 310 of the Communications Act of 1934, as amended.¹ VoiceStream has made such a certification and, consistent with the process we have followed in all of our auctions, we have accepted this certification without further examination prior to the commencement of the auction. However, such action does not prejudice the Commission's ability to examine foreign ownership issues at the conclusion of the auction as part of our licensing review process. Following the conclusion of an auction, a winning bidder for a license must file an application with the Commission that includes detailed ownership information.² Once we accept such an application for filing, section 309(d)(1) of the Communications Act expressly provides that any interested party may file a petition to deny against that application. The Commission previously has resolved other foreign ownership determinations as part of this post-auction licensing process. Furthermore, in accordance with section 309(j)(5), no license shall be granted to an applicant pursuant to competitive bidding unless the Commission determines that the applicant is qualified pursuant to section 310 of the Act.

¹ 47 C.F.R. 1.2105(a)(2)(vi). At the short form application filing stage, the Commission will accept applications certifying that a request for waiver or other relief from the requirements of section 310 is pending. 47 C.F.R. 1.2105(a)(2)(v).

² 47 C.F.R. 1.2107(c).

In keeping with our normal processes and procedures in the preparation of an auction, on December 1, 2000, we released a public notice listing the qualified bidders for auction 35, which included VoiceStream as a "qualified bidder" eligible to participate in the auction. As explained above, this action means that the listed bidders, including VoiceStream, have filed applications that comport with our rules and procedures, and that they have made a timely up-front payment. It does not mean that the Commission has made any finding with regard to the permissibility of the current level of VoiceStream's foreign ownership. In short, being a "qualified bidder" is not the same as being qualified to hold a license. If VoiceStream successfully becomes a winning bidder for a license in auction 35, the Commission will, as part of its long form application review, carefully examine its ownership, as it does all such applications, to reach a finding of whether it is in compliance with our rules.

I also note that VoiceStream's participation in the auction does not in any way prejudice the issues raised in the proposed merger, including your expressed concerns. I want to emphasize that my staff and I are closely examining the issues you have raised about the proposed merger between VoiceStream and Deutsche Telekom, and we look forward to receiving your formal comments in that proceeding.

Thank you for sharing your concerns on this matter.

Sincerely,



William E. Kennard
Chairman