

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
VOICESTREAM WIRELESS)	
CORPORATION,)	
)	
Transferor,)	
)	
And)	WT Docket No. 00-207
)	DA 00-2397
COOK INLET REGION, INC.)	
)	
Transferee,)	
)	
Application for Consent to)	
Transfer of Control)	

PETITION TO DENY

Jordan-Soldier Valley Telephone Co. d/b/a WITCO (WITCO), by its attorneys, hereby submits its Petition to Deny the above-captioned application which seeks FCC authority for the transfer of control of FCC radio licenses from Cook Inlet Region, Inc. (Cook) to VoiceStream Wireless Corporation (VoiceStream). As demonstrated herein, the proposed additional indirect foreign investment in Cook is not in the public interest and should be denied.

I. Background

WITCO is engaged in joint ventures with Commission radio licensees and other entities to provide wireless and wireline services in rural Iowa. WITCO currently seeks access to spectrum through acquisition, partitioning agreements or spectrum lease arrangements to further its plans to bring advanced wireless telecommunications services to rural portions of Nebraska and Iowa in the Omaha and Des Moines Basic Trading Areas (BTA). Specifically WITCO's

business plan calls for the deployment of advanced services in rural Harrison (pop. 14,500) and Crawford (pop. 16,700) Counties in Iowa and Platte (pop. 29,000) and Dodge (pop. 34,500) Counties in Nebraska. WITCO's plans to introduce wireless advanced services to these traditionally underserved areas have been stymied by the scarcity of available spectrum for this purpose. Cook controls several Personal Communications Service (PCS) licenses including a 15 MHz C Block PCS license serving the Omaha BTA (BTA 332).

If the instant transaction were approved, VoiceStream would take a controlling interest (from 70 to 100%) in Cook's PCS licenses creating indirect foreign ownership in the Cook licenses. Currently, 40.6 % of VoiceStream is held by foreign communications entities.¹ In addition, in a separate proceeding VoiceStream and Deutsche Telekom AG (DTAG) seek Commission approval of a transaction that will result in VoiceStream becoming a wholly owned subsidiary of DTAG.²

II. Argument

The Applicants have failed to meet their burden of demonstrating the public interest benefits of the proposed transaction. Under the Communications Act and the Commission's rules and policies, VoiceStream and Cook bear the burden of demonstrating that they are duly qualified to be a Commission licensee, that they comply with the Commission's rules and that the transaction they propose is consistent with the public interest, convenience and necessity.³

¹ See Cook Inlet/VoiceStream PCS, LLC Petition For Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as amended (Petition), p.4-5.

² See *Public Notice*, VoiceStream Wireless Corporation, Powertel, Inc. and Deutsche Telekom AG Seek FCC Consent to Transfer Control of Licenses and Authorizations and Request Declaratory Ruling Allowing Indirect Foreign Ownership, IB Docket No. 00-187, DA 00-2251 (rel. Oct. 11, 2000).

³ *Voicestream Wireless Corporation*, 19 CR 825, 15 FCC Rcd 3341 (2000).

The traditional public interest analysis must focus on whether the proposed transaction will harm competition in the U.S. marketplace or threaten national security and law enforcement concerns.⁴ Significantly, the Commission must also consider whether the “transaction would substantially frustrate or impair the Commission’s implementation or enforcement of the Act or interfere with the objectives of that or other statutes.”⁵

WITCO submits that the proposed transaction would frustrate the Commission’s policies and objectives embodied in Sections 254 and 706 of the Telecommunications Act of 1996. Section 254(b) requires the Commission to take actions consistent with universal service principles. Specifically, Section 254(b)(3) requires that:

consumers in all regions of the Nation . . . including rural insular and high cost areas, should have access to telecommunications and information services . . . including . . . advanced telecommunications services and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

47 U.S.C. §254(b)(3). Section 706 requires the Commission, as well as each State commission, to encourage the reasonable and timely deployment of advanced telecommunications capability to all Americans.

Wireless technology, particularly in rural America, could play a central role in the introduction of advanced services such as broadband Internet access to areas where fiber deployment and digital subscriber line (DSL) technology lag far behind urban areas. However, the proposed transaction will not serve Congress' directive to ensure that such advanced telecommunications capability is deployed in a reasonable and timely manner to *all* Americans.

⁴ *Id.* at para 11.

⁵ *Vodafone Airtouch, Plc, And Bell Atlantic Corporation*, 20 CR 86, 2000 FCC LEXIS 1683 (March 30, 2000).

VoiceStream has made no commitment to bring advanced services to rural areas like Harrison and Crawford Counties in Iowa or Platte and Dodge Counties in Nebraska. It is no secret that VoiceStream is focused on urban markets like New York City and Washington, DC rather than rural areas. This Commission recently reached that conclusion.⁶ WITCO believes that, with VoiceStream's control of Cook, it is inevitable that the focus of Cook's services will move to the urban markets to the detriment of rural consumers. Rural subscribers in the Omaha, Nebraska BTA may never obtain the benefit of Cook's services if it inherits VoiceStream's urban focus. This result will further widen the disparity between urban and rural consumers in violation of Sections 254 and 706.

Moreover, WITCO submits that the proposed increase in foreign ownership should not be considered in isolation of the pending merger of VoiceStream with Deutsche Telekom AG (DTAG). DTAG, which is controlled by the German government and is looking to further establish its global footprint, will be even less likely to invest in the rural portions of the service territories in Iowa and Nebraska. Rather DTAG, like VoiceStream, will be focused on its urban footprint and provision of international services in urban areas in disregard for and at the expense of rural consumers.⁷

WITCO also submits that the proposed transaction will harm competition in the U.S. marketplace. The proposed foreign ownership in Cook by VoiceStream and, ultimately by

⁶ See *Aerial Communications, Inc., Transferor, And VoiceStream Wireless Holding Corporation, Transferee*, 15 FCC Rcd 10089, para. 28 (March 31, 2000)(stating "VoiceStream is focusing initially on the deployment of service to metropolitan areas.").

⁷ See e.g., CMP's Techweb News, <http://www.techweb.com/wire/story/TWB20000721S0005> (stating "Deutsche Telekom . . . empowered by a cash war chest, has been hunting for an acquisition to give it a U.S. foothold to compete globally and to better serve its business customers with an international network.")

DTAG is also very troubling to US wireless providers who must compete not only for market share but also initially for access to spectrum. So troubling in fact, that last year legislation was introduced designed to prohibit foreign government ownership in U.S. carriers. Citing their concerns with promoting vigorous domestic competition, national security and international trade obligations, U.S. Senators Hollings, Inouye, Rockefeller, Dorgan and Kerry introduced S. 2793 last June entitled the Foreign Government Investment Act of 2000 which, if enacted would prevent the DTAG/VoiceStream merger.⁸

The concerns over DTAG's entrance in the U.S. market are well founded. U.S. competitors, particularly small entities like WITCO, are very concerned about the anticompetitive consequences of trying to compete head-to-head with such a government-owned and supported Goliath. Government ownership provides distinct advantages to DTAG such as access to capital, capital markets and interest rates on more favorable terms than small privately held entities could ever hope for.

Moreover, foreign government-owned competitors have special privileges in their home markets that can be exploited to improve their position and distort competition in the U.S. market. Most obviously in Germany DTAG is regulated by its government-owners. It is self-evident that so long as the German government holds large amounts of equity in DTAG it will be reluctant to do anything regulatory or otherwise that would have a negative effect on DTAG's stock price.⁹ This inevitably invites favoritism and protectionism from the German government.

⁸ See S. 2793, 106th Cong. (2000); Very similar legislation was introduced in the House of Representatives. See H.R. 4903, 106th Cong. (2000).

⁹ See e.g., *Foreign Government Ownership of American Telecommunications Companies*, Subcommittee on Telecommunications Trade & Consumer Protection, 106th Cong., September 7, 2000 (Prepared Statement of A. Michael Noll, Annenberg School for Communication, UCLA). Indeed, any promises made by Germany to further reduce its share

In recent Oversight Hearings, representatives of U.S.-backed competitive carriers operating in Germany presented testimony demonstrating the efforts of DTAG and the German government to block telecommunications competition in Germany.¹⁰ The referenced testimony describes at length how DTAG, with assistance from its government owners, has blocked competitors from entering emerging markets for DSL and advanced wireless services.¹¹ According to this testimony, such tactics include the creation of artificial bottlenecks for interconnection; forcing competitors to accept burdensome interconnection rules; chronically exceeding provisioning intervals for collocation space; impeding billing and collection services; and pursuing a strategy of predatory pricing in emerging telecom markets.¹² While such tactics are reported to be on the increase, the German Federal Ministry of Economics and Technology and the German regulatory authority have “generally adopted an overly passive and accommodating stand on DTAG’s anticompetitive activities.”¹³

It would be fundamentally unfair to grant the transfer of control of Cook’s PCS license for the Omaha BTA (BTA 332) to a foreign government-controlled VoiceStream when U.S. carriers like WITCO that are committed to deploying advanced wireless telecommunications services to rural Iowa and Nebraska, are having such difficulty in obtaining access to the

in DTAG must be reviewed with healthy skepticism. At the very least, any divestiture will come very slowly to avoid impact on share prices.

¹⁰ *See Foreign Government Ownership of American Telecommunications Companies, Subcommittee on Telecommunications Trade & Consumer Protection, 106th Cong., September 7, 2000* (Prepared Statement of Mr. Andrew D. Lipman, on behalf of Verband der Anbieter von Telekommunikations- und Mehrwertdiensten e. V.).

¹¹ *Id.* at p. 1 of 21.

¹² *Id.*

¹³ *Id.*

necessary spectrum; whether by partition or spectrum lease. Transferring control of that PCS license to a foreign government-owned carrier will distort competitive markets in the U.S., delay the use of that valuable spectrum in rural America, and undermine the concept of private capitalism that the American telecommunications market is built upon.¹⁴ Cook and VoiceStream have failed to demonstrate how the public in the rural areas of this country will benefit from allowing foreign government control of such scarce U.S. spectrum.

Conclusion

For all the reasons stated herein WITCO respectfully requests that the Commission deny the VoiceStream and Cook application for transfer of control.

Respectfully submitted,

Jordan-Soldier Valley Telephone Co.
d/b/a **WITCO**

By: _____ /S
James U. Troup
Brian D. Robinson
Arter & Hadden, LLP
1801 K St. NW
Suite 400-K
Washington, DC 20006
(202) 775-7100

Its Attorneys

November 22, 2000

¹⁴ *Id.* at fn 7. (*stating* partially privatized entities such as DTAG should not be allowed to own any telecommunication firm in the United States).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Petition to Deny via hand delivery upon the parties listed below:

Dated this 22nd day of November, 2000

Louis Gurman
Christa M. Parker
Morrison & Foerster LLP
2000 Pennsylvania Avenue
Washington, D.C. 20006

Jonathan D. Blake
Christine E Enemark
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401

/S

Brian D. Robinson