

“parachute payment” to a “disqualified individual” as those terms are defined in Section 280G of the Code without regard to whether such payment is reasonable compensation for personal services performed or to be performed in the future; and (xiii) none of Powertel, the Powertel Subsidiaries or DT will be obligated to pay any excise taxes or similar taxes imposed on any employee or former employee of, or individual providing services to, Powertel or the Powertel Subsidiaries under Section 4999 of the Code or any similar provisions as a result of the consummation of the transactions contemplated hereby, either alone or in connection with any other event.

**SECTION 2.11. *Liabilities.*** Except as set forth in Powertel Filed SEC Documents or **Schedule 2.11**, and as permitted by this Agreement and the Alternative Merger Agreement, Powertel and the Powertel Subsidiaries, taken as a whole, do not have any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by GAAP to be set forth on a consolidated balance sheet of Powertel and the Powertel Subsidiaries or in the notes thereto, other than (i) liabilities and obligations incurred in the ordinary course of business since December 31, 1999 or (ii) liabilities arising after December 31, 1999 which could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Powertel.

**SECTION 2.12. *Benefit Plans; Employees and Employment Practices.***

(a) Except as disclosed in the Powertel Filed SEC Documents or **Schedule 2.12(a)** or to the extent required by law or required to maintain in compliance with provisions of the Code, neither Powertel nor any of the Powertel Subsidiaries has adopted or amended in any material respect any ERISA Benefit Plan since the date of the most recent audited financial statements included in the Powertel Filed SEC Documents. Except as set forth in **Schedule 2.12(a)**, Powertel does not have any commitment to create, adopt or contribute to any Powertel Benefit Plan. Except as disclosed in **Schedule 2.12(a)** or in the Powertel Filed SEC Documents, as of the date of this Agreement, there exist no material employment, consulting, severance, bonus, incentive or termination agreements between Powertel or any of the Powertel Subsidiaries and any current or former employee, officer or director of Powertel or any of the Powertel Subsidiaries.

(b) **Schedule 2.12(b)** contains a list of all the material Powertel Benefit Plans. None of Powertel, any of the Powertel Subsidiaries, any officer of Powertel or any of the Powertel Subsidiaries or any of the ERISA Benefit Plans has on or before the date of this Agreement engaged in a “prohibited transaction” (as defined in Section 406 of ERISA or Section 4975 of the Code) with respect to any ERISA Benefit Plan that could reasonably be expected to subject Powertel, any of the Powertel Subsidiaries or any officer of Powertel or any of the Powertel Subsidiaries to any Tax on prohibited transactions imposed by Section 4975 of the Code or to any liability under Section 502(i) or (l) of ERISA where such Tax or liability has or would be reasonably expected to have a Material Adverse Effect on Powertel. No ERISA Benefit Plan has incurred any “accumulated funding deficiency” (as defined in Section 412 of the Code or Part 3 of Title I of ERISA), whether or not waived. Neither Powertel nor any of the Powertel Subsidiaries has incurred and none of such entities reasonably expects to incur, any material liability to the PBGC with respect to any ERISA Benefit Plan. No assets of Powertel or any of the Powertel Subsidiaries are subject to liens arising under ERISA or the Code on account of any ERISA Benefit Plan, neither Powertel nor any of the Powertel Subsidiaries has been required to provide any security under Sections 401(a)(29) or 412(f) of the Code, or under Section 307 of ERISA, and, to Powertel’s Knowledge, no event has occurred that could give rise to any such lien or a requirement to provide any such security. Except as disclosed in **Schedule 2.12(b)**, none of Powertel, the Powertel Subsidiaries or any ERISA Affiliate has at any time during the five-year period preceding the date hereof contributed to any “multiemployer plan” (as defined in Section 3(37) of ERISA).

(c) Except as disclosed in **Schedule 2.12(c)**, and except for such matters as could not be reasonably expected to have a Material Adverse Effect on Powertel, to the extent applicable, (i) each ERISA Benefit Plan complies with the requirements of ERISA and the Code, (ii) each ERISA Benefit Plan intended to be qualified under Section 401(a) of the Code has been determined by the Internal Revenue Service to be so qualified and nothing has occurred since the date of that determination that could reasonably be

expected to adversely affect the qualified status of such plan and its related trust is tax-exempt and has been so since its creation, and (iii) each Powertel Benefit Plan has been maintained, administered and operated in compliance with its terms and with the requirements prescribed by any and all statutes, orders, rules and regulations, including but not limited to ERISA and the Code, which are applicable to such Powertel Benefit Plans.

(d) Except as disclosed in **Schedule 2.12(d)**, all material contributions, reserves or premium payments under or to Powertel Benefit Plans, accrued to the date hereof have been made or provided for.

(e) Except as disclosed in **Schedule 2.12(e)**, and except for any liability as could not be reasonably expected to have a Material Adverse Effect on Powertel, Powertel has not incurred any liability under Subtitle C or D of Title IV of ERISA with respect to any "single-employer plan" within the meaning of Section 4001(a)(15) of ERISA, currently or formerly maintained by Powertel, or any entity which is considered one employer with Powertel under Section 4001 of ERISA.

(f) Except as disclosed in **Schedule 2.12(f)** neither Powertel nor any of the Powertel Subsidiaries has any obligation to provide retiree health or welfare benefits for any current or former employee under any Powertel Benefit Plan, except as required by Part 6 of Title I of ERISA or to avoid excise taxes under Section 4980B of the Code, and the terms of Powertel Benefit Plans permit Powertel to amend or terminate such Powertel Benefit Plans at any time without incurring liability thereunder.

(g) Except as disclosed in **Schedule 2.12(g)**, Powertel has not engaged in, nor is it a successor or parent corporation to an entity that has engaged in a transaction described in Section 4069 of ERISA.

(h) Except as disclosed in **Schedule 2.12(h)**, the consummation or announcement of any transaction contemplated by this Agreement will not (either alone or upon the occurrence of any additional or further acts or events) result in any (i) payment (whether of severance pay or otherwise) becoming due from Powertel or any of the Powertel Subsidiaries to any officer, employee, former employee or director thereof or to the trustee under any "rabbi trust" or similar arrangement; (ii) benefit under any Powertel Benefit Plan being established or becoming accelerated, vested or payable; or (iii) "reportable event" (as defined in Section 4043 of ERISA) with respect to any ERISA Benefit Plan subject to Title IV of ERISA.

(i) Except as disclosed in **Schedule 2.12(i)**, as of the date of this Agreement there are no pending disputes, arbitrations, claims, suits, grievances or, to the Knowledge of Powertel, governmental audits involving a Powertel Benefit Plan (other than routine claims for benefits payable under any such Powertel Benefit Plan or routine audits) that would reasonably be expected either individually or in the aggregate, to have a Material Adverse Effect on Powertel.

(j) **Schedule 2.12(j)** contains a list setting forth the name and current annual salary and other material compensation payable to each Significant Employee, and the profit sharing, bonus or other form of additional cash compensation paid or payable by Powertel or the Powertel Subsidiaries to or for the benefit of each such person for the current fiscal year. Except as set forth in **Schedule 2.12(j)**, there are no oral or written contracts, agreements or arrangements obligating Powertel or any of the Powertel Subsidiaries to increase the compensation or benefits presently being paid or hereafter payable to any Significant Employees or any oral employment or consulting or similar arrangements regarding any Significant Employee that are not terminable without liability on thirty days' or less prior notice. **Schedule 2.12(j)** lists all written employment and consulting agreements with respect to any Significant Employee. Powertel has provided true and correct copies of all employment agreements listed on **Schedule 2.12(j)**. Except for severance or retention obligations to Significant Employees set forth in **Schedule 2.12(j)** or as otherwise set forth on **Schedule 2.12(j)**, there is not due or owing and there will not be due and owing at the Effective Time to any Significant Employees, any sick pay, severance pay (whether arising out of the termination of a Significant Employee prior to, on, or subsequent to the Effective Time), compensable time or pay, including salary, commission and bonuses, personal time or pay or vacation time or vacation pay attributable to service rendered on or prior to the Effective Time the aggregate amount of which exceeds \$50,000 for any Significant Employee. Except as disclosed in **Schedule 2.12(j)** and other than claims made in the ordinary course of business consistent with past

practice in an aggregate amount not to exceed \$500,000 neither Powertel nor any of the Powertel Subsidiaries have any liability arising out of claims made or suits brought (including workers' compensation claims and claims or suits for contribution to, or indemnification of, third parties, occupational health and safety, environmental, consumer protection or equal employment matters) for injury, sickness, disease, discrimination, death or termination of employment of any Significant Employee, or other employment matter to the extent attributable to an event occurring or a state of facts existing on or prior to the Effective Time.

(k) Except as set forth on **Schedule 2.12(k)**, Powertel and each of the Powertel Subsidiaries (i) is in compliance with all applicable federal and state laws, rules and regulations respecting employment, employment practices, terms and conditions of employment and wages and hours, in each case, with respect to Powertel Employees, except where the failure to be in compliance would not, singly or in the aggregate, have a Material Adverse Effect on Powertel or any of the Powertel Subsidiaries or their financial condition or business; (ii) has withheld all amounts required by law or by agreement to be withheld from the wages, salaries and other payments to Powertel Employees; (iii) is not liable for any arrears of wages or any taxes or any penalty for failure to comply with any of the foregoing, except as would reasonably be expected to not have a Material Adverse Effect on Powertel; and (iv) (other than routine payments to be made in the normal course of business and consistent with past practice) is not liable for any payment to any trust or other fund or to any governmental or administrative authority, with respect to unemployment compensation benefits, Social Security or other benefits for Powertel Employees.

(l) Except as disclosed in **Schedule 2.12(l)**, as of the date of this Agreement there are no controversies, strikes, work stoppages or disputes pending or to Powertel's Knowledge threatened against Powertel or any of the Powertel Subsidiaries, and no organizational effort by any labor union or other collective bargaining unit currently is under way with respect to any employee, which in any such case would reasonably be expected to have a Material Adverse Effect on Powertel. None of Powertel or any of the Powertel Subsidiaries is a party to a collective bargaining agreement. Except as set forth in **Schedule 2.12(l)**, there is no, and there is not threatened, any labor dispute, grievance or litigation relating to labor, safety or discrimination matters involving any Powertel Employee including charges of unfair labor practices or discrimination complaints, which, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Powertel. There has been no engagement in any unfair labor practices by Powertel or the Powertel Subsidiaries within the meaning of the National Labor Relations Act which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Powertel.

**SECTION 2.13. *Litigation.*** Except as disclosed in **Schedule 2.13** or in the Powertel Filed SEC Documents, as of the date of this Agreement, there is no suit, action, proceeding or investigation pending or, to Powertel's Knowledge, threatened, against Powertel or any of the Powertel Subsidiaries before any Governmental or Regulatory Authority that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on Powertel or prevent or materially delay the consummation of the Merger. Except as disclosed in **Schedule 2.13** or in the Powertel Filed SEC Documents, neither Powertel nor any of the Powertel Subsidiaries is subject to any outstanding judgment, order, writ, injunction or decree that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Powertel.

**SECTION 2.14. *Environmental Matters.*** Except for such matters that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect on Powertel, or would not otherwise require disclosure pursuant to the Securities Act or Exchange Act, (i) each of Powertel and the Powertel Subsidiaries has complied and is in compliance with all applicable Environmental Laws; (ii) the properties currently owned or operated by Powertel or any of the Powertel Subsidiaries (including soils, groundwater, surface water, buildings or other structures) are not contaminated with any Hazardous Substances; (iii) to Powertel's Knowledge, no Hazardous Substances were present, disposed, released or otherwise deposited on, under, at or from the properties formerly owned or operated by Powertel or any of the Powertel Subsidiaries during the period of ownership or operation by Powertel or any of the Powertel Subsidiaries; (iv) to Powertel's Knowledge, neither Powertel nor any of the Powertel Subsidiaries is

subject to liability for any Hazardous Substance disposal or contamination on any third party property; (v) neither Powertel nor any of the Powertel Subsidiaries has received any notice, demand, threat, letter, claim or request for information alleging that Powertel or any of the Powertel Subsidiaries may be in violation of or liable under any Environmental Law (including any claims relating to electromagnetic fields or microwave transmissions); and (vi) to Powertel's Knowledge, neither Powertel nor any of the Powertel Subsidiaries is subject to any orders, decrees, injunctions or other arrangements (other than those of general applicability not specifically related to Powertel) with any Governmental or Regulatory Authority or regulatory authority or is subject to any indemnity or other agreement with any third party relating to liability under any Environmental Law or relating to Hazardous Substances (except for such agreements entered into by Powertel in the ordinary course of business).

**SECTION 2.15. *Section 203 of the Delaware Law.*** The Board of Directors of Powertel has approved this Agreement, the Merger and the Stockholders Agreement and the transactions contemplated hereby, with the effect that the restrictions on business combinations contained in Section 203 of the Delaware Law will not apply to DT as a result of this Agreement, the Merger and the Stockholders Agreement. To Powertel's Knowledge, (i) no anti-takeover statute or similar law of Georgia or Delaware imposes restrictions which could reasonably be expected to adversely affect or delay the consummation of the transactions contemplated by this Agreement, and (ii) no "control share acquisition," "fair price," "moratorium" or other anti-takeover laws or regulations enacted under Georgia or Delaware law ("**Takeover Law**") are applicable to Powertel apply to this Agreement or any of the transactions related thereto.

**SECTION 2.16. *Intellectual Property.*** Except as set forth in the Powertel Filed SEC Documents or in **Schedule 2.16**, the Intellectual Property Rights consist solely of items and rights which are: (i) owned by Powertel or the Powertel Subsidiaries, (ii) in the public domain or (iii) rightfully used by Powertel or the Powertel Subsidiaries pursuant to a license, and, with respect to Intellectual Property Rights owned by Powertel or the Powertel Subsidiaries, Powertel or the Powertel Subsidiaries own the entire right, title and interest in and to such Intellectual Property Rights free and clear of any Liens. Powertel and the Powertel Subsidiaries have all rights in the Intellectual Property Rights necessary to carry out their businesses substantially as currently conducted except as could not reasonably be expected to have a Material Adverse Effect on Powertel. The Intellectual Property Rights do not infringe on any proprietary right of any Person, except to the extent that any such infringement, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect on Powertel. As of the date of this Agreement, no claims against Powertel or any Powertel Subsidiary (or to Powertel's Knowledge, against any other holder of Intellectual Property Rights) (x) challenging the validity, effectiveness, or ownership by Powertel or the Powertel Subsidiaries of any of the Intellectual Property Rights, or (y) to the effect that the Intellectual Property Rights infringe or will infringe on any intellectual property or other proprietary right of any person have been asserted or, to Powertel's Knowledge, are threatened by any person nor to Powertel's Knowledge are there any valid grounds for any bona fide claim of any such kind. To Powertel's Knowledge, there is no material unauthorized use, infringement or misappropriation of any of the Intellectual Property Rights by any third party, employee or former employee of Powertel or the Powertel Subsidiaries.

**SECTION 2.17. *Opinion of Financial Advisor.*** The Board of Directors of Powertel has received the oral opinion of Morgan Stanley Dean Witter & Co. ("**Powertel Financial Advisor**"), on the date hereof, to the effect that, as of the date hereof, the consideration to be received in the Merger by Powertel's stockholders is fair to Powertel's stockholders from a financial point of view.

**SECTION 2.18. *Brokers.*** Except for the Powertel Financial Advisor, the fees and expenses of which will be paid by Powertel (and are reflected in agreements with Powertel, a true and correct copy of which has been furnished to, and accepted by, DT), no broker, investment banker, financial advisor or other person, is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Powertel. In no event shall the amounts paid or payable by Powertel to the Powertel Financial Advisor in connection with the transactions contemplated by this Agreement exceed \$28,000,000.

**SECTION 2.19. Tax Status.** To the Knowledge of Powertel after due investigation, neither Powertel nor any of its Affiliates has taken any action or failed to take any action which action or failure would (i) jeopardize the qualification of the Merger as a reorganization within the meaning of Section 368(a) of the Code or (ii) cause the stockholders of Powertel, other than any such stockholder that would be a "five-percent transferee shareholder" of DT (within the meaning of U.S. Treasury Regulations Section 1.367(a)-3(c)(5)) following the Merger, to recognize gain pursuant to Section 367(a) of the Code. To the Knowledge of Powertel after due investigation, there are no facts or circumstances relating to Powertel or its Affiliates, including any covenants or undertakings of Powertel pursuant to this Agreement, that would prevent Morris, Manning & Martin, LLP from delivering the opinion referred to in Section 6.02(d) as of the date hereof.

**SECTION 2.20. Contracts.** Except as set forth in the Powertel Filed SEC Documents or in **Schedule 2.20**, and except for this Agreement, the Alternative Merger Agreement and the agreements referenced hereby and thereby, neither Powertel nor any of the Powertel Subsidiaries is a party to or bound by (i) any "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC) or any agreement, contract or commitment the loss or termination of which could have a Material Adverse Effect on Powertel; (ii) any non-competition agreement or any similar agreement or obligation which materially limits or could materially limit Powertel or any of the Powertel Subsidiaries from engaging in the business of providing wireless communications services or from developing wireless communications technology anywhere in the world or (iii) any management agreement, technical services agreement or other agreement whereby Powertel or any of the Powertel Subsidiaries is providing or is required to provide management or technical services to any other Person. Taken as a whole, the contracts and agreements required to be filed by Powertel with the SEC together with the contracts and agreements required to be set forth on **Schedule 2.20** are collectively referred to as the "**Powertel Contracts**". With such exceptions as, individually or in the aggregate, have not had, and could not be reasonably expected to have, a Material Adverse Effect on Powertel, (x) each of the Powertel Contracts is valid and in full force and effect (except to the extent they have previously expired with no residual obligation in accordance with their terms), and (y) except as set forth in **Schedule 2.20**, neither Powertel nor any of the Powertel Subsidiaries has violated any provision of, or committed or failed to perform any act which, with or without notice, lapse of time, or both, would constitute a default under the provisions of any such Powertel Contract. To the knowledge of Powertel, no counterparty to any such Powertel Contract has violated any provision of, or committed or failed to perform any act which, with or without notice, lapse of time, or both would constitute a default or other breach under the provisions of, such Powertel Contract, except for defaults or breaches which, individually or in the aggregate, have not had, or would not reasonably be expected to have, a Material Adverse Effect on Powertel. Neither Powertel nor any of the Powertel Subsidiaries is a party to, or otherwise a guarantor of or liable with respect to, any interest rate, currency or other swap or derivative transaction, other than any such transactions which are not material to the business of Powertel or the Powertel Subsidiaries. Powertel has provided or made available to DT a copy of each agreement described in item (i), (ii) and (iii) above. The designation or definition of Powertel Contracts for purposes of this Section 2.20 and the disclosures made pursuant hereto shall not be construed or utilized to expand, limit or define the terms "material" and "Material Adverse Effect" as otherwise referenced and used in this Agreement.

**SECTION 2.21. Vote Required.** The only vote of the holders of any class or series of capital stock of Powertel necessary to approve this Agreement and the transactions contemplated hereby is the Powertel Stockholder Approval. As of the date hereof, the Powertel Principal Stockholders have the requisite voting power to satisfy the Powertel Stockholder Approval.

**SECTION 2.22. Transactions with Affiliates.** Except as described in **Schedule 2.22** or in the Powertel Filed SEC Documents, to Powertel's Knowledge, no director or executive officer of Powertel or any 5% or greater stockholder of Powertel is at the date hereof a party to any transaction with Powertel or any of the Powertel Subsidiaries in which the amount involved exceeds \$60,000, including any contract or arrangement providing for the furnishing of services to or by, providing for rental of real or personal

property (including intellectual property) to or from, or otherwise requiring payments to or from Powertel or any of the Powertel Subsidiaries.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES OF DT

Except as disclosed in the DT Filed SEC Documents and except as set forth in the DT disclosure schedules attached to this Agreement (it being agreed that disclosure of any item in the schedules shall be deemed disclosure with respect to any section of this Agreement to which the relevance of such is reasonably apparent), (i) DT hereby represents and warrants as of the date hereof as follows (except to the extent any of the following relates to Merger Sub), and (ii) Merger Sub hereby represents and warrants as of September 28, 2000) to Powertel as follows (but only to the extent any of the following relates to Merger Sub):

**SECTION 3.01. *Organization; Subsidiaries.*** DT and each of its Significant Subsidiaries, as listed on **Schedule 3.01** hereto, and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization. Each of DT and its Subsidiaries has the requisite corporate power and authority and any necessary franchise, grant, authorization, license, permit, easement, variance, exception, consent, certificate, approval and order of any Governmental or Regulatory Authority necessary for DT or any of its Subsidiaries to own, operate or lease the properties that it purports to own, operate or lease and to carry on its business as it is now being conducted (the “DT Permits”), and is duly qualified to do business, and is in good standing, in each jurisdiction where the character of its properties owned, operated or leased or the nature of its activities makes such qualification necessary, except for such failure which, when taken together with all other such failures, would not reasonably be expected to have a Material Adverse Effect on DT or materially delay the consummation of the Merger.

**SECTION 3.02. *Certificate of Incorporation and Bylaws.*** DT is an Aktiengesellschaft organized and existing under the laws of the Federal Republic of Germany. DT has heretofore furnished, or otherwise made available, to Powertel a complete and correct copy of the Memorandum and Articles of Association (SATZUNG) and Management Board (VORSTAND) Rules of Procedure (GESCHAFTSORDNUNG), each as amended to the date hereof, of DT. Such Memoranda and Articles of Association (SATZUNG), Management Board (VORSTAND) Rules of Procedure (GESCHAFTSORDNUNG), are in full force and effect. DT is not in violation of any of the provisions of its Memorandum or Articles of Association (SATZUNG) or, in any material respect, its Management Board (VORSTAND) Rules of Procedure (GESCHAFTSORDNUNG).

**SECTION 3.03. *Capital Structure.*** (a) As of the date hereof, DT’s stated share capital (GRUND KAPITAL) amounts to Euro 7,755,786,327.04 divided into 3,029,604,034 ordinary shares, all of which, as of the date hereof, are issued and outstanding and not held in the Treasury of DT, and DT’s authorized capital (GENEHMIGTES KAPITAL) available for the issuance of new DT Shares against contributions in kind amounts to up to Euro 3,865,093,163.52, as set forth in Section 5 of the Articles of Association of DT. As of the date hereof, 4,969,388 shares were held in the treasury of DT (EIGENE AKTIEN). Except as set forth on **Schedule 3.03** and except for the VoiceStream Merger Agreement, there are no outstanding DT Equity Rights on the date hereof. For purposes of this Agreement, “DT Equity Rights” shall mean subscriptions, options, warrants, calls, commitments, agreements, conversion rights or other rights of any character (contingent or otherwise) to purchase or otherwise acquire from DT or any of DT’s Significant Subsidiaries at any time, or upon the happening of any stated event, any shares of the capital stock or other voting or non-voting securities of DT.

(b) All of the issued and outstanding capital stock of DT is validly issued, fully paid and nonassessable. All DT Depositary Shares and DT Ordinary Shares to be issued as Merger Consideration will be, when issued, validly issued, fully paid and nonassessable.

(c) Except as disclosed on **Schedule 3.03** hereto, all the outstanding capital stock of each of DT's Significant Subsidiaries which is owned by DT is duly authorized, validly issued, fully paid and nonassessable, and is owned by DT free and clear of any liens, security interest, pledges, agreements, claims, charges or encumbrances except for any liens, security interest, pledges, agreements, claims, charges or encumbrances which would not, individually or in the aggregate, have a Material Adverse Effect on DT. Except as set forth on **Schedule 3.03** or in connection with the VoiceStream Merger Agreement or, with respect to Merger Sub, as otherwise contemplated by this Agreement, there are no existing subscriptions, options, warrants, calls, commitments, agreements, conversion rights or other rights of any character (contingent or otherwise) to purchase or otherwise acquire from DT or any of DT's Significant Subsidiaries or Merger Sub at any time, or upon the happening of any stated event, any shares of the capital stock or other voting or non-voting securities of any DT Subsidiary or Merger Sub, whether or not presently issued or outstanding (except for rights of first refusal to purchase interests in Subsidiaries which are not wholly-owned by DT), and there are no outstanding obligations of DT or any of DT's Significant Subsidiaries or Merger Sub to repurchase, redeem or otherwise acquire any shares of capital stock or other voting or non-voting securities of any of DT's Subsidiaries, other than such as would not, individually or in the aggregate, have a Material Adverse Effect on DT. The Merger Sub Common Stock constitutes and, to the knowledge of DT, as of the Closing Date, will constitute all of the outstanding capital stock of Merger Sub and, except as provided in the last sentence of Section 1.01(b), DT owns 100 percent of the outstanding capital stock of Merger Sub.

**SECTION 3.04. Authority.** (a) DT has the necessary corporate power and authority to enter into this Agreement and the Powertel Stockholder Agreements and to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Stockholders Agreement by DT and the consummation by DT of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of DT, including by the Management Board (VORSTAND) of DT, and the Supervisory Board (AUFSICHTSRAT) of DT of this Agreement and the Stockholders Agreement (except for the determination by the Board of Management which will be made pursuant to Section 205(2) of the German Act and except for the application to be filed with the Commercial Register). This Agreement and the Stockholders Agreement have been duly executed and delivered by DT and, assuming the due authorization, execution and delivery thereof by the other Parties, constitutes legal, valid and binding obligations of DT, enforceable against it in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting the rights and remedies of creditors generally and to general principles of equity (regardless of whether considered in a proceeding in equity or at law).

(b) Merger Sub has the necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation by Merger Sub of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Merger Sub and its stockholder. This Agreement has been duly executed and delivered by Merger Sub and, assuming the due authorization, execution and delivery thereof by the other Parties hereto, constitutes the legal, valid and binding obligation of Merger Sub, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting the rights and remedies of creditors generally and to general principles of equity (regardless of whether considered in a proceeding in equity or at law).

**SECTION 3.05. No Conflict; Required Filings and Consents.** (a) Except as set forth on **Schedule 3.05** or as described in subsection (b) below, the execution and delivery of this Agreement and the Stockholders Agreement by DT, or as applicable, by Merger Sub do not, and the performance of this Agreement and the Stockholders Agreement by DT, or as applicable, by Merger Sub will not, (i) violate or conflict with the Memorandum and Articles of Association (SATZUNG) or the Management Board (VORSTAND) Rules of Procedure (GESCHAFTSORDNUNG) of DT, (ii) conflict with or violate any law, regulation, court order, judgment or decree applicable to DT, any of its Significant Subsidiaries or Merger Sub or by which any of their respective property is bound or affected, (iii) violate or conflict with the Memorandum and Articles of Association (SATZUNG) or the Management Board

(VORSTAND) Rules of Procedure (GESCHAFTSORDNUNG) of any Subsidiaries of DT or the certificate of incorporation or bylaws of Merger Sub or (iv) result in any breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination or cancellation of, or result in the creation of a lien or encumbrance on any of the properties or assets of DT or any of its Significant Subsidiaries or Merger Sub pursuant to, or result in the loss of any material benefit or right, including the benefit of any standstill agreement, or result in an acceleration of any rights or amounts due resulting from a change of control or otherwise, or require the consent of any other party to, any contract, instrument, DT Permit, license or franchise to which DT or any of its Significant Subsidiaries or Merger Sub is a party or by which DT or any of such Subsidiaries or Merger Sub, or any of their respective property is bound or affected, except, in the case of clauses (ii), (iii) and (iv) above, for conflicts, violations, breaches, defaults, rights, results or consents which, individually or in the aggregate, would not have a Material Adverse Effect on DT or materially delay the consummation of the Merger.

(b) Except for applicable requirements, if any, of state, local, or foreign regulatory laws and commissions, the FCC, the Exchange Act, the premerger notification requirements of the HSR Act, Council Regulation (EEC) No. 4064/89, if required, filing of a notice pursuant to Section 721 of Exon-Florio, filing and recordation of appropriate merger or other documents as required by Delaware Law and any filings required pursuant to any state securities or "blue sky" laws or the rules of any applicable stock exchanges (the "DT Required Approvals" and together with the Powertel Required Approvals, the "Required Regulatory Approvals"), neither DT nor any of its Subsidiaries nor Merger Sub is required to submit any notice, report or other filing with any Governmental or Regulatory Authority in connection with the execution, delivery or performance of this Agreement and the Stockholders Agreement, as applicable. Except as set forth in the immediately preceding sentence, no waiver, consent, approval or authorization of any Governmental or Regulatory Authority is required to be obtained by DT or any of its Subsidiaries in connection with its execution, delivery or performance of this Agreement and the Stockholders Agreement.

SECTION 3.06. *SEC Filings; Financial Statements.* (a) DT has filed all forms, reports and documents required to be filed with the SEC since January 1, 1999, and has heretofore made available to Powertel, in the form filed with the SEC, together with any amendments and exhibits thereto, (i) its Annual Report on Form 20-F for the fiscal year ended December 31, 1999 and (ii) all other reports or registration statements filed by DT with the SEC since January 1, 1999 (collectively, the "DT SEC Documents"). The DT SEC Documents (i) were prepared substantially in accordance with the requirements of the Securities Act or the Exchange Act, as the case may be, and the rules and regulations promulgated under each of such respective acts and (ii) did not at the time they were filed contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(b) The financial statements (the "DT Financial Statements"), including all related notes and schedules, contained in the DT SEC Documents (or incorporated by reference therein) fairly present the consolidated financial position of DT and its Subsidiaries as at the respective dates thereof and the consolidated results of operations and cash flows of DT and its Subsidiaries for the periods indicated in accordance with generally accepted accounting principles in Germany (with a reconciliation to GAAP in accordance with SEC rules) applied on a consistent basis throughout the periods involved (except for changes as disclosed in the notes thereto) and subject in the case of interim financial statements to normal year-end adjustments.

SECTION 3.07. *Absence of Certain Changes or Events.* Except as permitted by this Agreement or the VoiceStream Merger Agreement or consented to by Powertel hereunder or as disclosed in the documents filed by DT with the SEC and publicly available prior to the date of this Agreement (the "DT Filed SEC Documents"), (a) since December 31, 1999, there has not been any Material Adverse Effect on DT, and (b) DT and its Subsidiaries, taken as a whole, have not incurred since December 31, 1999 any material liabilities or obligations except (i) liabilities or obligations (A) which are accrued or reserved

against in the DT Financial Statements or reflected in the notes thereto or (B) which were incurred after December 31, 1999 in the ordinary course of business and consistent with past practices, (ii) liabilities or obligations which have been discharged or paid in full prior to the date hereof in the ordinary course of business and (iii) liabilities and obligations which are of a nature not required to be reflected in the consolidated financial statements of DT and its Subsidiaries prepared in accordance with GAAP.

**SECTION 3.08. *Litigation.*** As of the date hereof, there are no claims, actions, suits, proceedings or investigations pending or, to DT's Knowledge, threatened against DT or any of its Subsidiaries, or any properties or rights of DT or any of its Subsidiaries, before any Governmental or Regulatory Authority that would reasonably be expected to result in an adverse judgment or determination against DT or any of its Subsidiaries, except for those that are not, individually or in the aggregate, reasonably likely to have a Material Adverse Effect on DT or prevent or materially delay the consummation of the Merger except as set forth on **Schedule 3.08** hereof.

**SECTION 3.09. *No Violation of Law.*** The business of DT and its Subsidiaries is not being conducted in violation of any Legal Requirements or in violation of any DT Permits, except for possible violations none of which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on DT or prevent or materially delay the consummation of the Merger. Except as disclosed in DT SEC Documents filed prior to the date hereof and as set forth on **Schedule 3.09** hereto, as of the date hereof, no investigation, review or proceeding by any Governmental or Regulatory Authority (including, without limitation, any stock exchange or other self-regulatory body) with respect to DT or its Subsidiaries in relation to any alleged violation of law or regulation is pending or, to DT's Knowledge, threatened, nor has any Governmental or Regulatory Authority (including, without limitation, any stock exchange or other self-regulatory body) indicated in writing an intention to conduct the same, except for such investigations which, if they resulted in adverse findings, would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on DT.

**SECTION 3.10. *Information Provided by DT.*** None of the information supplied or to be supplied by or on behalf of DT for inclusion or incorporation by reference in the Registration Statement will, at the time the Registration Statement becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the information supplied or to be supplied by or on behalf of DT for inclusion or incorporation by reference in the Powertel Proxy Statement will, at the date mailed to stockholders of Powertel and at the time of the Powertel Stockholders' Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Registration Statement (except for information relating solely to Powertel) will comply as to form in all material respects with the provisions of the Securities Act and the rules and regulations promulgated thereunder. None of the information supplied or to be supplied by or on behalf of DT for inclusion or incorporation by reference in the German Listing Prospectus will, at the time the German Listing Prospectus is published, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the information supplied or to be supplied by or on behalf of DT for inclusion or incorporation by reference in the auditor's report to be prepared pursuant to Section 183(3) of the German Act will, at the time the report is filed with the Commercial Register, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

**SECTION 3.11. *Board Action; Vote Required.*** (a) The Management Board (VORSTAND) and the Supervisory Board (AUFSICHTSRAT) of DT have determined that the transactions contemplated by this Agreement and the Stockholders Agreement are advisable and in the best interests of DT and its shareholders.

(b) No vote of holders of any class or series of DT capital stock, including, without limitation, holders of DT Ordinary Shares or DT Depository Shares, is required for the approval or entering into of this Agreement or the consummation of the transactions contemplated hereby, including the Merger.

SECTION 3.12. *Brokers.* Except for Donaldson, Lufkin & Jenrette, or as indicated in writing to Powertel on or prior to February 8, 2001, no broker, finder or investment banker is entitled to any brokerage, finder's or investment banking fee in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of DT or any of its Subsidiaries.

SECTION 3.13. *Tax Matters.* Except as set forth on **Schedule 3.13** and except to the extent that the failure of the following representations to be true, whether considered individually or in the aggregate, would not have a Material Adverse Effect on DT:

(a) All Tax Returns required to be filed by DT or its Subsidiaries on or prior to the Effective Time have been or will be timely filed with the appropriate Governmental or Regulatory Authorities and are or will be correct in all respects, and all Taxes due by DT or its Subsidiaries on or prior to the Effective Time have been, or will be, timely paid;

(b) There are no liens (except for statutory liens for current Taxes not yet due and payable) against any domestic or foreign assets of DT or any of its Subsidiaries resulting from any unpaid Taxes;

(c) No audit or other proceeding with respect to Taxes due from DT or any of its Subsidiaries, or any Tax Return of DT or any of its Subsidiaries, is pending, threatened in writing, or being conducted by any Governmental or Regulatory Authority;

(d) No extension of the statute of limitations on the assessment of any Taxes has been granted by DT or any of its Subsidiaries and is currently in effect;

(e) Neither DT nor any of its Subsidiaries has taken any action or knows of any fact that is reasonably likely to (i) prevent or impede the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code or (ii) cause the stockholders of Powertel, other than any such stockholder that would be a "five-percent transferee shareholder" of DT (within the meaning of U.S. Treasury Regulations Section 1.367(a)-3(c)(5)) following the Merger, to recognize gain pursuant to Section 367(a) of the Code; and

(f) The assets of DT do not consist wholly or principally of immovable property situated within Germany within the meaning of Article 13(2)(b) of the Income Tax Treaty between Germany and the United States.

SECTION 3.14. *Ownership of Securities.* Except pursuant to the Stockholders Agreement or as set forth on **Schedule 3.14**, as of the date hereof, neither DT nor, to DT's Knowledge, any of its Subsidiaries, beneficially owns, directly or indirectly, or is party to any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of, in each case, shares of capital stock of Powertel (other than shares held by DT Benefit Plans). Except as set forth on **Schedule 3.14**, DT owns no shares of Powertel Common Stock which would constitute Excluded Powertel Shares.

SECTION 3.15. *Licenses.* DT and each of its Subsidiaries are the authorized legal holders or otherwise have rights to all material Permits and licenses and operating rights necessary for the operation of their business as presently operated, except for such failures as would not reasonably be expected to have a Material Adverse Effect on DT (collectively, the "DT Licenses"). As of the date hereof there is not pending and, to DT's Knowledge, there is not threatened, any action by or before any Governmental or Regulatory Authority to revoke, suspend, cancel, rescind or modify in any material respect any of the DT Licenses which action would reasonably be expected to have a Material Adverse Effect on DT.

## ARTICLE 4

### CONDUCT OF BUSINESS PENDING THE MERGER

**SECTION 4.01. *Conduct of Business by Powertel Pending the Merger.*** During the period from the date of this Agreement until the earlier of the Effective Time or the termination of this Agreement, Powertel shall, and shall cause each of the Powertel Subsidiaries to, in all material respects, except as contemplated by this Agreement or the Alternative Merger Agreement or as disclosed in the disclosure schedules to this Agreement (including, without limitation, disclosures regarding the DiGiPH Transaction) or unless DT shall otherwise agree in writing in advance of the specific action taken, carry on its business in the ordinary course. Without limiting the generality of the foregoing, and except as otherwise expressly contemplated by this Agreement (including Section 1.07) or the Alternative Merger Agreement or as disclosed in the disclosure schedules to this Agreement, during such period, Powertel shall not, and shall not permit any of the Powertel Subsidiaries to, without the prior written consent of DT:

(a) except for regularly scheduled dividends payable on the Series E Preferred Shares and Series F Preferred Shares in Powertel Common Stock, (i) declare, set aside or pay any dividends on, or make any other distributions in respect of, or redeem or repurchase, any of its capital stock or other equity interest, except for dividends by a Powertel Subsidiary to its parent, and except that Powertel shall be permitted to acquire shares of Powertel Common Stock, from time to time, to the extent required by (A) Section 5.4 of the Restated Certificate of Incorporation of Powertel and (B) any Powertel Stock Option Plan in connection with the exercise of options and other rights granted thereunder; or (ii) split, combine or reclassify any of its capital stock or other equity interest or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock;

(b) issue, deliver, sell, pledge or otherwise encumber any shares of its capital stock or other equity interest, any other voting securities or any securities convertible into, or any rights, warrants or options to acquire, any such shares, voting securities or convertible securities, except for issuances of Powertel Common Stock or Powertel Common Stock Equivalents as set forth in Schedule 4.01(b) or deliveries of shares of its capital stock pursuant to contractual obligations existing prior to the execution of this Agreement and which are otherwise disclosed in this Agreement or the disclosure schedules hereto;

(c) amend the Restated Certificate of Incorporation of Powertel or Restated By-laws of Powertel or other similar organizational documents;

(d) adopt, amend or propose to amend any stockholder rights plan or related rights plan;

(e) acquire, or agree to acquire, in a single transaction or in a series of related transactions, any business, corporation or partnership, or substantially all of the assets of any of the foregoing, other than (i) transactions which involve individually or in the aggregate a purchase price not in excess of \$500,000, (ii) capital expenditures described in Section 4.01(f) below and (iii) transactions in connection with the DiGiPH Transaction;

(f) make or agree to make any new capital expenditure other than capital expenditures (i) in fiscal year 2000 that are contemplated by Powertel's capital budget for fiscal year 2000, provided the aggregate amount of such capital expenditures is less than \$177 million, or (ii) in fiscal year 2001 that are contemplated by Powertel's business plan for fiscal year 2001, as approved by the Board of Directors of Powertel, provided the aggregate amount of such capital expenditures is less than \$181.5 million;

(g) sell, lease, license, encumber or otherwise dispose of, or agree to sell, lease, license, encumber or otherwise dispose of, any of its assets, other than as set forth on **Schedule 4.01(g)** or in connection with transactions that are in the ordinary course of business and which involve assets having a current value not in excess of \$500,000 individually or in the aggregate (for avoidance of

doubt, the sale, lease, license, encumbrance or other disposition of Powertel FCC Licenses or other material assets shall not be in the ordinary course of business);

(h) increase the salary, wages, stipends, bonuses or reimbursable allowances payable or to become payable to its directors or officers, except for increases for officers in the ordinary course of business consistent with past practices; or enter into any employment or severance agreement with, or establish, adopt, enter into or amend, or make any grants or awards under, any new Powertel Benefit Plan for the benefit of, any director, officer or employee, except, in each case in the ordinary course of business consistent with past practices or adopt or amend any Powertel Benefit Plan except those specifically set forth in Annex 5.18 or take any action inconsistent with the provisions set forth in Annex 5.18, *provided*, that the aggregate increase in such compensation shall not exceed 5% of the previous year's amount (including those with respect to the timing and amount of, and persons entitled to, grants and awards), as may be required by the terms of any such Powertel Benefit Plan, or to comply with applicable law or as permitted by Section 4.01 (b), *provided, further*, that nothing in this Section 4.01 (h) shall restrict the ability of Powertel's Board of Directors to take the action contemplated by and to comply with the terms of the severance, retention and other arrangements as set forth in Annex 5.18 and to adopt appropriate resolutions with respect to persons who are officers or directors (including persons who are directors by deputization) of Powertel to cause the transactions relating to the Merger that may be considered dispositions under Section 16 of the Exchange Act for such persons to be exempt from such Section;

(i) except as may be required as a result of a change in law or in GAAP, make any change in its method of accounting or its fiscal year;

(j) except in connection with the transactions contemplated hereby or in the ordinary course of business, enter into, modify in any material respect, amend in any material respect or terminate any material contract or agreement to which Powertel or any of the Powertel Subsidiaries is a party, or waive, release or assign any material rights or claims, except to the extent that such contract, agreement, modification or amendment would not reasonably be expected to have a Material Adverse Effect on Powertel;

(k) amend any term of any of its outstanding securities in any material respect;

(l) adopt a plan or agreement of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other material reorganization;

(m) incur, assume or guarantee any material Indebtedness, including any refinancing of existing Indebtedness, for borrowed money unless such Indebtedness is prepayable at the election of Powertel on or after the Closing Date and the aggregate prepayment penalty and all other fees associated with such Indebtedness do not exceed \$1,000,000;

(n) create, incur, assume or suffer to exist any material Lien upon any of its property or assets, whether now owned or hereafter acquired, other than Liens incurred in the ordinary course of business or to secure Indebtedness, Liens arising by operation of law and not yet due and payable or other obligations permitted by this Agreement (including refinancing of existing Indebtedness);

(o) create, incur, assume or suffer to exist any obligation whereby Powertel or Powertel Subsidiaries guarantee any Indebtedness, leases, dividends or other obligations of any third party;

(p) make any loan or capital contributions to or investment in any Person, other than in the ordinary course of business or as set forth in **Schedule 4.01 (p)**, as required in connection with the DiGiPH Transaction, and loans or capital contributions to or investments in wholly owned Powertel Subsidiaries;

(q) enter into any agreement or arrangement that materially limits or otherwise materially restricts Powertel or any of the Powertel Subsidiaries or any successor thereto or that could, after the Effective Time, reasonably be expected to materially limit or restrict DT, any of the DT Subsidiaries or the Surviving Corporation from engaging in the business of providing wireless communications

services or developing wireless communications technology anywhere in the world or otherwise from engaging in any other business;

(r) settle, or propose to settle, any material litigation, investigation, arbitration, proceeding or other claim;

(s) make any material tax election or enter into any settlement or compromise of any material tax liability;

(t) take any action, other than as expressly permitted by this Agreement, that could reasonably be expected to make any representation or warranty of Powertel hereunder inaccurate and have a Material Adverse Effect on Powertel at the Effective Time;

(u) adopt, amend or propose to amend any Powertel Benefit Plan or make any discretionary contributions to any ERISA Benefit Plan other than as may be required by law or as may be required to maintain compliance with provisions of the Code; *provided, however*, that Powertel (1) may make an annual 3% of compensation profit sharing contribution and (2) may make matching contributions of 50% of the first 2% of compensation contributed by participants, to Powertel's profit sharing Code § 401(k) plan (similar to past practices);

(v) enter into (i) leveraged derivative contracts (defined as contracts that use a factor to multiply the underlying index exposure) or (ii) other derivative contracts except for the purpose of hedging known interest rate and foreign exchange exposures or otherwise reducing Powertel's cost of financing; *provided, however*, that employee stock ownership plans and other pension and deferred compensation plans of Powertel may enter into derivative contracts as part of their ordinary course investment strategy;

(w) file any amended Tax Returns if the result of such amendment would result in a material increase of Powertel tax liability;

(x) take any action which could reasonably be expected to materially adversely affect or materially delay the ability of any of the Parties to obtain any Required Regulatory Approval or consummate the transactions contemplated hereby;

(y) take any action that would be reasonably likely to (i) prevent or impede the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code or (ii) cause the stockholders of Powertel to recognize gain pursuant to Section 367(a) of the Code;

(z) other than pursuant to this Agreement, take any action to cause the Powertel Common Stock to cease to be quoted on Nasdaq;

(aa) Notwithstanding anything in this Agreement to the contrary, during the period of time beginning on the fifth Business Day prior to the Effective Time and extending until and including the Effective Time, Powertel shall not take or omit to take any action that could increase the number of shares of Powertel Stock outstanding on a fully diluted basis; or

(bb) enter into any contract, agreement, commitment or arrangement to do any of the foregoing.

SECTION 4.02. *Conduct of Business by DT.* Except as set forth on **Schedule 4.02** hereto or as otherwise expressly contemplated by this Agreement, DT agrees on behalf of itself and its Subsidiaries that they will not, between the date hereof and the Effective Time, directly or indirectly, do any of the following without the prior written consent of Powertel:

(a) except as may be necessary or required for the purpose of using or increasing any or all of DT's authorized capital (GENEHMIGTES KAPITAL) or necessary for the conduct of its business, amend or propose to amend the Memorandum and Articles of Association (SATZUNG) or Management Board (VORSTAND) Rules of Procedure (GESCHAFTSORDNUNG) (or other comparable organizational document) of DT in any manner that would be adverse to Powertel or its stockholders;

(b) take any action that would reasonably be likely to (i) prevent or impede the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code or (ii) cause the stockholders of Powertel to recognize gain pursuant to Section 367(a) of the Code; or

(c) take any action that would reasonably be likely to (i) materially adversely affect the ability of the Parties to obtain any Required Regulatory Approval or to consummate the transactions contemplated hereby or (ii) materially delay the ability of any of the Parties to obtain any Required Regulatory Approval or to consummate the transactions contemplated hereby; *provided, however*, that this Section 4.02(c) shall not preclude any acquisitions by DT or any of its Subsidiaries so long as such acquisitions, individually or in the aggregate, are not reasonably likely to prevent the consummation of the Merger.

SECTION 4.03. *No Solicitation.* (a) From and after the date hereof until the earlier of the Effective Time or the termination of this Agreement, Powertel shall not, nor shall it permit any of the Powertel Subsidiaries to, nor shall they authorize or instruct any of their respective officers, directors or employees to, and shall use their reasonable efforts to cause any investment banker, financial advisor, attorney, accountants or other representatives retained by them or any of their respective Subsidiaries not to, directly or indirectly through another person, (i) solicit, initiate or knowingly encourage (including by way of furnishing information), or knowingly take any other action designed to facilitate, any Alternative Transaction (as defined below), or (ii) continue or participate in any discussions or negotiations regarding any Alternative Transaction; *provided, however*, that if, at any time prior to the time that the Powertel Stockholders' Approval is obtained, the Board of Directors of Powertel receives an unsolicited *bona fide* proposal and determines in good faith and after the receipt of advice from outside counsel that providing information to the Third Party (as defined below), making such proposal or participating in negotiations or discussions with the Third Party is reasonably expected to result in a Powertel Superior Proposal (as defined below) and if Powertel has fully and completely complied with its obligations under this Section 4.03, Powertel may, subject to giving DT three Business Days' advance written notice of its intention to do so and obtaining a confidentiality agreement from the Third Party substantially similar to the Confidentiality Agreement between Powertel and DT dated as of August 16, 2000 (the "**Confidentiality Agreement**"), (x) furnish information to such Third Party with respect to Powertel and the Powertel Subsidiaries and (y) engage in discussions and negotiations regarding such proposal.

(b) Powertel will notify DT promptly (but in no event later than 24 hours) after receipt by Powertel (or any of its advisors) of any Alternative Transaction, or of any request (other than in the ordinary course of business and not related to an Alternative Transaction) for non-public information relating to Powertel or any of the Powertel Subsidiaries or for access to the properties, books or records of Powertel or any of the Powertel Subsidiaries by any Person who is known to be considering making, or has made, an Alternative Transaction. Powertel shall provide such notice orally and in writing and shall identify the Person making, and the terms and conditions of, any such Alternative Transaction or request. Powertel shall keep DT fully informed, on a prompt basis (but in any event no later than 24 hours), of the status and details of any such Alternative Transaction or request. Powertel shall, and shall cause the Powertel Subsidiaries and the directors, employees and other agents of Powertel and the Powertel Subsidiaries to cease immediately and cause to be terminated all activities, discussions or negotiations, if any, with any Persons conducted prior to the date hereof with respect to any Alternative Transaction.

(c) Powertel (i) agrees not to release any Third Party from, or waive any provision of, or fail to enforce, any standstill agreement or similar agreement to which it is a party related to, or which could affect, an Alternative Transaction and agrees that DT shall be entitled to enforce Powertel's rights and remedies under and in connection with such agreements, and (ii) acknowledges that the provisions of clause (i) are an important and integral part of this Agreement. Nothing contained in this Section 4.03 or in Section 5.02 shall prohibit Powertel (x) from complying with Rule 14d-9 or Rule 14e-2(a) promulgated under the Exchange Act, or (y) from making any disclosure to its stockholders if, in the good faith judgment of the Board of Directors of Powertel, after receipt of

advice from outside counsel, failure to disclose would result in a reasonable likelihood that the Board of Directors of Powertel would breach its duties to Powertel's stockholders under Delaware Law.

For purposes of this Agreement, "**Alternative Transaction**" means a proposal or intended proposal, regarding any of (i) a transaction or series of transactions pursuant to which any Person (or "group" of Persons) other than a Party and its Subsidiaries (a "**Third Party**") acquires or would acquire, directly or indirectly, "beneficial ownership" (as such terms are defined in or interpreted for purposes of Rule 13d-3 under the Exchange Act) of more than twenty percent (20%) of the voting power of the outstanding capital stock of Powertel or pursuant to a tender offer or exchange offer or otherwise, (ii) any acquisition or proposed acquisition of, or business combination with Powertel or any of the Powertel Subsidiaries, as applicable, by a merger or other business combination (including any so-called "merger-of-equals" and whether or not Powertel or any of the Powertel Subsidiaries, as the case may be, is the entity surviving any such merger or business combination) or (iii) any other transaction pursuant to which any Third Party acquires or would acquire, directly or indirectly, control of assets (including for this purpose the outstanding equity securities of the Powertel Subsidiaries and any entity surviving the merger or business combination including any of them) of Powertel or any of the Powertel Subsidiaries, as the case may be, for consideration equal to twenty percent (20%) or more of the fair market value of all of the outstanding shares of Powertel capital stock on the date of this Agreement; provided, that for purposes of this Agreement the term "Alternative Transaction" does not include the proposed acquisition of Powertel by VoiceStream as contemplated by the Alternative Merger Agreement.

**SECTION 4.04. *Subsequent Financial Statements.*** Powertel, prior to the Effective Time, will timely file with the SEC each Annual Report on Form 10-K, Quarterly Report on Form 10-Q and Current Report on Form 8-K required to be filed by it under the Exchange Act and the rules and regulations promulgated thereunder and will promptly deliver to DT copies of each such report filed with the SEC. DT will timely file with the SEC each Annual Report on Form 20-F and Report on Form 6-K required to be filed by it under the Exchange Act and the rules and regulations promulgated thereunder and will promptly deliver to Powertel copies of each such report filed with the SEC. As of their respective dates, none of such reports shall contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The respective audited financial statements and unaudited interim financial statements of each of Powertel and DT, as the case may be, included in such reports will fairly present the financial position of such Party and its Subsidiaries as at the dates thereof and the results of their operations and cash flows for the periods then ended in accordance with GAAP (with a reconciliation to GAAP in accordance with SEC rules in the case of Powertel) or generally accepted accounting principles in Germany (in the case of DT) applied on a consistent basis and, subject, in the case of unaudited interim financial statements, to normal year-end adjustments and any other adjustments described therein.

**SECTION 4.05. *Control of Operations.*** Nothing contained in this Agreement shall be deemed to give DT, directly or indirectly, the right to "control" or "direct", as such terms are construed under applicable rules or regulations of the FCC, Powertel's operations prior to the Effective Time. Prior to the Effective Time, Powertel shall exercise, consistent with the terms and conditions of this Agreement, "control" over its respective operations.

**SECTION 4.06. *Alternative Merger Agreement.*** Powertel will not modify, amend or waive in any material respect the provisions of the Alternative Merger Agreement without DT's prior written consent except for the amendments to the Alternative Merger Agreement made on September 28, 2000 and as of February 8, 2001.

ARTICLE 5  
ADDITIONAL AGREEMENTS

SECTION 5.01. *Powertel Proxy Statement; the DT Registration Statement and the German Listing Prospectus.* (a) Each of DT and Powertel shall cooperate and promptly prepare and DT shall file with the SEC as soon as practicable the DT Registration Statement on Form F-4 (or any successor form) (the “**Form F-4**”) under the Securities Act with respect to the DT Ordinary Shares and the DT Depositary Shares issuable and deliverable pursuant to this Agreement. A portion of the Form F-4 shall serve as a prospectus with respect to the DT Ordinary Shares and the DT Depositary Shares issuable and deliverable pursuant to the terms of this Agreement and as Powertel’s proxy statement with respect to Powertel Stockholders’ Meeting (the “**Powertel Proxy Statement**”). DT will cause the Form F-4 to comply as to form in all material respects with the applicable provisions of the Securities Act and the rules and regulations thereunder, and Powertel will cause the Powertel Proxy Statement to comply as to form in all material respects with the applicable provisions of the Exchange Act and the rules and regulations thereunder. Powertel and DT shall use their reasonable best efforts to have the Powertel Proxy Statement and the DT Registration Statement declared effective by the SEC under the Securities Act, and promptly thereafter shall mail to the holders of record of Powertel Common Shares the Powertel Proxy Statement; *provided, however*, that Powertel shall not mail or otherwise furnish the Powertel Proxy Statement to its stockholders unless and until:

(i) it has received oral notice from the SEC that the DT Registration Statement is effective under the Securities Act;

(ii) Powertel shall have received a letter of its independent accountants, dated a date within two (2) business days prior to the date of the first mailing of the Powertel Proxy Statement, and addressed to Powertel, in form reasonably satisfactory to Powertel and customary in scope for similar “cold comfort” letters delivered by independent public accountants in connection with registration statements on Form F-4 with respect to the financial statements of DT included in the Powertel Proxy Statement and the DT Registration Statement;

(iii) DT shall have received a letter of its independent accountants, dated a date within two (2) business days prior to the date of the first mailing of the Powertel Proxy Statement, and addressed to DT, in form reasonably satisfactory to DT and customary in scope for similar “cold comfort” letters delivered by independent public accountants in connection with registration statements on Form F-4 with respect to the financial statements of Powertel included in the Powertel Proxy Statement and the DT Registration Statement.

DT shall take any reasonable action (other than qualifying to do business in any jurisdiction in which it is now not so qualified) to obtain prior to the effective date of the Form F-4 all necessary state securities law or “Blue Sky” permits and approvals or similar foreign approvals required to effect the transactions contemplated by this Agreement, including the distribution of DT Depositary Shares and DT Ordinary Shares issued in accordance with the provisions of this Agreement, and Powertel will provide any reasonably requested cooperation in connection therewith. DT will advise Powertel of the time when the Form F-4 has become effective or any supplement or amendment has been filed, the issuance of any stop order or the suspension of the qualification of the DT Depositary Shares or DT Ordinary Shares issuable and deliverable in connection with the Merger for offering or sale in any jurisdiction.

(b) DT and Powertel will cooperate in (i) the preparation of the Powertel Proxy Statement and the DT Registration Statement or any amendments and supplements thereto and in having the DT Registration Statement declared effective as soon as practicable and (ii) the preparation and filing of the German Listing Prospectus with the FSE and the auditor’s report with the Commercial Register.

SECTION 5.02. *Powertel Stockholders’ Meeting and Consummation of the Merger.*

(a) As promptly as practicable after the DT Registration Statement is declared effective under the Securities Act, Powertel shall duly give notice of, convene and hold a meeting of its stockholders (the

**“Powertel Stockholders’ Meeting”**) in accordance with Delaware Law for the purposes of obtaining the Powertel Stockholder Approval and shall, subject to the provisions of Section 5.02(b) hereof, through its Board of Directors, recommend to its stockholders the approval and adoption of this Agreement and use its reasonable best efforts to obtain the Powertel Stockholder Approval.

(b) Neither the Board of Directors of Powertel nor any committee thereof shall (i) except as expressly permitted by this Section 5.02(b), withdraw, qualify or modify, or propose publicly to withdraw, qualify or modify, in a manner adverse to DT, the approval or recommendation of such Board of Directors or such committee of this Agreement, the Merger and the other transactions contemplated hereby, (ii) approve or recommend, or propose publicly to approve or recommend, any Alternative Transaction, or (iii) cause Powertel to enter into any letter of intent, agreement in principle, acquisition agreement or other similar agreement related to any Alternative Transaction (each, a **“Powertel Acquisition Agreement”**). Notwithstanding the foregoing, in the event that prior to the time the Powertel Stockholder Approval is obtained, Powertel receives a Superior Proposal (as defined below), the Board of Directors of Powertel may (subject to this and the following sentences) inform Powertel stockholders that it no longer recommends Powertel Stockholder Approval (a **“Subsequent Determination”**), but only at a time that is after the fifth Business Day following DT’s receipt of written notice advising DT that the Board of Directors of Powertel has received a Superior Proposal specifying the material terms and conditions of such Superior Proposal (and including a copy or draft copy thereof with all accompanying documentation or draft documentation, if in writing), identifying the Person making such Superior Proposal and stating that it intends to make a Subsequent Determination. After providing such notice, Powertel shall provide a reasonable opportunity to DT to make such adjustments in the terms and conditions of this Agreement as would enable Powertel to proceed with its recommendation to its stockholders without a Subsequent Determination; *provided, however*, that any such adjustment shall be at the discretion of Powertel and DT at the time. For purposes of this Agreement, a **“Superior Proposal”** means any proposal (on its most recently amended or modified terms, if amended or modified) made by a Third Party to enter into an Alternative Transaction which the Board of Directors of Powertel determines in its good faith judgment (based on, among other things, the advice of a financial advisor of nationally recognized reputation) to be more favorable to Powertel’s stockholders than the transactions contemplated by this Agreement taking into account all relevant factors (including whether, in the good faith judgment of the Board of Directors of Powertel, after obtaining the advice of a financial advisor of nationally recognized reputation, the Third Party is reasonably able to finance the transaction, and any changes to this Agreement that may be proposed by DT in response to such Alternative Transaction). Powertel shall submit this Agreement to its stockholders at the Powertel Stockholders’ Meeting even if the Board of Directors of Powertel shall have made a Subsequent Determination.

Powertel shall use its reasonable best efforts to schedule the Powertel Stockholders’ Meeting at the same time as the Powertel Stockholders’ Meeting (as defined in the Alternative Merger Agreement).

**SECTION 5.03. Notification of Certain Matters.** (a) Each of Powertel and DT shall give prompt notice to each other of the following:

(i) the occurrence or nonoccurrence of any event whose occurrence or nonoccurrence would be likely to cause either (i) any representation or warranty contained in this Agreement of such Party to be untrue, inaccurate or incomplete in any material respect at any time from the date hereof to the Effective Time if such failure to be true, accurate or complete would cause the condition set forth in Section 6.02(a) or 6.03(a) not to be satisfied, in which case the Party required to give prompt notice thereof shall promptly update and deliver to the other Party any Schedules hereto which require an update to remain true, accurate and correct or (ii) directly or indirectly, any Material Adverse Effect on such Party;

(ii) any material failure of such Party, or any officer, director, employee or agent of any thereof, to comply with or satisfy any covenant or agreement to be complied with or satisfied by it hereunder (if such failure would cause the condition set forth in Section 6.02(b) or 6.03(b) not to be satisfied); and

(iii) any facts relating to such Party which would make it necessary or advisable to amend the Powertel Proxy Statement or the DT Registration Statement in order to make the statements therein not misleading or to comply with applicable law; *provided, however*, that the delivery of any notice pursuant to this Section 5.03 shall not limit or otherwise affect the remedies available hereunder to the Parties receiving such notice.

(iv) Promptly upon receipt by Powertel from any Powertel stockholder who is a party to the Powertel Stockholder Agreements of a proxy card sent to the Powertel stockholders with the Powertel Proxy Statement and in accordance with Section 5 of the Stockholders Agreement, but in no event later than the second Business Day following such receipt or, if such receipt is on or after the fifth Business Day prior to the Closing, then on the date of such receipt, Powertel shall notify DT orally of its receipt and provide DT with copy of such proxy card.

(b) DT shall promptly provide to Powertel a copy of any written notice given by DT to VoiceStream or received by DT from VoiceStream of the termination of the VoiceStream Merger Agreement.

**SECTION 5.04. *Access to Information.*** Upon reasonable notice and subject to restrictions contained in the Confidentiality Agreement and other confidentiality agreements to which Powertel is subject, (a) Powertel shall, and shall cause each Powertel Subsidiary to, afford to DT and to the officers, employees, accountants, counsel and other representatives of DT all reasonable access, during normal business hours during the period prior to the Effective Time, to all their respective lenders, agents and other representatives, properties, assets, books, contracts, commitments and records and, during such period, Powertel shall (and shall cause each Powertel Subsidiary to) furnish promptly to DT all information concerning its business, properties and personnel as DT may reasonably request, including a copy of each report, schedule, registration statement and other document filed or received by it during such period pursuant to the requirements of the federal or state securities laws or the federal Tax laws and (b) DT shall, and shall cause each DT Subsidiary to, afford to Powertel and to the officers, employees, accountants, counsel and other representatives of Powertel all reasonable access, during normal business hours during the period prior to the Effective Time, to all their respective properties, assets, books, contracts, commitments and records and, during such period, DT shall (and shall cause each DT Subsidiary to) furnish promptly to Powertel all information concerning its business, properties and personnel as Powertel may reasonably request, including a copy of each report, schedule, registration statement and other document filed or received by it during such period pursuant to the requirements of the federal or state securities laws.

**SECTION 5.05. *Public Announcements.*** DT and Powertel will consult with each other before issuing any press release with respect to the transactions contemplated by this Agreement and shall not issue any such press release prior to such consultation, except as may be required by applicable law, fiduciary duties or by obligations pursuant to any listing agreement with any national securities exchange. The parties will cooperate in preparing a joint press release announcing the execution of this Agreement.

**SECTION 5.06. *Cooperation.*** (a) Upon the terms and subject to the conditions hereof, each of Powertel and DT agrees, and agrees to cooperate with each other, (i) to use reasonable best efforts to consummate and make effective, in the most expeditious manner practicable, the Merger and the transactions contemplated by this Agreement, (ii) to obtain in a timely manner all necessary Permits or waivers from, approvals or consents of, or declarations, registrations or filings with, and all expirations of waiting periods imposed by, any Governmental or Regulatory Authority which are necessary for the consummation of the transactions contemplated hereby, (iii) to promptly (A) prepare and file a Premerger Notification in accordance with the HSR Act, comply with any requests for additional information, and obtain termination of the waiting period thereunder as promptly as practicable, (B) prepare and file all required notifications, if any, under Council Regulation (EEC) No. 4064/89, and obtain the approval of the Council of the European Union to the transactions contemplated by this Agreement, if required, and (C) file a notice pursuant to Section 721 of Exon-Florio, and (iv) to take all actions within its control necessary to obtain any Required Regulatory Approvals necessary to consummate the transactions contemplated hereby; *provided, however*, that neither DT nor any of its Subsidiaries shall

be required, nor, without the consent of DT, shall Powertel or its Subsidiaries be permitted, to divest or hold separate or otherwise take or commit to take any action that limits its freedom of action with respect to Powertel, DT, VoiceStream or any of their Subsidiaries or any material portion of the assets of Powertel, DT, VoiceStream or any of their Subsidiaries or any of the business, product lines, or assets of Powertel, DT, VoiceStream or any of their Subsidiaries.

(b) Each of Powertel and DT agrees to cooperate with each other (i) to respond to inquiries from, and to make presentations to, Governmental or Regulatory Authorities and (ii) to promptly inform the others of any material oral or written communication received by such Party from, or given by such Party to, any Governmental or Regulatory Authority, and of any material communication received or given in connection with any proceeding by a private Party, in each case regarding the transactions between DT and Powertel contemplated by this Agreement. Powertel and DT agree to consult with each other in advance of any meeting or conference with, or of making any filing or other written submission to, any such Governmental or Regulatory Authority, and to the extent permitted by the applicable Governmental or Regulatory Authority, give the others the opportunity to attend and participate in such meetings and conferences, or to review and approve any such filing or other written submission, in each case regarding the transactions between DT and Powertel contemplated by this Agreement. Powertel shall promptly provide to DT, upon request, and DT shall promptly provide to Powertel, upon request, copies of all written communications referenced in Section 5.06(b)(i) above and all filings made by DT or Powertel, as the case may be, with any Governmental or Regulatory Authority in connection with this Agreement and the transactions contemplated hereby and written correspondence from any Governmental or Regulatory Authority that relates to the transactions contemplated hereby (excluding any exhibits, schedules and any confidential information contained therein).

(c) Each of Powertel and DT shall cooperate with each other to eliminate or reduce to the extent possible any illegality, forfeiture or loss on the part of DT, Powertel or their respective Subsidiaries that may result from the consummation of the transactions contemplated hereby.

(d) Each of Powertel and DT hereby agrees to cooperate with the other party, and to cause its officers, directors and independent accountants to cooperate with the other party, to do or cause to be done all things reasonably requested by the other party (including, without limitation, providing such information as may reasonably be requested to permit pro forma financial statements after giving effect to the Merger to be produced) in order to facilitate any financing, acquisition or capital markets transaction or registration to be entered into or made by either Party after the date hereof.

(e) Powertel hereby agrees to use reasonable best efforts, in consultation with DT, to obtain all waivers and consents that may be required from any parties to any Powertel Contract, including, without limitation, from lenders and other financing sources of Powertel and its Subsidiaries, in connection with this Agreement, the Powertel Stockholder Agreements and the transactions contemplated hereby and thereby.

(f) Powertel hereby agrees, from the date hereof until the Closing, to take any and all actions that are required to be taken prior to the Effective Time pursuant to any Powertel Contract or other agreement, including, without limitation, any debt instruments, including credit agreements and indentures, to which Powertel or any of its Significant Subsidiaries is a party and to make any offer to purchase any securities required to be made, as a result of the execution and delivery of this Agreement and the Powertel Stockholder Agreements.

(g) DT shall cause Merger Sub to approve, and shall vote all securities and give all approvals necessary for Merger Sub to approve, the Merger.

(h) Notwithstanding anything to the contrary contained in this Agreement, in connection with any filing or submission required or action to be taken by DT, Powertel or any of its respective Subsidiaries to consummate the Merger or the other transactions contemplated in this Agreement, Powertel shall not, without DT's prior written consent, commit to any divestiture of assets of businesses of Powertel and its

Subsidiaries if such divested assets and/or businesses are material to the assets or profitability of Powertel and its Subsidiaries taken as a whole.

**SECTION 5.07. Indemnification, Directors' and Officers' Insurance.** (a) DT shall, or shall cause the Surviving Corporation to, continue to provide, fulfill and honor all rights to indemnification or exculpation existing in favor of a director, officer, employee or agent (an "**Indemnified Person**") of Powertel or any of the Powertel Subsidiaries (including rights relating to advancement of expenses and indemnification rights to which such persons are entitled because they are serving as a director, officer, agent or employee of another entity at the request of Powertel or any of the Powertel Subsidiaries), as provided in the Restated Certificate of Incorporation of Powertel, the Restated By-laws of Powertel or any indemnification agreement, in each case, as in effect on the date of this Agreement, and relating to actions or events through the Effective Time, and such rights to indemnification shall survive the Merger and shall continue in full force and effect, without any amendment thereto; *provided, however*, that neither DT nor the Surviving Corporation shall be required to indemnify any Indemnified Person in connection with any proceeding (or portion thereof) to the extent involving any claim initiated by such Indemnified Person unless the initiation of such proceeding (or portion thereof) was authorized by the Board of Directors of Powertel or unless such proceeding is brought by an Indemnified Person to enforce rights under this Section 5.07; *provided further* any determination required to be made with respect to whether an Indemnified Person's conduct complies with the standards set forth under the Delaware Law, the Restated Certificate of Incorporation of Powertel, the Restated By-laws of Powertel or any such agreement, as the case may be, shall be made by independent legal counsel selected by DT and reasonably acceptable to such Indemnified Person; *provided further* that DT and the Surviving Corporation will cooperate and use all reasonable efforts to assist in the vigorous defense of any such matter; and *provided further* that that nothing in this Section 5.07 shall impair any rights of any Indemnified Person. Without limiting the generality of the preceding sentence, in the event that any Indemnified Person becomes involved in any actual or threatened action, suit, claim, proceeding or investigation after the Effective Time relating to actions prior to the Effective Time, DT shall, or shall cause the Surviving Corporation to, promptly advance to such Indemnified Person his or her legal and other expenses (including the cost of any investigation and preparation incurred in connection therewith), subject to the providing by such Indemnified Person, to the extent required by law, of an undertaking to reimburse all amounts so advanced in the event of a non-appealable determination of a court of competent jurisdiction that such Indemnified Person is not entitled thereto.

(b) Subject to the prior written approval by DT, which shall not be unreasonably withheld, prior to the Effective Time, Powertel shall have the right to obtain and pay for in full a "tail" coverage directors' and officers' liability insurance policy ("**D&O Insurance**") covering a period of six years after the Effective Time and providing coverage in amounts and on terms consistent with Powertel's existing D&O Insurance. In the event the Surviving Corporation does not obtain such insurance, DT shall cause the Surviving Corporation to continue to provide D&O Insurance relating to actions or events through the Effective Time, for a period of six years after the Effective Time; *provided*, that the Surviving Corporation may substitute therefor policies of substantially similar coverage and amounts containing terms no less advantageous to such former directors or officers; *provided further* that if the existing D&O Insurance expires or is cancelled during such period, DT or the Surviving Corporation shall make reasonable commercial efforts to obtain substantially similar D&O Insurance; and *provided further* that the Surviving Corporation shall not be required to expend, in order to maintain or procure an annual D&O Insurance policy, an amount in excess of 250% of the last annual premium paid prior to the date hereof, but in such case shall purchase as much coverage as possible for such amount.

(c) In the event DT or the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any person in a single transaction or a series of related transactions, then, and in each such case, DT will make or cause to be made proper provision so that the successors and assigns of

DT or the Surviving Corporation, as the case may be, assume the indemnification obligations described herein for the benefit of the Indemnified Parties.

(d) The provisions of this Section 5.07 are intended to be for the benefit of, and shall be enforceable by, each Indemnified Person, his or her heirs and his or her personal representatives and shall survive the Merger and be binding upon the successors and assigns of DT, Powertel and the Surviving Corporation.

SECTION 5.08. *Stock Exchange Listings/Establishment of DT Depositary Shares.* DT will take all steps necessary for the listing and authorization for listing on the FSE and the NYSE (subject to official notice of issuance) of the DT Ordinary Shares and the DT Depositary Shares, respectively, to be issued pursuant to the Merger.

SECTION 5.09. *No Shelf Registration.* DT shall not be required to amend or maintain the effectiveness of the Registration Statement for the purpose of permitting resale of the shares of DT received pursuant hereto by the Persons who may be deemed to be "affiliates" of Powertel within the meaning of Rule 145 promulgated under the Securities Act. The DT Ordinary Shares issuable upon exercise of options pursuant to Section 1.05 hereof shall be registered under the Securities Act and such registration shall be effective at the time of issuance.

SECTION 5.10. *Affiliates.* Powertel (i) shall deliver to DT not later than the 30th day after the date of this Agreement a list of all persons who are, as of the date hereof, its Affiliates for purposes of Rule 145 under the Securities Act and (ii) shall use its reasonable best efforts to cause each person who is identified as its "affiliate" on **Schedule 5.10** to deliver to DT as promptly as practicable but in no event later than the Closing Date, a signed agreement substantially in the form of Exhibit A. Powertel shall notify DT from time to time of any other persons who then are such an "affiliate" of Powertel and use its reasonable best efforts to cause each additional person who is identified as such an "affiliate" to execute a signed agreement as set forth in this Section 5.10.

SECTION 5.11. *Tax-Free Merger.* Each of the Parties will use its reasonable best efforts, and each agrees to cooperate with the other Parties and provide one another with such documentation, information and materials as may be reasonably necessary, proper or advisable to (i) cause the Merger to qualify as a reorganization within the meaning of Section 368(a) of the Code and (ii) avoid gain recognition to the stockholders of Powertel pursuant to Section 367(a) of the Code.

SECTION 5.12. *Reasonable Best Efforts.* Each of Powertel and DT shall use its reasonable best efforts to obtain the opinions referred to in Section 6.02(d), Section 6.02(e), 6.03(d) and 6.03(e) and the delivery of the Representation Letters in the forms set forth in Exhibits B and C.

SECTION 5.13. *Takeover Laws.* Subject to Section 5.02, no Party shall take any action that would cause the transactions contemplated by this Agreement or the Stockholders Agreement to be subject to requirements imposed by any Takeover Laws (including any such laws or regulations applicable to DT under German Legal Requirements or the Legal Requirements of the FSE) and each of them shall take all necessary steps within its control to exempt (or ensure the continued exemption of), or minimize the effect on, the transactions contemplated by this Agreement and the Stockholders Agreement from, or if necessary challenge the validity or applicability of, any applicable Takeover Law, as now or hereafter in effect, including, without limitation, Section 203 of the Delaware Law or any other Takeover Laws that purport to apply to this Agreement or the Stockholders Agreement or the transactions contemplated hereby or thereby.

SECTION 5.14. *Certain Litigation.* Powertel agrees that it shall not settle any litigation commenced after the date hereof against Powertel or any of its directors by any stockholder of Powertel relating to the Merger, this Agreement, the Alternative Merger Agreement or the Stockholders Agreement without the prior written consent of DT, which consent shall not be unreasonably withheld or delayed.

SECTION 5.15. *Senior Discount Notes and Senior Notes.* Within 30 days following the Effective Time, DT shall cause the Surviving Corporation to commence an offer to purchase all of the Senior Discount Notes and Senior Notes (collectively, the "Notes") pursuant to the terms of the February 1996

Indenture, April 1996 Indenture and June 1997 Indenture, as applicable (collectively, the “**Powertel Indentures**”). Any investment banking firm engaged in connection with such acquisition shall be selected by DT. DT shall bear the fees, costs and expenses of acquiring the Notes.

**SECTION 5.16. *Employee Benefits.*** (a) As of the Effective Time, Powertel will have terminated all Powertel Benefit Plans except for those Powertel Benefit Plans that DT requests not be terminated and those Powertel Benefit Plans described in Annex 5.18. DT shall take all necessary action so that, after the Effective Time, any current or former employee of Powertel who is eligible to participate in a Powertel Benefit Plan as of the Effective Time shall either be eligible to continue his or her participation in such Powertel Benefit Plan or participate in a corresponding employee benefit plan maintained by DT or any of its Subsidiaries, subject to the terms of such corresponding plan. DT shall have the sole discretion to determine which current or former employees of Powertel will continue participation in a Powertel Benefit Plan after the Effective Time and which will commence participation in a corresponding employee benefit plan maintained by DT or any of its Subsidiaries after the Effective Time and, with respect to current or former employees who transfer participation to such a corresponding plan, when such transfer will occur. DT need not treat all current and former employees of Powertel (including those who are similarly situated) in the same manner with respect to which plans they participate in and when, if at all, they transfer participation from a Powertel Benefit Plan to a corresponding employee benefit plan maintained by DT or any of its Subsidiaries. For example, DT may decide to have a current or former employee of Powertel continue participation after the Effective Time in certain Powertel Benefit Plans that have not been terminated, and with respect to other benefits transition his or her participation on or shortly after the Effective Time to a corresponding employee benefit plan maintained by DT or one of its Subsidiaries. DT may take such actions (or cause its Subsidiaries or the Surviving Corporation to take such actions) as are necessary or advisable to accomplish the foregoing, including, without limitation, amending the eligibility provisions of plans of DT, any of its Subsidiaries or the Surviving Corporation (including, without limitation, Powertel Benefit Plans that are not terminated on or before the Effective Time). Within 5 days of the date hereof, Powertel shall deliver a true and complete list of each director, officer and employee of Powertel and its Subsidiaries holding options under any Powertel Benefit Plan as of August 18, 2000, and the dollar or share amounts thereof.

(b) Except as otherwise provided in this Section, nothing in this Agreement shall be interpreted as limiting the power of the Surviving Corporation to amend or terminate any particular Powertel Benefit Plan or any other particular employee benefit plan, program, agreement or policy or as requiring the Surviving Corporation or DT to offer to continue (other than as required by its terms) any written employment contract or to continue the employment of any specific person; *provided, however*, (1) that no such termination or amendment may take away benefits or any other payments already accrued as of the time of such termination or amendment without the consent of such person, except as allowed by law, and (2) that nothing in this Section 5.01 shall be interpreted as limiting or modifying any requirement in Section 5.18 or the provisions of Annex 5.18.

(c) DT shall, or shall cause the Surviving Corporation to, (i) waive all limitations, to the extent allowable under applicable law, as to pre-existing conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to the current and former employees of Powertel and its Subsidiaries under any welfare or fringe benefit plan in which such employees and former employees may be eligible to participate after the Effective Time (other than a Powertel Benefit Plan that is not terminated on or before the Effective Time), other than limitations or waiting periods that are in effect with respect to such employees and that have not been satisfied under the corresponding welfare or fringe benefit plan maintained by Powertel for such current and former employees prior to the Effective Time, (ii) provide each current and former employee with credit under any welfare plans in which such employee or former employee becomes eligible to participate after the Effective Time for any co-payments and deductibles paid by such current or former employee for the then current plan year under the corresponding welfare plans maintained by Powertel prior to the Effective Time, and (iii) provide (to the extent allowed by law and Treasury regulations applicable to tax-qualified plans) each current and former employee with full credit for purposes of eligibility, vesting, and determination of the level of benefits

under any employee benefit plans, policies, practices or arrangements maintained by DT or any Subsidiary of DT for such current or former employee's service with Powertel or any Powertel Subsidiary to the same extent recognized by Powertel immediately prior to the Effective Time.

(d) Except in connection with the Permitted Stock Dividend, neither Powertel nor any Affiliate thereof shall, from the date hereof until the Effective Time, without the prior express written consent of DT, make any contribution, sale or other transfer of Powertel Stock or any other "employer security" (as such term is defined in Section 407 of ERISA), whether to satisfy a required obligation, to reimburse for expenses incurred, or otherwise, to any Powertel Benefit Plan or to the Powertel stock fund (or any other fund) under the Powertel 401(k) Profit Sharing Plan. Moreover, Powertel shall, promptly after the date hereof, amend the Powertel 401(k) Profit Sharing Plan (as amended and restated effective as of January 1, 1998, and further amended August 23, 1999), (a) to require that all contributions, from whatever source, be made in the form of cash and (b) to preclude the use of any present or future Powertel 401(k) Profit Sharing Plan assets to purchase from Powertel, or any Affiliate thereof, shares of Powertel Stock or other "employer securities" (as such term is defined in Section 407 of ERISA); it being understood, however, that such amendment need not preclude the Powertel 401(k) Profit Sharing Plan from purchasing Powertel Stock on the open market from any person or entity, other than Powertel or an Affiliate thereof, nor require that shares of Powertel Stock and units in the Powertel stock fund presently under the Powertel 401(k) Profit Sharing Plan be sold or otherwise liquidated.

SECTION 5.17. *Termination of Agreements with Stockholders.* Powertel agrees to the termination of the agreements referred to in Section 7 of the Powertel Stockholder Agreements.

SECTION 5.18. *Plans and Programs to be Implemented.* After the execution of this Agreement, Powertel and/or its subsidiaries shall adopt and implement the plans and arrangements described in Annex 5.18 with each such plan or arrangement being approved by VoiceStream and DT prior to such adoption or implementation. Each such plan or arrangement shall be designed to become effective as of the Effective Time (contingent upon the occurrence of the transactions contemplated by this Agreement) and remain effective without modification of the terms and provisions of such plan or arrangement until the termination date noted for each respective plan or arrangement in Annex 5.18. After the execution of this Agreement, Powertel and/or its subsidiaries shall take such actions as are required, necessary or appropriate to implement the provisions of Annex 5.18 and this Section 5.18, notwithstanding any provisions of this Agreement to the contrary, and no such actions shall be deemed to be a breach of any other provision of this Agreement.

SECTION 5.19. *Voting Agreement and Transfer Restrictions.* (a) If and when DT becomes a record or beneficial owner of any Shares, DT agrees:

(i) that, from the date hereof until the later of January 1, 2001 and the date of the VoiceStream Stockholders' Meeting, without Powertel's prior written consent, it will not Transfer or agree to Transfer any Shares, Additional Shares, Rights or Additional Rights that it owns of record or beneficially, except (A) pursuant to the VoiceStream Merger Agreement, (B) Transfers to any Affiliate of DT who agrees in writing to be bound by the terms of this Section 5.19 or (C) Transfers which occur by operation of law if the transferee remains or agrees in writing to remain bound by the terms of this Section 5.19; *provided, however*, that this Section 5.19(a)(i) shall cease to be of any force or effect immediately upon termination of the Alternative Merger Agreement; and

(ii) irrevocably and unconditionally to vote or cause to be voted or provide consent with respect to, all Shares and Additional Shares, if any, that it owns of record or beneficially as of the record date for the VoiceStream Stockholders' Meeting at the VoiceStream Stockholders' Meeting and at any other annual or special meeting of stockholders of VoiceStream or action by written consent where such matters arise in favor of the "Merger" contemplated by the Alternative Merger Agreement and, if required, the other transactions referenced in the Alternative Merger Agreement.

(iii) (a) to complete and send the proxy card received by it with the Joint Proxy Statement, so that such proxy card is received by VoiceStream, as prescribed by the Joint Proxy Statement, not

later than the fifth Business Day preceding the day of the VoiceStream Stockholders' Meeting, (b) to vote, by completing such proxy card but not otherwise, all the Shares it owns of record or beneficially as of the record date for the VoiceStream Stockholders' Meeting in favor of the "Merger" contemplated in the Alternative Merger Agreement and, if required, the other transactions referenced in the Alternative Merger Agreement and (c) not to revoke any such proxy.

(b) The provisions of Section 5.19(a)(i) shall terminate at the earlier of the date indicated therein and the date of termination of the Alternative Merger Agreement. Sections 5.19(a)(ii) and 5.19(a)(iii) shall terminate on the earlier of the termination of the Alternative Merger Agreement and the VoiceStream Stockholders' Meeting.

(c) From and after the date that this Agreement terminates in accordance with Article 7 hereof, DT agrees to abide by the provisions of the second, third and fourth sentences of Section 6 of the VoiceStream Stockholders' Agreements as if DT were a "Stockholder" named therein, *provided* that the First Amended and Restated Voting Agreement dated July 23, 2000 takes effect as to DT in accordance with its terms, and, *provided, further*, that, notwithstanding anything to the contrary contained herein, nothing contained in this Section 5.19(c) shall require DT to take any action that adversely affects its rights under the "DT Financing Agreements" (as defined in the VoiceStream Merger Agreement) or that might result in DT's designees on the VoiceStream Board of Directors in accordance with the DT Financing Agreements to represent less than 10% of the total number of members of the VoiceStream Board of Directors.

(d) For purposes of Section 5.19 only, the words "beneficially owns" or similar expressions of ownership and capitalized terms used but not otherwise defined in this Agreement shall have the meanings set forth in, or determined in accordance with, the VoiceStream Stockholder Agreements as if DT were a "Stockholder" thereunder.

**SECTION 5.20. *Powertel Warrants.*** After consultation with each other, DT and Powertel shall use reasonable efforts to take such actions as they may deem to be appropriate to attempt to cause the outstanding Powertel Warrants to be exercised in full prior to the Effective Time, including by reducing the exercise price of the Powertel Warrants to the extent agreed to by DT and Powertel and in accordance with the provisions of the Powertel Warrant Agreement.

## ARTICLE 6 CLOSING CONDITIONS

**SECTION 6.01. *Conditions to Each Party's Obligation to Effect the Merger.*** The respective obligations of Powertel and DT to consummate the Merger shall be subject to the fulfillment or (to the extent permitted by applicable law) written waiver prior to the Effective Time of the following conditions:

(a) *Stockholder Approval.* The Powertel Stockholder Approval shall have been obtained.

(b) *Legality.* No federal, state or foreign statute, rule, regulation, executive order, decree, temporary restraining order or injunction shall have been enacted, entered, promulgated or enforced by any Governmental or Regulatory Authority which is in effect and has the effect of making the Merger illegal or otherwise prohibiting the consummation of the Merger or which could reasonably be expected to have a Material Adverse Effect on Powertel.

(c) *Competition Law Approvals.* Any waiting period applicable to the consummation of the Merger under the HSR Act shall have expired or been terminated; to the extent required, the Commission of the European Union shall have approved the Merger under Regulation (EEC) No. 4064/89 of the Council of the European Union, or such approval shall have been deemed to have been granted; the review and investigation under Exon-Florio shall have been terminated and the President shall have taken no action authorized thereunder.

(d) *Registration Statement Effective.* The DT Registration Statement shall have become effective prior to the mailing by Powertel of the Powertel Proxy Statement to its stockholders, no stop order suspending the effectiveness of the DT Registration Statement or the Powertel Proxy Statement shall then be in effect, and no proceedings for that purpose shall then be threatened by the SEC or shall have been initiated by the SEC and not concluded or withdrawn.

(e) *Stock Exchange Listings.* All steps necessary for the listing of the DT Ordinary Shares to be issued pursuant to the Merger on the FSE shall have been taken and the DT Depositary Shares to be issued pursuant to the Merger shall have been authorized for listing on the NYSE, subject to official notice of issuance.

(f) *The VoiceStream Merger.* The VoiceStream Merger shall have been consummated.

SECTION 6.02. *Conditions to the Obligations of Powertel.* The obligations of Powertel to consummate the Merger are also subject to the fulfillment, or written waiver by Powertel, prior to the Effective Time, of each of the following conditions:

(a) *Representations and Warranties.* The representation and warranty of DT set forth in Section 3.07(a) of this Agreement shall have been true and correct on the date hereof and on and as of the Closing Date as though made on the Closing Date; and the other representations and warranties of DT and Merger Sub set forth in this Agreement shall have been true and correct on the date hereof (or, in the case of matters relating to Merger Sub, as of September 28, 2000) and on and as of the Closing Date as though made on the Closing Date (except to the extent that any representation or warranty expressly speaks as of an earlier date, in which case it shall be true and correct as of such date) except (i) for changes permitted under Section 4.02 or otherwise contemplated by this Agreement and (ii) for such failures to be true and correct which in the aggregate would not reasonably be expected to result in a Material Adverse Effect on DT.

(b) *Agreements and Covenants.* DT shall have performed or complied with all agreements and covenants required by this Agreement to be performed or complied with by it on or before the Effective Time; *provided, however,* that for purposes of this Section 6.02(b) only, such agreements and covenants shall be deemed to have been complied with unless the failure or failures of such agreements and covenants to have been complied with, individually or in the aggregate, results or would reasonably be expected to result in a Material Adverse Effect on DT.

(c) *Certificates.* Powertel shall have received a certificate of an executive officer of DT (and, to the extent such matters relate to Merger Sub, of an executive officer of Merger Sub) to the effect set forth in subparagraphs (a) and (b) above.

(d) *Tax Opinion.* Powertel shall have received an opinion of Morris, Manning & Martin, LLP in a form and substance reasonably satisfactory to Powertel, dated as of the Closing Date, substantially to the effect that, on the basis of the facts, representations and assumptions set forth or referred to in such opinion, for U.S. federal income tax purposes, the Merger (i) will qualify as a reorganization within the meaning of Section 368(a) of the Code and (ii) each transfer of property to DT by a stockholder of Powertel pursuant to the Merger will not be subject to Section 367(a)(1) of the Code. In rendering such opinion, Morris, Manning & Martin, LLP may require and shall be entitled to rely upon customary representations of Powertel and DT, including representations substantially in the form of Exhibits B and C, respectively and, if reasonably requested, customary tax certificates of Powertel Principal Shareholders. The opinion set forth in clause (ii) may assume that any stockholder who is a "five-percent transferee shareholder" with respect to DT within the meaning of U.S. Treasury Regulations Section 1.367(a)-3(c)(5)(ii) will file the agreement described in U.S. Treasury Regulations Section 1.367(a)-3(c)(1)(iii)(B).

(e) *FCC Opinion.* Powertel shall have received an opinion of FCC counsel of DT and/or VoiceStream, dated the Effective Time, substantially in the form attached hereto as Exhibit D.

(f) *Governmental Approvals.* All necessary consents or authorizations from any Governmental or Regulatory Authority which may be required in connection with the transactions contemplated hereby, shall have been received, unless the failure to receive any such consent or authorization would not have a Material Adverse Effect on DT or the transactions contemplated by this Agreement, and such consents or authorizations shall not contain any conditions which would reasonably be expected to have a Material Adverse Effect on DT or the transactions contemplated by this Agreement. With respect to any FCC consents or authorizations, effectiveness of necessary FCC approvals shall be sufficient to satisfy this condition, and Powertel's obligation to effect the Merger shall not be subject to the condition that any FCC consents or authorizations have become Final Orders.

Notwithstanding anything contained to the contrary in Section 6.02(a) or anywhere else in this Agreement, DT may enter into any Subsequent Transaction, and no changes of any representation or warranty of DT contained in this Agreement as a result of any Subsequent Transaction shall result in a failure of the conditions set forth in Section 6.02(a).

SECTION 6.03. *Conditions to the Obligations of DT.* The obligations of DT to consummate the Merger are also subject to the fulfillment or written waiver by DT, prior to the Effective Time, of each of the following conditions:

(a) *Representations and Warranties.* The representation and warranty of Powertel set forth in Section 2.07(i) of this Agreement shall have been true and correct on the date hereof and on and as of the Bringdown Date as though made on the Bringdown Date; and the other representations and warranties of Powertel set forth in this Agreement shall have been true and correct on the date hereof and on and as of the Bringdown Date as though made on the Bringdown Date (except to the extent that any representation or warranty expressly speaks as of (A) an earlier date, or (B) in the cases of Sections 2.03(d) and 2.05(a) to the extent either relates to the declaration or payment of the Permitted Stock Dividend, an earlier or later date, in which cases ((A) or (B)) it shall be true and correct as of such specified date) except (i) for changes permitted under Section 4.01 hereof or otherwise contemplated by this Agreement and (ii) for such failures to be true and correct which in the aggregate would not reasonably be expected to result in a Material Adverse Effect on Powertel or DT or the transactions contemplated by this Agreement.

(b) *Agreements and Covenants.* Powertel shall have performed or complied with all agreements and covenants required by this Agreement to be performed or complied with by it on or before the Effective Time; *provided, however,* that for purposes of this Section 6.03(b) only, such agreements and covenants shall be deemed to have been complied with unless the failure or failures of such agreements and covenants to have been complied with individually or in the aggregate, results or would reasonably be expected to result in a Material Adverse Effect on Powertel or DT or the transactions contemplated by this Agreement.

(c) *Certificates.* DT shall have received certificates of an executive officer of Powertel to the effect set forth in subparagraph (a) above on the Bringdown Date and subparagraph (b) above on the Closing Date; *provided, however,* that if the Bringdown Date occurs before the Closing Date and the Permitted Stock Dividend is declared or paid after the Bringdown Date, then the matters referred to in clause (B) of paragraph (a) shall be covered in the certificate delivered on the Closing Date, and need not be addressed or referenced in the certificate delivered on the Bringdown Date.

(d) *Tax Opinion.* DT shall have received an opinion of Cleary, Gottlieb, Steen & Hamilton, in form and substance reasonably satisfactory to DT, dated as of the Closing Date, substantially to the effect that, on the basis of facts, representations and assumptions set forth or referred to in such opinion, for U.S. federal income tax purposes, the Merger will (i) qualify as a reorganization within the meaning of Section 368(a) of the Code and (ii) each transfer of property to DT by a stockholder of Powertel pursuant to the Merger will not be subject to Section 367(a)(1) of the Code. In rendering such opinion, Cleary, Gottlieb, Steen & Hamilton may require and shall be entitled to rely upon customary representations of Powertel and DT including representations substantially in the form of Exhibits B and C, respectively. The opinion set forth in clause (ii) may assume that any