Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
VOICESTREAM WIRELESS CORPORATION, Transferor,	)	
and	)	IB Docket No. 00-187
DEUTSCHE TELEKOM AG Transferee,	)	
Application for Consent to Transfer of Control	)	

To: The Commission

<u>COMMENTS OF THE UNITED STATES CHAMBER OF COMMERCE</u>

The United States Chamber of Commerce ("the Chamber") respectfully submits its comments in the above-captioned proceeding. The Chamber is the world's largest not-for-profit business federation representing over 3,000,000 businesses, 3,000 state and local chambers, 830 business associations, and 88 American Chambers of Commerce abroad. Its members include businesses of all sizes and industries, from every corner of America. Although the majority of our nation's largest companies are active Chamber members, more than 96% of our members are small businesses with 100 or fewer employees.

The Chamber has helped lead the fight to open markets overseas so that American businesses and their employees can benefit from increased trade opportunities and the jobs supported by foreign trade. It therefore takes great interest in any action that might threaten such opportunities.

I. INTRODUCTION

The U.S. has the largest and most dynamic economy in the world. Our telecommunications products and services, in particular, have grown exponentially over the last several years, as witnessed by the incredible growth of new telecommunications services, the wireless market, the use of cell phones, pagers, and the latest personal handheld devices. These telecommunications products are becoming more affordable and available to all consumers as a direct result of government policies encouraging free trade and open markets. As Federal Reserve Chairman Alan Greenspan noted in November:

> [O]ur own economies are made better by our interaction with the wider world around us. International trade in goods, services, and assets are the chief means of facilitating that interaction. And those interactions and connections in recent decades have become stronger. To some extent, we can credit good national policy making for this. The progress in lowering trade barriers since World War II marks the triumph of putting an important idea into practice – that international trade benefits all nations. Indeed, in every nation, those benefits are shared by people spread across quite different income brackets.[1]

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[1] *Globalization*, Remarks by Alan Greenspan at the Banco de Mexico 75th Anniversary Conference on Stabilization and Monetary Policy (Nov. 14, 2000) (available at http://www.federalreserve.gov/BoardDocs/Speeches/2000/20001114.htm).

Some, however, are urging the Federal Communications Commission to take action in this proceeding that risks stifling these benefits. Specifically, some are urging the Commission to interpret the Communications Act either as prohibiting this merger because of Deutsche Telekom's partial governmental ownership or as requiring a highly intrusive examination of competitive conditions in foreign markets wholly unrelated to the merger. Such an interpretation could lead to a counterproductive and damaging trade war with our foreign trade partners.

The Chamber opposes any such action for several reasons:

- It would potentially violate the World Trade Organization ("WTO") Basic Agreement on Telecommunications and would likely lead the European Union ("EU") and other member WTO countries to retaliate by closing markets to American goods and services.
- Foreign investment in U.S. telecommunications providers would diminish markedly, limiting the competitive benefits of such investment to U.S. consumers and truncating technological innovation and economic expansion.
- The *Foreign Participation Order* already enables the Commission to act in the event of competition or security risks.

II. REJECTION OF THIS MERGER SOLELY ON THE BASIS OF FOREIGN GOVERNMENT OWNERSHIP WOULD LEAD TO FOREIGN RETALIATION AGAINST U.S. PRODUCERS AND CONSUMERS

Since 1995, the United States has worked hand-in-hand with the WTO to ensure that foreign trading partners open their markets to American businesses and abide by fair trading practices. Although the United States has not won every case before the WTO, American businesses and workers have clearly benefited. Indeed, "studies estimate that the effect of full implementation of the WTO Agreements will be to boost U.S. GDP by $125-250 billion per year (in 1998 dollars)."[2]

In the area of telecommunications, the United States and 68 other countries reached an accord on a set of commitments under the 1995 General Agreement on Trade in Services ("GATS") that fundamentally changed the structure of the global telecommunications market.[3] This set of commitments, known as the WTO Basic Telecommunications Agreement, is guided by a worldwide commitment to opening markets, promoting competition, and preventing anti-competitive behavior. Specifically, the United States agreed to the following:

- Market Access, under which the United States must provide treatment to WTO-member telecommunications carriers no less favorable than that provided for in the terms, limitations, and conditions specified in the U.S. schedule of commitments.[4]

- Most Favored Nation ("MFN"), under which the United States must offer the same treatment to like telecommunications services and service suppliers from all other WTO Members.[5]

- National Treatment, under which United States must treat like telecommunications services and service suppliers no less favorably than it treats its own services and service suppliers.[6]

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2 United States Trade Representative, *America and the WTO* (available at http://www.ustr.gov/html/wto_usa.html).

3 *See* Fourth Protocol to the General Agreement on Trade in Services (WTO 1997) (reprinted in 36 I.L.M. 354, 366).

4 *See* GATS art. XVI.

5 *See* GATS art. II.

6 *See* GATS art. XVII.

Significantly, these agreements were made without regard to foreign-government ownership. When the United States negotiated the Basic Telecom Agreement, it expressly represented that "[t]here will be no limits on indirect foreign ownership of such [wireless telecommunications] licenses by foreign governments (including government-owned corporations) . . . ."[7] The United States also stated that, under U.S. law as reflected in the U.S. offer of commitments, "[t]here is a limit on direct ownership, but it is one of form not substance."[8] For the Commission to block this merger solely on the issue of foreign government ownership or affiliation would therefore place the United States, we believe, in violation of its commitments under the Basic Telecom Agreement.

There is also little doubt such action would spark counterproductive and damaging retaliation by our foreign trading partners. Indeed, the EU has already threatened retaliation with respect to proposed legislation that would bar foreign-government ownership of U.S. telecom carriers.[9]

Such retaliation would not necessarily be limited to WTO action. For example, the United States and Japan recently concluded a bilateral agreement on interconnection

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7 *See* WTO, Negotiating Group on Basic Telecommunications, Communication from the United States, Conditional Offer on Basic Telecommunications (Revision), S/NGBT/W/12/Add.3/Rev.1 (Feb. 26, 1996).

8 *Id*.

9 On July 24, 2000, EU Trade Commissioner Pascal Lamy wrote to United States Trade Representative Charlene Barshefsky regarding congressional efforts to restrict foreign telecommunications ownership: "This [the proposed legislation] would clearly violate US commitments in the WTO . . . ." Lamy further urged Barshefsky to "resist such legislation and indicate clearly to the Congress the opposition of the US Administration to its adoption . . . . We have to avoid a very damaging trade fight in this highly important sector." Letter from Pascal Lamy to Charlene Barshefsky (July 24, 2000).

rates.[10] Under the agreement, Japan has agreed to reduce interconnection fees now charged by Nippon Telegraph and Telephone to U.S. telecommunications companies. This agreement will begin to allow U.S. telecommunications companies to compete more effectively in the Japanese market. The Chamber believes it is almost inconceivable that such an agreement would have been reached in the wake of the Commission action to limit foreign entry, such as that urged by some in this proceeding.

III. REJECTION OF THIS MERGER ON THE BASIS OF FOREIGN GOVERNMENT OWNERSHIP WOULD HURT AMERICAN CONSUMERS

Consumers benefit from competition in the global marketplace. Greater competition and greater market opportunities for American producers and consumers provide for greater choice at better prices in the U.S. and abroad. Clearly, American businesses and consumers will suffer if foreign governments retaliate against Commission action by closing their markets to American goods and services.

Moreover, American businesses and consumers will also be harmed by the loss of foreign investment in this country. Access to capital is the lifeblood that pulses through the American economy. Access to capital is what has energized the technological advancements and innovation so fundamental to the recent economic expansion. Billions of dollars of foreign investment is made annually in the U.S. This investment has helped

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10 *See United States and Japan Agree on Interconnection Rates*, United States Trade Representative Press Release (rel. July 18, 2000) (available at http://www.ustr.gov/releases/2000/07/00-55.pdf).

to fuel the growth and investment in this country. If telecommunications firms cannot raise needed investment capital to provide new products and services for consumers, the engine of our record economic expansion could find itself out of gas.

By blocking this merger on the basis of Deutsche Telekom's foreign ownership, the Commission risks chilling foreign investment in the U.S. telecommunications sector. This would set a dangerous precedent and send the wrong message to our trading partners.

IV. THE COMMISSION ALREADY HAS AUTHORITY TO SAFEGUARD THE PUBLIC INTEREST WITHOUT BLOCKING THIS MERGER OR REVIEWING MARKET CONDITIONS UNRELATED TO THE MERGER

Under the *Foreign Participation Order*, the Commission already has ample authority to act where there is a "very high risk to competition."[11] The *Foreign Participation Order* also contemplates that the Commission can and will consult with the Executive Branch, including the Federal Bureau of Investigation, the Department of Justice, and the United States Trade Representative, to determine whether foreign investments pose a risk to national security, law enforcement, foreign policy, or trade.[12] The Commission thus already has the legal authority to condition its approval of both foreign and domestic telecommunication mergers to protect U.S. interests relating to competition, national security, or law enforcement, *without* engaging in a wide-range review of market conditions outside the U.S. that are wholly unrelated to the merger.

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[11] *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd. 23891, 23913 (1997) ("*Foreign Participation Order*").

[12] *See id.*, 12 FCC Rcd. at 23914.

V. CONCLUSION

The Commission should reject the invitation to prohibit Deutsche Telekom's entry in the U.S. market solely on the basis of its partial ownership by a foreign government. Such action would invite retaliation by the EU and other WTO countries, risking an unnecessary trade war. It would diminish the flow of foreign investment into the United States, thereby harming consumers. And it is entirely unnecessary, in light of the Commission's existing authority under the *Foreign Participation Order*.

Respectfully submitted,

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