

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

RECEIVED

SEP 18 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
VOICESTREAM WIRELESS)
CORPORATION,)
)
Transferor,)
)
and)
)
DEUTSCHE TELEKOM AG,)
)
Transferee,)
)
Application for Consent to Transfer of Control.)

No. _____

**APPLICATION FOR TRANSFER OF CONTROL
AND PETITION FOR DECLARATORY RULING**

Cheryl A. Tritt
Louis Gurman
Doane F. Kiechel
Nina A. Mrose
Christa M. Parker
MORRISON & FOERSTER
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006

John T. Nakahata
Karen L. Gulick
Samuel L. Feder
HARRIS, WILTSHIRE & GRANNIS LLP
1200 Eighteenth St., N.W.
Washington, D.C. 20036

David A. Miller
Brian T. O'Connor
Robert A. Calaff
VOICESTREAM WIRELESS CORP.
1300 Pennsylvania Ave., N.W., Suite 700
Washington, D.C. 20004

Counsel for VoiceStream Wireless Corp.

William T. Lake
John H. Harwood II
William R. Richardson, Jr.
Matthew A. Brill
Julie A. Veach
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037

Hans-Willi Hefekäuser
Wolfgang Kopf
Andreas Tegge
DEUTSCHE TELEKOM, INC.
1020 Nineteenth Street, N.W., Suite 850
Washington, D.C. 20036

Counsel for Deutsche Telekom AG

appear as soon as VoiceStream raised prices to recoup earlier losses.^{126/} VoiceStream could not obtain spectrum owned by any failed competitor without the Commission's consent.

All these reasons explain why the Commission saw no need to impose any conditions to guard against improper cross-subsidization in its orders approving transactions involving Deutsche Telekom, France Telecom, and Sprint; MCI and BT; or AT&T and BT.^{127/} There is similarly no warrant for any such conditions here.

2. Any Executive Branch Concerns Will Be Addressed Through Cooperation with the Relevant Agencies and the Adoption of Appropriate Safeguards.

In addition to competition-related issues, the Commission's analysis under the public interest standard includes consideration of potential threats to national security, law enforcement, foreign policy, and trade.^{128/} The Commission consults "with the appropriate Executive Branch agencies regarding those concerns."^{129/} The applicants already have begun discussions with Executive Branch officials. As in the Commission's prior merger-review proceedings involving VoiceStream, the applicants are receptive to agreements with the Department of Justice and

^{126/} See generally *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 224-26 (1993); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 589 (1986); Robert H. Bork, *THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF* 144-59 (Free Press, rev. ed. 1993); Richard A. Posner, *ANTITRUST LAW: AN ECONOMIC PERSPECTIVE* 184-96 (University of Chicago Press 1976).

^{127/} See *Sprint Corp.*, Declaratory Ruling and Order, 11 FCC Rcd 1850, 1866-72 ¶¶ 96-133 (1996) (imposing various conditions but none relating to cross-subsidization of domestic wireless operations); *The Merger of MCI Communications Corp. and British Telecommunications Plc*, Memorandum Opinion and Order, 12 FCC Rcd 15351, 15459-69 ¶¶ 282-307 (1997) (same); *AT&T Corp., British Telecommunications, Plc, VLT Co. LLC, Violet License Co. L.L.C., and TNV Limited Applications*, Memorandum Opinion and Order, 14 FCC Rcd 19140, 19193-95 ¶¶ 107-110 (1999) (same).

^{128/} See *Foreign Participation Order*, 12 FCC Rcd at 23940 ¶ 113.

^{129/} *Id.*

Federal Bureau of Investigation, and other agencies if necessary, that will fully address any concerns raised by the Executive Branch.^{130/}

Among other things, like VoiceStream's existing agreement with DOJ and the FBI, an agreement likely will require VoiceStream to

(1) ensure that its network is configured so as to be capable of complying with lawful U.S. process; (2) make available in the United States certain call and subscriber data, if VoiceStream stores such data; and (3) take reasonable measures regarding use of facilities in domestic telecommunications (specifically, with respect to personnel holding sensitive positions), information storage, and access to foreign entities.^{131/}

The applicants do not object to making the Commission's approval of the transaction contingent on their compliance with any agreement reached with the Executive Branch departments.

C. VoiceStream and DT Respectively Possess the Requisite Qualifications To Hold and Indirectly Control Commission Licenses.

Finally, the Commission's public interest analysis requires it to determine under section 310(d) "whether the proposed licensees are qualified to hold Commission licenses and whether grant of the application would result in the violation of any Commission rules."^{132/} In the proposed transaction, VoiceStream will be the surviving entity that controls all Commission licenses. The Commission has previously ruled that VoiceStream's licensee subsidiaries are qualified to hold these licenses,^{133/} and there is no reason to alter that assessment.^{134/} Moreover,

^{130/} See *VoiceStream-Aerial* ¶¶ 45-47 (discussing applicants' agreement with DOJ and FBI); *VoiceStream-Omnipoint* ¶¶ 47-50 (same).

^{131/} *VoiceStream-Aerial* ¶ 45; *VoiceStream-Omnipoint* ¶ 48.

^{132/} See *VoiceStream-Omnipoint* ¶ 13

^{133/} See *id.*

^{134/} As noted above, DT's ownership interest in Sprint PCS is non-attributable. See *supra* n.87. This application accordingly presents no spectrum-cap issue under 47 C.F.R. § 20.6.

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

In the Matter of)
)
VOICESTREAM WIRELESS)
CORPORATION, and)
)
POWERTEL, INC.,)
)
Transferors,)
)
and)
)
DEUTSCHE TELEKOM AG,)
)
Transferee,)
)
Applications for Consent to Transfer of Control)

RECEIVED
JAN - 8 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IB Docket No. 00-187

REPLY IN SUPPORT OF
APPLICATIONS FOR CONSENT TO TRANSFER OF CONTROL

Cheryl A. Tritt
Louis Gurman
Doane F. Kiechel
Christa M. Parker
MORRISON & FOERSTER
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 887-1500

John T. Nakahata
Karen L. Gulick
Samuel L. Feder
HARRIS, WILTSHIRE & GRANNIS LLP
1200 Eighteenth St., N.W.
Washington, D.C. 20036
(202) 730-1300

Counsel for VoiceStream Wireless Corp.

William T. Lake
John H. Harwood II
William R. Richardson, Jr.
Matthew A. Brill
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

Hans-Willi Hefekäuser
Wolfgang Kopf
Andreas Tegge
DEUTSCHE TELEKOM, INC.
1020 Nineteenth Street, N.W., Suite 850
Washington, D.C. 20036
(202) 452-5100

Counsel for Deutsche Telekom AG

flexibility, it “restricts financial and operating flexibility.”^{83/} Standard and Poor’s accordingly concluded that Telstra’s partial governmental ownership warranted a lower credit rating than would be appropriate if the carrier were able to dilute its majority state ownership.^{84/}

* * *

In sum, the few speculative allegations in the comments regarding anticompetitive effects are easily refuted. The combination of competition in the United States and in Germany, comprehensive rate regulation and a host of other statutory and regulatory safeguards in Germany, and the separation between VoiceStream, T-Mobile, and DT firmly establishes that VoiceStream-DT could not engage in improper cross-subsidization or other anticompetitive conduct.

C. Applicants’ Forthcoming Agreement with DOJ and FBI Will Resolve Any Potential National Security and Law Enforcement Issues.

In the *Foreign Participation Order*, the Commission recognized that its review under section 310(b)(4) “should include consultation with the appropriate Executive Branch agencies regarding” any national security, law enforcement, foreign policy, and trade matters. No commenter has raised any specific concerns in these areas, and Applicants have been working with DOJ and the FBI to address the needs of national security and law enforcement agencies. Applicants joined in a petition with the FBI to defer the grant of the Applications until an appropriate agreement has been completed and submitted to the Commission for review.

^{83/} See Craig Liddell, *Telstra’s Credit Downgrade*, CNET Australia, May 3, 2000, available at www.australia.cnet.com/Briefs/News/Australian/telstra20000503.asp (“Telstra’s 50.1 percent Government ownership places a significant restriction on Telstra’s financial and operating flexibility, a top international credit agency [Moody’s] has revealed.”)

^{84/} See Geoff Elliott, *Telstra Credit Rating Caned*, Australian Business Intelligence, September 29, 2000.

Applicants are confident that this forthcoming agreement will address all potential concerns regarding national security and law enforcement.

II. GRANT OF THE APPLICATIONS IS FULLY CONSISTENT WITH SECTION 310(a) OF THE ACT.

Senator Hollings argues that DT's acquisition of VoiceStream is barred by section 310(a) of the Act, which prohibits a "foreign government or the representative thereof" from holding a common carrier radio license.^{85/} His argument misconstrues section 310 and the relevant facts, and would reverse wholesale the United States' settled interpretation of section 310. Because DT is applying to obtain only *indirect* control over VoiceStream's and Powertel's licenses, section 310(a), which prohibits only *direct* control, does not apply. Senator Hollings's argument also is diametrically and avowedly contrary to the position of the U.S. government in its commitments to the WTO. If adopted, the Senator's argument would reverse the trend of market liberalization abroad, subject the United States to a complaint before the WTO, and gravely damage the United States' credibility in future trade negotiations. The Commission should construe section 310 in a manner that avoids such damaging results. Even if Senator Hollings's reading of the law were correct, DT is not a "representative" of the German government, making section 310(a) inapplicable in any event.

A. Section 310(b)(4), Rather Than Section 310(a), Applies to DT's Application To Assume *Indirect* Control of Commission Licenses.

Senator Hollings argues that section 310(a) "plainly prohibits" the proposed transactions, because, in his view, it is irrelevant whether a carrier more than 25-percent owned by a foreign government holds a license directly or indirectly.^{86/} But Senator Hollings's argument ignores the

^{85/} 47 U.S.C. § 310(a).

^{86/} Comments of Senator Hollings at 2-3.



U.S. Department of Justice

Federal Bureau of Investigation

JAL
WRR
MB
EVA

Office of the General Counsel

Washington, D.C. 20535

January 25, 2001

By Hand Delivery

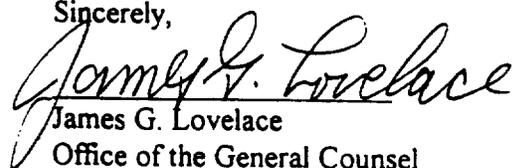
Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, D.C. 20554

Re: *Petition to adopt conditions to authorizations and Licenses in the Matter of VoiceStream Wireless Corporation, Powertel, Inc., and Deutsche Telekom AG ("DT") to permit, pursuant to Section 310(b)(4), 100 percent Indirect Foreign Ownership by Deutsche Telekom of Licenses and authorizations held by Voicestream and Powertel. (File No. 0000211827 DA 00-2251).*

Dear Ms. Salas:

Transmitted herewith, on behalf of the Department of Justice ("DoJ") and the Federal Bureau of Investigation ("FBI") are an original and four copies of a "Petition to Adopt Conditions to Authorization and Licenses" in the above-referenced matter. Please accept this Petition and be advised that neither the DoJ nor the FBI has any objection to the Federal Communications Commission (FCC) granting the proposed transfers of control and related assignments of VoiceStream's licenses that are the subject of the application filed with the FCC in IB Docket No. 00-187, provided that the Commission conditions the grant of approvals of the transfers of control, related assignments and authorizations on compliance with the terms of the Agreement (attached to the Petition as Exhibit 1) reached between Deutsche Telekom, VoiceStream, the DoJ and the FBI.

Sincerely,



James G. Lovelace
Office of the General Counsel
935 Pennsylvania Ave., N.W., Room 7435
Washington, D.C. 20535
(202) 324-5640

Enclosures

cc: Office of Media Relations
International Transcription Service, Inc.

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

_____))
In the Matter of:))
))
VoiceStream Wireless Corporation,))
Powertel, Inc.,))
 Transferors))
and))
))
Deutsche Telekom AG (“DT”)))
 Transferee))
))
For Consent to Transfer Control of))
Licenses and Authorizations and))
for Declaratory Ruling pursuant to))
Section 310(b)(4) allowing 100 percent))
Indirect Foreign Ownership by DT of))
Transferors Licenses and Authorizations))
_____))

IB Docket No. 00-187
DA 00-2251
File No 0000211827

To: The Commission

**PETITION TO ADOPT CONDITIONS TO
AUTHORIZATION AND LICENSES**

The Department of Justice (“DOJ”) and the Federal Bureau of Investigation (“FBI”) respectfully submit this Petition to Adopt Conditions to Authorization and Licenses (“Petition”), pursuant to 47 C.F. R. § 1.41.

Through this Petition, the DOJ and the FBI hereby advise the Federal Communications Commission (“FCC” or “Commission”) that the DOJ and the FBI have no objection to the FCC granting the relief requested in the applications filed in the above-referenced matter (herein referred to as “requested relief”), provided that the Commission conditions the grant of the requested relief on the compliance by VoiceStream Wireless Corporation, VoiceStream Wireless Holding

Corporation (collectively "VoiceStream"), and Deutsche Telekom AG ("Deutsche Telekom"), with the terms of the Agreement (attached hereto as Exhibit 1) reached between Deutsche Telekom, VoiceStream, the DOJ and the FBI.

Deutsche Telekom, which is a corporation organized and existing under the laws of the Federal Republic of Germany, VoiceStream, and Powertel, Inc. have filed with the Commission applications under sections 214 and 310(d) of the Communications Act of 1934, as amended (the "Act"), seeking consent to the transfer of control to Deutsche Telekom of the interests of VoiceStream Wireless and Powertel and their subsidiaries in certain authorizations and licenses, and in connection therewith have also filed with the Commission petitions pursuant to section 310(b)(4) of the Act for declaratory rulings that Deutsche Telekom's 100 percent indirect foreign ownership of the interests of VoiceStream Wireless and Powertel and their subsidiaries in wireless licenses is in the public interest.¹

In their filings, Deutsche Telekom, VoiceStream, and Powertel represented that following consummation of the proposed transfers of control of the authorizations and licenses, VoiceStream and Powertel would be wholly owned by Deutsche Telekom. Deutsche Telekom also represented that the German government currently owns, directly and indirectly, approximately 60 percent of the equity in Deutsche Telekom, and its ownership interest will decline to approximately 45 percent following the closing of Deutsche Telekom's mergers with VoiceStream and Powertel.

As the Commission is aware, the DOJ and the FBI have previously noted that their ability to satisfy their obligations to protect the national security, to enforce the laws and preserve the safety of the public can be significantly impacted by transactions in which foreign entities will own or operate a part of the U.S. communications system, or in which foreign-located facilities will be used to

1. Public Notice, IB Docket No. 00-187, 2000 WL 1509990 (rel. Oct. 11, 2000).

provide domestic communications services to U.S. customers. In such cases, the DOJ and the FBI have stated that foreign involvement in the provision of U.S. communications must not be permitted to impair the U.S. government's ability to satisfy its obligations to U.S. citizens to: (1) carry out lawfully-authorized electronic surveillance of domestic U.S. calls or calls that originate or terminate in the United States; (2) prevent and detect foreign-based espionage and electronic surveillance of U.S. communications, which would jeopardize the security and privacy of such communications, and could foreclose prosecution of individuals involved in such activities; and (3) satisfy the National Security Emergency Preparedness Act and U.S. infrastructure protection requirements. To address these concerns, the DOJ and the FBI have negotiated agreements. The agreements reached in the past have been filed by stipulation among the parties with the Commission, and the Commission has conditioned its grant of approvals of the requested transfers of control on compliance with the terms of the agreements.²

On December 15, 2000, the FBI together with Deutsche Telekom, VoiceStream, and Powertel jointly filed a petition with the Commission to defer the grant of the applications pending a resolution by the parties and the DOJ of those aspects of the applications that could give rise to national security, law enforcement, and public safety concerns. The parties were at that time engaged in negotiations to reach an agreement that would ensure that national security, law

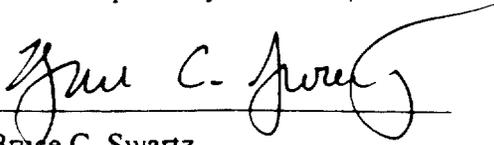
2. See, e.g., Memorandum Opinion and Order, *Merger of MCI Communications Corp., and British Telecommunications plc*, 12 FCC Rcd 15,351 (1997) (agreement adopted by the Commission, but the merger did not take place); Memorandum Opinion and Order, *AirTouch Communications, Inc. and Vodafone Group, plc*, DA No. 99-1200, 1999 WL 413237 (rel. June 22, 1999); Memorandum Opinion and Order, *AT&T Corp., British Telecommunications, plc, VLT Co. L.L.C., Violet License Co., LLC and TNV [Bahamas]*, 14 FCC Rcd (Oct. 29, 1999); Memorandum Opinion and Order, *Vodafone AirTouch PLC and Bell Atlantic Corp.*, DA No. 99-2451, 2000 WL 332670 (rel. Mar. 30, 2000); Memorandum Opinion and Order, *Aerial Communications, Inc. and VoiceStream Wireless Holding Corp.*, 15 FCC Rcd 10,089 (2000); Memorandum Opinion and Order, *DiGiPH PCS, Inc. and Eliska Wireless Ventures License Subsidiary I, L.L.C.*, No. 151639 (rel. Dec. 13, 2000).

enforcement and public safety concerns are adequately addressed.

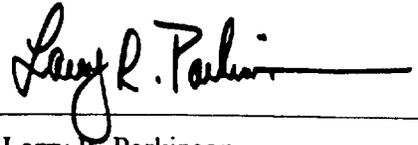
On January 12, 2001, the DOJ and the FBI entered into the Agreement with Deutsche Telekom and VoiceStream. The Agreement is intended to ensure that the DOJ, the FBI and other entities with responsibility for enforcing the law, protecting the national security and preserving public safety can proceed in a legal, secure and confidential manner to satisfy these responsibilities. Particular attention is given to provisions designed to limit the control or influence of the foreign government through the exercise, as a direct or indirect shareholder of Deutsche Telekom, of any control of Deutsche Telekom, or through the participation by the foreign government in any aspect of the day-to-day management of Deutsche Telekom, in such a way that interferes with or impedes the performance by Deutsche Telekom of its duties and obligations under the terms of this Agreement, interferes with or impedes the exercise by Deutsche Telekom of its rights under the terms of this Agreement, or foreseeably concerns DT's obligations addressed in the Agreement.

Although the Agreement does not eliminate every law enforcement, national security, or public safety risk posed by the proposed transactions, it does reduce those risks while affording the companies treatment consistent with other carriers in like circumstances. The DOJ and the FBI hereby advise the Commission that the DOJ and the FBI have no objection to the FCC granting the proposed transfers of control and related assignments of VoiceStream's licenses that are the subject of the application filed with the FCC in IB Docket No. 00-187, provided that the Commission conditions the grant of approvals of the transfers of control, related assignments and authorizations on compliance with the terms of the Agreement. The DOJ and the FBI are authorized to state that Deutsche Telekom, VoiceStream and Powertel do not object to the grant of this petition.

Respectfully submitted,



Bruce C. Swartz
Deputy Assistant Attorney General
Criminal Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
(202) 514-2333



Larry R. Parkinson
General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, DC 20535
(202) 324-6829

Date: January 24, 2001

AGREEMENT

This AGREEMENT is made as of the date of the last signature affixed hereto, by and between: DEUTSCHE TELEKOM AG, VOICESTREAM WIRELESS CORPORATION ("VoiceStream Wireless"), and VOICESTREAM WIRELESS HOLDING CORPORATION ("VoiceStream Holdings") (VoiceStream Wireless and VoiceStream Holdings, and their subsidiaries, are collectively referred to as "VoiceStream") on the one hand, and THE FEDERAL BUREAU OF INVESTIGATION ("FBI") and THE U.S. DEPARTMENT OF JUSTICE ("DOJ") on the other, (referred to individually as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, U.S. communication systems are essential to the ability of the U.S. government to fulfill its responsibilities to the public to preserve the national security of the United States, to enforce the laws, and to maintain the safety of the public;

WHEREAS, the U.S. government has an obligation to the public to ensure that U.S. communications and related information are secure in order to protect the privacy of U.S. persons and to enforce the laws of the United States;

WHEREAS, it is critical to the well being of the nation and its citizens to maintain the viability, integrity, and security of the communication system of the United States (*see, e.g.*, Presidential Decision Directive 63 on Critical Infrastructure Protection);

WHEREAS, protection of Classified, Controlled Unclassified, and Sensitive Information is also critical to U.S. national security;

WHEREAS, Deutsche Telekom AG, VoiceStream Wireless, and Powertel, Inc. ("Powertel") have filed (and/or will file) with the Federal Communications Commission ("FCC") applications under Sections 214 and 310(d) of the Communications Act of 1934, as amended (the "Act"), seeking FCC consent to the transfer of control to Deutsche Telekom AG of the interests of VoiceStream Wireless and Powertel and their subsidiaries in certain authorizations and licenses, and in connection therewith have also filed with the FCC petitions pursuant to Section 310(b)(4) of the Act for declaratory rulings that Deutsche Telekom AG's 100% indirect foreign ownership of the interests of VoiceStream Wireless and Powertel and their subsidiaries in wireless licenses is in the public interest, *see* International Bureau ("IB") Docket No. 00187 (Lead Application for licenses and authorizations controlled by VoiceStream Wireless, VoiceStream PCS I License L.L.C., File Number 0000211827; Lead Application for licenses and authorizations controlled by Powertel, Powertel Kentucky Licenses, Inc., File Number 0000214432);

WHEREAS, Deutsche Telekom AG is also requesting authority to acquire control of (1) any application or authorization issued to VoiceStream's subsidiaries or Powertel's subsidiaries during the FCC's consideration of the transfer of control and the period required for

consummation of the transactions described in the above paragraph following approval (*see, e.g.*, Public Notice, DA 00-2251 at 2 n.6 (rel. Oct. 11, 2000); Application for Transfer of Control and Petition for Declaratory Ruling, In re VoiceStream Wireless, at 44-45 n.136, IB Docket No. 00-187 (filed Sept. 19, 2000) (listing pending applications)), (2) construction permits held by such licensees that mature into licenses after closing and (3) applications that are filed after the date of these applications and that are pending at the time of consummation;

WHEREAS, Deutsche Telekom AG is a corporation organized and existing under the laws of the Federal Republic of Germany;

WHEREAS, Deutsche Telekom AG represents that the German government owned approximately 60% of the equity in Deutsche Telekom AG as of December 20, 2000, and that the German government's interest will decline to approximately 45% following the closing of Deutsche Telekom AG's mergers with VoiceStream Wireless and Powertel;

WHEREAS, the Parties are aware that the Foreign Policy and Security Advisor of the Federal Chancellor of Germany, stated in a letter dated 22 September 2000, to the Assistant to the President for National Security Affairs for the United States that "the German Government is fully committed to the full privatization of Deutsche Telekom and to the objective of reducing its direct stake not just to 25% but to zero," and the Economic Minister stated in a letter dated 5 September 2000, that "the German Government will continue to pursue its privatization policy and to reduce its stake in Deutsche Telekom steadily but cautiously, that is, in a manner which is consistent with the demand of the capital markets." Deutsche Telekom AG and VoiceStream have no knowledge that the intention of the German government is other than as stated in the letters;

WHEREAS, the transfers of control that are the subjects of the applications in IB Docket No. 00187 require prior consent by the FCC, and such consent and the grant of related requested declaratory rulings may be made subject to conditions relating to national security, law enforcement, and public safety, and Deutsche Telekom AG, VoiceStream Wireless and VoiceStream Holdings have each agreed to enter into this Agreement with the FBI and the DOJ to address issues raised by the FBI and the DOJ, and to request that the FCC condition the authorizations and licenses granted by the FCC on their compliance with this Agreement;

WHEREAS, Deutsche Telekom AG has represented that it will not exercise the authorizations and licenses granted by the FCC in IB Docket No. 00187 prior to the date on which the Deutsche Telekom AG mergers with VoiceStream and Powertel have closed;

WHEREAS, on December 15, 2000, the Parties filed a petition with the FCC to defer action on the subject applications pending agreement among the Parties;

WHEREAS, by Executive Order 12661, the President, pursuant to Section 721 of the Defense Production Act, as amended, authorized the Committee on Foreign Investment in the United States ("CFIUS") to review, for national security purposes, foreign acquisitions of U.S. companies;

WHEREAS, Deutsche Telekom AG, VoiceStream, and Powertel intend to submit a voluntary notice with CFIUS of Deutsche Telekom AG's mergers with VoiceStream Holdings and Powertel, and Deutsche Telekom AG and VoiceStream have each agreed to enter into this Agreement to resolve any national security issues that the DOJ and the FBI might raise, including in the CFIUS review process, consistent with Section 7.3 below; and

WHEREAS, representatives of Deutsche Telekom AG and VoiceStream have met with representatives of the FBI and the DOJ to discuss issues raised by the FBI and the DOJ. In these meetings, Deutsche Telekom AG represented that (a) it has no present plans, and is aware of no present plans of any other entity, as a result of which DT will provide Domestic Communications through facilities located outside the United States (though the Parties recognize that DT may, for bona fide commercial reasons as provided in this Agreement, use such facilities), (b) no government has, as a direct or indirect shareholder of Deutsche Telekom AG, special voting or veto rights concerning the actions of Deutsche Telekom AG, and is aware of no plans the result of which would confer such rights to a government concerning the actions of DT, (c) no government has appointed more than two members of the Supervisory Board of Deutsche Telekom AG, nor has any foreign government appointed any members to the Management Board of Deutsche Telekom AG, and DT is aware of no plans to increase the number of such members appointed, and (d) the members of the Supervisory Board of Deutsche Telekom AG appointed by the German government have always voted in line with the majority of other shareholders and have never opposed a proposal of the Management Board or Supervisory Board of Deutsche Telekom AG. In these meetings, VoiceStream represented that it has no present plans, and is aware of no present plans of any other entity, as a result of which DT will provide, direct, control, supervise or manage Domestic Communications through facilities located outside the United States. In these meetings, Deutsche Telekom AG and VoiceStream represented that they have no present plans for VoiceStream or any successor entity to provide non-wireless telecommunications services;

NOW THEREFORE, the Parties are entering into this Agreement to address national security, law enforcement and public safety issues.

ARTICLE 1: DEFINITION OF TERMS

As used in this Agreement:

1.1 "Call Associated Data" or "CAD" means any information related to a Domestic Communication or related to the sender or recipient of that Domestic Communication and includes without limitation subscriber identification, called party number, calling party number, start time, end time, call duration, feature invocation and deactivation, feature interaction, registration information, user location, diverted to number, conference party numbers, dual tone multifrequency (dial digit extraction), inband and outofband signaling, and party add, drop and hold.

1.2 “Classified Information” means any information that has been determined pursuant to Executive Order 12958, or any predecessor or successor order, or the Atomic Energy Act of 1954, or any statute that succeeds or amends the Atomic Energy Act, to require protection against unauthorized disclosure.

1.3 “Control” and “Controls” means the power, direct or indirect, whether or not exercised, and whether or not exercised or exercisable through the ownership of a majority or a dominant minority of the total outstanding voting securities of an entity, or by proxy voting, contractual arrangements, or other means, to determine, direct, or decide matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding:

- (a) the sale, lease, mortgage, pledge, or other transfer of any or all of the principal assets of the entity, whether or not in the ordinary course of business;
- (b) the dissolution of the entity;
- (c) the closing and/or relocation of the production or research and development facilities of the entity;
- (d) the termination or nonfulfillment of contracts of the entity;
- (e) the amendment of the articles of incorporation or constituent agreement of the entity with respect to the matters described in Section 1.3(a) through (d); or
- (f) DT’s obligations under this Agreement.

1.4 “Controlled Unclassified Information” means unclassified information, the export of which is controlled by the International Traffic in Arms Regulations (ITAR), 22 C.F.R. Chapter I, Subchapter M, or the Export Administration Regulations (EAR), 15 C.F.R., Chapter VII, Subchapter C.

1.5 “*De facto*” and “*de jure*” control have the meanings provided in 47 C.F.R. § 1.2110.

1.6 “Domestic Communications” means (i) Wire Communications or Electronic Communications (whether stored or not) from one U.S. location to another U.S. location and (ii) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the United States.

1.7 “Domestic Communications Infrastructure” means (a) the transmission and switching equipment (including software and upgrades) used by or on behalf of U.S. Subsidiaries to provide, process, direct, control, supervise or manage Domestic Communications, (b) facilities and equipment of U.S. Subsidiaries that are physically located in the United States and (c) the facilities used by U.S. Subsidiaries to control the equipment described in (a) above. Domestic

Communications Infrastructure does not include equipment or facilities used by service providers that are not U.S. Subsidiaries, and that are:

- (a) interconnecting communications providers or
- (b) providers of services or content that are
 - (i) accessible using the communications services of U.S. Subsidiaries, and
 - (ii) available in substantially similar form and on commercially reasonable terms through communications services of companies other than U.S. Subsidiaries.

1.8 "DT" means (a) Deutsche Telekom AG, (b) its U.S. Subsidiaries, and/or (c) all entities Controlled by Deutsche Telekom AG that also Control the U.S. Subsidiaries. If, after the date all the Parties have executed this Agreement, DT acquires or creates a U.S. Subsidiary, then that U.S. Subsidiary shall be included within the definition DT. If Deutsche Telekom AG, after the date all the Parties have executed this Agreement, acquires Control of any entity that also Controls a U.S. Subsidiary, then that entity shall be included within the definition of DT.

1.9 "Effective Date" means the date on which the Deutsche Telekom AG mergers with VoiceStream and Powertel have closed.

1.10 "Electronic Communication" has the meaning given it in 18 U.S.C. § 2510(12).

1.11 "Electronic Surveillance" means (a) the interception of wire, oral, or electronic communications as defined in 18 U.S.C. §§ 2510(1), (2), (4) and (12), respectively, and electronic surveillance as defined in 50 U.S.C. § 1801(f); (b) access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701 et seq.; (c) acquisition of dialing or signaling information through pen register or trap and trace devices or other devices or features capable of acquiring such information pursuant to law as defined in 18 U.S.C. § 3121 et seq. and 50 U.S.C. § 1841 et seq.; (d) acquisition of location related information concerning a service subscriber or facility; (e) preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and (f) including access to, or acquisition or interception of, or preservation of communications or information as described in (a) through (e) above and comparable State laws.

1.12 "Foreign" where used in this Agreement, whether capitalized or lower case, means non-U.S.

1.13 "Intercept" or "Intercepted" has the meaning defined in 18 U.S.C. § 2510(4).

1.14 "Lawful U.S. Process" means lawful U.S. federal, state or local Electronic Surveillance court orders or authorizations, and other orders, processes or authorizations for access to or disclosure of Domestic Communications, Call Associated Data, Transactional Data or Subscriber Information authorized by U.S. federal, state or local law.

1.15 "Party" and "Parties" have the meanings given them in the Preamble.

1.16 "*Pro forma* assignments or *pro forma* transfers of control" are transfers or assignments that do not "involve a substantial change in ownership or control" of the licenses as provided in 47 U.S.C. § 309(c)(2)(B).

1.17 "Sensitive Information" means unclassified information regarding (a) the persons or facilities that are the subjects of Lawful U.S. Process, (b) the identity of the government agency or agencies serving such Lawful U.S. Process, (c) the location or identity of the line, circuit, transmission path, or other facilities or equipment used to conduct Electronic Surveillance pursuant to Lawful U.S. Process, (d) the means of carrying out Electronic Surveillance pursuant to Lawful U.S. Process, (e) the type(s) of service, telephone number(s), records, communications, or facilities subjected to Lawful U.S. Process, and (f) other unclassified information designated in writing by an authorized official of a federal, state or local law enforcement agency or a U.S. intelligence agency as "Sensitive Information." DT may dispute pursuant to Article 4 whether information is Sensitive Information under subparagraph 1.14(f). Such information shall be treated as Sensitive Information unless and until the dispute is resolved in DT's favor.

1.18 "Subscriber Information" means information relating to subscribers of U.S. Subsidiaries of the type referred to and accessible subject to procedures specified in 18 U.S.C. § 2703(c) or (d) or 18 U.S.C. § 2709. Such information shall also be considered Subscriber Information when it is sought pursuant to the provisions of other Lawful U.S. Process.

1.19 "Transactional Data" means:

- (a) "call identifying information," as defined in 47 U.S.C. § 1001(2), including without limitation the telephone number or similar identifying designator associated with a Domestic Communication;
- (b) Internet address or similar identifying designator associated with a Domestic Communication;
- (c) the time, date, size, and duration of a Domestic Communication;
- (d) any information possessed by the provider of Domestic Communications relating specifically to the identity and physical address of the provider's subscriber, user, or account payer;
- (e) to the extent associated with such subscriber, user, or account payer, any information possessed by the Domestic Communications provider relating to all telephone numbers, Internet addresses, or similar identifying designators; the physical location of equipment, if known and if different from the location information provided under (f) below; types of services; length of service; fees; and usage, including billing records; and

(f) as to any mode of transmission (including mobile transmissions), and to the extent permitted by U.S. laws, any information indicating as closely as possible the physical location to or from which a Domestic Communication is transmitted.

The term does not include the content of any communication.

1.20 “United States” means the United States of America including all of its States, districts, territories, possessions, commonwealths, and the special maritime and territorial jurisdiction of the United States.

1.21 “U.S. Subsidiaries” means all those subsidiaries, divisions, departments, branches and other components of DT that provide Domestic Communications. If any subsidiary, division, department, branch or other component of DT provides Domestic Communications after the date that all the Parties execute this Agreement, then such subsidiary, division, department, branch or other component of DT shall be deemed to be a U.S. Subsidiary. If DT has or in the future obtains *de jure* or *de facto* control over a joint venture or other entity that provides Domestic Communications, then the joint venture or entity shall also be deemed to be a U.S. Subsidiary. The term U.S. Subsidiaries shall not include acquisitions by Deutsche Telekom AG in the United States after the date this Agreement is executed by all the Parties only if the DOJ or the FBI find that the terms of this Agreement are inadequate to address national security concerns presented by that acquisition and the necessary modifications to this Agreement cannot be reached pursuant to Section 9.11 below.

1.22 “Wire Communication” has the meaning given it in 18 U.S.C. § 2510(1).

1.23 Other capitalized terms used in this Agreement and not defined in this Article shall have the meanings assigned them elsewhere in this Agreement. The definitions in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

ARTICLE 2: FACILITIES, INFORMATION STORAGE AND ACCESS

2.1 Except to the extent and under conditions concurred in by the FBI and the DOJ in writing:

(a) all Domestic Communications Infrastructure that is owned, operated, or controlled by VoiceStream shall at all times be located in the United States and will be directed, controlled, supervised and managed by VoiceStream; and

(b) all Domestic Communications Infrastructure not covered by Section 2.1(a) shall at all times be located in the United States and shall be directed, controlled, supervised and managed by a U.S. Subsidiary, except strictly for *bona fide* commercial reasons;

(c) all Domestic Communications that are carried by or through, in whole or in part, the Domestic Communications Infrastructure shall pass through a facility under the control of a U.S. Subsidiary and physically located in the United States, from which Electronic Surveillance can be conducted pursuant to Lawful U.S. Process. DT will provide technical or other assistance to facilitate such Electronic Surveillance.

2.2 DT shall take all practicable steps to configure its Domestic Communications Infrastructure to be capable of complying, and DT's employees in the United States will have unconstrained authority to comply, in an effective, efficient, and unimpeded fashion, with:

- (a) Lawful U.S. Process,
- (b) the orders of the President in the exercise of his/her authority under § 706 of the Communications Act of 1934, as amended, (47 U.S.C. § 606), and under § 302(e) of the Aviation Act of 1958 (49 U.S.C. § 40107(b)) and Executive Order 11161 (as amended by Executive Order 11382), and
- (c) National Security and Emergency Preparedness rules, regulations and orders issued pursuant to the Communications Act of 1934, as amended (47 U.S.C. § 151 *et seq.*).

2.3 U.S. Subsidiaries shall make available in the United States the following:

- (a) stored Domestic Communications, if such communications are stored by a U.S. Subsidiary (or any entity with which a U.S. Subsidiary has contracted or made other arrangements for data or communications processing or storage) for any reason;
- (b) any Wire Communications or Electronic Communications (including any other type of wire, voice or electronic communication not covered by the definitions of Wire Communication or Electronic Communication) received by, intended to be received by, or stored in the account of a customer or subscriber of a U.S. Subsidiary, if such communications are stored by a U.S. Subsidiary (or any entity with which a U.S. Subsidiary has contracted or made other arrangements for data or communications processing or storage) for any reason;

(c) Transactional Data and Call Associated Data relating to Domestic Communications, if such data are stored by a U.S. Subsidiary (or any entity with which a U.S. Subsidiary has contracted or made other arrangements for data or communications processing or storage) for any reason;

(d) Subscriber Information concerning customers or subscribers of a U.S. Subsidiary, if such information are stored by a U.S. Subsidiary (or any entity with which a U.S. Subsidiary has contracted or made other arrangements for data or communications processing or storage) for any reason; and

(e) billing records relating to customers and subscribers of a U.S. Subsidiary for so long as such records are kept and at a minimum for as long as such records are required to be kept pursuant to applicable U.S. law or this Agreement.

2.4 U.S. Subsidiaries shall ensure that the data and communications described in Section 2.3(a) - (e) of this Agreement are stored in a manner not subject to mandatory destruction under any foreign laws, if such data and communications are stored by a U.S. Subsidiary (or any entity with which a U.S. Subsidiary has contracted or made other arrangements for data or communications processing or storage) for any reason. U.S. Subsidiaries shall ensure that the data and communications described in Section 2.3(a) - (e) of this Agreement shall not be stored by a U.S. Subsidiary (or any entity with which a U.S. Subsidiary has contracted with or made other arrangements for data or communications processing or storage) outside of the United States unless such storage is strictly for *bona fide* commercial reasons weighing in favor of storage outside the United States.

2.5 DT shall store for at least two years all billing records maintained by U.S. Subsidiaries for their customers and subscribers.

2.6 Upon a request made pursuant to 18 U.S.C. § 2703(f) by a governmental entity within the United States to preserve any information in the possession, custody, or control of DT that relates to (a) a customer or subscriber of a U.S. Subsidiary, or (b) any communication of such customer or subscriber described in (a) above, or (c) any Domestic Communication, DT shall store such preserved records or other evidence in the United States.

2.7 Nothing in this Agreement shall excuse DT from any obligation it may have to comply with U.S. legal requirements for the retention, preservation, or production of such information or data.

2.8 Except strictly for *bona fide* commercial reasons, DT shall not route a Domestic Communication outside the United States.