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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

REPLY IN SUPPORT OF APPLICATIONS FOR CONSENT TO TRANSFER OF CONTROL

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3. *DT Does Not Have Superior Access to Capital as a Result of Its Partial Government Ownership.*

Just as the conclusory allegations about predatory pricing are easily rebutted, so too are the claims that DT has an unfair advantage in capital markets stemming from the German Government's partial ownership. In fact, as described in the Applications and as supported by commenters Securities Industry Association and the Institute for International Economics,[70] there is simply no evidence linking a carrier's partial governmental ownership and its access to capital. If anything, DT's partial governmental ownership may have a *negative* impact on its credit rating.

While Senator Hollings asserts that "lenders are aware that the German government, as Deutsche Telekom's principle [sic] shareholder, will back the debts of Deutsche Telekom,"[71] DT's credit rating — the true mark of lenders' willingness to extend credit to the company — tells quite a different story.[72] Applicants have shown that DT's credit rating is comparable to that of fully privatized carriers, and far lower than that of the German government.[73] As Ambassador Richard W. Fisher, the Deputy United States Trade Representative, confirmed in his recent congressional testimony, British Telecom, a wholly privatized carrier, enjoys a higher bond rating from Standard and Poor's than DT, which in turn has a credit rating comparable to that of wholly private companies BellSouth and AT&T.[74] Based on this information,

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70/ *See* Comments of Securities Industry Association ("SIA") at 2-3; Comments of IIE, Attachment at 1.

71/ Comments of Senator Hollings at 6.

72/ Notably, the German government has not backed any of DT's debt since the company was privatized in 1995. *See* VoiceStream-DT App. at 38-39.

73/ *See id.*

Ambassador Fisher concluded that the "[m]arket data do not demonstrate a conclusive link between government ownership and access to capital."[75]

This conclusion is further borne out by the costs of capital reported by Bloomberg for these representative telecommunications carriers. With respect to equity-derived capital, Bloomberg reported in September 2000 that BellSouth, SBC, Verizon, and AT&T all had lower costs of capital than the partially government-owned carriers DT and France Telecom.[76] And when the costs of debt and equity are combined to produce a weighted average cost of capital, the figures again fail to show a clear advantage for government-owned firms.[77]

The recent downgrade of DT's long-term credit rating further demonstrates that its partial governmental ownership does not insulate it from ordinary market forces. Acknowledging "an expected surge in the competitive environment in Germany," Moody's stated that the pressure on DT to rebalance quickly an "historically . . . inadequate tariff structure" — a legacy of DT's former status as a government-owned monopoly — had resulted in increased operating risks.[78] Notably, DT's credit downgrade paralleled that of similarly situated carriers, and the credit agencies' analyses made no mention of government ownership at all — much less of that factor

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74/ *Foreign Government Ownership of American Telecommunications Companies: Oversight Hearing Before the Subcomm. on Telecommunications, Trade and Consumer Protection of the House Commerce Comm.*, 106th Cong. 6 (2000) (statement of Richard W. Fisher, Deputy U.S. Trade Representative) (attached as Appendix D) ("*Fisher Testimony*").

75/ VoiceStream-DT App. at 39.

76/ *See Fisher Testimony* at 7.

77/ *See Sidak Decl.* at 14.

78/ Rating Action: Deutsche Telekom AG, *Moody's Downgrades the Long-Term Debt Ratings of Deutsche Telekom AG to A2*, Moody's Investors Service (Oct. 5, 2000), *available at* www.moodys.com/moodys/cust/research/venus/Release/Rating%20Action/600020481/2000400000296446.asp?namedEntity=Rating+Action.

as a counterweight — in justifying their actions.[79] All available evidence thus refutes the notion that DT's partial government ownership gives it superior access to capital.[80]

Indeed, the remnants of governmental ownership may constitute a *minus*-factor in the ratings of the major credit agencies. One study has concluded that, for purposes of assessing a company's financial soundness, "partial privatization may be worse . . . than complete privatization or continued state ownership."[81] Additional evidence confirms that partial-governmental ownership may be an albatross, rather than a benefit, in terms of a carrier's access to capital. For example, the partial government ownership of Telstra (Australia's 50.1 percent government-owned telecommunications carrier) has been cited as a negative factor in Telstra's credit-rating equation. "As a fully-owned government business enterprise Telstra enjoyed the same credit rating as the Australian Government. Partially privatised, it must fend for itself in proving the soundness of its future prospects."[82] Because partial governmental ownership can result in greater public expectations and demands for service, increased liability, and less market

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79/ *See id. See also The Wireless Gamble*, The Economist, Oct. 14, 2000; *Is the End in Sight?*, The Economist, Oct. 14, 2000.

80/ As discussed in Part II.B below, the fact that some of DT's *old* debt was guaranteed by the German government does not affect DT's *current* access to capital. Since January 2, 1995, the date of DT's registration in the Commercial Register as a private corporation, the German government has not provided — and by law may not provide — any guarantee of the debts or liabilities of DT. *See* VoiceStream-DT App. at 39. DT could not unilaterally remove the guarantee attached to debt incurred before privatization in 1995; such action would require the consent of the holders of the debt instruments. *See id.* at 39 n.118.

81/ Anthony E. Boardman & Aidan R. Vining, *Ownership and Performance in Competitive Environments: A Comparison of the Performance of Private, Mixed, and State-Owned Enterprises*, 32 J.L. & Econ. 1, 26 (1989).

82/ Lyn Allison, *Is Reducing Public Debt So Great?*, Australian Financial Review, May 18, 2000.

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.

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Powertel, Inc.,	)	IB Docket No. 00-187
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Transferors,	)	
	)	
and	)	
	)	
Deutsche Telekom AG,	)	
	)	
Transferee.	)	

DECLARATION OF J. GREGORY SIDAK

III. The Negative Effect on Incumbent Wireless Carriers Could Not Result from Anticompetitive Behavior

22. Consider now the main question raised by opponents of Deutsche Telekom's acquisition of VoiceStream: Could losses to U.S. incumbent wireless carriers result not from greater competition but from anticompetitive behavior that is unique to an entrant that has partial government ownership? Policy makers in the United States might have two kinds of competitive concerns about a firm substantially owned by a foreign government entity.

23. First, the firm might theoretically enjoy an artificially low cost of capital compared with that of companies having no government ownership. If the firm's bonds were backed, explicitly or implicitly, by the full faith and credit of the foreign government, the firm might be able to borrow more cheaply than a company that faces some prospect of failure.

24. Second, the firm with partial government ownership might theoretically be able to cross-subsidize its entry into the U.S. market through supracompetitive pricing at home. This might happen if the firm does not face meaningful competition at home or the regulator in the firm's home market treats the firm leniently as a result of its government ownership.

25. Neither of these competitive concerns fits the facts of Deutsche Telekom and its acquisition of VoiceStream. Let us first consider the fear of government subsidization of capital.

A. Deutsche Telekom Does Not Benefit from Subsidized Capital

26. Deutsche Telekom's debt is not backed, explicitly or implicitly, by the full faith and credit of the German government. Deutsche Telekom does not benefit from any preferential conditions regarding access to capital, such as government guarantees. After January 2, 1995, the date of Deutsche Telekom's registration in the Commercial Register in Germany, the company's

liabilities incurred were no longer guaranteed by the Federal Republic of Germany.[5] Further evidence that Deutsche Telekom does not have a subsidized cost of capital is found in Deutsche Telekom's current credit rating.

1. Deutsche Telekom's Bond Ratings Are Inconsistent with the Credit-Subsidization Hypothesis

27. Deutsche Telekom's bond ratings refute the hypothesis that the company has subsidized capital. As of January 3, 2001, Deutsche Telekom's credit ratings were A2 (Moody's) and AA- (Standard & Poor's), respectively. As Table 1 indicates, the German government is rated significantly higher, at the highest possible rating of AAA.

TABLE 1: CREDIT RATINGS FOR SELECTED GLOBAL TELECOMMUNICATIONS COMPANIES (JANUARY 2001)

Carrier or Government	Standard & Poor's Rating	Moody's Rating
German Government	AAA	Aaa
SBC Communications Inc.	AA-	Aa3
Verizon Communications	A+	A1
British Telecom*	A	A2
AT&T Corp. **/***	A	A2
Deutsche Telekom*	A-	A2
WorldCom Inc.*	A-	A3

Notes: *Standard & Poor's: Negative outlook. ** Standard & Poor's: Negative credit watch. *** Moody's: On watch for possible downgrade.
Sources: Standard & Poor's ratings obtained from Standard & Poor's New York Ratings Desk at (212) 438-2400 on Jan. 2, 2001. Moody's ratings obtained from Moody's New York Rating Desk at (212) 553-0377 on Jan. 2, 2001.

Deutsche Telekom's credit rating not only is significantly lower than the German government's credit rating, but also is below or comparable with the credit ratings of private telecommunications firms in the United States and Europe. For example, Deutsche Telekom's

5. DEUTSCHE TELEKOM AG, PROSPECTUS FOR 200 MILLION ORDINARY SHARES IN THE FORM OF SHARES OR AMERICAN DEPOSITARY SHARES, June 17, 2000, at 23, *available at* <http://www.eoffering.com/company/pdf/deutsche _telekom.pdf> [hereinafter DEUTSCHE TELEKOM PROSPECTUS].

rating is below British Telecom's (A), Verizon's (A+), AT&T's (A), and SBC's (AA-), while WorldCom's credit rating is the same as Deutsche Telekom's, at A-.

28. Deutsche Telekom's most recent bond issue in June of 2000 was very successful because the bonds were priced extremely favorably.[6] Deutsche Telekom issued bonds priced at an interest rate that was equivalent to an A credit rating. At such a rating, the bonds had a lower face value (price), but bear a higher rate of interest. At the time, both major credit agencies, Moody's and Standard & Poor's, placed Deutsche Telekom on a credit watch with a negative outlook, and have since downgraded the company's credit ratings.

2. Deutsche Telekom's Weighted-Average Cost of Capital Is Inconsistent with the Credit-Subsidization Hypothesis

29. A weighted-average cost of capital (WACC) analysis can be used to address the claims the Deutsche Telekom has preferential access to capital by virtue of its partial government ownership. The results of this analysis are also inconsistent with the credit-subsidization hypothesis.

30. A firm's WACC is the expected return on a portfolio of all of that firm's securities.[7] The formula for WACC is simply a weighted-average of the return on equity and the return on debt or:

$$\text{WACC} = D/V\,(r_D)\,(1 - t) + E/V\,(r_E),$$

where D is the firm's outstanding debt, E is the market capitalization of the firm's equity, V is the sum of the firm's outstanding debt (D) and the market capitalization of the firm's equity (E),

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6. DEUTSCHE TELEKOM PROSPECTUS, *supra* note 5.
7. *See, e.g.*, RICHARD A. BREALEY & STEWART C. MYERS, PRINCIPLES OF CORPORATE FINANCE 457 (McGraw-Hill, 5th ed., 1996).

r_D is the firm's average borrowing rate, r_E is the firm's return on equity,[8] and t is the corporate income tax rate.[9]

31. To determine whether Deutsche Telekom has preferential access to capital, I computed the weighted-average cost of capital for Deutsche Telekom and other telecommunications operators. If Deutsche Telekom's WACC is not significantly less than the WACC of its global competitors, then one must reject the hypothesis that Deutsche Telekom has the opportunity to engage in predatory tactics in the United States by having preferential access to capital due to its partial government ownership.

32. It is implausible that Deutsche Telekom's cost of capital is subsidized by the German government. As Table 2 shows, Deutsche Telekom's weighted average cost of capital is *higher* than that of Sprint, SBC, AT&T, BellSouth, and Verizon and is roughly equal to British Telecom's cost of capital.

8. To estimate the firm's return on equity, I use the capital-asset pricing model—that is, the firm's return on equity is equal to the risk-free rate of return plus the product of the firm's "beta" (the sensitivity of a particular stock to market movements) and the excess return on all equities.

9. I use the tax rate of the country that hosts the parent company. For example, for Deutsche Telekom, I use the corporate tax rate of Germany, which is 31.65 percent. DEUTSCHE TELEKOM AG 1999 ANNUAL REPORT, SEC FORM 20-F 1999, filed April 19, 2000, at 73 [hereinafter DEUTSCHE TELEKOM ANNUAL REPORT] (According to Deutsche Telekom, "German corporations are subject to corporate income tax at a rate of 40 percent on non-distributed profits and of 30 percent on distributed profits. The corporate income tax liability is subject to a 5.5 percent solidarity surcharge (Solidaritätszuschlag). This results in an effective aggregate charge of 31.65 percent on distributed profits.").

TABLE 2: WEIGHTED AVERAGE COST OF CAPITAL (WACC) FOR MAJOR TELECOMMUNICATIONS COMPANIES

Rank	Company	Weighted Average Cost of Capital	Government Ownership
1	Telmex	15.7	0.0%
2	Qwest	15.7	0.0%
3	Worldcom	13.5	0.0%
4	Vodafone	13.3	0.0%
5	France Telecom	13.0	63.6%
6	Telecom Italia	11.9	3.46%
7	British Telecom	11.9	0.2%
8	Deutsche Telekom	11.7	58.2%
9	Bell Canada	11.7	0.0%
10	SBC	10.8	0.0%
11	Sprint	10.1	0.0%
12	Telefonica	9.9	0.0%
13	AT&T	9.8	0.0%
14	Verizon	8.7	0.0%
15	Bell South	8.6	0.0%
16	Telstra	8.2	50.1%
17	NTT	7.9	53.2%
18	KPN	7.5	43.0%
19	Eircom	7.4	1.1%
20	Telecom New Zealand	7.2	0.0%
	Average	**10.7**	

Note: Classes of non-traded common stock are not included in the market value of current outstanding equity.
Sources: Market risk premium from RICHARD A. BREALEY & STEWART C. MYERS, PRINCIPLES OF CORPORATE FINANCE 146 (McGraw-Hill, 5th ed., 1996). Risk-free rate is the 10-Year Treasury Constant Maturity Rate on December 15, 2000, downloaded from the Federal Reserve Bank of Chicago's web site at http://www.frbchi.org/econinfo/finance/int-rates/const_cd.pm. Betas downloaded from: http://www.nasdaq.com/. Debt borrowing rates, value of debt (which includes current maturities), corporate income tax rates, and shares outstanding taken from, or calculated based on, data from companies' annual reports and publicly available SEC documents. Market prices per share downloaded on January 2, 2001 from various stock exchanges' websites and http://finance.yahoo.com/?u.

33. In short, the theoretical argument that a firm with partial government ownership might have access to subsidized capital simply does not describe Deutsche Telekom. Deutsche Telekom's cost of capital is virtually the same as that of France Télécom, a company with a greater level of government ownership, and that of British Telecom, a company with no appreciable government ownership at all. Clearly, partial government ownership does not determine the cost of capital for global telecommunications carriers.

12-12

Securities Industry Association

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December 12, 2000

Chairman William E. Kennard
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Commissioner Susan Ness
Federal Communications Commission
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Commissioner Harold W. Furchtgott-Roth
Federal Communications Commission
Room 8-B115H
445 12th Street, S.W.
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Commissioner Gloria Tristani
Federal Communications Commission
Room 8-C302C
445 12th Street, S.W.
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Commissioner Michael K. Powell
Federal Communications Commission
Room 8-A204C
445 12th Street, S.W.
Washington, DC 20554

Dear Chairman Kennard, and Commissioners Ness, Furchtgott-Roth, Tristani, and Powell:

On behalf of the Securities Industry Association, I am writing to express our concern about certain statements made in letters sent to you by Senator Ernest Hollings (D-SC), regarding the proposed merger of Deutsche Telekom and VoiceStream Wireless, which is now being considered by the Federal Communications Commission. Senator Hollings, in recent correspondence, appears to be urging the Commission to adopt an interpretation of Section 310 of the Communications Act that would bar Deutsche Telekom from indirectly owning an FCC license, because after the merger the German government would still have a 44% ownership interest in Deutsche Telekom. We urge the Commission not to adopt such an interpretation, which would squarely contradict statements made by the United States government during negotiations of the WTO Basic Telecommunications Agreement, and which would violate the U.S. commitments in that agreement. Such an interpretation is not necessary to protect legitimate U.S. government interests under existing law, and would certainly undercut the United States' ability to further open foreign markets to U.S. consumers, investors and businesses.

Interpreting 310(a) categorically to prohibit substantial government ownership of a company that indirectly, rather than directly, holds a U.S. wireless license would violate our commitments in the WTO Basic Telecommunications Agreement, which the U.S. strongly backed. During the negotiations of that agreement, the U.S. was asked by its negotiating partners to clarify its market access commitments, particularly with respect to foreign government ownership. In an official communication to international negotiators, the U.S. expressly stated: "There will be no limits on indirect foreign ownership of such licenses by foreign governments (including government-owned corporations) . . ."[1] The United States then explained that "[t]here is a limit on direct ownership, but it is one of form not substance."[2] The Commission should continue to interpret Section 310(a) consistently with U.S. WTO commitments, as the Commission did in its post-WTO *Telecom Finland* decision.[3]

Second, the Commission already possesses the legal authority necessary to take action in cases where it is believed a security threat or a threat to competition in the United States exists. There is therefore is no need to interpret Section 310(a) to create a bar on indirect foreign government ownership of FCC licensees. The Commission has clearly stated in its *Foreign Participation Order* that it will consider whether a merger presents a "very high risk to competition" in the United States, and any national security considerations raised by the Executive Branch.[4] The Commission should fully evaluate these two factors.

We note that a least one allegation of anticompetitive harm levied against this merger during earlier congressional debates appears to be unsubstantiated. There is simply no evidence that Deutsche Telekom's partial governmental ownership gives it any advantage in gaining access to capital. In testimony before the House Commerce Committee, noted economist Greg Sidak pointed out that Deutsche Telekom's Standard & Poor's and Moody's bond ratings are consistent with those of other large, but fully privately owned, telecommunications companies such as Verizon, AT&T and SBC.[5] Mr. Sidak also calculated a weighted average of debt and equity capital for a number of

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1 *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).

2 *Id.*

3 *See Telecom Finland, Ltd.*, 12 FCC Rcd. 17648, 17651 (1997).

4 *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd. 23891, 23913-14 (1997) ("*Foreign Participation Order*").

5 *Foreign Government Ownership of American Telecommunications Companies: Hearing of the Subcomm. on Telecommunications, Trade and Consumer Protection of the House Comm. on Commerce*, September 7, 2000 (prepared testimony of J. Gregory Sidak at 11-12) (available at http://www.house.gov/commerce/).

large telecommunications companies, which showed that Deutsche Telekom had a higher cost of capital that these other large, but fully privately owned, telecommunications companies.[6]

Third, the use of FCC licensing processes to review market conditions outside the U.S. that are wholly unrelated to the merger, particularly in the face of international commitments to the contrary, sets a poor policy precedent. Had the U.S. wished to impose a market access test as a condition of entering the U.S. market, it could have expressly proposed such a test as part of its WTO basic telecommunications commitments. But the U.S. did not take such a reservation, so the only possible impact of *de facto* imposing such a condition now would be to undercut U.S. efforts to open foreign markets, which are currently ongoing, for example, in the FTAA and WTO. That would reduce economic growth and job creation prospects for the U.S. economy. We are convinced that U.S. leadership to open foreign markets has been a key factor in supporting global economic growth. The FCC should not inadvertently jeopardize the gains of the last decade.

Finally, U.S. consumers, investors and businesses have enjoyed the benefits of foreign investment in the U.S. More choice and lower cost products for consumers, new sources of capital for innovation and job creation, and the transfer of new technology and management practices to U.S. firms and workers could all be lost if foreign investors are discouraged, indeed prohibited, from entering the U.S. market. Rather, we respectfully urge the Commission to continue to pursue its historic role in pushing for open and fair foreign markets by honoring U.S. commitments designed to do just that.

Sincerely,

Steve Judge

Steve Judge
Senior Vice President,
Government Affairs

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6 *Id.* at 13-14.

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November 7, 2000

Chairman William E. Kennard
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Commissioner Michael K. Powell
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Washington, DC 20554

Dear Chairman Kennard, and Commissioners Ness, Furchtgott-Roth, Tristani, and Powell:

In September 2000, the Institute for International Economics published the attached policy brief, entitled "'No' to Foreign Telecoms Equals 'No' to the New Economy!" Because many of the points we made in that policy brief with respect to legislation proposed by Sen. Hollings are equally applicable to the Federal Communications Commission's deliberations regarding the VoiceStream/Deutsche Telekom merger, we are submitting that policy brief for your consideration.

In our policy brief, we reviewed the facts of the VoiceStream/Deutsche Telekom merger and concluded that it exemplifies the sort of horizontal expansion that *adds* to competition in the U.S. market. Unless VoiceStream combines with a carrier like Deutsche Telekom that is not already in the U.S. market, a merger is likely to subtract competition. We also concluded that Deutsche Telekom does not derive special benefits from the German government's ownership as competitors have alleged. For example, independent credit ratings show no discernable difference between Deutsche Telekom's credit rating, and the ratings of other large telecommunications companies.

We believe that what is at stake as the Commission considers this merger is no less than the United States' credibility as a trading partner. If the

FCC uses its statutory powers to block Deutsche Telekom's acquisition of VoiceStream based on Deutsche Telekom's degree of government ownership, protectionist forces around the world will learn by bad example and find new reasons to block U.S. telecom expansion abroad. This is especially true now that the merger has cleared U.S. antitrust authorities without an objection. U.S. telecom firms and consumers would be significant losers.

If the FCC denies or conditions the VoiceStream/Deutsche Telekom merger based on the German government's ownership interest in Deutsche Telekom, the Commission will shout a triple "No!": "No" to foreign competition, "No" to American consumers, and "No" to U.S. telecom firms. To shout this triple "No" is tantamount to shouting "No" to the new economy and the prosperity it is bringing.

Sincerely,

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INSTITUTE FOR INTERNATIONAL ECONOMICS

Number 00-7 September 2000

International Economics Policy Briefs

"No" to Foreign Telecoms Equals "No" to the New Economy!

Gary C. Hufbauer and Edward M. Graham
Institute for International Economics

Gary C. Hufbauer is Reginald Jones Senior Fellow and Edward M. Graham is a senior fellow at the Institute for International Economics. Graham is the author of Fighting the Wrong Enemy: Antiglobal Activists and Multinational Enterprises. *Hufbauer is coeditor of* Unfinished Business: Telecommunications after the Uruguay Round.

Within a few weeks, the United States will make a pivotal decision—whether to prohibit foreign telecommunications firms that are partly owned by foreign governments from competing in the US market. The decisive case is Deutsche Telecom's bid to acquire the US mobile telephone operator VoiceStream (and VoiceStream's own new acquisition, PowerTel).

Senator Ernest Hollings (D-SC) is doing everything he can to stop the German telecom giant. Along with 29 Senate cosponsors, Hollings has introduced a bill (S. 2793) that would block Deutsche Telecom, or any other telecom owned more than 25 percent by a foreign government, from acquiring a US telecom firm. S. 2793 may not pass, but to reinforce their objections, Senator Hollings and the 29 other senators wrote a stern letter to William Kennard, Chairman of the Federal Communications Commission (FCC), urging the FCC to block the acquisition. Hollings worries about what he sees as the unfair character of competition between privately-owned US telecom firms and publicly-owned foreign firms. To put the debate in a sound bite, "How can a private firm compete with a government wallet?"

But even at the sound bite level, it's wrong to characterize Deutsche Telecom as an extension of the German government's wallet. Deutsche Telecom is now 42 percent privately owned (US investors own approximately 20 percent of all privately held Deutsche Telecom shares). Acquisition of VoiceStream by Deutsche Telecom, through a share exchange, will increase the private ownership of Deutsche Telecom to 55 percent. The German Federal Government is already a largely passive investor, holding no "golden share" in Deutsche Telecom and only one of 20 board seats; in fact, the German government plans to sell off the rest of Deutsche Telecom as fast as market conditions permit. Deutsche Telecom enjoys no special tax breaks. Nor can it borrow from the German Finance Ministry. Indicative of the arm's length relation between Deutsche Telecom and the German government is that the Standard & Poor's credit rating for Deutsche Telecom is AA- (the same as AT&T, SBC, and BellSouth), while the German sovereign rating is AAA.

> ***If Hollings prevails in his campaign to block Deutsche Telecom, two groups of Americans will be certain losers—all US consumers and most US telecom companies.***

If Hollings prevails in his campaign to block Deutsche Telecom, two groups of

11

least 87 local loop access agreements.[14] In addition, many city-owned carriers and other entities (*e.g.*, NetCologne and Colt) have deployed local network infrastructure of their own, and 18 carriers have been awarded licenses to provide service using wireless local loops.[15] Other alternative providers include broadband cable operators, which have access to more than 25 million homes, and electric utilities. As a result, approximately 50 percent of towns in German with more than 50,000 inhabitants, and 64 percent of Germany's 83 largest towns and cities. have a choice of at least one alternative provider, and new entrants handle over 20 percent of the total volume of calls placed in Germany.[16]

7. Please explain the discrepancy between the weighted average cost of capital estimates provided in the statements by Sidak (at 14) and Fisher (at 8) included in the appendices to the Applicants' Reply.

The Declaration of Gregory Sidak fully explains the methodology he employed in calculating DT's weighted average cost of capital ("WACC").[17] Because we are not privy to Ambassador Richard Fisher's methodology, however, we cannot explain with any degree of certainty the discrepancy between the WACC estimate for DT provided by Mr. Sidak (11.7%) and that provided by Ambassador Fisher (5.32%). Most likely, this discrepancy results from the use of different values for DT's average borrowing rate and return on equity. Because these components of the equation are subject to change as a result of differing methodologies, the results are subject to change as well.[18]

Importantly, the overarching point made by both Mr. Sidak and Ambassador Fisher is exactly the same: An analysis of the WACC of many of the leading privatized and partially government-owned telecommunications carriers fails to demonstrate that DT has preferential access to capital vis-á-vis other global telecommunications companies. In Mr. Sidak's analysis, he showed that DT's WACC is actually *higher* than that of Sprint, SBC, AT&T, BellSouth, and Verizon, all fully privatized corporations. Similarly, Ambassador Fisher concluded that DT's WACC is only slightly lower than that of Verizon or BellSouth.

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14 European Commission, *Sixth Report on the Implementation of the Telecommunications Regulatory Package*, Annex 2, at 123 (Dec. 7, 2000).

15 *RegTP Mid-Year Report 2000* at 9.

16 *Id.* at 12-13.

17 *See* Sidak Declaration at 12-14 (Exh. B to Reply Comments).

18 Notably, the market risk premium of 8.4 percent used by Mr. Sidak — and not by Bloomberg (Ambassador Fisher's source) — is a standard estimate used in leading text books. *See, e.g.*, Richard A. Brealey and Stewart C. Myers, *Principals of Corporate Finance* 180 (5th ed. 1996).

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

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

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Nor is section 310(a) implicated here, because DT is not the "representative" of a foreign government.[53] The Commission has interpreted the phrase "representative of a foreign government" to mean a party acting "in behalf of" or "in connection with" a foreign government.[54] As shown below, DT does not act in behalf of or in connection with the German government. (*See infra* Part III.B.1.) In any event, "Section 310(b)(4) creates an exception to Section 310(a) to permit a foreign government to hold *indirectly* a U.S. license, so long as the Commission does not find that denying such control would serve the public interest."[55] Thus, because DT's control of VoiceStream's licenses will be indirect, section 310(b)(4) is the only applicable statutory provision.

A. The Merger Will Produce Substantial Procompetitive Benefits And Pose No Threat to Competition.

The merger of DT and VoiceStream will serve the public interest by promoting vigorous competition in the U.S. mobile telephony market. In approving VoiceStream's recent mergers with Omnipoint and Aerial, the Commission recognized that expanding VoiceStream's coverage area is critical to the company's ability to compete with larger nationwide mobile telephony providers — Verizon Wireless, AT&T Wireless, Sprint PCS, Nextel Communications, and SBC/BellSouth. The transaction with DT will give VoiceStream the financial resources it needs to build out its existing licenses and strengthen its existing networks. The transaction also will enable VoiceStream to acquire additional licenses to expand its licensed footprint and to provide

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53/ *See id.* § 310(a).

54/ *See QVC Network, Inc.*, 8 FCC Rcd 8485 ¶ 21 (1993); *Russell G. Simpson*, 2 F.C.C.2d 640 (1966); *see also Fox Television Stations, Inc.*, 10 FCC Rcd 8452 ¶ 175 (1995).

55/ *Telecom Finland, Ltd.*, Order, 12 FCC Rcd 17648, 17651 ¶ 7 (1997) ("*Telecom Finland*") (emphasis added); *see also Applications of Intelsat LLC*, Memorandum Opinion and Order, FCC 00-287, File Nos. SAT A/O 20000119-00002, et al., ¶¶ 44-55 (rel. Aug. 8, 2000).