

**VIA ELECTRONIC COMMENT FILING SYSTEM**

January 8, 2001

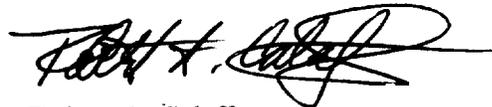
Ms. Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

**RE: IB Docket No. 00-187**

Dear Ms. Salas:

Enclosed for filing in the above captioned proceeding is the Statement of the Honorable Michael Kantor, which addresses the importance of U.S. trade interests, including the World Trade Organization's Basic Telecommunications Agreement, to the FCC's review of the applications for consent to transfer of control of licenses held by VoiceStream Wireless Corporation and Powertel, Inc. to Deutsche Telekom AG. Copies of Ambassador Kantor's Statement have also been served to the individuals listed in the attached Service List. Please do not hesitate to contact me with any questions.

Sincerely,



Robert A. Calaff  
Corporate Counsel –  
Governmental & Regulatory Affairs

Enclosures

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

In the Matter of )  
 )  
VoiceStream Wireless Corporation and ) **IB Docket No. 00-187**  
Powertel, Inc., Transferors and )  
 )  
Deutsche Telekom AG, Transferee )  
 )  
Application for Consent to Transfer of Control )  
and Petition for Declaratory Ruling )

## STATEMENT OF MICHAEL KANTOR

I have been asked by VoiceStream Wireless Corporation (“VoiceStream”) to address the importance of U.S. trade interests, including the World Trade Organization (“WTO”) Basic Telecommunications Agreement (“BTA”), to the FCC’s review of the application (the “DT Application”) for approval of the purchase of VoiceStream and Powertel, Inc. by Deutsche Telekom AG (“DT”).

My professional qualifications are set forth at Exhibit A, attached hereto. Briefly summarized, I am a partner in the law firm of Mayer, Brown & Platt. From 1996 to 1997, I was the U.S. Secretary of Commerce and, from 1993 to 1996, I was the U.S. Trade Representative (“USTR”). As the USTR, I oversaw U.S. efforts to establish the WTO and to commence negotiation of the BTA.

***Denial of the DT Application because of DT's partial government ownership would breach U.S. obligations under the BTA and the GATS.***

The binding U.S. schedule of commitments in the BTA clearly permits entry by foreign-government owned carriers. Common sense indicates that we would not have a BTA if the United States had insisted on full privatization as a prior condition to entry into the U.S. market. This common sense observation is born out by the history of BTA negotiations. After submitting its first offer for the BTA, on July 31, 1995, and having this offer rejected, the United States subsequently submitted a second, revised offer on February 26, 1996. This offer states in part as follows:

The revision also sets out the U.S. offer regarding foreign ownership of common carrier radio licenses in response to requests for clarification from our negotiating partners. The United States offers up to 100% foreign indirect ownership of common carrier radio licenses – there will be no limits on indirect ownership of such licenses by foreign governments (including government-owned corporation), non-U.S. nationals or non-U.S. corporations or other business entities.<sup>3</sup>

Consequently, the final U.S. commitment to the BTA, dated February 12, 1997, states simply “None” when addressing whether there would be limits on indirect foreign ownership of U.S. common carrier wireless licenses. The USTR’s communication with Congress clarified that the U.S. commitment permits a foreign government to indirectly own a U.S. common carrier radio licensee. In response to written questions from Senator Trent Lott, then acting USTR Barshefsky stated the following:

[t]he offer places no new restrictions on indirect foreign ownership of a U.S. corporation holding a radio license. Section 310(b)(4) allows such indirect foreign ownership unless the Federal Communications Commission finds that the public interest will be served by the refusal to grant such a license. The U.S. offer is to allow indirect foreign ownership, up to 100%, under this provision. The U.S. offer permits a foreign government indirectly to own a radio license, unless the FCC finds that such ownership is not in the public interest.<sup>4</sup>

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<sup>3</sup> COMMUNICATION FROM THE UNITED STATES, Draft Offer on Basic Telecommunications, World Trade Organization, February 26, 1996 (emphasis added).

<sup>4</sup> Written Responses of Acting U.S. Trade Representative Charlene Barshefsky to Questions from Senator Lott (undated), reprinted in 143 Cong. Rec. S1945, S1962 (daily ed. Mar. 5, 1997) (emphasis added).

The United States would breach its BTA commitment if the FCC were to deny the DT Application merely because DT is partially owned by the German government, or to impose a substantial privatization requirement as a condition precedent to entry. Were the FCC to impose such a restriction, the United States would breach its market access, national treatment and most favored nation obligations under the GATS.

In negotiating the BTA, the USTR consulted with other federal agencies, including especially the FCC with respect to the foreign ownership provisions of the Communications Act of 1934, as amended (the "Act"). The FCC would have resisted any attempt to submit an offer to the WTO that results in a violation of the Act. Instead, the Commission assisted in negotiations and fully endorsed the final U.S. commitment in the BTA. The Commission thereby participated in the U.S. Government's commitment to the WTO, which the DT Application now calls on the U.S. Government to honor. Therefore, we may presume that the binding schedule of commitments in the BTA is consistent with the Act and that the FCC, the expert agency, will interpret and enforce the Act in a manner that comports with the BTA.

***The FCC must exercise its public interest authority in compliance with the BTA.***

As the FCC has recognized in its order implementing the BTA, the FCC may unilaterally use its public interest authority to remedy a very high likelihood of harm to competition in a U.S. market. However, it may not do so in the case of conduct unrelated to competition in the United States: any unilateral FCC action to restrict entry because of conduct unrelated to competition in a U.S. market risks violating the BTA and the GATS.<sup>5</sup> The FCC has recognized the importance of limiting its public interest review in order to ensure that the United States complies with the BTA:

discriminating among foreign applicants based on the quality of their WTO commitment or the extent of the implementation of their commitment could raise GATS concerns. Adopting such a policy could damage relations with our trading partners and serve as a poor example to other countries also implementing their market opening commitments. . .

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<sup>5</sup> See Reply Comments of the Office of the United States Trade Representative, Oct. 17, 1997, 9, submitted in *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142.



WORLD TRADE  
ORGANIZATION

GATS/SC/90/Suppl.2

11 April 1997

(97-1457)

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Trade in Services

THE UNITED STATES OF AMERICA

Schedule of Specific Commitments

Supplement 2

(This is authentic in English only)

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This text supplements the entries relating to the Telecommunications section contained on pages 45 to 46 of document GATS/SC/90.

UNITED STATES - SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply:	1) Cross-border supply	2) Consumption abroad	3) Commercial presence	4) Presence of natural persons	Additional Commitments
Sector or Sub-sector	Limitations on Market Access				Limitations on National Treatment
<p><b>2.C. TELECOMMUNICATIONS SERVICES:</b></p>					
<p>2.C.a. Voice services</p>	(1) None				(1) None
<p>2.C.b. Packet-switched data transmission services</p>	(2) None				(2) None
<p>2.C.c. Circuit-switched data transmission services</p>	(3) None, other than				(3) None
<p>2.C.d. Telex services</p>	Comsat has exclusive rights to links with Intelsat and Inmarsat.				
<p>2.C.e. Telegraph services</p>	Ownership of a common carrier radio license:				
<p>2.C.f. Facsimile services</p>	b1 Indirect: None b3 Direct: May not be granted to or held by				
<p>2.C.g. Private leased circuit services</p>	(a) foreign government or the representative thereof (b) non-U.S. citizen or the representative of any non-U.S. citizen				

RESTRICTED

World Trade S/NBGT/W/12/Add.3/Rev.1

26 February 1996

Organization

(96-0709)

Original: English

Negotiating Group on Basic Telecommunications

## COMMUNICATION FROM THE UNITED STATES

Draft Offer on Basic Telecommunications

Revision

The following communication is circulated at the request of the United States to members of the Negotiating Group on Basic Telecommunications.

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The United States has revised its offer of 31 July 1995 (S/NBGT/W/12/Add.3) in response to requests from our negotiating partners. The revision offers unrestricted market access and national treatment to foreign telecommunications services and service suppliers in the "local" telecom market. Thus, the United States is willing to remove barriers to access at the local level. This revision reflects the United States commitment to promote competitive telecommunications services in order to increase the availability and variety of telecommunications services and to lower the prices at which those services are offered. With this revised offer, the United States has signaled its intention to commit to "roll back" existing restrictions on competition at the local level in the event of a successful conclusion to these negotiations.

The revision also sets out the U.S. offer regarding foreign ownership of common carrier radio licenses in response to requests for clarification from our negotiating partners. The United States offers up to 100% foreign indirect ownership of common carrier radio licenses -- there will be no limits on indirect ownership of such licenses by foreign governments (including government-owned corporations), non-U.S. nationals or non-U.S. corporations or other business entities. Nor will there be any limits on the nationality of officers or directors of any company holding directly or indirectly a common carrier radio license. There is a limit on direct ownership, but it is one of form not substance. A foreign government (including a government-owned corporation), a non-U.S. national or a non-U.S. corporation or other business entity can directly own or control a U.S. holding company, which directly owns or control 100% of a U.S. corporation holding a common carrier radio license.

**This offer is contingent** upon the agreement by a critical mass of WTO members to provide market access and national treatment for basic telecommunications services, as well as to provide commitments similar to those offered by the United States on pro-competitive regulatory disciplines. The United States reserves the right to withdraw or amend this offer at any time.  
UNITED STATES - DRAFT OFFER

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector

Limitations on Market Access

Limitations on National Treatment

Additional Commitments

Commitments in these subsectors are undertaken in accordance with the pro-competitive regulatory disciplines described in the column headed "additional commitments".

## 2. COMMUNICATION SERVICES

### C. Telecommunication services

Basic local, inter-exchange and international services; supplied over public telecommunications transport networks using any network technology (e.g., wire-based, radio-based, cable television); facilities-based and on a resale basis; in each of the following market segments:

- a. Voice services
  - b. Packet-switched data transmission services, including frame-relay services
  - c. Circuit-switched data transmission services
  - d. Telex services
  - e. Telegraph services
  - f. Facsimile services
- 1) None

2) None

3) - Subject to spectrum availability.

- Comsat has exclusive rights to links with Intelsat and Inmarsat.

- The right to obtain a licence to land a submarine cable may be restricted.

- A common carrier radio license may not be held directly by a:

(a) foreign government;

(b) non-U.S. citizen;

(c) non-U.S. corporation; or

(d) U.S. corporation of which more than 20% of the capital stock is owned or voted by a foreign government, a non-U.S. citizen or a non-U.S. corporation.

- Access to networks of companies providing local exchange services with fewer than two percent of the United States' phone lines may be limited by state action.

(1) None

(2) None

(3) None

Pro-competitive regulatory disciplines (attached).

g. Private leased circuit services

o. Other

Domestic/international satellite services and satellite links/capacity.

4) Unbound except as indicated in horizontal commitments.

4) Unbound except as indicated in horizontal commitments.

Satellite earth stations

International switching and other international gateway facilities

Mobile services

- Analogue/digital cellular services

- PCS (personal communication services)

- Paging services

- Mobile data services

Video transport services



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

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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**

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Nor is section 310(a) implicated here, because DT is not the “representative” of a foreign government.<sup>53/</sup> 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.<sup>54/</sup> 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.”<sup>55/</sup> 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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<sup>53/</sup> See *id.* § 310(a).

<sup>54/</sup> 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).

<sup>55/</sup> *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 2000119-00002, et al., ¶¶ 44-55 (rel. Aug. 8, 2000).



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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554  
December 13, 2000

In the Matter of	)	
	)	
VoiceStream Wireless Corporation	)	IB Docket No. 00-187
Powertel, Inc.	)	
	)	
Applications under Section 214 and 310(d) of	)	
the Communications Act of 1934, as amended,	)	
for transfer of control to Deutsche Telekom AG	)	

COMMENTS

I. Summary of Argument

The Federal Communications Commission ("FCC") must reject the merger application of Deutsche Telekom ("DT") and VoiceStream Wireless Corp. ("VoiceStream") as that transaction is flatly prohibited by 47 U.S.C. Section 310(a). Section 310(a) prohibits the FCC from granting or permitting the transfer of telecommunications licenses to foreign governments or their representatives. That prohibition is unequivocal and cannot be waived. A combined Deutsche Telekom-VoiceStream falls squarely within the reach of this prohibition. Indeed, the evidence clearly and amply demonstrates that the German government will exercise direct control over and will influence the combined entity post-transaction. This evidence even demonstrates that the parties themselves believe that Deutsche Telekom will continue to be a representative of the German government post-transaction.

47 U.S.C. Section 310(b)(4) does not provide the FCC the authority to waive the prohibition contained in Section 310(a). To find otherwise would read Section 310(a) out of the law and would contravene the plain language of the statute. Moreover, the FCC's only action in this area involved a bureau level decision that appears to be incorrectly decided, lacks

new operating subsidiary, VoiceStream, and therefore over any licenses VoiceStream holds. This control stands in direct contravention to the prohibitions contained in section 310(a), and requires the Commission to deny approval of the transfer of control.

### 1. De Jure Control

The German Government's direct stake in Deutsche Telekom is 58%, giving it *de jure* control over DT, and over VoiceStream if it successfully acquires that U.S. company. While DT was wholly owned by the German government until 1996, it has divested some of its shares to the public. Notwithstanding public promises to the contrary, Deutsche Telekom's divestment appears to have come to an abrupt halt, reflecting the empty promise of the German Government's commitment to privatize further in the near future. Indeed, Deutsche Telekom may not be able to afford the necessary divestment because of the massive debt it has incurred recently, as well as the recent drastic reduction in the price of its stock price. As one German government official put it plainly, "there is no way we are going to sell."<sup>11</sup>

Deutsche Telekom may assert that it does not meet the *de jure* control test for the purposes of the transaction. They may assert that after their acquisition of VoiceStream, the German government's stake in the combined corporation will be diluted to below 50 percent, thereby eliminating any *de jure* control under the FCC's rules. This argument, if carried to its logical extreme, undercuts the plain meaning of Section 310(a). The question of government control must be addressed before, not after the acquisition takes place.

### 2. De Facto Control

Regardless of whether DT argues that the German government stake will be diluted once VoiceStream has been acquired, numerous facts clearly demonstrate that the German government will exercise and retain control over the acquired telecommunications licenses, post transaction. In other words, the record shows that DT-VoiceStream will serve as a representative of the German government post merger, notwithstanding any dilution of the German government's equity stake in the combined entity. These facts completely counter Deutsche Telekom's claim, in its application, that "the German Government exercises no right beyond those of other shareholders in Deutsche Telekom."<sup>12</sup> In reality, the German government's exercise of control over Deutsche Telekom is extensive, and far exceeds the scope of influence of a private shareholder. Indeed, because of this relationship, some telecommunications companies have asserted that Germany has failed to live up to the WTO standard of having open competitive markets and its regulatory regime has been skewed by conflicts of interest between Deutsche Telekom and its German government owners.

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<sup>11</sup> "Time is Working Against Deutsche Telekom's Plan," Wall Street Journal, October 24, 2000.

<sup>12</sup> Deutsche Telekom Petition at ¶ 10.



Before the  
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Washington, D.C. 20554

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

IB Docket No. 00-187

**REPLY IN SUPPORT OF**  
**APPLICATIONS FOR CONSENT TO TRANSFER OF CONTROL**

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**B. Section 310(a) Does Not Apply in Any Event Because DT Is Not a “Foreign Government or the Representative Thereof.”**

Senator Hollings’s argument fails for a second key reason: DT is not a representative of the German government, and neither the German government nor any representative thereof will exercise *de jure* or *de facto* control over the licensee.<sup>118/</sup> The Commission has defined *de jure* control as control of more than 50 percent of a corporation’s shares.<sup>119/</sup> The German government currently owns 43.2 percent of DT’s shares and KfW, the German public bank, owns an additional 16.8 percent (for a total governmental stake of 60 percent).<sup>120/</sup> As a result of DT’s mergers with VoiceStream and Powertel (taking into account France Telecom’s recent sale of its DT shares to KfW), the German government’s interest (held directly or through KfW) will be reduced to approximately 45 percent.<sup>121/</sup> Therefore, the German government (either separately, or together with KfW) will lack *de jure* control over DT — and, in turn, over DT’s licensee subsidiaries — following the Commission’s approval of the proposed transactions.

Senator Hollings’s assertion that the Commission should consider the German government’s *premerger* interest, rather than its *postmerger* interest, is both logically unsound and at odds with the Commission’s precedents. Contrary to the Senator’s assertion that

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<sup>118/</sup> See *Intelsat* at ¶ 48 (applying control test); *Starsys Global Positioning Inc.*, Declaratory Ruling, 10 FCC Rcd 9392, 9393 ¶ 9 (1995) (“*Starsys*”) (same).

<sup>119/</sup> *Starsys* at 9393 ¶ 9.

<sup>120/</sup> DT reported in the Applications that KfW’s interest was 15 percent. As reported in DT’s SEC Form 20-F, in 1998 France Telecom purchased from KfW what amounts today to a 1.8 percent stake in DT. On December 15, 2000, France Telecom decided unilaterally to exercise its option to sell that stake in DT back to KfW. As a result of that transaction, KfW’s ownership interest will increase to 16.8 percent, and the overall *premerger* governmental interest in DT will increase to 60 percent.

<sup>121/</sup> This is Applicants’ current estimate and is subject to certain adjustment mechanisms set out in the Agreement and Plan of Merger Between Deutsche Telekom AG and VoiceStream Wireless Corporation, dated July 23, 2000.

considering the postmerger figure would “undercut[] the plain meaning of section 310(a),”<sup>122/</sup> it is irrelevant how much of DT the German government currently owns. Because the postmerger combination of DT-VoiceStream-Powertel is the entity that will control Commission licenses, the relevant question is how much of *that* entity will be owned by a foreign government. For that reason, the Commission always has examined postmerger ownership percentages in analyzing transactions under section 310.<sup>123/</sup>

Nor will the German government have *de facto* control over the licenses indirectly held by DT. Far from “dominat[ing] the management” of DT,<sup>124/</sup> the German government plays a minimal role in that process. The government possesses no rights superior to those of other shareholders, such as a “golden share” or a special veto right. In fact, the government even has refrained from exercising its full rights as a shareholder. Contrary to Senator Hollings’s suggestion that the government selects all (or a majority of) the members of DT’s Supervisory Board, the government and KfW each have named only one member to that board. And even if the German government and KfW were to select all 10 non-labor members of the Supervisory Board, the presence of 10 labor members on the board would deny the German government a

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<sup>122/</sup> Comments of Senator Hollings at 4.

<sup>123/</sup> See, e.g., *Applications of VoiceStream Wireless Corp. or Omnipoint Corp., Transferors, and VoiceStream Wireless Holding Co., Cook Inlet/VS GSM II PCS, LLC, or Cook Inlet/VS GSM III PCS, LLC, Transferees*, Memorandum Opinion and Order, FCC 00-53, DA 99-1634 & 99-2737, ¶ 14 (rel. Feb. 15, 2000); *Nextwave*, 12 FCC Rcd 2030 (stating that the Bureau agrees to reassess section 310(b)(4) compliance *after* promised transactions diluting foreign interests have been taken).

<sup>124/</sup> *Benjamin L. Dubb Decision*, 16 F.C.C. 274, 289 ¶ 3 (1951). See also *Nonbroadcast and General Action Report No. 1142*, Public Notice, 12 F.C.C.2d 559, 560 (1963) (“*Intermountain Microwave*”) (discussing other indicia of *de facto* control).



meetings that (a) concern the government as shareholder, rather than as sovereign, and (b) confer benefits on the government or KfW that are not available to other shareholders or to all members of the Supervisory Board. As a matter of principle, it would be impossible under the German Stock Corporation Act to direct information regarding the management of DT only to the governmental members of the Supervisory Board, because such information necessarily would become available to the entire Supervisory Board and, in turn, its various constituencies.<sup>36</sup> Consistent with this principle, DT does not hold meetings or produce reports that treat the German government or KfW preferentially vis-à-vis other shareholders or members of the Supervisory Board. Other shareholders and members of the Supervisory Board are also able to obtain information from or meetings with company officials on issues of concern to them.

**15. Other than through voting at shareholder meetings and regulation through RegTP, what influence over DT's business strategy does the government have?**

There are no formal or informal mechanisms for the German government to exercise any influence over DT's business strategy, apart from the government's votes at shareholder meetings. Of course, regulation by RegTP also affects DT's business decisions, just as with other participants in regulated industries.

**16. You state that "[t]he government has always cast its votes in line with the majority of other shareholders..." (See Application p.10). Please advise whether the government is, in any way, bound to vote in this manner and, if so, please provide supporting documentation.**

There is no formal mechanism that binds the German government to vote in line with the majority of other shareholders.

**17. The applicants state that the total government share of DT is currently 60%, and that this share will decrease to approximately 45.7% if the VoiceStream merger is consummated and to approximately 44% if the Powertel merger is subsequently consummated. Section 1.05 of the DT-VoiceStream merger agreement provides that VoiceStream shareholders have the right to receive (1) all cash, (2) all DT shares, or (3) a mix of cash and shares. In addition, the merger agreement calls for adjustments to the cash or stock exchange based on market price. Have the shareholders made their election? How does the possible election combination affect the dilution of the government's interest in DT? What are the assumptions regarding shareholder election and stock value that the statements regarding dilution are based upon? What would the percentage of DT held by the government be if all VS shareholders tendered their shares for an all cash option?**

Regardless of what options shareholders elect under the merger agreement, the German government and KfW will no longer own a majority of DT's stock after the mergers close. The VoiceStream shareholders have not yet made their elections. As outlined in section 1.05(i) of the VoiceStream-DT Merger Agreement, Election Forms will "be mailed to record holders of VoiceStream Common Shares not less than forty five (45) days prior to the anticipated Effective

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<sup>36</sup> See German Stock Corporation Act, § 90.

Time" (*i.e.*, the date the merger becomes effective with the filing of the Certificate of Merger with the Secretary of State of the State of Delaware). These forms must be returned by the "Election Deadline," which is five business days prior to the Closing Date set by the parties. *See* DT-VoiceStream Merger Agreement, § 1.03.

As described more fully in the Registration Statement (SEC Form S-4/F-4) filed February 9, 2001,<sup>37</sup> the basic consideration in the VoiceStream-DT merger is \$30 in cash and 3.2 DT shares for each VoiceStream common share outstanding at the completion of the merger, and each VoiceStream stockholder is entitled to elect to receive this basic mix. VoiceStream stockholders also may elect to receive instead more cash and fewer DT shares, or more DT shares and less cash, by making a "cash" election or a "stock" election. However, the cash and stock elections are subject to proration to preserve an overall mix of \$30 in cash and 3.2 DT shares for all of the outstanding VoiceStream shares taken together, and all three elections also are subject to a tax-related adjustment in some circumstances.

**18. Please state whether DT, the German government, or KfW has entered into any other agreements that are currently in effect that permit a party to "put" (or otherwise sell) DT shares back to DT or KfW as recently occurred with France Telecom?**

None of DT, the German government, and KfW has entered into any other agreement to sell DT shares back to DT or KfW as recently occurred with France Telecom.

**19. Please provide a list of all DT shareholders holding 5% or more of the entire issued share capital of DT.**

The German government and KfW are the only shareholders that hold 5 percent or more of the issued share capital of DT.

**20. Has the total post-merger German government interest changed from 44% due to the 1.8% interest sold by France Telecom to the German government? If so, what will it be?**

Yes, as a result of France Telecom's exercise of its option, the total post-merger interest of the German government has changed from our earlier estimate of approximately 44 percent. Our best estimate at this time is that the German government's post-merger interest will be approximately 45 percent. *See* Reply Comments at 37.

**21. Please provide us with a copy of the Powertel-DT merger agreement.**

A copy is attached at Appendix B.

**22. As we requested during our ex parte meeting on January 19, 2001, please provide a more detailed legal and factual analysis of the paid-in capital issue raised in**

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<sup>37</sup> We will submit a copy of the Registration Statement to the Commission on or about Monday, February 12. Attached to the Registration Statement are amendments the merger agreements.