

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

In the Matter of )  
 )  
VoiceStream Wireless Corporation, ) IB Docket No. 00-187  
Transferor, and Deutsche Telekom AG, )  
Transferee, Application for )  
Consent to Transfer of Control )

**Comments of**  
**Communications Workers of America**

Debbie Goldman  
George Kohl  
501 Third St. N.W.  
Washington, D.C. 20001  
(202) 434-1194 (phone)  
(202) 434-1201 (fax)  
[debbie@cwa-union.org](mailto:debbie@cwa-union.org)

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## Summary

The Communications Workers of America (CWA) submits these comments in support of the application for transfer of control submitted to the Commission by VoiceStream and Deutsche Telekom (DT). CWA represents more than 740,000 employees, the majority of whom work in the telecommunications industry. CWA members are also consumers of telecommunications services.

The telecommunications market is already global. Foreign firms have landed on U.S. shores and entered our airwaves, and U.S. firms have entered foreign markets at an astonishing rate. The question before the Commission is not whether foreign acquisition of a U.S. telecommunications common carrier is in the public interest, but whether this specific transaction will benefit U.S. consumers and workers.

CWA strongly believes that it will. DT's financial resources and expertise will stimulate investment in advanced wireless networks in the U.S., bringing new services to consumers and the growth of good jobs. Equally important, the transfer of DT's unique corporate culture and partnership with its workforce will benefit U.S. consumers with high-quality services and U.S. workers with high-quality jobs.

DT's purchase of VoiceStream is fully consistent with U.S. trade agreements, with Section 310(b)(4) of the Communications Act's public interest standard for foreign ownership of

U.S. common carriers, and with the Commission's market-opening foreign ownership rules. In fact, any Commission decision to deny this transaction solely on the basis of DT's greater-than-25% foreign ownership could pose serious public interest harm by undermining U.S. trade agreements and thereby encouraging retaliation by foreign governments against U.S. telecommunications firms.

The Commission should act expeditiously to approve the proposed VoiceStream-DT merger request.

## **I. Introduction**

In today's global telecommunications marketplace, the Commission must hold foreign telecommunications firms that seek to enter U.S. markets through merger or acquisition to the same high public interest standards that it uses in assessing mergers and acquisitions among U.S. common carriers. The Commission must assess the impact of the acquisition upon competition; the protection and advancement of quality, universal service; the deployment of advanced services to all Americans; network investment; and the growth of good jobs.

On all these measures, the proposed merger between Deutsche Telekom and VoiceStream will provide benefits to U.S. consumers and workers. In addition, the proposed merger meets all statutory and regulatory requirements for foreign ownership of U.S. common carriers and is consistent with U.S. trade agreements. The joint Applicants have indicated their willingness to make Commission approval contingent upon compliance with any agreement reached with the Executive Branch concerning national security, law enforcement, foreign policy or trade concerns. The Commission should approve the transaction.

## II. The Proposed VoiceStream/DT Merger is in the Public Interest

### A. Legal Standard

In a merger review, the Commission considers whether the proposed transaction is in the public interest.<sup>1</sup> The public interest evaluation includes the broad aims of the Communications Act, including, among other things, the implementation of Congress's pro-competitive national policy framework, the preservation and advancement of universal service, the acceleration of deployment of advanced services, and whether the transaction will result in the provision of new services.<sup>2</sup> These standards apply equally in all merger reviews, regardless of the ownership status of the purchaser, foreign or otherwise. In this instant proceeding, the Commission must also assess whether DT's greater-than-25% investment in VoiceStream is consistent with the public interest.<sup>3</sup>

The proposed transaction is in the public interest. It will result in accelerated investment in advanced wireless networks, create good jobs, and bring new services to U.S. consumers. It also provides a unique opportunity to transfer positive elements of DT's corporate culture and

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<sup>1</sup> 47 U.S.C. § 310(d) and 47 U.S.C. § 214(a).

<sup>2</sup> In re Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, CC Docket No. 98-141, Oct. 8, 1999 (rel), 50. *See also* WorldCom/MCI Order, 13 FCC Rcd at 18030-31, 9.; Applications of Teleport Communications Group, Inc., Transferor, and AT&T Corp., Transferee, for Consent to Transfer Control of Corporations Holding Point-to-Point Microwave Licenses and Authorizations to Provide International Facilities-Based and Resold Communications Services, CC Docket No. 98-24; Memorandum Opinion and Order, 13 FCC Rcd 15236, 15242-43, 11 (1998); Bell Atlantic-NYNEX Order, 12 FCC Rcd at 20063, para. 158.

<sup>3</sup> 47 U.S.C. § 310(b)(4)

partnership with its workforce to benefit U.S. consumers with high-quality services and U.S. workers with high-quality jobs.

**B. The Proposed VoiceStream/DT Merger Will Accelerate Network Investment, Create Jobs, and Bring New Services to U.S. Consumers**

The proposed merger will give VoiceStream the additional financial resources it needs to build out its existing licenses and strengthen its existing networks. VoiceStream has built out only 45 percent of its licensed areas.<sup>4</sup> The transaction will also provide the merged entity with the financial resources to acquire additional licenses to expand its national footprint and to invest in next-generation wireless services.<sup>5</sup> Thus, this transaction will result in accelerated network investment, job growth, and the pro-competitive consumer benefits of adding another national facilities-based wireless competitor.

The merger will also result in new services for U.S. consumers. DT's leadership in providing advanced wireless services in Europe will provide U.S. wireless consumers with new options, such as a service that allows wireless customers to dial short codes to access value-added services.<sup>6</sup> DT's expertise in deploying next-generation wireless services in Europe will also benefit U.S. consumers with accelerated deployment of these services.<sup>7</sup>

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<sup>4</sup> In the Matter of VoiceStream Wireless Corporation, Transferor, and Deutsche Telekom AG, Transferee, Application for Consent to Transfer Control, Application for Transfer of Control and Petition for Declaratory Ruling, ("VoiceStream/DT Application"), IB 00-187, Sept. 18, 2000, 24.

<sup>5</sup> *Id.*, 18-19.

**C. The Proposed Merger Will Provide the Opportunity to Transfer Positive Elements of DT's Corporate Culture and a Quality Competitor to the U.S. Telecommunications Market**

One of the potential benefits of a global marketplace is the opportunity to transfer positive aspects of foreign corporate culture and quality competitors to the U.S. environment. In the context of this merger review, U.S. consumers and workers will have the opportunity to benefit from DT's corporate culture, one that protects the interests not only of shareholders, as is the case in the U.S. business environment, but also of workers and their communities.

The German system of co-determination governing corporate legal structures requires corporations to have a two-tier system of governance. There is a Supervisory Board and a Management Board. The Supervisory Board appoints the Management Board, which has responsibilities for all management decisions and negotiations with third parties. The Supervisory Board monitors the Management Board's activities, receives regular reports from the Management Board, and can require prior approval of some business decisions. Under German law, one half of the Supervisory Board members are elected by employees to be worker representatives.<sup>8</sup>

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<sup>6</sup> *Id.*, 27.

<sup>7</sup> *Id.*, 28-9.

<sup>8</sup> The German government and the German federal/state bank KfW, which owns 21.6 percent of DT, have each appointed only one member of DT's Supervisory Board, even though their ownership interests entitle them to appoint up to 10 members. They have appointed no members of the Management Board. VoiceStream/DT Application, 10.

The German system of co-determination has given rise to a corporate culture that recognizes the interests of all stakeholders, including workers, consumers, and communities. DT is a good employer and good corporate citizen, offering strategies and programs that serve the public interest in Germany. DT's presence in the U.S. market will create a more positive competitive dynamic in the U.S. telecommunications industry.

For example, DT has been extremely proactive in making sure schools are equipped to participate in the Internet age. In April 1996, DT initiated a program called "Schools on the Net" aimed to connect every school in Germany to the Internet. In February 2000, DT expanded the program and announced its initiative entitled [T@School](#). The initiative includes free Internet access and ISDN connections for every school, a homepage for each school, and 10,000 email addresses. DT offers a special tariff for students; students can surf at home between 2-6 p.m. for only 50 cents.<sup>9</sup>

The German system of co-determination has encouraged a strong partnership between DT and the union that represents DT workers. Labor-management scholars have documented that such partnerships, termed "high performance" work organizations, tend to improve corporate effectiveness by encouraging employees to work with management to increase quality, productivity, and innovation in the workplace and in strategic decision-making.<sup>10</sup> The opportunity to transfer the positive aspects of DT's strong labor/management partnership and respect for

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<sup>9</sup> DT Fact Sheet, "Deutsche Telekom as a Good Corporate Citizen: Schools on the Net and Universal Service."

<sup>10</sup> Eileen Appelbaum and Rosemary Batt, *High-Performance Work Systems*, Washington, D.C.: Economic Policy Institute, 1993.

workers' rights will benefit U.S. consumers with quality telecommunications services and U.S. workers with good jobs.

In summary, the proposed merger is in the public interest. It will stimulate investment in wireless networks, accelerate deployment of new and advanced services to U.S. consumers, and create good jobs. The proposed merger provides the opportunity to transfer elements of a quality competitor and good corporate citizen to the U.S. marketplace and workplace.

#### **IV. The DT/VoiceStream Merger Meets all U.S. Statutory and Regulatory Requirements and Supports an Open Market Policy in Global Telecommunications Services**

The proposed VoiceStream/DT merger is fully consistent with U.S. trade agreements, Section 310(b)(4) of the Communications Act's public interest standard for foreign acquisition of U.S. common carriers, and the Commission's market-opening foreign ownership rules. On the other hand, Commission decision to deny the license transfer solely on the basis of DT's greater-than-25% foreign ownership would delay progress opening foreign markets to U.S. investment and invite retaliation by foreign governments against U.S. telecommunications firms.

##### **A. The Proposed VoiceStream/DT Merger is Consistent with the Public Interest Standard of Section 310(b)(4) of the Communications Act and the**

## **Presumption in Favor of Open Markets of the Commission's Foreign Participation Rules**

Under Section 310(b)(4) of the Communications Act (“the Act”), as amended, the Commission must consider whether the transfer of licenses to and the resulting indirect ownership of those licenses by DT, a carrier with greater-than-25% foreign ownership, is in the public interest.<sup>11</sup> As we have already discussed in Section II above, the proposed merger is in the public interest. It will provide benefits to U.S. consumers and workers by stimulating network investment, bringing new wireless services to U.S. consumers, transferring a positive corporate culture to the U.S. business market, and creating good jobs for U.S. workers. Thus, the proposed transaction meets the public interest test of Section 310(b)(4) of the Act.

On February 15, 1997, the United States along with 69 other nations signed the WTO Telecom Agreement, committing signatories to open their markets for basic telecommunications services.<sup>12</sup>

The Commission subsequently conducted a rulemaking to bring its rules into conformance with the market-opening provisions of the WTO Telecom Agreement. In the 1997 *Foreign Participation Order*, the Commission adopted an open entry standard for WTO member applicants, including a “presumption in favor of foreign participation by those applicants.”<sup>13</sup> The

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<sup>11</sup> 47 U.S.C. 310(b)(4). This section of the Communications Act, as amended, reads: “No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by... (4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, if the Commission finds that the public interest will be served by the refusal or revocation of such license.”

<sup>12</sup> Fourth Protocol to the General Agreement on Trade in Services (“Fourth Protocol to GATS”), April 30, 1996, 36 I.L.M. 366 (1997).

<sup>13</sup> In the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market and Market Entry and Regulation of Foreign-Affiliated Entities (“Foreign Participation Order”), IB Docket No. 970142 and IB Docket

Commission concluded that an open entry standard would enable U.S. consumers to enjoy the benefits of increased competition in U.S. markets, encourage foreign governments to open their markets, and enable the Commission to prevent anticompetitive conduct.<sup>14</sup>

In the *Foreign Participation Order*, the Commission concluded that the open entry standard applies to requests by WTO member applicants to exceed the Section 310(b)(4) foreign ownership benchmark. Especially relevant to this instant proceeding, the Commission concluded “the public interest will be served by permitting more open investment by entities from WTO Member countries in U.S. common carrier wireless licenses.”<sup>15</sup> The Commission noted that no commentator in the proceeding had raised the specter of anti-competitive behavior in common carrier wireless markets. Because those markets are, for the most part, wholly domestic, the Commission concluded “there is no possibility of leveraging foreign bottlenecks in order to create advantages for some competitors in U.S. markets.”<sup>16</sup> The Commission also concluded that the Commission review process would continue to provide a means to address any Executive Branch concerns regarding national security, law enforcement, foreign policy and trade.<sup>17</sup>

Of particular relevance in this proceeding, the Commission made no distinction in the *Foreign Participation Order* between investment by a firm with foreign-government ownership and any

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No. 95-22; Nov. 25, 1997 (rel), 13.

<sup>14</sup> *Id.*, 11.

<sup>15</sup> *Id.*, 111.

<sup>16</sup> *Id.*, 112.

<sup>17</sup> *Id.* 61-2 and 113-4.

other foreign investment. Thus, in this instant proceeding, DT's partial foreign government ownership, which is 58.2 percent today and will decline to 45.7 percent as a result of DT's merger with VoiceStream, does not provide a valid basis for rebutting the strong presumption in favor of approval.<sup>18</sup>

The Commission has applied its strong presumption in favor of approval to several recent proceedings which implicated Section 310(b)(4)'s foreign ownership threshold, including Vodafone and AirTouch<sup>19</sup>; Global Crossing and Frontier<sup>20</sup>; VoiceStream and Omnipoint<sup>21</sup>; and VoiceStream and Aerial reviews.<sup>22</sup> In each instance, the Commission concluded that since the transaction provided benefits to consumers, raised no competition problems, and addressed all Executive branch concerns on national security, law enforcement, foreign policy, and trade, the presumption in favor of market entry by a WTO member applicant applied. The Commission

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<sup>18</sup> When the U.S. negotiated the WTO Telecom Agreement, it chose not to take an exception for foreign government ownership when it adopted its open market standard. The Commission's *Foreign Participation* Order conforms to this approach. See VoiceStream/DT Application, 10 for citation on German government ownership stake in DT.

<sup>19</sup> In re Applications of AirTouch Communications, Inc., Transferor, and Vodafone Group PLC, Transferee, for Consent to Transfer Control of Licenses and Authorizations, Memorandum Opinion and Order, Files No. 0000003690 et al., DA 99-1200, June 22, 1999 (rel), 9. "Because the United Kingdom is a Member of the World Trade Organization (WTO), under the Commission's Foreign Participation Order, we presume that the public interest would be served by authorizing, under section 310(b)(4), common carrier radio licenses held by entities indirectly owned by Vodafone and citizens of the United Kingdom."

<sup>20</sup> In the Matter of Global Crossing Ltd. and Frontier Corporation Applications for Transfer of Control Pursuant to Sections 214 and 310(d) of the Communications Act, as amended, Memorandum Opinion and Order, CC Docket No. 99-264, Sept. 21, 1999 (rel), II(B)(1)(6). "Therefore, we believe that it would best serve the policies adopted in the Foreign Participation Order to apply the Commission's WTO standard to Global Crossing's indirect ownership of common carrier radio licenses...there is a strong presumption that no competitive concerns are raised by the foreign ownership at issues here. Seeing no reason to rebut that presumption, we find, pursuant to section 310(b)(4) and the Commission's Foreign Participation Order, that the public interest would be served by allowing the indirect foreign ownership."

<sup>21</sup> In re 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 FSM III PCS, LLC, Transferees, Memorandum Opinion and Order, FCC 00-53, DA 99-1634 and 99-2737, Feb. 15, 2000 (rel).

<sup>22</sup> Applications of Aerial Communications, Inc. Transferor, and VoiceStream Wireless holding Corp., Transferee, Memorandum Opinion and Order, WT Docket No. 00-3, DA 00-730, March 31, 2000 (rel).

approved the transactions. The Commission should follow its own precedents and approve this instant transaction.

## **B. The VoiceStream/DT Merger Does Not Raise Competitive Concerns**

The VoiceStream/DT merger does not raise any competitive concerns. VoiceStream and DT do not compete in any relevant market segments.<sup>23</sup> Nor does DT's partial government ownership provide DT with any competitive advantage in the U.S. market. Finally, the competitive market in Germany and the German regulatory framework preclude any cross-subsidization concerns.

The German government does not and cannot subsidize DT's services. DT is a private corporation subject to German law. DT does not receive any assistance from the German government. In fact, European Union law prohibits state aids that distort competition.<sup>24</sup> The German government possesses the same rights as do other DT shareholders. The German government has only one member on DT's Supervisory Board and no representatives on its Management Board. The German government cannot by law provide DT preferential access to capital, nor has it ever done so.<sup>25</sup>

In addition, the competitive and regulatory framework in Germany precludes cross-subsidization between DT and its affiliates. Important components of Germany's pro-competitive regulatory

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<sup>23</sup> VoiceStream/DT Application, 20-24 and 29-33.

<sup>24</sup> *Id.*, f. 111. (Citation from European Commission Treaty art. 87; European Commission, Guidelines on the Application of EEC Competition Rules in the Telecommunications Sector, Official Journal No. C233, Sept. 6, 1991, 2.

environment include independent regulatory authority, no foreign ownership restrictions, no structural market barriers, liberal licensing, cost-based interconnection rates, and unbundling requirements.<sup>26</sup> As a result, competition is thriving in the German telecommunications market, with a growing U.S. presence.

Moreover, Germany's competitive environment precludes its ability to inflate prices in Germany in order to price its U.S. wireless investment below cost. The infeasibility of such a cross-subsidy scheme explains why the Commission saw no need to impose conditions against improper cross-subsidization in its orders approving transactions involving Deutsche Telekom, France Telecom, and Sprint; MCI and BT; or AT&T and BT.<sup>27</sup> There is no competitive concern in this instant transaction, either.

**C. Commission Denial Based on DT's Greater-than-25% Foreign Ownership Would Undermine Progress in Opening Foreign Markets and Invite Retaliation Against U.S. Firms**

Commission denial of the joint Applicants' merger request solely on the basis of DT's greater-than-25% foreign ownership not only violates the Commission's rules, it also threatens to undermine market opening progress abroad. The European Commission has already made clear that U.S. failure to honor the WTO Basic Telecom Agreement's market opening provisions could result in retaliatory moves by other countries and efforts by the WTO to block U.S. companies

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<sup>25</sup> *Id.*, 10 and 38-39.

<sup>26</sup> *Id.*, 11-13.

from entering foreign markets. In a letter to members of the House and Senate Ways and Means, Commerce, and Appropriations committees, EC Washington Delegation Charge D'Affairs John Richardson wrote:

In an area where the U.S. has one of the most competitive industries in the world, it would also send a very negative signal to all those countries that are in the process of liberalizing their own market, only to see the U.S. market being closed to their companies. This initiative may have far-reaching effects on all services sectors, and our common efforts for further trade liberalization in the services negotiations in the WTO would face substantially increased opposition.<sup>28</sup>

Telecommunications is a global marketplace. Not only have foreign firms come to the U.S., but also virtually all major U.S. telecommunications companies have expanded abroad. The presence of U.S. firms in Germany alone is considerable. AOL is the second largest Internet Service Provider, and CompuServe is also a leading provider there. Cisco, IBM, Qwest, UUNet and other American companies provide Internet backbone, data transmission, and computer hardware in Germany. BellSouth is in a joint venture with KPN and is Germany's third largest wireless carrier. AT&T, WorldCom, Sprint, Qwest, Global TeleSystems, and Primus Telecommunications all provide long distance service in Germany. U.S. companies including COMSAT, GE American Communications, and SPACELINK have entered German satellite markets.<sup>29</sup>

Commission action to limit DT investment in this country would likely result in retaliatory action by foreign governments, limiting the ability of U.S. firms to gain a foothold in the global marketplace, and curtailing their ability to gain the scope and size necessary to compete globally.

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<sup>27</sup> *Id.*, 43.

<sup>28</sup> Cited in *Communications Daily*, July 28, 2000, 5.

<sup>29</sup> VoiceStream/DT Application, 13-15.

**D. The Applicants Have Indicated their Willingness to Address Any Merger-Related National Security, Law Enforcement, Foreign Policy, or Trade Concerns**

The joint Applicants state in their Application that they are fully prepared to make the Commission's approval of the transaction contingent upon compliance with any agreement reached with the Executive Branch concerning national security, law enforcement, foreign policy or trade concerns.<sup>30</sup> Thus, any national security, law enforcement, foreign policy or trade concerns posed by this transaction should and it appears will be addressed by the Applicants in conditions imposed by the Commission.

**IV. Conclusion**

U.S. consumers would benefit from the expanded choice provided by a quality competitor with the financial resources and expertise to accelerate deployment of next-generation wireless services. Workers would benefit from the fusion of U.S. technology and resources with the democratic governing structures and respect for workers' rights evident at DT. Since the proposed merger is fully consistent with U.S. statute, regulations, and trade agreements regarding

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<sup>30</sup> *Id.*, 42-43.

foreign entry into U.S. telecommunications markets, the Commission should act expeditiously to approve the proposed VoiceStream/DT merger.

Respectfully Submitted,

Communications Workers of America

George Kohl  
Assistant to the President and Director of Research

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