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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

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precedential value, and twists the applicable statutory text so as to permit foreign government control of U.S. telecommunications licenses. The FCC must review the instant application without regard to that prior, erroneous, bureau level decision.

In addition, the 1997 WTO Telecommunications Agreement does not provide the FCC the authority to approve the DT-VoiceStream merger application. Rather, that agreement clearly violates Section 310(a). Since that 1997 agreement was never submitted to the United States Senate for ratification, it represents nothing more than an Executive Agreement that cannot govern the FCC's consideration of the current transaction. Instead, the FCC must be guided by controlling statutory text – namely Section 310(a).

Finally, the acquisition of VoiceStream by Deutsche Telekom will harm competition in the United States and is clearly contrary to the public interest the FCC is required to safeguard and protect. The unique aspects of government ownership will provide a combined DT-VoiceStream with both the ability and the incentive to behave anticompetitively against U.S. telecommunications carriers in a manner that runs counter to decades of American telecommunications competition policy.

II. The Federal Communications Commission Must Deny the Application of Deutsche Telekom to Acquire VoiceStream Pursuant to the Plain Prohibition Against Such a Transaction Contained in 47 U.S.C. Section 310(a)

Deutsche Telekom is a formerly wholly state-owned company that has been partially privatized, but remains majority owned by the German government. DT's acquisition of VoiceStream is plainly prohibited by the plain language of 47 U.S.C. Section 310(a). Moreover, this prohibition is unequivocal, and cannot be waived.

A. Section 310(a) Plainly Prohibits the FCC from Granting Any "Station License" to an Entity Controlled by a Foreign Government

Any acquisition of a United States telecommunications company by a foreign government owned provider violates Section 310(a) of the Communications Act, as amended. That section plainly prohibits foreign governments or their representatives from acquiring U.S. telecommunications licenses. Deutsche Telekom, France Telekom, or NTT, for example, clearly fall within the prohibition contained in Section 310(a). Moreover, Section 310(a) of the Act is an enduring provision. Congress has had numerous opportunities to modify this prohibition on foreign government ownership of licenses but has declined to do so, effectively endorsing its viability and significance. In fact, in 1995, the Chief of the FCC's International Bureau, Scott Blake Harris, testified before the Senate Commerce Committee in favor of maintaining "the general ban, now in Section 310(a), on foreign governments or their representatives owning radio

licenses."[1] Subsequent to the enactment of the 1996 Telecommunications Act, he wrote in the National Law Journal in October 1996 – "Section 310(a) flatly prohibits a foreign government or its representative from holding any wireless license, directly or indirectly. This limitation is not subject to being waived by the FCC."[2] In that article, Harris specifically mentioned Deutsche Telekom and France Telekom relative to that ban.

A close examination of the Act reveals that section 310(a) has broad applicability. Section 310(a) of the Act states that "the station license required under this Act shall not be granted to or held by any foreign government or the representative thereof."[3] Under the definition of station license the Act explains that " 'station license,' 'radio station license,' or 'license' means that instrument of authorization required by this Act or the rules and regulations of the Commission made pursuant to this Act, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio by whatever name the instrument may be designated by the Commission."[4]

The Commission has developed a control test to determine whether section 310(a) applies to foreign government ownership of a license. The control test inquires as to whether "a foreign government or the representative thereof has either *de facto* or *de jure* control of the license."[5] If so, the foreign entity would be considered to be holding the license and "*would be precluded from a license grant under Section 310(a)*."[6] To determine if there is *de jure* control, the Commission looks to whether there is "control as a matter of law, such as a 51 percent or greater shareholder of a corporation."[7] *De facto* control, on the other hand, is analyzed on a case by case basis.[8] The primary factor is the "power to dominate the management of corporate affairs."[9] The *de facto* determination is made based upon "the totality of the circumstances."[10]

B. Deutsche Telekom's Proposed Acquisition of VoiceStream Falls Squarely Within the Unequivocal Statutory Prohibition in 47 U.S.C. Section 310(a)

In analyzing Deutsche Telekom's application, it is apparent that the German Government, through Deutsche Telekom, will exercise both *de jure* and *de facto* control over its

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[1] Testimony of Scott Blake Harris, Chief of the International Bureau, Federal Communications Commission, Hearing before the Senate Committee on Commerce, Science and Transportation, March 21, 1995.
[2] "U.S. Urges Opening of Foreign Telecom Markets," by Scott Blake Harris, The National Law Journal, October 7, 1996.
[3] 47 U.S.C. § 310(a).
[4] 47 U.S.C. § 153(42).
[5] *In the Matter of Starsys Global Positioning*, Request for a Declaratory Ruling Concerning section 310 of the Communications Act, 10 FCC Rcd. 9392, ¶ 9 (1995). Orion Satellite Corp., 5 FCC Rcd. 4937, 4944 n. 26 (1990); Alpha Lyracom, d/b/a/ Pan American Satellite, et al., 8 FCC Rcd. 376, 378 n. 21.
[6] *In the Matter of Starsys Global Positioning,* ¶ 9 (emphasis added).
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *In the Matter of the Applications of Intelsat* (rel. August 8, 2000).

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."[11]

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."[12] 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.

[11] "Time is Working Against Deutsche Telekom's Plan," Wall Street Journal, October 24, 2000.
[12] Deutsche Telekom Petition at ¶ 10.

The German government exercises control over Deutsche Telekom in a variety of ways. The government plays a large role in influencing management decisions. The government provides substantial financial backing to Deutsche Telekom. And, many of Deutsche Telekom's employees are statutory government civil servants who enjoy special protections under the German Constitution that are not available to workers of private companies. Finally, the parties themselves acknowledge that Deutsche Telekom is a representative of the German government

a) Government Influence on Management Decisions

The German government meets both formally and informally on a regular basis with the management of Deutsche Telekom to direct its activities. In fact, there is a specific division within the German Ministry of Finance that oversees Deutsche Telekom, along with the other shareholdings of the Government.

The German government also actively exercises its control as the majority shareholder during Deutsche Telekom's annual shareholder meetings. At these meetings, the government engages in activities such as appointing the representatives to Deutsche Telekom's Supervisory Board under the German Stock Corporation Act, and approving the annual financial statements. In its annual report for 1999, Deutsche Telekom candidly admits:

> "As long as the Federal Republic directly or indirectly controls the majority of Deutsche Telekom's shares, it will, like any majority shareholder in a German stock corporation, have the power to control most decisions taken at shareholders' meetings, including the appointment of all of the members of the Supervisory Board elected by the shareholders and the approval of the proposed dividend payments."[13]

The Government's role in appointing the Supervisory Board is critical because it is Deutsche Telekom's Supervisory Board that plays a key role in appointing the company's top managers and determining its strategy.[14] Although Deutsche Telekom and VoiceStream claim in their merger agreement that Deutsche Telekom will recommend the inclusion of a person nominated by VoiceStream on the Supervisory Board, it is highly unlikely that this one representative, if elected, will have any effect on the German government's influence.

It is worth noting that, although the merger has yet to be approved, there is evidence that the German government, through Deutsche Telekom, is already exercising control over VoiceStream. On October 4, 2000, Deutsche Telekom filed a SEC Form F-4 indicating that Deutsche Telekom will be formulating an auction plan for VoiceStream as it bids in the December 12, 2000 spectrum auctions. Specifically, the Form F-4 discloses that VoiceStream is required to obtain prior approval from DT's "Acquisitions Committee," comprised solely of DT senior management officials, before it can participate in the auction or deviate from the schedule

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[13] DTAG 20-F filing with SEC for 1999, p. 68.
[14] DTAG F-4 filing with SEC of October 4, 2000.

during the auction.[15] Such conditions demonstrate that rather than an autonomous bidder, VoiceStream will serve as an agent for Deutsche Telekom and the German government in the December 12 auction.

b) Financial backing of the Government

The fact that the German government controls Deutsche Telekom also is clearly recognized by the financial community. For example, Deutsche Telekom's recently released 3rd Quarter financial report of October 31, 2000, shows the accumulated debts of Deutsche Telekom to have increased dramatically to an overwhelming DM 121.5 billion (approximately US $53 billion). Despite this burden, Deutsche Telekom is still able to easily attract capital because lenders are aware that the German government, as Deutsche Telekom's principle shareholder, will back the debts of Deutsche Telekom. For instance, the German government already provides on-going financial support by serving as guarantor of almost EUR 32 billion of Deutsche Telekom's liabilities.[16] This preferred status appears likely to continue post transaction – in other words – without regard to whether the German government's stake in the combined entity is diluted.

The financial community has recognized this benefit of government ownership and control and has rewarded Deutsche Telekom with substantial loans that have made it possible for it to bid DM 16.6 billion in the German UMTS auction and put forth high bids in other European countries. Deutsche Telekom's unique status as a government owned carrier, therefore, confers on it a tremendous competitive advantage in relation to its private sector counterparts that lack such preferential access to capital.

c) Constitutional Protection of Deutsche Telekom Employees

Deutsche Telekom's employees also enjoy special protection under Art. 143 b of the German Constitution ("Basic Law"). This protection is conferred due to Deutsche Telekom's status as a former integral part of the German Post monopoly ("Deutsche Bundespost Telekom"):

> Article 143b [Privatization of the Deutsche Bundespost (Federal Post)]
>
> . . . .
>
> (3) Federal civil servants employed by the Deutsche Bundespost shall be given positions in the private enterprises that succeed to it, without prejudice to their legal status or the responsibility of their employer. The enterprises shall exercise the employer's authority. Details shall be regulated by a Federal law.

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[15] *Id.*

[16] "Deutsche Telekom: Germany Online Goes Global," Precursor Group, October 25, 2000.

German law allows this constitutional protection to endure even if the government's stake in the company is below 50 percent. In fact, Business Week recently stated that more than one third of Deutsche Telekom's employees are government civil servants "who can't be fired."[17] Deutsche Telekom's SEC filings confirm Business Week's conclusion, and indicate that those civil servants enjoy special protection in that they cannot be terminated except in extraordinary statutorily defined circumstances.[18] As such, much of Deutsche Telekom's workforce is actually part and parcel of the German government's workforce. Absent statutory intervention, these workers will likely remain employed by the German government if Deutsche Telekom's acquisition of VoiceStream is approved, thereby leaving the combined entity with a sizeable portion of its workforce under the near permanent employ of the German government.

So, the German Constitution and German statutes will enshrine a significant degree of government control over a sizeable portion of the workforce in a combined DT-VoiceStream, notwithstanding any dilution of the German government's equity stake after the completion of the transaction. This further indicia of government influence and control clearly fits within the framework of Section 310(a), which prohibits the transfer of a license to a "foreign government or the representative thereof." Thousands of statutory government civil servants certainly seem to fit within that plain language.

d) Acknowledgement that Deutsche Telecom is a Representative of the German Government

Finally, the Applicants themselves recognize that the German government has control and will legally remain a part of a combined DT-VoiceStream once their transaction is completed. In the merger Agreement filed at the Securities and Exchange Commission by Deutsche Telekom and VoiceStream, they do not treat the German Government as an "ordinary" (private) shareholder. Rather, they describe Deutsche Telekom's "status as an agency or instrumentality of government."[19] There can be no misinterpretation of this unequivocal language. The only logical conclusion is that Deutsche Telekom and VoiceStream both believe that under the law, DT is in fact an arm of the German government. A further reading of their merger agreement filed at the SEC supports this conclusion. In that document, DT agrees to waive the sovereign immunity they would otherwise enjoy as an "instrumentality of government from any legal action . . . initiated against DT with respect to this agreement."

The necessity to waive sovereign immunity arises from Deutsche Telekom's recognition that it will legally constitute an arm of the German government after DT and VoiceStream are combined. Furthermore, given the limited waiver contained in the merger agreement, Deutsche

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[17] "America or Bust for Deutsche Telekom," Business Week, July 17, 2000.

[18] DTAG 20-F filing with SEC for 1999, p. 60.

[19] Sec. 9, 10. of the Agreement and Plan of Merger between Deutsche Telekom and VoiceStream.

Telekom appears to be implicitly retaining its sovereign immunity as an "agency or instrumentality of government" with respect to other legal actions not relating to the merger agreement. The retention of such sovereign immunity is direct proof that a combined DT-VoiceStream will continue to operate as a representative of the German government as contemplated by 47 U.S.C. Section 310(a).

The German government apparently agrees with Deutsche Telekom that DT is an arm of the German government. In response to a request to contribute to a foundation to compensate the victims of Nazi era forced and slave laborers, the German Finance Ministry determined that Deutsche Telekom's contributions to the fund would be classified as state or government contributions, rather than as private corporate contributions.[20]

III. Section 310(b)(4) Does Not Give the FCC Authority to Waive the Prohibition on Foreign Government Control

VoiceStream and Deutsche Telekom have applied for a waiver of the FCC's foreign ownership rules under section 310(b)(4). The FCC does not have authority, however, under section 310(b)(4) to waive the requirements of section 310(a). Section 310(b)(4) only gives the FCC the power to find that foreign government ownership interests *below* control might be in the public interest.

A. Sections 310(a) and 310(b)(4)

As noted above, section 310(a) specifically prohibits the FCC from granting authorizations to entities *controlled* by foreign governments, either directly or indirectly. Section 310(b)(3) and (4) then fill the gap as to how to address foreign government ownership that amounts to less than control. Under section 310(b)(3), direct foreign government ownership interests above 20% are forbidden without any exceptions. Under section 310(b)(4), the FCC is given some discretion to allow indirect foreign government ownership of broadcast, common carrier, and aeronautical licenses in amounts above 25% if the public interest is served. However, nowhere does section 310(b)(4) state that the FCC can find the public interest served by allowing a "foreign government or the representative thereof" to control a "station license." To interpret this section otherwise, would be to read out of existence section 310(a). The only way to reconcile these two sections, then, is to conclude that section 310(b)(4) allows the FCC to find the public interest is served by allowing indirect foreign control, and/or ownership up to 100% of "station licenses" only when the foreign ownership is by a non-government controlled entity. If a foreign government controlled entity indirectly invests in an FCC licensee subject to section 310, then the entity can invest indirectly up to 25% without triggering section 310(b)(4), but investments above 25% have to be approved by the FCC, and must not give the foreign government controlled entity control of the FCC "station license" holder. Such control would contravene Section 310(a). To find otherwise, would be contrary to the Act.

[20] "Debate Over Telecom State Mires Bid," The Financial Times, October 18, 2000.

It appears that the FCC has only addressed the Section 310(a) issue once, when a decision by the International Bureau incorrectly determined that indirect foreign government control of an FCC licensee was permissible under section 310(b)(4).[21] The order found, however, that there was no guiding Commission precedent on the matter. Instead, the bureau level decision appeared to twist the statute and its language to read out of existence section 310(a), and determined that any level of indirect foreign government ownership and control of FCC licenses could be allowed so long as the FCC found it to be in the public interest. This order ignored the fact, however, that Section 310(a) is not subject to waiver. Rather, Section 310(a) is a flat bar on foreign government control.

Moreover, and perhaps more importantly, the bureau level decision was never reviewed by the Commission or a court and is therefore not of any value as a precedent in the instant case. Indeed, the International Bureau likely overstepped its delegated authority in deciding, incorrectly, to permit indirect foreign government control of an FCC licensee. The International Bureau does not have the authority to act on any application that "presents new or novel arguments not previously considered by the Commission." 47 C.F.R. Sec. 0.261(b)(1)(i). Because there was no prior precedent permitting indirect government control of a U.S. licensee, much less precedent that effectively reads Section 310(a) out of the statute, the International Bureau could not lawfully have addressed the issue. Such a matter could only be resolved by the full Commission. Accordingly, the Bureau decision has no binding effect on the matter at issue.

B. The 1997 WTO Telecommunications Agreement Fails to Alter the Statutory Framework Applicable to this Transaction

Section 310(a) of the Communications Act forbids the FCC from approving a transfer of telecommunications licenses to foreign governments or their representatives. Section 310(b)(4) prohibits the transfer of licenses to companies that are more than 25 percent foreign owned, unless the FCC determines that a waiver would be in the public interest. These provisions have not been altered in any significant fashion since they were originally enacted. In 1997, the United States entered into a WTO telecommunications agreement that was never ratified by the United States Senate. As such, this Executive Agreement does not supersede, nor can it even be read into, the governing statutory framework set forth in Section 310 of the Communications Act.

Nonetheless, the FCC proceeded to implement the WTO Telecommunications Agreement in a manner that clearly violated this prevailing statutory scheme. Rather than prohibiting transactions involving the transfer of licenses to foreign governments or their representatives, the FCC's implementation order presumes approval of such a transfer if the acquiring foreign government is a member of the WTO.

[21] Telecom Finland, Ltd., File No. ISP-97-002, 12 FCC Rcd 17,648 (Int. Bur. 1997).

It is worth noting that the European Union ("EU") appears to agree that the WTO Telecommunications Agreement is inconsistent with 47 U.S.C. Section 310. In a 1999 trade barriers report, the EU stated that Section 310 retains force and effect notwithstanding the 1997 WTO Telecommunications Agreement. Specifically, the EU report states: "Section 310 of the Communications Act of 1934 remains basically unchanged following the adoption of the new Communications Act of 1996 . . . This situation has not changed through the Basic Telecom Agreement."[22] As the EU correctly recognizes, and as the FCC should recognize, an executive agreement cannot and does not repeal existing United States statutory law.

IV. The Acquisition of VoiceStream by Deutsche Telekom Will Severely Harm Competition in the U.S. Market and therefore is Contrary to the Public Interest

In addition to the fact that Section 310(a) a bar to the acquisition of VoiceStream by Deutsche Telekom, the FCC must find that this acquisition is contrary to the public interest. Indeed, FCC approval would be tantamount to a complete abandonment of the FCC's obligations to safeguard the public interest. This conclusion is inescapable in light of the tremendous threat posed by foreign government control of U.S. licensed telecommunications carriers to our competitive market and our national security. In this instance, the potential abuses caused by the German government's control of Deutsche Telekom cannot be remedied by the imposition of safeguards and conditions by the FCC.

In reviewing these potential abuses, the Commission must focus on the unique per se anticompetitive aspects of substantial government ownership. By permitting its widespread entry into the U.S. market, grant of the instant application will provide Deutsche Telekom strong incentives to use its financial backing from the German government to compete anticompetitively in the United States. As the dominant telecommunications provider in Germany, the FCC already has found that Deutsche Telekom possesses the ability to discriminate against other U.S. carriers on the U.S.-Germany route. Indeed, the FCC in the past has expressed concern about competition in the German telecommunications market, especially regarding unfair limitations on interconnection with Deutsche Telekom's local exchange.

Approval of the VoiceStream acquisition will permit Deutsche Telekom to offer end-to-end services to U.S. customers at rates subsidized by monopoly rents reaped in Germany to undercut economically the services offered by true U.S. competitors. In other words, this acquisition increases the incentive, and ability, of Deutsche Telekom to behave anticompetitively against U.S. carriers, to the detriment of U.S. consumers. Thus, the addition of this government owned telecommunications power to the U.S. marketplace can only create the harm to the public interest that the FCC has long sought to avoid.

As in many countries, telecommunications in Germany is dominated by a single player

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[22] Report on United States Barriers to Trade and Investment, p. 55, European Commission, Brussels, August 1999.

that is owned by the very government that purports to regulate the market. Such relationships are by their very nature anticompetitive. After all, the degree to which their markets are opened depends on regulatory decisions made by the governments that own them. While U.S. policy cannot unilaterally alter these relationships, we certainly need not take steps to encourage them. FCC consideration of this merger must remain true to the U.S. core policy principles of promoting capitalism and competition across the globe. For more than fifty years, U.S. international trade policy has encouraged governments to separate themselves from the private or commercial sector. Unfortunately, some nations' important industrial sectors remain shackled by government owned monopolists. These monopolists distort competition in their markets, stand in the way of private capitalism, and leverage their market dominance to amass capital that enables them to forage the globe for targets ripe for acquisition. While we cannot force foreign governments to reduce their stake in their countries' telecommunications assets, we need not encourage them by green lighting their acquisitions of attractive U.S. telecommunications companies.

Deutsche Telekom is one of the world's largest and most powerful government controlled carriers. As demonstrated above, Deutsche Telekom has access to financial and government resources that no private company could match. Deutsche Telekom has a proven track record in using its vast power to stifle competition in whatever market it operates. As the FCC already knows, DT is the dominant local phone company, the dominant long distance company, the largest Internet service provider, and possesses a 45 percent stake in most of the cable companies competing in Germany. No American company can leverage such dominance to benefit its competitive forays abroad. The claims that this power cannot be wielded in the U.S. market are self-serving, and ignore the global marketplace in which a combined VoiceStream and Deutsche Telekom will compete. Take for example, Deutsche Telekom's claim that it has divested significant control of cable facilities in Germany and that that market is becoming competitive. According to a recent article in the New York Times, DT apparently retained a 45 percent stake in these supposed "privatized" companies and segregated them geographically so that they could not truly compete effectively.[23] In light of the U.S. experience that cable companies can provide true facilities based competition to local phone monopolies, DT's activities represent an ominous portend for such competition in Germany.

In analyzing Deutsche Telekom's ability to leverage its dominance, the FCC must not limit its review to the U.S. domestic wireless market as VoiceStream and Deutsche Telekom would suggest. Telecommunications markets generally, and in particular the wireless marketplace, are converging around the world. For instance, the European Commission recently recognized this in its "Directive on the 1999 Review Proposal for a Directive of the European Parliament and of the Council on a common regulatory framework for electronic

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[23] "Deutsche Telekom's Sideshow; Selling Cable Units to Small Fry to Keep the Sharks at Bay," New York Times, Section C, Page 1, July 26, 2000.

communications networks and services" of June 12, 2000.[24] The European Commission stated in Article 14 (2) of this document that the Commission should identify "transnational" markets in order to decide which markets are competitive and where sector-specific obligations must be imposed. The Directive clearly calls for concerted regulatory action to resolve the problems created by a dominant carrier when it operates across borders.

The Deutsche Telekom acquisition of VoiceStream is a prime example of the need to look at competition globally, especially in the wireless sector. Cell phones know no borders. They are portable and often used across borders, particularly in Europe. VoiceStream itself, in arguing for approval of this transaction, trumpets the benefits of international roaming that its customers will enjoy over its GSM network that is compatible with the European network, and in particular Deutsche Telekom's network in Germany. When you add to this the possibility to combine voice and Internet services (3-G services), and the amount Deutsche Telekom has invested in acquiring UMTS licenses throughout Europe, it is clear that Deutsche Telekom is positioning itself as the dominant provider of wireless services in the global market.

In order to protect the U.S. telecommunications market, the FCC must prevent a government controlled entity from using its monopoly profits from predatory pricing and other anti-competitive behaviors at home to subsidize its expansion into other countries, such as the United States. Deutsche Telekom's anticompetitive practices in Europe provide a clear indication of the type of activities the FCC should expect from Deutsche Telekom if it is allowed into the U.S. market. For instance in Hungary, there are reports that Deutsche Telekom, with the backing of the German government, used its majority stake in the incumbent carrier Matav Rt, to influence the Hungarian regulator to take action to the detriment of its competitors.[25] The only sure way that the FCC can protect the U.S. market from the negative effects resulting from Deutsche Telekom's government ownership is to keep Deutsche Telekom out of the U.S. market until the German government relinquishes control and divests its ownership interest through the public sale of its stock below 25 percent.

ERNEST F. HOLLINGS
U.S. Senate
December 13, 2000

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[24] Directive Proposal Com(2000)393 - at **http://www.ispo.cec.be/infosoc/telecompolicy/review99/com2000-393en.pdf**

[25] *See* Market Strategies: Matav Blocks Competitive IP Network Build, *Communications Week International*, February 21, 2000.

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International Transcription Services, Inc.
("ITS")
445 12th Street, S.W., Room CY-B402
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Office of Media Relations
Reference Operations Division
445 12th Street, S.W., Room CY-A257
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Claudia Fox
Policy and Facilities Branch
Telecommunications Division
International Bureau
445 12th St., S.W., Room 6-A848
Washington, D.C. 20554

Justin Connor
Policy and Facilities Branch
Telecommunications Division
International Bureau
445 12th St., S.W., Room 6-A832
Washington, D.C. 20554

Lauren Kravetz
Commercial Wireless Division
Wireless Telecommunications Bureau
445 12th Street, S.W., Room 4-A163
Washington, D.C. 20554

John Branscome
Commercial Wireless Division
Wireless Telecommunications Bureau
445 12th Street, S.W., Room 4-A234
Washington, D.C. 20554

Jamison Prime
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
445 12th Street, S.W., Room 4-A734
Washington, D.C. 20554

Carl Huie
Experimental Licensing Branch
Electromagnetic Compatibility Division
Office of Engineering and Technology
445 12th Street, S.W., Room 7-A361
Washington, D.C. 20554

James Bird
Office of General Counsel
445 12th Street, S.W., Room 8-C818
Washington, D.C. 20554

Cheryl A. Tritt
Louis Gurman
Doane F. Kiechel
Nina A. Mrose
Christa M. Parker
Morrison & Foerster
2000 Pennsylvania Ave., N.W.
Washington, DC 20006

John T. Nakahata
Karen L. Gulick
Samuel L. Feder
Harris, Wiltshire & Grannis LLP
1200 Eighteenth St., N.W.
Washington, DC 20036

(signature of person certifying)

David A. Miller
Brian T. O'Connor
Robert A. Calaff
VoiceStream Wireless Corp.
1300 Pennsylvania Ave., N.W., Suite 700
Washington, DC 20004

William T. Lake
John H. Harwood II
William R. Richardson, Jr.
Matthew A. Brill
Julie A. Veach
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037

Hans-Willi Hefekauser
Wolfgang Kopf
Andreas Tegge
Deutsche Telecom, Inc.
1020 Nineteenth Street, N.W., Suite 850
Washington, DC 20036