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January 23, 2001

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: IB Docket No. 00-187 Ex Parte Presentation

Dear Secretary Salas:

Pursuant to Section 1.1206(b)(1), enclosed for filing in the above-referenced docket are copies of several e-mails that were sent to the FCC's International Bureau. These e-mails are in reference to the state of telecommunications competition and regulation in Germany. Although they do not directly reference the Deutsche Telekom/VoiceStream merger proceeding, after discussion with FCC staff, and out of abundance of caution, we are formally submitting these e-mails to the FCC as Ex Parte communications for inclusion in the record of IB Docket No. 00-187.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,



Troy F. Tanner  
Axel Spies  
Counsel for Novaxess B.V. et al.

Enclosures

cc: Jacquelynn Ruff  
Claudia Fox  
Justin Connor  
Tracey Weisler

No. of Copies rec'd 0  
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## Spies, Axel

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**From:** Spies, Axel  
**Sent:** Tuesday, December 12, 2000 9:23 AM  
**To:** 'dabelson@fcc.gov'  
**Cc:** 'Tracey Weisler'; Lipman, Andrew; Tanner, Troy; Schunck, Michael; Belles, Thomas; 'Christina Speck'; 'Jonathan McHale'; 'Myles Denny-Brown'; 'Harry Sullivan'; 'Kenneth Schagrin'  
**Subject:** Important Developments in Germany  
**Importance:** High

Dear Don:

Following-up on Tracey's voice mail message yesterday, I have talked to Elmar Müller, Member of the German Bundestag (CDU) and Chairman of RegTP's Advisory Board. The Advisory Board is empowered to elect the new RegTP President and, possibly, a new Vice President. I also spoke with some other contacts close to RegTP.

1) Elmar Müller confirmed that the **letter from Mr. Zitzelsberger** (Federal Ministry of Finance) to Dr. Tacke (Federal Ministry of Economics - "BMW*i*"), that Tracey mentioned, exists in which Zitzelsberger urges for a change of RegTP's policy in favor of DTAG. Mr. Müller states that in this letter Mr. Zitzelsberger complains in particular about high interconnection charges which have cut into DTAG's revenue with the effect that DTAG's stock is seriously suffering from the regulator's decisions. The letter has not been made public, but it has been mentioned in the German press. Mr. Müller will send several relevant press articles to us by Thursday.

Elmar Müller said that he has asked the BMW*i* to declare publicly that it will not put pressure on RegTP to change its course towards protecting DTAG. He expects that the Federal Secretary of Economics, Werner Müller, will address the issue during the upcoming formal gathering on Mr. Scheurle's resignation as RegTP President on December 20. If BMW*i* does not deliver a satisfactory statement, the CDU will try to push its own candidate for the RegTP presidency, which will probably lead to a serious quarrel between the parties.

2) The RegTP Advisory Board is expected to vote on this issue on **January 15, 2001**. Apparently, the SPD is pushing for Mr. Kurth as President and Mr. Knauth as Vice President. Mr. Knauth is working for Mr. Ehrnsperger at the BMW*i* and is regarded by RegTP insiders as a mere "yesman" and a watchdog of the Ministry. If the Advisory Board is unable to resolve the issue, the Federal Government has the final say. This means that in the end, the SPD might impose their own candidate on RegTP.

3) Elmar Müller also cited a new **Position Paper of the SPD Parliamentary Group**, drafted by Mr. Barthels, Chairman of the Sub-Committee on Telecommunications and Post in the German Parliament. Mr. Barthels is an influential secretary of a trade union in Bavaria. Excerpts of this paper were published in the German daily "Die Welt" yesterday. In this paper, Mr. Barthels apparently urges the legislature to amend the German Telecommunications Act since otherwise "there exists the danger that a disproportionate burden is put on DTAG. ... The mechanism [in the German Telecommunications Act] that only the market-dominant operator must open its infrastructure and its cost calculations to competitors has led to distortions of competition on the international level to the disadvantage of over-regulated national incumbents."

He also criticizes RegTP's recent flat-rate decision severely, according to which DTAG must offer a wholesale flat rate, denouncing it as "bowing down to massive pressure of certain interest groups." Based on this paper, the SPD is expected to introduce a formal bill to amend the German Telecommunications Act next year in favor of DTAG. According to sources I spoke to, RegTP is very afraid that this Position Paper will be imposed on RegTP as binding guideline for its policy, which would be a serious blow to competition and undermine its position as an independent regulator.

Mr. Barthel's position has been strongly backed by DTAG's CEO Ron Sommer in a speech in Bratislava yesterday. Ron Sommer stated, in particular, that there is already free access to the German local market, but the competitors had simply refused to invest money into this sector. RegTP's future role should be restricted to only controlling "actual bottlenecks". Access to the local loop should only be provided for foreign carriers on a reciprocal basis, for instance, to the extent DTAG obtains the same access in the U.K.

We hope to receive a copy of this Position Paper today and will be pleased to provide you with a translation or a summary.

We will keep you updated on any development.

## AXEL SPIES

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Dr. Axel Spies, Rechtsanwalt

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## Spies, Axel

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**From:** Spies, Axel  
**Sent:** Wednesday, December 20, 2000 1:38 PM  
**To:** 'dabelson@fcc.gov'  
**Cc:** 'Tracey Weisler'; Lipman, Andrew; Tanner, Troy; 'Christina Speck'; 'Jonathan McHale'; 'Myles Denny-Brown'; 'Harry Sullivan'; 'Kenneth Schagrin'  
**Subject:** Quick Update re DTAG

Dear Don:

DTAG's Ron Sommer's attacks against RegTP obviously become harsher. According to the German press, he stated today that RegTP's regulatory policy has put a damper of "more than 25%" on T-Online's share price, DTAG's ISP sub. T-Online's shares fell by another 10% today after Alan Greenspan's announcement not to change interest rates.

Ron Sommer also stated that it is "high time to get rid of the sector-specific rules" and the "extreme asymmetric regulation" in Germany. He is optimistic that he will receive bipartisan political support for this plan. Three years after the implementation of the liberalization in Germany, he explained, competition in Germany would flourish. "We are forced to subsidize the competitors in Germany by a multitude of services." Ron Sommer complained that DTAG would face extreme protectionism abroad, whereas global players such as BT, Vodafone and France Telecom through their German subsidiaries (Viag Interkom, Mannesmann, MobilCom) "are freely operating in Germany."

Competitors, he says, "generally lie" if they state that DTAG obstructs their network deployment. Competitors are used to "complain loudly to get the next support they need."

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## Spies, Axel

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**From:** Spies, Axel  
**Sent:** Thursday, December 21, 2000 1:24 PM  
**To:** 'dabelson@fcc.gov'  
**Cc:** 'Tracey Weisler'; Lipman, Andrew; Tanner, Troy; 'Christina Speck'; 'Jonathan McHale'; 'Myles Denny-Brown'; 'Harry Sullivan'; 'Kenneth Schagrin'; Belles, Thomas; Rines, David; Schunck, Michael  
**Subject:** FYI: Deutsche Telekom: New Law Suit Against RegTP

Don:

Today, DTAG filed a law suit against RegTP's recent decision that DTAG must offer a wholesale flat rate for internet access. DTAG argues in particular that this decision unduly restricts DTAG's "freedom to do business."

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## Spies, Axel

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**From:** Spies, Axel  
**Sent:** Thursday, January 11, 2001 11:00 AM  
**To:** 'Christina Speck'; 'jconner@fcc.gov'; 'rarbogast@fcc.gov'; 'Tracey Weisler'; 'Christina Speck'; 'Jonathan McHale'; 'Myles Denny-Brown'; 'Harry Sullivan'; 'Kenneth Schagrin'; 'dabelson@fcc.gov'; 'Boyse, Matthew G'; 'Finton, Timothy C'  
**Cc:** Tanner, Troy; Belles, Thomas; Lipman, Andrew  
**Subject:** UPDATE: Germany picks new regulatory team for RegTP  
**Importance:** High

Dear all:

RegTP confirmed to me informally today that Mr. Kurth and Dr. Sander will presumably make the race for President and Vice President of RegTP (Please note Dr. Sander is 63 years old and will probably retire relatively soon). This means that the Christian Democrats (CDU) give up their direct influence on RegTP's leadership via a party membership (Mr. Scheurle, who stepped down as President, is a CDU/CSU member, Mr. Kurth an SPD member and V.P. Harms an FDP member). The formal approval of the supervisory board is expected to be given on Monday. I heard that RegTP's staffers are disappointed.

There had been some speculation that Kurth would not be selected for the role of RegTP's President, although he had acted as vice president under former incumbent Mr. Scheurle and was the obvious candidate. This is because the politicians who make up the advisory committee that selects the regulator seemed reluctant to agree on his appointment as being too close to the Federal Ministry of Economics.

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