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January 8, 2001

VIA COURIER

Ms. Magalie Román Salas, Secretary
Federal Communications Commission
The Portals
445 121 H Street, S.W.
Washington, D.C. 20554

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JAN - 8 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Re: Reply Comments of Novaxess B.V. in the Matter of VoiceStream Wireless Corporation, Transferor, and Deutsche Telekom AG, Transferee, Application for Consent to Transfer of Control and Petition for Declaratory Ruling, IB Docket No. 00-187

Dear Ms. Román Salas:

Novaxess B.V., by its undersigned counsel, respectfully submits reply comments in opposition to the above-cited application and petition consolidated in IB Docket 00-187. An original and four (4) copies of this filing are enclosed. Please date stamp the enclosed extra copy of this filing and return it in the self-addressed stamp envelope provided herein.

Please do not hesitate to contact Michael Schunck at (202) 295-8349 should you have any questions or concerns regarding this matter.

Respectfully submitted,



Troy F. Tanner
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Michael Schunck

Counsel for Novaxess B.V.

Enclosures

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

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In the Matter of)
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VoiceStream Wireless Corporation,)
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Transferor, and)
)
Deutsche Telekom AG, Transferee,)
)
Application for Consent to Transfer)
of Control and)
Petition for Declaratory Ruling)
_____)

IB Docket No. 00-187

REPLY COMMENTS OF NOVAXESS B.V.

January 8, 2001

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

In the Matter of)	
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REPLY COMMENTS OF NOVAXESS B.V.

Novaxess B.V., (“Novaxess”) is pleased to submit its Reply Comments on the VoiceStream Wireless Corporation’s (“VoiceStream”) and Deutsche Telekom AG’s (“DTAG”) Application for Transfer of Control and Petition for Declaratory Ruling, received by the Federal Communications Commission (“Commission”) on September 18, 2000 (“Merger Application”). As described in its initial comments in this proceeding, Novaxess is a leading competitive broadband communications provider for small and medium-sized companies in the Netherlands with subsidiaries in Leeds (U.K.) and in Paris (France), and plans to expand into Germany and Italy

Novaxess believes it is necessary to file these Reply Comments in order to draw to the Commission’s attention some fresh evidence that DTAG is continuing its obstructionist strategy vis-a-vis its competitors in Germany. In addition, the Commission

also should be aware of the mounting pressure the German Federal Government is placing on the independent German regulator, RegTP, to protect DTAG.

Additional Anti-competitive Activities of DTAG. At the end of December 2000, DTAG announced that it intends to raise the charges for leasing a copper double pair from currently DM 25.40 (US\$ 12.10) per month to approximately DM 34 (US\$ 16.20) as of April 1, 2001 -- an increase of more than 33 percent. DTAG intends to raise these prices despite the already existing heavy criticism over the current charges of DM 25.40 being much too high.

If approved by RegTP, the new charges will further increase the price squeeze between the Unbundled Local Loop ("ULL") charges and the amount DTAG charges its end users. A DTAG customer can already obtain an analog line for DM 24.81 per month. DTAG argues that the increase is justified due to DTAG's "long-term cost calculation" and is reasonable in comparison with other national markets. Yet DTAG has not made available its cost calculation for independent analysis.

DTAG also wants to raise the up-front charges for switching a DTAG customer to a competitive ULL carrier from DM 191.64 (US \$91) to DM 248.47 (US \$ 118). If the lease of the line is terminated, DTAG wants to charge another DM 204.21 (US \$97) (instead of the current DM 107.70 -- US \$51).

Competitors believe that if RegTP approves these charges, this will seriously harm the emergence of a competitive German local market with its already low profit margins. As the Commission knows, the market share of competitors in this market is currently less than 3%.

New Federal German Government Pressure on RegTP. On December 4, 2000, Klaus Barthel, a Member of the German Federal Parliament and the ruling SPD Party, as well as the Chairman of its Telecommunications Sub-Committee, released a Position Paper ("Paper") on the future telecommunications policy of the German Government. Translated excerpts of the Paper are attached. The Paper is evidence of the mounting political pressure on RegTP and on DTAG's competitors which has reached a new stage since the release of the Position Paper of the Federal Ministry of Economics last summer. It also is important because the SPD is the ruling party on the Federal level (together with the Greens), and the Federal Government has the final say on who will become RegTP's new President.

Even though the language of this Paper is sometimes ambiguous, competitive carriers in Germany are very concerned that this Paper will enable the German Federal Government to enact a regulatory policy whose ultimate goal is to protect DTAG. The Paper blames RegTP for lost jobs at DTAG and the recent decline in DTAG's stock price. Yet the Paper completely ignores the many more jobs created by competitors in Germany, and the benefits to the economy. The Paper also creates the false impression that RegTP has discretion in certain areas (such as RegTP's ex-ante price control), even though the German Telecommunications Act provides for strict standards. The author severely criticizes recent RegTP decisions, for instance on the wholesale flat rate for Internet Access. The Paper disregards the fact that without competition the incumbent has no incentive to cut its prices and offer innovative services. In the end, this policy will release DTAG from its dominant carrier obligation without sufficient standards to

prevent anti-competitive practices and cross-subsidization. The Paper also stands clearly against the EU's efforts to liberalize the telecommunications market ("1999 Review").

Despite all of the Paper's shortcomings, the political realities are such that a new President of RegTP will probably have no choice, but to adopt this Paper as RegTP's future binding policy guidelines.

For these reasons, Novaxess repeats that the merger should only be approved under conditions, as described in its comments filed on December 13, 2000.

Respectfully submitted,



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January 8, 2001

ANNEX

EXCERPTS (WORKING TRANSLATION OF THE GERMAN ORIGINAL)

**Position Paper of Klaus Barthel (Member of the German Federal Parliament –SPD–
and Chairman on its Telecommunications Sub-Committee), released on December
4, 2000**

(Text in square brackets added by us for clarification)

.... In both the Post and Telecommunications sectors Germany is one of the world's most liberal and competitive markets, which has been opened in record speed. However, this development had and has its victims, in particular because many workers have lost their jobs, and the government's significant cost for providing a social safety net in these cases has exceeded significantly the revenue gained from the privatization [of DTAG and the German Post].

Regulation that focuses on competition in national markets is going to reach its limits. Continuing this regulatory policy bears the following dangers:

- Distortions in competition on the international level are putting a burden on the national incumbent that is already suffering from over-regulation.
- Investments being blocked by mechanisms that force the carrier that is dominant in certain markets to make its infrastructure available to competitors based on its [DTAG's] own and/or regulated cost calculations.
- Regulatory decision-making is putting a break on market dynamics.
- Economic and general political [national] goals are being neglected, such as the further development of universal services, the imposition of social standards, and finally the creation of incentives for investments in infrastructure.

The flat rate decision [of RegTP] and the delays in the ruling process [of RegTP to determine that DTAG is] no longer a dominant carrier in certain sub-markets confirm our concerns. In its flat-rate decision [RegTP] bows down to the massive pressure of a certain group of competitors and does not reach its stated goals. RegTP has not created market conditions comparable with other countries, nor has RegTP provided incentives to carriers to make attractive offers to the consumers, nor are investments directed into the right direction. On the contrary, the new flat rate will lead to nothing else than special offers favorable to large customers but much too expensive for the average consumer. At the same time, RegTP has disregarded capacity problems [in DTAG's network].

[General remarks on the telecommunications sector:]

1. Whereas the local market continues to be quasi-monopolistic, the sub-markets for national and international long distance calls are in transition to open, self-sustained competition. The regulatory framework is flexible enough to provide for a **reduction of regulation** or, in part, its complete removal. For this reason, the term “dominant market power”, as it is used by RegTP and the German Monopoly Commission, must be reviewed. In this context, [the relevant authorities] must consider the market development in sub-markets and the fact that the traditional fixed national networks lose their significance due to the implementation of alternative networks and technologies (wireless networks, cable). Furthermore, the [German] telecommunications market is no longer a mere national market, but a global market. On the international level, national and European regulation must focus on comparable, fair conditions for competition and market access and must act accordingly.

We expect from RegTP that it will define and deregulate without further delay any sub-markets where a dominant market position [of DTAG] is no longer given.

2. We support the standpoint of the Federal Government and the EU-Commission that **convergence** in the areas of media, telecommunications and information technology requires closer attention from the regulatory and general policy perspective. ... [However,] the emergence of convergence must not lead to grasping further competencies by the EU without prior extensive discussion in the Member States. The medium-term goal must be a **coherent and integrated communications order** first on the national level, which must be developed step-by-step in cooperation between the countries and [then] must be streamlined by implementing the appropriate instruments [on the EU level].
3. ... We observe the **danger** that the dynamic of competition will lead to a rapid and intensive roll-out of network and services in urban areas with carriers undercutting their prices, whereas outside of these urban areas prices will remain high and service offers [to end-users] limited. We must avoid a split within the society, which would also be incompatible with the EU's goals. Consequently, regulatory policy must encourage the **provision of affordable broad band access everywhere and to everyone**. A dynamic interpretation of the term “universal service” will also include data transfers at high-bit rates. What is needed is a review and a **modernization of the quality and scope of universal service**. We also urge the implementation into practice of the rule of furthering telecommunications services at public facilities.
4. So far, RegTP's [regulatory] work is characterized by a patchwork of individual decisions due to filings, complaints etc. that require short-term decision-making. What is needed in the future is a **regulatory policy that is forward looking**. The basic coordinates [of this policy] must be determined in advance by increasingly relying on discussions with the interested public (experts) on the basis of position papers.

5. In order to stabilize and in part to reduce regulatory interference, [the legislature] must create a reliable framework for investment decisions. This framework must provide for **sufficient incentives to invest** in infrastructure and must safeguard that these investments will not lose their its value due to regulatory intervention that destroys the investments by allowing [network access] at rates that are too cheap.

On a short-term basis, certain aspects of the regulatory regime, such as the reduction of regulation or their abolishment in certain sectors, can be implemented through prior changes already made in the law. If this room of maneuvering is used in a reasonable manner, the new regulations proposed by the EU Commission for a new framework for communications networks and services [“1999 Review”] and implementation [of the new EU law] into the German Telecommunications Act are neither necessary nor ... desirable before the end of 2002. However, in view of the development of the regulatory practice, [the national legislature] must continue to evaluate whether already before this date [end of 2002] legal changes or new ordinances are necessary to reach the macro-economic and socio-political goals. In light of the experiences gained [by this process], the release of the new activity report [of RegTP], and the European development, [the German legislature] must **review the regulatory framework as a whole in 2002.**

What is needed is a **harmonization of the European telecommunications market.** This does not necessarily mean that the competencies of the EU Commission must be expanded. The additional rights of the EU Commission, as suggested by the regulatory package of the 1999 Review must be rejected. The EU’s Unbundled Local Loop Directive, for instance, raises the question whether the conditions for competition are the same in all Member States. Since this is currently not the case, [this new regulation] will put a competitive burden on Germany. We are very concerned about the impact of hasty decisions of the EU that are not based on a thorough analysis of the actual market and technological developments. The primary goal of European telecommunications policy must be the harmonization of actual conditions for competition in the framework of a European concept for modernization and a social model that is in line with the goals of the employment policy.

* * *

CERTIFICATE OF SERVICE

I, Michael Schunck, hereby certify that copies of the foregoing Reply Comments of Novaxess B.V. were sent by hand-delivery and first-class mail, postage prepaid, on January 8, 2001 to the persons listed below.



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