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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
POWERTEL, INC.,	)	
	)	
Transferor,	)	
	)	FCC File Nos. 0000216260,
and	)	0000216208, 0000216231,
	)	0000216236, 0000216244,
VOICESTREAM WIRELESS	)	0000216271, 0000216305,
CORPORATION,	)	0000216325
	)	
Transferee.	)	

Application for Transfer of Control.

APPLICATION FOR TRANSFER OF CONTROL

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Application for Transfer of Control.

To: Chief, Wireless Telecommunications Bureau
Chief, International Bureau

APPLICATION FOR TRANSFER OF CONTROL

Powertel, Inc. ("Powertel") and VoiceStream Wireless Corporation ("VoiceStream"), pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended (the "Act"),[1/] and subject to the conditions described in Section II.A of this application, hereby request Federal Communications Commission ("Commission") consent to transfer control of Powertel's interests in its Section 214 authorization and various Title III licenses to VoiceStream ("Application").[2/]

[1/] 47 U.S.C. §§ 214, 310(d). The instant application is included as Attachment 1 to the FCC Form 603, *Powertel Kentucky Licenses, Inc., Transferee, and VoiceStream Wireless Corp., Transferor*, Lead Application FCC File No. 0000216260.

[2/] A list of the Title III and Section 214 licenses that are the subject of this request, is included as Attachment 2 to the FCC Form 603 filed herewith.

On August 26, 2000, Powertel and VoiceStream entered into an Agreement and Plan of Reorganization (the "Reorganization Agreement"). Upon consummation of the transaction, Powertel will become a wholly owned subsidiary of VoiceStream. Closing on the transaction, however, will occur only if a proposed merger between Deutsche Telekom AG ("DT") and VoiceStream, pursuant to an Agreement and Plan of Merger entered into on July 23, 2000, is not consummated. (A related Agreement and Plan of Merger between DT and Powertel was entered into on August 26, 2000.) In connection with its proposed mergers with VoiceStream and Powertel, respectively, DT is filing two parallel sets of applications with the Commission seeking consent to transfers of control of VoiceStream and Powertel from their respective shareholders to DT. In the event that the Commission approves the VoiceStream/DT transfer of control, the proposed transfer of control from Powertel to VoiceStream will not be consummated. If the Commission does not approve the transfer of control of VoiceStream to DT, the instant transfer of Powertel to VoiceStream will be consummated following Commission approval. Accordingly, it is requested that the Commission process the Application simultaneously with the VoiceStream/DT and Powertel/DT transfer of control applications.

Approval of the VoiceStream/Powertel transaction would serve the public interest by facilitating development of a national network using the Global System for Mobile Communications ("GSM") standard. In acquiring control of Powertel, whose wireless personal communications services ("PCS") network covers a substantial portion of the southeastern United States, VoiceStream would fill a major gap in its national PCS footprint. The proposed transaction would enhance VoiceStream's ability to provide services to businesses and individuals with an expanded GSM footprint and enhance its

ability to compete with wireless carriers that already provide nationwide PCS coverage. Earlier this year, the Commission approved the mergers of VoiceStream with two other GSM-based PCS operators, Omnipoint Corporation, ("Omnipoint") and Aerial Communications, Inc. ("Aerial") based on its finding that each transaction would produce substantial public interest benefits.[3/] Those benefits are comparable to those promised by the Powertel transaction.

These procompetitive benefits will not be offset by any cognizable anticompetitive effects, because there are no operating overlaps between Powertel and VoiceStream, and the few license overlaps are not inconsistent with the Commission's CMRS spectrum cap.[4/] The merger also will have no anticompetitive effects on the market for international services.

The Application sets forth (I) a description of the applicants, (II) a description of the transaction, (III) a description of ownership interests, (IV) the public interest showing, and (V) a request that the instant approval cover additional authorizations.

I. DESCRIPTION OF THE APPLICANTS

A. Powertel

Powertel is a publicly traded Delaware corporation, headquartered at 1239 O.G. Skinner Drive, West Point, GA, 31833. Using the GSM standard, Powertel, through its various wholly owned subsidiaries, is licensed to provide wireless PCS service over a network spanning 12 states primarily in the southeastern United States.[5/] As of June 30,

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[3/] *VoiceStream-Aerial* ¶ 44; *see also VoiceStream-Omnipoint* ¶ 46.

[4/] *See infra* Part III.A.3 for a discussion of the overlaps between Powertel and VoiceStream interests.

[5/] Powertel is in compliance with all of the Commission's applicable build-out benchmarks for its PCS licenses.

2000, Powertel had approximately 727,000 customers and year-to-date total revenues of $212.3 million. The company's core markets are in 34 metropolitan areas and along more than 3,000 miles of highway. Among the metropolitan areas that Powertel is licensed to serve are Athens, Atlanta, Augusta, Columbus, Birmingham, Chattanooga, Jackson, Jacksonville, Knoxville, Lexington, Louisville, Macon, Memphis, Nashville and Savannah. Altogether Powertel is authorized to provide service in markets that have a combined population of more than 25 million people.[6/]

Powertel is authorized to provide global international resale services, but does not provide any facilities-based international services.[7/]

B. VoiceStream

VoiceStream is a publicly traded Delaware corporation, headquartered at 3650 131st Avenue, S.E., Suite 200, Bellevue, Washington, 98006. Through various wholly owned subsidiaries holding FCC licenses, VoiceStream constructs and operates broadband PCS systems throughout much of the United States. VoiceStream subsidiaries also are licensed to operate point-to-point microwave, local multipoint distribution service, and specialized mobile radio systems in various markets throughout the United

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[6/] Powertel also will be a 49.9% non-controlling investor in Eliska Wireless Ventures I, Inc. ("Eliska"), which has applied to acquire (through a subsidiary) eight C Block PCS licenses held by DiGiPH PCS, Inc. in Alabama, Florida, and Mississippi. Eliska does not currently hold any licenses, and those which it seeks to acquire will not create any additional overlaps with VoiceStream. That application is currently pending before the Commission. *See Assignment by DiGiPH to Eliska of licenses in the Part 24 Personal Communications Services,* Lead File No. 0000151639 (filed June 14, 2000).

[7/] Powertel received authority to provide global resale services in FCC File No. ITC-214-20000727-00441 (effective Aug. 18, 2000). Today, Powertel is filing a letter with the Commission, which includes a list of wholly owned subsidiaries operating under Powertel's authorization.

States. Formerly a subsidiary of Western Wireless Corporation, VoiceStream was spun off in its entirety to shareholders of that company on May 3, 1999.

VoiceStream is the fastest-growing wireless carrier in the United States and has received industry awards for innovation. It owns and operates the most substantial network in the United States using the GSM standard. In February and May 2000, VoiceStream successfully completed mergers with Omnipoint and Aerial, two other GSM-based PCS operators. Even with the Omnipoint and Aerial transactions, VoiceStream remains only the eighth-largest mobile telephony operator in the United States, behind Verizon Wireless, the SBC/BellSouth joint venture, AT&T Wireless, Sprint PCS, ALLTEL, Nextel Communications, and U.S. Cellular.[8/] VoiceStream (including Omnipoint and Aerial) served approximately 2.2 million customers as of the end of 1999 - only 2.6 percent of the mobile telephony market.[9/] The market leaders dwarf VoiceStream in terms of subscribership and market share. The respective subscribership totals and market shares at the end of 1999 for providers with nationwide (or near-nationwide) footprints were: Verizon - 25.8 million subscribers, 30 percent market share; SBC/BellSouth - 16.5 million subscribers, 19.2 percent market share; AT&T Wireless - 10.0 million subscribers, 11.6 percent market share; Sprint PCS - 5.7 million subscribers, 6.6 percent market share; and Nextel Communications - 4.5 million subscribers, 5.7 percent market share.

[8/] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile* Services, Fifth Report, FCC 00-289, at App. B-5, Table 3 (rel. Aug. 18, 2000) ("*Fifth CMRS Report*").

[9/] *Id.*

In acquiring Powertel and its related GSM interests, VoiceStream will have access to a licensed GSM network covering a population of nearly 250 million. Moreover, with the addition of the Atlanta market, VoiceStream will control or have ownership interests in licenses that serve 24 of the top 25 markets in the United States.

VoiceStream is authorized to provide global international resale services.[10/] VoiceStream has notified the Commission of its intent to provide such services through several of its wholly owned subsidiaries pursuant to Section 63.21(i) of the Commission's rules.[11/] VoiceStream and its subsidiaries do not provide any facilities-based international services.

[10/] *See* File No. ITC-214-19960930-00473 (effective Nov. 12, 1996). Pursuant to Section 63.24(b) of the Commission's rules, 47 C.F.R. § 63.24(b), this authorization was assigned from Omnipoint Communications, Inc. to VoiceStream Wireless Corporation by letter dated March 20, 2000. *See* Letter from Louis Gurman, Counsel to VoiceStream Wireless Corporation, to Magalie Roman Salas, Secretary, Federal Communications Commission, filed March 20, 2000.

[11/] 47 C.F.R. § 63.21(i). The Commission was provided with a list of wholly owned subsidiaries operating under VoiceStream's authorization on March 22, 2000. *See* Letter from Louis Gurman, Counsel to VoiceStream Wireless Corporation, to Magalie Roman Salas, Secretary, Federal Communications Commission, filed March 22, 2000. These subsidiaries are Omnipoint Communications, Inc., Omnipoint Corporation, Omnipoint Albany-Schenectady-Glen Falls E License, LLC, Omnipoint Boston Area DE License, LLC, Omnipoint Boston D License, LLC, Omnipoint Boston-Keene D License, LLC, Omnipoint Buffalo Area DE License, LLC, Omnipoint Buffalo-Olean D License, LLC, Omnipoint DC Area DE License, LLC, Omnipoint DC-Salisbury D License, LLC, Omnipoint Little Rock-El Dorado E License, LLC, Omnipoint MI-Indiana-Findlay D License, LLC, Omnipoint MI-Indiana-Lima D License, LLC, Omnipoint Miami E License, LLC, Omnipoint New England DE License, LLC, Omnipoint New York D License, LLC, Omnipoint Petoskey D License, LLC, Omnipoint St. Louis DE License, LLC, Omnipoint Wichita-E. Huchison E License, LLC, Omnipoint Philadelphia-E. Lancaster E License, LLC, Omnipoint MI-Indiana Area DE License, LLC, VoiceStream PCS Holding, LLC, VoiceStream PCS I License L.L.C., VoiceStream PCS II License Corporation, VoiceStream PCS III License Corporation, VoiceStream SMR Corporation, VoiceStream PCS LMDS Corporation, VoiceStream PCS BTA I License Corporation, and VoiceStream Washington Corporation.

II. DESCRIPTION OF THE TRANSACTION

On July 23, 2000, VoiceStream and DT entered into a merger agreement providing for the acquisition of VoiceStream by DT subject to certain conditions. On August 26, 2000, Powertel and VoiceStream entered into the Reorganization Agreement, contemplating the business combination of Powertel and VoiceStream through a reorganization procedure, which would include the merger of a wholly owned subsidiary of VoiceStream with and into Powertel. As noted above, the Powertel/VoiceStream reorganization will take place only in the event that the VoiceStream/DT merger agreement has been terminated.

VoiceStream has formed a wholly owned subsidiary ("Sub") pursuant to the Reorganization Agreement. All issued and outstanding shares of Sub are issued to VoiceStream. If the VoiceStream/DT merger is not consummated, Sub will be merged with and into Powertel. Powertel will continue as the surviving corporation and will succeed to all rights and obligations of Sub.

Holders of Powertel common and preferred stock will receive VoiceStream common shares at a conversion ratio ranging from .65 if the average closing price of VoiceStream common stock is $130.77 or above and .75 if the average closing price of VoiceStream common stock is $113.33 or below. Between these two points the ratio adjusts to yield $85 in VoiceStream common stock for each share of Powertel common stock equivalent. The average closing price of VoiceStream common stock will be based on an average of 10 randomly selected trading days during the 20-day period ending five trading days prior to the closing.

If, as planned, the VoiceStream/DT merger is consummated, the Powertel/VoiceStream reorganization proposed herein shall be terminated.

III. THE PROPOSED MERGER IS DEMONSTRABLY IN THE PUBLIC INTEREST

As the Commission has found in the past, the public interest is served when smaller mobile telephony carriers, such as VoiceStream, augment their national footprint and enhance their ability to provide nationwide, one-rate service to consumers in competition with larger carriers. The proposed merger with Powertel serves this procompetitive purpose and will advance the public interest.

In assessing whether a proposed merger serves the public interest, the Commission considers whether the transaction: (1) would result in a violation of the Act or any other applicable statutory provisions; (2) would result in a violation of the Commission's rules; (3) would substantially frustrate or impair the Commission's implementation or enforcement of the Act or interfere with the objectives of that and other statutes; and (4) promises to yield affirmative public interest benefits.[12/] This transaction satisfies the first three prongs of the Commission's analysis, because it would not result in the violation or frustration of any statutory provision of the Commission's rules.

Moreover, as demonstrated below, the merger of Powertel and VoiceStream will yield substantial public interest benefits, because it will benefit consumers by increasing their choices and lowering their prices and will promote competition in the mobile telephony market. The competitive benefits will not be offset by any cognizable anticompetitive effects, because as noted below there are very few overlaps between

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[12/] *See, e.g., VoiceStream-Aerial* ¶ 9; *Applications of Ameritech Corp. and SBC Communications Inc. for Consent to Transfer of Control,* Memorandum Opinion and Order, 14 FCC Rcd 14712, 14738-39 ¶¶ 49-50 (rel. Oct. 8, 1999) ("SBC-Ameritech"); *Application of WorldCom, Inc., and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc.,* Memorandum Opinion and Order, 13 FCC Rcd 18025, 18030-33 ¶¶ 9-12 (1998).

Powertel and VoiceStream's PCS licenses. None of those overlaps involves an operational overlap, none implicates the Commission's spectrum cap, and all of the overlap areas are well served by multiple broadband CMRS providers.[13/]

A. The Merger Will Produce Substantial Proconsumer And Procompetitive Benefits And Poses No Threat To Competition

The merger of Powertel with VoiceStream will serve the public interest by promoting vigorous competition in the mobile telephony market. In approving VoiceStream's recent mergers with Omnipoint and Aerial, the Commission recognized that "GSM subscribers will benefit from the expanded footprint to be offered by VoiceStream, and . . . all mobile phone users needing access throughout the nation will benefit significantly from the creation of another competitor with a near-nationwide footprint."[14/] Moreover, the Commission concluded that the mergers "will also provide more U.S. consumers with the opportunity to subscribe to a carrier that accommodates international roaming access, where GSM . . . prevails."[15/] This transaction will permit VoiceStream to offer that expanded footprint and international access to more consumers and to compete effectively with larger nationwide mobile telephony providers (such as Verizon Wireless, AT&T Wireless, Sprint PCS, Nextel Communications, and SBC/BellSouth) by filling in one of the remaining substantial gaps in VoiceStream's footprint — the southeastern United States.

[13/] *See infra* Part III.A.3.

[14/] *VoiceStream-Aerial* ¶ 44; *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, 15 FCC Rcd 3341, ¶ 46 (2000) ("*VoiceStream-Omnipoint*").

[15/] *VoiceStream-Aerial* ¶ 44; see also *VoiceStream-Omnipoint* ¶ 46.

The Commission begins its assessment of a transaction's competitive effects by defining the relevant markets, both in terms of relevant products (or services) and geographic scope,[16/] and identifying the current and potential participants in those markets.[17/] Based upon evidence of the relevant market's structure, the Commission considers the procompetitive benefits and any anticompetitive effects of the merger. On the procompetitive side, the Commission examines "merger specific efficiencies such as cost reductions, productivity enhancements, or improved incentives for innovation, and whether the merger will support the general policies of market-opening and barrier-lowering that underlie the 1996 Act."[18/] With respect to the anticompetitive effects, the Commission evaluates, "whether the merger is likely to result in either unilateral or coordinated effects that enhance or maintain the market power of the merging parties."[19/]

When the Commission applied this competitive analysis to VoiceStream's recent mergers with Omnipoint and Aerial, it found that those mergers were "likely to enhance competition in the relevant markets" by expanding VoiceStream's coverage area and improving VoiceStream's ability the compete with larger carriers.[20/] As the discussion below explains more fully, the proposed merger between VoiceStream and Powertel has the same procompetitive rationale and justifies the same result. Specifically, expansion of VoiceStream's coverage area continues to be critical to the company's ability to compete with larger mobile telephony providers such as Verizon Wireless, AT&T

[16/] *See Bell Atlantic-NYNEX* ¶ 37; see also *VoiceStream-Omnipoint* ¶ 21.

[17/] *See id.*

[18/] *Id.*

[19/] *Bell Atlantic-NYNEX* ¶ 37.

[20/] *VoiceStream-Omnipoint* ¶ 21; *see also id.* at ¶ 51; *VoiceStream-Aerial* ¶ 48.

Wireless, Sprint PCS, Nextel Communications, and SBC/BellSouth. The proposed transaction will give VoiceStream the coverage it needs to attain a more complete national footprint and to meet increasing demand for its wireless services. Strengthening VoiceStream's position as a competitor in the market for national "one-rate" service plans, in turn, will deliver more choice, improved services, and better prices to consumers. What is more, these substantial proconsumer, procompetitive benefits will not be offset by any significant reduction in competition.

1. The Relevant Product Markets And Their Geographic Scope

The markets affected by the proposed merger are the national market for mobile telephony services and the market for international services between the United States and other countries. Both markets are dominated -- and after the proposed merger, would continue to be dominated -- by carriers of substantially greater size and scope than VoiceStream and Powertel.

(a) **Mobile Telephony.** Powertel and VoiceStream are licensed to operate broadband PCS systems. Broadband PCS operators are considered CMRS providers, and in particular fall within the mobile telephony segment of the larger CMRS market. The Commission has defined the mobile telephony segment to include cellular, broadband PCS, and digital specialized mobile radio ("SMR") services.[21/] This market segment has a national geographic scope; while regional carriers may retain some consumer appeal,

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[21/] *See Fifth CMRS Report* at 9; *see also Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services,* Fourth Report, 14 FCC Rcd 10145, 10152 (1999) ("*Fourth CMRS Report*").

the emergence of national "one-rate" plans and the resulting industry consolidation have produced a distinct national market.[22/]

In addition to analog cellular networks, mobile telephony operators have deployed digital networks based on four primary technical standards: CDMA, TDMA, iDEN, and GSM.[23/] As of the end of 1999, TDMA systems had been launched in areas containing 207 million people, or 81.6 percent of the population.[24/] CDMA was close behind, having been launched in areas containing 204 million people (80.8 percent of the population), followed by iDEN (185 million people, 73.3 percent of the population).[25/] GSM — the technology employed by Powertel and VoiceStream — had been launched in areas containing 165 million people, or 65.3 percent of the population.[26/]

The market is led by five carriers with nationwide or near-nationwide footprints: Verizon Wireless, SBC/BellSouth, AT&T Wireless, Sprint PCS, and Nextel Communications.[27/] These carriers have thrived by offering national one-rate price plans that have the following attributes: "bundles of large quantities of minutes for a fixed monthly rate that translated into . . . a low per-minute price; no long distance charges when used on the operator's network; no roaming charges when used on the operator's

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[22/] *See Fifth CMRS Report* at 10-12; *Fourth CMRS Report*, 14 FCC Rcd at 10159-60. To the extent that regional markets remain for mobile telephony, that is irrelevant to this proceeding: Powertel's CMRS interests are centered in the southeastern United States, an area that is largely absent from VoiceStream's existing service area.

[23/] *Fifth CMRS Report* at 23-24.

[24/] *Id.* at 24.

[25/] *Id.*

[26/] *Id.*

[27/] *See id.* at 10-11, App. B-5, Table 3.

network; reduced roaming charges when off the operator's network; and, in some cases, no extra roaming charges anywhere."[28/] Consumers have signed up in great numbers following the introduction of such plans.[29/]

Following its mergers with Omnipoint and Aerial, VoiceStream became the eighth-largest provider of mobile telephony. But its footprint still falls short of national reach. In particular, VoiceStream currently has gaps in its footprint in California, Nevada, the Chicago metropolitan area, and the southeastern United States, among other places. This footprint is much less extensive than that of carriers such as AT&T and Verizon. As a result, VoiceStream does not enjoy the same economies of scale, increased efficiencies, and other cost advantages as its larger competitors. The Commission has recognized that the "most important variable affecting [a carrier's] ability to compete in the mobile telephone market is coverage."[30/]

(b) **International Services.** Both VoiceStream and Powertel participate in the international services "product" market, which entails the transmission of calls from the United States to other countries. The Commission has identified three categories of international services: (1) "facilities-based services," which are those provided over facilities that the carrier owns in whole or in part; (2) "facilities-resale services," which are those provided over circuits leased from other international carriers; and (3) "pure resale services," which carriers provide by switching traffic to (and reselling the switched services of) other underlying U.S. carriers, which in turn control the circuit that carries

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[28/] *Fourth CMRS Report*, 14 FCC Rcd at 10155.

[29/] *See id.* at 10156; *Fifth CMRS Report* at 22.

[30/] *Fourth CMRS Report*, 14 FCC Rcd at 10175.

the traffic to the international termination point and arrange for termination there.[31] VoiceStream and Powertel are authorized to provide pure resale international services. Because VoiceStream and Powertel do not own any international transmission facilities - and therefore lack control over rates and the use circuits - their merger will not have any anticompetitive effect in this market.

The geographic markets for international services consist of the routes between the United States and other countries. Powertel and VoiceStream are both very small participants in the international services market. In 1998, total billed revenues for international facilities-based and facilities-resale services were more than $15 billion.[32] The carriers with the highest billed revenues were AT&T (more than $8 billion), MCI WorldCom (more than $4.75 billion), and Sprint (more than $1.5 billion).[33] Powertel, which provides pure resale services, is a tiny competitor in the international services market. VoiceStream likewise provides pure resale services and is a very minor participant in this market.

2. Proconsumer and Procompetitive Benefits Of The Merger

VoiceStream's recent acquisitions of the PCS systems of Omnipoint and Aerial have transformed the company from a regional operator to one with a "*near*-nationwide

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[31] *See 1998 Section 43.61 International Telecommunications Data, Common Carrier Bureau, Industry Analysis Division,* at 2-3 (Jan. 2000) ("*International Services Report*").

[32] *Id.* at 25. Net revenues (billed revenues less settlement amounts owed to foreign carriers and plus settlement amounts due from foreign carriers) amounted to more than $10 billion, with AT&T earning nearly $5.8 billion, MCI WorldCom more than $3.25 billion, and Sprint more than $1 billion. *Id.* The Commission does not report carriers' pure resale revenues.

[33] *Id.*

footprint."[34/] The Powertel transaction will provide VoiceStream greater national coverage by filling out its footprint in the southeastern United States. The Commission repeatedly has recognized the importance of a having a nationwide footprint to a carrier's ability to meet consumer demand and compete effectively.[35/] The national providers of mobile telephony can offer consumers the advantages of free roaming and long distance over extremely broad territories. Although VoiceStream's acquisitions have moved the company beyond its formerly regional footprint, VoiceStream still has not closed the gap with the leaders in terms of coverage and, in turn, subscribership.[36/]

Fostering additional competition in the national mobile telephony market will benefit consumers, as it enhances choice, accelerates the pace of innovation, and exerts downward pressure on prices. The merger will enhance choice by making VoiceStream's GSM network a more attractive alternative to competitors' CDMA, TDMA, and iDEN systems. VoiceStream's use of GSM technology presently entails certain limitations. For example, because VoiceStream's build-out of GSM systems lags behind competitors' build-out of CDMA, TDMA, and iDEN systems, VoiceStream customers presently must pay roaming charges in a relatively large number of markets. The merger would alleviate this problem to some extent by accelerating the build-out of VoiceStream's GSM network, thereby reducing customers' need to roam on other systems.

[34/] *See VoiceStream-Aerial* ¶ 44 (emphasis added); *VoiceStream-Omnipoint* ¶ 46 (emphasis added).

[35/] *See id.; Fourth CMRS Report* at 15-16, 31; *Applications of Motorola, Inc. for Consent to Assign 800 MHz Licenses to Nextel Communications, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 7783, 7785 (1997).

[36/] *See Fifth CMRS Report* at App. B, Table 3, p. B-5.

The merger also will reduce the roaming charges incurred by VoiceStream's subscribers by increasing VoiceStream's footprint and thereby increasing the coverage area it serves. VoiceStream incurs roaming fees, which must be passed on to customers in some form, whenever its customers roam off VoiceStream's network. Because VoiceStream's footprint is more limited than that of its larger competitors (particularly those that own extensive analog cellular networks), VoiceStream is more likely to incur roaming charges than these competitors. Increasing the coverage of VoiceStream's networks will result in the reduction of the roaming charges VoiceStream pays, and VoiceStream in turn will be able to offer even more aggressively priced wireless service plans.

In addition, the merger offers the potential to reduce consumer prices as a result of improved economies of scale and scope. By consolidating functions such as technological research, system development, and various back-office activities, the Powertel/VoiceStream combination may result in lower costs -- savings which VoiceStream will pass on to consumers. Moreover, by combining the best practices of VoiceStream and Powertel, the combined company can be more responsive to subscribers' needs.

3. The Merger Will Not Cause Anticompetitive Effects in Either Relevant Market

The proposed Powertel/VoiceStream merger will not have any significant anticompetitive effect on the wireless telephony or international services market. The service areas of VoiceStream and its attributable interests and Powertel predominantly do not overlap. Even in those markets where some overlap occurs, the 45 MHz spectrum cap is not exceeded. Specifically, VoiceStream has a non-controlling, attributable

interest in Cook Inlet/VoiceStream GSM II PCS, LLC (CIVS II), which holds nine non-operational F block BTA licenses to provide service in areas that overlap with Powertel's licensed service areas.[37] The affected markets include Savannah, GA, Macon, GA, Augusta, GA, Albany, GA, Birmingham, AL, Huntsville, AL, Gadsen, AL, Decatur, AL, and Nashville, TN. Because the CIVS II licenses are all 10 MHz licenses, the overlaps in these markets will not cause VoiceStream to exceed the 45 MHz spectrum cap in any market and pose no threat to competition. In all but two of these nine markets -- Albany, GA, and Decatur, AL -- potential subscribers have available to them four or more alternative broadband CMRS providers already operating in the market. In Decatur and Albany there are three alternative service providers already in operation. In Albany, the additional licensees yet to initiate operations include AT&T, Bell South, and Nextel. In Decatur, they include Sprint, Alltel and AT&T.

In *VoiceStream-Omnipoint*, the Commission ruled that, even though that merger involved overlaps with a relatively significant regional mobile telephony operator, the merger would "not likely result in harm to competition in any relevant market."[38] First, the Commission noted that "in none of these markets do VoiceStream and Omnipoint presently compete against each other for business."[39] The same is true here with respect to VoiceStream and Powertel. Second, while the Commission recognized the possibility of potential future competition between Omnipoint and VoiceStream, it noted that "Our

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[37] Cook Inlet Region, Inc. ("CIRI") and VoiceStream have filed applications for consent to transfer control, which, if approved, would make CIVS II a wholly owned subsidiary of VoiceStream. *See Application of Cook Inlet/VoiceStream PCS, LLC and VoiceStream Wireless Corporation for Consent to Transfer Control*, Lead Application ULS File No. 0000216961 (filed Sept. 14, 2000).

[38] VoiceStream-Omnipoint ¶ 51.

[39] *Id.* ¶¶ 24-25.

general policy . . . has been to permit the aggregation of CMRS spectrum and interests therein up to the limits permitted under the spectrum cap rule, provided that such aggregation neither reduces actual competition nor stymies the development of competition in any market."[40/] The merger of VoiceStream and Powertel will satisfy that policy.

Second, the merger will have no significant impact on competition in the market for international services. Because neither Powertel nor VoiceStream owns any international transport facilities, this transaction will not "eliminate any significant potential participant in the provision of international services."[41/] As in VoiceStream's transactions with Omnipoint and Aerial, the *de minimis* nature of the transferor's international services precludes a finding of anticompetitive effects, in particular because neither Powertel nor VoiceStream controls any bottleneck facility in the United States on which other carriers rely to provide service.[42/] In fact, the combination of two comparatively small providers will only strengthen their ability to compete with market leaders AT&T, WorldCom, and Sprint, and therefore will promote competition in the international services market.

B. Voicestream Possesses The Requisite Qualifications To Hold And Indirectly Control Commission Licenses

Finally, the Commission's public interest analysis requires it to determine under section 310(d) whether the proposed transferee is qualified to hold Commission licenses and whether the grant of the application would result in the violation of any Commission

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[40/] *Id.* ¶ 26. *See also VoiceStream-Aerial* ¶ 32.

[41/] *See VoiceStream-Aerial* ¶ 39; *VoiceStream-Omnipoint* ¶ 33.

[42/] *Id.*

rules.[43/] VoiceStream, the proposed transferee, possesses the financial and other qualifications to exercise such control over Commission licenses. The Commission has recently ruled that VoiceStream is qualified to hold PCS licenses,[44/] and there is no reason to alter that assessment.

IV. OWNERSHIP INTERESTS

A. Post-Reorganization Ownership of VoiceStream and Powertel

Following the Powertel/VoiceStream reorganization, Powertel would become a wholly owned subsidiary of VoiceStream. The shareholders of Powertel would, in turn, become shareholders of VoiceStream. Information regarding persons and entities that would hold a hold a 10 percent or greater interest in VoiceStream following the Powertel/VoiceStream reorganization is provided in VoiceStream's updated FCC Form 602, which is being filed concurrently with the instant application. That form is attached hereto as Attachment 3.

B. Foreign Ownership of the Merged Entity Would Remain Within VoiceStream's Previously Approved Level

Pursuant to Section 310(b)(4) of the Communications Act, 47 U.S.C. § 310(b)(4), the Commission must determine whether the public interest would be served by allowing a common carrier licensee to have indirect foreign ownership that exceeds 25 percent. In the *VoiceStream-Omnipoint* proceeding, the Commission applied the public interest test under Section 310(b)(4), in approving an increase in the indirect ownership interest of Hutchison Whampoa, Ltd., a Hong Kong corporation, in VoiceStream's licensees to 30.6 percent following VoiceStream's merger with Omnipoint. Because Hong Kong is a

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[43/] *See VoiceStream-Aerial* ¶ 10

[44/] *See id.; VoiceStream-Omnipoint* ¶13.

WTO country, the Commission analyzed Hutchison's investment in light of the "strong presumption that no competitive concerns [were] raised by the indirect foreign investment."[45] The Commission concluded that there was no reason to find that presumption should be rebutted, and accordingly approved Hutchison's increased foreign investment in VoiceStream.[46] The Commission also held that non-Hong Kong or non-U.S. entities could acquire, in the aggregate, up to a 25 percent indirect interest in VoiceStream's licensee subsidiaries above the interest held by Hutchison (30.6 percent) without Commission approval.[47]

In approving VoiceStream's subsequent reorganization with Aerial, the International Bureau and the Wireless Telecommunications Bureau recognized that the transaction would dilute Hutchison's indirect ownership interest in VoiceStream to approximately 23 percent.[48] The Bureaus further took note of a proposed foreign interest in VoiceStream to be held by Sonera Ltd., a Finnish limited liability company formerly known as Telecom Finland, Ltd. (8.63 percent), as well as a proposed indirect, foreign interest attributable to VoiceStream through Telephone and Data Systems, Inc. ("TDS") (approximately 2.27 percent), which was then Aerial's parent company. The Bureaus held that no approval was necessary for non-U.S., non-Hong Kong investors in connection with these interests as a result of the Commission's earlier ruling in the

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[45] VoiceStream-Omnipoint ¶ 16.

[46] *See id.* ¶ 19.

[47] *See id.*

[48] *VoiceStream-Aerial* ¶ 14. After the recent investment by DT, Hutchison's beneficial ownership interest in VoiceStream is now 20.56 percent. A current FCC Form 602 is being filed contemporaneously herewith.

VoiceStream-Omnipoint Order allowing 25 percent headroom above the Hutchison interest.[49/]

Because VoiceStream is currently within the 25 percent headroom, and Powertel has calculated its foreign ownership to be less than 25 percent, this transaction cannot cause VoiceStream to exceed the 25 percent foreign ownership limit established in the *VoiceStream-Omnipoint* Order.[50/]

V. REQUEST FOR APPROVAL TO COVER GRANT OF ADDITIONAL AUTHORIZATIONS

As set forth in each of the applications for transfer of control, Powertel controls entities that hold numerous Commission licenses and other authorizations. Although the applications submitted to the Commission are intended to list all such authorizations, the licensees involved in this proposed transaction may now have on file, and may hereafter file, additional requests for authorizations for new or modified facilities, which may be granted during the pendency of the transfer of control applications.

Powertel and VoiceStream accordingly request that the grant of the transfer of control applications include authority for VoiceStream to acquire control of (1) any authorization issued to Powertel's subsidiaries during the Commission's consideration of

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[49/] *Id.* ¶ 15.

[50/] VoiceStream expects a second transaction to close prior to any consummation of the Powertel transaction that will further dilute its foreign ownership interests. In the second transaction two entities controlled by Cook Inlet Region, Inc., an Alaska Native Regional Corporation ("CIRI"), will exchange their ownership interests in four separate license holders for VoiceStream common stock (collectively, the "CIVS Exchange"). *See Application of Cook Inlet/VoiceStream PCS, LLC and VoiceStream Wireless Corporation for Consent to Transfer Control*, Lead Application, File No. 0000216961 (filed Sept. 14, 2000). Because CIRI is virtually 100 percent United States owned, its acquisition of VoiceStream stock will further dilute VoiceStream's alien ownership. Sonera, for example, which already had an ownership interest in Powertel in addition to its interest in VoiceStream (noted by the Bureaus in the *VoiceStream-Aerial* Order), would hold no more than approximately a 7.4 percent beneficial interest in VoiceStream following the merger.

the transfer-of-control applications and the period required for consummation of the transaction following approval; (2) construction permits held by such licensees that mature into licenses after closing; and (3) applications that are filed after the date of these applications and that are pending at the time of consummation. Such action would be consistent with Commission precedent.[51/] In addition, the applicants request a blanket exemption from any applicable cut-off rules in cases where Powertel or its subsidiaries, in order to reflect the consummation of the proposed transfer of control, file amendments to applications pending under Part 22, Part 24, Part 90, or Part 101 of the Commission's rules (or to any other application). Any change of control that results with respect to any particular pending application will be part of the larger merger and be undertaken for a legitimate business purpose. An exemption from the cut-off rules would be consistent with Commission precedent.[52/]

Finally, pursuant to 47 C.F.R. § 1.2111(a), applicants state that there was no separate consideration assigned to any licenses obtained by competitive bidding within the last three years (or to any other licenses).

CONCLUSION

For the above reasons, and for the reasons set forth in the individual applications filed under separate cover, the proposed merger is strongly in the public interest.

[51/] *See Bell Atlantic-NYNEX*, 12 FCC Rcd at 20097; *Applications of Pacific Telesis Group and SBC Communications, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 2624, 2665 (1997); *Applications of Craig O. McCaw, Transferor, and AT&T, Transferee,* Memorandum Opinion and Order, 9 FCC Rcd 5836, 5909 n.300 (1994) ("*McCaw-AT&T*").

[52/] *See, e.g., McCaw-AT&T*, 9 FCC Rcd at 5909 n.300.

Powertel and VoiceStream accordingly request that the Commission grant this application.

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