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ATTORNEYS AT LAW

January 22, 2001

EX PARTE – Via Electronic Filing

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: IB Docket No. 00-187

Dear Ms. Salas:

On January 19, 2001, Brian O'Connor (of VoiceStream Wireless), Bob Calaff (of VoiceStream Wireless), Lou Gurman (of Morrison & Foerster on behalf of VoiceStream), Andreas Tegge (of Deutsche Telekom), Henrike Frowein (of Deutsche Telekom), John Harwood (of Wilmer, Cutler & Pickering on behalf of Deutsche Telekom), Dan Phythyon (of Wilmer, Cutler & Pickering on behalf of Deutsche Telekom), and I (on behalf of VoiceStream) met with Don Abelson, Ari Fitzgerald, Kathy O'Brien, Justin Connor, James Bird, Neil Dellar, John Branscome, Claudia Fox, Joseph Cipolla, Claire Blue, Jackie Ruff, and Douglas Webbink, all of the FCC.

We provided the FCC attendees with copies of the attached documents and presented the points set forth therein. In particular, we stated that these applications can and should be resolved in a timely manner, well before the conclusion of the Commission's 180-day period. The parties have completed and signed an agreement with the Department of Justice and Federal Bureau of Investigation on national security, law enforcement and public safety matters, which we anticipated would be filed imminently. The comment periods have closed, and all issues are fully briefed. No commenters contested, and many supported, the pro-competitive, pro-consumer benefits that would result from the merger. Vigorous and rigorous review supports grant of these applications, and the Commission should expeditiously proceed to do so.

Ms. Magalie Roman Salas  
January 22, 2001  
Page 2 of 2

In accordance with the Commission's rules, a copy of this letter, with attachments, is being filed electronically in the above-captioned docket.

Sincerely,



John T. Nakahata

JTN/krs

Attachments

cc (w/o attachments): Mr. Don Abelson, Chief, International Bureau  
Mr. Ari Fitzgerald, Deputy Chief, International Bureau  
Ms. Kathy O'Brien, Deputy Division Chief, International Bureau,  
Telecommunications Division  
Mr. Justin Connor, Legal Advisor, International Bureau,  
Planning and Negotiations  
Mr. James Bird, Senior Counsel, Office of General Counsel  
Mr. Neil Dellar, Attorney Advisor, Office of General Counsel  
Mr. John Branscome, Commercial Wireless Division,  
Wireless Telecommunications Bureau  
Ms. Claudia Fox, Telecommunications Division, International Bureau  
Mr. Joseph Cipolla  
Ms. Claire Blue  
Ms. Jackie Ruff  
Mr. Douglas Webbink

# VoiceStream/PowerTel/Deutsche Telekom

Ready for Prompt Commission  
Approval

# Principal Commenters

## Supporting Approval

- National Consumers League
- Communications Workers of America
- Ambassador Mickey Kantor
- Alliance for Public Technology
- Institute for International Economics
- Securities Industry Association
- United States Chamber of Commerce
- Organization for International Investment
- Siemens
- European Telecommunications Network Operators
- Callahan Associates

# Process -- Ready for Prompt

## Disposition

- ⚡ Comments and Reply Comments filed.
- ⚡ VoiceStream/PowerTel/DT have concluded a national security agreement with the Department of Justice and FBI (to be filed week of January 17).
- ⚡ No outstanding, unaddressed factual or legal issues.

# Merger and 310(b)(4) Standards - - All Satisfied

- ‡ Public interest benefits.
- ‡ No harm to U.S. competition, let alone a “very high risk to competition.”
- ‡ No harm to U.S. national security.
- ‡ Rigorous and vigorous review of record supports grant.

## ‡ Public Interest Benefits

- Greater nationwide wireless competition from a stronger VoiceStream, to challenge five larger, nationwide wireless carriers. (Uncontested.)
- Faster introduction of new services (Uncontested.)
- Greater experience for next generation wireless. (Uncontested.)

## ‡ No Harm to Competition

- DOJ approved; found no harm to competition.
- No loss of actual or potential U.S. wireless competition. (Uncontested.)
- No foreclosure of essential inputs. (No U.S. competitor/consumer complaints.)
- No predation or cross-subsidization. (No U.S. competitor/consumer complaints.)
- No beneficial access to capital from German government ownership. (No U.S. competitor/consumer complaints.)

## ⚡ No Harm to National Security

- National Security Agreement reached with DOJ and FBI.
- VoiceStream, PowerTel and Deutsche Telekom agree that compliance with National Security Agreement should be a condition of the grant.

# Rigorous Review: Other Issues

## Raised by Commenters

- ‡ 310(a) does not bar merger.
- ‡ German market conditions are irrelevant to transfer application.

## ‡ 310(a) does not bar merger

- US WTO interpretation: 310(a) prohibits direct, not indirect, ownership interests.
  - US interpretation clear, and was followed in *Telecom Finland*.
  - Contrary interpretation violates WTO Basic Telecom Agreement and GATS.
  - FCC must construe statute to avoid conflict with international law (BTA/GATS).
- German government will not control DT.

‡ German market conditions are irrelevant to transfer application

- German market conditions are not merger-specific harms.
- *Foreign Participation Order* rejected  
examination of foreign markets for WTO countries, where no effect on U.S. competition.
- Basic Telecom Agreement precludes examination of foreign markets, where no effect on U.S. competition.

**Conclusion: Application should be granted without further delay.**

- No factual issues to investigate - full briefing and opportunity for comment already occurred.
- All legal issues are fully briefed.
- National security issues are resolved.
- Rigorous and vigorous analysis supports approval.

RESTRICTED

World Trade S/NGBT/W/12/Add.3/Rev.1

26 February 1996

Organization

(96-0709)

Original: English

Negotiating Group on Basic Telecommunications

## COMMUNICATION FROM THE UNITED STATES

Draft Offer on Basic Telecommunications

Revision

The following communication is circulated at the request of the United States to members of the Negotiating Group on Basic Telecommunications.

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The United States has revised its offer of 31 July 1995 (S/NBGT/W/12/Add.3) in response to requests from our negotiating partners. The revision offers unrestricted market access and national treatment to foreign telecommunications services and service suppliers in the "local" telecom market. Thus, the United States is willing to remove barriers to access at the local level. This revision reflects the United States commitment to promote competitive telecommunications services in order to increase the availability and variety of telecommunications services and to lower the prices at which those services are offered. With this revised offer, the United States has signaled its intention to commit to "roll back" existing restrictions on competition at the local level in the event of a successful conclusion to these negotiations.

The revision also sets out the U.S. offer regarding foreign ownership of common carrier radio licenses in response to requests for clarification from our negotiating partners. The United States offers up to 100% foreign indirect ownership of common carrier radio licenses -- there will be no limits on indirect ownership of such licenses by foreign governments (including government-owned corporations), non-U.S. nationals or non-U.S. corporations or other business entities. Nor will there be any limits on the nationality of officers or directors of any company holding directly or indirectly a common carrier radio license. There is a limit on direct ownership, but it is one of form not substance. A foreign government (including a government-owned corporation), a non-U.S. national or a non-U.S. corporation or other business entity can directly own or control a

U.S. holding company, which directly owns or control 100% of a U.S. corporation holding a common carrier radio license.

This offer is contingent upon the agreement by a critical mass of WTO members to provide market access and national treatment for basic telecommunications services, as well as to provide commitments similar to those offered by the United States on pro-competitive regulatory disciplines. The United States reserves the right to withdraw or amend this offer at any time.

UNITED STATES - DRAFT OFFER

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector

Limitations on Market Access

Limitations on National Treatment

Additional Commitments

Commitments in these subsectors are undertaken in accordance with the pro-competitive regulatory disciplines described in the column headed "additional commitments".

## 2. COMMUNICATION SERVICES

### C. Telecommunication services

Basic local, inter-exchange and international services; supplied over public telecommunications transport networks using any network technology (e.g., wire-based, radio-based, cable television); facilities-based and on a resale basis; in each of the following market segments:

- a. Voice services
- b. Packet-switched data transmission services, including frame-relay services
- c. Circuit-switched data transmission services
- d. Telex services

e. Telegraph services

f. Facsimile services

1) None

2) None

3) - Subject to spectrum availability.

- Comsat has exclusive rights to links with Intelsat and Inmarsat.

- The right to obtain a licence to land a submarine cable may be restricted.

- A common carrier radio license may not be held directly by a:

(a) foreign government;

(b) non-U.S. citizen;

(c) non-U.S. corporation; or

(d) U.S. corporation of which more than 20% of the capital stock is owned or voted by a foreign government, a non-U.S. citizen or a non-U.S. corporation.

- Access to networks of companies providing local exchange services with fewer than two percent of the United States' phone lines may be limited by state action.

(1) None

(2) None

(3) None

Pro-competitive regulatory disciplines (attached).

g. Private leased circuit services

o. Other

Domestic/international satellite services and satellite links/capacity.

4) Unbound except as indicated in horizontal commitments.

4) Unbound except as indicated in horizontal commitments.

Satellite earth stations

International switching and other international gateway facilities

Mobile services

- Analogue/digital cellular services

- PCS (personal communication services)

- Paging services

- Mobile data services

Video transport services

## ATTACHMENT TO THE UNITED STATES DRAFT OFFER IN BASIC TELECOMMUNICATIONS SERVICES

Pro-Competitive Regulatory Commitments<1>

### Definitions

Terms defined in the GATS have the same meaning in this schedule. In addition:

1. A local exchange carrier is a public telecommunications transport network operator that provides local basic telecommunications services to end-users and interconnection of inter-state and international telecommunications to the local public telecommunications transport network.
2. Interconnection is the provision of services for the origination or termination of inter-state or international telecommunications services.
3. A dominant operator is a public telecommunications transport network operator with market power. A dominant local exchange carrier is a local exchange carrier with market power.
4. Market power is the ability to charge prices above a competitive level. In basic telecommunications services, market power is particularly relevant with respect to control over bottleneck facilities for interconnection to public telecommunications transport networks.
5. Collocation is the physical presence, or its functional equivalent, of a competing service supplier's equipment at the facility of another service supplier to enable the competing service supplier to provide a scheduled service.
6. Dialing parity is the ability of all competing service suppliers to offer and use telephone numbering systems so that a customer dials an equal number of digits to use the service of any competing service supplier.
7. An accounting rate is defined as the rate per traffic unit agreed upon between administrations for a given relation, which is used for the establishment of international accounts, as per

International Telecommunications Union recommendation D. 150, "New System for Accounting in International Telephony".

8. Number portability is the ability of a customer to retain its existing phone number no matter which competing service supplier the customer uses.

#### Fair and Economical Interconnection

The United States undertakes the following commitments regarding fair and economical interconnection of inter-state and international telecommunications services:

1. A dominant local exchange carrier will provide interconnection to its public telecommunications transport network for the provision of inter-state and international telecommunications services:

(a) at rates that are publicly tariffed, non-discriminatory and cost-based and on terms and conditions that are publicly tariffed, non-discriminatory and reasonable;

(b) at any network interconnection point, subject to cost-sharing for necessary construction of additional facilities; and

(c) in a manner that permits service suppliers to buy only the facilities or services they actually need to provide a basic telecommunications service.

2. The regulator will make publicly available any cost information presented to it by a dominant local exchange carrier in support of its interconnection rates.

3. A dominant local exchange carrier with annual revenues in excess of a minimum level defined by the regulatory authority will provide collocation.

4. A dominant operator of international basic telecommunications services will not impose unreasonable entry barriers on other international basic telecommunications service suppliers.

5. A dominant local exchange carrier will provide equal access, including dialing parity, to its public telecommunications transport networks for the provision of inter-state and international basic telecommunications services.

6. International accounting rates maintained with foreign correspondents will be publicly available. A dominant operator will be required to justify any international accounting rate that differs significantly from domestic interconnection rates.

7. A dominant local exchange carrier will provide interconnection to its public telecommunications transport network to suppliers of cellular mobile radio services on reasonable, non-discriminatory terms and conditions.

8. Any universal service support obligation will be administered in a transparent, competitively neutral manner.

### Competition Safeguards

The United States undertakes the following commitments to prevent a dominant operator from abusing its market power by engaging in anti-competitive activity in the provision of inter-state and international telecommunications services:

1. A dominant operator will not be permitted to cross-subsidize its non-regulated services by shifting the costs of such services to services in which the dominant operator retains market power.
2. A dominant local exchange carrier with annual revenues in excess of a minimum level defined by the regulatory authority will adopt structural separation or cost accounting safeguards to prevent the allocation of costs of non-regulated services to regulated services.
3. A dominant local exchange carrier will make publicly available to all suppliers of basic telecommunications services, on a non-discriminatory basis and consistent with customer privacy requirements, network information that is:
  - (a) necessary to facilitate interconnection to its network; or
  - (b) which otherwise is necessary to facilitate the supply of competitive telecommunications services.

Information affecting changes to the public telecommunications network will be made publicly available prior to implementation and with reasonable advance notice.

4. There will be number portability for inter-state and international services.
5. All interested members of the public, including non-dominant suppliers of basic telecommunications services, will have a fair and reasonable opportunity to participate in the development of technical standards governing public telecommunications transport networks and services.

### Transparent Regulation

1. The United States will provide public notice of, and fair opportunity for comment on:
  - (a) all proposed regulations, licensing criteria, and other requirements governing the provision of inter-state and international telecommunications services and infrastructure; and
  - (b) all applications for licences and other authorizations to provide inter-state and international telecommunications services and infrastructure.

2. The United States will accord all interested parties timely and reasonable access to all information supporting regulatory decisions, subject to reasonable limitations to protect confidential information.

#### Effective Independence of the Regulator

The United States will:

1. Not own any interest in any public telecommunications transport network and will maintain a regulatory authority that is not accountable to any public network operator nor to any authorities that exercise direct or indirect control over any public network operator.

2. Ensure that an independent regulator is empowered to resolve disputes involving basic telecommunications service suppliers and impose meaningful sanctions for violations of relevant statutes, regulations and licence terms.

3. Ensure that an independent regulator is empowered to review publicly tariffed interconnection arrangements to ensure that rates, terms and conditions are reasonable and non-discriminatory.

4. Ensure that an independent regulator is empowered to adopt and enforce the interconnection and competition safeguards described above.

1 "The United States believes that the work on the Reference Paper will result in a text acceptable to all NGBT participants and has already stated its view that such a text is best made binding by its inclusion in the additional commitments column."

S/NGBT/W/12/Add.3/Rev.1NEGOTIATING GROUP ON BASIC TELECOMMUNICATIONS  
- COMMUNICATION FROM THE UNITED STATES - Draft Offer on Basic  
Telecommunications - Revision