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

In the Matter of VOICESTREAM WIRELESS CORPORATION, Transferor, and DEUTSCHE TELEKOM AG, Transferee, Application for Consent to Transfer of Control.	))))))))))))))	No. ______________

APPLICATION FOR TRANSFER OF CONTROL AND PETITION FOR DECLARATORY RULING

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TABLE OF CONTENTS

competitor to a truly national one.[2/] In particular, VoiceStream will have the resources to expand and strengthen its existing networks, to acquire additional licenses in upcoming spectrum auctions or through other possible acquisitions, and to invest in delivering next-generation wireless services to consumers. The merger also will give VoiceStream the scale necessary to purchase infrastructure equipment and handsets at lower prices, which in turn could result in lower prices for its customers.

In addition, the combination of VoiceStream's network with DT's extensive systems in Europe will create new service options for international travelers by offering them such features as worldwide voicemail access and transferable prepaid calling plans. Moreover, DT's expertise with advanced wireless features will enable VoiceStream to bring innovative services to the U.S. market more quickly than it could on its own.

As VoiceStream expands and strengthens its existing networks, enters new markets, and introduces new services, other wireless operators in the United States will come under competitive pressure to improve their service quality and offerings, and their prices as well. By strengthening VoiceStream and accelerating its build-out, the merger therefore will benefit *all* consumers, not just VoiceStream's subscribers.

These procompetitive benefits will not be offset by any anticompetitive effects. In fact, the merger will not eliminate any existing or likely potential wireless competitor. American wireless consumers in the areas served by VoiceStream will have the same number of wireless choices after the merger as they had before it. And wireless consumers in areas not served by

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[2/] DT and VoiceStream recently announced a combination with Powertel, Inc., a broadband PCS provider operating in the southeastern United States. That transaction will fill the most substantial remaining gap in VoiceStream's footprint. The applicants are filing a separate transfer of control application for the Powertel transaction simultaneously with this application.

VoiceStream today will see their choices expand as a strengthened VoiceStream accelerates its build-out.

The merger also will have no adverse effect on the market for international services. Nor will DT's foreign ownership impair competition or otherwise harm U.S. interests. The transaction therefore is overwhelmingly in the public interest, and is fully consistent with the Communications Act and the Commission's rules.

Below, this application sets forth (I) a description of the applicants, (II) a description of the transaction, (III) the public interest showing, and (IV) a request for additional authorizations.[3/]

I. DESCRIPTION OF THE APPLICANTS

A. VoiceStream

VoiceStream is a Delaware corporation headquartered in Bellevue, Washington. Through subsidiaries holding FCC licenses, VoiceStream constructs and operates broadband personal communications service ("PCS") systems throughout much of the United States.[4/] VoiceStream subsidiaries also are licensed to operate point-to-point microwave, local multipoint distribution service, and specialized mobile radio systems in various markets in the United

[3/] In addition to this Application for Transfer of Control and Petition for Declaratory Ruling, the merging parties are separately filing 31 electronic transfer applications on FCC Form 603 (through the Commission's universal licensing system) and one Form 603 on paper; 12 transfer applications on FCC Form 703; and an Application to Transfer Control of international section 214 authorizations held by VoiceStream and its subsidiaries.

[4/] VoiceStream is in compliance with all of the Commission's applicable build-out benchmarks for its PCS licenses. As indicated on the accompanying Form 603 filings, only one of VoiceStream's licenses has reached the 10-year build-out requirement.

States. Formerly a subsidiary of Western Wireless Corporation, VoiceStream was spun off in its entirety to shareholders of that company on May 3, 1999.[5/]

VoiceStream is the fastest-growing wireless carrier in the United States, and has received industry awards for innovation. It is the only U.S. wireless carrier that owns and operates a near-nationwide network using the global system for mobile communications ("GSM") standard. In February and May 2000 VoiceStream successfully completed mergers with two other GSM-based PCS operators, Omnipoint Corporation and Aerial Communications, Inc. The Commission approved these mergers based on its finding that each would produce substantial public interest benefits. Most importantly, the Commission found 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."[6/] Moreover, the Commission concluded that the

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[5/] The cellular and other commercial mobile radio service ("CMRS") licenses held by Western Wireless are attributable to VoiceStream for spectrum cap purposes, as a result of certain common officers and directors. *See* 47 C.F.R. § 20.6(d)(7). Also for spectrum cap purposes, VoiceStream has attributable but noncontrolling interests in four designated entities ultimately controlled by Cook Inlet Region, Inc., as well as in Iowa Wireless Services, L.P., NPI-Omnipoint Wireless, LLC, D&E/Omnipoint Wireless Joint Venture, L.P, Omnipoint Philadelphia-E. Lancaster E License LLC, and Wireless Alliance, LLC. (VoiceStream also has some other wireless ownership interests that are nonattributable.) VoiceStream has completed all divestitures necessary to comply with the spectrum cap as a result of these attributable interests. *See 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, FCC 00-53, DA 99-1634 & 99-2737, ¶ 32 (rel. Feb. 15, 2000) ("*VoiceStream-Omnipoint*"). Because DT does not hold any attributable interest in any CMRS licenses, this proposed merger does not raise any issues under the Commission's spectrum cap or cross-ownership rules. *See* 47 C.F.R. §§ 20.6(d), 22.942(d).

[6/] *Applications of Aerial Communications, Inc., Transferor, and VoiceStream Wireless Holding Corp., Transferee*, Memorandum Opinion and Order, WT Docket No. 00-3, DA 00-730, ¶ 44 (rel. Mar. 31, 2000) ("*VoiceStream-Aerial*"); *VoiceStream-Omnipoint* at ¶ 46.

mergers "will also provide more U.S. consumers with the opportunity to subscribe to a carrier that accommodates international roaming access, where GSM . . . prevails."[7]

Even with the Omnipoint and Aerial acquisitions, however, 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 following chart illustrates the respective subscribership totals and market shares at the end of 1999 for providers with nationwide or near-nationwide footprints:[10]

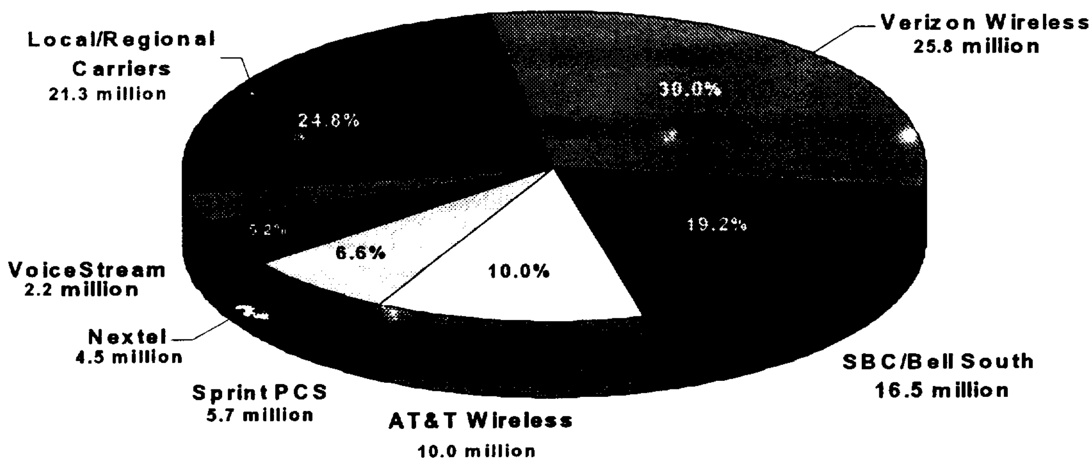
[7] *See id.*

[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.*

[10] *Id.* Regional carriers served approximately 21.3 million subscribers (24.8 percent of the market) at the end of 1999. *See id.* ALLTEL, the largest of the regional carriers, served more than twice as many subscribers as VoiceStream (*including* Omnipoint and Aerial's subscribers) at the end of 1999. *Id.* U.S. Cellular served approximately 400,000 more subscribers than VoiceStream. *Id.*

National Mobile Phone Networks by Number of Subscribers



Source: *Fifth CMRS Report* at App. B-5, Table 3

In addition to broadband PCS services, VoiceStream is authorized to provide global international resale services.[11/] VoiceStream notified the Commission of its intent to provide such services through several of its wholly owned subsidiaries[12/] pursuant to Section 63.21(i) of

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11/ Aerial Communications, Inc. received authority to provide global resale services in File No. ITC-214-19970626-00352 (effective August 20, 1997). Omnipoint Communications C Operations, LLC received authority to provide global resale services in File No. ITC-214-19970804-00463 (effective September 19, 1997). Omnipoint Communications DEF Operations, LLC received authority to provide global resale services in File No. ITC-214-19970908-00541 (effective October 22, 1997). Omnipoint Communications MB Operations, LLC received authority to provide global resale services in File No. ITC-214-19970908-00542 (effective October 22, 1997). Omnipoint Communications Midwest Operations, LLC received authority to provide global resale services in File No. ITC-214-19980203-00068 (effective March 25, 1998). D&E/Omnipoint Wireless Joint Venture, L.P. received authority to provide global resale services in File No. ITC-214-19980807-00546 (effective October 2, 1998). Pursuant to Section 63.24(b) of the Commission's rules, 47 C.F.R. § 63.24(b), the authorizations of Omnipoint Communications, Inc. were assigned 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.

12/ The Commission was provided with a list of wholly owned subsidiaries operating under VoiceStream Wireless Corporation'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 Communications Cap Operations, LLC, Omnipoint Albany-Schenectady-Glen Falls E License, LLC, Omnipoint Boston Area DE the Commission's rules.[13] VoiceStream and its subsidiaries do not provide any facilities-based international services.

VoiceStream currently is nearly one-quarter owned by subsidiaries of Hutchison Whampoa, Ltd., a Hong Kong corporation. In *VoiceStream-Omnipoint*, the Commission approved ownership by Hutchison of up to 30.6 percent of VoiceStream, finding that investment to be in the public interest.[14] The Commission also ruled that other non-U.S. entities may acquire, in the aggregate, up to an additional 25 percent of VoiceStream's equity without prior approval.[15]

On September 6, 2000, DT made a cash investment of approximately $5 billion in VoiceStream in exchange for 3,906,250 shares of preferred stock. That stock is convertible (at DT's option) into 31,250,000 shares of VoiceStream common stock, if and only if the merger for which this application seeks approval does not take place. If and only if this conversion were to occur, DT would have the right to appoint two members to VoiceStream's Board of Directors, which, including these two appointees, would then consist of 19 members.

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. Hutchison 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 LLC, 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.

[13] 47 C.F.R. § 63.21(i).

[14] *See VoiceStream-Omnipoint* ¶ 19.

[15] *See id.*

B. Deutsche Telekom

DT is a corporation organized and existing under the laws of the Federal Republic of Germany, with its headquarters in Bonn, Germany. Within Germany, DT provides local and long distance services, Internet services, data and IP system solutions, ISDN services, and cable television distribution services,[16/] among other telecommunications and information services.

DT also provides mobile telephony services in Germany and throughout Europe through operating subsidiaries held by T-Mobile International AG.[17/] T-Mobile is Germany's second-largest wireless carrier, with approximately 13.4 million subscribers or 39 percent of the market as of June 2000 (behind Vodafone AirTouch (formerly Mannesmann Mobilfunk), which had approximately 13.8 million subscribers, or 41 percent of the market at that time).[18/] T-Mobile serves another 7.6 million subscribers in other European countries through majority-controlled operations. T-Mobile's PCS systems use a GSM platform and provide voice and data services, including advanced features that are not yet available in the United States. For example, T-Mobile customers can access voicemail in numerous international markets by dialing a universal number. T-Mobile also provides various value-added services — such as emergency automobile service, travel assistance, shopping, or concierge/secretarial services — that are accessible through consumer-friendly, four-digit "short codes."

16/ DT is in the process of divesting its cable television distribution network in Germany. *See* Deutsche Telekom AG, SEC Form 20-F, at 6 (filed Apr. 19, 2000). DT provides no over-the-air "broadcasting," as that term is used in the United States.

17/ Although T-Mobile International AG is a holding company that does not directly provide service, for sake of simplicity the applicants refer hereafter to the various operating subsidiaries collectively as "T-Mobile."

18/ *See* Federal Republic of Germany, Regulatory Authority for Telecommunications and Posts, *Mid-Year Report 2000*, at 20 *available at* <http://www.regtp.de/en/market/start/fs_15.html> ("*RegTP Mid-Year Report*").

These and other services offered by T-Mobile in Europe are becoming far more robust as DT deploys the general package radio service ("GPRS") standard, which enables data transmission rates of more than 128 kbps. The planned deployment of third-generation wireless systems will further facilitate the deployment of advanced data services.

DT's existing operations in the United States are minimal. Deutsche Telekom, Inc. ("DTI"), a wholly owned subsidiary of DT that is headquartered in New York, is DT's only operating subsidiary in the United States. While DTI is authorized to provide international services between the United States and numerous countries throughout the world,[19] its revenues from such services are small. In 1999, DTI earned less than $5 million from international services, including an Internet Protocol telephony trial and facilities-based resale service.[20]

Until it became a stock corporation in 1995, DT was wholly owned by the German government. Since 1995, the German government has divested its stake as rapidly as possible taking into account the prevailing market conditions and the ability of markets to absorb large blocks of shares. In 1996, DT's first public offering reduced the government's ownership interest from 100 percent to 75 percent. In June 1999, through equity financing, DT reduced the government's stake to 64.8 percent. Between 1997 and 1999, the German government placed 21.6 percent of DT's shares with a bank (Kreditanstalt fuer Wiederaufbau, or "KfW") controlled

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[19] *See* Public Notice, International Authorizations Granted, 15 FCC Rcd 1651 (2000). DTI received authority to provide facilities-based service between the United States and Germany in File No. ITC-214-19991217-00788 (action taken January 12, 2000), and resale services between the United States and Germany in File No. ITC-214-19991217-00789 (action taken January 12, 2000). DTI also received authority to operate as a facilities-based carrier and a resale carrier between the United States and all other permissible locations except Croatia and Uzbekistan (for which it did not seek authorization) in File No. ITC-214-19991217-00787 (action taken January 12, 2000). DTI is subject to dominant-carrier treatment on the U.S.-Germany, U.S.-Hungary, and U.S.-Slovakia routes, and otherwise is regulated as nondominant.

[20] DTI also earned approximately $7 million in 1999 from the sale of German domestic services (such as ISDN services and system solutions) to U.S.-based multinational corporations.

by the German government and federal states. In June 2000, KfW sold through a public offering 6.6 percent of DT's stock, thereby decreasing the bank's share to 15 percent and bringing the German government's overall stake (owned directly and through the bank) down to the current level of 58.2 percent. The government's interest will decline to 45.7 percent as a result of DT's merger with VoiceStream, and it will decline further (to approximately 44 percent) following the closing of DT's recently announced merger with Powertel, Inc.[21/] U.S. investors currently hold about 18 percent of those shares of DT not held by the German government or KfW.

The German government exercises no rights beyond those of other shareholders. It confers no subsidies, tax preferences, or other benefits on DT and does not possess any "golden share" (*i.e.*, special veto rights).[22/] The German government and KfW have each appointed only one member of DT's Supervisory Board, even though their ownership interests entitle them to appoint up to 10 members.[23/] And neither the government nor KfW has appointed any members of DT's Management Board, which is appointed by the Supervisory Board and oversees the day-to-day business of the company. The government has always cast its votes in line with the majority of other shareholders and has never opposed a proposal of the Management Board or Supervisory Board.

DT operates in a very competitive telecommunications market in Germany. The mobile telephony market in Germany has been open since 1992, and the government opened all other

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21/ *See* Press Release, *Powertel To Be Acquired* <http://www.voicestream.com/about/press/press_20000828.asp>.

22/ *See, e.g.*, Deutsche Telekom AG, Articles of Incorporation (English translation attached as Exhibit A).

23/ *See id.* § 10; *see also* Deutsche Telekom AG, SEC Form 20-F, at 115-16 (filed Apr. 19, 2000) (listing members of Supervisory Board).

sectors of its telecommunications market by January 1998.[24] The Commission has recognized that Germany's regulatory system has all of the elements necessary to foster vigorous competition.[25] Key aspects of Germany's procompetitive regulatory environment include:

- **Independent Regulatory Authority**. Germany has as an independent regulator, RegTP, which reports to the Ministry of Economic Affairs. The government's shares in Deutsche Telekom are supervised by a separate entity, the Ministry of Finance.[26]

- **Foreign Ownership**. There are no foreign-ownership restrictions of any kind.[27] As discussed below, numerous non-German companies (including British Telecom Plc and such U.S. companies as BellSouth, AT&T, WorldCom, Sprint, and Qwest) have entered all telecommunications sectors in Germany. These entrants include several foreign-government-owned or -controlled carriers:

    - The partially government-owned Dutch carrier, KPN, owns a stake in E-Plus, Germany's third-largest mobile carrier.

    - Foreign government-owned companies including France Telecom, Sonera, and KPN are part owners of entities that have recently obtained valuable third-generation mobile licenses.[28]

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[24] *See Sprint Corp.*, Declaratory Ruling and Order, 13 FCC Rcd 17223, 17228 ¶ 14 (1998) ("We agree with Sprint that the French and German telecommunications markets are now open to competition.").

[25] *See id.*

[26] *See* European Commission, *Fifth Report on the Implementation of the Telecommunications Regulatory Package*, Annex 3, Effective Application — Analysis by Member State, at 6 (Nov. 11, 1999) ("*European Comm. Fifth Report*").

[27] *See* Klaus-Dieter Scheurle, Pres., Regulatory Authority for Telecomms. and Posts, speech at Dusseldorf, *Importance of Telecommunications for Germany* 3 (February 2, 1999) (transcript *available at* <http://www.regtp/de/en/aktuelles/reden/00062/index.html>).

[28] *See* Edmund L. Andrews, *The German Auction of Wireless Networks Uncovered Deep Fissures in the European Telecommunications Landscape*, N.Y. Times, Aug. 28, 2000, at C4; *A Tender for Selling Licenses for Researching and Developing 3G Networks (UMTS) Finished in Germany*, Telecommunications Services Market, Aug. 28, 2000; Sandra Wendelken, *Six Groups to Offer 3G in Germany*, Radio Communications Report, Aug. 21, 2000; Jonathan Collins, *The Bid Is Up in Europe*, 2000 CMP Media, Inc., Sep. 4, 2000.

- Swisscom, the partially government-owned Swiss carrier, owns Debitel, the telecommunications company that was formerly a subsidiary of DaimlerChrysler.

- **No Structural Market Entry Barriers**. All markets are open to competition, and no carrier is automatically precluded from entering any particular market.

- **Liberal Licensing**. Unlike the United States, Germany has no special licensing controls for foreign carriers. As of June 2000, 321 Class 4 licenses for provision of voice telephony services and 559 Class 3 licenses for provision of transmission lines had been granted.[29] Moreover, as of December 31, 1999, more than 1,200 providers of telecommunications services not subject to licensing requirements, such as resellers, had been registered with RegTP.[30]

- **Interconnection**. Interconnection rates in Germany are cost-based and among the lowest in the world. At the end of 1999, RegTP cut interconnection rates by more than 23 percent; and on September 8, 2000, RegTP ordered a further 23-percent reduction, effective June 1, 2001.[31] Interconnection agreements are in place between DT and 117 other carriers.[32]

- **Unbundled Access to the Local Loop**. Unbundled access to local loops is required.[33] Germany is the only large European country to impose such a requirement. Loops are available at prices comparable to or below the price of loops in the United States.

- **Satellite Access**. Direct access to INTELSAT capacity for foreign and domestic companies has been allowed since 1995.

- **No Cross-Subsidization**. Germany's Telecommunications Act requires rates for regulated services to be based on cost, and prohibits discounts that prejudice competition.[34] Companies with market power (dominant positions) must

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29/ *See RegTP Mid-Year Report* at 29.

30/ *See* Deutsche Telekom AG, SEC Form 20-F, at 44 (filed April 19, 2000).

31/ *See* Federal Republic of Germany, Regulatory Authority for Telecommunications and Posts, *Annual Report 1999*, at 16 ("*RegTP Annual Report*"); William Boston, *Deutsche Telekom To Lower Charges, Aiding a U.S. Deal*, Wall St. J. A23, Sept. 12, 2000.

32/ *See RegTP Mid-Year Report* at 12.

33/ *See id.*

34/ *See* German Telecommunications Act §§ 24, 25, 27, 29.

maintain separate accounting for regulated and unregulated sectors.[35] In addition, the EU treaty has strong antitrust enforcement mechanisms.[36]

- **Other Procompetitive Features**. Germany also requires equal access, dial-around and number portability to ensure customer choice of providers.[37]

Unlike other European countries, Germany has had all these features of an open and liberalized market in place since January 1998. As a result, competition has thrived in most sectors and prices have dropped sharply.

Wireless. T-Mobile's operating subsidiary is the *only* major wireless competitor in Germany — either in the existing wireless market or in the soon-to-develop third-generation market — that is owned exclusively by a German parent. It ranks second in subscribership behind Vodafone AirTouch, which acquired control of Mannesmann Mobilfunk last year.[38] E-Plus, which is now owned by BellSouth and KPN, ranks third.[39] The fourth-largest carrier is Viag Interkom, which British Telecommunications Plc recently agreed to acquire.[40] Vigorous

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35/ *See* German Telecommunications Act §14 (requiring transparent financial relations between and among services for dominant providers); §§ 29-30 (regulating rates); § 33 (preventing abuse of dominant position); § 35 (requiring dominant providers to grant competitive access to their networks).

36/ *See* Deutsche Telekom AG, SEC Form 20-F, at 57-58 (filed April 19, 2000) (discussing EU competition law).

37/ Deutsche Telekom AG, SEC Form 6-K, at 144-45 (filed June 27, 2000).

38/ *See RegTP Mid-Year Report* at 20.

39/ *See id.*; *see also* BellSouth Corp., SEC Form 10-K, at 22 (filed Mar. 2, 2000).

40/ *See RegTP Mid-Year Report* at 20; Jesse Eisinger, *Wireless Licenses in Germany Come at a Steep Price*, Eur. Wall St. J., Aug. 21, 2000 (noting BT acquisition of Viag). Other competitors include U.S. firms such as Ameritech and Motorola. In addition, U.S. carriers WinStar, Teligent, Star One, Callino, and others have secured the majority of licenses for wireless local loop frequencies. *See* Steven Lipin, *Obscure Start-Up Ends Up Drawing an All-Star Board*, Asian Wall St. J., Dec. 15, 1999, at 3; *Formus Communications Co-Founder Named to Broadband Solutions' Hall of Fame*, PR Newswire, Apr. 6, 2000; Brian White, *Star One Wins* competition among these providers and others has resulted in price reductions for wireless services of more than 20 percent in 1999 alone.[41/] The recently completed third-generation wireless auction will introduce additional competition — and foreign participation — in Germany: New entrants MobilCom (backed by France Telecom) and Group 3G (made up of Telefonica S.A. and Sonera Ltd. (which is majority government-owned)) acquired valuable new licenses.[42/]

Long Distance. According to a European Commission report issued in November 1999, Germany then had 47 carriers actually offering long distance service — the highest number in the European Union — and these carriers have captured 40 percent of the long distance market, and approximately 48 percent of the market for international long distance.[43/] Among the new entrants are several U.S. long distance providers, including AT&T, WorldCom, Sprint, Qwest, Global TeleSystems, and Primus Telecommunications. Since the German market was liberalized, rates for domestic long-distance calls have fallen by as much as 85 percent (to as little as 2 cents per minute), and rates for international long-distance calls have dropped by as much as 93 percent.[44/]

German Licenses but Faces Financial Problems, Network Briefing, Aug. 26, 1999; "Telephony," Communications Daily, Aug. 27, 1999.

41/ *See RegTP Annual Report* at 16; *see also RegTP Mid-Year Report* at 21 (mobile telephony prices have decreased 13 percent from June 1999 to June 2000).

42/ *See German 3G Winners Take Hit from Credit Rating Agency S&P*, Telecommunications Reports Daily, Aug. 21, 2000 (noting that having six distinct licensees will produce "fierce competition"); *German 3G Spectrum Auction Tops U.K. Bidding Total by $10 Billion*, Telecommunications Reports Daily, Aug. 17, 2000.

43/ *See RegTP Annual Report* at 16. The estimate of the market share of DT's competitors in the market for international services is based on DT's traffic levels.

44/ *See RegTP Mid-Year Report*, at 17-18; Klaus-Dieter Scheurle, Pres., Regulatory Authority for Telecomms. and Posts, speech at J.F. Kennedy School of Gov't, Harvard Univ.,

Local. The local telephony market also has seen considerable progress toward competition. As of November 1999, 147 carriers were authorized to provide local service.[45] Many business customers now have a choice, and consumers in more than half of the 83 largest German cities now do as well.[46] In addition, new entrants are beginning significant deployment of wireless local loop technology; in 1998 and 1999, RegTP allocated wireless local loop frequencies to 18 operators, many of which were U.S. companies.[47]

Other Sectors. Other sectors of Germany's communications market also are robustly competitive, and several include a growing U.S. presence. For example, AOL is the second largest Internet service provider in Germany, and Compuserve also is a leading provider there.[48] Cisco, Global Crossing, IBM, Qwest, UUNet, and other American companies provide Internet backbone, data transmission, and computer hardware in Germany. U.S. companies including COMSAT, GE American Communications, and SPACELINK have entered the satellite communications market in Germany. Moreover, as DT divests its cable TV network, U.S. companies (such as Callahan Associates) have been the first to take controlling interests in some

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Boston, *Competition, Regulation and the Future of Regulation in Germany* 1, (April 10, 2000) (transcript available at <http://www.regtp.de/en/aktuelles/reden/00060/index.html>).

45/ *European Comm. Fifth Report*, Section 4.7, Competition in Access, at 229.

46/ *RegTP Mid-Year Report* at 12.

47/ *See RegTP Mid-Year Report* at 9-10; *supra* n.40. Similar to the situation in the United States, competitive carriers currently hold a small portion of the local service market. As in the United States, local wireline service in Germany has been the slowest segment to see competition develop, because it requires costly local loops and other infrastructure. Competitors must either lease the incumbent's unbundled loops or lay their own.

48/ *See RegTP Mid-Year Report* at 24.

regions of Germany, and DT is negotiating with other U.S. companies with respect to its cable networks in other regions.[49]

II. DESCRIPTION OF THE TRANSACTION

On July 23, 2000, DT and VoiceStream entered into an Agreement and Plan of Merger, a copy of which is attached as Exhibit B. Under that Agreement, DT will acquire 100 percent of the outstanding common stock of VoiceStream. To accomplish this acquisition, DT has incorporated a wholly owned merger subsidiary pursuant to Delaware law. This merger subsidiary will be merged with VoiceStream, after which the merger subsidiary will cease to exist and VoiceStream (which will remain a Delaware corporation) will be the surviving entity. VoiceStream shareholders will receive 3.2 shares of DT's stock and $30 cash for each share of VoiceStream common stock, subject to certain adjustments. Alternatively, VoiceStream shareholders may elect an all-stock (3.7647 DT shares per VoiceStream share) or an all-cash ($200 per VoiceStream share) option, subject to proration and other adjustments. DT also will assume approximately $5 billion of the net debt of VoiceStream.

Following the closing of the merger, current VoiceStream shareholders will own approximately 22 percent of DT. VoiceStream is expected to become a subsidiary of T-Mobile but will continue to use the VoiceStream brand. The applicants envision that VoiceStream's existing senior management will continue to lead T-Mobile's U.S. mobile operations.

III. THE PROPOSED MERGER IS DEMONSTRABLY IN 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

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[49] *See* Deutsche Telekom AG, SEC Form 20-F, at 6 (filed Apr. 19, 2000).

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.[50/]

Taking the last prong first, the merger of VoiceStream and DT will yield substantial public interest benefits, because it will promote competition in the U.S. wireless market and, in turn, benefit consumers. The competitive benefits will not be offset by any anticompetitive effects, because the merger will not eliminate any wireless competitor or diminish competition in the international services market.

This transaction also satisfies the first three prongs of the Commission's analysis, because it would not result in the violation or frustration of any statutory provision or the Commission's rules. Because the transaction is procompetitive and there are no offsetting public interest harms, the transfer meets the requirement in section 310(b)(4) that DT's greater-than-25% investment in VoiceStream be in the public interest.[51/] Moreover, because VoiceStream's licenses will be held by U.S. entities following the merger, the merger raises no issues under sections 310(b)(1)-(3).[52/]

50/ *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).

51/ *See* 47 U.S.C. § 310(b)(4).

52/ *See id.* §§ 310(b)(1)-(3).

Nor is section 310(a) implicated here, because DT is not the "representative" of a foreign government.[53] The Commission has interpreted the phrase "representative of a foreign government" to mean a party acting "in behalf of" or "in connection with" a foreign government.[54] As shown below, DT does not act in behalf of or in connection with the German government. (*See infra* Part III.B.1.) In any event, "Section 310(b)(4) creates an exception to Section 310(a) to permit a foreign government to hold *indirectly* a U.S. license, so long as the Commission does not find that denying such control would serve the public interest."[55] Thus, because DT's control of VoiceStream's licenses will be indirect, section 310(b)(4) is the only applicable statutory provision.

A. The Merger Will Produce Substantial Procompetitive Benefits And Pose No Threat to Competition.

The merger of DT and VoiceStream will serve the public interest by promoting vigorous competition in the U.S. mobile telephony market. In approving VoiceStream's recent mergers with Omnipoint and Aerial, the Commission recognized that expanding VoiceStream's coverage area is critical to the company's ability to compete with larger nationwide mobile telephony providers — Verizon Wireless, AT&T Wireless, Sprint PCS, Nextel Communications, and SBC/BellSouth. The transaction with DT will give VoiceStream the financial resources it needs to build out its existing licenses and strengthen its existing networks. The transaction also will enable VoiceStream to acquire additional licenses to expand its licensed footprint and to provide

[53] *See id.* § 310(a).

[54] *See QVC Network, Inc.*, 8 FCC Rcd 8485 ¶ 21 (1993); *Russell G. Simpson*, 2 F.C.C.2d 640 (1966); *see also Fox Television Stations, Inc.*, 10 FCC Rcd 8452 ¶ 175 (1995).

[55] *Telecom Finland, Ltd.*, Order, 12 FCC Rcd 17648, 17651 ¶ 7 (1997) ("*Telecom Finland*") (emphasis added); *see also Applications of Intelsat LLC*, Memorandum Opinion and Order, FCC 00-287, File Nos. SAT A/O 20000119-00002, et al., ¶¶ 44-55 (rel. Aug. 8, 2000).

next-generation wireless services. Expanding VoiceStream's geographic reach and enhancing its existing networks will strengthen its position as a competitor in both local markets and the market for national "one-rate" service plans. In turn, the merger will result in more choice, improved services, and better prices for all wireless consumers. In contrast to a transaction that eliminates an existing wireless competitor, these substantial procompetitive benefits will not be offset by any reduction in competition: The merging parties have no overlapping wireless operations, and DT could not enter the U.S. wireless marketplace other than through an acquisition of an existing licensed carrier such as VoiceStream.[56/] The competitive balance therefore strongly supports approval of this application.

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.[57/] The Commission next identifies current and potential participants in these markets.[58/] The Commission then 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

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56/ *See infra* n.88.

57/ *See Application of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee*, Memorandum Opinion and Order, 12 FCC Rcd 19985, 20008 ¶ 37 (1997) ("*Bell Atlantic-NYNEX*"). For recent applications of the Commission's competitive analysis in the wireless context, *see, e.g.*, *Applications of Vodafone AirTouch, Plc and Bell Atlantic Corp.*, Memorandum Opinion and Order, DA 99-2451, DA 00-721, ¶ 25 (rel. Mar. 30, 2000) ("*Vodafone Bell Atlantic*"); *VoiceStream-Aerial* ¶ 30; *VoiceStream Omnipoint* ¶ 21; *Applications of AirTouch Communications, Inc., Transferor, and Vodafone Group, Plc, Transferee*, Memorandum Opinion and Order, DA 99-1200, ¶ 11 (rel. June 22, 1999).

58/ *See id.*

underlie the 1996 Act."[59] This portion of the "public interest analysis may also entail assessing whether the merger will affect the quality of telecommunications services or will result in the provision of new or additional services to consumers."[60] With respect to 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."[61] For many of the same reasons that prompted the Commission to approve VoiceStream's recent mergers with Omnipoint and Aerial, this merger "is likely to enhance competition in the relevant markets" and therefore is in the public interest.[62]

1. The Relevant Markets and Competitive Landscape

VoiceStream provides service in two relevant "product" markets: mobile telephony and international services. DT provides service in the United States (through DTI) only in the latter of these markets. The merger will be procompetitive with respect to both markets.

a. Mobile Telephony

Product and Geographic Markets. VoiceStream operates broadband PCS systems in many areas throughout the United States. Broadband PCS operators are considered commercial

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[59] *Id. See also SBC/Ameritech*, 14 FCC Rcd at 14739 ¶ 50 (public interest evaluation encompasses the broad aims of the Communications Act, "which include . . . the implementation of Congress's pro-competitive, deregulatory national policy framework designed to open all telecommunications markets to competition . . . and the acceleration of private sector deployment of advanced services").

[60] *SBC/Ameritech*, 14 FCC Rcd at 14739 ¶ 50.

[61] *See Bell Atlantic-NYNEX*, 12 FCC Rcd at 20008 ¶ 37. Where one or both of the merging parties possess market power in a relevant market, the Commission also considers the effect of the merger on the Commission's ability to constrain that power until competition is able to accomplish that feat. *See id.* That test has no application here, because neither party comes close to possessing market power in any relevant market, as discussed below.

[62] *VoiceStream-Omnipoint* ¶ 21. *See also id.* ¶ 51; *VoiceStream-Aerial* ¶ 48.

mobile radio service ("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.[63/] This market segment has a national geographic scope; while regional carriers may retain some consumer appeal, the emergence of national "one-rate" plans and the resulting industry consolidation have produced a distinct national market.[64/]

In addition to analog cellular networks, mobile telephony operators have deployed digital networks based on four primary technical standards: CDMA, TDMA, iDEN, and GSM.[65/] As of the end of 1999, TDMA systems had been launched in areas containing 207 million people, or 81.6 percent of the population.[66/] 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).[67/] GSM — the technology employed by VoiceStream — had been launched in areas containing 165 million people, or 65.3 percent of the population.[68/]

63/ *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*").

64/ *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: Because DT has no attributable interest in any provider of mobile service anywhere in the United States, there are no overlaps to consider in any particular region.

65/ *Fifth CMRS Report* at 23-24.

66/ *Id.* at 24.

67/ *Id.*

68/ *Id.* While GSM systems currently are the least prevalent of the digital systems in the United States, GSM is the prevailing technology throughout much of the world with 133 countries having built systems on that platform. *See VoiceStream-Omnipoint* ¶ 6.

As of December 1999, the U.S. mobile telephony market had nearly 86 million subscribers, representing more than a quarter of the nation's population.[69] Total revenues in this market were over $40 billion in 1999.[70]

Significant Market Participants. 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.[71] 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 network; reduced roaming charges when off the operator's network; and, in some cases, no extra roaming charges anywhere."[72] Consumers have signed up in droves following the introduction of such plans.[73]

Following its mergers with Omnipoint and Aerial, VoiceStream became the eighth-largest provider of mobile telephony.[74] 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.[75] Moreover,

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69/ *Fifth CMRS Report* at 5-6.

70/ *Id.* at 5.

71/ *See id.* at 10-11, App. B-5, Table 3.

72/ *Fourth CMRS Report*, 14 FCC Rcd at 10155.

73/ *See id.* at 10156; *Fifth CMRS Report* at 22.

74/ *See Fifth CMRS Report* at App. B-5, Table 3.

75/ VoiceStream is attempting to fill these gaps. VoiceStream has entered into a joint venture with Cook Inlet to provide PCS service in Chicago, and the recently announced agreements of VoiceStream and DT to merge with Powertel, Inc. would, if approved, address the

VoiceStream has built out only 45 percent of its licensed areas — which is far less extensive than the build-outs by more established competitors 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.[76] The Commission has recognized that the "most important variable affecting [a carrier's] ability to compete in the mobile telephone market is coverage."[77]

b. International Services

Product and Geographic Markets. Both VoiceStream and DT 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 resale carriers provide by switching traffic to (and reselling the switched services of) underlying facilities-based U.S. carriers.[78]

The geographic markets for international services consist of the routes between the United States and other countries. For example, DTI provides the majority of its international services between the United States and Germany, and thus competes within that geographic market, among others.

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need for licenses in the southeastern United States (VoiceStream and Powertel have entered into an agreement to merge in the event that DT and Powertel do not consummate their agreement).

76/ See *Fifth CMRS Report* at 10.

77/ *Fourth CMRS Report*, 14 FCC Rcd at 10175.

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

Significant Market Participants. In 1998, total billed revenues for all U.S. facilities-based and facilities-resale services were more than $15 billion.[79] 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).[80] DTI, which provides facilities-resale service over leased lines, is a very small participant in providing the U.S. end of U.S.-Germany telecommunications. DTI's total billed revenues for international services were less than $5 million in 1999. Even with respect to DTI's most significant route, U.S.-Germany, DTI's billed revenues amounted to well under one percent of the total billed revenues for all U.S. carriers serving that route.[81] VoiceStream, which provides pure resale services, also is a very minor participant in the international services market, including with respect to the U.S.-Germany route.

2. The Merger Will Produce Substantial Procompetitive Benefits.

The merger will enhance competition and deliver important consumer benefits with respect to both current- and next-generation wireless services.

Current-Generation Wireless Services. 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 footprint."[82] But VoiceStream has built out only 45% of its licensed areas. Its competitive potential will not be fully realized until that build-out is much more

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79/ *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 taking in nearly $5.8 billion, MCI WorldCom more than $3.25 billion, and Sprint more than $1 billion. *Id.* at 26. The Commission does not report carriers' pure resale revenues.

80/ *Id.* at 25.

81/ *Id.*, Table Switched Services 1 (showing billed revenues of approximately $643 million for the U.S.-Germany route).

82/ *See VoiceStream-Aerial* ¶ 44; *VoiceStream-Omnipoint* ¶ 46.

extensive. And unlike its larger competitors, VoiceStream cannot finance its expansion from a steady cash flow from local telephone services (as Verizon, SBC/BellSouth, and Sprint can), long-distance telephone services (as AT&T and Sprint can), or cable television (as AT&T can). The merger, therefore, is key to hastening the arrival of VoiceStream as a national competitor by providing the resources needed to accelerate the build-out of VoiceStream's existing licenses.

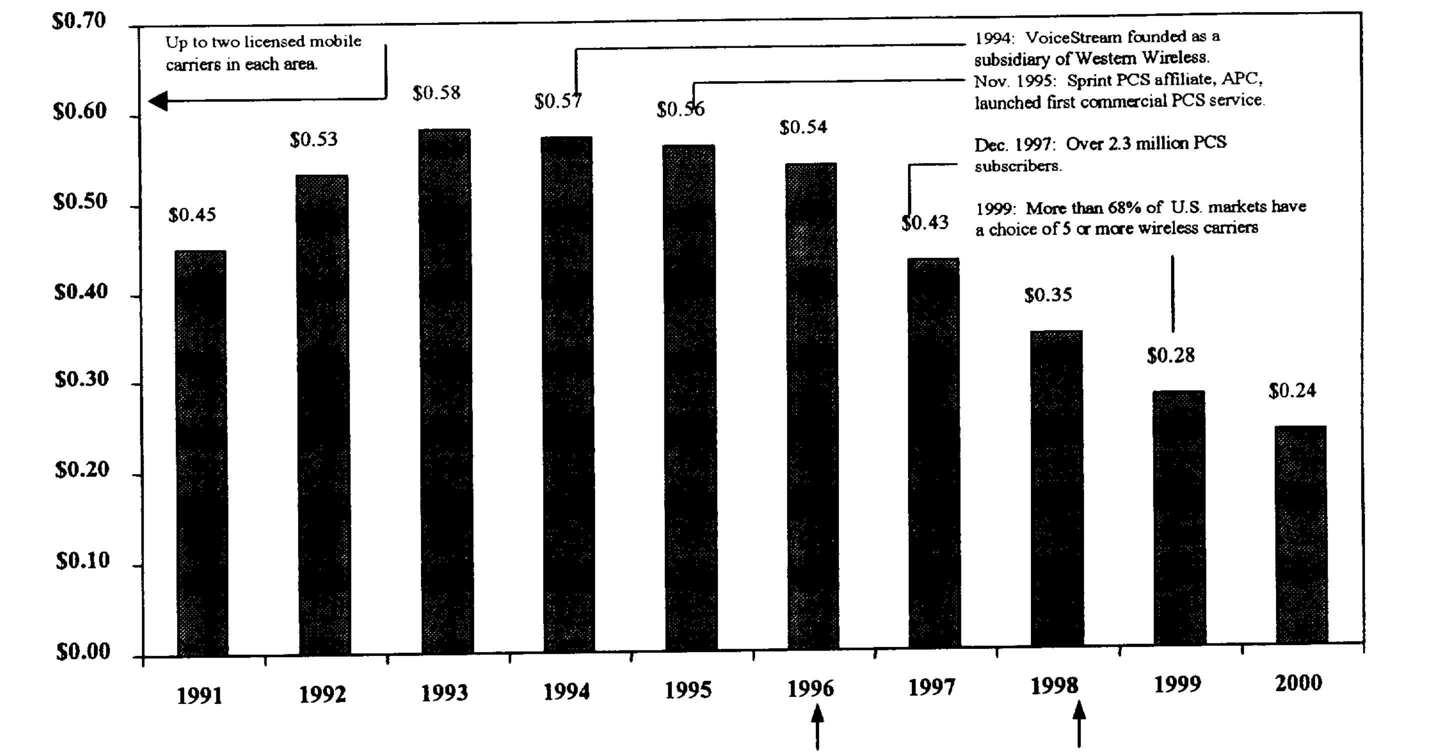
These resources enable VoiceStream not only to build out its existing licenses, but also to acquire additional licenses, either from other licensees or as licenses are put up for auction. Acquiring new licenses would further expand VoiceStream's footprint and give it the spectrum necessary to make its service more robust and to deploy additional wireless services. The Commission has recognized the importance of a having a nationwide footprint to a carrier's ability to compete,[83/] as well as the strongly procompetitive nature of a transaction that provides the capital needed to attain such a nationwide presence.[84/]

The introduction of new wireless competition will produce tangible benefits for consumers by driving down prices and increasing choice and service quality. As the following chart illustrates, the increase in wireless competition since the original cellular duopoly has driven prices down by nearly 60% since 1993:

83/ *See id.*; *Fourth CMRS Report*, 14 FCC Rcd at 10159-60, 10175; *Applications of Motorola, Inc. for Consent to Assign 800 MHz Licenses to Nextel Communications, Inc.*, Order, 10 FCC Rcd 7783, 7785 (1995).

84/ *See Sprint Corp.*, Declaratory Ruling and Order, 11 FCC Rcd 1850, 1863 ¶ 82 (1996) ("We agree with Sprint that this capital infusion to its wireless activities is an important procompetitive effect of the proposed transaction.").

Historical and Projected Average Price Per Minute for U.S. Mobile Telephone Service



Sources: FCC CMRS Reports; The Strategis Group, 2000

Adding VoiceStream as a competitor in many new markets and strengthening VoiceStream as a competitor in existing markets will continue this process of lowering consumer prices.

The merger also will reduce the roaming charges incurred by VoiceStream's subscribers by accelerating VoiceStream's build-out 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 the build-out of VoiceStream's systems 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. Accelerating the build-out of VoiceStream's networks will hasten the reduction of the roaming charges VoiceStream pays, and VoiceStream in turn will be able to offer even more aggressively priced wireless service plans.

Moreover, the merger will present opportunities for seamless, single-handset services throughout the world that will make VoiceStream's use of the GSM standard a key asset in the United States. This seamless network will offer travelers such features as worldwide voicemail access numbers and transferable prepaid calling plans. The Commission relied on such procompetitive benefits in approving VoiceStream's transactions with Omnipoint and Aerial.[85]

DT's leadership in providing advanced wireless services in Europe will provide additional service-related benefits to U.S. consumers. Several features offered there by DT have not yet been introduced in the United States. As noted above, T-Mobile customers can dial short codes to access an array of value-added services, such as emergency automobile service, travel assistance, shopping, or concierge/secretarial services. These and other services are becoming far more robust as a result of the introduction of the GPRS standard. The development of additional leading-edge services in Europe will continue to accelerate with the planned introduction of next-generation services. DT's experience with such advanced features, and its ongoing investments in research and development, will facilitate VoiceStream's ability to deliver these and other promising new services, including next-generation applications, to U.S. consumers.

In addition to enhancing consumer choice and innovation, the merger offers the potential for further price reductions as a result of improved economies of scale and scope. Currently, VoiceStream is dwarfed by its five large national competitors. By merging with DT.

[85] *See VoiceStream-Aerial* ¶ 44; *VoiceStream-Omnipoint* ¶ 46.

VoiceStream will achieve the scale necessary to procure handsets and infrastructure equipment at attractive prices, and to drive down other costs. The resulting savings could be passed on to consumers. Furthermore, by consolidating functions such as technological research and system development, DT-VoiceStream may be able to lower these costs and pass those savings on to consumers as well. Moreover, by combining the best practices of VoiceStream and T-Mobile, the combined company can be more responsive to subscribers' needs.

These various service enhancements and potential price reductions are not likely to be limited to VoiceStream's subscribers. Other wireless operators in the United States will come under competitive pressure to improve their own services, and therefore *all* wireless subscribers will benefit.[86] For example, as VoiceStream becomes an early provider of GPRS-based services, other carriers will be forced to upgrade their own service offerings. Just as the introduction of broadband PCS services pressured analog cellular operators to overhaul their networks, DT's operational experience with technologies that have yet to be introduced in the United States will redound to the benefit of U.S. consumers generally. Likewise, if VoiceStream is able to translate efficiencies from the merger with DT into reduced prices over time, as the companies expect, other wireless operators likely will be forced to keep pace, thereby delivering the benefits of price competition to all Americans.

Next Generation Wireless Services. The merger with DT also will provide VoiceStream with additional financial backing necessary to speed deployment of next-generation wireless services. Just as VoiceStream's competitors will be able to draw on the lessons they learn in Europe and elsewhere in deploying next-generation wireless services, merging with DT

86/ *See, e.g.*, *Fourth CMRS Report*, 14 FCC Rcd at 10173 (carriers have responded to competition in recent years by "increas[ing] their capacity and expand[ing] their service offerings").

will give VoiceStream access to DT's experience as it deploys next-generation services in other markets.

Accelerating deployment of next-generation wireless services promotes competition not only in U.S. wireless markets but also in mass-market, high-speed data services, which today are provided either over telephone lines through xDSL services or over cable lines through cable modems. VoiceStream's next-generation wireless services will provide consumers with another technological means of obtaining high-speed data services.

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

The merger's substantial procompetitive benefits will not be offset by any anticompetitive effects in the wireless telephony or international services market. VoiceStream's mobile telephony services do not overlap with any DT service in the United States, and the overlap of the two carriers' international services will have no significant impact on competition.

Mobile Telephony. DT does not presently provide any mobile telephony services in the United States.[87] Nor can DT be characterized as a potential entrant (apart from this merger or a similar transaction). Even if building a new network from the ground up were a viable competitive strategy, allocated and unassigned spectrum necessary to do so simply does not

[87] DT owns an interest of approximately 9 percent in Sprint PCS, with no rights to elect or nominate any members of Sprint's Board. DT receives the same information about the operations of Sprint PCS as any other shareholder. Under the Commission's rules, DT's interest in Sprint PCS is nonattributable. *See* 47 C.F.R. § 20.6(d); *1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers*, 15 FCC Rcd 9219, ¶ 86 (1999). Because the Commission considers only attributable interests in conducting its public interest analysis, *see, e.g.*, *VoiceStream-Omnipoint* ¶ 23, DT's interest in Sprint PCS is irrelevant to this proceeding. In any event, DT plans to dispose of its Sprint shares in an orderly manner, taking into account market conditions and any applicable legal and contractual restrictions. *See* Deutsche Telekom AG, SEC Form 20-F, at 34 (filed Apr. 19, 2000).

exist.[88/] The merger thus will not eliminate any actual or potential competition in the U.S. mobile telephony market. Moreover, in *VoiceStream-Aerial* and *VoiceStream-Omnipoint*, the Commission ruled that, even though each merger eliminated a relatively significant regional mobile telephony operator, the procompetitive benefits of the transaction easily outweighed this potential anticompetitive effect.[89/] Here, where there are no anticompetitive effects whatsoever, and there are considerable procompetitive benefits (*see infra* Part III.A.3), it is all the more clear that the merger will be procompetitive.

International Services. The merger will have no significant impact on competition in the U.S. market for originating or terminating international calls. Because VoiceStream does not own any international transport facilities, this transaction will not "eliminate any significant potential participant in the provision of international services."[90/] 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 VoiceStream nor DTI controls any bottleneck facility in the United States on which other carriers rely to provide service.[91/] In fact, the combination of two tiny competitors will only strengthen their

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88/ *See AirTouch-Vodafone* ¶ 14 ("any other avenue for Vodafone to enter the U.S. market [other than proposed merger] would generally have required it to acquire licensed spectrum from an existing licensee"). The Commission currently has plans to conduct two auctions, one for reclaimed C & F Block licenses, and one for the 700 MHz band. These licenses, either together or separately, would not be sufficient to form a new nationwide current-generation wireless network. The C & F Block licenses do not have a national footprint. And the 700 MHz licenses are subject to significant uncertainty as to when they will be available for wireless telecommunications because of the need to relocate existing UHF television stations (particularly in the northeastern United States), and because analog television licenses are reclaimed only if digital penetration reaches certain prescribed thresholds.

89/ *See VoiceStream-Aerial* ¶ 48; *VoiceStream-Omnipoint* ¶ 51.

90/ *See VoiceStream-Aerial* ¶ 39; *VoiceStream-Omnipoint* ¶ 33.

91/ *Id.*

ability to chip away at the dominance of market leaders AT&T, WorldCom, and Sprint, and therefore will *promote* competition in the international services market.

In reviewing the competitive effects of a merger on the international market, the Commission also considers whether the transferee will become affiliated with a foreign carrier, in order to determine whether to classify the merged entity as a dominant carrier on certain international routes.[92] Here, VoiceStream is expected to become a subsidiary of T-Mobile, and therefore an "affiliate" of DT under the FCC's rules. As a result, as noted in the accompanying section 214 application, VoiceStream (like DTI) will be subject to dominant carrier regulation with respect to three European routes: U.S.-Germany, U.S.-Slovakia, and U.S.-Hungary. *See supra* at 9 n.19. Under the Commission's rules, VoiceStream will be required to file international service tariffs on one day's notice; maintain separate books of account from DT; not jointly own transmission or switching facilities with DT; file quarterly reports of revenue and transmission; file quarterly reports summarizing the provisioning and maintenance of all basic network facilities and services procured from DT; and file quarterly circuit status reports.[93] These requirements are designed to make a carrier's interaction with its affiliated foreign carrier transparent and thereby guard against discriminatory conduct. To the extent that VoiceStream's relationship with DT poses any potential threat of such conduct, the Commission's dominant-carrier regulations are an adequate safeguard.[94]

92/ *See, e.g., VoiceStream-Omnipoint* ¶ 34.

93/ *See* 47 C.F.R. § 63.10(c).

94/ Moreover, the existence of any such threat would not be a result of the merger, because the combined international operations of VoiceStream and DTI are no more significant than DTI's alone. *See International Services Report* at 25.

This merger bears no resemblance to transactions in which the Commission has imposed safeguards above and beyond dominant-carrier regulation. For example, in approving investments by DT and France Telecom in Sprint, the Commission imposed additional safeguards because Germany and France *at that time* did not offer effective competitive opportunities to U.S. carriers, and Sprint, as the third-largest U.S. provider of international service, was capable of bringing about substantial anticompetitive effects.[95/]

Those factors are not present here. The German and French markets no longer are closed to competition by U.S. carriers. Indeed, in 1998, the Commission lifted the conditions it had imposed on Sprint, including dominant-carrier regulation, based on its conclusion that "the French and German telecommunications markets are now open to competition."[96/] Moreover, VoiceStream — unlike Sprint — is incapable of discriminating against other international carriers; to the contrary, as a pure reseller, VoiceStream is entirely dependent on other carriers to transport its customers' calls.[97/] Even in combination with DTI's small facilities-resale operations, the diminutive scale of the merged entity's presence in the U.S. international market will preclude the sort of competitive threat that exists where a carrier — such as Sprint — can exercise bottleneck control.

95/ *See generally Sprint Corp.*, Declaratory Ruling and Order, 11 FCC Rcd 1850, 1859 ¶ 52 (1996). Notably, this order was issued before negotiation of the WTO Basic Telecommunications Agreement.

96/ *Sprint Corp.*, Declaratory Ruling and Order, 13 FCC 17223, 17228 ¶ 14 (1998).

97/ *See VoiceStream-Aerial* ¶ 39; *VoiceStream-Omnipoint* ¶ 33.

In sum, the net impact of the proposed merger on competition will be overwhelmingly positive. Therefore, this transaction easily satisfies the standard adopted in *Bell Atlantic-NYNEX* and applied in subsequent orders.[98/]

B. The Merger Is Consistent with Section 310(b)(4), Because DT's Foreign Ownership Poses No Threat to Competition, and Any Concerns Regarding National Security or Law Enforcement Will Be Addressed in Cooperation with Executive Branch Officials.

Because DT will acquire 100 percent of VoiceStream through the merger — and therefore will exert *indirect* control over VoiceStream's licensee subsidiaries — the Commission must determine under section 310(b)(4) of the Act that the merger is in the public interest.[99/] In addition, the applicants seek a declaratory ruling that the transfer to DT of VoiceStream's noncontrolling interests in other wireless carriers (*see supra* n.5) also is in the public interest. In similar proceedings, the Commission has said that it is "guided . . . by the U.S. Government's commitment under the World Trade Organization ("WTO") Basic Telecommunications Agreement, which seeks to promote global markets for telecommunications so that consumers may enjoy the benefits of competition."[100/] The Commission accordingly adheres to the principles that "additional foreign investment can promote competition in the U.S. market," and that "the public interest will be served by permitting more open investment by entities from WTO Member countries in U.S. common carrier wireless licensees."[101/] Based on these principles, the Commission has adopted a "strong presumption that no competitive concerns are

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98/ *See supra* n.57.

99/ *See* 47 U.S.C. § 310(b)(4).

100/ *VoiceStream-Aerial* ¶ 9; *Vodafone AirTouch-Bell Atlantic*, 12 FCC Rcd at 20008-09 ¶ 13.

101/ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23939, ¶ 111 (1997) ("*Foreign Participation Order*").

raised by . . . indirect foreign investment[s] from WTO Member countries."[102] As Chairman Kennard testified recently before the Congress, pursuant to this presumption the Commission will approve a merger between a U.S. carrier and one based in a WTO country unless " the proposed merger poses a *very high risk to competition* [in the United States], or raises national security or law enforcement concerns."[103]

That strong presumption applies here, because DT's home country, Germany, is a WTO member. And the presumption cannot be rebutted in light of the overwhelmingly procompetitive nature of the transaction and the utter absence of anticompetitive effects. To the extent that the Executive Branch raises concerns relating to national security, law enforcement, or other matters, the parties will address those concerns in an agreement similar to the one adopted in *VoiceStream-Omnipoint* and *VoiceStream-Aerial*.

1. There Is Nothing To Rebut the Strong Presumption in Favor of DT's Acquisition of VoiceStream.

The Commission adopted the strong presumption in favor of open entry into the U.S. wireless market for carriers in WTO Member countries because "there is no possibility of leveraging foreign bottlenecks in order to create advantages for some competitors in U.S. [wireless] markets."[104] Consistent with that analysis, the Commission easily concluded that

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102/ *VoiceStream-Omnipoint* ¶ 16.

103/ *Foreign Government Ownership of American Telecommunications Companies, Hearing before House Commerce Committee, Subcommittee on Telecommunications, Trade and Consumer Protection* (Sept. 7, 2000) (statement of William E. Kennard, Chairman, FCC) (emphasis added).

104/ *Foreign Participation Order*, 12 FCC Rcd at 23940 ¶ 112.

Vodafone's acquisition of 100 percent of AirTouch was in the public interest,[105/] as it did with respect to VoiceStream's merger with partially foreign-owned Omnipoint.[106/]

Here, too, the strong presumption in favor of foreign investment cannot be rebutted. Far from diminishing competition in the United States, DT's investment will enhance competition significantly. *See supra* Part III.A.2. Indeed, this transaction provides a textbook example of the need for, and advantages of, an open telecommunications market. Whereas VoiceStream's GSM-based network meshes perfectly with DT's network, the fact that most U.S. wireless carriers have invested in networks based on the CDMA and TDMA standards would make an alliance with a domestic company a strategic mismatch for VoiceStream. Therefore, VoiceStream's transaction with a non-U.S. carrier such as DT not only makes sense for VoiceStream and its subscribers, but it might represent one of the *only* means for VoiceStream to attain the resources and scale it needs to compete effectively with the larger mobile telephony operators.

Nor is DT's partial government ownership a valid basis for rebutting the strong presumption in favor of approval.[107/] When the United States negotiated the WTO Basic Agreement on Telecommunications, it could have taken an exception for foreign-government

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105/ *See Vodafone-AirTouch* ¶ 9 ("Because the United Kingdom is a Member of the World Trade Organization (WTO), under the Commission's *Foreign Participation Order*, we presume that the public interest would be served by authorizing, under section 310(b)(4), common carrier radio licenses held by entities indirectly owned by Vodafone and citizens of the United Kingdom. No party has raised an argument rebutting this presumption, as we are aware of no other reason to rebut the presumption here.").

106/ *See VoiceStream-Omnipoint* ¶ 19 ("Under the *Foreign Participation Order*, VWHC is entitled to a strong presumption that no competitive concerns are raised by Hutchison's increased investment to 30.6 percent of VWHC's stock. We see no reason to rebut that presumption.").

107/ *See* Letter from Senator Ernest F. Hollings to FCC Chairman William Kennard of July 12, 2000.

ownership to the open-market standard. But it did not.[108] Accordingly, in adopting the strong presumption in favor of open entry, the Commission drew no distinction between investment by a firm with foreign-government ownership and any other foreign investment.[109] That presumption therefore applies with full force in this proceeding.

In any event, as shown below, DT's remaining government ownership — which the merger with VoiceStream will substantially dilute, from 58.2 percent to 45.7 percent — will not have any effect on the U.S. mobile telephony market.[110] DT is a private corporation subject to the same German laws as those applicable to other corporations in Germany, without distinction. The German government does not provide any state assistance or other special treatment to DT. Nor does DT enjoy superior access to capital. Indeed, it would be unlawful for the government to direct subsidies to DT. The structure of the government's role as shareholder in DT provides additional protection against any theoretical risk of cross-subsidization. DT in turn does not have any incentive to charge inflated rates for its local facilities in order to cross-subsidize predatory wireless rates in the United States.

The German Government Does Not and Cannot Subsidize DT's Services. DT is a private corporation subject to applicable German federal law such as the German Stock Corporation Act and German tax laws. Thus, DT has the same rights and responsibilities as any other private enterprise in Germany. DT does not receive any assistance from the German

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108/ *See Fourth Protocol to the General Agreement on Trade in Services*, 36 I.L.M. 354, 366 (1997).

109/ *See Foreign Participation Order*, 12 FCC Rcd at 23939-40 ¶¶ 111-12; *see also Telecom Finland*, 12 FCC Rcd at 17650 ¶ 7 (expressly approving of indirect holdings by foreign governments).

110/ After completion of the Powertel merger (in addition to the VoiceStream merger), the German government's ownership interest would be approximately 44%.

government, whether in the form of direct subsidies, preferential tax treatment, or any other special benefit. Even if the government wished to direct subsidies to DT, such conduct would violate the European Union law prohibiting state aids that distort competition.[111]

In any event, the government's noninvolvement in the management of DT — including its noninvolvement as a shareholder in establishing rates for DT's services — effectively precludes it from providing subsidies. The German government does not confer on DT any special advantages, such as subsidies, tax preferences, or licensing benefits.[112] Indeed, the recent third-generation spectrum auction in Germany is telling: RegTP's choice of an auction, rather than a "beauty contest," ensured that DT received no favoritism. DT participated on the same terms as all other bidders, and was thereby required to pay as much as its competitors — nearly $7.7 billion — for new spectrum.[113] DT derived no benefit from its partial government ownership.

111/ *See* European Commission Treaty art. 87 (prohibiting state aid that would distort competition); European Commission, Guidelines on the Application of EEC Competition Rules in the Telecommunications Sector, Official Journal No. C 233, at 2 (Sept. 6, 1991)

112/ *See, e.g.*, Deutsche Telekom AG, Articles of Incorporation (Exhibit A). While some critics of DT's proposed acquisition of VoiceStream have noted that a substantial minority of DT's employees are former civil servants, *see* Peter S. Goodman, *Takeover by German Firm Tests Free Trade*, Washington Post, Sept. 7, 2000, this byproduct of DT's past governmental control is a burden, not a benefit. When DT became a private corporation more than five years ago, its civil service employees were granted the same employment rights vis-a-vis DT that they had with the Federal Republic of Germany. The obligation to maintain these employees' former level of benefits imposes costs that DT's competitors need not bear. By law, the Federal Republic of Germany shifted all responsibility to steer and monitor the civil servants to DT. Moreover, the fact that DT's employees include civil servants has nothing to do with the *present* ownership of the Federal Republic of Germany's stake in DT: Even if the German government had divested 100 percent of its holdings in DT by now, that would not alter DT's obligations to its employees.

113/ *See, e.g.*, *German 3G Spectrum Auction Tops U.K. Bidding Total by $10 Billion*, Telecommunications Reports Daily, Aug. 17, 2000.

Far from conferring special benefits on DT, the German government possesses the same rights as other shareholders. In particular, it does not have special voting rights (*e.g.*, a "golden share"). Therefore, the German government cannot bring about important decisions such as capital increases or decreases or changes to the articles of association without the support of other shareholders.[114/] While the German government and KfW, based on their shareholdings, could select all 10 shareholder-appointed members of DT's 20- member Supervisory board, each has appointed only one member of that Board.[115/] Thus, because the Supervisory board must approve certain transactions, including major structural changes, the German government and its representatives could not bring about such changes unilaterally.[116/] In addition, the government has always cast its votes in line with the majority of other shareholders and has never opposed a proposal of the Management Board or Supervisory Board. Moreover, there is no government representative on the Management Board, which oversees the day to day operations of DT.[117/] Finally, the German government's hands-off approach is documented in reports required under German law, which are issued by DT's Management Board on a regular basis and reviewed and confirmed by independent auditors.

DT Does Not Enjoy Preferential Access to Capital. The German government also could not give DT preferential access to capital without knocking down the wall it has erected between its role as investor in DT, on the one hand, and as sovereign, on the other. Thus, since

[114/] An interest of 25 percent plus one share is sufficient under German corporate law to veto such changes. *See* German Stock Corporation Act § 179.

[115/] *See* Deutsche Telekom AG, Articles of Incorporation § 10; *see also* Deutsche Telekom AG, SEC Form 20-F, at 115-16 (filed Apr. 19, 2000) (discussing role of Supervisory Board and listing members).

[116/] *See* Deutsche Telekom AG, Articles of Incorporation § 9.

[117/] *See* Deutsche Telekom AG, SEC Form 20-F at 114-15 (discussing Management Board).

January 2, 1995, the date of DT's registration in the Commercial Register as a private corporation, the government has not provided — and by law may not provide — any guarantee of the debts or liabilities of DT.[118]

The difference between the bond ratings of DT and those of the German government is telling: Whereas the major credit-rating agencies have given German government bonds their highest rating (AAA), those agencies rate DT's bonds at a lower level (Moody's: Aa2; Standard & Poors: AA-) and have put DT on their "credit watch" list, signaling the possibility of an impending downgrade.[119] Moreover, DT's rating is the same as that of a number of large U.S. carriers, such as BellSouth and Verizon, and *lower* than that of British Telecommunications Plc ("BT") (Moody's: Aa1; Standard & Poors: AA+).[120] If DT enjoyed preferential access to capital as a result of the German government's ownership stake, DT's bond rating presumably would be comparable to that of the German government, or at least significantly higher than the bond ratings of fully private carriers.

The Competitive Marketplace in Germany and the Regulatory Framework Preclude Cross-Subsidization Between DT and Its Affiliates. DT's position in the German market, and in particular its control of local facilities there, is irrelevant to this merger

[118] Any debt incurred before DT was privatized is guaranteed by the German government, because at that time DT was a government entity. To remove that guarantee would require the consent of the holders of the debt instruments. In the five years since privatization, DT already has paid off about half of the debt that was outstanding at the time it was privatized; the remaining debt will be paid off by 2004 under DT's scheduled payments.

[119] *See Mergent Bond Record*, at 184 July 2000; Claudia Barros Semerei, *S&P Sees Gloomy Outlook for Telecom Operators*, Capital Markets Report, May 26, 2000; *AFX Top Stories-Afternoon*, AFX News, Aug. 16, 2000; *Credit Profile, Deutsche Telekom*, Bloomberg L.P., Aug. 28, 2000.

[120] *See Credit Profile, Deutsche Telekom, BellSouth Telecommunications, British Telecom Plc, Verizon Corp.*, Bloomberg L.P., Aug. 18, 2000.

proceeding. As the Commission has recognized, a foreign carrier with a dominant position in its home market for local exchange services would not be able to "leverag[e] foreign bottlenecks" in U.S. wireless markets.[121] If DT sought improperly to cross-subsidize VoiceStream's operations by charging inflated local service rates in Germany, it would be unable to do so for several reasons. The German regulatory authority regulates DT's local rates and ensures that they are based on DT's costs.[122] And DT would not be able to shift costs from VoiceStream to DT in an effort to justify local rate increases, because the companies — unlike incumbent LECs in the U.S. and their in-market wireless affiliates — will not have shared facilities and personnel.[123] Even assuming for the sake of argument that such cost-shifting were nevertheless possible — and that the German government would cause DT to charge German consumers inflated rates so that VoiceStream could charge American consumers below-cost rates — accounting and other

[121] *See Foreign Participation Order*, 12 FCC Rcd at 23940 ¶ 112. The Commission has recognized this point in other contexts, as well. The BOCs are forbidden to provide long distance in the "in-region" markets where they have bottleneck local exchange facilities, because the sharing of local and long-distance facilities might create opportunities for anticompetitive conduct; but the BOCs *may* provide long distance services "out of region," where they do *not* own bottleneck facilities and thus have no real opportunity to engage in discriminatory conduct. *See* 47 U.S.C. § 271. For the same reasons, the Commission's safeguards that apply to BOCs' provision of wireless services apply only within the BOCs' local service regions. *See Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services*, Report and Order, 12 FCC Rcd 15668, 15688-89 ¶¶ 27-28, 39 (1997) ("*CMRS Safeguards Order*").

[122] *See* German Telecommunications Act §§ 24, 25, 27, 29. DT is subject to strict sector-specific regulation of wholesale and retail tariffs. Tariffs must reflect the costs of efficient service provision based on the long-run incremental costs of providing a particular service, and these tariffs are subject to thorough scrutiny by RegTP. *See id.* § 24; Telekommunikations-Entgeltregulierungsverordnung (Telecommunications Rates Regulation) § 3. In particular, RegTP makes certain that these tariffs contain no surcharges that result from the provider's dominant position, or discounts that prejudice other companies' competitive opportunities in a telecommunications market sector. *See* German Telecommunications Act § 24.

[123] *See CMRS Safeguards Order*, 12 FCC Rcd at 15688-89 ¶¶ 27-28, 39 (describing how LEC control of bottleneck facilities could permit improper cost shifting where the LEC provides CMRS *in the same geographic market*, but not otherwise).

safeguards imposed by the German regulatory authority would enable German, E.U., and U.S. regulators to detect and respond to any anticompetitive behavior.[124]

Similarly, even if DT could somehow charge inflated rates in order to price VoiceStream's wireless services below their cost, competition in Germany would make such predatory pricing self-defeating. As discussed above, as a result of broad-based new entry by U.S. and other companies, the German telecommunications market is now subject to fierce price competition, with prices being driven toward competitive levels. Indeed, the extent of competitive entry indicates that entrants do not fear cross-subsidization in Germany, and it is even less probable that DT could cross-subsidize outside its home market. Inflating DT's local rates in Germany would cause DT to lose market share to ever-stronger local service competitors, and the lost revenue in its principal line of business would more than offset any gains in the U.S. wireless market.[125]

Not only would competition in Germany make any cross-subsidy scheme infeasible, but so too would the strength of wireless competitors in the United States. Any of the well-heeled wireless incumbents in the U.S. market could incur losses in anticipation of future profits, just as DT theoretically could. And even if DT could somehow drive VoiceStream's much larger competitors from the market, their spectrum and facilities would remain and new entrants would

[124] *See* German Telecommunications Act, §14 (requiring transparent financial relations between and among services for dominant providers); §§ 29-30 (regulating rates); § 33 (preventing abuse of dominant position); § 35 (requiring dominant providers to grant competitive access to their networks). *See also* Christoph Engel, *The Path to Competition for Telecommunications in Germany*, in COMPETITION AND REGULATION IN TELECOMMUNICATIONS: EXAMINING GERMANY AND AMERICA (J. Gregory Sidak, *et al.* Kluwer Academic Press 2000) (describing German safeguards against cross-subsidization).

[125] Moreover, under German corporate law, DT's executives and Board members are bound by a duty to preserve the long-term profitability of the company rather than by any allegiance to the German government. *See* German Stock Corporation Act §§ 76, 93. This fiduciary duty further militates against any counterproductive cross-subsidy scheme.

appear as soon as VoiceStream raised prices to recoup earlier losses.[126/] VoiceStream could not obtain spectrum owned by any failed competitor without the Commission's consent.

All these reasons explain why the Commission saw no need to impose any conditions to guard against improper cross-subsidization in its orders approving transactions involving Deutsche Telekom, France Telecom, and Sprint; MCI and BT; or AT&T and BT.[127/] There is similarly no warrant for any such conditions here.

2. Any Executive Branch Concerns Will Be Addressed Through Cooperation with the Relevant Agencies and the Adoption of Appropriate Safeguards.

In addition to competition-related issues, the Commission's analysis under the public interest standard includes consideration of potential threats to national security, law enforcement, foreign policy, and trade.[128/] The Commission consults "with the appropriate Executive Branch agencies regarding those concerns."[129/] The applicants already have begun discussions with Executive Branch officials. As in the Commission's prior merger-review proceedings involving VoiceStream, the applicants are receptive to agreements with the Department of Justice and

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126/ *See generally Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 224-26 (1993); *Matushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 589 (1986); Robert H. Bork, THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF 144-59 (Free Press, rev. ed. 1993); Richard A. Posner, ANTITRUST LAW: AN ECONOMIC PERSPECTIVE 184-96 (University of Chicago Press 1976).

127/ *See Sprint Corp.*, Declaratory Ruling and Order, 11 FCC Rcd 1850, 1866-72 ¶¶ 96-133 (1996) (imposing various conditions but none relating to cross-subsidization of domestic wireless operations); *The Merger of MCI Communications Corp. and British Telecommunications Plc*, Memorandum Opinion and Order, 12 FCC Rcd 15351, 15459-69 ¶¶ 282-307 (1997) (same); *AT&T Corp., British Telecommunications, Plc, VLT Co. LLC, Violet License Co. L.L.C., and TNV Limited Applications*, Memorandum Opinion and Order, 14 FCC Rcd 19140, 19193-95 ¶¶ 107-110 (1999) (same).

128/ *See Foreign Participation Order*, 12 FCC Rcd at 23940 ¶ 113.

129/ *Id.*

Federal Bureau of Investigation, and other agencies if necessary, that will fully address any concerns raised by the Executive Branch.[130]

Among other things, like VoiceStream's existing agreement with DOJ and the FBI, an agreement likely will require VoiceStream to

> (1) ensure that its network is configured so as to be capable of complying with lawful U.S. process; (2) make available in the United States certain call and subscriber data, if VoiceStream stores such data; and (3) take reasonable measures regarding use of facilities in domestic telecommunications (specifically, with respect to personnel holding sensitive positions), information storage, and access to foreign entities.[131]

The applicants do not object to making the Commission's approval of the transaction contingent on their compliance with any agreement reached with the Executive Branch departments.

C. VoiceStream and DT Respectively Possess 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 licensees are qualified to hold Commission licenses and whether grant of the application would result in the violation of any Commission rules."[132] In the proposed transaction, VoiceStream will be the surviving entity that controls all Commission licenses. The Commission has previously ruled that VoiceStream's licensee subsidiaries are qualified to hold these licenses,[133] and there is no reason to alter that assessment.[134] Moreover,

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130/ *See VoiceStream-Aerial* ¶¶ 45-47 (discussing applicants' agreement with DOJ and FBI); *VoiceStream-Omnipoint* ¶¶ 47-50 (same).

131/ *VoiceStream-Aerial* ¶ 45; *VoiceStream-Omnipoint* ¶ 48.

132/ *See VoiceStream-Omnipoint* ¶ 13

133/ *See id.*

134/ As noted above, DT's ownership interest in Sprint PCS is non-attributable. *See supra* n.87. This application accordingly presents no spectrum-cap issue under 47 C.F.R. § 20.6.

DT, which will indirectly control the licensees, is one of Europe's leading providers of telecommunications and information services, including wireless services. *See supra* Part I.B. DT possesses the financial and other qualifications to exercise such indirect control.[135/]

IV. REQUEST FOR APPROVAL OF ADDITIONAL AUTHORIZATIONS

As set forth in each of the applications for transfer of control, VoiceStream controls entities that hold numerous Commission licenses and other authorizations. While the applications 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.

VoiceStream and DT accordingly request that the grant of the transfer-of-control applications include authority for DT to acquire control of (1) any application of or authorization issued to VoiceStream's subsidiaries during the Commission's consideration of the transfer-of-control applications and the period required for consummation of the transaction following approval;[136/] (2) construction permits held by such licensees that mature into licenses after

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135/ To the best of DT's knowledge, none of the parties to the application has been denied any federal benefits pursuant to the Anti-Drug Abuse Act of 1998 or been a party to relevant adverse litigation. DT is in the process of confirming this understanding with all other parties to the application and will amend its applications promptly to report any necessary supplemental information.

136/ In particular, the following applications are pending: (1) an application for consent to partially assign license authorization KNLF224 from APT Minneapolis, Inc. to BWI Midwest LHC, Inc. was filed on August 2, 2000. *See* Public Notice rel. Aug. 9, 2000 (FCC File No. 0000198777); (2) an application to assign license authorizations KNLG778 and KNLG780 from VoiceStream PCS BTA I License Corporation to AT&T Wireless PCS, L.L.C. was filed July 24, 2000. *See* Public Notice rel. Aug. 2, 2000 (FCC File No. 0000192709); (3) an application to assign license authorizations KNLG247, KNLG760, KNLG768, KNLG773, KNLG784, KNLG786, KNLG791, KNLG803, KNLH737, KNLG747, KNLH763, KNLH770, and KNLH771 from VoiceStream PCS BTA I License Corporation to BWI Midwest LHC, Inc. was filed on August 2, 2000. *See* Public Notice rel. Aug. 9, 2000 (FCC File No. 0000198793); (4) an application to partially assign license authorizations KNLF249 and KNLF253 from AT&T Wireless PCS, L.L.C. to Omnipoint Holdings, Inc. was filed on July 27, 2000. *See* Public Notice rel. Aug. 2, 2000 (FCC File No. 0000192987); (5) an application to assign license authorizations KNLH289 and KNLH292 from Omnipoint MI-Indiana Area DE License LLC to AT&T Wireless PCS, L.L.C. was filed on July 24, 2000. *See* Public Notice rel. Aug. 2, 2000 (FCC File No. 00192588); (6) an application to transfer control of a one percent general partnership interest in license authorization KNLF983 from Omnipoint Venture Partners, LLC (licensee Omnipoint Philadelphia-E. Lancaster E License, LLC) to CIVS PA II, LLC was filed May 12, 2000. *See* Public Notice rel. May 17, 2000 (FCC File No. 0000126706) (application amended on June 13, 2000); (7) an application to transfer control of a one percent general partnership interest in license authorizations KNLF911 and KNLG721 from Omnipoint Venture Partners, LLC (licensee D&E/Omnipoint Wireless Joint Venture, L.P.) to CIVS PA II, LLC filed May 12, 2000. *See* Public Notice rel. May 17, 2000 (FCC File No. 0000126703)(application amended on June 14, 2000); and (8) an application to assign license authorizations KNLH348 and KNLH346 from Omnipoint St. Louis DE License LLC to AT&T Wireless PCS, L.L.C. was filed on July 24, 2000. *See* Public Notice rel. Aug. 2, 2000 (FCC File No. 0000192589).

VoiceStream also has 23 Part 101 Point-to-Point microwave applications pending before the Commission. They are the following:

Former Aerial Microwave Holdings			
	FCC File No.	**Licensee**	**Date Filed**
1	0000123394	VoiceStream PCS I License L.L.C.	5/4/2000
2	0000123356	VoiceStream PCS I License L.L.C.	5/4/2000
3	0000123401	VoiceStream PCS I License L.L.C.	5/4/2000
4	0000123359	VoiceStream PCS I License L.L.C.	5/4/2000
5	0000123365	VoiceStream PCS I License L.L.C.	5/4/2000
6	0000123386	VoiceStream PCS I License L.L.C.	5/4/2000
7	0000123374	VoiceStream PCS I License L.L.C.	5/4/2000
8	0000123403	VoiceStream PCS I License L.L.C.	5/4/2000
9	0000123357	VoiceStream PCS I License L.L.C.	5/4/2000
10	0000123370	VoiceStream PCS I License L.L.C.	5/4/2000
11	0000123361	VoiceStream PCS I License L.L.C.	5/4/2000
12	0000123409	VoiceStream PCS I License L.L.C.	5/4/2000
13	0000123410	VoiceStream PCS I License L.L.C.	5/4/2000

Other VoiceStream Pending Microwave Applications			
	File Number	**Licensee**	**Date Filed/Amended**
1	0000178838	VoiceStream PCS BTA I License Corporation	6/28/2000
2	0000190600	VoiceStream PCS BTA I License Corporation	7/18/2000
3	0000190952	VoiceStream PCS I License L.L.C.	7/19/2000

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.[137] In addition, the applicants request a blanket exemption from any applicable cut-off rules in cases where VoiceStream 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.[138]

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

4	0000191027	VoiceStream PCS I License L.L.C.	7/19/2000
5	0000191649	VoiceStream PCS I License L.L.C.	7/20/2000
6	0000190574	VoiceStream PCS I License L.L.C.	7/18/2000 (amended 7/20/2000)
7	0000190596	VoiceStream PCS I License L.L.C.	7/18/2000 (amended 7/20/2000)
8	0000191067	VoiceStream PCS I License L.L.C.	7/19/2000 (amended 7/20/2000)
9	0000191656	VoiceStream PCS I License L.L.C.	7/20/2000
10	0000191660	VoiceStream PCS I License L.L.C.	7/20/2000

[137] *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*").

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

(or to any other licenses). The Agreement and Plan of Merger and attachments are appended hereto as Exhibit B.

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. VoiceStream and DT accordingly request that the Commission grant these applications and grant the requested declaratory ruling.

Respectfully submitted,

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September 18, 2000