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December 12, 2000

Chairman William E. Kennard
Federal Communications Commission
Room 8-A302C
445 12th Street, S.W.
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
Room 8-B201H
445 12th Street, S.W.
Washington, DC 20554

Commissioner Harold W. Furchtgott-Roth
Federal Communications Commission
Room 8-B115H
445 12th Street, S.W.
Washington, DC 20554

Commissioner Gloria Tristani
Federal Communications Commission
Room 8-C302C
445 12th Street, S.W.
Washington, DC 20554

Commissioner Michael K. Powell
Federal Communications Commission
Room 8-A204C
445 12th Street, S.W.
Washington, DC 20554

Dear Chairman Kennard, and Commissioners Ness, Furchtgott-Roth, Tristani, and Powell:

On behalf of the Securities Industry Association, I am writing to express our concern about certain statements made in letters sent to you by Senator Ernest Hollings (D-SC), regarding the proposed merger of Deutsche Telekom and VoiceStream Wireless, which is now being considered by the Federal Communications Commission. Senator Hollings, in recent correspondence, appears to be urging the Commission to adopt an interpretation of Section 310 of the Communications Act that would bar Deutsche Telekom from indirectly owning an FCC license, because after the merger the German government would still have a 44% ownership interest in Deutsche Telekom. We urge the Commission not to adopt such an interpretation, which would squarely contradict statements made by the United States government during negotiations of the WTO Basic Telecommunications Agreement, and which would violate the U.S. commitments in that agreement. Such an interpretation is not necessary to protect legitimate U.S. government interests under existing law, and would certainly undercut the United States' ability to further open foreign markets to U.S. consumers, investors and businesses.

Interpreting 310(a) categorically to prohibit substantial government ownership of a company that indirectly, rather than directly, holds a U.S. wireless license would violate our commitments in the WTO Basic Telecommunications Agreement, which the U.S. strongly backed. During the negotiations of that agreement, the U.S. was asked by its negotiating partners to clarify its market access commitments, particularly with respect to foreign government ownership. In an official communication to international negotiators, the U.S. expressly stated: "There will be no limits on indirect foreign ownership of such licenses by foreign governments (including government-owned corporations) . . ."[1] The United States then explained that "[t]here is a limit on direct ownership, but it is one of form not substance."[2] The Commission should continue to interpret Section 310(a) consistently with U.S. WTO commitments, as the Commission did in its post-WTO *Telecom Finland* decision.[3]

Second, the Commission already possesses the legal authority necessary to take action in cases where it is believed a security threat or a threat to competition in the United States exists. There is therefore is no need to interpret Section 310(a) to create a bar on indirect foreign government ownership of FCC licensees. The Commission has clearly stated in its *Foreign Participation Order* that it will consider whether a merger presents a "very high risk to competition" in the United States, and any national security considerations raised by the Executive Branch.[4] The Commission should fully evaluate these two factors.

We note that a least one allegation of anticompetitive harm levied against this merger during earlier congressional debates appears to be unsubstantiated. There is simply no evidence that Deutsche Telekom's partial governmental ownership gives it any advantage in gaining access to capital. In testimony before the House Commerce Committee, noted economist Greg Sidak pointed out that Deutsche Telekom's Standard & Poor's and Moody's bond ratings are consistent with those of other large, but fully privately owned, telecommunications companies such as Verizon, AT&T and SBC.[5] Mr. Sidak also calculated a weighted average of debt and equity capital for a number of

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1 *See* WTO, Negotiating Group on Basic Telecommunications, Communication from the United States, Conditional Offer on Basic Telecommunications (Revision), S/NGBT/W/12/Add.3/Rev.1 (Feb. 26, 1996).

2 *Id.*

3 *See Telecom Finland, Ltd.*, 12 FCC Rcd. 17648, 17651 (1997).

4 *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd. 23891, 23913-14 (1997) ("*Foreign Participation Order*").

5 *Foreign Government Ownership of American Telecommunications Companies: Hearing of the Subcomm. on Telecommunications, Trade and Consumer Protection of the House Comm. on Commerce*, September 7, 2000 (prepared testimony of J. Gregory Sidak at 11-12) (available at http://www.house.gov/commerce/).

large telecommunications companies, which showed that Deutsche Telekom had a higher cost of capital that these other large, but fully privately owned, telecommunications companies.[6]

Third, the use of FCC licensing processes to review market conditions outside the U.S. that are wholly unrelated to the merger, particularly in the face of international commitments to the contrary, sets a poor policy precedent. Had the U.S. wished to impose a market access test as a condition of entering the U.S. market, it could have expressly proposed such a test as part of its WTO basic telecommunications commitments. But the U.S. did not take such a reservation, so the only possible impact of *de facto* imposing such a condition now would be to undercut U.S. efforts to open foreign markets, which are currently ongoing, for example, in the FTAA and WTO. That would reduce economic growth and job creation prospects for the U.S. economy. We are convinced that U.S. leadership to open foreign markets has been a key factor in supporting global economic growth. The FCC should not inadvertently jeopardize the gains of the last decade.

Finally, U.S. consumers, investors and businesses have enjoyed the benefits of foreign investment in the U.S. More choice and lower cost products for consumers, new sources of capital for innovation and job creation, and the transfer of new technology and management practices to U.S. firms and workers could all be lost if foreign investors are discouraged, indeed prohibited, from entering the U.S. market. Rather, we respectfully urge the Commission to continue to pursue its historic role in pushing for open and fair foreign markets by honoring U.S. commitments designed to do just that.

Sincerely,

Steve Judge

Steve Judge
Senior Vice President,
Government Affairs

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6 *Id.* at 13-14.