VoiceStream/PowerTel/Deutsche Telekom

Ready for Prompt Commission Approval

Process -- Ready for Prompt Disposition

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

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

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

✞ Public Interest Benefits

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

✞ No Harm to Competition

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

✞ No Harm to National Security

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

Rigorous Review: Other Issues Raised by Commenters

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

✞ 310(a) does not bar merger

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

✞ German market conditions are irrelevant to transfer application

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

Conclusion: Application should be granted without further delay.

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