

2.9 DT shall comply, with respect to Domestic Communications, with all applicable FCC rules and regulations governing access to and storage of Customer Proprietary Network Information ("CPNI"), as defined in 47 U.S.C. § 222(f)(1).

ARTICLE 3: SECURITY

3.1 DT shall take all reasonable measures to prevent the use of or access to the Domestic Communications Infrastructure to conduct Electronic Surveillance in violation of any U.S. federal, state, or local laws or the terms of this Agreement. With regard to Domestic Communications Infrastructure under the control of DT, these measures shall take the form of detailed technical, organizational, personnel related policies and written procedures, necessary implementation plans, and physical security measures.

3.2 DT shall not, directly or indirectly, disclose or permit disclosure of, or provide access to Domestic Communications, Call Associated Data, Transactional Data, or Subscriber Information stored by DT in the United States to any person if the purpose of such access is to respond to the legal process or the request of or on behalf of a foreign government, identified representative, component or subdivision thereof without the express written consent of the DOJ or the authorization of a court of competent jurisdiction in the United States. Any such requests or submission of legal process described in this Section 3.2 of this Agreement shall be reported to the DOJ as soon as possible and in no event later than five business days after such request or legal process is received by and known to DT. DT shall take reasonable measures to ensure that it will learn of all such requests or submission of legal process described in this Section 3.2 of this Agreement.

3.3 DT shall not, directly or indirectly, disclose or permit disclosure of, or provide access to:

- (a) Classified or Sensitive Information, or
- (b) Subscriber Information, Transactional Data, Call Associated Data, or a copy of any Wire Communications or Electronic Communication intercepted or acquired pursuant to Lawful U.S. Process

to any foreign government, identified representative, component or subdivision thereof without satisfying all applicable U.S. federal, state and local legal requirements pertinent thereto, and obtaining the express written consent of the DOJ or the authorization of a court of competent jurisdiction in the United States. Any requests or any legal process submitted by a foreign government, an identified representative, a component or subdivision thereof to DT for the communications, data or information identified in this Section 3.3 of this Agreement that is maintained by DT shall be referred to the DOJ as soon as possible and in no event later than five business days after such request or legal process is received by and known to DT unless the disclosure of the request or legal process would be in violation of an order of a court of competent jurisdiction within the United States. DT shall take reasonable measures to ensure that it will learn of all such requests or submission of legal process described in this Section 3.3 of this Agreement.

3.4 At least every 3 months, DT shall notify DOJ in writing of legal process or requests by foreign nongovernmental entities for access to or disclosure of Domestic Communications carried by or through, in whole or in part, the Domestic Communications Infrastructure unless the disclosure of the legal process or request would be in violation of an order of a court of competent jurisdiction within the United States.

3.5 Within 60 days after the Effective Date, DT shall designate points of contact within the United States with the authority and responsibility for accepting and overseeing the carrying out of Lawful U.S. Process to conduct Electronic Surveillance of or relating to Domestic Communications carried by or through, in whole or in part, the Domestic Communications Infrastructure; or relating to customers or subscribers of U.S. Subsidiaries. The points of contact shall be assigned to DT security office(s) in the United States, shall be available 24 hours per day, 7 days per week and shall be responsible for accepting service and maintaining the security of Classified Information and any Lawful U.S. Process for Electronic Surveillance of or relating to Domestic Communications carried by or through, in whole or in part, the Domestic Communications Infrastructure, or relating to customers or subscribers of U.S. Subsidiaries, in accordance with the requirements of U.S. law. Promptly after designating such points of contact, DT shall notify the FBI and the DOJ in writing of the points of contact, and thereafter shall promptly notify the FBI and the DOJ of any change in such designation. The points of contact shall be resident U.S. citizens who are eligible for appropriate U.S. security clearances. DT shall cooperate with any request by a government entity within the United States that a background check and/or security clearance process be completed for a designated point of contact.

3.6 DT shall protect the confidentiality and security of all Lawful U.S. Process served upon it and the confidentiality and security of Classified Information and Sensitive Information in accordance with U.S. federal and state law or regulation.

3.7 DT shall, within security office(s) in the United States:

- (a) take appropriate measures to prevent unauthorized access to data or facilities that might contain Classified Information or Sensitive Information;
- (b) assign U.S. citizens, who meet high standards of trustworthiness for maintaining the confidentiality of Sensitive Information, to positions that handle or that regularly deal with information identifiable to such person as Sensitive Information;
- (c) upon request from the DOJ or FBI, provide the name, social security number and date of birth of each person who regularly handles or deals with Sensitive Information;
- (d) require that personnel handling Classified Information shall have been granted appropriate security clearances;

- (e) provide that the points of contact described in Section 3.5 of this Agreement shall have sufficient authority over any of DT's employees who may handle Classified Information or Sensitive Information to maintain the confidentiality and security of such information in accordance with applicable U.S. legal authority and the terms of this Agreement; and
- (f) maintain appropriately secure facilities (e.g., offices) for the handling and storage of any Classified Information and Sensitive Information.

3.8 DT shall instruct appropriate officials, employees, contractors, and agents as to their obligations under this Agreement, including the reporting requirements of Sections 5.6 and 5.7 of this Agreement, and shall issue periodic reminders to them of such obligations.

3.9 Nothing contained in this Agreement shall limit or affect the authority of a U.S. government agency to deny, limit or revoke DT's access to Classified, Controlled Unclassified, and Sensitive Information under that agency's jurisdiction.

ARTICLE 4: DISPUTES

4.1 The Parties shall use their best efforts to resolve any disagreements that may arise under this Agreement. Disagreements shall be addressed, in the first instance, at the staff level by the Parties' designated representatives. Any disagreement that has not been resolved at that level shall be submitted promptly to higher authorized officials, unless the FBI or the DOJ believes that important national interests can be protected, or DT believes that its paramount commercial interests can be resolved, only by resorting to the measures set forth in Section 4.2 of this Agreement. If, after meeting with higher authorized officials, any of the Parties determines that further negotiation would be fruitless, then that Party may resort to the remedies set forth in Section 4.2 of this Agreement. If resolution of a disagreement requires access to Classified Information, the Parties shall designate a person or persons possessing the appropriate security clearances for the purpose of resolving that disagreement.

4.2 Subject to Section 4.1 of this Agreement, if any of the Parties believes that any other of the Parties has breached or is about to breach this Agreement, that Party may bring an action against the other Party for appropriate judicial relief.

4.3 Deutsche Telekom AG agrees that the United States would suffer irreparable injury if for any reason DT failed to perform any of its significant obligations under this Agreement, and that monetary relief would not be an adequate remedy. Accordingly, Deutsche Telekom AG agrees that, in seeking to enforce this Agreement against DT, the FBI and the DOJ shall be entitled, in addition to any other remedy available at law or equity, to specific performance and injunctive or other equitable relief.

4.4 The availability of any civil remedy under this Agreement shall not prejudice the exercise of any other civil remedy under this Agreement or under any provision of law, nor shall any action taken by a Party in the exercise of any remedy be considered a waiver by that Party of any other rights or remedies. The failure of any Party to insist on strict performance of any of the provisions of this Agreement, or to exercise any right they grant, shall not be construed as a relinquishment or future waiver, rather, the provision or right shall continue in full force. No waiver by any Party of any provision or right shall be valid unless it is in writing and signed by the Party.

4.5 DT agrees that, to the extent that it or any of its property (including FCC licenses and authorizations and intangible property) is or becomes entitled at any time to any immunity on the ground of sovereignty or otherwise based upon a status as an agency or instrumentality of government from any legal action, suit or proceeding or from setoff or counterclaim relating to this Agreement from the jurisdiction of any competent court or the FCC, from service of process, from attachment prior to judgment, from attachment in aid of execution of a judgment from execution pursuant to a judgment or arbitral award, or from any other legal process in any jurisdiction, it, for itself and its property expressly, irrevocably and unconditionally waives, and agrees not to plead or claim, any such immunity with respect to matters arising with respect to this Agreement or the obligations herein (including any obligation for the payment of money) in any proceeding brought by a U.S. federal, state or local governmental authority. DT agrees that the waiver in this provision is irrevocable and is not subject to withdrawal in any jurisdiction or under any statute, including the Foreign Sovereign Immunities Act, 28 U.S.C. Section 1602 *et seq.* The foregoing waiver shall constitute a present waiver of immunity at any time any action is initiated by a U.S. federal, state or local governmental authority against DT with respect to compliance with this Agreement.

4.6 It is agreed by and between the Parties that a civil action among the Parties for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement shall be brought, if at all, in the United States District Court for the District of Columbia.

4.7 Nothing in this Agreement shall limit or affect the right of a U.S. government agency to:

- (a) seek revocation by the FCC of any license, permit, or other authorization granted or given by the FCC to DT, or any other sanction by the FCC against DT, or
- (b) seek civil sanctions for any violation by DT of any U.S. law or regulation or term of this Agreement, or
- (c) pursue criminal sanctions against DT, or any director, officer, employee, representative, or agent of DT, or against any other person or entity, for violations of the criminal laws of the United States.

4.8 This Article 4, and the obligations imposed and rights conferred herein, shall be effective upon the execution of this Agreement by all the Parties.

ARTICLE 5: AUDITING, REPORTING, NOTICE AND LIMITS

5.1 If DT makes any filing with the FCC or any other governmental agency relating to the *de jure* or *de facto* control of DT, except for filings with the FCC for assignments or transfers of control to any U.S. subsidiary of DT that are *pro forma*, DT shall promptly provide to the FBI and the DOJ written notice and copies of such filing. This Section 5.1 is effective upon execution of this Agreement by all the Parties.

5.2 Effective upon execution of this Agreement by all the Parties, DT shall provide to the FBI and the DOJ written notice within 14 days after learning that any foreign government, any foreign government controlled entity, or any other foreign entity obtains or seeks to obtain an ownership interest or increase its existing ownership interest (direct or indirect) in DT to a level such that the foreign government or entity is itself entitled to (i) Board of Directors representation (including representation on the Management Board or Supervisory Board), (ii) special voting or veto rights, or (iii) minority shareholder rights under applicable Articles of Incorporation, bylaws (or equivalent documents), or other constituent agreements; or in the case of a foreign entity, obtains Control of DT. To the extent known to DT, such notice shall, at a minimum, (a) identify the foreign government or foreign entity, (b) quantify the amount of ownership interest in DT that the entity holds or will likely hold, and (c) include a description of the transaction that has resulted in or through which the foreign government or foreign entity seeks to obtain Control of DT.

5.3 U.S. Subsidiaries shall provide to the FBI and the DOJ 30 days advance notice if a U.S. Subsidiary (or any entity with which a U.S. Subsidiary has contracted or made other arrangements for data or communications processing or storage) plans to store a Domestic Communication, Transactional Data, Call Associated Data, or Subscriber Information outside of the United States. Such notice shall, at a minimum, (a) include a description of the type of information to be stored outside the United States, (b) identify the custodian of the information if other than a U.S. Subsidiary, (c) identify the location where the information is to be located, and (d) identify the factors considered in deciding to store the information outside of the United States (see Section 2.4 of this Agreement). This Section 5.3 is effective 30 days after execution of this Agreement by all the Parties.

5.4 DT has entered into or may enter into joint ventures under which the joint venture or entity may provide Domestic Communications. To the extent DT does not have *de facto* or *de jure* control over such joint venture or entity, DT shall in good faith endeavor to have such entity comply with this Agreement as if it were a U.S. Subsidiary and shall consult with the FBI or the DOJ about the activities of such entity. This Section 5.4 is effective upon execution of this Agreement by all the Parties. Nothing in this Section 5.4 does nor shall it be construed to relieve DT of its obligations under Sections 2.3 and 2.4 of this Agreement.

5.5 If DT outsources functions covered by this Agreement to a third party that is not a U.S. Subsidiary, DT shall take reasonable steps to ensure that those third parties comply with the applicable terms of this Agreement. Such steps shall include: (a) DT shall include in the contracts of any such third parties written provisions requiring that such third parties comply with all applicable terms of the Agreement or take other reasonable, good-faith measures to ensure that such third parties are aware of, agree to, and are bound to comply with the applicable obligations of this Agreement, (b) if DT learns that the outsourcing third party or the outsourcing third party's employee has violated an applicable provision of this Agreement, DT will notify the DOJ and the FBI promptly, and (c) with consultation and, as appropriate, cooperation with the DOJ and the FBI, DT will take reasonable steps necessary to rectify promptly the situation, which steps may (among others) include terminating the arrangement with the outsourcing third party, including after notice and opportunity for cure, and/or initiating and pursuing litigation or other remedies at law and equity.

5.6 If any member of a DT Board of Directors (including a Management Board or Supervisory Board) or member of the senior management of DT (including the Chief Executive Officer, President, General Counsel, Chief Technical Officer, Chief Financial Officer or other senior officer) learns that any foreign government:

(a) plans to participate or has participated in any aspect of the day-to-day management of DT in such a way that interferes with or impedes the performance by DT of its duties and obligations under the terms of this Agreement, or interferes with or impedes the exercise by DT of its rights under the Agreement, or

(b) plans to exercise or has exercised, as a direct or indirect shareholder of DT or its subsidiaries, any Control of DT in such a way that interferes with or impedes the performance by DT of its duties and obligations under the terms of this Agreement, or interferes with or impedes the exercise by DT of its rights under the terms of this Agreement, or foreseeably concerns DT's obligations under this Agreement,

then such member shall promptly cause to be notified the Vice President for Legal Affairs or other designated representative of a U.S. Subsidiary located in the United States, who in turn, shall promptly notify the FBI and the DOJ in writing of the timing and the nature of the government's plans and/or actions. This Section 5.6 is effective upon the execution of this Agreement by all the Parties.

5.7 DT shall take practicable steps to ensure that, if any DT official, employee, contractor or agent acquires any information that reasonably indicates: (a) a breach of this Agreement; (b) Electronic Surveillance conducted in violation of federal, state or local law or regulation; (c) access to or disclosure of CPNI or Subscriber Information in violation of federal, state or local law or regulation (except for violations of FCC regulations relating to improper use of CPNI); or (d) improper access to or disclosure of Classified Information or Sensitive Information, then DT

shall notify the FBI and the DOJ in the same manner as specified in Section 5.6 of this Agreement. This report shall be made promptly and in any event no later than 10 calendar days after DT acquired information indicating a matter described in 5.7(a)-(d) of this Agreement. DT shall lawfully cooperate in investigating the matters described in 5.6 and 5.7(a)-(d) of this Agreement. DT need not report information where disclosure of such information would be in violation of an order of a court of competent jurisdiction in the United States. This Section 5.7 is effective 30 days after execution of this Agreement by all the Parties.

5.8 In response to reasonable requests made by the FBI or the DOJ, DT shall provide access to information concerning technical, physical, management, or other security measures and other reasonably available information needed by the DOJ or the FBI to assess compliance with the then-effective terms of this Agreement. This Section 5.8 is effective upon execution of this Agreement by all the Parties.

5.9 Upon reasonable notice and during reasonable hours, the FBI and the DOJ may visit and inspect any part of DT's Domestic Communications Infrastructure and security offices for the purpose of verifying compliance with the terms of this Agreement. DT may have appropriate DT employees accompany U.S. government representatives throughout any such inspection.

5.10 Upon reasonable notice from the FBI or the DOJ, DT will make available for interview officers or employees of DT, and will seek to require contractors to make available appropriate personnel located in the United States who are in a position to provide information to verify compliance with the then-effective terms of this Agreement. This Section 5.10 is effective upon execution of this Agreement by all the Parties.

5.11 On or before the last day of January of each year, a designated senior corporate officer of Deutsche Telekom AG shall submit to the FBI and the DOJ a report assessing DT's compliance with the terms of this Agreement for the preceding calendar year. The report shall include:

- (a) a copy of the policies and procedures adopted to comply with this Agreement;
- (b) a summary of the changes, if any, to the policies or procedures, and the reasons for those changes;
- (c) a summary of any known acts of noncompliance with the terms of this Agreement, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future; and
- (d) identification of any other issues that, to DT's knowledge, will or reasonably could affect the effectiveness of or compliance with this Agreement.

5.12 Effective upon execution of this Agreement by all the Parties, all notices and other communications given or made relating to this Agreement, such as a proposed modification, shall be in writing and shall be deemed to have been duly given or made as of the date of receipt and shall be (a) delivered personally, or (b) sent by facsimile, (c) sent by documented overnight courier service, or (d) sent by registered or certified mail, postage prepaid, addressed to the Parties' designated representatives at the addresses shown below, or to such other representatives at such others addresses as the Parties may designate in accordance with this Section:

Department of Justice
Assistant Attorney General
Criminal Division
Main Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Federal Bureau of Investigation
General Counsel
935 Pennsylvania Avenue, NW
Washington, DC 20535

With a copy to:
The Assistant Director
National Security Division

Deutsche Telekom AG
P.O. Box 2000
53105 Bonn, Germany
Attention: Wolfgang Kopf (OWP 10)

With a copy to:
Wilmer, Cutler & Pickering
2445 M Street N.W.
Washington, D.C. 20037-1420
Attention: Sheila C. Cheston

VoiceStream Wireless Holding Corporation and
VoiceStream Wireless Corporation
3650 131st Avenue
Bellevue, Washington 98006
Attention: Vice President of Legal Affairs

With a copy to:
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888

Attention: Doane F. Kiechel

O'Melveny & Myers LLP
555 13th St. NW, Suite 500 West
Washington, D.C. 20004-1109
Attention: Stephen Harburg

ARTICLE 6: FREEDOM OF INFORMATION ACT

6.1 The FBI and the DOJ shall take all reasonable measures to protect from public disclosure all information submitted by DT to the FBI or the DOJ in connection with this Agreement and clearly marked with the legend providing "Confidential; Subject to protection under 5 U.S.C. § 553(b); Not to be released without notice to DT," or similar designation. Such markings shall signify that it is the position of DT that the information so marked constitutes "trade secrets" and/or "commercial or financial information obtained from a person and privileged or confidential," or otherwise warrants protection within the meaning of 5 U.S.C. § 552(b). If a request is made under 5 U.S.C. § 552(a)(3) for information so marked, and disclosure of any information (including disclosure in redacted form) is contemplated, the FBI or the DOJ, as appropriate, shall notify Deutsche Telekom AG, pursuant to Section 5.13 of this Agreement, or notify the submitting DT entity of the intended disclosure as provided by Executive Order 12600, 52 Fed. Reg. 23781 (June 25, 1987). If DT objects to the intended disclosure and its objections are not sustained, the FBI or the DOJ, as appropriate, shall notify the submitting entity and Deutsche Telekom AG of its intention to release (as provided by Section 5 of E.O. 12600) not later than 10 business days prior to disclosure of the challenged information. This Section 6.1 is effective upon execution of this Agreement by all the Parties.

6.2 The DOJ and the FBI acknowledge that officers and employees of the United States and of any department or agency thereof are subject to liability under 18 U.S.C. § 1905 for unlawful disclosure of information provided to them by the other Parties to this Agreement.

6.3 Nothing in this Agreement shall prevent the FBI or the DOJ from lawfully disseminating information as appropriate to seek enforcement of this Agreement, provided that the FBI and the DOJ take all reasonable measures to protect from public disclosure the information marked as described in Section 6.1.

ARTICLE 7: FCC CONDITION AND CFIUS

7.1 Upon the execution of this Agreement by all the Parties, the FBI and the DOJ shall promptly notify the FCC that, provided the FCC adopts a condition substantially the same as set forth in Exhibit A attached hereto (the "Condition to FCC Licenses"), the FBI and the DOJ have no objection to the FCC's consent to the proposed transfers of control of the authorizations currently held by VoiceStream Wireless, Powertel, and their subsidiaries that are the subject of the application filed with the FCC in IB Docket No. 00187, or the authority Deutsche Telekom AG seeks to hold 100% indirect control of those licenses.

7.2 DT agrees that in its applications or petitions to the FCC for licensing or other authority filed with the FCC after the Effective Date, except with respect to *pro forma* assignments or *pro forma* transfers of control, it shall request that the FCC condition the grant of such licensing or other authority on DT's compliance with the terms of this Agreement. The FBI and the DOJ reserve the right to seek additional or different terms that would, consistent with the public interest, address any threat to their ability to enforce the laws, preserve the national security and protect the public safety raised by the transactions underlying such applications or petitions.

7.3 Provided that the FCC adopts the Condition to FCC Licenses, the Attorney General shall not make any objection to the CFIUS or the President concerning the grant of the proposed transfers of control of the authorizations and licenses currently held by VoiceStream Wireless and Powertel that are the subject of the applications filed with the FCC in IB Docket No. 00187, the authority Deutsche Telekom AG seeks to hold 100% indirect control of those licenses and authorizations, or Deutsche Telekom AG's mergers with VoiceStream and Powertel. This commitment, however, does not extend to any objection the Attorney General may wish to raise with the CFIUS or the President in the event that (a) DT fails to comply with the terms of this Agreement, (b) the Attorney General learns that the representations of Deutsche Telekom AG, VoiceStream or Powertel made to the DOJ, the FBI, or the FCC above are materially untrue or incomplete, (c) there is a material increase in the authority of a foreign entity to exercise Control of DT, or (d) there is any other material change in the circumstances associated with the transactions at issue.

ARTICLE 8: PREVIOUS AGREEMENTS WITH VOICESTREAM

8.1 VoiceStream remains bound to comply with its obligations imposed pursuant to the agreement entered between VoiceStream and the FBI and the DOJ dated January 26, 2000, and such agreement remains in full force and effect until, and shall not terminate or be suspended before, all the conditions set forth in Section 8.2 below are met.

8.2 The agreement between VoiceStream and the FBI and the DOJ dated January 26, 2000 shall terminate upon, and only upon, the happening of all the following events: (a) the Parties, and each of them, execute this Agreement, (b) the FCC adopts the Condition to FCC Licenses and (c) Deutsche Telekom AG, VoiceStream Wireless, and all other necessary parties successfully and fully consummate the proposed transactions between VoiceStream and Deutsche Telekom, and their respective subsidiaries that underlay the applications for authority of Deutsche Telekom AG and VoiceStream Wireless filed with the FCC in IB Docket No. 00187 under sections 214 and 310(d) of the Act.

ARTICLE 9: OTHER

9.1 Deutsche Telekom AG represents that it has and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform its obligations

(including those to DT) hereunder and that this Agreement is a legal, valid, and binding obligation of Deutsche Telekom AG and DT enforceable in accordance with its terms.

9.2 VoiceStream Wireless represents that it has and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform its obligations hereunder and that this Agreement is a legal, valid, and binding obligation of VoiceStream Wireless enforceable in accordance with its terms.

9.3 VoiceStream Holdings represents that it has and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform its obligations hereunder and that this Agreement is a legal, valid, and binding obligation of VoiceStream Holdings enforceable in accordance with its terms.

9.4 The Article headings and numbering in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of the terms of this Agreement.

9.5 Nothing in this Agreement is intended to limit or constitute a waiver of (a) any obligation imposed by any U.S. federal, state or local laws on DT or VoiceStream, (b) any enforcement authority available under any U.S. or state laws, (c) the sovereign immunity of the United States, or (d) any authority the U.S. government may possess over the activities of DT or VoiceStream or facilities of DT or VoiceStream located within or outside the United States.

9.6 All references in this Agreement to statutory provisions shall include any future amendments to such statutory provisions.

9.7 Nothing in this Agreement is intended to confer or does confer any rights on any person other than the Parties and any U.S. governmental authorities entitled to effect Electronic Surveillance pursuant to Lawful U.S. Process.

9.8 None of the terms of this Agreement shall apply to (a) any services that a DT entity other than VoiceStream provides in the United States pursuant to Section 214 of the Communications Act of 1934, or (b) any noncommunications services provided by DT unrelated to the provision of Domestic Communications.

9.9 This Agreement may only be modified by written agreement signed by all of the Parties. The FBI and the DOJ agree to consider in good faith and promptly possible modifications to this Agreement if Deutsche Telekom AG or VoiceStream believes that the respective obligations imposed on them under this Agreement are substantially more restrictive than those imposed on other U.S. and foreign licensed service providers in like circumstances in order to protect U.S. national security, law enforcement, and public safety concerns. Any substantial modification to this Agreement shall be reported to the FCC within 30 days after approval in writing by the Parties.

9.10 The DOJ and the FBI agree to negotiate in good faith and promptly with respect to any request by DT for relief from application of specific provisions of this Agreement to future DT

activities or services if those provisions become unduly burdensome to DT or adversely affect DT's competitive position, or the German government's interest in DT decreases substantially.

9.11 If, as provided in Section 1.21, the DOJ or the FBI finds that the terms of this Agreement are inadequate to address national security concerns presented by an acquisition by Deutsche Telekom AG in the United States after the date that all the Parties have executed this Agreement, DT will negotiate in good faith to modify this Agreement to address those concerns.

9.12 If any portion of this Agreement is declared invalid by a U.S. court of competent jurisdiction, this Agreement shall be construed as if such portion had never existed, unless such construction would constitute a substantial deviation from the Parties' intent as reflected in this Agreement.

9.13 This Agreement may be executed in one or more counterparts, including by facsimile, each of which shall together constitute one and the same instrument.

9.14 This Agreement shall inure to the benefit of, and shall be binding upon, the Parties, and their respective successors and assigns.

9.15 This Article 9, and the obligations imposed and the rights conferred herein, is effective upon the execution of this Agreement by all the Parties.

9.16 Except as otherwise specifically provided in the provisions of this Agreement, the obligations imposed and rights conferred by this Agreement shall take effect upon the Effective Date. This Agreement shall be null and void in its entirety if Deutsche Telekom AG, VoiceStream and Powertel, their respective subsidiaries and all other necessary parties fail to successfully and fully consummate the proposed transactions among them that underlay the applications for authority of Deutsche Telekom AG and VoiceStream Wireless filed with the FCC in IB Docket No. 00-187 under sections 214 and 310(d) of the Act, and the transfers of control of the FCC licenses and authorizations for which FCC consent has been sought in IB Docket No. 00-187 are not effected.

9.17 Nothing in this Agreement is intended to or is to be interpreted to require the Parties to violate any applicable U.S. law.

This Agreement is executed on behalf of the Parties:

Deutsche Telekom AG

Date: _____ By: _____
Printed Name: Hans-Willi Hefekaeuser
Title: Senior Executive Vice-President

VoiceStream Wireless Corporation

Date: *J.W. Stanton* By: 12/29/00
Printed Name: John W. Stanton
Title: Chairman and Chief Executive Officer

VoiceStream Wireless Holding Corporation

Date: *J.W. Stanton* By: 12/29/00
Printed Name: John W. Stanton
Title: Chairman and Chief Executive Officer

Federal Bureau of Investigation

Date: 1-10-01 By: *Larry R. Parkinson*
Printed Name: Larry R. Parkinson
Title: General Counsel

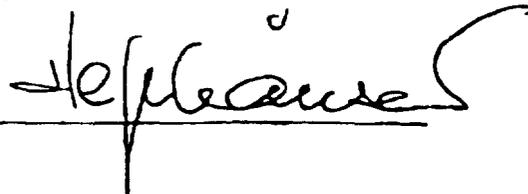
United States Department of Justice

Date: 1-12-01 By: *Eric Holder*
Printed Name: Eric Holder
Title: Deputy Attorney General

This Agreement is executed on behalf of the Parties:

Deutsche Telekom AG

Date: 04/01/01
Printed Name: Hans-Willi Hefekaeuser
Title: Senior Executive Vice-President

By: 

VoiceStream Wireless Corporation

Date: _____
Printed Name: John W. Stanton
Title: Chairman and Chief Executive Officer

By: _____

VoiceStream Wireless Holding Corporation

Date: _____
Printed Name: John W. Stanton
Title: Chairman and Chief Executive Officer

By: _____

Federal Bureau of Investigation

Date: _____
Printed Name: Larry R. Parkinson
Title: General Counsel

By: _____

United States Department of Justice

Date: _____
Printed Name: Eric Holder
Title: Deputy Attorney General

By: _____

EXHIBIT A

CONDITION TO FCC LICENSES

IT IS FURTHER ORDERED, that the authorizations and the licenses related thereto are subject to compliance with the provisions of the Agreement attached hereto between DEUTSCHE TELEKOM AG, VoiceStream Wireless Corporation, VoiceStream Wireless Holding Corporation on the one hand, and the Department of Justice (the "DOJ") and the Federal Bureau of Investigation (the "FBI") on the other, dated _____, 2001, which Agreement is designed to address national security, law enforcement, and public safety issues of the FBI and the DOJ regarding the authority granted herein. Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. § 222(a) and (c)(1) and the FCC's implementing regulations.

Certificate of Service

I, James G. Lovelace , Federal Bureau of Investigation, hereby certify that on this 25th day of January, 2001, I caused a true and correct copy of the foregoing **PETITION TO ADOPT CONDITIONS TO AUTHORIZATION AND LICENSES** to be served via hand delivery (indicated by *) or by mail to the following parties:

Ari Fitzgerald*
Deputy Chief, International Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Lauren Kravetz*
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W., Room 4-A163
Washington, D.C. 20554

International Transcription Services, Inc
445 12th Street, SW.
Room CY-B402
Washington, DC 20554

Claudia Fox*
Policy and Facilities Branch
Telecommunications Division
International Bureau
Communications Commission
445 Twelfth Street, S.W., Room 6A848
Washington, D.C. 20554

John Branscombe*
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W., Room 4A234
Washington, D.C. 20554

James Bird*
Office of General Counsel
Federal Communications Commission
445 Twelfth Street, S.W., Room 8C818
Washington, DC 20554

Daniel J. Connors*
Office of Commissioner Ness
Federal Communications Commission
445 Twelfth Street, S.W., Room 8B115
Washington, D.C. 20554

Justin Connor*
Policy and Facilities Branch
Telecommunications Division
International Bureau
Federal Communications Commission
445 Twelfth Street, S.W., Room 6- A832
Washington, D.C. 20554

Peter Tenhula*
Office of Commissioner Powell
Federal Communications Commission
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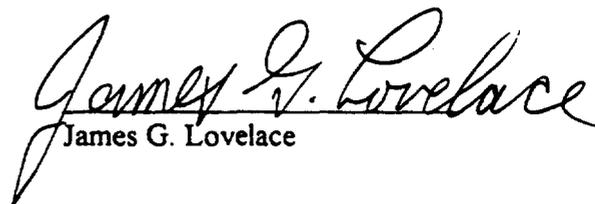
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November 13, 2000

Re: Deutsche Telekom AG/VoiceStream Acquisition – Docket IB00-187

UTStarcom opposes the merger/acquisition of VoiceStream by Deutsche Telekom on the ground that it is likely to harm competition in smaller markets in the United States. While this merger is likely to increase competition in the largest markets by providing substantial capital to build out a national GSM network in the United States, it is equally likely to leave more rural markets behind. This is particularly true of small towns or even University Campuses that are covered by PCS licenses as a result of their being located near larger cities. Commission rules would allow for licenses to be built out serving only the larger population centers and ignoring the more rural areas. Competition is likely to be further harmed by the fact that the acquisition includes many "Designated Entity" PCS licenses that were initially reserved for small businesses.

UTStarcom manufactures and sells PCS equipment intended for operation by small, local phone companies to provide local mobility to subscribers at rates comparable to local telephone service. Our product is intended for operation in "Block C" PCS spectrum and is very well suited to towns with populations over a few thousand as well as to University campuses and surrounding college communities.

This transaction will give VoiceStream/DT a virtually unlimited supply of capital. UTStarcom would expect them to acquire additional licenses in Auction 35 and to build out GSM networks in areas where they can get a return on their investment, particularly in larger population centers and along major highways. On the other side, we would expect them to ignore smaller towns that are unlikely to generate large volumes of roaming traffic onto their national network. An ideal remedy in this situation would be for VoiceStream/DT to make spectrum available on the secondary markets, via partitioning or even via lease as proposed by the FCC. UTStarcom believes that VoiceStream/DT would be unlikely to make spectrum available in this manner as local telephone companies would be unlikely to deploy roaming GSM solutions in places where VoiceStream/DT deemed them not to be economical and because these arrangements take too much effort given any financial return available to VoiceStream/DT.

UTStarcom would support this merger if it included defined provisions for true "designated entities", particularly rural telephone companies, cooperatives, and educational institutions to gain access to small amounts of spectrum (5 –15MHz) on a limited geographic basis. The benefits of making small amounts of spectrum, covering limited geographies, available for low power operations and subject to non-interference with wide area GSM systems, would seem to outweigh the negative impact of assigning these reserved licenses to one of the largest operators in the world. This could also serve as an example to further the general principles of a secondary market in spectrum supported by the Commission. With such provisions, UTStarcom would support this transaction as being in the public interest. Without these provisions, UTStarcom believes that this transaction will result in a reduction of potential competition in the rural US market and that it would not be in the public interest.

Howard Frisch
Director – North American Operations

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

In the Matter of)
)
VOICESTREAM WIRELESS)
CORPORATION, and)
)
POWERTEL, INC.,)
)
Transferors,)
)
and)
)
DEUTSCHE TELEKOM AG,)
)
Transferee,)
)
Applications for Consent to Transfer of Control)

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IB Docket No. 00-187

REPLY IN SUPPORT OF
APPLICATIONS FOR CONSENT TO TRANSFER OF CONTROL

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the United States surely would cry “foul” if a WTO-member government were to use concerns about provisioning intervals of an incumbent LEC in the United States (such as Verizon, SBC, BellSouth, or Qwest) to deny that company access.^{160/}

B. The Commission Also Should Reject Any Demands for Access to Spectrum for Designated Entities as Beyond the Scope of This Proceeding.

Finally, UTStarcom’s vague suggestions that VoiceStream should be required to make spectrum available in rural markets, and that designated entities should be the beneficiaries,^{161/} have nothing to do with the proposed merger and should therefore be rejected.^{162/} Whether the

^{160/} In addition to the proposed conditions regarding *DT’s* conduct in Germany, Novaxess asks the Commission to force the *German government* to “commit itself to sell its stake in DTAG within a reasonable time period.” Comments of Novaxess at 2. The Commission should reject this proposal for the same reasons stated above, chief among these being the Commission’s dual obligation to follow its own orders and to take no action that would contravene the lawful and binding foreign commitments of the United States, and the absence of any merger-related competitive effects of such governmental ownership. It would be particularly inappropriate for the Commission to impose conditions on the German government, which, unlike *DT*, is not even a party to this license-transfer proceeding. In any event, the German government has stated its intent to reduce its interest in *DT* to zero, as market conditions permit. See Letter from Michael Steiner, Foreign Policy and Security Adviser of the Federal Chancellor, to Samuel Berger, Assistant to the President for National Security Affairs, at 1 (Sept. 21, 2000) (“The German Government is fully committed to the full privatization of Deutsche Telekom and to the objective to reduce its direct stake not just to 25% but to zero.”). There has been no showing remotely approximating that necessary to justify the draconian step of forcing that process to go forward irrespective of market conditions.

^{161/} See UTStarcom at 1.

^{162/} See *CIRI/VoiceStream Order* at ¶ 19 (rejecting a similar request to deny a transfer of control of designated entity licenses to VoiceStream premised on alleged harm to rural consumers). As the Bureau noted in that order, “[t]he Commission has found that existing build-out requirements meet Congress’ directive . . . in section 309(j)(4)(B) of the Act to adopt rules to ‘include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services.’” *Id.* (citing 47 U.S.C § 309(j)(4)(B) and *Implementation of Section 309(j) of the Communications Act — Competitive Bidding*, Fifth Report and Order, 9 FCC Rcd 5532, 5570, ¶ 90 (1994)). These build-out requirements apply to all PCS licenses, regardless of the licensee.

Commission should make additional spectrum available to designated entities directly or by means of secondary markets are general policy questions that the Commission should address in industrywide rulemakings, rather than in its consideration of the pending license-transfer Applications.^{163/} Indeed, imposing such requirements on one company as a condition of market access to the United States would itself violate the guarantees of the WTO. In any event, the Commission already is addressing such issues, and need not consider them here.^{164/}

^{163/} See *Applications of Craig O. McCaw, Transferor, and AT&T Co., Transferee, for Consent to the Transfer of Control of McCaw Cellular Communications, Inc. and Its Subsidiaries*, Memorandum Opinion and Order, 9 FCC Rcd 5836, 5877-78, 5889-90 ¶ 70, 90-91 (1994) (holding that broader policy concerns raised by commenters must be addressed in a rulemaking of general applicability). See also *Community Television of Southern California v. Gottfried*, 459 U.S. 498, 511 (1983) (“rulemaking is generally a ‘better, fairer, and more effective’ method of implementing a new industry-wide policy than is the uneven application of conditions in isolated license renewal proceedings.”).

^{164/} See *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Notice of Proposed Rulemaking, FCC 00-402, WT Docket No. 00-230 (rel. Nov. 27, 2000) (proposing creation of secondary markets for spectrum); *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, Sixth Report and Order and Order on Reconsideration, FCC 00-313, WT Docket No. 97-82, ¶ 23 (rel. Aug. 29, 2000) (deciding to apportion spectrum to promote interests of designated entities); *Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees; Implementation of Section 257 of the Communications Act – Elimination of Market Entry Barriers*, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21831, 21843-45 ¶¶ 13-17 (1996) (partitioning and disaggregation rules improve the ability of smaller entities to overcome entry barriers through the creation of smaller licenses that require less capital).

CERTIFICATE OF SERVICE

I, John Meehan, do hereby certify that on this 14th day of February, 2001, I caused true and correct copies of the foregoing Outline of Comments and Replies to be served by hand via messenger (where indicated) or by first-class mail, postage pre-paid, upon the following parties:

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