FOREIGN GOVERNMENT OWNERSHIP OF AMERICAN TELECOMMUNICATIONS COMPANIES

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE, AND CONSUMER PROTECTION

OF THE

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HOUSE OF REPRESENTATIVES

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FOREIGN GOVERNMENT OWNERSHIP OF AMERICAN TELECOMMUNICATIONS COMPANIES

THURSDAY, SEPTEMBER 7, 2000

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 11:20 a.m., in room 2123, Rayburn House Office Building, Hon. W.J. "Billy" Tauzin (chairman) presiding.

Members present: Representatives Tauzin, Oxley, Stearns, Gillmor, Cox, Deal, Largent, Shimkus, Pickering, Fossella, Markey, Gordon, Eshoo, Wynn, Luther, Sawyer, Green, McCarthy, and Dingell (ex officio).

Staff present: Justin Lilley, majority counsel; Mike O'Rielly, professional staff; Robert Simison, legislative clerk; and Andy Levin, minority counsel.

Mr. TAUZIN. The committee will please come to order. We will ask all of our guests to take seats and to get comfortable. Members are on their way back and we should have a larger dais for you in a minute, Senator.

Let me indeed welcome our first guest and witness, the Honorable Ernest Fritz Hollings, U.S. Senate, one of my dearest personal friends, probably second only to John Breaux, himself from Louisiana.

Senator HOLLINGS. That is a good close friendship.

Mr. TAUZIN. Fritz, welcome to our hearing. Under our rules, all written statements of the committee and of our witnesses will be made a part of the record. The Chair will recognize himself first for an opening statement, and then members in order, and then we will be happy to take your testimony, sir.

Let me first point out that the United States has been at the forefront in bringing about a global telecommunications marketplace, working within the WTO to open up markets, increase business opportunities available to U.S. companies abroad. Foreign telecom companies have been aggressively penetrating the U.S. market, which continues to be the envy of the world.

Jennifer, welcome. I welcomed the Senator ahead of you, but we are also pleased to welcome the Honorable Congresswoman Jennifer Dunn here.

These foreign companies are injecting large amounts of capital in our market, and we all like to see that, frankly. Likewise, U.S. companies are busily developing and implementing business plans that include entering and exploiting foreign telecommunications markets. We all know the benefits of increasing competition. They include more choices for providers, increasing superior service, product innovation, hopefully better prices. None of us want to see this stop.

However, concerns involving foreign government ownership of the United States telecom carriers have been raised by key policymakers. Thirty senators sent a letter to the FCC urging it to consider national security implications of any foreign acquisition of a U.S. telecommunications firm. And, in fact, Senator Ernest Hollings of South Carolina, the ranking member of both the Senate Commerce Committee and the Senate Commerce, Justice, State Appropriations Subcommittee and our first witness today, has introduced legislation that would forbid any foreign company owning more than 25 percent—owning more than 25 percent by its government—from taking over a U.S. telecommunications business; as well as having attached comparable language, I think, in the CJS appropriations bill that is in the Senate.

Members in the House also have expressed concerns. And while it is no secret that I personally am a strong proponent of free trade, I have always felt and think today that the USTR needs to do more to push, pressure, prod, foreign government-owned telecom companies to privatize in an expeditious manner. And when the foreign monopolist is also the regulator in a country, there is a perception, real or not, that they will act in an anticompetitive manner to the detriment of the U.S. interests.

USTR has to, must, protect the interests of the United States citizens in that regard.

I think, therefore, this is a timely hearing. Deutsche Telekom, one of Europe's largest telecom companies, has just cleared the regulatory hurdle over at DOJ in its proposed acquisition of VoiceStream Wireless Corporation in an effort to penetrate the lucrative North American mobile phone market.

Today the DOJ let an antitrust review period lapse without opposing the merger. We would like to hear from DOJ about the process by which it arrived at its determination that in fact this merger does not raise competitive or other concern.

Currently, the German Government enjoys a 58 percent stake in Deutsche Telekom, and with the consummation of this merger, that share would be diluted to 45 percent. However, the DOJ's blessing is not the end of the regulatory process for this acquisition.

Other U.S. regulators, including the FCC, the Committee on Foreign Investment in the U.S., must also weigh in on this merger. And I am interested in hearing from the witnesses today as to whether or not they think the U.S. Government has the tools necessary to condition or deny mergers between companies owned by foreign governments and private U.S. companies to ensure that our telecom market remains competitive and, of course, that national security concerns are always properly considered and addressed.

I want to ensure that the process does not somehow allow foreign governments and foreign government-owned telecom companies

that possess monopoly power in their own country to distort the robustly competitive telecom marketplace that we have all fought for and continue to fight for in this great United States, and would never want to see a process that would harm not only that marketplace but the companies that compete so effectively within it.

I yield back the balance of my time and welcome and recognize the ranking minority member, my friend from Massachusetts, who is equally worn out as I am, I know, this morning, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman, very much. I thank you for holding this hearing. I thank Senator Hollings and Congresswoman Dunn and all of our witnesses for helping us out today with their expert testimony.

This committee has a long history of battling to open up our domestic telecommunications marketplace to ever more competition in telecommunications services, wireless services, cable, across the board. We have fought hard to make sure that we created a marketplace where innovation could flourish, jobs could be created, and prices lowered for consumers.

In addition, the members of this committee do not have to be sold on the benefits of increased trade, especially in the high-tech sector. I voted to support NAFTA and GATT because I believed they gave America a great opportunity to lay the groundwork for jobs and services in this new economy.

Today we will focus on the job that foreign countries have done in liberalizing their telecommunications markets and specifically deal with the issue that many foreign governments continue to own and control telecommunications assets in their own domestic markets. With respect to our market, consistent with our international commitments, the American telecommunications market is open for business. Foreign companies that want to come to the United States and invest and compete are welcome to do so.

The WTO Basic Telecom Agreement was intended to foster such investment and global competition among free market, high-tech companies. It was not designed or intended to foster or encourage government investment. The agreement was for trade in telecom services, not trade in government services.

We are trying to foster a dot-com revolution, not a dot-gov revolution. In the new economy of global proportions, governments have no place competing in the private marketplace. They should not be both market participant simultaneous with being market regulator. They should not be permitted to skew capital markets by artificially inflating stock prices through government backing; and foreign government participation in the United States marketplace also raises thorny law enforcement and national security issues.

The WTO Basic Telecom Agreement is wholly silent on any distinction between foreign investment and foreign government investment, and the agreement appears to have left to foreign governments to decide what privatization means to them. This was obviously a glaring omission from the agreement, and unless the administration starts to get real about its implications, it will turn out to be a giant loophole for foreign government-backed goliaths to exploit.

If we truly believe in a free marketplace, we should insist on it. Privatization should mean totally private. That is what we have in

the United States and what exists in England, New Zealand and Canada. Many other countries, however, have not undertaken full privatization and have significant government stakes in their companies. Australia, Japan, Germany, France, Sweden, Singapore and South Korea all have government ownership in excess of 50 percent. However, any other companies not owned by the government in those very same countries are more than welcome to enter the United States marketplace.

So every other company in every one of those countries could come to the United States. No problem. We are only talking about a small handful of companies, the government-owned companies.

Even if we cannot get foreign countries to zero government ownership soon, we should endeavor to limit the competitive unfairness and security implications by inducing them to dilute sooner. That is what the legislation is designed to do. It is not protectionist. It is not driven by xenophobia. It is driven by an ardent desire to have other countries fully embrace the free marketplace and to accelerate the liberalization of telecommunications markets.

In the absence of such a policy, what are the implications? Foreign government involvement in the United States market obviously will complicate law enforcement and national security efforts. Foreign governments seeking to establish their companies as global players may favor their own companies in their domestic marketplace to the detriment of those companies in which the government does not have a financial stake. In addition, governments with significant ownership stakes can spend their artificially inflated stock prices and buy their way into foreign markets.

Over time, such purchasing will obviously dilute a government share of the overall company but it will come at the expense of other private sector companies who have to go to the capital markets without government backing in order to fund acquisition strategies. That is a patently unfair way to proceed.

We have persevered over many years in the Congress to make the American telecommunications marketplace the envy of the world. We welcome foreign investment in telecommunication services from those foreign companies not owned by their governments. Yet we should not allow free market underachievers overseas to unfairly compete with government-controlled companies and to thereby gain all the benefits of our hard work here in the United States, on the cheap.

It is inconceivable that the WTO, which was set up essentially to get government out of the way, out of markets, and to foster free market trade across borders, could be used instead to foster government involvement in the marketplace and government investment across borders. I don't think that is what Adam Smith had in mind.

Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. TAUZIN. Who is Adam Smith?

The Chair thanks the gentleman.

Mr. MARKEY. Congressman.

Mr. TAUZIN. Congressman from the South somewhere, I am sure.

The Chair thanks the gentleman. The Chair recognizes the vice chairman of the committee, Mr. Oxley, for an opening statement.

Mr. OXLEY. Thank you, Mr. Chairman. And welcome to our distinguished witnesses, our good friend from the Senate side, Mr. Hollings, and Representative Jennifer Dunn.

I had the opportunity to confer with Jeff Lange and Ambassador Barshefsky during the negotiations on the 1997 WTO Basic Telecommunications Agreement, and I must say that I was pleased with their determination to consult regularly with Congress during the talks. More to the point at hand, I was deeply impressed by what was achieved in Geneva in 1997. The agreement covered 95 percent of world telecom revenues, giving U.S. firms unprecedented access to markets in Europe, Asia and Latin America. The treaty built upon the principles of competition, deregulation, and market opening embodied in the 1996 Telecom Act.

The accord included pro-competitive regulatory principles similar to those of the Telecom Act, allowing new entrants to compete fairly with incumbents, and it ensured U.S. companies could acquire a significant stake in telecom companies worldwide. This would not have been possible without a U.S. offer which included unlimited indirect investment in American telecom firms.

A more restrictive interpretation of Section 310(b) of the Communications Act, which governs international investment and radio license holders, would have resulted in a far less sweeping agreement. The U.S. offer to provide market access and national treatment for foreign telecommunications common carrier service providers was key to securing equivalent commitments from our trading partners in opening the global telecommunications market to American businesses. The point is to keep looking forward, not backward.

We should strive to find new ways to lower barriers to investment and promote the free flow of goods, services and capital, rather than second-guessing recent accomplishments. I firmly believe that in the vast majority of cases, artificial limits on international investment only harm U.S. firms by denying them access to foreign capital in foreign markets.

That said, I certainly support the goal of encouraging privatization of national telephone companies abroad. If we can find positive ways to do that without inviting retaliation from reliable trading partners, then I can lend my support.

Thank you, Mr. Chairman. I yield back.

Mr. TAUZIN. Thank the gentleman.

The Chair recognizes the gentlelady from California, Ms. Eshoo, for an opening statement.

Ms. ESHOO. Thank you, Mr. Chairman, for having this hearing, and good morning to you and to those that have joined us and are here to speak to the committee.

The technological revolution of the past decade has allowed our country to achieve grand levels of prosperity; not just great, but really I think grand and quite sweeping. Today America is enjoying unparalleled economic success. We are the envy of the world. Economic growth is sustained. Unemployment is low. Inflation has been kept at bay and the new economy has brought new wealth and new opportunities to our Nation and its workers. It has also opened international markets to foreign investment.

I think that our newfound prosperity did not result from simple happenstance, but rather is closely related to the increasingly global economy. For this reason, open markets are important to both our economy and to our continued leadership around the world. International trade is a benefit to all that are involved. America's policy of free trade has created fierce competition in many of the world's telecommunications markets and has sparked innovation as well.

I have a deep faith in American ingenuity and innovation and resolve, and a continued adherence to a free trade policy I think will only help our national economy use these inherent characteristics to take full advantage of international opportunities.

We are looked upon as a leader in free trade, and this credibility is not something we should take for granted. President Kennedy said "economic isolation and political leadership are fully incompatible, but we cannot ourselves stand still. We must adapt our own economy to the imperatives of a changing world and once more assert our leadership."

It was through America's leadership and determination that the WTO Basic Telecommunications Agreement was forged in 1997. In this agreement, we pledged that we will grant favorable trade and investment treatment to foreign carriers in domestic communications markets.

When 20 percent of all international communications services involve the United States market, and when more than 40 percent of the world's multinational corporations are headquartered in the United States, and when we advocate the liberalization of telecommunications systems around the world, we cannot simply reverse course when it comes the our markets. To do so, I think, undermines our credibility at the least, and at worst exposes our economy to retaliation. I am concerned that the legislation we are considering may be inconsistent with our current trade policies and will be very difficult to reconcile with the pledges we have made to our foreign trading partners.

Methods to review telecommunications mergers or acquisitions exist within the FCC's authority. These existing rules rely on the expertise of agencies such as the FBI and the Department of Defense when national security concerns exist. I think a more reasonable way of resolving these concerns may be through continued efforts to convince foreign governments to divest themselves of their holdings in their domestic carriers so that they may realize the benefits of true competition and avoid trade conflicts.

I share the concerns of some of my colleagues with the FCC merger review process. Under the Commission rules, foreign-owned firms from a WTO member country enjoy a rebuttable presumption that entry or investment in our markets is in the public interest. Perhaps a modification of this review process could reach the same end without the potentially drastic ramifications of legislation. These alternative solutions may outweigh the need for legislation when considering its potential consequences, which may include withdrawals from the WTO or retaliatory trade measures taken against our companies by those countries we pledged to open our markets to.

We stand at the beginning of a new century—we say that over and over again in this committee and in the Congress—and with it comes new opportunities. I look forward to learning more about these issues from our excellent panel of witnesses, with their wishes, and I thank you again, Mr. Chairman, for holding this hearing.

Mr. TAUZIN. I thank the gentlewoman.

The Chair recognizes the gentleman from Florida, Mr. Stearns, for an opening statement.

Mr. STEARNS. Thank you, Mr. Chairman. Let me also welcome Senator Hollings and also the distinguished gentlewoman from the State of Washington, Jennifer Dunn.

Mr. Chairman, thank you for holding this hearing. I see from the audience it is a very, very popular hearing here. They run around to the back of the building here. But the genesis of this debate started in 1934 with the Communications Act, and debates continue.

I remember serving on the Conference Committee on the Telecommunications Act of 1996, of which Senator Hollings was very active and a participant and was one of the ultimate deciders of some of the issues. But in today's telecommunication market, mergers are taking place at lightening speed and the effect is that we are going into foreign countries, they are coming into ours. I have letters here from the European Union who have pointed out they are against your bill, Senator Hollings, as you know, and evidently the Chamber of Commerce also feels that way, which we will hear later from today.

Basically, in a nutshell, Section 310 of the Telecom Act already prohibits companies in which foreign governments' holdings are greater than 25 percent from acquiring American telecommunications companies unless, unless, it is in the public interest to approve the merger. Recently it appears that the FCC's interpretation is that it is in the public interest to approve the entry of foreign companies if the country is a member of WTO. Now, that's the question, Mr. Chairman, of whether that's a compromise that we would go back to the FCC and allow—pass legislation that would clarify, legislation that would clarify for the FCC what this public interest equation is, because the committee is well aware the FCC has relied on that little thing called the public interest as an instrument to carry out its own desires and agenda and we have had our confrontation with the FCC in that regard.

Let me state that due to the 1996 act, this country has been privileged to benefit from a deregulated and competitive telecommunication marketplace. Proponents of this legislation raise valid concerns in allowing foreign governments owned by companies, government-owned companies, to acquire U.S. companies. The global economy has reduced barriers to free trade and are major contributors, I think, to our booming economy here. In fact, American telecommunications companies are successfully competing in foreign markets and bringing competition and lower prices to those nations, even though those countries have telecommunications corporations that are owned by their governments in greater than 25 percent.

However, these American companies do not have the United States as an active partner and investor and overseas foreign com-

panies compete with American companies, not the United States. The tables will be turned with foreign government-owned companies competing in the United States with American companies.

Senator Hollings' legislation is not perfect. Perhaps, Mr. Chairman, we can work with this bill to, as I pointed out earlier, find what the public interest is. Is it 25 percent? Is it 26 percent? Is it 28? I don't know, but somewhere during this hearing we should come up with an answer. And so, again, I applaud you for this hearing.

Mr. TAUZIN. I thank the gentleman.

The Chair now recognizes the ranking minority member of the full Commerce Committee, the gentleman from Michigan, Mr. Dingell, for an opening statement.

Mr. DINGELL. Mr. Chairman, I thank you, and I commend you for holding this important hearing. The question today that we will address is very simple: Should foreign governments be permitted to own or exercise control over vital telecommunications infrastructure in the United States? In my view, the answer to that question is a simple no, and I believe that U.S. law, specifically Section 310 of the Communications Act, already dictates that result.

Unfortunately, the Federal Communications Commission, the FCC, and the United States Trade Representative hold a contrary view. Their interpretation has necessitated a fresh look at congressional policies regarding competition and the national security that underlie this important provision of law. I stress, we are not talking about foreign ownership of American telecommunications facilities; we are talking here about something that I strongly oppose, and I think most Americans do, and that is foreign government ownership of American telecommunications equipment.

To clarify any ambiguity, Congressman Markey and I recently introduced H.R. 4903, a competitive measure to that offered by our good friend, Senator Hollings—and I certainly welcome him this morning to the committee—to make sure that this longstanding U.S. competition policy is maintained. I do extend a special welcome to my good friend, the Senator, and look forward to his testimony with interest.

I would also note that Senator Hollings has been joined in this legislative effort by leading Members of both parties in the Senate, including Senators Lott and Daschle, leaders of the Appropriations, Intelligence, and Foreign Relations Committees, as well as a bipartisan majority of the Senate Commerce Committee.

The reason this measure has received such widespread support is clear. It is just plain unfair to the competitive telecommunications industry in this country, as well as to American workers and consumers, to permit foreign governments and their monopoly subsidiaries to compete against private U.S. companies in the high-tech sector. Foreign government control of American firms not only puts our competitors at a disadvantage in all markets, but very especially in our own. It also compounds the difficulties for our companies overseas when that foreign government acts as both a competitor and a regulator in the same market simultaneously.

For the past several decades, the U.S. has worked diligently, notably through the 1984 breakup of AT&T and the 1996 Telecommunications Act, to open its telecommunications markets to

competition. In so doing, we have made sure that the safeguards were firmly in place to prevent historical monopolies from leveraging their embedded market share to engage in competition with a brand-new, unfair advantage in new competitive lines of business.

The FCC has imposed stringent accounting, audit and structural separation requirements to prevent cross-subsidization and other anticompetitive practices. Most notably, the Bell companies are still prohibited from entering the long distance market until their telephone businesses are sufficiently open to competition. This provision was designed to provide a strong incentive for the Bell companies to open their markets to competitors, and I daresay that the FCC in its zeal to open markets domestically has held their feet at the fire at every turn.

So I find it curious that in the international context, the FCC is far from zealous in applying appropriate incentives to foreign governments to ensure that their markets are sufficiently open for U.S. competitors. In fact, instead of applying Section 310 to preclude foreign government-owned monopolies from entering the U.S. market, which would provide ample incentive to privatize, the Commission has tortured its reading of the law to achieve precisely the opposite result.

The question, then, is how can we expect foreign governments to fully privatize their telecommunications industry if they get a free pass to compete unfettered in the United States? Full privatization is widely regarded by telecommunications and trade experts as the optimal way to achieve open market conditions. Yet, inexplicably, the FCC policy is to simply let them in, regardless of a rational reading of the law, and hope that full privatization will magically occur.

Unfortunately, they are joined by the U.S. Trade Representative in this tortured approach to the law. This approach flies in the face of both common sense and real world experience. We have to look very little to find problems. One need only look at the recent attempt by KPN, the Dutch government-owned telecommunications commission, to buy Telefonica de Espana, a newly fully privatized telephone company in Spain. The deal was scuttled, mainly due to Spanish concerns about foreign government ownership. It should be no surprise, then, that the Dutch government, after being spurned by Spain, subsequently announced that it would sell down its stake in KPN to 20 percent. I find 20 percent to still be high, but it does show that virtue can be induced by intelligent regulation.

I have little doubt that other foreign government-owned companies wishing to acquire American firms would do likewise.

Finally, I would be remiss if I failed to mention another serious reason to preclude foreign-government ownership of critical telecommunications assets in this country. While globalization can be a boon to our national economy, it also, however, brings with it new threats to our national security and law enforcement efforts. While the Justice Department and FBI are working diligently to mitigate this threat, they believe the risk is heightened substantially when a foreign government is involved in the transaction.

The Hollings-Markey-Dingell legislation is narrowly tailored to protect the United States from this most acute risk to our national

security. It would therefore free the FBI and Justice to harness their resources to safeguard American interests put at risk by a number of transactions involving nongovernmental foreign investment. I repeat, the question before us is not do we allow foreign companies to buy interests in U.S. companies. It is do we allow foreign governments to assume control of American companies in defiance of what I view as good public policy?

Thank you, Mr. Chairman, for holding this hearing. I look forward to examining the witnesses.

Mr. TAUZIN. I thank the gentleman from Michigan.

Let me just make a point and maybe the members can help me with this. The Chair is receiving messages from our first witnesses that they are under an extremely tight schedule, and might we interrupt the opening statements, hear their testimony, and then we will go back to finalize opening statements? Is there any objection to that procedure? We will come back and hear your opening statements at that point. I thank you very much.

Let me also remind the members that all the mikes are open, so if you have to say anything about Mr. Clymer or anybody else in the audience, be careful.

Mr. TAUZIN. The Chair is now pleased to welcome the Honorable Senator Fritz Hollings of the U.S. Senate. Mr. Hollings.

STATEMENT OF HON. ERNEST F. HOLLINGS, A UNITED STATES SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator HOLLINGS. I thank you very much, Mr. Chairman. I thank you and the distinguished committee for the opportunity to be heard. And since my statement has been filed, I will just highlight it.

Right to the point, about 2 months ago I was reading The Washington Post and there was an article in the business section, by Mr. Peter Goodman to the effect that Deutsche Telekom had a $100 billion kitty and all American companies were subject to takeover, and that he was not going to eliminate any of them, AT&T, MCI, VoiceStream, Sprint, the whole crowd. And the concluding paragraph in that story said he knew it was not a joint venture that he was looking to join in in America, but rather he wanted control.

Well, you and I and all of us in this committee have been in this game now for years, and we know good and well we didn't get into deregulation, Chairman Oxley, you and I particularly, back with Congressman Markey, in 1996 to deregulate from American government control to put it under German Government control. Necessarily, I got alarmed and particularly nettled in the sense that the next article by the same gentleman said that the trouble with Hollings was that he was a veteran from World War II and he was anti-German, and that he was a big protectionist and didn't understand globalization.

Well, I don't want to sound like Vice President Gore, but I invented globalization.

I, along with Luther Hodges and all, Mr. Chairman, back when Uncle Earl was there in Louisiana, I went in 1960, 40 years ago, and knocked on the doors there in Dusseldorf and Frankfurt, and today as I testify we have 116 German industries in South Carolina, my little State. We are proud of them. We have the British,

the Swiss, the French—Michelin—and all the rest of them. We are proud of it.

My point is that we don't object, as Chairman Dingell was talking, about foreign companies. We welcome foreign companies, not foreign governments, because we are trying—as the distinguished Chairman said, we are pushing Barshefsky and WTO and our special trade crowd to privatize, not to governmentize.

In that light, I am looking at the handout they gave us yesterday: "Protectionism is Not the Answer," by my good friend, Congressman Oxley, and good friend, John McCain, the chairman of our committee. Come on. Protectionism? They live in a life of symbols.

Let me, if you don't mind, put that in the record, Mr. Chairman, because they are the ones trying to protect. When we deregulate, we get the government control out of it.

What does Deutsche Telekom have? Well, everything that I guess Michael Armstrong would like to get ahold of right now. They have $100 billion. They just had earlier this year a bond issue for $14 billion. We don't have any communications company that can get a bond issue of that kind. But necessarily we all join in it, because you know the government is not going to allow them to fail, and you are bound to make a profit on the thing. With that $100 billion that they have, they can go around, even though their stock is way down, I think it has gone from 100 down to less than 40. If that was a private company, I would get ahold of T. Boone Pickens, an icon, and I would say, Look here, you fellows know how to do it; I have the idea; let's go grab that one and pay for it with $100 billion out of the stock easy, and run with the money. You and I know it. That's what happens. When you get the government in, it has got government control and protection, government financing, and that's exactly why we deregulated in 1996.

Now, historically, right to move quickly, back in 1995, we have been talking about this issue for at least 5 years with this administration. The Special Trade Representative, Mickey Kantor, came and he wanted to change Section 310, to start competition, foreign competition and otherwise. There was an exchange of letters which has been in the Congressional Record—we will put it in there—between Senator Robert Byrd and Kantor, but he got ahold of me and you and the others and everything like that; so in the 1996 act, during 1995 and 1996 when we were considering repealing the 1934 act, we looked at this very, very closely. During that time, it came dramatically to our attention because Scott Harris, the head of the International Bureau at the Federal Communications Commission testified before our committee on the Senate side, and he said, Wait a minute, Section 310(a) is categorical, it cannot be waived, and foreign governments can't be licensed in telecommunications in the United States.

Thereafter, again, during the negotiations, because we all talked about it, Mr. Harris had left the Federal Communications Commission and in the National Law Journal he wrote the same thing, and we put that in our letters not only to the FCC and everyone concerned but to Mr. Summers and Deutsche Telekom so they would understand what the law is; that in 1996 you and I, Chairman Oxley and all the rest of us, Chairman Bliley, we talked this out.

We agreed not to change the 1934 act with respect to foreign government ownership.

The law is there. I don't need a bill. You don't need a bill or anything else of that kind. We are just trying to clear up, as Congressman Dingell says, the appearance perhaps of an ambiguity. The European Union knows. Oh, yes, the European Union; this room is filled up with these arbitragers who think they are educating the European Union. It amuses me.

In 1999, the European Union stated this in its report, it said, and I "Section 310 of the Communications Act of 1934 remains basically unchanged following the adoption of the new Communications Act of 1996." This situation has not changed through the Basic Telecom Agreement. So all of Europe knows it. Any lawyer with any sense can read it, and it has never been changed, but you have got that cabal—the White House, Ambassador Barshefsky, and Chairman Kennard—and they think they invented competition.

Let me remind them that we have had competition. ITT was overseas, AT&T was overseas in 1910. That's why they covered foreign ownership and foreign company ownerships in the 1934 act.

I will never forget, Mr. Chairman, I landed about 10 years ago in Argentina, Buenos Aires. The Ambassador, trying to make conversation, turned to me in the car coming out of the airport. He said, Well, your company is doing good, Senator. I said, What company? He said, Bell South. I said, Are they down here?

He said, Oh, yes, they have about 12 to 14 million subscribers in wireless.

So I went to the record, and prior to the 1996 Act itself Bell South has been in 12 countries, all over Latin America, Israel and otherwise.

We find that former Bell Atlantic, our friends at NYNEX, Verizon they call it now, they are in 9 countries; SBC in 22 countries; AT&T in 7 countries; I could go down the list. But mind you me, the Special Trade Representative is not starting competition, nor are the children over at the White House.

The FBI is going to be heard before this committee, and they submitted their statement and they have already adjusted the statement over at the White House. You know, they are good at adjustments. And you ought to know about this and watch this crowd and Kennard, who thinks he is judicial saying, I am to give careful review. Just read the law. That's why I put in the bill now.

Spain, when the KPN tried to take over Telefonica, they said no. They didn't say since the Netherlands you are a WTO country, like Ambassador Barshefsky, we made an agreement, we made an agreement, but the agreement can't change the law. Only the Congress can do that.

Same with Singapore tel trying to take over Hong Kong Telephone. Hong Kong said no. They are WTO countries. Same with Italy. When Deutsche Telekom tried to take over Telecom Italia, Italy said no. It wasn't, as they are going to argue before this committee, that we made a firm agreement as long as you are a member of WTO then you ipso facto—the public interest is served by you coming in and having government ownership in the United States of America.

And finally, Mr. Chairman, let me just say this about this so-called protectionism that they have got here. This brings it right into focus. It reminds me of Chairmen McCain and Oxley talking about protectionism. The young lad who went to the psychiatrist and the psychiatrist drew some lines up and down on the board and he said, Now, young man, what does that make you think of? He said, Sex. He drew some parallel lines. He said, Sex. He drew some crosses, and the young man said, Sex.

The doctor looked at him and he said, Young man, you are the most oversexed, depraved individual. "Me, Doc?" the young man says, "You are the one drawing the dirty pictures."

They are the ones that are asking for protectionism. I am not asking for protectionism. Chairman Oxley, I ask your support now. Come on. You and I had this out, and I know you and I are for opening up markets and we have a wonderful competition going. Just don't let the government come in there where they can print money. Can you imagine coming and running around with $100 billion and your stock down to 40, giving $55 billion? No one has ever given per subscriber, in all of these mergers, over $12,000 per subscribers, now they come with $22,000; $55 billion. Necessarily my distinguished friend here, the Congresswoman, she necessarily is for that. I guess if I was VoiceStream, whoopee, let's give me the money. I would get out of the Congress. That's the way it goes.

I thank the committee and would be glad to answer any questions.

[The prepared statement of Hon. Ernest F. Hollings follows:]

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

In June of this year, I, along with a number of my colleagues, introduced legislation to clarify the rules governing the takeover of U.S. telecommunications providers by *state-owned* foreign companies. The legislation has been favorably received and now has 17 co-sponsors, including the majority and minority leaders, the chairman and ranking member of the Senate Appropriations Committee, the chairman of the Foreign Relations Committee, the chairman of the Intelligence Committee, and a majority of the members of the Senate Commerce Committee.

A companion piece of legislation has been introduced by the ranking members of the House Commerce Committee and its Subcommittee on Telecommunications. I want to thank Chairman Bliley for asking me to testify at this hearing and I commend Ranking Members Dingell and Markey for their work on this important issue.

It is important to emphasize at the onset that this legislation is narrowly targeted to prohibit substantial foreign government ownership of U.S. telecommunications companies. In fact, I am quite proud of the fact that hundreds of private foreign companies have invested in my State of South Carolina. For example, from Germany alone, there are over 100 companies with a presence in South Carolina.

On a national level, I must also point out that no objection was raised when Vodaphone (a foreign private company) purchased Airtouch, Cellular Properties located in Silicon Valley. Nor was there any outcry when France Telecom and Deutsche Telekom (DT) sought to acquire a minority 10% stake in Sprint.

Rather, we are troubled by substantial foreign government-ownership of U.S. telecommunications properties that allows foreign governments to hold and operate U.S. telecommunications licenses. Ours is an effort aimed squarely at privatization.

This legislation is necessary for two reasons. First, it is needed to rectify the FCC's misinterpretation of existing law that clearly prohibits foreign government ownership of U.S. telecom firms. Second, this legislation is justified by compelling public policy rationale that argues against allowing state ownership of U.S. telecom assets.

First the law. I believe that any acquisition of a U.S. telecom company by a foreign government owned provider violates Section 310 (a) of the Communications Act. That section plainly prohibits foreign governments or their representatives from

purchasing U.S. telecommunications entities. Deutsche Telekom, France Telecom, or NTT clearly fall within the prohibitions contained in Section 310(a).

In 1995, the Chief of the FCC's International Bureau, Scott Blake Harris, testified before the Senate Commerce Committee in favor of maintaining "the general ban, now in Section 310(a), on foreign governments or their representatives owning radio licenses."

Subsequent to the enactment of the 1996 Telecommunications Act, he wrote in the National Law Journal in October 1996—"Section 310(a) flatly prohibits a foreign government or its representative from holding any wireless license, directly or indirectly. This limitation is not subject to being waived by the FCC." In that article, he specifically mentioned Deutsche Telekom and France Telecom relative to that ban.

That brings me to Deutsche Telekom's takeover of VoiceStream. Deutsche Telekom is a formerly wholly state-owned company that has been partially privatized, but remains majority owned by the German government. Under the plain language of Section 310(a), this transaction appears to be prohibited.

This conclusion is not without significant justification in fact, for starters, DT, FT, NTT, and several other international telecom giants are significantly owned by the governments that regulate them. Using Deutsche Telekom as an example, we know that the German government owns 58% of DT. In addition, a recent SEC filing states that 41.3 percent of Deutsche Telekom's employees are statutory civil servants who cannot be terminated except in extraordinary statutorily defined circumstances.

The VoiceStream-Deutsche Telekom merger agreement reveals that Deutsche Telekom waived its foreign *sovereign immunity* for service of process in its merger documents. Why do they have this to waive? Only governments have sovereign immunity. Clearly, VoiceStream's lawyers were worried that Deutsche Telekom could assert that Deutsche Telekom is the government.

So, if DT is not the government or its representative as contemplated by Section 310(a), I don't know who is. Unfortunately, the FCC has read Section 310(a) completely out of the law. They possess no such authority.

Nonetheless, some argue that these transactions come under Section 310(b) of the Communications Act. As a bit of background, in 1995, U.S. Trade Representative Mickey Kantor wrote Senator Robert Byrd that Section 310(b) is regarded by foreign companies as a barrier to market access in America's telecommunications marketplace. He went on to indicate that legislative authority was needed before administration officials could "remove this restraint through international negotiations."

As most of you remember, after extensive debate and 'consideration of this issue in both the House and Senate, the 1996 Telecommunications Act reaffirmed Sections 310 (a) and (b) providing no authority to our trade negotiators. In spite of this, the U.S. negotiators in the 1997 WTO telecom negotiations reached an executive agreement that violates Section 310.

The FCC, then implemented rules to presume entry into our market, so long as the acquiring company originates from a WTO member country, without regard to whether that company is government owned.

The EU itself appears to acknowledge that the FCC order is inconsistent with U.S. law, stating in a 1999 trade barriers report that Section 310 retains force and effect notwithstanding the 1997 WTO telecom agreement. specifically, the EU report states: "Section 310 of the Communications Act of 1934 remains basically unchanged following the adoption of the new Communications Act of 1996 . . . this situation has not changed through the basic telecom agreement."

As the EU correctly recognizes, an executive agreement cannot repeal U.S. statutory law—a principle that brings to mind George Washington's farewell address, in which he stated: "If the distribution or modification of the powers under the Constitution be in any particular wrong, let it be changed in the way the Constitution designates, for while the usurpation in the one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed."

Having touched upon the law, I will now turn to the policy that justifies prohibiting state ownership of U.S. telecom companies. State ownership is troubling because it is fundamentally inconsistent with America's domestic telecommunications and competition policy.

Beginning with the breakup of AT&T, and culminating in the Telecommunications Act of 1996, the United States has consistently encouraged a free enterprise system in which competition prevails. Businesses are free to succeed, but they are also subject to the very real threat of failure.

In this "survival of the fittest" system, entrepreneurs and businesses "build a better mousetrap" and are rewarded in the marketplace. Others who don't quite cut it are left behind.

This is the level playing field of the competitive marketplace. Unfortunately, if we permit foreign state-owned companies into the U.S. market we will be facilitating the entry of new players who don't participate on a level playing field. Companies that are substantially owned by their governments are not subject to the rigors of either the competitive marketplace or the financial markets to the same degree as their private sector counterparts.

Government shareholders have different goals from private shareholders.

As a result, it is simply unfair to allow these state-owned companies to compete against other private companies, both U.S. and private foreign based. I find it constructive to compare two companies—one government owned, and/or one private—to illustrate this point. Deutsche Telekom (DT), which is 58% owned by the German government, recently completed an unprecedented bond offering where they raised nearly $15 billion dollars in a single offering—which was larger than any single offering by a "private" company in history. DT has also reportedly maintained a store of 100 billion euros, prompting their CEO to boast that no U.S. telecom company is "out of reach." These foreign government owned companies operate under a different set of rules—written and unwritten—that allow them to obtain favorable financial terms in a manner unavailable to their private sector counterparts.

In the private sector, we know that the financial markets would never permit companies to hold onto that much capital for an extended period of time. Rather, they would be required to return it to their shareholders in one form or another or be subject to a takeover.

Recently, AT&T's stock has significantly under performed the overall stock market. As a result AT&T's executives, have been meeting with investment bankers in an effort to raise its share price by discussing various corporate strategies. In fact, if press reports are to be believed, they too are considering a high profile merger, perhaps as the target company.

Contrast that with Deutsche Telekom, which has seen a similar plunge in its share price in the past three months. Yet, the only reason DT's executives are meeting with investment bankers is to decide which company they will purchase next. No matter how low DT's share price goes, they are unlikely to be a takeover target. Why?—the government could veto the acquisition. Thus, unlike AT&T, DT can hang onto its 100 billion euros and take its time seeking telecom targets without having to answer to shareholder criticism or demonstrate progress in their next financial report.

As the August 28th Barrons recently stated,

> "Often management is removed at a company the size of DT after such a debacle in the stock price. Will the knives come out here? DT is still controlled by the German Government, so [their CEO] Sommer's position is safe."

Mr. Sommer is doing exactly what his majority shareholder, the German Government, wants, by increasing global presence and increasing market share with less of a focus on profits.

As a practical matter, there are only a few remaining government owned telecom companies that this legislation would impact. In many ways, those companies represent the last vestiges of a collectivist past when governments, and not markets, dictated industrial policy.

This legislation establishes all of the correct incentives by narrowly prohibiting foreign government investment. We encourage these vestiges of the past to privatize by offering entry into the lucrative U.S. market, provided their government stake in the acquired entity is lower than 25 percent.

In fact, this approach already has a proven track record. Spain recently rejected Dutch government-owned KPN's attempt to purchase Telefonica, a privatized telecom company in Spain. In response, the Dutch government has reportedly decided to reduce its 43% stake in KPN to approximately 20%. Moreover, the Finnish government has also publicly signaled its intention to lower its stake in its government-owned provider Sonepa. Just this week, Israel made a similar announcement.

Such government divestment follows closely on actions by other governments to prevent similar takeovers by state-owned telecommunications providers. To be precise, three WTO member countries—Spain, Italy and Hong Kong—have formally and informally rebuffed efforts by state-owned providers to acquire domestic telecommunication providers. Moreover, at the urging of Spain, this month the EU will begin a review of the market distorting effects that are occasioned by the purchase of a privatized telecom company by a state owned entity.

It is important that these state-owned entities divest for another reason. There is a clear conflict of interest in the EU's current merger review process, particularly when that process examines mergers involving American companies. Many of the member states that make up the EU in fact own the very companies that compete with their American counterparts seeking EU approval to merge.

So, while Worldcom and Sprint barely met the commission's threshold for reviewing mergers in the first place, the EU recently rejected that merger. And, while AOL is not the dominant ISP in Europe, and Time Warner has only incidental holdings in Europe, the EU recently filed several objections to that transaction. Who is the number one ISP in Europe? Deutsche Telekom's T-Online. This conflict of interest is undeniable. If these state-owned companies privatize, however, the appearance of this conflict should disappear.

I would be remiss if I did not also mention the significant national security and privacy implications of foreign state ownership of American telecommunications facilities. The technology exists today to surreptitiously monitor virtually every telecommunications medium. In the wireless industry, for example, this monitoring can include the substance of our conversations and the locations of our calls. We already are too aware of the threat to individuals' privacy on the Internet. And in the wireline telephone industry, current U.S. law mandates that companies equip their networks to permit surveillance. Do we want a foreign government in charge of such surveillance? The answer most certainly is no.

Finally, I would like to make a point about the Telecommunications Act. In 1996, I worked with many of you to deregulate our telecommunications market. It was an extraordinary effort, and we are slowly beginning to see progress. Our efforts to foster competitors have begun to benefit consumers. These efforts, however, have also depressed the earnings and stock prices of many U.S. domestic providers. Under normal circumstances, that would be of no interest to us, but in "promoting competition" here at home we may be facilitating the ease by which foreign government-owned providers may emerge with key assets.

Opponents of our legislation argue that our concerns are misguided because DT is making progress in divesting its government stake and that the German market is more open today than it was years ago. Deutsche Telekom was 74% owned by the German government in 1996 and is now 58% government owned. I suppose that represents some progress.

But we did not tell our U.S. companies—"go ahead, make progress, and then we'll let you compete by leveraging your market dominance against your competitors." We did not tell Verizon and SBC—who are to be commended for opening their markets in New York and Texas—"go ahead, meet 10 of the 14 checklist points and then you can enter the long distance marketplace."

The market opening requirements that we have imposed on U.S. providers represent the appropriate incentives which have begun to break open the local telephone market. We should impose no less of a standard on foreign entrants that are government owned. Progress is not good enough. Only divestiture and the consequent competition that will result should suffice.

Contrast that approach with DT's recent statement in a SEC document from April that "DT does not yet face significant competition in the market for local calls for which an area code is required." DT concedes in the same document that it "has not lost significant market share in the market for local calls." In fact, the German monopoly commission has concluded "that effective competition in the telecommunications sector does not yet exist."

To permit state-owned monopolies to enter the U.S. market flies in the face of the Telecommunications Act of 1996. We didn't deregulate telecommunications from under U.S. government control to put it under German government control.

In conclusion, I would like to read you one final passage from DT's April filing before the SEC.

> "As long as the Federal Republic directly or indirectly controls the majority of Deutsche Telekom's share it will, like any majority shareholder in a German stock corporation, have the power to control most decisions taken at shareholders' meetings, including the appointment of all of the members of the supervisory board elected by the shareholders and the approval of proposed divided payments."

While DT argues that corporate acquisitions will reduce the German government's stake via dilution, does anyone believe that a 40% or 35% government shareholder does not exercise significant control?

The issue of foreign government ownership of private U.S. telecom firms is essentially one of privatization. For fifty years, the U.S. government has encouraged privatization around the globe because we recognize that government shareholders are different from private investors and that markets operate more efficiently than governments. Our legislation does not bar entry into the U.S. market.

It implicitly welcomes foreign private investment in the U.S. and establishes the appropriate incentives for these remaining vestiges of antiquated industrial policies to privatize sooner rather than later. Privatization should in turn lead to more open

markets abroad, and a fuller and freer flow of trade throughout the globe. Its the American way—and we should demand no less.

Mr. TAUZIN. Senator, would you like another 20 minutes or so?

Senator HOLLINGS. No. Thank you a lot.

Mr. TAUZIN. If you don't mind, Jennifer, Senator, I have heard this wonderful story about you and Petsy during the campaign for President that you just reminded me of. I don't know if it is true. Maybe you can verify it for me.

Senator HOLLINGS. Unfortunately, it's true.

Mr. TAUZIN. Dead tired on the campaign trail one night in one of these awful little motels you find yourself in as your tromping around New Hampshire during the early primaries and a reporter bothered you in the middle of night and Petsy answered the phone, like 2 o'clock in the morning.

Senator HOLLINGS. No, it was early in the morning, Mr. Chairman.

Mr. TAUZIN. Tell us what happened.

Senator HOLLINGS. What happened was I was to come on at 7 o'clock. We didn't get in there until 1 o'clock or 2 o'clock in the morning, out there at Carmel, California. And so calling us at 6 o'clock to make sure I would make that 7 o'clock meeting, Petsy answered the phone and then in a loud voice she turned to me and said, Honey, is your name Hollings?

Boy, I ran around explaining that to that crowd all the rest of the meeting.

Mr. TAUZIN. That's a great story. That is a great story, Senator, thank you.

We will now hear from the gentlelady.

Ms. DUNN. I will yield you my 5 minutes.

Mr. TAUZIN. Jennifer, I wonder if Senator Hollings showed up at that fiasco in Seattle to announce that he invent globalization.

Ms. DUNN. It might have worked. It might have been a lot calmer.

Mr. TAUZIN. Jennifer Dunn.

STATEMENT OF HON. JENNIFER DUNN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Ms. DUNN. Thank you very much, Mr. Chairman. You did not need to warn us that the mikes are open. I am sure that Senator Hollings and I would have had only very pleasant things to say about you.

Mr. Chairman, we still appreciate, though, having the chance to give testimony on an issue that I think is vitally important. It is a pleasure to be here and to preview in a way a great citizen of Washington State, whom you will hear from in one of your later panels, John Stanton, who is the CEO of VoiceStream Wireless. As you will discover today, John has been a visionary in cellular technology for many years. In fact, in the early days, he aligned with another Washington State resident, Craig McCaw. John and Craig really led the growth of this industry, not just in the Pacific Northwest, but nationally and internationally as well, and I think you will enjoy hearing from him soon.

Today, VoiceStream, a company that is based in my district, now employs 8,000 people and it has 2.3 million wireless customers

around this country. VoiceStream embodies the technological innovation, the quality jobs, and the international leadership that we have come to believe characterizes the new economy here in the United States and gives strength to us as we continue in our leadership.

As other high-tech companies in the new economy are discovering, however, their desire to innovate and expand their businesses often faces opposition from within their own government. Today, VoiceStream is poised to expand their business to other parts of the United States and to bring increased competition and innovations to customers all over our country. Unfortunately, actions being considered by Congress would arbitrarily negate these plans, and I believe would send a chill through the new economy and the high-tech industry, which heavily relies on outside investment to innovate and to bring new products to market.

The purpose of your hearing today is to examine the current procedures for the acquisition of a United States company holding FCC licenses by a foreign company. Under the Communications Act, as has been mentioned already in your hearing today, if indirect foreign ownership of a United States telecom company would exceed 25 percent, the FCC must rule that the purchase is in the public interest and that there is no national defense concern before the acquisition may be approved. And along that line, Mr. Chairman, I would like to offer for inclusion in the record the testimony of my colleague from Washington State, the Honorable Norm Dicks, who has been a member of the Intelligence Committee and speaks to the security issues that are related to this merger.

Mr. TAUZIN. Without objection, that's so ordered.

[The prepared statement of Hon. Norman D. Dicks follows:]

PREPARED STATEMENT OF HON. NORMAN D. DICKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Thank you Chairman Tauzin and Ranking Member Markey for holding this important hearing on the subject of foreign government ownership of American telecommunications companies. As technological innovations continue to make the world smaller, a discussion about foreign ownership of American companies is very timely. We must take care that any action we in Congress take regarding this most vibrant industry help, not harm American consumers and workers, and that any action we take can have unwanted and unforeseen negative repercussions. We would do well to study this issue carefully and proceed cautiously, making sure first of all that we understand the consequences of our decisions. This hearing is a first step toward making an informed decision, and so, again, thank you.

Today, I want to briefly address the merger between VoiceStream and Deutsche Telekom and explain how it will both serve American consumers and workers and further our national security interest.

First, the VoiceStream-Deutsche Telekom merger will benefit consumers and workers. It will do so by enhancing consumer choice, accelerating the pace of technological innovation, providing more competition, and encouraging lower costs. VoiceStream, which is now the fastest growing, but still smallest nationwide wireless company, will be able to expand its networks and service areas throughout the United States and thereby better compete with other much larger wireless telephone companies. This competition will provide consumers with more options and force all companies to increase efficiency, improve service, and lower prices. In addition, the increased competition will accelerate innovation and will soon enable more Americans to have one phone, with one number, that they can use almost anywhere in the world. The merger also promises to create thousands of good new jobs for Americans.

The suggestion has been made that, despite these benefits to American consumers and workers, the VoiceStream-Deutsche Telekom merger somehow poses a threat to our national security. Mr. Chairman, we do not need to enact this legislation to pro-

tect our national security. Mergers such as the VoiceStream-Deutsche Telekom merger will be subject to a full review by our national security agencies, through the Committee on Foreign Investment in the United States ("CFIUS").

VoiceStream already has a security agreement with the national security agencies that it agreed to as part of the approval of a previous merger. The national security issues have been worked out satisfactorily in the past, and there is no indication that they cannot be fully and adequately addressed here—without sacrificing the consumer benefits and new American jobs that this merger will bring.

Second, this merger will promote competition. No U.S. wireless consumer will lose a marketplace choice for wireless service as a result of this merger. In fact, marketplace choices for U.S. wireless consumers will increase as VoiceStream is able to continue to build out its existing licenses and to fill in the gaps in its nationwide coverage. In any event, the merger will be subject to tough scrutiny to ensure that it does not diminish competition. Competition. Specifically, the FCC already has authority to determine whether the public interest would be served by allowing any foreign corporation—including one with foreign-government ownership—to receive a common carrier wireless license. This review takes into account factors, such as competition, consumer welfare, and, in consultation with the Executive Branch, national security, law enforcement, foreign policy, and trade.

The Department of Justice also has the authority to review this merger. If it finds that a merger involving a foreign corporation threatens consumers or competition, the Justice Department has full authority to block it. In fact, it is worth noting that the WorldCom-Sprint merger began to unravel after the Justice Department (not the European Commission) filed suit to block the transaction.

In addition, the Exon-Florio Amendment provides a mechanism for blocking an international merger or requiring appropriate restrictions in order to protect national security and law enforcement interests. The Committee on Foreign Investment in the United States (CFIUS), the interagency committee created under Exon-Florio to review U.S. acquisitions by foreign companies that could threaten U.S. national security, includes the Departments of Commerce, Defense, Justice (including the FBI), State, Treasury, and the National Security Council. In previous telecommunications acquisitions by foreign companies, CFIUS has required limitations on a foreign parent's access to sensitive information and authority over sensitive facilities, including imposing requirements that facilities used to manage U.S. domestic telecommunications infrastructure remain in the United States. The CFIUS review—along with the FCC and DOJ reviews—are more than adequate to address the effects of any international merger on telecommunications competition and to require the continued maintenance of a secure communications system that meets national security and law enforcement needs.

Finally, concerns have been raised about the potential for the newly-formed company to be controlled by the German government. I believe this fear is misguided. Deutsche Telekom, which formerly was wholly owned by the German government, is now an independent, publicly traded company. While the German government still holds directly or indirectly some 58 percent of Deutsche Telekom shares, it is reducing its stake as market conditions permit. The proposed merger with VoiceStream would actually dilute the German government's ownership below 50 percent to about 44 percent.

Moreover, the German government, even with its current ownership stake, does not control Deutsche Telekom. The German government holds only one of the twenty seats on Deutsche Telekom's board of directors, consistently votes with the company's management and other board members, and has no special veto rights. In addition, it provides no subsidies or other special preferences to the company.

The VoiceStream-Deutsche Telekom merger clearly furthers our national security interests for national economic security reasons. The United States has been the leader in encouraging other countries to open up their markets—in telecommunications and in other areas—to foreign competition. We have pressed foreign governments to decentralize control of former and current state-run industries. We have done so because we believe in the benefits open markets create and because we have confidence that American companies can excel in any market where the rules permit open, fair competition. If we were to close our doors and restrict access to our market in this case, we would undermine every argument for liberalized trade and free markets that we have made in recent years. Worse yet, we would shut off important American companies from important sources of capital that they need to create American jobs and create new, innovative services at better prices for American consumers.

Let us make no mistake about it. Turning our back on this merger will not only undermine our credibility and ideals; it likely will have real, tangible consequences for workers and consumers, some of whom have no direct stake in the merger. I am

referring to the potential for a trade war. Indeed, "potential" might be an understatement. European Union officials already have informed the United States that they will face strong pressure to retaliate to any measure, such as the Hollings bill or Dingell-Markey legislation, that would strictly limit foreign ownership. Whether they lash back in agriculture, intellectual property, or electronics, the only clear victims will be American consumers, workers, and businesses for whom unfettered trade has delivered the best available goods at the lowest prices, created millions of jobs, and opened new markets for business.

Mr. Chairman, this merger is in our national interest. Enacting protectionist legislation and thereby inviting European retaliation is not. I urge the Subcommittee to reject the Hollings bill, the Dingell-Markey bill, and any other similar attempt to impose arbitrary limits on foreign competition. They will only result in less robust and less open markets here and abroad.

Ms. DUNN. Some in Congress are seeking to ensure that no acquisition that would result in indirect foreign government ownership of more than 25 percent should be approved. So the debate comes down to a very familiar topic: Do we grant the executive branch discretion to oversee international trade or do we micromanage it here on Capitol Hill?

As a member of the Ways and Means Subcommittee on Trade, I have always supported granting authority to the executive branch to negotiate and, after the approval by Congress, to implement trade agreements on our behalf. I believe this represents the best opportunity to open markets abroad for United States products. This is especially true of the Basic Telecom Agreement which was finalized in February 1997, as an add-on to the Uruguay Round of the WTO.

This historic agreement is helping United States telecommunications companies to gain a foothold in developed and developing countries around the world, and it provides us with an enforcement mechanism through the WTO to ensure compliance.

Make no mistake, however—and I would agree with others who have spoken today at this hearing on the subcommittee—much more can be done along this line. The pace of telecommunications privatization in other countries has been very slow. From Mexico to Japan to many European nations, our trading partners continue to have major ownership over their telecommunications infrastructure. Such ownership has proven to be extremely problematic for United States companies seeking access to markets abroad.

At the same time, we have processes in place through the FCC and the USTR to force greater concessions on market access. As part of the Uruguay Round Agreement, which Congress affirmed in 1994, our trading partners approved the FCC procedure for determining public interest and national security in cases of indirect foreign ownership of licenses.

If we were to arbitrarily change criteria for foreign investment in the United States market, that would be raising serious questions about WTO compatibility, something you need to take a very close look at.

Most importantly, however, is the fact that the FCC approval process allows the United States to condition these types of acquisitions on further privatization efforts overseas. Changing the law would have the ironic effect of reducing our ability to further privatize foreign telecommunications companies.

Arguments about WTO compatibility and market access, although important, are secondary to the true objective of the mar-

ket, and that is innovation and competition. In order for United States consumers to fully benefit from innovative technologies and increased competition, companies must be allowed to seek investment from around the world.

The current FCC process provides more than adequate protection against actions that would harm United States businesses and consumers. And let me repeat that, Mr. Chairman, because it is really the crux of what I believe. The current FCC process does provide more than adequate protection against actions that would harm United States businesses and consumers.

As many of you know, I represent an area east of Seattle, Washington, that has benefited greatly from the new economy. It is my sincere desire that every part of this country is some day touched by the technological revolution that is taking place in my part of the country. That will only happen, however, if innovators are allowed to create, if businessmen and women are allowed to market, and if investors are allowed to seed tomorrow's technology.

Thank you again for your willingness to let me speak to you today, and I would be happy to respond to any questions you might have.

Mr. TAUZIN. Thank you very much, Jennifer. Jennifer, I had a message you had to leave. Any time you need to depart, you are certainly welcome, and Senator Hollings the same. Would you like to take a few questions, sir?

Senator HOLLINGS. I would be glad to try to answer your questions.

Mr. TAUZIN. I think in fairness to the guy who has drawn all those nasty pictures for you, I think I ought to recognize Mr. Oxley first. Mr. Oxley.

Mr. OXLEY. Thank you. Welcome, Senator Hollings. Let me take you back to 1996 and the conference on the Telecom Act.

Senator HOLLINGS. Right.

Mr. OXLEY. If you will recall the Oxley amendment that passed the House dealt with 310(b) and a modified 310(b) to the extent that it provided for reciprocity in the process; that is, if we were dealing with a country that was open and allowed American investment, that indeed we would recognize that reciprocally. And unfortunately, because of your efforts, that language was taken out.

I am not sure whether you have second thoughts about that decision, because basically what has happened is that since that time the FCC and USTR have taken a very good, in my estimation, a good approach in dealing with 310(b). They don't even have to consider reciprocity. I am just wondering if you perhaps had another shot at that amendment whether it might have been a good idea to put into the bill at that time?

Senator HOLLINGS. No, Mr. Chairman, I definitely would—want that out. I didn't have my way. What happened was we had put in S. 1822, had it all ready, and a filibuster prevented its being taken up. At that time, I was chairman of the committee. In 1994, of course, the Republicans took over the U.S. Senate and Chairman Pressler put in the bill, and we had also that same kind of provision in the Senate bill.

We had a hard time getting that out, and the only reason I think we got it out, you and I agreed on the "snap-back." Don't you re-

member, we said, Wait a minute, if someone had been allowed in the country, this foreign country and then under new leadership they all of a sudden unlicensed the American company, then we would unlicense their particular things, and we argued back and forth the snap-back.

But, no, I think the law is sound. The market is dynamic. There is all kinds of money, and you and I have caused not only competition but companies to be pretty well bloodied and downgraded. AT&T is trying to compete. We have yet to get the Bell companies to comply with that 14 points. Thank heavens for SBC down in Texas and, of course, Verizon up in New York. But the others haven't just come around to complying, and that particular monopolistic conduct has failed to really carry through completely. But while we are trying to get that done and showing how it can be done, they tried to question the constitutionality, and they took it to the Supreme Court and everything else of that kind.

They wrote it—the Washington lawyers wrote those 14 points, not me, because it is all sophisticated communications law, and they knew about it. But now to come in and get the U.S. Government, in an open market here, and all of a sudden superimpose a country that can print dollars that is totally inappropriate.

No, I wouldn't change it, I would say.

Mr. OXLEY. You wouldn't even take stake the snap-back ? You wouldn't go back to the snap-back provision?

Senator HOLLINGS. I would consider snap-back but not governments. Yes, I would do it with respect to private companies.

Mr. OXLEY. Let me ask you——

Senator HOLLINGS. Yes, I like that reciprocity with respect to private companies.

Mr. OXLEY. Do you think the proposed merger with Deutsche Telekom and VoiceStream will provide more competition in the telecommunications industry?

Senator HOLLINGS. No, it will stifle competition. Wait a minute, here comes—they will all of a sudden raise the ante. Everybody is looking around how much is it really worth? They don't know. They are trying to get market share and in comes a foreign government and jumps it all up to $21,000, $22,000 a subscriber. We can't—AT&T can't print money. In fact, they have lost a good bit of their ability to finance.

Mr. OXLEY. So you wouldn't——

Senator HOLLINGS. No. The private market—they all are staying quiet. They favor what I have done, to a T. In fact, the European Union—one of you commented that the European Union was again—no, we have members from the European Union that oppose this.

You don't want the government into this open market. I don't want the government. Not the U.S. Government and not the German Government or any other government.

Mr. OXLEY. Will the effect of Deutsche Telekom merging dilute the percentage of government ownership in Deutsche Telekom?

Senator HOLLINGS. That's Washington lawyer talk, 310(a) still applies; none of this dilution by 10 percent, 10 percent, 10 percent. Well, look at it. Wait a minute, all of these other countries have all of these 10 percents and everything; my interest in ownership

has been diluted. Not so at all. In the SEC papers they said that they would waive sovereign immunity. As John Mitchell, the famous Attorney General said, Watch what we do, not what we say. Let them get rid of that 58 percent ownership. Get it down to 25 percent or less.

Mr. OXLEY. So in your estimation, this merger will not provide more competition.

Senator HOLLINGS. Absolutely not. It will start stifling competition, hurt everybody else in the free market here in America.

Mr. OXLEY. Will it provide working capital for VoiceStream?

Senator HOLLINGS. We don't have any shortage of working capital. This crowd behind me has got it. They have it coming and going. You and I can't catch up with it.

Mr. OXLEY. That decision has to be made in the marketplace, does it not?

Senator HOLLINGS. Sir?

Mr. OXLEY. That decision has to be made in the marketplace as to whether—VoiceStream obviously thought this was a good opportunity to get capital to be able to build a company.

Senator HOLLINGS. That made in the marketplace in accordance about the law, but the law categorically, and like Scott Harris said, it cannot be waived.

Mr. OXLEY. So you don't think this will benefit consumers in any way?

Senator HOLLINGS. No, it is not going to benefit consumers. It will hurt the consumers. It will benefit these individuals. Once they get their foot in the door in VoiceStream, they will come back and get—now they are looking at a part of the wireless over in Georgia that my Bell South has got part of that, and I have been sort of indirectly told that, wait a minute, if you quiet down, it means about $400 million more to Bell South so don't get so wrought up and that kind of thing. But once they get those two, then they will come back and get Sprint.

Come on. This is a foot in the door against the categorical prohibition against foreign governments being licensed. That's 310(a). That has not been changed. Barshefsky can't change it, nor can Chairman Kennard change it. Tell them to read it.

The question before them is not whether it is good or bad. It is there. And we think it is—I don't believe you could get a majority vote in either House right now to all of a sudden start putting governments in it.

Mr. TAUZIN. The gentleman's time has expired.

Mr. OXLEY. Let me just ask one more question.

Mr. TAUZIN. One more.

Mr. OXLEY. If that is the case then, we don't need your bill.

Senator HOLLINGS. No, we don't need the bill. I think 310(a) applies, and I want to say that loud and clear.

Mr. OXLEY. I yield back.

Senator HOLLINGS. I am just making this for the record when it goes up on appeal.

Mr. TAUZIN. The gentleman's time has expired.

The gentleman from Massachusetts.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

Can we turn a little bit to USTR? Maybe you could give us your perspective of how they view these issues. They seem to have a fairly long-term, fairly lenient view of the question of how much a foreign government has to divest its ownership, and it keeps—it kind of has a manana mindset. Maybe they haven't done it yet, but there is a process; there are discussions that are ongoing that will lead to the full opening of it. And what keeps coming to my mind is, what if they were in charge of the domestic American marketplace? Maybe their policy would have been, Well, there are 14 checkpoints and SBC has fulfilled 9, and they seem to be sincere about doing the other 5 and so we will continue our discussions with them; but for competition purposes, we will allow them into long distance right now, even though they haven't opened up their own marketplace.

Senator HOLLINGS. That's right.

Well, your question includes the answer. It is an excellent observation, Mr. Congressman. Actually, what is wrong here is Ambassador Barshefsky is like that famous rooster that crowed in the morning and thinks it started the sun to rise. I mean, just because she says now she is for competition—and we all have been getting on her to privatize—Chairman Tauzin, I have it right here, and that was the best thing, I didn't need any testimony, pushed her to privatize. That's what the chairman did.

That's all we are talking about here at this hearing, privatize foreign business. Come on in, but don't bring your government in and take control where you can print money.

Mr. MARKEY. What do you think would happen if we allowed Secretary Glickman, for example, to set up his own agricultural company here and then to move to France to begin to buy up all the farms in France so that we could have a big company to compete against all the small farms in France? Do you think the French would welcome that as a WTO?

Senator HOLLINGS. Like Napoleon, he would be banished to Elba, I can tell you that right now. Couldn't do it.

We all understand that we have done a real good thing. It has been hard going and the FCC has been generally very, very good, but they think—they are getting restless and they think they are starting the competition, and it is very, very dynamic out there, all of these mergers and everything, private entities but not the government. Don't let the government come in that can print money, as they obviously have done for Deutsche Telekom. I mean, you can't get in the Deutsche Telekom market. Look at their SEC filing and you will see they say we have got a monopoly and we have got control. Of course, they put down that little paragraph we want to waive sovereign immunity. I am not talking about legal service. I am talking about money and control of the market and competition, not sovereignty.

Mr. MARKEY. What does USTR say to you when you point out the Italian example and the other examples when they reject it?

Senator HOLLINGS. When I pointed this out to Ambassador Barshefsky, Chairman Reid Hunt at that particular time just threw up his hands and said the FCC has no idea of licensing a foreign government. That's what Reid Hunt said. That's why we had—I had a little amendment on her confirmation, and we just

got a minority vote, that's 15, 17 votes on it, but everybody says there is no use to cause any further trouble. The Chairman said he is not going to license any foreign government.

Mr. MARKEY. Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman. The gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman.

Senator HOLLINGS. Excuse me, Mr. Chairman. We have a vote at 12:20. I have to run. It began at 12:20, so I will be glad to answer your question.

Mr. STEARNS. I sort of have a question I think is a softball for you, because I have a letter here in which you write to Mr. Kennard, the Chairman. You say, A treaty confirmed by a two-thirds vote in the Senate amends a law, not an agreement, and the Global Telecommunications Agreement was never submitted to Congress. I can't emphasize enough that the WTO provision isn't absolute, only permissive.

So I guess the question would be, does the FCC inciting public interest have any reason to do so? And I guess what you are saying is the bill, the 310(b)4, talks about companies that have 25 percent interest, so the law is in place but you feel your bill is necessary because of the FCC taking the liberty to use public interest as a fulcrum to do something?

Senator HOLLINGS. Well, they are disregarding entirely 310(a), 310(a).

Mr. STEARNS. Okay.

Senator HOLLINGS. You just cannot license a foreign government.

Mr. STEARNS. And the WTO, the people are going to say that we have an agreement with the WTO and we can't break that agreement. And your answer was, basically, that that was never confirmed by the Senate?

Senator HOLLINGS. Well, that agreement, if you try to find it, it is on a little page; and under the heading Restrictions on Indirect Ownership, "none." And with that little nuance, they say the law has been changed; and we have said if you are a member of WTO, then you automatically have got our public interest in mind and we are going to license you.

Isn't that wonderful? I mean, I wish I could change laws like that. I mean, they haven't changed the basic law and they don't have the power to do so; neither the Ambassador nor the FCC.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Stearns.

Before you leave, Senator, I want to make sure I heard your answer correctly. Did you say that you believe that if a company dilutes its government ownership below 25 percent that 310(a) doesn't apply?

Senator HOLLINGS. That's right, because the license doesn't go to them. It goes to whoever has the majority ownership. For example, they are already into Sprint. They have—Deutsche Telekom this minute has got 10 percent of Sprint.

Mr. TAUZIN. Okay, Senator. Unless anybody has a quick question, I think we will have to excuse him.

Then, with our thanks.

Mr. Dingell, did you have any quick question you wanted to ask?

Mr. DINGELL. Mr. Chairman, I get the message the Chair is sending and I receive it gracefully.

Mr. TAUZIN. Thank you.

Mr. DINGELL. I would like, however, to welcome my old friend, the Senator. He is a great leader over in the Senate. He is a great friend of mine. He has a distinguished record and I am proud to be associated with him.

Senator HOLLINGS. You are a great friend of mine. You make me feel at home. Thank you very, very much.

Mr. TAUZIN. With that, Senator, thanks for coming. We really enjoyed it.

Senator HOLLINGS. Thank you, sir.

Mr. TAUZIN. The Chair will now welcome the second panel which will include—I am sorry. We agreed to go back to opening statements. Let me bring the second panel up. You can get seated and comfortable. That will include Mr. Kevin DiGregory, Deputy Assistant Attorney General of the Criminal Division, Department of Justice; Mr. Larry Parkinson, General Counsel of the FBI; of course, our old friend, the Honorable Bill E. Kennard, Chairman of the Federal Communications Commission. Chairman, long time no see. Welcome back. And Ambassador Richard Fisher, Assistant United States Trade Representative, USTR.

We will return quickly to any requests for opening statements and then take the testimony of our witnesses, beginning with Chairman Kennard. Are there any other requests for opening statements? The gentleman from Texas, Mr. Green?

Mr. GREEN. Thank you, Mr. Chairman. I won't read my total statement. I would like to submit it for the record. But, Mr. Chairman, because of all the other conflicts that are going on today, not only votes but other committee meetings going on, I may not be here during the questions; and I would like to make a brief statement and ask a question for our Trade Ambassador, Mr. Fisher, who I want to welcome today, a good Texan, coming here.

I also welcome on our next panel the Communications Workers of America president, Morty Bahr. Morty, welcome to the Commerce Committee.

Mr. Chairman, the concern I think a lot of us have is that we don't mind the competition, but we do have some concern on this side of the table from government ownership of U.S. telecommunications companies, particularly foreign government ownership. And so I think Senator Hollings' legislation is well thought out and raises a concern we all have.

My question for Mr. Fisher and maybe all the panelists today is that we realize that the intended focus is on foreign investment in telecommunication. However, I have a concern about how U.S. companies are treated when they invest in foreign markets. For instance, if you have seen press accounts of the treatment received by the U.S. corporation Southern Energy, a constituent of mine trying to do business in Germany. SCI is working to obtain a foothold in the German utility market and their efforts are being stifled by the actions of German utilities to prevent an American company from owning a majority stake in a German utility. Of course, we are talking about a U.S. company that's privately owned, and yet

these German companies are violating the contractual rights of SCI.

You know, it is a two-way street, and this is not even a fair two-way street. We are not talking about the U.S. Government trying to buy a utility in Germany. We are talking about a private company in the United States trying to do what the WTO has said we can.

My concern is, I don't mind Deutsche Telekom coming in; I just don't want them to be government controlled and competing with our industries. But using the SCI's experience in Germany on utility, I would hope that our Trade Representative would realize that not only in this issue but also our companies are trying to do business with other companies.

Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman.

Further requests for opening statement from any member?

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

Thank you Mr. Chairman.

Let me begin by welcoming our two Congressional colleagues, Senator Hollings and Representative Dunn. Welcome to the Commerce Committee.

This morning, we will address a very important issue: foreign government ownership of American telecommunications companies.

Almost four years ago, the United States and 68 other countries committed to opening their telecommunications services markets to competition. I supported those commitments then . . . and I continue to support them today.

The Basic Telecom Agreement has proven to be a good deal for the American consumer and American labor.

That should come as no surprise . . . given that the Basic Telecom Agreement was modeled on the Telecom Act of 1996. The 1996 Act broke down monopoly barriers to entry . . . and replaced it with a pro-competitive model.

The results speak for themselves: job creation and capital formation in the United States are at all-time highs.

We exported the 1996 Act model when we signed the WTO Agreement. One key aspect of the Agreement was that member countries would establish independent and impartial regulators.

This was a critical piece to the final Agreement . . . because of the extent to which most foreign governments literally owned and operated their national telecom monopolies.

That has *never* been the case here in America. True, we may have lingering monopolies at the local level. But at least the American government never owned and operated that monopoly.

Such is not the case with many of our trading partners. So the Agreement includes *strict requirements* that WTO members set up independent and impartial regulators. Without regulatory impartiality, there can be no free trade in telecom services.

This, in turn, means that WTO members *implicitly committed* to privatizing their telecom monopolies. After all, how can the government be "Impartial" if it has a financial interest in the monopoly provider?

We all know *it cannot be impartial* under such circumstances . . . and we should not pretend otherwise.

As a result, many of us in Congress . . . myself included . . . supported the Agreement with the expectation that WTO members would quickly and fully privatize their telecom monopolies.

But we now know that full and complete privatization is slow in coming . . . even in countries that have industrialized economies. For example:

- the Japanese government still has a 53 percent stake in NTT;
- the German government controls 58 percent of Deutsche Telekom;
- the French government holds 54 percent of the outstanding shares in France Telecom; and
- the Dutch government still controls 43 percent of its national telecom monopoly KPN.

The process of full privatization is taking far too long . . . and the various bills pending in Congress indicate that our patience is running out. The time has come for governments to get out of the telecom services business.

Indeed, I would note to the Administration and the FCC that, on matters such as this, Congress has demonstrated that it will act *if necessary*.

For example, Congress recently passed legislation privatizing INTELSAT and Inmarsat . . . once it became clear that the regulatory process was going nowhere.

Are we at the same point in the area of global telecom services where Congress needs to act? I hope not, but the answer to that question depends in large part on what we hear today.

We need to hear from law enforcement as to whether it feels its concerns are being addressed under existing regulatory processes.

We also need to hear from the FCC. I specifically want to know whether the FCC believes it has ample authority to address competitive concerns raised by foreign government control . . . *notwithstanding the presumption for entry by carriers based in countries that are WTO members*.

And finally . . . and perhaps most importantly . . . we need to know from the Clinton Administration about what it is doing to push for full privatization.

We invited Ambassador Barshefsky to speak to this critical issue . . . but unfortunately, she chose not to come. That is unfortunate . . . because this is one of the most important matters pending in Congress *today*.

So we need to hear from USTR about what it is doing *today* . . . and what it will be doing *tomorrow* . . . to push the issue of full privatization.

This is a critical moment for the Clinton Administration. It often points to the BTA as a landmark achievement, and rightly so.

But now is the time to close the deal. I urge the Administration to do so . . . rather than force Congress' hand.

Thank you, Mr. Chairman, and I yield back the balance of my time.

PREPARED STATEMENT OF HON. TOM SAWYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

This hearing presents an opportunity to vet an aspect of the Basic Telecom Ageement (BTA) that should have been addressed in 1997. I am referring to the lack of incentive for foreign entities to privatize under the BTA and because of this, the unfair advantage that a state-controlled telecommunications entity currently has in competition with a U.S. private telecommunications entity.

To be fair, if the USTR had attempted to negotiate in 1997 any type of privatization requirements on top of negotiating an open and fair regulatory regime, the deal would have backfired and the other nations signing the BTA would have walked away. In order for the U.S. to gain at least marginal access to foreign markets, we had to give access in return, and the only way to allow that in 1997 was to allow foreign government-owned telecommunications companies into the U.S. market.

However, that was then, and this is now. U.S. telecom companies are still fighting regulatory roadblocks in attempting to gain access to foreign markets. On top of this, it is often difficult for U.S. companies to compete with state-owned firms that have capital advantages. While approximately 18 of the 69 nations who signed the BTA have fully privatized their telecom industry, an estimated two-thirds have not.

In order to have free and fair competition in telecommunications, the playing field should be leveled. The question is how this can be best achieved.

Should there be an outright ban on foreign state-owned telecommunications companies competing in the US? While this would solve the problem of leveling the playing field domestically, this would do little to encourage cooperation and access abroad for U.S. companies. It is also possible that such an action would result in the U.S. violating its WTO agreement.

Should the FCC amend its rules to resurrect "the effective competitive opportunities" test (ECO) for foreign state-owned telecom entities? The test was used by the FCC prior to the BTA to determine whether a foreign-based telecom company could enter the U.S. market based upon its offering competitive opportunities to American carriers in the home market.

To re-issue this rule seems to move in the right direction—especially if targeting only state-owned, not privatized companies. Regardless of the ECO or some other, new litmus test, it seems entirely reasonable for the FCC to ensure that foreign state-owned entities who would like to compete in the United States should: a) demonstrate that their markets are fair and open to competition, and b) prove that they are not subsidizing their U.S. expansion with distorted monopolistic prices back home.

Finally, should the U.S. use the WTO dispute mechanism to address those countries not complying with the BTA? I believe the USTR has already pressed the case of Mexico, and it is not clear why the U.S. would not press ahead with other nations that have violated their WTO commitments.

I am interested in the different approaches that each of the witnesses would take to level the playing field in telecommunications competition, both domestically and abroad. I look forward to hearing the many views today and hope that we can walk away with a better understanding and consensus on where to go from here.

PREPARED STATEMENT OF HON. KAREN MCCARTHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Thank you Chairman Tauzin and Ranking Member Markey for holding this hearing on foreign government ownership of American telecommunications companies. I look forward to the testimony by the witnesses on today's global telecommunications market and on the national security and competitiveness implications of the acquisition of American telecommunications companies by foreign companies with government stockholders.

The global telecommunications market has been changing rapidly in the last 10 years. Many European governments are in the process of privatizing their government-run telecommunications companies and opening their markets to foreign telecommunications companies. This rapid change makes today's hearing timely for all concerned, especially consumers.

It is important that we look carefully at our commitments under the Basic Telecom Agreement of 1997, which spurred the FCC to amend its administrative process for merger evaluations involving WTO member nations, to ensure that the U.S. protects its national security and maintains a competitive marketplace in the emerging global telecommunications market. I am interested in hearing from the witnesses whether it is necessary to adopt legislation to revise the review system.

When looking at the issue of foreign government ownership of American telecommunications companies, we must look at how such ownership will affect American consumers. Deregulation and liberalization of markets should ultimately benefit the consumer with improved services and lower costs. Consumers all over the world are beginning to benefit from the increasingly global nature of the telecommunications market. VoiceStream customers in Kansas City can use their cell phones in cities throughout the world. This type of service was unheard of just a few years ago.

Preventing the joining of American and foreign telecommunications providers may stifle new emerging services such as one-stop shopping for customer communications needs. We must consider what the future may be for the U.S. telecommunications industry if it is not allowed to join forces with foreign corporations to better serve the consumer. Will it be at a competitive disadvantage? Will consumers choices be limited? Will we set a precedent that leads to the restriction of Internet mergers with foreign companies? These are important questions that I hope we address during this hearing.

Thank you Mr. Chairman, and I yield back the balance of my time.

Mr. TAUZIN. Hearing none, the Chair is now pleased to welcome our panel. We will begin with the Chairman of the Federal Communications Committee, the Honorable Bill Kennard.

Mr. Kennard.

STATEMENTS OF HON. WILLIAM E. KENNARD, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; KEVIN V. Di GREGORY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE; LARRY R. PARKINSON, GENERAL COUNSEL, FEDERAL BUREAU OF INVESTIGATIONS; AND AMBASSADOR RICHARD W. FISHER, ASSISTANT UNITED STATES TRADE REPRESENTATIVE, USTR

Mr. KENNARD. Thank you very much, Mr. Chairman, members of the subcommittee. I appreciate the opportunity to testify before the subcommittee this morning on this very important and timely issue.

I have listened very carefully to many of the concerns that have been expressed by Members of Congress in both Houses about the issue of foreign government ownership of U.S. telecommunications licenses. I want to state at the outset that I share many of these concerns. We at the FCC believe in open, privatized, competitive telecommunications markets. We believe that no monopoly or former monopoly should be allowed to leverage their relationship as a monopoly or with the government to squash competition. Indeed, that is what we have worked so very hard at at the FCC since the 1996 act was passed.

We are also very sensitive to your concerns about our critical information and telecommunications sectors and national security concerns and Defense Department concerns. But my message to the subcommittee this morning is really simple. I have two fundamental messages. First, the FCC does not prejudge any merger that is or will be coming before it. As Senator Hollings testified earlier that you can expect the Chairman of the FCC to be judicious this morning, and I will be judicious this morning because when you delegated to the FCC the responsibility to review mergers in this area of our economy, you gave us the power to act in a quasi-judicial capacity. We are acting as the judge and jury on applications that come before us. That means that the rights of parties are implicated, the rights of parties to have due process, to have their questions, whether it is statutory interpretation or questions of policy, decided on an open and comprehensive record.

And we will not be in a position to prejudge the outcome of any transaction that we have not decided before the Commission, and I wanted to make that clear.

That being said, I will say today as I have said previously, that having indicated that I share many of your concerns, we will give close scrutiny to any merger involving foreign-government-controlled providers. Specifically, whether the proposed merger poses a high risk to competition or raises national security or law enforcement concerns. This shouldn't be a surprise to anyone. This framework for decisionmaking was set forth very clearly by the Commission in its 1997 framework for determining these foreign ownership issues.

Second, I want to be very clear this morning that the Commission has and regularly employs all of the authority it needs to conduct a rigorous case-by-case review of every transaction pending before us. I think it is appropriate for me to dispel the myth that companies coming before the FCC that have foreign government ownership, including foreign-government-controlled parties get a free pass. That is not how it works. Every merger is looked at carefully. We determine all of the relevant facts and we do it on the basis of an open and transparent record.

In doing so we balance the need of the American consumers to have more competitive choices in the marketplace against the essential protections for law enforcement, national security and competition in the United States.

I think it is appropriate also for me to outline what the procedure is for merger applications involving WTO countries. In those cases we exercise what we call a rebuttable presumption that the investment is in the public interest, but there are two important

carve-outs from that rebuttable presumption. One is if there is a very high risk to competition domestically, we would not approve such a merger. Second, if there are national security issues involved, we would not approve such a merger. This framework was laid out in 1997 and it is very, very clear. This rebuttable presumption is tested before the FCC in an open process. If there are public interest concerns, we determine whether these concerns can be adequately addressed by safeguards and conditions or whether the application must simply be denied. On matters of law enforcement and national security, we defer to expert agencies such as the FBI and the Department of Defense.

Now, there are three salient features to this process that I hope the committee will keep in mind. This process is comprehensive. It is flexible and it is effective. It is comprehensive because the issues that we look at cover a wide range of public and national interests and they include the concerns of, in fact, many of the agencies that are represented here today and are assigned to protect those interests.

Second, the procedures are flexible. They permit us to weigh and balance, to amend and condition, to keep up with technology and to remain in harmony with the Nation's international obligations.

We make these decisions based on a factual record, and I suspect that if an application like this were to come before us many of the arguments that you will be hearing today would be presented to the FCC. Everyone would get a chance to be heard and we would weigh them carefully before making a decision, and I am confident that if government ownership presents a competitive issue or a threat to competition in our country, then we would be able to ferret out the problem and deal with it.

The Supreme Court said some time ago that the public interest standard is a, "supple instrument." It has been given to the FCC to use judiciously and that is exactly what we do. In fact, I don't think anyone, particularly the members of this committee, would ever accuse the FCC under my leadership of not using the public interest authority aggressively to protect consumers and to impose conditions where warranted to protect competition.

Finally, these procedures are effective. They have been used to increase competition both from U.S. and foreign-owned firms, have not harmed the U.S. market and have actually strengthened it to the benefit of U.S. consumers.

If you look at the record of FCC decisionmaking in this area under Section 310, we have conditioned approvals to protect competition, dealing with dominant carriers, dealing with the influence of foreign governments over foreign-owned firms. So we have a track record of imposing conditions and safeguards where warranted.

So, in sum, I believe we have the tools we need to do the job. These tools have worked for nearly three-quarters of a century in our country, and use of them has allowed the entry of innovation and capital from abroad while protecting national security in the interest of American consumers here at home.

So in conclusion, Mr. Chairman, I believe these tools that we have used have been part of the success story of our Nation's lead-

ership in the development of competitive telecommunications markets, both here and around the world.

Thank you very much.

[The prepared statement of Hon. William E. Kennard follows:]

PREPARED STATEMENT OF HON. WILLIAM E. KENNARD, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

INTRODUCTION

I am pleased to be here today to address some of the complex and important issues raised by foreign investment in the United States telecommunications market, with particular focus on concerns raised by entities with substantial foreign government ownership.

At home and abroad, the United States has led a worldwide revolution to bring competition to the telecommunications sector. Domestically, this revolution has been made possible by Congress's foresight in enacting the Telecommunications Act of 1996, and the Commission's aggressive implementation of that Act. Internationally, the Commission acted decisively to extend the principles of competition to reform the antiquated system for delivering international services.

A key factor in enabling this revolution has been the Commission's vigorous defense of the public interest as mandated by the Communications Act, including in Section 310. The Commission has implemented this mandate through its procedures for reviewing applications for entry into the U.S. market by foreign telecommunications entities. The Commission's balanced and flexible use of the Communications Act and the Commission's procedures has enabled it to both protect the interests of consumers and national security, and at the same time take advantage of the stimulus of capital in our economy.

MESSAGE

My message to the Subcommittee this morning is simple:

First, the Commission should not prejudge any application that comes before it. Prospectively, I can say that we would give close scrutiny to any merger involving foreign government-controlled providers. Specifically, we would determine whether the proposed merger poses a very high risk to competition, or raises national security or law enforcement concerns.

Second, the Commission has full and sufficient authority to address the issues of both national security and domestic competition through the authority granted us by Congress in the Communications Act of 1934 and the Telecommunications Act of 1996. Commission policies implementing these statutes provide for a rigorous case-by-case review of foreign ownership with sufficient flexibility to address the particular competitive concerns raised by individual transactions.

KINDS OF APPLICATIONS

The bulk of applications before us that raise foreign entry issues request one of the following:

(1) permission to provide international services under Section 214;
(2) permission to exceed the 25% foreign ownership cap for spectrum licenses under Section 310(b)(4); and
(3) permission to merge a U.S. firm with a foreign firm, including a foreign firm controlled partially or entirely by a foreign government.

GOVERNING LAW

The prospect of foreign government control of a U.S. carrier may pose unique concerns. However, the standard we use to review such transactions is sufficiently flexible to take these concerns into account.

The Commission unanimously adopted its framework for analyzing whether entry into or investment in the U.S. market by foreign-owned firms is in the public interest in the 1997 *Foreign Participation Order.*[1] Under that framework, there is a rebuttable presumption that entry or investment by foreign-owned firms from WTO Member countries is in the public interest. The Commission undertakes a case-by-

[1] *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market,* IB Docket No. 97-142, *Market Entry and Regulation of Foreign-Affiliated Entities,* IB Docket No. 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*"), *recon. pending.*

case analysis of all applications; however, to determine whether there are public interest factors that would overcome that presumption and compel the Commission to deny an application. In particular, the Commission assesses whether a transaction would pose a very high risk to competition in the United States that cannot be addressed by safeguards and that will thereby harm our domestic communications market and U.S. consumers.

In some cases, the Commission may determine that a transaction is in the public interest, but that the application can only be granted subject to conditions that address competitive concerns. In fact, the Commission's regulatory framework includes competitive safeguards that apply to firms that are affiliated with dominant foreign firms. If as a result of its review of an application, the Commission concludes that these standard safeguards are not sufficient to address specific competitive concerns, the Commission may impose additional, tailored safeguards, or deny the application altogether. In other cases, the Commission may determine that entry cannot be "conditioned" sufficiently to protect the public interest. The Commission will then deny the application.

In addition to the competition concerns addressed as part of the Commission's public interest analysis, the Commission has always had, and continues to maintain, the ability to consider a range of public interest factors in considering whether to allow entry into and investment in the U.S. market by foreign-owned firms. These additional public interest factors include national security and law enforcement concerns. On these issues, the Commission accords deference to the expertise of Executive Branch agencies, such as the FBI and the Department of Defense.

PUBLIC INTEREST FEATURES OF PROCESS

The United States has long welcomed foreign investment as a means of achieving a specific end: strengthening competition in the U.S. marketplace, to the benefit of U.S. consumers.

At the same time, the Commission has the tools at its disposal to ensure that foreign investment is in the public interest. The public interest requires that foreign investment not harm competition in the U.S. market or threaten national security and law enforcement concerns.

There are three essential features to this process that I hope the Subcommittee will keep in mind.

The procedures are *comprehensive.* They cover a wide range of public and national interests, and they include the concerns of the many agencies assigned to protect those interests.

The procedures are *flexible.* They permit us to weigh and balance, to amend and condition, to keep up with technology, and to remain in harmony with the nation's international obligations.

Finally, the procedures *work.* Increased competition, both from U.S. and foreign-owned firms, has not harmed the U.S. market, but has strengthened it, to the benefit of U.S. consumers. Today, U.S. consumers enjoy lower prices and better, more innovative services.

CLOSING

In sum, we have the tools we need to do the job. Use of them has allowed the entry of innovation and capital from abroad, while protecting national security and the interests of American consumers at home.

These tools also have been part of the success story of our nation's leadership in the development of competitive telecommunications markets.

Thank you.

Mr. TAUZIN. Thank you very much, Chairman Kennard.

The Chair is now pleased to welcome Mr. Kevin DiGregory, the Deputy Assistant Attorney General of the Criminal Division, Department of Justice, of course a very timely appearance when the DOJ has just allowed the time to lapse for rejection of this merger.

Mr. Di Gregory.

STATEMENT OF KEVIN V. Di GREGORY

Mr. DI GREGORY. Mr. Chairman, thank you, and I thank the members of the committee for the opportunity to be here today. I will say at the outset, as you noted in your introduction, I am the

Deputy Assistant Attorney General in the Criminal Division of the Department, and I understand that you have concerns about what the Antitrust Division of the Department did. And please understand, I am perfectly willing to hear your concerns and take them back, but I will not be able to give you any answers today and I just wanted to let you know.

I want to, again, thank you for this opportunity to provide the Justice Department's law enforcement perspective on foreign ownership interests and foreign government ownership interests in the American communications infrastructure.

Let me begin by noting that the soaring growth of communications is an engine that drives our developing information economy. Because our economy depends upon readily available and reliable communications systems for its most basic functions, we must be careful not to stifle the growth of communications technology through undue government action. We must ensure that emerging communications technologies are as reliable and safe to use for business, education and entertainment as other methods of communication and we should take a technology neutral approach to the degree that is practical when considering appropriate governmental action.

The increasing globalization of communications entities implicates a variety of complicated legal and policy doctrines, including issues relating to national security, the protection of the privacy of U.S. consumers and businesses, the integrity of domestic law enforcement operations and public safety. Due to the growing importance of communications, the U.S. Government should ensure that the communications infrastructure remains safe to use when it is owned, controlled or operated by non-U.S. entities, especially foreign governments.

The challenges and risks created by foreign ownership interests and foreign government ownership interests in our communication infrastructure, as well as those created by the globalization of the communications infrastructure, will be discussed at greater length by Mr. Larry Parkinson, the General Counsel of the Federal Bureau of Investigation, in his testimony today. But as Mr. Parkinson will testify, these challenges and risks are very real and may adversely affect the privacy of our citizens and our obligations to preserve the national security and enforce U.S. law.

As the Federal Government examines the appropriateness of foreign ownership interests, especially foreign government ownership interests, in our communications infrastructure, we must ensure that the risks are minimized and that these challenges are met. In addition, the government must consider the risks posed by the globalization of U.S. communications infrastructure, especially the risk that specific activities will destabilize that infrastructure.

These risks must be addressed if law enforcement and national security agencies are to have the tools and capabilities to enforce laws against espionage and invasion of privacy, to satisfy our responsibility to conduct effective and secure, legally authorized investigations of criminals who use telecommunications to aid their illegal activities, to conduct national security investigations, to ensure effective emergency preparedness, and to protect public safety.

Our efforts to address these risks have relied thus far upon two existing fora. Foreign companies investing in U.S. communications companies may seek approval for their ownership interests at the Federal Communications Commission and/or may file notice of the proposed foreign ownership interests for review by the Committee on Foreign Investment in the United States. These processes allow the Federal Government to review whether a proposed ownership interest violates the FCC's public interest standard or in the case of CFIUS threatens national security in such a way that the President should on recommendation of CFIUS suspend or prohibit the transaction.

In analyzing proposed foreign ownership interest in or transfer of control of U.S. companies, the FCC considers several public interest factors. The factors include the effect of the proposed transaction on U.S. national security, law enforcement, competition in the U.S., trade, and policy concerns, in determining whether this transaction is consistent with public convenience and necessity.

There have been several applications at the FCC in the last 2 years that involve foreign ownership interests or other foreign elements that potentially impaired the interests of U.S. citizens. Both the Department of Justice and the FBI have requested that the FCC not grant these applications until the companies involved committed to take certain steps that would protect the American public. I am quite pleased to say that those companies have worked with us to find solutions and have entered into agreements with the Department of Justice, the FBI and the Department of Defense to reduce the threat that the transaction posed.

The FCC, in turn, has granted those companies licenses and applications on the condition that they comply with these agreements.

We believe it is important to tailor solutions to the relevant concerns. Therefore, in our efforts to formulate these solutions with these companies, we seek only that which is necessary to preserve national security, the privacy of our citizens, and public safety.

Let me briefly address one other mechanism that allows the Federal Government to review foreign investment in U.S. telecommunications and Internet companies, that is the CFIUS process. This mechanism empowers the President, for national security reasons, to suspend or prohibit an acquisition of a U.S. company by a foreign company or government. As a member agency of CFIUS, the Department of Justice has raised and will continue to raise national security concerns that arise out of proposed foreign ownership interests in our communications infrastructure.

We believe that such vigilance is warranted in order to protect our national security interests. What protections then are necessary to defend national security, the privacy of our citizens and public safety? Variations in technology and business structures presented by each foreign investment make it impossible to identify a single solution for all companies. As a result, we have worked with individual companies to develop solutions that protect national security, privacy and public safety in manners that are least disruptive to those companies involved.

First, one of our requirements in order to acquire those protections are to ensure that U.S. national security and law enforcement

agencies are able to securely and effectively use lawful process to gather information during investigations.

Second, it is critical that foreign owned and controlled companies protect the privacy of U.S. communications and customers and not leave inert the statutory protections of privacy under U.S. law.

Third, we must work to protect the integrity of U.S. law enforcement in national security investigations, foreign control notwithstanding.

We have attempted, along with the FBI, to address these challenges created by increasing foreign ownership interests in U.S. communications systems and the globalization of communications systems. In doing so, we always keep in our minds the need to balance the value of a free marketplace, to encourage continuing innovation in communications technologies, with the protection of the public's privacy, safety and security. We believe that thus far the processes available to us have allowed us to effectively address those concerns.

Finally, I would like to comment on some pending legislation that we believe is as unintentional by-product could threaten the framework that we have discussed. The pieces of leglislation are S. 467 and H.R. 4019. S. 467 limits the time within which the SEC must rule on a transfer of control, while H.R. 4019 eliminates the FCC's use of the public interest determination. Those time limits and that elimination of the public interest determination could severely affect our ability to do what we have been doing in visiting with these companies and negotiating conditions to agreements—conditions to FCC licenses in the form of our agreements.

Mr. Chairman——

Mr. TAUZIN. You are referring to bills that affect the FCC's authority, right, just now, is that correct?

Mr. DI GREGORY. That is correct.

Mr. TAUZIN. All right.

Mr. DI GREGORY. And referring to them only in the way that they affect our concerns with respect to the national security.

I will sum up by thanking you, again, Mr. Chairman, for the opportunity to present the Department's view on foreign ownership interest, especially foreign government ownership interest in U.S. companies.

[The prepared statement of Kevin V. Di Gregory follows:]

PREPARED STATEMENT OF KEVIN V. DI GREGORY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Chairman Tauzin, Congressman Markey, and other Members of the Subcommittee, I want to thank you for this opportunity to provide the Department of Justice's law enforcement perspective on foreign ownership interests and foreign government ownership interests in the American communications infrastructure.

Let me begin by noting that the soaring growth of communications is an engine that drives our developing information economy. New communications technologies, including advancements in electronic mail, wireless telephones, and the Internet, are essential to new methods of business, education, and entertainment. Our economy depends upon readily available and reliable communications systems for its most basic functions. This has several consequences. First, we must be careful not to stifle the growth of communications technologies through undue government action. Second, we must ensure that emerging communications technologies are as reliable and safe to use for business, education, and entertainment as the methods of communication we have used in the past and that are still in use. Third, we must

take a technology-neutral approach, to the degree it is practical, when considering appropriate governmental action.

The increasing globalization of communications entities and facilities has significant consequences. The trend implicates a variety of complicated legal and policy doctrines, including issues relating to national security, the protection of the privacy of U.S. consumers and businesses, and the integrity of domestic law enforcement operations. Due to the growing importance of communications, the U.S. Government should ensure that the communications infrastructure remains safe to use when it is owned, controlled, or operated by non-U.S. entities, especially foreign governments. We must ensure that individuals and businesses can communicate privately, and with the expectation that if their privacy or security is harmed through the illegal use of communications, that law enforcement can apprehend those responsible and bring them to justice. In addition, we must also ensure that globalization does not hinder our responsibility to protect our citizens by blocking national security and law enforcement investigations.

The challenges and risks created by foreign ownership interests and foreign government ownership interests in our communication infrastructure, as well as those created by the globalization of the communications infrastructure, are discussed at greater length by Lawrence R. Parkinson, General Counsel of the Federal Bureau of Investigation ("FBI"), in his testimony today. As Mr. Parkinson testifies, these challenges and risks are very real and may adversely affect the privacy of our citizens, and our obligations to preserve the national security and enforce U.S. law. Moreover, as Mr. Parkinson also notes, the President over two years ago in Presidential Decision Directive ("PDD") 63 established the national security objective of protecting US cyber and information networks from attack or disruption. This is an important goal for the Administration, and the Administration reviews potential foreign acquisitions of both telecommunications and internet providers with PDD-63 in mind.

As the federal government examines the appropriateness of foreign ownership interests, especially foreign government ownership interests, in our communications infrastructure, we must ensure that risks are minimized and that challenges are met. In addition, the government must consider the risks posed by the globalization of U.S. communications infrastructure, especially the risk that specific activities will destabilize the infrastructure. These risks must be addressed if law enforcement and national security agencies are to have the tools and capabilities to enforce laws against espionage and invasion of privacy, to satisfy our responsibility to conduct effective and secure legally authorized investigations of criminals who use telecommunications to aid their illegal activities, to conduct national security investigations, to ensure effective emergency preparedness, and to protect public safety.

What protections, then, are necessary to defend national security, the privacy of our citizens, and public safety? There are many different technologies, business structures and other factors presented by each foreign investment. These variations make it impossible to identify a single solution for all companies and all transactions. As a result, we have worked with individual companies to develop solutions that protect national security, the privacy of U.S. citizens, and public safety in a manner that is least disruptive to the companies involved.

First, one of the requirements fundamental to preserving national security, the privacy of U.S. citizens, and public safety is ensuring that U.S. national security and law enforcement agencies are able to securely and effectively use lawful process to gather information during investigations. For example, whether we are conducting an investigation of a foreign spy or an alleged drug dealer, we must be able to conduct court-authorized interceptions, acquire stored communications, obtain subscriber data, and access any and all records and information when authorized by law and with appropriate process. The Department of Justice believes that it is critical to national security and law enforcement investigations that a foreign-owned or controlled company to ensure that U.S. court orders and statutory authorities are not rendered ineffective by foreign ownership interests.

Second, it is critical that foreign-owned and controlled communications companies protect the privacy of U.S. communications and customers and do not leave inert the statutory protections of privacy under U.S. law. The Department of Justice and the FBI have worked with providers to ensure that an investing foreign entity will take appropriate steps to prevent access to equipment and facilities under its control that could be used to monitor U.S. communications in violation of federal or state law. We also have worked to ensure that there will be no unauthorized or illegal sharing of subscriber information and related records regarding U.S. customers as a result of the foreign ownership interests or foreign-located facilities. Our goal is to prevent foreign governments, foreign companies and affiliates, or persons abroad

from obtaining unlawful access to the communications and information about our citizens.

Third, we must work to protect the integrity of U.S. law enforcement and national security investigations, foreign control notwithstanding. For example, we have worked with companies to find effective means to ensure that classified or sensitive information is not disseminated. As Mr. Parkinson testifies, when foreign government-owned or controlled companies are those investing in the U.S. communications infrastructure, we must act carefully to protect our citizens and their privacy. In addition, as our infrastructure gains global capabilities, the risks to the integrity of U.S. law enforcement and national security investigations is increasing. For example, when emerging technologies such as wireless and satellite communications systems are configured in such a way that the communications of U.S. customers are processed entirely at facilities located abroad, there is a risk that we cannot protect our citizens' communications and privacy. There is also a risk that, when the most heinous of crimes occur, we will be unable to properly investigate and prosecute the parties responsible.

The Department of Justice and the FBI, with the Department of Defense, have attempted to address the challenges created by increasing foreign ownership interests in U.S. communications systems and the globalization of communications systems. In my testimony, I focus on the foreign ownership interests. As ownership interests, mergers, and acquisitions present these issues, we always keep foremost in our minds the need to balance the value of a free marketplace, to encourage continuing innovation in communications technologies, with the protection of the public's privacy, safety, and security. In each case, we use available legal tools to seek a solution tailored to the specific concerns presented by the foreign ownership interests presented. We are cognizant that the relevant facts surrounding the ownership interests, business plans, system infrastructures, and technologies can vary significantly and in material respects. In some cases no action may be necessary; in other cases, tailored protections can alleviate privacy, public safety, and national security concerns.

Because of the wide range of possible circumstances, it has not been feasible to identify a precise and fixed set of criteria that each proposed foreign investor must satisfy in order to adequately protect the citizens of the U.S. Accordingly, the Department of Justice and the FBI analyze a large number of factors in each instance where foreign ownership potentially threatens the government's ability to satisfy its national security and law enforcement responsibilities to the public.

The factors we consider include, but are not limited to, the following:

- Does the proposed ownership interest create an increased risk of espionage and foreign-based economic espionage against U.S. companies and persons?
- Does the proposed ownership interest compromise our ability to protect the privacy of U.S. citizens and their communications?
- Will U.S. national security, law enforcement, and public safety capabilities be impaired by the proposed foreign ownership interests?
- Does the company have existing policies for protecting privacy, handling classified information, and complying with lawful process? Does the company have a good record of complying with lawful process relating to national security and law enforcement capabilities?
- What is the degree and nature of the proposed foreign control?
- If the ownership interest is transferred to a foreign entity, do we have adequate assurances that National Security Emergency Preparedness and U.S. Infrastructure Protection requirements are met?

Analyzing these and other factors, we have been successful in negotiating narrowly tailored solutions to concerns regarding privacy, public safety, and national security that are presented by the particular foreign ownership interests.

Our efforts to protect these critical values have relied upon two existing fora. In certain circumstances, foreign companies investments in U.S. communications companies, like domestic acquisitions, are subject to review by the Federal Communications Commission ("FCC") and/or the Committee On Foreign Investment in the United States ("CFIUS").[1] These processes allow the federal government to review whether a proposed ownership interest violates the FCC's public interest standard or threatens national security in such a way that the President should, on the recommendation of CFIUS, suspend or prohibit the transaction, respectively.

For example, before a telecommunication company may acquire control of facilities or transfer control of a license under Sections 214 and 310 of the Communications

[1] Even if a company does not file a notice, an agency may notify a proposed acquisition to CFIUS if the agency believes that the transaction poses national security risks.

Act, it must first obtain from the FCC a certificate that the transfer or acquisition is consistent with the present or future public convenience and necessity. The FCC has the power to issue such a certificate or refuse it, "and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require." 47 U.S.C. § 214(c). In addition, Section 310(d) provides, in pertinent part, that "[n]o construction permit, or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby." 47 U.S.C. § 310(d).

In analyzing proposed foreign ownership interests in or transfer of control of U.S. companies, the FCC considers several public interest factors. The factors include the effect of the proposed transaction on U.S. national security, law enforcement, competition in the U.S., trade, and policy concerns, in determining whether a transaction is consistent with public convenience and necessity. The FCC has stated it accords deference to other Executive Branch agencies with respect to the identification and interpretation of issues of concern related to national security, law enforcement, and foreign policy that are relevant for a particular application. *See e.g., Amendment to the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Station to Provide Domestic and International Satellite Service in the United States,* 12 FCC Rcd 24094, 24171 (1997) ("*Disco II Order*"); *In the Matter of Rules and Policies of Foreign Participation in the U.S. Telecommunications Market,* 12 FCC Rcd 23,891, 23,935 ¶97 (1997). The Commission's public interest analysis includes input from agencies such as the Department of Justice, the FBI, and the Department of Defense, each of which has unique expertise regarding national security and public safety.

The Department of Justice and FBI take seriously their responsibility to evaluate the national security and public safety concerns that might be present in foreign ownership applications pending before the FCC, and to work creatively to find solutions. There have been several applications at the FCC in the last two years that involved foreign ownership interests or other foreign elements that potentially impaired the interests of U.S. citizens. Both the Department of Justice and FBI have requested that the FCC not grant these applications until the companies involved committed to take certain steps that would protect the U.S. public. I am quite pleased to say that those companies have worked with us to find solutions, and have entered into agreements with the Department of Justice, the FBI and the Department of Defense to reduce the threat of the transaction on the U.S. public. The FCC, in turn, has granted those companies' licenses and applications on the condition that they comply with the agreements.

As I noted above, we believe it is important to tailor solutions to the relevant concerns. Therefore, in our efforts to formulate solutions with the companies, we seek only that which is necessary to preserve national security, the privacy of our citizens, and public safety. The Department of Justice and the FBI recognize the many—and sometimes competing—interests involved with foreign ownership interests in our telecommunications infrastructure. In fact, we rejected several commitments proposed by companies because those commitments went far beyond what we deemed necessary.

Before leaving this discussion of the FCC process, I would like to comment on some pending legislation that, as an unintentional byproduct, threatens the framework I have discussed. Our ability to protect the public interest through the FCC process has proven to be an effective tool to ensure that foreign ownership interests in U.S. telecommunications companies do not harm our citizens. Our ability, however, may be adversely affected by legislation pending before Congress. S. 467 limits the time in which the FCC must rule on transfer of control applications that come before the agency, while H.R. 4019 eliminates the FCC's use of the public interest determination in merger applications. The Administration has opposed both of these bills because of their severe ramifications on our efforts to protect national security, the privacy of our citizens, and public safety, and to promote local competition and universal service. It is critical that we continue to safeguard our national security and the integrity of our infrastructure. Establishing an inflexible time frame for FCC action, with little consideration of national security and law enforcement concerns, does not provide a safeguard. Eliminating the public interest standard altogether essentially eliminates any safeguard we might have against the risks posed by foreign ownership interests in our critical infrastructures. As more foreign-owned and foreign government-owned companies gain ownership interests in our communications infrastructure, the necessity to protect our citizens and our national security will only increase. The Administration looks forward to working with Congress

to protect and preserve national security, the privacy of our citizens, and public safety, and to promote local competition and universal access.

Let me briefly address one other mechanism that allows the federal government to review foreign investment in U.S. telecommunications and Internet companies—the CFIUS process. This mechanism empowers the President, for national security reasons, to suspend or prohibit an acquisition of a U.S. company by a foreign company or government. *See* Section 721 of the Defense Production Act ("Exon-Florio" provision), 50 App. U.S.C. § 2170. As a member agency of CFIUS, the Department of Justice has raised and will continue to raise national security concerns that arise out of proposed foreign ownership interests in our communications infrastructure that come before CFIUS. We believe that such vigilance is warranted in order to protect national security interests.

Of course, given the quick-changing nature of the marketplace and technology, the Department of Justice and the FBI will continue to evaluate and work closely with companies with pending foreign ownership issues to identify new or different approaches to protecting national security, the privacy of our citizens, and public safety. In particular, the Department of Justice intends to continue to evaluate how specific foreign government ownership interests, as well as other foreign ownership interests, in our communications infrastructure affect these three concerns.

I want to thank the Committee again for asking me to present the Department's views on foreign ownership interests, especially foreign government ownership, of the United States' communications infrastructure. I am pleased to answer any questions you have.

Mr. TAUZIN. Thank you, Mr. Di Gregory.

The Chair now welcomes Larry Parkinson, General Counsel for the FBI.

STATEMENT OF LARRY R. PARKINSON

Mr. PARKINSON. Thank you, Mr. Chairman, and members of the subcommittee. It is a pleasure to be here.

I appreciate the opportunity to talk this morning about the FBI's role in this process, as well as our concerns about foreign ownership in this arena.

My comments today will focus on our vital national security and law enforcement interests that can be adversely impacted by foreign ownership of U.S. telecommunications carriers. These vital interests range from protecting the privacy of personal communications to preserving public safety. I also note that the existing processes are utilized so that foreign ownership can occur without jeopardizing our security and privacy interests.

Telecommunications networks obviously are a critical part of the Nation's information infrastructure. They provide the central means for transacting, through voice, data and video, a vast amount of personal communications, private commerce and government business. Changes in telecommunications technology, infrastructure and business alignment have, however, transformed the nature of the industry at an ever accelerating rate and the traditional telecommunications model in which the domestic companies provide domestic services to domestic companies has increasingly been replaced by systems and organizations intended to provide services on an international, if not global, scale.

These systems attempt to serve the largest possible number of customers from centralized communication and data facilities without regard to where the customer being served is located or without regard to national boundaries. Business ventures in this industry often involve technological and contractual arrangement with, or control or ownership by foreign entities, or both.

The transnational nature of these ventures poses substantial legal, technical and practical challenges to U.S. agencies charged with enforcing the law or protecting the national security, including the FBI. These challenges range from protecting U.S. communications and data from unauthorized access to preserving the government's ability to intercept lawful communications routed by satellite to gateways outside the United States, without significantly impeding the introduction of new technologies, features or services. Notwithstanding the wide variety of business plans, technology and infrastructure that those various ventures involve, certain common characteristics exist and, more importantly, the interests of the United States in these matters generally remains constant.

I would like to address briefly the risks.

Our primary FBI interest and the most technologically challenging issue is the preservation of our ability to intercept communications and obtain communications transaction data pursuant to existing legal authorities despite these infrastructure and technological changes. To enforce the law, protect public safety, and preserve the national security, law enforcement and national security agencies must be able to intercept communications when necessary and obtain the associated identifying data in a secure, unobtrusive, and timely fashion pursuant to, of course, and in accordance with the relevant constitutional and statutory safeguards that we have in place. The government must also be able to obtain basic subscriber information and other transactional records relevant to the target communications.

Actions taken to preserve this interest do not expand existing authorities, and that is important to emphasize. Rather, they are designed to ensure that existing lawful investigative tools are not rendered inoperative by the transnational nature and technological complexity of a new venture or new technology. This will become increasingly important as the highly regulated telecommunications sector converges with the largely unregulated Internet communications industry.

Traditionally, the FBI as well as other Federal, State and local law enforcement agencies, have principally conducted electronic surveillance efforts, and obtained interception access and access to stored communications through those U.S. carriers which offer local exchange type services, and provide service connections directly to the public. It is vital, therefore, that a foreign-owned and controlled company, through its carrier subsidiaries, maintain within the United States interception access, access to the stored wire and electronic communications of their U.S. customers and subscribers, and any records and subscriber information relating to such U.S. customers or subscribers. If such information is unavailable because it is stored beyond the United States' borders, subject to restrictive disclosure laws of foreign countries, or technologically inaccessible, the national security, law enforcement, and public safety interests of the United States are degraded proportionally.

These requirements are essential to ensure effective, efficient and secure service of lawful U.S. process; effective, efficient and secure execution of such process; and to protect against any unauthorized disclosure of classified national security and sensitive law enforcement information related to such process, to foreign powers

and companies licensed and regulated by foreign powers. For this reason, the agreements that the Department of Justice and the FBI have negotiated over the last several years with foreign-owned companies contain provisions which address these requirements.

Another significant area of concern is the security of U.S. intercept and data acquisition activity. The implementation of lawfully authorized national security and law enforcement interception and data acquisitions increasingly requires the cooperation of the communications service provider. In these cases, the U.S. Government is required to disclose very sensitive target information and investigative techniques to the service provider in order for it to provide the assistance required under the court order. Such targets could be foreign intelligence officers or agents, or could be associated with criminal enterprises such as international drug trafficking or terrorist organizations. Without adequate safeguards, the damage to an investigation would be done almost from the moment the U.S. serves process on the foreign affiliated carrier.

The foreign affiliated carrier would also immediately become knowledgeable about the current technological intercept capabilities and the limitations of U.S. law enforcement and national security agencies. The disclosure of such information to a foreign government and its operatives could serve as a guide to how to evade U.S. surveillance.

Risks associated with the potential for compromise of the interception, unauthorized identification of interception targets, and disclosure of interception sources and methods correspond with the level of foreign involvement in or control of the entity through which the intercept is to be executed. Also, law enforcement's ability to prevent, detect and respond to breaches of wiretap security are greatly inhibited if the equipment and the personnel responsible for the intercept are located outside the United States.

The FBI and the Department of Justice are charged with preventing, investigating and prosecuting inappropriate instances in which U.S. communications and data have been acquired or disclosed in violation of our laws. Our ability to detect, investigate and assert jurisdiction is impeded, if not eliminated, when entire or significant components of the communications systems operating in the U.S. are located outside our borders.

I want to just touch briefly, Mr. Chairman, on the topic of economic espionage.

Mr. TAUZIN. We would ask the gentleman to briefly do that. His time has expired. If he would quickly do that for us.

Mr. PARKINSON. Mr. Chairman, I just want to point out that one of our concerns is also in the area of economic espionage and obviously foreign governments often target our trade secrets, and if they are in charge of the telecommunications system, any portion of that system in the United States, we are vulnerable.

Let me close. I will submit, obviously, the final statement for the record.

Since the business plans, system infrastructures, and involved technologies in proposed transactions vary significantly in innumerable ways, identifying a precise and fixed set of criteria that each venture must satisfy in order to adequately protect the interests that I have described is impractical. Instead, we have to ana-

lyze a large number of factors in each case to determine how the proposal will impact the government's ability to satisfy its public responsibilities, and we use the tools that Mr. Di Gregory described in order to do that.

With that, I will close and I am delighted to be here and happy to answer any questions.

[The prepared statement of Larry R. Parkinson follows:]

PREPARED STATEMENT OF LARRY R. PARKINSON, GENERAL COUNSEL, FEDERAL BUREAU OF INVESTIGATION

SUMMARY:

The increasing globalization of the telecommunications marketplace, while promoting competition and stimulating innovative service offerings, increases the risk that our national security and law enforcement interests will be hampered by control of U.S. communications networks by foreign entities. In anticipation of these risks, the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) have used the existing statutory/regulatory review processes to negotiate arrangements with foreign owned companies which preserve the government's ability to protect the safety and privacy of the American public.

When control of U.S. communications and data is located outside the jurisdiction of the United States, it becomes increasingly difficult to assert U.S. legal authority. In some cases, there may be no practical way to conduct lawful surveillance effectively and securely if the facilities that process U.S. communications are located outside of the United States. It is ultimately the safety of the American public that suffers the consequences of an inability to conduct national security investigations and prevent and detect criminal activity through effective investigative tools such as court authorized electronic surveillance and obtaining transactional information pursuant to lawful process. If these means are rendered useless, either due to the assertion of foreign jurisdiction, or because there is no assurance that confidential U.S. information will be secured, the safety and privacy of the American people become more vulnerable to exploitation. These concerns exist regardless of whether the controlling entity is foreign government owned. Even when the foreign entity controlling a U.S. communications network is privately held, there is cause for concern that the foreign-affiliated carrier may be subject to the influence and directives of the foreign government or others to compromise U.S. investigations and carry out or assist in carrying out intelligence efforts against the U.S. Government or U.S. companies. On a continuum of risk, however, a service provider that is directly or indirectly owned or controlled by a foreign government or its representatives falls on the higher risk end of the spectrum.

Many foreign nations dedicate significant resources to gathering intelligence about other governments or elements thereof and to gathering counterintelligence information to protect against other nation's intelligence activities. Ownership and control of U.S. communications networks gives a foreign government the capacity to gain relatively easy access to confidential information about the targets of U.S. national security and law enforcement investigations, the nature of those investigations, and the sources and methods used, as well as information about the extent to which the U.S. Government is aware of a foreign government's intelligence activities. Ownership and control of U.S. communications networks could also provide a foreign government with the ability to direct key employees to utilize routine monitoring capability to access confidential private communications and data of U.S. corporations and citizens communicating over the network. Although U.S. law prohibits unauthorized monitoring and disclosure of data, such monitoring by the service provider is difficult to detect. While the risks and likelihood of such problems depend on the particular situation involved, if a foreign government were to have unrestricted control of U.S. communications networks, the risk increases that it could exploit such access for its own gain to the detriment of U.S. security.

To address these concerns, the DOJ/FBI have, over the past few years, engaged in a series of discussions with various companies seeking to deploy global telecommunication systems or to consolidate existing domestic and foreign telecommunication systems. We have carried out these discussions within the existing statutory and regulatory processes for protecting law enforcement and national security. Please refer to Kevin Di Gregory's testimony for a further description of these processes. In each instance, the leverage provided by these processes has allowed us to reach an agreement that preserves law enforcement's ability to protect privacy through enforcing the laws and to protect the national security of the

United States, while facilitating approval of the transaction by the appropriate reviewing body.

Given the wide variety of business plans, technology, and infrastructure that these various ventures involve, the agreements have, of necessity, been company-specific. Nonetheless, the interests of the United States in these matters remain constant. These constants have served to help guide DOJ/FBI decision making, as well as to serve as a platform for guidance to the telecommunications industry and other interested parties.

I appreciate the opportunity to appear before your subcommittee to discuss H.R. 4903. My comments today will focus on our vital national security and law enforcement interests that can be adversely impacted by foreign ownership of U.S. telecommunication carriers. These vital interests range from protecting the privacy of personal communications to preserving public safety. I also note that existing processes are utilized so that foreign ownership can occur without jeopardizing our security and privacy interests.

Telecommunications networks are a critical part of the Nation's information infrastructure. They provide the central means for transacting, through voice, data, and video, a vast amount of personal communications, private commerce, and government business. Changes in telecommunications technology, infrastructure, and business alignment have transformed the nature of the industry at an ever-accelerating pace. The traditional telecommunications model in which domestic companies provide domestic services to domestic customers has increasingly been replaced by systems and organizations intended to provide services on an international, if not global, scale. These systems attempt to serve the largest possible number of customers from centralized communication and data facilities without regard to where the customer being served is located or to national boundaries. Business ventures in this industry often involve technological and contractual arrangement with, or control or ownership by, foreign entities, or both.

The transnational nature of these ventures poses substantial legal, technical, and practical challenges to U.S. agencies charged with enforcing the law or protecting the national security. These challenges range from protecting U.S. communications and data from unauthorized access to preserving the Government's ability to intercept lawfully communications routed by satellite to gateways outside the United States, without significantly impeding the introduction of new technologies, features, or services. Notwithstanding the wide variety of business plans, technology, and infrastructure that these various ventures involve, certain common characteristics exist and more importantly, the interests of the United States in these matters remain constant.

II. RISKS

A primary FBI interest and the most technologically challenging issue is the preservation of our ability to intercept communications and obtain communications transaction data pursuant to existing legal authorities[1] despite infrastructure and technological changes. To enforce the law, protect public safety, and preserve the national security, law enforcement and national security agencies must be able to intercept communications and obtain the associated identifying data in a secure, unobtrusive, and timely fashion pursuant to and in accordance with the relevant constitutional and statutory safeguards. The Government must also be able to obtain basic subscriber information and other transactional records relevant to the target communications. Actions taken to preserve this interest do not expand existing authorities; rather, they are designed to ensure that existing lawful investigative tools are not rendered inoperative by the transnational nature and technological complexity of a new venture. This will become increasingly important as the highly regulated telecommunication sector converges with the largely unregulated Internet communications industry.

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[1] The primary legal authorities governing electronic surveillance of communications content and associated data include:

1. Interception of real time communications content: 50 U.S.C. 1801 et seq. (Foreign Intelligence Surveillance Act); & 18 U.S.C. 2510 et seq. ("Title III").
2. Pen Register and Trap and Trace Devices (to acquire in real time certain traffic data) 18 U.S.C. 3121; 50 U.S.C. 1841.
3. Court Orders/Search Warrants (to obtain stored content, transactional data, and subscriber information) 18 U.S.C. 2703 and 2709.
4. Subpoenas (to obtain basic subscriber information) FRCP Rule 17.
5. Preservation of information (all data) 18 U.S.C. 2703(f).
7. CALEA, 47 U.S.C. §§ 1001-1021.

Traditionally, the FBI as well as other Federal, State, and local law enforcement agencies have principally conducted electronic surveillance efforts (and obtained interception access and access to stored communications and subscriber records) through those U.S. carriers which offer local exchange-type service, and provide service connections, directly to the public. It is vital therefore that a foreign owned and controlled company (through its carrier subsidiaries) maintain within the United States interception access, access to the stored wire and electronic communications of their U.S. customers and subscribers, and any records and subscriber information relating to such U.S. customers or subscribers. If such information is unavailable because it is stored beyond the United States border, subject to restrictive disclosure laws of foreign countries, or technologically inaccessible, the national security, law enforcement, and public safety interests of the United States are degraded proportionally. These requirements are essential to ensure effective, efficient, and secure service of lawful U.S. process; effective, efficient, and secure execution of such process; and to protect against any unauthorized disclosure of classified national security and sensitive law enforcement information related to such process, to foreign powers and companies licensed and regulated by foreign powers. For this reason, the agreements the DOJ/FBI have negotiated with foreign owned companies contain provisions which address these requirements.

Another area of significant concern is the security of U.S. intercept and data acquisition activity. The implementation of lawfully authorized national security and law enforcement interception and data acquisitions increasingly requires the cooperation of the communications service provider. In these cases, the U.S. Government is required to disclose sensitive target information and investigative techniques to the service provider in order for it to provide the assistance required under the order. Such targets could be foreign intelligence officers or agents, or could be associated with criminal enterprises (e.g., international drug-trafficking). Without adequate safeguards, the damage to an investigation would be done the moment the U.S. serves process on the foreign-affiliated carrier. The foreign-affiliated carrier would also immediately become knowledgeable about the current technological intercept capabilities and limitations of U.S. law enforcement and national security agencies. The disclosure of such information to a foreign government and its operatives could serve as a guide to how to evade lawful U.S. surveillance.

Risks associated with the potential for compromise of the interception, unauthorized identification of interception targets, and disclosure of interception sources and methods, correspond with the level of foreign involvement in or control of the entity through which the intercept is to be executed. Also law enforcement's ability to prevent, detect and respond to breaches of wire tap security are greatly inhibited if the equipment and personnel responsible for the intercept are located outside the United States.

If the U.S. Government cannot satisfy itself that the confidentiality of its national security and law enforcement interceptions will be maintained, then it may be denied the use of these investigative tools, degrading of our ability to protect national security and public safety, even though the interception is clearly authorized by law. Moreover, once a communications system is considered "intercept-free," it has the potential to become a haven for all sorts of unlawful activity. Our agreements with the foreign owned companies therefore require increased security of lawfully authorized electronic surveillance activities in situations where information about such activities could be accessible from outside the United States, or otherwise readily acquired by a foreign power.

The FBI together with the Department of Justice is charged with preventing, investigating, and prosecuting, when appropriate, instances in which U.S. communications and data have been acquired or disclosed in violation of our Nation's laws.[2] Our ability to detect, investigate, and assert jurisdiction, criminally or civilly, is impeded, if not eliminated, when entire or significant components of communication systems operating in the U.S. are located or accessible through means located outside U.S. borders. Even within the United States, unauthorized interceptions and disclosures by a service provider are, as a practical matter, undetectable. But the risk that a service provider might carry out, or assist in carrying out, covert interceptions increases when the entity with ownership, control and influence over company practices and employees owes its allegiance to a foreign government.

Related to protecting the security of private communications, is our interest in preventing economic espionage. The theft of trade secrets on behalf of foreign governments, instrumentalities, or agents is prohibited by 18 U.S.C. § 1831; theft of trade secrets in other instances is proscribed by 18 U.S.C. § 1832. Notwithstanding that an owner may have taken all measures that a reasonably prudent person in

[2] E.g., 18 U.S.C. § 2511.

the same or similar circumstances may have taken to safeguard his trade secrets, foreign control of or significant involvement in U.S. communications systems over which those trade secrets are sent increases their vulnerability to unobtrusive, illegal exploitation.

The operation of or access to telecommunications facilities and services which originate and/or terminate in the U.S. creates the opportunity for foreign-owned and controlled carriers and their personnel to engage in or allow espionage and economic espionage. To the extent that the operation of transnational or global communications systems increase this risk by virtue of their infrastructure, technology, or business plan, law enforcement's ability to prevent trade secret theft is proportionately decreased. Perhaps more importantly, if we cannot intercept lawfully the communications of foreign government agents, then we will be at a disadvantage in learning how and when economic espionage is committed. In other words, to combat this form of espionage effectively, we need to preserve our ability to learn who, when, and how it is being committed. This is very difficult to do when the government whose agent may be the subject of the intercept order owns or controls the network.

Finally, the globalization of the communications industry has the inherent potential for threats to the stability of our National communications infrastructure. We have a responsibility, under Presidential Decision Directive 63, to take reasonable measures to protect our national infrastructure. To ensure that critical infrastructure protection is achieved and maintained, the Directive provides that "[t]he full authorities, capabilities and resources of the government, including law enforcement, regulation, foreign intelligence and defense preparedness shall be available, as appropriate." (Presidential Decision Directive/NSC-63 on Critical Infrastructure Protection (May 22, 1998)). Related to this effort, telecommunications carriers are required to comply in an effective, efficient, and unimpeded fashion with applicable provisions of (i) all National Security and Emergency Preparedness rules, regulations, and orders issued by the FCC under the Communications Act of 1934, as amended (47 U.S.C. § 151 et seq.); (ii) the orders of the President in the exercise of his or her authority under section 706 of the Communications Act of 1934, as amended (47 U.S.C. § 606), and under section 302(e) of the Aviation Act of 1958 (49 U.S.C. § 40107(b)); and (iii) Executive Order 11161 (as amended by Executive Order 11382). These provisions are designed to ensure an immediate response to U.S. Government telecommunications requirements in the event of a national emergency. If a carrier's facilities that process U.S. communications are located outside of the United States or if the carrier is foreign owned or controlled, there could be a risk that it could not or would not immediately respond to the U.S. Government's telecommunication needs in an emergency. The agreements I have previously noted address such concerns by requiring that carrier facilities that are part of, or are used to direct, control, supervise or manage all or any part of the transmission of domestic U.S. communications, as well as that end of a call that originates or terminates in the United States, be located at all times within the United States.

III. ADDRESSING THE RISKS

Since the business plans, system infrastructures, and involved technologies in proposed telecommunication transactions vary significantly in innumerable ways, identifying a precise and fixed set of criteria that each venture must satisfy in order to protect adequately the interests identified above is impractical. Instead, we must analyze a large number of factors in each case to determine how the proposal will impact the government's ability to satisfy its public responsibilities: System size, technology and infrastructure; location of tangible and intangible assets; business plan and proposed practices; organizational structure; expected evolution of the communications market and technology; degree and nature of foreign control; national and international controls over the system's operations; political risks/reciprocity; and relevant historical intercept activity. Based on that evaluation, we begin to negotiate with the involved companies to devise and evaluate possible solutions.

In conducting this review, we recognize that every transaction presents some risk and do not aspire to eliminate every conceivable risk. Rather, we view all transactions as falling somewhere on a spectrum of risk. Some transactions, in short, present greater risks to law enforcement and national security than do others. At one end of this spectrum fall ventures involving small communications service providers seeking authority only to resell international service; at the other fall transactions involving the acquisition of large domestic service providers by, or the merger of a domestic service provider's network into, a global or transnational network owned or controlled by a hostile foreign government. Most transactions fall somewhere in between. We attempt to husband our limited resources by addressing those ventures that present a high level of risk to the American public.

To this end we are vigilant in requiring only that which is necessary to protect national security, privacy and public safety. While there are certain common characteristics in the measures that are critical to preserving national security, privacy and public safety, the commitments needed to mitigate our concerns vary depending on the company's network and structure. Nonetheless, we strive for consistency in protecting our ability to enforce the laws of the United States and to protect our national security. This consistency has served to help guide DOJ/FBI decision making, as well as to serve as a platform for guidance to the telecommunications industry and other interested parties in resolving national security concerns in foreign ownership cases.

I wish to stress that we have taken a number of positive steps to address the concerns discussed in this testimony. As Mr. Di Gregory describes in detail in his statement, in each case we use available legal tools to seek a tailored solution to the specific concerns presented. In that regard, the FBI and the Department of Justice have relied on two existing fora in evaluating proposed transactions in making our concerns about such transactions known: the Federal Communications Commission and the Committee on Foreign Investment in the United States. While I will not reiterate Mr. Di Gregory's remarks in any detail, I would, however like to echo his concern about changes to the current processes.

To date we have been able to use the existing legal framework and process to reach agreements which appropriately address our concerns. I believe we currently have a good balance between the need to ensure basic security and the virtues of supporting a vibrant communications sector. We will continue to utilize existing processes to protect our national security and law enforcement interests in a consistent and systematic manner.

Mr. TAUZIN. Thank you, Mr. Parkinson. Let me make a general unanimous consent, we always do, that your written statement, as all written statements, are a part of our record, without objection.

Let me ask for order in the committee. Our witnesses are entitled to our attention. We ask for everyone to please quiet the hum in the room. We thank you very much.

We are pleased to welcome now Ambassador Richard Fisher, the Deputy U.S. Trade Representative to the USTR. Indeed, Ambassador Fisher, your statement is welcome, sir.

STATEMENT OF AMBASSADOR RICHARD FISHER

Mr. FISHER. Thank you, Mr. Chairman, and Ranking Member Dingell. I appreciate being here. Behind me is seated my son, by the way, whose grandfather was a member of this committee and indeed, when he was in the minority as a Republican, was the ranking member of the minority side of this committee, and I know served with you, Mr. Markey. I am sure my son is delighted to find out that his father is the least popular man in this room as Deputy USTR.

Mr. Chairman——

Mr. TAUZIN. Just like at home, we should suggest.

Mr. FISHER. Mr. Chairman, an open and competitive telecommunications market promotes innovation and technological progress. It rewards the most efficient and well-run businesses. It reduces the price of services for families and other consumers. This is what we have experienced here in the United States, as many of you have eloquently pointed out, and it is what we seek to foster through our trade policy abroad.

As mentioned by Congressman Dingell, the deregulation of our telecommunications markets has fostered competition and innovation worldwide, certainly here in the United States, because once dominated by monopolies, we now have over 300 new competitive local providers who are bringing advanced services to millions of Americans, from cell phones and satellite services to high speed

Internet access. The direct value of this to our economy is vast and the associated benefits of reduced costs for our businesses, for our consumers, our greater convenience in daily life and national competitiveness, is still greater.

However, as the U.S. pioneered deregulation in the telecom sector, as many of you have pointed out, many of the world's major markets remained dominated by traditional monopolies and so we went to work, Mr. Chairman, in your words, to push and pressure and prod our trading partners to open up telecommunications to competition from the rest of the world. We have used a variety of tools to do so: Our domestic laws, our bilateral negotiations, and negotiations at the WTO.

Central to the advances of the past years was the conclusion of the WTO Basic Telecom Agreement. This agreement, in our humble opinion, is one of the major trade policy accomplishments of the past decade. Before it went into force, only 17 percent of the world's top 20 global markets were open to U.S. firms, and with it U.S. companies have now gained access to over 95 percent of global telecommunications markets, as mentioned by Congressman Oxley.

Since 1998, we have made still more progress. Singapore, Canada, Korea, Japan and India have all unilaterally improved market access. And China, Taiwan and other economies entering the WTO have each committed to opening their telecommunications markets.

We have also used Section 1377 to identify and eliminate violations of the agreement and address other telecom priorities in such markets as Canada, Mexico, the European Union and Japan. Most recently, Mr. Chairman, in our bilateral trade agreement with Hanoi we agreed on a substantial opening of the Vietnamese telecommunications market.

A by-product has been the privatization of many of these government monopolies. I know this is a subject that you, Congressman Markey, care a great deal about and that Congressman Hollings is intense about. From the beginning of 1997 to the end of July 1999, $104 billion worth of privatizations were completed. As of 1999, of the 189 members of the International Telecom Union, 90 have wholly or partially privatized their incumbent telecom operators and 18 of these were privatized completely. Of the nonprivatized operators that are remaining, over 30 are currently planning to privatize, including those in Finland and Egypt and Austria and Algeria, the Chech Republic, Kenya, Kuwait, Morocco, Norway and Turkey. All this has led to lower costs to consumers and businesses worldwide and to massive new business opportunities for U.S. telecommunications companies and their workers and shareholders.

What American consumers pay for international calls has fallen sharply. Retail calls across the Atlantic now cost little more than a domestic long distance telephone call, and even calls to Japan, recently as high as $1 a minute, are now available from major carriers for as little as 15 cents a minute. Overall, the price of wholesale international connectivity has plummeted by as much as 80 percent over the past 4 years. This is a key factor that is feeding the growth of the global Internet.

U.S. telecommunications firms, with the market access promoted by the agreement, are now leaders around the world. American companies hold substantial investments and operate in nearly 40

countries. They operate the most extensive pan-European networks. They lead the world in deploying technologies such as cable and Internet telephony. American firms are now the largest investors in almost every international submarine cable consortium and global satellite system. They have invested heavily in overseas wireless operations and they are taking the lead in moving globally into value added and Internet services.

Let me just give you some specific examples, Mr. Chairman, to illustrate the breadth and depth of what we have accomplished abroad. SBC now has stakes in 22 countries. It holds 50 percent of AUREC in Israel, 42 percent of Tele Danmark, 20 percent of Bell Canada, 19 percent of TransAsia in Taiwan, 18 percent of Belgacom, 18 percent of Telekom South Africa and 15 percent of Cegetel in France. Through Tele Danmark, SBC holds a 42 percent stake in Talkline, the German cellular service provider and reseller.

MCI-Worldcom now has facilities based in over 20 countries throughout Asia, Europe and Latin America.

Bellsouth, through various alliances, holds wireless licenses in Argentina, Brazil, Chile, Denmark, Ecuador, Germany, Guatemala, India, Israel, Nicaragua, Panama, Peru, Uruguay and Venezuela. By the way through an alliance with KPN of the Netherlands, Bellsouth holds 100 percent of E-Plus, a German mobile operator.

Verizon, which was mentioned earlier, has substantial wireless interests in Mexico and Italy and Greece and the Chech Republic, Slovakia, Indonesia, New Zealand, the United Kingdom, Thailand, and the Philippines.

AT&T is involved in joint ventures and alliances in several places, Canada, Britain, Japan, Mexico, India, and Latin America.

But it is not just the big guys. It is not just the Baby Bells that have benefited from liberalization. And it is not just companies that existed before the WTO agreement. Viatel, a company that is less than 5 years old, has a fiber-optic network of 4,700 kilometers that links 59 cities and is currently licensed in Austria, Belgium, Canada, France, Germany, Italy, the Netherlands, Spain, Switzerland, and the United Kingdom.

Level 3, a company that was founded in 1998 and has raised $14 billion in capital during that short time period, is building submarine links to Asia and Europe and is building an intercity network in Europe linking at least 13 European cities. And I could walk you through Global Crossing and Prime Mass and Global Telesystems and PSINet. These are companies that are new and active and exploiting in the most positive way what we have been able to accomplish.

It is true that, as Senator Hollings pointed out, U.S. firms may have had significant pre-WTO holdings. In addition to 50 percent additional holdings post WTO, previous holdings are now subject, and this is very important, to WTO dispute settlement if U.S. carriers encounter problems in foreign markets.

This is not to say, Mr. Chairman, that our work is done. Much remains to be done, particularly in fast growing, developing and newly industrialized countries such as India, South Africa, Korea, Malaysia, and Mexico. And moreover, broader liberalization of the service industries, many of which use telecommunications networks

as a principal vehicle for exports, is needed to spur growth in the telecom sector. And this work, by the way, has already begun. The WTO has agreed on opening a new set of services negotiations and we are hard at it.

The purpose is to create a virtuous cycle of innovation and growth in our telecom industry and easy delivery of our services to countries and markets abroad.

The point is this, Mr. Chairman, we have accomplished much. We have a great deal more to do. I ask you to bear in mind all this as you contemplate this very important matter, especially given, as Congresswoman Dunn and Chairman Kennard pointed out, that we have now in place the apparatus to protect competition and our national security through the FCC approval process and the Exon-Florio national security review process, as well as Section 7 of the Clayton Act. These laws and review standards provide us with strong protection against threats to national security and anti-competitive behavior and, very importantly, they are fully in accord with our commitments under the Basic Telecom Agreement and our other WTO commitments, and they enable us to continue the leadership that Congressman Eshoo spoke of in pushing the envelope, Congresswoman Eshoo should say, excuse me, in pushing the envelope on opening the global telecom market to our advantage.

A perception that the United States is turning its back on our current operating procedure risks halting or reversing the momentum toward liberalization. We have already received strong expressions of concern from the European Union and other trading partners regarding the compatibility of these legislative proposals with our international obligations in the WTO. If the United States enters the new services negotiations, having instituted measures countries may perceive as protectionist, some will be tempted to restrict existing opportunities offered to U.S. carriers and resist future liberalization. This could affect billions of dollars in current U.S. investment abroad and even more further investment. In short, a shift to restricting our market now could threaten the hard fought liberalization and growth that we have experienced in telecom markets around the world and diminish our leadership. Why would we take that risk?

Thank you.

[The prepared statement of Ambassador Richard W. Fisher follows:]

PREPARED STATEMENT OF AMBASSADOR RICHARD W. FISHER, DEPUTY UNITED STATES TRADE REPRESENTATIVE

Mr. Chairman, Members of the Subcommittee, thank you for inviting me to testify on our international telecommunications policy.

With the dramatic changes the telecommunications industry is undergoing domestically and abroad, this is a timely topic. Given the time that has elapsed since the passage of 1996 Telecom Act and the WTO Basic Telecommunications Agreement, which went into effect in February 1998, this is a useful opportunity to reflect on the policy choices the United States has made and how they have affected U.S. interests.

WTO AGREEMENT ON BASIC TELECOMMUNICATIONS

American telecommunications trade policy rests on simple and familiar principles. An open and competitive telecommunications market promotes innovation and technological progress; rewards the most efficient and well-run business; and reduces the price of services for families and other consumers. The telecommunications sec-

tor is a dynamic example of the value of our open investment policy and our leadership in liberalizing markets. This is the type of world market we seek to foster through trade policy, and the reason is very clear in America's experience at home.

Once dominated by monopolies, the deregulation of our local telecommunications markets has fostered competition and innovation. We now host over 300 new competitive local providers, who have attracted tens of billions of dollars in new capital and are bringing advanced services to millions of Americans, from cell phones and satellite service to video-conferencing, high-speed Internet access, and much more. The direct value of this to our economy is vast; and the associated benefits of reduced costs for businesses, greater convenience in daily life, and national competitiveness still greater.

However, as the United States pioneered deregulation in the telecom sector, in the 1980s and through the 1996 Telecom Act, many of the world's major markets remained dominated by traditional monopolies. This not only posed an obstacle to their technological development, but was a significant barrier to exports of some of America's most competitive businesses, whether across borders or through investment by American firms. Our trade initiatives have thus sought to open world telecommunications markets to competition. In this we have used a variety of policy tools, including bilateral negotiations, Section 1377 of our domestic trade law, and negotiations at the WTO. And central to the advances of the past years was conclusion of the WTO's Basic Telecom Agreement in 1998.

This agreement, joining most of the world's major telecommunications markets in binding commitments to market access and pro-competitive regulatory policies, is one of the major trade policy accomplishments of the past decade. Before it went into force, only 17% of the world's top 20 global markets were open to U.S. firms; with it, measured by annual sales, U.S. companies gained access to over 95% of global telecommunications markets.

Since 1998, we have made still more progress. Singapore, Canada, Korea, Japan, and India have all unilaterally improved market access. As China, Taiwan and other economies enter the WTO, each of them will implement market-opening commitments in telecommunications. Given the momentum we have established, we have been able to replicate this standard even outside the WTO—for example, in our recent bilateral trade agreement with Vietnam.

The value of these market-opening commitments is growing in step with the growth of global markets, stimulated in great part by the emerging competition the agreement unleashed. With sales at $650 billion in 1997, the global telecommunications market is now rapidly approaching one trillion dollars in annual sales.

As expected, U.S. firms have taken full advantage of these opportunities. U.S. firms hold substantial investments in operators in over three dozen countries and on every inhabited continent (e.g., SBC alone has stakes in 22 countries, and MCI Worldcom has facilities-based operations in over 20 countries as well (Source: Hoovers Online)). U.S. operators (such as Qwest, Viatel, GTS, and MCI Worldcom) now operate the most extensive pan-European networks and are global leaders in deploying technologies such as cable telephony and internet telephony. U.S. firms are the largest investors in almost every international submarine cable consortium and global satellite system (e.g., U.S. firms have ownership interest in over 70% of the capacity on the recently-laid U.S.-Japan cable, which will provide a quantum increase in trans-Pacific connectivity) and have invested heavily in overseas wireless operations (e.g., Bellsouth has over 6 million cellular customers in ten Latin American countries, and its international operations account for almost 10% of its revenues (Source: Forbes, March 2000)). Following in the wake of telecom liberalization, U.S. firms are also taking the lead in moving globally into value-added and Internet services (e.g., PSINet provides facilities-based Internet access in 29 countries on five continents).

The benefits of the WTO agreements extend far beyond U.S. telecommunications firms. U.S. and foreign consumers and businesses are major beneficiaries of the dramatic competition that has resulted from increased market opening: some retail calls across the Atlantic now can cost little more than a domestic long-distance phone call, and even calls to Japan, recently as high as one dollar a minute, are now available from major carriers for at little as 15 cents a minute. With end-to-end investment in submarine cables now possible, and massive investment led by U.S. firms now underway, the price of international connectivity has plummeted by as much as 80% over the past 4 years (source: ING Barings)—a key factor that is fueling the growth of the global Internet.

In addition to securing investment opportunities, the WTO Basic Telecom Agreement put into place binding regulatory principles to ensure that regulators enforce pro-competitive rules. These commitments—ranging from cost-oriented interconnection rates to transparent licensing procedures—are an essential framework for effec-

tive regulation and have provided a basis for addressing problems faced by U.S. carriers in Canada, Mexico, Japan, Peru, Israel, the United Kingdom, and Germany, affecting investments worth billions of dollars. Most recently, we have taken advantage of these commitments to reach an agreement with Japan that will lower interconnection payments for U.S. and other competitive carriers by over one billion dollars; and we have initiated proceedings in the WTO to enforce rights of U.S. telecom service providers relating to over one billion dollars of U.S. investments in Mexico and affecting the second largest international services market for the U.S. service providers and consumers.

Despite this progress, barriers continue to exist in these and other markets, and competition has not yet fully developed in all WTO markets, just as it has not yet fully developed in the United States. But as we make the global transition from monopoly to competitive markets, the WTO commitments provide one of the most important sets of competitive safeguards on which we can now rely to open foreign markets and ensure that our trading partners abide by their commitments. Furthermore, the impact of WTO commitments extends far beyond the WTO members which have undertaken them. These commitments are widely seen as goals for a much broader range of countries and are a major focus of attention in the International Telecommunications Union (ITU), the Asia-Pacific Economic Cooperation (APEC), and the World Bank.

To date, success has bred more success. Peer pressure by liberalizing countries has created a virtuous circle where countries now compete for global investment by offering more attractive investment opportunities and more effective regulatory regimes. For example, even after entry into force of the WTO Basic Telecom Agreement, Singapore, Korea, Japan and India have unilaterally decided to improve foreign investment and telecom regimes, and many EU and Latin American countries are substantially reducing interconnection rates. Preserving this momentum is essential if the WTO is to provide a forum for further progress—through implementation of existing commitments and expansion of new commitments.

CURRENT PROPOSALS CAN UNDERMINE THESE BENEFITS

New proposals are under consideration to limit foreign investment in the U.S. telecom markets by preventing the Federal Communications Commission (FCC) from licensing certain telecom carriers based on their level of government ownership. Currently, foreign investment in the telecommunications sector is governed by Section 310 of the Communications Act of 1934. This statute (section 310(a)) *prohibits* direct ownership of certain categories of telecom licenses by a foreign government or its representative; however, section 310(b)(4) authorizes *indirect* ownership of certain telecom licenses by a foreign person, a foreign corporation, or a foreign government to exceed 25 percent unless the FCC finds that the public interest will be served by the refusal or revocation of such license. By placing an absolute bar on certain types of licenses, the legislative proposals seek to remove the discretion that this statute currently provides the FCC to determine whether an award of a particular license or authorization is in the public interest.

Competition and national security concerns have been cited as justification for imposing an absolute bar on the participation of such foreign government-owned carriers in the U.S. market. For instance, there have been assertions that foreign government-owned competitors have special privileges in their home market which can be exploited to distort competition in our market. Questions have also been raised concerning the desirability of allowing foreign government ownership of U.S. telecommunications assets, which are vital to U.S. national security.

These arguments merit careful review and analysis. The FCC and other Executive Branch agencies must carefully scrutinize all transactions involving government-owned carriers to ensure that they do not distort competition in the U.S. market or undermine critical U.S. national security, law enforcement, and related interests.

However, the Administration does not believe that these concerns justify changing existing law to prevent a telecom company from participating in the U.S. market purely based on its level of government ownership. We believe that such proposals risk undermining the benefits the United States has reaped in the past few years in the international telecom market. Moreover, the evidence casts doubt on the assumptions underlying proposals to ban government-owned carriers, particularly assumptions that government-owned carriers enjoy special advantages.

Finally and most importantly, the U.S. Government already possesses effective tools to address the competition and national security concerns raised by any foreign government-owned carrier wishing to participate in the U.S. telecom market. These tools are more than adequate to address the concerns that have been raised and do not create the risks that the proposed initiatives are certain to engender. We will

continue to use these tools to address competition, national security, and other concerns that foreign investment in our market may raise.

BACKTRACK FROM INTERNATIONAL LIBERALIZATION

The United States has been the leader in worldwide liberalization of telecom markets, producing tangible benefits for both us and our trading partners. Proposals to ban government-owned telecom firms from our market would likely diminish our leadership role in this effort and could cause other countries to believe they could limit foreign investment in the telecom and possibly other sectors, either in retaliation or for protectionist goals. We would, therefore, be putting at risk the significant benefits we have derived from years of hard work in opening up these markets.

We are facing many of the same questions that framed policy discussions in the lead-up to telecommunications negotiations in the WTO in the mid-1990s. At that time, there was considerable debate over whether the United States could better affect foreign market opening through a unilateral, reciprocity-based approach or through a multilateral framework in the WTO. The stakes for the United States were enormous. With approximately one third of the value of the entire global telecommunications market at the time, the United States needed to ensure major concessions from its trading partners in return for offering access to the biggest domestic market in the world.

In the end, the calculus was clear: any broad-based agreement that rapidly opened up global markets to U.S. firms clearly played to our advantages. While we were offering other countries access to a market no other country individually could match, a critical mass of market opening offers would provide opportunities that U.S. firms were uniquely positioned to exploit, given our broad-based experience with competition.

As I already discussed, we have fared extremely well. So far, we have led the world trend in market liberalization and a commitment to competition. Others have followed, particularly in light of the increased productivity, investment, growth and consumer welfare that deregulation and competition have produced in the United States. But any perception that the United States is turning back on that approach risks reversing the incentives of our trading partners to compete in liberalizing their own markets, and possibly bolstering pressure to protect vested telecommunications interests. We have already received strong expressions of concern from the European Union (EU) and other trading partners regarding the compatibility of these proposals with our international obligations in the WTO.

We expect the telecommunications sector to be a major focus of recently launched WTO services negotiations, and, as in the last round, we can best take advantage of these negotiations by demonstrating leadership. Much work remains to be done to liberalize further global markets, particularly in fast-growing developing and newly-industrialized country markets such as India, South Africa, Korea, Malaysia, and Mexico.

If the United States enters these negotiations having instituted measures most countries will perceive as protectionist, it is possible that many countries will be tempted to restrict existing opportunities offered to U.S. carriers and resist any further opening in the WTO process. This could affect billions of dollars in current U.S. investment abroad, and even more future investment. In short, efforts to restrict our market now could curtail the virtuous cycle of liberalization and growth that we have experienced in telecom markets around the world.

ASSUMPTIONS REGARDING GOVERNMENT-OWNED TELECOM FIRMS

Much of the concern with foreign government-owned telecom firms stems from the belief that a government-owned company would enjoy significant advantages in competing with U.S. rivals in the U.S. market. At first blush, this appears to be a compelling concern. However, there is evidence that casts doubt on the assumptions underlying this belief.

Assumption 1: Government-owned firms are able to raise capital more easily than private firms.

Market data do not demonstrate a conclusive link between government ownership and access to capital. Although some government-owned firms have accumulated large cash reserves, presumably to finance acquisitions, any large firm can accumulate cash. What matters is not cash holdings *per se*, but the ability to finance acquisitions.

Companies raise capital primarily by issuing equity and debt. Most of the major players in telecom use close to an even split between equity and debt financing. A review of corporate bond ratings for large telecom firms (privately and government

owned) demonstrates that there is no systematic relationship between bond rating and the extent of government ownership in a firm.[1] In addition, the bonds of all government-owned telecom firms are rated lower than the bonds of the firm's respective governments.[2]

Telecom companies—including DT—have recently issued unprecedented levels of corporate bonds to finance acquisitions and expansions. Given these high levels of debt, investors have become cautious, demanding higher yields that have translated into higher financing costs for companies, both government and privately owned. At the same time, many of these telecom companies are under threat of credit rating downgrades. For instance, Moody's has placed DT under review for a possible downgrade to its credit rating, growing out of its $7 billion pledge for a third-generation wireless license in Germany, and its $50 billion offer for Voice Stream.[3] Such downgrades could have a major impact on certain companies. For example, to secure financing, DT agreed that it would add an extra one-half percentage point to the coupon of its recent $14.6 billion bond issue if its credit rating were downgraded to below single A. If the interest rate adjustment were triggered, it would cost DT an additional $73 million a year. As this example suggests, the market is focusing on the business risks associated with DT's actions, not its government ownership, as it determines DT's cost of capital.

This is not meant to suggest that these government-owned telecom operators do not enjoy high credit ratings and ready access to debt capital. But, as discussed above, the reasons do not appear to have a direct relationship to government ownership. Rather, while government involvement may be a factor in credit analysis, so are other factors, including the competitive environment, the regulatory environment, management strength, management strategy, diversification strategy, funding strategy, network quality, foreign acquisitions, and a range of financial measures. In some instances, government ownership is specifically cited by credit rating agencies as a negative factor.[4] Moreover, in the context of diversification strategy, foreign acquisitions may also be a negative factor in a credit rating due to political, currency, or other risks. Accordingly, one could argue that the high credit rating for firms like NTT derives principally from the dominant position in the domestic market combined with the fact that it has not ventured aggressively outside its home market.

On the equity side of the balance sheet, companies that earn superior returns on equity are usually assigned higher price and earnings multiples than are less efficient companies, thus lowering the cost of stock issuance. Looking at the cost of equity alone, Bellsouth, SBC, Verizon, and AT&T (with a cost of equity of 6.82%, 7.42%, 7.10%, and 7.67% respectively) enjoy a lower cost of capital than DT and FT (with a cost of equity of 7.78% and 7.70% respectively) (source: Bloomberg).

There are other reasons why government ownership might put foreign government-owned companies at a competitive disadvantage in the eyes of equity investors. Government-owned firms are typically less efficient and less profitable than

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[1] Bond ratings—which are determined by independent, private agencies (such as Moody's and Standard and Poor's)—classify firms by the risk level of their debt. As a firm's debt becomes more risky, its bond rating falls, and it must pay more to convince investors to hold its debt. According to Standard & Poor's bond ratings, British Telecom (BT) (which has no government ownership) has a higher credit rating than government-owned Deutsche Telekom (DT) and France Telecom (FT); similarly, privately-owned Bellsouth has a higher credit rating that Korea Telecom or Telekom Malaysia (both of which have substantial government ownership). Moreover, DT's rating is no better than those of SBC, Bellsouth, and AT&T. Similarly, a review of Moody's recent ratings of major government-owned operators (France Telecom, Deutsche Telekom, KPN, Telstra, Korea Telecom, Telekom Malaysia) does not cite government ownership as a factor in its ratings. In fact, Moody's review of Korea Telecom specifically cites as "neutral" the impact of the impending reduction of government ownership from 59% to 33% and gives NTT (with 53% government ownership) the same credit rating (Aa1) as NTT DoCoMo (which is only 35% government owned).

[2] Standard & Poor's gives an AAA rating to the government bonds of France, Germany, Japan, and the Netherlands, but gives the bonds of FT, DT, Nippon Telegraph and Telephone (NTT), and Royal KPN a rating of A, AA-, AA+, and A- respectively. An analysis of recently issued bonds of these firms shows that their trading values imply yields of between 25 and 125 basis points above the government bonds in their respective countries. On average, they trade with yields 50 basis points higher than government bonds with comparable maturities.

[3] NTT was subject to a similar review arising out of its acquisition of Verio, as were many other European government-owned carriers, relating to their third-generation wireless bids. Telenor (100% owned by Government of Norway) is subject to a possible downgrade arising out of its investments in Thai carriers.

[4] For example, Moody's recent rating of the Australian government-owned carrier Telstra bases its ratings, in part, on limitations associated with being 50.1% government-owned including inability to access equity markets and intense public scrutiny of cost initiatives.

private firms.[5] Government-owned firms are often burdened with high labor costs, extensive universal service requirements, and poor management. Management is often less prepared to operate in a market-oriented environment, putting such firms at a disadvantage in responding quickly to growth areas such as data services.

Governments may also have found it easier, as owner of the operator, to use the operator as an instrument of flawed industrial policy, imposing long-term burdens on these firms (e.g., NTT remains burdened with a cost structure in its local exchange markets that is three times higher than that of a typical U.S. Regional Bell Operating Company, while carrying far less traffic). These inefficiencies can be absorbed where a company is dominant in its domestic market, and that market remains its focus; but such a legacy is likely to be a comparative disadvantage for a firm looking to expand abroad into competitive markets like the U.S., where efficiency is such a key determinant of success.

Combining the cost of debt and the cost of equity to determine the overall cost of capital, it is not clear that companies with significant government investment have a comparative advantage. The evidence is mixed: DT has one of the lowest weighted average costs of capital (5.32%), but DT's rate is not significantly lower than that of Verizon, (5.46%) or Bellsouth (5.55%). Furthermore, these U.S. firms, along with SBC, have a lower weighted average cost of capital than France Telecom (which is 54% government owned) (source: Bloomberg).

In sum, the assumption that government-owned firms have privileged access to capital may initially seem compelling. However, as discussed above, the relationship between government ownership and access to capital is inconclusive, and government ownership can impose significant costs on a firm.

Assumption 2: Government-owned firms are more likely to have monopoly privileges in domestic markets and can subsidize their U.S. operations with revenues generated at home to engage more easily in anti-competitive behavior.

Allegations of monopoly privileges and anti-competitive cross-subsidization are common in markets with dominant telecom providers. However, just as there is no systematic relationship between government ownership and access to external finance, there is no certain connection between government ownership and monopoly privilege and anti-competitive cross-subsidization. The problem that U.S. carriers face in foreign markets involving issues stems less from government ownership than from monopoly legacy, and allegations of anti-competitive abuses arise in foreign markets dominated by a government-owned entity (such as DT in Germany or NTT in Japan) or a completely privately-owned company (such as Telmex in Mexico). One could argue that Germany (which owns a substantial stake in Deutsche Telekom) has a more independent and effective regulator than Mexico (which has no government stake in the dominant operator).

As a result, the relevant question may not be present levels of government ownership but whether the foreign market is more or less open to competition. We have made tremendous progress in this regard over the past few years, particularly since the entry into force of the WTO Basic Telecom Agreement. Where this is not the case and our carriers still face anti-competitive barriers in foreign markets, we have been vigilant in using our remedies in the WTO and under U.S. trade law (such as under Section 1377 of the 1988 Omnibus Trade and Competitiveness Act) to encourage our trading partners to open their markets to meaningful competition. Our recently initiated WTO case against Mexico and our actions under Section 1377 with respect to Germany, Israel, South Africa, and other countries underscore this resolve.

Finally, U.S. telecommunications firms are already operating—in many cases, quite successfully—in overseas markets. For example:

- SBC holds 50 percent of AUREC (Israel), 42 percent of Tele Danmark (Denmark), 20 percent of Bell Canada, 19 percent of TransAsia (Taiwan), 18 percent of Belgacom (Belgium), 18 percent of Telkom South Africa, and 15 percent of Cegetel (France). Through Tele Danmark, SBC holds a 42 percent stake in Talkline, a German cellular service provider and reseller.
- Bellsouth, through various alliances, holds wireless licenses in Argentina, Brazil, Chile, Denmark, Ecuador, Germany, Guatemala, India, Israel, Nicaragua, Pan-

[5] For extensive reviews, see, Boardman, Anthony, and Aidan R. Vining, "Ownership and Performance in Competitive Environments: A Comparison of the Performance of Private, Mixed, and State-Owned Enterprises," *Journal of Law and Economics* 32: 1B33 (1989); Vining, Aidan R., and Anthony E. Boardman, "Ownership versus Competition: Efficiency in Public Enterprise," *Public Choice* 73: 205B39 (1992); and Dewenter, Kathrin, and Paul H. Malatesta, "State-Owned and Privately-Owned Firms: An Empirical Analysis of Profitability, Leverage, and Labor Intensity." *American Economic Review*, forthcoming.

ama, Peru, Uruguay and Venezuela. Through an alliance with KPN (Netherlands), Bellsouth holds 100 percent of E-Plus, a German mobile operator.

- Verizon has substantial wireless interests in Mexico, Italy, Greece, the Czech Republic, Slovakia, Indonesia, New Zealand, the United Kingdom, Thailand, and the Philippines.
- AT&T is involved in joint ventures and alliances in, among other places, Canada, Britain, Mexico, India, Japan, Taiwan, and Latin America.
- MCI-Worldcom has facilities-based operations throughout Asia, Europe, and Latin America.
- Viatel has a fiber-optic network of 4,700 kilometers designed to link 59 cities and is currently licensed in Austria, Belgium, Canada, France, Germany, Italy, the Netherlands, Spain, Switzerland, and the United Kingdom.
- Qwest, in alliance with KPN, is building a European network designed to extend 11,800 miles and reach 46 European cities.
- Level 3 is building submarine links to Asia and Europe, and is building an intercity network in Europe linking at least 13 European cities.
- Global Crossing has submarine cables to Europe and Asia and is building gateways for data operations.
- Primus has operations in Japan and Germany.
- Global Telesystems operates the largest European Internet backbone.
- PSINet owns Internet service providers in 29 countries and five continents.

Assumption 3: Competition in the U.S. market has weakened the U.S. industry, making U.S. firms vulnerable to foreign takeover.

The evolution of the U.S. telecom market over the past several years has contributed to an environment that has allowed U.S. telecom companies to flourish. For example, new Competitive Local Exchange Carriers ("CLECs") have thrived due to competition and deregulation. Their market capitalization of about $85 billion at the end of 1999 was up from $3.1 billion in 1996. Between 1993 and 1998, overall market capitalization of U.S. telecom firms increased by $800 billion, doubling in value (source: CEA). Furthermore, stocks of U.S. telecom firms are generally trading today at earnings multiples similar to those of their European counterparts. As of September 1, the average ratio of stock price to EBITDA (i.e., Earnings Before Interest, Taxes, Depreciation, and Amortization) (the most commonly used valuation measure in telecom to measure cash flow) for all U.S. telecommunications firms with market values exceeding $20 billion was 10.5. The average of the same ratio for BT, FT, DT, and Telecom Italia was the identical 10.5. Thus it does not appear that U.S. firms are undervalued relative to their European counterparts.

Assumption 4: Government ownership provides a competitive advantage, particularly given the favorable regulatory treatment they receive.

The evidence suggests that government-owned firms view privatization as providing the competitive advantage that they currently may lack. For instance, one of the many incentives to privatize is to better tap global capital markets given large-scale investment needs that the government cannot meet. This is supported by evidence that firms are able to increase their capital expenditures significantly following privatization (Source: D'Souza, 2000).

The evidence also does not demonstrate a conclusive link between government ownership and regulatory favoritism. Rather, regulatory favoritism can exist wherever an incumbent telecom company wields considerable power and influence. In fact, we are currently investigating allegations of biased regulation in Mexico of Mexico's dominant carrier, Telmex, which is 100% privately-owned. Mexico, like many of our WTO trading partners, has undertaken obligations in the WTO to ensure impartial regulation. We continue to be vigilant in ensuring that countries live by these and related obligations regardless of whether their incumbent telecom supplier is government or privately-owned.

If companies truly saw government ownership as a competitive advantage for regulatory or other reasons, there would be significant resistance to privatization by operators. NTT management's current campaign to eliminate Japanese government ownership from its company reinforces this point, as do current privatization efforts in Finland, Egypt, Austria, Algeria, the Czech Republic, Kenya, Kuwait, Morocco, Norway, Turkey, etc. Between 1984 and 1996, over $140 billion worth of privatizations occurred, some of which resulted in firms which are 100% privately-owned (such as BT). From the beginning of 1997 to the end of July in 1999, an additional $104 billion worth of privatizations were completed. As of 1999, of the 189 members of the ITU, 90 had wholly or partially privatized their incumbent telecom operators; and 18 of these were privatized completely. Of non-privatized operators, over 30 are currently planning to privatize.

However, it is unrealistic to expect firms to privatize overnight. At the beginning of most privatization programs, national telecom firms in smaller countries have a potential market capitalization larger than the entire stock market, so it is impractical to sell shares all at once. Even in larger countries, the relative scale of privatization is enormous. For example, three NTT offerings in 1987-88 raised about $80 billion, yet this represented less than 25 percent of NTT's total equity. Likewise, DT's initial first round of privatization occurred in November 1996 with an initial share offering of about $13 billion, and reduced the government's ownership stake from 100 percent to 76 percent. A subsequent offering reduced this stake to the present 58 percent. For NTT and DT to suddenly meet the levels specified by current legislative proposals to be able to participate in the U.S. market, they would be required to sell $54 billion and $39 billion worth of stock, respectively, based on current market capitalization. To put these amounts in perspective, the U.S. market last year absorbed $51.2 billion in Initial Public Offerings.

TOOLS AVAILABLE TO ADDRESS COMPETITION AND NATIONAL SECURITY CONCERNS POSED BY FOREIGN GOVERNMENT OWNERSHIP

Proposals to bar telecom companies owned in excess of 25 percent by a foreign government from the U.S. market seek to address the competition and national security concerns presented by transactions involving such companies. However, current law already provides powerful tools that enable the FCC and other Executive Branch agencies to scrutinize proposed foreign investment to ensure that it in no way undermines national security or competition in the U.S. market. Although my colleagues will go into more detail on the role of their agencies in this review process, let me give you a brief overview of these tools and then focus on the activity of USTR in ensuring that U.S. companies can compete in foreign markets on meaningful terms.

1. Public Interest Test

The FCC's public interest test allows the FCC—with input from other Executive Branch agencies—to scrutinize carefully the competition, national security, and other concerns posed by foreign investment in the U.S. telecom market. The Communications Act of 1934 requires the FCC to conduct this analysis in several contexts related to foreign entry. For instance, section 310(b)(4) of the Act permits a foreign firm or government to acquire or maintain a greater than a 25 percent indirect ownership of certain telecom licenses unless the FCC finds that the public interest will be served by the refusal or revocation of such license. The FCC applies its public interest test by examining, through public proceedings, whether a particular transaction threatens competition in the U.S. market or implicates national security, law enforcement, foreign policy, or trade policy concerns.

With respect to competition issues, the public interest test establishes a presumption in favor of entry into the U.S. market by an applicant affiliated with a foreign telecommunications carrier from a WTO member country. However, contrary to certain claims, *this presumption is not automatic; it is rebuttable.* As part of its public interest test, the FCC is empowered to ensure, among other things, that a foreign carrier does not undermine competition in the U.S. market by virtue of its ability to exercise dominant power in its home or other third-country markets.

In fact, the FCC has put in place a series of competitive safeguards designed to curb anti-competitive behavior that could result in harm to the U.S. telecom market. For example, the FCC prohibits any U.S. international carrier from accepting "special concessions" (such as exclusive arrangements) from a foreign dominant carrier. The FCC also requires certain operators to produce quarterly reports on traffic and revenues and maintenance of basic service and facilities. The FCC can also require the U.S. carrier and its dominant foreign affiliate to maintain structural separation in order to prevent foreign-affiliates from miallocating costs.

In instances where these safeguards would be insufficient to prevent anticompetitive conduct in the U.S. market, the FCC has the authority to impose additional conditions on the grant of authority tailored to the competitive concerns raised in a particular transaction, such as applying the "no special concessions rule" or dominant carrier safeguards where the foreign carrier is not dominant in its home market. And where an application poses a very high risk to competition in the U.S. market, and where the FCC's competitive safeguards or other conditions would be ineffective, the FCC can deny the application.

The FCC's public interest test also addresses the national security and law enforcement concerns raised by the entry of a particular foreign carrier into the U.S. market. The FCC specifically accords deference to other Executive Branch agencies in this and other areas to ensure that national security and law enforcement con-

cerns are adequately addressed. Agencies charged with law enforcement and national security responsibilities will better explain how they have raised these issues with the FCC and how those issues have been resolved.

Accordingly, the Administration believes that the FCC's public interest test can address the concerns raised by an application by a foreign government-owned carrier to participate in the U.S. market. The public interest test ensures that foreign entry into the U.S. market does not harm competition in the U.S. market and addresses concerns that may arise in foreign markets—such as those relating to unfair cross-subsidies or unfair home-market advantages—to the extent that they give a foreign carrier an anti-competitive advantage in the U.S. market. In addition, the public interest test—as well as the Exon-Florio review discussed in the following section—ensures that entry of a foreign carrier into the U.S. market will not compromise our national security.

2. Exon-Florio National Security Review of Foreign Investment

The Exon-Florio provision (Section 721 of the Defense Production Act of 1950) provides for a national security review of foreign acquisitions of U.S. companies. Under the statute, the President may suspend or prohibit an acquisition if he finds that:

a) there is credible evidence to believe that the foreign investor might take action that threatens to impair the national security; *and*

b) existing laws, other than the International Emergency Economic Powers Act and the Exon-Florio provision itself, do not provide adequate and appropriate authority to protect the national security.

The President alone retains the power to suspend or prohibit a foreign acquisition of a U.S. company, but the President delegated the review and investigation aspects of the Exon-Florio provision to the Committee on Foreign Investment in the United States (CFIUS). CFIUS was established by Executive Order in 1975 to monitor the impact of foreign investment in the United States and to coordinate the implementation of U.S. policy on such investment. CFIUS is an interagency committee chaired by the Secretary of the Treasury with ten other agencies including Defense, State, Justice, Commerce, USTR, the NSC and the NEC. In addition, when CFIUS reviews a foreign acquisition of a U.S. company with businesses of interest to a non-CFIUS member agency, such as Energy or NASA, CFIUS invites that agency to participate in the particular review.

Over the last twelve years, CFIUS has established a record of implementing Exon-Florio to protect the national security. The prevailing judgment is that Exon-Florio has raised the awareness of foreign investors contemplating acquisitions of U.S. companies of the importance of national security considerations and has helped to ensure that foreign investments, including in the telecommunications sector, are structured in ways to address any of the government's national security concerns. In fact, a number of transactions have been restructured precisely to respond to national security concerns that CFIUS has raised.

3. Antitrust Review

Telecommunications mergers are subject to antitrust review by the Department of Justice under section 7 of the Clayton Act, which prohibits any merger that is likely to substantially lessen competition in any market in the United States. The standards for review are the same for all mergers, including those involving foreign firms or firms owned in whole or in part by foreign governments.

As in a merger of domestic firms, whether a firm involved in a merger has market power in any given market can be a relevant antitrust issue, and could, depending on the facts, raise antitrust concerns. If a foreign firm involved in a merger with a U.S. firm has market power in its home market, and if that market power could have an effect on a U.S. market as a result of the merger, then that market power in the home market could raise antitrust issues. It is the existence of the market power, and the effect on competition in a given market, not necessarily the source of the market power, that gives rise to the antitrust problem. The source of the market power could flow from any number of factors, such as historical developments, local regulations, intellectual property rights, government mandates, scale economies, first-mover advantages, or the like. Foreign government ownership of a firm that is a party to a U.S. telecom merger could be relevant if it implicates the nature or durability of any market power that creates an antitrust concern. Exactly how or whether market power in the foreign firm's home market creates an antitrust problem in the United States depends on the facts of any particular case.

If the Justice Department concludes that a merger would cause competitive problems in the United States because of market power in a foreign market, antitrust

law provides for a range of possible remedies. These can include blocking the merger, or imposing alterations, restrictions, or other safeguards that enable U.S. markets to realize the benefits offered by the merger while guarding against possible competitive harms. Determination of an appropriate remedy depends on the facts of the particular case.

For example, in British Telecom/MCI, the parties entered into a consent decree that tied approval of the merger to opening the British market to International Simple Resale on transatlantic calls, including interconnection in the United Kingdom for ISR carriers, and also imposed a number of disclosure requirements and restrictions on the sharing of competitively sensitive information to ensure that British Telecom would not use its market power abroad to injure competition in U.S. or international markets by discriminating against other competitors. In Sprint/France Telecom/Deutsche Telekom, the parties entered into a two-phase consent decree, in which a Phase II similar to BT/MCI was preceded by a Phase I with even more extensive oversight to address discrimination and cross-subsidy concerns until all legal prohibitions on competitive entry were removed in France and Germany, and competitors were licensed to compete in those markets.

4. U.S. and International Trade Laws

One of the primary missions of USTR is to ensure—by enforcing our domestic laws and our rights in the WTO—that U.S. services and service suppliers can compete robustly in foreign telecom markets. At the heart of the trade policy of this Administration has been a firm determination to enforce U.S. trade laws and ensure that other governments implement the commitments they made to us under international trade agreements. Vigorous enforcement enhances our ability to get the maximum benefit from our trade agreements, ensures that we can continue to open markets, and builds confidence in the trading system.

Under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, USTR solicits public comment as part of its annual review of the operation and effectiveness of U.S. telecommunications trade agreements and takes action where U.S. trading partners are not in compliance with their international obligations. In the past three years alone, USTR has undertaken major initiatives to encourage our trading partners to implement their telecom trade commitments and open their markets to competition from U.S. carriers. The annual Section 1377 review process has led foreign governments in most cases to quickly address complains we have had regarding implementation of the WTO Basic Telecom Agreement. Some recent highlights include:

- **Canada:** During the 1998 Section 1377 review, Canada eliminated restrictions that prevented U.S.-based carriers from enjoying the same opportunities for transmitting Canadian international long distance traffic as enjoyed by carriers based in third countries.
- **European Union:** U.S. government advocacy, including during the 1999 review, prevented unnecessary and potentially discriminatory standards-setting and licensing activities by the European Union and its Member States with regard to third-generation mobile telecommunications services, allowing U.S. suppliers of competing technologies greater access to European and global markets.
- **Germany:** During the 1999 and 2000 reviews, the Administration maintained an intense focus on action by the German regulator (Reg-TP) to ensure that Deutsche Telekom provide non-discriminatory and cost-oriented interconnection rates to competitive carriers. Certain Reg-TP decisions in 1999 helped to curb anticompetitive abuses by the Deutsche Telekom. However, we continue to monitor issues identified in the 2000 review related to a backlog of interconnection requests and concerns about excessive license fees and insufficient regulatory transparency.
- **Israel:** During this year's section 1377 review, Israel committed to remove its discriminatory access fee on calls to and from the United States and Canada by December 31, 2001.
- **Japan:** The Administration has successfully ensured more timely and effective implementation of Japan's WTO telecom commitments in three reviews since those commitments came into force. In 1998, we worked to ensure that new Japanese rules for international service resulted in lower retail prices on the bilateral route of 50 percent or more. In 1999, Japan eliminated restrictions on the use of leased lines by new entrants, lowering costs dramatically for NTT's competitors in the Japanese domestic and international long-distance and business-services markets, and agreed to eliminate a premium that NTT charged to competitors for calls to NTT's ISDN customers that was distorting competition. And most significantly, in July 2000, Japan agreed to slash its inter-

connection rates up to 50% over two years, saving competitive carriers over one billion dollars in above-cost interconnection fees; and to make its local network accessible for ensure competition in the provision of high-speed Internet services.

- **Mexico:** Last month, the United States initiated WTO dispute settlement proceedings against Mexico regarding barriers to competition in Mexico's $12 billion telecommunications market including: (1) a lack of effective disciplines on Telmex, which is able to use its dominant position in the market to thwart competition; (2) the failure to ensure timely, cost-oriented interconnection that would permit competing carriers to provide local, long-distance, and international service; and (3) the failure to permit alternatives to an outmoded system of charging U.S. carriers above-cost rates for completing international calls into Mexico. Mexican officials have recently been quoted as stating that they intend to cut interconnection rates substantially and issue dominant carrier regulations. The Administration will examine any concrete steps taken in Mexico to ensure satisfactory resolution of the problems our firms have encountered.
- **Peru:** During the 2000 review, the Administration identified high interconnection charges in Peru as a barrier to market access. The Peruvian telecom regulator (Osiptel) is currently taking steps to ensure that these charges are cost-oriented, consistent with WTO regulatory principles.
- **South Africa:** This year, the Administration successfully encouraged South Africa's dominant carrier, Telkom, to restore access to facilities that competitive U.S. value-added telecommunications services need to compete with Telkom in the South African market.
- **Taiwan:** During the 1998 review, the United States and Taiwan reached an agreement mandating a three-year transition to cost-based interconnection rates for wireless service suppliers, strengthening implementation of a 1996 agreement. In discussions under the 2000 Section 1377 review, Taiwan eliminated certain exclusivity rights from three licenses eventually issued to new entrants for fixed-network services.
- **United Kingdom:** As part of the 2000 review, the Administration urged the United Kingdom to open its telecommunications market to competition in advanced data services that make high-speed Internet access possible. We continue to monitor the UK's progress in introducing competition in the advanced data services market.

These examples highlight our continuing commitment to vigorously utilize our trade tools—including in the WTO and through domestic trade law—to open foreign telecommunications markets and ensure that our trading partners abide by their commitments in this vital and rapidly expanding services sector.

CONCLUSION

In summary, we are now enjoying the benefits of a remarkable era of innovation and growth in the telecommunications revolution. The United States is the leader in this field; and we have every reason to believe that by sustaining and deepening our commitment to an open and competitive world market, American families and businesses can draw still greater benefits from the telecommunications revolution than we have to date.

We do not need new legislation to deal with concerns raised by foreign investment in our telecom market—whether by government-owned privately-owned firms. Our laws and review standards provide us with strong protection against threats to national security or anti-competitive behavior. At the same time, they ensure that we remain fully in accord with our own commitments under the Basic Telecom Agreement, enabling us to maintain our leadership in developing a more open international market.

Thank you again for this opportunity to testify.

Mr. TAUZIN. Thank you, Mr. Ambassador. We are about out of time before this vote. What we will do is we will recess and come back and question this panel at 2. So it will give everybody a good lunch break and we will come back at 2. The committee stands in recess until 2 p.m.

[Whereupon, the subcommittee was recessed, to reconvene at 2 p.m.]

Mr. TAUZIN. The committee will please come to order. Let me ask guests to take seats and catch the doors.

Thank you. When we recessed, we had just completed the testimony of this panel and the Chair now recognizes himself for a round of questions and members in order.

First of all, Mr. Di Gregory, did your office, you personally or anyone from your office, interact with, participate in the antitrust sections, consideration of this merger which resulted in allowing the time to lapse as of yesterday?

Mr. DI GREGORY. From the criminal division, it is my understanding, no.

Mr. TAUZIN. So you didn't participate nor contribute in the considerations of the antitrust division?

Mr. DI GREGORY. We did not.

Mr. TAUZIN. I would initiate a letter requesting that division of the DOJ give us some indications why they allowed the time to lapse for that action and what was behind their reasoning to do so. If you would kindly allow them some notice. We will be sending it today with a timetable. We would like to get it in a week from now, next Thursday.

Mr. DI GREGORY. I will be happy to do that.

Mr. TAUZIN. Thank you.

Let me turn to Chairman Kennard. The question I have is relative to the testimony we heard this morning, very colorful and interesting testimony from the Senator whose interpretation of the statute is that section 310(a) is fairly absolute unless and until section 4 is complied with, that is, a company has divested enough stock so that it is less than 25 percent government owned.

Do you have a different interpretation at the FCC of the statute?

Mr. KENNARD. Mr. Chairman, as you know, statutes are subject to varying interpretations.

Mr. TAUZIN. We didn't know that.

Mr. KENNARD. That was just more to remind myself, Mr. Chairman, more than anything.

I think that there are varying reasonable interpretations of this statute. Clearly when I look at section 310(b)(4), it speaks to government ownership, and it also clearly gives the FCC some discretion in the public interest to grant applications that may exceed the 25 percent ownership benchmark.

I will note, though, that these questions would be determined based upon a full and open record before the FCC. These questions of statutory interpretation would be matters of first impression in the context of a transaction involving significant foreign government ownership.

Mr. TAUZIN. This particular acquisition is the first time, and it will be de novo before the full commission?

Mr. KENNARD. Before the full commission. There have been some decisions at the commission staff level which are similar, but this would be a case of first impression and everyone who is interested would have an opportunity to put their views on the record.

Mr. TAUZIN. What are the precedents at the staff level on this question?

Mr. KENNARD. I am aware of one situation involving some wireless licenses which were owned by a subsidiary of the Finnish Government which were granted on delegated authority by the FCC

staff that involved a similar question. That is the closest precedent I have been able to find.

Mr. TAUZIN. And what was the basis? Give us some idea how did that come about.

Mr. KENNARD. The FCC staff looked at the transaction and determined that it involved indirect ownership, that is, the licenses were held by a subsidiary. The parent company was controlled by the Finnish Government and invoking our discretion under 310(b)(4) of the act, the FCC staff approved that transaction.

Mr. TAUZIN. Now, I take it from your testimony that if I heard you correctly—and please correct me if I'm wrong—did you say that mere membership in WTO will not give any government a pass on this question of government ownership in the interpretation and judicious decisions that the FCC faces on this merger?

Mr. KENNARD. That is essentially correct, Mr. Chairman. In order to more fully answer your question, I think we have to look at the history of the way that the FCC has dealt with these issues of foreign participation in FCC licenses.

In 1995, the FCC established a framework for determining how to deal with these applications, and that framework looked at reciprocity issues. That is we determined whether a foreign entrant would allow participation by U.S. companies in the foreign market. It was a test known as the ECO test. It was essentially a reciprocity test. When the U.S. Government entered into the WTO agreement, we were able to streamline that test because instead of looking at the situation in all of the home markets, we were able to establish this rebuttable presumption in our 1997 Foreign Participation Order.

Now it is very important for me to state, however, that the rebuttable presumption is just that: it is a presumption and it is rebuttable. So anyone who has information that a transaction would undermine competition, threaten national security interests has an opportunity to present those concerns to the FCC.

Mr. TAUZIN. Let's talk about that in regard to Mr. Parkinson and Mr. Di Gregory's testimony. How does that process come about? I have just looked at your written testimony, Mr. Parkinson; and I notice that it got changed a little bit. The original language said these risks must be addressed to the government to fulfill its responsibilities. Those words are gone, and we have in anticipation of these risks, the Department of Justice and the FBI have used existing authority to negotiate. Who made those changes?

Mr. PARKINSON. We went through an ordinary process of editing. I didn't personally——

Mr. TAUZIN. Nobody told you to make those changes?

Mr. PARKINSON. I didn't personally put in the original language or amended language. We had discussions within the Department.

Mr. TAUZIN. You didn't receive instructions from somebody higher up to make editorial changes?

Mr. PARKINSON. No, I did not.

Mr. TAUZIN. Obviously, the language as it now appears indicates that what you are saying is that in the context of what Mr. Kennard has to now do at the commission, you are prepared to negotiate to protect these interests. How is that going to work among your agencies?

Mr. PARKINSON. Just briefly, I think not only are we prepared to, we have done that. We have had now roughly about a 4-year history of this since we have been involved in these kinds of transactions. We have done it nine to 10 times.

Mr. TAUZIN. But are you going to negotiate directly with the parties or through the FCC? How does this work?

Mr. PARKINSON. Normally, we negotiate directly with the parties and keep the FCC informed along the way, but it is usually a direct negotiation where we sit down with the parties and their counsel, and we describe to them what conditions and arrangements we think are necessary to protect our law enforcement national security interests, and then we negotiate.

Mr. TAUZIN. So if I got your testimony correct, Mr. Di Gregory, you had some comments about some other legislation we have, setting some timetables on the FCC. It seems to me that you like to use the FCC authority to hold up something until you get stuff negotiated the way that you want it; is that right?

Mr. DI GREGORY. We believe that the FCC's statutes do give us the authority to let the FCC know when someone applies for a license that we have concerns, and we have asked the FCC through——

Mr. TAUZIN. But your objections to the timetable seem to say we want to hold people up until we get the FCC to give us what we want. Is that what goes on?

Mr. DI GREGORY. I don't think that is an appropriate characterization.

Mr. TAUZIN. Characterize it for me.

Mr. DI GREGORY. This is a negotiation, and there is give and take. We try to tailor the agreements based upon the circumstances of the business transaction and the circumstances of the operation of the telecommunications companies.

Mr. TAUZIN. But the commission gives you leverage if it wants to? Doesn't it, Mr. Kennard?

Mr. KENNARD. I would be happy to answer that question.

We recognize at the FCC we are not expert on issues of national security, so we defer to the Justice Department on these questions.

Mr. TAUZIN. As long as you are not on the clock and the parties know you can just wait forever to give them a decision, that is leverage for these other agencies to get what they want negotiated; is that right?

Mr. KENNARD. I would not use the term "leverage." I would say that we are exercising our responsibility to the American public to protect the national security.

Mr. TAUZIN. You may be using your leverage for good purposes, but it is leverage.

Mr. KENNARD. It is good leverage, Mr. Chairman.

Mr. TAUZIN. We will talk about that later.

Let me turn to Ambassador Fisher quickly. You have seen the two pieces of legislation, Mr. Ambassador. Do you or the tradeoffice have an opinion as to whether or not either one of these two bills would violate our trade agreements?

Mr. FISHER. Mr. Chairman, I would have to see what the final formulation of those bills are.

Mr. TAUZIN. The way that they are written now. Assume that they pass just like they are, would they cause us problems in terms of violating any agreements our country signed?

Mr. FISHER. We have received notice from Mr. Lamin, who represents the European Union, that it is their opinion that——

Mr. TAUZIN. Let's not concern ourselves what somebody else thinks. What does your agency think or what is your opinion as to whether either one of these two bills as currently drafted would offend our trade agreements?

Mr. FISHER. First, Congressman, as I testified, I don't think that they are necessary.

Second, I think they would certainly precipitate a suit, as we have so been notified.

Mr. TAUZIN. That is not what I asked you.

Mr. FISHER. I understand that.

Mr. TAUZIN. Answer the question that I asked you.

Mr. FISHER. As they are presently presented, I would want to see them in their final form.

Mr. TAUZIN. But as they are presently presented, would they, in your opinion, or agency opinion, violate a trade agreement that we have signed?

Mr. FISHER. I believe that they would undoubtedly lead us to a suit which we would have to defend.

Mr. TAUZIN. What is your opinion?

Mr. FISHER. It would present problems.

Mr. TAUZIN. Does it violate a trade agreement in your opinion?

Mr. FISHER. My personal opinion, Mr. Chairman, is that this would run counter to the commitments to the WTO in the basic telecom agreement.

Mr. TAUZIN. Do they speak to government ownership at all?

Mr. FISHER. No.

Mr. TAUZIN. How can it violate the agreement then?

Mr. FISHER. At the time we entered into the agreement, almost all franchises were government owned, some 100 percent.

Mr. TAUZIN. My time is up, but I want to make one point. A number of you quoted words that I used: push, prod, cajole. But the more you did that, the more your office worked to ensure that we didn't have this problem before us, the less likely it would be that Congress would make a decision that would cause you those problems. Is government ownership trouble?

Mr. FISHER. In some cases yes and in other cases no. If I may take a second on that——

Mr. TAUZIN. Is it in this case?

Mr. FISHER. There are some assumptions being made that government ownership is an asset and not a liability. For example, with the cost of money, if you look at the cost of debt, British Telecom, which has become 100 percent privatized, has a higher credit rating that Deutsche Telekom or France Telekom. If you look at Korean Telecom or Malaysia Telecom, Bell South and SPC have the same credit rating as France Telecom.

If you look at the cost of equity which is very important and very few people have discussed here—and I notice by the way, with all due respect to Senator Hollings, he talked about these people able to print money—Bell South, SPC, AT&T, have a lower cost of eq-

uity; that means a higher price earnings multiple than Deutsche Telekom.

Mr. TAUZIN. Is it a priority of your office to push, cajole, convince, any way you can, pressure, to bring to bear the weight of the spirit of those agreements toward as much privatization of those government-owned entities who wish to participate in a competitive marketplace globally and here in the United States as possible?

Mr. FISHER. Yes, sir. We agree that is the objective, and we believe that we have made progress on that front. We will continue to push, prod, and pressure.

Mr. TAUZIN. I need to move on, but I would ask you to submit for the record evidence of what you have done in that regard because we would like to test it.

Mr. FISHER. I have tried to do that in my statement, but I will do it better.

Mr. TAUZIN. Indeed. Thank you, Mr. Ambassador. Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

Mr. Fisher, I think what I heard you say is that sometimes the government owning private sector company is a good thing and sometimes it is a bad thing; it all depends upon the circumstances.

One of the things that your father-in-law taught me, Jimmy Collins, who was a great Congressman on this committee, a Harvard Business School graduate, although he hid it when running for election from Texas, he told me and everyone else on the committee that government in the private sector is bad.

I tried to learn from this great man, and I admit I arrived here as a full blown regulator in 1976 when I got elected, but over the years I came to believe that to the extent that the government had a role, it was to ensure that the government wasn't protecting industries from competition. And in that way you didn't really need the government because obviously it was a free market.

My question I guess is this: Back in 1997 or so, whenever you were negotiating this basic telecom agreement, did you not as a negotiating point distinguish between government ownership and nongovernment ownership coming from these other countries? Or did you try to make that point and then lose and allow Germany and others to maintain this government ownership position? Which was the position that the American Government took in the negotiations?

Mr. FISHER. Again, Congressman, first I wasn't part of that negotiation; but if my memory serves correctly, first of all the vast majority of telecommunications franchises outside of this country as I referred to in my testimony were government owned. That is what we were dealing with at the time.

Second, the effect of what we have done, as I testified, has led to significant privatization worldwide; and I think the realities of competition that they face from those and those that are privatized like British Telecom and others is that very few governments seek to maintain their government franchise.

Mr. MARKEY. Our position was not to try to set firm timetables or deadlines for privatization; we allowed other countries to set those timetables for themselves. Is that correct?

Mr. FISHER. We did not deliberately set those timetables. We did not.

Mr. MARKEY. That is important to understand.

Now, let me go to this Italy case: Italy blocking the German telephone company from moving in and in Spain them blocking the Dutch company from coming in because they contend that the takeover companies were government owned. Was Italy in violation of the WTO when they blocked that deal, and was Spain in violation of the WTO when they blocked that deal?

Mr. FISHER. First of all, some countries do have reservations and also——

Mr. MARKEY. See, we are kind of ignorant in terms of the language that is used to deal in international forum. Do they have the right to say no or not to say no and not be in violation of the WTO?

Mr. FISHER. If I may walk you through both cases quickly, in Spain you are right, Telephonica rejected a bid by KPN, which is the Dutch carrier. Similarly, in Italy Telekom Italia rejected a bid by Deutsche Telekom. Both governments used what they call their golden shares. These are——

Mr. MARKEY. Do we have a golden share in the United States?

Mr. FISHER. No. This golden shared allowed those governments to veto strategic operations for certain public services like telecom and were at the time scheduled into their WTO agreement.

Now, here is what has happened since. The European Commission announced on July 5 that it will take Spain to the European Court of Justice regarding the compatibility of that golden share with EU law. In a related action against Italy, the Court of Justice ruled on May 23 that Italy was unjustified in its ability to block such transactions. The European Commission has similar actions pending against other member states.

I noticed also that Senator Hollings mentioned Hong Kong and the Singapore telephone attempt which failed. The reason that it failed is that they were out-bid by somebody else.

Mr. MARKEY. I don't want to know about Hong Kong. I want to know about Italy and Spain. Who will win that case? Is there a good case that can be made that they can't block the takeover of the telephone companies within those countries, in your opinion?

Mr. FISHER. First, in terms of Italy, that reservation that I referred to expired on January 1, 2000. Second, I don't know how the European court will run this all of the way through, but the point is that the European Court of Justice has taken them to task for this as a violation of the EU law, and I can't predict the outcome of that case.

Mr. MARKEY. I can predict the outcome of the case, which will be that regardless of how the court rules the Italians will not allow their telephone company to be taken over by the German Government; and I think the same thing I can say with great certitude by the Spanish telephone system. I don't think that anyone is going to give up their sovereignty.

Interestingly, in the SEC filing that Deutsche Telekom has to make, they actually have to waive their sovereign immunity in the SEC filing that they have made as part of this merger. Now, doesn't that, Mr. Parkinson, indicate quite clearly that the government controls this company and that the German Government ultimately has the ability to make the decisions with regard to this telephone company and all of its activities around the globe?

Mr. PARKINSON. Certainly I think it reflects the fact that they are starting from majority government ownership or they wouldn't have to waive sovereign immunity.

Mr. MARKEY. So the issue is clear in your mind that the German Government owns this company. And I think the issue for us, Ambassador Fisher, is one that goes back to 1997. I was assured personally by our trade representative at the time that I wouldn't have to worry, that no government-owned telecommunications company would be taking over American companies. Other Members of Congress were given the same assurance.

Now we are at a point in time where there is a merger pending. We are not being given assurances that the German telephone company will have to have its government share reduced down to 25 percent or 20 percent ownership by the German Government, notwithstanding the promises that were made to us back in 1997.

So I feel a little bit like Charlie Brown with Lucy holding the football for me—and there is a legal term for it, detrimental reliance—but I think Charlie Brown understood it quite well when he wound up on his behind. This committee feels like we are on our behind. We were given promises. We don't see the strong actions that are being taken in Italy and Spain to paradox the Germans and to let them know how much they are interested in cross-country competition but not with governments leading the charge.

I don't understand why our own government, which is the leader in opening up its markets, isn't trying to paradox the Germans into giving up its government control at this critical juncture and allowing them to take advantage of this enormous economic opportunity which VoiceStream offers to them and other companies of the United States but only if their government is not part and parcel of it.

The real nub of this issue is identified by the FBI and the Justice Department having to sit here. They don't want this deal approved until they are happy. They wouldn't be quite comfortable if this deal were already approved and now they have to get the concessions from the German Government. We have to make sure that we get our marketplace, our competition concessions before the deal is okayed, and we don't see that as part of our government strategy at this point in time.

Mr. TAUZIN. The gentleman's time has expired. The gentleman may respond, Ambassador Fisher.

Mr. FISHER. The point that I was making in my testimony was that we have the tools available to us presently to make sure that our national security and competition interests are met. I cannot tell you whether this transaction will be approved or not from my perspective. Again, I think Chairman Kennard made a similar point. The point that I was simply trying to make was that we have in place procedures here that obviously reflect our interest in, a, preserving national security; and, b, enhancing or ensuring and encouraging competition. And I cannot draw the conclusion that the tools that we have are adequate to the task.

Mr. TAUZIN. An even more ominous Charlie Brown story is Charlie sitting on the curb with his face in his hands feeling very gloomy after losing a game, and Lucy walks by and says, "Cheer up, Charlie Brown. You lose some, you win some."

And he looked up and he said, "That would be nice."

Mr. Oxley.

Mr. OXLEY. Thank you, Mr. Chairman. I assume from all of your testimony that you all agree, a, the current system is working and, b, that the Hollings bill is unnecessary? Can I assume that from your testimony? Okay. Let's go on then.

Chairman Kennard, I want to ask you about testimony from Senator Hollings in which he indicated that the threshold issue here dealt with section 310(a) and that 310(a) should be the controlling statute. As I read 310(a), it appears to me that it deals with broadcast licenses, not common carriers. It says the station license required under this act shall not be granted or held by any foreign government or representative thereof. Then we go to 310(b), no broadcast or common carrier, et cetera, et cetera. So it is clear from the use of the language here and the legislative intent—in the case of 310(b) we are talking common carrier, but in (a) we are talking about broadcast license. Is that a fair reading of that statute?

Mr. KENNARD. Well, I think an interpretation that many people talk about and have written about is that section 310(a) deals with direct ownership. That is if a foreign government or the representative of a foreign government were to come to the FCC and apply to own a license directly, 310(a) would be invoked.

310(b) on the other hand, and (b)(4) in particular, deals with indirect ownership, that is ownership of the license through a subsidiary. So we have not drawn the distinction in the word "station license." In fact, many people read station license to mean under 310(a) to include things broader than a broadcast license.

Mr. OXLEY. But that is not what it says. I think I took this is in law school in terms of understanding legislative intent. Why would the Congress and this subcommittee use the term station license in (a) and then talk about broadcast or common carrier in (b)? Had we been referring specifically to common carrier, why would it not appear in (a) and I think I would feel very comfortable arguing that before a court of appeals or any other appeals process in the land.

Mr. KENNARD. Well, that is certainly one interpretation. I want to underscore that this statute has been interpreted variously by many people over the years, and if we were to make a definitive determination in the context of a transaction, we would do it based on a written record where we would have briefs filed.

I would only note that under 310(a), I think it can be read fairly broadly because it says that the station license required under this act. Licenses required under the act even in 1934 when this was written included not only broadcast licenses but also other wireless licenses that could be deemed nonbroadcast licenses.

Mr. OXLEY. If that is the case and we are to believe Senator Hollings, it is over. This whole thing is over because all you have to do is read (a) and it says a license required under this act shall not be granted or held by any foreign government, in this case more than 50 percent is being held by a foreign government, and it is over. So I would suggest that this interpretation—dangerous interpretation in my estimation, and totally wrong—ought to be wiped out and that we ought to be talking about 310(b) because that is the issue that we had in the 1996 act, that is the issue that

we took to the conference committee. We thought we had an agreement dealing with reciprocity, and it fell apart at the end and was taken out of the conference report to my never-ending frustration; but I have to tell you that because the FCC and USTR I think have adequately and fairly interpreted this provision, we haven't had any train wrecks, we haven't had any problems.

Mr. MARKEY. Would the gentleman yield?

Mr. OXLEY. Yes.

Mr. MARKEY. In the telecommunications act they begin under general provisions and definitions, definition number 42 is station license and it reads thusly: "the terms station license, radio station license or license means that instrument of authorization required by this act or the rules and regulations of the commission made pursuant to this act for the use or operation of apparatus for transmission of energy or communications or signals by radio, by whatever name the instrument may be designated by the commission."

I think Senator Hollings correctly has interpreted it as a very broad interpretation and reiterated by the chairman of the commission today.

Mr. OXLEY. I am fortunate Ed Markey is not on the Court of Appeals. I still will argue that there is a reason why common carrier was used in (b) and not (a), but let's not quibble over that any more.

I asked the question to Senator Hollings would the VoiceStream/Deutsche Telekom merger bring more competition and he answered no. What is your opinion on that?

Mr. FISHER. The effect—would it bring more competition. This is an extremely dynamic market. I don't draw the conclusion that it would lessen competition.

Mr. OXLEY. I will take that, okay.

More capital. More foreign investment capital, yes or no?

Mr. FISHER. As I tried to show in my testimony, this is a dramatically expanding marketplace. Companies that didn't exist 3 years ago are active and are pursuing economic activity, which is to the benefit of their shareholders and the benefit of the countries that they represent as well.

Mr. OXLEY. So the answer is yes?

Mr. STEARNS [presiding]. The gentleman's time has expired.

Mr. OXLEY. And benefits consumers——

Mr. FISHER. The more competition there is, the better.

Mr. STEARNS. The gentleman from Michigan, Mr. Dingell, is recognized for 5 minutes.

Mr. DINGELL. Mr. Kennard, I am told Deutsche Telekom has a monopoly in radio, television distribution, telephone and cable and that they are the second biggest in Internet; is that true?

Mr. KENNARD. I don't know. I have not studied the German market.

Mr. DINGELL. Did you ever consider those questions when you made the presumptive finding that this was a regular acquisition?

Mr. KENNARD. I have not made any finding, presumptive or other, with respect to Deutsche Telekom because there is nothing before us.

Mr. DINGELL. You are going to presume this to be an appropriate acquisition by Deutsche Telekom over this VoiceStream company; is that right?

Mr. KENNARD. No, it is not. I tried to make clear in my testimony, Mr. Dingell, that there is no application before us involving Deutsche Telekom. If and when one is filed, we will carefully consider all of these issues.

Mr. DINGELL. You will consider it.

Do you concede that Deutsche Telekom has monopoly on radio, TV, telephone and cable and they are the second biggest in the handling in Internet inside Germany?

Mr. KENNARD. I won't concede that because I haven't looked at the figures.

Mr. DINGELL. Section 310 does not apply according to you on the Deutsche Telekom/VoiceStream deal. And that is because the government is not to be the license holder. The license will be held by a wholly owned American subsidiary, a shell company; is that right?

Mr. KENNARD. What I am saying is that we would have to evaluate this under section 310. It deals with all transfers, and what I was saying earlier is that section 310(b) is what we look to when we look at indirect ownership through a subsidiary.

Mr. DINGELL. Does 310(a) apply?

Mr. KENNARD. We don't have a transaction before us. I don't know exactly how it would be structured.

Mr. DINGELL. Let's look here. In DT's merger documents, which were filed with the SEC, Deutsche Telekom agreed to waive sovereign immunity with regard to the transaction. I note that applies only to government. Apparently VoiceStream at least believes that DT is either government or a representative thereof. What are your feelings on that?

Mr. KENNARD. I am not going to prejudge a transaction which has not been filed. I assume that these issues will be presented and debated.

Mr. DINGELL. DT's pre-1995 liabilities are guaranteed by the government. Over 40 percent of Deutsche Telekom employees are statutory civil servants, and DT said in its SEC form 20(f) filing, "As long as the Federal republic directly or indirectly controls the majority of DT's shares, it will, like any other majority shareholder in a German stock corporation have the power to control most decisions taken at shareholders' meetings, including appointment of all members of the supervisory board elected by the shareholders and the approval of proposed dividend payments."

What does that tell you about Deutsche Telekom here? Does it tell you that they are a government entity? The government owns 58 percent of the stock.

Mr. KENNARD. What it tells me is that there will be factual allegations like this presented to the FCC.

Mr. DINGELL. You are going to pass on the question of whether or not this takes place. What steps are you going to be able to take to assure yourself that there will be any independence in the license holder, the license holder will have all of its officers appointed by the shareholders, principal shareholder and total control will be in Deutsche Telekom? How are you going to know that you

will have any control over the affairs of that corporation and in ensuring that its licenses and any conditions which are attached thereto will be carried out and that you will have access to information and documents which will be important to you in your decisionmaking?

Mr. KENNARD. Well, the first thing we will do is determine what the facts are related to the ownership of this company. I will say that, as I have said before publicly, that we would be very concerned about a relationship between Deutsche Telekom or any other company proposing to come into the U.S. market and their relationship with the government. This is something that we would be sensitive to.

Mr. DINGELL. Fifty-eight percent is owned by the government and you have a company which is going to have total control over all of the actions of the license holder through the annual meeting process and through the power to appoint all of the officers and directors and so forth of the company.

How will you either know what is going on inside that company? How will you require the production of books, papers, and records? How, if you find that they have done something which is inappropriate either under antitrust laws or relative to national security, how will you take steps to compel Deutsche Telekom to produce the information that you need to make the necessary judgment?

Mr. KENNARD. We will use the tools that we use in every merger transaction, Mr. Dingell, which involves developing a record, determining what the facts are.

Mr. DINGELL. Suppose they say—tell you to go to the devil. What are you going to do about that?

Mr. KENNARD. Then they would not get through the FCC. That is not an appropriate response.

Mr. DINGELL. They would already have the licenses approved and the mergers approved. How will you unscramble the egg?

Mr. KENNARD. That is an interesting question. When we impose conditions on any licensee, whether it has foreign ownership or not, the company is on notice that they have an ongoing obligation to ensure that the conditions are enforced. In many cases we have gone back and——

Mr. DINGELL. But that goes to U.S. corporations, not Deutsche Telekom.

Mr. KENNARD. It goes to the company that we have jurisdiction over, which is the U.S. corporation.

Mr. DINGELL. It goes to the U.S. company.

Mr. KENNARD. We have jurisdiction over the U.S. licenses. If they violate a license condition in the United States, we take appropriate enforcement action, just like a domestic——

Mr. DINGELL. How do you?

Mr. STEARNS. The gentleman's time has expired.

Mr. DINGELL. How do you address the merger which you have already approved?

Mr. KENNARD. Again, there is ongoing enforcement and monitoring of merger conditions.

Mr. DINGELL. Just one question. If you were to have a company which was like Deutsche Telekom in the United States, let's say

one of the Baby Bells were to have this kind of situation, would you allow them in long distance?

Mr. KENNARD. I don't even know how to answer that question. The long distance requirements are so radically different than anything we are considering here.

Mr. DINGELL. Let's just say Ameritech had that kind of situation, would you allow Ameritech then into long distance?

Mr. KENNARD. I don't know what situation you are talking about.

Mr. DINGELL. If they had a total monopoly on radio, television distribution, telephone, cable and they are the second biggest Internet distributor?

Mr. KENNARD. Mr. Dingell, we let no Bell company into long distance until they have demonstrated that their market is open.

Mr. DINGELL. Then why are you—why are you so quick to take——

Mr. STEARNS. Mr. Dingell, your time has expired.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. KENNARD. May I respond?

I want to state for the record once again that the FCC has not made any decisions with respect to a bid by Deutsche Telekom to buy any U.S. licenses. Indeed, none is before the FCC at this time, so we have made no determinations in that regard.

Mr. STEARNS. Mr. Fisher, I will recognize myself for 5 minutes.

In your discussions with Mr. Tauzin earlier, you indicated, I believe, that foreign ownership by governments—foreign ownership by the government is bad. In other words, the German Government owning a large portion that wants to buy an American company, you are saying today that is bad, aren't you?

Mr. FISHER. I am saying certainly the way that the world has moved, it doesn't provide you with a comparative advantage. There are a lot of drawbacks in having government ownership in telecommunications companies.

Mr. STEARNS. A lot of Latin American countries, particularly Chile, and even Russia, sold off their telecommunications companies, so the world is moving toward not having the government have large ownership. What does USTR—what ability do you have to make sure these foreign companies, foreign governments lower their ownership in these private companies? Do you have any kind of stick? What do you do? Because you seemed to indicate earlier when you talked to Mr. Tauzin that you were now trying to get these foreign governments to lower their ownership. What are you doing? It seemed like if you were doing your job, we wouldn't be talking about this legislation.

Mr. FISHER. Again, we have had, for example in the case of Germany, numerous complaints against the Germans on a range of issues that competitive carriers have encountered in trying to enter the German market. We have complained about unreasonable interconnection rates and access to billing and collection services and very high licensing fees.

Mr. STEARNS. What have you done specifically to try and convince the German Government to reduce their stake? Or are you? Is that a priority for you folks?

Mr. FISHER. It is a priority, and we are not satisfied. We have taken them to task interconnection——

Mr. STEARNS. You are saying in this committee that German ownership is a problem?

Mr. FISHER. I am saying that our work is not done. What I am saying, Congressman, very respectfully, whatever my colleagues are handing me over my left shoulder, is that we have available presently the tools to effect——

Mr. STEARNS. You do have the tools to do this. What are these tools, and what is the German government's response—and give me specifics—when you use these tools?

Mr. FISHER. Well, we have our own processes under our 1377 review of telecommunications trade agreements. We have filed petitions against the Germans year after year in terms of that annual review.

Mr. STEARNS. Processes, you mean you file a document somewhere?

Mr. FISHER. Yes.

Mr. STEARNS. What, specifically, do you do and what has the German response been? Can we see copies of the documents or is there anything that——

Mr. FISHER. I would be happy to submit documents at your convenience. I would be happy to have our office——

Mr. STEARNS. So you sit down and raise this issue of government ownership. Can I assume that you are doing this recently, this year?

Mr. FISHER. Yes. You can assume that we have taken them to task in terms of, again, as I mentioned earlier, their interconnection rates, their collection services, very high licensing fees.

Mr. STEARNS. Staff is telling me that is a different issue. How about ownership? Specifically we are talking about ownership.

Mr. FISHER. Again, they have taken the steps to reduce government ownership of Deutsche Telekom. In terms of the specificity of the requirements of what we agreed to in the WTO——

Mr. STEARNS. I am getting just jargon. I am asking you dealing with ownership, what did you say to the Germans, and what did they say back, and what is the leverage that you have, and what is the possibility that they are going to do what you say? If you have nothing, just say nothing.

Mr. FISHER. The point is that——

Mr. STEARNS. You are dealing with ownership now.

Mr. FISHER. Yes, sir. We have been making progress in terms of the liberalization of that market, the ability of our operators and other operators to participate in the market. Germany has 350 licensed carriers. It is not just one giant company.

Mr. STEARNS. This specific case we are talking about, ownership.

Mr. TAUZIN. Would the gentleman yield?

Mr. STEARNS. I would be happy to yield to the chairman.

Mr. TAUZIN. Mr. Stearns has asked what did you tell the German Government in regards to ownership in this case and how did they respond, and what leverage, what is going on. Why don't you simply answer his question rather than giving him information about how well we are doing all over the world.

Mr. STEARNS. Reclaiming my time, have you or Ms. Barshefsky personally talked to the Germans and when?

Mr. FISHER. We have constant interaction with——

Mr. STEARNS. That is too vague. When and what did you say, and when did you say it?

Mr. FISHER. Sir, it might be easier for me to answer that in writing so I can give you specific dates. But again, within the context of this general process, the German market has made progress in liberalization. Are we satisfied? No. Do we have further items on our agenda? Yes.

Mr. STEARNS. We are talking about ownership, not generalization.

Mr. FISHER. I would be happy to respond at length in writing to your question.

Mr. TAUZIN. Let me ask again, if you want to say that you would rather not answer that question, say so. But the question is very simply put. Did you discuss with the German Government the question of ownership? Did you ask, did you try to encourage them to reduce the level of government ownership in this case, and what was their response? If you would rather not answer it, say that.

Mr. FISHER. We have not specifically addressed the matter of ownership with the German Government.

Mr. STEARNS. You have not talked to them. Is that your final answer?

Mr. FISHER. It does not present them with a comparative advantage, Mr. Chairman.

Mr. STEARNS. Obviously, the question is why haven't you.

I think my time has expired here.

Mr. TAUZIN. The gentlewoman from Missouri is recognized for 5 minutes.

Ms. MCCARTHY. Thank you very much, Mr. Chairman. I have been in and out with various distractions, but I feel like we are back in the cold war era, and I am not sure who the boogie men are any more. I do know this. I was sitting in Kuwait working on the peace process there a few months ago, and I was meeting with some entrepreneurs and business people at lunch on a different matter—how could we work together on joint business efforts and trade and other concerns—and we got to talking about high tech and I said wouldn't it be great if I could use my cell phone here and they said you can't and I said no, I can't. They said we can use our cell phones and we can use them when we come to your country, too. I was stunned. And of course that is what VoiceStream does. Kuwait is one of the countries where if I wanted to I could get a phone from them and use it in their country and mine as well.

I guess my question to any of the panelists who want to address it, I thought section 310 in the telecommunications law covered concerns about foreign ownership, and I have listened as much as I could in the time that I was present to the questions and concerns of my colleagues, all of whom I respect very much; but would you please give me your thoughts on what, if anything, more we must do as a legislative body that perhaps we didn't think to do in section 310 or the original law? Or in short what is broken and what do we need to fix so that I can use my phone all over the world? Thanks.

Mr. KENNARD. Well, I would prefer not to answer the question of when you will be able to use your phone all over the world. That is a subject for another hearing, I believe.

But on the question of the legislation, obviously it is Congress's prerogative to legislate whenever they need to. I wanted to be here today, and I appreciate this opportunity to be able to tell you all that the FCC has tools at its disposal which it has used in the past to deal with many of the concerns that have been raised in the wake of the spector of this transaction by Deutsche Telekom. And what I have attempted to do is outline for you the range of remedies that could be imposed in order to protect competition in this market.

We have worked very, very hard at the FCC to implement the 1996 act and to promote competition in this marketplace. And I feel sitting here today that I am truly a veteran of the telecom wars of the last 4 years, and I want to assure you that we will do nothing that will reverse the momentum that we have made to promote competition. If anybody wants to come into this market and threaten the progress that we have made, we will not permit it, and I believe we have the tools; and I think we have demonstrated the resolve in the past few years to use those tools as necessary to protect American consumers and give them more choice in services.

Ms. MCCARTHY. If time permits, does anyone else wish to comment? Because I am curious. Are we going to do this to the Internet companies as well? Where are we going to stop if we go down this path?

Mr. FISHER. Congresswoman, you had addressed me. Let me just say again there is no foregone conclusion here. The argument that we are making is that the current procedures and processes are adequate to the task. We are living in a world that is changing dramatically in terms of pushing the envelope on telecommunications and data communications and so on, and we have met with much success but our task is not done. Again, I think there is a tone in this room that it is a foregone conclusion that this has already been a pre-approved transaction.

What I believe the chairman and I and the other witnesses have presented here is that the tools that we presently have are adequate to the task, and the expansion or explosion of what we have had so far in terms of our interests abroad, while not complete, has been significant, and the system works. That is the point, I believe, we have tried to make in summary. Thank you.

Ms. MCCARTHY. So if it ain't broke, don't fix it. Thanks.

Mr. TAUZIN. I thank the gentlelady.

The gentleman from Illinois, Mr. Shimkus, is recognized.

Mr. SHIMKUS. Thank you, Mr. Chairman.

I just have a brief question that I think goes back to Senator Hollings and his comment, and you may or may not be able to comment. Is there a national security concern in the entrance of foreign-owned companies into the U.S. market? I know it probably should be directed to one person, but I am going to ask all of the above to see what their opinions are.

Mr. DI GREGORY. Well, the simple and direct answer is, yes, there is always a national security concern when you are talking

about a foreign-owned company, a foreign- government-owned company, coming into the American market.

Mr. SHIMKUS. Explain that. And I don't come as a lightweight to national security, being an old Army officer, but with technology, competition, choice, how is the entrance of a competitor in a highly competitive market a national security concern?

Mr. DI GREGORY. It is a concern because what we need to do in order to assure the national security is be able to effectively and securely effectuate court orders that we obtain for intercepts, whether those intercepts are pursuant to FISAs that we obtain or whether those intercepts are pursuant to criminal process and we obtain those—whether or not we obtain those orders through Title III, which is the wiretap statute, as well as other methods of lawful electronic surveillance that we conduct.

It is a national security concern because of the potential that foreign government-owned corporations, foreign-government-owned telecommunications corporations, may be in a better position to influence the people who are managing and operating the—whether it is a wholly owned U.S. subsidiary or not, managing and operating—they may be able to influence those folks who are managing and operating. To the extent that data that American companies store with those foreign telecommunications concerns or those U.S. subsidiaries that are owned by foreign governments, that data may potentially be in jeopardy; and that data could be related to trade secrets and, therefore, be subject potentially to economic espionage.

Mr. SHIMKUS. Thank you.

Mr. DI GREGORY. Those are just at least a couple of those.

Mr. SHIMKUS. That is fine.

Mr. Parkinson?

Mr. PARKINSON. I will just echo what Mr. Di Gregory said. I think the short answer to your question is, again, yes. We assume, particularly when you are talking about a foreign government, any foreign government control of a basic part of our telecommunications infrastructure is a risk, and it raises concerns for us, and it raises concerns on several different fronts, most of which Mr. Di Gregory touched upon.

We have a role in protecting that infrastructure. There are still nation states out there. Nation states act in their own national interest, and sometimes their national interest involves attacking us, and I use that term—put that term in quotes, but you can attack somebody, another nation state, in lots of different ways. It may be in their interest to engage in economic espionage. It may be in their interest to engage in more traditional espionage. It may be in their interest to try to find out what we are doing on the counterintelligence side of the house. And while we don't want to seem unduly alarmist or paranoid about this, I think the way we approach it is there are legitimate concerns any time the government—a foreign government is involved.

Mr. SHIMKUS. Okay. If I can—I think I got it, and I want to make sure I give Chairman Kennard a chance to answer.

Chairman Kennard, would you in the licensing process—I think you have testified, but I just want you to reiterate—you would take into account and into consideration testimony from the FBI and the Attorney General's Office, would you not?

Mr. KENNARD. Absolutely. We have a process in place where we defer to their expertise on these areas, and we coordinate closely. And the last thing that I would want to do, as chairman of the FCC, is to vote to grant an application if there were significant concerns from the FBI and the Department of Justice. I wouldn't do it. It is not done.

Mr. SHIMKUS. And just as—I don't know, Ambassador Fisher, if you wanted to add to this. You may. If not, I can yield back my time.

Mr. FISHER. No, sir.

Mr. SHIMKUS. Mr. Chairman, I yield back.

Mr. TAUZIN. I thank the gentleman.

The Chair recognizes the gentleman from Georgia, Mr. Deal.

Mr. DEAL. Thank you, Mr. Chairman.

I recognize, Mr. Fisher, at the outset that we are here to deal with telecom, but you heard in the opening statement from Congressman Green his concern with regard to a private competition issue relating to electrical utilities by his constituent and mine, and Congressman Bart Gordon has the same concern, for Southern Energy, Incorporated's ability to penetrate into the German electricity market. That is being hampered by some of their own domestic utilities.

And I would just like to have a commitment from you that you would be willing to pursue that issue so that we can be certain that our private companies that are attempting to penetrate the German market are not being treated unfairly.Could we have such a commitment from you?

Mr. FISHER. Sir, I will look into that and report back to you.

Mr. DEAL. Thank you very much.

Let me walk through some things, because I think there is some confusion, at least on my part, about where we stand. I suppose, Mr. Fisher, I would start with you by, first of all, asking, is there anything in the basic telecom agreement that we entered into that addressed the issue of foreign government ownership? Or was that just silent?

Mr. FISHER. At the time, Congressman, most of these foreign governments had significant ownership. There has been a move, as I testified, toward liberalization in many, many cases, and it is an increasing pace of liberalization.

Mr. DEAL. But the ITA itself, did it address that to require that they move toward this privatization or was it silent on that issue?

Mr. FISHER. The effect has been that they have moved toward privatization. In terms——

Mr. DEAL. But not mandated by that agreement?

Mr. FISHER. No, but by forcing and allowing competition that has been the effect.

Mr. DEAL. Is there anything in WTO rules that address the issue of government ownership in this area?

Mr. FISHER. Not directly, sir. Again, what we insist upon in the rules is impartial regulation.

Mr. TAUZIN. If the gentleman would yield for a second?

Mr. DEAL. Certainly.

Mr. TAUZIN. Doesn't an independent, impartial regulator imply privatization? How can you be independent and impartial if you are

the government that is regulating your own government-owned company?

Mr. FISHER. Well, again, this is why the effect of this agreement has been the movement toward increasing privatization, as I testified earlier. On the other hand, in some cases where we seen 100 percent privatization we would argue it hasn't lived up to our expectations and indeed has not allowed for more competition. Let me give you a signal example.

Mr. TAUZIN. I understand. That is a different issue.

Mr. FISHER. Telemex in Mexico. So moving to privatization, Congressman——

Mr. TAUZIN. That is a different issue. You are saying that even with impartial, independent regulatory structures you might not have enough competition. That may be true, but how can you have, under the agreement, impartial, independent regulatory structures unless you have privatization?

Mr. FISHER. If the governments are interested in competing internationally, they are moving or should be moving their governments toward enhancing competition through more competition.

Mr. TAUZIN. So the agreement does indirectly support, in fact demand, privatization?

Mr. FISHER. We believe that is the effect.

Mr. TAUZIN. I thank the gentleman for yielding.

Mr. DEAL. So therefore, I assume, that since it is either only implied and certainly not explicitly addressed that the reverse side of the coin would be true, that those who are arguing that we should statutorily impose a percentage prohibition of government ownership in an entity would not violate either the ITA or anything under WTO?

Mr. FISHER. I am sorry, sir. Could you kindly repeat that?

Mr. DEAL. If ITA does not address the issue, those who are arguing that we should impose the 25 percent rule to do so would not violate the ITA nor the rules of the WTO, would it?

Mr. FISHER. It would certainly, I think, violate the agreement that we have in effect right now, and I believe it would——

Mr. DEAL. Which agreement is that?

Mr. FISHER. Well, when we talk about, again, the subject of this hearing, but the—I am not sure what your point is, Senator—excuse me, Congressman.

Mr. DEAL. Thank you.

Mr. FISHER. Could you kindly repeat it for me? I apologize for promoting you.

Mr. DEAL. My question is, if we are talking about whether or not we should pass legislation that imposes a limitation of no more than 25 percent government ownership as a condition for telecommunication ownership here, then it does not—to do so would not violate anything under the ITA nor under the WTO rules?

Mr. FISHER. Well, again, the basic premise here is that we agreed to open our market in return for limitations on foreign government ownership. That is been the trade that has taken place, and that has been the effect of this in the short period it has been in place.

Mr. DEAL. Okay. And I realize that there is some disagreement about the interpretation of section 310(b)(4) in particular.

Mr. FISHER. Right.

Mr. DEAL. But has any foreign government raised that provision of the Telecommunication Act as being in violation of any WTO rules, or the BTA?

Mr. FISHER. I don't believe so, but I will double-check for you, sir.

Mr. DEAL. Has there been any case, Mr. Kennard, where this section has come in to question—up to this point, has there been any case that has questioned the application of this subsection?

Mr. KENNARD. If by "case," you mean any——

Mr. DEAL. Any application.

Mr. KENNARD. There have been applications, certainly, where we have invoked our discretion under section 310(b)(4). We have never been presented at the commission level—putting aside actions by the commission staff on delegated authority, we have never been presented with a transaction quite like the one that is being talked about today, where you have a major transaction by a company that has majority foreign government ownership.

Mr. DEAL. Have you had—Mr. Chairman, would you indulge me? I would like to ask this one question.

Mr. TAUZIN. The gentlemen is granted an additional minute, without objection.

Mr. DEAL. Thank you, sir.

Have you had cases up to this point where a license has been granted to an entity where there was foreign government ownership in excess of the 25 percent, where you have made a finding that the public interest was served by granting that license, which is your discretion under subsection (b)(4)?

Mr. KENNARD. I don't believe that we have had one at the commission level. I know I have not considered one since I have been chairman of the agency.

We had a similar situation involving a recent case involving Intelsat, but that is really distinguishable because Intelsat has—it is a unique animal, and it has multiple governments with ownership in that entity. So it is really—that is really not an appropriate precedent to use here.

Mr. DEAL. Thank you very much.

Mr. TAUZIN. Before the gentleman yields back, I want to clarify something.

Mr. Fisher, Ambassador Fisher, did we not have a reservation in the WTO for the public interest? Is that not de facto a reservation for section 310(b)(4)?

Mr. FISHER. We did reflect 310 in our WTO commitments, yes, sir.

Mr. TAUZIN. Okay. The Chair recognizes the gentlelady from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman, and good afternoon to all of the gentlemen at the table.

I have really soaked up a lot of what you have said, including your opening statements, but apologize for having to come and go from the hearing room. So if the questions I ask are somewhat repetitive, please bear with me.

Chairman Kennard, it is always good to see you here.

Mr. KENNARD. Likewise, thank you.

Ms. ESHOO. I hope your baby is doing very well.

Mr. KENNARD. He is. Thank you.

Ms. ESHOO. We need to bring things in. Since the Ambassador spoke about his son, we can mention your baby.

Let me ask you about the following: Can the FCC require a foreign government to divest below the 25 percent ownership? Maybe that was on the tail of the conversation that you were just having—you know, below the 25 percent ownership level before it approves a merger. And under what circumstances—have there been circumstances that have arisen or under what circumstances—what would you apply in terms of a yardstick? And then I would like to ask Ambassador Fisher a question as well, and then hopefully get to the other two gentlemen. But if you could maybe enlighten us on that.

Mr. KENNARD. The answer is, yes, but the threshold question that we would have to consider is what is the harm. Really, imposing a condition as you have outlined is a remedy; and in order to get to that point we would have to establish what the harm is. And there we would look at a range of factors. We would look at the influence of government over the applicant. We would look at the—whether the relationship between the applicant and the regulator gave an advantage that would depress competition in our domestic market.

We really focus principally on preservation and enhancing competition in the U.S., so we would have to determine whether there is a link between that situation and the extent of foreign government ownership. If there is a link, then I think we have a very wide range of tools, including conditions that we could impose to deal with it.

Ms. ESHOO. I have seen this before on some of these really highly complex issues and then the remedies that we examine here, that this is like trying to get socks on an octopus. I mean, I still don't know what is broken here that we are trying to repair.

It is a highly emotional issue when you present it to the American people. Do you want foreign interests in their government in your telecommunications? Well, guess what most people are going to say? That doesn't taste so good to them. But then when you say, well, what's the harm? Let's examine the harm. What's the solution? You really start going down a slippery slope.

Would either Mr. Di Gregory or Mr. Parkinson, can you tell us are there situations where the flag has been raised in either one of your departments where national security or other kinds of issues in terms of our Nation are raised, where your eyebrows have been raised by what has happened? Are you alarmed? Are you worried?

Mr. PARKINSON. Let me start, Congresswoman. The answer is, yes. I wouldn't say that we got carried away in raising the flag.

Ms. ESHOO. Oh, you have had that?

Mr. PARKINSON. We have weighed in on any number of occasions. It is now approximately 10 over the course of the last 4 years, not necessarily because a specific transaction posed some imminent threat of some kind, but it—it was a transaction that had some sort of technical arrangement or other kind of structure that caused us to be concerned about our ability to carry out our duties, particularly on the law enforcement side where we have to effect

our intercepts in an appropriate fashion, our lawful intercepts. And we have weighed in, for instance, and said that when you are processing—you, a telecommunications carrier—are processing a U.S.-to-U.S. phone call, the phone call has to come down from the sky someplace in the United States so that we have the ability to access that and also to preserve the privacy of the phone call.

Ms. ESHOO. But that does not really speak to the question of a percentage of ownership, though, does it? You just want to be able to intercept. You are not talking about how much they own.

Mr. PARKINSON. That was just one example of a particular condition that we have talked about.

Ms. ESHOO. Well, usually the first one is a big one, but maybe Mr. Di Gregory has——

Mr. PARKINSON. Just one shorthand, and I will turn it over to Mr. Di Gregory.

Ms. ESHOO. The red light is on, so you need to finish up.

Mr. PARKINSON. This is always an assessment of risk, and it varies depending on who the country is, depending on what their particular arrangement of the transaction is.

Ms. ESHOO. I appreciate that.

Mr. DI GREGORY. I just wanted to give you what could be a specific example of a concern, of a national security concern, that might develop. If a foreign-government-owned telecommunications company or a foreign-owned telecommunications company is providing service and we are conducting a counterintelligence investigation and during the course of that counterintelligence investigation we obtain lawful court process to conduct an intercept and the intercept must be conducted over facilities owned by the foreign corporation or owned by the foreign government, it would give us pause and we may have a tremendous concern about effectuating that intercept even if the intercept doesn't involve a citizen of that particular foreign country.

We may choose not to conduct the investigation or not to conduct that portion of the investigation because of our concern about the security of the information related to the investigation that we are conducting and related to that particular intercept that a court has permitted us to do.

Ms. ESHOO. But to date that hasn't happened. You are worried about the future. You are saying that if this happened this is what would raise our hackles; we are concerned about that if it were to happen.

Mr. DI GREGORY. I am saying that we are concerned about it now, and we are trying to do everything we can to keep it from happening.

Ms. ESHOO. But it hasn't happened, though. That is what I am saying.

Mr. DI GREGORY. Well, I can't say absolutely that—all I can tell you is that we are concerned about that now, and we are doing everything that we can do by virtue of these agreements that we have been negotiating to avoid that situation from occurring—to prevent that situation from occurring.

Ms. ESHOO. Thank you, sir.

Mr. Chairman, I would like to ask for a unanimous consent request for an additional minute.

Mr. TAUZIN. Without objection, the gentlelady has an additional minute.

Ms. ESHOO. I feel good to get these for ourselves. We don't stand in the way of others getting them.

Ambassador Fisher, even if the passage of this bill didn't violate any WTO basic agreement because it is not treaty, are there other considerations that should be placed on the table? I mean, what possible ramifications do our markets face?

Mr. FISHER. Well, we have been—Congresswoman, we have been extremely active here in activity abroad. I believe it is for the benefit of the shareholders of the companies and a benefit for U.S. interests, as I tried to explain in my testimony. And I think we run the risk here that other countries put up roadblocks to our activity on behalf of U.S. shareholders and U.S. employees and U.S. interests elsewhere around the world. I am not sure it is necessary—my point, Congresswoman, it is not necessary to do this.

Ms. ESHOO. Well, I have kind of quickly come to that view.

I think that we need to examine the flip side of this, and that is, would other countries and companies retaliate? I mean, we are thinking of our own retaliation for a whole variety of reasons, and maybe it is not so pretty to dress it up as retaliation but I think it is a form of retaliation or could be considered one. Wouldn't there be retaliation on the part of others if we did this?

Mr. FISHER. Well, I would say this: We have seen a significant but insufficient liberalization abroad. That is, we would like to see more. We want to keep it moving in the right direction.

U.S. economic interests have, in our opinion, been the beneficiaries of this process; and I do believe that at the very least other countries would stop listening.

We are—and we take the high spot, we are the preachers of free trade. We may be imperfect and not satisfactory to others, and certainly we have justifiable critics within our own government and elsewhere in the world, but it is very hard for us to take the high ground if indeed we say that basically a process that we negotiated, agreed to, and a very short time ago that we now are going to change this and shift the playing field. As I tried to point out in my testimony, we have made significant progress in terms of our economic interests around the world. It is not perfect. It is not done. It is not complete. But I do believe that we run the risk of, if not reversing the process, bringing it to a screeching halt.

Mr. TAUZIN. The gentlelady's time has expired.

Ms. ESHOO. Thank you.

Mr. TAUZIN. We just don't like preachers who sin too much by omission.

The Chair recognizes the gentleman from Oklahoma, Mr. Largent.

Mr. LARGENT. Thank you, Mr. Chairman.

Mr. Di Gregory, you are the Deputy Assistant Attorney General of the Criminal Division?

Mr. DI GREGORY. One of five, yes.

Mr. LARGENT. Okay. Is the Child Exploitation and Obscenity Section under your bureau?

Mr. DI GREGORY. No, I am not the supervisor of that section.

Mr. LARGENT. But is that under your bureau?

Mr. DI GREGORY. That is in the Criminal Division. That is correct.

Mr. LARGENT. I would just like to state real quickly that on May 23rd we had some questions of that particular agency within the Department of Justice. We are still waiting for the responses to those questions. If there is anything you can do to expedite that, we would appreciate it.

Mr. DI GREGORY. I will do my best.

Mr. LARGENT. I know the chairman and I both have sent letters in the last 3 months to get those responses.

Let me get back to this. I would like to ask Mr. Fisher, is it the goal of the German Government to eventually have zero percent ownership in their telecommunications company? You said you were in regular contact with the German Government.

Mr. FISHER. I can't answer the specific numerical goal that they have, but I would imagine like, any other government, their goal is to be competitive and to allow their economy to flourish. We live in the information age.

Mr. LARGENT. The German Government goal is to be competitive?

Mr. FISHER. In order to allow their economy to flourish, yes, sir. I believe that would be their goal. That would be my goal if I were a member of the Bundestag or the Bundesstaat.

Now, are they up—are they moving in that direction? The answer is yes. They have 350 licensed carriers in Germany. I could walk you through some of the data or be happy, Mr. Pickering, to submit data for you.

I am sorry. Let me change that. Let me restate my statement.

Mr. LARGENT. We all look alike.

Mr. FISHER. Congressman, I would be happy to submit that for you for the record.

Mr. LARGENT. Okay.

Chairman Kennard, I would like to ask you, has the FCC ever denied a merger because of public interest based upon foreign government ownership?

Mr. KENNARD. No, I don't believe so. But to put it in context, the FCC has never been presented with an application for a foreign government ownership on a controlling basis, that is a large controlling interest, to my knowledge.

Mr. LARGENT. Okay. All right.

Mr. Di Gregory, I want to ask you another question. Legislation proposed in the House by Mr. Dingell and in the Senate by Mr. Hollings of South Carolina would effectively block all communication company transactions involving companies with greater than 25 percent foreign government ownership. In your opinion, is this legislation necessary in light of the existing approval process?

Mr. DI GREGORY. In my opinion, we currently have processes—thus far, the processes that we currently have used with respect to foreign-owned telecommunications companies in their acquisition of American firms——

Mr. LARGENT. Are you making that distinction between foreign-owned versus foreign-government-owned?

Mr. DI GREGORY. Yes, I am making that distinction. Because we haven't yet dealt with a transaction where foreign government

ownership in the telecommunications sphere, acquiring a U.S. telecommunications company, has occurred. But the only thing that I was going to say was that we believe thus far these processes have enabled us to satisfy our national security and law enforcement concerns.

Mr. LARGENT. Okay. Mr. Parkinson, can you respond to that question? Is this legislation necessary under the current process?

Mr. PARKINSON. Congressman Largent, with respect to the specific question about specific legislation I will defer to Mr. Di Gregory on that. I will echo what he just said. We have found that the processes currently in place have been appropriate and useful and successful in us negotiating appropriate conditions on these licenses.

Mr. LARGENT. Mr. Parkinson, I have another question. We talked about the risk of espionage with a foreign government owning a wireless telecommunications company. Do you have to own a wireless company to spy?

Mr. PARKINSON. No.

Mr. LARGENT. And does owning a wireless communication company enable you to participate in espionage that would be impossible without it?

Mr. PARKINSON. It might.

Mr. LARGENT. Like what?

Mr. PARKINSON. Obviously, any kind of communication system or communication network might be, in a particular situation, important to your espionage activity. If you had the ability to control that information or communication network, obviously your task would be easier.

Mr. LARGENT. So controlling a wireless communication network would allow you to participate.

What kind of espionage could you do with a wireless company that you couldn't do without it? That is what I don't understand. I mean, technically what could you do?

Mr. PARKINSON. Well, I think the ability to communicate is critical to any insidious activity, whether it is espionage or other kind of criminal activity. If you have the ability to control the network, to keep law enforcement out of that network, to conceal what you are doing, I think it facilitates your actions.

Mr. LARGENT. So do you believe that a wireless company doing business with the United States would have the ability to keep the FBI out of its records?

Mr. PARKINSON. Potentially, and that is one of the conditions that we typically negotiate with the companies in these arrangements, is where are the records going to be kept, who are the personnel that are going to work with the system.

Let me give you a concrete example that would cause us concern on the espionage side, and that is you controlled the—you are foreign-government owned. You control the communication network. We had a counterintelligence investigation under way, and we decide—we went to the Court, the Foreign Intelligence Surveillance Court, and got a court order to go up on a particular phone, and the number that we had targeted, or the person that we had targeted, is in the hands of a foreign government. That would cause

us a great deal of concern, and it would certainly facilitate the foreign government's espionage program, if it had one.

Mr. LARGENT. Okay. Mr. Chairman, I yield back my time.

Mr. TAUZIN. I thank the gentleman. His time has expired.

I want to submit one question on behalf of Mr. Dingell to Admiral Fisher—Ambassador. Excuse me, I keep calling you Admiral—Ambassador Fisher. Would you please provide an analysis of whether section 310(a) would apply to a transaction such as the one described by DT and VoiceStream through their FCC filing? If your analysis concludes that section 310(a) does not apply, please explain whether section 310(b)(3) would apply to the transaction.

Mr. FISHER. May I do that in writing, Mr. Tauzin?

Mr. TAUZIN. Yes.

Mr. FISHER. Thank you.

Mr. TAUZIN. Yes, absolutely do that in writing.

Mr. FISHER. Thank you, sir.

Mr. TAUZIN. The Chair yields to Mr. Markey, who has another question.

Mr. MARKEY. Thank you. And this will be my final question.

Again, Ambassador Fisher, we are trying to get back to this interaction between the trade negotiator and the German Government on this question of ownership and how constrained you feel in having any conversations with the German Government about this issue. You are saying that you personally have not had any conversations about this ownership issue with the German Government, is that correct?

Mr. FISHER. Yes, sir, that is correct. But that is because my portfolio is Asia, Latin America, Canada and Mexico. So that may be the reason I haven't.

Mr. MARKEY. Who has that job?

Mr. FISHER. Well, our telecommunications negotiators and Ambassador Esserman, who handles Europe.

Mr. MARKEY. Shouldn't he be here today, I mean, honestly?

Mr. FISHER. I have responsibility, sir, for most of these cutting-edge negotiations, for example, with the Mexicans, the Japanese and others.

Mr. MARKEY. I understand, but this is a specific case that we are dealing with. You are saying that you don't have any specific responsibility for this particular case?

Mr. FISHER. I am not sure exactly what the question is.

Mr. MARKEY. The question is, do you have any decisionmaking power with regard to the Deutsche Telekom/VoiceStream issue? Or is that in another person's portfolio in the Trade Representative's Office?

Mr. FISHER. Well, the overall authority is Madam Barshefsky, but I believe—isn't the question with regard to Deutsche Telekom's percentage of German Government ownership?

Mr. MARKEY. Ownership, yes.

Mr. FISHER. And the answer to the question, sir, is that again this level of ownership, given the fact that when we negotiated this agreement very few other countries had the kind of liberalization that we have had, in and of itself is not the issue in terms of the——

Mr. MARKEY. I understand that. I understand that.

Here is the problem, Ambassador Fisher. When you started your testimony today, you told us about all of these wonderful companies from the United States that have just been created in the last 3 or 4 years who are now descending upon the European market.

Mr. FISHER. Yes.

Mr. MARKEY. Now the reason those companies exist, of course, is that the FCC, pursuant to a law that we passed in 1996, made it possible for them to be created because we took on government-protected monopolies. And so, yes, now they have this huge amount of capital, level 3 and other companies that you might have mentioned, heading across Europe. That is great. In fact, even VoiceStream itself is as a result of a U.S. Government policy to create more competition in the marketplace.

The paradox here, of course, is that the Germans have created an analogous monopoly in terms of this Deutsche Telekom situation, looking at the relationship between them and their regulators, which is hard for us from a distance to be able to decipher. So we are looking for you to tell us why it is—why insisting on full privatization is—can it be a requirement that we put on the books or is it a violation simultaneously for us to request that? Which is it? Can we request it or is it a violation for us to request it?

Mr. FISHER. My answer to you, sir, is that it is moving in that direction. If you will bear with me for just 1 minute, let me walk you through what the situation is in Germany.

Mr. TAUZIN. We don't have time for a big walk-through.

Mr. MARKEY. In your comments—we are going to miss a roll call, Mr. Fisher. Can you ask—can your office, not you personally, because it is not your responsibility—but can your office ask the German Government to reduce its ownership? Can you do that without violating the WTO?

Mr. FISHER. We have seen the effect of these efforts result in a reduction of Deutsche Telekom's government.

Mr. MARKEY. Okay. You are not going to answer the question. Thank you.

Mr. TAUZIN. He won't answer the question. And let me close out.

Ambassador Fisher, let me express some extreme disappointment with your testimony today before we close. We went through difficult questioning to get you to say whether or not you talked to the German Government, and you did not—you said, I did not, but you did not say but I am not the guy who would have talked to them anyhow. We had to find that out later. That is a bit disingenuous.

Now, let me say this is a serious question. I think you got the flavor of that. If you think there is an uneasiness in this room, you have an uneasiness with what you hear in this room, we have an uneasiness with what we are hearing from you. And if you think this committee is not serious about our concerns that the ITA impliedly requires privatization for competition in this country, then rest assured we are definitely deeply concerned about that. We believe, while it doesn't say it in the kind of language sometimes we say things, that to say an independent and separate, impartial regulatory authority is necessary, clearly says these governments are supposed to be privatizing; and to pretend otherwise is just not right.

Second, we will be very interested in getting some answers from those in your office who do have in their portfolio the obligation to talk to the heads of these governments to find out whether they are talking to them or not, and we will follow up with some questions in that regard. But I am deeply disappointed in the way in which you have avoided answering directly the questions of the members of this committee.

You may respond, but I am going to have to go vote, so do it quickly.

Mr. FISHER. Well, I apologize to you, Mr. Chairman, if I have disappointed you. I have made my best effort to answer your questions. I would be happy to follow up in writing to the questions that have been posed to me.

I have made, I think, one basic point, and that is that we presently have in place the tools to deal with this application. And I have made my best effort, sir, to answer your questions; and I will do my best to answer whatever questions I didn't answer in writing to you. Thank you.

Mr. SHIMKUS [presiding]. Let me now move to my colleague and friend from California, Mr. Cox, and recognize him for 5 minutes.

Mr. COX. I thank the chairman.

I would like to address myself, if I might, to Mr. Kennard and Mr. Di Gregory, to ask you, for starters, the degree to which you parse a distinction between foreign ownership on the one hand and foreign government ownership on the other hand. Because we have got two competing legislative provisions. One is current law, which speaks in section 310(b)(4) of a 25 percent foreign ownership cap, and the other is our colleague in the other body who is using the same figure but applying it to foreign government ownership, and at least facially it strikes me that the two are dramatically different. I would be interested in your views.

Mr. KENNARD. Well, Mr. Cox, we are guided, first and foremost, by the statute itself, section 310; and section 310 speaks in terms of ownership by aliens, by representatives of a foreign government, or by a foreign government. So if you look at the operative statute here, section 310, all of those types of owners are subsumed within that provision.

Mr. COX. And the first, aliens, includes private citizens?

Mr. KENNARD. That is right, foreign nationals.

Mr. COX. And I understand that. That was a premise to my question, so I hope I wasn't baiting my question. I think not.

Given that, do you distinguish between foreign government ownership on the one hand and foreign ownership on the other hand in making these decisions and in formulating your policy?

Mr. KENNARD. Yes, certainly there are distinctions that can be drawn as a policy matter, and we heard some of those distinctions drawn out today at hearing. That is, when you have foreign government ownership, you have a unique set of competition challenges—the relationship between the government and the company, whether there are cross subsidy issues, tax incentives, other issues like that that could cause us to have concern about competition in this country.

So, yes, we would look at those issues when they are presented to us in the context of a specific transaction.

Mr. COX. Mr. Di Gregory?

Mr. DI GREGORY. They are distinguishable for us, Mr. Cox, in terms of our assessment of the risk involved to national security and law enforcement concerns. The risk is heightened when it is a foreign-government-owned corporation, although there are risks still attendant to simply foreign corporations acquiring U.S. telecommunications providers.

Mr. COX. Now most of your testimony was directed to security concerns, but I wonder if I can't look through the other end of the telescope and see also equally valid competitive concerns and see those concerns even if I withdraw the adjective "foreign" from government. Because in my mind this is so distinguishable from the foreign ownership issue that we can even take the word "foreign" out of it altogether and just talk about government ownership.

We have a policy in this country—it is Clinton administration policy, it has been continued since President Eisenhower—of discriminating against government ownership of commercial enterprises, and it is stated in circular A-76. And it is stated—in fact, I think I have some—"the government should not compete with its citizens." That is Clinton administration policy. That is Bush administration policy, Reagan administration policy. It goes a long way back. But that circular has been renewed as recently as 1999.

The government should not compete with its citizens. The competitive enterprise system characterized by individual freedom initiative is the primary source of national economic strength.

So if we took "foreign" out of this equation, we just ask ourselves whether we wanted to have a policy that discriminated against government ownership of telecommunications, we have answered that question in this country.

Our view is that government ownership is not what we are after. We are after private ownership, and I believe for a couple of reasons. One is that governments are uniquely in a position to create their own regulatory environment, and you don't have an arm's-length relationship between the regulated entity and the regulator if you do that. Another is that governments, being run by politicians, oftentimes make decisions for other than economic reasons, for noneconomic reasons. Instead of supply and demand being the principal basis for resource allocation decisions, you have a lot of political decisionmaking.

So it isn't just a question of whether the U.S. consumer might be getting the benefit of a stupid subsidy by some foreign government. It is also the question of whether or not we don't experience all sorts of opportunity costs because resource allocation decisions are being made for political reasons instead of economic ones.

I wonder whether the Department of Justice has an interest in these things as well.

Mr. DI GREGORY. There may be another division in the Department of Justice that has an interest in these things.

Mr. COX . Well, I know there is a department.

Mr. DI GREGORY. And I don't know that I can speak to those concerns because of the role that I play and because of the focus that I have with respect to this issue on national security and law enforcement issues.

Mr. COX. Let me go back to Mr. Kennard and try and put myself in the shoes that I occupied 15 years ago when I was Reed Hundt's law partner.

Mr. SHIMKUS. Is that for the record?

Mr. COX. For the record, I was, yes. It is even a matter of Federal Election Commission record that he contributed to my campaign.

But when I was representing private clients and when my concern was the shareholders, the executives of the firms I represented and so on, I could easily see, were I there today, that their interests would be maximizing the number of potential buyers for their securities, giving them the greatest liquidity opportunities possible, the most buyers, the most potential angels.

And because some of the firms here that we are talking about are rather large, including governments in that universe, it is probably a good thing, more buyers. And yet from a regulatory standpoint the picture is a little bit different; and I wonder whether you wouldn't, A, think it natural that most of the shareholders, officers, executives and so on of the firms involved here would be in favor of including government in the bidders on the one hand and also whether that is something that should be at least partially discounted as you do your policy analysis?

Mr. KENNARD. That is an interesting question and one that I am sure is—I am sure a lot of people in this room are calculating whether they are going to be a competitor or a seller, and that is going to determine which side of this issue they are on. But from my perspective it is not something that we really need to worry about because, first and foremost, our responsibility is to American consumers and not necessarily creating buying or selling opportunities for anyone as a primary matter.

Going back to your initial comment about privatization, I just wanted to underscore that we believe fervently at the FCC in privatized competition. Every opportunity I have to meet and talk to my counterparts in independent regulatory agencies around the world, I always make this argument. It is our probably most important public policy export, if you will, which is promoting privatized competition.

The question that is being raised in this hearing today is what is the best way to get to that point? Is the market going to drive companies to ultimately privatize or not? And in the meantime, when transactions like this arise, are there competitive issues that we have to deal with before companies are fully privatized?

I guess my main message today is that we are prepared to deal with those hopefully interim market issues until we get to, hopefully soon, a world where all competitors are fully privatized.

Mr. COX. Well, let me, since I am here without competition myself, nonetheless yield because the panel has been very indulgent with all the members here.

I would just like to conclude by saying that in my view, for what it is worth, allowing private citizens and both privately and publicly held commercial entities to invest in U.S. telecom markets, even assuming these are foreign private investors, foreign private companies and so on, is indisputably beneficial. It is a good thing for our economy to inject new competition. It reduces prices.

But I do think that there are fundamentally different issues; and we haven't had a chance to get in a lot of them—sovereign immunity, for example, which, having read through the SEC filings of Deutsche Telekom, are, you know, front and center. They have done their level best, it appears, to waive them in the context of their filings, but, you know, whether or not in the clinch that satisfies everyone is something else. It is just a different beast altogether if you are talking about a foreign government compared to talking about foreign competition.

I am just sorry that much of the debate here, such as it was today, seemed not to focus on that distinction so much as foreign versus not. I don't think that there is any xenophobia or protectionism or anything that is latent on either side of the aisle here. I think we are all fairly enlightened that way, but I do think that you are wise to be very chary about the distinction between governments coming in and buying whatever the heck it is.

We happen to be doing telecommunications today on the one hand and private firms and individuals on the other.

I thank the chairman.

Mr. SHIMKUS. Thank you. And the Chair will note that there has been strong debate on government intervention and I would suggest some xenophobia discussed in the hearing about this issue raised by really members on both sides of the aisle. So it is probably another issue to address.

Mr. COX. You can say that now since they are gone, right?

Mr. SHIMKUS. I have been here the whole time.

Mr. COX. The xenophobes are at least gone.

Mr. SHIMKUS. I want to thank the panel, too, for being patient. And hearing no other questions, no other members being present, I would like to dismiss this panel, again thank them and call the third panel.

Panel three will consist of Mr. John Stanton, CEO and President of VoiceStream; Mr. Morton Bahr, President of Communications Workers of America; Mr. Gregory Sidak, Weyerhaeuser Fellow in Law and Economics; Mr. Andrew Lipman, Vice Chairman of Swidler Berlin Shereef Friedman; Dr. Michael Noll, Annenberg School for Communication; and Mr. Thomas Donohue, President and CEO, U.S. Chamber of Commerce.

If I can get our guests in the gallery to expedite their process out of the hearing room and take seats and close the doors, we would like to begin as soon as possible.

I have been informed that Mr. Donohue will not be able to testify.

Before I go to the opening statements, I would like to remind the panel that their written testimony is already going to be submitted into the record, so this committee likes to ask witnesses to summarize. I am going to try to be a little bit stricter on the time. Give us the high points. We will move through the testimony and then we will have time. Members will be rotating back from the vote to follow up with questions.

With that, I would like to welcome Mr. John Stanton, CEO and president of VoiceStream. You are recognized for 5 minutes.

STATEMENTS OF JOHN W. STANTON, CEO AND PRESIDENT, VOICESTREAM; MORTON BAHR, PRESIDENT, COMMUNICATIONS WORKERS OF AMERICA; J. GREGORY SIDAK, WEYERHAEUSER FELLOW IN LAW AND ECONOMICS, AMERICAN ENTERPRISE INSTITUTE, PUBLIC POLICY; ANDREW D. LIPMAN, VICE CHAIRMAN, SWIDLER BERLIN SHEREEF FRIEDMAN, LLP; AND A. MICHAEL NOLL, ANNENBERG SCHOOL FOR COMMUNICATION

Mr. STANTON. Thank you, Mr. Chairman.

Mr. Chairman, members, Mr. Cox, I very much appreciate the opportunity to testify today. I will follow your admonition and be quite brief. I have entered comments for the record.

Our message to consumers in our business, as articulated by our spokeswoman, Jamie Lee Curtis, is to get more. What we mean by that is we give our consumers the opportunity to get more from our product, and we give our employees an opportunity to get more employment opportunities.

I would like to speak briefly to the message that I have articulated in the statement and briefly introduce the business.

Our message today really is threefold. Our agreement with Deutsche Telekom benefits our consumers, benefits our employees and benefits our business as a whole.

The approval process that we must go through, in our opinion, works today. The proposed legislation is a categorical ban on our transaction and, as a consequence, will deprive our employees and our customers the benefits of the deal.

Let me briefly introduce the business. In telecommunications terms, we are a veritable new kid on the block. The business was founded by my wife Theresa and I, 6 years ago. The business has had the opportunity to compete, but we had to compete in a very different way in order to succeed. We built an all-digital network using licenses that we purchased through the FCC auction process for new personal communications auctions. We have competed very aggressively by offering what we call the best value in wireless, and frankly what that generally means is we are the lowest price in the marketplace.

Since we have launched our services, we, as well as other new competitors, have seen the average price per minute of wireless services drop by approximately 57 percent in under 5 years. That is down to an average price per minute, according to FCC records, of 24 cents. Our average price per minute is approximately 12 cents, or half the industry average, and our customers used an average, as of last quarter, of over 450 minutes of use per month, which is twice the national average.

We have built our business by raising money, both domestically and internationally. Today, approximately one-third of our equity is held by foreign companies and approximately two-thirds is held by American individuals and companies.

In 5 years, we have managed to build a business adding 2.5 million customers and adding 8,300 employees all over the country. So why do we need more money? Why do we need the deal with DT? We are now licensed to provide services in about 90 percent of the United States. We have to get the last 10 percent of those licenses. We only serve, however, about 45 percent of the licenses in the

United States. In other words, we are still in the process of building out the licenses that we have acquired.

In the meantime, we have seen our competitors get much larger, particularly companies like Verizon that have grown by acquiring many other businesses. We need additional capital with which to compete. It is imperative for us to build out that national footprint in order for us to succeed. In order to do that, we need to raise capital. We went through a prolonged process to find that capital and we identified what we believed to be the best possible transaction, that which we have signed with Deutsche Telekom, which we believe benefits both consumers and our employees.

I can tell you, having raised money both domestically and from foreign companies and having merged or acquired a number of companies over the last nearly 20 years, that the review process, which in this case includes the Securities and Exchange Commission, the Department of Justice, the Committee for Foreign Investment in the United States as well as the Federal Communications Commission, works and works well.

We will be thoroughly scrutinized in a process that will be very time consuming. But the reviews are done on a case-by-case basis, and the conclusion will be reached based on the merits of our applications.

The proposed legislation is simply a categorical ban on our transaction and as such would deprive our consumers and, frankly, the consumers that utilize our competitor's services of the benefits of other prices and our employees and our future employees the benefits of the capital and the additional jobs we would create.

As a consequence, I ask you and urge you to reject the proposed legislation.

[The prepared statement of John W. Stanton follows:]

PREPARED STATEMENT OF JOHN W. STANTON, CHAIRMAN, DIRECTOR, AND CEO, VOICESTREAM

I appreciate this opportunity to testify about VoiceStream's experience with foreign investment in U.S. telecommunications companies. In our view, current U.S. policies on foreign investment in telecommunications companies like VoiceStream—including investment by companies with government ownership—are sound. American consumers, American companies, and American jobs would suffer if Congress were to categorically shut off investment in American companies by companies with more than 25% foreign government ownership.

Our current system for regulating foreign and foreign government investment strikes the right balance for American consumers and American workers and gives the United States government full authority to protect our country's legitimate interests in national security, trade, and fair competition. By contrast, pending legislation that would change the current system, including Senator Hollings' amendment to the Senate Commerce-State-Justice appropriations bill and the freestanding bills (S. 2793 and H.R. 4960), strikes the wrong balance. This legislation would unnecessarily and harmfully prohibit investment in U.S. companies that boosts competition, job growth, and consumer welfare.

There are five points that I want to emphasize in my testimony today.

First, VoiceStream is a foreign investment success story. We demonstrate the tremendous benefits that foreign investment can bring to American consumers and workers. VoiceStream is the fastest growing wireless company in the country, and it is the newest nationwide wireless company. But VoiceStream would not be a nationwide wireless carrier today and an aggressive new market entrant if we had been barred from raising significant investment capital from abroad.

Second, VoiceStream's merger with Deutsche Telekom, which we announced on July 24, 2000, will permit us to become an even more vigorous U.S. wireless competitor by accelerating our nationwide buildout, and by allowing us to bring improved

service to consumers. DT will give us the financial backing we need to become a leader in delivering next-generation, broadband wireless to American consumers.

Third, the big winners from our merger with Deutsche Telekom will be American consumers and American workers. Our customers will benefit directly, but all consumers win when there are numerous strong competitors. As this merger strengthens VoiceStream, it will force the five larger nationwide wireless carriers to work harder, too. And unlike many mergers, this merger will create American jobs—good, high-skill, high-paying jobs.

Fourth, legislation to prohibit companies with more than 25% foreign government ownership from indirectly owning a U.S. wireless telecommunications company simply isn't needed to protect U.S. national security and competition interests. We know from recent first-hand experience that our existing process is thorough and complete. The mergers of VoiceStream, Omnipoint, and Aerial were scrutinized by competition authorities at the Department of Justice and the FCC, and by national security agencies, because of the significant investment by Hutchison Whampoa, a Hong Kong company. We know that these agencies' review of our merger with Deutsche Telekom will be equally rigorous.

Fifth, the proposed legislation's inflexible ban on investment by companies with more than 25% foreign government ownership would needlessly jeopardize American trading and investment interests.

Let us review each of these points in more detail.

First, VoiceStream's story shows how foreign investment benefits American consumers and workers. I founded VoiceStream as a subsidiary of Western Wireless in 1994. And since that time, we have enjoyed phenomenal success as a result of our hard work. Western Wireless spun off VoiceStream as an independent company just last year.

VoiceStream is today the fastest growing, most dynamic nationwide competitor in the wireless marketplace. As of the end of June, we serve 2.5 million subscribers and employ over 8,300 people nationwide. Our phenomenal subscriber growth promises even more job growth in the months ahead as we build out and expand our service areas. Moreover, VoiceStream recently reached an agreement to acquire PowerTel, Inc., which operates a wireless network spanning 12 states in the southeastern U.S., in areas where VoiceStream currently does not market wireless services. As a result of the PowerTel acquisition, VoiceStream or its affiliates will hold licenses reaching 90% of the population of the United States, including 24 of the top 25 U.S. cities.

We have received industry awards and have been recognized for our innovation. Our e-notes service allows customers to send and receive short e-mails directly from wireless phones. Our InfoStream product allows subscribers to receive customized messages, such as sports scores, stock alerts, news headlines, and weather updates, all through wireless phones. Our customers are able to tailor the information they receive, based on their own needs and interests.

VoiceStream did not become the country's fastest-growing wireless company through government largess. Nor did we rely on local telephone, long distance or cable services communications businesses to generate large cash flows that could finance our growth. In 1994, we convinced private investors to risk their capital by investing in VoiceStream so that we could acquire licenses in FCC-conducted auctions. In the last year, we combined with smaller wireless companies including Omnipoint, Aerial Communications, and now PowerTel. Over the past five years, we had to raise capital to build out and operate these licenses. We raised money in the public and private, debt and equity markets in the United States but we could not meet all of our capital needs in the U.S. We also raised foreign capital from those willing to invest in our new network and assume these risks. Sonera, the Finnish telecommunications company that is majority owned by the Finnish government, invested nearly $1 billion, and Hutchison Whampoa, a Hong Kong-based telecommunications company, invested $1.2 billion.

Quite simply, without these foreign investments, VoiceStream would not be the substantial innovative, competitive presence in the U.S. wireless markets that it is today. VoiceStream's history demonstrates that foreign investment in the United States creates jobs and benefits American consumers.

Although we are proud of our successes, we never lose sight of the fact that we are a relative newcomer entering a brutal marketplace. More often than not, we are the sixth or seventh competitor entering markets to battle established carriers with significant brand identification and financial backing: Verizon Wireless, SBC/BellSouth, AT&T, Sprint, and Nextel. We succeed in signing up new customers every day. To stay competitive, we must constantly innovate, expand our service areas, and roll out more features at prices consumers demand, which requires more capital to expand our services areas and service offerings.

As a consequence, we arrive at my second point—the VoiceStream/DT merger makes sense for both VoiceStream and DT. First and foremost, VoiceStream and DT have a unique synergy. GSM technology has become the global wireless standard, but VoiceStream is the only nationwide U.S. carrier to use GSM. The merged company will be the first to offer state-of-the-art GSM technology in a seamless, worldwide network. One phone, one number, with worldwide service.

Despite our potential, VoiceStream is today an adolescent among adults—we have to raise money to buy more licenses, build more systems, and market our services. To be competitive, we need to own and operate a national wireless network. When completed, the PowerTel acquisition will fill one significant hole in the Southeast after which VoiceStream will be licensed to serve nearly 90% of the American people. We still need to purchase licenses to serve the remaining 10%, primarily in California and the Carolinas. With DT's backing we can compete effectively to acquire the licenses that will allow us to achieve nationwide coverage.

Over the past 5 years we have built nearly 10,000 cell sites and today offer service in about half of our licensed markets (including PowerTel). We need to continue to build and finish our build-out. DT's capital will enable us to complete our national build-out. To be competitive, we also must be a major player in the rollout of next generation, broadband wireless systems. Standing alone, we simply did not have the financial resources and scale of our competitors—who are this country's largest providers of local and long distance telephone service and cable service. Our merger with DT now gives us the resources to compete with these carriers.

DT's worldwide scale will give us the resources needed to introduce next generation broadband wireless services and will make us a stronger competitor in the U.S. We will not be alone in our ability to draw upon the lessons of Europe—Verizon undoubtedly will benefit from Vodafone's European experience and the BellSouth/SBC wireless venture will benefit from their extensive international investments.

In turn, this transaction allows DT to fill a hole in their worldwide network. Without us as its partner in the U.S., DT would be at a competitive disadvantage in Europe, where Mannesmann/Vodafone/AirTouch—which serves the U.S. market through Verizon Wireless—is one of DT's biggest competitors.

Third, the big winners from the VoiceStream/DT merger will be American consumers and American workers. American consumers will enjoy the benefits, as VoiceStream becomes a stronger, quicker, more efficient competitor. The merger will speed our buildout and accelerate the introduction of new mobile data applications, forcing our competitors to respond with better services of their own. Consumers will also benefit from global roaming, unified billing, and worldwide customer service, which we now will be able to offer them. VoiceStream is today the best value in wireless. The more we expand, the more Americans can benefit from the lower prices we offer.

Additionally, consumers will benefit from a new source of broadband Internet access as we introduce next-generation services. Today consumers have only two choices for broadband Internet access in their homes—monopoly telephone lines and cable modem service. Next-generation wireless will be the third high-speed Internet access alternative, which will expand the choices, and we would expect lower prices to consumers for high-speed Internet data service. This merger will accelerate the deployment of the broadband Wireless Internet and give consumers a true choice among providers of high-speed data.

Our accelerated network buildout and introduction of new services will spur job growth among American workers. The 8,300 jobs at VoiceStream today (which will rise to 10,900 after the PowerTel acquisition closes) are jobs that did not exist before VoiceStream and its predecessor companies built this new wireless network. We estimate that we will hire 2,000-3,000 more workers to expand our networks and increase our sales, marketing and customer-service support facilities to keep pace with this expansion. And these jobs will be in the U.S. Unlike automobile or textile manufacturing jobs, wireless operations are inherently local. Leadership, marketing, sales, network operations, and customer service staff all must be locally knowledgeable and available.

Fourth, the proposed legislation to change U.S. foreign ownership law is a solution in search of a problem. National security and competition are well protected under current laws, and there is no need to enact a categorical ban on investment by companies with foreign government ownership.

I know from personal experience that we have national security safeguards in place. VoiceStream has been through this process before, and has entered agreements with various national security agencies to preserve U.S. interests. The Exon-Florio Amendment to the 1988 Trade Act is the centerpiece of our current process for protecting our national security in the case of mergers involving foreign companies, whether or not foreign government ownership is involved. Under this law, the

Committee on Foreign Investment in the U.S. ("CFIUS") reviews foreign mergers, and mergers that raise national security concerns can be blocked or conditioned. Agencies involved in the CFIUS review process include the Departments of Commerce, Defense, Justice (including the FBI), State, Treasury and the National Security Council.

In the past year, VoiceStream negotiated a national-security agreement. That agreement also was made a condition of our licenses under the FCC's review and approval process. As a consequence, our failure to abide by those agreements would subject us to FCC fines or even license revocation. Since we cannot operate our business without these licenses, we have this additional strong incentive to comply with our national security commitments.

Other safeguards are in place today to address competition concerns. The Clayton Act requires the Department of Justice's Antitrust Division to review a merger such as VoiceStream/DT, to negotiate consent decrees to resolve anti-competitive problems, and to block the merger if any problems with the transaction cannot be remedied. The FCC must also approve the transfer of control of VoiceStream's wireless licenses, and reject it if it finds that the merger is not in the public interest.

Our previous mergers were thoroughly reviewed by both agencies, and VoiceStream will soon file for FCC approval of the PowerTel acquisition and the DT merger. As was the case with our previous mergers, the FCC will provide interested members of the public with the opportunity to express their views. The FCC will examine these comments, and will review our proposal for its effects on consumer welfare, national security, law enforcement, foreign policy, and trade. The FCC can deny or condition mergers that do not meet its public interest test.

Based on past experience, the government's review of the VoiceStream-DT merger will be detailed and rigorous, and will focus on the facts of this case. I am confident that these agencies will uncover no substantial issues of national security that have not already been substantially addressed by our existing agreements, and that they will conclude that this merger is overwhelmingly pro-competitive. In my opinion, a case-by-case review is the appropriate approach. The proposed legislation, on the other hand, would create a rigid, categorical percentage threshold that would tie the hands of U.S. governmental officials. They would be left with no discretion to approve a specific transaction even if the facts showed it to be a good deal for the American people.

With that background, I will address some of the facts concerning the VoiceStream/DT merger. The VoiceStream/DT merger is pro-competitive. It will strengthen the smallest nationwide wireless carrier and allow VoiceStream to enter new markets and provide new services. The merger will not concentrate market share among existing operators in the same local markets, as DT and VoiceStream have no overlapping service areas. It will not reduce service offerings in the U.S., in Europe, or anywhere else—in fact, it will increase them. The VoiceStream/DT merger simply makes VoiceStream a stronger competitor in the U.S. wireless marketplace.

Even though the German government will have a significant ownership stake in the combined company, it will not exercise *de jure* or *de facto* control over VoiceStream. DT is a private corporation organized under German law, not an agency of the German government. The German government does not manage DT, and, in fact, holds only one of twenty seats on DT's board of directors.[1] The German government has consistently voted with DT's management and other board members, and holds no special right to veto corporate decisions. The German government's directly-held share of DT has fallen from 100% in 1995, to 75% in 1996, to 43.2% today (with another 15% held in trust by a German public bank for sale as market conditions permit). If this merger closes, the German government will directly hold only 32.7% of the new company, with another 11.3% indirectly held by the bank. In fact, this type of merger is the quickest way for the government to reduce its ownership share of DT. To reduce the German government's stake to 25% via stock sales would require an IPO *four times larger* than AT&T's record-setting wireless IPO last spring.

DT is not backed by government credit, government subsidies, government guarantees, or government tax preferences. There is also no objective marketplace evidence of any implicit credit guarantee. According to Standard & Poor's, DT's credit rating is identical to BellSouth's, SBC's and AT&T's, and lower than British Telecom's. Based on work undertaken for VoiceStream by Goldman Sachs, DT's cost of borrowing is greater than that of AT&T, Worldcom and BellSouth—all of which are smaller than DT. As a publicly traded corporation, DT is audited regularly and

[1] Kreditanstalt fur Wiederaufbau ("KfW"), a public bank that is a private corporation under German law, also has a single seat on the board.

subject to all EU and German corporate laws. Indeed, the receipt of favorable government treatment would violate DT's corporate charter, as well as EU and German laws.

Even if DT were somehow aided by the German government—which it is not—it would be impossible for DT to harm competition in the U.S. by cross-subsidizing VoiceStream. The U.S. wireless market is highly competitive and VoiceStream is tiny when compared with the other nationwide wireless networks—all of which have very significant financial backing and resources. Even if it were somehow possible to engage in cross-subsidization in the U.S. (which it is not), German market conditions and German regulations preclude DT from charging monopoly prices to generate money for such efforts.

DT faces substantial competition in German wireless markets, where DT is not even the largest wireless provider (Mannesmann/Vodafone is larger). BellSouth is another major wireless competitor in Germany through its investment in E-Plus. In the long distance market, in which many U.S. companies actively compete today, DT has lost 40% of its market share. In local telephone services, DT is subject to stringent regulation, both by the German government and by the European Union. T-Mobile International ("TMO"), the DT subsidiary that VoiceStream would join after the merger, is a structurally separate entity from DT's wireline local telephone operation. Under German law, TMO must maintain a separate set of accounts from the wireline operations. Moreover, TMO is subject to rules that require arm's length transactions and structural separation which creates transparency of financial relations and enables German and European Union regulators to detect cross-subsidies easily.

In sum, there are simply no unfair competitive advantages created by the DT/VoiceStream merger. This merger is overwhelmingly pro-competitive and pro-consumer.

Fifth, the Hollings Amendment would needlessly jeopardize American interests abroad. Under the WTO Basic Telecom Agreement, the U.S. made a commitment to open international investment and competition. VoiceStream has relied on those commitments as it has sought to raise the financing necessary to fill in gaps in its national service areas, to complete its U.S. build-out, and to make the investments necessary to bring next- generation broadband wireless services to market. Changing the rules of the road after the race has started is simply unfair.

More broadly, this legislation endangers all U.S. companies' foreign investment opportunities, because we believe that the proposed law would violate U.S. WTO commitments. The U.S.' WTO commitment was explicit and unequivocal: when addressing whether there would be limitations on indirect foreign ownership of common carrier wireless licenses, the U.S. stated simply "None." The Congressional Research Service has concluded that the proposed legislation is likely to violate U.S. market-opening commitments under the WTO and will subject us to a challenge under WTO rules. This legislation would undoubtedly undercut efforts by U.S. trade negotiators to encourage other countries to liberalize their foreign investment and trade laws.

VoiceStream is not alone among American interests in opposing this unnecessary and unwise legislation. Other opponents include groups as disparate as the U.S. Chamber of Commerce and the Communications Workers of America. Harris Miller, President of the Information Technology Association of America put it succinctly: "[The legislation] is a protectionist measure, which could hamstring the robustness of our digital economy. The idea just doesn't connect with the reality of the global marketplace . . ."

Conclusion. The VoiceStream/DT transaction will benefit American consumers by offering them lower prices and better services, and will create new American jobs. Categorically banning investment in the U.S. telecommunications sector by companies with more than 25% foreign government ownership will hurt American consumers, American workers, and American companies at home and abroad. The current process by which mergers of this type are reviewed by CFIUS, DOJ, and the FCC provides ample means to protect fundamental U.S. interests in national security and fair competition. We look forward to working closely with these agencies during this review process, and we look forward to fulfilling our potential as a strong new competitor in the marketplace.

Thank you for this opportunity to testify on such an important public policy issue.

Mr. SHIMKUS. Thank you very much.

I will now turn to Mr. Bahr, president of the workers communications of America. Again, welcome; and you have 5 minutes.

STATEMENT OF MORTON BAHR

Mr. BAHR. Thank you, Mr. Chairman.

I really appreciate this opportunity to address this issue, perhaps from a different perspective than what we have heard during the day. We believe there is ample room in the U.S. telecommunications market for competition from foreign-owned firms, including firms partially owned by foreign governments without jeopardizing U.S. jobs or our national security.

This conclusion is based on three factors: First, telecommunications is already a global market. Foreign firms have competed in the U.S. market since the break-up of the Bell system in 1984, and U.S. firms are entering foreign markets at an astonishing rate. Our policy should support these trends.

Second, the European Commission has demanded that European Union countries open up their local phone networks by the end of this year. Germany has already done so. France, Italy, Spain and Sweden plan to do so by the end of the year.

This proposed legislation could well invite retaliatory reaction from the EU just at a time when we are on the threshold of making a major breakthrough in Europe.

Third, the national security implications of foreign ownership are given sufficient scrutiny and protection under already existing regulations, as has already been testified to.

Finally, Mr. Chairman, the principles which should guide decisions about whether a firm should be permitted to do business in our country must be whether that firm meets high standards for the delivery of quality universal service, whether it will contribute to building the Nation's communications network through investment and job growth, and whether its employment practices reflect respect for workers' rights.

These standards should be applied in all merger and take-over situations, regardless of the firm's ownership status.

Mr. Chairman, in a competitive telecommunications market telecommunications policy should support success in the new competitive global market that is based on superior technology and excellent service. Achieving these goals does not depend on whether a competitor is partially government-owned or not. Indeed, we have much to learn from foreign corporations.

For example, the German system of co-determination creates a corporate culture that protects the interests not only of shareholders but also of workers in their communities. It is a far more democratic culture than ours, one that has created restrained and reasonable compensation packages for top executives and one which provides for worker participation at the highest levels of the corporation's supervisory structure.

In the telecommunications industry, the presence of Deutsche Telekom in our marketplace would yield substantial benefits for workers and consumers. DT is a good employer and good corporate citizen, serving the public interest while providing outstanding service and quality products. DT recognizes the rights of workers to form and join labor unions and honors its collective bargaining agreements and enjoys a positive relationship with a union that represents its workers. Our union welcomes DT to the U.S. and believes it will create a positive, competitive dynamic in our market.

I also want to point out that the German Government's share of DT will decrease over time by design. Deutsche Telekom, as we understand it, is undergoing a transformation to a 100 percent privately held stock corporation. And if the concern of the proposed legislation is primarily with corporate governance as opposed to ownership, then there is even less cause for concern.

Representatives of the German Government hold only two seats on DT's 20-member supervisory board and none on the management board. The union holds 10 of the 20 seats. They, in turn, appoint the management committee. The shareholders play no role in the selection of the supervisory board or the management committee.

So, in conclusion, I believe the U.S. telecommunications market has much to learn and much to gain from foreign competition, regardless of ownership. Business and consumers will benefit from expanded choice and access to the global market. Workers will benefit from the fusion of U.S. technology, outside capital and respect for workers' rights evident in many foreign corporations. Policymakers should take care not to exclude from our market foreign corporations who provide excellent models for future progress solely because they happen to be partially owned by a government.

Thank you, Mr. Chairman.

[The prepared statement of Morton Bahr follows:]

PREPARED STATEMENT OF MORTON BAHR, PRESIDENT, COMMUNICATIONS WORKERS OF AMERICA

Good afternoon, Mr. Chairman. I am Morton Bahr, President of the Communications Workers of America, AFL-CIO. Our union represents 650,000 workers in a variety of communications jobs, including telephone, wireless, broadcast and print. We also represent tens of thousands of public sector, health care and airline workers. Thank you for inviting me to speak today on the issue of foreign investment in U.S. telecommunications companies.

We hold that there is room in the U.S. telecommunications market for competition from foreign-owned firms, even firms owned by foreign governments. This conclusion is based on three factors. First, telecommunications is already a global marketplace; foreign firms have already landed on U.S. soil and in our airwaves, and U.S. firms have entered foreign markets at an astonishing rate. Second, protectionist legislation at home could provoke retaliatory measures that would impede our progress in the global market. Third, the national security implications of foreign ownership are given sufficient scrutiny and protection under already-existing regulations.

Finally, the principles which should guide decisions about whether a firm should be permitted to do business in our country must be whether the firm meets high standards for the delivery of quality, universal service, whether it will contribute to building the nation's communications network through investment and job growth, and whether its employment practices reflect respect for workers rights. These standards should be applied in all merger and takeover situations, and should be met, regardless of the ownership status of the owner, foreign or otherwise.

Mr. Chairman, I'd like to say a few words about each of these points.

As I mentioned before, today, telecommunications is a global marketplace. Foreign firms have acquired large US communications companies with US government cooperation. The IRS waived US tax rules to facilitate the acquisition of AirTouch by UK-based Vodafone. Frontier Communications was acquired by Global Crossing of Bermuda. Teleglobe of Canada acquired Excel Communications. Telmex, which was previously government owned, acquired Comm South Companies based in Dallas, Texas, and Topp Telecom Inc. based in Miami. All these foreign acquisitions of American companies occurred in 1999. Deutsche Telekom and France Telecom have long owned 20% of Sprint Corporation and each company has a member on the Sprint Board of Directors.

Not only have foreign firms come to the U.S., but virtually all major U.S. telecommunications companies have expanded abroad. For example, AT&T has operations in Britain, Canada, China, Japan, Luxembourg, Spain, and Germany, to

name a few. In addition, most companies have direct investments in foreign government controlled or previously foreign government owned communications companies. For example, SBC and government-controlled France Telecom have a joint investment in Telmex. Verizon has ownership interests in dominant telecom companies and cellular properties in Mexico, Italy, Greece, Czech Republic, Slovakia, Indonesia and New Zealand, properties that previously had been government-owned.

The transformation of telecommunications into a borderless, global market has accelerated in the last few years. A 1997 World Trade Organization accord, to which the U.S. is a signatory, helped spur the evolution. We, along with the other signatory nations, agreed to open our telecommunications markets to foreign companies, including government-owned companies. FCC rules which had restricted transfer of broadcast and common carrier licenses to foreign-owned entities were relaxed to allow foreign investments when the transaction is in the public interest.

Proposals to prevent foreign government-owned companies from investing in U.S. telecom companies fly in the face of this agreement. The European Commission has already made clear that our failure to honor the accord could result in retaliatory moves by other countries and the World Trade Organization to block US companies from entering foreign markets. Such restrictions imposed against U.S. companies could limit their ability to gain a foothold in the global marketplace, and curtail their ability to gain the scope and size necessary to compete globally.

The concerns about national security that underlie the proposed legislation are honorable, but there are sufficient safeguards in place already to protect national security and assure a level playing field for competitive telecommunications. The Department of Justice and FBI are required to review the purchase of US telecommunications firms by foreign entities to determine whether the purchase agreement would affect national security or law enforcement concerns. They can make modifications to such agreements, if it is deemed necessary to protect the national interest. The Department of Defense may also participate in the process. The FCC is required to give special scrutiny to any telecommunications purchases by foreign countries to determine if they pose a risk to competition or to public interest.

In addition, the Committee on Foreign Investment in the United States (CFIUS) is required to conduct a separate national security review of US acquisitions by foreign companies. CFIUS includes representatives from the Treasury Department, The Departments of State, Commerce, Defense, and Justice as well as other governmental agencies.

Just two weeks ago, CFIUS cleared Japan's Nippon Telegraph and Telephone Corporation (NTT) bid to take over Verio, Inc., an internet company. Japan's federal government owns more about 53 percent of NTT. As part of the CFIUS review, NTT agreed to strengthen Verio's handling of law enforcement requests for access to its networks. In addition, in accordance with world trade agreements, the Japanese Ministry of Finance will offer up to 1 million NTT shares to reduce its stake to about 46.7 percent. This recent experience demonstrates that current procedures are sufficient for assuring national security and for accommodating the needs of competitors in the global marketplace.

Our experience convinces us that the telecommunications market is already global, and recent developments demonstrate that procedures are in place to assure national security. Therefore, policy makers and law makers should focus their attentions on the key remaining issues relevant to an advancing telecommunications market—service and product quality and worker rights.

In a competitive telecommunications market, public policy should require that competitors within the market operate in ways that advance the nationwide telecommunications system and enhance employment opportunities within it. This is what CWA has long espoused. Telecommunications policy should promote quality, universal service, encourage network investment, assure competitive neutrality and provide for the growth of good union jobs. Policy should support the notion that success in the new competitive global market should be based on superior technology and service, not on depressed labor costs or neglect of service quality. The achievement of these goals is not dependent upon whether a telecommunications competitor is government-owned.

As a matter of fact, preventing foreign government-owned companies from entering the U.S. market could deny U.S. consumers the benefits of quality competitors. U.S. consumers, workers and shareholders could gain from the cross-pollinization of some characteristics of foreign markets.

For example, while U.S. corporations generally have a single board of directors responsible for managing the affairs of the corporation, German law governing corporate legal structures requires corporations to have a two-tier system of governance. There is a supervisory board and a management board. The supervisory board is the larger of the two. Under German law, one half of the supervisory board mem-

bers are elected by employees to be worker representatives and one-half are elected by shareholders to represent those interests. The management board has responsibilities for all management decisions and negotiations with third parties. The supervisory board, including the worker representatives, appoints members of the management board and has the authority to remove them. The supervisory board monitors the management board's activities, receives regular reports from the management board, and can require prior approval of some business decisions.

The German system of co-determination has given rise to a corporate culture that protects the interests not only of shareholders, as is the case in the U.S. business environment, but also of workers and their communities. It is a more democratic culture than ours. For example, among the differences between U.S. firms and foreign firms is the level of executive compensation. According to *Business Week's* annual survey, the average CEO of a major corporation made $12.4 million in 1999, up 17 percent from the previous year. That's 475 times more than an average blue-collar worker. According to another executive compensation report conducted by the consulting firm of Towers Perrin, German CEOs make 13 times what the average manufacturing employee makes. In Japan, the CEO-to-worker pay ratio is just 11-to-one. There is no doubt in my mind that the egalitarian culture of foreign corporations, with the oversight by worker participation on supervisory boards and through works councils, has resulted in more restrained and reasonable compensation packages for executives.I believe the U.S. corporate culture could be vastly improved by borrowing some of these characteristics of markets from abroad. The recent merger of Daimler-Chrysler will provide a first hand look at the marriage of different cultures. The 10 labor members of that company's 20-member supervisory board will include one representative from the United Auto Workers.

In the telecommunications industry, the presence of Deutsche Telekom (DT) in our market place could yield some substantial benefits for workers and consumers. Deutsche Telekom is a good employer and good corporate citizen, offering corporate strategies and programs that serve the public interest in Germany. If Deutsche Telekom successfully enters the U.S. market, it will create a positive competitive dynamic in the US telecommunications industry.

DT has spear-headed a very low fee structure for educational institutions in Germany, and has enabled every school there to be wired for internet access. DT is committed to making new technology available to everyone. Thus, DT is committed through action and practice to principles of universal service and to closing the digital divide. The worker voice on the DT supervisory board helped to set the corporate compass in this positive direction.

DT recognizes the rights of workers to form and join labor unions and honors its collective bargaining agreements. As a result, the company enjoys a very positive relationship with the union that represents its workers. This is in stark contrast to major telecommunications carriers like AT&T, WorldCom and Sprint, each of which has an active program to fight worker attempts to organize. If the boards of U.S. telecommunications companies were structured along the lines of Deutsche Telekom, I believe we would spend less time fighting for the rights of union workers to jobs in emerging technologies and more time building a cutting edge telecommunications infrastructure.

However, U.S. consumers and workers would be denied the benefits offered by such a desirable firm if recent legislative proposals are enacted. These proposals would prohibit a foreign-company with more than 25 percent government ownership from merging with or purchasing a U.S. telecommunications company. Currently the federal government owns about 60 percent of the share capital of Deutsche Telekom. Thus, under proposed legislation, it would be blocked from purchasing any U.S. telecommunications firm. Since Deutsche Telekom has recently made an offer to buy Voicestream, this is a very relevant issue for workers and consumers in the U.S.

In fact, though, the German Government's share of DT will decrease over time by design. Formerly 100 percent government-owned, Deutsche Telekom is undergoing a transformation to a totally private stock corporation. If the concern of the proposed legislation is primarily with corporate governance, as opposed to ownership, then there is even less cause for concern. Representatives of the German Government hold only two seats on DT's 24 member Supervisory Board, and none on the management board. Their votes and voice count no more than the worker representatives on the board.

In conclusion, I believe the U.S. telecommunications market has a lot to learn and a lot to gain from inclusion of foreign-owned companies. Consumers could benefit from the expanded choice and access to the global market. Workers could benefit from the fusion of U.S. technology and resources with the truly democratic governing structures and respect for workers rights evident in foreign corporations. Pol-

icy makers should take care not to exclude from our midst firms who may actually provide excellent models for progress.

Mr. SHIMKUS. Thank you, Mr. Bahr.

We will next move to Mr. Sidak——

Mr. SIDAK. Sidak.

Mr. SHIMKUS. [continuing] Weyerhaeuser Fellow in Law and Economics. Again, your written statement is already in the record, and you are recognized for 5 minutes.

STATEMENT OF J. GREGORY SIDAK

Mr. SIDAK. Thank you.

I would like to tailor my remarks to some of the points that Mr. Cox and others were making a few minutes ago about the need for some kind of framework for analyzing the effects of investment by firms that are partially government-owned on producers and consumers in the United States and to talk about how the government ownership issue affects that.

The first and I think biggest question to ask is, does the consumer benefit of direct foreign investment in telecommunications not obtain when the investing company is partly owned by a government? We have heard from Mr. Stanton what some of the benefits would be. I would add that when you have a company the size of Deutsche Telekom coming in and competing against incumbent American wireless companies through its investment in VoiceStream there will be a substantial impact in terms of price competition and quality competition.

Does the ownership stake of the German Government and the German reconstruction bank in Deutsche Telekom negate any of those consumer benefits? Obviously, they do not.

So then we move on to the next question. Does that investment in some way have an effect on U.S. producers? Yes, it does. It clearly benefits some interests of American producers. So even if our concern is not consumers but rather, then, producers, we need to ask what are the effects on those different producer constituencies.

Well, certainly for VoiceStream and its shareholders it is a clear benefit; and I would argue so is the case for other carriers that look like VoiceStream that might be potential candidates to fill out the footprint of GSM service in the United States so that it can be matched with the footprint in Europe and elsewhere.

A second constituency are large business users of telecommunications services. If there is the downward price effect on services, then I would predict clearly big users of telecommunications services like banks, insurance companies and so forth would benefit.

A third group is U.S. manufacturers of wireless telecommunications equipment. They are a very good proxy for consumer welfare. When prices go down and output expands, you need to sell more handsets, more switches, more base stations; and that means more sales, more profits, more employment for those equipment manufacturers.

Finally, the fourth category of producers in the U.S. that would be affected are incumbent wireless carriers. Clearly, they are not going to benefit from a large new competitor coming into the market. Is that something to complain about? Well, not under the American ethic of free enterprise. We revere competition, and the

reduction in the profits of incumbent wireless carriers because they would face greater competition is not something that they have good standing to complain about.

There is another issue involved here, and that is there will be upcoming auctions for additional spectrum, for third-generation and other spectrum. The entry of Deutsche Telekom through the investment in VoiceStream will make it a more robust bidder for the spectrum that the FCC will sell, and that means more revenues for the U.S. Treasury. If you are an incumbent wireless carrier in the United States, you would wish not to bid as much for your new spectrum. That is clearly a benefit of this kind of investment.

Now, is there any potential negative effect on incumbent wireless providers on their profits as a result of this kind of foreign investment, something that would be anticompetitive? We have heard about possible theories today. They have not been too specific, and I would like to address a couple and set to rest certain misconceptions. One, is there some kind of strategy that VoiceStream through the investment that Deutsche Telekom will bring to it could engage in that would rely on its having subsidized capital? Here the facts clearly say no.

In my prepared remarks in table 1 on page 12, I list the credit ratings for various global telecom companies as well as the credit rating of the German Government. The German Government gets a triple A rating from Standard & Poor's. Deutsche Telekom gets an AA minus, a considerably lower credit rating, one that is identical to Verizon, for example. That is evidence that there is not a credit subsidy.

A second piece of evidence that confirms that there is no credit subsidy is on page 14, table 2 of my prepared testimony. Here I have calculated the weighted average cost of capital for various major telecom companies and they are in descending order, and I also include the percentage government ownership as of September 2000 for all of those companies. Two things should be drawn from the table. No. 1, Deutsche Telekom at a weighted average cost of capital at 12.8 percent is higher than Sprint, SPC, AT&T, Bell South and Verizon. It is not lower; it is higher.

Second, if you look at the column of government ownership, there is absolutely no correlation between the cost of capital and the percentage of government ownership. So if there is a theory there, it is not borne out in this evidence.

So I think we can set to on side any theory of anticompetitive behavior that is predicated on subsidies to capital.

We have also heard that because Deutsche Telekom is currently in the process of privatization, that its regulator may not be as aggressive as it should be. I have summarized on page 20 and 21 in table 3 of my testimony key elements of the market entry conditions and the regulatory conditions in both the United States and Germany so they can be compared side by side. I won't go into them now—they are far too detailed—but every picture is worth a thousand words, and so I ask you to look on page 22 at figure 1.

Mr. SHIMKUS. We need to summarize.

Mr. SIDAK. It shows the decline in the marketshare which Deutsche Telekom has experienced since 1997 compared with the decline in the long distant market share that AT&T experienced be-

tween 1984 and 1997. It took AT&T 3½ years to get to a 70 percent market share. It took Deutsche Telekom 1 year in terms of the opening of the market. It took 9 years for AT&T to get to 60 percent and 2 years for Deutsche Telekom.

These are anecdotal pieces of evidence that tend to elaborate on this question of how open the German market is. I will stop at that point and invite questions. Thank you.

[The prepared statement of J. Gregory Sidak follows:]

BEFORE THE
SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE, AND CONSUMER PROTECTION
COMMITTEE ON COMMERCE
U.S. HOUSE OF REPRESENTATIVES

Oversight Hearing on

FOREIGN GOVERNMENT OWNERSHIP OF AMERICAN TELECOMMUNICATIONS COMPANIES

TESTIMONY OF J. GREGORY SIDAK

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September 7, 2000

Introduction

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Appendix: Qualifications

INTRODUCTION

Thank you, Mr. Chairman, for inviting me to testify before the Subcommittee. I am appearing today as a public policy consultant to Deutsche Telekom AG, a company to which I have consulted in the past on European regulatory matters. My views should not be attributed to the American Enterprise Institute, which does not take institutional positions on individual legislative matters.

My views on today's topic are shaped by my experience as Deputy General Counsel of the Federal Communications Commission (FCC) from 1987 to 1989 and from the subsequent research that I conducted while writing my book, *Foreign Investment in American Telecommunications*, published by the University of Chicago Press in 1997.

I would like to offer an economic perspective on the topic of today's hearing. Because there are currently several different legislative proposals to limit foreign government ownership of American telecommunications companies, I will make my comments as general as possible. I would like to address five questions:

1. Do the consumer benefits of direct foreign investment not obtain when the investing company is partially owned by a government?
2. Does foreign government investment harm U.S. producers?
3. Can existing procedures adequately scrutinize U.S. acquisitions by a company partially owned by a foreign government?
4. Does foreign government investment harm U.S. national security?
5. Would it harm international trade for Congress to enact a blanket ban on any acquisition of a telecommunications carrier by a company partially owned by a foreign government?

I will make clear when my analysis refers specifically to any particular legislative proposal or specifically to Deutsche Telekom's acquisition of VoiceStream Wireless Corporation.

SUMMARY OF CONCLUSIONS

In Part I of my testimony, I explain why the consumer benefits of direct foreign investment are unaffected when the investing company is partially owned by a government. Foreign direct investment increases competition in the market for telecommunications services in the United States, increases the supply of capital in the United States, and generates beneficial spillovers for U.S. telecommunications firms. Because each of these benefits is unrelated to the nature of the shareholders of the investing company, the partial government ownership of Deutsche Telekom cannot prevent those benefits from accruing to U.S. consumers.

In Part II, I explain how economics can be used to predict the likely winners and losers created by Deutsche Telekom's investment in the U.S. telecommunications sector. An invigorated VoiceStream, with access to Deutsche Telekom's technology, expertise, and resources, will provide increased competition in the provision of wireless services in the United States. Consumers benefit from increased competition in the form of improved services, lower prices, or both. The U.S. Treasury should also benefit from VoiceStream's ability to compete more effectively in upcoming spectrum auctions as the company seeks to complete the footprint necessary to offer truly national service.

To ensure that my analysis is complete, I examine a different, anticompetitive hypothesis that could explain any decline in the market value of U.S. incumbent wireless carriers. That alternative must be rejected, however, because Deutsche Telekom cannot engage in predatory pricing and cross-subsidization in the U.S. wireless telecommunications market. Deutsche Telekom does not benefit from subsidized capital. Its bond ratings and weighted-average cost of capital are inconsistent with the credit-subsidization hypothesis. Moreover, Deutsche Telekom does not have the *opportunity* to engage in predatory behavior because (1) Deutsche Telekom must pursue profit maximization, (2) Deutsche Telekom's fiduciary duties reinforce profit

maximization, and (3) in Germany, Deutsche Telekom faces competitive telecommunications markets as well as effective and transparent regulation. Finally, I demonstrate that Deutsche Telekom does not have the *incentive* to engage in predatory behavior in the U.S. wireless telecommunications market largely due to certain characteristics of the wireless telecommunications industry. In particular, the low variable costs and durability of spectrum ensure that no predatory policy would ever pay off in the long term.

In Part III of my testimony, I demonstrate that existing procedures adequately scrutinize U.S. acquisitions by a company partially owned by a foreign government. If legitimate concerns exist about the economic incentives of such an acquiring firm, those concerns militate in favor of a thoughtful examination of the issue in the public interest proceeding at the FCC or the merger review proceeding at the Department of Justice (DOJ). The FCC and DOJ review processes are competent to analyze such concerns. In contrast, a blanket prohibition on acquisitions by firms with partial government ownership would be unnecessary and ill-advised.

In Part IV, I explain why Deutsche Telekom's acquisition of VoiceStream cannot harm U.S. national security. There is no basis to suppose that, in the discharge of its duties under the Exon-Florio Amendment, the Committee on Foreign Investment in the United States (CFIUS) will fail to identify true threats to American security that would arise from acquisitions by foreign entities. The FBI has continued its vigilance in recent negotiations in connection with NTT's acquisition of Verio, an Internet service provider; British Telecommunications' proposed acquisition of MCI in 1997; and Vodafone's acquisition of AirTouch last year. Deutsche Telekom's acquisition of VoiceStream, like the prior ones, will be subject to careful CFIUS and FBI review, and will not go forward until those agencies are satisfied.

In Part V, I explain how a congressional ban of every acquisition of a telecommunications carrier by a company partially owned by a foreign government would harm

U.S. international trade interests. The United States engages in more trade than any other country and reaps substantial benefits from trade, including trade in the telecommunications sector. Under the WTO Basic Telecommunications Agreement, WTO members have agreed to open their markets and implement a set of procompetitive regulatory principles modeled on the U.S. experience. A ban on foreign government ownership would violate the WTO Agreement and put at risk investments that U.S. companies have made to gain access to those markets. It would also provide an easy excuse for countries to roll back their commitments to privatize government-owned carriers and liberalize their markets.

I. DO THE CONSUMER BENEFITS OF DIRECT FOREIGN INVESTMENT NOT OBTAIN WHEN THE INVESTING COMPANY IS PARTIALLY OWNED BY A GOVERNMENT?

American consumers gain from foreign direct investment in the U.S. market for telecommunications services. That is so for at least three reasons. First, foreign investment can increase competition in the market for telecommunications services in the United States and thus improve quality and decrease prices for American consumers.

Second, foreign direct investment increases the supply of capital in the United States. That influx decreases the cost of capital for U.S. telecommunications firms—particularly the riskier upstarts—and thus enables them to fund greater levels of expansion and service enhancements than would be possible in the presence of a higher cost of capital. A lower cost of capital eventually works its way into lower prices, which again benefits U.S. consumers.

Third, foreign direct investment may generate beneficial spillovers for U.S. telecommunications firms. Those benefits consist of the transfer of new technology and management practices to U.S. firms and their workers. Americans may be accustomed to thinking that U.S. firms consistently are in the vanguard of new technologies. Certainly, in the case of wireless telecommunications services, however, several other nations are more advanced than the United

States in terms of customer penetration and the breadth of service offerings. Again, these spillovers of technology and management expertise benefit U.S. consumers.

There is no reason to believe that these significant benefits to U.S. consumers from foreign investment would not accrue if the foreign firm making the investment were still undergoing the process of privatization. Each of these benefits is unrelated to the nature of the shareholders of the investing company.

Let me now speak briefly of some specific consumer benefits that will flow from Deutsche Telekom's acquisition of VoiceStream. (All of my points hold with even greater force when VoiceStream's recently announced acquisition of Powertel, Inc. is considered.) The combination will allow VoiceStream to compete more effectively with U.S. incumbent wireless carriers. The combined global GSM footprint of VoiceStream in the United States and Deutsche Telekom in Europe will allow U.S. customers to have a worldwide voicemail access number by using a global numbering system, and pre-paid service purchased in one country will be usable in other countries. Furthermore, to the extent that the transaction can enable VoiceStream to achieve cost savings, VoiceStream will more readily enter new markets and thus induce competitors to lower their prices. Moreover, lower marginal costs resulting from the merger will enable VoiceStream to lower its prices, which, in turn, will induce its wireless competitors to lower their prices. The resulting lower U.S. wireless prices will generate substantial consumer surplus. VoiceStream's acquisition of Powertel will accentuate these benefits by filling out VoiceStream's footprint in the United States.

II. DOES FOREIGN GOVERNMENT INVESTMENT HARM U.S. PRODUCERS?

Some might argue that the benefits to U.S. consumer welfare from investment by companies with foreign government partial ownership come at the expense of U.S. companies.

Put in economic terms, do the gains in consumer welfare come at the expense of producer welfare?

To begin to answer that question, one must immediately ask two more. First, which constituencies of American producers benefit or suffer from the foreign investment in question? Second, if a particular constituency of American producers suffers as a result of the foreign investment, is that harm something from which those producers have a legal right to be protected?

A. Which Producers?

To make my discussion easier to follow, let me now speak specifically about the acquisition of VoiceStream by Deutsche Telekom. There are four identifiable constituencies of producers affected by the transaction. Three of them clearly benefit. The fourth does not, but for reasons that should not raise policy concerns.

1. VoiceStream, Other GSM Carriers, and Their Shareholders

VoiceStream and its shareholders obviously benefit from Deutsche Telekom's acquisition. (The same is true of Powertel and other wireless carriers that use the GSM standard.) VoiceStream will be a more effective competitor, and the increased value of the company is reflected in the premium that Deutsche Telekom will pay over VoiceStream's previous market price. That premium would evaporate if the government were to block investment by Deutsche Telekom on the ground that it is partially owned by a foreign government during the remaining process of privatization.

2. Major Business Users of Wireless Telecommunications

American companies that are major users of wireless telecommunications services will benefit from the acquisition of VoiceStream by Deutsche Telekom because, as explained above,

the transaction will lead to more intense competition over price, quality, and service innovations. For these firms, the cost of an important input will fall and the quality of service will rise.

3. U.S. Manufacturers of Wireless Telecommunications Equipment

U.S. manufacturers of telecommunications equipment will benefit from Deutsche Telekom's acquisition of VoiceStream. An acquisition that leads to lower prices and raises output of wireless services in turn increases the demand for complementary equipment, including handsets, base stations, switches, and the like. The expanded demand for telecommunications equipment is a good proxy for consumer-welfare effects in the telecommunications services market.

4. Incumbent Wireless Carriers

Finally, incumbent wireless carriers in the United States clearly will suffer from Deutsche Telekom's acquisition of VoiceStream. The competitive effects on incumbent wireless carriers come from two distinct sources.

First, the incumbents will face more competition for customers and thus face downward pressure on prices. Second, in future spectrum auctions, the incumbents will confront a more robust bidder and thus face upward pressure on the amounts that they must pay the U.S. Treasury for spectrum. Neither of those results, however, is one that the incumbent U.S. wireless companies have standing to complain about. Both effects flow from more vigorous competition.

The effects of the VoiceStream acquisition on competitive pricing of wireless services is simple to understand. The effects of the acquisition on spectrum auctions may be less obvious. Deutsche Telekom's presence as a bidder in future U.S. auctions for third-generation (3G) spectrum will increase receipts to the U.S. Treasury by inducing higher bids from VoiceStream. This effect is clearly a public-interest benefit to U.S. taxpayers from Deutsche Telekom's entry into the U.S. wireless market through its acquisition of VoiceStream. The idea that such revenues

will be higher as a result of VoiceStream's acquisition by Deutsche Telekom finds support in auction theory. In an ascending-bid, English-style auction, which has been used by the FCC to allocate spectrum, the dominant strategy for a bidder is to remain in the auction until prices reach the bidder's estimate of the value of spectrum.[1] The valuation of a wireless carrier is simply the discounted present value of the difference between its expected revenues and its expected costs. To the extent that Deutsche Telekom's acquisition of VoiceStream raises the latter's expected revenues (by attracting a larger share of the business sector of the U.S. wireless market) or lowers its expected costs (by reducing international roaming fees or reducing equipment costs) or brings new services, VoiceStream's valuation for spectrum would rise. Thus, an invigorated VoiceStream will raise the price of spectrum for U.S. incumbent wireless carriers.

B. Could the Negative Effect on Incumbent Wireless Carriers Result from Anticompetitive Behavior?

Let me now address the main question that Deutsche Telekom's acquisition of VoiceStream presents: Could losses to U.S. incumbent wireless carriers result not from greater competition, but from anticompetitive behavior that is unique to an entrant that has partial government ownership? Policy makers in the United States might have two kinds of competitive concerns about a firm *wholly* owned by a foreign government entity.

First, the bonds of the firm may be backed, explicitly or implicitly, by the full faith and credit of the foreign government, thus allowing the firm to borrow more cheaply than a company that faces some prospect of failure. Consequently, the firm might enjoy an artificially low cost of capital relative to totally private firms.

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1. This strategy assumes that marginal valuations are decreasing for all bidders in the number of licenses won. If marginal valuations are increasing, then such a strategy may no longer be dominant. For a general review of auction theory, see Paul R. Milgrom, *Auction and Bidding: A Primer*, 3 J. ECON. PERSP. 3 (1989).

Second, the government-owned firm may cause the regulator in the firm's home market to be lenient toward the firm. As a consequence, the foreign market may not be open to competition, such that a government-owned firm might be able to cross-subsidize its entry into the U.S. market with supracompetitive pricing at home.

Neither of these competitive concerns fits the facts of Deutsche Telekom and its acquisition of VoiceStream. Let us first consider the argument about government subsidization of capital.

1. Deutsche Telekom Does Not Benefit from Subsidized Capital

Deutsche Telekom's debt is not backed, explicitly or implicitly, by the full faith and credit of the German government. Deutsche Telekom does not benefit from any preferential conditions regarding access to capital, such as government guarantees. After January 2, 1995, the date of Deutsche Telekom's registration in the Commercial Register, liabilities incurred were no longer guaranteed by the Federal Republic of Germany.[2] Further evidence that Deutsche Telekom does not have a subsidized cost of capital is found in Deutsche Telekom's current credit rating.

a. Deutsche Telekom's Bond Ratings Are Inconsistent with the Credit-Subsidization Hypothesis

Deutsche Telekom's bond ratings refute the hypothesis that the company has subsidized capital. As of August 2000, Deutsche Telekom's credit ratings were AA2 (Moody's) and AA- (Standard & Poor's), respectively. As Table 1 indicates, the German government is rated

2. DEUTSCHE TELEKOM AG, PROSPECTUS FOR 200 MILLION ORDINARY SHARES IN THE FORM OF SHARES OR AMERICAN DEPOSITARY SHARES, June 17, 2000, at 23, *available at* <http://www.eoffering.com/company /pdf/deutsche _telekom.pdf> [hereinafter DEUTSCHE TELEKOM PROSPECTUS].

significantly higher, at the highest possible rating of AAA. At the conclusion of the 3G spectrum auction in Germany in August 2000, Deutsche Telekom's credit rating was further downgraded.[3]

TABLE 1: CREDIT RATINGS FOR SELECTED GLOBAL TELECOMMUNICATIONS COMPANIES

Carrier or Government	Standard & Poor's Rating	Moody's Rating
German Government	AAA	Aaa
British Telecom*	AA+	Aa1
Deutsche Telekom*	AA-	Aa2
Verizon Communications	AA-	Not rated
AT&T Corp.	AA-	A1
SBC Communications Inc.	AA-	Aa3
WorldCom Inc.	A-	A3

Notes: *On watch for possible downgrade. **Verizon Communications not yet rated by Moody's Rating Service. Verizon Global Funding Inc. is rated A1.
Sources: Standard & Poor's ratings downloaded from Etrade's Bond Research at http://www.etrade.com on Aug. 25, 2000. Moody's ratings obtained from Moody's New York Rating Desk at (212) 553-0377.

Deutsche Telekom's credit rating not only is significantly lower than the German government's credit rating, but also is below or comparable with the credit ratings of private telecommunications firms in the United States and Europe. For example, Deutsche Telekom's rating is below British Telecom's (AA+), while Verizon's, AT&T's, and SBC's credit ratings are the same as Deutsche Telekom's, at AA-. WorldCom's bond rating is A-, which reflects the company's more leveraged capital structure and higher beta.

Deutsche Telekom's most recent bond issue in June of 2000 has been very successful because the bonds were priced extremely favorably.[4] Deutsche Telekom issued bonds priced at an interest rate that is equivalent to an A credit rating. At such a rating, the bonds have a lower face value (price), but bear a higher rate of interest. Therefore, both major credit agencies,

3. *German 3G Winners Take Hit From Credit Rating Agency S&P*, TELECOMMUNICATIONS REPORTS DAILY, Aug. 21, 2000 (discussing how S&P analysts planned to downgrade the credit ratings of Dutch carrier KPN NV, British Telecommunications plc, and Deutsche Telekom AG within two weeks of the auction close); Edmund L. Andrews, *International Business; $50 Billion for German Wireless Licenses*, N.Y. TIMES, Aug. 19, 2000, at *1.

Moody's and Standard & Poor's, have placed Deutsche Telekom on a credit watch with a negative outlook.

b. Deutsche Telekom's Weighted-Average Cost of Capital Is Inconsistent with the Credit-Subsidization Hypothesis

A weighted-average cost of capital (WACC) analysis can be used to address the claims the Deutsche Telekom has preferential access to capital by virtue of its partial government ownership. The results of this analysis are also inconsistent with the credit-subsidization hypothesis.

A firm's WACC is the expected return on a portfolio of all of that firm's securities.[5] The formula for WACC is simply a weighted-average of the return on equity and the return on debt or:

$$\text{WACC} = D/V\,(r_D)\,(1 - t) + E/V\,(r_E),$$

where D is the firm's outstanding debt, E is the market capitalization of the firm's equity, V is the sum of the firm's outstanding debt (D) and the market capitalization of the firm's equity (E), r_D is the firm's average borrowing rate, r_E is the firm's return on equity,[6] and t is the corporate income tax rate.[7]

To determine whether Deutsche Telekom has preferential access to capital, I computed the weighted-average cost of capital for Deutsche Telekom and other telecommunications

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4. DEUTSCHE TELEKOM PROSPECTUS, *supra* note 2.

5. RICHARD A. BREALEY & STEWART C. MYERS, PRINCIPLES OF CORPORATE FINANCE 457 (McGraw-Hill, 5th ed., 1996).

6. To estimate the firm's return on equity, I use the capital-asset pricing model—that is, the firm's return on equity is equal to the risk-free rate of return plus the product of the firm's beta and the excess return on all equities.

7. I use the tax rate of the country that hosts the parent company. For example, for Deutsche Telekom, I use the corporate tax rate of Germany, which is 31.65 percent. DEUTSCHE TELEKOM AG 1999 ANNUAL REPORT, SEC FORM 20-F 1999, filed April 19, 2000, at 73 [hereinafter DEUTSCHE TELEKOM ANNUAL REPORT] (According to Deutsche Telekom, "German corporations are subject to corporate income tax at a rate of 40 percent on non-distributed profits and of 30 percent on distributed profits. The corporate income tax liability is subject to a 5.5 percent solidarity surcharge (Solidaritätszuschlag). This results in an effective aggregate charge of 31.65 percent on distributed profits.").

operators. If Deutsche Telekom's WACC is not significantly less than the WACC of its global competitors, then one must reject the hypothesis that Deutsche Telekom has the opportunity to engage in predatory tactics in the United States by having preferential access to capital due to its partial government ownership.

It is implausible that Deutsche Telekom's cost of capital is subsidized by the German government. As Table 2 shows, Deutsche Telekom's weighted average cost of capital is *higher* than that of Sprint, SBC, AT&T, BellSouth, and Verizon and is roughly equal to British Telecom's cost of capital.

TABLE 2: WEIGHTED AVERAGE COST OF CAPITAL (WACC) FOR MAJOR TELECOMMUNICATIONS COMPANIES

Rank	Company	Weighted Average Cost of Capital	Government Ownership as of Sept. 2000
1	Qwest	16.78	0.0%
2	Telmex	16.32	0.0%
3	Worldcom	15.63	0.0%
4	Vodafone	13.88	0.0%
5	Telefonica	12.99	0.0%
6	France Télécom	12.88	63.6%
7	Deutsche Telekom	12.83	58.2%
8	Telecom Italia	12.57	3.5%
9	British Telecom	12.26	0.2%
10	Bell Canada	11.28	0.0%
11	Sprint	11.20	0.0%
12	SBC	11.09	0.0%
13	AT&T	10.45	0.0%
14	BellSouth	8.91	0.0%
15	Verizon	8.86	0.0%
16	Telecom New Zealand	8.71	0.0%
17	Telstra	8.54	50.1%
18	NTT	8.23	53.2%
19	KPN	8.00	43.3%
20	Eircom	7.94	1.1%
	Average	**11.47**	

Note: Classes of non-traded common stock are not included in the market value of current outstanding equity.
Sources: Market risk premium from RICHARD A. BREALEY & STEWART C. MYERS, PRINCIPLES OF CORPORATE FINANCE 146 (McGraw-Hill, 5th ed., 1996). Risk free rate is the 10-Year Treasury Constant Maturity Rate on August 11, 2000, downloaded from the Federal Reserve Bank of Chicago's web site at http://www.frbchi.org/econinfo/finance/int-rates/const_cd.prn. Betas downloaded from: http://www.nasdaq.com/. Debt borrowing rates, value of debt (which includes current maturities), corporate income tax rates, and shares outstanding taken from, or calculated based on, data from companies' annual reports and publicly available SEC documents. Market prices per share downloaded on August 21, 2000 from various stock exchanges' websites and http://finance.yahoo.com/?u.

In short, the theoretical argument that a firm with partial government ownership might have access to subsidized capital simply does not describe Deutsche Telekom. Deutsche Telekom's cost of capital is virtually the same as that of France Télécom, a company with a greater level of government ownership, and that of British Telecom, a company with no appreciable government ownership at all. Clearly, partial government ownership does not determine the cost of capital for global telecommunications carriers.

c. Deutsche Telekom Has No Statutory Privileges or Immunities

In addition to the fact that it does not have preferential access to capital, Deutsche Telekom is a private law stock corporation subject to applicable German federal law such as the German Stock Corporation Act and German tax laws.[8] Thus, Deutsche Telekom has the same rights and responsibilities (for example, with regard to taxation) as does any other private enterprise; nor does Deutsche Telekom enjoy tax benefits or any kind of preferential tax treatment.[9] Equally, Deutsche Telekom does not receive state aid, as this would clearly violate European Union legislation prohibiting state aids that would distort competition.[10]

2. Deutsche Telekom Cannot Engage in Predatory Pricing and Cross-Subsidization in the U.S. Wireless Telecommunications Market

A critical assumption of the cross-subsidy argument is that Deutsche Telekom would use cross-subsidies to obtain a temporary competitive advantage over its rivals in the U.S. wireless market, with the objective of eliminating competitors. That view implies that Deutsche Telekom would engage in behavior resembling predatory pricing, which is said to occur when a firm incurs a loss with the intention of eliminating rivals and later raising prices to recoup earnings after the

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8. *Id.* at 73-74.
9. *Id.*
10. Treaty Establishing the European Community, art. 87, Feb. 7, 1992, O.J. (C 224) 1 (1992), [1992] 1 C.M.L.R. 573 (1992), as amended by the Treaty of Amsterdam, Oct. 2, 1997, O.J. (C 340) 173 (1997), [1997] 4 E.U.L.R. ¶ 25,500 (1997).

rivals have exited the market.[11] That argument has been widely discredited. The published economics literature and the Supreme Court generally agree that predatory pricing is unlikely to succeed because (1) there is little guarantee of successful recoupment, (2) rivals can also incur losses in anticipation of future profits, and (3) new entrants will appear if prices are raised after the existing competitors have exited the industry.[12] Moreover, it is difficult in practice to distinguish low competitive prices from predatory prices and to distinguish low earnings from predatory losses.[13]

In the following sections, I apply the traditional theory on predatory behavior to demonstrate that Deutsche Telekom does not have either the opportunity or the incentive to engage in predatory behavior in the U.S. wireless telecommunications market. The German government's partial ownership of Deutsche Telekom during the remaining period of the company's privatization does not create any special concern in this regard.

a. Deutsche Telekom Does Not Have the Opportunity to Engage in Predatory Behavior in the U.S. Wireless Telecommunications Market

Deutsche Telekom does not have the opportunity to engage in predatory behavior in the U.S. wireless telecommunications market. This is true for at least three basic reasons. First, Deutsche Telekom is compelled to pursue profit maximization, which is inconsistent with predatory pricing. Second, fiduciary duties reinforce Deutsche Telekom's dedication to profit-

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11. *See, e.g.*, WILLIAM J. BAUMOL & J. GREGORY SIDAK, TOWARD COMPETITION IN LOCAL TELEPHONY 63 (MIT Press & AEI Press 1994); DANIEL F. SPULBER, REGULATION AND MARKETS 475-76 (MIT Press 1989); *see also* JOHN R. LOTT JR., ARE PREDATORY COMMITMENTS CREDIBLE?: WHO SHOULD THE COURTS BELIEVE (University of Chicago Press 1999).

12. *See* Brooke Group Ltd. *v.* Brown & Williamson Tobacco Corp., 509 U.S. 209, 224-26 (1993); Matsushita 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) (Basic Books 1978); YALE BROZEN, CONCENTRATION, MERGERS, AND PUBLIC POLICY 163, 392 (Macmillan Publishing Co. 1982); RICHARD A. POSNER, ANTITRUST LAW: AN ECONOMIC PERSPECTIVE 184-96 (University of Chicago Press 1976); Phillip Areeda & Donald F. Turner, *Predatory Pricing and Related Practices Under Section 2 of the Sherman Act*, 88 HARV. L. REV. 699, 718 (1975); J. Gregory Sidak, *Debunking Predatory Innovation*, 83 COLUM. L. REV. 1121 (1983); Frank H. Easterbrook, *Predatory Strategies and Counterstrategies*, 48 U. CHI. L. REV. 263 (1981).

maximizing behavior. Third, the German telecommunications market is competitive and therefore denies Deutsche Telekom any reservoir of supracompetitive profits with which it might pay for a strategy of predation in the U.S. wireless telecommunications market.

i. Deutsche Telekom Must Pursue Profit Maximization

The partial government ownership of Deutsche Telekom does not relieve the corporation from the objective of profit maximization. Because Deutsche Telekom must compete with other firms for capital, Deutsche Telekom is not able to choose predatory prices (or any other prices) that do not maximize profits.

The absence of profit maximization is the critical factor behind the theory that a public enterprise will have a heightened incentive for predatory conduct. But profit maximization necessarily becomes the objective of a firm as soon as it is *at least partly* privatized and listed on a stock exchange. This insight has critical implications for the competitive significance of the partial government ownership of Deutsche Telekom. It necessarily follows that because Deutsche Telekom is a publicly traded company, it must seek to maximize profit.

ii. Fiduciary Duties Reinforce Profit Maximization

It is, of course, a fundamental principle of corporate law that the majority shareholder of a corporation owes a fiduciary duty of loyalty to minority shareholders.[14] Even though Deutsche Telekom is a German corporation, its securities trade on not only the Frankfurt and London exchanges, but also the New York Stock Exchange. Upwards of 20 percent of Deutsche Telekom's stock is held by U.S. individual and institutional investors. If, as majority shareholders of Deutsche Telekom, the German government and the Kreditanstalt für

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13. BORK, *supra* note 12, at 144-55.
14. *See, e.g.*, Jones v. H. F. Ahmanson & Co., 460 P.2d 464 (Cal. 1969).

Wiederaufbau (KfW)[15] attempted to influence the management of Deutsche Telekom to deviate from profit-maximizing behavior, and if Deutsche Telekom acquiesced to that attempt, Deutsche Telekom would expose itself to liability under American corporate law to the company's minority shareholders. Similar risk of liability could arise for Deutsche Telekom under the laws of other nations with respect to the rights of Deutsche Telekom shareholders in those nations. Anyone who has studied shareholder litigation in the United States knows that these various fiduciary duties are powerful incentives to keep the current majority shareholders of Deutsche Telekom inclined toward profit maximization. That legal duty accords with good business sense. Plainly, Deutsche Telekom is in the midst of privatization; to ensure successful share offerings in the future, the KfW and the German finance ministry have a powerful incentive to see that Deutsche Telekom delivers maximum value to its current shareholders, which is an objective that cannot be reconciled with a strategy of incurring predatory losses in new markets.

iii. In Germany, Deutsche Telekom Faces Competitive Telecommunications Markets as Well as Effective and Transparent Regulation

The regulatory and competitive conditions of the German wireless and traditional landline telecommunications markets do not provide Deutsche Telekom supracompetitive returns with which to subsidize predatory behavior in the U.S. mobile telephony market. The German telecommunications market was fully liberalized on January 1, 1998. Because there are no foreign ownership restrictions in Germany, many foreign owned companies have entered the market. The level of competition in the German telecommunications market is reflected in the number of licenses and the amount of foreign ownership of those licenses. The Germany regulatory authority reports that, by the end of 1999, 252 companies had been granted a network

15. The KfW is the German bank for reconstruction.

or a voice telephony license.[16] Over 100 companies now offer voice telephony, including more than 40 resellers.[17] Foreign companies, mostly from North America, hold majority stakes in 20 percent of these licensees.[18] In satellite communications, over 30 percent of the licenses (19 of 59) have been awarded to foreign companies.[19]

The pace of telecommunications deregulation in Germany since its landmark legislation in 1996 compares favorably with that in the United States. Table 3 summarizes the regulatory and competitive conditions in Germany and compares them with those in the United States.

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16. REGULATORY AUTHORITY FOR TELECOMMUNICATIONS AND POSTS, ANNUAL REPORT 1999 (2000) (downloaded from http://www.regtp.de/en/market/start/fs_15.html).
17. *Id.*
18. *Id.*
19. *Id.*

TABLE 3: U.S.-GERMAN COMPARISON ON KEY REGULATORY ISSUES IN TELECOMMUNICATIONS, SEPTEMBER 2000

Issue	United States	Germany
Market Entry Conditions		
Foreign Ownership	Foreign ownership of 25% and above of U.S. companies with a radio license requires FCC approval (public interest test).	No foreign ownership restrictions (no public interest test).
License Requirements	FCC section 214 authority required for authorization to provide international basic services (public interest test); dominant carrier regulation for foreign carriers that are dominant in their home markets.	Very liberal licensing regime; no dominant carrier regulation for foreign carriers, no public interest test.
3rd Generation Wireless (3G)	Upon request by the EU, the FCC has recently announced plans to free up spectrum and auction off spectrum for third generation services. Date, terms, and conditions are unclear thus far.	RegTP auctioned six licenses in August 2000; no restrictions concerning technology or standards being used.
Intelsat Direct Access	Level III direct access became available to most users in December 1999. All parties obtaining direct access must still pay a 5.58 percent surcharge to COMSAT to compensate it for its costs as Intelsat signatory. Foreign INTELSAT signatories are not permitted to purchase direct access to countries where they control more than 50% of INTELSAT capacity consumed.	Direct access to INTELSAT has been offered since 1995, to foreign and domestic companies alike.
Regulation		
Interconnection	Interconnection is available. Interconnection between local carriers generally falls between 0.3 and 0.5 cents per minute. Following the FCC's access charge reform adopted in May 2000, access charges should have dropped to 0.7 cents in July 2000. A weighted average of local interconnection rates and access charges would show that current U.S. interconnection rates are approximately 0.6 cents per minute.	Interconnection has been available since January 1998. New tariffs were set by RegTP in December 1999 (24% reduction) and are among the lowest rates worldwide. Local interconnection rates average around 0.7 cents (average of peak and off-peak).

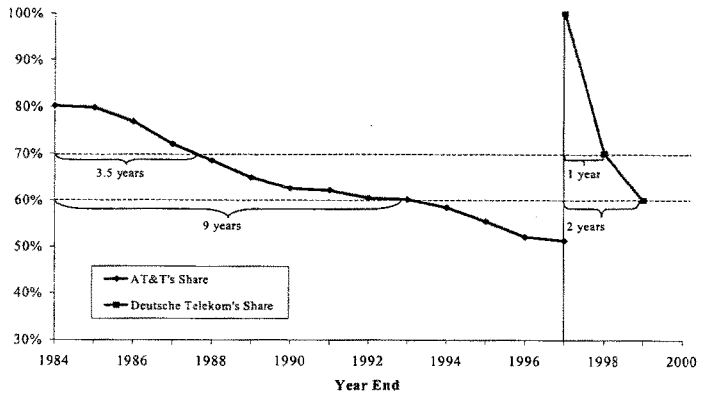
Unbundled Access to the Local Loop	Available. Best practice average of the three states with a population density most similar to Germany (NY, DE, MA) is $14.96. These prices only represent the cost for analog loops. The tariff for a digitally capable loop can be almost twice as expensive as the tariff for an analog loop.	Deutsche Telekom has been obliged to provide unbundled access to the local loop since January 1998. The price is currently set at DM 25.40 per month ($12.70 using 2 DM/$ exchange rate). In Germany, all loops are digitally capable. Thus, the price of an analog local loop in Germany is similar to an analog loop in the United States, whereas the price for a digital loop in Germany is roughly half the price of that in the United States.
Carrier Preselection	Preselection in the United States costs $5. Equal Access Recovery Fund established in the United States: Over the course of 5 years, approximately $1.3 billion was paid by the long-distance carriers to the ILECs to compensate the ILECs' network investment to facilitate carrier preselection.	Deutsche Telekom has made preselection available since January 1998. Current tariff set by RegTP: DM 10 ($5). No recovery of Deutsche Telekom's investment by competitors.
Number Portability	Available. The Telecommunications Act of 1996 allows ILECs to recover number portability costs on a "competitively neutral basis."	Available free-of-charge since January 1998. Deutsche Telekom receives no compensation for costs incurred due to a decision by the RegTP.
Third-Party Billing	Dominant carriers are not obliged to provide third-party billing. The FCC ruled that third-party billing is not a telecommunications service.	Deutsche Telekom is obliged to provide third-party billing (regulated services)
Universal Service Obligation	Provided by ILECs	Deutsche Telekom is the only carrier that is obliged to provide universal service.
Deregulation	Regulation in the long-distance market was lifted for AT&T in 1996, although AT&T still had more than 60% of the market.	Deutsche Telekom is strictly regulated in almost all market segments, although competitors gained 40% of the long-distance market.

Source: Criterion Economics L.L.C. analysis.

Although interconnection disputes arise in Germany and produce court cases, the same is true in the United States, where the Supreme Court this fall will hear its second case concerning the regulation of incumbent local exchange carriers under the Telecommunications Act of 1996. In the German long-distance market, as Figure 1 shows, the decline in Deutsche Telekom's market share following privatization has occurred much more rapidly than the decline in AT&T's market share occurred following its divestiture. AT&T's share of operating revenues fell from 91 percent to 45 percent during the thirteen-year period from 1984 to 1997, whereas Deutsche

Telekom's market share fell from 100 percent to approximately 60 percent in only a two-year period from year-end 1997 to year-end 1999.[20]

FIGURE 1: DECLINE IN LONG-DISTANCE MARKET SHARE FOR AT&T AND DEUTSCHE TELEKOM



Notes: AT&T's share of total access minutes, which includes international minutes, for all U.S. long-distance carriers. Deutsche Telekom's share of domestic long-distance long distance, international, and fixed-to-mobile minutes.

Sources: INDUSTRY ANALYSIS DIVISION, COMMON CARRIER BUREAU, FEDERAL COMMUNICATIONS COMMISSION, TRENDS IN TELEPHONE SERVICE, Table 10.1 (July 1998) (downloaded from http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend298.pdf on August 28, 2000); REGULATORY AUTHORITY FOR TELECOMMUNICATIONS AND POSTS, ANNUAL REPORT 1999, at 14 (2000); *Telekom Announces Aggressive Price Policy*, FRANKFURTER ALLGEMEINE ZEITUNG, Nov. 19, 1998, at 21.

Indeed, most market segments of the German telecommunications market are already highly competitive and thus subject to vigorous price competition, which in itself provides an effective means of eliminating any chance of excessive pricing to earn monopoly rents. With respect to the local market, Deutsche Telekom is required to provide competitors with unbundled

20. INDUSTRY ANALYSIS DIVISION, COMMON CARRIER BUREAU, FEDERAL COMMUNICATIONS COMMISSION, TRENDS IN TELEPHONE SERVICE, July 1998 (downloaded from http://www.fcc.gov/Bureaus/Common_Carrier

access to its subscriber access lines, and the Regulatory Authority has set a monthly tariff for this unbundled access that is substantially lower than Deutsche Telekom had sought in its tariff application.

With respect to unbundled network access, the U.S. incumbent local exchange carriers are obliged to provide unbundled access to the local loop. The access price is set by state regulators, and thus it varies by state. Using a three-state average of states with similar population density to Germany—New York, Delaware, and Massachusetts—the monthly local loop rate is $14.96, or DM 29.92. The tariff for a digitally capable loop, however, can be almost twice as expensive as the tariff for an analog loop. By comparison, Deutsche Telekom is obliged to provide unbundled access to the local loop at DM 25.40 per month, or 15.1 percent less than the U.S. rate. Moreover, in Germany, *all* loops are digitally capable—thus, while the price of an analog loop in Germany is similar to an analog loop in the United States, the price of a digital loop in Germany is roughly *half* the price of one in the United States.

In the national market, the terms on which Deutsche Telekom provides services to competitors are essentially determined by the Regulatory Authority. The interconnection rates charged by Deutsche Telekom during 1999 were set by the Ministry for Posts and Telecommunications, the predecessor to the Regulatory Authority, in September 1997. In December 1999, the Regulatory Authority approved new interconnection rates that will apply through January 31, 2001, which are on average approximately 24 percent lower than the previously applicable interconnection rates. The terms for interconnection of Deutsche Telekom's telephone network with networks of other national providers are contained in bilateral contracts. At the end of 1999, Deutsche Telekom had signed 95 such agreements. An additional

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/Reports/FCC-State_Link/IAD/trend298.pdf on August 28, 2000).

fifty companies had submitted requests for negotiations at that date. The total number of leased lines provided to carriers at year end (that is, transmission paths that are made available to competitors in the fixed-line network) rose by 43 percent in 1999 in comparison with the previous year.[21]

Although Deutsche Telekom did not face significant competition in the access and local calling markets in 1999, competition in those markets is expected to increase. Various competitors have announced plans for offering local call service using unbundled local loop access, wireless local loop access, and access via power lines. The Regulatory Authority auctioned licenses for wireless local loop services in the summer of 1999. In addition, regulatory inquiries regarding the possibility of requiring further unbundling of local loop access to the local loop are in progress at the European Union level. As a result of these developments, Deutsche Telekom may face substantial competition in the local loop in the near future.[22]

In the German wireless market, Deutsche Telekom ranks only second behind the market leader, Vodafone. The wireless market opened earlier than the wireline market. There are four mobile network operators currently serving Germany. The two largest, T-Mobil (T-D1/T-C-Tel) and Mannesmann Mobilfunk (D2), have battled for market leadership since 1990, with D2 currently having a modest edge. Between them, T-Mobil and Mannesmann Mobilfunk serve approximately 79.9 percent of the digital mobile telecommunications market in Germany, based on management estimates, with T-Mobil having an estimated share of 39 percent of this market as of December 31, 1999. E-Plus, the third mobile network operator, entered the market using the GSM 1800 standard in 1994, two years after T-D1 and D2 commenced operations, and held an estimated 16.3 percent of the market at year-end 1999. E2, the fourth network operator,

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21. *Id.* at 89.

commenced operations in late 1998 using the GSM 1800 standard and currently has an estimated market share of 3.9 percent. Licenses for UMTS—or third-generation mobile telecommunications—were auctioned in Germany during the summer of 2000. The auction generated six distinct licensees—the four incumbent wireless carriers plus two entrant carriers backed by France Télécom and by Telefonica and Sonera, respectively. Now Deutsche Telekom must compete for wireless customers against VIAG Interkom (backed by British Telecom), MobilCom Multimedia (backed by France Télécom), Mannesmann MobilFunk (Vodafone), Group 3G (a joint venture between Spain's Telefonica SA and Finland's Sonera Corp.), and KPN's E-Plus Hutchison.[23] Analysts expect that the six distinct licensees will produce "fierce competition" in the German wireless market, making "it more difficult for 3G operators to recoup their license costs."[24]

The large number of companies (especially from the United States) that have entered, and continue to enter, all segments of the German telecommunication market ensure that prices in Germany are driven close to competitive levels. That outcome in turn ensures that Deutsche Telekom cannot earn supracompetitive returns with which to fund a predatory strategy in another country. The competitive entry witnessed in the German telecommunication market also indicates that entrants there do not fear cross-subsidization by Deutsche Telekom. Otherwise, for example, firms other than Deutsche Telekom would not have spent $38.5 billion ($46.2 billion total, less $7.7 billion paid by Deutsche Telekom) in August 2000 to acquire licenses for 3G

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22. *Id.* at 129.

23. Auction results downloaded from the German Regulatory Authority for Telecommunications and Posts web site at http://umts.regtp.de/ on Aug. 21, 2000.

24. *German 3G Winners Take Hit From Credit Rating Agency S&P*, TELECOMMUNICATIONS REPORTS DAILY, Aug. 21, 2000 (quoting analysts from Standard & Poor's).

spectrum.[25] For these reasons, it is also highly improbable that, outside Deutsche Telekom's home market, Deutsche Telekom would pose any actual risk of cross-subsidization, nor would Deutsche Telekom be believed by competitors in those other countries to pose any such risk. It bears emphasis that Deutsche Telekom has not engaged in predatory behavior in other countries where it has acquired a wireless carrier. For example, no complaints have been filed against Deutsche Telekom since it acquired One2One in the United Kingdom in August 1999.[26]

In addition, the German Telecommunications Act contains other safeguards explicitly intended to rule out cross-subsidization between competitive and less competitive market segments. In particular, because Deutsche Telekom is not subject to rate-of-return regulation, it cannot cross-subsidize one division by misallocating its costs to another. The inability to shift costs from one division to another severely undermines Deutsche Telekom's opportunity to engage in predatory behavior.

There are two tariff approaches in Germany: price-cap and cost-based regimes. The Tariff Regulation Ordinance provides that priority be given to the price-cap approach. Under the price-cap approach, the Regulatory Authority establishes baskets of services and limits tariffs for the blend of services within those baskets through the use of a formula. The formula has the effect of requiring the affected company to reduce, or of limiting the extent to which the company can increase, the aggregate tariffs for services within a basket. Under the Telecommunications Act and the Tariff Regulation Ordinance, tariffs for voice telephony services and tariffs for transmission lines generally may not be combined in a single basket.

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25. *German 3G Spectrum Auction Tops U.K. Bidding Total by $10 Billion*, TELECOMMUNICATIONS REPORTS DAILY, Aug. 17, 2000 (article can be downloaded from http://www.tr.com/online/trd/2000/td081700/Td081700-01.htm)

26. Deutsche Telekom AG, *Deutsche Telekom Acquires One2One – Position in Great Britain Significantly Strengthened – Major Step on One of the Most Important Telecommunications Markets*, Company Press Release, Aug. 6, 1999.

Services may be combined within a basket only if the degree of competition with respect to those services does not substantially vary.[27]

Tariffs may not be approved if they (1) contain surcharges which prevail solely as a result of the applicant's market-dominant position, (2) include discounts which prejudice the competitive opportunities of other companies in a telecommunications market, or (3) discriminate among customers for the same or similar services in a telecommunications market, unless such surcharges, discounts, or discriminatory features are objectively justified.[28]

All tariffs of market-dominant providers in markets in which such dominance occurs are subject to *ex post* regulatory examination, even if the tariffs were initially subject to prior approval. The Regulatory Authority must initiate examination proceedings if it becomes aware of facts indicating that such tariffs contain discounts or discriminatory features that are not objectively justified, and the Regulatory Authority may ultimately object to such tariffs and declare them to be invalid. In addition, with respect to tariffs that are not subject to prior approval, the Regulatory Authority may initiate examination proceedings if it becomes aware of facts indicating that such tariffs contain surcharges, discounts, or discriminatory features, as described above. The Regulatory Authority may object to such tariffs and declare them invalid.[29]

Additional structural protections also exist. The German Telecommunications Act requires Deutsche Telekom to guarantee the transparency of financial relations between and among telecommunications services in the licensed sector and between and among such services and telecommunications services in the non-licensed sector by establishing a separate accounting

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27. DEUTSCHE TELEKOM PROSPECTUS, *supra* note 2, at 136.
28. *Id.* at 138.
29. *Id.* at 139.

system.[30] Moreover, upon completion of the acquisition of VoiceStream by Deutsche Telekom, VoiceStream will be a subsidiary of T-Mobil, which in turn is a subsidiary of Deutsche Telekom. This structure will further increase the divisional separation and promote arms-length transactions. Finally, the EU telecommunications regulatory framework also provides safeguards against cross-subsidization, as the principle of cost-orientation of wholesale and retail tariffs is firmly rooted in the relevant EC directives, which bind all EU member states.

b. Deutsche Telekom Does Not Have the Incentive to Engage in Predatory Behavior in the U.S. Wireless Telecommunications Market

We have just seen that Deutsche Telekom lacks that opportunity to engage in predatory behavior in the U.S. wireless telecommunications market. It also is the case that Deutsche Telekom lacks the *incentive* to engage in such conduct. Deutsche Telekom could never recoup predatory losses for at least four reasons.

First, the likelihood of cross-subsidization and predatory pricing grows increasingly implausible when one considers that the U.S. wireless market that Deutsche Telekom would enter through its acquisition of VoiceStream has multiple incumbent suppliers with substantial capacity and enormous financial resources. For example, the combined market capitalization of AT&T Wireless ($61.5 billion), BellSouth Corporation ($70.5), Nextel ($39.1 billion), SBC Communications ($146.4 billion), Sprint PCS ($45.9 billion), and Verizon ($119.5 billion) was $482.9 billion as of September 5, 2000.[31]

Second, the acquisition of VoiceStream will give Deutsche Telekom only about 3 percent of the wireless telecommunications customers in the United States. Such a low market share as a starting point makes it all the more implausible that Deutsche Telekom could capture a

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30. *See* Christoph Engel, *The Path to Competition for Telecommunications in Germany*, in COMPETITION AND REGULATION IN TELECOMMUNICATIONS: EXAMINING GERMANY AND AMERICA (J. Gregory Sidak, Christoph Engel & Günter Knieps, eds., Kluwer Academic Press 2000).

commanding market share quickly enough to make a campaign of predatory losses remunerative. Stated differently, Deutsche Telekom would need to capture a significant share of the U.S. wireless market to make the eventual price increase on "captured" customers profitable.

Third, the low average variable costs in the delivery of wireless services further diminishes the prospect that predation would be attempted by Deutsche Telekom or any other firm. Economic rationality will prevent a firm from persistently pricing below average variable cost.[32] When prices do not allow for a competitive level of profit—that is, when total revenues are less than total costs—a firm must confront the prospect of shutting down operations. In particular, the firm should continue to operate in the short run if and only if the loss incurred when the firm stays in business (that is, total costs less total revenues) is less than the loss incurred when the firm shuts down (that is, total costs less total variable costs).[33] Because the majority of the costs in developing a wireless network are fixed, the average variable costs for U.S. wireless carriers are very low relative to their respective prices. Hence, a necessary (but not sufficient) condition for a successful predatory strategy would be that Deutsche Telekom would force prices for wireless telecommunications services to fall significantly.

The fourth reason that recoupment is impossible and predation therefore implausible is the durability of spectrum. Spectrum does not wear out and cannot be destroyed. It would therefore be impossible for Deutsche Telekom to restrict industry output of wireless telecommunications services and raise prices above incremental costs during the recoupment

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31. Information downloaded from Yahoo's web site http://biz.yahoo.com/ at close of trading Sept. 5, 2000.

32. *See, e.g.*, WILLIAM J. BAUMOL & ALAN S. BLINDER, MICROECONOMICS: PRINCIPLES AND POLICY 216-17 (Dryden Press 7th ed. 1997).

33. Hence, the economic decision to remain in operation can be boiled down to the following simple rule: Remain in operation so long as total variable cost is less than total revenue. Because total cost and total revenue are divisible by quantity produced, the rule can be simplified further: A firm would remain in operation so long as average variable cost were less than price. If that condition were not met, the firm would rationally choose to shut down operations. Stated differently, no rational firm would choose to price below average variable cost if its sole objective were maximizing its own profit.

phase of the predation scenario. Even in the unlikely event that Deutsche Telekom could drive one of the large wireless incumbents into bankruptcy, the bandwidth capacity of that carrier would remain intact, ready for another firm to use (after a liquidation sale or FCC reassignment of licenses) and immediately undercut Deutsche Telekom's noncompetitive prices.[34] It is not plausible that Deutsche Telekom could hoard the spectrum of competitors that it had driven from the market, because the FCC (if not also the federal antitrust authorities) would first have to approve a transfer of the relevant licenses from the failed competitors to Deutsche Telekom. In short, if Deutsche Telekom were to attempt predatory pricing in the U.S. wireless market, it could not expect to recoup its investment in sales made below incremental cost.[35]

Because of the inherent durability of spectrum, Deutsche Telekom could never recoup predatory losses incurred in the U.S. mobile telephony market—there would always be competitors in the market. Moreover, the low average variable costs in the delivery of wireless services make it all the more implausible that U.S. carriers would exit the wireless telecommunications market in the face of attempted predation by Deutsche Telekom. Because its expected losses from engaging in predation would outweigh any expected gains, Deutsche Telekom would not have an incentive to engage in predatory behavior.

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34. The FCC has recognized an analogous argument concerning the durability of fiber-optic transmission capacity. *See* Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, Notice of Proposed Rulemaking, CC Dkt. No. 96-149, 11 F.C.C. Rcd. 18,877, 18,943 ¶ 137 (1996) (citing Daniel F. Spulber, *Deregulating Telecommunications*, 12 YALE J. ON REG. 25, 60 (1995); other citations omitted).

35. For similar skepticism of the plausibility of predatory pricing in the U.S. telecommunications market, see PAUL W. MACAVOY, THE FAILURE OF ANTITRUST AND REGULATION TO ESTABLISH COMPETITION IN LONG-DISTANCE TELEPHONE SERVICES 186-90 (MIT Press & AEI Press 1996); Susan Gates, Paul Milgrom & John Roberts, *Deterring Predation in Telecommunications: Are Line-of-Business Restraints Needed?*, 16 MANAGERIAL & DECISION ECON. 427 (1995); Paul S. Brandon & Richard L. Schmalensee, *The Benefits of Releasing the Bell Companies from the Interexchange Restrictions*, 16 MANAGERIAL & DECISION ECON. 349 (1995); Jerry A. Hausman, *Competition in Long-Distance and Telecommunications Markets: Effects of the MFJ*, 16 MANAGERIAL & DECISION ECON. 365 (1995);

III. CAN EXISTING PROCEDURES ADEQUATELY SCRUTINIZE U.S. ACQUISITIONS BY A COMPANY PARTIALLY OWNED BY A FOREIGN GOVERNMENT?

Consider again a generic acquisition of a U.S. wireless carrier by a company partially owned by a foreign government. If legitimate concerns exist about the economic incentives of such an acquiring firm, those concerns militate in favor of a thoughtful examination of the issue in the public interest proceeding at the FCC or the merger review proceeding at the Department of Justice (DOJ). The FCC and DOJ review processes are competent to analyze such concerns. In contrast, a blanket prohibition on acquisitions by firms with partial government ownership would be unnecessary and ill-advised.

There can be no question that the combination of the existing processes for the review of a merger/transfer-of-license application at the FCC and the DOJ (or Federal Trade Commission) are exhaustive. I say that as someone who has consulted or testified on the competitive consequences of many telecommunications mergers. Furthermore, even if one questions, as I do not, the diligence and competence of the public enforcement agencies, there remains a powerful incentive for private companies to use the antitrust law and the Communications Act to challenge mergers, for both noble reasons and selfish ones.

Congress need not deny American consumers the benefits of competitive entry and foreign direct investment in the name of preventing hypothetical competitive harms that government agencies and private parties already possess the legal tools to address. In light of the AT&T divestiture case and the implementation of the Telecommunications Act of 1996, there is, obviously, a wealth of experience at both the FCC and the DOJ in addressing allegations of

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Kenneth J. Arrow, Dennis W. Carlton & Hal S. Sider, *The Competitive Effects of Line-of-Business Restrictions in Telecommunications*, 16 MANAGERIAL & DECISION ECON. 301 (1995).

predation and cross-subsidization by major telecommunications carriers.[36] It is unrealistic to suppose that any merger measured in the tens of billions of dollars could slip past without serious antitrust and public-interest scrutiny. This is no less true of an acquisition by Deutsche Telekom than of one by AT&T or SBC.

IV. DOES FOREIGN GOVERNMENT INVESTMENT HARM U.S. NATIONAL SECURITY?

Although U.S. consumers clearly benefit from investment by companies with partial foreign government ownership, do such benefits possibly come at the expense of compromising U.S. national security? That question must be answered in the negative, both as a general matter and specifically with respect to Deutsche Telekom's acquisition of VoiceStream.

There is no basis to suppose that, in the discharge of its duties under the Exon-Florio Amendment, the Committee on Foreign Investment in the United States (CFIUS) will fail to identify true threats to American security that would arise from acquisitions by foreign entities. As reported recently on the front page of the *Wall Street Journal*, the Federal Bureau of Investigation (FBI) has played an aggressive role in that process in recent acquisitions that have concerned the telecommunications and information technology sectors.[37]

This national-security review of foreign investment appears to be nothing less than exhaustive, as recent examples demonstrate. For instance, in connection with transactions such as British Telecommunications' proposed acquisition of MCI in 1997 and Vodafone's acquisition of AirTouch last year, the FBI required the parties to agree to a variety of conditions and restrictions designed to ensure that foreign ownership of U.S. facilities will not impede U.S.

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36. *See generally* J. GREGORY SIDAK & DANIEL F. SPULBER, DEREGULATORY TAKINGS AND REGULATORY CONTRACT: THE COMPETITIVE TRANSFORMATION OF NETWORK INDUSTRIES IN THE UNITED STATES (Cambridge University Press 1997).

law enforcement or otherwise harm national security. Indeed, VoiceStream itself is already subject to restrictions of this nature, to which it agreed with the FBI earlier this year in connection with VoiceStream's acquisitions of Omnipoint and Aerial—transactions that, like the Vodafone/AirTouch acquisition, involved wireless communications in the United States.[38]

The FBI has continued its vigilance in recent negotiations in connection with the acquisition of Verio, an Internet service provider, by NTT Communications, a unit of Nippon Telegraph and Telephone, in which the Japanese government owns a majority interest. The NTT/Verio acquisition passed a thorough investigation by the CFIUS agencies, which resulted in a committee recommendation to the President that the transaction should be permitted to proceed. The President was satisfied that any national security issues that may have been presented by the acquisition had been resolved through these existing processes.[39]

Again, it is useful to consider the specific Deutsche Telekom/VoiceStream transaction. Deutsche Telekom is acquiring a U.S. wireless telecommunications company that is substantially smaller than AirTouch and that is already subject to a national security agreement as a result of prior regulatory reviews. This new transaction, like the prior ones, will be subject to careful CFIUS and FBI review, and will not go forward until those agencies are satisfied. With these review mechanisms in place, it is not credible to suggest that our national security requires enactment of a flat statutory ban that would prevent the reviewing agencies even from considering the acquisition of the sixth-largest U.S. wireless company by a private foreign corporation that is in the course of progressive privatization but continues at the moment to be

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37. *See* Neil King, Jr. & David S. Cloud, *Global Phone Deals Face Scrutiny From New Source: the FBI*, WALL ST. J., Aug. 24, 2000, at 1.

38. The FBI became involved because the acquisitions increased the level of indirect foreign investment in VoiceStream to more than 25 percent.

39. Statement by the Press Secretary on Verio Acquisition, Office of the Press Secretary, The White House, Aug. 23, 2000.

substantially owned by the government of a nation that is one of the United States' principal NATO allies.

V. WOULD IT HARM U.S. INTERNATIONAL TRADE INTERESTS FOR CONGRESS TO BAN EVERY ACQUISITION OF A TELECOMMUNICATIONS CARRIER BY A COMPANY PARTIALLY OWNED BY A FOREIGN GOVERNMENT?

A ban on issuing FCC wireless licenses to U.S. companies with more than 25 percent indirect foreign-government ownership would undermine U.S. trade interests, not only in the telecommunications sector, but also more broadly. The United States engages in more trade than any other country in the world.[40] In 1999, U.S. exports of goods and services worldwide totaled $ 958 billion.[41] Germany was the United States' fifth largest export market just after Canada, Mexico, Japan, and the United Kingdom.[42]

Not surprisingly, the United States was one of the leaders behind the WTO Basic Telecommunications Agreement—an effort that has been proceeding for more than ten years. When the agreement was negotiated, telecommunications was already a $600 billion industry and was projected to double or triple over ten years.[43] According to the Office of the United States Trade Representative, before the agreement, only 17 percent of the top twenty telecommunications markets were open to U.S. companies; today, over 95 percent of the world telecommunications market (by revenue) is open.[44]

In addition to market access commitments, a centerpiece of the agreement was the "Reference Paper" —a set of procompetitive regulatory principles that reflects the United States'

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40. Office of the United States Trade Representative, *2000 Trade Policy Agenda and 1999 Annual Report*, Annex 1, at 1 [hereinafter USTR Annual Report].

41. Office of Trade and Econ. Analysis, U.S. Dep't of Commerce, *U.S. Aggregate Foreign Trade Data*, tbl. 6 (last updated July 12, 2000) *available at* <http://www.ita.doc.gov/td/industry/otea/usfth/aggregate/H99t06.txt>.

42. *Id.*

43. Ambassador Charlene Barshefsky, *Basic Telecom Negotiations*, at 2 (Feb. 15, 1997), *available at* <http://www.ustr.gov/releases/1997/02/barshefsky.pdf> [hereinafter Barshefsky Statement].

own 1996 Telecommunications Act. Sixty-five countries have adopted those principles,[45] which include an independent regulatory authority, nondiscriminatory interconnection at cost-based rates, universal service, transparent licensing criteria, competitive safeguards, and other key building blocks for a competitive market.[46] USTR credits the agreement with spawning a dramatic shift in the regulatory approach to telecommunications around the world:

> Through the Agreement on Basic Telecommunications Services, the United States has largely succeeded in shaping an international consensus, unthinkable five years ago, that telecommunications monopolies must be replaced with competitive markets for any economy to enjoy the benefits of the digital era.
>
> Through this agreement, the United States has successfully exported a model based on the U.S. experience of telecommunications liberalization, focused on unimpeded market access, fair rules, and effective enforcement of key regulatory principles.[47]

The implementation of this new market-based model and corresponding growth of competition has stimulated lower prices and increased demand for telecommunications services, while also creating the incentive necessary for companies to invest in infrastructure.

U.S. consumers have reaped direct benefits from opening foreign markets. According to USTR, prices for international telephone calls from the United States fell 25 percent between 1996 and 1998, and in 1999 prices for calls to several competitive markets differed little from domestic long-distance prices.[48] But lower prices are only part of the picture; equally important are the significant investments companies are making to deploy high-capacity infrastructure—from fiber-optic undersea cables, to high-capacity broadband and third-generation wireless technology.

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44. USTR Annual Report, *supra* note 40, at 111.
45. Barshefsky Statement, *supra* note 43, at 2.
46. *See* Reference Paper (attached to Schedules of Specific Commitments), Fourth Protocol to the GATS, 36 I.L.M. 366 (1997).
47. USTR Annual Report, *supra* note 40, at 111.
48. *Id.*

To meet growing demand for the latest innovations delivered seamlessly across the globe, U.S. telecommunications carriers have been investing heavily to expand their networks abroad. Often, that investment includes buying into companies that are already established in those markets, to gain faster access to those markets and to the local expertise necessary to succeed in them, without having to start from the ground up. In addition, privatization has given U.S. companies the opportunity to invest in former (or current) government-owned companies. SBC, for example, has invested in Belgacom, which was previously 100 percent owned by the Belgian government.

American direct investment in overseas telecommunications markets dwarfs the current level of foreign direct investment in telecommunications in the United States. Table 4, which is reproduced from the FCC's *Fifth Report* on wireless services,[49] demonstrates the extent of U.S. investment in foreign wireless operations.

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49. 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, FCC 00-289 (released Aug. 18, 2000) [hereinafter FIFTH REPORT].

TABLE 4: FOREIGN HOLDINGS OF U.S. MOBILE TELEPHONE OPERATORS

Operator	Country	Subscribers (Brand Name) [1]	Venture	Ownership (%)
SBC	France	6,400,000	Cegetel (owns 80% of cellular company Societe Francaise de Radiotelephone)	15 (through JV with Vivendi)
	Denmark	1,100,000	Tele Danmark	41.6
	Norway	720,000	NetCom	19.6 (controls 27.9% through investment in Tele Danmark)
	Belgium	1,900,000	Belgacom	17.5 (controls 24.4% through investment in Tele Danmark, which owns 16.5% of Belgacom)
	Switzerland	413,000	DiAx	40
	Hungary	867,000	MATAV	29.8
	South Africa	2,100,000 (Vodacom)	Telkom SA (owns 50% of Vodacom)	18
	Canada	1,900,000 (Bell Mobility)	Bell Canada	20
	Mexico	4,100,000	Telmex	9
	Taiwan	478,000	TransAsia Tele-communications	19.4
	Brazil	900,000	Algar Telecom Leste SA (ATL)	50 (stake is jointly owned with Telmex and can be increased to 50% in 2004)
AT&T	Canada	2,600,000	Rogers Cantel	17
	Colombia	466,000	Celumovil	14
	India	90,000	Birla Communications Ltd.	49
	Taiwan	1,425,000	FarEasTone	14
	Japan	8,100,000 (J-Phone)	Japan Telecom	15
	Czech Republic	645,000	EuroTel Praha	24.5
	Slovakia	208,000	EuroTel Bratislava	24.5
	India	267,000 (BPL Mobile)	BPL Cellular	49
	Malaysia	630,000 (Maxis Mobile)	Maxis Communications	19
Verizon	Italy	6,200,000	Omnitel Pronto Italia	23.1
	Mexico	843,000	Iusacell	40.2
	Czech Republic	645,000	EuroTel Praha	24.5
	Slovakia	208,000	EuroTel Bratislava	24.5
	Greece	797,000	STET Hellas	20
	Indonesia	213,000	Excelcomindo	23.1
	Japan	3,137,800	Tu-Ka	0.8
	New Zealand	608,900	Telecom New Zealand	24.9
	Philippines	138,000 (Extelcom)	BayanTel (owns 46.6% stake in wireless provider Extelcom)	20
	Argentina	809,000	CTI Holdings	58
	Argentina	Expected to launch in 2000	GTE PCS	100
	Canada (British Columbia and Alberta)	1,100,000	TELUS	26.7
	Canada (Quebec)	37,000	Quebec Telephone	50.2

	Venezuela	1,200,000	CANTV	26.4
	Taiwan	3,100,000	Taiwan Cellular Corporation	13.5
	Dominican Republic	244,000	CODETEL	100
BellSouth	Uruguay	141,314	Abiatar	46
	Guatemala	Launch mid-2000	BellSouth Guatemala	60
	Nicaragua	51,022	Nicacell	49
	Ecuador	203,425	Otecel	89.4
	Panama	140,977	BellSouth Panama	43.7
	Brazil (Sao Paulo)	1,971,282	BCP	44.5
	Brazil (northeast)			46.8
	Brazil (central western & northern regions)	1,000,000	Tele Centro Oeste Celular	16.5
	Venezuela	2,833,667	Telcel	78.2
	Argentina	1,285,522	Movicom/ BellSouth	65
	Chile	403,119	BellSouth Chile	100
	Columbia	466,000	Celumovil	33.8
	Peru	318,953	Tele 2000	96.8
	Germany	4,089,294	E-Plus	22.5
	Denmark	827,992	SONOFON	46.5
	Israel	1,513,081	Cellcom	34.7
	India	24,664	SkyCell Communications	24.5
Nextel	Argentina Brazil Canada Japan Mexico Peru Philippines Shanghai, PRC	1,245,600	Ownership interests in international wireless companies are held through Nextel's substantially wholly owned subsidiary, Nextel International, Inc.	

Sources: Publicly available company documents such as operators' news releases, web sites, and filings made with the Securities and Exchange Commission; DONALDSON, LUFKIN & JENRETTE, THE GLOBAL WIRELESS COMMUNICATIONS INDUSTRY, at 76 (Summer 2000); and the following news articles: Doris Benavides, *Telmex Makes Analysts' Q1 Forecast*, INFOWORLD, May 15, 2000; *Canada: Rogers Units to Open Customer Center in Ottawa*, REUTERS ENGLISH NEWS SERVICE, May 11, 2000; *J-Phone Biz to Boost Japan Telecom Group Earnings in FY 2000*, JIJI PRESS ENGLISH NEWS SERVICE, May 18, 2000; *BellSouth Buys Brazil Celco Stake*, REUTERS, May 29, 2000; *Cellular Phone Carriers TCO, NBT Reach 1 Million Clients*, BRAZILIAN FINANCIAL WIRE, Apr. 5, 2000.
Note: Table reproduced from FIFTH REPORT, Appendix B, Table 4.

According to the FCC, U.S. wireless carriers have investments abroad that reach over 70 million subscribers. Other investments by U.S. wireless carriers not included in Table 4 include

VoiceStream, investing in the Canadian GSM operator Microcell Telecommunications, Inc.;[50] Sprint PCS, acquiring 30.5 percent of Mexican operator Pegaso PCS;[51] and AT&T, acquiring one-third of the Canadian carrier Rogers Cantel Mobile Communications Inc. through a joint investment with British Telecommunications.[52]

By comparison, the most notable investment into the U.S. mobile telephony market in 1999 was Vodafone's merger with AirTouch.[53] Other examples of foreign operators investing in U.S. carriers include the Hong Kong company, Hutchison Telecommunications Limited, owning a 23 percent stake in VoiceStream after VoiceStream completed its acquisitions of Omnipoint and Aerial.[54]

Allowing foreign companies, including ones with foreign-government ownership, to compete in the U.S. market gives USTR and the FCC considerable leverage to push other countries to continue to liberalize their markets. Most recently, USTR announced that Japan has agreed to lower its interconnection rates substantially, which is a priority to U.S. companies seeking to gain greater access to the Japanese market.[55] The FCC, likewise, has been able to use access to the U.S. market to induce foreign carriers to take steps to remove barriers to competition in their home markets. Imposing an absolute ban on market access to companies

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50. *Microcell Announces Equity Investment by VoiceStream*, News Release, Microcell Telecommunications, Inc., Feb. 14, 2000.

51. *Leap Cuts Losses, Adds Markets*, WIRELESS TODAY, Mar. 22, 2000.

52. *BT and AT&T Corp. Announce Strategic Telecommunications Investments In Canada*, News Release, AT&T Corp., Aug. 5, 1999.

53. *Vodafone and AirTouch to Complete Merger*, News Release, Vodafone Group PLC, June 25, 1999.

54. *See* Aerial Communications, Inc., and VoiceStream Wireless Holding Corporation, For Consent to Transfer Control of Licenses and Authorizations, WT Dkt. No. 00-3, Memorandum Opinion and Order, ¶ 11 (rel. Mar. 31, 2000); VoiceStream Wireless Corporation or Omnipoint Corporation and VoiceStream Wireless Holding Company, et al, For Consent to Transfer of Control and Assignment of Licenses and Authorizations, File Nos. 0000016354, *et al.*, File No. 0000054383, File No. 50001-CW-AL-00, Memorandum Opinion and Order, ¶ 14 (rel. Feb. 15, 2000).

55. *See* Office of the United States Trade Representative, *United States and Japan Agree on Interconnection Rates*, News Release (July 18, 2000) (Japan will cut rates for regional access by 50% over two years and for local access by 20 percent over two years.).

with more than 25 percent foreign-government ownership would eliminate this leverage. It would invite counterproductive retaliatory measures.

Moreover, a ban on issuing FCC licenses to U.S. companies with more than 25 percent indirect foreign-government ownership would violate U.S. commitments in the WTO Agreement on Basic Telecommunications. As part of that agreement, the United States, along with fifty-two other countries, agreed to permit foreign ownership or control of telecommunications services or facilities. In particular, the United States agreed to maintain no restrictions on indirect ownership of licenses in exchange for commitments by other WTO members. No distinction was made in the WTO agreement with respect to the attributes of the foreign ownership. Since many of the European and other foreign telecommunications operators were wholly or partly government-owned at the time, if the U.S. government had tried to exclude such companies from the benefits of its commitments, that attempt would have killed the Agreement on Basic Telecommunications by depriving our negotiating partners of most of the benefits of the deal. Hence, there is no reason to think that any exception for a firm undergoing privatization could have been conceived. Any after-the-fact imposition of such a restriction would subject the United States to a well-founded challenge under the WTO dispute resolution process and reduce the incentives of other member countries to honor their commitments.

Such a step by the United States would trigger rising tensions that could reach beyond the telecommunications sector. The EU has already stated that it believes such a ban would violate U.S. commitments in the WTO and that it would face "strong pressures to react."[56]

Taking a step backward from the United States' commitments in the WTO Basic Telecommunications Agreement also would undermine U.S. leadership in future negotiations—

both multilateral and bilateral. It would provide an easy excuse for countries to roll back their own commitments or refrain from making new ones, thus delaying the very progress on privatization of government-owned companies and liberalization of regulatory regimes that the United States is seeking.

These trade concerns have been echoed in a recent report regarding the Deutsche Telekom/VoiceStream transaction by the respected investment research firm of Sanford C. Bernstein & Co. According to the Bernstein report, the rejection of Deutsche Telekom's acquisition on the ground of partial foreign government ownership could "easily jeopardize past gains with marginally committed governments, risk retaliation from the EU specifically, and would almost certainly provide additional grounds for procrastination to countries still negotiating."[57]

At the same time, closing our doors to investment will not accelerate the privatization of Deutsche Telekom. In June 2000, the German government sold nearly 7 percent of Deutsche Telekom, bringing its ownership share to 58.2 percent. Before the most recent offering, the Federal Republic's *direct* ownership interest in Deutsche Telekom was approximately 43 percent. KfW, which is 80 percent owned by the Federal Republic and 20 percent owned by the German Federal states, owned approximately 22 percent. Hence, the German government's total share was 65 percent (= 43 + 22). The Federal Republic is therefore in indirect control of the shares owned by KfW. KfW acquired its shareholding in Deutsche Telekom from the Federal Republic in several tranches between 1997 and 1999.

The *direct* ownership interest of the Federal Republic in Deutsche Telekom was reduced to approximately 43 percent following the second public offering of Deutsche Telekom in June

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56. Letter from Pascal Lamy, Member of the European Commission, to Ambassador Charlene Barshefsky,

1999 and the nearly completed distribution of bonus shares relating to the initial public offering of Deutsche Telekom in 1996, while the ownership interest of KfW was reduced to approximately 22 percent following the transfer in December of 1998 of 2 percent of Deutsche Telekom's then-outstanding shares to France Télécom and following Deutsche Telekom's equity offering in June 1999.[58]

Particularly in view of its size and complexity, the privatization of Deutsche Telekom is proceeding at a respectable pace and compares favorably with the rates of privatization of major foreign carriers, including BT, France Télécom, NTT, and Telstra. The progress toward full privatization is depicted in Table 5.

USTR (July 24, 2000).

57. *Deutsche Telekom's proposed VoiceStream deal expensive*, BERNSTEIN RES. CALL, July 24, 2000, at 3.

58. DEUTSCHE TELEKOM PROSPECTUS, *supra* note 2, at 21.

TABLE 5: PRIVATIZATION TRAJECTORY OF FORMER STATE-OWNED TELECOMMUNICATIONS CARRIERS

	British Telecom[1]	Deutsche Telekom[2]	Telstra[3]	NTT[4]	France Télécom[5]
Year					
1984	51.0%				
1985	0.0%				
1986	0.0%			12.5%	
1987	0.0%			12.5%	
1988	0.0%			9.6%	
1989	0.0%			0.0%	
1990	0.0%			0.0%	
1991	26.0%			0.0%	
1992	0.0%			0.0%	
1993	21.0%			0.0%	
1994	0.0%			0.0%	
1995	0.0%			0.0%	
1996	0.0%	25.0%		0.0%	
1997	0.0%	0.0%	33.3%	0.0%	25.0%
1998	0.0%	0.0%	0.0%	6.3%	12.0%
1999	0.0%	10.0%	15.7%	6.0%	0.0%
2000	0.0%	6.8%	0.0%	0.0%	0.0%
Current Government Share	2.0%	58.2%	51.0%	53.1%	63.0%
Average Annual Sell Rate	9.8%	8.2%	12.3%	3.1%	9.3%
Years to Sell 35%	0	3	2	2	1
Years to Sell 50%	0	NA	NA	NA	NA
Years to Sell 75%	7	NA	NA	NA	NA
Years to Sell 90%	9	NA	NA	NA	NA

Source: (1) MITSUHIRO KAGAMI & MASATSUGU TSUJI, PRIVATIZATION, DEREGULATION AND INSTITUTIONAL FRAMEWORK 122 (Institute of Developing Economies Japan External Trade Organization 1999); BRITISH TELECOM ANNUAL REPORT, 2000; Anne Davies, *Telstra: Pros And Cons Of Privatisation*, SYDNEY MORNING HERALD, Aug. 19, 1995; (2) DEUTSCHE TELEKOM, SEC FORM 20-F (1996); (3) TELSTRA CORP. ANNUAL REPORT (1999); Telstra 1999 Annual General Meeting, November 12, 1999 http://www.telstra.com.au/newsroom/; (4) "History of NTT Stocks" http://www.ntt.co.jp/ir/e/history.html; NIPPON TELEGRAPH AND TELEPHONE CORPORATION, SEC FORM 20-F, filed August 10, 2000; (5) FRANCE TÉLÉCOM, ANNUAL REPORT (1999); http://www.francetelecom.fr/vanglais/e/e4.html.

Table 5 shows that Deutsche Telekom's privatization trajectory is in line with other former state-owned telecommunications companies. Even if one thought that Deutsche Telekom's pace of privatization should be swifter, it would not follow that a statutory prohibition on foreign investment by companies with partial government ownership would supply the proper catalyst. As I have explained, such a step would be counterproductive.

* * *

That concludes my prepared statement. For the convenience of members of the public seeking copies of my testimony, this document is now posted on the Internet at http:\\www.CriterionEconomics.com. Thank you, Mr. Chairman, for this opportunity to express my views. I welcome any questions that the Subcommittee might have.

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APPENDIX: QUALIFICATIONS

J. Gregory Sidak is the F. K. Weyerhaeuser Fellow in Law and Economics at the American Enterprise Institute for Public Policy Research (AEI) in Washington, D.C., where he has directed AEI's Studies in Telecommunications Deregulation since 1992. He is also the president and chief executive officer of Criterion Economics, L.L.C., an economic consulting firm in Washington, D.C., that has expertise in antitrust and regulatory issues concerning telecommunications, the Internet, and other network industries.

Mr. Sidak has worked in the federal government on three occasions. From 1987 to 1989, he was deputy general counsel of the FCC. From 1986 to 1987, he was senior counsel and economist to the Council of Economic Advisers in the Executive Office of the President. From 1981 to 1982, he served as a law clerk to Chief Judge Richard A. Posner during his first term on the U.S. Court of Appeals for the Seventh Circuit. In addition to having worked in government, Mr. Sidak has previously worked, as an attorney in private practice, on numerous antitrust cases and federal administrative, legislative, and appellate matters concerning competition policy in telecommunications and other network industries.

Mr. Sidak's academic research concerns regulation and strategy in telecommunications and other network industries, antitrust policy, and constitutional law issues concerning economic regulation. He is the author or co-author of five books concerning pricing, costing, competition, and

investment in regulated network industries,[59] and of more than thirty scholarly articles in law reviews and economics journals. One of his books is *Foreign Investment in American Telecommunications* (University of Chicago Press 1997). He is also the editor of a book evaluating the implementation of the Telecommunications Act of 1996[60] and co-editor of another book comparing telecommunications deregulation in the United States with that in Germany.[61] He has testified before committees of the U.S. Senate and House of Representatives. His writings have been cited by the Supreme Court, by the lower federal and state supreme courts, and by state and federal regulatory commissions. He has been a senior lecturer at the Yale School of Management, where he taught a course on telecommunications regulation and strategy with Professor Paul W. MacAvoy.

Mr. Sidak has been a consultant on regulatory and antitrust matters to the Antitrust Division of the U.S. Department of Justice and the Canadian Competition Bureau, and to more than thirty companies in the telecommunications, electric power, natural gas, mail and parcel delivery, broadcasting, newspaper publishing, and computer software industries in North America, Europe, Asia, and Australia.

From Stanford University, Mr. Sidak earned A.B. (1977) and A.M. (1981) degrees in economics and a J.D. (1981) in law. He was a member of the *Stanford Law Review*.

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59. J. GREGORY SIDAK & DANIEL F. SPULBER, DEREGULATORY TAKINGS AND THE REGULATORY CONTRACT: THE COMPETITIVE TRANSFORMATION OF NETWORK INDUSTRIES IN THE UNITED STATES (Cambridge University Press 1997); J. GREGORY SIDAK, FOREIGN INVESTMENT IN AMERICAN TELECOMMUNICATIONS (University of Chicago Press 1997); WILLIAM J. BAUMOL & J. GREGORY SIDAK, TOWARD COMPETITION IN LOCAL TELEPHONY (MIT Press & AEI Press 1994); WILLIAM J. BAUMOL & J. GREGORY SIDAK, TRANSMISSION PRICING AND STRANDED COSTS IN THE ELECTRIC POWER INDUSTRY (AEI Press 1995); J. GREGORY SIDAK & DANIEL F. SPULBER, PROTECTING COMPETITION FROM THE POSTAL MONOPOLY (AEI Press 1996).

60. IS THE TELECOMMUNICATIONS ACT OF 1996 BROKEN? IF SO, HOW CAN WE FIX IT? (J. Gregory Sidak, ed., AEI Press 1999).

61. COMPETITION AND REGULATION IN TELECOMMUNICATIONS: EXAMINING GERMANY AND AMERICA (J. Gregory Sidak, Christoph Engel & Günter Knieps, eds., Kluwer Academic Press 2000).

Mr. SHIMKUS. Thank you very much.

Next is Mr. Andrew Lipman, vice chairman of Swidler Berlin Shereff Friedman.

STATEMENT OF ANDREW D. LIPMAN

Mr. LIPMAN. Thank you, Mr. Chairman.

I have had the benefit of extensive experience in assisting competitive telecom clients enter previously closed local long distant markets in both the U.S. and abroad.

As the former senior vice president of legal and regulatory affairs for MFS Communication, at the time the country's largest competitive local exchange carrier, I obtained on behalf of MFS's Frankfurt network the first competitive carrier authorization ever issued in Germany.

Mr. COX. Could the gentleman put the mike closer. Thank you.

Mr. LIPMAN. After, incidentally, several years and many frequent flyer awards. Last year Germany generated over $45 billion in telecommunications services and represents the largest and the most attractive market opportunity for competitive carriers operating in Europe. Indeed, there are several dozen carriers owned, controlled, financed, and operated by U.S. firms which are seeking to compete in Germany against the incumbent government-controlled carrier Deutsche Telekom or DTAG.

I am here today on behalf of the leading German competitive carrier association, VATM, which is comprised of more than 50 companies, many of whom are American who have experienced firsthand the trials and tribulations of trying to establish a competitive foothold with DTAG. Our simply stated message is that DTAG should be allowed to invest in the U.S. telecom market if it satisfies two preconditions which will help serve to pry open the German market to competition and in turn eliminate the unfair advantages that DTAG would have if allowed to compete in the U.S. market.

First, DTAG must make specific binding commitments to cease immediately its anticompetitive practices such as artificially creating bottlenecks for interconnections, forcing competitors to accept burdensome interconnection roles, chronically exceeding provisioning intervals for collocation space, impeding billing and collection services, and pursuing predatory pricing.

Second, DTAG's regulators and the relevant ministries must commit to enforce these commitments in a manner which no longer displays favoritism toward DTAG. As recently as 1998, the U.S. telecom industry was enthusiastic about the prospects of entering Germany as a result of the WTO basic telecommunications agreement. After some initial inroads in the form of a monopolistic German telecom sector, U.S.-backed competitive carriers have faced increasingly onerous barriers that prevent them from achieving competitive traction in Germany. In an effort to prop up the value of its investment, the German Government is highly protectionist of the state-owned and -controlled incumbent DTAG and seeks in many ways to micromanage and suppress competition.

In the face of announced acquisitions of U.S. telecom carriers by DTAG, these developments in Germany have rightfully caught the attention of key Members of Congress as well as others. In this regard we particularly want to compliment Senator Hollings as well

as members of this subcommittee for leadership in this area and for shining a spotlight on these practices in Germany. While problems of anticompetitive practices may exist elsewhere, my testimony today focuses only on particular experiences in Germany.

DTAG's anticompetitive practices are well documented, in particular, its predatory pricing tactics and its refusal to provide reasonable and timely interconnection. The USTR has been unsuccessfully seeking redress from the German Government for these kinds of practices for more than a year. In the meantime these anticompetitive practices have actually accelerated. The German ministry and the regulatory authority RegTP have been passive and accommodating on these issues, such as matters involving DTAG's predatory pricing and price squeeze tactics.

While the government should instead be aggressively seeking to eliminate these barriers and where appropriate impose stiff penalties on DTAG, the ministry has recently announced that it intends to roll back several competitive safeguards previously implemented by the regulator, including price control. DTAG and its government-sponsored directors have calculatedly and deliberately made it oppressive and unduly expensive for U.S.-based carriers to invest in the German market. It is difficult enough to compete against a muscle-bound DTAG with all of the advantages of a former monopoly; it is especially unfair when the German Government not only dominates DTAG's side of the playing field, but is also the referee, umpire, and official scorer. They should shake off their bodyguard of German Government investors, managers, and overly sympathetic regulators and compete fairly in the marketplace with privately owned competitors.

In conclusion, DTAG, we would submit, must make the following commitments to U.S. policymakers necessary for competition both in the German and U.S. telecom markets: timely publish and monitor provisioning intervals, accept state-of-the-art ordering and benchmark systems for electronic bonding, contractual penalties for provisioning and service deficiencies, make available planning data for new provisioning, and significantly reduce the inflated fees for bundle loops.

If DTAG is prepared to make these commitments and if the German regulators and ministry represent to the U.S. policymakers that they will enforce them, then DTAG should be allowed to invest in the U.S. telecom market. Thank you.

[The prepared statement of Andrew D. Lipman follows:]

PREPARED STATEMENT OF ANDREW D. LIPMAN, SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

Thank you Mr. Chairman and Members of the Subcommittee for inviting me to testify on this timely topic. As Vice Chairman of the Washington D.C. law firm Swidler Berlin Shereff Friedman, LLP, and head of the Firm's Telecommunications Practice Group, I have had extensive experience over the past two decades in assisting our competitive telecommunications clients enter previously foreclosed local and long distance markets in both the United States and abroad. In addition, as the former Senior Vice-President of Legal and Regulatory Affairs for MFS Communications, (at the time, the country's largest competitive local exchange carrier), I and my team obtained on behalf of MFSI Frankfurt Fiber Optic Network GmBH the first competitive carrier authorization ever issued in Germany.

I. INTRODUCTION

Last year, Germany generated over $45 billion in telecommunications services and represents the largest and most attractive market opportunity for competitive telecommunications carriers operating in Europe. Indeed, there are now several dozen telecommunications carriers—owned, controlled, financed and operated by U.S. firms—which are seeking to compete in Germany against the incumbent government-controlled carrier Deutsche Telekom AG ("DTAG"). I am here today on behalf of the German competitive carrier association: Verband der Anbieter von Telekommunikations-und Mehrwertdiensten e.V. ("VATM"), which is comprised of a large number of these firms [1] who have experienced first hand the trials and tribulations faced when trying to establish a competitive foothold against DTAG. VATM is Germany's most significant competitive carriers' association, representing more than 50 telecommunications and multimedia companies which have entered the German market in competition with DTAG. Many of VATM's members are financed, operated or controlled by U.S. interests.

Our simply-stated message is that DTAG should be allowed to invest in the U.S. telecom market if it satisfies two preconditions which will serve to help pry open the German market to competition. First, DTAG must make specific binding commitments to cease immediately its anti-competitive activities such as artificially creating bottlenecks for interconnection; forcing competitors to accept burdensome interconnection rules; chronically exceeding provisioning intervals for collocation space; impeding billing and collection services; and pursuing a strategy of predatory pricing in emerging telecom markets. Second, DTAG's regulators and the relevant Ministries must commit to enforce these commitments vigorously, promptly and in a manner which displays no favoritism toward DTAG.

As recently as 1998, the U.S. telecommunications industry was enthusiastic about the prospects of entering the German market as a result of the WTO Basic Telecommunications Agreement. After a period of initial inroads into the former monopolistic German telecom sector, U.S.-backed competitive carriers have faced and continue to face increasingly difficult, and in many instances singularly burdensome, obstacles that prevent them from achieving competitive traction in Germany. In an effort to prop up the value of its investment, the German Government is highly protectionist of the state-owned and controlled incumbent DTAG, and seeks in many ways to micromanage and suppress competition.

In the face of announced acquisitions of U.S. telecommunications carriers by DTAG, these developments in Germany have rightfully caught the attention of key members of both the House and Senate, as well as the USTR and the FCC. While problems of anti-competitive practices may exist with government controlled telephone monopolies in certain other countries as well, my testimony focuses on my competitive carriers clients' particular experiences in Germany.

Over the past several years, DTAG has not only striven to defend its traditional markets by unfair means, but also has blocked competitors from entering emerging markets such as DSL and advance wireless services. DTAG's anti-competitive actions are well-known, in particular its predatory pricing tactics and its refusal to provide reasonable and timely interconnection. The USTR has been unsuccessfully seeking redress from the German Government for these types of practices for more than a year. It is particularly troubling that these anti-competitive practices have been accelerating over the last few months.

The German Federal Ministry of Economics and Technology (the "Ministry") and the German regulatory authority (the "RegTP") have generally adopted an overly passive and accommodating stand on issues such as DTAG's predatory pricing (e.g. voice telephony, DSL lines and Flat Rates for Online-Services) and price-squeeze tactics vis-á-vis competitors (in particular having extremely low retail prices while charging competitors high pre-product prices for the individual elements constituting those services in sectors such as interconnection, unbundled local loops and local access leased lines). The Ministry and the RegTP should instead be aggressively seeking to eliminate these barriers and, where appropriate, imposing stiff penalties on DTAG—powers that the German government has under the German Telecommunications Act. On the contrary, the Ministry has recently announced that it intends to roll back several competitive safeguards previously implemented by the RegTP. For example, the Ministry stated that it will partially release DTAG from the current price control mechanism, which was initially adopted to encourage competition. The Ministry also artificially redefined smaller relevant geographic and product markets in order to make it easier for DTAG to escape dominant carrier regulation. In light of DTAG's continuing abuses of its market power, however, now

[1] See Appendix 1 (VATM List of Members) attached hereto.

is **not** the time to even be thinking of releasing DTAG from these important dominant carrier safeguards.

DTAG and their government appointed Directors have calculatedly and deliberately made it onerous and unduly expensive for U.S.-based carriers to invest in the German market. It is difficult enough to compete against a muscle-bound DTAG with all the advantages of a former monopoly. It is especially unfair when the German Government is not only ubiquitous on DTAG's side of the playing field, but is also the referee, umpire and official scorer. DTAG should shake off its bodyguard of Government investors, managers, and overly sympathetic regulators and compete fairly in the marketplace with privately owned competitors.

At a minimum, DTAG should make the following binding commitments to U.S. policy-makers that the German telecom market is open to fair competition. DTAG should commit to:

- timely publish and monitor its provisioning intervals on a monthly basis;
- accept a state-of-the-art ordering and benchmark system via electronic bonding as well as severe contractual penalties and other prompt and predictable enforcement action for provisioning lapses and service deficiencies; and
- make available its internal planning data for loop provisioning and significantly reduce the inflated fees for unbundled local loops.

If DTAG makes these commitments, and if the German regulators and Ministry represent to enforce these commitments, then DTAG should be allowed to invest in the U.S. telecom market.

II. MARKET SITUATION IN GERMANY

1) Impact in Germany of the WTO Agreement on Basic Telecommunications

Only a few short years ago, the U.S. telecommunications industry was "wildly enthusiastic" about the successful conclusion of the negotiations resulting in the World Trade Organization's ("WTO") Fourth Protocol to the General Agreement on Trade in Services ("Basic Telecom Agreement") that entered into force on February 5, 1998.[2] At that time, U.S. negotiators committed to open the U.S. telecommunications markets to foreign carriers from WTO member countries, including carriers owned by foreign governments. U.S. carriers were enthusiastic about the prospects of entering the previously closed markets, particularly in Europe. Of all the countries announcing market-opening commitments, none generated as much excitement as Germany. As the largest telecom market in Continental Europe, Germany has been a magnet for many multinational companies, and the prospects that U.S. based and financed carriers could capture a part of this multinational telecom business in Germany were great considering these carriers' vast technical, marketing, and operational expertise and their valuable experience gained in the emerging U.S. competitive telecom market. Over the last several years, however, competition has not flourished as expected in Germany, and the benefits of the WTO Agreement have not materialized for U.S. based and financed carriers venturing into the German telecom marketplace. A large part of the blame can be attributed DTAG's anti-competitive activities and the German Government's refusal to take the necessary steps to reign in DTAG and enact and enforce laws that promote competition.

Detailed below is a snapshot of the state of competition in Germany, and a catalogue of problems encountered by U.S. based and financed carriers seeking to compete in that market. This list is not intended to be exhaustive, but merely sufficient to capture the essence of the difficulties competitive carriers face and how Germany has failed to live up to the commitments it made as part of the WTO Basic Telecom Agreement.

As the centerpiece of its WTO commitment, Germany agreed to provide to carriers from other WTO Member countries non-discriminatory access to and use of the German public telecommunications network. Germany also committed to abide by the principles found in the Reference Paper associated with the Basic Telecom Agreement.[3] Under the Reference Paper, Germany must provide interconnection with DTAG's network on an unbundled, non-discriminatory, cost-oriented and transparent basis, at any technically feasible point in the network. Germany also committed to make publicly available its licensing criteria and apply competitive safeguards when necessary to prevent anti-competitive conduct by DTAG. As dem-

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[2] Shortly before the conclusion of the negotiations, the U.S. negotiators of the Basic Telecom Agreement were met at a briefing of U.S. industry with signs saying "wildly enthusiastic". *See* Laura B. Sherman, *"Wildly Enthusiastic" About the First Multilateral Agreement on Trade in Telecommunications Services,* 51 Fed. Comm. L.J. 61, 62 n. 6 (1998).

[3] *See Fourth Protocol to the General Agreement on Trade in Services* (WTO 1997), 36 I.L.M. 354 (1997).

onstrated below, these commitments have not been fulfilled. Therefore, at the end of this statement is a list of specific commitments DTAG must make if Germany is to be truly open to competition as promised in its WTO commitments.

2) DTAG's Overwhelming Market Share for Local Services Remains Unchallenged.

DTAG continues to dominate the German local services market. Given the current regulatory regime and lack of effective enforcement procedures to deter DTAG anti-competitive practices,[4] a customer switching to a competitive carrier encounters a complicated and expensive process. Therefore, it does not come as surprise that DTAG's market share on the local level is 97%.[5] A recent study on the liberalization of the German telecommunications market published by the renowned German think tank "Institut für Wirtschaft" /Cologne ("IWK") finds that:

(1) DTAG remains the *de facto* monopolist for local traffic.

(2) DTAG can readily cross-subsidize its local services because approximately 90% of the revenues generated by competitors in the long distance market flow back to DTAG in the form of excessive interconnection charges and billing and collection fees.

(3) For the short and medium term, competitive carriers must continue to rely on DTAG's network to reach end-users because it is prohibitively expensive in most cases for competitors to install their own lines to end-users. Alternative access technologies such as Wireless Local Loop ("WLL") or connections via television cables or energy lines, will not likely soon challenge DTAG's existing local infrastructure because they face high installation costs, and traffic volumes on the local level are expected to be relatively low.[6]

In the emerging DSL market, DTAG is attempting to foreclose competition from obtaining traction by adopting a parade of anti-competitive practices and through manipulation of its role as the dominant local service provider. These measures include setting self-serving standards which favor its own services and inherently disadvantage competitors. These practices also include leveraging its dominant market position by failing to provide necessary provisioning and operating support services to competitive DSL providers who must necessarily rely on DTAG unbundled loops, provisioning and service coordination. Similarly, DTAG frequently exercises its dominance to thwart competitors' attempts to provide Value Added Services such as entertainment services, weather forecasts and, most importantly, payments for Internet shopping via the telephone, by simply refusing to provide competitors billing services for e-commerce and innovative tariffs. For instance, selling movie tickets over the phone and charging them through DTAG's telephone bill is not possible if an alternative carrier operates the service platform.

III. THE GERMAN GOVERNMENT UNFAIRLY PROTECTS DTAG

1) Intermingling of Interests Between the German Government, RegTP and DTAG

DTAG's anti-competitive practices are buttressed and in many instances sanctioned by the majority ownership and control exercised by the German Government. In numerous overt and subtle ways, the German Government seeks to fashion laws and policies to protect its significant investment in DTAG and keep competitors at leash.

In its annual report for 1999, DTAG candidly admits:

> "As long as the Federal Republic directly or indirectly controls the majority of Deutsche Telekom's shares, it will, like any majority shareholder in a German stock corporation, have the power to control most decisions taken at shareholders' meetings, including the appointment of all of the members of the Supervisory Board elected by the shareholders and the approval of the proposed dividend payments."[7]

In addition to its undisputed control at the shareholder level, DTAG's corporate structure ensures that the German Government exercises close supervision over DTAG's business. DTAG's Board of Management ("*Vorstand*") is controlled and directed by a Supervisory Board ("*Aufsichtsrat*") which consists to a large extent of representatives of the German Government and of the German trade unions. The Aufsichtsrat appoints, for instance, DTAG's top managers, determines the long-term goals of the Company and approves DTAG's general strategy and major transactions. Further, a significant share of DTAG's personnel consists of former govern-

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[4] VATM Position Paper ("*VATM Report*"), p. 3, The VATM Report is attached hereto as Appendix 2.

[5] *Id.*

[6] Klaus-Werner Schatz, *Liberalization in the telecommunications sector* (in German), IWK, publication 255 (1/2000).

[7] DTAG 20-F filing with SEC for 1999, p. 68.

ment civil servants, who, with the support of their trade unions, endorse DTAG government ownership.

There also are a myriad of different ways for the Government to pave the way for DTAG indirectly. Many of the personnel in the regulatory authority overseeing the telecom sector, the RegTP, have been recruited directly from government officials of the former Federal Ministry of Posts and Telecommunications, whose primary mission used to be to supervise and protect the activities of the former Federal Post and Telecommunications Monopolies. The RegTP is supervised by the Federal Ministry of Economics and Technology (the "Ministry") and, consequently, vulnerable to political pressure. Therefore, competitive carriers have observed that in many instances—especially since the change in government in 1998—the RegTP has not been able and sometimes unwilling to take an aggressive stand, let alone initiate enforcement action, against DTAG.

2) German Ministry of Economics and Technology Interferes Directly to Protect DTAG.

In connection with its WTO commitments, Germany committed to establishing an independent regulatory body, the RegTP, to oversee the telecommunications market. Recent events, however, bring into question the full independence of the RegTP and consequently its ability to effectively regulate DTAG. So long as the German Government stands to gain economically from its ownership and control of DTAG, the incentives will remain great for the German Government to enact rules and policies that favor DTAG vis-á-vis its competitors. For instance, it is a matter of concern that the Ministry recently released a Position Paper in which it announced that the RegTP "without undue delay" must refrain from reviewing DTAG's prices for domestic and international routes before they enter into force. The Ministry also mandated that business decisions by DTAG should "not more than necessary be restricted." The Ministry further reasoned that for business end-users, the prior approval procedure of DTAG's end-user prices must be abolished completely by 2002/2003 because new access technologies "bear the potential" for intensifying local competition on the local level.[8] Although competitors maintain that there is no support for these propositions, several DTAG petitions to remove prior RegTP price control are already pending before the RegTP.

This direct interference of the German Government into the day-to-day affairs of DTAG is inconsistent with the German Telecommunications Act and European law, under which the RegTP was intended to be established as an independent body (See Sec. 66 German Telecommunications Act). The Position Paper is a clear sign that the German Government intends to steer the telecommunications market into another direction, while overruling the well-established rules and competencies of the RegTP and the German Federal Cartel Office, both of which are under the supervision of the German courts.

3) Recent UMTS Auction Benefits DTAG Because of German Government Ownership.

The German Government also supports DTAG financially in many ways that impair competitors. Well beyond the aspirations of competitive carriers, DTAG has access to funds and guarantees that allow it virtually unlimited financial freedom to expand its networks and operations in ways that its competitors cannot begin to even dream. According to DTAG's Annual Report for 1999,

> "Pursuant to applicable law, all liabilities of Deutsche Telekom outstanding as of January 2, 1995, the date of Deutsche Telekom's registration in the Commercial Register (Handelsregister), became guaranteed by the Federal Republic. This guarantee replaced the Federal Republic's obligations with respect to Deutsche Telekom's liabilities when it was a state-owned special asset. Liabilities incurred after January 2, 1995 are not guaranteed by the Federal Republic . . . As of December 31, 1999, EUR 31.8 billion of Deutsche Telekom's liabilities were guaranteed by the Federal Republic."[9]

DTAG's government financial backing indirectly has helped DTAG to succeed in the recent auctions for the German universal mobile telecommunications service (UMTS). This auction made international news as six companies bid nearly $50 billion for licenses to offer a new generation of wireless communications in Germany. In addition, each of the future operators is expected to invest approximately US$ 4 billion to rollout its UMTS network. It is unclear when or whether at all UMTS will become profitable and who will survive the stiff fight for market share. The

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[8] Position Paper of the Federal Government on "*Competition on the Telecommunications and Post Markets*" (in German), August 16, 2000, p. 4 to 6. (download available at www.bmwi.de)

[9] DTAG 20-F filing for 1999, p. 71 and 106.

amounts at stake are tremendous, however, and only those players with vast financial resources were able to participate.

Most privately-owned competitive companies simply could not afford to participate in the auctions. Government-owned companies such as DTAG, however, could participate because of their vast government-backed resources. In essence, these carriers have a government created safety net and therefore enjoy artificially inflated credit ratings. DTAG, for instance, holds a Standard & Poor's Single A rating. There is little dispute that DTAG will be able to raise the funds for the UMTS world-record spectrum license fees. After the auction, the other consortia heavily criticized DTAG for unnecessarily inflating the bidding up by several billion dollars.

IV. IMPORTANT MARKET ENTRANCE ISSUES REMAIN UNRESOLVED.

1) Exorbitant Administrative Fees Render Competitors' Entrance Difficult.

In a number of European countries, competitors finance the regulatory authority through fees that are split among the licensees. In Germany, the license fees are exorbitant and represent a clear barrier to entry. A national voice license costs US$ 1.6 million and a national infrastructure license costs US$ 5.6 million. Moreover, these fees must be paid up-front. Fees for regional or city licenses are also exorbitantly high. Due to this high hurdle for market entrance, of the 305 entities that hold German infrastructure or a voice licenses [10], many of them only cover small regions or individual cities.

The following chart published by the European Commission clearly demonstrates that German license fees are out of scale, compared to other EU Member States:

Survey of the European Commission on administrative fees (numbering/licensing) for the first year of operation (nationwide provision)

EU Member State	First Year Fees Voice [1] in Euro	First Year Fees Infrastructure [2] in Euro
Belgium	130,000	21,000
Denmark	295,000	0
Germany	2,048,000	5,419,000
Spain	143,000	17,000
France	366,000	800,000
Ireland	51,000	6,000
Italy	124,000	165,000
Luxembourg	290,000	20,000
Netherlands	58,000	2,000
Austria	0	5,000
Portugal	n.a.	20,000
Finland	342,000	0
Sweden	600	600
U.K.	18,000	64,000 max.

[1] Chart 38 of EU 5th Report (Fifth Report on the Implementation of the Telecommunications Regulatory Package, November 1999), Annex 4.3.3.1: Total fees for the first year of operation for nationwide provision of voice telephony services (numbering and licensing fees) , not including the operation of the network, for 1,000,000 telephone numbers and 1 International Signaling Point Code (ISPC), and 4 National Signaling Point Codes (NSPC).

[2] Chart 41 of EU 5th Report, Annex 4.3.3.2.

Accordingly, two U.S. competitive telecommunications associations have already filed formal complaints concerning the German licensing fees as part of the USTR's annual review of telecommunications trade agreements under Section 1377 of the Omnibus Trade and Competitiveness Act. In one industry report on Foreign Trade Barriers submitted to USTR, Germany's fee structure was listed as one reason to place Germany on the list of countries that lack full or satisfactory implementation of commitments under the WTO Basic Telecommunications Agreement." [11]

2) Interconnection and Unbundled Local Loop Problems with DTAG

Equally egregious to the licensing fee barrier to entry are the myriad problems competitors face in obtaining access to essential facilities and interconnection. In virtually all instances, competitive carriers must rely on interconnection by DTAG to reach end-users. Alternative networks, such as WLL technologies, have yet to be implemented to provide an alternative to DTAG's ubiquitous network.

[10] RegTP Annual Report 1999, p. 12.

[11] USTR 2000 National Trade Estimate Report on Foreign Trade Barriers, at p. 118.

In its 2000 National Trade Estimate Report on Foreign Trade Barriers, the USTR stated:

> "The competitors to DTAG operated in considerable contractual uncertainty throughout 1999, after DTAG cancelled existing interconnection agreements in December 1999. On December 23, 1999, the German telecommunications regulatory agency (RegTP) finally approved new interconnection tariffs. These tariffs will remain valid until February 28, 2001. Competitors largely welcomed the rates, but noted that RegTP had still not ruled on a number of other important rate-related issues. In particular, DTAG has sought to impose numerous additional—and in the new entrants' view arbitrary and unsubstantiated charges for carrying competitor's traffic." [12]

One of the main reasons for the continuous struggle on interconnection issues between DTAG and its competitors in Germany (with dozens of complaints filed every year with the RegTP) is the fact that it is DTAG which still dictates unilaterally the rules and conditions for interconnection, not the RegTP—as it should be under EU law. The RegTP has yet to develop, together with all competitors and with the aim of truly well balanced non-discriminatory interconnection conditions, its own binding and fair Reference Interconnection Offer as required by EU law. Competitors have developed alternative draft interconnection agreements in an attempt to improve this long-lasting unsatisfactory situation in Germany. These draft interconnection agreements, however, have in fact been ignored by DTAG during negotiations. Therefore, DTAG continues to force competitors to accept new interconnection rules and proposals or risk having their interconnection agreements terminated. The RegTP tolerates in principle this situation and only takes action, albeit in a modest way, if there are large injustices at stake.

USTR, in its on-going investigation of Germany under Section 1377, noted that interconnection is a key significant barrier to entry into the German market by competitive U.S. companies. As USTR noted, several new entrants reported that DTAG was not providing interconnection in a timely fashion, on terms and conditions and cost-oriented rates that are transparent and reasonable. For many U.S. competitive carriers seeking to do business in Germany, the interconnection difficulties are reaching the boiling point. Serious backlogs remain for obtaining from DTAG points of interconnection for competitors, particularly in bottleneck metropolitan areas.

VATM recently initiated a survey among its members that covers approximately 1,500 orders for collocation space under the Local Loop contract, placed by 15 different carriers. The results are as follows:

1) Preparing an offer

(a) In **86.3%** of all cases DTAG exceeds the stipulated interval for Preparing an Offer for collocation space (the interval is supposed to be 20 days according to the agreement between the Competitors and DTAG, approved by the RegTP)

(b) In **50.69%** of the cases mentioned under (a) DTAG exceeds the interval for Preparing an Offer for collocation space by 250% (50 days or more).

2) Provisioning of collocation space

(a) In **77.02%** of all cases, DTAG does not comply with the provisioning intervals, which is 16 weeks from the receipt of the final order by DTAG.

(b) In **32.77%** of all cases DTAG exceeded the stipulated interval for providing collocation space by **12 weeks** or more (more than **75%** of the stipulated time). This number is expected to increase because DTAG has not even processed many orders.

(c) In **171 cases,** DTAG did not provide the requested collocation space at all, particularly when DTAG's Central Office was located in an attractive commercial area. This is happening on an increasing basis.

(d) The situation of placing offers and the provision of collocation space is particularly burdensome in the metropolitan bottleneck areas Essen, Düsseldorf, Stuttgart, Munich, Hamburg, Cologne, Karlsruhe and Freiburg. In addition, competitors observe increasing serious provisioning delays with DTAG in smaller cities, such as Hagen, Gelsenkirchen and Krefeld.

VATM concludes:

"Even after the RegTP decision rendered on June 7, 2000, DTAG seriously obstructs competition on the local markets as the survey clearly demonstrates, not only in individual cases, but systematically by artificially created bottlenecks. In particular, new market entrants in the local markets suffer from DTAG's obstruction policy."

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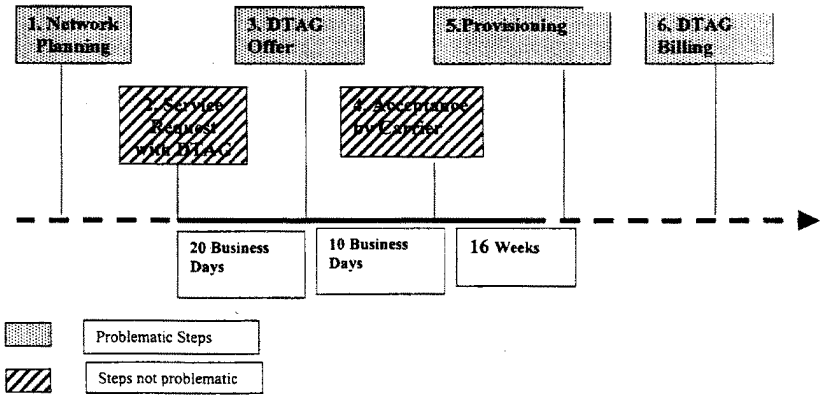
[12] *Id.* at p. 119.

Figure: Ordering Process with DTAG



Due to the backlog in obtaining interconnection capacity from DTAG and pressure from the U.S. Government, the RegTP published last year a ranking scheme for processing competitors' orders. However, DTAG still refuses to make public information on the availability of interconnection lines for each point of interconnection and will not publish the ranking of each carrier for those lines. Consequently, competitive carriers cannot efficiently plan when interconnection and the ensuing number of lines will become available at a certain point of interconnection. Further, additional delays result from DTAG's deliberate strategy to retire relevant technical personnel and to outsource the provisioning of interconnection services to sub-contractors who are not familiar with DTAG's network.[13] Additional artificial obstacles, such as DTAG's refusal to let competitors share standard collocation space or to provide data on DTAG's network planning[14] exacerbate this situation.

In the Unbundled Local Loop ("ULL") sector, DTAG typically does whatever it can to delay the entrance of competitors. DTAG almost never delivers to new entrants within the stipulated timeframe the key prerequisite for establishing service, i.e. the collocation space at the Central Office. Consequently, competitors' network planning and deployment speed are significantly delayed. Problems with the delivery of unbundled loops also are commonplace, in particular if DTAG must visit the customer or transfer a customer's access number to complete the unbundling. For instance, DTAG's actual ULL contract does not contain binding provisioning intervals, so DTAG does not suffer any consequence for exceeding these intervals. In addition, switching of business customers during off-peak periods is only offered on a limited basis. Fortunately in one of these cases the RegTP did intervene. Last June, the RegTP imposed binding provisioning intervals on DTAG but unfortunately no penalties in case of non-fulfillment.

Finally, with regard to the quality standards that DTAG provides to its competitors, DTAG does not treat its subsidiaries and competitors on an equal footing. For instance, DTAG refuses to make automatic alternative overflow/emergency routing available to its competitors, while at the same time offering it to its subsidiaries.[15]

3) Restrictions on Billing and Collection Services by DTAG

DTAG, with the confirmation of the RegTP in the case of innovative Value Added Services (in particular, e-commerce), tries to impose such onerous requirements on its competitors as to refuse for all intents and purposes to provide necessary billing and collection services. In its most recent offer, for instance, DTAG not only raises its charges for these services by up to 600%,[16] but also requires each individual competitor to submit to DTAG written direct debit authorizations individually for every single customer in order to be eligible for billing and collection services. If the authorizations are not submitted, DTAG charges the competitor a penalty for each cus-

[13] VATM Report at 3.
[14] *Id.* at 4.
[15] *Id.*
[16] *Id.* at 2.

tomer. It is not only extremely burdensome to provide these written statements for up to 48 million German households, but also impossible to provide in those cases where a carrier does not have a nexus with their end-users, such as dial-around carriers and carriers with specific Value Added Services. In addition, as already mentioned, DTAG is not obliged, due to a recent regulatory decision, to provide billing and collection for innovative Value Added Services (e-commerce) of its competitors.

4) DTAG's Proposed New Network Structure is Unfairly Burdensome for Regional and National Competititve Carriers.

Currently, DTAG's interconnection tariffs are based on a 4-tier structure: "City", "Regional (50 km)", "Regional (200 km)", and "National". During the last year, the RegTP has studied a network element-based system for interconnection rates similar to the rate structure in other European countries ("local", "single transit", "double transit"). Yet, DTAG has submitted a proposal that, if adopted, will fundamentally change the interconnection regime in Germany, to the distinct disadvantage of competitive carriers. In particular, DTAG intends to impose a requirement of 1,000 local points of interconnection ("POI") on any competitive carrier that seeks local interconnection tariffs for the entire territory of Germany. If approved, this new model is expected to become effective in 2001. Due to the size of the "City" areas, a competitor is currently allowed to cover, for instance, the City of Berlin with only one POI and is eligible for "City" interconnection rates. Under DTAG's proposal, a competitor covering the same Berlin area would have to interconnect at 46 local POIs to reach all end-users at the local rate. Consequently, competitors are compelled to invest heavily into network planning to mirror DTAG's inefficient network and may be forced to write-off parts of their investment in infrastructure. Once again, this measure serves no useful purpose and is designed simply to raise the bar (and ensuing costs) for competitive providers. This is especially true for the many U.S. companies with nationwide activities in Germany that relied on the RegTP's ruling last year that they only needed a minimum of 23 POIs to cover Germany. These companies are now faced with the burden of making a huge new investment in POIs if they don't want to lose considerable ground. Under the new network-element based structure, these competitors would be severely punished for their streamlined national network structure on the basis of 23 POIs because DTAG would charge them the double tandem-tariff to terminate the calls. This extremely unfair situation was not at all foreseeable for them previously, and therefore makes obsolete their existing business cases.

In addition, the new network concept may inevitably lead to increasing predatory pricing by DTAG because the RegTP cannot use its unwritten principle that there should be a margin of at least 25 % between DTAG's end-user prices and the underlying costs of a competitive carrier (calculated by using only interconnection fees, no switches, no backbone, marketing, customer care, billing, etc.) necessary to provide the same services to its end-users.[17] The interconnection charges structured along network elements cannot be put into this oversimplified model anymore. A more sophisticated model will need to be developed.

5) The RegTP's Regulatory Decisions Lack Transparency.

In contrast to the United States and most other European countries, there is considerably less transparency in the decision-making of the RegTP. The RegTP's website does not generally make the text of the RegTP's decisions available to the public. When tariff applications and decisions are made available to competitors, data is often heavily redacted to protect alleged "business secrets" of DTAG. This practice is considerably less open than the U.S. system or that of many European regimes where cost information of competitors is more readily available in order to determine whether access and other charges made by dominant carriers are in fact cost-based.

6) The RegTP's Regulatory Decisions Are Not Sufficiently Enforced.

As important as having clear industry standards and provisioning intervals is the ability to enforce these standards against incumbents swiftly and predictably. Experience in Germany with interconnection shows that the RegTP is extremely reticent about implementing a regulatory decision on this subject. Regulatory procedures are often long and burdensome, which lag naturally tends to benefit incumbents. Last June, the RegTP rendered a decision on some disputed ULL issues, such as splitting the costs for moving collocation space to another location and imposing binding provisioning intervals on DTAG for the delivery of ULL access. However, bowing to political pressure the RegTP refused a U.S. competitor's requests to impose automatic

[17] *Id.* at 8.

penalties on DTAG for violating the provisioning standards. In its decision, the RegTP—for the same reasons—also refused to introduce a process that automatically monitors DTAG's provisioning intervals, similar to the systems used in Texas and New York, which would automatically calculate damages for under-performance of DTAG. With little explanation or justification, the RegTP argued that implementing a benchmark system would be much too difficult and expensive.

Given the market inequality between DTAG and its competitors, and DTAG's incentive for delay, this process will not succeed on its own accord. In effect, if DTAG fails to meet the binding provisioning intervals for collocation space and lines, each competitor is forced to lodge individual complaints for every line or collocation space with the RegTP in order to challenge each particular delay. Otherwise, the competitor has to sue DTAG in court for each delay. This is not only burdensome and expensive, but also causes additional backlog and delay due to an overload on the regulator's docket. So far, the RegTP has not yet imposed significant penalties on DTAG.

Not content with the current regulatory situation, the Ministry seeks to further clip the RegTP's wings. As already mentioned the Ministry's Position Paper places even more restrictions on the ability of the RegTP to effectively regulate DTAG. The Paper determines that the RegTP should approve DTAG's prices "for at least one year" in order "to avoid unnecessary bureaucracy putting a burden on the market, in particular on DTAG."[18] Sadly, the RegTP appears to not recognize the need for changes in any of these policies in order to promote competition. The RegTP recently applauded DTAG's plans to acquire telecommunications companies in the United States because of the "background of the liberalized German telecommunications market"[19] in which U.S. carriers are investing. For these reasons, I am not sanguine that the German Government will take any action to increase competition in the German telecommunications market.

V. DTAG'S ANTI-COMPETITIVE BEHAVIOR IS NOT KEPT IN CHECK BY THE REGULATOR.

As most recently evidenced in the Ministry's Position Paper, the RegTP, although established under German Telecommunications Act as an independent body, has come under increased pressure from the German Government to protect DTAG's interests and financial well being. As a result, even though the RegTP touts the "achievements" of liberalization of the German telecommunications market, its regulatory practices prove increasingly otherwise.

1) DTAG Is Not Prevented from Engaging in Cross-Subsidization.

In Germany, the Ministry has publicly declared that it wants to lift the long-standing "*ex ante*" price control in certain sub-markets, meaning the RegTP will no longer review DTAG's prices before they enter into force. This measure will almost certainly encourage DTAG to engage in below cost pricing for special customer groups, which will lead to a customer migration from the competitors back to DTAG. There is no control over DTAG's prices because the Ministry and the RegTP are not advocating accounting separation of DTAG to the extent that markets (both regional and products) under price control are separable from markets without price control. This is particularly true if the German market will be divided into several regional markets, as suggested in the Position Paper.[20] According to the Paper, DTAG may be released from the price control regime in several of these markets, even though it is within the purview of the German Cartel Office and the RegTP, not the Ministry, to determine the relevant markets. Without proper cross-subsidization control through separated accounts, this measure will allow DTAG to reinforce its dominant position in these markets. This is especially the case because DTAG has not been forced to compete through bifurcating its local network and other local and long distance services. Among other things, DTAG may be able to cross-subsidize its international business if it penetrates the U.S. market by imposing high access and local charges in Germany.

This behavior is encouraged by the RegTP's practice of determining price caps for DTAG's access charges. Currently, the RegTP only differentiates between residential and non-residential services, and curiously places international, national long distance, local and access services into the same basket. Consequently, DTAG is in the position to comply with the price cap by offering low rates for its long-distance and international services, where competition is emerging, and by keeping the prices for its local access services (where competition is embryonic) artificially high. The end

[18] *Id.* at 10.
[19] Handelsblatt 07/25/00, Press Conference of RegTP President Scheurle.
[20] VATM Report at 5.

customers using DTAG's local services, and the competitive carriers, will end up bearing the burden of this regulatory policy.

2) DTAG is Following a Strategy of Strategic Pricing in New Markets.

From a traditional point of view, strategic pricing prevents competitors from entering into a field because a dominant company can artificially keep prices low until the competitors are driven from the market, after which point the prices for the products concerned are raised. Over the past several years, the RegTP has not sufficiently discouraged behavior that has elements of strategic or predatory pricing. The most recent example is the RegTP's conditioned approval of a DTAG flat rate (making calls and surfing the Web on Sundays). Bowing to Government pressure, the RegTP approved this DTAG service over the strenuous protests of DTAG's competitors. Most recently, the RegTP did not seek to suspend DTAG's offer to provide DSL services to residential end-users for less than $5 a month. This price, in the view of many competitors is clearly predatory and is much lower than in the United States where the DSL equipment is already significantly less expensive.

By engaging in this strategic pricing, DTAG seriously impairs competitors from entering the promising DSL market. It is true that strategic pricing may not work if a company is required to raise the prices for these specific products after a certain time period to finally cover its costs. However, a Party may decide to raise the prices for related products such as content if it has a dominant position in the means to access these products. Therefore consumers may pay less for access to the content, but much more for the content than in a competitive market situation without strategic pricing in the developmental phase of the market.

The following gives two concrete examples of DTAG's strategic pricing.

(a) The RegTP has allowed DTAG to provide a rebate to a customer who is already an ISDN customer and subscribes to the flat rate of DTAG's Internet provider "T-Online" (for $ 41 per month). The ISDN connection "AktivPlus" (including a 50% rebate for voice telephony) currently costs DM 54.88 (US$ 27) per month. In total, Internet via ISDN amounts to DM 133.88 (US$ 68). If the same customer subscribes to DTAG's new T-DSL service as of September 1, 2000, the customer will only be charged:

- DM 54.88 for the ISDN connection AktivPlus
- DM 14.89 (T-DSL)
- *DM 49 (Flatrate T-Online DSL)*

TOTAL: **DM 118.77 (US$ 55)** including the high speed and higher bandwidth of a DSL line.

(b) The RegTP recently issued an order permitting DTAG to introduce a flat rate XXL (DTAG's first flat rate offer) for a test period of 7 months beginning on June 1, 2000. This is good for Sundays and holidays only. Accordingly, DTAG's ISDN customers may choose to accept an increase in their monthly fee of DM 14.89 ($8) in order (without additional costs):

(1) To have unlimited surfing of the Internet via DTAG's provider T-Online; and
(2) To make unlimited telephone calls within Germany.

Further, customers may not be preselected to a competitor to use this service. Also, prior to this order DTAG was only permitted to charge for its services on a per-minute basis.

Competitors widely criticized this rate package unsuccessfully arguing that it materially increases the price squeeze between DTAG's interconnection charges (calculated on a per-minute-basis) and its end-user charges. Significantly, DTAG did not offer competitors comparable flat-rate services (such as interconnection) to enable them to offer their own flat rates. Competitors expect significant customer migration as a result of this pricing policy. The offer also blurs the line between DTAG's fees for voice telephony, where the RegTP's prior price approval is required, and Web communication, where this is not the case. It is already foreseeable that the XXL flat rate will lead to further congestion on DTAG's network because heavy users, who are no longer charged on a per-minute-basis, will remain connected to DTAG's network for the entire day. In addition, DTAG will be in the position to present bundled offers (for instance, combining voice and Internet services) which will undermine any efficient price control by the regulator.[21]

3. DTAG Has No Outside Incentive to Open Its Local and Long Distance Markets

As the incumbent carrier for local, long distance and international services, there is not one line of the telecommunications business that DTAG does not dominate. DTAG already has telecommunications facilities in virtually every building in Ger-

[21] *Id.* at 3.

many, and has long-established relationships with most businesses. In contrast, in the United States the Bell Operating Companies ("BOCs") historically have been precluded from providing long distance service. Under Sections 251 and 271 of the 1996 Telecommunications Act, Congress was able to create a large incentive for BOCs to open their local markets, and provide interconnection and unbundled local loops, by making the BOCs entry into the long distance market conditioned on their complying with the regulations and safeguards needed to open the local markets. This is a powerful tool that the U.S. Government has for fostering competition. Unfortunately, the RegTP does not have such a competitive mechanism and there are few, if any, incentives for DTAG to affirmatively open their market. Therefore, it is even more critical that the RegTP be totally independent from the influences of the German Government, and can take an aggressive role regulating DTAG. So far, the RegTP has, after initial tough actions under another government, increasingly not been able to do so. As a result, DTAG continues to dominate the markets, succeeds in dominating new ones, and competition remains embryonic.

VI. PROPOSED EU LEGISLATIVE MEASURES WILL NOT CHANGE THE PICTURE.

In many cases, gaps exist between national laws and EU laws as its Member States unequally interpret EU directives. The most recent EU proposed directives which intend to spur competition and close the "digital divide" with the United States generally will not take effect until the end of 2001 and have not yet passed the EU Parliament. Past experience has shown that EU Directives are implemented quite unevenly within the Member States. In the aforementioned Position Paper, the Ministry already warned the EU that "the adoption of the additional legal standards in compliance with the development of competition must not be obstructed by EU law." The "principle of subsidiarity" (safeguarding the priority of national law over EU law) "must be strictly adhered to." The goal is that "the German legislator should have sufficient room for maneuvering to ensure the competitiveness of *German* [emphasis added] carriers on the European and global level."[22] Therefore, one should not expect that pro-competitive missives from Brussels will improve the competitors' situation in Germany.

VII. PROPOSAL.

In order to evaluate which measures the U.S. Government should adopt to encourage open market environments, the matter should be addressed on a country-by-country basis. In the case of Germany, DTAG's behavior as a whole has been anti-competitive, and the German Government's response has not been in congruence with its WTO obligations. Moreover, the competitive situation has actually worsened during the last year. Because DTAG's share price has plummeted by approximately 60% since the beginning of this year, there is mounting pressure from the political level public on the Federal Government to interfere with market and competitive forces to bolster DTAG's stock.

- In general, a key goal should be to ensure that U.S.-based and financed companies have an open market environment and the opportunity to compete, as set forth by the WTO agreements, particularly as to cost based interconnection and access to end users. The RegTP and the Ministry are obviously under political pressure to protect DTAG. However, there is no valid reason that a highly industrialized country with an advanced telecommunications regulatory regime like Germany should not be able to abide by the WTO standards. Therefore, DTAG can and should make the necessary commitments to change its anti-competitive practices in order to create an open environment and adequate opportunities for meaningful competition in Germany. In addition, regulators must actively enforce these commitments by DTAG. Provided that these commitments are made and enforced, the United States should allow DTAG to own U.S. telecommunications companies.
- Although the German regulatory authorities will take a primary role in enforcing DTAG's commitments as they relate to its actions in the German telecom market, U.S. regulatory authorities also should play a role. The U.S. Government has both expansive and flexible competencies in the sector of merger approvals. Merger approvals should be granted under the condition that the U.S. Government supervises the performance of DTAG and has the power to impose stiff penalties upon backsliding and failure to adhere to any commitments it makes. The following are the minimum commitments to the regulators that DTAG should make to ensure open competition in the German telecom market.

1) DTAG must timely publish and monitor its internal and external provisioning intervals for all products it offers to competitors such as unbundled local loops, col-

[22] *Id.* at 2.

location space, interconnection lines, etc. (including all milestones, for instance the intervals for preparing the offer). The information should be published for each month by the end of the first week following that month.

2)DTAG must accept considerable contractual penalties for provisioning lapses and other service deficiencies in their agreements with their competitors. Penalties for failure to meet the benchmarks should be assessed in accordance with terms contained in the interconnection agreement. A pre-established matrix should be used and made publicly available to determine the penalty for failure to comply with a given benchmark.

3) DTAG must provide convincing evidence that it complies with the provisioning intervals by observing a benchmark of at least 98.5% of all orders (presenting the order collocation space, delivery of collocation space, reaction period for a loop order or interconnection port order, and delivery of the loop or the interconnection port order). Each order should be delivered free from defects. If DTAG falls below this benchmark during a certain month, DTAG must make good for this difference during the following month if it wants to avoid predetermined considerable penalties.

4)DTAG must make available its internal data which serves as DTAG's basis for loop provisioning to competitors so that both competitors and DTAG must commence discussions as soon as possible on how to streamline the process. The target deadline should be sufficiently in advance of the RegTP's review on DTAG's ULL charges by March 31, 2001. Electronic bonding, meaning a state-of-the-art online connection between DTAG and the competitors for ordering and monitoring of the competitors' orders, must be part of the process. The RegTP should review the ULL charges on the basis of the streamlined process. The goal is significant reduction of DTAG's inflated fees for unbundled loops.

VIII. CONCLUSION

DTAG and their government appointed managers have calculatedly and deliberately made it onerous for U.S.-based carriers to compete in the German market. DTAG should shake off its bodyguard of Government investors and managers and compete fairly in the marketplace with privately owned competitors. Therefore, DTAG should be allowed to invest in the U.S. telecom market if it meets two conditions that will serve to help pry open the German market to competition. First, DTAG must make specific binding commitments to cease immediately all its anticompetitive practices. In this regard, DTAG should commit to timely publish and monitor its provisioning intervals on a monthly basis; to accept a state-of-the-art ordering and benchmark system via electronic bonding as well as severe contractual penalties and other prompt and predictable enforcement action for provisioning lapses and service deficiencies; to make available its internal planning data for loop provisioning; and to significantly reduce its inflated fees for unbundled local loops. Second, DTAG's regulators must enforce these commitments vigorously, promptly and in a manner that displays no favoritism toward DTAG.

APPENDIX 1

VATM LIST OF MEMBERS

ACC Telekommunikation GmbH; Alpha Telecom GmbH; Bertelsmann New Media; Broadnet Deutschland GmbH; BT Telecom Deutschland GmbH; Cable & Wireless Deutschland GmbH; Callino GmbH; Carrier 1 AG; Carrier 24 GmbH; COLT Telecom GmbH; Completel GmbH; KDD Conos AG; debitel AG; D Plus Telecommunications GmbH; Drillisch AG; Econophone GmbH; E-Plus Mobilfunk GmbH; European Telecommunication Holding E.T.H. AG; EWE TEL GmbH; FirstmarkCommunications Deutschland GmbH; First Telecom GmbH; Gigabell AG; Global TeleSystems (Deutschland) GmbH; HanseNet Telekommunikation GmbH; Hermes Europe Railtel; Hutchison Telecom GmbH; Interoute Telecom Deutschland GmbH; isis Multimedia Net GmbH; KKF.net AG; Level 3 Communications GmbH; Mannesmann Arcor AG & Co.; Mannesmann AG; MCI WorldCom Deutschland GmbH; mcn tele.com AG; MobilCom AG; Netcologne GmbH; NETnet Telekommunikationssysteme GmbH; NETZTEL Plus AG; One.Tel GmbH; QS Communications AG; RSL COM Deutschland GmbH; Star Telecommunications Deutschland GmbH; Talkline GmbH; Talkline Infodienste GmbH; Tangens GmbH; TeleBeL Ges. Für Telekommunikation Bergisches Land mbH; Telegate AG; Teleglobe GmbH; Telia Telekommunikations GmbH; tesion Communikationsnetze Südwest GmbH & Co. KG; Versatel Deutschland GmbH; Viatel Global Communications; and Victor Vox GmbH & Co. KG.

APPENDIX 2

PROPOSITIONS REGARDING THE COMPETITIVE AND REGULATORY SITUATION IN THE GERMAN TELECOMMUNICATIONS MARKET—(ENGLISH TRANSLATION)

CONDITIONS FOR FAIR COMPETITION NO LONGER EXIST— REGULATION OF THE GERMAN TELECOMMUNICATIONS MARKET THREATENS TO FAIL

1. Deutsche Telekom ("DTAG") increasingly determines the rules of the game.
The Regulator ("RegTP") is threatening to lose control.
A clear policy favoring competition is required.

DTAG's strategy ranges from massively influencing political and regulatory decisions to systematically delaying and obstructing the development of competition.(The following merely outlines some of the more important instances out of an extensive repertoire of competition-obstructing practices by DTAG. Due to their complexity only their highlights are presented in the following.)

DTAG Consistently Abuses Its Market Power

Various services which are of substantial significance to competition in telecommunications are being offered solely to DTAG subsidiaries or its retail customers, but not to its competitors. One example of a technical service not being offered to competitors is automatic quality assurance measures in cases of network overload or switch failure (overflow and emergency rerouting services). Certain services and pricing terms, too, local flat rate calling for example, are being exclusively offered to DTAG's IP subsidiary T-Online, consequently harming the development of the Internet market. DTAG responds to innovative service offerings by competitors, as for example xDSL, with massive predatory pricing campaigns.

DTAG Prevents The Implementation Of RegTP's Regulatory Decisions

Even where DTAG has been forced to compete fairly, DTAG is openly obstructing the implementation of regulatory decisions, or is circumventing such decisions in practice through new obstructive behaviors. In response to DTAG's complete refusal to offer billing and collection services to competitors, the regulator more than one year later ordered DTAG to submit a new draft contract addressing such service. Instead of a full contract and much later than required, DTAG merely submitted a set of general terms and conditions which would prevent the offering of dial-around ("Call-by-Call") services. Not only does this offer substantially raise prices, it also requires the submission by the competitive carrier for each end customer wishing to take advantage of dial-around services while having these charges appear on his regular phone bill, of a prior written authorization for withdrawals from his account. It is in the ad-hoc nature of the dial-around offering that the carrier does not know who his customers will be.

DTAG Prevents The Implementation Of Court Orders

Even court orders, including threatened fines, are being ignored by DTAG. A court order threatening to impose fines of approximately $ 22,000 upon DTAG for the continuing refusal to offer a service vital to competition (billing for competitive value-added services) showed no effect. In March of this year, DTAG for the first time was fined for contempt. In several cases it took temporary injunctions to force DTAG to compete fairly.

DTAG Prevents Customer Acquisition By Dial-around Service Providers

The principal inroad into the residential market has been through dial-around, rather than through pre-subscribed carrier choice. Central to the viability of dial-around services is the ability to offer simple usage and billing options without prior written agreements. As some 60% of the population to date has never utilized a competitive provider to make even a single phone call, DTAG is doing all it can to make the use and billing of dial-around arrangements as difficult, or at least as expensive, as possible. The complete refusal to offer billing services to dial-around providers would mean for the customers to receive and pay a multitude of bills, at least some of which will be for pennies only. Even as competitive carriers will be obliged to establish and operate their own customer care and collection services, DTAG is now trying to raise the price of its remaining billing services (billing and initial payment acceptance) by up to 600%.

DTAG Prevents Customer Acquisition By Preselection Of Long-distance Providers

Since more and more customers are opting for preselection, instead of dial-around, DTAG is increasingly delaying the switching over of such customers to competitors, wrongly or never informing customers and carriers about impending transfers, with over 10% of transfers being switched to the wrong carrier or not switched at all.

Customers interested in switching over are subjected to unfair win-back marketing strategies including rebates. New tariffed offerings by DTAG (for example the new XXL Flat Rate) include terms and conditions, which preclude subscribers from preselecting a competitor, thus leveraging DTAG's 97% market share in local exchange to additionally impair the newly emerged competition in long-distance telephony. Through these so-called "bundled offerings", DTAG is able to use its overwhelming market dominance to once again monopolize markets which were believed to be safely on the road to competition.

DTAG Prevents Customer Acquisition by Change Of Local Exchange Network Operator

The greatest difficulties are those encountered in changing the local exchange network operators permanently. Here, DTAG has, and continues to, massively delay or prevent the necessary physical switch-over of the customer loop (claiming that no collocation space is available), a practice which at various times has been found to be an abuse of dominant market power by the RegTP. Since those regulatory rulings however, no measurable improvement has occurred; rather the situation is worsening. Now as before, competitive carriers are paying more for the unbundled customer loop than end customers of DTAG are paying for complete local exchange services. Before this background, and at prices which cannot be matched due to the high prices competitive carriers are being charged, DTAG is currently offering bundled Internet and broadband connections far below its own cost (offering such service for a mere approximately $4 extra, despite initial deployment costs of about $300 per customer).

DTAG Intentionally Constrains the Supply Of Resources Vital To Competition

The spectrum of such actions reaches from the firing of DTAG technical personnel and their replacement by qualitatively inferior subcontractors to the deficient or delayed provisioning of required network elements and collocation spaces. In doing so, DTAG is pointing fingers at the alleged difficulties of component suppliers, which these suppliers are usually unable to confirm. Increasingly, DTAG even argues that its own real estate subsidiary is unwilling to provide the necessary collocation spaces.

DTAG is Firing Personnel Urgently Required for Competitive Carrier Provisioning

Increasingly, DTAG claims that personnel bottlenecks are to blame for massive delays in processing and provisioning orders. Nevertheless, personnel is being reduced in the very areas in which demand will, due to the network build-out activities of competitive carriers demanded by DTAG itself, continue to be high and increase further. This situation is leading to extreme overwork of individual DTAG employees who are, despite their own enthusiastic efforts, not able to make up for these personnel shortages.

DTAG Is Preventing The Economical Utilization Of Existing Resources

In spite of existing capacity constraints which are only going to increase on a going forward basis, for example with regard to available collocation spaces, DTAG is preventing the efficient use of such network capacities on a level which in other countries is routine and even according to DTAG technically unproblematic. With reference to the alleged lack of any legally binding obligation to do so, DTAG is refusing to divide existing collocation spaces among competitors, or even to simply permit the installation of air conditioning (of course, at the expense of the competitive carriers). To date, DTAG has not even bothered to respond to a request for a statement on that matter from RegTP dating back to January; nor has DTAG replied to concrete proposals for the better utilization of existing collocation capacities made by competitive carriers in March of this year.

DTAG Is Preventing Reasonable Network Planning By Competitors

Even where improved network planning on the part of the competitive carriers would help to prevent over-subscriptions and therefore at least some instances of capacity constraints, DTAG has refused to cooperate in such undertakings, by stating that it is under no legal obligation to provide existing network planning information to competitors, much less prior to their placing orders with DTAG for interconnection and collocation space.

DTAG Is Preventing Improvements In Internal Processes

Even the processing of applications for carrier preselection or switching over of individual customers is being consistently obstructed, and processing times are being massively exceeded in constantly changing locations (up to three times the agreed-upon time frames). Only 10% of applications are being processed in a timely

manner. Many applications still have to be submitted by fax rather than via electronic interfaces. Many potentially cost-saving processing methods adopted, for instance in the British or U. S. context, are not being implemented to the detriment of competition in telecommunications.

DTAG Is Preventing The Implementation Of Higher Quality-Of-Service Standards By Competitors

Delivery of the highest quality service is a precondition for successful competition. The competitive carriers are dependent in many areas upon DTAG's quality-of-service standards. Requests for higher quality-of-service standards have not only been rejected, for example with respect to the availability of circuits, but even been met with attempts to reduce existing quality-of-service commitments. DTAG is even attempting to avoid making available to competitors its overflow and emergency rerouting services. Only the intervention of RegTP forced DTAG into, for example, offeringrestoration-of-circuit services on par with the terms available to DTAG's end customers.

DTAG Is Preventing Effective Network Build-Out By Competitors

DTAG had always claimed that the competitive carriers are attempting to run their businesses at the expense of DTAG and its legacy infrastructure, cherry-picking customers with minimal investment in technology and without investing in their own networks. Instead, the current structure of interconnection pricing has predictably lead to massive investment in the competitors' networks, which are carrying increasing loads. Even today, DTAG is neither able to timely provide competitors with the requested interconnection to the long-distance network, nor to comply with requests for interconnection at the local loop within the contractually specified time frames. The new structural cost model planned to be implemented in 2001 would, if one were to apply the assumptions being made by DTAG, not only worsen these existing problems, but will also result in substantially increased but useless investments in additional switching and transmission infrastructure.

DTAG Is Preventing Transparency In Cost Accounting

The data underlying DTAG's cost-basis models being submitted to the regulator is so restricted in nature as to make nearly impossible the appropriate review of these cost-models for infrastructure elements and services. Despite repeated requests by RegTP, DTAG has often failed to provide additional data, so that diverse regulations have had to be written on the basis solely of international comparative cost models. In the area of end-customer price controls, RegTP has been forced to work on the basis of dubious modeling assumptions because of this lack of actual data, such as a 20 to 25% minimum cost differential between wholesale and retail pricing. The increasing emergence of bundled pricing without any transparency of the underlying cost renders these simple assumption useless for reviewing DTAG's pricing.

DTAG Favors Obstruction Rather Than Cooperation

After more than a decade of competitive regulation, the former monopolists in the U.S. (AT&T) and the U.K. (BT) have developed completely different business philosophies in which their fellow carriers are treated as customers. Carrier service offerings have become profit centers, i.e. seek to sell to competitive carriers as comprehensive a service offering as possible, especially network capacity. Thus BT today has a significantly higher share of revenue attributable to the carrier services market than DTAG at significantly lower prices for leased lines and other services.

DTAG Seeks To Destabilize Rather Than To Shape The Market

DTAG systematically creates planning uncertainty for competitive carriers. Important information, for example about planned customer transfers, the making available of interconnection technologies, or simply the necessary planning materials are being provided by DTAG with the greatest possible delay. Issues agreed upon for planning purposes are never confirmed in writing even when explicitly requested. Commitments made by DTAG personnel in regional offices are being in part or entirely revoked by DTAG's headquarters. Agreed-upon provisioning dates are often repeatedly rescheduled at the last minute. Short contract terms and brief termination windows create constant insecurity from a legal and business perspective, hampering the development of new products and the development of business plans.

DTAG Selectively Discriminates Among Competitors

DTAG seeks to establish a contracting practice skewed in its favor by pushing one-sided agreements on specific carriers who share overlapping interests with DTAG, or by exploiting inexperienced small carriers who are under considerable

pressure to get a foothold in the market. The jurisprudence of RegTP institutionalizes the bias created by this practice, in that larger or more experienced competitive carriers in anti-trust proceedings will find themselves faced with the argument that these very same practices and rules have become the "market standard."

DTAG Is Waging An All-out Lobbying And Public Relations Campaign To Relax The Regulatory Framework In Spite of Increasing Competitive Obstacles

DTAG has framed the debate by portraying itself as the last enterprise of national pride worth protecting. A campaign on this level, in combination with the fact that DTAG remains majority-owned by the public, makes for a solid emotional appeal to the public. This campaign seeks to make the public forget the significant impact that the billions in foreign investment have had on the economy, in addition to the millions of jobs, which have been created by the competitive carriers and their suppliers in the German telecommunications market. This year, the order volume for network equipment placed by competitive carriers will overtake for the first time the volume of orders placed by DTAG, for instance with Siemens. Meanwhile, DTAG is even trying to blame the domestic regulatory framework for its repeated failures in international ventures. Its campaign for relaxed regulation culminates in its application to be considered non-dominant on the Berlin route even as DTAG still holds 97% of all end-user connections to the fixed network nationwide.

RegTP is under significant political pressure to relax the regulatory framework in favor of DTAG, despite of DTAG's massive obstruction of competition.

In addition, RegTP does not use its authority to counter the subtle obstructionism being practiced by DTAG .

The flood of technically and economically complex proceedings are overwhelming the limited staff and budget of the regulator.

RegTP Is Not Preventing DTAG's Abuse Of Its Market Dominance:

Even as DTAG has to this day never offered to competitive carriers "all essential network services" as demanded by the Telecommunications Act, RegTP is avoiding defining this core criterion, prevents decisions from being taken or delays making them. In contrast to the regulatory practice in the U.S. which can look back to ten years of competitive regulation, the RegTP occasionally lacks an understanding of the economic significance of seemingly minor irritations, like the refusal of DTAG to offer fast circuit restoration, the ability to switch business customers outside of business hours, automatic traffic rerouting and overflow routing in emergencies and other services which DTAG is providing only to itself and its subsidiaries. DTAG itself, according to its internal strategy memoranda, increasingly seeks to push competitors out of the market through predatory pricing of its products.

RegTP Does Not Prevent Predatory Pricing:

RegTP usually refuses to allow competitive carriers to join as parties the tariff review proceedings of DTAG, since their interests are allegedly not at stake—even as this is in fact the heart of their matter. Predatory tariff structures are often not even noticeable to the regulator, due to the limited knowledge and experience of RegTP (for example, the Internet access tariffs). Evermore complex tariff structures are being classified as not requiring approval and are approved up-front without sufficient review and lacking any factual basis for such classification (DTAG's digital subscriber line tariff or "T-DSL"), sometimes even being allowed to go into effect for several month on a "trial basis" without geographic limitation (e.g. DTAG'S "XXL" tariff). RegTP clearly does not have in hand any useful instruments to prevent predatory pricing.

RegTP Is Totally Overwhelmed Due To The Multitude And Increasing Complexity Of Violations:

The number of proceedings before the RegTP dealing with detailed technical matters has steadily increased since the beginning of liberalization. All agreements which DTAG had initially voluntarily negotiated with competitive carriers have been terminated unilaterally by it. Following the initial struggle to force DTAG to provide basic services to competitors, RegTP is now tasked with deciding upon details of service offerings and network elements without which effective competition is doomed to fail. DTAG's bundled tariff filings are growing ever more complex, strategically mixing different services. They can no longer be effectively reviewed for predatory pricing due to the decision-making principles thus far established (for example, the minimum 25% span assumed to exist between the price for some offering charged the end customer and the corresponding wholesale price of such offering for competitors). The provision of incomplete and redacted data by DTAG, which cannot be challenged by competitors, renders the situation even more difficult.

RegTP Is Not Consistently Using Its Existing Authority To Enforce Its Decisions

In several instances, RegTP has failed to ensure that its decisions with respect to DTAG are in fact being complied with. For instance, DTAG initially ignored the timeframes of the regulator's decision ordering the incumbent to continue to offer billing services to competitors and submit a corresponding offer for this service; substantively the revisions ordered to be made on DTAG's part are being ignored to this day. Similarly, RegTP determined that the significant delays in transferring local service customers from DTAG to be a clear abuse of market power; yet the regulator has failed over the past three months to enforce its order in the face of still-increasing delays in processing customer transfers. With respect to retail price tariffs, RegTP has failed to enforce the legal requirement that DTAG present evidence of cost-based pricing. Rather than to reject tariff submissions by DTAG lacking such required proof, the regulator is aiding and abetting DTAG's behavior by institutionalizing the recourse to makeshift approval processes (tariff approvals based on benchmarking or rule-of-thumb measures like wholesale price-plus-25-percent) rather than to insist on regularizing such approvals as envisioned by the law.

RegTP Is Not Using Its Authority To Actively Shape The Telecommunications Market

Even as many competitively problematic issues have long since been visible (and RegTP has in fact been informed numerous times of these issues) the regulator has to date continued to rely exclusively on reactive, quasi-judicial processes for each individual dispute. To date, no coherent, overall regulatory plan or rule making for the market is evident which would avoid the regulator having to make ad hoc decisions under time pressure, and to allow for more predictable planning by competitors. Additionally, the decisions made by RegTP limit themselves to the bare minimum and do not even begin to address future problem-solving approaches. Suggestions made by competitors, such as for example with regard to the proposal for more economical utilization of limited existing collocation spaces or the provision of automatic emergency overflow and rerouting services, were being rejected by the regulator as late as December of 1999 as unnecessary. The competitors had pointed RegTP to these emerging problems as much as one year previous to that date.

Demands for a Future Pro-Competitive Regulatory Policy:

1. *Competition* must be the driving force of:

- lower prices,
- innovative services,
- rapid infrastructure deployment,
- more jobs,
- large-scale foreign investment in the telecommunications market.

2. The regulation of the still absolutely dominant incumbent is only in its infancy and must be recognized as the necessary precondition for fair competition.

3. Predatory market behavior with the aim of eliminating competition as a deliberate strategy by DTAG, based on centralized monopolistic structures, must be met by stronger regulatory efforts and responses.

4. Only a reliably stable regulatory framework can create:

- future investment,
- innovative technology,
- new jobs with carriers and suppliers, and
- an efficient and consequently cheaper communications infrastructure.

5. Not the interests of only one company, but functioning competition as a whole must be the key for the future competitiveness of Germany as a business location.

Mr. SHIMKUS. Thank you.

Next, and our final panelist, Dr. Noll from the Annenberg School of Communication. Welcome. You are recognized for 5 minutes.

STATEMENT OF A. MICHAEL NOLL

Mr. NOLL. Thank you, Mr. Chairman, Mr. Markey, and the committee, for inviting me to be here today. This is the first time I have ever appeared before a congressional committee; and the experience is certainly interesting, to say the least, and certainly a bit overwhelming, even for an old professor like me. While I am a professor at the Annenberg School at the University of Southern California, I want to emphasize that my remarks and in my written statement are solely mine. I do not represent any organization,

any institution, or any company; and I am here today at my own personal expense.

Telecommunication like everything else is afflicted with a fever of merger mania that has gone global. Such globalization seems to have become information-age imperialism as foreign countries increase market domination outside their borders through companies that they own and control.

The provision of telecommunication in many countries is no longer operated by a department of the government. That is a good thing. Telecommunication has been privatized. However, in many countries substantial amounts of the stock of the allegedly privatized company are owned by the government. This is partial privatization. That is not a good thing, since the government still has a considerable involvement and financial interest in telecommunications. Partial privatization opens the possibilities for abuse and for conflicts of interest both within the foreign country and internationally.

Government ownership skews the marketplace. This occurs because governments, ours and others, do not operate as do markets to maximize economic efficiency. Additionally, governments are motivated to protect the government-owned company, particularly when telecommunication is still regulated by the government, as it is in most countries. Government will not regulate itself fairly compared to a competitor. Indeed, the business of government is government, not owning the stock of telecommunication companies.

Privatization means no government operation or ownership of telecommunication. Privatize means to make private, totally private. Telecommunication companies are licensed by the U.S. Government to operate as broadcasters and common carriers using the public airwaves and rights of way. Clearly such license to the use of public property should not be given or sold to a company owned by a foreign government. In the end this is an issue of national sovereignty. Until partially privatized countries eliminate totally their ownership of telecommunication, they should not be allowed to own any telecommunication business in the United States. And even then national security and antitrust issues still need to be examined for each particular case.

Senator Hollings' bill restricts foreign government ownership to no more than 25 percent and also eliminates the possibility of any FCC waiver of this restriction. Clearly, I would want to go all of the way and restrict foreign government ownership to zero. But Senator Hollings' bill is a strengthening step in the right direction and I favor it. It attempts to strengthen that golden share to protect the national sovereignty of our airwaves and telecommunication infrastructure. This clearly is an important topic deserving thoughtful discussion and consideration by the Congress; and the subcommittee today clearly is addressing the key issues. Everything that I have heard today touches upon them. I hope my remarks today and my written testimony help focus and summarize the issues for you. Thank you.

[The prepared statement of A. Michael Noll follows:]

PREPARED STATEMENT OF A. MICHAEL NOLL, ANNENBERG SCHOOL FOR COMMUNICATION

I wish to thank the House Subcommittee for inviting me to give my views on the topic of foreign government ownership of U.S. telecommunication companies. This topic has escalated in importance and controversy as foreign telecommunication companies with substantial foreign government ownership have recently attempted to purchase telecommunication firms in the United States.

PROVISION OF TELECOMMUNICATION

The Telecommunications Act of 1996 was intended to stimulate competition in the U.S. telecommunication industry, but instead mergers and industry consolidation are occurring on an epidemic scale. This fever of merger mania in telecommunication is now becoming pandemic on a global basis as telecommunication firms attempt to turn their pockets overloaded with profits into real property.

Indeed, the world telecommunication market has become global. As a positive benefit, globalization could lead to greater competition and lower prices to consumers. But globalization could also become a disguise for information-age imperialism as countries attempt to dominate markets outside their borders. Telecommunications could well become the 21st century's oil in terms of future international tensions. Mergers on a global scale can reduce both choice and competition for consumers. Globalization seems to have become the politically correct term for imperialism.

Except for a brief period during Word War I, telecommunication in the United States has always been provided by privately-owned monopolies—the old Bell System and the independent telephone companies. Nearly two decades ago, the Bell System was disbanded, and today many telecommunication markets in the United States are highly competitive. However, the monopolistic position of the local telephone companies in the United States has been difficult to break, perhaps because the provision of local service is more of a natural monopoly than the concept is politically acceptable today.

There are many ways that telecommunication can be owned and provided, ranging from a government owned and operated monopoly to a completely competitive environment operated by private industry. Between are such ways as a private monopoly and a government-owned company. The two significant dimensions are ownership (varying from completely private to completely public) and market (varying from closed monopoly to open competition). The ideal situation is open competition provided by private industry—as in the United States and in the United Kingdom.

In the past, telecommunication in most other countries was provided by an agency of the government, frequently as the postal, telephone, and telegraph (PTT) department. These government owned and operated monopolies were usually inefficient and stifled competition. Recently, many countries have opened their telecommunication markets to competition and have privatized the former government operated telecommunication department by creating government-owned corporations, but this is not privatization.

PARTIAL PRIVATIZATION

Privatization was accomplished in many countries by creating a private company to operate the telecommunication system, but the stock of the privatized companies was owned by the government. Some of the stock was then sold gradually to the public, but in many major countries, large proportions of the stock is today still owned by the government. I call such "privatization" partial privatization.[1,2] It appears to be a ruse to give the appearance of a private company while the government still owns and controls telecommunication, although not anymore directly responsible for the operation of telecommunication facilities.

Privatization must be complete. In the same way a woman can not be half pregnant, a business can not be partially privatized. Partial privatization opens the possibilities for abuses along with the appearance of conflicts of interest. Even a single share can create the potential for abuse, particularly if it is the "golden share" that grants veto power to the government.

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[1] Noll, A. Michael, "The Myth of Partial Privatization," *tele.com*, Vol. 4, No. 5, March 8, 1999, p. 94.

[2] Noll, A. Michael, "Telecommunication Privatization: Mixed Progress," *info*, Vol. 2, No. 1 (February 2000), pp. 21-23.

HARMS OF PARTIAL PRIVATIZATION

The standard should not be to document harm in advance, but rather the standard should be a matter of prudence about potential harms. There seem to me to be two major causes of potential harms from partial privatization. The first center on the commitments made by countries to the WTO to open telecommunication markets, and the second involve aspects of partial privatization that give me an uneasy feeling of concern.

The WTO is stimulating global business and the opening of markets around the planet. In its commitments to the WTO, I could not imagine that the U.S. could have agreed to accept partial privatization as representing an opening of foreign telecommunication markets to competition. Given the high value that the U.S. places on private industry, it is inconceivable to me that the U.S. could have agreed to this.

Government ownership skews markets. This occurs because governments—ours and others—do not operate, as do markets, to maximize economic efficiency. Countries that have only partially privatized their domestic telecommunication have not privatized and should receive no WTO privileges until they totally privatize.

Governments are in an awkward position financially because of their ownership of the stock of partially-privatized telecommunication firms. If the government sells the stock, then the price of the stock will be depressed, thereby harming the existing holders of the stock, frequently their own people. Since it is the function of government to act in the best interests of its people, the government cannot sell large blocks of the stock that it owns, and it can only sell very small amounts on a gradual schedule. Keeping stock off the open market through government ownership inflates the value of the remaining stock on the open market.

These financial conflicts of interest also creates temptations to protect the government-owned telecommunication company from competition within the domestic market—particularly when telecommunication is still regulated by the government in most countries. The opportunities for such protectionism—or even the appearances of protectionism—are not consistent with competition and open markets. It should not be the role of governments to be concerned about the profitability or the return on investment of businesses.

Regulation should be an adversarial process, and this is awkward when the government's regulators are attempting to regulate an entity owned by the government. There is also the appearance and suspicion that the regulators might be treating the government-owned entity more favorably.

In some ways, the privatization of telecommunication is an internal domestic matter for each sovereign country. However, total privatization most likely benefits consumers by stimulating both competition and foreign investment and thus benefits those countries that privatize completely. If a country wants to play on a global basis, however, then the ownership of telecommunications becomes the concern of other countries and is no longer an internal domestic matter.

It is particularly disturbing when a government-owned telecommunication company acquires telecommunication companies in another country. In effect, such acquisitions are government acquisitions because of the government ownership, and this is little more than old-fashioned imperialism, with all its evils. When a government-owned company acquires a company in another country, it is poor business policy when the acquiring government and country are dragged along in the venture. This can ultimately be the potential for increased international tensions. Government does not belong in business.

Many of the partially-privatized companies are very active in international acquisitions, mergers, and partnerships. It is almost as if they are more interested in mergers and acquisitions than in concentrating on improving and developing their domestic telecommunications. Profits from domestic operations are being used to fuel these global mergers and acquisitions. The partially-privatized companies can appear to be fronts for their governments in these international ventures.

Another potential problem area is interlocking ownership and managements across government-owned telecommunication entities. For example, 2 percent of France Telecom is owned by Deutsche Telekom, although the investment is planned to be sold by 2002. These kinds of global alliances between government-owned telecommunication firms are disturbing because they can reduce competition and have the appearance of colonial alliances.

DEUTSCHE TELEKOM ACQUISITION OF VOICESTREAM

This summer, Deutsche Telecom announced its intent to acquire VoiceStream Wireless in a deal valued at over $50 billion. The financial aspects of this proposed

acquisition do not make much sense.[3] VoiceStream lost $455 million on revenue of $475 million in 1999. The price being paid by Deutsche Telecom is equivalent to over $20,000 per wireless subscriber—an amount that would require yearly profits of $3,200 per subscriber to recoup the investment in 10 years at a return of 10 percent.

Clearly, at such an exorbitant price, Deutsche Telecom will have an impossible task in recouping or obtaining a return on its investment. Why then is Deutsche Telekom making such a foolish investment? Is this just an example of a company that must do something with its overvalued stock before it is too late? What will be the reaction of the German people and government when the size of this financial calamity becomes apparent? Are there some other aspects of this acquisition that are escaping scrutiny? Will the price of the deal be lowered through the intervention of the German government?

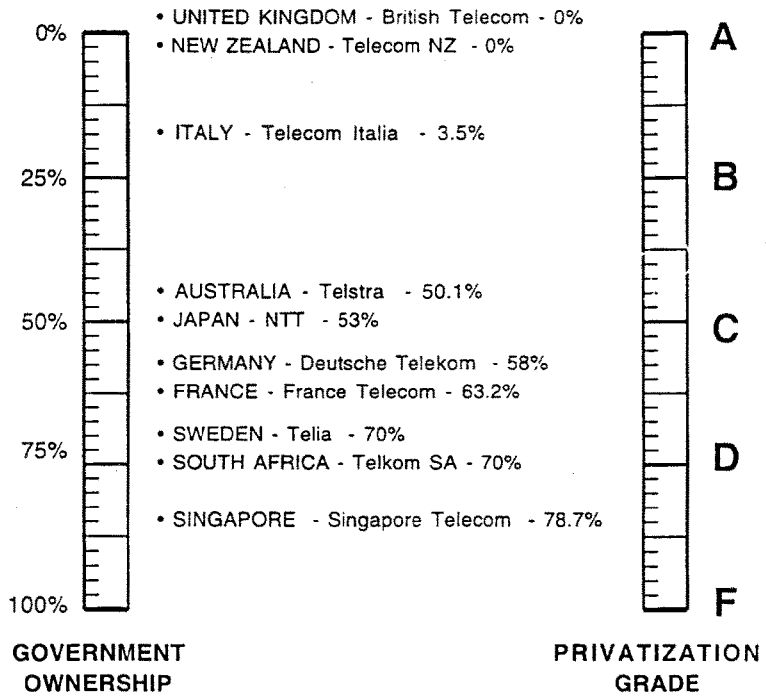
If Deutsche Telekom makes a catastrophic business decision, then U.S. and other companies would be expected to attack Deutsche Telekom in its domestic market. But how can this otherwise happen if the German government owns and protects Deutsche Telekom in its to foolish business decisions? I would have no problem with the acquisition of VoiceStream by Deutsche Telekom if Deutsche Telekom were not owned by the German government, although U.S. security and antitrust issues would still need to be examined.

CONCLUSION

My views about foreign ownership of US telecommunication firms might well be perceived as xenophobic. But I do believe that the "business of government is government"—not owning the stock of telecommunication, or any other, companies. I therefore believe that privatization must be complete—not partial. "Privatize" means to make private—totally private! Other foreign countries are not respecting their obligations to the WTO to privatize completely their telecommunications. Until they do so, they should be ineligible to own telecommunication companies in the United States.

If a company has been totally privatized with not a single share of its stock owned by the government, then most of the potential domestic and international problems that I foresee evaporate. I would see little opportunity for harm if such a privatized foreign company acquired a United States telecommunication company—other than the possible antitrust and national security issues that would need to be assessed for each particular case.

[3] Noll, A. Michael, "A Big 'Nein' to Deutsche Telekom," *Los Angeles Times*, July 26, 2000, p. B9.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• JAPAN - NTT - 53%
• GERMANY - Deutsche Telekom - 58%
• FRANCE - France Telecom - 63.2%
• SWEDEN - Telia - 70%
• SOUTH AFRICA - Telkom SA - 70%
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GOVERNMENT OWNERSHIP
PRIVATIZATION GRADE

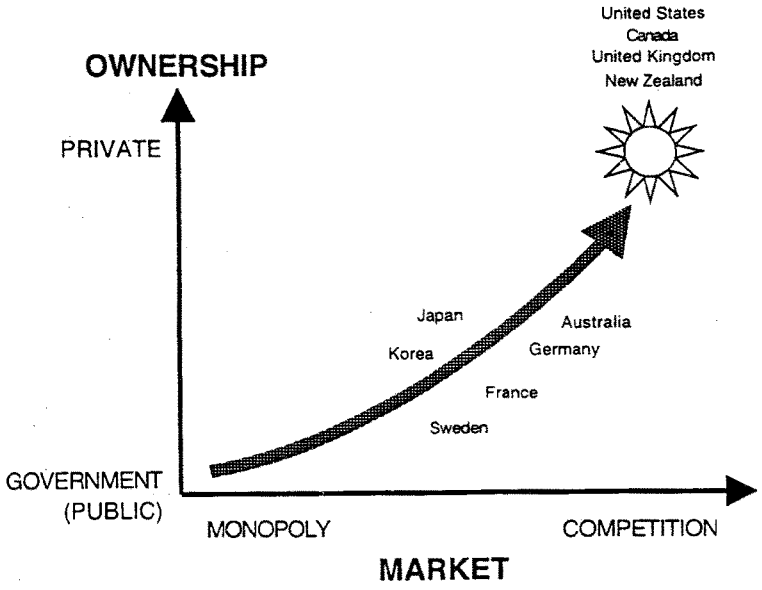
OWNERSHIP
PRIVATE
GOVERNMENT (PUBLIC)
United States
Canada
United Kingdom
New Zealand
Japan
Korea
Australia
Germany
France
Sweden
MONOPOLY
COMPETITION
MARKET

TABLE I.

Government Ownership of Telecommunication

Country	Telecommunication Firm	% Government Owned
Canada	Bell Canada	always 0%
United Kingdom	British Telecom	0%
New Zealand	Telecom New Zealand Ltd.	0%
Italy	Telecom Italia	3.5%
Australia	Telstra	50.1%
Japan	Nippon Telephone & Telegraph (NTT)	53%
Germany	Deutsche Telekom	58.0%
Korea	Korea Telecom	58.9%
France	French Telecom	63.2%
Sweden	Telia	70%
South Africa	Telkom SA	70%
Singapore	Singapore Telecom	78.7%

TABLE II.

Foreign Ownership Limits

Country	Foreign Investment Limit
Australia	5%
Canada	46.7%
France	20% in radio-based networks & France Telecom
Germany	no limits
India	25%
Italy	no limits
Japan	20% in KDD & NTT
Korea	49% on facilities—20% Korea Telecom
Malaysia	30%
Mexico	100% cellular—49% other services
New Zealand	49.9% in NZ Telecom
Singapore	74% (combined direct & indirect) permitted
South Africa	30%
Sweden	no limits
United Kingdom	no limits
United States	20% direct

The data in this Table is based on ''WTO Basic Telecommunications Services Agreement—Summary of Country Commitments'' posted at the Web site of the U.S. Department of Commerce's Office of Telecommunications Technologies.

Mr. SHIMKUS. Thank you.

The Chair now recognizes himself for 5 minutes. I want to ask Mr. Stanton and Mr. Bahr, my statement and questions to the other panel dealt with the national security issues, and you both didn't precisely address that, but in your testimony I thought there were some assumptions made.

Can you address the accusations being imposed about a threat to national security through this process?

Mr. STANTON. We have had some experience with the national security issues. Our largest shareholder today is a Hong Kong-based company. They made a substantial investment in our business, which was closed in February. A precondition for completing that investment was a review by the committee for foreign investment in the United States. We went through that process. We also went through a process of negotiating an agreement with the FBI which provided for certain protections that were described by Mr. Di Gregory and the gentleman from the FBI. Those processes I believe are thorough; and I believe that, as the national security concerns have been expressed to us by CFIUS and by the FBI, they

were satisfied in those—in the agreements and the approval process respectively.

Mr. TAUZIN. Thank you. Mr. Bahr.

Mr. BAHR. This is not an area of my expertise, and I mentioned in my testimony that I listened carefully to Mr. Di Gregory and the witness from the FBI, and I would have to be guided by their satisfaction that the national security would be served in any merger.

Mr. SHIMKUS. Following up on your testimony which I found very intriguing because of the international corporation, kind of a competition trade and the communications workers being supportive of this merger, and so I want to follow up on the premise, in your testimony you talked about the governing board of 20, 10 being members of the bargaining unit. And that is a—carrying on your testimony, you are saying that would be good because it could—it may work its way into the business, the communication industry as competition moves and may be a good example for other companies to follow, if I am reading into that. That is how I interpreted that.

How would a governing board with 20 members, 10 members and two only being government officials be a possible assault on the national security of entering into the United States market if your premise of the 20-member governing board, 10 being communication workers, two being members of the government and eight being management?

Mr. BAHR. That is not a premise. That is a fact. That is what the governing board——

Mr. SHIMKUS. So the communication workers and the management would be in cahoots with the government in a national security concern? Is that what you are saying?

Mr. BAHR. The company, as I understand it, is run by the governing board that appoints the management board on which there is no government representative. It would seem to me that the negotiations that we heard on the previous panel would take place with VoiceStream with the full cooperation of those who manage Deutsche Telekom, and I have a lot more confidence in the outcome based on the governing board that exists with Deutsche Telekom than some other countries.

Mr. SHIMKUS. Based upon that premise, I think that would speak against a fear of a national security risk based upon the organization that that has set up. So that is why I was intrigued by the organizational structure because I don't think that it speaks in support of a fear of a usurping of national sovereignty and a national security risk for this country.

Mr. BAHR. I agree.

Mr. SHIMKUS. Mr. Sidak?

Mr. SIDAK. I have two brief points on that. One is that the acquisition of VoiceStream is substantially smaller than the acquisition of AirTouch last year by Vodaphone, which already went through a very exhaustive FBI national security analysis, and there were conditions laid down there.

The second thing I would hope is that the FCC in the exercise of its discretion under the public interest standard would pay attention to what country the foreign investment is coming from. If it is a NATO ally of ours, I think that is a very different situation

from one in which the investment is coming from North Korea or Iraq or some country which has lukewarm relations with the U.S.

Mr. STANTON. I think you correctly described the Deutsche Telekom supervisory board as having two members, one direct and one indirect from government, 10 from the workers group. The other eight are actually outsiders, business people in Germany.

Mr. SHIMKUS. I appreciate that correction. I yield back the balance of my time, and I turn to the ranking member, Mr. Markey. You are recognized for 5 minutes.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

Let me begin by first of all saying to you, Mr. Stanton, that you represent the very best of the United States and our leadership in the wireless area, and I think every member of this committee admires you and your company and what you stand for in our economy and potentially in the global economy.

Mr. STANTON. Thank you very much.

Mr. MARKEY. Mr. Bahr, the same thing is true of your union members and your incredible grasp of the technical issues which they have which has made it possible for your employees working with leadership in the companies across our country to give us without question looking over our shoulder at No. 2 and three or four in world leadership, which is obviously why the rest of the world wants to come to the United States.

We stand here not trying to do anything other than to enhance the capacity for the United States to become the big winner. We know that you will be, Mr. Stanton, but ultimately this committee's goal has to be that the cover of Business Week or Forbes is the United States of America is the winner, in the same way that Germany Inc. or Japan Inc. might want to have their country's symbol on the cover of those magazines, and they do so through this relationship. Kiretsu, or call it what you will in these countries, that has historically been the relationship between the government and the private sector.

The Securities and Exchange Commission filing which Deutsche Telekom has had to make is quite illuminating. For example, under the section "civil servants" it says as of December 31, 1999, approximately 41 percent of all employees of Deutsche Telekom are in fact civil servants. In particular, civil servant salaries are set by statute in Germany and not by Deutsche Telekom or by collective bargaining agreement. In addition, civil servants are tenured employees and may not be unilaterally terminated except in extraordinary statutorily defined circumstances. This concerns me. This concerns me that in the event Deutsche Telekom merges with other companies, American and otherwise, might have to protect their own employees under German statutes by government dictate that could ultimately come to harm American workers because the bylaws of that company will tie their hands in terms of who is expendable.

Further, on the page dealing with share holding, it says as long as the Federal republic directly or indirectly controls the majority of Deutsche Telekom shares, it will, like any majority shareholder in a German stock corporation, have the power to control most decisions taken at shareholder meetings, including the appointment

of all of the members of the supervisory board elected by the shareholders and approval of proposed dividend payments.

Again, this keeps the government making all of the decisions; and no matter how you might try to cloud it in public statements, in their SEC filing they have to be quite forthright about that nexus that will continue to exist between the Federal Government of Germany and this corporation.

I think that Mr. Noll's testimony is quite helpful. On page 9 of his testimony he gives a grade to countries around the world in terms of how successful they have been in privatizing their telecommunications sector. Obviously, the United Kingdom and New Zealand, as I mentioned in my opening statements, deserve A's; and he gave it to them. Singapore was given a D minus with 78.7 percent still owned by the Singapore Government.

Germany and France are somewhere in the middle of the pack with a can-do-better note attached, and that is what this hearing is all about. They can do better, a lot better. We saw in our testimony from the last panel that our government negotiators don't really take the time to send that message to them. You can do better in this one little field, ownership, because that ownership question implicates so many other aspects of the German Government, as we can see from their SEC filing; and ultimately that can come back to haunt American shareholders, American workers who might become part of some conglomerate that is organized out of the German Government.

So we who are proposing this legislation are really trying ultimately to be helpful to you, Mr. Stanton, and to you, Mr. Bahr, and to any in the future that might have dealings with Deutsche Telekom. We hope that Deutsche Telekom purchases you, Mr. Stanton; but we hope that they do so without the government being the owner. We think that it would be good for the United States for Deutsche Telekom to purchase you. We will go that far. I think every member of the committee will agree with that. I think it is hard—Mr. Bahr, if you would just let me finish. I think that people don't understand the extent to which our committee is committed to ruthless Darwinian global telecommunications competition. It is not protectionist; it is this advocacy for this Darwinian competition that brings us here today. Mr. Bahr.

Mr. BAHR. I just wanted to comment on the 41 percent civil service. If you look at the history of the process of privatization, you will find that you had 100 percent of the employees who were civil service workers owned by the government. The union played a very strong role in the legislation to let the privatization, and this was a compromise. This was an accommodation to grandfather the benefits for 41 percent, or whatever it was originally. That is a declining number as people pass through the system and retire. I don't know how long it takes to phase it out, but the number will continue to reduce.

Mr. MARKEY. The point that I am trying to make here is if you are the German Government and you own a company and 41 percent of the people are civil servants, that might affect the way that you view the decisions that you make. We prefer that it be a private sector company that has this responsibility. The contractual relationship obviously would have to continue, but at least there

you could keep the government from perhaps tilting and putting their finger on the scale with regard to other issues related to the openness of their telecommunications marketplace in an effort to continue to prop up this firm which has so many civil servants working for it.

Mr. STANTON. If I may comment, your statistics were correct as of December 31. It may be helpful to know that as of June 30 they had reduced that percentage to 33 percent in part because of the retirements that Mr. Bahr mentioned and in part because of the increase in the total size of the work force.

Mr. SHIMKUS. Mr. Largent is recognized for 5 minutes.

Mr. LARGENT. Are you aware of any of the signatories to the WTO basic telecommunications agreement, if any of those other countries have government ownership limitations like those proposed in the Hollings bill? Is anybody aware of countries that have legislation similar to what we are proposing to do?

Mr. LIPMAN. Canada does have a limitation with foreign ownership. It is essentially limited to 46 percent of facility-based carriers, but I believe they took an exception or a footnote to the WTO agreement, and there are several other countries that do have restrictions on foreign ownership. Interestingly, none of the European Union countries no longer have foreign ownership restrictions.

Mr. LARGENT. Are they foreign ownership? I want to make the distinction. Are they foreign ownership restrictions or foreign government ownership restrictions?

Mr. LIPMAN. No, just foreign ownership that I am aware of.

Mr. LARGENT. This is a foreign government ownership limitation?

Mr. LIPMAN. Countries have done that on a case-by-case basis as in the case of Spain with KPN and in the case of Italy with Deutsche Telekom, but I don't believe that was a matter of statute. It was a matter of policy.

Mr. LARGENT. So in other words what you are saying is that what they did in those case-by-case issues, we could do in this country as well based upon the testimony of the panel that went before you?

Mr. LIPMAN. I would agree with that.

Mr. LARGENT. I wanted to ask Dr. Noll, in your testimony both written and spoken, you talked about market domination, that government-controlled industries have exhibited market domination as a result of the power. Could you name some examples of market domination by a government-controlled company?

Mr. NOLL. What I wanted to do in my testimony, but I didn't have the data, was look at two dimensions. One dimension was the extent to which the former government entity has been privatized and what extent there was still some government ownership. The other dimension that I wanted to look at was the extent to which markets in those countries had been opened to competition. I thought those were really the two key things, and I would have liked to have seen whether there was any relationship between the two.

The problem is how do you determine the extent to which a market has been opened. How do you determine whether that government, former monopoly, still dominates in that country or not? The simple fact that there are hundreds of carriers available doesn't

necessarily mean that there is still not a dominant one. A good example——

Mr. LARGENT. Would market share be a good index?

Mr. NOLL. It is difficult to look at another country, but one of the ways to do that is think about the United States. If you talk about long distance competition, I think everyone would agree that has been very successful. There is not really a dominant carrier; it used to be AT&T. When you start to get to the local level, local phone companies, you can point out that there are hundreds of competitive local exchange carriers in the United States; but when it comes down to it, it is the Baby Bells who are the dominant ones. It is a difficult question. My general sense in a number of these countries, there is still one big dominant carrier, and that is the former government monopoly and that is what I was referring to.

Mr. LARGENT. Well, let me ask you this question because you spoke in your testimony about liking the Hollings bill. To me, I guess, the question I would have for you is why is having a merger between a company that is—that 25 percent of the company is owned by the government versus 44 percent, why is that better? To me it is—I don't see why one is less risky or less risky than another.

Mr. NOLL. I stated today that actually I would prefer zero. I would like to get government out of telecommunications. It was enlightening to me today to sit here and listen to the trade representative try to handle those questions. I spent many hours myself looking on the Web trying to understand what did the United States agree to in the WTO, and I was horrified not to find much written documentation of anything. It seemed to be a bunch of people handshaking and making up loose schedules.

If some country says we will privatize and if their idea is to create a company that is mostly owned by the government, that was disturbing to me. Before allowing them into the United States, I would like to see that ownership to be zero. If zero, I would then also want to give to the FCC the right to waive. There might be some conditions. If the country went from 60 percent to 20 percent in 1 year, and they were planning to reduce that 20 percent next year to zero, I would say that shows good faith; and I would allow the FCC to have the right to let somebody do something today. But I would like to see zero.

Trying to cut it between 40 percent, or as I said jokingly to Chairman Kennard, maybe we should pick a number like 3.79 percent and let everybody struggle with why we came up with such a silly number. I would like it to be zero. I think that eliminates the possibilities, the concerns of everything I heard today. I don't see what the problem is. There are some countries like New Zealand that took it to zero quickly. Some countries like Canada never had any government ownership of telecommunications. It can be done. Yes, it is going to be a problem with the stock when the stock is dumped on the market and drops in value, but let's go all of the way. Let's not have a sense of trying to create a partial pregnancy. Let's have it all of the way. That is my personal belief.

Mr. SHIMKUS. Mr. Cox is recognized for 5 minutes.

Mr. COX. I thank the chairman, and I would like to thank the panel for being here and also to echo exactly what my colleague

from Massachusetts said about the business leaders that are here with us. Mr. Stanton, your company is not under scrutiny here today. Rather, you have a proposed business transaction that has some very interesting policy questions attached to it.

Mr. STANTON. Thank you.

Mr. COX. But none of this has anything to do with your company. We had a hearing like that yesterday, unfortunately.

Mr. STANTON. My children were worried about that when I talked to them last night.

Mr. COX. But all of this in a certain sense reflects well upon your company and your workers.

Mr. Sidak, of course representing the acquiror, likewise is paying a compliment to your firm because they are a suitor.

Mr. Lipman is here as a competitor and not surprisingly has the competitor's view of the wisdom of what you are up to.

And the only person who is here without a stake in the outcome is Dr. Noll who even paid his own way here, so I am particularly interested, Dr. Noll, in what you have to say.

Let me ask you this question. We watched as Europe and the U.K., for example, went through great travail in some major privatizations, some of them necessitated by government ownership of industry that we never witnessed in this country. It was very hard politically. In those circumstances the voters of the countries involved were the sovereigns. If we import government ownership of our industry into this country, then don't we have an even worse predicament in the sense that we are just like they used to be in the U.K., let us say pre-Thatcher, because now we have got government-owned industry in this country that we would like to privatize but we can't vote to influence the government to change because we don't live there? The government in this case would be Germany or the government would be Hong Kong or the government would be somewhere else, but it is not the U.S. Government. The U.S. Government has a salutary policy of private ownership of business. Aren't we even worse off than they are in the U.K. before Thatcher?

Mr. NOLL. Mr. Cox, that is an excellent point. This country would be moving backwards in essence by allowing government ownership of telecommunications sort of once removed. That would be disturbing to me. Good perspective. I hadn't thought of it myself.

Mr. COX. Mr. Lipman, Dr. Noll said in his testimony that government doesn't belong in business, and he also said that the relationship between business and the regulators should be arm's length.

Your testimony was to the latter point, that at present in your view that relationship is not at arm's length. Do I understand that correctly?

Mr. LIPMAN. That's correct, Congressman.

Mr. COX. One of the things that I am sure that the FCC will be interested in is the future, is where the government stake in Deutsche Telekom is headed. Mr. Sidak has some trends that he shows which would encourage us I think to believe—hope—that this is a work in progress and that we are headed in the right direction and in fact will arrive at our destination; but I don't know if anyone here knows presently whether or not there is anything that we can

reliably accept from the German Government as a commitment to dispose of their interest. Am I wrong in that?

Mr. STANTON. Two comments, Congressman Cox.

I think it is important to appreciate that there is a distinction, for example from New Zealand, which, while having done a terrific thing, is a much smaller country than Germany. The German Government has said publicly, there is a letter that has gone from the embassy to each of the members that says that they clearly intend to reduce their interest. The problem bluntly is the size of the interest that they have. The value of that stock today is worth somewhere in the neighborhood of $75 billion; and notwithstanding Dr. Noll's comments, I think it is fair to say that the German Government wants to make sure that it gets value for its stock. They have done very large public offerings for the last several years to reduce the interest. They have expressed that they intend to continue to do large offerings, but it takes huge offerings. The largest public offering in history is AT&T Wireless' stock sale. If they were to do a transaction that size, it would take seven of those to reduce the interest to zero.

What we are doing with this merger is diluting them. You do make an interesting point, the notion of stepping backwards; but I would suggest that what this does is that it dilutes the government from 57 percent to 44 percent, and they have—which is moving from a majority to a minority. It is clearly still a substantial stake. I am not going to argue that.

Mr. COX. The German Government—we have other foreign government ownership restrictions across our economy, and one of the ways that the Department of Justice and other agencies of the Federal Government have dealt with these in the past is voting agreements and voting trusts. Is that something that Deutsche Telekom would consider?

Mr. STANTON. I am not in a position—I represent VoiceStream not Deutsche Telekom. We have not discussed anything like that. We would be happy to put the question to them.

Mr. COX. Do you happen to know, Mr. Sidak?

Mr. SIDAK. Let me clarify I am not representing them as a lawyer.

Mr. COX. I understand that. I didn't mean to impugn your reputation in that way.

Do you have any idea whether they would look favorably upon that kind of a proposal from the FCC?

Mr. SIDAK. I would be happy to take the suggestion back to them and invite them to respond to your question.

Mr. COX. Mr. Lipman was about to interject.

Mr. LIPMAN. Thank you, Congressman. I want to say that the German Government can, of course, modulate its interest in Deutsche Telekom; but they can also do several things today to demonstrate to U.S. policymakers that they are removing themselves from their involvement and we would submit their interference in the German telecom market. They can stop reversing decisions made by the regulator, RegTP, and they can stop trying to roll back some of the modest procompetitive steps that RegTP has taken. They can eliminate the license fees in Germany, which as we show in our testimony are far and away the highest in Europe. It costs

nearly $6 million up front to get a license to serve all of Germany, and they can also encourage and stop discouraging open market standards.

That is really what our clients would like to see accomplished here, that Deutsche Telekom and the German Government, particularly the ministry, meaningfully move to open competition for both the German market as well as the U.S.-to-German market.

Mr. SHIMKUS. For the sake of our voting ability on the floor and our timely departure——

Mr. COX. I yield back the balance of my time.

Mr. SHIMKUS. The gentleman yields back. I want to thank the panel. This hearing is adjourned.

[Whereupon, at 4:56 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

PREPARED STATEMENT OF THOMAS J. DONOHUE, PRESIDENT AND CEO, U.S. CHAMBER OF COMMERCE

Mr. Chairman and members of the committee, I am Thomas J. Donohue, President and Chief Executive Officer of the United States Chamber of Commerce. The U.S. Chamber is the world's largest federation of business organizations, representing more than three million businesses and professional organizations of every size, in every business sector, and in every region of the country. The Chamber serves as the principal voice of the American business community here in this country and around the world through our 88 American Chambers of Commerce abroad.

I. INTRODUCTION

Mr. Chairman and members of the Subcommittee, I welcome the opportunity to testify on an issue that is critically important to American consumers and businesses of all sizes—free and fair competition in our telecommunications markets. The U.S. has the largest and most dynamic economy in the world. Our telecommunications products and services for consumers have grown exponentially over the last several years, as witnessed by the incredible growth of new telecommunication services, the wireless market, the use of cell phones, pagers, and the latest personal handheld devices. These telecommunications products are becoming more affordable and available to all consumers as a direct result of our open markets and healthy competition.

There are proposals currently before Congress that could stifle this incredible growth and threaten the benefits American businesses and consumers have begun to enjoy in the telecommunications market. These proposals could also lead to a counterproductive and damaging trade war with our foreign trade partners. Specifically, H.R. 4903 would prohibit all companies with 25 percent or more foreign government investment from obtaining a telecommunications license from the Federal Communications Commission.

The legislation is bad policy and should not be supported for several reasons: (1) The legislation is a potential violation of the World Trade Organization (WTO) agreement and would likely lead the European Union (EU) and other member WTO countries to retaliate by closing markets to American goods and services; (2) foreign investment in U.S. telecommunications providers would diminish markedly, limiting the competitive benefits of such investment to U.S. consumers and truncating technological innovation and economic expansion; and (3) procedures currently exist to protect U.S. national security interests and to ensure that the public interest is considerd in any telecommunications mergers or investmens by foreign entities with U.S. providers.

II. PROTECTIONIST PROVISIONS WOULD LEAD TO FOREIGN RETALIATION AGAINST U.S. PRODUCERS AND CONSUMERS

The U.S. Chamber of Commerce has helped lead the fight to open markets overseas so that American businesses and their employees can benefit from increased trade opportunities and the jobs supported by foreign trade. Since 1995, the U.S. has worked hand-in-hand with the WTO to ensure that foreign trading partners open their markets to American businesses and abide by fair trading practices. Although the U.S. has not won every case before the WTO, American businesses and

workers have clearly benefited as U.S. exports have risen by more than 35 percent since 1994.[1]

In the specific area of telecommunications, on February 15, 1997, the United States and 68 other countries reached a market-opening accord on a set of commitments under the 1995 General Agreement on Trade in Services (GATS) that fundamentally changed the structure of the global telecommunications market. This set of commitments, known as the WTO Basic Telecommunications Agreement, is guided by a worldwide commitment to opening markets, promoting competition, and preventing anti-competitive behavior. This agreement is continuing to increase competition significantly in the U.S. and foreign telecommunications markets—to the benefit of American consumers and businesses.

For example, free trade under the WTO and the WTO Basic Telecommunications Agreement paved the way for a recently-concluded bilateral agreement between the United States and Japan. Under the agreement, Japan has agreed to reduce interconnection fees now charged by Nippon Telegraph and Telephone to U.S. telecommunication companies. This agreement will begin to allow U.S. telecommunications companies to compete more effectively in the Japanese market. This historic agreement with Japan and other benefits under the WTO could not have been negotiated against the backdrop of the narrow protectionist ownership restrictions contained in H.R. 4903 had been in effect at the time.

Moreover, as outlined in the Congressional Research Service Memorandum on this issue, it is likely that H.R. 4903 or similar legislation would place the U.S. in violation of its commitments under the WTO Basic Telecommunications Agreement.[2] There is also little doubt that this legislation would spark counterproductive and damaging retaliation by our foreign trading partners. The EU has already threatened retaliation over U.S. violation of the WTO Agreement. On July 24, 2000, EU Trade Commissioner Pascal Lamy wrote to United States Trade Representative Charlene Barshefsky regarding congressional efforts to restrict foreign telecommunications ownership: "This [the proposed legislation] would clearly violate US commitments in the WTO . . " Lamy further urged Barshefsky to "resist such legislation and indicate clearly to the Congress the opposition of the US Administration to its adoption . . . We have to avoid a very damaging trade fight in this highly important sector."

The U. S. Chamber of Commerce is never afraid of a good fight when the interests of our members are at stake. So we are not simply reacting to EU threats. We are, however, strongly reacting to efforts that would set a bad precedent and risk putting the United States in an unnecessary trade war with our European trading partners and other members of the WTO.

III. UNNECESSARY RESTRICTIONS ON FOREIGN INVESTMENT WOULD HURT AMERICAN CONSUMERS

Consumers benefit from competition in the global marketplace. Greater competition and greater market opportunities for American producers and consumers provide for greater choice at better prices in the U.S. and abroad. Our continued and unprecedented economic expansion is a testament to the willingness, too often grudgingly, of government to stand aside and let the marketplace govern. Clearly, American businesses and consumers will suffer if foreign governments retaliate by closing their markets to American goods and services.

Moreover, American businesses and consumers will also be harmed by the loss of foreign investment in this country. Access to capital is the lifeblood that pulses through the American economy. Access to capital is what has energized the technological advancements and innovation so fundamental to the recent economic expansion. Billions of dollars of foreign investment is made annually in the U.S. This investment has helped to fuel the growth and investment in this country. If telecommunications firms cannot raise needed investment capital to provide new products and services for consumers, the engine of our record economic expansion could find itself out of gas.

By imposing unnecessary and counterproductive protectionist restrictions on foreign investment, H.R. 4903 would chill foreign investment in the U.S. telecommunications sector. This legislation would unwisely tie the hands of executive branch in favor of a rigid "auto-pilot"—"one solution for every problem" approach to U.S. foreign investment in the face of an increasingly flexible global investment regime.

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[1] United States Trade Representative Office

[2] Congressional Research Memorandum to Senate Commerce Committee, July 24, 2000, *WTO Compatibility of Proposed Legislation Prohibiting Certain FCC Licensing.*

This would set a dangerous precedent and send the wrong message to our trading partners.

IV. CURRENT LAW ALREADY SAFEGUARDS PUBLIC INTEREST

Current law protects the public interest from foreign investment that may be harmful. Under section 310(b)(4) of the Communications Act of 1934, the Federal Communications Commission (FCC) must make an affirmative finding that the public interest would be served before any foreign entity (including one with foreign-government ownership) can obtain control of a U.S. entity that owns a common carrier licenses.

The FCC in every case will consider any risks to domestic competition and potential harm to consumers, including any of the threats identified by the sponsors of H.R. 4903. The FCC also consults with the Executive Branch, including the Federal Bureau of Investigation, the Department of Justice, and the United States Trade Representative, to determine whether foreign investments pose a risk to national security, law enforcement, foreign policy, or trade.

The FCC has the legal authority to condition its approval of both foreign and domestic telecommunication mergers to protect U.S. interests relating to competition, national security, or law enforcement.

The ability to raise much needed investment capital in the cutting edge telecommunications industry has always been based on the investor's rights to secure assets such as an FCC license. Denying such rights without the FCC being able to consider the overall ramifications of such actions, such as improving competition, could severely hinder U.S. telecommunications entities from securing much needed capital in order to compete in the global market place. Such outright restrictions could have the unintended consequences of hindering investment in all telecommunication entities whose survival may depend on the ability to secure foreign investment.

In addition to the FCC, the Department of Justice (DOJ) and the Federal Trade Commission (FTC) have significant roles in determining the public interest in any telecommunications mergers. Under Section 7 of the Clayton Act, the DOJ Antitrust Division and the FTC review proposed mergers, including combinations that would bring common carrier licenses under the direct or indirect control of a corporation in which a foreign government holds more than a 25% interest.

These agencies may—and often do—sue to enjoin mergers that would harm competition and consumers in the United States. If a transaction involving a foreign corporation poses a threat to competition, DOJ has full authority to take preventive action.

V. NATIONAL SECURITY IS FULLY PROTECTED

Some have argued that the national security of the U.S. would be threatened if new legislative restrictions on foreign telecommunications ownership are not enacted. This is simply not true. Current law protects our national security interests. Foreign investments of any type in the U.S. telecommunications market are already strictly scrutinized to ensure that our national and domestic security is well protected.

Recently, an August 24, 2000 article in the Wall Street Journal outlined the extensive scrutiny given by the Federal Bureau of Investigation (FBI) to foreign telecommunications companies in the U.S. The article points out the significant hurdles these companies must go through before any deal is approved. For example, according to the article, negotiations between Verio and Nippon Telegraph and Telephone were delayed for nearly three months as "the FBI pushed to assure that the Japanese government, which owns 53% of NTT, would have no role in Verio's day-to-day operations or involvement in wiretapping Verio's network. The agency also demanded—and the companies agreed to—a variety of restrictions on who could have access within Verio to federal wiretapping information."[3]

In addition to FBI oversight, current law also gives the President the power to block any acquisition of a U.S. company that would result in foreign control and "threaten to impair national security." Under the "Exon-Florio provision," the President consults with the Committee on Foreign Investment in the United States (CFIUS), an eleven-member interagency body that includes, among others, the Secretaries of Defense, State, Treasury, and Commerce and the Attorney General.[4]

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[3] Neil King Jr. and David S. Cloud, Wall Street Journal, August 24, 2000, *Global Phone Deals Face Scrutiny From a New Source: The FBI.*

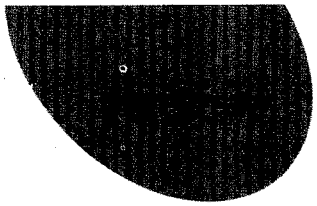
[4] Section 5021 of the Omnibus Trade and Competitiveness Act of 1988.

The President then may exercise his authority under Exon-Florio to suspend or prohibit any foreign acquisition, merger or takeover of a U.S. corporation in order to alleviate national security and law enforcement concerns. In the telecommunications arena, the threat of possible actions under Exon-Florio has forced companies to accept conditions relating to U.S. national security interest. These conditions have included restricting the foreign parent's access to sensitive information and authority over sensitive activities; required that facilities used to manage U.S. domestic telecommunications infrastructure remain in the United States; and required that various records be maintained and remain available in the United States.

VI. CONCLUSION

Mr. Chairman, Congress must reject the proposed restrictions to foreign government ownership of American telecommunications companies found in H.R. 4903. Enactment of these restrictions would invite retaliation by the EU and other WTO countries, starting an unnecessary trade war. The federal government has sufficient authority to protect America's businesses and consumers under current law. American consumers rely on the benefits from competition in the global marketplace, which would be jeopardized by these restrictions. Finally, the current law already allows for strict scrutiny of any foreign investment in the U.S. telecommunications markets to ensure that our national security is protected.

Thank you again for the opportunity to testify today. I would be pleased to answer any questions you might have.



John Stanton
Chairman & CEO

September 15, 2000

The Honorable W.J. "Billy" Tauzin
Chairman
Telecommunications, Trade, and
Consumer Protection Subcommittee
House Committee on Commerce
Room 2125 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for inviting me to testify before your Subcommittee on September 7, 2000, on foreign government ownership of American telecommunications companies. I appreciated the opportunity to express our views on this important and timely topic, and to describe how VoiceStream's pending transaction with Deutsche Telekom will benefit American consumers, workers, and competition in the wireless marketplace. During the hearing, some discussions were predicated on inaccurate information about Deutsche Telekom (DT). This letter is intended to clarify certain facts for the record of this hearing.

I want to underscore that the testimony at the hearing demonstrated that the VoiceStream/DT merger is pro-competitive, benefiting American consumers and creating American jobs. No one at the hearing presented any evidence that the VoiceStream/DT merger would hurt American consumers or workers or reduce competition in the U.S. I implore Congress to avoid taking any legislative action that would sacrifice these benefits to the American people.

1. DT does not have a monopoly on telecommunications services in Germany.

During the hearing, it was asserted that DT has a monopoly on radio and television distribution, telephone, and cable television in Germany. In fact, DT has no monopoly in any of these areas. Germany has an independent regulator that has taken aggressive steps to create a pro-competitive regulatory environment, with no foreign ownership restrictions and no structural market entry barriers. The German telecommunications market has been open to competition in all segments since 1998, and many American companies have taken advantage of these opportunities. Germany is widely recognized as one of the most open and competitive telecommunications markets in the world in each of these segments:

3650 131st Avenue S.E. Suite 200 Bellevue, WA 98006

Broadcast Radio and Television. DT does not own radio or television stations, nor does it produce radio and television programming. DT does operate cable television distribution facilities but programmers have other distribution alternatives including broadcast and satellite facilities.

Cable. DT does own a cable network infrastructure but DT is in the process of selling control of that business on a regional basis. DT has already sold its majority stakes in three regions, with two of those regions going to a U.S. company. Negotiations are currently underway to sell its stakes in the remaining regions.

Telephone. Just two years after the German market was fully liberalized, competition is thriving in all market segments.

Long Distance. Forty-seven carriers now offer service in Germany. As a result of this fierce competition, prices have dropped by 70% overall and as much as 89% for domestic long distance calls on weekdays. DT's competitors hold 40% of the long distance market, after just two years.

Wireless Telephony. The wireless market illustrates how rapidly competition has taken hold in Germany. There are four wireless carriers and Vodafone, not DT, holds the largest market share. Germany's recently concluded UMTS auction will create even more wireless competition. Market growth has been explosive. As a result of competition and low prices, penetration rates in Germany are higher than penetration rates in the U.S.

Wired Local Telephony. Over 150 competitive companies now offer local service in Germany. Approximately 60% of Germany's recently awarded licenses for fixed wireless local loop services went to American-dominated companies. DT has 82 local loop access agreements with its competitors. Customers now have a choice among competing local service providers in 64% of Germany's 83 largest cities.

Internet Access. DT's subsidiary T-Online is currently the largest Internet Service Provider (ISP), but there is fierce competition from U.S. and German companies. AOL, the international market leader, is the second largest ISP in Germany. CompuServe and MSN have also entered the market. Monthly rates for Internet service have fallen by roughly 45%, as competition between T-Online and other providers has brought about lower rates.

2. While 33% of DT employees still have civil service employment rights, this presents no threat to U.S. workers or U.S. competition.

At the hearing there was concern expressed about the civil service employment rights of some DT employees. When DT became a private corporation more than five years ago, its civil service employees were entitled to comparable employment rights with DT. The Federal Republic has no supervisory role over them. Furthermore, DT does not grant civil service employment rights to newly hired employees. Thus, the number of DT's employees with civil service-type employment rights is declining as employees retire or move on to other opportunities. As an illustration, the percentage of employees entitled to these benefits declined from 40% of DT employees on December 31,1999 to 33% of all employees as of June 30, 2000.

The fact that some of DT employees have civil service employment arrangements presents no threat to U.S. competition or U.S. workers. Without regard to such civil service rights, Germany generally has more protective labor laws than the United States. If anything, this puts DT at a competitive *dis*advantage to U.S. carriers generally, as it reduces DT's staffing flexibility. Moreover, the percentage of DT's German workers with these benefits will have no effect on the U.S. These DT workers are employed in Germany to do different jobs than VoiceStream employees; therefore, they are not substitutable for each other. In particular, there are no overlaps between the wireless services VoiceStream provides and those that DT provides in Germany.

DT's investments in VoiceStream will *create* jobs in the United States. As VoiceStream expedites the build out and expansion of its networks there is no merit to the suggestion that, because some of DT's German workers maintain civil service employment arrangements, DT would simply cut jobs in the United States if it has a need to downsize.

3. The German government does not interfere with DT's business activities.

During the hearing, it was noted that as long as the German government controls the majority of DT's shares, it will have the power to control most decisions taken at shareholders' meetings, including appointment of all members of the Supervisory Board elected by the shareholders. This assertion refers to the following statement in DT's 1999 annual report to the SEC:

> "As long as the Federal Republic directly or indirectly controls the majority of Deutsche Telekom's shares, it will, like any majority shareholder in a German stock corporation, have the *power* to control most decisions taken at shareholders' meetings, including the appointment of all of the members of the Supervisory Board elected by the shareholders and the approval of proposed dividend payments." (Emphasis supplied.)

This does not mean that the German government in fact controls or appoints DT's Supervisory Board, or otherwise interferes with DT's business operations. In fact there are several protections to public shareholders that will also protect the interests of VoiceStream's US consumers and workers. As a result of the merger, American

investors, including VoiceStream employees, will hold large blocks of DT stock, whose interests are also protected by US Securities laws.

Under German law, labor has the right to elect half the board. Thus, DT's employees elect 10 of the 20 seats on DT's Supervisory Board. While the government, as the current majority shareholder, has a legal right to elect the other 10 representatives on the Board, it does not exercise that right: It holds only 1 seat directly, and the government owned development bank holds 1 seat. DT's public shareholders elect the other 8 members. In addition, under German corporate law, day-to-day management of the company is entrusted to the Management Board. The Supervisory Board elects members of the Management Board, and no person may serve on both boards.

The German government has always voted with the majority of public shareholders and has never opposed a proposal of the Management Board or of the Supervisory Board. In addition, 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.

Furthermore, the German government, unlike some other European governments, does not own special veto rights often referred to as a "golden share". The government has only the rights that are available to shareholders. The exercise of shareholders' rights is restricted to shareholder meetings. Outside such a meeting, shareholders may not legally influence the operations of a company and German law prohibits shareholders from exerting undue influence on a company or members of its Supervisory Board, regardless of how big their stake is in the company.

4. The Government does not guarantee any new DT debt.

During the hearing, it was asserted that the German government backs DT's newly incurred debt, and that DT thus has an unfair advantage over its competitors. In fact, since DT was privatized more than five years ago, debt it has incurred is backed only by DT's assets, just like any other companies. The German government did guarantee debt DT incurred before it was privatized. That guarantee cannot be unilaterally removed. DT has already paid off approximately half of the debt that was outstanding at the time it was privatized. The remaining pre-privatization debt will continue to be reduced under DT's scheduled payments, and is scheduled to be paid off by 2004.

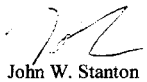
While there are a variety of forces that influence DT's cost of capital on a going-forward basis, the fact that any new debt that DT incurs is *not* guaranteed by the government is clearly reflected in current credit ratings: DT's rating (AA-, Standard & Poor's, as of Aug. 25) is significantly lower than the German government's rating (AAA, Standard & Poor's, as of Aug. 25). As I indicated at the hearing, in work done for VoiceStream by Goldman Sachs, DT's cost of capital is higher than that of our American competitors including AT&T, Sprint, BellSouth and SBC.

5. DT has no sovereign immunity.

At the hearing, it was asserted that since DT's merger agreement with VoiceStream waives DT's sovereign immunity, this demonstrates that DT is in fact an instrument of the German government. In reality, DT has no sovereign immunity. It is a private corporation, with shares publicly traded and listed on major stock exchanges around the world. We now believe that DT can be sued in Germany or anywhere else it does business, just like any other company. While the merger agreement with VoiceStream contains a provision stating that, to the extent that DT may be entitled to any immunity, it waives that immunity, that is boilerplate language that is routinely included whenever one company contracts with another that is partly owned by a government. This is a standard precaution, which benefits VoiceStream and is intended to avoid any misunderstanding about whether DT is entitled to assert any immunity.

Please associate this letter with my written and oral testimony in the hearing record. Again, I appreciate this opportunity to communicate VoiceStream's views on foreign government ownership issues and to clear up any possible misconceptions about DT and VoiceStream. I am available to discuss these important matters in more detail with you, your colleagues, or the Subcommittee staff, at your convenience.

Best personal regards,



John W. Stanton

Question Submitted for the Record By
Congressman Steve Largent
Ambassador Richard Fisher
Before House Commere Subcommittee on Telecommunications,
Trade and Consumer Protection
September 7, 2000

During the hearing, Congressman Largent asked whether (a) the German Government's goal was to foster competition in its telecommunications market and (b) the German Government intended to reduce its ownership interest in Deutsche Telekom (DT) to zero.

Since enactment of the Germany's 1996 Telecommunications Act, the German regulator, RegTP, has licensed 350 carriers in Germany, a significant number of which have foreign equity holdings. Attached is information on each of the competitive carriers that have received licenses.

While this number illustrates the extent of openness of Germany's market, ensuring that competitors could engage in meaningful competition with DT has required strong action by the German regulator to ensure a level playing field. USTR has played an important role in this process by encouraging the German Government to take a number of pro-competitive actions over the past several years in the context of annual reviews conducted under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988. These actions – such as reducing interconnection rates, eliminating burdensome network requirements, and addressing excessive licensing fees – have bolstered the competitive environment in Germany.

The German Government expressed its intention to reduce its ownership interest in DT in a September 21, 2000 letter from Michael Steiner (Foreign Policy and Security Advisor of the Federal Chancellor) to National Security Advisor Sandy Berger. Specifically, Mr. Steiner wrote that "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." The full text of this letter is attached.

BUNDESKANZLERAMT
Michael Steiner
Foreign Policy and Security Advisor
of the Federal Chancellor

Berlin, 21. September 2000
Phone ++49-(0)30-4000-2200
Fax ++49-(0)30-4000-2262

The Honorable
Samuel Berger
Assistant to the President
for National Security Affairs
The White House
Washington, D.C.
USA

Dear Sandy,

as you know, the pending decision on the Hollings-Rider Bill is of some importance for our bilateral relations. In a letter to Ambassador Barshefsky and Under Secretary Eizenstat dated July 25, 2000, State Secretary Axel Gerlach pointed out the Federal Government's grave concern over the initiative being taken in Congress aimed at preventing foreign investment in the telecommunications sector. In this connection I would like to draw your attention to a number of facts. In no way does the Federal Government's existing holding in Deutsche Telekom AG (DT AG) impair free competition in the telecommunications sector.

The German Government is fully committed to the full privatization of Deutsche Telekom and to the objective to reduce its direkt stake not just to 25 % but to zero. Since the process began in 1995, the German Government's interest has been progressively and rapidly reduced, from 100 percent in 1995 to a direct ownership share of 43.2 percent today. Another 15 percent of Deutsche Telekom's shares have been sold irrevocably to a public bank (KFW) for sale to the public as market conditions permit. Deutsche Telekom's proposed mergers with VoiceStream and Powertel will further dilute the German Government's direct stake to less than 33 percent, and its total direct and indirect interests to approximately 44 percent.

Since 1995 the sole instruments available to the Federal Government to influence the business policy of DT AG are the instruments provided under German company law.

Address:
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Mail:
P.O. Box 61 02 61, D-10924 Berlin, Germany

Dr. SOMMER +49 228 1818009 22.08.00 09:18 P2/3

namely, the shareholders meeting and the supervisory board. On the supervisory board it has only one of the 20 seats. Through its voting rights the Federal Government exercises no control over business policy. In Germany there is no "golden share", i.e. no veto rights or special status in the corporate governance sphere. DT AG receives no state subsidies.

To ensure the telecommunications market is opened up to competition the Regulatory Authority for Telecommunications and Posts was set up under the 1996 Telecommunications Act. This independent Authority, which started operating in 1998, imposes stringent conditions designed to secure fair competition and non-discriminatory market access. Examples of how the Authority operates to promote competition are:

- the number of licences issued to other operators of transmission systems and the range of voice telephone services available to the public (the Authority had issued 252 such licences by the end of 1999);
- the marked fall in telephone call charges over the past two years;
- the recent decision requiring DT AG to modify its charges to rival Internet providers for connecting customers so as to prevent distortions to competition.

Overall Germany now ranks as one of the world's most open telecommunications markets, as was most recently shown by the result of the auction of UMTS licences. Over 80% of this in future extremely important market will henceforth be controlled by companies that are partly in foreign ownership.

The Federal Government herewith once again reaffirms its determination to make the formerly state-owned company DT AG into a company managed on entirely market-economy lines and privately owned. I would be grateful if, with a view to preventing the enactment of the Hollings-Rider Bill, you could convey this assurance on the part of the Federal Government also to the members of Congress. State Secretary Gerlach will contact to this effect also Ambassador Barshefsky.

Yours

Michael

Airdata Holding GmbH Hauptstätter Strasse 58 70178 Stuttgart	Westfalen, Sachsen-Anhalt (ohne Regierungsbez. Dessau), Regierungsbezirke Braunschweig, Hannover, Darmstadt, Rheinhessen-Pfalz, Stuttgart, Karlsruhe, Oberbayern, Schwaben, Mittelfranken, Landkreise Ammerland, Wesermarsch, Cloppenburg, Oldenburg, Verden, Osterholz, Harburg, Stade, Bad Kreuznach, Tübingen, Reutlingen, Forchheim, Neumarkt i.d. Oberpfalz, Oder-Spree, Dahme-Spreewald, Teltow-Flämig, Potsdam-Mittelmark, Havelland, Oberhavel, Barnim, Märkisch-Oberland
AKF-Antennenbau- und Kabelfernsehen Gesellschaft mit beschränkter Haftung Mailander Straße 8 60598 Frankfurt am Main	Rüsselsheim, Raunheim, Dietzenbach, Wiesbaden-Dotzheim, Frankfurt (Ortsteile Sachsenhausen-Nord, Berkersheim, Niederursel)
ALLBAU Managementgesellschaft mbH Kennedyplatz 5 45127 Essen	Essen (Stadtteile Bedingrade, Huttrop, Kupferdreh, Stadtwald)
AllgäuKom GmbH & Co. Telekommunikations KG Gerberstraße 2 87435 Kempten	Städte Kempten und Kaufbeuren, die Landkreise Oberallgäu und Ostallgäu
Altvater Airdata Systems GmbH & Co.KG Riemenstraße 30 74906 Bad Rappeau	Stadt Heilbronn, Gemeinde Bad Rappenau und Fernverbindung zwischen diesen Städten; Neckarsulm, Brackenheim, Leingarten, Nordheim
Altvater + Schreiber Systemtechnik GmbH Banter Deich 18 26382 Wilhelmshaven	Bonn, St. Augustin, Wilhelmshaven
Andreas Muth Schillerstraße 19 06114 Halle	Halle (Stadtteile Halle und Giebichenstein)
Antennendienst Cabel Tec GmbH Karlstraße 1 39418 Staßfurt	Klein Schierstedt, Beesenlaublingen, Egeln, Staßfurt, Hecklingen, Groß Börnecke, Löderburg, Neundorf, Hohenerxleben, Förderstedt
Antennentechnik Weser-Ems GmbH Eßkamp 102 26127 Oldenburg	Stadt Oldenburg, Stadt Wildeshausen, Gemeinden Schortens, Wiefelstede und Großenkneten, Orte Bensersiel und Horumersiel
AT&T-Unisource Communications Services (Deutschland) GmbH Kölner Str. 8b 65760 Eschborn	Fernlinien: Staatsgrenze Schweiz/Deutschland - Frankfurt am Main, Frankfurt am Main - Düsseldorf, Düsseldorf - Staatsgrenze Deutschland/Niederlande
AugustaKom Telekommunikations GmbH Curt-Frenzel-Straße 4 86167 Augsburg	Städte Augsburg, Gersthofen und Stadtbergen (Markt)
AVC Kommunikationssysteme GmbH Louis-Braille-Straße 1 03044 Cottbus	Cottbus (Stadtteil Sandow), Gemeinden Gallinchen und Gaglow
Bavaria Telecentrum GmbH & Co.KG Kleinhohenried 108 86668 Karlshuld	Stadt Schrobenhausen
Bayern Digital Radio GmbH Medienhaus Am Moosfeld 31 81829 München	Freistaat Bayern

BCC-Braunschweiger Communication Carrier GmbH Taubenstraße 7 38106 Braunschweig	Städte: Braunschweig, Salzgitter, Hannover, Lübeck und Landkreise: Peine, Wolfenbüttel, Goslar, Helmstedt, Northeim, Diepholz, Hannover, Hildesheim, Nienburg, Celle, Harburg, Lüchow-Dannenberg, Lüneburg, Soltau-Fallingbostel, Uelzen, Ohrekreis, Altmarkkreis Salzwedel, Jerichower Land, Stendal, Bördekreis, Schönebeck, Havelland, Ludwigslust, Herzogtum Lauenburg, Gifhorn, Wolfsburg, Osterode am Harz, Göttingen, Ostholstein, Prignitz, Ostprignitz-Ruppin, Oberhavel, Bad Doberan, Demmin, Güstrow, Mecklenburg-Strelitz, Müritz, Nordwest Mecklenburg, Parchim
BerliKomm Telekommunikationsgesellschaft mbH Ludwig Erhard Haus Fasanenstrasse 85 10623 Berlin	Berlin, Potsdam, Schönerlinde, Münchehofe, Waßmannsdorf, Stahnsdorf, Kleinmachnow, Blankenfelde, Stolpe, Neu Zittau, Gosen, Wernsdorf, Niederlehme, Zeuthen, Eichwalde, Schulzendorf, Waltersdorf, Schönefeld, Großziethen, Mahlow, Osdorf, Teltow, Groß Glienicke, Hennigsdorf, Stolpe Süd, Hohen Neuendorf, Schönfließ, Schildow, Mühlenbeck, Zepernick, Schwanebeck, Lindenberg, Ahrensfelde, Eiche, Hönow, Neuenhagen, Dahlwitz-Hoppegarten, Schöneiche, Woltersdorf, Seeburg, Dallgow, Falkensee, Schönwalde, Erkner, Glienicke Nordbahn, Birkenwerder
Bisping & Bisping & Co. OHG Spitalstraße 21 91207 Lauf a. d. Pregnitz	Lauf an der Pregnitz, Neunkirchen am Sand, Ottensoos
BITel Gesellschaft für kommunale Telekommunikation mbH Schildescher Straße 16 33611 Bielefeld	Städte Bielefeld, Werther, Halle/Westf., Oerlinghausen; Gemeinden Augustdorf, Leopoldshöhe, Schloß Holte-Stukenbrok, Steinhagen; Ortsteile Gütersloh-Ebesloh, -Hollen, -Niehorst, -Isselhorst
BKG Breitbandkabelgesellschaft mbH Neuruppin Heinrich-Rau-Straße 3 16816 Neuruppin	Gebiet der Stadt Neuruppin
Bosch Telecom GmbH Produktbereich BN Robert-Bosch-Platz 1 70839 Gerlingen-Schillerhöhe	Orte und Gemeinden aus: Brandenburg, Mecklenburg-Vorpommern, Niedersachsen, Nordrhein-Westfalen, Sachsen, Sachsen-Anhalt, Thüringen, Bayern, Baden-Württemberg
BroadNet Deutschland GmbH Am Kronenberger Hang 2a 65824 Schwalbach	Bundesrepublik Deutschland
BreisNet Telekommunikations- und Carrier-Dienste Sundgauallee 25 79114 Freiburg	Gebiet der Städte/Gemeinden: Au, Merzhausen, Bad Krozingen, Oberried, Breitnau, Schallstadt, Buchenbach, Sölden, Freiburg im Breisgau, St. Märgen, Friedenweiler - Rötenbach, St. Peter, Gundelfingen, Staufen, Hartheim, Stegen, Hinterzarten, Titisee-Neustadt, Horben, Umkirch, Kirchzarten, Wittnau, Löffingen, Landkreise: Breisgau-Hochschwarzwald, Emmendingen
Bremer Kommunikationstechnik GmbH Stolzenauer Straße 32 28207 Bremen	Bundesland Bremen, Punkt-zu-Punkt-Verbindung: Bremerhaven-Bremen
BTV Breitband-Television Jena GmbH Göschwitzer Straße 22 07745 Jena-Burgau	Stadt Jena
Bürgergemeinschaft "Großantennenanlage Dresden-Prohlis" w.V. Garnigstraße 20 01239 Dresden	Dresden-Prohlis und Nossen
Cable & Wireless (Deutschland) GmbH	

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VK

Kaistraße 5 40221 Düsseldorf	Bundesrepublik Deutschland
Callino GmbH Trimburgstraße 2 81249 München	Bundesrepublik Deutschland
Carrier 1 International GmbH Militärstraße 36 CH-8004 Zürich	**Gebiete:** Bundesland Bremen, Köln, Essen, Dortmund, Münster, Hamburg, Berlin, Dresden, Leipzig, Nürnberg, München, Stuttgart, Karlsruhe, Mannheim, Frankfurt/Main, Düsseldorf **Fernlinien:** von Frankfurt jeweils nach Düsseldorf und Mannheim, von Düsseldorf nach Köln, von Köln nach Frankfurt, von Mannheim nach Autobahnrastplatz Füllbruch, A5
carrier24 GmbH Augustenstraße 44 80333 München	Erfurt, Bielefeld, Hannover, Magdeburg Fernlinien: von Hamburg jeweils nach Kiel, Rostock, Bremen, Berlin; von Berlin jeweils nach Magdeburg und Leipzig; von Leipzig nach Dresden, von Dresden zur Grenze Tschechien, von der Grenze Tschechien nach Erfurt, von Erfurt nach Nürnberg, von Nürnberg jeweils nach Würzburg und München, von München nach Augsburg, von Augsburg nach Stuttgart, von Stuttgart nach Karlsruhe, von Karlsruhe zur Grenze Schweiz und Mannheim, von Frankfurt jeweils nach Mannheim, Würzburg, Köln und Bielefeld, von Köln nach Aachen und Düsseldorf, von Düsseldorf nach Essen, von Essen nach Dortmund, von Dortmund nach Bielefeld, von Bielefeld nach Hannover und Bremen, von Hannover nach Magdeburg; vom Autobahnrastplatz Füllbruch nach Stuttgart, von Stuttgart zum Grenzübergang Schweiz, von Stuttgart nach München, von München nach Nürnberg, von Nürnberg nach Leipzig, von Leipzig nach Dresden, von Dresden nach Berlin, von Berlin nach Hamburg, von Hamburg nach Bremen, von Bremen nach Dortmund, von Dortmund nach Essen, von Essen nach Berlin Ortslinen innerhalb von Nürnberg, Mannheim, Würzbur, Rostock, Frankfurt/M.
ChemTel Telekommunikation GmbH Blankenburgstraße 2 09114 Chemnitz	Chemnitz, Grüna, Mittelbach, Röhrsdorf, Neukirchen, Niederwiesa, Dresden; Punkt-zu-Punkt-Verbindungen von Chemnitz nach Dresden und von Dresden nach Radebeul
City TV-Kabelservice GmbH Kurt-Große-Straße 1 08459 Neukirchen	Crimmitschau
Citykom Münster GmbH Telekommunikationsservice Haferlandweg 8 48155 Münster	Stadt Münster, Stadt Drensteinfurt; Kreise Steinfurt, Coesfeld, Warendorf
COLT Telecom GmbH Bleichstraße 52 60313 Frankfurt am Main	Freie und Hansestadt Hamburg; Bundesland Berlin und Potsdam; Land- bzw. Stadtkreise Rhein-Sieg-Kreis, Oberbergischer Kreis, Rheinisch-Bergischer Kreis, Mettmann, Viersen, Neuss, Erftkreis; Städte Bonn, Köln, Leverkusen, Solingen, Remscheid, Wuppertal, Düsseldorf, Krefeld, Mönchengladbach, Hannover; Land- bzw. Stadtkreise Darmstadt, Offenbach, Hoch-Taunus-Kreis, Rheingau-Taunus-Kreis, Mainz-Bingen, Groß-Gerau, Dieburg; Städte Darmstadt, Offenbach a. M., Frankfurt/M., Wiesbaden, Mainz; Landkreise Böblingen, Esslingen, Göppingen, Ludwigsburg, Stuttgart, Pforzheim, Baden-Baden, Rems-Murr-Kreis, Karlsruhe, Rastatt, Enzkreis; Land- bzw. Stadtkreise München, Ebersberg, Erding, Freising, Landshut, Pfaffenhofen a.d.Ilm, Neuburg-Schrobenhausen, Aichach-Friedberg, Augsburg, Dachau, Fürstenfeldbruck, Landsberg a. Lech, Starnberg;

DETECON Deutsche Telepost Consulting GmbH Oberkasseler Straße 2 53227 Bonn	Landkreis Bitterfeld
DeTeKabelService Deutsche Telekom Kabel Service GmbH Welschnonnenstraße 7 53111 Bonn	Bremen (Ortsteile Sebaldsbrück, Riensberg, Gröpelingen, Burglesum, Vegesack, Obervieland, Östliche Vorstadt, Schwachhausen, Findorff), Marl, Duisburg (Ortsteil Laar), Bielefeld, Bottrop, Münster (Stadtbezirk Südost)
Deutsche Landtel GmbH Am Luftschiffhafen 1 14471 Potsdam	Ennepe-Ruhr-Kreis, Neuss, Oberbergischer Kreis, Rheinisch-Bergischer Kreis, Stormarn; Landkreise Augsburg, Hannover, München, Neunkirchen, Saale-Holzland-Kreis; Städte Augsburg, Berlin, Bochum, Dortmund, Düsseldorf, Erfurt, Hamburg, Hannover, Hagen, Herne, Jena, Köln, Leverkusen, Möchengladbach, München, Wilhelmshaven
Deutsche Telekom AG Zentrale Friedrich-Ebert-Allee 140 53105 Bonn	Bundesrepublik Deutschland
Digital Radio Nord GmbH Jenfelder Allee 80 22039 Hamburg	Bundesland Niedersachsen
Digital Radio Saar GmbH Am Halberg 6 66121 Saarbrücken	Bundesland Saarland
Digital Radio Südwest GmbH Friolzheimer Straße 3 70499 Stuttgart	Bundesländer Baden-Württemberg und Rheinland-Pfalz
Digital Radio West GmbH Kolumbastr. 3 50667 Köln	Bundesland Nordrhein-Westfalen
DOKOM Gesellschaft für Telekommunikation mbH Im Defdahl 5-7 44141 Dortmund	Stadtgebiet Dortmund
E-Plus Mobilfunk GmbH E-Plus-Platz 40468 Düsseldorf	Bundesrepublik Deutschland
EAM-Line GmbH Monteverdistraße 2 34131 Kassel	Gebietslizenz: Kreis Höxter, Kreisfreie Stadt Kassel, Lahn-Dill-Kreis, Landkreise Eichsfeld, Fulda, Gießen, Göttingen, Hersfeld-Rotenburg, Holzminden, Kassel, Limburg-Weilburg, Marburg-Biedenkopf, Northeim, Osterode, Waldeck-Frankenberg, Main-Kinzig-Kreis, Schwalm-Eder-Kreis, Vogelsbergkreis, Werra-Meißner-Kreis, Wetterau-Kreis Linienlizenz: Grenze Wetterau-Kreis - Umspannwerk Frankfurt/Nord
Easynet Group Plc. 44-46 Whitfield Street London W1P 5RF	Hamburg (-Mitte, -Altona, -Eimsbüttel, -Nord)
ECN Telekommunikation GmbH Brunnenstraße 4 61191 Rosbach	Punkt-zu-Punkt-Verbindung: Frankfurt/Main-Bad Reichenhall
EggeNet Gesellschaft für Telekommunikation mbH Tegelweg 25 33102 Paderborn	Kreise Paderborn und Höxter, Gemeinden Horn-Bad Meinberg, Schloß Holte-Stukenbrock und Schlangen
	Esslingen am Neckar, Heidelberg, Mannheim, Ludwigshafen,

EinstelNet AG Ramskamp 71-75 25337 Elmshorn	Erlangen, Fürth, Nürnberg, Potsdam, Wiesbaden, Mainz, Hanau, Offenbach, Schwerin, Oldenburg, Bochum, Gelsenkirchen, Herne, Neuss, Mülheim a.d. Ruhr, Krefeld, Mönchengladbach, Dresden, Chemnitz, Leipzig, Zwickau, Dessau, Halle, Kiel, Lübeck, Gera,
Enco Telecom GmbH & Co.KG Leibnitzstraße 73 07548 Gera	Kreisfreie Stadt Gera
Energis (Switzerland) AG Industriestraße 21 CH-8304 Wallisellen (Schweiz)	Einfache Linien - Weil am Rhein, Grenzübergang Schweiz è Frankfurt/M. - Aachen, Grenzübergang NL è Düsseldorf, - Frankfurt/M. è Düsseldorf
Engel & Engel GmbH Rosenstraße 7 38723 Seesen	Seesen
ENKom GmbH **Gesellschaft für Telekommunikation** Mühlenstraße 49 58285 Gevelsberg	Ennepe-Ruhr-Kreis, 1 Ortslinie in Hagen
envia.tel GmbH Thiemstraße 136 03048 Cottbus	Einzelbereiche: im Land Brandenburg, im Freistaat Sachsen und im Land Sachsen-Anhalt, Regierungsbezirk Chemnitz, Regierungsbezirk Leipzig und Landkreis Altenburger Land
EWE TEL GmbH Cloppenburger Str. 310 26133 Oldenburg	Bundesland Bremen Landkreise: Ammerland, Aurich, Cloppenburg, Friesland, Leer, Oldenburg, Vechta, Wesermarsch, Wittmund, Emsland (außer den Gemeinden: Emsbüren, Geeste, Lingen, Salzbergen), Diepholz (außer den Gemeinden Weyhe, Wagenfeld, Brockum, Höde, Lembruch, Lemförde, Mark, Quernheim, Sternshorn, Barnsdorf, Drebber, Drentwede, Eydelstedt, Barver, Dickel, Hemsloh, Rehden, Wetschen); Städte: Delmenhorst, Emden, Oldenburg, Wilhelmshaven, Quakenbrück, Gemeinden: Fürstenau, Bippen, Bergen, Menslage, Wietzen (aus dem Landkreis Nienburg/Weser), Hopsten, Landkreise: Cuxhaven Stade, Harburg, Rotenburg, Osterholz, Soltau-Fallingbostel und Verden, Emsbüren, Geeste, Salzbergen und Lingen im Landkreis Emsland, Wietmarschen und Nordhorn aus dem Landkreis Grafschaft Bentheim, Bassum, Stuhr
EWT Communications GmbH Volkhartstraße 4-6 86152 Augsburg	Teilbereiche aus den Städten: Augsburg, Chemnitz, München, Landshut, Nürnberg, Mainz, Frankfurt/M.; Städte: Memmingen, Lindau, Oberstdorf, Sondthofen, Immenstadt, Landsberg am Lech, Geretsried, Ottobrunn, München-Harlaching, Würzburg, Ochsenfurt, Karlsruhe, Göppingen, Schorndorf, Schwäbisch Gmünd, Wangen, Ravensburg, die Städte und Gemeinden: Retzbach, Zellingen, Marktheidenfeld, Veitshöchheim, Langenau, Erbach, Ehingen, Tettnang, Remshalden, Bad Waldsee, Bad Würzach, Bergkamen, Hotzwickede, Herdecke, Wesseling, Hürth, Rheinbach, Meckenheim, Erkrath, Soest, Moers, Hamminkeln (Stadteil Dingden), Düren, Oer-Erkenschwick, Recklinghausen (ST Innenstadt, Nordviertel, Süd, König-Ludwig, Suderwich), Hamm (Mitte, Uentrop, Herringen, Heessen), Bochum (Mitte, Wattenscheid, Querenburg), Bocholt (Lowick, Suderwick, Bocholt), Bad Kreuznach, Stromberg, Regensburg (Galgenberg, Kumpfmühl-Ziegetsdorf-Neuprüll, Großprüfening-Dechbetten, Königswiesen), Fürth (Südstadt1 und Südstadt2, Hardhöhe, Scherbsgraben, Stadeln, Erlangen (Nord, Ost), Frankfurt am Main (Nordend-Ost, Heddernheim, Ginnheim, Niederursel), Plattling, Augsburg (Firnhaberau), Ochsenhausen, Gummersbach, Köln (Chorweiler)
Ferdinand Brink E.K. Dr. Röhrig Damm 89	Paderborn (Stadtteil Kernstadt)

33102 Paderborn

Fernseh GmbH Niederdorf Chemnitzer Straße 73 09366 Niederdorf	Bundesland Sachsen: Stollberg, Niederdorf, Lugau, Niederwürschnitz, Hohndorf, Oelsnitz, Wildenfels
Fibernet GmbH Lyoner Str. 15 60528 Frankfurt am Main	Bundesrepublik Deutschland
FirstMark Communications Deutschland GmbH Günther-Wagner-Allee 13 30177 Hannover	Bundesrepublik Deutschland
First Telecom GmbH Lyoner Str. 15 60528 Frankfurt	Berlin, Hamburg, München, Düsseldorf, Frankfurt am Main
GC Pan European Crossing Deutschland GmbH Alsterarkaden 27 20354 Hamburg	In Hessen die Städte Frankfurt u. Eschborn; Fernlinien von: Fehmarn/Ostsee nach Hamburg, Staatsgrenze Dänemark/Deutschland nach Hamburg, Hamburg nach Hannover, Hannover nach Düsseldorf, Düsseldorf nach Köln, Köln nach Frankfurt/M., Frankfurt/M. nach Kehl und von Achim nach Staatgrenze Deutschland/Niederlande und eine Ortslinie in Hamburg; Folgende Fernlinien: Fehmarn/Ostsee - Hamburg; Staatsgrenze Dänemark/Deutschland - Hamburg; Hamburg - Hannover; Hannover - Düsseldorf; Düsseldorf - Köln; Köln - Frankfurt/M.; Frankfurt/M. - Kehl und eine Ortslinie in Hamburg; Fernlinie von Börnsen nach: Achim und Sülte; Fernlinie von Ismaning nach: Eching, München und Burghausen (Grenze); Fernlinie von Naundorf nach: Nempitz und Deutschneudorf-Grenze Tschechien; Fernlinie von Genshagen nach: Berlin und Brusendorf; folgende Fernlinien von: Hamburg - Börnsen; Sülte - Erdeben; Erdeben - Bartschendorf; Bartschendorf - Genshagen; Berlin - Brusendorf; Brusendorf - Naundorf b. Freiberg; Nempitz - Zimmritz; Zimmritz - Ichtershausen; Ichtershausen - Renzenhof, Renzenhof - Manching; Manching - Mönchsmünster; Mönchsmünster - Ismaning; München - Eching; Eching - Steinheim; Steinheim - Stuttgart; Stuttgart - Rohrdorf; Rohrdorf - Kehl; Kehl - Basel; Düsseldorf - Kempen; Kempen - Venlo sowie eine Ortslinie in Hamburg; von 06231 Nempitz bis 04460 Kitzen durch die Landkreise Merseburg-Querfurt, Weißenfels, Leipziger Land; von 04460 Kitzen bis 04135 Leipzig und von 04135 Leipzig zurück nach 04460 Kitzen durch das Leipziger Land und die Stadt Leipzig; von 09600 Naundorf b. Freiberg bis 01139 Dresden und von 01139 Dresden zurück nach 09600 Naundorf b. Freiberg durch die Landkreise Freiberg, Meißen-Radebeul, Weißeritzkreis und die Stadt Dresden.
GELSEN-NET mbH Munscheidstraße 14 45886 Gelsenkirchen	Gelsenkirchen, Bottrop, Gladbeck, Kreis Recklinghausen
Gernot Padur Hauptstraße 4 18609 Binz	Binz
Gigabell AG Mainzer Landstraße 46 60325 Frankfurt am Main	Landkreise Offenbach, Main-Kinzig-Kreis, Fulda, Hersfeld-Rotenburg, Aschaffenburg, Wartburgkreis, Gotha, Ilm-Kreis, Weimarer Land, Saale-Holzland-Kreis, Greiz, Altenburger Land, Burgenlandkreis, Merseburg-Querburg, Saalkreis, Bitterfeld, Wittenberg, Anhalt-Zerbst, Leipziger Land, Teltow-Flämig, Dahme-Spreewald; Fernlinien: von Frankfurt a.Main nach Offenbach a. Main; eine

	Linie innerhalb Offenbach, Weimar, Jena, Dessau und Berlin; zwei Linien innerhalb Leipzig, Gera und Halle; drei Linien innerhalb Erfurt
Girrbach GmbH Huttenstraße 15 01309 Dresden	Stadtbezirke Johannstadt, Blasewitz, Striesen, Gruna und Seidnitz der Stadt Dresden
GKS I-NetPartner GmbH Online Services Seewiesenstrasse 12 73054 Eislingen	Göppingen, Kirchheim/Teck, Eislingen, Salach, Süßen, Donzdorf, Uhingen, Heiningen, Dürnau, Aichelberg, Zell unter Teck, Holzmaden, Weilheim/Teck, Gingen, Kuchen, Geislingen/Steige
GlobalAirNet AG Leuchtenbergring 3 81677 München	München
DK **GlobalConnect A/S** Vestre Garde 18 DK-2605 Broendby Dänemark	Punkt-zu-Punkt-Verbindung: Grenzübergang Padborg-Harrislee, Harrislee-Kiel, Kiel-Norderstedt, Norderstedt-Hamburg, Hamburg-Lübeck, Lübeck-Rostock, Rostock-Grenzübergang
Global Metro Networks GmbH Bethmannstrasse 50-54 60311 Frankfurt am Main	Berlin, München, Frankfurt am Main
Global One Telekommunikationsdienste GmbH Stiftstraße 23 60313 Frankfurt	aus der Stadt Frankfurt am Main die Stadtteile: Niederrad, Innenstadt, Ginheim
Global Telesystems GmbH c/o Rechtsanwalt Strohmeier Stephanstraße 14 25980 Westerland/Sylt	Linien von List Strandhalle bis zum Kreuzungspkt. Landesgr. BRD/DK; von Samoa bis zum Kreuzungspkt. Landesgr. BRD/DK und von List Strandhalle nach Samoa
US **Global TeleSystems Netzwerk GmbH & Co. KG** August-Thyssen-Straße 1 40211 Düsseldorf	Die Städte und Gemeinden aus folgenden Bundeslandern: die Länder Berlin und Hamburg; Schleswig-Holstein: Pinneberg, Quickborn, Bönningstedt, Ellerbeck, Halstenbek, Hasloh, Reilingen u. Tangstedt, Bargteheide, Ahrensburg, Delingsdorf, Ammersbek, Norderstedt Brandenburg: Potsdam, Schönefeld, Diepensee, Waltersdorf Rheinland-Pfalz: Mainz, Klein-Winternheim Nordrhein-Westfalen: Mönchengladbach, Mönchengladbach, Krefeld, Neuss, Kaarst, Korschenbroich, Meerbusch, Dormagen, Willich, Langenfeld, Monheim, Erkrath, Hilden, Ratingen, Köln, Leverkusen, Brühl, Frechen, Hürth, Pulheim, Wesseling, Düsseldorf Hessen: Wiesbaden, Hochheim, Bad Soden a.T., Eschborn, Flörsheim, Hattersheim, Schwalbach a.Ts., Liederbach a.Ts., Kriftel und Sulzbach/Ts., Bad Vilbel, Hanau, Maintal, Offenbach, Dietzenbach, Dreieich, Heusenstamm, Langen, Neu-Isenburg, Egelsbach, Bad Homburg v.d.H., Kronberg, Oberursel, Steinbach, Kelsterbach, Mörfelden-Walldorf, Raunheim, Rüsselsheim, Groß-Gerau Büttelborn, Darmstadt, Griesheim, Weiterstadt, Frankfurt am Main, Mühlheim am Main Baden-Württemberg: Stuttgart, Böblingen, Leonberg, Sindelfingen, Magstadt, Steinenbronn, Esslingen, Filderstadt, Leinfelden-Echterdingen, Ostfildern, Kirchheim, Nürtingen, Plochingen, Wendlingen, Wernau, Neuhausen, Altbach, Deizisau, Dettlingen, Hochdorf, Köngen, Notzingen, Oberboihingen, Unterensingen, Wolfschlungen, Ludwigsburg, Gerlingen, Kornwestheim, Korntal-Münchingen, Möglingen Ludwigsburg, Fellbach, Kernen Bayern: München, Garching, Aschheim, Feldkirchen, Gräfeling, Haar, Ismaning, Kirchheim, Neuried, Oberschleißheim, Ottobrunn, Planegg, Putzbrunn, Taufkirchen, Neubiberg, Unterföhring, Unterhaching, Unterschleißheim, Hallbergmoos, Neufahrn, Eching, Fürstenfeldbruck, Germering, Emmering, Eichenau,

64521 Groß-Gerau	
KFS Kabelfernsehen Stuttgart GmbH Schockenriedstraße 7 70565 Stuttgart	Stuttgart
KielNET GmbH Uhlenkrog 30 24113 Kiel	Stadt Kiel; im Kreis Rendsburg-Eckernförde die Gemeinden: Altenhof, Neudorf-Bornstein, Noer, Gettorf, Osdorf, Schwedeneck, Strande, Altbuelk, Dänischenhagen, Altenholz, Felm, Tüttendorf, Neuwittenbek, Quarnbeck, Ottendorf, Kronshagen, Melsdorf, Achterwehr, Mielkendorf, Radenbek, Molfsee, Rumohr, Flintbek; im Kreis Plön die Gemeinden: Boksee, Honigsee, Pohnsdorf, Kühren, Preetz, Schellhorn, Lehmkuhlen, Rastorf, Raisdorf, Klausdorf, Schönkirchen, Tökendorf, Mönkeberg, Heikendorf, Probsteierhagen, Passade, Prosdorf, Fiefbergen, Schönberg, Krokau, Wisch, Barsbek, Wentorf, Lutterbek, Brodersdorf, Laboe, Stein
Klaus Daten- und Telekommunikationstechnik GmbH Robertstraße 6 42107 Wuppertal	Wuppertal-Elberfeld
KKF.net AG Stiftsallee 60 32425 Minden	Minden in Westfalen, Hannover, Langenhagen bei Hannover, Gemeinde Isernhagen bei Hannover
KMG Kabelfernsehen-Hannover GmbH Peiner Straße 8 30519 Hannover	Hannover, Barsinghausen, Garbsen, Isernhagen, Laatzen, Seelze, Ronnenberg, Lehrte, Burgwedel, Hemmingen, Gehrden, Burgdorf, Wennigsen, Köln, Frankfurt am Main, Düsseldorf, Berlin, Hamburg
KOMRO Gesellschaft für Telekommunikation mbH Am Innreit 2 83022 Rosenheim	Stadt Rosenheim, Trostberg
KomTel Gesellschaft für Kommunikations- und Informationsdienste mbH Nordstraße 2 24937 Flensburg	Stadt Flensburg und Gemeinden Glücksburg, Handewitt, Harrislee, Jarplund-Weding, Tastrup und Wees; Kreise Schleswig-Flensburg, Nordfriesland; Kreise Rendsburg-Eckernförde, Segeberg, Pinneberg und Stormann, Dithmarschen, Steinburg; die kreisfreien Städte Kiel und Neumünster; Linie von Jarplund-Weding nach Hamburg; Ortslinie innerhalb Hamburg
KPNQwest Assets Germany GmbH Ismaninger Straße 17-19 81675 München	Fernlinien: niederländische Grenze-Düsseldorf, Düsseldorf-Frankfurt, Frankfurt-französische Grenze; Hannover-Bremen, Bremen-Hamburg, Hamburg-Berlin, Berlin-Magdeburg, Düsseldorf-Hannover, Hannover-Magdeburg, Magdeburg-Leipzig, Leipzig-Zwickau, Zwickau-Nürnberg, Frankfurt/M.-Nürnberg, Nürnberg-Mannheim und nach München, Düsseldorf-Köln, Köln-Bonn, Bonn-Frankfurt/M., Frankfurt/M.-Mannheim, Mannheim-Karlsruhe, Karlsruhe-französische Grenze, Stuttgart-Karlsruhe, Stuttgart-München; Städte und Gemeinden: Düsseldorf, Erkrath, Hilden, Meerbusch, Ratingen, Krefeld, Neuss, Mönchengladbach, Frankfurt am Main, Eschborn, Liederbach Mühlheim, Neu-Isenburg, Offenbach, Sulzbach, München, Aschheim, Aying, Baierbrunn, Brunnthal, Eching, Egmating, Feldkirchen, Garching, Gauting, Germering, Gräfelfing, Grasbrunn, Grünwald, Haar, Haimhausen, Halbergmoos, Hebertshausen, Höhenkirchen-Siegertsbrunn, Hohenbrunn, Ismaning, Kirchheim, Krailing, Moosach, Neubiberg, Neuried, Oberhaching, Oberschleißheim, Ottobrunn, Petershausen, Planegg, Pliening, Poing, Puchheim, Pullach i. Isartal, Putzbrunn, Sauerlach, Schäftlarn, Straßlach-Dingharting, Taufkirchen, Unterföhring, Unterhaching, Unterschleißheim,

NL

	Vaterstetten, Wörth, Hamburg, Hasloh, Pinneberg, Schenefeld, Wedel, Norderstedt, Glinde, Reinbek, Buchholz in der Nordheide, Jesteburg, Neu-Wulmstorf, Rosengarten, Seevetal, Stelle, Winsen, Buxtehude, Hohnstorf, Lüneburg, Potsdam, Berlin
KVG Internet Services GmbH Am Seerhein 8 78467 Konstanz	Konstanz, Reichenau, Allensbach
LambdaNet Communications GmbH Günther-Wagner-Allee 13 30117 Hannover	mehre Orts- bzw. Fernlinien, Gebiet der Stadt Frankfurt
Leschinsky & Schneider GmbH **Antennen- und Kabelfernsehanlagen** Friedrichstraße 44 06366 Köthen	Köthen
LeuCom **Telekommunikationsgesellschaft mbH** Gebäude 4310, Am Haupttor 06237 Leuna	Leuna, Merseburg, Bad Dürrenberg, Spergau, Großkorbetha, Wengelsdorf, Beuna, Frankleben, Großkeyna
Level 3 Communications GmbH Niedenau 13-19 60325 Frankfurt/Main	Gebiete im Bundesland Hessen: Landkreise: Limburg-Weilburg, Rheingau-Taunus-Kreis, Darmstadt-Dieburg, Bergstraße; Städte u. Gemeinden: Wiesbaden, Darmstadt, Groß-Gerau, Eppstein a. Ts., Hochheim a.M., Biebesheim a. Rhein, Bischofsheim b. Rüsselsheim, Büttelborn, Gernsheim, Ginsheim-Gustavsburg, Nauheim, Riedstadt, Stockstadt a. Rhein, Trebur, Frankfurt am Main, Offenbach am Main, Bad Vilbel, Karben, Rosbach v.d. Höhe, Kelsterbach, Mörfelden-Walldorf, Raunheim, Rüsselsheim, Bad Homburg, Friedrichsdorf, Königstein im Taunus, Kronberg im Taunus, Oberursel, Steinbach, Hanau, Maintal, Niederdorfelden, Schöneck, Bad Soden, Eschborn, Flörsheim, Hattersheim am Main, Hofheim am Taunus, Kelkheim am Taunus, Kriftel, Liederbach am Taunus, Schwalbach am Taunus, Sulzbach am Taunus, Dreieich, Egelsbach, Heusenstamm, Langen (Hessen), Mühlheim am Main, Neu-Isenburg, Obertshausen; Fernlinien: Frankfurt/M. nach Emmerich und Kehl; Bundeshauptstadt Berlin, Freie und Hansestadt Hamburg, Stadt Bremerhaven Gebiete im Bundesland Baden-Württemberg: Städte: Baden-Baden, Heidelberg, Karlsruhe, Mannheim, Pforzheim, Stuttgart, Landkreise: Rhein-Neckar-Kreis, Karlsruhe, Rastatt, Ortenaukreis, Enzkreis, Ludwigsburg, Rems-Murr-Kreis, Ostalbkreis, Esslingen, Reutlingen, Zollernalbkreis, Sigmaringen, Konstanz, Emmendignen, Waldshut, Göppingen, Böblingen, Freudenstadt, Tübingen, Rottweil, Tuttlingen, Schwarzwald-Baar-Kreis, Breisgau-Hochschwarzwald Gebiete im Bundesland Bayern: Städte: München, Bayreuth, Hof, Ingolstadt, Nürnberg, Donau-Ries-Kreis, Landkreise: Neuburg-Schrobenhausen, Eichstätt, Pfaffenhofen an der Ilm, Freising, Dachau, München, Ebersberg, Erding, Mühldorf a. Inn, Kelheim, Neumarkt i.d. Oberpfalz, Roth, Weißenburg-Gunzenhausen, Nürnberger Land, Amberg-Sulzbach, Neustadt a.d. Waldnaab, Forchheim, Bayreuth, Kulmbach, Hof Gebiete im Bundesland Thüringen: Kreisfreie Stadt Gera; Landkreise: Greiz, Saale-Orla-Kreis, Saale-Holzland-Kreis Gebiete im Bundesland Sachsen-Anhalt: Landeshauptstadt Magdeburg, Landkreise: Burgenlandkreis, Weißenfels,

M"net Telekommunikations GmbH Corneliusstraße 10 80469 München	Planegg, Neubiberg, Ismaning, Unterschleißheim, Oberschleißheim, Eching, Ottobrunn; Punkt-zu-Punkt-Verbindung: westliche Landkreisgrenze der Gemeinde Eching - Augsburg
Magdeburg-City-Com GmbH Weitlingstraße 22 39104 Magdeburg	• Stadt Magdeburg • Landkreise Ohrekreis, Jerichower Land, Bördekreis und Schönebeck (einschl. Stadt Schönebeck) • Fernlinie: Magdeburg - Halle
Mainova Kommunikationsnetze GmbH Solmsstraße 73 60486 Frankfurt am Main	Städte Frankfurt am Main, Friedrichsdorf, Bad Homburg v.d. Höhe, Rosbach v.d.Höhe, Gemeinde Eschborn
MAINZ-KOM Telekommunikation GmbH Rheinallee 41 55118 Mainz	Stadt Mainz; Landkreise Mainz-Bingen, Groß-Gerau; Ortsbezirke Mainz-Kastel, -Kostheim, -Amöneburg der Stadt Wiesbaden
MAnet GmbH Gesellschaft für Telekommunikation und Information Luisenring 49 68159 Mannheim	Mannheim, Heidelberg, Neckar-Odenwald-Kreis, Rhein-Neckar-Kreis, Main-Tauber-Kreis; Gemeinden Philippsburg, Graben-Neudorf, Bruchsal, Viernheim
Mandala Internet, EDV Service GmbH Hamburger Straße 283 38114 Braunschweig	Salzgitter-Nord, Bielefeld, Braunschweig,
Mannesmann Arcor AG & Co. Kölner Straße 5 65760 Eschborn	Bundesrepublik Deutschland
Mannesmann o.tel.o GmbH Deutz-Mülheimer Str. 111 51063 Köln	Bundesrepublik Deutschland
Marienfeld Multimedia GmbH Im Teelbruch 104 45219 Essen	Halle, Merseburg, Leuna, Bad Dürrenberg, Bochum, Bottrop, Dorsten, Dortmund, Duisburg, Düsseldorf, Essen, Gelsenkirchen, Hagen, Hamm, Hattingen, Hilden, Iserlohn, Kleve, Krefeld, Meerbusch, Moers, Mülheim, Oberhausen, Recklinghausen, Remscheid, Schwerte, Wert, Wuppertal
Martens Antennen- und Kabelanlagen-Gesellschaft mbH Papenreye 31 22453 Hamburg	Hamburg (Stadtteil Osdorf)
Mediascape Communications GmbH Weidestrasse 122 A 22083 Hamburg	mehrere Stadtbezirke in Hamburg, Ortsteile der Stadt Frankfurt am Main, Stadteile der Städte Hannover, Düsseldorf, Köln, Stuttgart, Stadtbezirke der Bundeshauptstadt Berlin, Stadtbezirke der Landeshauptstadt München; Landkreis Stormarn, Lübeck, Landkreise Hannover und Pein, Stadt Braunschweig, Kreisfreie Städte Essen, Mülheim, Oberhausen, Duisburg, Mönchengladbach, Kreis Neuss, Landkreis Ludwigsburg, Rems-Murr-Kreis, Wiesbaden, Offenbach, Darmstadt, Landkreis Offenbach, Main-Taunus-Kreis, Mainz, Landkreis München, Potsdam; Augsburg, Bremen, Flensburg, Mannheim, Ludwigshafen, Nürnberg, Würzburg, Kiel, Neumünster, Osnabrück, Münster, Dortmund, Kassel, Leipzig, Bonn, Karlsruhe, Freiburg, Ulm, Landshut
Memorex Telex Communications AG Ortsstraße 24 A 2331 Vösendorf, Österreich	Fernlinien von Kiefersfelde nach München, von Fürstenwalde nach Dresden, von Freilassing nach München
MEOCOM Telekommunikation GmbH & Co.KG	Mülheim an der Ruhr, Oberhausen, Essen, Duisburg, Bottrop, Gelsenkirchen, Moers, Rheinberg, Voerde, Hünxe, Dinslaken,

Gutenbergstraße 3 45128 Essen	Gladbeck, Ratingen, Heiligenhaus, Velbert
MERO Pipeline GmbH MERO-Weg 1 85088 Vohburg a.d. Donau	Fernlinie von 85088 Vohburg nach 92726 Markt Waldhaus
Metromedia Fiber Network GmbH Eschersheimer Landstraße 55 60322 Frankfurt/Main	Bundesrepublik Deutschland
MEVACOM Telekommunikationsdienstleistungen GmbH Posthofstraße 15 14467 Potsdam	Potsdam und Brandenburg an der Havel, Greifswald, Stralsund, Rostock und Wismar sowie die Landkreise Havelland, Oberhavel, Ostprignitz-Ruppin, Potsdam-Mittelmark, Teltow-Fläming, Prignitz und Dahme-Spreewald, Rügen, Nordvorpommern, Bad Doberan, Nordwestmecklenburg
MFS Communications GmbH Solmstraße 73-75 60486 Frankfurt am Main	Bundesland Berlin, Landkreise: Barnim, Dahme-Spreewald, Havelland, Märkisch-Oderland, Oberhavel, Oder-Spree, Potsdam-Mittelmark, Teltow-Fläming; Städte Düsseldorf, Duisburg, Krefeld, Mülheim a.d.Ruhr, Kreise Mettmann, Neuss; Städte Frankfurt/M, Offenbach/M., Landkreise Groß-Gerau, Main-Kinzig-Kreis, Main-Taunus-Kreis, Offenbach, Wetterauskreis; Bundesland Hamburg, Landkreise Harburg, Stade, Herzogtum Lauenburg, Pinneberg, Segeberg, Stormarn; Städte Köln, Leverkusen, Kreise Erftkreis, Rheinisch-Bergischer Kreis, Rhein-Sieg-Kreis; Stadt München, Landkreise Dachau, Ebersberg, Erding, Freising, Fürstenfeldbruck, München, Starnberg; Stadt Stuttgart, Landkreise Böblingen, Esslingen, Ludwigsburg, Rems-Murr-Kreis, Reutlingen, Tübingen sowie mehrere Punkt-zu-Punkt-Fernverbindungen
MK-Net Telekommunikationsgesellschaft mbH Lennestr. 3 58507 Lüdenscheid	Landkreise Märkischer Kreis und Olpe sowie Stadt Hagen, Stadt Herdecke
MobilCom CityLINE GmbH Königsstr. 28 24837 Schleswig	Länder: Berlin, Bremen, Hamburg; kreisfreien Städte: Augsburg, Bielefeld, Dortmund, Dresden, Düsseldorf, Erfurt, Essen, Frankfurt am Main, Hannover, Karlsruhe, Kiel, Köln, Leipzig, Magdeburg, Mannheim, München, Nürnberg, Rostock, Stuttgart, Wiesbaden, Würzburg Punkt-zu-Punkt-Verbindungen: Büdelsdorf – Itzehoe, Itzehoe – Hamburg, Hamburg – Sittensen, Sittensen – Achim, Achim – Luttum, Luttum – Kolshorn, Kolshorn – Hannover, Hannover – Stadthagen, Stadthagen – Ummeln, Ummeln – Brinkmann, Brinkmann – Dortmund, Dortmund – Essen, Essen - Düsseldorf, Düsseldorf – Köln, Köln – Dembach, Dembach – Naurod, Naurod - Frankfurt/Main, Frankfurt/Main – Gernsheim, Gernsheim - Karlsruhe(Container), Karlsruhe(Container) – Stuttgart, Stuttgart – Steinheim, Steinheim - Anwalting, Anwalting – München, München – Eittingermoos, Eittingermoos – Oberisling, Oberisling – Poppenricht, Poppenricht – Renzenhof, Renzenhof – Nürnberg, Gernsheim – Röllbach, Röllbach – Kleinlangheim, Kleinlangheim – Nürnberg, Klein Ammensleben – Raffturm, Raffturm – Hannover, Klein Ammensleben – Brandenburg, Brandenburg – Ketzin, Ketzin – Berlin, Berlin – Karwesee, Karwesee – Wolfshagen, Wolfshagen – Dreenkrögen, Dreenkrögen – Sülte, Sülte – Witzesee, Witzesee - Hamburg
muenchner-freiheit.net GmbH & Co.KG Münchner Freiheit 20 80802 München	München

Richard-Wagner-Str. 14-16 66111 Saarbrücken	Gebiet des Stadtverbandes Saarbrücken
QS Communication Service AG Oberländer Ufer 180-182 50968 Köln	Bundesland Berlin, Bundesland Hamburg, Städte Köln, Aachen, Essen, München, Leverkusen, Hürth, Frankfurt am Main, kreisfreie Stadt Bremen, Dresden, Halle, Leipzig, Chemnitz, Erfurt, Rostock, Magdeburg, Kiel, Kassel, Dortmund, Bielefeld, Bonn, Wiesbaden, Mönchengladbach, Augsburg, Krefeld, Lübeck, Hagen, Freiburg, Duisburg, Hannover, Nürnberg, Bochum, Wuppertal, Mannheim, Gelsenkirchen, Karlsruhe, Münster, Braunschweig, Oberhausen, Düsseldorf, Stuttgart
Radio -SWS Norderney -Sturmwellensender GmbH An der Mühle 6 26548 Norderney	Insel Norderney
Rapp Bürosysteme GmbH Münchner Straße 87b 85221 Dachau	Stadt Dachau und die Gemeinde Karlsfeld
R-KOM Regensburger Telekommunikationsgesellschaft mbH & Co.KG Greflingerstraße 22 93055 Regensburg	Kreisfreie Stadt Regensburg, Sinzing Gemeinden Barbing, Donaustauf, Lappersdorf, Mintraching, Neutraubling, Obertraubling, Pentling, Pielenhofen/Pettendorf, Regenstauf, Tegernheim, Wenzenbach und Zeitlarn sowie im Landkreis Kelheim die Gemeinden Bad Abbach und Teugn
Regio (.NET) Gesellschaft für neue Kommunikationsformen mbH Bahnhofstraße 16 36037 Fulda	Fulda, Hünfeld, Ebersburg, Eichenzell, Petersberg, Künzell
RegioCom GmbH Steinfeldstrasse 3 39179 Barleben	Regierungsbezirk Magdeburg, Landkreis Anhalt-Zerbst und Stadt Dessau
Regional-TV Fernsehproduktions GmbH Heinkelstraße 9 71034 Böblingen	Landkreis Böblingen
REKA Regionalservice Kabelfernsehen GmbH Kirschackerstraße 31 76855 Annweiler am Trifels	Kamenz, Neustadt/Sa., Sebnitz
RFT radio-television Brandenburg GmbH Kurstraße 14-15 14778 Brandenburg	Belzig, Brandenburg a.d. Havel, Jüterbog, Ludwigsfelde, Oranienburg, Potsdam, Werder, Gemeinde Wühnsdorf
RheiNet GmbH Hafenbahn 10 48431 Rheine	Rheine, Neuenkirchen, Wettringen
riodata GmbH Hessenring 13a 64546 Mörfelden-Walldorf	Düsseldorf, Essen, Frankfurt am Main, Bremen, Freie und Hansestadt Hamburg, Solingen, Remscheid, Wuppertal, Krefeld, Duisburg, Oberhausen, Mülheim an der Ruhr, Bottrop, Gelsenkirchen, Bochum, Herne, Dortmund, Hagen, Hilden, Erkrath, Ratingen, Neuss, Meerbusch, Kaarst, Rechklinghausen, Witten, Moers, Offenbach, Kelsterbach, Mörfelden-Walldorf, Eschborn, Neu-Isenburg, Hanau, Norderstedt, Würzburg, Wolfsburg, Ulm, Siegen, Schwerin, Saarbrücken, Rostock, Reutlingen, Regensburg, Pforzheim, Paderborn, Osnabrück, Ingolstadt, Hildesheim, Heilbronn, Hamm, Halle, Göttingen, Gera, Freiburg i. Breisgau, Erfurt, Dresden, Oldenburg, Münster, München, Magdeburg, Lübeck, Leipzig, Koblenz, Kiel, Kassel, Karlsruhe, Kaiserslautern, Darmstadt, Cottbus, Chemnitz, Braunschweig, Salzgitter,

Siegbert-Toni Marschall Luisenstrasse 13 63263 Neu-Isenburg	Neu-Isenburg
Sitecom Internetdienste und Agentur für Neue Medien GmbH Am Graalwall 7 21335 Lüneburg	Lüneburg
SKYTRON Communications GmbH Kinzigstraße 3 75210 Keltern	Pforzheim, Keltern, Birkenfeld, Remchingen-Nöttingen
SMATcom Netz-Verwaltungs GmbH Frankfurter Str. 101 65479 Raunheim	Altdöbern, Annaberg-Buchholz, Bad Langensalza, Dabel, Döbeln, Dornstadt, Ebersbach, Erkner, Falkensee, Franzburg, Friedricharoda, Glauchau, Glöwen, Goldberg, Gotha, Hermsdorf, Hirschfelde, Ilmenau, Kahla, Karow, Karstädt, Kindelbrück, Lößnitz, Lucka, Meerane, Neugersdorf, Neustadt-Glewe, Niedersachswerfen, Ochtendung, Perleberg, Pirna, Proh, Rüdersdorf, Sagard, Schipkau, Schmölln, Schneeberg, Seddiner See, Seebach, St. Egidien, Stadtroda, Straußfurt, Tabarz, Tribsees, Velgast, Weißensee, Wittstock/Dosse Stadt, Zittau, Aue (Eichert, Brunlasberg), Brandenburg (Altstadt, Neustadt, Görden), Darmstadt (Darmstadt-Mitte, -Nord, -Ost, -West, -Bessungen, -Arheiligen, -Eberstadt, -Wixhausen), Erfurt (Altstadt, Löbervorstadt, Rieth, Johannesvorstadt, Krämpfervorstadt, Roter Berg, Daberstedt, Melchendorf, Wiesenhügel, Ilversgehofen, Johannesplatz, Vieselbach, Linderbach-Azmannsdorf)
Soco Network Solutions GmbH Nordstraße 102 52353 Düren	Stadt Düren, Kreis Düren
Softwaresupport Raab GmbH Bayreuther Str. 10 91054 Erlangen	Stadtteile Altstadt, Markgrafenstadt, Rathausplatz, Tal, Heiligenloh, Alterlangen, Steinforst, Burgberg, Maiwald, Sieglitzhof, Löwenich, Stubenloh, Röthelheim, Sebaldus, Röthelheimpark, Anger, Raithenau, Schönfeld, Forschungszentrum, Bachfeld, Bierlach, Frauenaurach, Industriehafen, Büchenbach-Nord der Stadt Erlangen
SpaceKomm GmbH Joseph-Dollinger-Bogen 14 80807 München	München (Stadtteile Altstadt Lehel, Ludwigsvorstadt, Maxvorstadt, Schwabing-West, Au-Haidhausen, Sendling, Sendling-Westpark, Schwanthaler Höhe, Neuhausen-Nymphenburg, Milbertshofen-Am Hart, Schwabing-Freimann, Bogenhausen, Berg am Laim, Trudering-Riem, Ramersdorf-Perlach, Thalkirchen-Obersendling-Forstenried-Fürstenried-Solln
Stadtnetz Bamberg Gesellschaft für Telekommunikation mbH Margaretendamm 28 96052 Bamberg	aus dem Landkreis Bamberg: die kreisfreie Stadt Bamberg und Hallstadt
US **Star-One 2in1 Networks GmbH & Co.KG** Hanauer Landstraße 175-179 60314 Frankfurt am Main	Bundesrepublik Deutschland
Stefan Jäger & Raik Quascher GbR Alfred-Nobel-Straße 4 28207 Bremen	Freie und Hansestadt Bremen (Ortsteil Lehesterdeich)
Südharz Media Klara Nienhaus e.K. Angerberg 29 06543 Wippra	Bad Lauchstädt, Milzau, Knapendorf, Schkopau, Merseburg, Halle (Stadtviertel Freiimfelde, Dieselstraße, Radewell/Osendorf, Planena)
CH **Swisscom (Deutschland) GmbH** Zeil 5, Büro Nr. 15 60313 Frankfurt am Main	Femlinien: jeweils von Frankfurt zur Grenze Schweiz b. Laufenburg, zur Grenze Frankreich b. Kehl, zur Grenze Niederlande b. Elten; von Kehl nach Weil

TALKLINE GmbH Talkline-Platz 1 25388 Elmshorn	Hamburg (Stadtteile Hammerbrook, Hamm-Süd), Elmshorn, Kölln-Reisiek, Klein Nordende (Landkreis Pinneberg)
TC net GmbH Ikarusallee 7 30179 Hannover	Langenhagen-Kaltenweide
Tele2 Telecommunication Services GmbH In der Steele 39 40599 Düsseldorf	Bundesrepublik Deutschland
TeleBel Gesellschaft für Telekommunikation Bergisches Land GmbH Johannisberg 7 42103 Wuppertal	Wuppertal, Remscheid, Solingen, Velbert, Schwelm, Erkrath, Haan, Heiligenhaus, Hilden, Langenfeld; Fernlinien jeweils von Wuppertal nach Düsseldorf und nach Witten; von Velbert nach Essen und nach Hattingen; von Schwelm nach Hattingen
TeleData Friedrichshafen GmbH Kornblumenstraße 7 88046 Friedrichshafen	aus dem Landkreis Bodenseekreis: Friedrichshafen, Immenstaad, Markdorf, Bermatingen, Meersburg, Stetten, Daisendorf, Meckenbeuren, Obertreuringen, Tettnang, Langenargen, Kressbronn, Hagnau, Eriskirch; aus dem Landkreis Ravensburg: Ravensburg, Weingarten, Baienfurt, Berg bei Ravensburg, Grünkraut und Schlier
Teleglobe GmbH Poseidon-Haus Theodor-Heuss-Allee 2 60486 Frankfurt am Main	Bundesrepublik Deutschland
Telia International Carrier GmbH Rebstöcker Straße 55 60326 Frankfurt am Main	Bundesrepublik Deutschland
Telekommunikation Lindau (B) GmbH Auenstraße 12 88131 Lindau (B)	Städte Lindau und Tettnang; Gemeinden Bodolz, Nonnenborn, Wasserburg, Weißensburg, Hergensweiler, Sigmarszell, Achberg, Neuravensburg, Kressborn
TELELEV Telekommunikation GmbH Dönhoffstraße 39 51373 Leverkusen	Stadt Düsseldorf, Essen, Duisburg, Heiligenhaus, Dinslaken, Oberhausen, Mülheim a.d.Ruhr, Ratingen, Moers, Rheinberg, Voerde (Niederrhein), Hüxe, Bottrop, Gladbeck, Gelsenkirchen, Hattingen, Kreisfreie Stadt Leverkusen; Städte und Gemeinden des Rheinisch-Bergischen Kreises: Bergisch-Gladbach, Leichlingen, Burscheid und Odenthal; Städte des Kreises Mettmann: Langenfeld und Monheim; Stadteile der kreisfreien Stadt Köln ("Köln rechtsrheinisch und linksrheinisch")
TeleMark Telekommunikationsgesellschaft Mark mbH Lennestraße 2 58507 Lüdenscheid	Märkischer Kreis
TelemaxX Telekommunikation GmbH Amalienstraße 81 76133 Karlsruhe	Stadtkreise Baden-Baden, Karlsruhe; Landkreise Karlsruhe, Rastatt Stadte Bad Herrenalb, Knittlingen, Gemeinde Remchingen; Fernlinie von Gemarkung Königsbach-Stein/Walzbachtal nach Stuttgart (nur durch Vaihingen/Enz, Pforzheim, Leonberg, Stuttgart)
TeleNEC Telekommunikation Neustadt GmbH & Co.KG Steinweg 15 96465 Neustadt b. Coburg	Landkreise Coburg, Sonneberg, Kronach, Stadt Coburg
	Bundesland Thüringen Fernlinien von Düsseldorf nach Köln, von Köln nach Frankfurt

Kaiserslautern GmbH & Co.KG Altes Forsthaus 2 67661 Kaiserslautern	Gebiet des Stadtteils St. Georgen der Stadt Freiburg im Breisgau
tnp TeleNet Potsdam Kommunikationsgesellschaft mbH Erich-Weinert-Strasse 100 14478 Potsdam	Kreisfreie Stadt Potsdam
TMR Telekommunikation Mittleres Ruhrgebiet GmbH Brenscheder Straße 62 44799 Bochum	Städte Bochum, Hattingen, Herne und Witten
todo Gesellschaft für Informationstechnik GmbH Kaiserin-Augusta-Allee 10-11 10553 Berlin	mehrere Ortslinien in Berlin
TraveKom Telekommunikationsgesellschaft mbH Moislinger Allee 9 23558 Lübeck	Hansestadt Lübeck, Bad Schwartau, Stockelsdorf, Groß Grönau, Krummsee, Lüdersdorf, Selmsdorf, Dassow
True Global Communications GmbH In der Au 27 61440 Oberursel	Oberursel (Taunus)
TSS Telekabel Service Süd Marketing u. Verwaltung GmbH Volkhartstr. 4-6 86150 Augsburg	Stadt Berlin: Berlin-Mitte, Stadt Dresden: Ortsamtsbereiche Leuben und Prolitz, aus dem Ortsamtsbereich den Stadtteil 04 Wilsdruffer Vorstadt/Seevorstadt-West
TüNet GmbH Eisenhutstraße 6 72072 Tübingen	Tübingen
ÜWU Mediendienste GmbH Bismarckstraße 13 97080 Würzburg	Leidersbach, Sailauf, Saal an der Saale, Zellingen, Erlabrunn, Güntersleben, Stadtprozelten, Himmelstadt, Leinach, Retzstadt, Thüngersheim, Münnerstadt, Dorfprozelten, Rimpar, Hofheim, Burkardroth, Maßbach
URBANA Telekommunikation GmbH Heidenkampsweg 40 20097 Hamburg	Land Berlin der Bezirk Friedrichshain, Stadt Verden an der Aller, Waren (Müritz), Gemeinde Isernhagen, Dassau, Aken (Elbe), Dresden, Lübeck, Teltow, Stahnsdorf, Oschersleben, Wasungen, Charlottenburg, Grömitz, Meiningen, Wildau, Kiel, Lüneburg
"Urbana Teleunion" Rostock GmbH & Co. Majakowskistraße 58 18059 Rostock	Hansestadt Rostock
VANCO Euronet GmbH Frankfurter Straße 233 63263 Neu-Isenburg	Stadt Neu-Isenburg, Stadtteil Urdenbach der Landeshauptstadt Düsseldorf, Stadtteil Rothenburgsort der Freien und Hansestadt Hamburg
VEAGCOM Telekommunikationsgesellschaft mbH Beilsteiner Straße 115 12681 Berlin	Das Lizenzgebiet umfaßt mehrere Fernlinien
Versatel Deutschland GmbH Unterste-Wilms-Straße 29 44143 Dortmund	Bundesrepublik Deutschland
Versa Tel Telecom International B.V. Paalbergweg 38 NL-1105 BV Amsterdam Zuidoost	Fernlinien: 1. Deutsche Grenze, Venlow, Kaldenkirchen - Düsseldorf 2. Düsseldorf - Frankfurt am Main 3. Frankfurt am Main - Kehl

VIAG INTERKOM GmbH & Co. Frankfurter Ring 213 80807 München	Bundesrepublik Deutschland
VIATEL GmbH Hanauer Landstraße 187-189 60314 Frankfurt	Bundesrepublik Deutschland
Vino Telecom GmbH Hermannstraße 46 20095 Hamburg	Bundesrepublik Deutschland
v.Bodelschwinghsche Anstalten Bethel Quellenhofweg 25 33617 Bielefeld	Gadderbaum/Ortschaft Bethel
VSE Net GmbH Heinrich-Böcking-Str. 10-14 66121 Saarbrücken	Bundesland Saarland
WBG Wohnungsbaugesellschaft Görlitz mbH Konsulstraße 65 02826 Görlitz	Stadt Görlitz
WESTEND GmbH Lütticher Straße 10-15 52064 Aachen	Stadt Aachen
WiCom GmbH Wilhelmshavener Telecommunication GmbH Nahestraße 6 26382 Wilhelmshaven	Stadt Wilhelmshaven
wilhelm.tel GmbH Heidbergstraße 101-111 22846 Norderstedt	Stadt Norderstedt aus dem Kreis Segeberg, mehrere Ortslinien von Norderstedt nach Hamburg
WiKom Elektrik GmbH Zühlsdorfer Chaussee 25 16348 Wandlitz	Stadt Bernau bei Berlin
WinStar Communications GmbH Platz der Einheit 1 60327 Frankfurt am Main	Kreisfreie Städte und Kreise: Düsseldorf, Mönchengladbach, Neuss; Kreisfreie Städte und Kreise: Köln, Leverkusen, Oberbergischer Kreis, Rheinisch-Bergischer Kreis; Freie und Hansestadt Hamburg
WITCOM Wiesbadener Informations- und Telekommunikations Gesellschaft mbH Kirchgasse 2 65185 Wiesbaden	-Stadt Wiesbaden - die Gemeinden Niedernhausen, Taunusstein, Walluf, Wallau (Ortsteil von Hofheim am Taunus)
Wittenberg-Net Am Bahnhof 5 06896 Lutherstadt Wittenberg/Reinsdorf	Lutherstadt Wittenberg
WOBCOM GmbH Heßlinger Straße 1-5 38440 Wolfsburg	Stadt Wolfsburg, Samtgemeinde Boldecker Land, Samtgemeinde Isenbüttel, Stadt Gifhorn
Wohnstättengesellschaft Dortmund-Süd mbH Niederhofener Straße 52 44263 Dortmund	Dortmunder Stadtteile Benninghofen, Hörde, Holzen, Wellinghofen, Mengede und Brackel
Wolfgang Rischke Obere Straße 13 73491 Gaishardt	Fichtenau (Landkreis Schwäbisch Hall); Adelmannsfelden, Jagstzell, Neuler, Rosenberg (Landkreis Ostalbkreis)

Lizenzklasse 3

	Vaterstetten, Wörth, Hamburg, Hasloh, Pinneberg, Schenefeld, Wedel, Norderstedt, Glinde, Reinbek, Buchholz in der Nordheide, Jesteburg, Neu-Wulmstorf, Rosengarten, Seevetal, Stelle, Winsen, Buxtehude, Hohnstorf, Lüneburg, Potsdam, Berlin
KVG Internet Services GmbH	

Lizenzklasse 3

	Linie innerhalb Offenbach, Weimar, Jena, Dessau und Berlin; zwei Linien innerhalb Leipzig, Gera und Halle; drei Linien innerhalb Erfurt
Girrbach GmbH	Stadtbezirke Johannstadt, Blasewitz, Striesen, Gruna und

Lizenzklasse 3

33102 Paderborn	
Fernseh GmbH Niederdorf Chemnitzer Straße 73 09366 Niederdorf	Bundesland Sachsen: Stollberg, Niederdorf, Lugau, Niederwürschnitz, Hohndorf, Oelsnitz, Wildenfels
Fibernet GmbH Lyoner Str. 15 60528 Frankfurt am Main	Bundesrepublik Deutschland

Lizenzklasse 3

BCC-Braunschweiger Communication Carrier GmbH Taubenstraße 7 38106 Braunschweig	Städte: Braunschweig, Salzgitter, Hannover, Lübeck und Landkreise: Peine, Wolfenbüttel, Goslar, Helmstedt, Northeim, Diepholz, Hannover, Hildesheim, Nienburg, Celle, Harburg, Lüchow-Dannenberg, Lüneburg, Soltau-Fallingbostel, Uelzen, Ohrekreis, Altmarkkreis Salzwedel, Jerichower Land, Stendal, Bördekreis, Schönebeck, Havelland, Ludwigslust, Herzogtum Lauenburg, Gifhorn, Wolfsburg, Osterode am Harz, Göttingen, Ostholstein, Prignitz, Ostprignitz-Ruppin, Oberhavel, Bad Doberan, Demmin, Güstrow, Mecklenburg-Strelitz, Müritz,

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	Vaterstetten, Wörth, Hamburg, Hasloh, Pinneberg, Schenefeld, Wedel, Norderstedt, Glinde, Reinbek, Buchholz in der Nordheide, Jesteburg, Neu-Wulmstorf, Rosengarten, Seevetal, Stelle, Winsen, Buxtehude, Hohnstorf, Lüneburg, Potsdam, Berlin

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	Linie innerhalb Offenbach, Weimar, Jena, Dessau und Berlin; zwei Linien innerhalb Leipzig, Gera und Halle; drei Linien innerhalb Erfurt
Girrbach GmbH Huttenstraße 15	Stadtbezirke Johannstadt, Blasewitz, Striesen, Gruna und

Lizenzklasse 3 Page 9 of 30

33102 Paderborn	
Fernseh GmbH Niederdorf Chemnitzer Straße 73 09366 Niederdorf	Bundesland Sachsen: Stollberg, Niederdorf, Lugau, Niederwürschnitz, Hohndorf, Oelsnitz, Wildenfels
Fibernet GmbH Lyoner Str. 15 60528 Frankfurt am Main	Bundesrepublik Deutschland

Lizenzklasse 3 Page 2 of 30

Airdata Holding GmbH Hauptstätter Strasse 58 70178 Stuttgart	Westfalen, Sachsen-Anhalt (ohne Regierungsbez. Dessau), Regierungsbezirke Braunschweig, Hannover, Darmstadt, Rheinhessen-Pfalz, Stuttgart, Karlsruhe, Oberbayern, Schwaben, Mittelfranken, Landkreise Ammerland, Wesermarsch, Cloppenburg,

M"net Telekommunikations GmbH Corneliusstraße 10 80469 München	Planegg, Neubiberg, Ismaning, Unterschleißheim, Oberschleißheim, Eching, Ottobrunn; Punkt-zu-Punkt-Verbindung: westliche Landkreisgrenze der Gemeinde Eching - Augsburg
Magdeburg-City-Com GmbH Weitlingstraße 22 39104 Magdeburg	• Stadt Magdeburg • Landkreise Ohrekreis, Jerichower Land, Bördekreis und Schönebeck (einschl. Stadt Schönebeck) • Fernlinie: Magdeburg - Halle
Mainova Kommunikationsnetze GmbH Solmsstraße 73 60486 Frankfurt am Main	Städte Frankfurt am Main, Friedrichsdorf, Bad Homburg v.d. Höhe, Rosbach v.d.Höhe, Gemeinde Eschborn
MAINZ-KOM Telekommunikation GmbH Rheinallee 41 55118 Mainz	Stadt Mainz; Landkreise Mainz-Bingen, Groß-Gerau; Ortsbezirke Mainz-Kastel, -Kostheim, -Amöneburg der Stadt Wiesbaden
MAnet GmbH Gesellschaft für Telekommunikation und Information Lüisenring 49 68159 Mannheim	Mannheim, Heidelberg, Neckar-Odenwald-Kreis, Rhein-Neckar-Kreis, Main-Tauber-Kreis; Gemeinden Philippsburg, Graben-Neudorf, Bruchsal, Viernheim
Mandala Internet, EDV Service GmbH Hamburger Straße 283 38114 Braunschweig	Salzgitter-Nord, Bielefeld, Braunschweig,
Mannesmann Arcor AG & Co. Kölner Straße 5 65760 Eschborn	Bundesrepublik Deutschland
Mannesmann o.tel.o GmbH Deutz-Mülheimer Str. 111 51063 Köln	Bundesrapublik Deutschland
Marienfeld Multimedia GmbH Im Teelbruch 104 45219 Essen	Halle, Merseburg, Leuna, Bad Dürrenberg, Bochum, Bottrop, Dorsten, Dortmund, Duisburg, Düsseldorf, Essen, Gelsenkirchen, Hagen, Hamm, Hattingen, Hilden, Iserlohn, Kleve, Krefeld, Meerbusch, Moers, Mülheim, Oberhausen, Recklinghausen, Remscheid, Schwerte, Werl, Wuppertal
Martens Antennen- und Kabelanlagen-Gesellschaft mbH Papenreye 31 22453 Hamburg	Hamburg (Stadtteil Osdorf)
Mediascape Communications GmbH Weidestrasse 122 A 22083 Hamburg	mehrere Stadtbezirke in Hamburg, Ortsteile der Stadt Frankfurt am Main, Stadteile der Städte Hannover, Düsseldorf, Köln, Stuttgart, Stadtbezirke der Bundeshauptstadt Berlin, Stadtbezirke der Landeshauptstadt München; Landkreis Stormarn, Lübeck, Landkreise Hannover und Pein, Stadt Braunschweig, Kreisfreie Städte Essen, Mülheim, Oberhausen, Duisburg, Mönchengladbach, Kreis Neuss, Landkreis Ludwigsburg, Rems-Murr-Kreis, Wiesbaden, Offenbach, Darmstadt, Landkreis Offenbach, Main-Taunus-Kreis, Mainz, Landkreis München, Potsdam; Augsburg, Bremen, Flensburg, Mannheim, Ludwigshafen, Nürnberg, Würzburg, Kiel, Neumünster, Osnabrück, Münster, Dortmund, Kassel, Leipzig, Bonn, Karlsruhe, Freiburg, Ulm, Landshut
Memorex Telex Communications AG Ortsstraße 24 A 2331 Vösendorf, Österreich	Fernlinien von Kiefersfelde nach München, von Fürstenwalde nach Dresden, von Freilassing nach München
MEOCOM Telekommunikation GmbH & Co.KG	Mülheim an der Ruhr, Oberhausen, Essen, Duisburg, Bottrop, Gelsenkirchen, Moers, Rheinberg, Voerde, Hünxe, Dinslaken,

A

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Mobile Radio Licences

	Digital Cellular Mobile Radio	Trunked Radio			Mobile Data	Paging		TFTS
		Licence Category						
		A Urban areas	B Non Category A regions	C On-site		Band at 400 MHz	ERMES	
LICENCES HOLDERS	T-Mobil GmbH (D1) Mannesmann Mobilfunk GmbH (D2) E-Plus Mobilfunk GmbH (E1) VIAG Interkom GmbH & Co (E2)				T-Mobil GmbH Dolphin Telecom Deutschland GmbH	DFR Deutsche Funkruf GmbH MiniRuf MiniRuf GmbH T-Mobil GmbH	InfoCom GmbH MiniRuf MiniRuf GmbH T-Mobil GmbH	Not yet reawarded

license class 2

Satellitenfunk

Die Lizenz berechtigt zum Betreiben von Übertragungswegen für Satellitenfunkdienstleistungen für die Öffentlichkeit in der Bundesrepublik Deutschland (Lizenzklasse 2 nach § 6 TKG). Nicht von den Rechten dieser Lizenz eingeschlossen ist das Angebot von Sprachtelefondienst (Lizenzklasse 4), das Betreiben von Übertragungswegen für Mobilfunkdienste (Lizenzklasse 1) und das Betreiben von Übertragungswegen (Lizenzklasse 3), für die eine Zuteilung von Frequenzen zur Übertragung von Rundfunkprogrammen (§ 47 Abs. 3 TKG) erforderlich ist. Lizenziert wird nur das sog. Bodensegment.

Von der Lizenz nicht umfaßt ist das Weltraumsegment, womit letztlich die Satellitenkapazität gemeint ist. Hier muß der Lizenznehmer, sofern er nicht selbst Eigentümer eines Weltraumsegments ist, Satellitenkapazität bei einem Satellitenbetreiber anmieten. Die Lizenzlaufzeit der Satellitenfunklizenzen nach TKG ist nicht zeitlich befristet.

S-PCS

Diese Lizenz verleiht das Recht zum Betreiben von Übertragungswegen für Satellitengestützte Persönliche Kommunikationssysteme für die Öffentlichkeit in der Bundesrepublik Deutschland. Die Lizenz stellt eine Kombination dar zwischen Satellitenfunklizenz und Mobilfunklizenz, berechtigt jedoch nicht zum Angebot von Sprachtelefondienst nach § 6 Abs. 2 Nr. 2 TKG. Die Lizenzlaufzeit beträgt 20 Jahre. (Lizenznehmer)

Lizenznehmer im Satellitenfunk in der Bundesrepublik Deutschland
(Stand: Juli 1999)

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Mannheimer Str. 22 b
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Bavaria Film GmbH
Bavariaplatz 7
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Bayerischer Rundfunk
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Rundfunkplatz 1
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UK **BT Telecom (Deutschland) GmbH**
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Frankfurter Ring 213
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DESY Deutsches Elektronen-Synchrotron
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Deutsche Welle
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Justitiariat
50588 Köln

Elbe Space & Technology
Dresden GmbH & Co. KG
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US **GE Capital Spacenet Services Europe GmbH**
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US **IDB Communications Group, Inc.**
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S-PCS
(Stand: Januar 1998)

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