

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of)
)
)
VOICESTREAM WIRELESS)
CORPORATION,)
)
POWERTEL, INC.)
)
Transferors,)
)
and)
)
DEUTSCHE TELEKOM AG,) IB Docket No. 00-187
)
Transferee,)
)
for Consent to Transfer)
Control of Corporations Holding)
Commission Licenses and Authorizations)
Pursuant to Section 214 and 310(d) of the)
Communications Act and)
Parts 1, 21, 24, 25, 63, 73, 78, 90, and 101)
And Petition for Declaratory Ruling)
Pursuant to Section 310 of the Communications Act)

POWERTEL, INC.,)
)
Transferor,)
)
and)
)
VOICESTREAM WIRELESS)
CORPORATION,) IB Docket No. 00-187
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Transferee,)
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for Consent to Transfer)
Control of Corporations Holding)
Commission Licenses and Authorizations)
Pursuant to Section 214 and 310(d) of the)
Communications Act and)
Parts 1, 21, 24, 25, 63, 73, 78, 90, and 101)
And Petition for Declaratory Ruling)
Pursuant to Section 310 of the Communications Act)

ORDER ADOPTING PROTECTIVE ORDER**Adopted: December 6, 2000****Released: December 7, 2000**

By the Deputy Chief, International Bureau:

1. On September 18, 2000, Deutsche Telekom AG, (“DT”), VoiceStream Wireless Corporation (“VoiceStream”), and Powertel, Inc. (“Powertel”), pursuant to sections 214 and 310 of the Communications Act, as amended, 47 U.S.C. §§ 214 and 310 (the “Act”), filed the following three joint applications asking the Federal Communications Commission (“Commission”) to approve the transfer of control of various licenses and authorizations: (1) DT and VoiceStream filed a joint application seeking approval of the transfer of control of licenses and authorizations from VoiceStream to DT in connection with their proposed merger; (2) DT and Powertel filed a joint application seeking approval of the transfer of control of licenses and authorizations from Powertel to DT in connection with their proposed merger; and (3) VoiceStream and Powertel filed a joint application seeking approval of the transfer of control of licenses and authorizations from Powertel to VoiceStream in connection with their conditional merger, which would be effective only if the proposed merger between DT and VoiceStream is not consummated.

2. The Commission anticipates that it may seek documents in this proceeding from DT, VoiceStream and Powertel (individually or collectively, the “Submitting Party”) that contain proprietary or confidential information, and that, therefore, should be made available pursuant to a Protective Order. Consequently, the International Bureau (“Bureau”) hereby enters the attached Protective Order (see Appendix A) to ensure that any confidential or proprietary documents submitted by DT, VoiceStream or Powertel are afforded adequate protection. We note that this Protective Order is similar to the protective orders adopted in other mergers reviewed or pending review by the Commission.¹

¹ E.g., *Applications for Consent to the Transfer of Control of Licenses and Sections 214 and 310(d) of the Communications Act from Intermedia Communications, Inc., Transferor, and Worldcom, Inc., Transferee*, CC Docket No. 00-206, Order Adopting Protective Order, DA 00-2494 (rel. Nov. 6, 2000); *Applications of Sprint Corporation, Transferor, and MCI WorldCom, Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Section 214 and 310(d) of the Communications Act and Parts 1, 21, 24, 25, 63, 73, 78, 90, and 101*, CC Docket No. 99-333, Order Adopting Protective Order, DA 00-186 (rel. Feb. 2, 2000), Order Modifying Protective Order, DA 00-827 (rel. Apr. 12, 2000); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from US WEST, Inc., Transferor, to Qwest Communications International, Inc., Transferee*, CC Docket No. 99-272, Order Adopting Protective Order, DA 99-2546 (rel. Nov. 17, 1999); *Applications for Consent to the Transfer of Control Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor to AT&T Corp., Transferee*, CS Docket No. 99-251, Order Adopting Protective Order, DA 99-1568 (rel. Aug. 6, 1999); *Applications for Consent to the Transfer of Control Licenses and Section 214 Authorizations from GTE Corporation (Transferor) to Bell Atlantic Corporation (Transferee)*, CC Docket No. 98-184, Order Adopting Protective Order, DA 98-2348, 13 FCC Rcd 22751 (rel. Nov., 1998).

3. A Submitting Party filing a document that contains all or a portion of a Stamped Confidential Document or other Confidential Information (as such terms are defined in the Protective Order) (a “Confidential Filing”) must deliver in person one copy of the Confidential Filing and one copy of the Confidential Filing in redacted form (a “Redacted Confidential Filing”) to Claudia Fox, International Bureau, Room 6A848, 445 12th Street, S.W., Washington, DC 20554. In addition, the Submitting Party must file with the Secretary’s Office one copy of the Confidential Filing and two copies of the Redacted Confidential Filing, each with an accompanying cover letter. The Confidential Filing and accompanying cover letter should be stamped “CONFIDENTIAL – NOT FOR PUBLIC INSPECTION – SUBJECT TO PROTECTIVE ORDER IN IB Docket No. 00-187.” The two copies of the Redacted Confidential Filing and their accompanying cover letters should be stamped “REDACTED – FOR PUBLIC INSPECTION.” The cover letters accompanying each set of documents should state that the Submitting Party is filing a confidential document and a redacted version of that document. Other than having different stamps, *i.e.*, “CONFIDENTIAL – NOT FOR PUBLIC INSPECTION – SUBJECT TO PROTECTIVE ORDER IN IB Docket No. 00-187” or “REDACTED – FOR PUBLIC INSPECTION,” the cover letter should be the same for the confidential and the redacted copies. The Confidential Filing and the Redacted Confidential Filing to be filed with the Secretary’s Office should be delivered in person at 445 12th Street, S.W., Room TW-B204, Washington, DC 20554 to: Magalie Roman Salas, Secretary; or, in her absence, William F. Caton, Deputy Secretary.

4. Where the Submitting Party is DT, it shall make available for review its Stamped Confidential Documents at the offices of DT’s outside counsel, Wilmer, Cutler & Pickering, 2445 M Street, NW, Washington, D.C. 20037. Where the Submitting Party is VoiceStream, it shall make available for review its Stamped Confidential Documents at the offices of VoiceStream’s outside counsel, Morrison & Foerster, 2000 Pennsylvania Avenue, NW, Washington, DC. 20006. Where the Submitting Party is Powertel, it shall make available for review its Stamped Confidential Documents at the offices of Powertel’s outside counsel, Kelley, Drye & Warren, L.L.P., 1200 19th Street, N.W., Suite 500, Washington, D.C. 20036. Persons reviewing Stamped Confidential Documents will be provided the following alternatives: Such persons (1) will be provided adequate opportunity to inspect the Stamped Confidential Documents on site; (2) may inspect the Stamped Confidential Documents on site with the ability to request copies, at cost, of all or some of the Stamped Confidential Documents, other than those marked as “Copying Prohibited;” or (3) may request a complete set of the Stamped Confidential Documents other than those marked “Copying Prohibited”, at cost, allowing two days after the request is made for receipt of the copies. If a complete set of Stamped Confidential Documents is requested, persons are encouraged to make such requests at the time they submit the Declaration (as defined in and attached to the Protective Order). This will allow parties the opportunity to begin reviewing the documents at the end of the five-day period referenced in paragraph 5 of the Protective Order. All copies of Stamped Confidential Documents that are removed from the Wilmer, Cutler & Pickering, Morrison & Foerster or Kelley, Drye & Warren offices will bear an original confidential stamp, must be returned in accordance with the terms of the Protective Order and must not be further copied except as expressly provided for herein and in the Protective Order.

5. Any person seeking access to Stamped Confidential Documents or other Confidential Information subject to this Protective Order shall request access pursuant to paragraph 5 of the Protective Order.

FEDERAL COMMUNICATIONS COMMISSION

Ari Fitzgerald
Deputy Chief, International Bureau

Appendix A

PROTECTIVE ORDER

1. *Introduction.* On September 18, 2000, Deutsche Telekom AG, (“DT”), VoiceStream Wireless Corporation (“VoiceStream”), and Powertel, Inc. (“Powertel”), pursuant to sections 214 and 310 of the Communications Act, as amended, 47 U.S.C. §§ 214 and 310 (the “Act”), filed the following three joint applications asking the Federal Communications Commission (“Commission”) to approve the transfer of control of various licenses and authorizations: (1) DT and VoiceStream filed a joint application seeking approval of the transfer of control of licenses and authorizations from VoiceStream to DT in connection with their proposed merger; (2) DT and Powertel filed a joint application seeking approval of the transfer of control of licenses and authorizations from Powertel to DT in connection with their proposed merger; and (3) VoiceStream and Powertel filed a joint application seeking approval of the transfer of control of licenses and authorizations from Powertel to VoiceStream in connection with their conditional merger, which would be effective only if the proposed merger between DT and VoiceStream is not consummated. The Commission anticipates that it may seek documents in this proceeding from DT, VoiceStream and Powertel (individually or collectively, the “Submitting Party”) that contain proprietary or confidential information, and, therefore, should be made available pursuant to a Protective Order. Consequently, the International Bureau enters this Protective Order to ensure that the documents considered by the Submitting Party to be confidential or proprietary are afforded protection as provided hereunder. This Protective Order does not constitute a resolution of the merits concerning whether any confidential information would be released publicly by the Commission upon a proper request under the Freedom of Information Act (“FOIA”) or otherwise. As used in this Protective Order, the term “Confidential Information” means a Stamped Confidential Document (as hereinafter defined) and information taken or derived from a Stamped Confidential Document.

2. *Non-Disclosure of Stamped Confidential Document or Other Confidential Information.* Except with the prior written consent of the Submitting Party, or as hereinafter provided under this Protective Order, neither a Stamped Confidential Document nor the Confidential Information contained therein, that has not been lawfully publicly disclosed, may be disclosed by a reviewing person to any person. A “Stamped Confidential Document” shall mean any document filed by a Submitting Party that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “CONFIDENTIAL – NOT FOR PUBLIC INSPECTION – SUBJECT TO PROTECTIVE ORDER IN IB Docket No. 00-187” to signify that it contains information that the Submitting Party has determined in good faith should be subject to protection under FOIA and the Commission's implementing rules unless the Commission determines, *sua sponte* or by petition, pursuant to Sections 0.459 or 0.461 of its rules that any such document is not entitled to confidential treatment. For purposes of this Protective Order, the term “document” means any written, recorded, electronically stored, or graphic material (including email), whether produced or created by a Submitting Party or another person.

3. *Permissible Disclosure.* Subject to the requirements of paragraph 5, Stamped Confidential Documents, made available pursuant to this paragraph 3, may be reviewed by outside counsel of record and in-house counsel who are actively engaged in the conduct of this proceeding, provided that those counsel seeking access are not involved in competitive decision-making, *i.e.*, counsel's activities, association, and relationship with a client (whether or not that client is a participant in this proceeding) that are such as to involve counsel's advice and participation in any or all of the client's business decisions made in light of similar or corresponding information about a competitor. Subject to the requirements of paragraph 5 and subject to the obligation to secure the confidentiality of Confidential Information in accordance with the terms of this Protective Order, such counsel may disclose Stamped Confidential Documents or other Confidential Information only to: (i) the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in this proceeding, *provided that*; during this proceeding, such persons are not involved in the analysis underlying the business decisions of and do not participate directly in the business decisions of any competitor of any Submitting Party, (ii) Commission officials involved in this proceeding; (iii) outside consultants or experts retained for the purpose of assisting counsel in these proceedings and who, during this proceeding, are not involved in the analysis underlying the business decisions and do not participate directly in the business decisions of any competitor of any Submitting Party; (iv) employees of such counsel involved in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designing programs for handling data connected with this proceeding; and (v) employees of third-party contractors performing one or more of such functions. Each person who has executed a Declaration (see Appendix B) is charged with the responsibility not to and shall not communicate with any person regarding Confidential Information protected by this Protective Order unless such person is permitted to receive such Confidential Information (*i.e.*, the intended recipient has signed a Declaration and is not prohibited by the Protective Order from receiving such Confidential Information). Where the Submitting Party is DT, it shall make available for review its Stamped Confidential Documents at the offices of DT's outside counsel, Wilmer, Cutler & Pickering, 2445 M Street, NW, Washington, D.C. 20037. Where the Submitting Party is VoiceStream, it shall make available for review its Stamped Confidential Documents at the offices of VoiceStream's outside counsel, Morrison & Foerster, 2000 Pennsylvania Avenue, NW, Washington, DC. 20006. Where the Submitting Party is Powertel, it shall make available for review its Stamped Confidential Documents at the offices of Powertel's outside counsel, Kelley, Drye & Warren, L.L.P., 1200 19th Street, N.W., Suite 500, Washington, D.C. 20036.

4. *Access to Confidential Information.* All persons described in paragraph 3 shall have the obligation to ensure that access to Confidential Information is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure: (i) that Confidential Information is used only as provided in this order; (ii) that Stamped Confidential Documents are not further duplicated except as necessary for filing at the Commission under seal as provided in paragraph 7, and (iii) that a written record of any additional copies of Stamped Confidential Documents is kept and produced to the Submitting Party upon reasonable request.

5. *Procedures for Obtaining Access to Stamped Confidential Documents.* In all cases where access to Stamped Confidential Documents is permitted pursuant to paragraph 3, and before reviewing or having access to any Stamped Confidential Documents, each person seeking such access shall execute the Declaration (see Appendix B) and submit it to the Commission and to each Submitting Party so that it is received by each Submitting Party five business days prior to such person's reviewing or having access to any such Stamped Confidential Documents. Each Submitting Party shall have an opportunity to object to

the disclosure of Stamped Confidential Documents to any such persons. Any objection must be filed at the Commission and served on counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Declaration. Until any such objection is resolved by the Commission and any court of competent jurisdiction prior to any disclosure, and unless that objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Stamped Confidential Documents.

6. *Requests for Additional Disclosure.* If any person requests disclosure of Stamped Confidential Documents outside the terms of this Protective Order, such requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

7. *Use of Confidential Information.*

(A) *In Filings in this Proceeding.* Persons described in paragraph 3 may, in any documents that they file in this proceeding, reference Confidential Information, but only if they comply with the following procedure:

(i) Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings;

(ii) The portions of pleadings containing or disclosing Confidential Information must be covered by a separate letter to the Secretary of the Commission referencing this Protective Order;

(iii) Each page of any party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked: "Confidential Information included pursuant to Protective Order, IB Docket No. 00-187;" and

(iv) The confidential portion(s) of the pleading shall be served upon the Secretary of the Commission and each Submitting Party. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File. A party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. Parties may provide courtesy copies under seal of pleadings containing Confidential Information to Commission staff. Persons who have signed a Declaration shall be entitled to review unredacted copies of pleadings.

(B) *In Other Documents.* Notes, internal memoranda and other documents produced by a reviewing person that contain Confidential Information must be clearly marked "Contains Confidential Information protected pursuant to Protective Order, IB Docket No. 00-187;" and, at the termination of the proceeding, shall be dealt with in accordance with the provisions of paragraph 13.

8. *No Waiver of Confidentiality.* Disclosure of Confidential Information pursuant to the terms of this Protective Order by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing persons, by viewing this material: (a) agree not to assert any such waiver; (b) agree not to use information in or derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege

or entitlement as long as the Submitting Party takes prompt remedial action.

9. *Subpoena by Courts or Other Agencies.* If a court or another administrative agency subpoenas or orders production of Stamped Confidential Documents or other Confidential Information that a person has obtained under terms of this Protective Order, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court or administrative agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document or other Confidential Information.

10. *Client Consultation.* Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Confidential Documents provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not disclose Stamped Confidential Documents or other Confidential Information.

11. *Violations of Protective Order.* Persons obtaining access to Stamped Confidential Documents or other Confidential Information under this order shall use the information solely for preparation and the conduct of this proceeding as delimited in paragraphs 4, 7, and 10, and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. Should a person that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or in equity against any person using Confidential Information in a manner not authorized by this Protective Order.

12. *Prohibited Copying.* If, in the judgment of the Submitting Party, a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited," and no copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to counsel for the Submitting Party.

13. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding (which includes any administrative or judicial review), Stamped Confidential Documents and all copies of same shall be returned to the Submitting Party. No Confidential Information may be retained by any person having access thereto, except counsel to a party in this proceeding (as described in paragraph 3) may retain, under the continuing strictures of this Protective Order, two copies of pleadings containing Confidential

Information prepared on behalf of that party. All counsel of record shall make certification of compliance herewith and shall deliver the same to counsel for the Submitting Party not more than three weeks after conclusion of this proceeding.

14. *Effect of Protective Order.* This Protective Order constitutes an Order of the Commission and an agreement between the reviewing person, executing the attached Declaration, and the Submitting Party.

15. *Authority.* This Order is issued pursuant to Sections 4(i), 214(a), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214(a), and 310(d), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Ari Fitzgerald
Deputy Chief, International Bureau

Appendix B*DECLARATION*

I hereby declare that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding and I understand it. I agree that I am bound by its terms and that I shall not disclose or use documents or information designated as “CONFIDENTIAL” or any information taken or derived from such documents or information except as allowed by the Protective Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

I am not involved and will not during this proceeding become involved in giving advice regarding, participating in or preparing analyses underlying the business decisions of any competitor of Deutsche Telekom AG, VoiceStream Wireless Corporation or Powertel, Inc. made in light of information similar or corresponding to documents or information designated as “CONFIDENTIAL” or any information taken or derived from such documents or information.

I will not disclose any documents or information designated as “CONFIDENTIAL” or any information taken or derived from such documents or information to any person *except* (i) the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in this proceeding, *provided that*, during this proceeding, such persons are not involved in the analysis underlying the business decisions of and do not participate directly in the business decisions of any competitor of any Submitting Party, (ii) Commission officials involved in this proceeding; (iii) outside consultants or experts retained for the purpose of assisting counsel in these proceedings and who, during this proceeding, are not involved in the analysis underlying the business decisions and do not participate directly in the business decisions of any competitor of any Submitting Party; (iv) employees of such counsel involved in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designing programs for handling data connected with this proceeding; and (v) employees of third-party contractors performing one or more of such functions. Furthermore, I will not disclose any such information to any person described in items (i), (iii) or (v) unless such person has executed this Declaration.

I certify that my law firm (or other office or organization, as the case may be) currently has in place procedures to protect against disclosure of such documents or confidential information in any manner inconsistent with the terms of the Protective Order.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the order is due solely to my capacity as counsel or consultant to a party or other person described in paragraph 3 of the foregoing Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Protective Order.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at _____ this ____ day of _____, 20__.

Signature

Title

Organization