

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

In re Applications of)	
)	
Cook Inlet Region, Inc.,)	
Transferor)	
)	
and)	WT Docket No. 00-207
)	DA 00-2397
VoiceStream Wireless Corporation,)	
Transferee)	
)	
For Consent to Transfer of Control)	
of Licenses and Authorizations)	
)	
and)	
)	
For Consent to Transfer an International)	File No. ITC-T/C-20001013-00604
Section 214 authorization)	
)	
and)	
)	
Cook Inlet/VoiceStream PCS, LLC, <i>et al.</i>)	
Applicants)	
)	
Petition for Declaratory Ruling)	File No. ISP-PDR-20001020-00033
Under Section 310(b)(4) of the)	
Communications Act of 1934,)	
As Amended)	

ORDER

Adopted: December 13, 2000

Released: December 13, 2000

By the Chief, Wireless Telecommunications Bureau, and Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we grant the applications filed by Cook Inlet Region, Inc. ("CIRI") and VoiceStream Wireless Corporation ("VoiceStream") (collectively, "Applicants") to transfer control of various Personal Communications Services ("PCS") and Wireless Communications Service ("WCS") licenses and an international section 214 authorization currently controlled by

CIRI to VoiceStream, subject to the conditions specified below. We also grant the petition for a declaratory ruling that the public interest would be served by allowing the proposed indirect foreign ownership of twelve entities currently controlled by CIRI (the "CIVS entities") in excess of the twenty-five-percent statutory benchmark. We deny, in part, and defer, in part, the petition to deny the applications filed by Jordan-Soldier Valley Telephone Co. d/b/a WITCO.

II. BACKGROUND

2. CIRI is an Alaska Native Regional Corporation organized pursuant to the Alaska Native Claims Settlement Act¹ and headquartered in Anchorage, Alaska.² Cook Inlet GSM, Inc. ("CIGSM") and Cook Inlet Telecommunications, Inc. ("CITI"), both Delaware corporations, are wholly owned subsidiaries of CIRI. Through these two subsidiaries, CIRI controls the CIVS entities, which are licensed to provide PCS and WCS services.³ The CIVS entities hold nine WCS and 144 PCS licenses covering in excess of 100 million POPs,⁴ and have introduced commercial service in fifty-four of the CIVS entities' licensed basic trading areas ("BTAs") utilizing Global System for Mobile Communications ("GSM") technology.⁵

3. VoiceStream, a Delaware corporation headquartered in Bellevue, Washington, currently controls PCS licenses covering in excess of 151 million POPs.⁶ VoiceStream is the eighth largest provider of mobile telephony in the United States in terms of subscribers,⁷ operating a near-nationwide PCS network using GSM technology.⁸ VoiceStream, as a non-

¹ 43 U.S.C. §§ 1601 *et seq.*

² See Cook Inlet Region, Inc. and VoiceStream Wireless Corporation, Applications for Consent to Transfer of Control, WT Docket No. 00-207, File No. 0000216961 *et seq.*, filed Sept. 25, 2000, amended October 13, 2000 ("Wireless Applications"), Attachment 1 to FCC Form 603 at 1, 12 ("Public Interest Statement").

³ The CIVS entities include Cook Inlet/VoiceStream PCS, LLC ("CIVS I"), Cook Inlet/VS GSM II PCS, LLC ("CIVS II"), Cook Inlet/VS GSM III PCS, LLC ("CIVS III"), Cook Inlet/VoiceStream PV/SS PCS Holdings, L.P. ("CIVS LP"), and their licensee subsidiaries: Cook Inlet/VoiceStream License Company, LLC, Omnipoint Atlantic City License, LLC, Omnipoint Dover License, LLC, Omnipoint Philadelphia License, LLC, CIVS PA I, LLC, CIVS PA III, LLC, D&E/Omnipoint Joint Venture, L.P., and Omnipoint Philadelphia-E Lancaster E License, LLC. See *id.* at 1-11; Cook Inlet Region, Inc. Opposition to Petition to Deny, WT Docket No. 00-207, filed Dec. 1, 2000, at 2 n. 2 ("CIRI Opposition").

⁴ See Public Interest Statement at 13-14.

⁵ See Cook Opposition at 2, citing Attachment 1, Affidavit of Craig Floerchinger, Vice President of CIRI, December 1, 2000 at ¶ 9.

⁶ See Public Interest Statement at 13. Applications are on file to transfer control of the licenses and authorizations of VoiceStream to Deutsche Telekom AG ("DT"). See *VoiceStream Wireless Corporation, Powertel, Inc., and Deutsche Telekom AG Seek FCC Consent to Transfer Control of Licenses and Authorizations and Request Declaratory Ruling Allowing Indirect Foreign Ownership*, Public Notice, IB Docket No. 00-187, DA 00-2251 (rel. Oct. 11, 2000) ("DT/VoiceStream Public Notice").

⁷ See Public Interest Statement at 13; see also *Implementation of Section 67002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Fifth Report, FCC 00-289, at B-5, Table 3 (rel. Aug. 18, 2000) ("Fifth Annual CMRS Competition Report").

⁸ Public Interest Statement at 13; CIRI Opposition at 2.

controlling member or limited partner, indirectly and jointly owns each of the CIVS entities with CIRI.⁹

4. On September 14, 2000, pursuant to section 310(d) of the Communications Act of 1934, as amended (the "Act"),¹⁰ and section 8149 of the Department of Defense Appropriations Act of 2001 (the "Defense Appropriations Act"),¹¹ CIRI and VoiceStream filed applications seeking consent to transfer control of certain PCS and WCS licenses of the CIVS entities from CIRI to VoiceStream.¹² On October 13, 2000, pursuant to section 214 of the Act,¹³ CIRI and VoiceStream filed an application for consent to transfer control of an international 214 authorization from CIRI to VoiceStream,¹⁴ and a request for declaratory ruling pursuant to section 310(b)(4) of the Act,¹⁵ to allow the indirect foreign ownership of the CIVS entities in excess of the twenty-five-percent statutory benchmark.¹⁶ These applications were filed in connection with a proposed transaction pursuant to which CITI and CIGSM will exchange certain membership and partnership interests of CIGSM and CITI in four entities that own, directly or indirectly, twelve Commission licensee entities for VoiceStream common stock or cash.¹⁷

5. On October 24, 2000, by delegated authority, the Wireless Telecommunications Bureau ("WTB") and the International Bureau ("IB") (collectively, "Bureaus") issued a public notice to announce that the applications had been accepted for filing and to establish a pleading cycle to permit interested parties an opportunity to comment on the applications involved in the

⁹ Public Interest Statement at 1-11; CIRI Opposition at 2. CIRI, through its wholly owned subsidiaries, serves as the sole manager or general partner in each CIVS entity. *Id.*

¹⁰ 47 U.S.C. § 310(d).

¹¹ Public L. No. 106-259, 114 Stat. 656 § 8149 (2000).

¹² *See* Wireless Applications. The applicants amended the Wireless Applications on October 13, 2000.

¹³ 47 U.S.C. § 214.

¹⁴ *See* Application of Cook Inlet Region, Inc., Transferor, and VoiceStream Wireless Corporation, Transferee, for Authority Under Section 214 of the Communications Act of 1934, as Amended, to Transfer Control of D&E/Omnipoint Wireless Joint Venture, L.P. to VoiceStream Wireless Corporation, File No. ITC-T/C-20001013-00604 (filed Oct. 13, 2000) ("international 214 Application").

¹⁵ 47 U.S.C. § 310(b)(4).

¹⁶ *See* Cook Inlet/VoiceStream PCS, LLC; Cook Inlet/VoiceStream License, LLC; Cook Inlet/VS GSM II PCS, LLC; Omnipoint Atlantic City License, LLC; Omnipoint Dover License, LLC; Omnipoint Philadelphia License, LLC; Cook Inlet/VS GSM III PCS, LLC; CIVS PA I LLC; CIVS PA III, LLC; D&E/Omnipoint Joint Venture, L.P.; Omnipoint Philadelphia-E Lancaster E License, LLC; and Cook Inlet/VoiceStream PV/SS PCS L.P., Petition for Determination of the Public Interest Under Section 310(b)(4) of the Communications Act of 1934, As Amended, File No. ISP-PDR-20001020-00033 (filed Oct. 13, 2000, amended Oct. 20, 2000) ("CIVS Petition").

¹⁷ Public Interest Statement at 1-11.

proposed transaction.¹⁸ In response to the *Acceptance Public Notice*, Jordan-Soldier Valley Telephone Co. d/b/a WITCO ("WITCO") filed a petition to deny the applications.¹⁹ WITCO's primary argument against the proposed transfers of control centers on allegations that once VoiceStream controls the CIVS entities' licenses, rural subscribers in the CIVS entities' markets will be harmed because VoiceStream will shift its focus to urban markets. WITCO further alleges that the harm to rural consumers would be exacerbated if the pending transfers of control from VoiceStream to Deutsche Telekom AG ("DT") are approved.

III. DISCUSSION

6. Pursuant to section 214(a) of the Act, the Commission must determine whether the Applicants have demonstrated that their proposed transaction will serve the public interest, convenience, and necessity.²⁰ Section 310(d) of the Act 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."²¹

A. Transfer of Control of PCS and WCS Licenses

7. In evaluating transfer of control applications under section 310(d) of the Act, we do not re-evaluate the qualifications of transferors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.²² No such issues exist here with respect to CIRI. By

¹⁸ See *VoiceStream Wireless Corporation and Cook Inlet Region, Inc. Seek FCC Consent for Transfer of Control of Licenses and Authorizations*, Public Notice, WT Docket No. 00-207, DA 00-2397 (rel. Oct. 24, 2000) ("*Acceptance Public Notice*").

¹⁹ See *Petition to Deny of Jordan-Soldier Valley Telephone Co. d/b/a WITCO*, filed November 22, 2000 ("*WITCO Petition*").

²⁰ 47 U.S.C. § 214(a). See *Applications of WorldCom and MCI Communications Corporation*, Memorandum Opinion and Order, 13 FCC Rcd 18,025, 18,030, at ¶ 8 (1998).

²¹ 47 U.S.C. § 310(d). Because the proposed transaction neither involves a business combination nor presents significant domestic or international competitive issues, we are able to analyze the applications before us without reference to the analytical framework we have ordinarily used in the case of corporate mergers and acquisitions. See, e.g., *Applications of VoiceStream Wireless Corp. or Omnipoint Corp and VoiceStream Wireless Holding Co., Cook Inlet/VS GSM II PCS, LLC or Cook Inlet/VS GSM III PCS, LLC*, Memorandum Opinion and Order, 15 FCC Rcd 3341, 3351-61, at ¶¶ 21-46 (2000) ("*VoiceStream/Omnipoint Order*"); *Applications of Aerial Communications, Inc., and VoiceStream Wireless Holding Corporation for Transfer of Control*, Memorandum Opinion and Order 15 FCC Rcd 10,089, 10,102-09, ¶¶ 30-44 (WTB/IB rel. Mar. 31, 2000) ("*VoiceStream/Aerial Order*").

²² See *Applications of SBC Communications, Inc. and BellSouth Corporation for Transfer of Control or Assignment*, WT Docket No. 00-81, Memorandum Opinion and Order, 2000 WL 1455744 at ¶ 14 (WTB/IB rel. Sept. 29, 2000); *Applications of Vodafone AirTouch and Bell Atlantic Corporation*, Memorandum Opinion and Order, 2000 WL 332670, at ¶ 14, n. 25 (WTB/IB rel. Mar. 30, 2000); *VoiceStream/Aerial Order*, 15 FCC Rcd at 10,093-94, ¶ 9, n. 22 (citing *MobileMedia Corporation et al.*, 14 FCC Rcd 8017 ¶ 4 (1999) (citing *Jefferson Radio Co. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964)). See also Stephen F. Sewell, "Assignments and Transfers of Control of FCC Authorizations Under Section 310(d) of the Communications Act of 1934," 43 Fed. Comm. L.J. 277, 339-40 (1991). The policy of not

contrast, as a regular part of our public interest analysis, we determine whether the proposed transferee is qualified to hold Commission licenses.²³ In addition, where applications seek consent to transfer control of C and F block PCS licenses, such as the instant applications, we normally are required to determine whether the proposed transferee meets the eligibility criteria under the Commission's rules.²⁴

8. In this case, no party has challenged the basic qualifications of VoiceStream as transferee.²⁵ The Commission and the Bureaus previously have found VoiceStream properly qualified to control other licensees.²⁶ As for an evaluation of VoiceStream's eligibility to hold C and F block PCS licenses, the Defense Appropriations Act effectively renders moot the need for any such analysis, because it permits the PCS licenses controlled by CIRI to be transferred or assigned to "any transferee or assignee" without penalties and amends any laws or regulations to the contrary.²⁷ Because of this unique statutory provision, there is no need for a detailed factual determination of VoiceStream's eligibility to hold the CIVS entities' C and F block PCS licenses. Therefore, based on our independent review of the qualifications of the proposed transferee, we conclude that we need examine further only the legal qualifications of VoiceStream with respect to its foreign ownership.

1. Foreign Ownership

9. On October 20, 2000, the CIVS entities filed an amended petition for a declaratory ruling seeking Commission approval of the indirect foreign ownership of the CIVS entities pursuant to section 310(b)(4) of the Act.²⁸ Section 310(b)(4) of the Act establishes a 25

approving assignments or transfers when issues regarding the licensee's basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. *Id.*

²³ See *In re applications of AirTouch Communications, Inc. and Vodafone Group, Plc*, Memorandum Opinion and Order, DA 99-1200, 1999 WL 413237 at ¶¶ 5-9 (WTB rel. June 22, 1999).

²⁴ See 47 C.F.R. §§ 24.709, 24.839.

²⁵ As discussed below, we defer WITCO's arguments relating to the proposed acquisition of VoiceStream by DT to IB Docket No. 00-187.

²⁶ See *VoiceStream/Omnipoint Order*, 15 FCC Rcd at 3347-50, at ¶¶ 13-20; *VoiceStream/Aerial Order*, 15 FCC Rcd at 10,094-10,096, ¶¶ 10-16.

²⁷ Section 8149 of the Defense Appropriations Act states: "[a]n Alaska Native regional corporation organized pursuant to the Alaska Native Claims Settlement Act, or an affiliate thereof, that holds a Federal Communications Commission license in the personal communications service as of the date of enactment of this section and has either paid for such license in full or has complied with the payment schedules for such license shall be permitted to transfer or assign without penalty such license to any transferee or assignee. No economic penalties shall apply to any transfer or assignment authorized under this section. Any amounts owed to the United States for the initial grant of such licenses shall become immediately due and payable upon the consummation of any such transfer or assignment. Any application for such a transfer or assignment shall be deemed granted if not denied by the Commission within 90 days of the date on which it was initially filed. Any provision of law or regulation to the contrary is hereby amended." Public L. No. 106-259, 114 Stat. 656 § 8149.

²⁸ See CIVS Petition.

percent benchmark for indirect investment by foreign individuals, corporations and governments in U.S. common carrier radio licensees, but grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is consistent with the public interest.²⁹ Upon consummation of the CIRI-VoiceStream transaction, VoiceStream's current foreign ownership will become attributable to the CIVS entities.³⁰ Because the CIVS entities' proposed level of indirect foreign ownership exceeds 25 percent, they have requested, pursuant to section 310(b)(4) that we determine whether the proposed indirect foreign ownership of the CIVS entities is in the public interest.

10. The only pleading we received in response to the *Acceptance Public Notice* was the WITCO Petition. WITCO argues that U.S. wireless providers, especially small entities like WITCO, should be concerned about the proposed ultimate ownership of the CIVS entities by DT because the ownership interest of the German government in DT will provide it with distinct advantages such as access to capital, capital markets and interest rates on more favorable terms than would be available to small, privately-held entities.³¹ In the *Acceptance Public Notice*, we instructed parties wishing to comment on the ultimate transfer of control of the licenses held by the CIVS entities to DT to comment in the docket created to address that issue, namely the DT-VoiceStream proceeding in IB Docket No. 00-187.³² Therefore, we defer consideration of this argument presented, and on our own motion, enter the pleading in Docket No. 00-187, where it will be duly considered. We received no other comments addressing the proposed indirect foreign ownership of the CIVS entities.³³

²⁹ See 47 U.S.C. § 310(b)(4) (providing that "No broadcast or common carrier . . . radio station license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.").

³⁰ According to the CIVS Petition, VoiceStream's present foreign ownership includes the following interests: (1) Hutchison Telecommunications PCS (USA) Limited, a British Virgin Islands corporation and a wholly owned subsidiary of Hutchison Whampoa Limited ("Hutchison"), a Hong Kong limited liability holding company, holds a 20.56-percent equity interest and a 13.59-percent voting interest; (2) DT, a German corporation, holds an 11.49-percent equity and a 1.79-percent voting interest; (3) Telephone and Data Systems ("TDS"), a Delaware corporation, a portion of which is owned by foreign investors, holds interests in VoiceStream that will result in indirect foreign ownership interests attributable to the CIVS entities of a 1.57-percent equity and a 1.14-percent voting interest; (4) Sonera Limited ("Sonera"), a Finnish corporation, which holds a 6.98-percent equity and a 8.69-percent voting interest. See CIVS Petition at 4.

³¹ See WITCO Petition at 4-6.

³² See *Acceptance Public Notice* at 2, n. 3.

³³ We are aware that a question has been raised in another proceeding concerning whether VoiceStream's foreign ownership, as currently structured, is consistent with sections 310(a) and (b)(4) of the Act. See Letter from Ernest F. Hollings, Ranking Democrat, Committee on Commerce, Science and Transportation, U.S. Senate to William E. Kennard, Chairman, Federal Communications Commission, IB Docket 00-187 (filed Nov. 30, 2000). The letter argues, *inter alia*, that the \$5 billion investment of DT in VoiceStream may exceed the twenty-five-percent benchmark under section 310(b)(4). The questions raised by Senator Hollings' letter will be addressed in IB Docket No. 00-187, and our action here is without prejudice to any future action by the Commission in that docket, or any other proceeding.

11. The most recent rulings on VoiceStream's foreign ownership permitted VoiceStream's common carrier licensees to be indirectly owned by Hutchison, a Hong Kong limited liability company, up to 30.6 percent.³⁴ The rulings also stated that VoiceStream is then authorized to accept an additional up-to-25-percent indirect foreign investment, in addition to the Hutchison's investment. The additional foreign ownership interests identified in the Petition, specifically those of Sonera, DT, and TDS, do not total a greater-than-25-percent interest, and therefore are within the flexibility afforded to VoiceStream under its previous foreign ownership rulings.³⁵ In the instant petition, the CIVS entities seek to have VoiceStream's previous foreign ownership determinations applied to the licenses being transferred by this Order. As VoiceStream's present levels of foreign ownership are well below that which was authorized by the previous rulings, we see no reason not to grant the authority requested. Additional authority would be required before any CIVS entity could accept indirect foreign investment greater than that specified in this Order.³⁶

2. Unjust Enrichment

12. In establishing and providing bidding credits for small businesses participating in auctions, the Commission also, as mandated by statute,³⁷ adopted provisions to prevent unjust enrichment should licenses acquired using these provisions be subsequently transferred to ineligible entities.³⁸ With respect to bidding credits, the unjust enrichment rule requires those seeking to transfer or assign licenses to entities that do not qualify for a bidding credit, or that qualify for a different level of bidding credit, to reimburse the government for the amount of the bidding credit or for the difference between the bidding credit obtained by the seller and the bidding credit for which the buyer would qualify, plus interest.³⁹

13. The CIVS entities acquired, subject to bidding credits, the C and F block PCS licenses they propose to transfer to VoiceStream. While transfer of these C and F block PCS licenses to an entity that does not qualify or qualifies for a different level of bidding credit would

³⁴ See *VoiceStream/Omnipoint Order*, 15 FCC Rcd at 3347-50, ¶¶ 13-20; *VoiceStream/Aerial Order*, 15 FCC Rcd at 10,094-96, ¶¶ 10-16.

³⁵ See *supra* n. 33.

³⁶ 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, 23941, ¶ 114 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, FCC 00-339 (rel. Sept. 19, 2000); see also *BBC License Subsidiary, L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973-74, ¶¶ 22-26 (1995).

³⁷ 47 U.S.C. § 309(j)(4)(E).

³⁸ See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2394, ¶ 258 (1994) ("*Competitive Bidding Second Report and Order*"); see also, *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fifth Report and Order, 9 FCC Rcd 5532, 5592, ¶ 136 (1994) ("*Competitive Bidding Fifth Report and Order*").

³⁹ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2395, ¶ 264; *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403, 469, ¶ 127 (1994); 47 C.F.R. § 1.2111(d).

require an unjust enrichment payment, section 8149 of the Defense Appropriations Act again renders any such analysis moot. Section 8149 specifically provides that no economic penalties are owed in connection with the assignment or transfer of PCS licenses held by an Alaska Native Regional Corporation organized pursuant to the Alaska Native Claims Settlement Act, such as CIRI, at the time of the enactment of the legislation.⁴⁰ Thus, no unjust enrichment analysis with respect to the C and F block PCS licenses is necessary in this instance.

14. Section 8149 of the Defense Appropriations Act does, however, require that any "amounts owed to the United States for the initial grant of such licenses shall become immediately due and payable upon the consummation of any such transfer or assignment."⁴¹ Accordingly, as a condition to this Order, on or before consummation of the instant transfers of control of the PCS licenses to VoiceStream, CIRI will be required to pay the outstanding balances owed to the United States on any licenses subject to installment financing.⁴²

15. One of the CIVS entities, CIVS II, also proposes to transfer control of nine WCS licenses to VoiceStream.⁴³ These licenses were assigned to CIVS II from Omnipoint Data Company, Inc. ("Omnipoint Data").⁴⁴ Omnipoint Data was awarded these WCS licenses with a bidding credit of 35 percent as a "very small business" (*i.e.*, with gross revenues of less than \$15 million) in Auction No. 14.⁴⁵ The language of section 8149 of the Defense Appropriations Act is limited, on its face, to PCS licenses, and does not address assignment or transfer of WCS licenses.⁴⁶ VoiceStream has not claimed it is qualified for the bidding credit on the WCS licenses, has provided no financial information as to its gross revenues to enable us to make a determination of bidding credit eligibility, and has not sought a waiver of unjust enrichment for these bidding credits.⁴⁷ Therefore, we find that VoiceStream is not eligible for bidding credits on the WCS licenses, and as a result, unjust enrichment is owed. Accordingly, before CIRI can complete the transfer of the WCS licenses, it must first reimburse the U.S. government for the amount of the bidding credit received at auction, plus interest, in accordance with the payment schedule in the Commission's rules.⁴⁸

⁴⁰ Public L. No. 106-259, 114 Stat. 656 § 8149.

⁴¹ *Id.*

⁴² See 47 C.F.R. § 1.2111(c).

⁴³ See File No. 0000217007.

⁴⁴ See *VoiceStream/Omnipoint Order*, 15 FCC Rcd at 3364, ¶ 59 (File No. 0000016676).

⁴⁵ See File Nos. 01984-WS-L-97, 02084-WS-L-97, 02085-WS-L-97, 02086-WS-L-97, 02087-WS-L-97, 02088-WS-L-97, 02089-WS-L-97, 02090-WS-L-97, and 02091-WS-L-97. These applications were granted on July 21, 1997. See FCC Announces the Grant of Wireless Communications Service ("WCS") Licenses, *Public Notice*, DA 97-1552 (rel. July 21, 1997).

⁴⁶ Public L. No. 106-259, 114 Stat. 656 § 8149.

⁴⁷ See Public Interest Statement at 20-22.

⁴⁸ See 47 C.F.R. § 1.2111(d).

3. Competitive Issues

16 CIRI and VoiceStream subsidiaries are both licensed to provide PCS services. The Applicants indicate that the licenses for which control is to be transferred to VoiceStream overlap existing VoiceStream licenses in 62 markets.⁴⁹ None of the overlaps, however, implicate the Commission's spectrum aggregation limits⁵⁰ because VoiceStream is already attributed with the CIVS entities' licenses through VoiceStream's existing indirect, non-controlling interest in the CIVS entities.⁵¹ Thus, a detailed spectrum cap analysis is not required in this transaction. Moreover, the proposed transaction poses no other competitive concerns. For instance, we note that the services offered by the CIVS entities in these 62 markets are all currently marketed to consumers under the VoiceStream brand name.⁵² Therefore, consumers in these markets will have the same access to alternative services and service providers in these markets both before and after the proposed transfers of control.⁵³

4. Service to Rural Areas

17. WITCO argues that transfer of the CIVS entities' licenses to VoiceStream will negatively impact the provision of services to rural consumers in CIRI's markets, particularly in portions of rural Iowa and Nebraska.⁵⁴ WITCO alleges that "with VoiceStream's control of Cook, it is inevitable that the focus of Cook's services will move to urban markets to the detriment of rural consumers."⁵⁵ WITCO argues that a transfer of the CIVS entities' licenses would frustrate Congressional objectives in sections 254 and 706 of the Telecommunications Act of 1996,⁵⁶ in that it will further widen the disparity between urban and rural consumers in the deployment of advanced telecommunications capability.⁵⁷

⁴⁹ Public Interest Statement at 17.

⁵⁰ See 47 C.F.R. § 20.6.

⁵¹ See Public Interest Statement at 17; see also, *VoiceStream/Omnipoint Order*, 15 FCC Rcd at 3352, ¶ 23; *VoiceStream/Aerial Order*, 15 FCC Rcd at 10,103-04, ¶ 31.

⁵² Public Interest Statement at 17-18.

⁵³ See *Applications of Various Subsidiaries and Affiliates of Geotek Communications, Inc. and Wilmington Trust Company or Hughes Electronics Corporation, and Applications of Wilmington Trust Company or Hughes Electronics Corporation and FCI 900, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 790, 801, ¶ 23 (WTB, 2000).

⁵⁴ WITCO Petition at 3-4.

⁵⁵ *Id.* at 4. WITCO cites the *VoiceStream/Aerial Order* as support. *Id.*, citing *VoiceStream/Aerial Order*, 15 FCC Rcd at 10,101-02, ¶ 28 ("... VoiceStream is focusing initially on the deployment of service to metropolitan areas.").

⁵⁶ *Id.* at 3-4, citing Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq.*

⁵⁷ WITCO Petition at 3-4. WITCO claims this disparity would be exacerbated by the proposed transfer of control of VoiceStream to DT. *Id.* at 4.

18. CIRI responds that of the 54 BTAs in which the CIVS entities have introduced commercial service, 31 are in rural markets having fewer than 100 POPs per square mile.⁵⁸ CIRI also argues that CIRI and VoiceStream have demonstrated their commitment to rural markets through license acquisition, system construction, and commercial launches, and that, as a result of the proposed instant transaction, VoiceStream will be better able to deploy rapidly its GSM service, including to rural markets, to compete more effectively with other nationwide wireless carriers.⁵⁹ CIRI points out that the CIVS entities' licenses, including those in the most rural areas, must be constructed under the Commission's construction build-out requirements.⁶⁰ Finally, CIRI argues that VoiceStream's stated "strategy that includes initially deploying service in urban areas is not in any way incompatible with providing seamless nationwide service."⁶¹

19. We deny the WITCO Petition. The Commission's rules provide wireless carriers with minimum service requirements, and WITCO's speculation as to VoiceStream's intent has not shown that these requirements will not be met.⁶² Each of the CIVS entities' licenses is subject to construction build-out requirements found in the Commission's rules.⁶³ For PCS licenses, these rules require the licensees to construct their systems so as to provide sufficient signal strength to provide adequate service to a certain percentage of the population of the market at five- and ten-year marks.⁶⁴ For WCS licenses, licensees must construct their systems so as to provide "substantial service" at the end of the ten-year mark.⁶⁵ The construction build-out requirements apply to individual licenses, regardless of the licensee. The Commission has found that these build-out requirements meet Congress' directive to the Commission in section 309(j)(4)(B) of the Act to adopt rules to "include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services."⁶⁶ Therefore, we

⁵⁸ See CIRI Opposition at 2. CIRI also states that nine more of its systems are currently under construction in markets with fewer than 100 POPs per square mile. *Id.*

⁵⁹ *Id.* at 3.

⁶⁰ *Id.* at 4. Construction build-out requirements for the PCS and WCS licenses are found in sections 24.203 and 24.17 of the Commission's rules, respectively. See 47 C.F.R. §§ 24.203, 27.14.

⁶¹ CIRI Opposition at 3.

⁶² CIRI and VoiceStream both challenge WITCO's standing as a party-in-interest in the instant proceeding. See *id.* at 5-6; VoiceStream Opposition at 2-5. Because we deny the WITCO Petition to the extent WITCO claims that the instant transfers of control will harm rural consumers, and defer WITCO's arguments about the proposed transfers of VoiceStream's licenses to DT to the appropriate docket, we need not address Cook and VoiceStream's challenges to WITCO's standing.

⁶³ See 47 C.F.R. §§ 24.203, 27.14.

⁶⁴ 47 C.F.R. §§ 24.203(a) and (b).

⁶⁵ 47 C.F.R. § 27.14(a); see *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")*, Report and Order, 12 FCC Rcd 10,785, 10,843-45, ¶¶ 111-15 (1997).

⁶⁶ 47 U.S.C. § 309(j)(4)(B); see also, *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5570, ¶ 90.

deny WITCO's Petition with respect to its allegations that the instant transfers of control to VoiceStream would harm rural consumers.⁶⁷

B. Transfer of International 214 Authorization

20. On October 8, 1998, the Commission granted international section 214 authority to D&E/Omnipoint Wireless Joint Venture, L.P. ("D&E"), a joint venture then controlled by Omnipoint Corporation ("Omnipoint").⁶⁸ On October 13, 2000, VoiceStream and CIRI requested Commission consent to transfer control of the international section 214 authority held by D&E.⁶⁹ Previously, control of this international section 214 authority was transferred from Omnipoint to VoiceStream,⁷⁰ and then to CIVS PA II, LLC.⁷¹ Also pending is a nonstreamlined application to transfer control of this international section 214 authority to DT.⁷² On October 24, 2000, we released a public notice seeking comment on the proposed transfer of control of this international section 214 authority from CIRI to VoiceStream.⁷³ We received no comments addressing the proposed transfer of international section 214 authority. The Applicants have indicated that they have no affiliations with foreign carriers that would require application of the Commission's international dominant carrier safeguards. Therefore, we grant the proposed transfer of the international section 214 authority from CIRI to VoiceStream.

IV. CONCLUSION

21. Based upon our reviews under sections 214(a), 310(b)(4), and 310(d) of the Act, we determine that grant of the applications is in the public interest. Accordingly, we grant the applications, subject to the conditions discussed herein.

V. ORDERING CLAUSES

22. IT IS ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i) and (j), 309, and 310(d), that the Petition to Deny filed by Jordan-Soldier Valley Telephone Co. d/b/a WITCO, filed November 22, 2000, IS DENIED, in part, and DEFERRED, in part, to IB Docket No. 00-187.

23. IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require a grant of the above-captioned applications. Therefore, IT IS ORDERED that

⁶⁷ As noted above, we defer consideration of WITCO's arguments with respect to the effect of the proposed transfer of control of VoiceStream to DT.

⁶⁸ See *Overseas Common Carrier Section 214 Applications Actions Taken*, File No. ITC-214-19980807-00546, Report No. TEL-00016 (rel. Oct. 8, 1998).

⁶⁹ See international 214 Application at 1.

⁷⁰ See *VoiceStream/Omnipoint Order*, 15 FCC Rcd at 3357, ¶ 36

⁷¹ See *International Authorizations Granted*, File No. ITC-T/C-2001013-00605, Report No. TEL-00315 (rel. Nov. 16, 2000).

⁷² See *DT/VoiceStream Public Notice* at 9.

⁷³ See *Acceptance Public Notice* at 4.

the CIVS entities are authorized to accept indirect foreign ownership in excess of the twenty-five-percent benchmark of section 310(b)(4) of the Communications Act of 1934, as amended, to the extent specified in this Order.

24. Accordingly, having reviewed the applications and the record in this matter, IT IS ORDERED, pursuant to sections 4(i) and (j), 214(a) and (c), 309, and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 214(a) and (c), 309, and 310(b) and (d), and section 8149 of the Department of Defense Appropriations Act of 2001, Public Law No. 106-259, that the applications filed by CIRI and VoiceStream in the above-captioned proceeding ARE GRANTED subject to the conditions below.

25. IT IS FURTHER ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 8149 of the Department of Defense Appropriations Act of 2001, Public Law No. 106-259, the approval of the transfer of control of the CIVS entities' PCS licenses to VoiceStream granted herein is conditioned upon payment in full of any amount owed to the United States for these licenses on or before consummation of the contemplated transaction.

26. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 309, and 310(d), and section 1.2111(d) of the Commission's rules, 47 C.F.R. § 1.2111(d), that, to the extent discussed above, Commission approval of the transfer of the WCS licenses granted herein is conditioned upon transferors making unjust enrichment payments to the U.S. government pursuant to section 1.2111(d) of the Commission's rules, 47 C.F.R. § 1.2111(d).

27. This Order is issued pursuant to authority delegated by sections 0.261 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.261, 0.331, and is effective upon release. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within thirty days of the date of public notice of this Order.

FEDERAL COMMUNICATIONS COMMISSION

/s/

Thomas J. Sugrue
Chief, Wireless Telecommunications Bureau

/s/

Donald Abelson
Chief, International Bureau