

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

In re Applications of
VODAFONE AIRTOUCH, PLC,
and
BELL ATLANTIC CORPORATION
For Consent to Transfer of Control or
Assignment of Licenses and Authorizations
File Nos. 0000032969, et al.
DA 99-2451
File Nos. 0000046624, 0000046639
WTB Rpt. No. 371

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 2000

Released: March 30, 2000

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

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I. INTRODUCTION

1. In this Order we grant (1) the pending applications filed by Bell Atlantic Corporation (“Bell Atlantic”) and Vodafone AirTouch, Plc (“Vodafone”) (collectively, “Applicants”) for transfer of control or assignment of various licenses and authorizations, and (2) the joint petition filed by the Applicants, the Department of Defense (“DOD”), the Department of Justice (“DOJ”), and the Federal Bureau of Investigation (“FBI”) to attach conditions to this grant. We deny the remaining pleadings.

II. BACKGROUND

2. Bell Atlantic, which is headquartered in New York City, owns telephone companies in the eastern part of the United States with approximately 42 million local telephone access lines providing local telephone services to retail customers in 13 eastern states and the District of Columbia. In addition, Bell Atlantic offers long distance service in New York. Through Cellco Partnership (“Cellco”), a Delaware general partnership, it also offers cellular mobile telephone services throughout its local exchange service region.¹

3. Vodafone is headquartered in Newbury, United Kingdom, and is the world’s largest mobile telecommunications company. It has mobile telephone operations or shareholdings in 23 countries on five continents, with more than 28 million customers. In the United States, Vodafone operates through its subsidiary, AirTouch Communications, Inc. (“AirTouch”), serving nine million cellular and PCS customers in 24 states and in 22 of the top 30 U.S. markets, primarily in the west. In addition, AirTouch is one of the largest providers of messaging services in the United States, operating as a facilities-based paging carrier in 48 states, serving over 3.5 million subscribers.²

4. In addition, Bell Atlantic and Vodafone each own 50 percent of PrimeCo Personal Communications, L.P. (“PrimeCo”), a Delaware limited partnership that is licensed to provide wireless services in 18 states.³ Bell Atlantic and Vodafone intend for these properties also to become part of Cellco.⁴

¹ See Vodafone AirTouch Plc and Bell Atlantic Corporation, Applications for Transfer of Control, File Nos. 0000032969, *et al.* (filed Oct. 14, 1999) at 5 (“Applications”). Our references in this Order to the Applications includes the separate application, also filed on October 14, 1999, with respect to the Applicants’ international 214 authorizations.

² See <http://www.app.airtouch.com/zip/plsql/frames?p_url=/about/aboutbody.html>.

³ Applications at 5.

⁴ Applications for prior approval of the contribution of the PrimeCo properties have not been filed because the transfer or assignment of these properties to Cellco will occur on a *pro forma* basis and are subject to the forbearance procedures in 47 C.F.R. §§ 1.948(c)(1)(iii) and (d). For several reasons, we have determined that the transfer or assignment of the PrimeCo properties to Cellco would constitute an insubstantial transfer of control or assignment. The PrimeCo properties are currently owned in equal 50 percent interests by Bell Atlantic and Vodafone, with each party holding equal general and limited partner ownership interests. Therefore, Bell Atlantic and Vodafone each are considered to have a controlling interest in PrimeCo, both as 50 percent equity holders and as general partners. See *In the Matter of Federal Communications Bar Association’s Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control*

5. On September 21, 1999, Bell Atlantic and Vodafone entered into a “U.S. Wireless Alliance Agreement” (“Agreement”) to form a new, domestic, nationwide wireless business that will combine the cellular, PCS, paging, and other wireless properties (except satellite) of both companies, including the PrimeCo properties.⁵ The business will be conducted by Cellco, which is currently 100-percent owned by wholly-owned subsidiaries of Bell Atlantic.

6. According to the Applicants, the combination of their U.S. wireless operations will create a company with licenses capable of serving more than 90 percent of the United States, 49 of the top 50 wireless markets, and 209 million people, making Cellco one of the largest wireless providers in the country.⁶ The Applicants state that they intend to initiate “national-one-rate” service to rival current nationwide service providers.⁷

7. The Applicants state that the Agreement contemplates the contribution of Vodafone’s U.S. wireless properties to Cellco in two stages, and the Applications seek approval for both stages of Vodafone’s contribution of properties to Cellco.⁸ In the first stage, most of Vodafone’s U.S. wireless properties will be conveyed to Cellco in exchange for partnership

Involving Telecommunications Carriers, et al., 13 FCC Rcd 6293, 6297 ¶ 7 (1998) (50 percent or more equity ownership considered controlling interest); *In re Applications of BCP CommNet, L.P., Transferor, and Vodafone AirTouch, Plc, Transferee, For Consent to Transfer of Control of Licenses*, DA 99-3009, at ¶ 6 & n.8 (WTB, rel. Dec. 27, 1999) (“*Vodafone/CommNet Order*”)(general partner ownership interest considered controlling interest). In addition, both Bell Atlantic and Vodafone already have been subject to Commission review with respect to their ownership of PrimeCo’s licenses, which is a factor in determining whether a transfer of control or assignment is substantial. See *In re Application of SuperCom, Inc. and Super Com Limited Partnership of Northern Michigan*, Memorandum Opinion and Order, DA 00-465, ¶ 7 (CWD/PRB rel. Mar. 2, 2000). After the PrimeCo properties are contributed to Cellco, we will still view both Bell Atlantic and Vodafone to hold controlling interests in those licenses – Bell Atlantic through its ability to exercise *de facto* control over Cellco once the transaction with Vodafone is consummated, and Vodafone through its ownership of 65.1 percent of Cellco’s equity. Therefore, the transfer or assignment of the PrimeCo properties to Cellco is permitted to occur on a *pro forma* basis. We note that several PrimeCo properties will not be contributed to Cellco in at the inception of the Applicants joint venture because those properties overlap with wireless properties of GTE Corporation, with which Bell Atlantic has proposed to merge. See *infra* note 9. Depending on how Bell Atlantic, GTE and Vodafone resolve these overlap issues to comply with both the Commission’s CMRS spectrum aggregation limit, 47 C.F.R. § 20.6, and their DOJ Consent Decree, see *infra* note 53, these PrimeCo properties ultimately may not become part of Cellco. Applications at 8.

⁵ *Id.* at 2-4.

⁶ *Id.* at 11.

⁷ *Id.* at 13.

⁸ In preparation for the transaction with Bell Atlantic, Vodafone has undertaken internal reorganizations on both the international and domestic levels, resulting in a large number of *pro forma* assignments and transfers of control of its licensee subsidiaries. Prior to this reorganization, Vodafone requested, and, on January 30, 2000, orally was granted, a waiver of 47 C.F.R. §1.948(c)(1)(iii) and (d), which requires notification within 30 days of the consummation of *pro forma* transactions. Vodafone requested this waiver to permit all of the notices of consummation and FCC Forms 602 that would result from the internal reorganization to be filed at the conclusion of the transaction with Bell Atlantic. Without the waiver, Vodafone would be required to file a continuous stream of notices and Forms 602 over a period of several months. Because Vodafone’s request would significantly minimize the burden on the Commission’s database administration and recordkeeping staff, the Commercial Wireless Division (“Division”) permitted Vodafone an additional 90 days, until March 31, 2000, to file the notices of consummation from the internal reorganization. On March 21, 2000, because the Commission had not yet acted on the Applications, the Division orally extended the waiver by an additional 30 days, to April 30, 2000.

interests in Cellco. At the time that the parties undertake the second stage of the transaction, Vodafone would convey its remaining U.S. wireless properties to Cellco, and the parties intend that Bell Atlantic would also transfer additional properties to Cellco.⁹

8. At the completion of the first stage, Cellco will hold all of the current Cellco licenses as well as most of Vodafone's current U.S. licenses. Bell Atlantic will hold a 34.9 percent general partner ownership interest in Cellco; Vodafone will indirectly hold the remaining 65.1 percent interest through one or more of its U.S. subsidiaries. At the completion of the second stage, assuming that the Bell Atlantic-GTE transaction is also in a position to close, Bell Atlantic's equity share will rise to 55 percent, and Vodafone's will drop to 45 percent. The Applicants state, however, that Bell Atlantic will retain management control of Cellco throughout both stages. Further, the Applicants state that the Agreement provides that control of Cellco's business and affairs is vested in a seven-member Board of Representatives, four designated by Bell Atlantic and three by Vodafone. Therefore, according to the Applicants, Bell Atlantic will also hold majority control of the Board and, thus, will have affirmative control of Cellco.¹⁰

9. On October 14, 1999, Bell Atlantic and Vodafone filed applications pursuant to sections 214 and 310 of the Communications Act of 1934, as amended ("the Act"),¹¹ seeking Commission consent to transfer control of or assign their respective wireless licenses and international authorizations to Cellco. On November 5, 1999, the Wireless Telecommunications Bureau ("WTB") and the International Bureau, by delegated authority,¹² 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 proposed transaction.¹³

⁹ The additional wireless properties that the parties contemplate Bell Atlantic will contribute to Cellco in the second stage are those currently owned by GTE Corporation ("GTE"), with which Bell Atlantic has proposed to merge. Consent for the transfers of control and assignments involved in the merger of Bell Atlantic and GTE are the subject of applications before the Commission regarding the proposed merger of Bell Atlantic and GTE. See Public Notice, *GTE Corporation and Bell Atlantic Corporation Seek FCC Consent for a Proposed Transfer of Control and Commission Seeks Comment on Proposed Protective Order Filed by GTE and Bell Atlantic*, DA 98-2035 (rel. Oct. 8, 1998) and Public Notice, *Commission Seeks Comment on Additional Applications Submitted by GTE and Bell Atlantic*, DA 00-608 (rel. Mar. 17, 2000).

¹⁰ Applications at 4. Bell Atlantic contends that, as a result of the transaction with Vodafone, there will not be a substantial transfer of control of the licenses currently held in Cellco at any stage in the process. At the time that these applications were filed, however, Bell Atlantic agreed to file applications for prior approval of the transfer of control of the current Cellco licenses and to have the applications be subject to a 30-day public comment period pending WTB's determination of whether the transfers of control would be eligible for *pro forma* treatment and, therefore, subject to the Commission's forbearance procedures. See *Acceptance Public Notice* at 2 cited *infra* at note 13. Because no petitions or comments were filed during the public comment period addressing the appropriate processing of these Applications, and because, under the analysis in this Order, we would approve these transfers of control as in the public interest in any event, it is not necessary for us to make a specific determination whether or not these transfers of control are substantial in nature.

¹¹ 47 U.S.C. §§ 214, 310(b), 310(d).

¹² 47 C.F.R. §§ 0.261, 0.331.

¹³ See Public Notice, *Vodafone AirTouch and Bell Atlantic Seek FCC Consent to Transfer of Control of Bell Atlantic's and Vodafone AirTouch's Wireless Licenses*, DA 99-2451 (rel. Nov. 5, 1999) ("*Acceptance Public Notice*"). On November 17, 1999, WTB issued an additional Public Notice announcing that the Applicants had filed additional applications for consent to transfer control of certain Air-to-Ground licenses. See Report No. 371 (rel. Nov. 17, 1999). These additional applications, File Nos. 0000046624 and 0000046639, also are granted herein.

10. In response to the *Acceptance Public Notice*, the United States Cellular Corporation (“USCC”) filed a Petition to Deny or, in the Alternative, Hold in Abeyance, arguing that we lack sufficient information regarding the Agreement to make a public interest determination and that a pending partnership dispute prevents us from considering the entire Bell Atlantic-Vodafone transaction.¹⁴ Jointly with the Applicants, FBI and DOJ submitted a Joint Notice of Intent to File Petition to Adopt Conditions to Authorization and Licenses.¹⁵ On March 15, 2000, these parties and DOD filed a Joint Petition to Adopt Conditions to Authorization and Licenses.¹⁶

11. As explained below, we find that the proposed combination of Vodafone’s and Bell Atlantic’s U.S. wireless assets poses no risk of harm to U.S. telecommunications markets and would permit the merged companies to form a wireless network capable of competing with other companies that provide nationwide service. Accordingly, we find that pursuant to sections 214(a), 310(b), and 310(d) of the Act, grant of the pending requests for transfer of control would serve the public interest. Therefore, we deny USCC’s petition and grant the Applications with the conditions requested in the DOD/DOJ/FBI Joint Petition.¹⁷

II. DISCUSSION

A. Statutory Authority

12. 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.¹⁸ 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

¹⁴ See Petition to Deny or, in the Alternative, Hold in Abeyance, filed by USCC on Dec. 6, 1999 at 2 and Supplement to Petition to Deny, or, in the Alternative, Hold in Abeyance, filed by USCC on Mar. 20, 2000 (collectively, “USCC Petition”).

¹⁵ See Joint Notice, filed by Vodafone, Bell Atlantic, the Federal Bureau of Investigation and the Department of Justice, filed Dec. 6, 1999 (“FBI/DOJ Joint Notice of Intent”).

¹⁶ See Petition to Adopt Conditions to Authorization and Licenses, filed by Vodafone, Bell Atlantic, the Department of Defense, the Federal Bureau of Investigation and the Department of Justice, filed March 15, 2000 (“DOD/DOJ/FBI Joint Petition”).

¹⁷ On December 6, 1999, Timothy E. Welch, Esq. filed a *pro se, ex parte* pleading styled Request for Confidentiality, Request for Investigation of Witness Intimidation, Request for Referral to DOJ for Criminal Investigation, and Emergency Request for a Protective Order (“Welch Request”). The pleading is neither a petition to deny nor a comment upon the transfer applications. The request for confidentiality was denied on December 9, 1999. See Letter from William W. Kunze, Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau to Timothy E. Welch, Esq., Hill and Welch, dated Dec. 9, 1999). An amended request for confidentiality was filed on December 15, 1999 and was also denied. See Letter from William W. Kunze, Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau to Timothy E. Welch, Esq., Hill and Welch, dated Dec. 30, 1999. Mr. Welch did not then withdraw the amended pleading, so by the terms of the December 30, 1999 letter, it was made part of the public record in this matter. We determine that the remaining requests do not have merit and, accordingly, deny the Welch Request.

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

the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.”¹⁹ Section 310(d) also requires the Commission to consider the license transfer or assignment application as if it were filed pursuant to section 308 of the Act, which governs applications for new facilities and for renewal of existing licenses.²⁰

13. In applying the public interest test under Section 310(d), the Commission considers four overriding questions: (1) whether the transaction would result in a violation of the Act or any other applicable statutory provision; (2) whether the transaction would result in a violation of Commission rules; (3) whether the transaction would substantially frustrate or impair the Commission's implementation or enforcement of the Act or interfere with the objectives of that and other statutes; and (4) whether the transaction promises to yield affirmative public interest benefits.²¹ In cases such as this that involve an international carrier, we are guided also by the U.S. Government's commitment under the World Trade Organization (“WTO”) Basic Telecommunications Agreement, which seeks to promote global markets for telecommunications so that consumers may enjoy the benefits of competition.²² In summary, the Applicants bear the burden of demonstrating that the transaction will not violate or interfere with the objectives of the Act or Commission rules, and that the predominant effect of the transaction will be to advance the public interest.²³ Prior to approving the Applications, we must determine whether the Applicants have met this burden.²⁴

¹⁹ 47 U.S.C. § 310(d).

²⁰ Section 310 provides that the Commission shall consider any such applications “as if the proposed transferee or assignee were making application under Section 308 for the permit or license in question.” 47 U.S.C. § 310(d). Furthermore, the Commission is expressly barred from considering “whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.” *Id.*

²¹ *See Applications of Ameritech Corp. and SBC Communications Inc. for Transfer of Control*, CC Docket No. 98-141, Memorandum Opinion and Order, FCC 99-279, at ¶¶ 49-50 (rel. Oct. 8, 1999) (“*SBC/Ameritech Order*”); *WorldCom/MCI Order*, 13 FCC Rcd at 18,030-33, ¶¶ 9-12 (citing *Applications of NYNEX Corporation and Bell Atlantic Corporation*, Memorandum Opinion and Order, 12 FCC Rcd 19,985, 19,987 ¶ 2 & n.2 (1997) (“*Bell Atlantic/NYNEX Order*”)); *Applications of MCI Communications Corporation and British Telecommunications P.L.C.*, Memorandum Opinion and Order, 12 FCC Rcd 15, 351, 15,367 ¶ 33 (1997) (“*BT/MCI Order*”).

²² The commitments undertaken as a result of the WTO basic telecommunications services negotiations are incorporated into the General Agreement on Trade in Services (GATS) by the Fourth Protocol to the GATS. *Fourth Protocol to the General Agreement on Trade in Services (WTO 1997)*, 36 I.L.M. 354, 366 (1997). These commitments are colloquially referred to as the WTO Basic Telecom Agreement, though they are not technically contained in a stand-alone agreement.

²³ *WorldCom/MCI Order*, 13 FCC Rcd at 18,031 ¶ 10 n.33 (citing 47 U.S.C. § 309(e) (burdens of proceeding and proof rest with the applicant)) and *LeFlore Broadcasting Co., Inc.*, Docket No. 20026, Initial Decision, 66 F.C.C. 2d 734, 736-37 ¶¶ 2-3 (1975) (burden of proof is on licensee on issue of whether applicants have the requisite qualifications to be or to remain Commission licensees and whether grant of applications would serve public interest, convenience and necessity)).

²⁴ *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20,001, 20,007, ¶¶ 29, 36; *BT/MCI Order*, 12 FCC Rcd at 15,367 ¶ 33.

B. Qualifications

14. In evaluating assignment and transfer applications under section 310(d) of the Act, we do not re-evaluate the qualifications of transferors or assignors 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.²⁵ In this case, no party has challenged the basic qualifications of Bell Atlantic or Vodafone as transferors or assignors as reason why we should not consent to the transfers of control.

15. By contrast, as a regular part of our public interest analysis, we determine whether the proposed transferee or assignee is qualified to hold Commission licenses.²⁶ No issues have been raised with respect to the basic qualifications of Bell Atlantic as transferee, and we do not find an independent reason to examine further Bell Atlantic's basic qualifications here.²⁷ We examine Cellco's qualifications below in light of the investment by Vodafone, which will result in increased foreign ownership of Cellco.

1. Foreign Ownership

16. Under section 310(b)(4) of the Act, the Commission must determine whether the public interest would be served by allowing a common carrier licensee to have indirect foreign ownership that exceeds 25 percent.²⁸ As a result of this proposed transaction, Vodafone, which is chartered in the United Kingdom, will indirectly own more than 25 percent of Cellco.²⁹ At the completion of Stage 1, according to the Applicants, Vodafone (through one or more of its U.S.

²⁵ See *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 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.*

²⁶ See *In re applications of AirTouch Communications, Inc. and Vodafone Group, Plc*, Memorandum Opinion and Order, DA 99-1200, 1999 WL 413,237 (rel. June 22, 1999) at ¶¶ 5-9 ("*Vodafone/AirTouch Order*").

²⁷ Bell Atlantic has recently been found qualified to hold Commission licenses, including a number of the licenses it currently holds through Cellco. See Public Notice, *Wireless Telecommunications Bureau Grants Consent for Transfer of Control of Paging, Cellular and Microwave Licenses from Global Crossing to Bell Atlantic Corporation*, DA 99-2392 (rel. Nov. 1, 1999). We note that the recent Consent Decree between the Commission and Bell Atlantic that resolved issues regarding Bell Atlantic's wireline business specifically stated that "there are no substantial and material questions as to whether Bell Atlantic possesses the basic qualifications, including its character qualifications, to hold or obtain any FCC licenses or authorizations." See *Bell Atlantic-New York Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service In the State of New York*, FCC 00-92 (rel. Mar. 9, 2000).

²⁸ 47 U.S.C. § 310(b)(4); see also *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and order, 12 FCC Rcd 23,891, 23,935 ¶ 97 (1997), recon. pending ("*Foreign Participation Order*").

²⁹ However, as discussed above, the parties contend that Bell Atlantic will retain management control over Cellco. See *supra* ¶ 8 and note 10.

subsidiaries) will indirectly hold 65.1 percent of Cellco.³⁰ Therefore, under section 310(b)(4) of the Act, we must analyze whether the public interest would be served by allowing the assignment or transfer of control of those licenses to Cellco.

17. In the *Foreign Participation Order*, the Commission stated that additional foreign investment from countries with competitive markets can promote competition in the U.S. market. The Commission therefore concluded that the public interest generally would be served by permitting more open investment by foreign entities whose home markets are members of the WTO.³¹ In such cases, there is a presumption that no competitive concerns are raised by the indirect foreign investment. The Commission also stated in the *Foreign Participation Order* that parties that have already received approval to exceed the 25 percent benchmark up to a certain level of indirect foreign ownership must seek further Commission approval in order to increase that level of ownership.³²

18. In the *Vodafone/AirTouch Order*, WTB determined that the United Kingdom, a member of the WTO, was Vodafone's principal place of business. Based on information contained in the record, we find that the United Kingdom continues to be Vodafone's principal place of business.³³

19. Under the *Foreign Participation Order*, the Applicants are entitled to a presumption that no competitive concerns are raised by Vodafone's 65.1 percent indirect interest in Cellco. We see no reason to rebut that presumption. Accordingly, noting the Executive Branch's concerns with respect to the proposed transaction, set forth in Section C.4. below, we conclude, pursuant to section 310(b)(4) and the Commission's *Foreign Participation Order*, that the public interest would be served by allowing the proposed indirect foreign ownership, subject to the terms and conditions set forth herein. In effect, this ruling allows Cellco to be indirectly owned by Vodafone in an amount up to 65.1 percent. Cellco would need additional Commission authority under section 310(b)(4) before Vodafone could increase its investment above authorized levels. Additional authority also would be required before any other foreign entity or entities acquire, in the aggregate, a greater-than-25 percent indirect interest in Cellco.³⁴

³⁰ Applications at 3-4. At the completion of the second stage and assuming that the Bell Atlantic-GTE transaction is also in a position to be consummated, Vodafone's share will drop to 45 percent, with Bell Atlantic's equity share increasing to 55 percent. Alternatively, if the Bell Atlantic-GTE transaction is not to be consummated at that time, Bell Atlantic has the right to purchase Cellco equity from Vodafone so that Bell Atlantic will hold the majority of the equity in Cellco. Applications at Tab 2 (Statement of Michael L. Katz and Daniel L. Rubinfeld) at ¶ 16.

³¹ See *Foreign Participation Order*, 12 FCC Rcd at 23,941 ¶ 111.

³² *Id.* at 23,941 ¶ 114 (accepting the FBI's assertion that increases in indirect foreign ownership or influence may present concerns that Executive Branch agencies may need an opportunity to evaluate before the Commission allows an increased level of foreign ownership).

³³ See Letter from Kenneth D. Patrich, Esq., Counsel to Vodafone, to Magalie Roman Salas, Secretary, Federal Communications Commission, filed Mar. 27, 2000.

³⁴ For this purpose, foreign ownership of Bell Atlantic and foreign ownership of Vodafone, other than its ownership from the United States and the United Kingdom, would be included in the total indirect foreign ownership of Cellco. See *id.* (stating that approximately 47.43 percent of Vodafone's shares are held by U.K. citizens, 36.05 percent by citizens of North America, 7.8 percent by citizens of Europe, and the remainder by citizens from around the world).

2. USCC Petition Regarding Vodafone Interests

20. USCC alleges that the proposed transfer of Vodafone's interest in the Los Angeles cellular MSA would adversely affect the 5.5 percent limited partner interest held by a USCC subsidiary in the Los Angeles SMSA Limited Partnership ("LASLP"), a cellular licensee controlled by AirTouch Cellular, which is a subsidiary of Vodafone.³⁵ Further, USCC argues that our consenting to the transfer of control of Vodafone's interest in LASLP prejudices USCC's rights as a limited partner.³⁶ We do not agree.

21. We find that this partnership dispute is not relevant to our analysis under section 310(d) authority but, rather, is best resolved in courts of competent jurisdiction.³⁷ We disagree with USCC that our action consenting to the transfer of control of Vodafone's interest is intended to decide, or has the effect of deciding, contractual issues between the LASLP partners. Vodafone indirectly holds a 40 percent general partner ownership interest and a 42.3 percent limited partner ownership interest in LASLP.³⁸ Under the Commission's rules and precedent, Vodafone's interest is considered to be a controlling interest in the licensee.³⁹ Our consent to the transfer of Vodafone's interest does not predetermine the resolution of contractual disputes under the LASLP partnership agreement. In addition, this dispute does not appear to relate to the type of anti-competitive conduct that the Commission considers as a relevant character qualification in licensing.⁴⁰ Therefore, we find that the allegation based on USCC's partnership dispute with Vodafone's subsidiary, AirTouch, should not preclude grant of these Applications.

22. USCC further argues that the Applicants have failed to file or make publicly available the Agreement, related transaction documents, or any other document that explains

³⁵ See USCC Petition at 2.

³⁶ *Id.*

³⁷ See, e.g., *Listeners Guild, Inc. v FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987); *Applications of Centel Corp., Sprint Corp, and FW Sub Inc.*, 8 FCC Rcd 1829, 1831 (1993) ("alleged violation of . . . partnership agreements amounts to a contractual dispute . . . and therefore is a matter for resolution by a private cause of action, rather than resolution by the Commission"). The Commission has consistently refused to interject itself into private matters, finding that a court, and not the Commission, is the proper forum for resolving such disputes. *WorldCom/MCI Order*, 13 FCC Rcd at 18,148 ¶ 214; *PCS 2000, L.P.*, 12 FCC Rcd 1681, 1691 (1997) (citing *United Tel. Co of Carolinas v. FCC*, 599 F.2d 720,732 (D.C. Cir. 1977)).

³⁸ USCC Petition at Addendum, Attachment 1 at 2.

³⁹ See *Vodafone/CommNet Order*, DA 99-3009, at ¶ 6 & n.8.

⁴⁰ See *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 F.C.C.2d 1179, 1195-97, 1200-03 (1986), *aff'd on recon.*, 1 FCC Rcd 421 (1982), *modified*, 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991), *modified in part*, 7 FCC Rcd 6564, 6566 (1992) (the Commission will consider only adjudicated non-FCC misconduct that involves violations of antitrust or other laws protecting competition). Principles of character qualification apply equally in the wireless context. *MCI Telecommunications Corp.*, 3 FCC Rcd 509, 515 n.14 (1988).

precisely how the parties intend to operate Cellco or LASLP.⁴¹ USCC submits that, in the absence of such documents, the Commission cannot determine whether a grant of the Applications would be in the public interest.⁴²

23. We disagree. The Commission's rules do not require the routine submission of underlying contracts and other documents in this case. Under section 1.2111 of the Commission's rules, a reporting requirement of this nature is only imposed when an applicant is "seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license within three years of receiving a new license through a competitive bidding procedure...."⁴³ A review of our records indicates that none of the subject licenses was awarded through auction within the last three years. Further, USCC fails to provide any statutory or regulatory authority that would require the Bureau to review these documents. Finally, the Applicants provide an adequate summary regarding the corporate structure of Cellco at the completion of Stages 1 and 2 as well as information on the makeup of its Board of Directors.⁴⁴ In this case, we believe that the detailed summary included with the Applications provided sufficient basis for us to analyze the transaction. Therefore, we find that the Applicants have provided sufficient information upon which to complete a public interest analysis.

24. For the reasons discussed above, we therefore deny the Petition to Deny filed by USCC.

C. Public Interest Analysis

1. Competitive Framework

25. Where the transfer or assignment of licenses involves telecommunications service providers, the Commission's public interest determination must be guided primarily by the Act, as amended,⁴⁵ and in this case, also by the WTO Basic Telecommunications Agreement.⁴⁶ Our analysis of competitive effects under the Commission's public interest standard consists of three steps. First, we determine the markets potentially affected by the proposed transaction.⁴⁷ Second, we assess the effects that the transaction may have on competition in these markets.⁴⁸ Third, we

⁴¹ See USCC Petition at 3.

⁴² *Id.*

⁴³ 47 C.F.R. § 1.2111.

⁴⁴ See Applications at 2-5.

⁴⁵ We note that the 1996 amendments to the Communications Act were specifically intended to produce competitive telecommunications markets. *AT&T Corporation, et al., v. Iowa Utils. Bd.*, 119 S. Ct. 721, 724 (1999).

⁴⁶ See *supra* ¶ 13 and note 22.

⁴⁷ Our determination of the affected markets requires us to identify the Applicants' existing and potential product offerings, and may require us to determine which products offered by other firms compete or potentially compete with these offerings.

⁴⁸ Depending on circumstances, this step may include the identification of market participants and analysis of market structure, market concentration, and potential entry.

consider whether the proposed transaction will result in merger-specific public interest benefits.⁴⁹ Ultimately, we must weigh any harmful and beneficial effects to determine whether, on balance, the merger is likely to enhance competition in the relevant markets.

2. Analysis of Potential Adverse Effects

a. Domestic Mobile Communications Services

26. With respect to the provision of domestic mobile communications,⁵⁰ Bell Atlantic and Vodafone currently have wireless interests that overlap in five southwestern U.S. markets.⁵¹ Although this transaction does not raise issues concerning the Commission's CMRS spectrum cap rule, upon consummation of this transaction, the joint venture would hold attributable interests in both of the cellular licensees in these five markets. Applicants recognize that their combined interest in both cellular licensees in these markets would constitute a violation of our cellular cross-ownership rule⁵² and have committed to divesting one of the properties in each market prior to closing, to ensure compliance with this rule.⁵³ On February 1, 2000, Bell Atlantic and Vodafone filed applications to transfer these properties to ALLTEL Corporation ("ALLTEL").⁵⁴ On February 11, 2000, WTB issued a public notice accepting these applications for filing.⁵⁵ No petitions to deny were filed in response to this public notice, and in another action today, WTB, under delegated authority, granted these applications.⁵⁶ We condition our grant of the Applications and the consummation of the Bell Atlantic-Vodafone transaction on consummation of the required divestitures.

27. With these divestitures, we conclude that this transaction will not reduce existing competition in any other domestic wireless market. We recognize the possibility that Bell Atlantic and Vodafone might have become competitors in the United States wireless communications sector,

⁴⁹ These include but may extend beyond factors relating to cost reductions, productivity enhancements, or improved incentives for innovation. See *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20,014, ¶ 49; *BT/MCI Order*, 12 FCC Rcd at 15,368, ¶ 35. See also, Horizontal Merger Guidelines Issued by the U.S. Department of Justice and the Federal Trade Commission, 57 Fed. Reg. 41,552, §§ 2.1, 2.2, 4 (dated Apr. 2, 1992, as revised, Apr. 8, 1997).

⁵⁰ These include, in this case, mobile voice services, mobile data services, and messaging services.

⁵¹ Applications at 9. These markets are cellular service areas, as follows: Phoenix, Tucson, Tucson unserved, Albuquerque and Arizona-2. *Id.*

⁵² 47 C.F.R. § 22.942.

⁵³ Applications at 9. DOJ also requires that the Applicants divest these licenses prior to or at the same time as consummation of the transaction. *United States of America v. Bell Atlantic Corporation, GTE Corporation, and Vodafone AirTouch Plc.*, Civil No. 1:99CV01119 (LFO), Final Judgment, filed Dec. 6, 1999, at 12 ("DOJ Consent Decree").

⁵⁴ See Public Notice, *Bell Atlantic, Vodafone, and ALLTEL Seek FCC Consent for Assignment and Transfer of Control of Wireless Licenses to Comply With Cellular Cross Ownership Rules and Department of Justice Consent Decree Regarding Pending Applications of Bell Atlantic and Vodafone*, WT Docket No. 00-25, DA 00-277 (rel. Feb. 11, 2000).

⁵⁵ See *id.*

⁵⁶ See Public Notice, *Wireless Telecommunications Bureau Grants Consent for Transfer of Control of Cellular and Related Microwave Licenses from Bell Atlantic Corporation and Vodafone AirTouch PLC to ALLTEL Corporation*, DA 00-731 (rel. Mar. 30, 2000).

and that this transaction eliminates any such prospects. However, under the circumstances of this case, including the public interest benefits described below, we are not concerned by the elimination of a potential competitor. Specifically, the transaction combines two companies that have complementary wireless systems, one primarily in the western United States, the other primarily in the east. As discussed below, the combination will create another national wireless network better positioned to compete with those that already exist. Therefore, and with the overlaps resolved as described above, we see no further competitive issues requiring additional analysis.

b. International Services

28. Bell Atlantic, Vodafone, and Cellco are all currently authorized to provide and resell international switched telecommunications services. As part of the proposed transaction, the Applicants request authority to assign to Cellco the international section 214 resale authorizations and Title III authorizations held by two Vodafone subsidiaries, AirTouch Communications, Inc. and AirTouch Cellular.⁵⁷ We conclude that the proposed transaction would not have anti-competitive effects in any U.S. international service market, including any input market that is essential for the provision of international service.⁵⁸ This conclusion is supported by the fact that the Applicants have no U.S. international transport facilities,⁵⁹ and that this transaction will not eliminate any significant potential participant in the provision of international services.⁶⁰

29. Our conclusion that this transaction would not have anti-competitive effects in any U.S. international service market takes into account whether, as a result of Vodafone's interest in Cellco, Cellco would become affiliated with a foreign carrier that has market power on the foreign end of a U.S. international route that Vodafone is authorized to serve, which could adversely impact competition in the United States. As the Commission has observed in the *Foreign Participation Order*, the exercise of foreign market power in the U.S. market could harm U.S. consumers through increases in prices, decreases in quality, or reductions in alternatives in end user markets.⁶¹ Generally, this risk occurs when a U.S. carrier is affiliated with a foreign carrier that has sufficient market power on the foreign end of a route to affect competition adversely in the U.S. market.⁶²

30. Vodafone certifies, pursuant to section 63.18 of the Commission's rules,⁶³ that it is

⁵⁷ These authorizations include the 214 authorizations held by the PrimeCo properties. As stated *supra*, note 4, we have determined that the transfer or assignment of the PrimeCo properties to Cellco would constitute an insubstantial transfer of control or assignment. Accordingly, the proposed transfer or assignment of the international 214 authorizations held by the PrimeCo properties to Cellco is permitted to occur on a *pro forma* basis. We expect the parties to notify the Commission of this transfer in accordance with section 63.24 of the Commission's rules. See 47 C.F.R. § 63.24.

⁵⁸ See *WorldCom/MCI Order*, 13 FCC Rcd at 18,071 ¶ 81.

⁵⁹ See International Bureau Report: 1998 Circuit Status Report No. IN 99-36 (rel. Dec. 17, 1999).

⁶⁰ See *In the Matter of Global Crossing Ltd and Frontier Corporation*, 14 FCC Rcd 15,911 ¶ 19 (WTB/CCB/IB 1999); see also generally *WorldCom/MCI Order*.

⁶¹ *Foreign Participation Order*, 12 FCC Rcd at 23,951-54 ¶¶ 144-46.

⁶² *Id.* at 23,954 ¶ 147. As recently amended, Section 63.09(e) of the Commission's rules, 47 C.F.R. § 63.09(e), provides that "[t]wo entities are affiliated with each other if one of them or an entity that controls one of them directly or indirectly owns more than 25 percent of the capital stock of, or controls, the other one."

⁶³ 47 C.F.R. § 63.18(h).

affiliated, within the applicable definition in Part 63, with carriers authorized to provide international telecommunications in the United Kingdom, Greece, Hungary, the Netherlands, Malta, Portugal, Germany, Sweden, and India.⁶⁴ Vodafone also certifies that none of its affiliates has sufficient market power in any foreign market to affect competition adversely in the U.S. market.⁶⁵

31. We therefore conclude the proposed transaction would not result in Cellco acquiring an affiliation with a foreign carrier that has market power on the foreign end of routes that Vodafone is authorized to serve. This finding supports our conclusion that the transaction would not have anti-competitive effects in any U.S. international market and would serve the public interest, convenience, and necessity. In addition, pursuant to section 63.10(a)(3) of the Commission rules, we grant Cellco's request to be regulated as non-dominant on all U.S. international routes.⁶⁶

3. Public Interest Benefits

32. Applicants contend that the proposed alliance would create a stronger and more efficient wireless competitor with substantially greater geographic coverage in an industry in which nationwide coverage is becoming increasingly important.⁶⁷ The new entity would have a footprint capable of serving approximately 209 million customers.⁶⁸ Applicants contend that a contiguous nationwide footprint will permit the alliance to offer service plans that include reduced roaming charges. In addition, Applicants contend that unifying the two company's U.S. wireless properties will result in the savings of hundreds of millions of dollars annually.⁶⁹ Specifically, they identify economies of scale from the consolidation of billing and management, pooled equipment purchasing, joint research and development, sharing of operational support systems, more cost-effective advertising, and reduced customer churn.⁷⁰

33. We agree with Applicants that the creation of another nationwide wireless competitor constitutes a clear, transaction-specific public interest benefit. We also concur with Applicants that this alliance should enable them to realize significant cost savings, including incremental cost savings to subscribers from the reduction of roaming charges.⁷¹ Although savings in fixed costs are not necessarily cognizable benefits, the savings purportedly derived by realizing economies of scale could reasonably be expected to reduce the marginal costs of providing wireless services.

⁶⁴ See Letters from Kenneth D. Patrich, Esq., Counsel to Vodafone, to Magalie Roman Salas, Secretary, Federal Communications Commission, filed Dec. 7, 1999 and Jan. 19, 2000.

⁶⁵ See Applications, specifically File No. ITC-T/C-19991015-00679, at 7.

⁶⁶ 47 C.F.R. § 63.10(a)(1), (3) (providing that a U.S. carrier that is not affiliated with a dominant foreign carrier in a particular country shall presumptively be classified as non-dominant).

⁶⁷ Applications at 9; 11-16.

⁶⁸ *Id.* at 11.

⁶⁹ *Id.* at 16.

⁷⁰ *Id.* at 16-17.

⁷¹ Applicants indicate that this alliance will sharply reduce these costs. *Id.* at 12. We observe, however, that the larger the magnitude of these savings, the greater should have been the incentives for both Bell Atlantic and Vodafone to agree upon mutual reductions without recourse to full integration.

4. Executive Branch Concerns

34. The Executive Branch has raised concerns regarding national security and law enforcement in this proceeding, which we must consider pursuant to the public interest analysis articulated in the Commission's *Foreign Participation Order*.⁷² In their Joint Notice of Intent, DOJ, FBI, and the Applicants filed notice of their intention to resolve any national security, law enforcement, and public safety issues raised by the proposed transfer of licenses and the degree of foreign ownership interest in Cellco.⁷³

35. On March 15, 2000, DOD, DOJ and FBI requested that the Commission adopt an agreement among DOD, DOJ, FBI, Vodafone and Bell Atlantic ("DOD/DOJ/FBI Agreement") that resolves the national security, law enforcement, and public safety issues raised in the DOD/DOJ/FBI Petition.⁷⁴ The DOD/DOJ/FBI Agreement provides, *inter alia*, that the Applicants shall: (1) ensure that Cellco's network is configured so as to be capable of complying with lawful U.S. process;⁷⁵ (2) make available in the United States certain call and subscriber data, if Cellco stores such data;⁷⁶ and (3) take reasonable measures to monitor the use of facilities used in domestic telecommunications (specifically, with respect to personnel holding sensitive positions),⁷⁷ information storage,⁷⁸ and access to foreign entities.⁷⁹ The parties to that Agreement also have agreed to adopt and maintain policies with regard to confidentiality and security of electronic surveillance orders and authorizations, legal process, and statutory authorizations and certifications related to subscriber records and information.⁸⁰

36. In fulfilling our public interest mandate, we take into account the record and afford the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues.⁸¹ We recognize that, separate from our licensing process, the applicants have entered into a voluntary agreement with the DOD, DOJ, and FBI, and that this Agreement

⁷² *Foreign Participation Order*, 12 FCC Rcd at 23,918 ¶ 59.

⁷³ See FBI/DOJ Joint Notice of Intent, at 1-2.

⁷⁴ See DOD/DOJ/FBI Joint Petition at Tab 1 (DOD/DOJ/FBI Agreement), attached hereto as Appendix A.

⁷⁵ *Id.* at Art. 1.2.

⁷⁶ *Id.* at Art. 1.

⁷⁷ *Id.* at Art. 2.

⁷⁸ *Id.* at Art. 1.

⁷⁹ *Id.* at Art. 2.

⁸⁰ *Id.*

⁸¹ See *Foreign Participation Order*, 12 FCC Rcd at 23,919-21 ¶¶ 61-66.

expressly states that the DOD, DOJ, and FBI will not object to grant of the pending Applications provided that the Commission approves the agreement and conditions grant of the Applications on compliance with it.⁸²

37. We note that the DOD/DOJ/FBI Agreement, the negotiation of which delayed resolution of this proceeding, contains certain provisions relevant to this transaction that, if broadly applied, would have significant consequences for the telecommunications industry. These provisions, if viewed as precedent for other service providers and potential investors, would warrant further inquiry on our part, and we will consider any subsequent agreements on a case-by-case basis. However, notwithstanding these concerns about the broader implications of the DOD/DOJ/FBI Agreement, we see no reason to modify or disturb the agreement of the parties on this matter. Therefore, in accordance with the request of the DOD, DOJ, and FBI and the discussion above, we condition our grant of the Applications to transfer or assign certain licenses and authorizations in connection with the proposed merger on compliance with the DOD/DOJ/FBI Agreement.

III. CONCLUSION

38. Based upon our reviews under sections 214(a) and 310(d), we determine that this transaction will not likely result in harm to competition in any relevant market. We also determine that the proposed merger will likely result in several public interest benefits. We therefore conclude that, on balance, Applicants have demonstrated that these transfers serve the public interest, convenience, and necessity. Accordingly, we grant the Applications, subject to the conditions set forth herein.

IV. ORDERING CLAUSES

39. 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, 310(b) and (d), that the Petition to Deny or in the Alternative, Hold in Abeyance of United States Cellular Corporation IS DENIED.

40. 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), that the Request for Confidentiality, Request for Investigation of Witness Intimidation, Request for Referral to DOJ for Criminal Investigation, and Emergency Request for a Protective Order filed by Timothy E. Welch, Esq. IS DENIED.

41. 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, 310(b) and (d), that the Petition to Adopt Conditions to Authorization and Licenses, filed by DOD, DOJ, the FBI, Bell Atlantic, and Vodafone on March 15, 2000, IS GRANTED, and that the authorizations and licenses related thereto which are to be assigned or transferred as a result of this Order are subject to compliance with provisions of the Petition to Adopt Conditions to Authorization and Licenses between Vodafone, Bell Atlantic, and the United States Department of Defense, the

⁸² DOD/DOJ/FBI Agreement at Art. 4.6.

United States Department of Justice, and the United States Federal Bureau of Investigation, dated March 14, 2000, which Agreement is fully binding upon Vodafone and Bell Atlantic and those subsidiaries, successors, and assigns of both companies that provide telecommunications services within the United States and that are not controlled by a U.S. entity. Nothing in the Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. §§ 222(a) and (c)(1) and the Commission's implementing regulations.

42. 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 authorizations and licenses related thereto are subject to the condition that, prior to consummation, the parties divest properties sufficient for the proposed Bell Atlantic – Vodafone transaction to comply with the Commission's cellular cross ownership rule, 47 C.F.R. § 22.942. Failure of the parties to comply with this obligation will result in automatic cancellation of the Commission's approval hereunder and in dismissal of the relevant transfer of control or assignment applications.

43. 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), 154(j), 309, and 310(d), and section 1.925(a) of the Commission's rules, 47 C.F.R. § 1.925(a), that the requirement in 47 C.F.R. § 1.948(c)(1)(iii) and (d) that notices of consummation and FCC Forms 602 be filed subsequent to the occurrence of *pro forma* transfers of control or assignments IS HEREBY WAIVED with respect to those transfers of control and assignments involved in the international and domestic reorganization of Vodafone to permit Bell Atlantic and Vodafone to file such notices and FCC Forms 602 for those reorganization transactions and the transactions addressed herein no later than April 30, 2000.

44. 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), that the applications filed by Vodafone AirTouch Plc and Bell Atlantic Corporation in the above-captioned proceeding ARE GRANTED subject to the above conditions.

45. This action is taken pursuant to authority delegated by 47 C.F.R. §§ 0.261 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Sugrue
Chief, Wireless Telecommunications Bureau

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Chief, International Bureau