

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

In re Applications of	)	
	)	
GTE Corporation,	)	DA 00-953,
Vodafone AirTouch Plc, and	)	DA 00-1076, and
Bell Atlantic Corporation	)	DA 00-1193
	)	
For Consent to Transfer Control of or	)	
Assign Properties to Divestiture Trust and	)	
For Temporary Waiver of the CMRS	)	
Spectrum Cap Rule	)	

**ORDER**

Adopted: June 26, 2000

Released: June 26, 2000

By the Deputy Chief, Wireless Telecommunications Bureau:

1. This Order grants 14 applications filed by Bell Atlantic Corporation or its affiliates or subsidiaries (“Bell Atlantic”), GTE Corporation or its affiliates or subsidiaries (“GTE”), Vodafone AirTouch Plc or its affiliates or subsidiaries (“Vodafone”), and Joseph J. Simons, Esq., Trustee (collectively, “the Applicants”) seeking consent to transfer control of or assign licenses to a divestiture trust, and approves the divestiture trust structure. In addition, this Order grants to the current licensees a temporary waiver of the Commission’s spectrum aggregation limit.

**I. Divestiture Trust**

2. On May 3 and 4, 2000, Bell Atlantic, GTE, and Vodafone filed applications under Section 310(d) of the Communications Act, 47 U.S.C. § 310(d), seeking Commission consent to assign or transfer control of certain cellular, PCS, and microwave licenses to a trustee selected by the United States Department of Justice (“DOJ”) and approved by the U.S. District Court for the District of Columbia.<sup>1</sup> On May 12, 2000, the Wireless Telecommunications Bureau (“Bureau”), by delegated authority, issued a public notice announcing that the applications had

<sup>1</sup> The Applicants also filed applications for the transfer of international 214 authority to the trustee and for blanket authority for the trustee. *See* In the Matter of Joseph J. Simons, Trustee, File No. ITC-214-20000531-00321, Application for Global Blanket Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Offer Resale Services as an International Carrier (filed May 31, 2000); *see also*, In the Matter of Joseph J. Simons, Trustee, File No. ITC-214-20000531-00321, Letter from Nancy J. Victory to Magalie Roman Salas (filed June 16, 2000) (clarifying that the initial application should be treated as an application to transfer control of the international section 214 authority currently held by certain cellular and PCS licensee to Joseph J. Simons, Trustee). On June 23, 2000, the International Bureau granted these applications. *See In the Matter of Joseph J. Simons, Trustee*, File No. ITC-214-20000531-00321, DA 00-1408, International Telecommunications Certificate (IB, rel. June 23, 2000).

been accepted for filing and establishing a pleading cycle to permit interested parties an opportunity to comment on the proposed transaction.<sup>2</sup> On May 24, 2000, DOJ nominated Joseph J. Simons, Esq. (“Trustee”)<sup>3</sup> as the trustee, and the applications were amended to reflect the identity of the proposed trustee. This amendment was placed on public notice on May 30, 2000.<sup>4</sup> No petitions to deny or comments were received in response to these public notices.<sup>5</sup>

3. The purpose of this divestiture trust is to facilitate the closing of the merger between GTE and Bell Atlantic consistent with the Commission’s Merger Order,<sup>6</sup> the cellular cross-ownership<sup>7</sup> and spectrum aggregation<sup>8</sup> rules, and with a Revised Consent Decree among Bell Atlantic, GTE, Vodafone, and DOJ.<sup>9</sup> Closing of the merger without certain divestitures would result in violations of the Merger Order, these rules, and the Revised Consent Decree. Specifically, pursuant to the Commission’s cellular cross-ownership rule, the Merger Order, and the Revised Consent Decree, the current licensees must eliminate all cellular-cellular overlaps prior to consummating the Bell Atlantic - GTE merger.<sup>10</sup> Of the 19 cellular-cellular overlaps created by the combination of Bell Atlantic’s, Vodafone’s, and GTE’s U.S. wireless properties that require divestiture, six have already been cured through a sale to ALLTEL, and the Commission has already approved the sale to ALLTEL of another seven cellular properties.<sup>11</sup> The remaining six cellular-cellular overlaps are covered by the trust applications addressed in this Order; the current licensees request consent to cure the six remaining cellular-cellular overlaps (five in the San Francisco area and one in San Diego) by placing the properties in a divestiture trust pending divestiture to third parties.<sup>12</sup>

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<sup>2</sup> See *Bell Atlantic, GTE and Vodafone Seek Consent to Transfer Control of or Assign Properties to Divestiture Trust*, Public Notice, DA 00-1076 (rel. May 12, 2000) (Lead Application File No. 0000123023).

<sup>3</sup> The District Court approved the nomination on June 16, 2000. See *United States of America v. Bell Atlantic, GTE Corporation, and Vodafone AirTouch Plc.*, Civ. No. 1:99CV01119(EGS), Order on Motion of the United States for the Appointment of a Trustee, filed June 16, 2000.

<sup>4</sup> See *Bell Atlantic, GTE, and Vodafone File Amendment to Trust Applications to Name Trustee*, Public Notice, DA 00-1193 (rel. May 30, 2000).

<sup>5</sup> The Applicants have recently amended certain of the trust applications to reflect a corporate restructuring of certain of GTE’s license holdings. In some cases, the amendment reflects that GTE has undertaken a corporate restructuring by assigning current licenses to a different GTE subsidiary, resulting in a new assignor for certain of the trust applications. In other cases, the amendment reflects an alternative GTE corporate structure that may be in place at the time that the Trustee obtains properties. Accordingly, the form of the divestiture transactions as originally outlined in the May 12 Public Notice has changed or may change. Because the underlying changes in corporate structure are *pro forma* in nature, we accept the amendments and consent to the transactions both as originally filed and as proposed, as appropriate in each market, without the need for additional public notice.

<sup>6</sup> See *Application of GTE Corporation and Bell Atlantic Corporation*, Memorandum Opinion and Order, CC Docket No. 98-184, FCC 00-221 (rel. June 16, 2000) (“Merger Order”).

<sup>7</sup> 47 C.F.R. § 22.942.

<sup>8</sup> 47 C.F.R. § 20.6.

<sup>9</sup> *U.S. v. Bell Atlantic Corp., et al.*, Final Judgment, Civ. No. 1:99CV01119 (LFO) (D.D.C. Apr. 18, 2000) (“Revised Consent Decree”).

<sup>10</sup> 47 C.F.R. § 22.942(a).

<sup>11</sup> See Merger Order, FCC 00-221, at para. 386 (citing *Wireless Telecommunications Bureau Grants Consent to Bell Atlantic and GTE for Assignment and Transfer of Control of Certain Cellular, Microwave and Telephone Maintenance Radio Service Licenses to ALLTEL*, Public Notice, DA 00-1273 (rel. June 12, 2000)).

<sup>12</sup> We note that, last week, the current licensees announced that they intend to sell cellular properties in the six remaining cellular-cellular overlap areas to AT&T, along with a PCS property in Houston. See “AT&T to Buy Wireless Phone Systems in Three U.S. Cities for \$3.3 Billion,” June 19, 2000, available at [www.bloomberg.com/bbn/techttop](http://www.bloomberg.com/bbn/techttop). Because the sale to AT&T cannot be concluded before the anticipated

4. Closing of the merger also implicates the Commission's spectrum aggregation limit. This rule requires that, before closing the transaction that would cause a violation of the rule, the parties file applications to divest sufficient spectrum in each PCS-cellular overlap area to remain in compliance with the rule.<sup>13</sup> The Bell Atlantic – GTE merger would create impermissible overlaps between 11 PCS MTAs and 77 cellular service areas.<sup>14</sup> In three MTAs, the parties have already obtained approval to resolve overlaps by selling additional cellular properties to ALLTEL.<sup>15</sup> The overlaps created in the remaining eight MTAs are addressed by the trust applications.<sup>16</sup> In each of these MTAs, the Applicants request authority to place 20 MHz of PCS spectrum license into the divestiture trust.<sup>17</sup>

5. The current licensees may be in a position to file sufficient divestiture applications with the Commission, before closing the merger, to avoid putting properties in these markets into the divestiture trust. Because it remains unclear, however, whether the Applicants will be able to do so, they have also sought consent to place one property in each PCS-cellular overlap market into trust.<sup>18</sup> The amount of time that the Applicants will have to file applications to divest to third parties is addressed below in section II.

6. Section 20.6 of the Commission's rules, which addresses the spectrum aggregation limit, also addresses the use of divestiture trusts. The rule provides that divestiture to a trust is permitted "as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the license as it sees fit."<sup>19</sup> We have reviewed the proposed Trust Agreement as attached hereto in Exhibit A and find that it comports with the Commission's rules. We are satisfied that the Trustee will be independent, that he will be able to dispose of the

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closing of the Bell Atlantic – GTE merger, the Applicants have not withdrawn the applications that request authority to place in the divestiture trust the properties involved in the prospective AT&T transaction.

<sup>13</sup> 47 C.F.R. § 20.6(e)(4)(A). We note that the Revised Consent Decree requires the parties to close *all* divestiture transactions prior to closing the Bell Atlantic – GTE merger, but provides for two 30-day extensions in the case of PCS-cellular overlaps.

<sup>14</sup> In two additional MTAs -- Jacksonville and Milwaukee -- the overlaps created between the Verizon PCS license and GTE cellular interests do not trigger the spectrum aggregation rule because the cellular interests are minority and non-controlling.

<sup>15</sup> See Merger Order, FCC 00-221, at para. 386 (citing *Wireless Telecommunications Bureau Grants Consent to Bell Atlantic and GTE for Assignment and Transfer of Control of Certain Cellular, Microwave and Telephone Maintenance Radio Service Licenses to ALLTEL*, Public Notice, DA 00-1273 (rel. June 12, 2000)).

<sup>16</sup> The eight MTAs are: Chicago, Dallas-Forth Worth, Houston, San Antonio, Richmond-Norfolk, Cincinnati, Seattle, and Spokane. The only overlap market currently not covered by an application to divest either to a third party or to the Trustee is the overlap created by the San Antonio PCS MTA and the San Antonio cellular MSA. The current licensees state that GTE's interest in the San Antonio MSA license is a 30-percent limited partnership interest. Therefore, prior Commission approval to transfer control of or assign the interest is not required (assuming that the transfer of the interest does not otherwise effect a transfer of control in the license based on the remaining interests). Because the interest is greater than 20 percent, however, it is attributable for purposes of the spectrum aggregation limit and is included in the request for a spectrum cap waiver, discussed below.

<sup>17</sup> The licenses are currently 30 MHz, except in Seattle, which is currently 20 Mhz. Therefore, the merged entity will acquire 10 MHz of PCS spectrum in each of these MTAs, except in Seattle, where it will not acquire any PCS spectrum.

<sup>18</sup> As discussed above, *supra* note 16, the overlap created in the San Antonio MSA is not included in the trust applications.

<sup>19</sup> 47 C.F.R. § 20.6(e)(4)(A).

properties as he sees fit, and that communication between the Trustee and the Applicants will be limited to communications initiated by the Trustee seeking information needed to operate the businesses and divest the licenses.<sup>20</sup>

7. Therefore, we determine that a grant of the applications to divest to a trust is in the public interest. Because these divestitures are required by competitive concerns, however, we do not believe that the Applicants should be permitted to continue to hold the properties for 180 additional days, as would otherwise be permitted under the Commission's rule regarding time for consummation.<sup>21</sup> Instead, we permit the Applicants 60 days to consummate transactions to place properties in trust.

8. Furthermore, the Commission's rules require that a divestiture trust be of no more than six months' duration, and that any license that is not transferred from the trust within that period will be cancelled.<sup>22</sup> These applications are therefore granted on the condition that any cellular or PCS license that is transferred to the trust and that is not further transferred from the trust to an ultimate buyer within 180 days thereafter will be automatically cancelled.

## II. Spectrum Cap Waiver

9. On April 6, 2000, the Applicants requested a 90-day waiver of the spectrum aggregation rule with respect to certain of the PCS-cellular overlaps.<sup>23</sup> On May 2, 2000, the Bureau placed the request on public notice.<sup>24</sup> Two parties commented in support of the waiver;<sup>25</sup> no parties opposed granting the waiver. In an *ex parte* letter filed May 26, 2000 to support their request, the Applicants state that this is the largest set of divestitures ever required either under the Commission's rules or by DOJ, and that the size and complexity of these divestitures exceeds that of recent mergers with respect to which similar waivers were granted.<sup>26</sup>

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<sup>20</sup> We understand that DOJ may not have completed its review of the Trust Agreement. To the extent that any changes are made to the Trust Agreement, we will need to review the Trust Agreement again. Grant of the applications referenced herein is conditioned on Commission approval of any revisions to the Trust Agreement.

<sup>21</sup> See 47 C.F.R. § 1.948(d). As mentioned above, the cellular cross-ownership rule requires that transactions to divest in cellular-cellular overlap areas be consummated before consummation of the Bell Atlantic – GTE merger.

<sup>22</sup> See *In the Matter of 1998 Biennial Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers, etc.*, WT Docket Nos. 98-205 and 96-59, GN Dkt. No. 93-252, Report and Order, FCC 99-244, 1999 WL 734848 at para. 117 & n.263.

<sup>23</sup> Petition for Temporary Waiver of CMRS Spectrum Cap Rule, filed April 6, 2000, by Vodafone AirTouch Plc, Bell Atlantic Corporation, and GTE Corporation, at Attachment 1 ("Waiver Request").

<sup>24</sup> See *Wireless Telecommunications Bureau Seeks Comment on Vodafone AirTouch Plc, Bell Atlantic Corporation, and GTE Corporation Request for Temporary Waiver of Section 20.6 of the Commission's Rules*, Public Notice, DA 00-953 (rel. May 2, 2000).

<sup>25</sup> See Comments of SBC Communications Inc. in Support of Petition for Temporary Waiver of CMRS Spectrum Cap Rule, filed May 9, 2000; Comments of BellSouth Corporation in Support of Request for Temporary Divestiture Waiver, filed May 9, 2000.

<sup>26</sup> Letter to Magalie Roman Salas, Secretary, Federal Communications Commission, from Kenneth D. Patrich, Esq. Wilkinson Barker Knauer LLP, dated May 26, 2000, at 3 ("*May 26 Ex Parte Letter*") (citing *Applications of VoiceStream Wireless Holding Corporation or Omnipoint Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 3341 (2000) (*Errata*, 15 FCC Rcd 4722) and *Applications of VoiceStream Wireless Holding Corporation*, Memorandum Opinion and Order, WT Dkt. No. 00-3, DA 00-730 (WTB/IB rel. Mar. 31, 2000) at ¶ 38).

10. Further, Bell Atlantic, GTE, and Vodafone state that the divestiture process established by the Revised Consent Decree is explicitly designed to preserve and promote competition both before and after divestiture.<sup>27</sup> They note that the Revised Consent Decree provides that

[u]ntil accomplishment of the divestitures. . . [the Applicants] shall take all steps necessary to ensure that each of the wireless businesses that it owns or operates in [overlap] markets shall continue to be operated as a separate, independent, ongoing, economically viable and active competitor to the other mobile wireless telecommunications providers operating in the same license area . . . .<sup>28</sup>

Further, each of the companies must assign complete managerial responsibility over each wireless business in overlap markets to a specified manager who shall not participate in the operation of that company's other wireless businesses<sup>29</sup> and must appoint a person to oversee compliance with the reporting and "hold separate" provisions of the Revised Consent Decree.<sup>30</sup>

11. The companies state further that the Revised Consent Decree adds considerable complexity to the divestiture process, resulting in a need for greater time to accomplish the necessary divestitures. To ensure that the buyers of the divested spectrum have the capacity to compete vigorously, DOJ has sole discretion to approve the buyers, and no transactions may proceed without DOJ's affirmative approval.<sup>31</sup> The parties were required to hire investment advisors, prepare detailed offering memoranda, and circulate the memoranda widely among investment companies, existing wireless providers, small business entities, and others.<sup>32</sup> The parties are also required to maintain a due diligence facility for prospective buyers and to report to DOJ every 30 days on the status of negotiations to sell properties, including identifying all potential buyers contacted.<sup>33</sup>

12. We believe that the complex circumstances of this case warrant a temporary waiver of the spectrum aggregation rule. The parties began the divestiture process several months ago, culminating to date in sales (some consummated and some yet to be consummated) to ALLTEL and contracts to sell to AT&T, and, in the Richmond MTA, CFW Communications, Inc. Active negotiations are well underway in other markets, and in some cases, the parties have narrowed the field of potential buyers to one. In addition to the complexities of selling such a great number of properties in a coordinated effort, the divestiture procedures established by the Revised Consent Decree impose a longer timeline on these parties to accomplish divestiture transactions than would be the case in most other circumstances. Further, the hold-separate order and reporting requirements contained in the Revised Consent Decree help to alleviate competitive concerns that might be raised by granting the Applicants limited additional time to comply with the Commission's spectrum aggregation rule. In addition, the proposed merger would promote competition by furthering the development of a major nationwide wireless system. We therefore find that the public interest will be served by providing limited additional time to effect these

<sup>27</sup> *May 26<sup>th</sup> Ex Parte Letter* at 3.

<sup>28</sup> Revised Consent Decree at Section IX.A.

<sup>29</sup> *May 26<sup>th</sup> Ex Parte Letter* at 2; *see also* Revised Consent Decree at Section IX.C.

<sup>30</sup> *May 26<sup>th</sup> Ex Parte Letter* at 2; *see also* Revised Consent Decree at Section IX.D.

<sup>31</sup> *May 26<sup>th</sup> Ex Parte Letter* at 2; *see also* Revised Consent Decree at Section IX.D.

<sup>32</sup> *May 26<sup>th</sup> Ex Parte Letter* at 3; *see also* Revised Consent Decree at Section IX.D.

<sup>33</sup> *May 26<sup>th</sup> Ex Parte Letter* at 3; *see also* Revised Consent Decree at Section IX.D.

divestitures. The parties are therefore required to come into compliance with the spectrum aggregation rule within 90 days following the closing of the Bell Atlantic – GTE merger.

### III. Ordering Clauses

13. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 310(d), and section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, the applications filed by Bell Atlantic Corporation, GTE Corporation, Vodafone AirTouch Plc, and Joseph J. Simons, Esq., Trustee, for consent to assign or transfer control of certain cellular, PCS, and microwave licenses to Joseph J. Simons, Esq., Trustee, ARE GRANTED, subject to Commission approval of any subsequent revisions to the final Trust Agreement.

14. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 310(d), and section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, the Applicants are required to consummate the authority granted herein within 60 days of the date of this Order.

15. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 310(d), and section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, the cellular or PCS licenses that are put into the divestiture trust will automatically cancel if not divested to a third party within 180 days of transfer or assignment to the trust.

16. IT IS FURTHER ORDERED that, pursuant to sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and sections 0.331 and 1.925 of the Commission's Rules, 47 C.F.R. §§ 0.331 and 1.925, the Petition for Waiver of CMRS Spectrum Cap Rule, codified in section 20.6 of the Commission's rules, filed on April 6, 2000, by Bell Atlantic Corporation, GTE Corporation, and Vodafone AirTouch Plc, IS GRANTED for a period not to exceed 90 days with respect to PCS-cellular overlaps in the Chicago, Dallas-Fort Worth, Houston, San Antonio, Richmond-Norfolk, Cincinnati, Seattle, and Spokane MTAs.

FEDERAL COMMUNICATIONS COMMISSION

James D. Schlichting, Deputy Chief  
Wireless Telecommunications Bureau