law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

**FOR FURTHER INFORMATION CONTACT:** Caryn Huntt or Steve Alcorn, Deputy Area Manager, telephone and TDD: (775) 882–3436, Lahontan Basin Area Office, Attention: LO–450 or LO–101, P.O. Box 640, Carson City, NV 89702.

**SUPPLEMENTARY INFORMATION:** Derby Dam was constructed in 1903 through 1905 and is located on the Truckee River approximately 20 miles east of Reno, Nevada. The dam is an integral part of the Newlands Project and diverts Truckee River water into the Truckee Canal. Water from the Truckee Canal is used for irrigation of the Truckee Division lands along the canal and for supplemental storage at Lahontan Reservoir on the Carson River. Water stored at Lahontan Reservoir is used to irrigate land in the Carson Division of the Newlands Project.

Historically, the endangered cui-ui and threatened Lahontan cutthroat trout (LCT) species inhabited Pyramid Lake and migrated upstream in the Truckee River to spawn. Water diversions, commercial fishing, construction of dams, and other changes in the watershed impacted the ability of both species to spawn in the river. Currently three structures impede fish movements between Pyramid Lake and the lower Truckee River. Fish must negotiate Marble Bluff Dam, immediately upstream of the lake; Numana Dam, 8.3 miles upstream from the lake; and Derby Dam about 34 miles upstream from Pyramid Lake. Marble Bluff Dam and Numana Dam have fish passage facilities. A fish ladder was installed at Derby Dam in 1908, but the ladder is no longer present. Providing fish passage at Derby Dam will allow access for fish species, including LCT and possibly cui-ui, to habitat upstream of Derby Dam.

The purpose of the Derby Dam Fish Passage Project is to provide fish species with access to habitat upstream and downstream of Derby Dam, consistent with existing Derby Dam operations, Pyramid Lake and Newlands Project water rights, and flood control operations at Derby Dam. This project would not alter the operations of Derby Dam during flood or non-flood conditions, or change the 1997 adjusted Newlands Project Operating Criteria and Procedures. The project would enhance the Federal Government's ability to meet Federal trust responsibilities in the Truckee River basin.

**Special Services**

Persons requiring any special services should contact Caryn Huntt at (775) 882–3436. Please notify Ms. Huntt as far in advance of the particular meeting as possible, but no later than 3 working days prior to the meeting to enable Reclamation to secure the services. If a request cannot be honored, the requester will be notified.

Dated: December 29, 1999.

**Lester A. Snow,**

*Regional Director.*

[FR Doc. 00–132 Filed 1–4–00; 8:45 am]

**BILLING CODE 4310–94–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. Bell Atlantic Corporation et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment and Competitive Impact Statement has been filed with the United States District Court for the District of Columbia in *United States of America* v. *Bell Atlantic Corporation et al.,* Civil Action 99–1119 (LFO). On December 9, 1999, the United States filed a Supplemental Complaint alleging that the proposed merger of GTE Corporation and Bell Atlantic Corporation and the proposed partnership between Vodafone AirTouch Plc and Bell Atlantic Corporation would lessen competition in the markets for wireless mobile telephone services in 13 major trading areas, and 96 metropolitan statistical areas and rural service areas in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Supplemental Complaint, requires defendants to divest one of their two wireless telephone businesses in each market where these businesses overlap geographically. The proposed Final Judgment supersedes the proposed decree filed in May 1999 which predated Bell Atlantic Corporation's September 1999 partnership agreement with Vodafone AirTouch Plc and therefore related solely to the merger of Bell Atlantic Corporation and GTE Corporation. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 Seventh Street, NW, and at the Office of the Clerk of the United States District Court for the District of Columbia. These materials are also located on the Antitrust Division's web site (www.usdoj.gov/atr/cases.html).

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, Department of Justice, 1401 H Street, NW, Room 8000, Washington, DC 20530 (telephone: (202) 514–5621).

**Constance K. Robinson,**

*Director of Operations.*

**Stipulation**

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in this Court.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

(4) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(5) In the event plaintiff withdraws its consent, as provided in paragraph (2) above, or in the event that the Court declines to enter the proposed Final Judgment pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(6) Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: December 6, 1999.

For Plaintiff United States of America:

Joel I. Klein,

*Assistant Attorney General.*

A. Douglas Melamed,

*Principal Deputy Assistant Attorney General.*

Constance K. Robinson,

*Director of Operations and Merger Enforcement.*

Donald J. Russell,

*Chief, Telecommunications Task Force.*

Laury Bobbish,

*Assistant Chief, Telecommunications Task Force.*

Hillary B. Burchuk, D.C. Bar No. 366755;

Lawrence M. Frankel; D.C. Bar No. 441532.

Susan Wittenberg; D.C. Bar No. 453692;

*Attorneys, Telecommunications Task Force.*

*U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 8000, Washington, D.C. 20530, (202) 514–5621.*

Date Signed: December 6, 1999.

For Bell Atlantic Corporation:

John Thorne,

*D.C. Bar No. 421351, Bell Atlantic Corporation, 1320 North Courthouse Road, Eighth Floor, Arlington, Virginia 22201, (703) 974–1600.*

Date Signed: December 6, 1999.

For GTE Corporation:

Steven G. Bradbury,

*D.C. Bar No. 416430, Kirkland & Ellis, 655 15th Street, N.W., Washington, DC 20005, (202) 879–5000.*

Date Signed: December 6, 1999.

For Vodafone Airtouch PLC

Megan Pierson,

*AirTouch Communications, Inc., One California Street, San Francisco, CA 94111, (415) 658–2157.*

Date Signed: December 3, 1999.

Stipulation Approved for Filing.

Done this day of December, 1999.

United States District Judge

**Final Judgment**

*Whereas,* plaintiff, United States of America, filed its Motion for Leave to File Supplemental Complaint on December 6, 1999.

*And whereas,* plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication on any issue of fact or law;

*And whereas,* entry of this Final Judgment does not constitute any evidence against or an admission by any party with respect to any issue of law or fact;

*And whereas,* defendants have further consented to be bound by the provisions of the Final Judgment pending its approval by the Court;

*And whereas,* plaintiff the United States believes that entry of this Final Judgment is necessary to protect competition in markets for mobile wireless telecommunications services in Alabama, Arizona, California, Florida, Idaho, Illinois, Indiana, Montana, New Mexico, Ohio, South Carolina, Texas, Virginia, Washington and Wisconsin.

*And whereas,* the essence of this Final Judgment is prompt and certain divestiture of certain wireless businesses that would otherwise be commonly owned and in many cases controlled, including their licenses and all relevant assets of the wireless businesses, and the imposition of related injunctive relief to ensure that competition is not substantially lessened;

*And whereas,* plaintiff the United States requires that defendants make certain divestitures of such licenses and assets for the purpose of ensuring that competition is not substantially lessened in any relevant market for mobile wireless telecommunications services in Alabama, Arizona, California, Florida, Idaho, Illinois, Indiana, Montana, New Mexico, Ohio, South Carolina, Texas, Virginia, Washington and Wisconsin.

*And whereas,* defendants have represented to plaintiff that the divestitures ordered herein can and will be made and that defendants will not raise any claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained herein below;

*Therefore,* before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged* and *decreed:*

*I. Jurisdiction*

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Supplemental Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, 15 U.S.C. 18, as amended.

*II. Definitions*

A. ''Bell Atlantic'' means Bell Atlantic Corporation, a corporation with its headquarters in New York City, New York and includes its successors and assigns, its subsidiaries and affiliates, and the directors, officers, managers, agents and employees acting for or on behalf of any of the foregoing entities.

B. ''Bell Atlantic/GTE Merger'' means the merger of Bell Atlantic and GTE, as detailed in the Agreement and Plan of Merger entered into Bell Atlantic and GTE on July 28, 1998.

C. ''Bell Atlantic/Vodafone Partnership'' means the partnership between Bell Atlantic and Vodafone as detailed in the U.S. Wireless Alliance Agreement among Bell Atlantic Corporation and Vodafone AirTouch Plc dated September 21, 1999.

D. ''GTE'' means GTE Corporation, a corporation with its headquarters in Irving, Texas and includes its successors and assigns, its subsidiaries and affiliates, and the directors, officers, managers, agents and employees acting for or on behalf of any of the foregoing entities.

E. ''Overlapping Wireless Markets'' means the following Metropolitan Statistical Areas (''MSA''), Major Trading Areas (''MTA''), and Rural Service Areas (''RSA'') used to define cellular and PCS license areas by the Federal Communications Commission (''FCC''), in which, as of the date of the filing of the Motion for Leave to File Supplemental Complaint in this case, Bell Atlantic and GTE held an interest in cellular and PCS businesses, and Vodafone held, or has plans to acquire,[1] an ownership interest in cellular and PCS businesses which serve the following MTAs, MSAs and RSAs that geographically overlap with the cellular and/or PCS business of another defendant, as indicated:

**I. Cellular/Cellular Overlap Areas**

A. Bell Atlantic Cellular/Vodafone Cellular Overlap Areas

1. Arizona

[1] Pursuant to a July 18, 1999 purchase agreement, Vodafone plans to acquire interests in cellular businesses from CommNet Cellular Inc. (''CommNet'') that overlap with GTE's PCS business in the following RSAs: Idaho 2-Idaho RSA; Montana 1-Lincoln RSA.

a. Phoenix MSA
b. Tucson MSA
c. Arizona 2-Coconino RSA
2. New Mexico
a. Albuquerque MSA
B. Bell Atlantic Cellular/GTE Cellular Overlap Areas
1. Mew Mexico
a. Las Cruces MSA
2. South Carolina
a. Greenville MSA
b. Anderson MSA
3. Texas
a. El Paso MSA
C. GTE Cellular/Vodafone Cellular Overlap Areas
1. California
a. Salinas-Monterey-Seaside MSA
b. San Diego MSA
c. San Francisco MSA
d. San Jose MSA
e. Santa Rosa-Petaluma MSA
f. Vallejo-Napa-Fairfield MSA
2. Ohio
a. Akron MSA
b. Canton MSA
c. Cleveland MSA
d. Lorain-Elyria MSA
e. Ohio 3-Ashtabula RSA

**II. PCS/Cellular Overlap Areas**

A. PrimeCo PCS/GTE Cellular Overlap Areas [2]
1. Jacksonville MSA
a. Jacksonville MSA
b. Florida 5-Putnam RSA
2. Miami-Fort Lauderdale MTA
a. Fort Myers MSA
b. Florida 1-Collier (B1) RSA
c. Florida 2-Glades (B1) RSA
d. Florida 3-Hardee RSA
e. Florida 11-Monroe (B2) RSA
3. Tampa-St. Petersburg-Orlando MTA
a. Tampa-St. Petersburg MSA
b. Lakeland-Winter Haven MSA
c. Sarasota MSA
d. Bradenton MSA
e. Florida 2-Glades (B1) RSA
f. Florida 3-Hardee RSA
g. Florida 4-Citrus (B1) RSA
4. New Orleans-Baton Rouge MTA
a. Mobile, AL MSA
b. Pensacola, FL MSA
5. Chicago MTA
a. Auroa-Elgin, IL MSA
b. Bloomington-Normal, IL MSA
c. Champaign-Urbana-Rantoul, IL MSA
d. Chicago, IL MSA
e. Decatur, IL MSA
f. Fort Wayne, IN MSA
g. Gary-Hammond-East Chicago, IN MSA
h. Joliet, IL MSA
i. Kankakee, IL MSA
J. Rockford, IL MSA
k. Springfield, IL MSA
l. Illinois 1-Jo Daviess RSA
m. Illinois 2-Bureau (B1) RSA
n. Illinois 2-Bureau (B3) RSA
o. Illinois 4-Adams (B1) RSA
p. Illinois 5-Mason (B2) RSA
q. Illinois 6-Montgomery RSA
r. Illinois 7-Vermilion RSA
s. Indiana 1-Newton (B1) RSA
t. Indiana 1-Newton (B2) RSA
u. Indiana 3-Huntington RSA
6. Dallas-Fort Worth MTA
a. Dallas-Fort Worth MSA
b. Austin MSA
c. Sherman-Denison MSA
d. Texas 10-Navarro (B3) RSA
e. Texas 11-Cherokee (B1) RSA
f. Texas 16-Burleson RSA
7. Houston MTA
a. Houston MSA
b. Beaumont-Port Arthur MSA
c. Galveston MSA
d. Bryan-College Station MSA
e. Victoria MSA
f. Texas 10-Navarro (B3) RSA
g. Texas 11-Cherokee (B1) RSA
h. Texas 16-Burleson RSA
i. Texas 17-Newton RSA
j. Texas 20-Wilson (B2) RSA
k. Texas 21-Chambers RSA
8. San Antonio MTA
a. San Antonio MSA
b. Texas 16-Burleson RSA
c. Texas 20-Wilson (B2) RSA
9. Richmond-Norfolk MTA
a. Norfolk-Virginia Beach-Portsmouth MSA
b. Richmond MSA
c. Newport News—Hampton MSA
d. Petersburg—Colonial Heights MSA
e. Virginia 7—Buckingham (B1) RSA
f. Virginia 8—Amelia RSA
g. Virginia 9—Greensville RSA
h. Virginia 11—Madison (B1) RSA
i. Virginia 12—Caroline (B1) RSA
j. Virginia 12—Caroline (B2) RSA
10. Milwaukee MTA
a. Wisconsin 8—Vernon RSA
B. GTE PCS/Vodafone Cellular Overlap Areas
1. Cincinnati—Dayton MTA
a. Cincinnati MSA
b. Dayton MSA
c. Hamilton/Middleton MSA
d. Springfield MSA
e. Ohio 4—Mercer RSA
f. Ohio 8—Clinton RSA
2. Seattle MTA
a. Bellingham MSA
b. Bremerton MSA
c. Olympia MSA
d. Seattle—Everett MSA
e. Tacoma MSA
f. Washington 1—Clallam RSA
g. Washington 2—Okanagan RSA
h. Washington 4—Gray's Harbor RSA
3. Spokane—Billings MTA
a. Spokane MSA
b. Idaho 1—Boundary RSA
c. Idaho 2—Idaho RSA
d. Montana 1—Lincoln RSA
e. Washington 3—Ferry RSA

F. ''Vodafone'' means Vodafone AirTouch Plc, an English public limited company with its headquarters in Newbury, Berkshire, England, and includes its successors and assigns, its subsidiaries and affiliates, and the directors, officers, managers, agents and employees acting for or on behalf of any of the foregoing entities.

G. ''Wireless System Assets'' means, for each wireless business to be divested under this Final Judgment, all types of assets, tangible and intangible, used by defendants in the operation of the wireless businesses to be divested (including the provision of long distance telecommunications services for wireless calls). ''Wireless System Assets'' shall be construed broadly to accomplish the complete divestitures of the entire business of one of the two wireless systems in each of the Overlapping Wireless Markets required by this Final Judgment and to ensure that the divested wireless businesses remain viable, ongoing businesses. With respect to each overlap in the Overlapping Wireless Markets created by the consummation of a transaction between any of the defendants, the Wireless System Assets to be divested shall be either those in which one party to the transaction has an interest or those in which the other party to the transaction has or will acquire an interest, but not both. These divestitures of the Wireless System Assets in the Overlapping Wireless Markets as defined in Section II.E shall be accomplished by: (1) transferring to the purchaser the complete ownership and/or other rights to the assets (other than those assets used substantially in the operations of either defendant's overall wireless business that must be retained to continue the existing operations of the wireless properties defendants are not required to divest, and that either are not capable of being divided between the divested wireless businesses and those that are not divested or are assets that the divesting defendant and the purchaser(s) agree shall not be divided); and (ii) granting to the purchaser(s) an option to obtain a non-exclusive, transferable license from defendants for a reasonable period at the election of the purchaser to use any of the divesting defendant's assets used in the operation of the wireless business being divested, so as to enable the purchaser to continue to operate the divested wireless businesses without impairment, where those assets are not subject to complete transfer to the purchaser under (i). Assets shall include, without limitation, all types of real and personal property, monies and financial instruments, equipment, inventory, office furniture, fixed assets and furnishings, supplies and materials, contracts, agreements, leases, commitments, spectrum licenses issued by the FCC and all other licenses, permits and authorizations, operational support systems, customer support and billing systems, interfaces with other service providers, business and customer records and information,

[2] Bell Atlantic and Vodafone, as of the date of the filing of the Motion for Leave to File Supplemental Complaint, are partners in PCS Prime-Co, L.P. (''PrimeCo''). PrimeCo currently operates PCS businesses in ten MTAs, which geographically overlap with GET's cellular businesses.

customer lists, credit records, accounts, and historic and current business plans, as well as any patents, licenses, sub-licenses, trade secrets, know-how, drawings, blueprints, designs, technical and quality specifications and protocols, quality assurance and control procedures, manuals and other technical information defendants supply to their own employees, customers, suppliers, agents, or licensees, and trademarks, trade names and service marks (except for trademarks, trade names and service marks containing ''1–800–BUY–TIME,'' ''Airbridge,'' ''AirTouch,'' ''AmericaChoice,'' ''Bell Atlantic Mobile,'' ''Cellular One,'' ''Conversation Card,'' ''DitigalChoice,'' ''EasternChoice,'' ''GTE,'' ''HomeChoice,'' ''International Traveler,'' ''Megaphone,'' ''MetroMobile,'' ''Mobilnet,'' ''No Regrets,'' ''Now You Can,'' ''PCS Now,'' ''PCS Home,'' ''PCS Ultra,'' ''Portal Phone,'' ''PrimeCo,'' ''Vodafone,'' ''Welcome to the United States of America,'' and ''WesternChoice'') or other intellectual property, including all intellectual property rights under third party licenses that are capable of being transferred to a purchaser either in their entirety, for assets described above under (i), or through a license obtained through or from the divesting defendant, for assets described above under (ii). Defendants shall identify in a schedule submitted to plaintiff and filed with the Court, as expeditiously as possible following the filing of the Supplemental Complaint in this case and in any event prior to any divestitures and before the approval by the Court of this Final Judgment, any intellectual property rights under third party licenses that are used by the wireless businesses being divested but that defendants could not transfer to a purchaser entirely or by license without third party consent, and the specific reasons why such consent is necessary and how such consent would be obtained for each asset.

1. In the event that defendants elect to divest an interest in a PCS business in one of the PCS/Cellular Overlap Areas, defendants may retain up to 10 MHz of broadband PCS spectrum within that PCS/Cellular Overlap Area upon completion of the divestiture of the Wireless System Assets.

2. In the event that defendants elect to divest an interest in a PCS business in one of the PCS/Cellular Overlap Areas, defendants, at least 90 calendar days prior to the consummation of the transaction which gives rise to the overlap, may request approval from plaintiff to partition the PCS license along Basic Trading Area (''BTA'') geographic boundaries, or in the case of Kenosha County, Wisconsin, county boundaries, and to retain assets in one or more specified non-overlapping BTAs or in Kenosha County, Wisconsin. Plaintiff's approval of the request shall be subject to a determination by plaintiff in its sole discretion that the assets to be retained in the non-overlapping BTAs or Kenosha County, Wisconsin, are not needed to ensure the competitive effectiveness of the divested business in the remainder of the MTA, and that the purchaser of the Wireless System Assets in the remainder of the MTA will be able to operate the divested PCS business as a fully competitive entity.

3. In a PCS/Cellular Overlap Area where a defendant holds a non-controlling minority interest in an overlapping cellular business, defendants, at least 90 calendar days prior to the consummation of the transaction which gives rise to the overlap, may request approval from plaintiff to retain both the PCS business and the non-controlling minority interest in such overlapping cellular business. Plaintiff's approval of the request shall be subject to a determination by plaintiff in its sole discretion that the retention of a non-controlling minority interest will be entirely passive and will not significantly diminish competition.

*III. Applicability and Effect*

A. The provisions of this Final Judgment shall be applicable to Bell Atlantic, GTE, and Vodafone, as defined above, the attorneys of each of the above, and shall also be applicable to all other persons in active concert or participation with any of the above who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition to an Interim Party, which shall be defined to mean any person other than a purchaser approved by plaintiff pursuant to Section IV.C, of all or substantially all of their assets, or of a lesser business unit containing the Wireless System Assets required to be divested by this Final Judgment, that the Interim Party agrees to be bound by the provisions of this Final Judgment, and shall also require that any purchaser of the Wireless System Assets agree to be bound by Section X of this Final Judgment.

*IV. Divestiture of Wireless Interests*

A. Defendants Bell Atlantic, Vodafone and GTE shall divest themselves of the Wireless System Assets of one of the two wireless businesses in each of the Overlapping Wireless Markets, including both any direct or indirect financial ownership interests and any direct or indirect role in management or participation in control, to a purchaser or purchasers acceptable to plaintiff in its sole discretion, or to a trustee designated pursuant to Section V of this Final Judgment in accordance with the following schedule:

1. The divestiture of the Wireless System Assets for each Cellular/Cellular Overlap Area shall occur prior to or at the same time as consummation of the transaction that gives rise to the overlap.

2. The divestitures of the Wireless System Assets for each PCS/Cellular Overlap Area shall occur prior to or at the same time as consummation of the transaction that gives rise to the overlap, or June 30, 2000, whichever is later. Plaintiff may, in its sole discretion, extend this date by up to two thirty-day periods. If one or more divestitures have not been completed as of the date of the consummation of the transaction that gives rise to the overlap, defendants will submit to plaintiff a definitive Divestiture List identifying the specific Wireless System Assets in each of the PCS/Cellular Overlap Areas that will be divested.

B. Defendants agree to use their best efforts to accomplish the divestitures set forth in this Final Judgment and to seek all necessary regulatory approvals as expeditiously as possible. The divestitures carried out under the terms of this decree shall also be conducted in compliance with the applicable rules of the FCC, including 47 CFR 20.6 (spectrum aggregation) and 47 CFR 22.942 (cellular cross-ownership), or any waiver of such rules or other authorization granted by the FCC. Authorization by the FCC to conduct divestiture of a cellular business in a particular manner will not modify any of the requirements of this decree.

C. Unless plaintiff otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of the Final Judgment, shall be accomplished by (1) divesting all of the Wireless System Assets in any individual Overlapping Wireless Market entirely to a single purchaser (but Wireless System Assets used by any defendant in the operation of its cellular business in different Overlapping Wireless Markets may be divested to different purchasers), and (2) selling or otherwise conveying the Wireless System Assets to the purchaser(s) in such a way as to satisfy plaintiff, in its sole discretion, that each wireless business can and will be used by the purchaser(s) as part of a viable,

ongoing business engaged in the provision of wireless mobile telephone service. The divestitures pursuant to this Final Judgment shall be made to one or more purchasers for whom it is demonstrated to plaintiff's sole satisfaction that (1) the purchaser has the capability and intent of competing effectively in the provision of wireless mobile telephone service using the Wireless System Assets, (2) the purchaser has the managerial, operational and financial capability to compete effectively in the provision of wireless mobile telephone service using the Wireless System Assets, and (3) none of the terms of any agreement between the purchaser and any of the defendants shall give defendants the ability unreasonably (i) to raise the purchaser's costs, (ii) to lower the purchaser's efficiency, (iii) to limit any line of business which a purchaser may choose to pursue using the Wireless System Assets (including, but not limited to, entry into local telecommunications services on a resale or facilities basis or long distance telecommunications services on a resale or facilities basis), or otherwise to interfere with the ability of the purchaser to compete effectively.

D. If they have not already done so, defendants shall make known the availability of the Wireless System Assets in each of the Overlapping Wireless Markets by usual and customary means, sufficiently in advance of the time of consummation of any transaction which gives rise to an overlap in an Overlapping Wireless Market, reasonably to enable the required divestitures to be accomplished according to the schedule outlined herein. Defendants shall inform any person making an inquiry regarding a possible purchase of the Wireless System Assets that the sale is being made pursuant to the requirements of this Final Judgment, as well as the rules of the FCC, and shall provide such person with a copy of the Final Judgment.

E. Defendants shall offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, access to personnel, the ability to inspect the Wireless System Assets, and all information and any financial, operational, or other documents customarily provided as part of a due diligence process, including all information relevant to the sale and to the areas of business in which the cellular business has been engaged or has considered entering, except documents subject to attorney-client or work product privileges, or third party intellectual property that defendants are precluded by contract from disclosing and that has been identified in a schedule pursuant to Section II.G. Defendants shall make such information available to the plaintiff at the same time that such information is made available to any other person.

F. Defendants shall not interfere with any negotiations by any purchaser to retain any employees, for Bell Atlantic and GTE who work or have worked since July 29, 1998, and for Vodafone who work or have worked since September 21, 1999 (other than solely on a temporary assignment basis from another part of Bell Atlantic, Vodafone or GTE) with, or whose principal responsibility relates to, the divested Wireless System Assets.

G. To the extent that the wireless businesses to be divested use intellectual property, as required to be identified by Section II.G, that cannot be transferred or assigned without the consent of the licensor or other third parties, defendants shall cooperate with the purchaser(s) and trustee to seek to obtain those consents.

H. Defendants shall preserve all records of all efforts made to preserve and divest any or all of the Wireless System Assets required to be divested until the termination of this Final Judgment.

*V. Appointment of Trustee*

A. If defendants have not divested all of the Wireless System Assets required to be divested in accordance with Section IV to a purchaser or purchasers that have been approved by plaintiff pursuant to Section IV.C, then:

1. Defendants that are party to a transaction that gives rise to an overlap shall identify to plaintiff in writing the remaining Wireless System Assets to be divested in the Overlapping Wireless Markets, and this written notification shall also be provided to the trustee promptly upon his or her appointment by the Court;

2. The Court shall, on application of plaintiff, appoint a trustee selected by plaintiff, who will be responsible for (a) accomplishing a divestiture of all Wireless System Assets transferred to the trustee from defendants, in accordance with the terms of this Final Judgment, to a purchaser or purchasers approved by plaintiff under Section IV.C, and (b) exercising the responsibilities of the licensee and controlling and operating the transferred Wireless System Assets, to ensure that the wireless businesses remain ongoing, economically viable competitors in the provision of mobile wireless telecommunications services in the Overlapping Wireless Markets, until they are divested to a purchaser or purchasers, and the trustee shall agree to be bound by this Final Judgment.

3. Defendants shall submit a form of trust agreement (''Trust Agreement'') to plaintiff, which must be consistent with the terms of this Final Judgment and which must have received approval by plaintiff, who shall communicate to defendants within ten (10) business days approval or disapproval of that form; and

4. After obtaining any necessary approvals from the FCC for the transfer of control of the licenses of the remaining Wireless System Assets to the trustee, defendants shall irrevocably divest the remaining Wireless System Assets to the trustee, who will own such assets (or own the stock of the entity owning such assets, if divestiture is to be effected by the creation of such an entity for sale to purchaser(s)) and control such assets, subject to the terms of the approved Trust Agreement.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the wireless business(es) to be divested, which shall be done within the time periods set forth in this Final Judgment. Those assets shall be the Wireless System Assets as designated by defendants as set forth in Section V.A.1 for the Overlapping Wireless Markets. In addition, notwithstanding any provision to the contrary, plaintiff may, in its sole discretion, require defendants to include additional assets that substantially relate to the wireless mobile telephone business in the Wireless System Assets to be divested if it would facilitate a prompt divestiture to an acceptable purchaser. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment. Subject to Section V.C of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture and in the management of the Wireless System Assets transferred to the trustee, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to plaintiff in its sole discretion, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds

other than the trustee's malfeasance. Any such objections by the defendants must be conveyed in writing to plaintiff and the trustee within ten (10) days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the wireless business(es) sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee and of professionals and agents retained by the trustee shall be reasonable in light of the value of the divested wireless business(es) and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture, including their best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the wireless business(es) to be divested, and defendants shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. As required and limited by Sections IV.E and F of this Final Judgment, defendants shall permit prospective purchaser(s) of the Wireless System Assets to have reasonable access to personnel and to make such inspection of the Wireless System Assets to be sold and any and all financial, operational, or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After being appointed and until the divestiture of the Wireless System Assets is complete, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that, to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring the Wireless System Assets to be sold, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Wireless System Assets.

F. The Trustee shall divest the Wireless System Assets in each of the Overlapping Wireless Markets to a purchaser or purchasers acceptable to plaintiff in its sole discretion, as required in Section IV.C of this Final Judgment, no later than one hundred and eighty (180) calendar days after the Wireless System Assets are transferred to a trustee in accordance with the schedule outlined in Section IV, provided however, that if applications have been filed with the FCC within the one hundred eighty day period seeking approval to assign or transfer licenses to the purchaser(s) of the Wireless System Assets but approval of such applications has not been granted before the end of the one hundred eighty day period, the period shall be extended with respect to the divestiture of those Wireless System Assets for which final FCC approval has not been granted until five (5) days after such approval is received.

G. If the trustee has not accomplished the divestiture of all of the Wireless System Assets within the time specified for completion of divestiture to a purchaser or purchasers under Section V.F of this Final Judgment, the trustee thereupon shall file promptly with this Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations; provided, however, that, to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it deems appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period agreed to by plaintiff.

H. After defendants transfer the Wireless System Assets to the trustee, and until those Wireless System Assets have been divested to a purchaser or purchasers approved by plaintiff pursuant to Section IV.C, the trustee shall have sole and complete authority to manage and operate the Wireless System Assets and to exercise the responsibilities of the licensee, and shall not be subject to any control or direction by defendants. Defendants shall not retain any economic interest in the Wireless System Assets transferred to the trustee, apart from the right to receive the proceeds of the sale or other disposition of the Wireless System Assets. The trustee shall operate the wireless business(es) as a separate and independent business entity from each of the defendants, with sole control over operations, marketing and sales. Defendants shall not communicate with, or attempt to influence the business decisions of, the trustee concerning the operation and management of the wireless businesses, and shall not communicate with the trustee concerning the divestiture of the Wireless System Assets or take any action to influence, interfere with, or impede the trustee's accomplishment of the divestitures required by this Final Judgment, except that defendants may communicate with the trustee to the extent necessary for defendants to comply with this Final Judgment and to provide the trustee, if requested to do so, with whatever resources or cooperation may be required to complete the divestitures of the Wireless System Assets and to carry out the requirements of this Final Judgment. In no event shall defendants provide to, or receive from, the trustee or the wireless businesses under the trustee's control any non-public or competitively sensitive marketing, sales, or pricing information relating to their respective mobile wireless telecommunications service businesses.

*VI. Notification*

A. Within two (2) business days following execution of a binding agreement to effect, in whole or in part, any proposed divestiture required by this Final Judgment, whichever defendant is divesting the Wireless System Assets, or the trustee if the trustee is divesting the Wireless System Assets, shall notify plaintiff of the proposed divestiture. If the trustee is responsible for the divestiture, the trustee shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified

who theretofore offered to, or expressed an interest in or a desire to, acquire any ownership interest in the Wireless System Assets that are the subject of the binding agreement, together will full details of same.

B. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendants, the proposed purchaser(s), any other third party, or the trustee (if applicable), additional information concerning the proposed divestiture and the proposed purchaser(s) or any other potential purchaser(s). Defendants and the trustee shall furnish any such additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice, or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendants, the proposed purchaser(s), any third party, or the trustee, whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not plaintiff objects to the proposed divestiture. If plaintiff provides written notice to defendants and the trustee, if there is one, that it does not object, then the divestiture may be consummated subject only to defendants' limited right to object to the sale under Section V.B of this Final Judgment. Absent written notice that plaintiff does not object to the proposed purchaser(s) or in the event of an objection by plaintiff, a divestiture shall not be consummated. Upon objection by a defendant under the proviso of Section V.B, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

*VII. Affidavits*

A. Within twenty (20) calendar days of the filing of the Motion for Leave to File Supplemental Complaint in this matter and every thirty (30) calendar days thereafter until all divestitures have been completed, defendants shall deliver to plaintiff an affidavit as to the fact and manner of defendants' compliance with this Final Judgment. Each such affidavit shall (i) include, *inter alia,* the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any or all of the Wireless System Assets required to be divested, (ii) describe in detail each contact with any such person during that period, and (iii) include a summary of the efforts that defendants have made to solicit a purchaser(s) for the Wireless System Assets to be divested in the Overlapping Wireless Markets pursuant to this Final Judgment and to provide required information to prospective purchasers.

B. Within twenty (20) calendar days of the filing of the Motion for Leave to File Supplemental Complaint in this matter, defendants shall deliver to plaintiff an affidavit which describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to preserve the Wireless System Assets to be divested pursuant to this Final Judgment. Defendants shall deliver to plaintiff another affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to Section VII.B of this Final Judgment within fifteen (15) calendar days after the charge is implemented.

*VIII. Financing*

Defendants shall not finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment.

*IX. Hold Separate Order*

A. Until accomplishment of the divestitures of the Wireless System Assets to purchaser(s) approved by plaintiff pursuant to Section IV.C, each defendant shall take all steps necessary to ensure that each of the wireless businesses that it owns or operates in the Overlapping Wireless 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; and that except as necessary to comply with this Final Judgment, the operation of said wireless businesses (including the performance of decision-making functions relating to marketing and pricing) will be kept separate and apart from, and not influenced by, the operation of the other wireless business, and the books, records, and competitively sensitive sales, marketing, and pricing information associated with said wireless businesses will be kept separate and apart from the books, records, and competitively sensitive sales, marketing, and pricing information associated with the other wireless business; provided that defendants may continue to use any trademarks, trade names or service marks used in the operation of such wireless businesses prior to the consummation of the Bell Atlantic/GTE Merger and/or the creation of the Bell Atlantic/Vodafone Partnership.

B. Until the Wireless System Assets in each Overlapping Wireless Market have been divested to purchaser(s) approved by plaintiff, or transferred to a trustee pursuant to Section V of this Final Judgment, each defendant shall in accordance with past practices, with respect to each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets;

1. Use all reasonable efforts to maintain and increase sales of wireless mobile telephone services, and maintain and increase promotional, advertising, sales, technical assistance, and marketing support for the mobile telephone service sold by the wireless businesses;

2. Take all steps necessary to ensure that each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets is fully maintained in operable condition and shall maintain and adhere to normal maintenance schedules;

3. Provide and maintain sufficient working capital and lines and sources of credit to maintain the Wireless System Assets as viable ongoing businesses;

4. Not remove, sell, lease, assign, transfer, pledge or otherwise dispose of or pledge as collateral for loans, any asset of each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets, other than in the ordinary course of business, except as approved by plaintiff;

5. Maintain, in accordance with sound accounting principles, separate, true, accurate and complete financial ledgers, books and records that report, on a periodic basis, such as the last business day of each month, consistent with past practices, the assets, liabilities, expenses, revenues, income, profit and loss of each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets;

6. Be prohibited from terminating, transferring, or altering to the detriment of any employees who work with each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets as of the date of consummation of the Bell Atlantic/GTE Merger or the creation of the Bell Atlantic/Vodafone Partnership, any current employment or salary agreements, except: (a) In the ordinary course of business, (b) for transfer bids initiated by employees pursuant to defendants' regular, established job posting policies, (c) for an individual who has a written offer of employment

from a third party for a like position, or (d) as necessary to promote accomplishment of defendants' obligations under this Final Judgment; and

7. Take no action that would impede in any way or jeopardize the sale of each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets.

C. On or before the consummation of the Bell Atlantic/GTE Merger or the creation of the Bell Atlantic/Vodafone Partnership, defendants shall assign complete managerial responsibility over each wireless business that they have an ownership interest in or operate in the Overlapping Wireless Markets to a specified manager who shall not participate, during the period of such responsibility, in the management of any of defendants' other businesses.

D. Defendants shall, during the period before all Wireless System Assets have been divested to a purchaser(s) or transferred to the trustee pursuant to Section V of this Final Judgment, each appoint a person or persons to oversee the Wireless System Assets owned by that defendant, who will be responsible for defendants' compliance with the requirements of Sections VII and IX of this Final Judgment. Such person(s) shall not be an officer, director, manager, employee, or agent of another defendant.

*X. Compliance Inspection*

For the purposes of determining or securing compliance of defendants with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the relevant defendant made to its principal office, shall be permitted without restraint or interference from defendants:

1. To have access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, and to take sworn testimony from the officers, directors, employees, or agents of defendants, who may have counsel present, relating to any matters contained in this Final Judgment.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to defendants at their principal offices, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this Section X or Sections VI and VII shall be divulged by plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, or to the FCC (pursuant to a customary protective order or a waiver of confidentiality by defendants), except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents as to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days' notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

*XI. Retention of Jurisdiction*

Jurisdiction is retained by this Court for the purposes of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

*XII. Further Provisions and Termination*

A. The entry of this judgment is in the public interest.

B. Unless this Court grants an extension, this Final Judgment shall expire on the tenth anniversary of the date of its entry.

United States District Judge

*Certificate of Service*

I hereby certify that copies of the foregoing Motion for Leave to File Supplemental Complaint and Memorandum of Points and Authorities in Support thereof were served this 6th day of December, 1999 upon the following:

John Thorne (by hand),

*Bell Atlantic Corporation, 1320 North Court House Road, Eighth Floor, Arlington, VA 22201, Counsel for Defendant Bell Atlantic Corporation.*

Steven G. Bradbury (by hand),

*Kirkland & Ellis, 655 Fifteenth Street, NW, Washington, DC 20005, Counsel for Defendant GTE Corporation.*

Megan Pierson (by first class mail postage prepaid),

*AirTouch Communications, Inc., One California Street, San Francisco, CA 94111, Counsel for Vodafone AirTouch Plc.*

**Lawrence M. Frankel,**

*Counsel for Plaintiff United States of America.*

**Competitive Impact Statement**

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (''APPA''), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

*I. Nature and Purpose of the Proceeding*

The United States filed a civil antitrust Supplemental Complaint on December 9, 1999 alleging that: (1) The proposed acquisition of GTE Corporation (''GTE'') by Bell Atlantic Corporation (''Bell Atlantic'') (2) the proposed partnership between Bell Atlantic and Vodafone AirTouch Plc (''Vodafone''); and (3) the combined effect of these two transactions would violate Section 7 of the Clayton Act, 15 U.S.C. 18 by lessening competition in the markets for wireless mobile telephone services in 13 major trading areas (''MTAs''), as well as 96 metropolitan statistical areas (''MSAs'') and rural service areas (''RSAs'') in Alabama, Arizona, California, Florida, Idaho, Illinois, Indiana, Montana, New Mexico, Ohio, South Carolina, Texas, Virginia, Washington, and Wisconsin.[1]

[1] The original Complaint in this proceeding was filed on May 7, 1999, challenging the July 28, 1998, merger agreement between Bell Atlantic and GTE (''Bell Atlantic/GTE Merger''). On September 21, 1999, Bell Atlantic and Vodafone entered into an agreement to create a partnership (''Bell Atlantic/Vodafone Partnership'') with the intent of combining the wireless businesses of Bell Atlantic, Vodafone, and GTE into a national wireless network. On December 6, 1999, the United States filed a motion requesting leave to file a Supplemental Complaint and to add Vodafone as a defendant to this action. That motion was granted

Shortly before the Supplemental Complaint was filed, the United States and defendants reached agreement on the terms of a revised proposed Final Judgment. The revised proposed Final Judgment [2] requires Bell Atlantic, Vodafone, or GTE to divest wireless assets in 96 markets. These overlapping markets include: (1) 58 MSAs and RSAs where GTE owns in whole or in part a cellular mobile telephone services business that overlaps part of one of the 10 MTAs where Bell Atlantic and Vodafone provide personal communications services through PCS PrimeCo, L.P. (''PrimeCo''), a business half owned by Bell Atlantic and half owned by Vodafone; (2) four MSAs where Bell Atlantic and GTE own in whole or in part competing cellular mobile wireless telephone businesses; (3) three MSAs and one RSA where Bell Atlantic and Vodafone own in whole or in part competing cellular mobile wireless telephone businesses; (4) ten MSAs and one RSA where Vodafone and GTE own in whole or part competing cellular mobile wireless telephone businesses; and (5) ten MSAs and nine RSAs where Vodafone owns, or will own, in whole or part, a cellular mobile wireless telephone business that competes with GTE wireless PCS telephone business that overlaps all or part of the area. These 96 overlap areas are collectively identified in the Supplemental Complaint as the ''Overlapping Wireless Markets.''

In each of the Overlapping Wireless Markets, defendants can choose which wireless business to divest. The proposed Final Judgment also contains provisions, explained below, designed to minimize any risk of competitive harm that otherwise might arise pending completion of the divestiture. The proposed Final Judgment and a Stipulation by plaintiff and defendants consenting to its entry were filed simultaneously with the Supplemental Complaint.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (''APPA''). Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. The United States and defendants have also stipulated that defendants will comply with the terms of the proposed Final Judgment from the date of signing of the Stipulation, pending entry of the Final Judgment by the Court. Should the Court decline to enter the Final Judgment, defendants have also committed to continue to abide by its requirements until the expiration of time for any appeals of such ruling.

*III. Description of the Events Giving Rise to the Alleged Violation*

A. The Defendants and the Proposed Transaction

Bell Atlantic is one of the remaining five Regional Bell Operating Companies (''RBOCs'') created in 1984 by the consent decree settling the United States' antitrust case against American Telephone & Telegraph Co. GTE is the largest non-RBOC local telephone operating company in the United States. Vodafone is the world's largest mobile telecommunications company, and the third largest wireless mobile telephone service provider in the United States. Bell Atlantic and GTE each provide local exchange services in distinct regions, as well as wireless mobile telephone services, including cellular mobile telephone services and PCS, both within and outside of their local exchange service regions. Bell Atlantic is a 50/50 partner with Vodafone in PrimeCo, a firm that provides wireless mobile telephone services in many areas of the country.

Bell Atlantic, with headquarters in New York City, New York, is the second largest RBOC in the United States, with approximately 42 million total local telephone access lines. In 1998, Bell Atlantic had revenues in excess of $31 billion. Bell Atlantic provides local telephone services to retail customers in Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, as well as cellular mobile telephone services in those states. Bell Atlantic also provides cellar mobile telephone services in some areas outside its local exchange service region, including areas within the states of Arizona, Georgia, North Carolina, New Mexico, South Carolina, and Texas. Through its partnership with Vodafone in PrimeCo, Bell Atlantic also provides wireless services in the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Michigan, Minnesota, Mississippi, New Mexico, North Carolina, Ohio, Oklahoma, Texas, Virginia, and Wisconsin. Bell Atlantic is the nation's fourth largest wireless mobile telephone service provider, with about 7.5 million proportionate subscribers [3] nationwide.

GTE, with headquarters in Irving, Texas, is the a largest non-RBOC local telephone company in the United States, with over 23 million total local telephone access lines. In 1998, GTE had revenues in excess of $25 billion. GTE provides local telephone service to retail customers in Alabama, Alaska, Arizona, Arkansas, California, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin, and it also provides wireless mobile telephone service in 17 states. GTE is the nation's fifth largest wireless mobile telephone service provider, with about 6.9 million proportionate subscribers nationwide.

Vodafone, with its headquarters in Newbury, Berkshire, England, has mobile operations in 23 countries in five continents, with more than 19 million proportionate customers outside of the United States. Within the United States, Vodafone serves 9.1 million cellular mobile telephone and PCS customers in 24 states and 22 of the top 30 U.S. markets. Vodafone entered into an agreement on July 19, 1999 to acquire certain cellular mobile telephone business from CommNet (''Vodafone/CommNet Merger'') for $1.36 billion, which would make Vodafone a provider of cellular mobile telephones services in an additional 11 midwestern and western states. The acquisition of CommNet's cellular business would add about 360,000 subscribers to Vodafone's total number of wireless subscribers nationwide.

On July 28, 1998, Bell Atlantic and GTE entered into a merger agreement whereby the two firms would merge in a transaction valued at approximately $53 billion at the time of the agreement. If this transaction is consummated, the combined total of Bell Atlantic's and GTE's wireless mobile telephone service

by the Court on December 9, 1999, and the Supplemental Complaint was accepted as filed on that date.

[2] The original proposed Final Judgment required either Bell Atlantic or GTE to divest its wireless telephone business in those markets where the two companies' business overlap. The revised Final Judgment essentially includes those areas, as well as the areas where Vodafone's wireless telephone businesses overlap with a competing businesses owned either by Bell Atlantic or GTE.

[3] ''Proportionate subscribers'' refers to the number of subscribers in a firm's wireless mobile telephone systems discounted by the firm's ownership interest in each system. For instance, a firm with a 100% ownership interest in a wireless business with 100,000 subscribers would have 100,000 proportionate subscribers, but a firm with a 25% interest in a system with 100,000 subscribers would be attributed 25,000 proportionate subscribers for that system.

subscribers, absent divestitures, would exceed 14 million.

On September 21, 1999, Bell Atlantic and Vodafone entered into an agreement to create a new wireless partnership that will combine the approximately $70 billion worth of wireless assets of Bell Atlantic, Vodafone, and GTE. The new wireless partnership will be the largest wireless business in the United States, serving over 23 million customers in 49 of the top 50 U.S. wireless markets and boasting a footprint covering 90% of the U.S. population.

B. Wireless Mobile Telephone Services

Wireless mobile telephone services permit users to make and receive telephone calls, using radio transmissions, while traveling by car or by other means. The mobility afforded by this service is a valuable feature to consumers, and cellular and other wireless mobile telephone services are commonly priced at a substantial premium above landline services. In order to provide this capability, wireless carriers must deploy an extensive network of switches and radio transmitters and receivers, and interconnect this network with the networks of local and long distance landline carriers, and with the networks of other wireless carriers. Current annual revenues from the sale of wireless mobile telephone services total approximately $37 billion in the United States.

Initially, wireless mobile telephone services were provided principally by two cellular systems in each MSA and RSA license area. Cellular licenses were awarded by the Federal Communications Commission (''FCC'') beginning in the early 1980s for each MSA and RSA.[4] A provider of Specialized Mobile Radio (''SMR'') services typically was also authorized to operate with some additional spectrum in these areas, including the Overlapping Wireless Markets.

In 1995, the FCC allocated (and subsequently issued licenses for) additional spectrum for the provision of PCS, a type of wireless telephone service that includes wireless mobile telephone services comparable to those offered by cellular carriers. In 1996, one SMR spectrum licensee began to use its SMR spectrum to offer wireless mobile telephone services, comparable to that offered by cellular and PCS providers and bundled with dispatch services, in a number of areas including some of the Overlapping Wireless Markets. While the areas for which PCS providers are licensed (MTAs and basic trading areas (''BTAs'')) differ somewhat from the cellular MSAs and RSAs, they generally overlap with them. In many areas, including most of the Overlapping Wireless Markets, not all of the PCS license holders have started to offer services or even begun to construct the facilities necessary to begin offering service. The PCS providers have tended to enter in the largest cities first, entering in smaller markets only later and not on as wide a scale. Moreover, even in those areas where one or more PCS providers have constructed their networks and have started to offer service, including the Overlapping Wireless Markets, the incumbent cellular providers, such as Bell Atlantic, Vodafone and GTE, still typically have substantially larger market shares than the new entrants.

C. Anticompetitive Consequences of the Proposed Acquisition

Bell Atlantic, Vodafone and GTE, or firms in which they have an interest, are or will be competing providers of wireless mobile telephone services in 96 cellular license areas in 15 states. These areas are referred to in the Supplemental Complaint as follows:

**I. Cellular/Cellular Overlap Areas**

A. Bell Atlantic Cellular/Vodafone Cellular Overlap Areas
1. Arizona
a. Phoenix MSA
b. Tucson MSA
c. Arizona 2—Coconino RSA
2. New Mexico
a. Albuquerque MSA

B. Bell Atlantic Cellular/GTE Cellular Overlap Areas
1. New Mexico
a. Las Cruces MSA
2. South Carolina
a. Greenville MSA
b. Anderson MSA
3. Texas
a. El Paso MSA

C. GTE Cellular/Vodafone Cellular Overlap Areas
1. California
a. Salinas-Monterey-seaside MSA
b. San Diego MSA
c. San Francisco MSA
d. San Jose MSA
e. Santa Rosa-Petaluma MSA
f. Vallejo-Napa-Fairfield MSA
2. Ohio
a. Akron MSA
b. Canton MSA
c. Cleveland MSA
d. Lorain-Elyria MSA
e. Ohio 3—Ashtabula RSA

**II. PCS/Cellular Overlap Areas**

A. PrimeCo PCS/GTE Cellular Overlap Areas
1. Jacksonville MTA
a. Jacksonville MSA
b. Florida 5—Putnam RSA
2. Miami-Fort Lauderdale MTA
a. Fort Myers MSA
b. Florida 1—Collier (B1) RSA
c. Florida 2—Glades (B1) RSA
d. Florida 3—Hardee RSA
e. Florida 11—Monroe (B2) RSA
3. Tampa-St. Petersburg-Orlando MTA
a. Tampa-St. Petersburg MSA
b. Lakeland-Winter Haven MSA
c. Sarasota MSA
d. Brandenton MSA
e. Florida 2—Glades (B1) RSA
f. Florida 3—Hardee RSA
g. Florida 4—Citrus (B1) RSA
4. New Orleans-Baton Rouge MTA
a. Mobile, AL MSA
b. Pensacola, FL MSA
5. Chicago MTA
a. Aurora-Elgin, IL MSA
b. Bloomington-Normal, IL MSA
c. Champaign-Urbana-Rantoul, IL MSA
d. Chicago, IL MSA
e. Decatur, IL MSA
f. Fort Wayne, IN MSA
g. Gary-Hammond-East Chicago, IN MSA
h. Joliet, IL MSA
i. Kankakee, IL MSA
j. Rockford, IL MSA
k. Springfield, IL MSA
l. Illinois 1—Jo Daviess RSA
m. Illinois 2—Bureau (B1) RSA
n. Illinois 2—Bureau (B3) RSA
o. Illinois 4—Adams (B1) RSA
p. Illinois 5—Mason (B2) RSA
q. Illinois 6—Montgomery RSA
r. Illinois 7—Vermilion RSA
s. Indiana 1—Newton (B1) RSA
t. Indiana 1—Newton (B2) RSA
u. Indiana 3—Huntington RSA
6. Dallas-Fort Worth MTA
a. Dallas-Fort Worth MSA
b. Austin MSA
c. Sherman-Denison MSA
d. Texas 10—Navarro (B3) RSA
e. Texas 11—Cherokee (B1) RSA
f. Texas 16—Burleson RSA
7. Houston MTA
a. Houston MSA
b. Beaumont-Port Arthur MSA
c. Galveston MSA
d. Bryan-College Station MSA
e. Victoria MSA
f. Texas 10—Navarro (B3) RSA
g. Texas 11—Cherokee (B1) RSA
h. Texas 16—Burleson RSA
i. Texas 17—Newton RSA
j. Texas 20—Wilson (B2) RSA
k. Texas 21—Chambers RSA
8. San Antonio MTA
a. San Antonio MSA
b. Texas 16—Burleson RSA
c. Texas 20—Wilson (B2) RSA
9. Richmond-Norfolk MTA
a. Norfolk-Virginia Beach-Portsmouth MSA
b. Richmond MSA
c. Newport News-Hampton MSA
d. Petersburg-Colonial Heights MSA
e. Virginia 7—Buckingham (B1) RSA
f. Virginia 8—Amelia RSA
g. Virginia 9—Greensville RSA
h. Virginia 11—Madison (B1) RSA

[4] 25 MHZ of spectrum was allocated to each cellular system in an MSA or RSA. MSAs are the 306 urbanized areas in the United States, defined by the federal government, and used by the FCC to define the license areas for urban cellular systems. RSAs are the 428 areas defined by the FCC used to define the license areas for rural cellular systems outside of MSAs.

i. Virginia 12—Caroline (B1) RSA
j. Virginia 12—Caroline (B2) RSA
10. Milwaukee MTA
a. Wisconsin 8—Vernon RSA
B. GTE PCS/Vodafone Cellular Overlap Areas
1. Cincinnati-Dayton MTA
a. Cincinnati MSA
b. Dayton MSA
c. Hamilton/Middleton MSA
d. Springfield MSA
e. Ohio 4- Mercer RSA
f. Ohio 8—Clinton RSA
2. Seattle MTA
a. Bellingham MSA
b. Bremerton MSA
c. Olympia MSA
d. Seattle-Everett MSA
e. Tacoma MSA
f. Washington 1—Clallam RSA
g. Washington 2—Okanagan RSA
h. Washington 4—Gray's Harbor RSA
3. Spokeane-Billings MTA
a. Spokane MSA
b. Idaho 1—Boundary RSA
c. Idaho 2—Idaho RSA
d. Montana 1—Lincoln RSA
e. Washington 3—Ferry RSA

In the Overlapping Wireless Markets, the population potentially addressable by wireless mobile telephone systems exceeds 57 million.

Bell Atlantic, Vodafone, and GTE are direct competitors in wireless mobile telephone services in the Cellular/Cellular Overlap Areas. The cellular businesses owned in whole or in part by Bell Atlantic and GTE, Bell Atlantic and Vodafone, or GTE and Vodafone are the two largest providers of cellular mobile telephone services, and the two primary providers of all wireless mobile telephone services, in the Cellular/Cellular Overlap Areas. Moreover in the PCS/Cellular Overlap Areas, PrimeCo or GTE offer, or will soon offer, PCS wireless mobile telephone service, while either GTE, Vodafone, or CommNet owns all or part of a business offering cellular mobile telephone service. Thus, PrimeCo and GTE, GTE and Vodafone, and GTE and CommNet are among each other's most significant competitors in wireless mobile telephone services in the PCS/Cellular Overlap Areas. In each of the PCS/Cellular Overlap Areas, the GTE, Vodafone, or CommNet cellular business has one of the two largest market shares in the provision of wireless mobile telephone services while PrimeCo and GTE as one of a small number of new PCS entrants in these markets.

Therefore, the Bell Atlantic/GTE Merger and the Bell Atlantic/Vodafone Partnership would significantly increase the level of concentration among firms providing wireless mobile telephone services in each of the Overlapping Wireless Markets. A high level of concentration in the provision of wireless mobile telephone services already exists in each of the Overlapping Wireless Markets. In the Cellular/Cellular Overlap Areas, Bell Atlantic, Vodafone, and GET's individual market shares in the provision of wireless mobile telephone services, if measured on the basis of the number of subscribers, exceeds 35% and their combined market share ranges between 75–95%. As measured by the Herfindahl-Hirschman Index (''HHI''), which is commonly employed by the Department of Justice in merger analysis and is explained in more detail in Appendix A to the Supplemental Complaint, concentration in these markets is already in excess of 2800, well above the 1800 threshold at which the Department normally considers a market to be highly concentrated. After the consummation of these transactions, the HHI in these markets will be in excess of 5500.

There is also already a high level of consentration in the provision of wireless mobile telephone services in the PCS/Cellular Overlap Areas. In virtually all, the individual share of the two cellular carriers—one of which is GTE, Vodafone, or CommNet—is the ranger of 30-40% and the combined market share of PrimeCo's PCS and GTE's cellular business, or the GTE PCS and Vodafone cellular business, is generally in the 35-50% range, resulting in an HHI over 2000. In almost all of these markets, PrimeCo or GTE is one of the very few PCS firms that have begun to vigorously compete against, and take share away from, the two dominant cellular firms, one of which is, or will be, owned, in whole or part, by GTE or Vodafone. The competition between PrimeCo and GTE PCS businesses, and between GTE and Vodafone or CommNet cellular businesses, created by PrimeCo's or Vodafone's entry into markets that were previously in effective duopoly, has resulted in lower prices and higher equality in these markets than would otherwise have existed absent such competition.

If GTE and Bell Atlantic merge and Bell Atlantic and Vodafone form their partnership, the Overlapping Wireless Markets will become significantly more concentrated, and the competition between the defendants in wireless mobile telephone services in these markets will be eliminated. As a result of their loss of competition in these markets, there will be an increased likelihood both of unilateral actions by the combined firm to increase prices, diminish the quality or quantity of service provided, or refrain from making investments in network improvements, and of coordinated interaction among the limited number of remaining competitors that could lead to similar anticompetitive results. Therefore, the likely effect of the Bell Atlantic/GTE Merger and the Bell Atlantic/Vodafone Partnership on the provisions of wireless mobile telephone services in the Overlapping Wireless Markets is that prices would increase, and the quality or quantity of service together with incentives to improve network facilities would decrease.

It is unlikely that entry within the next two years into wireless mobile telephone services in the Overlapping Wireless Markets would be sufficient to mitigate the competitive harm resulting from the consummation of these two transactions.

For these reasons, the United States concluded that Bell Atlantic/GTE Merger and the Bell Atlantic/Vodafone Partnership as proposed may substantially lessen competition, in violation of Section 7 of the Clayton Act, in the provision of wireless mobile telephone services within the Overlapping Wireless Markets.

*III. Explanation of the Proposed Final Judgment*

A. The Divestiture Requirement

The proposed Final Judgment will preserve competition in the sale of mobile wireless telephone services in each of the Overlapping Wireless Markets by requiring defendants to divest one of their two wireless telephone businesses in each of the overlapping Wireless Markets. This divestiture will eliminate the change in market structure caused by the merger.

The divestiture requirements of the proposed Final Judgment, as stated in Sections IV.A and II.G, direct defendants to divest one of their wireless telephone businesses (to be selected by defendants) in each of the Overlapping Wireless Markets. Section IV.C permits different wireless businesses in separate Overlapping Wireless Markets to be divested to different purchasers, but requires that, for any individual wireless business, the Wireless System Assets be divested entirely to a single purchaser, unless the United States otherwise consents in writing.

The proposed Final Judgment's divestiture provisions are intended to accomplish the ''complete divestiture of the entire business of one of the two wireless systems in each of the Overlapping Wireless Markets,'' as Section II.G states. Section II.G also specifies in detail the types of assets to be divested, which collectively are described throughout the consent decree

as ''Wireless System Assets,'' and addresses some special circumstances concerning the divestiture of those assets. In all of the Overlapping Wireless Markets, Wireless System Assets means all types of assets, tangible and intangible, used by defendants in the operation of each of the wireless businesses to be divested, including the provision of long distance telecommunications service for wireless calls. Section II.G enumerates in detail, without limitation, particular types of assets covered by the divestiture requirement.

For the most part, the divesting defendant is required to transfer to the purchaser the complete ownership and/or other rights to the Wireless System Assets. However, the merged firm will retain a number of other wireless businesses in areas that do not overlap, and prior to the merger each defendant may have had certain assets that were used substantially in the operations of its overall wireless business and that must be retained to some extent to continue the existing operations of the wireless businesses not being divested. Section II.G permits special divestiture arrangements for such assets if they are not capable of being divided between the divested and retained wireless businesses, or if the divesting defendant and the purchaser agree not to divide them. For these assets, the divestiture requirement is satisfied if the divesting defendant grants to the purchaser, at the election of the purchaser, an option to obtain a non-exclusive, transferable license for a reasonable period to use the assets in the operation of the wireless business being divested, so as to enable the purchaser to continue to operate the divested wireless businesses without impairment.

The definition of Wireless System Assets in Section II.G contains special provisions relating to intellectual property. One addresses intellectual property rights that defendants may have under third-party licenses that could not be transferred to a purchaser entirely or by license without the consent of the third-party licensor. If any such assets are used by the wireless businesses being divested, defendants must identify them in a schedule submitted to plaintiff and filed with the Court as expeditiously as possible following the filing of the Supplemental Complaint, and in any event, prior to any divestiture and before the Court approves the proposed Final Judgment. Defendants must explain the necessary consents and how a consent would be obtained for each asset. This proviso is not intended to afford defendants any opportunity to withhold intellectual property rights over which they have any control, which could impair the ability of a purchaser to use the divested wireless business to compete effectively. It relates only to intellectual property assets that defendants have no power to transfer themselves, and defendants must do all that is possible to transfer the entire business of the divested wireless businesses. To make this clear, Section IV.G obligates defendants to cooperate with any purchaser as well as a trustee, if any, to seek to obtain the necessary third-party consents, if any assets require such consents before they may be transferred to a purchaser.

Another proviso relates to certain specific trademarks, trade names and service marks. Section II.G, defining the Wireless System Assets to be divested, generally requires the divestiture of trademarks, trade names and service marks, with the 25 specified exceptions which contain names under which defendants' retained wireless businesses, or their corporate parents or affiliates, do business. Such trademarks, trade names and service marks, like other assets, are either to be divested in their entirety, except for marks and names that must be retained to continue the existing operations of defendants' remaining wireless properties and that are not capable of being divided (or that the divesting defendant and purchaser agree not to divide), which are to be made available to the purchaser through a non-exclusive, transferable license.

Under limited circumstances, defendants are allowed to retain specified portions of the Wireless System Assets in the Overlapping Wireless Markets. First, Section II.G.1 provides that if defendants elect to divest an interest in a PCS business in one of the PCS/Cellular Overlap Areas, defendants may retain up to 10 MHZ of broadband PCS spectrum within that PCS/Cellular Overlap Area upon completion of the divestiture of the Wireless System Assets. In this instance, defendants will still otherwise be required to divest the entire PCS business, including 20 MHZ of broadband PCS spectrum, to ensure that the market structure does not change as a result of the merger and that the divested business will be able to compete as effectively under new ownership as under its current ownership.

Second, in the event that defendants elect to divest an interest in a PCS business in one of the PCS/Cellular Overlap Areas, Section II.G.2 of the Final Judgment allows defendants to request approval from plaintiff to partition the PCS license along BTA geographic boundaries, or county boundaries in the Case of Kenosha County, Wisconsin, and retain assets in one or more specified non-overlapping BTAs or in Kenosha County. Plaintiff's approval of the request shall be subject to a determination by plaintiff in its sole discretion that the assets to be retained in the non-overlapping BTAs or Kenosha County are not needed to assure the competitive effectiveness of the divested business in the remainder of the MTA, and that the purchaser of the Wireless System Assets in the remainder of the MTA will be able to operate the divested PCS business as a fully competitive entity. Section II.G.2 requires defendants to seek this approval at least 90 calendar days prior to the consummation of the transaction which gives rise to the overlap.

Finally, Section II.G.3 allows defendants, with approval from plaintiff, to retain both the PCS business and the non-controlling minority interest in an overlapping cellular business in a PCS/Cellular Overlap Area. Plaintiff's approval of the request shall be subject to a determination by plaintiff in its sole discretion that the retention of a non-controlling minority interest will be entirely passive and will not significantly diminish competition. GTE has a number of non-controlling minority interests in cellular businesses, ranging from 2% to 40%, in the Overlapping Wireless Markets. To be permitted to retain a minority cellular interest, defendants will be required to demonstrate that the interest they wish to keep is entirely passive, such that they receive no competitively sensitive information about the competing cellular business and have no input into the business decisions of the competing cellular provider that could have anticompetitive consequences. Plaintiff, in its sole discretion, will determine that the retention of the non-controlling minority interest will not significantly diminish competition before approval will be granted for the merged firm to retain a minority interest. Section II.G.3 requires defendants to seek this approval at least 90 calendar days prior to the consummation of the transaction which gives rise to the overlap.

Section IV contains other provisions to facilitate divestiture, including notification of the availability of the Wireless System Assets for purchase in Section IV.D, access to information about the Wireless System Assets in Section IV.E, and preservation of records in Section IV.H. In addition, to ensure that a purchaser will be able to operate the divested wireless business without impairment, Section IV.F prohibits defendants from interfering with a purchaser's negotiations to retain

any employees who work or have worked with the Wireless System Assets since the date of the announcement of the merger of partnership, or whose principal responsibility relates to the Wireless System Assets.

B. Timing of Divestiture

In antitrust cases involving mergers in which the United States seeks a divestiture remedy, it requires completion of the divestiture within the shortest time period reasonable under the circumstances. The proposed Final Judgment in this case requires, in section IV.A, the divestiture of the Wireless System Assets in the Overlapping Wireless Markets on a strict schedule, but provides defendants with some flexibility in recognition of the special timing issues involved in a divestiture of this size and complexity.

Under Section IV.A, defendants must divest the Wireless System Assets of one of the two wireless businesses in the Cellular/Cellular Overlap Areas on or before consummation of the transaction that gives rise to the overlap. The divestitures of the Wireless System Assets for each PCS/Cellular Overlap Area shall occur prior to or at the same time as consummation of the transaction that gives rise to the overlap, or June 30, 2000, whichever is later. Plaintiff may, in its sole discretion, extend this date by up to two thirty-day periods. If one or more divestitures have not been completed as of the date of the consummation of the transaction that gives rise to the overlap, defendants will submit to plaintiff Divestiture List identifying the specific Wireless System Assets in each of the PCS/Cellular Overlap Areas that will be divested.

The divestiture timing provisions of the proposed Final Judgment will ensure that the divestitures are carried out in a timely manner, and at the same time will permit the parties an adequate opportunity to accomplish the divestitures through a fair and orderly process. Even if all Wireless System Assets have not been divested upon consummation of the transaction that gives rise to the overlap, there will be no adverse impact on competition given the short duration of the period of common ownership and the detailed requirements of the Hold Separate Order contained in Section IX of the Final Judgment.

Section IV. B of the proposed Final Judgment requires that, in carrying out the divestitures, defendants comply with all of the applicable rules of the FCC, or any waiver of such rules or other authorization granted by the FCC. These rules include 47 CFR 20.6 (spectrum aggregation) and 47 CFR 22.942 (cellular cross-ownership)[5] These FCC requires may add to, but cannot subtract from or impair, the requirements of the proposed Final Judgment, since Section IV.B specifies that authorization by the FCC to conduct divestiture of a wireless business in a particular manner will not modify any of the requirements of the degree. The provisions of the proposed Final Judgment have been designed to avoid any conflict with the FCC's rules.

C. Use of a Trustee Subsequent to Consummation of the Acquisition

The proposed Final Judgment provides in Section IV.A that defendants must divest the Wireless System Assets in each of the Overlapping Wireless Markets in accordance with the schedule contained therein, either to purchasers acceptable to plaintiff in its sole discretion, or to a trustee designated pursuant to Section V of the Final Judgment. As part of this divestiture, defendants must relinquish any direct or indirect financial ownership interests and any direct or indirect role in management or participation in control. If a trustee is appointed pursuant to Section V of the proposed Final Judgment, the trustee will then own and control the systems until they are sold to a final purchasers, subject to safeguards to prevent defendants from influencing their operation.

Section V details the requirements for the establishment of the trust, the selection and compensation of the trustee, the responsibilities of the trustee in connection with divestiture and operation of the Wireless System Assets, and the termination of the trust. If defendants have not divested all of their Wireless System Assets in the Overlapping Wireless Markets to approved purchasers in accordance with Section IV.A, Section V. A requires: (1) defendants to identify the Wireless System Assets in each Overlapping Wireless Market to be divested; (2) the Court to appoint a trustee, which shall be selected by the United States; (3) defendants to submit a form of Trust Agreement consistent with the terms of the Final Judgment, and which form agreement must have received approval by the United States; and (4) defendants, after receiving FCC approval for the license transfers, to divest irrevocably the unsold Wireless System Assets to the trustee.

The trustee will then have the obligation and the sole responsibility for the divestiture of any transferred Wireless System Assets. Under Section V.B, the trustee has the authority to accomplish divestitures at the earliest possible time and ''at the best price then obtainable upon a reasonable effort by the trustee.'' In addition, notwithstanding any provision to the contrary, plaintiff may, in its sole discretion, require defendants to include additional assets that substantially relate to the wireless mobile telephone business in the Wireless System Assets to be divested if it would facilitate a prompt divestiture to an acceptable purchaser. This provision allows plaintiff, in its discretion, to require defendants to divest additional Wireless System Assets that substantially relate to the wireless mobile telephone business to ensure that the trustee can promptly locate and divest to a purchaser acceptable to plaintiff. Defendants are not entitled to object to divestiture based on the adequacy of the price the trustee obtains or any other grounds, unless the trustee's conduct amounts to malfeasance. The terms of the trustee's compensation, under Section V.C, will provide incentives based on the price and terms of the divestiture and the speed with which it is accomplished. As provided by Section V.B and V.C., defendants will pay the compensation and expenses of the trustee, and of any investment bankers, attorneys or other agents that the trustee finds reasonably necessary to assist in the divestiture and the management of the Wireless System Assets.

The trusteeship mechanism has been used by the FCC, in a variety of contexts, to provide a short period of time in which to complete a sale of a spectrum licensee that must be divested, while permitting the broader merger or acquisition that necessitates the divestiture to go forward. In this context, the critical feature of the trusteeship arrangement is that the trustee will not only have responsibility for sale of the Wireless System Assets, but will also be the authorized holder of the wireless license, with full responsibility for the operations, marketing and sales of the wireless business to be divested, and will not be subject to any control or direction by defendants. Defendants will no longer

[5] The FCC's spectrum aggregation rules, in 47 CFR 20.6, do not permit a licensee to have an attributable interest in more than 45 MHZ of spectrum licensed for cellular, PCS or SMR with significant overlap in any geographic area. The FCC will attribute an interest if it is controlling, or if in most cases it is 20% or more of the equity, outstanding stock or voting stock of the licensee. The FCC's cellular cross-ownership rules, in 47 CFR 22.942, also prohibit a licensee or any person controlling a licensee from having a direct or indirect ownership interest of more than 5% in both cellular systems in an overlapping cellular geographic service area, unless such interests pose ''no substantial threat to competition.''

have any role in the ownership, operation or management of the Wireless System Assets to be divested following consummation of their merger, as provided by Section V.H, other than the right to receive the proceeds of the sale, and certain obligations to provide cooperation to the trustee in order to complete the divestiture, as indicated in Section V.D. Under V.E., the trustee also has monthly reporting obligations concerning the efforts made to divest the Wireless System Assets. Defendants are precluded under Section V.H from communicating with the trustee, or seeking to influence the trustee, concerning the divestiture or the operation and management of the wireless businesses transferred, apart from the limited communications necessary to carry out the Final Judgment and to provide the trustee with the necessary resources and cooperation to complete the divestitures. Defendants and the trustee are subject to an absolute prohibition on exchanging any non-public or competitively sensitive marketing, sales or pricing information relating to either of the wireless businesses in the Overlapping Wireless Markets. These safeguards will protect against any competitive harm that could arise from coordinated behavior or information sharing between the two wireless businesses during the limited period while sale of the Wireless System Assets is not yet complete, and ensure that the trusteeship arrangement is consistent with the FCC's rules.

Section V.F. requires the trustee to divest the Wireless System Assets to a purchaser or purchasers acceptable to the plaintiff no later than 180 days after the assets are transferred to the trustee. However, since the FCC's approval is required for the transfer of the wireless licenses to a purchaser, Section V.F provides that if applications for transfer of a wireless license have been filed by the FCC within the 180-day period, but the FCC has not granted approval before the end of that time, the period for divestiture of the specific Wireless System Assets covered by the license that cannot yet be transferred shall be extended until five days after the FCC's approval is received. This extension is to be applied only to the individual wireless license affected by the delay in approval of the license transfer and does not entitle defendants to delay the divestiture of any other Wireless System Assets for which license transfer approval has been granted.

D. Criteria for the United States' Approval of Purchasers

Under the proposed Final Judgment, the United States plays an important role in the approval of purchasers for each of the divested wireless businesses by ensuring that the purchasers chosen by defendants or the trustee are adequate from a competitive viewpoint. Section IV.A specifies that the United States' approval or rejection of a purchaser is at its sole discretion, but also enumerates certain criteria that the United States will apply in making the approval decision.

In the case of any divestiture by defendants or the trustee, it is important to ensure that the ongoing wireless businesses go to purchasers with the capability and intent to operate them as effective competitors in the lines of business they already serve, and that there are no conditions restricting competition in the terms of the sale. Specifically, Section IV.C of the proposed Final Judgment requires that the divestitures of Wireless System Assets be made to a purchaser or purchasers for whom it is demonstrated to plaintiff's sole satisfaction that: (1) The purchaser(s) has the capability and intent to compete effectively in the provision of wireless mobile telephone service using the Wireless System Assets; (2) the purchaser(s) has the managerial, operational and financial capability to compete effectively in the provision of wireless mobile telephone service using the Wireless System Assets; and (3) none of the terms of any agreement between the purchaser(s) and either of defendants shall give defendants the ability unreasonably (i) to raise the purchaser(s)'s costs, (ii) to lower the purchaser(s)'s efficiency, (iii) to limit any line of business which a purchaser(s) may choose to pursue using the Wireless System Assets, or otherwise to interfere with the ability of the purchaser(s) to compete effectively. All of these criteria must be satisfied whether the divestiture is accomplished by defendants or the trustee.

E. Other Provisions of the Decree

Section III specifies the persons to whom the Final Judgment is applicable, and provides for the Final Judgment to be applicable to certain interim Parties to whom defendants might transfer the Wireless System Assets, other than purchasers approved by the United States.

Section VI obliges defendants, or the trustee if applicable, to notify the United States of any planned divestiture of Wireless System Assets within two business days of executing a binding agreement with a purchaser. This section enables the United States to obtain information to evaluate the chosen purchaser as well as other prospective purchasers who expressed interest and establishes a procedure for the United States to notify defendants and the trustee whether it objects to a divestiture. The United States' notification of its lack of objection is necessary for a divestiture to proceed. This section also provides for an objection by defendants to a sale by the trustee under the limited situation of alleged malfeasance, but in that case it is possible for the Court to approve a sale over defendants' objection.

Section VII establishes affidavit requirements for defendants to report to the United States on their compliance with the proposed Final Judgment, their activities in seeking to divest the Wireless System Assets prior to consummating the transaction that gives rise to the overlap, and their actions to preserve the Wireless System Assets to be divested.

Section VIII prohibits defendants from financing all or any part of a purchase made by an acquirer of the Wireless System Assets, whether the divestiture is carried out by defendants or by the trustee.

Section IX, the Hold Separate Order, contains important requirements concerning the operation of the wireless businesses before divestiture is complete, and the preservation of the Wireless System Assets as a viable, ongoing business. The obligations of Section IX.A fall on each defendant and both wireless businesses in any Overlapping Wireless Market to ensure that such wireless businesses continue to be operated as separate, independent, ongoing, economically viable and active competitors to the other wireless mobile telecommunications providers in the same area. Section IX.A requires separation of the operations of the two wireless businesses and their books, records and competitively sensitive information. The requirements of Section IX.A serve to ensure that defendants maintain their two wireless businesses in the Overlapping Wireless Markets as fully separate competitors prior to consummating their merger, notwithstanding their expectations that the merger will take place. The requirements also reinforce the provisions of Section V.H concerning the separation of defendants and the trustee after the merger is consummated but white Wireless System Assets are still awaiting sale.

Section IX.B requires the defendant whose assets will be divested (or both, if it has not yet been decided which

system will be divested in a particular market) to take certain specified steps to preserve the assets in accordance with past practices. These steps include maintaining and increasing sales, maintaining the assets in operable condition, providing sufficient credit and working capital, not selling the assets (except with approval of plaintiff), not terminating, transferring or reassigning employees who work with the assets (with certain limited exceptions), and not taking any actions to impede or jeopardize the sale of the assets. Section IX.D obliges each defendant, during the period while they still control Wireless System Assets, to appoint persons not affiliated with the other defendant to oversee the Wireless System Assets to be divested and to be responsible for compliance with the Final Judgment.

In order to ensure compliance with the Final Judgment, Section X gives the United States various rights, including the ability to inspect defendants' records, to conduct interviews and take sworn testimony of defendants' officers, directors, employees and agents, and to require defendants to submit written reports. These rights are subject to legally recognized privileges, and any information the United States obtains using these powers is protected by specified confidentiality obligations, which permit sharing of information with the FCC under a customary protective order issued by that agency or a waiver of confidentiality. Under Section III.B, purchasers of the Wireless System Assets must also agree to give the United States similar access to information.

The Court retains jurisdiction under Section XI, and Section XII provides that the proposed Final Judgment will expire on the tenth anniversary of the date of its entry, unless extended by the Court. Although the required divestitures will be accomplished in a considerably shorter time, defendants are also precluded from reacquiring the divested properties within the term of the decree.

*IV. Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages that the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposal Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

*V. Procedures Available for Modification of the Proposed Final Judgment*

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the responses of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 8000, Washington, D.C. 20530.

The proposed Final Judgment provides, in Section XI, that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate to carry out or construe the Final Judgment, to modify any of its provisions, to enforce compliance, and to punish any violations of its provisions.

*VI. Alternatives to the Proposed Final Judgment*

The United States considered, as an alternative to the proposed Final Judgment, seeking an injunction to block consummation of the Bell Atlantic/GTE Merger and Bell Atlantic/Vodafone Partnership and a full trial on the merits. The United States is satisfied, however, that the divestiture of Wireless System Assets and other relief contained in the proposed Final Judgment will preserve competition in the provision of wireless mobile telephone services in the Overlapping Wireless Markets. This proposed Final Judgment will also avoid the substantial costs and uncertainty of a full trial on the merits of the violations alleged in the complaint. Therefore, the United States believes that there is no reason under the antitrust laws to proceed with further litigation if the divestitures of the Wireless System Assets are carried out in the manner required by the proposed Final Judgment.

*VII. Standard of Review Under the APPA for Proposed Final Judgment*

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other consideration bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the United States Court of Appeals for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See United States v. Microsoft, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [6] Rather,

[6] 119 Cong. Rec. 24598 (1973). See United States v. Gillette Co., 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A

Continued

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest filing, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' United States v. BNS, Inc., 858 F.2d 456, 462 (9th Cir. 1988) (citing United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981): see also Microsoft, 56 F.3d at 1460–62. Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[7]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' United States v. American Tel. & Tel. Co., 552 F. Supp. 131, 151 (D.D.C. 1982), aff'd sub nom., Maryland v. United States, 460 U.S. 1001 (1983) (quoting Gillette Co., 406 F. Supp. at 716), United States v. Alcan Aluminum Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Since ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that the court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. Id.

*VIII. Determinative Documents*

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment. Consequently, the United States has not attached any such materials to the proposed Final Judgment.

Dated: December 22, 1999.

Respectfully submitted,

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*Certificate of Service*

I hereby certify that copies of the foregoing Plaintiff United States' Competitive Impact Statement, were served via U.S. Mail, first class postage prepaid, on this 22nd day of December, 1999 upon each of the parties listed below:

John Thorne,

*Bell Atlantic Corporation, 1320 North Court House Road, Eighth Floor, Arlington, VA 22201, Counsel for Bell Atlantic Corporation.*

Steven G. Bardbury, Kirkland & Ellis, 655 Fifteenth Street, N.W., Washington, DC 20005, Counsel for GTE Corporation.

Megan Pierson,

*AirTouch Communications, Inc., One California Street, San Francisco, CA 94111, Counsel for Vodafone AirTouch Plc.*

**Lawrence M. Frankel,**

*Counsel for Plaintiff.*

[FR Doc. 00–197 Filed 1–4–00; 8:45 am]

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court need not invoke any of them unless it believes that the comments have raised significant issues and the further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93d Cong. 2d Sess. 8–9 (1974), reprinted in U.S.C.C.A.N. 6535, 6538.

[7] Bechtel, 648 F.2d at 666 (emphasis added); see BNS, 858 F.2d at 463; United States v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); Gillette, 406 F. Supp. at 716. See also Microsoft, 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

**[INS No. 1971–99]**

### Announcement of District Advisory Council on Immigration Matters Eighth Meeting

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice of meeting.

**SUMMARY:** The Immigration and Naturalization Service (Service), has established a District Advisory Council on Immigration Matters (DACOIM) to provide the New York District Director of the Service with recommendations on ways to improve the response and reaction to customers in the local jurisdiction, and to develop new partnerships with local officials and community organizations to build and enhance a broader understanding of immigration policies and practices. The purpose of this notice is to announce the forthcoming meeting.

**DATES AND TIMES:** The eighth meeting of the DACOIM is scheduled for January 27, 2000, at 1 p.m.

**ADDRESSES:** The meeting will be held at the Jacob Javitts Federal Building, 26 Federal Plaza, Room 537, New York, New York 10278.

**FOR FURTHER INFORMATION CONTACT:** Christian A. Rodriguez, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York, 10278, telephone: (212) 264–0736.

**SUPPLEMENTARY INFORMATION:** Meetings will be held tri-annually on the fourth Thursday during the months of January, May, and September 2000.

**Summary of Agenda**

The purpose of the meeting will be to conduct general business, review