

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| UNITED STATES OF AMERICA, |) | |
| |) | |
| |) | |
| <i>Plaintiff,</i> |) | Civil No.: 1:99CV01119(LFO) |
| |) | |
| v. |) | |
| |) | |
| |) | |
| BELL ATLANTIC CORPORATION and |) | |
| GTE CORPORATION, |) | |
| |) | |
| <i>Defendants.</i> |) | |
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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT

Plaintiff United States of America ("United States") moves for leave to file a Supplemental Complaint. Leave to file a supplemental pleading should be freely given where, as here, the supplemental facts connect it to the original pleading, and undue prejudice to the opposing parties will not result. Accordingly, the United States respectfully requests that this Court grant leave to file the Supplemental Complaint and add Vodafone AirTouch Plc ("Vodafone") as a defendant to this action, because it will promote a complete adjudication of the dispute between the parties.

STATEMENT OF FACTS

On July 28, 1998, Bell Atlantic Corporation ("Bell Atlantic") and GTE Corporation ("GTE") entered into a merger agreement ("Bell Atlantic/GTE Merger") whereby the two firms would merge in a transaction valued at approximately \$53 billion dollars at the time of the agreement. If this transaction is

consummated, the combined total of Bell Atlantic's and GTE's cellular and other wireless mobile telephone service subscribers, absent divestitures, would be in excess of 14 million. On May 7, 1999, the United States filed a civil antitrust Complaint alleging that the proposed acquisition of GTE by Bell Atlantic 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 10 major trading areas, 65 metropolitan statistical areas and rural service areas in Florida, Alabama, Illinois, Indiana, Texas, Virginia, Wisconsin, New Mexico, and South Carolina. A proposed Final Judgment requiring either Bell Atlantic or GTE to divest its wireless telephone business in the markets where the two companies' business overlap was filed simultaneously with the Complaint. On August 30, 1999, plaintiff United States filed a Certificate of Compliance with the Provisions of the Antitrust Procedures and Penalties Act, informing this Court that all conditions for entry of the proposed Final Judgment had been satisfied and requesting this Court to enter the Final Judgment.

On September 21, 1999, Bell Atlantic and Vodafone entered into an agreement to create a partnership ("Bell Atlantic/Vodafone Partnership") valued in excess of \$70 billion, with the goal of forming a new domestic national wireless business that will combine the wireless businesses of Bell Atlantic, Vodafone and GTE.¹ Upon the consummation of the Bell Atlantic/GTE Merger and the creation of the Bell Atlantic/Vodafone Partnership, the Bell Atlantic/Vodafone Partnership will hold licenses capable of serving more than 90% of the U.S. population and will have a footprint capable of

¹On September 30, 1999, the parties jointly moved to defer entry of the proposed Final Judgment to allow them to evaluate the impact of the Bell Atlantic/Vodafone Partnership on the terms encompassed therein.

serving 264 million potential customers, and 49 of the top 50 wireless markets.

The United States discussed this Motion with John Thorne, counsel for defendant Bell Atlantic Corporation, Steven G. Bradbury, counsel for defendant GTE Corporation, and Brian D. Kidney, an authorized representative of Vodafone, by telephone on December 3, 1999. Defendants and Vodafone do not oppose this motion.

ARGUMENT

The United States' Motion for Leave to File Supplemental Complaint should be granted for three reasons. First, granting this motion would advance the purpose of Rule 15(d), because it will promote a complete adjudication of the dispute between the parties. Second, defendants Bell Atlantic and GTE, and Vodafone will not be prejudiced by the supplemental pleading. Finally, this Motion is unopposed.

Rule 15(d) of the Federal Rules of Civil Procedure provides, in pertinent part, "Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." The purpose of Rule 15(d) is to promote as complete an adjudication of the dispute between the parties as is possible. LaSalvia v. United Dairymen of Arizona, 804 F.2d 1113, 1119 (9th Cir. 1986), cert. denied, 482 U.S. 928 (1987). It follows that persons participating in the new events may be added if necessary. Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964). The decision to grant a Rule 15 motion rests within the sound discretion of the district court, and leave to file a supplemental pleading

should be freely granted when the supplemental facts connect it to the original pleading. Quarantino v. Tiffany & Co., 71 F.3d 58, 66 (2d Cir. 1995). Absent undue delay, bad faith, dilatory tactics, undue prejudice to the party to be served with the proposed pleading, or futility, the motion should be freely granted. Foman v. Davis, 371 U.S. 178 (1962).

This Court should exercise its discretion and grant this Motion. The agreement to create the Bell Atlantic/Vodafone Partnership is intricately connected to the transaction that is the subject of this action, the Bell Atlantic/GTE Merger. In their agreement to form the Bell Atlantic/Vodafone Partnership, defendant Bell Atlantic and Vodafone specifically contemplate the consummation of the Bell Atlantic/GTE Merger. Indeed, in their application to the Federal Communications Commissions for transfer of control of Vodafone's wireless licenses, defendant Bell Atlantic and Vodafone describe the Bell Atlantic/GTE Merger and the Bell Atlantic/Vodafone Partnership as "[c]omplementary but independent transactions." Application for Transfer of Control from Vodafone AirTouch Plc to Bell Atlantic Corporation at 3, F.C.C. File Nos. 0000032969 et al. (filed Oct. 14, 1999). Moreover, as detailed in the attached Supplemental Complaint, competitive issues of the same nature as those complained of in the original Complaint, namely overlaps between the wireless businesses of defendant Bell Atlantic and Vodafone, and defendant GTE and Vodafone, are raised by the creation of the Bell Atlantic/Vodafone Partnership. An efficient resolution of all issues raised by these two related transactions requires the addition of Vodafone as a party to this proceeding, and the supplementation of the Complaint to encompass all wireless overlaps between Bell Atlantic, Vodafone and GTE.²

² Attached, in addition to the Supplemental Complaint, are a Stipulation and proposed Final Judgment that would resolve this matter.

Additionally, neither defendant Bell Atlantic, nor defendant GTE nor Vodafone can claim that they will suffer prejudice if leave is granted to file the supplemental Complaint. This request for leave was made without undue delay and in good faith, to promote prompt resolution of all issues in one proceeding. Finally, defendants Bell Atlantic and GTE, and Vodafone, do not oppose this Motion.

WHEREFORE, for the foregoing reasons, the United States respectfully requests that leave be granted to file the Supplemental Complaint, and to add Vodafone AirTouch Plc as a defendant to this action.

Respectfully submitted,

_____/s/_____

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Dated: December 6, 1999