

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)
Department of Justice)
Antitrust Division)
1401 H Street, N.W., Suite 8000)
Washington, D.C. 20530,)
Plaintiff,) Civil: No. 1:99CV01119
v.) Filed: 5/7/99
BELL ATLANTIC CORPORATION) Judge: Louis F. Oberdorfer
1095 Avenue of the Americas)
New York, NY 10036)
and)
GTE CORPORATION)
1255 Corporate Drive)
Irving, TX 75038)
Defendants.)

COMPLAINT

The United States of America, acting under direction of the Attorney General of the United States, brings this civil antitrust action to enjoin defendant Bell Atlantic Corporation (“Bell Atlantic”) from merging with defendant GTE Corporation (“GTE”) and to obtain other relief as appropriate. The United States of America alleges as follows:

1. On July 28, 1998, Bell Atlantic and GTE entered into a merger agreement under which the two companies would merge. The United States seeks to enjoin this transaction because its effect may be substantially to lessen competition in wireless mobile telephone services in 10 major trading areas ("MTA"), 65 metropolitan statistical areas ("MSA") and rural service areas ("RSA") in Florida, Alabama, Illinois, Indiana, Texas, Virginia, Wisconsin, New Mexico, and South Carolina.

2. 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. Bell Atlantic and GTE each provide local exchange services in distinct regions, and they also provide wireless mobile telephone services, including cellular mobile telephone services and personal communications services (“PCS”), both within and outside of their local exchange service regions. Bell Atlantic is a 50% partner in PCS PrimeCo, L.P. (“PrimeCo”), a firm that provides wireless mobile telephone services in many areas of the country.

3. This acquisition affects 23 MSAs and 23 RSAs where GTE operates, and/or has an ownership interest in, a cellular mobile wireless telephone business that competes with a PrimeCo wireless PCS telephone business that overlaps all or part of the area. In addition, this acquisition affects four additional MSAs where competing cellular mobile wireless telephone businesses are owned in whole or in part by Bell Atlantic and GTE. Finally, this acquisition impacts 9 MSAs and 6 RSAs where GTE is acquiring cellular businesses from Ameritech Mobile Phone Service of Illinois, Inc., and Ameritech Mobile Phone Service of Chicago, Inc. (collectively “Ameritech”) pursuant to an agreement dated April 2, 1999,¹ and PrimeCo operates a competing wireless mobile telephone business that overlaps all or part of the area. These 65

¹GTE plans to acquire the following cellular systems from Ameritech: Aurora-Elgin, IL MSA, Bloomington-Normal, IL MSA, Champaign-Urbana-Rantoul, IL MSA, Chicago, IL MSA, Decatur, IL MSA, Gary-Hammond-East Chicago, IN MSA, Joliet, IL MSA, Kankakee, IL MSA, Springfield, IL MSA, Illinois 2- Bureau (B3) RSA, Illinois 4- Adams (B1) RSA, Illinois 5- Mason (B2) RSA, Illinois 6- Montgomery RSA, Illinois 7- Vermilion RSA, and Indiana 1- Newton (B2) RSA.

MSAs and RSAs, which have a total population in excess of 25 million, are herein referred to as the “Overlapping Wireless Markets.”

4. The cellular businesses owned in whole or in part by Bell Atlantic and GTE are the only two providers of cellular mobile telephone services, and the two primary providers of all wireless mobile telephone services, in four cellular license areas in the states of New Mexico, Texas, and South Carolina herein referred to as the “Cellular MSA Overlap Areas.” In addition, in 61 cellular license areas in the states of Alabama, Florida, Illinois, Indiana, Texas, Virginia, and Wisconsin, herein referred to as the “PCS/Cellular Overlap Areas,” the cellular businesses to be acquired or owned in whole or in part by GTE, and the PCS business owned by PrimeCo are two of a small number of providers of wireless mobile telephone services.

5. GTE and Bell Atlantic are direct competitors in wireless mobile telephone services in the Cellular MSA Overlap Areas. GTE and PrimeCo, and Ameritech and PrimeCo, are direct competitors in wireless mobile telephone services in the PCS/Cellular Overlap Areas. In each of the Overlapping Wireless Markets, the wireless businesses owned or to be owned in whole or in part by Bell Atlantic and GTE compete to sell the best quality service at the lowest possible rates and are among each other’s most significant competitors.

6. If Bell Atlantic and GTE consummate their proposed merger, only one completely independent provider of cellular mobile telephone services (and a small number of wireless mobile telephone service providers) would remain available to consumers in the Cellular MSA Overlap Areas because the combined firm would have an ownership interest in both cellular businesses in those areas. Moreover, in the PCS/Cellular Overlap Areas, because the combined firm would have acquired or will acquire substantial control over the GTE cellular business, the

Ameritech cellular business and the PrimeCo PCS business (and might ultimately choose to combine those businesses) the small number of wireless mobile telephone service competitors would be effectively reduced by one, making an already concentrated market even more concentrated. As a result, unless the Bell Atlantic/GTE merger is blocked, the level of concentration among firms providing wireless mobile telephone services in the Overlapping Wireless Markets, which is already high, will be significantly increased, and competition for wireless mobile telecommunications services will be substantially lessened in the Overlapping Wireless Markets. This will result in increased prices to consumers for wireless mobile telephone services and reductions in the quality of wireless mobile telephone services, either because of unilateral actions by Bell Atlantic/GTE or coordinated interaction among Bell Atlantic/GTE and the limited number of other competitors remaining in the Overlapping Wireless Markets.

I.
JURISDICTION AND VENUE

7. This action is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

8. Defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has subject matter jurisdiction over this action and jurisdiction over the parties pursuant to 15 U.S.C. §§ 22 and 25, and 28 U.S.C. §§ 1331 and 1337.

9. Defendants transact business or are found in the District of Columbia. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c).

II.
THE DEFENDANTS AND THE TRANSACTION

10. Bell Atlantic, with headquarters in New York City, New York, is one of the largest RBOCs 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 cellular 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 50% partnership in PrimeCo, Bell Atlantic provides wireless service 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 6.6 million subscribers nationwide.

11. GTE, with headquarters in Irving, Texas, is the 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 also provides wireless mobile telephone service in most of

these states. GTE is a major wireless mobile telephone service provider, with about 4.8 million subscribers nationwide. GTE also has entered into an agreement, dated April 2, 1999, to acquire certain cellular mobile telephone businesses from Ameritech for \$3.27 billion, which would make GTE a provider of cellular mobile telephone services in additional areas in Illinois and Indiana. The acquisition of the Ameritech cellular businesses would add about 1.7 million subscribers to GTE's total number of wireless subscribers nationwide.

12. 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 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 will be 13.1 million, including the number of subscribers GTE would receive from its acquisition of Ameritech.

III. TRADE AND COMMERCE

A. Nature of Trade and Commerce

13. 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. In 1998, revenues from the sale of wireless mobile telephone services totaled approximately \$30 billion in the United States.

14. Initially, wireless mobile telephone services were provided principally by two cellular businesses in each license area. Cellular licenses were awarded by the Federal Communications Commission (“FCC”) beginning in the early 1980s for each MSA and RSA. 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 category of services which 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 and GTE, still typically have substantially larger market shares than the new entrants. In the Cellular MSA Overlap Areas, the combined market share of GTE and Bell Atlantic in the provision of wireless mobile telephone services, if measured by the number of subscribers, is in the range of 75 - 95%, taking into account other operational wireless

mobile competitors. In the PCS/Cellular Overlap Areas, the combined market share of PrimeCo and the cellular business in question is generally in the 35-50% range. In almost all of these markets, PrimeCo is one of a very few PCS firms that have begun to vigorously compete against, and take away share from, the two dominant cellular firms, one of which either already is (or after consummation of the GTE/Ameritech transaction, will be) owned, in whole or in part, by GTE.

B. Relevant Product Market

15. Wireless mobile telephone service is a relevant product market. There are no cost-effective alternatives to wireless mobile telephone services for those customers using these services. If the price of wireless mobile telephone service were to increase by a small but significant amount, there would not be a sufficient number of customers that would switch away from wireless mobile telephone services to make that price increase unprofitable. Wireless mobile telephone service is therefore a relevant product market, and a line of commerce within the meaning of Section 7 of the Clayton Act.

C. Relevant Geographic Markets

16. Each Overlapping Wireless Market is a relevant geographic market. The FCC has licensed only a limited number of firms to provide wireless mobile telephone services in these areas based upon availability of radio spectrum. If the price of wireless mobile telephone service were to increase by a small but significant amount in any of the Overlapping Wireless Markets, there would not be a sufficient number of customers that would switch to wireless mobile telephone services in a different Overlapping Wireless Market to make that price increase unprofitable, because consumers cannot turn to providers of wireless mobile telephone services

outside of the Overlapping Wireless Markets to obtain wireless mobile telephone services in the Overlapping Wireless Markets. Each Overlapping Wireless Market is therefore a relevant geographic market, and a section of the country within the meaning of Section 7 of the Clayton Act. The PCS/Cellular Overlap Areas and the Cellular MSA Overlap Areas are listed below:

I. PCS/CELLULAR OVERLAP AREAS

A. Jacksonville MTA

1. Jacksonville MSA
2. Florida 5- Putnam RSA

B. Miami-Fort Lauderdale MTA

1. Fort Myers MSA
2. Florida 1- Collier (B1) RSA
3. Florida 2- Glades (B1) RSA
4. Florida 3- Hardee RSA
5. Florida 11- Monroe (B2) RSA

C. Tampa-St. Petersburg-Orlando MTA

1. Tampa-St. Petersburg MSA
2. Lakeland-Winter Haven MSA
3. Sarasota MSA
4. Bradenton MSA
5. Florida 2- Glades (B1) RSA
6. Florida 3- Hardee RSA
7. Florida 4- Citrus (B1) RSA

D. New Orleans-Baton Rouge MTA

1. Mobile, AL MSA
2. Pensacola, FL MSA

E. Chicago MTA

1. Aurora-Elgin, IL MSA
2. Bloomington-Normal, IL MSA
3. Champaign-Urbana-Rantoul, IL MSA
4. Chicago, IL MSA
5. Decatur, IL MSA
6. Fort Wayne, IN MSA
7. Gary-Hammond-East Chicago, IN MSA
8. Joliet, IL MSA
9. Kankakee, IL MSA
10. Rockford, IL MSA
11. Springfield, IL MSA
12. Illinois 1- Jo Daviess RSA
13. Illinois 2- Bureau (B1) RSA
14. Illinois 2- Bureau (B3) RSA
15. Illinois 3- Mercer RSA
16. Illinois 4- Adams (B1) RSA
17. Illinois 5- Mason (B2) RSA
18. Illinois 6- Montgomery RSA

19. Illinois 7- Vermilion RSA
20. Indiana 1- Newton (B1) RSA
21. Indiana 1- Newton (B2) RSA
22. Indiana 3- Huntington RSA

F. Dallas-Fort Worth MTA

1. Dallas-Fort Worth MSA
2. Austin MSA
3. Sherman-Denison MSA
4. Texas 10- Navarro (B3) RSA
5. Texas 11- Cherokee (B1) RSA
6. Texas 16- Burleson RSA

G. Houston MTA

1. Houston MSA
2. Beaumont-Port Arthur MSA
3. Galveston MSA
4. Bryan-College Station MSA
5. Victoria MSA
6. Texas 10- Navarro (B3) RSA
7. Texas 11- Cherokee (B1) RSA
8. Texas 16- Burleson RSA
9. Texas 17- Newton RSA
10. Texas 20- Wilson (B2) RSA

11. Texas 21- Chambers RSA

H. San Antonio MTA

1. San Antonio MSA

2. Texas 16- Burleson RSA

3. Texas 20- Wilson (B2) RSA

I. Richmond-Norfolk MTA

1. Norfolk-Virginia Beach-Portsmouth MSA

2. Richmond MSA

3. Newport News-Hampton MSA

4. Petersburg-Colonial Heights MSA

5. Virginia 7- Buckingham (B1) RSA

6. Virginia 8- Amelia RSA

7. Virginia 9- Greensville RSA

8. Virginia 11- Madison (B1) RSA

9. Virginia 12- Caroline (B1) RSA

10. Virginia 12- Caroline (B2) RSA

J. Milwaukee MTA

1. Wisconsin 8- Vernon RSA

II. CELLULAR MSA OVERLAP AREAS

A. Greenville, SC MSA

B. Anderson, SC MSA

C. El Paso, TX MSA

D. Las Cruces, NM MSA

D. Anticompetitive Effects and Entry

17. Currently, Bell Atlantic and GTE both own all or part of businesses that offer cellular mobile telephone service in the four Cellular MSA Overlap Areas. Their individual market shares in the Cellular MSA Overlap Areas, if measured on the basis of the number of subscribers, exceed 35% and their combined market shares in these markets would range from 75 - 95%.

18. There is already a high level of concentration in the provision of wireless mobile telephone services in the Cellular MSA Overlap Areas. 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 this 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 merger, the HHI in these markets will be in excess of 5500.

19. Competition between GTE and Bell Atlantic, as the two largest providers of wireless mobile telephone services in the Cellular MSA Overlap Areas, has resulted in lower prices and higher quality in these markets than would otherwise have existed absent such competition. If GTE's merger with Bell Atlantic is consummated, the Cellular MSA Overlap Areas will become substantially more concentrated, and the competition between GTE and Bell Atlantic in wireless mobile telephone services in these markets will be eliminated. As a result of the loss in competition between GTE and Bell Atlantic, there will be an increased likelihood both of unilateral actions by the combined firm in these markets 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 merger of GTE and Bell Atlantic is that prices would increase, and the quality or quantity of service together with incentives to improve network facilities would decrease, in the provision of wireless mobile telephone services in the Cellular MSA Overlap Areas.

20. Currently, in the PCS/Cellular Overlap Areas, PrimeCo offers, or will soon offer, wireless mobile telephone service, and either GTE or Ameritech owns all or part of a business offering cellular mobile telephone service. The Ameritech businesses will pass to GTE control upon consummation of the GTE/Ameritech acquisition agreement dated April 2, 1999. In each of the PCS Cellular Overlap Areas, the GTE or Ameritech cellular business has one of the two largest market shares in the provision wireless mobile telephone services and PrimeCo is one of a small number of new PCS entrants into these markets. In some of these markets, such as Richmond, Houston, and Tampa, PrimeCo was the first new PCS entrant, is the third largest wireless firm in terms of number of subscribers, and has managed to garner a significant share. Competition between PrimeCo and GTE or Ameritech, created by PrimeCo's entry into markets that were previously an effective duopoly, has resulted in lower prices and higher quality in these markets than would otherwise have existed absent such competition. There is already a high level of concentration in the provision of wireless mobile wireless telephone services in the PCS/Cellular Overlap Areas. In virtually all, the individual shares of the two cellular carriers--one of which is GTE or Ameritech--is in the 30-40% range and the HHI exceeds 2000. After Bell Atlantic's merger with GTE and GTE's acquisitions of the Ameritech properties, concentration in virtually all of these markets would increase significantly.

21. If GTE and Bell Atlantic merge, and GTE completes its acquisition of the Ameritech cellular businesses, the PCS/Cellular Overlap Areas will become significantly more concentrated, and the competition between PrimeCo and GTE or Ameritech in wireless mobile telephone services in these markets will be eliminated. As a result of the loss in competition between the PrimeCo and GTE or Ameritech cellular businesses, there will be an increased likelihood both of unilateral actions by the combined firm in these markets 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 merger of Bell Atlantic and GTE is that prices would increase, and the quality or quantity of service together with incentives to improve network facilities would decrease, in the provision of wireless mobile telephone services in the PCS/Cellular Overlap Areas.

22. It is unlikely that new entry in response to a small but significant price increase by the combined company for wireless mobile telephone services in the Overlapping Wireless Markets would be timely and sufficient to mitigate the competitive harm resulting from this acquisition, if it were to be consummated.

IV.
VIOLATION ALLEGED

23. The effect of Bell Atlantic's merger with GTE, if it were to be consummated, may be substantially to lessen competition in interstate trade and commerce in the Overlapping Wireless Markets, in violation of Section 7 of the Clayton Act.

24. Unless restrained, the transaction will likely have the following effects in wireless mobile telephone services in the Overlapping Wireless Markets, among others:

- a. actual and potential competition between Bell Atlantic and GTE, between GTE and PrimeCo, and between Ameritech and PrimeCo will be eliminated;
- b. competition in general will be lessened substantially;
- c. prices are likely to increase;
- d. the quality and/or quantity of services are likely to decrease; and
- e. incentives to improve wireless networks will be reduced.

VI.
REQUESTED RELIEF

WHEREFORE, Plaintiff requests:

- 25. That the proposed merger of Bell Atlantic and GTE be adjudged to violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;
- 26. That defendants be permanently enjoined from and restrained from carrying out the merger agreement, dated July 28, 1998, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to bring Bell Atlantic and GTE under common ownership or control;
- 27. That plaintiff be awarded its costs of this action; and

28. That plaintiff have such other relief as the Court may deem just and proper.

Dated this 7th day of May, 1999.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES

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APPENDIX A

DEFINITION OF “HHI”

The term “HHI” means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.