

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No.: 1:00CV02073 (PLF)
	)	
SBC COMMUNICATIONS INC.	)	
	)	
and	)	
	)	
BELLSOUTH CORPORATION,	)	
	)	
Defendants.	)	

PLAINTIFF’S MOTION TO ENTER ORDER MODIFYING FINAL JUDGMENT

Plaintiff, United States of America, moves this Court under the Federal Rules of Civil Procedure 60(b)(5) and Section XII of the Final Judgement entered December 29, 2000, to enter an Order modifying the Final Judgment in the above-captioned matter by modifying Sections XI and XIII to read as follows:

XI

No Reacquisition

A. Defendants may not reacquire any part of the spectrum licenses issued by the Federal Communications Commission (“FCC”) and all other licenses, permits and authorizations divested pursuant to this Final Judgment in the MSAs and RSAs listed in Section II.D.I and the following BTAs within the Indianapolis MTA listed in Section II.D.II.B: BTA 015 Anderson, IN; BTA 039 Muncie, IN; BTA 373 Richmond, IN; BTA 442 Terre Haute, IN; and BTA 457 Vincennes-

Washington, IN (“Restricted BTAs”), provided, however, the divested spectrum licenses in the Restricted BTAs may be reacquired in connection with the proposed Cingular/AT&T Wireless Acquisition if the conditions in Subsection B are met.

B. Defendants may reacquire the divested spectrum in the Restricted BTAs if they do not also acquire as a result of the Cingular/AT&T Wireless Acquisition any interest (equity, financial, or otherwise) in, any ability to exercise control over, or any right to use the spectrum covered by the Partnership Licenses in any of the Restricted BTAs, except as noted below. In furtherance of this, defendants shall:

1. Provide to plaintiff for its approval, in its sole discretion, copies of all agreements entered into by the defendants or AT&T Wireless with the owners of the Partnership Licenses, including amendments to the existing agreements between AT&T Wireless and Von Donop, so that plaintiff will have the opportunity to review them before this Final Judgment is modified. No term shall be included in said agreements or amendments that would in any way limit Von Donop’s ability to make the spectrum covered by the Partnership Licenses available to other users. The agreements may be contingent on the closing of the Cingular/AT&T Wireless Acquisition;

2. Not acquire, directly or indirectly, any rights to influence or control how the Partnership Licenses are used, sold or leased, nor shall defendants and AT&T Wireless have any control over the identity of any purchasers or lessees, or the price or any other terms and conditions of sale or lease;
3. Be prohibited from acquiring any managerial, administrative, financial or legal interest in the Partnership Licenses or entering into any arrangement that allows them to use the Partnership Licenses; and
4. Notify plaintiff 30 days before the implementation of any changes in the relationship between defendants or AT&T Wireless and Von Donop.

The defendants may retain a limited interest in the proceeds of any sale or lease of the Partnership Licenses, provided that (1) such interest influences neither whether the Partnership Licenses are sold or leased nor the terms on which they are offered and (2) such interest is capped at the total amount of debt incurred by Von Donop in acquiring the Partnership Licenses and any tax consequences to Von Donop from the agreements referenced in Subsection B.1.

Any breach of these conditions by defendants, while defendants own, operate, or control any of the reacquired licenses in the Restricted BTAs shall violate this Final Judgment.

C. For purposes of Section XI, the following definitions will apply:

1. “AT&T Wireless” means AT&T Wireless Services Inc., its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents and employees.
2. “Cingular/AT&T Wireless Acquisition” means the proposed acquisition of AT&T Wireless by SBC/BellSouth Wireless Joint Venture encompassed in The Agreement and Plan of Merger dated February 17, 2004.
3. “Partnership Licenses” means the following spectrum licenses issued by the FCC:

Call Sign	Market	Channel Block	MHz	Frequencies
WPOK609	BTA015- Anderson, IN	C	30	1895.00-1910.00 1975.00-1990.00
WPOK648	BTA309- Muncie, IN	C	30	1895.00-1910.00 1975.00-1990.00
WPOK655	BTA373- Richmond, IN	C	30	1895.00-1910.00 1975.00-1990.00
KNLF314	BTA442- Terre Haute, IN	C1	15	1902.50-1910.00 1982.50-1990.00
KNLF305	BTA457- Vincennes- Washington, IN	C1	15	1902.50-1910.00 1982.50-1990.00

4. “Von Donop” means Von Donop Inlet PCS, LLC, its owners, partners, successors, and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents and employees, including but not limited to its successors or assigns related to the Partnership Licenses.

. . .

XIII

Expiration of Modified Final Judgment

Unless this Court grants an extension, this Modified Final Judgment shall expire on the tenth anniversary of the entry of the original Final Judgment, December 29, 2000.

In support of this motion, the United States states as follows:

1. On August 11, 2004, the United States and defendants, SBC Communications Inc. (“SBC”), and BellSouth Corporation (“BellSouth”), jointly moved to modify the Final Judgment and jointly moved to establish procedures to modify the Final Judgment entered by this Court on December 29, 2000.
2. The United States tentatively agreed to the modification subject to defendants agreeing to the following procedures (see Stipulation dated August 10, 2004):
 - a. Defendants shall publish at their own expense a notice of the proposed modification in two consecutive issues of (a) The Los Angeles Times, (b) The Indianapolis Star, and (c) RCR Wireless News;

- b. The United States would publish in the Federal Register a notice announcing the motion to modify the Final Judgment and the United States's tentative consent to it, summarizing the Complaint and Final Judgment, describing the procedures for inspection and obtaining copies of relevant papers, and inviting the submission of comments;
- c. A period for public comment shall end 30 days after the last publication of the notices required by the Stipulation. Within a reasonable time after the conclusion of the 30-day public comment period, the United States would file with the Court copies of all comments that it receives and its response to those comments;
- d. Defendants shall provide the United States for its review and approval in its sole discretion, copies of all agreements to be entered into by the Defendants or AT&T Wireless with Von Donop including any amendments to the existing agreements between AT&T Wireless and Von Donop, so that the United States will have the opportunity to review them before the Court enters an order modifying the Final Judgment; and
- e. An Order modifying the Final Judgment entered in this cause of action on December 29, 2000, and a Modified Final Judgment would not be entered until the United States filed any comments and its responses to those comments or the United States notifies the Court that no comments were received, and until the United States has reviewed and approved any

agreements as described in the modification, and provided that the United States has not withdrawn its tentative consent.

3. On August 12, 2004, the Court entered an order establishing such procedures.

4. Defendants published the required notices in (a) The Los Angeles Times and (b) The Indianapolis Star on August 16 and 17, 2004, and (c) RCR Wireless News on August 16 and 23, 2004, and they filed proof of publication with the Court on August 30, 2004.

5. The United States published a notice in the Federal Register on August 18, 2004.

6. The United States received one comment within the 30-day comment period and filed its response to the public comment on October 5, 2004.

7. Defendants have provided an agreement between AT&T Wireless and Von Donop to the United States for its review and represented that this is the only agreement and that there have been no other amendments to existing agreements with Von Donop.

8. As of the date of this motion, the United States has not withdrawn its consent to the proposed modification, and all of the foregoing conditions have been fulfilled.

9. Pursuant to Local Rule 7, the United States has discussed the motion with defendants and they do not oppose the motion.

10. Entry of an Order modifying the Final Judgment is in the public interest.

A proposed Order Modifying the Final Judgment and a Modified Final Judgment are attached.

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

_____/s/
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