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*, v. SBC COMMUNICATIONS INC. 174 East Houston San Antonio, TX 78205 and BELLSOUTH CORPORATION 1155 Peachtree Street, NE Atlanta, GA 30309 *Defendants*.	)	Civil No.: Filed:

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 SBC Communications Inc. ("SBC") and defendant BellSouth Corporation ("BellSouth") from combining their wireless telecommunications service businesses and to obtain other relief as appropriate. The United States of America alleges as follows:

1. On April 4, 2000, SBC and BellSouth entered into a Contribution and Formation

Agreement under which the two companies would combine their wireless telecommunications service businesses. The United States seeks to enjoin this transaction because its effect may be substantially to lessen competition in wireless mobile telephone services in 16 metropolitan statistical areas ("MSA") and rural service areas ("RSA") in California, Indiana and Louisiana.

2. SBC and BellSouth are two of the remaining four Regional Bell Operating Companies ("RBOCs") created in 1984 by the consent decree settling the United States' antitrust case against American Telephone & Telegraph Co. SBC and BellSouth 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.

3. This joint venture affects seven MSAs and four RSAs where one defendant owns, in whole or part, a cellular mobile wireless telephone business that competes with a wireless PCS telephone business owned by the other defendant that overlaps all or part of the area. In addition, this joint venture affects two MSAs and three RSAs where competing cellular mobile wireless telephone businesses are owned in whole or in part by SBC and BellSouth. These 16 MSAs and RSAs, which have a total population in excess of 20.2 million, are herein referred to as the "Overlapping Wireless Markets."

4. The cellular businesses owned in whole or part by SBC and BellSouth are the only two providers of cellular mobile telephone services, and the two primary providers of all wireless mobile telephone services, in five cellular license areas in the state of Louisiana herein referred to as the "Cellular Overlap Areas." In addition, in 11 cellular license areas in the states of Indiana and California, herein referred to as the "PCS/Cellular Overlap Areas," the cellular and PCS

businesses owned in whole or part by BellSouth and SBC are two of a small number of providers of wireless mobile telephone services.

5. BellSouth and SBC are direct competitors in wireless mobile telephone services in the Overlapping Wireless Markets. In each of the Overlapping Wireless Markets, the wireless businesses owned in whole or part by SBC and BellSouth compete to sell the best quality service at the lowest possible rates and are among each other's most significant competitors.

6. If SBC and BellSouth consummate their proposed joint venture, 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 Overlap Areas because the joint venture would operate both cellular businesses in those areas. Moreover, in the PCS/Cellular Overlap Areas, because the joint venture would have acquired control over the combined cellular and PCS 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 SBC/BellSouth joint venture 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 SBC/BellSouth or coordinated interaction among SBC/BellSouth 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. This 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. SBC, with headquarters in San Antonio, Texas, is one of the largest RBOCs in the United States, with approximately 60 million total local telephone access lines. In 1999, SBC had revenues in excess of $49 billion. SBC provides local telephone services to retail customers in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin. With the exception of Nevada, SBC also provides cellular mobile telephone services or other wireless mobile telephone services in those states as well as in some areas outside its local exchange service region, including the District of Columbia and areas within the states of Delaware, Hawaii, Kentucky, Louisiana, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, and West Virginia. SBC is the nation's third largest wireless mobile telephone service provider, with approximately 11.2 million subscribers nationwide.

11. BellSouth, with headquarters in Atlanta, Georgia, is the third largest RBOC in the United States, with approximately 24 million total local telephone access lines. In 1999, BellSouth had revenues in excess of $25 billion. BellSouth provides local telephone service to retail customers in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee, and also provides cellular mobile telephone service in these states, as well as in some states outside its local exchange service region, including Arkansas, California, Indiana, Pennsylvania, Texas and Virginia. BellSouth is a major wireless mobile telephone service provider, with approximately 5.6 million subscribers nationwide.

12. On April 4, 2000, SBC and BellSouth entered into a Contribution and Formation Agreement under which the two companies agreed to combine their wireless telecommunications service businesses into a business with approximate annual revenues of $10.2 billion. If this transaction is consummated, the combined total of SBC's and BellSouth's cellular and other wireless mobile telephone service subscribers will be 16.2 million.

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 1999, revenues from the sale of wireless mobile telephone services totaled approximately $40 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. Providers of Specialized Mobile Radio ("SMR") services typically were 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 geographic areas for which PCS providers are licensed (Major Trading Areas ("MTA") and Basic Trading Areas) 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 SBC and BellSouth, still typically have substantially larger

market shares than the new entrants. In the Cellular MSA Overlap Areas, the combined market share of BellSouth and SBC in the provision of wireless mobile telephone services, if measured by the number of subscribers, is in the range of 65-95%, taking into account other operational wireless mobile competitors. In the PCS/Cellular Overlap Areas, the combined market share of SBC and BellSouth is generally in the 35-50% range. In almost all of these markets, one defendant 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 owned, in whole or part, by the other defendant.

B. <u>Relevant Product Market</u>

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. <u>Relevant Geographic Markets</u>

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 Cellular Overlap Areas and the PCS/Cellular Overlap Areas are listed below:

I. Cellular Overlap Areas

A. Baton Rouge MSA
B. New Orleans MSA
C. Louisiana 6 RSA- Iberville
D. Louisiana 8 RSA- St. James
E. Louisiana 9 RSA- Plaquemines

II. PCS/Cellular Overlap Areas

A. Los Angeles- San Diego MTA
    1. Los Angeles MSA

B. Indianapolis MTA
    1. Anderson MSA
    2. Bloomington MSA
    3. Indianapolis MSA
    4. Lafayette MSA
    5. Muncie MSA
    6. Terre Haute MSA
    7. Indiana 5 RSA- Warren
    8. Indiana 7 RSA- Owen
    9. Indiana 8 RSA-Brown
    10. Indiana 9 RSA- Decatur

D. <u>Anticompetitive Effects and Entry</u>

17. Currently, SBC and BellSouth both own all or part of businesses that offer cellular mobile telephone service in the five Cellular Overlap Areas. Their individual market shares in the

Cellular Overlap Areas, if measured on the basis of the number of subscribers, ranges from 20 to 70% and their combined market shares in these markets would range from 65 to 95%.

18. There is already a high level of concentration in the provision of wireless mobile telephone services in the Cellular 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 2600, well above the 1800 threshold at which the Department normally considers a market to be highly concentrated. After the wireless businesses are contributed to the joint venture, the HHI in these markets will be in excess of 4800.

19. Competition between BellSouth and SBC, as the two largest providers of wireless mobile telephone services in the Cellular Overlap Areas, has resulted in lower prices and higher quality in these markets than would otherwise have existed absent such competition. If the joint venture between BellSouth and SBC is consummated, the Cellular Overlap Areas will become substantially more concentrated, and the competition between BellSouth and SBC in wireless mobile telephone services in these markets will be eliminated. As a result of the loss in competition between BellSouth and SBC, 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 joint venture between BellSouth and SBC 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 Overlap Areas.

20. Currently, in the PCS/Cellular Overlap Areas, SBC offers PCS mobile telephone service, and BellSouth owns all or part of a business offering cellular mobile telephone service. In each of the PCS/Cellular Overlap Areas, BellSouth has one of the two largest market shares in the provision wireless mobile telephone services and SBC is one of a small number of new PCS entrants into these markets. In one of these markets, Los Angeles, SBC 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 SBC and BellSouth 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 telephone services in the PCS/Cellular Overlap Areas. In virtually all these areas, the individual shares of the two cellular carriers--one of which is owned in whole or part by BellSouth --is in the 30 to 50% range and the HHI exceeds 2000. After the SBC/BellSouth joint venture, concentration in virtually all of these markets would increase significantly.

21. If BellSouth and SBC combine their wireless telecommunications service businesses, the PCS/Cellular Overlap Areas will become significantly more concentrated, and the competition between SBC and BellSouth in wireless mobile telephone services in these markets will be eliminated. As a result of the loss in competition between the SBC and BellSouth wireless mobile telephone services, 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 joint venture between SBC and BellSouth 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 joint venture, if it were to be consummated.

IV.

VIOLATION ALLEGED

23. The effect of the joint venture between SBC and BellSouth, 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 SBC and BellSouth 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 joint venture between SBC and BellSouth 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 Contribution and Formation agreement, dated April 4, 2000, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to bring the wireless telecommunications services businesses of SBC and BellSouth 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 28th day of August, 2000.

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.