Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of	)	
	)	
SBC COMMUNICATIONS INC.	)	File Nos. 0000117778, *et al.*
	)	
and	)	WT Dkt. No. 00-81
	)	
BELLSOUTH CORPORATION	)	
	)	
For Consent to Transfer of Control or Assignment of Licenses and Authorizations	)	

MEMORANDUM OPINION AND ORDER

Adopted: September 29, 2000 Released: September 29, 2000

By the Deputy Chief, Wireless Telecommunications Bureau, and Acting Chief, International Bureau:

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I. INTRODUCTION

1. In this Order, we grant (1) the pending applications filed by SBC Communications Inc. ("SBC") and BellSouth Corporation ("BellSouth") (collectively, "Applicants") for transfer of control or assignment of various licenses and authorizations, and (2) a temporary waiver of the Commission's commercial mobile radio service ("CMRS") spectrum aggregation limit with respect to one market. We deny the Petition to Dismiss or Deny filed by Thumb Cellular Limited Partnership ("TCLP") in the respects discussed below.

II. BACKGROUND

2. SBC is a holding company whose affiliates offer wireline and wireless voice and data communications, paging services, high-speed Internet access and messaging, cable and satellite television, security services, telecommunications equipment, and directory advertising and publishing services. In the United States, SBC's affiliates currently serve over 90 million voice grade equivalent lines, and SBC's CMRS affiliates offer cellular and PCS service in an area covering a population of 120 million persons, both within the thirteen states where SBC's affiliates are incumbent local exchange carriers and elsewhere in the United States. SBC's CMRS affiliates currently serve approximately 11.2 million cellular and PCS customers.[1]

3. BellSouth is a holding company whose affiliates offer telecommunications services, Internet, data, and e-commerce applications, wireless communications, entertainment services, and online and directory advertising to more than 39 million customers in 19 countries. BellSouth offers domestic cellular and PCS services in an area covering a population of approximately 57 million in twelve states. The number of BellSouth domestic wireless customers exceeded 5.3 million at the end of 1999. BellSouth's nationwide wireless data service, BellSouth Wireless Data, L.P. ("BSWD") reaches 93 percent of the urban business population in the United States.[2]

4. On May 4, 2000, SBC and BellSouth filed applications pursuant to sections 214 and 310 of the Communications Act of 1934, as amended ("the Act"),[3] seeking Commission consent to transfer control of or assign their respective U.S. wireless licenses and associated international authorizations to a newly-formed entity, currently called Alloy LLC ("Alloy").[4] On May 19, 2000, by delegated authority, [5] the Wireless Telecommunications Bureau ("WTB") and the International Bureau, ("IB") (collectively, "Bureaus") issued a Public Notice to announce that the Applications had been accepted for filing and to establish a pleading cycle to permit interested parties an opportunity to comment on the proposed transaction.[6]

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1 *See* Wireless Joint Venture of SBC Communications Inc. and BellSouth Corporation, Applications for Transfer of Control or Assignment of Licenses and Authorizations, Description of Transaction, Public Interest Showing and Related Demonstration, File Nos. 0000117778, *et al*. (filed May 4, 2000) at 3 ("Application").

2 *Id*.

3 47 U.S.C. §§ 214(a), 310(d).

4 Application at 7.

5 47 C.F.R. §§ 0.261, 0.331.

6 *See* Public Notice, *SBC Communications Inc. and BellSouth Corporation Seek FCC Consent to Transfer Control of, or Assign, Licenses to Joint Venture*, DA 00-1120 (rel. May 19, 2000) ("*Acceptance Public Notice*"). On June 8, 2000, WTB issued an additional Public Notice announcing that SBC, through its subsidiary Corpus Christi SMSA Limited Partnership ("Corpus Christi"), was seeking FCC approval to acquire cellular and

5. This transaction combines almost all of the current U.S. mobile wireless operations of SBC and BellSouth. Specifically, the Applicant plans to contribute to the new venture almost all of their substantial cellular and PCS businesses. Each also is contributing to Alloy those fixed microwave services, experimental services, private land mobile radio services, and international Section 214 authorizations that are incidental to the CMRS businesses being contributed.[7] In addition, BellSouth will contribute authorizations for 900 MHz SMR services that are used to operate its mobile data network.

6. According to the Applicants, the combination of their U.S. wireless operations will create a company capable of serving approximately 175 million people, in 40 of the 50 top U.S. markets.[8] According to the Applicants, SBC and BellSouth each use TDMA and GSM air interfaces in most of their markets, which will facilitate the eventual integration of their networks and make it easier for their customers to use their phones outside the United States.[9] In addition, the coverage areas of SBC and BellSouth are highly complementary, with overlaps only in three Major Trading Areas ("MTAs"): Indianapolis, New Orleans-Baton Rouge, and Los Angeles-San Diego. SBC offers service

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microwave licenses held by E.N.M.R. Telephone Cooperative and Plateau Telecommunications, Incorporated in Texas RSAs 12, 13, and 14, and that SBC intended to contribute these authorizations to Alloy. *See* Public Notice, *E.N.M.R. Telephone Cooperative, Plateau Telecommunications, Incorporated and Corpus Christi SMSA Limited Partnership Seek FCC Consent for Assignment of Wireless License*, ("*Corpus Christi PN*") DA 00-1242 (rel. June 8, 2000). No petitions were received in response to the *Corpus Christi PN*, and the applications were granted on August 4, 2000. *See* DA 00-1769 (WTB, rel. Aug. 4, 2000). On September 14, 2000, SBC added the E.N.M.R. and Plateau licenses to File No. 0000118405, which is addressed herein, and those licenses are included among the licenses addressed herein.

On July 17, 2000, WTB and IB issued a Public Notice announcing that GTE Corporation ("GTE") and SBC were seeking Commission approval of the transfer of control to SBC of certain cellular, PCS, and microwave licenses then controlled by GTE ("GTE licenses") in Texas and Washington, and that SBC intended to contribute those licenses to Alloy. *See* Public Notice, *GTE Corporation and SBC Communications Inc. Seek FCC Consent to Transfer Control of Wireless Licenses*, ("*GTE PN*") DA 00-1581 (rel. July 17, 2000). No petitions were received in response to the *GTE PN*, and the applications were granted on August 28, 2000. *See* DA 00-1972 (WTB, rel. Aug. 28, 2000). On September 8, 2000, SBC filed minor amendments to the applications addressed herein to transfer control of, or assign, the GTE licenses to Alloy. *See* File Nos. 0000215649, 0000215657, 0000215662, 0000215666, 0000215668, and 0000215611. These additional applications are granted herein.

On September 15, 2000, SBC and BellSouth filed a minor amendment to the international Section 214 transfer applications filed by SBC and BellSouth to include the international Section 214 authority held by former subsidiaries of GTE Corporation acquired by SBC on August 29, 2000. *See* Letter from Philip W. Horton, Counsel for SBC Communications, Inc., and L. Andrew Tollin, Counsel for BellSouth Corporation, to Magalie Roman Salas, Secretary, Federal Communications Commission (Sept. 15, 2000) (September 15, 2000 International Section 214 Amendment Letter). Because this letter constitutes a minor amendment filed at the request of Commission staff, and because SBC's intent to contribute these authorizations to Alloy was noted in the *GTE PN*, no further public notice is required. The specific authorizations that are the subject of the minor amendment are listed in the section of this Order addressing international transfers. In addition to the minor amendment, the letter listed international Section 214 authorizations issued to wireless subsidiaries or affiliates of SBC, which are to be acquired by Alloy, during the Commission's consideration of the transfer of control applications. The letter also listed pending applications filed by wireless subsidiaries or affiliates of SBC for international Section 214 authority. Finally, the letter also included updated foreign carrier affiliation information.

7 Application at 4. The Applicants will not, however, contribute authorizations relating to paging, wireless video, fixed wireless services, and microwave and other wireless authorizations that are incidental to lines of businesses (*e.g.*, landline local exchange service) that are not part of the joint venture.

8 *Id.* at 6.

9 *Id.* at 11. The Applicants state that SBC markets acquired in the Ameritech merger that currently use CDMA are being converted to TDMA. *Id.* at 11 note 14.

primarily in the Southwest, the Midwest, the Northeast, and on the West Coast; BellSouth serves primarily the Southeast and a few additional markets in other areas.[10] BellSouth also manages the A band wireless cellular system in Houston, which is in SBC's region, but where SBC does not currently have facilities.[11]

7. Alloy will be owned approximately 60 percent by SBC and 40 percent by BellSouth, reflecting the value of the assets that each will contribute to the venture. A separate entity, owned and controlled equally by SBC and BellSouth, will manage Alloy and will also own a minimal interest in Alloy.[12] Thus, though the investments by and financial returns to Alloy will be split on a 60/40 basis between SBC and BellSouth, respectively, control of the venture will be shared equally. The Applicants state that any disputes regarding significant management decisions will be referred to a "Strategic Review Committee" within the managing entity, and SBC and BellSouth will each have two of the four seats on that committee. The proposed structure is for the committee to be empowered to act only by a two-thirds vote, meaning that SBC and BellSouth will each, as a practical matter, have control over the joint venture.[13]

8. In response to the *Acceptance Public Notice*, TCLP filed a Petition to Dismiss or Deny disputing: (1) SBC's claim, through Ameritech Corporation ("Ameritech"); to a partnership interest in TCLP, (2) any attempt by SBC to transfer any interest in TCLP to Alloy; and (3) SBC's filing of an application for *pro forma* transfer of control of TCLP following SBC's 1999 acquisition of Ameritech.[14] No other party filed in response to the *Acceptance Public Notice*.

9. On August 16, 2000, in response to the staff's request to review the underlying agreements by which Alloy will be created and managed, and pursuant to a Protective Order,[15] the Applicants filed additional documents as a minor amendment to their applications. The Applicants

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[10] *Id.* at 6.

[11] As discussed below, SBC currently holds a non-controlling interest of approximately two percent in the B band cellular carrier in Houston that it will be selling in connection with this transaction. *See id.* at 6 note 7.

[12] *Id.* at 7.

[13] *Id*.

[14] *See* Petition to Dismiss or Deny, filed by TCLP on June 19, 2000 at 2. ("TCLP Petition").

[15] *See In re Applications of SBC Communications Inc. and BellSouth Corporation*, Order Adopting Protective Order, WT Docket No. 00-81,DA 00-1876 (rel. Aug. 16, 2000) ("Protective Order").

requested confidential treatment for certain of these documents.[16] Pending a determination on the issue of confidentiality, the documents for which the Applicants claim confidential or proprietary treatment were available only pursuant to the Protective Order.[17]

10. On August 30, 2000, SBC, BellSouth, and the U.S. Department of Justice ("DOJ") entered into a Consent Decree with respect to the formation of Alloy, whereby SBC and BellSouth agreed to certain divestitures and to certain prospective conditions on certain of their wireless holdings.[18] Specifically, SBC and BellSouth agreed to divest one wireless business in each area where their respective wireless businesses would overlap.[19] In all markets except for the Los Angeles-San Diego MTA, the divestiture must be completed prior to or at the same time as the consummation of the contribution of the affected properties to Alloy; divestiture of assets for the Los Angeles-San Diego MTA PCS/cellular overlap is required no later than January 27, 2001.[20] The DOJ Consent Decree requires SBC and BellSouth to divest to viable competitors,[21] and pending accomplishment of the divestitures, to operate their overlapping wireless businesses as separate, independent, ongoing, economically viable, and active competitors in each overlapping market.[22]

11. As explained below, based on the record before us, we find that the proposed combination of SBC's and BellSouth's U.S. wireless properties will not adversely affect competition in any U.S. telecommunications market and will permit the companies to form a wireless network capable of competing with other companies that provide nationwide service. Accordingly, we find that, pursuant to sections 214(a) and 310(d) of the Act, grant of the pending requests for transfer of control would serve the public interest. We deny TCLP's Petition for the reasons discussed below, and grant the Applications.

III. DISCUSSION

A. Statutory Authority

12. Pursuant to section 214(a) of the Act, the Commission must determine whether the Applicants have demonstrated that their proposed transaction will serve the public interest, convenience and necessity.[23] Section 310(d) of the Act provides, in pertinent part, that "[n]o construction permit, or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such

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16 *See* Applicants' Request for Confidential Treatment, filed Aug. 16, 2000.

17 On August 25, 2000, TCLP filed a Conditional Objection to Minor Amendment, stating that, if the additional documents filed by the parties were responsive to the issues raised in this proceeding by TCLP, then TCLP objects to the amendment. The staff has determined that the documents filed were unrelated to TCLP's petition and, therefore, denies TCLP's objection.

18 *See United States of America v. SBC Communications Inc. and BellSouth Corporation*, 1:00CV02073, Final Judgment, filed Aug. 30, 2000 (D.D.C.) ("DOJ Consent Decree").

19 DOJ Consent Decree at Section IV.A.

20 *Id*. at Section IV.A.2.

21 *Id*. at Section IV.C.

22 *Id*. at Section IX.A.

23 47 U.S.C. § 214(a). *See* Memorandum Opinion and Order, *Applications of WorldCom and MCI Communications Corporation*, 13 FCC Rcd 18,025, 18,030, at ¶ 8 (1998) ("*WorldCom/MCI Order*").

permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby."[24] Section 310(d) also requires the Commission to consider a license transfer of control or assignment application as if it were filed pursuant to section 308 of the Act, which governs applications for new facilities and for renewal of existing licenses.[25]

13. In applying the public interest test under Section 310(d), the Commission considers four overriding questions: (1) whether the transaction would result in a violation of the Act or any other applicable statutory provision; (2) whether the transaction would result in a violation of Commission rules; (3) whether the transaction would substantially frustrate or impair the Commission's implementation or enforcement of the Act or interfere with the objectives of that and other statutes; and (4) whether the transaction promises to yield affirmative public interest benefits.[26] In summary, the Applicants bear the burden of demonstrating that the transaction will not violate or interfere with the objectives of the Act or Commission rules, and that the predominant effect of the transaction will be to advance the public interest.[27] Prior to approving the Applications, we must determine whether the Applicants have met this burden.[28]

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[24] 47 U.S.C. § 310(d).

[25] Section 310 provides that the Commission shall consider any such applications "as if the proposed transferee or assignee were making application under Section 308 for the permit or license in question." 47 U.S.C. § 310(d). Furthermore, the Commission is expressly barred from considering "whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee." *Id.*

[26] *See Applications of GTE Corporation and Bell Atlantic Corporation for Transfer of Control*, CC Docket No. 98-184, Memorandum Opinion and Order, FCC 00-221, at ¶ 22 (rel. June 16, 2000) ("*Bell Atlantic/GTE Order*"); *Applications of MCI Communications Corporation and British Telecommunications P.L.C*, Memorandum Opinion and Order, 12 FCC Rcd 15, 351, 15,367 ¶ 33 (1997) ("*BT/MCI Order*")); *Applications of Aerial Communications, Inc., and VoiceStream Wireless Holding Corporation for Transfer of Control*, Memorandum Opinion and Order 15 FCC Rcd 10,089, at ¶ 9 (WTB/IB rel. Mar. 31, 2000) ("*VoiceStream/Aerial Order*") (citing *Applications of Ameritech Corp. and SBC Communications Inc. for Transfer of Control*, CC Docket No. 98-141, Memorandum Opinion and Order, FCC 99-279, at ¶¶ 49-50 (rel. Oct. 8, 1999) ("*SBC/Ameritech Order*"); *Applications of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18,025, 18,030-33, ¶¶ 9-12 ("*WorldCom/MCI Order*")); *Applications of Vodafone AirTouch and Bell Atlantic Corporation*, (WTB/IB rel. Mar. 30, 2000) ("*Bell Atlantic/Vodafone AirTouch Order*") (same).

[27] *Bell Atlantic/GTE Order*, FCC 00-221, at ¶ 22, n. 63; *VoiceStream/Aerial Order*, 15 FCC Rcd 10,089, at ¶ 9, n. 20 (citing *WorldCom/MCI Order*, 13 FCC Rcd at 18,031 ¶ 10 n.33 (citing 47 U.S.C. § 309(e) (burdens of proceeding and proof rest with the applicant) and *LeFlore Broadcasting Co., Inc.*, Docket No. 20026, Initial Decision, 66 F.C.C. 2d 734, 736-37 ¶¶ 2-3 (1975) (burden of proof is on licensee on issue of whether applicants have the requisite qualifications to be or to remain Commission licensees and whether grant of applications would serve public interest, convenience and necessity)); *Bell Atlantic/Vodafone AirTouch Order*, 2000 WL 332670, at ¶ 13, n. 23 (same).

[28] *VoiceStream/Aerial Order*, 15 FCC Rcd 10089, at ¶ 9, n. 21(*citing Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20,001, 20,007, ¶¶ 29, 36; *BT/MCI Order*, 12 FCC Rcd at 15,367 ¶ 33); *Bell Atlantic/Vodafone AirTouch Order*, 2000 WL 332670, at ¶ 13, n. 24 (same).

B. Qualifications

14. In evaluating assignment and transfer applications under section 310(d) of the Act, we do not re-evaluate the qualifications of transferors or assignors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.[29] By contrast, as a regular part of our public interest analysis, we determine whether the proposed transferee or assignee is qualified to hold Commission licenses.[30]

15. In this case, no party has challenged the basic qualifications of BellSouth as transferor or assignor. TCLP questions SBC's qualifications both as a transferor and assignor and as a proposed transferee or assignee, in that SBC will hold a majority of the equity in Alloy. Specifically, TCLP asserts, *inter alia*, that: (1) SBC (and previously Ameritech) has falsely stated that it is an owner in TCLP;[31] and (2) SBC improperly filed a *pro forma* transfer of control for TCLP when SBC bought Ameritech because SBC's purchase of Ameritech did not effect a transfer of control of TCLP.[32] The essence of TCLP's arguments in support of its position are that it has already informed the Commission that Ameritech (now, SBC) does not hold an interest in TCLP;"[33] therefore SBC should not have been able to file a transfer of control application for TCLP.[34] SBC responds that TCLP's petition should be dismissed because: (1) the petition raises state law issues that are beyond the Commission's jurisdiction;[35] (2) Ameritech has grounds to believe that it had a partnership interest in TCLP;[36] (3) Michigan's state records list Ameritech as a partner;[37] and (4) TCLP's allegations have been raised in another matter before the Commission.[38]

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29 *See VoiceStream/Aerial Order*, 15 FCC Rcd 10,089, at ¶ 9, n. 22 (citing *MobileMedia Corporation et al.*, 14 FCC Rcd 8017 ¶ 4 (1999) (citing *Jefferson Radio Co. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964)); *Bell Atlantic/Vodafone AirTouch Order*, 2000 WL 332670, at ¶ 14, n. 25 (same). *See also*, Stephen F. Sewell, "Assignments and Transfers of Control of FCC Authorizations Under Section 310(d) of the Communications Act of 1934," 43 Fed. Comm. L.J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee's basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. *Id*.

30 *See In re applications of AirTouch Communications, Inc. and Vodafone Group, Plc*, Memorandum Opinion and Order, DA 99-1200, 1999 WL 413,237 (WTB, rel. June 22, 1999) at ¶¶ 5-9 ("*Vodafone/AirTouch Order*").

31 TCLP Petition at 2.

32 *Id*. at 3. According to TCLP, SBC made these statements when it notified the Commission of a *pro forma* transfer of control of TCLP when SBC purchased Ameritech's minority, non-controlling interest in TCLP. *See* File Nos. 0000063348 and 0000052981. When SBC purchased Ameritech, SBC filed a notification of a *pro forma* transfer of control for every licensee in which Ameritech held a minority, non-controlling interest.

33 *Id*. at 2-4.

34 *Ex Parte* Reply to Applicant's Response to Petition to Dismiss or Deny, filed July 6, 2000 by TCLP at 2. ("TCLP Reply"); Response to July 21 *Ex Parte* Response of SBC and BellSouth to Reply to Applicant's Response to Petition to Dismiss or Deny, filed July 27, 2000 by TCLP at 2-3.

35 Applicants' Response to Petition to Dismiss or Deny ("Applicants' Response"), filed June 29, 2000 by SBC and BellSouth, at 4 ("Applicant's Response"); *Ex Parte* Response of SBC and BellSouth to Reply to Applicant's Response to Petition to Dismiss or Deny, filed July 20, 2000, at 5 ("Applicant's Further Reply").

36 *Id*. at 2; Applicant's Further Reply at 4-5.

37 *Id*. at 2.

38 Response of SBC Communications Inc. to Thumb Cellular Partnership's Petition for Clarification or, Alternatively, for Reconsideration, filed August 24, 2000, at 3.

16. We agree with SBC and BellSouth that, regardless what TCLP has reported to the Commission in ownership filings, the Commission is not the proper forum to resolve the underlying issue of which parties should be considered partners of TCLP.[39] Further, because Ameritech's claim is that it owns a minority, non-controlling interests in TCLP, [40] SBC did not have an obligation to seek approval for or notify the Commission of the transfer, or alleged transfer, of an interest in TCLP when SBC bought Ameritech. [41] We do not find, however, that SBC's representations to the Commission regarding its continuing claim to an interest in TCLP or SBC's filing of an unnecessary application reflects a lack of candor. For these reasons, we deny TCLP's petition.

17. No issues have been raised with respect to the basic qualifications of Alloy, the transferee/assignee, which will be controlled by SBC and BellSouth. The Commission has previously found that SBC and BellSouth are properly qualified as licensees,[42] and no party, other than TCLP, has raised any objection to the applicants holding these licenses through Alloy. We do not find an independent reason to examine further Alloy's qualifications. Therefore, we find that Alloy is properly qualified to acquire these licenses and authorizations.

C. Public Interest Analysis

1. Competitive Framework

18. Where the transfer or assignment of licenses involves telecommunications service providers, the Commission's public interest determination must be guided primarily by the Act.[43] Our analysis of competitive effects under the Commission's public interest standard consists of three steps. First, we determine the markets potentially affected by the proposed transaction.[44] Second, we assess the effects that the transaction may have on competition in these markets.[45] Third, we consider whether the proposed transaction will result in merger-specific public interest benefits.[46] Ultimately, we must

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39 TCLP apparently also recognizes that the ultimate determination regarding which entities rightfully claim a partnership interest in TCLP is not appropriately decided by the Commission. *See* TCLP Reply at 2.

40 Ameritech's claim is that it holds a minority, non-controlling interest in TCLP. Applicant's Response at 2.

41 *See* 47 C.F.R. § 1.948.

42 The Commission recently found SBC qualified in approving the merger of SBC and Ameritech. *See Application of Ameritech Corporation and SBC Communications, Inc. for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14,712, ¶ 568 (1999) ("*SBC/Ameritech Order*"). BellSouth is a wireless licensee in good standing the basic qualifications of which have never been challenged.

43 We note that the 1996 amendments to the Communications Act were specifically intended to produce competitive telecommunications markets. *AT&T Corporation, et al., v. Iowa Utils. Bd.*, 119 S. Ct. 721, 724 (1999).

44 Our determination of the affected markets requires us to identify the Applicants' existing and potential product offerings, and may require us to determine which products offered by other firms compete or potentially compete with these offerings.

45 Depending on circumstances, this step may include the identification of market participants and analysis of market structure, market concentration, and potential entry.

46 These include but may extend beyond factors relating to cost reductions, productivity enhancements, or improved incentives for innovation. *See Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20,014, ¶ 49; *BT/MCI Order*, 12 FCC Rcd at 15,368, ¶ 35. *See also*, Horizontal Merger Guidelines Issued by the U.S. Department of Justice and the Federal Trade Commission, 57 Fed. Reg. 41,552, §§ 2.1, 2.2, 4 (dated Apr. 2, 1992, as revised, Apr. 8, 1997) ("*DOJ Horizontal Merger Guidelines*").

weigh any harmful and beneficial effects to determine whether, on balance, the merger is likely to enhance competition in the relevant markets.

2. Analysis of Potential Competitive Harms

19. We find that two wireless product markets will be affected by this transaction: mobile voice services and mobile data services. Regarding mobile data, BellSouth is contributing the primary assets and ongoing business of BSWD. BSWD's operating footprint substantially overlaps with SBC's cellular and PCS footprint. However, we have received no challenges to this transaction based on its effects on competition in the mobile data market, and we find no reason to believe that the joint venture will adversely affect competition in any such market. Further, there is no evidence that SBC was planning independently to launch a dedicated data network to compete with BSWD. Numerous competitors are actively providing data services today, and advances in technology render it likely that there will be significant entry into the mobile data sector in the near future.[47] Therefore, in the discussion that follows, we focus on the mobile voice market.

a. Mobile Voice Services

20. While the mobile voice interests held by SBC and BellSouth are to a large degree complementary, their respective properties overlap in sixteen cellular markets in three MTAs that implicate either the cellular cross-ownership rule[48] or the CMRS spectrum aggregation limit.[49] Cellular/cellular overlaps would result in the New Orleans Metropolitan Statistical Area ("MSA"), Baton Rouge MSA, and Louisiana RSA Nos. 6, 8, and 9. PCS/cellular overlaps would result in the Indianapolis MTA (involving ten cellular markets) and the Los Angeles-San Diego MTA (involving one cellular market). The joint venture will also create overlaps in several other markets that do not implicate the Commission's cellular cross-ownership or CMRS spectrum aggregation rules.[50]

21. With the exception of the overlap in Los Angeles-San Diego, the Applicants propose to eliminate prior to closing all of the overlaps that would violate the cellular cross-ownership rule or the CMRS spectrum aggregation limit by the sale of SBC's relevant interest. In the case of the Louisiana overlap markets, SBC proposes to divest its CMRS and related authorizations to ALLTEL Communications, Inc. In the case of Indianapolis, where SBC owns a 30 MHz PCS license and

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47 *See, generally, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Fifth Report, FCC 00-289, 2000 WL 1166196 (F.C.C.) (Aug. 18, 2000).

48 47 C.F.R. § 22.942.

49 47 C.F.R. § 20.6.

50 For example, in the Houma-Thibodaux, Louisiana cellular market, SBC owns the A band cellular license and BellSouth owns a 10 MHz PCS license. Combining these authorizations in the joint venture will result in the ownership of only 35 MHz of spectrum, which is permitted under the CMRS spectrum aggregation limit. In Houston, BellSouth's interest in the A band license and SBC's interest of just over two percent in the B band overlap. SBC's interest is below the five-percent attribution benchmark stated in the Commission's cellular cross-ownership rule, 47 C.F.R. § 22.942(a), but the parties state that SBC plans to divest the interest in any event. In Hammond, Louisiana, SBC controls a 10 MHz PCS license, while BellSouth controls the B band cellular licensee for Louisiana RSA 7. Although this overlap does not raise an issue under the CMRS spectrum aggregation limit, the parties state that SBC intends to divest this license. In Pittsburgh, SBC holds a minority, non-controlling interest in the A band cellular license, which will not be contributed to Alloy, and BellSouth has an indirect and *de minimis* (less than 2 percent) interest in the B band cellular license that will be contributed to Alloy. *See* Application at 14-15. The DOJ Consent Decree also does not require any divestiture as a result of these overlaps. Consent Decree at Section IV.

BellSouth controls various A band cellular and related authorizations, SBC proposes to sell 20 MHz of its PCS spectrum to AT&T. Applications to transfer or assign these SBC interests were recently approved.[51]

22. With respect to the PCS/cellular overlap in the Los Angeles-San Diego MTA, the Applicants propose to comply with the CMRS spectrum aggregation rule by January 27, 2001, and have requested a temporary waiver of the Commission's spectrum aggregation limit until that time.[52] Specifically, the Applicants have requested authority, through January 27, 2001, for Alloy to hold SBC's 30 MHz PCS license for the Los Angeles-San Diego MTA, while BellSouth continues to hold an interest in a Los Angeles cellular license. In support of their request, the Applicants state that they need the additional time to come into compliance with the spectrum aggregation limit in this market because of constraints imposed by the partnership agreement through which BellSouth holds its cellular interest in the Los Angeles MSA. More specifically, BellSouth and AT&T are the partners of AB Cellular Partnership, which holds cellular and associated licenses for the Los Angeles MSA, as well as for the Houston and Galveston, Texas MSAs. The Applicants state that, under the partnership agreement, BellSouth has a pre-existing right, which ripens on December 13, 2000, to elect to dissolve the partnership and distribute the properties.[53] The Applicants have requested the waiver through January 27, 2001, to provide sufficient time after the first election date to resolve partnership issues and file appropriate applications with the Commission.[54] The Applicants state that the proposed temporary overlap should pose little competitive concern because, under the partnership agreement, BellSouth currently has no management rights with respect to the Los Angeles cellular system.[55] The Applicants state further that, while their proposed joint venture involves the transfer of more than 2,300 Commission licenses, the waiver request involves only one license in one market, and is similar to the waivers granted in the recent *VoiceStream/Omnipoint* and *VoiceStream/Aerial* decisions, which covered several dozen markets.[56]

23. We find that the circumstances of this case warrant a temporary waiver of the spectrum aggregation rule. In addition to the support provided by the Applicants, we note that we received no adverse public comment regarding the waiver request and that the DOJ Consent Decree requires that the two Los Angeles businesses be operated during this period in a manner designed to preserve and promote competition among all providers in the market. Specifically, the DOJ Consent Decree requires that, until accomplishment of the divestiture, SBC and BellSouth must: (1) ensure that SBC's PCS businesses in the Los Angeles-San Diego MTA and BellSouth's cellular business in the Los Angeles MSA are operated as separate, independent, ongoing, economically viable and active competitors to the other mobile wireless telecommunications providers operating in the same area;[57] (2) assign

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[51] *See Wireless Telecommunications Bureau and International Bureau Grant Consent to SBC Communications Inc. and ALLTEL Communications, Inc. to Transfer Control of Wireless Licenses*, Public Notice, DA 00-2194 (WTB/IB, rel. Sept. 27, 2000); *Wireless Telecommunications Bureau Grants Consent to SBC Communications Inc., Ameritech Wireless Communications, Inc., AT&T Wireless PXS, LLC, and Indiana Acquisition, L.L.C. to Transfer Control of or to Assign Wireless Licenses*, Public Notice, DA 00-2195 (WTB, rel. Sept. 27, 2000).

[52] Application at 14-21.

[53] *Id.* at 16.

[54] *Id*.

[55] *Id.* at 19.

[56] *See In re Applications of VoiceStream Wireless Corp. or Omnipoint Corp. and VoiceStream Wireless Holding Co., Cook Inlet/VS GSM II PCS, LLC, or Cook Inlet/VS GSM II PCS, LLC*, Memorandum Opinion and Order, 15 FCC Rcd. 3341, ¶ 32 (2000); *see also VoiceStream/Aerial Order*, 15 FCC Rcd. at 10,089 ¶ ¶ 30, 38.

[57] DOJ Consent Decree at Section IX.A.

complete managerial responsibility over each business in the overlap market to a specified manager who shall not participate in the operation of that company's other wireless businesses;[58] and (3) appoint a person to oversee compliance with the reporting and "hold separate" provisions of the DOJ Consent Decree.[59] We find that the public interest will be served by permitting limited additional time to resolve the overlap in the Los Angeles-San Diego MTA.[60] Therefore, we grant the Applicants' request for a temporary waiver of the spectrum aggregation limit in the Los Angeles-San Diego MTA and require that they come into compliance by January 27, 2001.

24. While these divestitures will ensure compliance with our cellular cross-ownership and CMRS spectrum aggregation limits, our competitive assessment of the mobile voice sector does not end with a finding that these rules are satisfied. We consider also whether the contemplated transfers or assignments will produce competitive effects that do not violate those rules but are nonetheless harmful. A number of overlaps will be created that will not exceed the cellular cross-ownership or CMRS spectrum aggregation limits.[61] For the reasons set forth below, we find that these situations will not result in undue harm to competition.

25. In Houma-Thibodaux, Louisiana MSA, where the joint venture will combine a 25 MHz cellular license and a 10 MHz PCS license, ample competitive alternatives for consumers should remain. The combination of SBC's and BellSouth's wireless businesses leaves this market with at least five competitors. In addition to Alloy, there will be an independent cellular operator, a Sprint affiliate (PCS), an AT&T affiliate (PCS), and Nextel (SMR). Moreover, three additional service launches, including Verizon, are expected in the future.

26. The Houston, Texas overlap will combine SBC's very small ownership stake in one carrier with BellSouth's cellular operation. Though not required, SBC has indicated its intention to divest its interest. Similarly, SBC has applied to divest its license in Hammond, Louisiana, where a 25 MHz cellular license and a 10 MHz PCS license would overlap.[62] In these two cases, divestitures will eliminate any increase in concentration of spectrum ownership or loss of competition. In Pittsburgh, Pennsylvania, SBC and BS will hold a minority, non-controlling interest in one cellular license and a *de minimis* interest in the other cellular license. The Applicants have stated that these interests will remain with the respective parent entities, and not become part of the joint venture.[63] We do not believe that this situation will adversely affect competition in Pittsburgh. Given the mandatory and elective divestitures outlined above, and the nature of the overlaps that do not violate either the cellular cross-ownership rule or the CMRS spectrum aggregation limit, we find that this transaction will not result in harm to competition in any mobile voice telephony market.

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58 *Id*. at Section IX.C.

59 *Id.* at Section IX.D.

60 WTB recently granted a similar waiver to AT&T to permit AT&T to acquire an attributable interest in a Houston PCS license. *See Wireless Telecommunications Bureau Grants Consent to PrimeCo PCS, LP, and Joseph J. Simons, as Trustee on Behalf of AT&T Corporation and AT&T Wireless Services of San Antonio, Inc. to Transfer Control of PCS License,* Public Notice, DA 00-1975 (WTB, rel. Aug. 28, 2000).

61 *See* note 44 *supra*.

62 This SBC interest is included in the applications granted on September 27, 2000 to divest properties to ALLTEL. *See* note 47 *supra*.

63 Applications at 15.

b. Wireline Services

27. SBC and BellSouth each currently provide mobile voice services within certain parts of the other's wireline local exchange and exchange access territories. SBC, for example, provides mobile voice service in New Orleans where BellSouth is the incumbent LEC, and BellSouth provides mobile voice service in Indianapolis where SBC provides wireline service through Ameritech. This transaction will transform these wireless operations that are out of the current parent's wireline regions into operations that are within the region of the joint venture's two parents.

28. We have recognized in prior decisions that a significant wireless presence can in some cases be used to launch an incumbent LEC's entry into out-of-region local wireline markets.[64] Thus, in some cases, the loss of a wireless competitor could result in a potential public interest harm to local exchange markets if the wireless competitor had intended to use its wireless presence to establish an out-of-region wireline presence. In this case, however, the record contains no evidence that either SBC or BellSouth intended to utilize its wireless assets to launch out-of-region local wireline service in each other's territories.[65] There is also nothing in the joint venture agreement that would limit competition outside of wireless markets (*e.g.*, the wireless joint venture will not inhibit SBC's out-of-region expansion into local markets in Miami, Atlanta, and other cities in BellSouth's territory, as required by conditions adopted in the *SBC-Ameritech Merger Order*).[66]

29. The joint venture may actually provide each Applicant with an increased ability to use wireless assets to launch out-of-region wireline service. The Applicants state that, under their agreement, each will be able to resell Alloy's service "out-of-region."[67] In BellSouth territory, SBC will be permitted to resell Alloy service under the name of SBC. Similarly, in SBC territory, BellSouth will be permitted to resell Alloy service under the BellSouth name. For these reasons, and because of the presence of other CMRS carriers in the major markets served by SBC's and BellSouth's wireline operations, we conclude that the loss of a fully independent wireless carrier as a result of the joint venture will not adversely affect competition for local telecommunications services in either SBC's or BellSouth's in-region territories.

c. International Services

(i.) Introduction/Background

30. The proposed transaction includes an application requesting authority to transfer control of or assign[68] certain international Section 214 authorizations held by BellSouth Cellular Corporation,

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64 *See SBC/Ameritech Order*, 14 FCC Rcd at 14,757-60.

65 *Cf. id.* at 14,749-50, 14,751-52, at ¶¶ 78, 82. In the *SBC/Ameritech Order*, the Commission noted that Ameritech's cellular subsidiary in St. Louis "planned to offer local service as part of a bundle" to residential and business customers, and further that SBC "had plans to enter the mass market in Chicago building off its cellular base in that city," and thus could be viewed as a potential market entrant there. *Id.*

66 *See id.* at 15,026-29 ("Out-of-Territory Competitive Entry"). SBC has stated that it intends to include Miami and Atlanta among the cities where it will commence "out-of-region" wireline service. *See* <Http://www.sbc.com/News_Center/A>rticle.html?query type=article&query=19991011-07> (visited 9-12-00).

67 Application at 23-24 and n.33.

68 All of the requests are for transfers of control, except one which is a request for an assignment, as specified below.

BellSouth Carolinas PCS, L.P., BellSouth Personal Communications, Inc., and BellSouth Wireless Data, L.P. (collectively, the "BellSouth wireless subsidiaries") to Alloy.[69] The authorizations currently held by BellSouth wireless subsidiaries that are the subject of the proposed transaction consist of the following: (1) resale of international switched service of unaffiliated carriers (offered by BellSouth Cellular Corporation, BellSouth Carolinas PCS, L.P, and BellSouth Personal Communications Inc.);[70] and (2) facilities-based and resale service between the U.S. and Canada (offered by BSWD).[71]

31. The proposed transaction also includes an application requesting authority to transfer control of certain international Section 214 authorizations held by CCPR Services, Inc. ("CCPR Services"), USVI Cellular Telephone Corporation ("USVI Cellular"),[72] and Ameritech Mobile Communications, Inc. (collectively, the "SBC wireless subsidiaries") to Alloy. The authorizations currently held by SBC wireless subsidiaries that are the subject of the proposed transaction consist of the following: (1) resale of the international switched services of authorized, unaffiliated U.S. international carriers for the provision of switched services (by Ameritech Mobile);[73] (2) resale of the international switched services of authorized, unaffiliated international carriers for the provision of switched services (by CCPR Services);[74] and (3) resale of the international switched services of authorized, unaffiliated U.S. international carriers for the provision of switched services from U.S. Virgin Islands 1-St. Thomas Island RSA to various international points (by USVI Cellular).[75]

32. In addition, on September 15, 2000, SBC and BellSouth filed a minor amendment to their international Section 214 transfer applications to include: (1) the international Section 214

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[69] *See* BellSouth Corporation International 214 Application at 3. Reference to Alloy is also intended to include Alloy's operating companies. Because Alloy will be owned and controlled by SBC and BellSouth Corporation, we recognize that Alloy's operating companies include SBC and BellSouth affiliated companies or operating subsidiaries.

[70] *See id*. at 5-6; FCC File No. ITC-214-19960426-0172 (ITC -T/C-20000504-0266--assignment)(old File No. ITC-96-270); ITC-214-19960516-00196 (ITC-T/C-20000504-0263) (old File No. ITC-96-279); ITC-214-19960516-00197 (ITC-T/C-20000504-0264) (old File No. ITC-96-280).

[71] *See* BellSouth Corporation International 214 Application at 6; FCC File No. ITC-214-19990608-00327 (ITC-T/C-20000504-0265).

[72] In the SBC International 214 Application, Applicants note that CCPR Services and USVI Cellular are partially owned by Teléfonos de México, S.A. de C.V. (Telmex), with Telmex owning a non-controlling, fifty- percent interest in each company. *See* SBC International 214 Application at 2 n.1. On September 20, 2000, SBC filed a letter explaining the ownership and governance of the "CCPR family of companies," both as they exist now, and as they will exist after SBC and BellSouth form their proposed wireless joint venture, and making certain commitments with respect to the post-consummation structure of this family of companies. *See* Letter from Peter J. Schildkraut, Counsel for SBC Communications, Inc., to Elizabeth Nightingale, Telecommunications Division, International Bureau, Federal Communications Commission, filed Sept. 20, 2000 at 1-2 (September 20, 2000 CCPR Structure Letter). In the letter, SBC asserts that, after the proposed transfers of control to Alloy are consummated, Telmex's non-controlling interest in SBC International-Puerto Rico, Inc. (the indirect parent of both CCPR Services and USVI Cellular) will not change. *See* September 20, 2000 CCPR Structure Letter at 2. As a result, after the proposed transfers of control to Alloy are consummated, Telmex will continue to hold an indirect non-controlling, fifty-percent interest in both CCPR Services and USVI Cellular.

[73] *See* SBC International 214 Application at 9; FCC File No. ITC-214-19960418-00152 (ITC-T/C-20000504-00260) (old File No. ITC-96-243).

[74] *See* SBC International 214 Application at 9; FCC File No. ITC-94-100 (ITC-T/C-20000504-00261).

[75] *See* SBC International 214 Application at 9; FCC File No. ITC-93-128 (ITC ITC-T/C-20000504-00262).

authority held by the former subsidiaries of GTE Corporation that were acquired by SBC on August 29, 2000; [76] (2) international Section 214 authorizations issued to wireless subsidiaries or affiliates of SBC during the Commission's consideration of the transfer of control applications addressed in this Order; [77] and (3) pending applications for international Section 214 authority filed by wireless subsidiaries or affiliates of SBC.[78] Applicants note that the international Section 214 authorizations held by the former GTE entities and the after-acquired authorizations are limited to the resale of international switched services of unaffiliated U.S. carriers, except for the authorization held by Pacific Telesis Mobile Services ("PTMS").[79] Applicants assert that, while the overwhelming majority of international service provided by PTMS involve the resale of switched services of unaffiliated U.S. carriers, a very small amount of service does not fall within that category.[80] Specifically, Applicants assert that PTMS has roaming agreements with a number of foreign carriers, including foreign carriers with whom it is "affiliated" within the meaning of Section 63.09 of the Commission's rules.[81] Applicants assert that these foreign carriers may provide not only roaming services but also long distance services for the benefit of PTMS customers roaming in their markets, and that, therefore, PTMS resells some international switched service provided by affiliated foreign carriers.[82] Applicants acknowledge that PTMS currently is subject to dominant carrier regulation with respect to roaming traffic carried by affiliated carriers on routes

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[76] *See* September 15, 2000 International Section 214 Amendment Letter. The *GTE PN*, in addition to seeking comment on the transfer of control to SBC of certain wireless licenses currently controlled by subsidiaries and affiliates of GTE, also gave public notice that the application to transfer control to SBC of certain international Section 214 authority held by the same wireless affiliates or subsidiaries of GTE had been found, upon initial review, to be acceptable for filing and subject to the streamlined processing procedures set forth in Section 63.12 of the Commission's rules, 47 C.F.R. § 63.12. The authorization to be transferred was to resell the international switched services of unaffiliated U.S. carriers and was held by GTE Wireless Seattle LLC, GTE Wireless Victoria LLC, GTE Mobilnet of Austin Limited Partnership, GTE Mobilnet of Texas RSA #11 Limited Partnership, GTE Mobilnet of Texas RSA #16 Limited Partnership, and Texas RSA 10B3 Limited Partnership, under authorization number was File No. ITC-95-561 and transfer of control file number ITC-T/C-20000713-00397. *See GTE PN* at 2. Streamlined grant was effective July 31, 2000. *See International Authorizations Granted*, Report No. TEL-00279, DA 00-1952, at 3 (rel. Aug. 24, 2000). The Public Notice stated that streamlined grant would in no way prejudge the outcome of the pending license transfers in WT Docket No. 00- 81. *See GTE PN* at 2. In a letter dated September 1, 2000, counsel for SBC notified the Commission that, on August 29, 2000, it consummated its acquisition of control of the international authorizations formerly held by GTE. *See* Letter from Peter J. Schildkraut, Counsel for SBC Communications, Inc., to Magalie Roman Salas, Secretary, Federal Communications Commission, dated Sept. 1, 2000.

[77] *See* September 15, 2000 International Section 214 Amendment Letter at 3. These authorizations include: (1) Ameritech Wireless Communications, Inc., File No. ITC-214-20000720-00425; (2) Houma-Thibodaux Cellular Partnership, File No. ITC-214-20000721-00430; (3) Pacific Telesis Mobile Services (PTMS), File No. ITC-214-20000516000368; and (4) SNET Mobility, Inc., File No. ITC-214-20000516000367. *See* September 15, 2000 International Section 214 Amendment Letter at 3. The original transfer of control applications included a request to transfer control of authorizations issued to SBC or BellSouth wireless subsidiaries or affiliates during the pendency of this proceeding as well as applications that were filed by such entities and that remained pending at the time of consummation of the proposed transaction. *See e.g.*, SBC International 214 Application, Exhibit 1, Public Interest Statement at 26-27.

[78] *See* September 15, 2000 International Section 214 Amendment Letter at 3. These authorizations include: (1) SBC Wireless, Inc., pending application filed May 17, 2000; and (2) SNET Cellular, Inc., pending application filed May 16, 2000. *Id*.

[79] *See id*. at 5-6.

[80] *See id*. at n.16.

[81] *See id*. (citing 47 C.F.R. § 63.09).

[82] *See id*.

between the United States and Denmark, South Africa, Belgium, and Hungary, and agree that PTMS will continue to accept dominant carrier regulatory treatment with respect to roaming traffic carried by affiliated carriers on these routes after the transfers of control.[83] The minor amendment also included updated foreign carrier affiliation information, which is discussed in detailed below.

33. Competition in U.S. International Services Market. There is no evidence in the record that the proposed transfers of control or assignments would affect competition adversely in any U.S. international service market, including any input market that is essential for the provision of international service, such as the market for international transport services.[84] This conclusion is supported by the fact that, on all international routes except the U.S.-Canada route, Alloy will be authorized only to provide service through the resale of the international switched services of unaffiliated U.S. carriers.[85] Therefore, the proposed transaction does not raise concerns about a potential increase in concentration of U.S. international transport facilities, with the exception of Canada. In addition, because SBC has no reported U.S. international transport facilities on the U.S.-Canada route, the proposed transaction does not raise concerns about an increase in concentration of U.S. international transport facilities on that route.[86] In addition, no party has alleged, and we find no basis to conclude, that this transaction will otherwise reduce competition in any international services market.[87]

34. Foreign Affiliations. We note that both BellSouth and SBC have ownership interests in carriers that operate on the foreign end of U.S. international routes that create "affiliations" within the meaning of section 63.09 of the Commission's rules.[88] Alloy certifies, pursuant to section 63.18 of the Commission's rules,[89] that it is not a foreign carrier. As a result of the transactions, Alloy would become affiliated with all of BellSouth's and SBC's foreign carrier affiliates.

35. Applicants certify that, as a result of BellSouth's ownership interest in Alloy, Alloy would acquire affiliations with the following foreign carriers: (1) Abiatar, S.A. (Uruguay); (2) BCP, S.A. and BSE, S.A. (Brazíl); (3) BellSouth Chile S.A. and BellSouth Comunicaciones S.A. (Chile); (4)

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83 *See id*. at 6 and n.17. On September 20, 2000, SBC and BellSouth filed a letter revising certifications in the September 15, 2000 International Section 214 Amendment Letter regarding the dominant regulatory status of PTMS with respect to international roaming traffic on the U.S.-Hungary route. Specifically, Applicants agree that, even though SBC (and therefore PTMS) no longer is affiliated with a foreign carrier on the U.S.-Hungary route, after the contribution of PTMS to Alloy, PTMS will continue to be subject to dominant carrier regulation with respect to roaming traffic on the U.S.-Hungary route pending the Commission's determination of SBC's request for nondominant treatment for services provided on the U.S.-Hungary route. *See* Letter from Philip W. Horton, Counsel for SBC Communications, Inc., and L. Andrew Tollin, Counsel BellSouth Corporation, to Magalie Roman Salas, Secretary, Federal Communications Commission, filed Sept. 20, 2000, at 1-2 and n.3 ("*September 20th Letter*"); Southwestern Bell Communications Services., Inc., et al., Notification of Foreign Affiliation and Request for Change in Regulatory Status, filed Sept. 13, 2000, at 2.

84 *See WorldCom/MCI Order*, 13 FCC Rcd at 18,071, ¶ 81 (stating that the "Commission appropriately has tended to focus its analysis on particular inputs in considering competitive effects on international routes").

85 *See* BellSouth Corporation International 214 Application at 14-15; SBC International 214 Application at 18-19.

86 *See* International Bureau Report: 1998 Circuit Status Report No. IN 99-36 (rel. Dec. 17, 1999).

87 *See generally WorldCom/MCI Order*, 13 FCC Rcd 18,025; *Global Crossing Ltd. and Frontier Corporation, Applications for Transfer of Control Pursuant to Sections 214 and 310(d) of the Communications Act, as amended*, CC Docket No. 99-264, Memorandum Opinion and Order, 14 FCC Rcd 15,911, ¶ 19 (WTB/CCB/IB 1999).

88 *See* 47 C.F.R. § 63.09(e). Section 63.09(e) provides, in relevant part, that: "[t]wo entities are *affiliated* with each other if one of them, or an entity that controls one of them, directly or indirectly owns more than 25 percent of the capital stock of, or controls, the other one." *Id*.

89 47 C.F.R. § 63.18(h).

BSC de Panamá, S.A. (Panamá); (5) CellCom Israel Ltd. (Israel); (6) Compania de Radiocomunicaciones Moviles S.A. (Argentina); (7) Dansk MobilTelefon I/S d/b/a SONOFON (Denmark); (8) Otecel S.A. (Ecuadór); (9) Telcel Celular, C.A. (Venezuela); (10) Telefonia Celulár de Nicaragua, S.A. (Nicaragua); (11) Tele 2000, S.A. (Perú); (12) BellSouth Guatemala y CIA S.C.A. (Guatemala);[90] (13) Celumovil S.A. (Colombia); and (14) Compania Celulár de Colombia Cocelco S.A. (Colombia).[91]

36. Applicants also certify that, as a result of SBC's ownership interest in Alloy, Alloy would acquire affiliations with the following foreign carriers: (1) Telkom South Africa Ltd. (South Africa); (2) diAX Holding AG (Switzerland); (3) BEN Netherlands B.V. (the Netherlands); (4) Tele Danmark A/S (Denmark); (5) EITele Ost (Norway); (6) Talkline GmbH (Germany and the Netherlands); (7) UAB Mobilios Telekomunikacijos (Bité) (Lithuania); (8) Ameritech Communications International, Inc. (Canada);[92] (9) Belgacom S.A. (Belgium); (10) Belgacom France (France); (11) Sunrise Communications A.G. (Switzerland); and (12) Contactel, s.r.o. (Czech Republic).[93]

37. For the reasons discussed below, we conclude that the proposed transaction would not result in Alloy acquiring an affiliation with a foreign carrier that has market power in non-World Trade Organization ("WTO") markets that Alloy would become authorized to serve by means of the transfers of control or assignments of the authorizations listed above. This finding supports our conclusion that the transaction would not have anti-competitive effects in any U.S. international market and would serve the public interest, convenience, and necessity. We also, for the reasons described below, find it unnecessary to modify the authorizations being transferred or assigned to Alloy to classify Alloy as dominant in the provision of the authorized service on the routes where Alloy will be affiliated with foreign carriers that possess market power.

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90 *See* BellSouth Corporation International 214 Application at 8, 11-12.

91 *See* September 15, 2000 International Section 214 Amendment Letter at 5 (adding new foreign carrier affiliations).

92 *See* SBC Corporation International 214 Application at 11-14.

93 *See* September 15, 2000 International Section 214 Amendment Letter at 4-5 (adding new foreign carrier affiliations). Applicants also assert that SBC no longer is affiliated with MATÁV Rt (Hungary) or NetCom GSM (Norway). *Id*.at 4.

38. Standards. In the *Foreign Participation Order*,[94] the Commission adopted a presumption in favor of granting applications by carriers from WTO members in light of the WTO Agreement on Basic Telecommunications Services ("Basic Telecom Agreement"), the market-opening commitments of other WTO members, and the Commission's improved competitive safeguards governing U.S. international services. As part of this policy, the Commission adopted a presumption in favor of granting applications that request authority to serve a WTO member where the applicants have a foreign carrier affiliate. Previously, the Commission had applied an "effective competitive opportunities" ("ECO") test to certain applicants that sought to provide service on routes where an affiliated foreign carrier possessed market power.[95] In the *Foreign Participation Order*, the Commission eliminated the ECO test in favor of a rebuttable presumption that requests for international section 214 authority from applicants affiliated with foreign carriers in WTO members do not pose concerns that would justify denial of the application on competition grounds.[96] The Commission retained the ECO test for applicants that seek to serve non-WTO countries in which the applicant has an affiliation with a foreign carrier possessing market power in such countries.[97]

39. In the *Foreign Participation Order*, however, the Commission observed that the exercise of foreign market power in the U.S. market could harm U.S. consumers through increases in prices, decreases in quality, or a reduction in alternatives in end-user markets.[98] Generally, this risk occurs when a U.S. carrier is affiliated with a foreign carrier that has sufficient market power on the foreign end of a route to affect competition adversely in the U.S. market.[99] To determine whether the public interest is served by permitting Alloy to provide U.S. international service on the routes where it would become affiliated with foreign carriers through the foreign affiliations of SBC and BellSouth Corporation, we apply the entry standard adopted in the *Foreign Participation Order*. We also consider other public interest factors that may weigh in favor of, or against, granting an international Section 214 application, including national security, law enforcement, foreign policy, and trade concerns.[100]

40. If we determine that the public interest would be served by permitting Alloy to provide U.S. international service on the affiliated routes, we next decide the terms under which the newly authorized entity will provide service on these routes. Specifically, we examine whether it is necessary

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94 *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry and Regulation of Foreign Affiliated Entities*, IB Docket Nos. 97-142, 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23,891 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, FCC 00-339 (rel. Sept. 19, 2000).

95 The ECO analysis was developed and discussed in *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Report and Order, 11 FCC Rcd 3873 (1995) ("*Foreign Carrier Entry Order*").

96 *See Foreign Participation Order*, 12 FCC Rcd 23,891 23,906-10, 23,913-17, ¶¶ 33-43, 50-58; *BT/MCI Order*, 12 FCC Rcd at 15,409-10, ¶¶ 154–155.

97 *See Foreign Participation Order*, 12 FCC Rcd at 23,944-46, 23,949-50, ¶¶ 124-29, 139-42. Sections 63.18(j)-(k) of the Commission's rules calls for application of the ECO test in situations in which: an applicant is a foreign carrier in a non-WTO country; an applicant controls a foreign carrier in a non-WTO country or any entity that owns more than twenty-five percent of the applicant, or controls the applicant, controls a foreign carrier in a non-WTO country; or, in specified circumstances, more than twenty-five percent of an applicant is owned by two or more foreign carriers. *See* 47 C.F.R. §§ 63.18(j)-(k).

98 *See Foreign Participation Order*, 12 FCC Rcd at 23,951-954, ¶¶ 144-46; Thomas G. Krattenmaker & Steven C. Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power Over Price*, 96 Yale L.J. 209 (1986).

99 *See Foreign Participation Order*, 12 FCC Rcd at 23,954, ¶ 147.

100 *See id*., 12 FCC Rcd at 23,919-21, ¶¶ 61-66.

to impose the Commission's international dominant carrier safeguards on the newly authorized entity's international operating companies in their provision of service on the affiliated routes.[101] The standard for determining the regulatory status on affiliated routes also is governed by the *Foreign Participation Order*. Under the Commission's rules adopted in that order, the Commission regulates U.S. international carriers as dominant on routes where an affiliated foreign carrier has sufficient market power on the foreign end to affect competition adversely in the U.S. market.[102] A U.S. carrier presumptively is classified as non-dominant on an affiliated route if the carrier demonstrates that the foreign affiliate lacks fifty-percent market share in the international transport and local access markets on the foreign end of the route.[103] Further, a U.S. carrier also presumptively is classified as non-dominant on an affiliated route if the carrier provides service solely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services.[104]

(ii.) Discussion

41. Entry Standard. For the reasons described below, we conclude that the public interest would be served by transferring control of or assigning (in the manner requested by the Applicants) the international Section 214 authorizations held by BellSouth wireless subsidiaries and SBC wireless subsidiaries to Alloy. Section 63.18(k) of the Commission's rules requires an applicant seeking to serve a destination where the applicant is affiliated with a foreign carrier to demonstrate that: (1) the destination is a WTO Member; (2) the affiliate lacks market power; or (3) the destination offers effective competitive opportunities to U.S. carriers.[105]

42. All countries where BellSouth and SBC have foreign carrier affiliates, with the exception of Lithuania, are members of the WTO. Accordingly, we find that Alloy is entitled to a presumption that its affiliation with carriers in those countries do not raise competition concerns that would warrant denial of its request to serve the affiliated routes through its acquisition of control of the international Section 214 authorizations held by BellSouth wireless subsidiaries and SBC wireless subsidiaries.

43. With respect to Lithuania, where Alloy would become affiliated with Bité through SBC's affiliation, though Lithuania is not a member of the WTO, Applicants certify that Bité "has far less than a 50 percent market share in the international transport and local access markets in Lithuania."[106] Applicants argue, therefore, that Bité is presumed not to possess market power in any relevant market on the U.S.-Lithuania route.[107] They note that, for this reason, the Commission already has concluded that Bité lacks sufficient market power to affect competition adversely in the United States.[108] Indeed, the Commission, in the *SBC/Ameritech Order*, found that, though SBC proposed to

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[101] The Commission's international dominant carrier safeguards are set forth in sections 63.10(c) and (e) of the Commission's rules (as amended in *International Settlement Rates*, IB Docket No. 96-261, Report and Order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999)), 47 C.F.R. § 6310(c), (e).

[102] *See Foreign Participation Order*, 12 FCC Rcd at 23,951-52, ¶ 144; 47 C.F.R. § 63.10(a)(3).

[103] *See id*. Section 63.18 of the Commission's rules requires an applicant to demonstrate that it qualifies for non-dominant classification on any affiliated route for which it seeks to be regulated as a non-dominant international carrier. 47 C.F.R. § 63.18.

[104] *See* 47 C.F.R. § 63.10(a)(4).

[105] *See* 47 C.F.R. § 63.18(k)(1)-(3).

[106] SBC International 214 Application at 15.

[107] *See id*.

[108] *See id*.

acquire Ameritech's controlling interest in Bité in Lithuania, the public interest would continue to be served by SBC's authorization to provide service on this route.[109] The Commission noted that Bité is authorized in Lithuania to provide mobile wireless service only and concluded, on that basis and in the absence of any other evidence of market power, that Bité lacks sufficient market power to affect competition adversely in the United States.[110] Accordingly, the Commission found SBC's investment to be consistent with the entry policies adopted in the *Foreign Participation Order* for carriers from countries that are not members of the WTO.[111] IB's Telecommunications Division recently relied on this conclusion in granting authority to Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance ("SBCS") to provide international facilities-based and resale services between all points in Texas and all international points.[112] The Telecommunications Division found that each of the destination markets where SBCS has an affiliation with a foreign carrier is a WTO Member except Lithuania, where SBCS' foreign carrier affiliate lacks market power. Therefore, the Telecommunications Division found that SBCS is entitled to a presumption that its foreign carrier affiliations do not raise competition concerns that would warrant denial of its request to serve these routes. That analysis applies equally here. We also note that no party has filed comments specifically addressing competition concerns on the U.S.-Lithuania route (or other routes where Alloy would acquire affiliations with foreign carriers), and we find no other public interest factors that warrant denial of Alloy's acquisition of the authorizations held by the SBC and BellSouth Corporation wireless subsidiaries.

44. Regulatory Status. We next examine whether it is necessary to impose the Commission's international dominant carrier safeguards on Alloy's provision of service on these affiliated routes. Applicants request that the Commission treat Alloy as non-dominant on all routes where it would become affiliated with foreign carriers through the ownership interests of BellSouth and SBC, [113] except, as noted above, Applicants agree that PTMS will continue to accept dominant carrier regulatory treatment with respect to roaming traffic carried by affiliated foreign carriers on routes between the United States and Denmark, South Africa, Belgium, and Hungary after the transfers of control are consummated.[114] On all international routes except the U.S.-Canada route (and with the limited exception of PTMS roaming traffic) Alloy and its operating companies will be authorized to provide service only through the resale of the international switched services of unaffiliated U.S. carriers.[115] Therefore, under Section 63.10(a)(4)[116] of the Commission's rules, we need not modify the

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109 *See SBC Ameritech Order*, 14 FCC Rcd at 14,934, ¶ 358.

110 *See id*.

111 *See id*. The Commission also found that, after the merger, SBC subsidiaries would be subject to continued regulation as non-dominant international carriers between the United States and Lithuania. *See id*.

112 *See Southwestern Bell Communications Services, Inc., Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, for Authority to Operate as an International Facilities-Based and Resale Carrier*, File No. ITC-214-20000127-00027, Order, Authorization and Certificate, DA 00-1474 at ¶ 14 (rel. June 30, 2000).

113 *See* BellSouth Corporation International 214 Application at 15; SBC International 214 Application at 19.

114 *See* September 15, 2000 International Section 214 Amendment Letter at 6 and n.17; *September 20th Letter* at 1-2 (agreeing that, even though SBC, and therefore PTMS, no longer is affiliated with a foreign carrier on the U.S.-Hungary route, after the contribution of PTMS to Alloy, PTMS will continue to be subject to dominant carrier regulation with respect to roaming traffic on the U.S.-Hungary route pending the Commission's determination of SBC's request for nondominant treatment for services provided on the U.S.-Hungary route). *See also*, *International Authorizations Granted*, Public Notice, Report No. TEL-00261, DA 00-1614 at 1 (IB Rel. July 20, 2000) (noting that PTMS is subject to dominant carrier regulation with respect to roaming traffic carried by affiliated carriers on routes between the United States and Denmark, South Africa, Hungary, and Belgium).

115 *See* BellSouth Corporation International 214 Application at 14-15; SBC International 214 Application at 18-19;

authorizations being transferred or assigned to Alloy and its operating companies to classify them as dominant in the provision of the authorized service on the routes where Alloy and its operating companies will be affiliated with foreign carriers that possess market power. Moreover, as noted above, Applicants agree that PTMS will continue to accept dominant carrier regulatory treatment with respect to roaming traffic carried by affiliated carriers on routes between the United States and Denmark, South Africa, Belgium, and Hungary. Though PTMS will become affiliated with BellSouth foreign carrier affiliates upon consummation of the proposed transaction, we find no basis at this time to conclude that any of BellSouth's affiliated foreign carriers have market power in any relevant foreign market.[117]

45. On the U.S.-Canada route, the only route on which Alloy would provide facilities-based service, Applicants state that only BSWD will be authorized to provide facilities-based service.[118] The record reflects that Applicants are not affiliated with any foreign carrier on the U.S.-Canada route that has fifty percent or more market share in the international transport and local access markets in Canada.[119] Given this, we need not modify BSWD's Section 214 authority to provide service on the U.S.-Canada route to reclassify it as dominant in the provision of the authorized service.

3. Public Interest Benefits

46. In addition to assessing the possible public interest harms of the proposed joint venture, we also must consider whether the combination of these companies' wireless operations is likely to generate redeeming public interest benefits.[120] In doing so, we ask whether the new entity is likely to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that could not be pursued but for the creation of the joint venture.

47. Applicants claim that several public interest benefits will result from their joint venture and contend that the proposed alliance will create a stronger and more efficient wireless competitor with substantially greater geographic coverage in an industry in which nationwide coverage is becoming increasingly important.[121] The new entity would have a footprint capable of serving a population of approximately 175 million and 40 of the 50 top markets.[122] Applicants contend that a contiguous

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September 15, 2000 International Section 214 Amendment Letter at 5-6.

116 *See* 47 C.F.R. §63.10(a)(4) ("[a] carrier that is authorized under this part to provide to a particular destination an international switched service, and that provides such service solely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services . . . shall presumptively be classified as non-dominant for the provision of the authorized service . . . .)."

117 Since the issuance of the *Acceptance Public Notice* on May 19, 2000, BellSouth has filed a foreign carrier notification pursuant to Section 63.11 of the Commission's rules, 47 C.F.R. § 63.11, notifying the Commission of its foreign carrier affiliations in Colombia. No comments were filed in response to the public notice announcing the filing of the notification. *See Foreign Carrier Affiliation Notification*, Report No. FCN-00033, DA No. 00-1809 (IB, rel. Aug. 10, 2000). As noted above, Applicants also provided notice in this proceeding of these new BellSouth foreign carrier affiliations in Colombia. *See* September 15, 2000 International Section 214 Amendment Letter at 5.

118 *See* BellSouth Corporation International 214 Application at 14-15; SBC International 214 Application at 18-19.

119 *See* BellSouth Corporation International 214 Application at 14-15; SBC International 214 Application at 18-19.

120 *BA/GTE Order*, FCC 00-221, ¶ 209; *SBC/Ameritech Order*, 14 FCC Rcd at 14,825, ¶ 255; *WorldCom/MCI Order*, 13 FCC Rcd at 18,134-35, ¶ 194.

121 Applications at 5-6.

122 *Id*. at 6.

nationwide footprint will permit the alliance to offer service plans that include reduced roaming charges.[123] In addition, Applicants contend that unifying the two company's U.S. wireless properties will result in synergies and efficiencies that will lower its costs, and enhance its ability to compete. These efficiencies will be derived through the creation of a national network, which will reduce the reliance of Alloy on roaming rates as Alloy promotes its own "one rate" plan, and will permit the creation of a single headquarters' staff that will manage the business and eliminate duplication in that area.[124] Further, Alloy will be able to generate efficiencies by consolidating national advertising media, reducing customer service and billing costs and through decreased per-unit costs for network equipment and handsets. Alloy will also be able more efficiently to develop and offer new products and services as the new product development implementation and marketing costs will be spread over a larger network and subscriber base.[125] Applicants also contend that the eventual integration of their networks will allow them to provide uniform service features across their networks, as well as the efficient provisioning of wireless data services.[126]

48. We agree with Applicants that the creation of another national wireless competitor constitutes a clear, transaction-specific public interest benefit. A significant percentage of mobile phone users desire nationwide access, and those users will benefit significantly from the creation of another competitor with a near-nationwide footprint. We are persuaded that new service plans, new features, and reduced charges (including charges for roaming) to consumers will result from the expansion of these two regional wireless into one national company. Further, we find the Applicants' arguments regarding cost savings have been reasonably justified, and therefore count among the public benefits of this transaction. [127] An example of the likely public benefits that will result from the creation of the joint venture is the combination of BellSouth's service in Houston with SBC's existing service in Texas, which fills a significant gap in SBC's current regional wireless footprint. This will provide clear benefits for both sets of existing customers. Thus, we conclude that the proposed joint venture is likely to produce demonstrable and verifiable public benefits.

IV. CONCLUSION

49. Based upon our reviews under sections 214(a) and 310(d), we determine that this transaction will not likely result in harm to competition in any relevant market. We also determine that the proposed merger will likely result in several public interest benefits. We therefore conclude that, on balance, Applicants have demonstrated that these transfers serve the public interest, convenience, and necessity. Accordingly, we grant the Applications.[128]

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123 *Id*. at 13.

124 *See* Application, Attachment A, at 3-4.

125 *Id.* at 5.

126 Application at 11, Attachment A at 4.

127 We observe, however, that the larger the magnitude of these savings from the elimination of roaming charges, the greater should have been the incentives for both SBC and BellSouth to agree upon mutual reductions without recourse to partial integration.

128 We note that, on June 19, 2000, the Applicants were granted a waiver of the thirty-day notification requirement for *pro forma* transfers of control contained in sections 1.948(c)(1)(iii) and (d) of the Commission's rules, 47 C.F.R. §§ 1.948(c)(1)(iii), (d). *See In re Applications of SBC Communications Inc. and BellSouth Corporation*, Order, DA 00-1346 (WTB/CWD, rel. June 19, 2000).

V. ORDERING CLAUSES

50. IT IS ORDERED, pursuant to sections 4(i) and (j), 214(a) and (c), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i) and (j), 214(a) and (c), 309, 310(d), and section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, that the Petition to Dismiss or Deny of Thumb Cellular Limited Partnership and the Conditional Objection to Minor Amendment of Thumb Cellular Limited Partnership ARE DENIED.

51. IT IS FURTHER ORDERED that, pursuant to sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and sections 0.331 and 1.925 of the Commission's Rules, 47 C.F.R. §§ 0.331 and 1.925, the Petition for Waiver of CMRS Spectrum Cap Rule, codified in section 20.6 of the Commission's rules, filed on May 4, 2000, by SBC Communications Inc. and BellSouth Corporation, IS GRANTED until January 27, 2001, with respect to the cellular-PCS overlap in the Los Angeles-San Diego MTA.

52. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 309, and 310(d), and section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, that the authorizations and licenses that are the subject of the applications granted herein are subject to the condition that, prior to consummation, the parties divest properties sufficient for the proposed Alloy joint venture to comply with the Commission's cellular cross ownership rule, 47 C.F.R. § 22.942. Failure of the parties to comply with this obligation will result in automatic cancellation of the Commission's approval hereunder and in dismissal of the relevant transfer of control or assignment applications.

53. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 309, and 310(d), that the requirements of the Commission's spectrum aggregation limit, 47 C.F.R. § 20.6, ARE WAIVED until January 27, 2001, with respect to the PCS/cellular overlap that would be created in the Los Angeles-San Diego MTA by consummation of the proposed transaction. Failure of the parties to comply with the spectrum aggregation limit for this overlap by January 27, 2001, will result in automatic cancellation of the Commission's approval hereunder and in dismissal of the relevant transfer of control or assignment applications.

54. Accordingly, having reviewed the Applications and the record in this matter, IT IS ORDERED, pursuant to sections 4(i) and (j), 214(a) and (c), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 214(a) and (c), 309, and 310(d), and sections 0.261 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.261 and 0.331, that the applications filed by SBC Communications Inc. and BellSouth Corporation in the above-captioned proceeding ARE GRANTED subject to the above conditions.

55. This action is taken pursuant to authority delegated by 47 C.F.R. §§ 0.261 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

James D. Schlichting
Deputy Chief, Wireless Telecommunications Bureau

Ari Fitzgerald
Acting Chief, International Bureau

APPENDIX A

Parties Filing Petitions or Comments

Party Filing Petition

Thumb Cellular Limited Partnership

Party Filing Other Pleadings

Thumb Cellular Limited Partnership

Parties Filing Oppositions

Jointly: SBC Communications Inc.
BellSouth Corporation