01-10

FCC 603	FCC Wireless Telecommunications Bureau Application for Assignments of Authorization and Transfers of Control	Approved by OMB 3060 - 0800 See instructions for public burden estimate Submitted 12/11/2000 at 04:25PM File Number: **0000287262**

DOCKET FILE COPY ORIGINAL

1) Application Purpose: **Assignment of Authorization**	
2a) If this request is for an Amendment or Withdrawal, enter the File Number of the pending application currently on file with the FCC.	File Number:
2b) File numbers of related pending applications currently on file with the FCC:	

Type of Transaction

3a) Is this a *pro forma* assignment of authorization or transfer of control? **No**

3b) If the answer to Item 3a is 'Yes', is this a notification of a *pro forma* transaction being filed under the Commission's forbearance procedures for telecommunications licenses?

4) For assignment of authorization only, is this a partition and/or disaggregation? **Yes**

5) Does this filing request a waiver of the Commission's rules? **No**

6) Are attachments being filed with this application? **Yes**

7a) Does the transaction that is the subject of this application also involve transfer or assignment of other wireless licenses held by the assignor/transferor or affiliates of the assignor/transferor(e.g., parents, subsidiaries, or commonly controlled entities) that are not included on this form and for which Commission approval is required? **Yes**

7b) Does the transaction that is the subject of this application also involve transfer or assignment of non-wireless licenses that are not included on this form and for which Commission approval is required? **No**

Transaction Information

8) How will assignment of authorization or transfer of control be accomplished? **See Exhibit 1**
If required by applicable rule, attach as an exhibit a statement on how control is to be assigned or transferred, along with copies of any pertinent contracts, agreements, instruments, certified copies of Court Orders, etc.

9) The assignment of authorization or transfer of control of license is: **Voluntary**

Licensee/Assignor Information

10a) Taxpayer Identification Number:		10b) SGIN: **011**	10c) FCC Registration Number (FRN):
11) First Name (if individual):	MI:	Last Name:	Suffix:
12) Entity Name (if not an individual): **Pacific Telesis Mobile Services, LLC**			
13) Attention To: **Kellye Abernathy**			
14) P.O. Box:	And / Or	15) Street Address: **17330 Preston Road, Suite 100A**	
16) City: **Dallas**		17) State: **TX**	18) Zip: **75252**
19) Telephone Number: **(972)733-2092**		20) FAX: **(972)733-8141**	
21) E-Mail Address: **ka8805@swmob.sbms.sbc.com**			

22) Race, Ethnicity, Gender of Assignor/Licensee (Optional)

Race:	American Indian or Alaska Native:	Asian:	Black or African-American:	Native Hawaiian or Other Pacific Islander:	White:
Ethnicity:	Hispanic or Latino:	Not Hispanic or Latino:			
Gender:	Female:	Male:			

Transferor Information (for transfers of control only)

23a) Taxpayer Identification Number:		23b) SGIN:	23c) FCC Registration Number (FRN):
24) First Name (if individual):	MI:	Last Name:	Suffix:
25) Entity Name (if not an individual):			
26) P.O. Box:	And / Or	27) Street Address:	
28) City:		29) State:	30) Zip:
31) Telephone Number:		32) FAX:	
33) E-Mail Address:			

Name of Transferor Contact Representative (if other than Transferor) (for transfers of control only)

34) First Name:	MI:	Last Name:	Suffix:
35) Company Name:			
36) P.O. Box:	And / Or	37) Street Address:	
38) City:		39) State:	40) Zip:
41) Telephone Number:		42) FAX:	
43) E-Mail Address:			

Assignee/Transferee Information

44) The Assignee is a(n): **Limited Liability Corporation**			
45a) Taxpayer Identification Number:		45b) SGIN: **000**	45c) FCC Registration Number (FRN): **2145696**
46) First Name (if individual):	MI:	Last Name:	Suffix:
47) Entity Name (if other than individual): **Omnipoint NY MTA License, LLC**			
48) Name of Real Party in Interest:			49) TIN:
50) Attention To:			
51) P.O. Box:	And / Or	52) Street Address: **12920 SE 38th Street**	
53) City: **Bellevue**		54) State: **WA**	55) Zip: **98006**
56) Telephone Number: **(425)378-4000**		57) FAX: **(425)378-4040**	
58) E-Mail Address:			

Name of Assignee/Transferee Contact Representative (if other than Assignee/Transferee)

59) First Name: **Louis**	MI:	Last Name: **Gurman**	Suffix:
60) Company Name: **Morrison & Foerster LLP**			
61) P.O. Box:	And / Or	62) Street Address: **2000 Pennsylvania Avenue, NW, Suite 5500**	
63) City: **Washington**		64) State: **DC**	65) Zip: **20006**
66) Telephone Number: **(202)887-8745**		67) FAX: **(202)887-0763**	
68) E-Mail Address: **LGurman@mofo.com**			

Alien Ownership Questions

69) Is the Assignee or Transferee a foreign government or the representative of any foreign government?	**No**
70) Is the Assignee or Transferee an alien or the representative of an alien?	**No**
71) Is the Assignee or Transferee a corporation organized under the laws of any foreign government?	**No**
72) Is the Assignee or Transferee a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	**No**
73) Is the Assignee or Transferee directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? If 'Yes', attach exhibit explaining nature and extent of alien or foreign ownership or control.	**Yes**

Basic Qualification Questions

74) Has the Assignee or Transferee or any party to this application had any FCC station authorization, license or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license, construction permit denied by the Commission? If 'Yes', attach exhibit explaining circumstances.	No
75) Has the Assignee or Transferee or any party to this application, or any party directly or indirectly controlling the Assignee or Transferee, or any party to this application ever been convicted of a felony by any state or federal court? If 'Yes', attach exhibit explaining circumstances.	No
76) Has any court finally adjudged the Assignee or Transferee, or any party directly or indirectly controlling the Assignee or Transferee guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition? If 'Yes', attach exhibit explaining circumstances.	No
77) Is the Assignee or Transferee, or any party directly or indirectly controlling the Assignee or Transferee currently a party in any pending matter referred to in the preceding two items? If 'Yes', attach exhibit explaining circumstances.	No

78) **Race, Ethnicity, Gender of Assignee/Transferee** (Optional)

Race:	American Indian or Alaska Native:	Asian:	Black or African-American:	Native Hawaiian or Other Pacific Islander:	White:
Ethnicity:	Hispanic or Latino:	Not Hispanic or Latino:			
Gender:	Female:	Male:			

Assignor/Transferor Certification Statements

1) The Assignor or Transferor certifies either (1) that the authorization will not be assigned or that control of the license will not be transferred until the consent of the Federal Communications Commission has been given, or (2) that prior Commission consent is not required because the transaction is subject to streamlined notification procedures for *pro forma* assignments and transfers by telecommunications carriers. See *Memorandum Opinion and Order*, 13 FCC Rcd. 6293(1998).

2) The Assignor or Transferor certifies that all statements made in this application and in the exhibits, attachments, or in documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.

79) Typed or Printed Name of Party Authorized to Sign

First Name: **Carol**	MI: **L**	Last Name: **Tacker**	Suffix:

80) Title: **VP/General Counsel-Corporate & Secretary**

Signature: **Carol L Tacker** 81) Date: **12/11/00**

Assignee/Transferee Certification Statements

1) The Assignee or Transferee certifies either (1) that the authorization will not be assigned or that control of the license will not be transferred until the consent of the Federal Communications Commission has been given, or (2) that prior Commission consent is not required because the transaction is subject to streamlined notification procedures for *pro forma* assignments and transfers by telecommunications carriers *See Memorandum Opinion and Order,* 13 FCC Rcd. 6293 (1998).

2) The Assignee or Transferee waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application.

3) The Assignee or Transferee certifies that grant of this application would not cause the Assignee or Transferee to be in violation of any pertinent cross-ownership, attribution, or spectrum cap rule.*
*If the applicant has sought a waiver of any such rule in connection with this application, it may make this certification subject to the outcome of the waiver request.

4) The Assignee or Transferee agrees to assume all obligations and abide by all conditions imposed on the Assignor or Transferor under the subject authorization(s), unless the Federal Communications Commission pursuant to a request made herein otherwise allows, except for liability for any act done by, or any right accured by, or any suit or proceeding had or commenced against the Assignor or Transferor prior to this assignment.

5) The Assignee or Transferee certifies that all statements made in this application and in the exhibits, attachments, or in documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.

6) The Assignee or Transferee certifies that neither it nor any other party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C § 862, because of a conviction for possession or distribution of a controlled substance. See Section 1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.

7) The applicant certifies that it either (1) has an updated Form 602 on file with the Commission, (2) is filing an updated Form 602 simultaneously with this application, or (3) is not required to file Form 602 under the Commission's Rules.

82) Typed or Printed Name of Party Authorized to Sign

First Name: **David**	MI:	Last Name: **Miller**	Suffix:

83) Title: **Vice President**

Signature: **David Miller**	84) Date: **12/11/00**

WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

Authorizations To Be Assigned or Transferred

85) Call Sign	86) Location Number	87) Path Number (Microwave only)	88) Lower or Center Frequency (MHz)	89) Upper Frequency (MHz)	90) Constructed Yes / No
KNLF205					

FCC Form 603 Schedule A	Schedule for Assignments of Authorization and Transfers of Control in Auctioned Services	Approved by OMB 3060 - 0800 See instructions for public burden estimate

Assignments of Authorization

1) Assignee Eligibility for Installment Payments (for assignments of authorization only)

Is the Assignee claiming the same category or a smaller category of eligibility for installment payments as the Assignor (as determined by the applicable rules governing the licenses issued to the Assignor)?	
If 'Yes', is the Assignee applying for installment payments?	

2) Gross Revenues and Total Assets Information (if required) (for assignments of authorization only)

Refer to applicable auction rules for method to determine required gross revenues and total assets information

Year 1 Gross Revenues (current)	Year 2 Gross Revenues	Year 3 Gross Revenues	Total Assets:

3) Certification Statements

For Assignees Claiming Eligibility as an Entrepreneur Under the General Rule

Assignee certifies that they are eligible to obtain the licenses for which they apply.

For Assignees Claiming Eligibility as a Publicly Traded Corporation

Assignee certifies that they are eligible to obtain the licenses for which they apply and that they comply with the definition of a Publicly Traded Corporation, as set out in the applicable FCC rules.

For Assignees Claiming Eligibility Using a Control Group Structure

Assignee certifies that they are eligible to obtain the licenses for which they apply.

Assignee certifies that the applicant's sole control group member is a pre-existing entity, if applicable.

For Assignees Claiming Eligibility as a Very Small Business, Very Small Business Consortium, Small Business, or as a Small Business Consortium

Assignee certifies that they are eligible to obtain the licenses for which they apply.

Assignee certifies that the applicant's sole control group member is a pre-existing entity, if applicable.

For Assignees Claiming Eligibility as a Rural Telephone Company

Assignee certifies that they meet the definition of a Rural Telephone Company as set out in the applicable FCC rules, and must disclose all parties to agreement(s) to partition licenses won in this auction. See applicable FCC rules.

Transfers of Control

4) Licensee Eligibility (for transfers of control only)

As a result of transfer of control, must the licensee now claim a larger or higher category of eligibility than was originally declared?	
If 'Yes', the new category of eligibility of the licensee is:	

Certification Statement for Transferees

Transferee certifies that the answers provided in Item 4 are true and correct.

FCC Form 603 Schedule B	Partition and Disaggregation Schedule	Approved by OMB 3060 - 0800 See instructions for public burden estimate

1) Partitioner/Disaggregator Call Sign: **KNLF205**

Geographic Area Partitioned

2) Defined Area to be Partitioned	3) Undefined Area to be Partitioned (Complete undefined geographic area attachment)	4) Population of Partitioned Area
	Schedule C # Attached:	

5) Spectrum Disaggregated (in MHz)

Spectrum Disaggregated	
Lower Frequency	Upper Frequency
01870.00000	**01875.00000**
01950.00000	**01955.00000**

6) Coverage Requirements - Partitioning

(No) Option 1	Partitioner and Partitionee each certify that they will be subject to the same coverage requirements for their respective partitioned areas.
(No) Option 2	Partitioner certifies that the 5 year coverage requirements have been or will be met and that the 10 year coverage requirements must be met for the entire license area. Partitionee certifies that only the substantial service requirement for renewal expectancy for the partitioned area must be met by the end of the 10 year license term.

7) Coverage Requirements - Disaggregation

(No) Option 1	Disaggregator and Disaggregatee each certify that the Disaggregator will maintain responsibility for meeting the applicable coverage requirements for the entire license area.
(No) Option 2	Disaggregator and Disaggregatee each certify that the Disaggregatee will maintain responsibility for meeting the applicable coverage requirements for the entire license area.
(Yes) Option 3	Disaggregator and Disaggregatee each certify that they will share responsibility for meeting the applicable coverage requirements for the entire license area.

Attachment List

Attachment Type	Date	Description	Contents
Other	12/08/00	Exhibit 1: Description of Transaction	17609115.0.pdf
Other	12/08/00	Exhibit 2: Environmental Statement	17609117.0.pdf
Other	12/08/00	Exhibit 3: Antitrust Exhibit	17609300.0.pdf

DESCRIPTION OF TRANSACTION

I. INTRODUCTION

These applications seek Commission approval for the full or partial assignment of PCS licenses controlled by Cingular Wireless LLC ("Cingular") to existing or expectant subsidiaries of VoiceStream Wireless Corporation ("VoiceStream")[1] in exchange for the full or partial assignment of PCS licenses by such VoiceStream subsidiaries to subsidiaries of Cingular. Specifically, Cingular will exchange 10 MHz licenses in the Los Angeles and San Francisco MTAs for 10 MHz licenses either presently held or expected to be held by VoiceStream in the New York MTA and in the Detroit and St. Louis BTAs. In each case, only spectrum, not facilities or customers, are being exchanged. A total of 7 applications are being filed in connection with this transaction.

These transactions have two major competitive benefits. First, as a result of the New York, Los Angeles and San Francisco exchanges, Cingular and VoiceStream, which are two of the country's leading CMRS providers, will each acquire spectrum in major markets where each has previously been unable to offer facilities-based service.[2] The addition of spectrum in such major markets will enhance the ability of both companies to serve consumers as truly national CMRS carriers. The Commission has repeatedly found that such expansion of CMRS systems brings benefits to consumers and is pro-competitive and serves the public interest. Second, Cingular will acquire additional spectrum in two other major markets, Detroit and St. Louis, where it already has a presence, thereby facilitating its ability to provide 3G and other advanced services that require a large amount of spectrum. No spectrum cap implications arise from any of these exchanges. Moreover, there will be no anti-competitive effects in any market. Quite the contrary, the exchanges will not eliminate any competitors in any of the affected markets, and will either make possible for the first time or otherwise facilitate direct competition between these carriers in all the markets involved. Accordingly, the Commission should approve these applications expeditiously.

II. THE PROPOSED TRANSACTION

On November 1, 2000, Cingular and VoiceStream entered into an "Exchange Agreement," which provides for a series of related transactions involving the exchange of

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[1] A wholly owned subsidiary of VoiceStream has an application pending to acquire control of the Detroit BTA F Block license. *See* note 6, *infra.*

[2] While VoiceStream currently holds or has an ownership interest in BTA licenses within the Los Angeles and San Francisco MTAs, as discussed below, this transaction would provide it spectrum for the first time throughout those MTAs.

various FCC authorizations for PCS.[3] Under the terms of this agreement, there will be three separate sets of exchanges: (1) Cingular spectrum in Los Angeles and San Francisco will be exchanged for VoiceStream spectrum in New York; (2) Cingular spectrum in San Francisco will be exchanged for VoiceStream spectrum in St. Louis; and (3) Cingular spectrum in San Francisco will be exchanged for VoiceStream's expected spectrum in Detroit, all subject to requisite FCC approvals. Each of these exchanges is described in further detail below.

Upon approval of this transaction, several of the PCS licenses currently controlled by Cingular and VoiceStream will be disaggregated and, in some cases, partitioned, to create the licenses that will actually be exchanged. Specifically, 10 MHz of spectrum from the San Francisco B Block license currently held by Pacific Telesis Mobile Services LLC ("PTMS"), a subsidiary of Cingular, will be both disaggregated and partitioned into three parts, creating three new 10 MHz licenses. In addition, 10 MHz of the Los Angeles B Block license held by PTMS will be disaggregated. Finally, VoiceStream will disaggregate 10 MHz of spectrum from the A Block license for the New York MTA held by VoiceStream's subsidiary, Omnipoint NY MTA License, LLC ("Omnipoint NY").

Under the first exchange, Omnipoint NY will assign 10 MHz of spectrum from the New York MTA to PTMS in exchange for the assignment to Omnipoint NY of 10 MHz of spectrum from the Los Angeles MTA held by PTMS, as well as 10 MHz of spectrum covering a partitioned portion of PTMS's license for the San Francisco MTA.[4] In the second exchange, VoiceStream's subsidiary, VoiceStream PCS II License Corporation ("VoiceStream PCS"), will assign its license for the E Block in the St. Louis BTA to PTMS in exchange for the assignment to VoiceStream PCS of 10 MHz of spectrum covering the second portion of PTMS's San Francisco license.[5] In the third exchange, VoiceStream's expectant subsidiary, Cook Inlet/VoiceStream GSM II PCS, LLC ("CIVS II"),[6] will assign its license for the F Block in the Detroit BTA to PTMS in

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[3] The licenses that are the subject of this application were granted more than three years ago and thus, submission of the underlying purchase agreement is not required. *See* 47 C.F.R. §1.2111(a).

[4] This partitioned license will cover the entire San Francisco MTA, except for the San Francisco BTA.

[5] This partitioned license will cover the counties of San Francisco, Alameda and San Mateo within the San Francisco MTA.

[6] VoiceStream currently owns 49.9% of CIVS II and has an application pending to acquire the remaining 50.1% ownership interest. *See* Public Notice, Lead Application, File No. 0000216961 (rel. Oct. 24, 2000). The application filed herewith in which CIVS II is an assignor is filed in contemplation of the Commission's grant of consent to the pending VoiceStream acquisition of CIVS II. Consummation of the proposed exchange of the F Block license with Cingular is conditioned on grant of Commission consent to and closing of the VoiceStream/CIVS II transaction.

exchange for 10 MHz of spectrum covering the third portion of PTMS's San Francisco license.[7]

These transactions are summarized in the following chart:

Assignor	Call Sign	Market No.	Freq. Block	Market Name	Spectrum Being Assigned (MHz)	Geographic Area Being Assigned	Assignee
Exchange 1							
Omnipoint NY	KNLF202	M001	A	New York	1850-1855 1930-1935	New York MTA	PTMS
PTMS	KNLF205	M002	B	Los Angeles	1870-1875 1950-1955	Los Angeles MTA	Omnipoint NY
PTMS	KNLF209	M004	B	San Francisco	1870-1875 1950-1955	San Francisco MTA excluding the San Francisco BTA	Omnipoint NY
Exchange 2							
VoiceStream PCS	KNLG831	B394	E	St. Louis	1885-1890 1965-1970	St. Louis BTA	PTMS
PTMS	KNLF209	M004	B	San Francisco	1870-1875 1950-1955	Counties of San Francisco, Alameda, San Mateo	VoiceStream PCS
Exchange 3							
CIVS II	KNLF970	B112	F	Detroit	1890-1895 1970-1975	Detroit BTA	PTMS
PTMS	KNLF209	M004	B	San Francisco	1870-1875 1950-1955	Counties of Santa Clara, Contra Costa, Sonoma, Solano, Santa Cruz, Marin, Napa, Mendocino, Lake, San Benito	CIVS II

III. THE PARTIES

VoiceStream is a Delaware corporation headquartered in Bellevue, Washington. VoiceStream is qualified to operate and provide PCS service, and currently controls licenses covering in excess of 151 million POPs. VoiceStream is the only national wireless carrier in the U.S. to own and operate a substantial network using only the Global System for Mobile Communications ("GSM") technology – the world's most widely used digital standard. Following its mergers with Omnipoint Corporation and Aerial Communications, Inc., VoiceStream became the eighth-largest provider of mobile

[7] This partitioned license will cover the counties of Santa Clara, Contra Costa, Sonoma, Solano, Santa Cruz, Marin, Napa, Mendocino, Lake and San Benito within the San Francisco MTA.

telephony in the United States.[8] VoiceStream is led by a management team that has decades of collective experience in the telecommunications industry.[9]

Cingular is the second largest CMRS provider in the country. It serves more than 19 million customers, and approximately 190 million potential customers, in 38 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. It will have annual revenues of approximately $12 billion, making it one of the 150 largest companies in the country, and it combines the considerable wireless expertise of the former CMRS operations of SBC Communications Inc. and BellSouth Corporation.

IV. STATEMENT OF PUBLIC INTEREST

In applying the public interest test under Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§310(d), to determine whether a proposed assignment should be approved, 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 Communications Act or interfere with the objectives of that and other statutes; and (4) whether the transaction promises to yield affirmative public interest benefits.[10]

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[8] *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, FCC 00-289 (rel. Aug. 18, 2000) at App. B, Table 3, p. B-5 ("*Fifth CMRS Report*").

[9] VoiceStream is currently prosecuting applications to effectuate a merger with a wholly-owned U.S. subsidiary of Deutsche Telecom AG ("DT"). *See* Public Notice, Lead Application, File No. 000021187 (rel. Oct. 11, 2000). Consistent with the procedures announced in that Public Notice, upon grant of Commission consent to the exchanges proposed here, VoiceStream will amend its pending merger applications to include the pertinent new licenses being acquired from Cingular and to delete or modify the description, as appropriate, of those licenses either being assigned or disaggregated.

[10] *See Applications of SBC Communications Inc. and BellSouth Corporation for Transfer of Control*, WT Docket No. 00-81, Memorandum Opinion and Order, 2000 WL 1455744 at ¶¶ 12-13 (rel. Sept. 29, 2000) ("*SBC-BellSouth*"); *Applications of Ameritech Corp. and SBC Communications Inc. for Transfer of Control, CC Docket No. 98-141*, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14738-39 at ¶¶49-50 (rel. Oct. 8, 1999) ("*SBC-Ameritech*"); *Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18030-33 ¶¶9-12 (1998) (citing *Applications of NYNEX Corporation and Bell Atlantic Corporation*, Memorandum Opinion and Order, 12 FCC Rcd 19,985, 19,987 at ¶ 2 & n.2 (1997) ("*Bell Atlantic-NYNEX*"); *Applications of MCI Communications Corporation and British Telecommunications P.L.C*, Memorandum Opinion and Order, 12 FCC Rcd 15,351 at 15,367 ¶ 33 (1997).

Many transfer or assignment applications on their face show that a transaction will yield affirmative public interest benefits and will neither violate the Communications Act or Commission rules, nor frustrate or undermine policies and enforcement of the Communications Act by reducing competition or otherwise.[11] Such applications do not require extensive review and expenditures of considerable resources by the Commission and interested parties.[12] This is such a transaction, and the Commission should approve the assignment applications expeditiously.[13]

The proposed assignments fully satisfy the public interest test. By filling in existing gaps in the national footprints of Cingular and VoiceStream, the subject assignments will enhance each company's ability to compete both with each other and with other established nationwide operators such as AT&T Wireless Services, Sprint PCS Group, Verizon Wireless, and Nextel. As the Commission recently reaffirmed, "operators with larger nationwide footprints can achieve economies of scale and increased efficiencies compared to operators with smaller footprints."[14] Such efficiencies permit companies to offer national rate plans that reduce prices for consumers.[15] The Commission also pointed out that current trends in the wireless industry – *i.e.*, transactions, such as here, which would result in a geographic expansion of an operator's service areas – will intensify competition among nationwide providers of wireless services.[16]

Moreover, approval would not result in the violation or frustration of any statutory provision or the Commission's rules, and would require no waivers. Thus no

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[11] *See In re Applications of Tele-Communications, Inc. and AT&T Corp.*, Memorandum Opinion and Order, 14 FCC Rcd 3160 at ¶ 16 (1999) (*citing In re Applications of Bourbeuse Tel. Co. and Fidelity Tel. Co.*, Memorandum Opinion and Order, 14 FCC Rcd 803 (1998)); *SBC-Ameritech* at ¶ 54.

[12] *See SBC-Ameritech at* ¶ 54.

[13] The Commission has emphasized that a detailed showing of benefits is not required for transactions where there are no anticompetitive effects. The Commission stated in *In re Applications of Southern New England Telecomm. Corp. and SBC Communications Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 21292 at ¶ 45 (1998) ("*SBC-SNET*"), that, in the absence of anticompetitive effects, a detailed showing of benefits is not necessary in seeking approval of a merger. Similarly, as the Commission stated in its approval of the SBC/Telesis merger, where it found that the merger would not reduce competition and that SBC possessed the requisite qualifications to control the licenses in question, "[*a*] *demonstration that benefits will arise from the transfer is not . . . a prerequisite to our approval*, provided that no foreseeable adverse consequences will result from the transfer." *In re Applications of Pac. Telesis Group and SBC Communications Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 2624 at ¶ 2 (1997) ("*SBC-Telesis*") (emphasis added).

[14] *Fifth CMRS Report* at 10.

[15] *Id.*

[16] *Id.* (citing predictions of industry analysts).

competitive concerns are raised by the instant transaction and, by strengthening existing competitors and filling gaps in VoiceStream's and Cingular's footprints, the assignments will produce substantial public interest benefits.

It has been the Commission's general policy "to permit the aggregation of CMRS spectrum and interests therein up to the limits permitted under the spectrum cap rules, provided that such aggregation neither reduces actual competition nor stymies the development of competition in any market."[17] Although there is one overlap area in Los Angeles between CIVS II (the licensee of the F Block PCS license in which VoiceStream will hold a controlling interest) and Cingular, such overlap would give VoiceStream total spectrum of only 20 MHz, well within the 45 MHz spectrum cap. There is also one overlap in San Francisco. VoiceStream holds the E Block PCS license in the San Francisco-Oakland-San Jose BTA. This overlap would also give VoiceStream a total of only 20 MHz.

Similarly, the additional 10 MHz of spectrum that Cingular will acquire in the St. Louis and Detroit BTAs will overlap with its cellular licenses in the St. Louis and Detroit MSAs, as well as certain adjacent RSAs. In each case, however, the overlap would result in Cingular's ownership of less than 36 MHz,[18] well below the spectrum cap.[19]

Indeed, the effect of the assignments will be to increase competition by adding an additional licensee in major markets. In particular, in both Los Angeles and San Francisco, Cingular and its subsidiaries will continue to operate their existing PCS systems providing the same innovative, high quality services as before. The parties have proposed to assign only a 10 MHz portion of Cingular's spectrum to VoiceStream. That 10 MHz, particularly when combined with VoiceStream's expectant 10 MHz license for the Los Angeles BTA and its existing 10 MHz license for the San Francisco BTA, will permit VoiceStream to provide new competitive CMRS services in addition to those already being provided by Cingular and its subsidiaries. Similarly, in the three markets where VoiceStream has proposed to assign spectrum to Cingular, VoiceStream holds

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[17] *VoiceStream Wireless Corporation, Omnipoint Corporation, Cook Inlet/VS GSM II PCS, LLC, and Cook Inlet/VS GSM III PCS, LLC; Seek FCC Consent for Transfer of Control and Assignment of Licenses and Authorizations*, Memorandum Opinion and Order, 15 FCC Rcd 3341 at ¶26 (Feb. 15, 2000) ("*VoiceStream-Omnipoint*"), citing: *In the Matter of the 1998 Biennial Regulatory Review, Spectrum Aggregation Limits for Wireless Telecommunications Carriers*, Report and Order, 15 FCC Rcd 9219 (1999).

[18] In addition to the cellular and PCS spectrum in each area, Cingular is also attributed with the 900 MHz of spectrum of its subsidiary, BellSouth Wireless Data LLC.

[19] While compliance with the spectrum cap does not automatically foreclose the possibility that an overlap may cause anticompetitive effects, there can be no question in this case that no such effects will occur. All of the overlaps are located in major markets in which a number of other major competitors are operating, so there is no cause for concern. To the contrary, the additional spectrum acquired by the Applicants in those markets will enhance competition, not impair it.

ownership interests in other licenses and VoiceStream will continue to provide service provided there.[20] Thus, rather than decreasing competition, the proposed transaction will increase competition in five major markets. VoiceStream, as a national wireless player, will bring innovative services and pricing options to Los Angeles and San Francisco, while Cingular will do the same in New York. The introduction of another strong national competitor in each of these markets may encourage other carriers in the area to offer new services and lower prices, thus benefiting all consumers.[21]

In addition to allowing Cingular and VoiceStream to offer facilities-based service in new markets, these transactions will also provide Cingular with additional spectrum in St. Louis and Detroit. Providing this additional spectrum will serve the public interest by facilitating the Applicants' ability to offer 3G or other advanced services.

The Commission cited similar public interest considerations when it approved VoiceStream's mergers with Omnipoint and Aerial. Specifically, it agreed that "GSM subscribers will benefit from the expanded footprint to be offered by VoiceStream, and that all mobile phone users needing access throughout the nation will benefit significantly from the creation of another competitor with a near-nationwide footprint."[22] The Commission again acknowledged that competition would be promoted by development of an additional nationwide PCS system.[23] Like the *VoiceStream-Omnipoint* and *VoiceStream-Aerial* transactions, the subject assignments constitute another important step for Cingular and VoiceStream toward achieving nationwide footprints.

For the foregoing reasons, the proposed license assignments will serve the public interest, convenience and necessity. Accordingly, Cingular and VoiceStream respectfully request Commission approval of these applications and the companion application being filed by Cingular and CIVS II.[24]

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[20] In Detroit, Cook Inlet/VoiceStream GSM III PCS, L.L.C. holds the C Block PCS license WPOL262; in St. Louis, Cook Inlet/VoiceStream GSM III PCS, L.L.C. holds C Block PCS license WPOL269; and in New York, VoiceStream is only proposing to assign 10 MHz of a 30 MHz license. It will retain the other 20 MHz.

[21] The transaction will also be reviewed by the Department of Justice pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

[22] *Applications of Aerial Communications, Inc., Transferor, and VoiceStream Wireless Holding Corp., Transferee,* Memorandum Opinion and Order, 15 FCC Rcd 10089 at ¶44 (2000)("*VoiceStream-Aerial*").

[23] *VoiceStream-Omnipoint* at ¶ 32.

[24] Consistent with the Commission's current policy concerning after-acquired licenses, upon closing of the VoiceStream/CIVS II transaction following receipt of Commission consent, the parties to the instant transaction will file a minor amendment to the application pertaining to the Detroit F Block license to reflect VoiceStream's acquisition of control of that license.

V. THE APPLICANTS' QUALIFICATIONS

There can be no question as to the qualifications of Cingular or VoiceStream. Both parties have been the subject of a number of recent Commission decisions involving the transfer of control or assignment of various licenses, including PCS licenses, and the Commission has not hesitated to affirm their qualifications.[25]

Pursuant to Section 310(b)(4) of the Act, the Commission must determine whether the public interest would be served by allowing a common carrier licensee to have indirect foreign ownership that exceeds 25%. Consistent with the Commission's prior rulings in *VoiceStream-Omnipoint* and *VoiceStream-Aerial*, VoiceStream's foreign ownership remains in compliance with Section 310(b)(4) of the Act and it is thus, a fully qualified assignee in the subject transaction.[26]

VI. CONSTRUCTION REQUIREMENTS AND COVERAGE CERTIFICATION (47 CFR §§ 24.203 and 24.714(f))

Pursuant to Sections 24.203(b) and (c) of the Commission's Rules, licensees of 10 MHz broadband PCS licenses must serve the BTA with a signal level sufficient to cover one-quarter of the population within five years of being licensed. In the alternative, the construction requirement may be met through a showing of substantial service in the BTA within five years of being licensed. Licensees of 30 MHz broadband PCS blocks must provide adequate service to cover at least one-third of the population in the licensed service area within five years of being licensed. In addition, within ten years of being licensed, service must be provided that covers two-thirds of the population within the licensed service area. 47 CFR §24.203(a).

With respect to the Detroit 10 MHz BTA, the five year construction requirement was met and, in accordance with Section 24.203(c) of the Commission's Rules, on April 1, 1999, the licensee filed maps and other supporting documents demonstrating compliance with the five-year build-out requirement. Thus, PTMS would acquire the Detroit BTA as a fully constructed license with no outstanding performance benchmarks.

With respect to the St. Louis 10 MHz BTA, Voicestream has not met the five-year construction requirement. It should be noted, however, that the five-year construction deadline for the license is not until April 28, 2002.

The five and ten year construction benchmarks for the New York 30 MHz MTA were met by VoiceStream, and the requisite Section 24.203(c) filing was made on April 1, 1999. Thus, pursuant to Section 24.714(f)(2), PTMS would have no additional

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[25] *See SBC-BellSouth* at ¶¶ 14-17; *VoiceStream-Omnipoint* at ¶13; *VoiceStream-Aerial* at ¶ 16.

[26] *See* FCC Form 175 of VoiceStream PCS BTA I License Corporation for Auction No. 35, Attachment A, filed November 6, 2000, amended November 28, 2000.

performance requirements to meet as a result of acquiring a disaggregated 10 MHz license throughout the New York MTA.

Finally, with respect to the San Francisco and Los Angeles 30 MHz MTAs, PTMS met both the five and ten-year build-outs for both MTAs, and documented those accomplishments as required by Section 24.203(c) in June 2000. VoiceStream certifies, pursuant to Section 24.714(f)(1)(ii) of the Commission's Rules, that, with respect to the partitioned areas of the MTAs, it will satisfy the requirements for "substantial service," as set forth in 47 CFR § 24.16(a), by the end of PTMS's original ten-year license term. With respect to the disaggregated 10 MHz block throughout both MTAs, there would be no additional performance requirements for VoiceStream to meet, as indicated by Section 24.717(f)(2) of the Commission's Rules.

VII. CONCLUSION

For the foregoing reasons, the Commission should conclude that these transactions serve the public interest, convenience and necessity, and should grant the applications expeditiously.

Pursuant to section 1.923(e) of the Commission's rules,[1] the Applicants state that a Commission grant of this application will not have a significant environmental effect, as defined by section 1.1307 of the Commission's rules.[2] An assignment of authorization does not involve any engineering changes and, therefore, cannot have a significant environmental impact.

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[1] 47 C.F.R. § 1.923(e).

[2] 47 C.F.R. § 1.1307.

Response to Question 77:

On August 3, 1999, a case entitled Communication Station, Inc. v. 7-Eleven Inc., f/k/a Southland Corporation and Southwestern Bell Wireless, Inc., No. 348-178492-99, was filed in the District Court of Tarrant County, Texas, by a company involved in the business of prepaid cellular service. The complaint alleges among other things, that Southwestern Bell Wireless, Inc., which is the general partner of Corpus Christi SMSA Limited Partnership, violated Texas antitrust law in connection with the sale of prepaid cellular service. A second amended complaint was filed on August 2, 2000, in which SBC Communications Inc. ("SBC") and SBC Wireless, Inc., as well as two other affiliates of SBC, were also named as defendants. Cingular does not consider the allegations of this case to fall within the scope of disclosures required by Question 77 but is reporting this case out of an abundance of caution.