

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

In re Applications of)	
)	File Nos. 0000016354, <i>et al.</i>
)	DA 99-1634
VOICESTREAM WIRELESS CORPORATION,)	
OMNIPOINT CORPORATION, <i>et al.</i>)	File No. 0000054383
)	WTB Report No. 405
For Consent to Transfer of Control and)	
Assignment of Authorizations and Licenses)	File No. 50001-CW-AL-00
)	DA 99-2737

ORDER

Adopted: May 24, 2000

Released: May 24, 2000

By the Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. On May 12, 2000, VoiceStream Wireless Corporation (“VoiceStream”) filed a Request for Extension of Waiver asking the Wireless Telecommunications Bureau to extend for 60 days the May 25, 2000 deadline established in this proceeding for VoiceStream to divest sufficient commercial mobile radio services (“CMRS”) spectrum to come into compliance with the Commission’s spectrum aggregation limits in section 20.6 of the Commission’s rules (“Spectrum Cap”).¹ We grant VoiceStream’s request to the extent discussed below.

2. On February 15, 2000, the Commission issued a Memorandum Opinion and Order approving the assignment or transfer of control of licenses and authorizations held by Omnipoint Corporation (“Omnipoint”) to VoiceStream.² In the *VoiceStream/Omnipoint Order*, the Commission granted VoiceStream a temporary waiver of the Spectrum Cap to permit

¹ 47 C.F.R. § 20.6. Pursuant to Section 20.6(e)(1), divestiture of interests exceeding the spectrum aggregation limit must occur prior to consummation of the transfer of control or assignment. 47 C.F.R. § 20.6(e)(1). Parties, however, are considered to have come into compliance with this requirement once they have submitted an application to the Commission for the transfer of control or assignment of license(s) such that, if granted, the parties would not exceed the spectrum aggregation limit. 47 C.F.R. § 20.6(e)(4)(A).

² *Applications of VoiceStream Wireless Corporation or Omnipoint Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 3341 (2000) (*Errata*, 15 FCC Rcd 4722) (“*VoiceStream/Omnipoint Order*”).

VoiceStream to come into compliance within 90 days of the consummation of the merger with Omnipoint.³ In granting the temporary waiver, the Commission concluded that the extent of divestitures necessary to complete the merger and the need for an orderly divestiture process warranted the temporary waiver.⁴ Because VoiceStream and Omnipoint consummated their merger on February 25, 2000, VoiceStream's temporary waiver of the Spectrum Cap extends until May 25, 2000.

3. In its Request for Extension of Waiver, VoiceStream states that it has been unable to bring the divestiture process to conclusion for several reasons and that good cause exists for this limited extension.⁵ VoiceStream cites the disruption caused by its consummation of a second merger, this one with Aerial Communications, Inc. ("Aerial"), close on the heels of the Omnipoint merger.⁶ VoiceStream also provides the testimony of Cregg Baumbaugh, the corporate officer responsible for implementing the divestiture transactions, explaining that negotiations are underway to conclude a transaction with a national carrier that, when completed, would cure VoiceStream's relevant overlaps.⁷ Mr. Baumbaugh explains in his Declaration that this transaction involves an exchange of properties that would permit both VoiceStream and the other carrier to expand their national footprints, but that this carrier is unable to conclude the transaction within the timeframe of VoiceStream's temporary waiver because the carrier is currently involved in concluding its own time-sensitive divestiture transactions.⁸

4. We believe that VoiceStream has provided sufficient justification for a brief

³ *Id.* at 3355, ¶ 32.

⁴ *Id.*

⁵ Request for Extension of Waiver at 2, 5-8.

⁶ *Id.* at 4, 7. On March 31, 2000, the Chiefs of the Wireless Telecommunications Bureau and the International Bureau approved VoiceStream and Aerial's applications to assign or transfer control of Aerial's licenses and authorizations to VoiceStream. See *Applications of VoiceStream Wireless Corporation and Aerial Communications, Inc.*, Memorandum Opinion and Order, WT Docket No. 00-3, DA 00-730, 2000 LEXIS 1703 (FEDCOM Library) (WTB/IB, rel. Mar. 31, 2000) (*Errata*, 2000 LEXIS 1870 (FEDCOM Library) (rel. Apr. 11, 2000)) ("*VoiceStream/Aerial Order*"). Based on the same justifications as in *VoiceStream/Omnipoint*, the Wireless Telecommunications Bureau and the International Bureau granted VoiceStream a temporary waiver of the Spectrum Cap with respect to the merger with Aerial, permitting the parties to come into compliance within 90 days of consummation of the merger. *Id.* at ¶ 38. Because VoiceStream consummated its merger with Aerial on May 4, 2000, VoiceStream's temporary waiver of Spectrum Cap with respect to the overlaps created by the Aerial merger extends until August 2, 2000.

⁷ Request for Extension of Waiver at Attachment (Declaration of Cregg R. Baumbaugh, Executive Vice President – Finance, Strategy and Development of VoiceStream Wireless Corporation).

⁸ *Id.* at ¶ 4.

extension of the Spectrum Cap waiver granted in the *VoiceStream/Omnipoint Order*. In approving the applications involved in the merger of VoiceStream and Omnipoint, the Commission considered the creation of VoiceStream's nationwide network to be an important factor.⁹ Mr. Baumbaugh states that both VoiceStream and the carrier with which it is negotiating would be able to expand their nationwide footprints through the contemplated divestiture transaction. We caution, however, that while the public interest may be served by permitting limited additional time to allow the contemplated transaction to come to fruition, it would not be served either by an open-ended extension or by an extended series of "limited" extensions.

5. Therefore, we grant VoiceStream an additional 60 days, until July 24, 2000, to come into compliance with the Spectrum Cap with respect to the overlaps created by the merger with Omnipoint. Pursuant to section 20.6 of the Commission's rules, VoiceStream must file appropriate applications to accomplish the necessary divestitures by this date,¹⁰ whether to the contemplated carrier, to another carrier, or to a divestiture trust that complies with the Commission's rules.

6. Accordingly, IT IS ORDERED that pursuant to sections 1, 2, and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, and 154(i), and sections 0.331, 1.3, 1.925(a), and 20.6(a) of the Commission's rules, 47 U.S.C. §§ 0.331, 1.3, 1.925(a), 20.6(a), the Request for Extension of Waiver filed by VoiceStream Wireless Corporation and Omnipoint Corporation is GRANTED as indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze
Deputy Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

⁹ *VoiceStream/Omnipoint Order*, 15 FCC Rcd at 3361, ¶ 46.

¹⁰ 47 C.F.R. § 20.6(e)(4)(A).