

PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET, S.W., TW-A325
WASHINGTON, D.C. 20554

DA 00-24

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January 7, 2000

**VoiceStream Wireless Holding Corporation and Aerial Communications, Inc.
Seek FCC Consent for Transfer of Control
of Licenses and Authorizations**

WT Docket No. 00-3

PLEADING CYCLE ESTABLISHED

Comments/Petitions due: February 7, 2000
Responses/Oppositions due: February 17, 2000

VoiceStream Wireless Holding Corporation (“VWHC”) and Aerial Communications, Inc. (“Aerial”), a majority-owned subsidiary of Telephone and Data Systems, Inc. (“TDS”), have filed applications pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 214 and 310(d), seeking Commission consent to transfer control from TDS to VWHC of licenses and authorizations held by subsidiaries and affiliates of Aerial (“VWHC/Aerial Transaction”).¹

The VWHC/Aerial Transaction is related to pending applications of VoiceStream Wireless Corporation (“VoiceStream”) and Omnipoint Corporation (“Omnipoint”) for consent to a proposed transfer of control of the licenses and authorizations held by subsidiaries and affiliates of VoiceStream and Omnipoint to VWHC (“VoiceStream/Omnipoint Transaction”).² VWHC and Aerial request that the two sets of applications be processed independently by the Commission.

1 In addition, Attachment 3 to the FCC Forms 603 filed in connection with this transaction references 13 pending applications of a subsidiary of Aerial for Part 101 Common Carrier Point-to-Point Microwave facilities.

2 See 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, *Public Notice*, DA 99-1634 (rel. Aug. 16, 1999).

Request for Waiver of Spectrum Aggregation Limit

The parties state that the relative timing of the proposed transfers of control involved in the VWHC/Aerial Transaction and those involved in the VoiceStream/Omnipoint Transaction may create issues with respect to the Commission's CMRS Spectrum Aggregation Limit, 47 C.F.R. § 20.6, because both transactions propose that, ultimately, VWHC will be in control of all of the licenses and authorizations of VoiceStream, Omnipoint and Aerial. Different issues with respect to the Commission's spectrum aggregation limit may be created, however, depending on which of the two transactions is in a position to consummate first. Further, the parties state that many of the potential spectrum cap issues may be resolved if the VoiceStream/Omnipoint transaction closes prior to, or simultaneous with, the VWHC/Aerial Transaction. Accordingly, VWHC and Aerial request interim waivers of Section 20.6(d) for a period of six months following Commission action on the later of the VoiceStream/Omnipoint Transaction or the VWHC/Aerial Transaction. Because of the contingencies involved in the different transactions, the parties state that they may also seek to obtain permanent market-specific waivers.

Request for Declaratory Ruling Regarding Attribution

The parties state that, in the event that the VWHC/Aerial Transaction is consummated before the VoiceStream/Omnipoint Transaction, they have not attributed the licenses of United States Cellular Corporation ("US Cellular"), a majority-owned subsidiary of TDS, to VWHC or to Western Wireless Corporation ("Western"), VoiceStream's former parent corporation. In addition, they have not attributed the licenses of Western to TDS or US Cellular, or the licenses of VWHC to TDS or US Cellular. As a result, the parties also request a declaratory ruling confirming, pursuant to Section 20.6, 47 C.F.R. § 20.6, that (1) VWHC will not be deemed to have an attributable interest, indirectly through TDS, in the licenses of US Cellular; (2) TDS will not be deemed to have an attributable interest, indirectly through VWHC, in the licenses of Western; and (3) the methodologies used by the parties to determine that the licenses held by certain other entities are non-attributable comply with the Commission's rules and policies. Alternatively, the parties request grant of permanent waivers of Section 20.6 with respect to each of the above-referenced interests in the event any of these interests are deemed attributable under Section 20.6(d).

Request for Declaratory Ruling Pursuant to Section 310(b)(4)

The parties request that the level of permissible foreign ownership in VoiceStream and its operating subsidiaries, approved by Public Notice released June 4, 1999 (DA 99-1059), be applied to VWHC and the additional operating subsidiaries that VWHC will acquire in connection with the VWHC/Aerial Transaction. The request for a declaratory

ruling pursuant to section 310(b)(4) of the Communications Act, as amended, 47 U.S.C. § 310(b)(4), has been assigned file no. ISP-PDR-19991202-00013.

SECTION 310 APPLICATIONS

Part 24 - Personal Communications Service

The following applications for consent to transfer control from Aerial to VWHC have been assigned the file numbers below.

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign</u>
0000053257	APT Columbus, Inc.	KNLRF276
0000053261	APT Houston, Inc.	KNLRF227
0000053222	APT Kansas City, Inc.	KNLRF268
0000053239	APT Minneapolis, Inc.	KNLRF224
0000053250	APT Pittsburgh Limited Partnership	KNLRF242
0000053252	APT Tampa/Orlando, Inc.	KNLRF225

Part 5 - Experimental License

The following applications for consent to transfer control from Aerial to VWHC have been assigned the file numbers below.

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign</u>
0023-EX-TC-1999	Aerial Communications, Inc.	WA2XHB
0021-EX-TC-1999	APT Columbus, Inc.	KS2XFG
0022-EX-TC-1999	APT Houston, Inc.	KA2XER
0025-EX-TC-1999	APT Kansas City, Inc.	KA2XEM
0027-EX-TC-1999	APT Minneapolis, Inc.	KA2XEK
0026-EX-TC-1999	APT Pittsburgh Limited Partnership	KA2XES
0024-EX-TC-1999	APT Tampa/Orlando, Inc.	KA2XEN

SECTION 214 APPLICATIONS (INTERNATIONAL)

The following application for consent to transfer control from Aerial to VWHC has been assigned the following file number.

<u>File No.</u>	<u>Licensee</u>
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GENERAL INFORMATION

The transfer of control applications referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies.

Final action will not be taken on these applications, related waiver request and requests for declaratory ruling earlier than 31 days following the date of this Public Notice. *See* 47 U.S.C. § 309(b). Interested parties may file comments or petitions to deny no later than **February 7, 2000**. Oppositions to such pleadings may be filed no later than **February 17, 2000**. All filings concerning matters referenced in this Public Notice should refer to **WT Docket No.00-3 and DA 00-24**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

Pursuant to 47 C.F.R. § 1.1200(a), which permits the Commission to adopt modified *ex parte* procedures in particular proceedings if the public interest so requires, we announce that this proceeding will be governed by **permit-but-disclose** *ex parte* procedures that are applicable to non-restricted proceedings under 47 C.F.R. § 1.1206.

An original and four copies of all comments, petitions to deny, oppositions and replies must be filed with the Commission's Secretary, Magalie Roman Salas, 445 12th Street, S.W., TW-B204, Washington, D.C. 20554, in accordance with Section 1.51 of the Commission's rules, 47 C.F.R. § 1.51. In addition, one copy of each pleading must be delivered to each of the following locations: (1) the Commission's duplicating contractor, International Transcription Services, Inc. ("ITS"), 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; (2) Consumer Information Bureau, Reference Division, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554; (3) Lauren Kravetz, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, 445 12th Street, S.W., Room 4-A163, Washington, D.C. 20554, (4) Ramona Melson, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, 445 12th Street, S.W., Room 4-C237, Washington, D.C. 20554, and (5) Susan O'Connell, International Bureau, 445 12th Street, S.W., Room 6-A847, Washington, D.C. 20554.

Instead of filing paper comments, parties may file comments using the Commission's Electronic Comment Filing System ("ECFS"). See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic

submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties are also encouraged to file a copy of all pleadings on a 3.5 inch diskette in an IBM-compatible format using Microsoft Word 97 software in a "read only" mode. Diskette submissions should be in addition to, and not a substitute for, the hard copy filing requirements reviewed above. All diskettes should be clearly labeled with: (1) the party's name; (2) the name of the proceeding and docket number; (3) the type of filing submitted (e.g., comments or oppositions); and (4) the date of submission. The diskettes should be accompanied by a cover letter and filed with Lauren Kravetz of the Commercial Wireless Division, Wireless Telecommunications Bureau, 445 12th Street, S.W., Washington D.C. 20554.

Copies of the applications and any subsequently filed documents in this matter may be obtained from International Transcription Service, Inc., 445 12th Street, S.W., CY-B402, Washington, D.C. 20554, telephone (202) 857-3800. Electronic versions of the applications and subsequent filings will also be available through the ECFS, which can be accessed via the Commission's Internet Home Page (<http://www.fcc.gov>). Copies of the applications and documents are also available for public inspection and copying during normal reference room hours at the Commission's Reference Center, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554. In addition, application file numbers for the transfer of Aerial's PCS licenses listed herein, and associated pleadings and filings are available electronically through the Wireless Telecommunications Bureau's Universal Licensing System, which may be accessed on the Commission's Internet website.

For further information, contact Lauren Kravetz or John Branscome, Wireless Telecommunications Bureau, Commercial Wireless Division, at (202) 418-7240 (Part 24), Ramona Melson, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, at (202) 418-0680 (Part 101), Carl Huie, Office of Engineering and Technology at (202) 418-2430 (Part 5), or Susan O'Connell or Matthew Vitale, International Bureau, at (202) 418-1460 (Section 214 international authorization and 310(b)(4) declaratory ruling).

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