

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

AT&T CORP. and
TELE-COMMUNICATIONS, INC.,

Defendants.

Case Number: No.98-CV03170

Judge Emmet G. Sullivan

MOTION FOR ENTRY OF FINAL JUDGMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, ("APPA" or "Tunney Act"), 15 U.S.C. § 16 (b)-(h), the United States of America moves for entry of the proposed Final Judgment in this civil antitrust proceeding. The Final Judgment may be entered at this time without further hearing, if the Court determines that entry is in the public interest. A Certificate of Compliance, certifying that the parties have complied with all applicable provisions of the APPA and that the waiting period has expired, has been filed simultaneously with this Court.

I.

Background

This action was commenced on December 30, 1998, when the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25. The complaint alleged that the proposed acquisition of Tele-communications, Inc. ("TCI") by AT&T

Corp. (“AT&T”) would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Complaint alleges that the acquisition of TCI by AT&T would substantially lessen competition in the market for mobile wireless telephone services in geographic markets in which AT&T is one of the two cellular licensees, and in which Sprint PCS is a PCS licensee for mobile wireless telephone services.

Also on December 30, 1998, the United States submitted a proposed Final Judgment and a Stipulation signed by the parties consenting to entry of the proposed Final Judgment. Defendants have consented to abide by the terms of the proposed Final Judgment pending its entry by this Court. In addition, on December 30, 1998, the United States filed a Competitive Impact Statement explaining the provisions of the Final Judgment and their anticipated effect on competition in the relevant markets. The principal requirement of the proposed Final Judgment is that a 23.5% stock interest in Sprint PCS must be divested by TCI to a trust, with a trustee chosen by the plaintiff, prior to the consummation of the merger. The trustee must then divest the stock in a manner reasonably calculated to maximize the value of the sale to the current shareholders. The proposed Final Judgment also contains hold separate provisions with respect to the overlapping mobile wireless systems, pending the completion of the divestiture, which must be accomplished in full by May 23, 2004.

The terms and conditions imposed by the Final Judgment are intended to safeguard against a loss of competition in wireless mobile telephone services in the geographic markets in which AT&T is one of the two cellular licensees, and in which Sprint PCS is a PCS licensee for mobile wireless telephone services. The Competitive Impact Statement explains the basis for the Complaint and the reasons why entry of the proposed Final Judgment would be in the public

interest. The United States received and responded to one public comment on the proposed Final Judgment. In response to that comment, the United States and defendants agreed to modify the Final Judgment. On March 26, 1999, the comment, Plaintiff's Response to Public Comment, a second stipulation and Final Judgment as modified were filed with the Court. The second Stipulation provides that the proposed Final Judgment as modified may be entered by the Court after completion of the procedures required by the APPA.

II.

Compliance with the APPA

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment, 15 U.S.C. § 16(b). In this case, the sixty-day comment period commenced on January 14, 1999 and expired on March 14, 1999. During this period, the United States received one comment on the proposed Final Judgment, and filed a Response of the United States to Comment and on May 4, 1999 published the comment and the Response in the Federal Register. Those requirements of the APPA that must be completed prior to entry of the proposed Final Judgment have all been met, as is attested in the Certificate of Compliance filed by the United States with this Court simultaneously with this motion. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment. The Court will retain jurisdiction to construe, modify or enforce the Final Judgment.

III.

Standard of Judicial Review

Before entering the proposed Final Judgment, the Court is to determine that the Judgment "is in the public interest." In making that determination, the court *may* consider:

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). In its Competitive Impact Statement filed with the Court, the United States has explained the meaning and proper application of the public interest standard under the APPA, and incorporates that statement herein by reference.

The public, including affected competitors and customers, has had opportunity to comment on the proposed Final Judgment as required by law, and only one comment was received. The United States and Defendants modified the proposed Final Judgment in response to the comment. There has been no showing that the proposed settlement as modified constitutes an abuse of the Department's discretion or that it is not within the zone of settlements consistent with the public interest.

IV.

Conclusion

For the reasons set forth in this Motion and in the Competitive Impact Statement, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. The United States is authorized by counsel for the defendants to state that the defendants join in this motion. The modified proposed Final Judgment submitted on March 26, 1999 has not changed during the pendency of the Tunney Act proceedings in this case and should be entered in the form submitted to the Court. A copy of the modified Final Judgment is attached to this motion.

Dated: July 15, 1999

Respectfully submitted,

_____/s/_____
Peter A. Gray
Pennsylvania Bar Member # 57628
Attorney
Telecommunications Task Force
Antitrust Division
United States Department of Justice
1401 H Street, N.W.
Room 8116
Washington, D.C. 20530
(202) 514-5636

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion for Entry of Final Judgment were served by hand and/or first-class U.S. mail, postage prepaid, this 15th day of July, 1999 upon each of the parties listed below, who are counsel for defendants AT&T Corp. Inc. or Telecommunications, Inc. in the matter of United States of America v. AT&T Corp. & Telecommunications, Inc., No. No.98-CV03170 (D.D.C.):

Betsy Brady, Esq., (by hand)
Vice President-Federal Government Affairs
Suite 1000
1120 20th Street, NW
Washington, DC 20036
(Counsel for AT&T Corp.)

Kathy Fenton (by hand)
Jones, Day, Reavis and Pogue
51 Louisiana Avenue, N.W.
Washington, DC 20005
(Counsel for Tele-Communications, Inc.)

/s/
Peter A. Gray
Counsel for Plaintiff