

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 94-1317 {TFH}
)	
MCI COMMUNICATIONS)	
CORPORATION and)	
BT FORTY-EIGHT COMPANY)	
{"NewCo"})	
)	
Defendants.)	

MOTION FOR ENTRY OF FINAL JUDGMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, ("APPA"), 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 June 15, 1994, when the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, alleging that the proposed acquisition of a 20% equity interest in MCI Communications Corporation ("MCI") by British Telecommunications plc ("BT"), and the proposed formation of a joint

venture between MCI and BT to provide international enhanced telecommunications services, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, by lessening competition in the markets for global seamless telecommunications services and for international telecommunications services between the United States and the United Kingdom. On the same date, the United States submitted a proposed Final Judgment, a Competitive Impact Statement, and a Stipulation signed by the parties consenting to entry of the proposed Final Judgment, and this Court approved the Stipulation for filing. The proposed Final Judgment contains terms and conditions to safeguard against discriminatory and other anticompetitive practices by the defendants affecting other United States providers of international telecommunications 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 Stipulation provides that the proposed Final Judgment 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 June 27, 1994, and terminated on August 26, 1994. During this period, the United States received comments by one company, ACC Global Corp., on the proposed Final

Judgment.¹ The United States filed its Response to the public comments on September 8, 1994. Upon publication of the comments and the Response in the Federal Register on September 22, 1994, the procedures required by the APPA prior to entry of the proposed Final Judgment were completed. The Certificate of Compliance filed by the United States with this Court simultaneously with this motion demonstrates that the requirements of the APPA have been met. 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.

¹ The comments have been filed previously with this Court on September 8, 1994, together with the Response of the United States.

15 U.S.C. § 16(e) (emphasis added). In its Competitive Impact Statement and its Response to public comments previously filed with the Court, the United States has explained the meaning and proper application of the public interest standard under the APPA, and incorporates those statements here by reference.

The public, including affected competitors and customers, has had opportunity to comment on the proposed Final Judgment as required by law, and no one has contended that entry of the proposed Final Judgment would as a whole be contrary to the public interest. The only public comments filed, by ACC Global Corp., indeed recognized the value of the proposed Final Judgment in protecting competition, and were directed to relatively minor issues concerning the implementation and possible modification of the Proposed Final Judgment. There has been no showing that the proposed settlement 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, in the Competitive Impact Statement and in the Response of the United States to the public comments, 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. Defendants have requested that the proposed Final Judgment be

entered expeditiously, before the end of the month of September if possible, in order to enable this transaction to be consummated promptly, and the United States concurs in this request.

Dated: September 26, 1994

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused to be served by first class mail, postage prepaid, or by hand, if so indicated, a copy of the foregoing Motion for Entry of Final Judgment upon the following persons, counsel for defendants in the matter of United States of America v. MCI Communications Corporation:

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Dated: September 26, 1994

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