IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	Civil Action No.: 1:10-cv-01415-WHP Hon. William H. Pauley III
v.	)	
KEYSPAN CORPORATION,	)	
Defendant.	)	

UNITED STATES'S UNOPPOSED MOTION AND SUPPORTING MEMORANDUM FOR AUTHORIZATION TO EXCUSE *FEDERAL REGISTER* PUBLICATION OF ATTACHMENTS TO THE STEWART COMMENTS

The United States hereby moves this Court, pursuant to 15 U.S.C. § 16(d)(2), for authorization to excuse *Federal Register* publication of the attachments to the Comments of Mr. Nelson M. Stewart received in this case. Defendant KeySpan Corporation does not object to this motion.

As described in the United States's Response to Public Comments ("Response"), the United States received seven public comments relating to the proposed Final Judgment in this matter. On June 11, 2010, the United States filed with the Court its Response and all of the comments along with their appendices, exhibits and attachments, including the Comments of Mr. Nelson M. Stewart ("Stewart Comments") and their multiple attachments. The United States also has posted all of these materials to the website of the Antitrust Division of United States Department of Justice.[1]

[1] *See* http://www.justice.gov/atr/cases/keyspan.htm

The United States will publish the Stewart Comments in the *Federal Register* pursuant to statutory requirement, but seeks Court authorization through this motion to excuse costly publication of the attachments. These several attachments consist primarily of correspondence and litigation filings relating to Mr. Stewart's allegations that KeySpan and related entities committed fraud, perjury and forgery with respect to construction contracts wholly unrelated to the issues in this case.

I. Argument

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (the "Tunney Act"), the United States is required to publish the public comments it received in this matter and its Response in the *Federal Register* prior to moving the Court for entry of the proposed Final Judgment. In 2004, the Tunney Act was amended in light of the benefits of electronic publication and the costs of publication in the *Federal Register*. The amendment authorizes the Court to order an alternative publication method when the expense involved exceeds the public interest benefits to be gained:

> Upon application by the United States, the district court may, for good cause (based on a finding that the expense of publication in the Federal Register exceeds the public interest benefits to be gained from such publication), authorize an alternative method of public dissemination of the public comments received and the response to those comments.

15 U.S.C. § 16(d)(2).[2]

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[2] At the Senate hearing on the legislation, Senator Leahy noted that publication in the *Federal Register* "can be very expensive . . . with little benefit, because those materials are, if anything, more accessible on the Web than in a library." 150 CONG. REC. 6,328 (2004). Senator Kohl echoed these comments stating, "[t]his provision is intended to avoid unnecessary expense in publishing proposed consent decrees if alternate means are available, such as, for example, posting the proposed decrees electronically, which are sufficient to inform interested persons of the proposed consent decree." 150 CONG. REC. 6,332 (2004).

The United States would incur expenses of approximately $28,000 to publish the attachments to the Stewart Comments in the *Federal Register*. The attachments include an accounting invoice, a partial deposition transcript, email messages, and several pages of correspondence that do not lend themselves to simple text transcription. In order to reproduce the attachments in the manner in which they were filed with the Department of Justice, the *Federal Register* must individually photograph each page, at a cost to the United States of $522 per page. *See* Circular Letter No. 609, "*Changes in the Cost to Publish in the Federal Register and Code of Federal Regulations*," March 17, 2006, attached hereto as Exhibit A.

The United States proposes to publish the Stewart Comments in the *Federal Register*, without the attachments but with a statement providing the link to the Department of Justice website where the attachments can be viewed or downloaded. This alternative would save the expense of full *Federal Register* publication while preserving the public interest benefits associated with public access to the materials. Moreover, the substance of the Stewart Comment is fully understandable without the attachments.[3]

II. Conclusion

The United States respectfully requests that the Court enter the Proposed Order authorizing the publication in the *Federal Register* of the Stewart Comments with a link to the United States Department of Justice website where the attachments to those comments can be

[3] The Stewart Comments provide a detailed description of the attachments.

viewed and downloaded.

Dated: June 15, 2010

Respectfully submitted
FOR PLAINTIFF UNITED STATES:

/s/

JADE ALICE EATON
Attorney
U.S. Department of Justice
Antitrust Division
450 Fifth Street, N.W., Suite 4000
Washington, D.C. 20530
Telephone: (202) 307-6316
Fax: (202) 307-2784
Email: jade.eaton@usdoj.gov