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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10		)	CASE NO.: 8:09-cv-00275-AG-AN
11	UNITED STATES OF AMERICA,	)	
12	Plaintiff,	)	COMPETITIVE IMPACT
13	v.	)	STATEMENT
14	MICROSEMI CORPORATION,	)	
15	Defendant.	)	Hon. Andrew J. Guilford

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17 Plaintiff United States of America ("United States"),
18 pursuant to Section 2(b) of the Antitrust Procedures and
19 Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. § 16(b)-(h),
20 files this Competitive Impact Statement relating to the proposed
21 Final Judgment submitted for entry in this civil antitrust
22 proceeding.

23 **I. NATURE AND PURPOSE OF THE PROCEEDING**

24 On July 14, 2008, defendant Microsemi Corporation
25 ("Microsemi") acquired most of the assets of Semicoa. After
26 investigating the competitive impact of that acquisition, the
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1 United States filed a civil antitrust Complaint on December 18,
2 2008, seeking an order compelling Microsemi to divest the
3 Semicoa assets and other relief to restore competition. The
4 Complaint alleges that the acquisition significantly lessened
5 competition in the development, manufacture and sale of certain
6 high reliability small signal transistors and ultrafast recovery
7 rectifier diodes used in aerospace and military applications, in
8 violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and
9 Section 2 of the Sherman Act, 15 U.S.C. § 2. As a result of the
10 acquisition, prices for these products did or would have
11 increased, delivery times would have lengthened, and terms of
12 service would have become less favorable. Pursuant to an Order
13 to Preserve and Maintain Assets, which was entered on December
14 24, 2008 and modified on August 6, 2009, Microsemi may not,
15 without written consent of the United States, dispose of the
16 acquired assets prior to resolution of this proceeding.

17 Concurrent with the filing of this Competitive Impact
18 Statement, the United States and Microsemi have filed a
19 Stipulation Regarding Proposed Final Judgment and a proposed
20 Final Judgment. These filings are designed to restore
21 competition through a divestiture of the acquired assets. The
22 proposed Final Judgment, which is explained more fully below,
23 requires Microsemi to divest the Semicoa assets, thus restoring
24 the competition that was lost as a result of the acquisition.

25 The United States and Microsemi have stipulated that the
26 proposed Final Judgment may be entered after compliance with the
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1 APPA. Entry of the Final Judgment would terminate this action,
2 except that the Court would retain jurisdiction to construe,
3 modify, or enforce the provisions of the Final Judgment and to
4 punish violations thereof.

5 **II. DESCRIPTION OF THE EVENTS**
6 **GIVING RISE TO THE ALLEGED VIOLATION**

7 *A. Microsemi and the Semicoa Acquisition*

8 Microsemi is a Delaware corporation with its principal
9 place of business in Irvine, California. Microsemi's sales were
10 approximately \$514 million in fiscal year 2008. Microsemi's
11 products include a range of electronic components, including
12 high reliability small signal transistors and ultrafast recovery
13 rectifier diodes.

14 Semicoa was a California corporation that operated from a
15 manufacturing facility in Costa Mesa, California. Semicoa's
16 sales were approximately \$14.7 million in 2007. Semicoa
17 manufactured a range of high reliability electronic devices for
18 the military, aerospace, and satellite markets, including high
19 reliability small signal transistors and ultrafast recovery
20 rectifier diodes.

21 On July 14, 2008, Microsemi acquired substantially all of
22 the assets of Semicoa. The transaction was not subject to the
23 Hart-Scott-Rodino Antitrust Improvements Act of 1976, which
24 requires companies to notify and provide information to the
25 Department of Justice and the Federal Trade Commission before
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1 consummating certain acquisitions. As a result, the Department
2 of Justice did not learn of the transaction until after it had
3 been consummated.

4 *B. The Competitive Impact of the Acquisition on the*
5 *Markets for QML Small Signal Transistors and QML*
6 *Ultrafast Recovery Rectifier Diodes*

7 Transistors and diodes are semiconductor devices used to
8 control the flow of electric current. In their simplest forms,
9 transistors can be viewed as switches and diodes can be viewed
10 as one-way valves. Both products begin as silicon wafers
11 produced in a furnace, typically referred to as a foundry. They
12 are then cut into small sections known as dies. These dies are
13 packaged in various ways into transistors and diodes.

14 Small signal transistors are a class of transistors
15 commonly used in communications and other signal processing
16 applications. Small signal transistors operate at low power
17 levels and typically are used to amplify electrical signals in a
18 wide range of products, including critical military and civilian
19 applications ranging from satellites to nuclear missile systems.

20 Rectifier diodes are a class of diodes also commonly used
21 in communications and other signal processing applications.
22 Rectifier diodes operate at low power levels and are used to
23 convert alternating current to direct current in a wide range of
24 products, including critical military and civilian applications
25 ranging from satellites to nuclear missile systems. Ultrafast
26 recovery rectifier diodes are distinguished from other rectifier
27 diodes by their extremely high alternating speeds, which
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1 minimize power loss and waste heat generation. Their ability to
2 perform efficiently and without generating excess heat is
3 especially important in applications such as satellites and
4 missiles, where power availability is strictly limited and heat
5 dissipation is challenging.

6 Highly reliable performance under demanding conditions is
7 absolutely essential in military and space systems, where
8 failure of a single component could result in failure of the
9 mission. To ensure reliability and proper performance,
10 production of these components for use in United States military
11 and space applications is supervised by the Defense Supply
12 Center Columbus ("DSCC"), a component of the Department of
13 Defense. DSCC maintains a list of qualified components and
14 their suppliers generally known as the Qualified Manufacturers
15 List, or QML. Manufacturers seeking placement on the QML must
16 pass rigorous audits of their facilities, production processes,
17 assembly and test procedures, equipment, documentation, and
18 personnel.

19 Prior to the acquisition, Microsemi and Semicoa were the
20 only QML-listed manufacturers of small signal transistors. In
21 addition, Semicoa and Microsemi were both poised to obtain QML
22 listing for ultrafast recovery rectifier diodes, which at the
23 time were in critically short supply.¹ While a firm with
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26 Products listed on the QML are organized into "slash
27 sheets," which generally denote groups of components produced by
28 similar processes and having somewhat similar characteristics.
Small signal transistors are denoted on slash sheets 182, 251,

1 production facilities in Mexico did produce some QML Ultrafast
2 Recovery Rectifier Diodes, concerns related to classified data,
3 sensitive end uses, and the inability of the United States
4 government to prioritize product deliveries beyond the nation's
5 borders make many customers reluctant to purchase such products
6 from non-domestic sources.

7 As discussed in the Complaint, customers benefitted from
8 robust competition between the two firms. In the two years
9 before the acquisition, Semicoa expanded its capacity, improved
10 delivery times, and priced aggressively to take business from
11 Microsemi. As a result, it increased its shipments by more than
12 40 percent between 2005 and 2007. Without the constraining
13 effect of Semicoa, Microsemi has the power to raise prices and
14 lengthen delivery times on QML Small Signal Transistors and QML
15 Ultrafast Recovery Rectifier Diodes.²

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18 253, 255, 270, 290, 291, 301, 317, 336, 349, 354, 366, 374, 376,
19 382, 391, 392, 394, 395, 423, 455, 512, 534, 535, 544, 545, 558,
20 559, 560, and 561. Ultrafast recovery rectifier diodes are
21 denoted on slash sheets 477 and 590. This Competitive Impact
Statement will hereinafter refer to the products on these slash
sheets as "QML Small Signal Transistors" and "QML Ultrafast
Recovery Rectifier Diodes."

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23 The Complaint describes the various reliability grades of
24 QML products. In particular, it distinguishes products
25 qualified for use in space ("JANS") from lower reliability
26 grades (collectively referred to in the Complaint as "JANTXV").
27 The terms of the proposed Final Judgment, however, do not vary
among the different QML reliability grades. Therefore, this
Competitive Impact Statement uses the terms "QML Small Signal
Transistors" and "QML Ultrafast Recovery Rectifier Diodes" to
include products of all QML reliability grades.

1 There are no practical substitutes for QML Small Signal
2 Transistors or QML Ultrafast Recovery Rectifier Diodes. While
3 commercial grade analogues of these components exist, such
4 components are produced to much wider tolerances than QML
5 components, and lack the extensive production control, testing
6 and documentation—and thus the reliability and guaranteed
7 performance—of QML components. While extensive testing of
8 commercial grade components might somewhat reduce the risk of
9 failure posed by the use of such components, such testing would
10 be costly and time consuming, and some risk would still remain.
11 Military and aerospace customers therefore do not regard
12 commercial grade components as viable substitutes for QML
13 components.

14 Entry of new firms into the production of QML Small Signal
15 Transistors or QML Ultrafast Recovery Rectifier Diodes is highly
16 unlikely to alleviate the harm to competition resulting from
17 Microsemi's acquisition of Semicoa. Obtaining QML listing is a
18 lengthy and uncertain process. Even at the lowest QML
19 reliability grades, entry resulting in sufficient market impact
20 likely would take more than two years. Moreover, entry on a
21 scale sufficient to match the competitive impact of Semicoa
22 prior to the acquisition would require significant investment,
23 particularly in equipment dedicated to automated production, and
24 is unlikely to occur given the small size of the potential
25 markets.

1 **III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT**

2 The divestiture required by the proposed Final Judgment
3 will eliminate the anticompetitive effects of the acquisition in
4 the markets for QML Small Signal Transistors and QML Ultrafast
5 Recovery Rectifier Diodes by reestablishing Semicoa as an
6 independent and economically viable competitor. The assets to
7 be divested include essentially all of the assets³ acquired by
8 Microsemi in the July 14, 2008 transaction. The divestiture
9 provisions of the proposed Final Judgment will eliminate the
10 anticompetitive effects of the acquisition in the provision of
11 QML Small Signal Transistors and QML Ultrafast Recovery
12 Rectifier Diodes.

13 The proposed Final Judgment requires Microsemi, within
14 thirty (30) days after the filing of the proposed Final
15 Judgment, or five (5) calendar days after notice of the entry of
16 the Final Judgment by the Court, whichever is later, to divest
17 the Semicoa assets as a viable ongoing business. The United
18 States may, in its discretion, extend this period by an
19 additional period of up to thirty (30) days. The assets must be
20 divested in such a way as to satisfy the United States, in its
21 sole discretion, that the assets can and will be operated by the
22 purchaser as a viable, ongoing business that can compete

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25 Inventory and/or work-in-progress that Microsemi sold in
26 the ordinary course of business after the July 14, 2008
27 acquisition of the Semicoa assets are excluded from the
divestiture. The Acquirer will acquire all of the assets
necessary to restore competition in the relevant markets.

1 effectively in the relevant markets. Microsemi must use its
2 best efforts to accomplish the divestiture as expeditiously as
3 possible and shall cooperate with prospective purchasers.

4 In the event that Microsemi does not accomplish the
5 divestiture within the periods prescribed in the proposed Final
6 Judgment, the proposed Final Judgment provides that the Court
7 will appoint a trustee selected by the United States to effect
8 the divestiture. If a trustee is appointed, the Final Judgment
9 provides that Microsemi will pay all costs and expenses of the
10 trustee. The trustee's commission will be structured so as to
11 provide an incentive for the trustee based on the price obtained
12 and the speed with which the divestiture is accomplished. After
13 his or her appointment becomes effective, the trustee will file
14 monthly reports with the Court and the United States setting
15 forth his or her efforts to accomplish the divestiture. At the
16 end of six (6) months, if the divestiture has not been
17 accomplished, the trustee and the United States will make
18 recommendations to the Court, which shall enter such orders as
19 appropriate, in order to carry out the purpose of the trust,
20 including extending the trust or the term of the trustee's
21 appointment.

22 In addition to the divestiture provisions, the proposed
23 Final Judgment, in Section XI, provides that Microsemi will
24 provide the United States at least thirty (30) days advance
25 notice of any acquisition of the assets of, or any interest in,
26 any entity engaged in the development, production or sale of QML

1 Small Signal Transistors or QML Ultrafast Recovery Rectifier
2 Diodes. The notification shall be provided in the same format
3 as, and per the instructions relating to, the Notification and
4 Report Form set forth in the Appendix to Part 803 of Title 16 of
5 the Code of Federal Regulations as amended, except that the
6 information requested in Items 5 through 9 of the instructions
7 need be provided only for QML Small Signal Transistors and QML
8 Ultrafast Recovery Rectifier Diodes.

9 **IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS**

10 Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that
11 any person who has been injured as a result of conduct
12 prohibited by the antitrust laws may bring suit in federal court
13 to recover three times the damages the person has suffered, as
14 well as costs and reasonable attorneys' fees. Entry of the
15 proposed Final Judgment will neither impair nor assist the
16 bringing of any private antitrust damage action. Under the
17 provisions of Section 5(a) of the Clayton Act, 15 U.S.C. §
18 16(a), the proposed Final Judgment has no *prima facie* effect in
19 any subsequent private lawsuit that may be brought against the
20 defendant.

21 **V. PROCEDURES AVAILABLE FOR**
22 **MODIFICATION OF THE PROPOSED FINAL JUDGMENT**

23 The United States and Microsemi have stipulated that the
24 proposed Final Judgment may be entered by the Court after
25 compliance with the provisions of the APPA, provided that the
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1 United States has not withdrawn its consent. The APPA
2 conditions entry upon the Court's determination that the
3 proposed Final Judgment is in the public interest.

4 The APPA provides a period of at least sixty (60) days
5 preceding the effective date of the proposed Final Judgment
6 within which any person may submit to the United States written
7 comments regarding the proposed Final Judgment. Any person who
8 wishes to comment should do so within sixty (60) days of the
9 date of publication of this Competitive Impact Statement in the
10 Federal Register, or the last date of publication in a newspaper
11 of the summary of this Competitive Impact Statement, whichever
12 is later. All comments received during this period will be
13 considered by the Department of Justice, which remains free to
14 withdraw its consent to the proposed Final Judgment at any time
15 prior to the Court's entry of judgment. The comments and the
16 response of the United States will be filed with the Court and
17 published in the Federal Register.

18 Written comments should be submitted to:

19 Maribeth Petrizzi
20 Chief, Litigation II Section
21 Antitrust Division
22 United States Department of Justice
Liberty Square Building
450 5th Street, N.W., Suite 8700
Washington, D.C. 20530

23 The proposed Final Judgment provides that the Court retains
24 jurisdiction over this action, and the parties may apply to the
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1 Court for any order necessary or appropriate for the
2 modification, interpretation, or enforcement of the Final
3 Judgment.

4 **VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT**

5 The United States considered, as an alternative to the
6 proposed Final Judgment, a full trial on the merits against
7 Microsemi. The United States could have continued the
8 litigation and sought divestiture of the Semicoa assets. The
9 United States is satisfied, however, that the divestiture of the
10 assets in the manner prescribed in the proposed Final Judgment
11 will restore competition in the markets for QML Small Signal
12 Transistors and QML Ultrafast Recovery Rectifier Diodes. The
13 proposed Final Judgment would achieve all of the relief the
14 government would have obtained through litigation, but avoids
15 the time, expense and uncertainty of a full trial on the merits
16 of the Complaint.

17 **VII. STANDARD OF REVIEW UNDER THE APPA**
18 **FOR THE PROPOSED FINAL JUDGMENT**

19 The Clayton Act, as amended by the APPA, requires that
20 proposed consent judgments in antitrust cases brought by the
21 United States be subject to a sixty-day comment period, after
22 which the court shall determine whether entry of the proposed
23 Final Judgment "is in the public interest." 15 U.S.C. §
24 16(e)(1). In making that determination, the court, in accordance
25 with the statute as amended in 2004, is required to consider:
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1 (A) the competitive impact of such judgment,
2 including termination of alleged violations,
3 provisions for enforcement and modification,
4 duration of relief sought, anticipated effects of
5 alternative remedies actually considered, whether
6 its terms are ambiguous, and any other
7 competitive considerations bearing upon the
8 adequacy of such judgment that the court deems
9 necessary to a determination of whether the
10 consent judgment is in the public interest; and

11 (B) the impact of entry of such judgment upon
12 competition in the relevant market or markets,
13 upon the public generally and individuals
14 alleging specific injury from the violations set
15 forth in the complaint, including consideration
16 of the public benefit, if any, to be derived from
17 a determination of the issues at trial.

18 15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory
19 factors, the court's inquiry is necessarily a limited one as the
20 government is entitled to "broad discretion to settle with the
21 defendant within the reaches of the public interest." *United*

1 *States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995);
2 *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp.
3 2d 1 (D.D.C. 2007) (assessing public interest standard under the
4 Tunney Act).⁴

5 Under the APPA a court considers, among other things, the
6 relationship between the remedy secured and the specific
7 allegations set forth in the government's complaint, whether the
8 decree is sufficiently clear, whether enforcement mechanisms are
9 sufficient, and whether the decree may positively harm third
10 parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the
11 adequacy of the relief secured by the decree, a court may not
12 "engage in an unrestricted evaluation of what relief would best
13 serve the public." *United States v. BNS, Inc.*, 858 F.2d 456,
14 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.*, 648
15 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at
16 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40
17 (D.D.C. 2001). Courts have held that:

18 [t]he balancing of competing social and political
19 interests affected by a proposed antitrust consent
20 decree must be left, in the first instance, to the
21 discretion of the Attorney General. The court's role

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23 The 2004 amendments substituted "shall" for "may" in
24 directing relevant factors for the court to consider and amended
25 the list of factors to focus on competitive considerations and
26 to address potentially ambiguous judgment terms. Compare 15
27 U.S.C. § 16(e) (2004), with 15 U.S.C. § 16(e)(1) (2006); *see*
also *SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the
2004 amendments "effected minimal changes" to Tunney Act
review).

1 in protecting the public interest is one of insuring
2 that the government has not breached its duty to the
3 public in consenting to the decree. The court is
4 required to determine not whether a particular decree
5 is the one that will best serve society, but whether
6 the settlement is "*within the reaches of the public*
7 *interest.*" More elaborate requirements might undermine
8 the effectiveness of antitrust enforcement by consent
9 decree.

10 *Bechtel*, 648 F.2d at 666 (emphasis added) (citations omitted).⁵
11 In determining whether a proposed settlement is in the public
12 interest, a district court "must accord deference to the
13 government's predictions about the efficacy of its remedies, and
14 may not require that the remedies perfectly match the alleged
15 violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; see also
16 *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be
17 "deferential to the government's predictions as to the effect of
18 the proposed remedies"); *United States v. Archer-Daniels-Midland*

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23 *Cf. BNS*, 858 F.2d at 464 (holding that the court's
24 "ultimate authority under the [APPA] is limited to approving or
25 disapproving the consent decree"); *United States v. Gillette*
26 *Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this
27 way, the court is constrained to "look at the overall picture
not hypercritically, nor with a microscope, but with an artist's
reducing glass"). See generally *Microsoft*, 56 F.3d at 1461
(discussing whether "the remedies [obtained in the decree are]
so inconsonant with the allegations charged as to fall outside
of the 'reaches of the public interest'").

1 Co., 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court
2 should grant due respect to the United States's prediction as to
3 the effect of proposed remedies, its perception of the market
4 structure, and its views of the nature of the case).

5 Courts have greater flexibility in approving proposed
6 consent decrees than in crafting their own decrees following a
7 finding of liability in a litigated matter. "[A] proposed decree
8 must be approved even if it falls short of the remedy the court
9 would impose on its own, as long as it falls within the range of
10 acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151
12 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub*
14 *nom. Maryland v. United States*, 460 U.S. 1001, 103 S. Ct. 1240,
15 75 L.Ed.2d 472 (1983); *see also United States v. Alcan Aluminum*
16 *Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the
17 consent decree even though the court would have imposed a
18 greater remedy). To meet this standard, the United States "need
19 only provide a factual basis for concluding that the settlements
20 are reasonably adequate remedies for the alleged harms." *SBC*
21 *Commc'ns*, 489 F. Supp. 2d at 17.

22 Moreover, the court's role under the APPA is limited to
23 reviewing the remedy in relationship to the violations that the
24 United States has alleged in its Complaint, and does not
25 authorize the court to "construct [its] own hypothetical case
26 and then evaluate the decree against that case." *Microsoft*, 56
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1 F.3d at 1459. Because the "court's authority to review the
2 decree depends entirely on the government's exercising its
3 prosecutorial discretion by bringing a case in the first place,"
4 it follows that "the court is only authorized to review the
5 decree itself," and not to "effectively redraft the complaint"
6 to inquire into other matters that the United States did not
7 pursue. *Id.* at 1459-60. As confirmed in *SBC Communications*,
8 courts "cannot look beyond the complaint in making the public
9 interest determination unless the complaint is drafted so
10 narrowly as to make a mockery of judicial power." 489 F. Supp.
11 2d at 15.

12 In its 2004 amendments, Congress made clear its intent to
13 preserve the practical benefits of utilizing consent decrees in
14 antitrust enforcement, adding the unambiguous instruction that
15 "[n]othing in this section shall be construed to require the
16 court to conduct an evidentiary hearing or to require the court
17 to permit anyone to intervene." 15 U.S.C. § 16(e)(2). The
18 language wrote into the statute what Congress intended when it
19 enacted the Tunney Act in 1974, as Senator Tunney explained:
20 "[t]he court is nowhere compelled to go to trial or to engage in
21 extended proceedings which might have the effect of vitiating
22 the benefits of prompt and less costly settlement through the
23 consent decree process." 119 Cong. Rec. 24,598 (1973) (statement
24 of Senator Tunney). Rather, the procedure for the public
25 interest determination is left to the discretion of the court,
26 with the recognition that the court's "scope of review remains
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1 sharply proscribed by precedent and the nature of Tunney Act
2 proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.⁶

3 **VIII. DETERMINATIVE DOCUMENTS**

4 There are no determinative materials or documents within
5 the meaning of the APPA that were considered by the United
6 States in formulating the proposed Final Judgment.

7 Dated: August 20, 2009 Respectfully submitted,

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9 By: _____/s/_____
10 Lowell R. Stern
11 Attorney for Plaintiff
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19 ⁶
20 See *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17
21 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the
22 court to make its public interest determination on the basis of
23 the competitive impact statement and response to comments
24 alone"); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade
25 Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a
26 showing of corrupt failure of the government to discharge its
27 duty, the Court, in making its public interest finding, should .
28 . . . carefully consider the explanations of the government in the
competitive impact statement and its responses to comments in
order to determine whether those explanations are reasonable
under the circumstances."); S. Rep. No. 93-298, 93d Cong., 1st
Sess., at 6 (1973) ("Where the public interest can be
meaningfully evaluated simply on the basis of briefs and oral
arguments, that is the approach that should be utilized.").

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of August, 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Brett J. Williamson
Darin J. Glasser
O'Melveny & Myers LLP
610 Newport Center Drive
17th Floor
Newport Beach, CA 92660-6429

Michael E. Antalics
Benjamin G. Bradshaw
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_____/s/_____
Lowell R. Stern
Attorney for Plaintiff