IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. MOTOROLA, INC. and NEXTEL COMMUNICATIONS, INC., Defendants.	No. CIV. A. 9402331 (TFH) Filed: March 2, 1999

MEMORANDUM OF THE UNITED STATES IN RESPONSE TO MOBEX'S MOTION TO ENFORCE CONSENT DECREE OR, IN THE ALTERNATIVE, TO CONVENE A HEARING

Mobex Communications, Inc. ("Mobex") has moved for enforcement of this Court's July 25, 1995 consent decree; in the alternative, Mobex urges the Court either (1) to convene a hearing to determine whether Nextel Communications, Inc. ("Nextel") has violated the decree or (2) to permit, at the least, Mobex's participation in any proceeding or hearing resulting from Nextel's February 16, 1999 motion to vacate the decree.

Mobex is not a party in this case, and the United States does not understand Mobex to be seeking formal intervention. To the extent that Mobex seeks merely an opportunity to submit comments or an amicus brief in response to Nextel's motion to vacate the decree, the United States has no objection to such participation.[1] Submission of comments or an amicus curiae

[1] We understand the Court at the February 19, 1999 status conference to have so limited Mobex's participation.

brief is a practice allowed under the Tunney Act with respect to the entry of antitrust consent decrees, and the Antitrust Division of the Department of Justice usually invites public comment on requests for modification or termination its decrees, as well. See 15 U.S.C. § 16(f)(3)(district court determining whether consent decree is in the public interest may allow "limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, . . . or participation in any other manner and extent which serves the public interest as the court may deem appropriate").

In connection with its request for enforcement of the decree, Mobex provides information allegedly indicating violations of the decree by Nextel. The Department requested information from Nextel concerning these matters after Mobex brought them to our attention several months ago. In the Department's view, a hearing on this matter is not appropriate or necessary at this time. The Department has not yet reached any conclusions concerning Mobex's allegations, and currently intends to defer further action on this matter pending resolution of Nextel's motion to vacate the decree. If the Court would like to have additional information concerning these issues at this time, it appropriately could require Nextel to provide a report addressing the issue of its compliance with the decree, in light of the information provided by Mobex.

Dated: March 2, 1999.

Respectfully submitted,
FOR PLAINTIFF UNITED STATES:

_____/s/_____
Donald J. Russell
Chief, Telecommunications Task Force

_____/s/_____
Claude F. Scott, Jr. (D.C. Bar # 414906)
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