

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
)	
<i>Plaintiff,</i>)	Civil No.: 99-0715 (TPJ)
)	
v.)	
)	
)	
SBC COMMUNICATIONS INC. and)	
AMERITECH CORPORATION,)	
)	
<i>Defendants.</i>)	
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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 March 23, 1999, 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 Ameritech Corporation ("Ameritech") by SBC

Communications Inc. (“SBC”) would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Complaint alleges that the acquisition of Ameritech by SBC would substantially lessen competition in seventeen markets for wireless mobile telephone services in Illinois, Indiana and Missouri where SBC and Ameritech own or operate the only two cellular telephone systems, and in combination would have an 80-90% share of the relevant markets.

Also on March 23, 1999, 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. On April 16, 1999, the United States filed a Competitive Impact Statement explaining the provisions of the Final Judgment and their anticipated effect on competition in relevant markets. The principal requirement of the proposed Final Judgment is that one of the two cellular systems in each of the overlapping markets must be divested by Ameritech or SBC, no later than 180 days after either the consummation of the merger or the issuance of final approvals by the Federal Communications Commission (“FCC”) and all state regulatory commissions that are necessary preconditions to the consummation of the merger, whichever comes first. In some of the overlapping markets, the Ameritech cellular system must be divested, while in others, defendants could choose which of the two cellular systems to divest. If the divestiture to an approved purchaser is not completed at or before the time that the merger is consummated, the cellular systems to be divested in each market must be transferred to a trustee chosen by the plaintiff, who will then be responsible for completing the divestiture. The proposed Final Judgment also contains hold separate provisions with respect to the overlapping cellular systems, pending the completion of the divestiture.

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 seventeen markets where SBC's and Ameritech's cellular systems overlap. 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.

On April 5, 1999, Ameritech announced that it had entered into a binding agreement to sell all of its cellular systems in the seventeen overlapping markets, as well as three adjoining ones, to GTE Consumer Services Inc., a company owned 93% by GTE Corporation and 7% by Davenport Cellular Communications L.L.C. This \$3.27 billion sale, which would satisfy defendants' divestiture obligations under the proposed Final Judgment, is contingent upon the consummation of the merger between SBC and Ameritech. On May 26, 1999, the Department advised the defendants and the prospective purchasers that it had no objection to this divestiture.

As of the date of this filing, SBC and Ameritech have not consummated the merger because it is still under review by the FCC and by two state regulatory commissions, the Illinois Commerce Commission and the Indiana Utility Regulatory Commission.¹ On June 29, 1999, the

¹ In the Competitive Impact Statement, the Department stated that the only state regulatory reviews that were preconditions to the merger were those in Illinois and in Ohio, the latter of which has now been completed. The Public Utilities Commission of Ohio approved the merger, subject to a number of conditions, on April 8, 1999. See In the Matter of the Joint Application of SBC Communications Inc., SBC Delaware, Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change of Control, Case No. 98-1082-TP-AMT, Stipulation and Recommendation (Public Utilities Commission of Ohio Feb. 23, 1999); id., Opinion and Order (Public Utilities Commission of Ohio April 8, 1999) (approving stipulation and merger by 4-1 decision). The Indiana Utility Regulatory Board subsequently asserted jurisdiction to review the merger, although a challenge by defendants to this claim of jurisdiction is pending before the
(continued...)

parties to the merger and the staff of the FCC reached agreement on conditions under which the merger could be approved.² This proposed settlement is still subject to public comment, and the FCC must decide whether to accept it. The planned divestiture of Ameritech's cellular systems in the overlapping markets will only occur after the FCC completes its review of the merger and approves the transfer of control of the cellular system licenses to GTE.

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 April 29, 1999, and terminated on June 28, 1999. During this period, the United States received no comments on the proposed Final Judgment, so that it was not necessary to file a Response of the United States to Comments or publish any comments or 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.

¹ (...continued)
Indiana Supreme Court.

² The publicly announced summary of the proposed conditions for resolution of the FCC's review of the SBC-Ameritech merger is attached to this Motion as Exhibit A.

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 no comments have been received. 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 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 proposed Final Judgment submitted on March 23, 1999 has not changed during the pendency of the Tunney Act proceedings in this case and should be entered in the form originally submitted to the Court. A copy of the proposed Final Judgment is attached to this motion.

Dated: July 7, 1999

Respectfully submitted,

_____/s/_____
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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 7th day of July, 1999 upon each of the parties listed below, who are counsel for defendants SBC Communications Inc. or Ameritech Corporation in the matter of United States of America v. SBC Communications Inc., No. 99-0715 (D.D.C.):

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