

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
)	
<i>Plaintiff,</i>)	Civil No.: 1:00CV02073 (PLF)
)	
v.)	
)	
)	
SBC COMMUNICATIONS INC.,)	
and BELLSOUTH CORPORATION,)	
)	
)	
<i>Defendants.</i>)	
_____)	

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

On August 30, 2000, 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 joint venture between SBC Communications Inc. (“SBC”) and BellSouth Corporation (“BellSouth”)

would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, by lessening competition in the markets for wireless mobile telephone services in 16 metropolitan statistical areas (“MSAs”) and rural service areas (“RSAs”) in California, Indiana, and Louisiana.

Also on August 30, 2000 the United States filed with the Court 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 August 30, 2000, 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 proposed Final Judgment requires SBC or BellSouth to divest wireless assets in 16 markets, including (1) 11 MSAs and RSAs where BellSouth owns, in whole or in part, a cellular mobile telephone services business that overlaps with part of two Metropolitan Statistical Area (“MTA”) where SBC provides personal communications services; and (2) two MSAs and three RSAs where SBC and BellSouth own competing cellular mobile wireless telephone businesses. In the markets where such overlaps exist, defendants can choose which wireless business to divest.

The proposed Final Judgment will preserve competition in the sale of wireless mobile telephone services in the overlap markets identified in the Complaint, and it also contains provisions designed to minimize any risk of competitive harm that could arise pending completion of the divestitures. The Competitive Impact Statement explains the basis for the Complaint and the reasons that 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.

The proposed joint venture received approval from the Federal Communications Commission on September 29, 2000, and the joint venture was launched on October 5, 2000. Divestitures have been completed in all but one MSA in which BellSouth owns, in part, a cellular business that competes with and overlaps with one MTA where SBC provides personal communications services. At this time, defendants anticipate completing this last divestiture by the end of this year.

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 September 20, 2000 and terminated on November 20, 2000. 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 to 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.

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 the 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. Counsel for defendants have informed plaintiff that defendants consent to the entry of the Final Judgment in this matter. The proposed Final Judgment filed on August 30, 2000 has not changed during the pendency of the APPA 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: December 28, 2000

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 first-class U.S. mail, postage prepaid, this 28th day of December, 2000 upon each of the parties listed below:

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