UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. STANDARD PARKING CORPORATION, KCPC HOLDINGS, INC., and CENTRAL PARKING CORPORATION, Defendants.	**CASE NO.** **JUDGE:** **FILED:**

COMPETITIVE IMPACT STATEMENT

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

I.

NATURE AND PURPOSE OF THE PROCEEDING

Defendants Standard Parking Corporation ("Standard") and KCPC Holdings, Inc. entered into an agreement on February 28, 2012, by which Standard will acquire KCPC Holdings, Inc. and its wholly owned subsidiary, Defendant Central Parking Corporation (together "Central"), for approximately $345 million. This transaction will combine the two largest nationwide operators of off-street parking facilities, who compete in providing parking services in numerous cities throughout the United States. The United States filed a civil antitrust Complaint on

September 26, 2012, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for off-street parking services in various local geographic markets in 29 specified cities, or parts of cities, throughout the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition likely would result in higher prices and lower quality of services for off-street parking in the affected local geographic markets.

At the same time the Complaint was filed, the United States also filed an Asset Preservation Stipulation and Order ("Stipulation") and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants will be required within a specified time to divest their interests in at least 107 identified parking facilities in the affected local geographic markets, including the parking facility leases or management contracts ("parking facility agreements") under which they operate those parking facilities on behalf of the owners. Under the terms of the Stipulation, Standard and Central will ensure that each of the parking facilities to be divested continues to be operated as a competitively and economically viable ongoing business concern during the pendency of the ordered divestiture.

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

II.

DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. *The Defendants and the Proposed Transaction*

Standard and Central are the two largest nationwide operators of off-street parking facilities in the United States. Together, Standard and Central will operate about 4,400 parking facilities with over 2.2 million parking spaces and more than $1.5 billion in combined total revenues.

Standard, a publicly held Delaware corporation with its headquarters in Chicago, Illinois, has parking operations in 41 states and the District of Columbia. Standard operates approximately 2,200 parking facilities containing over 1.2 million parking spaces in hundreds of cities. Standard's portfolio includes both leased and managed parking facilities, with about 90% of its facilities under management contracts. Standard's total reported revenues for 2011 were more than $729 million.

Central Parking Corporation, a privately held Tennessee corporation with its headquarters in Nashville, Tennessee, is a wholly owned subsidiary of KCPC Holdings, Inc., a Delaware corporation with its principal place of business in Mt. Kisco, New York. Central has parking operations in 38 states along with the District of Columbia and Puerto Rico, and operates more than 2,200 parking facilities and approximately 1 million parking spaces. Central's portfolio includes owned, leased and managed parking facilities, with most of its facilities under management contracts though many facilities are also leased. Central's total revenues for 2011 were in excess of $800 million.

Pursuant to an Agreement and Plan of Merger dated February 28, 2012, Standard will acquire KCPC Holdings, Inc. and its wholly owned subsidiary, Central Parking Corporation, from the owners of Central. The transaction is valued at approximately $345-348 million in total, including cash compensation, about 6.1 million shares of common stock amounting to a 28% interest in Standard, and assumption by Standard of Central's debt.

The proposed transaction, as initially agreed to by Defendants, would substantially lessen competition in local geographic markets in 29 cities, or parts of cities, throughout the United States where Standard and Central are close competitors, as stated in the Complaint.

B. The Competitive Effects of the Transaction on Off-Street Parking Services

Standard and Central are both in the business of providing off-street parking services to consumers in hundreds of cities throughout the United States. Defendants act principally as operators of parking facilities owned by others, entering into leases or management contracts with the owners or agents of the owners to operate the facilities (though Central still has a few owned facilities). Standard and Central supply employees and equipment, as well as back-office support from their regional and headquarters management.

Standard and Central, as operators of parking facilities, are direct and substantial head-to-head competitors in providing off-street parking services. The consumers of off-street parking services are motorists visiting the central business districts (CBDs) of numerous cities, or parts of cities, throughout the United States. In many of the geographic markets where Standard and Central now compete, one of the two firms is the largest or among the largest operators of off-street parking services, and the other firm operates nearby parking facilities that constitute attractive competitive alternatives for consumers. Therefore, as a result of the merger of

Standard and Central, in many of the markets where these firms now compete, market concentration would increase substantially, and the merged entity would have a dominant share. Head-to-head competition between Standard and Central has benefitted consumers through lower prices and better services, and the proposed merger threatens to end this substantial competition in areas where both firms operate competing parking facilities that are attractive alternatives for consumers.

As alleged in the Complaint, the relevant product market is the provision of off-street parking services. When consumers drive their vehicles to CBDs of cities, or parts of cities, whether for work, business, shopping or entertainment, they primarily park their vehicles in off-street parking facilities. These parking facilities can be open lots, free-standing garages, or parking garages located within commercial or residential buildings. Off-street parking services are commonly offered to consumers with varying price structures, for monthly, daily, hourly, or less-than-hourly parking. In addition, special prices can be offered for certain events in the area, such as sports games, concerts or theatre productions, or for lower demand times, such as "early-bird," evening and overnight prices.

On-street parking is generally not a practical substitute for off-street parking services. Off-street and on-street parking are distinct services, with off-street parking services providing many advantages over on-street parking. Off-street parking services can allow customers to select a level of service (e.g., using a valet parking service instead of just self-parking), a feature not available with on-street parking. In addition, off-street parking services provide consumers with relative certainty about availability of suitable parking, particularly for customers who purchase monthly off-street parking contracts. Off-street parking offers greater security, and,

with garages, shelter from the elements. On-street parking is limited and is also frequently only short-term parking, which may be unavailable in certain locations or at particular times of day. With off-street parking, customers usually do not need to "feed the meter," nor do they need to move their vehicles periodically to comply with traffic restrictions and avoid parking tickets. For all these reasons, as alleged in the Complaint, the prospect that motorists would switch to on-street parking is unlikely to affect significantly the pricing decisions of managers of off-street parking facilities.

Likewise, the possibility of consumers traveling to a CBD by public transportation, even where adequate public transportation is available, is not an alternative that is likely to be a significant constraint on pricing decisions at off-street parking facilities. Consumers decide to drive to a CBD rather than take public transportation for a variety of reasons, including the need to have a car available, and the inconvenience of using public transportation to reach their homes, workplaces or other destinations.

There are a variety of arrangements by which Central and Standard, as well as other operators of parking facilities, obtain the rights to offer parking services in those facilities, including direct ownership, leases, and management contracts with the owners of the facilities. An operator that owns a parking facility is the proprietor of the business and sets the conditions of operation, including prices. Direct ownership by these operators is now rare, though still used occasionally by Central.

Leasing is used by both Central and Standard, with Central using it more frequently. An operator that leases a parking facility from the property owner pays the owner a set lease amount or shares some of the parking revenues with the owner, and retains substantial or complete

control over pricing and other conditions of operation. The lessee operating the facility generally assumes the risk that the facility will be unprofitable and is responsible for the costs of operation.

Management contracts are now the most common form under which parking facilities are operated by both Standard and Central, and especially so for Standard. When an operator manages a parking facility for the owner, the operator is commonly compensated with a set management fee and reimbursement of a large part of its expenses in operating the facility, avoiding the risk of loss that a lessee faces. In addition, the operator often receives a share of revenues or profits as specified in the management contract, providing a financial incentive to the manager to operate the facility so as to maximize revenues and profits.

In managed parking facilities, the incentives of the operator are often the same as or similar to those of the owner: to maximize profits, especially as to non-tenant monthly customers or transient (daily, hourly and event parking) customers, who do not have a special relationship with the owner of the building in which the facility is located. An operator such as Standard or Central managing a parking facility for an owner commonly conducts competitive rate analyses of the parking market in the area near the facility and recommends conditions of business operation, including prices, to the owner. Even if owners are not obliged to accept such recommendations, they often do, relying on the expertise of the operator to help them maximize their revenues and profits from the facility. For all these reasons, parking facilities managed by either Standard or Central, as well as ones leased or owned by Standard or Central, have been considered as part of the competitive analysis in evaluating the impact of this merger.

Though the process of identifying relevant geographic markets for parking services and

the competitors in those markets can be complex, the underlying principle guiding this process is well understood in the parking industry. As reflected in the competitive rate analyses conducted by the parking operators, motorists park near their destinations, typically within a few blocks of where they are going. Consumers faced with a small but significant and nontransitory increase in parking prices for the parking facilities near their destinations would not turn to more distant parking facilities in sufficient numbers to render the price increase unprofitable. Parking managers for Central, Standard, and other competitors in the industry make their pricing decisions or recommendations separately for each facility, based on market conditions within a few blocks of that facility. Therefore, the relevant geographic markets within which the likely competitive effects of this merger have been assessed are no larger than the CBDs of individual cities, or parts of cities, where Standard and Central both have parking facilities, and commonly consist of considerably smaller areas of the CBDs that encompass those off-street parking facilities within a few blocks of a destination for consumers.

Two methods have been used to identify relevant geographic markets. In most cases, the geographic market is based on overlapping pairs of parking facilities, one operated by Central and one by Standard, that are within close enough walking distance typically to be considered by customers as alternatives for parking. The extent of the overlap between the Standard and Central facilities is the area containing consumer destinations for which the Standard and Central facilities compete to provide parking. This analysis then determines which facilities of other competitors would be considered within close enough walking distance to that overlap area to be alternatives to the customers for which Standard or Central compete. In some cases, where there is a single attraction likely to draw a large part of the parking business in an area, such as a sports

stadium, or where one of the overlapping facilities of the parties is not open to the general public but the other is and could serve as a competitive alternative to parkers in the first, the geographic market includes all other parking facilities within close enough walking distance of the attraction or restricted facility that consumers would be likely to consider them as alternatives.

This process has led to the identification of numerous relevant geographic markets for off-street parking services within the CBDs of cities, or parts of cities, where Standard and Central both operate, each consisting of areas containing several city blocks around the parking facilities at issue. Within one or multiple such areas in 29 cities, or parts of cities, and 21 states of the United States, as listed below, Standard and Central both operate parking facilities close enough to be attractive competitive alternatives to customers, and a likelihood of competitive harm arises as a result of this merger in view of the extent of competition in those markets:

Atlanta, GA
Baltimore, MD
Bellevue, WA
Boston, MA
New York City (Bronx), NY
Charlotte, NC
Chicago, IL
Cleveland, OH
Columbus, OH
Dallas, TX
Denver, CO
Fort Myers, FL
Fort Worth, TX
Hoboken, NJ
Houston, TX
Kansas City, MO
Los Angeles, CA
Miami, FL (including Coral Gables, FL)
Milwaukee, WI

Minneapolis, MN
Nashville, TN
New Orleans, LA
Newark, NJ
Philadelphia, PA
Phoenix, AZ
New York City (Rego Park), NY
Richmond, VA
Sacramento, CA
Tampa, FL

In the relevant geographic markets, substantial competitive harm to consumers is likely to result from this merger in off-street parking services, as alleged in the Complaint. The proposed merger would substantially increase Standard's market shares in the relevant geographic markets, and it would place in Standard's hands substantial control over prices and services available to consumers. On its own or in cooperation with the owners of parking facilities, who often have the same or similar incentives to Standard to maximize profits, Standard could profitably unilaterally raise prices to consumers, or reduce the quantity or quality of services offered.

Standard and Central now compete in these relevant geographic markets in several respects, including the prices charged; hours of operation; the mixture of parking operations offered, such as monthly contracts, "early-bird," and evening specials; cleanliness and security of facilities; and the skill, efficiency and courtesy of staff. When Standard and Central determine, or recommend to owners, prices and terms of service, they take into consideration a variety of factors relevant to competition in the local geographic market in which a specific facility operates, including local market conditions such as the demand for off-street parking and the availability of other off-street parking locations, and the prices charged by available competing

firms in the local geographic market.

Following the merger, in some of the relevant geographic markets, there would be no other parking facilities that would be competitive alternatives to Central or Standard facilities, so that the merger would create a monopoly. More often, in the relevant geographic markets, some other competitors are present, but the number of their facilities and the capacities of those facilities are insufficient to preclude the exercise of market power by a merged Standard and Central. Control over a large share of available parking capacity in a local geographic market is likely to give rise to the ability to exert market power unilaterally over prices and terms of service for off-street parking in that area.

Market shares in the relevant geographic markets have generally been assessed based on total capacity of parking facilities in terms of parking spaces, for both Standard and Central, and for competing facilities that would be attractive alternatives to their customers. In all of the local geographic markets identified for off-street parking services, the merger of Standard and Central would result in the merged firm having at least 35%, and often much more than that, of the total parking capacity. In all of these markets, the merger would result in at least a moderately concentrated market and in the great majority of cases a highly concentrated market, as measured by the Herfindahl-Hirschman Index ("HHI").[1] In addition, in all of the geographic markets identified, the merger of Standard and Central would also result in a significant increase in

[1] The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. The agencies generally consider markets in which the HHI is in excess of 2,500 points to be highly concentrated. See *U.S. Department of Justice & FTC, Horizontal Merger Guidelines* § 5.3 (2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets are presumed likely to enhance market power under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission. *See id.*

concentration in the market following the merger, reflected by an increase in the HHI of at least 200 points. Under the *Horizontal Merger Guidelines*, the combination of a highly concentrated market and an increase in concentration of at least 200 points gives rise to a presumption of competitive harm. Indeed, in the great majority of the relevant geographic markets, the merger would result in an increase in concentration of several hundred points, or of even more than 1000 points, as measured by the HHI.

Entry of new off-street parking capacity would not be likely, timely, or sufficient to remedy the competitive harm otherwise likely to result from this merger, in any of the affected relevant geographic markets. That is because creation of new parking facilities and spaces in CBDs is largely a by-product of other decisions, such as whether to build or tear down a building, that are not directly related to the demand for, or changes in the price of, parking services in that area. Given the local character of competition, the cost of land, the limited availability of substitutable parking facilities, and the alternative options for the use of convenient land in the market, new entry of parking capacity cannot be viewed as a response likely to make a small but significant and nontransitory price increase unprofitable.

Other operators of parking facilities can enter only to the extent that capacity is available. Assuming that new capacity has not been built, new operators could only enter in a way that might alter Standard's and Central's dominant position in a relevant market by taking capacity from them. But in the parking industry, leases and management contracts typically run for periods of several years, and are usually awarded to the incumbent operators by the owners when they come up for renewal. Given these practices, it cannot be expected that existing leases or

management contracts currently held by Standard and Central would be transferred to new operators in a manner that would be timely, likely or sufficient to prevent anticompetitive effects from the merger in the affected markets.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture in the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in off-street parking services in the relevant geographic markets in 29 cities, or parts of cities, by providing for the divestiture of the parking businesses of Central or Standard in those markets involving 107 or 108 named parking facilities.[2] Such a divestiture most commonly will involve the sale of Standard's or Central's interests in the parking facilities in those markets, including its parking facility lease or management agreements, to a different operator or operators, thereby establishing the divested facility as an economically viable competitor independent of Standard. In some cases, as provided by Paragraph IV.K of the proposed Final Judgment, the Defendants may elect to accomplish a divestiture by terminating Standard's or Central's parking facility agreement for the specified facility -- or letting the agreement expire without renewal at the end of its natural term -- after notice to the affected facilities owners. This alternative may be particularly relevant in the case of agreements with a very short remaining term that could be difficult to sell. In these cases, the owner of the parking

[2] The reason why there is not a single number for the total parking facilities to be divested is that Defendants have the option in one city, Milwaukee, WI, to accomplish the required divestiture in the relevant geographic markets through either three parking facilities currently operated by Standard, or four parking facilities currently operated by Central. In either form, the divestiture would be sufficient to remedy competitive harm in those markets.

facility would select a new operator for the facility following the divestiture.

The proposed Final Judgment requires Defendants, within 90 days after the filing of the Complaint, or 5 days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as a viable ongoing parking service business, all of their interests in each of the Parking Facilities listed in Schedule A to the proposed Final Judgment. Defendants are required to use their best efforts to accomplish the divestitures ordered as expeditiously as possible, and the United States has the sole discretion, under Paragraph IV.D of the proposed Final Judgment, to extend the time period for any divestiture, but not for more than 90 additional days. Such extensions can be granted by the United States on an individual basis for any facility, but the United States expects it will take into account both the extent of the efforts Defendants have made to divest the facility within the original time provided, and the prospects that they will succeed in doing so within the additional time that the extension would permit.

"Parking Facilities" are defined in the proposed Final Judgment, Paragraph II.E, to mean all of Defendant's interests in the properties listed in Schedule A, including but not limited to Parking Facility Agreements (whether leases, management agreements or otherwise). In turn, "Parking Facility Agreements" are defined in Paragraph II.D of the proposed Final Judgment as all agreements that are related to the management of off-street parking facilities as listed in Schedule A, and are between or among the Defendants and the owners or their agents of the properties listed in Schedule A. Defendants must also divest all other tangible and intangible assets used by them primarily in connection with those properties, such as: the other contracts (whether with employees, customers or otherwise); equipment and other property; customer lists, business accounts and records, and market research data for the individual Parking Facilities;

manuals and instructions provided to employees; and other physical assets they may have associated with their operation of the specific properties. This would not include, however, assets such as centralized systems software, that are located outside the Parking Facilities and that do not relate primarily to the properties listed on Schedule A. Thus, Defendants will be able to retain back-office systems or other assets and contracts used at the corporate level to support multiple parking facilities, which they would need to conduct their remaining operations, and which other purchasers experienced in the operation of parking facilities could supply for themselves.

The Parking Facility assets must be divested in such a way as to satisfy the United States in its sole discretion that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. This means, for example, that the United States retains the right to preclude Defendants from divesting their interests in a Parking Facility to a purchaser that in its view would not have the support systems or other needed centralized capabilities to continue the effective competitive operation of the facility. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

Defendants are also obliged, under Paragraph IV.E of the proposed Final Judgment, to provide information to acquirers concerning the personnel involved in the operation of any Parking Facility, so as to make offers of employment, and not to interfere with negotiations by any acquirer to employ a person currently employed by a Defendant whose primary responsibility concerns the parking service business of that Parking Facility. This includes, for example, removing impediments to the employees accepting such employment, such as non-

compete agreements, which also may not be enforced with respect to any employee whose responsibilities at a local or regional level include a Parking Facility and whose employment terminates within six months of the date after this merger is completed.

Defendants are required, under Paragraphs IV.B and C of the proposed Final Judgment, to cooperate with prospective acquirers of the Parking Facilities, by furnishing them information and documents about the Parking Facilities as customarily provided in a due diligence process, and giving them reasonable access to personnel and other documents and information, and the ability to make inspection of the Parking Facilities. They are also required not to take any action that would impede the operation of any parking business connected with the Parking Facilities, or take any action that would impede divestiture, under Paragraph IV.G.

In the event that Defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides in Section VI that upon application of the United States the Court will appoint a trustee selected by the United States to effect the divestiture. The appointment of a trustee can be made individually for any Parking Facility, so that some facilities, for example, might be assigned to the trustee even as extensions of time are granted by the United States for the Defendants to complete the divestitures of others, and those Parking Facilities might also be assigned to the trustee later if the Defendants fail to complete the divestiture within the extended time.

If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. The Defendants will have no right to object to a divestiture by the

trustee on any ground other than malfeasance.

After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months from the time that the trustee has assumed responsibility for divestiture of any individual Parking Facility, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The proposed Final Judgment also provides a mechanism for protecting competition in the event that an individual divestiture cannot be made. The Defendants are required to report to the United States at 30-day intervals on compliance with the proposed Final Judgment, including submission of affidavits. Beginning with the second of these periodic reports, Defendants are required to identify any instances in which they anticipate that divestitures of any Parking Facilities cannot be practically accomplished within 30 additional days. This might occur, for example, because the owner of the facility refuses to grant consent to the transfer to an acquirer under the terms of the lease or management contract, or because no prospective purchaser may appear in time. Thus, whenever a Parking Facility is not divested within 60 days of the filing of the Complaint, and no definitive agreement for divestiture exists, the United States has the right under the proposed Final Judgment, Paragraph IV.N, to require Defendants to propose alternative divestitures of Parking Facilities sufficient to preserve competition. The United States has sole discretion whether to accept a proposed alternative divestiture, and if it refuses to accept the alternative, the Defendants must continue to propose alternative divestitures in the

relevant market until an acceptable one is found. If the alternative is accepted, it becomes for all purposes a Parking Facility in place of the other Parking Facility listed in Schedule A of the proposed Final Judgment that could not be divested. This process of identifying alternatives in the absence of a divestiture agreement does not apply where Defendants will be divesting a property under Paragraph IV.K by letting the lease or management contract terminate before the time allowed for divestiture has elapsed.

Once a Parking Facility is divested, whether this occurs through transfer to an acquirer acceptable to the United States, or by termination or non-renewal of the lease or management contract, Defendants are prohibited by Paragraph IV.I of the proposed Final Judgment from entering into any agreement to acquire, lease or operate, or acquiring in any other manner an interest in ownership or management of, that Parking Facility during the ten-year term of the proposed Final Judgment. A shorter limitation on reacquisition of only three years from the divestiture of a Parking Facility is provided, however, where Defendants reacquire a Parking Facility directly from the owner of the Parking Facility or the owner's agent through a process that does not involve a transaction with the operator of the Parking Facility. This provision serves to ensure that acquisition of the divested Parking Facilities will be attractive to new operators, who will have a reasonable time to establish themselves and demonstrate to owners that they can operate the facilities effectively before having to compete again against the former incumbent for the right to operate the property. At the same time, it gives the Defendants the opportunity within a reasonable period of time to return to competing for the rights to operate the divested Parking Facilities from the facility owners in a normal manner, rather than having to wait for the expiration of the proposed Final Judgment. This may involve either processes

initiated by the owners of facilities, such as requests for bids, or requests to compete for the operating rights initiated by Defendants, provided that a transaction between the operator of the facility and Defendants is not involved. The period of time during which reacquisition is prohibited even for direct transactions with the owner takes into account the normal term of many management contracts for parking facilities. The broader prohibition on reacquisition during the term of the decree also safeguards against any "sweetheart deals" where an acquirer or a facility owner takes control of operation of a Parking Facility merely to satisfy the divestiture obligation and then returns it to the Defendants, and thereby ensures that the remedy cannot be circumvented.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the provision of off-street parking services, in the relevant local geographic markets in the 29 cities, or parts of cities, named in the Complaint where Defendants compete closely now. This relief is designed to ensure that the merger does not increase Standard's market share and control of parking capacity in the relevant local geographic markets in these cities, or parts of cities, to a level likely to lead to the exercise of market power. Nothing in the proposed Final Judgment is intended to limit the United States' ability to investigate or bring actions, where appropriate, to challenge other past or future activities of the Defendants.

IV.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been

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

V.

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

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

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the *Federal Register*, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment.

The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the *Federal Register*.

Written comments should be submitted to:

Scott A. Scheele
Chief, Telecommunications and Media Enforcement Section
Antitrust Division
United States Department of Justice
450 Fifth Street, N.W., Suite 7000
Washington, DC 20530

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

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Standard Parking Corporation's acquisition of KCPC Holdings, Inc. and its wholly owned subsidiary, Central Parking Corporation. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of off-street parking services in the relevant markets identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have

obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII.

STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, 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)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp.

2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. InBev N.V./S.A.*, 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08-1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").[3]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc*., 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp*., 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest*." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent

[3] The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 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).

decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[4] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a

[4] *Cf. BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this 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

factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; see also *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60. As this Court recently confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended

---

the public interest'").

proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.[5]

VIII.

DETERMINATIVE DOCUMENTS

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

[5] *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . 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

Dated: September 26, 2012

Respectfully submitted,

/s/ Carl Willner

Carl Willner (D.C. Bar No. 412841)
Michael J. Hirrel (D.C. Bar No. 940353)
U.S. Department of Justice
Antitrust Division
Telecommunications and Media
Enforcement Section
450 Fifth Street, N.W., Suite 7000
Washington, DC 20530
(202) 514-5813
E-mail: carl.willner@usdoj.gov

---

should be utilized.”).