

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

UNITED STATES OF AMERICA, STATE OF
ALABAMA, STATE OF CALIFORNIA, STATE
OF IOWA, STATE OF KANSAS, STATE OF
MINNESOTA, STATE OF NORTH DAKOTA,
and STATE OF SOUTH DAKOTA,

Plaintiffs,

v.

VERIZON COMMUNICATIONS INC. and
ALLTEL CORPORATION,

Defendants.

Case No. 1:08-CV-01878 (EGS)

**PLAINTIFF UNITED STATES'S MOTION AND
MEMORANDUM IN SUPPORT OF ENTRY OF FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA" or "Tunney Act"), plaintiff United States moves for entry of the proposed Final Judgment filed in this civil antitrust case. The proposed Final Judgment (which is attached) may be entered at this time without further hearing if the Court determines that entry is in the public interest. The defendants do not object to entry of the proposed Final Judgment without a hearing. The Competitive Impact Statement ("CIS") and Response to Public Comments, filed by plaintiff United States in the above-captioned matter, respectively, on October 30, 2008 and February 17, 2009, explain why entry of the proposed Final Judgment is in the public interest. Plaintiff United States is filing simultaneously with this motion a Certificate of Compliance setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting periods have expired.

MEMORANDUM

I. Background

Verizon Communications Inc. (“Verizon”) and Alltel Corporation (“Alltel”) entered into an Agreement and Plan of Merger dated June 5, 2008, pursuant to which Verizon would acquire Alltel. Plaintiffs United States and the States of Alabama, California, Iowa, Kansas, Minnesota, North Dakota, and South Dakota filed a civil antitrust Complaint on October 30, 2008, seeking to enjoin the proposed acquisition. As explained more fully in the Complaint and CIS, the likely effect of this acquisition would be to lessen competition substantially for mobile wireless telecommunications services in 94 Cellular Market Areas (“CMAs”) in Alabama, Arizona, California, Colorado, Georgia, Idaho, Illinois, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Ohio, South Carolina, South Dakota, Utah, Virginia, and Wyoming where Verizon and Alltel are among the most significant competitors, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.¹ This loss of competition would result in consumers facing higher prices, lower quality service and fewer choices of mobile wireless telecommunications services providers.

At the same time the Complaint was filed, plaintiffs also filed a Preservation of Assets

¹ In order to alleviate competitive concerns associated with the proposed acquisition, defendants also agreed to divest wireless businesses in six additional CMAs, which were divested pursuant to the final judgments in *United States et al. v. Alltel Corp. et al.*, Civ. No. 06-3631 (RHK/AJB) (D. MN filed Sept. 7, 2006), and *United States v. Bell Atlantic Corp. et al.*, Civ. No. 1:99CV01119 (EGS) (D.D.C. filed May 7, 1999). These final judgments prohibit defendants from reacquiring the wireless businesses in those six CMAs. The wireless businesses in those CMAs will be divested pursuant to modifications of those modified final judgments, entered by the courts on October 31, 2008 and December 30, 2008, respectively.

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 are required to divest mobile wireless telecommunications services businesses and related assets in the 94 CMAs (the “Divestiture Assets”). Under the terms of the Stipulation, defendants will take certain steps to ensure that, during the pendency of the ordered divestitures, the Divestiture Assets are preserved and operated as competitively independent, economically viable ongoing businesses without influence by defendants.

Plaintiffs 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. Defendants have also stipulated that they will comply with the terms of the Stipulation and the proposed Final Judgment from the date of signing of the Stipulation, pending entry of the proposed Final Judgment by the Court and the required divestitures. Should the Court decline to enter the proposed Final Judgment, defendants have also committed to continue to abide by its requirements and those of the Stipulation until the expiration of time for appeal.

II. Compliance with the APPA

The APPA requires a sixty-day period for the submission of public comments on a proposed Final Judgment. *See* 15 U.S.C. § 16(b). In compliance with the APPA, plaintiff United States filed the CIS in this Court on October 30, 2008; published the proposed Final Judgment and CIS in the *Federal Register* on November 12, 2008, *see* 73 Fed. Reg. 66,922 (2008); and

published a summary of the terms of the proposed Final Judgment in the *Washington Post* for seven days beginning on November 19, 2008 and continuing on consecutive days through November 25, 2008. The 60-day period for public comments ended on January 24, 2009, and one comment was received. Plaintiff United States filed its Response to Public Comments and the comment itself with this Court on February 17, 2009, and published the Response and the public comment in the *Federal Register* on March 3, 2009, *see* 74 Fed. Reg. 9267 (2009). The Certificate of Compliance filed simultaneously with this Motion recites that all the requirements of the APPA have now been satisfied. It is therefore appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment.

III. Standard of Judicial Review

Before entering the proposed Final Judgment, the Court is to determine whether the Judgment “is in the public interest.” *See* 15 U.S.C. § 16(e). In making that determination, the Court shall 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).

In its CIS filed on October 30, 2008 and its Response to Public Comments filed on February 17, 2009, plaintiff United States has explained the meaning and proper application of

the public interest standard under the APPA and now incorporates those statements 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. In its response to that comment, plaintiff United States explained why the arguments raised therein should not concern this Court in its public interest inquiry. The proposed Final Judgment is within the range of settlements consistent with the public interest.

IV. Conclusion

For the reasons set forth in this Motion, the CIS, and the Response to Public Comments, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. Plaintiff United States respectfully requests that the proposed Final Judgment be entered as soon as possible.

Dated: March 5, 2009

Respectfully submitted,

/s/ Hillary B. Burchuk
Hillary B. Burchuk (D.C. Bar No. 366755)
Jared A. Hughes
Lawrence M. Frankel (DC Bar No. 441532)
Attorneys, Telecommunications & Media
Enforcement Section
Antitrust Division

U.S. Department of Justice
City Center Building
1401 H Street, N.W., Suite 8000
Washington, D.C. 20530
(202) 514-5621
Facsimile: (202) 514-6381

Certificate of Service

I hereby certify that on March 5, 2009, copies of the foregoing Plaintiff United States's Motion and Memorandum In Support of Entry of Final Judgment and proposed Final Judgment were mailed via first class mail, postage prepaid, upon counsel for Public Service Communications, Inc., addressed as follows:

David U. Fierst, Esq.
Stein, Mitchell & Muse L.L.P.
1100 Connecticut Ave. N.W.
Suite 1100
Washington, DC 20036

/s/ Hillary B. Burchuk
Hillary B. Burchuk (D.C. Bar No. 366755)
Telecommunications & Media
Enforcement Section
Antitrust Division
U.S. Department of Justice
City Center Building
1401 H Street, N.W., Suite 8000
Washington, D.C. 20530
(202) 514-5621
Facsimile: (202) 514-6381