

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA and)	
STATE OF VERMONT,)	
)	
)	Case No. 1:08-cv-993-EGS
<i>Plaintiffs,</i>)	
)	
v.)	
)	
VERIZON COMMUNICATIONS INC. and)	
RURAL CELLULAR CORPORATION,)	
)	
<i>Defendants.</i>)	
<hr/>)	

PLAINTIFFS' 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"), the plaintiffs move 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") filed by the United States in the above-captioned matter on June 10, 2008 explains why entry of the proposed Final Judgment is in the public interest. The 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 Rural Cellular Corporation (“RCC”) entered into an Agreement and Plan of Merger dated July 29, 2007, pursuant to which Verizon would acquire RCC. The United States filed a civil antitrust Complaint on June 10, 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 throughout Vermont, one geographic area in New York that is contiguous to Vermont, and in northeast Washington, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition would result in consumers facing higher prices, lower quality service and fewer choices of mobile wireless telecommunications services.

At the same time the Complaint was filed, plaintiffs also filed a Preservation of Assets Stipulation and Order 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 RCC’s mobile wireless telecommunications services businesses and related assets throughout Vermont, one geographic area in New York that is contiguous to Vermont, and in northeast Washington (“Divestiture Assets”). Under the terms of the Preservation of Assets Order, defendants will take certain steps to ensure that during the pendency of the ordered divestiture: (a) the Divestiture Assets are preserved and operated as competitively independent, economically viable and ongoing businesses; (b) the Divestiture Assets are operated independently and without influence by defendants; and (c) competition is maintained.

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 Preservation of Assets Stipulation and Order and the proposed Final Judgment from the date of signing of the Preservation of Assets Stipulation and Order, 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 Preservation of Assets Stipulation and Order 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, the United States filed the CIS in this Court on June 10, 2008; published the proposed Final Judgment and CIS in the *Federal Register* on June 27, 2008, *see* 73 Fed. Reg. 36,557 (2008); and published a summary of the terms of the proposed Final Judgment in the *Washington Post* for seven days beginning on July 9, 2008 and continuing on consecutive days through July 15, 2008. The 60-day period for public comments ended on September 13, 2008. Because the United States did not receive any comments, it did not file a Response to Public Comments. 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 June 10, 2008, the United States 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. 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 and the CIS, 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 plaintiffs respectfully request that the proposed Final Judgment be entered as soon as possible.

Dated: Sept. 22, 2008

Respectfully submitted,

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