

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

UNITED STATES OF AMERICA,
Plaintiff,

v.

AT&T CORPORATION and
TELE-COMMUNICATIONS, INC.,

Defendants.

No. 1:98CV03170
Judge Emmett G. Sullivan

**MEMORANDUM IN SUPPORT OF JOINT MOTION
TO TERMINATE THE FINAL JUDGMENT**

The United States, AT&T Corporation (“AT&T”) and Liberty Media Corporation (ALiberty@) file this Memorandum in Support of the Joint Motion to Terminate the Final Judgment entered in this matter on August 23, 1999. Changed circumstances mean that the relief provided is no longer required to achieve the purposes of the Final Judgment and that termination of the Final Judgment is in the public interest.

I. Background

The Final Judgment at issue arose from the June 1998 agreement between defendants Tele-Communications, Inc. (ATCI@), the then-parent of Liberty, and AT&T pursuant to which TCI would be merged into a wholly owned subsidiary of AT&T. The merger agreement also contemplated the indirect acquisition by AT&T of Liberty’s 23.5% equity interest in Sprint Corporation’s mobile wireless telephone business, (ASprint PCS Holdings”) a competitor of AT&T in the provision of mobile wireless telephone business in many geographic areas of the United States. Following an investigation, the U.S.

Department of Justice Antitrust Division (The Department) concluded that AT&T's incentives to compete with Sprint PCS would be lessened significantly as a result of this ownership interest.

Accordingly, on December 30, 1998, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, seeking to enjoin the TCI-AT&T merger on the grounds that it would substantially lessen competition in the provision of mobile wireless telephone services in many geographic areas throughout the country. Simultaneously with the filing of its Complaint, the United States also submitted a proposed Final Judgment, a Competitive Impact Statement, and a Stipulation signed by the Defendants consenting to the entry of the Final Judgment. Following compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, the Final Judgment was entered by this Court on August 23, 1999.

II. The Final Judgment

In order to preserve competition in the sale of mobile wireless telephone services, the Final Judgment ordered the complete divestiture by Liberty of its Sprint PCS Holdings over a period of five years. (Final Judgment, Section V). This divestiture was intended to prevent AT&T from recapturing through Liberty any of the revenues that might hypothetically be diverted from AT&T to Sprint PCS as a result of an increase in the price of AT&T's mobile wireless telephone services. The Final Judgment mandates that Liberty's Sprint PCS Holdings be reduced to 10% or less of the outstanding Sprint PCS stock by May 23, 2002; Liberty's interest must be divested completely by May 23, 2004.

Pending the completion of this divestiture, the Final Judgment imposed other measures to ensure that AT&T's partial ownership of Sprint PCS through Liberty would not create anticompetitive incentives. These provisions, among others, required that all economic benefits of Liberty's Sprint PCS Holdings inure exclusively to the holders of the Liberty Media Group tracking stock, forbade AT&T from transferring any of these benefits to AT&T shareholders, required certain amendments to the

Liberty certificate of incorporation and bylaws, and imposed certain restrictions on Liberty's Board of Directors. (Id., Section VI.B). In order to ensure ongoing separation between Liberty's Sprint PCS Holdings and AT&T's wireless business, Liberty also was restricted in its ability to acquire any interest in AT&T's wireless business. (Id., Section VI.F). Finally, prior to the closing of the AT&T merger, TCI was required to (and did) establish an independent trust, and appoint a trustee, approved by the Department, who had the obligation and sole responsibility to divest the Sprint PCS Holdings in a manner calculated to maximize the value of the Sprint PCS Holdings to the Liberty Media shareholders. (Id., Section V.B).

Section IX of the Final Judgment provides that the district court will retain jurisdiction and permits application to the Court for any order necessary or appropriate for the modification of the Final Judgment. If a motion to terminate the Final Judgment in which the Department has joined has been filed and is pending before the Court, the trustee is not required to proceed with the mandated divestiture until the motion to terminate the Final Judgment has been decided by the Court. (Id., Section V.A).

III. Termination of the Final Judgment is in the Public Interest

A. Standard for Modification or Termination

This Court has jurisdiction to modify the Final Judgment under both Section IX of the Final Judgment (Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment [and] for the modification of any of the provisions hereof) and Federal Rule of Civil Procedure 60(b)(5). When considering an uncontested motion to modify an existing Final Judgment in which the United States has

joined, the Court's role is limited to determining whether the proposed modification is within the zone of settlements consistent with the public interest. As the D.C. Circuit has held:

[T]he public interest test, as applied to a modification assented to by all parties to a decree, directs the district court to approve an uncontested modification so long as the resulting array of rights and obligations is within the zone of settlements consonant with the public interest today. That formation made clear that it was not up to the court to reject an agreed-on change simply because the proposal diverged from its view of the public interest. Rather, the court was bound to accept any modification that the Department (with the consent of the other parties we repeat) reasonably regarded as advancing the public interest.

United States v. Western Electric Co., 993 F.2d 1572, 1576 (D.C. Cir. 1993) (citation omitted); see also United States v. Microsoft Corp., 56 F.3d 1448, 1460 (D.C. Cir. 1995) (court's function in reviewing agreed-upon decree modification is not to determine whether the resulting array of rights and liberties is one that will best service society, but only to confirm that the resulting settlement is within the reaches of the public interest). The proposed termination of the Final Judgment meets this standard.

B. Termination is within the Zone of Settlements which will Advance the Public Interest

The possibility that changes in the legal and economic relationship between AT&T and Liberty as the holder of Sprint PCS stock would completely resolve the competitive concerns posed by the TCI/AT&T merger was recognized by the United States at the time the proposed Final Judgment was submitted to the court. The Competitive Impact Statement ("CIS") filed in this matter on December 30, 1998, stated:

In the Department's view, complete legal and economic separation between AT&T's wireless business and the Sprint PCS Holdings would constitute a material change in circumstances that would justify termination of the divestiture obligation.

CIS at 16.

On August 10, 2001, Liberty was spun off from AT&T and became a separate, publicly traded company.¹ AT&T no longer owns any Liberty Media Corporation stock or has any other legal or economic interest in Liberty.²

The spin off of Liberty from AT&T has dissolved the legal and economic relationships between AT&T and Liberty on which the Final Judgment was premised. The competitive harm sought to be addressed by the Final Judgment rested on those shared interests **B** through Liberty **B** between Sprint PCS and AT&T's wireless business. The Final Judgment's divestiture obligation (and the creation of a trust and appointment of a trustee pending divestiture) sought to separate these interests in order to ensure competition. With the spin-off establishing Liberty as a separate company, there is no longer any conceivable means for AT&T or AT&T Wireless to direct or to recoup the benefits of an anticompetitive strategy with respect to Sprint PCS's wireless telephone business through Liberty.

Therefore, the Final Judgment is no longer necessary to preserve the public interest in competition in the provision of mobile telephone services and should be terminated.

IV. Conclusion

For the reasons set forth above, the Court should enter the accompanying proposed Order and terminate the Final Judgment.

Respectfully submitted,

For Plaintiff
UNITED STATES OF AMERICA

¹Liberty Media Corporation, SEC 10-Q filing (8/14/01).

²Id. In addition, Liberty's chairman Dr. John C. Malone, resigned from the AT&T Board of Directors. See July 10, 2001 AT&T News Release (visited 2/5/02) <http://www.att.com/press/item/0,1354,3909,00.html>. Also, on July 9, 2001, AT&T Wireless Services, Inc. (AT&T Wireless®) was spun off from AT&T and became a separate, publicly traded company. See AT&T Corporation, SEC 10-Q filing (8/14/01).

/s/

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Dated: 2/20/02, 2002