IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA and STATE OF VERMONT,	)	
Plaintiffs,	)	Case No.
v.	)	
VERIZON COMMUNICATIONS INC. and RURAL CELLULAR CORPORATION,	)	Filed:
Defendants.	)	

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 entered into an Agreement and Plan of Merger dated July 29, 2007, pursuant to which Verizon Communications Inc. ("Verizon") will acquire Rural Cellular Corporation ("RCC"). Plaintiffs United States and the State of Vermont filed a civil antitrust Complaint on June 10, 2008 seeking to enjoin the proposed acquisition. The Complaint alleges that 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. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Verizon, with headquarters in New York, is a corporation organized and existing under the laws of the state of Delaware. Verizon is one of the world's largest providers of communications services. Verizon is the second largest mobile wireless telecommunications services provider in the United States as measured by subscribers, provides mobile wireless telecommunications services in 49 states, and serves in excess of 65 million subscribers. In 2007, Verizon earned mobile wireless telecommunications services revenues of approximately $43 billion.

RCC, with headquarters in Alexandria, Minnesota, is a corporation organized and existing under the laws of the state of Minnesota. RCC is the 10th largest mobile wireless telecommunications services provider in the United States, as measured by subscribers and provides mobile wireless telecommunications services in 15 states. It has approximately 790,000 subscribers. In 2007, RCC earned approximately $635.3 million in revenues.

Pursuant to an Agreement and Plan of Merger dated July 29, 2007, Verizon will acquire RCC for approximately $2.67 billion. If this transaction is consummated, Verizon and RCC combined would have approximately 66 million subscribers in the United States, with $44 billion in mobile wireless telecommunications services revenues. The proposed transaction, as initially agreed to by defendants, would 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. This acquisition is the subject of the Complaint and proposed Final Judgment filed by plaintiffs.

B. Mobile Wireless Telecommunications Services Industry

Mobile wireless telecommunications services allow customers to make and receive telephone calls and obtain data services using radio transmissions without being confined to a small area during the call or data session, and without the need for unobstructed line-of-sight to the radio tower. Mobility is highly valued by customers, as demonstrated by the more than 255 million people in the United States who own mobile wireless telephones. In 2007, revenues from the sale of mobile wireless telecommunications services in the United States were over $138 billion. To meet this desire for mobility, mobile wireless telecommunications services providers must deploy extensive networks of switches and radio transmitters and receivers and interconnect their networks with the networks of wireline carriers and other mobile wireless telecommunications services providers.

In the early to mid-1980s, the FCC issued two cellular licenses (A-block and B-block) in each Metropolitan Statistical Area ("MSA") and Rural Service Area ("RSA") (collectively, "Cellular Marketing Areas" or "CMAs"), with a total of 734 CMAs covering the entire United States. Each license consists of 25 MHz of spectrum in the 800 MHz band. The first mobile wireless voice systems using this cellular spectrum were based on analog technology, now referred to as first-generation or "1G" technology.

In 1995, the FCC licensed additional spectrum for the provision of Personal Communications Services ("PCS"), a category of services that includes mobile wireless telecommunications services comparable to those offered by cellular licensees. These licenses

are in the 1900 MHz band and are divided into six blocks: A, B, and C, which consist of 30 MHz each; and D, E, and F, which consist of 10 MHz each. Geographically, the A and B-block 30 MHz licenses are issued by Major Trading Areas ("MTAs"). C, D, E, and F-block licenses are issued by Basic Trading Areas ("BTAs"), several of which comprise each MTA. MTAs and BTAs do not generally correspond to MSAs and RSAs.

With the introduction of the PCS licenses, both cellular and PCS licensees began offering digital services, thereby increasing network capacity, shrinking handsets, and extending battery life. In addition, in 1996, one provider, a specialized mobile radio ("SMR" or "dispatch") spectrum licensee, began to use its SMR spectrum to offer mobile wireless telecommunications services comparable to those offered by other mobile wireless telecommunications services providers, in conjunction with its dispatch, or "push-to-talk," service. Although there are a number of providers holding spectrum licenses in each area of the country, not all providers have fully built out their networks throughout each license area. In particular, because of the characteristics of PCS spectrum, providers holding this type of spectrum generally have found it less attractive to build out in rural areas.

Today, more than 95 percent of the total U.S. population lives in counties where three or more mobile wireless telecommunications services operators offer service. Nearly all mobile wireless voice services have migrated to second-generation or "2G" digital technologies, GSM (global standard for mobility), and CDMA (code division multiple access). Even more advanced technologies ("2.5G" and "3G"), based on the earlier 2G technologies, have been deployed for mobile wireless data services. Additionally, during the past two years, the FCC has auctioned off additional spectrum that can be used to support mobile wireless telecommunications services,

including Advanced Wireless Spectrum (1710-1755 MHz and 2110-2155 MHz bands) and 700 MHz band spectrum, although it will be several years before mobile wireless telecommunications services based on this spectrum are widely deployed.

C. The Competitive Effects of the Transaction on Mobile Wireless Telecommunications Services

Mobile wireless telecommunications services include both voice and data services provided over a radio network and allow customers to maintain their telephone calls or data sessions without wires when traveling. There are no cost-effective alternatives to mobile wireless telecommunications services. Because fixed wireless services are not mobile, they are not regarded by consumers of mobile wireless telecommunications services to be a reasonable substitute for those services. It is unlikely that a sufficient number of customers would switch away from mobile wireless telecommunications services to make a small but significant price increase in those services unprofitable.

The United States comprises numerous local geographic markets for mobile wireless telecommunications services.[1] A large majority of customers use mobile wireless telecommunications services in close proximity to their workplaces and homes. Thus, customers purchasing mobile wireless telecommunications services choose among mobile wireless telecommunications services providers that offer services where they live, work, and travel on a regular basis. The geographic areas in which the FCC has licensed mobile wireless telecommunications services providers often represent the core of the business and social sphere within which customers have the same competitive choices for mobile wireless telephone

[1]The existence of local markets does not, of course, preclude the possibility of competitive effects in a broader geographic area, such as a regional or national area.

services. The number and identity of mobile wireless telecommunications services providers varies among geographic areas, as does the quality of services and breadth of geographic coverage offered by providers. Some mobile wireless telecommunications services providers can and do offer different promotions, discounts, calling plans, and equipment subsidies in different geographic areas, varying the price for customers by geographic area.

The relevant geographic markets, under Section 7 of the Clayton Act, 15 U.S.C. §18, where the transaction will substantially lessen competition for mobile wireless telecommunications services are effectively represented by the following FCC spectrum licensing areas: Burlington, Vermont (CMA 248); New York RSA-2 (CMA 560); Vermont RSA-1 (CMA 679); Vermont RSA-2 (CMA 680); Washington RSA-2 (CMA 694); and Washington RSA-3 (CMA 695). It is unlikely that a sufficient number of customers would switch to mobile wireless telecommunications services providers who do not offer services in these geographic areas to make a small but significant price increase in the relevant geographic markets unprofitable.

These geographic areas of concern for mobile wireless telecommunications services were identified via a fact-specific, market-by-market analysis that included consideration of, but was not limited to, the following factors: the number of mobile wireless telecommunications services providers and their competitive strengths and weaknesses; Verizon's and RCC's market shares, along with those of the other providers; whether additional spectrum is, or is likely soon to be, available; whether any providers are limited by insufficient spectrum or other factors in their ability to add new customers; the concentration of the market, and the breadth and depth of

coverage by different providers in each area and in the surrounding area; and the likelihood that any provider would expand its existing coverage or that new providers would enter.

In each of the cellular license areas described above, Verizon and RCC are the two largest carriers (based on subscribers), with a combined share in each area ranging from over 60% to nearly 94%, and are each other's closest competitor for a significant set of customers. In all but a portion of one of these cellular license areas, Verizon and RCC hold all of the cellular spectrum licenses. In a portion of the Vermont RSA 2 license area (consisting of Bennington and Windham counties, and the portion of Windsor County south of U.S. Route 4), Verizon does not own cellular spectrum, but it is a strong competitor because, unlike many other providers with PCS spectrum in rural areas, it has constructed a PCS network that covers a significant portion of the population, supplements that network with roaming on another carrier's cellular network and plans to substantially expand its own PCS network in the future. Thus, even in that area, Verizon and RCC are the leading two competitors in terms of share. Taking into account the factors that potentially impact competition including coverage area, brand recognition, service quality and reputation, handset selection, and service features, Verizon and RCC are stronger competitors, and thus closer substitutes for each other for a significant set of customers, than the other cellular provider, and the other PCS providers, that serve this area.

The relevant geographic areas for mobile wireless services are also highly concentrated. As measured by the Herfindahl-Hirschman Index ("HHI"), which is commonly employed in merger analysis and is defined and explained in Appendix A to this Complaint, concentration in these areas ranges from over 2800 to more than 5100, which is well above the 1800 threshold at which plaintiffs consider a market to be highly concentrated. After Verizon's proposed

acquisition of RCC is consummated, the HHIs in the relevant geographic areas will range from over 4900 to over 8700, with increases in the HHI as a result of the merger ranging from over 1200 to over 4200, significantly beyond the thresholds at which plaintiffs consider a transaction likely to cause competitive harm.

Competition between Verizon and RCC in the relevant geographic areas has resulted in lower prices and higher quality in mobile wireless telecommunications services than would otherwise have existed in these geographic areas. If Verizon's proposed acquisition of RCC is consummated, the competition between Verizon and RCC in mobile wireless telecommunications services will be eliminated in these areas and the relevant geographic areas for mobile wireless telecommunications services will become substantially more concentrated. As a result, the loss of competition between Verizon and RCC increases the merged firm's incentive and ability in the relevant geographic markets to increase prices, diminish the quality or quantity of services provided, and refrain from or delay making investments in network improvements.

Entry by a new mobile wireless services provider in the relevant geographic areas would be difficult, time-consuming, and expensive, requiring spectrum licenses and the build out of a network. Therefore, any entry in response to a small but significant price increase for mobile wireless telecommunications services by the merged firm in these relevant geographic areas would not be timely, likely, or sufficient to thwart the competitive harm resulting from Verizon's proposed acquisition of RCC, if it were to be consummated.

For these reasons, plaintiffs concluded that Verizon's proposed acquisition of RCC will likely substantially lessen competition, in violation of Section 7 of the Clayton Act, in the

provision of mobile wireless telecommunications services in the relevant geographic areas alleged in the Complaint.

III. Explanation of the Proposed Final Judgment

The divestiture requirements of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in mobile wireless telecommunications services in the geographic areas of concern. The proposed Final Judgment requires defendants, within one hundred twenty (120) days after the consummation of the Transaction, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the Divestiture Assets. The Divestiture Assets are essentially RCC's entire mobile wireless telecommunications services businesses in the geographic areas described herein where Verizon and RCC are each other's closest competitors for mobile wireless telecommunications services. These assets must be divested in such a way as to satisfy plaintiff United States, (and with respect to the Divestiture Assets located in Vermont upon consultation with plaintiff Vermont), in its sole discretion that the assets will be operated by the purchaser as a viable, ongoing business that can compete effectively in each relevant area. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

The proposed Final Judgment requires that a single purchaser acquire the Divestiture Assets in New York and Vermont, and a single purchaser acquire the Divestiture Assets in Washington. This will allow the purchaser of these assets to supply service to customers that require mobile wireless telecommunications services throughout each of these areas in the same way that RCC is currently able to provide that service. This provision resolves concerns about the loss of

competition for customers that demand coverage over a combination of FCC licensing areas, in addition to the concerns due to eliminating competition within each licensing area.

Under limited circumstances, defendants are permitted to retain specified portions of RCC's mobile wireless assets in the relevant geographic areas. First, plaintiffs are not requiring the divestiture of the PCS spectrum held by RCC in the RSAs being divested. In requiring the divestitures, plaintiffs seek to make certain that the potential buyer acquires all the assets it may need to be a viable competitor and replace the competition lost by the merger. The 25 MHz of cellular spectrum that must be divested is typically sufficient to support the operation and expansion of the mobile wireless telecommunications services businesses being divested, enabling the buyer to be a viable competitor to the merged entity. Similarly, defendants are not required to divest CDMA equipment on the Mt. Stratton, Vermont tower or the CDMA, TDMA, and analog equipment on the Woodstock, Vermont tower, although they will be required to divest the GSM equipment located on these towers. The CDMA, TDMA and analog equipment located on these towers is not part of the GSM network being divested and therefore is not essential to the operations of the divested business. The Acquirer will receive the GSM network assets it will need to operate effectively in this area. Third, defendant Verizon may retain defendant RCC's Colchester, Vermont switches (an Ericsson AXE 810 and a Lucent 5E). Verizon needs the Ericsson switch to provide service to RCC's GSM customers Verizon is acquiring in Maine and New Hampshire, where Verizon currently has only a CDMA network. It also needs the Lucent switch to support CDMA, TDMA, and analog services used predominantly by roaming customers in Massachusetts, New Hampshire, New York, and Vermont. A potential acquirer of the Divestiture Assets, which include RCC's GSM network, will either already have, or will be able to

quickly obtain, GSM switching capability and will not need TDMA or analog switching to support the divested business.

Additionally, in two instances, defendants may seek approval to retain certain spectrum in Vermont. First, in the Burlington MSA, the merged firm wants to retain RCC's PCS spectrum to insure that it has sufficient spectrum to support its wireless telecommunications services. Depending on the identity of the Acquirer, it may not need this additional PCS spectrum to be an effective competitor. Once an Acquirer is presented for approval, plaintiff United States, in its sole discretion upon consultation with Vermont, will determine whether the proposed Acquirer needs the PCS spectrum to insure it can operate a competitive business with Divestiture Assets its receives and whether allowing defendants to keep the cellular spectrum is consistent with the purposes of the Final Judgment. Second, for the portion of Vermont RSA 2 where Verizon does not own the cellular license, defendants are concerned that they will be unable to promptly roll out wireless broadband services to the citizens of Vermont if they cannot retain any of RCC's cellular spectrum in this area. Once an Acquirer is identified, plaintiff United States, in its sole discretion upon consultation with Vermont, will determine whether Verizon should be allowed substitute 10 MHz of RCC's cellular spectrum for the 10 MHz of PCS spectrum it would otherwise retain.

A. Timing of Divestitures

In antitrust cases involving mergers or joint ventures in which the United States seeks a divestiture remedy, it requires completion of the divestitures within the shortest time period reasonable under the circumstances. Section IV.A.g of the proposed Final Judgment in this case requires divestiture of the Divestiture Assets, within one hundred twenty (120) days after the consummation of the Transaction, or five (5) days after notice of the entry of the Final Judgment

by the Court, whichever is later. Plaintiff United States in its sole discretion, and with respect to the Divestiture Assets located in Vermont upon consultation with plaintiff Vermont, may extend the date for divestiture of the Divestiture Assets by up to sixty (60) days. Because the FCC's approval is required for the transfer of the wireless licenses to a purchaser, Section IV.A provides that if applications for transfer of a wireless license have been filed with the FCC, but the FCC has not acted dispositively before the end of the required divestiture period, the period for divestiture of those assets shall be extended until five (5) days after the FCC has acted. This extension is to be applied only to the individual Divestiture Assets affected by the delay in approval of the license transfer and does not entitle defendants to delay the divestiture of any other Divestiture Assets for which license transfer approval is not required or has been granted.

The divestiture timing provisions of the proposed Final Judgment will ensure that the divestitures are carried out in a timely manner, and at the same time will permit defendants an adequate opportunity to accomplish the divestitures through a fair and orderly process. Even if all Divestiture Assets have not been divested upon consummation of the transaction, there should be no adverse impact on competition given the limited duration of the period of common ownership and the detailed requirements of the Preservation of Assets Stipulation and Order.

B. Use of a Management Trustee

The Preservation of Assets Stipulation and Order, filed simultaneously with this Competitive Impact Statement, ensures that, prior to divestiture, the Divestiture Assets remain an ongoing business concern. The Preservation of Assets Stipulation and Order is designed to ensure that the Divestiture Assets will be preserved and remain independent of defendants, so that competition is maintained during the pendency of the ordered divestiture.

The Preservation of Assets Stipulation and Order provides for the appointment of a management trustee selected by plaintiff United States, and with respect to Divestiture Assets located in Vermont upon consultation with plaintiff Vermont, to oversee the Divestiture Assets. The appointment of a management trustee in this situation is required because the Divestiture Assets are not independent facilities that can be held separate and operated as stand-alone units by the merged firm. Rather, the Divestiture Assets are an integral part of a larger network and, to maintain their competitive viability and economic value, they should remain part of that network during the divestiture period. A management trustee will oversee the continuing relationship between defendants and these assets, to ensure that these assets are preserved and supported by defendants during this period, yet run independently. The management trustee will have the power to operate the Divestiture Assets in the ordinary course of business, so that they will remain independent and uninfluenced by defendants, and so that the Divestiture Assets are preserved and operated as an ongoing and economically viable competitor to defendants and to other mobile wireless telecommunications services providers. The management trustee will preserve the confidentiality of competitively sensitive marketing, pricing, and sales information; ensure defendants' compliance with the Preservation of Assets Stipulation and Order and the proposed Final Judgment; and maximize the value of the Divestiture Assets so as to permit expeditious divestiture in a manner consistent with the proposed Final Judgment.

The Preservation of Assets Stipulation and Order provides that defendants will pay all costs and expenses of the management trustee, including the cost of consultants, accountants, attorneys, and other representatives and assistants hired by the management trustee as are reasonably necessary to carry out his or her duties and responsibilities. After his or her appointment becomes

effective, the management trustee will file monthly reports with plaintiffs setting forth efforts taken to accomplish the goals of the Preservation of Assets Stipulation and Order and the proposed Final Judgment and the extent to which defendants are fulfilling their responsibilities. Finally, the management trustee may become the divestiture trustee, pursuant to the provisions of Section V of the proposed Final Judgment.

C. Use of a Divestiture Trustee

In the event that defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by plaintiff United States, and with respect to Divestiture Assets located in Vermont upon consultation with plaintiff Vermont, to effect the divestitures. As part of this divestiture, defendants must relinquish any direct or indirect financial ownership interests and any direct or indirect role in management or participation in control. Pursuant to Section V of the proposed Final Judgment, the divestiture trustee will own and control the Divestiture Assets until they are sold to a final purchaser, subject to safeguards to prevent defendants from influencing their operation.

Section V details the requirements for the establishment of the divestiture trust, the selection and compensation of the divestiture trustee, the responsibilities of the divestiture trustee in connection with the divestiture and operation of the Divestiture Assets, and the termination of the divestiture trust. The divestiture trustee will have the obligation and the sole responsibility, under Section V.D, for the divestiture of any transferred Divestiture Assets. The divestiture trustee has the authority to accomplish divestitures at the earliest possible time and "at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee." In addition,

to ensure that the divestiture trustee can promptly locate and divest to an acceptable purchaser, United States, in its sole discretion, and with respect to Divestiture Assets located in Vermont upon consultation with plaintiff Vermont, may require defendants to include additional assets, or allow defendants to substitute substantially similar assets, which substantially relate to the Divestiture Assets to be divested by the divestiture trustee.

The divestiture trustee will not only have responsibility for sale of the Divestiture Assets, but will also be the authorized holder of the wireless licenses, with full responsibility for the operations, marketing, and sales of the wireless businesses to be divested, and will not be subject to any control or direction by defendants. Defendants will no longer have any role in the ownership, operation, or management of the Divestiture Assets other than the right to receive the proceeds of the sale. Defendants will also retain certain obligations to support to the Divestiture Assets and cooperate with the divestiture trustee in order to complete the divestiture.

The proposed Final Judgment provides that defendants will pay all costs and expenses of the divestiture trustee. The divestiture trustee's commission will be structured, under Section V.G of the proposed Final Judgment, so as to provide an incentive for the divestiture trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the divestiture trustee will file monthly reports with the Court and plaintiffs setting forth his or her efforts to accomplish the divestitures. Section V.J requires the divestiture trustee to divest the Divestiture Assets to an acceptable purchaser or purchasers no later than six (6) months after the assets are transferred to the divestiture trustee. At the end of six (6) months, if all divestitures have not been accomplished, the trustee and plaintiffs will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out

the purpose of the Final Judgment, including extending the trust or term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the transaction in the provision of mobile wireless telecommunications services. The divestitures of the Divestiture Assets will preserve competition in mobile wireless telecommunications services by maintaining an independent and economically viable competitor in the relevant geographic areas.

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, which ever is later. All comments received during this period will be considered by the 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 plaintiff United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

Nancy M. Goodman
Chief, Telecommunications and Media Enforcement Section
Antitrust Division, U.S. Department of Justice
1401 H Street, N.W., Suite 8000
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

Plaintiffs considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. Plaintiffs could have continued the litigation and sought preliminary and permanent injunctions against Verizon's acquisition of RCC. Plaintiffs are satisfied, however, that the divestiture of assets and other relief described in the proposed Final Judgment will preserve competition for the provision of mobile wireless telecommunications services in the relevant areas identified in 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 reach 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, 11 (D.D.C. 2007) (assessing the public interest standard under the Tunney Act).[2]

---

[2] The 2004 amendments substituted "shall" for "may" in directing relevant factors for a 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).

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). 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 decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[3] 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

---

[3] *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 the public interest'").

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 great 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 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. 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. *Id.* 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 "[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 the Congress that enacted the Tunney Act in 1974 intended, as Senator Tunney then explained: "[t]he court is nowhere compelled to go to trial or to engage in extended 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.[4]

---

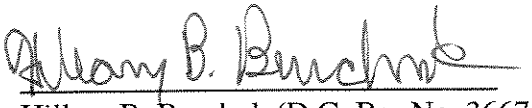
[4] *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.*, 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 should be utilized.").

VIII. Determinative Documents

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

Dated: June 10, 2008

Respectfully submitted,



Hillary B. Burchuk (D.C. Bar No. 366755)
Lawrence M. Frankel (DC Bar No. 441532)
Jared A. Hughes
Deborah Roy (DC Bar No. 452573)

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