

Attorneys for Plaintiff

UNITED STATES OF AMERICA,  
Plaintiff,

**v.**

PACIFIC TELESIS GROUP, and  
COMMUNICATIONS INDUSTRIES, INC.,  
Defendants.

No. CV-86-1298. RMT

## COMPETITIVE IMPACT STATEMENT

Filed: 2/28/86

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)), the United States of America hereby files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry against Pacific Telesis Group ("Telesis") and Communications Industries, Inc. ("CI") in this civil antitrust proceeding.

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1 I. NATURE AND PURPOSE OF THE PROCEEDING

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3 This civil action began on February 28, 1986, when the  
4 United States filed a complaint alleging that the proposed  
5 acquisition of CI by Telesis would violate Section 7 of the  
6 Clayton Act (15 U.S.C. § 18) and Section 1 of the Sherman Act  
7 (15 U.S.C. § 1). The complaint alleges that the effect of the  
8 acquisition may be substantially to lessen competition in the  
9 provision of cellular telephone service in Los Angeles,  
10 California. As a result of the acquisition, Telesis will  
11 become a partner with LIN Cellular Communications Corporation  
12 (LIN) in one of the two cellular systems in Dallas-Ft. Worth,  
13 Texas, thereby increasing the potential for collusion between  
14 Telesis and LIN, the only two firms in the Los Angeles cellular  
15 market. The complaint requests that Telesis be required to  
16 divest its interest in the Dallas-Ft. Worth cellular system or  
17 that other appropriate relief be granted to prevent Telesis  
18 from participating in or gaining access to confidential  
19 information about the Dallas-Ft. Worth cellular system.

20 The United States, Telesis and CI have stipulated that  
21 the proposed Final Judgment may be entered after compliance  
22 with the Antitrust Procedures and Penalties Act. Entry of the  
23 proposed Final Judgment will terminate the action, except that  
24 the Court will retain jurisdiction to construe, modify or  
25 enforce the Final Judgment and to punish violations of the  
26 Final Judgment.



1 II. EVENTS GIVING RISE TO THE ALLEGED VIOLATION

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3 On May 21, 1985, Telesis and CI entered into an  
4 Agreement and Plan of Reorganization (Merger Agreement)  
5 pursuant to which Telesis will acquire all of the outstanding  
6 common stock of CI for \$32.75 per share or a total purchase  
7 price of approximately \$432 million. The Merger Agreement  
8 provides for a two-step process. "Step One", the "closing"  
9 under the Merger Agreement, will result in transfer of CI's  
10 stock to a temporary trust, under which CI's present management  
11 will continue to run its businesses. 1/ At that time, the CI  
12 stockholders will be paid and will have no further ownership  
13 interest in CI. "Step Two" of the transaction, transfer of  
14 control of CI from the trustee to Telesis, will occur after the  
15 necessary regulatory approvals have been secured and  
16 divestitures required by the FCC and the MFJ Court have been  
17 completed.

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19  
20 1/ The conditions to closing under the Merger Agreement  
21 include obtaining (1) Federal Communications Commission ("FCC")  
22 approval of the transfer of CI's stock to the trust,  
23 (2) California Public Utility Commission (PUC) approvals, (3) a  
24 waiver of the Modification of Final Judgment, United States v.  
25 AT&T, 552 F. Supp. 131 (D.D.C. 1982), aff'd sub. nom. Maryland  
26 v. United States, 460 U.S. 1001 (1983) ("MFJ") to permit the  
transaction, and (4) approval by CI's shareholders. The FCC  
has approved the "Step One" transfers, the CI shareholders have  
approved the merger, and the MFJ Court has granted the waivers,  
with conditions, including divestiture of specified CI assets  
and businesses. The California PUC is expected to rule on  
February 28, 1986.

1           The alleged violation arises from the impact of the  
2 acquisition on the market for cellular radio services in  
3 Dallas-Forth Worth, Texas, and Los Angeles, California.  
4 Cellular radio is a high-capacity, two-way mobile telephone  
5 service. Unlike traditional mobile telephone systems, in which  
6 transmission on a particular frequency covers an entire  
7 metropolitan area, a cellular system is divided into several  
8 "cells," each of which is assigned a subset of the 333 channels  
9 available to the entire system. The same frequency subsets can  
10 be reused in non-adjacent cells, thereby greatly increasing the  
11 system's capacity. Cellular telephone systems are connected to  
12 the public switched, or "landline" telephone network, and  
13 cellular subscribers are able to make local and interexchange  
14 calls in essentially the same manner as ordinary telephone  
15 users. Cellular systems are designed to provide subscribers  
16 with transmission quality and call completion ratios comparable  
17 to those of traditional landline service.

18           Cellular radio is a product that under present  
19 technology is competitively distinct from other  
20 telecommunications services, particularly in urban markets.  
21 The capacity of older mobile telephone technologies is so  
22 limited relative to cellular radio that such systems cannot  
23 effectively constrain cellular prices. Local landline  
24 telephone service is not a substitute for cellular service

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1 because it does not offer mobility, an important attraction of  
2 cellular. 2/

3 The FCC is responsible for licensing cellular radio  
4 systems, and has authorized two cellular systems in each  
5 franchise area (called a Cellular Geographic Service Area, or  
6 CGSA). 3/ As a result of the FCC's regulations, all cellular  
7 radio markets are highly concentrated, with only two firms, and  
8 there is no possibility of new entry.

9 Telesis, which is the parent company of Pacific Bell and  
10 Nevada Bell, and CI each provides a variety of  
11 telecommunications services. PacTel Mobile Access, a  
12 wholly-owned subsidiary of Telesis, holds controlling interests  
13 in the wireline cellular systems in Los Angeles, San Diego,  
14 Sacramento and Oxnard-Simi Valley-Ventura, California, and a  
15  
16

17  
18 2/ In the future, cellular service could become a partial  
19 substitute for landline telephone service. Today, however,  
20 cellular prices are significantly higher and the capacity of  
21 cellular systems is more limited than that of landline  
22 telephone services.

23 3/ Cellular Communications Systems, 86 F.C.C.2d 469, 476  
24 (1981). The FCC generally based its CGSA delineations on an  
25 area's corresponding Metropolitan Statistical Area. Each of  
26 the two cellular systems in an area is allocated 333 radio  
channels. 47 C.F.R. § 22.903. The FCC's rules initially  
reserved one of the two licenses in each CGSA for the local  
wireline telephone company affiliate; this is commonly referred  
to as the "wireline", or "block B", license. The second  
cellular franchise could be awarded to any other qualified  
applicant; it is commonly referred to as the "non-wireline", or  
"block A", license. Cellular Communications Systems, supra, at  
487-92.

1 23.5 percent interest in the San Francisco non-wireline  
2 cellular system. CI holds substantial interests in the  
3 non-wireline cellular systems in San Diego and San Francisco,  
4 California; Atlanta, Georgia; and Tampa-St. Petersburg,  
5 Florida. 4/

6 CI, through its subsidiary, Gensub, Inc., owns  
7 approximately a 48 percent interest in D/FW Signal, a Texas  
8 general partnership, which in turn owns a 34 percent interest  
9 in Metroplex Telephone Company ("Metroplex"), a Texas general  
10 partnership that holds the non-wireline license for the  
11 Dallas-Ft. Worth, Texas CGSA. Thus, CI owns approximately a 16  
12 percent interest in Metroplex. As a result of Telesis'  
13 acquisition of CI, Telesis will acquire this CI interest in the  
14 Dallas-Ft. Worth system.

15 LIN owns approximately a 60 percent interest in  
16 Metroplex and manages the Dallas-Ft. Worth non-wireline  
17 cellular system. LIN also has a 35 percent equity interest and  
18 a 50 percent voting interest in Los Angeles Cellular Telephone  
19 Company ("LACTC"), the non-wireline cellular carrier that is  
20  
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22  
23 4/ CI also provides paging and other mobile communications  
24 services and manufactures telecommunications equipment. To  
25 comply with the MFJ and the FCC's rules, Telesis will divest or  
26 discontinue CI's manufacturing operations, CI's San Diego  
cellular system, voice storage and retrieval services in  
California, interexchange paging services in California, and  
certain interexchange microwave facilities owned by CI in  
Kentucky and Northern California.



1 Telesis' only competitor in the Los Angeles, California CGSA. 5/

2 The effect of Telesis' acquisition of CI's interest in  
3 the Dallas-Ft. Worth non-wireline cellular system may be  
4 substantially to lessen competition or tend to create a  
5 monopoly in violation of Section 7 of the Clayton Act and to  
6 unreasonably restrain competition in violation of Section 1 of  
7 the Sherman Act in the Los Angeles market for cellular radio  
8 service. The partnership between Telesis and LIN in the  
9 Dallas-Ft. Worth cellular system may have a significant  
10 anticompetitive effect by hampering LIN's ability to compete  
11 effectively in Los Angeles or in Dallas-Ft. Worth, and thereby  
12 increasing the already significant incentives and opportunities  
13 for collusion between LIN and Telesis in the Los Angeles  
14 cellular market. 6/

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17  
18 5/ In addition, LIN holds controlling interests in the  
19 Philadelphia and New York non-wireline cellular systems, as  
well as a substantial interest in the Houston non-wireline  
cellular partnership.

20 6/ The acquisition also will create other partner-competitor  
21 overlaps that, due to the nature and extent of the ownership  
22 interests involved and other relevant considerations, appear  
23 less likely to reduce competition, and thus are not challenged  
24 in the complaint. These include relationships between Telesis  
25 and McCaw Communications, which is Telesis' partner in San  
Francisco and will be Telesis' competitor in Sacramento, and  
between Telesis and Graphic Scanning (Dallas-Fort Worth  
partner/Oxnard, Fresno competitor), and between Telesis and  
American Cellular Telephone Corp. (Louisville, Jacksonville  
partner/Los Angeles competitor).

1 In order to realize efficiencies from its ownership  
2 interests and management role in Dallas-Ft. Worth, Los Angeles  
3 and other cellular systems, LIN intends to operate those  
4 systems in a centralized manner, coordinating closely the  
5 operations of all of its cellular systems. It plans to use  
6 substantially similar operational and promotional strategies in  
7 each of these markets, and it intends to develop technical  
8 improvements that it will employ in all of its cellular  
9 systems. It is important to the success of LIN's centralized  
10 form of operation that its plans not be disclosed to its  
11 competitors in advance of implementation.

12 The partnership agreement governing the Dallas-Ft. Worth  
13 non-wireline cellular system, however, affords each partner  
14 advance access to all information and plans concerning the  
15 operation of that cellular system. Since LIN will employ much  
16 of the same technology and marketing plans in Los Angeles as it  
17 does in Dallas-Ft. Worth, its partners in Dallas-Ft. Worth will  
18 have advance knowledge of LIN's competitive strategy in Los  
19 Angeles. Thus, if Telesis, LIN's only competitor in Los  
20 Angeles, acquired CI's interest in the Dallas-Ft. Worth system  
21 without modification of the current partnership agreement, it  
22 would have access to otherwise confidential, competitively  
23 sensitive information held by LIN. Such access would give  
24 Telesis time to react to LIN's competitive technical and  
25 marketing strategies that it normally would not have. The  
26 effectiveness of LIN's strategies for the Los Angeles market



1 may therefore be reduced because of Telesis' access to this  
2 information through the Dallas-Ft. Worth partnership. LIN  
3 would sacrifice significant efficiencies if it had to develop  
4 separate plans and strategies to prevent Telesis from gaining  
5 access to its proprietary information.

6 By making it more difficult for LIN to compete  
7 effectively with Telesis in Los Angeles, Telesis' presence in  
8 the Dallas-Ft. Worth partnership may facilitate, and increase  
9 the risk of, collusion between Telesis and LIN. A collusive  
10 agreement between Telesis and LIN in Los Angeles could involve  
11 a variety of elements, including pricing, the introduction of  
12 service enhancements, and the implementation of technical  
13 modifications. Collusion would be attractive to LIN because it  
14 would allow LIN to disclose information to the Dallas-Ft. Worth  
15 partnership without fear of adverse consequences in Los  
16 Angeles. By colluding with Telesis, LIN could avoid the  
17 harmful effects of information transfer and increase  
18 significantly the profitability of its cellular operations.

19 Moreover, the Dallas-Ft. Worth partnership between  
20 Telesis and LIN would provide additional opportunities for  
21 communications necessary to the creation and enforcement of any  
22 collusive agreement. The discussion of information in the  
23 Dallas-Ft. Worth partnership that would not normally be  
24 disclosed between competitors provides an attractive  
25 opportunity for reaching and enforcing anticompetitive  
26 agreements in Los Angeles without detection.

1           The reduced incentives to innovate and the increased  
2 potential for collusion created when competitors in one market  
3 become partners in another is of particular concern in cellular  
4 radio markets because of the absence of other competitors and  
5 the absolute barriers to entry. Because FCC rules permit only  
6 two cellular systems in each metropolitan area, there would be  
7 no cellular competition in Los Angeles if Telesis and LIN  
8 colluded.

9  
10       III.    EXPLANATION OF THE PROPOSED FINAL JUDGMENT AND ITS  
              EFFECT ON COMPETITION

11           The United States brought this action because the effect  
12 of Telesis' acquisition of CI's interest in the Dallas-Ft.  
13 Worth cellular partnership may be substantially to lessen  
14 competition in violation of Section 7 of the Clayton Act or to  
15 restrain competition in violation of Section 1 of the Sherman  
16 Act in the market for cellular services in Los Angeles. The  
17 anticompetitive effects associated with the merger, however,  
18 can be largely eliminated if Telesis does not participate  
19 actively in the Dallas-Ft. Worth cellular system.

20           To this end, Paragraph IV of the proposed Final Judgment  
21 restricts Telesis to an essentially passive investment role in  
22 the Dallas-Ft. Worth partnerships, D/FW and Metroplex. It  
23 prohibits Telesis from participating in the affairs of these  
24 partnerships except in very limited ways. Telesis is  
25 prohibited from playing any role in the daily operations and  
26 planning of the Metroplex cellular system. It may not attend



1 meetings of or have employees in common with D/FW or  
2 Metroplex. Telesis' right to vote is significantly limited.  
3 It may vote only (and only in writing) on the proposed  
4 admission of a partner to D/FW or Metroplex, a proposed merger  
5 or consolidation of D/FW or Metroplex, a proposed sale of all  
6 or substantially all of the assets of D/FW or Metroplex, or a  
7 proposed amendment of the D/FW or Metroplex partnership  
8 agreement.

9 Paragraphs IV(A)-(C) of the proposed Final Judgment also  
10 strictly limit the information Telesis may obtain about the  
11 Dallas-Ft. Worth system or about LIN's cellular operations.  
12 Telesis may obtain from the Dallas-Ft. Worth partnerships only  
13 information available to the public; financial statements of  
14 D/FW and Metroplex; a summary of results of an independent  
15 financial audit that it may request; notice of capital calls;  
16 notice of rights to purchase or sell interests in D/FW or  
17 Metroplex; notice and full information on any transfer or  
18 proposed transfer by a Metroplex or D/FW partner of its  
19 interest in Metroplex or D/FW and of rights of first refusal  
20 regarding such proposed transfer; notice and full information  
21 on matters on which it is permitted to vote; notice of any  
22 allocations made to the partnership accounts of any of the  
23 Metroplex or D/FW partners; information needed to notify  
24 persons of their decree obligations; and any additional  
25 financial information necessary to permit Telesis to prepare  
26 its state or federal tax returns. To facilitate monitoring of

1 compliance with these restrictions, communications between  
2 Telesis and the D/FW and Metroplex partnerships and partners  
3 concerning the cellular operations of LIN or the Dallas-Ft.  
4 Worth system, and all Telesis votes in the D/FW and Metroplex  
5 partnerships must be in writing.

6 Paragraph IV(D) of the proposed Final Judgment requires  
7 Telesis to enter into an amendment to the D/FW partnership  
8 agreement in the form of Exhibit A to the proposed Final  
9 Judgment in order to conform the partnership agreement to the  
10 terms of the proposed Final Judgment. Paragraph IV(D) further  
11 requires that Telesis submit any proposed amendment to the D/FW  
12 partnership agreement to the Department of Justice at least  
13 thirty (30) days prior to the effective date of the amendment.  
14 If the Department of Justice during the thirty (30) day period  
15 does not object to the proposed amendment, it shall take  
16 effect. An amendment to the partnership agreement, however,  
17 would not operate as a modification of the Final Judgment. If  
18 the Department of Justice objects in writing to a proposed  
19 amendment to the D/FW partnership agreement, the proposed  
20 amendment shall not become effective until the Department of  
21 Justice removes its objection or the Court rules, on the motion  
22 of either party to the Final Judgment, that the proposed  
23 amendment is consistent with the Final Judgment or that  
24 modification of the Final Judgment is warranted.

25 Under Paragraph III of the Final Judgment, the  
26 restrictions on Telesis' access to information from the



1 Dallas-Ft. Worth partnership are binding not only on Telesis  
2 and CI but on "all other persons in active concert or  
3 participation with any of them who shall have received actual  
4 notice of [the] proposed Final Judgment by personal service or  
5 otherwise." Telesis is required by Paragraph V of the proposed  
6 Final Judgment to inform its officers and management officials  
7 with significant responsibility for Telesis' cellular  
8 operations, the trustee under the Temporary Trust Agreement  
9 dated July 26, 1985, certain consultants providing services  
10 related to the operation of Telesis' cellular business, and any  
11 independent financial auditor that Telesis may hire, about the  
12 Final Judgment and their obligations to comply with it. In  
13 addition, Telesis is required by Paragraph V(E) of the proposed  
14 Final Judgment to inform each officer or management official of  
15 D/FW and Metroplex with significant responsibility for cellular  
16 operations, either the chief operating officer or the officer  
17 with primary responsibility for cellular operations for each  
18 Metroplex or D/FW partner, and each person who is a  
19 representative, alternate representative, or officer of the  
20 D/FW or Metroplex partnership committee about the Final  
21 Judgment and their obligations to comply with it.

22 Paragraph VI of the proposed Final Judgment allows the  
23 United States to obtain information and documents relating to  
24 Telesis' compliance with the proposed Final Judgment.

25 Paragraph VII of the Final Judgment provides that the  
26 Final Judgment shall terminate ten years after it is entered.

1 Because the anticompetitive effect at issue in this case arises  
2 from the resulting partner-competitor relationship between  
3 Telesis and LIN, Paragraph VII further provides that the Final  
4 Judgment will terminate if Telesis or LIN disposes of its  
5 entire interest in their competing Los Angeles systems, or if  
6 Telesis or LIN disposes of its entire interest in the  
7 Dallas-Ft. Worth partnership.

8  
9 IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

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11 Section 4 of the Clayton Act (15 U.S.C. § 15) provides  
12 that any person who has been injured as a result of conduct  
13 prohibited by the antitrust laws may bring suit in federal  
14 court to recover three times the damages the person has  
15 suffered, as well as costs and reasonable attorney fees. Entry  
16 of the proposed Final Judgment will neither impair nor assist  
17 the bringing of any private antitrust damage actions. Under  
18 provisions of Section 5(a) of the Clayton Act (15 U.S.C.  
19 § 16(a)), entry of the proposed Final Judgment would have no  
20 prima facie effect in any private lawsuit that may be brought  
21 against Telesis or CI.

22  
23 V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE  
24 PROPOSED FINAL JUDGMENT

25 The United States and defendants Telesis and CI have  
26 stipulated that the proposed Final Judgment may be entered by



1 the Court after compliance with the provisions of the Antitrust  
2 Procedures and Penalties Act, provided that the United States  
3 has not withdrawn its consent. The Act conditions entry upon  
4 the Court's determination that the proposed Final Judgment is  
5 in the public interest.

6 The Act provides a period of at least sixty (60) days  
7 preceding the effective date of the proposed Final Judgment  
8 within which any person may submit to the United States written  
9 comments regarding the proposed Final Judgment. Any person who  
10 wants to comment on the proposed Final Judgment should do so  
11 within sixty (60) days of the date of publication of this  
12 Competitive Impact Statement in the Federal Register. The  
13 United States will evaluate the comments, determine whether it  
14 should withdraw its consent, and respond to the comments. The  
15 comments and the response of the United States will be filed  
16 with the Court and published in the Federal Register. Written  
17 comments should be submitted to:

18 Barry Grossman, Chief  
19 Communications and Finance Section  
20 Antitrust Division (504 Safeway)  
21 U.S. Department of Justice  
Washington, D.C. 20530

22 Under Paragraph VIII of the proposed Final Judgment, the  
23 Court would retain jurisdiction over this matter for the  
24 purpose of enabling the United States, Telesis or CI to apply  
25 to the Court for such further orders or directions as may be  
26 necessary or appropriate for the construction, implementation,

1 modification, or enforcement of compliance with the Final  
2 Judgment, or for the punishment of any violations of the Final  
3 Judgment.

4  
5 VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT  
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7 The only alternative remedy considered was to require  
8 Telesis to divest CI's interest in the Dallas-Ft. Worth  
9 system. The United States determined that the competitive  
10 danger raised by the acquisition would be largely eliminated  
11 and the public interest would be served best by obtaining  
12 Telesis' consent to an enforceable decree limiting its  
13 participation in the Dallas-Ft. Worth partnership and by filing  
14 the proposed Final Judgment with the Court prior to the  
15 consummation of the proposed merger. Although the proposed  
16 Final Judgment may not be entered until the criteria  
17 established by the Antitrust Procedures and Penalties Act (15  
18 U.S.C. § 16(b)-(h)) have been satisfied, the public will  
19 benefit immediately from the safeguards contained in the  
20 proposed Final Judgment because Telesis and CI have stipulated  
21 to comply with the terms of the Final Judgment pending its  
22 entry by the Court. The United States believes that the  
23 overriding public interest in having these enforceable  
24 safeguards in effect prior to consummation of the proposed  
25 merger required that it not attempt to seek a preliminary  
26 injunction, and thereby avoid the risk that the merger might be



1 permitted to go forward without any enforceable safeguards in  
2 effect.

3  
4 VII. DETERMINATIVE DOCUMENTS  
5

6 The only document determinative in the formulation of  
7 the proposed Final Judgment was the First Amendment to  
8 Partnership Agreement D/FW Signal Partnership, amending that  
9 agreement to conform to the restrictions of the Final  
10 Judgment. A copy of that agreement is being filed by the  
11 United States pursuant to Section 2(b) of the Antitrust  
12 Procedures and Penalties Act, 15 U.S.C. 16(b), as Exhibit A to  
13 the proposed Final Judgment.

14 Respectfully Submitted,

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26 Dated: February 27, 1986