

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
)
)
 v.)
)
 MERCURY PCS II, L.L.C.)
)
 Defendant.)
 _____)

**CIVIL ACTION NO. 98-2751(PLF)
PLAINTIFF’S MOTION FOR
ENTRY OF THE FINAL
JUDGEMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (“APPA”), 15 U.S.C. § 16 (b)-(h), plaintiff United States moves for entry of the proposed Final Judgment annexed hereto in this civil antitrust proceeding. The Final Judgment may be entered at this time without further hearing if the Court determines that entry is in the public interest. The Competitive Impact Statement filed in this matter on November 10, 1998, explains why entry of the proposed Final Judgment would be in the public interest. 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 period has expired has been filed simultaneously with this Motion.

I.
BACKGROUND

Plaintiff filed a civil antitrust Complaint on November 10, 1998, alleging that Mercury PCS II, L.L.C. (“Mercury”) violated Section 1 of the Sherman Act, 15 U.S.C. § 1. In its complaint, the plaintiff alleged that the defendant used coded bids during a Federal

Communications Commission auction of radio spectrum licenses for personal communication services. The Complaint further allege that, through the use of these coded bids, the defendant reached an agreement to stop bidding against other bidders in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

The proposed Final Judgment, filed the same time as the Complaint, prohibits Mercury from entering into anticompetitive agreements and from using coded bids in future FCC auctions. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and the remedies available to private litigants who may have been injured by the alleged violation.

The plaintiff and the defendant 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.

II. **COMPLIANCE WITH THE APPA**

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment. 15 U.S.C. § 16(b). In this case, the comment period terminated on January 24, 1999. The United States received one comment during this period from High Plains -- another bidder in the FCC auction. The United States responded to the comment on March 9,

1998; the comment and the United States' response were published in the Federal Register on March 19, 1999, Volume 64, No. 53, beginning at page 13598. The procedures required by the APPA prior to entry of the proposed Final Judgment are completed. The Certificate of Compliance filed by the United States with this Court simultaneously with this Motion demonstrates that all the requirements of the APPA have been met. It is now 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." In making that determination, the Court may consider:

- (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

- (2) the impact of entry of such judgment 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 Competitive Impact Statement previously filed with the Court on November 10, 1998, the United States explained the meaning and proper application of the public interest standard under the APPA and incorporates those statements here by reference. There was one comment filed in response to the proposed Final Judgment. However, the comment did not address the adequacy of the proposed Final Judgment. Thus, there has been no showing that the proposed settlement constitutes an abuse of the Justice Department's discretion or that it is not within the zone of settlements consistent with the public interest.

IV. **CONCLUSION**

For the reasons set forth in this Motion and the Competitive Impact Statement, 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 Final Judgment will remedy the anticompetitive effects of the challenged conduct by requiring Mercury to refrain from entering into anticompetitive agreements and from using coded bids in future FCC auctions. Therefore, the United States respectfully requests that the proposed Final Judgment annexed hereto be entered as soon as possible.

The defendant has informed the plaintiff that the defendant consents to the entry of the Final Judgment in this matter.

Respectfully submitted,

“/s”

Jill Ptacek
J. Richard Doidge
U.S. Department of Justice
Antitrust Division
325 7th Street, NW, Suite 500
Washington, D.C. 20530
(202) 307-6607

Dated: April 27, 1999

CERTIFICATE OF SERVICE

I, Jill Ptacek, hereby certify that, on April 27th , 1999, I caused the foregoing documents to be served on defendant Mercury PCS II, L.L.C. by having a copy mailed, first-class, postage prepaid, to:

Charles A. James, Esquire
Jones, Day, Reavis & Pogue
Metropolitan Square
1450 G Street
Washington, D.C. 20005

“/s/”

Jill Ptacek