

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

LIBERTY LATIN AMERICA LTD., *et al.*

Defendants.

Civil Action No. 1:20-cv-03064-TNM

**UNITED STATES' 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”), the United States of America (“United States”) moves the Court to enter the proposed Final Judgment filed in this civil antitrust proceeding on October 23, 2020 (Dkt. No. 2-2) (attached as Exhibit A). As set forth in the Asset Preservation Stipulation and Order (“Stipulation and Order”) dated October 26, 2020 (Dkt. No. 7), Defendants stipulated that the Final Judgment could be filed with and entered by the Court, upon the motion of the United States or upon the Court’s own motion, after compliance with the requirements of the APPA and without further notice to any party or other proceedings.

The proposed Final Judgment may be entered at this time without further proceedings if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement (“CIS”) filed in this matter on November 9, 2020 (Dkt. No. 11) explains why entry of the proposed Final Judgment is in the public interest. The United States is also filing a Certificate of Compliance (attached as Exhibit B) showing that the parties have complied with all

applicable provisions of the APPA and certifying that the 60-day statutory public comment period has expired.

## **I. BACKGROUND**

On October 23, 2020, the United States filed a civil antitrust Complaint (Dkt. No. 1) seeking to enjoin the proposed acquisition of Defendant AT&T Inc.'s ("AT&T") wireless and wireline telecommunications businesses in Puerto Rico and the United States Virgin Islands by Defendant Liberty Latin America Ltd. ("Liberty"). The Complaint alleges that the likely effect of this transaction would be to substantially lessen competition in the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition likely would result in increased prices and lower-quality services for enterprise customers across the island.

The United States also filed a proposed Final Judgment and a Stipulation and Order on October 23, 2020, and a CIS describing the events giving rise to the alleged violation and the proposed Final Judgment on November 9, 2020. The Stipulation and Order, which was agreed to by the parties and which was entered by the Court on October 26, 2020 (Dkt. No. 7), provides that the proposed Final Judgment may be entered by the Court once the requirements of the APPA have been met. The proposed Final Judgment requires Defendants to, among other things, divest certain fiber-optic assets in Puerto Rico to an acquirer acceptable to the United States. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction, to construe, modify, or enforce the provisions of the Final Judgment, including by appointing any trustees provided for in the Final Judgment, and to punish violations thereof.

## II. COMPLIANCE WITH THE APPA

The Certificate of Compliance filed with this Motion and Memorandum states that all the requirements of the APPA have been satisfied. In particular, the APPA requires a 60-day period for the submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the proposed Final Judgment and the CIS with the Court on October 23, 2020, and November 9, 2020, respectively; published the proposed Final Judgment and CIS in the *Federal Register* on November 16, 2020 (*see* 85 Fed. Reg. 73070 (2020)); and caused a summary of the terms of the proposed Final Judgment and the CIS, along with directions for the submission of written comments, to be published in *The Washington Post* and *El Nuevo Día* (a newspaper of general circulation based in San Juan, Puerto Rico) for seven days during the period from November 12, 2020, to November 18, 2020. The public comment period concluded on January 19, 2021, and the United States did not receive any comments concerning the proposed Final Judgment.<sup>1</sup>

## III. STANDARD OF JUDICIAL REVIEW

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether 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, “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

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<sup>1</sup> The United States did receive a short submission from a consumer in Puerto Rico who is unhappy with her experience as a customer of AT&T. This submission, however, does not discuss the settlement under review in this proceeding and is unrelated to the competitive concerns identified by the United States in the Complaint. It is well-settled that purported comments that are unrelated to the concerns identified in the Complaint are beyond the scope of the court’s Tunney Act review. *See, e.g., United States v. Apple, Inc.*, 889 F. Supp. 2d 623, 642 (S.D.N.Y. 2012); *see also United States v. U.S. Airways Group, Inc.*, 38 F. Supp. 3d 69, 76 (D.D.C. 2014) (quoting Microsoft, 56 F.3d at 1459).

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). Section 16(e)(2) of the APPA states that “[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). In its CIS, the United States explained the meaning and the proper application of the public interest standard under the APPA to this case and now incorporates those statements by reference.

#### **IV. ENTRY OF THE PROPOSED FINAL JUDGMENT IS IN THE PUBLIC INTEREST**

The United States alleged in its Complaint that Liberty’s acquisition of AT&T’s wireless and wireline telecommunications businesses in Puerto Rico and the United States Virgin Islands would substantially lessen competition in the provision of fiber-based connectivity and telecommunications services to enterprise customers in Puerto Rico in violation of Section 7 of the Clayton Act. As explained in the CIS, the proposed Final Judgment is designed to eliminate the likely anticompetitive effects of the acquisition alleged by the United States by requiring Liberty to, among other things, divest certain fiber-optic assets in Puerto Rico to an acquirer acceptable to the United States, in its sole discretion. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment, and no comments concerning the proposed Final Judgment were submitted. As explained in the CIS, entry of the proposed Final Judgment is in the public interest.

**V. CONCLUSION**

For the reasons set forth in this Motion and Memorandum and in the CIS, the United States respectfully requests that the Court find that the proposed Final Judgment is in the public interest and enter the proposed Final Judgment.

Dated: February 2, 2020

Respectfully submitted,

/s/ Matthew Jones

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