IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, STATE OF ALABAMA, STATE OF CALIFORNIA, STATE OF IOWA, STATE OF KANSAS, STATE OF MINNESOTA, STATE OF NORTH DAKOTA, and STATE OF SOUTH DAKOTA, *Plaintiffs,* v. VERIZON COMMUNICATIONS INC. and ALLTEL CORPORATION, *Defendants.*	Case: 1:08-cv-01878 Assigned To : Sullivan, Emmet G. Assign. Date : 10/30/2008 Description: Antitrust

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 June 5, 2008, pursuant to which Verizon Communications Inc. ("Verizon") will acquire Alltel Corporation ("Alltel"). Plaintiffs United States and the States of Alabama, California, Iowa, Kansas, Minnesota, North Dakota, and South Dakota filed a civil antitrust Complaint on October 30, 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 in

94 Cellular Market Areas ("CMAs") in Alabama, Arizona, California, Colorado, Georgia, Idaho, Illinois, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Ohio, South Carolina, South Dakota, Utah, Virginia, and Wyoming where Verizon and Alltel are among the most significant competitors, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.[1] This loss of competition would result in consumers facing higher prices, lower quality service and fewer choices of mobile wireless telecommunications services providers.

At the same time the Complaint was filed, plaintiffs also filed a Preservation of Assets Stipulation and Order ("Stipulation") 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 mobile wireless telecommunications services businesses and related assets in the 94 CMAs (the "Divestiture Assets"). Under the terms of the Stipulation, defendants will take certain steps to ensure that, during the pendency of the ordered divestitures, the Divestiture Assets are preserved and operated as competitively independent, economically viable ongoing businesses without influence by defendants.

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

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[1] In order to alleviate competitive concerns associated with the proposed acquisition, defendants also have agreed to divest wireless businesses in six additional CMAs, covered by the final judgments in *United States et al. v. Alltel Corp. et al.*, Civ. No. 06-3631 (RHK/AJB) (D. MN filed Sept. 7, 2006), and *United States v. Bell Atlantic Corp. et al.*, Civ. No. 1:99CV01119 (EGS) (D.D.C. filed May 7, 1999), which prohibit defendants from reacquiring the wireless businesses in those CMAs. The wireless businesses in those CMAs will be divested pursuant to proposed modifications of those Final Judgments.

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 Stipulation and the proposed Final Judgment from the date of signing of the Stipulation, 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 Stipulation 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. It is the second largest mobile wireless telecommunications services provider in the United States measured by subscribers, providing mobile wireless telecommunications services in 49 states to more than 70 million subscribers. In 2007, Verizon earned mobile wireless telecommunications services revenues of approximately $43 billion.

Alltel, a subsidiary of Atlantis Holdings LLC, is a corporation organized and existing under the laws of the State of Delaware, with headquarters in Little Rock, Arkansas. Alltel is the fifth largest mobile wireless telecommunications services provider in the United States measured by subscribers providing mobile wireless telecommunications services in 13 states to approximately 13 million subscribers. In 2007, Alltel earned approximately $8.8 billion in mobile wireless telecommunications services revenues.

Pursuant to an Agreement and Plan of Merger dated June 5, 2008, Verizon will acquire Alltel for approximately $28 billion. If this transaction is consummated, Verizon and Alltel combined would have approximately 83 million subscribers in the United States, with over $51 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 in a large number of CMAs in Alabama, Arizona, California, Colorado, Georgia, Idaho, Illinois, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Ohio, South Carolina, South Dakota, Utah, Virginia, and Wyoming. 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 262 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, 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, CMAs), for 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 the size of handsets, and extending handset battery life. In addition, in 1996, a specialized mobile radio ("SMR" or "dispatch") spectrum licensee, began using 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 the second-generation, or "2G" digital technologies, using GSM (global standard for mobility) or CDMA (code division multiple access). Even more advanced technologies ("2.5G" and "3G"), based on the earlier 2G technologies, have now 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 utilizing 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.[2] 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 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 would substantially lessen competition for mobile wireless telecommunications services are effectively represented by the following FCC spectrum licensing areas:

(1) Lima OH MSA (CMA 158);
(2) Hickory NC MSA (CMA 166);
(3) Fargo-Moorhead ND-MN MSA (CMA 523);
(4) Mansfield OH MSA (CMA 231);
(5) Dothan AL MSA (CMA 246);

[2] The existence of local markets does not preclude the possibility of competitive effects in a broader geographic area, such as a regional or national area, though plaintiff United States does not allege such effects in this transaction.

(6) Sioux City IA-NE MSA (CMA 253);
(7) Albany GA MSA (CMA 261);
(8) Danville VA MSA (CMA 262);
(9) Sioux Falls SD MSA (CMA 267);
(10) Billings MT MSA (CMA 268);
(11) Grand Forks ND-MN MSA (CMA 276);
(12) Rapid City SD MSA (CMA 289);
(13) Great Falls MT MSA (CMA 297);
(14) Bismarck ND MSA (CMA 298);
(15) Casper WY MSA (CMA 299);
(16) AL RSA 7 (CMA 313);
(17) AZ RSA 5 (CMA 322);
(18) CA RSA 6 (CMA 341);
(19) CO RSA 4 (CMA 351);
(20) CO RSA 5 (CMA 352);
(21) CO RSA 6 (CMA 353);
(22) CO RSA 7 (CMA 354);
(23) CO RSA 8 (CMA 355);
(24) CO RSA 9 (CMA 356);
(25) GA RSA 6 (CMA 376);
(26) GA RSA 7 (CMA 377);
(27) GA RSA 8 (CMA 378);
(28) GA RSA 9 (CMA 379);
(29) GA RSA 10 (CMA 380);
(30) GA RSA 12 (CMA 382);
(31) GA RSA 13 (CMA 383);
(32) ID RSA 2 (CMA 389);
(33) ID RSA 3 (CMA 390);
(34) IL RSA 8 (CMA 401);
(35) IL RSA 9 (CMA 402);
(36) IA RSA 8 (CMA 419);
(37) KS RSA 1 (CMA 428);
(38) KS RSA 2 (CMA 429);
(39) KS RSA 6 (CMA 433);
(40) KS RSA 7 (CMA 434);
(41) KS RSA 11 (CMA 438);
(42) KS RSA 12 (CMA 439);
(43) KS RSA 13 (CMA 440);
(44) MN RSA 1 (CMA 482);
(45) MN RSA 2 (CMA 483);
(46) MN RSA 7 (CMA 488);
(47) MT RSA 1 (CMA 523);
(48) MT RSA 2 (CMA 524);

(49) MT RSA 4 (CMA 526);
(50) MT RSA 5 (CMA 527);
(51) MT RSA 6 (CMA 528);
(52) MT RSA 7 (CMA 529);
(53) MT RSA 8 (CMA 530);
(54) MT RSA 9 (CMA 531);
(55) MT RSA 10 (CMA 532);
(56) NE RSA 5 (CMA 537);
(57) NV RSA 2 (CMA 544);
(58) NV RSA 5 (CMA 547);
(59) NM RSA 1 (CMA 553);
(60) NM RSA 5 (CMA 557);
(61) NM RSA 6 (CMA 558);
(62) NC RSA 2 (CMA 566);
(63) NC RSA 5 (CMA 569);
(64) ND RSA 1 (CMA 580);
(65) ND RSA 2 (CMA 581);
(66) ND RSA 3 (CMA 582);
(67) ND RSA 4 (CMA 583);
(68) ND RSA 5 (CMA 584);
(69) OH RSA 2 (CMA 586);
(70) OH RSA 5 (CMA 589);
(71) OH RSA 6 (CMA 590);
(72) SC RSA 1 (CMA 625);
(73) SC RSA 2 (CMA 626);
(74) SC RSA 3 (CMA 627);
(75) SC RSA 7 (CMA 631);
(76) SD RSA 1 (CMA 634);
(77) SD RSA 2 (CMA 635);
(78) SD RSA 3 (CMA 636);
(79) SD RSA 4 (CMA 637);
(80) SD RSA 5 (CMA 638);
(81) SD RSA 6 (CMA 639);
(82) SD RSA 7 (CMA 640);
(83) SD RSA 8 (CMA 641);
(84) SD RSA 9 (CMA 642);
(85) UT RSA 3 (CMA 675);
(86) UT RSA 4 (CMA 676);
(87) UT RSA 5 (CMA 677);
(88) UT RSA 6 (CMA 678);
(89) VA RSA 1 (CMA 681);
(90) VA RSA 8 (CMA 688);
(91) WY RSA 1 (CMA 718);

(92) WY RSA 2 (CMA 719);
(93) WY RSA 4 (CMA 721); and
(94) WY RSA 5 (CMA 722).

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 Alltel'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; concentration in the market, and the breadth and depth of coverage by different providers in each area and in the surrounding area; each carrier's network coverage in relationship to the population density of the license area; each provider's retail presence; local wireless number portability data; and the likelihood that any provider would expand its existing coverage or that new providers would enter.

Verizon and Alltel are significant providers of mobile wireless telecommunications services in each of the CMAs listed above. Their combined share of subscribers in each area ranges from over 55 percent to 100 percent. In addition, each is the other's closest competitor for a significant set of customers. Verizon and Alltel each hold cellular spectrum licenses in all but two of these CMAs. Verizon does not own cellular spectrum in the other two CMAs – NE RSA 5 and MN RSA 7 – but 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. Considering these factors, defendants Verizon and Alltel are also strong and close competitors considering their brand recognition, service quality and reputation, coverage, handset selection, and service features.

The relevant geographic markets for mobile wireless services are highly concentrated. As measured by the Herfindahl-Hirschman Index ("HHI"), which is commonly employed in merger analysis and is defined and explained in Appendix B to the Complaint, concentration in these geographic areas ranges from over 2100 to more than 9100, which is well above the 1800 threshold at which plaintiffs consider a market to be highly concentrated. After Verizon's proposed acquisition of Alltel is consummated, the HHIs in the relevant geographic areas will range from over 4000 to 10,000, with increases in the HHI as a result of the merger ranging from over 300 to over 4900, significantly beyond the thresholds at which plaintiffs consider a transaction likely to cause competitive harm.

Competition between Verizon and Alltel in the relevant geographic areas has resulted in lower prices and higher quality in mobile wireless telecommunications services than otherwise would have existed in these geographic areas. If Verizon's proposed acquisition of Alltel is consummated, competition between Verizon and Alltel in mobile wireless telecommunications services will be eliminated in these areas. As a result, the loss of competition between Verizon and Alltel 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 Alltel, if it were consummated without the divestitures provided for in the proposed Final Judgment.

For these reasons, plaintiffs concluded that Verizon's proposed acquisition of Alltel likely would 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 to divest the Divestiture Assets within one hundred twenty days after the consummation of the Transaction, or five days after notice of the entry of the Final Judgment by the Court, whichever is later. The Divestiture Assets are essentially the entire mobile wireless telecommunications services businesses of one of the merging companies in the geographic areas described herein where Verizon and Alltel are each other's close competitors for mobile wireless telecommunications services. These assets must be divested in such a way as to satisfy plaintiff United States in its sole discretion upon consultation with the relevant plaintiff state 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 all of the Divestiture Assets in each of the following numbered subsections:

1) Alabama
    a) Dothan MSA (CMA 246);
    b) AL RSA 7 (CMA 313);

2) Colorado
    a) CO RSA 4 (CMA 351);
    b) CO RSA 5 (CMA 352);
    c) CO RSA 6 (CMA 353);
    d) CO RSA 7 (CMA 354);
    e) CO RSA 8 (CMA 355);
    f) CO RSA 9 (CMA 356);

3) Georgia
    a) Albany MSA (CMA 261);
    b) GA RSA 6 (CMA 376);
    c) GA RSA 7 (CMA 377);
    d) GA RSA 8 (CMA 378);
    e) GA RSA 9 (CMA 379);
    f) GA RSA 10 (CMA 380);
    g) GA RSA 12 (CMA 382);
    h) GA RSA 13 (CMA 383);

4) Idaho
    a) ID RSA 2 (CMA 389);
    b) ID RSA 3 (CMA 390);

5) Illinois
    a) IL RSA 8 (CMA 401);
    b) IL RSA 9 (CMA 402);

6) Iowa/Nebraska
    a) Sioux City MSA (CMA 253);
    b) IA RSA 8 (CMA 419);
    c) NE RSA 5 (CMA 537);

7) Kansas
    a) KS RSA 1 (CMA 428);
    b) KS RSA 2 (CMA 429);
    c) KS RSA 6 (CMA 433);
    d) KS RSA 7 (CMA 434);
    e) KS RSA 11 (CMA 438);
    f) KS RSA 12 (CMA 439);
    g) KS RSA 13 (CMA 440);

8) Southern Minnesota[3]
    a) MN RSA 7 (CMA 488);

9) Montana
    a) Billings (CMA 268);
    b) Great Falls (CMA 297);
    c) MT RSA 1 (CMA 523);
    d) MT RSA 2 (CMA 524);
    e) MT RSA 4 (CMA 526);
    f) MT RSA 5 (CMA 527);
    g) MT RSA 6 (CMA 528);
    h) MT RSA 7 (CMA 529);
    i) MT RSA 8 (CMA 530);
    j) MT RSA 9 (CMA 531);
    k) MT RSA 10 (CMA 532);

10) Nevada
    a) NV RSA 2 (CMA 544);
    b) NV RSA 5 (CMA 547);

11) New Mexico[4]
    a) NM RSA 5 (CMA 557);

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[3] In addition, defendants will divest the wireless businesses in MN RSAs 7 through 10, recently acquired by Verizon from Rural Cellular Corporation, pursuant to the proposed Modified Final Judgment in *United States et al. v. Alltel Corp. et al.*, Civ. No. 06-3631 (RHK/AJB) (D. MN filed Sept. 7, 2006), to the same acquirer as the acquirer of the Divestiture Assets in the CMA specified in this subsection.

[4] In addition, defendants will divest the wireless business in the Las Cruces MSA (CMA 285), currently owned by Alltel, pursuant to the proposed Modified Final Judgment in *United States v. Bell Atlantic Corp. et al.*, Civ. No. 1:99CV01119 (EGS) (D.D.C. filed May 7, 1999), to the same acquirer as the acquirer of the Divestiture Assets in the CMAs specified in this subsection.

b) NM RSA 6 (CMA 558);

12) North Carolina
    a) Hickory MSA (CMA 166);
    b) NC RSA 2 (CMA 566);
    c) NC RSA 5 (CMA 569);

13) North Dakota/Northern Minnesota
    a) Fargo-Moorhead ND-MN (CMA 523);
    b) Grand Forks ND-MN (CMA 276);
    c) Bismarck MSA (CMA 298);
    d) MN RSA 1 (CMA 482);
    e) MN RSA 2 (CMA 483);
    f) ND RSA 1 (CMA 580);
    g) ND RSA 2 (CMA 581);
    h) ND RSA 3 (CMA 582);
    i) ND RSA 4 (CMA 583);
    j) ND RSA 5 (CMA 584);

14) Ohio[5]
    a) Lima MSA (CMA 158);
    b) Mansfield MSA (CMA 231);
    c) OH RSA 2 (CMA 586);
    d) OH RSA 5 (CMA 589);
    e) OH RSA 6 (CMA 590);

15) South Carolina[6]
    a) SC RSA 1 (CMA 625);
    b) SC RSA 2 (CMA 626);
    c) SC RSA 3 (CMA 627);
    d) SC RSA 7 (CMA 631);

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[5] In addition, defendants will divest the wireless business in OH RSA 3 (CMA 587), currently owned by Alltel, pursuant to the proposed Modified Final Judgment in *United States v. Bell Atlantic Corp. et al.*, Civ. No. 1:99CV0119 (EGS) (D.D.C. filed May 7, 1999), to the same acquirer as the acquirer of the Divestiture Assets in the CMAs specified in this subsection.

[6] In addition, defendants will divest the wireless business in the Anderson MSA (CMA 227), currently owned by Alltel, pursuant to the proposed Modified Final Judgment in *United States v. Bell Atlantic Corp. et al.*, Civ. No. 1:99CV0119 (EGS) (D.D.C. May 7, 1999), to the same acquirer as the acquirer of the Divestiture Assets in the CMA specified in this subsection.

16) South Dakota
    a) Sioux Falls MSA (CMA 267);
    b) Rapid City MSA (CMA 289);
    c) SD RSA 1 (CMA 634);
    d) SD RSA 2 (CMA 635);
    e) SD RSA 3 (CMA 636);
    f) SD RSA 4 (CMA 637);
    g) SD RSA 5 (CMA 638);
    h) SD RSA 6 (CMA 639);
    i) SD RSA 7 (CMA 640);
    j) SD RSA 8 (CMA 641);
    k) SD RSA 9 (CMA 642);

17) Utah
    a) UT RSA 3 (CMA 675);
    b) UT RSA 4 (CMA 676);
    c) UT RSA 5 (CMA 677);
    d) UT RSA 6 (CMA 678);

18) Wyoming
    a) Casper MSA (CMA 299);
    b) WY RSA 1 (CMA 718);
    c) WY RSA 2 (CMA 719);
    d) WY RSA 4 (CMA 721);
    e) WY RSA 5 (CMA 722).

The CMAs have been grouped to reflect the fact that carriers frequently are more competitive where they serve contiguous areas. Some customers often travel across FCC licensing areas, so operating a larger contiguous service area can be an important feature for selling the product in each affected market. Moreover, there may be significant efficiencies associated with serving a broader geographic area. In deciding on the particular packages to require, plaintiff United States recognized that selling areas with significant linkages across these areas provides greater assurance that the buyer will be an effective competitor. Plaintiff United States also recognized, however, that larger packages might discourage potential buyers who might otherwise have the strongest incentives to replace the lost competition in any one particular area. The proposed Final Judgment

strikes a balance between these potential issues by creating bundles that are geographically linked but allowing potential buyers to effectively suggest larger packages by bidding conditionally on multiple packages. The proposed Final Judgment also gives plaintiff United States in its sole discretion upon consultation with the relevant plaintiff State the flexibility to allow even smaller packages of assets as appropriate to ensure a successful divestiture.

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 of the proposed Final Judgment in this case requires divestiture of the Divestiture Assets, within 120 days after the consummation of the Transaction, or five days after notice of the entry of the Final Judgment by the Court, whichever is later. Plaintiff United States in its sole discretion, upon consultation with the relevant plaintiff State, may extend the date for divestiture of the Divestiture Assets by up to 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 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 Stipulation.

B. Use of a Management Trustee

The Stipulation filed simultaneously with this Competitive Impact Statement ensures that the Divestiture Assets remain an ongoing business concern prior to divestiture. To accomplish this objective, the Stipulation provides for the appointment of a management trustee selected by plaintiff United States upon consultation with the plaintiff States, to oversee the operations of the Divestiture Assets. The appointment of a management trustee is appropriate because the Divestiture Assets are not independent facilities that can be held separate and operated as stand-alone units, but are an integral part of a larger network which, to maintain their competitive viability and economic value, 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 Stipulation 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 Stipulation 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 Stipulation 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 upon consultation with the relevant plaintiff State, to effect the divestitures. As part of this divestiture, defendants must continue, as has been the practice while the businesses have been managed by the Management Trustee, to relinquish any direct or indirect financial control and any direct or indirect role in management. Pursuant to Section V of the proposed Final Judgment, the divestiture trustee will have the legal right to 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, plaintiff United States, in its sole discretion upon consultation with the relevant plaintiff State, 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 continue to have no role in the 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 months after the assets are transferred to the divestiture trustee. At the end of six 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 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 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 Alltel. 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).[7]

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.

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[7] 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).

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[8] 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 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

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[8] *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'").

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

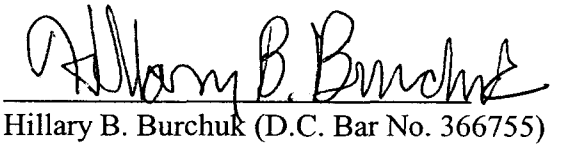
recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.[9]

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: October 30, 2008

Respectfully submitted,



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[9] *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.").