Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 25, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

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DEPARTMENT OF JUSTICE

Antitrust Division

Public Comment and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comment received on the proposed Final Judgment in *United States et al.* v. *Verizon Communications Inc. and Alltel Corporation,* No. 1:08–CV–01878–EGS, which were filed in the United States District Court for the District of Columbia, on February 17, 2009, together with the response of the United States to the comment.

Copies of the comment and the response are available for inspection at the Department of Justice Antitrust Division, 325 Seventh Street, NW., Room 200, Washington, DC 20530, (telephone (202) 514–2481), and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Patricia Brink,

Deputy Director of Operations, Antitrust Division.

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, Case No. 1:08–Cv–01878 (Egs), Plaintiffs, v. Verizon Communications Inc. and Alltel Corporation, Defendants

Plaintiff United States's Response to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (''APPA'' or ''Tunney Act''), plaintiff United States hereby responds to the public comment received regarding the proposed Final Judgment in this case. After careful consideration of the comment, plaintiff United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint. Plaintiff United States will move the Court for entry of the proposed Final Judgment after the public comment and this Response have been published in the **Federal Register**, pursuant to 15 U.S.C. § 16(b), (d).

On October 30, 2008, plaintiff United States and the States of Alabama, California, Iowa, Kansas, Minnesota, North Dakota, and South Dakota filed the Complaint in this matter alleging that the proposed merger of two mobile wireless telecommunications service providers, Verizon Communications Inc. (''Verizon'') and Alltel Corporation (''Alltel''), would violate Section 7 of the Clayton Act, 15 U.S.C. 18 in certain geographic areas of the United States. Simultaneously with the filing of the Complaint, plaintiff United States filed a proposed Final Judgment and a Preservation of Assets Stipulation and Order signed by plaintiff United States, the plaintiff States and the defendants consenting to the entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act. Pursuant to those requirements, plaintiff United States filed a Competitive Impact Statement (''CIS'') in this Court on October 30, 2008; published the proposed Final Judgment and CIS in the **Federal Register** on November 12, 2008, *see* 73 FR 66,922 (2008); and published a summary of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in the *Washington Post* for seven days beginning on November 19, 2008 and ending on November 25, 2008. The defendants filed the statements required by 15 U.S.C. § 16(g) on November 7, 2008. The 60-day period for public comments ended on January 24, 2009, and one comment was received as described below and attached hereto.

I. Background

As explained more fully in the Complaint and the CIS, the likely effect of this transaction would be to lessen competition substantially for mobile wireless telecommunications services in 94 geographic areas in the states of 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. To restore competition in these markets, the proposed Final Judgment, if entered, would require defendants to divest (a) Alltel's mobile wireless telecommunications businesses and related assets in 85 Cellular Market Areas (''CMAs''); (b) Verizon's mobile wireless telecommunications businesses and related assets acquired from Rural Cellular Corporation in August 2008 in seven CMAs; and (c) Verizon's mobile wireless telecommunications businesses and related assets (excluding those acquired from Rural Cellular Corporation in August 2008) in two CMAs. 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 punish violations thereof.

II. Legal Standard Governing the Court's Public Interest Determination

Upon publication of the public comments and this Response, plaintiff United States will have fully complied with the Tunney Act. It will then ask the court to determine that entry of the proposed Final Judgment would be ''in the public interest,'' and to enter it. 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004,[1] 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 reaches of the public interest.'' *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (DC Cir.

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for the 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 United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1, 11 (D.D.C. 2007) (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).

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 (citations omitted).[2] 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's 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 greater 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 plaintiff 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 plaintiff United States did not pursue. *Id.* at 1459–60. As this Court recently confirmed in *SBC Commc'ns*, 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 using consent decrees in antitrust enforcement, adding the unambiguous instruction 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). The language codified what the Congress that enacted the Tunney Act in 1974 intended, as Senator Tunney 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.[3]

III. Summary of Public Comment and Plaintiff United States's Response

During the 60-day public comment period, plaintiff United States received one comment, from Public Service Communications, Inc., Public Service Telephone Company, and their related affiliates (collectively ''PST''), which is attached hereto and summarized below. This comment relates primarily to mobile wireless services in the State of Georgia. Upon review, plaintiff United States believes that nothing in the comment warrants a change in the proposed Final Judgment or is sufficient to suggest that the proposed Final Judgment is not in the public interest. Copies of this Response and its attachments have been mailed to PST.

A. Factual Background

The plaintiffs' Complaint alleges that the merger of Verizon and Alltel would tend to lessen competition substantially, in violation of Section 7 of the Clayton Act, in the provision of mobile wireless telecommunications services in geographic areas effectively represented by 94 FCC spectrum licensing areas, including eight CMAs in the state of Georgia.[4] In recognition of the fact that wireless carriers frequently are more

[2] *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'').

[3] *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''); 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.''); *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.'').

[4] The wireless assets to be be divested in Georgia (collectively, the ''Georgia divestiture assets'') are located in the Albany, GA Metropolitan Statistical Area (''MSA'') and Georgia Rural Service Areas (''RSAs'') 6, 7, 8, 9, 10, 12, and 13.

competitive where they serve contiguous areas, *see* CIS at 16, the proposed Final Judgment requires that all the assets to be divested in the State of Georgia be sold together to a single buyer.[5] Proposed Final Judgment, Section IV.I.

B. Summary of Comment

PST provides wireline telecommunications services (though not, currently, wireless) in the mostly rural area in Georgia between Columbus and Macon. Its service area covers portions of two of the CMAs to be divested in Georgia, including roughly half of Georgia RSA 6 and a small portion of Georgia RSA 9. PST believes that the divestitures contained in the proposed Final Judgment are inadequate.

PST first contends that plaintiffs should have challenged the merger everywhere Verizon and Alltel competed and obtained ''national relief'' in the proposed Final Judgment. In its view, the Verizon/Alltel transaction is national in scope. PST Comment at 2, 4–6. PST recognizes, however, that the relevant markets could be viewed as ''a series of CMA markets,'' in which case ''a different analysis is appropriate.'' PST Comment at 6. Therefore, PST also contends the plaintiffs should have challenged the merger in additional CMAs in Alabama and Georgia not alleged in the Complaint based on the market shares and spectrum holdings in these areas. It notes that plaintiff United States ''has not addressed the CMAs where market shares and concentration are high enough to injure competition, though below the artificial thresholds for divestiture in the proposed final Judgment.'' PST Comment at 7.

Second, PST argues that the wireless assets to be divested in the Georgia CMAs alleged in the Complaint are inadequate to restore competition to premerger levels in these CMAs because they do not contain all the assets necessary for a divestiture purchaser to be a viable long-term competitor. PST Comment at 8. In order to cure the deficiencies it believes exist with respect to the proposed Final Judgment, PST proposes that wireless assets in the Columbus GA–AL MSA, Georgia RSA 5, and Alabama RSAs 5 and 8 be divested.[6] PST Comment at 13. According to PST, the proposed Georgia divestiture areas are likely to be less profitable than those in neighboring urban areas, due to the higher costs of serving sparsely populated regions and the relatively low per-capita income of rural residents. PST Comment at 8–9. In particular, PST believes that a purchaser of the Georgia divestiture assets must obtain wireless assets in the Columbus GA–AL MSA to properly serve customers in the divestiture areas because Columbus is a major economic and cultural center in the region. PST Comment at 9–12.

C. Response to Comment

PST does not object to the divestiture of assets in the 94 CMAs, including the eight Georgia CMAs. Instead PST contends that the remedy should be broader and encompass divestitures of wireless assets in additional CMAs. PST contends that the merger will have an adverse impact on competition nationwide, but notes that no national relief was required. PST Comment at 2, 5. Also, PST claims plaintiff United States should have identified, and alleged, competitive injury in four additional geographic areas: ''Alabama RSAs 5 and 8, Georgia RSA 5, and the Columbus GA–AL MSA'' and remedied harm in these areas in the proposed Final Judgment. PST Comment at 5, 7.

These arguments are not ones that should concern the Court in its public interest inquiry. As the Court of Appeals has warned, the APPA 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, and yet, PST invites the Court to do exactly that. The Complaint alleges that the United States ''comprises numerous local geographic markets for mobile wireless telecommunications services,'' Complaint 15, and the ''relevant geographic markets * * * where the transaction would substantially lessen competition for mobile wireless telecommunications services are effectively represented by the 94 FCC spectrum licensing areas specified in Appendix A.'' Complaint 16.[7] Thus, the Complaint does not allege competitive harm in specific CMAs beyond the 94, nor did it allege a ''national market'' or harm in such a market. Absent such allegations, it would be inappropriate for this Court to inquire into the advisability of implementing a remedy to address competitive concerns in geographic areas outside the 94 alleged CMAs.[8] The proposed Final Judgment's lack of a remedy for purported harm in geographic markets that plaintiff United States neither found nor alleged is not a flaw, but rather a perfectly appropriate tailoring of relief to the alleged violation.[9]

PST's second argument is that the divestiture of wireless assets in additional geographic areas in Georgia and Alabama is necessary because the Georgia divestiture assets contained in the proposed Final Judgment are insufficient to permit a divestiture buyer to fully replace the competition that would otherwise be lost in the CMAs where harm is alleged. PST Comment at 8. According to PST, a purchaser of the Georgia assets cannot be a viable long-term competitor unless it also obtains the assets of neighboring areas of Georgia and Alabama, in particular the Columbus GA–AL MSA. PST Comment at 9–12. However, the information reviewed by plaintiff United States suggests that this contention regarding

[5] Section IV.I of the proposed Final Judgment allows plaintiff United States, in its sole discretion, upon consultation with the relevant plaintiff State, to allow the sale of less than all the wireless assets in Georgia to facilitate a prompt divestiture to an acceptable buyer. In addition, if an acceptable buyer is not found for the mobile wireless businesses, plaintiff United States, in its sole discretion, upon consultation with the relevant plaintiff State, can require defendants to include additional assets, for example, in order to attract an acceptable buyer. Proposed Final Judgment, Section V.E.

[6] These CMAs are adjacent to three of the eight CMAs in Georgia and the two CMAs in Alabama where wireless assets are to be divested pursuant to the proposed Final Judgment. *See* Attachment 1, Map, Alabama and Georgia: Divested CMAs and PST Proposed Divestitures.

[7] Plaintiff United States investigated all areas of the United States in which Verizon and Alltel compete, including whether the proposed merger would impact mobile wireless telecommunications services nationwide. The 100 CMAs listed in the Complaint and related decree modifications are the only areas where plaintiff United States concluded the merger was likely to substantially lessen competition.

[8] As this Court has held, 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. Plainly, with allegations of competitive harm in 94 geographic license areas covering millions of potential subscribers, the Complaint in this matter is not so narrowly drafted.

[9] Plaintiff United States's determination of which areas to allege in the Complaint was based on a thorough investigation of each area that included consideration of: the number of mobile wireless providers and their competitive strengths and weaknesses; market shares and concentration; the availability of new spectrum; whether any providers are spectrum constrained or otherwise limited in their ability to add customers; the breadth and depth of coverage by different providers (including coverage in relation to population density); the retail presence of each provider; local wireless number portability data; and the likelihood of new entry or expansion. CIS at 10. PST's allegations of harm are based simply on unreliable guesses about market shares and information about total spectrum holdings. Shares and spectrum holdings are just two of many factors that need to be considered, not a complete competitive analysis. *United States* v. *Baker Hughes, Inc.,* 908 F.2d 981, 984 (D.C. Cir. 1990) (stating that evidence of market concentration ''simply provides a convenient starting point for a broader inquiry into future competitiveness''); *FTC* v. *Arch Coal, Inc.,* 329 F. Supp. 2d 109, 130 (D.D.C. 2004) (recognizing that ''this circuit has cautioned against relying too heavily on a statistical case of market concentration alone'').

the sufficiency of the remedy is ultimately without merit.

Plaintiff United States has substantial expertise in constructing remedies and reviewing potential buyers of mobile wireless assets.[10] Plaintiff United States carefully considers all relevant factors before agreeing to a divestiture settlement taking into account that the ability of a divestiture buyer to succeed in a particular area will depend on the specific nature of the area, the assets it is acquiring, and what other businesses and expertise the buyer already possesses. Plaintiff United States also carefully reviews the qualifications and business plans of proposed purchasers before approving divestitures.[11] Divestiture packages are not tailored to favor one potential buyer over another.[12] Instead, plaintiff United States seeks to ensure that the collection of assets will allow the purchaser to adequately compete. In order to replace the competition lost as a result of the merger, the buyer need not be the preferred provider of every customer but only be attractive to a large enough number of potential customers so as to be a viable competitor.

Plaintiff United States recognizes that there are efficiencies of scale associated with serving a broad, contiguous geographic area, and it is largely for this reason that the proposed Final Judgment requires the Georgia divestiture assets to be sold together to a single acquirer.[13] *See* CIS at 16–17; proposed Final Judgment, Section IV.I. The divestitures in Georgia required by the proposed Final Judgment include not only Georgia RSAs 6 and 9, PST's existing service areas, but five other RSAs and the metropolitan area of Albany, GA. *See* proposed Final Judgment, Section IV.I.

PST's comment suggests that the assets being sold are insufficient to allow the purchaser to be a long-term viable competitor given the rural nature of the area. PST Comments at 8. However, the Georgia mobile wireless business assets cover a large portion of the state of Georgia, serving a population of more than 1.3 million people.[14] The purchaser will acquire approximately 200,000 subscribers and a business that generates annual revenues of over $150 million. The asset package also includes a substantial amount of cellular spectrum which has significant advantages in serving rural areas, *see* CIS at 5–6, and the potential to not only provide mobile wireless services to local residents but also to sell roaming services to other providers who do not have networks in these areas of the state. Given the extent of the assets being sold, plaintiff United States believes that a buyer will be found that can effectively compete in the long term.

Moreover, there are a number of viable wireless businesses in the United States that operate in a small number of license areas with similar revenues and subscriber counts. For example, Bluegrass Cellular offers service in approximately 10 license areas and has approximately 130,000 subscribers, and Alaska Communications Systems provides service in approximately seven license areas, has approximately 144,000 subscribers and its 2007 wireless revenues were approximately $137 million.

PST's other argument for additional divestitures hinges in large part on its belief that a wireless carrier seeking to provide service to the Georgia divestiture areas needs to be able to serve the Columbus GA–AL MSA as well because two of the Georgia divestiture RSAs (Georgia RSA 6 and 9) are economically interconnected with the Columbus GA–AL MSA.[15] But plaintiff United States found insufficient evidence to support the contention that a buyer needs wireless assets in Columbus in order to successfully serve the proposed Georgia divestiture areas.[16] For example, less than 1% of the residents of the eight CMAs in Georgia where wireless assets are to be divested commute to Columbus to work.[17] Even if only Georgia RSAs 6 and 9 are considered, less than 3% of residents commute to Columbus.[18] The addition of the Columbus GA–AL MSA to the divestiture package would therefore have little, if any, impact on the buyer's ability to serve customers in the divestiture area at their homes and workplaces. Moreover, to the extent the divestiture buyer needs coverage of the Columbus GA–AL MSA for some small percentage of its minutes, it can likely achieve that via a roaming agreement, which wireless carriers routinely enter to expand their coverage to areas where they own no wireless facilities.[19]

This Court has held that the United States need not prove that the settlement represents a ''perfect'' remedy of the harms alleged in the Complaint. Rather, it needs to 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. In addition, the DC Court of Appeals has held that district courts should be ''deferential to the government's predictions as to the effect of the proposed remedies.'' *Microsoft,* 56 F.3d at 1461. There is no basis to believe that divestitures in the Columbus GA–AL MSA, or any other CMAs mentioned by PST, are necessary to ensure the success of the divested business, either because of a particularly strong nexus between Columbus and the divestiture properties, or because of a need to achieve greater scale.[20]

[10] This is the sixth case in which plaintiff United States has required such a divestiture in the last five years. *United States et al.* v. *Cingular Wireless Corp., SBC Communications Inc., BellSouth Corp. and AT&T Wireless Services, Inc.,* Civ. No. 1:04CV01850 (RBW) (D.D.C. filed Oct. 24, 2004); *United States* v. *Alltel Corp. and Western Wireless Corp.,* Civ. No. 1:05CV01345 (RCL) (D.D.C. filed July 6, 2005); *United States* v. *Alltel Corp. and Midwest Wireless Holdings, L.L.C.,* Civ. No. 06–3631 (PJS/AJB) (D. Minn. filed Sept. 7, 2006); *United States* v. *AT&T Inc. and Dobson Communications Corp.,* Civ. No. 1:07CV01952 (RMC) (D.D.C. filed Oct. 30, 2007); and *United States et al.* v. *Verizon Communications Inc. and Rural Cellular Corp.,* Civ. No. 1:08CV00993 (EGS) (D.D.C. filed June 10, 2008).

[11] The proposed Final Judgment states that plaintiff United States, in its sole discretion, upon consultation with the relevant plaintiff State, must be satisfied that the purchaser has the managerial, operational, technical and financial capability to compete effectively with the divested assets. Proposed Final Judgment, Section IV.H.

[12] Although PST may wish to have the combination of wireless assets that is most attractive to its existing wireline customers in portions of Georgia RSAs 6 and 9 (close to the Columbus GA–AL MSA), plaintiff United States needs to consider what assets are necessary for a buyer, in general, to effectively compete.

[13] It is not, however, always necessary or appropriate to divest multiple CMAs in a state as a single group. *See* Proposed Final Judgment, Section IV.I (providing that three CMAs in Virginia, one CMA in Arizona, one CMA in California, and one CMA in New Mexico can be sold separately).

[14] See *http://wireless.fcc.gov/auctions/data/maps/cntysv2000_census.xls.*

[15] PST Comment at 9–10. For instance, PST claims that Columbus is connected with Georgia RSAs 6 and 9 because of the colleges, hospitals, and cultural attractions located in Columbus. *Id.*

[16] Plaintiff United States also found insufficient evidence to suggest that the proposed merger would cause competitive harm in the Columbus GA–AL MSA itself.

[17] *See http://wireless.fcc.gov/auctions/data/maps/cntysv2000_census.xls* (population of each county in 2000); *http://www.census.gov/population/www/cen2000/commuting/index.html* (number of residents per county commuting to other counties for work in 2000).

[18] *Id.*

[19] There are reasons to question whether the purchaser will need to be ''unduly dependent on roaming.'' PST Comment at 9. First, the purchaser may already own a wireless network that serves the surrounding area or other major portions of the country. Second, the purchaser may be able to offer carriers in the surrounding metropolitan areas of Macon, Columbus and Atlanta roaming services in the rural portions of the state in exchange for an agreement to allow its customers to roam in these metropolitan areas.

[20] Although plaintiff United States does not expect there to be a lack of bidders for the Georgia divestiture assets, if no acceptable purchaser was proposed, plaintiffs could reconsider, under Section V.E of the proposed Final Judgment whether to require defendants to add additional assets to the divestiture package.

The settlement contained in the proposed Final Judgment ensures that a buyer of the proposed Georgia divestiture assets will have the assets necessary to establish a viable competitor in each of the CMAs alleged in plaintiffs' Complaint. Accordingly, the settlement is within the reaches of the public interest and the proposed Final Judgment should be entered by this Court.

IV. Conclusion

After careful consideration of this public comment, plaintiff United States still concludes that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is, therefore, in the public interest. Pursuant to Section 16(d) of the Tunney Act, plaintiff United States is submitting the public comment and its Response to the **Federal Register** for publication. After the comments and its Response are published in the **Federal Register**, plaintiff United States will move this Court to enter the proposed Final Judgment.

Respectfully submitted,

/s/ Hillary B. Burchuk

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Certificate of Service

I hereby certify that on February 17, 2009, a copy of the foregoing Plaintiff United States's Response to Public Comments was mailed via first class mail, postage prepaid, upon counsel for Public Service Communications, Inc., addressed as follows:

David U. Fierst, Esq., Stein, Mitchell & Muse L.L.P., 1100 Connecticut Ave., NW., Suite 1100, Washington, DC 20036.

/s/

Hillary B. Burchuk (D.C. Bar No. 366755)

Telecommunications & Media Enforcement Section, Antitrust Division, U.S. Department of Justice, City Center Building, 1401 H Street, NW., Suite 8000, Washington, DC 20530 (202) 514–5621, Facsimile: (202) 514–6381.

January 12, 2009
HAND DELIVERED
Nancy M. Goodman
Telecommunications & Media
Enforcement Section
Antitrust Division
U.S. Department of Justice
1401 H Street N.W., Suite 8000
Washington D.C. 20530
Re: *United States et al* v. *Verizon Communications, Inc. and Alltel Corp.* Case No. 1:08–cv–01878–EGS

Dear Ms. Goodman:

This comment is submitted on behalf of Public Service Communications, Inc., Public Service Telephone Company, and their related affiliates (collectively ''PST''), in response to the Competitive Impact Statement filed with the United States District Court for the District of Columbia on October 30, 2008 by the Plaintiff United States of America in the above referenced case. The Impact Statement was published in the **Federal Register** on November 12, 2008. PST respectfully submits that the proposed acquisition by Verizon Wireless of Alltel Corporation will injure competition among wireless mobile telephone service providers nationwide and in multiple CMAs in Georgia and adjacent Alabama. The United States Department of Justice also concluded that the acquisition will injure competition in many CMAs around the country.

We contend that the Department should modify the proposed settlement with the Defendants Verizon Communications, Inc. (''Verizon'') and Alltel Corporation (''Alltel''), by requiring them to divest overlapping cellular systems in four Georgia and Alabama CMAs, namely CMA 153 (Columbus, GA MSA), CMA 375 (Georgia 5—Haralson RSA), CMA 311 (Alabama 5—Cleburne RSA) and CMA 314 (Alabama 8—Lee RSA).

As we will explain, the central flaw in the proposed Consent Judgment is that it does not adequately ameliorate the competitive injury found by the Department, and lacks any reasoned analysis why the relief obtained is limited.

More specifically, the Department recognized that this acquisition will combine the second and fifth ranked competitors in a highly concentrated national market, but did not require any national relief. The Department also recognized that the acquisition will cause injury in many CMAs, but required divestitures only in 94 CMAs where the combined post-acquisition market share for Verizon and Alltel exceeds 55% and the post-acquisition Herfindahl-Hirschman Index (HHI) exceeds 4000. We do not object to the requirement that overlapping assets in these 94 CMAs be divested. We object to the failure to require divestiture in CMAs where post-acquisition shares do not reach these astronomical levels but nonetheless exceed normal thresholds. In other words, according to the competitive impact statement, no divestiture is required where the combined share is less than 55% or the post-acquisition HHI is less than 4000 even though normal merger analysis finds competitive injury at much lower levels.

The Department also failed to consider whether it is practicable to divest mobile phone assets in rural CMAs with small populations without also divesting neighboring urban areas. Entry costs in the mobile telephone industry are steep, and entry is not feasible without a significant population base in a defined geographic area.

Description of PST

PST is a family-owned telecommunications company providing wireline telephone, cable television and internet services in 1,050 square miles of territory between Macon and Columbus, Georgia. Its headquarters is in Reynolds, a small town with a population of slightly more than 1,000 persons.

The service area covered by PST is mostly rural, with a number of small mostly farming communities. It is sparsely populated. PST serves a total of 10,724 wireline customers in the following counties: Bibb (1,829 lines), Crawford (3,169 lines), Macon (108 lines), Marion (64 lines), Monroe (288 lines), Muscogee (20 lines), Talbot (1,590 lines), Taylor (3,492 lines), and Upson (164 lines). PST is interested in entering the mobile cellular market in its current service area, and in surrounding, more populous areas. However, as described below, PST does not believe that the proposed divestiture of cellular markets in the State of Georgia, as presently endorsed by the Department, will yield a viable competitive operation, unless the Columbus market and certain adjoining properties are added.

Description of Acquisition

Verizon Wireless, a joint venture of Verizon Communications, Inc. and Vodafone, has entered into an agreement to acquire Alltel. Verizon is paying $5.9 billion, and will become responsible for debt of $22.2 billion. The total value of the acquisition is therefore approximately $28.1 billion. Verizon is the second largest mobile wireless service provider in the United States. It has recently acquired the 10th largest service provider. Alltel is the fifth largest mobile wireless service provider. The Competitive Impact Statement indicates (at p. 4) that the combined entity will control approximately 36 percent of all revenues generated in the United States

from mobile wireless communications services.

This is the second major wireless acquisition by Verizon in recent months. On June 10, 2008, Verizon and the Department entered into a consent Judgment as a result of the acquisition of Rural Cellular Corporation (''RCC''). According to the Competitive Impact Statement filed in that case, prior to that acquisition, Verizon was the second largest provider of mobile wireless telecommunications services in the United States. At the time that acquisition was announced (mid 2007), Verizon had more than 65 million subscribers, and annual revenues of $43 billion. According to the FCC's Twelfth Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services (January 28, 2008), Verizon, with 59 million subscribers, was second only to AT&T, which had 60.9 million subscribers. The Competitive Impact Statement (at p. 3) indicates that Verizon's subscriber count has now grown to 70 million.

In the State of Georgia, the proposed Final Judgment would require that Verizon and Alltel divest the following markets:

Albany MSA (CMA 261)
GA RSA 6 (CMA 376)
GA RSA 7 (CMA 377)
GA RSA 8 (CMA 378)
GA RSA 9 (CMA 379)
GA RSA 10 (CMA 380)
GA RSA 12 (CMA 382)
GA RSA 13 (CMA 383)

In the State of Alabama, the proposed Final Judgment would require that Verizon and Alltel divest the following markets:

Dothan MSA (CMA 246)
AL RSA 7 (CMA 313)

PSC is on record asking the Federal Communications Commission (''FCC'') and the Department to order the divestiture of the following additional markets, in order to ensure the creation of a viable competitor within the States of Georgia and Alabama:

Columbus MSA (CMA 153)
GA RSA 5 (CMA 375)
AL RSA 5 (CMA 311)
AL RSA 8 (CMA 314)

PST notes that the Albany MSA and GA RSA 6 were not included in the original divestiture proposal formulated by Verizon and Alltel, but were added only upon review by the Department, following comments by PST showing the need to add these (and other) markets to the divestiture list.

Injury to Competition

It is generally accepted that the relevant product market for analyzing an acquisition of mobile wireless service providers is mobile wireless telecommunications. See, for example, *United States* v. *Verizon Communications, Inc. and Rural Cellular Corporation,* (D.D.C. 2008), Competitive Impact Statement at 4 (''there are no cost-effective alternatives to mobile wireless telecommunications services'') (RCC Impact Statement). See also *In the Matter of AT&T Inc. and Dobson Communications Corp.,* WT Docket #07–153 (11/15/07) at ¶ 21 (''mobile telephony service,'' including both voice and data over mobile wireless telephones).

Geographic markets in mobile telephone acquisitions are generally based on the FCC spectrum licensing areas, called Cellular Market Areas (CMAs), consisting of Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs). See, e.g., RCC Impact Statement at 4.

In this case, Verizon in its application with the FCC for approval of the acquisition described wireless competition as being national in scope. Description of Transaction, *In re Applications of Atlantis Holdings LLC and Cellco Partnership d/b/a Verizon Wireless,* June 13, 2008 at 29. Verizon's expert report submitted to the FCC addressed only the national markets, not the CMAs. Declaration of Dennis Carlton, Allan Shampine, and Hal Sider, June 13, 2008 at 4, 20. The Department noted the nationwide impact (Competitive Impact Statement at 3) but ordered divestitures only at the CMA level.

If the market is viewed as nationwide, the acquisition will clearly have an adverse impact on competition. Market shares and concentration are high. According to the FCC, the HHI was nearly 2700 at the end of 2006, and the market has become more concentrated since then. FCC's Twelfth Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services (January 28, 2008) (''Twelfth Annual Report'') at 6. It is not possible to calculate the post-acquisition HHI without knowing more about Alltel's volume in the 94 CMAs to be divested and the CMAs to be retained, but the increase is highly likely to exceed the thresholds in the merger guidelines. According to the Twelfth Annual Report at 17, Verizon's nationwide share in 2006 was about 26%. Thus, any non-negligible acquisition of Alltel will necessarily cause the HHI to increase by more than 50, and a very small acquisition will cause an increase of 100.

As noted in the Competitive Impact Statement (at page 4), the Department found in the case of this mega-merger that ''the proposed transaction, as initially agreed to by the defendants, would lessen competition substantially for mobile wireless telecommunications services in a large number of CMAs,'' including CMAs in the States of Georgia and Alabama. Pursuant to their analysis of the merger, the Plaintiffs United States of America and several individual states (including Georgia and Alabama) have ''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.'' The primary remedy for this impending adverse affect on competition is the proposed requirement that Verizon divest the affected markets.

As discussed below, it is not clear from the Competitive Impact Statement that competition will not be harmed within the CMA 153 (Columbus, GA MSA), CMA 375 (Georgia 5—Haralson RSA), CMA 311 (Alabama 5—Cleburne RSA) and CMA 314 (Alabama 8—Lee RSA) markets. However, even if it is assumed *arguendo* that these individual markets will not be adversely affected, divestiture of these markets is necessary to ensure that the competitor to be created in the State of Georgia is a viable one, and will be able to continue effective operations as necessary to offset the harms caused by the combination of two of the biggest competitors in the state.

Competitive Harm in Columbus and Surrounding CMAs

If the market is viewed as a nationwide market, then limited divestitures in smaller geographic markets scattered around the country may be insufficient to restore competitive vigor. Given that the pre-acquisition nationwide HHI is already approximately 2700,[1] it is a fair assumption that the post-acquisition HHI, even assuming some divestitures, will still be very high, and that the increase will exceed the recognized benchmarks for injury to competition.

If the market is viewed as a series of CMA markets, a different analysis is

[1] FCC's Twelfth Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services (January 28, 2008) at 6, There have been a number of significant acquisitions since the 12th Annual Report, including Verizon's acquisition of RCC, AT&T's acquisition of Dobson, and the T-Mobile acquisition of SunCom. As a result of these acquisitions, concentration is likely to be higher than it was at the time of the 12th Annual Report, but that information is not available to the public.

appropriate. As noted above, the Department has found 94 CMAs where the acquisition will result in concentration that far exceeds normal thresholds, but the Department has not addressed whether there are other CMAs where the acquisition will lead to concentration that exceeds threshold levels, though not by such gross amounts.

Nationwide HHI, according to the FCC, was 2674 at the end of 2006. 12th Annual Report at 6. According to the 1997 Horizontal Merger Guidelines, a market is considered highly concentrated when its HHI exceeds 1800, which this does by a substantial amount. According to the FCC figures for year end 2006, the Verizon acquisition of Alltel (assuming no divestitures) will increase the HHI by about 260.[2] According to the Merger Guidelines, in a highly concentrated market, an increase in the HHI of 50 or more points potentially raises significant competitive concerns. Increases of more than 100 points are presumptively likely to create or enhance market power or facilitate its exercise.

Thus, on a nationwide basis, the market is highly concentrated, and this acquisition will increase concentration significantly. It is not possible for a party other than the Department or the FCC to compute HHI in any particular CMA. However, the post-acquisition HHI on a nationwide basis is highly likely to exceed 2800 with an increase well in excess of 100. Moreover, the nationwide increase in HHI is likely to exceed 250. Thus, it is a fair inference that in individual CMAs the post-acquisition HHI will exceed acceptable levels. The Department is requiring divestitures only where the post-acquisition HHI exceeds 4000. No divestitures are required where the post-acquisition HHI is between 2800 and 4000, although by any realistic analysis, an acquisition resulting in such high concentrations is likely to injure competition. The Department has not addressed the CMAs where market shares and concentration are high enough to injure competition, though below the artificial thresholds for divestiture in the proposed final Judgment.

There is another way to identify CMAs where the acquisition will lead to injury. The FCC finds likely injury to competition where, in any particular CMA, there is either (1) a post-acquisition HHI of 2800 with an increase of 100,[3] or (2) an increase of 250 regardless of the HHI, or (3) the acquiring party will hold a 10 percent or greater interest in 95 MHz of cellular, PCS, SMR and 700 MHz spectrum. *In the Matter of AT&T, Inc. and Dobson Communications Corp.*, WT Docket, 07–153 (11/19/07) at ¶ 40. It is possible to measure Verizon's and Alltel's spectrum in specific CMAs. For example, in CMA 153, the Verizon/Alltel combination will hold 104 MHz in each of the three constituent counties (one in Alabama and two in Georgia); and in CMA 314, covering 5 counties in adjacent Alabama, the combination will hold 107 MHz in one county, and varying amounts ranging from 72 to 92 in the other four.[4]

Despite PST's comments raising concerns about the above additional markets in Georgia and Alabama, the Competitive Impact Statement does not furnish an HHI analysis for, or otherwise specifically address, these markets. PST respectfully requests that the Department amend the Competitive Impact Statement to do so. However, as discussed below, even if the HHI for the additional divestiture markets does not surpass the anticompetitive level, the relationship of these markets to the areas that will suffer harm must be evaluated.

Divestitures

The proposed divestitures must also be evaluated from the perspective of what is necessary to restore competition. As the Department recognizes in the Antitrust Division Policy Guide to Merger Remedies, a divestiture will be ineffective to restore competition unless it includes all assets necessary for the purchaser to be an effective long-term competitor. Indeed, the Competitive Impact Statement confirms (at p. 13) that the States of Georgia and Alabama have an interest in, and consultation right to, ensure that the purchaser of the divested Alltel assets in their states will be ''a viable, ongoing business that can compete effectively in each relevant area.''

In this instance, the proposed divestitures in Georgia will not include necessary assets. The inadequacy flows from the fact that the divestiture in Georgia will be restricted to certain CMAs, and those CMAs do not include the high density urban areas and corridors of commerce (including neighboring portions of Alabama) needed for successful operation of a wireless network. The CMAs where the proposed divestitures will occur are generally populated by lower income residents than in the CMAs to be retained. Consequently, the residents of the to-be-divested CMAs are less likely to have mobile devices and more likely to be price conscious. In other words, profits in those areas are likely to be lower than in the CMAs in which Verizon seeks to retain assets and customers of Alltel. Moreover, the CMAs in Georgia where assets will be divested are sparsely populated in relation to the areas to be retained by Verizon, resulting in increased operational costs.

PST analyzed the counties included in the six Georgia CMAs in which Verizon originally proposed to divest overlapping properties. PST compared them to the counties in the additional CMAs the overlapping assets of which PST contended should also be divested. This analysis was provided to the Department. The analysis showed that in the Verizon-chosen CMAs, populations are generally lower than in the CMAs proposed by PST. As recognized in the Remedies Guide, where an installed base of customers is required in order to operate at an effective scale, the divested assets should convey that base, or quickly enable the purchaser to obtain an installed customer base. The mobile wireless market requires significant infrastructure or it will be unduly dependent on roaming, which under the best of circumstances will not be profitable.

In CMA 377, where Verizon agreed to divest overlapping properties, there are six counties. Two of them (as of the 2000 census) had populations of about 45,000, one had 21,000, and the other three were in the 8,000–10,000 range. By contrast, Muscogee County in CMA 153, where Verizon and Alltel cumulatively hold 104 MHz of spectrum but which Verizon is not required to divest, the 2000 population was about

[2] The Department will have access to more recent market share information. We believe that the market will have grown more concentrated in the last year and a half, and the Verizon share (post-acquisition of RCC) will be larger than it was in December 2006.

[3] The Department does not address the possibility of a CMA with a post-acquisition HHI in excess of 2800 but less than 4000. In any such CMA, the FCC would find an injury to competition, as would the normal Department merger analysis, but no divestiture will be required.

[4] In the six Georgia CMAs where the proposed Final order requires divestitures, the overlap is typically less. In CMA 377 (6 Georgia counties) there is no overlap in two of the counties, and an overlap of 82 in the other four. In CMA 378 (10 Georgia counties), the overlap is 72 MHz in 9 of the counties and 82 in the tenth. In CMA 379 (12 Georgia counties), the overlap is 82 in 6 counties and 92 in the other 6. In CMA 380 (12 Georgia counties), the overlap is 102 in one county, 82 in 9 and 72 in two. In CMA 382 (6 Georgia counties), the overlap ranges from 72 to 112. In CMA 383 (9 Georgia counties), the overlap is 102 MHz in two counties and 82 in the other 7. Combined spectrum is therefore likely to indicate a competitive problem in the CMAs to be divested and even more so in the adjoining CMAs Verizon wants to retain.

186,000. The adjacent Russell County, Alabama (also in CMA 153) had a 2000 population of about 50,000.

The size disparity is important for reasons other than the obvious need for a customer base large enough to earn a fair return. One aspect of the competition among the wireless service providers is the availability of attractive cell phone devices. For example, AT&T's ability to offer its customers the iPhone was a major competitive benefit for AT&T. The smaller wireless carriers are disadvantaged in obtaining attractive devices, and the population disparity between the CMAs Verizon will be permitted to retain and those it is will be obligated to divest will make it that much more difficult for any new entrant to obtain the customer base necessary to gain access to the more desirable telephones. There are also certain mandates imposed by the FCC. For example, there must be a system of automatic tracking of cell phones used to call 911. These mandates involve substantial fixed costs, which will constitute a significant barrier to entry by any small provider of wireless service, but will not be a major problem if the costs can be spread among a large enough customer base. For this reason also, the proposed consent judgment allowing Verizon to keep mobile phone assets in the more populous areas of Georgia while divesting the less populous areas will not restore the competition lost as a result of the acquisition.

Moreover, the average household income in the CMAs chosen for divestiture by Verizon is lower than in the state as a whole or in the CMAs where we contend additional divestitures should be ordered. Median household income in Georgia in 2004 was $42,600. In the 6 counties in CMA 377, the median household income in 2004 ranged from about $24,000 to $33,500. In CMA 153, median household income in 2004 was $35,100 in Muscogee, nearly $35,500 in Chattahoochie, and $29,600 in Russell County, Alabama.

The inclusion of CMA 261 and CMA 376 in the divestiture markets, following PST's showing that these markets should be included, constituted a step in the right direction. However, this step does not go far enough, because the linchpin for the areas to be divested in Georgia is the Columbus CMA, and surrounding suburban areas. In this regard, Columbus furnishes the residents of markets such as the GA 6 RSA and GA 9 RSA with the following:

a. Nine colleges, including Columbus State University, Columbus Technical College, Beacon College, Meadows Junior College, Calvary Christian Life Ministries, the Medical Center, Inc. School of Radiologic Technology, and others. It is well-known that college students are prime users of mobile telephones, and often use only mobile phones rather than landlines.

b. Columbus Georgia Convention and Trade Center provides access to 182,000 sq. ft. usable floor space, 27 breakout rooms, Ballrooms and Exhibit Halls.

c. RiverCenter for the Performing Arts provides regional access to the Columbus Symphony Orchestra, Broadway performances, comedy, and musical entertainment.

d. Multiple hospitals, including the St. Francis Hospital; Columbus Doctors Hospital; Hughston Orthopedic Hospital; and Columbus Regional Medical Center, among other medical facilities.

More importantly, Columbus is where the residents of the more rural markets go for jobs, major medical procedures, and to market their produce and goods. This fact is confirmed by both pre-existing private sector analyses of the commercial and societal factors impacting areas to be divested in Georgia, performed by Rand-McNally.

The FCC uses the CMA in analyzing regulatory aspects of cellular service transactions, because long ago, cellular licenses were awarded along CMA boundaries. However, these boundaries do not necessarily reflect the realities of the marketplace. In this regard, the FCC has recognized that Rand McNally's Major Trading Areas (MTAs) and Basic Trading Areas (BTAs) as more indicative of real-world marketplace factors. Thus, the FCC decided to use the Rand-McNally areas for certain mobile telecommunications spectrum auctions, stating:

> We conclude that a combination of MTA and BTA service areas would promote the rapid deployment and ubiquitous coverage of PCS and a variety of services and providers. We recognize that the majority of parties express support for MSA/RSAs as the definition of PCS service areas. We conclude, however, that using MSAs/RSAs likely would result in unnecessary fragmentation of natural markets. MTAs and BTAs were designed by Rand McNally based on the natural flow of commerce. Specifically, the trading area ''boundaries have been drawn on a county-line basis because most statistics relevant to marketing are published in terms of whole counties. The boundaries have been determined after an intensive study of such factors as physiography, population distribution, newspaper circulation, economic activities, highway facilities, railroad service, suburban transportation, and field reports of experienced analysts [citing Rand McNally 1992 Commercial Atlas & Marketing Guide at 39].

See Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order, 73 RR 2d 1477, 8 FCC Rcd 7700, 7732 [1993 FCC LEXIS 6517] (October 22, 1993).

Rand McNally also rates cities individually based on their economic function. Columbus is a 3–AA or ''major significant local business center,'' meaning it is the most important city in the area for purposes of local business. Rand McNally's formulation of its MTAs and BTAs, and the designation of business centers, takes into consideration whether a city or town is a natural center for shopping-goods purchases, entertainment, education and medical care. See Rand McNally Atlas, ''Economic Data for the United States'', p. 48 (1984). As shown above, Columbus serves as the center of shopping, entertainment, education and medical care for the Western Georgia-Eastern Alabama area.

Significantly, the Columbus BTA includes the following counties:

Barbour	AL
Russell	AL
Chattahoochee	GA
Harris	GA
Marion	GA
Muscogee	GA
Quitman	GA
Schley	GA
Stewart	GA
Sumter	GA
Talbot	GA
Webster	GA

Of the above counties, two (Harris and Talbot) are part of the GA 6 RSA area that the proposed Final Judgment proposes to divest. And six of the counties (Marion, Quitman, Schley, Stewart, Sumter and Webster) are part of the GA 9 RSA area that would be divested. Another county (Barbour) is part of the AL 8 RSA. The remaining three counties (Russell, Chattahoochee and Muscogee) make up the Columbus MSA. Thus, Rand-McNally's analysis of key economic, health and social factors indicates that a significant part of the Columbus Basic Trading Area includes areas that are to be divested. The proposed divestiture will not only create a gap in coverage, but will leave the purchaser without the socio-economic heart of the market it is trying to serve. This is a formula for failure as a competitor: Without the population contained in the Columbus MSA and surrounding suburbs such as the AL 5 and 8 RSAs and the GA 5 RSA, it will be difficult if not impossible for the purchaser to achieve the efficiencies recognized by the Department as important to a viable operation. See

Competitive Impact Statement at p. 16. And without this high density, low cost population area, it will be more expensive and difficult for the purchaser to meet the FCC's E911 and other regulatory mandates, because there will be far fewer customers over which to spread the fixed costs of such compliance. Moreover, without coverage into Columbus, the area where a large part of the population of the divested area travel for economic, health, entertainment and other reasons, customers will see little benefit in keeping their service with the purchaser.[5] As a result, the purchaser will fail as a competitor in a relatively short period of time; and all of the competitive harms to consumers that the Plaintiffs have concluded could happen in the absence of another source of competition will indeed happen.

The need to provide a fair opportunity to succeed is particularly necessary given the current economic climate. Credit is tight, and consumers are resistant to spending of all kinds. Prospective purchasers (other than the major carriers, a purchase by which would also increase concentration) will have a difficult time making an acquisition in Georgia and Alabama and making it work. Excluding the Columbus area from any divestiture will make it that much more difficult to restore competition.

Conclusion

For these reasons, we urge on behalf of PST that the Department modify the proposed Final Judgment, to require that Verizon divest the acquired assets in CMA 153, 311, 314 and 375, as well as the other Georgia and Alabama CMAs listed in Competitive Impact Statement.

Sincerely,

David U. Fierst

cc: Hillary B. Burchuk, DOJ, Lawrence M. Frankel, DOJ, Jared A. Hughes, DOJ

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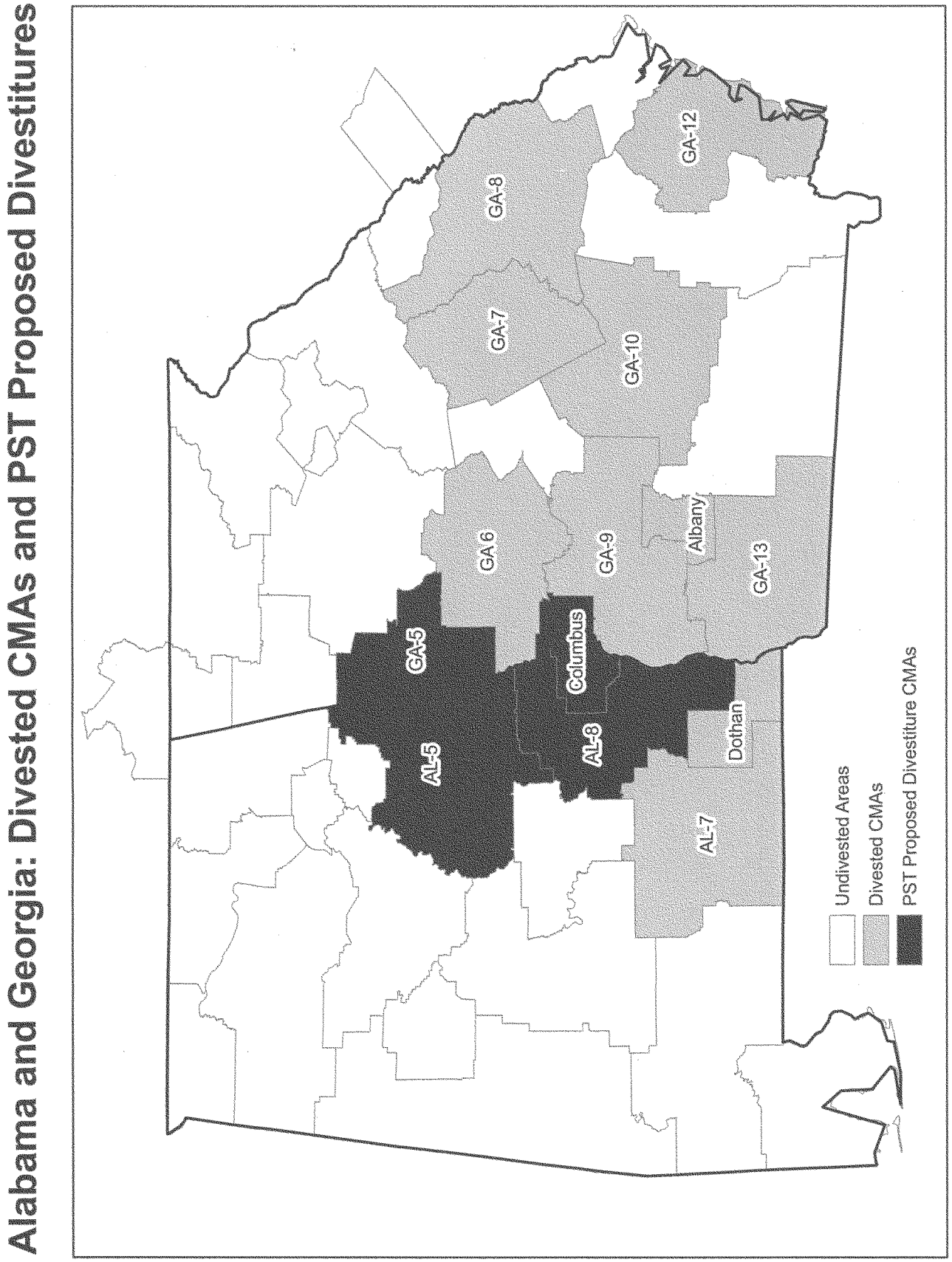
[5] The possibility of reaching a roaming agreement for coverage of the Columbus MSA is of little comfort. A provider's only significant protection against unreasonably high roaming fees is the ability to comparison shop among multiple service providers in other geographic areas. Thus, any acquisition that removes a significant potential supplier of roaming services may increase roaming fees to other, smaller competitors. That is the potential problem here. Alltel provides service primarily in rural areas where roaming alternatives may be limited. Removing it from the market enhances Verizon's market power to raise roaming rates. Verizon reassured the FCC that it will honor all existing roaming contracts. That is a meaningless gesture. Of course it will honor existing contracts; failure to do so is breach and exposes Verizon to litigation. The real question is whether the acquisition will affect Verizon's incentives to enter into future roaming contracts at a reasonable price. Where one potential alternative source of roaming service is removed from an already-highly concentrated market, the answer is obvious. Verizon will have less incentive to offer low roaming fees for future contracts.


Alabama and Georgia: Divested CMAs and PST Proposed Divestitures
GA-8
GA-12
GA-7
GA-10
GA-6
GA-9
Albany
GA-13
GA-5
Columbus
AL-5
AL-8
Dothan
AL-7
Undivested Areas
Divested CMAs
PST Proposed Divestiture CMAs

[FR Doc. E9–4341 Filed 3–2–09; 8:45 am]
BILLING CODE 4410–11–C

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *February 9 through February 13, 2009.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–64,881; Dalmar Precision, Inc., Saegertown, PA: January 13, 2008.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–64,278; Purcell Systems, Spokane Valley, WA: October 13, 2007.

TA–W–64,584; Master Brand Cabinets, Leased Workers from Express Personnel, Grants Pass, OR: November 24, 2007.

TA–W–64,922; International Staple & Machine Co., Butler, PA: January 18, 2009.

TA–W–64,924; Phelps Dodge Chino, Inc., Freeport-McMoran Corp, Hurley, NM: January 15, 2008.

TA–W–65,106; Wilson Sporting Goods, Team Sports Division, Sparta, TN: January 26, 2008.