

Rules of Practice and Procedure (19 CFR 210.75).

Copies of the Commission's Order, public versions of the ID and RD, and all other nonconfidential documents filed in connection with this enforcement proceeding are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

Issued: April 26, 1999.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-10781 Filed 4-28-99; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 99-0715]

United States v. SBC Communications Inc. and Ameritech Corporation; Proposed Final Judgment and Competitive Impact Statement

Filed: March 23, 1999.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States v. SBC Communications Inc. and Ameritech Corporation*, Civil No. 99-0715 (D.D.C.). The proposed Final Judgment is subject to approval by the court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b)-(h).

On March 23, 1999, the United States filed a Complaint alleging that the proposed acquisition of Ameritech Corporation by SBC Communications Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that if this merger is consummated, competition in the markets for wireless mobile telephone services in seventeen areas in Illinois, Indiana and Missouri would be lessened substantially. The areas affected include

fourteen markets where SBC and Ameritech are the two providers of cellular mobile telephone services, including Chicago and St. Louis, and three markets where Ameritech is one of the providers of cellular mobile telephone services and Comcast Cellular Corporation, which SBC has entered into an agreement to acquire, owns the other cellular telephone system. The Complaint also alleges that competition would be lessened in the St. Louis area because, as a result of this merger, Ameritech would not provide local exchange and long distance telephone services bundled with its cellular mobile telephone services, as it had planned to do in St. Louis before agreeing to merge with SBC.

The proposed Final Judgment, filed at the same time as the Complaint, requires SBC and Ameritech to divest one of the two overlapping cellular telephone systems in each of the seventeen market areas. In the areas presently served by Comcast, and in the areas in Missouri, the Ameritech cellular systems must be divested, while in the other SBC and Ameritech may choose which of the two systems will be divested. The assets Ameritech planned to use to provide local exchange and long distance telephone services together with its cellular mobile telephone services in the St. Louis area must also be divested. The proposed Final Judgment requires that the assets of these cellular telephone systems be divested no later than 180 days following the earlier of: (1) all final regulatory approvals needed for SBC and Ameritech to consummate their merger; or (2) the consummation of the merger of SBC and Ameritech. Before the merger can be consummated, any assets required to be divested that have not been sold must be transferred to a trustee, who will complete the divestiture during whatever part of the 180-day period remains.

On April 7, 1999, SBC and Ameritech notified the Department of Justice, pursuant to the provisions of the proposed Final Judgment, that they have entered into an agreement to sell all of the assets of these cellular telephone systems required to be divested to a venture owned 93% by GTE and 7% by Georgetown Partners. This agreement is contingent on the consummation of the merger between SBC and Ameritech.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, Department of

Justice, 1401 H St, NW, Suite 8000, Washington, DC 20530 (telephone: (202) 514-5621).

The Competitive Impact Statement, filed by the United States on April 16, 1999, describes the Complaint, the proposed Final Judgment, the alleged violations, and the remedies available to private litigants. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the United States Department of Justice, Antitrust Division, 325 7th St, NW, Washington DC 20530 (telephone (202) 514-2841) and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations and Merger Enforcement, Antitrust Division.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in this Court.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

(4) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted in the Court.

(5) In the event plaintiff withdraws its consent, as provided in paragraph (2) above, or in the event that the Court declines to enter the proposed Final

Judgment pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(6) Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: March 23, 1999.

For Plaintiff United States of America.

Joel I. Klein,

Assistant Attorney General.

A. Douglas Melamed,

Principal Deputy Assistant Attorney General.

Constance K. Robinson,

Director of Operations and Merger Enforcement.

Donald J. Russell,

Chief, Telecommunications Task Force.

Laury Bobbish,

Assistant Chief, Telecommunications Task Force.

Carl Willner,

D.C. Bar No. 412841.

Michael Chaleff,

Attorneys, Telecommunications Task Force.

U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 8000, Washington, DC 20530.

Date Signed: March 23, 1999.

For SBC Communications Inc.

Donald L. Flexner,

D.C. Bar No. 343269, Crowell & Moring LLP, 1001 Pennsylvania Avenue, NW, Washington, DC 20004-2595.

Date Signed: March 17, 1999.

For Ameritech Corporation.

Richard J. Favretto,

D.C. Bar No. 156588.

Mark W. Ryan,

D.C. Bar No. 359098, Mayer, Brown & Platt, 2000 Pennsylvania Avenue NW, Washington, DC 20006-1882.

Date Signed: March 17, 1999.

Stipulation Approved for Filing

Done this ____ day of ____, 1999

United States District Judge

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on March 23, 1999:

And whereas, plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication on any issue of fact or law;

And whereas, entry of this Final Judgment does not constitute any evidence against or an admission by any party with respect to any issue of law or fact;

And whereas, defendants have further consented to be bound by the provisions of the Final Judgment pending its approval by the Court;

And whereas, plaintiff the United States believes that entry of this Final Judgment is necessary to protect competition in markets for mobile wireless telecommunications services in Illinois, Indiana and Missouri;

And whereas, the essence of this Final Judgment is prompt and certain divestiture of certain cellular wireless systems that would otherwise be commonly owned and controlled, including their licenses and all relevant assets of the cellular systems, and the imposition of related injunctive relief to ensure that competition is not substantially lessened;

And whereas, plaintiff the United States requires that defendants make certain divestitures of such licenses and assets for the purpose of ensuring that competition is not substantially lessened in any relevant market for mobile wireless telecommunications services in Illinois, Indiana or Missouri;

And whereas, defendants have represented to plaintiff that the divestitures ordered herein can and will be made and that defendants will not raise any claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained herein below;

Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged and Decreed:*

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, 15 U.S.C. 18, as amended.

II

Definitions

A. *Ameritech* means Ameritech Corporation, a corporation with its

headquarters in Chicago, Illinois, and includes its successors and assigns, its subsidiaries and affiliates, and its directors, officers, managers, agents and employees acting for or on behalf of any of the foregoing entities.

B. *Cellular System Assets* means, for each cellular system to be divested under this Final Judgment, all types of assets, tangible and intangible, used by defendants in the operation of each of the cellular systems to be divested (including the provision of long distance telecommunications services for wireless calls), and with respect to the divested cellular system in the St. Louis Area (defined to mean the St. Louis MO-IL Metropolitan Statistical Area and the Missouri 8, Missouri 12, Missouri 18, and Missouri 19 Rural Service Areas), shall also include those assets acquired, developed, used or intended for use in connection with the provision of local exchange telecommunications services and long distance telecommunications services by such system. "Cellular System Assets" shall be construed broadly to accomplish the complete divestitures of the entire business of one of the two cellular systems in each of the Overlapping Cellular Markets required by this Final Judgment and to ensure that the divested cellular systems remain viable, ongoing businesses. In the Overlapping Cellular Markets in the St. Louis Area, and in the Comcast Overlapping Cellular Markets (defined as the Joliet, IL, Aurora-Elgin, IL, and Kankakee, IL Metropolitan Statistical Areas), the Cellular System Assets to be divested shall be those currently owned and used by Ameritech. In the remaining Overlapping Cellular Markets, the Cellular System Assets to be divested shall be either those currently owned and used by Ameritech or those currently owned and used by SBC, but not both. These divestitures of the Cellular System Assets as defined in this Section II.B shall be accomplished by: (i) transferring to the purchaser the complete ownership and/or other rights to the assets (other than those assets used substantially in the operations of either defendant's overall cellular business that must be retained to continue the existing operations of the cellular properties defendants are not required to divest, and that either are not capable of being divided between the divested cellular systems and those that are not divested or are assets that the divesting defendant and the purchaser(s) agree shall not be divided); and (ii) granting to the purchaser an option to obtain a non-exclusive, transferable license from defendants for

a reasonable period at the election of the purchaser to use any of the divesting defendant's assets used in the operation of the cellular system being divested, so as to enable the purchaser to continue to operate the divested cellular systems without impairment, where those assets are not subject to complete transfer to the purchaser under (i). The assets acquired, developed, used or intended for use in connection with the provision of local exchange telecommunications services and long distance telecommunications services by the cellular system in the St. Louis Area are all subject to complete transfer of ownership and/or other rights under (i). Assets shall include, without limitation, all types of real and personal property, monies and financial instruments, equipment, inventory, office furniture, fixed assets and furnishings, supplies and materials, contracts, agreements, leases, commitments, spectrum licenses issued by the Federal Communications Commission ("FCC") and all other licenses, permits and authorizations, operational support systems, customer support and billing systems, interfaces with other service providers, business and customer records and information, customer lists, credit records, accounts, and historic and current business plans, as well as any patents, licenses, sub-licenses, trade secrets, know-how, drawings, blueprints, designs, technical and quality specifications and protocols, quality assurance and control procedures, manuals and other technical information defendants supply to their own employees, customers, suppliers, agents, or licensees, and trademarks, trade names and service marks (except for trademarks, trade names and service marks containing "SBC," "Southwestern Bell," "Ameritech," or "Cellular One") or other intellectual property, including all intellectual property rights under third party licenses that are capable of being transferred to a purchaser either in their entirety, for assets described above under (i), or through a license obtained through or from the divesting defendant, for assets described above under (ii). Defendants shall identify in a schedule submitted to plaintiff and filed with the Court, as expeditiously as possible following the filing of the Complaint in this case and in any event prior to any divestitures and before the approval by the Court of this Final Judgment, any intellectual property rights under third party licenses that are used by the cellular systems being divested but that defendants could not transfer to a purchaser entirely or by license without

third party consent, and the specific reasons why such consent is necessary and how such consent would be obtained for each asset.

C. Overlapping Cellular Markets means the following Metropolitan Statistical Areas and Rural Service Areas used to define cellular license areas by the FCC, in which Ameritech and SBC each held ownership interests in one of the cellular wireless licenses issued by the FCC as of the date of the filing of the Complaint in this action, or in which Comcast Cellular Corporation (which SBC has entered into an agreement to acquire as of January 19, 1999) and Ameritech each held ownership interests in one of the cellular wireless licenses issued by the FCC as of the date of the filing of the Complaint in this action:

Metropolitan Statistical Areas Served by SBC and Ameritech

Chicago, IL
St. Louis, MO—IL
Gary-Hammond-East Chicago, IN
Springfield, IL
Champaign-Urbana-Rantoul, IL
Bloomington-Normal, IL
Decatur, IL

Rural Service Areas Served by SBC and Ameritech

Illinois 2—Bureau
Illinois 5—Mason
Illinois 6—Montgomery
Missouri 8—Callaway
Missouri 12—Maries
Missouri 18—Perry
Missouri 19—Stoddard

Metropolitan Statistical Areas Served by Comcast and Ameritech

Joliet, IL
Aurora-Elgin, IL
Kankakee, IL (Comcast 10.07% interest)

D. SBC means SBC Communications Inc., a corporation with its headquarters in San Antonio, Texas, and includes its successors and assigns, its subsidiaries and affiliates, and its directors, officers, managers, agents and employees acting for or on behalf of any of the foregoing entities.

E. SBC/Ameritech Merger means the merger of SBC and Ameritech, as detailed in the Agreement and Plan of Merger entered into by SBC and Ameritech on May 10, 1998, for which defendants have filed a notification pursuant to the Hart-Scott-Rodino Antitrust Improvements Act on July 20, 1998.

III

Applicability and Effect

A. The provisions of this Final Judgment shall be applicable to each of

the defendants, its affiliates, subsidiaries, successors, and assigns, and its directors, officers, managers, agents, employees, attorneys, and shall also be applicable to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition to an Interim Party, which shall be defined to mean any person other than a purchaser approved by the plaintiff pursuant to Section IV.C, of all or substantially all of their assets, or of a lesser business unit containing the Cellular System Assets required to be divested by this Final Judgment, that the Interim Party agrees to be bound by the provisions of this Final Judgment, and shall also require that any purchaser of the Cellular System Assets agree to be bound by Section X of this Final Judgment.

IV

Divestiture of Cellular Interests

A. Defendants Ameritech and SBC shall divest themselves, at or before the time of consummation of the SBC/Ameritech Merger, of the Cellular System Assets as defined above in each of the Overlapping Cellular Markets, including both any direct or indirect financial ownership interests and any direct or indirect role in management or participation in control, to a purchaser or purchasers acceptable to plaintiff in its sole discretion, or to a trustee designated pursuant to Section V of this Final Judgment. Divestiture of the Cellular System Assets in each of the Overlapping Cellular Markets to a purchaser or purchasers acceptable to plaintiff in its sole discretion, as required in Section IV.C of this Final Judgment, shall occur no later than one hundred eighty (180) calendar days after the earlier of the following events: (i) issuance of all final authorizations by the FCC and state regulatory commissions that are necessary preconditions to the consummation of the SBC/Ameritech Merger, or (ii) the consummation of the SBC/Ameritech Merger; provided, however, that if applications have been filed with the FCC within the one hundred eighty day period seeking approval to assign or transfer licenses to the purchaser(s) of the Cellular System Assets but approval of such applications has not been granted before the end of the one hundred eighty day period, the period shall be extended with respect to the divestiture of those Cellular System Assets for which final FCC approval has

not been granted until five (5) days after such approval is received.

B. Defendants agree to use their best efforts to accomplish the divestitures set forth in this Final Judgment (i) as expeditiously as possible, including obtaining all necessary regulatory approvals, and (ii) to a purchaser or purchasers at or before consummation of the SBC/Ameritech Merger. The divestitures carried out under the terms of this decree shall also be conducted in compliance with the applicable rules of the FCC, including 47 CFR 20.6 (spectrum aggregation) and 47 CFR 22.942 (cellular cross-ownership). Authorization by the FCC to conduct divestiture of a cellular system in a particular manner will not modify any of the requirements of this decree.

C. Unless plaintiff otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of the Final Judgment, shall be accomplished by (1) divesting all of the Cellular System Assets in any individual Overlapping Cellular Market entirely to a single purchaser (but Cellular System Assets in different Overlapping Cellular Markets may be divested to different purchasers), and (2) selling or otherwise conveying the Cellular System Assets to the purchaser(s) in such a way as to satisfy plaintiff, in its sole discretion, that each cellular system can and will be used by the purchaser(s) as part of a viable, ongoing business engaged in the provision of cellular mobile telephone service. The divestitures pursuant to this Final Judgment shall be made to a purchaser(s) for whom it is demonstrated to plaintiff's sole satisfaction that (1) purchaser(s) has the capability and intent of competing effectively in the provision of cellular mobile telephone service using the Cellular System Assets, (2) the purchaser(s) has the managerial, operational and financial capability to compete effectively in the provision of cellular mobile telephone service using the Cellular System Assets, (3) with respect to the purchaser of the Cellular System Assets in the St. Louis Area, if such Cellular System Assets are divested to the purchaser by Ameritech rather than by the trustee, the purchaser has the capability of competing effectively in the provision of local exchange telecommunications services and long distance telecommunications services in the St. Louis Area, and (4) none of the terms of any agreement between the purchaser(s) and either of the defendants shall give defendants the ability unreasonably (i) to raise the purchaser(s) costs, (ii) to lower the purchaser(s)'s efficiency, (iii) to limit

any line of business which a purchaser(s) may choose to pursue using the Cellular System Assets (including, but not limited, to entry into local telecommunications services on a resale or facilities basis or long distance telecommunications services on a resale or facilities basis), or otherwise to interfere with the ability of the purchaser(s) to compete effectively.

D. If they have not already done so, defendants shall make known the availability of the Cellular System Assets in each of the Overlapping Cellular Markets by usual and customary means, sufficiently in advance of the time of consummation of the SBC/Ameritech Merger reasonably to enable the required divestitures to be carried out at or before the consummation of the SBC/Ameritech Merger. Defendants shall inform any person making an inquiry regarding a possible purchase of the Cellular System Assets that the sale is being made pursuant to the requirements of this Final Judgment, as well as the rules of the FCC, and shall provide such person with a copy of the Final Judgment.

E. Defendants shall offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, access to personnel, the ability to inspect the Cellular System Assets, and all information and any financial, operational, or other documents customarily provided as part of a due diligence process, including all information relevant to the sale and to the areas of business in which the cellular system has been engaged or has considered entering, except documents subject to attorney-client or work product privileges, or third party intellectual property that defendants are precluded by contract from disclosing and that has been identified in a schedule pursuant to Section II.B. Defendants shall make such information available to the plaintiff at the same time that such information is made available to any other person.

F. Defendants shall not interfere with any negotiations by any purchaser to retain any employees who work or have worked since May 11, 1998 (other than solely on a temporary assignment basis from another part of Ameritech or SBC) with, or whose principal responsibility relates to, the divested Cellular System Assets.

G. To the extent that the cellular systems to be divested use intellectual property, as required to be identified by Section II.B, that cannot be transferred or assigned without the consent of the licensor or other third parties, defendants shall cooperate with the

purchaser(s) and trustee to seek to obtain those consents.

H. Defendants shall preserve all records of all efforts made to preserve and divest any or all of the Cellular System Assets required to be divested until the termination of this Final Judgment.

V

Appointment of Trustee

A. If, at or before the consummation of the SBC/Ameritech Merger, the defendants have not divested all of the Cellular System Assets required to be divested to a purchaser or purchasers that have been approved by plaintiff pursuant to Section IV.C, then, before defendants consummate the SBC/Ameritech Merger:

1. Defendants shall notify plaintiff in writing whether the remaining Cellular System Assets to be divested in the Overlapping Cellular Markets, other than those in the St. Louis Area (the St. Louis, MO-IL Metropolitan Statistical Area and the Missouri 8, Missouri 12, Missouri 18, and Missouri 19 Rural Service Areas), and the Comcast Overlapping Cellular Markets (the Joliet, IL, Aurora-Elgin, IL, and Kankakee, IL Metropolitan Statistical Areas), shall be those currently owned and used by Ameritech, or those currently owned and used by SBC (in the St. Louis Area and the Comcast Overlapping Cellular Markets, the divested Cellular System Assets must be those owned by Ameritech), and this written notification shall also be provided to the trustee promptly upon his or her appointment by the Court;

2. The Court shall, on application of plaintiff, appoint a trustee selected by the plaintiff, who will be responsible for (a) accomplishing a divestiture of all Cellular System Assets transferred to the trustee from defendants, in accordance with the terms of this Final Judgment, to a purchaser or purchaser(s) approved by the plaintiff under Section IV.C, and (b) exercising the responsibilities of the licensee and controlling and operating the transferred Cellular System Assets, to ensure that the cellular systems remains ongoing, economically viable competitors in the provision of cellular mobile wireless telecommunications services in the Overlapping Cellular Markets, until they are divested to a purchaser or purchasers, and the trustee shall agree to be bound by this Final Judgment;

3. Defendants shall submit a form of trust agreement ("Trust Agreement") to the plaintiff, which must be consistent with the terms of this Final Judgment and which must have received approval

by the plaintiff, who shall communicate to defendants within ten (10) business days approval or disapproval of that form; and

4. After obtaining any necessary approval from the FCC for the transfer of control of the licenses of the remaining cellular systems to the trustee, defendants shall irrevocably divest the remaining Cellular System Assets to the trustee, who will own such assets (or own the stock of the entity such assets, if divestiture is to be effected by the creation of such an entity for sale to purchaser(s)) and control such assets, subject to the terms of the approved Trust Agreement.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the cellular system(s) to be divested, which shall be done within the time periods set forth in this Final Judgment. Those assets shall be the Cellular System Assets for the Ameritech cellular operations in the St. Louis Area (the St. Louis MO-IL Metropolitan Statistical Area and the Missouri 8, Missouri 12, Missouri 18, and Missouri 19 Rural Service Areas) and the Comcast Overlapping Cellular Markets (the Joliet, IL, Aurora-Elgin, IL, and Kankakee, IL Metropolitan Statistical Areas) and the Cellular System Assets as designated by defendants prior to the consummation of the SBC/Ameritech Merger as set forth in Section V.A.1 for the remaining Overlapping Cellular Markets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment. Subject to Section V.C of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture and in the management of the Cellular System Assets transferred to the trustee, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the plaintiff in its sole discretion, and shall have such other powers as this Court shall deem appropriate. The defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by the defendants must be conveyed in writing to plaintiff and the trustee within ten (10) days after the trustee has provided

the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of the defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the cellular system(s) sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee and of professionals and agents retained by the trustee shall be reasonable in light of the value of the divested cellular system(s) and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. The defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture, including their best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the cellular system(s) to be divested, and the defendants shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. As required and limited by Sections IV.E and F of this Final Judgment, the defendants shall permit prospective purchaser(s) of the cellular system(s) to have reasonable access to personnel and to make such inspection of the Cellular System Assets to be sold and any and all financial, operational, or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After being appointed and until the divestiture of the Cellular System Assets is complete, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that, to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring,

entered into negotiations to acquire, or was contacted or made an inquiry about acquiring the Cellular System Assets to be sold, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Cellular System Assets.

F. If the trustee has not accomplished the divestiture of all of the Cellular System Assets within the time specified for completion of divestiture to a purchaser or purchaser(s) under Section IV.A of this Final Judgment, the trustee thereupon shall file promptly with this Court a report setting forth: (1) the trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations; provided, however, that, to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it deems appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period agreed to by the plaintiff.

G. After defendants transfer the Cellular System Assets to the trustee, and until those Cellular System Assets have been divested to a purchaser or purchaser(s) approved by plaintiff pursuant to Section IV.C, the trustee shall have sole and complete authority to manage and operate the Cellular System Assets and to exercise the responsibilities of the licensee, and shall not be subject to any control or direction by defendants. Defendants shall not retain any economic interest in the Cellular System Assets transferred to the trustee, apart from the right to receive the proceeds of the sale or other disposition of the Cellular System Assets. The trustee shall operate the cellular system(s) as a separate and independent business entity from SBC or Ameritech, with sole control over operations, marketing and sales. SBC and Ameritech shall not communicate with, or attempt to influence the business decisions of, the trustee concerning the operation and management of the cellular systems, and shall not communicate with the trustee concerning the divestiture of the Cellular System Asset or take any action to influence, interfere with, or impede

the trustee's accomplishment of the divestitures required by this Final Judgment, except that defendants may communicate with the trustee to the extent necessary for defendants to comply with this Final Judgment and to provide the trustee, if requested to do so, with whatever resources or cooperation may be required to complete the divestitures of the Cellular System Assets and to carry out the requirements of this Final Judgment. In no event shall defendants provide to, or receive from, the trustee or the cellular systems under the trustee's control any non-public or competitively sensitive marketing, sales, or pricing information relating to their respective cellular mobile wireless telecommunications service businesses.

VI

Notification

A. Within two (2) business days following execution of a binding agreement to effect, in whole or in part, any proposed divestiture required by this Final Judgment, whichever defendant is divesting the cellular system, or the trustee if the trustee is divesting the cellular system, shall notify plaintiff of the proposed divestiture. If the trustee is responsible for the divestiture, the trustee shall similarly notify the defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who theretofore offered to, or expressed an interest in or a desire to, acquire any ownership interest in the Cellular System Assets that are the subject of the binding agreement, together with full details of same.

B. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendants, the proposed purchaser(s), any other third party, or the trustee (if applicable), additional information concerning the proposed divestiture and the proposed purchaser(s) or any other potential purchasers. Defendants and the trustee shall furnish any such additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice, or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendants, the proposed purchaser(s), any third party, or the trustee, whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating

whether or not plaintiff objects to the proposed divestiture. If plaintiff provides written notice to defendants and the trustee, if there is one, that it does not object, then the divestiture may be consummated subject only to defendants' limited right to object to the sale under Section V.B of this Final Judgment. Absent written notice that plaintiff does not object to the proposed purchaser(s) or in the event of an objection by plaintiff, a divestiture shall not be consummated. Upon objection by a defendant under the proviso of Section V.B. a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII

Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed, defendants shall deliver to plaintiff an affidavit as to the fact and manner of defendants' compliance with this Final Judgment. With respect to the period preceding the consummation of the SBC/Ameritech Merger, each such affidavit shall (i) include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any or all of the Cellular System Assets required to be divested, (ii) describe in detail each contact with any such person during that period, and (iii) include a summary of the efforts that defendants have made to solicit a purchaser(s) for the Cellular System Assets to be divested in the Overlapping Cellular Markets pursuant to this Final Judgment and to provide required information to prospective purchasers.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to plaintiff an affidavit which describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to preserve the Cellular System Assets to be divested pursuant to this Final Judgment. Defendants shall deliver to plaintiff another affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to Section VII.B of this Final Judgment within fifteen (15) calendar days after the change is implemented.

VIII

Financing

Defendants shall not finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment.

IX

Hold Separate Order

A. Until accomplishment of the divestitures of the Cellular System Assets to purchaser(s) approved by plaintiff pursuant to Section IV.C, each defendant shall take all steps necessary to ensure that each of the cellular systems that it owns or operates in the Overlapping Cellular Markets shall continue to be operated as a separate, independent, ongoing, economically viable and active competitor to the other cellular system and mobile wireless telecommunications providers operating in the same license area; and that except as necessary to comply with this Final Judgment, the operation of said cellular systems (including the performance of decision-making functions relating to marketing and pricing) will be kept separate and apart from, and not influenced by, the operation of the other cellular system, and the books, records, and competitively sensitive sales, marketing, and pricing information associated with said cellular systems will be kept separate and apart from the books, records, and competitively sensitive sales, marketing, and pricing information associated with the other cellular system.

B. Until the Cellular System Assets in each Overlapping Cellular Market have been divested to purchaser(s) approved by the plaintiff, or transferred to a trustee pursuant to Section V of this Final Judgment, defendants shall in accordance with past practices, with respect to the Cellular System Assets in the Overlapping Cellular Markets (including the assets of both cellular systems in any Overlapping Cellular Market where the cellular system that will be divested has not yet been decided):

1. Use all reasonable efforts to maintain and increase sales of cellular mobile telephone services, and maintain and increase promotional, advertising, sales, and marketing support for the cellular mobile telephone services sold by the cellular systems;

2. Take all steps necessary to ensure that the Cellular System Assets are fully maintained in operable condition and shall maintain and adhere to normal maintenance schedules;

3. Provide and maintain sufficient lines of sources of credit and working

capital to maintain the Cellular System Assets as viable ongoing businesses;

4. Be prohibited from, except as part of a divestiture approved by plaintiff, removing or selling any of the Cellular System Assets, other than sales in the ordinary course of business;

5. Be prohibited from terminating, transferring, or reassigning any employees who work with the Cellular System Assets, except (a) in the ordinary course of business, (b) for transfer bids initiated by employees pursuant to defendants' regular, established job posting policies, or (c) as necessary to promote accomplishment of defendants' obligations under this Final Judgment; and

6. Take no action that would impede in any way or jeopardize the sale of the Cellular System Assets.

C. Following consummation of the SBC/Ameritech Merger, defendants shall take no action that would impede in any way or jeopardize the sale of the Cellular System Assets.

D. Defendants shall, during the period before all Cellular System Assets have been divested to a purchaser(s) or transferred to the trustee pursuant to Section V of this Final Judgment, each appoint a person or persons to oversee the Cellular System Assets owned by that defendant, who will be responsible for defendants' compliance with the requirements of Sections VII and IX of this Final Judgment. Such person(s) shall not be an officer, director, manager, employee, or agent of the other defendant.

X

Compliance Inspection

For the purposes of determining or securing compliance of defendants with this Final Judgment, and subject to any legally recognized privilege, from time to time.

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the relevant defendant made to its principal office, shall be permitted without restraint or interference from defendants.

1. to have access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, and to take sworn testimony

from the officers, directors, employees, or agents of defendants, who may have counsel present, relating to any matters contained in this Final Judgment.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to defendants at their principal offices, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this section X or sections VI and VII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, or to the FCC (pursuant to a customary protective order or a waiver of confidentiality by defendants), except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents as to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and mark each pertinent page of such material, "Subject to claim of protection under rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days' notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XI

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purposes of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII

Further Provisions and Termination

A. The entry of this judgment is in the public interest.

B. Unless this Court grants an extension, this Final Judgment shall

expire on the tenth anniversary of the date of its entry.

United States District Judge.

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA"), 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

The United States filed a civil antitrust Complaint on March 23, 1999, alleging that the proposed acquisition of Ameritech Corporation ("Ameritech") by SBC Communications, Inc. ("SBC") would violate Section 7 of the Clayton Act, 15 U.S.C. 18 by lessening competition in the markets for wireless mobile telephone services in seventeen cellular license areas in Illinois, Indiana and Missouri. In these seventeen areas, which are identified in the Complaint as the "Overlapping Markets", Ameritech is one of two providers of cellular mobile telephone services. The other provider of cellular mobile telephone services in the Overlapping Markets is either SBC or Comcast Cellular Corporation ("Comcast"), which SBC has entered into an agreement to acquire.

Shortly before the Complaint in this matter was filed, the Department and the defendants reached agreement on the terms of a proposed Final Judgment, which requires SBC and Ameritech to divest one of the cellular telephone systems in each of the Overlapping Markets.¹ In nine of the Overlapping Markets in Illinois and Indiana, the defendants can choose which cellular system to divest, but in the five Overlapping Markets in Missouri in the St. Louis area, as well as the three Overlapping Markets in Illinois where Comcast and Ameritech both own cellular systems, the Ameritech cellular systems must be the ones divested. The proposed Final Judgment also contains provisions, explained below, designed to minimize any risk of competitive harm that otherwise might arise pending completion of the divestiture. The proposed Final Judgment embodying the settlement, and a Stipulation by plaintiff and defendants consenting to

¹ The proposed Final Judgment describes the seventeen license areas containing overlapping cellular systems as the "Overlapping Cellular Markets." That term has the same meaning as the "Overlapping Markets" referred to in the Complaint, and the two terms are used interchangeably herein.

its entry, were filed simultaneously with the Complaint.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 ("APPA"). Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. The United States and the defendants have also stipulated that the defendants will comply with the terms of the proposed Final Judgment from the date of signing of the Stipulation, pending entry of the Final Judgment by the Court, permitting the required divestitures to be carried out and the acquisition to be consummated prior to completion of the APPA procedures. Should the Court decline to enter the Final Judgment, the defendants have also committed to continue to abide by its requirements until the expiration of time for any appeals of such ruling.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

SBC and Ameritech are two of the remaining five Regional Bell Operating Companies ("RBOCs") created in 1984 by the consent decree settling the United States' antitrust case against American Telephone & Telegraph Co. SBC and Ameritech each provide local exchange telephone services indistinct regions, and also provide wireless mobile telephone services, including cellular mobile telephone services, both within and outside of their local exchange service regions.

SBC, with headquarters in San Antonio, Texas, is the second largest RBOC in the United States, with approximately 43 million total local access lines. In 1998, SBC had revenues in excess of \$28 billion. SBC provides local telephone services to retail customers in Arkansas, California, Connecticut, Kansas, Missouri, Nevada, Oklahoma, and Texas as well as cellular mobile telephone services or other wireless mobile telephone services in those states. SBC also provides cellular mobile telephone services or other wireless mobile telephone services in some areas outside its local exchange service region, including the District of Columbia and areas within the states of Illinois, Indiana, Maryland, Massachusetts, Rhode Island, New York, Virginia, and West Virginia. SBC,

through its Cellular One cellular systems out of region and its in-region Southwestern Bell, Pacific Bell, Nevada Bell and SNET cellular or other wireless mobile systems, is the nation's third largest wireless mobile telephone service provider, serving areas with a total population of about 82 million, and it has about 6.5 million subscribers nationwide.

Ameritech, with headquarters in Chicago, Illinois, is the fourth largest RBOC in the United States, with approximately 24 million total local access lines. In 1998, Ameritech had revenues in excess of \$17 billion. Ameritech provides local telephone service to retail customers in Illinois, Indiana, Michigan, Ohio, and Wisconsin, and also provides cellular mobile telephone service in these states, as well as in some states outside its local exchange service region including Missouri and Hawaii. Ameritech is a major wireless mobile telephone service providers, serving areas with a total population of about 30 million, and it has about 3.2 million subscribers nationwide.

On May 10, 1998, SBC and Ameritech entered into a purchase agreement, the Agreement and Plan of Merger, whereby SBC would acquire Ameritech in exchange for SBC stock valued at approximately \$58 billion dollars at the time of the agreement. Defendants filed a notification of this transaction pursuant to the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. 18a, on July 20, 1998.

SBC has also entered into an agreement as of January 19, 1999, to acquire Comcast Cellular Corporation for \$1.67 billion, which would give SBC all of Comcast's cellular telephone systems. Notification of this transaction also was filed pursuant to the Hart-Scott-Rodino Antitrust Improvements Act. By acquiring Comcast's cellular telephone systems, SBC would become a provider of cellular mobile telephone services in additional areas in Delaware, Illinois, Indiana, New Jersey and Pennsylvania. The acquisition of the Comcast cellular systems would add about 800,000 subscribers to SBC's total of wireless subscribers nationwide.

If both transactions were consummated, the combined total of SBC's and Ameritech's cellular and other wireless mobile telephone service subscribers would be 10.5 million, including the number of subscribers SBC would receive from its acquisition of Comcast.

B. Wireless Mobile Telephone Services

Wireless mobile telephone services permit users to make and receive

telephone calls, using radio transmissions, while traveling by car or by other means. The mobility afforded by this service is a valuable feature to consumers, and cellular and other wireless mobile telephone services are commonly priced at a substantial premium above landline services. In order to provide this capability, wireless carriers must deploy an extensive network of switches and radio transmitters and receivers, and interconnect this network with the networks of local and long distance landline carriers, and with the networks of other wireless carriers. In 1998, revenues from the sale of wireless mobile telephone services totaled approximately \$30 billion in the United States.

Initially, wireless mobile telephone services were provided principally by two cellular systems in each license area, as was the case in the Overlapping Markets. Cellular licenses were awarded by the Federal Communications Commission ("FCC") beginning in the early 1980s, within any given Metropolitan Statistical Area ("MSA") or Rural Service Area ("RSA").² Providers of Specialized Mobile Radio ("SMR") services typically were also authorized to operate with some additional spectrum in these areas, including the Overlapping Markets.

In 1995 the FCC allocated (and subsequently issued licenses for) additional spectrum for the provisions of PCS, a category of services which includes wireless mobile telephone services comparable to those offered by cellular carriers. In 1996 one SMR spectrum licensee began to use its SMR spectrum to offer wireless mobile telephone services, comparable to that offered by cellular providers and bundled with dispatch services, in a number of areas including some of the Overlapping Markets. The areas for which PCS providers are licensed differ from the cellular MSAs and RSAs but overlap with them.³ However, in many areas, including the Overlapping Markets, not all of the PCS license holders have started to offer services or

² 25 MHz of spectrum was allocated to each cellular system in an MSA or RSA. MSAs are the 306 urbanized areas in the United States defined by the federal government, used by the FCC to define the license areas for urban cellular systems. RSAs are the 428 areas defined by the FCC used to define the license areas for rural cellular systems outside of MSAs.

³ There can be as many as three PCS providers, with 30 MHz of spectrum each, authorized to serve areas considerably larger than a single MSA or RSA. In addition, there can be as many as three PCS providers, with 10 MHz of spectrum each, licensed to provide service in smaller areas that overlap more closely with a given MSA or RSA.

have even begun to construct the facilities necessary to begin offering service. The PCS providers have tended to enter first in the largest cities, entering in smaller markets only later and not to as great an extent. Moreover, even in those areas where one or more PCS providers have constructed their networks and have started to offer service or some SMR spectrum is also used for wireless mobile telephone services, including the Overlapping Markets, the incumbent cellular providers, such as SBC and Ameritech, still typically control the great majority of the market.

C. Anticompetitive Consequences of the Proposed Acquisition

SBC and Ameritech are the sole providers of cellular mobile telephone services, and the two primary providers of all wireless mobile telephone services, in fourteen cellular license areas in the states of Illinois, Indiana, and Missouri. These fourteen areas are referred to in the Complaint as the "SBC/Ameritech Overlapping Markets." SBC and Ameritech are direct competitors in the markets for wireless mobile telephone services in the SBC/Ameritech Overlapping Markets.

In three cellular license areas in the state of Illinois, the cellular systems owned entirely or in part by Ameritech and Comcast are the sole providers of cellular mobile telephone services, and the two primary providers of all wireless mobile telephone services. These three areas, which are in addition to the fourteen cellular license areas where Ameritech and SBC own overlapping cellular systems, are referred to in the Complaint as the "Comcast/Ameritech Overlapping Markets." Comcast and Ameritech are direct competitors in the markets for wireless mobile telephone services in the Comcast/Ameritech Overlapping Markets. SBC already manages the Comcast cellular systems in the Comcast/Ameritech Overlapping Markets. When the Comcast acquisition is consummated, SBC and Ameritech will own, entirely or in part, the overlapping cellular systems in these additional three cellular license areas in the state of Illinois.

In the Overlapping Markets, the population potentially addressable by cellular mobile telephone systems totals about 11 million, including over 10.8 million in the SBC/Ameritech Overlapping Markets and nearly 200,000 in the Comcast/Ameritech Overlapping Markets. The Overlapping Markets are listed below:

SBC/Ameritech Overlapping Markets

MSAs

Chicago, IL
St. Louis, MO—IL
Gary-Hammond-East Chicago, IN
Springfield, IL
Champaign-Urbana-Rantoul, IL
Bloomington-Normal, IL
Decatur, IL

RSAs

Illinois 2—Bureau
Illinois 5—Mason
Illinois 6—Montgomery
Missouri 8—Callaway
Missouri 12—Maries
Missouri 18—Perry
Missouri 19—Stoddard

Comcast/Ameritech Overlapping Markets

MSAs

Joliet, IL
Aurora-Elgin, IL
Kankakee, IL (Comcast has a 10.07% interest in this cellular system)

If SBC's plan to acquire Ameritech were consummated, only one provider of cellular mobile telephone services would remain available to consumers in the Overlapping Markets. SBC would own both cellular systems in the SBC/Ameritech Overlapping Markets. In addition, because SBC already manages the Comcast cellular systems in Illinois, SBC would operate both of the cellular systems in the Comcast/Ameritech Overlapping Markets if SBC were to acquire Ameritech. If both the Comcast and Ameritech acquisitions were consummated, SBC would own, entirely or in part, both of the cellular systems in the Comcast/Ameritech Overlapping Markets.

Therefore, SBC's acquisition of Ameritech would cause the level of concentration among firms providing wireless mobile telephone services in the Overlapping Markets to increase significantly. Already a high level of concentration in the provision of wireless mobile telephone services exists in the Overlapping Markets. In the SBC/Ameritech Overlapping Markets, the individual market shares of SBC and Ameritech, measured on the basis of the numbers of subscribers or wireless lines served, range from 30% to over 50%. The combined market share of SBC and Ameritech in the provision of wireless mobile telephone services is in the range of 80 to 90%, taking into account other operational wireless mobile competitors.⁴ As measured by

⁴The United States has used subscriber data here to estimate market shares because those data are more readily available. In some contexts, however,

the Herfindahl-Hirschman Index (HHI), which is commonly employed by the Department of Justice in merger analyses and is explained in more detail in Appendix A to the Complaint, concentration in these markets is already in the range of 3200 to 4100, well above the 1800 threshold at which the Department normally considers a market to be concentrated. After the merger, the HHI in these markets will greatly increase and will range from 6400 to 8100. In the Comcast/Ameritech Overlapping Markets, the combined market share of Comcast and Ameritech similarly is much larger than that of all other wireless mobile competitors, and the merger would similarly lead to large increases in concentration.

Competition between SBC and Ameritech, and between Comcast and Ameritech, as the two largest providers of wireless mobile telephone services in the Overlapping Markets, has resulted in lower prices and higher quality of service in these markets than would otherwise have existed absent such competition. If SBC and Ameritech were to merge, the competition between SBC and Ameritech and between Comcast and Ameritech in wireless mobile telephone services in these markets would be eliminated, and competition overall for wireless mobile telecommunications services would be substantially lessened in the Overlapping Markets by SBC's acquisition of Ameritech. As a result of the loss in competition between SBC and Ameritech, and between Comcast and Ameritech, there would be an increased likelihood both of unilateral actions by the combined firm in these markets to increase prices, diminish the quality or quantity of service provided, or refrain from making investments in network improvements, and of coordinated interaction among the limited number of remaining competitors that could lead to similar anticompetitive results.

Competition would also be adversely affected in another, related way by the consummation of SBC's acquisition of Ameritech. In the SBC/Ameritech Overlapping Markets in the St. Louis area, including the St. Louis MSA and the four RSAs in Missouri, Ameritech planned, prior to its announcement of its agreement to be acquired by SBC, to

other measures of market share may provide a more precise indication of market concentration or a firm's competitive significance. The use of subscriber data here is reasonable, given that measuring market share in other ways would not affect the Department's conclusions. The market shares of SBC and Ameritech would also be very high if measured on a variety of dimensions other than subscribers or lines served, such as revenues or volumes of traffic handled.

provide local exchange and long distance telephone services in SBC's local telephone service area. Ameritech would have competed with SBC primarily by selling bundled packages of such local exchange and long distance telephone services, together with its cellular mobile telephone service, to existing Ameritech residential cellular customers. There is no alternative source of such a bundled product in the St. Louis area at present. Ameritech expected that its plan would enhance its ability to retain existing cellular customers. Ameritech had made extensive preparations for entry, over the course of more than a year, and was ready to begin providing local exchange and long distance telephone services to its cellular mobile telephone customers at the time it agreed to be acquired by SBC. Shortly thereafter, because it was being acquired by SBC, Ameritech decided not to implement its local exchange and long distance entry plans in the St. Louis area. The consummation of SBC's acquisition of Ameritech thus would preclude such competition by Ameritech.

It is unlikely that entry within the next two years into wireless mobile telephone services in the Overlapping Markets would be sufficient to mitigate the competitive harm resulting from this acquisition, if it were to be consummated.

For these reasons, the United States concluded that the merger as proposed may substantially lessen competition, in violation of Section 7 of the Clayton Act, in the provision of wireless mobile telephone services in the Overlapping Markets.

III. Explanation of the Proposed Final Judgment

A. The Divestiture Requirement

The proposed Final Judgment will preserve competition in the sale of mobile wireless services in the Overlapping Markets by requiring the defendants to divest one of their two cellular telephone systems in each of the Overlapping Markets. This divestiture will eliminate the change in market structure caused by the merger.

The divestiture requirements of the proposed Final Judgment, as stated in Sections IV.A and II.B, direct Ameritech to divest its cellular telephone systems in St. Louis and other markets in Missouri, as well as its cellular telephone systems in the three markets in Illinois where it overlaps with Comcast. In the remaining markets in Illinois and Indiana where SBC's and Ameritech's cellular telephone systems overlap, SBC and Ameritech may

choose which of the two systems in each market must be divested. Section IV.C permits the different cellular systems in separate Overlapping Cellular Markets to be divested to different purchasers, but requires that, for any individual cellular system, the Cellular System Assets be divested entirely to a single purchaser, unless the United States otherwise consents in writing.

In the Comcast/Ameritech Overlapping Markets, because Comcast is not a party to the consent decree, the necessary divestitures to avoid loss of competition between the overlapping cellular systems could be effected only through Ameritech. Comcast was not considered a necessary party to this action because SBC's acquisition of Comcast, standing alone, is not a competitive problem. A violation of Section 7 of the Clayton Act only arises in the three Comcast/SBC Overlapping Markets when the Comcast acquisition is considered together with SBC's merger with Ameritech.

The reason for requiring the divestiture of the five Ameritech cellular systems in the St. Louis area is different, arising from Ameritech's plans prior to the merger to compete with SBC in providing local exchange and long distance telephone services together with its cellular mobile telephone services in St. Louis. Ameritech had made extensive preparations to provide local exchange and long distance services in SBC's local telephone service area, over the course of the year preceding the announcement of the merger, and was ready to launch its bundled offering of these services together with cellular telephone service at the time the merger was announced. In contrast, the SBC cellular systems in the St. Louis area, being owned by the incumbent local telephone service provider, had made no preparations to offer local exchange telephone service competition in any of the relevant markets in Missouri.

The loss of competition in cellular mobile telephone services between the Ameritech and SBC cellular systems in Missouri, standing alone, required one of the two cellular systems to be divested, as in the other Overlapping Markets. However, a buyer of the Ameritech cellular systems would be much more favorably positioned to enter rapidly into local exchange and long distance telephone services in St. Louis and provide a bundled product together with its cellular services than would a buyer of the SBC cellular systems in the St. Louis area. Therefore, in order to remedy this aspect of the competitive harm arising from the

merger, the United States concluded that the divestiture of the Ameritech cellular systems in the St. Louis area, together with "those assets acquired, developed, used or intended for use in connection with the provision of local exchange telecommunications services and long distance telecommunications services by such system[s]," would be necessary, as required by Section II.B of the proposed Final Judgment.

The proposed Final Judgment's divestiture provisions are intended to accomplish the "complete divestiture of the entire business of one of the two cellular systems in each of the Overlapping Cellular Markets," as Section II.B states. Section II.B also specifies in detail the types of assets to be divested, which collectively are described throughout the consent decree as "Cellular System Assets," and addresses some special circumstances concerning the divestiture of those assets. In all of the Overlapping Markets, Cellular System Assets means all types of assets, tangible and intangible, used by defendants in the operation of each of the cellular systems to be divested, including the provision of long distance telecommunications service for wireless calls. For the five Ameritech cellular systems to be divested in the St. Louis area, additional types of assets related to Ameritech's plans for providing local exchange and long distance telecommunications services are also included, as described above. Section II.B enumerates in detail, without limitation, particular types of assets covered by the divestiture requirement.

For the most part, the divesting defendant is required to transfer to the purchaser the complete ownership and/or other rights to the Cellular System Assets. However, the merged firm will retain a number of other cellular systems in areas that do not overlap, and prior to the merger each defendant may have had certain assets that were used substantially in the operations of its overall cellular business and that must be retained to some extent to continue the exiting operations of the cellular properties not being divested. Section II.B permits special divestiture arrangements for such assets either if they are not capable of being divided between the divested and retained cellular systems, or if the divesting defendant and the purchaser agree not to divide them. For these assets, the divestiture requirement is satisfied if the divesting defendant grants to the purchaser, at the election of the purchaser, an option to obtain a non-exclusive, transferable license for a reasonable period to use the assets in

the operation of the cellular system being divested, so as to enable the purchaser to continue to operate the divested cellular systems without impairment. None of the Cellular System Assets associated with Ameritech's plans to provide local exchange and long distance telecommunications service in the St. Louis are covered by this licensing requirement, because all of those assets are required to be transferred completely to the purchaser.

The definition of Cellular system Assets in section II.B contains the special provisions relating to intellectual property. One addresses intellectual property rights that defendants may have under third-party licenses that could not be transferred to a purchaser entirely or by license without the consent of the third-party licensor. If any such assets are used by the cellular systems being divested, defendants must identify them in a schedule submitted to plaintiff and filed with the Court as expeditiously as possible following the filing of the Complaint, in any event, prior to any divestiture and before the Court approves the proposed Final Judgment. Defendants must explain the necessary consents and how a consent would be obtained for each asset. This proviso is not intended to afford defendants any opportunity to withhold intellectual property rights over which they have any control, which could impair the ability of a purchaser to use the divested cellular system to compete effectively. It relates only to intellectual property assets that defendants have no power to transfer themselves, and defendants must do all that is possible to transfer the entire business of the divested cellular systems. To make this clear, section IV.G obligates defendants to cooperate with any purchaser as well as a trustee, if any, to seek to obtain the necessary third-party consents, if any assets require such consents before they may be transferred to a purchaser.

The second proviso relates to certain specific trademarks, trade names and service marks. Section II.B, defining the Cellular System Assets to be divested, generally requires the divestiture of trademarks, trade names and service marks, with the four specified exceptions of ones containing "SBC", "Southwestern Bell", "Ameritech", or "Cellular One," which are the names under which the defendants' retained cellular systems, or their corporate parents, do business. Such trademarks, trade names and service marks, like other assets, are either to be divested in their entirety or in the case of such marks and names that must be retained

to continue the existing operations of defendants' remaining cellular properties, and that are not capable of being divided or that the divesting defendant and purchaser agree not to divide, are to be made available to the purchaser through a non-exclusive, transferable license. Section II.B therefore creates an obligation on the part of SBC and Ameritech to license the "Clearpath" trade name, currently used in connection with Ameritech's digital cellular services, to a purchaser of Cellular System Assets currently owned by Ameritech. The Department has been advised by Ameritech, and recognizes on that basis, that (1) Ameritech's use of the trade name "Clearpath" is subject to a letter agreement between Ameritech and Unisys Corporation, (2) any use by a purchaser of Ameritech Cellular System Assets would be pursuant to a license agreement which the purchaser would need to enter into with SBC and/or Ameritech; and (3) such a license agreement would need to contain terms and conditions that would protect SBC and Ameritech from claims by Unisys related to the use of that trade name.

Section IV contains other provisions to facilitate divestiture, including notification of the availability of the Cellular System Assets for purchase in Section IV.D, access to information about the Cellular System Assets in Section IV.E, and preservation of records in Section IV.H. In addition, to ensure that a purchaser will be able to operate the divested cellular systems without impairment, section IV.F prohibits defendants from interfering with a purchaser's negotiations to retain any employees who work or have worked since the date of the announcement of the merger with the Cellular System Assets, or whose principal responsibility relates to the Cellular System Assets.⁵

B. Timing of Divestiture

In antitrust cases involving mergers in which the United States seeks a divestiture remedy, it requires completion of the divestiture within the shortest time period reasonable under the circumstances. The proposed Final Judgment in this case requires, in section IV.A, that the divestitures of the Cellular System Assets in the seventeen Overlapping Cellular Markets to a purchaser or purchasers approved by the United States must be completed within 180 days of the time that SBC

and Ameritech consummate their merger, or the time that they receive the final regulatory approvals from the FCC and state regulatory commissions that are necessary preconditions to consummation of the merger, whichever is earlier. These alternative starting dates were chosen because, at the time SBC and Ameritech entered into the Stipulation and agreed to the proposed Final Judgment, the FCC and two state regulatory commissions, the Illinois Commerce Commission and the Ohio Public Utilities Commission, were still reviewing SBC's acquisition of Ameritech. The approval of these three regulatory bodies is necessary for the acquisition to be consummated.⁶ If SBC's acquisition of Ameritech were not consummated because any of those regulatory bodies denied the necessary approval, defendants would not be required to divest their cellular systems in the Overlapping Markets.

Even though approval by these three regulatory bodies is a necessary precondition for the merger to be consummated, after an initial favorable decision by any of those regulatory bodies, a brief period of time would exist for reconsideration before the decision would become final. Defendants could agree to consummate their merger based on the initial decisions, before the period for reconsideration has run. Therefore, the time for divestiture has been linked to the first event that would allow the acquisition to take place, either the last of the three necessary final regulatory approvals or a decision by the defendants to consummate the merger without any or all of these final regulatory approvals.

Defendants are also required by Section IV.B to use their best efforts to accomplish the divestitures of the Cellular System Assets in the Overlapping Cellular Markets to a purchaser or purchasers at or before the consummation of the merger of SBC and Ameritech, and to do so as expeditiously as possible, including obtaining all required regulatory approvals.

In addition, the proposed Final Judgment requires in Section IV.B that defendants comply with all of the applicable rules of the FCC in carrying out the divestitures. These rules include 47 CFR 20.6 (spectrum aggregation) and 47 CFR 22.942 (cellular cross-

⁵ There is a limited exception for employees working with the Cellular System Assets solely on a temporary basis from another part of SBC or Ameritech.

⁶ The merger is also being reviewed by other state telecommunications regulators, e.g., in Indiana, but the United States understands that prior approval by other state regulators is not necessary for the merger to proceed.

ownership).⁷ These FCC requirements may add to, but cannot subtract from or impair, the requirements of this proposed Final Judgment, since Section IV.B specifies that authorization by the FCC to conduct divestiture of a cellular system in a particular manner will not modify any of the requirements of the decree. The provisions of the proposed Final Judgment have been designed to avoid any conflict with the FCC's rules. In particular, the inclusion of the trusteeship requirements discussed below ensures that impermissible control of both cellular systems by the merged company should not arise even if defendants were to consummate their merger during the 180-day period authorized for divestiture, at a time when some of the cellular systems have not yet been sold to any purchaser approved by the Department of Justice. Since the FCC's approval is required for the transfer of the cellular system licenses to a purchaser, Section IV. A provides one exception to the 180-day divestiture period. If applications for transfer of a cellular license have been filed by the FCC within the 180 day period, but the FCC has not granted approval before the end of that time, the period for divestiture of the specific Cellular System Assets covered by the license that cannot yet be transferred shall be extended until five days after FCC's approval is received. This extension is to be applied only to the individual cellular system affected by the delay in approval of the license transfer and does not entitle defendants to delay the divestiture of any other Cellular System Assets for which license transfer approval has been granted.

C. Use of a Trustee Subsequent to Consummation of the Acquisition

The proposed Final Judgment provides in Section IV.A that, at or before the time that SBC and Ameritech consummate their merger, they must divest the Cellular System Assets in each of the Overlapping Cellular Markets, either to purchasers acceptable to plaintiff in its sole discretion, or to a trustee designated pursuant to Section V

of the Final Judgment. As part of this divestiture, SBC and Ameritech must relinquish any direct or indirect financial ownership interests and any direct or indirect role in management or participation in control. Thus, if SBC and Ameritech want to consummate their merger before they have completed the divestitures of Cellular System Assets to approved purchasers, by the time of consummation, they must have transferred any remaining Cellular System Assets to a trustee chosen by the Department of Justice. Pursuant to Section V of the proposed Final Judgment, the trustee will own and control the systems until they are sold to a final purchaser, subject to safeguards to prevent SBC and Ameritech from influencing their operation.

This trust arrangement is an option available to defendants, to enable them to consummate their merger once all regulatory approvals have been received, even if the 180-day period for divestitures has not yet run and some Cellular System Assets that must be divested have not yet been purchased. It is not the preferred option, however, as indicated by the requirement in Section IV.B that defendants use their best efforts to accomplish the divestitures before consummation of the merger. The overall period of 180 days to complete the divestitures continues to apply, whether the divestitures are made by SBC and Ameritech or by the trustee. In other words, the transfer of any Cellular System Assets to the trustee does not extend the time to complete the divestitures. The trustee simply has whatever part of the 180-day period remains from the time SBC and Ameritech transfer the cellular systems. If, for any reason, the trustee has not completed all of the required divestitures to purchasers within this period, the trustee is required, under Section V.F, to report to the Court on the efforts made and the reasons why divestiture has not been accomplished, but the trust period may be extended by the Court only if plaintiff agrees to the period involved.

Section V details the requirements for the establishment of the trust, the selection and compensation of the trustee, the responsibilities of the trustee in connection with divestiture and operation of the Cellular System Assets, and the termination of the trust. If defendants have not divested all of their Cellular System Assets in the Overlapping Cellular Markets to approved purchasers by the time of consummation of the merger, Section V.A requires that before consummating the merger: (1) defendants must have

notified the United States which Cellular System Assets in each Overlapping Market will be divested; (2) the Court must have appointed a trustee, which shall be selected by the United States; (3) defendants must have submitted a form of Trust Agreement consistent with the terms of the Final Judgment, and the form agreement must have received approval by the United States; and (4) after receiving FCC approval for the license transfers, defendants must irrevocably divest the unsold Cellular System Assets to the trustee. As a practical matter, the process of establishing a trust arrangement for any Cellular System Assets will take some time, so if defendants plan to make use of this option, they will need to begin preparations for it soon after the 180 days has begun to run.

The trustee will have the obligation and the sole responsibility, under Section V.B, for the divestiture of any transferred Cellular System Assets. The trustee has the authority to accomplish divestitures at the earliest possible time and "at the best price then obtainable upon a reasonable effort by the trustee." The defendants are not entitled to object to divestiture based on the adequacy of the price the trustee obtains or any other ground, unless the trustee's conduct amounts to malfeasance. The terms of the trustee's compensation, under Section V.C, will provide incentives based on the price and terms of the divestiture and the speed with which it is accomplished. As provided by Sections V.B and V.C., defendants will pay the compensation and expenses of the trustee, and of any investment bankers, attorneys or other agents that the trustee finds reasonably necessary in his judgment to assist in the divestiture and the management of the Cellular System Assets.

The trusteeship mechanism has been used by the FCC, in a variety of contexts, to provide a short period of time in which to complete a sale of a spectrum licensee that must be divested, while permitting the broader merger or acquisition that necessitates the divestiture to go forward. In this context, the critical feature of the trusteeship arrangement is that the trustee will not only have responsibility for sale of the Cellular System Assets, but will also be the authorized holder of the cellular system license, with full responsibility for the operations, marketing and sales of the cellular system to be divested, and will not be subject to any control or direction by defendants. The defendants will no longer have any role in the ownership, operation or management of the Cellular

⁷ The FCC's spectrum aggregation rules, in 47 CFR 20.6, do not permit a licensee to have an attributable interest in more than 45 MHz of spectrum licensed for cellular, PCS or SMR with significant overlap in any geographic area. The FCC will attribute an interest if it is controlling, or if in most cases it is 20% or more of the equity, outstanding stock or voting stock of the licensee. The FCC's cellular cross-ownership rules, in 47 CFR 22.942, also prohibit a licensee or any person controlling a licensee from having a direct or indirect ownership interest of more than 5% in both cellular systems in an overlapping cellular geographic service area, unless such interests pose "no substantial threat to competition."

System Assets to be divested following consummation of their merger, as provided by Section V.G, other than the right to receive the proceeds of the sale, and certain obligations to provide cooperation to the trustee in order to complete the divestiture, as indicated in Section V.D. Defendants are precluded under Section V.G from communicating with the trustee, or seeking to influence the trustee, concerning the divestiture or the operation and management of the cellular systems transferred, apart from the limited communications necessary to carry out the Final Judgment and to provide the trustee with the necessary resources and cooperation to complete the divestitures. Defendants and the trustee are subject to an absolute prohibition on exchanging any non-public or competitively sensitive marketing, sales or pricing information relating to either of the cellular system businesses in the Overlapping Markets. These safeguards will protect against any competitive harm that could arise from coordinated behavior or information sharing between the two cellular systems after the merger, during the limited period while sale of the Cellular System Assets is not yet complete. They ensure that the trusteeship arrangement is consistent with the FCC's rules.

D. Criteria for the United States' Approval of Purchasers

Under the proposed Final Judgment, the United States has an important role in the approval of purchasers for each of the divested cellular systems, to ensure that the purchasers chosen by the defendants or the trustee are adequate from a competitive viewpoint. The United States' approval or rejection of a purchaser is at its sole discretion, as Section IV.A specifies, but the consent decree also embodies certain criteria that the United States will apply in making the approval decision.

Specifically, Section IV.C of the proposed Final Judgment requires that the divestitures of Cellular System Assets be made to a purchaser or purchasers for whom it is demonstrated to plaintiff's sole satisfaction that: (1) the purchaser(s) has the capability and intent of competing effectively in the provision of cellular mobile telephone service using the Cellular System Assets; (2) the purchaser(s) has the managerial, operational and financial capability to compete effectively in the provision of cellular mobile telephone service using the Cellular System Assets; (3) with respect to the purchaser of the Cellular System Assets in the St. Louis Area, if such Cellular System Assets are divested to the purchaser by

Ameritech rather than by the trustee, the purchaser has the capability of competing effectively in the provision of local exchange telecommunications services and long distance telecommunications services in the St. Louis Area, and (4) none of the terms of any agreement between the purchaser(s) and either of the defendants shall give defendants the ability unreasonably (i) to raise the purchaser(s)'s costs, (ii) to lower the purchaser(s)'s efficiency, (iii) to limit any line of business which a purchaser(s) may choose to pursue using the Cellular System Assets (including, but not limited, to entry into local telecommunications services on a resale or facilities basis or long distance telecommunications services on a resale or facilities basis), or otherwise to interfere with the ability of the purchaser(s) to compete effectively.

All of these criteria must be satisfied whether the divestiture is accomplished by defendants or the trustee, with the exception of (3), which applies only to divestitures made by defendants and not if the trustee assumes control over the Cellular System Assets in the St. Louis Area. In the case of any divestiture, by defendants or the trustee, it is important to ensure that the ongoing cellular businesses go to purchasers with the capability and intent of operating them as effective competitors in the lines of business they already serve, and that there are no conditions restricting competition in the terms of the sale. The United States, however, viewed the issue of potential competition in local exchange and long distance telecommunications services in the St. Louis Area somewhat differently. Defendants have incentives to divest Ameritech's Missouri cellular properties in a way that could minimize the risk of their use for such competition to SBC, while a trustee charged with seeking the best price obtainable would not have similar incentives. Also, the United States has sought only to ensure that the purchaser of Ameritech's St. Louis-area cellular systems would have the capability to compete effectively in these additional lines of business; it has not insisted on proof of intent to compete. Such claims of intent are inherently less subject to verification when dealing with a new line of business, and, unlike the situation with an ongoing profitable business, a purchaser could reasonably decide to enter local exchange and long distance telecommunications services in St. Louis in a somewhat different way than Ameritech had planned to do, or not to pursue those lines of business,

depending on their economic attractiveness.

In exercising its sole discretion to approve a purchaser under Section IV.C, the United States will take into account the following considerations. In evaluating the capability of a purchaser to provide cellular mobile telephone service under (1) or (2), or local exchange telecommunications services and long distance telecommunications services under (3), the United States will consider the capabilities not only of the immediate purchaser of Cellular System Assets, but also of any parent, subsidiary, corporate affiliate or partner of the immediate purchaser, to the extent that the United States is satisfied that such capabilities of related entities would actually be available to the immediate purchaser to provide the services. Moreover, in evaluating a purchaser's capability to provide services under (1), (2), or (3), the United States will consider all of the assets and capabilities of the purchaser (including their affiliated entities where it is appropriate to take these into account, as discussed above) that are actually available at present to provide the relevant services, including, without limitation, financial assets, the assets being acquired from SBC and/or Ameritech, and the experience of members of the purchaser's management team. The capability to compete effectively in providing both local exchange service and long distance service under (3) can be on either a resale or facilities basis. The United States would look most favorably, in assessing capability, on those purchasers (including their affiliated entities where these are appropriate to take into account, as discussed above) that have significant experience in providing cellular mobile telephone service for purposes of (1) and (2), and on those purchasers that have significant experience in providing local exchange and long distance services for purposes of (3). Conversely, a purchaser without such experience would need to make a more compelling demonstration to satisfy the United States. The United States' evaluation of a purchaser with limited or no experience in providing the relevant services would take into account the nature and extent of efforts made by the defendants (or trustee, if applicable) to find purchasers with more substantial experience. A conclusion by the United States that a purchaser satisfies (1) and (2) is relevant to whether (3) is also satisfied, but not determinative, since (3) represents an additional requirement that must be met by a purchaser of the St. Louis Area

Cellular System Assets. No single factor or group of factors is determinative in the United States' exercise of its sole discretion in evaluation of a purchaser, and none of these considerations necessarily predetermines the outcome of the United States' review of any particular purchaser.

E. Other Provisions of the Decree

Section III specifies the persons to whom the Final Judgment is applicable, and provides for the Final Judgment to be applicable to certain Interim Parties to whom defendants might transfer the Cellular System Assets, other than purchasers approved by the United States.

Section VI obliges defendants, or the trustee if applicable, to notify the United States of any planned divestiture of Cellular System Assets within two business days of executing a binding agreement with a purchaser. It enables the United States to obtain information to evaluate the chosen purchaser as well as other prospective purchasers who expressed interest and establishes procedure for the United States to notify defendants and the trustee whether it objects to a divestiture. The United States' notification of its lack of objection is necessary for a divestiture to proceed. This section also provides for an objection by defendants to a sale by the trustee under the limited situation of alleged malfeasance, but in that case it is possible for the Court to approve a sale over defendants' objection.

Section VII establishes affidavit requirements for defendants to report to the United States on their compliance with the proposed Final Judgment, their activities in seeking to divest the Cellular System Assets prior to consummating their merger, and their actions to preserve the Cellular System Assets to be divested. Under V.E, the trustee also has monthly reporting obligations concerning the efforts made to divest the Cellular System Assets.

Section VIII prohibits defendants from financing all or any part of a purchase made by an acquirer of the Cellular System Assets, whether the divestiture is carried out by defendants or by the trustee.

Section IX, the Hold Separate Order, contains important requirements concerning the operation of the cellular systems before divestiture is complete, and the preservation of the Cellular System Assets as a viable, ongoing business. The obligations of Section IX.A fall on both defendants and both cellular systems in any Overlapping Market, obliging them to ensure that such cellular systems continue to be

operated as separate, independent, ongoing, economically viable and active competitors to the other cellular system and all other wireless mobile telecommunications providers in the same area. Section IX.A requires separation of the operations of the two cellular systems and their books, records and competitively sensitive information. The requirements of Section IX.A both serve to ensure that defendants maintain their two cellular systems in the Overlapping Markets as fully separate competitors prior to consummating their merger, notwithstanding their expectations that the merger will take place, and reinforce the provisions of Section V.G concerning the separation of defendants and the trustee after the merger is consummated but while there are still Cellular System Assets awaiting sale.

Because SBC already operates the three Comcast systems in the Comcast/Ameritech Overlapping Markets, and the hold separate requirements of Section IX.A of the Final Judgment apply to "each of the cellular systems" that either defendant "owns or operates" in the Overlapping Markets, SBC is obliged to ensure that the three Comcast systems are operated in a way that complies with Section IX.A, pending divestiture of the Ameritech systems in these areas to purchasers approved by the Department of Justice.

Section IX.B, in contrast, applies only to the Cellular System Assets to be divested and to the period before consummation of the merger, while defendants still control those assets. It requires the defendant whose assets will be divested (or both, if it has not yet been decided which system will be divested in a particular market) to take certain specified steps to preserve the assets in accordance with past practices. These steps include maintaining and increasing sales, maintaining the assets in operable condition, providing sufficient credit and working capital, not removing the assets, not terminating, transferring or reassigning employees who work with the assets (with certain limited exceptions), and not taking any actions to impede or jeopardize the sale of the assets. Section IX.C similarly obliges defendants not to take any actions that would impede or jeopardize the sale of the assets after the merger has been consummated but while Cellular System Assets remain in the control of a trustee. Finally, Section IX.D obliges each defendant, during the period while they still control Cellular System Assets, to appoint persons not affiliated with the other defendant to oversee the Cellular System Assets to be

divested and to be responsible for compliance with the Final Judgment.

In order to ensure compliance with the Final Judgment, Section X gives the United States various rights, including inspection of defendants' records, the ability to conduct interviews and take sworn testimony of defendants' officers, directors, employees and agents, and to require defendants to submit written reports. These rights are subject to legally recognized privileges, and information the United States obtains using these powers is protected by specified confidentiality obligations, which do permit sharing of information with the FCC under a customary protective order issued by that agency or a waiver of confidentiality. Under Section III.B, purchasers of the Cellular System Assets must also agree to give the United States similar access to information.

The Court retains jurisdiction under Section XI, and Section XII provides that the proposed Final Judgment will expire on the tenth anniversary of the date of its entry, unless extended by the Court. Although the required divestitures will be accomplished in a considerably shorter time, defendants are also precluded from reacquiring the divested properties within the term of the decree.

F. Divestiture-Related Developments Since the Complaint Was Filed

On April 5, 1999, Ameritech announced that it has agreed to sell 20 of its cellular telephone systems to a venture owned 97% by GTE and 7% by Georgetown Partners, for \$3.27 billion. The systems being sold, according to Ameritech, cover a population of 11.4 million, and have nearly 1.5 million subscribers.⁸ This agreement, of which the United States was notified on April 7, 1999, pursuant to Section VI.A of the proposed Final Judgment, is contingent on the closing of the merger between SBC and Ameritech. It is intended to eliminate all of the cellular overlaps alleged in the complaint and to satisfy all of the divestiture requirements of the proposed Final Judgment.⁹ Ameritech

⁸ GTE's announcement of the sale estimated that the cellular systems being transferred were slightly larger, covering a population of 12.9 million and having 1.7 million subscribers.

⁹ In addition to the 17 cellular telephone systems in Overlapping Markets that are specified in the proposed Final Judgment, Ameritech and the purchasers agreed to include in the sale three other cellular telephone systems, in parts of the Indiana 1, Illinois 4, and Illinois 7 RSAs, which have been operated in close association with the other properties being sold. The inclusion of these additional properties in the agreement also has the effect of eliminating a limited overlap between Ameritech and SBC in part of the area of the Illinois 4 RSA.

will continue to provide services to its cellular customers until the closing of the merger. Up to 1,700 Ameritech employees of the cellular systems will be transferred to GTE as a result of the sale.

The United States will evaluate this proposal for sale of the cellular systems, pursuant to Section IV and VI of the proposed Final Judgment. Under the schedule specified by Section VI, the United States' evaluation of the acceptability of this proposal is likely to be completed before the 60-day period for comments pursuant to the APPA has expired.

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 that 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 plaintiff 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 (60) 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 (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the responses of the United States will be filed with the

Court and published in the **Federal Register**.

Written comments should be submitted to: Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 8000, Washington, D.C. 20530.

The proposed Final Judgment provides, in Section XI, that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate to carry out or construe the Final Judgment, to modify any of its provisions, to enforce compliance, and to punish any violations of its provisions.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, seeking an injunction to block consummation of the merger and a full trial on the merits. The United States is satisfied, however, that the divestiture of cellular system assets and other relief contained in the proposed Final Judgment will preserve competition in the provision of wireless mobile telephone services in the Overlapping Markets. This settlement will also avoid the substantial costs and uncertainty of a full trial on the merits on the violations alleged in the complaint. Therefore, the United States believes that there is no reason under the antitrust laws to proceed with further litigation if the divestitures of the cellular system assets are carried out in the manner required by the proposed Final Judgment.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

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

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to

be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the United States Court of Appeals for the D.C. Circuit recently held, this statute permits a court to consider, 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 *United States v. Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, "[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."¹⁰ Rather,

[a]bsent 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 circumstances.

United States v. Mid-America Dairymen, Inc., 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, 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.), cert. denied, 454 U.S. 1083 (1981)); see also *Microsoft*, 56 F.3d at 1460–62. Precedent requires that

the 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

¹⁰ 119 Cong. Rec. 24598 (1973). See *United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93d Cong. 2d Sess. 8–9 (1974), reprinted in U.S.C.A.N. 6535, 6538.

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.¹¹

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[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. American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom., Maryland v. United States*, 460 U.S. 1001 (1983) (quoting *Gillett Co.*, 406 F. Supp. at 716); *United States v. Alcon Aluminum, Ltd.* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Moreover, the court's role under the Tunney Act 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. Since "[t]he 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 might have but did not pursue. *Id.*

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment. Consequently, the United States has not attached any such materials to the proposed Final Judgment.

¹¹ *Bechtel*, 648 F.2d at 666 (emphasis added); see *BNS*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (D.C. Cal. 1978); *Gillette*, 406 F. Supp. at 716. See also *Microsoft*, 56 F.3d at 1561 (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'").

Respectfully submitted.

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Dated: April 16, 1999.

Certificate of Service

I hereby certify that copies of the foregoing Competitive Impact Statement in the matter of *United States* versus *SBC Communications Inc. and Ameritech Corp.*, Civ. No. 99-0715, were served on April 16, 1999 by hand and/or first-class U.S. mail, postage prepaid, upon each of the parties listed below:

Donald L. Flexner, Esq., Crowell & Moring LLP, 1001 Pennsylvania Avenue, NW, Washington, DC 20004-2595, Counsel for SBC Communications Inc.

Richard Favretto, Mayer, Brown, & Platt, 1909 K Street, NW, Washington, DC 20006-1101, Counsel for Ameritech Corporation.

Carl Willner,

Counsel for Plaintiff.

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BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 21, 1999, Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St.

Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine Hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Opium granulated (9640)	II
Levo-alphaacetylmethadol (9648)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the controlled substances for distribution as bulk products to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 28, 1999.

Dated: April 16, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

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