IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
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and

Civil No.

Case: 1:08-cv-01878
Assigned To : Sullivan, Emmet G.
Assign. Date : 10/30/2008
Description: Antitrust

STATE OF SOUTH DAKOTA,)
Office of the Attorney General)
1302 E. Highway 14, Suite 1)
Pierre, South Dakota 57501-8501,)
)
Plaintiffs,)
)
v.)
)
VERIZON COMMUNICATIONS INC.)
140 West Street)
New York, New York 10007)
)
and)
)
ALLTEL CORPORATION)
One Allied Drive)
Little Rock, Arkansas 72202)
)
Defendants.)
)

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, the State of Alabama, by its Attorney General Troy King, the State of California, by its Attorney General Edmund G. Brown Jr., the State of Iowa, by its Attorney General Thomas J. Miller, the State of Kansas, by its Attorney General Steve Six, the State of Minnesota, by its Attorney General Lori Swanson, the State of North Dakota, by its Attorney General Wayne Stenehjem, and the State of South Dakota, by its Attorney General Lawrence E. Long, bring this civil action to enjoin the merger of two mobile wireless telecommunications services providers, Verizon Communications Inc. ("Verizon") and Alltel Corporation ("Alltel"), and to obtain other relief as appropriate. Plaintiffs allege as follows:

1. Verizon entered into an agreement to acquire Alltel, dated June 5, 2008, under which the two companies would combine their mobile wireless telecommunications services businesses ("Transaction Agreement"). Plaintiffs seek to enjoin this transaction because it likely will substantially lessen competition to provide mobile wireless telecommunications services in 94 geographic markets where Verizon and Alltel are among the most significant competitors.

2. Verizon's mobile wireless telecommunications services network covers 263 million people in 49 states and serves in excess of 70 million subscribers. Alltel provides mobile wireless telecommunications services in 35 states and serves approximately 13 million subscribers. The combination of Verizon and Alltel likely will substantially lessen competition for mobile wireless telecommunications services throughout North and South Dakota, and geographic areas in Alabama, Arizona, California, Colorado, Georgia, Idaho, Illinois, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, South Carolina, Utah, Virginia and Wyoming, where both Verizon and Alltel currently operate. As a result of the proposed acquisition, residents of these areas will likely face increased prices, diminished quality or quantity of services, and less investment in network improvements for these services.

I. JURISDICTION AND VENUE

3. This Complaint is filed by the United States under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. Plaintiffs Alabama, California, Iowa, Kansas, Minnesota, North Dakota, South Dakota by and through their respective Attorneys General, bring this action in their respective sovereign capacity and as parens patriae on behalf of the citizens, general

welfare, and economy of their respective States under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

4. Verizon and Alltel are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has jurisdiction over this action pursuant to Sections 15 and 16 of the Clayton Act, 15 U.S.C. §§ 25 and 26, and 28 U.S.C. §§ 1331 and 1337.

5. The defendants have consented to personal jurisdiction and venue in this judicial district.

II. THE DEFENDANTS AND THE TRANSACTION

6. Verizon, with headquarters in New York, is a corporation organized and existing under the laws of the State of Delaware. Verizon is one of the world's largest providers of communications services. Verizon is the second largest mobile wireless telecommunications services provider in the United States as measured by subscribers, provides mobile wireless telecommunications services in 49 states, and serves in excess of 70 million subscribers. In 2007, Verizon earned mobile wireless telecommunications services revenues of approximately $43 billion.

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

8. Pursuant to the Transaction Agreement, Verizon will acquire Alltel for approximately $28 billion. If this transaction is consummated, Verizon and Alltel combined would have approximately 83 million subscribers in the United States, with over $51 billion in mobile wireless telecommunications services revenues.

III. TRADE AND COMMERCE

A. Nature of Trade and Commerce

9. Mobile wireless telecommunications services allow customers to make and receive telephone calls and obtain data services using radio transmissions without being confined to a small area during the call or data session, and without the need for unobstructed line-of-sight to the radio tower. Mobility is highly valued by customers, as demonstrated by the more than 262 million people in the United States who own mobile wireless telephones. In 2007, revenues from the sale of mobile wireless telecommunications services in the United States were over $138 billion. To meet this desire for mobility, mobile wireless telecommunications services providers must deploy extensive networks of switches, radio transmitters, and receivers and interconnect their networks with the networks of wireline carriers and other mobile wireless telecommunications services providers.

10. In the early to mid-1980s, the FCC issued two cellular licenses (A-block and B-block) in each Metropolitan Statistical Area ("MSA") and Rural Service Area ("RSA") (collectively, "Cellular Market Areas" or "CMAs"), for a total of 734 CMAs covering the entire United States. Each license consists of 25 MHz of spectrum in the 800 MHz band. The first mobile wireless voice systems using this cellular spectrum were based on analog technology, now referred to as first-generation or "1G" technology.

11. In 1995, the FCC licensed additional spectrum for the provision of Personal Communications Services ("PCS"), a category of services that includes mobile wireless telecommunications services comparable to those offered by cellular licensees. These licenses are in the 1900 MHz band and are divided into six blocks: A, B, and C, which consist of 30 MHz each; and D, E, and F, which consist of 10 MHz each. Geographically, the A and B-block 30 MHz licenses are issued by Major Trading Areas ("MTAs"). C, D, E, and F-block licenses are issued by Basic Trading Areas ("BTAs"), several of which comprise each MTA. MTAs and BTAs do not generally correspond to MSAs and RSAs.

12. With the introduction of the PCS licenses, both cellular and PCS licensees began offering digital services, thereby increasing network capacity, shrinking the size of handsets, and extending handset battery life. In addition, in 1996, a specialized mobile radio ("SMR" or "dispatch") spectrum licensee, began using SMR spectrum to offer mobile wireless telecommunications services comparable to those offered by other mobile wireless telecommunications services providers, in conjunction with its dispatch, or "push-to-talk," service. Although there are a number of providers holding spectrum licenses in each area of the country, not all providers have fully built out their networks throughout each license area. In particular, because of the characteristics of PCS spectrum, providers holding this type of spectrum generally have found it less attractive to build out in rural areas.

13. Today, more than 95 percent of the total U.S. population lives in counties where three or more mobile wireless telecommunications services operators offer service. Nearly all mobile wireless voice services have migrated to the second-generation, or "2G" digital technologies, using GSM (global standard for mobility) or CDMA (code division multiple

access). Even more advanced technologies ("2.5G" and "3G"), based on the earlier 2G technologies, have been deployed for mobile wireless data services.

B. Relevant Product Market

14. Mobile wireless telecommunications services is a relevant product market. Mobile wireless telecommunications services include both voice and data services provided over a radio network and allow customers to maintain their telephone calls or data sessions without wires when traveling. There are no cost-effective alternatives to mobile wireless telecommunications services. Because fixed wireless services are not mobile, they are not regarded by consumers of mobile wireless telecommunications services to be a reasonable substitute for those services. It is unlikely that a sufficient number of customers would switch away from mobile wireless telecommunications services to make a small but significant price increase in those services unprofitable. Mobile wireless telecommunications services accordingly is a relevant product market under Section 7 of the Clayton Act, 15 U.S.C. § 18.

C. Relevant Geographic Markets

15. The United States comprises numerous local geographic markets for mobile wireless telecommunications services. A large majority of customers use mobile wireless telecommunications services in close proximity to their workplaces and homes. Thus, customers purchasing mobile wireless telecommunications services choose among mobile wireless telecommunications services providers that offer services where they live, work, and travel on a regular basis. The geographic areas in which the FCC has licensed mobile wireless telecommunications services providers often represent the core of the business and social sphere within which customers have the same competitive choices for mobile wireless telephone

services. The number and identity of mobile wireless telecommunications services providers varies among geographic areas, as does the quality of services and breadth of geographic coverage offered by providers. Some mobile wireless telecommunications services providers can and do offer different promotions, discounts, calling plans, and equipment subsidies in different geographic areas, varying the price for customers by geographic area.

16. The relevant geographic markets, under Section 7 of the Clayton Act, 15 U.S.C. §18, where the transaction would substantially lessen competition for mobile wireless telecommunications services are effectively represented by the 94 FCC spectrum licensing areas specified in Appendix A. It is unlikely that a sufficient number of customers would switch to mobile wireless telecommunications services providers who do not offer services in these geographic areas to make a small but significant price increase in the relevant geographic markets unprofitable.

D. Anticompetitive Effects

1. Mobile Wireless Telecommunications Services

17. In each of the cellular license areas described in Appendix A, Verizon and Alltel are significant providers of mobile wireless telecommunications services (based on subscribers), and together their combined share in each area ranges from over 55% to 100%. In addition, each is the other's closest competitor for a significant set of customers.

18. The relevant geographic markets for mobile wireless services are highly concentrated. As measured by the Herfindahl-Hirschman Index ("HHI"), which is commonly employed in merger analysis and is defined and explained in Appendix B to this Complaint, concentration in these geographic areas ranges from over 2100 to more than 9100, which is well

above the 1800 threshold at which plaintiffs consider a market to be highly concentrated. After Verizon's proposed acquisition of Alltel is consummated, the HHIs in the relevant geographic areas will range from over 4000 to 10,000, with increases in the HHI as a result of the merger ranging from over 300 to over 4900, significantly beyond the thresholds at which plaintiffs consider a transaction likely to cause competitive harm.

19. Competition between Verizon and Alltel in the relevant geographic markets has resulted in lower prices and higher quality in mobile wireless telecommunications services than otherwise would have existed in these geographic markets. In these areas, consumers consider Verizon and Alltel to be particularly attractive competitors because other providers' networks often lack coverage or provide lower-quality service. In all but two of these CMAs, Verizon and Alltel each hold cellular spectrum licenses. If Verizon's proposed acquisition of Alltel is consummated, competition between Verizon and Alltel in mobile wireless telecommunications services will be eliminated in these markets and the relevant markets for mobile wireless telecommunications services will become substantially more concentrated. As a result, the loss of competition between Verizon and Alltel increases the merged firm's incentive and ability in the relevant geographic markets to increase prices, diminish the quality or quantity of services provided, and refrain from or delay making investments in network improvements.

2. Entry

20. Entry by a new mobile wireless services provider in the relevant geographic markets would be difficult, time-consuming, and expensive, requiring spectrum licenses and the build out of a network. Therefore, any entry in response to a small but significant price increase for mobile wireless telecommunications services by the merged firm in the relevant geographic

markets would not be timely, likely, or sufficient to thwart the competitive harm resulting from Verizon's proposed acquisition of Alltel, if it were consummated.

IV. VIOLATION ALLEGED

21. The effect of Verizon's proposed acquisition of Alltel, if it were to be consummated, may be substantially to lessen competition in interstate trade and commerce in the relevant geographic markets for mobile wireless telecommunications services, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

22. Unless restrained, the transaction will likely have the following effects in mobile wireless telecommunications services in the relevant geographic markets, among others:

a. actual and potential competition between Verizon and Alltel will be eliminated;

b. competition in general will be lessened substantially;

c. prices are likely to increase;

d the quality and quantity of services are likely to decrease; and

e. incentives to improve wireless networks will be reduced.

V. REQUESTED RELIEF

The plaintiffs request:

23. That Verizon's proposed acquisition of Alltel be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

24. That defendants be permanently enjoined from and restrained from carrying out the Agreement and Plan of Merger dated June 5, 2008, or from entering into or carrying out any

agreement, understanding, or plan, the effect of which would be to bring the wireless services businesses of Verizon and Alltel under common ownership or control;

25. That plaintiffs be awarded their costs of this action; and

26. That plaintiffs have such other relief as the Court may deem just and proper.

Dated: October 30, 2008

Respectfully Submitted,

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APPENDIX A

(1) Lima OH MSA (CMA 158);
(2) Hickory NC MSA (CMA 166);
(3) Fargo-Moorhead ND-MN MSA (CMA 221);
(4) Mansfield OH MSA (CMA 231);
(5) Dothan AL MSA (CMA 246);
(6) Sioux City IA-NE MSA (CMA 253);
(7) Albany GA MSA (CMA 261);
(8) Danville VA MSA (CMA 262);
(9) Sioux Falls SD MSA (CMA 267);
(10) Billings MT MSA (CMA 268);
(11) Grand Forks ND-MN MSA (CMA 276);
(12) Rapid City SD MSA (CMA 289);
(13) Great Falls MT MSA (CMA 297);
(14) Bismarck ND MSA (CMA 298);
(15) Casper WY MSA (CMA 299);
(16) AL RSA 7 (CMA 313);
(17) AZ RSA 5 (CMA 322);
(18) CA RSA 6 (CMA 341);
(19) CO RSA 4 (CMA 351);
(20) CO RSA 5 (CMA 352);
(21) CO RSA 6 (CMA 353);
(22) CO RSA 7 (CMA 354);
(23) CO RSA 8 (CMA 355);
(24) CO RSA 9 (CMA 356);
(25) GA RSA 6 (CMA 376);
(26) GA RSA 7 (CMA 377);
(27) GA RSA 8 (CMA 378);
(28) GA RSA 9 (CMA 379);
(29) GA RSA 10 (CMA 380);
(30) GA RSA 12 (CMA 382);
(31) GA RSA 13 (CMA 383);
(32) ID RSA 2 (CMA 389);
(33) ID RSA 3 (CMA 390);
(34) IL RSA 8 (CMA 401);
(35) IL RSA 9 (CMA 402);
(36) IA RSA 8 (CMA 419);
(37) KS RSA 1 (CMA 428);
(38) KS RSA 2 (CMA 429);
(39) KS RSA 6 (CMA 433);
(40) KS RSA 7 (CMA 434);
(41) KS RSA 11 (CMA 438);

(42) KS RSA 12 (CMA 439);
(43) KS RSA 13 (CMA 440);
(44) MN RSA 1 (CMA 482);
(45) MN RSA 2 (CMA 483);
(46) MN RSA 7 (CMA 488);
(47) MT RSA 1 (CMA 523);
(48) MT RSA 2 (CMA 524);
(49) MT RSA 4 (CMA 526);
(50) MT RSA 5 (CMA 527);
(51) MT RSA 6 (CMA 528);
(52) MT RSA 7 (CMA 529);
(53) MT RSA 8 (CMA 530);
(54) MT RSA 9 (CMA 531);
(55) MT RSA 10 (CMA 532);
(56) NE RSA 5 (CMA 537);
(57) NV RSA 2 (CMA 544);
(58) NV RSA 5 (CMA 547);
(59) NM RSA 1 (CMA 553);
(60) NM RSA 5 (CMA 557);
(61) NM RSA 6 (CMA 558);
(62) NC RSA 2 (CMA 566);
(63) NC RSA 5 (CMA 569);
(64) ND RSA 1 (CMA 580);
(65) ND RSA 2 (CMA 581);
(66) ND RSA 3 (CMA 582);
(67) ND RSA 4 (CMA 583);
(68) ND RSA 5 (CMA 584);
(69) OH RSA 2 (CMA 586);
(70) OH RSA 5 (CMA 589);
(71) OH RSA 6 (CMA 590);
(72) SC RSA 1 (CMA 625);
(73) SC RSA 2 (CMA 626);
(74) SC RSA 3 (CMA 627);
(75) SC RSA 7 (CMA 631);
(76) SD RSA 1 (CMA 634);
(77) SD RSA 2 (CMA 635);
(78) SD RSA 3 (CMA 636);
(79) SD RSA 4 (CMA 637);
(80) SD RSA 5 (CMA 638);
(81) SD RSA 6 (CMA 639);
(82) SD RSA 7 (CMA 640);
(83) SD RSA 8 (CMA 641);
(84) SD RSA 9 (CMA 642);

(85) UT RSA 3 (CMA 675);
(86) UT RSA 4 (CMA 676);
(87) UT RSA 5 (CMA 677);
(88) UT RSA 6 (CMA 678);
(89) VA RSA 1 (CMA 681);
(90) VA RSA 8 (CMA 688);
(91) WY RSA 1 (CMA 718);
(92) WY RSA 2 (CMA 719);
(93) WY RSA 4 (CMA 721);
(94) WY RSA 5 (CMA 722).

APPENDIX B

Herfindahl-Hirschman Index

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). (Note: Throughout the Complaint, market share percentages have been rounded to the nearest whole number, but HHIs have been estimated using unrounded percentages in order to accurately reflect the concentration of the various markets.) The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* ¶ 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id.*