

UTAH CADASTRAL FIELD NOTES AND SURVEY PLATS—Continued

Number	Group	Township	Meridian	Approved
[23]	[858]	[T13S R01W]	[SLM]	[97-09-11]
[24]	[860]	[T14S R01W]	[SLM]	[98-03-18]
[25]	[870]	[T41S R11W]	[SLM]	[97-11-07]
[26]	[875]	[T20S R25E]	[SLM]	[98-03-18]
[27]	[876]	[T43S R15W]	[SLM]	[98-03-18]
[28]	[877]	[T41S R13W]	[SLM]	[98-02-02]

AMENDED PROTRACTION DIAGRAMS

Number	Group	Township	Meridian	Approved
[29]	[P001]	[TOWNSHIP]	[INDEX]	[97-10-30]
[30]	[P002]	[T01N R20E]	[SLM]	[97-10-30]
[31]	[P003]	[T01S R20E]	[SLM]	[97-10-30]
[32]	[P004]	[T02S R20E]	[SLM]	[97-10-30]
[33]	[P005]	[T01N R21E]	[SLM]	[97-10-30]
[34]	[P006]	[T02N R21E]	[SLM]	[97-10-30]
[35]	[P007]	[TOWNSHIP]	[INDEX]	[97-10-30]
[36]	[P008]	[T01S R10E]	[SLM]	[97-10-30]
[37]	[P009]	[T01N R11E]	[SLM]	[97-10-30]
[38]	[P010]	[T01S R11E]	[SLM]	[97-10-30]
[39]	[P011]	[T01N R12E]	[SLM]	[97-10-30]
[40]	[P012]	[T01S R12E]	[SLM]	[97-10-30]
[41]	[P013]	[T01N R13E]	[SLM]	[97-10-30]
[42]	[P014]	[T01S R13E]	[SLM]	[97-10-30]
[43]	[P015]	[T01N R14E]	[SLM]	[97-10-30]
[44]	[P016]	[T02N R14E]	[SLM]	[97-10-30]
[45]	[P017]	[TOWNSHIP]	[INDEX]	[97-10-30]
[46]	[P018]	[T01N R15E]	[SLM]	[97-10-30]
[47]	[P019]	[T02N R15E]	[SLM]	[97-10-30]
[48]	[P020]	[T01N R16E]	[SLM]	[97-10-30]
[49]	[P021]	[T02N R16E]	[SLM]	[97-10-30]

UTAH CADASTRAL FIELD NOTES AND SURVEY PLATS

Number	Group	Township	Meridian	Approved
[50]	[P022]	[T01N R17E]	[SLM]	[97-10-30]
[51]	[P023]	[T02N R17E]	[SLM]	[97-10-30]
[52]	[P024]	[T01N R18E]	[SLM]	[97-10-30]
[53]	[P025]	[T02N R18E]	[SLM]	[97-10-30]
[54]	[P026]	[T01S R18E]	[SLM]	[97-10-30]
[55]	[P027]	[T02S R18E]	[SLM]	[97-10-30]
[56]	[P028]	[T03S R18E]	[SLM]	[97-10-30]
[57]	[P029]	[T01N R19E]	[SLM]	[97-10-30]
[58]	[P030]	[T01S R19E]	[SLM]	[97-10-30]
[59]	[P031]	[T02S R19E]	[SLM]	[97-10-30]

Dated: March 12, 1999.

Roger Zortman,

Deputy State Director, Operations.

[FR Doc. 99-6733 Filed 3-18-99; 8:45 am]

BILLING CODE 4310-D9-M

DEPARTMENT OF JUSTICE

Antitrust Division

Public Comments and Plaintiff's Responses; *United States v. Mercury PCS II, L.L.C.*

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), that a public

comment and plaintiff's response thereto has been filed with the United States District Court for the District of Columbia in *United States v. Mercury PCS II, L.L.C.*, Civil Case No. 98-2751 (PLF).

On November 10, 1998, the United States filed a civil antitrust complaint alleging that Mercury PCS II, L.L.C. ("Mercury") violated Section 1 of the Sherman Act, 15 U.S.C. 1. In its complaint, the plaintiff alleged that the defendant used coded bids during a Federal Communications Commission auction of radio spectrum licenses for personal communication services. The complaint further alleges that, through the use of these coded bids, the

defendant reached an agreement to stop bidding against another bidder in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed the same time as the Complaint, prohibits Mercury from entering into anticompetitive agreements and from using coded bids in future FCC auctions.

Public comment was invited within the statutory sixty-day comment period. One comment was received, and the response thereto, are hereby published in the **Federal Register** and filed with the Court. Copies of the comment and the response are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh

Street, N.W., Washington, DC 20530 (telephone: (202) 514-2481) and at the office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, DC 20001. Copies of these materials may be obtained on request and payment of a copying fee.

Rebecca P. Dick,

*Director of Civil Non-Merger Enforcement
Antitrust Division.*

United States of America, Plaintiff, v.
Mercury PCS II, L.L.C., Defendant. Civil Case
No. 98-2751 (PLF).

Plaintiff's Response to Public Comment

I

Background

Pursuant to section 2(d) of the Antitrust Procedures and Penalties Act (the "APPA"), 15 U.S.C.A § 16(d), the United States files this response to the single public comment received regarding the proposed Final Judgment submitted for entry in this case.

Plaintiff filed a civil antitrust complaint on November 10, 1998, alleging that Mercury PCS II, L.L.C. ("Mercury") violated Section 1 of the Sherman Act, 15 U.S.C. 1. In its complaint, the plaintiff alleged that the defendant used coded bids during a Federal Communications Commission ("FCC") auction of radio spectrum licenses for personal communication services. The complaint further alleges that, through the use of these coded bids, the defendant reached an agreement to stop bidding against another bidder in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

The proposed Final Judgment, filed the same time as the complaint, prohibits Mercury from entering into anticompetitive agreements and from using coded bids in future FCC auctions. A competitive impact statement ("CIS") filed by the United States describes the complaint, the proposed Final Judgment, and the remedies available to private litigants who may have been injured by the alleged violation. The plaintiff and the defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA.

The APPA requires a sixty-day period of the submission of public comments on the proposed Final Judgment following publication of the proposed Final Judgment in the **Federal Register**. 15 U.S.C. 16(b). The proposed Final Judgment was published in the **Federal Register** on November 25, 1998; the comment period terminated on January 25, 1999. The United States received

only on comment, from High Plains Wireless, L.P. ("High Plains").¹

II

Response to the Public Comment

In its comment, High Plains states that the factual descriptions in the complaint and CIS do not distinguish between the conduct of Mercury and High Plains—the two parties to the alleged illegal agreement. High Plains claims it was a "victim of Mercury's scheme" and notes that High Plains notified the FCC about Mercury's use of BTA numbers in its bids for the Amarillo and Lubbock licenses shortly after it detected the message contained within Mercury's bids. High Plains requests that the plaintiff amend the complaint and CIS to reflect its role as a victim and a whistle blower. High Plains' comment does not address the adequacy of the proposed Final Judgment.

The complaint properly alleges an illegal agreement between High Plains and Mercury—indeed High Plains does not dispute the allegations that establish the agreement.² And the complaint already distinguishes in a fundamental way between Mercury and High Plains—only Mercury is named as a defendant. The complaint also reflects the different conduct engaged in by each party, it alleges that Mercury actively solicited the agreement through repeated use of BTA numbers, while High Plains eventually assented to Mercury's offer by ceasing to bid in a market Mercury wanted. That High Plains immediately complained to the FCC about Mercury's use of BTA numbers is a matter of public record.³ It is, however, irrelevant to the complaint against Mercury and for that reason was not included.

The sole concern of this Tunney Act proceeding is with the adequacy of the relief obtained to address the offense charged in the complaint. After careful consideration of the comment, the plaintiff concludes that High Plains' comment does not change its determination that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the complaint and is in the public interest. The relief

¹ The comment is attached. The United States plans to publish promptly the comment and this response in the **Federal Register**. The United States will provide the Court with a certificate of compliance with the requirements of the Tunney Act and file a motion for entry of the Final Judgment once publication takes place.

² See *United States v. Mercury PCS II, LLC* (Civil Case No. 98-2751 (PLF)), ¶¶ 19-21 (D.D.C.) (Complaint, filed November 10, 1998).

³ See, e.g., Notice of Apparent Liability for Forfeiture, FCC 97-388 (Rel. October 28, 1997).

obtained as to Mercury is fully adequate to address the complaint against that firm. The plaintiff will move the Court to enter the proposed Final Judgment after the public comment and this Response have been published in the **Federal Register**, as 15 U.S.C. § 16(d) requires.

Dated this 9th day of March, 1999.

Respectfully submitted,

Jill Ptacek,

J. Richard Doidge,

*U.S. Department of Justice, Antitrust Division,
325 7th Street, NW, Suite 500, Washington,
D.C. 20530, (202) 307-6607.*

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Plaintiff's Response to Public Comments, as well as the attached copy of the public comment received from Jonathan P. Graham on behalf of High Plains Wireless, L.P., to be served on counsel for the defendant by first class mail, postage prepaid, as the addresses set forth below.

Charles A. James, Esq.,

*Jones, Day, Reavis & Pogue, Metropolitan
Square, 1450 G Street, N.W., Washington, D.C.
20005.*

Dated: March 9, 1999.

Jill Ptacek

Williams & Connolly

*725 Twelfth Street, N.W., Washington, D.C.
20005-5901, (202) 434-5000, FAX (202) 434-
5029*

January 25, 1999.

By Hand

Mr. Roger W. Fones,

*Chief, Transportation Energy and Agriculture
Section, Antitrust Division, 325 Seventh
Street, N.W., Suite 500, Washington, D.C.
20530.*

Dear Mr. Fones: We represent High Plains Wireless, L.P. ("High Plains"). Enclosed, pursuant to the Tunney Act, 15 U.S.C. § 16(b)-(h), please find the Comments of High Plains in connection with the antitrust complaint and competitive impact statement filed in *United States v. Mercury PCS II, L.L.C.*, CA No. 1:98CV02751 (D.D.C.).

If you require any further information or have any questions, please write or call me at the address and number listed above.

Very truly yours,

Jonathan P. Graham

Comments of High Plains Wireless, L.P. on the Proposed Final Judgment in United States v. Mercury PCS II, L.L.C., CA No. 1:98CV02751

High Plains Wireless, L.P. ("High Plains") is a victim of the conduct engaged in by Mercury PCS II, L.L.C. ("Mercury") in *United States v. Mercury PCS II, L.L.C.*, CA No. 1:98CV02751 (D.D.C.). Because the Complaint and

Competitive Impact Statement do not provide all of the background facts necessary to understand High Plains' role in the matter and may harm High Plains by incorrectly suggesting that it willingly participated in an agreement to violate the antitrust laws, High Plains is making this Tunney Act submission. See 15 U.S.C. § 16(b)–(h). High Plains respectfully requests that the Department amend its Complaint, and make corresponding modifications in its Competitive Impact Statement, to reflect accurately High Plains' role in this matter.

High Plains is concerned that the Complaint and the Competitive Impact Statement filed by the Department of Justice neglect to explain fully the relevant circumstances. The Complaint alleges that Mercury and High Plains reached an agreement to refrain from bidding against one another for PCS licenses in certain markets in violation of Section 1 of the Sherman Act. See Complaint ¶¶ 3, 19, 20, 21. Similarly, the Competitive Impact Statement filed with the Court alleges that High Plains reached an agreement with Mercury to cease bidding on particular PCS licenses. See Competitive Impact Statement at 1–2, 6–8. Although it is accurate that Mercury threatened, through bid-signaling, to outbid High Plains for the Amarillo F block license, and that in order to confirm Mercury's intention, High Plains ceased bidding on the Lubbock F block license, the Complaint and Competitive Impact Statement fail to explain that High Plains (1) was the object of Mercury's improper conduct, (2) immediately reported Mercury's wrongdoing to the FCC, and (3) did not benefit from Mercury's misconduct. The Complaint and Competitive Impact Statement thus incorrectly suggest that High Plains was a willing participant in a violation of the antitrust laws of the United States.

Relevant Facts

From August 26, 1996 to January 14, 1997, both Mercury and High Plains participated in an auction conducted by the Federal Communications Commission ("FCC") of licenses to use certain broadband radio spectrum in the operation of personal communications services ("PCS"). The auction comprised numerous rounds of bidding. As stated in the Competitive Impact Statement, High Plains had been the high bidder for the Amarillo F Block license since Round 68 and continuing through round 120. High Plains was also bidding for the Lubbock F block license. Mercury, on the other hand, had shown no interest in the Amarillo market, but

was an active participant in the bidding for the Lubbock F block license.

In round 117 of the auction, when only Mercury and High Plains were bidding, Mercury made the last three digits of its bid match the "BTA code" assigned to the Amarillo market ("013"), for which High Plains was then the high bidder. High Plains did not then understand that there was any connection between the Amarillo market and Mercury's bid amount for the Lubbock market containing the BTA code for Amarillo. High Plains continued bidding for the Lubbock F block license over the next three rounds. In round 121, Mercury for the first time placed a bid for the Amarillo F block license; its bid ended in the three digits that served as the BTA code for the Lubbock market ("264"). Still not understanding Mercury's intent, High Plains continued to bid for the Lubbock F block license. Mercury responded by making the message clearer—it placed bids ending in "013" in the Lubbock market in round 123, "264" in the Amarillo market in round 125, and "013" in the Lubbock market in round 127.

After the conclusion of round 127, High Plains realized that Mercury was signalling High Plains to stop its bidding in Lubbock. In order to test its theory that Mercury was signaling it through the use of BTA code numbers, High Plains stopped bidding for the F block license in Lubbock. The theory was confirmed when Mercury immediately ceased bidding for the F block license in Amarillo. As soon as High Plains' fears were confirmed, it immediately contacted the FCC by telephone on November 22 and 25, 1996 and followed up on November 26, 1996 by filing an Emergency Motion for Disqualification. That notification led to an investigation of Mercury's conduct by the FCC and to the FCC's referral of the matter to the Department of Justice.

Summary and Request for Amendment

In light of this history, we believe it is both inaccurate and unfair to describe the conduct of High Plains as if that conduct were no different than that of Mercury. High Plains respectfully requests that the Complaint and Competitive Impact Statement be amended to reflect that the conduct and actions of Mercury and High Plains were significantly different. High Plains was the party that first brought this matter to the attention of the FCC. Because High Plains promptly reported and later filed a formal complaint with the FCC identifying the illegal conduct of Mercury, Mercury's misconduct was exposed. If the only facts about High

Plains were those alleged in the Complaint, then presumably the United States would have pursued the same judicial course of action against High Plains that it followed against Mercury. Unfortunately, the *only* facts in the record are those alleged in the complaint; High Plains, the good citizen that observed and reported the crime, is condemned by association.

Having observed what it believed to be a violation of the FCC's rules and an apparent violation of Section 1 of the Sherman Act, High Plains was in the difficult position of no longer being completely free to pursue its own best interests and High Plains could not just ignore Mercury's misconduct. High Plains immediately reported Mercury's conduct to the FAA—the only thing it could have done in the circumstances to bring the improper conduct to a halt and to avoid being wrongly implicated in Mercury's scheme. Thus, we respectfully request that the Complaint and Competitive Impact Statement be amended to reflect that High Plains was a victim of Mercury's scheme, that High Plains promptly brought the scheme to the attention of the proper authorities, and that High Plains did not willingly participate in any agreement that violated the antitrust laws.

Respectfully submitted,
Williams & Connolly

Steven R. Kuney
Jonathan P. Graham
[FR Doc. 99–6677 Filed 3–18–99; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Atlantic Richfield Company ("ARCO"): LPG Blends Evaluation Test Program

Notice is hereby given that, on January 15, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Atlantic Richfield Company ("ARCO"): LPG Blends Evaluation Test has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to