Commc'ns, 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have great flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel, & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. Id. at 145 9–60. As this Court recently confirmed in SBC Communications, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction ''[nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what the Congress that enacted the Tunney Act in 1974 intended, as Senator Tunney then explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[9]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by plaintiff United States in formulating the proposed Final Judgment.

Dated: October 30, 2008

Respectfully submitted,

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[9] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am Dairymen, Inc.,* 1977–1 Trade Cas. (CCII) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Bell Atlantic Corporation; Proposed Modification of Final Judgment

Notice is hereby given that a Motion to Modify the Final Judgment, Stipulation, and Memorandum in Support of the Motion to Modify the Final Judgment, have been filed with the United States District Court for the District of Columbia in *United States* v. *Bell Atlantic Corporation,* Civil No. 1 :99CV0 1119. On May 7, 1999, the United States filed a Complaint (and a Supplemental Complaint on December 6, 1999) alleging that the proposed merger between Bell Atlantic Corporation and GTE Corporation (the merged firm known as ''Verizon Communications Inc.'') and the proposed joint venture between Bell Atlantic and Vodafone AirTouch Plc (the joint venture now known as ''Verizon Wireless'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in wireless mobile telephone service in certain areas of Alabama, Arizona, California, Florida, Idaho, Illinois, Indiana, Montana, New Mexico, Ohio, South Carolina, Texas, Virginia, Washington, and Wisconsin.

The Final Judgment, entered on April 18, 2000, required the defendants to divest certain mobile wireless telecommunications services businesses. Divestitures were made to Ailtel in 25 Cellular Market Areas (''CMAs''). The modification would allow the defendants to reacquire the divested wireless system assets in 22 of those CMAs—Cleveland MSA (CMA 16), Tampa MSA (CMA 22), Phoenix MSA (CMA 26), Akron MSA (CMA 52), Greenville SC MSA (CMA 67), Tucson MSA (CMA 77), El Paso TX MSA (CMA 81), Mobile MSA (CMA 83), Albuquerque MSA (CMA 86), Canton MSA (CMA 87), Lakeland MSA (CMA 114), Pensacola MSA (CMA 127), Lorain MSA (CMA 136), Ft. Myers MSA (CMA 164), Sarasota MSA (CMA 167), Bradenton MSA (CMA 211), AZ RSA 2 (CMA 319), FL RSA 1 (CMA 360), FL RSA 2 (CMA 361), FL RSA 3 (CMA 362), FL RSA 4 (CMA 363), and FL RSA 11 (CMA 370). The modification would allow the defendants to reacquire three additional CMAs—Anderson SC MSA (CMA 227), Las Cruces NM MSA (CMA 285) and OH RSA 3 (CMA 587)—only until the assets are divested according to terms specified in the Modified Final Judgment.

Copies of the Motion to Modify the Final Judgment, Stipulation, Memorandum in Support of the Motion to Modify the Final Judgment, and all other papers with the Court in connection with the motion are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (202–514–2481), on the Department of Justice Web site (*http://www.usdoj.gov/atr*), 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 from the Antitrust Division upon request and payment of the copying fee set by Department of Justice Regulations. Public comment is invited within 30 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Nancy Goodman, Chief, Telecommunications & Media Enforcement Section, Antitrust Division, U.S. Department of Justice, City Center Building, 1401 H Street, NW., Suite 8000, Washington, DC 20530 (202–514–5621).

J. Robert Kramer II,

Director of Operations, Antitrust Division.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–307F]

Controlled Substances: Final Revised Aggregate Production Quotas for 2008

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of final aggregate production quotas for 2008.

SUMMARY: This notice establishes final 2008 aggregate production quotas for controlled substances in schedules I and II of the Controlled Substances Act (CSA). The DEA has taken into consideration comments received in response to a notice of the proposed revised aggregate production quotas for 2008 published July 1, 2008 (73 FR 37496).

DATES: *Effective Date:* November 12, 2008.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, *Telephone:* (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in schedules I and II. This responsibility has been delegated to the Administrator of the DEA by 28 CFR 0.100. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant 28 CFR 0.104.

The 2008 aggregate production quotas represent those quantities of controlled substances in schedules I and II that may be produced in the United States in 2008 to provide adequate supplies of each substance for: the estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks (21 U.S.C. 826(a) and 21 CFR 1303.11). These quotas do not include imports of controlled substances.

On July 1, 2008, a notice of the proposed revised 2008 aggregate production quotas for certain controlled substances in schedules I and II was published in the **Federal Register** (73 FR 37496). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before July 31, 2008.

Five companies commented on a total of 25 schedules I and II controlled substances within the published comment period. One additional comment was received after the comment period ended and therefore was not considered. Five companies proposed that the aggregate production quotas for amphetamine (for sale), codeine (for sale), codeine (for conversion), dextropropoxyphene, dihydromorphine, diphenoxylate, fentanyl, gamma-hydroxybutyric acid, hydrocodone (for sale), hydromorphone, methadone, methadone intermediate, morphine (for sale), morphine (for conversion), nabilone, noroxymorphone (for conversion), opium, oripavine, oxycodone (for sale), oxycodone (for conversion), oxymorphone (for sale), oxymorphone (for conversion), sufentanil, tetrahydrocannabinols, and thebaine were insufficient to provide for the estimated medical, scientific, research, and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

DEA has taken into consideration the above comments along with the relevant 2007 year-end inventories, initial 2008 manufacturing quotas, 2008 export requirements, actual and projected 2008 sales, research, product development requirements and additional applications received. Based on this information, the DEA has adjusted the final 2008 aggregate production quotas for codeine (for conversion), diphenoxylate, heroin, hydrocodone (for sale), morphine (for conversion), nabilone, noroxymorphone (for conversion), oxymorphone (for conversion), phenazocine, and phenylacetone to meet the legitimate needs of the United States.

Regarding amphetamine (for sale), codeine (for sale), dextropropoxyphene, dihydromorphine, fentanyl, gamma-hydroxybutyric acid, hydromorphone, methadone, methadone intermediate, morphine (for sale), opium, oripavine, oxycodone (for sale), oxycodone (for conversion), oxymorphone (for sale), sufentanil, tetrahydrocannabinols, and thebaine, the DEA has determined that the proposed revised 2008 aggregate production quotas are sufficient to meet the current 2008 estimated medical, scientific, research, and industrial needs of the United States and to provide for adequate inventories.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA (21 U.S.C. 826), and delegated to the Administrator of the DEA by 28 CFR 0.100, and redelegated to the Deputy Administrator, pursuant to 28 CFR 0.104, the Deputy Administrator hereby orders that the 2008 final aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class—Schedule I	Final revised 2008 quotas (grams)
2,5-Dimethoxyamphetamine	2
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7)	10
3-Methylfentanyl	2
3-Methylthiofentanyl	2