IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
Plaintiff,	)	Case No. 1:94CV02331 (TFH)
v.	)	
MOTOROLA, INC. and NEXTEL COMMUNICATIONS, INC.	)	
Defendants.	)	

PLAINTIFF UNITED STATES' MEMORANDUM IN OPPOSITION TO MOTION OF GEOTEK CREDITORS TO INTERVENE OR IN THE ALTERNATIVE FOR LEAVE TO PARTICIPATE AS *AMICI CURIAE*

The United States hereby opposes the Motion to Intervene or In the Alternative For Leave to Participate as *Amici Curiae* pursuant to 15 U.S.C. § 16 and Federal Rule of Civil Procedure 24, filed jointly by the Wilmington Trust Company and Hughes Network Systems (collectively, the "Geotek Creditors" or "creditors"), insofar as the creditors seek intervention.[1]

[1] The United States previously stated that it had no objection to the creditors' Motion for Leave to File *Amicus Curiae* Brief in Support of Defendant Nextel Communications, Inc.'s Motion to Vacate Consent Decree, and therefore does not oppose the instant motion to the extent they request *amici* status. Of course, the creditors need not have such status in order to comment to the Court.

After months of intense litigation in this matter, the United States and Nextel Communications, Inc. ("Nextel") recently reached a settlement on proposed modifications to the consent decree found to be in the public interest and entered by this Court in 1995. Among other things, the decree barred Nextel from purchasing certain licenses for 900 MHz spectrum in order to promote the public interest in competition. The proposed provision to which the creditors object continues that restriction. Wishing now to consummate a long-prohibited anticompetitive transaction, and asserting merely their own narrow financial interest, the creditors seek to intervene in order to frustrate the modification and complete a deal that Nextel itself has agreed to forego. Because their intervention would not assist the determination of whether relaxation of decree restrictions is in the public interest, the Court should deny intervention.

SUMMARY OF ARGUMENT

The creditors do not satisfy the standards set by Federal Rule of Civil Procedure 24 for intervention of right or for permissive intervention. Although claiming the right to intervene, the creditors merely assert their private financial interest in maximizing the sale price of Geotek's assets -- an interest legally unprotected in this proceeding. Second, the creditors advance no interest that will be impaired, since the proposed modification provision to which they object is but a continuation of the procompetitive restriction established in the decree. Finally, to the extent that the creditors claim a public interest in the proposed modification, they are well-represented by the United States; if they seek intervention to advance that interest, they impermissibly encroach on the government's exclusive role in protecting the public interest in

competition and ignore the procedurally satisfactory route of comment to the Court. Intervention of right should thus be denied.

Nor should the creditors be permitted to intervene pursuant to Rule 24(b). As a threshold matter, they do not advert to, let alone fulfill, the required showing that the government acted in bad faith or with neglect in advocating the public interest. The creditors also fail to explain why comment to the Court is inadequate to allow their contribution of affidavits, documents, and the like. Further, the extensive discovery necessary to flesh out their claims will unduly delay this proceeding. Finally, because the creditors would appeal only to vindicate an extraneous private interest, the Court should not permit intervention.

ARGUMENT

I. THE GEOTEK CREDITORS HAVE NO RIGHT TO INTERVENE IN THIS PUBLIC INTEREST PROCEEDING

Before the proposed decree modification agreed to by the United States and Nextel can take effect, this Court must determine whether easing certain decree restrictions is consistent with the public interest in competition. See United States v. Western Elec. Co., 993 F.2d 1572, 1576 (D.C. Cir. 1993) (footnote omitted) ("[T]he 'public interest test,' as applied to a modification assented to by all parties to a decree, 'directs the district court to approve an uncontested modification so long as the resulting array of rights and obligations is within the zone of settlements consonant with the public interest today.'") (quoting United States v. Western Elec. Co., 900 F.2d 283, 307 (D.C. Cir. 1990) ("Triennial Review Opinion")).[2]

[2] The Western Electric standard is similar to that applied to the initial entry of a proposed decree under the Tunney Act. See 15 U.S.C. § 16(e) (conditioning entry of final

Assuming *arguendo* that a third party may in some circumstances have the right to intervene in a decree modification proceeding,[3] Rule 24(a)(2) does not allow intervention unless a party shows: (1) that it has a legally protected interest in the action; (2) that disposition of the action threatens to impair that interest; and (3) that no existing party to the action adequately represents the applicant's interests. See also SEC v. Prudential Sec. Inc., 136 F.3d 153, 156 (D.C. Cir. 1998). The creditors' failure to substantiate these requirements forecloses any intervention of right.

A. The Creditors' Private Financial Interest Is Not Legally Protectable in This Proceeding.

1. The creditors' private financial interest is legally irrelevant to the Court's public interest inquiry.

The creditors' own financial interest cannot justify intervention in a decree modification proceeding where the sole issue for the Court is whether the partial alteration of decree restrictions is in the public interest. The creditors assert as a justification for intervention their

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judgment on court's "determin[ation] that the entry of such judgment is in the public interest").

[3] In consensual modification proceedings, the Department of Justice has followed procedures similar to those applicable under the Tunney Act to the initial entry of a decree. In the latter context, this Court consistently has held that the Act confers no right to intervene under Rule 24(a)(1), even if a putative intervenor seeks to weigh in on the public interest. See, e.g., United States v. Thomson Corp., 1996 WL 554557, at *2 (D.D.C. Sept. 25, 1996) ("[I]t is clear from the language of the Tunney Act, its legislative history, and the case law that there is no right to intervene."); United States v. Microsoft Corp., 159 F.R.D. 318, 328 (D.D.C.) ("Intervention is not a matter of right under the Tunney Act."), rev'd on other grounds, 56 F.3d 1448 (D.C. Cir. 1995); United States v. Airline Tariff Publ'g Co., 1993 WL 95486, at *1 (D.D.C. Mar. 8, 1993) ("[T]here is no right to intervene in a Tunney Act proceeding to determine whether a proposed consent decree is in the public interest."); United States v. Western Elec. Co., 1987 WL 56667, at *1 (D.D.C. Feb. 4, 1987) ("In Tunney Act proceedings, there is no right to intervene."); United States v. AT&T, 552 F. Supp. 131, 218 (D.D.C. 1982), aff'd sub nom., Maryland v. United States, 460 U.S. 1001 (1983). Further, this Court has never found that a third party to a Tunney Act proceeding satisfied Rule 24(a)(2) criteria for intervention. This analysis suggests that no right to intervene exists here.

interest in selling Geotek's assets to the highest bidder.[4] They claim that Section IV.K. of the proposed modified decree frustrates that interest to the extent it continues the restriction against sale to Nextel. Should the Court find the proposed decree modification consonant with the public interest, however, the Court of Appeals for the District of Columbia Circuit has instructed that the Court "is not to reject [it] 'simply because a third party claims it could be better treated.'" Massachusetts School of Law at Andover v. United States, 118 F.3d 776, 780 (D.C. Cir. 1997) (quoting United States v. Microsoft, 56 F.3d 1448, 1461 n.9 (D.C. Cir. 1995)); cf. United States v. G. Heileman Brewing Co., 563 F. Supp. 642, 647 (D. Del. 1983) (emphasis added) ("[A] district court may permit third party participation in consent decree proceedings where this would assist the court in making its *public interest* determination."). This is especially the case where a third party seeks to lessen decree restrictions on a defendant to a greater extent than the defendant itself urges.[5]

It is well-established that if a transaction is harmful to competition, the courts "do not rank as a private equity meriting weight a mere expectation of private gain from a transaction . . . shown . . . likely to violate the antitrust laws." FTC v. Weyerhaeuser Co., 665 F.2d 1072, 1083 n.26 (D.C. Cir. 1981). This follows from Section 7 of the Clayton Act, 15 U.S.C. § 18, which prohibits transactions "the effect of [which] may be to substantially lessen competition . . . ." This prohibition is not qualified by any exceptions to protect the financial interests of would-be

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[4] The creditors assert that Nextel's offer to acquire these assets -- principally the 900 MHz licenses -- is worth more than the next best offer, made by a firm that would use those assets to compete against Nextel in the dispatch market.

[5] In any event, to the that extent the creditors have a private interest that affects the Court's public interest determination, they can present that interest to the Court through a comment or *amici* submission. See infra.

sellers, and any such exceptions would eviscerate the underlying purpose of the statute. Accordingly, in FTC v. Staples, Inc., this Court recognized that Office Depot shareholders "will likely lose a substantial portion of their investments if the merger is enjoined," 970 F. Supp. 1066, 1092 (D.D.C. 1997), but blocked the transaction because "[t]his private equity alone . . . does not suffice to justify denial of a preliminary injunction." Id. Similarly, in FTC v. PPG Indus., Inc., 798 F.2d 1500 (D.C. Cir. 1986), the Court of Appeals reversed the district court's decision to deny a preliminary injunction to block an acquisition challenged under the antitrust laws. The district court decided to allow the acquisition to proceed pending final adjudication, in part because no other potential acquirer had offered terms as favorable as those offered by PPG, see FTC v. PPG Indus., Inc., 628 F. Supp. 881, 886 (D.D.C. 1986), and observed that the founder of Swedlow, the company to be acquired, would "like to receive full and fair value for his stock, and to know that others who have invested with him over the years will do likewise." Id. The Court of Appeals reversed, disregarding the interests of the shareholders entirely, noting that "the record reveals several firms . . . with varying degrees of interest in acquiring Swedlow," and holding that "[t]he district court's conclusion that PPG is the only firm willing to pay Swedlow's price may be questionable; under Weyerhaeuser it is, in any event, irrelevant." 798 F.2d at 1507.[6]

[6] Ample case law confirms that private interests in this context are assigned little weight, if they are considered at all. See, e.g., Grumann Corp. v. LTV Corp., 665 F.2d 10, 15-16 (2d Cir. 1981) ("The Grumann shareholders are not entitled to a gain obtained from a sale that presents a substantial likelihood of violating § 7."); United States v. Ivaco, 704 F. Supp. 1409, 1430 (W.D. Mich. 1989) ("[P]rivate, financial harm must, however, yield to the public interest in maintaining effective competition."); United States v. Columbia Pictures Indus., Inc., 507 F. Supp. 412, 434 (S.D.N.Y. 1980) ("The public interest is not easily outweighed by private interests [and a]ny doubt concerning the necessity of safeguarding the public interest should be resolved by the granting of a preliminary injunction." (citations omitted)); United States v.

Moreover, sellers ordinarily want to sell to the highest bidder, so the question whether a proposed acquisition violates Section 7 typically involves a proposed sale to the highest bidder. It is thus almost always the case that when a proposed acquisition is prohibited to protect competition, the seller is required to forego the highest bid and to take less instead. Thus, in preliminary injunction proceedings relating to a section 7 claim (where the court has some discretion to fashion interim relief pending final adjudication on the merits), irreparable harm to the public is presumed as a matter of law once the government establishes a reasonable probability of success on the merits, and an injunction's likely adverse effects on the interests of private parties is given virtually no weight.

Because private financial interests do not outweigh and are generally irrelevant to the public interest in competition, a third party asserting the former has no right to intervene.

2. The creditors do not assert a legally recognized "individual" injury.

Relying on an inapposite provision in the Tunney Act and dicta from a single case, the creditors argue that the Court may consider whether the proposed decree would adversely affect their financial interest, and thus that they have the right to intervene. Their reliance on each is misplaced.

First, the assertion of a statutory basis for consideration of the creditors' alleged injury lacks merit. They note correctly that in making its public interest determination, a court may

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Atlantic Richfield Co., 297 F. Supp. 1061, 1073-74 (S.D.N.Y. 1969) (potential substantial losses to stockholders "cannot be ignored" but "cannot outweigh the public interest in preventing this merger from taking effect pending trial [because] the public interest with which Congress was concerned in enacting Section 7 is paramount" (citations omitted)); United States v. Ingersoll-Rand Co., 218 F. Supp. 530, 543 (W.D. Pa. 1963) ("[T]he public interest in preserving a free-competitive economy cannot be outweighed by any private interest.").

assess "the impact of the entry of [a consent decree] upon the public generally and *individuals alleging specific injury from the violations set forth in the complaint*." 15 U.S.C. § 16(e)(2) (emphasis added). However, far from claiming injuries due to the anticompetitive transaction underlying this action (i.e., Nextel's purchase of the 900 MHz licenses, which the decree originally barred), the creditors argue that proposed Section IV.K. prevents them from consummating precisely that transaction. The creditors' "injury" is thus not one this Court may take into account. Furthermore, a third party need not intervene in order to apprise the court of alleged "specific injury"; to the extent the creditors want to argue that such interests are relevant, they may present their views in a comment or an *amicus* brief.

Furthermore, dicta from United States v. Microsoft Corp. affords the creditors no basis for intervening to urge further relaxation of the decree restriction. There, the Court of Appeals for the District of Columbia Circuit observed that "if third parties contend that they would be positively injured by the decree, a district judge might well hesitate before assuming that the decree is appropriate." 56 F.3d at 1462. The court earlier interpreted Section 16(e)(2) of the Tunney Act to allow "the district court [to] inquire into whether a decree will result in any positive injury to third parties." Id. at 1461 n.9. As with the statute, the court said nothing of intervention; to the extent that third party injury is relevant, it may be presented in comments. Additionally, the type of injury suggested in the Microsoft quote is not that which the creditors claim. The Microsoft court appears to have had in mind incidental effects of a decree when it referred to provisions that might "positively injure" third parties.[7] See id. at 1459 (noting that

[7] For a possible example of positive injury to third parties, see United States v. AT&T, 552 F. Supp. 131, 186-88, 191-94 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983). There, the district court found that several provisions of the

decree might do "*unexpected* harm" to persons other than those suffering injury from the antitrust violation (emphasis added)).

The "injury" alleged by the creditors is neither incidental nor unexpected. The assets in question were acquired by Geotek largely through the divestitures ordered by the decree. See Decree § IV.A. at *2. Moreover, Geotek's inability to sell 900 MHz spectrum to Nextel is part and parcel of the decree's principal restriction, which bars Nextel's acquisition of such spectrum.[8] See id. Geotek and its creditors thus knew years ago that competitive concerns prohibited a sale of that 900 MHz spectrum back to Nextel. The creditors' desire to consummate an acquisition prohibited by the original decree and the modification as an anticompetitive transaction makes it disingenuous for the creditors to aver the unexpected injury the Microsoft

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proposed consent decree requiring the breakup of AT&T were not in the public interest. One of those provisions would have barred the Bell Operating Companies from the highly profitable "Yellow Pages" business. Id. at 193. The court concluded that this restriction was not needed to achieve the basic competitive objectives of the decree, and that it would deprive local telephone ratepayers of a significant source of subsidies that operated to reduce local rates, a consideration that the court recognized was not "directly related to competition." Id. at 194. In that case, of course, the potential injury to third parties from the proposed decree was an injury to the public generally (local telephone ratepayers), not to the private financial interests of specific firms.

[8] Also without merit is the creditors' argument that the decree arbitrarily discriminates against the holders of the Geotek licenses. The proposed modification sets the Geotek licenses apart from others for good reason, for they have several characteristics raising unique competitive concern: (1) unlike other licenses, they are in fact for sale; and (2) they are being sold in relatively large, contiguous blocks in the decree cities, allowing reduced transactions costs. The licenses thus offer the best opportunity for a significant competitor to enter the market for trunked dispatch services; this is why the decree has for years restricted sale of the licenses to Nextel, the dominant dispatch provider. Nextel itself recognized the unique value of the Geotek licenses when it stated that "[t]he occasion of this motion [to vacate the Decree] is Nextel's limited window of opportunity to acquire a large block of 900 MHz spectrum in the bankruptcy auction." Defendant Nextel Communications, Inc.'s Memorandum of Points and Authorities in Support of Its Motion to Vacate the Consent Decree at 4 (filed Feb. 16, 1999).

court hypothesized. Any recognition of such an "injury" through intervention would improperly subordinate the public interest in competition to the creditors' private financial interest.

B. The Proposed Decree Modification Would Not Impair the Creditors' Private Financial Interest.

Assuming that the creditors' private interest in selling Geotek's assets to the highest bidder is relevant to this proceeding, their ability to protect that interest would not be impaired or impeded by entry of the proposed modification. As explained above, the creditors' assets were originally acquired by Geotek under the terms of the decree, see Decree § IV.A. at *2. Given the decree's restrictions on sale of 900 MHz spectrum back to Nextel, the creditors cannot claim that the proposed modification affects their ability to sell those assets to Nextel any more adversely than the decree does. Put another way, after this public interest proceeding, the governing regime will be either the modification or the original decree, rather than the modification or no decree.

C. The United States Well Represents the Public Interest in Competition.

It is firmly established that "[i]n federal antitrust litigation, it is the United States, not private parties, which 'must alone speak for the public interest.'" G. Heileman Brewing, 563 F. Supp. at 649, (quoting Buckeye Coal & Railway Co. v. Hocking Valley Railway Co., 269 U.S. 42, 49 (1925)). Here, if the creditors wish to present their views on why Section IV.K. of the proposed decree modification is contrary to this interest, they may comment to the Court. On the other hand, if they seek intervention to urge further removal of decree restrictions in the name of the public interest, they impermissibly arrogate for themselves the role reserved exclusively to the United States in antitrust cases. The creditors must "stand as any other member of the public. They are not entitled to intervene simply to advance their own ideas of what the public

interest requires." G. Heileman Brewing, 563 F. Supp. at 648; accord United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981). Thus, "courts have consistently denied intervention to private parties whose views about the proper terms for an antitrust settlement differed from those of the United States." G. Heileman Brewing, 563 F. Supp. at 648.

II. THE CREDITORS SHOULD NOT BE PERMITTED TO INTERVENE

The creditors assert that they should be permitted to intervene pursuant to Rule 24(b) partly because no other method of participation would allow them to offer information and highlight issues to the Court, and partly because the proposed intervention would not unduly delay the proceedings or prejudice the rights of the original parties. Neither contention is correct; moreover, the creditors ignore at the outset a requirement for this mode of intervention in the antitrust context. Finally, to the extent the creditors seek intervention solely for purposes of appeal, the Court should deny intervention.

A. The Creditors' Failure to Allege Governmental Bad Faith or Prosecutorial Neglect Bars Permissive Intervention.

As the Court of Appeals for the District of Columbia Circuit has explained, "[a] private party generally will not be permitted to intervene in government antitrust litigation absent some strong showing that the government is not vigorously and faithfully representing the public interest." Massachusetts School of Law at Andover, Inc. v. United States, 118 F.3d 776, 783 (D.C. Cir. 1997), (citing United States v. LTV Corp., 746 F.2d 51, 54 n.7 (D.C. Cir. 1984), quoting United States v. Hartford-Empire Co., 573 F.2d 1, 2 (6th Cir. 1978)); see also United States v. Thomson Corp., 1996 WL 554557, at *2 (D.D.C. Sept. 25, 1996) (same). The creditors do not allege, let alone demonstrate, bad faith or malfeasance on the government's part in

advocating the public interest. The Court would be justified denying permissive intervention on this basis alone. See, e.g., United States v. The Stroh Brewery Co., 1982 WL 1852, at *2 (D.D.C. June 8, 1982) (rejecting permissive intervention solely for movants' failure to assert bad faith, which "is required before such intervention will be permitted in an antitrust consent judgment proceeding").

B. The Creditors May Adequately Advance Their Interest(s) by Commenting to the Court.

Nothing bars the creditors from appending "memoranda and written evidence (affidavits and documents) in opposition to Section IV.K. of the proposed decree" to a comment to the Court, and nothing suggests the Court would or ought to give that submission more weight if the creditors were allowed to intervene. See Motion and Memorandum in Support of Motion to Intervene or In the Alternative For Leave to Participate as *Amici Curiae* ("Creditors' Br.") at 2. Therefore, if the creditors want to provide information on whether the modified decree is in the public interest -- for example, whether "Nextel's acquisition of the Geotek licenses would lead to impermissible concentration in any relevant market," id. at 9 -- they do not need intervenor status. See G. Heileman Brewing, 563 F. Supp. at 647 (denying intervention in part because movants had not "shown that the APPA's third-party comment procedure is an inadequate means to apprise the Court of their complaints about the Final Judgment"); The Stroh Brewing Co., 1982 WL 1852, at *2 (comment procedures afforded adequate means of informing the court); United States v. AT&T, 1982 WL 1795, at *1 (D.D.C. Jan. 21, 1982) (same).

C. The Creditors' Intervention Will Unduly Delay This Limited Proceeding.

The creditors' protestations notwithstanding, intervention will inevitably cause undue delay. They argue that delay is never undue where an attempted intervenor shows adequate grounds for upsetting a consent judgment. See Creditors' Br. at 8. As explained above, however, the creditors have asserted nothing other than their private financial interest, which has no bearing on this public interest proceeding. By definition, the creditors' intervention would needlessly postpone swift resolution of this litigation (and thus the opportunity for entry), and would add nothing to the Court's deliberations. See G. Heileman Brewing, 563 F. Supp. at 649-50 (finding undue delay because movants raised "extraneous issues" that were "totally irrelevant to conventional antitrust analysis"). If the creditors are seeking discovery, for example, that surely would delay this litigation, and is a reason for the Court to deny them intervenor status. See United States v. Carrols Dev. Corp., 454 F. Supp. 1215, 1221 (N.D.N.Y. 1978) ("Intervention . . . would defeat entry of the consent decree and prolong this litigation. In such circumstances, courts have consistently denied permissive intervention by private parties in Government antitrust litigation."); cf. United States v. Alex. Brown & Sons, Inc., 169 F.R.D. 532, 539 (S.D.N.Y. 1996), aff'd sub nom., United States v. Bleznak, 153 F.3d 16 (2d Cir. 1998) (allowing permissive intervention because movants' objections to proposed decree provision "raise purely legal questions that will not require additional discovery or evidence"). Simply put, "[t]he prospect that a new party might string out a case that the original parties want to resolve usually is a compelling objection to intervention rather than a reason to allow it." Bethune Plaza, Inc. v. Lumpkin, 863 F.2d 525, 531 (7th Cir. 1988).

D. The Court Should Not Allow the Creditors to Intervene Solely for Purposes of Appeal.

Finally, the creditors should not be afforded appellate rights as an intervenor merely because they contend that entry of the proposed decree modification would harm their financial interest. See, e.g., Massachusetts School of Law, 118 F.3d at 779 n.1 (rejecting the notion "that one who has moved to intervene is automatically entitled to an appeal on the merits"). Although a third party not allowed to intervene cannot appeal, that in itself is not a reason to grant intervention where, as here, the party does not meet Rule 24(b)'s requirements. The creditors not only fail to satisfy those requirements, but they also do not intend to litigate the types of issues for which intervention solely for purposes of appeal has been granted. Successful intervenors for appellate purposes typically seek to raise important issues of law, rather than to vindicate an irrelevant private interest. See, e.g., id. at 785 (reversing district court's denial of intervention for purpose of appealing question whether the Tunney Act required governmental disclosure of evidentiary materials to the public); Zuber v. Allen, 402 F.2d 660, 662-63 (D.C. Cir. 1968), aff'd, 396 U.S. 168 (1969) (upholding intervention for appellate purposes where the government was unlikely to appeal the enjoinment of a federal regulation); Smuck v. Hobson, 408 F.2d 175, 177, 182 (D.C. Cir. 1969) (deeming appropriate intervention by schoolchildrens' parents seeking review of district court's decision given the "importance of the constitutional [educational] issues as stake"); Brawner Building, Inc. v. Shehyn, 442 F.2d 847, 852 & n.4 (D.C. Cir. 1971) (same). For example, in United States v. Thomson Corp., on which the creditors rely, the successful intervenors sought to raise the issues of the district court's supposed misinterpretation and misapplication of the Microsoft decision, the breadth of document disclosure required under the Tunney Act, and the comment procedures to be followed when a

decree underwent multiple revision after expiration of the initial comment period. 1997 WL 90992, at *4 (D.D.C. Feb. 27, 1997).[9] By contrast, the creditors here simply want to complete an anticompetitive transaction that would yield them more money. This Court should not invite the creditors' participation, and induce certain delay from appellate litigation, for that purpose.

[9] Similarly, AT&T, 552 F. Supp. at 219 & n.365, in which Judge Greene granted intervention to third parties for purposes of appeal, is *sui generis*, as it involved a massive reorganization of the telecommunications industry and issues of nationwide importance that warranted appellate review. Id.

CONCLUSION

For the reasons stated above, the Geotek Creditors' Motion to Intervene or In the Alternative For Leave to Participate as *Amici Curiae* should be denied, insofar as the creditors seek to intervene in this matter.

Dated: August 9, 1999

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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