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FEDERAL COURT HOLDS THAT VERIZON CUSTOMERS FAILED TO STATE A CLAIM FOR ANTITRUST VIOLATIONS

Greco v. Verizon Communications, Inc., et al., 2005 WL 659200 (S.D.N.Y. March 22, 2005)

The plaintiff, the named representative in a class action, complained that Verizon's refusal to sell high speed internet services to customers who did not also purchase local telephone service from Verizon constituted unlawful tying in violation of antitrust laws. Plaintiff argued that 1) by unlawfully tying its telephone service to its DSL service, Verizon forced those customers who wanted Verizon's DSL service to pay a higher price for their local Verizon telephone service than is charged by competing providers of telephone service, and 2) Verizon thereby disadvantaged those competitors, and monopolized local telephone service.

The United States District Court for the Southern District of New York dismissed the Plaintiff's claims for failure to state a claim and for lack of standing. In reaching this decision, the District Court first noted that, although the Telecommunications Act did not supersede antitrust laws, the United States Supreme Court's decision in *Verizon Communications, Inc. v. Law Offices of Curtis V. Trinko, LLP.*, 540 U.S. 398 (2004), required it to take FCC regulation into account when determining whether to expand the reach of antitrust laws. This avoids the possibility that antitrust judgments will conflict with the FCC's regulatory scheme. Moreover, the District Court explained that because Congress has created a comprehensive scheme to deter and remedy anticompetitive harm, the additional benefit to competition provided by antitrust enforcement would be small.

The District Court next focused on whether it was suited to provide a remedy for allegedly anticompetitive conduct by a single firm. In resolving this inquiry, it noted that an award of damages would require it to determine the prices that Verizon would have charged, absent antitrust violations. This determination, the Supreme Court in *Trinko* held should not be made by a court - courts are not equipped to determine the appropriate price for one component of a bundled product where market forces have not determined an appropriate price for that component.

Accordingly, the District Court concluded that, because ordering Verizon to pay damages would require it to answer the same cost-related and market-force questions that the Supreme Court in *Trinko* held were not suitable for courts to answer, it held that plaintiff failed to state a claim under section 2 of the Sherman Act. The District Court further held that plaintiff lacked standing to bring a claim under sections 1 and 2 of the Sherman Act because standing requires redressability - a likelihood that the requested relief will redress the harm alleged - and, because of the reasons discussed, the court was ill-suited to redress the injuries claimed.

As to the claims brought under the Communications Act, the District Court held that the plaintiff failed to prove that Verizon's actions were discriminatory since it was not offering its service to other customers at a different price nor under different conditions than those offered to the plaintiff. Alternatively, even if discriminatory, the District Court held that the FCC had primary jurisdiction over these claims.

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For more information call Thomas A. Dye at (561) 659-7070 or Daniel C. Johnson at (407) 849-0300, Co-Chairs of Carlton Fields, P.A.'s Telecommunications and Technology Litigation Practice Group, or visit www.carltonfields.com.