the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4]

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. *Armour & Co.*, 402 U.S. 673, 681 (1971).

The proposed Final Judgment therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[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.' (citations omitted).'' [5]

VIII

Determinative Documents

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

Dated: April 22, 1999.

Respectfully submitted,

Arthur A. Feiveson,

IL Bar #3125793.

David R. Bickel,

DC Bar #393409.

Thomas J. Horton

Denise Cheung,

U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0924.

Certificate of Service

I hereby certify that a copy of the foregoing has been served upon Allied Waste Industries, Inc., Browning-Ferris Industries, Inc., the Office of the Attorney General of the State of Illinois, and the Office of the Attorney General of the State of Missouri, by placing a copy of this Competitive Impact Statement in the U.S. mail, directed to each of the above-named parties at the address given below, this 22d day of April, 1999.

Allied Waste Industries, Inc., c/o Tom D. Smith, Jones Day Reavis & Pogue, Metropolitan Square, 1450 G Street, NW, Washington, DC 20005–2088

Browning-Ferris Industries, Inc., c/o David M. Foster, Fulbright & Jaworski, 801 Pennsylvania Avenue, NW, Washington, DC 20004–2615

State of Illinois, Christine H. Rosso, Assistant Attorney General, Office of the Attorney General, Antitrust Bureau, 100 W. Randolph, Chicago, IL 60601

State of Missouri, J. Robert Sears, Assistant Atorney General, Office of the Attorney General, 1530 Rax Court, Jefferson City, Missouri 65109

Arthur A. Feiveson,

Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0924.

[FR Doc. 99–11076 Filed 5–3–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 98CV03170]

Public Comments and Response on Proposed Final Judgment United States v. AT&T Corp. and Telecommunications, Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States of America hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *AT&T Corp. and Telecommunications, Inc.* Civil Action No. 98CV03170, filed in the United States District Court for the District of Columbia, together with the United States' response to the comments.

Copies of the comments and response are available for inspection in Room 8000 of the U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Washington, D.C. 20530, telephone: (202) 514–5621, and at the office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Third Street and Constitution Avenue, N.W., Washington, D.C. 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Comment Relating to Proposed Final Judgment and Response of the United States to Comment

Judge Emmet G. Sullivan

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)) (''APPA''), the United States of America hereby files the public comment it has received relating to the proposed Final Judgment in this civil antitrust proceeding, and herein responds to the public comment. The United States has concluded that the change to the proposed Final Judgment that was suggested in the comment would be in the public interest. Accordingly, the United States has secured the consent of the defendants to modify the proposed Final Judgment in this respect. The APPA requires publication of the public comment and the United States' response. When that publication has been completed, the United States will file a Certificate of Compliance with the APPA and a Motion for Entry of the Modified Judgment with the court.

I. Background

This action was commenced on December 30, 1998, when the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, alleging that the merger of Tele-Communications, Inc. (''TCI'') with a wholly-owned subsidiary of AT&T Corp. (''AT&T'') and the resultant acquisition by AT&T of a 23.5 percent equity interest in the mobile wireless telephone business of Sprint Corporation (''Sprint PCS'') would substantially lessen competition in the provision of mobile wireless telephone services in many geographic areas throughout the country.

In June 1998, AT&T and TCI executed a Merger Agreement and Plan of Merger pursuant to which TCI would be merged into a wholly-owned subsidiary of AT&T. The proposed transaction would have resulted in the acquisition of a 23.5 percent interest in Sprint's mobile

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[4] *United States* v. *Bechtel*, 648 F. 2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F. 2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F. 2d at 565.

[5] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983) *quoting United States* v. *Gillette Co., supra*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

wireless business, one of the principal competitors to AT&T's mobile wireless telephone business in many geographic areas throughout the country. The United States concluded that AT&T's incentives to compete with Sprint PCS could be lessened significantly as a result of the ownership of this substantial interest in Sprint PCS. Accordingly, on December 30, 1998, the United States filed a Complaint seeking to enjoin the merger. Contemporaneously with its Complaint, the United States also submitted a proposed Final Judgment, a Competitive Impact Statement, and a Stipulation signed by the defendants consenting to entry of the proposed Final Judgment by the Court after completion of the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16).

Among other things, the proposed Final Judgment requires the defendants to transfer the Sprint PCS stock to a trustee, who is required to divest the stock. See Section V.A., proposed Final Judgment. The proposed Final Judgment also contains a number of provisions to effect a ''hold separate'' arrangement until this divestiture has been completed. See CIS at 12–15. One of these provisions, set forth in Section VI.D. of the proposed Final Judgment, required that the trustee be instructed not to vote the Sprint PCS shares held by the trust.

II. Response to Public Comments

The only comment received by the United States was filed by Sprint.[1] Sprint's comment is focused on section VI.D. of the proposed Final Judgment. Sprint points out that some of its potential corporate transactions require the approval of a majority (or some other specified percentage) of all shares entitled to vote. For these matters, shares that fail to vote are the equivalent of shares voting against a proposal. Given the substantial portion of Sprint PCS shares that will be held by the trust, Sprint contends that its ability to obtain shareholder approval on such matters could be impeded by the non-voting requirement in section VI.D. of the proposed Final Judgment, and that Sprint's effectiveness as a competitor could be diminished by this constraint on its strategic flexibility. Comments of Sprint Corporation at 2.

The United States agrees that section VI.D. of the proposed Final judgment could have such an effect, and that the modification suggested by Sprint would be appropriate in order to address the concerns raised by Sprint. The United States' objective in negotiating the non-voting requirement in Section VI.D. was to protect competition by ensuring that the Sprint PCS shares would not be voted in a way that might reduce competition. In light of the information and analysis set forth in Sprint's comments, however, the United States has concluded that the underlying objective would be better served if section VI.D. is modified, to read as follows: ''The trustee shall be instructed to vote all of Liberty's Sprint Holdings that are entitled to vote for and/or against applicable matters in the same respective proportions as the other holders of the Sprint PCS Tracking Stock.'' This modification will fully neutralize the voting rights of the Liberty Sprint Holdings, yet avoids the unintended effects described by Sprint in its comment.

The defendants and the United States have entered into a Stipulation, attached hereto, agreeing to the entry of a Final Judgment which incorporates this modification to section VI.D., but which is otherwise unchanged from the proposed Final Judgment filed on December 30, 1998.

III. Standard of Review

As set forth in Section VII of the Competitive Impact Statement, the APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93d Cong. 2d Sess. 8–9 (1974), reprinted in U.S.C.C.A.N. 6535, 6538. As the United States Court of Appeals for the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

Under this standard, the Court's role is limited to determining whether the proposed decree is within the ''zone of settlements'' consistent with the public interest, not whether the settlement diverges from the Court's view of what would best serve the public interest. *United States* v. *Western Electric Co.*, 993 F.2d 1572, 1576 (quoting *United States* v. *Western Electric Co.*, 900 F.2d 283, 307 (D.C. Cir. 1990)); *United States* v. *Microsoft Corp.*, 56 F.3d at 1457–58, see also 56 F.3d at 1460 (D.C. Cir. 1995). As the United States Court of Appeals for the District of Columbia Circuit recognized in reversing the district court's refusal to enter an antitrust consent decree proposed by the United States: ''Congress did not mean for a district judge to construct his own hypothetical case and then evaluate the decree against that case.'' *United States* v. *Microsoft Corp.*, 56 F.3d at 1458–60. To the contrary, ''[t]he 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,'' and so the district court ''is only authorized to review the decree itself,'' not other matters that the government might have but did not pursue. *Id.*

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 . . . and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977). The Court may reject the agreement of the parties as to how the public interest is best served only if it has ''exceptional confidence that adverse antitrust consequences will result. . . .'' *United States* v. *Western Electric Co.*, 993 F.2d at 1577 (D.C. Cir.), *cert. denied*, 114 S. Ct. 487 (1993), *quoted with approval in United States* v. *Microsoft Corp.*, 56 F.3d at 1460.

IV. Conclusion

For the reasons stated herein, the proposed Final Judgment, with section VI.D. of the proposed Final Judgment modified as indicated above with the consent of the Defendants, is consistent with the public interest.

Dated: March 26, 1999.

[1] This comment is attached hereto as Exhibit A.

Respectfully submitted,

Peter A. Gray,

Attorney, Telecommunications Task Force, U.S. Department of Justice, Antitrust Division, 1401 H. Street, N.W., Suite 8000, Washington, D.C. 20530, (202) 514–5636.

King & Spalding

1730 Pennsylvania Avenue, N.W., Washington, D.C. 20006–4706, Telephone: 202/737–0500, Facsimile: 202/626–3737

March 11, 1999.

By Hand Delivery

Mr. Donald J. Russell,
Chief, Telecommunications Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 8000, Washington, D.C. 20530

Re: U.S. v. AT&T Corp. and Tele-Communications, Inc., Civil Action No. 98 CV 03170 (EGS (D.D.C.)

Dear Mr. Russell: In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), Sprint Corporation submits the enclosed comments on the proposed consent decree in the above-entitled action.

Sincerely,

Kevin R. Sullivan

Comments of Sprint Corporation

Sprint Corporation (''Sprint''), pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''Tunney Act''), submits these comments on the Final Judgment proposed by the United States Department of Justice (the ''Department'') concerning the planned acquisition by AT&T Corporation (''AT&T'') of Tele-Communications, Inc. (''TCI'').

Summary

TCI owns about 22% of the outstanding shares of Sprint PCS Stock (a tracking stock which generally tracks Sprint's wireless operations). The proposed Final Judgment requires TCI to transfer its holdings in Sprint PCS Stock to a trustee for the purpose of accomplishing a complete divestiture of such holdings by May 23, 2004, See Final Judgment §§ IV.A., V.A., 64 Fed. Reg. 2506, 2507–08 (January 14, 1999). While the PCS Stock is held in the trust, the trustee is instructed by § VI.D. of the proposed Final Judgment not to vote the stock 64 F.R. at 2509.

Sprint believes that the non-voting provision of the proposed Final Judgment could have the anticompetitive effect of limiting Sprint's financial and operating flexibility. Certain Sprint corporate matters require the approval of a majority (or some other percentage) of all shares entitled to vote. For these matters, not voting has the same effect as a negative vote. Due to the large amount of Sprint PCS Stock the trust will hold, if the trustee does not vote the shares, it could be difficult for Sprint to obtain necessary shareholder votes. Many of the matters that could be affected involve important strategic options including the authorization of additional stock which could be needed to fund new products or technologies, the combination of PCS Group with the rest of Sprint, and the ''spin-off'' of the PCS Group. If Sprint's strategic flexibility is constrained, it could become a less effective competitor in the constantly-evolving telecommunications industry.

In order to avoid these potential anticompetitive effects, the proposed Final Judgment needs to be modified to instruct the trustee to vote the Sprint PCS Stock pro rata in accordance with the votes of all other Sprint PCS shareholders. By ordering the trustee to vote its shares pro rata, the Final Judgment would neuter completely the voting power of the Sprint PCS Stock held by the trust without constraining Sprint.

I. The Non-Voting Provision in the Proposed Final Judgment Would Constrain Sprint's Operating and Financial Flexibility

A. Background

Sprint's PCS Stock is a ''tracking stock'' which generally tracks the performance of Sprint's wireless PCS operations. Sprint's other tracking stock, the FON Common Stock, tracks the performance of Sprint's other operations, including local and long distance telephone service. On most matters, the FON Stock has one vote per share and the PCS Stock has a fluctuating vote based on the market price of the PCS stock relative to the FON Stock.

TCI, through a subsidiary, owns approximately 98.5 million shares of low-vote Series 2 PCS Stock. TCI's shares are equal to approximately 22% of the total shares and share equivalents of the Sprint PCS Stock (not including the warrants and preferred stock owned by TCI). On most matters, the Series 2 PCS Stock owned by TCI has one-tenth of the vote per share of Series 1 PCS Stock.[1] However, on matters for which the PCS Stock votes as a class (as opposed to voting with the FON Stock), the Series 2 PCS Stock has the same voting power as the publicly-traded Series 1 PCS Stock.

[1] Upon sale by TCI to an unrelated party, the Series 2 PCS Stock now owned by TCI will convert to Series 1 PCS Stock with full voting power.

B. The Proposed Final Judgment

Under the terms of the proposed Final Judgment, TCI must, prior to the closing of AT&T's acquisition of TCI, transfer the Sprint PCS Stock it currently owns to a trustee. Final Judgment § IV.A., 64 FR at 2507. Pursuant to § V.A., the trustee must divest by May 23, 2002, the portion of TCI's holdings sufficient to bring the holding to no more than 10% of the outstanding Sprint PCS Stock and must completely divest the Sprint PCS Stock by May 23, 2004. 64 FR at 2508. Section VI.D. of the Final Judgment states that ''[t]he trustee shall be instructed not to vote [the Sprint PCS shares] for so long as they are held in trust.'' 64 FR at 2509.

C. The Potential Anticompetitive Effects

The trustee's inability to vote the shares in the trust will adversely affect Sprint's ability to obtain the necessary shareholder vote in any matter that requires a majority (or some other percentage) of all shares entitled to vote. On these matters, if the trustee does not vote, the large block of PCS stock held by the trust will effectively vote no.[2] Because many important corporate actions require a majority of all shares entitled to vote, Sprint's operating flexibility will be constrained significantly.

The difficulties caused if TCI's PCS shares don't vote are most significant where the Series 2 PCS Stock that the trust will hold has a full vote per share. Spring will be exposed to significant anticompetitive harm if it is unable to obtain shareholder approval for this category of actions.

For instance, in order for Sprint to increase the number of authorized shares of PCS Stock, Article Sixth, Section 3.1(ii) of its Charter requires that the PCS Stock vote as a class (with the Series 2 PCS Stock, that the trust will hold, having a full vote per share). For more PCS shares to be authorized, the approval of a majority of all shares entitled to vote is needed. Assuming, hypothetically, that at the time of a vote Sprint has 450 million shares of PCS Stock that vote and the trust holds approximately 22% of the PCS Stock or 98.5 million shares of Series 2 PCS Stock, Sprint would need approval of 225,000,001 shares. If out of the 351.5 million non-trust shares, only 275 million are voted on this issue due to shareholders failing to send in proxy cards and if the trustee does not vote its shares, Sprint would be required to

[2] The trustee's inability to vote will not affect Sprint's ability to obtain shareholder approval in matters where a percentage of the shares that actually do vote at a given meeting is required.

obtain affirmative votes from 81.8% of the shares that are voted (225,000,001 out of 275,000,000 votes), a difficult percentage to obtain in any public vote. If less than 225 million shares were voted, then Sprint's proposal would fail, even if a full 100% of the shares voted in favor.

Any difficulty in authorizing more PCS Stock could have substantial anticompetitive effects:

- Sprint might need to have more shares of PCS Stock authorized in order to issue more shares to raise capital for the buildout of its PCS network, or to raise substantial capital for events that are not foreseeable today, such as improvements or changes to technology that are necessitated by competitive developments in the PCS business.
- Sprint might desire to complete certain pro-competitive acquisitions using PCS Stock as consideration, which could require the authorization of additional shares.

Without the ability to fund the buildout of its network and other activities that become necessary in the future, and without the ability to acquire strategic business partners that may become critical to the survival of Sprint PCS, Sprint could be placed in a position of substantial competitive disadvantage.

There are numerous other examples of important Sprint corporate actions that require a majority of all shares entitled to vote and entitle the Series 2 PCS Stock that the trust will hold to a full vote per share including:

- Amendment to the Charter that would alter or change the powers, preferences or special rights of the shares of the PCS Stock so as to affect them adversely;
- ''Spin off'' of the PCS Group within 2 years of November 23, 1998; and
- Acquisition by the FON Group or another Group of more than 33% of the assets of the PCS Group.

For each of these actions, the trustee's inability to vote could constrain Sprint anticompetitively by preventing Sprint from structuring itself most effectively.

If the trustee does not vote TCI's PCS shares, the financial and operating flexibility of Sprint will be constrained. To be competitive in telecommunications, a company needs the ability to change its capital structure in order to provide new technologies and compete in new markets. In the past year alone, each of AT&T, MCI, and Sprint has undergone substantial structural changes in an effort to be more competitive. Exactly what will be demanded in the next five years is unknown, but it is certain that technology will progress and companies will need to organize themselves properly to efficiently deliver these developing technologies to their customers.

II. To Avoid Anticompeititive Effects, the Final Judgment Must Order Pro Rata Voting by the Trustee

In order to avoid the anticompetitive effects discussed above, the Final Judgment must require the trustee to vote the Sprint PCS Stock held in the trust pro rata in accordance with the proportion of the votes of the other Sprint PCS shareholders. Under this proposal, the trustee would exercise no discretion in voting the stock, but the views of the other Sprint PCS shareholders would not be frustrated in those situations requiring a majority of all shares entitled to vote.

For all votes in which the PCS shares held by the trust are eligible to vote, the trustee should be instructed to vote the shares in the same proportion as the other shares of PCS Stock are voted. Specifically, the proportion voted in favor and the proportion voting against (or, where shareholders are not provided the opportunity to vote against, the proportion of votes not voted in favor) should be equal to these respective proportions in light of all votes cast by the other holders of Series 2 PCS Stock, the holders of Series 1 PCS Stock, the holders of Series 3 PCS Stock, and the PCS Stock votes that are attributed to the shares of Class A Common Stock held by France Télécom S.A. and Deutsche telekom AG.

Because the Sprint PCS Stock held by TCI has low voting power in most situations, the Department concluded that any concerns that AT&T would influence or control Sprint's competitive behavior are minimal. See Competitive Impact Statement § II.C n.8, 64 FR 2506, 2511. Nevertheless, according to the Competitive Impact Statement filed by the Department, the voting prohibition embodied in § VI.D. is meant to further address the concern that AT&T might ''influence [] the competitive behavior of [Sprint] in ways that reduce competition.'' See Id. By ordering the trustee to vote the PCS Stock held by the trust pro rata, the Final Judgment will eliminate completely any influence or control AT&T or the trustee has over Sprint's competitive behavior and avoids the anticompetitive effect of constraining Sprint's strategic flexibility caused by the no vote approach.

Dated: March 11, 1999.

Respectfully submitted,

Sprint Corporation by its attorneys

Kevin R. Sullivan (D.C. Bar No. 411718),

Peter M. Todaro (D.C. Bar No. 455430),

King & Spalding, 1730 Pennsylvania Avenue, NW., Washington, DC 20006, (202) 737–0500.

Bruce N. Hawthorne,

Andrew M. Tebbe,

King & Spalding, 191 Peachtree Street, Atlanta, Georgia 30303, (404) 572–4600.

[FR Doc. 99–11075 Filed 5–3–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request, Submitted for Public Comment and Recommendations; Extension of the Unemployment Insurance (UI) Revenue Quality Control (RQC) Program

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision and extension of the UI RQC Program. Note that as part of an Unemployment Insurance Service (UIS) reorganization effort, the name was changed from RQC to the Tax Performance System (TPS). Discussions are still taking place as to the most appropriate name for the program and so, during the process of extending this program, the reference name shall remain as Revenue Quality Control on all papers, documents, handbooks, forms and software packages. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before July 6, 1999.