Econ 300: Senior Project

Case Analysis:

VERIZON COMMUNICATIONS INC.

v.

LAW OFFICES OF CURTIS V. TRINKO, LLP

Ryan McCallum

The Telecommunications Act of 1996 imposes upon incumbent local exchange carriers (ILEC) the obligation to share its telephone network with competitors, also including the responsibility of providing access to individual network elements on an “unbundled” basis. New entrants to the market, so-called competitive LECs (CLECs), combine and resell these unbundled network elements.

Verizon Communications Inc., the LEC in New York State, signed interconnection agreements with rivals, including AT&T, as it is obligated to do so, describing the terms on which it will make its networks available to AT&T. Part of Verizon’s unbundled network elements obligation is providing access to operations support systems. Without access to these operations support systems, rival companies (AT&T in this case) cannot fill their customers’ orders.

Verizon’s interconnection agreement was approved by the New York Public Service Commission (PSC). Its authorization to provide long-distance service was approved by the Federal Communications Commission (FCC). Each of these specified the means by which its operations support systems requirement would be met. When rival local exchange carriers complained that Verizon was in violation of its operations support systems obligation, the PSC and FCC opened their own investigations.

These complaints led to the imposition of financial penalties, remediation measures, and other reporting requirements on Verizon. Afterwards LEC AT&T filed a class action lawsuit alleging that Verizon had filled its rivals' orders on a discriminatory basis as part of an anticompetitive scheme to discourage customers from becoming or remaining customers of competitive local exchange carriers. AT&T believed this to be in violation of the Sherman Act, and the Essential Facilities Doctrine.

The purpose of this paper is to examine antitrust case No. 02-682, Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP (AT&T's law office). The paper will first describe the Telecommunications Act of 1996, the Sherman Act, and the Essential Facilities Doctrine in greater detail. It is necessary to do so because these are the antitrust laws this case and decision were based off of. This means it is important to have an understanding of both of them before applying these antitrust laws the case under examination. The paper will go on to discuss the case in further detail, and economically analyze the case using antitrust laws pertaining to the case. This economic analysis will be done by examining the Telecommunications Act of 1996, the Sherman Act, and the Essential Facilities doctrine, and how each antitrust law pertains to the case at hand. In other words, this paper will examine the claims brought against Verizon, and whether or not these claims violate any antitrust laws. Certain policy implications will be discussed, and then finally I will give my final statements and conclusions regarding the analysis of the case.

Telecommunications Act of 1996

The Telecommunications Act of 1996 was the first major overhaul of telecommunications law in almost sixty two years before it was passed. This act amended the previous Communications Act of 1934. The goal of the act was to allow everyone and anyone to be able to enter the telecommunications business. The Telecommunications Act of 1966 was an act that had a tremendous impact, and changed the way people worked, learned, and lived. It affected the local and long distance telephone services, cable programming, other video services, broadcast services, and services provided at schools. This act represented a major change in American telecommunication law since it was the first time that the internet was included in broadcasting and spectrum allotment. The legislation's primary goal was the deregulation of the communication market.

Its stated objective was to open up markets to competition by removing regulatory barriers to entry: The conference report refers to the bill “to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced information technologies and services to all Americans by opening all telecommunications markets to competition....” (Conference Report, Telecommunications Act of 1996, House of Representatives, 104th Congress, 2d Session, H.Rept. 104-458, at p. 1.).

The Federal Communications Commission has a tremendous role to play in creating fair rules for this new act on competition. There is a lot that goes into figuring out how to

implement this act in a way that is fair to producers and consumers, while also keeping markets competitive. We will see this more clearly as we examine the case.

Sherman Antitrust Act 1980

The Sherman Act is a landmark federal statute on competition law passed by congress in 1890. The act prohibits certain business activities that strive to reduce competition in the marketplace, and requires the United States federal government to investigate and pursue, trusts, companies, and organizations suspected of being in violation. The Sherman act was the first statue to limit cartels and monopolies, and today still forms the basis for most antitrust litigation by the United States Federal Government.

This case primarily focuses on section two of the Sherman Act. Section two of the Sherman act pertains to monopolizing trade and states: "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trace or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine, or by imprisonment, or by both said punishments, in the discretion of the court." (Stolaf.edu)

The main goal of the Sherman Act is to protect consumers by preventing arrangements designed, or which tend, to advance the cost of goods to consumers. In the Verizon case, the law offices claim that Verizon had filled rivals' orders on a discriminatory basis as part of a

scheme to discourage customers from becoming or remaining customers of LEC's that were in competition with Verizon.

Essential Facilities Doctrine

The essential facilities doctrine (sometimes also referred to as the essential facility doctrine) is a legal doctrine which describes a particular type of claim of monopolization made under competition laws. In general, it refers to a type of anti-competitive behavior in which a firm with market power uses a "bottleneck" in a market to deny competitors entry into the market.

In order for a plaintiff to establish liability under this doctrine they must show the basic elements of this legal claim. The basic elements of this claim that must be shown are: control of the essential facility by a monopolist, a competitor's inability to practically or reasonably duplicate the essential facility, the denial of the use of the facility to a competitor, and the feasibility of providing the facility to competitors. The U.S. Supreme Court's ruling in Verizon v. Trinko, in affect added a fifth basic element to this legal claim. The fifth basic element that needed to be shown was the absence of regulatory oversight from an agency (the Federal Communications Commission, in this case) with power to compel access.

These elements are difficult for potential plaintiffs to establish for several reasons. It is quite difficult for a plaintiff to demonstrate that a particular facility is "essential" to entry into and/or competition within the relevant market. The plaintiff must demonstrate that the "facility" must be something so indispensable to entry or competition that it would be impossible for smaller firms to compete with the market leader. Likewise, the plaintiff must

show that compelling the dominant firm to permit others to use the facility would not interfere with the ability of the dominant firm to serve its own customers.

VERIZON COMMUNICATIONS INC. v. LAW OFFICES OF CURTIS V. TRINKO, LLP

As previously stated the Telecommunications Act of 1966 imposes certain duties upon required local telephone companies in order to facilitate market entry by competitors, and the act establishes a complex regime for monitoring and enforcement. This case considered whether a complaint alleging a breach in Verizon's duty under the Telecommunications Act of 1996 did in fact go against the Sherman Act, as LEC competitors (mainly AT&T) claimed. In other words, was Verizon violating antitrust laws and harming competition in the telecommunications market.

"Verizon Communications Inc. was the incumbent local exchange carrier serving the state of New York. Before the Telecommunication Act of 1996, Verizon, like other incumbent LECs, enjoyed an exclusive franchise within its local service area." (Justice Scalia) The 1996 Act sought to rid LEC monopolies and to introduce competition instead. As stated earlier one of the central ideas of the act is the incumbent LEC's obligation under the act to share its network with its competitors, including provision of access to individual elements of the network on an unbundled basis. New entrants to the telecommunications market resell these unbundled network elements, recombined with each other or with elements belonging to the ILECs.

The case stated that Verizon, much like other local exchange carriers, had actually taken a couple important steps with what the Act requires in order to take steps towards increased competition. The first step Verizon took was signing interconnection agreements with rival LECs such as AT&T, as it is obliged to do under the act, detailing the terms on which its networks will be available. Verizon and AT&T could not agree on the terms of this interconnection agreement so open issues were resolved by an arbiter. “In 1997, the state regulator, New York’s Public Service Commission (PSC), approved Verizon’s interconnection agreement with AT&T.” (Americanbar.org)

The second step Verizon took was taking advantage of the opportunity for incumbent LECs to enter the long-distance market. LECs had been excluded from entering the long distance market for a long time but the Telecommunications Act of 1996 allowed LECs to do so. Entering the long distance market “required Verizon to satisfy, among other things, a 14-item checklist of statutory requirements, which included compliance with the Act's network-sharing duties. Checklist item two, for example, includes "nondiscriminatory access to network elements in accordance with the requirements"” (Americanbar.org).

Whereas the state regulator approves an interconnection agreement, for long-distance approval the incumbent LEC applies to the Federal Communications Commission (FCC). In December 1999, the FCC approved Verizon’s application to enter the long distance market. These were two incidents in the case where Verizon showed they were actually taking steps towards competition rather than reducing the markets competition.

As briefly stated previously, part of Verizon’s unbundled network elements obligation under the act was the obligation to provide access of operations support systems. These are a set of systems used by incumbent LECs to provide services to customers and ensure quality service for those customers. Verizon’s interconnection agreement and long-distance authorization both specified the means by which its OSS obligation would be met. As relevant to this case, a competitive LEC sends orders for service through an electronic interface using Verizon’s ordering system, and then Verizon would complete various steps in filling the order, and send confirmation back to the competitive LEC through the same interface. If a rival is unable to have access to OSS then the rival would not be able to fill its customers’ orders.

“In late 1999, competitive LECs complained to regulators that many orders were going unfilled, in violation of Verizon's obligation to provide access to OSS functions. The PSC and FCC opened parallel investigations, which led to a series of orders by the PSC and a consent decree with the FCC. Under the FCC consent decree, Verizon undertook to make a "voluntary contribution" to the U. S. Treasury in the amount of $3 million. Under the PSC orders, Verizon incurred liability to the competitive LECs in the amount of $10 million. Under the consent decree and orders, Verizon was subjected to new performance measurements and new reporting requirements to the FCC and PSC, with additional penalties for continued noncompliance. In June 2000, the FCC terminated the consent decree.” (Americanbar.org)

Law Offices of Curtis V. Trinko, LLP, a New York City law firm, was a local telephone service customer of AT&T. The day after Verizon entered its consent decree with the FCC, the

law offices filed a complaint in the District Court for the Southern District of New York, on behalf of itself and a class of similarly situated customers. The complaint claimed that Verizon had filled its rival's orders on a discriminatory basis as part of an anticompetitive scheme to discourage customers from becoming or remaining customers of its rivals LECS, thus hurting the competitive LECs ability to enter and compete in the local telephone service market. According to the complaint, Verizon had filled orders of competitive LEC customers after it had already filled orders for its own local phone service, failed to fill competitive LEC orders in a timely manner or not at all, and had systematically failed to inform the competitive LECs of the status of their customers' orders.

"The complaint set forth a single example of the alleged "failure to provide adequate access to competitive LECs, namely the OSS failure that resulted in the FCC consent decree and PSC orders. It asserted that the result of Verizon's improper "behavior with respect to providing access to its local loop" was to "deter potential customers, of rivals, from switching." The complaint sought damages and injunctive relief for violation of the Sherman Act, pursuant to the remedy provision of the Clayton Act. The complaint also alleged violations of the 1996 Act, the Communications Act of 1934, and state law." (Supreme.justia.com)

When this case was brought to the district level the court dismissed the entire complaint. For the antitrust portion of the complaint, the district court concluded that the allegations of deficient assistance to rivals failed to satisfy the requirements of the Sherman Act. When the case was then appealed, the Court of Appeals reinstated the complaint in part,

including the antitrust claim. The court of Appeals granted certiorari, so that they could review the case to make sure that the district court did not make a mistake in dismissing the antitrust claims.

Analysis of Case

When analyzing this case it is important to understand exactly what the claims against Verizon are, and to understand the relevant antitrust laws in their entirety. The claims that the law offices of Curtis V. Trinko brought against Verizon alleged that Verizon deliberately provided poor repair services to AT&T customers while giving preferential treatment to their own customers in violation of the Telecommunications Act and Section 2 of the Sherman Act.

The plaintiffs also argued that certain Verizon-owned networking equipment constituted an essential facility for the market for competitive local telephone services. That market was a creation of the 1996 Telecommunications Act. So it is important to look at the law offices claim and decided how/if they go against these antitrust laws.

First it is important to examine the claim against Verizon in respects to the Telecommunications Act of 1996. This means it is important to figure out what effects, if any, the 1996 Act has in regards to traditional antitrust principles. The Telecommunications Act imposes a large number of duties upon incumbent LECs that are above and beyond typical responsibilities that the act imposes upon all carriers, such as assuring number portability and providing access to rights-of-way. Under the sharing duties of the act, incumbent LECs are

required to be able to provide three kinds of access. One type of access that was already previously mentioned is the duty to be able to offer access to unbundled network elements (UNEs) on "just, reasonable, and nondiscriminatory terms.

According to the case Verizon Communications Inc. v. FCC, the FCC has determined that phrase to mean a price reflecting long-run incremental costs. A rival has the option to either connect its own facility with those of the incumbent LEC, or it can easily purchase services at wholesale prices from the incumbent and then sell those services back to the consumers. The Telecommunications Act of 1996 also states that incumbent LECs have the duty to allow physical "collocation" (to allow a competitor to be able to locate and install its own equipment on the incumbent LECs premises), which makes interconnection and access to unbundled network elements possible.

Now just because Congress created this act that entails all these duties, does not automatically mean that these duties can be enforced by means of an antitrust claim. "A detailed regulatory scheme such as that created by the 1996 Act ordinarily raises the question whether the regulated entities are not shielded from antitrust scrutiny altogether by the doctrine of implied immunity. See, e.g., United States v. National Assn. of Securities Dealers, Inc., 422 U. S. 694 (1975); Gordon v. New York Stock Exchange, Inc., 422 U. S. 659 (1975). In some respects the enforcement scheme set up by the 1996 Act is a good candidate for implication of antitrust immunity, to avoid the real possibility of judgments conflicting with the agency's regulatory scheme "that might be voiced by courts exercising jurisdiction under the

antitrust laws." United States v. National Assn. of Securities Dealers, Inc., supra, at 734. Congress, however, precluded that interpretation. Section 601(b)(1) of the 1996 Act is an antitrust-specific saving clause providing that "nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws." 110 Stat. 143, 47 U. S. C. §152, note. This bars a finding of implied immunity. As the FCC has put the point, the saving clause preserves those "claims that satisfy established antitrust standards." Brief for United States and the Federal Communications Commission as Amici Curiae Supporting Neither Party in No. 02-7057, Covad Communications Co. v. Bell Atlantic Corp. (CADC), p. 8." (Americanbar.org). This quote states the Telecommunications Act of 1996 preserves claims that satisfy todays existing antitrust standards.

Although, the 1996 Act may preserve those claims that satisfy existing antitrust standards, it does not create any new claims that go beyond existing antitrust standards, aside from the requirement to sell to rivals. If this were to be true it would be totally inconsistent with the saving clause just previously described in the quote. The clause states that nothing in the Act should modify, impair, or supersede the applicability of the antitrust laws. This shows that the claims of the law offices against Verizon fall apart when examined through the Telecommunication Act of 1996. It is then important to look at whether or not the law offices complaint violates any of the already existing antitrust standards, such as the Sherman Act and the Essential Facilities Doctrine.

The complaint against Verizon also states that Verizon allegedly denied interconnection services to its rivals in order to limit entry into the telecommunications market. If this complaint states an antitrust claim at all, it would do under section two of the Sherman Act. As previously stated section two of the Sherman Act states that no persons or businesses will be allowed to monopolize or be allowed to attempt to monopolize.

In order to actually be in violation of the Sherman act, law states that two requirements must be met. The first requirement is that the person or firm being accused of violating the Sherman Act must have some sort of monopoly power in the relevant market. The second requirement requires "the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." (law.cornell.edu). This was settled as a law during the United States v. Grinnell Corp. case. In this case the court decided that not only is the mere possession of monopoly power not unlawful, but it is a rather important piece of a free-market system.

I agree with the courts findings during the United States v. Grinnell Corp. Case. The chance for a firm to be able to price at monopoly prices, at least for a short period of time, is was drives businesses in the first place is it not? If people believe they have a product that everyone will want to buy, and believe they can charge high monopolistic prices for at least a little, then they will be driven to pursue what they believe in. This risk that people are willing to take produces innovation and economic growth in our society. To make the mere possession of monopoly power illegal would greatly decrease innovation and economic growth in our society.

Monopoly power should not be found illegal unless it is also accompanied with some sort of anticompetitive conduct.

Mere monopoly power should not be deemed illegal because a firm(s) may acquire monopoly power by creating an infrastructure that puts them in a unique position to be able to best serve customers. Firms may also achieve monopoly power by the government granting it to them. This is how Verizon gained its monopoly power. Telling those firms they must share the source of their advantage is in some tension with the main purposes of antitrust law. This is because telling those firms to do so might lessen the incentives of the monopolist, the competitive firm, or both parties to invest in economically beneficial infrastructures. It should not matter how a firm achieves its monopoly power, it should only matter how they practice that power. Antitrust laws and regulations are in place to prevent a firm or firms from using their monopoly power in such a way that harms competition in their market

Making competitive firms share the source of their advantage is also typically fearful when discussing antitrust. Telling firms they need to negotiate with each other could potentially lead to “the supreme evil of antitrust: collusion.” (stolaf.edu). “The Sherman Act does not restrict the long recognized right of a trader or manufacturer engaged in an entirely private business, to be able to freely exercise his/her own independent discretion as to parties with whom he/she will deal with. United States v. Colgate & Co., 250 U. S. 300, 307 (1919).” (Americanbar.org).

Although the statement that a business owner does have the right to choose who he/she does business with is true, sometimes a refusal to cooperate with rival businesses comes in the form of anticompetitive conduct and in fact does violate section two of the Sherman Act. When researching this case the courts compared the Verizon case to the Aspen Skiing Co. v. Aspen Highlands Skiing Corp. case.

The Supreme Court described the case: “The Aspen ski area consisted of four mountain areas. The defendant, who owned three of those areas, and the plaintiff, who owned the fourth, had cooperated for years in the issuance of a joint, multiple-day, all-area ski ticket. After repeatedly demanding an increased share of the proceeds, the defendant canceled the joint ticket. The plaintiff, concerned that skiers would bypass its mountain without some joint offering, tried a variety of increasingly desperate measures to re-create the joint ticket, even to the point of in effect offering to buy the defendant's tickets at retail price. The defendant refused even that. We upheld a jury verdict for the plaintiff, reasoning that the jury may well have concluded that the defendant elected to forgo these short-run benefits because it was more interested in reducing competition over the long run by harming its smaller competitor." (Supreme.Justia.com)

The court stated that the Aspen Skiing case was really pushing the outer limits of section two of the Sherman Act. The court viewed the defendant deciding to stop participating in a voluntary course of dealings with the plaintiff as an attempt to forgo the company’s short run profits in order to achieve an anticompetitive long run ending. The court also saw how the

defendant would not agree to renew the ticket even if reimbursed at retail price as an anticompetitive move.

I believe that the Aspen Skiing case and the Verizon case differ from one another however. I do not think the alleged complaints of the Verizon case fit within the already pushed limitations of the decision on the Aspen Skiing case. In the Verizon case, Verizon never voluntarily engaged in business dealings with its rival competitors, and may have never chosen to do so if it had not been required of them by the Telecommunications Act of 1996. The Aspen Skiing case shows the two businesses had prior successful business relations that seemed to turn south. When examining the fact that the defendant turned down a proposal to sell at its own retail price, after previously having successful business dealings with the plaintiff, suggests anticompetitive behavior. However, Verizon's reluctance to interconnect at the cost-based rate of compensation available under the 1996 Act shows no evidence that Verizon was acting in an anticompetitive manner. The court claimed the specific nature of what the 1996 Act compels makes these two cases different in another way.

"In Aspen Skiing, what the defendant refused to provide to its competitor was a product that it already sold at retail. In Otter Tail Power Co. v. United States, 410 U. S. 366 (1973), another case relied upon by respondent, the defendant was already in the business of providing a service to certain customers (power transmission over its network), and refused to provide the same service to certain other customers. In the present case, by contrast, the services allegedly withheld are not otherwise marketed or available to the public. The sharing obligation

imposed by the 1996 Act created "something brand new", "the wholesale market for leasing network elements." Verizon Communications Inc. v. FCC, 535 U. S., at 528. The unbundled elements offered pursuant to the 1996 Act exist only deep within the bowels of Verizon; they are brought out on compulsion of the 1996 Act and offered not to consumers but to rivals, and at considerable expense and effort. New systems must be designed and implemented simply to make that access indeed possible; it is the failure of one of those systems that prompted the present complaint." (law.cornell.edu). This quote shows the Supreme Court's reasoning as to why the Verizon case did not fall into the stretched limits of section two of the Sherman Act.

Last but not least it is also important to examine the case through the Essential Facilities Doctrine. As previously stated the plaintiffs argued that certain Verizon-owned networking equipment constituted an essential facility for the market for competitive local telephone services. At first glance, the Supreme Courts holding in the case does not appear to change the essential facilities doctrine. As a matter of fact, the Court stated that the case was not an essential facilities case at all.

The Supreme Court's decision not to apply the Essential Facility Doctrine came about because the Court, though disclaiming any intention of examining the doctrine, created a significant new limitation on the doctrines application. Specifically, the new limitation stated that where a government agency has powers to enforce access to a facility, the Essential Facilities Doctrine will not apply. The agencies in this case were the FCC and PSC.

The Supreme Court's decision to not apply the Essential Facilities Doctrine may be due to the large amount of criticism the doctrine receives, especially from the Supreme Court. The Essential Facilities Doctrine evolved in the lower and circuit courts, and has never been explicitly endorsed by the Supreme Court. When analyzing the Essential Facilities Doctrine and the Verizon case it is helpful to examine previous cases involving the Essential Facilities Doctrine.

A good starting point is the Supreme Court case of U.S. v. Terminal Railroad Assn of St Louis, 224 U.S. 383; (1912), because it is universally cited by exponents of the essential facilities doctrine. In that case a cartel of railroads monopolizing railroad access to St. Louis (by means of control over railway switchyards) was judged to be a "combination in restraint of trade", primarily on the grounds that 1) there was no practical alternative to the use of its switchyards, and 2) it refused proper and equal access to its facilities to rail lines owned by competitors.

At infrequent intervals in a small number of cases, the Supreme Court announced further rulings consistent with the general idea that a monopolist had a duty to share a sufficiently crucial facility upon nondiscriminatory terms. In Associated Press v. United States, 326 U.S. 1 (1945), an association for sharing international news reports was not allowed to exclude from membership the competitors of existing members. In Lorain Journal Co. v. United States, 72 S. Ct. 181 (1951), a newspaper was forced to allow advertising from businesses who also advertised in competing media. And in Otter Tail Power Co. v. United States, 410 U.S. 366 (1973), an electric utility was forced to allow a competitor to transmit power over its lines.

None of these cases, however, used the phrase essential facility, nor can they be said in themselves to have established a coherent doctrine. Decades later, after a formal essential facilities doctrine had been developed in lower courts, the Supreme Court still declined to rely on it, using other grounds to decide leading cases including the previously discussed Aspen Skiing Co. v. Aspen Highlands Skiing Corp, and in the Verizon case itself.

I believe the court to be right in not applying the Essential Facilities Doctrine to this case, but rather, focusing on the 1996 Act and the Sherman Act. The essential requirement for invoking the doctrine is the unavailability of access to the “essential facilities”; where access exists, as it does here by virtue of the 1996 Act, the doctrine serves no purpose.

Policy Implications

I believe that it is important to pay attention to regulation when analyzing an antitrust case. The regulatory framework showed in this case demonstrated how, in certain situations, regulation can significantly decrease the chances of major antitrust harm happening. An example shown in this case was all the restrictions upon Verizon’s entry into the lucrative market for long-distance services. In order to enter that market in the first place, Verizon needed to be on good behavior in its local market. Then its entrance to the market needed to be approved by the FCC. Authorization by the FCC required a state by state satisfaction competitive checklist, which as previously noted involves the nondiscriminatory provision of access to unbundled network elements.

I believe Verizon agreeing to the FCC’s guidelines to entering the long distance market showed Verizon’s dedication to provide unbundled network elements, including the provision

of OSS. Those commitments are enforceable by the FCC through continual oversight. Failure to meet the FCC's standards could result in the FCC requiring whatever problem be fixed, could result in penalties, or could even result in the suspension of long-distance approval. This shows how Verizon subjected itself to the oversight of the FCC. Verizon also subjected itself to the oversight of the PSC under a "Performance Assurance Plan". This plan provides specific financial penalties in the event of Verizon's failure to achieve its performance requirements. These are just a few regulations that Verizon had that helped to keep Verizon in check. I believe regulations like these are put into place to help prevent major antitrust harm. This was proven to be true in the example of the regulatory response to the OSS failure previously described.

When several of the competitive LECs complained about deficiencies in Verizon's servicing of orders, the FCC and PSC responded. As previously stated the FCC concluded that Verizon was in breach of its sharing duties under the Telecommunications Act of 1996, imposed a hefty fine, and set up a plan for Verizon to fix the problem at hand. The FCC also required a weekly reporting requirement and established specific penalties for failure to comply. The PSC found Verizon in violation of the "PAP" and imposed financial penalties and also required reporting requirements. This shows that the regulations put on Verizon were effective in helping to prevent further antitrust harm.

I also believe the Supreme Court was correct in not applying the Essential Facilities Doctrine when examining the policy implications of the doctrine. The main requirement for using the doctrine is that a monopolist must have "essential facilities" that are inaccessible to a

competitor or competitors. Where access does exist, the doctrine does not. Under the 1996 Telecommunications Act, Verizon was required to allow access to its “essential Facilities”.

Essentially, the essential facility doctrine is only invoked in certain circumstances, such as existence of technical feasibility to provide access, possibility of replicating the facility in a reasonable period of time, distinct possibility of lack of effective competition if such access is denied and possibility of providing access on reasonable terms.

Conclusions

After examining the Verizon v. Law Offices of Curtis V. Trinko, LLP, I agree with the court’s decision, and conclude that Verizon’s alleged insufficient assistance in the provision of a service to its rivals is not a recognizable antitrust claim under any existing antitrust laws. The Law Offices of Trinko believed that the existence of sharing duties under the Telecommunications Act of 1996 supported their case. After examining the case through the 1996 Act, I do not believe their claim was supported enough. I think if Verizon would have been found guilty under these claims that the court would have been helping a competitor, not competition itself. The whole purpose of antitrust laws is to regulate markets and help competition in order to keep markets fairly balanced to help best benefit consumers.

In conclusion, after analyzing the court case of Verizon v. The Law Offices of Curtis V. Trinko, LLP, I believe the court to be correct in its verdict of Verizon Communications Inc. being not guilty of the claims brought against the corporation. I came to this conclusion by

economically analyzing the case using antitrust law. I came to this conclusion by reading the case, understanding the claims against Verizon, and by examining those claims through the Telecommunications Act of 1996, the Sherman Act, and the Essential Facilities Doctrine.

References

Correct Answers to Large Questions about Verizon v.Trinko. Americanbar.org. Retrieved Nov, 18, 2012, from http://www.americanbar.org/content/dam/aba/publishing/antitrust_source/skitol.authcheckdam.pdf

SUPREME COURT OF THE UNITED STATES Syllabus, VERIZON COMMUNICATIONS INC. v. LAW OFFICES OF CURTIS V. TRINKO, LLP. Stolaf.edu. Retrieved Nov, 18, 2012, from http://www.stolaf.edu/people/becker/antitrust/summaries/02-682.htm

SUPREME COURT OF THE UNITED STATES Syllabus, VERIZON COMMUNICATIONS INC. v. LAW OFFICES OF CURTIS V. TRINKO, LLP. Stolaf.edu. Retrieved Nov, 18, 2012, from http://www.stolaf.edu/people/becker/antitrust/statutes/sherman.html

Supreme Court Holds That There is No Sherman Act Claim in Verizon v. Trinko. Techlawjournal.com. Retrieved Nov, 15, 2012, from http://www.techlawjournal.com/topstories/2004/20040113.asp

Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP - 02-682 (2003). Supreme.Justia.com. Retrieved Nov, 18, 2012, from http://supreme.justia.com/cases/federal/us/540/02-682/

VERIZON COMMUNICATIONS INC. V. LAW OFFICESOF CURTIS V. TRINKO, LLP (02-682) 540 U.S. 398 (2004) 305 F.3d 89, reversed and remanded. Law.Cornell.Edu. Retrieved Nov, 18, 2012, from http://www.law.cornell.edu/supct/html/02-682.ZS.htm

The Essential Facilities Doctrine. Competitioncommission.gov. Retrieved Nov, 30, 2012, from http://www.competitioncommission.gov.in/advocacy/Articles_in_press/The_essential_facilities_doctrine_23_3_2007_FE.pdf

SAVING OTTER TAIL: THE ESSENTIAL FACILITIES DOCTRINE AND ELECTRIC POWER POST-TRINKO. Law.fsu.edu. Retrieved Dec, 1, 2012 from http://www.law.fsu.edu/journals/lawreview/downloads/331/coker.pdf

Ryan McCallum

Econ 300

Senior Project Memo

After receiving the rough draft of my senior project back I was able to make numerous changes, thanks to your insight, that I believe helped to improve the final draft of my paper. The first thing I fixed about my final draft was improving the content of the paper based on your constructive comments. I researched the Essential Facilities Doctrine and how it was applied to the case I analyzed. I added a section describing what this doctrine was, and how it was applied to the Verizon case in my economic analysis section. I also created a policy implication section to help improve the content of my paper. Here I discussed my opinions of the policies, regulations, and antitrust laws pertaining to the case, and their repercussions on the case verdict.

After I was done improving the content of my paper I was able to focus on all the grammatical errors. I went through my paper and fixed every grammatical error that you found, and then reread my paper and was able to fix a couple that I found. I then reread my paper again to see if there were any other grammatical errors I could catch.