Press Release

Washington Legal Foundation
Advocate for freedom and justice®
2009 Massachusetts Ave., NW
Washington, D.C. 20036
202.588.0302

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HIGH COURT REJECTS EXPANSION OF ANTITRUST DOCTRINES

(*Verizon Communications Inc. v. Trinko,* No. 02-682)

The U.S. Supreme Court today ruled unanimously in favor of the Washington Legal Foundation抯 position in an antitrust class action. WLF had filed a brief in the case on May 23, 2003, urging the Court to overturn an appeals court decision that would have opened new frontiers of antitrust liability for successful companies.

The lawsuit, *Verizon Communications Inc. v. Curtis V. Trinko*, is a class action brought on behalf of consumers who received local phone service from competitors of Bell Atlantic (now part of Verizon). The complaint alleged that Bell Atlantic discriminated against local competitors in providing access to its exchange network, and claimed that Bell Atlantic had violated federal telecommunications laws and section 2 of the Sherman Antitrust Act. The U.S. Court of Appeals for the Second Circuit ruled on June 20, 2002, in favor of the plaintiffs on both the telecommunications and antitrust counts of the complaint. The Supreme Court granted Verizon抯 petition for certiorari, limiting its review to the antitrust count.

In its ruling, the Supreme Court sided with WLF in rejecting the far-reaching antitrust theories upheld by the appeals court. The appeals court claimed that 揳 monopolist has a duty to provide competitors with reasonable access to 慹ssential facilities,挃 which it defined as 慺acilities under the monopolist抯 control and without which one cannot effectively compete in a given market.? The Supreme Court in *Verizon* noted that its earlier cases recognizing a duty to do business with competitors either involved concerted conduct among companies against a competitor or other exceptional circumstances. Justice Scalia, writing for the Court, observed that monopoly power, and even monopoly pricing, are not inherently unlawful:

The mere possession of monopoly power, and the concomitant charging of

monopoly prices, is not only not unlawful; it is an element of the free-market system. The opportunity to charge monopoly prices ? at least for a short period is what attracts 捷 usiness acumen? in the first place; it induces risk taking that produces innovation and economic growth.

In a concurring opinion, Justice Stevens, joined by Justices Souter and Thomas, agreed with WLF担 alternative position that the lawsuit should be dismissed because the class action plaintiffs lacked standing to bring antitrust claims. The concurring justices argued the claims can properly be brought, if at all, only by one or more of Verizon担 competitors in the local telephone market, who are more directly affected by the alleged conduct.

WLF's brief was drafted and filed on a pro bono basis by Steven G. Bradbury and Kannon Shanmugam of the Washington, D.C. law firm of Kirkland & Ellis.

WLF is a public interest law and policy center with supporters in all 50 states. It devotes a substantial portion of its resources to defending free enterprise, individual rights, and a limited and accountable government. It has frequently appeared as amicus in the U.S. Supreme Court and other federal courts to address the proper scope of the antitrust laws, including in *United States Tobacco Co. v. Conwood Co.*, *cert. denied*, 123 S. Ct. 876 (2003); *Hartford Fire Ins. Co. v. California*, 509 U.S. 764 (1993); and *In re Stock Exchanges Options Trading Antitrust Litig*., 317 F.3d 134 (2d Cir. 2003). It has also participated in numerous cases to oppose class action abuses.

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For further information, contact WLF Senior Vice President for Litigation Affairs David Price, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.