News Release

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COURT URGED TO LIMIT REACH OF ANTITRUST DOCTRINES

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

The Washington Legal Foundation (WLF) yesterday urged the U.S. Supreme Court to overturn an appeals court decision that would open new frontiers of antitrust liability for successful enterprises.

The lawsuit 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.

In its brief filed in *Verizon Communications Inc. v. Trinko,* WLF argued that the far-reaching antitrust theories upheld by the appeals court – the "essential facilities" doctrine and the "monopoly leveraging" doctrine – are based on misinterpretations of the Supreme Court's antitrust cases. The appeals court claimed that "a monopolist has a duty to provide competitors with reasonable access to 'essential facilities,'" which it defined as "facilities under the monopolist's control and without which one cannot effectively compete in a given market." WLF noted that the essential facilities theory has never been recognized by the Supreme Court, and that its use by lower courts has been widely criticized by commentators.

The appeals court also claimed that federal antitrust law bars a company from "leveraging" a monopoly in one market to gain an advantage in a separate market. WLF observed that the High Court's 1993 decision in *Spectrum Sports, Inc. v. McQuillan* appeared to reject the monopoly leveraging theory as an independent basis for antitrust liability. WLF also argued that the antitrust theories are not applicable in a case such as this, in any event, where Congress has already enacted a statutory scheme that regulates the sharing of facilities. In addition, WLF argued that the class action plaintiffs lacked standing to bring antitrust claims; the claims are properly brought by Verizon's competitors, who are more directly affected by the alleged conduct.

WLF's brief pointed out that using the antitrust laws to compel the sharing of facilities would deter competition, rather than encourage it, by effectively ordering a taking of a company's property – and thereby deter that company and its competitors from investing in facilities that might be subject to forced sharing.

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 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.