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April 29, 2005

BY FEDERAL EXPRESS

R. Hewitt Pate
Assistant Attorney General
Antitrust Division
U. S. Department of Justice
Washington, DC 20530

Dear Assistant Attorney General Pate:

I am writing to you on behalf of MediaNews Group, Inc. ("MediaNews"), the owner of The Denver Post ("Denver Post"), to request a review under the Antitrust Division's Business Review Procedure, 28 CFR § 50.6, of a proposed but not yet implemented new edition of the Denver Post. The new edition would be distributed to readers one or more times each week and would be without charge to its readers, at least initially. MediaNews wishes to know the Antitrust Division's enforcement intentions with respect to the Denver joint operating arrangement ("JOA") and its participants should the Denver Post proceed with its plans to publish the proposed new edition.

No public announcement has been made of the proposed new edition. A premature disclosure could compromise its successful launch. While we recognize that business review letters become public at the completion of the process, we ask the Division to use the utmost discretion during its investigation of this matter.

The Denver Post and the Rocky Mountain News ("News"), owned by E. W. Scripps Co., are produced, marketed, and distributed by the Denver Newspaper Agency ("DNA"). The newspapers are participants in a JOA formed pursuant to the Newspaper Preservation Act, 15 U. S. C. § 1801 *et seq*. The stated purpose of the Act is the preservation of "a newspaper press editorially and reportorially independent and competitive in all parts of the United States." The Act requires complete independence of the news and editorial departments of the newspapers. When the requirements of the Act are met, participating newspapers receive a limited antitrust exemption.

The Antitrust Division conducted an extensive investigation of the application for this JOA when it was initially proposed in 2000. On September 8, 2000, the Antitrust Division recommended to the Attorney General that the application be approved without a hearing, concluding "that the *Denver Rocky Mountain News* was in probable danger of financial failure and that the proposed joint operating arrangement adhered to the guidelines stated under the Newspaper Preservation Act." On January 5, 2001, Attorney General Janet Reno accepted the recommendation of the Antitrust Division and approved the joint operating arrangement, acting pursuant to 15 U. S. C. § 1803 (b).

The Denver Post currently publishes editions in the mornings on weekdays and Sunday. The News publishes editions in the mornings Monday through Saturday. Under the present proposal, both newspapers would continue all their present editions, but the Denver Post would create a new edition. The Denver Post and the News editions each have complete news and editorial independence, which would not be altered by the pending proposal.

Like most paid distribution daily newspapers, the Denver Post and the News derive revenues from two sources. The largest source of revenue is from the sale of advertising. A much smaller but still significant source of revenue is from the sale of newspapers to subscribers and single copy purchasers.

While paid distribution historically has been the prevailing model for daily newspapers, it is not the only model for news publications. Weekly and alternative newspapers, as well as some daily newspapers, distribute editions without charge to their readers, deriving all of their revenues from advertisers. The demographics of the readership of these free distribution publications are quite different from those of the paid distribution dailies. For example, studies and experience have shown that many younger potential readers between the ages of 18 and 34 resist purchasing paid distribution dailies because they are accustomed to getting their news free from the internet and television. *See generally* Jennifer Saba, *The Free Market*, EDITOR & PUBLISHER, March 1, 2005, at 32-37 (attached) and Mark Fitzgerald, *J-Prof: Chicago "Red" Papers Succeeding*, EDITOR & PUBLISHER, April 13, 2005 (attached).

Paid circulation newspapers have struggled with limited success to reach this audience, which has demographic characteristics of great interest to many advertisers. Advertisements in free papers are, on average, priced below the price in paid dailies. Jennifer Saba, *The Free Market*, EDITOR & PUBLISHER, March 1, 2005, at 36. Because of this price differential, advertisers who may not be able to afford the higher rates of paid circulation are provided an opportunity to reach this target audience through free editions.

Free distribution dailies have increased over the past five or six years and have shown some signs of success in reaching this audience. *See generally, id.* Free distribution editions of daily newspapers have been started in many cities, including

Washington, D.C., San Francisco, Philadelphia, Dallas, Chicago, and Boston. In some cities with free distribution dailies, restaurants catering to young professionals allow free dailies and weeklies to be distributed in preference to paid distribution papers. *Id.* at 35.

There is already one free distribution daily in Denver, and reportedly another free distribution daily may be started in the near future. Free distribution dailies are produced by the same companies that offer paid circulation newspapers in some instances (*e.g.*, Chicago Tribune, Chicago Sun Times, Dallas Morning News, Washington Post) and in other instances are produced by independent companies (*e.g.*, San Francisco Examiner, Washington Examiner, Metro). The Antitrust Division reportedly conducted an investigation recently of the purchase of a minority interest in a free distribution daily in Boston by the owner of paid distribution newspapers in New York and Boston. According to news stories, the investigation ended without any action being taken against the parties.

The Denver Post is interested in starting a free distribution edition in Denver with the expectation that the free distribution edition would extend the reach of its news and editorial voice to an audience that generally has not relied upon the paid distribution editions of the Denver Post as a primary source for news. The Denver Post would like to create another choice for its existing advertisers as well as for potential advertisers who want to reach this audience. Preliminary assessments by the Denver Post indicate that there is a demand in the Denver area for a free distribution edition and that it is likely to be profitable.

The edition to be created by the Denver Post would be completely independent of any editorial or reportorial involvement by the News. It is possible that the News might at some point wish to create its own free distribution edition, which would further expand output and choice in the market, but what the News may do in the future is not part of this business review request.

In order to position itself for maximum penetration of the targeted demographic, the proposed new edition would probably have a masthead, logotype, graphics, design, and running date line that would be different from the other editions of the parent newspaper. It would be identified in the ownership box as an edition of the Denver Post. Because the free distribution concept is relatively new and rapidly evolving, experimentation with the editorial product and with distribution will be necessary. Some of the editorial content may be duplicated in both the paid and the free editions of the Denver Post, some content may be based on the same source but edited for the different target audiences, and other editorial content may be unique to one or the other of the editions. The new edition would be marketed and distributed by DNA, although some of the channels of distribution may be specific to the target audience and may differ from the channels used for the present editions of the Denver Post and the News. The new edition may be distributed in combination with the other editions of the Denver Post or

with other advertising media, and may be distributed on racks, by carriers, by mail or on the internet. It may also have links to internet locations.

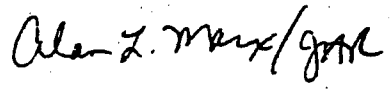
Nothing contained in the Act, its legislative history, or the implementing regulations issued under the Act by the Department of Justice, 28 C.F.R. § 48.1 *et. seq.*, addresses or purports to prohibit the creation of new editions by newspapers operating within JOAs. As the preservation of diverse news and editorial voices is the fundamental goal of the Act, the creation of a new edition that would increase the ability of the Denver Post to broaden its audience by reaching a demographic it is not currently reaching with its news and voice, is consistent with and furthers the stated policy and purpose of the Act.

MediaNews understands that in applying for this business review it is obligated to cooperate with the staff of the Antitrust Division, to undertake a good faith search for the documents and information requested by the staff, and where applicable, to provide all responsive material. It is prepared to do so. As time is of the essence in preparing for the creation and distribution of the proposed new edition, MediaNews requests that this review be conducted in as expeditious a manner as possible.

The creation of the proposed new edition may require an amendment to the JOA. If so, the appropriate filing required by the Act and by the Department of Justice regulations will be made in a timely manner.

Counsel for MediaNews request an opportunity to meet with the staff of the Antitrust Division as soon as possible to discuss any additional information and documents that would be helpful in their evaluation of this matter and to respond to any questions they may have.

Sincerely,



Alan L .Marx

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Enclosure

cc: John R. Read, Esq.
Howell Begle, Esq.