

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ENTERCOM COMMUNICATIONS CORP.,

and

CBS CORPORATION,

Defendants.

Civil Action No.: 1:17-cv-02268

Judge James E. Boasberg

**MOTION AND MEMORANDUM OF THE
UNITED STATES IN SUPPORT OF ENTRY OF FINAL JUDGMENT**

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (“APPA” or “Tunney Act”), Plaintiff United States of America (“United States”) moves for entry of the proposed Final Judgment filed in this civil antitrust proceeding on November 1, 2017 (ECF No. 2-1), a copy of which is attached as Exhibit A. The proposed Final Judgment may be entered at this time without further proceedings if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement filed in this matter on November 1, 2017 (ECF No. 3), explains why entry of the proposed Final Judgment would be in the public interest. The United States is filing simultaneously with this motion a Certificate of Compliance, attached hereto as Exhibit B, setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the sixty-day statutory public comment period has expired.

I. BACKGROUND

On November 1, 2017, the United States filed a civil antitrust Complaint, alleging that the proposed acquisition by Entercom Communications Corp. (“Entercom”) of CBS Radio, Inc. likely would substantially lessen competition in the sale of radio advertising to advertisers targeting English-language listeners in the Boston, Sacramento, and San Francisco Designated Market Areas (“DMAs”) (collectively, the “Local Markets”), in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that, in each of the Local Markets, Entercom and CBS Radio compete vigorously to win business from advertisers and substantially constrain each other’s prices. The proposed merger would eliminate this head-to-head competition and likely would result in higher prices to advertisers.

At the same time the Complaint was filed, the United States also filed a proposed Final Judgment, a Hold Separate Stipulation and Order, and a Competitive Impact Statement. Defendant Entercom was allowed to consummate its acquisition of CBS Radio, but the proposed Final Judgment requires Defendants to divest certain radio stations in the Local Markets to remedy the anticompetitive effects of the transaction. The Hold Separate Stipulation and Order, which was entered by the Court on November 6, 2017 (ECF No. 7), provides in Section IV.A that the proposed Final Judgment may be entered by the Court after the completion of the procedures required by the APPA. The Competitive Impact Statement explains the basis for the Complaint and why the entry of the proposed Final Judgment would be in the public interest. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. COMPLIANCE WITH THE APPA

The APPA requires a sixty-day period for the submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed a Competitive Impact Statement with the Court on November 1, 2017; published the proposed Final Judgment and Competitive Impact Statement in the *Federal Register* on November 13, 2017 (*see* 82 Fed. Reg. 52319); and ensured that a summary of the terms of the proposed Final Judgment—with directions for the submission of written comments relating to the proposed Final Judgment and Competitive Impact Statement—were published in *The Washington Post* for seven days during the period of November 3-9, 2017. The sixty-day public comment period terminated on January 12, 2017, and the United States received no public comments relevant to the proposed Final Judgment or the Local Markets.¹

The United States has filed a Certificate of Compliance simultaneously with this Motion and Memorandum stating that all APPA requirements have been satisfied. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.

III. STANDARD OF JUDICIAL REVIEW

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether the proposed Final Judgment is in the public interest. 15 U.S.C. § 16(e)(1). In making that determination, the Court is required to consider

- (A) the competitive impact of such judgment, including the termination of alleged violations, the provisions for enforcement and modification, the duration of relief sought, the anticipated effects of alternative remedies

¹ The United States received correspondence from one private citizen concerning a former Entercom radio station in the Los Angeles DMA, a market which is not included in the Complaint or the proposed Final Judgment. That station was sold to a third party prior to the filing of the Complaint in this matter. In addition, the correspondence did not comment on the proposed Final Judgment itself. Accordingly, the United States did not file a response to the correspondence or publish it in the *Federal Register*.

actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment the Court deems necessary to determine whether the consent judgment is in the public interest; and

- (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally, and upon individuals alleging specific injury from the violations set forth in the complaint include consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A), (B). In its Competitive Impact Statement, the United States explained the meaning and the proper application of the public interest standard under the APPA and now incorporates those portions of the Competitive Impact Statement by reference.

IV. ENTRY OF THE PROPOSED FINAL JUDGMENT IS IN THE PUBLIC INTEREST

As described above, the United States alleged in its Complaint that the proposed acquisition of CBS Radio by Entercom likely would substantially lessen competition in the sale of radio advertising to advertisers targeting English-language listeners in the Local Markets, leading to a substantial increase in concentration and eliminating existing and future competition between Defendants in those markets. As explained in the Competitive Impact Statement, the proposed Final Judgment is designed to eliminate the likely anticompetitive effects of this acquisition by requiring the divestiture of radio stations in the Local Markets to one or more acquirers approved by the United States.

The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law, and no comments have been submitted relating to the proposed Final Judgment or the Local Markets.² There has been no showing that the proposed settlement constitutes an abuse of the United States' discretion or that it is not within the zone of settlements consistent with public interest.

² See footnote 1, *supra*.

