

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

UNITED STATES OF AMERICA

Plaintiff,

v.

GRAY TELEVISION, INC.

and

RAYCOM MEDIA, INC.

Defendants.

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Stipulation and Order:

- A. “Acquirer” means Scripps, TEGNA, Lockwood, Marquee, or any other entity or entities to which Defendants divest any of the Divestiture Assets.
- B. The “Big 4” television networks mean the NBC, CBS, ABC, and FOX networks.
- C. “Divestiture Assets” means the Divestiture Stations and all assets, tangible or intangible, necessary for the operation of the Divestiture Stations as viable, ongoing commercial broadcast television stations, including, but not limited to, all real property (owned or leased), all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property relating to the Divestiture Stations; all licenses, permits, and authorizations

issued by, and applications submitted to, the FCC and other government agencies relating to the Divestiture Stations; all contracts (including programming contracts and rights), agreements, network affiliation agreements, leases, and commitments and understandings of Defendants relating to the Divestiture Stations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to the Divestiture Stations; all customer lists, contracts, accounts, and credit records relating to the Divestiture Stations; and all logs and other records maintained by Defendants in connection with the Divestiture Stations. Divestiture Assets does not include Excluded Assets.

D. “Defendants” means Gray and Raycom.

E. “Divestiture Stations” means WTNZ, WTOL, KXXV, KRHD-CD, WTXL-TV, WFXG, KWES-TV, WPGX, WSWG, and WDFX-TV.

F. “DMA” means Designated Market Area as defined by The Nielsen Company (US), LLC, based upon viewing patterns and used by BIA Advisory Services’ *Investing in Television Market Report 2018* (1st edition). DMAs are ranked according to the number of television households therein and are used by broadcasters, advertisers, and advertising agencies to aid in evaluating television audience size and composition.

G. “Excluded Assets” means

- (1) the Telemundo affiliation agreement and programming stream (including any syndicated programming), receiver, program logs and related materials, related intellectual property and domain names, relating in all cases to KWES-TV and/or the Odessa-Midland, Texas, DMA;
- (2) the CW affiliation agreement and programming stream (including any syndicated programming), receiver, program logs and related materials,

related intellectual property and domain names, relating in all cases to KWES-TV and/or the Odessa-Midland, Texas, DMA;

(3) the Telemundo affiliation agreement and programming stream (including any syndicated programming), receiver, program logs and related materials, related intellectual property and domain names, relating in all cases to KXXV; and

(4) the CW affiliation agreement and programming stream (including any syndicated programming), receiver, program logs and related materials, related intellectual property and domain names, related in all cases to WSWG.

H. "FCC" means the Federal Communications Commission.

I. "Gray" means defendant Gray Television, Inc., a Georgia corporation

headquartered in Atlanta, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

J. "KRHD-CD" means the ABC-affiliated broadcast television station bearing that call sign located in the Waco-Temple-Bryan, Texas, DMA, owned by Defendant Raycom.

K. "KWES-TV" means the NBC-affiliated broadcast television station bearing that call sign located in the Odessa-Midland, Texas, DMA, owned by Defendant Raycom.

L. "KXXV" means the ABC-affiliated broadcast television station bearing that call sign located in the Waco-Temple-Bryan, Texas, DMA, owned by Defendant Raycom.

M. "Lockwood" means Greensboro TV, LLC, a Virginia limited liability company headquartered in Hampton, Virginia, its successors and assigns, and its subsidiaries, divisions,

groups, affiliates, partnerships, and joint ventures, and their directors, members, officers, managers, agents, and employees.

N. “MVPD” means multichannel video programming distributor.

O. “Marquee” means Marquee Broadcasting Georgia, Inc., a Georgia corporation headquartered in Lawrenceville, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

P. The “Overlap DMAs” means the following nine DMAs: Waco-Temple-Bryan, TX, Tallahassee, FL-Thomasville, GA, Toledo, OH, Odessa-Midland, TX, Knoxville, TN, Augusta, GA, Panama City, FL, Dothan, AL, and Albany, GA.

Q. “Raycom” means defendant Raycom Media, Inc., a Delaware corporation headquartered in Montgomery, Alabama, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

R. “Scripps” means the E.W. Scripps Company, an Ohio corporation headquartered in Cincinnati, Ohio, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

S. “TEGNA” means TEGNA Inc., a Delaware corporation headquartered in McLean, Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

T. “WDFX-TV” means the FOX-affiliated broadcast television station bearing that call sign located in the Dothan, Alabama, DMA, owned by Defendant Raycom.

U. “WFXG” means the FOX-affiliated broadcast television station bearing that call sign located in the Augusta, Georgia, DMA, owned by Defendant Raycom.

V. “WPGX” means the FOX-affiliated broadcast television station bearing that call sign located in the Panama City, Florida, DMA, owned by Defendant Raycom.

W. “WSWG” means the CBS-affiliated broadcast television station bearing that call sign located in the Albany, Georgia, DMA, owned by Defendant Gray.

X. “WTNZ” means the FOX-affiliated broadcast television station bearing that call sign located in the Knoxville, Tennessee, DMA, owned by Defendant Raycom.

Y. “WTOL” means the CBS-affiliated broadcast television station bearing that call sign located in the Toledo, Ohio, DMA, owned by Defendant Raycom.

Z. “WTXL-TV” means the ABC-affiliated broadcast television station bearing that call sign located in the Tallahassee, Florida-Thomasville, Georgia, DMA, owned by Defendant Raycom.

II. OBJECTIVES

A. The Final Judgment filed in this case is meant to ensure Defendants’ prompt divestitures of the Divestiture Assets for the purpose of preserving competition in (a) the licensing of Big 4 television network content to MVPDs for distribution to their subscribers (“retransmission consent”) in the Overlap DMAs, and (b) the sale of broadcast television spot advertising in the Overlap DMAs, in order to remedy the anticompetitive effects that the United States alleges would otherwise result from Gray’s proposed merger with Raycom.

B. The United States has determined, for the purposes of this settlement, that Scripps is an acceptable purchaser of the Divestiture Assets related to KXXV, KRHD-CD, and WTXL-TV; TEGNA is an acceptable purchaser of the Divestiture Assets related to WTOL and KWES-

TV; Lockwood is an acceptable purchaser of the Divestiture Assets related to WTNZ, WFXG, WPGX, and WDFX-TV; and that Marquee is an acceptable purchaser of the Divestiture Assets related to WSWG, subject to certain conditions regarding local news programming.

C. This Hold Separate Stipulation and Order ensures that, prior to the consummation of the ordered divestitures, the Divestiture Assets currently owned respectively by Gray and Raycom remain independent of the other Defendant and remain economically viable and ongoing business concerns, and that competition is maintained during the pendency of the ordered divestitures.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue is proper in the United States District Court for the District of Columbia. Defendants waive service of summons of the Complaint.

IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court upon the motion of any party, or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and, if the United States withdraws consent after the filing of a complaint, by filing that notice with the Court. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three (3)

business days after Defendants' receipt from the United States of the text of the notice and identity of the newspaper or newspapers within which the publication shall be made.

Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper or newspapers within which the notice was published.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment, including Section X, as though the same were in full force and effect as the Final order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures required in the proposed Final Judgment can and will be made, and that Defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. HOLD SEPARATE PROVISIONS

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate each Divestiture Station as an independent, ongoing, economically viable competitive business, with the management, sales, and operations of each station held entirely separate, distinct, and apart from those of Defendants' other operations. Defendants shall not coordinate the production, marketing, or terms of sale of any products or services with those produced by, provided by, or sold under any of the Divestiture Stations. Defendants shall take all steps necessary to preserve and maintain the value and goodwill of each Divestiture Station. Within twenty (20) calendar days after the entry of the Hold Separate Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Divestiture Stations will be maintained and operated as independent, ongoing, economically viable, and active competitors in the business of licensing retransmission consent to MVPDs and in the broadcast television spot advertising business; (2) each of Gray and Raycom will not influence the management of the Divestiture Stations owned by the other Defendant; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the production, distribution, provision, or sale of products or services by or under any

of the Divestiture Stations owned by Raycom will be kept separate and apart from those of the Divestiture Stations owned by Gray and any of Gray's other operations.

C. Defendants shall preserve, in accordance with current practice, the existing relationships of the Divestiture Stations with each broadcast television spot advertising customer, with each MVPD retransmitting a broadcast station's programming, with each network providing affiliation and programming, and with others doing business with the Divestiture Stations.

D. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of each Divestiture Station, and shall maintain at 2018 or previously approved levels for 2019, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Divestiture Stations.

E. Defendants shall, to the extent permitted by the terms and conditions of the FCC's Equity/Debt Plus rule (47 C.F.R. § 73.3555, note 2(i)), provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Stations as economically viable, ongoing businesses, consistent with the requirements of Sections V(A) and V(B).

F. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than current capacity and sales and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

G. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Divestiture Assets.

H. Defendants shall provide such support services for each Divestiture Station as the station requires to operate as an economically viable, competitive, and ongoing provider of

retransmission consent and broadcast television spot advertising. These support services may include federal, state, and local municipal regulatory compliance; human resources; legal; finance; software and computer operations support; and such other services as are required to operate the Divestiture Assets.

I. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books, and records for each Divestiture Station that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of that station.

J. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

K. Unless the United States otherwise consents in writing, Defendants' employees of each Divestiture Station shall not be transferred or reassigned to other areas within Defendants' business before divestiture of that station, except for transfer bids initiated by employees pursuant to Defendants' regular, established, job posting policy. Defendants shall provide the United States with ten (10) calendar days' notice before such transfer.

L. Defendants, subject to the approval of the United States, shall appoint a person or persons to oversee each Divestiture Station, and who will be responsible for Defendants' compliance with this section. This person(s) shall have complete managerial responsibility for the respective Divestiture Stations, subject to the provisions of this Final Judgment. In the event such person(s) is unable to perform his or her duties, Defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) business days. Should Defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

M. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer or Acquirers acceptable to the United States.

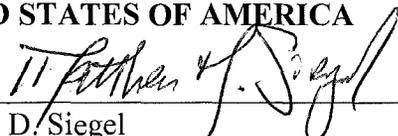
VI. DURATION OF HOLD SEPARATE AND ASSET PRESERVATION OBLIGATIONS

Defendants' obligations under Section V of this Hold Separate Stipulation and Order shall remain in effect until (1) consummation of the divestitures required by the proposed Final Judgment or (2) further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, Defendants are released from all further obligations under this Hold Separate Stipulation and Order.

Respectfully submitted,

Dated: December 14, 2018

**FOR PLAINTIFF
UNITED STATES OF AMERICA**



Matthew D. Siegel
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Respectfully submitted,

Dated: December 14, 2018

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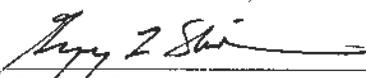
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ORDER

IT IS SO ORDERED by the Court, this _____ day of _____, 2018.

United States District Judge