

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

UNITED STATES OF AMERICA,
STATE OF ILLINOIS,
COMMONWEALTH OF PENNSYLVANIA,
and
COMMONWEALTH OF VIRGINIA,

Plaintiffs,

v.

NEXSTAR MEDIA GROUP, INC., and
TRIBUNE MEDIA COMPANY,

Defendants.

Case No. 1:19-cv-2295 (DLF)

**PLAINTIFF'S MOTION AND MEMORANDUM
IN SUPPORT OF ENTERING THE FINAL JUDGMENT**

Pursuant to Section 2(b) of 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 the Court to enter the proposed Final Judgment. The United States, together with the State of Illinois and the Commonwealths of Pennsylvania and Virginia (“Plaintiff States”),¹ filed the proposed Final Judgment in this civil antitrust proceeding on July 31, 2019 (Dkt. No. 2-2) (Exhibit A). Concurrent with that filing, the Parties also filed a Hold Separate Stipulation and Order (the “Hold Separate”), stipulating that a Final Judgment in the form of the proposed Final Judgment 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 APPA and without further

¹ Separately, the Plaintiff States and Defendants entered into a joint stipulation for the entry of a supplemental final judgment, which is currently pending before this Court.

notice to any party or other proceedings. The Hold Separate was entered by the Court on August 19, 2019 (Dkt. No. 14). Attached hereto as Exhibit B is a Certificate of Compliance setting forth the steps taken by the Parties to comply with all applicable provisions of the APPA and certifying that the statutory public comment period has expired.

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 August 1, 2019 (Dkt. No. 6), explains why entry of the proposed Final Judgment is 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. The United States respectfully requests that the Court enter the proposed Final Judgment.

I. BACKGROUND

On November 30, 2018, Defendant Nexstar Media Group, Inc. (“Nexstar”) agreed to acquire Defendant Tribune Media Company (“Tribune,” and together with Nexstar, “Defendants”) for approximately \$6.4 billion. The United States and Plaintiff States filed a civil antitrust Complaint on July 31, 2019, seeking to enjoin the proposed merger. The Complaint alleges that the likely effect of this merger would be to substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, in thirteen Designed Market Areas (“DMAs”), including certain DMAs in which Defendants license the television programming of NBC, CBS, ABC, and FOX affiliate stations to cable, satellite, and fiber optic television providers and over-the-top providers for retransmission to their subscribers, and certain DMAs in which Defendants sell broadcast television spot advertising.

At the same time the Complaint was filed, the United States also filed a proposed Final Judgment and a Hold Separate, both agreed to by the United States, the Plaintiff States, and Defendants, designed to eliminate the anticompetitive effects of the proposed acquisition. Under the proposed Final Judgment, Defendants were required to divest broadcast television stations in thirteen markets (collectively, the “Divestiture Stations”) to acquirers approved by the United States in a manner that preserved competition in each of the DMAs.

The agreed upon divestitures included:

- the sale of WTKR, WGNT, WXMI, WTVR, and KSTU to the E.W. Scripps Company or its subsidiaries (collectively, “Scripps”);
- the sale of WNEP-TV, KFSM-TV, WQAD-TV, WOI-DT, KCWI-TV, WZDX, WATN-TV, WLMT, WPMT, WTIC-TV, and WCCT-TV to TEGNA Inc. or its subsidiaries (collectively, “TEGNA”); and
- the sale of WNDY-TV and WISH-TV to Circle City Broadcasting I, Inc. (“Circle City”).

On September 19, 2019, Nexstar sold the Divestiture Stations to Scripps, TEGNA, and Circle City, respectively. On the same day, Nexstar consummated its acquisition of Tribune.

II. COMPLIANCE WITH THE APPA

The APPA requires a period of at least sixty days 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 the proposed Final Judgment and the Competitive Impact Statement with the Court on July 31, 2019 and August 1, 2019, respectively; published the proposed Final Judgment and Competitive Impact Statement in the *Federal Register* on August 15, 2019 (*see* 84 Fed. Reg. 41,738 (2019)); and ensured that a summary of the terms of the proposed Final Judgment and of the Competitive Impact Statement, with directions for the submission of written comments, were

published in *The Washington Post* for seven days during the period August 9, 2019 to August 15, 2019. The public comment period concluded on October 15, 2019, and the United States did not receive any comments.

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

III. STANDARD OF JUDICIAL REVIEW

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment “is in the public interest.” 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, “shall consider”:

- (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of 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 individuals alleging specific injury from the violations set forth in the complaint including

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). The Court can make the public-interest determination based on the Competitive Impact Statement. Section 16(e)(2) of the APPA states that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.”

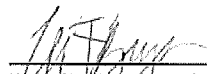
In the Competitive Impact Statement, the United States set forth the public interest standard under the APPA and now incorporates those statements by reference. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment, and no comments have been submitted. As explained in the Competitive Impact Statement, entry of the proposed Final Judgment is in the public interest.

IV. CONCLUSION

For the reasons set forth in this Motion and Memorandum and in the Competitive Impact Statement, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further proceedings. Plaintiff United States respectfully request that the proposed Final Judgment, attached hereto as Exhibit A, be entered at this time.

Dated: January 7, 2020

Respectfully submitted,



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