UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA Department of Justice, Antitrust Division 450 5th Street, N.W., Suite 4000 Washington, DC 20530, Plaintiff, v. **RAYCOM MEDIA, INC.** RSA Tower, 20th Floor 201 Monroe Street Montgomery, AL 36104, Defendant.	Civil Action No.: Filed: Judge:

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against defendant Raycom Media, Inc. ("Raycom"), and complains and alleges as follows:

1. The United States brings this suit to prevent Raycom from continuing to own two of the top four broadcast television stations in Richmond, Virginia. On April 1, 2008, Raycom consummated a transaction with Lincoln Financial Media Company ("Lincoln"), in which Raycom acquired WWBT-TV, the Richmond, Virginia, affiliate of the National Broadcasting Corporation ("NBC") (the "acquisition"). Raycom at that time already owned and continues to own WTVR-TV, the Richmond, Virginia, affiliate of CBS Broadcasting Inc. ("CBS"). In 2007, WWBT-TV earned approximately 32 percent and WTVR-TV earned approximately 23 percent of the broadcast television spot advertising revenues in the Richmond market.

2. The acquisition eliminated substantial head-to-head competition between WWBT-TV and WTVR-TV. Unless remedied, the loss of WWBT-TV as an independent significant competitor will substantially lessen competition for the sale of broadcast television spot advertising in the Richmond market, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

I. Jurisdiction and Venue

3. This Complaint is filed and this action is instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Defendant from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

4. Raycom sells broadcast television spot advertising to advertisers, a commercial activity that substantially affects and is in the flow of interstate commerce. This Court has jurisdiction over the subject matter of this action pursuant to Sections 15 and 16 of the Clayton Act, 15 U.S.C. §§ 25, 26, and 28 U.S.C. §§ 1331, 1337.

5. The Defendant has consented to personal jurisdiction and venue in this judicial district.

II. The Defendant

6. Raycom Media, Inc. is a Delaware corporation with its headquarters in Montgomery, Alabama.

7. Raycom is one of the country's largest television broadcasters. It currently owns and/or operates forty-six television stations in thirty-five markets and eighteen states. Raycom also distributes syndicated television programming and provides event management, information system support, and website design and hosting services.

III. Trade and Commerce

A. Relevant Product Market

8. Broadcast television stations attract viewers through their programming and then sell access to their viewers to businesses and others that want to advertise their products and services. Broadcast television programming is transmitted by broadcast television stations, for free, over the air to television receivers. Broadcast television programming is also simultaneously retransmitted, as aired, by cable television systems (systems that deliver programming, for a fee, through wires into homes), and satellite television systems (systems that deliver programming over the air, for a fee, to home satellite receivers). Sales of "spot" advertising generate the majority of a broadcast television station's revenues. Broadcast television spot advertising is purchased by advertisers that want to target potential customers in specific localized geographic markets. It differs from network and syndicated television advertising, which is sold by the major television networks and producers of syndicated programs on a nationwide basis and broadcast in every market where the network or syndicated program is aired. Spot advertising is sold either directly by the station or through its national representative on a localized, market-by-market basis.

9. Broadcast television spot advertising possesses attributes that collectively set it apart from advertising using other types of media. Television combines sight, sound, and motion, thereby creating a memorable and effective advertisement. Moreover, of all media, broadcast television spot advertising reaches the largest percentage of all potential customers in a particular desired target audience and is therefore especially effective in introducing and establishing the image of a product. A significant number of advertisers view broadcast

television spot advertising as a necessary advertising medium for which there is no close substitute. Such customers would not switch to another advertising medium – such as radio, cable, internet, or newspaper – or some combination thereof, if broadcast television spot advertising prices increased by a small but significant amount.

10. In the Richmond DMA, cable television advertising is not a meaningful substitute for broadcast television spot advertising because the viewership of cable television networks, even when the networks are combined and packaged together, is significantly smaller than the viewership of broadcast television stations and is more demographically homogeneous. Additionally, unlike broadcast television advertising, it is generally difficult for advertisers to place last minute advertisements on cable television. Other media, such as radio, newspapers, internet or billboards, are even less desirable substitutes for broadcast television advertising. Satellite television advertising is not a substitute because satellite television providers cannot limit the distribution of their advertisements to a particular DMA, and therefore do not sell advertising in competition with local broadcast television stations.

11. Broadcast television stations generally can identify advertisers with strong broadcast television advertising preferences. Broadcast television stations negotiate prices individually with advertisers; consequently, broadcast television stations can charge different advertisers different prices. In the event of a price increase in broadcast television spot advertising, some advertisers may shift some of their advertising to other media rather than absorb a price increase. However, the existence of such advertisers would not prevent broadcast television stations from profitably raising prices by a small but significant amount for a

substantial number of advertisers that would not shift to other media or broadcast television stations.

12. Accordingly, the sale of broadcast television spot advertising is a relevant product market within the meaning of Section 7 of the Clayton Act.

B. Relevant Geographic Market

13. A Designated Marketing Area ("DMA") is a non-overlapping geographic area defined by A. C. Nielsen Company, a firm that surveys television viewers and furnishes television stations, advertisers, and advertising agencies with data to aid in evaluating audience size and composition. The Richmond DMA encompasses the city of Richmond, Virginia, and the surrounding counties in which stations within the Richmond DMA receive the largest share of viewers.

14. Advertisers use broadcast television stations within the Richmond DMA to reach the largest possible number of viewers within the entire DMA. Advertising on television stations outside the Richmond DMA is not an effective alternative for these advertisers because such stations are not viewed by a significant number of potential customers within the Richmond DMA. Thus, if there were a small but significant price increase in broadcast television spot advertising prices within the Richmond DMA, an insufficient number of advertisers would switch their advertising time purchases to television stations outside the Richmond DMA to render the price increase unprofitable.

15. Accordingly, the Richmond DMA is a relevant geographic market for the sale of broadcast television spot advertising within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects

16. Broadcast television stations compete for advertisers by providing advertisers access to their viewers. A station attracts viewers by selecting shows that appeal to the greatest number of viewers, and also tries to differentiate itself from other stations by appealing to specific demographic groups. Advertisers, in turn, are interested in using broadcast television spot advertising to reach a large audience, as well as to reach a high proportion of the type of viewers that are most likely to buy their products.

17. Broadcast station ownership in the Richmond DMA is highly concentrated. Unremedied, Raycom's acquisition of WWBT-TV would give it control of two of the top four broadcast stations in the Richmond DMA and sales of over 50 percent of the total broadcast television spot advertising revenues in the Richmond DMA. Using a measure of concentration called the Herfindahl-Hirschman Index ("HHI"), defined and explained in Appendix A, combining the ownership of WWBT-TV and WTVR-TV substantially increases the HHI from approximately 2400 to approximately 3800, well above the 1800 threshold at which the Division normally considers a market to be highly concentrated.

18. Prior to the transaction, WWBT-TV, the local NBC affiliate, and WTVR-TV, the local CBS affiliate, competed vigorously for advertisers because the demographic makeup of their viewers makes them close substitutes for a significant number of advertisers. The two stations competed head-to-head for a substantial number of advertisers seeking a desired audience, forcing the stations to offer better terms to win an advertiser's business. These advertisers would find it difficult or impossible to obtain competitive rates with the threat to "buy around" WWBT-TV and WTVR-TV, because they would be unable to as effectively reach their desired audiences without

purchasing advertising from Raycom's stations. Thus, without divestiture of one of its Richmond stations, Raycom's acquisition of WWBT-TV substantially reduces competition for broadcast television spot advertising in the Richmond DMA.

D. Entry

19. De novo entry into the Richmond DMA is unlikely, because the Federal Communications Commission ("FCC") regulates entry through the issuance of licenses. These licenses are difficult to obtain because the availability of spectrum is limited, and the regulatory process associated with obtaining a license is lengthy. Even if a new signal became available, commercial success would come, at best, over a period of many years, because all major broadcast networks are already affiliated with a licensee in the Richmond DMA, the contracts last for many years, and the broadcast networks rarely switch licensees when the contracts expire. Thus, entry into the Richmond DMA broadcast television spot advertising market would not be timely, likely, or sufficient to deter Raycom from unilaterally raising prices.

IV. Violation Alleged

20. Each and every allegation in paragraphs 1 through 19 of this Complaint is here realleged with the same force and effect as though said paragraphs were here set forth in full.

21. The effect of Raycom's acquisition of WWBT-TV would be to substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act.

22. Raycom's acquisition of WWBT-TV will likely have the following effects, among others:

a. competition in the sale of broadcast television spot advertising in the Richmond DMA would be substantially lessened;

b. actual and potential competition between WWBT-TV and WTVR-TV in the sale of broadcast television spot advertising in the Richmond DMA would be eliminated; and

c. the prices for broadcast television spot advertising in the Richmond DMA would likely increase.

23. Unless restrained, the acquisition will violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

V. Requested Relief

24. Plaintiff requests:

a. that Raycom's acquisition of WWBT-TV be adjudged to violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;

b. that Raycom be ordered to divest WTVR-TV in accord with the attached Hold Separate Stipulation and Order and proposed Final Judgment;

c. that a proposed Final Judgment giving effect to the divestiture be entered by the Court after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16;

d. that the United States be awarded the costs of this action; and

e. that the United States be granted such other and further relief as the Court may deem just and proper.

Dated: August 28, 2008.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2008, I caused a copy of the foregoing Complaint to be served on the defendant in this matter in the manner set forth below:

By facsimile and U.S. mail:

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Appendix A

DEFINITION OF HHI

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.