

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

VERSO PAPER CORP., and
NEWPAGE HOLDINGS INC.,

Defendants.

Case No. 1:14-cv-2216 (TSC)

**UNITED STATES' UNOPPOSED MOTION AND SUPPORTING MEMORANDUM
TO EXCUSE *FEDERAL REGISTER* PUBLICATION OF
ATTACHMENTS TO PUBLIC COMMENTS**

The United States hereby moves this Court, pursuant to 15 U.S.C. § 16(d)(2), to excuse *Federal Register* publication of the attachments to the Comments of Local 1821 of the International Association of Machinists and Aerospace Workers Union (“Local 1821 Comments”¹) in this case and instead authorize electronic publication of the attachments for good cause, pursuant to 15 U.S.C. § 16(d). The United States proposes to meet its statutory obligations by publishing all comments received in the *Federal Register*, posting the attachments to the Local 1821 Comments on the Antitrust Division’s website, and publishing the relevant internet address for those attachments in the *Federal Register*. Defendants Verso Paper Corp. (“Verso”) and NewPage Holdings Inc. (“NewPage”) do not object to this motion. Local 1821 also does not object to posting the attachments submitted with its public comments on the Antitrust Division’s website in lieu of *Federal Register* publication.

¹ The Local 1821 Comments were submitted on behalf of 58 former employees of a mill in Bucksport, Maine, that Defendant Verso Paper Corp. closed in December 2014.

The United States filed a civil antitrust Complaint on December 31, 2014 challenging Verso's acquisition of NewPage, along with a proposed Final Judgment that would resolve the litigation. As required by the Antitrust Procedures and Penalties Act, 15 U.S.C. § (b)-(h) (the "Tunney Act"), the United States published the proposed Final Judgment and a Competitive Impact Statement ("CIS") in the *Federal Register* on January 14, 2015, *see* 80 Fed. Reg. 1957, and had summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, published in *The Washington Post* on January 14, 15, 16, 19, 20, 21, and 22, 2015. The United States received two comments during the sixty-day period for public comment that ended on March 24, 2015.

As required by the Tunney Act, the United States will shortly file with the Court and serve on all parties to this action a Response to Public Comments, which will include copies of all comments and their attachments. The Response to Public Comments will be published in the *Federal Register* and will appear, along with electronic versions of the public comments and their respective attachments, on the Antitrust Division's website.

I. Argument

The Tunney Act requires the United States to publish the comments it received in this matter and its Response in the *Federal Register* prior to moving the Court for entry of the proposed Final Judgment. *See* 15 U.S.C. § 16(d)(2). In 2004, the Tunney Act was amended in light of the benefits of electronic publication and the costs of publication in the *Federal Register*. The amendment authorizes the Court to order an alternative publication method when the expense involved with *Federal Register* publication exceeds the public interest benefits to be gained:

Upon application by the United States, the district court may, for good cause (based on a finding that the expense of publication in the Federal Register exceeds the public interest benefits to be gained from such publication), authorize an alternative method of public dissemination of the public comments received and the response to those comments.

15 U.S.C. § 16(d)(2).²

The United States would incur a significant expense to publish in the *Federal Register* the attachments received with the Local 1821 Comments. The attachments include a list of Local 1821 members, a chronology, and several pages of correspondence that do not lend themselves to simple text transcription. In order to reproduce the attachments in the manner in which they were filed with the Department of Justice, the *Federal Register* would be required to individually photograph each page, at a total cost to the United States of approximately \$30,000.

Since the 2004 amendment of 15 U.S.C. § 16(d)(2), courts have uniformly granted motions by the Department of Justice to excuse *Federal Register* publication of Tunney Act comments and/or their attachments where, as here, such publication would involve significant expense.³ The United States proposes to publish the Local 1821 Comments in the *Federal Register*, without the attachments but with a statement providing the link to the Department of

² At the Senate hearing on the legislation, Senator Leahy of the Judiciary Committee noted that *Federal Register* publication “can be very expensive . . . with little benefit, because those materials are, if anything, more accessible on the Web than in a library.” 150 CONG. REC. 6,328 (2004). Senator Kohl echoed those comments, stating, “[t]his provision is intended to avoid unnecessary expense in publishing proposed consent decrees if alternative means are available, such as, for example, posting the proposed decrees electronically, which are sufficient to inform interested persons of the proposed consent decree.” *Id.* at 6,332.

³ Courts in this district have repeatedly found good cause to excuse *Federal Register* publication under 15 U.S.C. § 16(d)(2). *See, e.g., United States v. US Airways Grp., Inc.*, No. 1:13-cv-01236-CKK (D.D.C. Nov. 20, 2013) (attached as Exhibit 1); *United States v. Anheuser-Busch InBev SA/NV*, No. 1:13-cv-127-RWR (D.D.C. Aug. 5, 2013) (attached as Exhibit 2); *United States v. United Techs. Corp.*, No. 1:12-cv-1230-RC (D.D.C. Mar. 25, 2013) (attached as Exhibit 3); *United States v. Ticketmaster Entm’t, Inc.*, No. 1:10-cv-00139-RMC (D.D.C. Jun. 15, 2010) (attached as Exhibit 4). The United States is not aware of any case denying a motion brought by the Department of Justice to excuse *Federal Register* publication of Tunney Act comments or attachments since the statute was amended in 2004.

Justice website where the attachments can be viewed or downloaded. This alternative would save the expense of full *Federal Register* publication while preserving the public interests associated with public access to the materials. Moreover, the substance of the Local 1821 Comments is fully understandable without the attachments.⁴

II. Conclusion

The United States respectfully requests that the Court enter the proposed Order authorizing the publication in the *Federal Register* of the Local 1821 Comments with a link to the Department of Justice website where the attachments to those comments can be viewed and downloaded.

Dated: May 7, 2015.

Respectfully submitted,

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⁴ The Local 1821 Comments provide a detailed description of the attachments.

CERTIFICATE OF SERVICE

I, Karl D. Knutsen, hereby certify that on May 7, 2015, I caused a copy of the United States' Unopposed Motion and Supporting Memorandum to Excuse *Federal Register* Publication of Attachments to Public Comments, and a Proposed Order, to be filed and served upon all counsel of record by operation of the CM/ECF system for the United States District Court for the District of Columbia. Additionally, a copy of the foregoing was delivered via e-mail to the duly authorized legal representatives of the defendants, as follows:

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