

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

UNITED STATES OF AMERICA,	)	Civil Action No. 1:99-CV3212
	)	Filed June 19, 2002
	)	Judge: Thomas Hogan
Plaintiff,	)	
	)	
v.	)	
	)	
CBS CORPORATION;	)	
INFINITY BROADCASTING	)	
CORPORATION; and	)	
OUTDOOR SYSTEMS, INC.,	)	
	)	
Defendants	)	

**MEMORANDUM OF LAW IN SUPPORT OF MOTION  
TO EXTEND TERM OF TRUSTEE'S APPOINTMENT**

This memorandum is submitted in support of the Motion of the United States to Extend Term of Trustee's Appointment. The United States requests that the Court extend the term for six months, until November 26, 2002. Section V of the Final Judgment in this case specifically provides that the Court has authority to take such action.

On November 26, 2001, this Court signed an order appointing Gordon J. Davis as Trustee to effectuate the divestiture of either the New York City Subway Business or the New York City Bus Shelter Business. After reviewing the relevant contracts and meeting with state and city officials, the Trustee concluded that there were many obstacles to an efficient sale of the Bus Shelter Business. (The Trustee's analysis of the obstacles to a successful divestiture of the Bus Shelter Business is contained in his Report to the Court dated January 3, 2002, and Exhibit A to that Report.) Accordingly, he elected to focus on the sale of the Subway Business.

In December 2001, the Trustee sent out written requests for expressions of

interest to companies that had been identified by the Defendants and/or the MTA as possible purchasers of the Subway Business. In January 2002, he sent out offering packages to those companies that had expressed interest and signed confidentiality agreements. The deadline for submission of offers was January 25, 2002. See Trustee's Report to the Court dated January 3, 2002 and February 4, 2002.

Only one company submitted a conforming offer. That company ("Proposed Acquiror") had significant out-of-home advertising experience and appeared qualified to operate the Subway Business. The other companies that had signed confidentiality agreements but did not submit conforming offers explained that the remaining term of the subway advertising contract was too short, the guaranteed minimum payments to the MTA contained in the subway advertising contract were too high, or both. The Trustee subsequently met with representatives of the MTA in an effort to secure the required MTA approval of Proposed Acquiror. However, his efforts proved unsuccessful.

Prior efforts by the Defendants to sell the Subway Business were, of course, also unsuccessful. Prior to the appointment of the Trustee, the Defendants entered into an asset purchase agreement with Spanish Broadcasting System. At the beginning of November 2000, while awaiting MTA approval, Spanish Broadcasting System elected to terminate the asset purchase agreement. Defendants then entered into an agreement with Interep National Radio Sales ("Interep"), but Interep was unable to obtain MTA approval.

It appears to all concerned that further efforts to divest the Subway Business

(short of a court order compelling the Defendants to terminate the contract) would be futile. The parties have filed a joint motion seeking a modification of the Final Judgment to permit the Defendants to divest other assets.

The United States believes that the Trustee should have a role in the divestiture of those assets (assuming the Court agrees to the proposed modification). Specifically, the United States believes that the Trustee initially should act in a monitoring capacity with respect to any efforts made by the Defendants to find a buyer for the substitute assets. During the monitoring period, the Defendants would advise the Trustee regarding contacts and negotiations with potential purchasers and grant the Trustee access to any necessary personnel, books, records, and facilities, subject to any applicable privileges. In the event the Defendants have not found a buyer, secured all necessary consents, and divested the substitute assets within a very brief time B 30 days after notice of the entry of an order modifying the Final Judgment B the Trustee would then assume responsibility for the sale of those assets. The Trustee's authority to sell the assets would be in accordance with (and subject to) the terms of the Final Judgment, as modified.

Section V of the Final Judgment gives the Court authority to extend the term of the Trustee's appointment and to make such other orders as are appropriate. The United States submits that it would be appropriate for the Trustee=s term to be extended for six months, until November 26, 2002, on the terms outlined herein, subject to further order of the Court. The United States understands that the Trustee and the Defendants have reached agreement on an amendment to the Trustee's fee

agreement, and the amended fee agreement will filed with the Court shortly.

Defendants have no objection to this motion.

Respectfully submitted,

FOR PLAINTIFF  
UNITED STATES OF AMERICA

\_\_\_\_\_/s/

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Dated: June 19th, 2002

**Certificate of Service**

I, Allen P. Grunes, hereby certify that, on June 19, 2002, I caused the foregoing document to be served on the Defendants and the Trustee by having a copy mailed, first-class, postage prepaid, to:

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Trustee

\_\_\_\_\_  
/s/  
Allen P. Grunes