UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*, v. GRAY TELEVISION, INC., and RAYCOM MEDIA, INC., *Defendants*.	Case No. 1:18-cv-02951-CRC

PLAINTIFF UNITED STATES' 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 filed the proposed Final Judgment in this civil antitrust proceeding on December 14, 2018 (ECF No. 2-2) (Exhibit A). Also on December 14, 2018, the Parties 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 notice to any party or other proceedings. The Hold Separate was entered by the Court on December 20, 2018 (ECF No. 8) (Exhibit B). Simultaneous with this motion, the United States filed a Certificate of Compliance, attached hereto as Exhibit C, 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 December 14, 2018 (ECF No. 3), explains why entry of the proposed Final Judgment is in the public interest. Therefore, the United States respectfully requests that the Court enter the proposed Final Judgment.

I. BACKGROUND

On June 23, 2018, Gray Television, Inc. ("Gray") and Raycom Media, Inc. ("Raycom") entered into an Agreement and Plan of Merger pursuant to which Gray would acquire Raycom for approximately $3.6 billion. On December 14, 2018, the United States filed a civil antitrust Complaint that alleged that the proposed acquisition would likely substantially lessen competition in the licensing of "Big 4" television retransmission consent and in the sale of broadcast television spot advertising in each of nine Designated Market Areas ("Overlap DMAs") in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

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 Plaintiff and Defendants, designed to eliminate the anticompetitive effects of the proposed acquisition. Under the proposed Final Judgment, Defendants were required to divest a Big 4 broadcast television station in each of the Overlap

DMAs (collectively, the "Divestiture Stations") to acquirers approved by the United States in a manner that preserved competition in each of the DMAs.[1]

Prior to the filing of the Complaint, the Defendants proposed the following divestitures, to take place pursuant to executed asset purchase agreements that the Defendants provided to the United States:

- the sale of KXXV, KRHD-CD, and XTXL-TV to the E.W. Scripps Company or its subsidiaries (collectively, "Scripps");
- the sale of WTOL and KWES-TV to TEGNA Inc. or its subsidiaries (collectively, "TEGNA");
- the sale of WTNZ, WFXG, WPGX, and WDFX-TV to Greensboro TV, LLC, a company controlled by Jim Lockwood ("Lockwood"); and
- the sale of WSWG to Marquee Broadcasting Georgia, Inc. ("Marquee").

The United States has determined that these divestitures are acceptable, subject to certain conditions regarding local news programming described in Paragraph IV(I) and Paragraph IV(J) of the proposed Final Judgment. On December 31, 2018, and January 2, 2019, Gray sold the Divestiture Stations to these respective buyers, subject to the required conditions. On January 2, 2019, Gray consummated its acquisition of Raycom.

[1] The proposed Final Judgment contemplates that Gray would not be required to divest certain excluded assets, namely, the Telemundo and CW affiliations and programming streams in the Odessa-Midland, Texas, DMA; the Telemundo affiliation and programming stream in the Waco-Temple-Bryan, Texas, DMA; and the CW affiliation and programming stream in the Albany, Georgia, DMA. The United States has concluded that Gray's retention of these programming streams would not have a material effect on the adequacy of the proposed remedy.

Paragraph IV(A) of the Hold Separate provides that the proposed Final Judgment may be entered by the Court after the completion of the procedures required by the APPA. 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.

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 published the proposed Final Judgment and Competitive Impact Statement in the *Federal Register* on February 1, 2019 (*see* 84 Fed. Reg. 1,216 (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 February 4 to February 10, 2019.[2] The public comment period concluded on April 5, 2019, and the United States received one comment. The United States filed its Response to Public Comment on June 3, 2019, addressing the substance of the comment.

The United States filed a Certificate of Compliance simultaneously with this Motion and Memorandum, stating that all APPA requirements have been satisfied. It is therefore appropriate

[2] Though not expressly required to do so by the APPA, the United States also caused these summaries of the proposed Final Judgment and Competitive Impact Statement, and directions for submission of written comments, to be published for seven days over a period of two weeks in 11 other newspapers that are widely read in the Overlap DMAs: *The Albany Herald*, *The Augusta Chronicle*, the *Dothan Eagle*, the *Waco Tribune-Herald*, *The Knoxville News-Sentinel*, the *Midland Reporter-Telegram*, *The Odessa American*, *The News Herald* (published in Panama City, Florida), the *Tallahassee Democrat*, *The Blade* (published in Toledo, Ohio), and *The Valdosta Daily Times*.

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
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> (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 and Response to Public Comment alone. 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 its Response to Public Comment, the United States set forth the public interest standard under the APPA and now incorporates those statements herein by reference. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment. As explained in the Competitive Impact Statement and Response to Public Comment, 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 requests that the proposed Final Judgment, attached hereto as Exhibit A, be entered at this time.

Dated: June 3, 2019

Respectfully submitted,

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