

Response to Comments in  
*United States v. Village Voice Media*

Exhibit B

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
Eastern Division

UNITED STATES OF AMERICA,	)	
	)	
<i>Plaintiff,</i>	)	Civil Action No. 1:03-CV-0164
	)	
v.	)	Before: Judge Polster
	)	
VILLAGE VOICE MEDIA, LLC.	)	Filed: March 26, 2003
	)	
and	)	
	)	
NT MEDIA, LLC.,	)	
	)	
<i>Defendant.</i>	)	
	)	

BRIEF OF S.M. OLIVA AS AMICUS CURIAE

Statement of Interest

I, S.M. Oliva, declare that I have no financial interest in this case, nor do I have a financial interest in any competitor of Village Voice Media or NT Media. The views expressed in this brief are my own, and are based on my experience as a public policy analyst in the field of antitrust and competition law.

### **Relevant Facts**

On January 27, 2003, the United States filed a complaint and proposed Final Judgment with this Court in the above-captioned case. Pursuant to the Tunney Act, 15 U.S.C. §16(b)-(h), the United States subsequently published the proposed Final Judgment, along with a competitive impact statement (CIS), in the *Federal Register* on February 12, 2003. At that time, a 60-day public comment period commenced under the Tunney Act, following which the United States is required to file any comments received, along with the Government's responses, with this Court prior to the entry of any Final Judgment.

The proposed Final Judgment requires both defendants to divest assets to third parties. The goal, according to the United States, is to ensure that two newspapers closed by the defendants are able to resume operation under new owners, thus restoring competition the United States claims was lost by the defendants' illegal conduct. Under Section V(A) of the proposed Final Judgment, these divestitures must be completed within 30 calendar days of the filing of the complaint, or February 26, 2003. Subsequent to the filing of the proposed Final Judgment, however, the United States filed notice with the Court on February 26, announcing that it reached an agreement with the defendants to extend the time for divestiture until March 10 in the case of Village Voice Media, and March 14 for NT Media. On March 18 and March 20, separate notices were filed by the United States declaring that both defendants had entered agreements with other parties to divest the required assets, and that the Government did not object to either arrangement.

Despite the fact these divestitures are essentially completed, the public comment period remains open in this case until April 12.

## Argument

Congress passed the Tunney Act in order to ensure public review of antitrust settlements before they take effect. 15 U.S.C. § 16 (b) explicitly requires any proposed Final Judgment be filed with the district court “at least 60 days prior to the *effective* date of such judgment,” (italics added.) Under section 16 (d), the United States must “receive and consider any written comments” to the proposed settlement during this period prior to the entry of judgment.

In requiring the defendants to complete their divestiture nearly one full month prior to the expiration of the public comment period, the United States intentionally violated the Tunney Act. Section 16 (b) makes it clear that no judgment may take effect until at least 60 days have elapsed from the filing of the proposed Final Judgment. Since the divestitures accomplish the Government’s primary objective in pursuing this case in the first place, Section V(A) of the proposed Final Judgment unquestionably violates the Tunney Act’s legally mandated timeline for approving antitrust settlements.

Because of the United States’ actions, any public comments offered in opposition to the proposed Final Judgment are essentially meaningless, because the substance of the judgment has already been executed by the parties. Furthermore, this Court’s own power under the Tunney Act is compromised, because 15 U.S.C. § 16 (e) requires that “[b]efore entering any consent judgment...the court shall determine that the entry of such judgment is in the public interest.” As the Court has yet to make such determination, the execution of Section V (A) effectively usurps the judicial function of oversight called for by the Tunney Act.

The United States offers no direct explanation for their actions. There is no justification offered, either in the proposed Final Judgment or the CIS, for why the divestitures must be completed *before* the required Tunney Act review is completed. The only suggestion of a

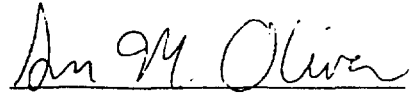
defense by the United States is its statement in the CIS that, “[g]iven that defendants has (sic) closed the Cleveland Free Times and New Times LA in October 2002, a quick and effective remedy was necessary to reestablish competition. Consequently, defendants must use their best efforts to divest assets within 30 days.” Competitive Impact Statement, 68 Fed. Reg. 7132, 7144 (Feb. 12, 2003). This doesn’t tell us much beyond the fact the United States seeks to re-open the closed newspapers under new owners. It does not tell the Court or the public *why* the Tunney Act must be discarded in order to accomplish this goal.

If the United States believed that the injury to competition was so severe as to require dispensing with the Tunney Act’s normal schedule, the Government possessed a statutory remedy. Under 15 U.S.C. § 16 (d), the Court may order a shortening of the 60-day public comment period upon showing of “extraordinary circumstances” or demonstration that “such shortening is not adverse to the public interest.” The United States never requested a shortening of the comment period, nor has it offered anything in the CIS which would meet either of the statutory requirements for shortening the comment period.

### **Conclusion**

Given the blatant and egregious nature of the United States’ Tunney Act violations, the Court should act promptly to ensure the “public interest” is protected, and Congress’ intent is faithfully executed. 15 U.S.C. § 16 (f)(5) permits the Court to “take such other action in the public interest as the court may deem appropriate,” in Tunney Act proceedings. In this case, the Court should exercise its broad statutory authority to prevent the execution of the proposed Final Judgment prior to the conclusion of the 60-day public comment period and the Court’s subsequent public interest determination.

Respectfully Submitted,



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*Amicus Curiae*

DATED: March 26, 2003

**CERTIFICATE OF SERVICE**

I hereby certify that on this 26<sup>th</sup> day of March, 2003, I caused a true and correct copy of the foregoing Motion for Leave to File and Brief of Amicus Curiae to be mailed by First Class United States Mail to:

For Plaintiff United States of America:

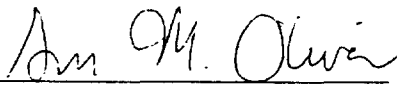
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