identification of the human remains as Native American is consistent with observed burial practices, such as a burial in a pit without evidence of a coffin, the lack of buttons or other artifacts indicative of Euro-American clothing, and morphological characteristics.

Mackinaw City is located on the south side of the Straits of Mackinac. During this period, the French had missions, traders, and a military presence at the Straits. During the late 17th and early 18th century, the Odawa were known to inhabit both sides of the Straits, as documented by French missionary and military records. At this time, Huron/Wyandotte refugees, fleeing attacks by the Iroquois, also lived on the north side of the Straits, at present day St. Ignace. The Sault Ste. Marie Tribe of Chippewa Indians resided on the north side of the Straits as well. A band of Chippewa was reported at times in the Cheboygan area. Other tribes were known to pass through the area, often stopping to trade. Although the tribal affiliation of the human remains found at Mackinaw City is not scientifically certain, the remains are likely culturally affiliated with the Odawa, as they were the tribe most commonly reported in the Mackinaw City area during the period in question. The Odawa who lived at what is now Mackinaw City moved to Little Traverse Bay in the 1740s, and their descendants are members of the Little Traverse Bay Bands of Odawa Indians, Michigan, based in what is now Emmet County.

The Village of Mackinaw City transferred the human remains found in the water main trench to the Michigan Historical Center with the understanding that the Center would arrange for reburial after studies were complete. The Center entered into consultation with the Little Traverse Bay Bands of Odawa Indians in the spring of 2008. The tribe has provided the Michigan Historical Center with documentation of their continuous presence in the Straits of Mackinac area for at least 350 years. The NAGPRA coordinators of the Sault Ste. Marie Tribe of Chippewa Indians of Michigan and Wyandotte Nation, Oklahoma have sent the Michigan Historical Center letters of support for repatriation of the human remains removed from Mackinaw City to the Little Traverse Bay Bands of Odawa Indians, Michigan.

Officials of the Michigan Historical Center have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Michigan Historical Center also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Little Traverse Bay Bands of Odawa Indians, Michigan.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Barbara Mead, Michigan Historical Center, P.O. Box 30740, Lansing, MI 48909–8240, telephone (517) 373–6416, before October 10, 2008. Repatriation of the human remains to the Little Traverse Bay Band of Odawa Indians, Michigan may proceed after that date if no additional claimants come forward.

The Michigan Historical Center is responsible for notifying the Little Traverse Bay Bands of Odawa Indians, Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; and Wyandotte Nation, Oklahoma that this notice has been published.

Dated: August 20, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–21009 Filed 9–9–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America* v. *Mark and Amanda St. Pierre,* Civil Action No. 1:08–cv–177 (D. Vt.), was lodged with the United States District Court for the District of Vermont on September 3, 2008.

This proposed Consent Decree concerns a complaint filed by the United States against Mark and Amanda St. Pierre, pursuant to sections 309(b), 309(d) and 404 of the Clean Water Act, 33 U.S.C. 1319(b), 1319(d) and 1344, to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas and perform mitigation and to pay a civil penalty. The Consent Decree also provides for the Defendants to perform a supplemental environmental project.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Joshua M. Levin, Senior Trial Attorney, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and refer to *United States of America* v. *Mark and Amanda St. Pierre,* DJ # 90–5–1–1–17229/1.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Vermont, Federal Bldg, 5th Floor, 11 Elmwood Avenue, Burlington, VT 05401. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

Scott A. Schachter,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. E8–20987 Filed 9–9–08; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Raycom Media, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Raycom Media, Inc.*, Civil Action No. 1:08–cv–01510. On August 28, 2008, the United States filed a Complaint alleging that the acquisition by Raycom Media, Inc. of WWBT–TV, a Richmond, Virginia, broadcast television station, from Lincoln Financial Media Company violates section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Raycom to divest its Richmond, Virginia, broadcast television station WTVR–TV, along with certain related assets.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (*telephone:* 202–514–2481), on the Department of Justice's Web site (*http://www.usdoj.gov/atr*), and at the Office of the Clerk of the United States District

Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John R. Read, Chief, Litigation III, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone: 202–307–0468).

Patricia Brink,

Deputy Director, Office of Operations.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 5th Street, NW., Suite 4000, Washington, DC 20530, Plaintiff,

v.

Raycom Media, Inc., RSA Tower, 20th Floor, 201 Monroe Street, Montgomery, AL 36104, Defendant.

Civil Action No.: l:08–cv–01510

Assigned To: Urbina, Ricardo M.

Assign. Date: 08/28/2008

Description: Antitrust

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-F-lirschnian 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 I 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:

Deborah A. Garza,
Acting Assistant Attorney General.

Ann Marie Blaylock (D.C. Bar No. 967825),
Trial Attorney, Litigation III Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530, (202) 616–5932, Facsimile: (202) 514–7308, *ann.blaylock@usdoj.gov*.

Patricia A. Brink,
Deputy Director, Office of Operations.

John R. Read (D.C. Bar No. 419373),
Chief, Litigation III Section,

Nina B. Hale,
Assistant Chief, Litigation III Section.

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:

Counsel for Defendant Raycom Media, Inc.,
Everett J. Bowman, Esq.,
Robinson Bradshaw & Hinson, 101 North Tryon St., Suite 1900, Charlotte, NC 28246, Telephone: (704) 377–8329, Facsimile: (704) 373–3929, E-mail: *ebowman@rbh.com*.

Ann Marie Blaylock (D.C. Bar. No. 967825), *Litigation III Section, Antitrust Division, United States Department of Justice*, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530, (202) 616–5932, Facsimile: (202) 514–7308, *ann.blaylockusdoj.gov*.

Appendix A

Definition of HHI

The term HH1 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.

United States District Court for the District of Columbia

United States of America, Plaintiff,

v.

Raycom Media, Inc., Defendant.

Civil Action No.: l:08–cv–01510

Assigned To: Urbina, Ricardo M.

Assign. Date: 08/28/2008

Filed: 8/28/08.

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on August 28, 2008, the United States and defendant, Raycom Media, Inc. (''Raycom''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, defendant agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by defendant to assure that competition is not substantially lessened;

And whereas, the United States requires defendant to make a certain divestiture for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendant has represented to the United States that the divestiture required below can and will be made and that it will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ordered, adjudged, and *decreed*:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendant under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the entity to which defendant divests the Divestiture Assets.

B. ''Raycom'' means defendant Raycom Media, Inc., a Delaware limited liability company with its headquarters in Montgomery, Alabama, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''DMA'' means designated market area as defined by A.C. Nielsen Company based upon viewing patterns and used by the Investing In Television BIA Market Report 2007 (2nd edition). DMAs are ranked according to the number of households therein and are used by broadcasters, advertisers and advertising agencies to aid in evaluating television audience size and composition.

D. ''Richmond market'' means the Richmond, Virginia, DMA broadcast television market.

E. ''WTVR–TV'' means the broadcast television station WTVR–TV located in the Richmond market owned by defendant.

F. ''Divestiture Assets'' means all of the assets, tangible or intangible, used in the operation of WTVR–TV, including, but not limited to, all real property (owned or leased), broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property used in the operation of the station; all licenses, permits, authorizations, and applications therefor issued by the Federal Communications Commission (''FCC'') and other government agencies relating to the station; all contracts (including programming contracts and rights), agreements, network affiliation agreements, leases, and commitments and understandings of defendant relating to the operation of WTVR–TV; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to WTVR–TV; all customer lists, contracts, accounts, and credit records; and all logs and other records maintained by defendant in connection with WTVR–TV.

III. Applicability

A. This Final Judgment applies to Raycom, as defined above, and all other persons in active concert or participation with Raycom who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with section IV and V of this Final Judgment, Defendant sells or otherwise disposes of all or substantially all of its assets or of lesser business units that include the Divestiture Assets, defendant shall require the purchaser to be bound by the provisions of this Final Judgment.

Defendant need not obtain such an agreement from the acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestiture

A. Defendant is ordered and directed, within thirty (30) calendar days after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed 60 calendar days in total, and shall notify the Court in such circumstances. With respect to divestiture of the Divestiture Assets by defendant or the trustee appointed pursuant to section V of this Final Judgment, if applications have been filed with the FCC within the period permitted for divestiture seeking approval to assign or transfer licenses to the Acquirer of the Divestiture Assets, but an order or other dispositive action by the FCC on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of the Divestiture Assets for which FCC approval has not been issued until five (5) days after such approval is received. Defendants agree to use their best efforts to accomplish the divestitures set forth in this Final Judgment and to seek all necessary regulatory approvals as expeditiously as possible. This Final Judgment does not limit the FCC's exercise of its regulatory powers and process with respect to the Divestiture Assets. Authorization by the FCC to conduct the divestiture of a Divestiture Asset in a particular manner will not modify any of the requirements of this decree.

B. In accomplishing the divestiture ordered by this Final Judgment, defendant promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendant shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendant shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine. Defendant shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendant shall provide the Acquirer and the United States information relating to the personnel involved in the operation of the Divestiture Assets to enable the Acquirer to make offers of employment. Defendant will not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the operation of the Divestiture Assets.

D. Defendant shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the business to be divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendant shall warrant to the Acquirer that each asset will be operational on the date of sale.

F. Defendant shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. Defendant shall warrant to the Acquirer that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, defendant will not undertake, directly or indirectly, any challenges to the environmental, zoning or other permits relating to the operation of the Divestiture Assets.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to section IV, or by trustee appointed pursuant to section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing commercial broadcast television business. Divestiture of the Divestiture Assets must be made to a single Acquirer that can demonstrate to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to section IV or section V of this Final Judgment,

(1) Shall be made to an Acquirer that, in the United States sole judgment, has the intent and capability (including the necessary managerial, technical, operational, and financial capability) of competing effectively in the commercial broadcast television business in the Richmond market; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement(s) between an Acquirer and defendant gives them the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If defendant has not divested the Divestiture Assets within the time period specified in section IV(A), defendant shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendant any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendant shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendant must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under section VI.

D. The trustee shall serve at the cost and expense of defendant, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting. including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendant and the trust shall then be terminated. The compensation of the

trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendant shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities related to the Divestiture Assets and defendant shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendant shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court, setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment. why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendant or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendant. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendant, the proposed Acquirer(s), any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s) and any other potential Acquirer. Defendant and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendant, the proposed Acquirer(s), any third party and the trustee, whichever is later, the United States shall provide written notice to defendant and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendant's limited right to object to the sale under section V(C) of this Final Judgment. Without prior written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under section IV or section V shall not be consummated. Upon objection by defendant under section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendant shall not finance all or any part of any purchase made pursuant to section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, defendant shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendant shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under section IV or V, defendant shall deliver to the United States an affidavit as to the fact and manner of its compliance with section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendant has taken to solicit buyers for the Divestiture Assets and to provide required information to prospective Acquirers. including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendant, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendant shall deliver to the United States an affidavit that describes in reasonable detail all actions defendant has taken and all steps defendant has implemented on an ongoing basis to comply with section VIII of this Final Judgment. Defendant shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in its earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendant shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year

after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant, be permitted:

(1) Access during defendant's office hours to inspect and copy, or at the option of the United States, to require defendant to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendant, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendant's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendant.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States or, pursuant to a customary protective order or waiver of confidentiality by defendant, the FCC, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to the United States, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give defendant ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendant may not reacquire any part of the Divestiture Assets or enter into any local marketing agreement, joint sales agreement, or any other cooperative selling arrangement with respect to the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date:

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16:

United States District Judge

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 5th Street, NW., Suite 4000, Washington, DC 20530, Plaintiff,

v.

Raycom Media, Inc., RSA Tower, 20th Floor, 201 Monroe Street, Montgomery, AL 36104, Defendant.

Civil Action No.: l:08–cv–01510

Assigned To: Urbina, Ricardo M.

Assign. Date: 08/28/2008

Description: Antitrust

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendant Raycom Media, Inc. (''Raycom'') and Lincoln Financial Media Company [1] (''Lincoln'') entered into a Stock Purchase Agreement, dated November 12, 2007, pursuant to which Raycom acquired three broadcast television stations from Lincoln. The transaction closed on April 1, 2008. The United States filed a cMl antitrust Complaint on August 28, 2008, alleging that Raycom's acquisition of one of the stations, WWBT–TV, the Richmond, Virginia, affiliate of the National Broadcasting Corporation, when it already owned WTVR–TV, the Richmond, Virginia, affiliate of CBS Broadcasting Inc., violates section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Raycom, as a result of the acquisition, owns two of the top four broadcast television stations in the Richmond market accounting for more than half of all broadcast television spot advertising revenue in 2008. Raycom's continued ownership of both WWBT–TV and WTVR–TV would substantially lessen competition in the sale of broadcast television spot advertising in Richmond, Virginia, and the surrounding area.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to

[1] Lincoln is not a party to this lawsuit.

eliminate the anticompetitive effects of Raycom's common ownership of WWBT–TV and WTVR–TV. Under the proposed Final Judgment, which is explained more fully below, Raycom agrees to divest WTVR–TV. Under the terms of the Hold Separate Stipulation and Order, Raycom agrees to take certain steps during the pendency of the proposed divestiture to ensure that WTVR–TV is operated as a competitively independent, economically viable and ongoing business concern, that will remain independent and uninfluenced by Raycom's other broadcast operations, and that competition is maintained between WWBT–TV and WTVR–TV.

The United States and Defendant have stipulated that the proposed Final Judgment may be entered after compliance with 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 proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendant and the Transaction

Defendant Raycom is a Delaware limited liability company with its headquarters in Montgomery, Alabama. Raycom, through its subsidiaries, owns approximately 46 television stations in the United States, including WWBT–TV and WTVR–TV in Richmond, Virginia.

B. The Transaction

On November 12, 2007, Raycom agreed to acquire three broadcast television stations in three different markets from entities controlled by Lincoln. In one of those markets—Richmond, Virginia—the acquisition would result in Raycom owning WWBT–TV and WTVR–TV, two of the top four broadcast television stations that combined account for more than 50 percent of the broadcast television spot advertising revenues in that market. Although a Federal Communications Commission (''FCC'') rule against duopolies in local markets (''the FCC duopoly rule'') prohibited Raycom from owning both stations, prior to closing Raycom planned to seek a temporary waiver of the FCC duopoly rule to allow the transaction to be completed, and then to divest WTVR–TV to cure the overlap.

On January 9, 2008, the United States, Raycom, and Lincoln entered into an agreement by which: The United States agreed to defer filing suit to enjoin the transaction for a period of ninety days following the closing of the Raycom-Lincoln transaction, during which period Raycom was to sell WTVR–TV; Raycom agreed that the United States could tile the executed Hold Separate Stipulation and Order and a proposed Final Judgment compelling the sale of WTVR–TV in the event that Raycom did not sell WTVR–TV within that period; and Raycom agreed to comply by the terms of the Hold Separate Stipulation and Order requiring Raycom to preserve and hold separate WTVR–TV, so that competition in the Richmond broadcast television advertising market would be maintained.

Raycom closed its transaction with Lincoln on April 1, 2008, but the agreed-upon divestiture has not yet taken place. Therefore, in accordance with the terms of the January 9, 2008 agreement, the United States instituted this action.

C. The Competitive Effects of the Transaction

1. The Relevant Product and Geographic Markets

The Complaint alleges that the provision of broadcast television spot advertising in the Richmond Designated Marketing Area (''Richmond DMA'') constitutes a line of commerce and section of the country, or relevant market, for antitrust purposes. Broadcast television spot advertising comprises the majority of a broadcast television station's revenues. It is purchased by advertisers who want to target potential customers in specific geographic markets and differs from network and syndicated television advertising, both of which are 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.

The Complaint alleges that broadcast television spot advertising possesses specific characteristics, such as its combination of sight, sound, and motion, and broad reach, that collectively differentiate it from other media. Broadcast television stations are able to identify advertisers with strong preferences for broadcast television advertising, and can charge different advertisers different prices. The Complaint alleges that if broadcast television stations were to raise the price of spot advertising, some advertisers might 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.

The Complaint alleges that the Richmond. Virginia, DMA is the relevant geographic market. The Richmond DMA [2] encompasses the city of Richmond, Virginia, and the surrounding counties in which stations within the Richmond DMA receive the largest share of viewers. 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 advertisers wishing to target viewers within the Richmond DMA, because such stations are not viewed by a significant number of potential customers within the Richmond DMA.

2. Anticompetitive Effects of the Transaction

Raycom's acquisition of WWBT–TV substantially lessens competition in the provision of broadcast television spot advertising time in the Richmond DMA. Raycom's ownership of WWBT–TV and WTVR–TV gives it control over two of the top four broadcast stations in the Richmond DMA and over 50 percent of the broadcast television spot advertising revenue in the Richmond DMA. Combining the ownership of WWBT–TV and WTVR–TV substantially increases the already high concentration in the market, which will reduce competition and lead to higher prices.

Advertisers select broadcast television stations to reach a large percentage of their target audience based upon a number of factors, including the size and demographic characteristics of the station's audience. Many advertisers seek to reach a large percentage of their target audience by selecting those broadcast television stations whose audience best correlates to their target audience. If multiple broadcast television stations efficiently reach that target audience, advertisers benefit from the competition among such stations to offer better prices or services. Today, WWBT–TV and WTVR–TV compete

[2] A Designated Marketing Area (''DMA'') is a non-overlapping geographic unit defined by A.C. Nielsen Company, a firm that surveys television viewers and furnishes television stations, advertisers, and advertising agencies in a particular area with data to aid in evaluating audience size and composition. A DMA is used to identify broadcast television stations whose broadcast signals reach a specific area and attract the most viewers.

head-to-head to reach the same audiences and, for many advertisers that buy broadcast television time in Richmond, they are close substitutes for each other based on their specific audience characteristics. Because advertisers seeking to reach a target audience would have fewer and more expensive alternatives to the merged entity as a result of the merger, the acquisition would give Raycom the ability to raise its rates.

The Complaint alleges that new entry into the Richmond broadcast television spot advertising market is highly unlikely in response to a Raycom price increase. The 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 station 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.

For these reasons, the Division concluded that Raycoms acquisition of WWBT–TV, when it already owned WTVR–TV, would substantially lessen competition in the sale of broadcast television spot advertising time in the Richmond DMA, eliminate actual competition between WWBT–TV and WTVR–TV, and result in increased rates for broadcast television spot advertising time in the Richmond DMA, all in violation of section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment requires that Defendant divest all of the tangible and intangible assets used in the operation of WTVR–TV, defined in the Final Judgment as the ''Divestiture Assets.'' The sale of the Divestiture Assets according to the terms of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the Richmond market for broadcast television spot advertising time. The Divestiture Assets must be divested in such a way as to satisfy the United States in its sole discretion that WTVR–TV can and will be operated by the acquirer as a viable, ongoing commercial broadcast television business; and Defendant must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective acquirers. The divestiture will establish a new, independent, and economically viable competitor.

Unless the United States grants an extension of time, Raycom must divest WTVR–TV either within thirty (30) calendar days after the Complaint has been filed or within five (5) days after notice of entry of the Final Judgment, whichever is later. The United States may, in its sole discretion, grant one or more extensions of time, which in total may not exceed sixty (60) calendar days. Until the divestiture takes place, Raycom will maintain WTVR–TV as an independent competitor to the other broadcast television stations in the Richmond DMA, including WWBT–TV. WTVR–TV must be divested in such a way as to satisfy the United States in its sole discretion that it can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Raycom must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

If Raycom fails to divest WTVR–TV within the time periods specified in the Final Judgment, the Court, upon application of the United States, shall appoint a trustee nominated by the United States and approved by the Court to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Raycom will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of WTVR–TV and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished. After appointment, the trustee will file monthly reports with the United States and the Court, setting forth the trustee's efforts to accomplish the divestiture ordered under the proposed Final Judgment. If the trustee has not accomplished the divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. At the same time, the trustee will furnish such report to the United States, who will have the right to make additional recommendations consistent with the purpose of the trust. In such a situation, the Court may enter any order(s) it deems appropriate to carry out the purpose of the Final Judgment.

The proposed Final Judgment requires that Raycom maintain and operate WTVR–TV separate and apart from Raycom's other operations, pending divestiture. The Final Judgment also contains provisions to ensure that WTVR–TV will be preserved, so that after divestiture it will remain a viable, aggressive competitor.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: John Read, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 450 5th St., NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendant. The United States could have continued the litigation and sought preliminary and permanent injunctions against Defendant's acquisition of WWBT–TV. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of broadcast television spot advertising in the relevant market identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

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 sixty-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, is required to 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

(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)(l)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); see generally United States SBC Commc'ns, Inc., 489 F. Supp. 2d I (D.D.C. 2007) (assessing public interest standard under the Tunney Act).[3]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See Microsoft, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); see also Microsoft, 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[4] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' SBC Commc'ns, 489 F. Supp. 2d at 17; see also Microsoft, 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), aff'd sub nom. *Maryland* v. *United States*, 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' SBC Commc'ns, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review

[3] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(l) (2006); see also SBC Commc'ns, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[4] Cf BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). See generally Microsoft, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'').

the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *id.* at 1459–60. As this Court recently confirmed in SBC Communications, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' SBC Commc'ns, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction 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.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' SBC Commc'ns, 489 F. Supp. 2d at 11.[5]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: August 28, 2008.

Respectfully submitted,

Ann Marie Blaylock (D.C. Bar No. 967825),
Trial Attorney, United States Department of Justice, Antitrust Division, Liberty Square Building, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530, (202) 616–5932, Facsimile: (202) 514–7308, *ann.blaylock@usdoj.gov.*

Certificate of Service

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

By facsimile and U.S. mail:

Counsel for Defendant Raycom Media, Inc.
Everett J. Bowman, Esq.,
Robinson Bradshaw & Hinson, 101 North Tryon St., Suite 1900, Charlotte, NC 28246, Telephone: (704) 377–8329, Facsimile: (704) 373–3929, E-mail: *ebowman@rbh.com.*

Ann Marie Blaylock (D.C. Bar. No. 967825),
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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 08–33]

Novelty Distributors, Inc.; Revocation of Registration

On January 17, 2008, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Novelty Distributors, Inc. (Respondent), of Greenfield, Indiana. The Order immediately suspended and proposed the revocation of Respondent's DEA Certificate of Registration, 003563NSY, as a distributor of the list I chemicals ephedrine and pseudoephedrine, on the grounds that its ''continued registration is inconsistent with the public interest,'' and ''constitute[d] an imminent danger to public health and safety.'' Show Cause Order at 1 (ALJ EX. 1) (citing 21 U.S.C. 823(h), 824(a)(4), and 824(d)).

More specifically, the Show Cause Order alleged that Respondent was storing listed chemical products at, and distributing them from, over 100 unregistered locations throughout the United States, in violation of Federal law and regulations. *Id.* (citing 21 U.S.C. 822(e), 21 CFR 1309.21 and 1309.23(a)).

Next, the Show Cause Order alleged that Respondent was distributing quantities of listed chemical products ''to small retail outlets such as convenience stores'' in amounts ''far exceed[ing] what those retail outlets could be expected to sell for legitimate, therapeutic purposes.'' *Id.* at 2. The Order thus alleged that the ''listed chemical products distributed by [Respondent] in large quantities have been, and are likely to continue being, diverted to the clandestine manufacture of methamphetamine.'' *Id.* (citing cases). Relatedly, the Show Cause Order alleged that some ''[s]mall retail outlets that receive large quantities of * * * listed chemical products from [Respondent] sell such products to individuals in amounts that cannot be attributed to legitimate individual needs,'' that ''some of the retail outlets allow customers to make multiple purchases of scheduled listed chemical products within a single week, and in some cases, within a single day,'' and that ''[s]ome customers of these retail outlets purchased more than 9 grams of ephedrine or pseudoephedrine base within 30 days in violation of 21 U.S.C. 844(a).'' *Id.*[1]

The Show Cause Order further alleged that between January 1, 2007, and July 9, 2007, Respondent distributed listed chemical products ''on at least 284 occasions to 35 retail outlets,'' which had not self-certified as required under Federal law. *Id.* (citing 21 U.S.C. 830(e)(1)(A)(vii)). *Id.* Moreover, on three occasions subsequent to February 1, 2007, Respondent allegedly distributed 24-count bottles of listed chemical products to retailers in violation of Federal law, which effective April 9, 2006, required that non-liquid form products be sold only in blister packs. *Id.* at 2–3 (citing 21 U.S.C. 830(d)(2)). Relatedly, the Show Cause Order alleged that Respondent had distributed tablet-form products to retailers in Kentucky and North Carolina in violation of the laws of these States which ''prohibit the sale of non-liquid ephedrine and pseudoephedrine except in a gel-cap product.'' *Id.* at 3.

Finally, the Show Cause Order alleged that in July 2007, DEA had audited twenty listed chemical products which Respondent distributed. *Id.* at 2. The Show Cause Order alleged that Respondent ''could not account for more than 60,000 dosage units of two ephedrine products'' and that it also had ''overages for 16 different * * * listed chemical products.'' *Id.* The Order thus alleged that Respondent ''failed to maintain accurate records of its distributions and receipts of * * * listed chemical products in violation of 21 U.S.C. 830(a) and 21 CFR 1310.04.'' *Id.*

[5] See 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

[1] The Show Cause Order also alleged that ''[i]n November 2002, 22 bottles of ephedrine products distributed by Novelty were found at an illicit methamphetamine laboratory in Connecticut.'' Show Cause Order at 2.