

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

UNITED STATES OF AMERICA,
Plaintiff,

v.

NEXSTAR BROADCASTING GROUP, INC.,
MISSION BROADCASTING, INC.,
COMMUNICATIONS CORPORATION
OF AMERICA, and
SILVER POINT CAPITAL FUND, L.P.,
Defendants.

Case: 14cv2007 (KBJ)

**PLAINTIFF UNITED STATES' MOTION AND
MEMORANDUM FOR ENTRY OF THE PROPOSED FINAL JUDGMENT**

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (APPA), plaintiff United States of America moves for entry of the proposed Final Judgment filed on November 26, 2014 (Docket No. 2-2). 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 (CIS), filed by the United States on November 26, 2014 (Docket No. 3), explains why entry of the proposed Final Judgment is in the public interest. The United States is filing simultaneously with this Motion and Memorandum a Certificate of Compliance (attached as Exhibit 1) setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the sixty-day statutory public comment period has expired.

I. Background

On November 26, 2014, the United States filed a Complaint in this matter challenging the proposed acquisition by Defendant Nexstar Broadcasting Group, Inc. of Defendant

Communications Corporation of America (CCA) (Docket No. 1). The Complaint alleged that the proposed acquisition's likely effect would be to increase broadcast television spot advertising prices in the Evansville, Indiana Designated Marketing Area (DMA) in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

With the Complaint, the United States also filed the proposed Final Judgment (Docket No. 2-1); the CIS; and a Hold Separate Stipulation and Order (Hold Separate) signed by the parties consenting to entry of the proposed Final Judgment after compliance with the requirements of the APPA. Under the terms of the Hold Separate, which the Court entered on December 5, 2014 (Docket No. 5), Defendants were allowed to consummate the proposed acquisition subject to ongoing requirements that Defendants take certain steps to ensure that WEVV-TV in Evansville, Indiana is operated as a competitively independent, economically viable business that is uninfluenced by Defendants Nexstar or Mission Broadcasting, Inc. On December 4, 2014, the FCC approved Nexstar's acquisition of CAA and the divestiture of WEVV-TV to Bayou City Broadcasting Evansville, Inc., and both transactions closed on January 2, 2015. In sum, the required divestiture has taken place, and WEVV-TV is now owned by Bayou City Broadcasting.

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 sixty-day period 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 filed the CIS with the Court on November 26, 2014, and published the proposed Final

Judgment and CIS in the *Federal Register* on December 5, 2014, 79 Fed. Reg. 72,203 (2014). Summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, were published in *The Washington Post* for seven days during the period December 10, 2014 through December 20, 2014. The sixty-day period for public comments ended on February 18, 2015.¹ The United States received no written comments relating to the proposed Final Judgment. The Certificate of Compliance attached to this Motion and Memorandum states that all the requirements of the APPA have been satisfied. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.

III. Standard of Judicial Review

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether the proposed Final Judgment “is in the public interest.” 15 U.S.C. § 16(e)(1). In making that determination, the Court 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

(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). In its CIS, the United States set forth the public interest standard under the APPA and now incorporates those statements herein by reference. The public, including affected

¹ In addition, although not required by the APPA, a summary of the terms of the proposed Final Judgment and CIS was published for seven days in the *Evansville Courier-Press*, a daily newspaper serving the Evansville, Indiana area, during the period December 5, 2014 through December 15, 2014. This publication completed its run prior to the end of the run in the *The Washington Post*, allowing any readers in Evansville the full benefit of the sixty-day comment period.

competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law. As explained in the CIS, entry of the proposed Final Judgment is in the public interest.

IV. Conclusion

For the reasons set forth in this Motion and Memorandum and the CIS, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further proceedings. The United States respectfully requests that the proposed Final Judgment be entered at this time. Defendants have stipulated to its entry, and counsel for Defendants have authorized Plaintiff to state that Defendants join in the United States request to enter the proposed Final Judgment.

Dated: February 26, 2015

Respectfully submitted,

_____/s/_____
Matthew C. Hammond, Trial Attorney
U.S. Department of Justice
Antitrust Division, Telecom & Media
450 5th Street, N.W., Suite 7000
Washington, DC 20530
Phone: 202-305-8541
Fax: 202-514-6381
Email: matthew.hammond@usdoj.gov

COUNSEL FOR PLAINTIFF UNITED STATES
OF AMERICA