DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Entercom Communications Corp., et al.; 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, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in United States of America v. Entercom Communications Corp., Case No. 1:17-cv-02268. On November 1, 2017, the United States filed a Complaint alleging that Entercom Communications Corp.'s proposed acquisition of CBS Radio, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on the same day as the Complaint, resolves the case by requiring Entercom to divest certain broadcast television stations in Boston, Massachusetts; San Francisco, California; and Sacramento, California. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and the industry.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at http://www.justice.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, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the

Federal Register. Comments should be directed to Owen M. Kendler, Chief, Media, Entertainment, and Professional Services Section, Antitrust Division, Department of Justice, Washington, DC 20530, (telephone: 202-305-8376).

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
United States Department of Justice
Antitrust Division
450 Fifth Street, N.W., Suite 4000
Washington, DC 20530,

Plaintiff,

v.

ENTERCOM COMMUNICATIONS CORP.
401 E. City Avenue
Suite 809
Bala Cynwyd, PA 19004,

and

CBS CORPORATION
51 W. 52nd Street
New York, NY 10019,

Defendants.

CASE NO: 1:17-cv-02268

Judge: Boasberg

COMPLAINT

The United States of America brings this civil action to enjoin the proposed acquisition of CBS Radio, Inc. by Entercom Communications Corporation, and to obtain other equitable relief. The acquisition likely would substantially lessen competition for the sale of radio advertising to advertisers targeting English-language listeners in the Boston, Sacramento, and San Francisco Designated Market Areas ("DMAs"), in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The United States alleges as follows:

I. NATURE OF THE ACTION

1. Pursuant to an Agreement and Plan of Merger dated February 2, 2017, between Entercom, CBS Radio, Inc. and CBS Corporation, Entercom agreed to acquire CBS Radio in a Reverse Morris Trust transaction valued at over $1.6 billion. CBS Radio is a subsidiary of CBS Corporation.

2. Entercom and CBS Radio own and operate broadcast radio stations in various locations throughout the United States, including multiple stations in Boston, Massachusetts, Sacramento, California, and San Francisco, California. Entercom and CBS Radio compete head-to-head for the business of local and national companies that seek to advertise on English-language broadcast radio stations in these three DMAs.

3. As alleged in greater detail below, the proposed acquisition would eliminate this substantial head-to-head competition in Boston, Sacramento, and San Francisco, and likely would result in advertisers paying higher prices for radio advertising. Therefore, the proposed acquisition would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be enjoined.

II. JURISDICTION, VENUE, AND COMMERCE

4. The United States brings this action under the direction of the Attorney General and pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Entercom and CBS Corp. from violating Section 7 of the Clayton Act, 15 U.S.C. § 18. The Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

5. Entercom and CBS Corporation are engaged in interstate commerce and in activities substantially affecting interstate commerce. They own and operate broadcast radio

stations in various locations throughout the United States and sell radio advertising time on those stations to advertisers located throughout the United States. Defendants' radio advertising sales have a substantial effect upon interstate commerce.

6. Defendants Entercom and CBS Corporation transact business in the District of Columbia and have consented to venue and personal jurisdiction in this District. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

III. THE DEFENDANTS

7. Entercom, a Pennsylvania corporation with its headquarters in Bala Cynwyd, Pennsylvania, is the fourth-largest broadcast radio company in the United States. It has a portfolio of 127 stations in 27 markets. In 2016, Entercom reported net revenues of approximately $460 million.

8. CBS Corporation is incorporated in Delaware and maintains its headquarters in New York, New York. Its wholly-owned subsidiary, CBS Radio, owns 117 stations in 26 DMAs. In 2016, CBS Radio reported net revenues of approximately $1.2 billion.

IV. RELEVANT MARKETS

9. Entercom and CBS Radio sell radio advertising time to local and national advertisers that target English-language listeners in the Boston, Sacramento, and San Francisco DMAs. A DMA is a geographical unit in which the Nielsen Company surveys radio listeners in order to furnish radio stations, advertisers, and advertising agencies with data to aid in evaluating radio audiences. DMAs are widely accepted by industry participants as the standard geographic boundaries to use in evaluating radio audience size and demographic composition. A radio station's advertising rates are directly related to the station's ability, relative to competing radio

stations, to attract listeners within a DMA that have demographic characteristics that advertisers want to reach.

10. The primary source of revenue for Entercom and CBS Radio is the sale of advertising time to local and national advertisers who want to reach listeners in one or more DMAs. Advertising placed on radio stations in a DMA is aimed at reaching listening audiences located in that DMA, and radio stations outside that DMA do not provide effective access to these audiences.

11. Local and national advertisers purchase radio advertising time because they find such advertising valuable, either by itself or as part of a broader mix of advertising on other media platforms. Advertisers use broadcast radio for many reasons, including that radio advertising offers a high level of audience reach, as well as a stable listenership, and it is often a more efficient means than other advertising platforms to reach an advertiser's target audience at the desired frequency. In addition, radio stations offer certain promotional opportunities to advertisers, such as on-air endorsements by local radio personalities, that advertisers cannot obtain as effectively using other media.

12. Many local and national advertisers consider English-language broadcast radio to be a particularly effective or important means to reach their desired customers, and do not consider advertisements on other media, including non-English-language broadcast radio, digital music streaming services (such as Pandora), and television, to be reasonable substitutes.

13. In addition, radio stations negotiate prices individually with advertisers; consequently, radio stations can charge different advertisers different prices. Radio stations generally can identify advertisers with strong preferences to

advertise on radio in a particular language in a specific DMA. Because of this ability to price discriminate among customers, radio stations may charge higher prices to advertisers that view English-language radio advertising in a specific DMA as particularly effective for their needs, while maintaining lower prices for more price-sensitive advertisers. As a result, Entercom and CBS Radio could profitably raise prices to those advertisers that view English-language radio targeting listeners in the Boston, Sacramento, or San Francisco DMAs as an important advertising medium.

14. If there were a small but significant and non-transitory increase in the price of radio advertising time on English-language stations in the Boston, Sacramento, and San Francisco DMAs, advertisers would not reduce their purchases sufficiently to render the price increase unprofitable. Advertisers would not switch enough purchases of advertising time to radio stations outside the DMA, to other media, or to non-English-language radio stations to render the price increase unprofitable.

15. Accordingly, the sale of broadcast radio advertising time to advertisers targeting English-language listeners is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act. The Boston, Sacramento, and San Francisco DMAs constitute relevant geographic markets within the meaning of Section 7 of the Clayton Act.

V. ANTICOMPETITIVE EFFECTS

16. Post merger, radio station ownership in the Boston, Sacramento and San Francisco DMAs would be highly concentrated. In each of these markets, a small number of station-group owners account for the bulk of the advertising revenues. Entercom's and CBS

Radio's combined advertising revenue shares would exceed 40% in San Francisco, 50% in Boston, and 55% in Sacramento.

17. As articulated in the Horizontal Merger Guidelines issued by the Department of Justice and the Federal Trade Commission, the Herfindahl-Hirschman Index ("HHI") is a measure of market concentration.[1] Market concentration is often one useful indicator of the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition harming consumers. Mergers resulting in highly concentrated markets (with an HHI in excess of 2,500) that involve an increase in the HHI of more than 200 points are presumed to be likely to enhance market power.

18. Concentration in the Boston DMA would increase substantially as a result of the proposed acquisition: the post-acquisition HHI would exceed 3,600 for English-language broadcast radio stations, with an increase of over 1,200 points.

19. Concentration in the Sacramento DMA would increase substantially as a result of the proposed acquisition: the post-acquisition HHI would exceed 4,300 for English-language broadcast radio stations, with an increase of over 1,600 points.

20. Concentration in the San Francisco DMA would increase substantially as a result of the proposed acquisition: the post-acquisition HHI would exceed 2,800 for English-language broadcast radio stations, with an increase of over 800 points.

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[1] *See* U.S. Dep't of Justice, Horizontal Merger Guidelines § 5.3 (2010), available at http://www.justice.gov/atr/public/guidelines/hmg-2010.html. 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 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches a maximum of 10,000 points 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.

21. In addition to increasing concentration, the merger also combines stations that are close substitutes and vigorous head-to-head competitors. Advertisers that use radio to reach their target audiences select radio stations on which to advertise based upon a number of factors including, among others, the size of a station's audience, its demographic composition, and the geographic reach of its broadcast signal. Many advertisers select stations whose listening audiences best correlate to their target audience. If a number of stations, or combinations of stations, broadcasting in the same DMA efficiently reach a particular target audience, advertisers benefit from the competition among those stations to offer better prices and other terms.

22. Entercom and CBS Radio, each of which operates multiple highly-rated radio stations in the Boston, Sacramento, and San Francisco DMAs, are important competitors for listeners and advertisers in those DMAs. From the perspective of many local and national advertisers buying radio advertising time in those DMAs, Entercom and CBS Radio are two of a limited number of station groups whose large and diverse listenership allows advertisers to meet their reach and frequency goals with respect to their target audience. Entercom and CBS Radio compete vigorously to win business from advertisers and substantially constrain each other's prices.

23. During individual negotiations between advertisers and radio stations, advertisers often provide the stations with information about their advertising needs, including their target audience and the desired frequency and timing of ads. Radio stations have the ability to charge advertisers differing rates based in part on the number and attractiveness of competitive radio stations that can meet a particular advertiser's specific target needs. During negotiations, advertisers can gain more competitive rates and other terms by "playing off" Entercom stations

against CBS Radio stations, either individually or as a cluster. The proposed acquisition would end that competition, resulting in harm to advertisers.

24. Post-acquisition, if Entercom raised prices to those advertisers that buy advertising time on Entercom stations in the Boston, Sacramento and San Francisco DMAs, non-Entercom stations in those DMAs would likely respond with higher prices of their own rather than alter their existing formats to attract the Entercom stations' listeners and advertisers. Repositioning a station by changing format is costly and risky, with the potential to lose substantial numbers of existing listeners and advertisers. In addition, re-formatting is unlikely to attract in a timely manner sufficient listeners and advertisers to make a price increase unprofitable for Entercom.

25. Due to FCC regulation, the lack of available spectrum, and other significant barriers, the entry of new broadcast radio stations into the Boston, Sacramento, and San Francisco DMAs would not be timely, likely, or sufficient to deter the exercise of market power.

26. For all of these reasons, the effect of the proposed acquisition of CBS Radio by Entercom would likely be to lessen competition substantially in violation of Section 7 of the Clayton Act.

VI. VIOLATION ALLEGED

27. Entercom's proposed acquisition of CBS Radio would likely substantially lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and would likely have the following effects, among others:

a) competition in the sale of advertising time on English-language broadcast radio stations in the Boston, Sacramento, and San Francisco DMAs would be substantially lessened;

b) competition between Entercom broadcast radio stations and CBS broadcast radio stations in the sale of radio advertising time in the Boston, Sacramento, and San Francisco DMAs would be eliminated; and

c) prices for advertising time on English-language radio stations in the Boston, Sacramento, and San Francisco DMAs would likely increase.

VII. REQUESTED RELIEF

28. The United States requests that this Court:

a) adjudge and decree Entercom's proposed acquisition of CBS Radio to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;

b) permanently enjoin and restrain the Defendants from carrying out the proposed acquisition or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine CBS Radio with Entercom;

c) award the United States the costs of this action; and

d) award such other relief to the United States as the Court may deem just and proper.

Dated: November 1, 2017

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. ENTERCOM COMMUNICATIONS CORP. and CBS CORPORATION, Defendants.	CASE NO: 1:17-cv-02268 Judge: Boasberg

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. § 16(b)-(h), plaintiff United States of America ("United States") 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

The United States filed a civil antitrust Complaint on November 1, 2017 seeking to enjoin Entercom Communications Corporation's ("Entercom") proposed acquisition of broadcast radio stations from CBS Corporation ("CBS"). The Complaint alleges that the acquisition's likely effect would be to increase English-language broadcast radio advertising prices in the following Designated Market Areas ("DMAs") in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18: Boston, Massachusetts; San Francisco, California; and Sacramento, California (collectively "the Divestiture Markets").

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order ("Hold Separate") and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the proposed acquisition in the Divestiture Markets. The proposed Final Judgment, which is explained more fully below, requires defendants to divest the following broadcast radio stations (the "Divestiture Stations") to acquirers approved by the United States in a manner that preserves competition: (1) in the Boston DMA: WBZ AM, WBZ FM, WKAF FM, WZLX FM, and WRKO AM; (2) in the San Francisco DMA: KOIT FM, KMVQ FM, KUFX FM, and KBLX FM; and (3) in the Sacramento DMA: KNCI FM, KYMX FM, KZZO FM and KHTK AM. The Hold Separate also requires defendants to take certain steps to ensure that the Divestiture Stations are operated as competitively independent, economically viable and ongoing business concerns, uninfluenced by Entercom, so that competition is maintained until the required divestitures occur.

The United States and defendants 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 Defendants and the Proposed Acquisition

Entercom is incorporated in Pennsylvania and headquartered in Bala Cynwyd, Pennsylvania. Entercom owns and operates 126 broadcast radio stations in 28 metropolitan areas.

CBS is organized under the laws of Delaware, with headquarters in New York, New York. CBS owns and operates 116 broadcast radio stations in 26 metropolitan areas.

Pursuant to an Agreement and Plan of Merger, dated February 2, 2017, Entercom agreed to acquire all of CBS's broadcast radio stations.

Entercom and CBS compete against one another to win business from local and national advertisers that seek to purchase English-language radio advertising time that targets listeners located in certain DMAs. The proposed transaction between Entercom and CBS would eliminate that competition in the Divestiture Markets.

B. Anticompetitive Consequences of the Transaction

1. Broadcast Radio Advertising

The Complaint alleges that the sale of English-language broadcast radio advertising time to advertisers targeting listeners located in the Divestiture Markets constitutes a relevant market for analyzing this acquisition under Section 7 of the Clayton Act. Each of the Divestiture Markets constitutes a distinct DMA. A DMA is a geographical unit defined by the Nielsen Company, which surveys radio listeners in order to furnish radio stations, advertisers, and advertising agencies with data to aid in evaluating radio audiences. DMAs are widely accepted by radio stations, advertisers, and advertising agencies as the standard geographic area to use in evaluating radio audience size and demographic composition (primarily age and gender). A radio station's advertising rates typically are based on the station's ability, relative to competing radio stations, to attract listening audiences that have certain demographic characteristics that advertisers want to reach.

Entercom and CBS broadcast radio stations generate most of their revenues by selling English-language advertising time in particular DMAs to local and national advertisers. Advertising placed on radio stations in a DMA is aimed at reaching listening audiences located

in that DMA, and broadcast radio stations outside that DMA do not provide effective access to those audiences.

Many local and national advertisers purchase radio advertising time because they find such advertising valuable, either by itself or as part of a mix of media platforms, including television, digital music services, like Pandora Media, Inc. ("Pandora"), and other advertising platforms. For such advertisers, radio time (a) may be less expensive and more cost-efficient than other media in reaching the advertiser's target audience (individuals most likely to purchase the advertiser's products or services) at the desired frequency; or (b) may offer promotional and on-air endorsement opportunities to advertisers that cannot be replicated as effectively using other media. For these and other reasons, many local and national advertisers who purchase radio advertising time view radio as a necessary advertising medium for them or as an important part of advertising campaigns that include other media platforms.

Many local and national advertisers also consider English-language radio to be particularly effective or important to reach their desired customers. The advertisers that use English-language radio, either alone or as a mix with other media platforms to reach their target audience, generally do not consider other media, including non-English-language radio, such as Spanish-language radio, for example, to be a reasonable substitute.

If there were a small but significant and non-transitory increase in the price ("SSNIP") of advertising time on English-language broadcast radio stations in the Divestiture Markets, advertisers would not reduce their purchases sufficiently to render the price increase unprofitable. Advertisers would not switch enough purchases of advertising time to radio stations located outside the Divestiture Markets, to other media, including digital music services,

like Pandora, that offer advertising time, or to non-English-language stations to render the price increase unprofitable.

In addition, radio stations negotiate prices individually with advertisers; consequently, radio stations can charge different advertisers different prices. Radio stations generally can identify advertisers with strong preferences to advertise on radio in a specific language and in a specific DMA. Because of this ability to price discriminate among customers, radio stations may charge higher prices to advertisers that view radio in a specific DMA as particularly effective for their needs, while maintaining lower prices for more price-sensitive advertisers in that same DMA. As a result, Entercom and CBS could profitably raise prices to those advertisers that view broadcast radio that targets listeners in the Divestiture Markets as an important advertising medium.

2. Harm to Competition

The Complaint alleges that the proposed acquisition likely would lessen competition substantially in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and likely would have the following effects, among others:

a) competition in the sale of advertising time on English-language broadcast radio stations in the Divestiture Markets would be lessened substantially;

b) competition between Entercom broadcast radio stations and CBS broadcast radio stations in the sale of radio advertising time in the Divestiture Markets would be eliminated; and

c) the prices for advertising time on English-language broadcast radio stations in the Divestiture Markets likely would increase.

In the Divestiture Markets, combining the Entercom and CBS broadcast radio stations would give Entercom the following estimated percentages of advertising sales on English-language broadcast radio stations: in Boston, over 50 percent; in San Francisco, over 40 percent; and in Sacramento, over 55 percent. In addition, Entercom's acquisition of CBS's broadcast radio

stations located in the Divestiture Markets would result in each Divestiture Market becoming highly concentrated. Using the Herfindahl-Hirschman Index ("HHI"), a standard measure of market concentration,[2] the estimated post-acquisition HHIs and the changes in those HHIs in each of the Divestiture Markets based on revenues can be stated as follows: in Boston, the post-merger HHI would be over 3,600 with an increase in the HHI of over 1,200; in San Francisco, the post-merger HHI would be over 2,800 with an increase of over 800; and in Sacramento, the post-merger HHI would be over 4,300 with an increase of over 1,600. As can be seen, Entercom's proposed acquisition of CBS's broadcast radio stations in the Divestiture Markets would result in substantial increases in the HHIs of each market in excess of the 200 points presumed likely to enhance market power under the Horizontal Merger Guidelines issued by the Department of Justice and Federal Trade Commission.

The transaction also combines stations that are close substitutes and vigorous head-to-head competitors for advertisers seeking to reach audiences in the Divestiture Markets. Advertisers select radio stations to reach a large percentage of their target audience based upon a number of factors, including, *inter alia*, the size of the station's audience, the demographic characteristics of its audience, and the geographic reach of a station's broadcast signal. Many advertisers seek to reach a large percentage of their target listeners by selecting those stations whose audience best correlates to their target listeners. As stated above, radio stations have the ability to charge different advertisers differing prices, but that ability is circumscribed in part by the number and attractiveness of competitive radio stations and station groups in the market that

[2] *See* U.S. Dep't of Justice, Horizontal Merger Guidelines § 5.3 (2010), available at http://www.justice.gov/atr/public/guidelines/hmg-2010.html. 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 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches a maximum of 10,000 points 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.

can meet a particular advertiser's audience reach and frequency needs. When such competition exists, advertisers can negotiate lower prices by "playing off" stations and station groups against each other. Entercom and CBS, each of which operates highly-rated radio stations and clusters of stations in the Divestiture Markets, are important competitors for listeners and advertisers in each of those markets. For many local and national advertisers buying radio advertising time in the Divestiture Markets, Entercom and CBS are two of a limited number of station groups whose large and diverse listenership allows advertisers to meet their reach and frequency goals with respect to their targeted audience. The transaction would end the head-to-head competition between Entercom and CBS station groups in each of the Divestiture Markets.

In addition, the loss of head-to-head competition between specific Entercom and CBS radio stations can exacerbate the harm to advertisers for whom those stations are particularly close substitutes. For example, in Boston, Entercom's WEEI FM, which broadcasts in a sports talk format, is a close substitute for CBS's WBZ FM, which also broadcasts in a sports talk format. Both stations are among the highest-rated in Boston. They share many of the same listeners and have audiences with very similar demographic characteristics that are valuable to many advertisers. Prior to the transaction, if Entercom had increased prices for advertising time on WEEI FM, it likely would have lost sufficient revenues and profits to CBS's WBZ FM to outweigh the gain from customers willing to accept the price increase. Following the transaction, however, it would recapture the revenues and profits from those advertisers switching to WBZ FM because of a WEEI FM price increase. As a consequence, the transaction would make such a price increase profitable. Entercom could also effect this strategy by increasing WBZ FM's prices, which could be recaptured to some extent through increased WEEI

FM's sales. Therefore, Entercom likely would raise advertising prices as a result of the transaction.

Post-acquisition, if Entercom raised prices to those advertisers that buy advertising time on the Entercom and CBS broadcast radio stations in the Divestiture Markets, non-Entercom stations in those markets would likely respond with higher prices of their own, rather than reposition their stations to induce Entercom's listeners and advertisers to switch. Repositioning, by changing a station's format, is costly and risky, with the potential to lose substantial numbers of existing listeners and advertisers. In addition, reformatting is unlikely to attract in a timely manner enough listeners or advertisers to make a price increase unprofitable for Entercom. Finally, the entry of new radio stations into the Divestiture Markets would not be timely, likely, or sufficient to deter the exercise of market power.

For all these reasons, the Complaint alleges that Entercom's proposed acquisition of CBS' broadcast radio stations would lessen competition substantially in the sale of radio advertising time to advertisers targeting listeners in each of the Divestiture Markets, eliminate head-to-head competition between Entercom and CBS broadcast radio stations in those three markets, and result in increased prices for radio advertisers in those markets, all in violation of Section 7 of the Clayton Act.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment requires significant divestitures that will eliminate the anticompetitive effects of the transaction in the Divestiture Markets by maintaining the Divestiture Stations as independent, economically viable competitors. The proposed Final Judgment requires Entercom to divest the Boston broadcast radio stations WBZ AM, WRKO AM, WZLX FM, and WKAF FM to iHeartMedia, and WBZ FM to Beasley Broadcasting. The

proposed Final Judgment also requires Entercom to place certain broadcast radio stations into a trust to be operated independent from and in competition with Entercom: in San Francisco, KOIT FM, KMVQ FM, KUFX FM, and KBLX FM; and in Sacramento, KNCI FM, KYMX FM, KZZO FM, and KHTK AM. With respect to those stations, the proposed Final Judgment provides that Entercom can enter into local marketing agreement(s) ("LMAs") with Bonneville International. During the term of the LMAs, Bonneville will program each of those radio stations as an independent, ongoing, economically viable, competitive business, with programming and advertising sales of each station held entirely separate, distinct, and apart from those of defendants' other operations. The LMAs cannot be amended without the prior approval of the United States at its sole discretion. Each LMA will expire with respect to each LMA station upon the consummation of a final agreement to divest that station to an acquirer. The United States has approved iHeartMedia and Beasley as divestiture buyers in Boston, and has approved the LMAs with Bonneville.

The divestitures target the loss of competition between Entercom and CBS in each of the Divestiture Markets.

Because of the unique positioning of radio stations in Boston, the divestitures will strengthen the ability of each of the remaining major station groups to offer a wider range of attractive demographics to advertisers that seek to target specific demographic groups of listeners on English-language broadcast radio stations in the Boston market. Further, the divestiture of WBZ FM to Beasley Broadcasting preserves the competition for advertisers and listeners between the two important sports radio stations, WEEI FM and WBZ FM.

In San Francisco, the divestitures prevent any significant lessening of competition in the San Francisco broadcast radio market.

In Sacramento, the divestitures prevent any significant lessening of competition in the Sacramento broadcast radio market.

The "Divestiture Assets" are defined in Paragraph II.I of the proposed Final Judgment to cover all assets, tangible or intangible, necessary for the operation of the Divestiture Stations as viable, ongoing commercial broadcast radio stations. With respect to each Divestiture Station, the divestiture will include assets sufficient to satisfy the United States, in its sole discretion, that such assets can and will be used to operate each station as a viable, ongoing, commercial radio business.

To ensure that the Divestiture Stations are operated independently from Entercom after the divestiture, Section V and Section XII of the proposed Final Judgment prohibit Entercom from entering into any agreements during the term of the Final Judgment that create a long-term relationship with or any entanglements that affect competition between either Entercom and the acquirers of the Divestiture Stations concerning the Divestiture Assets after the divestiture is completed. Examples of prohibited agreements include agreements to reacquire any part of the Divestiture Assets, agreements to acquire any option to reacquire any part of the Divestiture Assets or to assign the Divestiture Assets to any other person, agreements to enter into any time brokerage agreement, local marketing agreement, joint sales agreement, other cooperative selling arrangement, shared services agreement, or agreements to conduct other business negotiations jointly with the acquirer(s) with respect to the Divestiture Assets, or providing financing or guarantees of financing with respect to the Divestiture Assets, during the term of this Final Judgment. The shared services prohibition does not preclude defendants from continuing or entering into any non-sales-related shared services agreement that is approved in advance by the United States in its sole discretion. The time brokerage agreement prohibition does not preclude

defendants from entering into an agreement pursuant to which the acquirers can begin programming the Divestiture Stations immediately after the Court's approval of the Hold Separate Stipulation and Order in this matter, so long as any agreement with an acquirer expires upon the consummation of a final agreement to divest the Divestiture Assets to the acquirer.

Defendants are required to take all steps reasonably necessary to accomplish the divestiture quickly and to cooperate with prospective purchasers. Because transferring the broadcast license for each of the Divestiture Stations requires FCC approval, defendants are specifically required to use their best efforts to obtain all necessary FCC approvals as expeditiously as possible. The divestiture of each of the Divestiture Stations must occur within ninety (90) calendar days after the filing of the Hold Separate Stipulation and Order in this matter or five (5) calendar days after notice of the entry of the Final Judgment by the Court, whichever is later, subject to extension during the pendency of any necessary FCC order pertaining to the divestiture. The United States, in its sole discretion, may agree to one or more extensions of the ninety-day time period not to exceed ninety (90) calendar days in total, and shall notify the Court in such circumstances.

In the event that defendants do not accomplish the divestitures within the periods prescribed in the proposed Final Judgment, the proposed Final Judgment provides that the Court, upon application of the United States, will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that Entercom will pay all costs and expenses of the trustee. The trustee's commission will be structured to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States describing his or her efforts

to accomplish the divestiture of any remaining stations. If the divestiture has not been accomplished after six (6) months, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

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. In addition, comments will be posted on the United States Department of Justice, Antitrust Division's Internet website and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

Owen M. Kendler
Chief, Media, Entertainment, and Professional Services Section
Antitrust Division
United States Department of Justice
450 5th Street, N.W. Suite 4000
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and defendants 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 defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Entercom's acquisition of CBS's broadcast radio stations. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the sale of broadcast radio advertising in the Boston, San Francisco, and Sacramento DMAs. 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)(1)(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 v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v, U.S. Airways Group, Inc.*, No. 13-cv-1236 (CKK), 2014-1 Trade Cas. (CCH) ¶ 78, 748, 2014 U.S. Dist. LEXIS 57801, at *7 (D.D.C. Apr. 25, 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11,

2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").[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) (quoting *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); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. 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.

[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)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

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 U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *16 (noting that a court should not reject the proposed remedies because it believes others are preferable); *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 U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *8 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft*, 56 F.3d at 1461)); *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the

[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'").

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; *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *9 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). 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 the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d 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); *see also U.S.*

Airways, 2014 U.S. Dist. LEXIS 57801, at *9 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). 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] A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *9.

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: November 1, 2017

[5] *See United States v. Enova Corp.*, 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.").

Respectfully Submitted,

/s/

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*Attorney of Record

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. ENTERCOM COMMUNICATIONS CORP. and CBS CORPORATION, Defendants.	CASE NO: 1:17-cv-02268 Judge: Boasberg

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on November 1, 2017, the United States and defendants Entercom Communications Corp. and CBS Corporation, 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, defendants agree 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 the defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to the United States that the divestitures required below can and will be made, and that defendants 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 defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. "Entercom" means defendant Entercom Communications Corp., a Pennsylvania corporation headquartered in Bala Cynwyd, Pennsylvania, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "CBS" means defendant CBS Corporation, a Delaware corporation headquartered in New York City, New York, its successors and assigns, and its subsidiaries, including CBS Radio, Inc., divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Acquirers" means Beasley, iHeartMedia, or another entity to which Entercom divests any Divestiture Assets.

D. "Beasley" means Beasley Broadcast Group, Inc., a Delaware Corporation, headquartered in Naples, Florida, its successor and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. "Bonneville" means Bonneville International Corporation, headquartered in Salt Lake City, Utah, its successor and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. "iHeartMedia" means iHeartMedia, Inc., a Delaware Corporation, headquartered in San Antonio, Texas, its successor and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

G. "DMA" means Designated Market Area as defined by A.C. Nielsen Company and used by the *Investing in Radio BIA Market Report 2016* (1st edition). DMAs are ranked according to the number of households therein and are used by broadcasters, advertisers, and advertising agencies to aid in evaluating radio audience size and composition.

H. "LMA" means a local marketing agreement.

I. "Divestiture Assets" means

1. The following broadcast radio stations owned by CBS:

a. WBZ AM, located in the Boston, Massachusetts DMA ("WBZ AM");

b. WBZ FM, located in the Boston, Massachusetts DMA ("WBZ FM");

c. WZLX FM, located in the Boston, Massachusetts DMA ("WZLX FM");

d. KMVQ FM, located in the San Francisco, California DMA ("KMVQ FM");

e. KNCI FM, located in the Sacramento, California DMA ("KNCI FM");

f. KYMX FM, located in the Sacramento, California DMA ("KYMX FM");

g. KZZO FM, located in the Sacramento, California DMA ("KZZO FM"); and

h. KHTK AM, located in the Sacramento, California DMA ("KHTK AM").

2. The following broadcast radio stations owned by Entercom:

a. WRKO AM, located in the Boston, Massachusetts DMA ("WRKO AM");

b. WKAF FM, located in the Boston, Massachusetts DMA ("WKAF FM");

c. KOIT FM, located in the San Francisco, California DMA ("KOIT FM")

d. KUFX FM, located in the San Francisco, California DMA ("KUFX FM"); and

e. KBLX FM, located in the San Francisco, California DMA ("KBLX FM").

3. All of the assets, tangible or intangible, necessary for the operations of the Divestiture Radio Stations and LMA Radio Stations as viable, ongoing commercial broadcast radio stations, except as otherwise agreed to in writing by the United States Department of Justice, including, but not limited to, all real property (owned or leased), all broadcast equipment,

office equipment, office furniture, fixtures, materials, supplies, and other tangible property; all licenses, permits, authorizations, and applications therefore issued by the Federal Communications Commission ("FCC") and other government agencies related to the stations; all contracts (including programming contracts and rights), agreements, network agreements, leases, and commitments and understandings of defendants; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to the stations (subject to the CBS Brands License Agreements contained in the Agreement and Plan of Merger, dated February 2, 2017, between CBS, CBS Radio, Inc., and Entercom); all customer lists, contracts, accounts, credit records, and all logs and other records maintained by defendants in connection with the stations.

J. "Divestiture Radio Stations" means WBZ AM, WBZ FM, WRKO AM, WKAF FM and WZLX FM.

K. "LMA Radio Stations" means KOIT FM, KMVQ FM, KUFX FM, KBLX FM, KNCI FM, KYMX FM, KZZO FM and KHTK AM.

L. "Relevant Employee" means the personnel involved in the operations of the Divestiture Assets.

III. Applicability

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

B. If, prior to complying with Section V and Section VI of this Final Judgment, defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, defendants shall require the purchaser to be bound by the provisions of this Final Judgment. Entercom need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. LMA

Entercom is ordered and directed, after the Court's approval of the Hold Separate Stipulation and Order in this matter, to enter into an LMA(s) with respect to the LMA Radio Stations with Bonneville, the terms of which are subject to the approval of the United States in its sole discretion. Pursuant to the terms of the LMA(s), Entercom will cede to Bonneville the sole right and ability to program and sell advertising on the LMA Radio Stations. The LMA(s) shall last no longer than one year or, with respect to each LMA Radio Station, upon the consummation of a final agreement to divest that station to an Acquirer. Without limiting defendants' obligations under Section IX, Bonneville will program each of those radio stations as an independent, ongoing, economically viable, competitive business, with programming and advertising sales held entirely separate, distinct, and apart from those of defendants' other operations. Entercom and Bonneville may not amend the LMA(s) without the prior approval of the United States, in its sole discretion.

V. Divestitures

A. Entercom is ordered and directed, within ninety (90) calendar days after the signing of the Hold Separate Stipulation and Order in this matter or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Radio Stations in a manner consistent with this Final Judgment to an Acquirer or Acquirers 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 ninety (90) calendar days in total, and shall notify the Court in such circumstances.

B. Entercom is ordered and directed, within one hundred and eighty (180) calendar days after the signing of the Hold Separate Stipulation and Order in this matter, to divest the LMA Radio Stations in a manner consistent with this Final Judgment to an Acquirer or Acquirers 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 one hundred and eighty (180) calendar days in total, and shall notify the Court in such circumstances.

C. With respect to divestiture of the Divestiture Assets by Entercom or the trustee appointed pursuant to Section VI 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(s) of the Divestiture Assets, but no order or other dispositive action by the FCC on such applications has been issued before the end of the period permitted for divestiture, the period permitted for divestiture shall be extended no later than ten (10) business days after the FCC order consenting to the assignment of the Divestiture Assets to the Acquirers has become final.

D. Entercom shall use its best efforts to accomplish the divestitures ordered by this Final Judgment as expeditiously as possible, including using their best efforts to obtain all necessary FCC 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 Final Judgment.

E. In the event that Entercom is attempting to divest any of the Divestiture Assets to an Acquirer other than Beasley (WBZ FM) or iHeartMedia (WBZ AM, WRKO AM, WKAF FM, and WZLX FM):

(1) Entercom promptly shall make known, by usual and customary means, the availability of the Divestiture Assets;

(2) Entercom 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;

(3) Except with written permission from the United States, Entercom 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 privilege or work-product doctrine; and

(4) Entercom shall make available such information to the United States at the same time that such information is made available to any other person.

F. Defendants shall provide the Acquirer(s) and the United States information relating to the personnel necessary to the operation or management of the Divestiture Assets to enable the Acquirer(s) to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer(s) to employ any defendant employee whose primary responsibility is the operation or management of the Divestiture Assets.

G. From the date of the filing of the Complaint in this matter, defendants may enter into an agreement with an Acquirer or Bonneville pursuant to which defendants may not solicit to hire, or hire, certain Relevant Employees. Any such agreement is subject to the approval of the United States, in its sole discretion.

H. Entercom shall permit prospective acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of each of the Divestiture Radio Stations; 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.

I. Entercom shall warrant to the Acquirer(s) that each Divestiture Radio Station or LMA Radio Station will be operational on the date of sale.

J. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of each of the Divestiture Radio Stations or LMA Radio Stations.

K. Entercom shall warrant to the Acquirers that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each Divestiture Radio Station or LMA Radio Station, and that, following the sale of each of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning,

or other permits relating to the operation of each Divestiture Radio Station or LMA Radio Station.

L. Unless the United States otherwise consents in writing, the divestiture pursuant to Section V, or by Divestiture Trustee appointed pursuant to Section VI 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 each Divestiture Radio Station or LMA Radio Station can and will be used by the Acquirer(s) as part of a viable, ongoing commercial radio broadcasting business. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable, and the divestiture of such assets will achieve the purposes of this Final Judgment and remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section V or Section VI of this Final Judgment:

(1) shall be made to Acquirers that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the commercial radio broadcasting business; and

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

VI. Appointment of Divestiture Trustee

A. If defendants have not divested each of the Divestiture Radio Stations within the time period specified in Section V(A) or each of the LMA Radio Stations within the time period specified in Section V(B), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture 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 Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer(s) acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections V, VI, and VII of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section VI(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Entercom any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VII.

D. The Divestiture Trustee shall serve at the cost and expense of Entercom pursuant

to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Entercom and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture 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. If the Divestiture Trustee and Entercom are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within 14 calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to Entercom and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestitures. The Divestiture Trustee and any consultants, accountants, attorneys, and other agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or

other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestitures.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the Divestiture 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 and of the Divestiture Radio Stations or LMA Radio Stations, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestitures ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court reports setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestitures, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestitures have not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such reports 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 Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VII. Notice of Proposed Divestitures

A. Within two (2) business days following execution of a definitive divestiture agreement, Entercom or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section V or Section VI of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify defendants. 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 defendants, the proposed Acquirer(s), any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture(s), the proposed Acquirer(s), and any other potential Acquirer. Defendants and the Divestiture 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 defendants, the proposed Acquirer(s), any third party, and the Divestiture Trustee,

whichever is later, the United States shall provide written notice to defendants and the Divestiture 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 defendants' limited right to object to the sale under Section VI(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section V or Section VI shall not be consummated. Upon objection by defendants under Section VI(C), a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

VIII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section V or Section VI of this Final Judgment.

IX. Hold Separate

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

X. 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 V or Section VI, defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Section V or Section VI 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 any of the Divestiture Radio Stations, 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 defendants have taken to solicit buyers for and complete the sale of each of the Divestiture Radio Stations, including efforts to secure FCC or other regulatory approvals, 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 defendants, including any limitations 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, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment. Each such affidavit shall also include a description of the efforts defendants have taken to complete the sale of each of the Divestiture Radio Stations, including efforts to secure FCC or other regulatory approvals. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as the Hold Separate Stipulation and Order, 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 defendants, be permitted:

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

(2) to interview, either informally or on the record, defendants' 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 defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or responses 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, 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 defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(g) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. No Reacquisition and Other Prohibited Activities

After the Divestiture Assets have been divested to Acquirers acceptable to the United States in its sole discretion, and during the term of the Final Judgment: defendants may not (1) reacquire any part of the Divestiture Assets, (2) acquire any option to reacquire any part of the Divestiture Assets or to assign the Divestiture Assets to any other person, (3) enter into any time brokerage agreement, local marketing agreement, joint sales agreement, or other cooperative selling arrangement with respect to the Divestiture Assets, or (4) provide financing or guarantees of financing with respect to the Divestiture Assets. Entercom may not enter into any shared services agreement or conduct other business negotiations jointly with the Acquirer(s) with respect to the Divestiture Assets.

The shared services prohibition does not preclude defendants from continuing or entering into any non-sales-related shared services agreement that is approved in advance by the United States in its sole discretion.

If defendants reach an agreement to divest the Divestiture Assets to the Acquirers, defendants may also enter into an agreement, approved in advance by the United States in its sole discretion, under which a defendant cedes to the Acquirer the sole right and ability to program one or more of the Divestiture Assets after the Court's approval of the Hold Separate Stipulation and Order in this matter, provided that any such time brokerage agreement must expire upon the termination of a final agreement to divest the Divestiture Assets to the Acquirer or upon the consummation of a final agreement to divest the Divestiture Assets to the Acquirer.

XIII. 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.

XIV. Enforcement of Final Judgment

The United States retains and reserves all rights available to it under applicable law to enforce the provisions of this Final Judgment, including its right to seek an order of contempt from this Court. Any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this order shall be evaluated under a preponderance of the evidence standard.

XV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and the Parties that the divestitures have been completed and that the continuation of the decree no longer is necessary or in the public interest.

XVI. 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' response to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

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

_____

United States District Judge

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