Billing Code: 4410-11

DEPARTMENT OF JUSTICE
Antitrust Division

United States v. Gray Television, Inc., 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. Gray Television, Inc., et al.*, Civil Action No. 1:18-cv-2951 (CRC). On December 14, 2018, the United States filed a Complaint alleging that the proposed merger between Gray Television, Inc., and Raycom Media, Inc., would violate Section 7 of the Clayton Act, 15 U.S.C. §18. The proposed Final Judgment, filed at the same time as the Complaint, requires Gray and Raycom to divest certain broadcast television stations in Waco-Temple-Bryan, Texas; Tallahassee, Florida-Thomasville, Georgia; Toledo, Ohio; Odessa-Midland, Texas; Knoxville, Tennessee; Augusta, Georgia; Panama City, Florida; Dothan, Alabama; and Albany, Georgia.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at https://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 sixty (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 Kendler, Chief, Media, Entertainment, and Professional Services Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 4000, 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 450 Fifth Street NW Washington, DC 20530 *Plaintiff*, v. GRAY TELEVISION, INC. 4370 Peachtree Road NE Atlanta, Georgia 30319; and RAYCOM MEDIA, INC. RSA Tower 20th Floor 201 Monroe Street Montgomery, Alabama 36104 *Defendants*.	Case No. 1:18-cv-2951 Judge Christopher R. Cooper

COMPLAINT

The United States of America, acting under the direction of the Acting Attorney General of the United States, brings this civil action against Gray Television, Inc. ("Gray") and Raycom Media, Inc. ("Raycom") to enjoin Gray's proposed merger with Raycom. The United States complains and alleges as follows:

I. NATURE OF THE ACTION

1. Pursuant to an Agreement and Plan of Merger dated June 23, 2018, Gray plans to acquire Raycom through a merger transaction for approximately $3.6 billion in cash and stock.

2. The proposed merger would combine two of the largest independent local television station owners in the United States and would combine many popular local

television stations that compete against each other today in several markets, likely resulting in significant harm to competition.

3. In nine Designated Market Areas ("DMAs"), Gray and Raycom each own at least one broadcast television station that is an affiliate of one of the "Big 4" television networks: NBC, CBS, ABC, or FOX.

4. These nine "Overlap DMAs" are: (i) Waco-Temple-Bryan, Texas; (ii) Tallahassee, Florida-Thomasville, Georgia; (iii) Toledo, Ohio; (iv) Odessa-Midland, Texas; (v) Knoxville, Tennessee; (vi) Augusta, Georgia; (vii) Panama City, Florida; (viii) Dothan, Alabama; and (ix) Albany, Georgia.

5. In each Overlap DMA, the proposed merger would eliminate competition between Gray and Raycom in (i) the licensing of Big 4 network content ("retransmission consent") to cable, satellite, and fiber optic television providers (referred to collectively as multichannel video programming distributors, or "MVPDs"), for distribution to their subscribers; and (ii) the sale of spot advertising to advertisers interested in reaching viewers in the DMA.

6. By eliminating a major competitor, the merger would likely give Gray the power to charge MVPDs higher fees for its programming—fees that those companies would likely pass on, in large measure, to their subscribers. Additionally, the merger would likely allow Gray to charge local businesses and other advertisers higher prices to reach audiences in the Overlap DMAs.

7. As a result, the proposed merger of Gray and Raycom likely would substantially lessen competition in the markets for licensing Big 4 television retransmission consent in the Overlap DMAs, and selling broadcast television spot

advertising in the Overlap DMAs, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. THE DEFENDANTS

8. Gray is a Georgia corporation with its headquarters in Atlanta, Georgia. Gray owns 92 television stations in 56 DMAs, of which 83 stations are Big 4 affiliates. In 2017, Gray reported revenues of $883 million.

9. Raycom is a Delaware corporation with its headquarters in Montgomery, Alabama. Raycom owns 51 television stations in 43 DMAs, of which 45 stations are Big 4 affiliates. In 2017, Raycom earned revenues of more than $1 billion.

III. JURISDICTION AND VENUE

10. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

11. 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.

12. Defendants license Big 4 television retransmission consent to MVPDs, and sell broadcast television spot advertising to businesses (either directly or through advertising agencies), in the flow of interstate commerce, and such activities substantially affect interstate commerce.

13. Gray and Raycom have consented to venue and personal jurisdiction in this judicial district. Both companies transact business in this district. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. § 1391(b)(1) and (c).

IV. BIG 4 TELEVISION RETRANSMISSION CONSENT MARKETS

A. Background

14. MVPDs, such as Comcast, DirecTV, and Mediacom, typically pay the owner of each local Big 4 broadcast station in a given DMA a per-subscriber fee for the right to retransmit the station's content to the MVPD's subscribers. The per-subscriber fee and other terms under which an MVPD is permitted to distribute a station's content to its subscribers is set forth in a retransmission agreement. Retransmission agreements are negotiated directly between a broadcast station group, such as Gray or Raycom, and a given MVPD, and these agreements cover all of the station group's stations located in the MVPDs service area, or "footprint."

15. Each broadcast station group typically renegotiates retransmission agreements with the MVPDs every few years. If an MVPD and a broadcast station group cannot agree on a retransmission consent fee at the expiration of a retransmission agreement, the result is a "blackout" of the broadcast group's stations from the particular MVPD—i.e., an open-ended period during which the MVPD may not distribute those stations to its subscribers, until a new contract is successfully negotiated.

B. Relevant Markets

1. Product Market

16. Big 4 broadcast content has unique appeal to television viewers, as compared to the other content that is available through broadcast and cable stations. Big 4 stations usually are the highest ranked in terms of audience share and ratings in each DMA, largely because of unique offerings such as local news, sports, and highly ranked primetime programs. Viewers typically consider the Big 4 stations to be close substitutes for one another.

17. Because of Big 4 stations' popular national content and valued local coverage, MVPDs regard Big 4 programming as highly desirable for inclusion in the packages they offer subscribers.

18. Non-Big-4 broadcast stations are typically not close substitutes for viewers of Big 4 stations. Stations that are affiliates of networks other than the Big 4, such as the CW Network, MyNetworkTV, or Telemundo, typically feature niche programming without local news or sports—or, in the case of Telemundo, aimed at a Spanish-speaking audience. Stations that are unaffiliated with any network are similarly unlikely to carry programming with broad popular appeal.

19. If an MVPD suffers a blackout of a Big 4 station in a given DMA, many of the MVPD's subscribers in that DMA are likely to turn to other Big 4 stations in the DMA to watch similar content, such as sports, primetime shows, and local news and weather. This willingness of viewers to switch between competing Big 4 broadcast stations limits an MVPD's expected losses in the case of a blackout, and thus limits a broadcaster's ability to extract higher fees from that MPVD—since an MVPD's willingness to pay higher retransmission consent fees for content rises or falls with the harm it would suffer if that content were lost.

20. Due to the limited programming typically offered by non-Big-4 stations, viewers are much less likely to switch to a non-Big-4 station than to switch to other Big 4 stations in the event of a blackout of a Big 4 station. Accordingly, competition from non-Big-4 stations does not typically impose a significant competitive constraint on the retransmission consent fees charged by the owners of Big 4 stations.

21. For the same reasons, subscribers—and therefore MVPDs—generally do not view cable network programming as a close substitute for Big 4 network content. This is primarily because cable channels offer different content. For example, cable channels generally do not offer local news, which offers a valuable connection to the local community that is important to viewers of Big 4 stations.

22. Because viewers do not regard non-Big-4 broadcast stations, or cable networks, as close substitutes for the programming they receive from Big 4 stations, these other sources of programming are not sufficient to discipline an increase in the fees charged for Big 4 television retransmission consent. Accordingly, a hypothetical monopolist of Big 4 television retransmission consent would likely increase the retransmission consent fees it charges to MVPDs by at least a small but significant amount.

23. The licensing of Big 4 television retransmission consent therefore constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. § 18.

2. Geographic Markets

24. A DMA is a geographic unit for which A.C. Nielsen Company—a firm that surveys television viewers—furnishes broadcast television stations, MVPDs, cable and satellite television networks, advertisers, and advertising agencies in a particular area with data to aid in evaluating audience size and composition. DMAs are widely accepted by industry participants as the standard geographic areas to use in evaluating television audience size and demographic composition. The Federal Communications Commission ("FCC") also uses DMAs as geographic units with respect to its MVPD regulations.

25. In the event of a blackout of a Big 4 network station, FCC rules generally prohibit an MVPD from importing the same network's content from another DMA. Thus, Big 4 viewers in one DMA cannot switch to Big 4 programming in another DMA in the face of a blackout. Therefore, substitution from outside the DMA cannot discipline an increase in the fees charged for retransmission consent for broadcast stations in the DMA. Each DMA thus constitutes a relevant geographic market for the licensing of Big 4 television retransmission consent within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

C. Likely Anticompetitive Effects

26. The more concentrated a market would be as a result of a proposed merger, the more likely it is that the proposed merger would substantially lessen competition. Concentration can be measured by the widely used Herfindahl-Hirschman Index ("HHI").[1] Under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission, mergers that result in highly concentrated markets (i.e., with an HHI over 2,500) and that increase the HHI by more than 200 points are presumed likely to enhance market power.

[1] The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size, and reaches its maximum of 10,000 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.

27. The chart below summarizes Defendants' approximate Big 4 television retransmission consent market shares, based on revenue, and the result of the transaction on the HHI in each Overlap DMA.[2]

Overlap DMA	Gray Share	Raycom Share	Merged Share	Pre-Merger HHI	Post-Merger HHI	HHI Increase
Augusta, GA	50%	24%	74%	3,741	6,119	2,379
Panama City, FL	50%	24%	73%	3,731	6,095	2,363
Dothan, AL	49%	24%	73%	3,692	6,065	2,373
Tallahassee, FL-Thomasville, GA	33%	32%	65%	3,338	5,448	2,110
Albany, GA	33%	32%	65%	3,339	5,440	2,101
Toledo, OH	25%	24%	49%	2,504	3,710	1,206
Waco-Temple-Bryan, TX	25%	24%	49%	2,503	3,687	1,184
Knoxville, TN	25%	24%	49%	2,503	3,681	1,178
Odessa-Midland, TX	24%	24%	48%	2,504	3,660	1,156

28. As indicated by the preceding chart, the post-merger HHI in each Overlap DMA is well above 2,500, and the HHI increase in each Overlap DMA far exceeds the 200-point threshold. Thus, the proposed merger presumptively violates Section 7 of the Clayton Act in each Overlap DMA.

29. In addition to substantially increasing the concentration levels in each Overlap DMA, the proposed merger would also enable Gray to black out more Big 4 stations simultaneously in each of the Overlap DMAs than either Gray or Raycom could black out independently today, increasing Gray's bargaining leverage against any MVPD whose footprint includes any of the Overlap DMAs, and likely leading to increased retransmission consent fees charged to such MVPDs.

[2] In this chart and the one below, sums that do not agree precisely reflect rounding.

30. Retransmission consent fees generally are passed through to an MVPD's subscribers in the form of higher subscription fees or as a line item on their bills. Broadcasters typically charge MVPDs uniform retransmission consent fees across an MVPD's entire footprint. Thus, higher fees resulting from increased leverage in the Overlap DMAs will likely be experienced by subscribers in any DMA where an affected MVPD retransmits at least one Gray Big 4 station, not just by those subscribers who live in the Overlap DMAs.

31. For these reasons, the proposed merger of Gray and Raycom likely would substantially lessen competition in the licensing of Big 4 television retransmission consent in each of the Overlap DMAs, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

V. BROADCAST TELEVISION SPOT ADVERTISING MARKETS

A. Background

32. Broadcast television stations sell advertising "spots" during breaks in their programming. An advertiser purchases spots from a broadcast station to communicate to viewers within the DMA in which the broadcast television station is located.

33. Gray and Raycom compete to sell broadcast television spot advertising in each of the Overlap DMAs.

B. Relevant Markets

1. Product Market

34. Broadcast television spot advertising possesses a unique combination of attributes that set it apart from advertising on other media. Broadcast television spot advertising combines sight, sound, and motion in a way that makes television advertisements particularly memorable and impactful. Additionally, broadcast television

spot advertising reaches a large percentage of an advertisers' potential customers in a DMA, making it especially effective for promoting brand awareness.

35. Advertisers want to advertise on broadcast stations because they offer popular programming such as local news, sports, and primetime and syndicated shows that are especially attractive in reaching a broad demographic base and a large audience of viewers. Typically, an advertiser purchases broadcast advertising spots as one component of an advertising strategy that also includes other components—such as cable advertisements, newspaper advertisements, billboards, radio spots, and digital advertisements. Each component of the advertising budget targets a particular audience and serves a distinct purpose.

36. MVPDs sell spot advertising to be shown during breaks in cable network programming. For the following reasons, cable television spot advertising is an ineffective substitute for broadcast television spot advertising.

37. First, broadcast television spot advertisements typically penetrate about ninety percent of the households in a DMA, while cable television spot advertisements penetrate many fewer homes. A significant and growing number of television households do not subscribe to an MVPD at all, instead receiving broadcast television signals over the air for free. These households cannot see cable television spot advertisements. Even in households that do subscribe to cable television, the tier of service they receive almost always includes all broadcast channels but often excludes many cable channels. As a result, some cable television spot advertisements cannot be seen even by households that subscribe to MVPDs.

38. Moreover, households that have access to cable networks are divided among multiple MVPDs within a DMA. Although some MVPDs sell some spot advertising through consortia called "interconnects"—thereby allowing a cable television spot advertisement to reach more television households than it would through a single MVPD—household reach of cable television spot advertisements remains limited because not all MVPDs participate in interconnects.

39. Second, for many advertisers broadcast television spot advertising is a more efficient option than cable television spot advertising. Because broadcast television offers highly rated programming with broad appeal, each broadcast television advertising spot typically offers the opportunity to reach more viewers (more "ratings points") than a single spot on a cable channel. By contrast, MVPDs offer dozens of cable channels with specialized programs that appeal to niche audiences. This fragmentation allows advertisers to target narrower demographic subsets by buying cable spots on particular channels, but it does not meet the needs of advertisers who want to reach a large percentage of a DMA's population.

40. Finally, MVPDs' inventory of cable television spot advertising is limited—typically to two minutes per hour—contrasting sharply with broadcast stations' much larger inventory. Due to the limited inventories and lower ratings associated with cable television spot advertisements, these advertisements cannot offer a sufficient volume of ratings points, or broad enough household penetration, to provide a viable alternative to broadcast television spot advertising. Because of these limitations, MVPDs and interconnects would be unable to expand output or increase sales sufficiently to

defeat a small but significant increase in the prices charged for broadcast television spot advertising in a given DMA.

41. Digital media advertising also is not an effective substitute for broadcast television spot advertising. Digital advertising, such as static and floating banner advertisements, static images, text advertisements, wallpaper advertisements, pop-up advertisements, flash advertisements, and paid search results, lacks the combination of sight, sound, and motion that makes television spot advertising particularly impactful and memorable. Although online video advertisements do allow for a combination of sight, sound, and motion, these advertisements face certain challenges. For example, they can be skipped, minimized, or blocked.

42. Digital advertisements also serve a different purpose from broadcast advertising. Whereas advertisers use broadcast television spots to reach a large percentage of the population in a given DMA to build widespread brand awareness, advertisers use digital advertising to target narrow demographic subsets of a population and often to generate an immediate response to the advertisement.

43. Other forms of advertising, such as radio, newspaper, billboard, and direct-mail advertising, also do not constitute effective substitutes for broadcast television spot advertising. These forms of media do not combine sight, sound, and motion, and they consequently lack television's ability to capture consumers with emotive storytelling. In addition, these forms of media do not reach as many local viewers or drive brand awareness to the same extent as broadcast television does.

44. For all of these reasons, advertisers likely would not respond to a small but significant non-transitory increase in the price of broadcast television spot advertising by

switching to other forms of advertising—such as cable, digital, print, radio, or billboard advertising—in sufficiently large numbers to make the price increase unprofitable.

2. Geographic Markets

45. For an advertiser seeking to reach potential customers in a given DMA, broadcast television stations located outside of the DMA do not provide effective access to the advertiser's target audience, because their signals generally do not reach any significant portion of the target DMA. Because advertisers cannot advertise on stations outside a DMA to reach viewers inside the DMA, a hypothetical monopolist of broadcast television spot advertising on stations in a given DMA would likely implement at least a small but significant non-transitory price increase.

46. Each of the Overlap DMAs accordingly constitutes a relevant geographic market for the sale of broadcast television spot advertising within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

C. Likely Anticompetitive Effects

47. The chart below summarizes Defendants' approximate market shares and the result of the transaction on the HHIs in the sale of broadcast television spot advertising in each of the Overlap DMAs.

Overlap DMA	Gray Share	Raycom Share	Merged Share	Pre-merger HHI	Post-merger HHI	HHI Increase
Albany, GA	11%	71%	82%	5,407	7,007	1,600
Dothan, AL	65%	15%	80%	4,866	6,778	1,912
Toledo, OH	38%	37%	75%	3,088	5,872	2,784
Panama City, FL	54%	10%	64%	4,220	5,274	1,054
Augusta, GA	44%	17%	61%	3,695	5,197	1,503
Tallahassee, FL-Thomasville, GA	48%	16%	64%	3,267	4,759	1,492
Odessa-Midland, TX	30%	35%	65%	2,563	4,688	2,125

Waco-Temple-Bryan, TX	41%	19%	60%	2,988	4,564	1,576
Knoxville, TN	28%	10%	38%	2,791	3,367	576

48. Defendants' large market shares reflect the fact that, in each Overlap DMA, Gray and Raycom each own at least one Big 4 station, and often own one or more non-Big-4 network affiliates, which also sell spot advertising.

49. As indicated by the preceding chart, the post-merger HHI in each Overlap DMA is well above 2,500, and the HHI increase in each Overlap DMA far exceeds the 200-point threshold above which a transaction is presumed to enhance market power and harm competition. Defendants' proposed transaction is thus presumptively unlawful in each Overlap DMA.

50. In addition to substantially increasing the concentration levels in each Overlap DMA, the proposed merger would combine Gray's and Raycom's Big 4 broadcast television stations, which are close substitutes and generally vigorous competitors in the sale of broadcast television spot advertising. The merger would also combine the Defendants' non-Big-4 programming streams in the Overlap DMAs, which are also used to sell spot advertising.

51. In each Overlap DMA, Defendants' broadcast stations compete head to head in the sale of broadcast television spot advertising. Advertisers obtain lower prices as a result of this competition. In particular, advertisers in the Overlap DMAs can respond to an increase in one station's spot advertising prices by purchasing, or threatening to purchase, advertising spots on one or more stations owned by different broadcast station groups—"buying around" the station that raises its prices. This practice

allows the advertisers either to avoid the first station's price increase, or to pressure the first station to lower its prices.

52. If Gray acquires Raycom's stations, advertisers seeking to reach audiences in the Overlap DMAs would have fewer competing broadcast television alternatives available to meet their advertising needs, and would find it more difficult and costly to buy around higher prices imposed by the combined stations. This would likely result in increased advertising prices.

53. For these reasons, the proposed merger likely would substantially lessen competition in the sale of broadcast television spot advertising in each of the Overlap DMAs, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

VI. ABSENCE OF COUNTERVAILING FACTORS

54. Entry of a new broadcast station into an Overlap DMA would not be timely, likely, or sufficient to prevent or remedy the proposed merger's likely anticompetitive effects in the relevant markets. The FCC regulates entry through the issuance of broadcast television licenses, which are difficult to obtain because the availability of spectrum is limited and the regulatory process associated with obtaining a license is lengthy. Even if a new signal were to become available, commercial success would come over a period of many years, if at all.

55. Defendants cannot demonstrate merger-specific, verifiable efficiencies sufficient to offset the proposed merger's likely anticompetitive effects.

VII. VIOLATIONS ALLEGED

56. The United States repeats and realleges the allegations of paragraphs 1 through 56 as if fully set forth herein.

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

a. competition in the licensing of Big 4 television retransmission consent in each of the Overlap DMAs likely would be substantially lessened;

b. competition between Gray and Raycom in the licensing of Big 4 television retransmission consent in each of the Overlap DMAs would be eliminated;

c. the fees charged to MVPDs for the licensing of retransmission consent in each of the Overlap DMAs and throughout each MVPD's footprint likely would increase;

d. competition in the sale of broadcast television spot advertising in each of the Overlap DMAs likely would be substantially lessened;

e. competition between Gray and Raycom in the sale of broadcast television spot advertising in each of the Overlap DMAs would be eliminated; and

f. prices for spot advertising on broadcast television stations in each of the Overlap DMAs likely would increase.

VIII. RELIEF REQUESTED

58. The United States requests that:

a. the Court adjudge the proposed merger to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. the Court enjoin and restrain Defendants from carrying out the merger, or entering into any other agreement, understanding, or plan by which

Gray would merge with, acquire, or be acquired by Raycom, or Gray and Raycom would combine any of their respective Big 4 stations in the Overlap DMAs;

c. the Court award the United States the costs of this action; and

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

Dated: December 14, 2018

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*, v. GRAY TELEVISION, INC., and RAYCOM MEDIA, INC., *Defendants*.	Case No. 1:18-cv-2951 Judge Christopher R. Cooper

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on December 14, 2018, and Defendant Gray Television, Inc., and Defendant Raycom Media, Inc., 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 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. "Acquirer" means Scripps, TEGNA, Lockwood, Marquee, or any other entity or entities to which Defendants divest any of the Divestiture Assets.

B. "Divestiture Assets" means the Divestiture Stations and all assets, tangible or intangible, necessary for the operation of the Divestiture Stations as viable, ongoing commercial broadcast television stations, 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 relating to the Divestiture Stations; all licenses, permits, and authorizations issued by, and applications submitted to, the FCC and other government agencies relating to the Divestiture Stations; all contracts (including programming contracts and rights), agreements, network affiliation agreements, leases, and commitments and understandings of Defendants relating to the Divestiture Stations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to the Divestiture Stations; all customer lists, contracts, accounts, and credit records related to the Divestiture Stations; and all logs and other records maintained by Defendants in connection with the Divestiture Stations. Divestiture Assets does not include Excluded Assets.

C. "Divestiture Stations" means WTNZ, WTOL, KXXV, KRHD-CD, WTXL-TV, WFXG, KWES-TV, WPGX, WSWG, and WDFX-TV.

D. "DMA" means Designated Market Area as defined by The Nielsen Company (US), LLC, based upon viewing patterns and used by BIA Advisory Services' Investing in Television Market Report 2018 (1st edition). DMAs are ranked according to the number of television households therein and are used by broadcasters, advertisers, and advertising agencies to aid in evaluating television audience size and composition.

E. "Excluded Assets" means

(1) the Telemundo affiliation agreement and programming stream (including any syndicated programming), receiver, program logs and related materials, related intellectual property and domain

names, relating in all cases to KWES-TV and/or the Odessa-Midland, Texas, DMA;

(2) the CW affiliation agreement and programming stream (including any syndicated programming), receiver, program logs and related materials, related intellectual property and domain names, relating in all cases to KWES-TV and/or the Odessa-Midland, Texas, DMA;

(3) the Telemundo affiliation agreement and programming stream (including any syndicated programming), receiver, program logs and related materials, related intellectual property and domain names, relating in all cases to KXXV; and

(4) the CW affiliation agreement and programming stream (including any syndicated programming), receiver, program logs and related materials, related intellectual property and domain names, related in all cases to WSWG.

F. "FCC" means the Federal Communications Commission.

G. "Gray" means Defendant Gray Television, Inc., a Georgia corporation headquartered in Atlanta, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

H. “KRHD-CD” means the ABC-affiliated broadcast television station bearing that call sign located in the Waco-Temple-Bryan, Texas, DMA, owned by Raycom.

I. “KWES-TV” means the NBC-affiliated broadcast television station bearing that call sign located in the Odessa-Midland, Texas, DMA, owned by Raycom.

J. “KXXV” means the ABC-affiliated broadcast television station bearing that call sign located in the Waco-Temple-Bryan, Texas, DMA, owned by Raycom.

K. “Lockwood” means Greensboro TV, LLC, a Virginia limited liability company headquartered in Hampton, Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, members, officers, managers, agents, and employees.

L. “Marquee” means Marquee Broadcasting Georgia, Inc., a Georgia corporation headquartered in Lawrenceville, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

M. “Raycom” means Defendant Raycom Media, Inc., a Delaware corporation headquartered in Montgomery, Alabama, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

N. “Scripps” means the E.W. Scripps Company, an Ohio corporation headquartered in Cincinnati, Ohio, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

O. “TEGNA” means TEGNA Inc., a Delaware corporation headquartered in McLean, Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

P. “WDFX-TV” means the FOX-affiliated broadcast television station bearing that call sign located in the Dothan, Alabama, DMA, owned by Raycom.

Q. “WFXG” means the FOX-affiliated broadcast television station bearing that call sign located in the Augusta, Georgia, DMA, owned by Raycom.

R. “WPGX” means the FOX-affiliated broadcast television station bearing that call sign located in the Panama City, Florida, DMA, owned by Raycom.

S. “WSWG” means the CBS-affiliated broadcast television station bearing that call sign located in the Albany, Georgia, DMA, owned by Gray.

T. “WTNZ” means the FOX-affiliated broadcast television station bearing that call sign located in the Knoxville, Tennessee, DMA, owned by Raycom.

U. “WTOL” means the CBS-affiliated broadcast television station bearing that call sign located in the Toledo, Ohio, DMA, owned by Raycom.

V. "WTXL-TV" means the ABC-affiliated broadcast television station bearing that call sign located in the Tallahassee, Florida-Thomasville, Georgia, DMA, owned by Raycom.

III. APPLICABILITY

A. This Final Judgment applies to Defendants 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 Sections IV and V 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, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirers.

C. If, prior to the entry of this Final Judgment, Defendants sell or otherwise dispose of business units that do not include any of the Divestiture Assets, then this Final Judgment shall not apply to such business units.

IV. DIVESTITURES

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to one or more 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. With respect to divestiture of the Divestiture Assets by Defendants, or by the Divestiture Trustee appointed pursuant to Section V of this Final Judgment, if applications have been filed with the FCC within the period permitted for divestiture seeking approval to assign or transfer licenses to the Acquirer(s) of the Divestiture Assets, but an order or other dispositive action by the FCC on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of the Divestiture Assets for which no FCC order has issued until five (5) days after such order is issued. Defendants agree to use their best efforts to divest the Divestiture Assets and 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.

C. In the event that Defendants are attempting to divest the KXXV, KRHD-CD, or WTXL-TV Divestiture Assets to an Acquirer other than Scripps; the WTOL or KWES-TV Divestiture Assets to an Acquirer other than TEGNA; the WTNZ, WFXG, WPGX, or WDFX-TV Divestiture Assets to an Acquirer other than Lockwood; or the WSWG Divestiture Assets to an Acquirer other than Marquee:

(1) Defendants, in accomplishing the divestitures ordered by this Final Judgment, promptly shall make known, by usual and customary means, the availability of the Divestiture Assets;

(2) Defendants shall inform any person making an inquiry regarding a possible purchase of the relevant Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment;

(3) Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the relevant 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) Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall provide each Acquirer and the United States information relating to the personnel involved in the operation and management of the relevant Divestiture Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by any Acquirer to employ or contract with any Defendant employee whose primary responsibility relates to the operation or management of the relevant Divestiture Assets.

E. Defendants shall permit the prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; 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.

F. Defendants shall warrant to the Acquirers that each asset will be operational on the date of sale.

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

H. At the option of the respective Acquirer, Defendants shall enter into a transition services agreement with each Acquirer for a period of up to six (6) months to facilitate the continuous operations of the relevant Divestiture Assets until the Acquirer can provide such capabilities independently. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for the services provided, and shall be subject to the approval of the United States, in its sole discretion. The United States in its sole discretion may approve one or more extensions of this agreement for a total of up to an additional six (6) months.

I. In the case of Lockwood as the Acquirer of the WFXG and/or WDFX-TV Divestiture Assets and at the option of Lockwood, Defendants shall enter into an agreement with Lockwood to provide to WFXG and WDFX-TV (or, if Lockwood is purchasing just one of those stations, that station) substantially the same local news programming as the respective stations currently receive from other stations owned or operated by Raycom for one (1) year after the sale of the WFXG and/or WDFX-TV Divestiture Assets, respectively, to Lockwood, with such agreement to be terminable by Lockwood on no more than thirty (30) days' notice. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for the services provided, and shall be subject to the approval of the United States, in its sole discretion. The United States in its sole discretion, and at the option of Lockwood, may approve one or more extensions of any such agreement for a total of up to an additional one (1) year.

J. In the case of Marquee as the Acquirer of the WSWG Divestiture Assets, the transition services agreement contemplated by Paragraph IV(H) shall include, at the option of Marquee, an agreement by Defendants to provide to WSWG substantially the same local news programming as that station currently receives from other stations owned or operated by Gray for at least ninety (90) days after the sale of the WSWG Divestiture Assets, with such agreement to be terminable by Marquee on no more than thirty (30) days' notice, except that such agreement may omit up to two (2) hours of the news programming currently provided to WSWG each week, the identification of the hours to be omitted to be determined by Marquee. For the avoidance of doubt, the terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for the services provided, and shall be subject to the approval of the United States, in its sole discretion.

K. Defendants shall warrant to the Acquirers (1) that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets, and (2) that, following the sale 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 the Divestiture Assets.

L. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by the Divestiture Trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Divestiture Assets and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by each Acquirer as part of a viable, ongoing commercial television 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 remedy the competitive harm alleged in the Complaint. The divestitures, whether made pursuant to Section IV or Section V of this Final Judgment:

(1) shall be made to Acquirers that, in the United States' sole judgment, have the intent and capability (including the necessary

managerial, operational, technical, and financial capability) to compete effectively in the commercial television 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 any Acquirer and Defendants give Defendants the ability unreasonably to raise the costs of the Acquirer, to lower the efficiency of the Acquirer, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. APPOINTMENT OF DIVESTITURE TRUSTEE

A. If Defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A) and Paragraph IV(B), Defendants shall notify the United States of that fact in writing, specifically identifying the Divestiture Assets that have not been divested. 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 that have not yet been divested.

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

D. The Divestiture Trustee shall serve at the cost and expense of Defendants 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 relevant Divestiture Assets 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 Defendants 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 subject to sale by the Divestiture Trustee and based on a fee arrangement providing the Divestiture Trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished, but the timeliness of the divestiture is paramount. If the Divestiture Trustee and Defendants are unable to reach agreement on the Divestiture Trustee's or any agent's or consultant's compensation or other terms and conditions of engagement within fourteen (14) calendar days of the appointment of the Divestiture Trustee, agent, or consultant, 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 agents or consultants, provide written notice of such hiring and the rate of compensation to Defendants 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 agents or consultants 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 provide or develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets; 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 divestiture.

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 relevant 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 on the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the relevant Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestitures ordered under this Final Judgment within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report 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 report contains information that the Divestiture Trustee deems confidential, such reports shall not be filed on the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of this 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 that the Court appoint a substitute Divestiture Trustee.

VI. NOTICE OF PROPOSED DIVESTITURE

A. Within (10) calendar days after notice of entry of this Final Judgment by the Court, or two (2) business days following execution of a definitive divestiture agreement, whichever is later, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States of any proposed divestiture required by Section IV or Section V 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 tendered an offer for, or expressed an interest in or desire to acquire, any ownership interest in the relevant 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, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirers. 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, 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 Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer, or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. FINANCING

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

VIII. 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.

IX. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Section IV and Section V of this Final Judgment, Defendants shall deliver to the United States an affidavit, signed by each Defendant's Chief Financial Officer and General Counsel or, subject to the approval of the United States, an officer of the Defendant, which shall describe the fact and manner of Defendants' compliance with Section IV and Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, 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 limitations on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days after 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 VIII of this Final Judgment. 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 Paragraph IX(B) 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 divestitures have been completed.

X. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any 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, including agents and consultants 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 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 that Defendants furnish information or documents 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).

XI. NO REACQUISITION AND LIMITATIONS ON COLLABORATIONS

A. During the term of this 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 local marketing agreement, joint sales agreement, other cooperative selling arrangement, or shared services agreement (except as provided in this Paragraph XI(A) or in Paragraph XI(B)), or conduct other business negotiations jointly with any Acquirer with respect to the Divestiture Assets divested to such Acquirer; or (4) provide financing or guarantees of financing with respect to the Divestiture Assets. The shared services prohibition does not preclude Defendants from continuing or entering into agreements in a form customarily used in the industry to (a) share news helicopters or (b) pool generic video footage that does not include recording a reporter or other on-air talent, and does not preclude Defendants from entering into any non-sales-related shared services agreement or transition services agreement that is approved in advance by the United States in its sole discretion.

B. Paragraph XI(A) shall not prevent Defendants from entering into agreements to provide news programming to broadcast television stations included in the Divestiture Assets, provided that Defendants do not sell, price, market, hold out for sale, or profit from the sale of advertising associated with the news programming provided by Defendants under such agreements except by approval of the United States in its sole discretion.

XII. RETENTION OF JURISDICTION

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

XIII. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar civil action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved prior to litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

XIV. EXPIRATION OF FINAL JUDGMENT

Unless the Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

XV. 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, any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and 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

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA 450 Fifth Street NW Washington, DC 20530 *Plaintiff,* v. GRAY TELEVISION, INC. 4370 Peachtree Road NE Atlanta, Georgia 30319; and RAYCOM MEDIA, INC. RSA Tower 20th Floor 201 Monroe Street Montgomery, Alabama 36104 *Defendants.*	Case No. 1:18-cv-2951 Judge Christopher R. Cooper

COMPETITIVE IMPACT STATEMENT

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

I. NATURE AND PURPOSE OF THE PROCEEDING

On June 23, 2018, Defendant Gray Television, Inc. ("Gray") and Raycom Media, Inc. ("Raycom," and together with Gray, "Defendants") entered into an Agreement and Plan of Merger (the "Merger Agreement") pursuant to which Gray proposes to acquire Raycom for approximately $3.6 billion. The United States filed a civil antitrust Complaint on December 14, 2018, seeking to enjoin the proposed merger. The

Complaint alleges that the proposed merger likely would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, in nine local geographic markets, in (1) the licensing of the television programming of NBC, CBS, ABC, and FOX ("Big 4") affiliate stations to cable, satellite, and fiber optic television providers (referred to collectively as multichannel video programming distributors, or "MVPDs") for retransmission to their subscribers (known as "retransmission consent"), and (2) the sale of broadcast television spot advertising. The nine Designated Market Areas ("DMAs") in which a substantial reduction in competition is alleged are: (i) Waco-Temple-Bryan, Texas; (ii) Tallahassee, Florida-Thomasville, Georgia; (iii) Toledo, Ohio; (iv) Odessa-Midland, Texas; (v) Knoxville, Tennessee; (vi) Augusta, Georgia; (vii) Panama City, Florida; (viii) Dothan, Alabama; and (ix) Albany, Georgia (collectively, "the Overlap DMAs").[1] The loss of competition alleged in the Complaint likely would result in an increase in retransmission consent fees charged to MVPDs, much of which would be passed through to subscribers, and higher prices for broadcast television spot advertising in each Overlap DMA.

Concurrent with the filing of the Complaint, the United States filed a Hold Separate Stipulation and Order ("Hold Separate") and proposed Final Judgment, which are designed to eliminate the anticompetitive effects that would have resulted from Gray's merger with Raycom. Under the proposed Final Judgment, which is explained

[1] A DMA is a geographic unit for which A.C. Nielsen Company—a firm that surveys television viewers—furnishes broadcast television stations, MVPDs, cable and satellite television networks, advertisers, and advertising agencies in a particular area with data to aid in evaluating audience size and composition. DMAs are widely accepted by industry participants as the standard geographic areas to use in evaluating television audience size and demographic composition. The Federal Communications Commission ("FCC") also uses DMAs as geographic units with respect to its MVPD regulations.

more fully below, Defendants are required to divest the following broadcast television stations (the "Divestiture Stations") to acquirers acceptable to the United States in its sole discretion: (i) KXXV and KRHD-CD, located in the Waco-Temple-Bryan, Texas, DMA; (ii) WTXL-TV, located in the Tallahassee, Florida-Thomasville, Georgia, DMA; (iii) WTOL, located in the Toledo, Ohio, DMA; (iv) KWES-TV, located in the Odessa-Midland, Texas, DMA; (v) WTNZ, located in the Knoxville, Tennessee, DMA; (vi) WFXG, located in the Augusta, Georgia, DMA; (vii) WPGX, located in the Panama City, Florida, DMA; (viii) WDFX-TV, located in the Dothan, Alabama, DMA; and (ix) WSWG, located in the Albany, Georgia, DMA. Under the Hold Separate, Defendants will take certain steps to ensure that the Divestiture Stations will operate as independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestitures.

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 Transaction

Gray is a Georgia corporation with its headquarters in Atlanta, Georgia. Gray owns 92 television stations in 56 DMAs, of which 83 are Big 4 affiliates.

Raycom is a Delaware corporation with its headquarters in Montgomery, Alabama. Raycom owns 51 television stations in 43 DMAs, of which 45 are Big 4 affiliates.

Pursuant to the Merger Agreement, Gray agreed to acquire Raycom for approximately $3.6 billion, through a merger transaction. This merger is the subject of the Complaint and proposed Final Judgment filed in this case.

B. Big 4 Television Retransmission Consent

1. Background

MVPDs, such as Comcast, DirecTV, and Mediacom, typically pay the owner of each local Big 4 broadcast station in a given DMA a per-subscriber fee for the right to retransmit the station's content to the MVPD's subscribers. The per-subscriber fee and other terms under which an MVPD is permitted to distribute a station's content to its subscribers is set forth in a retransmission agreement. Retransmission agreements are negotiated directly between a broadcast station group, such as Gray or Raycom, and a given MVPD, and these agreements cover all of the station group's stations located in the MVPDs service area, or "footprint."

Each broadcast station group typically renegotiates retransmission agreements with the MVPDs every few years. If an MVPD and a broadcast station group cannot agree on a retransmission consent fee at the expiration of a retransmission agreement, the result is a "blackout" of the broadcast group's stations from the particular MVPD—i.e., an open-ended period during which the MVPD may not distribute those stations to its subscribers, until a new contract is successfully negotiated.

2. Relevant Markets

The licensing of Big 4 television retransmission consent constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act. Big 4 broadcast content has unique appeal to television viewers, as compared to the other content that is available through broadcast and cable stations. Big 4 stations usually are the highest ranked in terms of audience share and ratings in each DMA, largely because of unique offerings such as local news, sports, and highly ranked primetime programs. Viewers typically consider the Big 4 stations to be close substitutes for one another. Due to these features, MVPDs regard Big 4 programming as highly desirable for inclusion in the packages they offer subscribers. Non-Big-4 broadcast stations are typically not close substitutes for viewers of Big 4 stations.

If an MVPD suffers a blackout of a Big 4 station in a given DMA, many of the MVPD's subscribers in that DMA are likely to turn to other Big 4 stations in the DMA to watch similar content. This willingness of viewers to switch between competing Big 4 broadcast stations limits an MVPD's expected losses in the case of a blackout, and thus limits a broadcaster's ability to extract higher fees from that MVPD—since an MVPD's willingness to pay higher retransmission consent fees for content rises or falls with the harm it would suffer if that content were lost. Due to the limited programming typically offered by non-Big-4 stations, viewers are much less likely to switch to a non-Big-4 station than to switch to other Big 4 stations in the event of a blackout of a Big 4 station. Accordingly, competition from non-Big-4 stations does not typically impose a significant competitive constraint on the retransmission consent fees charged by the owners of Big 4 stations. For the same reasons, subscribers—and therefore MVPDs—generally do not view cable network programming as a close substitute for Big 4 network content.

Because viewers do not regard non-Big-4 broadcast stations, or cable networks, as close substitutes for the programming they receive from Big 4 stations, these other sources of programming are not sufficient to discipline an increase in the fees charged for Big 4 television retransmission consent. Accordingly, a small but significant increase in the retransmission consent fees of Big 4 affiliates would not cause enough MVPDs to forego carrying the content of the Big 4 affiliates to make such an increase unprofitable for the Big 4 affiliates.

The relevant geographic markets for the licensing of Big 4 television retransmission consent are the individual DMAs in which such licensing occurs. In the event of a blackout of a Big 4 network station, FCC rules generally prohibit an MVPD from importing the same network's content from another DMA, so substitution to stations in other DMAs cannot discipline a fee increase by stations within a given DMA.

3. Anticompetitive Effects

In each of the Overlap DMAs, Gray and Raycom each own at least one Big 4 affiliate broadcast television station. By combining the Defendants' Big 4 stations, the proposed merger would increase the Defendants' market shares in the licensing of Big 4 television retransmission consent in each Overlap DMA, and would increase the market concentration in that business in each Overlap DMA. The chart below summarizes the Defendants' approximate Big 4 retransmission consent market shares, and market concentrations measured by the widely used Herfindahl-Hirschman Index ("HHI")[2], in each Overlap DMA, before and after the proposed merger.

Overlap DMA	Gray Share	Raycom Share	Merged Share	Pre-Merger HHI	Post-Merger HHI	HHI Increase
Augusta, GA	50%	24%	74%	3,741	6,119	2,379
Panama City, FL	50%	24%	73%	3,731	6,095	2,363
Dothan, AL	49%	24%	73%	3,692	6,065	2,373
Tallahassee, FL-Thomasville, GA	33%	32%	65%	3,338	5,448	2,110
Albany, GA	33%	32%	65%	3,339	5,440	2,101
Toledo, OH	25%	24%	49%	2,504	3,710	1,206
Waco-Temple-Bryan, TX	25%	24%	49%	2,503	3,687	1,184
Knoxville, TN	25%	24%	49%	2,503	3,681	1,178
Odessa-Midland, TX	24%	24%	48%	2,504	3,660	1,156

As indicated by the preceding chart, in each Overlap DMA the post-merger HHI would exceed 2,500 and the merger would increase the HHI by more than 200 points. As a result, the proposed merger is presumed likely to enhance market power under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission.

In addition to substantially increasing the concentration levels in each Overlap DMA, the proposed merger would also enable Gray to black out more Big 4 stations

[2] The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size, and reaches its maximum of 10,000 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.

simultaneously in each of the Overlap DMAs than either Gray or Raycom could black out independently today, increasing Gray's bargaining leverage and likely leading to increased retransmission consent fees to any MVPD whose footprint includes any of the Overlap DMAs. Retransmission consent fees—and thus the fee increases likely to be caused by the proposed merger—generally are passed through to an MVPD's subscribers in the form of higher subscription fees or as a line item on their bills.

C. Broadcast Television Spot Advertising

1. Background

Broadcast television stations sell advertising "spots" during breaks in their programming. An advertiser purchases spots from a broadcast station to communicate to viewers within the DMA in which the broadcast television station is located. Gray and Raycom compete to sell broadcast television spot advertising in each of the Overlap DMAs.

2. Relevant Markets

Broadcast television spot advertising constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act. Broadcast television spot advertising possesses a unique combination of attributes that set it apart from advertising on other media. Broadcast television spot advertising combines sight, sound, and motion in a way that makes television advertisements particularly memorable and impactful. Additionally, broadcast television spot advertising reaches a large percentage of an advertisers' potential customers in a DMA, making it especially effective for promoting brand awareness. Advertisers want to advertise on broadcast stations because they offer popular programming such as local news, sports, and primetime and syndicated shows that are especially attractive in reaching a broad demographic base and a large audience of viewers.

MVPDs sell spot advertising to be shown during breaks in cable network programming. However, cable television spot advertising is an ineffective substitute for broadcast television spot advertising. Cable television spot advertising reaches far fewer television households within a DMA, is limited in supply, and generally offers more specialized programs that appeal to niche audiences.

Digital media advertising is not an effective substitute for broadcast television spot advertising. Most forms of digital advertising lack the combination of sight, sound, and motion that characterize television advertising, and, while online video advertisements can combine sight, sound, and motion, these advertisements face challenges including the fact that they can be skipped, minimized, or blocked. Also, digital advertising serves a different purpose from broadcast advertising, as it typically targets narrow demographic subsets of a population and often seeks to generate an immediate response.

Other forms of advertising, such as radio, newspaper, billboard, and direct-mail advertising, also are not effective substitutes. They do not combine sight, sound, and motion, and consequently lack television's ability to capture consumers with emotive storytelling. In addition, they do not reach as many local viewers or drive brand awareness to the same extent as broadcast television does.

For these reasons, advertisers likely would not respond to a small but significant increase in the price of broadcast television spot advertising by switching to other forms of advertising in sufficiently large numbers to make the price increase unprofitable.

The relevant geographic markets for the sale of broadcast television spot advertising are the individual DMAs in which such advertising is sold. For an advertiser seeking to reach potential customers in a given DMA, broadcast television stations located outside of the DMA do not provide effective access to the advertiser's target audience, because their signals generally do not reach any significant portion of the target DMA.

3. Anticompetitive Effects

By combining the broadcast television stations of Gray and Raycom under common ownership, the proposed merger would increase the combined entity's market shares of the broadcast television spot advertising business in each of the Overlap DMAs. The chart below summarizes Defendants' approximate market shares and the result of the transaction on HHIs in the sale of broadcast television spot advertising in each Overlap DMA.

Overlap DMA	Gray Share	Raycom Share	Merged Share	Pre-merger HHI	Post-merger HHI	HHI Increase
Albany, GA	11%	71%	82%	5,407	7,007	1,600
Dothan, AL	65%	15%	80%	4,866	6,778	1,912
Toledo, OH	38%	37%	75%	3,088	5,872	2,784
Panama City, FL	54%	10%	64%	4,220	5,274	1,054
Augusta, GA	44%	17%	61%	3,695	5,197	1,503
Tallahassee, FL-Thomasville, GA	48%	16%	64%	3,267	4,759	1,492
Odessa-Midland, TX	30%	35%	65%	2,563	4,688	2,125
Waco-Temple-Bryan, TX	41%	19%	60%	2,988	4,564	1,576
Knoxville, TN	28%	10%	38%	2,791	3,367	576

Defendants' large market shares reflect the fact that, in each Overlap DMA, Gray and Raycom each own at least one Big 4 station, and often own one or more non-Big-4 network affiliates, which also sell spot advertising.

As indicated by the preceding chart, in each Overlap DMA the post-merger HHI would exceed 2,500 and the merger would increase the HHI by more than 200 points. As a result, the proposed merger is presumed likely to enhance market power under the *Horizontal Merger Guidelines*.

In each Overlap DMA, Defendants' broadcast stations compete head-to-head in the sale of broadcast television spot advertising. Advertisers targeting viewers in the Overlap DMAs can respond to an increase in one station's spot advertising prices by purchasing, or threatening to purchase, advertising spots on one or more stations owned by different broadcast station groups, allowing the advertisers to avoid the price increase or pressure the first station to lower its prices. The proposed merger would reduce the number of alternative sellers of broadcast television spot advertising to which such advertisers could turn to meet their needs, likely resulting in higher advertising prices.

D. Entry

Entry of a new broadcast station into an Overlap DMA would not be timely, likely, or sufficient to prevent or remedy the proposed merger's likely anticompetitive effects. The FCC regulates entry through the issuance of broadcast television licenses, which are difficult to obtain because the availability of spectrum is limited and the regulatory process associated with obtaining a license is lengthy. Even if a new signal were to become available, commercial success would come over a period of many years, if at all.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

A. The Divestitures

The divestiture requirements of the proposed Final Judgment will eliminate the substantial anticompetitive effects of the merger in each Overlap DMA, by maintaining the Divestiture Stations as independent, economically viable competitors. The proposed Final Judgment requires Gray to divest the Big 4 affiliates owned by either Gray or Raycom in each of the Overlap DMAs, as shown in the following chart:

Overlap DMA	Divestiture Stations	Big 4 Affiliation of Divestiture Stations	Current Owner of Divestiture Stations
Waco-Temple-Bryan, Texas	KXXV and KRHD-CD	ABC	Raycom
Tallahassee, Florida-Thomasville, Georgia	WTXL-TV	ABC	Raycom
Toledo, Ohio	WTOL	CBS	Raycom
Odessa-Midland, Texas	KWES-TV	NBC	Raycom
Knoxville, Tennessee	WTNZ	FOX	Raycom
Augusta, Georgia	WFXG	FOX	Raycom
Panama City, Florida	WPGX	FOX	Raycom
Dothan, Alabama	WDFX-TV	FOX	Raycom
Albany, Georgia	WSWG	CBS	Gray

The Divestiture Stations must be divested in such a way as to satisfy the United States in its sole discretion that the Divestiture Stations (1) can and will be operated by the purchaser(s) as part of a viable, ongoing commercial television broadcasting business, and (2) are divested to acquirer(s) that have the intent and capability to compete effectively in that business. The proposed Final Judgment requires divestiture of all assets, tangible or intangible, necessary for the operation of the Divestiture Stations as viable, ongoing commercial broadcast television stations.

B. The Excluded Assets

Certain assets are excluded from the assets to be divested, as described in Definitions S and T of the proposed Final Judgment. The excluded assets relate to: (1) the Telemundo and CW programming streams currently broadcast on KWES-TV in the Odessa-Midland, Texas, DMA; (2) the Telemundo programming stream currently broadcast on KXXV in the Waco-Temple-Bryan, Texas, DMA; and (3) the CW programming stream currently broadcast on WSWG in the Albany, Georgia, DMA.

The excluded Telemundo and CW programming streams currently are derived from separate network affiliations, and are broadcast from digital subchannels of the Divestiture Stations. As a result, the Defendants' retention of these Telemundo and CW programming streams will not prevent the divestiture buyers from operating the Divestiture Stations as viable, independent competitors. Nor will Defendants' retention of these assets substantially lessen competition. Divesting one of the Defendants' Big 4 affiliates in each Overlap DMA will ensure that competition in the granting of Big 4 television retransmission consent is not diminished. Also, nearly all of the merger-induced increase in concentration in the sale of broadcast television spot advertising in each Overlap DMA is avoided by the sale of one Defendant's Big 4 affiliates in each Overlap DMA.

C. General Conditions and Proposed Buyers

Under the proposed Final Judgment, Defendants agree to use their best efforts to divest the Divestiture Stations and to obtain any necessary FCC approvals as expeditiously as possible. The proposed Final Judgment contains requirements for Defendants to provide prospective purchasers of the Divestiture Stations with access to relevant personnel and information. Additionally, to facilitate the continuous operations of the Divestiture Stations until the acquirers can provide such capabilities independently, Paragraph IV(H) of the proposed Final Judgment provides that, at the option of an acquirer of a Divestiture Station, Defendants shall enter into a transition services agreement with the acquirer for a period of up to six months.

The United States has determined that the following companies are acceptable purchasers of Divestiture Stations: The E.W. Scripps Company; TEGNA Inc.; Greensboro TV, LLC, a member of the Lockwood Broadcast Group of companies; and Marquee Broadcasting Georgia, Inc. (respectively, together with their subsidiaries and affiliated entities and individuals, "Scripps," "TEGNA," "Lockwood," and "Marquee"). The following table sets out the proposed purchaser for each Divestiture Station.

Overlap DMA	**Divestiture Stations**	**Proposed Purchaser**
Waco-Temple-Bryan, Texas	KXXV and KRHD-CD	Scripps
Tallahassee, Florida-Thomasville, Georgia	WTXL-TV	Scripps
Toledo, Ohio	WTOL	TEGNA
Odessa-Midland, Texas	KWES-TV	TEGNA
Knoxville, Tennessee	WTNZ	Lockwood
Augusta, Georgia	WFXG	Lockwood
Panama City, Florida	WPGX	Lockwood
Dothan, Alabama	WDFX-TV	Lockwood
Albany, Georgia	WSWG	Marquee

Under the proposed Final Judgment, in the event that Defendants attempt to divest KXXV, KRHD-CD, or WTXL-TV to an acquirer other than Scripps; WTOL or KWES-TV to an acquirer other than TEGNA; WTNZ, WFXG, WPGX, or WDFX-TV to an acquirer other than Lockwood; or WSWG to an acquirer other than Marquee, Defendants agree to cooperate with these prospective acquirers as contemplated in Paragraph IV(C) of the proposed Final Judgment.

D. Conditions Specific to Certain Divestiture Stations

The proposed Final Judgment also contains provisions that will ensure the efficient operation of the Divestiture Stations as they transition to new ownership and create new arrangements for their news programming. In the case of Lockwood as the acquirer of WFXG and/or WDFX-TV, Paragraph IV(I) of the proposed Final Judgment provides that, at the option of Lockwood, Defendants shall enter into an agreement with Lockwood to provide to WFXG and/or WDFX-TV substantially the same local news programming as the respective stations currently receive from other stations owned or operated by Raycom for a period of one year after the sale of WFXG and/or WDFX-TV, respectively, to Lockwood, with such agreement being subject to extensions for a total of up to one additional one year, at the approval of the United States, and at the option of Lockwood.

WFXG currently receives a portion of its news programming from Raycom's WTOC-TV in Savannah, Georgia. WDFX-TV currently receives its news programming from Raycom's WSFA in Montgomery, Alabama. Continuation of the provision of this news programming to WFXG and WDFX-TV for one year would provide Lockwood with enough time to take control of these stations, and make and implement plans for the replacement of this news programming with other sources of news. Allowing these transitional arrangements to be extended for up to one year provides a safety mechanism, in case Lockwood has not fully implemented its plans to replace the Defendants' news by the end of the one-year period.

In the case of Marquee as the Acquirer of WSWG, Paragraph IV(J) of the proposed Final Judgment provides that the transition services agreement contemplated by Paragraph IV(H) shall include, at the option of Marquee, an agreement by Defendants to provide to WSWG (with small exceptions) substantially the same local news programming as that station currently receives from other stations owned or operated by Gray for at least 90 days after the sale of WSWG.

WSWG currently receives its news programming from Gray's WCTV in the Tallahassee, Florida-Thomasville, Georgia, DMA. Marquee already operates an unaffiliated station in Albany, Georgia, which produces its own local news. Therefore, Marquee will likely require a relatively short transition period during which it continues to receive out-of-DMA news before implementing its plans for local news programming on WSWG. The agreement to continue supplying out-of-DMA news for at least 90 days is reasonably sufficient to allow Marquee to complete its transition.

E. Timeline for Divestitures, Appointment of Divestiture Trustee, and Conditions to Ensure Independent Operation of the Divestiture Stations Post-Divestiture

Under Paragraph IV(A) of the proposed Final Judgment, divestiture of each of the Divestiture Stations must occur within 90 calendar days after the filing of the Complaint, or five calendar days after notice of entry of the Final Judgment by the Court, whichever is later, to one or more 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 90 calendar days in total, and shall notify the Court in such circumstances. Paragraph IV(B) of the proposed Final Judgment provides for the tolling of deadlines for divestitures that would otherwise be required to meet those deadlines, in the case where a divestiture requires certain FCC action but the FCC has not taken such action by the time the deadline would otherwise occur.

To provide for the possibility that Defendants do not accomplish all required divestitures within the periods set forth in Paragraph IV(A) and Paragraph IV(B) of the proposed Final Judgment, Section V of the proposed Final Judgment provides that in such a case the Court shall appoint a Divestiture Trustee, selected by the United States and approved by the Court, to effect the divestitures. The proposed Final Judgment provides that if a Divestiture Trustee is appointed, Defendants shall pay the costs and expenses of the Divestiture Trustee. The Divestiture Trustee's compensation is to be structured so as to provide an incentive based on the price obtained and the speed with which the divestitures are accomplished. After the appointment of the Divestiture Trustee becomes effective, the Divestiture Trustee is required to file monthly reports with the United States and, as appropriate, the Court, setting forth the Divestiture Trustee's efforts to accomplish the required divestitures. If the Divestiture Trustee has not accomplished the required divestitures within six months after the Divestiture Trustee's appointment, the Divestiture Trustee must promptly file a report with the Court, which shall enter such orders as it deems appropriate to carry out the purpose of the Final Judgment, which may include extending the term of the Divestiture Trustee's appointment by a period requested by the United States.

To ensure that the Divestiture Stations are operated independently from Defendants after the divestitures, Paragraph XI(A) of the proposed Final Judgment provides that during the term of the Final Judgment Defendants shall not (1) reacquire any part of the assets required to be divested; (2) acquire any option to reacquire any part of such assets or to assign them to any other person; (3) enter into any local marketing agreement, joint sales agreement, other cooperative selling arrangement, or shared services agreement (except as provided in in Paragraph XI(A) or Paragraph XI(B)), or conduct other business negotiations jointly with any acquirer of any of the assets required to be divested with respect to those assets; or (4) provide financing or guarantees of financing with respect to the assets required to be divested.

The shared services prohibition does not preclude Defendants from continuing or entering into agreements in a form customarily used in the industry to (a) share news helicopters or (b) pool generic video footage that does not include recording a reporter or other on-air talent, and does not preclude Defendants from entering into any non-sales-related shared services agreement or transition services agreement that is approved in advance by the United States in its sole discretion. Additionally, Paragraph XI(B) provides that the restrictions of Paragraph XI(A) do not prevent Defendants from entering into agreements to provide news programming to the Divestiture Stations, provided that Defendants do not sell, price, market, hold out for sale, or profit from the sale of advertising associated with the news programming provided by Defendants under such agreements except by approval of the United States in its sole discretion.

F. Enforcement and Expiration of the Final Judgment

The proposed Final Judgment contains provisions designed to promote compliance and make enforcement of Division consent decrees as effective as possible. Paragraph XIII(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its right to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar civil action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence, and Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XIII(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore all competition the United States alleged was harmed by the merger. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XIII(C) of the proposed Final Judgment further provides that should the Court find in an enforcement proceeding that the Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation of violations of, and the enforcement of, the proposed Final Judgment, Paragraph XIII(C) provides that in connection with any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved prior to litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including the investigation of the potential violation.

Finally, Section XIV of the proposed Final Judgment provides that the Final Judgment shall expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

G. Summary

The divestiture provisions of the proposed Final Judgment will eliminate the substantial anticompetitive effects of the merger in the licensing of Big 4 television retransmission consent and the sale of broadcast television spot advertising in each of the Overlap DMAs.

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 of the proposed Final Judgment upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 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 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 before 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 U.S. 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 to enable any party to the Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe the Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

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 Gray's merger with Raycom. The United States is satisfied, however, that the divestiture of assets required by the proposed Final Judgment, together with the other restrictions contained in the proposed Final Judgment, will preserve competition in the licensing of Big 4 television retransmission consent and the sale of broadcast television spot advertising in the Overlap 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 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, 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.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 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 mechanisms to enforce the final judgment are clear and manageable.").

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 its 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. Instead:

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

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[3]

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

[3] *See also. 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").

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*, 38 F. Supp. 3d at 74-75 (noting that a court should not reject the proposed remedies because it believes others are preferable and that room must be made for the government to grant concessions in the negotiation process for settlements); *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 government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case"). The ultimate question is 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.'" *Microsoft*, 56 F.3d at 1461 (*quoting United States v. Western Elec. Co.*, 900 F.2d 283, 309 (D.C. Cir. 1990)). 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,* 38 F. Supp. 3d at 75 (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.

In its 2004 amendments,[4] 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*, 38 F. Supp. 3d at 76 (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). This language explicitly wrote into the statute what Congress intended when it first 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 Sen. 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*

[4] The 2004 amendments substituted "shall" for "may" in directing relevant factors for a 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).

Commc'ns, 489 F. Supp. 2d at 11. A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 38 F. Supp. 3d at 76. *See also 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"); 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.").

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.

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Respectfully submitted,

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