

set forth herein, in the Certificate of Incorporation, or in any other certificate or designations creating a series or any similar stock or as otherwise required by law.

Resolved, further, that the officers of this Corporation be, and each of them hereby is, authorized and empowered on behalf of this Corporation to execute, verify and file a certificate of designations of preferences in accordance with Delaware law.

In Witness whereof, Entravision Communications Corporation has caused this certificate to be duly executed by its duly authorized officers this day of March, 2003.

Entravision Communications Corporation

By: 11111111111111111111

Walter F. Ulloa,

Chairman and Chief Executive Officer.

By: 11111111111111111111

John F. DeLorenzo,

Chief Financial Officer.

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Village Voice Media, LLC, & NT Media, LLC; Public Comments and Plaintiff's Response

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) and (d), the United States hereby publishes below the written comments received on the proposed Final Judgment in *United States of America v. Village Voice Media, LLC, and NT Media, LLC*, Civil Action No. 1:03CV0164, filed in the United States District Court for the Northern District of Ohio, together with the United States' response to the comments.

Copies of the comments and the United States' response are available for inspection at the United States Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 300, Washington, DC 20530, and at the Office of the Clerk, United States District Court for the Northern District of Ohio, Carl B. Stokes United States Court House, 801 West Superior Avenue, Cleveland, OH 44113-1830. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,
Director of Operations.

Response to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h) ("APPA" or

"Tunney Act"), the United States hereby responds to the public comments received regarding the Proposed Final Judgment in this case.

I. Background

On January 27, 2003, the United States filed the Complaint in this matter to terminate the Defendants' illegal agreement to allocate markets for advertisers in, and readers of, alternative newsweeklies in metropolitan Cleveland, Ohio, and Los Angeles, California, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. Simultaneously with the filing of the Complaint, the United States filed a Proposed Final Judgment. A Competitive Impact Statement ("CIS") was also filed with the Court on February 3, 2003, and published in the **Federal Register**, along with the Proposed Final Judgment, on February 12, 2003 (*see* 68 FR 7132). Pursuant to 15 U.S.C. 16(c), a summary of the terms of the Proposed Final Judgment and CIS was published in The Plain Dealer during the period of February 6 through 12, 2003, and The Washington Post, a newspaper of general circulation in the District of Columbia, during the period of February 14 through 20, 2003.

As explained more fully in the Complaint and CIS, prior to entering into their unlawful agreement, Defendants NT Media ("New Times") and Village Voice Media were head-to-head competitors in publishing alternative newsweeklies in Cleveland and Los Angeles. In October 2002, New Times agreed to shut down its Los Angeles alternative newsweekly, the New Times Los Angeles, if Village Voice Media closed its newsweekly in Cleveland, the Cleveland Free Times. Thus, Defendants "swapped" markets, leaving New Times with a monopoly in Cleveland and Village Voice Media with a monopoly in Los Angeles. This unlawful agreement eliminated the competition that had brought advertisers in both cities lower advertising rates, more promotional opportunities and better service, and that had benefitted readers with a higher quality product.

The Proposed Final Judgment requires, in part, that New Times and Village Voice Media terminated their unlawful agreement, allow affected advertisers in Los Angeles and Cleveland to terminate their contracts, notify the United States before entering into any merger, sale, or joint venture involving their alternative newsweeklies, and divest the assets of the New Times Los Angeles and the Cleveland Free Times to new entrants in those markets. The proposed consent

decree also prohibits the companies from entering into any market or customer allocation agreements in the future.

The sixty-day period for public comment expired on April 21, 2003. As of today, the United States has received written comments from; (1) Citizens for Voluntary Trade, whose president filed an amicus motion with this Court, (2) Gary Beberman, and (3) Denise D'Anne. The United States has carefully considered the views expressed in these comments, but nothing in the comments has altered the United States' conclusion that the Proposed Final Judgment is in the public interest. Pursuant to section 16(d) of the Tunney Act, the United States is now filing with this Court its response to such comments. Once these comments and this response are published in the **Federal Register**, the United States will have fully complied with the Tunney Act and will file a motion for entry of the Proposed Final Judgment.

II. Response to Public Comments

A. Citizens for Voluntary Trade's Comment

In its written comment, Citizens for Voluntary Trade ("CVT") states that the First Amendment to the U.S. Constitution preempts the Proposed Final Judgment, as "[e]ven the most 'anti-competitive' conduct is protected by the First Amendment." (CVT Comment at 2, a copy of which is attached at Exhibit A.)

The Supreme Court as long ago as 1945 dismissed this assertion. The restraints imposed by these private arrangements are not protected by the First Amendment. *Citizen Publishing Co. v. United States*, 394 U.S. 131 (1969); *Associated Press v. United States*, 326 U.S. 1, 20 (1945). Neither news gathering nor news dissemination are being regulated by the Proposed Final Judgment, which addresses only the Defendants' per se illegal restraints on certain business or commercial practices. The Defendants' unreasonable restraints on competition—which the Proposed Final Judgment remedies—comport neither with the antitrust laws nor with the First Amendment. As the Supreme Court held in the *Associated Press* case, and reiterated twenty-four years later in the *Citizen Publishing* decision:

It would be strange indeed * * * if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom. The First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful