

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

UNITED STATES OF AMERICA,
STATE OF CALIFORNIA,
STATE OF FLORIDA, STATE OF MISSOURI,
STATE OF TEXAS, and STATE OF
WASHINGTON,

Plaintiffs,

v.

COMCAST CORP., GENERAL ELECTRIC
CO., and NBC UNIVERSAL, INC.,

Defendants.

CASE: 1:11-cv-00106
JUDGE: Leon, Richard J.

**UNITED STATES' MOTION AND SUPPORTING MEMORANDUM
TO ENTER FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA" or "Tunney Act"), the United States moves for entry of the proposed Final Judgment filed in this civil antitrust case. The proposed Final Judgment (attached hereto) may be entered at this time if the Court determines that entry is in the public interest. The Plaintiff United States and Defendants have stipulated to entry of the proposed Final Judgment. The Competitive Impact Statement ("CIS") and Response to Public Comments, filed by the United States on January 18, 2011 and June 6, 2011, respectively, explain why entry of the proposed Final Judgment is in the public interest. The United States is filing simultaneously with this motion a Certificate of Compliance setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting periods have expired. A hearing on the

proposed Final Judgment was scheduled by this Court for July 6, 2011, but that hearing has been postponed indefinitely. The United States respectfully submits that no hearing is required in order for this Court to conclude that entry of the proposed Final Judgment is in the public interest. If the Court nonetheless determines that a hearing would be helpful, the United States suggests the following alternative dates: July 18, 20, 21, 25, 26, 27 or 28.

I. BACKGROUND

On January 18, 2011, the United States and the States of California, Florida, Missouri, Texas, and Washington, (the "Plaintiff States") filed the Complaint in this matter, alleging that the formation of a Joint Venture ("JV") among Comcast Corporation ("Comcast"), General Electric Company, NBC Universal, Inc. ("NBCU") and Navy, LLC, which would give Comcast control over the NBC broadcast and NBCU cable networks, if permitted to proceed, would substantially lessen competition in the market for timely distribution of professional, full-length video programming to consumers in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the United States also filed a Stipulation and Order and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the merger, and a CIS. As discussed in the CIS, the proposed Final Judgment is designed to preserve competition in the market for timely distribution of professional, full-length video programming to consumers in the United States by mandating certain conduct remedies. First, the proposed Final Judgment requires the JV to license its broadcast, cable, and film content to online video distributors ("OVDs") on terms that are comparable to those that are contained in similar

licensing arrangements with traditional multichannel video programming distributors (“MVPDs”) or OVDs. Second, the proposed Final Judgment requires the JV to relinquish its voting and governance rights in Hulu, LLC, one of the most successful OVDs to date, and bars the defendants from receiving confidential or competitively sensitive information concerning Hulu. Third, the proposed Final Judgment prohibits the JV from discriminating or retaliating against any programmer for providing its programming to any OVD or MVPD, and vice versa. Fourth, the proposed Final Judgment further protects OVDs by prohibiting Comcast or the JV from entering into agreements containing certain restrictive or exclusive terms. Fifth, the proposed Final Judgment also contains restrictions on the operation and control of Internet facilities controlled by Comcast, which OVDs depend upon in order to deliver video content to their customers. Finally, the proposed Final Judgment contains reporting and document retention requirements to assist the Department in monitoring and enforcing the proposed Final Judgment.

The Stipulation and Order provides that the proposed Final Judgment may be entered by the Court after the completion of the procedures required by 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. COMPLIANCE WITH THE APPA

The APPA requires a 60 period for the submission of public comments on a proposed Final Judgment. *See* 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed a CIS in this Court on January 18, 2011; published the proposed Final

Judgment and CIS in the Federal Register on January 31, 2011, *see* 76 Fed. Reg. 5,440 (2011); and published a summary of the terms of the proposed Final Judgment in *The Washington Post* for a total of seven days commencing on January 28, 2011 and ending on February 7, 2011. The 60-day period for public comments ended on April 9, 2011, and eight comments were received. The United States filed its Response to Public Comments and the comments themselves with this Court on June 6, 2011, and published the Response and the public comments in the Federal Register on June 14, 2011. *See* 76 Fed. Reg. 34,750 (2011). The Certificate of Compliance, filed contemporaneously with this Motion, recites that all the requirements of the APPA have now been satisfied. It is therefore appropriate for the Court to make the public-interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment.

III. STANDARD OF JUDICIAL REVIEW

Before entering the proposed Final Judgment, the Court is to determine whether the Judgment “is in the public interest.” *See* 15 U.S.C. § 16(e). In making that determination, the Court shall consider:

A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e).

In its CIS filed on January 18, 2011 and its Response to Public Comments filed on June 6, 2011, the United States set forth the public-interest standard under the APPA and now incorporates those statements herein by reference. The public, including affected competitors and customers, have had the opportunity to comment on the proposed Final Judgment as required by law. As explained in the CIS and the Response to Comments, the proposed Final Judgment is within the range of settlements consistent with the public interest and the United States therefore requests that this Court enter the proposed Final Judgment.

IV. CONCLUSION

For the reasons set forth in this Motion, the CIS, and the Response to Public Comments, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment. The United States respectfully requests that the proposed Final Judgment attached hereto be entered as soon as possible.

Dated: June 29, 2011

Respectfully submitted,

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