

Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means except to the extent provided by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: February 7, 2003.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

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## DEPARTMENT OF JUSTICE

### Antitrust Division

#### ***United States v. Village Voice Media, LLC, & NT Media, LLC; Proposed Final Judgment and Competitive Impact Statement***

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b) through (h), that a proposed final judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District court for the Northern District of Ohio in *United States of America v. Village Voice Media, LLC, and NT Media, LLC*, Civil Action No. 1:03CV0164. On January 27, 2003, the United States filed a Complaint alleging that the market allocation agreement between New Times and Village Voice Media was *per se* illegal under section 1 of the Sherman Act, 15 U.S.C. 1. The proposed final judgment, filed the same time as the complaint, (i) enjoins Village Voice Media and New Times from taking any actions in furtherance of, or required under, their *per se* illegal market allocation agreement; (ii) requires defendants to divest all the assets used in connection with the publication of the *New Times LA*, New

Times's alternative newsweekly in Los Angeles, and the *Cleveland Free Times*, Village Voice Media's alternative newsweekly in Cleveland, for the purpose of establishing a viable competitive alternative newsweekly in both geographic markets; (iii) permits any advertiser that entered into an advertising or promotion contract after October 1, 2002, with Village Voice Media's *LA Weekly*, or New Times's *Cleveland Scene*, for a specified time and solely at the advertiser's option, to terminate such contract without penalty or threat of retaliatory action; (iv) requires Village Voice Media and New Times to notify the United States for the next five years of any future acquisitions, or sales of, alternative newsweeklies; (v) prevents both defendants from enforcing any non-compete contractual provisions against any current or former employees involved in their Cleveland or Los Angeles alternative newsweeklies; and (vi) prevents each defendant and its officers, directors, agents, and employees, from entering into, continuing, maintaining, or renewing any market or customer allocation agreement. Copies of the complaint, proposed final judgment, and competitive impact statement are available for inspection at the Department of Justice in Washington, DC, in Room 200, 325 Seventh Street, NW., on the Department of Justice's web site at <http://www.usdoj.gov/atr/>, and at the Office of the Clerk of the United States District Court for the Northern District of Ohio, Eastern Division, in Cleveland, Ohio.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James R. Wade, Chief, Litigation III Section, Antitrust Division, Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530 (telephone: (202) 616-5935).

**Constance K. Robinson,**  
*Director of Operations.*

#### **Hold Separate Stipulation and Order**

It is hereby stipulated and Agreed by and between the undersigned parties, subject to approval and entry by this court, that:

#### **I. Definitions**

As used in this Hold Separate Stipulation and Order:

(A) "Acquirer" or "acquirers" means the entity or entities to which defendants divest the Divestiture assets.

(B) "Alternative newsweekly" means a publication (such as the Cleveland Scene or LA Weekly) that possesses more than one of the following attributes: (i) It is published in a geographic area served by one or more daily newspaper to which residents turn as their primary source or sources of printed news; (ii) it is published weekly (or less frequently), and at least 24 times annually; (iii) it is distributed free of charge; (iv) it is not owned by a daily newspaper publishing company; and (v) it is a general interest publication that does not focus exclusively on one specific topic, such as music, entertainment, religion, the environment, or a political party or organization.

(C) "Cleveland Free Times assets" means all assets within the possession, custody or control of Village Voice Media and New Times that were formerly employed in the publication of the Cleveland Free Times alternative newsweekly in the Greater Cleveland area by Village Voice Media before October 1, 2002, including, but not limited to:

(1) All rights to the Cleveland Free Times name (and any derivations thereof), logo, layout and design, including all legal rights, including intellectual property rights associated with the Cleveland Free Times, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property to the fullest extent sublicenseable (provided that, with respect to any rights not legally transferable, Village Voice Media shall assist, and neither impede nor hinder, the Acquirer in negotiating with, and obtaining all necessary legal right from, the third party controls such rights);

(2) Except for the payroll systems located in New York, New York, all computer hardware, software and licensing agreements connected with that software to the fullest extent sublicenseable (provided that, with respect to any rights not legally transferable, Village Voice Media shall assist, and neither impede nor hinder, the acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights); and all information relating to the Cleveland Free Times stored on the computer hardware, including all design templates and databases;

(3) All office furniture, telephone systems, T-1 lines, fax machines, copy machines, stationery, business cards, rate kits, and all other supplies and equipment used by the Cleveland Free Times;

(4) All rights to the Cleveland Free Times website and URL ([www.freetimes.com](http://www.freetimes.com));

(5) All rights to the print and electronic archives of the Cleveland Free Times publications and articles on a non-exclusive basis;

(6) All assets used in the publication of the Cleveland Free Times, including all distribution racks, street distribution boxes, permits and licenses for individual distribution racks and boxes, route sheets, and leases or other rights to real property from which Village Voice Media published the Cleveland Free Times; and

(7) All other tangible and intangible assets used in the publication of the Cleveland Free Times, including, but not limited to: All other leases; all licenses, permits and authorizations issued by any governmental organization; all contracts, terming arrangements, agreements, commitments, certifications, and understanding, including supply agreements, all customer lists, contracts, accounts, and credit records; all agreements with retailers, wholesalers, or any other person regarding the sale, promotion, marketing, advertising or placement of such products; all graphics and artwork relating to the Cleveland Free Times; all other records stored in the office of, or generated by or for, the Cleveland Free Times; all technical information, computer software and related documentation, and know-how, and information relating to plans for, or improvements to, the Cleveland Free Times; all research, packaging, sales, marketing, advertising and distribution know-how, information, data, and documentation, including marketing and sales data, and layout designs, and manuals and technical information Village Voice Media provided to any of its Cleveland Free Times employees, customers, suppliers, agents or licensees; and all specifications for materials.

(D) "Divestiture assets" means the *Cleveland Free Times* Assets and the *New Times LA* Assets.

(E) "Greater Cleveland area" means the counties of Cuyahoga, Lake, Geauga, Portage, Summit, Medina and Lorain in the state of Ohio.

(F) "Greater Los Angeles area" means the counties of Los Angeles, Orange, San Bernardino, Riverside and Ventura in the state of California.

(G) "New Times" means defendant NT Media, LLC, a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in Phoenix, Arizona, its successor and assigns, and its subsidiaries, divisions, groups,

affiliates, partnerships and joint ventures, including without limitation Cleveland Scene, LLC, and New Times Los Angeles, LP, and their directors, officers, managers, agents, and employees.

(H) "*New Times LA* Assets" means all assets within the possession, custody or control of New Times and Village Voice Media that were formerly employed in the publication of the *New Times LA* alternative newsweekly in the Greater Los Angeles area by New Times before October 1, 2002, including, but not limited to:

(1) Subject to the provisions of section V(K) of the proposed final judgment, all rights to the *New Times LA*, *LA Reader* and *LA View* names (including any derivations thereof), logos, layout and design, including all legal rights, including intellectual property rights associated with the *New Times LA*, *LA Reader* and *LA View*, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property to the fullest extent sublicensable (provided that, with respect to any rights not legally transferable, New Times shall assist, and neither impede nor hinder, the Acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights);

(2) All computer hardware, software, and licensing agreements connected with that software to the fullest extent sublicensable, which are associated primarily with the publication of the *New Times LA*, including all rights to the *New Times LA* website and URL ([www.newtimesla.com](http://www.newtimesla.com)); all information relating to the *New Times LA* stored on the computer hardware, including all design templates and databases; New Times shall provide in the original format to the Acquirer (if such format is not readable or usable by commercially available software, then New Times shall provide such data in such format the Acquirer may reasonably specify) all other information relating to the publication of *New Times LA* stored on New Times's computer hardware (provided that, with respect to any rights not legally transferable, New Times shall assist, and neither impede nor hinder, the acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights);

(3) All office furniture, telephone systems, T-1 lines, fax machines, copy machines, stationery, business cards, rate kits, and all other supplies and equipment used by the *New Times LA*;

(4) All rights to the print and electronic archives of *New Times LA* publications and articles on a non-exclusive basis;

(5) All graphics and artworks used in the publication of the *New Times LA* and New Times's other alternative newsweeklies as of October 1, 2002, on a non-exclusive basis;

(6) All assets used in the publication of the *New Times LA*, including all distribution racks, street distribution boxes, permits and licenses for individual distribution racks and boxes, route sheets, and leases or other rights to real property from which New Times published the *New Times LA*; and

(7) All other tangible and intangible assets used in the publication of the *New Times LA*, including, but not limited to: all other leases; all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all agreements with retailers, wholesalers, or any other person regarding the sale, promotion, marketing, advertising or placement of such products; all graphics and artwork relating exclusively to the *New Times LA*; all other records stored in the offices of, or generated by or for, the *New Times LA*; all technical information, computer software and related documentation, and know-how, and information relating to plans for, or improvements to, the *New Times LA*; all research, packaging, sales, marketing, advertising, and distribution know-how, information, data and documentation, including marketing and sales data, and layout designs used exclusively in, or which relate exclusively to, the publication of the *New Times LA* (and copies of such know-how, information, data and documentation which relates to the publication of the *New Times LA*); all manuals and technical information New Times provided to any of its *New Times LA* employees, customers, suppliers, agents or licensees; and all specifications for materials.

(I) "Publication" means all activities associated with the business of offering an alternative newsweekly to the public as a commercial endeavor, including, but not limited to, editing, writing, printing, circulating, operating, marketing, and distributing such alternative newsweeklies, and selling advertisements and promotions therein.

(J) "State Attorneys General" means the Office of the Attorney General of the State of Ohio and the Office of the

Attorney General of the State of California, who may share information and consult with the Office of the Los Angeles County District Attorney on any matters arising under this hold separate stipulation and order.

(K) "Village Voice Media" means defendant Village Voice Media, LLC, a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including without limitation LA Weekly Media, Inc. and Cleveland Free Times Media, Inc., and their directors, officers, managers, agents, and employees.

(L) The terms "and" and "or" have both conjunctive and disjunctive meanings.

## II. Objectives

The final judgment filed in this civil action is meant to ensure prompt divestitures for the purpose of establishing viable competitors in the alternative newsweekly industry in order to remedy the effects that the United States alleges have resulted, and would otherwise continue to result, from the defendants' agreement that the United States alleges to have violated section one of the Sherman Act. The hold separate stipulation and order ensure, prior to such divestitures, that the Cleveland Free Times Assets and New Times LA Assets remain economically viable, and that the divestiture assets be maintained and not be diminished during the pendency of the ordered divestitures.

## III. Jurisdiction and Venue

This court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Northern District of Ohio.

## IV. Compliance With and Entry of Final Judgment

(A) The parties stipulate that a final judgment in the form attached hereto as Exhibit A may be filed with and entered by this court, upon the motion of any party or upon this court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any part or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed final judgment by serving notice thereof on

defendants and by filing that notice with this Court.

(B) Defendants shall abide by and comply with the provisions of the proposed final judgment, pending the judgment's entry by this court, or until expiration of time for all appeals of any court ruling declining entry of the proposed final judgment. Defendants, from the date of the signing of this hold separate stipulation and order by the parties, shall comply with all the terms and provisions of the proposed final judgment as though the same were in full force and effect as an order of this court.

(C) This hold separate stipulation and order shall apply with equal force and effect to any amended proposed final judgment agreed upon in writing by the parties and submitted to this Court.

(D) In the event that (1) the proposed final judgment is not entered pursuant to this hold separate stipulation and order, the time has expired for all appeals of any court ruling declining entry of the proposed final judgment, and this court has not otherwise ordered continued compliance with the terms and provisions of the proposed final judgment, or (2) the United States has withdrawn its consent, as provided in section IV(A) above, then the parties are released from all further obligations under this hold separate stipulation and order, and the making of this hold separate stipulation and order shall be without evidentiary prejudice to any party in this or any other proceeding.

(E) Defendants represent that the divestitures ordered in the proposed final judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking this court to modify any of the provisions contained therein.

## V. Hold Separate Provisions

Until the divestitures required by the final judgment have been accomplished:

(A) Defendants shall preserve and maintain the value and goodwill of the divestiture assets. Defendants shall not, except as part of a divestiture approved by the United States, after consultation with the State Attorneys General, in accordance with the terms of the proposed final judgment, remove, sell, lease or sublease, assign, transfer, pledge or otherwise dispose of any of the divestiture assets.

(B) Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices,

the assets, liabilities, expenses, revenues and income, if any, of the Divestiture Assets.

### *Cleveland Free Times Assets*

(C) With respect to the books, records, sales, marketing, promotions, customer and pricing information as part of the Cleveland Free Times Assets in its possession, custody or control, New Times shall hold them entirely separate, distinct and apart from those of New Times's other operations. Until such time that the Cleveland Free Times Assets are divested, the Cleveland Free Times Assets in New Times's possession, custody, or control shall be managed by a person, not employed by New Times's alternative newsweekly, the Cleveland Scene (the "New Times designated person").

(D) The New Times Designated Person shall have complete managerial responsibility for the Cleveland Free Times Assets in the possession, custody, and control of New Times, subject to the provisions of this order, and will be responsible for overseeing New Times's compliance with this section.

(E) In the event that the New Times designated person is unable to perform his or her duties, or is not approved by the United States, upon consultation with the State Attorneys General, New Times shall appoint, subject to the approval of the United States, upon consultation with the State Attorneys General, a replacement within five calendar days. Should defendant New Times fail to appoint a replacement acceptable to the United States, upon consultation with the State Attorneys General, within five calendar days, the United States shall appoint, upon consultation with the State Attorneys General, a replacement.

(F) Defendant New Times shall take no action that would interfere with the ability of the New Times designated person or any later appointed persons to oversee the Cleveland Free Times assets in New Times's possession, custody or control. The New Times Designated person shall not be terminated, transferred or reassigned prior to the divestiture of such assets under the final judgment and this hold separate stipulation and order.

(G) Within 10 calendar days after either the filing of the complaint or the entry of the hold separate stipulation and order, whichever is earlier, New Times shall deliver to the United States and State Attorneys General an affidavit that describes in reasonable detail: (i) Each Cleveland Free Times asset in its possession, custody, or control, (ii) the identity, title, and responsibilities of the New Times designated person, and (iii)

all actions New Times has taken and all steps New Times has implemented on an ongoing basis to comply with this hold separate stipulation and order.

#### *New Times LA Assets*

(H) With respect to the books, records, sales, marketing, promotions, customer and pricing information as part of the New Times LA Assets in its possession, custody or control, Village Voice Media shall hold them entirely separate, distinct and apart from those of Village Voice Media's other operations. Until such time that the New Times LA assets are divested, the New Times LA assets shall be managed by a person, not employed by Village Voice Media's Alternative Newsweekly, the LA Weekly (the "VVM designated person").

(I) The VVM designated person shall have complete managerial responsibility for the New Times LA assets in the possession, custody, and control of Village Voice Media, subject to the provisions of this order, and will be responsible for overseeing Village Voice Media's compliance with this section.

(J) In the event that the VVM designated person is unable to perform his or her duties, or is not approved by the United States, upon consultation with the State Attorneys General, Village Voice Media shall appoint, subject to the approval of the United States, upon consultation with the State Attorneys General, a replacement within five calendar days. Should Village Voice Media fail to appoint a replacement acceptable to the United States, upon consultation with the State Attorneys General, within five calendar days, the United States shall appoint, upon consultation with the State Attorneys General, a replacement.

(K) Defendant Village Voice Media shall take no action that would interfere with the ability of the VVM designated person or any later appointed persons to oversee the New Times LA Assets in Village Voice Media's possession, custody or control. The VVM designated person shall not be terminated, transferred or reassigned prior to the divestiture of such assets under the final judgment and this hold separate stipulation and order.

(L) Within 10 calendar days after either the filing of the complaint or the entry of the hold separate stipulation and order, whichever is earlier, Village Voice Media shall deliver to the United States and State Attorneys General an affidavit that describes in reasonable detail: (i) Each New Times LA asset in its possession, custody, or control, (ii) the identity, title, and responsibilities of the VVM designated person, and (iii) all actions Village Voice Media has taken

and all steps Village Voice Media has implemented on an ongoing basis to comply with this hold separate stipulation and order.

(M) Defendants shall take all steps necessary to ensure that preservation of the assets will be conducted by the designated persons and not be influenced by New Times or Village Voice Media. Defendants shall take all steps necessary to ensure that the divestiture assets are fully maintained in operable condition, and shall maintain and adhere to normal repair, product improvement and upgrade, and maintenance schedules for the divestiture assets.

(N) Defendants shall use their best efforts to assist, and shall take no action to interfere with or to impede, the trustee (if applicable) in accomplishing the required divestiture pursuant to the final judgment.

(O) This hold separate stipulation and order shall remain in effect until consummation of the divestiture required by the proposed final judgment or until further order of this court.

Dated: January 25, 2003, Washington, DC  
Respectfully submitted,

For defendant Village Voice Media, LLC:

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For defendant NT Media, LLC:

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For plaintiff United States of America:

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#### **Order**

It is so ordered by this court, this \_\_\_\_ day  
of \_\_\_\_ / \_\_\_\_ / \_\_\_\_, 2003.  
United States District Judge.

#### **Final Judgment**

Whereas, the United States of America filed its complaint on January 27, 2003, alleging that defendants Village Voice Media and New Times entered into agreements in violation of section one of the Sherman Act, and the plaintiff and defendants, 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 any admission by, any party regarding any such issue of fact or law;

And whereas, Village Voice Media and New Times agree to be bound by the provisions of this Final Judgment pending its approval by this court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Village Voice Media and New Times to restore the loss of competition alleged in the complaint;

And whereas, the United States requires Village Voice Media and New Times to agree to certain procedures and prohibitions for the purpose of restoring the loss of competition alleged in the complaint;

And whereas, the United States requires Village Voice Media and New Times to make certain divestitures for the purpose of remedying the loss of competition alleged in the complaint;

And whereas, Village Voice Media and New Times have represented to the United States that the divestitures required below can and will be made and that they 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 Village Voice Media and New Times under section 1 of the Sherman Act, as amended (15 U.S.C. 1).

#### **II. Definitions**

As used in this final judgment:

(A) "Acquirer" or "acquirers" means the entity or entities to which defendants divest the divestiture assets.

(B) "Alternative newsweekly" means a publication (such as the Cleveland Scene or LA Weekly) that possesses more than one of the following attributes: (i) It is published in a geographic area served by one or more daily newspapers to which residents turn as their primary source or sources of printed news; (ii) it is published weekly (or less frequently), and at least 24 times annually; (iii) it is distributed free of charge; (iv) it is not owned by a daily newspaper publishing company; and (v) it is a general interest publication that does not focus

exclusively on one specific topic, such as music, entertainment, religion, the environment, or a political party or organization.

(C) "California Attorney General" means the Office of the Attorney General of the State of California, who may share information and consult with the Office of the Los Angeles County District Attorney on any matters arising under this final judgment.

(D) "Cleveland Asset Purchase Agreement" means the Asset Purchase Agreement by and among Cleveland Free Times Media, Inc., Cleveland Scene, LLC, Village Voice Media, LLC, and NT Media, LLC, dated October 1, 2002, and any agreements ancillary thereto.

(E) "Cleveland Free Times Assets" means all assets within the possession, custody or control of Village Voice Media and New Times that were formerly employed in the publication of the Cleveland Free Times alternative newsweekly in the Greater Cleveland Area by Village Voice Media before October 1, 2002, including, but not limited to:

(1) All rights to the Cleveland Free Times name (and any derivations thereof), logo, layout and design, including all legal rights, including intellectual property rights associated with the Cleveland Free Times, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property to the fullest extent sublicenseable (provided that, with respect to any rights not legally transferable, Village Voice Media shall assist, and neither impede nor hinder, the acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights);

(2) Except for the payroll systems located in New York, New York, all computer hardware, software and licensing agreements connected with that software to the fullest extent sublicenseable (provided that, with respect to any rights not legally transferable, Village Voice Media shall assist, and neither impede nor hinder, the acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights); and all information relating to the Cleveland Free Times stored on the computer hardware, including all design templates and databases;

(3) All office furniture, telephone systems, T-1 lines, fax machines, copy machines, stationery, business cards, rate kits, and all other supplies and

equipment used by the Cleveland Free Times;

(4) All rights to the Cleveland Free Times website and URL ([www.freetimes.com](http://www.freetimes.com));

(5) All rights to the print and electronic archives of the Cleveland Free Times publications and articles on a non-exclusive basis;

(6) All assets used in the publication of the Cleveland Free Times, including all distribution racks, street distribution boxes, permits and licenses for individual distribution racks and boxes, route sheets, and leases or other rights to real property from which Village Voice Media published the Cleveland Free Times; and

(7) All other tangible and intangible assets used in the publication of the Cleveland Free Times, including, but not limited to: All other leases; all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all agreements with retailers, wholesalers, or any other person regarding the sale, promotion, marketing, advertising or placement of such products; all graphics and artwork relating to the Cleveland Free Times; all other records stored in the offices of, or generated by or for, the Cleveland Free Times; all technical information, computer software and related documentation, and know-how, and information relating to plans for, or improvements to, the Cleveland Free Times; all research, packaging, sales, marketing, advertising and distribution know-how, information, data, and documentation, including marketing and sales data, and layout designs; all manuals and technical information Village Voice Media provided to any of its Cleveland Free Times employees, customers, suppliers, agents or licensees; and all specifications for materials.

(F) "Cleveland Scene termination period" means the period of time beginning October 1, 2002, and ending 30 calendar days after consummation of the divestiture of the Cleveland Free Times assets.

(G) "Divestiture assets" means the Cleveland Free Times Assets and the New Times LA assets.

(H) "Greater Cleveland area" means the counties of Cuyahoga, Lake, Geauga, Portage, Summit, Medina and Lorain in the state of Ohio.

(I) "Greater Los Angeles area" means the counties of Los Angeles, Orange,

San Bernardino, Riverside and Ventura in the state of California.

(J) "Los Angeles asset purchase agreement" means the asset purchase agreement among LA Weekly Media, Inc., New Times Los Angeles, LP, Village Voice Media, LLC, and NT Media, LLC, dated October 1, 2002, and any agreements ancillary thereto.

(K) "LA Weekly termination period" means the period of time beginning October 1, 2002, and ending 30 calendar days after consummation of the divestiture of the New Times LA assets.

(L) "New Times" means Defendant NT Media, LLC, a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in Phoenix, Arizona, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including without limitation Cleveland Scene, LLC, and New Times Los Angeles, LP, and their directors, officers, managers, agents, and employees.

(M) "New Times LA Assets" means all assets within the possession, custody or control of New Times and Village Voice Media that were formerly employed in the publication of the New Times LA alternative newsweekly in the Greater Los Angeles area by New Times before October 1, 2002, including, but not limited to:

(1) Subject to the provisions of section V(K), all rights to the New Times LA, LA Reader and LA View names (including any derivations thereof), logos, layout and design, including all legal rights, including intellectual property rights associated with the New Times LA, LA Reader and LA View, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property to the fullest extent sublicenseable (provided that, with respect to any rights not legally transferable, New Times shall assist, and neither impede nor hinder, the Acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights);

(2) All computer hardware, software, and licensing agreements connected with that software to the fullest extent sublicenseable, which are associated primarily with the publication of the New Times LA, including all rights to the New Times LA website and URL ([www.newtimesla.com](http://www.newtimesla.com)); all information relating to the New Times LA stored on the computer hardware, including all design templates and databases; New Times shall provide in the original

format to the acquirer (if such format is not readable or usable by commercially available software, then New Times shall provide such data in such format the acquirer may reasonably specify) all other information relating to the publication of New Times LA stored on New Times's computer hardware (provided that, with respect to any rights not legally transferable, New Times shall assist, and neither impede nor hinder, the acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights);

(3) All office furniture, telephone systems, T-1 lines, fax machines, copy machines, stationery, business cards, rate kits, and all other supplies and equipment used by the New Times LA;

(4) All rights to the print and electronic archives of New Times LA publications and articles on a non-exclusive basis;

(5) All graphics and artworks used in the publication of the New Times LA and New Times's other alternative newsweeklies as of October 1, 2002, on a non-exclusive basis;

(6) All assets used in the publication of the New Times LA, including all distribution racks, street distribution boxes, permits and licenses for individual distribution racks and boxes, route sheets, and leases or other rights to real property from which New Times published the New Times LA; and

(7) All other tangible and intangible assets used in the publication of the New Times LA, including, but not limited to: All other leases; all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all agreements with retailers, wholesalers, or any other person regarding the sale, promotion, marketing, advertising or placement of such products; all graphics and artwork relating exclusively to the New Times LA; all other records stored in the offices of, or generated by or for, the New Times LA; all technical information, computer software and related documentation, and know-how, and information relating to plans for, or improvements to, the New Times LA; all research, packaging, sales, marketing, advertising, and distribution know-how, information, data and documentation, including marketing and sales data, and layout designs used exclusively in, or which relate exclusively to, the publication of the New Times LA (and copies of such know-how, information,

data and documentation which relates to the publication of the New Times LA); all manuals and technical information New Times provided to any of its New Times LA employees, customers, suppliers, agents or licensees; and all specifications for materials.

(N) "Ohio Attorney General" means the Office of the Attorney General of the State of Ohio.

(O) "Publication" means all activities associated with the business of offering an alternative newsweekly to the public as a commercial endeavor, including, but not limited to, editing, writing, printing, circulating, operating, marketing, and distributing such alternative newsweeklies, and selling advertisements and promotions therein.

(P) "State Attorneys General" means the California Attorney General and the Ohio Attorney General.

(Q) "Village Voice Media" means defendant Village Voice Media, LLC, a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including without limitation LA Weekly Media, Inc. and Cleveland Free Times Media, Inc., and their directors, officers, managers, agents, and employees.

(R) The terms "and" and "or" have both conjunctive and disjunctive meanings.

### III. Applicability

(A) This final judgment applies to Village Voice Media and New Times, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

(B) Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include any of the divestiture assets that the purchaser agrees to be bound by the provisions of this final judgment, provided, however, that Village Voice Media and New Times need not obtain such an agreement from the acquirer(s).

### IV. Prohibited and Required Conduct

(A) Village Voice Media and New Times are enjoined as of the filing of the Complaint in this matter from taking any actions in furtherance of, or required under, either the Cleveland asset purchase agreement or the Los Angeles asset purchase agreement. Village Voice Media's and New Times's obligation under this final judgment

supercede their obligations under either of these agreements, and Village Voice Media and New Times shall not object to the performance of their obligations under this final judgment on the grounds that those obligations would cause them to breach either agreement.

(B) For a period of two years commencing upon the filing date of the complaint in this matter, Village Voice Media shall permit any advertiser that entered during the LA Weekly termination period into a written or oral contract to advertise in, or engage in a promotion with, the LA Weekly, solely at the advertiser's option, to terminate such contract without penalty, retaliatory action, or threat of retaliatory action. Village Voice Media shall provide all affected advertisers a copy of this final judgment within 15 calendar days after the filing of the complaint in this matter, and inform in writing all affected advertisers within: (i) Fifteen calendar days after the filing of the complaint in this matter; and (ii) thirty calendar days after consummation of the divestiture of the New Times LA assets, of their rights to terminate at their option their advertising or promotion contracts with the LA Weekly.

(C) For a period of two years commencing upon the filing date of the complaint in this matter, New Times shall permit any advertiser that entered during the Cleveland Scene termination period into a written or oral contract to advertise in, or engage in a promotion with, the Cleveland Scene, solely at the advertiser's option, to terminate such contract without penalty, retaliatory action, or threat of retaliatory action. New Times shall provide all affected advertisers a copy of this final judgment within 15 calendar days after the filing of the complaint in this matter, and inform in writing all affected advertisers within: (i) Fifteen calendar days after the filing of the complaint in this matter; and (ii) 30 calendar days after consummation of the divestiture of the Cleveland Free Times assets, of their right to terminate at their option their advertising or promotion contracts with the Cleveland Scene.

(D) Each defendant, its officers, directors, agents, and employees, acting or claiming to act on its behalf, and successors and all other persons action or claiming to act on its behalf, are enjoined and restrained from, in any matter, directly or indirectly, entering into, continuing, maintaining, or renewing any market or customer allocation agreement, or from engaging in any other combination, conspiracy, contract, agreement, understanding or concert of action having a similar purpose or effect, and from adopting or

following any practice, plan, program, or device having a similar purpose or effect.

(E) Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), defendants for a period of five years commencing upon the filing of the complaint in this matter, and without providing advance notification to the Antitrust Division of the United States Department of Justice, shall not directly or indirectly enter into any merger or joint venture involving, or sale of, any of its alternative newsweeklies or national advertising networks or acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any publication that possesses more than two of the five attributes specified in the definition of "alternative newsweekly" in section II(B) and this final judgment, one of which must be the attribute specified in section II(B)(v). Such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to, the notification and report form set forth in the Appendix to part 803 of title 16 of the Code of Federal Regulations as amended, except that the information requested in items 5 through 8 of the instructions must be provided only about alternative newsweeklies. Notification shall be provided at least 30 calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until 20 calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this section shall be resolved in favor of filing notice.

(F) For any employee involved in the publication of the Cleveland Free Times as of October 1, 2002, any non-compete

provision imposed by Village Voice Media shall be null and void. For a period from the filing of the complaint to one year from the divestiture of the Cleveland Free Times assets, defendants shall not enforce any other non-compete contractual provisions against any of their former or current employees of the Cleveland Free Times or the Cleveland Scene in the Greater Cleveland area. Defendants shall notify in writing all affected former and current employees that such non-compete contractual provisions will not be enforced.

(G) For any employee involved in the publication of the New Times LA as of October 1, 2002, any non-compete provision imposed by New Times shall be null and void. For a period from the filing of the complaint to one year from the divestiture of the New Times LA assets, defendants shall not enforce any other non-compete contractual provisions against any of their former or current employees of the New Times LA or LA Weekly in the Greater Los Angeles area. Defendants shall notify in writing all affected former and current employees that such non-compete contractual provisions will not be enforced.

#### V. Divestitures

(A) Defendants are ordered and directed, within 30 calendar days after the filing of the complaint in this matter, to divest the divestiture assets in a manner consistent with this final judgment to an acquirer or acquirers acceptable to the United States in its sole discretion, after consultation with the State Attorneys General. The United States, in its sole discretion, after consultation with the State Attorneys General, may agree to an extension of this time period for any divestiture of up to 30 additional calendar days, and shall notify this court in such circumstances.

(B) Defendants agree to use their best efforts to divest the divestiture assets in a manner consistent with this final judgment to an acquirer or acquirers acceptable to the United States in its sole discretion, after consultation with the State Attorneys General, and to effect such divestitures as expeditiously as possible.

(C) In accomplishing the divestitures ordered by this final judgment, each defendant promptly shall make known, by usual and customary means, the availability of the divestiture assets under its possession, custody or control. Defendants shall inform any person making inquiry regarding a possible purchase of the divestiture assets that such assets are being divested pursuant to this final judgment and provide that

person with a copy of this final judgment. Defendants shall offer to furnish to all prospective acquirers, subject to customary confidentiality assurances, all information and documents relating to the divestiture assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or attorney work-product doctrine. Defendants shall make available such information to the United States and the State Attorneys General at the same time that such information is made available to any other person.

(D) Village Voice Media shall provide the acquirers, the United States, and the State Attorneys General information relating to the personnel that were involved in any way in the publication of the Cleveland Free Times to enable the acquirer to make offers of employment. Defendants will not interfere with any negotiations by the acquirer(s) to employ any current or former Village Voice Media employee that was involved in the publication of the Cleveland Free Times.

(E) New Times shall provide the acquirers, the United States, and the State Attorneys General information relating to the personnel that were involved in any way in the publication of the New Times LA to enable the acquirer to make offers of employment. Defendants will not interfere with any negotiations by the acquirer(s) to employ any current or former New Times employee that was involved in the publication of the New Times LA.

(F) Defendants shall permit prospective acquirers of the divestiture assets to have reasonable access to personnel and to make inspections of the physical facilities of the divestiture assets. To the extent that defendants continue to maintain any environmental, zoning or other permits pertaining to the publication of the Cleveland Free Times or the New Times LA, defendants shall permit prospective acquirers access to any and all documents and information associated with those permits. Defendants shall permit prospective acquirers of the divestiture assets to have access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

(G) Defendants shall warrant to the acquirer(s) of the divestiture assets that each asset will be operational on the date of sale.

(H) Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of



the Cleveland Free Times assets or the New Times LA assets.

(I) To the extent that Defendants continue to maintain any environmental, zoning or other permits pertaining to the publication of the Cleveland Free Times or the New Times LA Defendants shall warrant to the Acquirer(s) that there are no material defects in those permits. Following the sale of the Cleveland Free Times and/or the New Times LA Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the publication of the Cleveland Free Times and/or the New Times LA.

(J) Unless the United States, in its sole discretion, after consultation with the State Attorneys General, otherwise consents in writing, the divestiture pursuant to section V, or by trustee appointed pursuant to section VI, or this final judgment, shall include the Divestiture assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the State Attorneys General, that the Cleveland Free Times or the New Times LA can and will be published by the acquirer(s) as viable, ongoing alternative newsweeklies. Divestiture of the divestiture assets may be made to one acquirer or to two acquirers, provided that (1) all the Cleveland Free Times assets are sold to one acquirer, (2) all the New Times LA assets are sold to one acquirer, and (3) in each instance it is demonstrated to the sole satisfaction of the United States, after consultation with the State Attorneys General, that the Cleveland Free Times assets and the New Times LA assets will remain viable and that the divestiture of the divestiture assets will remedy the competitive harm alleged in the complaint. The divestitures, whether pursuant to section V or section VI of this final judgment,

(1) Shall be made to an acquirer (or acquirers) that, in the United States's sole judgment, after consultation with the State Attorneys General, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the publication of alternative newsweeklies; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with the State Attorneys General, that none of the terms of any agreement between an acquirer (or acquirers) and defendants give defendants the ability unreasonably to raise the acquirer's costs, to lower the acquirer's efficiency, or otherwise to interfere in the ability of the acquirer to compete effectively.

(K) With respect to copyrights or trademarks associated specifically with the New Times LA that New Times employs in the publication of other New Times Alternative Newsweeklies, the divestiture pursuant to section V, or by a trustee appointed pursuant to section VI, of this Final Judgment shall be accomplished by means of an exclusive, perpetual, royalty-free, assignable license to those copyrights or trademarks for use by the acquirer and its successors in connection with publishing an alternative newsweekly in the Greater Los Angeles area. New Times is enjoined from using, or granting rights to persons other than the acquirer or its successors to use, such copyrights or trademarks in the publication of an alternative newsweekly in the Greater Los Angeles area. New Times, consistent with the purpose and intent of this final judgment, may include, as part of the license for any valid registered trademark used specifically with New Times's other alternative newsweeklies and New Times LA, the requirement on the acquirer and its successors to take the minimum reasonable measures necessary to prevent New Times from being deemed to have abandoned such shared registered trademarks under the Lanham Act.

#### **VI. Appointment of Trustee**

(A) If defendants have not divested the Cleveland Free Times assets within the time period specified in section V(A), they shall notify the United States and the State Attorneys General of that fact in writing. Upon application of the United States, the court shall appoint a trustee selected by the United States in its sole discretion and approved by this court to effect the divestiture of the Cleveland Free Times assets.

(B) If defendants have not divested the New Times LA assets within the time period specified in section V(A), they shall notify the United States and the State Attorneys General of that fact in writing. Upon application of the United States, the court shall appoint a trustee selected by the United States in its sole discretion and approved by this court to effect the divestiture of the New Times LA assets.

(C) After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the divestiture assets. The trustee shall have the power and authority to accomplish the divestiture to an acquirer(s) acceptable to the United States, after consultation with the State Attorneys General, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions

of sections V, VI, and VII of this final judgment, and shall have such other powers as this court deems appropriate. Subject to section VI(E) of this final judgment, the trustee may hire at the cost and expense of the defendant whose divestiture assets the trustee is to divest any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

(D) Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States, the State Attorneys General and the trustee within five calendar days after the trustee has provided the notice required under section VII of this final judgment.

(E) The trustee shall serve at the cost and expense of the defendant whose divestiture assets the trustee is to divest, on such terms and conditions as the United States approves, after consultation with the State Attorneys General, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by this court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to the defendant whose divestiture assets the trustee divested and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the divestiture assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

(F) Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the defendants' personnel, books, records, and facilities, and defendants shall develop financial and other information relevant to such businesses as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.



(G) After its appointment, the trustee shall file monthly reports with the United States, the State Attorneys General and the court setting forth the trustee's efforts to accomplish the divestiture ordered under this final judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of this 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 the trustee is to divest, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the divestiture assets.

(H) If the trustee has not accomplished such divestiture within three months after its appointment, the trustee shall promptly file with this court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of this court. The trustee shall at the same time furnish such report to the United States and the State Attorneys General who shall have the right to make additional recommendations consistent with the purpose of the final judgment. The court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the final judgment, which may, if necessary, include extending the trust and the terms of the trustee's appointment by a period request by the United States.

#### **VII. Notice of Proposed Divestiture**

(A) Within two business days following execution of a definitive divestiture agreement, Village Voice Media, New Times, or the trustee, whichever effected the divestiture, shall notify the United States and the State Attorneys General of any proposed divestiture required by section V or VI of this final judgment. If the trustee is responsible, it shall similarly notify the defendant whose divestiture assets the trustee divested. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to

acquire any ownership interest in the divestiture assets, together with full details of the same.

(B) Within five calendar days of receipt by the United States and the State Attorneys General of such notice, the United States, after consultation with the State Attorneys General, may request from defendants, the proposed acquirer or acquirers, any other third party, or the trustee (if applicable) additional information concerning the proposed divestiture, the proposed acquirer or acquirers, and any other potential acquirer. Defendants and the trustee shall furnish any additional information requested within five calendar days of the receipt of the request, unless the parties shall otherwise agree.

(C) Within fifteen calendar days after receipt of the notice or within five calendar days after the United States and the State Attorneys General have been provided the additional information requested from defendants, the proposed acquirer or acquirers, any third party, and the trustee (if applicable), whichever is later, the United States, after consultation with the State Attorneys General, shall provide written notice to the defendant whose divestiture assets are at issue, and the trustee (if applicable), stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under section VI(D) 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 V or section VI shall not be consummated. Upon objection by either defendant under section VI(D), a divestiture proposed under section VI shall not be consummated unless approved by this court.

#### **VIII. Financing**

Defendants shall not finance all or any part of any purchase made pursuant to section V or VI of this final judgment.

#### **IX. Affidavits**

(A) Within fifteen calendar days of the filing of the complaint in this matter, and every thirty calendar days thereafter until the divestiture(s) has been completed under section V or VI, defendants each shall deliver to the United States and the State Attorneys General an affidavit as to the fact and manner of its compliance with section V or VI of this final judgment. Each such affidavit shall include the name,

address, and telephone number of each person who, during the preceding thirty 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 the divestiture assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objective by the United States, after consultation with the State Attorneys General, to information provided by defendants, including limitation on information, shall be made within five calendar days of receipt of such affidavit.

(B) Defendants shall keep all records of all efforts made to preserve and divest the divestiture assets until one year after such divestiture has been completed.

#### **X. Compliance Inspection**

(A) For the purposes of determining or securing compliance with this final judgment, or of determining whether the final judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice or the State Attorneys General, including consultants and other persons retained or designated thereby, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, or duly authorized representatives of the State Attorneys General, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at the United States' or State Attorneys General's option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in their possession, custody, or control 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 a duly authorized representative of the Assistant Attorney General in charge of

the Antitrust Division, or upon written request of duly authorized representatives of the State Attorneys General, defendants shall submit written reports, 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 plaintiffs to any person other than an authorized representative of the executive branch of the United States, or of the State Attorneys General, except in the course of legal proceedings to which the United States or State Attorneys General 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 defendants furnish information or documents to the United States, they 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)(7) of the Federal Rules of Civil Procedure, and mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

#### **XI. No Reacquisition**

Defendants may not reacquire any part of the divestiture assets during the term of this final judgment.

#### **XII. Retention of Jurisdiction**

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

#### **XIII. Expiration of Final Judgment**

Unless this court grants an extension, this final judgment shall expire ten years from the date of its entry.

#### **XIV. Notice**

For purposes of this final judgment, any notice or other communication shall be given to the persons at the addresses set forth below (or such other addresses as the United States or State Attorneys General may specify in writing to New Times or Village Voice Media):

*For the United States:* James R. Wade, Chief, Litigation III Section, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 300, Washington, DC 20530.

*For the Ohio Attorney General:* Alan C. Witten, Antitrust Section, Ohio Attorney General's Office, 140 East Town Street, 12th Floor, Columbus, Ohio 43215.

*For the California Attorney General:* Winston H. Chen, Deputy Attorney General, Office of the California Attorney General, 300 South Spring Street, Los Angeles, California 90013.

#### **XV. Public Interest Determination**

Entry of this final judgment is in the public interest.

Dated: \_\_\_\_\_

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

United States District Judge.

#### **Competitive Impact Statement**

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b), files this competitive impact statement relating to the proposed final judgment submitted for entry in this civil antitrust proceeding.

On January 27, 2003, the United States filed a civil antitrust complaint pursuant to section 4 of the Sherman Act, as amended, 15 U.S.C. 4, against defendants Village Voice Media, LLC, ("Village Voice Media") and NT Media, LLC, ("New Times"), the nation's two largest chains of alternative newsweeklies. The complaint alleges that defendants entered into and engaged in a combination and conspiracy to suppress and eliminate advertising and editorial competition by allocating the markets for advertising in, and readers of, alternative newsweeklies in Cleveland, Ohio and Los Angeles, California. Defendants' market allocation agreement, as the complaint further alleges, is an unreasonable restraint of interstate trade that is per se illegal under section 1 of the Sherman Act, 15 U.S.C. 1.

The complaint seeks an order to terminate defendants' illegal agreement, to enjoin future conduct in furtherance of any such agreement, and to obtain such other equitable relief necessary to restore competition for the benefit of advertisers and readers in Cleveland and Los Angeles.

The United States filed simultaneously with the complaint a proposed final judgment and a hold separate stipulation and order, which constitute the parties' settlement.

This proposed final judgment, as explained more fully below, (i) enjoins Village Voice Media and New Times from taking any actions in furtherance of, or required under, their per se illegal market allocation agreement; (ii) requires defendants to divest all the assets used in connection with the publication of the New Times Los Angeles ("New Times LA"), New Times's alternative newsweekly in Los Angeles, and the Cleveland Free Times, Village Voice Media's alternative newsweekly in Cleveland, for the purpose of establishing a viable competitive alternative newsweekly in both geographic markets; (iii) permits any advertiser that entered into an advertising or promotion contract after October 1, 2002, with Village Voice Media's alternative newsweekly, the LA Weekly, or New Times's alternative newsweekly, the Cleveland Scene, for a specified time and solely at the advertiser's option, to terminate such contract without penalty or threat of retaliatory action; (iv) requires Village Voice Media and New Times to notify the United States for the next five years of any future acquisitions or sales of alternative newsweeklies; (v) prevents both defendants from enforcing any non-compete contractual provisions against any current or former employees involved in their Cleveland or Los Angeles alternative newsweeklies; and (vi) prevents each defendant and its officers, directors, agents, and employees, from entering into, continuing, maintaining, or renewing any market or customer allocation agreement.

The hold separate stipulation and order, which were filed with this Court on January 27, 2003, and the proposed final judgment require New Times and Village Voice Media to maintain and preserve the assets to be divested under the proposed final judgment to ensure that the assets remain economically viable until divested.

The United States, New Times, and Village Voice Media have stipulated that the proposed final judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed final judgment would terminate this action, except that this court would retain jurisdiction to construe, modify, and enforce the proposed final judgment and to punish violations thereof.

## 1. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

### A. Defendants

#### 1. Village Voice Media

Village Voice Media, LLC, is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York. Prior to its agreement with New Times to shut down its Cleveland Free Times alternative newsweekly, Village Voice Media owned alternative newsweeklies in New York City, Minneapolis-St. Paul, Cleveland, Seattle, Nashville, Orange County, and Los Angeles. Village Voice Media's revenues in 2001 were approximately \$92 million.

Village Voice Media's Cleveland Free Times, launched in 1992, grew to become Ohio's largest alternative newsweekly, with an average weekly circulation that tripled in recent years to over 80,000. With a decade of covering news, arts, and music in Northeast Ohio, the Cleveland Free Times was popular with local retailers, concert promoters, clubs, and national advertisers, who sought to reach the weekly's demographic of active, young adults. Until its sudden closing on October 2, 2002, it directly competed against New Times's alternative newsweekly, the Cleveland Scene.

Village Voice Media's LA Weekly was launched in 1978 with the mission, according to Village Voice Media, to cover political, cultural, and social issues often overlooked by the mainstream daily newspaper, and provide readers with each week's most comprehensive events listing. With a weekly circulation of approximately 215,000 and an average 200 pages per issue, Village Voice Media's LA Weekly has the highest page count of any alternative newsweekly in the United States. Until October 3, 2002, its direct competitor was New Times's alternative newsweekly, the New Times LA.

#### 2. New Times

NT Media, LLC, is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Phoenix, Arizona. Prior to its agreement with Village Voice Media to shut down its New Times LA alternative newsweekly, New Times published 12 award-winning alternative newsweeklies (nine of which New Times had acquired since 1991) in Phoenix, Cleveland, Los Angeles, San Francisco, Oakland-Berkeley, Broward-Palm Beach, Miami, Denver, St. Louis,

Kansas City, Dallas, and Houston. New Times's revenues in 2001 were approximately \$104 million.

New Times in the summer of 1996 purchased two established alternative newsweeklies, the LA Reader and LA View, for approximately \$4 million, and consolidated and renamed them the New Times LA. To better compete against the LA Weekly, New Times grew its newsweekly's circulation to approximately 120,000 copies, aggressively discounted its advertising rates, and offered award-winning journalism.

In August 1998, New Times acquired the Cleveland Scene, a local music publication established in 1970. New Times repositioned and reformatted the Cleveland Scene to compete directly and aggressively against Cleveland's other alternative newsweekly, Village Voice Media's Cleveland Free Times.

### B. The Alternative Newsweekly Industry

As the name suggests, alternative newsweeklies provide an alternative perspective to the established news-gathering organizations. In 1955, Village Voice Media's predecessors launched the first alternative newsweekly, The Village Voice, in New York City. Since then, the popularity of alternative newsweeklies has increased dramatically, fueled by the typically "anti-establishment" perspective of these publications which emerged during the 1960's and 1970's. Today over 125 alternative newsweeklies are published throughout the United States. Their popularity with readers continues to be driven largely by a unique editorial mix of politics, investigative reporting, and entertainment issues, often presented with a somewhat controversial or highly opinionated slant, and all of which is focused on decidedly local issues.

The local nature of these alternative newsweeklies, with their in-depth coverage of local happenings in the arts, music, politics, and entertainment fields, makes them particularly attractive to advertisers hoping to reach a young, educated, and urban audience in a cost-effective manner. Between 1990 and 2000, the collective weekly circulation of alternative newsweeklies has more than doubled to 7.8 million. Likewise, advertising expenditures in alternative newsweeklies have jumped, exceeding \$500 million in the United States in 2000.

Two major chains dominate the alternative newsweekly industry: defendants New Times and Village Voice Media. New Times, the leading chain, distributes each week over 1.1 million copies of its various alternative

newsweeklies. Village Voice Media operates on a similar scale, with a weekly circulation of over 800,000 for its alternative newsweeklies.

### C. The Competition Between Village Voice Media and New Times

Prior to the defendants' per se illegal market allocation agreement, the only two geographic markets in which defendants competed head-to-head for readers and advertisers were Cleveland, Ohio and Los Angeles, California. This competition between the defendants' alternative newsweeklies provided both readers and advertisers with better editorial coverage, heavily discounted advertising rates, and higher quality service.

In Cleveland, New Times's alternative newsweekly, the Cleveland Scene, fought against the newly matched Village Voice Media's newsweekly, the Cleveland Free Times. From 1998 (when New Times purchased the Cleveland Scene) until October 2, 2002, the competition between the Cleveland Scene and the Cleveland Free Times was fierce. It resulted in steep discounts off the defendants' published advertising rate cards, better customer service, increased promotions, and a host of value-added services offered at little cost to the advertiser, such as "buy one ad get one free" deals, larger ads for the same price, or free upgrades of ads from black and white to color.

After New Times reformatted the Cleveland Scene to compete directly and aggressively against the Cleveland Free Times, the editorial competition between the defendants' alternative newsweeklies was similarly intense. The Cleveland Scene and the Cleveland Free Times responded to the other's editorial changes and improvements by introducing new or better features or increasing investigative journalism to recapture the readers' attention to its publication, both of which were distributed each Wednesday throughout Cleveland.

Likewise, from 1996 until October 3, 2002, advertisers benefitted from the competition between New Times LA and Village Voice Media's LA Weekly with lower advertising rates, better advertisement placement and improved service. Even if they did not advertise in the New Times LA, advertisers could leverage that alternative newsweekly in their negotiations with the older, entrenched LA Weekly. Moreover, the New Times LA discounted significantly off of its published rate cards—which benefitted smaller advertisers that could not afford the LA Weekly's higher advertising rates.

Both the LA Weekly and New Times LA, which were distributed each Thursday throughout Los Angeles, aggressively competed for readers. The different, and at times opposing, views and positions of the defendants' competing alternative newsweeklies provided readers with alternative viewpoints of important local events affecting social, political, esthetic, and moral issues. Since 1997, the New Times LA garnered numerous journalism awards—including over 30 awards from the Greater Los Angeles Press Club—for its investigative and news reporting.

#### *D. The Illegal Market Allocation Agreement*

In July 2002, New Times proposed to Village Voice Media to end their competitive war by agreeing to "swap" markets: New Times would close its New Times LA publication, making Village Voice Media's LA Weekly, in the words of Defendants' executives, the "only alternative weekly in LA." Likewise, Village Voice Media would close its Cleveland Free Times, leaving New Times's Cleveland Scene "the only alternative weekly in Cleveland." By August 12, 2002, Defendants agreed in principle to swap markets. Over the next two months, New Times's and Village Voice Media's senior executives and attorneys negotiated the terms of their contracts to effectuate their proposed market swap. As part of this agreement, Village Voice Media would compensate New Times for withdrawing from the larger Los Angeles market by paying New Times \$9 million in cash. The proposed deal ended all competition between defendants, and created an opportunity for the remaining alternative newsweekly in each market to raise advertising rates.

On October 1, 2002, Village Voice Media's and New Times's senior executives signed two written contracts, each expressly contingent on the other, which sealed their *per se* illegal market allocation arrangement. Village Voice Media paid New Times a net amount of \$9 million in cash at closing (\$11 million to New Times less \$2 million paid to Village Voice Media). The defendants' written contracts did not involve the transfer or integration of any meaningful economic assets associated with those shuttered papers. New Times shifted the New Times LA's accounts receivable, customer lists, and advertising contracts to Village Voice Media, who, in exchange, shifted the Cleveland Free Times's accounts receivable, customer lists, advertising contracts, and street boxes to New Times. These advertisers were already

well known to defendants because each defendant had attempted in the past to sign up the other's advertisers. Moreover, the net assets (primarily the accounts receivable) actually transferred in Los Angeles accounted, according to the defendants' calculations, for only seven percent of their \$11 million sale price in Los Angeles, and 24 percent of their \$2 million sale price in Cleveland.

The defendants' written contracts specifically excluded from the sale most of the assets associated with the actual operations and goodwill of the two shuttered newsweeklies, notably: (i) The advertising personnel, writers, editors, and other employees, (ii) leases, offices, and computer equipment, (iii) back issues and archived materials of the closed publications, including editorial articles, photos, and art work, and (iv) the logos, trade names, trademarks, and copyrights associated with the closed publications. New Times specifically retained the rights to its New Times LA logo or "flag," and Village Voice Media specifically retained the rights to its Cleveland Free Times logo or "flag," but both defendants were contractually prevented from using, or letting anyone else use, these logos.

As defendants acknowledged in their internal documents, the goal of their agreement was to end their competitive war and to give one another a monopoly in each market. Consequently, the defendants' written contracts were designed to ensure that neither defendant would face competition in its "protected" market. To further that end, the defendants' contracts contained:

- Essentially identical "non-competition" clauses in which each defendant agreed not to publish an alternative newsweekly in the other defendant's market for at least ten years;
- Commitments by each defendant not to solicit or attempt to induce any advertiser to advertise in a competing publication over the next decade;
- Requirements that each Defendant redirect any traffic on its closed weekly's website to the other defendant's website for a period of one year, and to prominently state on its website that its alternative newsweekly was no longer in circulation;
- Provisions to deter any new competitive entry into each defendant's protected market. For example, over the next decade, Village Voice Media agreed not to use, and to prevent anyone else from using, the name "Cleveland Free Times" in connection with any current or future publication in the greater Cleveland area. Similarly, over the next decade, New Times agreed not to use, and to prevent anyone else from using, the name "New Times LA" or any

variant containing "New Times" in connection with any current or future publication in the greater Los Angeles area; and

- Prohibitions on selling or otherwise making available any of the fixed assets associated with each defendant's closed publication to any of its former employees, consultants, or independent contractors in the affected markets.

After defendants executed their written contracts on October 1, 2002, defendant Village Voice Media closed down its Cleveland Free Times alternative newsweekly the next day, leaving New Times's Cleveland Scene the only alternative newsweekly in Cleveland, Ohio. Likewise, on October 2, 2002, New Times informed its New Times LA staff that it was shutting down immediately, leaving Village Voice Media's LA Weekly the only alternative newsweekly distributed throughout the greater Los Angeles area.

#### *E. Competitors' Allocation of Geographic Markets Is an Unreasonable Restraint of Trade That is Per Se Illegal*

The Supreme Court has long held that territorial allocation schemes among direct competitors are naked restraints of trade with no purpose except stifling competition. *United States v. Topco Assoc.*, 405 U.S. 596, 608 (1972) (citations omitted); *see also Addyston Pipe & Steel Co. v. United States*, 175 U.S. 211 (1899), *modifying and aff'g* 85 F. 271 (6th Cir. 1898) (Taft, J.); *Citizen Publ'g Co. v. United States*, 394 U.S. 131, 139–40 (1969) (applying *per se* standard where defendants' "market control" agreement comported neither with antitrust laws nor with First Amendment). As recently as 1990, the Supreme Court repeated that such market allocation agreements are classic examples of a *per se* violation of the Sherman Act. *Palmer v. BRG of Georgia, Inc.*, 498 U.S. 46 (1990).

Accordingly, these market allocation agreements—whereby competitors agree to divide or allocate among themselves certain geographic areas—are condemned as *per se* violations of section one of the Sherman Act. Given their pernicious effect on competition and lack of any redeeming virtue, these market allocation agreements are conclusively presumed to be unreasonable, without the need for an elaborate inquiry into the precise harm that they caused or the potential business justification for their use. *Topco*, 405 U.S. at 607 (quoting *Northern Pacific Ry. Co. v. United States*, 356 U.S. 1, 5 (1958)). Consequently, competitors cannot agree to split or "swap" markets.

This is not a case in which the territorial restraints were ancillary to a lawful business transaction. Such ancillary restraints are not illegal when reasonably necessary to protect the purchaser of the full enjoyment of the legitimate fruits of the contract. *Addyston Pipe & Steel*, 85 F. at 283. The Antitrust Division examines the substance, rather than the form, of the parties' agreement in evaluating its potential effect. When the restraints of trade are reasonably ancillary to the agreement's central pro-competitive purposes, then the Division will analyze the restraints under the rule-of-reason standard. Where the central purpose of the parties' agreement, however, is to unreasonably restrain competition by allocating territories and terminating competition among themselves and by preventing any significant entrant from competing, then the entire agreement will be treated as *per se* illegal. As Judge (later Mr. Chief Justice) Taft noted over 100 years ago, "[t]here is in such contracts no main lawful purpose, to subvert which partial restraint is permitted, and by which its reasonableness is measured, but the sole object is to restrain trade in order to avoid the competition which it has always been the policy of the common law to foster." *Id.*

That is the case, here, where the central purpose and effect of the defendants' agreement were to unreasonably restrain competition, by allocating the only two markets in which they compete, so that after swapping these markets, defendants would face no significant direct competitor. Five factors support this conclusion.

First, this was not a case where the underlying agreement created a distinctive product, and thereby increased competition in the alternative newsweekly industry generally, or in Cleveland or Los Angeles, specifically.<sup>1</sup> The defendants' restraints on competition were not essential for, or even beneficial to, the products, which in this case are alternative newsweeklies, to be made available in the first place. After all, before their market allocation agreement, defendants vigorously competed through their own alternative newsweeklies. As a direct result of the defendants' agreement to withdraw from each other's market, advertisers and readers were left with fewer meaningful options and the prospect of higher advertising rates.

Consequently, the defendants' agreement on its face did not promote enterprise and productivity at the time it was adopted.

Second, the clear intent and explicit design of the defendants' contractual provisions were to eliminate competition in these markets and prevent others from meaningfully entering. Village Voice Media agreed to shut down its Cleveland alternative newsweekly, solely on the condition that New Times shuts down its newsweekly in Los Angeles. The contracts' essentially identical "non-competition" clauses prevented each defendant from publishing an alternative newsweekly in the other defendant's market for at least 10 years. Each defendant also agreed not to solicit or attempt to induce any advertiser to advertise in a competing publication over the next decade. Defendants restrained each other from meaningfully using the closed papers' logos and prevented anyone else from using these valuable assets in connection with any current or future publication in the Los Angeles or Cleveland areas. Furthermore, each defendant agreed not to sell or otherwise make available the fixed assets associated with its closed publication to any of its former employees, consultants or independent contractors, who might seek to rejuvenate the closed alternative newsweekly, and restore competition in the marketplace.

Third, The anticompetitive restraints at issue cannot be said to be ancillary to the sale of assets, given that so few assets were actually transferred. None of the assets associated with the actual operations and goodwill of the defendants' two shuttered newsweeklies were sold or integrated into the other defendant's newsweekly. The assets defendants actually transferred (which were mainly the accounts receivable of the shuttered paper) were of little value, even by defendants' own calculations.

Fourth, the anticompetitive purpose of the defendants' agreements is evident from the defendants' documents, which confirm that they entered into this agreement to end their competitive war, and grant each another a monopoly in the respective markets. The defendants' documents are replete with evidence that shows—and the testimony of the defendants' former employees and current advertisers confirms—that the defendants' market allocation agreement will end all meaningful competition, and enable each remaining alternative newsweekly, as the "only game in town," to raise advertising rates by a significant, non-cost based, amount.

Fifth, the fact that defendants planned to, and in some cases did, implement such rate hikes after allocating markets on October 2, 2002, confirms that the defendants' agreement was formed for the purpose, and with the effect, of raising advertising rates.

## II. Explanation of the Proposed Final Judgment

The proposed final judgment requires divestiture that will restore the editorial and advertising competition in alternative newsweeklies published and distributed in Cleveland, Ohio and Los Angeles, California. Within 30 calendar days after January 27, 2003, the date the complaint was filed, defendants must divest the assets used in the publication of New Times's alternative newsweekly, the New Times LA, and Village Voice Media's alternative newsweekly, the Cleveland Free Times, to an acquirer or acquirers that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the alternative newsweekly business.<sup>2</sup> This relief has been tailored to ensure that the ordered divestitures restore the competition that has been eliminated as a result of the defendants' market allocation agreement and further prevent either defendant from exercising market power in the Cleveland or Los Angeles markets.

Given that defendants has closed the Cleveland Free Times and New Times LA in October 2002, a quick and effective remedy was necessary to reestablish competition. Consequently, defendants must use their best efforts to divest assets within 30 days. The proposed final judgment provides that the assets be divested in such a way as to satisfy the United States, in its sole discretion, that the acquirer can and will use the assets as part of a viable, ongoing business engaged in the publication of an alternative newsweekly in Cleveland, Ohio and Los Angeles, California. Until the ordered divestitures take place, defendants must

<sup>2</sup> The assets to be divested are defined and described in section II of the proposed final judgment as the "New Times LA Assets" and "Cleveland Free Times Assets." Defendants in essence must divest all assets that were formerly employed in the publication of the New Times LA and Cleveland Free Times alternative newsweeklies, including, but not limited to, all rights to the New Times LA, LA Reader, LA View and Cleveland Free Times names (including any derivations thereof); all rights to the New Times LA and Cleveland Free Times website; all rights to the print and electronic archives of New Times LA and Cleveland Free Times publications and articles on a non-exclusive basis; and all other tangible and intangible assets used in the publication of the New Times LA and Cleveland Free Times.

<sup>1</sup> See, e.g., *Broadcast Music, Inc. v. Columbia Broad. Sys., Inc.*, 441 U.S. 1 (1979)(challenged agreement created distinctive product of access to vast musical repertoire).

cooperate with any perspective purchasers.

If defendants do not accomplish the ordered divestitures within the prescribed 30-day time period, then section VII of the proposed final judgment provides that this court will appoint a trustee, selected by the United States, to complete the divestitures.

If a trustee is appointed, the proposed final judgment provides that defendants must cooperate fully with the trustee and pay all of the trustee's costs and expenses. The trustee's compensation will be structured to provide an incentive for the trustee based on the price and terms of the divestiture and the speed with which its is accomplished. After the trustee's appointment becomes effective, the trustee will file monthly reports with the United States, the State Attorney General of Ohio and California, and this Court setting forth the trustee's efforts to accomplish the required divestiture. If at the end of three months after that appointment, the divestiture has not been accomplished, then the trustee, the United States, and the State Attorneys General of Ohio and California will make recommendations to this court, which shall enter such orders as appropriate to carry out the purpose of the final judgment.

In addition to ordering the divestiture of the assets used in the publication of the *Cleveland Free Times* and *New Times LA*, the proposed final judgment places several additional requirements on defendants.

First, Village Voice Media and New Times are enjoined under the proposed final judgment from taking any actions in furtherance of, or required under, both their written and oral market allocation agreements.

Second, for a period of two years commencing from January 27, 2003, Village Voice Media and New Times must allow advertisers that entered into certain written or oral contracts to advertise in, or engage in a promotion with, the *LA Weekly* or *Cleveland Scene*, solely at the advertiser's option, the right to terminate such contract without penalty, retaliatory action, or threat of retaliatory action. The advertising or promotion contracts that may be terminated are those entered into beginning October 1, 2002, and for the Cleveland advertisers, ending 30 days after the assets of the *Cleveland Free Times* are sold, and for the Los Angeles advertisers, 30 days after the assets of the *New Times LA* are sold.

Third, for a period of five years commencing from January 27, 2003, each defendant cannot directly or indirectly enter into any merger, sale, or

joint venture involving any of its alternative newsweeklies or national advertising networks or acquire any assets of any alternative newsweekly without first notifying the United States 30 days in advance. If within this 30-day period, the United States requests additional information, defendants cannot consummate the proposed transaction or agreement until 20 days after submitting all such additional information.

Fourth, for any employee who was involved in the publication of the *Cleveland Free Times* or the *New Times LA* as of October 1, 2002, any non-compete provision imposed by defendants on such employee shall be null and void. Moreover, from the date the complaint was filed, January 27, 2003, to one year from the divestiture of the *Cleveland Free Times* assets, neither *Village Voice Media* nor *New Times* can enforce any other non-compete contractual provisions against any of their former or current employees in the greater Cleveland area. Likewise, from January 27, 2003, to one year from the divestiture of the *New Times LA* assets, defendants cannot enforce any other non-compete contractual provisions against any of their former or current employees in the greater Los Angeles area.

Fifth, the final judgment enjoins each defendant, and its officers, directors, agents, and employees from entering into, continuing, maintaining, or renewing this, or any other, market or customer allocation agreement, or from engaging in any other conspiracy, agreement, or understanding having a similar purpose or effect, and from adopting or following any practice having a similar purpose or effect.

### III. 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 suite in Federal district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit 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 effect as *prima facie* evidence in any subsequent private lawsuit that may be brought against defendants.

### IV. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed final judgment may be entered by this 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 decree upon this 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**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed final judgment at any time prior to entry. the comments and the response of the United States will be filed with this court and published in the **Federal Register**.

Written comments should be submitted to: James R. Wade, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 300, Washington, DC 20530.

The proposed final judgment provides that this court retains jurisdiction over this action, and the parties may apply to this court for any order necessary or appropriate for the modification, interpretation, or enforcement of the final judgment.

### V. 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. Given the inherent delays of a full trial and the appeals process, the United States is satisfied that the prompt divestiture of the *Cleveland Free Times* assets and *New Times LA* assets, coupled with the other relief contained in the proposed final judgment, will quickly establish, preserve and ensure a viable competitor in the publication of alternative newsweeklies in Cleveland, Ohio and Los Angeles, California. Thus, the United States is convinced that the proposed final judgment, once implemented by the court, will present

defendants from illegally benefitting from their market allocation agreement.

## VI. Standard of Review Under the APPA for Proposed Final Judgment

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." In making that determination, the court "may consider"—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment 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)(emphasis added). As the Court of Appeals for the District of Columbia has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States v. Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, "the 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."<sup>3</sup> Rather, absent a showing of corrupt failure of the government to discharge its duty, the court, in making its public interest finding, should \* \* \* carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those

explanations are reasonable under the circumstances.<sup>4</sup>

Accordingly, 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.), cert. denied, 454 U.S. 1083 (1981)); see also *Microsoft*, 56 F.3d at 1458. "Indeed, the district court is without authority to 'reach beyond the complaint to evaluate claims that the government did not make and to inquire as to why they were not made.'" *United States v. Microsoft Corp.*, 231 F. Supp. 2d 144, 154 (D.D.C. 2002) (quoting *Microsoft*, 56 F.3d at 1459). Precedent requires that:

The 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.<sup>5</sup>

The proposed final judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. A "proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is within the reaches of public interest."<sup>6</sup>

<sup>4</sup> *United States v. Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶61,508, at 71,980 (W.D. Mo. 1977); see also *United States v. Loew's Inc.*, 783 F. Supp. 211, 214 (S.D.N.Y. 1992); *United States v. Columbia Artists Mgmt., Inc.*, 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

<sup>5</sup> *United States v. Bechtel Corp.*, 648 F.2d at 666 (emphasis added); see also *United States v. BNS, Inc.*, 858 F.2d at 462–63 (district court may not base its public interest determination on antitrust concerns in markets other than those alleged in government's complaint); *United States v. Gillette Co.*, 406 F. Supp. at 716 (court will not look at settlement "hypercritically, nor with a microscope"); *United States v. National Broad. Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978) (same).

<sup>6</sup> *Microsoft*, 231 F. Supp. 2d at 153 (quoting *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citation omitted),

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. Since 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 might have but did not pursue. *Microsoft*, 56 F.3d at 1459–60.

## VII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed final judgment.

Dated: February 3, 2003.

Respectfully submitted,

Maurice E. Stucke,  
Carol A. Bell,  
Matthew J. Bester,

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Jon Smibert,

*Attorney for the United States, U.S. Department of Justice, Antitrust Division, Cleveland Field Office, 55 Erieview Plaza, Suite 700, Cleveland, OH 44114-1816.*

## Certificate of Service

I hereby certify that I served a copy of the foregoing competitive impact statement via first class United States mail, this 3rd day of February, 2003, on:

Melanie Sabo,  
*Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW., Suite 500, Washington, DC 20006-5209. Counsel for Defendant Village Voice Media, LLC.*

Joseph Kattan, P.C.

*Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, NW., Washington, DC 20036. Counsel for Defendant NT Media, LLC.*

Matthew Bester,

aff'd sub nom. *Maryland v. United States*, 460 U.S. 1001 (1983)); see also *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (standard is not whether decree is one that will best serve society, but whether it is within the reaches of the public interest); *United States v. Carrols Dev. Corp.*, 454 F. Supp. 1215, 1222 (N.D.N.Y. 1978) (standard is not whether decree is the best of all possible settlements, but whether decree falls within the reaches of the public interest).

<sup>3</sup> 119 Cong. Rec. 24,598 (1973). See *United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the competitive impact statement and response to comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93-1463, 93rd Cong. 2d Sess. 8-9 (1974), reprinted in 1974 U.S.C.A.N. 6535, 6538-39.



Attorney for the United States, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 300, Washington, DC 20530. (202) 353-4391.

[FR Doc. 03-3441 Filed 2-11-03; 8:45 am]

BILLING CODE 4410-11-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Manufacturer of Controlled Substances, Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 2, 2002, Cedarburg Pharmaceuticals, LLC, 870 Badger Circle, Grafton, Wisconsin 53024, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370) ....	I
Oxycodone (9143) .....	II
Hydromorphone (9150) .....	II
Hydrocodone (9193) .....	II

The firm will manufacturer these controlled substances for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 14, 2003.

Dated: February 5, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 03-3502 Filed 2-11-03; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 19, 2002, and published in the **Federal Register** on March 12, 2002 (67 FR 11142), ISP Freetown Fine Chemicals, Inc., 238

South Main Street, Freetown, Massachusetts 02702, made application by renewal and letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
Amphetamine (1100) .....	II
Methamphetamine (1105) .....	II
Phenylacetone (8501) .....	II
Fentanyl (9801) .....	II

The firm plans to bulk manufacture amphetamine, methamphetamine and fentanyl for customers and to bulk manufacture the phenylacetone for the manufacture of the amphetamine. The bulk 2,5-dimethoxyamphetamine will be used for conversion into a non-controlled substance.

No comments or objections have been received. DEA has considered the factors in Title 21, U.S.C. section 823(a) and determined that the registration of ISP Freetown Fine Chemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated ISP Freetown Chemicals, Inc. to ensure that the company's registration is consistent with the public interest.

This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: February 5, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.*

[FR Doc. 03-3503 Filed 2-11-03; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 23, 2002, and published in the **Federal Register** on

September 5, 2002 (67 FR 58857), ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Freetown, Massachusetts 02702, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724) .....	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II

The firm plans to bulk manufacture methylphenidate to produce a commercial product and manufacture the dextropropoxyphene to supply the generic market.

No comments or objections have been received. DEA has considered the factors in Title 21, U.S.C., section 823(a) and determined that the registration of ISP Freetown Fine Chemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated ISP Freetown Chemicals, Inc. to ensure that the company's registration is consistent with the public interest.

This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the a basic classes of controlled substances listed above is granted.

Dated: February 5, 2003.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[03-012]

### Notice of Information Collection

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork