

to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, should refer to *United States v. Mack Trucks, Inc.*, Civil Action No. 98-1495 (HHK), D.J. Ref. 90-5-2-1-2251 and *United States v. Renault Vehicules Industriels*, Civil Action No. 98-2543 (HHK), D.J. Ref. 90-5-2-1-2251/1, and should be received by January 12, 1999.

Joel M. Gross,

Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.
[FR Doc. 98-32220 Filed 12-2-98; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Extension of Comment Period on Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that the comment period for the proposed Consent Decree lodged on October 22, 1998, with the United States District Court for the District of Columbia in *United States v. Navistar International Corp.*, Civil Action No. 98-2545 (HHK), is being extended through January 12, 1999. The original notice of this proposed settlement, which summarizes the settlement and identifies where copies of the Consent Decree may be obtained, was published in the **Federal Register** on November 3, 1998, Vol. 63, No. 212, Pg. 59333-59334. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, should refer to *United States v. Navistar International Corp.*, Civil Action No. 98-2545 (HHK), D.J. Ref. 90-5-2-1-2252, and should be received by January 12, 1999.

Joel M. Gross,

Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.
[FR Doc. 98-32221 Filed 12-2-98; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Extension of Comment Period on Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that the comment period for the proposed Consent Decree lodged on October 22, 1998, with the United States District Court for the District of Columbia in *United States v. Volvo Truck Corporation*, Civil Action No. 98-2547 (HHK), is being extended through

January 12, 1999. The original notice of this proposed settlement, which summarizes the settlement and identifies where copies of the Consent Decree may be obtained, was published in the **Federal Register** on November 3, 1998, Vol. 63, No. 212, Pg. 59334. Comments shall be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, shall refer to *United States v. Volvo Truck Corporation*, Civil Action No. 98-2457 (HHK), D.J. Ref. 90-5-2-1-2256, and shall be received by January 12, 1999.

Joel M. Gross,

Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.
[FR Doc. 98-32218 Filed 12-2-98; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; *United States of America v. Chancellor Media Corp. and Kunz & Co.*

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America v. Chancellor Media Corporation and Kunz & Company*, Case No. 1:98CV0273. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act. 15 U.S.C. 16(b)-(h).

The United States filed a civil antitrust Complaint on November 12, 1998, alleging that the proposed acquisition of Kunz & Company ("Kunz") by Chancellor Media Corporation ("Chancellor") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Chancellor and Kunz compete head-to-head to sell outdoor advertising in four counties: (1) Kern County, California; (2) Kings County, California; (3) Inyo County, California; and (4) Mojave County, Arizona (collectively "the Four Counties"). Outdoor advertising companies sell advertising space, such as on billboards, to local and national customers. The outdoor advertising business in the Four Counties is highly concentrated. Chancellor and Kunz have

a combined share of revenue ranging from about 60 percent to a virtual monopoly in the Four Counties. Unless the acquisition is blocked, competition would be substantially lessened in the Four Counties, and advertisers would pay higher prices.

The prayer for relief seeks: (a) an adjudication that the proposed transaction described in the Complaint would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the transaction; (c) an award to the United States of the costs of his action; and (d) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits Chancellor to complete its acquisition of Kunz, yet preserves competition in the Four Counties where the transaction raises significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the Complaint was filed.

The proposed settlement requires Chancellor to divest all of the outdoor advertising assets of:

- (1) Kunz in Kern County and Inyo County, California; and in Mojave County, Arizona; and
- (2) Chancellor in Kings County, California.

Unless the plaintiff grants a time extension, Chancellor must divest these outdoor advertising assets within four (4) months after the filing of the Complaint in this action. Finally, in the event that the Court does not, for any reason, enter the Final Judgment within that four-month period, the divestitures are to occur within five (5) business days after notice of entry of the Final Judgment.

If Chancellor does not divest the advertising assets in the specified counties within the divestiture period, the Court, upon plaintiff's application, is to appoint a trustee to sell the assets. The proposed Final Judgment also requires that, until the divestitures mandated by the Final Judgment have been accomplished, Chancellor shall take all steps necessary to maintain and operate the advertising assets as active competitors; maintain the management, staffing, sales and marketing of the advertising assets; and maintain the advertising assets in operable condition at current capacity configurations. Further, the proposed Final Judgment requires Chancellor to give the United States prior notice regarding certain future outdoor advertising acquisitions

or agreements pertaining to the sale of outdoor advertising in the Four Counties.

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530 (telephone: 202-307-0001). Copies of the Complaint, Stipulation, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530 (telephone: 202-514-2481) and at the office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue, NW., Washington, DC 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Chancellor Media Corporation and Kunz & Company, Defendants.

[Civil Action No. 982763]

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The 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 District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the 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 party or other proceedings, provided that plaintiff 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 the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, 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 the Court.

4. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Stipulation and order.

5. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

6. In the event (a) the plaintiff withdraws its consent (as provided in paragraph 2 above), or (b) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

7. 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 hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: November 12, 1998.

For Plaintiff United States of America:

Barry L. Creech,

D.C. Bar No.—421070, U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, NW, Suite 4000, Washington, DC 20530, (202) 307-0001.

For Defendant Kunz & Company:

Riccarda Heising,

Powell, Goldstein, Frazer & Murphy LLP, 191 Peachtree Street, NE, 16th Floor, Atlanta, GA 30303, (404) 572-6730.

For Defendant Chancellor Media Corporation:

Steven H. Schulman,

Bruce J. Prager,

Latham & Watkins, 1001 Pennsylvania Ave., NW, Suite 1300, Washington, DC 20004, (202) 637-2184.

So Ordered:

United States District Judge

Certificate of Service

I, Barry L. Creech, hereby certify that, on November 12, 1998, I caused the foregoing document to be served on defendants Kunz & Company and Chancellor Media Corporation by having a copy mailed, first-class, postage prepaid, to:

Steven H. Schulman, Bruce J. Prager, Latham & Watkins, 1001 Pennsylvania Ave., NW, Suite 1300, Washington, DC 20004, Counsel for Chancellor Media Corporation
Riccarda Heising, Powell, Goldstein, Frazer & Murphy LLP, 191 Peachtree Street, NE, 16th Floor, Atlanta, GA 30603, Counsel for Kunz & Company

Barry L. Creech,

D.C. Bar No.—421070

Final Judgment

Whereas, plaintiff, the United States of America, filed its Complaint in this action on November 12, 1998, and plaintiff and defendants by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is prompt and certain divestiture of the outdoor advertising assets in the four counties identified below to ensure that competition is substantially preserved;

And whereas, plaintiff requires Chancellor and Kunz to make the divestitures for the purpose of

maintaining the current level of competition in the sale of outdoor advertising;

And *whereas*, Chancellor and Kunz have represented to the plaintiff that the divestitures ordered herein can and will be made and that Chancellor and Kunz will not later raise claims of hardship or difficulty as grounds for asking the Court to modify any of the divestitures contained below;

Now, *therefore*, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the defendants hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against the defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. *DOJ* means the Antitrust Division of the United States Department of Justice.

B. *Chancellor* means defendant Chancellor Media Corporation, a Delaware corporation with its headquarters in Dallas, Texas, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees, including but not limited to Martin & MacFarlane, Inc. ("Martin"), a California corporation with its headquarters in Dallas, Texas.

C. *Kunz* means defendant Kunz & Company, a California corporation with its headquarters in Larkspur, California, and its successors, assigns, subsidiaries, divisions groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

D. *Defendants* means Chancellor and Kunz.

E. *Advertising Assets* means the outdoor advertising display faces owned by:

(1) Kunz in each of these three counties: Kern County, California; Inyo County, California; and Mojave County, Arizona; and

(2) Chancellor in Kings County, California (collectively "the Four Counties").

This includes all tangible and intangible assets relating to these display faces, including all real property (owned or leased); all licenses, permits

and authorizations issued by any governmental organization relating to the operation of the bulletins; and all contracts, agreements, leases, licenses, commitments and understandings pertaining to the sale of outdoor advertising on display faces.

F. *Acquirer* (or "Acquirers") means the entity or entities to whom Chancellor and Kunz divest the Advertising Assets pursuant to this Final Judgment.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. The defendants shall require, as a condition of the sale or other disposition of all or substantially all of their outdoor advertising business in any of the Four Counties, that the acquirer or acquirers agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. Chancellor and Kunz are hereby ordered and directed in accordance with the terms of this Final Judgment, within four (4) months after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Advertising Assets to an Acquirer (or Acquirers) acceptable to DOJ in its sole discretion.

B. Chancellor and Kunz shall use their best efforts to accomplish the divestitures as expeditiously and timely as possible. DOJ, in its sole discretion, may extend the time period for any divestiture for two (2) additional thirty (30) day periods of time, not to exceed sixty (60) calendar days in total.

C. In accomplishing the divestitures ordered by this Final Judgment, Chancellor and Kunz promptly shall make known, by usual and customary means, the availability of the Advertising Assets described in this Final Judgment. Chancellor and Kunz shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Chancellor and Kunz shall also offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information regarding the Advertising

Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Chancellor and Kunz shall make available such information to DOJ at the same time that such information is made available to any other person.

D. Chancellor and Kunz shall permit prospective Acquirers of the Advertising Assets to have reasonable access to personnel and to make such inspection of the physical facilities of the Advertising Assets and any and all financial, operational, or other documents and information customarily provided as part of due diligence process.

E. The defendants shall not take any action that will impede in any way the divestiture of the Advertising Assets.

F. Divestiture of the Advertising Assets may be made to one or more Acquires, *so long as*:

(1) There is only one Acquirer for any particular county's assets in King and Inyo Counties, California and Mojave County, Arizona;

(2) There are no more than two Acquirers for the assets in Kern County California; and

(3) In each instance it is demonstrated to the sole satisfaction of DOJ that the Advertising Assets will remain viable and the divestiture of such Advertising Assets will remedy the competitive harm alleged in the Complaint.

The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be:

(1) Made to an Acquirer or Acquirers who it is demonstrated to DOJ's sole satisfaction has or have the intent and capability (including the necessary managerial, operational, and financial capability) of competing effectively in the sale of outdoor advertising; and

(2) Accomplished so as to satisfy DOJ, in its sole discretion, that none of the terms of any agreement between an Acquirer (or Acquirers) and Chancellor or Kunz give Chancellor or Kunz the ability unreasonably to raise the Acquirer's (or Acquirers') costs, to lower the Acquirer's (or Acquirers') efficiency, or otherwise to interfere with the ability of the Acquirer (or Acquirers) to compete effectively.

V. Appointment of Trustee

A. In the event that chancellor and Kunz have not divested the Advertising Assets within the time specified in Section IV(A) of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by DOJ in its sole discretion to effect the divestiture of the Advertising Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Advertising Assets. The trustee shall have the power

and authority to accomplish the divestitures at the best price than obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and X of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Chancellor any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures of the Advertising Assets at the earliest possible time to an Acquirer or Acquirers acceptable to DOJ in its sole discretion, and shall have such other powers as this Court shall deem appropriate. Chancellor and Kunz shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Chancellor and Kunz must be conveyed in writing to the plaintiff and trustee within ten (10) calendar days after the trustee has provided the notice required under Section VII of this Final Judgment.

C. The trustee shall serve at the cost and expense of Chancellor, on such terms and conditions as the Court may prescribe, 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 the 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 Chancellor or Kunz, as appropriate, and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished.

D. Chancellor and Kunz shall use their best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary consents and regulatory approvals. The trustee, and any consultants, accountants, attorneys and other persons retained by the trustee, shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Chancellor and Kunz shall develop financial or other information

relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Chancellor and Kunz shall permit prospective Acquirers of the Advertising Assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered pursuant to this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth: (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by DOJ.

VI. Notice

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, without providing advance notification to DOJ, shall not directly or indirectly acquire any assets of or any interest, including any financial security, loan, equity or management interest, in any outdoor advertising business:

(1) In Kern County, California that constitutes the greater of (a) four display faces or (b) \$250,000 in assets over a twelve-month period (beginning when this Final Judgment is entered and continuing for the term of the Final Judgment); for the purposes of this limitation, acquisitions during each twelve-month period shall be aggregated;

(2) In Inyo County, California; Kings County, California; or Mojave County, Arizona that constitutes the greater of (a) four display faces or (b) \$250,000 in assets in any one of these counties during a five-year period; for the purposes of this limitation, there shall be two consecutive five-year periods. Acquisitions during each of these five-year periods shall be aggregated, with the first period ending five years after the Final Judgment is ended, and the second period beginning immediately upon the expiration of the first-five year period.

Such notification shall be provided to the DOJ 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 5-9 of the instructions must be provided only about outdoor advertising operations in the Four Counties. Notification shall be provided at least thirty (30) 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 DOJ make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until twenty (20) 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.

VII. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestitures pursuant to Sections IV or V of this Final Judgment, Chancellor and Kunz or the trustee, whichever is then responsible for effecting the divestitures, shall notify DOJ of the proposed divestitures. If the trustee is responsible, it shall similarly notify Chancellor and Kunz. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the businesses to be divested that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by DOJ of notice, DOJ may request from Chancellor or Kunz, the proposed Acquirer (or Acquirers), or any other third party Acquirer (or Acquirers) additional information concerning the proposed divestitures and the proposed Acquirer (or Acquirers). Chancellor and Kunz and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after DOJ has been provided the additional information requested from Chancellor and Kunz, the proposed Acquirer (or Acquirers), and any third party, whichever is later, DOJ shall provide written notice to Chancellor and Kunz and the trustee, if there is one, stating whether or not it objects to the proposed divestitures. If DOJ provides written notice to Chancellor and Kunz and the trustee that DOJ does not object, then the divestitures may be consummated, subject only to Chancellor and Kunz's limited right to object to the sale under Section V (B) of this Final Judgment. Absent written notice that DOJ does not object to the proposed Acquirer (or Acquirers) or upon objection by DOJ, a divestiture proposed under Section IV or Section V may not be consummated. Upon objection by Chancellor and Kunz under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, Chancellor and Kunz shall deliver to DOJ and affidavit as to the fact and manner of compliance with this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, 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 businesses to be divested, 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 that Chancellor and Kunz have taken to solicit a buyer for the Advertising Assets and to provide required information to prospective Acquirers.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Chancellor and Kunz shall deliver to DOJ an affidavit that describes in detail all actions they have taken and all steps they have implemented on an on-going basis to preserve the Advertising Assets pursuant to Section IX of this Final Judgment. The affidavit also shall describe, but not be limited to, the efforts of Chancellor and Kunz to maintain and operate the Advertising Assets as active competitors, maintain the management, staffing, sales, and marketing of the Advertising Assets, and maintain the Advertising Assets in operable condition at current capacity configurations. Chancellor and Kunz shall deliver to DOJ an affidavit describing any changes to the efforts and actions outlined in their earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Chancellor and Kunz shall preserve all records of all efforts made to preserve the business to be divested and effect the divestitures.

IX. Preservation of Assets

Until the divestitures required by the Final Judgment have been accomplished, Chancellor and Kunz shall take all steps necessary to maintain and operate the Advertising Assets as active competitors; maintain the management, staffing, sales and marketing of the Advertising Assets; and

maintain the Advertising Assets in operable condition at current capacity configurations. Defendants shall take no action that would jeopardize the divestitures described in this Final Judgment. Kunz agrees to abide by the above requirements only to the extent that its contractual rights and obligations pertaining to the Advertising Assets to be divested permit it to.

X. Financing

The defendants are ordered and directed not to finance all or any part of any purchase by an Acquirer (or Acquirers) made pursuant to Section IV or V of this Final Judgment.

XI. Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendants made to their principal offices, shall be permitted:

(1) Access during office hours of the defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, who may have counsel present, relating to the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the defendants and without restraint or interference from any of them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, made to the defendants' principal offices, the defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment.

C. No information or documents obtained by the means provided in Sections VII or XI of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of this United States, except in the course of legal proceedings to which the plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendants to the plaintiff, the defendants represent and identify in

writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendants 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 ten (10) calendar days notice shall be given by the plaintiff to the defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendants are not a party.

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII. Termination

Unless this court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry; however, all of Kunz's obligations under the terms of this Decree cease once Kunz irrevocably conveys the Advertising Assets (owned by Kunz) to be divested to Chancellor.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.
Dated _____

United States District Judge

[Civil Action No. 1:98CV02763 (Judge Kollar-Kotelly)]

Competitive Impact Statement

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

I. Nature and Purpose of the Proceeding

Plaintiff filed a civil antitrust Complaint on November 12, 1998, alleging that a proposed acquisition of Kunz & Company ("Kunz") by Chancellor media Corporation ("Chancellor") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Chancellor and Kunz compete head-to-head to sell

outdoor advertising in four counties: (1) Kern County, California; (2) Kings County, California; (3) Inyo County, California; and (4) Mojave County, Arizona (collectively "the Four Counties"). Outdoor advertising companies sell advertising space, such as on billboards, to local and national customers. The outdoor advertising business in the four Counties is highly concentrated. Chancellor and Kunz have a combined share of revenue ranging from about 60 percent to a virtual monopoly in the Four Counties. Unless the acquisition is blocked, competition would be substantially lessened in the Four Counties, and advertisers would pay higher prices.

The prayer for relief seeks: (a) an adjudication that the proposed transaction described in the Complaint would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the transaction; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits Chancellor to complete its acquisition of Kunz, yet preserves competition in the Four Counties where the transaction raises significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the Complaint was filed.

The proposed Final Judgment orders Chancellor to divest all of the outdoor advertising assets of:

- (1) Kunz in Kern county and Inyo County, California; and in Mojave County, Arizona; and
- (2) Chancellor in Kings County, California

Unless the plaintiff grants a time extension, Chancellor must divest these outdoor advertising assets within four (4) months after the filing of the Complaint in this action. Finally, in the event that the Court does not, for any reason, enter the Final Judgment within that four-month period, the divestitures are to occur within five (5) business days after notice of entry of the Final Judgment.

If Chancellor does not divest the advertising assets in the specified counties within the divestiture period, the Court, upon plaintiff's application, is to appoint a trustee to sell the assets. The proposed Final Judgment also requires that, until the divestitures mandated by the Final Judgment have been accomplished, Chancellor shall take all steps necessary to maintain and operate the advertising assets as active competitors; maintain the management,

staffing, sales and marketing of the advertising assets; and maintain the advertising assets in operable condition at current capacity configurations. Further, the proposed Final Judgment requires Chancellor to give the United States prior notice regarding certain future outdoor advertising acquisitions or agreements pertaining to the sale of outdoor advertising in the Four Counties.

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. The Alleged Violations

A. The Defendants

Chancellor, a large nationwide operator of media businesses, including outdoor advertising, is a Delaware corporation headquartered in Dallas, Texas. Chancellor conducts some outdoor advertising business through its subsidiary, Martin MacFarlane, Inc. ("Martin"), a California corporation also headquartered in Dallas, Texas. Martin sells outdoor advertising in many states throughout the United States, including in each of the Four Counties. In 1997 Chancellor's total revenues from outdoor advertising were approximately \$78 million.

Kunz is a California corporation headquartered in Larkspur, California. Kunz sells outdoor advertising in Arizona and California, including in each of the Four Counties. In 1997, its revenues from outdoor advertising were approximately \$6.9 million.

B. Description of the Events Giving Rise to the Alleged Violations

On September 30, 1998, Chancellor entered into an Asset Purchase Agreement with Kunz. Chancellor agreed to purchase certain assets of Kunz used or useful in the outdoor advertising business of Kunz in the United States. The transaction is valued at approximately \$39.5 million.

Chancellor and Kunz compete for the business of advertisers seeking to obtain outdoor advertising space in the Four Counties. The proposed acquisition of Kunz by Chancellor would eliminate that competition in violation of Section 7 of the Clayton Act

C. Anticompetitive Consequences of the Proposed Transaction

The Complaint alleges that the sale of outdoor advertising in the Four Counties constitutes a relevant product market and a line of commerce, and that each county constitutes a relevant geographic market and section of the country for antitrust purposes.

Advertisers select outdoor advertising based upon a number of factors including, *inter alia*, the size of the target audience (individuals most likely to purchase the advertiser's products or services), the traffic patterns of the audience, and other audience characteristics. Many advertisers seek to reach a large percentage of their target audience by selecting outdoor advertising on highways and roads where vehicle traffic is high, so that the advertising will be frequently viewed by the target audience, or where the vehicle traffic is close to the advertiser's location. If outdoor advertising spaces owned by different firms would efficiently reach that target audience, advertisers benefit from the competition among outdoor advertising providers to offer better prices or services. Many local and/or national advertisers purchase outdoor advertising because outdoor advertising space is less expensive and more cost-efficient than other media at reaching the advertiser's target audience with the type of advertising message that the advertiser prefers to deliver.

Outdoor advertising has prices and characteristics that are distinct from other advertising media. An advertiser's evaluation of the importance of these characteristics depends on the type of advertising message the advertiser wishes to convey and the price the advertiser is willing to pay to deliver that message. Many advertisers who use outdoor advertising also advertise in other media, including radio, television, newspapers and magazines, but use outdoor advertising when they want a large number of exposures to consumers at a low cost per exposure. Because each exposure is brief, outdoor advertising is most suitable for highly visual, limited information advertising.

For many advertising customers, outdoor advertising's particular combination of characteristics makes it an advertising medium for which there are no close substitutes. Such customers who want or need to use outdoor advertising would not switch to another advertising medium if outdoor advertising prices increased by a small but significant amount. Although some local and national advertisers may switch some of their advertising to other

media, rather than absorb a price increase in outdoor advertising space, the existence of such advertisers would not prevent outdoor advertising companies in the Four Counties from profitably raising their prices a small but significant amount. At a minimum, outdoor advertising companies could profitably raise prices to those advertisers who view outdoor advertising as a necessary advertising medium for them, or as a necessary advertising complement to other media. Outdoor advertising companies negotiate prices individually with advertisers. During individual price negotiations between advertisers and outdoor advertising companies, advertisers provide the outdoor advertising companies with information about their advertising needs, including their target audience and the desired exposure. Outdoor advertising companies thus have the ability to charge advertisers differing rates based in part on the number and attractiveness of competitive outdoor advertising companies that can meet a particular advertiser's specific target needs. Because of this ability to price discriminate among customers, outdoor advertising companies may charge higher prices to advertisers that view outdoor advertising as particularly effective for their needs, while maintaining lower prices for other advertisers.

The Complaint alleges that Chancellor's proposed acquisition of Kunz would lessen competition substantially in the sale of outdoor advertising in each of the Four Counties. The proposed transaction would create further market concentration in already highly concentrated markets, and Chancellor would control a substantial share of the outdoor advertising revenues in these markets. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), explained in Appendix A annexed hereto, post acquisition:

a. In Kern County, California, Chancellor's share of the outdoor advertising market, based on advertising revenues, would increase to about 83 percent. The approximate post-merger HHI would be 7046, representing an increase of about 1820.

b. In Kings County, California, Chancellor's share of the outdoor advertising market, based on advertising revenues, would increase to about 58 percent. The approximate post-merger HHI would be 4205, representing an increase of about 714.

c. In Inyo County, California, Chancellor's share of the outdoor advertising market, based on advertising revenues, would increase to about 96 percent. The approximate post-merger HHI would be 9232, representing an increase of about 4030.

d. In Mojave County, Arizona, Chancellor's share of the outdoor advertising market, based on advertising revenues, would increase to about 62 percent. The approximate post-merger HHI would be 4340, representing an increase of about 770.

In each of the Four Counties, Chancellor and Kunz compete head-to-head and, for many local and/or national advertisers buying space, they are close substitutes for each other. During individual price negotiations, advertisers that desire to reach a certain audience can help ensure competitive prices by "playing off" Kunz against Chancellor. Chancellor's acquisition of Kunz will end this competition. After the acquisition, such advertisers will be unable to reach their desired audiences with equivalent efficiency without using Chancellor's outdoor advertising. Because advertisers seeking to reach these audiences would have inferior alternatives to the merged entity as a result of the acquisition, the acquisition would give Chancellor the ability to raise prices and reduce the quality of its service to some of its advertisers in each of the Four Counties.

New entry into the advertising market in response to a small but significant price increase by the merged parties in any of these markets is unlikely to be timely and sufficient to render the price increase unprofitable.

For all of these reasons, plaintiff concludes that the proposed transaction would lessen competition substantially in the sale of outdoor advertising in the Four Counties, eliminate actual and potential competition between Chancellor and Kunz, and result in increased prices and/or reduced quality of services for outdoor advertisers in each of the Four Counties, all in violation of Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve existing competition in the sale of outdoor advertising space in the Four Counties. It requires the divestiture of either all Kunz or all Chancellor advertising assets in each of the Four Counties; thus maintaining the level of competition that existed premerger, and ensuring that the affected markets will suffer no reduction in competition as a result of the merger. Advertisers will continue to have alternatives to the merged firm in purchasing outdoor advertising. Finally, the ownership structure is maintained in that the number of competitors who may compete for advertisers' business will remain unchanged.

Unless plaintiff grants an extension of time, the divestitures must be completed within four (4) months after the filing of the Complaint in this matter or within five (5) business days after notice of entry of this Final Judgment by the Court, whichever is later. Until the divestitures take place, Chancellor must maintain and operate the advertising assets as active competitors; maintain the management, staffing, sales, and marketing of the advertising assets; and maintain the advertising assets in operable condition at current capacity configuration.

The divestitures must be to a purchaser or purchasers acceptable to the plaintiff in its sole discretion. Unless plaintiff otherwise consents in writing, the divestitures shall include all the assets of the outdoor advertising business being divested, and shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that such assets can and will be used as viable, ongoing commercial outdoors/advertising businesses. In addition, the purchaser or purchasers must intend in good faith to continue the operations of the outdoor advertising businesses as were in effect in the period immediately prior to the filing of the Complaint, unless any significant change in the operations planned by a purchaser is accepted by the plaintiff in its sole discretion. This provision is intended to ensure that the outdoor advertising businesses to be divested remain competitive with Chancellor's other outdoor advertising businesses in the Four Counties.

If Chancellor fails to divest these outdoor advertising assets within the time periods specified in the Final Judgment, the Court, upon plaintiff's application, is to appoint a trustee nominated by plaintiff to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that Chancellor will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of the advertising assets, and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished. After appointment, the trustee will file monthly reports with the plaintiff, defendants and the Court, setting forth the trustee's efforts to accomplish the divestitures ordered under the proposed Final Judgment. If the trustee has not accomplished the divestitures within six (6) months after its appointment, the

trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished and (3) the trustee's recommendations. At the same time the trustee will furnish such report to the plaintiff and defendants, who will each have the right to be heard and to make additional recommendations.

The proposed Final Judgment contains provisions to ensure that these outdoor advertising assets will be preserved, so that the advertising assets remain viable competitors after divestiture.

The proposed Final Judgment requires Chancellor to provide at least thirty (30) days notice to the Department of Justice before acquiring more than a *de minimis* interest in any assets of, or any interest in, another outdoor advertising company in the Four Counties. Such acquisitions could raise competitive concerns but might be too small to be reported otherwise under the Hart-Scott-Rodino ("HSR") premerger notification statute. Moreover, Chancellor may not agree to sell outdoor advertising space for any other outdoor advertising company in the Four Counties without providing plaintiff with notice. Thus, the provision in the proposed Final Judgment ensures that the Department will receive notice of and be able to act, if appropriate, to stop any agreements that might have anticompetitive effects in the Four Counties.

The relief in the proposed Final Judgment is intended to remedy the likely anticompetitive effects of Chancellor's proposed transaction with Kunz in the Four Counties. Nothing in this Final Judgment is intended to limit the plaintiff's ability to investigate or to bring actions, where appropriate, challenging other past or future activities of defendants in the Four Counties.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in

any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the plaintiff has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The plaintiff 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 plaintiff will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, NW; Suite 4000, Washington, DC 20530.

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

VI. Alternatives to the Proposed Final Judgment

Plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against defendants. Plaintiff is satisfied, however, that the divestiture and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of outdoor advertising space in the Four Counties. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (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).

As the United States Court of Appeals for the D.C. Circuit held, this statute 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*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, "[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."¹ Rather,

[a]bsent 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.

¹ 119 Cong. Rec. 24598 (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. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), reprinted in U.S.C.A.N. 6535, 6538.

United States v. Mid-America Dairymen, Inc., 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

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), citing *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 1460–62. 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.²

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.'"³

The relief obtained in this case is strong and effective relief that should fully address the competitive harm posed by the proposed transaction.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the

² *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); see *BNS*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette* 406 F. Supp. at 716. See also *Microsoft*, 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'" (citations omitted)).

³ *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), quoting *Gillette*, 406 F. Supp. at 716 (citations omitted); *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

plaintiff in formulating the proposed Final Judgment.

Dated: November 17, 1998.

Respectfully submitted,

Barry L. Creech,

D.C. Bar No.—421070, Merger Task Force,
U.S. Department of Justice, Antitrust Division,
1401 H Street, NW.; Suite 4000, Washington,
DC 20530, (202) 307-0001.

Exhibit A Definition of HHI and Calculations for Market

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See Merger Guidelines § 1.51.

Certificate of Service

I, Barry L. Creech, hereby certify that, on November 16, 1998, I caused the foregoing documents to be served on defendants Kunz & Company and Chancellor Media Corporation by having a copy mailed, first-class, postage prepaid, to:

Steven H. Schulman, Bruce J. Prager,
Latham & Watkins, 1001 Pennsylvania
Ave., NW., Suite 1300, Washington,
DC 20004, Counsel for Chancellor
Media Corporation

Riccarda Heising, Powell, Goldstein,
Frazer & Murphy LLP, 191 Peachtree
Street, NE., 16th Floor, Atlanta, GA
30603, Counsel for Kunz & Company

Barry L. Creech,

D.C. Bar No.—421070.

[FR Doc. 98–32148 Filed 12–2–98; 8:45 am]

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