travel agents, and its members agreed on commission levels and other terms of trade on which to transact business with providers of travel services, and encouraged and participated in a group boycott with the intent to induce certain providers of travel services to agree to certain commission levels and practices. The Complaint seeks an order enjoining ARTA from inviting or encouraging such concerted action by travel agents.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment, a Competitive Impact Statement ("CIS") and a Stipulation signed by ARTA for entry of the proposed Final Judgment. The proposed Final Judgment resolves the antitrust violation alleged in the Complaint by enjoining ARTA from inviting or encouraging travel agents to deal with travel providers only on agreed terms. This prohibition includes any agreements on Specified commission levels. The proposed Final Judgment also prohibits ARTA from adopting or disseminating any rules, policies, or statements that have the purpose or effect of advocating or encouraging such a concerted refusal to deal. Finally, the proposed Final Judgment requires ARTA periodically to inform its members, officers and board members on the requirements of the proposed Final Judgments and the antitrust laws

As required by the APPA, on December 8, 1994, ARTA filed with this Court a description of written and oral communications on its behalf within the reporting requirements of section 15(g) of the APPA. A summary of the terms of the proposed Final Judgment and CIS, and directions for the submission of written comments relating to the proposal were published in the Washington Post for seven consecutive days beginning November 13, 1994. The proposed Final Judgment and CIS were published in the **Federal Register** on November 17, 1994. 59 FR 59422 (1994).

The 60-day period for public comments commenced on November 18, 1994 and expired on January 16, 1995. The United States has received one comment on the proposed Final Judgment, from the Independent Travel Agencies of America Association, Inc. ("ITAA"). That comment is being filed with the Court along with this response.

I. Legal Standards Governing the Court's Public Interest Determination

The procedural requirement of the Tunney Act are intended to eliminate secrecy from the consent decree process, to ensure that the Justice Department has access to information from the widest spectrum of persons with

knowledge of the issues bearing on the consent decree, and to create a public record of the reasoning behind the government's consent to the decree. Hearings on H.R. 9703, H.R. 9947, and S. 782, Consumer Decree Bills Before the Subcomm. on Monopolies and Commercial Law of the House Judiciary Committee, 93rd Cong. 1st Sess. 40 (1977) (hereinafter "Hearings") (Statement of Senator Tunney.) See also United States v. Western Electric Co., 993 F.2d 1572 (D.C. (Cir.), cert. denied, 114 S. Ct. 487 (1993); United States v. American Tel. and Tel. Co., 552 F. Supp. 131, 148 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983)

The issue in a Tunney Act proceeding is whether the relief provided by the decree adequately protects the public interest. Although the Tunney Act requires the Court to make an independent determination that a decree is in the public interest, the Court's role is limited. Congress intended to preserve the viability of the consent decree process by avoiding lengthy and protracted judicial proceedings, and therefore, "[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General." United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981).

The Court's public interest inquiry must be conducted in light of the "violations set forth in the complaint." 15 U.S.C. 16(b). The enforcement agency's decision about what charges to bring in its complaint is a matter generally "committed to the agency's absolute discretion." *Heckler* v. *Chaney*, 470 U.S. 821, 831 (1985).

II. Public Comments

ITAA states that the proposed Final Judgment should be modified to require ARTA to agree (a) not to lobby or "foster legislation" that would discriminate against travel agencies that are not members of ARTA, and (b) not to use the press to discriminate, or to cause travel suppliers to discriminate, against non-ARTA travel agencies. ITAA's comment does not discuss how such remedies are related to, or would cure, the violations alleged in the Complaint, nor explain why the proposed remedies would otherwise be appropriate.

Upon careful consideration, the government does not believe there is any reason to modify the proposed Final Judgment. As noted, the Complaint in this case alleges a boycott by ARTA to induce travel suppliers to agree to commission rates and other terms. It

does not allege any activity directed toward or utilizing legislation or the press. Nor does it allege any activity involving or directed toward travel agents activity involving or directed toward travel agents that are not ARTA members. Moreover, it does not appear that the relief proposed by ITAA would prevent or mollify the violations that are alleged in the complaint. The lack of a connection between ITAA's proposed relief and any alleged antitrust violation is particularly apparent here because attempts to petition a legislature, standing alone, are normally not subject to the antitrust laws. See Eastern Railroads Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961).

III. Conclusion

The decree provides relief entirely adequate to redress the harm caused by defendant's conduct. Entry of the decree is in the public interest. ITAA's comment and this response will be published in the **Federal Register**.

Dated: February 14, 1995. Anne K. Bingaman, Assistant Attorney General. Robert E. Litan,

Deputy Assistant Attorney General.

Respectfully submitted, Roger W. Fones, Donna N. Kooperstein, Robert D. Young, Nina B. Hale.

Attorneys, Transportation, Energy, and Agriculture Section, Antitrust Division, Department of Justice.

Certificate of Service

I hereby certify that I have caused a copy of the foregoing UNITED STATES RESPONSE TO PUBLIC COMMENTS to be served upon Alexander Anolik, 693 Sutter St., 6th Floor, San Francisco, CA 94102 by first class mail, postage prepaid.

Dated: February 14, 1995.

Robert D. Young,

Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice.

November 1,1994. Mr. Roger Fones,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Judiciary Center Building, 555 4th Street, NW, Rm 9104, Washington, DC 20001

Re: United States of America v. Association of Retail Travel Agents Case Number 1:94CVO2305

Dear Mr. Fones: I am General Counsel of the Independent Travel Agencies of America Association. We represent in excess of 5000 independent travel agencies across the