

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 1:99CV01043
)	Judge) Thomas F. Hogan
v.)	4/28/99
)	
CITADEL COMMUNICATIONS)	
CORPORATION)	
)	
and)	
)	
)	
TRIATHLON BROADCASTING)	
COMPANY)	
)	
)	
and)	
)	
CAPSTAR BROADCASTING)	
CORPORATION)	
)	
Defendants.)	
)	

PROPOSED FINAL JUDGMENT

WHEREAS, plaintiff, the United States of America, has filed its complaint in this action, and plaintiff and defendants Citadel Communications Corporation (“Citadel”) and Capstar Broadcasting Corporation (Capstar”) 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, these 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 the prompt and likely termination of the Joint Sales Agreement “JSA” in Colorado Springs, Colorado and Spokane, Washington, identified below, which will help ensure that competition is substantially preserved;

AND WHEREAS, plaintiff requires Citadel and Capstar to terminate the JSA for the purpose of restoring competition in the sale of radio advertising;

AND WHEREAS, Citadel and Capstar have represented to the plaintiff that the JSA can and will be terminated, subject to paragraph 9 of the Stipulation, and that Citadel and Capstar will not later raise claims of hardship, contractual bar, or difficulty as grounds for asking the Court to delay or modify termination of the JSA described 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 and over the subject matter of this action, and defendants have agreed to waive any objection to personal jurisdiction. The

Complaint states a claim upon which relief may be granted against the defendants, as hereinafter defined, under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II. DEFINITIONS

As used in this Final Judgment:

A. “Capstar” means defendant Capstar Broadcasting Corporation, a Delaware corporation with its headquarters in Austin, 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 Hicks, Muse, Tate, & Furst Incorporated (“Hicks-Muse”), a Delaware corporation with its headquarters in Dallas, Texas.

B. “Citadel” means defendant Citadel Communications Corporation, a Nevada corporation with its headquarters in Las Vegas, Nevada, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. “Defendants” means Citadel and Capstar.

D. “Antitrust Division” means the Antitrust Division of the United States Department of Justice.

E. “JSA” means the Joint Sales Agreement entered on or around December 15, 1995 among Citadel and Pourtales Radio Partnership (to which Triathlon is successor), providing for the sale of radio advertising time in Colorado Springs, Colorado and Spokane, Washington.

F. “Radio Assets” means all of the assets, tangible or intangible, used in the operation of the following radio stations that sell advertising time in Colorado Springs, Colorado, and Spokane, Washington, including all real property (owned or leased) used in the operation of these stations, all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property used in the operation of these stations; all licenses, permits, authorizations, and applications therefor issued by the Federal Communications Commission and other government agencies related to these stations; all contracts, agreements, leases and commitments of defendants relating to their operation; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to these stations; and all logs and other records maintained by the operator or owner in connection with its business:

- (1) In Colorado Springs, KSPZ-FM, KKFM-FM, KKMFG-FM, KVUU-FM, KKLI-FM, KVOR-AM, and KTWK-AM; and
- (2) in Spokane, KAEP-FM, KDRK-FM, KEYF-FM, KNFR-FM, KISC-FM, KKZX-FM, KGA-AM, KEYF-AM, KAAQ-AM, KJRB-AM, and KUDY-AM.

G. “Triathlon” means Triathlon Broadcasting Company, a Delaware corporation with its headquarters in San Diego, California, named as a defendant in this action.

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 any of the Radio Assets, that the acquirer or acquirers agree to be bound by the provisions of this Final Judgment.

IV. TERMINATION OF JSA AND DIVESTMENT OF KEYF-FM

A. Citadel and Capstar are hereby ordered and directed in accordance with the terms of this Final Judgment to terminate the JSA as quickly as possible, but no later than June 2, 1999.

B. Capstar is also ordered to divest KEYF-FM in Spokane as quickly as possible, but no later than June 2, 1999.

C. The Antitrust Division, in its sole discretion, may extend the time period for termination for two (2) additional thirty (30) day periods of time, not to exceed sixty (60) calendar days in total.

D. Citadel and Capstar shall not acquire any other radio stations that sell radio advertising time in either Colorado Springs or Spokane except under the procedures stated in § V. Further, Citadel and Capstar shall not enter into any JSA or any cooperative selling arrangement with any other operator of radio stations serving listeners in either Colorado Springs or Spokane except under the procedures and conditions stated in § V.

E. Citadel shall not confer with operators of other radio stations that sell advertising time in Colorado Springs or Spokane regarding the price of radio advertising time -- including any discounts for advertisers or classes of advertisers or the availability of added value such as free or bonus spots, remote broadcasts, or other promotions.

V. NOTICE

Capstar and Citadel shall provide advance notification to the Antitrust Division when they directly or indirectly acquire any assets of or any interest (including any financial, security, loan, equity or management interest) in any radio station that sells advertising time in Colorado Springs, Colorado, or Spokane, Washington, or enter into any JSA or any cooperative selling arrangement with any other operator of radio stations serving listeners in either city. This obligation to provide notice is met under this section when a transaction is 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"),

Notification under this section 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 5-9 of the instructions must be provided only about the sales of radio advertising time in Colorado Springs and Spokane. Notification shall be provided at least thirty (30) days prior to the acquisition of 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 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.

Citadel shall not enter into any JSA or any other cooperative selling arrangement with any other operator of radio stations that sells or helps to sell radio advertising time in either Colorado Springs or Spokane without advance written approval from the Antitrust Division.

VI. PRESERVATION OF ASSETS

Until the termination of the JSA required by § IV has been accomplished, Citadel shall take all steps necessary to maintain and operate the Radio Assets as active and viable entities to the extent it is able under the JSA; maintain the management, staffing, sales and marketing of the Radio Assets; and maintain the Radio Assets in operable condition at current capacity configurations. Citadel and Capstar agree that they may hire each other's employees and that they will not enforce any non-compete provisions in the employment contracts of any sales employee of any radio station they own in Colorado Springs.

VII. FINANCING

Citadel and Capstar shall not finance for each other all or any part of any transaction related to this Final Judgment.

VIII. COMPLIANCE INSPECTION

For purposes of determining or securing compliance with the Final Judgment or determining whether the Final Judgment should be modified or terminated 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 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 Section VIII 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 the 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.

IX. 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.

X. TERMINATION

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XI. PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated _____

United States District Judge