

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
and	:	
STATE OF NEW YORK,	:	
by and through its Attorney	:	
General, Dennis C. Vacco	:	
	:	
Plaintiffs,	:	No. _____
	:	
v.	:	
	:	FINAL JUDGMENT
AMERICAN RADIO SYSTEMS	:	
CORPORATION,	:	
THE LINCOLN GROUP, L. P. and	:	
GREAT LAKES WIRELESS	:	
TALKING MACHINE LLC,	:	
	:	
Defendants.	:	

WHEREAS, plaintiffs, the United States of America (hereinafter "United States") and the State of New York (hereinafter "New York"), having filed their Complaint herein on October 24, 1996, 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 purpose of this Final Judgment is prompt and certain divestiture of certain assets to assure that competition is not substantially lessened;

AND WHEREAS, plaintiffs require defendants to make certain divestitures and contract terminations for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to plaintiffs that the divestitures and contract terminations ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or termination provisions 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 parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants ARS and Lincoln, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18), and against defendants ARS and Great Lakes, as hereinafter defined, under Section 1 of the Sherman Act, as amended (15 U.S.C. § 1).

II. DEFINITIONS

As used in this Final Judgment:

A. "ARS" means defendant American Radio Systems Corporation, a Delaware corporation with its headquarters in Boston, Massachusetts, and includes its successors and assigns,

its subsidiaries, and directors, officers, managers, agents and employees acting for or on behalf of ARS.

B. "Lincoln" means defendant The Lincoln Group, L.P., a New York limited partnership with its headquarters in Syracuse, New York, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents and employees acting for or on behalf of Lincoln.

C. "Great Lakes" means defendant Great Lakes Wireless Talking Machine LLC, a New York limited liability company with its headquarters in East Rochester, New York, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents and employees acting for or on behalf of Great Lakes.

D. "Lincoln Assets" means all of the assets, tangible or intangible, used in the operation of the WHAM-AM and WVOR-FM radio stations in Rochester, New York, including but not limited to: all real property (owned and leased) used in the operation of these two stations; all broadcast equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies and other tangible property used in the operation of these two stations; all licenses, permits and authorizations and applications therefor issued by the Federal Communications Commission ("FCC") and other governmental agencies relating to these two stations; all contracts, agreements, leases and commitments of Lincoln pertaining to these two stations and their operations; all trademarks, service marks, trade names,

copyrights, patents, slogans, programming materials and promotional materials relating to these two stations; and all logs and other records maintained by Lincoln or these two stations in connection with each station's business.

E. "WCMF-AM Assets" means all of the following assets: all real property (owned and leased) used solely in the operation of radio station WCMF-AM; all broadcast equipment used solely in the operation of radio station WCMF-AM; and all licenses, permits and authorizations and applications therefor issued by the Federal Communications Commission ("FCC") and other governmental agencies relating to radio station WCMF-AM.

F. "ARS Rochester Radio Stations" means the following radio stations: WCMF-FM, WRMM-FM, WPXY-FM and WHTK-AM.

G. "Non-ARS Radio Station" means any radio station licensed to a community in the Rochester Area that is not an ARS Rochester Radio Station.

H. "Rochester Area" means the Rochester, New York Metro Survey Area as identified by The Arbitron Radio Market Report for Rochester (Summer 1996), and includes the following six counties: Monroe, Wayne, Ontario, Livingston, Genesee and Orleans.

I. The "WNVE Joint Sales Agreement" means the agreement between ARS and Great Lakes dated September 28, 1995, entitled "Joint Sales Agreement."

J. The "WNVE Option Agreement" means the agreement between ARS and Great Lakes dated September 28, 1995, entitled "Option Agreement."

K. "WNVE" means WNVE-FM, a radio station owned by Great Lakes and located in South Bristol, New York.

L. The "Asset Purchase Agreement" means the agreement between ARS and Lincoln dated February 23, 1996, entitled "Asset Purchase Agreement."

M. "Acquirer" means the entity or entities to whom ARS divests the Lincoln Assets and/or the WCMF-AM Assets under this Final Judgment.

III. APPLICABILITY

A. The provisions of this Final Judgment apply to each of the defendants, their successors and assigns, their subsidiaries, affiliates, 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. Each defendant shall require, as a condition of the sale or other disposition of all or substantially all of the assets used in its business of owning and operating its portfolio of radio stations in the Rochester Area, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment; provided, however, defendants need not obtain such an agreement from an Acquirer, as defined herein, or from any future purchaser of WNVE.

IV. DIVESTITURE OF LINCOLN ASSETS AND WCMF-AM

A. ARS is hereby ordered and directed, in accordance with the terms of this Final Judgment, within six (6) months after the

filing of this Final Judgment, or within five (5) business days after notice of entry of this final judgment, whichever is later, to divest the Lincoln Assets and WCMF-AM Assets to an Acquirer acceptable to the United States, in its sole discretion, after consulting with New York. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV of this Final Judgment or by the trustee appointed pursuant to Section V, shall be accomplished in such a way as to satisfy the United States, in its sole discretion after consulting with New York, that the Lincoln Assets and WCMF-AM Assets can and will be used by an Acquirer as viable, ongoing commercial radio businesses. The divestitures, whether pursuant to Section IV or V of this Final Judgment, shall be made (i) to an Acquirer that, in the sole judgment of the United States after consulting with New York, has the capability and intent of competing effectively, and has the managerial, operational and financial capability to compete effectively as a radio station operator in the Rochester Area; and (ii) pursuant to an agreement the terms of which shall not, in the sole judgment of the United States after consulting with New York, interfere with the ability of the purchaser to compete effectively.

B. ARS agrees to use its best efforts to divest the Lincoln Assets and WCMF-AM Assets, and to obtain all regulatory approvals necessary for such divestitures, as expeditiously as possible. The United States, in its sole discretion, may extend the time period for the divestitures 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, ARS promptly shall make known, by usual and customary means, the availability of the Lincoln Assets and, unless relieved of this obligation by compliance with paragraph E of this Section, the WCMF-AM Assets. ARS shall inform any person making a bona fide inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of the Final Judgment. ARS shall make known to any person making an inquiry regarding a possible purchase of the Lincoln Assets or WCMF-AM Assets that the assets described in Section II (D) and (E) are being offered for sale. ARS and Lincoln shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Lincoln Assets and, unless relieved of this obligation by compliance with paragraph E of this Section, WCMF-AM Assets customarily provided in a due diligence process, except such information that is subject to attorney-client privilege or attorney work-product privilege. ARS shall make available such information to plaintiffs at the same time that such information is made available to any other person.

D. ARS and Lincoln shall permit bona fide prospective purchasers of the Lincoln Assets and, unless relieved of this obligation by compliance with paragraph E of this Section, WCMF-

AM Assets, to have access to personnel and to make such inspection of the assets, and any and all financial, operational or other documents and information customarily provided as part of a due diligence process.

E. ARS may fully comply with those portions of Sections IV and V that pertain to the divestiture of the WCMF-AM Assets by entering, within forty (40) days of the filing of this Final Judgment, into a binding agreement to divest the WCMF-AM Assets to an Acquirer approved by the United States, in its sole judgment after consulting with New York.

V. APPOINTMENT OF TRUSTEE

A. In the event that ARS has not divested the Lincoln Assets and WCMF-AM Assets within the time periods specified in Section IV above, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the assets.

B. After the trustee's appointment has become effective, only the trustee shall have the right to sell the Lincoln Assets and WCMF-AM Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section V and VIII of this Final Judgment and consistent with FCC regulations, and shall have 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 ARS any investment

bankers, attorneys or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals or agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, in its sole judgment after consulting with New York, and shall have such other powers as this Court shall deem appropriate. ARS shall not object to the sale of the Lincoln Assets and WCMF-AM Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by ARS must be conveyed in writing to plaintiffs and the trustee no later than fifteen (15) calendar days after the trustee has provided the notice required under Section VIII of this Final Judgment.

C. The trustee shall serve at the cost and expense of ARS, 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 monies shall be paid to ARS and the trustee's services 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 divestiture 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.

D. ARS shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Lincoln Assets and WCMF-AM Assets, and shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best efforts to effect all necessary regulatory approvals. Subject to a customary confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records, and facilities related to the Lincoln Assets and WCMF-AM Assets, and ARS shall develop such financial or other information as may be necessary to the divestiture of the Lincoln Assets and WCMF-AM Assets. ARS shall permit prospective purchasers of the Lincoln Assets and WCMF-AM Assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment becomes effective, the trustee shall file monthly reports with ARS, the plaintiffs and the Court, setting forth the trustee's efforts to accomplish divestiture of the Lincoln Assets and WCMF-AM Assets as contemplated under 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 Lincoln Assets and WCMF-AM Assets, 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 these operations.

F. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, the trustee shall promptly file with the 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; 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 reports to ARS, the United States and New York, who shall each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it shall deem appropriate to accomplish the purpose of this Final Judgment, which shall, if necessary, include extending the term of the trustee's appointment.

VI. TERMINATION OF JOINT SALES
AGREEMENT AND OPTION TO PURCHASE

ARS and Great Lakes are hereby ordered and directed, within five (5) business days after notice of entry of this Final Judgment, to terminate the WNVE Joint Sales Agreement, and to cease and desist from entering into any joint sales agreements between them in the Rochester Area. ARS and Great Lakes are further ordered and directed, within five (5) business days after notice of entry of this Final Judgment, to terminate the WNVE Option Agreement, unless said Option Agreement has theretofore been assigned by ARS to an Acquirer approved in advance by the United States, in its sole judgment after consulting with New York.

VII. PRESERVATION OF ASSETS/HOLD SEPARATE

Until the divestiture of the Lincoln Assets required by Section IV of the Final Judgment has been accomplished:

A. ARS and Lincoln shall continue to take all steps necessary to ensure that WHAM-AM, WPXY-FM, WVOR-FM and WHTK-AM, until divested pursuant to Section IV, are maintained as separate, independent, ongoing, economically viable and active competitors to ARS and that, except as necessary to comply with Section IV and paragraphs B and C of this Section of the Final Judgment, the management of said stations, including the performance of decision-making functions regarding marketing and pricing, will be kept separate and apart from, and not influenced by, ARS.

B. ARS and Lincoln shall use all reasonable efforts to maintain and increase sales of advertising time by WHAM-AM, WPXY-FM, WVOR-FM and WHTK-AM, until divested pursuant to Section IV, and shall maintain at 1995 or previously approved levels for 1996, whichever are higher, promotional advertising, sales, marketing and merchandising support for such radio stations.

C. ARS and Lincoln shall take all steps necessary to ensure that the assets used by Lincoln in the operation of WHAM-AM, WPXY-FM, WVOR-FM and WHTK-AM are fully maintained until divested pursuant to Section IV. Lincoln's sales and marketing employees shall not be transferred or reassigned to any non-Lincoln ARS station, except for transfer bids initiated by employees pursuant to ARS' regular, established job posting policy, provided that ARS gives plaintiffs and Acquirer ten (10) days' notice of such transfer.

D. Neither ARS nor Lincoln shall, except as part of a divestiture approved by the United States after consulting with New York or in connection with the consummation of the the Asset Purchase Agreement, sell any Lincoln Assets.

E. ARS and Lincoln shall take no action that would jeopardize the sale of the Lincoln Assets.

F. ARS and Lincoln shall appoint a person or persons to oversee the assets to be held separate and who will be responsible for ARS' and Lincoln's compliance with Section VII of this Final Judgment.

VIII. NOTIFICATION

Within two (2) business days following execution of a binding agreement to divest, including all contemplated ancillary agreements (e.g., financing), to effect, in whole or in part, any proposed divestiture pursuant to Section IV or V of this Final Judgment, ARS or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible, it shall similarly notify ARS. 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 Lincoln Assets or the WCMF-AM Assets, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiffs of such notice, plaintiffs may request from ARS, the proposed purchaser or purchasers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. ARS and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information, whichever is later, the United States after consulting with New York shall provide written notice to ARS and the trustee, if there is one, stating whether or not it objects

to the proposed divestiture. If the United States fails to object within the period specified, or if the United States provides written notice to ARS and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to ARS' limited right to object to the sale under Section V (B) of this Final Judgment. A divestiture proposed under Section IV shall not be consummated if the United States objects to the identity of the proposed purchaser or purchasers. Upon objection by the United States, or by ARS under the proviso in Section V (B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

IX. FINANCING

ARS is ordered and directed not to finance all or any part of any purchase by an Acquirer made pursuant to Sections IV or V of this Final Judgment without the prior written consent of the United States.

X. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or Section V of this Final Judgment, ARS shall deliver to plaintiffs an affidavit as to the fact and manner of ARS' compliance with Section IV or V of 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, was contacted by ARS, or their

representatives, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or made an inquiry about acquiring, any interest in the Lincoln Assets or the WCMF-AM 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 that ARS has taken to solicit a buyer for the Lincoln Assets and the WCMF-AM Assets.

B. Within twenty (20) calendar days following the entry of this Final Judgment, ARS and Great Lakes shall deliver to plaintiffs an affidavit as to the fact and manner of their compliance with Section VI of this Final Judgment.

C. Within twenty (20) calendar days of the filing of this Final Judgment, ARS shall deliver to plaintiffs an affidavit which describes in reasonable detail all actions ARS has taken and all steps ARS has implemented on an on-going basis to preserve WHAM-AM, WPXY-FM, WVOR-FM and WHTK-AM pursuant to Section VII of this Final Judgment. ARS shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in its earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after such change is implemented.

D. ARS shall preserve all records of all efforts made to preserve WHAM-AM, WPXY-FM, WVOR-FM and WHTK-AM and to divest the Lincoln Assets and the WCMF-AM Assets.

XI. NOTICE

A. 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"), ARS, without providing advance notification to the plaintiffs, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any Non-ARS Radio Station; provided, however, that, where not inconsistent with the HSR Act, ARS need not provide notice under this provision for an acquisition of any one, but not more than one, of any Class A Licensed FM radio station in the Rochester Area other than WDKX, 103.9 FM, and WMAX, 106.7 FM, or their successors.

B. ARS and Great Lakes, without providing advance notification to the plaintiffs, shall not directly or indirectly enter into any agreement or understanding that would allow ARS or Great Lakes to market or sell advertising time or to establish advertising prices for any Non-ARS Radio Station.

C. Notification described in (A) and (B) above shall be provided to the plaintiffs 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, in the case of ARS, the information requested in Items 5-9 of the instructions must be provided only with respect to ARS Rochester Radio Stations.

Notification shall be provided at least thirty (30) days prior to acquiring any such interest or entering any such agreement covered in (A) or (B) above, 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 plaintiffs make a written request for additional information, ARS or Great Lakes 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.

D. 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.

XII. COMPLIANCE INSPECTION

For the purpose 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 plaintiffs, including consultants and other persons retained by the plaintiffs, shall, upon written request of the United States Attorney General, or of the Assistant Attorney General in charge

of the Antitrust Division, or of the New York Attorney General, and on reasonable notice to defendants made to their principal offices, be permitted:

- (1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and
- (2) Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview directors, officers, employees and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the United States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, or of the New York Attorney General, made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect 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 XII shall be divulged by any representative of the United States or New York to any person other than a duly authorized representative of the Executive Branch of the United States or the State of New York, except in the course of legal proceedings to which either 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 any defendant to plaintiffs, and such defendant represents and identifies 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 such defendant marks 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 plaintiffs to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which such defendant is not a party.

XIII. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation or modification of any provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XIV. TERMINATION

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

XV. PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: _____

United States District Judge