

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

UNITED STATES OF AMERICA,
United States Department of Justice
Antitrust Division
Merger Task Force
4000 City Center Building
1401 H. St. N.W.
Washington, DC 20530

Plaintiff,

v.

CAPSTAR BROADCASTING
CORPORATION
600 Congress Ave.
Suite 1400
Austin, TX 78701

and

TRIATHLON BROADCASTING
COMPANY
750 B Symphony Towers
Suite 1920
San Diego, CA 92101

Defendants.

CASE NUMBER 1:99CV00993
JUDGE: Louis F. Oberdorfer
Deck Type: Antitrust
Date Stamp: 4/21/99

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this action to prevent the proposed acquisition of Triathlon Broadcasting Company (“Triathlon”) by Capstar Communications Corporation (“Capstar”).

I. Nature of the Action

1. Capstar is a large nationwide operator of broadcast radio stations in mid-sized markets. Capstar owns three stations in Wichita, Kansas: KKRD-FM, KRZZ-FM, and KNSS-AM. Capstar controls approximately 20 percent of the radio advertising revenues in the Wichita market.

2. Triathlon is also a nationwide operator of broadcast radio stations. Triathlon owns six radio stations in Wichita, Kansas: KZSN-FM, KRBB-FM, KEYN-FM, KWSY-FM, KFH-AM, and KQAM-FM. Triathlon controls approximately 33 percent of the radio advertising revenues in the Wichita market.

3. On July 23, 1998, Capstar and Triathlon entered into an Agreement and Plan of Merger (“Agreement”). Under the terms of the Agreement, Triathlon agreed to transfer its licensee companies, including Triathlon Broadcasting of Wichita Licensee, Inc., to Capstar Broadcasting Company. Also under the terms of the Agreement, Triathlon agreed to sell Triathlon Broadcasting Company to Capstar. The value of the transaction is approximately \$190 million.

4. Under Federal Communications Commission regulations, Capstar must divest two FM stations in Wichita. Even if Capstar divests the two FM stations generating the smallest

revenues -- KWSJ-FM and KEYN-FM -- Capstar would still control over 45 percent of the radio advertising revenues in the Wichita market.

5. Capstar's and Triathlon's radio stations compete with one another for the business of local and national companies seeking to advertise in the Wichita, Kansas radio advertising market. The acquisition, if completed, would eliminate price and service competition between these two companies and the benefits resulting from this competition, and would result in many advertisers paying higher prices and receiving fewer services. After this acquisition, radio advertisers seeking to reach radio listeners in Wichita would have inferior alternatives to Capstar, resulting in Capstar having the ability to raise prices to these advertisers. Thus, as a result, the transaction would give Capstar substantial market power in the Wichita radio market. Accordingly, the acquisition is likely to lessen competition substantially, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Defendants

6. Triathlon is a Delaware corporation headquartered in San Diego, California. It currently owns 31 radio stations in six U.S. markets. In 1997, Triathlon had total revenue of approximately \$33.6 million, approximately \$8 million of which was derived from its Wichita stations.

7. Capstar is a Delaware corporation headquartered in Austin, Texas. It currently owns 309 radio stations in 76 U.S. markets. In 1997, Capstar had total revenue of approximately \$350 million, approximately \$4.9 million of which was derived from its Wichita stations.

III. Jurisdiction and Venue

8. This action is filed under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, pursuant to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

9. Capstar and Triathlon sell radio advertising, a commercial activity that substantially affects, and is in the flow of, interstate commerce. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 22.

10. The parties have agreed to waive any objection to personal jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337.

11. The parties have agreed to waive any objection to venue in this district under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

**IV. The Proposed Acquisition Is Likely To Reduce Competition
Substantially in the Wichita, Kansas Markets for Radio
Advertising Time, in Violation of the Clayton Act**

12. *Radio Advertising Time in Wichita is a Relevant Market.* The relevant geographic market for local and national advertisers that buy advertising time on the Capstar and Triathlon radio stations in Wichita is the Wichita, Kansas Metro Survey Area ("MSA"). This is the geographical unit for which Arbitron, a company that surveys radio listeners, furnishes radio stations, advertisers and advertising agencies in Wichita with data to aid in evaluating radio audience size and composition. The Wichita MSA includes: Harvey, Sedgwick and Butler Counties. Local and national advertising that is placed on radio stations in the Wichita MSA is aimed at reaching listening audiences in the Wichita MSA, and other radio stations do not provide effective access to these audiences. Thus, if there were a small but significant increase in radio advertising prices within the Wichita MSA, advertisers would not switch enough advertising time purchases to other radio stations to defeat the price increase.

13. Radio advertising time is sold by radio stations directly or through their national representatives. Radio stations in the Wichita, metropolitan areas generate almost all of their revenues from the sale of advertising time to local and national advertisers.

14. Many local and national advertisers purchase radio advertising time in Wichita because they find such advertising preferable to advertising in other media to meet their specific needs. Reasons for this include the fact that radio advertising time may be less expensive and more cost-efficient than other media at reaching the advertiser's target audience (individuals

most likely to purchase the advertiser's products or services). Radio may also reach certain target audiences that cannot be reached as effectively through other media. Additionally, radio stations render certain services or promotional opportunities to advertisers that they cannot exploit as effectively using other media. For these reasons, many local and national advertisers who purchase radio advertising time view radio either as a necessary advertising medium for them, or as a necessary advertising complement to other media.

15. Although some local and national advertisers may switch some of their advertising to other media rather than absorb a price increase in radio advertising time, the existence of such advertisers would not prevent all radio stations in the Wichita market from profitably raising their prices a small but significant amount. At a minimum, stations could profitably raise prices to those advertisers who view radio as a necessary advertising medium for them, or as a necessary advertising complement to other media. Radio stations negotiate prices individually with advertisers; consequently, radio stations can charge different advertisers different prices. Radio stations generally can identify advertisers with strong radio preferences. Because of this ability to price discriminate among customers, radio stations may charge higher prices to advertisers that view radio as particularly effective for their needs, while maintaining lower prices for other advertisers.

16. The provision of advertising time on radio stations in the Wichita MSA is a relevant market (i.e., a line of commerce and a section of the country) within the meaning of Section 7 of the Clayton Act.

17. The provision of advertising time on radio stations in the Wichita MSA is a relevant market within the meaning of Section 7 of the Clayton Act.

18. *Market Structure Post-Acquisition.* Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), explained in Appendix A annexed hereto, a combination of Capstar and Triathlon would substantially increase concentration in the Wichita radio advertising market. If Capstar divests only the two least significant FM stations, Capstar's share of the Wichita radio market, based on advertising revenue, would increase to 45%. The approximate post-merger HHI would be 3680, representing an increase of about 640 points.

19. *Harm to Competition.* Advertisers who use radio to reach their target audience select radio stations upon which to advertise based upon a number of factors including, *inter alia*, the size of the station's audience and the characteristics of its audience.

20. Many advertisers seek to reach a large percentage of their target audience by selecting those stations whose audience has a high correlation with their target audience. If a number of stations efficiently reach that target audience, advertisers benefit from the competition among such stations to offer better prices or services. Today, several Capstar and Triathlon stations in Wichita compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in Wichita, they are close substitutes for each other based on their specific audience characteristics. The merger would eliminate this competition.

21. During individual price negotiations between advertisers and radio stations, advertisers provide the stations with information about their advertising needs, including their target audience and the desired frequency and timing of ads. Radio stations thus have the ability to charge advertisers differing rates based in part on the number and attractiveness of competitive radio stations that can meet a particular advertiser's specific target needs.

22. During individualized rate negotiations, advertisers that desire to reach certain listeners can help ensure competitive rates by "playing off" Capstar stations against Triathlon stations. Capstar's acquisition of Triathlon will end this competition. After the acquisition, such advertisers will be unable to reach their desired audiences with equivalent efficiency without using Capstar stations. 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 Capstar the ability to raise prices and reduce the quality of its service to some of its advertisers on its stations in Wichita.

23. The transaction would have the following effects, among others:

- a. competition in the sale of advertising time on radio broadcast stations in the Wichita MSA would be substantially lessened;
- b. actual competition between Capstar and Triathlon radio stations in the sale of radio advertising time in the Wichita MSA would be eliminated; and

- c. the prices for advertising on radio stations in the Wichita MSA would likely increase, and services would likely decline.

24. *Lack of Any Likely Entry To Deter Capstar's Ability To Harm Competition.* If Capstar raised prices or lowered services to those advertisers who buy advertising time on Capstar and Triathlon stations in Wichita because of their strength in delivering access to certain audiences, non-Capstar radio stations in Wichita would not be induced to change their formats to attract those audiences in sufficiently large numbers to defeat a price increase. Successful radio stations are unlikely to undertake a format change solely in response to small but significant increases in price being charged to advertisers by a multi-station firm such as Capstar because they would likely lose their existing audiences. Even if less successful stations did change format, they would still be unlikely to attract enough listeners to provide suitable alternatives to the merged entity.

25. New entry into the Wichita radio advertising market would not be timely, likely or sufficient to deter the exercise of market power.

26. The effect of the proposed acquisition of Capstar by Triathlon would be to lessen competition substantially in interstate trade and commerce, in violation of Section 7 of the Clayton Act.

V. Requested Relief

27. The plaintiff requests: (a) adjudication that Capstar proposed acquisition of Triathlon would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed acquisition; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

Dated: April 21, 1999

_____/s/_____
Joel I. Klein
Assistant Attorney General

_____/s/_____
Donna E. Patterson
Deputy Assistant Attorney General

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APPENDIX A

HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

"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 ($900 + 900 + 400 + 400 = 2600$). 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 Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See Merger Guidelines § 1.51.

CERTIFICATE OF SERVICE

I, Karl Knutsen, of the Antitrust Division of the United States Department of Justice, do hereby certify that true copies of the foregoing Complaint, Stipulation, Final Judgment, and Plaintiff's Explanation of Consent Decree Procedures were served this 21st day of April, 1999, by hand, to the following:

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_____/s/_____
Karl D. Knutsen