

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

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| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | Case No. 98CV00819 (EGS) |
| |) | |
| v. |) | |
| |) | PLAINTIFF’S MOTION FOR ENTRY |
| |) | OF FINAL JUDGMENT |
| CBS CORPORATION and |) | |
| AMERICAN RADIO SYSTEMS |) | |
| CORPORATION, |) | |
| |) | |
| Defendants. |) | |

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16 (b)-(h), plaintiff United States moves for entry of the proposed Final Judgment annexed hereto in this civil antitrust proceeding. The Final Judgment may be entered at this time without further hearing if the Court determines that entry is in the public interest. The Competitive Impact Statement filed in this matter on March 31, 1998 explains why entry of the proposed Final Judgment would be in the public interest. A Certificate of Compliance setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting period has expired has been filed simultaneously with this Motion.

I.

Background

Plaintiff filed a civil antitrust Complaint on March 31, 1998, alleging that a proposed acquisition of American Radio Systems Corporation ("ARS") by CBS Corporation ("CBS")

would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that CBS and ARS both own and operate numerous radio stations throughout the United States, and that they each own and operate radio stations in the Boston, St. Louis, and Baltimore metropolitan areas. The acquisition would give CBS a significant share of the radio advertising market in each of these metropolitan areas, control over a high percentage of the available radio signals which cover the markets, and control over stations that are close substitutes for each other based on their specific audience characteristics. In Boston, according to 1997 industry estimates, the acquisition would give CBS control of 3 out of 5 top radio stations or 59 percent of the radio advertising revenues. In St. Louis, CBS would control 4 out of the 7 top radio stations or 49 percent of the radio advertising revenues. Finally, CBS would control 5 of the top 9 radio stations or 46 percent of the radio advertising revenues in Baltimore. As a result, the combination would substantially lessen competition in the sale of radio advertising time in the Boston, St. Louis, and Baltimore metropolitan areas.

The prayer for relief seeks: (a) an adjudication that the proposed transactions 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 CBS to complete its acquisition of ARS, yet preserves competition in the markets in which the transactions would raise 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 CBS to divest WEEI-AM, WEGQ-FM, WAAF-FM and WRKO-AM in Boston, KSD-FM and KLOU-FM in St. Louis, and WOCT-FM in Baltimore. These stations are currently owned by ARS. Unless the plaintiff grants a time extension, CBS must divest these radio stations within six months after CBS places certain stations which it is required to dispose of by FCC rules into FCC disposition trusts. The FCC disposition trusts require disposition within six months, with the result that the divestitures required under the Final Judgment for antitrust purposes and the divestitures required for FCC regulatory purposes will be accomplished during the same period of time. In order to insure prompt divestiture, the proposed Final Judgment provides that the divestitures shall take place within 6 months of the date CBS places stations into the FCC disposition trusts or 9 months from the date the Complaint in this action is filed, whichever is sooner. This provision establishes an outside date based on the filing of the Complaint in the event that there is any delay associated with the establishment of the FCC disposition trusts. (Plaintiff has no reason to believe that there will be any such delay.) Finally, in the event that the Court does not, for any reason, enter the Final Judgment within the time period measured by the establishment of the FCC disposition trusts or the filing of the complaint, the divestitures are to occur within five (5) business days after notice of entry of the Final Judgment.

If CBS does not divest these stations 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 CBS to ensure that, until the divestitures mandated by the Final Judgment have been accomplished, these stations will be operated independently as viable, ongoing businesses, and kept separate and apart from CBS's other radio stations in Boston, St. Louis and Baltimore.

Further, the proposed Final Judgment requires defendants to give plaintiff prior notice regarding future radio station acquisitions or certain agreements pertaining to the sale of radio advertising time in Boston, St. Louis or Baltimore.

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.

Compliance with the APPA

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment. 15 U.S.C. § 16(b). In this case, the comment period terminated on June 12, 1998. The United States received no comments during this period on the proposed Final Judgment. The procedures required by the APPA prior to entry of the proposed Final Judgment are completed. The Certificate of Compliance filed by the United States with this Court simultaneously with this Motion demonstrates that all the requirements of the APPA have been met. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment.

III.

Standard of Judicial Review

Before entering the proposed Final Judgment, the Court is to determine whether the 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).

In its Competitive Impact Statement previously filed with the Court on March 31, 1998, the United States has explained the meaning and proper application of the public interest standard under the APPA and incorporates those statements here by reference.

The public, including affected competitors and customers, has had opportunity to comment on the proposed Final Judgment as required by law. There has been no showing that the proposed settlement constitutes an abuse of the Justice Department's discretion or that it is not within the zone of settlements consistent with the public interest.

IV.

Conclusion

For the reasons set forth in this Motion and in the Competitive Impact Statement, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. The Final Judgment will remedy the anticompetitive effects of the challenged transaction by requiring the divestiture of WEEI-AM, WEGQ-FM, WAAF-FM and WRKO-AM in Boston, KSD-FM and KLOU-FM in St. Louis, and WOCT-FM in Baltimore, all of which are stations with powerful (Class B, Class C1 and Class

II) signals. Therefore, the United States respectfully requests that the proposed Final Judgment annexed hereto be entered as soon as possible.

Defendants have informed plaintiff that defendants consent to the entry of the Final Judgment in this matter.

Respectfully submitted,

_____/s/_____
Allen P. Grunes
Merger Task Force
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Dated: June 25, 1998

Certificate of Service

I, Allen P. Grunes, hereby certify that, on June 25, 1998, I caused the foregoing document to be served on defendants CBS Corporation and American Radio Systems Corporation by having a copy mailed, first-class, postage prepaid, to:

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_____/s/_____
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