

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CASE NUMBER 1:98CV00819

JUDGE: Emmet G. Sullivan

UNITED STATES OF AMERICA,

DECK TYPE: Antitrust

Plaintiff,

DATE STAMP: 03/31/98

v.

:
: COMPETITIVE IMPACT STATEMENT
:

CBS CORPORATION and
AMERICAN RADIO SYSTEMS
CORPORATION,

:
: Filed: March 31, 1998
:

Defendants.

Plaintiff, the United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

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. THE ALLEGED VIOLATIONS

A. The Defendants

CBS is a Pennsylvania corporation with its headquarters in New York, New York. It currently operates 76 radio stations located in 17 metropolitan areas in the

United States. It owns four radio stations in the Boston area (WBCN-FM, WBZ-AM, WODS-FM and WZLX-FM), one station in the St. Louis area (KMOX-AM), and five radio stations in the Baltimore area (WCAO-AM, WHFS-FM, WJFK-AM, WLIF-FM and WXYV-FM). In 1996, its revenues from its Boston stations were approximately \$69,600,000, its revenues from its St. Louis station were approximately \$21,900,000, and its revenues from its Baltimore stations were approximately \$15,900,000.

ARS is a Delaware corporation headquartered in Boston, Massachusetts. It owns and operates 85 radio stations located in 19 metropolitan areas nationwide. It owns six radio stations in the Boston area (WAAF-FM, WBMX-FM, WEEI-AM, WEGQ-FM, WNFT-AM, and WRKO-AM), four radio stations in the St. Louis area (KEZK-FM, KLOU-FM, KSD-FM and KYKY-FM), and five radio stations in the Baltimore area (WBGR-AM, WBMD-AM, WOCT-FM, WQSR-FM and WWMX-FM). In 1996, its revenues from its Boston stations were approximately \$55,700,000, its revenues from its St. Louis stations were approximately \$26,950,000, and its revenues from its Baltimore stations were approximately \$25,850,000.

B. Description of the Events Giving Rise to the Alleged Violations

On September 19, 1997, CBS (formerly known as Westinghouse Electric Corporation) entered into an Agreement and Plan of Merger with ARS. This

Agreement was amended and restated on December 18, 1997, and further amended on December 19, 1997. Pursuant to the Agreement, ARS's radio operations will be acquired by CBS. ARS's tower operations will be separately spun off and will not be acquired by CBS. The transaction is valued at approximately \$1.6 billion. The result of this transaction, as is more fully discussed below, would be to give CBS a significant share of the radio advertising market in Boston, St. Louis, and Baltimore as well as a significant percentage of advertising directed to certain target audiences in these areas.

CBS and ARS previously have competed for the business of local and national companies seeking to advertise in the Boston, St. Louis, and Baltimore areas. The proposed acquisition by CBS of ARS, and the threatened loss of competition that would be caused thereby, precipitated the government's suit.

C. Anticompetitive Consequences of the Proposed Transaction

I. Sale of Radio Advertising Time in Boston

The Complaint alleges that the provision of advertising time on radio stations serving the Boston, St. Louis, and Baltimore Metro Service Area ("MSA") constitutes a line of commerce and section of the country, or relevant market, for antitrust purposes. The MSA is the geographical unit for which Arbitron furnishes radio stations, advertisers and advertising agencies with data to aid in evaluating radio audience size and composition. Advertisers use this data in making decisions about

which radio station or combination of radio stations can deliver their target audiences in the most efficient and cost-effective way. The Boston MSA includes five counties: Essex, Middlesex, Norfolk, Plymouth, and Suffolk. The St. Louis MSA includes twelve counties: Clinton, Franklin, Jefferson, Jersey, Lincoln, Madison, Monroe, St. Charles, St. Clair, St. Louis, St. Louis City, and Warren. The Baltimore MSA includes seven counties: Anne Arundel, Baltimore, Baltimore City, Carroll, Hartford, Howard, and Queen Anne's.

Local and national advertising that is placed on radio stations within the Boston, St. Louis, and Baltimore MSAs is aimed at reaching listening audiences within the respective MSAs, and other radio stations do not provide effective access to these audiences. Thus, if there were a small but significant nontransitory increase in radio advertising prices within one of these MSAs, advertisers would not buy enough advertising time from radio stations outside of the Boston, St. Louis, or Baltimore MSAs to defeat the increase.

Radio stations earn their revenues from the sale of advertising time to local and national advertisers. Many local and national advertisers purchase radio advertising time in Boston, St. Louis, or Baltimore because they find such advertising preferable to advertising in other media for their specific needs. For such advertisers, radio time (a) 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); (b) may reach certain target audiences that cannot be reached as effectively through other media; or (c) may offer promotional opportunities to advertisers that they cannot exploit as effectively using other media. For these and other reasons, many local and national advertisers in Boston, St. Louis, or Baltimore who purchase radio advertising time view radio either as a necessary advertising medium for them or as a necessary advertising complement to other media.

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 in Boston, St. Louis, or Baltimore, the existence of such advertisers would not prevent radio stations from raising their prices a small but significant amount. At a minimum, stations could raise prices profitably to those advertisers who view radio either as a necessary advertising medium for them, or as a necessary advertising complement to other media. Radio stations, which negotiate prices individually with advertisers, can identify those advertisers with strong radio preferences.

Consequently, radio stations can charge different advertisers different rates. Because of this ability to price discriminate between different customers, radio stations may charge higher rates to advertisers that view radio as particularly effective for their needs, while maintaining lower rates for other advertisers.

2. Harm to Competition

The Complaint alleges that CBS's proposed acquisition of ARS would lessen competition substantially in the provision of radio advertising time on stations in the Boston, St. Louis, and Baltimore MSAs. The proposed transactions would create further market concentration in already highly concentrated markets, and CBS would control a substantial share of the advertising revenues in these markets. CBS's market share of radio advertising revenues in Boston would rise from 33 percent to 59 percent after the proposed transaction (BIA Investing in Radio 4th ed. 1997). According to the Herfindahl-Hirschman Index ("HHI"), a widely-used measure of market concentration defined and explained in Appendix A, CBS's post-transaction HHI in Boston would be 4059, representing an increase of 1746 points. In St. Louis, CBS's post-transaction share of radio advertising revenue would increase from 22 to 49 percent. CBS's post-transaction HHI would equal 3075, representing an increase of 1200 points. In Baltimore, CBS's market share of radio advertising revenue would increase from 17 to 46 percent as a result of the transaction. CBS's post-transaction HHI in Baltimore would be 3077, an increase of 985 points. These substantial increases in concentration are likely to give CBS the unilateral power to raise advertising prices and reduce the level of service provided to advertisers in Boston, St. Louis, and Baltimore.

Furthermore, the proposed transactions would eliminate head-to-head competition between CBS and ARS for advertisers seeking to reach specific audiences. Advertisers select radio stations to reach a large percentage of their target audience based upon a number of factors, including, inter alia, the size of the station's audience, the characteristics of its audience, and the geographic reach of a station's signal. Many advertisers seek to reach a large percentage of their target audience by selecting those stations whose audience best correlates to their target audience. Today, several CBS and ARS stations in Boston, St. Louis, and Baltimore compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in those markets, the stations are close substitutes for each other based on their specific audience characteristics. The proposed transaction would eliminate such competition.

Format changes are unlikely to deter the anticompetitive consequences of this transaction. If CBS raised prices or lowered services to those advertisers who buy ARS and CBS stations because of their strength in delivering access to certain specific audiences, non-CBS radio stations in Boston, St. Louis, and Baltimore respectively, would not be induced to change their formats to attract a greater share of the same listeners and to serve better those advertisers seeking to reach such listeners. 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 CBS, because they would likely lose a substantial portion of their existing audiences. Even if less successful stations did change format, they still would be unlikely to attract enough listeners to provide a suitable alternative to CBS.

Finally, new entry into the Boston, St. Louis, or Baltimore radio advertising markets is highly unlikely in response to a price increase by CBS. No unallocated radio broadcast frequencies exist in these markets. Also, it is unlikely that stations located in adjacent communities could boost their power so as to enter the Boston, St. Louis, or Baltimore markets without interfering with other stations on the same or similar frequencies, a violation of FCC regulations.

For all of these reasons, plaintiff concludes that the proposed transactions would lessen competition substantially in the sale of radio advertising time on radio stations serving the Boston, St. Louis, and Baltimore MSAs, eliminate actual competition between CBS and ARS, and result in increased prices and reduced quality of service for radio advertising time on stations in the Boston, St. Louis, and Baltimore MSAs, all in violation of Section 7 of the Clayton Act.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment would preserve competition in the sale of radio advertising time in the Boston, St. Louis, and Baltimore MSAs. It requires the divestiture of WEEI-AM, WEGQ-FM, WAAF-FM, and WRKO-FM in Boston, the divestiture of KSD-FM and KLOU-FM in St. Louis, and the divestiture of WOCT-

FM in Baltimore. This relief will reduce the market share in advertising revenues CBS would have achieved through the proposed transaction from 59 percent to 39 percent in the Boston market, 49 percent to 39 percent in the St. Louis market, and from 46 percent to about 40 percent in the Baltimore radio market.

The divestitures will ensure that the affected markets will remain competitive. First, no firm will dominate the competitively significant radio signals in any market. Second, advertisers will have sufficient alternatives to the merged firm in reaching groups of radio listeners most affected by the transaction; that is, advertisers can reasonably efficiently reach such audiences (“buy around”) without using the merged firm. Third, the ownership structure in each market is such that it will allow for the possibility of at least three significant competitors who may compete for advertisers’ business.

Unless plaintiff grants an extension of time, CBS must 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, within six months after CBS places stations into FCC disposition trusts (with an outside date of nine months after the Complaint has been filed) or within five (5) business days after notice of entry of the Final Judgment, whichever is later. Until the divestitures take place, these stations will be maintained as viable and independent competitors to CBS’s other stations in the Boston, St. Louis, and Baltimore MSAs.

The divestitures must be to a purchaser or purchasers acceptable to the plaintiff in its sole discretion. Unless plaintiff otherwise consents in writing, the divestitures shall include all the assets of the stations being divested, and shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that such assets can and will be used as viable, ongoing commercial radio businesses. In addition, the purchaser or purchasers must intend in good faith to continue the operations of the radio stations as were in effect in the period immediately prior to the filing of the complaint, unless any significant change in the operations planned by a purchaser is accepted by the plaintiff in its sole discretion. This provision is intended to insure that the stations to be divested remain competitive with CBS's other stations in Boston, St. Louis, and Baltimore.

If defendants fail to divest these stations within the time periods specified in the Final Judgment, the Court, upon plaintiff's application, is to appoint a trustee nominated by plaintiff to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value 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, and based on a fee arrangement providing the trustee with an incentive

based on the price and terms of the divestitures and the speed with which they are accomplished. After appointment the trustee will file monthly reports with the plaintiff, defendants and the Court, setting forth the trustee's efforts to accomplish the divestitures ordered under the proposed Final Judgment. If the trustee has not accomplished the divestitures within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished and (3) the trustee's recommendations. At the same time the trustee will furnish such report to the plaintiff and defendants, who will each have the right to be heard and to make additional recommendations.

The proposed Final Judgment requires that prior to the consummation of the transaction, defendants will maintain the independence of their respective radio stations in Boston, St. Louis, and Baltimore. Following the consummation of CBS's acquisition of ARS, CBS is required to maintain WEEI-AM, WEGQ-FM, WAAF-FM, and WRKO-AM in Boston, KSD-FM and KLOU-FM in St. Louis, and WOCT-FM in Baltimore as separate and apart from defendant CBS's other Boston, St. Louis, and Baltimore stations, pending divestiture. The Judgment also contains provisions to ensure that these stations will be preserved, so that the stations remain viable, aggressive competitors after divestiture.

The proposed Final Judgment also prohibits CBS from entering into certain agreements with other Boston, St. Louis, and Baltimore radio stations without providing at least thirty (30) days' notice to the Department of Justice. Specifically, CBS must notify the Department before acquiring any interest in another Boston, St. Louis, or Baltimore radio station. Such acquisitions could raise competitive concerns but might be too small to be reported otherwise under the Hart-Scott-Rodino ("HSR") premerger notification statute. Moreover, CBS may not agree to sell radio advertising time for any other Boston, St. Louis, or Baltimore radio station without providing plaintiff with notice. In particular, the provision requires CBS to notify the Department before it enters into any Joint Sales Agreements ("JSAs"), where one station takes over another station's advertising time, or any Local Marketing Agreements ("LMAs"), where one station takes over another station's broadcasting and advertising time, or other comparable arrangements, in the Boston, St. Louis, or Baltimore areas. Agreements whereby CBS sells advertising for or manages other Boston, St. Louis, or Baltimore area radio stations would effectively increase its market share in these MSAs. Despite their clear competitive significance, JSAs probably would not be reportable to the Department under the HSR Act. Thus, this provision in the proposed Final Judgment ensures that the Department will receive notice of and be able to act, if appropriate, to stop any agreements that might have anticompetitive effects in the Boston, St. Louis, and Baltimore markets.

The relief in the proposed Final Judgment is intended to remedy the likely anticompetitive effects of CBS's proposed transaction with ARS in Boston, St. Louis, and Baltimore. Nothing in this Final Judgment is intended to limit the plaintiff's ability to investigate or to bring actions, where appropriate, challenging other past or future activities of defendants in the Boston, St. Louis, and Baltimore MSAs.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the plaintiff has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The plaintiff will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the plaintiff will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

Craig W. Conrath
Chief, Merger Task Force
Antitrust Division
United States Department of Justice
1401 H Street, NW; Suite 4000
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

Plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against defendants. Plaintiff is satisfied, however,

that 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, and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of radio advertising time on stations serving the Boston, St. Louis, and Baltimore MSAs. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR PROPOSED FINAL JUDGMENT

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final 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).

As the United States Court of Appeals for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient and whether the decree may positively harm third parties. See United States v. Microsoft, 56 F.3d 1448, 1461-62 (D.C. Cir. 1995).

In conducting this inquiry, "[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."¹

Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

119 Cong. Rec. 24598 (1973). See United States v. Gillette Co., 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93-1463, 93rd Cong. 2d Sess. 8-9 (1974), reprinted in U.S.C.C.A.N. 6535, 6538.

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." United States v. BNS, Inc., 858 F.2d 456, 462 (9th Cir. 1988), citing United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also Microsoft, 56 F.3d at 1460-62. Precedent requires that

the 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. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.²

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as

² Bechtel, 648 F.2d at 666 (citations omitted) (emphasis added); see BNS, 858 F.2d at 463; United States v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); Gillette, 406 F. Supp. at 716. See also Microsoft, 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ") (citations omitted).

long as it falls within the range of acceptability or is 'within the reaches of public interest.'¹³

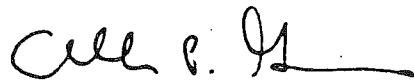
This is strong and effective relief that should fully address the competitive harm posed by the proposed transactions.

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.

Dated: March 31, 1998

Respectfully submitted,



Allen P. Grunes

Merger Task Force
U.S. Department of Justice
Antitrust Division
1401 H Street, N.W.; Suite 4000
Washington, D.C. 20530
(202) 307-0001

¹³ United States v. American Tel. and Tel Co., 552 F. Supp. 131, 151 (D.D.C. 1982), aff'd. sub nom. Maryland v. United States, 460 U.S. 1001 (1983), quoting Gillette Co., 406 F. Supp. at 716 (citations omitted); United States v. Alcan Aluminum, Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985).

EXHIBIT A
DEFINITION OF HHI AND
CALCULATIONS FOR MARKET

"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 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). 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.

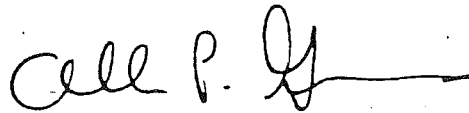
Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See *Merger Guidelines* § 1.51.

Certificate of Service

I, Allen P. Grunes, hereby certify that, on March, 31, 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:

Joe Sims
Jones, Day, Reavis & Pogue
1450 G St., N.W.
Washington, D.C. 20005
Counsel for CBS Corporation

Timothy J. O'Rourke
Dow, Lohnes & Albertson
1200 New Hampshire Ave., N.W.
Washington, D.C. 20036
Counsel of American Radio Systems Corporation

A handwritten signature in black ink, appearing to read "Allen P. Grunes", with a horizontal line extending to the right from the end of the signature.

Allen P. Grunes