

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CUMULUS MEDIA INC., and CITADEL
BROADCASTING CORPORATION,

Defendants.

CASE NO.:

11-1619

JUDGE:

DATE FILED:

DESCRIPTION:

Entered: 11/29/2011

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on August XX, 2011, and the United States of America and defendants Cumulus Media Inc. ("Cumulus") and Citadel Broadcasting Corporation ("Citadel") (collectively "Defendants"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree 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 certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states claims upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

(A) “Acquirer” or “Acquirers” means the person, persons, entity or entities to whom Defendants divest all or some of the Radio Assets.

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

(C) “Cumulus” means Defendant Cumulus Media Inc., a Delaware corporation with its headquarters in Atlanta, Georgia, its successors and assigns, and its subsidiaries, divisions,

groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

(D) "Defendants" mean Cumulus and Citadel.

(E) "Divestiture Cities" means the Flint, Michigan and Harrisburg-Lebanon-Carlisle, Pennsylvania Metropolitan Survey Areas defined as "Arbitron Markets" in the BIA Investing in Radio Market Report 2011.

(F) "WRSR" means the broadcast radio station WRSR (FM) licensed to Owosso, Michigan owned by defendant Cumulus.

(G) "WCAT" means the broadcast radio station WCAT (FM) licensed to Carlisle, Pennsylvania owned by defendant Citadel.

(H) "WWKL" means the broadcast radio station WWKL (FM) licensed to Palmyra, Pennsylvania owned by defendant Cumulus.

(I) "WTPA" means the broadcast radio station WTPA (FM) licensed to Mechanicsburg, Pennsylvania owned by defendant Cumulus.

(J) "Radio Assets" means

(1) all right, title, and interest of Cumulus and Citadel in and to the assets, tangible or intangible, used in the operations of WRSR and WCAT, including, but not limited to: (i) all real property (owned or leased) used in the operation of each station; (ii) all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property used in the operation of each station; (iii) all licenses, permits, and other authorizations issued by the Federal Communications Commission ("FCC") and other government agencies related to each station, along with all applications pending before the FCC and other governmental agencies for any new authorizations or

the renewal or modification of existing authorizations for each station; (iv) all contracts, agreements, leases and commitments of Cumulus or Citadel (including those relating to programming) relating to the operation of each station; (v) all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to each station; and (vi) all logs and other records maintained by Cumulus or Citadel relating to the business of each station; save and except for any such specifically enumerated assets that are principally devoted to the operations of stations other than WRSR and WCAT or to the operation of their parent companies, and not necessary to the operation of WRSR and WCAT as viable, ongoing commercial radio broadcasting businesses;

(2) all right, title, and interest of Cumulus and Citadel in and to the assets, tangible or intangible, used in the operation of WWKL (other than WWKL's intellectual property), including (i) all real property (owned or leased) used in the operation of WWKL; (ii) all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property used in the operation of WWKL; (iii) all licenses, permits, and other authorizations issued by the FCC and other government agencies related to WWKL, along with all applications pending before the FCC and other governmental agencies for any new authorizations or the renewal or modification of existing authorizations for WWKL; (iv) all contracts, agreements, leases and commitments of Cumulus or Citadel relating to the operation of WWKL but excluding (a) all contracts, agreements and commitments relating to programming, and (b) all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials used in the operation of WWKL; (v) all logs and

other records maintained by Cumulus or Citadel relating to the business of WWKL; save and except for any such specifically enumerated assets that are principally devoted to the operations of stations other than WWKL or to the operation of its parent company, and not necessary to the operation of WWKL as a viable, ongoing commercial radio broadcasting business;

(3) all right, title and interest of Cumulus in and to the intellectual property used in the operation of WTPA (which will be made available to the trustee in the operation and subsequent sale of WWKL), including (i) all programming contracts, agreements, and commitments; (ii) all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials used in the operation of WTPA; and (iii) records maintained by Cumulus or Citadel that identify parties who have purchased advertising time on WTPA in the prior twelve (12) months.

III. Applicability

(A) This Final Judgment applies to both Defendants, as defined above, and all other persons in active concert or participation with the Defendants who receive actual notice of this Final Judgment by personal service or otherwise.

(B) If, prior to complying with Section IV of this Final Judgment, Defendants sell, license, or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Radio Assets, Defendants shall require the Acquirer or Acquirers to be bound by the provisions of this Final Judgment.

IV. Divestitures

(A) The United States, having consulted with the FCC, will nominate a trustee to effect the divestiture of the Radio Assets and to serve until the Radio Assets are sold to one or

more Acquirers. Defendants shall not object to the trustee's immediate appointment by this Court. In the event of the trustee's resignation, incapacity to act or death, this Court shall appoint another trustee, selected by the United States, after consultation with the FCC, to effect the divestiture of the Radio Assets. In this event, the United States will identify to Defendants the individual or entity it proposes to select as trustee. The United States will move the Court to approve and appoint a substitute trustee.

(B) Unless the United States otherwise consents in writing, the divestitures by the trustee shall include all of the Radio Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the divestiture will achieve the purposes of this Final Judgment and that the Radio Assets can and will be used by the Acquirer or Acquirers as part of one or more viable, ongoing commercial radio broadcasting businesses. Divestiture of the Radio Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Radio Assets will remain viable and that the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures pursuant to this Final Judgment:

(i) shall be made to an Acquirer or Acquirers that, in the United States' sole judgment, has or have the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the commercial radio broadcasting business in the Divestiture Cities; and

(ii) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer or Acquirers and Defendants gives Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to

compete effectively.

(C) Only the trustee shall have the right to sell the Radio Assets. The trustee shall have the power and authority to accomplish the divestitures to an Acquirer or Acquirers acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV and V of this proposed Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section IV (E) of this proposed Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestitures.

(D) Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section V.

(E) The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, 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 money shall be paid to Defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Radio Assets 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, but timeliness is paramount.

(F) Defendants shall use their best efforts to assist the trustee in accomplishing the

required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Radio Assets, and Defendants shall develop financial and other information relevant to the Radio Assets as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

(G) After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. 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 Radio Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Radio Assets.

(H) If the trustee has not accomplished the divestiture ordered under this Final Judgment within four (4) 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 divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed three (3) months. To the extent the report contains information that the trustee deems confidential, the report shall not be filed in the public

docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

V. Notice of Proposed Divestiture

(A) Within two (2) business days following execution of a definitive divestiture agreement, the trustee shall notify the United States of any proposed divestiture required by Section IV of this Final Judgment. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Radio Assets, together with full details of the same.

(B) Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer(s), any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the trustee shall furnish to the United States any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

(C) Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written

notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section IV(D) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV shall not be consummated. Upon objection by Defendants under Section IV(D), a divestiture proposed under Section IV shall not be consummated unless approved by the Court.

VI. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV of this Final Judgment.

VII. Preservation of Assets

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Preservation of Assets Stipulation and Order entered by this Court and cease use of the Radio Assets during the period that the trustee manages the Radio Assets. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

VIII. Affidavits

(A) Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Section IV, Defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Section IV of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, 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 Radio 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 Defendants have taken to solicit buyers for the Radio Assets and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Provided that the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including any limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

(B) Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

(C) Defendants shall keep all records of all efforts made to preserve the Radio Assets until one (1) year after the respective divestitures of WCAT, WWKL and WRSR have been completed.

IX. Compliance Inspection

(A) For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States, including consultants and other persons retained by the United States, shall, upon written request

of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(i) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(ii) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

(B) Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating 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 shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States 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 Defendants to the United States, 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)(1)(G) of the Federal

Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

X. No Reacquisition

Defendants shall not reacquire any part of the Radio Assets during the term of this Final Judgment.

XI. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XII. Expiration of Final Judgment

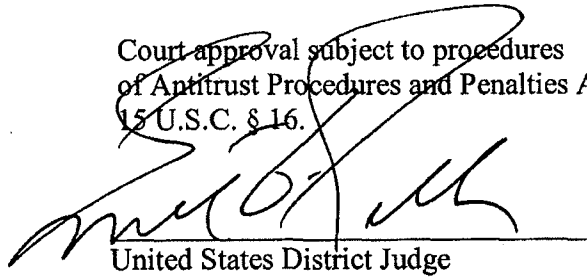
Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIII. Public Interest Determination

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to those comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: 11/29/11

Court approval subject to procedures
of Antitrust Procedures and Penalties Act,
15 U.S.C. § 16.



United States District Judge