

**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.: 1: 11-cv-01619 EGS  
JUDGE: EMMET G. SULLIVAN

**PLAINTIFF UNITED STATES' MOTION AND  
MEMORANDUM IN SUPPORT OF ENTRY OF FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA” or “Tunney Act”), plaintiff United States moves for entry of the proposed Final Judgment filed in this civil antitrust case. The proposed Final Judgment (which is attached) may be entered at this time without further hearing if the Court determines that entry is in the public interest. The defendants do not object to entry of the proposed Final Judgment without a hearing. The Competitive Impact Statement (“CIS”), filed by plaintiff United States in the above-captioned matter, on September 8, 2011, explains why entry of the proposed Final Judgment is in the public interest. Plaintiff United States is filing simultaneously with this motion 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 periods have expired.

**MEMORANDUM**

**I. Background**

On March 10, 2011, Cumulus Media Inc.'s ("Cumulus") agreed to acquire Citadel Broadcasting Corporation ("Citadel"). Plaintiff United States filed a civil antitrust Complaint on September 8, 2011, seeking to enjoin the proposed acquisition. As explained more fully in the Complaint and CIS, the likely effect of this acquisition would be to lessen competition substantially for the sale of radio advertising time in two Metropolitan Statistical Areas ("MSAs"): Flint, Michigan and Harrisburg, Pennsylvania, eliminate head-to-head competition between Cumulus and Citadel in the Flint and Harrisburg MSAs, and result in increased prices and reduced quality of service for radio advertisers in those MSAs, all in violation of Section 7 of the Clayton Act.

At the same time the Complaint was filed, plaintiff also filed a Preservation of Assets Stipulation and Order ("Stipulation") and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, defendants are required to divest three broadcast radio stations – WRSR (FM) licensed to Owosso, Michigan and owned by Cumulus; WCAT-FM licensed to Carlisle, Pennsylvania and owned by Citadel; and the assets used in the operation of WWKL (FM) licensed to Palmyra, Pennsylvania and owned by Cumulus (other than the station intellectual property), and the station intellectual property used in the operation of WTPA (FM) licensed to Mechanicsburg, Pennsylvania and owned by Cumulus (collectively the "Divestiture Assets"). Under the terms of the Stipulation, defendants will take certain steps to ensure that, during the pendency of the ordered divestitures, the Divestiture Assets are preserved and operated as

competitively independent, economically viable ongoing businesses without influence by defendants.

Plaintiffs and 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. Defendants have also stipulated that they will comply with the terms of the Stipulation and the proposed Final Judgment from the date of signing of the Stipulation, pending entry of the proposed Final Judgment by the Court and the required divestitures. Should the Court decline to enter the proposed Final Judgment, defendants have also committed to continue to abide by its requirements and those of the Stipulation until the expiration of time for appeal.

## **II. Compliance with the APPA**

The APPA requires a sixty-day period for the submission of public comments on a proposed Final Judgment. *See* 15 U.S.C. § 16(b). In compliance with the APPA, plaintiff United States filed the CIS in this Court on September 8, 2011; published the proposed Final Judgment and CIS in the *Federal Register* on September 14, 2011, *see* 76 Fed. Reg. 56,797 (2011); and published a summary of the terms of the proposed Final Judgment in the *Washington Post* for seven days beginning on September 12, 2011 through September 16, 2011, and on September 19 and 20, 2011. The 60-day period for public comments ended on November 19, 2011. Plaintiff United States received no comments. The Certificate of Compliance filed simultaneously with this Motion recites that all the requirements of the APPA have now been satisfied. It is therefore 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.” *See* 15 U.S.C. § 16(e). In making that determination, the Court shall consider:

- A. the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
- B. the impact of entry of such judgment upon competition in the relevant market or markets, 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 CIS filed on September 8, 2011, plaintiff United States has explained the meaning and proper application of the public interest standard under the APPA and now

incorporates those statements herein by reference. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law. The proposed Final Judgment is within the range of settlements consistent with the public interest.

#### **IV. Conclusion**

For the reasons set forth in this Motion and the CIS, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. Plaintiff United States respectfully requests that the proposed Final Judgment be entered as soon as possible.

Dated: November 28, 2011

Respectfully submitted,

/s/ Mark A. Merva

Mark A. Merva  
Trial Attorney  
Litigation III Section  
Antitrust Division  
U.S. Department of Justice  
450 Fifth Street, N.W., 4<sup>th</sup> Floor  
Washington, DC 20530  
(202) 616-1398

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**CERTIFICATE OF SERVICE**

I, Mark A. Merva, of the Antitrust Division of the United States Department of Justice, do hereby certify that true copies of the foregoing Plaintiff United States' Motion and Memorandum in Support of Entry of Final Judgment were served by electronic mail this 28th day of November, 2011, to the following:

Tom D. Smith  
Jones Day  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001-2113  
Telephone: (202) 879-3971  
*Counsel for Cumulus Media Inc.*

Alan R. Kusintiz  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
Tel: (212) 310-8000  
*Counsel for Citadel Broadcasting Corporation.*

          /s/ Mark A. Merva            
Mark A. Merva

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