

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.:  
JUDGE:  
DATE FILED:  
DESCRIPTION:

**PRESERVATION OF ASSETS STIPULATION AND ORDER**

The undersigned parties hereby stipulate and agree, subject to approval and entry by the Court, that:

**I. DEFINITIONS**

As used in this Preservation of Assets Stipulation and Order:

(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.

## **II. OBJECTIVES**

The proposed Final Judgment filed in this case is meant to ensure Defendants' prompt divestiture of the Radio Assets for the purpose of maintaining competition in radio broadcasting markets in the Divestiture Cities in order to remedy the anticompetitive effects that the United States alleges would otherwise result from Cumulus' acquisition of Citadel. This Preservation of Assets Stipulation and Order ensures that competition is maintained during the pendency of the ordered divestitures, and that, when the Radio Assets are placed in a trust, the Radio Assets remain independent, economically viable, competitive, and ongoing business concerns, and that competition is maintained during the pendency of the ordered divestitures.

### **III. JURISDICTION AND VENUE**

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto. Venue of this action is proper in the United States District Court for the District of Columbia.

### **IV. COMPLIANCE WITH AND ENTRY OF PROPOSED FINAL JUDGMENT**

A. The parties stipulate that a proposed Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (the "APPA"), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA. The publication shall be arranged no later than five (5) calendar days after Defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notice was published.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the proposed Final Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Preservation of Assets Stipulation and Order by the parties,

comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Preservation of Assets Stipulation and Order.

D. This Preservation of Assets Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Preservation of Assets Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Preservation of Assets Stipulation and Order, and the making of this Preservation of Assets Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that Defendants will later raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

## **V. MANAGEMENT TRUSTEE**

A. On or before the closing of Cumulus' acquisition of Citadel, the United States, having consulted with the Federal Communications Commission ("FCC"), will nominate a

Management Trustee in this case to serve as manager of the Radio Assets until the Radio Assets are sold to one or more Acquirers. Defendants have no objection to the immediate appointment of the Management Trustee by this Court. It is contemplated that the same individual may be appointed to act as both the Management Trustee pursuant to this provision and the trustee appointed pursuant to Section IV of the proposed Final Judgment upon this Court's approval of the proposed Final Judgment.

B. On or before the closing of Cumulus' acquisition of Citadel, Defendants shall enter into one or more agreements with the Management Trustee with respect to WCAT, WRSR, and WWKL, subject to the approval of the United States, in its sole discretion, that will grant the rights, powers, and authorities necessary to permit the Management Trustee to perform the duties and responsibilities of the Management Trustee pursuant to this Stipulation with respect to WCAT, WRSR, and WWKL.

C. Simultaneous with the closing of its acquisition of Citadel, Cumulus shall (i) file or cause to be filed applications with the FCC seeking its consent to the assignment of the Radio Assets to the Management Trustee and (ii) execute or cause to be executed one or more Time Brokerage Agreements (collectively, the "TBA"), subject to the approval of the United States, with the Management Trustee that would enable the Management Trustee to operate WCAT, WRSR, and WWKL pending consummation of the aforementioned assignments. Cumulus shall use its best efforts to obtain FCC consent to the applications at the earliest practicable time and shall consummate or cause the consummation of the assignments by entering into a trust agreement with the Management Trustee with respect to the Radio Assets within ten days after the FCC consent becomes effective. On or before the closing of the Management Trustee's acquisition of the Radio Assets, Cumulus shall enter into a trust agreement with Management Trustee with respect to the

Radio Assets, subject to the approval of the United States, in its sole discretion, that will grant the rights, powers, and authorities necessary to permit it to perform the duties and responsibilities of the Management Trustee pursuant to this Stipulation with respect to the Radio Assets.

D. Each of the aforementioned trust agreements and the TBA shall enable the Management Trustee to assume all rights, powers, and authorities necessary to perform the Management Trustee's duties and responsibilities, pursuant to this Stipulation and the proposed Final Judgment and consistent with their purposes. The Management Trustee or any subsequently appointed Management Trustee shall serve at the cost and expense of Defendants, on such terms and conditions as plaintiff United States approves, with a fee arrangement that is reasonable in light of the person's experience and responsibilities.

E. The Management Trustee will have the following powers and responsibilities with respect to the Radio Assets:

- (1) The Management Trustee will have the power to manage the Radio Assets in the ordinary course of business consistent with this Stipulation. Only with the prior written approval of the United States may the Management Trustee make any decision, take any action, or enter any transaction that is outside the ordinary course of business.
- (2) The Management Trustee shall have a duty, consistent with the terms of this Stipulation and the proposed Final Judgment, to monitor the organization of the Radio Assets; manage the Radio Assets in order to maximize their value so as to permit expeditious divestitures in a manner consistent with the proposed Final Judgment, maintain the independence of the Radio Assets from Defendants, control and operate the Radio Assets to ensure that each radio station associated



with the Radio Assets remains an independent, ongoing, economically viable competitor to the other broadcast radio stations owned by Defendants, and assure Defendants' compliance with their obligations pursuant to this Stipulation and the proposed Final Judgment.

- (3) The Management Trustee shall have the authority to retain, at the cost and expense of Defendants, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Management Trustee's duties and responsibilities.
- (4) The Management Trustee and any consultants, accountants, attorneys, and any other persons retained by the Management Trustee, shall have full and complete access to all personnel, books, records, documents, and facilities of the Radio Assets or to any other relevant information as the Management Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the Radio Assets. Defendants shall develop such financial or other information as the Management Trustee may reasonably request and shall cooperate with the Management Trustee. Defendants shall take no action to interfere with or impede the Management Trustee's ability to monitor Defendants' compliance with this Stipulation and the proposed Final Judgment or otherwise to perform the Management Trustee's duties and responsibilities consistent with the terms of this Stipulation and the proposed Final Judgment.

(5) The Management Trustee will operate each radio station associated with the Radio Assets with sufficient employees to maintain their viability and competitiveness. To the extent that any employee whose principal responsibilities relate to the Radio Assets leaves or has left a radio station associated with the Radio Assets prior to divestiture of the Radio Assets, the Management Trustee may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.

(6) Thirty (30) days after the Management Trustee has been appointed by the Court, and thereafter on the last business day of each month until the Radio Assets are transferred to the trustee pursuant to the proposed Final Judgment, the Management Trustee shall report in writing to the United States concerning the efforts to accomplish the purposes of this Stipulation and the proposed Final Judgment. Included within that report shall be the Management Trustee's assessment of the extent to which the Radio Assets are meeting (or exceeding) their projected goals as those are reflected in existing or revised operating plans, budgets, projections or any other regularly prepared financial statements and the extent to which Defendants are fulfilling their responsibilities under this Stipulation and the proposed Final Judgment.

F. The following limitations apply to the Management Trustee:

(1) the Management Trustee shall not be involved, in any way, in the operations or other businesses of Defendants;

- (2) the Management Trustee shall have no financial interests affected by Defendants' revenues, profits or profit margins, except that the Management Trustee's compensation for managing the Radio Assets may include economic incentives dependent on the financial performance of the Radio Assets provided that those incentives are consistent with the objectives of this Stipulation and the proposed Final Judgment and are approved by plaintiff United States; and
- (3) the Management Trustee shall be prohibited from performing any further work for Defendants for one year after the close of the divestiture transactions.

G. Defendants and the Management Trustee shall take all reasonable efforts to preserve the confidentiality of information that is material to the operation of either the Radio Assets or Defendants' businesses. Defendants' personnel supplying services to the Radio Assets pursuant to this Stipulation must retain and maintain the confidentiality of any and all confidential information material to the Radio Assets. Except as permitted by this Stipulation and the proposed Final Judgment, such persons shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing the confidential information of the Radio Assets to or with any person whose employment involves any of Defendants' businesses, except as necessary to fulfill the purposes of this Stipulation and the proposed Final Judgment.

H. If in the judgment of the Management Trustee, Defendants fail to provide the services listed in Section VI of this Stipulation to the satisfaction of the Management Trustee, upon notification to Defendants and approval by the United States, the Management Trustee may engage third parties unaffiliated with the Defendants to provide those services for the Radio Assets, at the cost and expense of Defendants, provided that Defendants may have reasonable

access to necessary information to satisfy themselves that after the services have been provided, the Radio Assets are in compliance with all applicable laws, rules, and regulations.

I. At the option of the Management Trustee, Defendants may also provide other products and services on an arm's-length basis, provided that the Management Trustee is not obligated to obtain any other product or service from Defendants and may acquire any such products or services from third parties unaffiliated with Defendants.

J. If the Management Trustee ceases to act or fails to act diligently and consistently with the purposes of this Stipulation and the proposed Final Judgment, if the Management Trustee proposed by the United States is not approved by this Court, resigns, or if for any other reason the Management Trustee ceases to serve in the capacity as Management Trustee, the United States, after consultation with the FCC, may select a substitute Management Trustee. In this event, the United States will identify to Defendants the individual or entity it proposes to select as Management Trustee. Defendants must make any objection to this selection within five business days after the United States notifies Defendants of the substitute Management Trustee's selection. The United States will move the Court to approve and appoint a substitute Management Trustee. Within five business days of such appointment, Defendants shall enter into a trust agreement with the substitute Management Trustee subject to the approval of the United States in its sole discretion as described in Section V.B of this Stipulation.

## VI. PRESERVATION OF ASSETS

Until the divestitures required by the proposed Final Judgment have been accomplished, except as otherwise approved in advance in writing by the United States:

A. Defendants and the Management Trustee shall preserve, maintain, and operate the radio stations associated with the Radio Assets as independent, ongoing, and economically viable competitors, with management, sales, and operation of such assets held entirely separate, distinct, and apart from those of Defendants' other operations. Defendants shall not coordinate the marketing of, or sales by, the radio stations associated with the Radio Assets with their other operations. Within twenty (20) days after the filing of the Preservation of Assets Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Stipulation and Order.

B. The Management Trustee shall take all steps necessary to ensure that (1) the Radio Assets will be maintained and operated as independent, economically viable, and active competitors in the broadcast radio business in the Divestiture Cities; (2) the management of the Radio Assets will be conducted by designated personnel and will not be influenced by Defendants; and (3) the books, records, competitively sensitive sales, marketing, promotion and pricing information, and decision-making concerning research, development, production, distribution, marketing, promotion or sales of the Radio Assets will be kept separate and apart from Defendants' other operations.

C. The Management Trustee shall use all reasonable efforts to maintain the research, development, sales, revenues, marketing, promotion, advertising, and distribution of the Radio Assets, and shall maintain at fiscal year 2010 or previously approved levels for fiscal year 2011,

whichever are higher, all research, development, product improvement, promotional, advertising, sales, distribution, marketing and merchandising support for those products. The Management Trustee shall also ensure that all plans and efforts to improve the Radio Assets are continued.

D. Defendants shall provide sufficient working capital and lines and sources of credit as deemed necessary by the Management Trustee to continue to maintain the Radio Assets consistent with this Stipulation.

E. Except (1) as recommended by the Management Trustee and approved by the United States, or (2) as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, Defendants shall not remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Radio Assets outside the ordinary course of business.

F. The Management Trustee, with Defendants' cooperation consistent with this Stipulation and the proposed Final Judgment, shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of each radio station associated with the Radio Assets.

G. Defendants' employees with primary responsibilities that relate exclusively to the research, development, marketing, promotion, production, operation, distribution, and/or sale of the Radio Assets, shall not be transferred or reassigned to other areas within Defendants' business, except for transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy provided, that certain employees who perform services for more than one of Defendants' radio stations in the Divestiture Cities will be available for use by the

Management Trustee in the exercise of the Management Trustee's sole discretion. Defendants shall provide the United States with ten (10) calendar days' notice of any transfer of any employees at any of the radio stations associated with the Radio Assets prior to the Management Trustee's acquisition of the Radio Assets or the commencement of the TBA.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Radio Assets; nor shall Defendants take any action that would influence or interfere with the ability of the Management Trustee or any Divestiture Trustee appointed pursuant to the proposed Final Judgment to operate and manage the Radio Assets or to complete the divestitures pursuant to the proposed Final Judgment to an Acquirer(s) acceptable to the United States.

#### **VII. DURATION OF ASSET PRESERVATION OBLIGATIONS**

Defendants' obligations under this Preservation of Assets Stipulation and Order shall remain in effect until (1) consummation of the divestitures required by the proposed Final Judgment or (2) until further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, Defendants are released from all further obligations under this Preservation of Assets Stipulation and Order.

Dated: September 8, 2011

Respectfully submitted,

**FOR PLAINTIFF  
UNITED STATES OF AMERICA**

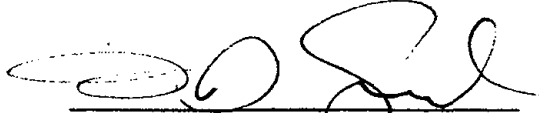


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ORDER

IT IS SO ORDERED by the Court, this \_\_\_\_ day of \_\_\_\_\_, 2011.

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United States District Judge