

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- against -

HICKS, MUSE, TATE & FURST INCORPORATED,
and
CAPSTAR BROADCASTING PARTNERS, INC.,
and
SFX BROADCASTING, INC.,

Defendants.

Hon.

Civil Action No. CV 98 2422

Filed: March 31, 1998

COMPLAINT FOR
INJUNCTIVE
RELIEF AGAINST
COMBINATION
IN VIOLATION
OF SECTION 7
OF THE CLAYTON ACT

The United States of America, acting under the direction of the Attorney General of the United States, brings this action to prevent the proposed acquisition of SFX Broadcasting, Inc. by Capstar Broadcasting Partners, Inc.

I. Nature of the Action

1. Capstar Broadcasting Partners, Inc. ("Capstar") is a large nationwide operator of radio broadcast stations that owns 245 radio stations across the United States. Capstar or its related entity Chancellor Media Corporation (successor in interest to Chancellor Media Company, Inc.) ("Chancellor") owns radio stations located in or around Greenville-Spartanburg, South Carolina; Houston, Texas; Jackson, Mississippi; Pittsburgh, Pennsylvania; and Suffolk County,

New York. On or about August 24, 1997, Capstar agreed to purchase SFX Broadcasting, Inc. ("SFX") for approximately \$2.1 billion.

2. As a result of the proposed transaction, radio station assets will be combined such that Capstar and related entities Chancellor and Hicks, Muse, Tate & Furst Incorporated ("Hicks Muse") would control stations that account for approximately 74 percent of the radio advertising revenue in Greenville, 41 percent in Houston, 49 percent in Jackson, 45 percent in Pittsburgh, and 65 percent in Suffolk.

3. Capstar or Chancellor and SFX each own several radio stations in or around Greenville, Houston, Jackson, Pittsburgh, and Suffolk County ("Suffolk") and compete for the business of local and national companies seeking to advertise in Greenville, Houston, Jackson, Pittsburgh and Suffolk. The acquisition, if consummated, would eliminate price and service competition between these companies and the benefits resulting from this competition, and would result in many advertisers having to pay higher prices and receiving fewer services. Following the acquisition, defendants and Chancellor would own eight radio stations in the Greenville area (6 FMs and 2 AMs), nine radio stations in the Houston area (6 FMs and 3 AMs), six radio stations in the Jackson area (4 FMs and 2 AMS), seven radio stations in the Pittsburgh area (5 FMs and 2 AMs), and six radio stations in the Suffolk area (4 FMs and 2 AMs).

4. Furthermore, defendants or Chancellor would control radio stations in and around Greenville, Houston, Jackson, Pittsburgh and Suffolk that account for a substantial amount of radio advertising. After this acquisition, radio advertisers seeking to reach radio listeners in and around Greenville, Houston, Jackson, Pittsburgh and Suffolk would have inferior alternatives to defendants or Chancellor, resulting in defendants, together with Chancellor, having the ability to raise prices to

these advertisers. Thus, as a result, these acquisitions would give defendants substantial market power in the Greenville, Houston, Jackson, Pittsburgh and Suffolk areas. Neither the remaining radio stations in or around Greenville, Houston, Jackson, Pittsburgh or Suffolk nor any new entry are likely to check defendants' ability to exercise the market power it would obtain through this acquisition. Accordingly, the proposed acquisition is likely to lessen competition substantially in the Greenville, Houston, Jackson, Pittsburgh and Suffolk markets, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Jurisdiction, Venue and Standing

5. This action is filed pursuant to Section 15 of the Clayton Act, as amended, to obtain equitable relief to prevent a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

6. Defendants sell radio advertising, a commercial activity that substantially affects, and is in the flow of, interstate commerce. The Court has jurisdiction over the subject matter of this action and jurisdiction over the parties pursuant to 15 U.S.C. §§ 22 and 25, and 28 U.S.C. §§ 1331 and 1337.

7. Venue in this District is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391.

III. Parties

8. Defendant Capstar is a Delaware corporation headquartered in Austin, Texas. Capstar currently owns and operates 245 radio stations in 60 markets in the United States. In 1997, its revenues were approximately \$190 million. In Greenville, Capstar currently owns WJMZ-FM, WTPT-FM, WESC-FM and WESC-AM. In Jackson, Capstar owned WJMI-FM, WKXI-FM, WOAD-AM and WKXI-AM until a recent sale made in anticipation of this lawsuit. Capstar is wholly owned by Hicks Muse.

9. Defendant Hicks Muse is an investment firm headquartered in Dallas, Texas. Hicks Muse, through investment funds it controls, owns all the stock of Capstar and has a significant ownership and management interest in Chancellor.

10. Chancellor is a Delaware corporation headquartered in Irving, Texas. In 1997, it was the second largest owner of radio stations in the United States and owned 97 radio stations in 22 major U.S. markets, including each of the 12 largest markets. Chancellor revenues in 1997 were approximately \$582.1 million. In Houston, Chancellor owns KLDE-FM, KKBQ-FM, KLOL-FM, KTRH-AM and KKBQ-AM. In Pittsburgh, Chancellor owns WWSW-FM and WWSW-AM. In Suffolk, Chancellor owns WALK-FM and WALK-AM. Chancellor is a Hicks Muse-related company. Hicks Muse owns a significant portion of Chancellor stock and Hicks Muse management and owners influence or control Chancellor competitive behavior to such an extent that Chancellor/Capstar ownership of otherwise competing radio stations would substantially lessen competition.

11. Defendant SFX is a Delaware corporation headquartered in New York, New York. SFX owns and operates approximately 85 radio stations located in 23 markets in the United States. SFX revenues in 1997 were approximately \$ 322 million. In Greenville, SFX owns WSSL-FM, WYMI-FM, WROQ-FM and WGVF-AM. In Houston, SFX owns KKPN-FM, KODA-FM, KKRW-FM and KQUE-AM. In Jackson, SFX owns WMSI-FM, WJDX-FM, WSTZ-FM, WKTF-FM, WZRX-AM and WJDS-AM. WJDX-FM was recently acquired by SFX, in 1996. In

Pittsburgh, SFX owns WDVE-FM, WVTY-FM, WXDX-FM, WJJJ-FM and WTAE-AM. In Suffolk, SFX owns WBAB-FM, WBLI-FM, WHFM-FM and WGBB-AM.

**IV. The Proposed Acquisition Is Likely To Reduce Competition
Substantially in the Greenville, Houston, Jackson, Pittsburgh and Suffolk Markets for Radio
Advertising Time, in Violation of the Clayton Act**

12. *Radio Advertising Time in Greenville is a Relevant Market.* The relevant geographic markets for local and national advertisers that buy time on the Capstar and SFX radio stations in and around Greenville is the Greenville-Spartanburg, South Carolina Metro Survey Area ("MSA"). This is the geographical unit for which Arbitron, a company that surveys radio listeners, furnishes radio stations, advertisers and advertising agencies in Greenville with data to aid in evaluating radio audience size and composition. The Greenville MSA includes four counties: Anderson, Greenville, Pickens and Spartanburg. Local and national advertising that is placed on radio stations serving the Greenville MSA is aimed at reaching listening audiences in the Greenville MSA, and other radio stations do not provide effective access to this audience. Thus, if there were a small but significant non-transitory increase in radio advertising prices within the Greenville MSA, advertisers would not switch enough advertising time purchases to other radio stations to defeat the price increase.

13. *Radio Advertising Time in Houston is a Relevant Market.* The relevant geographic markets for local and national advertisers that buy time on the Chancellor and SFX radio stations in and around Houston is the Houston-Galveston MSA. This is the geographical unit for which Arbitron furnishes radio stations, advertisers and advertising agencies in Houston with data to aid in evaluating radio audience size and composition. The Houston MSA includes eight counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller. Local and

national advertising that is placed on radio stations serving the Houston MSA is aimed at reaching listening audiences in the Houston MSA, and other radio stations do not provide effective access to this audience. Thus, if there were a small but significant non-transitory increase in radio advertising prices within the Houston MSA, advertisers would not switch enough advertising time purchases to other radio stations to defeat the price increase.

14. *Radio Advertising Time in Jackson is a Relevant Market.* The relevant geographic markets for local and national advertisers that buy time on the Capstar and SFX radio stations in and around Jackson is the Jackson, Mississippi MSA. This is the geographical unit for which Arbitron furnishes radio stations, advertisers and advertising agencies in Jackson with data to aid in evaluating radio audience size and composition. The Jackson MSA includes three counties: Hinds, Madison and Rankin. Local and national advertising that is placed on radio stations serving the Jackson MSA is aimed at reaching listening audiences in the Jackson MSA, and other radio stations do not provide effective access to this audience. Thus, if there were a small but significant non-transitory increase in radio advertising prices within the Jackson MSA, advertisers would not switch enough advertising time purchases to other radio stations to defeat the price increase.

15. *Radio Advertising Time in Pittsburgh is a Relevant Market.* The relevant geographic markets for local and national advertisers that buy time on the Chancellor and SFX radio stations in and around Pittsburgh is the Pittsburgh, Pennsylvania MSA. This is the geographical unit for which Arbitron furnishes radio stations, advertisers and advertising agencies in Pittsburgh with data to aid in evaluating radio audience size and composition. The Pittsburgh MSA includes six counties: Allegheny, Beaver, Butler, Fayette, Washington and Westmoreland. Local and national advertising that is placed on radio stations serving the Pittsburgh MSA is aimed

at reaching listening audiences in the Pittsburgh MSA, and other radio stations do not provide effective access to this audience. Thus, if there were a small but significant non-transitory increase in radio advertising prices within the Pittsburgh MSA, advertisers would not switch enough advertising time purchases to other radio stations to defeat the price increase.

16. *Radio Advertising Time in Suffolk is a Relevant Market.* The relevant geographic markets for local and national advertisers that buy time on the Chancellor and SFX radio stations in Suffolk is Suffolk County. Local and national advertising that is placed on radio stations serving Suffolk is aimed at reaching listening audiences in Suffolk, and other radio stations do not provide effective access to this audience. Thus, if there were a small but significant non-transitory increase in radio advertising prices within Suffolk, advertisers would not switch enough advertising time purchases to other radio stations to defeat the price increase.

17. Radio advertising time is sold by radio stations directly or through their national representatives. Radio stations in the Greenville, Houston, Jackson, Pittsburgh and Suffolk markets generate almost all of their revenues from the sale of advertising time to local and national advertisers.

18. Many local and national advertisers purchase radio advertising time in the Greenville, Houston, Jackson, Pittsburgh and Suffolk markets because they find such advertising preferable to advertising in other media to meet their specific needs. Reasons for this include the fact that radio advertising time 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). Radio may also reach certain target audiences that cannot be reached as effectively through other media. Additionally, radio stations render certain services or promotional

opportunities to advertisers that they cannot exploit as effectively using other media. For these reasons, many local and national advertisers who purchase radio advertising time view radio either as a necessary advertising medium for them, or as a necessary advertising complement to other media.

19. 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, the existence of such advertisers would not prevent all radio stations owned or controlled by defendants and Chancellor in the Greenville, Houston, Jackson, Pittsburgh and Suffolk markets from profitably raising their prices a small but significant amount. At a minimum, stations could profitably raise prices to those advertisers who view radio as a necessary advertising medium for them, or as a necessary advertising complement to other media. Radio stations negotiate prices individually with advertisers; consequently, radio stations can charge different advertisers different prices. Radio stations generally can identify advertisers with strong radio preferences. Because of this ability to price discriminate among customers, radio stations may charge higher prices to advertisers that view radio as particularly effective for their needs, while maintaining lower prices for other advertisers.

20. The provision of advertising time on radio stations in the Greenville MSA is a relevant market (*i.e.*, a line of commerce and a section of the country) within the meaning of Section 7 of the Clayton Act.

21. The provision of advertising time on radio stations in the Houston MSA is a relevant market (*i.e.*, a line of commerce and a section of the country) within the meaning of Section 7 of the Clayton Act.

22. The provision of advertising time on radio stations in the Jackson MSA is a relevant market (*i.e.*, a line of commerce and a section of the country) within the meaning of Section 7 of the Clayton Act.

23. The provision of advertising time on radio stations in the Pittsburgh MSA is a relevant market (*i.e.*, a line of commerce and a section of the country) within the meaning of Section 7 of the Clayton Act.

24. The provision of advertising time on radio stations in Suffolk is a relevant market (*i.e.*, a line of commerce and a section of the country) within the meaning of Section 7 of the Clayton Act.

25. *The Transaction.* Capstar has agreed to acquire SFX for approximately \$2.1 billion.

26. *Market Structure Post-Acquisition.* Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), explained in Appendix A annexed hereto, the transaction would substantially increase concentration in the Greenville, Houston, Pittsburgh and Suffolk radio advertising markets, and would maintain the increase in concentration caused by a prior SFX acquisition in Jackson.

26(a). After the proposed transaction, defendants' share of the Greenville market would be 74 percent measured by radio advertising revenues. The acquisition would yield a post-merger HHI of 5836, representing an increase of 2571. Post-merger, defendants would own and operate WSSL-FM and WESC-FM, the only two successful country stations in the market. Accordingly, advertisers who need to target country listeners would not be able to buy around defendants' stations.

26(b). In Houston, after the acquisition, defendants and Chancellor together would have a 41 percent market share, measured by radio advertising revenues. The acquisition would yield a post-merger HHI of 2230, representing an increase of 765. The ownership of some Houston stations by Chancellor and others by defendants would substantially lessen competition because of the relationship between Chancellor and defendants Capstar and Hicks Muse.

26(c). In Jackson, after the acquisition, defendants' share of the market would be 49 percent, measured by radio advertising revenues. The acquisition would yield a post-merger HHI of 3320; it would have been significantly higher, if certain stations had not already been sold by defendant Capstar in anticipation of this lawsuit. Furthermore, the prior acquisition of WJDX-FM by defendant SFX previously had increased the HHI by 1080. That acquisition substantially lessened competition and resulted in a market in which defendants would own three out of the four top-rated stations.

26(d). In Pittsburgh, after the acquisition, defendants and Chancellor together would have a 45 percent market share, measured by radio advertising revenues. The acquisition would yield a post-merger HHI of 3162, representing an increase of 626. The ownership of some Pittsburgh stations by Chancellor and others by defendants would substantially lessen competition because of the relationship between Chancellor and defendants Capstar and Hicks Muse.

26(e). In Suffolk, Chancellor and SFX are the number one and number two radio companies. After the proposed acquisition, defendants and Chancellor would have over 65 percent of the radio advertising market in Suffolk. The ownership of some Suffolk stations by Chancellor and others by defendants would substantially lessen competition because of the relationship between Chancellor and defendants Capstar and Hicks Muse. A previous attempt to combine the

Chancellor and SFX stations in Suffolk was the subject of an earlier lawsuit, United States v. Chancellor Media Co. and SFX Broadcasting, Inc., CV 97-6497. A proposed final judgment in that matter was filed today, pursuant to which that transaction will be abandoned.

27. *Harm to Competition.* Advertisers who use radio to reach their target audience select radio stations upon which to advertise based upon a number of factors, including, inter alia, the geographic reach of a station's signal, the size of a station's audience and the characteristics of its audience.

28. Many advertisers seek to reach a large percentage of their target audience by selecting those stations whose audience has a high correlation with their target audience. If a number of stations efficiently reach that target audience, advertisers benefit from competition among such stations to offer better prices or services. Today, Capstar and Chancellor and SFX stations in Greenville, Houston, Jackson, Pittsburgh and Suffolk compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in these markets, they are good substitutes for each other based on their specific audience characteristics.

29. During individual price negotiations between advertisers and radio stations, advertisers provide the stations with information about their advertising needs, including their target audience and the desired frequency and timing of ads. Radio stations thus have the ability to charge advertisers differing rates based in part on the number and attractiveness of competitive radio stations that can meet a particular advertiser's specific target needs.

30. During individualized price negotiations, advertisers that must reach certain listeners can help ensure competitive prices by "playing off" SFX stations against Capstar and Chancellor stations. Capstar's acquisition of SFX will end this competition. In the absence of the SFX

acquisition, advertisers seeking to reach listeners in the overlap markets could efficiently reach their audiences by using non-Capstar or non-Chancellor stations. After the acquisition of SFX, such advertisers will be unable to reach these listeners with equivalent efficiency without using Capstar or Chancellor stations. Because advertisers seeking to reach these audiences would have inferior alternatives to the merged entity as a result of the acquisition, the acquisition would give defendants the ability to raise prices and reduce the quality of its service to some of its advertisers on its stations in the Greenville, Houston, Jackson, Pittsburgh and Suffolk markets.

31. The transaction would have the following effects, among others:

- a. competition in the sale of advertising time on radio broadcast stations in Greenville, Houston, Jackson, Pittsburgh and Suffolk would be substantially lessened;
- b. actual competition between Capstar/Chancellor and SFX radio stations in the sale of radio advertising time serving Greenville, Houston, Pittsburgh and Suffolk would be eliminated; and
- c. the prices for advertising on radio stations serving Greenville, Houston, Pittsburgh and Suffolk would likely increase, and services would likely decline.

32. *Lack of Any Likely Entry To Deter Capstar's Ability To Harm Competition.* If defendants raised prices or reduced services to those advertisers who buy advertising time on defendants' or Chancellor's stations in Greenville, Houston, Jackson, Pittsburgh and Suffolk because of their strength in delivering access to certain audiences, non-Capstar or non-Chancellor radio stations in Greenville, Houston, Jackson, Pittsburgh and Suffolk would not be induced to change their formats to attract those audiences in sufficiently large numbers to defeat a price increase. 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 Capstar because they would likely lose their existing audiences. Even if less successful stations did change format, they would still be unlikely to attract enough listeners to provide suitable alternatives to the merged entity.

33. New entry into the Greenville, Houston, Jackson, Pittsburgh or Suffolk radio advertising markets is highly unlikely in response to a price increase by the merged parties. Also, stations located in adjacent communities cannot boost their power so as to enter the Greenville, Houston, Jackson, Pittsburgh and Suffolk markets without interfering with other stations on the same or similar frequencies, a violation of Federal Communications Commission regulations.

34. The effect of the proposed transaction would be to lessen competition substantially in interstate trade and commerce, in violation of Section 7 of the Clayton Act.

V. Requested Relief

35. The plaintiff requests: (a) adjudication that the proposed acquisition would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed transaction; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

Dated: March 31, 1998

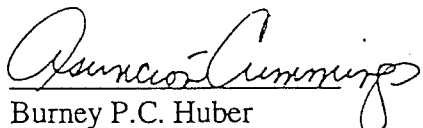
Joel I. Klein
Assistant Attorney General

Constance K. Robinson
Director of Operations

Donna E. Patterson
Deputy Assistant Attorney General

Reid B. Horwitz
Assistant Chief, Merger Task Force

Charles E. Biggio
Senior Counsel to the
Assistant Attorney General



Burney P.C. Huber
Asuncion Cummings (AC-1850)
Attorneys, Merger Task Force
U.S. Department of Justice
Antitrust Division
1401 H Street, NW, Suite 4000
Washington, D.C. 20530
(202) 307-0001

APPENDIX A

HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

"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 Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* § 1.51.