

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

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Richard A. [unclear]
District Court

UNITED STATES OF AMERICA.

Plaintiff.

Civil Action No.: C-96-64

v.

Entered: January 10, 1997

TEXAS TELEVISION, INC., GULF
COAST BROADCASTING COMPANY,
and K-SIX TELEVISION, INC.,

Defendants.

FINAL JUDGMENT

WHEREAS Plaintiff, United States of America, filed its complaint on February 6, 1996 and Plaintiff and Defendants, Texas Television, Inc., Gulf Coast Broadcasting Company, and K-Six Television, Inc., 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 an admission by any party with respect to any such issue;

AND WHEREAS Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby,

ORDERED, ADJUDGED AND DECREED as follows:

I.

JURISDICTION AND VENUE

The Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The complaint states a claim upon which relief may be granted against Defendants under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II.

DEFINITIONS

As used in this Final Judgment:

- A. "Affiliated" means under common ownership or control.
- B. "Multichannel video programming distributor" means a cable operator, a multichannel multipoint distribution service or any other person that sells multiple channels of video programming to subscribers or customers.
- C. "Retransmission consent" means any authorization given by a television broadcast station to a multichannel video programming distributor to distribute that station's signal.
- D. "Retransmission consent negotiation" means any communication between a television broadcast station and a multichannel video programming distributor relating to the compensation or consideration to be given by the distributor in exchange for retransmission consent.

E. "Television broadcaster" means:

1. each Defendant and each of its officers, directors, agents, employees, subsidiaries, successors and assigns;
2. each person that operates any television broadcast station; and
3. each person that possesses an equity interest of at least five percent (5%) in any television broadcast station.

F. "Television broadcast station" means any broadcast station, as defined in 47 U.S.C. § 153(dd), that broadcasts television signals.

III.

APPLICABILITY

This Final Judgment applies to each Defendant and to each of their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them which shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

PROHIBITED CONDUCT

A. Each Defendant is hereby enjoined and restrained from directly or indirectly entering into, adhering to, maintaining, soliciting or knowingly performing any act in furtherance of any contract, agreement, understanding or plan with any television broadcaster

not affiliated with that Defendant relating to retransmission consent or retransmission consent negotiations.

B. Each Defendant is further enjoined and restrained from directly or indirectly communicating to any television broadcaster not affiliated with that Defendant:

1. Any information relating to retransmission consent or retransmission consent negotiations, including, but not limited to, the negotiating strategy of any television broadcaster, or the type or value of any consideration sought by any television broadcaster; or

2. Any information relating to the negotiating strategy of any television broadcaster, or to the type or value of any consideration sought by any television broadcaster relating to any actual or proposed transaction with any multichannel video programming distributor.

C. Nothing contained in Section IV.B. of this Final Judgment shall prohibit any Defendant, in response to any question to it from any news organization related to retransmission consent or to any actual or proposed transaction with any multichannel video programming distributor, from providing to that news organization a response that does not disclose that Defendant's negotiating strategy, the content or progress of negotiations, any plan related to retransmission consent, or the type or value of any consideration being sought.

V.

NOTIFICATION PROVISIONS

Each Defendant is ordered and directed:

A. To send a written notice, in the form attached as Appendix A to this Final Judgment, and a copy of this Final Judgment, within sixty (60) days of the entry of this Final Judgment, to each multichannel video programming distributor that distributes the television signal of any of Defendant's television broadcast stations transmitting in Corpus Christi:

B. To send a written notice, in the form attached as Appendix A to this Final Judgment, and a copy of this Final Judgment, to each multichannel video programming distributor, that contacts the Defendant within ten (10) years of entry of this Final Judgment to request retransmission consent for the television signal of any of Defendant's television broadcast stations transmitting in Corpus Christi, and which was not given such notice pursuant to Section V.A. Such notice shall be sent within seven (7) days after such multichannel video programming distributor first contacts the Defendant about carrying the Defendant's signal.

VI.

COMPLIANCE PROGRAM

Each Defendant is ordered to establish and maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for implementing the antitrust compliance program and achieving full compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, be responsible for the following:

A. Furnishing a copy of this Final Judgment within thirty (30) days of entry of the Final Judgment to each of that Defendant's officers and directors and each of its employees, salespersons, sales representatives, or agents whose duties relate to retransmission consent for any of Defendant's television broadcast stations transmitting in Corpus Christi;

B. Distributing in a timely manner a copy of this Final Judgment to each person who succeeds to a position described in Section VI.A.; and

C. Obtaining from each person designated in Sections VI.A. or B. a signed certification that he or she has read, understands and agrees to abide by the terms of this Final Judgment and is not aware of any violation of the Final Judgment that has not already been reported to the Antitrust Compliance Officer and understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court.

VII.

CERTIFICATION

A. Within 75 days of the entry of this Final Judgment, Defendant shall certify to Plaintiff whether the Defendant has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with Section VI.A. above.

B. For ten years after the entry of this Final Judgment, on or before its anniversary date, the Defendant shall file with the Plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections V and VI.

C. If Defendant's Antitrust Compliance Officer learns of any possible violation of any of the terms and conditions contained in this Final Judgment, Defendant shall forthwith take

appropriate action to terminate or modify the activity so as to comply with this Final Judgment. Any such action shall be reported by Defendant in the respective annual statement required by paragraph VII.B. above.

VIII.

PLAINTIFF ACCESS

A. For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of Plaintiff shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a Defendant, be permitted, subject to any legally recognized privilege:

1. Access during that Defendant's office hours to inspect and copy all records and documents in the possession or under the control of that Defendant, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. To interview that Defendant's officers, employees and agents, who may have counsel present, regarding any such matters. The interviews shall be subject to the Defendant's reasonable convenience.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to any Defendant at its principal office, that Defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested, subject to any legally recognized privilege.

C. No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly 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, 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 a Defendant to Plaintiff, that Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and that Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by Plaintiff to that Defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding), so that Defendant shall have an opportunity to apply to this Court for protection pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure.

IX.

DURATION OF FINAL JUDGMENT

This final judgment will expire on the tenth anniversary of its date of entry.

X.

CONSTRUCTION, ENFORCEMENT, MODIFICATION AND COMPLIANCE


Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

XI.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: 1-10-97


JANIS GRAHAM JACK
United States District Judge

APPENDIX A

Dear Distributor:

In February 1996, the Antitrust Division of the United States Department of Justice filed a civil suit that alleged that KIII, KRIS and KZTV violated the antitrust laws of the United States by conspiring with the intent and effect of raising the price of retransmission consent rights in the Corpus Christi region. Our station denies these allegations. Without admitting any violation of the law and without being subject to any monetary penalties, our station has agreed to the entry of a civil Final Judgment that prohibits us from engaging in certain practices for a period of ten (10) years.

I have enclosed a copy of the Final Judgment for your information. Retransmission consent was authorized by Congress in the Cable Television Consumer Protection and Competition Act of 1992. Under the terms of the enclosed Final Judgment, our station may not enter into any agreement or understanding with any other television broadcast station relating to retransmission consent or retransmission consent negotiations. The Final Judgment also forbids our station from communicating certain related information to any other station.

If you learn that our station or its agents have violated the terms of the Final Judgment at any time after the its effective date, you should provide this information to our station in writing.

Should you have any questions concerning this letter, please feel free to contact me.

Sincerely,

[GENERAL MANAGER OF STATION]