

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff

v.

WESTINGHOUSE ELECTRIC
CORPORATION and
INFINITY BROADCASTING
CORPORATION,

Defendants.

:
:
: No. _____

:
: FINAL JUDGMENT

96 2563

: Entered: March 10, 1997

FILED

MAR 10 1997

NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

WHEREAS, plaintiff, the United States of America, having filed its Complaint herein on November 12, 1996, and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

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

AND WHEREAS, the purpose of this Final Judgment is prompt and certain divestiture of certain assets to assure that competition is not substantially lessened;

AND WHEREAS, plaintiff 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 plaintiff that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

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

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants Westinghouse and Infinity, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. DEFINITIONS

As used in this Final Judgment:

A. "Westinghouse" means defendant Westinghouse Electric Corporation, a Pennsylvania corporation with its headquarters in Pittsburgh, Pennsylvania, and

includes its successors and assigns, its subsidiaries (including CBS Inc.), and directors, officers, managers, agents and employees acting for or on behalf of Westinghouse.

B. "Infinity" means defendant Infinity Broadcasting Corporation, a Delaware corporation with its headquarters in New York, New York, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents and employees acting for or on behalf of Infinity.

C. "WMMR-FM Assets" means all of the assets, tangible or intangible, used in the operation of the WMMR 93.3 FM radio station in Philadelphia, Pennsylvania, including but not limited to: all real property (owned and leased) used in the operation of that station; all broadcast equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies and other tangible property used in the operation of that station; all licenses, permits and authorizations and applications therefor issued by the Federal Communications Commission ("FCC") and other governmental agencies relating to that station; all contracts, agreements, leases and commitments of Westinghouse pertaining to that station and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to that station; and all logs and other records maintained by Westinghouse or that station in connection with its business. The WMMR-FM Assets do not include any

trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials created by Westinghouse, or its subsidiary CBS Inc., and used by other radio stations, not solely by WMMR-FM. For all assets used jointly by WMMR and KYW-AM or KYW TV prior to the divestiture required by this Final Judgment, defendants shall propose to the plaintiff, within 90 days of the filing of this Final Judgment, a plan for dividing such assets in a way that, in plaintiff's sole discretion, does not impair WMMR's ability to attract potential acquirers. Upon approval of the plan by plaintiff, the term "WMMR-FM Assets" shall include only those assets allocated under the plan to WMMR.

D. "WBOS-FM Assets" means all of the assets, tangible or intangible, used in the operation of the WBOS 92.9 FM radio station in Boston, Massachusetts, including but not limited to: all real property (owned and leased) used in the operation of that station; all broadcast equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies and other tangible property used in the operation of that station; all licenses, permits and authorizations and applications therefor issued by the Federal Communications Commission ("FCC") and other governmental agencies relating to that station; all contracts, agreements, leases and commitments of Infinity pertaining to that station and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to that station; and all

logs and other records maintained by Infinity or that station in connection with its business. For all assets used jointly by WBOS and WOAZ-FM prior to the divestiture required by this Final Judgment, defendants shall propose to plaintiff, within 90 days of the filing of this Final Judgment, a plan for dividing such assets in a way that, in the sole discretion of plaintiff, does not impair WBOS's ability to attract potential acquirers. Upon approval of the plan by plaintiff, the term "WBOS-FM Assets" shall include only those assets allocated under the plan to WBOS.

E. "Philadelphia Area" means the Philadelphia, Pennsylvania Metro Survey Area as identified by The Arbitron Radio Market Report for Philadelphia (Summer 1996), which is made up of the following eight counties: Bucks, Montgomery, Chester, Philadelphia, Delaware, Burlington, Camden and Gloucester.

F. "Boston Area" means the Boston, Massachusetts Metro Survey Area as identified by The Arbitron Radio Market Report for Boston (Summer 1996), which is made up of the following five counties: Essex, Middlesex, Suffolk, Norfolk and Plymouth.

G. "Westinghouse Radio Station" means any radio station owned by Westinghouse or Infinity and licensed to a community in either the Philadelphia Area or the Boston Area, other than WMMR-FM in the Philadelphia Area and WBOS-FM in the Boston Area.

H. "Non-Westinghouse Radio Station" means any radio station licensed to a community in either the Philadelphia Area or the Boston Area that is not a Westinghouse Radio Station.

I. "Acquirer" means the entity or entities to whom defendants divest the WMMR-FM Assets and/or the WBOS-FM Assets under this Final Judgment.

III. APPLICABILITY

A. The provisions of this Final Judgment apply to each of the defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Each defendant shall require, as a condition of the sale or other disposition of all or substantially all of the assets used in its business of owning and operating its portfolio of radio stations in either the Philadelphia Area or the Boston Area, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment; provided, however, that defendants need not obtain such an agreement from an Acquirer, as defined herein.

IV. DIVESTITURE OF WMMR-FM AND WBOS-FM

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within six (6) months after the filing of this Final

Judgment, or within five (5) business days after notice of entry of this Final Judgment, whichever is later, to divest the WMMR-FM Assets and the WBOS-FM Assets to one or two Acquirers acceptable to plaintiff, in its sole discretion. Unless plaintiff otherwise consents in writing, the divestitures pursuant to Section IV of this Final Judgment, or by the trustee appointed pursuant to Section V, shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the WMMR-FM Assets and the WBOS-FM Assets can and will be used by an Acquirer or Acquirers as viable, ongoing commercial radio businesses. The divestitures, whether pursuant to Section IV or V of this Final Judgment, shall be made (i) to an Acquirer or Acquirers that, in plaintiff's sole judgment, has or have the capability and intent of competing effectively, and has or have the managerial, operational and financial capability to compete effectively as radio station operators in the Philadelphia Area and the Boston Area; and (ii) pursuant to agreements the terms of which shall not, in the sole judgment of plaintiff, interfere with the ability of the purchaser(s) to compete effectively.

B. Defendants agree to use their best efforts to divest the WMMR-FM Assets and the WBOS-FM Assets, and to obtain all regulatory approvals necessary for such divestitures, as expeditiously as possible. Plaintiff, in its sole discretion, may extend the time period for the divestitures for two (2) additional thirty (30)-day periods of time, not to exceed sixty (60) calendar days in total.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability for sale of the WMMR-FM Assets and the WBOS-FM Assets. Defendants shall inform any person making a bona fide inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of the Final Judgment. Defendants shall make known to any person making an inquiry regarding a possible purchase of the WMMR-FM Assets and/or the WBOS-FM Assets that the assets described in Section II (C) and (D) are being offered for sale and that the WMMR-FM Assets and the WBOS-FM Assets may be purchased as a two-station package or sold separately to different purchasers. Defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the WMMR-FM Assets and the WBOS-FM Assets customarily provided in a due diligence process, except such information that is subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to plaintiff at the same time that such information is made available to any other person.

D. Defendants shall permit bona fide prospective purchasers of the WMMR-FM Assets and/or the WBOS-FM Assets to have access to personnel and to make such inspection of the assets, and any and all financial, operational or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall not interfere with any efforts by any Acquirer or Acquirers to employ the general manager or any other employee of WMMR-FM or WBOS-FM.

V. APPOINTMENT OF TRUSTEE

A. In the event that defendants have not divested the WMMR-FM Assets and the WBOS-FM Assets within the time periods specified in Section IV above, the Court shall appoint, on application of plaintiff, a trustee selected by plaintiff to effect the divestiture of the assets.

B. After the trustee's appointment has become effective, only the trustee shall have the right to sell the WMMR-FM Assets and the WBOS-FM Assets. The trustee shall have the power and authority to accomplish the divestitures at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section V and VII of this Final Judgment and consistent with FCC regulations, and shall have other powers as the Court shall deem appropriate. Subject to Section V (C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals or agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser acceptable to plaintiff, in its

sole judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to the sale of the WMMR-FM and/or the WBOS-FM Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee no later than fifteen (15) calendar days after the trustee has provided the notice required under Section VIII of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, 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 monies shall be paid to defendants and the trustee's services shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divestiture and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished.

D. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the WMMR-FM Assets and the WBOS-FM Assets, and shall use their best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary regulatory

approvals. Subject to a customary confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records and facilities related to the WMMR-FM Assets and the WBOS-FM Assets, and defendants shall develop such financial or other information as may be necessary to the divestiture of the WMMR-FM Assets and WBOS-FM Assets. Defendants shall permit prospective purchasers of the WMMR-FM Assets and WBOS-FM Assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment becomes effective, the trustee shall file monthly reports with defendants, plaintiff and the Court, setting forth the trustee's efforts to accomplish divestiture of the WMMR-FM Assets and WBOS-FM Assets as contemplated under this Final Judgment; provided, however, that 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

WMMR-FM Assets and WBOS-FM Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

F. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, 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 divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that 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. The trustee shall at the same time furnish such reports to defendants and plaintiff, who shall each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it shall deem appropriate to accomplish the purpose of this Final Judgment, which shall, if necessary, include extending the term of the trustee's appointment.

VI. PRESERVATION OF ASSETS/HOLD SEPARATE

Until the divestiture of the WMMR-FM Assets and the WBOS-FM Assets required by Section IV of the Final Judgment has been accomplished:

A. Defendants shall take all steps necessary to ensure that WMMR-FM is maintained as a separate, independent, ongoing, economically viable and active

competitor to defendants' other stations in Philadelphia and that, except as necessary to comply with Section IV and paragraphs C through F of this Section of the Final Judgment, the management of said station, including the performance of decision-making functions regarding marketing and pricing, will be kept separate and apart from, and not influenced by, defendants.

B. Defendants shall take all steps necessary to ensure that WBOS-FM is maintained as a separate, independent, ongoing, economically viable and active competitor to defendants' other stations in Boston and that, except as necessary to comply with Section IV and paragraphs C through F of this Section of the Final Judgment, the management of said station, including the performance of decision-making functions regarding marketing and pricing, will be kept separate and apart from, and not influenced by, defendants.

C. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time by WMMR-FM, and shall maintain at 1995 or previously approved levels for 1996, whichever are higher, promotional advertising, sales, marketing and merchandising support for said station.

D. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time by WBOS-FM, and shall maintain at 1995 or previously approved levels for 1996, whichever are higher, promotional advertising, sales, marketing and merchandising support for said station.

E. Defendants shall take all steps necessary to ensure that the assets used in the operation of WMMR-FM are fully maintained. WMMR-FM's sales and marketing employees shall not be transferred or reassigned to any other station, except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policies, provided that defendants give plaintiff and Acquirer ten (10) days' notice of any such transfer.

F. Defendants shall take all steps necessary to ensure that the assets used in the operation of WBOS-FM are fully maintained. WBOS-FM's sales and marketing employees shall not be transferred or reassigned to any other station, except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policies, provided that defendants give plaintiff and Acquirer ten (10) days' notice of any such transfer.

G. Defendants shall not, except as part of a divestiture approved by plaintiff, sell any WMMR-FM Assets or WBOS-FM Assets.

H. Defendants shall take no action that would jeopardize the sale of the WMMR-FM Assets or the WBOS-FM Assets.

I. Defendants shall each appoint a person or persons to oversee the assets to be held separate and who will be responsible for defendants' compliance with Section VI of this Final Judgment.

VII. NOTIFICATION

Within two (2) business days following execution of a binding agreement to divest, including all contemplated ancillary agreements (*e.g.*, financing), to effect, in whole or in part, any proposed divestiture pursuant to Section IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the WMMR-FM Assets or the WBOS-FM Assets, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendants, the proposed purchaser or purchasers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information, whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff fails to

object within the period specified, or if plaintiff provides written notice to defendants and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V (B) of this Final Judgment. A divestiture proposed under Section IV shall not be consummated if plaintiff objects to the identity of the proposed purchaser or purchasers. Upon objection by plaintiff, or by defendants under the proviso in Section V (B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. FINANCING

Defendants are ordered and directed not to finance all or any part of any purchase by an Acquirer made pursuant to Sections IV or V of this Final Judgment without the prior written consent of plaintiff.

IX. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or Section V of this Final Judgment, Defendants shall deliver to plaintiff an affidavit as to the fact and manner of their compliance with Section IV or V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address and telephone number of each person who, at any time after the period covered by the last such report, was contacted by

defendants, or their representatives, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or made an inquiry about acquiring, any interest in the WMMR-FM Assets and/or the WBOS-FM 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 that defendants have taken to solicit a buyer or buyers for the WMMR-FM Assets and the WBOS-FM Assets .

B. Within twenty (20) calendar days of the filing of this Final Judgment, defendants shall deliver to plaintiff an affidavit which describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve WMMR-FM and WBOS-FM pursuant to Section VI of this Final Judgment. Defendants shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in their earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after such change is implemented.

C. Defendants shall preserve all records of all efforts made to preserve WMMR-FM and WBOS-FM and to divest the WMMR-FM Assets and the WBOS-FM Assets.

X. NOTICE

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), defendants, without providing

advance notification to the United States Department of Justice, shall not directly or indirectly:

- (1) acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any Non-Westinghouse Radio Station or any person affiliated with any such Station; provided, however, that defendants need not provide notice under this provision for any direct or indirect acquisition of equity of a Non-Westinghouse Radio Station that would result in defendants' holding no more than five percent of the total equity of the station; or
- (2) enter into any Joint Sales Agreements, Local Marketing Agreements or comparable arrangements with any Non-Westinghouse Radio Station.

Notification shall be provided to the United States Department of Justice in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5-9 of the instructions must be provided only with respect to Westinghouse Radio Stations in the city implicated by the transaction giving rise to the notification obligation under this Section X.

Notification shall be provided at least thirty (30) days prior to acquiring any such interest covered in (1) or (2) above, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the

parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Department make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

B. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XI. COMPLIANCE INSPECTION

For the purpose of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, including consultants and other persons retained by the plaintiff, shall, upon written request of the United States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, be permitted:

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview directors, officers, employees and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the United States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, made to defendants' principal offices, defendants 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.

C. No information or documents obtained by the means provided in this Section XI shall be divulged by any representative of plaintiff 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 plaintiff 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 either defendant to plaintiff, and such 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 such 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) calendar days' notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which such defendant is not a party.

XII. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation or modification of any provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XIII. TERMINATION


Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIV. PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated

MARCH 10, 1997


NORMA HOLLOWAY JOHNSON
UNITED STATES DISTRICT JUDGE

Civil Action No. 96-2563