UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, 1401 H Street, NW Washington, DC 20530 (202) 307-0829	
Plaintiff,	No. 1:97CV00406
v.	
EZ COMMUNICATIONS, INC. 10800 Main Street Fairfax, VA 22030-8003 (703) 591-1000	**COMPLAINT FOR INJUNCTIVE RELIEF AGAINST COMBINATIONS IN VIOLATION OF SECTION 7 OF THE CLAYTON ACT**
	RECEIVED: February 27, 1997 at 4:24 PM
EVERGREEN MEDIA CORPORATION, 433 E. Las Colinas Blvd. Suite 1130 Irving, TX 75039 (912) 869-9020	UNITED STATES DISTRICT COURT DISTRICT OF COLUMBIA
Defendants.	

The United States of America, acting under the direction of the Attorney General of the United States, brings this action to prevent a proposed swap of radio stations between EZ Communications, Inc. ("EZ") and Evergreen Media Corporation ("Evergreen"), in which Evergreen would give EZ five Charlotte, North Carolina radio stations in exchange for two EZ radio stations in Philadelphia. In addition, the United States seeks to enjoin the consummation of a separate purchase agreement between EZ and Evergreen, in which EZ will purchase another Charlotte radio station from Evergreen for $10 million.

I. Nature of the Action

1. EZ is a nationwide operator of radio broadcast stations that owns 23 radio stations across the United States, including two located in the Charlotte metropolitan area. Evergreen owns 45 radio stations throughout the United States, including six located in the Charlotte metropolitan area. In a related transaction, EZ will be acquired through merger by American Radio Systems Corporation, a Delaware corporation headquartered in Boston, that owns and operates approximately 75 radio stations nationwide.

2. EZ and Evergreen both compete for the business of local and national companies seeking to advertise in the Charlotte area through radio. The two transactions, 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.

3. EZ's share of radio advertising dollars in the Charlotte area would rise from about 21 percent to about 55 percent. Moreover, EZ would control Charlotte stations that account for a substantial amount of advertising to specific demographic groups. After this merger, radio advertisers seeking to target these demographic groups in Charlotte would have inferior alternatives to EZ, resulting in EZ having the ability to raise prices to these advertisers. Thus, as a result, these transactions would give EZ substantial market power in the Charlotte radio market. Neither the remaining Charlotte radio stations nor any new entry is likely to check effectively EZ's ability to exercise the market power it would obtain through these transactions.

Accordingly, the proposed station swaps and acquisition are likely to lessen competition substantially, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Jurisdiction, Venue and Standing

4. This action is filed pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and Section 4 of the Sherman Act, 15 U.S.C. § 4, to obtain equitable relief to prevent a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

5. EZ and Evergreen 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. §§ 4, 22, and 25, and 28 U.S.C. §§ 1331 and 1337.

6. EZ and Evergreen have consented to the plaintiff's assertion that venue in this District is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

III. Defendants

7. EZ is a Virginia corporation headquartered in Fairfax, Virginia. EZ owns 23 radio stations, including the following two in the Charlotte area: WSOC-FM and WSSS-FM. EZ's Charlotte revenues in 1995 were approximately $12 million.

8. Evergreen is a Delaware corporation headquartered in Irving, Texas. It owns 41 radio stations, including the following six in the Charlotte area: WPEG-FM, WRFX-FM, WBAV-FM, WBAV-AM, WFNZ-AM and WNKS-FM. Evergreen's Charlotte revenues in 1995 were approximately $20 million.

IV. The Proposed Acquisition Is Likely To Reduce Competition Substantially in the Charlotte Market for Radio Advertising Time, in Violation of the Clayton Act

9. *Radio Advertising Time in Charlotte is the Relevant Market*. The relevant geographic market for local and national advertisers that buy time on the EZ and Evergreen radio stations in Charlotte is the Charlotte, North 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 Charlotte with data to aid in evaluating radio audience size and composition. The Charlotte MSA includes seven counties: Union, York Cabarrus, Rowan, Mecklenburg, Lincoln and Gaston. Local and national advertising that is placed on radio stations within the Charlotte MSA is aimed at reaching listening audiences in the Charlotte MSA, and radio stations outside of the Charlotte MSA 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 Charlotte MSA, advertisers would not switch enough advertising time purchases to radio stations located outside of the Charlotte MSA to defeat the increase.

10. Radio advertising time is sold by radio stations directly or through their national representatives. Radio stations generate almost all of their revenues from the sale of advertising time to local and national advertisers.

11. Many local and national advertisers purchase radio advertising time in Charlotte because they find such advertising preferable to advertising in other media for 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 also may 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.

12. 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 in Charlotte, the existence of such advertisers would not prevent all radio stations in Charlotte from profitably raising their prices a small but significant amount. At a minimum, stations could profitably raise their 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. Because of this ability to identify advertisers with strong preferences for radio and to negotiate separately with advertisers, radio stations can and do charge higher prices to advertisers that view radio as particularly effective for their needs while maintaining lower prices for other advertisers.

13. The provision of advertising time on radio stations in the Charlotte 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.

14. *The Transactions*. On August 27, 1996, EZ entered into an agreement with Evergreen to swap two of EZ's radio stations in Philadelphia for five of Evergreen's stations in Charlotte. In addition, EZ agreed to purchase another Charlotte radio station from Evergreen for $10 million.

15. *Market Structure Post-Acquisition*. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), explained in Appendix A, a combination of EZ and Evergreen would substantially increase concentration in the Charlotte radio advertising market EZ's share of the Charlotte radio advertising market, based on advertising revenues, would increase to about 55 percent. This correlates with an approximate post-merger HHI of 2423, representing an increase of 225. Following the acquisition, EZ would control advertising time on the top three stations in the Charlotte area.

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

17. Many advertisers seek to reach a large percentage of their target audience by selecting those stations whose audience best correlates to their target audience. If a number of stations efficiently reach that target audience, advertisers benefit from the competition among such stations to offer better prices or services. Today, EZ and Evergreen stations compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in Charlotte, they are close substitutes for each other based on their specific audience characteristics. The proposed transactions would eliminate this competition, most critically affecting advertisers seeking to reach male listeners in Charlotte.

18. 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 prices based in part on the number and attractiveness of competitive radio stations that can meet a particular advertiser's specific target audience needs.

19. During individualized price negotiations, advertisers that must reach listeners within certain target audiences can help ensure competitive prices by "playing off" EZ stations against Evergreen stations in the Charlotte area. EZ's swap and acquisition transactions with Evergreen will end this competition. At present, advertisers seeking to reach males listeners in Charlotte could efficiently reach this audience by using non-EZ stations. After the merger, such advertisers will be unable to reach these demographic groups with equivalent efficiency without using EZ stations. Because advertisers seeking to reach these audiences would have inferior alternatives to the merged entity as a result of the transactions, the transactions would give EZ the ability to raise prices and reduce the quality of its service to some of its advertisers on its stations in Charlotte.

20. The transactions would have the following effects, among others:

a. competition in the sale of advertising time on radio broadcast stations in the Charlotte MSA would be lessened substantially;

b. actual competition between EZ and Evergreen radio stations in the sale of radio advertising time would be eliminated; and

c. the prices for advertising on radio stations in the Charlotte MSA likely would increase and services likely would decline.

21. *Lack of Any Likely Entry To Deter EZ's Ability To Harm Competition*. If EZ raised prices or reduced services to those advertisers who buy advertising time on EZ and Evergreen stations because of their strength in delivering access to certain audiences, non-EZ

radio stations in Charlotte 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 EZ 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 a suitable alternative to the merged entity.

22. New entry into the Charlotte radio advertising market is highly unlikely in response to a price increase by the merged parties. Currently no unallocated radio broadcast frequencies exist in Charlotte. Also, stations located in adjacent communities cannot boost their power so as to enter the Charlotte market without interfering with other stations on the same or similar frequencies, a violation of Federal Communications Commission regulations.

23. The effect of the proposed transactions by EZ and Evergreen would be to lessen competition substantially in interstate trade and commerce, in violation of Section 7 of the Clayton Act.

VI. Relief Requested

24. The plaintiff's request: (a) adjudication that EZ's proposed transactions with Evergreen would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed transactions; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

Dated: February 27, 1997

/s/	/s/
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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*.