UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
United States Department of Justice
Antitrust Division
Merger Task Force
1401 H Street, NW
Suite 4000
Washington, D.C. 20530

Plaintiff,

v.

CBS CORPORATION
11 Stanwix Street
Pittsburgh, PA 15222

and

AMERICAN RADIO SYSTEMS CORPORATION
116 Huntington Ave.
Boston, MA 02116

Defendants.

CASE NUMBER 1:98CV00819

JUDGE: Emmet G. Sullivan

DECK TYPE: Antitrust

DATE STAMP: 03/31/98

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

Filed: March 31, 1998

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 American Radio Systems Corporation ("ARS") by CBS Corporation ("CBS").

## I. Nature of the Action

1. CBS is a large nationwide operator of radio broadcast stations that owns 76 radio stations across the United States, including 5 located in the Baltimore metropolitan area, 4 located in the Boston metropolitan area, and 1 located in the St. Louis metropolitan area. ARS is a large nationwide operator of radio broadcast stations that owns 85 radio stations across the United States, including 5 located in the Baltimore metropolitan area, 6 located in the Boston metropolitan area, and 4 located in the St. Louis metropolitan area.

2. CBS and ARS each own radio stations authorized and operating as Class B FM radio broadcast facilities in the Baltimore area and compete for the business of local and national companies seeking to advertise in the Baltimore area through radio. The acquisition, if consummated, would eliminate price and service competition between these two 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, CBS would own 10 radio stations in the Baltimore metropolitan area, including 6 of the 13 Class B stations in Baltimore.

3. In addition, CBS's share of radio advertising dollars in the Baltimore metropolitan area would rise from 17 percent to 46 percent. After this acquisition, radio advertisers seeking to reach radio listeners in Baltimore would have inferior alternatives to CBS, resulting in CBS having the ability to raise prices to these

advertisers. Thus, as a result, the transaction would give CBS substantial market power in the Baltimore radio market. Neither the remaining Baltimore radio stations nor any new entry is likely to check effectively CBS's ability to exercise the market power it would obtain through this acquisition. Accordingly, the proposed acquisition is likely to lessen competition substantially, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

4. CBS and ARS each own radio stations authorized and operating as Class B FM radio broadcast facilities in the Boston area and compete for the business of local and national companies seeking to advertise in the Boston area through radio. The acquisition, if consummated, would eliminate price and service competition between these two 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, CBS would own 10 radio stations in the Boston metropolitan area, including 6 of the 17 Class B stations in Boston.

5. In addition, CBS's share of radio advertising dollars in the Boston metropolitan area would rise from 33 percent to 59 percent. After this acquisition, radio advertisers seeking to reach radio listeners in Boston would have inferior alternatives to CBS, resulting in CBS having the ability to raise prices to these advertisers. Thus, as a result, the transaction would give CBS substantial market power in the Boston radio market. Neither the remaining Boston radio stations nor

any new entry is likely to check effectively CBS's ability to exercise the market power it would obtain through this acquisition. Accordingly, the proposed acquisition is likely to lessen competition substantially, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

6. CBS and ARS each own radio stations authorized and operating with an effective radiated power of at least 50,000 watts in the St. Louis area and compete for the business of local and national companies seeking to advertise in the St. Louis area through radio. The acquisition, if consummated, would eliminate price and service competition between these two 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, CBS would own 5 radio stations in the St. Louis metropolitan area, including the only clear channel AM, 1 of the 4 Class C FM stations, and 3 of the 7 Class C1 FM stations in St. Louis.

7. In addition, CBS's share of radio advertising dollars in the St. Louis metropolitan area would rise from 22 percent to 49 percent. After this acquisition, radio advertisers seeking to reach radio listeners in St. Louis would have inferior alternatives to CBS, resulting in CBS having the ability to raise prices to these advertisers. Thus, as a result, the transaction would give CBS substantial market power in the St. Louis radio market. Neither the remaining St. Louis radio stations nor any new entry is likely to check effectively CBS's ability to exercise the market

power it would obtain through this acquisition. Accordingly, the proposed acquisition is 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

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

9. CBS and ARS 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 over the parties pursuant to 15 U.S.C. §§ 22 and 25, and 28 U.S.C. §§ 1331 and 1337.

10. Defendants have consented to 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

11. CBS is a Pennsylvania corporation headquartered in New York, New York. It owns 76 radio stations located in 17 metropolitan areas in the United States. It owns five radio stations in the Baltimore area (WCAO-AM, WHFS-FM, WJFK-AM, WLIF-FM and WXYV-FM), four radio stations in the Boston area (WBCN-FM, WBZ-AM, WODS-FM and WZLX-FM), and one station in the St. Louis area (KMOX-AM). In 1996, its revenues from its Baltimore stations were approximately

$15,900,000, its revenues from its Boston stations were approximately $69,600,000, and its revenues from its St. Louis station were approximately $21,900,000.

12. ARS is a Delaware corporation headquartered in Boston, Massachusetts. ARS owns 85 radio stations located in 19 metropolitan areas in the United States. It owns five radio stations in the Baltimore area (WBGR-AM, WBMD-AM, WOCT-FM, WQSR-FM and WWMX-FM), six radio stations in the Boston area (WAAF-FM, WBMX-FM, WEEI-AM, WEGQ-FM, WNFT-AM and WRKO-AM), and four stations in the St. Louis area (KEZK-FM, KLOU-FM, KSD-FM and KYKY-FM). In 1996, its revenues from its Baltimore stations were approximately $26,850,000, its revenues from its Boston stations were approximately $55,700,000, and its revenues from its St. Louis stations were approximately $26,950,000.

## IV. The Proposed Acquisition Is Likely To Reduce Competition Substantially in the Baltimore, Boston and St. Louis Markets for Radio Advertising Time, in Violation of the Clayton Act

13. *Radio Advertising Time in Baltimore is a Relevant Market.* The relevant geographic market for local and national advertisers that buy time on the CBS and ARS radio stations in Baltimore is the Baltimore, Maryland 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 Baltimore with data to aid in evaluating radio audience size and composition. The Baltimore MSA includes 7 counties: Anne Arundel, Baltimore, Baltimore City,

Carroll, Harford, Howard, and Queen Anne's. Local and national advertising that is placed on radio stations in the Baltimore MSA is aimed at reaching listening audiences in the Baltimore MSA, and other radio stations do not provide effective access to these audiences. Thus, if there were a small but significant non-transitory increase in radio advertising prices within the Baltimore MSA, advertisers would not switch enough advertising time purchases to other radio stations to defeat the price increase.

14. *Radio Advertising Time in Boston is a Relevant Market.* The relevant geographic market for local and national advertisers that buy time on the CBS and ARS radio stations in Boston is the Boston, Massachusetts MSA. The Boston MSA includes 5 counties: Essex, Middlesex, Norfolk, Plymouth, and Suffolk. Local and national advertising that is placed on radio stations in the Boston MSA is aimed at reaching listening audiences in the Boston MSA, and other radio stations do not provide effective access to these audiences. Thus, if there were a small but significant non-transitory increase in radio advertising prices within the Boston MSA, advertisers would not switch enough advertising time purchases to other radio stations to defeat the price increase.

15. *Radio Advertising Time in St. Louis is a Relevant Market.* The relevant geographic market for local and national advertisers that buy time on the CBS and ARS radio stations in St. Louis is the St. Louis, Missouri MSA. The St. Louis MSA includes 12 counties: Clinton, Franklin, Jefferson, Jersey, Lincoln, Madison, Monroe,

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

16. Radio advertising time is sold by radio stations directly or through their national representatives. Radio stations in the Baltimore, Boston and St. Louis metropolitan areas generate almost all of their revenues from the sale of advertising time to local and national advertisers.

17. Many local and national advertisers purchase radio advertising time in Baltimore, Boston or St. Louis 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, on a per-dollar basis, 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.

18. 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 in the Baltimore, Boston or St. Louis 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.

19. The provision of advertising time on radio stations in the Baltimore 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.

20. The provision of advertising time on radio stations in the Boston MSA is a relevant market within the meaning of Section 7 of the Clayton Act.

21. The provision of advertising time on radio stations in the St. Louis MSA is a relevant market within the meaning of Section 7 of the Clayton Act.

22. *The Transaction.* On September 19, 1997, CBS (formerly known as Westinghouse Electric Corporation) entered into an Agreement and Plan of Merger with ARS. This Agreement was amended and restated on December 18, 1997, and further amended on December 19, 1997. Pursuant to the Agreement, ARS's radio operations will be acquired by CBS. ARS's tower operations will be separately spun off and will not be acquired by CBS. The transaction is valued at approximately $1.6 billion.

23. *Market Structure Post-Acquisition.* Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), explained in Appendix A annexed hereto, a combination of CBS and ARS would substantially increase concentration in the Baltimore, Boston and St. Louis radio advertising markets. CBS's share of the Baltimore radio advertising market, based on advertising revenues, would increase to about 46 percent. The approximate post-merger HHI would be 3077, representing an increase of about 985. CBS's share of the Boston radio advertising market, based on advertising revenues, would increase to 59 percent. The approximate post-merger HHI would be 4059, representing an increase of about

1746. CBS's share of the St. Louis radio advertising market, based on advertising revenues, would increase to 49 percent. The approximate post-merger HHI would be 3075, representing an increase of about 1200.

24. *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 size of the station's audience and the characteristics of its audience.

25. 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 the competition among such stations to offer better prices or services. Today, several CBS and ARS stations in Baltimore compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in Baltimore, they are close substitutes for each other based on their specific audience characteristics. The merger would eliminate this competition. Similarly, several CBS and ARS stations in Boston compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in Boston, they are close substitutes for each other based on their specific audience characteristics. The merger would also eliminate this competition. Similarly, CBS and ARS stations in St. Louis compete head-to-head to reach the same audiences and, for many local and national

advertisers buying time in St. Louis, they are close substitutes for each other based on their specific audience characteristics. The merger would also eliminate this competition.

26. 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.

27. During individualized rate negotiations, advertisers that desire to reach certain listeners can help ensure competitive rates by "playing off" ARS stations against CBS stations. CBS's acquisition of ARS will end this competition. After the acquisition, such advertisers will be unable to reach their desired audiences with equivalent efficiency without using CBS 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 CBS the ability to raise prices and reduce the quality of its service to some of its advertisers on its stations in Baltimore, Boston, and St. Louis.

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

a. competition in the sale of advertising time on radio broadcast stations in the Baltimore, Boston and St. Louis MSA would be substantially lessened;

b. actual competition between CBS and ARS radio stations in the sale of radio advertising time in the Baltimore, Boston and St. Louis MSA would be eliminated; and

c. the prices for advertising on radio stations in the Baltimore, Boston and St. Louis MSA would likely increase, and services would likely decline.

29. *Lack of Any Likely Entry To Deter CBS's Ability To Harm Competition.* If CBS raised prices or lowered services to those advertisers who buy advertising time on CBS and ARS stations in Baltimore, Boston and St. Louis because of their strength in delivering access to certain audiences, non-CBS radio stations in Baltimore, Boston and St. Louis 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 CBS 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.

30. New entry into the Baltimore, Boston or St. Louis radio advertising market is highly unlikely in response to a price increase by the merged parties in any of these markets. No unallocated radio broadcast frequencies exist in Baltimore, Boston or St. Louis. Also, it is unlikely that stations located in adjacent communities could boost their power so as to enter the Baltimore, Boston or St. Louis markets without interfering with other stations on the same or similar frequencies, a violation of Federal Communications Commission regulations.

31. The effect of the proposed acquisition of ARS by CBS would be to lessen competition substantially in interstate trade and commerce, in violation of Section 7 of the Clayton Act.

## V. Requested Relief

32. The plaintiff requests: (a) adjudication that CBS's proposed acquisition of ARS would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed acquisition; (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

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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.

## Certificate of Service

I, Allen P. Grunes, hereby certify that, on March 31, 1998, I caused the foregoing document to be served on defendants CBS Corporation and American Radio Systems Corporation by having a copy mailed, first-class, postage prepaid, to:

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