

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CAPSTAR BROADCASTING
CORPORATION,

and

TRIATHLON BROADCASTING
COMPANY,

Defendants.

Civil Action No. 99 0993

FINAL JUDGMENT

WHEREAS, plaintiff, the United States of America, filed its complaint in this action on April 21, 1999, and plaintiff and Defendants Capstar and Triathlon 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, these Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the 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 the plaintiff that the divestitures ordered herein can and will be made and that Defendants will not later raise claims of hardship, contractual bar, or difficulty as grounds for asking the Court to delay or modify the divestiture described 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 Defendants and over the subject matter of this action, and Defendants have agreed to waive any objection to personal jurisdiction or venue. The Complaint states a claim upon which relief may be granted against the Defendants, 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. “Capstar” means defendant Capstar Broadcasting Corporation, a Delaware corporation with its headquarters in Austin, Texas, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees, including but not limited to Hicks, Muse, Tate, & Furst Incorporated (“Hicks-Muse”), a Delaware corporation with its headquarters in Dallas, Texas.

B. “Triathlon” means defendant Triathlon Broadcasting Company, a Delaware corporation with its headquarters in San Diego, California, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. “Defendants” means Capstar and Triathlon.

D. “Antitrust Division” means the Antitrust Division of the United States Department of Justice.

E. “Radio Assets” means all of the assets, tangible or intangible, used in the operation of the radio stations KEYN-FM, KWSJ-FM, KNSS-AM, KFH-AM, and KQAM-AM, that sell advertising time in Wichita, Kansas, including all real property (owned or leased) used

in the operation of these stations, all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property used in the operation of these stations; all licenses, permits, authorizations, and applications therefor issued by the Federal Communications Commission (“FCC”) and other government agencies related to these stations; all contracts, agreements, leases and commitments of Defendants relating to their operation; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to these stations; and all logs and other records maintained by the operator or owner in connection with its business, except that in the case of KNSS-AM, the divestiture may include only those assets necessary to continue the transmitting, programming, and selling of that station in its present form.

F. “Acquirer” means the entity to whom defendant Capstar divests the Radio Assets.

G. “Wichita” means the Wichita, Kansas Metropolitan Survey Area, which includes Sedgwick, Harvey and Butler Counties, Kansas.

III. APPLICABILITY

A. The provisions of this Final Judgment apply to the Defendants, their successors and assigns, their subsidiaries, 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, specifically including any trustee or trustees appointed by defendant pursuant to an FCC Trust Agreement (as defined in Section V(A)) applicable to the Radio Assets.

B. Defendant Capstar shall require, as a condition of the sale or other disposition of any of the Radio Assets, that the Acquirer or Acquirers agree to be bound by the provisions of this Final Judgment.

IV. DIVESTITURE OF RADIO ASSETS

A. Capstar is hereby ordered and directed in accordance with the terms of this Final Judgment to divest the Radio Assets to (i) an Acquirer acceptable to the Antitrust Division at its sole discretion or (ii) the Trustee identified pursuant to § V at the same time it acquires Triathlon. Unless plaintiff otherwise consents in writing, the divestiture pursuant to this Section IV of this Final Judgment, or by the Trustee appointed pursuant to Section V, shall include all the Radio Assets and shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the Radio Assets can and will be used by an Acquirer as a viable and ongoing radio business. The divestiture, whether pursuant to section IV or section V of this Final Judgment, shall be made (1) to an Acquirer that, in the sole judgment of plaintiff, has the capability and the intent of competing effectively, and has the managerial, operational, and financial capability to compete effectively as a radio operator in the Wichita area; and (2)

pursuant to agreements the terms of which shall not, in the sole judgment of plaintiff, interfere with the ability of the Acquirer to compete effectively.

B. Defendant Capstar agrees to use its best efforts to divest the Radio Assets, and to obtain all regulatory approvals necessary for such divestiture, as expeditiously as possible.

C. In accomplishing the divestiture ordered by the Final Judgment, defendant Capstar promptly shall make known, by usual and customary means, the availability of the Radio Assets. Defendant Capstar shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide each person with a copy of this Final Judgment. Defendant Capstar shall make known to any person making an inquiry regarding a possible purchase of the Radio Assets described in Section II that the Radio Assets are being offered for sale. Capstar shall also offer to furnish all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Radio Assets customarily provided in a due diligence process, except such information that is subject to attorney-client privilege or attorney-work product privilege. Defendant Capstar shall make available such information to plaintiff at the same time that such information is made available to any other person.

D. In accomplishing the divestiture ordered by this Section IV, defendant Capstar shall permit prospective purchasers of the Radio Assets to have access to personnel and to make

such inspection of assets, and any and all financial, operational, and or other documents and information, as is customary in a due diligence process.

E. Defendant Capstar shall not interfere with any efforts by any Acquirer to employ the general manager or any other employee of the Radio Assets.

V. APPOINTMENT OF TRUSTEE

A. In the event that Capstar has not divested the Radio Assets in the time period specified in § IV above, Henry M. Rivera shall, subject to the prior approval of the FCC, become Trustee (the “Trustee”) to effect the operation and sale of the Radio Assets pursuant to an FCC Trust Agreement submitted by Capstar to the FCC, as amended, and attached to this proposed Final Judgment as Exhibit A (the “FCC Trust Agreement”). In the event of Mr. Rivera’s resignation, incapacity to act, death, or insolvency, the Court shall appoint, on application of plaintiff and subject to such prior approvals as may be required, 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 Radio Assets. The Trustee shall have the power and authority to accomplish the sale pursuant to the conditions of the FCC Trust Agreement.

C. The Trustee shall serve at the cost and expense of defendant Capstar, on such terms and conditions contained in the FCC Trust Agreement or 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 pursuant to the attached FCC Trust Agreement.

D. Defendants shall take no action to interfere with or impede the Trustee's accomplishment of the divestiture of the Radio Assets, and shall use their best efforts to assist the Trustee in accomplishing the required divestiture, including its best efforts to effectuate 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 Radio Assets, and, at the Trustee's request, Defendants shall develop such financial or other information as may be necessary for the divestiture of the Radio Assets. The Trustee shall permit prospective purchasers of the Radio 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 divestiture required by this Final Judgment.

E. After his appointment becomes effective, the Trustee shall file reports pursuant to this Final Judgment and the FCC Trust Agreement with defendant Capstar, the plaintiff, and the Court, setting forth the Trustee's efforts to accomplish divestiture of the Radio Assets as contemplated under this Final Judgment; provided, however, that to the extent that 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 Radio 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 the Radio Assets.

F. Within four (4) months after the date of entry of this proposed Final Judgment, if the Trustee has not accomplished the divestiture required by Section V 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 divestiture has 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 at the same time shall furnish such reports to the plaintiff and to defendant Capstar, which shall have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it deems appropriate to accomplish the purpose of this Final Judgment, which shall, if necessary, include extending the term of the Trustee's appointment after all applicable government approvals are obtained.

G. Upon divestiture of the radio assets, the FCC Trust will be deemed terminated and the Trustee discharged.

VI. NOTICE

Capstar shall provide advance notification to the Antitrust Division when it directly or indirectly acquires any assets of or any interest (including any financial, security, loan, equity or management interest) in any broadcast radio station that sells advertising time in Wichita, Kansas, or enters into any joint sales agreement or any cooperative selling arrangement with any other operator of radio stations serving listeners in Wichita, Kansas. This obligation to provide notice is met under this section when a transaction is 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").

Notification under this section shall be provided to the Antitrust Division 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 about the sales of radio advertising time in Wichita. Notification shall be provided at least thirty (30) days prior to the acquisition of any such interest, 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 Antitrust Division make a written request for additional information, Defendant Capstar 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. 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.

VII. PRESERVATION OF ASSETS/HOLD SEPARATE

Until the divestiture of the Radio Assets required by Sections IV or V of the Final Judgment has been accomplished:

A. Defendants shall take all steps necessary to operate the Radio Assets as separate, independent, ongoing, economically viable and active competitors to the other stations in Wichita, Kansas, and shall take all steps necessary to ensure that, except as necessary to comply with Section IV and paragraphs B and C of this Section of the Final Judgment, the management of said stations, including the performance of decision-making functions regarding marketing and pricing, will be kept separate and apart from, and not influenced by, defendant Capstar in the case of Triathlon stations and defendant Triathlon in the case of Capstar stations.

B. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time by the Radio Assets, and shall maintain at 1997, 1998, or previously approved

levels for 1999, whichever are higher, promotional advertising, sales, marketing and merchandising support for such radio stations.

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

D. Defendant Capstar shall not, except as part of a divestiture approved by plaintiff, sell any Radio Assets.

E. Defendants shall take no action that would jeopardize the sale of the Radio Assets.

F. Defendant Capstar shall appoint a person or persons to oversee the assets to be held separate who will be responsible for Defendant's compliance with Section VI of this Final Judgment.

VIII. FINANCING

Defendant Capstar is 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.

IX. COMPLIANCE INSPECTION

For purposes of determining or securing compliance with the Final Judgment or determining whether the Final Judgment should be modified or terminated and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Defendants made to their principal offices, shall be permitted:

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

- (2) Subject to the reasonable convenience of the Defendants and without restraint or interference from any of them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, made to the Defendants' principal offices, the Defendants shall submit written reports, under oath if requested, with respect to any matter contained in the Final Judgment.

C. No information or documents obtained by the means provided in Section IX or X of this Final Judgment shall be divulged by a representative of the 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 the 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 the Defendants to the plaintiff, the Defendants represent and identify 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 the Defendants mark 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 the plaintiff to the Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the Defendants are not a party.

X. 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, defendant Capstar shall deliver to plaintiff an affidavit as to the fact and manner of defendant's 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 defendant, or its 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 Radio 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 defendant Capstar has taken to solicit a buyer for the Radio Assets.

B. Within twenty (20) calendar days of the filing of this Final Judgment, defendant Capstar shall deliver to plaintiff an affidavit which describes in reasonable detail all actions defendant Capstar has taken and all steps defendant Triathlon has implemented on an on-going basis to preserve the Radio Assets describing any changes to the efforts and actions outlined in its earlier affidavit(s) filed pursuant to this section within fifteen (15) calendar days after such change is implemented.

C. Defendant Capstar shall preserve all records of all efforts to preserve the Radio Assets and to divest the Radio Assets.

XI. RETENTION OF JURISDICTION

Jurisdiction is retained by this 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 and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. TERMINATION

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

XIII. PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated _____

United States District Judge