

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
1401 H Street, NW
Suite 4000
Washington, D.C. 20530
(202) 307-0829

Plaintiff,

v.

WESTINGHOUSE ELECTRIC
CORPORATION, and
11 Stanwix Street
Pittsburgh, Pennsylvania 15222
(412) 244-2000

INFINITY BROADCASTING
CORPORATION
600 Madison Avenue
New York, New York 10022
(212) 750-6400

Defendants.

CASE NUMBER 1:96CV02563

JUDGE: Norma Holloway Johnson

DECK TYPE: Antitrust

DATE STAMP: 11/12/96

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

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
Infinity Broadcasting Corporation ("Infinity") by Westinghouse Electric Corporation
("Westinghouse").

I. Nature of the Action

1. Westinghouse, through its subsidiary, CBS Inc., is a large nationwide operator of radio broadcast stations that owns 41 radio stations across the United States, including four located in the Philadelphia metropolitan area and two located in the Boston metropolitan area. Infinity owns 42 radio stations across the United States, including two located in the Philadelphia metropolitan area and four located in the Boston metropolitan area.

2. Westinghouse and Infinity compete for the business of local and national companies seeking to advertise in the Philadelphia area through radio. The acquisition, if consummated, would eliminate price and service competition between Westinghouse and Infinity radio stations 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, Westinghouse's share of radio advertising dollars in the Philadelphia metropolitan area would rise from 28 percent to about 45 percent. In addition, Westinghouse would control Philadelphia stations that account for a substantial amount of radio advertising to specific demographic groups. After this merger, radio advertisers seeking to target these demographic groups in Philadelphia would have inferior alternatives to Westinghouse, resulting in Westinghouse having the ability to raise prices to these advertisers. Thus, as a result, the transaction would give Westinghouse substantial market power in the

Philadelphia radio market. Neither the remaining Philadelphia radio stations nor any new entry is likely to check effectively Westinghouse's ability to exercise the market power it would obtain through this acquisition. Accordingly, the proposed acquisition is likely to lessen competition substantially in the Philadelphia market for radio advertising time, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

3. Westinghouse and Infinity 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 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, Westinghouse's share of radio advertising dollars in the Boston metropolitan area would rise from under 15 percent to over 40 percent. In addition, Westinghouse would control Boston stations that account for a substantial amount of radio advertising to specific demographic groups. After this merger, radio advertisers seeking to target these demographic groups in Boston would have inferior alternatives to Westinghouse, resulting in Westinghouse having the ability to raise prices to these advertisers. Thus, as a result, the transaction would give Westinghouse substantial market power in the Boston radio market. Neither the remaining Boston radio stations nor any new entry is likely to check effectively Westinghouse's ability to exercise the market power it

would obtain through this acquisition. Accordingly, the proposed acquisition is likely to lessen competition substantially in the Boston market for radio advertising time, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Jurisdiction and Venue

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. Westinghouse and Infinity 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. §§ 4, 22 and 25, and 28 U.S.C. §§ 1331 and 1337.

6. Westinghouse and Infinity 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

7. Westinghouse is a Pennsylvania corporation headquartered in Pittsburgh, Pennsylvania. It owns, through its subsidiary, CBS Inc., 41 radio stations located in 13 metropolitan areas in the United States. It owns four radio stations in the Philadelphia area (KYW-AM, WMMR-FM, WOGL-FM and WPHT-AM) and two radio stations in the Boston area (WBZ-AM and WODS-FM). In 1995, its

revenues from its Philadelphia stations were approximately \$55,300,000 and its revenues from its Boston stations were approximately \$26,600,000.

8. Infinity is a Delaware corporation headquartered in New York, New York. Infinity owns 42 radio stations located in 13 metropolitan areas in the United States. It owns two radio stations in the Philadelphia area (WYSP-FM and WIP-AM) and four radio stations in the Boston area (WBCN-FM, WZLX-FM, WBOS-FM and WOAZ-FM). In 1995, its revenues from its Philadelphia stations were approximately \$31,500,000 and its revenues from its Boston stations were approximately \$46,000,000.

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

9. *Radio Advertising Time in Philadelphia and Boston Are Relevant Markets.*

The relevant geographic market for local and national advertisers that buy time on the Westinghouse and Infinity radio stations in Philadelphia is the Philadelphia, Pennsylvania 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 Philadelphia with data to aid in evaluating radio audience size and composition. Local and national advertising that is placed on radio stations within the Philadelphia MSA is aimed at reaching listening audiences in the Philadelphia MSA, and radio stations outside of the Philadelphia MSA 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 Philadelphia MSA, advertisers would not switch enough advertising time purchases to radio stations located outside of the Philadelphia MSA to defeat the price increase.

10. The relevant geographic market for local and national advertisers that buy time on the Westinghouse and Infinity radio stations in Boston is the Boston, Massachusetts MSA. Local and national advertising that is placed on radio stations within the Boston MSA is aimed at reaching listening audiences in the Boston MSA, and radio stations outside of the Boston MSA 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 radio stations located outside of the Boston MSA to defeat the price increase.

11. 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.

12. Many local and national advertisers purchase radio advertising time in Philadelphia and/or Boston 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.

13. 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 either the Philadelphia or Boston 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 either 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 rates. Radio stations generally can identify those advertisers with strong radio preferences. Because of this ability to price discriminate between different 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.

14. The provision of advertising time on radio stations in the Philadelphia 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.

15. 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.

16. *The Transaction.* On June 20, 1996, Westinghouse agreed to purchase Infinity for approximately \$4.9 billion.

17. *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 Westinghouse and Infinity would substantially increase concentration in both the Philadelphia and Boston radio advertising markets. Westinghouse's share of the Philadelphia radio advertising market, based on advertising revenues, would increase to about 45 percent. The approximate post-merger HHI would be 2800, representing an increase of about 924. Westinghouse's share of the Boston radio advertising market, based on advertising revenues, would increase to over 40 percent. The approximate post-merger HHI would be 2638, representing an increase of about 763.

18. *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.

19. 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 Westinghouse and Infinity stations in Philadelphia compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in Philadelphia, they are close substitutes for each other based on their specific audience characteristics. The merger would eliminate this competition, most critically affecting advertisers seeking to reach male listeners between the ages of 18 and 54. Similarly, several Westinghouse and Infinity 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, most critically affecting advertisers seeking to reach male listeners between the ages of 18 and 54.

20. 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 audience needs.

21. During individualized rate negotiations, advertisers that must reach male listeners within certain age ranges can help ensure competitive rates by "playing off" Infinity stations against Westinghouse stations. Westinghouse's acquisition of Infinity will end this competition. At present, advertisers seeking to reach adult males between the ages of 18 and 54 in Philadelphia and between the ages of 25 and 54 in Boston could efficiently reach this audience by using non-Westinghouse stations. After the merger, such advertisers will be unable to reach these demographic groups with equivalent efficiency without using Westinghouse 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 Westinghouse the ability to raise prices and reduce the quality of its service to some of its advertisers on its stations in Philadelphia and Boston.

22. The transaction would have the following effects, among others:
- a. competition in the sale of advertising time on radio broadcast stations in the Philadelphia MSA would be substantially lessened;

- b. competition in the sale of advertising time on radio broadcast stations in the Boston MSA would be substantially lessened;
- c. actual competition between Westinghouse and Infinity radio stations in the sale of radio advertising time in the Philadelphia MSA would be eliminated;
- d. actual competition between Westinghouse and Infinity radio stations in the sale of radio advertising time in the Boston MSA would be eliminated;
- e. the prices for advertising on radio stations in the Philadelphia MSA would likely increase, and services would likely decline; and
- f. the prices for advertising on radio stations in the Boston MSA would likely increase, and services would likely decline.

23. *Lack of Any Likely Entry To Deter Westinghouse's Ability To Harm*

Competition. If Westinghouse raised prices or lowered services to those advertisers who buy advertising time on Westinghouse and Infinity stations in Philadelphia and Boston because of their strength in delivering access to certain audiences, non-Westinghouse radio stations in Philadelphia and Boston 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 Westinghouse 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.

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

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

V. Requested Relief

26. The plaintiff requests: (a) adjudication that Westinghouse's proposed acquisition of Infinity 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: November 12, 1996

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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.

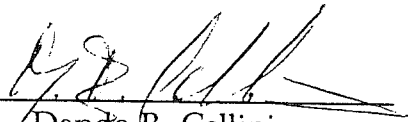
Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust 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, Dando B. Cellini, hereby certify that, on November 12, 1996, I caused the foregoing document to be served on defendants Westinghouse Electric Corporation and Infinity Broadcasting Corporation by having a copy mailed, first- class, postage prepaid, to:

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