wild or scenic rivers system by, or pursuant to, an act of the legislature of that state.

(2) Management of the river must be administered by an agency or political subdivision of the state, except for those lands administered by an agency of the Federal government.

(3) The river meets National Wild and Scenic River eligibility criteria, that is, that the river is free-flowing and possesses one or more outstanding resources of significance to the region or nation.

(4) There must be effective mechanisms and regulations in place—local, state or federal—to provide for the long-term protection of those resources for which the river was deemed eligible.

Upon the request of a state governor to the Secretary of the Interior, the National Park Service, acting for the Secretary, undertakes an evaluation of the state's request.

As a result of the evaluation, the National Park Service has concluded that the following requirements that were fully met for all 115 miles of the Lumber River include: (1) Designation of the river into a State wild and scenic river system; (2) management of the river by a political subdivision of the State; and (3) possession of eligibility criteria common to all national wild and scenic rivers.

However, 51 miles (from the Scotland/Robeson County lines to Jacob Branch) of the 115-mile nomination failed to fully meet the fourth requirement, existence of effective local and State mechanisms and regulations to protect the Lumber River without federal management. The National Park Service is recommending that this reach be designated if and when the state of North Carolina and local jurisdictions develop a management plan that affords future protection of the river in accordance with the National Wild and Scenic Rivers Act.

The National Park Service recommends that the Lumber River, from State Route 1412/1203 (River Mile 0) to the Scotland/Robeson County lines at the end of the Maxton Airport Swamp (River Mile 22) and from Jacob Branch (River Mile 73) to the North Carolina/South Carolina border (River Mile 115) be included in the National Wild and Scenic River System. The National Park Service recommends that the following segments of the Lumber River be classified as scenic: State route 1412/1203 to the Scotland/Robeson County lines, Jacob Branch to the upstream town limit of Fair Bluff, and the downstream town limit of Fair Bluff to the North Carolina/South Carolina border. The National Park Service recommends that the segment of the Lumber River within the town limits of Fair Bluff be classified as recreational.

Dated: April 6, 1998.

Robert Stanton,

Director, National Park Service.

[FR Doc. 98–9815 Filed 4–13–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Hicks, Muse, Tate & Furst Incorporated and Capstar Broadcasting Partners, Inc. and SFX Broadcasting, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of New York in *United States* v. *Hicks, Muse, Tate & Furst Incorporated and Capstar Broadcasting Partners, Inc. and SFX Broadcasting, Inc.* Civil Action No. 98–2422. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

Plaintiff filed a civil antitrust Complaint on March 31, 1998, alleging that the proposed acquisition of SFX Broadcasting, Inc. (''SFX'') by Capstar Broadcasting Partners, Inc. (''Capstar'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Capstar or its related entity Chancellor Media Corporation, (''Chancellor''), and SFX own and operate numerous radio stations throughout the United States, and the proposed transaction would give defendants or Chancellor a significant share of the radio advertising market in Greenville, SC, Houston, TX, Jackson, MS, Pittsburgh, PA and Suffolk County, NY. As a result, the combination of these radio stations would lessen competition substantially in the sale of radio advertising time in the Greenville, Houston, Jackson, Pittsburgh and Suffolk areas.

The prayer for relief seeks: (a) An adjudication that Capstar's proposed acquisition described in the complaint would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed transaction; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits Capstar to complete its transactions with SFX, yet preserves competition in the markets in which the transactions would raise significant competitive concerns. A Stipulation and Order and a proposed Final Judgment embodying the settlement were filed at the same time the Complaint was filed.

Unless the plaintiff grants a time extension, the proposed Final Judgment orders Capstar to divest either within six months after the filing of the complaint or within five (5) business days after notice of entry of the Final Judgment, whichever is later, radio stations WESC–FM, WESC–AM, WJMZ–FM, WTPT–FM in Greenville, SC, KKPN–FM in Houston, TX, WJDX–FM in Jackson, MS and WTAE–AM in Pittsburgh, PA. The proposed Final Judgment also orders Capstar to divest either within three months after the filing of the Complaint or within five (5) business days after notice of entry of the Final Judgment, whichever is later, radio stations WBLI–FM, WBAB–FM, WGBB–AM and WHFM–FM in Suffolk, NY. If Capstar does not divest the stations described above within the divestiture period, the Court shall, upon plaintiff's application, appoint a trustee to sell the assets. The proposed Final Judgment also requires Capstar to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, WESC–FM, WESC–AM, WJMZ–FM, WTPT–FM, KKPN–FM, WJDX–FM, WTAE–AM, WBLI–FM, WBAB–FM, WGBB–AM and WHFM–FM will be operated independently as a viable, ongoing business, and kept separate and apart from defendants' other radio stations located in those areas. Further, the proposed Final Judgment requires defendants to give plaintiff prior notice regarding future radio station acquisitions or certain agreements pertaining to the sale of radio advertising time in the Greenville-Spartanburg, SC, Houston, TX, Jackson, MS, Pittsburgh, PA and Suffolk County, NY areas.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530 (telephone: (202) 307–0001). Copies of the Complaint, Stipulation and Order, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, D.C. 20530 (telephone: (202) 514–2481) and at the office of the Clerk of the United States District Court for the Eastern District of New York, United States Courthouse, 2 Uniondale Avenue, Uniondale, New York 11553.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

United States District Court for the Eastern District of New York

United States of America, Plaintiff, v. Hicks, Muse, Tate & Furst Incorporated, and Capstar Broadcasting Partners, Inc., and SFX Broadcasting, Inc., Defendants. Hon. J. Seybert/M. Orenstein. Civil Action No. CV 98 2422.

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Eastern District of New York.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an Order of the Court.

(4) Defendant Capstar agrees that the transactions contemplated by Letter Agreement dated February 20, 1998, between Chancellor and Capstar, when consummated, will require Capstar to obtain from Chancellor a commitment to be bound to the provisions of the Final Judgment pursuant to Section III(B).

(5) The parties recognize that there could be a delay in obtaining approval by or a ruling of a government agency related to the divestitures required by Section IV of the Final Judgment, notwithstanding the good faith efforts of the defendants and any prospective Acquirer, as defined in the Final Judgment. In this circumstance, plaintiff will, in the exercise of its sole discretion, acting in good faith, give special consideration to forebearing from applying for the appointment of a trustee pursuant to Section V of the Final Judgment, or from pursuing legal remedies available to it as a result of such delay, provided that: (i) Defendants have entered into one or more definitive agreements to divest the Greenville Assets, the Houston Assets, the Jackson Assets, the Pittsburgh Assets, and the SFX Long Island Assets, as defined in the Final Judgment, and such agreements and the Acquirer or Acquirers have been approved by plaintiff; (ii) All papers necessary to secure any governmental approvals and/or rulings to effectuate such divestitures (including but not limited to FCC, SEC and IRS approvals or rulings) have been filed with the appropriate agency; (iii) Receipt of such approvals are the only closing conditions that have not been satisfied or waived; and (iv) Defendants have demonstrated that neither they nor the prospective Acquirer or Acquirers are responsible for any such delay.

(6) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(7) In the event plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(8) Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: March 31, 1998.

For Plaintiff United States of America

Asuncion Cummings (AC–1850),

U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20005.

For Defendants Capstar Broadcasting Partners, Inc., and Hicks, Muse, Tate & Furst, Incorporated

Neil Imus (NI–3536),

Vinson & Elkins, L.L.P., 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

For Defendant SFX Broadcasting, Inc.

David A. Clanton (DC–2683),

Baker & McKenzie, 815 Connecticut Avenue, N.W., Washington, D.C. 20006–4078.

SO ORDERED

Dated, ___________________, New York, 1998.

____

United States District Judge

Certificate of Service

I hereby certify that, on this 31st day of March, 1998, I caused to be served by hand delivery a copy of the foregoing proposed Final Judgment and Stipulation and Order upon the following:

David A. Clanton, Baker & McKenzie, 815 Connecticut Avenue, N.W., Washington, D.C. 20006–4078

Neil Imus, Vinson & Elkins, 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20004

Asuncion Cummings

United States District Court for the Eastern District of New York

United States of America, Plaintiff v. Hicks, Muse, Tate & Furst Incorporated, and Capstar Broadcasting Partners, Inc., and SFX Broadcasting, Inc., Defendants. Hon. J. Seybert/M. Orenstein. Civil Action No. CV 98 2422.

Final Judgment

Whereas, plaintiff, the United States of America, filed its Complaint in this action on March 31, 1998, and plaintiff 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 the 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 Hicks, Muse, Tate & Furst Incorporated (Hicks Muse), Capstar Broadcasting Partners, Inc. (Capstar), and SFX Broadcasting, Inc. (SFX), 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 Partners, Inc., a Delaware corporation with its headquarters in Austin, Texas, and includes its predecessors, successors and assigns, divisions, subsidiaries, companies, groups, partnerships and joint ventures that Capstar controls, directly or indirectly, and their directors, officers, managers, agents and representatives, and their respective successors and assigns.

B. ''Chancellor'' means Chancellor Media Corporation (successor in interest to Chancellor Media Company, Inc.), a Delaware corporation with its headquarters in Irving, Texas, and includes its predecessors, successors and assigns, divisions, subsidiaries, companies, groups, partnerships and joint ventures that Chancellor controls, directly or indirectly, and their directors, officers, managers, agents and representatives, and their respective successors and assigns.

C. ''SFX'' means defendant SFX Broadcasting, Inc., a Delaware corporation with its headquarters in New York, New York, and includes its predecessors, successors and assigns, divisions, subsidiaries, companies, groups, partnerships and joint ventures that SFX controls, directly or indirectly, and their directors, officers, managers, agents and representatives, and their respective successors and assigns.

D. ''Hicks Muse'' means Hicks, Muse, Tate & Furst Incorporated, an investment firm headquartered in Dallas, Texas, its domestic and foreign parents, predecessors, divisions, subsidiaries, partnerships and joint ventures that Hicks Muse controls, directly or indirectly, and all directors, officers, employees, agents and representatives of the foregoing.

E. ''Greenville Assets'' means all of the assets, tangible or intangible, used respectively in the operation of the WESC 92.5 FM radio station in Greenville, South Carolina; the WESC 660 AM radio station in Greenville, South Carolina; the WJMZ 107.3 FM radio station in Anderson, South Carolina; and the WTPT 93.3 FM radio station in Forest City, North Carolina; including but not limited to: all real property (owned or leased) used in the operation of each station; all broadcast equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies and other tangible property or improvements used in the operation of each 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 defendants 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 defendants or that station in connection with its business.

F. ''Houston Assets'' means all of the assets, tangible or intangible, used in the operation of the KKPN 102.9 FM radio station in Houston, Texas, including but not limited to: all real property (owned or 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 or improvements used in the operation of that station; all licenses, permits and authorizations and applications therefor issued by the FCC and other governmental agencies relating to that station; all contracts, agreements, leases and commitments of defendants 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 defendants or that station in connection with its business.

G. ''Jackson Assets'' means all of the assets, tangible or intangible, used in the operation of the WJDX 96.3 FM radio station in Jackson, Mississippi, including but not limited to: All real property (owned or 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 or improvements used in the operation of that station; all licenses, permits and authorizations and applications therefor issued by the FCC and other governmental agencies relating to that station; all contracts, agreements, leases and commitments of defendants 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 defendants or that station in connection with its business.

H. ''Pittsburgh Assets'' means all of the assets, tangible or intangible, used in the operation of the WTAE 1250 AM radio station in Pittsburgh, Pennsylvania, including but not limited to: All real property (owned or 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 or improvements used in the operation of that station; all licenses, permits and authorizations and applications therefor issued by the FCC and other governmental agencies relating to that station; all contracts, agreements, leases and commitments of defendants 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 defendants or that station in connection with its business.

I. ''The SFX Long Island Assets'' means all of the assets, tangible or intangible, used in the operation of the SBLI 106.1 FM radio station in Patchogue, Long Island, New York; the WBAB 102.3 FM radio station in Babylon, Long Island, New York; the WHFM 95.3 FM radio station in Southampton, Long Island, New York; and the WGBB 1240 AM radio station in Freeport, New York; including but not limited to: all real property (owned or leased) used in the operation of each station; all broadcast equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies and other tangible property or improvements used in the operation of each station; all licenses, permits, authorizations, and applications therefor issued by the FCC and other governmental agencies related to each station; all contracts, agreements, leases and commitments of defendants pertaining to each station and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to each station; and all logs and other records maintained by defendants or each station in connection with its business.

J. ''Greenville Area'' means the Greenville-Spartanburg, South Carolina area, as identified by the Spring 1997 Arbitron Radio Market Report for Greenville-Spartanburg.

K. ''Houston Area'' means the Houston, Texas area, as identified by the Spring 1997 Arbitron Radio Market Report for Houston, Texas.

L. ''Jackson Area'' means the Jackson, Mississippi area, as identified by the Spring 1997 Arbitron Radio Market Report for Jackson, Mississippi.

M. ''Pittsburgh Area'' means the Pittsburgh, Pennsylvania area, as identified by the Spring 1997 Arbitron Radio Market Report for Pittsburgh, Pennsylvania.

N. ''Suffolk Area'' means the Nassau-Suffolk area, as identified by the Spring 1997 Arbitron Radio Market Report for Nassau and Suffolk Counties in New York.

O. ''Hicks Muse Radio Station'' means any radio station owned, operated, or controlled by Chancellor, Capstar, SFX or Hicks Muse and licensed to a community in the Greenville, Houston, Jackson or Pittsburgh areas, or broadcasting from a transmitter site located in Nassau-Suffolk Area.

P. ''Non-Hicks Muse Radio Station'' means any radio station that is licensed to a community in the Greenville, Houston, Jackson or Pittsburgh Areas, or broadcasting from a transmitter site located in the Nassau-Suffolk Area, and is not a Hicks Muse Radio Station.

Q. ''Acquirer'' means the entity or entities to whom defendants divest the Greenville Assets, the Houston Assets, the Jackson Assets, the Pittsburgh Assets, or the SFX Long Island Assets under this Final Judgment.

R. ''LMA'' means the Local Marketing Agreement that Chancellor and SFX entered into on or about July 1, 1996, as part of their July 1, 1996 asset exchange agreement whereby SFX agreed to exchange its four Long Island-based radio stations for Chancellor's two Jacksonville, Florida radio stations and an additional $11 million.

III. Applicability

A. The provisions of this Final Judgment apply to each of the defendants, their successors and assigns, subsidiaries, their 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. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of the assets used in their business of owning and operating radio stations in the Greenville area, the Houston area, the Jackson area, the Pittsburgh area or the Nassau-Suffolk area, that the respective acquiring party of parties agree to be bound, as a successor or assign, by the provisions of this Final Judgment, provided, however, that defendants need not obtain such an agreement from an Acquirer.

C. The term ''sale or other disposition'' used in paragraph (B) of this Section shall include in whole or in part, without limitation, any agreement (such as Local Marketing Agreement or Joint Sales Agreement) pursuant to which another entity has the right to operate, program or sell advertising time on a radio station in the relevant Area.

IV. Divestitures

A. Hicks Muse and Capstar are hereby ordered and directed, in accordance with the terms of this Final Judgment, within six (6) months after the filing of the complaint in this action, or within five (5) business days after notice of entry of this final judgment, whichever is later, to divest the Greenville Assets, the Houston Assets, the Jackson Assets, and the Pittsburgh Assets to one or more Acquirers acceptable to plaintiff in its sole discretion.

B. Hicks Muse and Capstar are hereby ordered and directed, in accordance with the terms of this Final Judgment, within three (3) months after the filing of the complaint in this action, or within five (5) business days after notice of entry of this final judgment, whichever is later, to divest the SFX Long Island Assets to one or more Acquirers acceptable to plaintiff in its sole discretion.

C. Defendants shall use their best efforts to divest the Greenville Assets, the Houston Assets, the Jackson Assets, the Pittsburgh Assets, and the SFX Long Island 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.

D. 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 Greenville Assets, the Houston Assets, the Jackson Assets, the Pittsburgh Assets, and the SFX Long Island Assets. Defendants shall inform any person making an 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 also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Greenville Assets, the Houston Assets, the Jackson Assets, the Pittsburgh Assets, and the SFX Long Island Assets customarily provided in a due diligence process, except such information 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.

E. Defendants shall permit prospective purchasers of the Greenville Assets, the Houston Assets, the Jackson Assets, the Pittsburgh Assets, and the SFX Long Island 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.

F. 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 include all the Greenville Assets, Houston Assets, Jackson Assets, Pittsburgh Assets, and SFX Long Island Assets, and shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the Greenville Assets, the Houston Assets, the Jackson Assets, the Pittsburgh Assets, and the SFX Long Island Assets can and will be used by an Acquirer or Acquirers as viable, ongoing commercial radio businesses. The divestitures, whether pursuant to Sections IV or V of this Final Judgment, shall be made (I) to an Acquirer or Acquirers that in plaintiff's sole discretion, 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 Greenville, Houston, Jackson, Pittsburgh or Nassau-Suffolk Areas, as the case may be, and intends in good faith to continue the operations of the radio station as were in effect in the period immediately prior to the filing of the complaint in this action (unless any significant change in the operations planned by the acquirer is accepted by the plaintiff in its sole discretion); and (ii) pursuant to agreements the terms of which shall not, in the sole judgment of plaintiff, interfere with or otherwise diminish the ability of the purchaser(s) to compete effectively against defendants.

G. Defendants shall not interfere with any efforts by any Acquirer or Acquirers to employ the general manager or any other person working at any of the Greenville, Houston, Jackson, Pittsburgh, or SFX Long Island Assets.

V. Appointment of Trustee

A. In the event that defendants have not divested the Greenville Assets, the Houston Assets, the Jackson Assets, the Pittsburgh Assets, or the SFX Long Island Assets within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by plaintiff to effect the divestiture of the Greenville Assets, the Houston Assets, the Jackson Assets, the Pittsburgh Assets, or the SFX Long Island Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Greenville Assets, the Houston Assets, the Jackson Assets, the Pittsburgh Assets, or the SFX Long Island Assets described in Section II of this Final Judgment. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VI of this Final Judgment, and shall have such 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 divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the plaintiff, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to plaintiff and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VII 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 money shall be paid to defendants and the trust 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 divested assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture, including best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the assets to be divested, and defendants shall develop financial or other information relevant to the assets to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Defendants shall permit prospective acquirers of the assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered 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 assets to be divested, 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 assets to be divested.

F. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (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 report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by plaintiff.

VI. Preservation of Assets

Until the divestitures of the Greenville Assets, the Houston Assets, the Jackson Assets, the Pittsburgh Assets and the SFX Long Island Assets, as required by Section IV of the Final Judgment, have been accomplished:

A. Prior to the consummation of Capstar's acquisition of SFX, defendants shall maintain the independence of their respective radio station operations in the Areas, and following the consummation of Capstar's acquisition of SFX, defendants shall take all steps necessary to operate the Greenville Assets, the Houston Assets, the Jackson Assets, and the Pittsburgh Assets as separate, independent, ongoing, economically viable and active competitors to defendants' other stations in the Greenville, Houston, Jackson, or Pittsburgh Areas, respectively, and shall take all steps necessary to insure 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 Assets, 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 use all reasonable efforts to maintain and increase sales of advertising time by the Greenville, Houston, Jackson, and Pittsburgh Assets, and shall maintain at 1997 or previously approved levels for 1998, whichever are higher, promotional advertising, sales, marketing and merchandising support for said stations.

C. Defendants shall take all steps necessary to ensure that the assets used in the operation of the Greenville, Houston, Jackson, and Pittsburgh Assets, are fully maintained. 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.

D. Defendants shall use their best efforts, consistent with their rights and obligations under the LMA, to cause the SFX Long Island Assets to be operated in a manner consistent with the obligations in paragraphs B and C of this Section; provided, however, that, in the event the LMA is terminated, paragraphs A, B and C of this Section shall apply fully to the operation of the SFX Long Island Assets by or on behalf of defendants.

E. Defendants shall not, except as part of a divestiture approved by plaintiff, in its sole discretion, or a transfer to a trust approved by the FCC, also approved by plaintiff, in its sole discretion, sell any Greenville Assets, Houston Assets, Jackson Assets, Pittsburgh Assets or SFX Long Island Assets.

F. Defendants shall take no action that would jeopardize the sale of the Greenville Assets, the Houston Assets, the Jackson Assets, the Pittsburgh Assets, or the SFX Long Island Assets.

G. Defendants shall 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 definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestitures pursuant to Section IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestitures, shall notify plaintiff of the proposed divestitures. 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 Greenville Assets, the Houston Assets, the Jackson Assets, the Pittsburgh Assets, or the SFX Long Island Assets, as the case may be, 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, or any other third party, additional information concerning the proposed divestitures and the proposed purchaser. Defendants and the trustee shall furnish any additional information from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendants, the proposed purchaser or purchasers, and any third party, 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 provides written notice to defendants and the trustee 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. Absent written notice that plaintiff does not object to the proposed purchaser or upon objection by the plaintiff, a divestiture proposed under Sections IV or V may not be consummated. Upon objection by defendants under the provision 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 divestitures have 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, made an offer to acquire, expressed an interest in acquiring, entering into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Greenville Assets, the Houston Assets, the Jackson Assets, the Pittsburgh Assets, and the SFX Long Island 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 Greenville Assets, the Houston Assets, the Jackson Assets, the Pittsburgh Assets, or the SFX Long Island Assets, as the case may be.

B. Within twenty (20) calendar days of the filing of the complaint in this action, 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 Greenville, Houston, Jackson, and Pittsburgh Assets, and the SFX Long Island Assets, 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 efforts made to preserve the assets to be divested and effect the divestitures.

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 plaintiff, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any Non-Hicks Muse Radio Station, or would transfer the power to market or sell advertising time or to establish advertising prices for Hicks Muse Radio Stations in an Area to any other owner or operator of Non-Hicks Muse Radio Station.

B. Defendants, without providing advance notification to the plaintiff, shall not directly or indirectly enter into any agreement or understanding (including a Local Marketing Agreement (''LMA'') or Joint Sales Agreement (''JSA'')), that would allow defendants to market or sell advertising time or to establish advertising prices for any Non-Hicks Muse Radio Station.

C. The notification obligations required by paragraphs (A), (B), or (E) of this Section X shall not apply to defendants with respect to an Area at such time as there are no Hicks Muse Radio stations in that Area, provided that the provisions of Section III have been complied with.

D. Notification described in Section X (A) and (B) or (E) 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 radio stations owned or operated by defendants in the Area or Areas in which the notifiable transaction takes place. Notification shall be provided at least thirty (30) days prior to acquiring any such interest covered in (A) or (B) 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.

E. Hicks Muse shall notify plaintiff in writing (or arrange for Chancellor to provide such notification) ten (10) days prior to (I) consummation of any direct or indirect acquisition of a Non-Hicks Muse Radio Station by Chancellor, or (ii) entry into force of any agreement or understanding (including an LMA or JSA), that would allow Chancellor to market or sell advertising time or to establish advertising prices for any Non-Hicks Muse Radio Station.

F. 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 United States Department of Justice, including consultants and other persons retained by the plaintiff, upon written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to their principal offices, shall 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 the matters contained in this Final Judgment; and

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

B. Upon the written request of the 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 the Final Judgment as may be requested.

C. No information or documents obtained by the means provided in Section IX or 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 complinance 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 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.

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: ___________________ 1998.

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United States District Judge

United States District Court for the Eastern District of New York

United States of America, Plaintiff, v. Hicks, Muse, Tate & Furst Incorporated, and Capstar Broadcasting Partners, Inc., and SFX Broadcasting Partners, Inc., Defendants. Hon. J. Seybert/M. Orenstein. Civil Action No. CV 98 2422.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The plaintiff filed a civil antitrust Complaint on March 31, 1998, alleging that a proposed acquisition of SFX Broadcasting, Inc. (''SFX'') by Capstar Broadcasting Partners, Inc. (''Capstar'') [1] would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The complaint alleges that Capstar, or its related entity, Chancellor Media Corporation (''Chancellor''), and SFX own and operate several radio stations throughout the United States, and that the transaction will combine radio

[1] Capstar is wholly owned by Hicks, Muse, Tate & Furst, Incorporated (''Hicks Muse''). Hicks Muse is also the largest and controlling shareholder of Chancellor Media Corporation.

station assets such that defendants would control stations that have approximately 74 percent of the radio advertising revenue in Greenville-Spartanburg (''Greenville''), SC, 41 percent in Houston, TX, 49 percent in Jackson, MS, 45 percent in Pittsburgh, PA, and 65 percent in Suffolk County, NY.[2] This acquisition would give defendants the majority of the most competitively significant radio signals in the Greenville, Houston, Jackson, Pittsburgh and Suffolk markets, and a significant share of radio advertising in these markets. As a result, this acquisition would substantially lessen competition in the sale of radio advertising time in the Greenville, Houston, Jackson, Pittsburgh and Suffolk markets.

The prayer for relief seeks: (a) Adjudication that Capstar's proposed acquisition of the radio stations from SFX 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.

Shortly before this suit was filed, a proposed settlement was reached that permits Capstar to complete its acquisition of SFX, yet preserves competition in the markets for which the transaction would raise significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the Complaint was filed.

The proposed Final Judgment orders Capstar and Hicks Muse to divest WESC–FM, WESC–AM, WJMZ–FM and WTPT–FM in Greenville; KKPN–FM in Houston; WJDX–FM in Jackson and WTAE–AM in Pittsburgh, WBLI–FM, WBAB–FM, WHFM and WGBB–AM in Suffolk (the ''divestiture stations''). Unless the United States grants an extension of time, Capstar and Hicks Muse must divest these radio stations within six months after the filing of the Final Judgment (three months in the case of the Suffolk stations). If the parties do not divest these stations within the divestiture period, the Court shall appoint a trustee to sell the assets. The proposed Final Judgment also requires the defendants to ensure that, until the divestitures mandated by the Final Judgment have been accomplished, the divestiture stations will be operated independently as viable, ongoing businesses, and kept separate and apart from the other radio stations of Capstar, Chancellor and SFX in the Greenville, Houston, Jackson, and Pittsburgh areas.[3] The proposed Final Judgment also requires that the divestitures be made to an acquirer or acquirers that have the capability and intent to compete effectively as radio station operators in the Greenville, Houston, Jackson, Pittsburgh and Suffolk markets.

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. The Alleged Violation

A. The Parties

Defendant Capstar is a Delaware corporation headquartered in Austin, Texas. Capstar currently owns and operates approximately 245 radio stations in 60 markets in the United States. In 1997, its revenues were approximately $190 million. In Greenville, Capstar currently owns WJMZ–FM, WTPT–FM, WESC–FM and WESC–AM. In Jackson, Capstar owned WJMI–FM, WKXI–FM, WOAD–AM and WKXI–AM, until a recent sale made in anticipation of this lawsuit. Capstar is wholly owned by Hicks Muse.

Defendant Hicks Muse is an investment firm headquartered in Dallas, Texas. Hicks Muse, through investment funds it controls, owns all the stock of Capstar and has a significant ownership interest in Chancellor.

Chancellor is a Delaware corporation headquartered in Irving, Texas. In 1997, it was the second largest owner of radio stations in the United States and owned 97 radio stations in 22 major U.S. markets, including in each of the 12 largest markets. Chancellor revenues in 1997 were approximately $582.1 million. In Houston, Chancellor owns KLDE–FM, KKBQ–FM, KLOL–FM, KTRH–AM and KKBQ–AM. In Pittsburgh, Chancellor owns WWSW–FM and WWSW–AM. In Suffolk, Chancellor owns WALK–FM and WALK–AM. Chancellor is a Hicks Muse-related company. Hicks Muse owns a significant portion of Chancellor stock and Hicks Muse management and owners influence or control Chancellor competitive behavior to such an extent that Chancellor/Capstar ownership of otherwise competing radio stations would substantially lessen competition.

Defendant SFX is a Delaware corporation headquartered in New York, New York. SFX owns and operates approximately 85 radio stations located in 23 markets in the United States. SFX revenues in 1997 were approximately $322 million. In Greenville, SFX owns WSSL–FM, WTPT–FM, WYMI–FM, WROQ–FM and WGVL–AM. In Houston, SFX owns KKPN–FM, KODA–FM, KKRW–FM and KQUE–AM. In Jackson, SFX owns WMSI–FM, WJDX–FM, WSTZ–FM, WKTF–FM, WZRX–AM and WJDS–AM. WJDX–FM was recently acquired by SFX, in 1996. In Pittsburgh, SFX owns WDVE–FM, WVTY–FM, WXDX–FM, WJJJ–FM and WTAE–AM. In Suffolk, SFX owns WBAB–FM, WBLI–FM, WHFM–FM and WGBB–AM.

B. Description of the Events Giving Rise to the Alleged Violations

On or about August 24, 1997, Capstar agreed to purchase SFX for approximately $2.1 billion. Capstar or Chancellor and SFX own or operate radio broadcast stations in five overlapping markets in which there would be a lessening of competition: Greenville, Jackson, Houston, Pittsburgh and Suffolk. As a result of this transaction, defendants and Chancellor would control stations that have approximately 74 percent of radio advertising revenue in Greenville, 41 percent in Houston, 49 percent in Jackson, 45 percent in Pittsburgh and 65 percent in Suffolk. Prior to the agreement, the Capstar/Chancellor and SFX stations in the Greenville, Houston, Jackson, Pittsburgh and Suffolk markets were vigorous competitors of each other. The proposed acquisition of SFX by Capstar, and the threatened loss of such competition that would be caused thereby, precipitated the Government's suit.

C. Anticompetitive Consequences of the Proposed Merger

1. Sale of Radio Advertising Time In Greenville, Houston, Jackson, Pittsburgh and Suffolk

The Complaint alleges that the sale of advertising time on radio stations

[2] Following the acquisition, defendants and Chancellor would own eight radio stations in the Greenville area (6 FMs and 2 AMs), nine radio stations in the Houston area (6 FMs and 3 AMs), six radio stations in the Jackson area (4 FMs and 2 AMs) seven radio stations in the Pittsburgh area (5 FMs and 2 AMs) and six radio stations in the Suffolk area (4 FMs and 2 AMs).

[3] In Suffolk County, the Chancellor and SFX stations are currently being operated together by Chancellor under a local marketing agreement. Under the terms of another proposed Final Judgment, the parties have agreed to terminate this agreement on or before August 1, 1998, after which time, the parties must operate the Chancellor and SFX stations as separate entities, pending the divestiture required by this Final Judgment.

serving the Greenville, Houston, Jackson, and Pittsburgh Metro Service Areas (''MSA'') each constitute a line of commerce and section of the country—or relevant market—for antitrust purposes. The Greenville MSA includes four counties: Anderson, Greenville, Pickens and Spartanburg. The Houston MSA includes eight counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller. The Jackson MSA includes three counties: Hinds, Madison and Rankin. The Pittsburgh MSA includes six counties: Allegheny, Beaver, Butler, Fayette, Washington and Westmoreland. The relevant market for Suffolk County is Suffolk County. Local and national advertising that is placed on radio stations within Greenville, Houston, Jackson, Pittsburgh and Suffolk markets is aimed at reaching listening audiences in each of these markets, and radio stations located outside of Greenville, Houston, Jackson, Pittsburgh and Suffolk do not provide effective access to these audiences. Thus, if there were a small but significant nontransitory increase in radio advertising within one of these markets, advertisers would not buy enough advertising time from radio stations located outside the Greenville, Houston, Jackson, Pittsburgh and Suffolk markets to defeat the increase.

The defendants' radio stations, like most commercial radio stations, generate almost all their revenues from the sale of advertising time. In general, radio stations attract listeners, and then sell access to those listeners (that is, advertising time) to businesses who wish to advertise their products.

Radio stations price their advertising time in large part on the basis of the number of listeners that they reach. Traditionally, this is expressed on a cost-per-thousand (CPM) basis. When buying radio advertising time, advertisers consider the CPM and the overlap of the number and demographic characteristics of a radio station's listeners with the advertisers' likely customers. If a station individually or number of stations in combination efficiently reach an advertiser's likely customers (target audience), the advertiser has a choice in how to reach its potential customers. This choice creates competition between radio stations and results in lower prices and better services.

In Greenville, Houston, Jackson, Pittsburgh and Suffolk, the defendants' radio stations compete to serve a single distinct geographic area. When the Capstar/Chancellor and SFX stations operate independently, they are good substitutes for each other. The stations compete head-to-head to reach listeners. Many local and regional advertisers seeking to reach listeners in Greenville, Houston, Jackson, Pittsburgh and Suffolk can reach a target efficiently by purchasing time on Capstar and Chancellor or SFX stations or by using a combination of Capstar, Chancellor, SFX and other stations in the market. However, other stations, either alone or in combination with other stations, cannot offer a sufficient number of listeners in demographic groups to be an effective substitute for Capstar, Chancellor and SFX.

When the Capstar and SFX stations operate independently, advertisers can obtain lower prices by ''playing off'' Capstar-owned or Chancellor-owned stations against SFX stations. Advertisers use the threat to move their business between the Capstar/Chancellor and the SFX stations to get more favorable prices and services at each. Advertisers in Greenville, Houston, Jackson, Pittsburgh and Suffolk have paid less for advertising as a result of price competition between the Capstar/Chancellor and SFX radio stations.

2. Harm to Competition

The Complaint alleges that Capstar's acquisition of the SFX will give defendants the ability to raise price to many advertisers—especially local and regional advertisers. Price increases made possible by the acquisition are likely to be profitable. Radio stations see other radio stations as their principal competition. Moreover, for many advertisers, other media do not serve as substitutes for radio advertising. Radio enjoys unique access to certain audiences. A radio is portable; people can listen to radio anywhere especially in places and situations where other media are not present, such as in the car. In addition, radio formats can target listeners in specific demographics. These features make is a more effective means for many advertisers to achieve what the advertising industry refers to as ''frequency.''

Many advertisers who purchase time on radio stations consider such purchases preferable to purchases of other media to meet their specific needs. When these advertisers use radio as part of a ''media mix,'' they often view the other advertising media (such as television or newspapers) as a complement to, and not a substitute for, radio advertising.

Radio stations also provide certain value-added services or promotional opportunitites—such as contests, disc jockey endorsements, live remote broadcasts and greater flexibility in ad placement—that many advertisers significantly value, and which many advertisers cannot exploit as effectively using other media.

For many advertisers, radio advertising is more cost effective than other media, like television and newspapers, in reaching their likely customers. Many advertisers who use radio as part of a multi-media campaign do so because they believe that the radio component enhances the effectiveness of their overall advertising campaign. Many advertisers, especially local and regional advertisers, would not switch their radio advertising purchases to other media if radio prices rose a small but significant amount in relation to other media prices.

Because radio stations in Greenville, Houston, Jackson, Pittsburgh and Suffolk would be able to charge higher prices to these customers without losing the business of other advertisers, a small but significant price increase would be profitable. This is because Capstar will be able to raise price selectively without losing a significant amount of business. Radio stations know a great deal about how likely an advertiser is to turn to an alternative. In the negotiation process, for example, radio stations obtain significant information about an advertiser's objectives. As a result, radio stations know that some advertisers are more likely than others to turn to alternatives. Because prices are set through individual negotiation, station can charge higher prices to advertisers that are less likely to use alternatives, while charging lower prices to those advertisers that would more readily switch. Consequently, defendants will be able to raise price profitably to the many advertisers that would readily switch between Capstar and Chancellor and SFX long before they would consider other alternatives.

Accordingly, the complaint alleges that the relevant product market within which to assess the competitive effects of this acquisition is the sale of radio advertising time in the Greenville, Houston, Jackson, Pittsburgh and Suffolk markets.

Using a measure of market concentration called the Herfindahl-Hirschman Index (''HHI''), explained in Appendix A annexed hereto, the transaction would substantially increase concentration in the Greenville, Houston, Jackson, Pittsburgh and Suffolk radio advertising markets.

a. Greenville. After the proposed transaction, defendants' share of the Greenville market will be 74 percent, measured by radio advertising revenues. The acquisition would yield a post-merger HHI of 5836, representing an increase of 2571. Post-merger, defendants will own and operate WSSL–FM and WESC–FM, the only two successful country stations in the market. Accordingly, advertisers who desire to target country listeners will not be able to buy around defendants' stations.

b. Houston. In Houston, after the acquisition, defendants and Chancellor together would have a 41 percent market share, measured by radio advertising revenues. The acquisition would yield a postmerger HHI of 2330, representing an increase of 765.

c. Jackson. In Jackson, defendants' share of the market would be 49 percent, measured by radio advertising revenues. After the acquisition, there would be an HHI of 3320; it would have been significantly higher, if certain stations had not already been sold by defendant Capstar in anticipation of this lawsuit. Furthermore, the prior acquisition of WJDX-FM by defendant SFX previously had increased the HHI by 1080. That acquisition substantially lessened competition and resulted in a market in which defendants would own three out of the four top-rated stations.

d. Pittsburgh. In Pittsburgh, after the acquisition, defendants and Chancellor together would have a 45 percent market share, measured by radio advertising revenues. The acquisition would yield a post-merger HHI of 3162, representing an increase of 626. The ownership of some Pittsburgh stations by Chancellor and others by defendants would substantially lessen competition because of the relationship between Chancellor and defendants Capstar and Hicks Muse.

e. Suffolk. In Suffolk, Chancellor and SFX are the number one and number two radio companies. After the proposed acquisition, defendants and Chancellor together would control over 65 percent of the radio advertising market. A previous attempt to combine the Chancellor and SFX stations in Suffolk was the subject of an earlier lawsuit, *United States* v. *Chancellor Media Co. and SFX Broadcasting, Inc.*, CV 97–6497. A proposed final judgment in that matter also was field today, pursuant to which that transaction will be abandoned.

For the reasons outlined above, the Department of Justice concludes that the acquisition of SFX by Capstar would substantially lessen competition in the sale of radio advertising time in Greenville, Houston, Pittsburgh and Suffolk, and result in increased prices and reduced quality of service for radio advertising time in each of these overlapping markets, and that the prior acquisition of WJDX in Jackson similarly substantially lessened competition, all in violation of Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of radio advertising time in Greenville, Houston, Jackson, Pittsburgh and Suffolk. It requires the divestiture of several radio stations in the affected markets. This relief-will reduce the market share Capstar would have achieved through the acquisition in the overlapping markets. The divestitures will preserve choices for advertisers, preserve competition among these radio stations, and help ensure that radio advertising rates do not increase and that services to do not decline in the overlapping markets as a result of the acquisition.

The diverstitures will ensure that the affected markets will remain competitive. First, no firm will dominate the competitively significantly radio signals in any market. Second, advertisers will have sufficient alternatives to the merged firm in reaching groups of radio listeners most affected by the transaction; that is, advertisers can reasonably efficiently reach such audiences (''buy around'') without using the merged firm. Third, the ownership structure in each market is such that it allows for the possibility of at least three significant competitors who may compete for advertisers' business.

Unless the United States grants an extension of time, the parties must divest the divestiture stations within six months after the Final Judgment has been filed (three months in Suffolk). Until the divestitures take place, these stations will be maintained as independent competitors to the other stations in Greenville, Houston, Jackson, Pittsburgh and Suffolk. If the parties fail to divest any of the divestiture stations and their respective Assets within the time period specified in the Final Judgment, or extension thereof, the Court, upon application of the United States, shall appoint a trustee nominated by the United States to effect the required divestiture or divestitures. If a trustee is appointed, the proposed Final Judgment provides that the defendants will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of the divestitures stations, and shall be 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. After appointment, the trustee will file monthly reports with the plaintiff, the defendants and the Court, setting forth the trustee's efforts to accomplish the divestitures ordered under the proposed Final Judgment. If the trustee has not accomplished the divestitures within three (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations. At the same time, the trustee will furnish such report to the plaintiff and defendants, who will each have the right to be heard and to make additional recommendations consistent with the purpose of the trust.

The proposed Final Judgment requires that defendants maintain each of the divestiture stations separate and apart from their other stations, pending divestiture of those stations, in the Greenville, Houston, Jackson and Pittsburgh areas. The Judgment also contains provisions to ensure that these stations will be preserved, so that they will remain viable, aggressive competitors after divestiture. The defendants, without providing advance notification to the plaintiff, may not acquire any assets in any Non-Hicks Muse Radio Stations. Also, the defendants may not, without providing advance notice to the plaintiff, enter into any agreement (including a Local marketing agreement or a Joint Sales Agreement), that would allow defendant to market or sell advertising time or to establish adverting prices for any Non-Hicks Muse Radio Station.

The Judgment requires that the defendants or the trustee notify the plaintiff of any proposed divestitures, within two (2) days following the execution of a definitive agreement. Within fifteen (15) days of receipt by plaintiff of notice, the plaintiff may request additional information regarding the proposed divestiture and the proposed purchaser. The defendants and the trustee must furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice, or within twenty days after plaintiff has been provided the additional information requested from the defendants, the proposed purchaser or purchasers, and any third party, plaintiff will provide written notice to the defendants or the trustee stating whether or not it objects to the proposed divestiture. Absent written notice that plaintiff does not object to the proposed divestiture, a divestiture may not be consummated.

The relief in the proposed Final Judgment is intended to remedy the likely anticompetitive effects of the proposed acquisition of SFX by Capstar. Nothing in this Final Judgment is intended to limit the plaintiff's ability to investigate or bring actions, where appropriate, challenging other past or future activities of defendants in Greenville, Houston, Jackson, Pittsburgh and Suffolk or any other markets, including their entry into any JSAs. LMAs, or any other agreements related to the sale of advertising time.

IV. Remedies Available To Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available For the Modification of the Proposed Final Judgment

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Any such written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives To The Proposed Final Judgment

The plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its complaint against defendants. The plaintiff is satisfied, however, that the divestiture of the divestiture stations and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of radio advertising time in Greenville, Houston, Jackson, Pittsburgh and Suffolk. Thus, the proposed Final Judgment would achieve the relief the Government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(a). As the United States Court of Appeals for the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft,* 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, "[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." [4] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making it public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-American Dairymen, Inc.*, 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.,), *cert. denied*, 454 U.S. 1083 (1981); see also *Mircosoft,* 56 F.2d at 1460–62. Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements undermine the effectiveness of antitrust enforcement by consent decree.[5]

The proposed Final Judgment, therefore, should not be reviewed under a

[4] 119 Cong. Rec. 24598 (1973). See *United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comment filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), reprinted in the U.S.C.C.A.N. 6535, 6538.

[5] *Bectel*, 648 F.2d at 666 (citations omitted) (emphasis added); see 858 *BNS*, F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. See also *Microsoft,* 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ") (citation omitted).

standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' [6]

This is strong and effective relief that should fully address the competitive harm posed by the proposed acquisition.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Respectfully submitted,

Asuncion Cummings (AC–1850),

Merger Task Force, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W.; Suite 4000, Washington, D.C. 20530, (202) 307–0001.

Dated March 31, 1998.

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.

[6] *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), quoting *Gillette Co.*, 406 F. Supp. at 716 (citations omitted); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Certificate of Service

I hereby certify that, on this 31st day of March 1998, I caused to be served by hand delivery a copy of the foregoing Competitive Impact Statement upon the following:

David A. Clanton, Baker & McKenzie, 815 Connecticut Avenue, N.W., Washington, D.C. 20006–4078

Neil Imus, Vinson & Elkins, 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20004

Asuncion Cummings

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Digital Imaging Group, Inc.

Notice is hereby given that, on December 17, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Digital Imaging Group, Inc. (''Corporation'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following entities have become members of the Corporation: AGF–GEVAERT N.V., Belgium; Canto Software, San Francisco, CA; Creative Wonders, Redwood City, CA; FotoNation, San Mateo, CA; InMedia Presentations Inc., Vancouver, Canada; Konica, Tokyo, Japan; Koyosha Graphics of America, Inc., San Francisco, CA; LEAD Technologies, Charlotte, NC; Live Picture Corp., Scotts Valley, CA; LSI Logic, Milpitas, CA; MGI Incorporated, Ontario, Canada; Microsoft Corporation, Redmond, CA; Photo Spin Corp., Rolling Hills Estates, CA; Pixo Arts Corporation, Mountain View, CA; Polaroid Corporation, Cambridge, MA; SSG Thomson Microelectronics, San Diego, CA; Storm Technologies, Mountain View, CA; True Spectra, Ontario, Canada; Visioneer, Freemont, CA; and Warp 10 Technologies, Ontario, Canada.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Digital Imaging Group., Inc. intends to file additional written notifications disclosing all changes in membership.

On September 25, 1997 Digital Imaging Group, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 1997 (62 FR 60530).

Constance K. Robinson,

Director of Operations, Antitrust Division.

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OBI Consortium Inc.

Notice is hereby given that, on December 9, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the OBI Consortium Inc., (''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following entities have become members of the venture: Requisite Technology, Inc., Boulder, CO; Bellcore, Piscataway, NJ; Ariba Technologies, Sunnyvale, CA; Chemdex Corporation, Palo Alto, CA; Southern California Gas Co., Los Angeles, CA; Sigma-Aldrich Research, St. Louis, MO; SciQuest, RTP, NC; Visa International, San Francisco, CA; Affymax Research Institute, Santa Clara, CA; DMR Consulting Group, Inc., Ottawa, Ontario, CANADA; Fisher Scientific, Pittsburgh, PA; Rohm and Haas Company, Philadelphia, PA; Johnson & Johnson, New Brunswick, NJ; Graybar Electric Co., St. Louis, MO; GE Global Services, Fairfield, CT; NEC Corporation, Minato-ku, Tokyo, JAPAN; National Semiconductor Corp., Santa Clara, CA; and Staples, Inc., Westboro, MA; Applied Industrial Technologies, Cleveland, OH; First Union National Bank, Charlotte, NC; Newark Electronics, Chicago, IL; Perot Systems, Westchester, PA; SAP America, Foster City, CA; IBM Corporation, Hawthorne, NJ; Microsoft Corporation, Redmond, WA; Hewlett-Packard, Roseville, CA;