

afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Socorro Resource Area Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with the regulations set forth in 43 CFR 2300. For a period of 2 years from the date of publication of this notice in the Federal Register, the public land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are leases, permits, and rights-of-way.

Dated: November 22, 1996.

Josie Banegas,

Acting District Manager.

[FR Doc. 96-30579 Filed 11-29-96; 8:45 am]

BILLING CODE 4310-VC-P

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Westinghouse Electric Corporation and Infinity Broadcasting Corporation; 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 Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States v. Westinghouse Electric Corporation and Infinity Broadcasting Corporation*, Civil Action No. 96-02563. 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).

The United States filed a civil antitrust Complaint on November 12, 1996, alleging that the proposed acquisition of the Infinity Broadcasting Corporation ("Infinity") by the Westinghouse Electric Corporation ("Westinghouse") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Westinghouse

and Infinity own and operate numerous radio stations throughout the United States, and that they each own and operate stations in the Philadelphia, Pennsylvania and Boston, Massachusetts metropolitan areas. This acquisition would give Westinghouse control over more than 40 percent of the radio advertising revenues in those metropolitan areas, as well as a substantial amount of control over access to certain demographic groups of radio listeners targeted by advertisers in those metropolitan areas. As a result, the combination of these companies would substantially lessen competition in the sale of radio advertising time in the Philadelphia and Boston metropolitan areas.

The prayer for relief seeks: (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.

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

The proposed Final Judgment orders Westinghouse to divest WMMR-FM, currently owned by Westinghouse, and WBOS-FM, currently owned by Infinity, in Philadelphia and Boston, respectively. Unless the United States grants an extension of time, Westinghouse must divest these radio stations within six months after the filing of the Final Judgment, or within five (5) business days after notice of entry of the Final Judgment, whichever is later. If Westinghouse does not divest these stations within the divestiture period, the Court may 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, WMMR-FM and WBOS-FM will be operated independently as viable, ongoing businesses, and kept separate and apart from Westinghouse's and Infinity's other Philadelphia and Boston radio stations, respectively. Further, the proposed Final Judgment requires the defendants to give plaintiff prior notice regarding future radio station

acquisitions and future Joint Sales Agreements, Local Marketing Agreements or comparable arrangements in Philadelphia and Boston.

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, NW, Suite 4000, Washington, D.C. 20530 (telephone: 202-307-0001). Copies of the Complaint, Stipulation, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th St., NW, Washington, D.C. 20530 (telephone: 202-514-2481), and at the office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue, NW, Washington, D.C. 20001.

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

Constance K. Robinson,

Director of Operation, Antitrust Division.

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 District of Columbia.

(2) The defendants have agreed to waive the requirements of Fed. R. Civ. P. 4 and to accept service of the Complaint herein by first class mail, addressed to their undersigned counsel of record. available to it as a result of such delay, provided that: (i) Defendants have entered into one or more definitive agreements to divest the WMMR-FM Assets and the WBOS-FM Assets, as defined in the Final Judgment, and such agreements and the Acquirer or Acquires 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) In the event the United States withdraws its consent, as provided in paragraph 3 above, or if the proposed Final Judgment is not entered, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

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

Dated: November 12, 1996.

For Plaintiff United States of America:

Dando B. Cellini,

*U.S. Department of Justice, Antitrust Division,
Merger Task Force, 1401 H Street, N.W., Suite
4000, Washington, D.C. 20005, (202) 307-
0829.*

For Defendant Westinghouse Electric Corporation:

Joe Sims,

*Jones, Day, Reavis & Pogue, 1450 G Street,
N.W., Washington, D.C. 20005, (202) 879-
3939.*

For Defendant Infinity Broadcasting Corporation:

Daniel M. Abuhoff,

*Debevoise & Plimpton, 875 Third Avenue,
New York, NY 10022, (212) 909-6000.*

So Ordered:

United States District Judge

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:

Joe Sims, Jones, Day, Reavis & Pogue,
1450 G St., N.W., Washington, D.C.
20005, Counsel for Westinghouse
Electric Corporation

Daniel M. Abuhoff, Debevoise &
Plimpton, 875 Third Avenue, New
York, NY 10022, Counsel for Infinity
Broadcasting Corporation

Dando B. Cellini.

Whereas, plaintiff, the United States of America, having filed its Complaint herein on November 12, 1996, 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 this Final Judgment

constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, 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 Westinghouse and Infinity, 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. "Westinghouse" means defendant Westinghouse Electric Corporation, a Pennsylvania corporation with its headquarters in Pittsburgh, Pennsylvania, and includes its successors and assigns, its subsidiaries (including CBS Inc.), and directors, officers, managers, agents and employees acting for or on behalf of Westinghouse.

B. "Infinity" means defendant Infinity Broadcasting Corporation, a Delaware corporation with its headquarters in New York, New York, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents and employees acting for or on behalf of Infinity.

C. "WMMR-FM Assets" means all of the assets, tangible or intangible, used in the operation of the WMMR 93.3 FM radio station in Philadelphia, Pennsylvania, including but not limited to: all real property (owned and 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 used in the operation of that 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 Westinghouse 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 Westinghouse or that station in connection with its business. The WMMR-FM Assets do not include any trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials created by Westinghouse, or its subsidiary CBS Inc., and used by other radio stations, not solely by WMMR-FM. For all assets used jointly by WMMR and KYW-AM or KYW TV prior to the divestiture required by this Final Judgment, defendants shall propose to the plaintiff, within 90 days of the filing of this Final Judgment, a plan for dividing such assets in a way that, in plaintiff's sole discretion, does not impair WMMR's ability to attract potential acquirers. Upon approval of the plan by plaintiff, the term "WMMR-FM Assets" shall include only those assets allocated under the plan to WMMR.

D. "WBOS-FM Assets" means all of the assets, tangible or intangible, used in the operation of the WBOS 92.9 FM radio station in Boston, Massachusetts, including but not limited to: all real property (owned and 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 used in the operation of that 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 Infinity 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 Infinity or that station in connection with its business. For all assets used

jointly by WBOS and WOAZ-FM prior to the divestiture required by this Final Judgment, defendants shall propose to plaintiff, within 90 days of the filing of this Final Judgment, a plan for dividing such assets in a way that, in the sole discretion of plaintiff, does not impair WBOS's ability to attract potential acquirers. Upon approval of the plan by plaintiff, the term "WBOS-FM Assets" shall include only those assets allocated under the plan to WBOS.

E. "Philadelphia Area" means the Philadelphia, Pennsylvania Metro Survey Area as identified by The Arbitron Radio Market Report for Philadelphia (Summer 1996), which is made up of the following eight counties: Bucks, Montgomery, Chester, Philadelphia, Delaware, Burlington, Camden and Gloucester.

F. "Boston Area" means the Boston, Massachusetts Metro Survey Area as identified by The Arbitron Radio Market Report for Boston (Summer 1996), which is made up of the following five counties: Essex, Middlesex, Suffolk, Norfolk and Plymouth.

G. "Westinghouse Radio Station" means any radio station owned by Westinghouse or Infinity and licensed to a community in either the Philadelphia Area or the Boston Area, other than WMMR-FM in the Philadelphia Area and WBOS-FM in the Boston Area.

H. "Non-Westinghouse Radio Station" means any radio station licensed to a community in either the Philadelphia Area or the Boston Area that is not a Westinghouse Radio Station.

I. "Acquirer" means the entity or entities to whom defendants divest the WMMR-FM Assets and/or the WBOS-FM Assets under this Final Judgment.

III. Applicability

A. The provisions of this Final Judgment apply to each of the defendants, their successors and assigns, their subsidiaries, affiliates, 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. Each defendant shall require, as a condition of the sale or other disposition of all or substantially all of the assets used in its business of owning and operating its portfolio of radio stations in either the Philadelphia Area or the Boston Area, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment; provided, however, that defendants need not obtain such an agreement from an Acquirer, as defined herein.

IV. Divestiture of WMMR-FM and WBOS-FM

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within six (6) months after the filing of this Final Judgment, or within five (5) business days after notice of entry of this Final Judgment, whichever is later, to divest the WMMR-FM Assets and the WBOS-FM Assets to one or two Acquirers acceptable to plaintiff, in its sole discretion. 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 be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the WMMR-FM Assets and the WBOS-FM Assets can and will be used by an Acquirer or Acquirers as viable, ongoing commercial radio businesses. The divestitures, whether pursuant to Section IV or V of this Final Judgment, shall be made (i) to an Acquirer or Acquirers that, in plaintiff's sole judgment, 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 Philadelphia Area and the Boston Area; and (ii) pursuant to agreements the terms of which shall not, in the sole judgment of plaintiff, interfere with the ability of the purchaser(s) to compete effectively.

B. Defendants agree to use their best efforts to divest the WMMR-FM Assets and the WBOS-FM 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.

C. 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 WMMR-FM Assets and the WBOS-FM Assets. Defendants shall inform any person making a bona fide 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 make known to any person making an inquiry regarding a possible purchase of the WMMR-FM Assets and/or the WBOS-FM Assets that the assets described in Section II (C) and (D) are being offered for sale and that the WMMR-FM Assets and the WBOS-FM

Assets may be purchased as a two-station package or sold separately to different purchasers. Defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the WMMR-FM Assets and the WBOS-FM Assets customarily provided in a due diligence process, except such information that is 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.

D. Defendants shall permit bona fide prospective purchasers of the WMMR-FM Assets and/or the WBOS-FM 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.

E. Defendants shall not interfere with any efforts by any Acquirer or Acquirers to employ the general manager or any employee of WMMR-FM or WBOS-FM.

V. Appointment of Trustee

A. In the event that defendants have not divested the WMMR-FM Assets and the WBOS-FM Assets within the time periods specified in Section IV above, the Court shall appoint, on application of plaintiff, a trustee selected by plaintiff to effect the divestiture of the assets.

B. After the trustee's appointment has become effective, only the trustee shall have the right to sell the WMMR-FM Assets and the WBOS-FM Assets. The trustee shall have the power and authority to accomplish the divestitures at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section V and VII of this Final Judgment and consistent with FCC regulations, and shall have 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 divestitures, and such professionals or agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser acceptable to plaintiff, in its sole judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to the sale of the WMMR-FM and/or the WBOS-FM Assets by the trustee on any

grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee no later than fifteen (15) calendar days after the trustee has provided the notice required under Section VIII 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 monies shall be paid to defendants and the trustee's services 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 divestiture and 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.

D. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the WMMR-FM Assets and the WBOS-FM Assets, and shall use their best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary regulatory approvals. Subject to a customary confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records and facilities related to the WMMR-FM Assets and the WBOS-FM Assets, and defendants shall develop such financial or other information as may be necessary to the divestiture of the WMMR-FM Assets and WBOS-FM Assets. Defendants shall permit prospective purchasers of the WMMR-FM Assets and WBOS-FM Assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment becomes effective, the trustee shall file monthly reports with defendants, plaintiff and the Court, setting forth the trustee's efforts to accomplish divestiture of the WMMR-FM Assets and WBOS-FM Assets as contemplated 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 WMMR-FM Assets and WBOS-FM Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

F. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required 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 reports to defendants and plaintiff, who shall each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it shall deem appropriate to accomplish the purpose of this Final Judgment, which shall, if necessary, include extending the term of the trustee's appointment.

VI. Preservation of Assets/Hold Separate

Until the divestiture of the WMMR-FM Assets and the WBOS-FM Assets required by Section IV of the Final Judgment has been accomplished:

A. Defendants shall take all steps necessary to ensure that WMMR-FM is maintained as a separate, independent, ongoing, economically viable and active competitor to defendants' other stations in Philadelphia and that, except as necessary to comply with Section IV and paragraphs C through F of this Section of the Final Judgment, the management of said station, 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 take all steps necessary to ensure that WBOS-FM is maintained as a separate, independent, ongoing, economically viable and active competitor to defendants' other stations in Boston and that, except as necessary

to comply with Section IV and paragraphs C through F of this Section of the Final Judgment, the management of said station, including the performance of decision-making functions regarding marketing and pricing, will be kept separate and apart from, and not influenced by, defendants.

C. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time by WMMR-FM, and shall maintain at 1995 or previously approved levels for 1996, whichever are higher, promotional advertising, sales, marketing and merchandising support for said station.

D. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time by WBOS-FM, and shall maintain at 1995 or previously approved levels for 1996, whichever are higher, promotional advertising, sales, marketing and merchandising support for said station.

E. Defendants shall take all steps necessary to ensure that the assets used in the operation of WMMR-FM are fully maintained. WMMR-FM's 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.

F. Defendants shall take all steps necessary to ensure that the assets used in the operation of WBOS-FM are fully maintained. WBOS-FM's 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.

G. Defendants shall not, except as part of a divestiture approved by plaintiff, sell any WMMR-FM Assets or WBOS-FM Assets.

H. Defendants shall take no action that would jeopardize the sale of the WMMR-FM Assets or the WBOS-FM Assets.

I. Defendants shall each 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.

Within two (2) business days following execution of a binding agreement to divest, including all contemplated ancillary agreement (e.g., financing), to effect in whole or in part, any proposed divestiture pursuant to Section IV or V of this Final Judgment,

defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. 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 WMMR-FM Assets or the WBOS-FM Assets, 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, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information, whichever is later, plaintiff shall provide written notice of defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff fails to object within the period specified, or if plaintiff provides written notice to defendants and the trustee, if there is one, 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. A divestiture proposed under Section IV shall not be consummated if plaintiff objects to the identity of the proposed purchaser or purchasers. Upon objection by plaintiff, or by defendants under the proviso 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 divestiture has 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, was contacted by defendants, or their representatives, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or made an inquiry about acquiring, any interest in the WMMR-FM Assets and/or the WBOS-FM 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 WMMR-FM Assets and the WBOS-FM Assets.

B. Within twenty (20) calendar days of the filing of this Final Judgment, defendants shall deliver 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 WMMR-FM and WBOS-FM pursuant to Section IV 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 all efforts made to preserve WMMR-FM and WBOS-FM and to divest the WMMR-FM Assets and the WBOS-FM Assets.

X. Notice

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), defendants, without providing advance notification to the United States Department of Justice, shall not directly or indirectly:

(1) acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any Non-Westinghouse Radio Station or any person affiliated with any such Station; provided, however, that defendants need not provide notice under this provision for any direct or indirect acquisition of equity of a Non-Westinghouse Radio Station that would result in defendants' holding no more than five percent of the total equity of the station; or

(2) enter into any Joint Sales Agreements, Local Marketing Agreements or comparable arrangement

with any Non-Westinghouse Radio Station.

Notification 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 respects to Westinghouse Radio Stations in the city implicated by the transaction giving rise to the notification obligation under this Section X. Notification shall be provided at least thirty (30) days prior to acquiring any such interest covered in (1) or (2) above, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreements who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-days 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.

B. 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 of securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, including consultants and other persons retained by the plaintiff, shall, upon written request of the United States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to the principal offices, 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 any matters contained in this Final Judgment; and

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

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

C. No information or documents obtained by the means provided in 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 compliance 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 at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation or modification of any provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violation 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: _____

United States District Judge

COMPETITIVE IMPACT STATEMENT

Plaintiff, the United States of America, 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

Plaintiff filed a civil antitrust Complaint on November 12, 1996, alleging that the proposed acquisition of the Infinity Broadcasting Corporation ("Infinity") by the Westinghouse Electric Corporation ("Westinghouse") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Westinghouse and Infinity own and operate numerous radio stations throughout the United States, and that they each own and operate radio stations in the Philadelphia, Pennsylvania and Boston, Massachusetts metropolitan areas. This acquisition would give Westinghouse control over more than 40 percent of the radio advertising revenues in those metropolitan areas, as well as a substantial amount of control over access to certain demographic groups of radio listeners targeted by advertisers in those metropolitan areas. As a result, the combination of these companies would substantially lessen competition in the sale of radio advertising time in the Philadelphia and Boston metropolitan areas.

The prayer for relief seeks: (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.

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

The proposed Final Judgment orders Westinghouse to divest WMMR-FM, currently owned by Westinghouse, and WBOS-FM, currently owned by Infinity, in Philadelphia and Boston, respectively. Unless the United States grants an extension of time, Westinghouse must divest these radio stations within six months after the filing of the Final Judgment, or within five (5) business days after notice of entry of the Final Judgment, whichever is later. If Westinghouse does not divest these stations within the divestiture period, the Court may 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, WMMR-FM and WBOS-FM will be operated independently as viable, ongoing businesses, and kept separate and apart from Westinghouse's and Infinity's other Philadelphia and Boston radio stations, respectively. Further, the proposed Final Judgment requires the defendants to give plaintiff prior notice regarding future radio station acquisitions in Philadelphia and Boston.

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 Defendants

Westinghouse is a Pennsylvania corporation headquartered in Pittsburgh, Pennsylvania. It currently owns, through its subsidiary CBS Inc., 41 radio stations in 13 metropolitan areas across the United States, including four located in the Philadelphia metropolitan area and two located in the Boston metropolitan area. Westinghouse's four radio stations in the Philadelphia area are KYW-AM, WMMR-FM, WOGL-FM and WPHT-AM; its two radio stations in the Boston area are 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.

Infinity is a Delaware corporation headquartered in New York, New York. Infinity owns 42 radio stations in 13 metropolitan areas across the United States, including two located in the Philadelphia metropolitan area and four

located in the Boston metropolitan area. Infinity's two radio stations in the Philadelphia area are WYSP-FM and WIP-AM; its four stations in the Boston area are WBCN-FM, WZLA-FM, WBOS-FM and WOAZ-FM. In 1995, its revenues from its Philadelphia stations were approximately \$31,500,000, and its revenues from the Boston stations were approximately \$46,000,000.

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

On June 20, 1996, Westinghouse agreed to purchase Infinity for approximately \$4.9 billion. As is more fully discussed below, Westinghouse would control more than 40 percent of the radio advertising revenues in Philadelphia and in Boston, and could exercise substantial control over access to certain target audiences sought by advertisers in those metropolitan areas. The proposed acquisition by Westinghouse of Infinity, and the threatened loss of 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 the Philadelphia and Boston MSAs

The Complaint alleges that the provision of advertising time on radio stations serving the Philadelphia, Pennsylvania Metro Survey Area ("MSA") and the Boston, Massachusetts MSA each constitute a line of commerce and section of the country, of relevant market, for antitrust purposes. These MSAs are the standard geographical units for which Arbitron furnishes radio stations, advertisers and advertising agencies in Philadelphia and Boston with data to aid in evaluating radio audience size and composition. Local and national advertising that is placed on radio stations within the Philadelphia and Boston MSAs is aimed at reaching listening audiences in those MSAs, and radio stations outside of those MSAs do not provide effective access to those audiences. Thus, advertisers would not buy enough advertising time from radio stations located outside of the Philadelphia MSA to defeat a small but significant non-transitory increase in radio advertising prices within that MSA. Likewise, advertisers would not buy enough advertising time from radio stations located outside of the Boston MSA to defeat a small but significant non-transitory increase in radio advertising prices within that MSA.

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.

Many local and national advertisers purchase radio advertising time in Philadelphia and Boston because they find such advertising preferable to advertising in other media to meet certain of their specific needs. For such advertisers, radio 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); may reach target audiences that cannot be reached as effectively through other media; or may offer promotional opportunities to advertisers that they cannot exploit as effectively using other media. For these reasons, many local and national advertisers in Philadelphia and Boston who purchase radio advertising time view radio either as a necessary advertising medium for them, or as a necessary advertising complement to other media.

Although some local and national advertisers may switch some of their advertising to other media rather than absorb a price increase in radio advertising time in Philadelphia and Boston, the existence of such advertisers would not prevent radio stations 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, which negotiate prices individually with advertisers, can identify those advertisers with strong radio preferences. Consequently, radio stations can charge different advertisers different rates. Because of this ability 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.

2. Harm to Competition

The Complaint alleges that Westinghouse's proposed acquisition of Infinity would lessen competition substantially in the provision of radio advertising time in the Philadelphia and Boston MSAs. Westinghouse presently controls approximately 28 percent of all radio advertising revenues in Philadelphia and approximately 15 percent of all radio advertising revenues in Boston. Infinity presently controls approximately 16 percent of all radio advertising revenues in Philadelphia

and more than 25 percent of all radio advertising revenues in Boston. Westinghouse's market shares would rise to approximately 45 percent in Philadelphia and to more than 40 percent in Boston after the proposed merger. According to the Herfindahl-Hirschman Index ("HHI"), a widely-used measure of market concentration defined and explained in Exhibit A annexed hereto, the pre-merger HHI in Philadelphia is approximately 1876, which would rise to 2800 after the merger, with a change of about 924. In Boston, the pre-merger HHI is approximately 1875, which would rise to 2638 after the merger, with a change of about 763. These substantial increases in concentration are likely to reduce competition and lead to higher prices and lower quality of service in each of these markets.

Advertisers select radio stations to reach a large percentage of their target audience based upon a number of factors, including, *inter alia*, the size of the station's audience and whether the characteristics of its audience have a high correlation to the target audience of the advertisers. If a number of stations efficiently reach that target audience, advertisers benefit from the competition among such stations, which leads to better prices and services. Today, several Westinghouse and Infinity stations compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in Philadelphia and Boston, they are close substitutes for each other based on their specific audience characteristics. The proposed merger would eliminate this competition, most critically affecting advertisers seeking to reach male listeners between the ages of 18 and 54 in Philadelphia and Boston.

During individual price negotiations between advertisers and radio stations, advertisers provide the stations with information about their advertising needs, including their target audience and the desired frequency and timing of ads. Radio stations thus have the ability to charge advertisers differing prices after assessing the number and attractiveness of alternative radio stations that can meet a particular advertiser's specific target audience needs.

In Philadelphia and Boston, advertisers that must reach male listeners within certain age ranges can help ensure competitive rates by "playing off" Infinity stations against Westinghouse stations. Because the direct competition between the Westinghouse and the Infinity stations would be eliminated by the proposed merger, and because advertisers seeking

to reach male listeners between the ages of 18 and 54 would have inferior alternatives to the merged entity, the acquisition would give Westinghouse the ability to raise prices and reduce quality. This is particularly true because of the merged entity's ability to charge different prices to different advertisers.

If Westinghouse raised prices or lowered services to those advertisers who buy time on Westinghouse and Infinity stations 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 a substantial portion of 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.

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

For these reasons, the plaintiff concludes that the merger as proposed would substantially lessen competition in the sale of radio advertising time in the Philadelphia and Boston MSAs, eliminate actual competition between Westinghouse and Infinity, and result in increased prices and reduced quality of service for buyers of radio advertising time in those markets, 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 the Philadelphia and Boston MSAs. It requires the divestiture of WMMR-FM in Philadelphia and WBOS-FM in Boston. The divestitures will preserve choices for advertisers, particularly for those seeking to reach male listeners between the ages of 18 and 54. They will also help ensure that

radio advertising rates do not increase and that services do not decline in Philadelphia and Boston as a result of the acquisition. This relief will reduce the market share Westinghouse would have achieved through the merger from about 45 percent to about 37 percent in the Philadelphia MSA, and from over 40 percent to 36.5 percent in the Boston MSA.

Unless the United States grants an extension of time, defendants must divest WMMR-FM and WBOS-FM within six months after the Final Judgment has been filed, or within five (5) business days after notice of entry of this Final Judgment, whichever is later. Until the divestitures take place, these stations, now owned by Westinghouse and Infinity, respectively, will be maintained as independent competitors to the other stations in the Philadelphia and Boston MSAs, respectively, including the other Westinghouse and Infinity stations in those markets.

If Westinghouse fails to divest either or both of these stations within the time period specified in the Final Judgment, or any extension thereof, the Court, upon application of the plaintiff, shall appoint a trustee nominated by the plaintiff to effect the required divestiture or divestitures. If a trustee is appointed, the proposed Final Judgment provides that 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 WMMR-FM and WBOS-FM, 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 six (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 WMMR-FM

and WBOS-FM separate and apart from their other stations, pending divestiture. The Judgment also contains provisions to ensure that these stations will be preserved, so that they will remain viable, aggressive competitors after divestiture.

The proposed Final Judgment also requires defendants to notify the plaintiff before acquiring any significant interest in another Philadelphia or Boston radio station. Such acquisitions could raise competitive concerns but might be too small to be otherwise reported under the Hart-Scott-Rodino ("HSR") premerger notification requirements.

Moreover, defendants are also required to notify the plaintiff before they enter into any Joint Sales Agreements ("JSAs"), where one station takes over another station's advertising time, or enter into any Local Marketing Agreements ("LMAs"), where one station takes over another station's broadcasting and advertising time, or any other comparable arrangements, in the Philadelphia or Boston areas. Agreements whereby defendants sell advertising for or manage other Philadelphia or Boston area radio stations would effectively increase their market share in such MSA. Despite their clear competitive significance, JSAs probably would not be reportable to the plaintiff under the HSR Act. Thus, this provision in the decree ensures that the plaintiff will receive notice of, and be able to stop, any agreements that could have anticompetitive effects in the Philadelphia or Boston markets.

The relief in the proposed Final Judgment is intended to remedy the likely anticompetitive effects of the proposed acquisition of Infinity by Westinghouse. 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 the Philadelphia and Boston MSAs, 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 result of conduct prohibited by the antitrust laws may bring suite in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' 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 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 plaintiff 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 plaintiff 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 plaintiff 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 plaintiff 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 WMMR-FM and WBOS-FM and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of radio advertising time in the Philadelphia and Boston MSAs. 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(e). 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."¹ Rather, [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its 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.

¹ 119 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 Responses 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 U.S.C.A.N. 6535, 6538.

United States v. Mid-America Dairymen, Inc., 1977–1 Trade Case. ¶ 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 *Microsoft*, 56 F.3d 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 distance 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 might undermine the effectiveness of antitrust enforcement by consent decree.²

The proposed Final Judgment, therefore, should not be reviewed under a 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.'" ³

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

VIII. Determinative Documents

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

Dated: November 14, 1996.

² *Bechtel*, 648 F.2d at 666 (citations omitted)(emphasis added); see *BNS*, 858 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'" (citations omitted)).

³ *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).

Respectfully submitted,

Dando B. Cellini,

Merger Task Force, U.S. Department of Justice, Antitrust Division, 1401 H Street NW., Suite 4000, Washington, DC 20530, (202) 307-0829.

EXHIBIT A—Definition of HHI and Calculations for Market

“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 Merger Guidelines. See Merger Guidelines § 1.51.

Certificate of Service

I, Dando B. Cellini, hereby certify that, November 15, 1996, I caused a copy of the foregoing Competitive Impact Statement filed this day in *United States v. Westinghouse Broadcasting Corporation and Infinity Broadcasting Corporation*, Civil Action No. 1:96CV02563 (NHJ), to be served on defendants Westinghouse Broadcasting Corporation and Infinity Broadcasting Corporation by having a copy mailed, first class, postage prepaid, to:

Joe Sims, Jones, Day, Reavis & Pogue,
1450 G St., N.W., Washington, D.C.
20005, Counsel for Westinghouse
Electric Corporation

Daniel M. Abuhoff, Debevoise & Plimpton, 875 Third Avenue, New York, NY 10022, Counsel for Infinity Broadcasting Corporation.

Dated: November 15, 1996.

Dando B. Cellini,

[FR Doc. 96-30550 Filed 11-29-96; 8:45 am]

BILLING CODE 4410—M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 91-38

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 91-38. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before January 31, 1997. The Department of Labor is particularly interested in comments which:

- * evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- * evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- * enhance the quality, utility, and clarify the information to be collected; and
- * minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEE: Gerald B. Lindrew, Department of Labor, Pension and

Welfare Benefits Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219-7933, FAX (202) 219-4745.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 91-38 provides an exemption from the prohibited transaction provisions of ERISA for certain transactions between a bank collective investment fund and persons who are parties in interest with respect to a plan as long as the plan's participation in the collective investment fund does not exceed a specified percentage of the total assets in the collective investment fund. In order to ensure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that compliance with the exemption's conditions are taking place, DOL has required that records regarding the exempted transactions be maintained for six years.

II. Current Actions

This existing collection of information should be continued because without the exemption, individuals or entities which are parties in interest of a plan that invests in a bank collective investment fund would not be able to engage in transactions with the collective investment fund and would, thus, create a potential hardship to those affected. For DOL to grant an exemption, however, it needs to assure that the plan's participants and beneficiaries are protected. It, therefore, included certain conditions in the exemption, and required that records be kept for six years from the date of the transaction so that it can be determined whether these conditions have been followed. Without such records, DOL and other interested parties, such as participants, would be unable to effectively enforce the terms of the exemption and ensure user compliance.

Type of Review: Extension

Agency: Pension and Welfare Benefits Administration

Title: Prohibited Transaction Class Exemption 91-38

OMB Number: 1210-0082

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals

Frequency: On occasion

Estimated Total Burden Hours: 1

Respondents, proposed frequency of response, and annual hour burden: Under ERISA regulation section 2520.103-9, banks sponsoring collective investment funds are required to