

LG Electronics, U.S.A., Inc., 1000 Sylvan Avenue, Englewood Cliffs, NJ 07632.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.  
Issued: September 8, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–23439 Filed 9–13–11; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–388–391 and 731–TA–817–821 ;Second Review]

**Cut-to-Length Carbon-Quality Steel Plate From India, Indonesia, Italy, Japan, and Korea; Revised schedule for the subject reviews.**

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**DATES:** *Effective Date:* September 7, 2011.

## FOR FURTHER INFORMATION CONTACT:

Angela M. W. Newell (202–708–5409), Office of Investigations, U.S.

International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:** On April 18, 2011, the Commission established a schedule for the conduct of the subject five-year reviews (76 FR 22725, April 22, 2011). Due to scheduling conflicts, the Commission is issuing a revised schedule.

Specifically, the Commission will hold its hearing on October 19, 2011, beginning at 10 a.m. Posthearing briefs will be due on October 28, 2011.

For further information concerning this proceeding see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and F (19 CFR part 207).

**Authority:** This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.  
Issued: September 8, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–23438 Filed 9–13–11; 8:45 am]

**BILLING CODE 7020–02–P**

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Meeting of the Federal Advisory Committee

**AGENCY:** Joint Board for the Enrollment of Actuaries.

**ACTION:** Notice.

**SUMMARY:** The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

**DATES:** The meeting will be held on October 21, 2011, from 8:30 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at Deloitte, 2901 N. Central Avenue, Suite 1200, Phoenix, AZ 85012.

## FOR FURTHER INFORMATION CONTACT:

Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–622–8225.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at Deloitte, 2901 N. Central Avenue, Suite 1200, Phoenix, AZ, on October 21, 2011, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: September 8, 2011.

**Patrick W. McDonough,**

*Executive Director, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 2011–23453 Filed 9–13–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. Cumulus Media Inc., et al.; 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 and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America v. Cumulus Media Inc., et al.*, Civil Action No. 1:11–cv–01619. On September 8, 2011, the United States filed a Complaint alleging that Cumulus Media Inc.'s proposed acquisition of Citadel Broadcasting Corporation would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Cumulus to divest certain broadcast radio stations in Harrisburg-Lebanon-Carlisle, Pennsylvania and Flint, Michigan, along with certain tangible and intangible assets.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202-514-2481), on the Department of Justice's Web site at <http://www.usdoj.gov/atr>, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be filed with the Court and may be published in the **Federal Register**. Comments should be directed to John Read, Chief, Litigation III Section, Antitrust Division, Department of Justice, Washington, DC 20530; (telephone: 202-307-0468).

**Patricia A. Brink,**  
*Director of Civil Enforcement.*

#### **United States District Court for the District of Columbia**

United States of America, United States Department of Justice, Antitrust Division, Litigation III Section, 450 Fifth Street, NW., 4th Floor, Washington, DC 20530, *Plaintiff*, v. Cumulus Media Inc., 3280 Peachtree Road, NW., Atlanta, Georgia 30305, and Citadel Broadcasting Corporation, 7690 West Cheyenne Avenue, Suite 220, Las Vegas, Nevada 89129, *Defendants*.

Case: 1:11-cv-01619, Assigned To: Sullivan, Emmet G., Assign. Date: 9/8/2011, Description: Antitrust.

#### **Complaint**

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the proposed acquisition of Citadel Broadcasting Corporation ("Citadel") by Cumulus Media Inc. ("Cumulus"), and to obtain other equitable relief. The acquisition would likely substantially lessen competition for the sale of radio advertising in certain geographic markets in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The United States alleges as follows:

#### **I. Nature of the Action**

1. By agreement dated March 10, 2011, Cumulus agreed to acquire Citadel (by acquiring all of the shares of Citadel)

in a cash-and-stock deal that values Citadel at about \$2.5 billion.

2. Cumulus and Citadel are two of the largest operators of broadcast radio stations in the United States. Cumulus' proposed acquisition of Citadel would make Cumulus the third largest operator of broadcast radio stations in the United States. Cumulus' and Citadel's radio stations provide substantial head-to-head competition against one another for the business of local and national companies that seek to advertise on radio stations in Harrisburg-Lebanon-Carlisle, Pennsylvania; and Flint, Michigan.

3. As alleged in greater detail below, the proposed acquisition would eliminate this substantial head-to-head competition and would result in many advertisers paying higher prices for radio advertising time. Therefore, the proposed acquisition violates Section 7 of the Clayton Act. 15 U.S.C. 18.

#### **II. Jurisdiction and Venue**

4. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

5. Cumulus and Citadel sell radio advertising, a commercial activity that substantially affects, and is in the flow of, interstate commerce. The Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

6. Citadel transacts business and is found in the District of Columbia. Cumulus has consented to venue in this District. Therefore, venue is proper in this District for Cumulus and Citadel under Section 12 of the Clayton Act, 15 U.S.C. 22. Citadel and Cumulus have consented to personal jurisdiction in this District.

#### **III. The Defendants**

7. Cumulus, organized under the laws of Delaware, with headquarters in Atlanta, Georgia, is one of the four largest radio broadcast companies in the United States in terms of revenue. In 2010, Cumulus reported radio broadcast revenues of approximately \$259 million.

8. Citadel, organized under the laws of Delaware, with headquarters in Las Vegas, Nevada, is one of the three largest radio broadcast companies in the United States in terms of revenue. For the period June 1, 2010 through December 31, 2010, Citadel reported net revenues of approximately \$444 million.

#### **IV. Relevant Markets**

9. The relevant markets for Section 7 of the Clayton Act are the sale of radio advertising time to advertisers targeting listeners in two separate Arbitron Metro Survey Areas ("MSAs") by radio stations in those MSAs. The two MSAs are: Harrisburg-Lebanon-Carlisle, Pennsylvania, which includes Cumberland, Dauphin, Lebanon and Perry Counties in Pennsylvania (the "Harrisburg MSA"); and Flint, Michigan, which includes Genesee County in Michigan (the "Flint MSA").

10. Advertisers buy radio advertising time on Cumulus and Citadel radio stations within geographic areas defined by an MSA. An MSA is the geographical unit that is widely accepted by radio stations, advertisers and advertising agencies as the standard geographic area to use in evaluating radio audience size and composition. Cumulus and Citadel radio stations in the Harrisburg and Flint MSAs generate almost all of their revenues by selling advertising time to local, regional, and national advertisers who want to reach listeners in each of those MSAs. Typically, a radio station's advertising rates are based on the station's ability, relative to competing radio stations, to attract listening audiences that have certain demographic characteristics that advertisers want to reach.

11. Many local and national advertisers purchase radio advertising time because they find such advertising preferable to advertising on other media platforms. Reasons for this include the fact that radio advertising time may be more cost-efficient and effective than other media at reaching the advertiser's target audience (individuals most likely to purchase the advertiser's products or services). In addition, radio stations offer certain services or promotional opportunities to advertisers that advertisers cannot obtain as effectively using other media.

12. Local and national advertising that is placed on radio stations broadcasting into the Harrisburg or the Flint MSA is aimed at reaching listening audiences that are present in those MSAs. Radio stations that primarily broadcast into other MSAs do not provide effective access to those audiences.

13. If there were a small but significant and non-transitory increase in the price that Harrisburg and Flint radio stations sold radio advertising time to advertisers targeting listeners in the Harrisburg and Flint MSAs, advertisers would not switch enough purchases to other radio stations or forms of advertising to render the price increase unprofitable. Although some

local and national advertisers may switch some of their advertising to other radio stations or media rather than absorb a price increase in radio advertising time in the Harrisburg or Flint MSAs, the existence of such alternatives would not prevent the Harrisburg or Flint radio stations from profitably raising their prices a small but significant amount. At a minimum, Harrisburg or Flint radio stations could profitably raise prices to those advertisers that view radio targeting listeners in Harrisburg or Flint as a necessary advertising complement to other media. Radio stations negotiate prices individually with advertisers; consequently, radio stations can charge different advertisers different prices. Radio stations generally can identify advertisers with strong preferences to advertise on radio in their MSAs. Because of this ability to price discriminate among customers, radio stations may charge higher prices to advertisers that view radio in their MSA as particularly effective for their needs, while maintaining lower prices for other advertisers.

#### V. Likely Anticompetitive Effects

14. Radio station ownership in the Harrisburg and Flint MSAs is highly concentrated. Cumulus' and Citadel's combined advertising revenue shares exceed 40 percent in both the Harrisburg and Flint MSAs.

15. As articulated in the Horizontal Merger Guidelines issued by the Department of Justice and the Federal Trade Commission, the Herfindahl-Hirschman Index ("HHI") is a measure of market concentration.<sup>1</sup> Market concentration is often one useful indicator of the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition harming consumers. Mergers resulting in highly concentrated markets (with an HHI in excess of 2,500)

that involve an increase in the HHI of more than 200 points are presumed to be likely to enhance market power under the merger guidelines.

16. Concentration in both the Harrisburg and Flint MSAs would increase significantly as a result of the proposed acquisition. The post-acquisition HHI in the Harrisburg MSA would be approximately 3,900. The post-acquisition HHI in the Flint MSA would be over 4,000. Both of these HHIs are well above the 2,500 threshold at which the Department normally considers a market to be highly concentrated. Cumulus' proposed acquisition of Citadel would result in a substantial increase in the HHI in both markets in excess of the 200 points presumed to be anticompetitive under the merger guidelines.

17. Advertisers that use radio to reach their target audiences select radio stations on which to advertise based upon a number of factors including, among others, the size and composition of a station's audience. Many advertisers seek to reach a large percentage of their target audiences by selecting those stations whose listening audience is highly correlated to their target audience. If a number of stations broadcasting in the same MSA efficiently reach a target audience, advertisers benefit from the competition among those stations to offer better prices and services.

18. Cumulus and Citadel compete for listeners in the Harrisburg and Flint MSAs. Cumulus and Citadel each have stations in those two MSAs that seek to appeal to and attract the same listening audiences. For many local and national advertisers buying radio advertising time in the Harrisburg and Flint MSAs, the Cumulus and Citadel stations are close substitutes for each other based upon their specific audience characteristics.

19. During individual price negotiations between advertisers and radio stations, advertisers often provide the stations with information about their advertising needs, including their target audience and the desired frequency and timing of ads. Radio stations have the ability to charge advertisers differing rates based in part on the number and attractiveness of competitive radio stations that can meet a particular advertiser's specific target needs.

20. During these negotiations, advertisers that desire to reach a certain target audience can gain more competitive rates by "playing off" Cumulus stations against Citadel stations in the Harrisburg and Flint MSAs. The proposed acquisition would end this competition.

21. Post-acquisition, if Cumulus raised prices or lowered services to those advertisers that buy advertising time on the Cumulus and Citadel stations in the Harrisburg or Flint MSAs, non-Cumulus radio stations in the Harrisburg or Flint MSAs would not be induced to change their formats to attract those audiences in sufficiently larger numbers to defeat a price increase. Successful radio stations are not likely to change a format solely in response to a small but significant price increase to advertisers by a multi-station firm such as Cumulus because they likely would lose their existing audiences. Even if less successful stations broadcasting in the Harrisburg and Flint MSAs did change format, they would still be unlikely to attract in a timely manner enough listeners to provide suitable alternatives to the post-acquisition Cumulus.

22. The entry of new radio stations into the Harrisburg and Flint MSAs would not be timely, likely or sufficient to deter the exercise of market power.

23. The effect of the proposed acquisition of Citadel by Cumulus would be to lessen competition substantially in interstate trade and commerce in violation of Section 7 of the Clayton Act.

#### VI. Violation Alleged

24. The United States hereby repeats and realleges the allegations of paragraphs 1 through 25 as if fully set forth herein.

25. Cumulus' proposed acquisition of Citadel would likely substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and would likely have the following effects, among others:

(a) Competition in the sale of advertising time on radio stations in the Harrisburg and Flint MSAs would be substantially lessened;

(b) Actual and potential competition in the Harrisburg and Flint MSAs between Cumulus and Citadel in the sale of radio advertising time would be eliminated; and

(c) The prices for advertising time on radio stations in the Harrisburg and Flint MSAs would likely increase, and the quality of services would likely decline.

#### VII. Request for Relief

The United States requests:

(a) That the Court adjudge the proposed acquisition to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) That the Court permanently enjoin and restrain the Defendants from carrying out the proposed acquisition or

<sup>1</sup> See U.S. Dep't of Justice, Horizontal Merger Guidelines § 5.3 (2010), available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.html>. The HHI 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 30, 30, 20, and 20 percent, the HHI is 2,600 (30<sup>2</sup> + 30<sup>2</sup> + 20<sup>2</sup> + 20<sup>2</sup> = 2,600). It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches a maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

from entering into or carrying out any other agreement, understanding, or plan by which Citadel would be acquired by, acquire, or merge with Cumulus;

(c) That the Court award the United States the costs of this action; and

(d) That the Court award such other relief to the United States as the Court may deem just and proper.

Dated: September 8, 2011.

Respectfully submitted,  
For Plaintiff United States.

Sharis A. Pozen (DC Bar #446732),  
*Acting Assistant Attorney General for Antitrust.*

Patricia A. Brink,  
*Director of Civil Enforcement.*

John R. Read (DC Bar #419373),  
*Chief.*

David C. Kully (DC Bar #448763),  
*Assistant Chief, Litigation III Section.*

Mark Merva (DC Bar #451743),  
*Attorney, Litigation III Section, Antitrust Division, U.S. Department of Justice 450 Fifth Street, NW., 4th Floor, Washington, DC 20530. Telephone: (202) 616-1398. Facsimile: (202) 514-7308. E-mail: mark.merva@usdoj.gov.*

United States of America, *Plaintiff v.*  
Cumulus Media Inc., and Citadel  
Broadcasting Corporation;  
*Defendants.*

Case: 1:11-cv-01619.

Assigned To: Sullivan, Emmet G.

Assign. Date: 9/8/2011.

Description: Antitrust.

### Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 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 United States filed a civil antitrust Complaint on September \_\_, 2011, seeking to enjoin Cumulus Media Inc.'s ("Cumulus") proposed acquisition of Citadel Broadcasting Corporation ("Citadel"), alleging that the acquisition would substantially lessen competition for radio advertising in Flint, Michigan and Harrisburg-Lebanon-Carlisle, Pennsylvania in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. At the same time the Complaint was filed, the United States also filed a Preservation of Assets Stipulation and Order and a proposed Final Judgment, which, as described below, are designed to eliminate the anticompetitive effects of the proposed acquisition.

Under the terms of the proposed Final Judgment, Cumulus must divest three broadcast radio stations—WRSR (FM)

licensed to Owosso, Michigan and owned by Cumulus ("WRSR"); WCAT-FM licensed to Carlisle, Pennsylvania and owned by Citadel ("WCAT"); and the assets used in the operation of WWKL (FM) licensed to Palmyra, Pennsylvania and owned by Cumulus ("WWKL") (other than the station intellectual property), and the station intellectual property used in the operation of WTPA (FM) licensed to Mechanicsburg, Pennsylvania and owned by Cumulus ("WTPA"), including all programming contracts and rights (collectively the "Radio Assets"). The Preservation of Assets Stipulation and Order requires that Cumulus and Citadel take steps to ensure that the Radio Assets will remain independent of and uninfluenced by Cumulus and Citadel prior to the Court's approval of the proposed Final Judgment. To ensure that competition is preserved during this time period, the Stipulation requires that the Court appoint a management trustee to serve as manager of the Radio Assets. The duties and responsibilities of the management trustee are set forth in the Stipulation. The management trustee will have the power to operate the Radio Assets in the ordinary course of business, so that they will remain independent and uninfluenced by defendants and so that the Radio Assets are preserved and operated as an ongoing and economically viable competitor to defendants and to other broadcast radio companies.

At the time the Court approves the proposed Final Judgment, pursuant to Section IV of that proposed Final Judgment, the Court will appoint a divestiture trustee who will be responsible for divesting the Radio Assets. The United States contemplates that the Court will appoint the management trustee as the divestiture trustee upon the Court's approval of the proposed Final Judgment. Unless the United States grants an extension, it is contemplated that the divestiture trustee will divest the Radio Assets to a buyer or buyers that the Department, in its sole discretion, has approved within four (4) months of the date of entry of the proposed Final Judgment. After the Radio Assets are transferred to the divestiture trustee, the divestiture trustee will continue to operate the stations independently of Cumulus and Citadel as viable ongoing businesses.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with 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

Cumulus, organized under the laws of Delaware, with headquarters in Atlanta, Georgia, is one of the four largest radio broadcast companies in the United States in terms of revenue. In 2010, Cumulus reported radio broadcast revenues of approximately \$259 million.

Citadel, organized under the laws of Delaware, with headquarters in Las Vegas, Nevada, is one of the three largest radio broadcast companies in the United States in terms of revenue. For the period June 1, 2010 through December 31, 2010, Citadel reported net revenues of approximately \$444 million.

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

On March 10, 2011, Cumulus agreed to acquire Citadel (by acquiring all of the shares of Citadel) in a cash-and-stock deal that values Citadel at about \$2.5 billion. The proposed acquisition would make Cumulus the third largest operator of broadcast radio stations in the United States. Cumulus' and Citadel's radio stations compete head-to-head against one another for the business of local and national companies that seek to purchase radio advertising time that targets listeners that are present in the Flint and Harrisburg MSAs. The proposed acquisition would eliminate that competition.

### C. Anticompetitive Consequences of the Proposed Acquisition

#### 1. Radio Advertising

The Complaint alleges that the provision of radio advertising time to advertisers targeting listeners in two separate MSAs (the Flint MSA and the Harrisburg MSA) by radio stations in those MSAs are two relevant markets for purposes of Section 7 of the Clayton Act. Advertisers buy radio advertising time on Cumulus and Citadel radio stations within geographic areas defined by an MSA. An MSA is the geographical unit that is widely accepted by radio stations, advertisers and advertising agencies as the standard geographic area to use in evaluating radio audience size and composition.

Cumulus and Citadel radio stations in the Harrisburg and Flint MSAs generate almost all of their revenues by selling advertising time to local and national advertisers who want to reach listeners present in each of those MSAs.

Typically, a radio station's advertising rates are based on the station's ability, relative to competing radio stations, to attract listening audiences that have certain demographic characteristics that advertisers want to reach.

Many local and national advertisers purchase radio advertising time because they find such advertising preferable to advertising in other media for their specific needs. For such advertisers, radio time (a) May be less expensive and more cost-efficient than other media in reaching the advertiser's target audience (individuals most likely to purchase the advertiser's products or services); or (b) may offer promotional opportunities to advertisers that they cannot exploit as effectively using other media. For these and other reasons, many local and national advertisers who purchase radio advertising time view radio either as a necessary advertising medium for them or as a necessary advertising complement to other media.

Local and national advertising placed on Flint and Harrisburg radio stations is aimed at reaching listening audiences in the Flint and Harrisburg MSAs. Radio stations that primarily broadcast into other MSAs do not provide effective access to audiences in the Flint and Harrisburg MSAs. If there were a small but significant increase in the price that Flint and Harrisburg radio stations sold radio advertising time to advertisers targeting listeners in the Flint and Harrisburg MSAs, advertisers would not switch enough purchases to other radio stations or forms of advertising to render the price increase unprofitable.

Although some local and national advertisers may switch some of their advertising to other radio stations or media rather than absorb a price increase for radio advertising time in the Harrisburg or Flint MSAs, the existence of such alternatives would not prevent the Harrisburg or Flint radio stations from profitably raising their prices a small but significant amount. At a minimum, Harrisburg or Flint radio stations could profitably raise prices to those advertisers that view radio targeting listeners present in Harrisburg or Flint as a necessary advertising medium, or as a necessary advertising complement to other media. Radio stations negotiate prices individually with advertisers; consequently, radio stations can charge different advertisers different prices. Radio stations generally can identify advertisers with strong preferences to advertise on radio in their MSAs. Because of this ability to price discriminate among customers, radio stations may charge higher prices to advertisers that view radio in their MSA as particularly effective for their needs,

while maintaining lower prices for other advertisers.

## 2. Harm to Competition

The Complaint alleges that Cumulus' proposed acquisition of Citadel would lessen competition substantially in the sale of radio advertising time in the Flint and Harrisburg MSAs. In particular, the merger would further concentrate markets that are already highly concentrated. The Complaint alleges that Cumulus' market share in each of the Flint and Harrisburg MSAs would exceed 40 percent after the merger. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), which is explained in Appendix A to the Complaint, the merger would result in concentration in each of these markets in excess of 3,900 points, well above the 2,500 threshold at which the United States normally considers a market to be highly concentrated.

Furthermore, the Complaint alleges that the merger would eliminate substantial head-to-head competition between Cumulus and Citadel for advertisers seeking to reach specific audiences present in the Flint and Harrisburg MSAs. 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, the characteristics of its audience, and the geographic reach of a station's signal. Many advertisers seek to reach a large percentage of their target listeners by selecting those stations whose audience best correlates to their target listeners. Today, Cumulus and Citadel each have stations in the Flint and Harrisburg MSAs that substantially compete head-to-head to reach the same target audiences. For many local and national advertisers buying time in each of those markets, the Cumulus and Citadel stations are close substitutes for each other based on their specific audience characteristics. During individual price negotiations between advertisers and radio stations, advertisers often provide the stations with information about their advertising needs, including their target audience and the desired frequency and timing of ads. Radio stations have the ability to charge advertisers differing rates based in part on the number and attractiveness of competitive radio stations that can meet a particular advertiser's specific target needs. During these negotiations, advertisers that desire to reach a certain target audience can gain more competitive rates by "playing off" Cumulus stations against Citadel stations in the Flint and

Harrisburg MSAs. The proposed acquisition would end this competition.

Format changes are unlikely to deter the anticompetitive consequences of this transaction. 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 Cumulus because they likely would lose a substantial portion of their existing audiences. Even if less successful stations did change format, they still would be unlikely to attract in a timely manner enough listeners to provide suitable alternatives to the Cumulus stations in their markets.

For all of these reasons, the Complaint alleges that Cumulus' proposed acquisition of Citadel would lessen competition substantially in the sale of radio advertising time to advertisers targeting listeners present in the Flint and Harrisburg MSAs, eliminate head-to-head competition between Cumulus and Citadel in the Flint and Harrisburg MSAs, and result in increased prices and reduced quality of service for radio advertisers in those MSAs, all in violation of Section 7 of the Clayton Act.

## III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will preserve competition in the sale of radio advertising time to advertisers targeting listeners in the Flint and Harrisburg MSAs by requiring substantial radio station divestitures.

### A. Radio Divestitures

The proposed Final Judgment requires Cumulus to divest three broadcast radio stations—one in the Flint MSA and two in the Harrisburg MSA. The divestitures will reduce Cumulus' share in advertising revenues in the Flint and Harrisburg MSAs to less than 40 percent. The divestitures will preserve choices for advertisers and will ensure that radio advertising prices do not increase and services do not decline as a result of the transaction.

Cumulus must divest: WRSR, WCAT, and the Federal Communications Commission ("FCC") license and broadcast signal associated with WWKL along with the intellectual property and broadcast radio programming associated with WTPA. The divestitures must be to a purchaser or purchasers acceptable to the United States in its sole discretion. Except in the case of WWKL, and unless the United States otherwise consents in writing, the divestitures will include all the assets of the stations being divested, and will be accomplished in a way that

will satisfy the United States, in its sole discretion, that such assets can and will be used as viable, ongoing commercial radio businesses. With respect to WWKL and WTPA, the divestiture will include assets sufficient to satisfy the United States, in its sole discretion, that such assets can and will be used to operate WWKL as a viable, ongoing, commercial radio business. The signal strength of that station will be 1,500 watts and the format of the station attracts listeners in the key demographic categories that advertisers desire. Thus, the WWKL/WTPA divestiture will help maintain an economically viable competitor in the Harrisburg MSA.

The relief in the proposed Final Judgment is intended to remedy the likely anticompetitive effects of Cumulus' proposed acquisition of Citadel in the Flint and Harrisburg MSAs. Nothing in the proposed Final Judgment is intended to limit the United States' ability to investigate other past or future activities of Cumulus or Citadel in the Flint and Harrisburg MSAs, or any other MSAs.

#### 1. The Management Trustee

The Preservation of Assets Stipulation and Order, filed at the same time as the Complaint, provides for the appointment of a management trustee to oversee the operations of the Radio Assets prior to the Court's approval of the proposed Final Judgment. The United States contemplates that the Court also will appoint the management trustee as the divestiture trustee pursuant to Section IV of the proposed Final Judgment upon the Court's approval of the proposed Final Judgment.

Unless properly maintained, the value of the Radio Assets may diminish. As a result, the appointment of a management trustee is appropriate to ensure that the Radio Assets maintain their competitive viability and economic value prior to the Court's approval of the proposed Final Judgment. The management trustee will have the power to operate the Radio Assets in the ordinary course of business, so that they will remain independent and uninfluenced by defendants, and so that the Radio Assets are preserved and the related radio stations are operated as an ongoing and economically viable competitor to defendants and to other broadcast radio companies. The management trustee will preserve the confidentiality of competitively sensitive marketing, pricing, and sales information; ensure defendants' compliance with the Stipulation and the proposed Final Judgment; and maximize the value of

the Radio Assets so as to permit expeditious divestiture in a manner consistent with the proposed Final Judgment.

The Stipulation provides that defendants will pay all costs and expenses of the management trustee, including the cost of consultants, accountants, attorneys, and other representatives and assistants hired by the management trustee as are reasonably necessary to carry out his or her duties and responsibilities. After the management trustee's appointment becomes effective, the management trustee will file monthly reports with the United States setting forth efforts taken to accomplish the goals of the Stipulation and the proposed Final Judgment and the extent to which defendants are fulfilling their responsibilities.

#### 2. The Divestiture Trustee

The proposed Final Judgment provides that the Court will appoint a divestiture trustee, selected by the United States upon consultation with the FCC, to effect the divestitures of the Radio Assets and to serve until the Radio Assets are sold to one or more acquirers. Cumulus must divest WCAT and WWKL to an FCC trust in order to comply with FCC local ownership rules. The United States, having consulted with the FCC, will nominate a divestiture trustee. As part of the divestiture, defendants must relinquish any direct or indirect financial control and any direct or indirect role in management of the Radio Assets. Pursuant to Section IV of the proposed Final Judgment, the divestiture trustee will have the legal right to control the Radio Assets until they are sold to a final purchaser, subject to safeguards to prevent defendants from influencing their operation.

Section IV of the proposed Final Judgment details the requirements for the establishment of the divestiture trust, the selection and compensation of the divestiture trustee, and the responsibilities of the divestiture trustee in connection with the divestiture and operation of the Radio Assets. The divestiture trustee has the authority to accomplish divestitures at the earliest possible time and "at such price and on such terms as are then obtainable upon reasonable effort by the trustee."

The proposed Final Judgment provides that defendants will pay all costs and expenses of the divestiture trustee. After the divestiture trustee's appointment becomes effective, the divestiture trustee will file monthly reports with the Court and the United States setting forth the divestiture

trustee's efforts to accomplish the divestitures. Section IV(H) requires the divestiture trustee to divest the Radio Assets to an acceptable purchaser or purchasers no later than four months after the assets are transferred to the divestiture trustee, unless extended by the United States. At the end of that time, if all divestitures have not been accomplished, the divestiture trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the Final Judgment, including extending the trust or term of the divestiture trustee's appointment.

The proposed Final Judgment also requires the defendants to maintain the independence of the Radio Assets, and requires those stations to be kept separate and apart from the defendants' other radio stations. The proposed Final Judgment also contains provisions intended to ensure that these stations will remain viable and aggressive competitors after divestiture.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the transaction. The divestitures of the Radio Assets will preserve competition to sell radio advertising time to advertisers targeting listeners present in the Flint and Harrisburg MSAs by maintaining an independent and economically viable competitor in the Flint and Harrisburg MSAs.

#### B. Ban on Reacquisition

The defendants may not reacquire any of the assets divested pursuant to the terms of the proposed Final Judgment during the term of the consent decree, which is for ten years unless extended by the Court. Reacquisition of any of those assets would undermine, if not negate, the benefits of the relief obtained in these markets. Accordingly, this provision is necessary to protect the integrity of the relief.

#### 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 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 United States 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** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to:

John R. Read, Chief, Litigation III  
Section, Antitrust Division, United  
States Department of Justice, U.S.  
Department of Justice, 450 Fifth  
Street, NW., 4th Floor, Washington,  
DC 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 proposed Final Judgment.

#### VI. Alternatives to the Proposed Final Judgment

The United States considered as an alternative to the proposed Final Judgment, a full trial on the merits against the defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Cumulus' proposed acquisition of Citadel. The United States is satisfied, however, that the radio station divestitures described in the proposed Final Judgment will preserve competition in the sale of radio

advertising in the Flint and Harrisburg MSAs, the markets described in the Complaint. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States 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 the 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." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, 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)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one, as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); see generally *United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. InBev N.V./S.A.*, 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at \*3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism

to enforce the final judgment are clear and manageable."').<sup>2</sup>

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, 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 *Microsoft*, 56 F.3d at 1458–62. 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. 1981)); see also *Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at \*3. Courts have held that:

[T]he 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 might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel*, 648 F.2d at 666 (emphasis added) (citations omitted).<sup>3</sup> In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC*

<sup>2</sup> The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006); see also *SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

<sup>3</sup> Cf. *BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). See generally *Microsoft*, 56 F.3d at 1461 (discussing 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'").



*Comm'ns*, 489 F. Supp. 2d at 17; see also *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[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.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); see also *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Comm'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; see also *InBev*, 2009 U.S. Dist. LEXIS 84787, at \*20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the

complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Comm'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "The 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." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Comm'ns*, 489 F. Supp. 2d at 11.<sup>4</sup>

#### 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.

Dated: September 8, 2011.

Respectfully submitted,  
Mark A. Merva (D.C. Bar # 451743). *Trial Attorney, Litigation III Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW., 4th Floor, Washington, DC 20530, (202) 616-1398.*

#### United States District Court for the District of Columbia

United States of America, *Plaintiff*: v. Cumulus Media Inc., and Citadel Broadcasting Corporation;  
*Defendants.*

<sup>4</sup> See *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent 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."); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

Case: 1:11-cv-01619.

Assigned To: Sullivan, Emmet G.

Assign. Date: 9/8/2011.

Description: Antitrust.

#### [Proposed] Final Judgment

*Whereas*, Plaintiff, United States of America, filed its Complaint on August XX, 2011, and the United States of America and defendants Cumulus Media Inc. ("Cumulus") and Citadel Broadcasting Corporation ("Citadel") (collectively "Defendants"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

*And whereas*, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

*And whereas*, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

*And whereas*, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

*And whereas*, Defendants have represented to the United States that the divestitures required below 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 below;

*Now therefore*, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed*:

#### I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states claims upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

#### II. Definitions

As used in this Final Judgment:

(A) "Acquirer" or "Acquirers" means the person, persons, entity or entities to whom Defendants divest all or some of the Radio Assets.

(B) "Citadel" means Defendant Citadel Broadcasting Corporation, a Delaware corporation with its headquarters in Las Vegas, Nevada, its successors and assigns, and its subsidiaries, divisions, groups,



affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

(C) "Cumulus" means Defendant Cumulus Media Inc., a Delaware corporation with its headquarters in Atlanta, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

(D) "Defendants" mean Cumulus and Citadel.

(E) "Divestiture Cities" means the Flint, Michigan and Harrisburg-Lebanon-Carlisle, Pennsylvania Metropolitan Survey Areas defined as "Arbitron Markets" in the *BIA Investing in Radio Market Report 2011*.

(F) "WRSR" means the broadcast radio station WRSR (FM) licensed to Owosso, Michigan owned by defendant Cumulus.

(G) "WCAT" means the broadcast radio station WCAT (FM) licensed to Carlisle, Pennsylvania owned by defendant Citadel.

(H) "WWKL" means the broadcast radio station WWKL (FM) licensed to Palmyra, Pennsylvania owned by defendant Cumulus.

(I) "WTPA" means the broadcast radio station WTPA (FM) licensed to Mechanicsburg, Pennsylvania owned by defendant Cumulus.

(J) "Radio Assets" means

(1) All right, title, and interest of Cumulus and Citadel in and to the assets, tangible or intangible, used in the operations of WRSR and WCAT, including, but not limited to: (i) All real property (owned or leased) used in the operation of each station; (ii) all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property used in the operation of each station; (iii) all licenses, permits, and other authorizations issued by the Federal Communications Commission ("FCC") and other government agencies related to each station, along with all applications pending before the FCC and other governmental agencies for any new authorizations or the renewal or modification of existing authorizations for each station; (iv) all contracts, agreements, leases and commitments of Cumulus or Citadel (including those relating to programming) relating to the operation of each station; (v) all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to each station; and (vi) all logs and other records maintained by Cumulus or Citadel relating to the business of each station; save and except for any such

specifically enumerated assets that are principally devoted to the operations of stations other than WRSR and WCAT or to the operation of their parent companies, and not necessary to the operation of WRSR and WCAT as viable, ongoing commercial radio broadcasting businesses;

(2) All right, title, and interest of Cumulus and Citadel in and to the assets, tangible or intangible, used in the operation of WWKL (other than WWKL's intellectual property), including (i) All real property (owned or leased) used in the operation of WWKL; (ii) all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property used in the operation of WWKL; (iii) all licenses, permits, and other authorizations issued by the FCC and other government agencies related to WWKL, along with all applications pending before the FCC and other governmental agencies for any new authorizations or the renewal or modification of existing authorizations for WWKL; (iv) all contracts, agreements, leases and commitments of Cumulus or Citadel relating to the operation of WWKL but excluding (a) All contracts, agreements and commitments relating to programming, and (b) all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials used in the operation of WWKL; (v) all logs and other records maintained by Cumulus or Citadel relating to the business of WWKL; save and except for any such specifically enumerated assets that are principally devoted to the operations of stations other than WWKL or to the operation of its parent company, and not necessary to the operation of WWKL as a viable, ongoing commercial radio broadcasting business;

(3) All right, title and interest of Cumulus in and to the intellectual property used in the operation of WTPA (which will be made available to the trustee in the operation and subsequent sale of WWKL), including (i) All programming contracts, agreements, and commitments; (ii) all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials used in the operation of WTPA; and (iii) records maintained by Cumulus or Citadel that identify parties who have purchased advertising time on WTPA in the prior twelve (12) months.

### III. Applicability

(A) This Final Judgment applies to both Defendants, as defined above, and all other persons in active concert or

participation with the Defendants who receive actual notice of this Final Judgment by personal service or otherwise.

(B) If, prior to complying with Section IV of this Final Judgment, Defendants sell, license, or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Radio Assets, Defendants shall require the Acquirer or Acquirers to be bound by the provisions of this Final Judgment.

### IV. Divestitures

(A) The United States, having consulted with the FCC, will nominate a trustee to effect the divestiture of the Radio Assets and to serve until the Radio Assets are sold to one or more Acquirers. Defendants shall not object to the trustee's immediate appointment by this Court. In the event of the trustee's resignation, incapacity to act or death, this Court shall appoint another trustee, selected by the United States, after consultation with the FCC, to effect the divestiture of the Radio Assets. In this event, the United States will identify to Defendants the individual or entity it proposes to select as trustee. The United States will move the Court to approve and appoint a substitute trustee.

(B) Unless the United States otherwise consents in writing, the divestitures by the trustee shall include all of the Radio Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the divestiture will achieve the purposes of this Final Judgment and that the Radio Assets can and will be used by the Acquirer or Acquirers as part of one or more viable, ongoing commercial radio broadcasting businesses. Divestiture of the Radio Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Radio Assets will remain viable and that the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures pursuant to this Final Judgment:

(i) Shall be made to an Acquirer or Acquirers that, in the United States' sole judgment, has or have the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the commercial radio broadcasting business in the Divestiture Cities; and

(ii) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer or Acquirers and Defendants gives Defendants the ability unreasonably to

raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

(C) Only the trustee shall have the right to sell the Radio Assets. The trustee shall have the power and authority to accomplish the divestitures to an Acquirer or Acquirers acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV and V of this proposed Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section IV (E) of this proposed Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestitures.

(D) Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section V.

(E) The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, 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 the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Radio 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, but timeliness is paramount.

(F) Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. 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 Radio Assets, and Defendants shall develop financial and other information relevant to the Radio Assets as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential

research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

(G) After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. 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 Radio Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Radio Assets.

(H) If the trustee has not accomplished the divestiture ordered under this Final Judgment within four (4) 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 divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed three (3) months. To the extent the report contains information that the trustee deems confidential, the report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

#### **V. Notice of Proposed Divestiture**

(A) Within two (2) business days following execution of a definitive divestiture agreement, the trustee shall notify the United States of any proposed divestiture required by Section IV of this Final Judgment. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to

acquire any ownership interest in the Radio Assets, together with full details of the same.

(B) Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer(s), any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the trustee shall furnish to the United States any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

(C) Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section IV(D) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV shall not be consummated. Upon objection by Defendants under Section IV(D), a divestiture proposed under Section IV shall not be consummated unless approved by the Court.

#### **VI. Financing**

Defendants shall not finance all or any part of any purchase made pursuant to Section IV of this Final Judgment.

#### **VII. Preservation of Assets**

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Preservation of Assets Stipulation and Order entered by this Court and cease use of the Radio Assets during the period that the trustee manages the Radio Assets. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

#### **VIII. Affidavits**

(A) Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures

have been completed under Section IV, Defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Section IV of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Radio Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Radio Assets and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Provided that the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including any limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

(B) Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

(C) Defendants shall keep all records of all efforts made to preserve the Radio Assets until one (1) year after the respective divestitures of WCAT, WWKL and WRSR have been completed.

#### **IX. Compliance Inspection**

(A) For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(i) Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(ii) To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

(B) Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating 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 shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States 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 Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

#### **X. No Reacquisition**

Defendants shall not reacquire any part of the Radio Assets during the term of this Final Judgment.

#### **XI. Retention of Jurisdiction**

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify

any of its provisions, to enforce compliance, and to punish violations of its provisions.

#### **XII. Expiration of Final Judgment**

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

#### **XIII. Public Interest Determination**

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to those comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

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United States District Judge.

[FR Doc. 2011-23548 Filed 9-13-11; 8:45 am]

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## **DEPARTMENT OF JUSTICE**

### **Drug Enforcement Administration**

[Docket No. DEA-350R]

#### **Proposed Adjustment of the Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2011**

**AGENCY:** Drug Enforcement Administration (DEA), Department of Justice.

**ACTION:** Notice with request for comments.

**SUMMARY:** This notice proposes to adjust the 2011 assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

**DATES:** Electronic comments must be submitted and written comments must be postmarked on or before October 14, 2011. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

**ADDRESSES:** To ensure proper handling of comments, please reference "Docket No. DEA-350R" on all electronic and written correspondence. DEA encourages all comments be submitted