Fujitsu Ltd. and Fujitsu Microelectronics, Inc.

On February 25, 1998, Samsung moved to amend the complaint and notice of investigation by deleting from the investigation all claims of the ''026 patent that were at issue. Samsung stated that it sought to withdraw its allegations regarding these claims in order to ensure prompt resolution of the investigation and, specifically, to ensure that the target and hearing dates will be met. Samsung further stated that withdrawal of these claims would significantly narrow the issues presented in the investigation and substantially lessen the amount of discovery to be taken. Thus, Samsung asserted that good cause existed for the ALJ to grant its motion. Samsung's motion was unopposed by the respondents and the Commission investigative attorneys.

On March 17,1998, the ALJ issued an ID granting Samsung's motion to amend the complaint and notice of investigation. No party petitioned for review of the ALJ's ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

Issued: April 6, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–9624 Filed 4–10–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. CBS Corporation and American Radio Systems 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. *CBS Corporation and American Radio Systems Corporation,* Case No. 1:98CV00819. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day pubic 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 March 31, 1998, alleging that the proposed acquisition of American Radio Systems Corporation (''ARS'') by CBS Corporation (''CBS'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that CBS and ARS own and operate numerous radio stations throughout the United States, and that they each own and operate radio stations in the Boston, Massachusetts, St. Louis, Missouri and Baltimore, Maryland metropolitan areas. This acquisition would give CBS control over more than 40 percent of the radio advertising revenues in those metropolitan areas, and would give CBS the ability to raise prices and reduce services to many advertisers. As a result, the combination of these companies would substantially lessen competition in the sale of radio advertising time in the Boston, St. Louis and Baltimore metropolitan areas.

The prayer for relief seeks: (a) Adjudication that CBS's proposed acquisition of ARS 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 CBS to complete its acquisition of ARS, yet preserves competition in the markets in which the transaction would raise significant competitive concerns. A Stipulation, proposed Final Judgment embodying the settlement, and Competitive Impact Statement were filed with the Court at the same time the Complaint was filed.

The proposed Final Judgment orders CBS to divest WEEI–AM, WAAF–FM, WEGQ–FM and WRKO–AM in Boston, KSD–FM and KLOU–FM in St. Louis, and WOCT–FM in Baltimore, all of which are currently owned by ARS. Unless the United States grants an extension of time, CBS must divest these radio stations within six months after CBS places certain stations which it is required to dispose of by FCC rules into FCC disposition trusts (with an outside date of nine months after the Complaint was filed) or within five business days after notice of entry of the Final Judgment, whichever is later.

If CBS does not divest these stations within the divestiture period, the Court, upon application of the United States, is to appoint a trustee to sell the assets. The proposed Final Judgment also requires CBS to ensure that, until the divestitures mandated by the Final Judgment have been accomplished, these stations will be operated independently as viable, ongoing businesses, and kept separate and apart from CBS's other radio stations in Boston, St. Louis and Baltimore. Further, the proposed Final Judgment requires defendants to give the United States prior notice regarding future radio station acquisitions or certain agreements pertaining to the sale of radio advertising time in Boston, St. Louis or Baltimore.

The United States and CBS and ARS 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.

A Competitive Impact Statement filed by the United States describes the Compliant, 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, DC 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 Street, NW., Washington, DC 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, DC 20001.

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

Constance K. Robinson,

Director of Operations & Merger Enforcement Antitrust Division.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. CBS Corporation and American Radio Systems Corporation, Defendants

[No. 98–0819]

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

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

(4) The parties recognize that there could be a delay in obtaining approval by or a ruling of a government agency related to the divestitures required by Section IV of the Final Judgment, notwithstanding the good faith efforts of the defendants and any prospective Acquirer, as defined in the Final Judgment. In this circumstance, plaintiff will, in the exercise of its sole discretion, acting in good faith give special consideration to forebearing from applying for the appointment of a trustee pursuant to Section V of the Final Judgment, or from pursuing legal remedies available to it as a result of such delay, provided that: (i) Defendants have entered into one or more definitive agreements to divest the WOCT–FM Assets, the WEGO–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, and the KLOU–FM Assets, as defined in the Final Judgment, and such agreements and the Acquirer or Acquiers 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 wit 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 Acquiers are responsible for any such delay.

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

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

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

Dated: March 31, 1998.

For Plaintiff United States of America:

Allen P. Grunes,

U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20005, (202) 307–0001.

For Defendant CBS Corporation:

Joe Sims,

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

For Defendant American Radio Systems Corporation:

Timothy J. O'Rourke,

Dow, Lohnes & Albertson, 1200 New Hampshire Avenue, N.W., Washington, D.C. 20036, (202) 776–2000.

So Ordered:

_____

United States District Judge

Certificate of Service

I, Allen P. Grunes, hereby certify that, on March 31, 1998, I caused the foregoing document to be served on defendants CBS Corporation and American Radio Systems 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 CBS Corporation.

Timothy J. O'Rourke,

Dow, Lohnes & Albertson, 1200 New Hampshire Avenue, N.W., Washington, D.C. 20036, Counsel for American Radio Systems Corporation.

Allen P. Grunes.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. CBS Corporation and American Radio Systems Corporation, Defendants

[No. 98–0819]

Final Judgment

WHEREAS, plaintiff, the United States of America, filed its Complaint in this action on March 31, 1998, and plaintiff and defendants by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without 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 CBS and ARS, 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. ''CBS'' means defendant CBS Corporation, a Pennsylvania 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 CBS.

B. ''ARS'' means defendant American Radio Systems Corporation, a Delaware corporation with its headquarters in Boston, Massachusetts, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents and employees acting for or on behalf of ARS.

C. ''WOCT–FM Assets'' means all of the assets, tangible or intangible, used in the operation of the WOCT 104.3 FM radio station in Baltimore, Maryland, 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 defendants pertaining to that station and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to that station; and all logs and other records maintained by defendants or that station in connection with its business.

D. ''WEGQ–FM Assets'' means all of the assets, tangible or intangible, used in the operation of the WEGQ 93.7 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 FCC and other governmental agencies relating to that station; all contracts, agreements, leases and commitments of defendants pertaining to that station and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to that station; and all logs and other records maintained by defendants or that station in connection with its business.

E. ''WAAF–FM Assets'' means all of the assets, tangible or intangible, used in the operation of the WAAF 107.3 FM radio station in Worcester, 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 FCC and other governmental agencies relating to that station; all contracts, agreements, leases and commitments of defendants pertaining to that station and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to that station; and all logs and other records maintained by defendants or that station in connection with its business.

F. ''WEEI–AM Assets'' means all of the assets, tangible or intangible, used in the operation of the WEEI 850 AM 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 FCC and other governmental agencies relating to that station; all contracts, agreements, leases and commitments of defendants pertaining to that station and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to that station; and all logs and other records maintained by defendants or that station in connection with its business.

G. ''WRKO–AM Assets'' means all of the assets, tangible or intangible, used in the operation of the WRKO 680 AM 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 FCC and other governmental agencies relating to that station; all contracts, agreements, leases and commitments of defendants pertaining to that station and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to that station; and all logs and other records maintained by defendants or that station in connection with its business.

H. ''KSD–FM Assets'' means all of the assets, tangible or intangible, used in the operation of the KSD 93.7 FM radio station in St. Louis, Missouri, 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 FCC and other governmental agencies relating to that station; all contracts, agreements, leases and commitments of defendants pertaining to that station and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to that station; and all logs and other records maintained by defendants or that station in connection with its business.

I. ''KLOU–FM Assets'' means all of the assets, tangible or intangible, used in the operation of the KLOU 103.3 FM radio station in St. Louis, Missouri, 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 FCC and other governmental agencies relating to that station; all contracts, agreements, leases and commitments of defendants pertaining to that station and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to that station; and all logs and other records maintained by defendants or that station in connection with its business.

J. ''Baltimore Area'' means the Baltimore, Maryland Metro Survey Area as identified by The Arbitron Radio Market Report for Baltimore (Spring 1997), which is made up of the following counties: Anne Arundel, Baltimore, Baltimore City, Carroll, Harford, Howard, and Queen Annes.

K. ''Boston Area'' means the Boston, Massachusetts Metro Survey Area as identified by The Arbitron Radio Market Report for Boston (Spring 1997), which is made up of the following counties: Essex, Middlesex, Norfolk, Plymouth, and Suffolk.

L. ''St. Louis Area'' means the St. Louis, Missouri Survey Area as identified by The Arbitron Radio Market Report for St. Louis (Spring 1997), which is made up of the following counties: Clinton, Franklin, Jefferson, Jersey, Lincoln, Madison, Monroe, St. Charles, St. Clair, St. Louis, St. Louis City, and Warren.

M. ''CBS Radio Station'' means any radio station owned by CBS or ARS and licensed to a community in the Baltimore Area, the Boston Area, or the St. Louis Area, other than WOCT–FM in the Baltimore Area, WEGQ–FM, WAAF–FM, WEEI–AM and WRKO–AM in the Boston Area, and KSD–FM, and KLOU–FM in the St. Louis Area.

N. ''Non-CBS Radio Station'' means any radio station licensed to a community in the Baltimore Area, the Boston Area, or the St. Louis Area that is not a CBS Radio Station.

O. ''Acquirer'' means the entity or entities to whom defendants divest the WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, and/or the KLOU–FM Assets under this Final Judgment.

P. ''FCC Disposition Trust'' means the FCC-approved trust or trusts established for the purpose of insuring compliance with FCC numerical limitations on radio local ownership.

Q. ''FCC Trust Radio Stations'' means those stations which CBS will transfer into the FCC Disposition Trust prior to consummation of the proposed acquisition.

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 the Baltimore Area, the Boston Area, or the St. Louis 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 in connection with the divestiture of the WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, and/or the KLOU–FM Assets; and provided further that if any divestiture assets are placed in an FCC Disposition Trust, defendants shall undertake to require that the trustee be bound by the provisions of this Final Judgment.

IV. Divestitures

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within six (6) months after CBS assigns the FCC Trust Radio Stations to the FCC Disposition Trust, or nine (9) months after the filing of the complaint in this action, whichever is earlier, to divest the WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, and the KLOU–FM Assets to one or more Acquirers acceptable to plaintiff in its sole discretion; provided, however, notwithstanding the foregoing, the divestitures required by this Final Judgment need not be accomplished prior to five (5) days after notice of the entry of this Final Judgment by the Court.

B. Defendants agree to use their best efforts to divest the WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, and the KLOU–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 WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, and the KLOU–FM Assets. Defendants shall inform any person making a bonafide 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 WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, and/or the KLOU–FM Assets that the assets described in Section II (C) through (I) are being offered for sale and may be purchased separately or as a multi-station package of two or more stations. Defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, and the KLOU–FM Assets customarily provided in a due diligence process, except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to plaintiff at the same time that such information is made available to any other person.

D. Defendants shall permit bona fide prospective purchasers of the WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, and/or the KLOU–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. Unless plaintiff otherwise consents in writing, the divestitures pursuant to Section IV of this Final Judgment, or by the trustee appointed pursuant to Section V, shall include all the WOCT–

FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, and the KLOU–FM Assets, and shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that such 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 (a) 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 Baltimore Area, the Boston Area, and the St. Louis Area, and (b) intends or intend in good faith to continue the operations of the radio station as were in effect in the period immediately prior to the filing of the complaint in this action (unless any significant change in the operations planned by an Acquirer is accepted by the plaintiff in its sole discretion); and (ii) pursuant to agreements the terms of which shall not, in the sole judgment of plaintiff, interfere with or otherwise diminish the ability of the Acquirer or Acquirers to compete effectively against defendants.

F. Defendants shall not interfere with any efforts by any Acquirer or Acquirers to employ the general manager or any other employee of WOCT–FM, WEGQ–FM, WAAF–FM, WEEI–AM, WRKO–AM, KSD–FM or KLOU–FM.

V. Appointment of Trustee

A. In the event that defendants have not divested the WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, and the KLOU–FM Assets within the time specified in Section IV of this Final Judgment, 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 WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, and the KLOU–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 IV and VII of this Final Judgment and consistent with FCC regulations, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely 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 WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, or the KLOU–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 within ten (10) calendar days after the trustee has provided the notice required under Section VII of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants, and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divestitures and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the spend with which they are accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys and any other persons retained by the trustee shall have full and complete access to the personnel, books, records and facilities related to the WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, and the KLOU–FM Assets, and defendants shall develop financial or other information relevant to the assets to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Defendants shall permit prospective purchasers of the WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, and the KLOU–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, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, or the KLOU–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 assets.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment.

VI. Preservation of Assets/Hold Separate

Until the divestiture of the WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, and the KLOU–FM Assets required by Section IV of the Final Judgment has been accomplished:

A. Prior to the consummation of CBS's acquisition of ARS, defendants shall maintain the independence of their respective radio stations in the Baltimore Area. Following the consummation of CBS's acquisition of ARS, defendants shall take all steps necessary to operate WOCT–FM as a separate, independent, ongoing, economically viable and active competitor to CBS's other stations in the Baltimore Area, and shall take all steps necessary to insure that, except as necessary to comply with Section IV and paragraphs (D) and (K) 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, CBS.

B. Prior to the consummation of CBS's acquisition of ARS, defendants shall maintain the independence of their respective radio stations in the Boston Area. Following the consummation of CBS's acquisition of ARS, defendants shall take all steps necessary to operate WEGQ–FM, WAAF–FM, WEEI–AM and WRKO–AM as separate, independent, ongoing, economically viable and active competitors to CBS's other stations in the Boston Area, and shall take all steps necessary to insure that, except as necessary to comply with Section IV and paragraphs (E), (F), (G), (H), (L), (M), (N) and (O) of this Section of the Final Judgment, the management of said stations, including the performance of decision-making functions regarding marketing and pricing, will be kept separate and apart from, and not influenced by, CBS.

C. Prior to the consummation of CBS's acquisition of ARS, defendants shall maintain the independence of their respective radio stations in the St. Louis Area. Following the consummation of CBS's acquisition of ARS, defendants shall take all steps necessary to operate KSD–FM and KLOU–FM as separate, independent, ongoing, economically viable and active competitors to CBS's other stations in the St. Louis Area, and shall take all steps necessary to insure that, except as necessary to comply with Section IV and paragraphs (I), (J), (P) and (Q) of this Section of the Final Judgment, the management of said stations, including the performance of decision-making functions regarding marketing and pricing, will be kept separate and apart from, and not influenced by, CBS.

D. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time by WOCT–FM, and shall maintain at 1997 or previously approved levels for 1998, whichever are higher, promotional advertising, sales, marketing and merchandising support for said station.

E. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time by WEGQ–FM, and shall maintain at 1997 or previously approved levels for 1998, whichever are higher, promotional advertising, sales, marketing and merchandising support for said station.

F. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time by WAAF–FM, and shall maintain at 1997 or previously approved levels for 1998, whichever are higher, promotional advertising, sales, marketing and merchandising support for said station.

G. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time by WEEI–AM, and shall maintain at 1997 or previously approved levels for 1998, whichever are higher, promotional advertising, sales, marketing and merchandising support for said station.

H. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time by WRKO–AM, and shall maintain at 1997 or previously approved levels for 1998, whichever are higher, promotional advertising, sales, marketing and merchandising support for said station.

I. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time by KSD–FM, and shall maintain at 1997 or previously approved levels for 1998, whichever are higher, promotional advertising, sales, marketing and merchandising support for said station.

J. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time by KLOU–FM, and shall maintain at 1997 or previously approved levels for 1998, whichever are higher, promotional advertising, sales, marketing and merchandising support for said station.

K. Defendants shall take all steps necessary to ensure that the assets used in the operation of WOCT–FM are fully maintained. WOCT–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.

L. Defendants shall take all steps necessary to ensure that the assets used in the operation of WEGQ–FM are fully maintained. WEGQ–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.

M. Defendants shall take all steps necessary to ensure that the assets used in the operation of WAAF–FM are fully maintained. WAAF–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.

N. Defendants shall take all steps necessary to ensure that the assets used in the operation of WEEI–AM are fully maintained. WEEI–AM'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.

O. Defendants shall take all steps necessary to ensure that the assets used in the operation of WRKO–AM are fully maintained. WRKO–AM'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.

P. Defendants shall take all steps necessary to ensure that the assets used in the operation of KSD–FM are fully maintained. KSD–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.

Q. Defendants shall take all steps necessary to ensure that the assets used in the operation of KLOU–FM are fully maintained. KLOU–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.

R. Defendants shall not, except as part of a divestiture approved by plaintiff, sell any WOCT–FM Assets, WEGQ–FM Assets, WAAF–FM Assets, WEEI–AM Assets, WRKO–AM Assets, KSD–FM Assets, or KLOU–FM Assets.

S. Defendants shall take no action that would jeopardize the sale of the WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, or the KLOU–FM Assets.

T. Defendants shall appoint a person or persons to oversee the assets to be held separate and who will be responsible for defendants' compliance with Section VI of this Final Judgment.

VII. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestitures pursuant to Sections IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestitures, shall notify plaintiff of the proposed divestitures. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, or the KLOU–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, or any other third party, additional information concerning the proposed divestitures and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendants, the proposed purchaser or purchasers, and any third party, whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendants and the trustee that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that plaintiff does not object to the proposed purchaser or upon objection by the plaintiff, a divestiture proposed under Section IV or Section V may not be consummated. Upon objection by defendants under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. Financing

Defendants are ordered and directed not to finance all or any part of any purchase by an Acquirer made pursuant to Sections IV or V of this Final Judgment without the prior written consent of plaintiff.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, defendants shall deliver to plaintiff an affidavit as to the fact and manner of their compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, and/or the KLOU–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 WOCT–FM Assets, the WEGQ–FM Assets, the WAAF–FM Assets, the WEEI–AM Assets, the WRKO–AM Assets, the KSD–FM Assets, or the KLOU–FM Assets.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to plaintiff an affidavit which describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve WOCT–FM, WEGQ–FM, WAAF–FM, WEEI–AM, WRKO–AM, KSD–FM, and KLOU–FM pursuant to Section VI of this Final Judgment. Defendants shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in their earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after such change is implemented.

C. Defendants shall preserve all records of efforts made to preserve the assets to be divested and effect the divestitures.

X. Notice

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the ''HSR Act''), defendants, without providing advance notification to the plaintiff, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any Non-CBS Radio Station; provided, however, that defendants need not provide notice under this provision for any direct or indirect acquisition of equity of a Non-CBS Radio Station that would result in defendants' holding no more than five percent of the total equity of the station.

B. Defendants, without providing advance notification to the plaintiff, shall not directly or indirectly enter into any agreement or understanding that would allow defendants to market or sell advertising time or to establish advertising prices for any Non-CBS Radio Station.

C. Notification described in (A) and (B) shall be provided to the United States Department of Justice in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5–9 of the instructions must be provided only with respect to CBS Radio Stations in the Baltimore Area, the Boston Area, and the St. Louis Area. Notification shall be provided at least thirty (30) days prior to acquiring any such interest covered in (A) or (B) above, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans

discussing the proposed transaction. If within the 30-day period after notification, representatives of the Department make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

D. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XI. Compliance Inspection

For the purpose of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the plaintiff, upon written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

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

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

B. Upon the written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in the Final Judgment as may be requested.

C. No information or documents obtained by the means provided in 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 for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII. Termination

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

XIV. Pubic Interest

Entry of this Final Judgment is in the public interest.

Dated _____.

_____

United States District Judge

Certificate of Service

I, Allen P. Grunes, hereby certify that, on March 31, 1998, I caused the foregoing document to be served on defendants CBS Corporation and American Radio Systems Corporation by having a copy mailed, first-class, postage prepaid, to:

Joe Sims,

Jones, Day, Reavis & Pogue, 1450 G St., NW., Washington, DC 20005, Counsel for CBS Corporation.

Timothy J. O'Rourke,

Dow, Lohnes & Albertson, 1200 New Hampshire Avenue, NW., Washington, DC 20036, Counsel for American Radio Systems Corporation.

Allen P. Grunes.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. CBS Corporation and American Radio Systems Corporation, Defendants

[Case Number 1:98CV00819]

JUDGE: Emmet G. Sullivan
DECK TYPE: Antitrust
DATE STAMP: 03/31/98

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 March 31, 1998, alleging that a proposed acquisition of American Radio Systems Corporation (''ARS'') by CBS Corporation (''CBS'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that CBS and ARS both own and operate numerous radio stations throughout the United States, and that they each own and operate radio stations in the Boston, St. Louis, and Baltimore metropolitan areas. The acquisition would give CBS a significant share of the radio advertising market in each of these metropolitan areas, control over a high percentage of the available radio signals which cover the markets, and control over stations that are close substitutes for each other based on their specific audience characteristics. In Boston, according to 1997 industry estimates, the acquisition would give CBS control of 3 out of 5 top radio stations or 59 percent of the radio advertising revenues. In St. Louis, CBS would control 4 out of the 7 top radio stations or 49 percent of the radio advertising revenues. Finally, CBS would control 5 of the top 9 radio stations or 46 percent of the radio advertising revenues in Baltimore. As a result, the combination would substantially lessen competition in the sale of radio advertising time in

the Boston, St. Louis, and Baltimore metropolitan areas.

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

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

The proposed Final Judgment orders CBS to divest WEEI–AM, WEGQ–FM, WAAF–FM and WRKO–AM in Boston, KSD–FM and KLOU–FM in St. Louis, and WOCT–FM in Baltimore. These stations are currently owned by ARS. Unless the plaintiff grants a time extension, CBS must divest these radio stations within six months after CBS places certain stations which it is required to dispose of by FCC rules into FCC disposition trusts. The FCC disposition trusts require disposition within six months, with the result that the divestitures required under the Final Judgment for antitrust purposes and the divestitures required for FCC regulatory purposes will be accomplished during the same period of time. In order to insure prompt divestiture, the proposed Final Judgment provides that the divestitures shall take place within 6 months of the date CBS places stations into the FCC disposition trusts or 9 months from the date the Complaint in this action is filed, whichever is sooner. This provision establishes an outside date based on the filing of the Complaint in the event that there is any delay associated with the establishment of the FCC disposition trusts. (Plaintiff has no reason to believe that there will be any such delay.) Finally, in the event that the Court does not, for any reason, enter the Final Judgment within the time period measured by the establishment of the FCC disposition trusts or the filing of the complaint, the divestitures are to occur within five (5) business days after notice of entry of the Final Judgment.

If CBS does not divest these stations within the divestiture period, the Court, upon plaintiff's application, is to appoint a trustee to sell the assets. The proposed Final Judgment also requires CBS to ensure that, until the divestitures mandated by the Final Judgment have been accomplished, these stations will be operated independently as viable, ongoing businesses, and kept separate and apart from CBS's other radio stations in Boston, St. Louis and Baltimore. Further, the proposed Final Judgment requires defendants to give plaintiff prior notice regarding future radio station acquisitions or certain agreements pertaining to the sale of radio advertising time in Boston, St. Louis or Baltimore.

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 Violations

A. The Defendants

CBS is a Pennsylvania corporation with its headquarters in New York, New York. It currently operates 76 radio stations located in 17 metropolitan areas in the United States. It owns four radio stations in the Boston area (WBCN–FM, WBZ–AM, WODS–FM and WZLX–FM), one station in the St. Louis area (KMOX–AM), and five radio stations in the Baltimore area (WCAO–AM, WHFS–FM, WJFK–AM, WLIF–FM and WXYV–FM). In 1996, its revenues from its Boston stations were approximately $69,600,000, its revenues from its St. Louis station were approximately $21,900,000, and its revenues from its Baltimore stations were approximately $15,900,000.

ARS is a Delaware corporation headquartered in Boston, Massachusetts. It owns and operates 85 radio stations located in 19 metropolitan areas nationwide. It owns six radio stations in the Boston area (WAAF–FM, WBMX–FM, WEEI–AM, WEGQ–FM, WNFT–AM, and WRKO–AM), four radio stations in the St. Louis area (KEZK–FM, KLOU–FM, KSD–FM, and KYKY–FM), and five radio stations in the Baltimore area (WBGR–AM, WBMD–AM, WOCT–FM, WQSR–FM and WWMX–FM). In 1996, its revenues from its Boston stations were approximately $55,700,000, its revenues from its St. Louis stations were approximately $26,950,000, and its revenues from its Baltimore stations were approximately $26,850,000.

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

On September 19, 1997, CBS (formerly known as Westinghouse Electric Corporation) entered into an Agreement and Plan of Merger with ARS. This Agreement was amended and restated on December 18, 1997, and further amended on December 19, 1997. Pursuant to the Agreement, ARS's radio operations will be acquired by CBS. ARS's tower operations will be separately spun off and will not be acquired by CBS. The transaction is valued at approximately $1.6 billion. The result of this transaction, as is more fully discussed below, would be to give CBS a significant share of the radio advertising market in Boston, St. Louis, and Baltimore as well as a significant percentage of advertising directed to certain target audiences in these areas.

CBS and ARS previously have competed for the business of local and national companies seeking to advertise in the Boston, St. Louis, and Baltimore areas. The proposed acquisition by CBS of ARS, and the threatened loss of competition that would be caused thereby, precipitated the government's suit.

C. Anticompetitive Consequences of the Proposed Transaction

1. Sale of Radio Advertising Time in Boston

The Complaint alleges that the provision of advertising time on radio stations serving the Boston, St. Louis, and Baltimore Metro Service Area (''MSA'') constitutes a line of commerce and section of the country, or relevant market, for antitrust purposes. The MSA is the geographical unit for which Arbitron furnishes radio stations, advertisers and advertising agencies with data to aid in evaluating radio audience size and composition. Advertisers use this data in making decisions about which radio station or combination of radio stations can deliver their target audiences in the most efficient and cost-effective way. The Boston MSA includes five counties: Essex, Middlesex, Norfolk, Plymouth, and Suffolk. The St. Louis MSA includes twelve counties: Clinton, Franklin, Jefferson, Jersey, Lincoln, Madison, Monroe, St. Charles, St. Clair, St. Louis, St. Louis City, and Warren. The Baltimore MSA includes seven counties: Anne Arundel, Baltimore, Baltimore City, Carroll, Hartford, Howard, and Queen Anne's.

Local and national advertising that is placed on radio stations within the Boston, St. Louis, and Baltimore MSAs is aimed at reaching listening audiences

within the respective MSAs, and other radio stations do not provide effective access to these audiences. Thus, if there were a small but significant nontransitory increase in radio advertising prices within one of these MSAs, advertisers would not buy enough advertising time from radio stations outside of the Boston, St. Louis, or Baltimore MSAs to defeat the increase.

Radio stations earn their revenues from the sale of advertising time to local and national advertisers. Many local and national advertisers purchase radio advertising time in Boston, St. Louis, or Baltimore 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 at reaching the advertiser's target audience (individuals most likely to purchase the advertiser's products or services); (b) may reach certain target audiences that cannot be reached as effectively through other media; or (c) 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 in Boston, St. Louis, or Baltimore 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 Boston, St. Louis, or Baltimore, the existence of such advertisers would not prevent radio stations from raising their prices a small but significant amount. At a minimum, stations could raise prices profitably 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 to price discriminate between different customers, radio stations may charge higher rates to advertisers that view radio as particularly effective for their needs, while maintaining lower rates for other advertisers.

2. Harm to Competition

The Complaint alleges that CBS's proposed acquisition of ARS would lessen competition substantially in the provision of radio advertising time on stations in the Boston, St. Louis, or Baltimore MSAs. The proposed transactions would create further market concentration in already highly concentrated markets, and CBS would control a substantial share of the advertising revenues in these markets. CBS's market share of radio advertising revenues in Boston would rise from 33 percent to 59 percent after the proposed transaction (BIA *Investing in Radio* 4th ed. 1997). According to the Herfindahl-Hirschman Index (''HHI''), a widely-used measure of market concentration defined and explained in Appendix A, CBS's post-transaction HHI in Boston would be 4059, representing an increase of 1746 points. In St. Louis, CBS's post-transaction share of radio advertising revenue would increase from 22 to 49 percent. CBS's post-transaction HHI would equal 3075, representing an increase of 1200 points. In Baltimore, CBS's market share of radio advertising revenue would increase from 17 to 46 percent as a result of the transaction. CBS's post-transaction HHI in Baltimore would be 3077, an increase of 985 points. These substantial increases in concentration are likely to give CBS the unilateral power to raise advertising prices and reduce the level of service provided to advertisers in Boston, St. Louis, and Baltimore.

Furthermore, the proposed transactions would eliminate head-to-head competition between CBS and ARS for advertisers seeking to reach specific audiences. 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 audience by selecting those stations whose audience best correlates to their target audience. Today, several CBS and ARS stations in Boston, St. Louis, and Baltimore compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in those markets, the stations are close substitutes for each other based on their specific audience characteristics. The proposed transaction would eliminate such competition.

Format changes are unlikely to deter the anticompetitive consequences of this transaction. If CBS raised prices or lowered services to those advertisers who buy ARS and CBS stations because of their strength in delivering access to certain specific audiences, non-CBS radio stations in Boston, St. Louis, and Baltimore respectively, would not be induced to change their formats to attract a greater share of the same listeners and to serve better those advertisers seeking to reach such listeners. 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 CBS, because they would likely lose a substantial portion of their existing audiences. Even if less successful stations did change format, they still would be unlikely to attract enough listeners to provide a suitable alternative to CBS.

Finally, new entry into the Boston, St. Louis, or Baltimore radio advertising markets is highly unlikely in response to a price increase by CBS. No unallocated radio broadcast frequencies exist in these markets. Also, it is unlikely that stations located in adjacent communities could boost their power so as to enter the Boston, St. Louis, or Baltimore markets without interfering with other stations on the same or similar frequencies, a violation of FCC regulations.

For all of these reasons, plaintiff concludes that the proposed transactions would lessen competition substantially in the sale of radio advertising time on radio stations serving the Boston, St. Louis, and Baltimore MSAs, eliminate actual competition between CBS and ARS, and result in increased prices and reduced quality of service for radio advertising time on stations in the Boston, St. Louis, and Baltimore MSAs, 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 Boston, St. Louis, and Baltimore MSAs. It requires the divestiture of WEEI–AM, WEGQ–FM, WAAF–FM, and WRKO–FM in Boston, the divestiture of KSD–FM and KLOU–FM in St. Louis, and the divestiture of WOCT–FM in Baltimore. This relief will reduce the market share in advertising revenues CBS would have achieved through the proposed transaction from 59 percent to 39 percent in the Boston market, 49 percent to 39 percent in the St. Louis market, and from 46 percent to about 40 percent in the Baltimore radio market.

The divestitures will ensure that the affected markets will remain competitive. First, no firm will dominate the competitively significantly radio signals in any market. Second, advertisers will have sufficient alternatives to the merged firm in reaching groups of radio listeners most

affected by the transaction; that is, advertisers can reasonably efficiently reach such audiences (''buy around'') without using the merged firm. Third, the ownership structure in each market is such that it will allow for the possibility of at least three significant competitors who may compete for advertisers' business.

Unless plaintiff grants an extension of time, CBS must divest WEEI–AM, WEGQ–FM, WAAF–FM, and WRKO–AM in Boston, KSD–FM and KLOU–FM in St. Louis, and WOCT–FM in Baltimore, within six months after CBS places stations into FCC disposition trusts (with an outside date of nine months after the Complaint has been filed) or within five (5) business days after notice of entry of the Final Judgment, whichever is later. Until the divestitures take place, these stations will be maintained as viable and independent competitors to CBS's other stations in the Boston, St. Louis, and Baltimore MSAs.

The divestitures must be to a purchaser or purchasers acceptable to the plaintiff in its sole discretion. Unless plaintiff otherwise consents in writing, the divestitures shall include all the assets of the stations being divested, and shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that such assets can and will be used as viable, ongoing commercial radio businesses. In addition, the purchaser or purchasers must intend in good faith to continue the operations of the radio stations as were in effect in the period immediately prior to the filing of the complaint, unless any significant change in the operations planned by a purchaser is accepted by the plaintiff in its sole discretion. This provision is intended to insure that the stations to be divested remain competitive with CBS's other stations in Boston, St. Louis, and Baltimore.

If defendants fail to divest these stations within the time periods specified in the Final Judgment, the Court, upon plaintiff's application, is to appoint a trustee nominated by plaintiff to effect the 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 WEEI–AM, WEGQ–FM, WAAF–FM, and WRKO–AM in Boston, KSD–FM and KLOU–FM in St. Louis, and WOCT–FM in Baltimore, 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 they are accomplished. After appointment the trustee will file monthly reports with the plaintiff, 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.

The proposed Final Judgment requires that prior to the consummation of the transaction, defendants will maintain the independence of their respective radio stations in Boston, St. Louis, and Baltimore. Following the consummation of CBS's acquisition of ARS, CBS is required to maintain WEEI–AM, WEGQ–FM, WAAF–FM, and WRKO–AM in Boston, KSD–FM and KLOU–FM in St. Louis, and WOCT–FM in Baltimore as separate and apart from defendant CBS's other Boston, St. Louis, and Baltimore stations, pending divestiture. The Judgment also contains provisions to ensure that these stations will be preserved, so that the stations remain viable, aggressive competitors after divestiture.

The proposed Final Judgment also prohibits CBS from entering into certain agreements with other Boston, St. Louis, and Baltimore radio stations without providing at least thirty (30) days' notice to the Department of Justice. Specifically, CBS must notify the Department before acquiring any interest in another Boston, St. Louis, or Baltimore radio station. Such acquisitions could raise competitive concerns but might be too small to be reported otherwise under the Hart-Scott-Rodino (''HSR'') premerger notification statute. Moreover, CBS may not agree to sell radio advertising time for any other Boston, St. Louis, or Baltimore radio station without providing plaintiff with notice. In particular, the provision requires CBS to notify the Department before it enters into any Joint Sales Agreements (''JSAs''), where one station takes over another station's advertising time, or any Local Marketing Agreements (''LMAs''), where one station takes over another station's broadcasting and advertising time, or other comparable arrangements, in the Boston, St. Louis, or Baltimore areas. Agreements whereby CBS sells advertising for or manages other Boston, St. Louis, or Baltimore area radio stations would effectively increase its market share in these MSAs. Despite their clear competitive significance, JSAs probably would not be reportable to the Department under the HSR Act. Thus, this provision in the proposed Final Judgment ensures that the Department will receive notice of and be able to act, if appropriate, to stop any agreements that might have anticompetitive effects in the Boston, St. Louis, and Baltimore markets.

The relief in the proposed Final Judgment is intended to remedy the likely anticompetitive effects of CBS's proposed transaction with ARS in Boston, St. Louis, and Baltimore. Nothing in this Final Judgment is intended to limit the plaintiff's ability to investigate or to bring actions, where appropriate, challenging other past or future activities of defendants in the Boston, St. Louis, and Baltimore MSAs.

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 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 entry. The comments and the response of the plaintiff will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Craig W. Conrath, Chief, Manager Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and that 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

Plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against defendants. Plaintiff is satisfied, however, that the divestiture of WEEI–AM, WEGQ–FM, WAAF–FM, and WRKO–AM in Boston, KSD–FM and KLOU–FM in St. Louis, and WOCT–FM in Baltimore, and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of radio advertising time on stations serving the Boston, St. Louis, and Baltimore 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 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.

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

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

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.

Date: March 31, 1998.

Respectfully submitted,

Allen P. Grunes,

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

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 numbers 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

[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 he basis of the Competitive Impact Statement and Response to Comments 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.C.A.N. 6535, 6538.

[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).

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, Allen P. Grunes, hereby certify that, on March, 31, 1998, I caused the foregoing document to be served on defendants CBS Corporation and American Radio Systems 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 CBS Corporation.

Timothy J. O'Rourke,

Dow, Lohnes & Albertson, 1200 New Hampshire Ave., N.W., Washington, D.C. 20036, Counsel of American Radio Systems Corporation.

Allen P. Grunes,

[FR Doc. 98–9374 Filed 4–10–98; 8:45 am]

BILLING CODE 4410–11–M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On March 5, 1998, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on April 7, 1998 to the following applicants.

Gerald L. Kooyman Permit No. 99–001

William R. Fraser Permit No. 99–002

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 98–9625 Filed 4–10–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43 issued to the Detroit Edison Company (the licensee) for operation of the Fermi 2 plant located in Monroe County, Michigan.

The proposed amendment would revise Technical Specification (TS) 3.8.1.1 to change the emergency diesel generator (EDG) allowed outage time (AOT) from 3 to 7 days. This would be a one-time amendment, effective from the date of issuance until September 30, 1998. In order to use the extended AOT, the revised TS will require the licensee to ensure the alternate AC power source (combustion turbine-generator 11–1) is operable and to verify the planned activity is not potentially risk significant in accordance with use of the licensee's On-Line System Maintenance Risk Matrix specified in its Integrated Work Management Guidelines.

The one-time amendment was requested in a submittal dated April 3, 1998. It relies on the technical information and the discussion of no significant hazards consideration (NSHC) associated with an earlier submittal and supplements for a permanent amendment dated November 22, 1995, as supplemented February 19, April 19, May 3, June 12, and December 4, 1996, and January 30 and August 7, 1997. The staff issued a **Federal Register** notice on February 28, 1996 (61 FR 7550), providing the notice of consideration of issuance of the amendment, proposed no significant hazards consideration, and opportunity for a hearing. The proposed one-time amendment does not modify the discussion of NSHC. However, the discussion will be repeated below. The portions of the November 22, 1995, submittal related to changes in EDG surveillance testing and reporting requirements (also discussed in the NSHC) were addressed in amendment no. 107 issued on June 20, 1996.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident. Changing the out-of-service time, surveillance frequency and reporting requirements for emergency diesel generators (EDGs) will not affect the initiation of an accident, since EDGs are not associated with any accident initiation mechanism. The proposed changes will not impact the plant design or method of EDG operation. The increased out-of-service time has been evaluated to have only a small impact on plant risk. Performing the EDG inspections during plant operations will decrease plant risk during plant outages. Deleting the accelerated testing provisions will not affect the consequences of an accident since the implementation of a maintenance and monitoring program for EDGs consistent with the provisions of the maintenance rule will assure EDG performance as discussed in Generic Letter 94–01. Deleting reporting requirements has no impact on consequences of an accident since reporting has no accident effect. Based on the amount of electrical system redundancy, the small increase in plant risk during operations and the decrease in plant risk during outages, this change will not result in a significant increase in the probability or consequences of an accident.

2. The proposed changes do not create the possibility of a new or different accident from any previously evaluated. The proposed changes do not modify the plant design or method of diesel operation. Therefore, no new accident initiator is introduced, nor is a new type of failure created. For these reasons, no new or different type of accident is created by these changes.

3. The proposed changes do not involve a significant reduction in a margin of safety. Since implementation of a maintenance program for the EDGs consistent with the Maintenance Rule will ensure that high EDG performance standards are maintained, the accelerated testing schedule is not needed to maintain the margin of safety. Deleting reporting requirements has no impact on safety or margin of safety. Increasing the allowed out-of-service time for one division of onsite AC power will slightly increase EDG unavailability during plant operation. However, this change does not impact the redundancy of offsite power supplies, the