The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to, *United States* v. *Thomas Plating Company, Inc. et al.*, Civil Action No. 98–N–1536, and D.J. Ref. # 90–11–2–1327.

The Decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, North Tower Suite 945, Denver, Colorado, 80202, and the U.S. EPA Region VIII, 999 18th Street, Superfund Records Center, Suite 500, Denver, Co. 80202, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $4.00 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–12338 Filed 5–14–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Citadel Communications Corporation, Triathlon Broadcasting Company, and Capstar Broadcasting Corporation

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Amended Competitive Impact Statement have been filed with the United States District Court for the District of the District of Columbia in *United States of America* v. *Citadel Communications Corporation*, Capstar Broadcasting Corporation and Triathlon Broadcasting Company, Civil Action No. 99–CV01043. On April 30, 1999, the United States filed an Amended Complaint alleging that the Joint Sales Agreement (''JSA'') in Colorado Springs, Colorado, and Spokane, Washington and Triathlon's acquisition of certain radio stations in Spokane, Washington violates Section One of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed the same time as the Complaint, requires Citadel and Capstar to terminate the JSA pursuant to the Final Judgment and Capstar to divest a particular station in Spokane, Washington. Copies of the Amended Complaint, proposed Final Judgment and Amended Competitive Impact Statement are available for inspection at the Department of Justice in Washington, D.C. in Room 200, 325 Seventh Street, N.W., and at the Office of the Clerk of the United States District Court for the District of the District of Columbia.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, Department of Justice, 1401 H St N.W., Suite 4000, Washington, D.C. 20530 (telephone: (202) 307–0001).

Rebecca P. Dick,

Director of Civil Non-Merger Enforcement.

Stipulation

It is stipulated by and between the United States Department of Justice Antitrust Division (''Antitrust Division''), Citadel Communications Corporation (''Citadel''), and Capstar Broadcasting Corporation (''Capstar''), by their respective attorneys, as follows:

1. This Court has jurisdiction over the subject matter of this action and the parties have agreed to waive all objections to personal jurisdiction and venue 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 though the same were in full force and effect as an Order of the Court.

4. Citadel and Capstar have agreed to terminate the Citadel-Triathlon Joint Sales Agreement (''JSA'') (defined in Section II(e) of the Final Judgment) pursuant to the Final Judgment, but subject to Paragraph 9 of this stipulation. In addition, the parties have agreed to make certain transfers of radio stations. Capstar's transfer of KEYF–FM to Citadel in Spokane is part of the agreement memorialized in the Final Judgment.

5. The parties have agreed to take the following actions that the United States has agreed not to oppose. In Colorado Springs, Capstar has agreed to transfer KSPZ–FM, KVOR–AM, and KTWK–AM to Citadel while Citadel has agreed to transfer KKLI–FM to Capstar. In Spokane, Capstar has agreed to transfer KEYF–FM and KEYF–AM to Citadel. Also in Spokane, Citadel has entered into an agreement with an unrelated third party to acquire KNJY–FM. Although the Final Judgment is not contingent upon these exchanges and acquisitions, the Antitrust Division has analyzed the transactions and has no objection to them.

6. Citadel and Capstar state that there are no agreements or understandings between them that will affect how they will program or format the radio stations that they own in Colorado Springs or Spokane.

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

8. Defendants represent that the JSA will be terminated and the divestiture of KEYF–FM will be made as ordered, 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.

9. If Capstar does not acquire Triathlon Broadcasting Company by June 2, 1999, the Antitrust Division will

withdraw the proposed Final Judgment and dismiss Capstar as a defendant in this matter.

Dated: April 7, 1999.

For Plaintiff United States of America.

Karl D. Knutsen,

United States Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, N.W., Washington, D.C. 20530, (202) 514–0976.

For Defendant Capstar Broadcasting Corporation.

Neil W. Imus,

Vinson & Elkin L.L.P., 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20006, (202) 639–6675.

Dated: April 8, 1999.

For Defendant Citadel Communications Corporation.

Debra H. Dermody,

Reed, Smith, Shaw, & McClay, 435 Sixth Ave., Pittsburgh, PA 15219, (412) 288–3302.

Final Judgment

Whereas, plaintiff, the United States of America, has filed its complaint in this action, and plaintiff and defendants Citadel Communications Corporation (''Citadel'') and Capstar Broadcasting Corporation (''Capstar'') 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, these defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court.

And whereas, the essence of this Final Judgment is the prompt and likely termination of the Joint Sales Agreement ''JSA'' in Colorado Springs, Colorado and Spokane, Washington, identified below, which will help ensure that competition is substantially preserved;

And whereas, plaintiff requires Citadel and Capstar to terminate the JSA for the purpose of restoring competition in the sale of radio advertising;

And whereas, Citadel and Capstar have represented to the plaintiff that the JSA can and will be terminated, subject to paragraph 9 of the Stipulation, and that Citadel and Capstar will not later raise claims of hardship, contractual bar, or difficulty as grounds for asking the Court to delay or modify termination of the JSA described 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 defendants and over the subject matter of this action, and defendants have agreed to waive any objection to personal jurisdiction. The Complaint states a claim upon which relief may be granted against the defendants, as hereinafter defined, under Section 1 of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

A. ''Capstar'' means defendant Capstar Broadcasting Corporation, a Delaware corporation with its headquarters in Austin, Texas, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees, including but not limited to Hicks, Muse, Tate, & Furst Incorporated (''Hicks-Muse''), a Delaware corporation with its headquarters in Dallas, Texas.

B. ''Citadel'' means defendant Citadel Communications Corporation, a Nevada corporation with its headquarters in Las Vegas, Nevada, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. ''Defendants'' means Citadel and Capstar.

D. ''Antitrust Division'' means the Antitrust Division of the United States Department of Justice.

E. ''JSA'' means the Joint Sales Agreement entered on or around December 15, 1995 among Citadel and Pourtales Radio Partnership (to which Triathlon is successor), providing for the sale of radio advertising time in Colorado Springs, Colorado and Spokane, Washington.

F. ''Radio Assets'' means all of the assets, tangible or intangible, used in the operation of the following radio stations that sell advertising time in Colorado Springs, Colorado, and Spokane, Washington, including all real property (owned or leased) used in the operation of these stations, all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property used in the operation of these stations; all licenses, permits, authorizations, and applications therefor issued by the Federal Communications Commission and other government agencies related to these stations; all contracts, agreements, leases and commitments of defendants relating to their operation; all trademarks, service marks, trade names, copyrights, patents, slogans; programming materials, and promotional materials relating to these stations; and all logs and other records maintained by the operator or owner in connection with its business:

(1) In Colorado Springs, KSPZ–FM, KKFM–FM, KKMG–FM, KVUU–FM, KKLI–FM, KVOR–AM, and KTWK–AM; and

(2) In Spokane, KAEP–FM, KDRK–FM, KEYF–FM, KNFR–FM, KISC–FM, KKZK–FM, KGA–AM, KEYF–AM, KAQQ–AM, KJRB–AM, and KUDY–AM.

(G) ''Triathlon'' means Triathlon Broadcasting Company, a Delaware corporation with its headquarters in San Diego, California, named as a defendant in this action.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, 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. The defendants shall require, as a condition of the sale or other disposition of any of the Radio Assets, that the acquirer or acquirers agree to be bound by the provisions of this Final Judgment.

IV. Termination of JSA and Divestment of KEYF–FM

A. Citadel and Capstar are hereby ordered and directed in accordance with the terms of this Final Judgment to terminate the JSA as quickly as possible, but no later than June 2, 1999.

B. Capstar is also ordered to divest KEYF–FM in Spokane as quickly as possible, but no later than June 2, 1999.

C. The Antitrust Division, in its sole discretion, may extend the time period for termination for two (2) additional thirty (30) day periods of time, not to exceed sixty (60) calendar days in total.

D. Citadel and Capstar shall not acquire any other radio stations that sell radio advertising time in either Colorado Springs or Spokane except under the procedures stated in Section V. Further, Citadel and Capstar shall not enter into any JSA or any cooperative selling arrangement with any other operator of radio stations serving listeners in either Colorado Springs or Spokane except under the procedures and conditions stated in Section V.

E. Citadel shall not confer with operators of other radio stations that sell advertising time in Colorado Springs or Spokane regarding the price of radio advertising time—including any discounts for advertisers or classes of

advertisers or the availability of added value such as free or bonus spots, remote broadcasts, or other promotions.

V. Notice

Capstar and Citadel shall provide advance notification to the Antitrust Division when they directly or indirectly acquire any assets of or any interest (including any financial, security, loan, equity or management interest) in any radio station that sells advertising time in Colorado Springs, Colorado, or Spokane, Washington, or enter into any JSA or any cooperative selling arrangement with any other operator of radio stations serving listeners in either city. This obligation to provide notice is met under this section when a transaction is 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''),

Notification under this section shall be provided to the Antitrust Division 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 about the sales of radio advertising time in Colorado Springs and Spokane. Notification shall be provided at least thirty (30) days prior to the acquisition of any such interest, 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 Antitrust Division 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. 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.

Citadel shall not enter into any JSA or any other cooperative selling arrangement with any other operator of radio stations that sells or helps to sell radio advertising time in either Colorado Springs or Spokane without advance written approval from the Antitrust Division.

VI. Preservation of Assets

Unitl the termination of the JSA required by Section IV has been accomplished, Citadel shall take all steps necessary to maintain and operate the Radio Assets as active and viable entities to the extent it is able under the JSA; maintain the management, staffing, sales and marketing of the Radio Assets; and maintain the Radio Assets in operable condition at current capacity configurations. Citadel and Capstar agree that they may hire each other's employees and that they will not enforce any non-complete provisions in the employment contracts of any sales employee of any radio station they own in Colorado Springs.

VII. Financing

Citadel and Capstar shall not finance for each other all or any part of any transaction related to this Final Judgment.

VIII. Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment or determining whether the Final Judgment should be modified or terminated and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendants made to their principal offices, shall be permitted:

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

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

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

C. No information or documents obtained by the means provided in Section VIII of this Final Judgment shall be divulged by a representative of the 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 the 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 the defendants to the plaintiff, the defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendants mark 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 the plaintiff to the defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendants are not a party.

IX. 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.

X. Termination

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

XI. Public Interest

Entry of this Final judgment is in the public interest.

Dated _____

_____

United States District Judge

Plaintiffs Explanation of Consent Decree Procedures

Plaintiff, the United States of America, submits this short memorandum summarizing the procedures regarding the Court's entry of the proposed Final Judgment. The Judgment would settle this case pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''APPA''), which applies to civil

antitrust cases brought and settled by the United States.

1. Today, plaintiff has filed a Complaint, a proposed Final Judgment, and a Stipulation by which the parties have agreed to the Court's entry of the proposed Final Judgment following compliance with the APPA, and a Motion to Enter the Stipulation and Order. The defendants have agreed not to consummate their transaction until the Court signs the Stipulation and Order. The Court's entry of the Stipulation will enable it immediately to govern the parties's behavior relating to the transaction, until such time as the Final Judgment is entered pursuant to the APPA.

2. Plaintiff is also filing a Competitive Impact Statement relating to the proposed Judgment [15 U.S.C. 16(b)].

3. The APPA requires that plaintiff publish the proposed Final Judgment and Competitive Impact Statement in the Federal Register and in certain newspapers at least 60 days prior to entry of the Final Judgment. The notice will inform members of the public that they may submit comments about the Final Judgment to the United States Department of Justice, Antitrust Division [15 U.S.C. 16(b)-(c)].

4. During the sixty-day period, plaintiff will consider, and at the close of that period respond to, any comments received, and it will publish the comments and responses in the **Federal Register.**

5. After the expiration of the sixty-day period, plaintiff will file with the Court the comments, the government's responses, and a Motion for Entry of the Final Judgment (unless the United States has decided to withdraw its consent to entry of the Final Judgment, as permitted by Paragraph 2 of the Stipulation) [*see* 15 U.S.C. 16(d)].

6. At that time, pursuant to the APPA, 15 U.S.C. 16(e)–(f), the Court may enter the Final Judgment without a hearing, if it finds that the Final Judgment is in the public interest.

Dated: April 28, 1999.

Respectfully submitted.

Karl D. Knutsen,

Attorney, United States Department of Justice, Antitrust Division, Merger Task Force, 1401 H St., NW, Suite 4000, Washington, DC 20530, (202) 514–0976.

Certificate of Service

I, Karl D. Knutsen, of the Antitrust Division of the United States Department of Justice, do hereby certify that true copies of the foregoing Complaint, Final Judgment, Stipulation, Competition Impact Statement, and Plaintiff's Explanation of Consent Decree Procedures were served this 28th day of April, 1999, by hand and Fedex, to the following:

Debra H. Dermody, Reed, Smith, Shaw, & McClay, 435 Sixth Avenue, Pittsburgh, PA 15219, Counsel for Citadel Communications Corporation, By Fedex.

David J. Laing, Baker & McKenzie, 815 Connecticut Avenue, N.W., Washington, D.C. 20006, Counsel for Triathlon Broadcasting Company, By hand.

Neil W. Imus, Vinson & Elkins L.L.P., 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20006, Counsel for Capstar Broadcasting Corporation, By hand.

Karl D. Knutsen

Amended Competitive Impact Statement

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

I. Nature and Purpose of the Proceeding

The plaintiff filed an amended civil antitrust Complaint on April 30, 1999 (''Complaint'') alleging that Citadel Communication Corporation's (''Citadel'') ''Joint Sale Agreement'' (''JSA'') with Triathlon Broadcasting (''Triathlon'') violates Section One of the Sherman Act, 15 U.S.C. 1. The Complaint alleges that the JSA between Citadel and Triathlon is anticompetitive in the Colorado Springs, Colorado, and Spokane, Washington, radio advertising markets. The Complaint also alleges that Triathlon's acquisition of additional radio stations in Spokane is anticompetitive.

The Complaint alleges that in Colorado Springs, Citadel's KKFM–FM, and KKMG–FM competed against Triathlon's KSPZ–FM, KVUU–FM, KTWK–AM, and KVOR–AM prior to the JSA, and that since the creation of the JSA, Citadel has acquired KKLI–FM. The complaint further alleges that since Citadel and Triathlon instituted the JSA in Colorado Springs, Citadel now sets the prices for radio advertising for both its and Triathlon's stations. In addition, the complaint alleges that Citadel approached its remaining competitors in Colorado Springs and suggested that they could all make more money if they were to eliminate a discount to certain advertisers, thus indicating its intent and willingness to collude and avoid price competition.

The complaint alleges that in Spokane, Citadel's KAEP–FM, KDRK–FM, KJRB–AM, and KGA–AM competed against Triathlon's KKZX–FM, KEYF–FM, KEYF–AM, and KUDY–AM prior to the JSA. The complaint further alleges that since Citadel and Triathlon instituted the JSA in Spokane, Citadel now sets the prices for radio advertising for both its and these Triathlon stations. In addition, the complaint alleges that Triathlon later acquired KNFR–FM, KISC–FM, and KAQQ–AM in Spokane, and has a reduced incentive to compete against the JSA because it receives a share of the profits from the JSA.

Finally, the complaint alleges that Capstar Broadcasting Corporation (''Capstar'') has announced its agreement to acquire Triathlon, including its stations in Colorado Springs and Spokane. After it acquires Triathlon, Capstar would become a party to the JSA, if the JSA were still in existence.

The prayer for relief seeks: (a) adjudication that Citadel's JSA with Triathlon in Colorado Springs violates Section One of the Sherman Act, 15 U.S.C. 1; (b) adjudication that Citadel's JSA with Triathlon and Triathlon's acquisition of non-JSA stations in Spokane violate Section One of the Sherman Act, 15 U.S.C. 1; (c) entry of an injunction terminating the JSA in both Colorado Springs and Spokane and requiring Capstar to divest KEF–FM in Spokane; (d) entry of an injunction preventing Citadel from discussing the price of radio advertising time with competitors in Colorado Springs and Spokane; and (e) such other relief as is proper.

The United States has reached a proposed settlement with Citadel and Capstar which is memorialized in the proposed Final Judgment filed with the Court. Under the terms of the proposed Final Judgment, Citadel and Capstar will terminate the JSA and Capstar will divest KEYF–FM.

The plaintiff and defendants Citadel and Capstar have stipulated that the proposed Final Judgment may be entered after compliance with the APPA and that they can fulfill their obligations under the Final Judgment. 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 Final Judgment and to punish violations thereof.

II. The Alleged Violation

A. The Defendants

Citadel is a Nevada corporation with its headquarters in Las Vegas, Nevada.

According to industry estimates, it owns 107 radio stations in 20 U.S. markets. Triathlon is a Delaware Corporation with its headquarters in San Diego, California. According to industry estimates, it currently owns 31 radio stations in six U.S. markets. Capstar has announced its agreement to acquire Triathlon.

Capstar is a Delaware corporation with its headquarters in Austin, Texas. It is associated with Hicks, Muse, Tate, & Furst Incorporated (''Hicks-Muse''), a Delaware corporation with its headquarters in Irving, Texas. According to industry estimates, Capstar owns approximately 309 radio stations in 76 U.S. markets. Chancellor Media Company, a company with which Capstar shares some directors and owners, has announced its intention to acquire Capstar.

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

Prior to December, 1995, the Citadel and Triathlon radio stations in Colorado Springs and Spokane competed against each other within their respective cities. On or about December 15, 1995, however, Citadel and Triathlon's predecessor corporation entered into a Joint Sales Agreement (''JSA''). Under the terms of the JSA, Citadel sets prices and sells advertising time on the radio stations subject to the JSA in both Colorado Springs and Spokane. Citadel also collects payments from advertisers, makes a monthly report to Triathlon, deducts expenses, and divides the profits between the parties. Citadel and Triathlon have operated under the JSA since December, 1995. Later, Triathlon acquired another group of radio stations in Spokane.

C. Anticompetitive Consequences of the JSA

1. The Sale of Radio Advertising Time in Colorado Springs, Colorado, and Spokane, Washington, Are The Appropriate Markets in Which To Analyze This Antitrust Action

The Complaint alleges that the provision of advertising time on radio stations serving Colorado Springs, Colorado, and Spokane, Washington, constitutes a line of commerce and sections of the country, or relevant markets, for antitrust purposes. Radio stations, by their programming, seek to attract listeners. The radio stations then sell advertising time to advertisers who want to reach those listeners. Radio's unique characteristics as an inexpensive drive-time and workplace news and entertainment companion has given it distinct and special qualities. Retailers, in an effort to reach potential customers, use a mix of electronic and print media to deliver their advertising messages. In so doing, they have learned that certain media are more cost-effective than others in meeting certain of their advertising goals and that radio can serve several such goals.

When radio advertisers use radio as part of a ''media mix,'' they often view the other advertising media (such as television or newspapers) as a complement to, and not a substitute for, radio advertising. Many advertisers who use radio as part of a multi-media campaign do so because they believe that the radio component enhances the effectiveness of their overall advertising campaign. They view radio as giving them unique and cost-effective access to certain audiences. They recognize that because radio is portable, people can listen to it anywhere—especially in places and situations where other media are not present, such as in the office and car. In addition, they know that radio formats are designed to attract listeners in specific demographic groups. As a consequence of the foregoing factors, the closest substitute to advertising on one radio station, for many advertisers, is advertising on other radio stations.

In addition to accomplishing these goals more efficiently than other media, radio advertising is the relevant market in which to evaluate the JSA because a hypothetical monopolist of radio stations could profitably raise prices. Although some local and national advertisers may switch some of their advertising to other media rather than absorb a price increase in the cost of radio advertising time, the existence of such advertisers would not prevent all radio stations in the Colorado Springs and Spokane markets from profitably raising their prices a small but significant amount. At a minimum, stations could profitably raise prices to those advertisers who view radio as a necessary advertising medium for them, or as a necessary advertising complement to other media. Radio stations negotiate prices individually with advertisers; consequently, radio stations can charge different advertisers different prices. Radio stations generally can identify advertisers with strong radio preferences. Because of this ability to price discriminate among customers, radio stations may charge higher prices to advertisers that view radio as particularly effective for their needs, while maintaining lower prices for other advertisers.

2. Harm to Competition

a. The concentration of radio stations in Colorado Springs and Spokane substantially harms competition. The Complaint alleges that Citadel's JSA with Triathlon in Colorado Springs and Spokane along with Triathlon's subsequent acquisition of additional stations in Spokane harms competition. Prior to the JSA, an advertiser buying radio advertising time could select a combination of Citadel, Triathlon, and independent stations that would allow it to exclude either the Triathlon or Citadel stations—thus giving both Citadel and Triathlon an incentive to negotiate with the advertiser. After the JSA, however, the Citadel and Triathlon stations subject to the JSA no longer compete with each other. Because the JSA represents a large percentage of the radio advertising available in those geographic markets, many advertisers in those markets cannot meet their listener goals without using the JSA stations. Realizing that these advertisers cannot buy around its JSA, Citadel can raise prices to many advertisers.

b. Advertisers could not turn to other Colorado Springs or Spokane radio stations to prevent Citadel from imposing an anticompetitive price increase. If Citadel and Triathlon raised prices to advertisers in Colorado Springs or Spokane, other radio stations in Colorado Springs and Spokane would not and could not profitably offer additional advertising inventory or change their formats to provide access to different audiences, thus mitigating the effect of the price increase. Stations are constrained in their ability to play additional commercials by the tendency of listeners to avoid stations that play too much advertising and the insistence of advertisers on ''separation'' from similar advertisers. Thus, even if advertisers trying to avoid a price increase wanted to run additional commercials on non-Citadel and non-Triathlon stations, the alternative stations would likely be unable to accommodate them. Moreover, even assuming that such a station could accommodate an increase in advertisers, it would perceive the increase in demand for its product and would have an incentive to raise its prices as well. Finally, successful stations are reluctant to change formats because of the risk and costs involved in a format change and unsuccessful stations may not be able to gain a large enough audience to undermine a supra-competitive price increase. In addition, an advertiser wishing to reach a broad audience cannot simply run more commercials on fewer stations, because the advertiser will not reach a broad enough audience without a range of stations.

In both the Colorado Springs and Spokane radio advertising markets, new

entry is unlikely as a response to a supra-competitive price increase from the JSA. In addition, it is unlikely that stations in adjacent communities could boost their power so as to enter the Colorado Springs or Spokane markets without interfering with other stations and thus violating Federal Communications Commission regulations.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of radio advertising time in both Colorado Springs and Spokane. It requires Citadel and Capstar [1] to terminate their JSA as soon as possible, but no later than June 2, 1999. Plaintiff, at its sole discretion, may extend the time period for the parties to comply with the terms of the Final Judgment for two additional 30-day periods. In addition, the proposed Final Judgment requires Capstar to divest KEYF–FM in Spokane. Defendants have also expressed their desire to exchange certain other stations among themselves and plaintiff has stipulated that it will not contest any or all of their proposed exchanges. *See* Stipulation and Order, ¶¶ 4 & 5. The Final Judgment provides that neither defendant, nor their successors, can acquire any other radio station in either Colorado Springs or Spokane without giving the Antitrust Division of the Department of Justice prior notice. Furthermore, the Final Judgment places conditions on the parties if they wish to enter any subsequent JSA in either Colorado Springs or Spokane. Capstar (never a party to the JSA) may not enter into a JSA in those cities without notifying that Antitrust Division; Citadel may not enter a JSA in those cities without permission from the Antitrust Division. Despite their clear competitive significance. JSAs may not all be reportable to the Department under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (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 these radio advertising markets.

[1] Although this action names Triathlon as a defendant, the Department expects that Triathlon will be acquired by Capstar soon and will be acquired by Capstar soon and will then cease to have a separate legal existence. Hence, relief against it is unnecessary. When Triathlon's separate existence is terminated, the Department will move to dismiss it as a defendant. This will occur before the Department moves for entry of the proposed Final Judgment at the conclusion of the Tunney Act review process.

Finally, the proposed Final Judgment prevents Citadel from discussing radio advertising prices and discounts with other radio stations in both Colorado Springs and Spokane. Nothing in this proposed Final Judgment limits the plaintiff's ability to investigate or bring actions, where appropriate, challenging other past or future activities of defendants in Colorado Springs, Spokane, or any other markets, including their entry into a JSA or any other agreements related to the sale of advertising time except those specifically identified in the Complaint.

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 conducted 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.

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 United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

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

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

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

VI. Alternatives to the Proposed Final Judgment

The plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its complaint against defendants. The plaintiff is satisfied, however, that the termination of the JSA and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of radio advertising time in the Colorado Springs and Spokane radio advertising markets. Thus, the proposed Final Judgment achieves all of 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 District of Columbia Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 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.''[2] 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.)); *see also Microsoft*, 56 F.3d at 1460–62. Rather,

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.[3]

The proposed Final Judgment, therefore, need not be certain to eliminate every anticompetitive effect of a particular practice. Court approval of a final judgment requires a more flexible and less strict standard 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.' ''[14]

In this case, the proposed Final Judgment meets the appropriate standard. The Final Judgment dissolves the JSA. In addition, Capstar's divestiture of KEYF-FM in Spokane will cure the anticompetitive effects of Triathlon's prior acquisitions there. The exchanges of stations anticipated by defendants Citadel and Capstar leave both surviving parties with radio advertising market shares of approximately 40% or less in both Colorado Springs and Spokane.

VIII. Determinative Documents

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

Respectfully submitted.

Karl D. Knutsen,

Attorney, Colorado Bar Reg. No. 23997, Merger Task Force, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Washington, D.C. 20530, (202) 514–0976.

Certificate of Service

I, Karl D. Knutsen, of the Antitrust Division of the United States Department of Justice, do hereby certify that true copies of the foregoing Amended Complaint and amended Competitive Impact Statement were served this 26th day of April, 1999, by United States mail, to the following:

Debra H. Dermody, Reed, Smith, Shaw, & McClay, 435 Sixth Ave., Pittsburgh, PA 15219, Counsel for Citadel Communications Corporation

David J. Laing, Baker & McKenzie, 815 Connecticut, Washington, D.C. 20006, Counsel for Triathlon Broadcasting Company

Neil W. Imus, Vinson & Elkins, 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20006, Counsel for Capstar Broadcasting Corporation

Karl D. Knutsen

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[2] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to 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.*

[3] *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see BNS*, 858 F.2d at 463; *United States* v. *National Broad, 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).

[4] *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). Washington, D.C. 20530

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Suiza Foods Corporation and Broughton Foods Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Kentucky, London Division in *United States of America* v. *Suiza Foods Corporation and Broughton Foods Company*, Civil Action No. 99–CV–130. On March 18, 1999, the United States filed a Complaint alleging that the proposed acquisition by Suiza Foods Corporation (''Suiza'') of the stock of Broughton Foods Company (''Broughton''), would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on April 22, 1999, requires Suiza to divest the Southern Belle plant and related assets in Somerset, Kentucky, pursuant to the Final Judgment. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, D.C. in Room 200, 325 Seventh Street, N.W., and at the Office of the Clerk of the United States District Court for the District of the District of Columbia.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, Department of Justice, 1401 H St. N.W., Suite 4000, Washington, D.C. 20530 (telephone: (202) 307–0001).

Constance K. Robinson,

Director of Operations & Merger Enforcement.

United States of America, Plaintiff, vs. Suiza Foods Corporation, d/b/a Louis Trauth Dairy, Land O'Sun Dairy, and Flav-O-Rich Dairy, and Broughton Foods Company, d/b/a Southern Belle Dairy, Defendants. Civil Action No. 99–CV–130.

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 Eastern District of Kentucky, London Division.

(2) The parties stipulate that a Final Judgment in the form hereto attached