

IN THE MATTER OF

BOULDER RIDGE CABLE TV, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3537. Complaint, Oct. 19, 1994--Decision, Oct. 19, 1994*

This consent order prohibits, among other things, two California-based cable companies and their officers from enforcing any rights they may have under certain paragraphs of an agreement not to compete, entered into as part of Boulder Ridge's acquisition of Three Palms, Ltd., and prohibits the respondents from entering into similar agreements not to compete with the seller or buyer of a cable television system or cable television service in any geographic area in the future.

Appearances

For the Commission: *Ronald B. Rowe, Jill M. Frumin and Mary Lou Steptoe.*

For the respondents: *Burt Braverman, Cole, Raywid & Braverman, Washington, D.C. and Ray Jacobsen, Howrey & Simon, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents Boulder Ridge Cable TV, a corporation, and Dean Hazen, individually and as an officer of said corporation, Weststar Communications, Inc., a corporation, and Rodney A. Hansen, individually, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

I. RESPONDENTS

PARAGRAPH 1. Respondent Boulder Ridge Cable TV (hereinafter "Boulder Ridge") is a corporation organized, existing and doing

business under and by virtue of the laws of the State of California, with its principal office and place of business at 590 Kelly Ave., Half Moon Bay, California. During 1986, 1987, 1988, and 1989, respondent Boulder Ridge, doing business as Desert Cable TV, owned and operated a cable television system in Indian Wells Valley in the State of California.

PAR. 2. Respondent Dean Hazen is the president and majority shareholder of Boulder Ridge, and was the sole shareholder of Boulder Ridge at the time of the acts and practices referred to in paragraphs eight through twelve. His business address is 590 Kelly Ave., Half Moon Bay, California. Respondent Dean Hazen formulates, directs, and controls the acts and practices of respondent Boulder Ridge.

PAR. 3. Respondents Boulder Ridge and Dean Hazen are collectively and individually referred to herein as "Boulder Ridge Entities."

PAR. 4. Respondent Weststar Communications, Inc. (hereinafter "Weststar"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business at 2200 Sunrise Blvd., Suite 250, Rancho Cordova, California. Respondent Weststar indirectly owned a substantial interest in Three Palms, Ltd., (hereinafter "Three Palms").

PAR. 5. Respondent Rodney A. Hansen is a shareholder of Weststar and was a partner in Three Palms, Ltd., a dissolved California partnership. His business address is 8217 Hegseth Court, Fair Oaks, California. During 1986, 1987, and 1988, Three Palms or its predecessors owned and operated a cable television system in Indian Wells Valley in the State of California. Respondent Rodney A. Hansen, through his ownership interests in various corporations and partnerships, formulated, directed and controlled the acts and practices of Three Palms.

PAR. 6. Respondents Weststar and Rodney A. Hansen are collectively and individually referred to herein as "Three Palms Entities."

PAR. 7. At all times relevant herein, each of the respondents or their predecessors maintains or has maintained a substantial course of business, including the acts and practices hereinafter set forth, which are in or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

II. THE NON-COMPETITION AGREEMENT

PAR. 8. On November 16, 1988, respondents entered into an asset purchase agreement in which Boulder Ridge agreed to acquire the assets of Three Palms.

PAR. 9. As Schedule Z to the asset purchase agreement referred to in paragraph eight, respondents entered into a NON-COMPETITION AND NON-DISCLOSURE AGREEMENT, dated November 22, 1988. In paragraphs 3 and 4 of the latter agreement, respondents agreed that: (a) respondents Boulder Ridge Entities would not "own, manage, operate, control, or engage or participate in the ownership, management, operation, or control of, or be connected as a stockholder, officer, director, agent, employee, consultant, partner, joint venturer, or otherwise with any business or organization, any part of which engages in the business of operating a cable television system, subscription television system, multipoint distribution system, direct broadcast system, private operational fixed microwave service, or any similar system or service (or obtaining or holding any authorizations or franchises for any of the foregoing)," located within fifteen (15) miles of the legal boundaries of a community in which respondents Three Palms Entities currently, or at any time in the future, own or operate a cable television system; and (b) respondents Three Palms Entities would not "own, manage, operate, control, or engage or participate in the ownership, management, operation, or control of, or be connected as a stockholder, officer, director, agent, employee, consultant, partner, joint venturer, or otherwise with any business or organization, any part of which engages in the business of operating a cable television system, subscription television system, multipoint distribution system, direct broadcast system, private operational fixed microwave service, or any similar system or service (or obtaining or holding any authorizations or franchises for any of the foregoing)," located within fifteen (15) miles of the legal boundaries of a community in which respondents Boulder Ridge Entities currently, or at any time in the future, own or operate a cable television system.

PAR. 10. On November 22, 1988, Boulder Ridge Entities owned and operated cable television systems on the Island of Oahu in the State of Hawaii and in eight counties in the State of California. On that date, Three Palm Entities owned and operated cable television systems in twenty-two (22) locations in the State of California.

PAR. 11. The purpose, capacity, tendency, or effect of the agreement described in paragraph nine has been, and continues to be, to restrain competition unreasonably and to injure competition and consumers in the following ways, among others:

- A. Preventing the respondents from competing for cable television subscribers;
- B. Restricting the supply and quality of cable television service and of alternate sources of home-video entertainment; and
- C. Maintaining monopoly pricing for cable television service.

III. VIOLATIONS CHARGED

PAR. 12. The acts or practices of respondents constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. These acts or practices are continuing and will continue or recur in the absence of the relief requested.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act; and

The respondents, their officers, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said act, and that a complaint should issue stating

its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Boulder Ridge Cable TV (hereafter "Boulder Ridge") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business at 590 Kelly Ave., Half Moon Bay, California.

2. Respondent Dean Hazen is the president and majority shareholder of Boulder Ridge, and was the sole shareholder of Boulder Ridge at the time of the acts and practices being investigated. His business address is 590 Kelly Ave., Half Moon Bay, California.

3. Respondent Weststar Communications, Inc. (hereafter "Weststar") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business at 2200 Sunrise Blvd., Suite 250, Rancho Cordova, California.

4. Respondent Rodney A. Hansen is a shareholder of Weststar and was a partner in Three Palms, Ltd., a dissolved California partnership. His business address is 8217 Hegseth Court, Fair Oaks, California.

5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

As used in this order, the following definitions shall apply:

(A) "*Boulder Ridge*" means (1) Boulder Ridge Cable TV, and its predecessors, successors and assigns, subsidiaries, and divisions, and their respective directors, officers, employees, agents, and representatives; and (2) partnerships, joint ventures, groups and affiliates that

Boulder Ridge Cable TV, controls, directly or indirectly, and their respective directors, officers, employees, agents, and representatives.

(B) "*Dean Hazen*" means Dean Hazen, individually, and all partnerships, joint ventures, and corporations that Dean Hazen controls, directly or indirectly, and their respective directors, officers, employees, agents, and representatives.

(C) "*Three Palms, Ltd.*," means (1) Three Palms, Ltd, and its predecessors, successors and assigns, subsidiaries, and divisions, and their respective directors, officers, employees, agents, and representatives; and (2) partnerships, joint ventures, groups and affiliates that Three Palms, Ltd., controlled, directly or indirectly, and their respective directors, officers, employees, agents, and representatives.

(D) "*Weststar Communications, Inc.*" means (1) Weststar Communications, Inc., and its predecessors, successors and assigns, subsidiaries, divisions, and their respective directors, officers, employees, agents, and representatives; and (2), partnerships, joint ventures, groups and affiliates that Weststar Communications, Inc., controls, directly or indirectly, and their respective directors, officers, employees, agents, and representatives.

(E) "*Rodney A. Hansen*" means Rodney A. Hansen, individually, and all partnerships, joint ventures, and corporations that Rodney A. Hansen controls, directly or indirectly, and their respective directors, officers, employees, agents, and representatives.

(F) "*Respondents*" means Boulder Ridge Cable TV, Dean Hazen, Weststar Communications, Inc., and Rodney A. Hansen.

(G) "*Cable Television Service*" means the delivery to the home of various entertainment and informational programming via a cable television system.

(H) "*Cable Television System*" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service, which includes video programming and which is provided to multiple subscribers within a community. The term does not include: (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; or (b) a facility that serves only subscribers in one or more multiple dwelling units under common ownership, control, or management, unless such facility or facilities uses a public right-of-way.

(I) "*NON-COMPETITION AGREEMENT*" means the "*NON-COMPETITION AND NON-DISCLOSURE AGREEMENT*" signed by respondents and Three Palms, Ltd., on November 22, 1988.

(J) "*Agreeing not to compete*" means agreeing directly or indirectly not to own, manage, operate, control (or engage or participate in the ownership, management, operation, or control of) a cable television system, subscription television system, multipoint distribution system, direct broadcast system, private operational fixed microwave service, or any similar multi-channel video distribution system or service (or obtaining or holding any authorizations or franchises for any of the foregoing) in competition with another person.

II.

It is ordered, That respondents, in connection with the purchase, sale, or operation of any cable television system or cable television service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from enforcing any rights they may have under paragraphs three and four of the *NON-COMPETITION AGREEMENT*.

III.

It is further ordered, That respondents, in the acquisition or sale of any cable television system or cable television service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from agreeing not to compete with the seller or buyer of such cable television system or cable television service in any geographic area. Provided, however, that this paragraph shall not apply to any agreement made in connection with the lawful acquisition or sale of a cable television system or cable television service in which the seller agrees not to compete with the buyer or buyers, or the buyer agrees not to compete with the seller or sellers, in a geographic area that is reasonably related to:

(A) The cable television system or cable television service that is being acquired or sold;

(B) A proximately located system or service of the buyer with which the cable television system or cable television service that is being acquired will be jointly operated; or

(C) A proximately located system or service of the seller with which the cable television system or cable television service that is being sold previously was jointly operated.

IV.

It is further ordered, That, within sixty (60) days after the date this order becomes final, and annually thereafter for a period of three (3) years on the anniversary date this order becomes final, and at such other times as the Commission or its staff may request, each respondent shall file with the Secretary of the Federal Trade Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying and has complied with this order.

V.

It is further ordered, That, for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on five days notice to any respondent, made to its principal office, such respondent shall permit any duly authorized representatives of the Federal Trade Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

(B) Without restraint or interference from respondent, an opportunity to interview officers or employees of respondent, who may have counsel present, regarding any matters contained in this order.

VI.

It is further ordered, That, each respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in such respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or partnership, the creation, dissolution, or sale of subsidiaries, and any other change that may affect compliance obligations arising out of this order.

Commissioner Varney not participating.

IN THE MATTER OF

HEALTHTRUST, INC. - THE HOSPITAL COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3538. Complaint, Oct. 20, 1994--Decision, Oct. 20, 1994*

This consent order requires, among other things, a Tennessee-based corporation, that provides acute care hospital services, to divest Holy Cross Hospital of Salt Lake City to a Commission approved acquirer; to complete the divestiture within six months of the date of the order; and to consent to the appointment of a trustee, if the divestiture is not completed within six months. In addition, the consent order requires the respondent, for ten years, to obtain prior Commission approval before purchasing any acute care hospital or any hospital, medical or surgical diagnostic or treatment service or facility in the Utah counties of Weber, Davis, and Salt Lake.

Appearances

For the Commission: *Mark J. Horoschak, Philip M. Eisenstat and Rendell Davis.*

For the respondent: *Phil Proger, Jones, Day, Reavis & Pogue, Washington, D.C. and G. Scott Rayson, Waller, Lansden, Dorich & Davis, Nashville, TN.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent Healthtrust, Inc. - The Hospital Company ("Healthtrust"), a corporation subject to the jurisdiction of the Commission, has entered into an agreement whereby Healthtrust will acquire certain assets from Holy Cross Health System Corporation; that the acquisition agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its