to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12½-percent royalty system based on the favorable performance of this system in these high-cost areas in past sales.

c. The royalty suspension volumes were based on the water depth specific volumes mandated by the DWRRA.

The specific blocks to be offered under each system are shown on the ''Stipulations, Lease Terms, and Bidding Systems'' and ''Royalty Suspension Areas for the Western Gulf of Mexico'' maps for Western Gulf of Mexico Lease Sale 161. These maps are available from the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

Cynthia Quarterman,

Director, Minerals Management Service.

Approved:

Dated: August 9, 1996.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 96–20862 Filed 8–15–96; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–66]

Fresh Tomatoes and Bell Peppers

Determination

On the basis of the information developed in the subject investigation, the Commission determines [1] [2] that fresh tomatoes and bell peppers, provided for in subheadings 0702.00.20, 0702.00.40, 0702.00.60, and 0709.60.40 of the Harmonized Tariff Schedule of the United States,[3] are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries producing articles like or directly competitive with the imported articles.

Background

Following receipt of a petition filed on March 11, 1996, by the Florida Fruit & Vegetable Association, Orlando, FL, the Florida Bell Pepper Growers Exchange, Inc., Orlando, FL, the Florida Commissioner of Agriculture, Tallahassee, FL, the Ad Hoc Group of Florida Tomato Growers and Packers, and individual Florida bell pepper growers, the Commission, effective March 11, 1996, instituted Investigation No. TA–201–66 under section 202 of the Trade Act of 1974 to determine whether fresh tomatoes and bell peppers are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries producing articles like or directly competitive with the imported articles.

Notice of the institution of the Commission's investigation and of public hearings to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of March 28, 1996 (61 F.R. 13875). The hearing in connection with the injury phase of the investigation was held in Washington, DC, on June 3, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel. The hearing on the remedy phase scheduled for August 1, 1996, was not held because the Commission made a negative injury determination and accordingly did not reach the question of remedy.

The Commission transmitted its determination in this investigation to the President on August 9, 1996. The views of the Commission are contained in USITC Publication 2985 (August 1996), entitled ''Fresh Tomatoes and Bell Peppers: Investigation No. TA–201–66.''

Issued: August 12, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–20875 Filed 8–15–96; 8:45 am]

BILLING CODE 7020–02–P

[1] Commissioner Bragg dissenting with regard to imports of fresh tomatoes and bell peppers other than (1) greenhouse tomatoes and bell peppers and (2) imports from Canada.

[2] Commissioner Nuzum not participating.

[3] The imported articles covered by this investigation are fresh or chilled tomatoes, including but not limited to the varieties known scientifically as *Lycopersicon esculentum*, *Lycopersicon cerasiforme*, and *Lycopersicon pyriforme*, but excluding tomatoes grown for processing. ''Bell peppers,'' also called sweet peppers, are defined as fresh or chilled peppers belonging to the species *Capsicum annuum var. annuum*, but excluding chili and cayenne peppers and peppers grown for processing.

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Jacor Communications, Inc. et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16 (b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with United States District Court for the Southern District of Ohio in *United States of America* v. *Jacor Communications, Inc. et al.*, Civil Action C–1–96–757. The Complaint in this case alleged that the proposed acquisition of Citicasters, Inc. by Jacor Communications, Inc. would tend to lessen competition substantially in the sale of radio advertising in Cincinnati, Ohio and the surrounding areas in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment requires Jacor to divest within six months of the filing of the Final Judgment one of Cincinnati radio stations, WKRQ–FM, it will acquire from Citicasters. The proposed Final Judgment further requires defendants to ensure that, until the divestiture mandated by the decree has been accomplished, WKRQ will be operated as a viable, ongoing business and kept separate and apart from Jacor's other Cincinnati radio stations. Finally the proposed Final Judgment requires Jacor to give the United States prior notice as to certain future radio station acquisitions in Cincinnati or agreements that would grant Jacor the right to sell advertising time for Cincinnati stations that are not owned by Jacor.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the Federal Register and filed with the Court. Comments should be directed to Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, Department of Justice, 555 4th Street, NW., Room 8104, Washington, DC 2001.

Constance K. Robinson,

Director of Operations.

In the United States District Court for the Southern District of Ohio

United States of America, Plaintiff, v. Jacor Communications, Inc. and Citicasters, Inc., Defendants.

No. C–1–96–757 (Antitrust)
Stipulation
Judge Weber
Filed: 8/5/96

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

A. The parties to this Stipulation consent that a Final Judgment in the form attached may be filed and entered by the Court, upon any party's or 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), 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 entry of the proposed Final Judgment by serving notice on the defendants and by filing that notice with the Court.

B. If Jacor enters into a local marketing agreement or time brokerage agreement (''LMA'') for WKRQ with another person that has entered into a written agreement to acquire the WKRQ Assets (''broker'') and the person and LMA have been approved by the Plaintiff, Jacor need not comply with Sections VIII (A), (C), (D), (F), (G), (H), (K), (M), or (N) of the Final Judgment, provided that the LMA includes the following provisions:

(1) Jacor shall not sell advertising time for WKRQ or any other station owned by the broker;

(2) If Jacor has any employee working at WKRQ, each such employee shall not sell advertising time, or participate in programming or financial decisions of the broker, and Jacor shall ensure that each such employee does not influence or attempt to influence, directly or indirectly, any decision related to programming or the sale of advertising time by the broker, except to the extent necessary for Jacor to fulfill its obligations as the licensee under applicable FCC rules and policies related to LMAs;

(3) Each such employee shall not have access to WKRQ confidential information, including marketing sales, pacing or rate information related to the sale of advertising time on radio stations in the Cincinnati area, and shall not communicate or otherwise disclose any information related to the sale of advertising on WKRQ or the format or programming at WKRQ to anyone at Jacor;

(4) Each such employee shall not be employed by another Jacor Cincinnati Radio Station except that Jacor employees may provide technical and administrative services to WKRQ;

(5) No officer, director or employee of Jacor shall be an officer, director or employee of the broker;

(6) The broker shall hold no interest in Jacor at the time it enters into the LMA, unless plaintiff agrees otherwise in writing;

(7) Jacor shall not hold an interest in the broker, and shall not receive compensation related to profits earned by the broker from advertising sales of WKRQ;

(8) Jacor shall exercise no right of control under the LMA to oversee the programming, personnel, operations or finances of WKRQ, without providing 14 days prior notice to plaintiff, except that if Jacor is required to take action to fulfill its obligations as the licensee under applicable FCC rules and policies related to LMAs, Jacor may take immediate action after notifying plaintiff. Such action shall be limited in scope and time to what is necessary to correct the problem and shall be consistent with FCC rules and policies;

(9) Jacor shall take all steps necessary to preserve the WKRQ Assets in good working condition within the bounds of its rights and obligations under the LMA; and

(10) Jacor and the broker shall enter into no agreement or understanding that limits competition between WKRQ and the Jacor Cincinnati radio stations.

For purposes of this Stipulation, the term ''broker'' means the person who enters into the LMA and the written agreement to acquire the WKRQ Assets, the person's successors and assigns and its subsidiaries, affiliates, parents, directors, officers, managers, agents and employees acting for or on behalf of any of them. This provision will survive the entry of the Final Judgment and terminate after the divestiture ordered by Section IV of the Final Judgment is completed.

C. The parties recognize that there could be a delay in obtaining approval by or a ruling of a government agency related to the divestiture required by Section IV of the Final Judgment, notwithstanding the diligent and good faith efforts of Jacor and any prospective owner of the WKRQ Assets. The Department will, in the exercise of its sole discretion, acting in good faith, give special consideration to extending the time period specified in Section IV of the Final Judgment provided that:

(1) Jacor has entered into a definitive agreement to divest the WKRQ Assets and such agreement and the prospective purchaser have been approved by the Department;

(2) All papers necessary to secure any governmental approvals and/or rulings to effectuate such divestiture (including but not limited to FCC, SEC and IRS approvals or rulings) have been filed with the appropriate agency;

(3) Receipt of such approvals are the only closing conditions that have not been satisfied or waived; and

(4) Jacor has demonstrated that neither it nor the prospective owner of the WKRQ Assets is responsible for any such delay.

D. The parties understand that nothing in the Final Judgment should be construed to require the trustee appointed pursuant to Section V of the Judgment to directly or indirectly control, supervise, direct or attempt to control the operations of WKRQ, without receiving the prior approval of the FCC. Such operations, including complete control and supervision of all of the programs, employees, finances, operations and policies of WKRQ, shall remain solely the responsibility of defendants, subject to its obligations set forth in Section VIII of the Final Judgment, or the responsibility of the broker, subject to the rights and limitations described in Paragraph (C), above. Nothing in this paragraph shall change or limit the right of the trustee to sell the WKRQ Assets pursuant to Section V of the Final Judgment.

E. The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, 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; provided, however, the Citicasters need not comply with Section V or Sections VIII(B) through VIII(N) until the Jacor/Citicasters Transaction has been consummated; provided further that, prior to the consummation of the Transaction, Jacor shall take no action to impede or influence Citicasters' compliance with Section VIII(A); and provided, further, that Citicasters need not comply with Sections IV(B) through IV(D) until the earlier to occur of the consummation of the Transaction or ten business days following issuance of all FCC approvals required as a condition to the consummation of the Transaction, except that, prior to the time Citicasters' obligation to comply with Sections IV(B) through IV(D) arises, Citicasters shall use all reasonable efforts to cooperate with Jacor's efforts to divest the WKRQ Assets.

F. Jacor shall prepare and deliver reports in the form required by the provisions of paragraph B of Section VII of the proposed Final Judgment commencing no later than September 1,1996, and every thirty days thereafter pending entry of the Final Judgment.

G. In the event plaintiff withdraws its consent, as provided in paragraph (A) above, or if the proposed final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

H. All parties agree that this agreement can be signed in multiple counter-parts.

Dated: August 2, 1996.

For the Plaintiff:

Nancy M. Goodman,

Assistant Chief, Telecommunications Task Force.

Andrew S. Cowan,

Attorney, Telecommunications Task Force, U.S. Department of Justice, Antitrust Division, 555 4th Street N.W., Room 8104, Washington, DC 20001, (202) 514–5621.

For the Defendant:

Thomas B. Leary,

Counsel for Jacor Communications, Inc.

Tom D. Smith,

Counsel for Citicasters, Inc.

Whereas, plaintiff, the United States of America, having filed its Complaint herein on August 5, 1996, and plaintiff and defendants, by their respective attorneys, having consented to the entry of its 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 essence of this Final Judgment is prompt and certain divestiture of certain assets to assure that competition is not substantially lessened;

And whereas, plaintiff requires Jacor 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 be made and that Jacor will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

And, 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 the subject matter of this action. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. ''Jacor'' means defendant Jacor Communications, Inc., an Ohio corporation with its headquarters in Cincinnati, Ohio and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents, and employees acting for or on behalf of Jacor.

B. ''Citicasters'' means defendant Citicasters Inc., a Florida corporation with its headquarters in Cincinnati, Ohio, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents, and employees acting for or on behalf of Citicasters.

C. ''WKRQ Assets'' means all of the assets, tangible or intangible, used in the operation of the WKRQ–FM radio station ''WKRQ'') in Cincinnati, Ohio, including but not limited to: all real property (owned and leased) used in the operation of WKRQ; all broadcast equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies and other tangible property used in the operation of WKRQ; all licenses, permits and authorizations and applications therefor issued by the Federal Communications Commission (''FCC'') and other governmental agencies relating to WKRQ; all contracts, agreements, leases and commitments of Citicasters pertaining to WKRQ and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to WKRQ; and all logs and other records maintained by Citicasters or WKRQ in connection with the station's business. For all assets used jointly by WKRQ and WWNK–FM or WKRC–TV prior to the divestiture required by this Final Judgment, Jacor shall propose to plaintiff, within 7 days of the consummation of the Jacor/Citicasters Transaction, a plan for dividing such assets among these stations. Upon approval of the plan by plaintiff, the term''WKRQ Assets'' shall include only those assets allocated under the plan to WKRQ.

D. ''Jacor Cincinnati Radio Station'' means each broadcast radio station that is licensed to a community in the Cincinnati Area, and that Jacor owns, operates, manages, or has an interest in, or for which Jacor sells more than 20 percent of its advertising time.

E. ''Non-Jacor Radio Station'' means any radio broadcast station licensed to a community in the Cincinnati Area that is not a Jacor Cincinnati Radio Station.

F. ''Cincinnati Area'' means the Cincinnati, Ohio DMA as identified by The Arbitron Radio Market Report for Cincinnati (Winter 1996).

G. ''Jacor/Citicasters Transaction'' means the proposed acquisition of Citicasters by Jacor contemplated by the Agreement and Plan of Merger, dated as of February 12, 1996.

III. Applicability

The provisions of this Final Judgment apply to each of the defendants, its successors and assigns, its 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.

IV. Divestiture of WKRQ

A. Jacor is hereby ordered and directed, in accordance with the terms of this Final Judgment, within six (6) months after the filing of this Final Judgment, to divest the WRRQ Assets to a purchaser acceptable to plaintiff. Unless plaintiff otherwise consents in writing, the divestiture pursuant to Section IV of this Final Judgment or by the trustee appointed pursuant to Section V shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the WKRQ Assets can and will be used by the purchaser as a viable, ongoing business. The divestiture, whether pursuant to Sections IV or V of this Final Judgment, shall be made (i) to a purchaser that, in the plaintiff's sole judgment, has the capability and intent of competing effectively, and has the managerial, operational, and financial capability to compete effectively as a radio station in the Cincinnati Area; and (ii) pursuant to an agreement the terms of which shall not interfere with the ability of the purchaser to compete effectively.

B. Defendants agree to use their best efforts to accomplish the divestiture as expeditiously and timely as possible. Plaintiff, in its sole discretion, may extend the time period for the divestiture for two additional periods of time not to exceed sixty (60) calendar days in toto.

C. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the WKRQ Assets. Defendants shall inform any person making a bona fide inquiry regarding a possible purchase that the sale is being

made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall make known to any person making an inquiry regarding a possible purchase of the WKRQ Assets that the assets described in Section II (C) are being offered for sale. Defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the WKRQ 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 WKRQ 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.

V. Appointment of Trustee

A. In the event that Jacor has not divested the WKRQ Assets within six months of the filing of this Final Judgment with the Court, or within any extension granted under Section IV, the Court shall appoint, on application of the plaintiff and consistent with the rules of the FCC, a trustee selected by the 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 WKRQ Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections V and VI of this Final Judgment, and shall have other powers as the Court shall deem appropriate. Subject to Section V (C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investments bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals or agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to plaintiff, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to the sale of the WKRQ Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee no later than fifteen (15) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

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

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

E. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture of the WKRQ Assets as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the WKRQ Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

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

VI. Notification

Within two (2) business days following execution of a definitive agreement, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, Jacor or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendants, the proposed purchaser or purchasers, any other third party, or the trustee if applicable additional information concerning the proposed divestiture and the proposed purchaser or purchasers. Defendants and the trustee shall furnish any additional information requested 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, any third party, and the trustee, 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 plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, or by defendants under the proviso in Section V (B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Jacor shall deliver to plaintiff an affidavit as to the fact and manner of defendants' 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 WKRQ Assets, and shall describe in detail each contact with any such person during that period.

B. Within twenty (20) calendar days of the filing of this Final Judgment, 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 the WKRQ Assets pursuant to Section VIII of this Final Judgment. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate WKRQ as an active competitor, maintain the management, sales, marketing and pricing of WKRQ apart from that of the other Jacor Cincinnati Radio Stations, maintain and increase sales of advertising time at WKRQ, and maintain the WKRQ Assets in operable condition, continuing normal maintenance. Defendants shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall preserve all records of all efforts made to preserve and divest the WKRQ Assets.

VIII. Preservation of Assets/Hold Separate

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendants shall preserve, hold, and continue to operate the business of WKRQ as an independent, ongoing, economically viable business, with its assets, management, and operations separate, distinct, and apart from the other Jacor Cincinnati Radio Stations. Defendants shall maintain the business of WKRQ as a viable and active competitor to the other Cincinnati radio stations, including the Jacor Cincinnati Radio Stations.

B. Defendants shall not coordinate the marketing, promotion, merchandising or terms of sale of advertising time on WKRQ with other current or hereafter acquired Jacor Cincinnati Radio Stations. There shall be no communications between personnel at WKRQ and those at other Jacor Cincinnati Radio Stations relating to any confidential business information, including any marketing, sales, pacing or rate information relating to the sale of advertising time on radio stations in the Cincinnati Area.

C. Defendants shall use all reasonable efforts to maintain and increase sales of advertising time on WKRQ. In particular, defendants shall, consistent with market conditions, provide promotional, marketing and merchandising support for the sale of advertising time on WKRQ, including maintaining or increasing expenditures designed to promote WKRQ.

D. Defendants shall ensure that WKRQ has separate management, programming, sales personnel and other employees from the other Jacor Cincinnati Radio Stations, and ensure that the management, programming, sales personnel and employees of other Jacor Cincinnati Radio Stations, or anyone acting at their direction, do not influence or attempt to influence, directly or indirectly, any operational, programming, marketing or financial decisions of WKRQ, and vice versa.

E. Except in the ordinary course of business or as part of the disposition of the WRKQ Assets under this Final Judgment, defendants shall not, without the prior consent of plaintiff, sell, lease, assign, transfer, or otherwise dispose of, or pledge for collateral for loans (except such loans and credit facilities as are currently outstanding or replacements or substitutes therefor), the WKRQ Assets, including but not limited to the real estate, facilities, and equipment, all tangible and intangible assets used in connection with WKRQ's format, and all administrative, marketing, sales and support facilities, related to the sale of advertising time on WRKQ.

F. Defendants shall provide and maintain sufficient working capital, consistent with past practice, to maintain the WKRQ Assets as a viable, ongoing business.

G. Defendants shall provide and maintain sufficient lines and sources of credit, consistent with past practice, to maintain the general business operations of WKRQ as a viable, ongoing business.

H. Consistent with the stations' existing practices, defendants shall maintain, in accordance with sound accounting practices, separate, true and complete financial ledgers, books and records reporting the profits and losses of WKRQ on a monthly and quarterly basis.

I. Defendants shall refrain from taking any action designed to reduce the scope or level of competition between the general business operations of WKRQ and other Cincinnati radio stations, including current or hereafter acquired Jacor Cincinnati Radio Stations, or in the sale of advertising time on radio stations in the Cincinnati Area, without the prior consent of plaintiff.

J. Defendants shall refrain from taking any action designed to jeopardize its ability to divest the WKRQ Assets as a viable, ongoing business.

K. Defendants shall give five business days' prior notice to plaintiff of its decision to terminate any WKRQ management staff, on-air personality or sales employee.

L. Jacor shall not hire or contract to purchase services from any WKRQ employee including management, sales or production staff or on-air-personality.

M. Defendants shall give five business days' notice to plaintiff prior to either (1) changing WKRQ's format from Contemporary Hits Radio, or (2) Jacor changing the format of any current or hereafter acquired Jacor Cincinnati Radio Stations to an Adult Hits, Top 40, Soft Hits, Adult Contemporary, or to a similar format.

N. Defendants shall appoint a person or persons to oversee the WKRQ Assets, and who will be responsible for defendants' compliance with Section VIII of this Final Judgment.

IX. 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''), Jacor, without providing advance notification to the United States Department of Justice, shall not directly or indirectly:

(1) acquire any assets of, or any equity or management interest in, any Non-Jacor Radio Station; provided, however, that Jacor need not provide notice under this provision for any direct or indirect acquisition of equity of a Non-Jacor Radio Station that would result in Jacor's holding no more than five percent of the total equity of the station; and provided further that assets for purpose of this Section IX(A) means: (i) substantially all the assets of a Non-Jacor Radio Station, or (ii) any trademarks, trade names, service marks, service names, copyrights, or call letters, or programming the purchase of which is accompanied by a non-compete covenant, whether or not the acquired assets constitute substantially all the assets of a Non-Jacor Radio Station; or

(2) enter into any agreement or understanding that would allow Jacor to market or sell advertising time for any Non-Jacor Radio Station; provided, however, that Jacor need not provide notice under this provision for any such agreement or understanding: (i) that is consideration for the sale by Jacor of proprietary news, weather or traffic programming to any such Non-Jacor Radio Station and would permit Jacor to sell no more than 5 percent of that station's advertising time for any day and no more than 20 percent of that station's advertising time for any hour segment, or (ii) that is consideration for Jacor's granting to such station rebroadcast rights for a sports event to which Jacor has exclusive broadcast rights, and would permit Jacor to sell no more than 15 percent of such station's advertising time for any day.

Notification shall be provided to the United States Department of Justice in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5–9 of the instructions must be provided only with respect to Jacor Cincinnati Radio Stations. Notification shall be provided at least thirty (30) days prior to acquiring any such interest covered in (1) or (2) above, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the 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, Jacor shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

B. Jacor shall submit to the Department within ten (10) business days following the end of each of Jacor's fiscal quarters a list of each acquisition made by Jacor in that just-ended quarter of any assets of a Non-Jacor Radio Station that was not subject to the reporting and waiting period requirements of the HSR Act or to the notice and waiting period requirements of Section IX(A); provided, however, that the acquisition of physical assets valued at less than $25,000 need not be included in the list. The list shall include the identity of the parties to the transaction, the date of the transaction and a description of the assets acquired.

X. Compliance Inspection

Only for the purposes 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, 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 enforcement of this Final Judgment; and

(2) Subject to the reasonable convenience of defendants and without restraint or interference from it, to interview 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 enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in this Section X shall be divulged by 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 United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, 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 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 plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. 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.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry, except that plaintiff, after five years from the date of this Final Judgment's entry, in its sole discretion, may notify Jacor and the Court that Jacor shall no longer be subject to Section IX.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

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 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 a civil antitrust complaint on August 5, 1996, alleging that the proposed acquisition of Citicasters, Inc. (''Citicasters'') by Jacor Communications, Inc. (''Jacor'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. Jacor and Citicasters own and operate radio broadcast stations in various cities across the United States, and they are the first and third largest owners of radio stations in the Cincinnati, Ohio area.

The complaint alleges that the combination of these companies would substantially lessen competition in the sale of radio advertising time in Cincinnati, Ohio and the surrounding areas. The prayer for relief seeks: (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and (2) a preliminary and permanent injunction preventing Jacor and Citicasters from carrying out the proposed merger.

Shortly before that suit was filed, a proposed settlement was reached that permits Jacor to complete its acquisition of Citicasters, yet preserves competition in the market for which the transaction 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 Jacor to divest WKRQ–FM in Cincinnati, which it will acquire from Citicasters in the proposed transaction, including all the assets necessary to make WKRQ an economically viable competitor in the Cincinnati radio market. Unless the United States grants a time extension, Jacor must complete this divestiture within six months after the entry of the Final Judgment. If Jacor does not divest the WKRQ Assets during the divestiture period, the Court may appoint a trustee to sell the assets. The proposed Final Judgment further requires defendants to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, WKRQ will be operated independently as a viable, ongoing business, and kept separate and apart from Jacor's other Cincinnati radio stations. Finally, the proposed Final Judgment requires Jacor to give the United States prior notice as to certain future radio station acquisitions in Cincinnati or agreements that would grant Jacor the right to sell advertising time for non-Jacor radio stations in Cincinnati.

The United States and Jacor 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. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Defendant Jacor is an Ohio corporation with its headquarters in Cincinnati, Ohio. It currently owns and operates 22 stations in 7 cities.[1] In 1995, Jacor reported total revenues of approximately $134 million, $40 million from operations in the Cincinnati area. Jacor owns four Cincinnati radio stations, and sells advertising for three more radio stations under joint sales agreements (''JSAs'').

Citicasters is a Florida corporation headquartered in Cincinnati, Ohio. Citicasters owns 19 radio stations in 8 cities, and also owns two television stations. In 1995, Citicasters' total revenues were approximately $60 million, $10 million from its Cincinnati radio operations. Citicasters owns two radio stations in Cincinnati.

On February 12, 1996, Jacor agreed to purchase Citicasters for approximately $770 million. This transaction, which would combine Jacor and Citicasters, precipitated the Government's suit. As a result of the proposed transaction, Jacor would own six major radio stations in Cincinnati and control the sale of advertising time for three more.

B. Sale of Radio Advertising Time

The complaint alleges that the provision of advertising time on radio stations serving the Cincinnati metropolitan area constitutes a line of commerce and section of the country, or relevant market, for antitrust purposes. Advertisers that seek to reach residents of the Cincinnati area would not find radio stations that broadcast to other areas to be acceptable substitutes for Cincinnati stations.

Radio stations earn money by selling broadcast time to advertisers. Advertisers choose among radio stations by comparing differences among the stations' rates, audience size, audience composition, and availability of time for sale. An advertiser typically has a ''target audience'' (young women, for example) that it seeks to reach when marketing its product or service, and wants its target audience to have substantial exposure to its message. To ensure this reach and frequency, advertisers generally buy time on multiple radio stations in the same market. Because a radio station bases its rates on the size of its overall audience, advertisers prefer to advertise on stations that are listened to primarily by their target audience.

For Cincinnati advertisers, radio is a qualitatively different medium from television or newspapers. Perhaps most significantly, radio gives Cincinnati advertisers the ability to reach target audiences far more efficiently than other media. Cincinnati radio stations attract different types of audiences by adopting different formats, such as country or rock and roll. By choosing appropriate radio stations, a Cincinnati advertiser can reach a large percentage of its target audience without also reaching (and thus paying for) listeners outside of its target. Although television and newspapers are good vehicles for reaching a broad, undifferentiated audience, they generally lack radio's ability to provide efficient targeting.

Radio advertisements are also comparatively inexpensive to produce, and can be changed or modified easily and with little advance notice to the radio station. This makes radio advertising especially attractive to Cincinnati advertisers that need to change messages frequently (for example, to advertise different items as being on sale each week), as well as to companies with limited advertising budgets. Radio is also the most effective medium for delivering a message to consumers when they are traveling in their cars or outside their homes.

Radio thus has particular advantages for those seeking to place low-cost, targeted or time-sensitive advertising. Many Cincinnati advertisers therefore perceive radio as a distinct advertising medium from television or newspapers. Accordingly, many are not likely to switch any or some of their advertising budget from radio to other media were radio prices to rise 5–10%.

Radio stations negotiate rates individually with each advertiser. As an integral part of these negotiations, an advertiser will provide the station with a description of its target audience, as well as the reach and frequency it desires. Based on this information and the station's knowledge of its competitors, the station can identify the reasonable alternatives available to advertisers, and has the ability to charge advertisers different rates, based on whether such alternatives exist.

[1] In a separate acquisition, Jacor plans to acquire Noble Broadcast Group, Inc., which owns 10 radio stations.

C. Anticompetitive Consequences of the Proposed Merger

The complaint alleges that Jacor's proposed acquisition of Citicasters would lessen competition substantially in the provision of advertising time on radio in the Cincinnati area. The proposed acquisition would create further market concentration in an already highly concentrated market, and Jacor would control a substantial share of the advertising revenues in this market. Jacor presently controls 42% of all radio advertising revenues in Cincinnati, and its market share would rise to 53% after the proposed merger. According to the Herfindahl-Hirschman Index (''HHI''), a widely-used measure of market concentration defined and explained in Appendix A, Jacor possesses a pre-merger HHI of 2180, which would rise to 3077 after the merger.

Advertisers, at present, can choose among radio stations owned by Jacor, Citicasters and others. When there are multiple stations that could satisfy its needs, an advertiser can get competing bids from the stations, and so obtain better rates or other special services from them. After the merger, advertisers will have fewer radio companies to choose from, and many will have to purchase advertising time from Jacor/Citicasters so as to obtain the desired reach and frequency. Advertisers will thus lose the benefits that the existing competition between Jacor and Citicasters stations provides.

Currently, many advertisers feel that advertising on either one of the Jacor-controlled stations, or on WKRQ, is very important. Many of these advertisers' target audiences include young adults (listeners aged 18 to 34). Thus, the Jacor stations and WKRQ compete against each other for the business of advertisers trying to reach that audience, and in rate negotiations, advertisers use this competition to get better rates or increased services from the Citicasters and Jacor stations. This competition will be eliminated by the merger.

Currently, advertisers trying to reach young adults could efficiently reach this audience on the radio without having to use a Jacor station. Post-merger, however, many of these advertisers will be much more dependant on purchasing time from Jacor stations. Jacor could accordingly raise its rates, and reduce the quality of its service, to advertisers targeting young adults (or who need either the Jacor stations or WKRQ for other reasons) who would have scant alternatives to paying the increase, while maintaining lower rates for other advertisers. This would make a price increase profitable even though some advertisers could switch to other radio stations.

Non-Jacor radio stations in Cincinnati are not likely to respond to Jacor's increased prices after the acquisition by changing formats so as to attract a greater number of young adults. Most radio stations change format only when their existing formats are losing money. A station is also unlikely to change its format solely in response to higher prices being charged by a large established company that controls a number of stations in the market, such as Jacor.

Entry by new radio stations in this market is unlikely. The FCC is unlikely to grant a license to a new radio station, as there is insufficient spectrum to accommodate a new signal without interfering with existing signals. In addition, radio stations sited in nearby communities cannot easily boost their signal power so as to provide better coverage and thereby enter the Cincinnati market. Boosting a signal would interfere with neighboring stations on the same or similar frequencies, a violation of FCC regulations.

For these reasons, the Department concludes that the merger as proposed would substantially lessen competition in the sale of radio advertising time in the Cincinnati area, eliminate actual competition between Jacor and Citicasters, and result in increased rates for radio advertising time in the Cincinnati metropolitan area, 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 Cincinnati metropolitan market. It requires the divestiture of WKRQ–FM, the station owned by Citicasters that competes most directly with Jacor stations for advertising dollars targeted to young adults. As a result of this divestiture, WKRQ–FM will remain as a strong competitor to the Jacor stations. The divestiture will preserve choices for advertisers and help ensure that radio advertising rates in Cincinnati do not increase as a result of the acquisition.

Unless the United States grants a time extension, this divestiture of WKRQ must be accomplished by Jacor within six months after entry of the Final Judgment. The defendants must divest the assets and rights associated with WKRQ in such a way as to satisfy the plaintiff that the station can and will be operated as a viable, ongoing business, and that until the divestiture, the station will be maintained as an independent competitor to the other stations in the Cincinnati area, including the Jacor stations.

If the defendants fail to divest WKRQ within the six months after entry of Final Judgment, or extension thereof, the Court, upon application of the United States, shall appoint a trustee nominated by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Jacor 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 WKRQ and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished. After appointment, the trustee will file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under the proposed Final Judgment. If the trustee has not accomplished the divestiture 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 divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. At the same time, the trustee will furnish such report to the parties, who will each have the right to be heard and to make additional recommendations consistent with the purpose of the trust.

The proposed Final Judgment requires that Jacor maintain WKRQ separate and apart pending divestiture. The Judgment also contains provisions to ensure that the assets of WKRQ will be preserved so that the station after divestiture will remain a viable, aggressive competitor.

The proposed Final Judgment also prohibits Jacor from entering into certain agreements with other Cincinnati radio stations without providing at least thirty (30) days notice to the Department of Justice. Specifically, Jacor must notify the Department before acquiring any significant interest in another Cincinnati radio station, which would raise competitive concerns but might well be too small to be reported under the Hart-Scott-Rodino (''HSR'') premerger notification process. In addition, Jacor may not agree to sell radio advertising time for any other Cincinnati radio station, without providing such notice.

This provision ensures that the Department will receive advance notice of any acquisition, or agreements, through which Jacor will increase the amount of advertising time on radio stations that it can sell. In particular, this provision will require Jacor to notify the Department before it enters into any more joint sales agreements (''JSAs'') or limited management agreements (''LMAs'') with other stations in the Cincinnati area. Such agreements, whereby Jacor sells advertising for or manages other area radio stations, would effectively increase Jacor's market share in Cincinnati. In analyzing the Cincinnati radio market, the Department treated Jacor's three present JSA stations as if Jacor owned them outright. Despite their clear competitive significance, a JSA or an LMA probably would not be reportable to the Department under HSR. Thus, this provision in the decree 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 Cincinnati market.

The relief in the proposed Final Judgment is intended to remedy the competitive effects of the proposed acquisition of Citicasters by Jacor. Nothing in this Final Judgment is intended to limit the plaintiff's ability to investigate or bring actions, where appropriate, challenging other past or future activities of Jacor in the Cincinnati area, including its entry into JSAs, LMAs or other agreements related to the sale of advertising time on non-Jacor stations.

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

Written comments should be submitted to: Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, United States Department of Justice, 555 4th Street, N.W., Room 8104, Washington, D.C. 20001.

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

VI. Alternatives to the Proposed Final Judgment

The plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its complaint against defendants. The plaintiff is satisfied, however, that the divestiture of WKRQ and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of radio advertising time in the Cincinnati metro area. 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) (emphasis added). As the United States Court of Appeals for the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry. ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [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.

[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.

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.[3]

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.' '' [4]

VIII. Determinative Documents

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

Dated: August 2, 1996.

Respectfully submitted,

Nancy M. Goodman,

Assistant Chief, Telecommunications Task Force, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Room 8104, Washington, D.C. 20001, (202) 514–5621.

Exhibit A—Definition of HHI and Calculations for Market

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See Merger Guidelines § 1.51.

Based on available radio advertising revenues, the pre-merger HHI for the Cincinnati area radio market is 2180. After the proposed merger the HHI would be 3077, an increase of 897 points.

[FR Doc. 96–20860 Filed 8–15–96; 8:45 a.m.]

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[3] *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).

[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).

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 12, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

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

Agency: Employment and Training Administration.

Title: Revenue Quality Control—Tax Performance System.

OMB Number: 1203–0332.

Agency Number: ETA Handbook 407.

Frequency: Annually.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 52.

Estimated Time Per Respondent: 1,750.

Total Burden Hours: 91,000.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Revenue Quality Control (RQC)—Tax Performance System gathers and disseminates information on the timeliness and accuracy of State unemployment insurance tax operations. This submission proposes to extend the RQC program for three years.

Agency: Employment and Training Administration.

Title: Alternative Schools Random Assignment Evaluation, Student Follow-up Survey.

OMB Number: 1205–0331.

Frequency: Annually.

Affected Public: Individuals or households.

Number of Respondents: 1,600.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 800.

Total Annualized capital/startup costrs: 0.