information collection need not respond unless the OMB control number is current.

Frequency: This information will be collected only once for each well as long as changes in water use, or other changes that would impact water use entitlement management, are not made.

Description of Respondents: Every well owner and operator along the lower Colorado River in Arizona, California, and Nevada.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 1.

Estimated Annual Responses: 1,000.

Estimated Total Annual Burden on Respondents: 500 hours.

Reclamation's Clearance Officer: Marilyn Rehfeld (303) 236–0305 extension 459.

No comments were received on this information collection as requested in Federal Register notice 61 FR 31950, June 21, 1996.

Dated: October 3, 1996.

Blaine Hamann,

Assistant Regional Director.

[FR Doc. 96–28674 Filed 11–6–96; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 C.F.R. 50.7, and Section 122 of CERCLA, 42 U.S.C. § 9622, notice is hereby given that on October 29, 1996, a proposed Partial Consent Decree in *United States* v. *Metallics, Inc.*, Civil Action No. 96–C–0275–S, was lodged with the United States District Court for the Western District of Wisconsin. This consent decree represents a settlement of claims of the United States and the State of Wisconsin against Metallics, Inc., for reimbursement of response costs and injunctive relief in connection with the Onalaska Municipal Landfill site (''Site'') pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*

Under this settlement between the United States, the State of Wisconsin, and Metallics, Metallics will pay the United States $1,350,000 in partial reimbursement of response costs incurred by the Environmental Protection Agency at the Site. Metallics will pay $675,000 to the United States and $675,000 to the State, plus accrued interest, in annual installment payments over a three year period, commencing 60 days following entry of the proposed consent decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent 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. *Metallics, Inc.*, D.J. Ref. 90–11–3–605B.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Wisconsin, 660 West Washington Avenue, Suite 200, Madison, Wisconsin 53701, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker Smith,

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

[FR Doc. 96–28615 Filed 11–6–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Consent Decree in Comprehensive Environmental Response, Compensation and Liability Action

In accordance with the Departmental Policy, 28 C.F.R. 50.7, notice is hereby given that two Consent Decrees in *United States* v. *Ralph Riehl, et al.*, Civil Action No. 89–226(E), were lodged with the United States District Court for the Western District of Pennsylvania on October 21, 1996.

On October 16, 1989, the United States filed a complaint against the owners and operator of, and certain transporters to, the Millcreek Dump Superfund Site (the ''Site''), pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9607(a). In September 1991, the United States added additional defendants to the action. The two proposed Consent Decrees resolve the liability of Bethlehem Steel Corporation and United Brass Works, Keystone Foundry Division. These Consent Decrees resolve the liability of the above-named defendants for the response costs incurred and to be incurred by the United States at the Site. Bethlehem Steel Company will pay $100,000 in response costs and United Brass Works will pay $197,500 in response costs.

The Department of Justice will accept written comments relating to these proposed Consent Decrees for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *Ralph Riehl, et al.*, DOJ No. 90–11–3–519.

Copies of the proposed Consent Decrees may be examined at the Office of the United States Attorney, Western District of Pennsylvania, Federal Building and Courthouse, Room 137, 6th and States Streets, Erie, Pennsylvania 15219; Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202) 624–0892. A copy of each proposed Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. When requesting copies of the proposed Consent Decrees, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the ''Consent Decree Library'' in the following amounts:

$6.00 for the Bethlehem Steel Consent Decree
$5.75 for the United Brass Works, Keystone Foundry Division Consent Decree

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 96–28616 Filed 11–6–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States of America v. American Radio Systems Corporation, The Lincoln Group, L.P. and Great Lakes Wireless Talking Machine LLC

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have

been filed with the United States District Court for the District of Columbia in *United States* v. *American Radio Systems Corporation, The Lincoln Group, L.P. and Great Lakes Wireless Talking Machine LLC,* Civ. Action No. 96–2459. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act. 15 U.S.C. 16(b)–(h).

The United States filed a civil antitrust Complaint on October 24, 1996, alleging that the proposed acquisition of assets of The Lincoln Group, L.P. (''Lincoln'') by American Radio Systems Corporation (''ARS'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and that the Joint Sales Agreement (''JSA'') between ARS and Great Lakes Wireless Talking Machine LLC (''Great Lakes'') violates Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint alleges that ARS and Lincoln own and operate three and four radio stations respectively in the Rochester, New York area. In addition, ARS has a JSA with a radio station owned by Great Lakes (WNVE–FM), allowing ARS post-merger to control the sale of advertising time on an eighth station as well. This acquisition would allow ARS to control advertising time on six of the top eight radio stations in the Rochester area. As a result, the combination of these companies would substantially lessen competition in the sale of radio advertising time in Rochester, New York and the surrounding area.

Moreover, the Complaint alleges that, beginning at least as early as October 1, 1995 and continuing to this day, ARS and Great Lakes entered into a contract, the purpose of which is the elimination of all pricing competition between two rival radio stations, to the detriment of purchasers of radio advertising time in the Rochester area. As such, it constitutes an illegal contract in restraint of interstate trade and commerce.

The proposed Final Judgment orders ARS to divest WHAM–AM and WVOR–FM, both currently owned by Lincoln, and WCMF–AM, currently owned by ARS. Unless the United States grants a time extension, ARS must divest these radio stations either within six months after the filing of the Final Judgment, or within five (5) business days after notice of entry of the Final Judgment, whichever is later. If ARS does not divest WHAM–AM, WVOR–FM and WCMF–AM within the divestiture period, the Court may appoint a trustee to sell the assets. The proposed Final Judgment also requires ARS to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, all of Lincoln's present stations (including WHAM–AM and WVOR–FM) will be operated independently as viable, ongoing businesses, and kept separate and apart from ARS' other Rochester radio stations. Further, the proposed Final Judgment requires ARS to give the United States prior notice as to certain future radio station acquisitions in Rochester.

In addition, the Final Judgment requires ARS and Great Lakes to terminate the JSA that allows ARS to sell radio advertising time for WNVE within five (5) business days after receiving notice of entry of the Final Judgment, and to cease and desist from entering into any future joint sales agreements between them in the Rochester, New York Metro Survey Area. ARS and Great Lakes also must terminate their ''Option Agreement'' dated September 28, 1995, between them, within five (5) business days after receiving notice of the entry of the Final Judgment, unless ARS has first assigned this agreement to any entity or entities acquiring WHAM–AM, WVOR–FM or WCMF–AM. Furthermore, the proposed Final Judgment requires ARS and Great Lakes to give the United States prior notice before entering any future agreements that would grant ARS or Great Lakes the right to sell advertising time or to establish advertising prices for non-ARS radio stations in Rochester.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the Federal Register and filed with the Court. Written comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, 1401 H Street, NW, Suite 4000, Washington, D.C. 20530 (telephone: 202–307–0001). Copies of the Complaint, Stipulation, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th St., NW, Washington, D.C. 20530 (telephone: 202–514–2481), and at the office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue, NW, Washington, D.C. 20001.

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

Constance K. Robinson,

Director of Operations, Antitrust Division.

Stipulation

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

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States of America (hereinafter ''United States'') 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 the parties and by filing that notice with the Court.

(3) The defendants 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 signing 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.

(4) The parties recognize that there could be a delay in obtaining approval by or a ruling of a government agency related to the divestitures required by Section IV of the Final Judgment, notwithstanding the good faith efforts of American Radio Systems Corporation (''ARS'') and any prospective Acquirer. In this circumstance, the United States will, in the exercise of its sole discretion, acting in good faith, give special consideration to forebearing from applying for the appointment of a trustee pursuant to Section V of the Final Judgment, or from pursuing legal remedies available to it as a result of such delay, provided that: (i) ARS has entered into one or more definitive agreements to divest the Lincoln Assets and WCMF–AM Assets, and such agreements and the Acquirer or Acquirers have been approved by the United States; (ii) All papers necessary to secure any governmental approvals and/or rulings to effectuate such divestitures (including but not limited to FCC, SEC and IRS approvals or rulings) have been filed with the appropriate agency; (iii) Receipt of such approvals are the only closing conditions that have not been satisfied or waived; and (iv) ARS has demonstrated that neither it nor the prospective Acquirer or Acquirers are responsible for any such delay.

(5) In the event the United States withdraws its consent, as provided in paragraph 2 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.

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

Dated: October 24, 1996.

For Plaintiff United States of America:

Craig W. Conrath,

U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20005, (202) 307–5779.

For Defendant American Radio Systems Corporation:

James R. Loftis, III, Collier Shannon Rill & Scott, PLLC, 3050 K Street, N.W., Suite 400, Washington, DC 20007, (202) 342–8480.

For Plaintiff State of New York:

Dennis C. Vacco,

Attorney General of the State of New York.

John H. Carley,

Deputy Attorney General, Public Advocacy.

Stephen D. Houck,

Assistant Attorney General, Chief, Antitrust Bureau.

By:

Stephen D. Houck.

Richard L. Schwartz,

Deputy Chief, Antitrust Bureau.

George R. Mesires,

Assistant Attorney General, 120 Broadway, Suite 2601, New York, New York 10271, (202) 416–8275.

For Defendant the Lincoln Group, L.P.:

Jason L. Shrinsky,

Kaye Scholer Fierman Hays & Handler, LLP, 901 15th Street, N.W., Suite 1100, Washington, DC 20005.

For Defendant, Great Lakes Wireless Talking Machine LLC:

Stephen P. Morris,

Morris & Morris, 30 Corporate Woods, Suite 120, Rochester, NY 14623, (716) 292–5750.

Certificate of Service

I, Dando B. Cellini, hereby certify that on October 24, 1996, I caused a copy of the foregoing Complaint, Motion for Entry of Stipulation and Order, Stipulation, form of Order, United States' Explanation of Consent Decree Procedures and Competitive Impact Statement filed this day in *United States and State of New York* v. *American Radio Systems, et. al* to be served on all parties by having a copy mailed, first class, postage prepaid, to:

Plaintiff State of New York:

George R. Mesires,

Assistant Attorney General, State of New York, 120 Broadway, Suite 2601, New York, New York 10271.

Defendant the Lincoln Group, L.P.:

Jason L. Shrinsky,

Kaye Scholer Fierman Hays & Handler, LLP, 901 15th Street, NW., Suite 1100, Washington, DC 20005.

Defendant American Radio Systems Corporation:

James R. Loftis, III,

Collier Shannon Rill & Scott, PLLC, 3050 K Street, N.W., Suite 400, Washington, DC 20007, (202) 342–8480.

Defendant Great Lakes Wireless Talking Machine LLC:

Stephen P. Morris,

Morris & Morris, 30 Corporate Woods, Suite 120, Rochester, NY 14623, (716) 292–5750.

Dando B. Cellini

Dated: October 24, 1996.

Final Judgment

Case Number: 1:96CV02459
Judge: Norma Holloway Johnson
Deck Type: Antitrust
Date Stamp: 10/24/96
No. _____.

Whereas, plaintiffs, the United States of America (hereinafter ''United States'') and the State of New York (hereinafter ''New York''), having filed their Complaint herein on October 24, 1996, and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the purpose of this Final Judgment is prompt and certain divestiture of certain assets to assure that competition is not substantially lessened;

And whereas, plaintiffs require defendants to make certain divestitures and contract terminations for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to plaintiffs that the divestitures and contract terminations ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or termination provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or

adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants ARS and Lincoln, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and against defendants ARS and Great Lakes, as hereinafter defined, under Section 1 of the Sherman Act, as amended (15 U.S.C. 1).

II. Definitions

As used in this Final Judgment:

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

B. ''Lincoln'' means defendant The Lincoln Group, L.P., a New York limited partnership with its headquarters in Syracuse, NY, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents, and employees acting for or on behalf of Lincoln.

C. ''Great Lakes'' means defendant Great Lakes Wireless Talking Machine LLC, a New York limited liability company with its headquarters in East Rochester, New York, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents and employees acting for or on behalf of Great Lakes.

D. ''Lincoln Assets'' means all of the assets, tangible or intangible, used in the operation of the WHAM–AM and WVOR–FM radio stations in Rochester, New York, including but not limited to: All real property (owned and leased) used in the operation of these two stations; all broadcast equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies and other tangible property used in the operation of these two stations; all licenses, permits and authorizations and applications therefor issued by the Federal Communications Commission (''FCC'') and other governmental agencies relating to these two stations; all contracts, agreements, leases, and commitments of Lincoln pertaining to these two stations and their operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to these two stations; and all logs and other records maintained by Lincoln or these two stations in connection with each station's business.

E. ''WCMF–AM Assets'' means all of the following assets: all real property (owned and leased) used solely in the operation of radio station WCMF–AM; all broadcast equipment used solely in the operation of radio station WCMF–AM; and all licenses, permits, and authorizations and applications therefor issued by the Federal Communications Commission (''FCC'') and other governmental agencies relating to radio station WCMF–AM.

F. ''ARS Rochester Radio Stations'' means the following radio stations: WCMF–FM, WRMM–FM, WPXY–FM, and WHTK–AM.

G. ''Non-ARS Radio Station'' means any radio station licensed to a community in the Rochester Area that is not an ARS Rochester Radio Station.

H. ''Rochester Area'' means the Rochester, New York Metro Survey Area as identified by The Arbitron Radio Market Report for Rochester (Summer 1996), and includes the following six counties: Monroe, Wayne, Ontario, Livingston, Genesee and Orleans.

I. The ''WNVE Joint Sales Agreement'' means the agreement between ARS and Great Lakes dated September 28, 1995, entitled ''Joint Sales Agreement.

J. The ''WNVE Option Agreement'' means the agreement between ARS and Great Lakes dated September 28, 1995, entitled ''Option Agreement.''

K. ''WNVE'' means WNVE–FM, a radio station owned by Great Lakes and located in South Bristol, New York.

L. The ''Asset Purchase Agreement'' means the agreement between ARS and Lincoln dated February 23, 1996, entitled ''Asset Purchase Agreement.''

M. ''Acquirer'' means the entity or entities to whom ARS divests the Lincoln Assets and/or the WCMF–AM Assets under this Final Judgment.

III. Applicability

A. The provisions of this Final Judgment apply to each of the defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Each defendant shall require, as a condition of the sale or other disposition of all or substantially all of the assets used in its business of owning and operating its portfolio of radio stations in the Rochester Area, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment; provided, however, defendants need not obtain such an agreement from an Acquirer, as defined herein, or from any future purchaser of WNVE.

IV. Divestiture of Lincoln Assets and WCMF–AM

A. ARS 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, or within five (5) business days after notice of entry of this final judgment, whichever is later, to divest the Lincoln Assets and WCMF–AM Assets to an Acquirer acceptable to the United States, in its sole discretion, after consulting with New York. Unless the United States otherwise consents in writing, the divestitures 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 the United States, in its sole discretion after consulting with New York, that the Lincoln Assets and WCMF–AM Assets can and will be used by an Acquirer as viable, ongoing commercial radio businesses. The divestitures, whether pursuant to Section IV or V of this Final Judgment, shall be made (i) to an Acquirer that, in the sole judgment of the United States after consulting with New York, has the capability and intent of competing effectively, and has the managerial, operational and financial capability to compete effectively as a radio station operator in the Rochester Area; and (ii) pursuant to an agreement the terms of which shall not, in the sole judgment of the United States after consulting with New York interfere with the ability of the purchaser to compete effectively.

B. ARS agrees to use its best efforts to divest the Lincoln Assets and WCMF–AM Assets, and to obtain all regulatory approvals necessary for such divestitures, as expeditiously as possible. The United States, in its sole discretion, may extend the time period for the divestitures for two (2) additional thirty (30)-day periods of time, not to exceed sixty (60) calendar days in total.

C. In accomplishing the divestitures ordered by this Final Judgment, ARS promptly shall make known, by usual and customary means, the availability of the Lincoln Assets and, unless relieved of this obligation by compliance with paragraph E of this Section, the WCMF–AM Assets. ARS 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 the Final Judgment. ARS shall make known to any person making an inquiry regarding a possible purchase of the Lincoln Assets or WCMF–AM Assets that the assets described in Section II (D) and (E) are being offered for sale. ARS and Lincoln shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Lincoln Assets and, unless relieved of this obligation by compliance with paragraph E of this Section, WCMF–AM Assets customarily provided in a due diligence process, except such information that is subject to attorney-client privilege or attorney work-product privilege. ARS shall make available such information to plaintiffs at the same time that such information is made available to any other person.

D. ARS and Lincoln shall permit bona fide prospective purchasers of the Lincoln Assets and, unless relieved of this obligation by compliance with paragraph E of this Section, WCMF–AM Assets, to have access to personnel and to make such inspection of the assets, and any and all financial, operational or other documents and information customarily provided as part of a due diligence process.

E. ARS may fully comply with those portions of Section IV and V that pertain to the divestiture of the WCMF–AM Assets by entering, within forty (40) days of the filing of this Final Judgment, into a binding agreement to divest the WCMF–AM Assets to an Acquirer approved by the United States, in its sole judgment after consulting with New York.

V. Appointment of Trustee

A. In the event that ARS has not divested the Lincoln Assets and WCMF–AM Assets within the time periods specified in Section IV above, the Court shall appoint, on application of the United States, a trustee selected by the United States 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 Lincoln Assets and WCMF–AM 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 Section V and VIII of this Final Judgment and consistent with FCC regulations, 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 ARS any investment 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 the United States, in its sole judgment after consulting with New York, and shall have such other powers as this Court shall deem appropriate. ARS shall not object to the sale of the Lincoln Assets and WCMF–AM Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by ARS must be conveyed in writing to plaintiffs and the trustee no later than fifteen (15) calendar days after the trustee has provided the notice required under Section VIII of this Final Judgment.

C. The trustee shall serve at the cost and expense of ARS, 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 ARS 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. ARS shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Lincoln Assets and WCMF–AM Assets, and shall use its 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 Lincoln Assets and WCMF–AM Assets, and ARS shall develop such financial or other information as may be necessary to the divestiture of the Lincoln Assets and WCMF–AM Assets. ARS shall permit prospective purchasers of the Lincoln Assets and WCMF–AM 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 ARS, the plaintiffs and the Court, setting forth the trustee's efforts to accomplish divestiture of the Lincoln Assets and WCMF–AM 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 Lincoln Assets and WCMF–AM 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 ARS, the United States and New York, 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 to accomplish the purpose of this Final Judgment, which shall, if necessary, include extending the term of the trustee's appointment.

VI. Termination of Joint Sales Agreement and Option to Purchase

ARS and Great Lakes are hereby ordered and directed, within five (5) business days after notice of entry of this Final Judgment, to terminate the WNVE Joint Sales Agreement, and to cease and desist from entering into any joint sales agreements between them in the Rochester Area. ARS and Great Lakes are further ordered and directed, within five (5) business days after notice

of entry of this Final Judgment, to terminate the WNVE Option Agreement, unless said Option Agreement has theretofore been assigned by ARS to an Acquirer approved in advance by the United States, in its sole judgment after consulting with New York.

VII. Preservation of Assets/Hold Separate

Until the divestiture of the Lincoln Assets required by Section IV of the Final Judgment has been accomplished.

A. ARS and Lincoln shall continue to take all steps necessary to ensure that WHAM–AM, WPXY–FM, WVOR–FM and WHTK–AM, until divested pursuant to Section IV, are maintained as separate, independent, ongoing, economically viable and active competitors to ARS and that, except as necessary to comply with Section IV and paragraphs B and C of this Section of the Final Judgment, the management of said stations, including the performance of decision-making functions regarding marketing and pricing, will be kept separate and apart from, and not influenced by, ARS.

B. ARS and Lincoln shall use all reasonable efforts to maintain and increase sales of advertising time by WHAM–AM, WPXY–FM, WVOR–FM and WKTK–AM, until divested pursuant to Section IV, and shall maintain at 1995 or previously approved levels for 1996, whichever are higher, promotional advertising, sales, marketing and merchandising support for such radio stations.

C. ARS and Lincoln shall take all steps necessary to ensure that the assets used by Lincoln in the operation of WHAM–AM, WPXY–FM, WVOR–FM and WHTK–AM are fully maintained until divested pursuant to Section IV. Lincoln's sales and marketing employees shall not be transferred or reassigned to any non-Lincoln ARS station, except for transfer bids initiated by employees pursuant to ARS' regular, established job posting policy, provided that ARS gives plaintiffs and Acquirer ten (10) days' notice of such transfer.

D. Neither ARS not Lincoln shall, except as part of a divestiture approved by the United States after consulting with New York or in connection with the consummation of the Asset Purchase Agreement, sell any Lincoln Assets.

E. ARS and Lincoln shall take no action that would jeopardize the sale of the Lincoln Assets.

F. ARS and Lincoln shall appoint a person or persons to oversee the assets to be held separate and who will be responsible for ARS' and Lincoln's compliance with Section VII of this Final Judgment.

VIII. Notification

Within two (2) business days following execution of a binding agreement to divest, including all contemplated ancillary agreements (e.g., financing), to effect, in whole or in part, any proposed divestiture pursuant to Section IV or V of this Final Judgment, ARS or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible, it shall similarly notify ARS. 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 Lincoln Assets or the WCMF–AM Assets, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiffs of such notice, plaintiffs may request from ARS, the proposed purchaser or purchasers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. ARS and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information, whichever is later, the United States after consulting with New York shall provide written notice to ARS and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States fails to object within the period specified, or if the United States provides written notice to ARS and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to ARS' limited right to object to the sale under Section V (B) of this Final Judgment. A divestiture proposed under Section IV shall not be consummated if the United States objects to the identity of the proposed purchaser or purchasers. Upon objection by the United States, or by ARS under the proviso in Section V (B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

IX. Financing

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

X. 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, ARS shall deliver to plaintiffs an affidavit as to the fact and manner of ARS' compliance with Section 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, was contacted by ARS, or their representatives, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or made an inquiry about acquiring, any interest in the Lincoln Assets or the WCMF–AM Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that ARS has taken to solicit a buyer for the Lincoln Assets and the WCMF–AM Assets.

B. Within twenty (20) calendar days following the entry of this Final Judgment, ARS and Great Lakes shall deliver to plaintiffs an affidavit as to the fact and manner of their compliance with Section VI of this Final Judgment.

C. Within twenty (20) calendar days of the filing of this Final Judgment, ARS shall deliver to plaintiffs an affidavit which describes in reasonable detail all actions ARS has taken and all steps ARS has implemented on an on-going basis to preserve WHAM–AM, WPXY–FM, WVOR–FM and WHTK–AM pursuant to Section VII of this Final Judgment. ARS shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in its earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after such change is implemented.

D. ARS shall preserve all records of all efforts made to preserve WHAM–AM, WPXY–FM, WVOR–FM and WHTK–AM and to divest the Lincoln Assets and the WCMF–AM Assets.

XI. 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''), ARS, without providing advance notification to the plaintiffs, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any

Non-ARS Radio Station; provided, however, that, where not inconsistent with the HSR Act, ARS need not provide notice under this provision for an acquisition of any one, but not more than one, of any Class A Licensed FM radio station in the Rochester Area other than WDKX, 103.9 FM, and WMAX, 106.7 FM, or their successors.

B. ARS and Great Lakes, without providing advance notification to the plaintiffs, shall not directly or indirectly enter into any agreement or understanding that would allow ARS or Great Lakes to market or sell advertising time or to establish advertising prices for any Non-ARS Radio Station.

C. Notification described in (A) and (B) above shall be provided to the plaintiffs 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, in the case of ARS, the information requested in Items 5–9 of the instructions must be provided only with respect to ARS Rochester Radio Stations. Notification shall be provided at least thirty (30) days prior to acquiring any such interest or entering any such agreement covered in (A) or (B) above, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the plaintiffs make a written request for additional information, ARS or Great Lakes shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information, Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

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

XII. Compliance Inspection

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

A. Duly authorized representatives of the plaintiffs, including consultants and other persons retained by the plaintiffs, shall, upon written request of the United States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, or of the New York Attorney General, and on reasonable notice to defendants made to their principal offices, 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 any matters contained in this Final Judgment; and

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

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

C. No information or documents obtained by the means provided in this Section XII shall be divulged by any representative of the United States or New York to any person other than a duly authorized representative of the Executive Branch of the United States or the State of New York, except in the course of legal proceedings to which either 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 any defendant to plaintiffs, and such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days' notice shall be given by plaintiffs to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which such defendant is not a party.

XIII. Retention of Jurisdiction

Jurisdiction is retained by this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation or modification of any provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XIV. Termination

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

XV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

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 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 plaintiffs filed a civil antitrust Complaint on October 24, 1996, alleging that the proposed acquisition of The Lincoln Group, L.P. (''Lincoln'') by American Radio Systems Corporation (''ARS'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and that the Joint Sales Agreement (''JSA'') between ARS and Great Lakes Wireless Talking Machine LLC (''Great Lakes'') violates Section 1 of the Sherman Act, 15 U.S.C. 1. The Compliant alleges that ARS and Lincoln own and operate three and four radio stations respectively in the Rochester, New York area. In addition, ARS has a JSA with a radio station owned by Great Lakes (WNVE–FM), allowing ARS post-merger to control the sale of advertising time on an eighth station as well. This acquisition would allow ARS to control advertising time on six of the top eight radio stations in the Rochester area. As a result, the combination of these companies would substantially lessen competition in the sale of radio advertising time in Rochester, New York and the surrounding area.

Moreover, the Complaint alleges that, beginning at least as early as October 1, 1995 and continuing to this day, ARS and Great Lakes entered into a contract, the purpose of which is the elimination of all pricing competition between two rival radio stations, to the detriment of purchasers of radio advertising time in the Rochester area. As such, it constitutes an illegal contract in restraint of interstate trade and commerce.

The prayer for relief seeks: (a) Adjudication that ARS's proposed acquisition of Lincoln would violate Section 7 of the Clayton Act; (b) adjudication that ARS' JSA with Great Lakes is a violation of Section 1 of the Sherman Act; (c) preliminary and permanent injunctive relief preventing the consummation of the proposed acquisition and enjoining the continuation of the JSA; (d) an award to the United States of the costs of this action; and (e) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits ARS to complete its acquisition of Lincoln, 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 ARS to divest WHAM–AM and WVOR–FM, both currently owned by Lincoln, and WCMF–AM, currently owned by ARS. Unless the United States grants a time extension, ARS must divest these radio stations either within six months after the filing of the Final Judgment, or within five (5) business days after notice of entry of the Final Judgment, whichever is later. If ARS does not divest WCMF–AM and the Lincoln Assets within the divestiture period, the Court may appoint a trustee to sell the assets. The proposed Final Judgment also requires ARS to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, all of Lincoln's present stations (including WHAM–AM and WVOR–FM) will be operated independently as viable, ongoing businesses, and kept separate and apart from ARS' other Rochester radio stations. Further, the proposed Final Judgment requires ARS to give the United States prior notice as to certain future radio station acquisitions in Rochester.

In addition, the Final Judgment requires ARS and Great Lakes to terminate the JSA that allows ARS to sell radio advertising time for WNVE within five (5) business days after receiving notice of entry of the Final Judgment, and to cease and desist from entering into any future joint sales agreements between them in the Rochester, New York Metro Survey Area. ARS and Great Lakes also must terminate their ''Option Agreement'' dated September 28, 1995, between them, within five (5) business days after receiving notice of the entry of the Final Judgment, unless ARS has first assigned this agreement to any entity or entities acquiring either the Lincoln Assets or WCMF–AM. Furthermore, the proposed Final Judgment requires ARS and Great Lakes to give the United States prior notice before entering any future agreements that would grant ARS or Great Lakes the right to sell advertising time or to establish advertising prices for non-ARS radio stations in Rochester.

The plaintiffs and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. The Alleged Violations

A. The Defendants

Defendant ARS is a Delaware corporation with its headquarters in Boston, Massachusetts. It currently owns and operates 62 radio stations in 14 metropolitan areas in the United States. In 1995, ARS reported total net revenues of approximately $97 million. ARS owns three radio stations in Rochester, and sells advertising for one other radio station (WNVE) under a JSA.

Lincoln is a New York limited partnership headquartered in Syracuse, New York. Lincoln owns four radio stations in Rochester and two in Salem, Ohio. Great Lakes is a New York limited partnership headquartered in East Rochester, New York. It owns one radio station in Rochester, WNVE–FM

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

On February 23, 1996, ARS agreed to purchase Lincoln for approximately $30.5 million. As a result of the proposed transaction; ARS would own or have the right to sell advertising for six of the top eight radio stations in Rochester.

ARS and Great Lakes formerly competed for the business of local and national companies seeking to advertise in the Rochester area. This competition ended after ARS and Great Lakes entered into a JSA on September 28, 1995, giving ARS exclusive control over the sale of advertising on Great Lakes' radio station, WNVE–FM. The JSA eliminated rivalry between direct competitors, to the detriment of radio advertisers, without realizing any procompetitive benefits.

The proposed acquisition between ARS and Lincoln and the JSA between ARS and Great Lakes precipitated the Government's suit.

C. Anticompetitive Consequences of the Proposed Merger

1. *Sale of Radio Advertising Time in Rochester.* The Complaint alleges that the provision of advertising time on radio stations serving the Rochester, New York Metro Survey Area (''MSA'') constitutes a line of commerce and section of the country, or relevant market, for antitrust purposes. The Rochester MSA is the geographical unit for which Arbitron furnishes radio stations, advertisers, and advertising agencies in Rochester with data to aid in evaluating radio audience size and composition. The Rochester MSA includes six counties: Monroe; Wayne; Ontario; Livingston; Genesee and Orleans. Local and national advertising that is placed on radio stations within the Rochester MSA is aimed at reaching listening audiences in the Rochester MSA, and radio stations outside of the Rochester MSA do not provide effective access to this audience. Thus, advertisers would not buy enough advertising time from radio stations located outside of the Rochester MSA to defeat a small but significant nontransitory increase in radio advertising prices within the Rochester MSA.

Radio advertising time is sold by radio stations directly or through their national representatives. Radio stations generate almost all of their revenues from the sale of advertising time to local and national advertisers.

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

Although some local and national advertisers may switch some of their advertising to other media rather than absorb a price increase in radio advertising time in Rochester, the existence of such advertisers would not prevent radio stations from profitably raising their prices a small but

significant amount to those advertisers who have strong preferences for using radio over other media for some or all of their advertising campaigns. Radio stations, which negotiate prices individually with advertisers, can identify those advertisers with strong radio preferences. Consequently, radio stations can charge different advertisers different rates. Because of this ability to price discriminate between different customers, radio stations may charge higher prices to advertisers that view radio as particularly effective for their needs, while maintaining lower prices for other advertisers.

2. *Harm to Competition.* The Complaint alleges that ARS' proposed acquisition of Lincoln would lessen competition substantially in the provision of radio advertising time in the Rochester MSA. The proposed acquisition would create further market concentration in an already highly concentrated market, and ARS would control a substantial share of the advertising revenues in the market. ARS presently controls approximately 34% of all radio advertising revenues in Rochester (including its JSA with Great Lakes), and its market share would rise to approximately 64% after the proposed merger. According to the Herfindahl-Hirschman Index (''HHI''), a widely-used measure of market concentration defined and explained in Exhibit A hereto, the pre-merger HHI in this market is 2704, which would rise to 4744 after the merger, with a change of 2040. This substantial increase in concentration will reduce competition and lead to higher prices and reduced services.

Advertisers select radio stations to reach a large percentage of their target audience based upon a number of factors, including, *inter alia*, the size of the station's audience and the characteristics of its audience. Many advertisers seek to reach a large percentage of their target audience by selecting those stations whose audience best correlates to their target audience. If a number of stations efficiently reach that target audience, advertisers benefit from the competition among such stations to offer better prices or services. Today, several ARS and Lincoln stations compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in Rochester, they are close substitutes for each other based on their specific audience characteristics.

During price negotiations between advertisers and radio stations, advertisers will provide the stations with information about their advertising needs, including their target audience and the desired frequency and timing of ads. Radio stations thus have the ability to charge advertisers differing prices after assessing the number and attractiveness of alternative radio stations that can meet a particular advertiser's specific target audience needs.

After the merger, advertisers attempting to reach certain audiences who now mostly listen to ARS and Lincoln stations would face less desirable choices if they buy time solely from firms other than the merged entities in order to reach these audiences. Because advertisers seeking to reach these audiences would have inferior alternatives to the merged entity as a result of the merger, the acquisition would give ARS the ability to raise its rates and reduce the quality of its service.

The Department also considered how the proposed merger would concentrate Rochester's strongest radio signals into the hands of a single entity. After the merger, ARS would own four of the seven Class B FM license radio stations in the Rochester area, and would have controlled advertising on a fifth Class B FM license radio station through its JSA with Great Lakes. ARS would also own the area's only clear channel AM station. The merger would therefore have given ARS control over advertising on six of Rochester's eight most powerful radio signals.

If ARS raised prices or lowered services to those advertisers who buy ARS and Lincoln stations because of their strength in delivering access to certain specific audiences, non-ARS radio stations in Rochester would not be induced to change their formats to attract a greater share of the same listeners and to serve better those advertisers seeking to reach such listeners. Successful radio stations are unlikely to undertake a format change solely in response to small but significant increases in price being charged to advertisers by a multi-station firm such as ARS, because they would likely have to give up their existing audiences. Less successful stations that change format may still not attract enough listeners to provide a suitable alternative to the merged entity.

New entry into the Rochester radio advertising market is highly unlikely in response to a price increase by the merged parties. No unallocated radio broadcast frequencies exist in Rochester. Also, stations located in adjacent communities cannot boost their power so as to enter the Rochester market without interfering with other stations on the same or similar frequencies, a violation of Federal Communications Commission (''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 Rochester MSA, eliminate actual competition between ARS and Lincoln, and result in increased rates for radio advertising time in the Rochester MSA, all in violation of Section 7 of the Clayton Act.

D. The JSA is an Illegal Restraint of Trade

The complaint alleges that the JSA between ARS and Great Lakes violates Section 1 of the Sherman Act. Before entering into the JSA, Great Lakes station WNVE–FM competed with ARS Station WCMF–FM for advertisers. Advertisers regularly played one of these stations off against the other to obtain better rates and increased services. In the fall of 1995, ARS and Great Lakes entered into a JSA pursuant to which ARS exclusively prices and sells all radio advertising time on WNVE–FM. In return, ARS pays Great Lakes a monthly lump sun.

The JSA gives ARS complete control over the sale of the inventory of its direct competitor. In so doing, the JSA eliminates one of the most important forms of competition between two firms in an open market: independent pricing. The agreement thus gives rise to the inference that it will have anticompetitive effects.

This is the first JSA assessed by the Department. The FCC, though not purporting to address antitrust issues, have suggested that, at least in certain circumstances (without addressing the circumstances present here), some JSAs may be beneficial. Accordingly, the Department considered whether the JSA possessed any redeeming procompetitive virtues. However, the creators of this JSA have not offered any plausible procompetitive justifications for the JSA, and our examination revealed none.

Based on our investigation, we found that this JSA did not improve either the operations of the radio stations or the quality of their products. The JSA did not integrate the management or operations of the two stations. Nor did the JSA create any procompetitive benefits for advertisers. Indeed, the Department uncovered evidence that the JSA was created for the simple purpose of ending price competition between the two stations. As one key participant explicitly acknowledged, the JSA was entered into because the two stations ''were fighting needlessly over the advertising dollar.''

Given the JSA's inherently suspect nature and conspicuous lack of procompetitive virtues, the JSA is an unreasonable restraint that violates Section 1 of the Sherman Act. See *Federal Trade Comm'n* v. *Indian Federation of Dentists,* 476 U.S. 447, 459 (1986).[1] Moreover, though not necessary to the conclusion that this JSA is anticompetitve, our investigation uncovered evidence that, following the creation of the JSA, advertising prices increased despite a decline in listenership.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of radio advertising time in the Rochester MSA. It requires the divestiture of WHAM–AM, WVOR–FM and WCMF–AM. It ends ARS' control of WNVE advertising time. This relief will reduce the market share ARS would have achieved through the merger from over 60 percent to about 40 percent of the Rochester radio market. The divestitures will preserve choices for advertisers and help ensure that radio advertising rates in Rochester do not increase, and that services do not decline.

Unless the United States grants an extension of time, ARS must divest WHAM–AM, WVOR–FM and WCMF–AM either within six months after the Final Judgment has been filed or within five (5) business days after notice of entry of the Final Judgment, whichever is later. Until the divestitures take place, all stations now owned by Lincoln will be maintained as independent competitors to the other stations in the Rochester MSA, including the ARS stations.

If ARS fails to divest WHAM–AM, WVOR–FM and WCMF–AM within the time periods specified in the Final Judgment, the Court, upon application of the United States, shall appoint a trustee nominated by the United States to effect these divestitures. If a trustee is appointed, the proposed Final Judgment provides that ARS will pay all costs and expenses of the trustee and any professionals agent 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 WHAM–AM, WVOR–FM and WCMF–AM, 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 ARS, the plaintiffs 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 ARS and the plaintiffs, who will each have the right to be heard and to make additional recommendations.

The proposed Final Judgment requires that ARS maintain all stations now owned by Lincoln separate and apart from ARS, pending divestiture. The Judgment also contains provisions to ensure that these Lincoln stations will be preserved, so that the stations after divestiture will remain viable, aggressive competitors.

In addition, the proposed Final Judgment requires ARS and Great Lakes to terminate the WNVE Joint Sales Agreement within five (5) business days after notice of entry of the Final Judgment, and to cease and desist from entering into any future joint sales agreements between them in the Rochester area. This prohibition prevents the parties from re-entering what the Department has already determined would be an illegal contract, and is designed to prevent a recurrence of a violation of Section 1 of the Sherman Act, not merely as a way to guard against another possible violation of Section 7 of the Clayton Act.

Moreover, ARS and Great Lakes must terminate the WNVE Option Agreement (which gives ARS the right to purchase WNVE) within five (5) business days after notice of entry of the Final Judgment, unless the option has been assigned to one of the entities that is buying either WHAM–FM, WVOR–FM or WCMF–AM. This prohibition prevents further increases in concentration by ARS without providing the government with adequate notice.

The proposed Final Judgment also prohibits ARS from entering into certain agreements with other Rochester radio stations without providing at least thirty (30) days' notice to the Department of Justice. Specifically, ARS must notify the Department before acquiring any significant interest in another Rochester radio station, except for acquisition of one additional Class A-License FM radio station in the Rochester MSA other than WDKX–FM or WMAX–FM. Acquisitions beyond this would raise competitive concerns but might be too small to be otherwise reportable under the Hart-Scott-Rodino (''HSR'') premerger notification process.

Moreover, ARS and Great Lakes may not agree to sell radio advertising time for any other Rochester radio station, or have any other Rochester radio station sell advertising time for them, without providing the United States with notice. This provision ensures that the Department will receive advance notice of any acquisition, or agreements, through which ARS or Great Lakes would increase the amount of advertising time on radio stations that they can sell. In particular, this provision requires ARS and Great Lakes to notify the Department before they enter into any joint sales agreements (''JSAs''), where one station takes over another station's advertising time, or enter into any local marketing agreements (''LMAs''), where one station takes over another station's broadcasting and advertising time, in the Rochester area. Agreements whereby ARS sells advertising for or manages other area radio station would effectively increase ARS' market share in the Rochester MSA. In analyzing the Rochester radio market, the Department treated ARS' present JSA station as if ARS owned it outright. Despite their clear competitive significance, JSAs 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 Rochester market.

The relief in the proposed Final Judgment is intended to remedy the competitive effects of the proposed acquisition of Lincoln by ARS, and to eliminate a contract between ARS and Great Lakes that constitutes an illegal restraint of trade. Nothing in this Final Judgment is intended to limit the plaintiffs' ability to investigate or to bring actions, where appropriate, challenging other past or future activities of ARS or Great Lakes in the Rochester MSA, including their entry into other JSAs, LMAs, or other agreements related to the sale of advertising time.

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

[1] The Department recognizes that JSAs may differ both in their terms and in their potential for realizing procompetitive efficiencies.

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 plaintiffs 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: 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 that the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The plaintiffs considered, as an alternative to the proposed Final Judgment, a full trial on the merits of their Complaint against defendants. The plaintiffs are satisfied, however, that the divestiture of the Lincoln Assets, the termination of the JSA between ARS and Great Lakes, and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of radio advertising time in the Rochester MSA. 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 judgment in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the United States Court of Appeals for the D.C. Circuit 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 discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

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

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *citing United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); see also *Microsoft*, 56 F.3d at 1460–62. Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether its it 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 fall 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]

[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 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).

This is strong and effective relief that should fully address the competitive harm posed by the proposed merger and the JSA.

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,

Dando B. Cellini,

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

Dated: October 24, 1996.

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 points 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.

[FR Doc. 96–28617 Filed 11–6–96; 8:45 am]

BILLING CODE 4410–01–M

Federal Bureau of Investigation

Criminal Justice Information Services (CJIS) Advisory Policy Board

The Criminal Justice Information Services (CJIS) Advisory Policy Board will meet on December 12–13, 1996, from 9 a.m. until 5 p.m., at the San Diego Concourse Center, 202 C Street, San Diego, California, telephone 619–236–6500, to formulate recommendations to the Director, Federal Bureau of Investigation (FBI) on the security, policy, and operation of the National Crime Information Center (NCIC), NCIC 2000, the Integrated Automated Fingerprint Identification System (IAFIS), and the Uniform Crime Reporting and National Incident Based Reporting System programs.

The topics to be discussed will include the progress of the NCIC 2000 and IAFIS projects, and other topics related to the operation of the FBI's criminal justice information systems.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public may file a written statement concerning the FBI CJIS Division programs or related matters with the Board. Anyone wishing to address this session of the meeting should notify the Designated Federal Employee, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, facsimile, or a hand-delivered note. It should contain the requestor's name, corporate designation, consumer affiliation, or Government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. A nonmember requestor will ordinarily be allowed not more than 15 minutes to present a topic, unless specifically approved by the Chairman of the Board.

Inquires may be addressed to the Designated Federal Employee, Mr. Demery R. Bishop, Section Chief, Programs Development Section, CJIS Division, FBI, 935 Pennsylvania Avenue, Northwest, Washington, DC 20537–9700, telephone 202–324–5084, facsimile 202–324–8906.

Dated: October 31, 1996

Demery R. Bishop,

Section Chief, Programs Development Section, Federal Bureau of Investigation, Designated Federal Employee.

[FR Doc. 96–28675 Filed 11–6–96; 8:45 am]

BILLING CODE 4410–02–M

Office of Justice Programs

[OJP No. 1104]

ZRIN 1121–ZA–53

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention; Correction

AGENCY: Office of Justice Programs, Justice.

ACTION: Correction to notice of meeting.

SUMMARY: The time for the meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention has changed. The meeting will begin at 10:00 a.m. on Wednesday, November 20, 1996 and will end at 12:00 p.m. on November 20, 1996. All other information remains unchanged. The original meeting notice can be found at 61 FR 56570, November 1, 1996.

FOR FURTHER INFORMATION CONTACT: The point of contact at OJJDP is Lutricia Key who can be reached at (202) 307–5911.

Dated: October 31, 1996.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 96–28569 Filed 11–6–96; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Chief Financial Officer; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of the Chief Financial Officer is soliciting comments concerning the proposed extension of Department of Labor regulations implementing various provisions of the Debt Collection Act of 1982, including Disclosure of Information to Credit Reporting Agencies; Administrative Offset; Interest, Penalties and Administrative Costs.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 6, 1997.

The Department of Labor 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;