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Before the
Federal Communications Commission
Washington, D.C. 20554

In The Matter of The Applications of	)	
	)	
Youngstown Radio License, L.L.C., Assignor	)	
	)	MB Docket No. 02-139
and	)	
	)	
Citicasters Licenses, Inc., Assignee	)	File Nos. BAL/BALH-19991001ABM-ABP
	)	
For Consent to Assignment of Licenses of WNIO(AM) and WNCD(FM), Youngstown, OH, WICT(FM), Grove City, PA and WAKZ(FM), Sharpsville, PA	)	

HEARING DESIGNATION ORDER

Adopted: June 5, 2002 **Released: July 10, 2002**

By the Commission:

1. The Commission has before it the above-captioned applications of Citicasters Licenses, Inc., a wholly-owned, direct subsidiary of Citicasters Co., which is a wholly-owned subsidiary of Clear Channel Communications, Inc., ("Clear Channel") to acquire the licenses of stations WNIO(AM) and WNCD(FM), Youngstown, Ohio; WICT(FM), Grove City, Pennsylvania; and WAKZ(FM), Sharpsville, Pennsylvania, from Youngstown Radio License, L.L.C. ("YRL").[1] Because these applications were pending when we adopted the Notice of Proposed Rulemaking in MM Docket No. 01-317 ("*Local Radio Ownership NPRM*"), we resolve the competition concerns raised by these applications pursuant to the interim policy adopted in that notice.[2] As discussed more fully below, we cannot find on this record that grant of these applications is consistent with the public interest. Accordingly, pursuant to Section 309(e) of the Communications Act of 1934, as amended (the "Communications Act"), we hereby designate the applications for hearing.

I. INTRODUCTION

2. For much of its history, the Commission has sought to promote diversity and competition in broadcasting by limiting the number of radio stations a single party could own or acquire in a local

[1] When the applications were filed on October 1, 1999, the call signs of stations WNIO(AM), WNCD(FM), and WAKZ(FM) were WRTK(AM), WBBG(FM), and WTNX(FM), respectively. Additionally, prior to a March 6, 2002, amendment, the proposed assignee was Citicasters Co.

[2] *See Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets*, 16 FCC Rcd 19861, 19894-97 ¶¶ 84-89 (2001).

market.[3] In March 1996, the Commission relaxed the numerical station limits in its local radio ownership rule in accordance with Congress's directive in Section 202(b) of the Telecommunications Act of 1996.[4] Since then, the Commission has granted thousands of assignment and transfer of control applications proposing transactions that complied with the new limits. In certain instances, however, the Commission has received applications proposing transactions that would comply with the new limits, but that nevertheless could produce concentration levels that raised significant concerns about the potential impact on the public interest.

3. In response to these concerns, the Commission concluded that it has "an independent obligation to consider whether a proposed pattern of radio ownership that complies with the local radio ownership limits would otherwise have an adverse competitive effect in a particular local radio market and[,] thus, would be inconsistent with the public interest."[5] In August 1998, the Commission also began "flagging" public notices of radio station transactions that, based on an initial analysis by the staff, proposed a level of local radio concentration that implicated the Commission's public interest concerns.[6]

4. On November 8, 2001, we adopted the *Local Radio Ownership NPRM*. We expressed concern that "our current policies on local radio ownership [did] not adequately reflect current industry conditions" and had "led to unfortunate delays" in the processing of assignment and transfer applications.[7] Accordingly, we adopted the *Local Radio Ownership NPRM* "to undertake a comprehensive examination of our rules and policies concerning local radio ownership" and to "develop a new framework that will be more responsive to current marketplace realities while continuing to address our core public interest concerns of promoting diversity and competition."[8] In the *NPRM*, we requested comment about possible interpretations of the statutory framework, including whether the new numerical station ownership limits definitively addressed the permissible levels of radio station ownership, whether they addressed diversity concerns only, or whether they established rebuttable presumptions of ownership levels that were consistent with the public interest. We also requested comment on how we should define and apply our traditional goals of promoting diversity and competition in the modern media environment. The *NPRM* also sought comment on how we should implement our policies toward local radio ownership.

5. In the *Local Radio Ownership NPRM*, we also set forth an interim policy to "guide [our] actions on radio assignment and transfer of control applications pending a decision in this proceeding."[9]

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[3] *See generally id.* at 19862-70 ¶¶ 3-18.

[4] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), § 202(b); 47 C.F.R. § 73.3555(a)(1).

[5] *CHET-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041, 13043 ¶ 8 (1999) (citing 47 U.S.C. § 309(a) and *KIXK, Inc.*, 13 FCC Rcd 15685 (1998)). *See also Shareholders of Citicasters, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 19135, 19141-43 ¶¶ 12-16 (1996).

[6] *See* Public Notice, Broadcast Applications, Rep. No. 24303 (Aug. 12, 1998). Under this policy, the Commission flagged proposed transactions that would result in one entity controlling 50 percent or more of the advertising revenues in the relevant Arbitron radio market or two entities controlling 70 percent or more of the advertising revenues in that market. *See AMFM, Inc.*, 15 FCC Rcd 16062, 16066 ¶ 7 n.10 (2000).

[7] *Local Radio Ownership NPRM*, 16 FCC Rcd at 19870 ¶ 19.

[8] *Id.*

[9] *Id.* at 19894 ¶ 84.

Although we recognized the need to "handle currently pending radio assignment and transfer applications and to address any future applications filed" while the *NPRM* is pending, we disavowed any intent to prejudge the "ultimate decision" in the rulemaking and rejected any "fundamental" changes to our current policy pending completion of the rulemaking.[10]

6. Under our interim policy, "we presume that an application that falls below the [50/70] screen will not raise competition concerns" unless a petition to deny raising competitive issues is filed. For applications identified by the 50/70 screen, the interim policy directs the Commission's staff to "conduct a public interest analysis," including "an independent preliminary competitive analysis," and sets forth generic areas of inquiry for this purpose.[11] The interim policy also sets forth timetables for staff recommendations to the Commission for the disposition of cases that may raise competition concerns.

II. BACKGROUND

7. Clear Channel currently is the licensee of three stations in the Youngstown-Warren, Ohio metro:[12] (1) WMXY(FM), Youngstown, Ohio; (2) WKBN(AM), Youngstown, Ohio; and (3) WBBG(FM), Niles, Ohio. Clear Channel has provided programming for WNIO(AM) and WNCD(FM) pursuant to time brokerage agreements ("TBAs") since September 21, 1999. Clear Channel has provided programming for WAKZ(FM) pursuant to a TBA since June 30, 2000, and previously sold advertising time on that station pursuant to a joint sales agreement ("JSA") from September 21, 1999 to June 29, 2000. Clear Channel has sold advertising time on station WICT(FM) pursuant to a JSA since June 30, 2000, and provided programming for that station from September 21, 1999 to June 29, 2000, pursuant to a TBA. Through its proposed acquisition of WNIO(AM), WNCD(FM), WICT(FM), and WAKZ(FM), Clear Channel would own five FM stations and two AM stations in the Youngstown-Warren metro.

8. On October 22, 1999, the Commission issued a public notice indicating that the subject applications had been accepted for filing.[13] The public notice also "flagged" the applications pursuant to the Commission's "50/70" screen. Under this screen, the Commission flags proposed transactions for further competition analysis if the transaction would result in one entity controlling 50 percent or more of the advertising revenues in the relevant Arbitron radio market or two entities controlling 70 percent or more of the advertising revenues in that market.[14] Based on Year 2001 revenue estimates from the BIA[15]

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[10] *Id.*

[11] *Id.* at 19895 ¶ 86.

[12] A metro is a metropolitan area defined by the Arbitron rating service, which is used by radio stations and radio advertisers in negotiating and determining advertising rates.

[13] *See* Public Notice, Broadcast Applications, Report No. 24597 (rel. Oct. 22, 1999).

[14] *See generally Local Radio Ownership NPRM*, 16 FCC Rcd at 19870 ¶ 18. A flagged public notice includes the following language:

> Note: Based on our initial analysis of this application and other publicly available information, including advertising revenue share data from the BIA database, the Commission intends to conduct additional analysis of the ownership concentration in the relevant market. This analysis is undertaken pursuant to the Commission's obligation under Section 310(d) of the Communications Act, 47 U.S.C. Section 310(d), to grant an application to transfer or assign a broadcast license or permit only if so doing serves the public interest, convenience and necessity. We request that anyone interested in filing a response to this notice specifically address the issue of concentration

(continued....)

database, the seven stations that Clear Channel proposes to own account for a 40.8 percent revenue share in the Youngstown-Warren, Ohio Arbitron metro. Post-consummation, Clear Channel and Cumulus Licensing Corp. ("Cumulus") would collectively control 95.3 percent of the advertising revenue in the Youngstown-Warren metro.

9. On December 12, 2001, the Department of Justice informed the Commission that it had concluded its preliminary investigation into the proposed transaction. On January 16, 2002, the staff provided the parties an opportunity to update the record in light of the interim policy.[16] The staff received a response and a supplement to the response from Clear Channel urging the Commission to grant the applications.[17] On April 17, 2002, Clear Channel submitted a chart comparing the subject transaction to transactions addressed in recently issued Commission decisions ("Clear Channel Comparison Chart").

III. DISCUSSION

A. Framework for Analysis Under Interim Policy

10. Section 310(d) of the Communications Act requires the Commission to find that the public interest, convenience and necessity would be served by the assignment of YRL's radio broadcast licenses to Clear Channel before that assignment may occur.[18] Under the interim policy set forth in our *Local Radio Ownership NPRM*, we conduct a public interest analysis, including but not limited to an independent preliminary competition analysis of the proposed transaction based on publicly available information and information in the Commission's records.[19]

11. Under the interim policy, to decide whether a proposed assignment serves the public interest, we first determine whether it complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules, including our local radio ownership rules. If it does, we then consider any potential public interest harms of the proposed transaction as well as any potential public interest benefits to determine whether, on balance, the assignment serves the public interest.[20]

(Continued from previous page)
and its effect on competition and diversity in the broadcast markets at issue and serve the response on the parties.

[15] BIA is a communications and information technology, investment banking, consulting, and research firm. BIA provides strategic funding, consulting and financial services to the telecommunications, Internet, and media/entertainment industries.

[16] Letter from Peter Doyle, Chief, Audio Services Division, Mass Media Bureau, to Marissa G. Repp, Esq., *et al.* (dated Jan. 16, 2002).

[17] *See* Clear Channel's February 5, 2002, Response ("Clear Channel Letter") and March 25, 2002, Supplement to Response ("Clear Channel Supplement").

[18] 47 U.S.C. § 310(d).

[19] *Local Radio Ownership NPRM*, 16 FCC Rcd at 19895-96 ¶ 86.

[20] *Id.* at 19895 ¶ 85; *see VoiceStream Wireless Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9789 ¶ 17 (2001); *see also Chet-5 Broadcasting, L.P.*, 14 FCC Rcd at 13043 ¶ 8 (holding that the Commission has "an independent obligation to consider whether a proposed pattern of radio station ownership that complies with the local radio ownership limits would otherwise have an adverse competitive effect in a particular local market and thus would be inconsistent with the public interest").

12. The Commission's analysis of public interest benefits and harms includes an analysis of the potential competitive effects of the transaction, as informed by traditional antitrust principles. While an antitrust analysis, such as that undertaken by the Department of Justice or the Federal Trade Commission, focuses solely on whether the effect of a proposed merger "may be substantially to lessen competition" in the advertising market,[21] our focus is different.[22] Our analysis of radio license assignments is informed by how those antitrust experts look at competition issues, yet our authority arises out of the Communications Act, which is not concerned solely with the potential impact of economic concentration on advertisers, but ultimately seeks to maximize the utility that the public derives from the public airwaves. The Commission's public interest evaluation is therefore not limited to competition concerns but necessarily encompasses the "broad aims of the Communications Act."[23] These broad aims include, among other things, ensuring the existence of an efficient, nationwide radio communications service available to everyone and promoting locally oriented service and diversity in media voices.[24] Our public interest analysis therefore includes assessing whether the transfer will affect the quality of radio services or responsiveness to the local needs of the community,[25] and whether it will result in the provision of new or additional services to listeners.[26]

13. Thus, under our interim policy, where a proposed transaction raises concerns about economic concentration, we will consider evidence that the particular circumstances of a case may mitigate any adverse impact that might otherwise result, as well as any evidence of benefits to radio listeners that might result from the proposed transaction. Ultimately, it is the potential impact of the

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[21] 15 U.S.C. § 18.

[22] Although the Commission's analysis of competitive effects is informed by antitrust principles and judicial standards of evidence, it is not governed by them, which allows the Commission to arrive at a different assessment of likely competitive benefits or harms than antitrust agencies may find based solely on antitrust laws. *See FCC v. RCA Communications,* 346 U.S. 86, 96-97 (1953) ("To restrict the Commission's action to cases in which tangible evidence appropriate for judicial determination is available would disregard a major reason for the creation of administrative agencies, better equipped as they are for weighing intangibles by specialization, by insight gained through experience, and by more flexible procedure."). *See also RCA Communications,* 346 U.S. at 94; *United States v. FCC,* 653 F.2d 72, 81-82 (D.C. Cir. 1980) (*en banc*) (The Commission's "determination about the proper role of competitive forces in an industry must therefore be based, not exclusively on the letter of the antitrust laws, but also on the 'special considerations' of the particular industry."); *Teleprompter-Group W,* 87 FCC 2d 531 (1981), *aff'd on recon.,* 89 FCC 2d 417 (1982) (Commission independently reviewed the competitive effects of a proposed merger); *Equipment Distributors' Coalition, Inc. v. FCC,* 824 F.2d 937, 947-48 (1st Cir. 1993) (public interest standard does not require agency to "analyze proposed mergers under the same standards that the Department of Justice . . . must apply.").

[23] *See AT&T Corp.*, Memorandum Opinion and Order, 14 FCC Rcd 3160, 3168-69 ¶ 14 (1999); *WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18030-31 ¶ 9 (1998) ("*Worldcom-MCI Order*").

[24] For example, the Supreme Court has repeatedly emphasized the Commission's duty and authority under the Communications Act to promote diversity and competition among media voices: it has long been a basic tenet of national communications policy that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." *Turner Broadcasting System, Inc. v. FCC,* 512 U.S. 622, 663 (1994) (*quoting United States v. Midwest Video Corp.*, 406 U.S. 649, 668 n.27 (1972)).

[25] *See Deregulation of Radio*, Report and Order, 84 FCC 2d 968, 994-97 (1981); *Sixth Report and Order*, Docket No. 8736, 1 RR 91:559, :624 (1952).

[26] *See, e.g.*, *Worldcom-MCI Order*, 13 FCC Rcd at 18030-31 ¶ 9.

transaction on listeners that will determine whether we can find that, on balance, grant of a particular radio station assignment or transfer of control application serves the public interest.

B. Local Radio Ownership Rules

14. The Commission's local radio ownership rules restrict the number of radio stations in the same service and the number of stations overall that may be commonly owned in any given local radio market.[27] A local radio market is defined by the area encompassed by the mutually overlapping principal community contours of the stations proposed to be commonly owned.[28] Under the rules, as amended by the Telecommunications Act of 1996, in a local radio market with 45 or more commercial radio stations, a single entity may own up to eight commercial radio stations, no more than five of which are in the same service; in a market with 30 to 44 commercial radio stations, one owner may hold up to seven commercial radio stations, no more than four of which are in the same service; in a market with 15 to 29 stations, a single owner may own up to six stations, no more than four of which are in the same service; and in a market with 14 or fewer stations, one owner may hold up to five stations, no more than three of which are in the same service, except that no single entity may control more than 50 percent of the stations in such a market.[29]

15. We find that Clear Channel's proposed acquisition of stations WNIO(AM), WNCD(FM), WICT(FM), and WAKZ(FM) is consistent with the numerical limits in our local radio ownership rules. Clear Channel's multiple ownership showing indicates that, using the Commission's current definition of "radio market,"[30] the transaction creates five radio markets which are each comprised of 85 radio stations.[31] Therefore, a single licensee may own up to 8 radio stations in each market, not more than 5 of which are in the same service (AM or FM). If Clear Channel acquires the YRL stations, Clear Channel will own in market 1, six stations (3AM/3FM); in market 2, six stations (3AM/3FM); in market 3, seven

[27] 47 C.F.R. § 73.3555(a).

[28] *Id.*; *see Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996*, 11 FCC Rcd 12368 (1996).

[29] *See supra* Note 4.

[30] *See Definition of Radio Markets*, Notice of Proposed Rule Making, 15 FCC Rcd 25077 (2000).

[31] Clear Channel amended its multiple ownership exhibit on March 16, 2001. *See* Letter from Marissa G. Repp, Hogan & Hartson, LLP, to Magalie Roman Salas, Secretary (dated Mar. 16, 2001). This amended multiple ownership showing states that the proposed transaction complies with the local radio ownership rules, provided that Clear Channel divests its interest in station WRTK(AM) (formerly WNIO(AM)), Niles, Ohio prior to or simultaneously with Clear Channel's acquisition of the four captioned YRL stations. On May 4, 2001, the staff granted the application to assign the license of station WRTK(AM), Niles, OH from Clear Channel to D&E Communications, Inc. (FCC File No. BAL-20010316AAM). *See* Public Notice, Broadcast Actions, Report No. 44981 (rel. May 9, 2001). This transaction was consummated on August 29, 2001. At the time the subject application was filed, Clear Channel also had a time brokerage agreement with the licensee of station WRBP(FM) (formerly WBTJ(FM)), Hubbard, Ohio and a pending application to acquire that station. However, that time brokerage agreement was terminated on November 17, 2000, and the assignment application was dismissed on September 7, 2000 (File No. BALH-19990816GE). *See* Public Notice, Broadcast Actions, Report No. 44817 (rel. Sept. 12, 2000). Finally, although the purchase agreements between YRL and Clear Channel referenced station WPAO(AM), Farrell, Pennsylvania, Clear Channel assigned its rights to acquire station WPAO(AM) to D&E Communications, Inc. On May 4, 2001, the staff granted the application to assign the license of station WPAO(AM) from YRL to D&E Communications, Inc. (File No. BAL-20010316AAL) and the transaction was consummated on August 29, 2001. *See* Public Notice, Broadcast Actions, Report No. 44981 (rel. May 9, 2001).

stations (2 AM/5 FM); in market 4, eight stations (4AM/4FM); and in market 5, eight stations (4AM/4FM). The transaction therefore complies with the multiple ownership rules.

C. Public Interest Analysis Under Interim Policy

16. Having concluded that the proposed transaction is consistent with the numerical limits set forth in our ownership rules, we turn to our competition analysis. Here, we find that the proposed transaction would create a market in which the combined market share of the top two group owners in the market would be 95.3 percent. Unlike other transactions we have considered, we find that Clear Channel has failed to demonstrate particular circumstances in this market sufficient to overcome a concern that this level of economic concentration in this market will harm the public interest. We will not consider Clear Channel's generic arguments challenging the parameters of our current competition analysis here, because will be addressing such concerns in the context of the *Local Radio Ownership NPRM*. Rather, we look only to the record of this case to determine whether there are unique facts that persuade us that grant of this assignment application would serve the public interest despite the apparent economic concentration it will create. We are unable to conclude on this record that the public interest would be served by a grant of this application. Accordingly, under Section 309(e), we must designate this matter for hearing.

17. In order to set the stage for the hearing in this case, we lay out below the specific market conditions that lead to our conclusion that the level of economic concentration in this market in the wake of this transaction would be contrary to the public interest. We recognize that Clear Channel may elect not to go to hearing, opting instead to wait until the conclusion of the rulemaking proceeding where we will consider the generic arguments it has presented.

18. *Radio Advertising as the Relevant Product Market.* Pursuant to our interim policy, we presume that the relevant product market is radio advertising. However, we consider evidence from the parties that the relevant product market in a specific case includes other forms of media advertising or should be based on listenership rather than advertising. Clear Channel asserts that radio advertising is not the relevant product market, that there is no radio-advertising customer in the Youngstown area that does not have an economical alternative to radio advertising, and that the Commission has not properly taken inter-media competition into account from newspapers, television stations, cable operators and other local media outlets.[32] Clear Channel states that every one of the top ten advertisers on each of Clear Channel's and YRL's stations devotes some of its advertising budget to other media.[33] Clear Channel contends that, if it unreasonably raised its advertising rates, these advertisers could and would shift advertising dollars to other media. However, the only "data" Clear Channel provides to support its assertions is a collection of anecdotes from one of its own employees.[34] Accordingly, for purposes of this order, we continue to assume that radio advertising is the relevant product market.

19. *The Arbitron Metro as the Relevant Geographic Market.* Pursuant to our interim policy, we presume that the relevant geographic market is the Arbitron metro. However, we consider evidence from the parties that the relevant geographic market in a specific case may be larger, smaller, or otherwise different from the Arbitron metro. Clear Channel asserts that "Arbitron market areas are arbitrarily drawn and do not accurately reflect the geographic areas in which Clear Channel's stations compete for

[32] Clear Channel Letter at 1.

[33] Declaration of William E. Kelly, attached to Clear Channel Letter, ("Kelly Declaration") at 2.

[34] Kelly Declaration at 1-4.

advertising revenue."[35] Clear Channel contends that relying on only the Youngstown-Warren Arbitron market as the relevant geographic market ignores the competitive dynamic among stations in a broader area that includes the Akron, Canton, and Youngstown-Warren, Ohio and Meadville-Franklin, Pennsylvania Arbitron markets.[36] Clear Channel argues that many stations in the Youngstown-Warren Arbitron-defined market compete in and generate revenue and ratings from this broader area.[37] Clear Channel identifies six stations[38] in the Youngstown-Warren market which each generate ratings from one or more of the Akron, Canton, and Meadville-Franklin Arbitron metros.[39] Clear Channel also asserts that stations not considered "home" to the Youngstown-Warren Arbitron market compete for ratings and revenue in the Youngstown area and that Arbitron fails to capture the competition that such stations provide within the Youngstown area. Clear Channel asserts that there are 49 AM stations and 41 FM stations that provide commercial service to the Youngstown area and that only a handful of those stations are considered "home" to the Youngstown-Warren Arbitron market.[40] Finally, Clear Channel notes that Arbitron allows a station to declare itself "home" to any market in which it achieves minimum audience shares and allows a station to be "home" to only one market.

20. We find that some out-of-market stations may receive revenue from advertisers located in the Youngstown-Warren metro and some in-market stations may receive revenue from advertisers located outside the Youngstown-Warren metro. However, businesses that view listeners in the Youngstown-Warren metro to be potential customers and do not view listeners in Akron, Canton, and Meadville-Franklin to be potential customers may not consider most of the out-of-market stations to be good substitutes for stations home to the Youngstown-Warren metro. While BIA data show that 27 out-of-market stations receive listening share in the Youngstown-Warren metro, only six received a listening share greater than 1.0 in Fall 2001 and two of those stations are licensed to Clear Channel. Additionally, five of those six stations are home to the Cleveland or Pittsburgh metro and likely charge rates significantly higher than the rates charged by stations home to the Youngstown-Warren metro. If Clear Channel acquires the YRL station licenses, advertisers seeking to reach large Youngstown-Warren audiences would appear to have only two choices: Clear Channel stations and Cumulus stations. Under these circumstances, we find no persuasive reason to vary from the presumption in our interim policy that the Arbitron metro represents the appropriate geographic market.

21. *Market Participants*. Current BIA data show 26 in-market stations, three of which operate on channels reserved for noncommercial use, in the Youngstown-Warren metro. BIA also identifies 27 out-of-market stations, which together receive approximately 11 percent of listening for the Youngstown-Warren metro. Clear Channel owns ten of the out-of-market stations and Cumulus owns one. These eleven out-of-market stations collectively receive approximately 3.8 percent of listening for the

[35] Clear Channel Letter at 3.

[36] Clear Channel Letter at 3-4; Kelly Declaration at 2-3.

[37] Clear Channel also asserts that some stations that are "home" to the Youngstown-Warren metro are licensed to serve communities outside the geographic boundaries of that Arbitron-defined market and generate substantial ratings and revenues from outside the Youngstown area. *See* Clear Channel Letter at 3-4.

[38] The six stations include WHOT-FM, WKBN(AM), and WNCD(FM), Youngstown, OH; WICT(FM), Grove City, PA; WQXK(FM), Salem, OH; and WYFM(FM), Sharon, PA.

[39] Clear Channel Letter at 4 and Kelly Declaration at 2-3.

[40] Clear Channel Letter at 4-5 and Attachments 2 and 3 (contour maps).

Youngstown-Warren metro. Clear Channel asserts that BIA does not provide an accurate list of market participants because it includes particular stations in a market based on rough estimates of a station's advertising revenue from the market.[41] Clear Channel argues that this is particularly true in the Youngstown-Warren market where in-market stations compete in a broader area with stations attributed to other BIA markets. Clear Channel states that "many stations outside of the Youngstown-Warren market do or could compete for audience and revenue within the Youngstown-Warren metro area."[42] However, given the low audience shares garnered by out-of-market stations and for the reasons stated *supra* at ¶20, we find no persuasive reason to vary from the market participants identified by BIA.

22. *Market Share and Concentration.* Under the interim policy, we presume that BIA revenue share estimates accurately reflect actual market shares. Clear Channel disagrees with the presumptions regarding the relevant product and geographic markets and asserts that, in the absence of a proper market definition, it is not possible to calculate accurate market shares.[43] Clear Channel contends that in the broader area including the Akron, Canton, and Meadville-Franklin areas, its market share would be "much more modest" - at or below 26 percent - and numerous other significant competitors would exist.[44] As noted above, however, we find no reason in this case to vary from the presumptions in our interim policy that radio advertising is the relevant product market and that the Youngstown-Warren Arbitron metro is the appropriate geographic market.[45] Clear Channel also argues that, even assuming that radio advertising and the Youngstown-Warren Arbitron metro are the correct product and geographic markets, it disagrees with the proposed reliance on historical revenue figures reported by BIA. Clear Channel asserts that reliance on historical revenues and market shares understates the competitive importance of stations that, through effective management, have the potential to increase their listenership and thereby increase their advertising revenues. Clear Channel states that "[s]everal stations in the Youngstown area have significant unrealized potential which is relevant to a forward-looking competitive analysis, but which is not reflected in historical share calculations."[46] However, Clear Channel does not identify any such stations or their "significant unrealized potential."[47]

23. Using BIA 2001 Database information, the pre-transaction market structure in the Youngstown-Warren metro is as follows:

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[41] Clear Channel argues that BIA bases its determination of whether to include a station in a market on sometimes rather rough estimates generated through the use of direct mail surveys, telemarketing, market contacts, and computer modeling. Clear Channel also contends that, because BIA generally does not differentiate between revenue earned from in-market versus out-of-market sources, it often incorrectly estimates the revenue earned by a particular station. *See* Clear Channel Letter at 5.

[42] Kelly Declaration at 2.

[43] Clear Channel Letter at 6.

[44] *Id.*; Clear Channel Comparison Chart at 1.

[45] *See supra* at ¶¶ 18, 20.

[46] *Id.*

[47] This matter is addressed further *infra* at ¶¶ 25-26 which address existing facilities and barriers to entry.

Owner	Market Revenue	Market Share	Fall 2001 Audience Share[48]
Clear Channel	$5,700,000	24.8%	24.7%
YRL	$3,675,000	16.0%	15.7%
Cumulus	$12,525,000	54.5%	27.7%
Others	$1,100,000	4.7%	8.1%
Total	$23,000,000	100%	76.2%

Clear Channel states that, using the Arbitron geographic market and BIA figures, its market revenue would increase by 13.5 percent from 24 percent to 37.5 percent.[49] It appears that Clear Channel used BIA Database information from year 2000 instead of year 2001 BIA data. Our preliminary competition analysis using the year 2001 BIA data shows that Clear Channel's proposed transaction would increase Clear Channel's advertising market share from 24.8 percent to 40.8 percent, giving it the second-largest share in the market. Clear Channel emphasizes that post-transaction it would have only the second-largest share in the market. However, the proposed transaction would eliminate a third competitor and essentially create a duopoly market, with the top two owners having a combined share of 95.3 percent.

24. The post-merger level of market concentration and the change in concentration resulting from a merger affect the degree to which a merger raises competitive concerns. Market concentration is often measured by the Herfindahl-Hirschman Index ("HHI"). BIA data show that the proposed combination would result in an HHI of 4,633.5 with a change in the HHI of 792. Clear Channel notes that "the HHI is relevant only if the proper product market and geographic markets have been defined and if the basis for the market shares underlying the HHI calculation are accurate and reflect the future competitive significance of the market participants."[50] Clear Channel submits that the HHI is irrelevant to the analysis here because none of these factors have been properly assessed.[51] We disagree. First, as noted above, the record does not support Clear Channel's contention that the product and geographic markets are inappropriately defined by our interim policy. Second, the fact that the HHI figures in this case are less than the HHI figures in a previously approved transaction involving the Trenton, New Jersey market does not persuade us that the outcome here should be the same as in Trenton.[52] In the referenced case involving the Trenton market, the Commission found that several factors in that market, including high listener share held by stations not included within the Trenton metro (a large majority of the Trenton audience listens to out-of-market stations) and the low percentage of station revenue coming from local advertisers, mitigated any concern that the level of concentration produced by the proposed transaction would cause adverse effects that were inconsistent with the public interest.[53] The record does not show that such mitigating factors are present in this case. Although we believe that mechanical application of

[48] BIA does not report audience share for non-commercial stations.

[49] Clear Channel Comparison Chart at 1.

[50] Clear Channel Letter at 6.

[51] *Id.*

[52] *See* Clear Channel Comparison Chart at 2; *see also Great Scott Broadcasting, et. al.*, Memorandum Opinion and Order, FCC 02-52 (released March 19, 2002).

[53] *See Great Scott Broadcasting, et. al.*, Memorandum Opinion and Order, FCC 02-52 (released March 19, 2002).

the *Horizontal Merger Guidelines*[54] standards may provide misleading answers to competitive issues in the context of local radio transactions, as a general matter, sufficiently large HHIs establish a *prima facie* case in antitrust suits.[55] Our preliminary competition analysis using the BIA database shows that the proposed combination of stations in the relevant geographic market results in an HHI of 4,633.5 with a change in the HHI of 792. We find that Clear Channel has failed to present sufficient evidence to rebut the presumption that this HHI describes a highly concentrated market.

25. *Existing Facilities/Barriers to Entry*. Where market share and concentration data suggest the potential for competitive concerns, we examine the number, class, and signal contour of all existing stations in the radio market to determine their competitive significance. We recognize that there may be good AM and FM facilities with low current advertising revenues and our analysis considers the potential for these stations to provide effective competition in the future. In some cases there may be a sufficient number of good facilities remaining outside the largest group's (or two largest groups') control to provide a competitive challenge. In the Youngstown-Warren metro, there are eight commercial radio stations that would not be controlled by the two largest groups following the proposed transaction: (1) WPAO(AM), Class B; (2) WRBP(FM), Class A; (3) WRTK(AM), Class B; (4) WGFT(AM), Class B; (5) WKTX (AM), Class B; (6) WHKW (AM), Class B; (7) WASN(AM), Class B; and (8) WANR (AM), Class B. BIA year 2001 data show that only five of these stations had reportable revenue in 2001 and that their combined advertising market share was 4.7 percent. Only four of these eight stations had a Fall 2001 listening share and their combined listening share was 8.1 percent. Moreover, all but one of these eight stations is in the AM service and the one FM station has the smallest class of facilities licensed to such stations. Clear Channel contends that the nature of competition for radio advertising is that high barriers to entry traditionally do not exist because of the ability of stations to improve their performance, increase market share, and respond to a non-transitory price increase through format changes and "tweaking" signals.[56] Clear Channel provides recent examples of stations that "tweaked" their signals, noting that WYFM(FM), Sharon, Pennsylvania modified its signal last year to improve its coverage of the Youngstown area and that WWIZ(FM), Mercer, Pennsylvania has applied with the FCC to move its transmitter site to a location that also would improve its coverage over the Youngstown area. However, WYFM(FM) and WWIZ(FM) are both licensed to Cumulus which already has the largest advertising market share in the Youngstown-Warren metro. We are unable to find on this record that the eight stations which will not be owned by Cumulus or Clear Channel post-transaction have realistic potential to provide effective competition in the Youngstown-Warren metro if the subject application is granted.

26. We also consider evidence regarding the possibility of entry by new stations, as well as any barriers to entry, and the timeliness, likelihood, and sufficiency of entry to counter any potential market power. Clear Channel argues that "the relevant market includes a wide variety of competing media outlets such that entry into radio broadcasting is not the only means of entry into the market for advertising revenue" and that "[e]ntry into any of these competing media could be sufficient to deter any potential adverse competitive effects."[57] We have already determined that radio advertising is the relevant product market for purposes of this order. We are unable to find on this record that entry by new

[54] *Horizontal Merger Guidelines,* issued by U.S. Department of Justice & Federal Trade Commission, April 2, 1992, revised April 8, 1997 ("*Horizontal Merger Guidelines*").

[55] *FTC v. Heinz*, 246 F.3d 708, 716 (D.C. Cir. 2001).

[56] Clear Channel Letter at 8-9.

[57] Clear Channel Letter at 8.

radio stations is a realistic possibility in the Youngstown-Warren area and Clear Channel has offered no credible evidence to the contrary.

27. *Potential Adverse Competitive Effects: Coordination and Unilateral Market Power.* Under the interim policy, relevant evidence concerning the potential adverse competitive effects of a proposed transaction may include direct proof of adverse competitive effects or facts that demonstrate that structural conditions (*e.g.*, a high market share and significant barriers to entry) will facilitate the exercise of market power. Clear Channel asserts that, because it competes in the broader market for advertising revenue with other radio stations, newspapers, television stations, cable operators, and other media, "no adverse competitive effects from the proposed transaction are possible either in terms of coordinated behavior or unilateral effects."[58] Clear Channel also contends that, even assuming that radio advertising is the relevant product market, there could be no adverse competitive effects in the broader geographic market including Akron, Canton, Meadville-Franklin and Youngstown area stations.[59] Clear Channel's arguments against coordination rests on their product and geographic market definitions, which, for purposes of this order, we rejected *supra* at ¶¶ 18, 20. Clear Channel also asserts that six operators in addition to Clear Channel and Cumulus will remain in the Youngstown-Warren market post-transaction.[60] However, as discussed *supra* at ¶ 25, the eight stations owned by those six licensees have a combined advertising market share of only 4.7 percent.

28. Clear Channel notes that it has sold substantially all of the advertising time on the stations it seeks to acquire from YRL for more than two years pursuant to TBAs or JSAs. Clear Channel asserts that this has not harmed competition and has instead resulted in increased competition, including increased competition with Cumulus stations in the area.[61] We are not persuaded by Clear Channel's argument that the proposed transaction will not adversely impact competition and will increase competition because Clear Channel has operated the stations it seeks to acquire pursuant to TBA and JSA agreements for some time. There is no substantial evidence on the record from which we might conclude that no adverse effects have resulted from the aggregation of economic power attributable to Clear Channel's TBA and JSA relationships or that this aggregation of economic power has increased competition. We note, in this regard, that this is the first opportunity the Commission will have had to consider any such effects because we do not currently review TBAs or JSAs when they are entered.

29. The proposed transaction would eliminate the third competitor and create an effective duopoly in the Youngstown-Warren metro, with Clear Channel and Cumulus owning all but one of the non-reserved band FM stations in the market and having a combined share of 95.3 percent of the in-market advertising revenues and 89.4 percent of the audience share attributable to in-market stations. As noted above, the Youngstown-Warren market is highly concentrated and there are significant barriers to entry. This market structure increases the risk of coordinated behavior leading to price discrimination, division of advertising accounts, and lower quality programming. As the D.C. Circuit has stated, "[t]he combination of a concentrated market and barriers to entry is a recipe for price coordination. Where rivals are few, firms will be able to coordinate their behavior, either by overt collusion of implicit understanding, in order to . . . achieve profits above competitive levels. The creation of a durable duopoly affords both the opportunity and incentive for both firms to coordinate to increase prices. . . . . Tacit

[58] Clear Channel Letter at 7.

[59] *Id.*

[60] Clear Channel Comparison Chart at 3.

[61] Clear Channel Letter at 8 and Kelly Declaration at 3-4.

coordination 'is feared by antitrust policy even more than explicit collusion, for tacit coordination, even when observed, cannot be easily controlled directly by the antitrust laws. It is a central object of merger policy to obstruct the creation or reinforcement by merger of such oligopolistic market structures in which tacit coordination can occur.'"[62]

30. Clear Channel contends that it faces "significant and direct competition from the largest radio station operator in the Youngstown area, Cumulus Broadcasting."[63] Clear Channel notes that Cumulus's eight stations in the Youngstown-Warren market comprise the "overwhelmingly largest single block of stations in the Youngstown area and are credited a market share approaching 60% according to BIA numbers."[64] Clear Channel asserts that its proposed acquisition of WNIO(AM), WNCD(FM), WICT(FM) and WAKZ(FM) would enhance competition by allowing Clear Channel to compete more effectively with Cumulus's eight stations. It notes that none of the stations to be acquired face direct format competition from any station already licensed to Clear Channel.[65] However, as the discussion above demonstrates, the existence of another single "competitor" with a large market share increases the return and viability of collusion and the exercise of unilateral market power. We see no evidence on this record to mitigate our concerns about the potential adverse competitive effects of this transaction, nor has Clear Channel credibly argued that acquisition of the subject stations is essential to its continued ability to effectively compete in the Youngstown-Warren market.

31. *Efficiencies and Public Interest Benefits.* Under the interim policy, we consider evidence of economic efficiencies that the proposed transaction would produce and public interest benefits the proposed transaction would provide listeners or advertisers, such as improvements in the quality, scope, and quantity of community responsive programming, improved community service, and the furtherance of localism. Parties asserting that a proposed transaction will produce efficiencies and other public interest benefits are required to show both how the transaction will produce those benefits and how those benefits will flow through to listeners or advertisers. Clear Channel asserts that the proposed transaction will allow it to increase competition by achieving operational efficiencies through common ownership. It states that consolidation of certain back office functions and combining sales efforts will allow Clear Channel's existing stations and the stations it seeks to acquire to lower overhead, administrative and sales costs to a greater extent than either group could achieve separately.[66] Clear Channel notes that, if the transaction is approved, the stations could all share the same facility resulting in reduced rent and they could share engineering, technical, and programming staffs. Clear Channel contends that some of these efficiencies have already been achieved through its sale of advertising time on the stations to be acquired pursuant to TBAs and a JSA. It states that these efficiencies have resulted in cost savings which enabled the stations to hire better talent and to invest in new studio facilities and equipment which will ultimately result in improved programming for the listening public.[67] Clear Channel asserts that the proposed transaction will enable it to achieve similar efficiencies that Cumulus enjoys with its eight stations and to

[62] *FTC v. Heinz*, 246 F.3d at 724-25 (quoting 4 Phillip E. Areeda, Herbert Hovenkamp & John L. Solow, *Antitrust Law*, ¶ 901b2 at 9 (rev. ed. 1998)) (other quotations and citations omitted).

[63] Clear Channel Letter at 7.

[64] *Id.*

[65] *Id.* and Kelly Declaration at 3-4.

[66] Clear Channel Letter at 9 and Kelly Declaration at 3-4.

[67] *Id.*

be more competitive in the Youngstown area.[68] Clear Channel also states that the proposed transaction will benefit advertisers, listeners, and the public generally. It further asserts that its TBAs with WAKZ(FM), WNCD(FM), and WNIO(AM) and JSA with WICT(FM) have resulted in benefits for advertisers which include lower advertising rates when buying time on multiple stations and broader demographic reach due to the diversity of formats.[69] Clear Channel states that it has received no advertiser complaints regarding its sale of advertising time on the YRL stations and that it has, in fact, received praise from advertisers because it is more efficient for them to buy time.[70] Clear Channel states that its time brokerage of WNIO(AM) has resulted in increased local news broadcasts and that its time brokerage of WAKZ(FM), WNCD(FM), and WNIO(AM) has resulted in increased participation in community and charitable events.[71]

32. To be cognizable, efficiencies must be *transaction specific i.e.*, "efficiencies likely to be accomplished with the proposed transaction and unlikely to be accomplished in the absence of either the proposed transaction or another means having comparable anticompetitive effects."[72] Any claimed efficiencies resulting from a radio transaction should be substantiated and susceptible to verification by the Commission. Efficiencies that are vague, speculative, and unverifiable will not be considered in evaluating the competitive effects of the proposed transaction. Merger-specific efficiencies that lower the marginal cost of production relative to one-time reductions in fixed costs are weighted much more heavily than fixed cost reductions as possible offsets to potential adverse effects on listeners and advertisers resulting from the merger. Merger-specific efficiencies that lower the marginal cost of production are likely to flow-through as benefits to listeners and advertisers in the form of improved programming and lower advertising prices, while reductions in fixed costs will not provide the same financial incentive for such flow-through of benefits. Any profit-maximizing firm, including a monopolist, will reduce the price of output in response to a reduction in the marginal cost of production. Reductions in fixed cost for the same firm will provide no incentive for such reductions in output price that would otherwise flow-through merger-specific benefits to listeners and advertisers. The record in this proceeding neither quantifies the magnitude of the merger-specific efficiencies nor clarifies whether the efficiencies are properly attributable to one-time changes in fixed cost or to permanent reductions in marginal cost that provide a financial incentive to flow-through such efficiencies as benefits to listeners and advertisers. Additional specificity and documentation of claimed efficiencies should be developed during the hearing of this case. With respect to public interest benefits and merger-specific efficiencies, we believe that there are material issues as to whether Clear Channel's asserted benefits would result from the transaction and would benefit the public. We find the record in this proceeding insufficient to conclude that the public interest benefits and claimed merger-specific efficiencies of this transaction outweigh the potential for competitive harm.

IV. CONCLUSION

33. On the basis of the information before us, as explained above, we are unable to make the required finding that the public interest, convenience and necessity will be served by granting the

[68] *Id.*

[69] Kelly Declaration at 3 and 4.

[70] Kelly Declaration at 4.

[71] Clear Channel Supplement at 2-3.

[72] *Horizontal Merger Guidelines*, § 4.

captioned applications in light of the questions raised in the context of our competition analysis. Accordingly, we will designate the assignment applications for hearing to determine, pursuant to Section 309(e) of the Communications Act, and based on the evidence to be adduced at hearing, whether the public interest, convenience and necessity will be served by the grant of the applications.

V. ISSUES TO BE DETERMINED AT HEARING

34. Implementing our analytical framework described in the foregoing paragraphs, we direct the Administrative Law Judge ("ALJ") to examine in an evidentiary hearing the particular circumstances of the Youngstown-Warren market to determine whether the factual assumptions in paragraphs 18 through 30 above are correct. We further direct the ALJ to determine, in light of his conclusions, whether the transaction is likely to cause any anticompetitive harms, and to determine what, if any, public benefits would accrue from this transaction. Finally, we direct the ALJ to apply these findings to determine whether, on balance, grant of the applications would serve the public interest. The ALJ should address the following specific issues.

35. Issue 1: *Product Market Definition.* Following our analytical framework and the *Horizontal Merger Guidelines*, the ALJ shall receive testimony, studies, and other relevant economic evidence that allows the determination of the relevant commercial radio product in the Youngstown-Warren metro. In the alternative, parties may stipulate that the relevant product market is "radio advertising," the presumptive product market definition in our analytical framework.

36. Issue 2: *Geographic Market Definition.* Following our analytical framework and the *Horizontal Merger Guidelines*, the ALJ shall receive testimony, studies, and other relevant economic evidence that allows the determination of the relevant commercial radio geographic market. Arbitron identifies Trumbull and Mahoning counties in Ohio as comprising the Youngstown-Warren metro. In the alternative, parties may stipulate that the relevant geographic market is the Youngstown-Warren metro.

37. Issue 3: *Market Participants.* Given the findings with respect to Issues 1 and 2, the ALJ shall receive testimony and other relevant economic evidence that identifies all firms that participate in the relevant product and geographic markets. Following the general methodology prescribed in the *Horizontal Merger Guidelines*, firms not currently producing or selling the relevant product in the relevant geographic market may be included if their inclusion reflects a probable supply response in reaction to a hypothetical increase in the price of the relevant product. Such firms are "uncommitted entrants" and may be induced to enter the relevant product and geographic markets within one year and without the expenditure of significant sunk costs of entry and exit in response to a small but significant and non-transitory increase in the price of the relevant product. If the parties stipulate that the relevant product and geographic markets are "radio advertising" and the "Arbitron metro," respectively, then market participants would include all operating commercial radio stations in the Youngstown-Warren metro plus any "dark" stations that might be expected to become operational in response to a small but significant and non-transitory increase in the price of radio advertising.

38. Issue 4: *Market Shares.* The ALJ shall receive testimony or other economic evidence that will facilitate the calculation of market shares for all firms identified as market participants in Issue 3 based on total sales generated within the relevant geographic market for the most recent year for which data are available. If uncommitted entrants may be expected to enter within a year, in response to a small but significant and non-transitory price increase in the relevant product, then such forecast market shares may also be included. In the alternative, parties may stipulate that market shares will be calculated using the most recent revenue data available in the BIA database.

39. Issue 5: *Market Concentration*. The extent of market concentration depends on the number of firms in the market and their respective market shares. Our analytical framework recognizes the Herfindahl-Hirschman Index ("HHI") as a measure of market concentration but finds that the HHI may not be entirely appropriate when applied to the commercial radio industry. The ALJ shall receive testimony, studies, or other relevant economic evidence to determine the appropriate measure of market concentration in the Youngstown-Warren metro. In the alternative, the parties may stipulate that the market shares developed in the record pursuant to Issue 4 will be taken as the indicator of market concentration.

40. Issue 6: *Potential Adverse Competitive Effects*. Following our analytical framework and the *Horizontal Merger Guidelines*, the ALJ shall receive testimony, studies and other relevant economic evidence that evaluates the nature and extent of any lessening of competition that might result from the merger in the relevant product and geographic markets. Evidence concerning the potential lessening of competition by (1) coordinated behavior among competing firms and (2) unilateral effects attributable to the behavior of the post-merger firm should be developed. Both the examination of the issue and the ALJ's opinion will be informed by the findings developed with respect to Issues 1-5.

41. Issue 7: *Conditions of Entry*. The ALJ shall receive testimony, studies, and other relevant economic evidence concerning the conditions of entry into the relevant product and geographic markets in the Youngstown-Warren metro. A merger is unlikely to create or enhance market power, or facilitate its exercise, if entry into the radio market is sufficiently easy such that market participants, following the merger, could not profitably maintain an increase in the price of the relevant product following the merger. In general, the development of the record addressing conditions of entry in the Youngstown-Warren metro should follow our analytical framework and the *Horizontal Merger Guidelines*. Thus, evidence concerning the timeliness, likelihood, and sufficiency of entry in the Youngstown-Warren metro are essential to reaching a judgment with respect to the efficacy of market entry as a way to offset potential adverse competitive effects that may be identified in the record pursuant to Issue 6. In the alternative, parties may stipulate that entry is so difficult such that it is unreasonable to view it as a factor that may have significant effect as an offset to any increase in market power resulting from the merger.

42. Issue 8: *Efficiencies*. The ALJ shall receive testimony, studies, and other relevant economic evidence with respect to possible efficiencies that the merger may produce. In general, the record on efficiencies must show that such efficiencies are both merger-specific and cognizable as indicated in our analytical framework and the *Horizontal Merger Guidelines*.

43. Issue 9: *Public Interest Benefits*. The ALJ shall receive testimony, studies, and other relevant evidence that documents public interest benefits that the instant merger will provide listeners and advertisers in the Youngstown-Warren metro. Such public interest benefits shall be in addition to efficiencies, if any, documented in the record pursuant to Issue 8 and must be benefits that would not otherwise be realized but for the instant merger. To count as a public interest benefit, efficiencies must be shown to "flow through" in a measurable way to listeners or advertisers or both. Public interest benefits other than efficiencies may include improvements in the quality, scope, and quantity of community-responsive programming; improved community service; and other commitments to strengthen programming and advertising services that support our long-standing policy of localism in broadcasting. The record on this issue should be of sufficient scope and specificity to enable the ALJ to reach a judgment whether the public interest benefits specific to the merger are sufficiently certain to result from the merger and quantitatively and qualitatively substantial enough to offset the adverse effects, if any, of the merger on competition in the Youngstown-Warren metro.

VI. ORDERING CLAUSES

44. Accordingly, IT IS ORDERED, That, in the event the parties elect to defer further consideration of the applications to assign the licenses of stations WNIO(AM) and WNCD(FM), Youngstown, Ohio, WICT(FM), Grove City, Pennsylvania and WAKZ(FM), Sharpsville, Pennsylvania from Youngstown Radio License, L.L.C. to Citicasters Licenses, Inc. in accordance with the interim policy, Youngstown Radio License, L.L.C. and Citicasters Licenses, Inc. SHALL FILE a joint election to defer consideration of the applications. Such election SHALL BE FILED within 15 days of the Order becoming effective.

45. IT IS FURTHER ORDERED, That, in the event the parties do not timely file the joint election set forth in the paragraph above, pursuant to Section 309(e) of the Communications Act, the applications to assign the licenses of stations WNIO(AM) and WNCD(FM), Youngstown, Ohio, WICT(FM), Grove City, Pennsylvania and WAKZ(FM), Sharpsville, Pennsylvania from Youngstown Radio License, L.L.C. to Citicasters Licenses, Inc. ARE DESIGNATED FOR HEARING at a time and place to be specified in a subsequent Order, on the following issue:

46. To determine, in light of the evidence to be presented in the hearing, whether the public interest, convenience and necessity would be served by the grant of the above-captioned assignment applications (File Nos. BAL/BALH-19991001ABM-ABP).

47. IT IS FURTHER ORDERED, That pursuant to Section 309(e) of the Communications Act, the burden of proof with the introduction of evidence and the burden of proof with respect to the issue specified in this Order shall be upon Youngstown Radio License, L.L.C. and Citicasters Licenses, Inc., the applicant parties in this proceeding.

48. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order SHALL BE SERVED on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations and Hearings Division of the Enforcement Bureau at (202) 418-1420. Such service SHALL BE ADDRESSED to the named counsel of record, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B431, Washington, D.C. 20554.

49. IT IS FURTHER ORDERED, That the effectiveness of this Order IS STAYED for a period of 20 days from the date of its release, during the first 10 days of which the parties may amend their applications or file such other information with the Media Bureau as they deem relevant to ameliorate the competitive concerns identified in this Order.

50. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, Youngstown Radio License, L.L.C. and Citicasters Licenses, Inc., pursuant to Sections 1.221(c) and 1.221(e) of the Commission's Rules, in person or by their respective attorneys, SHALL FILE in triplicate, A WRITTEN APPEARANCE, stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Such written appearance shall be filed within 20 days of this Order becoming effective pursuant to Paragraph 47 above. Pursuant to Section 1.221(c) of the Commission's rules, if the parties fail to file an appearance within the specified time period, the assignment applications will be dismissed with prejudice for failure to prosecute.

51. IT IS FURTHER ORDERED, That the applicants, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's rules, SHALL GIVE NOTICE of the hearing within the time and in the manner prescribed, and SHALL ADVISE the

Commission of the publication of such notice as required by Section 73.3594(g) of the Commission's rules.

52. IT IS FURTHER ORDERED that, the applications to assign the licenses of stations WNIO(AM) and WNCD(FM), Youngstown, Ohio, WICT(FM), Grove City, Pennsylvania and WAKZ(FM), Sharpsville, Pennsylvania from Youngstown Radio License, L.L.C. to Citicasters Licenses, Inc. WILL BE HELD IN ABEYANCE PENDING THE OUTCOME OF THIS PROCEEDING.

53. IT IS FURTHER ORDERED, That the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND copies of this Order to all parties by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary