IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA, Plaintiff, v. JACOR COMMUNICATIONS, INC. and CITICASTERS, INC., Defendants.	No. C-1-96-757 Judge Weber **MODIFIED FINAL JUDGMENT**

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

AND WHEREAS, plaintiff requires Jacor to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to plaintiff that the divestitures ordered herein can be made and that Jacor will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

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

II. DEFINITIONS

As used in this Final Judgment:

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

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

C. "WKRQ Assets" means all of the assets, tangible or intangible, used in the operation of the WKRQ-FM radio station ("WKRQ") in Cincinnati, Ohio, including but not limited to: all real property (owned and leased) used in the operation of WKRQ; all broadcast equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies and

other tangible property used in the operation of WKRQ; all licenses, permits and authorizations and applications therefor issued by the Federal Communications Commission ("FCC") and other governmental agencies relating to WKRQ; all contracts, agreements, leases and commitments of Citicasters pertaining to WKRQ and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to WKRQ; and all logs and other records maintained by Citicasters or WKRQ in connection with the station's business. For all assets used jointly by WKRQ and WWNK-FM or WKRC-TV prior to the divestiture required by this Final Judgment, Jacor shall propose to plaintiff, within 7 days of the consummation of the Jacor/Citicasters Transaction, a plan for dividing such assets among these stations. Upon approval of the plan by plaintiff, the term "WKRQ Assets" shall include only those assets allocated under the plan to WKRQ.

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

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

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

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

III. APPLICABILITY

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

IV. DIVESTITURE OF WKRQ

A. Jacor is hereby ordered and directed, in accordance with the terms of this Final Judgment, within six (6) months of August 5, 1996, to divest the WKRQ Assets to a purchaser acceptable to plaintiff. Unless plaintiff otherwise consents in writing, the divestiture pursuant to Section IV of this Final Judgment or by the trustee appointed pursuant to Section V shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the WKRQ Assets can and will be used by the purchaser as a viable, ongoing business. The divestiture, whether pursuant to Sections IV or V of this Final Judgment, shall be made (i) to a purchaser that, in the plaintiff's sole judgment, has the capability and intent of competing effectively, and has the managerial, operational, and financial capability to compete effectively as a radio station in the Cincinnati Area; and (ii) pursuant to an agreement the terms of which shall not interfere with the ability of the purchaser to compete effectively.

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

C. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the WKRQ Assets. Defendants shall inform any person making a bona fide inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall make known to any person making an inquiry regarding a possible purchase of the WKRQ Assets that the assets described in Section II (C) are being offered for sale. Defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the WKRQ Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to plaintiff at the same time that such information is made available to any other person.

D. Defendants shall permit bona fide prospective purchasers of the WKRQ Assets to have access to personnel and to make such inspection of the assets, and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

V. APPOINTMENT OF TRUSTEE

A. In the event that Jacor has not divested the WKRQ Assets within six months of August 5, 1996, or within any extension granted under Section IV, the Court shall appoint, on application of the plaintiff and consistent with the rules of the FCC, a trustee selected by the plaintiff to effect the divestiture of the assets.

B. After the trustee's appointment has become effective, only the trustee shall have the right to sell the WKRQ Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section V and VI of this Final Judgment, and shall have other powers as the Court shall deem appropriate. Subject to Section V (C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any 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 plaintiff, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to the sale of the WKRQ Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee no later than fifteen (15) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

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

on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

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

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

F. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to the parties, who shall each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it shall deem appropriate, which shall, if necessary, include extending the term of the trustee's appointment.

VI. NOTIFICATION

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

the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendants, the proposed purchaser or purchasers, any third party, and the trustee, whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendants and the trustee that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V (B) of this Final Judgment. Absent written notice that plaintiff does not object to the proposed purchaser or upon objection by plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, or by defendants under the proviso in Section V (B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. AFFIDAVITS

A. Within twenty (20) calendar days of August 5, 1996 and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Jacor shall deliver to plaintiff an affidavit as to the fact and manner of defendants' compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry

about acquiring, any interest in the WKRQ Assets, and shall describe in detail each contact with any such person during that period.

B. Within twenty (20) calendar days of August 5, 1996, defendants shall deliver to plaintiff an affidavit which describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve the WKRQ Assets pursuant to Section VIII of this Final Judgment. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate WKRQ as an active competitor, maintain the management, sales, marketing and pricing of WKRQ apart from that of the other Jacor Cincinnati Radio Stations, maintain and increase sales of advertising time at WKRQ, and maintain the WKRQ Assets in operable condition, continuing normal maintenance. Defendants shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

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

VIII. PRESERVATION OF ASSETS/ HOLD SEPARATE

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

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

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

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

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

E. Except in the ordinary course of business or as part of the disposition of the WKRQ Assets under this Final Judgment, defendants shall not, without the prior consent of plaintiff, sell, lease, assign, transfer, or otherwise dispose of, or pledge for collateral for loans (except such loans and credit facilities as are currently outstanding or replacements or substitutes therefor), the WKRQ Assets, including but not limited to the real estate, facilities, and equipment, all

tangible and intangible assets used in connection with WKRQ's format, and all administrative, marketing, sales and support facilities, related to the sale of advertising time on WKRQ.

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

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

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

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

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

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

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

M. Defendants shall give five business days' notice to plaintiff prior to either (1) changing WKRQ's format from Contemporary Hits Radio, or (2) Jacor changing the format of

any current or hereafter acquired Jacor Cincinnati Radio Station to an Adult Hits, Top 40, Soft Hits, Adult Contemporary, or to a similar format.

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

IX. NOTICE

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), Jacor, without providing advance notification to the United States Department of Justice, shall not directly or indirectly:

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

(2) enter into any agreement or understanding that would allow Jacor to market or sell advertising time for any Non-Jacor Radio Station; provided, however, that Jacor need not

provide notice under this provision for any such agreement or understanding (i) that is consideration for the sale by Jacor of proprietary news, weather or traffic programming to any such Non-Jacor Radio Station and would permit Jacor to sell no more than 5 percent of that station's advertising time for any day and no more than 20 percent of that station's advertising time for any hour segment, or (ii) that is consideration for Jacor's granting to such station rebroadcast rights for a sports event to which Jacor has exclusive broadcast rights, and would permit Jacor to sell no more than 15 percent of such station's advertising time for any day.

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

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

C. 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.

X. COMPLIANCE INSPECTION

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

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

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

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

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

C. No information or documents obtained by the means provided in this Section X shall be divulged by plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. TERMINATION

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

XIII. PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: _____

_____
HERMAN J. WEBER
United States District Judge