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. Civ. C-1-96-757 (Antitrust) Filed: August 5, 1996 **COMPLAINT FOR INJUNCTIVE RELIEF AGAINST COMBINATION IN VIOLATION OF SECTION 7 OF THE CLAYTON ACT**

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action pursuant to section 15 of the Clayton Act, as amended 15 U.S.C. § 25, to obtain equitable relief in order to prevent and restrain a violation of section 7 of the Clayton Act, as amended 15 U.S.C. § 18, and alleges as follows:

1. The United States brings this antitrust action to prevent the proposed acquisition of Citicasters, Inc. ("Citicasters") by Jacor Communications, Inc. ("Jacor"). Jacor is a large nationwide operator of radio broadcast stations that owns or sells advertising for seven stations in the Cincinnati metropolitan area, more than any other operator. Citicasters, another nationwide

operator of radio broadcast stations, owns two radio stations in Cincinnati, making it the third-largest operator there. Jacor and Citicasters if combined would own or have the right to sell advertising for a total of nine stations, including seven of the thirteen top-rated stations in the Cincinnati metropolitan area based on audience share data.

2. In Cincinnati, Citicasters radio stations compete against Jacor radio stations for the business of local and national companies seeking to advertise to the Cincinnati area through radio. The acquisition, if consummated, would eliminate all the competition between these stations, resulting in many advertisers having to pay higher rates and receiving a lower quality of service.

3. Following the acquisition, Jacor's share of radio advertising dollars in the Cincinnati metropolitan area will rise from 42% to 53%. Many advertisers that presently can choose between Jacor, Citicasters, and other radio stations will have to buy radio advertising time from Jacor after the acquisition because the remaining stations in Cincinnati provide a less attractive alternative for advertisers trying to reach certain demographic groups. It is unlikely that the other Cincinnati stations would be able to increase their transmission power or vary their formats so as to check effectively Jacor's ability to exercise market power after the acquisition. Further, because the local commercial radio spectrum is full to capacity, it is unlikely that any person could obtain a license to operate a new radio broadcast station in the Cincinnati metropolitan area.

4. Accordingly, the proposed acquisition will substantially lessen competition in violation of section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

I. Jurisdiction and Venue

5. Jacor and Citicasters both sell radio advertising, a commercial activity that substantially

affects and involves transactions in interstate commerce. The Court has jurisdiction of this action and jurisdiction over the parties pursuant to 15 U.S.C. §§ 4, 22 and 25, and 28 U.S.C. §§ 1331 and 1337.

6. Both Jacor and Citicasters transact business in this District. Venue in this District is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II. Defendants and the Proposed Acquisition

7. Jacor is an Ohio corporation headquartered in Cincinnati, Ohio. It owns 22 radio stations (broadcasting on both the AM and FM bands) located in 7 metropolitan areas in the United States.[1] Jacor also has joint sales agreements ("JSAs") or limited marketing agreements ("LMAs") with five non-Jacor radio stations, whereby Jacor sells and manages advertising time for these stations. In the Cincinnati metropolitan area, Jacor owns four radio stations (WLW-AM, WCKY-AM, WOFX-FM & WEBN-FM) and has JSAs with three more (WSAI-AM, WAOZ-AM & WAQZ-FM), allowing it to control the sale of advertising time on seven stations overall. Jacor's Cincinnati revenues in 1995 were approximately $40 million.

8. Citicasters is a Florida corporation headquartered in Cincinnati, Ohio. Citicasters owns or operates nineteen radio stations located in eight metropolitan areas. In the Cincinnati metropolitan area, Citicasters owns two radio stations (WKRQ-FM & WWNK-FM). Citicasters' Cincinnati revenues in 1995 totaled approximately $10 million.

9. On February 12, 1996, Jacor entered into an agreement to purchase all of the stock of

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[1] In addition, Jacor has entered into a separate agreement to purchase Noble Broadcast Group, Inc., which owns 10 radio stations. Noble has no stations in Cincinnati.

Citicasters for approximately $770 million. As a result of this transaction, Jacor will own all the Citicasters radio stations, including the two stations in the Cincinnati metropolitan area.

III. Trade & Commerce

10. Radio stations generate most of their revenues from the sale of advertising time. Advertisers select radio stations based upon a number of factors, including the size of the station's audience, the characteristics of its audience, the strength and contours of its transmission, the supply of advertising time and its advertising rates.

11. Advertisers seek to reach a large percentage of their target audience (individuals most likely to purchase their products or services) and to have sufficient repetition of their message to achieve the desired impact. To obtain this reach and frequency, advertisers will often buy time on several radio stations in the same market. If a number of stations efficiently reach portions of that target audience, competition among stations for advertisers produces better rates or other special services from the stations.

12. Radio stations negotiate advertising rates individually and separately with each advertiser and charge different advertisers different rates. As part of those negotiations, an advertiser will provide the stations with information about its requirements, including the target audience and the desired frequency and timing of ads. Radio stations have the ability to charge advertisers differing rates based in part on the number and attractiveness of other options available to those advertisers.

A. Relevant Market

13. The relevant geographic market is the Cincinnati metropolitan area. Local advertising is aimed at reaching audiences in the Cincinnati metropolitan area, and radio stations outside of the area do not provide effective access to this audience. Thus, advertisers would not turn to radio stations located outside of the Cincinnati metropolitan area in response to a 5-10% price increase for radio advertising in the area.

14. Radio differs from other media available to advertisers such as television or print. For many advertisers, radio possesses considerable qualitative advantages over other media. In particular, radio permits advertisers to target particular audience segments far more effectively than do other media. Each radio station develops its own programming ("format") so as to attract a particular group of listeners within the general population. By strategically selecting a station or group of stations, an advertiser effectively can reach a large portion of its target audience. Other media, such as television and print, may reach a larger number of people, but for many advertisers these media are more costly because the advertiser must pay to reach many people who are not within its target audience. Radio is one of the most efficient, cost-effective means for advertisers to reach specific demographic groups.

15. Radio advertisements are also relatively inexpensive to produce and can be changed frequently with little advance notice to the radio station. Thus, advertisers that need to change their message on a regular basis to promote sales or special events and advertisers with limited budgets find radio very attractive. Finally, radio is mobile and able to reach people in their cars, outdoors and other places where other media are less effective.

16. These attributes provide radio with considerable advantages for advertisers seeking to

place low-cost, targeted, or time-sensitive advertisements. As a consequence, many advertisers in Cincinnati, if confronted with a 5-10% increase in the price of radio advertising time, would not switch any of, or any significant amount of, their advertising dollars to other media but would continue to purchase radio advertising time at the higher price.

17. Although certain Cincinnati advertisers might switch some of their advertising to other media rather than absorb a radio price increase, the existence of such advertisers would not prevent radio stations from raising prices to the advertisers described in Paragraph 16. Radio stations negotiate individually with advertisers, and can identify those advertisers who have strong reasons for selecting radio over other advertising media. Consequently, radio stations can charge different advertisers different rates. Because of this ability to price discriminate between different customers, radio stations may charge higher rates to advertisers that view radio as particularly effective for their needs, while maintaining lower rates for other advertisers.

18. Radio stations in Cincinnati view other radio stations, not other media, as their most direct competition. Radio stations in the Cincinnati metropolitan area set their advertising rates based primarily on the rates charged by other radio stations, not on the rates charged by other media.

19. The provision of advertising time on radio stations in the Cincinnati metropolitan area is a relevant market (i.e., a line of commerce and a section of the country) within the meaning of Section 7 of the Clayton Act.

B. Competition, Competitive Harm, and Entry

20. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), defined and explained in Appendix A, a combination of Jacor and Citicasters would substantially increase concentration in the markets alleged in this complaint. Jacor's share of the Cincinnati radio advertising market, based on advertising revenues, would rise from 42% to 53%. This correlates with an approximate post-merger HHI of 3077, representing an increase of 897 points.

21. At the present time, advertisers can choose between stations owned by Jacor, Citicasters, and others when purchasing radio advertising time. As a result of the merger, advertisers will have fewer and inferior choices, and many will be forced to buy time from the merged entity in order to achieve adequate reach and frequency. This reduction in competition most critically affects advertisers seeking to reach young adults (listeners aged 18 to 34) through the radio.

22. Among the leading Cincinnati radio stations that have significant numbers of young adult listeners are several Jacor-controlled stations and WKRQ-FM, a Citicasters station. These stations directly compete against each other for radio advertising dollars aimed at that audience. During individualized rate negotiations, advertisers that must reach young adults can help ensure competitive rates by "playing off" Citicasters' WKRQ-FM against the Jacor-controlled radio stations. Jacor's acquisition of Citicasters will eliminate this competition. At present, an advertiser seeking to reach young adults could efficiently reach this audience by using only non-Jacor stations. After the merger, such advertisers will be unable to reach this demographic group with equivalent efficiency without using Jacor stations. Because advertisers seeking to reach

young adults will have inferior alternatives to the merged entity as a result of the acquisition, the acquisition will increase Jacor's ability to raise prices and reduce its quality of service to them.

23. As discussed in paragraph 12, radio stations may price discriminate among advertisers. A Jacor-imposed price increase on advertisers seeking to reach young adults, therefore, will not be defeated by Jacor's other advertisers switching to other radio stations.

24. It is also unlikely that non-Jacor radio stations in Cincinnati will change their formats to compete head-to-head with Jacor in order to attract a greater share of young adults and so better serve advertisers seeking to reach them. Changing format creates significant risks for a radio station, and a station is extremely unlikely to undertake such a change solely in response to higher prices being charged to advertisers by a multi-station firm such as Jacor that already has a substantial share of the format. Moreover, a station that does change its format may still not attract enough listeners to provide an attractive alternative to the merged entity.

25. New entry into the Cincinnati radio advertising market is highly unlikely in response to a price increase by the merged parties. No unallocated radio broadcast frequencies exist in Cincinnati. Also, stations located in adjacent communities cannot boost their power so as to enter the Cincinnati market without interfering with other stations on the same or similar frequencies, a violation of FCC regulations. For the same reason very low-power, and therefore competitively insignificant, stations in and near Cincinnati are not likely to boost their power to compete more effectively against Jacor.

27. Unless restrained, the proposed acquisition will violate Section 7 of the Clayton Act.

Harm to Competition

28. The effect of the proposed acquisition of Citicasters by Jacor is to lessen competition

substantially in interstate trade and commerce in violation of Section 7 of the Clayton Act.

29. The transaction would have the following effects, among others:

a. competition in the sale of local advertising time on radio broadcast stations in the Cincinnati metropolitan area would be substantially lessened;

b. actual competition between Jacor and Citicasters radio stations in the sale of radio advertising time would be eliminated; and

c. the rates for advertising on radio stations in the Cincinnati metropolitan area would likely increase.

Requested Relief

30. The United States requests (a) adjudication that Jacor's proposed acquisition of Citicasters would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed acquisition; (c) an award to the United States of the costs of this action; and (d) such other relief as is just and proper.

Dated August 1, 1996

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EXHIBIT A
DEFINITION OF HHI AND CALCULATIONS FOR MARKET

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

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

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