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

In The Matter of The Application of Bunyard Partnership, Assignor and Clear Channel Broadcasting Licenses, Inc., Assignee For Consent to Assignment of License of KMJI(FM), Ashdown, AR	)))))))))))))	File No. BALH-20010827AAP

MEMORANDUM OPINION AND ORDER

Adopted: June 11, 2002 **Released: June 28, 2002**

By the Commission: Commissioner Copps dissenting and issuing a statement.

1. In this order, we consider the above-captioned application of Clear Channel Broadcasting Licenses, Inc., a wholly owned subsidiary of Clear Channel Communications, Inc. (collectively, "Clear Channel") to acquire the license of station KMJI(FM), Ashdown, Arkansas, from Bunyard Partnership ("Bunyard"). This application is uncontested. Because this application was 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 the application pursuant to the interim policy adopted in that notice.[1] After reviewing the record, we find that grant of the application is consistent with the public interest.

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 market.[2] 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.[3] 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

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

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

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

has received applications proposing transactions that would comply with the new limits, but that nevertheless would 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."[4] 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.[5]

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.[6] 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."[7] 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."[8] 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.[9]

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

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[4] *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).

[5] *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).

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

[7] *Id.*

[8] *Id.* at 19894 ¶ 84.

[9] *Id.*

sets forth generic areas of inquiry for this purpose.[10] The interim policy also sets forth timetables for staff recommendations to the Commission for the disposition of cases that may raise competitive concerns.

7. We decide the application before us pursuant to our interim policy. Under our interim policy, we first conduct a competition analysis of the proposed transaction. Here, we find that the proposed transaction raises potentially serious competition concerns because the fourth highest revenue generating station in the Texarkana, TX-AR Arbitron radio metro ("Texarkana metro") [11] would be combined with four stations that Clear Channel already owns, creating a market in which Clear Channel would have up to a 56.8 percent radio advertising market share and the top two station groups would have up to a 70.9 percent radio advertising market share. These concentration levels, however, do not provide a complete picture of the competitive realities within this market. Two factors in particular substantially mitigate concerns about the post-transaction concentration levels: (1) the number of other stations and owners with no relationship to Clear Channel; and (2) the high listener share held by such stations. In taking these and other factors into consideration, we find that the competitive characteristics of the Texarkana metro make it unlikely that the proposed transaction will cause adverse effects that are inconsistent with the public interest. We therefore grant the application to permit Clear Channel to acquire KMJI(FM) from Bunyard.

II. BACKGROUND

8. Clear Channel currently is the licensee of four stations in the Texarkana metro: (1) KKYR(FM), Texarkana, TX; (2) KOSY(AM) (formerly KKYR(AM)), Texarkana, AR; (3) KPWW(FM), Hooks, TX; and (4) KYGL(FM), Texarkana, AR (the "Clear Channel Stations"). In addition, since August 2001, Clear Channel has had a Local Marketing Agreement ("LMA") with Bunyard to provide programming to, and to sell advertising on, KMJI(FM). Through its proposed acquisition of KMJI(FM), Clear Channel would own four FM stations and one AM station in the Texarkana metro.

9. On September 7, 2001, the Commission issued a public notice indicating that the Clear Channel application had been accepted for filing.[12] The public notice also "flagged" the application 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.[13] At the time that the public

[10] *Id.* at 19895 ¶ 86.

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

[12] *See* Public Notice, Broadcast Applications, Report No. 25065 (rel. Sept. 7, 2001).

[13] *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 and its effect on competition and diversity in the broadcast markets at issue and serve the response on the parties.

notice was issued, Year 2000 revenue estimates were available from the BIA[14] database. Based on Year 2000 revenue estimates, the five-station combination that Clear Channel proposes to own accounted for a 60.1 percent revenue share in the Texarkana metro. Based on Year 2001 BIA estimates,[15] the same five-station combination would account for a 56.8 percent revenue share, and Clear Channel and the second largest commercial broadcaster in the metro, ArkLaTex LLC ("ArkLaTex"), would collectively control 70.9 percent of the advertising revenue in the Texarkana metro. According to BIA, there was no advertising revenue share for Clear Channel's KOSY(AM) in 2001 (nor for Year 2000 when the AM station operated under its former call sign, KKYR(AM)).

10. The Mass Media Bureau sent an inquiry letter to Clear Channel on January 29, 2002,[16] providing the applicants an opportunity to update the record in light of any competitive changes that might have occurred in the Texarkana market and in light of our interim policy.[17] In response, Clear Channel filed additional materials concerning the potential competitive impact of the proposed transaction.[18]

III. DISCUSSION

A. Framework for Analysis Under Interim Policy

11. Section 310(d) of the Communications Act of 1934, as amended (the "Communications Act"), requires the Commission to find that the public interest, convenience and necessity would be served by the assignment of Bunyard's radio broadcast license to Clear Channel before the assignment may occur.[19] We are making that finding in this case pursuant to the interim policy laid out in the recently issued *Local Radio Ownership NPRM*.[20] Under the interim policy, 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.[21]

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[14] 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.

[15] Year 2001 BIA data, including radio advertising revenue estimates and listening shares, were made available through the BIA Database on March 12, 2002. Throughout the remainder of this *Order*, all references to BIA data mean the BIA Database providing Year 2001 data, as released on March 12, 2002, unless otherwise specified.

[16] Letter from Peter H. Doyle, Chief, Audio Services Division, Mass Media Bureau, to Christopher L. Robbins, Esq. and Frank R. Jazzo, Esq. (dated Jan. 29, 2002).

[17] As used here, in-market stations are radio stations whose "home market," as reported by BIA, is the Arbitron metro at issue. Out-of-market stations are radio stations that BIA reports as having a listening share in a particular Arbitron market, but that have a "home market" in another Arbitron market or in a county that is not part of an Arbitron market.

[18] *See* Response to Inquiry Letter of Clear Channel Broadcasting Licenses, Inc., to Peter H. Doyle, Chief, Audio Services Division, Mass Media Bureau (filed Feb. 19, 2002) ("Clear Channel Response"). The Clear Channel Response also included as attachments the Declaration of Ron Bird ("Bird Declaration"), Clear Channel's Texarkana market manager, and the Declaration of Jay Bunyard ("Bunyard Declaration"), the proposed assignor of KMJI(FM).

[19] 47 U.S.C. § 310(d).

[20] *See Local Radio Ownership NPRM,* 16 FCC Rcd at 19894-97 ¶¶ 84-89.

[21] *Id*. at 19895-96 ¶ 86.

12. 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.[22]

13. 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"[23] in the advertising market, our focus is different.[24] 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."[25] 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.[26] Our public interest analysis therefore includes assessing whether the transfer will affect the quality of radio services

[22] *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").

[23] 15 U.S.C. § 18.

[24] 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.").

[25] *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*").

[26] 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)).

or responsiveness to the local needs of the community,[27] and whether it will result in the provision of new or additional services to listeners.[28]

14. 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 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

15. 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.[29] 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.[30] 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.[31]

16. We find that Clear Channel's proposed acquisition of KMJI(FM) is consistent with the numerical limits in our local radio ownership rule. Clear Channel's multiple ownership showing indicates that, using the Commission's current definition of "radio market,"[32] the transaction creates one radio market, composed of 32 radio stations. In this market, a single licensee may, therefore, own up to 7 radio stations, not more than 4 of which are in the same service (AM or FM).[33] If Clear Channel acquires the Bunyard station, Clear Channel will own 5 stations (1 AM/4 FM) in the market, in compliance with the rule.

C. Public Interest Analysis Under Interim Policy

17. In the interim policy, we stated that, consistent with precedent, we will continue to examine the potential competitive effects of proposed radio station combinations. Competition analysis requires us to define at the outset the relevant product and geographic markets in which the radio stations compete.

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[27] *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).

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

[29] 47 C.F.R. § 73.3555(a).

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

[31] *See supra* note 3.

[32] *See Definition of Radio Markets*, Notice of Proposed Rule Making, 15 FCC Rcd 25077, 25077-78 ¶¶ 2-3 (2000).

[33] 47 C.F.R. § 73.3555(a)(l)(ii).

We must also determine the market shares and concentration levels that the proposed transaction would produce. Ultimately, we must weigh the potential competitive benefits and harms, as well as other public interest benefits and harms, that the proposed transaction is likely to produce to determine if, overall, grant of the underlying application would be consistent with the public interest.

18. *Relevant Product Market*. For the purposes of this competition analysis, we must first define the relevant product and geographic markets. Under our interim policy, we presume that the relevant product market is radio advertising.[34] Clear Channel asserts that radio advertising is not a separate product market, as detailed in prior letter responses.[35] While Clear Channel maintains that "all of its radio stations face vigorous competition for advertising revenues from all media,"[36] the record establishes that radio stations compete first and foremost with other radio stations for advertising. No empirical or otherwise credible evidence is supplied to suggest that radio advertising is not the proper product market. Accordingly, we will rely on our presumptive product market definition in evaluating this application.

19. *Relevant Geographic Market*. Clear Channel also seeks to rebut the presumption that the relevant geographic market for competition analysis is the relevant Arbitron metro market, which in this case is the Texarkana metro, comprised of Miller County in Arkansas and Bowie County in Texas. Clear Channel claims that Arbitron markets are arbitrarily drawn and "do not accurately reflect the geographic areas in which Clear Channel's stations compete for advertising revenue."[37] Clear Channel notes that four of the seventeen stations listed as home to the metro, including KMJI(FM), are licensed to communities in counties outside the Arbitron metro.[38] For the reasons explained below, we are not persuaded by Clear Channel's claims.

20. To determine relevant geographic market, standard antitrust analysis evaluates whether a hypothetical monopolist in a particular geographic area could profitably raise prices by a "small but significant and nontransitory amount."[39] Here, Clear Channel and Bunyard (the "Applicants") have failed to show that a hypothetical monopolist of radio advertising in the Texarkana metro would not profitably be able to raise prices by a small but significant and nontransitory amount. In a monopolist scenario, it is unlikely that a large number of Texarkana advertisers would find most stations outside the Texarkana metro, including stations in the larger Arbitron metro market of Shreveport, Louisiana (the "Shreveport metro"), a cost-effective alternative for Texarkana metro stations. Only seven out-of-market stations, all home to the Shreveport metro, received a listening share in the Texarkana metro in Fall 2001, and all such stations have more listeners in the Shreveport metro, according to BIA.[40] As such, the cost for advertisers to reach Texarkana listeners through these Shreveport stations is likely to be higher than through Texarkana stations. Further, while Applicants have not submitted a contour analysis to support their market definition theory, our own initial contour analysis indicates that few out-of-market stations place a

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

[35] *See* Clear Channel Response at 2, citing a previous response regarding the Cheyenne, WY metro.

[36] *See id*. at 2.

[37] *See id.*

[38] *See id.* at 2-3. The other three stations identified by Clear Channel are KTXO(FM), Hope, Arkansas, KNRB(FM), Atlanta, Texas, and KOWS(FM) (*see infra* note 41), Ashdown, Arkansas.

[39] U.S. Dep't of Justice & Fed. Trade Comm'n, *1992 Horizontal Merger Guidelines* §§ 1.2, 1.22 (as revised in 1997) ("*1997 Merger Guidelines*"). In markets such as radio advertising, where individually negotiated contracts facilitate price discrimination, determining the relevant geographic market is more complicated. *Id.* § 1.22.

[40] Three of these out-of-market stations are owned by Clear Channel.

city grade signal over Texarkana. In light of these facts, we find that buyers of radio advertising time would not find a sufficient number of outlets outside of the Texarkana metro so as to render unprofitable a small but significant and nontransitory price increase by a hypothetical monopolist of radio stations in the Texarkana metro. Accordingly, we find that Applicants have failed to rebut the presumption that the Texarkana metro, defined by Miller County in Arkansas and Bowie County in Texas, comprises the relevant geographic market.

21. *Market Participants*. In addition to KMJI(FM) and the Clear Channel Stations, the following commercial band radio stations, representing seven separate owners, are reported by BIA as having their home market in the Texarkana metro: (1) KFYX(FM), Texarkana, AR, KCMC(AM) and KTFS(AM), Texarkana, TX, and KTXO(FM), Hope, AR, all owned by ArkLaTex; (2) KEWL-AM/FM, Texarkana/New Boston, TX, and KOWS(FM), Ashdown, AR,[41] all owned by Petracom Media LLC ("Petracom"); (3) KTOY(FM), Texarkana, AR, owned by Jo-Al Broadcasting, Inc.; (4) KZRB(FM), New Boston, TX, owned by B&H Broadcasting System, Inc.; (5) KNRB(FM), Atlanta, TX, owned by Family Worship Center Church, Inc.; (6) KNBO(AM), New Boston, TX, owned by Bowie County Broadcasting; and (7) KLMZ(FM), Fouke, AR, which began broadcasting in 2001, owned by In Phase Broadcasting, Inc.

22. Clear Channel argues that the stations listed as "home" to the Texarkana metro is an inaccurate and incomplete listing of the competitive stations.[42] Clear Channel states that BIA's methodology provides no indication of the extent to which out-of-market stations garner advertising revenue in Texarkana. Clear Channel estimates that KTAL-FM and other out-of-market stations earn a significant portion of their revenue in the Texarkana market.[43] We are not persuaded that this should alter our presumptions with regard to the list of market participants.

23. While KTAL-FM is licensed to the city of Texarkana, TX, its 70 dBu signal contour covers portions of Bowie and Miller counties as well as the city of Shreveport to the south. As noted above, Shreveport is a larger metropolitan area than Texarkana, and KTAL-FM commands a larger audience in Shreveport. According to BIA, KTAL-FM had approximately four times as many listeners in the Shreveport metro than in the Texarkana metro during the Fall 2001 ratings period. Clear Channel acknowledges that since the time that Access.1 Communications acquired KTAL-FM in 2001, it has operated the station with its other Shreveport stations and that KTAL-FM now receives less revenue from the Texarkana market than in the past.[44] These factors suggest that KTAL-FM would only be attractive to advertisers who wish to reach a substantial number of Shreveport listeners and are content to reach only a relatively small number of Texarkana listeners.[45]

24. None of the other out-of-market stations identified by Clear Channel has a reportable listening share in the Texarkana metro. While these stations may be able to sell some small amount of advertising time to Texarkana advertisers, most such advertisers would not consider out-of-market

[41] According to our database, the call signs KEWL-AM and KOWS(FM) have been changed to, respectively, KKTX(AM) and KPGG(FM).

[42] *See* Clear Channel Response at 3.

[43] *See id.* Clear Channel and Bunyard identify the following other out-of-market stations as market participants: KPYN(AM), Atlanta, TX and its associated expanded-band station KALT(AM), owned (according to our database) by Family Worship Center Church, Inc. (previously owned by Dominion Media); and KDQN-AM/FM, DeQueen, AR, owned by Bunyard. *See* Clear Channel Response at 3 and Bunyard Declaration ¶ 2.

[44] *See* Clear Channel Response at 3, n.3.

[45] According to BIA, KTAL-FM had a Fall 2001 listening share in the Texarkana metro of 2.2%.

stations with no reported listening share to be adequate substitutes for Texarkana metro stations. The only evidence to support their inclusion in the Texarkana metro is the Applicants' own estimates that these stations sell advertising time in Texarkana. We found this evidence unpersuasive when we addressed geographic market definition, and we reach a similar conclusion here. As such, none of the stations identified by Clear Channel appears to be a substantial competitor to stations in the Texarkana metro.

25. Clear Channel also notes that KMJI(FM) Ashdown, AR, KTXO(FM), Hope, AR, KNRB(FM), Atlanta, TX, and KOWS(FM),[46] Ashdown, AR, have cities of license that are not in the Texarkana metro counties.[47] We find this fact of no relevance to our analysis because a radio station may participate in a market even if its city of license is located outside of the counties that make up the market, as long as the station's advertising customer base, contours, listening audience, and other relevant factors indicate that it "currently produces or sells" in the relevant market or is an "uncommitted entrant" in that market.[48] The stations noted by Clear Channel are identified by both BIA and Arbitron as Texarkana metro stations, have contours consistent with their inclusion in the metro, and have listening share exclusively in the Texarkana metro. Thus, KMJI(FM), KTXO(FM), KNRB(FM), and KOWS(FM)[49] can appropriately be considered market participants in the Texarkana metro even though their cities of license are located outside of the counties that make up the Texarkana metro.

26. *Market share and market concentration*. According to BIA, radio stations that are home to the Texarkana metro generate $5,675,000 in radio advertising revenues. Using BIA data for Year 2001, the pre-transaction market structure in the Texarkana metro is as follows:

	Market Share	Market Revenue
Clear Channel	47.1%	$2,675,000
Bunyard Partnership	9.7%	$550,000
ArkLaTex LLC	14.1%	$800,000
Petracom Media	12.8%	$725,000
Jo-Al Broadcasting	9.3%	$525,000
B&H Broadcasting	4.4%	$250,000
Family Worship Center	1.8%	$100,000
Bowie County Broadcasting	0.9%	$50,000
Total	100%	$5,675,000

27. The Applicants propose only one adjustment to the revenue estimates. Clear Channel asserts that KMJI(FM) earned revenues of $399,460 in 2000 rather than the $550,000 estimated by BIA in 2000 and in 2001.[50] While we have no reason to question the accuracy of the submission with respect to KMJI(FM), we decline to adjust the revenue figure for only one station. Without actual revenues for most of the substantial participants in the metro, it would be inconsistent to use actual revenues for some stations and BIA estimates for others. In addition, this one adjustment does not significantly alter market shares or our overall assessment of competition concerns. Based on the BIA revenue estimates for 2001,

[46] *See supra* note 41.

[47] *See* Clear Channel Response at 3, n.2.

[48] *See 1997 Merger Guidelines* §§ 1.31, 1.32. Under the *1997 Merger Guidelines*, an uncommitted entrant is a firm that is likely to enter the market "within one year and without the expenditure of significant sunk costs of entry and exit, in response to a 'small but significant and nontransitory' price increase." *Id.* § 1.32.

[49] *See supra* note 41.

[50] *See* Clear Channel Response at 4 and Bunyard Declaration ¶ 2.

we find that, after the transaction, Clear Channel will have a market share of 56.8 percent.[51] This will result in an increase in the HHI for the Texarkana metro of 914, with a total post-transaction HHI of 3700.[52]

28. In this case, we also find it meaningful to consider in-market listening audience shares in addition to revenue shares. We note that there is rarely a one-to-one relationship between audience share and revenue share, but radio stations earn the bulk of their advertising revenue by "delivering" listeners to the advertisers. Arbitron's estimates of audience shares are based on regular surveys of radio listeners. The Fall 2001 Arbitron listening data indicate that, post-transaction, Clear Channel would have a 39.7 percent listening share in the Texarkana metro. Both the revenue share and the listening share are taken into account in our analysis, below, of the potential for harm to advertisers and listeners as a result of this transaction.

29. *Potential for harm to advertisers and listeners.* The Applicants argue that the proposed transaction will not harm advertisers or listeners because KMJI(FM) has been operated pursuant to an LMA by Clear Channel since August 2001. Clear Channel states it "has not used its supposed market share to raise advertising rates in an anticompetitive fashion . . . ."[53] We reject these arguments with respect to potential anti-competitive harm associated with increased concentration. Clear Channel also asserts that the acquisition will not lead to a unilateral increase in advertising because KMJI(FM) is not a close substitute for KPWW(FM) or any other Clear Channel station in the market.[54]

30. We recognize that Clear Channel's provision of programming for KMJI(FM) pursuant to the LMA has enabled Clear Channel to exercise substantial influence over the advertising on this station. However, LMAs do not come before the Commission for approval, unless an application is filed involving a station subject to an LMA. Consequently, no public interest determination has been made previously regarding Clear Channel's operation of KMJI(FM) in combination with its owned stations in the Texarkana metro. In addition, while we have no independent assessment of changes in advertising prices since August 2001, the fact that rates do not rise during the pendency of a subject application does not establish that, once the application is granted and the sale consummated, there is no potential for, or likelihood of, (1) unilateral effects attributable to the dominant post-merger firm, or (2) coordinated behavior among competing firms, including the dominant firm. We consider this potential because the proposed transaction will provide Clear Channel with a dominant share of the local radio advertising market and with actual and legal control of KMJI(FM).

31. While Clear Channel's large revenue share suggests that Clear Channel may obtain some unilateral market power over advertising rates in the Texarkana metro, a number of factors lessen our concern about such potential. Notably, in addition to Clear Channel's post-transaction five-station combination, twelve stations will remain in the Texarkana metro that are not owned by Clear Channel. Of the twelve FM facilities in the metro, firms other than Clear Channel will own eight. Moreover, Clear Channel will own only four of the twelve highest-rated stations in the Texarkana metro. ArkLaTex and

[51] If KMJI(FM)'s revenue were adjusted, as urged by Clear Channel, to $399,460 down from $550,000, Clear Channel's post-transaction market share would be 55.7 percent.

[52] Making Clear Channel's proposed revenue adjustment for KMJI(FM) to $399,460 would change the post-consummation HHI for the Texarkana metro to 3,594, with an increase in HHI of 700.

[53] *See* Clear Channel Response at 5 and Bird Declaration at ¶ 2.

[54] *See id.* Clear Channel notes that while KMJI(FM) and KPWW(FM) are both adult contemporary stations, each station targets a different demographic. KMJI(FM) targets an older audience, specifically women in the 25 to 54 age demographic, and KPWW(FM) targets the younger 12 to 24 demographic. *Id.*

Petracom, the two next largest owners after Clear Channel in the metro, each have multiple stations. There are other strong stations not owned by these three largest group owners. In fact, the highest-rated station is owned by Jo-Al Broadcasting. These factors suggest that advertisers will have sufficient alternatives following the proposed transaction.

32. In addition, Clear Channel's purchase of KMJI(FM) will not result in elimination of a third competitor so as to create a duopoly, nor will it result in elimination of an independent facility that is essential to the maintenance of competition in the Texarkana metro. KMJI(FM) is currently operated as a stand-alone facility with the fourth-largest revenue share and the sixth-highest listening share in the Texarkana metro, according to BIA. This further reduces the likelihood that this transaction will give Clear Channel the ability to raise prices unilaterally for a significant number of advertisers.

33. We also find that anti-competitive coordinated behavior is unlikely. When a dominant firm is able to cooperate with other significant station groups in the metro, the resulting shared monopoly can harm competition. BIA estimates that the top two station groups (Clear Channel and ArkLaTex) would account for a 70.9 percent revenue share, as noted above, and a 57.5 percent listening share in the post-transaction Texarkana metro. Because 30 percent of the revenue and over 40 percent of listening share would be garnered by stations owned by entities unrelated to the two largest group owners, coordination by Clear Channel and ArkLaTex with the intent of creating a shared monopoly would be difficult. Moreover, there is no indication of collusion in the record, which further supports our finding that the post-transaction market structure makes coordinated behavior unlikely. We therefore conclude that the proposed transaction does not create significant competition concerns for national, regional or local Texarkana metro advertising.

34. Generally, because we believe that the economic incentives inherent in a fully functioning competitive market are the most effective way to maximize listener benefits, the potential harm to advertisers implicates our public interest concerns. Absent a finding of harm to advertisers, we find that it is unlikely that listeners will be harmed by the subject transaction. There is no independent evidence of harm to listeners in the record of this proceeding. In addition, we believe the continued existence, post-transaction, of twelve commercial radio stations owned by seven separate owners other than Clear Channel helps constrain the incentive and ability of a dominant station group in Texarkana to diminish program quality or quantity and thereby harm listeners. Under these circumstances, we conclude that the evidence in the record does not raise a substantial and material question of fact regarding the potential adverse impact of the proposed transaction on advertisers or listeners.[55]

35. *Efficiencies and other public interest benefits.* The Applicants argue that the proposed transaction will produce a number of efficiencies and other public interest benefits. Clear Channel asserts that the acquisition of KMJI(FM) will result in several operating efficiencies through sharing of facilities, engineering and administrative personnel.[56] Clear Channel also asserts that small market advertisers benefit from Clear Channel's advertising expertise.[57]

[55] In light of our conclusion, we do not need to consider whether entry into the Texarkana radio market is likely. Clear Channel does not identify any likely entrants and maintains that it is impossible to predict what modifications to existing radio stations, such as technical amendments to upgrade, downgrade, or relocate stations, may be possible or what opportunities for a station to enter the Texarkana market may arise in the future. *See* Clear Channel Response at 6.

[56] Clear Channel estimates the resulting cost-savings to be approximately $3,200 per month under the LMA. *See* Clear Channel Response at 6.

[57] *See id.*

36. Clear Channel further asserts that listeners benefit through increased coverage of local and national news. Since the implementation of the LMA, Clear Channel has added a full-time news staff person to KMJI(FM)'s two person on-air staff.[58] Clear Channel also maintains that it has increased KMJI(FM)'s participation in sponsorship and promotion of local activities, organizations and charities.[59]

37. We deem the cost-savings and public interest benefits described above as relatively modest in nature and scope. Moreover, Clear Channel does not provide a full explanation of why the potential benefits are specific to this transaction, *i.e.,* why they cannot be achieved absent this transaction. Although we generally require applicants to demonstrate that their claimed benefits are transaction-specific to be entitled to much weight, we have in this case found no public interest harms, and thus we need not examine Clear Channel's public interest showing further.

IV. CONCLUSION

38. Based on the foregoing analysis, we find no substantial and material question of fact as to the effect of the proposed transaction on competition that would warrant further inquiry. In addition, we have reviewed the assignment application and find that Clear Channel is qualified to be the assignee of KMJI(FM) and that grant of the transaction is consistent with the public interest, convenience and necessity.

V. ORDERING CLAUSES

39. ACCORDINGLY, IT IS ORDERED, That the application to assign the license for station KMJI(FM), Ashdown, Arkansas, from Bunyard Partnership to Clear Channel Broadcasting Licenses, Inc. (File No. BALH-20010827AAP) IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[58] *See id.* at 1.

[59] *See id.* at 1-2.

DISSENTING STATEMENT OF COMMISSIONER MICHAEL J. COPPS

In the Matter of the Application of Bunyard Partnership and Clear Channel For Consent to Assignment of License of KMJI(FM), Ashdown, Arkansas

This transaction would give Clear Channel its fifth station in the Texarkana market, the 255^{th} radio market, for a total of 56.8% of the advertising revenues in the market. While this market does include stations owned by other individual and group owners, no other owner has even one quarter of the market share of Clear Channel. In a market of this size, this level of concentration is particularly unacceptable.