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

In The Matter of The Applications of	)	
	)	
Pollack Broadcasting Company	)	
Jonesboro, LLC,	)	
Assignor	)	File Nos. BAL-20010724ABN
	)	and BALH-20010724ABM
and	)	
	)	
Clear Channel Broadcasting Licenses, Inc.,	)	
Assignee	)	
	)	
For Consent to Assignment of Licenses of	)	
KNEA(AM), Jonesboro, Arkansas, and	)	
KKEY(FM), Harrisburg, Arkansas	)	

MEMORANDUM OPINION AND ORDER

Adopted: June 13, 2002 **Released: June 28, 2002**

By the Commission:

1. In this order, we consider the above-captioned applications of Clear Channel Broadcasting Licenses, Inc. ("Clear Channel") to acquire the licenses of stations KNEA(AM), Jonesboro, Arkansas, and KKEY(FM), Harrisburg, Arkansas, from Pollack Broadcasting Company Jonesboro, LLC ("PBC," and collectively with Clear Channel, the "Applicants"). 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.[1] After reviewing the record, we find that grant of these applications 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

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[1] *See Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 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) ("1996 Act"), § 202(b); 47 C.F.R. § 73.3555(a)(1).

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 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] Under this policy, the Commission flags 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.[6] The public notice for a flagged transaction indicates that the Commission intends to subject the proposed transaction to further competitive review and seeks comments from the public on that issue.[7]

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.[8] 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."[9] 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

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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).

[6] *See AMFM, Inc.*, 15 FCC Rcd 16062, 16066 ¶ 7 n.10 (2000).

[7] *See generally Local Radio Ownership NPRM,* 16 FCC Rcd at 19870 ¶ 18 (rel. Nov. 9, 2001). 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.

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

[9] *Id.*

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."[10] 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.[11]

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.[12] 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 applications before us pursuant to our interim policy. Under our interim policy, we first conduct a competition analysis of the proposed transaction. Our competition analysis indicates that while Clear Channel's acquisition of PBC's two stations (the "PBC Stations") results in a substantial increase in concentration in the Jonesboro market, it is unlikely that this post-transaction concentration will harm advertisers or listeners in this particular case. The record indicates that the PBC Stations are in extremely poor financial health and that, if the proposed transaction is not consummated, the PBC Stations may go off the air. The record also indicates that Clear Channel's acquisition of the PBC Stations may improve their financial performance, which helps ensure that these stations will continue to provide service to the public in Jonesboro. For these reasons, we conclude that Clear Channel's acquisition of the PBC Stations serves the public interest.

II. BACKGROUND

8. Clear Channel currently owns three stations in the Jonesboro metro:[13] KBTM(AM), KFIN(FM), and KIYS(FM), all licensed to Jonesboro, Arkansas (collectively, the "Clear Channel Stations"). It now proposes to acquire the two PBC Stations, KNEA(AM), Jonesboro, Arkansas, and KKEY(FM), Harrisburg, Arkansas, which also are assigned to the Jonesboro metro.

9. On July 31, 2001, the Commission issued a public notice indicating that the subject applications had been accepted for filing.[14] The public notice also "flagged" the applications pursuant to the Commission's "50/70" screen. Based on Year 2001 revenue estimates from the BIA[15] database, the

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[10] *Id.* at 19894 ¶ 84.

[11] *Id.*

[12] *Id.* at 19895 ¶ 86.

[13] A metro is a metropolitan area defined by Arbitron and used by radio stations and radio advertisers.

[14] *See* Public Notice, Broadcast Applications, Report No. 25038 (July 31, 2001).

[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.

five stations that Clear Channel proposes to own account for a 61.9 percent revenue share in the Jonesboro Arbitron metro. Post-consummation, Clear Channel and Pressly Partnership Productions, Inc. ("Productions") would collectively control 89.9 percent of the advertising revenue in the Jonesboro metro. In addition, currently pending before the Commission is an application seeking Commission consent to allow Productions to acquire KJBX(FM), Trumann, Arkansas, located in the Jonesboro metro and currently owned by Pressly Enterprises, LLC ("Enterprises").[16] If that application is granted and the transaction is consummated, Productions and Clear Channel would collectively control 95 percent of the advertising revenue in the Jonesboro metro.

10. By letter dated January 17, 2002 ("Inquiry Letter"), pursuant to our interim policy, the staff requested that the parties provide additional information for the record in order to assess fully the transaction for its effect on the public interest. The Inquiry Letter also afforded the parties an opportunity to update the record in light of the interim policy the Commission adopted regarding the processing of radio assignment and transfer of control applications.[17] Clear Channel filed a response on February 6, 2002 and a correction to the letter on February 25, 2002.[18] PBC filed responses and additional materials on March 15, 2002 and May 3, 2002 to supplement the record.[19]

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 PBC's radio broadcast licenses to Clear Channel before the assignment may occur.[20] We are making that finding in this case pursuant to the interim policy laid out in the recently issued *Local Radio Ownership NPRM*.[21] 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.[22]

12. Under the interim policy, to decide whether a proposed assignment serves the public interest,

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[16] *See* FCC File No. BALH-20010604AAW.

[17] Letter from Peter H. Doyle, Chief, Audio Services Division, Mass Media Bureau, to Christopher L. Robbins, Wiley, Rein & Fielding, *et al*. (Jan. 17, 2002). Pursuant to the interim policy, the staff will review the facts and arguments contained in any pleadings that are filed in connection with a particular transaction, and will 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. In addition, the staff is authorized to request additional information from the parties to the extent required for the staff to issue or recommend a decision on the application.

[18] *See* Letter from Dorann Bunkin, Wiley, Rein & Fielding, to Peter H. Doyle, Chief, Audio Services Division, Mass Media Bureau (Feb. 6, 2002) ("Clear Channel Response"); Letter from Dorann Bunkin, Wiley, Rein & Fielding, to Peter H. Doyle, Chief, Audio Services Division, Mass Media Bureau (Feb. 25, 2002).

[19] Letter from Barry D. Wood, Wood, Maines & Brown, to Peter H. Doyle, Chief, Audio Services Division, Mass Media Bureau (Mar. 15, 2002) ("PBC Response"); Letter from Barry D. Wood, Wood, Maines & Brown, to Peter H. Doyle, Chief, Audio Services Division, Mass Media Bureau (May 3, 2002) ("PBC Supp. Response").

[20] 47 U.S.C. § 310(d).

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

[22] *Id*. at 19895-96 ¶ 86.

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.[23]

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"[24] in the advertising market, our focus is different.[25] 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."[26] 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.[27] 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,[28] and whether it will result in the provision of new

[23] *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").

[24] 15 U.S.C. § 18.

[25] 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.").

[26] *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*").

[27] 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)).

[28] *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).

or additional services to listeners.[29]

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.[30] 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.[31] 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.[32]

16. We find that Clear Channel's proposed acquisition of the PBC Stations 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,"[33] the transaction creates three radio markets. The first market is formed by the contours of stations KNEA(AM), KKEY(FM), KBTM(AM), KIYS(FM), and KFIN(FM). The second market is formed by the contours of KKEY(FM), KIYS(FM), KFIN(FM), and WDIA(AM), Memphis, Tennessee. The third market is formed by the contours of stations KKEY(FM), KIYS(FM), KFIN(FM), WDIA(AM), and WREC(AM), Memphis, Tennessee. In each of these three markets, there are at least 35 stations, as calculated pursuant to our local radio ownership rule. In each market, therefore, a single licensee may own up to 7 radio stations, not more than four of which are in the same service (AM or FM). If Clear Channel acquires the PBC Stations, Clear Channel will own five stations (2 AM/3 FM) in market one, four stations (1 AM/3 FM) in market two, and five stations (3 AM/2 FM) in market three. The transaction therefore complies with the local radio ownership rule.

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

[30] 47 C.F.R. § 73.3555(a).

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

[32] *See* 1996 Act § 202(b)(1); 47 C.F.R. § 73.3555(a)(1).

[33] *See Definition of Radio Markets*, Notice of Proposed Rule Making, 15 FCC Rcd 25077 (2000); 47 C.F.R. § 73.3555(a)(3).

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. 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*. As with any 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 argues that the relevant product market is broader than radio advertising.[35] Clear Channel, however, provides no evidentiary support for its argument. Accordingly, we will rely on our presumptive product market definition in evaluating this application.

19. *Relevant Geographic Market*. The Applicants also seek to rebut the presumption that the relevant geographic market for competition analysis is the relevant Arbitron metro market, which in this case is comprised of Craighead County, Arkansas. Clear Channel claims that Arbitron markets are arbitrarily drawn and "do not reflect the geographic areas in which Clear Channel's stations compete for revenues."[36] William H. Pollack, owner of PBC, asserts that the radio market consists of an area within a 55-mile radius of Jonesboro, and that it includes at least six and as many as 12 counties, including Craighead County.[37] Pollack further asserts that radio stations must sell advertising time on a regional basis, and that advertisers want to reach the regional audience, not just the local audience.[38] As further support for their proposed regional market definition, the Applicants contend that many commuters come from surrounding counties to Jonesboro and that Craighead County radio stations sell time to advertisers in those surrounding counties.[39]

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."[40] Here, the Applicants have failed to show that a hypothetical monopolist of radio advertising in Craighead County would not profitably be able to raise prices by a small but significant and nontransitory amount. Clear Channel's Vice-President and Market Manager for Jonesboro, Larry S. James, admits that "Jonesboro is the largest city in the Northeastern corner of Arkansas" and that the "next closest regional centers" are Little Rock and Memphis, which are 125 and

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

[35] Clear Channel Response at 4.

[36] *Id.* at 4.

[37] *See* Declaration of William H. Pollack ("Pollack Supp. Decl.") at 3-4, attached to PBC Response.

[38] Pollack Supp. Decl. at 5.

[39] *See* PBC Response at 2; Declaration of Larry S. James, Vice President/Market Manager for Clear Channel ("James Supp. Decl.") at ¶¶ 2, 4, attached to PBC Response; Pollack Supp. Decl. at 5, 8.

[40] *Horizontal Merger Guidelines,* issued by the U.S. Department of Justice & Federal Trade Commission, Apr. 2, 1992, revised Apr. 8, 1997 ("*Horizontal Merger Guidelines*") § 1.2. In markets such as radio advertising, where individually negotiated contracts facilitate price discrimination, determining the relevant geographic market is more complicated. *Id.* § 1.22.

75 miles away, respectively.[41] Although the Applicants contend that up to 15 out-of-market stations sell advertising time in the Jonesboro metro,[42] none of the named 15 stations is reported by BIA to have an audience share in the Jonesboro metro, and only two of these stations, KDRS-FM and KZLE(FM), have sufficient minimum listening share in Craighead County to be reported by BIA as out-of-market stations in the Jonesboro metro.[43] Further, while Applicants have not submitted a contour analysis to support their market definition theory, our own initial contour analysis indicates that most of the stations that Applicants cite do not place a city grade signal over Jonesboro. In light of these facts, we find that buyers of radio advertising time would not find a sufficient number of outlets outside of Craighead County so as to render unprofitable a small but significant and nontransitory price increase by a hypothetical monopolist of radio stations in the Jonesboro metro. Accordingly, we find that Applicants have failed to rebut the presumption that Craighead County is the relevant geographic market.

21. *Market Participants*. In addition to KNEA(AM), KKEY(FM), and the Clear Channel Stations, the following commercial radio stations are reported by BIA as having their home market in the Jonesboro metro: (1) KDEZ(FM) and KDXY(FM), Jonesboro, Arkansas, owned by Productions; (2) KJBX(FM), Trumann, Arkansas, owned by Enterprises[44]; and (3) KJBR(FM) and KJLV(FM), Jonesboro, Arkansas, owned by PBC.[45]

22. Clear Channel argues that KKEY(FM) and KJBX(FM) should not be counted as in-market stations because their cities of license are not located within Craighead County.[46] PBC contends that, because KKEY(FM) is located in Poinsett County, Arkansas, Poinsett County should be included in the geographic market definition.[47] We reject both arguments. 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 contours, listening audience, advertising customer base, and all other relevant factors indicate that it "currently produces or sells" in the relevant market or is an "uncommitted entrant[]" in that market.[48] Thus, KKEY(FM) and KJBX(FM) can be appropriately considered market participants in the Jonesboro metro even though their cities of license are located outside of Craighead County. Contrary to

[41] James Supp. Decl. at ¶ 2.

[42] These stations are KHLS(FM) and KLCN(AM), Blytheville, Arkansas; KWYN-FM, Wynne, Arkansas; KOKR(FM), Newport, Arkansas; KZLE(FM), Batesville, Arkansas; KTMO-FM, New Madrid, MO; KRLW-FM and KRLW(AM), Walnut Ridge, Arkansas; KTRQ(FM), Brinkley, Arkansas; KDRS-FM and KDRS(AM), Paragould, Arkansas; KOSE(AM), Osceola, Arkansas; KWOZ(FM), Mountain View, Arkansas; and KPOC(AM) and KPOC-FM, Pocahontas, Arkansas. *See* Pollack Supp. Decl. at 4-5, 8; James Supp. Decl. ¶ 7.

[43] The BIA database reports both the audience share and the revenue of these two stations as zero.

[44] As noted above, *see supra* ¶ 9, an application has been filed seeking Commission consent to allow Productions to acquire KJBX(FM) from Enterprises.

[45] The Commission has approved the assignment of KJBR(FM) and KJLV(FM) from PBC to Educational Media Foundation ("EMF"), a non-profit religious broadcaster. *See* Public Notice, Broadcast Actions, Rep. No. 45106 (Nov. 6, 2001). According to the Applicants, financing issues require that the sale of the two stations being acquired by EMF and the sale of the PBC Stations be consummated simultaneously. *See* Clear Channel Response at 2.

[46] Clear Channel Response at 4-5.

[47] PBC Response at 3; Pollack Supp. Decl. at 3.

[48] *See Horizontal Merger Guidelines* §§ 1.31, 1.32. Under the *Horizontal 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.

PBC's contention, moreover, KKEY(FM)'s inclusion does not mean that all of Poinsett County also must be included. Poinsett County, for example, may be an entirely separate market in which KKEY(FM) participates (a question we need not decide today).

23. The Applicants contend that "KDRS," owned by Productions and licensed to Paragould, Arkansas, also should be included as a market participant.[49] The Applicants contend that "KDRS" places a city grade signal over Jonesboro and actively sells advertising in Jonesboro in combination with Productions' in-market stations.[50] Pollack estimates that KDRS(AM) and KDRS-FM collectively earn approximately $250,000, or 60% of their advertising revenue, from Craighead County advertisers.[51] We agree that KDRS(AM) and KDRS-FM should be included in the market.[52] Their proximity to Jonesboro, their contour coverage of Jonesboro, and the fact that they have certain common owners and managers with the Productions stations in the Jonesboro metro leads us to conclude that they represent a competitive presence in the market.

24. The Applicants further contend that KTRQ(FM), Brinkley, Arkansas, should be included in the market because, as a result of a signal upgrade, it now places a "competitive signal" over Jonesboro and it sells advertising in Jonesboro.[53] We disagree. Even with the upgrade, KTRQ(FM)'s tower is over 50 miles from Jonesboro. Without more information, we cannot conclude that KTRQ(FM) should be considered a market participant in the Jonesboro market. The Applicants also contend that KRLW-FM is planning to upgrade its station to reach Jonesboro.[54] No application has been filed for this asserted upgrade, however, and we have no way of determining the competitive effect of a hypothetical upgrade at this time. Accordingly, we decline to count KRLW-FM as a market participant. In addition, as mentioned above, the Applicants claim that several other named stations should also be included in the Jonesboro market.[55] The only evidence to support the inclusion of such stations in the Jonesboro market is the Applicants' own estimates that these stations sell advertising in Jonesboro. We found this evidence unpersuasive when we addressed geographic market definition, and, aside from KDRS(AM) and KDRS-FM, we find likewise here. Finally, we note that, although PBC contends that more than 40 percent of listening in the Jonesboro metro is to out-of-market stations,[56] according to the BIA database, the vast majority of out-of-market station listening is to stations located in Memphis, which we conclude, because of distance and relative market size, are not participants in the Jonesboro radio market.

25. *Market share and market concentration*. Under the interim policy, we presume that BIA

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[49] The Applicants do not specify whether "KDRS" refers to KDRS(AM) or KDRS-FM, both owned by Productions and licensed to Paragould, Arkansas. KDRS(AM) and KDRS(FM) have principal community contours that substantially overlap each other.

[50] Clear Channel Response at 5; Declaration of William H. Pollack ("Pollack Decl.") ¶ 12, attached to Clear Channel Response; Declaration of Barbara Nelson, Business Manager, Clear Channel ("Nelson Decl.") ¶ 2, attached to Clear Channel Response.

[51] Pollack Supp. Decl. at 7.

[52] For the purposes of our analysis of this case, we need not decide whether KDRS(AM) and KDRS-FM are current participants or "uncommitted entrants" in the Jonesboro radio advertising market. *See Horizontal Merger Guidelines* § 1.32.

[53] Clear Channel Response at 5; Pollack Decl. ¶ 12; Pollack Supp. Decl. at 7.

[54] Clear Channel Response at 5; Pollack Decl. ¶ 12; Pollack Supp. Decl. at 7.

[55] *See supra* ¶ 20.

[56] Pollack Supp. Decl. at 4.

revenue share estimates accurately reflect actual market shares. According to the BIA database, radio stations that are home to the Jonesboro metro market generate $5,900,000 in radio advertising revenues. Using BIA data for Year 2001, the pre-transaction market structure in the Jonesboro metro is as follows:

	Market Share	Market Revenue
Clear Channel	55.5%	$3,275,000
PBC[57]	11.4%	$675,000
Productions	28.0%	$1,650,000
Enterprises[58]	5.1%	$300,000
Total	100%	$5,900,000

26. The Applicants propose certain adjustments to these numbers. They assert that Productions and Enterprises collectively had revenues of $2,500,000 in 2001.[59] In addition, they assert that Productions' KDRS(AM) and KDRS-FM, which are not considered by BIA to be in-market stations in Jonesboro, collectively earned $250,000 from Jonesboro metro advertisers.[60] BIA, in contrast, reports no revenue for KDRS-FM and does not name KDRS(AM) in its listing of out-of-market stations in Jonesboro. In a separate proceeding, Productions has informed the Commission that it reports its and Enterprises' revenue figures to BIA.[61] Consequently, we decline to adjust the figures reported by BIA for Productions and Enterprises.

27. Pollack also states that the two PBC Stations earned $170,000 in 2001.[62] However, Barbara Nelson, Business Manager for Clear Channel in the Jonesboro market, states that the station revenues for the same two PBC Stations for the last five months of 2001 (during which time Clear Channel began brokering the PBC Stations pursuant to a Local Marketing Agreement ("LMA")) was $219,834.[63] Given this significant discrepancy, we decline to adopt either proposed adjustment. Finally, Clear Channel asserts that its three Jonesboro stations earned revenues of $2,776,069 in 2001.[64] In the absence of any evidence to the contrary, we accept Clear Channel's representation concerning the revenues earned by its own stations.

28. Based on the BIA revenue estimates for 2001 and the adjustments indicated in the preceding paragraph, we find that, after the transaction, Clear Channel will have a market share of 58.3 percent. This will result in an increase in the HHI for the Jonesboro market of 637, with a total post-transaction HHI of 4399 if the assignment of KJBX(FM) from Enterprises to Productions is not approved and

[57] The two stations that EMF proposes to purchase from PBC (*see supra* note 46) account for five percentage points of PBC's 11.4 percent market share.

[58] These data are for the station that Enterprises seeks to sell to Productions. *See supra* ¶ 9.

[59] Pollack Decl. ¶ 2.

[60] Pollack Supp. Decl. at 7.

[61] *See* Letter from Frank R. Jazzo, Fletcher, Heald & Hidreth, to Peter H. Doyle, Chief, Audio Services Division, Mass Media Bureau (Feb. 7, 2002), *filed in* FCC File No. BALH-20010604AAW, regarding the assignment of license for KJBX(FM). To the extent that KDRS(AM) and KDRS-FM are merely uncommitted entrants in the Jonesboro radio advertising market, it may explain their lack of reportable revenue from that market. *See supra* note 53.

[62] Pollack Decl. ¶ 3.

[63] Nelson Decl. ¶ 3.

[64] Nelson Decl. ¶ 3.

consummated, and 4738 if such assignment is approved and consummated.

29. *Potential for harm to advertisers and listeners.* The Applicants argue that the proposed transaction will not harm advertisers or listeners because the PBC Stations are currently in financial distress and, absent this transaction, are likely to go off the air.[65] To support this argument, PBC submitted financial data, some of it with a request for confidentiality, indicating that KKEY(FM) and KNEA(AM), as well as PBC's two other stations in the Jonesboro metro, have required the significant and constant infusions of new capital by Pollack since PBC acquired the four stations in June 2000.[66] According to Pollack, the financial losses were mitigated in the summer of 2001 only because Clear Channel had started making payments pursuant to the LMA that it had entered into contemplating this transaction.[67] Pollack asserts that he would be unable to continue sustaining the negative cash flow that would inevitably result if the LMA were terminated, which Pollack asserts would occur if the proposed transaction were disapproved.[68]

30. According to PBC, moreover, Clear Channel is the only willing purchaser of the stations. PBC asserts that it engaged Sunbelt Media, a radio broker specializing in mid-South broadcast stations, to find a purchaser for KKEY(FM) and KNEA(AM).[69] PBC submitted to us a copy of a letter from William N. Cate, President of Sunbelt Media, in which Cate opines that Clear Channel is the "only buyer who has the ability and willingness to acquire these two stations."[70] Pollack asserts that, prior to reaching an agreement with Clear Channel, he sought to sell KKEY(FM) and KNEA(AM) to Productions.[71] After several months of discussions, Productions declined to purchase the stations.[72] Pollack also indicates that he tried unsuccessfully to sell the two stations to at least two other companies that own radio stations in the vicinity of Jonesboro.[73] In addition, the record indicates that, before PBC purchased KKEY(FM) and KNEA(AM) in 2000, the prior owners also had significant difficulty in finding a buyer for these stations.[74] The Applicants assert that the economic downturn will make it even more difficult to find a buyer for the stations other than Clear Channel.[75]

31. We have carefully examined the Applicants' submissions concerning the financial health of KKEY(FM) and KNEA(AM). Based on the record, we find that these stations have in fact been operating with a negative cash flow for a significant period of time. We also note that the four stations owned by PBC generally have the lowest audience shares of the three major radio station groups in the

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[65] Clear Channel Response at 7; PBC Response at 1; Pollack Supp. Decl. at 2.

[66] Pollack Supp. Decl. at 1-2; PBC Supp. Response at 3.

[67] Pollack Supp. Decl. at 2.

[68] *Id.*

[69] *Id.* at 1; PBC Supp. Response, Exh. B.

[70] *See* PBC Supp. Response, Exh. B at 2.

[71] *Id.*; Pollack Supp. Decl. at 1.

[72] PBC Supp. Response, Exh. B at 2; Pollack Supp. Decl. at 1.

[73] Pollack Supp. Decl. at 1.

[74] Pollack Decl. ¶ 5; PBC Supp. Response, Exh. B at 1.

[75] Clear Channel Response at 7; PBC Supp. Response, Exh. B at 2.

Jonesboro market.[76] We further find, based on the record, that PBC has made a good faith attempt to locate buyers other than Clear Channel for KKEY(FM) and KNEA(AM). We believe that, absent intervention, it is unlikely that station performance will improve or that PBC will be able to maintain the operation of these stations for a significant period of time. In light of the financial exigencies surrounding the stations and the lack of any other buyers willing to purchase them, we believe that KKEY(FM) and KNEA(AM) are likely to go off the air if the instant transaction is not approved.

32. We also find that it is likely that Clear Channel's ownership of KKEY(FM) and KNEA(AM) will improve the financial performance of the stations. Clear Channel is a large company with significant resources. Although PBC has obtained a construction permit to upgrade KKEY(FM) from 6 kW to 50 kW, it has been unable to obtain the funding necessary to complete the upgrade.[77] Clear Channel plans to do so.[78] Moreover, the proposed transaction should result in certain efficiencies that may improve station performance. Clear Channel estimates that it will be able to operate KKEY(FM) and KNEA(AM) at 33 percent less cost than PBC currently does.[79] According to Clear Channel, these cost savings will stem from consolidation of facilities, personnel, and "backroom" functions such as accounting, as well as from the ability to obtain lower-priced supplies through bulk purchases.[80] These efficiencies and Clear Channel's significant resources should help ensure continued operation of KKEY(FM) and KNEA(AM).

33. Given the record evidence that KKEY(FM) and KNEA(AM) will likely go off the air if the applications before us are not granted, we find that we do not need to designate these applications for hearing to determine the impact of post-transaction concentration levels on advertisers or listeners. Although the Jonesboro market will become more concentrated after consummation of the transaction, the impact on advertising rates will not be materially different than if KKEY(FM) and KNEA(AM) were to go off the air. Similarly, because the likely alternative to the transaction is that KKEY(FM) and KNEA(AM) will become silent, we find that any harm to listeners is outweighed by the substantial benefit they receive in having continued access to two additional radio outlets in Jonesboro. 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.[81]

34. *Efficiencies and other 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

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[76] Productions and Clear Channel each currently own two stations in the metro that have an audience share of greater than 10 percent. PBC has no stations in the metro with that high a rating. Moreover, PBC's KNEA(AM) is the lowest rated AM station in the metro, and the two stations that PBC intends to sell to EMF are the two lowest rated FM stations in the metro.

[77] Pollack Decl. ¶ 6.

[78] Clear Channel Response at 3; Declaration of Larry S. James ("James Decl.") ¶ 5, attached to Clear Channel Response.

[79] Clear Channel Response at 8; James Decl. ¶ 3.

[80] Clear Channel Response at 8.

[81] In light of our conclusion, we do not need to consider whether entry into the Jonesboro radio market is likely.

those benefits will flow through to listeners or advertisers. The Applicants argue that the proposed transaction will produce several efficiencies and other public interest benefits. We already have discussed some of these efficiencies and benefits in the preceding paragraphs, and as discussed above, we find that maintaining continued operation of KKEY(FM) and KNEA(AM) is a public interest benefit supporting grant of these applications. In addition, Clear Channel states that KKEY(FM) and KNEA(AM) will have access to its subscription to the Associated Press wire and the Nex-Rad-Storm Sentry warning system,[82] and that all five stations owned by Clear Channel will have a full time news director to cover local news.[83] Clear Channel further asserts that KKEY(FM) and KNEA(AM) will have access to its power generator to guard against power outages. Clear Channel also plans to have KKEY(FM) and KNEA(AM) join with the Clear Channel Stations in promoting and sponsoring community events, air public service announcements, and provide daily weekday community issues and events programming.[84] Finally, Clear Channel asserts that the PBC Stations would participate in Clear Channel's internship program.[85] We do not decide the sufficiency of these asserted benefits because we find that the public interest benefit of maintaining continued operation of the PBC Stations sufficient to support grant of these applications.

IV. CONCLUSION

35. Based on the foregoing analysis, we find no substantial and material questions of fact as to the effect of the proposed transaction on competition that would warrant further inquiry. In addition, we have reviewed the assignment applications and find that the Clear Channel is qualified and that grant of the transaction is consistent with the public interest, convenience and necessity.

V. ORDERING CLAUSES

36. ACCORDINGLY, IT IS ORDERED, That the application to assign the license for station KNEA(AM), Jonesboro, Arkansas, from Pollack Broadcasting Company Jonesboro, LLC to Clear Channel Broadcasting Licenses, Inc. (File No. BAL-20010724ABN) IS GRANTED.

37. IT IS FURTHER ORDERED, That the application to assign the license for station KKEY(FM), Harrisburg, Arkansas, from Pollack Broadcasting Company Jonesboro, LLC to Clear Channel Broadcasting Licenses, Inc. (File No. BALH-20010724ABM) IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[82] Clear Channel Response at 3; James Decl. ¶ 4.

[83] Clear Channel Response at 3; James Decl. ¶ 4.

[84] Clear Channel Response at 3; James Decl. ¶ 5.

[85] Clear Channel Response at 4; James Decl. ¶ 10.