**SNOW DATE:** Tuesday, January 21, 1997; 1:30 p.m., Brown County Courthouse, 148 West 4th Street, Ainsworth, Nebraska.

**AGENDA:** (1) Discussion of the counties progress in developing a management council for the Niobrara NSR; (2) Discussion of the hearings held in Lincoln on December 14, 1996, regarding state assistance; (3) The opportunity for public comment and proposed agenda, date, and time of the next Advisory Group meeting. The meeting is open to the public. Interested persons may make oral/written presentation to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chairman at the beginning of the meeting. In order to accomplish the agenda for the meeting, the Chairman may want to limit or schedule public presentations. The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

**FOR FURTHER INFORMATION CONTACT:** Superintendent Warren Hill, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, or at 402–336–3970.

**SUPPLEMENTARY INFORMATION:** The Advisory Commission was established by the law that established the Niobrara National Scenic River, Public Law 102–50. The purpose of the group, according to its charter, is to advise the Secretary of the Interior on matters pertaining to the development of a management plan, and management and operation of the Scenic River. The Niobrara National Scenic River includes the 40-mile segment from Borman Bridge southeast of Valentine, Nebraska to its confluence with Chimney Creek; and the 30-mile segment from the confluence with Rock Creek downstream to State Highway 137.

Dated: December 12, 1996.

William W. Schenk,

*Field Director, Midwest Field Area.*

[FR Doc. 96–32311 Filed 12–19–96; 8:45 am]

**BILLING CODE 4310–70–P**

## Sleeping Bear Dunes National Lakeshore Advisory Commission; Notice of Meeting

**SUMMARY:** This notice sets the schedule for the forthcoming meeting of the Sleeping Bear Dunes National Lakeshore Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

**DATE, TIME, AND ADDRESSES:** Friday, March 21, 1997; 9:30 a.m. until 12 noon.

**AGENDA:** Sleeping Bear Dunes National Lakeshore Headquarters Empire, Michigan. The Chairman's welcome; minutes of the previous meeting; update on park activities; old business; new business; public input; next meeting date; adjournment. The meeting is open to the public.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Sleeping Bear Dunes, Ivan Miller, 9922 Front Street, Empire, Michigan 49630; or telephone 616–326–5134.

**SUPPLEMENTARY INFORMATION:** The Advisory Commission was established by the law that established the Sleeping Bear Dunes National Lakeshore, P.L. 91–479. The purpose of the commission, according to its charter, is to advise the Secretary of the Interior with respect to matters relating to the administration, protection, and development of the Sleeping Bear Dunes National Lakeshore, including the establishment of zoning by-laws, construction, and administration of scenic roads, procurement of land, condemnation of commercial property, and the preparation and implementation of the land and water use management plan.

Dated: December 12, 1996.

William W. Schenk,

*Field Director, Midwest Field Area.*

[FR Doc. 96–32312 Filed 12–19–96; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. Jacor Communications, Inc. et al.; Comments Relating to Proposed Modified Final Judgment and Response of United States to Comments

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(c)–(h), the United States published below the comments received on the proposed Modified Final Judgment in *United States of America* v. *Jacor Communication, Inc. et al.,* Civil Action C–1–96–757, filed in the United States District Court for the Southern District of Ohio, together with the Response of the United States to the comments.

Copies of the comments and Response are available for inspection and copying in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, D.C. 20530 (telephone: (202) 514–2481), and at the Office of the Clerk of the United States District Court for the Southern District of Ohio. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

*Director of Operations.*

Comments Relating to Proposed Modified Final Judgment and Response of United States to Comments

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § (b)–(h) (''APPA''), the United States of America hereby files the public comments it has received relating to the proposed Modified Final Judgment in this civil antitrust proceeding, and herein responds to the public comments.

I. Background

This action was commenced on August 5, 1996, when the United States filed a civil antitrust Complaint under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, alleging that the proposed acquisition of Citicasters, Inc. (''Citicasters'') by Jacor Communication, Inc. (''Jacor'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The complaint alleges that the combination of these companies would substantially lessen competition in the sale of radio advertising time in Cincinnati, Ohio and the surrounding areas. Also on August 5, the United States filed a proposed Final Judgment that would allow the acquisition to proceed provided that Jacor divest the assets of Cincinnati radio station WKRQ–FM. At the same time, the government filed a Competitive Impact Statement explaining the basis for the Complaint and the provisions of the proposed Final Judgment.

On September 16, 1996, the United States filed a Modified Final Judgment with the Court superseding the original Final Judgment. The Modified Final Judgment clarified the obligation of Jacor under Section IX of the Judgment to file notice with the Department of Justice for certain types of transactions. At the same time, the United States filed a stipulation in which the parties consented to the entry of the Modified Final Judgment after completion of the

procedures required by the APPA. The United States published notice of the Modified Final Judgment in the Federal Register on September 27, 1996 and in appropriate newspapers beginning on September 22, 1996.

II. Compliance with the APPA

The APPA requires a 60-day period for the submission of public comments on the proposed Modified Final Judgment, 15 U.S.C. § 16(b). In this case, the 60-day comment period began on September 27, 1996 and terminated on November 26, 1996. During this period, the United States received comments from two interested parties. Sabre Communications, Inc. and John J. Oezer, a Cincinnati resident.[1] The United States responds herein to these comments. Upon publication in the Federal Register of these comments and of this Response of the United States to these comments pursuant to 15 U.S.C. § 16(d) of the APPA, the procedures required by the APPA prior to entry of the proposed Modified Final Judgment will be completed. The United States will then certify that the requirements of the Tunney Act have been satisfied and move for entry of the proposed Modified Final Judgment.[2]

III. Response to Public Comments

The United States has reviewed the comments received and believes that neither one addresses the issue of whether entry of the proposed Modified Final Judgment is in the public interest. We, however, summarize the comments below and briefly respond to the issues raised.

Sabre Communications, Inc. in its comments contends that no radio station owner could exercise market power because radio competes with other forms of advertising, and because only 7% of overall advertising dollars are spent on radio. As the United States discusses at length in Section II of the Competitive Impact Statement, radio is a separate market for antitrust purposes because it possesses unique qualities compared to other advertising media. Many Cincinnati advertisers would consequently continue to purchase radio advertising even in the fact of a 5 to 10% price increase, evidence that a radio station owner could successfully raise advertising rates if it possessed market power. Sabre also suggested that the position taken by the United States in this case contradicted Congress' intent in enacting the Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56, 111 (1996), which eased previous FCC limits on common ownership of radio stations. Sabre, however, ignores Section 601(b)(1) of the Act which explicitly provides that ''nothing in the Act * * * shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws.'' 110 Stat. at 141 (1996). Thus, Congress intended radio station mergers to still be subject to challenge under the antitrust law.

In his comment, John J. Oezer of Cincinnati urges the United States not to permit the Jacor/Citicasters merger because it would result in monopolistic control over the content of programming and advertising in the Cincinnati area. The United States has, however, evaluated the impacts of the Jacor/Citicasters merger and has challenged it under the antitrust laws. The issue before the Court is whether the Modified Final Judgment that requires the divesture of WKRQ–FM is adequate to remedy the violations contained in the complaint. Mr. Oezer's comments do not address the adequacy of the proposed relief, but raise issues about other types of media, such as TV and newspapers, that are not presently before the Court.

IV. Standard of Review

Pursuant to 15 U.S.C. 16(e), the proposed Modified Final Judgment cannot be entered unless the Court determines that it is in the public interest. The focus of this determination is whether the relief provided by the proposed Modified Final Judgment is adequate to remedy the antitrust violations alleged in the Complaint. *United States* v. *Bechtel Corp.*, 648 F.2d 660, 665–66 (9th Cir.), *cert denied*, 454 U.S. 1083 (1981), *quoted with approval in United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1457–58, *see also* 56 F.3d at 1459–60 (D.C. Cir. 1995). In the recent *Microsoft* decision by the United States Court of Appeals for the District of Columbia Circuit, which reversed the district court's refusal to enter an antitrust consent decree proposed by the United States, the court of appeals held that the provision in Section 16(e)(1) of the Tunney Act allowing the district court to consider ''any other considerations bearing upon the adequacy of such judgment,'' does not authorize extensive inquiry into the conduct of the case. 56 F.3d at 1458–60. The court of appeals concluded that ''Congress did not mean for a district judge to construct his own hypothetical case and then evaluate the decree against that case.'' *Id.* To the contrary, ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' and so the district court ''is only authorized to review the decree itself,'' not other matters that the government might have but did not pursue. *Id.*

Under the public interest standard, the Court's role is limited to determining whether the proposed decree is within the ''zone of settlements'' consistent with the public interest, not whether the settlement diverges from the Court's view of what would best serve the public interest. *United States* v. *Western Electric Co.*, 993 F. 2d 1572, 1576 (quoting *United States* v. *Western Electric Co.*, 900 F.2d 283, 307 (D.C. Cir. 1990)); *United States* v. *Microsoft Corp.*, 56 F.3d at 1460. Moreover, the Court should give a request for entry of a proposed decree even more deference than a request by a party to an existing decree for approval of a modification, for in dealing with an initial settlement the Court is unlikely to have substantial familiarity with the market involved. *United States* v. *Microsoft Corp.*, 56 F.3d at 1460–61.

> Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977). The Court may reject the agreement of the parties as to how the public interest is best served only if it has ''exceptional confidence that adverse antitrust consequences will result * * *'' *United States* v. *Western Electric Co.*, 993 F.2d at 1577 (D.C. Cir.), *cert. denied*, 114 S. Ct. 487 (1993), *quoted with approval in United States* v. *Microsoft Corp.*, 56 F.3d at 1460.

V. Conclusion

After careful consideration of the comments, the United States continues to believe that, for the reasons stated herein and in the Competitive Impact Statement, the proposed Modified Final Judgment is adequate to remedy the antitrust violations alleged in the Complaint. There has been no showing that the proposed settlement constitutes an abuse of the United States' discretion or that it is not within the zone of settlements consistent with the public interest. Therefore, the Court should

[1] These comments are attached as Exhibits A & B.

[2] Until these events have taken place, and the United States has certified that the requirements of the Tunney Act have been met, the Court should not rule on entry of the proposed Modified Final Judgment.

find entry of the proposed Modified Final Judgment to be in the public interest, after the United States has completed the procedures mandated by the Tunney Act and moved for entry of judgment.

Dated: December 5, 1996.

Respectfully submitted,

Andrew S. Cowan,

*Attorney, Telecommunications Task Force, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Room 8104, Washington, D.C. 20001, (202) 514–5621.*

Edmund A. Sargus, Jr.,

*United States Attorney.*

Jan M. Holtzman,

*Ohio Bar #0017949, Assistant United States Attorney, Rm. 220, Potter Stewart Federal Courthouse, 5th & Walnut Streets, Cincinnati, Ohio 45202, (513) 684–3711.*

*Certificate of Service*

I hereby certify that on this date I have caused to be served by first class mail, postage prepaid, or by hand, if so indicated, a copy of the foregoing Response to Public Comment upon the following person, counsel for defendants in the matter of *United States of America* v. *Jacor Communications, Inc., and Citicasters, Inc.*

Phillip A. Proger, Esquire, Jones, Day, Reavis & Pogue, 1450 G Street, NW, Washington, D.C. 20005–2088, Counsel for Defendant, Jacor Communications, Inc.—BY HAND

Dated: December 5, 1996.

Respectfully submitted,

Andrew S. Cowan,

*Attorney, Telecommunications Task Force, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Room 8104, Washington, D.C. 20001, (202) 514–5621.*

Sabre Communications Inc.

August 15, 1996.

Mr. Donald J. Russell,

*Chief, Telecommunications Task Force, Antitrust Division, U.S Department of Justice, Room 8104, 555 Fourth Street, NW, Washington, DC 20001.*

Dear Mr. Russell: After reading various accounts of the Justice Department's investigation re: the Jacor Broadcasting/Citicasters acquisition as it applies to the Cincinnati market, I have concluded that the Department has made a dreadful decision probably because it failed to grasp the essence of the advertising business and arrived at faulty conclusions after comparing apples to oranges.

Obviously the Department is concerned about a monopoly, but in this case, monopoly is impossible. Please note that, while it is true that the purchase of radio advertising is often decided by determining specific demographic groups reached by individual stations, it is also fact that radio captures only 7% of all advertising dollars (in a typical US market, the local newspaper annually generates more revenue from classified ads than that revenue generated by all of the radio stations combined). This means that 93% of all advertising dollars are spent elsewhere. Advertisers have a multitude of choices other than a couple of radio stations, among them, newspaper, newspaper inserts, magazines, penny savers, specialty publications, TV [also *very* demographically specific], cable [much different from broadcast TV], billboards, direct mail [again, very demographically specific], matchbook covers and other specialty items, other radio stations, etc. And advertisers use *those* media (not radio), and spend 93% of their dollars doing it. By the way, don't tell any of the ''other'' media that they ''. . . lack . . . ability to provide efficient targeting.'' Each believes that they provide efficiency better than radio or any of the others, and they passionately present that case to advertisers every day. All in the spirit of true competition!

Radio a monopoly? Under no circumstances! Even though there are over 10,000 commercial radio stations in the United States, the pure fact is that if one person owned every one of them, that person still could never achieve a monopoly over either the spending of advertising dollars or the opportunity for the advertiser to reach consumers in any of the various demographic groups. That is unless 7% of something has suddenly become a monopoly. Anyway, the topic is moot because owning all radio stations in any given market is not only impractical, it is against the law.

I would suggest that if the Department is truly interested in investigating advertising monopolies it should investigate the newspaper business. Almost every market in our country has only one newspaper thereby giving every potential newspaper advertiser no choice. Where I went to school, we were taught that one was the ultimate monopoly and monopoly meant no choice.

My recommendation is that the Justice Department spend some time learning about the advertising business and the fierce competition that exists between the media. The result of that effort will be a clear understanding that, given radio's tiny piece of the advertising pie and the multitude of choices offered to the advertiser, monopoly is impossible and that, in this instance, the Congress of the United States and the Federal Communications Commission have got it right.

Respectfully,

Paul H. Rothfuss,

*President, Sabre Communications, Inc.*

Mr. Donald J. Russell,

*Chief, Telecommunications Task Force, Antitrust Div., Department of Justice, Room 8104, 555 Fourth St N.W., Washington, D.C. 20001.*

Dear Sir:

Re. civil suit no. C–1–97–757.

We think that you should be made aware that the citizens in Cincinnati, Hamilton County, and the Tristate area in southwest Ohio are finding it more and more difficult to get unbiased news and programming on radio, TV, and newspapers. Of the two daily Cincinnati newspapers, one is owned by the other. Jacor Communications already owns and puts Mr. Michael's ''flavor'' on several local radio stations. Three major TV stations are affiliated with networks which are owned by other corporate giants. WLW–TV, ch. 5 is the local NBC affiliate. NBC is owned by G.E. Co. and we seldom hear anything negative about G.E products, especially Jet Aircraft engines, even if there is news.

Advertising in the electronic media is becoming unbearable. In the past, programs were separated by a respectable number of informative commercials. Today, loud, hectic, demanding commercials are separated by brief segments of programs lasting only 3 to 5 minutes.

Indepth news lasting more than 90 seconds is available only on PBS, and our very own government is trying to abolish PBS!! Please don't compound the abusive assault on our radio listening senses by allowing Jacor to swallow up Citicasters Inc., thus giving Jacor a near monolistic control over program content and advertising in our Tristate area, with a population of about 2 million people.

To illustrate how controlled the local news already is, about 6 months ago we were active in a local tax issue and our group, which had the backing of a large number of petitioners could not get equal news coverage on any of the news media unless we paid for it. The opposing side, favored by the news media, got free ''news bits'' every day, giving the voters one side of the issues of a very controversial tax.

Please deny this monopolistic acquisition an keep healthy competition alive.

Respectfully yours,

John J. Oezer,

*PE, 5050 Miami Road, Indian Hill, Cincinnati, Ohio 45243.*

[FR Doc. 96–32339 Filed 12–19–96; 8:45 am]

BILLING CODE 4410–01–M

## Notice Pursuant to the National Cooperative Research and Production Act of 1993—Biotechnology Research and Development Corporation (''BRDC'')

Notice is hereby given that, on December 6, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Biotechnology Research and Development Corporation (''BRDC'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain supplemental and additional information regarding (1) the identities of the parties to BRDC and (2) the nature and objectives of BRDC. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Hewlett