

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

In The Matter of The Application of)
Pressly Enterprises, LLC)
Assignor)
and) File No. BALH-20010604AAW
Pressly Partnership Productions, Inc.)
Assignee)
For Consent to Assignment of License of)
KJBX(FM), Trumann, Arkansas)

MEMORANDUM OPINION AND ORDER

Adopted: July 15, 2002

Released: July 18, 2002

By the Commission:

1. In this order, we consider the above-captioned application of Pressly Partnership Productions, Inc. ("Productions") to acquire the license of station KJBX(FM), Trumann, Arkansas, from Pressly Enterprises, LLC ("Enterprises"). 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 this application pursuant to the interim policy adopted in that notice. After reviewing the record, we find that grant of this 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. 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. 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 has received applications proposing transactions that would comply with the new limits, but that

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).

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 of the flagged transaction indicates that the Commission intends to subject the proposed transaction to further competitive review and seeks comment 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 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.

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.*

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 prejudice 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 application before us pursuant to our interim policy. Under our interim policy, we first conduct a competition analysis of the proposed transaction. In this case, we find that the proposed transaction is unlikely to harm competition or otherwise adversely affect the public interest. Productions and Enterprises are closely related entities through certain common owners, officers, and directors who are close family members.¹³ As a result, we find it extremely unlikely that Productions and Enterprises would behave as true competitors for advertisers or listeners, regardless of our decision in this case. Accordingly, we grant the application to permit Productions to acquire KJBX(FM) from Enterprises.

II. BACKGROUND

8. Productions currently owns two stations in the Jonesboro metro: KDEZ(FM), Jonesboro, Arkansas, and KDXY(FM), Lake City, Arkansas (collectively, the “Productions Stations”). It proposes to acquire one additional station, KJBX(FM), Trumann, Arkansas, which also is assigned to the Jonesboro metro.¹⁴

9. On June 6, 2001, the Commission issued a public notice indicating that the subject application had been accepted for filing.¹⁵ Based on Year 2001 revenue estimates from the BIA¹⁶ database, the three stations that Productions proposes to own account for a 33.1 percent revenue share in the Jonesboro Arbitron metro.¹⁷ Post-consummation, Productions and Clear Channel would collectively

¹⁰ *Id.* at 19894 ¶ 84.

¹¹ *Id.*

¹² *Id.* at 19895 ¶ 86.

¹³ *See infra* ¶¶ 21-24.

¹⁴ A metro is a metropolitan area defined by Arbitron and used by radio stations and radio advertisers.

¹⁵ *See* Public Notice, Broadcast Applications, Report No. 25001 (June 6, 2001).

¹⁶ 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.

¹⁷ Productions’ post-merger market share, as reported by BIA, is higher today than when public notice of the application was issued because BIA has since updated its database to reflect Year 2001 revenue estimates.

control 88.6 percent of the advertising revenue in the Jonesboro metro. In addition, the Commission has previously granted applications by Clear Channel to acquire two radio stations in the Jonesboro metro owned by Pollack Broadcasting Company Jonesboro, LLC (“PBC”).¹⁸ If the instant transaction and the Clear Channel-Pollack transaction are both 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.¹⁹ 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. Productions filed a response on February 7, 2002.²⁰ On July 3, 2002, Productions filed an amendment to its application to reflect (1) the recent consummation of the sale by Enterprises of two of its stations, KDRS(AM) and KDRS-FM, Paragould, Arkansas, to MOR Media, Inc. and (2) the filing of an application by Productions for a construction permit to modify the facilities of KDEZ(FM).²¹

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 Enterprises’ radio broadcast license to Production before the assignment may occur.²² We are making that finding in this case pursuant to the interim policy laid out in the recently issued *Local Radio Ownership NPRM*.²³ 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.²⁴

¹⁸ See *Applications of Pollack Broadcasting Company Jonesboro, LLC, Assignor, 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, FCC 02-184 (rel. June 28, 2002) (“*Clear Channel Order*”). As of July 15, 2002, we have not received notice of consummation of this transaction.

¹⁹ Letter from Peter H. Doyle, Chief, Audio Services Division, Mass Media Bureau, to Frank R. Jazzo, Fletcher, Heald & Hidreth, PLC (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.

²⁰ See Letter from Frank R. Jazzo, Fletcher, Heald & Hidreth, to Peter H. Doyle, Chief, Audio Services Division, Mass Media Bureau (Feb. 7, 2002) (“Productions Response”).

²¹ See Letter from Frank R. Jazzo, Fletcher, Heald & Hidreth, to Roy J. Stewart, Chief, Office of Broadcast License Policy, Media Bureau (July 5, 2002) (“Productions Amendment”). The modification application was accepted for filing and is pending. See FCC File No. BPH-20020516AAA.

²² 47 U.S.C. § 310(d).

²³ See *Local Radio Ownership NPRM*, 16 FCC Rcd at 19894-97 ¶¶ 84-89.

²⁴ *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.²⁵

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"²⁶ in the advertising market, our focus is different.²⁷ 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."²⁸ 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.²⁹ Our public interest analysis therefore includes assessing whether the transfer will affect the quality of radio services

²⁵ *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").

²⁶ 15 U.S.C. § 18.

²⁷ 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.").

²⁸ 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*").

²⁹ 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,³⁰ and whether it will result in the provision of new or additional services to listeners.³¹

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.³² 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.³³ Under the rules, as amended by the 1996 Act, 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.³⁴

16. We find that Productions' proposed acquisition of KJBX(FM) is consistent with the numerical limits in our local radio ownership rule. Production's multiple ownership showing indicates that, using the Commission's current definition of "radio market,"³⁵ the transaction creates one radio market formed by the mutually overlapping principal community contours of KJBX(FM), KDEZ(FM), and KDXY(FM). In this market, there are at least 16 commercial radio stations, as calculated pursuant to our local radio ownership rule,³⁶ and a single licensee may therefore own up to six radio stations, no more than four of which are in the same service (AM or FM). If Productions acquires KJBX(FM), it will own three FM stations in this market. The transaction therefore complies with the local radio ownership rule.

C. Public Interest Analysis Under Interim Policy

17. In the interim policy, we stated that, consistent with precedent, we will continue to examine

³⁰ 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).

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

³² 47 C.F.R. § 73.3555(a).

³³ *Id.*; see *Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996*, 11 FCC Rcd 12368 (1996).

³⁴ See 1996 Act, § 202(b)(1); 47 C.F.R. § 73.3555(a)(1).

³⁵ See *Definition of Radio Markets*, Notice of Proposed Rule Making, 15 FCC Rcd 25077 (2000) ("*Radio Market Definition NPRM*"); 47 C.F.R. § 73.3555(a)(3).

³⁶ The number of stations in the market may be higher, depending on whether Productions' application to modify KDEZ(FM) is granted. See *supra* ¶ 10.

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.³⁷ Productions seeks to rebut this presumption. According to Productions, the relevant product market includes newspaper and television advertising.³⁸ Productions also argues that no category of advertisers views radio advertising as “critical,” and that, because of the small size of the Jonesboro market, advertisers view other media as substitutes for radio advertising.³⁹ We find that Productions has not rebutted the presumption that radio advertising is the relevant product market. We previously have rejected the argument that the use of other media by advertisers by itself is sufficient to rebut the product market presumption of our interim policy.⁴⁰ Under standard competition analysis, alternative media would be included in the relevant product market only if their presence would preclude a hypothetical monopolist of radio advertising from profitably raising prices by a “small but significant and nontransitory” amount.⁴¹ Productions fails to make this showing.

19. *Geographic market and market participants.* Although Productions notes that it sells advertising outside of the Jonesboro metro and that the listening share of out-of-market stations⁴² is relatively high, Productions does not seriously attempt to rebut the presumption that the Jonesboro metro is the relevant geographic market for competition analysis.⁴³ Similarly, Productions does not dispute that the in-market and out-of-market stations listed in the BIA database are a “complete and accurate” indication of market participants, except to note that the BIA database figures appear to presume the consummation of certain pending transactions.⁴⁴ Accordingly, we will rely on BIA data for purposes of this decision.

³⁷ *Local Radio Ownership NPRM*, 16 FCC Rcd at 19895 ¶ 86.

³⁸ Productions Response at 6-7.

³⁹ *Id.*

⁴⁰ See *Great Scott Broadcasting*, Memorandum Opinion and Order, FCC 02-52, at ¶ 20-21 (rel. Mar. 19, 1992).

⁴¹ See, e.g., *Horizontal Merger Guidelines*, issued by the U.S. Department of Justice & Federal Trade Commission, Apr. 2, 1992, revised Apr. 8, 1997 (“*Horizontal Merger Guidelines*”) §§ 1.1, 1.12.

⁴² 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 metro, but that have a “home market” in another Arbitron metro or in a county that is not part of an Arbitron metro.

⁴³ See Productions Response at 8.

⁴⁴ *Id.* at 9. See *infra* note 45.

20. *Market shares and market concentration.* Under the interim policy, we presume that BIA revenue share estimates accurately reflect actual market shares. According to the BIA database, radio stations that are home to the Jonesboro metro generate \$5,900,000 in radio advertising revenues. Using BIA data, the pre-transaction market structure in the Jonesboro metro is as follows:

| | Market Share | Market Revenue |
|-------------------|--------------|----------------|
| Clear Channel | 55.5% | \$3,275,000 |
| PBC ⁴⁵ | 11.4% | \$675,000 |
| Productions | 28.0% | \$1,650,000 |
| Enterprises | 5.1% | \$300,000 |
| Total | 100% | \$5,900,000 |

Productions states that, because it provides revenue figures to BIA for itself and for the Enterprises stations, which Productions operates pursuant to a local marketing agreement, it can confirm that the revenue figures for Productions and Enterprises are correct.⁴⁶ Productions contends, however, that it cannot verify its market share because it is unaware of the correct revenue figures for the other radio stations in the Jonesboro market.⁴⁷ Productions concedes that it “has no reason to believe its proposed advertising revenue share is significantly more or less than the 26.4 percent attributed to it.”⁴⁸ In light of these statements, we will use BIA data to determine Productions’ and Enterprises’ revenue shares. Moreover, in connection with Clear Channel’s application to acquire the PBC stations, Clear Channel has informed us that its 2001 revenues for the Jonesboro market are \$2,776,069.⁴⁹ We adjust Clear Channel’s revenue figures here. Accordingly, we find that, after the transaction, Productions will have a market share of 36.1 percent. This will result in an increase in the HHI for the Jonesboro market of 339, with a total post-transaction HHI of 4101 if the sale of the four PBC stations to Clear Channel and EMF is not consummated and 4768 if such sale is consummated.

21. *Potential for harm to advertisers and listeners.* We find the proposed transaction is unlikely to harm advertisers or listeners. Productions and Enterprises are closely related entities that have common directors, officers, and owners consisting of members of the same family. Although we cannot process the proposed transaction on a *pro forma* basis because of the particular ownership structures of Productions and Enterprises,⁵⁰ the current overlap of the ownership and management of these two entities makes it unlikely that Productions’ post-transaction ownership of KJBX(FM) will harm

⁴⁵ PBC currently owns four stations in the Jonesboro metro. In the *Clear Channel Order*, the Commission granted applications to assign two of the PBC stations to Clear Channel. See *supra* note 18 and accompanying text. Educational Media Foundation (“EMF”), a non-profit religious broadcaster, is the proposed assignee of the other two PBC stations. Although the Commission has approved the assignment from PBC to EMF, that sale has not yet been consummated. According to Clear Channel, financing issues require that the sale to EMF and the sale to Clear Channel be consummated simultaneously. See Letter from Dorann Bunkin, Wiley, Rein & Fielding, LLP, to Peter H. Doyle, Chief, Audio Services Division, Mass Media Bureau (Feb. 6, 2002), at 2 (“Clear Channel Response”), filed in FCC File Nos. BAL-20010724ABM & BALH-20010724ABN. The station ownership information in the BIA database assumes that both the Clear Channel and EMF transactions have been consummated.

⁴⁶ Productions Response at 9.

⁴⁷ *Id.*

⁴⁸ *Id.* Productions’ response was submitted before BIA updated its revenue figures to provide Year 2001 revenue estimates.

⁴⁹ See Declaration of Barbara Nelson, Business Manager, Clear Channel, ¶ 3, attached to Clear Channel Response.

⁵⁰ See *infra* ¶ 23.

competition or adversely impact listeners, as described below.

22. The existence of a familial relationship is not sufficient by itself to cause each affected family member to have an attributable interest in the media holdings of his or her relatives.⁵¹ Nevertheless, we have recognized that the potential exists for family members to exercise a “degree of control” over their relatives’ holdings.⁵² Under established Commission policy, where close family relationships are implicated, the Commission will find attribution where the “totality of the circumstances” shows that the media holdings are not being operated independently or are subject to common influence or control.⁵³ We need not determine here whether the familial relationships present in this case are alone sufficient to warrant attribution.⁵⁴ We take into account, however, the familial connection between Productions and Enterprises in evaluating whether the proposed transaction is likely to cause harm to advertisers or listeners.

23. The record indicates that Enterprises and Productions currently are under the common ownership and operational control of the Pressly family. Enterprises is owned by Robert and Elizabeth Pressly, who are husband and wife and who each own 50 percent of Enterprises.⁵⁵ Robert and Elizabeth Pressly also have attributable interests in Productions through trusts created in each of their names. The Robert Pressly Trust, of which Robert Pressly is the trustee, holds a 13 percent interest in Productions, and the Elizabeth Pressly Trust, of which Elizabeth Pressly is the trustee, holds a 9 percent interest. Curry W. Pressly, the Presslys’ son, owns 37 percent of Productions. Two other individuals unrelated to the Presslys each own 30 percent and 10 percent, respectively, of Productions. Thus, members of the Pressly family collectively control the vote of 59 percent of Productions. In addition, Robert, Elizabeth, and Curry Pressly are three of the four directors on the board of Productions. Each is also an officer of the corporation: Robert Pressly is the President and Chief Executive Officer of Productions, Elizabeth Pressly is its Treasurer, and Curry Pressly is its Vice-President and Secretary.⁵⁶ In addition, Productions began operating KJBX(FM) pursuant to an LMA immediately after Enterprises acquired the station.⁵⁷ Thus, Robert and Elizabeth Pressly have multiple mechanisms through which to influence and participate in the affairs of Productions.

⁵¹ See, e.g., *Lady Sarah McKinney-Smith and J. Shelby McCallum*, 59 FCC 2d 398, 401 (1976).

⁵² *Id.*; *East Arkansas Broadcasters, Inc.*, Memorandum Opinion and Order, 20 RR (P&F) 934, 935 ¶ 3 (1960).

⁵³ *Sevier Valley Broadcasting, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 9795, 9797 ¶ 11 (1995). In a 1992 Policy Statement, the Commission identified seven factors that it had found relevant in evaluating whether media interests are being operated independently of familial relationships. These factors are: “(1) [r]epresentations that the media interests of close family members will be independent and will not be subject to common influence or control; (2) [c]ommingling of ownership or other interests in media businesses; (3) [p]articipation by family members in the financial affairs, programming and personnel decisions of each other’s media interests; (4) [p]rior broadcast experience of the individual seeking to establish independent interests; (5) [f]inancial independence; (6) [s]haring of personnel, equipment, contractors or information regarding programming; [and] (7) [i]nvolvement by family members in the acquisition or application process.” *Clarification of Commission Policies Regarding Spousal Attribution*, Policy Statement, 7 FCC Rcd 1920, 1922-23 ¶ 16 (1992).

⁵⁴ As we note below, Robert and Elizabeth Pressly, the sole shareholders of Enterprises, hold attributable positional interests in Productions as well as cognizable ownership interests in that entity.

⁵⁵ Productions Response at 2.

⁵⁶ The two other stockholders of Productions that are not members of the Pressly family also are officers of Productions, and one of them is also a director.

⁵⁷ Productions Response at 4.

24. Based on this record, we conclude that Productions' acquisition of KJBX(FM) is not likely to alter appreciably the competitive circumstances in the Jonesboro market and that the transaction will not, therefore, harm advertisers or listeners. The existing ownership and positional interests held by Robert and Elizabeth Pressly make it extremely unlikely that Productions and Enterprises would be true competitors for advertising dollars or listeners in the event that the instant application were not approved. Moreover, based on current board membership, Robert and Elizabeth Pressly by themselves have negative control over the actions of Productions' board and, with their son Curry, have affirmative control over its operations. Although Robert and Elizabeth Pressly collectively control only 22 percent of the vote through their respective trusts, any attempt to reduce their influence over Productions is unlikely to succeed because it would require the consent of Curry Pressly, who controls an additional 37 percent of the vote. Given the current and unique commonality of operation, ownership, and control between Productions and Enterprises and the close familial ties involved, the proposed transaction presents unique circumstances such that it does not effectively change the level of concentration in the market and is unlikely to affect either advertisers or listeners. We conclude, therefore, that it is unlikely that Productions' post-transaction ownership of KJBX(FM) would produce any adverse competitive effect or otherwise harm the public.⁵⁸

25. *Efficiencies and other public interest benefits.* Under the interim policy, we consider evidence of economic efficiencies that the proposed transaction would produce and the 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 those benefits will flow through to listeners or advertisers. Productions argues that the proposed transaction will produce some cost savings through consolidation of studios and management.⁵⁹ With respect to other public interest benefits, Productions argues that the Presslys have made significant investments in both station acquisition and new technologies to create a new (since 1993) and successful radio presence in Jonesboro, which Productions argues had been dominated by stations previously owned by Duke Media and currently owned by Clear Channel.⁶⁰ Productions argues that it is a "locally-owned, locally-operated" broadcaster involved in its community, which is an anachronism in "an era of publicly-traded national multimedia behemoths."⁶¹ Productions argues that KJBX(FM) has benefited from the Presslys' prior efforts and investments, and the proposed transaction will help ensure the station's survival in a market where "stand alone" radio stations are not viable.⁶²

26. We conclude that the proposed transaction will likely result in some degree of cost savings, and that Presslys' investments in and efforts to improve KJBX(FM), as well as the Productions Stations, has produced public interest benefits. Productions, however, provides only a minimal explanation of why these 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, such a showing may be difficult here because of the

⁵⁸ Because we do not find it likely that the proposed transaction will cause harm to advertisers or listeners, we do not need to determine whether new entry to counteract anticompetitive behavior is likely. In any event, Productions admits that new entry into the market is unlikely. See Productions Response at 11.

⁵⁹ *Id.* at 12.

⁶⁰ *Id.* at 2-5, 13-14.

⁶¹ *Id.* at 14.

⁶² *Id.*

existing close relationship between Productions and Enterprises that we have described above. Under these circumstances, and because we have found no public interest harms, we need not examine Productions' public interest showing further.

IV. CONCLUSION

27. 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 Productions is qualified and that grant of the transaction is consistent with the public interest, convenience and necessity.

V. ORDERING CLAUSES

28. **ACCORDINGLY, IT IS ORDERED**, That the application to assign the license of station KJBX(FM), Trumann, Arkansas, from Pressly Enterprises, LLC to Pressly Partnership Productions, Inc. (File No. BALH-20010604AAW) **IS GRANTED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary