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

In the Matter of	)	
	)	
Rules and Policies Concerning	)	MM Docket No. 01-317
Multiple Ownership of Radio Broadcast	)	
Stations in Local Markets	)	
	)	
Definition of Radio Markets	)	MM Docket No. 00-244
	)	

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

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Executive Summary

The National Association of Broadcasters ("NAB") submits these comments in response to the *Notice of Proposed Rulemaking* seeking comment on a comprehensive array of issues relating to multiple ownership of radio stations in local markets. NAB believes the Commission has no statutory authority – as well as no basis grounded in diversity or competition concerns – to override Congress' judgments in the 1996 Telecommunications Act ("1996 Act") about ownership consolidation in local radio markets.

In Section 202(b) of the 1996 Act, Congress quite plainly established the number of radio stations that could be commonly owned in a local market. In selecting specific numerical limits corresponding to market size, Congress made its own determination as to what level of ownership concentration would serve the public interest, taking into account the traditional concerns of diversity and competition. Congress' judgments in this regard are definitive, and the Commission lacks the authority to override these judgments by delaying or preventing radio station transactions that are expressly permissible under Section 202(b).

NAB particularly emphasizes that the Commission cannot rely upon its generalized "public interest" authority under the 1934 Communications Act to nullify the specific judgments that Congress made in Section 202(b) of the 1996 Act about the acceptable levels of ownership concentration and diversity in local radio markets. Because Congress has spoken so clearly on the precise question of local radio ownership, any reviewing court would hold that the Commission must give effect to Congress' unambiguously expressed intent by approving, without additional "public interest" analyses or showings, proposed radio transactions that comply with the statutory standards. Section 202(h) of the 1996 Act – which requires the Commission to review all of the broadcast ownership rules biennially – does not, moreover, authorize the Commission to reduce the level of ownership consolidation expressly permitted by Congress in Section 202(b). Indeed, given that NAB's comments, as discussed below, demonstrate that increased ownership consolidation has produced both greater programming diversity and significant efficiency benefits, the Commission, when conducting its required biennial reviews of the broadcast ownership rules, must consider whether a further liberalization of the radio caps would serve the public interest.

With regard to the Commission's traditional goal of promoting diversity, NAB observes that programming diversity is the type of diversity most relevant to the listening public and that the public's interest in receiving varying types of radio programming is clearly being met on a market basis. A study conducted by BIA Financial Network, and attached to NAB's comments, unequivocally demonstrates that the consolidation that has occurred in the radio industry since 1996 has benefited the public by leading to greater diversity of radio programming in local markets. Another study conducted by NAB shows that the overall impact of this recent consolidation in the radio industry may be less dramatic than commonly assumed, as a very large number of commercial radio stations remain "standalones," or are part of local duopolies, in their respective markets. Moreover, in gauging the impact of concentration on diversity in the marketplace of ideas, the Commission has no basis for assuming that increased ownership consolidation in the radio industry will result in a reduction in diversity of viewpoint in today's competitive local media markets.

Although the Commission has also traditionally attempted to promote competition, as well as diversity, in local media markets, NAB questions the wisdom of, and the basis for, any imposition of structural ownership regulations by the Commission in an effort to protect advertisers from concentration in advertising markets. If the Commission does attempt in this proceeding to define the relevant product market for advertising, previous FCC decisions indicate that a broader market including a number of forms of media advertising may be more appropriate than a market strictly limited to radio advertising. More importantly, NAB emphasizes that the Commission should not be concerned that the consolidation that has occurred in the radio industry since 1996 has resulted in anti-competitive market power for consolidated groups. Another study conducted by BIA Financial Network, and attached to NAB's comments, shows that the market power of station groups necessarily remains limited, even after the recent consolidation, because of the volatility of audience shares received by radio stations and the relative ease with which lower rated stations may improve their ratings and challenge market leading stations by altering their formats. Other commentators have confirmed the FCC's recognition of the economic efficiencies flowing from consolidation in the broadcast industry, and have found that the recent consolidation in the radio industry specifically has not lead to collusive conduct and market power.

For all the reasons set forth above, the Commission should rely on the clear and easily administered numerical limits set by Congress in the 1996 Act when addressing proposed station combinations. At this juncture, cutting back on the level of ownership consolidation specifically permitted under Section 202(b) would not only be contrary to congressional intent, but would also cause significant competition and fairness problems. Certainly any decision to address proposed radio transactions on a case-by-case basis would cause unacceptable administrative delays, create uncertainty in the marketplace, and greatly increase costs for applicants. If, however, the Commission were unwisely to alter the current radio ownership limits so that any existing combinations would no longer comply with FCC rules, those existing station groups must be grandfathered and should also be freely transferable to new owners. In sum, NAB urges the Commission in this proceeding to comply with congressional intent both by giving effect to the local radio ownership standards set forth in Section 202(b), and by engaging in a full review of those ownership caps biennially as required by Section 202(h).

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TO: The Commission

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters ("NAB")[1] submits these comments in response to the Commission's *Notice of Proposed Rulemaking* in this proceeding.[2] The *Notice* sought comment on a comprehensive array of issues relating to multiple ownership of radio stations in local markets. In particular, the Commission requested comment on the statutory framework governing local radio ownership, and how this framework affects the Commission's traditional goals of promoting competition and diversity. The *Notice* also sought to examine the consolidation that has occurred in the radio industry and what effect this consolidation has had on the industry, advertisers and the public.

NAB believes that the express numerical limits for local ownership of radio stations set by Congress in Section 202(b) of the 1996 Telecommunications Act are definitive, and that the

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[1] NAB is a nonprofit incorporated association of radio and television stations and broadcast networks. NAB serves and represents the American broadcasting industry.

[2] *Notice of Proposed Rule Making and Further Notice of Proposed Rule Making* in MM Docket Nos. 01-317 and 00-244, FCC 01-329 (rel. Nov. 9, 2001) (*"Notice"*).

Commission therefore lacks the authority to delay or prevent radio station transactions that are permissible under Section 202(b). In particular, the Commission cannot rely upon its generalized "public interest" authority to nullify the specific judgments that Congress made as to the appropriate levels of diversity and competition in local radio markets when it set these explicit numerical limits. Section 202(h) of the Telecommunications Act – which requires the Commission to review all of the broadcast ownership rules biennially – does not, moreover, authorize the Commission to reduce the level of ownership consolidation expressly permitted by Congress in Section 202(b). Indeed, given that NAB's comments demonstrate that increased ownership consolidation has produced both greater programming diversity and significant efficiency benefits, the Commission, when conducting its required biennial reviews of the broadcast ownership rules, must consider whether a further liberalization of the radio caps would serve the public interest.

With regard to the Commission's traditional goal of promoting diversity, NAB observes that programming diversity is the type of diversity most relevant to the listening public and that the public's interest in receiving varying types of radio programming is clearly being met on a market basis. A study attached to NAB's comments unequivocally demonstrates that the consolidation that has occurred in the radio industry since 1996 has benefited the public by leading to greater diversity of radio programming formats in local markets. Another study conducted by NAB shows that the overall impact of this recent consolidation in the radio industry may be less dramatic than commonly assumed, as a very large number of commercial radio stations either remain "standalones," or are part of local duopolies, in their respective markets. Moreover, in gauging the impact of concentration on diversity in the marketplace of ideas, the Commission has no basis for assuming that increased ownership consolidation in the radio industry will result in a reduction in diversity of viewpoint in today's competitive local media markets.

Although the Commission has also traditionally attempted to promote competition, as well as diversity, in local media markets, NAB questions the wisdom of, and the basis for, any imposition of structural ownership regulations by the Commission in an effort to protect advertisers from concentration in advertising markets. If the Commission does attempt in this proceeding to define the relevant product market for advertising, previous FCC decisions indicate that a broader market including a number of forms of media advertising may be more appropriate than a market strictly limited to radio advertising. More importantly, NAB emphasizes that the Commission should not be concerned that the consolidation that has occurred in the radio industry since 1996 has resulted in anti-competitive market power for consolidated groups. Another study attached to NAB's comments shows that the market power of station groups necessarily remains limited, even after the recent consolidation, because of the volatility of audience shares received by radio stations and the relative ease with which lower rated stations may improve their ratings and challenge market leading stations by altering their formats. Other commentators have confirmed the FCC's recognition of the economic benefits flowing from consolidation in the broadcast industry, and have found that the recent consolidation in the radio industry has not lead to collusive conduct and market power.

For all these reasons, NAB urges the Commission to rely on the clear and easily administered numerical ownership limits set by Congress when addressing proposed station combinations. Cutting back on the level of ownership consolidation specifically permitted under Section 202(b) would be contrary to congressional intent, and attempting to address each radio transaction on a case-by-case basis would cause unacceptable administrative delays, create uncertainty in the marketplace, and greatly increase costs for applicants. For purposes of applying these radio ownership limits established by Congress, NAB also urges the Commission to continue applying its long-standing methodology for defining radio markets. If, however unwisely, the Commission were to alter the current radio ownership limits so that certain existing combinations would no longer comply with FCC rules, those existing combinations must be grandfathered and should also be freely transferable to new owners.

I. The Commission Lacks Authority To Override Congress' Judgment As To The Appropriate Levels Of Ownership Concentration In Local Radio Markets.

In Section 202(b)(1) of the Telecommunications Act of 1996 ("1996 Act"), Pub. L. No. 104-104, § 202(b)(1), 110 Stat. 56, "Congress established quite plainly the number of radio stations that could be commonly owned in a local market."[3] In selecting specific numerical limits corresponding to market size, Congress made its own determination as to what level of ownership concentration would serve the public interest, taking into account the traditional concerns of diversity and competition.[4] Congress' judgments in this regard are definitive, and the Commission lacks the authority to override these judgments by preventing radio station

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[3] Concurring Statement of Commissioner Michael Powell, *Memorandum Opinion and Order,* 15 FCC Rcd 16062, 16115 (2000) (approving merger of AMFM, Inc. and Clear Channel Communications, Inc.).

[4] Indeed, Section 202(b)(1) is even entitled "Local Radio Diversity." This section allows the common ownership of eight commercial radio stations in the largest radio markets (*i.e.*, those with 45 or more commercial stations), seven stations in markets with between 30 and 44 stations, six stations in markets with between 15 and 29 stations, and five stations in markets with 14 or fewer stations, except that no one can own more than 50 percent of the stations in such small markets. Beyond diversity, Congress no doubt considered concentration issues in selecting these precise limits on the number and percentage of stations permitted to be commonly owned in markets of varying sizes. *See* H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 161-62 (1996) (prior to adopting the numerical radio ownership limits in conference, the Senate and House bills had contained language allowing the FCC to refuse to grant applications to transfer radio and/or other broadcast licenses if "undue concentration" would result).

transactions that are expressly permissible under Section 202(b)(1). *See Notice* at ¶ 25 (asking whether the numerical limits of Section 202(b) "are definitive").

NAB particularly emphasizes that the Commission cannot rely upon its generalized "public interest" authority under the 1934 Communications Act ("1934 Act") to nullify the specific judgments that Congress made in Section 202(b)(1) about the acceptable levels of ownership concentration and diversity in local radio markets.[5] After all, as Chairman Powell has previously stated, "if Congress did not mean [in Section 202(b)(1)] to set the appropriate level of concentration, or the acceptable level of diversity, what on earth are the numerical market levels meant to do?"[6] Because Congress has in fact spoken so clearly on the precise question of local radio ownership, any reviewing court would hold that the Commission must give effect to Congress' unambiguously expressed intent by approving, without additional "public interest" analyses or showings, proposed radio transactions that comply with the statutory ownership standards. The biennial review provisions of Section 202(h) do not, moreover, authorize the Commission to reduce the level of ownership consolidation expressly permitted by Section 202(b)(1).

[5] Under Sections 309(a) and 310(d) of the 1934 Act, the Commission regulates the granting and transfer of radio licenses consistent with the "public interest, convenience, and necessity." 47 U.S.C. §§ 309(a), 310(d).

[6] Separate Statement of Commissioner Michael K. Powell, *1998 Biennial Review Report*, 15 FCC Rcd 11058, 11159 (2000). Members of Congress have also clearly stated that Section 202(b)(1) reflects congressional determinations about diversity and competition, and that Congress did not intend for the Commission to conduct its own "independent" evaluations, based on either diversity of voices or competitive effect, of proposed radio transactions. *See, e.g.*, Letter from The Honorable Conrad Burns, U.S. Senate to Reed Hundt, Chairman, FCC (Feb. 13, 1997); Letter from The Honorable Billy Tauzin, U.S. House of Representatives to Reed Hundt, Chairman, FCC (Feb. 25, 1997).

A. Applicable Precedent Makes Clear the FCC's Duty to Give Effect to the Congressionally Determined Local Radio Ownership Limitations.

As explained by the Supreme Court in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc*., 467 U.S. 837, 843 (1984), an agency (and a reviewing court) "must give effect to the unambiguously expressed intent of Congress." If, "employing traditional tools of statutory construction," it is determined that Congress "had an intention on the precise question at issue," that "is the end of the matter" because Congress' "intention is the law and must be given effect." *Chevron*, 467 U.S. at 843 and note 9.

"The first traditional tool of statutory construction focuses on the language of the statute."[7] As the Supreme Court has repeatedly emphasized, there is one "cardinal canon" is interpreting a statute – a presumption "that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut National Bank v. Germain*, 503 U.S. 249, 253-54 (1992). In Section 202(b)(1), Congress clearly addressed the issue of local radio ownership, and explicitly established the number of radio stations that may be commonly owned in local markets. The Commission therefore "must presume" that its authority with regard to local radio ownership is limited to implementing the ownership standards as set by Congress, and does not extend to conducting extra-statutory concentration and diversity analyses with regard to transactions that comply with congressional ownership standards. *Germain*, 503 U.S. at 253. Moreover, because Congress "has directly spoken to the precise question" of local radio ownership limitations by adopting Section 202(b)(1), and the express terms of that section clearly establish the levels of ownership consolidation that are permissible, any effort by the

[7] *Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044, 1047 (D.C. Cir. 1997) (applying *Chevron* in a case challenging the Commission's construction of a provision of the 1996 Act). *See also Bailey v. U.S*., 516 U.S. 137, 144 (1995) (in interpreting a statute, court must start with the language of the statute).

Commission to construe Section 202(b)(1) as permitting the rejection of proposed ownership combinations that comply with the statutory standards would not merit judicial deference. *Chevron*, 467 U.S. at 842-43 (an agency's construction of a statute is entitled to deference by a reviewing court only if the statute "is silent or ambiguous with respect to the specific issue").[8]

Given the precision and clarity with which Congress addressed local radio ownership in Section 202(b)(1), the general "public interest" provisions of the 1934 Act do not authorize the Commission to ignore the specific judgments made by Congress as to the appropriate levels of diversity and competition in local radio markets. "It is a basic principle of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged" by another "statute covering a more generalized spectrum," regardless of the priority of enactment. *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976). Because Section 202(b)(1) deals solely with the "narrow, precise, and specific subject" of local radio ownership (*id.*), its terms cannot be "controlled or nullified" by other, more general grants of authority to the Commission.[9] Indeed, Section 202(b)(1) – with its language establishing explicit numerical caps on radio ownership in different sized markets – must be regarded as governing the Commission's authority with regard to the subject of local radio ownership. *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384-85 (1992) (in holding that a general "remedies saving" clause

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[8] *Accord Bell Atlantic*, 131 F.3d at 1047 (if Congress has expressed its intention as to a question, then judicial deference to an agency's interpretation of a statute is "not appropriate").

[9] *Morton v. Mancari*, 417 U.S. 535, 550-51 (1974) ("a specific statute will not be controlled or nullified by a general one"). *See also Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 228-29 (1957) ("the law is settled that, however inclusive may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment," as "[*s]pecific terms prevail over the general in the same or another statute which otherwise might be controlling*") (citations omitted) (emphasis added).

could not be allowed to supersede a specific substantive preemption provision, court stated that it was "a commonplace of statutory construction that the specific governs the general").[10]

In particular, the Commission cannot rely upon its general authority in Sections 309(a) and 310(d) to grant or transfer radio licenses pursuant to the public interest to supersede the terms of Section 202(b)(1), in which Congress specifically determined what levels of radio station ownership were appropriate in local markets. Courts have made clear, in several cases involving administrative agencies, that agencies cannot rely on their general authority to act in the "public interest" or "public convenience" if in doing so they ignore a specific congressional directive. For example, in *Markair, Inc. v. Civil Aeronautics Board*, 744 F.2d 1383 (9th Cir. 1984), the Civil Aeronautics Board ("CAB") determined that "the public convenience and necessity" required the issuance of certificates permitting multiple carriers to provide air charter transportation in Alaska. *Id*. at 1385. Although the CAB contended that its decision was justified by "general" provisions of the Airline Deregulation Act ("Act") "mandating a pro-competitive policy," the court reversed the CAB's decision because it was "inconsistent" with a more "specific" provision of the Act regarding Alaskan air carriers. *Id*. at 1385-86.[11] The Commission similarly cannot rely on its general authority to approve the grant and transfer of

[10] *See also Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 445 (1987) (in case concerning the award of expert witness fees to a prevailing litigant, court held that a specific statutory provision relating to witness fees controlled over a general provision concerning the award of litigation costs); *Preiser v. Rodriguez*, 411 U.S. 475, 489-90 (1973) (specific habeas corpus statute held to override the general terms of a civil rights statute); *South African Airways v. Dole*, 817 F.2d 119, 126 (D.C. Cir.), *cert. denied*, 484 U.S. 896 (1987) (specific congressional directive regarding air service was found to supersede Secretary of Transportation's general duties under Aviation Act).

[11] In reaching its decision, the court criticized the CAB for "ignor[ing] the well-settled rule of statutory construction that the specific terms of a statute override the general terms." *Markair*, 744 F.2d at 1385.

licenses "in the public interest, convenience, and necessity" to "override" the "specific" terms of Section 202(b)(1) regarding the acceptable levels of radio station ownership in local markets. *Id*. at 1385.

The D.C. Circuit Court of Appeals has also on several occasions reversed the decisions of administrative agencies that relied on broad grants of statutory authority to override more specific statutory provisions. For instance, in *International Brotherhood of Teamsters v. Interstate Commerce Commission* ("ICC"),[12] the court held that the ICC had violated congressional intent when it permitted a certain rail/motor consolidation without considering a specific statutory restriction on approving such consolidations. The court specifically explained:

> [W]hen the ICC resolves statutory issues left unresolved by Congress, such as the meaning of the "public interest" or the "public convenience," it is the agency's province to strike a reasonable balance between competing statutory policies . . . . In discharging this delegated function, the ICC is obliged to consider the general purposes underlying the statutory scheme as a whole. . . . *But it will not do for an agency to invoke the broad purposes of an entire act in order to contravene Congress' intent embodied in a specific provision of the statute.*

801 F.2d at 1429-30 (emphasis added). Thus, the Commission cannot "invoke" its general authority to determine the "public interest" or the "public convenience" so as to "contravene Congress' intent embodied" in the specific local radio ownership provisions of Section 202(b)(1). *Id*. at 1430. Other clear precedent similarly prohibits the Commission from bypassing the requirements of Section 202(b)(1) by relying on its broad "public interest" authority to decline to approve radio station transactions specifically deemed permissible by Congress. *See Regular Common Carrier Conference v. U.S.*, 820 F.2d 1323, 1331 (D.C. Cir.

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[12] 801 F.2d 1423 (D.C. Cir. 1986), *different results reached on rehearing*, 818 F.2d 87 (D.C. Cir. 1987) (challenge to ICC's decision addressed by the court in its original decision was mooted by subsequent legislation).

1987) (decision of ICC reversed because agency sought to "rely on a general statutory provision" to "nullify" or "bypass" the requirements of "a specific one").[13]

The existence of a generic "savings clause" in the 1996 Act does not in any way change the above analysis of the interplay between the specific requirements of Section 202(b)(1) and the general public interest provisions in the 1934 Act.[14] Because the 1996 Act did "expressly so provide[]" that the Commission establish the local radio ownership caps set forth in Section 202(b)(1), these limits therefore "supersede[d]" existing federal requirements with regard to local radio ownership. Thus, even under the terms of the Section 601(c)(1) savings clause itself, the standards explicitly mandated by Section 202(b)(1) are controlling authority on the subject of local radio ownership.

Moreover, the "well-settled rule of statutory construction that the specific terms of a statute override the general terms," *Markair*, 744 F.2d at 1385, has been expressly applied by the courts to savings clauses. For example, in *Morales*, 504 U.S. at 385, the Supreme Court held

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[13] *See also MCI Telecommunications Corp. v. AT&T Co.*, 512 U.S. 218, 233-34 (1994) (FCC could not rely on "Communications Act's broad purpose of promoting efficient telephone service" to justify an interpretation of a specific statutory provision in the 1934 Act that altered "well-established statutory . . . requirements" pertaining to tariff filings); *Board of Governors of the Federal Reserve System v. Dimension Financial Corporation*, 474 U.S. 361, 373 (1986) (Federal Reserve Board could not rely in its decision-making on "broad purposes of legislation at the expense of specific" terms of the statute itself); *Independent Insurance Agents of America, Inc. v. Hawke*, 211 F.3d 638, 643 (D.C. Cir. 2000) (contrary to opinion of the Office of the Comptroller of the Currency, statute granting national banks "all such incidental powers as shall be necessary to carry on the business of banking" did not include the power of banks to sell crop insurance because "subsequent statutes more specifically address[ing]" the sale of insurance had narrowed the meaning of the broad earlier statute); *Halverson v. Slater*, 129 F.3d 180, 181-186 (D.C. Cir. 1997) (general statute authorizing Secretary of Transportation to delegate certain powers and duties to any Transportation officer or employee could not be "construed to expand" a more specific statute's limitation of that delegation authority).

[14] Section 601(c)(1) of the 1996 Act states that the "Act shall not be construed to modify, impair, or supersede Federal, State, or local law *unless expressly so provided*" in the Act (emphasis added). The *Notice* (at ¶ 24) inquired whether this savings clause limited the effect that Section 202(b) could otherwise have on the statutory public interest standard.

that a “general ‘remedies’ saving clause” could not “be allowed to supersede” a “specific substantive pre-emption provision.” Because “specific substantive” provisions “express congressional intent more clearly” than “a general savings clause,” the Commission must “defer to the more specific statutory sections” on local radio ownership “rather than override them with a very broad application” of Section 601(c)(1). *In re Lifschultz Fast Freight Corp.*, 63 F.3d 621, 628-29 (7th Cir. 1995). Indeed, it would clearly violate congressional intent for the Commission to invoke its general public interest authority via the savings clause in Section 601(c)(1) of the 1996 Act so as to nullify the specific radio ownership requirements established by Congress in Section 202(b)(1) of that same Act. Simply put, Congress cannot have “intended to undermine” its “carefully drawn” local radio ownership provisions -- which established varying numerical caps corresponding to different sized markets -- “through a general saving clause” making no reference whatsoever to ownership limitations of any sort. *International Paper Co. v. Ouellette*, 479 U.S. 481, 494 (1987) (general saving clause included in Clean Water Act could not be read broadly so as to interfere with the achievement of congressional objectives in that Act). In sum, the inclusion of a general savings clause in the 1996 Act cannot limit in any way the controlling effect of Section 202(b)(1) with regard to the specific subject of local radio ownership.

Notwithstanding the foregoing discussion, NAB does not dispute that, in many areas, the Commission enjoys wide discretionary authority in defining the “public interest,” especially in situations where Congress has not expressly spoken and the Commission is writing on a “clean slate.” In this case, however, Congress adopted detailed, explicit standards on radio ownership in local markets, and if Congress had wanted to give the Commission discretion to treat these statutory ownership caps as suggestions or presumptions subject to further “public interest” review, Congress could have said so.[15] The Commission cannot seriously suggest that it retains authority to treat the statutory radio ownership caps as mere suggestions because Section 202(b)(1) did not explicitly provide that the Commission "shall not" utilize its general public interest authority to bypass those statutory standards.[16] Because "Congress has directly spoken to the precise question" of local radio ownership, *HUD v. Rucker*, No. 00-1770 (Sup. Ct., March 26, 2002), *quoting Chevron*, 467 U.S. at 842, the Commission must give effect to the intent of Congress as unambiguously expressed in Section 202(b)(1). The Commission's general public interest authority cannot properly be invoked to simply disregard the specific statutory regime established by Congress.[17]

B. The Commission Cannot Rely on Section 202(h) to Cut Back on the Level of Ownership Consolidation Specifically Permitted under Section 202(b)(1).

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[15] For example, in Section 202(d) of the 1996 Act concerning relaxation of the one-to-a-market rule, Congress in fact directed the Commission to "extend its waiver policy" to more markets "consistent with the public interest, convenience, and necessity." With regard to other local ownership rules such as the television duopoly rule, Congress merely directed the FCC in Section 202(c)(2) to conduct a rulemaking to determine whether to "retain, modify, or eliminate" the rule. Congress gave the FCC no such discretion with regard to local radio ownership, and did not refer to the "public interest" standard at all in Section 202(b).

[16] *See Railway Labor Executives' Association v. National Mediation Board*, 29 F.3d 655, 671 (D.C. Cir. 1994) (*en banc*) ("agencies would enjoy virtually limitless hegemony" if a congressional delegation of power were presumed absent an express negation of such "power (i.e. when the statute is not written in 'thou shalt not' terms)").

[17] NAB additionally notes that attempting to limit local radio ownership under the public interest standard of Sections 310(d) and 309(a) raises a question of compliance with Section 310(d) itself. That section provides that "in acting" on transfer applications, "the Commission may *not* consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person *other than* the proposed transferee." 47 U.S.C. § 310(d) (emphasis added). By refusing to approve (at least without further "public interest" review) a proposed license transfer complying with the statutory requirements of Section 202(b)(1), the FCC may be determining by implication that the public interest would be better served by the transfer of the license to a person other than the current licensee's proposed choice. Because the Commission would be essentially engaging in comparative consideration by declining to process and grant transactions conforming to express statutory ownership limits, a clear tension with the terms of Section 310(d) exists.

The biennial review provisions of Section 202(h) of the 1996 Act require the Commission to "review its rules adopted pursuant to" Section 202 and "all of its ownership rules biennially" to "determine whether any of such rules are necessary in the public interest as the result of competition." By its clear terms, Section 202(h) applies to the local radio ownership rules set forth in Section 202(b)(1). Thus, the Commission is required to determine biennially whether these local radio ownership limits remain "necessary," and must "repeal or modify" those ownership limits if they are "no longer in the public interest."

The language of Section 202(h), especially when considered with the terms of other parts of Section 202, clearly allows the Commission in its biennial reviews to repeal entirely or further loosen the local radio ownership caps set in Section 202(b)(1).[18] However, the Commission's authority under Section 202(h) to cut back on the ownership consolidation specifically permitted in Section 202(b)(1) appears highly questionable. In mandating the biennial review, Congress directed the Commission to determine whether "any" of its ownership rules remain "necessary" at all "as the result of competition," and instructed the Commission to "repeal" or "modify" any rule "no longer in the public interest." This language, with its emphasis on eliminating unnecessary regulation, certainly does not suggest that the congressional directive to "repeal" or "modify" unneeded rules authorizes the adoption of even stricter ownership regulations (especially any inconsistent with specific congressional determinations on consolidation). NAB finds notable that the only express exception to the radio ownership limits set forth in Section 202(b)(1) is that provided in (b)(2), which authorizes the Commission to *increase* the levels of

[18] Of course, the Commission may also retain the radio ownership limitations set forth in Section 202(b)(1) if it determines that these limitations still serve the public interest in light of competitive changes in the marketplace.

radio ownership in local markets under certain circumstances.[19] Because the *only* flexibility provided by Congress in the radio ownership caps is in an upward direction, a decision by the Commission under Section 202(h) to "modify" the radio ownership rules by reducing the level of local radio ownership below that specifically permitted by Section 202(b)(1) would be inconsistent with the overall statutory scheme.[20]

In addition, it is clear that Congress had a deregulatory intent when adopting Section 202(h) requiring the Commission to examine its ownership rules regularly to determine whether they remain "necessary" as "the result of competition."[21] Certainly the purpose of the 1996 Act was to "promote[] competition and reduce[] regulation," and Congress expressly sought to "promote the competitiveness" of broadcast stations in a multichannel media market by "depart[ing] from the traditional notions of broadcast regulation" and "rely[ing] more on competitive market forces." H.R. Rep. No. 204, 104th Cong., 2d Sess. 47-48, 55 (1995).[22] Given Congress' deregulatory intent when adopting the broadcast-related provisions of the 1996 Act,

[19] Section 202(b)(2) provides that, "[n]otwithstanding any limitation authorized by this subsection, the Commission may permit" the ownership of "radio broadcast stations if the Commission determines" that such ownership would "result in an increase in the number of radio broadcast stations in operation."

[20] *See Food and Drug Administration v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (in finding that Congress had precluded the Food and Drug Administration from asserting jurisdiction to regulate tobacco products, the Supreme Court emphasized that the provisions of the Food, Drug and Cosmetic Act had to be "read in their context and with a view to their place in the overall statutory scheme").

[21] *See* Separate Statement of Commissioner Michael K. Powell, *1998 Biennial Review Report*, 15 FCC Rcd 11058, 11151 (2000) ("the clear bent of the biennial review process set out by Congress is deregulatory, in recognition of the pace of dramatic change in the marketplace and the understanding that healthy markets can adequately advance the government's interests in competition and diversity").

[22] *See also Bell Atlantic*, 131 F.3d at 1047 (the "traditional tools of statutory construction" used to ascertain congressional intent include "examination of the statute's text, legislative history, and structure, as well as its *purpose*") (emphasis added).

including Section 202(h), the Commission cannot properly rely on the biennial review requirements of Section 202(h) to "re-regulate" local radio markets by cutting back on the ownership consolidation specifically permitted by Congress in Section 202(b)(1).[23] In fact, as NAB's comments will demonstrate that increased ownership consolidation has produced greater programming diversity and substantial efficiency benefits without a significant increase in market power, the Commission, when conducting its required biennial reviews, must consider whether a further liberalization of the radio ownership caps will serve the public interest.

II. The Public's Interest In Receiving Diverse Radio Programming Is Clearly Being Met On A Market Basis, As Consolidation Has Increased The Diversity Of Radio Programming Available In Local Markets.

A. The Availability of Diverse Programming Across a Market Is the Most Relevant Concern When Addressing Diversity in the Context of Radio.

The Commission has traditionally justified its structural ownership rules, including the local radio ownership limits, "on considerations . . . loosely call[ed] diversity."[24] NAB observes, however, that the Commission has long had difficulty in clearly articulating its interest in the "elusive concept" of diversity, which, according to Chairman Powell, "has come to mean many

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[23] Even assuming that Congress did intend the term "modify" in Section 202(h) to allow the Commission to cut back on the specific levels of ownership consolidation found appropriate in Section 202(b), certainly the Commission could not, given Section 202(h)'s emphasis on competition, modify those ownership caps in a more restrictive manner, absent a dramatic *reduction* in the level of competition in the radio industry. Given the *increase* in the level of competition in the radio industry due to the growth in the number of stations and the emergence of new technologies (*see infra* 17-18), the Commission cannot possibly establish a decline in the level of competition sufficient to even arguably justify cutting back on the ownership consolidation expressly permitted by Congress.

[24] Separate Statement of Commissioner Michael Powell, *Notice of Inquiry, 1998 Biennial Regulatory Review*, 13 FCC Rcd 11276 (1998).

things."[25] Indeed, in this proceeding, the Commission has identified and attempted to define three aspects of diversity (viewpoint, outlet and source) as appropriate for guiding its public interest considerations (*see Notice* at ¶ 30), but has neglected the type of diversity most relevant in the context of radio. Specifically, NAB submits that, on a day-to-day basis, the type of diversity most relevant to radio listeners is programming diversity, and that, on previous occasions, the Commission has stressed the importance of this type of diversity, especially with regard to the radio industry. For example, in determining in 1992 to relax substantially its national and local radio ownership limits, the Commission recognized that "radio station programming" had "become increasingly diverse," and focused particularly on the large increase in the number of programming formats since the 1970's.[26] Similarly, Chairman Powell has specifically identified "program diversity" – *i.e*., programs that "vary in content and style" – as one of the "primary" aspects of diversity.[27]

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[25] Separate Statement of Commissioner Michael K. Powell, *1998 Biennial Review Report*, 15 FCC Rcd 11058, 11146 (2000). *See also* Separate Statement of Commissioner Michael Powell, *Notice of Inquiry, 1998 Biennial Regulatory Review*, 13 FCC Rcd 11276 (1998) (diversity is a "visceral matter," one "bathed in subjective judgments and debated in amorphous terms").

[26] *Report and Order* in MM Docket No. 91-140, 7 FCC Rcd 2755, 2758 (1992), *recon. granted in part*, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 7 FCC Rcd 6387 (1992) ("*1992 Radio Ownership Order*") (noting that by one count the number of major programming formats had increased from eight to 35). In this order, the Commission also stated that its goal of "diversifying ownership" was intended to promote "*program* diversity," and expressly concluded that relaxing its radio ownership restrictions could "play a significant part in improving the diversity of *programming* available to the public." *Id*. at 2757, 2761 (emphasis added).

[27] Separate Statement of Commissioner Michael K. Powell, *1998 Biennial Review Report*, 15 FCC Rcd 11058, 11146 (2000). *See also* Separate Statement of Commissioner Michael Powell, *Notice of Inquiry, 1998 Biennial Regulatory Review*, 13 FCC Rcd 11276 (1998) (identifying diversity of ownership, programming and outlets as three relevant "expressions of diversity").

As in its 1992 decision on radio ownership, the Commission should focus its diversity concerns in this proceeding on the "diversity of programming available to the public." *1992 Radio Ownership Order*, 7 FCC Rcd at 2761. And as the Commission has previously recognized, it is not necessary that every radio station broadcast a wide variety of programming, so long as different types of programming are available to consumers on a market basis.[28] In considering whether the public's interest in receiving a diversity of radio programming is being met, the Commission therefore need not be concerned that every radio station be "all things to all people," but should focus on the variety of programming offered across markets as a whole.[29]

B. The Public's Interest in Receiving Diverse Radio Programming Is Clearly Being Met.

Recent decades have seen both a considerable increase in the number of traditional radio stations, and the emergence of new technologies, that together provide even greater programming diversity for radio listeners (as well as increased competition for radio broadcasters). In 1975, for example, there were only 7,785 radio stations licensed in the United

[28] *See, e.g., Deregulation of Radio, Report and Order* in BC Docket No. 79-219, 84 FCC 2d 968, 977-79 (1981) (due to the growth of radio and other informational and entertainment services, it is no longer necessary for government to require "every radio station to broadcast a wide variety of different types of programming" because a "full complement of programming services" will be available through "the totality of stations" in a market); *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, Report and Order* in MM Docket No. 83-670, 98 FCC 2d 1076, 1088 (1984) (requiring television stations to "present programming in all categories" is "unnecessary and burdensome in light of overall market performance").

[29] *See Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344, 355-56 (D.C. Cir. 1998) (it is "understandable why the Commission would seek station to station differences," but a "goal of making a single station all things to all people makes no sense" and "clashes with the reality of the radio market"); *Office of Communication of the United Church of Christ v. FCC,* 707 F.2d 1413, 1434 (D.C. Cir. 1983) (audiences "benefit by the increased diversity of programs" offered by the growing number of radio outlets "across the market").

States; by September 30, 2001, the Commission had licensed 13,012 radio stations.[30] FCC News Release, *Broadcast Station Totals as of September 30, 2001* (Oct. 30, 2001). Beyond listening to the radio stations in their local markets,[31] consumers today may also access radio programming from stations all over the United States (or even the world) via the Internet. In addition, the recent development of satellite radio services allows consumers to obtain dozens and dozens of additional channels of radio programming in a very wide variety of formats.[32]

Clearly, consumers today have access to a greater number of radio outlets than ever before, and the evidence also shows the availability of more diverse programming than ever before. The Commission recognized a decade ago that, due to "intense inter- and intra-industry competition, radio station programming has become increasingly diverse," with the number of programming formats increasing dramatically. *1992 Radio Ownership Order*, 7 FCC Rcd at 2758. A study of radio programming covering 1975 through 1995 showed "a pronounced upward trend in the number of formats reported over this period."[33] Assuming the "number of

[30] There has been similar dramatic growth in the number of television broadcast stations. In 1975, there were only 952 television stations licensed in the U.S., but by 2001, the Commission had licensed 1686 full power television stations, 2,212 low power stations and 424 Class A television stations.

[31] A 1998 NAB study found that there were 84.1 commercial radio stations in the average Designated Market Area ("DMA"), when weighted by population. In the largest DMAs, there were over 100 commercial radio stations licensed on average. Even in the smallest DMAs (number 201 and higher), there were over eight commercial radio stations licensed on average. *See Media Outlets by Market—Update*, Attached as Appendix A to NAB Comments in MM Docket No. 98-35 (filed July 21, 1998). And of course the number of licensed radio stations (both commercial and non-commercial) has increased since 1998.

[32] *See, e.g.*, Paige Albiniak, *Radio Set to Fly*, Broadcasting & Cable at 26 (Sept. 3, 2001) (XM and Sirius, the two satellite radio services, each offer 100-plus channels of music, news, talk and sports).

[33] Thomas W. Hazlett and David W. Sosa, *Was the Fairness Doctrine A "Chilling Effect"? Evidence from the Postderegulation Radio Market*, 26 J. Legal Stud. 279, 292 (1997). According to this study, in 1975 music programming "was dominated by only a few formats

identifiable formats" to be "a broad" measure of programming diversity, this study concluded that "the overall trend is toward an increase in program listening choices." Hazlett and Sosa, *Was the Fairness Doctrine a "Chilling Effect"?* at 292.

Perhaps more importantly from the Commission's perspective, there was also an "explosion in news, talk, and public affairs formats, on both AM and FM," between 1975 and 1995.[34] "The share of informational formats on FM increased from 4.64 percent in 1975 to 7.39 percent in 1995, but the more dramatic increase was in the AM band where the share of informational programming went from 4.29 percent to 27.60 percent." Hazlett and Sosa, *Chilling the Internet?* at 16. Other commentators have also observed this "expansion of the number of all-news/all-talk format stations," and noted that such expansion "tend[ed] to support the arguments of deregulation that the public's interest in news and public-affairs programming is being served, if not by every station, at least by stations in many markets."[35] Indeed, studies have demonstrated the widespread availability of radio news programming and the existence of all-news stations in a wide variety of markets, thereby "attest[ing] to the format's versatility and contradict[ing] the judgment that all-news is viable only in major markets."[36]

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such as country-western and adult contemporary." By 1995, there were "more than 20 specific" music formats, including "urban contemporary, new age, and bluegrass." *Id*.

[34] Thomas W. Hazlett and David W. Sosa, *Chilling the Internet? Lessons from FCC Regulation of Radio Broadcasting*, Cato Policy Analysis No. 270 at 5 (March 1997).

[35] Benjamin J. Bates and Todd Chambers, *The Economic Basis for Radio Deregulation*, 12 J. Media Econ. 19, 28 (1999).

[36] Daniel Riffe and Eugene Shaw, *Ownership, Operating, Staffing and Content Characteristics of "News Radio" Stations*, 67 Journalism Quarterly 684, 691 (1990). This study also found that the news on all-news or predominantly news stations "was decidedly local in orientation." *Id*. at 686.

Moreover, economists have asserted for decades that consolidation within local media markets may well lead to greater diversity of programming.[37] The Commission itself envisioned that consolidated ownership would promote "program service diversity and the development of new broadcast services" when it initially liberalized the radio ownership regulations in 1992. *1992 Radio Ownership Order*, 7 FCC Rcd at 2757. And as predicted, the post-1996 ownership consolidation in the radio industry has indeed significantly enhanced programming diversity in local radio markets. A 1999 study concluded that, "[b]etween 1993 and 1997 ownership concentration and the programming variety available in local radio markets both increased substantially," consequently "suggest[ing] that the increased concentration has been good for listeners."[38] An NAB study, also conducted in 1999, similarly found an increase, between 1996 and 1998, in the average number of programming formats offered in all Arbitron surveyed markets.[39]

In addition, a new study conducted by BIA Financial Network clearly demonstrates that the number of programming formats provided in Arbitron radio markets has continued to increase and that a causal link exists between increased ownership consolidation and increased programming diversity. *See* Attachment A, BIA Financial Network, *Has Format Diversity Continued to Increase?* (March 26, 2002) ("BIA Diversity Study"). Specifically, this study

[37] *See, e.g.*, Peter Steiner, *Program Patterns and Preferences, and the Workability of Competition in Radio Broadcasting*, 66 Q.J. Econ. 194 (1952) (demonstrating that a consolidated owner of radio stations within a market may be more likely to program minority taste formats than if stations in the market were separately owned).

[38] Steven Berry and Joel Waldfogel, *Mergers, Station Entry, and Programming Variety in Radio Broadcasting*, National Bureau of Economic Research, Working Paper 7080 at 25-26 (April 1999). This study in fact found that "increased concentration *caused* an increase in available programming variety." *Id*. at 25 (emphasis added).

[39] *See* Comments of NAB in MM Docket No. 99-25, Attachment B, *Format Availability After Consolidation* (filed Aug. 2, 1999).

found that, since 1998, the average number of general programming formats offered in all Arbitron surveyed markets has increased 8%, and the average number of specific programming formats has increased by 11.1%. BIA Diversity Study at 5, 7.[40] With regard to the number of programming formats offered, the average Arbitron market has 10.8 general and 16.2 specific programming formats. When weighted by the relative population of the markets, the average Arbitron market has 14.0 general and 27.5 specific programming formats.[41] Although larger markets do enjoy greater programming diversity, the study demonstrated that even the smallest markets receive a considerable variety of radio programming.[42]

Rather interestingly, the BIA Diversity Study found that the above analysis actually understates the level of programming diversity available to the listening public because it fails to consider "out-of-market" listening.[43] On average, less than three-quarters (71.1%) of the listening within a market is attributable to commercial radio stations listed by Arbitron as being "home" to that market. *Id*. at 9. When taking into account the additional diversity provided by

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[40] BIA Financial Network categorizes radio station programming formats in two ways. The specific formats for stations are those actually used by station personnel in describing the programming formats of their stations, and can include situations where a station has split or multiple formats. BIA then categorizes this broader range of programming formats into 19 general categories. Whether utilizing these general or specific format categories, the BIA Diversity Study (at 5-6) found that the average number of formats has increased in all market size groupings since 1998.

[41] BIA Diversity Study at 5, 7. Such weighted averages are more reflective of the number of formats available to the average listener in Arbitron markets because they give greater weight to the markets with the highest populations.

[42] *See* BIA Diversity Study at 5-6. The smallest Arbitron markets (rank 101 and higher) receive, on average, 9.5 general and 12.3 specific programming formats. The largest markets (rank 1-10) receive, on average, 17.0 general and 38.6 specific programming formats. *Id*.

[43] As described in the study (at 9), listeners are able to receive many more stations than those assigned to their Arbitron markets. There is consequently a considerable amount of listening in markets to stations that are not listed by Arbitron as being "home" to that market.

out-of-market stations, the (unweighted) average Arbitron market has 12.0 general and 19.0 specific programming formats (which represents an increase of 11.1% and 17.3%, respectively, in the number of general and specific formats than were counted when only in-market stations were examined). *Id*. at 12-13. The increase in programming diversity provided by out-of-market stations is especially pronounced in smaller markets.[44]

To establish more clearly the connection between ownership consolidation and the continuing increases in radio programming diversity, the BIA Diversity Study also conducted several regression analyses using the level of ownership concentration as an independent variable. These analyses showed that, whether utilizing general or specific programming format categories, greater levels of ownership consolidation have lead to greater programming diversity. *Id*. at 13-15. Thus, in response to the Commission's request for empirical evidence showing the link between greater consolidation and increases in diversity (*Notice* at ¶ 38), the BIA Diversity Study demonstrates that "there is a statistically significant positive relationship between the level of local ownership concentration and the level of local format diversity." *Id*. at 17.[45]

In sum, multiple studies unequivocally show that consumers today have access to more diverse radio programming than ever before, and that ownership consolidation has contributed significantly to the increase in programming diversity since 1996. Because Congress' decision in the 1996 Act to allow greater levels of radio ownership consolidation "has been good for

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[44] When taking into account listening to out-of-market stations, the smallest markets (rank 101 and higher) receive, on average, 10.9 general and 15.6 specific programming formats. BIA Diversity Study at 11-12.

[45] *Accord* Berry and Waldfogel, *Mergers, Station Entry, and Programming Variety* at 2, 25 (finding that increased concentration in radio industry has caused an increase in programming variety).

listeners,"[46] no concerns related to programming diversity justify any attempt by the Commission to cut back on the congressionally mandated ownership standards (even *if* the Commission had the statutory authority to do so).[47] Indeed, given that increases in ownership consolidation have consistently produced greater programming diversity, the Commission, when conducting its required biennial reviews of the broadcast ownership rules, must consider whether a further liberalization of the radio caps would serve the public interest.

C. Concerns About the Effect of Consolidation in the Radio Industry on Source and Viewpoint Diversity Appear Unwarranted.

As discussed above, the empirical evidence clearly demonstrates that consolidation in the radio industry has benefited the public by increasing programming diversity. The *Notice* (at ¶ 37) also inquired about the "relationship between consolidation and viewpoint and source diversity." For the reasons set forth below, concerns that ownership consolidation has significantly impacted source and viewpoint diversity in the radio industry are misplaced.

As an initial matter, NAB stresses that the overall impact of the recent consolidation in the radio industry may be less dramatic than commonly assumed. A study conducted by NAB shows that a large number of commercial radio stations either remain "standalones," or are part of local duopolies, in their respective markets. *See* Attachment B, NAB, *Independent Radio Voices in Radio Markets* (Nov. 2001) ("Radio Voices Study"). In the ten largest Arbitron markets, for instance, 25.6% of the commercial radio stations are standalones, and an additional 13.6% of the stations are in local duopolies. *Id*. In a number of smaller market groupings, the percentages of standalone stations and those in local duopolies are even higher and, in some

[46] Berry and Waldfogel, *Mergers, Station Entry, and Programming Variety* at 26.

[47] As discussed in detail above, Congress has definitively determined that the level of ownership concentration allowed under Section 202(b)(1) does not threaten diversity in local radio markets. That section of the 1996 Act is, after all, entitled "Local Radio Diversity."

market groups, approach 50%. *Id*.[48] Thus, despite the recent consolidation in the radio industry, there remains a very large number of independent owners providing content to consumers.

With regard to viewpoint diversity specifically, the existing literature indicates that the connection between ownership and diversity of viewpoint remains unproven. For example, one researcher, after reviewing the history of FCC ownership regulation and the related scholarly literature, concluded that "[t]here is no evidence" that the Commission's ownership policies have "in fact resulted in greater (or less) diversity of content" within the commercial sectors of the U.S. broadcasting industry.[49] Another study, after reviewing the existing economic literature on the effect of market structure on diversity, found that "[m]ultiplicity of ownership is a blunt instrument, and . . . possibly a counterproductive one" for insuring that "many points of view are heard."[50] Because the "great majority of those who operate broadcast stations" do not seem to be driven "by the desire to mold public opinion and attitudes," these "independent owners, all with identical economic incentives, may produce relatively uniform products." Haddock and Polsby, *Bright Lines* at 349. Chairman Powell himself has agreed with this assessment, stating that he failed "to see how ownership restrictions in themselves do much to promote the goal" of providing antagonistic viewpoints. Admittedly, "[d]ifferent owners have different perspectives, but they probably have more in common as commercial interests than not, for each must compete

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[48] For instance, in markets 11-25, nearly half (49.4%) of the commercial radio stations are standalones (28.5%) or are part of a local duopoly (an additional 20.9%). Similarly, 46.4% of the commercial radio stations in markets 26-50 fall in these categories. Overall, more than 40% of all commercial stations in Arbitron markets are either standalone or duopoly stations within their respective markets. Radio Voices Study at 1.

[49] Benjamin Compaine, *The Impact of Ownership on Content: Does It Matter?*, 13 Cardozo Arts & Ent. L.J. 755, 763 (1995).

[50] David Haddock and Daniel Polsby, *Bright Lines, the Federal Communications Commission's Duopoly Rule, and the Diversity of Voices*, 42 Fed. Comm. L.J. 331, 348-49 (1990).

for maximum audience share to remain profitable." While the "ownership class may include different people," it is "hard to see how that ensures" they "are different in their viewpoints."[51] Because the actual correlation between ownership of broadcast stations and the local availability of diverse ideas and viewpoints is attenuated at best, the Commission cannot simply assume that increased ownership consolidation in the radio industry has already, or will in the future, result in a decline in viewpoint or content diversity.[52]

Indeed, a very recent study demonstrates that consolidated media owners do in fact provide a meaningful diversity of viewpoints on issues of public concern.[53] The Pritchard Study examined the diversity of information and viewpoints regarding the 2000 Presidential campaign offered by commonly owned newspaper/broadcast combinations in Chicago, Dallas and Milwaukee, and "found substantial diversity in the news and commentary offered by each of the three newspaper/broadcast combinations." Pritchard Study at 33. Specifically, the study "found no evidence of ownership influence on, or control of, news coverage" of the Presidential campaign in the cross-owned media properties in the three markets. *Id*. at 49.[54] The "slant" of

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[51] Separate Statement of Commissioner Michael K. Powell, *1998 Biennial Review Report*, 15 FCC Rcd 11058, 11149 (2000). *Accord* Timothy J. Brennan, *Vertical Integration, Monopoly, and the First Amendment*, J. Media Econ. 57, 67-68 (Spring 1990) (media owners are constrained by marketplace pressures and economic incentives from "control[ling] content in ways" divergent from the preferences of "readers, listeners, or viewers").

[52] *See, e.g., Lamprecht v. FCC*, 958 F.2d 382 (D.C. Cir. 1992) (gender-based preference in broadcast comparative licensing process was invalidated when FCC introduced no evidence supporting a link between female ownership and programming of any particular kind).

[53] *See* David Pritchard, *A Tale of Three Cities: "Diverse and Antagonistic" Information in Situations of Local Newspaper/Broadcast Cross-Ownership,* 54 Fed. Comm. L.J. 31 (2001) ("Pritchard Study").

[54] Rather interestingly, the author of this study noted that the three media corporations being examined all favored repeal of the newspaper/broadcast cross-ownership rule, "an outcome that

the campaign coverage aired by each company's radio and television stations "tended to differ from the slant of news published by the company's newspaper." *Id*. This "difference was especially pronounced in Milwaukee," which was the *most* concentrated media market of the three. *Id*. Overall, the study "found a wealth of 'diverse and antagonistic' information" offered by the newspaper/broadcast combinations examined. *Id*. Because commonly-owned media properties appear both willing and able to provide "a wide range of diverse and antagonistic opinions" (*Notice* at ¶ 30), the Commission should not be concerned that ownership consolidation will prevent the expression of diverse viewpoints in radio programming content.[55]

Finally, if the Commission is concerned about the impact of consolidation in the radio industry on "diversity in the marketplace of ideas," then it must be careful in defining the market for ideas so as not to "overestimate the degree of concentration" in that market.[56] After all, consumers do not rely solely – or even primarily – on radio as a source of news and information, but instead access a continually expanding variety of mass media outlets for entertainment,

was much more likely" if Bush defeated Gore. Pritchard Study at 38. This position did not, however, produce a coordinated or consistent "slant" toward Bush in the coverage of the campaign by the corporations' various cross-owned media properties. *Id*. at 49.

[55] Moreover, despite its traditional concern with viewpoint diversity, the Commission cannot ignore the fact that, as Chairman Powell has expressly noted, much of the content on television and radio is entertainment-oriented and not the type of programming where the concept of viewpoint antagonism had substantial "relevance." Separate Statement of Commissioner Michael K. Powell, *1998 Biennial Review Report*, 15 FCC Rcd 11058, 11149 (2000).

[56] Benjamin J. Bates, *Concentration in Local Television Markets*, J. Media Econ. 3, 17 (Fall 1993) (arguing that using the "same market definition to consider the impact" of "concentration on the price of advertising" to also consider "the impact of concentration on diversity in the marketplace of ideas" would "be to seriously overestimate the degree of concentration" in the marketplace of ideas).

information and opinion.[57] Indeed, nearly two decades ago, the Commission concluded that "the information market relevant to diversity concerns includes not only television and radio outlets, but cable, other video media, and numerous print media" (such as newspapers, magazines and periodicals) "as well." *Report and Order* in Gen. Docket No. 83-1009, 100 FCC 2d 17, 25 (1984) (specifically finding that "these other media compete with broadcast outlets for the time that citizens devote to acquiring the information they desire" and "are substitutes in the provision of such information").[58]

Today, with the recent emergence of, *inter alia*, the Internet and video and radio satellite services, the "information market relevant to diversity concerns" is broader and more varied than ever before. *Id*.[59] Given the expansion in the number of traditional broadcast outlets, the "rapid

[57] The tremendous growth in the number and variety of mass media outlets in recent decades has been documented on many occasions. *See, e.g*., Separate Statement of Commissioner Michael K. Powell, *1998 Biennial Review Report*, 15 FCC Rcd 11058, 11141-48 (2000); Comments of Newspaper Association of America, Appendix I in MM Docket Nos. 01-235 and 96-197 (filed Dec. 3, 2001).

[58] NAB has previously demonstrated the impressive growth of these various media outlets in individual markets. In a 1998 study, NAB found that the average DMA had 12.4 television stations, 84.1 commercial radio stations, and 18.3 newspapers that reached 1,000 or more in circulation (13.6 of which were published within the market and 2.9 of which reached a minimum of 5% penetration). The average DMA also had a 23.6% penetration of weekly newspapers and 10.2 national magazines that reached a 5% penetration. *See* Comments of NAB in MM Docket No. 98-35, Appendix A, *Media Outlets by Market-Update* (filed July 21, 1998) ("Media Outlet Report"). The growth of cable television has also expanded the number of news sources and outlets available to consumers in local markets, as numerous national (*e.g.*, CNN, MSNBC, CNBC, C-SPAN, Fox News Channel) and local or regional cable programming services (such as Newschannel 8 in the Washington, D.C. area and Chicagoland Television News in the Chicago area) have flourished.

[59] According to NAB's 1998 Media Outlet Report, only 23.4 million households were online in 1998, but by 2005, 68.4 million households, or 63% of all American homes, are expected to be online. *Veronis Suhler Releases 15th Annual Communications Industry Forecast*, PR Newswire (Aug. 6, 2001). Over 72% of Americans currently have Internet access, and 58% of the U.S. population has such access at home. Alec Klein, *Internet Use Seems to Cut into TV Time*, Washington Post at E01 (Nov. 29, 2001); *Eighth Annual Report*, CS Docket No. 01-129, FCC

development and diffusion of alternatives" to these "mainstream media," and the equally rapid "converg[ence] of media technologies," the Commission should have little concern that ownership consolidation in the radio industry will have a deleterious effect on the availability of diverse viewpoints in local media markets. Bates, *Concentration in Local Television Markets* at 17 (emphasizing the importance of the "presence and impact of substitutes" to traditional media such as broadcast outlets when considering the "impact of concentration on diversity in the marketplace of ideas"). It certainly would seem contrary to the reality of today's mass media marketplace to suggest that consumers are unable to access a sufficiently wide variety of entertainment and informational programming, and, as television and radio broadcasters and other service providers move into an era of digital abundance, the Commission should have even less cause for concern about any lack of diversity in the marketplace of ideas.[60]

III. In Light Of The Economic Benefits Of Consolidation, The Still Limited Market Power Of Station Groups, And The Commission's Questionable Authority To Regulate Advertising Markets, Competitive Issues Should Not Concern The Commission In This Proceeding.

A. The Commission's Authority to Impose Structural Ownership Regulation to Protect Advertisers May Be Questioned.

Beyond "promot[ing] diversity," the Commission has also traditionally intended its broadcast ownership rules "to foster economic competition." *Report and Order* in MM Docket Nos. 91-221, and 87-8, 14 FCC Rcd 12903, 12910 (1999). However, NAB questions the

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01-389 at ¶ 13 (rel. Jan. 14, 2002). Nearly half of Americans currently use the Internet to obtain news specifically, and among people younger than 45, 60% use the Internet for news. *Internet Grows as News Source*, abcNEWS.com (Oct. 17, 2001).

[60] *See, e.g.*, *Report and Order*, 98 FCC 2d at 1086, 1099 (emergence of "new technologies, coupled with the continued growth in the number of television [and radio] stations, will create an economic environment that is even more competitive than the existing marketplace," will "only further ensure the presentation" of informational and other non-entertainment programming, and "will continue" to cause a "decline" in the "need" for regulation of broadcasters).

wisdom of, and the basis for, any imposition of structural ownership regulations by the Commission in an effort to protect advertisers from concentration in advertising markets. Congress certainly has not charged the Commission with the specific task of regulating the broadcast advertising market, or of insuring that rates for advertisers remain reasonable. Although the Commission's authority to regulate in the "public interest" is broad, it nonetheless has limits, and may not reach to the imposition of regulations designed to insure that, for example, broadcasters charge competitive rates to Procter & Gamble to advertise laundry detergent.[61] To justify imposing or retaining structural ownership regulations on the basis of insuring a competitive market for advertisers, the Commission would, at the very least, need to demonstrate empirically that a decline in the competitiveness of the advertising market causes the degradation of the broadcast services provided to the public. Indeed, Chairman Powell, in questioning "why the FCC should concern itself with advertising rates," has flatly stated that the Commission does "not regulate advertising and *the price impacts there do not have a secondary effect on viewers in a manner cognizable by the Communications Act*."[62]

Moreover, as Chairman Powell and former Commissioner Harold Furchtgott-Roth have pointed out, the antitrust statutes, as enforced by the Department of Justice and the Federal Trade Commission, adequately address concerns about undue concentration in advertising markets.[63]

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[61] And while competitive advertising markets may keep advertising rates lower, and lower advertising costs may result in lower prices for consumers, the price consumers pay for laundry detergent may not either be a legitimate concern for the FCC, as it is essentially unrelated to the provision of broadcast service to the public.

[62] Separate Statement of Commissioner Michael K. Powell, *1998 Biennial Review Report*, 15 FCC Rcd 11058, 11145 n.14 (2000) (emphasis added).

[63] *See* Separate Statement of Commissioner Michael K. Powell, *1998 Biennial Review Report*, 15 FCC Rcd 11058, 11145 n.14 (2000); Concurring Statement of Commissioner Harold W. Furchtgott-Roth, *In re Great Empire Broadcasting, Inc.*, 14 FCC Rcd 11145, 11161 (1999).

Because the Commission should not needlessly replicate the work of these agencies on questions of competition in advertising markets raised by proposed broadcast mergers, the Commission must, at the very least, explain how its role in reviewing such questions differs from that of other federal agencies.[64]

B. The Commission Has Previously Recognized that a Broad Advertising Market Is Appropriate.

If the Commission in this proceeding nonetheless attempts to define the relevant product market for advertising, it should rely on its previous decisions indicating that the market includes a number of forms of media advertising, rather than just radio (or any other single medium) alone. Indeed, in many decisions over the course of more than a decade, the Commission has consistently utilized broad advertising product markets encompassing a number of media, and has generally not limited its considerations to advertising in particular, individual mediums.[65]

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[64] And, as discussed in Section I. above, the Commission in any event lacks the statutory authority under the Communications Act to delay, or refuse to approve, on competition-related grounds proposed radio transactions that comply with the local radio ownership standards established by Congress in the 1996 Act. NAB does not dispute that the Justice Department has authority under the antitrust laws to review broadcast industry mergers on competition grounds, including those mergers in compliance with the radio ownership caps established in the 1996 Act.

[65] *See, e.g., Notice of Inquiry, 1998 Biennial Regulatory Review* in MM Docket No. 98-35, 13 FCC Rcd 11276 at ¶ 5 (1998) (local advertising market consists of broadcast television, cable television, radio and newspapers); *In re Stockholders of Renaissance Communications Corporation*, FCC 97-98 at ¶ 48 (1997) (in evaluating request for newspaper/broadcast cross-ownership waiver, FCC utilized advertising product market of television and radio stations, newspapers and cable television systems); *In re Capital Cities/ABC, Inc.*, FCC 96-48 at ¶ 94 (1996) (FCC utilized advertising product market of newspapers, cable television, broadcast television and radio in considering request for newspaper/broadcast cross-ownership waiver); *Further Notice of Proposed Rulemaking* in MM Docket Nos. 91-221 and 87-8, 10 FCC Rcd 3524, 3543 (1995) (local advertising market includes cable operators, broadcast television stations, radio stations and newspapers); F. Setzer and J. Levy, *Broadcast Television in a Multichannel Marketplace*, Office of Plans and Policy Working Paper No. 26, DA 91-817, 6 FCC Rcd 3996, 4083 (1991) (finding that "[a]dvertising alternatives" to television and cable

Moreover, in previous decisions concerning the radio industry specifically, the Commission has expressly found that radio stations compete with non-radio outlets, including broadcast television and cable, "for audiences and advertising revenues." *1992 Radio Ownership Order,* 7 FCC Rcd at 2757, 2759 (finding that radio's share of local advertising market had been flat throughout the 1980's, "even as the respective shares of *directly competitive media,* most notably local cable, increased") (emphasis added).[66]

A study previously conducted for NAB similarly found that radio stations, in selling their advertising time slots, "compete[] in a product market that includes other radio stations and a host of other media," including broadcast and cable television, newspapers, magazines, outdoor advertising and direct mail.[67] While each advertising medium has different characteristics, more than one type of media can generally fulfill an advertiser's needs. As a result, advertisers strive to find the most cost effective "media mix," and "regularly shift components of their [advertising] budgets between media as tactics and cost factors dictate." Kerr Study at 15-16.[68] Several recent empirical studies have also concluded that the various media are substitutable for

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advertising "include radio, newspapers, magazines, direct mail, yellow pages, and outdoor advertising").

[66] *See also First Report and Order* in MM Docket No. 87-7, 4 FCC Rcd 1723, 1727 (1989) (in decision relaxing radio duopoly rule, FCC observed that the "record in this proceeding indicates that other media," including "television stations, newspapers, and cable television systems," provide "competition for advertising with radio").

[67] William Kerr, Ph.D., Capital Economics, *Comments of the National Association of Broadcasters on the Advertising Product Market* at 5 (submitted to Department of Justice, Antitrust Division, May 15, 1996) ("Kerr Study"). This study discussed in detail how the radio industry works to persuade advertisers to divert their advertising dollars away from newspapers, broadcast television, cable television and other media. *Id.* at 6-13.

[68] The Kerr Study (at 16-18) cited many instances of advertisers who traditionally heavily relied upon one advertising medium shifting their advertising budgets between media because of perceived changes in the value received for their advertising dollar.

advertising purposes.[69] In sum, it is contrary to common sense and substantial evidence to contend that advertisers are captive to radio, or any other single medium, or that advertisers are forced to maintain their advertising with a particular medium "in the face of rate increases out of proportion to other media." Kerr Study at 19-20 (asserting specifically that "[m]essages conveyed by radio also can be distributed by myriad other media options," and "[e]ven the discrete audience targeting offered by specific radio formats now can be obtained through other media alternatives," including cable television).[70]

Particularly in light of evidence showing inter-media competition in advertising, NAB sees no reason for the Commission to reject at this juncture its earlier determinations about the broad nature of the local advertising market.[71] At the very least, if the Commission abandons in

[69] *See, e.g.*, R.B. Ekelund, Jr., G.S. Ford and J.D. Jackson, *Are Local TV Markets Separate Markets?*, 7 Int'l. J. Econ. Bus. 79, 91-92 (2000) (finding that, at the local level, television advertising is not a distinct antitrust market because "radio and newspaper advertising are substitutes for TV advertising," and, as a result, "broadening the local advertising market to include (at least, some) other local media is required to accurately delineate the appropriate antitrust market for local advertising"); B.J. Seldon, R.T. Jewell, and D.M. O'Brien, *Media Substitution and Economies of Scale in Advertising*, 18 Int'l. J. Ind. Org. 1153, 1175 (1999) (finding at the national level "strong substitution possibilities from TV into both print and radio, from radio into both print and TV, and from print into radio"); B.J. Seldon and C. Jung, *Derived Demand for Advertising Messages and Substitutability Among the Media*, 33 Q. Rev. Econ. & Fin. 71, 82 (1993) (finding "fairly good" substitutability among the various media, aggregating the advertising market as a whole). *But see* R.B. Ekelund, Jr., G.S. Ford and J.D. Jackson, *Is Radio Advertising a Distinct Local Market? An Empirical Analysis*, 14 Rev. Ind. Org. 239, 254-55 (1999) (while "television and newspaper advertising are substitutes for radio advertising," study concluded that "substitutability" within local radio markets was "present," but "low").

[70] *Accord* Seldon, *et al.*, *Media Substitution* at 1173 ("with respect to mergers in the television and radio media, antitrust agencies perhaps need not be too concerned that the owners of these media outlets will be able to significantly increase the price of advertising because advertisers could switch to print advertising"); Seldon & Jung, *Derived Demand* at 82 ("if advertising in one media were controlled by only a few firms and if these firms attempted to exercise market power, producers could advertise through other, less costly, media").

[71] As discussed in the *Notice* (at ¶ 42), the Department of Justice has in recent years taken the position that radio advertising does constitute a separate market. But the Justice Department itself has not been consistent in this position, and in fact previously asserted that broadcast

this proceeding its earlier position that a "number of non-radio outlets compet[e] with radio for audiences and advertising revenues," *1992 Radio Ownership Order*, 7 FCC Rcd at 2757, then it must supply a detailed and reasoned analysis to justify its change in course.[72] The Commission's failure to provide "the requisite 'reasoned basis' for altering" its previous conclusions (*ACT*, 821 F.2d at 746) concerning the "intense" competition between radio and other media outlets would clearly be vulnerable to challenge. *1992 Radio Ownership Order*, 7 FCC Rcd at 2758.

C. The Question of Defining the Appropriate Geographic Market Presents Considerable Difficulties and Has No Clear Answer.

Because the Commission lacks the authority to subject proposed radio transactions complying with the caps established in Section 202(b) to an extra-statutory competition analysis, the Commission need not even address in this proceeding the very challenging question of defining the relevant geographic market for radio competition. If, however, the Commission is determined to address this difficult issue, NAB offers the following observations.

As a matter of logical consistency, the Commission should use the same method of defining the geographic market for any competition analysis as it uses for applying the multiple

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stations and newspapers are competitors in the advertising market. *See Second Report and Order* in Docket No. 18110, 50 FCC 2d 1046, 1056 (1975) (Department of Justice "sees newspapers and television advertising as interchangeable" and "would define the product market so as to include newspapers and television stations"). The Supreme Court has, furthermore, expressly recognized that radio stations compete with other media in the advertising market. *See Lorain Journal Co. v. U.S.*, 342 U.S. 143, 154 (1951) (finding that a radio station and a newspaper in the same geographic area competed in the "dissemination of news and advertising").

[72] *See, e.g., Motor Vehicle Manufacturers Association of the U.S., Inc. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 42 (1983) (an agency changing course "is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance"); *ACT v. FCC*, 821 F.2d 741, 746 (D.C. Cir. 1987) (court found that FCC had failed to explain adequately its alteration of "long-established" children's television policy); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970) ("an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed").

ownership rules.[73] Logically, the same contour overlap method appropriate for defining radio markets, for counting stations in them, and for determining the number of radio stations owned by an entity in a market should also be appropriate for an analysis of that same entity's competitive position in the market.[74]

NAB cannot, however, fully endorse the use of the Commission's traditional contour overlap method of market definition in a competition analysis (particularly if the Commission, however unwisely, were to adopt an entirely case-by-case approach for addressing proposed station combinations in the future).[75] Utilizing a contour overlap method of market definition for competitive purposes would essentially require each applicant to submit a customized competition analysis based on the unique market created by every proposed transaction. Such a requirement would be burdensome, time-consuming and expensive for applicants, and reviewing large numbers of individualized competition analyses would also be administratively burdensome for the Commission and would likely result in slower FCC resolution of proposed radio transactions.

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[73] As stated in the *Notice* (at ¶ 44), the geographic market is defined under the local ownership rules using "a system of mutually overlapping signal contours, which makes the geographic market endogenous to a common owner's particular station holdings."

[74] And although the Commission's current contour overlap method of defining radio markets under the local ownership rules has been criticized for creating a certain number of anomalies, NAB has previously explained in detail why every method of defining radio markets would undoubtedly produce anomalies. There is no reason to believe that the Commission could replace its current contour overlap method with an alternative market definition approach that would ultimately produce fewer anomalies. *See* Comments of NAB in MM Docket No. 00-244, *In re Definition of Radio Markets* (filed Feb. 26, 2001).

[75] *See Notice* at ¶¶ 66-71 (discussing in detail the framework for a case-by-case approach to addressing proposed station combinations).

Unfortunately, neither can NAB endorse the obvious alternative to utilizing a contour-overlap market definition for competition purposes – the use of Arbitron markets. Admittedly, data about the revenues of radio stations on an Arbitron market basis are readily and cheaply available, so utilizing Arbitron markets for any competition analysis should be relatively easy and uncomplicated for the Commission and applicants alike. Arbitron, however, does suffer from a number of drawbacks that severely limit its usefulness as the Commission's tool of choice in market competition analyses.

First, nearly half of all radio stations are not located in Arbitron markets, so adoption of Arbitron market definitions would not resolve the problem of defining radio markets in a large number of cases. Second, as NAB has previously explained in considerable detail, Arbitron data lack the neutrality and consistency needed for data to be used as a regulatory tool.[76] Third, Arbitron data do not reflect the true level of competition that exists in a number of markets. As explained in the attached BIA Diversity Study, Arbitron assigns radio stations to only one radio market, even if they serve multiple areas; consequently, there is a considerable amount of listening in markets to stations that are not listed by Arbitron as being "home" to that market. On average, less than three-quarters (71.1%) of the listening within a market is attributable to commercial stations listed as being home to that market. BIA Diversity Study at 9-11 (finding "2,663 instances in which a radio station was receiving enough listening in another market to be reported" in that other market). Perhaps most significantly, in some Arbitron markets as much as *two-thirds* of the radio listening is to stations that Arbitron does not assign to the listeners'

[76] *See* Comments of NAB in MM Docket No. 00-244 at 15-24 (filed Feb. 26, 2001) (discussing the extent to which Arbitron's market definition process remains subject to the control of Arbitron subscribers, the anomalous effects of Arbitron's employment of "minimum reporting standard" thresholds and of certain survey techniques, Arbitron's authority to "delist" stations, and other concerns).

geographic market. *Id*. at 3.[77] Thus, Arbitron data seriously underestimate the level of competition (and diversity) existing in a number of markets. NAB therefore questions the suitability of utilizing Arbitron market data for assessing the true competitive impact of proposed radio transactions.

Given these problems with employing Arbitron market data to conduct a competition analysis, the Commission should use such data – if at all – as only a "first cut" screen that will quickly and easily identify transactions clearly raising no competitive concerns, which can then be expeditiously approved. The Commission should certainly never reject a proposed radio transaction on competitive grounds where only Arbitron market data has been examined in the competition analysis. If an initial screen of a transaction utilizing Arbitron market data appeared to raise competitive concerns, the Commission must allow applicants a full and complete opportunity to demonstrate that their proposed transaction would not in fact cause competitive harm in the marketplace.

From the above discussion, it is evident that satisfactorily defining the relevant geographic market for any competition analysis of proposed radio transactions will be extremely challenging. NAB moreover sees no compelling reason for the Commission to even attempt to formulate such a definition in this proceeding, given the FCC's lack of authority to conduct an extra-statutory competition review of radio transactions that comply with the numerical ownership standards established by Congress in the 1996 Act.

[77] According to the Spring 2001 ratings survey, for example, in the New Haven, CT Arbitron market, in-market commercial radio stations receive only 30.6% of the total radio listening. In-market radio stations in Trenton, NJ and Akron, OH receive, respectively, only 29.9% and 28.7% of the total radio listening.

D. As Demonstrated by Numerous Studies, the Commission Should Not Be Concerned about the Exercise of Market Power in the Radio Industry.

Despite the considerable consolidation that has recently occurred in the radio industry, several factors operate to prevent the exercise of undue market power by broadcasters. A number of studies in fact demonstrate that the Commission need not be concerned about the ability of even consolidated groups to engage in anti-competitive behavior in the radio marketplace.

More specifically, several factors have been previously identified as limiting the market power of radio stations or groups. First, it has been observed that, unlike most industries, "the supply of radio advertising time is relatively insensitive to the price of that product" (*i.e.*, is inelastic). Kerr Study at 23. "Radio stations produce advertising slots 24 hours a day, seven days a week, 365 days a year," regardless of the level of demand for those slots or the low (or high) market price for them. *Id*.[78] These characteristics of the supply of radio advertising time tend to reduce the power of radio broadcasters vis-à-vis potential advertisers. Perhaps more importantly, as the Commission itself (*see Notice* at ¶ 47) and previous studies have suggested, the volatility of ratings and audience share in the radio industry provides a very significant check on the market power of the leading stations or groups in local markets. Given the relative speed and ease with which radio stations can, and do, seek larger audiences and advertising revenues by shifting formats, "leadership in the ratings game" is "impermanent[t]," and, thus, even market leading stations are quite limited in their ability to exercise market power.[79]

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[78] In addition, radio advertising time slots are perishable in the sense that they cannot be inventoried. Because a commercial "minute that goes unsold today will never be sold," there is "pressure on broadcasters to sell marginal minutes, even if for very low rates." Kerr Study at 24.

[79] Kerr Study at 21. This study examined the audience share of the five highest rated stations in a representative group of six Arbitron markets in 1980, 1985, 1990 and 1994. "Not one of the

A new study confirms that the market power of even market leading stations necessarily remains limited because of the volatility of audience shares received by radio stations that results from, *inter alia*, the relative ease with which lower rated stations may improve their ratings and challenge market leading stations by altering their formats. *See* Attachment C, BIA Financial Network, *Volatility in Radio Market Shares* (March 26, 2002) ("BIA Volatility Study"). Even the recent consolidation in the radio industry has not, according to this study, negatively impacted the ability of stations to increase their audience shares through format changes.

Specifically, this study examined the level of volatility in the audience shares of commercial radio stations in Arbitron markets, and then directly focused on the audience share increases earned by stations that changed their formats. The study clearly shows that the audience shares earned by radio stations are quite volatile, and that stations are able to make significant gains in their shares over short periods of time. For example, between only the Fall 2000 and Spring 2001 ratings periods, nearly one-quarter (23.1%) of all reportable stations in Arbitron surveyed markets saw their audience shares increase by 25% *or more*. A virtually identical percentage of stations (23.0%) saw their audience shares increase by 25% or more over a longer period (between Spring 2000 and Spring 2001). BIA Volatility Study at 4-5.[80]

When specifically examining stations that changed their formats, the study showed that these stations on average increased their audience shares by considerable amounts. For example,

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groups of 1980 market leaders retained all five top slots by 1985." By 1994, "in only one market was the number one ranked station still number one." In two of the six markets, "just one of the five stations was still in the top five in 1994." Between 1980 and 1994, moreover, "there were 31 changes in format among the 30 stations," and only "nine of the 30 stations ended the period with the same format they had at the beginning." *Id.* at 21-22.

[80] Large numbers of stations also saw their audience shares *drop* by 25% or more during these same periods, and many other stations experienced smaller increases or decreases in their audience shares. BIA Volatility Study at 4-6.

over 300 stations in Arbitron markets changed their formats between Fall 2000 and Spring 2001, and these stations increased their share, on average, by 30.8% between these two ratings periods. *Id*. at 7. Over a longer time period, the share gains made by format changing stations were even more impressive. Between Spring 2000 and Spring 2001, over a tenth (10.5%) of all reportable stations changed their formats, and these stations increased their audience share on average by 38.5%. *Id*. at 9-11.[81]

Moreover, a regression analysis was performed to determine whether greater ownership concentration in local markets made it more difficult for stations to increase their shares after changing formats. *See Notice* at ¶ 47 (inquiring whether the level of concentration had "an impact on the ability of stations to increase their market share," and whether stations in markets with low concentration found it easier to increase their listenership than stations in more concentrated markets). The study "found no evidence that an increase in local ownership concentration negatively affects the ability of stations to increase their local audience share" through a format change. BIA Volatility Study at 17.[82]

The BIA Volatility Study therefore clearly confirms that the audience shares earned by radio stations are generally very volatile, and that large numbers of stations are able to utilize format changes in particular to improve significantly their competitive positions in local markets

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[81] Over a two-year period (Spring 1999 to Spring 2001), nearly a fifth (18.5%) of all reportable stations changed their formats, and these stations increased their shares by 35.6% on average. BIA Volatility Study at 9-11.

[82] In fact, in the short run (between Fall 2000 and Spring 2001), format changing stations were more likely to increase their shares in highly concentrated markets than in less concentrated markets. Over longer time periods (between Spring 2000 and Spring 2001 and between Spring 1999 and Spring 2001), there was no impact, positive or negative, from the level of concentration on the success of format changing stations. BIA Volatility Study at 13-16.

over relatively short time periods.[83] This ratings volatility necessarily reduces the ability of even the current market leading stations or groups to exercise market power (or, indeed, to even retain their market leading position over time). The volatile and dynamic nature of local radio markets accordingly should allay concerns about the ability of consolidated groups to engage in anti-competitive behavior.

Even beyond this volatility of audience shares (and therefore advertising revenues) experienced by radio stations, NAB also observes that the ratings received by market leading stations have declined consistently in recent years. Specifically, NAB has compared the aggregate listening shares earned by the top five stations in the 100 largest Arbitron markets in 1996 to the aggregate shares earned by the five leading stations in those markets in 2001. *See* Attachment D, *Aggregate Shares of the Top Five Stations in Arbitron's Top 100 Markets: Spring 2001 vs. Spring 1996*.[84] In 78 of the 97 markets compared, the aggregate shares of the top five stations were lower in 2001 than they had been in 1996. In two markets, the aggregate shares of the five leading stations were the same in 2001 as in 1996, and in only 17 markets did the top five stations' aggregate shares increase between 1996 and 2001. On average across the 97 markets, the top five stations received an aggregate listening share of 37.6 in 1996; by 2001, this aggregate share had dropped, on average, to 34.2 (a 9.1% decline). Thus, even if some stations have been able to retain their position as market leaders over time, despite the

[83] And while BIA's Study focused on format changes, which are easily identifiable, stations may also take other actions to attract audiences and increase their ratings, such as improving the quality of their on-air talent or increasing their promotional and marketing activities.

[84] This survey actually compared 97, rather than 100, markets because three current Arbitron markets in the top 100 (Puerto Rico-13; Middlesex-33; and Westchester County-59) were not surveyed as separate markets in 1996.

considerable volatility in audience shares generally, the shares of such long-term market leading stations will nonetheless likely have declined.[85]

The difficulties in consistently attracting large audiences that even market leading radio stations experience no doubt result from increased inter- and intra-industry competition, as consumers today may obtain entertainment and information from a continuously expanding variety of broadcast and other media outlets. *See supra* 26-28. Local radio broadcasters also now face growing competition from Internet radio and from new satellite radio services, which "some analysts expect will transform the [radio] medium to the same degree cable transformed television." Neil Irwin, *XM Raises the Baton*, Washtech.com (Sept. 8, 2001). This increasing competition for listeners should certainly tend to negate the ability of even market leading radio stations to exercise market power.

Whether due to the volatility of audience shares, the declining shares earned by even market leading stations, or other factors, available empirical evidence indicates that stations have in fact been unable to exercise anti-competitive market power, despite increased ownership consolidation. A recent study specifically examining market power in radio found little support for the hypothesis that increased ownership concentration has lead to collusive conduct and market power in the industry.[86] This study of profits and concentration in the radio industry concluded that "radio station groups achieve efficiencies relative to stand-alone stations," and that "[t]hese efficiencies are achieved through group ownership *without* a corresponding increase

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[85] In Chicago, for example, WGN(AM) led all radio stations in 1976 with a 13 share, and it remained the market leader in 2001, but with only a seven audience share – a decline approaching 50%. Comments of Tribune Company in MM Docket Nos. 01-235 and 96-197 at 33 (filed Dec. 3, 2001).

[86] R.B. Ekelund, Jr., G.S. Ford, and T. Koutsky, *Market Power in Radio Markets: An Empirical Analysis of Local and National Concentration*, 43 J. Law & Econ. 157 (2000).

in market power" of radio broadcasters generally. Ekelund, *et al.*, *Market Power in Radio Markets* at 181 (emphasis added). In expressly examining "whether concentration leads to economic efficiency or to market power," this study clearly found that "group ownership" did "increase efficiency" rather than market power. *Id.* at 157, 159.

Furthermore, as discussed above (at 23-24), it is clear that, despite the existence of consolidated groups in many markets, standalone radio stations and local duopolies remain viable in markets of all sizes. The attached Radio Voices Study shows that more than 40% of all commercial stations in Arbitron markets are either standalone stations, or are part of local duopolies, in their respective markets.[87] Clearly, consolidated groups have not exercised anti-competitive market power so as to undermine the viability of their competitors, including standalone or local duopoly stations.[88] The existence of numerous standalone and duopoly stations also shows that barriers to entry for new owners remain relatively low, as non-group owned stations are still available for purchase by prospective broadcasters.

In fact, according to Wachovia Securities, radio is the *least* consolidated media sector. The top ten owners in the radio industry combined earn only 44% of the industry's revenues. In stark contrast, the top ten owners in the cable and Direct Broadcast Satellite ("DBS") industries earn 89% and 95%, respectively, of those industries' revenues. Radio is also less consolidated than other media sectors, including movie studios, movie theaters, outdoor media, television stations, newspapers and others. *See* Attachment E, Wachovia Securities, Chart of Revenue

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[87] In some market groups (such as Arbitron markets 11-25), the percentages of standalone stations and those in local duopolies approach 50%. Radio Voices Study at 1.

[88] If standalone stations have experienced difficulties competing against certain consolidated groups, it is likely because "radio station groups achieve efficiencies relative to stand-alone stations." Ekelund, *et al.*, *Market Power in Radio Markets* at 181.

Shares of Media Sectors. If the Commission intends to address media concentration, radio should clearly be the last place it focuses its attention.

Based on all of the studies discussed above, the Commission should accordingly conclude that, despite the consolidation that has occurred in the radio industry, broadcasters remain very limited in their ability to exercise anti-competitive market power. Especially in light of the clear benefits of consolidation (as discussed below), no competition-related concerns justify the Commission's rejection of any proposed station combinations that comply with the congressionally established numerical ownership caps (even *if* the Commission had the statutory authority to do so).

E. The Economic Benefits of Consolidation Have Long Been Recognized by the Commission and Other Commentators.

In previous ownership proceedings, the Commission has expressly recognized the economic and public interest benefits flowing from joint ownership of media entities.[89] In earlier proceedings relaxing the radio ownership restrictions specifically, the Commission found that joint operation of radio stations in the same market would "enable broadcasters to realize cost savings by consolidating general and administrative functions such as accounting, billing, and payroll," and "there could be cost savings in advertising and promotion through the use of a common sales force, and some studio facilities may be shared."[90] Beyond generating these

[89] *See, e.g., Report and Order* in MM Docket Nos. 91-221 and 87-8, 14 FCC Rcd 12903, 12930 (1999) (in loosening the television duopoly rule, FCC discussed the "significant efficiencies inherent in joint ownership and operation of television stations in the same market," and how "[t]hese efficiencies can contribute to programming and other benefits").

[90] *First Report and Order* in MM Docket No. 87-7, 4 FCC Rcd 1723, 1727 (1989) (relaxing radio duopoly rule). *See also 1992 Radio Ownership Order*, 7 FCC Rcd at 2760-61 (relaxing radio ownership rules "will grant operators greater opportunity to combine administrative, sales, programming, promotion, production and other functions, as well as to share studio space and equipment," and these efficiencies will "enable radio stations to improve their competitive standing").

efficiencies that strengthen the "competitive standing" of combined stations, the Commission has long recognized that common ownership of radio stations "may also play a significant part in improving the diversity of programming available to the public." *1992 Radio Ownership Order*, 7 FCC Rcd at 2761.[91] As discussed in Section II.B. above, several studies, including the BIA Diversity Study attached hereto, have clearly demonstrated that the Commission was correct in associating an increase in common ownership with significant improvements in the programming diversity offered to the public.

A recent empirical study of local and national concentration in radio markets has also confirmed the Commission's belief that substantial operating efficiencies result from common ownership of radio stations. This study described the various efficiencies thought to arise from radio mergers,[92] and then "systemically examine[d] whether a link exists between increased concentration of radio station ownership, both local and national, and station profitability." Ekelund, *et al.*, *Market Power in Radio Markets* at 159. The evidence showed that the "ownership of radio station groups appears to increase the profitability of each station in the group," but "station profitability of those not part of a group is not increased with increased

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[91] *See also In re Golden West Broadcasters, Memorandum Opinion and Order*, 10 FCC Rcd 2081, 2084 (1995) (in liberalizing the local radio and radio/television cross-ownership rules, the Commission determined that "combinatorial efficiencies derived from common ownership" of broadcast outlets "in local markets were presumptively beneficial and would strengthen the competitive standing of combined stations," which "would enhance the quality of viewpoint diversity by enabling such stations to invest additional resources in programming and other service benefits provided to the public").

[92] These operating efficiencies might "include the sharing of a single general manager, other management personnel, and production, programming, and clerical staff." "[B]ulk discounts on services and supplies, shared operating facilities, advertising, and promotional expenses, and combined technical facilities" have additionally been cited as "efficiencies of merged operations." Other efficiencies of "a regional (and national) character" have also been suggested, including "programming economies and quality increases." Ekelund, *et al.*, *Market*

concentration" in the radio market generally. *Id*. at 159-60. The study accordingly concluded that "group ownership . . . increase[s] efficiency," especially "relative to stand-alone stations." *Id*. at 157, 181. Given the significant "efficiency benefits from radio mergers," this study explicitly urged the "antitrust authorities evaluating radio mergers" to "increas[e] the weight given to the efficiency benefits of radio mergers, relative to market power concerns." *Id*. at 181.

This empirical study accordingly confirms the assertions of the Commission and other commentators[93] about the efficiency gains resulting from common ownership of radio stations. Because ownership consolidation has produced these significant efficiency benefits, "without a corresponding increase in market power," (*id*.), the Commission has little cause for concern that consolidation has resulted in actual harms in the marketplace. The Commission accordingly has no factual basis (as well as no statutory authority) for cutting back on the levels of ownership consolidation explicitly established by Congress in the 1996 Act. Indeed, if the Commission were to "increas[e] the weight given to the efficiency benefits of radio mergers, relative to market power concerns," (*id*.), then the Commission, when conducting its required biennial reviews of the broadcast ownership rules, may very well find it in the public interest to loosen further the existing radio ownership limits.

IV. The Commission Should Rely On The Clear Numerical Limits Established By Congress In Addressing Proposed Station Combinations.

A. The Commission's Reliance on the Statutory Numerical Caps Comports with Congressional Intent and Has Numerous Practical Advantages.

Power in Radio Markets at 158.

[93] *See, e.g.*, Terrance W. Moore, *Telecommunications In the 21st Century: An Opinionated Analysis of the Radio Industry Including a Primer on Valuation of Radio Spectrum*, 27 Wm. Mitchell L. Rev. 2227, 2234 (2001) (stating that consolidation has allowed radio operators to reduce costs, including "[b]ack office costs" and costs associated with "bricks and mortar aspects of the business," such as "studios" and "sales offices").

As discussed in Section I., the express numerical caps for local ownership of radio stations set by Congress in Section 202(b) of the 1996 Act are "definitive." *Notice* at ¶ 25. In selecting these specific numerical limits corresponding to market size, Congress made its own determination as to what level of ownership consolidation would serve the public interest, and the Commission simply lacks the statutory authority to nullify this congressional judgment on any basis, whether diversity or competition related.[94] The Commission must accordingly rely on the clear numerical limits established by Congress in the 1996 Act in addressing proposed station combinations, and cannot reject, on either competition or diversity grounds, proposed transactions that comply with these statutory caps.[95] For purposes of applying the multiple ownership limits established by Congress, NAB also urges the Commission to continue applying its long-standing methodologies for defining radio markets, for counting stations in them, and for determining the number of radio stations owned by an entity in a market. *See* Comments of NAB in MM Docket No. 00-244 (filed Feb. 26, 2001).[96]

[94] And, in any event, as described in detail in Sections II. and III., the public's interest in receiving diverse radio programming is clearly being met, and the Commission has no cause for concern that ownership consolidation has resulted in actual competitive harms in the marketplace.

[95] The Commission also has the obligation, under the biennial review provisions of Section 202(h) of the 1996 Act, to determine whether the local ownership limits set forth in Section 202(b) remain "necessary" as the "result of competition," and must "repeal or modify" those limits if they are "no longer in the public interest." As discussed in Section I., the Commission therefore clearly has the authority to repeal, loosen or retain the ownership caps established in Section 202(b), but it cannot rely on Section 202(h) to "re-regulate" local radio markets by cutting back on the ownership consolidation specifically permitted by Congress.

[96] In these earlier comments, NAB discussed in great detail how altering the current methodology for determining the dimensions of radio markets and counting stations in them (i) could be contrary to congressional intent; (ii) would be highly unlikely to eliminate perceived anomalies or enhance the consistent and predictable application of the multiple ownership rules; and (iii) would be unlikely to serve the FCC's core competition and diversity concerns any more effectively than the FCC's long-standing approach.

Beyond being in accordance with clear congressional intent, the Commission's reliance on the numerical ownership caps set forth in Section 202(b) has numerous practical advantages for the Commission and for applicants. The numerical limits established by Congress are clear and easily understood and applied by the Commission and radio station owners. Applying clear-cut numerical caps would conserve the resources of both the Commission and prospective applicants and would avoid long, costly administrative delays. Utilizing express numerical limits therefore lowers transaction costs for applicants and promotes uniform, consistent decision-making by the Commission.

In contrast, a case-by-case approach to addressing proposed station combinations would enjoy none of these advantages. A case-by-case approach – even one utilizing presumptions or screens – would undoubtedly cause considerable administrative uncertainty and delays, would increase transaction costs for applicants, and would increase administrative burdens for the Commission. NAB predicts that a case-by-case approach would entail many of the problems inherent in the Commission's current flagging process, which has resulted in proposed transactions remaining "pending for several years." Separate Statement of Commissioner Kevin J. Martin to the *Notice*. Surely the Commission's unhappy experience with its flagging procedure has demonstrated why utilizing a case-by-case approach is practically untenable (as well as being contrary to congressional intent). For all these reasons, the Commission should respect Congress' judgment as to the acceptable levels of ownership consolidation, as set forth in the clear numerical caps of Section 202(b) of the 1996 Act.

B. Reducing the Number of Stations Permitted to be Commonly Owned at this Juncture Would Clearly Cause Significant Competition and Fairness Problems.

Beyond the lack of statutory authority to cut back on the level of ownership consolidation approved by Congress, the Commission's adoption at this time of more restrictive local radio ownership caps would clearly raise substantial competition and fairness issues. Since Congress' liberalization of the radio ownership rules in 1996, thousands of radio stations have been bought and sold, and significant consolidation in the radio industry has occurred. If the Commission were at this juncture to modify the local radio ownership caps so as to effectively cut back on the level of consolidation permitted in the future, then permanent competitive imbalances would be created in many markets.

Assume, for example, that one entity has already purchased in an area the maximum number of stations permitted under the 1996 Act. But if the Commission were to modify the local radio rules so that less consolidation is allowed in the future, then the "early consolidator" has gained a permanent competitive advantage over other station owners in that area because they will not be permitted to obtain in the future as many stations as currently controlled by the early consolidator, assuming that the early consolidator is grandfathered.[97] Modifying the local radio ownership caps after so much consolidation has already occurred may therefore freeze significant competitive imbalances in a number of radio markets. NAB submits that this result is unfair to radio station owners who are not the early consolidators, and fails to serve the Commission's interest in promoting vigorous competition in the radio industry.

In response to the Commission's request for comment on the disadvantages of the "50/70" screen (*see Notice* at ¶ 60), NAB believes that its application in the "flagging" of radio station transactions has similarly contributed to competitive imbalances in local radio markets.[98]

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[97] And, as previously recognized by the FCC in the pending radio market definition proceeding and discussed in Section IV.C. below, there is "no reason" to disturb existing ownership combinations by mandating any divestiture. *Notice of Proposed Rulemaking* in MM Docket No. 00-244, FCC 00-427 at ¶ 13 (rel. Dec. 13, 2000).

[98] Under this 50/70 policy, the Commission has flagged proposed radio transactions for further review if they would result in a single radio group controlling 50% or more of the advertising

Assume, for instance, that one entity has already acquired in an area the maximum number of stations permitted under the 1996 Act, and this entity consequently controlled approximately 45% of the advertising revenues in the relevant Arbitron radio market. If a smaller entity would then attempt to acquire another station(s) to compete with the "early consolidator," that entity's proposed transaction would be subject to flagging even if the transaction would result in the smaller entity accounting for only 25% of the radio advertising revenues in the same Arbitron market. And because flagged transactions have been cast into administrative limbo and subject to delays so significant as to amount to *de facto* denials,[99] the 50/70 screen and flagging policy have prevented transactions that would have enhanced competition by creating another station group able to compete more effectively with the early consolidator. The Commission's 50/70 screen has accordingly failed to serve the public's interest in effective competition, especially in smaller markets.[100] It is also fundamentally unfair for the Commission's policies to place smaller entities at a permanent competitive disadvantage vis-à-vis larger competitors that consolidated more quickly.

C. Any Change in the Ownership Limits Should Not Affect the Transferability of Existing Station Groups.

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revenues in the relevant Arbitron radio market, *or* two radio groups accounting for 70% or more of the advertising revenues in that market. *Notice* at ¶ 18.

[99] The *Notice* (at ¶ 87) stated that some of the flagged transactions have been pending at the FCC for over a year, and Commissioner Martin noted in his separate statement that some proposed transactions "have been pending for several years." Parties to transactions facing such lengthy and indeterminate delays often simply terminate their arrangements.

[100] This problem is more likely to occur in smaller markets where, due to the smaller number of radio owners, one owner may more frequently account for a larger percentage of the radio advertising revenues in those markets.

If the Commission in this proceeding were (however unwisely) to adopt more restrictive local ownership caps, the Commission will clearly need to address the issues of grandfathering and transferability. The Commission cannot even consider applying any modified ownership limitations retroactively so as to require divestiture of existing station combinations. As the Commission recognized in the pending proceeding on radio market definitions, there is "no reason to disturb" existing ownership combinations that "were granted as being in the public interest and in accordance with applicable *Commission* rules and policies."[101] In this case, existing combinations were granted in accordance with C*ongress*' determinations about local radio ownership, and radio owners have formed station groups in good faith reliance upon these clear congressional directives. It would therefore be manifestly unfair to station owners, and extremely disruptive to the industry, for the Commission to require the divestiture of any stations to comply with revised ownership limitations.

But beyond grandfathering existing ownership combinations, the Commission should also refrain from requiring multiple owners to break up their station groups upon transfer, even if an existing group were to exceed any revised ownership cap. The sale of an existing combination cannot, after all, adversely impact the level of competition and diversity in a local market. Indeed, the forced separation of commonly owned stations could negatively affect service to the public in the local market because the economic efficiencies associated with joint ownership – and the programming and other benefits made possible by those cost savings – would be lost. Spinning off a station that has become part of a consolidated group can also cause considerable practical difficulty and economic hardship for station owners. Commonly owned

[101] *Notice of Proposed Rulemaking* in MM Docket No. 00-244, FCC 00-427 at ¶ 13 (rel. Dec. 13, 2000) (emphasis added).

stations usually have consolidated operations, personnel and equipment, and, for obvious reasons, it is difficult to spin off separately a station that no longer has its own studio and equipment. In many instances, moreover, the price that a group owner paid for his or her stations represented their value as part of a consolidated group, a value that might not be obtainable if the stations could not be transferred together.

Presumably, it was considerations such as these that lead the Commission in the *1992 Radio Ownership Order* to *not* require the break up of station groups upon transfer or assignment.[102] NAB strongly asserts that the Commission should follow its own precedent, and recognize that requiring the break up of lawfully assembled station combinations upon transfer unfairly penalizes station owners. The reasonable expectations of group owners who assembled station combinations in reliance on the congressionally determined ownership caps set forth in the 1996 Act should not be overturned at this juncture.

V. Conclusion.

As Chairman Powell has correctly questioned, "what on earth are the numerical" local radio ownership caps of Section 202(b) of the 1996 Act "meant to do," if not "to set the appropriate level of concentration, or the acceptable level of diversity?"[103] NAB believes the Chairman's question answers itself – Congress clearly intended to make these diversity and competition determinations in setting explicit numerical ownership standards, and the Commission has no authority to substitute its own judgment about these issues. Because

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[102] In this order, the Commission determined not to "require a multiple owner which acquired its stations in compliance with the audience share and numerical station limits . . . to break up its station group upon transfer or assignment because the combined share of the group has grown to a level exceeding the [audience share] limit or the applicable numerical limit has changed." *1992 Radio Ownership Order*, 7 FCC Rcd at 2783.

Congress has so clearly spoken as to the appropriate level of ownership consolidation in local radio markets, any attempt by the Commission to exercise its generalized public interest authority to override Congress' specific judgment would be met with considerable skepticism by a reviewing court.

Even if the Commission possessed the authority to ignore Congress' determinations about local radio ownership, NAB has shown that the Commission need not be concerned about either a lack of diversity or anti-competitive concentration in the radio marketplace. The public's interest in receiving diverse radio programming is clearly being met on a market basis, and a number of empirical studies demonstrate that the consolidation that has occurred in the radio industry since 1996 has benefited the public by leading to greater diversity of radio programming in local markets. Despite the ownership consolidation that has occurred, several factors moreover operate to prevent the exercise of undue market power by broadcasters, especially the volatility of listening shares received by radio stations and the relative ease with which lower rated stations may improve their ratings and challenge market leading stations by altering their formats or making other changes to attract audiences. Considerable empirical evidence in fact demonstrates that radio broadcasters remain very limited in their ability to exercise market power and that clear economic efficiencies have flowed from consolidation. Indeed, given that increases in ownership consolidation have produced both greater programming diversity and significant efficiency benefits, the Commission, when conducting its required biennial reviews of the broadcast ownership rules, must consider whether a further liberalization of the radio caps would serve the public interest.

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[103] Separate Statement of Commissioner Michael K. Powell, *1998 Biennial Review Report*, 15 FCC Rcd 11058, 11159 (2000).

For all the reasons set forth in NAB's comments, the Commission should rely on the clear and easily administered numerical limits set by Congress in the 1996 Act when addressing proposed station combinations, and should not reject, on either competition or diversity grounds, proposed transactions that comply with the statutory caps. Applying these ownership standards – without any extra-statutory review – is not only in accordance with congressional intent, but also will not jeopardize the Commission's traditional goals of promoting diversity and competition in local markets. In sum, NAB urges the Commission in this proceeding to comply with congressional intent both by giving effect to the local radio ownership standards set forth in Section 202(b), and by engaging in a full review of those ownership caps biennially as required by Section 202(h).

Respectively submitted,

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March 27, 2002

ATTACHMENT A

HAS FORMAT DIVERSITY CONTINUED TO INCREASE?

March 27, 2002

BIA Financial network

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Executive Summary

Given the large numbers of radio stations available in many markets, operators have long tried to attract the largest audiences for their individual stations by adjusting their programming. As part of the arguments for liberalization of the local radio ownership rules, proponents suggested that group owners would reprogram their stations with other formats not currently being adequately provided in local markets, and, possibly, experiment with new types of formats.

The Federal Communications Commission and others have shown that this predicted increase in format diversity did occur soon after passage of the 1996 Telecommunications Act. This study updates those analyses, and further examines the availability of formats by taking into account out-of-market stations that many times constitute a very large percentage of the radio listening in a market. The study also statistically analyzes whether the increase in concentration in specific markets leads to increased format diversity.

The most notable results found in this study include:

- The average number of general formats being provided in Arbitron markets increased 8.0% in just the last three years. With respect to specific formats, that increase was 11.1%.
- The average number of formats in all market size groupings continued to increase using a general format categorization scheme.
- The average number of formats in all market size groupings continued to increase using a specific format categorization scheme.
- In the average market, less than three-quarters (71.1%) of local radio listening is attributable to local commercial stations listed as being home to those markets, with much of that other listening going to out-of-market commercial stations.
- By taking into account the listening to out-of-market stations, the average number of general formats available increased by 11.1%, and the number of specific formats by 17.3%, than were counted when only-in market stations were examined.
- There is a statistically significant positive relationship between the level of local ownership concentration and local format diversity.

This study shows that the increase in format diversity witnessed in the first few years after passage of the 1996 Telecommunications Act continues to the present. Clearly, owners with more

locally owned stations are providing more diverse programming in order to attract more listeners and compete more effectively.

HAS FORMAT DIVERSITY CONTINUED TO INCREASE?

Introduction

Given the large numbers of radio stations available in many markets, operators have long tried to attract the largest audiences for their individual stations by modifying and adjusting their programming. In the past, that has led to multiple stations in the same market generally providing the same type of programming. As part of the arguments for liberalization of the local radio ownership rules, proponents have suggested that such duplication would be reduced since consolidated owners would not want to steal audiences from their commonly owned stations. Instead, these group owners would reprogram their stations with other formats not currently being adequately provided in local markets, and, possibly, experiment with new types of formats.

Just two years after the passage of the 1996 Telecommunications Act, the Mass Media Bureau of the Federal Communications Commission showed that this predicted increase in programming diversity had occurred when it found that the average number of formats had increased, using very general categories of formats.[1] The Mass Media Bureau concluded,

> Rather than concentrating on particular formats, these owners [owning more stations locally] are choosing to operate stations with a variety of formats. A variety of formats may allow the owner to appeal to more advertisers and in particular to the advertiser who wants to reach a variety of different audiences.[2]

[1] *Review of the Radio Industry, 1997*, Mass Media Bureau, Federal Communications Commission, MM Docket No. 98-35, March 13, 1998. These nineteen categories have been established for some time by BIA Financial Networks, and are listed in note seven below.

[2] Ibid., p. 11.

Further analyses of this issue have shown similar results. A more detailed analysis of these general format categories, as well as an analysis of more specific format categories, showed that by three years after the passage of the Act, the number of formats continued to grow.[3] Recently the Mass Media Bureau has found that the "the number of formats has declined slightly in some of the larger markets while increasing in most of the smaller ones."[4] We believe that the Bureau in this recent study understated the increase in format diversity in the largest markets, as even it suggested might be the case.[5] Finally, a recent independent study reached a similar conclusion that "increased concentration caused an increase in available programming variety."[6]

Because the consolidation of ownership continued to increase after these studies were completed, it is important to see whether the diversification of programming has also continued.

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[3] See Mark R. Fratrik, "Format Availability After Consolidation," August 1999, Appendix B, Comments of the National Association of Broadcasters, In re FCC Examination of the Creation of a Low Power Radio Service, MM Docket No. 99-25. The specific formats analyzed in this earlier study and in this paper are the station's own categorization of their formats that BIA Financial Network learns in its call-out to these stations and in its review of industry trade press articles.

[4] See "Review of the Radio Industry, 2001," Federal Communications Commission, Mass Media Bureau, Policy and Rules Division, September 2001, p.7.

[5] "There is probably a great deal of shifting of sub-formats that our relatively aggregated measure of format does not capture." Ibid. Moreover, the Bureau includes Puerto Rico as a surveyed market, which, as will be shown later, distorts the yearly comparisons for the largest markets.

[6] Steven T. Berry and Joel Waldfogel, "Mergers, Station Entry and Programming Variety in Radio Broadcasting," Working Paper 7080, National Bureau of Economic Research, Cambridge, MA, April 1999, p. 25.

In this paper we will conduct that analysis by first updating the previous NAB study using the general and more specific categories of formats with the most recent information on formats.

While the previous and present analyses of in-market radio stations shows that diversity has continued to increase, it actually understates the amount of format diversity available to the listening public. Specifically, listeners are able to receive many more stations than those assigned to their markets by Arbitron. A considerable amount of listening in some markets, sometimes as much as two-thirds, is from stations that Arbitron does not assign to the listeners' geographic market. We will incorporate the listening to those stations and describe the amount of total format diversity available to listeners in different markets.

Finally, while one of the earlier cited studies demonstrated the causal link between the increase in radio station ownership concentration and format diversity, the FCC has requested further evidence supporting that finding. We will present regression results to show that the increase in radio station ownership concentration in specific markets leads to increased format diversity.

Format Change Analysis

General Formats

It is extremely difficult to classify radio formats into nice, neat categories. Programming staffs at different radio stations adjust general formats so as to differentiate their stations and to be competitive in their local markets. Some of these adjustments may be minor, while others can be very dramatic. For example, an Adult Contemporary formatted station may make a significant change by changing the station to a Hot AC or Urban AC station, both of which would have many different songs on the station's play list. Nevertheless, BIA*fn* categorizes the many different formats into nineteen general groups.[7]

The first analysis examines the change in the general format field in the BIA Financial Network database during the last three years. General format specification for the Spring of 1996,[8] 1997, Fall 1998, and Spring 2001 (most recent completed survey period covering all markets) were compared. Figure 1 shows the averages for these periods for five market size groupings.[9]

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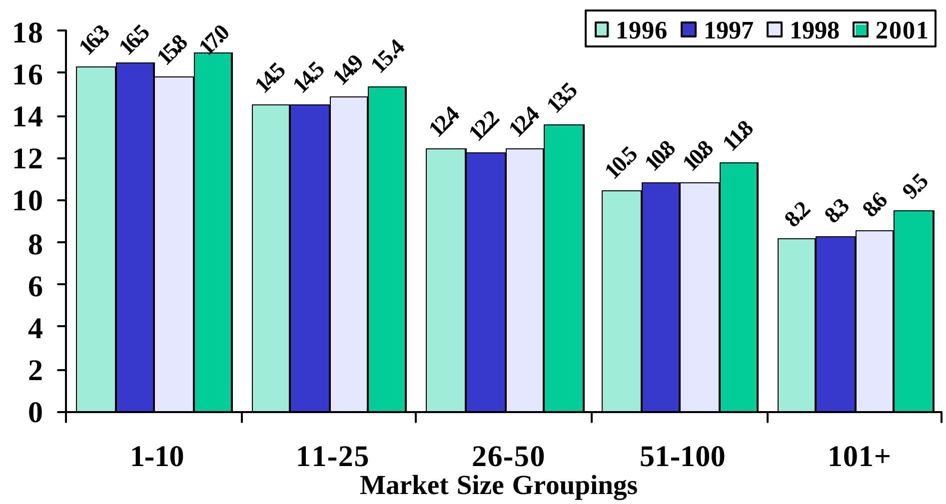
[7] These general format categories are Adult Contemporary, Album Oriented Rock/Classic Rock, Classical, Contemporary Hit Radio/Top 40, Country, Easy Listening/Beautiful Music, Ethnic, Jazz/New Age, Middle of the Road, Miscellaneous, News/Sports, Nostalgia/Big Band, Oldies, Religion, Rock, Spanish, Talk, Urban, No Reported Format. To see the total number of commercial stations with these formats, their relative audience share, and their relative revenue share see Mark R. Fratrik, "What is Going On With Radio Formats?", State of the Radio Industry Report, BIA Financial Network, January 2002, www.bia.com.

[8] While this was technically after the passage of the Telecommunications Act of 1996, we use this as a proxy for pre-Act formats since most of the consolidation occurred after this period. Further, even for those stations that were sold between the passage of the Act and the Spring ratings period, there is little likelihood that formats were quickly changed for those changes often involve a considerable amount of research which takes, at the very least, a few months.

[9] The average for the market size range of 11 – 25 does not include Puerto Rico. Arbitron has only started surveying that market since 1999; hence, it would be misleading to include that market in the calculation for 2001 when it was not included in previous analyses. In addition, the level of format availability in Puerto Rico is completely mischaracterized by use of the general format categories. That market has 92 stations, though it only offers four different general formats since 89 stations in that market are classified as Spanish stations using the general format categories.

Figure 1
Average Number of General Format Categories by Market Size Grouping



Source: BIAI*fn* Media Access Pro™

Even using these general categories, the average number of formats has continued to increase across all market size groupings. Nationally, the unweighted market average had 10.8 general formats, an 8.0% increase from the 1998 level. The weighted average, with weights determined by the market's relative population, was 14.0 general formats being offered in Spring 2001.[10]

Specific Formats

As mentioned earlier, radio stations are continuously attempting to differentiate their stations so as to attract greater audiences. The general format categories do not, however, allow some of these

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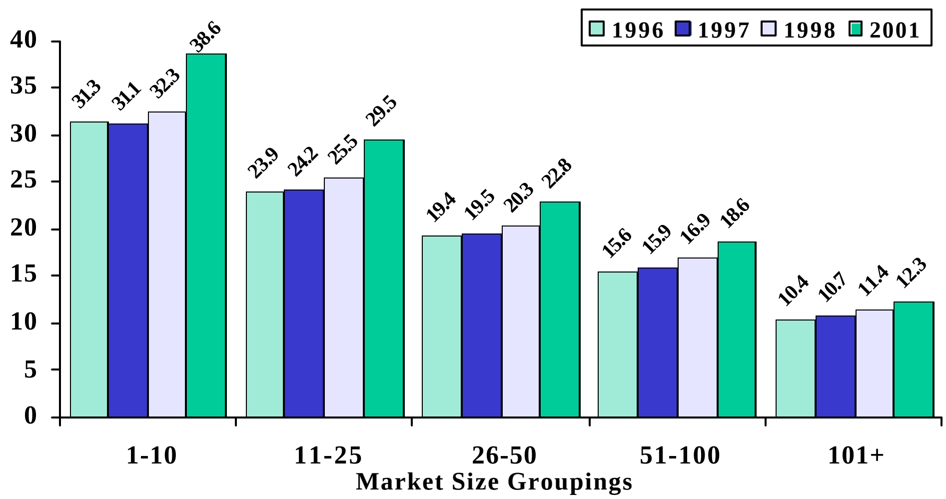
10 This weighted average better reflects the number of formats actually available to the average listener across all Arbitron markets, because it gives greater weight to the markets with the most people.

differences to be recognized. Our next analysis will employ the specific format categories (e.g., Urban AC) actually used by station personnel in characterizing their stations' formats. Stations with mixed formats were classified as having different formats than stations with either of the components.[11] Figure 2 shows the average number of specific formats for the five market size groupings during this time.

Figure 2
Average Number of Specific Format Categories by Market Size Grouping



Source: BIAI*fn* Media Access Pro™

With the more expansive categorization of formats, the increase in format diversity across all market sizes is clearly seen. In fact, in the top ten markets there was an average increase of over six new formats being offered in the last three years. Note also that in markets ranked between 11 – 25,

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11 For example, an Adult Contemporary/Urban station was coded as having a different format than either a pure Adult Contemporary or pure Urban station.

there was a noticeable increase, 15.7%, in the average number of specific formats being provided in just the last three years.

Nationally, the unweighted average market had 16.2 specific formats, an 11.1% increase from 1998 levels. The weighted (by population) average for Spring 2001 was 27.5 formats.

Adjusted Formats

Finally, while some stations may differentiate themselves by having multiple formats at different parts of the day, or by developing new formats with these combinations, there is no way to measure how much differentiation there actually is. To err on the conservative side, we also conducted an analysis using the first format that is listed for each station.[12] Figure 3 shows the average number of formats offered in the five market size groupings using this categorization scheme.[13]

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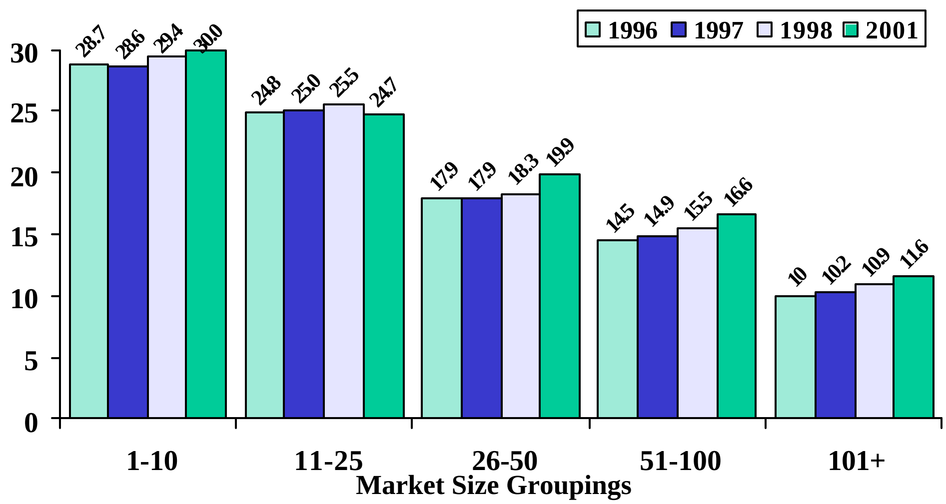
[12] Using the example mentioned earlier, the Adult Contemporary/Urban station would now be classified as an Adult Contemporary station.

[13] Once again, we calculate the average for markets ranked between 11 and 25 without Puerto Rico. In that market, 89 stations have "first formats" that are Spanish, although many are differentiated by the type of music or non-music programming.

Figure 3
Average Number of Adjusted Format Categories by Market Size Grouping



Source: BIAI*fn* Media Access Pro™

Using this categorization scheme, we see increases for all market size groupings except for the markets ranked 11 – 25. Given that the earlier results showed an increase in the average number of specific formats being offered in markets 11-25 (see Figure 2), it seems that stations in those markets are likely differentiating themselves by providing multiple formats, either at different parts of the day or by combining them.

Finally, the unweighted market average was 14.4 "Adjusted" formats, up 4.3% from the 1998 level. The weighted (by population) market average was 22.2 formats.

Out-of-Market Stations

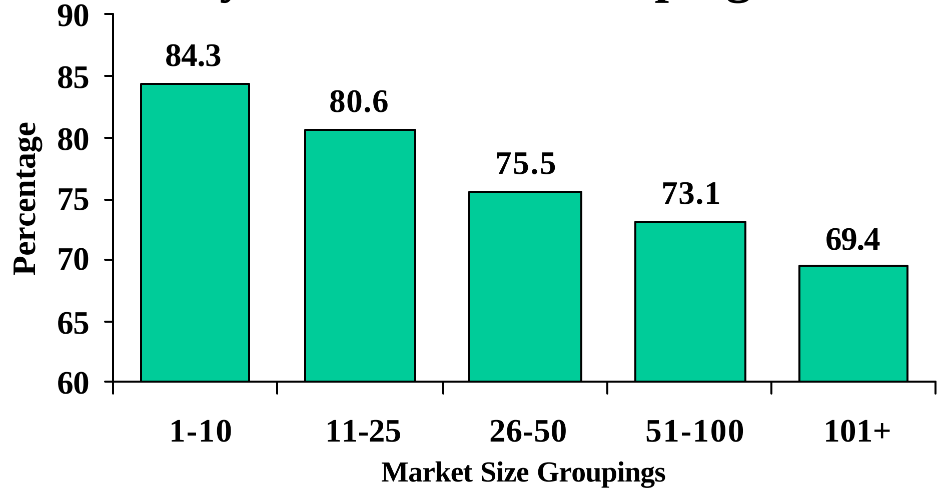
Level of Out-of-Market Listening

Because radio station signals do not stop at geographic market borders, and stations are assigned to only one radio market even if they serve multiple areas, there is a considerable amount of listening in markets to stations that are not listed by Arbitron as being home to that market.[14] On average, less than three-quarters (71.1%) of the listening within a market is attributable to commercial stations listed as being home to that market. Some of this "lost listening" is to public stations, though the overwhelming majority of that listening is to stations listed as being out-of-market.

The level of in-market commercial station listening varies by specific markets, depending, in part, upon the location of nearby markets, and the availability of stations and formats within the specific markets. Generally, the smallest markets have the lowest amount of in-market listening. Figure 4 shows the average amount of in-market commercial station listening for the five different market size groupings.

[14] Also contributing to this point is the ability of stations to ask Arbitron to be listed as home to a market even though they are physically located within the boundaries of another Arbitron market.

Figure 4
In-Market Commercial Station Listening
(Spring 2001)
by Market Size Grouping



Source: BIAI*fn* Media Access Pro™

Total Format Availability

One reason that out-of-market stations may attract this "distant"[15] listening is that they offer a different format. To determine whether these out-of-market stations added programming diversity, we examined the 2,663 instances[16] in which a radio station was receiving enough listening in another market

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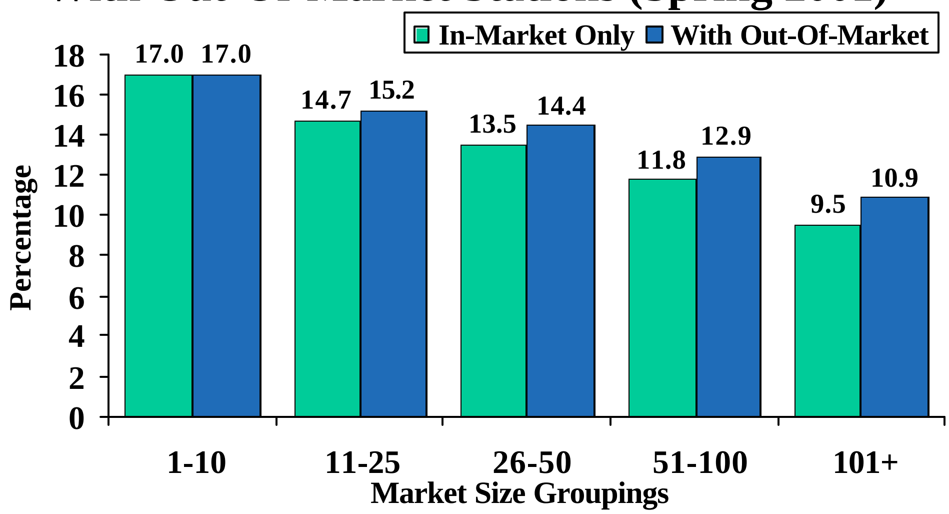
15 We characterize this out-of-market listening as being distant listening even though it may only be a few miles away from the actual station location, or might actually be within the market boundaries if the station has asked Arbitron to be listed in a different market.

16 We purposely used the term "instances," instead of stations, as some stations are heard in more than one non-home market.

to be reported.[17] To err on the conservative side, we only report on the formats of stations that achieve a one percent or greater share in a non-home market.[18] There were 1,627 instances of radio stations achieving that out-of-market listening level. Figures 5 and 6 show the average number of formats available with and without inclusion of the out-of-market stations using the General and Specific format categorizations.[19]

Figure 5
Average Number of General Format Categories By Market Size Grouping With Out-Of-Market Stations (Spring 2001)



Source: BIA*fn* Media Access Pro™

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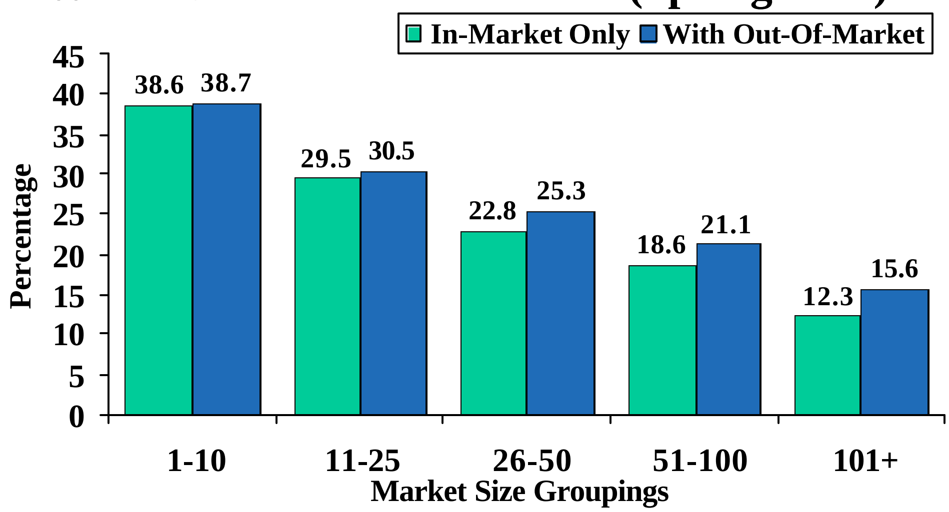
[17] Arbitron has minimum thresholds of listening levels for out-of-market stations to be listed.

[18] This conservative approach is to take into account the possibility that some of these out-of-market stations may not be receivable in all parts of the non-home market.

[19] The Adjusted format categorization shows similar increases in the number of formats available after taking into consideration the out-of-market stations.

The unweighted and weighted (by population) market averages of the number of general formats are 12.0 and 14.3, respectively. That represents 11.1% (unweighted) and 2.1% (weighted) more general formats than were counted when only in-market stations were examined.

Figure 6
Average Number of Specific Format Categories By Market Size Grouping With Out-Of-Market Stations (Spring 2001)



Source: BIAI*fn* Media Access Pro™

Looking at both the general and specific format categories, we see some significant increases in the number of formats available, especially in the smallest market size ranges. Even with the general format categorization, there was over a 15% increase in the average number of formats available in the smallest market size range. This result is not surprising since there are fewer formats being offered by in-market stations in those smaller markets, and partially as a result, there is a considerable amount of out-of-market listening in those markets.

The unweighted and weighted market averages of the number of specific formats are 19.0 and 28.9, respectively. That represents 17.3% (unweighted) and 5.1% (weighted) more specific formats than were counted when only in-market stations were examined.

Regression Analysis

Model

It is unmistakable that the number of formats, under any categorization scheme, has increased substantially in just the last three years. That increase continues even five years after the Telecommunications Act was passed. Nevertheless, there may remain some doubt as to whether the increased consolidation in the industry was the factor leading to this increase in programming diversity.

To answer that question, we conducted several regression analyses using the level of concentration as an independent variable. If the consolidation rationale for increased diversity were true, then higher levels of concentration would lead to larger numbers of formats being offered. We measured format diversity as the number of formats (either under the general or specific categorization) divided by the number of stations in the market[20] – a larger percentage would mean greater format diversity given the number of stations in the market.

[20] We examine both the number of in-market formats as well as all formats (i.e., including out-of-market stations). When we use all the formats provided including the out-of-market stations' formats, we divide by the sum of the number of in-market stations plus the number of out-of-market stations generating at least a one share.

The measure we used to account for local market concentration levels is the Herfindahl-Hirschmann index of the shares of listening in each market (HERFLCS).[21] That share takes into account the local ownership share of all listening, including in the denominator the listening to out-of-market stations. That concentration index, used in antitrust analyses of all industries, is the sum of the squares of all local owners' audience share.

Other variables included in the regression analysis and the expected impacts on format diversity are:

- Percentage of population in market that is Black – a larger percentage should lead to more format diversity.
- Percentage of population in market that is Hispanic – a larger percentage should lead to more format diversity.
- Percentage of population in market that is Asian – a larger percentage should lead to more format diversity.
- Median income – a higher level of income should lead to more format diversity, as the local economic base is stronger.

Results

The first set of equations involves only the in-market formats, using both the general and specific format categories. Table 1 shows the results for the different variables.

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[21] We also considered whether the calculated Herfindahl-Hirschmann index of local revenue share would be a better explanatory variable, and it provided less explanatory power.

Table 1

Regression Results for In-Market Format Diversity

Dependent Variable: # of In-Market General Formats ÷ Number of In-Market Stations			Dependent Variable: # of In-Market Specific Formats ÷ Number of In-Market Stations		
	Coefficients	T Statistic		Coefficients	T Statistic
(Constant)	.330*	6.909	(Constant)	.535*	13.665
HERFLCS	.445*	8.564	HERFLCS	.343*	5.931
MEDIAN	.107**	1.975	MEDIAN	.157*	2.670
BLACK	-.156*	-2.953	BLACK	-017	-.295
HISPANIC	-.039	-.704	HISPANIC	.103**	1.714
ASIAN	-.706	-1.373	ASIAN	.019	.316
* Coefficient significant at .05 level ** Coefficient significant at .10 level R Square: .272			* Coefficient significant at .05 level ** Coefficient significant at .10 level R Square: .137		

For both categorization schemes, the expected impact for the level of concentration and median income was as predicted. Greater levels of concentration and relatively larger levels of local income lead to greater programming diversity.

The other local demographic variables generate, at first glance, some confusing results. The percentage of Black population has a statistically significant negative impact in the general format equation and is not significant in the specific format equation. The Hispanic population is not significant in the general format equation though it is statistically significant (at the weaker .10 level) and positive in the specific format equation. These apparently inconsistent results might be explained by the diversity recognized in the specific format categorization scheme that would be unrecognized in the general format categorization scheme. The formats that are provided to attract the Black audience, while perhaps different from other formats in that market, may be grouped together under one general format category.[22] This could also explain the Hispanic population variable result. There are many different specific formats that are classified as Spanish under the general categorization scheme (e.g., Spanish/News, Spanish/Country). Therefore, only when you account for more explicit variations in formats (i.e., using specific formats) do you see radio station owners adjusting their programming for these target audiences.

Turning to the wider format availability – including out-of-market stations – we see similar results. Table 2 shows the results when using the total number of formats available in a market under both the general and specific format categorization schemes.

Table 2

Regression Results for Total Format Diversity

Dependent Variable: # of Total General Formats ÷ Total Number of Stations			Dependent Variable: # of Total Specific Formats ÷ Total Number of Stations		
	Coefficients	T Statistic		Coefficients	T Statistic
(Constant)	.454*	13.116	(Constant)	.532*	15.346
HERFLCS	.314*	5.585	HERFLCS	.210*	3.511
MEDIAN	-.071	-1.248	MEDIAN	.192*	3.154
BLACK	-.167*	-2.974	BLACK	.060	1.011
HISPANIC	-.140*	-2.405	HISPANIC	.115**	1.852
ASIAN	-.077	-1.329	ASIAN	.002	.032
* Coefficient significant at .05 level R Square: .185			* Coefficient significant at .05 level ** Coefficient significant at .10 level R Square: .077		

Here again, the coefficients for the Black and Hispanic population flip signs and vary in statistical significance when the different format categorization schemes are used.

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[22] For example, in markets with large Black populations, there are several stations with Urban/AC and Urban/Talk formats. Both of these widely differing formats would be classified as Urban stations under the general format categorization scheme.

Another interesting comparison between the in-market and total format diversity equations is with the size of the coefficient for the concentration variable. For both format categorization schemes, the size of the impact of the local concentration variable is smaller when you take into consideration the out-of-market stations. In other words, the impact of local consolidation on format diversity is not as strong when all formats available to the listener are taken into account. This should not come as a surprise since, as shown earlier, the number of formats being provided by all stations (in-market and out-of-market) are substantially higher than just the stations classified as home to the market. Therefore, we would not expect the positive impact from greater consolidation to be as pronounced.

Conclusion

Everyone recognizes that the radio industry has experienced tremendous changes in the years since the Telecommunications Act was passed and implemented. Ownership consolidation, both locally and nationally, has been dramatic. An important outcome of that consolidation has been a steady and large increase in the diversity of programming provided to the American public.

This study shows that the increase in format diversity witnessed in the first few years after 1996 continues to the present in all market sizes. Further, the study shows that the format diversity is even larger than previously thought, once all of the stations available to listeners (including out-of-market stations) are taken into account. Finally, the study shows that there is a statistically significant positive relationship between the level of local ownership concentration and the level of local format diversity. Clearly, owners with more locally owned stations are providing more diverse programming in order to attract more listeners and compete more effectively. Therefore, as previous studies have suggested, "increased concentration has been good for listeners."[23]

[23] Berry and Waldfogel, p. 26.

ATTACHMENT B

Independent Radio Voices
In Radio Markets

November 2001

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National Association of Broadcasters
November 29, 2001

This report follows a similar earlier study by Dr. Mark Fratrik of NAB Research and Planning in August 1999 to gauge the number of independent radio voices available to the American public.[1] The purpose of this updated report is to determine whether radio industry consolidation in the intervening period may have altered Dr. Fratrik's earlier findings.

As with the earlier work, this study utilized the BIA Media Access Pro™ database of ownership information for all commercial radio stations as of November 2001.[2] Within each of the 286 radio markets currently measured by Arbitron, the number of stations owned by the same group was calculated. Appendix A provides a listing for each market of the number of stations owned by the concurrent number of groups within the market.[3] For example, in the Arbitron New York Metro, 14 stations are singly owned, four groups own two stations each, three groups own three stations each, etc.

The chart following Page Two of this report shows the percentage of radio stations within each market size grouping that are either: a) the only station owned within the market by that station's owner; or b) part of a two-station group within the market (*i.e.*, a local market duopoly situation). Nationally, 1,510 stations (or 23.6 percent of the 6,403 commercial stations operating in the 286 Arbitron markets) are the only stations owned within their respective market by their stations' owners; an additional 1,064 stations (16.6 percent) are part of duopolies within their respective markets. In

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[1] See Comments of NAB in MM Docket No. 99-25, Attachment A, Independent Radio Voices in Radio Markets (filed Aug. 2, 1999).

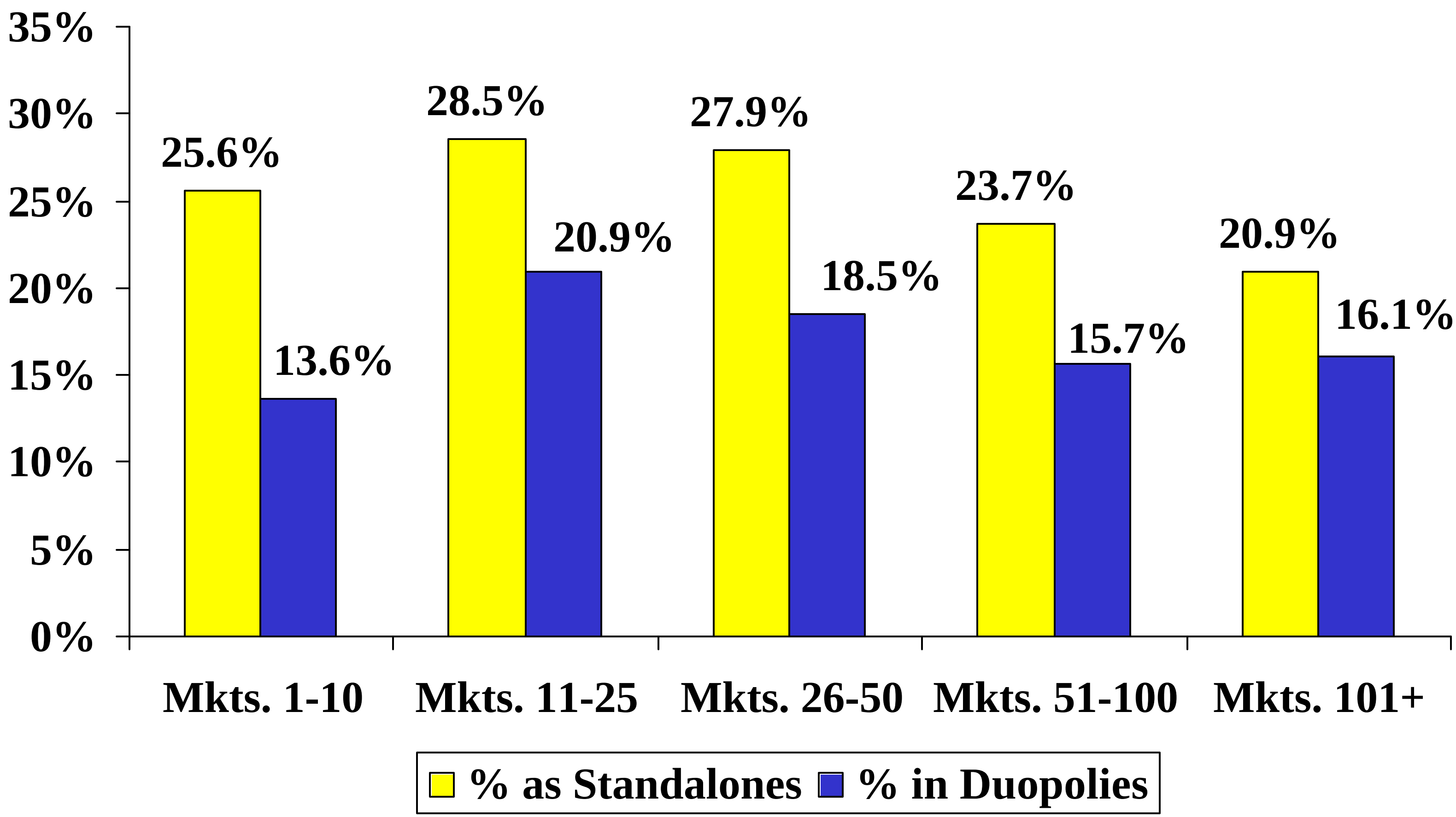
[2] Broadcast Investment Analysts, Chantilly, VA. This database is regularly updated with new radio stations and ownership changes as announced by the FCC.

[3] In twenty Arbitron Metros, there are local groups of more than eight stations. This occurs because the relevant geographic markets for local ownership regulations are not Arbitron Metros.

other words, more than 40 percent of all commercial stations in Arbitron markets are either standalone or duopoly stations. Thus, while this figure represents a decline from the approximately 50 percent figure determined by the 1999 study by Dr. Fratrik,[4] it remains the case that a large number of stations in Arbitron markets are "independent voices," in that they represent the only radio outlet, or one of only two radio outlets, controlled by the same owner in the local markets they serve.

[4] Note that the 1999 study examined only stations in the 268 markets that Arbitron served at that time, as opposed to the 286 markets considered in the current study.

% of Local Commercial Stations that are Standalones or in Local Duopolies by Market Size Grouping



Source: Analysis of BIA Media Access Pro™ Database, Research and Planning Dept., National Association of Broadcasters

Appendix A

Number of Groups Owning Different Numbers of Local Radio Stations by Arb. Metro

		Number of Local Radio Stations Owned													
Ran	**Market Name**	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**
1	New York	14	4	3	0	1	1	0	0	0	0	0	0	0	0
2	Los Angeles	12	2	3	3	3	0	1	0	0	1	0	0	0	0
3	Chicago, IL	22	5	6	1	2	1	1	0	0	0	1	0	0	0
4	San Francisco	5	7	1	1	1	0	1	1	0	0	0	0	0	0
5	Philadelphia	17	2	1	2	1	1	0	0	0	0	0	0	0	0
6	Dallas - Ft. Worth	11	5	3	0	1	3	1	0	0	0	0	0	0	0
7	Detroit	9	1	4	1	0	1	1	0	0	0	0	0	0	0
8	Boston	21	5	2	2	2	0	0	0	0	0	0	0	0	0
9	Washington, DC	12	1	2	2	2	0	0	1	0	0	0	0	0	0
10	Houston-Galveston	16	5	0	2	1	0	0	2	0	0	0	0	0	0
11	Atlanta, GA	13	8	6	1	1	0	1	0	0	0	0	0	0	0
12	Miami-Ft.	14	3	2	2	1	0	1	0	0	0	0	0	0	0
13	Puerto Rico	39	10	0	2	0	0	0	0	0	0	1	0	0	1
14	Seattle-Tacoma	15	4	2	2	2	0	0	1	0	0	0	0	0	0
15	Phoenix, AZ	12	3	2	1	2	0	0	1	0	0	0	0	0	0
16	San Diego	14	5	2	1	0	0	0	0	1	0	0	0	0	0
17	Minneapolis - St. Paul	5	4	1	3	0	1	1	0	0	0	0	0	0	0
18	Nassau-Suffolk	9	3	2	0	1	0	0	0	0	0	0	0	0	0
19	St. Louis	14	7	1	1	1	1	0	0	0	0	0	0	0	0
20	Baltimore, MD	11	4	1	1	1	0	0	0	0	0	0	0	0	0
21	Tampa-St.	10	6	0	0	0	2	0	1	0	0	0	0	0	0
22	Pittsburgh, PA	12	6	2	2	0	1	1	0	0	0	0	0	0	0
23	Denver - Boulder	11	3	2	2	1	0	0	1	0	0	0	0	0	0
24	Cleveland	10	1	0	3	0	1	0	0	0	0	0	0	0	0
25	Portland, OR	10	6	1	0	1	1	1	0	0	0	0	0	0	0
26	Cincinnati	10	2	2	1	0	0	0	1	0	0	0	0	0	0
27	Sacramento, CA	7	6	2	1	1	1	0	0	0	0	0	0	0	0
28	San Jose	7	1	2	0	0	0	0	0	0	0	0	0	0	0
29	Riverside-San Bernardino	11	4	0	1	0	1	0	0	0	0	0	0	0	0
30	Kansas City	9	2	1	3	0	0	0	0	1	0	0	0	0	0
31	Milwaukee - Racine	6	4	2	1	1	1	0	0	0	0	0	0	0	0
32	San Antonio, TX	13	4	0	0	0	2	1	0	0	0	0	0	0	0
33	Middlesex-Somerset-Union,	3	0	1	0	0	0	0	0	0	0	0	0	0	0

Ran	Market Name	1	2	3	4	5	6	7	8	9	10	11	12	13	14
34	Columbus, OH	5	6	3	0	0	0	1	0	0	0	0	0	0	0
35	Providence-Warwick-Pawtu	13	4	0	1	0	1	0	0	0	0	0	0	0	0
36	Salt Lake City - Ogden	9	4	0	1	2	0	2	0	0	0	0	0	0	0
37	Charlotte-Gastonia-Rock	15	3	1	1	1	0	1	0	0	0	0	0	0	0
38	Norfolk-Virginia	6	3	1	4	0	1	0	0	0	0	0	0	0	0
39	Las Vegas, NV	10	1	2	2	0	1	0	0	0	0	0	0	0	0
40	Indianapolis, IN	6	3	3	2	0	0	0	0	0	0	0	0	0	0
41	Orlando	8	3	2	0	0	1	1	0	0	0	0	0	0	0
42	New Orleans	12	3	1	0	0	1	1	0	0	0	0	0	0	0
43	Greensboro-Winston	11	4	1	2	0	1	0	0	0	0	0	0	0	0
44	Nashville	16	6	3	0	2	0	0	0	0	0	0	0	0	0
45	Memphis	7	2	2	2	1	1	0	1	0	0	0	0	0	0
46	Hartford-New	6	3	0	2	1	0	0	0	0	0	0	0	0	0
47	Austin, TX	11	1	1	1	1	1	0	0	0	0	0	0	0	0
48	Raleigh - Durham, NC	10	4	0	1	1	0	0	0	0	0	0	1	0	0
49	Monmouth-Ocean, NJ	5	1	0	0	1	0	0	0	0	0	0	0	0	0
50	Buffalo-Niagara Falls, NY	10	1	0	0	2	1	0	0	0	0	0	0	0	0
51	W. Palm Beach-Boca Raton	6	2	0	1	1	0	0	1	0	0	0	0	0	0
52	Jacksonville, FL	15	2	1	0	0	1	0	0	1	0	0	0	0	0
53	Rochester, NY	9	3	0	2	1	0	1	0	0	0	0	0	0	0
54	Louisville, KY	8	0	1	2	0	1	0	0	0	1	0	0	0	0
55	Oklahoma City	7	2	0	2	1	1	0	0	0	0	0	0	0	0
56	Dayton, Ohio	7	2	0	2	0	0	0	1	0	0	0	0	0	0
57	Birmingham, AL	10	3	1	0	1	1	1	0	0	0	0	0	0	0
58	Richmond, VA	10	1	0	3	0	1	0	0	0	0	0	0	0	0
59	Westchester, NY	3	1	1	0	0	0	0	0	0	0	0	0	0	0
60	Greenville-Spartanburg, SC	12	5	1	0	0	1	1	0	0	0	0	0	0	0
61	Albany-Schenectady-Troy	6	4	2	1	1	1	1	0	0	0	0	0	0	0
62	Tucson, AZ	6	1	0	2	1	0	1	0	0	0	0	0	0	0
63	Honolulu	8	0	1	1	1	1	1	0	0	0	0	0	0	0
64	Tulsa, OK	6	4	2	0	1	1	0	0	0	0	0	0	0	0
65	McAllen-Brownsville-Harli	4	5	1	2	0	0	0	0	0	0	0	0	0	0
66	Grand Rapids, MI	3	5	0	1	1	0	1	0	0	0	0	0	0	0
67	Fresno	12	2	2	0	0	0	1	1	0	0	0	0	0	0
68	Wilkes Barre - Scranton	9	1	1	0	1	0	0	0	1	0	1	0	0	0

Ran	Market Name	1	2	3	4	5	6	7	8	9	10	11	12	13	14
69	Allentown - Bethlehem	7	3	0	1	0	0	0	0	0	0	0	0	0	0
70	Knoxville, TN	11	3	0	2	1	0	1	0	0	0	0	0	0	0
71	Akron, OH	1	1	2	0	0	0	0	0	0	0	0	0	0	0
72	Ft. Myers-Naples-Marco	7	1	0	3	1	0	0	1	0	0	0	0	0	0
73	El Paso, TX	4	3	2	1	0	2	0	0	0	0	0	0	0	0
74	Albuquerque, NM	6	1	0	0	0	0	2	2	0	0	0	0	0	0
75	Omaha - Council Bluffs	4	0	1	1	0	1	0	1	0	0	0	0	0	0
76	Wilmington, DE	4	1	1	1	0	0	0	0	0	0	0	0	0	0
77	Monterey-Salinas-Santa	5	4	1	0	1	2	0	0	0	0	0	0	0	0
78	Syracuse, NY	2	2	0	2	0	0	1	0	1	0	0	0	0	0
79	Harrisburg-Lebanon-Carlisle	6	2	0	2	0	1	0	0	0	0	0	0	0	0
80	Sarasota - Bradenton, FL	4	1	0	0	0	1	0	0	0	0	0	0	0	0
81	Toledo, OH	7	3	0	0	0	1	0	1	0	0	0	0	0	0
82	Springfield, MA	5	3	0	2	0	0	0	0	0	0	0	0	0	0
83	Greenville-New	9	3	1	0	1	1	0	0	0	1	0	0	0	0
84	Baton Rouge, LA	5	0	0	0	1	2	0	0	0	0	0	0	0	0
85	Little Rock, AR	11	2	0	0	2	0	0	0	0	1	0	0	0	0
86	Charleston, SC	6	1	2	0	0	1	0	1	0	0	0	0	0	0
87	Stockton, CA	1	4	0	0	0	0	0	0	0	0	0	0	0	0
88	Wichita, KS	7	1	0	1	0	1	1	0	0	0	0	0	0	0
89	Gainesville - Ocala, FL	4	4	0	0	2	0	0	1	0	0	0	0	0	0
90	Mobile, AL	6	4	0	0	1	1	0	0	0	0	0	0	0	0
91	Bakersfield, CA	3	1	3	3	0	1	0	0	0	0	0	0	0	0
92	Des Moines, IA	3	2	0	0	1	1	1	0	0	0	0	0	0	0
93	Columbia, SC	5	1	1	2	0	1	0	0	0	0	0	0	0	0
94	Spokane, WA	4	2	0	0	1	1	1	0	0	0	0	0	0	0
95	Daytona Beach, FL	7	0	0	0	1	0	0	0	0	0	0	0	0	0
96	Colorado Springs, CO	3	5	0	1	1	0	0	0	0	0	0	0	0	0
97	Melbourne-Titusville-Cocoa	7	0	1	1	0	0	0	0	0	0	0	0	0	0
98	Lakeland-Winter Haven, FL	8	0	0	1	0	0	0	0	0	0	0	0	0	0
99	Johnson	12	3	0	0	2	1	0	0	0	0	0	0	0	0
100	Morristown, NJ	2	1	0	0	0	0	0	0	0	0	0	0	0	0
101	New Haven, CT	2	1	1	0	0	0	0	0	0	0	0	0	0	0
102	Lafayette, LA	5	3	1	0	0	0	1	1	0	0	0	0	0	0
103	Ft. Wayne, IN	7	4	0	0	2	0	0	0	0	0	0	0	0	0

Ran	Market Name	1	2	3	4	5	6	7	8	9	10	11	12	13	14
104	Youngstown - Warren, OH	4	2	0	0	0	0	1	1	0	0	0	0	0	0
105	York, PA	3	4	0	0	0	0	0	0	0	0	0	0	0	0
106	Lexington-Fayette, KY	6	0	1	0	3	0	1	0	0	0	0	0	0	0
107	Chattanooga, TN	12	0	0	3	0	1	0	0	0	0	0	0	0	0
108	Visalia-Tulare-Hanford	6	3	1	0	0	0	0	0	0	0	0	0	0	0
109	Roanoke-Lynchburg, VA	10	5	0	0	0	1	0	0	1	0	0	0	0	0
110	Worcester, MA	4	2	1	0	0	0	0	0	0	0	0	0	0	0
111	Huntsville, AL	11	0	1	2	0	1	0	0	0	0	0	0	0	0
112	Lancaster, PA	4	2	0	0	0	0	0	0	0	0	0	0	0	0
113	Oxnard - Ventura, CA	3	0	2	0	0	1	0	0	0	0	0	0	0	0
114	Santa Rosa, CA	0	3	1	1	0	0	0	0	0	0	0	0	0	0
115	Bridgeport, CT	6	0	0	0	0	0	0	0	0	0	0	0	0	0
116	Augusta, GA	4	1	1	0	1	0	1	0	1	0	0	0	0	0
117	Lansing-East Lansing, MI	2	2	0	1	0	1	0	0	0	0	0	0	0	0
118	Ft. Pierce-Stuart-Vero	3	1	0	1	1	0	0	0	0	0	0	0	0	0
119	Portsmouth-Dover-Rocheste	2	1	1	0	0	0	1	0	0	0	0	0	0	0
120	Flint, MI	4	2	1	0	1	0	0	0	0	0	0	0	0	0
121	Jackson, MS	10	2	1	1	1	1	0	0	0	0	0	0	0	0
122	Madison, WI	3	2	1	0	0	2	0	0	0	0	0	0	0	0
123	Modesto, CA	4	2	1	1	1	0	0	0	0	0	0	0	0	0
124	Pensacola, FL	7	2	1	1	0	0	0	0	0	0	0	0	0	0
125	Boise, ID	3	3	0	0	1	2	0	0	0	0	0	0	0	0
126	Canton, OH	6	2	0	0	0	0	0	0	0	0	0	0	0	0
127	Saginaw-Bay City-Midland	5	1	1	0	1	1	0	0	0	0	0	0	0	0
128	Reno, NV	4	2	0	2	1	1	0	0	0	0	0	0	0	0
129	Fayetteville, NC	8	3	0	0	1	1	0	0	0	0	0	0	0	0
130	Beaumont-Port Arthur, TX	6	0	0	0	1	1	0	0	0	0	0	0	0	0
131	Ft Collins-Greeley, CO	3	1	1	1	0	0	0	0	0	0	0	0	0	0
132	Corpus Christi, TX	6	2	2	2	0	1	0	0	0	0	0	0	0	0
133	Reading, PA	3	1	0	0	0	0	0	0	0	0	0	0	0	0
134	Shreveport, LA	4	2	0	1	0	2	0	0	0	0	0	0	0	0
135	Quad Cities, IA-IL	0	2	1	0	1	1	0	0	0	0	0	0	0	0
136	Appleton - Oshkosh, WI	3	2	2	0	1	0	0	0	0	0	0	0	0	0
137	Biloxi-Gulfport-Pascagoula,	6	1	0	0	1	1	0	0	0	0	0	0	0	0
138	Stamford-Norwalk, CT	2	0	0	1	0	0	0	0	0	0	0	0	0	0

Ran	Market Name	1	2	3	4	5	6	7	8	9	10	11	12	13	14
139	Trenton, NJ	4	0	0	0	1	0	0	0	0	0	0	0	0	0
140	Atlantic City - Cape May,	4	1	1	1	1	1	0	0	0	0	0	0	0	0
141	Peoria, IL	1	1	0	1	0	1	1	0	0	0	0	0	0	0
142	Newburgh-Middletown, NY	2	2	0	1	0	0	0	0	0	0	0	0	0	0
143	Tyler - Longview, TX	2	2	1	0	2	0	1	0	0	0	0	0	0	0
144	Eugene - Springfield, OR	5	2	2	0	0	1	0	0	0	0	0	0	0	0
145	Montgomery, AL	5	0	2	0	0	0	1	0	0	0	0	0	0	0
146	Ann Arbor, MI	2	0	0	0	1	0	0	0	0	0	0	0	0	0
147	Springfield, MO	4	1	3	0	1	0	0	0	0	0	0	0	0	0
148	Huntington, WV - Ashland,	4	3	0	1	0	0	0	0	1	0	0	0	0	0
149	Macon, GA	3	0	1	1	0	0	1	1	0	0	0	0	0	0
150	Rockford, IL	3	0	0	2	0	0	0	0	0	0	0	0	0	0
151	Killeen-Temple, TX	4	1	0	0	1	0	0	0	0	0	0	0	0	0
152	Salisbury-Ocean City, MD	9	1	0	0	0	0	1	1	1	0	0	0	0	0
153	Palm Springs, CA	3	3	0	1	0	0	1	0	0	0	0	0	0	0
154	Utica - Rome, NY	1	1	3	0	1	0	0	0	1	0	0	0	0	0
155	Fayetteville, AR	4	0	0	2	0	0	1	0	0	0	0	0	0	0
156	Evansville, IN	6	2	0	1	1	0	0	0	0	0	0	0	0	0
157	Savannah, GA	4	0	0	1	0	1	1	0	0	0	0	0	0	0
158	Flagstaff-Prescott, AZ	10	4	2	0	0	1	0	0	0	0	0	0	0	0
159	Poughkeepsie, NY	3	0	1	0	1	0	1	0	0	0	0	0	0	0
160	Erie, PA	2	1	0	1	0	1	0	0	0	0	0	0	0	0
161	Wausau-Stevens Point, WI	2	2	1	1	0	1	0	0	0	0	0	0	0	0
162	Fredericksburg, VA	1	2	0	1	0	0	0	0	0	0	0	0	0	0
163	Tallahassee, FL	5	0	0	2	1	0	0	0	0	0	0	0	0	0
164	Portland, ME	1	1	0	1	1	2	0	0	0	0	0	0	0	0
165	Hagerstown-Chambersburg-	2	2	0	0	2	0	0	0	0	0	0	0	0	0
166	South Bend, IN	6	3	0	1	1	0	0	0	0	0	0	0	0	0
167	Charleston, WV	1	2	0	0	1	0	1	0	0	0	0	0	0	0
168	New Bedford-Fall River,	2	2	0	0	0	0	0	0	0	0	0	0	0	0
169	Anchorage, AK	4	1	1	1	0	2	0	0	0	0	0	0	0	0
170	San Luis Obispo, CA	8	3	1	1	0	0	0	0	0	0	0	0	0	0
171	Binghamton, NY	4	1	0	0	1	1	0	0	0	0	0	0	0	0
172	New London, CT	1	0	2	1	0	0	0	0	0	0	0	0	0	0
173	Ft. Smith, AR	4	5	0	1	1	0	0	0	0	0	0	0	0	0

Ran	Market Name	1	2	3	4	5	6	7	8	9	10	11	12	13	14
174	Lincoln, NE	0	0	0	3	0	0	0	0	0	0	0	0	0	0
175	Columbus, GA	1	0	1	1	0	0	0	1	0	0	0	0	0	0
176	Myrtle Beach, SC	9	0	2	1	0	0	1	0	0	0	0	0	0	0
177	Johnstown, PA	5	2	1	1	1	0	0	0	0	0	0	0	0	0
178	Wilmington, NC	2	1	2	1	1	0	0	0	0	0	0	0	0	0
179	Kalamazoo, MI	2	1	2	1	0	0	0	0	0	0	0	0	0	0
180	Odessa - Midland, TX	8	1	0	0	1	1	0	0	0	0	0	0	0	0
181	Lubbock, TX	8	0	2	0	0	1	0	0	0	0	0	0	0	0
182	Tupelo, MS	9	1	3	0	0	1	0	0	0	0	0	0	0	0
183	Asheville, NC	5	2	0	0	1	0	0	0	0	0	0	0	0	0
184	Cape Cod, MA	1	2	1	1	0	0	0	0	0	0	0	0	0	0
185	Topeka, KS	5	1	0	0	0	1	0	0	0	0	0	0	0	0
186	Green Bay, WI	1	3	0	1	0	0	0	0	0	0	0	0	0	0
187	Dothan, AL	9	4	2	0	0	0	0	0	0	0	0	0	0	0
188	Manchester, NH	5	2	1	0	1	0	0	0	0	0	0	0	0	0
189	Santa Barbara, CA	5	0	1	0	0	0	1	0	0	0	0	0	0	0
190	Amarillo, TX	4	3	0	0	1	1	0	0	0	0	0	0	0	0
191	Merced, CA	4	1	0	0	0	0	1	0	0	0	0	0	0	0
192	Danbury, CT	0	0	1	1	0	0	0	0	0	0	0	0	0	0
193	Morgantown-Clarksburg-Fai	3	2	2	1	1	0	0	0	0	0	0	0	0	0
194	Terre Haute, IN	3	5	1	1	0	0	0	0	0	0	0	0	0	0
195	Yakima, WA	4	0	0	1	0	2	0	0	0	0	0	0	0	0
196	Chico, CA	0	1	0	1	1	1	0	0	0	0	0	0	0	0
197	Santa Maria-Lompoc, CA	5	2	2	0	0	0	0	0	0	0	0	0	0	0
198	Waco, TX	4	1	2	0	0	0	0	0	0	0	0	0	0	0
199	Traverse City-Petoskey, MI	0	1	1	0	2	1	0	1	0	0	0	0	0	0
200	Clarksville-Hopkinsville,	3	1	0	0	1	0	0	0	0	0	0	0	0	0
201	Springfield, IL	2	0	1	1	1	0	0	0	0	0	0	0	0	0
202	Frederick, MD	5	1	0	0	0	0	0	0	0	0	0	0	0	0
203	Laredo, TX	4	2	0	0	0	0	0	0	0	0	0	0	0	0
204	Florence, SC	3	1	0	0	0	0	0	1	1	0	0	0	0	0
205	Elmira-Corning, NY	2	2	0	0	1	2	0	0	0	0	0	0	0	0
206	Cedar Rapids, IA	3	0	1	0	1	0	0	0	0	0	0	0	0	0
207	Bowling Green, KY	2	3	2	1	0	0	0	0	0	0	0	0	0	0
208	Alexandria, LA	7	3	0	1	0	0	0	0	0	0	0	0	0	0

Ran	Market Name	1	2	3	4	5	6	7	8	9	10	11	12	13	14
209	Bangor, ME	3	2	0	0	1	0	1	0	0	0	0	0	0	0
210	Ft. Walton Beach, FL	3	3	0	0	1	0	0	0	0	0	0	0	0	0
211	Medford-Ashland, OR	3	0	1	0	1	1	0	0	0	0	0	0	0	0
212	Richland-Kennewick-Pasco,	4	2	0	0	2	0	0	0	0	0	0	0	0	0
213	Sioux Falls, SD	0	1	1	0	1	1	0	0	0	0	0	0	0	0
214	Laurel-Hattiesburg, MS	3	1	2	0	0	0	1	0	0	0	0	0	0	0
215	Lake Charles, LA	5	0	1	1	0	0	0	0	0	0	0	0	0	0
216	Fargo, ND - Moorhead, MN	3	0	0	0	1	1	0	0	0	0	0	0	0	0
217	Champaign, IL	5	1	1	1	0	0	0	0	0	0	0	0	0	0
218	Blacksburg-Christiansburg-	4	0	1	0	0	1	0	0	0	0	0	0	0	0
219	St. Cloud, MN	2	1	1	1	0	1	0	0	0	0	0	0	0	0
220	Tuscaloosa, AL	1	2	0	2	0	0	0	0	0	0	0	0	0	0
221	Marion-Carbondale, IL	5	0	0	0	0	2	0	0	0	0	0	0	0	0
222	Muskegon, MI	3	1	1	0	1	0	0	0	0	0	0	0	0	0
223	Redding, CA	3	1	0	0	1	0	1	0	0	0	0	0	0	0
224	Duluth, MN - Superior, WI	4	0	0	1	0	2	0	0	0	0	0	0	0	0
225	Winchester, VA	1	2	1	1	0	0	0	0	0	0	0	0	0	0
226	Charlottesville, VA	3	0	1	0	0	1	0	0	0	0	0	0	0	0
227	Dubuque, IA	1	0	1	0	2	0	0	0	0	0	0	0	0	0
228	Wheeling, WV	6	0	1	0	0	1	0	0	0	0	0	0	0	0
229	Abilene, TX	5	2	0	1	0	1	0	0	0	0	0	0	0	0
230	Rochester, MN	3	0	2	0	1	0	0	0	0	0	0	0	0	0
231	Burlington, VT	0	2	2	1	1	0	0	0	0	0	0	0	0	0
232	Joplin, MO	1	3	0	1	0	0	1	0	0	0	0	0	0	0
233	Panama City, FL	1	0	0	1	1	1	0	0	0	0	0	0	0	0
234	Lima, OH	3	0	0	2	0	0	0	0	0	0	0	0	0	0
235	Parkersburg-Marietta,	2	0	1	0	1	1	0	0	0	0	0	0	0	0
236	Bloomington, IL	0	1	1	0	0	0	0	0	0	0	0	0	0	0
237	Bryan-College Station, TX	5	0	2	1	0	0	0	0	0	0	0	0	0	0
238	Eau Claire, WI	3	1	0	0	0	1	1	0	0	0	0	0	0	0
239	Meadville-Franklin, PA	1	1	0	0	0	0	0	0	1	0	0	0	0	0
240	Lafayette, IN	1	2	1	1	0	0	0	0	0	0	0	0	0	0
241	Monroe, LA	6	2	2	1	0	0	0	0	0	0	0	0	0	0
242	Santa Fe, NM	3	2	1	0	0	0	0	0	0	0	0	0	0	0
243	Sussex, NJ	0	0	0	1	0	0	0	0	0	0	0	0	0	0

Ran	Market Name	1	2	3	4	5	6	7	8	9	10	11	12	13	14
244	Waterloo-Cedar Falls, IA	1	2	1	2	0	0	0	0	0	0	0	0	0	0
245	Battle Creek, MI	1	0	0	1	0	0	0	0	0	0	0	0	0	0
246	Pueblo, CO	4	1	1	0	0	0	0	0	0	0	0	0	0	0
247	Elizabeth City-Nags Head,	5	1	1	0	0	0	0	1	0	0	0	0	0	0
248	State College, PA	1	2	0	0	1	0	0	0	0	0	0	0	0	0
249	Florence-Muscle Shoals,	5	1	1	0	1	0	0	0	0	0	0	0	0	0
250	Wichita Falls, TX	0	0	0	2	0	0	0	0	0	0	0	0	0	0
251	St. George-Cedar City, UT	4	0	0	1	0	1	0	0	0	0	0	0	0	0
252	Columbia, MO	2	1	0	1	0	0	1	0	0	0	0	0	0	0
253	Altoona, PA	3	2	1	0	1	0	0	0	0	0	0	0	0	0
254	Eureka, CA	3	1	2	0	1	0	0	0	0	0	0	0	0	0
255	Billings, MT	1	1	0	1	2	0	0	0	0	0	0	0	0	0
256	Texarkana, TX-AR	5	0	1	1	1	0	0	0	0	0	0	0	0	0
257	Columbus-Starkville-West	2	3	0	0	0	1	0	0	0	0	0	0	0	0
258	Sioux City, IA	1	2	0	1	1	0	0	0	0	0	0	0	0	0
259	Grand Junction, CO	1	1	0	0	1	1	0	0	0	0	0	0	0	0
260	Williamsport, PA	3	1	0	0	1	1	0	0	0	0	0	0	0	0
261	Augusta-Waterville, ME	1	1	0	1	0	0	0	1	0	0	0	0	0	0
262	Albany, GA	3	1	0	1	0	0	0	1	0	0	0	0	0	0
263	Decatur, IL	2	0	1	1	0	0	0	0	0	0	0	0	0	0
264	Bluefield, WV	3	2	0	0	0	0	0	0	1	0	0	0	0	0
265	Mankato-New Ulm-St	1	1	1	0	0	1	0	0	0	0	0	0	0	0
266	Watertown, NY	0	0	0	1	1	0	0	0	0	0	0	0	0	0
267	Harrisonburg, VA	1	3	0	1	1	0	0	0	0	0	0	0	0	0
268	Rapid City, SD	2	2	1	0	0	1	0	0	0	0	0	0	0	0
269	San Angelo, TX	2	2	2	0	0	0	0	0	0	0	0	0	0	0
270	Lawton, OK	3	3	0	0	0	0	0	0	0	0	0	0	0	0
271	Lewiston-Auburn, ME	2	0	0	0	0	0	0	0	0	0	0	0	0	0
272	Ithaca, NY	2	1	0	1	0	0	0	0	0	0	0	0	0	0
273	Cookeville, TN	2	0	0	2	0	0	0	0	0	0	0	0	0	0
274	Bismarck, ND	2	1	1	1	0	0	0	0	0	0	0	0	0	0
275	Grand Forks, ND-MN	2	1	2	0	1	0	0	0	0	0	0	0	0	0
276	Owensboro, KY	2	0	1	0	1	0	0	0	0	0	0	0	0	0
277	Jackson, TN	4	2	1	1	0	0	0	0	0	0	0	0	0	0
278	Sebring, FL	1	0	0	0	1	0	0	0	0	0	0	0	0	0

Ran	Market Name	1	2	3	4	5	6	7	8	9	10	11	12	13	14
279	Beckley, WV	2	1	0	0	1	0	0	0	0	0	0	0	0	0
280	Mason City, IA	3	0	1	0	0	1	0	0	0	0	0	0	0	0
281	Jonesboro, AR	0	1	1	0	1	0	0	0	0	0	0	0	0	0
282	Cheyenne, WY	1	2	0	1	0	0	1	0	0	0	0	0	0	0
283	Great Falls, MT	2	0	1	1	0	0	0	0	0	0	0	0	0	0
284	Meridian, MS	5	1	1	0	1	0	0	0	0	0	0	0	0	0
285	Brunswick, GA	1	1	0	0	0	1	0	0	0	0	0	0	0	0
286	Casper, WY	2	0	0	1	0	1	0	0	0	0	0	0	0	0

ATTACHMENT C

VOLATILITY IN

RADIO MARKET SHARES

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Executive Summary

In discussing competition issues in the context of local radio ownership, the Federal Communications Commission (FCC) has expressed its concern about potential local market power, and has noted several factors to be considered when addressing those competitive concerns. One factor the FCC has discussed is whether there are under-performing stations (in terms of attracting audiences and generating revenues) that could "turn around" their performance and become stronger local competitors. If there are stations present in the market that could improve their positions, there is less concern about possible negative effects resulting from any particular combination of stations.

This paper will evaluate the ability of under-performing radio stations to improve their competitive positions by examining the volatility in the audience shares of commercial radio stations. If considerable volatility in these shares exists, it would indicate that current market leaders are not firmly entrenched, and, thus, could be challenged by the advances of previously less competitive radio stations and could accordingly be constrained from exercising market power.

The most notable results found in this study include:

- Nearly one-quarter (23.1%) of all reportable stations in Arbitron surveyed markets saw their audience share increase by 25% or more between two recent ratings periods (Fall 2000 to Spring 2001).
- A similar percentage of reportable stations (23.0%) saw their audience share increase by 25% or more between Spring 2000 to Spring 2001.
- Over three hundred stations in Arbitron markets changed their format between Fall 2000 to Spring 2001. These stations increased their share, on average, by 30.8% between these two ratings periods.
- Over a tenth (10.5%) of all reportable stations changed their format between Spring 2000 to Spring 2001. These stations increased their share, on average, by 38.5% between these two ratings periods.
- Nearly a fifth (18.5%) of all reportable stations changed their format between Spring 1999 and Spring 2001. These stations increased their share, on average, by 35.6%.
- Several variables describing local market conditions and audience demographics were shown to have very little explanatory power in predicting the success of a format change. Many other factors affect that success.

- Local ownership concentration has a positive impact on the success of a format changing station only in the short term. It is not significant when evaluating the longer-term success of format changing stations.

With so many radio stations improving their local audience shares from period to period, and with so many radio stations successfully changing their formats, local radio markets are very dynamic. This vitality in local radio markets, accompanied with the ability of individual radio stations to improve their positions quickly, should allay concerns about the potential anti-competitive effects resulting from any proposed combinations of local radio stations. If any local consolidated radio operator attempted to exercise market power, it would soon face improved and more successful competitive radio stations.

VOLATILITY IN RADIO MARKET SHARES

Introduction

A concern when conducting a competitive analysis of any industry is whether there are sufficient constraints on leading firms to prevent their exercising market power. One constraint could be having many different firms in the relevant geographic and product markets obstructing any collusive or monopolistic type of behavior. Another constraint could be the likely potential entry of new, or expansion of existing, firms that would occur if any anticompetitive actions (e.g., price increases, quality degradation) were taken.

In addressing competition issues in the context of local radio ownership, the Federal Communications Commission (FCC) has expressed its concern about potential local market power, and has noted several factors, including the number and shares of market participants and barriers to entry, to be taken into consideration.[1] In discussing these competitive concerns, the FCC has also considered whether unused allocations are available (i.e., new entry), and whether there are under-performing stations (in terms of attracting audiences and generating revenues) that could "turn around" their performance and become stronger local competitors.[2]

In many cases there are very few unused allocations, especially in the largest markets. Therefore, the number and ability of local underperforming stations to "turn around" their performances

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[1] See FCC Notice of Proposed Rulemaking, In the Matter of Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, MM Docket No. 01-317 and Definition of Radio Markets, MM Docket No. 00-244 (NPRM), paras. 84-89, discussing the FCC's current interim policy for evaluating local radio station acquisitions.

becomes a very important consideration in the competitive analysis of any merger of local radio operations. If there are stations present in the market that could improve their competitive positions, there is less concern about possible negative effects resulting from any particular combination of stations. Such "turn arounds" do not necessarily have to occur with the present owners of these under-performing stations because new owners sensing opportunities could make the necessary investments to improve those stations' performance.

The purpose of this paper is to examine the likelihood of turning around a radio station's performance. Specifically, we will examine the level of volatility in the audience shares of commercial radio stations in all Arbitron markets to see if there are significant changes to these shares from one ratings period to another,[3] or from one year to the next. If these shares are volatile, it would indicate that existing market leaders are not firmly entrenched, and could be threatened from advances of previously less competitive radio stations.[4]

One action that could possibly increase a station's audience share is to change the format of the station. Under-performing stations commonly change their formats, and it is easy to see why. Most of a radio station's cost structure is fixed -- e.g., utility costs -- and does not vary with the size of the

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2 See NPRM, paras. 46-47.

3 In the most recent year, 2001, there were 97 Arbitron markets that were surveyed four times a year, and 190 surveyed two times a year (Spring and Fall).

4 The Commission seems to agree with this assessment. See NPRM, para. 47 ("This suggests that radio stations with low market share may be able to increase their market share and provide a check on the leader's market power.").

audience it attracts.[5] Any increase in audiences will lead to larger advertising revenues, and most of those additional revenues will result in greater profits. Consequently, radio stations conduct a considerable amount of research to determine whether changing formats will attract larger audiences and whether it is a sound business decision. Many ultimately decide to make those changes. We will therefore specifically examine the changes in station shares after changes in station formats.

Included as part of that examination will be a statistical analysis of whether local market conditions hinder or help stations in their ability to increase share with a format change. Specifically, we will examine whether greater ownership concentration in local markets makes it more or less difficult for stations to increase their shares after changing formats. If it is found that greater local concentration makes it less difficult or has no impact on the ability of under-performing stations to increase shares with new formats, then there should be less concern about local concentration of ownership.

Changes in Audience Share

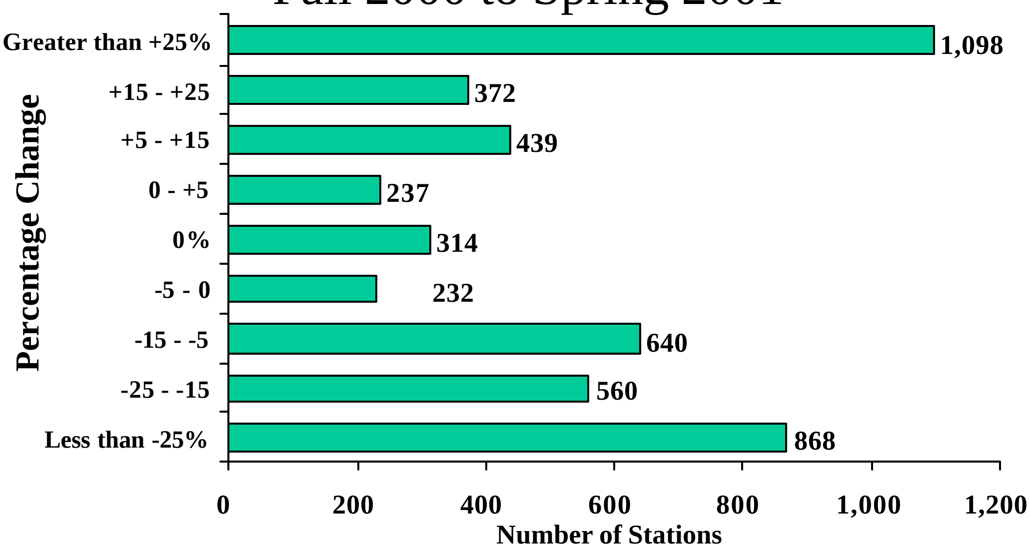
One Period to the Next

The first indicator of volatility examined is the simple change in audience share. To gauge the level of change, we compare the shares of commercial radio stations from the Fall 2000 ratings period with the Spring 2001 ratings period. There are 278 Arbitron surveyed markets with results from those

[5] The only exception to that is the sales commission paid, since that is generally based on the amount of revenues generated which is higher for stations attracting larger audiences.

ratings periods.[6] Figure 1 shows the number of stations with different levels of percentage changes between these two ratings periods.[7]

Figure 1
Percentage Changes in Audience Share –
Number of Stations
Fall 2000 to Spring 2001



Source: BIAI*fn* Media Access Pro™

The most striking point from these results is the large number of stations that either experienced a 25% or larger increase (1,098 stations) or a 25% or larger decrease (868 stations) in their local audience share between the two ratings periods. Those stations showing a 25% or larger increase were nearly a quarter (23.1%) of all the reportable stations in Arbitron surveyed markets.

[6] Arbitron started surveying nine new markets in Spring 2001. Therefore, there are nine presently surveyed markets for which we do not have Fall 2000 audience ratings information.

[7] There were 4,760 commercial radio stations that met minimum reporting requirements for both of these two ratings periods.

There will always be some changes in share simply due to sampling error even if local market conditions stayed the same (e.g., no station changed its format). These audience shares are based on a random sampling survey of potential listeners. Nevertheless, the great number of stations seeing substantial percentage increases in audience shares indicates that there are wide swings from one period to the next in the actual listening received by stations.[8]

One Year to the Next

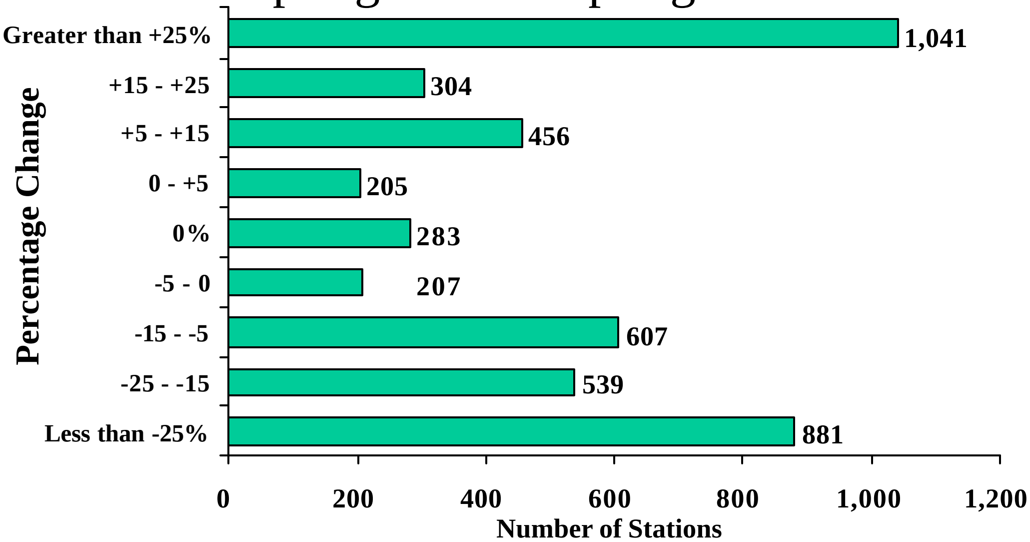
Given the different formats offered by stations, there may be some seasonable variability in listening patterns due to certain types of programming (e.g., more listening to certain stations during a particular sports season). The audience shares generated by some stations may therefore "naturally" vary from the Fall to the following Spring ratings periods. To remove this seasonable variability we conducted a similar analysis of the share changes from Spring 2000 to Spring 2001. Figure 2 shows the distribution of those percentage changes.[9]

Here again we see a large number of stations whose shares changed by a considerable margin. Similar numbers of stations saw their shares change by the same percentages as in Figure 1. In fact, the percentage of stations whose audience share increased by at least 25% was virtually the same (23.0% vs. 23.1%).

[8] One concern about examining percentage increases of station shares is whether there are many instances of very low shares seeing only a small absolute change but a large percentage change. While that does occur, the large majority of those large percentage changes are from stations with noticeable starting (Fall 2000) shares. For example, of the 1,098 stations that experienced a 25% or larger increase, 984 started off with a .5 share or larger in Fall 2000.

[9] There were 4,523 commercial stations in Arbitron markets that met minimum reporting requirements in both of these two survey periods.

Figure 2
Percentage Changes in Audience Share –
Number of Stations
Spring 2000 to Spring 2001



Source: BIA*fn* Media Access Pro™

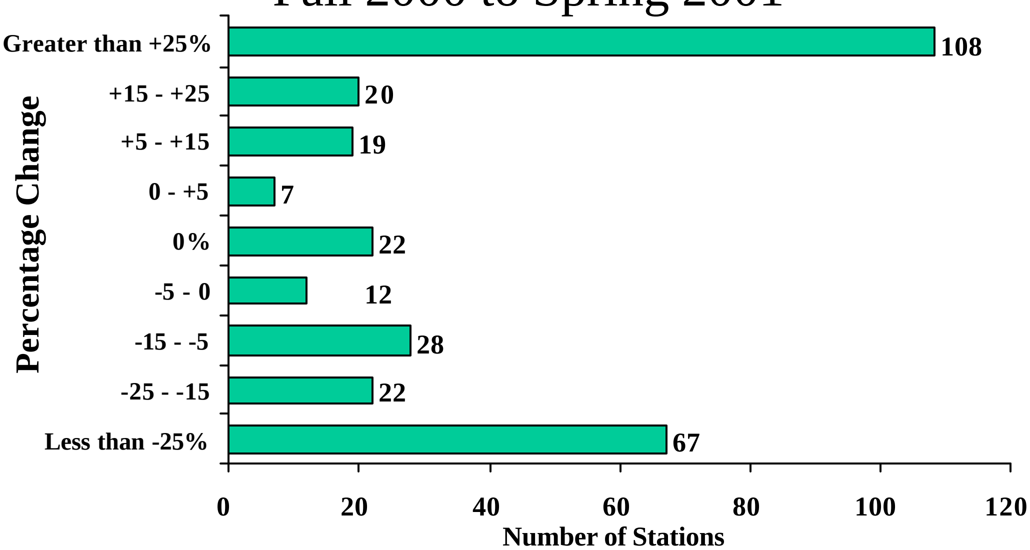
Format Changes

Local radio stations changing their formats can cause the changes in audience share shown above from one ratings period to the next, or from one year to the next. Radio stations spend a considerable amount of time and money in evaluating the right format for a specific market at a specific time. Custom research projects are frequently conducted to see if there is a “format hole” in a particular market that an existing station may decide to “fill” by changing its present format.

Short Term Impacts

To examine the short-term audience reaction to format changes, we analyzed the shares of the stations that changed their formats between the Fall 2000 and Spring 2001 ratings periods. There were 305 stations that changed their formats and met minimum reporting standards in both ratings periods, representing 6.4% of all commercial stations in surveyed markets. The average percentage change in audience share for those 305 stations between these two ratings periods was a 30.8% increase.[10] Figure 3 shows the number of these 305 format-changing stations with different levels of share changes.

Figure 3
Percentage Changes in Audience Share – Format Changing Stations
Fall 2000 to Spring 2001



Source: BIAI*fn* Media Access Pro™

[10] Once again, to see if low initially rated stations had a significant impact on this average, we calculated the average of only those stations that started out (in Fall 2000) with at least a .5 share. The

Clearly some of these format changes were successful, as the shares of 108 stations (35.4% of the 305 format changing stations) increased by more than 25%. Others were not as successful, with the shares of 67 stations (22.0% of the format changing stations) decreasing by 25% or more.

Longer Term Impacts

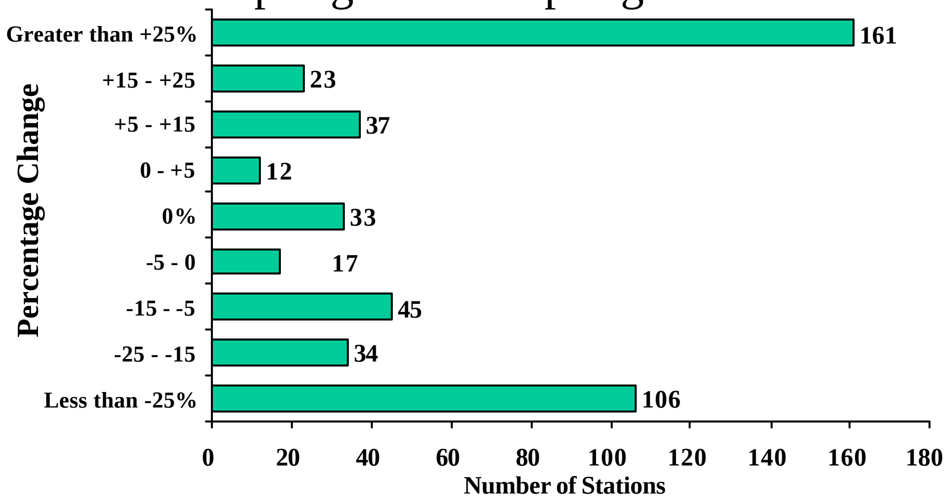
Depending upon the timing of their format change (i.e., how soon before the next ratings period the change is made) and other factors (e.g., number of stations in the local radio market), radio stations may not be able to determine the success of that change by just the next ratings period. It may take more time for local listeners to sample that new programming, thereby delaying any possible improvement in the station's share. At the same time, however, other radio stations may competitively react with changes in their own programming or other actions over a longer time period, possibly reducing or eliminating any share increase.

To see the longer-term results of these format changes and competitive reactions, we examined the changes in the shares of the format changing stations over longer time periods. Figure 4 shows the share change results from the 468 radio stations (10.5% of reportable stations) whose formats were changed between Spring 2000 and Spring 2001. Figure 5 shows the share change results from the 822 radio stations (18.5% of the reportable stations[11]) with different formats between Spring 1999 and Spring 2001.

average change for the 301 format changing stations that met that criteria was 28.1%, still a very significant increase.

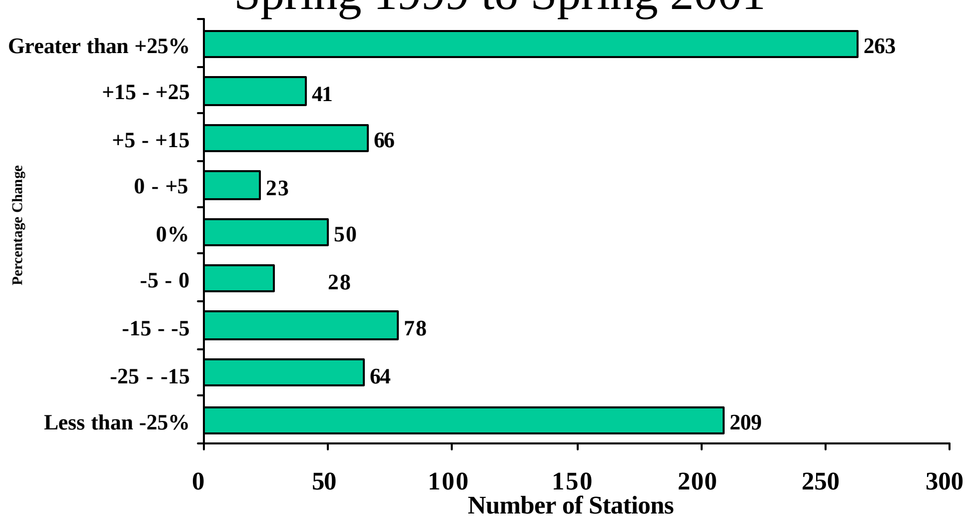
[11] There were 4,448 commercial stations in Arbitron markets that met minimum reporting requirements in both of these two survey periods.

Figure 4
Percentage Changes in Audience Share –
Format Changing Stations
Spring 2000 to Spring 2001



Source: BIA*fn* Media Access Pro™

Figure 5
Percentage Changes in Audience Share –
Format Changing Stations
Spring 1999 to Spring 2001



Source: BIA*fn* Media Access Pro™

The shares of the stations with one year between format changes (Spring 2000 – Spring 2001) increased an average 38.5%, noticeably higher than the share increases experienced by format changing stations during a single ratings period (Fall 2000 – Spring 2001). This may indicate that it does take some time for listeners to sample the new programming and adjust their listening habits.

In contrast, the shares of the stations with two years between format changes (Spring 1999 – Spring 2001) increased by a lower amount, 35.6%, but still larger than the share increases of format changing stations over a single ratings period. While one should be cautious with generalizations about differing groups of stations, these results indicate that it does take some time for listeners to sample stations with new formats.

Regression Analysis

Although there were many successful changes of formats during the three time periods examined, stations changing formats were certainly not guaranteed success. Local market conditions, as well as the quality of the new programming, play important roles in determining whether such a switch will be successful.

One particular local market condition – local ownership concentration – has been suggested as possibly being an important factor in determining the success of a format change. A market in which there is considerable ownership concentration may forestall any challenge to the dominance of market leading stations by stations changing formats. On the other hand, if one or two groups already garner a substantial share of the audience, a format changing station may be able to "pick off" shares without much of a reaction by market leading groups. Finally, a local consolidated group in a highly concentrated market may be best able to discern whether there are successful format change possibilities.[12]

To examine the impact of this ownership concentration variable, we conducted several regression analyses using the three groups of format changing radio stations previously described. For each equation, the dependent variable was the percentage increase in the local station's commercial audience share. Independent variables describing local market conditions and audience demographics that were evaluated include:

- Herfindahl-Hirschmann Concentration Index of Local Commercial Audience Share (HERFLCS)
- Percentage of population in market that is Black (Black)
- Percentage of population in market that is Hispanic (Hispanic)
- Median income (Median)
- Number of radio stations in the local market airing the specific format that the format changing station is adopting (SPFMTAV)[13]

Table 1 shows the results from the regression analysis for the stations that changed formats between Fall 2000 and Spring 2001.

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[12] See Mark R. Fratrik, "Has Format Diversity Continued to Increase?" submitted as an attachment to the Comments of National Association of Broadcasters, In the Matter of Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, MM Docket No. 01-317 and Definition of Radio Markets, MM Docket No. 00-244.

[13] We also evaluated the number of stations with the same format using a general format categorization scheme. In that categorization scheme, all formats are categorized into one of nineteen general types. Using that number of stations in the local market prior to the change in format generated similar results as the number of specific formats available in the market at the same time.

Table 1

Regression Results for Format Changing Stations –

Fall 2000 – Spring 2001

Dependent Variable: Percentage Increase in Local Commercial Share		
	Coefficients	T Statistic
(Constant)	.558	1.620
HERFLCS	.191*	3.200
MEDIAN	-.111	-1.891
BLACK	.011	.180
HISPANIC	.014	.223
SPFMTAV	-0.11	-.180
* Coefficient significant at .05 level R Square: .049		

Perhaps the most important result in the above table, and repeated in the other tables below, is that these variables collectively do **not** have much explanatory power (i.e., low R square) in predicting the success of a format change. In other words, there are many other factors that affect that success.

There is only one statistically significant variable, the local ownership concentration variable, and it has a positive impact on the immediate success of a format changing station. In markets with greater ownership concentration in Fall 2000, stations changing their formats were more likely to increase their local share by the next ratings period (Spring 2001) than format changing stations in less concentrated markets. For this group, it may be that the format changing station was able to "pick off" audience share from the locally consolidated operations. Alternatively, because the group of stations changing formats included stations that are part of local consolidated operations, that positive impact may indicate that the local consolidated operations can successfully discover the format "holes" not being served in local marketplaces. Whatever the reason for the positive impact that ownership consolidation has on the short run change in audience share, that result is not present when a longer time period is examined. The competitive response to format changing stations may weaken the impact of the initial filling of format "holes."

Turning to the longer-term impact, Table 2 shows the results from the regression analysis for the stations that changed formats between Spring 2000 and Spring 2001.

Table 2

Regression Results for Format Changing Stations –

Spring 2000 – Spring 2001

Dependent Variable: Percentage Increase in Local Commercial Share		
	Coefficients	T Statistic
(Constant)	.579	1.548
HERFLCS	.005	.109
MEDIAN	-.043	-.940
BLACK	-.012	-.250
HISPANIC	.133*	2.750
SPFMTAV	.017	.161
* Coefficient significant at .05 level R Square: .020		

Once again, the explanatory power of this equation is quite low (i.e., R square: .02), even lower than the first equation. Moreover, only one of the variables was statistically significant, the Hispanic percentage of the local market population. That variable being significant indicates that format changing stations were more successful with greater percentages of Hispanics in the local market. This result may be explained by the fact that the number of stations airing Spanish programming noticeably increased during this time period in response to the growing Hispanic population in many markets.[14]

With respect to the local level of ownership concentration variable, there is no discernable impact on the share change for these stations. In other words, the level of ownership concentration in Spring 2000 had no positive or negative impact on the ability of format changing stations to increase their audience shares by Spring 2001.

Finally, Table 3 shows the results from the regression analysis for the stations that changed formats between Spring 1999 and Spring 2001.

Table 3
Regression Results for Format Changing Stations –
Spring 1999 – Spring 2001

Dependent Variable: Percentage Increase in Local Commercial Share		
	Coefficients	T Statistic
(Constant)	.401	.098
HERFLCS	.027	.722
MEDIAN	.009	.257
BLACK	.034	.919
HISPANIC	.098*	2.585
SPFMTAV	.026	.731
* Coefficient significant at .05 level R Square: .009		

This equation provides even less explanatory power than the second equation and also has only the one variable (Hispanic population) that is statistically significant. Even over a longer term (two years), the share increasing success of a format changing station is not negatively or positively affected

14 See Table 2 in Mark R. Fratrik, "State of the Radio Industry: *What is Going On With Radio*

by the level of local ownership concentration before that format was changed. Many other factors affect whether a station changing formats will be successful.

Conclusion

Radio stations compete vigorously against each other, as well as against other forms of audio programming, to attract local audiences. Their ability to turn their programming, marketing, and other business decisions into increased revenues and profits hinges on attaining higher local audience shares. Those audience shares have sometimes been referred to as the "currency of the radio industry."

As a result, the relative market positions of radio stations are determined every time the ratings reports are published. While there are some radio stations that consistently attract large audiences, other radio stations make changes that lead to substantial increases in those audience shares. After reviewing those differences in audience shares from one ratings period to the next, and from one year to the next, we see a tremendous number (nearly one-quarter) of stations that have successfully improved their competitive position in a relatively short time, and concomitantly, other stations have seen their shares reduced.

One important way that these stations improve their competitive positions is by changing their programming (i.e., formats). Stations invest a considerable amount of their resources constantly reviewing the programming available in their local markets, looking for possible new opportunities to

Formats?," BIA Financial Network, January 2002. (www.bia.com) serve the listening public and to attract larger audiences. The evidence demonstrates that many of these stations are successful in increasing their local audience share after switching formats.

Upon further examination of the possible factors affecting the success of the format changing stations, we found no evidence that an increase in local ownership concentration negatively affects the ability of stations to increase their local audience share. In fact, in the short run, the format changing stations were more likely to increase their shares in highly concentrated markets than stations in less concentrated markets. Over a longer time period, there was no impact, negative or positive, from the level of concentration on the success of format changing stations.

With so many radio stations improving their local audience shares from period to period, and with so many radio stations successfully changing their formats, local radio markets are very dynamic. While there are some stations that historically have served their local communities well and are rewarded with consistently high ratings, there is also constant reshuffling among the top ranked stations in many markets. This vitality in local radio markets, accompanied with the ability of individual radio stations to improve their positions quickly, should allay concerns about the potential anti-competitive effects resulting from proposed combinations of local radio stations. If any local consolidated radio operator attempted to exercise market power, it would soon be challenged by improved and more successful competitive radio stations.

ATTACHMENT D

Aggregate Shares of the Top Five Stations in Arbitron's Top 100 Markets: Spring 2001 vs. Spring 1996

MktRank(Sp01)	MktName	Spring01	Spring96	Diff	%Chg
1	New York	24.4	27.3	-2.9	-10.6%
2	Los Angeles	23.6	25.4	-1.8	-7.1%
3	Chicago, IL	25.3	25	0.3	1.2%
4	San Francisco	23.3	24.2	-0.9	-3.7%
5	Dallas - Ft. Worth	26.2	28.2	-2	-7.1%
6	Philadelphia	30	30.6	-0.6	-2.0%
7	Washington, DC	25.3	27.8	-2.5	-9.0%
8	Boston	28.9	33.4	-4.5	-13.5%
9	Houston-Galveston	30.7	29.9	0.8	2.7%
10	Detroit	28.2	33.6	-5.4	-16.1%
11	Atlanta, GA	35.7	38.6	-2.9	-7.5%
12	Miami-Ft. Lauderdale-Hollywood	26.7	26.7	0	0.0%
14	Seattle-Tacoma	31.2	28.4	2.8	9.9%
15	Phoenix, AZ	27.2	32	-4.8	-15.0%
16	Minneapolis - St. Paul	38.2	42.3	-4.1	-9.7%
17	San Diego	25.4	29.8	-4.4	-14.8%
18	Nassau-Suffolk	20.2	18.9	1.3	6.9%
19	St. Louis	35.9	40.6	-4.7	-11.6%
20	Baltimore, MD	36.4	36.9	-0.5	-1.4%
21	Tampa-St. Petersburg-Clearwater	33.1	35.1	-2	-5.7%
22	Denver - Boulder	29.9	33.3	-3.4	-10.2%
23	Pittsburgh, PA	36.9	42	-5.1	-12.1%
24	Portland, OR	29.6	31.9	-2.3	-7.2%
25	Cleveland	35.5	36	-0.5	-1.4%
26	Cincinnati	35.6	40.5	-4.9	-12.1%
27	Sacramento, CA	28.4	34.1	-5.7	-16.7%
28	Riverside-San Bernardino	25.6	23.7	1.9	8.0%
29	Kansas City	33.8	37.4	-3.6	-9.6%
30	San Jose	14.8	21.5	-6.7	-31.2%
31	San Antonio, TX	30.7	36.7	-6	-16.3%
32	Milwaukee - Racine	34.6	39.2	-4.6	-11.7%
34	Salt Lake City - Ogden	28.7	31.6	-2.9	-9.2%
35	RI	31.6	33.4	-1.8	-5.4%
36	Columbus, OH	38.4	38.6	-0.2	-0.5%
37	Charlotte-Gastonia-Rock Hill	32.3	38.6	-6.3	-16.3%
38	News	32.7	35.7	-3	-8.4%
39	Orlando	29.7	35.4	-5.7	-16.1%
40	Indianapolis, IN	39	45.2	-6.2	-13.7%
41	Las Vegas, NV	33.8	38.4	-4.6	-12.0%
42	Point	38	38.9	-0.9	-2.3%
43	Austin, TX	33	40.6	-7.6	-18.7%
44	Nashville	37.7	47	-9.3	-19.8%
45	New Orleans	40.4	39.8	0.6	1.5%
46	Raleigh - Durham, NC	32.7	38.6	-5.9	-15.3%
47	W. Palm Beach-Boca Raton	28.5	33.3	-4.8	-14.4%
48	Memphis	32.1	42.4	-10.3	-24.3%
49	Hartford-New Britain-Middletown	43.7	42.2	1.5	3.6%
50	Buffalo-Niagara Falls, NY	44.5	40.5	4	9.9%

Source: BIA's MediaAccess Pro 3.1

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Aggregate Shares of the Top Five Stations in Arbitron's Top 100 Markets:
Spring 2001 vs. Spring 1996

51	Monmouth-Ocean, NJ	16.9	20.6	-3.7	-18.0%
52	Jacksonville, FL	34.9	37.7	-2.8	-7.4%
53	Rochester, NY	43.2	45.5	-2.3	-5.1%
54	Oklahoma City	35.4	42.7	-7.3	-17.1%
55	Louisville, KY	42.1	46.8	-4.7	-10.0%
56	Richmond, VA	40.4	49.2	-8.8	-17.9%
57	Birmingham, AL	38.3	46.2	-7.9	-17.1%
58	Dayton, Ohio	38.4	43.4	-5	-11.5%
60	Greenville-Spartanburg, SC	39.9	48.6	-8.7	-17.9%
61	Albany-Schenectady-Troy	39.6	44.9	-5.3	-11.8%
62	Honolulu	36.6	46.6	-10	-21.5%
63	McAllen-Brownsville-Harlingen, TX	53.3	52.6	0.7	1.3%
64	Tucson, AZ	36.1	41.2	-5.1	-12.4%
65	Tulsa, OK	39.1	38.9	0.2	0.5%
66	Grand Rapids, MI	36.8	38.4	-1.6	-4.2%
67	Wilkes Barre - Scranton	39.6	39.6	0	0.0%
68	Fresno	29.4	39.1	-9.7	-24.8%
69	Allentown - Bethlehem	50.1	50	0.1	0.2%
70	Ft. Myers-Naples-Marco Island	36	45.2	-9.2	-20.4%
71	Knoxville, TN	52	58.1	-6.1	-10.5%
72	Albuquerque, NM	31.1	36.7	-5.6	-15.3%
73	Akron, OH	27.8	27.5	0.3	1.1%
74	Omaha - Council Bluffs	38.8	40.9	-2.1	-5.1%
75	Wilmington, DE	29.7	30.5	-0.8	-2.6%
76	Monterey-Salinas-Santa Cruz	26.6	25.5	1.1	4.3%
77	El Paso, TX	48.6	52.4	-3.8	-7.3%
78	Harrisburg-Lebanon-Carlisle, PA	37.9	43.3	-5.4	-12.5%
79	Syracuse, NY	40.4	43.6	-3.2	-7.3%
80	Sarasota - Bradenton, FL	23.4	19.5	3.9	20.0%
81	Toledo, OH	43.2	46.7	-3.5	-7.5%
82	Springfield, MA	37.2	42.6	-5.4	-12.7%
83	Baton Rouge, LA	39.8	44.6	-4.8	-10.8%
84	Greenville-New Bern-Jacksonville	43.4	48.4	-5	-10.3%
85	Little Rock, AR	36.6	47.8	-11.2	-23.4%
86	Gainesville - Ocala, FL	32.2	31	1.2	3.9%
87	Stockton, CA	23.3	18	5.3	29.4%
88	Columbia, SC	39.8	53.2	-13.4	-25.2%
89	Des Moines, IA	41	50.4	-9.4	-18.7%
90	Bakersfield, CA	35.7	40.1	-4.4	-11.0%
91	Mobile, AL	48.2	37.6	10.6	28.2%
92	Wichita, KS	38.6	41.4	-2.8	-6.8%
93	Charleston, SC	35.6	41	-5.4	-13.2%
94	Spokane, WA	35.1	39.7	-4.6	-11.6%
95	Daytona Beach, FL	21.2	21.7	-0.5	-2.3%
96	Colorado Springs, CO	40.1	43.6	-3.5	-8.0%
97	Madison, WI	39.2	40.4	-1.2	-3.0%
98	Johnson City-Kingsport-Bristol	52.6	59.6	-7	-11.7%
99	Lakeland-Winter Haven, FL	18.3	27.6	-9.3	-33.7%
100	Melbourne-Titusville-Cocoa, FL	24.8	28.1	-3.3	-11.7%

Source: BIA's MediaAccess Pro 3.1

3/27/2002

**Aggregate Shares of the Top Five Stations in Arbitron's Top 100 Markets:
Spring 2001 vs. Spring 1996**

	97 Market Averages:	34.2	37.6	-3.4	-9.1%

ATTACHMENT E

The Least Consolidated Media Sector Is—*Surprise!*— Radio
(revenue share of the top 10 owners)

Sector	Holdings	Rev. Share
Movie Studios	$32.6 billion in revenue	99%
DBS	16.2 million subscribers	95%
Theme Parks	$10.3 billion in revenue	93%
Cable Systems	60.5 million subscribers (83%)	89%
Outdoor	$1 billion in revenue	85%
Web Sites	146 million weekly visits	76%
Movie Theaters	20,600 screens	57%
TV Stations	$15.8 billion in revenue	55%
Newspapers	26.7 million circulation	48%
Radio	**2,000 stations**	**44%**

Source: OAAA, Nielsen, NATO, NAA, IAB and Wachovia Securities' estimates.