Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF RADIO ONE, INC.

Richard J. Bodorff
Gregory L. Masters
Eve J. Klindera
of
Wiley Rein & Fielding LLP
1776 K Street NW
Washington, DC 20006
TEL: 202.719.7000
FAX: 202.719.7049

Attorneys for Radio One, Inc.

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SUMMARY

Radio One is the largest African-American-owned radio broadcasting company in the United States, and the largest radio broadcaster that primarily targets the African-American community. As explained in these comments, Radio One's business strategy includes specific efforts to meet the needs of market segments that other broadcast companies may not be adequately serving. The company thereby makes an identifiable contribution to diversity and competition.

Any decrease in the number of radio stations in a market that an entity may own below the numerical limits set forth in Section 202(b) would inappropriately shut out mid-sized companies like Radio One from achieving the levels of group ownership contemplated by the 1996 Act and conflict with the Act's deregulatory goals. Alteration of the method used to define local geographic markets in a manner that would decrease the number of stations an entity could own in a local market would have a similar effect and would clearly contradict with Congress' intent as expressed in Section 202(b). Rather than harming diversity or competition, consolidation allows group owners to achieve economies of scale through the common operation of multiple stations in a local market. These efficiency benefits, in turn, allow group owners like Radio One to enhance diversity and competition, by offering a wider range of program formats to serve specialized audiences. Accordingly, the Commission should not take any action in this proceeding that would prevent mid-sized radio owners from enjoying the efficiency benefits associated with the levels of consolidation explicitly permitted under the 1996 Act.

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Radio One, Inc. ("Radio One"), by its attorneys and pursuant to Section 1.415 of the Commission's rules,[1] hereby submits its comments in response to the Notice of Proposed Rule Making ("NPRM") released by the Federal Communications Commission ("FCC" or "Commission") on November 9, 2001 in the above-captioned proceeding.[2] In the NPRM, the Commission seeks to evaluate the effects on the public of consolidation in the radio industry following the relaxation of the FCC's numerical limits on station ownership, as required by Congress in Section 202(b) of the Telecommunications Act of 1996 (the "1996 Act").[3]

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[1] 47 C.F.R. § 1.415.

[2] FCC 01-329 (rel. Nov. 9, 2001). By Order released January 23, 2002, the FCC extended the deadline for filing comments in response to the NPRM until March 13, 2002. See DA 02-156. On March 8, 2002, the Commission further extended the deadline for filing comments until March 27, 2002. See DA 02-582.

[3] Pub. L. No. 104-104, 110 Stat. 110 (1996). Section 202(b) directed the FCC to revise its local radio ownership regulations to provide that:

> (A) in a radio market with 45 or more commercial radio stations, a party may own, operate, or control up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM);

I. INTRODUCTION

Radio One was founded in 1980 and is the largest African-American-owned radio broadcasting company in the United States. Since its inception, the company has focused primarily on providing radio programming of interest to the diverse needs of the African-American community. Radio One currently owns and operates 65 radio stations, including 36 stations in 14 of the top 20 African-American markets.[4] While the largest group owners control hundreds of stations and have acquired the maximum number of stations allowable in a broad range of radio markets, Radio One has not yet done so in the vast majority of its local markets. For example, in Washington, DC, Radio One owns 4 stations, while the limit is 8. Similarly, in Boston, Radio One owns 2 stations, while it could own up to 8. Radio One owns only one station in Miami and Los Angeles, which both also have an 8-station limit. The company also owns only one station in St. Louis and Charlotte, each of which have a 7-station limit.

For the reasons set forth below, Radio One submits that the Commission lacks authority to decrease the number of radio stations in a market that an entity may own below the numerical limits set forth in Section 202(b) or to alter its method of defining local geographic markets in a manner that would conflict with the 1996 Act's deregulatory goals. As demonstrated below,

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> (B) in a radio market with between 30 and 44 (inclusive) commercial radio stations, a party may own, operate, or control up to 7 commercial radio stations, not more than 4 of which are in the same service (AM or FM);
>
> (C) in a radio market with between 15 and 29 (inclusive) commercial radio stations, a party may own, operate, or control up to 6 commercial radio stations, not more than 4 of which are in the same service (AM or FM); and
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> (D) in a radio market with 14 or fewer commercial radio stations, a party may own, operate, or control up to 5 commercial radio stations, not more than 3 of which are in the same service (AM or FM), except that a party may not own, operate, or control more than 50 percent of the stations in such market.

[4] These include 26 FM and 10 AM stations in Washington, DC, Los Angeles, Detroit, Atlanta, Philadelphia, Houston, Miami, Baltimore, Dallas, St. Louis, Cleveland, Boston, Richmond and Charlotte.

such action would also inappropriately shut out mid-sized minority-owned broadcasters such as Radio One, which contribute meaningfully to the level of diversity available in the mass media, from enjoying the efficiency benefits associated with the consolidation permitted under the 1996 Act. Moreover, the level of consolidation that has occurred since the passage of the 1996 Act has not had detrimental effects on either diversity or competition in local radio markets, but has instead permitted group owners to achieve economies of scale through the common operation of multiple stations in a local market. These efficiency benefits, in turn, have allowed group owners like Radio One to offer significantly improved service to the public in the form of diverse program offerings.

II. ESTABLISHED PRINCIPLES OF STATUTORY CONSTRUCTION AND FUNDAMENTAL NOTIONS OF FAIRNESS REQUIRE THAT THE COMMISSION, AT A MINIMUM, MAINTAIN THE STATUS QUO WITH REGARD TO NUMERICAL LIMITS AND GEOGRAPHIC MARKET DEFINITION

With the passage of Section 202(b) of the 1996 Act, Congress spoke clearly and directly to the issue of how many stations in a local market a single entity could operate consistent with the public interest, convenience and necessity. In accordance with the 1996 Act, the FCC increased the local ownership limits, and has judged transactions since that time in accordance with its revised local ownership rules while utilizing the same geographic market definition employed prior to the 1996 Act. As noted above, although Radio One has not yet done so, numerous other group owners have already achieved the maximum level of consolidation permitted under Section 202(b) and the Commission's rules, with those transactions judged under the current ownership limits and established market definition principles. Radio One submits that minority and mid-sized radio station owners like itself, who contribute meaningfully to diversity and competition, should be permitted to achieve the level of group ownership permitted under the 1996 Act.

Congress acknowledged that joint station ownership generates efficiencies that permit the radio industry to compete in today's vastly competitive media marketplace, and aimed to "empower radio so that it can grow strong well into the [21st] century, and continue to serve our communities as it has done so well for 70 years."[5] Congress attempted to achieve this goal by explicitly requiring the Commission to relax its local radio ownership limits to permit an entity to own a greater number of stations. Significantly, Congress chose not to allow the Commission to continue to rely on its general authority to regulate radio ownership consistent with the public interest, convenience and necessity.[6] Instead, by adopting Section 202(b), Congress expressed its independent judgment as to the number of stations that an entity could own in a local market.

The fact that the 1996 Act expressed a specific, congressional determination of the level of local radio ownership that is consistent with the public interest eliminates the Commission's ability to consider additional public interest factors relating to diversity and competition in evaluating station acquisitions. This interpretation is consistent with not only the established canon of statutory construction that a specific statement in a statute governs a more general one,[7] but also with the biennial review mandate contained in Section 202(h) of the 1996 Act.[8] That section directed the Commission to "review its . . . ownership rules biennially . . . and determine

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[5] 141 Cong. Rec. S8076-77 (Daily Ed. June 9, 1995) (remarks of Sen. Pressler); see 141 Cong. Red. S8424 (Daily Ed. June 15, 1995) (remarks of Sen. Burns) ("Increased multiple ownership opportunities will allow radio operators to obtain efficiencies from being able to purchase programming and equipment on a group basis and from combining operations such as sales and engineering); id. at S8433 (remarks of Sen. Bryan) ("One way to help radio stations get out of the red is to permit them to use economies of scale that they can achieve from consolidating their operations.").

[6] See 47 U.S.C. §§ 309(a), 310(d).

[7] It is well established that when interpreting statutes, courts "are to prefer the more specific [term] over a conflicting general one." Mail Order Ass'n of Am. v. United States Postal Svc., 986 F.2d 509, 515 (D.C. Cir. 1993) (citing United States v. Chase, 135 U.S. 255, 260 (1890)); see Circuit City Stores v. Adams, 121 S. Ct. 1302, 1308-09 (2001); 2A Sutherland Statutory Construction § 47:17, at 273-274 (6th ed. 2000).

[8] 1996 Act § 202(h).

whether any of such rules are necessary in the public interest as a result of competition."[9] As the D.C. Circuit recently stated, "Section 202(h) carries with it a presumption in favor of repealing or modifying the ownership rules,"[10] and, as such, confirms the deregulatory intent of the 1996 Act. Simply put, if Congress did not mean to set the appropriate level of concentration in local radio markets, the numerical limits in Section 202(b) serve no purpose at all.[11]

When Congress set the numerical limits in Section 202(b), it is further presumed to have been aware of the FCC's consistent use of overlapping principal community contours to define radio markets. Indeed, "it is well established that when Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress."[12] When the Commission initially announced its intention to initiate a proceeding to consider the adoption of a different and more restrictive method for determining the relevant geographic market for analyzing radio transactions, then-Commissioner Powell expressed concern that the agency was proposing to shrink markets, with the effect of limiting the number of stations that a single entity could own:

> When Congress adopted its radio ownership provision,

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[9] Id. It is also important to note that the only exception to the numerical limits in the 1996 Act authorizes higher levels of ownership concentration – Section 202(b) allows the Commission to permit an entity to own a larger number of stations in a local market if it finds that such ownership would increase the overall number of stations in a local market.

[10] Fox Television Stations, Inc. v. FCC, No. 00-1222, -- F.3d --, 2002 WL 233650, at *18 (D.C. Cir. Feb 19, 2002).

[11] 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Communications Act, 15 FCC Rcd 11058, 11159 (2000) ("1998 Biennial Review Report") (Separate Statement of Commissioner Michael K. Powell) ("[I]f Congress did not mean to set the appropriate level of concentration, or the appropriate level of diversity, what on earth are the numerical market levels meant to do?").

[12] CFTC v. Schor, 478 U.S. 833, 845 (1986) (quoting NLRB v. Bell Aerospace Co., 416 U.S. 267, 274-75 (1974)).

> Commission regulations defined these markets in a particular way. That way was the law of the land. . . . I believe proper statutory interpretation would lead one to conclude that Congress set its numerical limits against the market definition that prevailed in regulation at the time, and not a definition that had not been used for this purpose previously.[13]

In sum, the FCC simply may not adopt any numeric limit or geographic market definition that would conflict with the intent of Congress, clearly expressed in the 1996 Act, to relax local radio ownership restrictions.

Congress has also explicitly directed the Commission to "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by . . . disseminating licenses among a wide variety of applicants, including . . . businesses owned by members of minority groups and women."[14] The 1996 Act similarly requires the FCC to identify and eliminate market entry barriers for small business owners, including minorities, and in so doing, to "seek to promote the policies and purposes of th[e Communications] Act favoring diversity of media voices."[15] A decision to modify the local radio ownership rules in a manner that would limit the ability of a minority-owned mid-sized radio station owner such as Radio One to acquire additional stations would conflict with the Commission's statutory goal to improve the ability of minority owners to participate in the broadcast industry, and would inhibit the growth of a company that has a proven track record of serving the Commission's interest in diversity.[16]

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[13] 1998 Biennial Review Report, 15 FCC Rcd at 11158 (Separate Statement of Commissioner Michael K. Powell).

[14] 47 U.S.C. § 309(j). This section was added to the Communications Act in 1993 by the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002(a), 107 Stat. 312, 387 (1993).

[15] 1996 Act § 257.

[16] Even if the Commission had authority to change its method of defining local radio markets under the 1996 Act, the use of Arbitron metro markets should be rejected. Arbitron markets are arbitrarily drawn and do not

III. CONSOLIDATION INCREASES, RATHER THAN DECREASES, OVERALL PROGRAMMING DIVERSITY IN THE LOCAL MARKETPLACE

A. Consolidation Provides Owners With the Incentive and Ability to Diversify the Programming They Air

The NPRM asks commenters to address whether "competing parties in a market have a commercial incentive to air 'greatest common denominator' programming, while a single party that owns all stations in a market has a commercial incentive to air more diverse programming to appeal to all substantial interests."[17] Indeed, it has been widely recognized that commonly owned media outlets have a strong commercial incentive to diversify their content offerings in order to reach the largest possible aggregate audience, whereas an independently operating media outlet has an incentive to focus primarily on mainstream content in order to attract the largest possible audience.[18] The Commission has recognized this principle in previous

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accurately reflect the geographic areas in which Radio One's stations compete for advertising revenue. Nor do Arbitron markets accurately reflect the areas in which other media (newspaper, television, cable and other media) compete against radio stations that Radio One owns. Indeed, twelve out of nineteen of the comments, and three of the five reply comments in the radio market definition proceeding specifically advocated against using Arbitron for market definitions, noting that doing so would lead to anomalous results. Not one commenter favored using Arbitron markets. Definition of Radio Markets, MM Docket No. 00-244, FCC 00-427 (rel. Dec. 13, 2000). As such, Arbitron markets cannot be used as a method to define the relevant geographic are for purposes of the local radio ownership rules.

[17] NPRM at ¶ 37. Economic studies are virtually unanimous in recognizing this incentive, and economics literature supporting this model has been frequently cited and relied upon by the Commission. See, e.g., Bruce M. Owen and Steven S. Wildman, Video Economics (Cambridge, Mass.: Harvard Univ. Press 1992), Chapters 3 and 4 (cited in Amendment of Section 73.658(g) of the Commission's Rules – The Dual Network Rule, 15 FCC Rcd 11253, 11263 n.30 (2000)); Steiner, P.O., Program Patterns and Preferences, and the Workability of Competition in Radio Broadcasting, Q. J. Econ. 66 (1952) (cited in Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules, 10 FCC Rcd 3524, 3551 n.81 (1995) ("TV Ownership FNPRM")).

[18] NPRM at ¶ 37. Although the Commission has often "focused on the number of different owners on the theory that a larger number of owners would help provide greater viewpoint or source diversity," see id., this idea has been widely criticized by scholars and economists. See, e.g., Benjamin M. Compaine, The Impact of Ownership on Content: Does It Matter?, 13 Cardozo Arts and Ent. L.J., 755, 755-80 (1995); John C. Busterna, Television Station Ownership Effects on Programming and Idea Diversity: Baseline Data, 1 J. Media & Econ. 63 (1988); Stanley M. Besen and Leland Johnson, Regulation of Media Ownership by the Federal Communications Commission: An Assessment, at 7, 28-32 (1984).

proceedings regarding its local radio ownership rules[19] as well as in several proceedings involving other mass media ownership restrictions.[20]

Radio One's programming strategy provides a real-life demonstration that common ownership does not decrease, and indeed increases, diversity at the local level. Specifically, Radio One focuses on identifying un-served or underserved markets or segments of the African-American community. It has acquired and turned around under-performing radio stations in an attempt to meet the needs of listeners within the markets and segments that other broadcasters may not be serving adequately, if at all. In this connection, the company has expanded its range of primarily urban programming formats to target a more diverse listener base, and strives to create a distinct identity for each of its radio stations in a given market. Indeed, in an overwhelming majority of the markets in which it operates stations, each of Radio One's stations has a different program format. Through its ownership of clusters of radio stations in various markets and the economic efficiencies that result, Radio One has been able to serve a variety of demographic segments within the African-American population.

For example, in the Washington, D.C. market, Radio One owns four stations, each with a different format: Urban contemporary, which serves listeners between 18 and 34; Adult Urban Contemporary, which serves listeners between 25 and 54; Gospel, which serves listeners between 25 and 64; and Urban Talk Radio, which serves listeners 25-54. Without the ability to

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[19] Revision of Radio Rules and Policies, 6 FCC Rcd 3275, 3276 (1991) ("stations managed in common can effectively counterprogram each other. . . we believe that increased group ownership . . . may encourage [diversity of programming]"); see also Revision of Radio Rules and Policies, 7 FCC Rcd 2755, 2771-72 (1992) ("Radio Rules and Policies Order") ("[C]ommenters tend to agree . . . that greater combination will not harm diversity because, while competing stations might try to reach the same core audience, a single owner might try to program different stations to appeal to different audience segments in order to maximize its total audience size").

[20] See Cross-Ownership of Broadcast Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy, MM Docket Nos. 01-235, 96-197, FCC 01-262, ¶ 17 (rel. Sept. 20, 2001); TV Ownership FNPRM, 10 FCC Rcd at 3551 (internal citation omitted).

operate multiple stations in a market, Radio One would be unable to take the risks associated with introducing unique programming formats, such as the Gospel format, which may draw smaller aggregate audiences than more mainstream formats.

Radio One also has a strong commitment to community involvement in the local African-American communities where its stations are located, demonstrated by the special events and programs that it sponsors. The company sponsors two annual community concerts – the Stone Soul Picnic in Washington, DC, Detroit, Atlanta and Baltimore; and the Lifestyles Expo (formerly People's Expo) in Washington, DC, Baltimore and Richmond – which provide not only entertainment, but also serve as an outlet for community organizations and local merchants and offer educational seminars for members of the local African-American community. In addition, Radio One has a history of sponsoring events that demonstrate its commitment to African-American listeners in its local markets, including heightening the awareness of diseases which disproportionately impact African-Americans and holding fundraisers to benefit the search for their cure; developing contests specifically designed to assist African-American single mothers with day care expenses; and organizing seminars designed to educate African-Americans on personal issues such as home-buying, entrepreneurship, credit management, financial planning, and health care.

Radio One's business practices are consistent with empirical evidence, which establishes that consolidation generally increases and does not decrease diversity of programming. For example, a study submitted by the Minority Media and Telecommunications Council in this proceeding specifically concludes that "Black music can be programmed in several distinctive and nonoverlapping format hybrids,"[21] providing group owners with latitude to program their

[21] See David Honig, The Relationships Between Platform Size and Program Formats in Commercial Radio, at 18 (attached to Comments of the Minority Media & Telecommunications Council in MM Docket Nos. 01-317,

stations to reach diverse segments within the African-American demographic. As the study recognizes, even within the Black contemporary format, "[t]he variety of Black contemporary hybrids . . . provides an opportunity for minority owned companies to build platforms that contain several stations carrying" programming that meets the needs of distinct sectors of the African-American community.[22]

At least two additional studies conducted in connection with this proceeding confirm that consolidation allows station owners to offer a wider range of formats. Specifically, a study conducted by BIA Financial Network demonstrates that there is a statistically significant positive relationship between local ownership concentration levels and local format diversity.[23] Similarly, Jerry A. Hausman, MacDonald Professor of Economics at the Massachusetts Institute of Technology, conducted a study in connection with this proceeding that demonstrates an overall increase in the variety of formats available as a result of increased concentration levels since the 1996 Act.[24] These findings are consistent with a 1999 study by professors Steven T. Berry and Joel Waldfogel, which concludes that although concentration levels increased between 1993 and 1997, this increase led to a concomitant increase in program variety rather than a decrease in diversity.[25] In light of this evidence, it is clear that consolidation has a significant positive effect on diversity of programming. Thus, the Commission cannot rely on a purported

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00-244 (filed March 27, 2002)).

[22] Id.

[23] See BIA Financial Network, Has Format Diversity Continued to Increase? (2002) (attached to Comments of the National Association of Broadcasters in MM Docket Nos. 01-317, 00-244 (filed March 27, 2002)).

[24] See Statement of Professor Jerry A. Hausman, at 2, 12-14, Table 4 (March 2002) (attached as Exhibit 3 to Comments of Clear Channel Communications, Inc. in MM Docket Nos. 01-317, 00-244 (filed March 27, 2002)).

[25] See Steven T. Berry and Joel Waldfogel, Mergers, Station Entry, and Programming Variety in Radio Broadcasting (1999) available at www.nber.org/papers/w7080 (last visited March 12, 2002).

need to protect diversity as a justification to constrain the number of stations that an entity may own in a local market.

B. Cutting off the Ability of Minority-Owned Broadcast Companies to Achieve the Synergies and Efficiencies of Increased Consolidation Conflicts with the Commission's Interest in Diversity

Eliminating the ability of a minority-owned broadcaster such as Radio One, which has not yet had the ability to fully enjoy the benefits of the 1996 Act's deregulatory mandate, to acquire additional stations up to the statutory limits, would be at cross-purposes with the Commission's expressed desire to promote diversity. Radio One engages in strategic efforts to serve all segments of the African-American community with tailored programming addressing their specific needs, directly serving the interest in diversity. As explained above, the company seeks to identify demographic segments that are not adequately served by other stations in a local market, to meet the needs of those segments through programming that is specifically targeted to their particular needs, and to provide different formats within a given market to reach all segments of the African-American community. Radio One's ability to engage in these efforts to serve a diverse array of African-American citizens is enhanced, and indeed depends on, the economic synergies associated with clustering. Thus, constraining Radio One's ability to acquire additional stations in local radio markets would directly conflict with the Commission's diversity goals.

IV. MULTIPLE STATION COMBINATIONS PROMOTE SIGNIFICANT EFFICIENCIES AND OPERATIONAL SYNERGIES THAT BENEFIT THE COMBINATIONS THEMSELVES, ADVERTISERS, AND THE PUBLIC AND DO NOT CAUSE ANY COMPETITIVE HARM

The Commission acknowledges in the NPRM, as it has on numerous previous occasions, that the common ownership of multiple radio stations in a market produces economies of scale which translate into tremendous cost savings and, ultimately, benefit advertisers and the public.[26] These cost savings flow from the ability to consolidate support services, eliminate redundant management positions, and share overall station resources. The benefits that result from ownership of multiple radio stations in a market are demonstrated by Radio One's experience. By increasing not only the number of markets in which it operates, but also the number of stations it operates within these markets, Radio One is able to offer the public better news, information, and tailored programming, including local voices within a national platform. Radio One is now also able to save costs in top management by "clustering" its stations by market. Rather than employing one manager for each station, Radio One has avoided duplication of effort (and reduced costs) by employing one general manager for each cluster.

The money saved by such clustering can then be filtered down to the stations to serve the local community through the delivery of improved programming services. Thus, the efficiencies of multiple ownership translate into benefits to Radio One's listeners, in the form of enhanced programming. Additionally, it is partially because of the efficiencies of multiple ownership that Radio One has been able to experiment with alternative, and potentially less-profitable, formats in certain markets, in order to serve the needs of niche audiences. Radio One's stations WOL-AM and WOLB-AM in the Washington and Baltimore markets, respectively, provide a prime example of this phenomenon. Both stations are formatted as Black Talk Radio; a unique and rare format which seeks to give voice to an audience that rarely has such an opportunity in mainstream media.

As the Commission recognizes, allowing a group owner to acquire a struggling or otherwise weak station in a market may also "result[] in intensified rivalry with stronger

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[26] NPRM at ¶ 48.

competing stations," leading to the realization of benefits for not only the station and its owner, but also the public and advertisers.[27] In Radio One's case, this has been the reality. Supported by its strong management team, Radio One has successfully acquired and turned around under-performing stations on numerous occasions, transforming these stations into stronger competitors in the local market. In Los Angeles, Atlanta, and Detroit, Radio One has taken struggling stations and has substantially grown them to be within the top five stations in their respective markets; in some cases, in as little as six months after acquiring the station. In combination with its goal of identifying un-served or under-served segments of the African-American community within its markets and striving to serve the needs of these demographic groups, Radio One has been able to improve the performance of struggling stations in a manner that directly enhances competition.

Moreover, there is no evidence that consolidation in the radio industry has caused any competitive harm. Indeed, studies demonstrate that there has been no increase in advertising rates as a result of increased concentration levels since the 1996 Act.[28] Accordingly, a desire to protect competition in the advertising market cannot form the basis for a decision to further restrict the limits on local radio ownership.

V. THE OVERALL INCREASE IN THE NUMBER OF MEDIA OUTLETS ACROSS LOCAL MARKETS ELIMINATES ANY MATERIAL DANGER TO DIVERSITY OR COMPETITION

As the Commission recognizes in its NPRM, the mass media marketplace has undergone a dramatic and sweeping transformation in recent years, vastly increasing the number and power

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[27] NPRM at ¶ 48.

[28] See Statement of Professor Jerry A. Hausman, supra note 24, at 3-11, Tables 2-3.

of media outlets that compete with radio stations for local audiences and advertising revenue.[29] The number of broadcast radio stations has skyrocketed, growing to 12,932 as of June 30, 2001,[30] and the number of recognized radio program formats has expanded dramatically. Alternatives to traditional media have multiplied as new media outlets have entered the marketplace, and consumers now enjoy the widest choice of outlets that has ever been available. Cable operators offer numerous music services over their lines, including an increasing number of digital music channels that compete with radio.[31] The popularity of streaming audio has continued to increase at an astounding rate, with users turning to the Internet for the mainstays of traditional radio – music and news.[32] Furthermore, in 2001, XM Satellite Radio launched the first satellite-delivered digital audio radio service ("DARS"). A second DARS provider, Sirius Satellite Radio, initiated service in February of 2002. Both offer subscribers dozens of channels of CD-quality music and other information/entertainment services.

Technological and market forces have produced a wealth of information outlets from which Americans can pick and choose their sources of news, opinion, information, and entertainment. The explosive growth in broadcasting itself, coupled with the development of a seemingly unending stream of new technologies for the delivery of information and entertainment to the mass audience, has produced a remarkable array of media choices from

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[29] NPRM at ¶ 35.

[30] See id. (citing News Release: Broadcast Station Totals as of June 30, 2001 (July 13, 2001)).

[31] DMX music, which has agreements with over 800 cable operators, offers over 100 digital music channels. See http://www.dmxmusic.com (visited March 13, 2002). Music Choice offers over 50 digital music channels on 650 cable systems, through Regional Bell Operating Companies, and DirecTV. See http://www.musicchoice.com/what_we_are.html (visited March 13, 2002).

[32] See Arbitron/Edison Media Research, Internet VI: Streaming at a Crossroads (Jan. 2001), at 9, available at http://www.arbitron.com/downloads/internet_study_vi.pdf (visited March 13, 2002).

which listeners and advertisers may choose.[33] Moreover, DARS and, with the advent of wireless Internet access devices, streaming audio, are able to reach mobile users, and many Americans have the ability to access streaming audio via the Internet from their offices. Any allegedly "unique" qualities that radio may have once offered have been eroded by the development of these new and alternative sources of programming that is virtually indistinguishable from that offered over the AM and FM airwaves. In this competitive landscape, there is simply no basis on which to impose restrictions, beyond those adopted by Congress in the 1996 Act, on the number of radio stations a company may own in a local market.

VI. CONCLUSION

As demonstrated above, the Commission does not have authority to decrease the number of radio stations in a market that an entity may own below the numerical limits set forth in Section 202(b) or to alter its method of defining local geographic markets in a manner that would conflict with the 1996 Act's deregulatory goals. Not only would such action be contrary to the statute, but it would also inappropriately shut out mid-sized and minority-owned broadcasters such as Radio One, which indisputably contribute to the level of diversity and competition in local radio markets, from enjoying the efficiency benefits associated with the consolidation permitted under the 1996 Act. The Commission should permit small and mid-sized radio group owners like Radio One to continue to grow and achieve economies of scale through the common operation of multiple stations in a local markets as authorized by the 1996 Act. Any other course of action would inappropriately impede the ability of smaller group owners to continue in their

[33] See David Pritchard, The Expansion of Media Diversity: A Longitudinal Study of Local Media Outlets in Five American Communities (March 2002) (attached to Comments of Viacom Inc. in MM Docket Nos. 01-317, 00-244 (filed March 27, 2002)); Selected Media Voices by Designated Market Area (December 2001) (attached as Exhibit 1 to Comments of Hearst-Argyle Television, Inc. in MM Docket Nos. 01-235, 96-197 (filed Dec. 3, 2001)).

efforts to provide diverse program offerings to market segments that may not be adequately served by the largest radio broadcasters.

Respectfully submitted,

WILEY REIN & FIELDING LLP

By: Richard J. Bodorff
Gregory L. Masters
Eve J. Klindera
of
Wiley Rein & Fielding LLP
1776 K Street NW
Washington, DC 20006
TEL: 202.719.7000
FAX: 202.719.7049

Attorneys for Radio One, Inc.

Dated: March 27, 2002