and 614.[294] TDF would be a useful source of financing for Free Speech Stations.

6. Transferability, Assignability And License Modifications For Entertainment Stations And Free Speech Stations

Control of Entertainment Stations could be assigned or transferred to any qualified entity, using forms similar to Forms 314 and 315. After such a sale, the regulatory benefits of being an Entertainment Licensee would attach to the successor Entertainment Licensee, with two exceptions.

First, if the successor Entertainment Licensee owns Traditional Stations in the same market, it must bifurcate enough of them to result in the creation of the same number of Free Speech Stations contemplated by the original "bifurcate one, buy (and bifurcate) one" provision. Otherwise, a platform operator could accomplish indirectly what it could not accomplish directly: ownership of up to eight Traditional Stations as well as a number of Entertainment Stations.[295]

294/ TDF has about $50 million in capital under management. It offers equity financing in relatively modest amounts.

295/ For example, suppose a Traditional Broadcaster, X Corp., owns a standalone station, and bifurcates and then buys and bifurcates another station. X Corp. now owns two Entertainment Stations. It then sells them both to a Traditional Broadcaster, Y Corp., that originally has eight stations. As a result, Y Corp. would own eight Traditional Stations and two Entertainment Stations, and Y Corp. would share time with only two Free Speech Stations. However, under the proposed bifurcation rules, the largest allowable combination of ten Traditional or Entertainment Stations would be Six Traditional Stations and Four Entertainment Stations (reflecting two bifurcations and two purchase-then-bifurcations, and spawning four Free Speech Stations). See p. 129 and Table 1 supra. In this example, Y Corp. could buy X Corp., but only if Y Corp. bifurcated two of its Traditional Stations: AMs or FMs if the stations being bought are AMs; FMs if the stations being bought are FMs.

Second, if an Entertainment Licensee wishes to "re-consolidate" a channel by purchasing the Free Speech Station with which it shares time, it should not be permitted to retain the second Entertainment Station it acquired by having undertaken the original bifurcation. The Commission should scrutinize carefully any behavior under which the larger broadcaster coerces the smaller one to reconsolidate,[296/] and the Commission should require those making a Bifurcation Election to reduce to writing and provide any agreement they might have that establishes or affects the terms under which reconsolidation might occur.

296/ For example, the Commission should strongly enforce a policy that would prevent an Entertainment Licensee from suddenly terminating a tower lease in order to force a Free Speech Station either to erect its own tower or agree to reconsolidation. Cf. George B. Cameron Communications, 71 FCC2d 460, 467 (1979) (holding that an incumbent's transmitter site would be available to a successful challenger in a comparative renewal proceeding), repealed (unwisely) in Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process (First Report and Order), 4 FCC Rcd 4780, 4788-89 ¶¶63-70 (1989), recon. denied, 5 FCC Rcd 3902 (1990).

Reasonable time periods (e.g. one year) should be allowed to facilitate any divestitures or additional bifurcations required by these provisions.297/

To ensure that the two time-sharing licensees co-exist peacefully, the Commission should carve out a modest exception to its policy against restraints on alienation. Neither the Free Speech Licensee nor the Entertainment Licensee ought suddenly to discover, to its surprise, that it must share a channel with a new transferee or assignee of its original co-channel occupant that does not wish to cooperate on the sharing of tower space, or programming arrangements governing the time one station signs off and the other signs on. Thus, the Commission should permit a Free Speech Licensee and an Entertainment Licensee to agree in advance that either entity must receive the other's consent to any subsequent sale of its station, as long as such consent is not unreasonably withheld. We do not believe other restrictions on alienation are necessary.298/

297/ See pp. 54-57 supra (describing why a one year divestiture period is necessary to ensure that minority entrepreneurs are not excluded from purchasing spinoff properties).

298/ In particular, there is no need for a Free Speech Station holding period, unless such a station were acquired through a new market entrant policy. The public would not be harmed if a Free Speech Licensee sells its station to another, equally qualified broadcaster. Moreover, since that Free Speech Radio would be brand new, sources of capital would more likely invest in a Free Speech Licensee if it has an exit strategy. In any event, Free Speech licensees are unlikely to be motivated by quick profits from trafficking.

Finally, an application by an Entertainment Licensee and its co-channel Free Speech Licensee to modify their respective hours of operation would be treated as a "major change" (and thus would be subject to the provisions outlined above) if it results in the Free Speech Station having fewer than 20 non-nighttime hours per week. Thus, *inter alia*, any proposal that contemplates that the Free Speech Licensee would acquire additional hours from the Entertainment Licensee would be treated as a "minor change" and would be processed according to procedures similar to those in 47 C.F.R. §73.1715.

VI. The Commission Should Conduct A Negotiated Rulemaking To Secure Consensus In This Proceeding

MMTC invites the industry's support for the Free Speech Radio concept, and its suggestions on how the plan can be improved.

As we have noted, any erroneous increase in the ownership limits would be almost impossible to correct.[299] Fortunately, what is proposed here is moderate in scope, with each increase in consolidation offset by a more than commensurate increase in source and viewpoint diversity. Allowing more consolidation without bifurcation would yield a considerable net loss to the public. But consolidation that evolves with bifurcation and Free Speech Radio would benefit all stakeholders -- large, small, majority and minority owned broadcasters, advertisers, people working in radio, and the listening public. It is the classic win-win.

Inevitably, there will be definitional and operational hurdles in refining the Free Speech Radio concept. For example, care will be required in determining eligibility criteria, and in ensuring that the Commission's longstanding definition of nonentertainment programming is still viable. But issues like these are hardly insurmountable. The Commission has dealt with such matters before, and it deals everyday with far more daunting issues of definitions and enforcement. It is much harder to define "political broadcasting" or "indecency" than to define "nonentertainment programming."

This job is not too hard. The Commission should roll up its institutional sleeves and invite the best minds in the

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299/ *See* p. 46 *supra*.

In light of the many issues in this proceeding in addition to Free Speech Radio, it will take the efforts of many Solomonic minds, pulling together, to ensure that this proceeding yields a fair balance among platforms, standalones and Free Speech Stations that will promote economic efficiency, diversity of viewpoints and minority ownership.

The way to bring the best minds together is to conduct a negotiated rulemaking.[303] In this way, all stakeholders can be heard and participate meaningfully.[304] A consensus reached in this way would be far preferable to the customary and inefficient manner of resolving differences in a rulemaking or in a court test over how many stations is "enough." For once, the Commission might be able to produce a result that is not deemed fair because nobody likes it, but because everyone likes it.

303/ Procedures for negotiated rulemakings are set out in 5 U.S.C. §561 *et seq*.

304/ As part of a negotiated rulemaking, the Commission should provide research support to assist the negotiating parties. In the wake of *Fox Television*, the Commission apparently could be compelled to review every one of its thousands of regulations and justify their retention. Regulations should evolve with participation from representatives of large companies, small and minority owned companies, and consumers. The burden on small and minority owned companies and consumers to provide meaningful input in the rulemakings was overwhelming even before *Fox Television*, and now it boggles the mind. Hundreds of lawyers are available to help large companies participate in rulemaking proceedings. However, only two senior FCC practicioners and four other lawyers work fulltime to file rulemaking comments on behalf of consumers. It is profoundly unrealistic to expect a balanced work product to emerge from unbalanced advocacy.

Respectfully submitted, 305/

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March 19, 2002

304/ MMTC recognizes with appreciation the helpful suggestions of Kofi Ofori, Esq., and the editorial and research assistance of Fatima Fofana, Esq. Moushumi Khan, Esq., Kay Pierson, Esq., and MMTC's Earle K. Moore Associate, Carol Westmoreland. Special thanks are due the Ivy Planning Group for developing the data used in our study of radio formats.

APPENDIX 1

OFORI & ASSOCIATES

RADIO LOCAL MARKET CONSOLIDATION

&

MINORITY OWNERSHIP

Prepared by

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March 2002

Abstract

For the past five years ownership consolidation has exceeded FCC standards designed to safeguard competition and diversity of viewpoint. Consolidation is most accentuated in the smaller markets where 50% of the stations owned by minorities are located. Hence, minority owners seeking affordable stations in the smaller markets may be prevented from acquiring them.

The number of minority owners remained relatively unchanged between 1990 and 1995 and then declined 14 percentage points after passage of the Telecommunications Act of 1996. At least 36 minority owners – accounting for 65 stations – left the radio industry between 1997 and 2001. In addition, the performance of the average minority station, according to several measures, rates below that of majority stations. The inability of minority stations to realize their full free-market potential may be linked to a combination of factors that include ownership consolidation (e.g. limited technical facilities, lack of capital and advertising practices). Given the extraordinary contribution of minority stations to diversity of viewpoint, it is recommended that the FCC take further steps to understand the impediments facing minority competitors in a separate forum.

ACKNOWLEDGEMENTS

The author would like to acknowledge the Minority Media and Telecommunications Council for funding this important research initiative. Dr. Charles D. Palit, Professor Emeritus of the Survey Research Laboratory at the University of Wisconsin and Peter Lechmen of Mullaney Engineering are also acknowledged for their invaluable advice and assistance.

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Local Market Ownership Consolidation and Minority Broadcasters*

INTRODUCTION

The following study was prepared in support of comments submitted by the Minority Media and Telecommunications Council, a nonprofit organization, in a proceeding of the Federal Communications Commission ("FCC" or "Commission") intended to examine the effects of increased ownership consolidation in local radio markets. The Commission's Notice of Proposed Rulemaking and Further Notice of Proposed Rule Making ("NPRM")[1] acknowledges that since relaxation of the numerical limits on local station ownership, increased ownership consolidation has significantly "transformed" the radio marketplace. The purpose of this study is to analyze and discuss the relationship between ownership consolidation and the competitive ability of minority radio broadcasters.[2]

SUMMARY

Market data provide strong evidence that patterns of ownership consolidation have exceeded the Commission's public interest safeguards. The anti-competitive effects of ownership consolidation are greatest in the smaller markets (i.e. ranked over 100) where nearly 50% of the minority owned are located. Further research, however, needs to be undertaken to determine the extent to which ownership consolidation, in combination with other factors, impedes the ability of minority stations to realize their full free-market potential.

During 1996 and 2000, firms with a dominant share of listeners and advertising revenues exceeded standards established by the Commission to safeguard competition and diversity of viewpoint. The 25% audience cap that was enforced by the Commission prior to the Telecommunications Act of 1996, was exceeded in 222 instances in 1996 and 331 instances during 2000. A firm with multiple radio outlets in the local market controlled an average of 36% of the listening audience. The data also show that the two firms in each Arbitron market with the most dominate share of advertising revenue controlled an average of 74% of the revenue share – exceeding the 70% screen currently enforced by the Commission. Together, these statistics show that numerical limits by themselves are insufficient to safeguard the public interest goals of competition and diversity.

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* This report was prepared by Kofi A. Ofori, Esq. for the Minority Media and Telecommunications Council. Mr. Ofori co-authored *Blackout: Media Ownership Concentration and the Future of Black Radio* and served as Principal Investigator for *When Being Number One is Not Enough: The Impact of Advertising Practices on Minority-Owned and Minority-Formatted Broadcasting Stations.* Mr. Ofori graduated cum laude from Tufts University in 1973 and received his J.D. degree from Boston University School of Law in 1976.

[1] *In the Matter of Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets,* MM Docket 01-317, FCC 01-329, released November 9, 2001.

[2] Throughout this study the term "privately owned" minority station is used to mean those stations that are not publicly traded and in which racial/ethnic minorities own 50% or more of the equity. The term "minority-controlled" station means those that fit the definition of a privately-owned station prior to their initial public offering, that are presently publicly traded and in which a racial/ethnic minority presently serves as chief executive officer. The terms "minority station" or "minority broadcaster" are used interchangeably and refer to "privately owned" and minority-controlled" stations.

The impact of ownership consolidation on minority ownership is most apparent in terms of the decline in the number of minority owners that commenced with the passage of the 1996 Telecommunications Act. In 1991 and 1995, there were 173 minority owners. In 1997, their numbers declined to 169 and continued to decline to their present level of 149. Between 1997 and 2001, 36 minority owners (accounting for 65 stations) left the industry and an estimated 16 new minority firms entered the industry for a net loss of 20 firms. These trends are consistent with prior research that have linked relaxation of the ownership caps with decreasing numbers of minority owned broadcasters.[3]

According to performance measures that include audience share, percentage revenue share, station revenues and power ratio, minority stations consistently operate at levels that rate below majority stations. In this study, privately owned minority stations were compared to private majority stations and minority-controlled stations were compared with publicly traded majority stations. Other performance measures show that in comparison with majority owned stations, minority stations are located in markets that are more densely populated and that have higher incomes per household. However, these favorable market locations have not translated into superior station performance.

The inability of minority stations to perform on levels commensurate with their majority counterparts may be attributed to a several factors. For example, 61% of the stations owned by minorities broadcast on the technically limited AM band compared to 37% for majority stations. Secondly, very few of minority AM stations are assigned to low frequency bandwidths that have the greatest audience reach.

The performance levels of minority stations may also be attributed to the anticompetitive effects of ownership consolidation, which are most accentuated in the higher market ranges. Nearly 50% of the minority stations are located in markets ranked over 100. In addition, advertising practices that discriminate against minority-formatted programming may also adversely affect the station performance of minorities. As noted in the section on Syracuse, New York,[4] the inability to attract advertising greatly contributed to the downfall of three minority-formatted and owned stations in the Syracuse market.

Consistent with overall industry trends towards increased numbers of stations, the number of stations owned by minorities increased from 367 in 1997 to 399 in 2001. The increase in the number of minority owned stations was partly attributable to spin offs from the Clear Channel AMFM merger resulting in seven minority firms acquiring 30 radio stations.[5]

Not included in the number of minority owned stations mentioned above is the vast increase in the number of minority-controlled stations – those stations that are publicly traded but managed

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[3] Ofori et al., *Blackout? Media Ownership Consolidation and the Future of Black Radio,* Medgar Evers College Press, 1997; Ivy Planning Group, L.L.C., *Whose Spectrum is it Anyway?* A Report for the Federal Communications Commission, December 2000.

[4] See page 25.

[5] Figures in this analysis only include those stations that remained under the ownership or control of minorities until 2001. Stations that were acquired by minorities and sold to a majority firm prior to December 2001 were not included.

by racial/ethnic minorities.[6] As of December 2001, four companies (Entravision, Radio One, Radio Unica and Spanish Broadcasting System), accounting for 156 stations, fit this description. Prior to 1997 there were no minority-controlled stations. On average, the performance of these stations was superior to privately owned minority stations, but lower in performance compared to publicly traded majority stations.

While the link between second-tier station performance by minorities and ownership consolidation has not been established, it is important to emphasize that there has been a net loss of 20 minority owners during the period when consolidation intensified. It is also important to note that the anti-competitive effects of ownership consolidation are the greatest in the smaller markets, thus creating a barrier to market entry in markets where stations are otherwise more affordable. Finally, the superior performance of minority-controlled stations over private minority stations suggests that the advantage that these firms enjoy in terms of access to equity capital may have fueled station acquisition and the increased ability to compete with majority group owners. It is recommended that the question of what factors may have contributed to going public on the part of some minority broadcasters, and conversely not others, be explored in a separate forum.

BACKGROUND

In the NPRM, the Commission seeks comment on how it should achieve its public interest goals of diversity and competition within the framework of the numerical limits set forth in Section 202(b) of the Telecommunications Act of 1996 ("1996 Act").[7] Section 202(b) permits a single firm to own from five to eight stations in a local radio market depending on the number of stations in the market.[8] Since 1996, ownership consolidation in the local markets has increased substantially threatening to undermine competition and diversity.[9] As noted in a recent biennial review of the industry, the number of commercial radio stations has increased 7%, while the average number of owners per Arbitron market has decreased 22%.[10]

Prior to the present numerical limits on local ownership, proposed radio sales transactions were subject to an audience share cap of 25% in addition to numerical anticompetitive safeguards.[11] The policy stated that in markets with 15 or more radio stations:

> *...evidence that the grant of any application will result in a combined audience share exceeding 25 percent will be considered prima facie inconsistent with the public interest.*[12]

According to the Commission, the 25% cap was intended to "protect and promote a diversity of voices..."[13] Nonetheless, *in the absence of public comment*, the agency repealed the 25% cap when it adopted regulations intended to implement Section 202(b) of the 1996 Act.[14]

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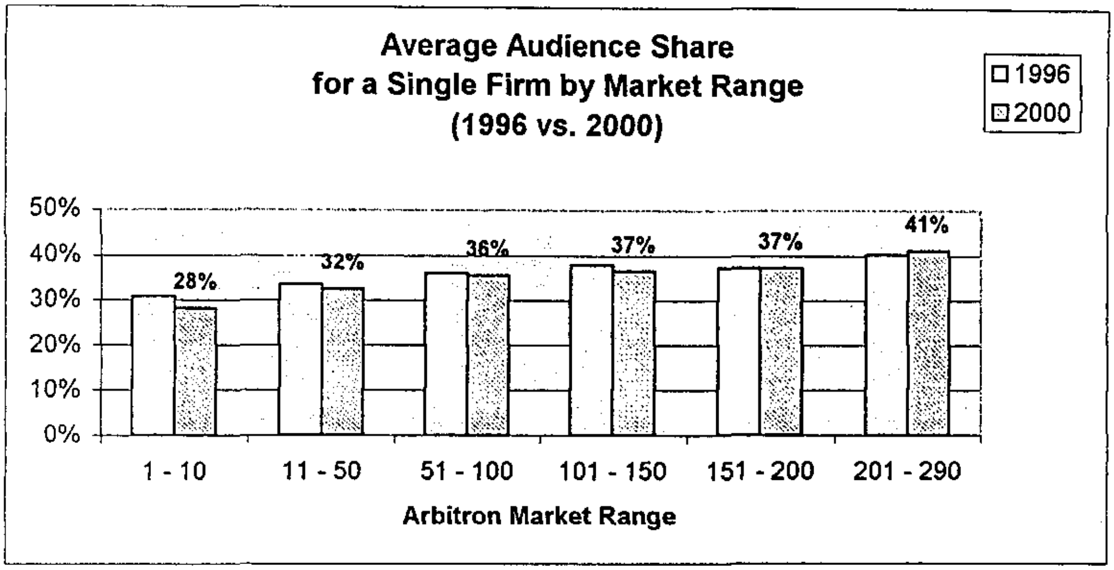
[6] Footnote 2, *supra.*
[7] NPRM paras.15, 19-21 (the Commission notes that Sections 309(a) and 310(d) of the Communications Act of 1934 requires it to issue licenses and approve the transfer of licenses only when those actions are consistent with the public interest).
[8] *See, Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications At of 1996*, 11 FCC Rcd 1268 (1996).
[9] NPRM para.17.
[10] Federal Communications Commission, *Review of the Radio Industry, 2001*, at 37.
[11] *Revision of Radio Rules and Policies*, 7 FCC Rcd 2755, 2776 (1992).
[12] *Revision of Radio Rules and Policies*, 7 FCC Rcd 6387, 6406 (1992)

Notwithstanding repeal of the 25% audience cap, the magnitude of instances in which this public interest safeguard has been exceeded suggests disregard for the Commission's public policy mandate. An examination of the 1996 Arbitron markets with 15 or more stations indicates that there were 222 cases in which a single firm through multiple stations in a local market controlled 25% or more of the audience share. In 2000, there were 331 such cases. A list of broadcasters and the audience share attributable to their combined ownership in local markets is provided in Appendices I and II. On average, these firms controlled 36% of the audience share for both 1996 and 2000. Control of audience share ranged as high as 71% in 1996 and 68% in 2000.[15]

In Chart I,[16] data for each of the Arbitron markets have been aggregated into market ranges. In 1996, the average single firm[17] controlled 31% of the audience share in markets 1 through 10. In 2000, such firms controlled 28% of the audience share for the same market range. The percentage of control over audience share increases as market rank decreases. In market range 201 through 290, the average firm controlled 40% of the audience share in 1996 and 41% of the audience share in 2000.

Chart I. **Average Audience Share for a Single Firm by Market Range**



After repeal of the 25% audience share cap, the Commission adopted a "50/70 screen" to determine whether proposed radio transactions are consistent with public policy favoring diversity and competition.[18] Under the current scheme the Commission "flags" transactions that would result in one firm controlling 50% or more, or two firms controlling 70% or more, of the advertising revenue in a local market. The results of this study show that the average revenue share controlled

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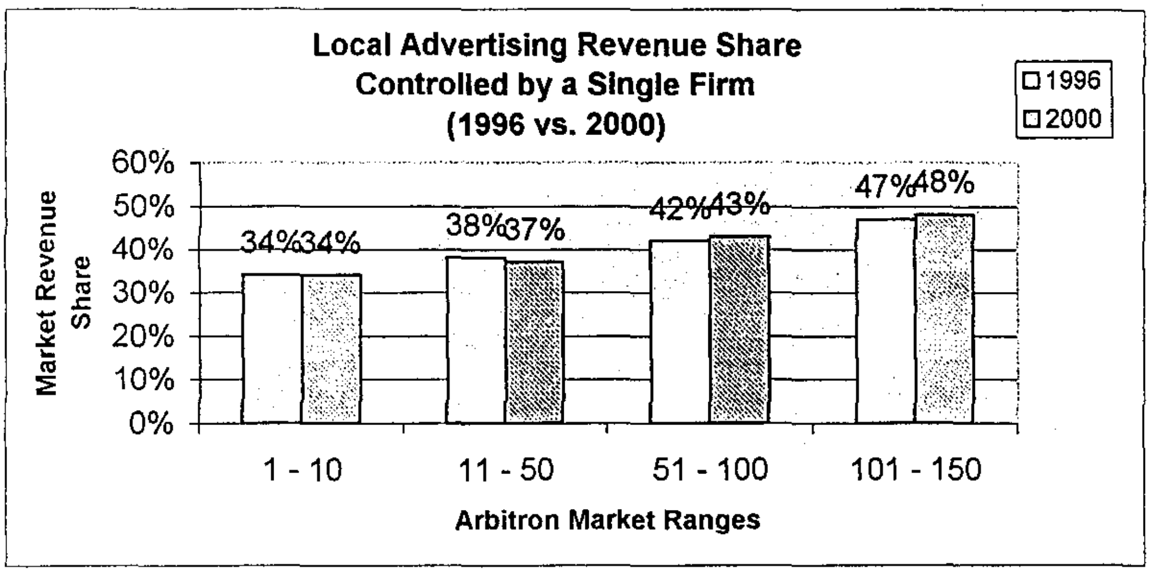
[13] Footnote 11, *supra* at 2780.
[14] NPRM para. 14.
[15] Audience share for the purpose of this study is based upon a station's Local Commercial Share averaged over four quarterly Arbitron ratings periods.
[16] All market and station data were obtained from Media Access Pro software published by BIA Research, Inc.
[17] For the purpose of Chart I, the average single firm includes only those firms that control 25% or more of the audience share in a market where there are 15 or more stations.
[18] AMFM, Inc.. 15 FCC Rcd at 16066 n.10.

by the single largest firm[19] is slightly less than 50% screen and that the average revenue share controlled by the two largest firms[20] exceeds the 70% screen. These findings are consistent with those of the Commission.[21] During 1996 and 2000, a single owner controlled an average of 44% and 45%, respectively, of the advertising revenues in the Arbitron markets.[22]

Chart II aggregates advertising revenue data for each of the Arbitron markets into market ranges. In market range 1 through 10, the firm with the largest audience share in 1996 controlled an average of 34% of the local market revenue (or revenue share). The same amount of audience share was attributed to the single largest firm in 2000. For market range 101 through 150, the single largest firm controlled an average of 47% and 48% for years 1996 and 2000, respectively.

Chart II. Local Advertising Revenue Share Controlled by a Single Firm by Market Range



An analysis of the two largest firms in each of the Arbitron markets indicates that they controlled an average of 70% of the revenue share in 1996 and 74% of the revenue share in 2000. These findings were consistent with research conducted by the FCC, which indicates that the two largest firms controlled an average of 72.8% of the revenue share as of March 2001. [23]

Chart III aggregates these data for various Arbitron market ranges. For market range 1 – 10, the two largest firms controlled an average of 56% of the revenue share in 1996 and 58% of the revenue share in 2000. For markets 200 and above, the two largest firms controlled an average of 77% of the revenue share in 1996 and 87% of the revenue share in 2000.

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[19] The "single largest firm" for the purpose of this analysis means the firm that accounts for greatest amount of advertising revenue within a given Arbitron market based upon the combined revenue of the stations that it owns within that market.

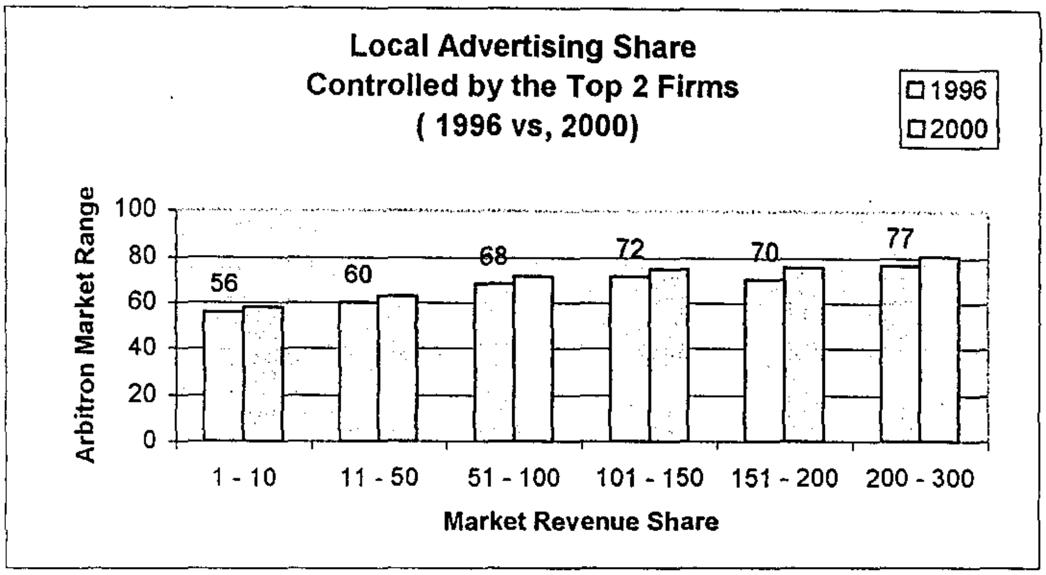
[20] The definition of the "two largest firms" is consistent with the definition for the "single largest firm" and includes the two firms with greatest amount of advertising revenue within a given Arbitron market based upon the combined revenue of the stations that they own within that market.

[21] Footnote 10, *supra*, page 6 and Chart I.

[22] The FCC estimates that a single entity controlled an average of 36% of the market revenues as of March 1996 and 46% as of March 2001. Footnote 10, *supra*, page 6 and Chart I.

[23] Footnote 10, *supra*, page 6 and Chart I.

Chart III. Local Advertising Share Controlled by the Top 2 Firms by Market Range

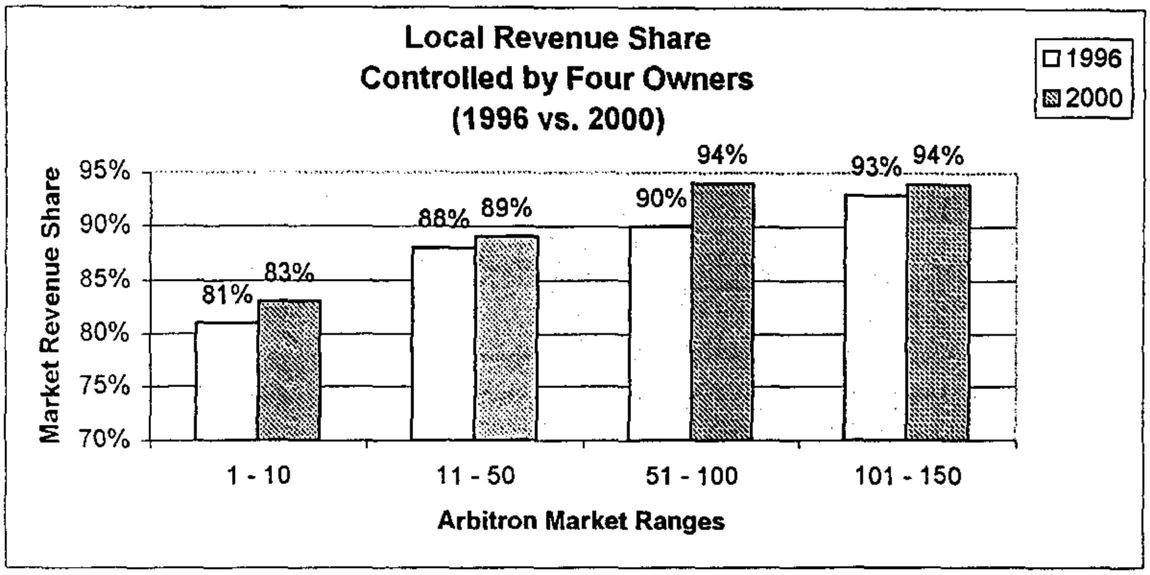


This study also examined the advertising revenue share controlled by the four largest firms.[24] The average advertising revenue share controlled by the four largest firms in each of the Arbitron markets was 91% in 1996 and 93% for the year 2000. The FCC has estimated that four firms control and average of 93% of the revenue share as of March 2001.[25]

Similar to the trend for the single largest firm control of advertising revenues becomes more concentrated as market rank decreases. Chart IV indicates that during 1996 the four largest firms controlled an average of 81% of the revenue share in markets 1 through 10. They controlled 83% of the revenue in 2000. For market ranges 101 through 150, the extent of control increased to 93% and 94% for 1996 and 2000 respectively.

[24] The definition of the "four largest firms" is consistent with the definition for the "single largest firm" and includes the four firms with greatest amount of advertising revenue within a given Arbitron market based upon the combined revenue of the stations that they own within that market.
[25] Footnote 10, *supra*, page 6 and Chart I.

Chart IV. Local Revenue Share Controlled by Four Owners by Market Range



The data show that according to two measures – the 25% audience cap and the 50/70 screen – that ownership consolidation has exceeded public interest safeguards. The data also show that the impact consolidation is greater in the smaller markets where there are generally fewer stations and smaller populations. For example, in the small Eugene-Springfield market, ranked 148 in 2001, Cumulus owns six stations and controls the greatest share of market revenues - 40%. Cumulus, McKenzie River, Clear Channel, and Coast Broadcasting collectively own 14 stations and control 97% of the market's $13,100,000 advertising revenues. The remaining 3% of advertising revenues is shared among the remaining 10 owners with 16 stations.

By comparison, in New York 40 owners share advertising revenues that totaled $823,900,000 during 2000. Infinity Broadcasting, which owns 6 stations in the New York market accounted for 35.7% of the radio ad revenues. The four largest firms, Infinity, Clear Channel, Emmis and ABC, accounted for 17 stations and controlled 81.3% of the revenues. The remaining 36 owners account for 59 stations and less than 20% of the local ad revenues.

In is within this environment of growing consolidation, with greatest impact in the smaller markets, that minority broadcasters have competed. The plight of minority owners is of particular importance given the nexus between First Amendment concerns for diversity of viewpoint and minority ownership.[26] A 1999 study conducted by Santa Clara University on behalf of the FCC found empirical evidence of the link between the racial/ethnic ownership of a station and diversity of news and public affairs programming. [27] The finding was stronger for radio than for television. In comparison to majority owned stations, the Santa Clara study found that:

- Twice as many minority owners tailor national and regional news stories to minority community concerns;

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[26] The NPRM states that the policy of diversity calls for "a wide range of diverse and antagonistic opinions and interpretations." NPRM para. 30.

[27] Christine Bachen et al, Santa Clara University, *Diversity of Programming in the Broadcast Spectrum: Is there a Link between Owner Race or Ethnicity and News and Public Affairs Programming?* (1999).

- Four times as many minority owned radio stations air programming that is minority formatted. Sixty-six percent, or twice as many minority owners play a direct role in station management;
- Substantially more minority owned stations cover news stories different from their chief competitor;
- News and public affairs departments at minority owned stations employ a higher proportion of racial/ethnic minorities;
- A statistical regression analysis shows that as racial/ethnic diversity in the newsroom increases so does program diversity.

Based upon the Santa Clara study it appears that any analysis of the effects of local market consolidation that neglects to consider the impact upon minority ownership would be incomplete.

As further discussed in the following sections, none of the minority broadcasters succeeded in obtaining capital by means of a public offering until after 1996. As of 2001, four minority firms, that own over 150 stations, are publicly traded. However, these firms no longer satisfy the Commission's or NTIA's definition of minority ownership that requires at least 50% ownership of the voting stock to be minority owned.[28] Accordingly, the competitiveness of these publicly traded minority-controlled firms will be treated separately in the discussion below.

METHODOLOGY

In order to examine the relationship between ownership consolidation and minority radio stations the study first quantified ownership consolidation in terms of audience share and advertising share. These measures of consolidation were referred to in the Commission's NPRM.[29] Data for 1996 and 2000 were compared in order to examine consolidation trends since relaxation of the local ownership rules in 1996. The results of these analyses are reported in the Background section, above.

Next, the study compared the performance of minority stations in 1996 and 2000[30] to determine whether changes in the performance levels of these stations might be associated with ownership consolidation trends. The performance measures employed were: a) market rank and market conditions (e.g. average market disposable income); b) potential audience reach as indicated by broadcast service (AM band vs. FM band) and class of service; c) audience listening size as measured by local commercial share;[31] d) share of local market advertising as measured by local revenue share; e) station revenues; and f) ability to convert listening share into revenue as measured by the power ratio.[32] All market and station data was obtained from database software published by BIA Research, Inc.[33] All statistical analyses were performed using SPSS software.

[28] Footnote 34, *infra*.
[29] NPRM para. 39.
[30] The years 1996 and 2000 were generally used for when data averages for an entire year was required. In certain instances, the years 1997 and 2001 were compared to utilize more up to date information.
[31] The local commercial share is a based upon the Arbitron rating (i.e. for age 12 plus, 6am to midnight) of the station divided by the total listener share for all commercial stations in the market.
[32] The power ratio is calculated by dividing a station's annual revenue by the revenues for all of the stations in the market and multiplying the result by 100. The product is the revenue share. The revenue share is divided by the local

The performance of minority stations was also compared to that of majority stations to determine whether ownership consolidation and/or other factors had affected minority stations differently from majority stations. As it became obvious that there were a significant number of publicly traded minority-controlled stations in 2001 that did not appear to satisfy the federal government's definition of minority ownership,[34] the study treated them separately and compared their performance with their majority counterparts – majority publicly-traded stations. The performance of private minority owned stations was compared with majority privately owned stations. The results of these analyses are discussed in the Research Findings section, below.

The entire BIA database included 10,529 call signs for 1997 and 13,143 call signs for 2001. Only stations located within the United States were examined. Complete data sets, however, were not available for every call sign. For example, station revenues were not reported for each call sign. Consequently, the size of the data set used in statistical averaging varied for each performance measure. Appendix III lists the size of each data set for each performance measure where averaging was employed.

Several sources were used to identify minority stations. For the purpose of the 1997 portion of the BIA database, the study relied upon the 1997-1998 survey contained in Minority Commercial Broadcast Ownership in the United States published by NTIA. For the purpose of the 2001 BIA database, the study relied upon information supplied by the American Hispanic Owned Radio Association, the Minority Media and Telecommunications Council, and the National Association of Black Owned Broadcasters. Complete lists of the minority stations utilized for this study are provided in Appendices IV, V and VI. [35]

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commercial share to get the power ratio. The higher the power ratio the more efficient is in terms of obtaining advertising revenue.

[33] BIA MasterAccess version 2.0 (updated through November 8, 1997) and Media Access Pro version 3.1 (updated through December 17, 2001) published by BIA Research, Inc.

[34] According to several minority ownership reports published by the National Telecommunications and Information Administration, U.S. Department of Commerce, ("NTIA") minority media ownership is defined as a sole proprietorship owned by ethnic/racial minorities, a corporate entity in which ethnic/racial minorities own more than 50% of the entity's stock, or a partnership in which ethnic/racial minorities maintain voting control. In a 1995 report entitled Capital Formation and Investment in Minority Business Enterprises in the Telecommunications Industry, NTIA's definition of minority ownership included minority control as evidenced by greater than 50% of a corporation's voting stock. The FCC has defined minority ownership a various ways depending upon the context, however, the agency consistently requires minorities to hold both a "substantial" equity interest and to exercise actual control over the broadcast operation. For the purpose of this study, a firm that was indicated as publicly traded in the BIA database was assumed not to satisfy any of the above definitions of minority ownership. See *Changes, Challenges, and Charting New Courses: Minority Commercial Broadcast Ownership in the United States.* NTIA, U.S. Department of Commerce, 2000 for further discussion.

[35] NTIA and the FCC do not provide current lists of minority owned stations.

RESEARCH FINDINGS

Changes in the Number of Minority Broadcasters

Consistent with overall industry trends,[36] the number of stations owned by minorities has increased during the past four years while the number of minority owners has declined. From August 1997 until December 2001 the number of minority broadcast stations (i.e. owned by private firms) increased from 367 to 399 (see Appendices IV and V). Table A shows that the number of African-American stations increased from 225 to 251. The number of Hispanic stations decreased from 136 to 117. The number of Asian stations increased from 5 to 29. One owner during 2001 accounted for all 29 Asian stations. The number of Native American stations increased from 1 to 2 during the four-year period.

Table A. Number of Privately Owned Minority Radio Stations.

Number of Privately-Owned Minority Radio Stations		
	1997	***2001***
African-American	225	251
Hispanic	136	117
Asian	5	29
Native-American	1	2
Total	367	399

The number of minority owners decreased from 173 in 1991 to 149 in 2001. Chart V shows that there were 173 minority owners in both 1991 and 1995.[37] By 1997 the number of owners declined to 169. By 2001 there was a loss of an additional 20 owners. As the number of minority owners declined, the average number of stations owned by each broadcaster increased from 1.48 in 1991 to 2.68 in 2001. These developments parallel overall industry trends that show an increase in the number of radio outlets accompanied by increased ownership consolidation.[38]

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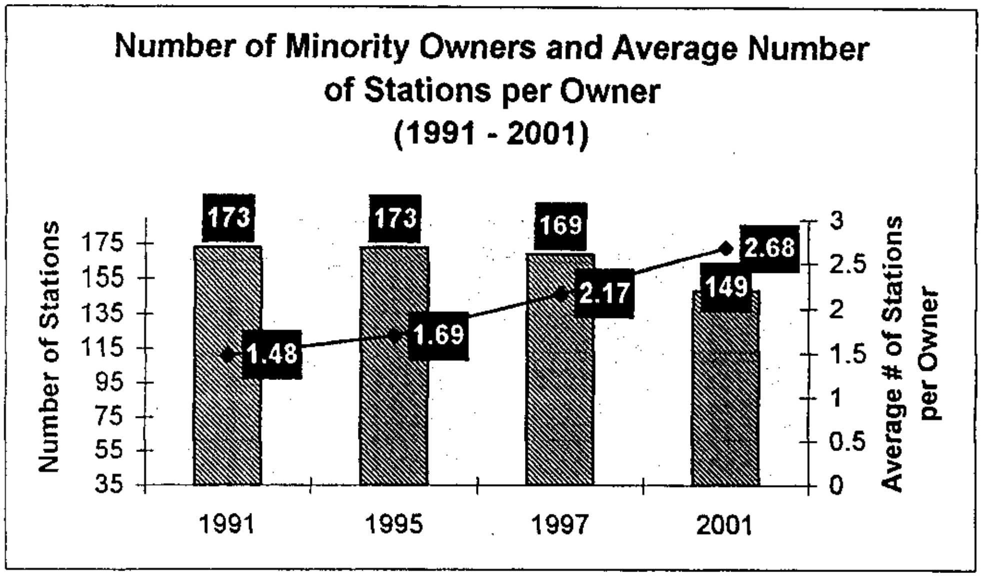
[36] The total number of commercial radio stations has increased 7.1% since March 1996 while the total number of owners has declined 25% since that date. Footnote 10, *supra*, at 3.

[37] Figures are based upon minority owners listed in NTIA's broadcast ownership reports for 1991 and 1996. *Compilation by State of Minority-Owned Commercial Broadcast Stations,* NTIA, U.S. Department of Commerce, October 1991 *and Minority Commercial Broadcast Ownership in the United States,* NTIA, U.S. Department of Commerce, April 1996

[38] Footnote 10, *supra*, page 3.

Chart V. Number of Minority Owners and Average Number of Stations per Owner .



The surge in ownership consolidation that resulted from relaxation of the ownership caps in 1996 coincides with the beginning of the downward trend in the number of minority owners.[39] During 1996, several minority owners directly attributed their decision to leave the industry to ownership consolidation.[40] The 14% decline in the number of minority owners from 1997 to 2001 compares with a 25% decline in the overall number of owners in the industry from 1996 to 2001.[41]

In the local markets the number of minority owners declined from 1.42 owners per market in 1997 to 1.19 owners per market in 2001.[42] [43] Thirty-six minority owners – accounting for 65 stations in August 1997 - left the industry before December 2001.[44] Appendix VI provides a list of these firms. An estimated 16 minority firms entered the market between 1997 and 2001.

The increase in the number of minority owned stations is partly attributable to the AMFM Clear Channel merger that resulted in spin offs to seven minority firms. A total of 30 stations were acquired as part of the Commission's approval of the merger (Appendix VII). Figures in this analysis only include those stations that were still under the ownership or control of a minority firm in 2001. Stations that were acquired by minorities and sold to a majority firm prior to December 2001 were

[39] Within six months of the passage of the Telecommunications Act in February 1996 there was a surge of mergers and acquisitions valued at more than $11 billion. In comparison, there was only $5.6 billion worth of transactions for the entire year of 1995. Inside Radio Inc., *Who Owns What*, September 2, 1996.

[40] Perhaps the most notable example is the decision of radio veteran Ragan Henry to sell his 17 stations to Clear Channel in 1996. Ofori et al., *Blackout? Media Ownership Consolidation and the Future of Black Radio*, Medgar Evers College Press, 1997 (quoting Mr. Henry at page 39, "*I figured that in some of the markets that we were in, if other people could come in and consolidate those markets, we would be left with what we had [and unable to expand]. That would not basically be good for us in the long run*"). *See also*, Ivy Planning Group, L.L.C., *Whose Spectrum is it Anyway?* Prepared on behalf of the Federal Communications Commission, December 2000.

[41] Footnote 10, *supra*, at 1.

[42] From March 1996 until March 2001, the average number of total owners (minority and majority) per market fell from 13.5 to 10.3. Footnote 8, *supra*, page 7.

[43] Figures are based upon 169 private minority owners in 1997 located in 119 markets and 149 owners located in 125 markets in 2001.

[44] In calculating the number of minority owners that left the industry, the study made its best effort to account for firms that changed their name.

not included. Table B compares the number of stations that each firm acquired as a result of the merger with the total number of stations that the firm owns.

Table B. Number of Stations Acquired as a Result of the AM/FM Clear Channel Merger

Number of Stations Acquired as a Result of the AM/FM Clear Channel Merger		
	Acquired by Merger	Total # Stations
Blue Chip	1	1
Chase Radio Partners	5	5
Entravision	2	52
Inner City Broadcasting	9	17
Latino Communications	1	1
Pecan Partners	1	1
Radio One	10	62
Spanish Broadcasting System	1	26
Total	30	165

As of August 1997, there were no minority-controlled stations. By December 2001 there were 156 such stations owned by four firms - Entravision (52 stations), Radio One (63 stations), Radio Unica (16 stations) and Spanish Broadcasting System (26 stations). Table C summarizes the racial/ethnic ownership of those stations.

Table C. Number of Publicly-Owned Minority Radio Broadcasters

Number of Minority-Controlled Radio Broadcasters		
	1997	***2001***
African-American	0	62
Hispanic	0	94
Asian	0	0
Native-American	0	0
Total	0	156

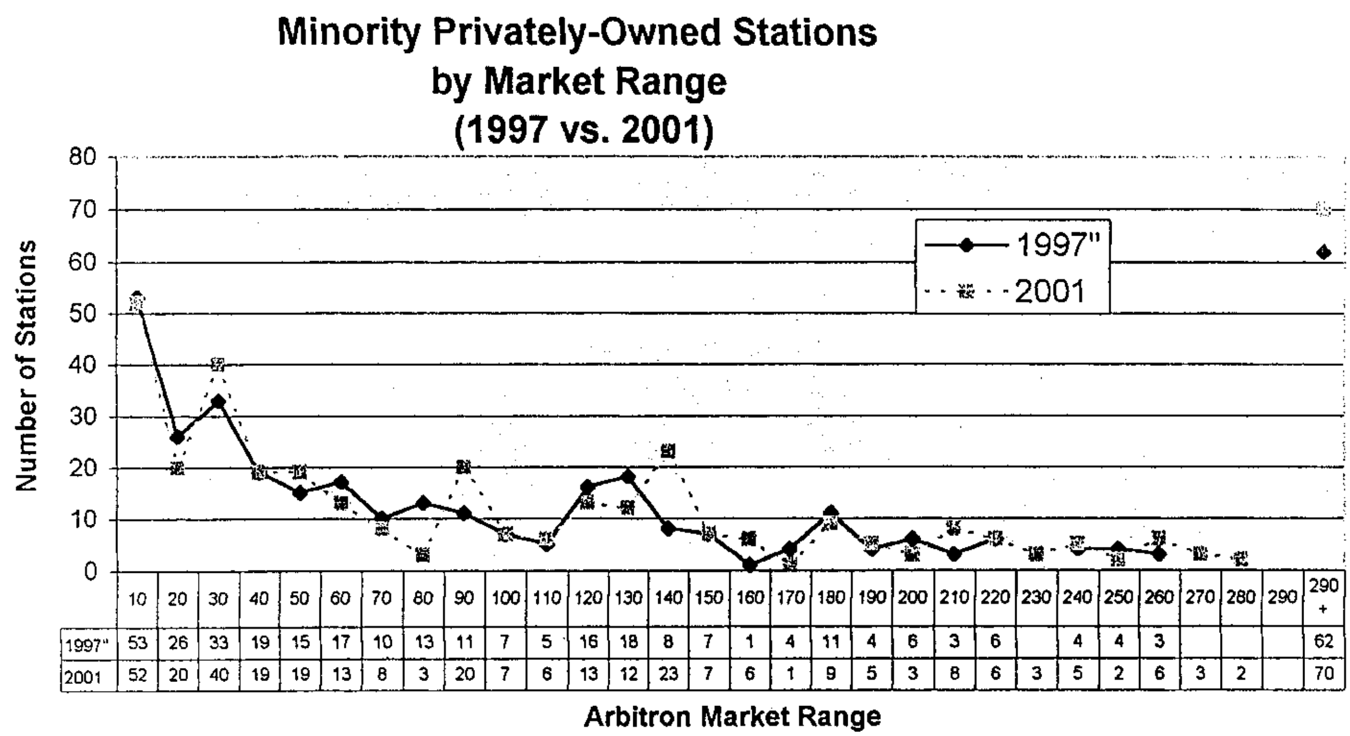
Changes in Market Rank and Market Conditions

This study also examined the market rank of minority owned stations. In general, the data show that half of the minority stations are located in the smaller markets where the impact of consolidation, as discussed above, is the greatest.

Chart VI aggregates data on market rank for minority stations into market ranges. The data table within the chart shows the number of stations owned within the market segments listed on the bottom axis. In 1997 (see diamond-shaped data lines), 53 of the stations were located in markets 1 - 10. Twenty-six were located in market range 11 – 20, and 33 were located in market range 21 – 30.

In 2001 (see square-shaped data lines), 52 stations were located in markets 1- 10. Twenty were located in market range 11-20, and 40 were located in market range 21-30.

Chart VI. **Minority Privately-Owned Stations by Market Range**



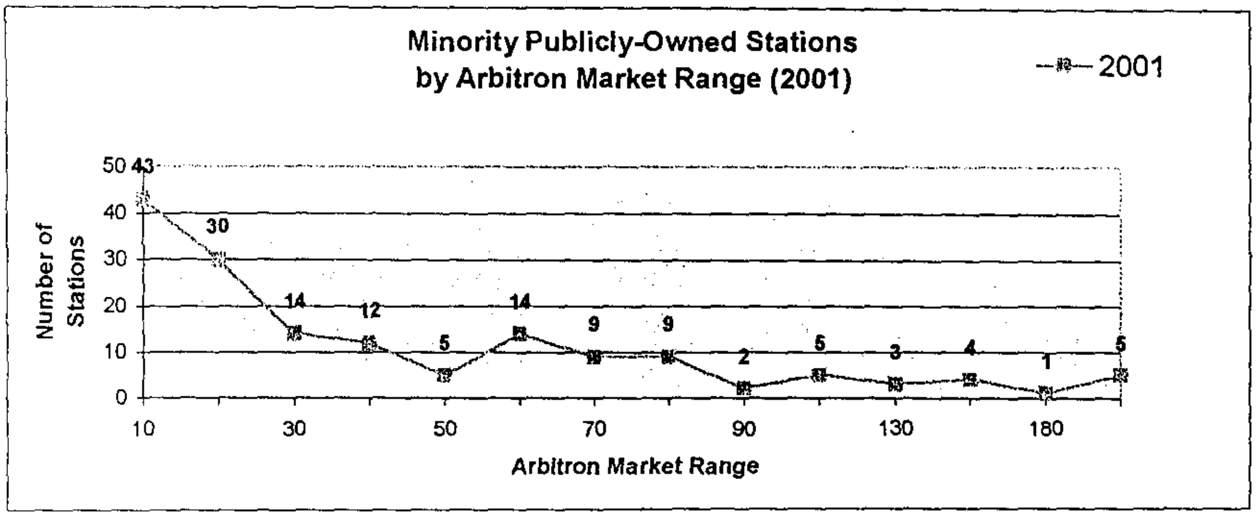
	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	160	170	180	190	200	210	220	230	240	250	260	270	280	290	290 +
1997"	53	26	33	19	15	17	10	13	11	7	5	16	18	8	7	1	4	11	4	6	3	6		4	4	3				62
2001	52	20	40	19	19	13	8	3	20	7	6	13	12	23	7	6	1	9	5	3	8	6	3	5	2	6	3	2		70

A comparison of market rankings for 1997 and 2001 shows a slight trend toward markets in which audience size is smaller and the anticompetitive effects of ownership consolidation are greater;[45] [46]45% of the stations were ranked in the range of markets over 100 in 1997 compared with 50% ranked in markets over 100 in 2001. In comparison, 71% of all majority firms were located in markets ranked over 100 in 1997 and 69% in 2001. Appendices VIII and IX provide a complete tabulation of the market ranges for minority firms during 1997 and 2001.

With respect to minority-controlled stations, 43 of the stations were located in markets ranked 1 – 10; 30 in markets ranked 11 – 20; and 14 in markets ranked 21 – 30 (see Chart VII). Compared to the private stations, the minority-controlled stations have better market position in terms of audience size and less competition; 88.5% of the minority-controlled stations are located in markets 1 – 90, compared to 49.5% for the privately traded minority stations.

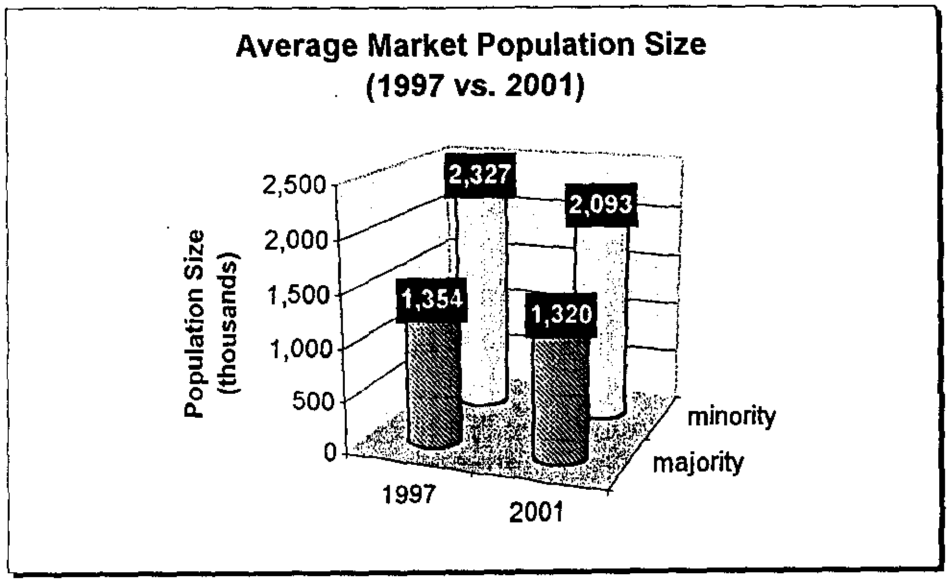
[45] "Anticompetitive effects" used here refers to audience share and revenue share in excess of public interest standards as discussed in the Background section, above.
[46] Further research should examine trends in the market rank of minority stations prior to 1997 to determine the significance of the direction of the trend following 1997.

Chart VII. Minority Publicly Owned Stations by Arbitron Market Range



Compared to majority firms, a greater percentage of the minority firms are located in markets with larger populations. This may be due to the tendency of minority broadcasters to target ethnic/racial minorities residing in densely populated urban areas. The average population size of the markets in which private minority stations were located in 1997 was 2,327,000; this decreased to 2,093,000 in 2001. In contrast, the average population size for private majority stations was 1,354,000 in 1997 and 1,320,000 in 2001 (see Chart VIII).[47]

Chart VIII. Average Market Population Size



The average market population size for minority-controlled stations was 3,484,000 in 2001. In comparison, the average population size for the 2,225 majority publicly traded stations was 1,639,000 for 2001.

[47] Figures in Chart VII are based upon the market ranks of stations for years 1997 and 2001. Population data, supplied by BIA Research, are based upon population estimates for 1995 and 1999.