

Before the FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of 2002 Biennial Regulatory Review -
Review of the Commission's Broadcast Ownership Rules
and Other Rules Adopted Pursuant to Section 202
of the Telecommunications Act of 1996,
Notice of Proposed Rulemaking,
MM Docket No. 02-277, (rel. Sept. 23, 2002)

To: The Secretary, FCC Commissioners, and Chief, Media Bureau

I am writing to you today to comment on Docket No. 02-277, The Biennial Review of the FCC's broadcast media ownership rules. I am an independent media producer, film, radio, and television artist. I own and operate a small independent film and music production studio in Indianapolis, Indiana: [Http://home.att.net/~JackRooney](http://home.att.net/~JackRooney). I strongly oppose any further concentration of the media in the hands of the giant corporations who presently dominate the media marketplace.

It is difficult enough for independent artists to market their work to the public when we are at the mercy of a small handful of corporations who control all the outlets for media. I can not even get the local radio stations to play my music <http://home.att.net/~JackRooney/mp3downloads.html> on the radio in my own hometown, even though I have a very large and established fan base in the international market place. Were it not for the Internet, it is highly unlikely I would be able to sell any of my music or film product by relying on local or national radio and television media to exhibit my work to the public.

Clear Channel, for example, owns the majority of Radio stations in Indianapolis. And Clear Channel promotes those producers and artists who patronize it with advertising dollars and payola, those artists who are under the control of the major record labels, and the majority of these labels and "signed" artists are under control of less than six giant corporate entities, BMI, EMI, Sony, Universal, and Warner. These corporations are without exception located in California and New York, and the ideas, attitudes, and beliefs they espouse through selection of entertainment media they choose to promote and exhibit to the public are without question regionally and culturally biased.

But there are more serious and more compelling economic reasons why the media marketplace should be more rigorously regulated and controlled to promote diversity, and the FCC should do everything in it's power to exercise government's Constitutional responsibility and mandate under The Constitution of the United States of America to "regulate commerce" (Section 8, Clause 3) in the best interests of the American people to promote the "general welfare" of the United States (Section 8.).

The media production industry is highly vertically integrated. These media giants dominate, and when they act in concert through their cartel alliance in the Recording Industry Association of America (RIAA) and the Motion Picture Industry Association of America (MPAA), they effectively have monopoly power in the market for the commercial distribution of

entertainment media in the United States. The combined US market share of these five major production distribution companies exceed 85%. Nearly all the major media production companies in the US are corporate affiliates of, or are under direct financial influence of (with advertising dollars spent), and therefore, control of, these five major corporations. The Justice department is now conducting investigations into allegations of monopoly, racketeering, price fixing, restraint of trade, and a variety of violations of federal anti trust law by these corporations and suit has been filed against them recently in California courts alleging much the same thing. I would think that for these reasons alone the FCC would not want to grant these corporations any more permission to further consolidate than they already have.

I am a part of a growing segment of the music and film production industry known as "independent artists", artists who are not "signed" under contract with these corporations or any of their affiliates, artists who produce and market our own film and music to the public. There are tens of millions of independent artists like myself throughout the world, all operating at varying degrees of sophistication in their capacity to produce entertainment media, with a high concentration located in the United States, who are not a part of, not represented by, or who have broken away from, the giant media control of the performing arts for moral, financial, and artistic reasons, or who, for whatever reason, have decided not to participate in a system of corporate control of our art which we view as stifling, uncreative, un-inovative, monopolistic, predatory, and corrupt.

But we pay our taxes and we contribute revenue to our federal, state, and local economies. We spend and consume goods and services in the day-to-day management and operation of our business and we create new jobs, both on a long and short term basis, and we promote and support and sustain existing media jobs, both in the physical media manufacturing sector and in the media production and exhibition sector.

Small independent producers and independent artists are one of the major emerging outlets for independently produced records and entertainment media. Individually, the single independent artist may not account for much in terms of record CD sales, DVD and video sales, but collectively, as a total group or class of producer/media product resellers, our total combined sales are staggering. We are the direct competitors of the giant cooperate cartel, the under represented majority segment of the industry the giant corporations do not want you to know about, and our numbers are increasing. But we are locked in a constant struggle for market share with the media giants who correctly view the rising tide of independent artists as a threat to their established business model. They will not play our songs on commercial radio. They will not broadcast our films on the commercial airways. They will not distribute or do anything that would serve to promote our work in the marketplace in competition with their own productions. Any further concentration of media outlets, particularly terrestrial television and radio broadcasting, in the hands of the cartel members will further restrain my ability to market my product to the public.

There are millions of independent artists in America similarly situated whose efforts and activities are routinely stifled and restrained by the giant corporations who control access to the public market by controlling the media that the public relies upon to gain information about available

media product.

Today, with advances in imaging and music recording technology and falling costs of this technology that place it in the hands of almost anyone, more and more independent artist are emerging who produce their own work and manufacture and sell their own independently produced CDs, DVDs, films, and videos.

Independent performing artists can now, if they wish, produce their own art, not only their demo songs, but entire albums, music videos, and recordings of live shows, television shows and films, news programs, documentaries, educational programming, and can maintain control over their own recorded masters, their copyrights, their own creative art, and keep their own copyrights intact and then license their own work, exhibit, and sell copies as the market will bear demand for their product. This is a real problem for the cartel members, the major studios and the established broadcast networks. They do not own the rights to product produced by independents, and our rising numbers are having the effect of diminishing major studio market share, cutting into their established corporate bank accounts. Every CD or DVD sale I make is one sale not made by them.

Millions of artists now have the capacity to produce their wares in competition with each other and with the giant studios who have dominated the marketplace for decades, but the cartel conglomerates still control the radio and television exhibition outlets to the world almost exclusively, which restricts the independent producer's access to market.

As little as 10 years ago, it would have been almost impossible for an unsigned music artist or band or television artist to gain a foothold in this marketplace without hundreds of thousands, perhaps millions in capital outlay. Today, many independent artists are doing very well on their own selling CDs, DVD, and streams and downloads on the internet, getting bookings and gigs from the internet, reaching worldwide fan bases from the Internet, and gaining notoriety and fame from the internet, which all translates into money in the pocket of the independent artist and into their local and regional economies, and not into the pocket of the cartel. However, terrestrial broadcasting is still the dominant media exhibition outlet overshadowing the Internet and will almost certainly remain so for the general mass audience for some time to come.

Even though there have been observed downturns in the media industry sales and corporate profit margins among the well established industry players, people are still spending the same amount of money on entertainment as ever (in terms of percentage spent relative to income ratios), which is an 80 billion dollar industry, and this dollars-spent-by-the-consumer figure does not change much up or down outside of normal market fluctuations that respond to the ebb and flow of all interdependent markets - the money is just distributed among a now larger and wider market of artists, the vast majority of which are not signed.

And it is good that independents should now at long last all be allowed to compete against one another and the corporate giants for the public affection and make sales of their art to the public in an open and free marketplace. The more competition, the more artists creating, the more they will each be motivated to strive for higher and higher standards of excellence in their work. And the public will have meaningful choices, and

the public will decide what is good art, and the public will be enriched.

But government deregulation of marketplaces under the presumption that the market will regulate itself, such as the proposed relaxing of standards deregulation move now being considered by the FCC, works only for markets where there is a potentially unlimited number of sales outlets in any given market, such as the Internet, where there are an unlimited number of possible broadcast streams that can be made available to the public at any given time. The public airways, on the other hand, as an outlet for media product, is finite. There are only a limited number of bandwidths that can be reasonably assigned for effective broadcasting of terrestrial stations. So the idea that deregulation allowing further consolidation of the finite broadcast station airways will result in greater diversity, better programming, and more jobs in the media sector is pure fallacy.

Consolidation of finite sales outlets in the hands of a few results in a less stable marketplace and greater potential for catastrophic collapse of the entire market and subsequent loss of more jobs during unstable or changing economic times, which is exactly what we are witnessing today in the established media industry. When the market is centralized around a few players who control the means of production and distribution and who also create and control media jobs, more people will lose their jobs en masse and more American investors will lose their money en masse when the marketplace changes and the power of production, distribution, and sales is centralized around a few corporations. The market will change. All markets constantly change and evolve, and the media market is changing now. Because of the potential risks involved to consumers, workers, and investors, allowing any further media consolidation is ill advised.

A diverse marketplace makes the entire market more resilient, more flexible, more adaptable to change during inevitable market changes, shifts in technology, fluctuations in supply and demand, and downturns in the economy, such as in a recession or a depression. The national public interest will not be well served by allowing its eggs to be placed in a small handful of baskets. Such a strategy is risky to American media workers, corporate investors, the public, and is dangerous to the national economy.

So in the interests of the public welfare alone, notwithstanding the valid cultural and artistic considerations and implications that have been raised by well-reasoning objectors to media consolidation, the FCC should deny any further requests on the part of the cartel to deregulate and loosen ownership controls presently in place.

The argument of the proponents for media consolidation that the Internet now makes media consolidation less an important issue is only a half-truth. The Internet, as an exhibition outlet for media, is also a vast desert wasteland, with no clear markers or signposts pointing to the refreshing oasis. Traditional media such as radio, television, cable, magazines, newspapers, etc serve as signposts pointing the way to product and are effective public guides because of their ability to advertise and communicate marketing information to the masses. Media consolidation gives the giant corporations unfair advantage over what signposts get posted pointing the way to Internet content. Surely the media giants will not post signs to their competitor's product. So further media consolidation is further counter-indicated because of its ability to unfairly influence, interfere with, and distort public perception regarding quality and

availability of media product on the Internet.

The idea that further industry consolidation should be allowed in order to strengthen the United States media industry dominance in the world market place to protect the established US entertainment industry that exports media to the rest of the world against competing nations and foreign producers is also specious. The United States has always been the leading producer of entertainment programming in the world. It will continue to be the leader whether the production/distribution of media is concentrated in the hands of a few or distributed more evenly and more broadly among many competing American producers. The demand for American media will not change much worldwide and may actually increase when competing producers are motivated by competition to create programming and physical product in the form of tapes, CDs, DVDs, and Internet transferable media with more diverse variety. American artists, who are the real producers, the real innovators, the real creators of the media and entertainment programming that the rest of the world finds attractive, will continue to produce and provide the world with as much media programming as the market demands. Diversity in the American media production sector will stimulate variety and increase sales of American media product to the world. It makes little difference economically whether the US exports 100 million copies of media produced by one or two giant corporations or 100 million copies produced by 5 thousand producers. The overall unit export numbers will remain relatively stable and innovation brought about by increased competition among American producers will actually stimulate the development of better product and increase demand for American media in the foreign market. So government has nothing to gain economically from an overall physical media product export standpoint by allowing further media concentration.

In its goals to promote competition, diversity and localism in today's media market, I strongly believe that the FCC should retain all of the current media ownership rules now in question. These rules serve the public interest by limiting the market power of already huge companies in the broadcast industry.

I believe past actions by former FCC administrators, actions that allowed media consolidation in the hands of a few powerful corporations to reach its present state, actions that relaxed the rules regarding limitations on media ownership, were ill conceived and should be re-examined in the light of empirical market realities which may have eluded these past FCC administrators and regulators in their decision making, and corporate control and consolidation of the media should be gradually rolled back to pre-1980 standards, even if this means the large corporations who now control most of the media marketplace will be ultimately compelled to divest some of their ownership interests in the media they now control.

The FCC ought not wait until the anti trust regulators intervene and start dismantling these monopolies when there is clear evidence now of the negative impact of media consolidation, nor should the FCC take any action or acquiesce to any media industry activities or requests that would serve to promote the furtherance of monopoly.

The evidence shows that past FCC actions relaxing the ownership prohibitions against companies owning too many stations nationally and in any given geographic region have not resulted in a more diverse media marketplace, it has resulted in a less diverse market. The number of corporations that control nearly all US media has fallen from almost 50

corporations in the early 1980s to less than 6 corporations today who own and operate 90% of the mass media -- controlling almost all of America's newspapers, magazines, TV and radio stations, books, records, movies, videos, and wire services.

I do not believe that the studies commissioned by the FCC accurately demonstrate the negative affects media deregulation and consolidation have had on media diversity or the potential impact consolidation has on the general public welfare. While there may indeed be more sources of media than ever before, the spectrum of views presented have become more limited, and the comparisons drawn by consolidation proponents between the infinite potential of the Internet and the finite terrestrial radio and television broadcasting system networks and physical print media are pure false analogy.

The right to carry on informed debate and discussion of current events is part of the founding philosophy of our nation. Our forefathers believed that democracy was best served by a diverse marketplace of ideas. If the FCC allows our media outlets to merge, our ability to have open, informed discussion with a wide variety of viewpoints would be compromised.

The public interest will best be served by preserving media ownership rules in question in this proceeding. In addition, I support the FCC's plan to hold a public hearing on this matter in Richmond, VA in February 2003. I strongly encourage the Commission to hold similar hearings in all parts of the country and solicit the widest possible participation from the public that will be the most directly affected by the outcomes of these decisions. I think it is important for the FCC to not only consider the points of view of those with a financial interest in this issue, but also those with a social or civic interest.

With the serious impact these rule changes will have on our democracy and on the economy of our nation, and on the welfare of our people, it is incumbent on the Commission to take the time to review these issues more thoroughly and allow the American people to have a meaningful say in the process.

Thank you,

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