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May 19, 2003

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**By Hand**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Room TWB-204  
445 12th Street, SW  
Washington, DC 20554

Re: Ex Parte Presentation  
MB Docket No. 02-277  
MM Docket Nos. 01-235, 01-317, 00-244

Dear Ms. Dortch:

Enclosed please find copies of letters from Lewis W. Dickey, Jr., President of Cumulus Media Inc., to the Chairman, each of the Commissioners, Roy J. Stewart (Chief of the Media Bureau's Office of License Policy) and Robert H. Ratcliffe (Deputy Chief of the Media Bureau) with respect to the above-referenced proceedings. Each of the letters was hand-delivered today.

If the staff has any questions concerning the attached letters, the undersigned counsel should be contacted.

Sincerely,  
DICKSTEIN SHAPIRO MORIN &  
OSHINSKY, LLP  
Attorneys for Cumulus Media Inc.

By: 

Lewis J. Paper

cc: Honorable Michael K. Powell  
Honorable Kathleen Q. Abernathy  
Honorable Michael J. Copps  
Honorable Kevin J. Martin  
Honorable Jonathan S. Adelstein  
Roy J. Stewart  
Robert H. Ratcliffe

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# CUMULUS

May 19, 2003

The Honorable Michael K. Powell  
Office of the Chairman  
Federal Communications Commission  
Room 8B-201  
The Portals  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: Ex Parte Presentation  
MB Docket No. 02-277  
MM Docket Nos. 01-235, 01-317, 00-244

Dear Mr. Chairman:

The purpose of this letter is to express my deep concern with respect to reports (1) that the Commission's draft *Report and Order* in the above-referenced proceedings will replace the current methodology for defining a radio market with a system based on Arbitron for rated markets and a Census Bureau area for unrated markets, (2) that, in some instances at least, parties to a transaction in the smaller unrated markets would have the burden of submitting economic studies for Commission review and approval as to the precise boundaries of the market, (3) that the new rules will be applied to pending transactions, and (4) that existing market clusters in violation of the new rule will be grandfathered but that there will be only one opportunity to transfer any cluster that does not conform with the new market definition rule.

If accurate, the foregoing proposals could have an adverse impact on a vast number of radio broadcasters who have expended substantial monies in reliance on the existing rules. It bears emphasizing that the existing rules were adopted in 1992 to help save a radio industry that was in dire financial straits. The Commission's strategy – fueled by the Telecommunications Act of 1996 – has produced the very benefits the Commission sought. Since 1992, the radio industry has invested billions of dollars – including money from millions of people around the country who have purchased the stock of public companies – to restore the financial health of the radio industry and enhance service to listeners around the country. The benefits have been particularly significant in smaller communities. Radio broadcasters like Cumulus have brought the high quality service found in large metropolitan areas to smaller communities where radio stations were often operated with minimal resources and no local programming. That transformation has been made possible because the existing rules allow broadcasters to develop a cluster of stations in a market that could operate with greater efficiency and therefore justify the investment of monies that previous owners could not or would not make.

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Recognizing the Commission's desire to replace the current contour overlap methodology with a system of established boundaries, and whatever the merits in using Arbitron or any Census Bureau area, it is critical that any new rule provide certainty for those trying to structure transactions in compliance with Commission rules. Such certainty should be provided to all radio licensees or prospective licensees, regardless of the market size involved. It would be antithetical to the public interest if the Commission's new rule required companies interested in serving unrated markets to undertake costly, time-consuming, and often-times subjective economic studies in an effort to persuade the Commission that the parties' view of the radio marketplace is a reasonable one. That kind of burden will not only significantly increase the costs of a transaction (where it can be least afforded), reduce asset liquidity, and greatly delay FCC review of an application; that kind of burden also will create the very kind of uncertainty that the Commission is trying to eliminate with its new rules. The Commission should instead devise a rule that will provide the same certainty in those smaller unrated markets that the Commission is trying to provide in the larger markets. Failure to do so will only make service to the unrated markets less desirable and impede the provision of new service to the listening public in those smaller communities.

It is also vital that the Commission provide permanent grandfathered status to existing station clusters that were created in reliance on the existing rules. The first buyer (or any succeeding buyer) would immediately discount the value of the stations being purchased if that buyer could not in turn sell the cluster intact. If the sale of existing clusters is restricted, public and private equity holders – who made substantial investments in reliance on rules which have been in place for more than ten years – will be harmed financially. Far more is involved, however, than the loss of money to investors. Many of the efficiencies of the existing rules will be lost, and many radio broadcasters will be handicapped in their ability to compete with large incumbents who have consolidated on the basis of the existing rules.

The loss of those efficiencies and the imposition of those handicaps would be particularly inequitable because there does not appear to be any countervailing public benefit. There is no demonstration in the record before the Commission that the preservation of existing clusters would create anticompetitive situations or compromise the quality of service being provided to the listening public. Despite the common practice of “flagging” transactions over the last few years, there have only been a handful of transactions where the Commission concluded that anticompetitive concerns precluded an approval. Restrictions on grandfathering are simply not necessary to promote better or more competitive service to the public.

The same reasoning warrants application of the existing rules to assignment or transfer applications currently pending before the Commission (some of which have been pending for many months). The equities of those situations are obvious. Substantial monies have been expended to structure and negotiate transactions in reliance on existing rules (and, in many cases, to commence permissible local marketing agreements that would allow for new program operations under the control of the existing licensee). A decision to apply the new rules to pending applications would not only vitiate negotiated purchase agreements, but will also disrupt many new programming operations that have already been inaugurated.

All of these reports and concerns about the Commission's proposed treatment of radio stand in sharp contrast with reports about proposed rules for television. It has been reported that

Chairman Michael K. Powell  
May 19, 2003  
Page 3

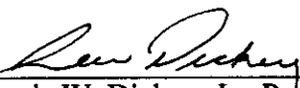
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In sum, if it feels compelled to change the definition of radio markets, the Commission should at least (1) provide permanent grandfathered status to existing clusters and thereby preserve the value of billions of dollars of investments made by the public in reliance on the existing rules, (2) provide certainty to acquisitions through the adoption of objective market definition rules that can be applied equally to all markets, and (3) only apply the new market definition rules prospectively to applications filed after the date on which the rules become effective.

A copy of this letter is simultaneously being filed today with the Secretary's Office (and a copy of that filing will be served on you as well).

Sincerely,

CUMULUS MEDIA INC.

By:   
Lewis W. Dickey, Jr., President



# CUMULUS

May 19, 2003

The Honorable Kathleen Q. Abernathy  
Federal Communications Commission  
Room 8B-115  
The Portals  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: Ex Parte Presentation  
MB Docket No. 02-277  
MM Docket Nos. 01-235, 01-317, 00-244

Dear Commissioner Abernathy:

The purpose of this letter is to express my deep concern with respect to reports (1) that the Commission's draft *Report and Order* in the above-referenced proceedings will replace the current methodology for defining a radio market with a system based on Arbitron for rated markets and a Census Bureau area for unrated markets, (2) that, in some instances at least, parties to a transaction in the smaller unrated markets would have the burden of submitting economic studies for Commission review and approval as to the precise boundaries of the market, (3) that the new rules will be applied to pending transactions, and (4) that existing market clusters in violation of the new rule will be grandfathered but that there will be only one opportunity to transfer any cluster that does not conform with the new market definition rule.

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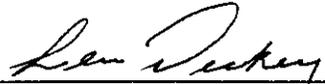
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A copy of this letter is simultaneously being filed today with the Secretary's Office (and a copy of that filing will be served on you as well).

Sincerely,

CUMULUS MEDIA INC.

By:   
Lewis W. Dickey, Jr., President



# CUMULUS

May 19, 2003

The Honorable Michael J. Copps  
Federal Communications Commission  
Room 8A-302  
The Portals  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: Ex Parte Presentation  
MB Docket No. 02-277  
MM Docket Nos. 01-235, 01-317, 00-244

Dear Commissioner Copps:

The purpose of this letter is to express my deep concern with respect to reports (1) that the Commission's draft *Report and Order* in the above-referenced proceedings will replace the current methodology for defining a radio market with a system based on Arbitron for rated markets and a Census Bureau area for unrated markets, (2) that, in some instances at least, parties to a transaction in the smaller unrated markets would have the burden of submitting economic studies for Commission review and approval as to the precise boundaries of the market, (3) that the new rules will be applied to pending transactions, and (4) that existing market clusters in violation of the new rule will be grandfathered but that there will be only one opportunity to transfer any cluster that does not conform with the new market definition rule.

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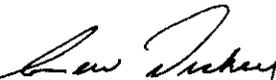
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CUMULUS MEDIA INC.

By:   
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Lewis W. Dickey, Jr., President



# CUMULUS

May 19, 2003

The Honorable Kevin J. Martin  
Federal Communications Commission  
Room 8A-204  
The Portals  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: Ex Parte Presentation  
MB Docket No. 02-277  
MM Docket Nos. 01-235, 01-317, 00-244

Dear Commissioner Martin:

The purpose of this letter is to express my deep concern with respect to reports (1) that the Commission's draft *Report and Order* in the above-referenced proceedings will replace the current methodology for defining a radio market with a system based on Arbitron for rated markets and a Census Bureau area for unrated markets, (2) that, in some instances at least, parties to a transaction in the smaller unrated markets would have the burden of submitting economic studies for Commission review and approval as to the precise boundaries of the market, (3) that the new rules will be applied to pending transactions, and (4) that existing market clusters in violation of the new rule will be grandfathered but that there will be only one opportunity to transfer any cluster that does not conform with the new market definition rule.

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Commissioner Kevin J. Martin

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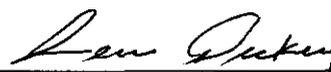
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Sincerely,

CUMULUS MEDIA INC.

By:   
Lewis W. Dickey, Jr., President



# CUMULUS

May 19, 2003

The Honorable Jonathan S. Adelstein  
Federal Communications Commission  
Room 8C-302  
The Portals  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: Ex Parte Presentation  
MB Docket No. 02-277  
MM Docket Nos. 01-235, 01-317, 00-244

Dear Commissioner Adelstein:

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All of these reports and concerns about the Commission's proposed treatment of radio stand in sharp contrast with reports about proposed rules for television. It has been reported that

Commissioner Jonathan S. Adelstein

May 19, 2003

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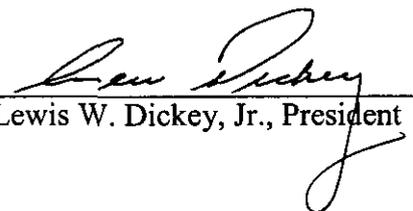
the Commission will increase the national television cap from 35% to 45% so that certain television station owners can retain television stations through transactions that were previously approved by the Commission subject to the applicants' commitment to divest certain stations so that the transactions would comply with the Commission's rules. There would be a gross inequity if the Commission were to limit or destroy ownership rights in radio stations that were acquired in compliance with the rules while simultaneously expanding the ownership rights of television companies to retain stations that could not be owned under the Commission's present rules.

In sum, if it feels compelled to change the definition of radio markets, the Commission should at least (1) provide permanent grandfathered status to existing clusters and thereby preserve the value of billions of dollars of investments made by the public in reliance on the existing rules, (2) provide certainty to acquisitions through the adoption of objective market definition rules that can be applied equally to all markets, and (3) only apply the new market definition rules prospectively to applications filed after the date on which the rules become effective.

A copy of this letter is simultaneously being filed today with the Secretary's Office (and a copy of that filing will be served on you as well).

Sincerely,

CUMULUS MEDIA INC.

By:   
Lewis W. Dickey, Jr., President



# CUMULUS

May 19, 2003

Roy J. Stewart, Chief  
Office of License Policy  
Media Bureau  
Federal Communications Commission  
The Portals, Room 2-C347  
445 12th Street, SW  
Washington, D.C. 20554

Re: Ex Parte Presentation  
MB Docket No. 02-277  
MM Docket Nos. 01-235, 01-317, 00-244

Dear Mr. Stewart:

The purpose of this letter is to express my deep concern with respect to reports (1) that the Commission's draft *Report and Order* in the above-referenced proceedings will replace the current methodology for defining a radio market with a system based on Arbitron for rated markets and a Census Bureau area for unrated markets, (2) that, in some instances at least, parties to a transaction in the smaller unrated markets would have the burden of submitting economic studies for Commission review and approval as to the precise boundaries of the market, (3) that the new rules will be applied to pending transactions, and (4) that existing market clusters in violation of the new rule will be grandfathered but that there will be only one opportunity to transfer any cluster that does not conform with the new market definition rule.

If accurate, the foregoing proposals could have an adverse impact on a vast number of radio broadcasters who have expended substantial monies in reliance on the existing rules. It bears emphasizing that the existing rules were adopted in 1992 to help save a radio industry that was in dire financial straits. The Commission's strategy – fueled by the Telecommunications Act of 1996 – has produced the very benefits the Commission sought. Since 1992, the radio industry has invested billions of dollars – including money from millions of people around the country who have purchased the stock of public companies – to restore the financial health of the radio industry and enhance service to listeners around the country. The benefits have been particularly significant in smaller communities. Radio broadcasters like Cumulus have brought the high quality service found in large metropolitan areas to smaller communities where radio stations were often operated with minimal resources and no local programming. That transformation has been made possible because the existing rules allow broadcasters to develop a cluster of stations in a market that could operate with greater efficiency and therefore justify the investment of monies that previous owners could not or would not make.

Cumulus Broadcasting Inc.

3535 Piedmont Road • Building 14 • Suite 1400 • Atlanta, GA 30305 • tel 404.949.0700 • fax 404.949.0740 • www.cumulus.com

Recognizing the Commission's desire to replace the current contour overlap methodology with a system of established boundaries, and whatever the merits in using Arbitron or any Census Bureau area, it is critical that any new rule provide certainty for those trying to structure transactions in compliance with Commission rules. Such certainty should be provided to all radio licensees or prospective licensees, regardless of the market size involved. It would be antithetical to the public interest if the Commission's new rule required companies interested in serving unrated markets to undertake costly, time-consuming, and often-times subjective economic studies in an effort to persuade the Commission that the parties' view of the radio marketplace is a reasonable one. That kind of burden will not only significantly increase the costs of a transaction (where it can be least afforded), reduce asset liquidity, and greatly delay FCC review of an application; that kind of burden also will create the very kind of uncertainty that the Commission is trying to eliminate with its new rules. The Commission should instead devise a rule that will provide the same certainty in those smaller unrated markets that the Commission is trying to provide in the larger markets. Failure to do so will only make service to the unrated markets less desirable and impede the provision of new service to the listening public in those smaller communities.

It is also vital that the Commission provide permanent grandfathered status to existing station clusters that were created in reliance on the existing rules. The first buyer (or any succeeding buyer) would immediately discount the value of the stations being purchased if that buyer could not in turn sell the cluster intact. If the sale of existing clusters is restricted, public and private equity holders – who made substantial investments in reliance on rules which have been in place for more than ten years – will be harmed financially. Far more is involved, however, than the loss of money to investors. Many of the efficiencies of the existing rules will be lost, and many radio broadcasters will be handicapped in their ability to compete with large incumbents who have consolidated on the basis of the existing rules.

The loss of those efficiencies and the imposition of those handicaps would be particularly inequitable because there does not appear to be any countervailing public benefit. There is no demonstration in the record before the Commission that the preservation of existing clusters would create anticompetitive situations or compromise the quality of service being provided to the listening public. Despite the common practice of "flagging" transactions over the last few years, there have only been a handful of transactions where the Commission concluded that anticompetitive concerns precluded an approval. Restrictions on grandfathering are simply not necessary to promote better or more competitive service to the public.

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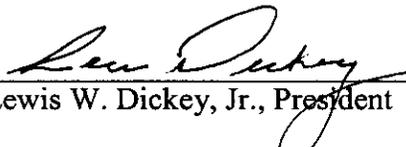
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Sincerely,

CUMULUS MEDIA INC.

By:   
Lewis W. Dickey, Jr., President



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May 19, 2003

Robert H. Ratcliffe, Deputy Chief  
Media Bureau  
Federal Communications Commission  
445 12th Street, SW  
Room 3-C486  
Washington, DC 20554

Re: Ex Parte Presentation  
MB Docket No. 02-277  
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Dear Mr. Ratcliffe:

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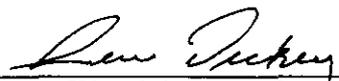
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