➢ *Discrimination in the Workplace*

Mr. Faush, an African-American television station owner, talked about his experiences with segregation during his earlier days in broadcasting.

> *... (I)t goes back to the days of segregated everything and what all that involves, whether you're talking about public facilities or access to anything. So I came through all that era and was here, you know, through the demonstrations and everything. (W)e'd always had the hope [of becoming owners], okay. But obviously the fact that certain gains were made in certain areas would certainly increase that hope that you'd finally get to the point where you'd talk about ownership rather than just being employed.*
>
> *[The segregation that I experienced did stand in the way of that hope] of course. Being realistic, you're looking at getting Black-owned, Black-programmed radio stations that were all owned by Whites. I mean, no matter what hope you have, you're looking at something that is in front of you. And you know if your hope takes on any reality at all and so forth, you know that something has got to have a dramatic change.*
>
> *You know, we worked inside the radio station where you had Black and White toilets. I mean, not just outside but inside, you know. The owner of the station and the White employees had their restroom; the Black employees had theirs. I mean, you came in one door and they went in another door, yet, you're in the same facility. Now how blatant can it be? You don't have to go out on the street anymore to see a sign separating people on a bus, behind a water fountain that said, "Colored," or "White." (EFaush238, pp. 19-20)*

Nancy Waters, a Black radio licensee, talked about her difficulties earning respect from her staff when she first acquired her station.

> *With me being Black, I had no respect from the staff when I started. White men – they would address my husband. You know, I'd say to him, you have to come up and get on to them, because they won't listen to me about this, and won't listen to me about that. So I was dealing with the double bias everywhere I went. (NWaters178, p. 16)*

While not nearly as blatant, Rev. Parker told us that discrimination still exists in the hiring practices of large companies.

> *Well, you certainly see [discrimination] in a [large] company (T)hey could . . . .certainly have a policy of even just fair promotion, which would open upper management spots, middle management spots, to anybody who has the capability, and they could hire for that purpose. And any one of these companies could do that. Certainly they discriminate. How is it that only White males get onto the decision making level? Maybe a women here and there. Look at the boards of directors of these companies. They have maybe one or two women and they are mostly window dressing. But how many of these*

> *big companies really have important people of color on their boards of directors? Just go over all of these communications companies. (EParker504, p. 27)*

Even in small broadcasting companies, disadvantaged groups have difficulties with employment. Stuart Martin, a White male television licensee, articulated a perception that may hamper the advancement of women within broadcasting.

> *The issue on Equal Employment and Fair Employment of women in this business has been self-correcting. For instance, in our news department, our problem is finding White males. It's almost like horseback riding. It's being dominated by women. I don't know why. And all come in and are very eager until they approach 30, then all of the sudden, somehow or other they seem to drift off in marriage. What happens is, of course, they get along and all of the sudden, they begin to get the urge to have a family and once they have a kid or two, they find it's a hell of a lot more rewarding than pacing around after stories. Over and over again I see that. (SMartin212, pp. 17-18)*

➢ *Ethnic and Gender Marginalizing Practices by Competitors*

Minorities have also had their share of difficulties with competitors. Again, Erskine Faush, an African-American, shares his recollections of how ratings were distorted by his White counterparts.

> *I can remember the time when we were number one in the market. But when the [audience share] ratings came out . . . the general market stations would put up billboards. And perhaps they were number three or four or whatever, and they would call themselves number one in the market and with an asterisk by it. In fine print at the bottom it would say, "excluding ethnic stations." They just couldn't bear the thought of a Black, even programmed, facility being number one in the city. (EFaush238, p. 9)*

Such practices have the effect of marginalizing minority-formatted stations, justifying discounted advertising or no advertising on those stations.

Given the difficulty of acquiring stations, some minorities, just to get started with their community-specific programming, bought time on others' stations. Andres Neidig, a Hispanic radio owner, called all 42 stations in Denver to try to buy time to produce a Hispanic show, and none of them made any time available for him to buy, *"even the stations that were losing money."* The general response he got was *"Hell, no. I'm not going to put a Mexican program on the air." (ANeidig426, p. 18)*

Bernadine Nash, an African-American radio broadcaster, talked about the marked difference in her experiences trying to buy stations both during and after the repeal in 1995 of the Tax Certificate program.

> *Well, it was a no-brainer for people in this market [to find me for tax certificate deals] because I'm the only [minority here]. So, if they wanted ... I mean there is only one person within the market that they would call. So that was a no-brainer for them.*
>
> *On the other side of it, and this is where I realized after the tax certificate went away, that the more institutionalized issues around race began to surface. Because there were actually two properties that I knew were for sale, that I was interested in (b)ecause my goal had been to get a 24-hour signal. I didn't care if it was AM, FM, whatever.*
>
> *And I would put calls in and then not get calls back, and then I would get a little pissed off, so . . . then I would like decide, it would become a challenge, so I was determined to get through. And I would finally get through and I would be told either that the property was no longer available, or I was given a purchase price that seemed irrational to me. And after maybe the second time, I had a friend of mine do that game you do sometimes in housing. And we got different answers. We got different answers [in terms of both availability and pricing]. (BNash118, pp. 17-18)*

Ms. Nash and a friend not known to the local broadcasters both inquired about the availability and pricing of stations; thereafter they compared the answers. In so doing, Nash employed a technique, widely recognized by the courts, for ferreting out illegal bias, namely discrimination testing. The fact that her friend received more favorable answers, in terms of availability and pricing, underscores not only the importance of the Tax Certificate but why discrimination makes it necessary.

Nancy Logan, President of American Women in Radio and Television (AWRT), recalls hearing about the experience of a woman who had been marginalized by a group of local broadcast competitors.

> *I remember hearing this woman on the NAB panel speaking about having a difficulty in her marketplace being [that she owned only] one station and, plus, that she was a woman owner, and that the guys who ran the stations in town that were groups would, you know, literally gang up on her in the business way, in the market. (NLogan523, p. 14)*

Some women, like Patty Ruiz, a Hispanic female television licensee, told us she had to prove herself in the male-dominated communications industry.

> *The truth of it is there's a lot of barriers; it's a man's world especially in the communications industry. You really have to struggle to make them, not only believe in your capabilities, because you are woman, and because you are a minority. You know, you were always banging your head against the wall. You had to really prove yourself to show that you knew what you were doing and knew the industry and loved the industry. I mean you got to love and have a passion for the industry to survive. (PRuiz452, pp. 14-15)*

She expounded on how she had to prove herself as a woman so that others could take her seriously:

> *Also, I think the engineering studies were, you know, you had to really know what you were talking about, because you're dealing with – talk about a man's world. And so you had to constantly prove yourself, and make sure that you understood the lingo and everything that goes with it. That they took you seriously, that they just didn't think, you know, this girl doesn't know what the hell she's doing. So you had to work twice as hard to read and learn about engineering. The sites and where, you know, the towers would go, and the height and reach, all that great stuff that comes with it. (PRuiz452, pp. 14-15)*

In addition to being excluded by local group owners, S. Jennell Trigg, a communications attorney, opines on the inability of minorities and women to rely on the National Association of Broadcasters (NAB) for guidance.

> *I know for small licensees that were not members of groups, independent stand-alones; [but] if you were minority, you certainly didn't have a voice at NAB. You were dependent on NABOB. If you were woman owned, you really couldn't depend on NAB, you had to deal with American Women in Radio and Television.... there are all kinds of politics going on with NAB that the small guys, and if you're minority, you get lost in my opinion. (JTrigg536, pp. 37-38)*

➢ *Restricted Access to Information and Opportunity*

Getting into the "deal flow" is a critical step in the acquisition process. Deal flow refers to being in the loop to receive information about purchase opportunities. This information can come from sellers, lenders, brokers, and investors. It is all in who you know.

Diane Sutter, who has managed to get herself into the deal flow for television station purchase opportunities talks about the lack of incentive for sellers to seek out women and minorities as prospective buyers.

> *Well, the problem still exists that you can't find stations that you can afford to buy whether you're male or female, and at the same time, it's even harder for the women and minorities because generally they're not in the deal flow arena. And because there's no reason to sell it to a woman or a minority, because there are no Tax Certificates available today, there's no incentive to sell it to any of us, so why not just keep it in the family? And everybody, and you know, it's like Monopoly. Everybody sits at the board and they shuffle their hotels around. You know, I'll trade you a Boardwalk and a Park Place for St. James Place, and (a "get out of jail free" card). . . . I think it's especially difficult—and I'm atypical because I've had a lot of things that have worked in my favor. But someone else going in to do this, today, with consolidation? I think it's enormously difficult. (DSutter205, pp. 19)*

Brian McNeill, a media investment banker, talks about his experience with women and minorities and how he judges their ability to participate in a deal.

> *. . . (W)e look at deals dispassionately based on quality of management, the quality of the purchase price and how much upside there is. But you know, having said that, . . . it seems to me, but I've never actually done this statistical arithmetic, [that] the bulk of the deals we see are more from, I think more men are in the business, so I get more plans from men than women, and minorities are still minorities so we see more plans from Caucasian men and companies than we do from minorities. So I don't really know the statistical breakdown. (BMcneill513, p. 7)*

Diane Sutter shared more of her experience when she told us that *"when I hired Bank Boston's M&A department to do my investment banking for me . . .one of [the two people I was working with] said to me that I was the first woman client they had ever had. . . . And when I went to the [venture capital] firms, I think it is safe to say that not one of them had invested in a women entrepreneur in broadcast. (DSutter205, pp. 8-9)*

Willie D. Davis, a Black male radio licensee, observes that minorities are often the last to know about broadcast deals because they are not a part of the network; and that by the time minorities find out, the deals have become public and the negotiations have already taken place.

> *Most of the deals sometimes they're done kind of behind the scenes and they only [be]come public pretty much [when] the filing with the FCC takes place. In other words, the negotiations many times have started very much on an inside track and it only becomes public when they file. Well, as you probably would surmise, not being heavily plugged into that network, I would say it's almost fair to say that minorities are the last to know. (WDavis120, p. 15)*

Mutter D. Evans, a Black female radio licensee, echoes that observation by pointing out that *"[y]ou don't know what properties are available unless you [are] in the inner circle. Who's always been in it? Those who control. White men." (MEvans275, p. 26)*

➢ *Access to Station Purchase Opportunities Through the Informal Network of Owners*

Manny Davila, a Hispanic radio licensee, talked about how stations for sale passed among the members of the *"good old boy network."* What made it difficult for him is that *"(t)here wasn't a lot of minority ownership. ... It was basically conservative Anglo, you know, and hey, this guy will sell it to this guy, this guy will sell it to – and it was basically almost like a little group there. (MDavila128, p 15)*

In contrast to Mr. Davila's experiences, Robert Fink, a White radio station owner, shared how easy it has been for him to find properties for sale through his network of other station owners

and brokers. Even if he were to enter a new market, he expressed confidence that he could find a broker who would be willing to work with him.

> *(I)n fact, I never used a broker to find anything I bought. It's just kind of being in the business and keeping your eyes and ears open and, you know, hearing scuttlebutt and hearing that this person might be for sale and that type of thing. And that's always kind of been, you know, it's a small group, we broadcasters, and you talk to friends and you get an idea, and you think, hey, I might want to go there, and I hear that so-and-so is having some problems. And you talk to them. And so, it's really kind of old-fashioned, just exploring and seeing what you are doing. Now that's for me, because I've been so active here in California basically, that I have the network. If I were to buy or look for a station in Michigan, I would obviously have to go to a broker because I don't know anybody there. (RFink235, pp. 16-17)*

4. Discrimination in Advertising

Discrimination in the advertising industry against minority-owned and –formatted stations has been well documented in recent years, most notably in the report prepared by the Civil Rights Forum on Communications Policy for the FCC, *When Being No. 1 is Not Enough: The Impact of Advertising Practices on Minority-Owned and Minority-Formatted Broadcast Stations* (submitted in January 1999). Our study revealed similar findings as reported below.

The small, minority and women broadcast licensees that we spoke with frequently cited routine discriminatory behavior on the part of advertisers and advertising agencies based on:

- the race or ethnicity of a broadcast licensee,
- the minority audience targeted by a format,
- the operational size and scale of a licensee (e.g. WalMart's common refusal to purchase local advertising other than through national agency representatives), and
- whether a licensee could afford to subscribe to rating services (e.g. Arbitron).

➢ *Advertising Dollars are the Life Blood of A Station*

Advertising dollars are the lifeblood of a station. Ad revenues provide the much needed working capital to pay for on-air and behind the scenes professionals, local news crews, new or upgraded equipment, syndicated programs, community sponsorships, general station promotion, and return on the owner's investment. Further, since stations are valued at a multiple of their cash flow, any diminishment in advertising revenue reduces many times over the market value of a broadcast property.

If one takes into account the market entry barriers created by limited access to capital experienced by small, minority- and women-owned radio stations and couples it with the discrimination that they have traditionally experienced from advertisers, one begins to understand how serious a problem this discrimination is for these business owners. The combined lack of resources severely impacts their ability to compete, grow and, quite simply, survive. Further, in the face of industry consolidation, the value of their stations suffers to a point where, if they decide or are forced to sell, the proceeds from the sale may well be less than the station would be worth if it were owned by or formatted for non-minorities.

> *Personal Attacks and Racial Slurs*

Minority broadcasters have long had to suffer personal discrimination that was blatant and insulting. Not only were advertising dollars withheld because of this discrimination, but also minority owners had to endure personal attacks and racial slurs. To the extent that such attacks and slurs were general indicia of the status and standing of minorities and women in the market, they are instructive. James Wolf, Jr., an African-American radio broadcaster, shared his historical and more recent experiences with us.

> *(W)e had comments made to some of our [Account executives – AEs]. [Some business owners] said, "We don't want those kinds of folks in our business." [So they wouldn't do advertising on our station..] Well, see, they would say it to my White AEs. They would never say it to my African-American AEs. They would always come back and tell me, you know. But they never said it to African-Americans.*
>
> *Now recently my brother got – he faced some discrimination. He works in operations here. And he had a client that said that – "I normally don't want niggers coming in my business." He said, "But you seem like you're kind of nice." He said, "I think I'm going to buy some advertising from you. You're kind of different from them," you know. "I'm just going to give you a little advertising just because of your attitude. But I normally don't care for niggers coming in my business." He said that. And my brother said he let him write that contract up. He said he wrote that contract. He was so mad. He said, "Man, I've taken more time than I've taken in a long –" that happened last year as a matter of fact. (JWolf281, pp. 37-38)*

Jose Molina, a Hispanic radio and television licensee who acquired his licenses between 1980 and 1997, had experiences that were not as blatant as Mr. Wolf's, yet the feelings of discrimination were there just the same.

> *Overtly, no [I didn't experience discrimination because of my minority status]. But sometimes I walked away [from sales meetings with prospective customers] with a feeling with, hmm, what could have happened here? ... [I don't exactly know what gave me that feeling.] I guess that if you are, I don't know, maybe like in that Bruce Willis movie, the Sixth Sense, you know. . . . (I)t's almost impossible to put words on when somebody treats you real, real nice, you know, ha ha ha, that sort of thing. [If I had to draw an analogy of*

> *what it was like], (a)t the beginning it would have been like The Jeffersons show. Remember that? Just like George Jefferson, who is a buffoon. That's how you would feel coming out of a meeting;[and if I felt that the discrimination was not present, it] would feel like you're coming out like Top Gun. But it wasn't one of these cruel types of discriminations, you know what I mean, [like] Jim Crow. . . . (I)t's very subtle. (JMolina121, pp. 16-17)*

➢ *Disparity Between Market Share and Revenue Share*

More often, the discrimination took the form of withholding advertising "buys" from the stations. It was not uncommon that stations would be ranked in the top five in terms of audience share but be positioned well below that level in terms of share of advertising dollars.

William Saunders, an African-American whose radio station was No. 1 in the market as far as listeners, yet he could not get his fair share of advertising dollars.

> *Well in the marketplace, two things were happening. Our station ended up being number 1 in the market, but we still couldn't get advertising. They said you [have to] be a certain place in the [ratings] book, a number between 1 and 4. And no matter where [we got] in the book, and our station WPAL AM was number 1 in the whole area, and still we couldn't get that crossover advertisement, so it really didn't [matter], and we needed the capital to make it run. And it put a strain on the corporation. (WSaunders163, p. 4)*

Andrew Langston, an African-American radio licensee who was a pioneer in the industry, had similar experiences being No. 4 in the market with his station.

> *I'm No. 4 in this market and I've been there for 18 months. That's a year and a half I'm locked in it. The number one station is WHAM . . .. , No. 2 station is . . . a country station, No. 3 station is . . . a hip-hop, that's a rock and roll station. No. 4 is [my station,] DKX. Now, I'm not (just) saying that to you. Here's the classic frustration. Now am I No. 4 in income? No. And am I No. 5, No. 6, No. 7, they make it all the way down there, am I No. 9 is income? Hell, no. All right? That's what is unfair here and how in the world can you let agencies which some way or another do this and then they like Blackball you. You don't get this, you don't get that. (ALangston112, p. 4)*

➢ *The "Katz Memo" – It's Implications for Minority Broadcasters*

As recently as last year, Tom Joyner, a well-known and well-regarded African-American radio personality with a popular, widely-syndicated morning radio program, released an internal memo that had been written at the Katz Advertising Agency ("the Katz memo") which essentially said that media buyers should not place ads with minority-formatted stations since their clients were looking to advertise to "prospects, not suspects." As one might imagine, the disclosure of that

memo caused a giant ground swell inside and outside of the industry. Richard Weaver-Bey, an African-American broadcaster, responded to the Katz memo this way.

> *[T]he Katz memo was sort of the final spike in the coffin, and that was just last year . . . that that memo came out. And that's where a large advertising agency in New York is saying to its people don't buy Black media. I mean, when you say that and then you look at stations that are sixth or seventh in the market in the ratings by Arbitron and 24th or 25th in ad revenue, it says that there is blatant disregard for the stations that are owned by minorities or geared to minority listeners. I mean, it can't be anymore poignant than that when you look at the facts. You know, many people are saying why are African-Americans or minority people always crying, but the facts are the facts. (Rweaver-Bey171, p.8)*

Broadcasters like Black radio station owner Art Gilliam see part of the problem as lack of awareness on the part of advertisers and agencies. He thinks there is an opportunity to educate the public about African-American markets and spending power.

> *I think the advertising community operates in the general framework as the rest of society in the sense that many of the advertisers, particularly the agencies, have not much awareness of African-American markets or their value. So that if you have a real good sales staff, they can go out and talk directly to retailers and many of those retailers if they have an interest in Black markets, will be responsive and some can be convinced of the importance of that market.*
>
> *But within the agencies, there's a lot less of that and over the years we've experienced that and unlike radio, where there are certain EEO requirements which put in place people who understand African-American markets, that doesn't apply in the advertising business and consequently if you have for example a lily White advertising agency, that has no awareness of Black media, Black markets or anything along that line, then you're going to have a harder time convincing them to buy Black radio. So there's no question that there is, I don't, I wouldn't necessarily even call it discrimination, but just an absence of awareness in that market. (AGilliam117, p. 20)*

Charles Cherry, a fellow Black broadcaster, shares Mr. Gilliam's views.

> *. . . As far as trying to market the station to other folks. . . you have to educate them in reference to the fact that Black people are a viable market, because a lot of folks just don't understand that. They just don't believe that Black people buy anything. And you would think that people who deal with numbers and understand what statistics say could see the purchasing power of Black America, the allure to Black America, the high level of listenership, the susceptibility . . . or the effectiveness the advertising has on the purchasing power and the habits of Black America -- (CCherry262, pp.6, 32)*

➢ *Discounted Pricing for Ads on Minority-Formatted Stations*

In addition to withholding advertising altogether, many minorities have had to accept discounted pricing on their advertising spots. Dorothy Brunson, the first African-American woman television broadcaster, shares that *"(t)here has never been an equal process in terms of advertisers. If you have 10 listeners who happen to be Black, they may be worth $2.00; if you have 10 listeners who happen to be White, they may be worth $5.00." (DBrunson105, p. 5)* As Ms. Brunson continued, she indicated that she understood that this was the way it was and learned to take that into account in the operation of her stations.

This dramatic disparity in prices for ads was not unique to Ms. Brunson's experience. William Saunders, another African-American broadcaster, had similar experiences and shared the choices that he had to make as a result.

> *Normally our price [for advertising spots] would be lower . . . (p)robably sometimes 50%. . . . We wouldn't even attempt Wal-Mart; it's not even worth raising the effort. But get down to just car dealers, large car dealers, here, and I don't know if you know much about South Carolina, but the coast of South Carolina, where we are, Blacks have always been 40-50% of the area, and some of the counties now are still 80% Black. And the area where we live, Blacks buy about 70% of the cars. These are their estimates, not ours. We think it's higher than that. But the advertiser goes to the other stations or to, I mean these companies sponsor golf tournament and fishing things and all kinds of stuff that has no relationship to my market or my business and the African American community gets nothing out of spending their money with these merchants.*
>
> *So that's where the problem lies. And even when we do something, like I just did a deal with Rick Hendricks, he's the largest dealer here in the Charleston area, automobile dealer, and we wanted to do an education program called Focus on Education, a half an hour a week. And for a year to run this program, it would cost us $13,000. And we went to them with it and they said well anytime that we want to do something with the community or we if want to reach the community, we always want to do it with you, and we want to just buy advertisement, then we go to these other people. Don't make too much sense to me, but they ended with the numbers, but they came back to me and said, well, our advertising people are saying that the program on your station would only be worth $5200. So what they do in a sense, they put a price on my product. And you either take it or you leave it. And you know what we did was you know we wanted the program so we said that WPAL will sponsor that other part of that $13,000, but not changing our price. (WSaunders163, pp. 8-9)*

Some people, such as Bob Carl Bailey, an African-American radio licensee who acquired his station in 1977, took bolder actions vis-à-vis their communities. Mr. Bailey risked alienating one of his largest advertisers when his station was critical of one of his *"biggest food chain advertisers for the low numbers of Black people it's hired in the management ranks of the store. Nine locations, very few Blacks . . . so how the hell's he going to write me a check when I take that kind of stand against him?"* he asks. Furthermore, his station insisted that Black people be

hired by the Census Bureau to be the enumerators in the Black neighborhoods. *"That hurts you financially,"* he offered.

➢ *National vs. Local Advertising Revenue*

For radio broadcasters, it is important to receive a significant percentage of their advertising revenue from national accounts vs. local advertisers. The national advertisers are more able to afford advertising than their local counterparts and advertise with more regularity and frequency. Historically, minorities have had difficulty acquiring national accounts. Some, like Willie Walls, an African-American radio station owner, felt it was because they did not move in the same circles with those who made advertising decisions.

> *Well, the discrimination was, basically, that we were not able to get national accounts and some local accounts that maybe a counterpart ... of another race, would do. Because they had inside contacts with people. They ate with them, they worshipped with them, which we did not do. And they had a better chance of getting ads and advertisement that we sometimes did not get. (WWalls403, pp. 4-5)*

Richard Weaver-Bey, an African-American who in addition to his radio station owns a real estate business and is active in his community, noted that the lack of contact with the "right" people has impacted his ability to gain advertising revenue.

> *I was right here in the Hartford area and I run a real estate business as well. What I had planned to do was to take control of the radio station and use my community contacts and a number of boards – I sit on a little better than half a dozen boards of directors from the Chamber of Commerce to the school board, to the Board of Education to Community In The Arts organization. So I thought that there would be enough community contacts for me to be able to encourage people to advertise and thereby getting enough revenue to make our station profitable or at least break even.*
>
> *But unfortunately that's not the case that we minority media are finding around the country. We're finding ... that when stations that are owned by minority individuals, whether they're first in the marketplace or not, they're not generally first in ad revenues, because ad revenues basically are doled out by large advertising agencies and many of those deals are made on the golf courses and in the country clubs, and that's not really the area that is frequented by minority individuals or females. (RWeaver-Bey171, p.2)*

Johnny Shaw, a fellow Black broadcaster, felt that because local, independent stations are providing service to their communities, *"there ought to be some regulations put into place to say that independent owners, especially if they pull good numbers, if they've got the listenership, ought to get at least a fair, what I would term as, a fair share of those national dollars. And when I say national dollars, I speak in term of agencies and, not just local people because you've got to understand local business, small businesses can't afford to spend a whole lot of dollars for*

advertisement. I'm talking about, you know, your big conglomerate companies who can spend those dollars. I think some of those dollars should be shared with us. (JShaw185, pp. 15-16)

Mateo Camarillo, a Hispanic radio licensee, discussed how being in smaller markets coupled with his minority status and minority programming markedly affected his ratio of local to national advertising. He raised the issue of how advertising reps are compensated for placing ads.

> *[Our radio stations] were in the obviously smaller markets in [California]. One of the problems of having [stations in smaller markets is that] the percentage of local vs. national support is very skewed so that it's . . . heavily laden with local support as opposed to the typical formula 60-40 national to local, it's more closer to 100% local.*
>
> *And there's a, and I won't say conspiracy, but there's also the media reps, [who] have an incentive just to stay with big cities. And so even though they may represent you, your representation is not a very strong advocation for the smaller markets. So the media reps play a role in the finances and the ability of a medium- to smaller-market station's being able to get national advertising, which is a real problem in this industry. And I don't have a solution, but I'm just saying is that there are very few Hispanic media reps, so the understanding of that issue is not as clear as it ought to be.*
>
> *And the consolidation that's taking place, even marginalizes those few that are, so they have to concentrate on the larger markets where the consolidation is taking place. So the smaller and medium-sized markets, which is where the area of Hispanic ownership of licenses happens to be because they can't afford the bigger cities unless they themselves have the wherewithal to become a public entity, the majority of Hispanic licensees are having to struggle. That's why I got out of broadcasting. That's why this year I sold the end of my stock and I actually started shifting away in '95. (MCamarillo375, pp. 18-19)*

➢ *The Impact of Rating Services Practices on Minority Broadcasters*

Another variable that factors into whether and at what level small broadcasters receive advertising revenues are the audience rating services such as Arbitron[28]. Sampling practices, geographic market definition and the cost of the service are all impediments for minorities in the ratings game.

[28] Arbitron is an independent company which collects radio listening habits and market share information from a sampling of families throughout the U.S. using various survey instruments and methods. Arbitron measures radio audiences in 270+ local markets. This listenership information is used by broadcasters to attract advertisers. Only those broadcasters who become members of Arbitron are allowed to quote the data during the selling process.

Ed Gomez, a Hispanic radio licensee, shared his experiences with Arbitron's efforts to capture the Hispanic audience listening patterns and the reactions of other Arbitron members to the company's efforts to accurately capture the data.

> *Arbitron was another thorn in our side. Arbitron ... when Arbitron instituted a methodology that they called personal placement and retrieval ... PPR meant that over a survey period... they had a policy of sending so many diaries into high density Hispanic areas and high density Black areas. Well, both the Blacks and Hispanics, and particularly the Hispanics, were terrible at returning the diaries. They just, you know ... they would agree to do it and then they wouldn't do it.*
>
> *And it was hard for Arbitron to get back any semblance of diaries from the Hispanic communities. So they instituted personal placement and retrieval, and they would hire people here in Albuquerque to go into the south valley, which is a high density Hispanic area, or the north valley, and put in, you know, 50 diaries. And it was a four-week survey. They had to keep the diaries. In between the four weeks, these people were required to call or even go back and make sure that the people were not having any difficulties with the diaries and making sure that they were keeping them; And at the end of the survey period, go and get them, retrieve them.*
>
> *Well, all of a sudden, stations in large Hispanic markets began to generate some really high numbers; some high rating numbers. Because they were finally really measuring the Hispanic markets. Well, the general market members of Arbitron began to complain, and they said, you know, you shouldn't play favorites. I mean you are doing this simply to help the Spanish stations, and they didn't want that to happen. So they dropped that methodology and went to something else... it was just going back to what they did before. And so, if you didn't have 80% of the population Hispanic in your market, you lost all of your numbers.... And that was, in my opinion, blatant discrimination (EGomez370, pp. 34-36)*

Many like Black radio station owner James Wolf, Jr. were confronted with the impact of Arbitron ratings on their ability to secure local advertising dollars. Without the ratings, which one had to be a member of Arbitron to use in selling efforts, advertisers could use that as an excuse for not buying time on a particular station.

> *Well, ... I've had difficult times with much of the advertisers, especially locally. Unless you've got the numbers, you know, the Arbitron numbers, you know, you still are not going to do well, you know. . . . Oh, they bought from us because we always had the numbers, you know.... [But] we were brutalized on the local [advertising] end of it. (JWolf281, pp. 37-38)*

Art Gilliam, an African-American radio licensee, talked about how Arbitron's definition of metropolitan areas can severely impact the smaller, low power broadcaster.

> *The Arbitron rating area, therefore, what they consider their metro becomes an important factor for us, because if they expand what they call the metro, it impacts stations with less power. Now, our position is, and has always been, that the objective way to determine the metro is to let the government determine what that metro is, which the government does define standard metropolitan areas, whereas Arbitron, at the request in many instances of its subscribers, can expand the metro and has done it in the past, beyond what is the actual government defined metro and that creates a hardship for stations with less power.*
>
> *And I don't know to what extent the FCC or government could play a role in that but it gets very expensive to take it through the Department of Justice or try to claim anti-Trust or anything like that, but it's definitely an area that it's time to consider, especially given that there are offenses taking place now. (AGilliam117, pp. 22-23)*

Johnny Shaw and Richard Weaver-Bey, both African-American broadcasters, talked about the prohibitive cost for small broadcasters of being a subscriber to Arbitron and the fact that if you do not subscribe, you cannot quote your Arbitron ratings when you sell advertising. Since advertising agencies, who place the bulk of national advertising dollars, almost always use Arbitron ratings as variables in the "buy" decision, lacking such ratings is a severe handicap for those who cannot pay the price of admission.

Johnny Shaw offered these experiences.

> *And that's what hurt us the most as independent owners who are trying to – [get advertising dollars]. We can't even afford to invest in Arbitron because it costs so much money. And I'm not complaining about Arbitron, ... (t)he least I can get by with to buy the Arbitron figures is $10,000. (JShaw185, p. 16.)*

Richard Weaver-Bey echoes these comments.

> *[We don't] subscribe to Arbitron because our numbers are not strong enough, our coverage area is not that broad and it's expensive to subscribe to Arbitron. And if you don't pay for a subscription to Arbitron, then they do not focus on your audience in order to publish your numbers and you're not able to quote the Arbitron numbers. So that becomes a very difficult challenge. (RWeaver-Bey171, p. 11)*

Who gets sampled and how they are sampled determines the accuracy of the information collected by the ratings agencies. Erskine Faush, a Black television broadcaster, takes exception with Arbitron's sampling practices.

> *I've always had a thing with the rating people. I don't think it's done fairly. I don't think it's truly representative. I don't think there's enough sampling. I don't think, you know – I don't think it's ever been. And I've still got in my possession, as I said, time when the stations – our ratings, you know, exceeded those of the general market stations even. And, yet, it was always with the asterisk. We can't sell on the numbers. We're not a*

> *subscriber [to the rating services], okay, because of the enormous cost. (EFaush238, pp. 21-22)*

Jeffrey Hutton, a White radio broadcaster, made us aware of the fact that small, non-minority-owned stations have related problems with Arbitron.

> *I'm in an unrated market, I can't afford to pay Arbitron to tell me how many people listen. It wouldn't be accurate anyway because in a county our size, they only send out like 20 or 25 diaries so I have to be able to sell my results. I have to be able to explain to people why working with my station will put butts in their buildings, so to speak. And, business does not come to us, I go to everything. I go to everybody and that's how we survive. (JHutton383, pp. 9-11)*

Mr. Hutton also shared that since he is *"a hometown radio station"* in very small city, *"people with national buys never come"* to his town. Like his minority counterparts, *(t)he [advertisers] don't get to me; I go to them. I have to, I mean, very rarely will somebody ring my telephone or send me a fax and say I want to buy advertising. I go out every day and knock on doors and introduce myself to people and try to sell advertising. (JHutton383, pp. 9-11)*

In contrast, Robert Fink, a White radio broadcaster, told of experiences selling advertising time quite different from those we heard about from minority broadcasters. He characterized whatever difficulty he might have with capturing local advertising dollars as purely a function of small advertisers' budgets, not discrimination. With national advertisers, he shared Mr. Hutton's experience being in a small market.

> *Basically [our experience of going out and getting advertisers has been] really good. And I've been a sales manager in Los Angeles, so I've had the experience of, you know, "the big time" and the small time. In a small community, they tend to realize that they do need you, and it's a difficult sale simply because, again, their budgets are so small, and it's more a budgetary problem with our clients than whether or not they want to do something with us. Some people don't even want to give you the time of day. But anybody that's somewhat trying to make their business successful, they will talk to you*
>
> *... I'd say in the small market the biggest problem tends to be the budget problem of the local merchants. (L)ocally we're accepted fine because we're just one of the people. Where we don't get our share is, we do not get our share of what we term regional or national dollars. [With] the local mom-and-pop, we don't have a problem except for budget; the bigger type of people, their hands are controlled by their corporate offices that basically give them no dollars to spend on a small market. (RFink235, pp. 18-20)*

5. Effect of Deregulation and Consolidation

On par with discrimination as a long-standing barrier to broadcast and wireless entry, study participants cited industry consolidation pursuant to the 1996 Act, as a fundamental and significant barrier to entry in recent years.

Johnny Shaw, an African-American radio station owner, characterizes the raising of the caps on the number of radio stations one can own in a market as *"the lowest blow for independent owners. I think that probably has hurt more than anything else. (JShaw185, p. 21)*

> ➢ ***The Shift from Local, Independent Owners to Large National Group Owners – Opening the Floodgates That Virtually Wiped Out Small Radio Stations***

With the consolidation resulting from the 1996 Act, there has been a shift away from independent local owners to large, Wall Street-financed group owners. Manuel Davila, a Hispanic radio broadcaster, recognizes the shift from community focus to earnings per share.

> *[I]t's basically all corporate, you know, because they have to answer to . . . investors now. The investors don't give a damn if it's an Hispanic radio station or it's a Black disk jockey or it's a Chinese salesperson. They care about if they get 10 cents on the damn investment... . All the government did is help the big guys. And that's what's happened. The big guys, corporate America, have taken over communications, and it seems to be okay with everybody, or it seems to be okay with everybody that's of importance, I guess. Now I may not like it. You may not like it. My dealerships[who advertise with me] may not like it but, hell, there's nothing he can do about it. (MDavila128, pp. 50-51)*

Many believe that the deregulation of broadcasting was motivated and driven by politics, i.e. donations made to legislators by large broadcasting enterprises. John Tupper, a White television licensee suggests that *"[C]ongress and the FCC shouldn't be fooled by the contributions being made by the networks to their campaigns for the purpose of gobbling up more of the voices out there that are going to be more homogenized over time. (JTupper216, p. 36)*

Mary Helen Barro, a Hispanic former broadcaster, talked about the impact of raising the caps as *"open[ing] the floodgates."* While caps had been lifted gradually from 1985 to 1996, the big jump allowed by the 1996 Act *"ended up wiping us all out."* She went on to say:

> *The big corporations got what they wanted, and the little people are out of business. Bottom line. ... They kept bumping them up because you know the big corporations wanted it.... (W)e were pleading with them, we were saying, "No! You're going to put us out of business! We can't grow fast enough, we can't . . ." . . .(W)e went to the FCC, we went to hearings, we wrote letters . . . to the Congress. It did not matter. (MHBarro190, p. 13)*

Manuel Davila, a Hispanic broadcaster, blames the government for the predicament in which small broadcasters find themselves today. He feels that the only thing the 1996 Act is going to do for the *"little guy"* is help him or her get a better price for his station once he or she sells because he or she can not compete anymore.

> *Who's going to lend us $30 million [to buy a station]? Because the government, the government had dictated that big business is going to own communications. And that's the government's fault, man. Because somewhere along the line the government said it was all right to own 400 radio stations. ... (L)et me tell you the scenario that I see.*
>
> *Originally you could own seven stations. . . . Okay, that's kind of back in the old days. And then that changed to 14 because there was AM and FM. And then as the people acquired what they needed to acquire – and I'm not knocking it but, you know, the big guys, they acquired what they needed, but they said, you know, it's time to change the rule again. So let's go to 20 stations. Okay, the government says yeah. They ram this thing through. Now they can own 20 AMs and 20 FMs, something like that. And then all the big guys buy what they can buy. And then they said, you know, we think it's better if we own 25. Well, the government changes the rule again ... And now they can own all these things.*
>
> *And they're saying this is all to help the little guys. I haven't seen a little guy get big yet, you know. I'm not saying they haven't, okay. Then the government says, you know what, the big guys have bought all the markets that they can possibly own, New York, LA, Chicago, San Antonio, Dallas, Houston, El Paso, et cetera, et cetera, et cetera, down the row. You know what, we think those rules should be changed so we can own two FMs in those markets because we've bought everything we can buy and we want to get bigger. So the government says, you know, that's a great idea. The next thing you know, the rules have changed, again, under the pretense to help the little guy. All this did for the little guy is allow him to sell his station. That's about all this did for the little guy. Because he couldn't afford to buy the big guy out, so he had to almost out of default sell. (MDavila128, pp. 45-46.)*

Mary Helen Barro also acknowledges that deregulation did not help the independent broadcasters, but rather put them out of business. She further sees market consolidation as a threat to freedom of speech as smaller and often minority-owned and minority–formatted stations are forced out of business.

> *They put us out of business bottom line.... Yeah, no doubt about it. I'd be in business today if it weren't for the FCC.... the American Hispanic-Owned Radio Associations broadcasters [fought] individually for years as the FCC and the Congress kept pushing for higher ownership caps, trying to gratify the large corporations who wanted to expand and they wanted to buy up stations and expand. Now there were some small broadcasters who did want to sell. There was no doubt about that. But for every one that wanted to sell, there were 10 of us that were struggling to stay in business.*

And when the FCC raised the ownership cap, they literally shoved us out of the business. And if you look at broadcasting today, you will see that the vast majority are large corporations, fewer minorities ... And what I don't think has been discussed up 'til now but what I consider a very grave threat is loss of freedom of speech. With fewer and fewer companies owning more and more licenses, there is a real threat to freedom of speech. (MHBarro190, pp. 1-2)

➢ *Economies of Size and Scale*

The findings of this study point to an unprecedented level of market dominance and influence enjoyed by public companies utilizing scale economies, inexpensive capital, stock-funded acquisitions of licenses, and similar financial and operational advantages. These attributes of size and scale represent insurmountable obstacles to competitiveness for small, women- and minority-owned companies lacking such advantages.

In broadcasting, participation by small and local businesses had been historically supported due to a regulatory structure that set licensee ownership levels and encouraged local ownership. Through the 1980's and early 1990's, the industry saw significant increases in minority and female ownership, stemming from regulatory initiatives that included comparative hearing minority ownership policies, distress sales, and tax certificates. Since 1996, however, small, women- and minority- owned companies, and the communities they serve, have, and continue to be, dramatically impacted by a broadcast industry rapidly responding to the deregulatory nature of The Act by consolidating license ownership.

(a) Impact Upon Licensees

➢ *Deregulation as a Barrier to Entry*

Deregulation and the resulting industry consolidation have formed multi-faceted barriers to new entry for small, women- and minority-owned companies. The dramatic increase in the price of stations, and the predominance of Wall Street-funded companies with stock and stations to use as currency for station acquisition, have severely disadvantaged the small, independent broadcaster. Given the history of limited access to capital traditionally experienced by small companies, and especially those owned by woman and minorities, it appears that this disadvantage is virtually insurmountable.

Brian McNeill, a media investment banker, explains how the economic landscape for broadcasters has changed in recent years.

... (T)he bulk of our business used to be financing entrepreneurs in the radio and television business, but as consolidation has played itself out, most of the assets have gone into the hands of public companies, there are just quite frankly less opportunities

> *for private companies and entrepreneurs, and even less opportunities still for start ups. There's just less opportunities.... (A) much greater proportion of the stations are owned by large public companies so there's just less turnover, there's less activity, and in fact, prices have been driven up by public companies and that makes it harder for entrepreneurs to make the numbers work. So for both of those reasons there is just a lot less activity for private companies and entrepreneurs and individuals to buy assets in the media businesses. (BMcneill513, pp. 5-6)*

Mr. McNeill goes on to talk about how this change of station ownership from private to public companies has negatively affected small businesses.

> *(M)aybe I'm naïve and maybe there's a lot of prejudice and hardship that goes on at a level that I'm not aware of, but I think the world is getting pretty focused on quality and pretty color- and gender-blind. I think the difficult thing is that the structure of the industry has changed, and I think it's just really difficult now because ten years ago, there was a very small percentage of the assets in the hands of public companies. A very large [number] of the assets are [now] in the hands of public companies and that's just made doing deals a lot harder for everybody... It shifted into high gear in 1996, when they had the 1996 Deregulation Act. ... So since 1996, it's more the private and small companies [that] are disadvantaged, vis-à-vis, big and public companies. That's been a more dominant theme than minorities and women being disadvantaged. (BMcneill513, p. 25)*

Art Gilliam, an African-American radio broadcaster, explains how this shift affects access to both acquisition opportunities and capital.

> *The [large companies] can go to the market place, get funded and buy properties, they can also bid up the price because they can wait for a number of years to turn a profit. So you have a situation where they're able to obtain financing ... so that creates upward pressure in terms of pricing. So it's very difficult to find stations and to compete for financing with companies that are in that position. (AGilliam117, p. 19)*

Frank Montero, former Director of the FCC's Office of Communications Business Opportunities, talked about the change from a different perspective. Historically, he has seen that small, minority- and women-owned companies have *" ... frequently focused on the smaller markets or the medium-sized markets as opposed to the big markets because the economies are easier to maintain ..."* He remarks that initially consolidation took place in the larger, more lucrative market. He sees that changing now and notes that new entrants will have more difficulty than before. *" ... I can tell you that consolidation is definitely moving downstream as you are seeing these large companies definitely starting to inquire into the middle and I think eventually into the smaller markets. I think that doesn't bode well for new entrants, for new people coming into the marketplace. (FMontero509, pp. 10-11)*

➢ *Deregulation as a Barrier to Expansion*

For small, women- and minority-owned companies already operating as licensees, deregulation and consolidation have meant severe difficulties in growing their stations, adding to their holdings and remaining competitive. Growth of existing operations is generally a function of advertising revenue and access to working capital. Growth in holdings is a function of access to large sums of capital. With discrimination in advertising and the capital markets coupled with the effect of deregulation on national advertising practices and station prices, smaller broadcasters have virtually lost their ability to compete.

Alfredo Alonzo, a Hispanic male radio licensee, explains how deregulation has restricted the growth opportunities for small businesses.

> *You know when the FCC deregulated ownership, in '96 was it? I really feel that that hurt the small business owner because of the fact that these larger entities were able to buy literally almost all the radio stations in the big markets. And it really didn't leave a whole lot of pickings for anybody else. A case in point, in Tampa, we happen to have 2 AMs and an FM in Tampa, and if you look at Cox, Clear Channel, and CBS, between the three companies, they own like 80% of all the radio stations in the market. So it only leaves 20%. Before 1996, the most you could own was 2 AMs or 2 FMs [in each market]. And prior to that, a number of years before, the most you could own were 8 AMs and 8 FMs throughout the whole country. So I just feel that deregulation has hurt the ability of a small business entrepreneur to really grow. Because you just don't have assets available to you. These companies have grown; they set up these portfolios where they have, you know, 8 radio stations in their given market, and since they're not forced to sell because they could legally own them, they drove up the price because they were able to pay more money than the small business owner, so I really think deregulation has hurt the small businessman more than anything else. (AAlonzo377, pp. 7-8)*

Erskine Faush, a Black television station owner, told us of his recent attempt to buy a station in Birmingham, Alabama. He made an offer on the station and thought he had a deal. *"... but over the weekend something happened to that deal and one of the major companies came in with more bucks and bought it. (EFaush238, pp. 12-13)*

Even though Mr. Faush was trying to buy another station, many small broadcasters are being marginalized and often forced to sell. Mateo Camarillo, a Hispanic broadcaster, says:

> *... (A)s I mentioned to you, my preference is to look at the world with more rosy-colored glasses than looking at it half empty and being pessimistic about things. But you know, as I see things, it's a real challenge, it's difficult to see positive things with the trends, the impact of consolidation, with the market being controlled by the big guys and the impact with most minorities not being big guys, being marginalized and squeezed to the point that ... if it wasn't for their dedication and commitment to community, it [would] make life real difficult. But still their life is difficult. I see few rays of hope. (MCamarillo375, pp. 27-28)*

Tyrone Brown, an African-American communications attorney and former FCC Commissioner, understands that the need to grow or die is what is driving many small broadcasters, and largely minorities, to sell their stations. *"Well, I can't get big enough to stay in this game so I better get out now." (TBrown510, p. 11)*

Patrick Prout, an African-American radio licensee, told us why he was selling his station.

> *If one does not have a huge number of stations – at least that's my perception and it's my belief and others' – one cannot survive as a small broadcaster.... when you have to compete now that the cap is off in terms of how many stations one can own in a particular marketplace. We were actually in an LMA [Local Marketing Agreement] situation. We ended up in an LMA situation.... (T)he owners of the stations that we were LMA-ing to were selling their stations, and we decided to go in as part of the package. For one, we would get out from under this thing. Secondly, I'm still on a full-time basis trying to drive cash flow to feed my family. So I couldn't afford to – just to - put the time into this endeavor, and decided I might as well just sell it. (PProut284, p. 9)*

➢ *Economies of Size and Scale as a Barrier to Expansion*

Small, women- and minority-owned companies report their viability is being made more vulnerable due to increasingly larger consolidated competitors who enjoy natural operational advantages that smaller companies cannot match. With more stations, one has more clout with advertisers. For single-station or very small group owners, the remaining piece of the advertising pie is very small.

Additionally, larger, more well-financed broadcasters have the capital to finance station improvements, attract and retain top management and on-air talent, and purchase syndicated programming. For some, the struggle to stay competitive in today's market reality is no longer worth it.

Diane Sutter, a White former television licensee, also explains that size and scale have impacted the small licensee's ability to compete.

> *Well, the trouble with doing anything in radio is ... the monopoly game has already been played for a long time, and if you can't get 4 or 5 or 6 or 8 stations in a market I think it's very difficult to survive. I think that's already happened... for me, I don't think there's a place for me in radio right now. I mean let's face it; when Lowry Mays [Chairman of Clear Channel] is selling off a bulk of stations that if someone had bought those would have been the 3rd largest group in the country and Mel Karmizan's [CEO of CBS radio] got 180. That's not an arena in which someone like myself can compete very successful(ly)... (DSutter205, pp. 23-24)*

Dorothy Brunson paints a bleak picture for African-American-owned television stations, such as hers, over the next few years. Ms. Brunson predicts that being small, non-network-affiliated stations, struggling to get carried by cable and satellite systems and still being required to conform to the new digital television requirements, will cause all of them to be out of business in the next two years.

> *When I look at the number of African-Americans that own television stations in this country, I think there's twelve of us, if I recall correctly.... And I'm sure that in the next two years, we won't exist. There will probably be none, because certainly, it's going to be more difficult for me. As high definition comes about, I've got to find funding to do that.... (L)ike right now, because I'm not [affiliated with] one of the big four [networks], the cable and the satellite companies don't have to carry me for two years. How am I going to survive for two years? And that's happening to all of the smaller market stations, where we [African-Americans] are. Two of us are in large markets and the others are in small- to medium-sized markets.*
>
> *What's going to happen when the satellite (television) companies don't have to carry you, and that becomes as important as cable...And what happens to most carriers in the interval? For us, it's life and death. But for others, they can market because they've got the better programs. Well, you sell out. You've got to get out. There's no way you can survive, you've got to get out. So then [the station under the new owner] becomes an ABC affiliate or somebody else who can go in and lower the boom on those [satellite and cable] guys.*
>
> *And the Commission says, well go in and ... negotiate with those guys. I have not been able to get in the door. I haven't been able to get in the door of those satellite companies'. Those cable guys, I'm still fighting against the opposition from most carriers of seven to eight years ago... There's just no way that we can survive. In radio, you probably can do a little better, because you don't have the technical, you know, those hindrances. And you're not on the cutting edge, but I just don't see, I don't see many of us staying in television. I just don't see it. I talked to five to six of these people all the time. And they're scared. I mean, we can do the basics, but we can't compete with the big guys, you know, we just don't have the wherewithal. Someone said, well, why don't you all band together? But if you take a lot of little nothings and put them together, you still got a big nothing. (DBrunson105, pp. 23-24)*

➢ *Small Businesses Unprepared for Speed and Impact of Consolidation*

Mary Helen Barro, a Hispanic former radio broadcaster, shared the impact that consolidation has had on her life. She lost her stations as did some of her Hispanic colleagues. Consolidation happened too quickly for her to put into place a meaningful competitive strategy. At 61, she is "*on food stamps*" and back in college to get herself "... *a teaching credential so I can earn a living.*" She feels lucky that she did not lose everything. She knows many who did.

Patrick Prout, a Black radio licensee, asks the FCC to find some way to help the small owners, a lot of whom are minorities, compete with the larger players.

> *With the consolidation and the mega broadcasting companies today, that certainly has driven a lot of small players out of the marketplace and a lot of your African-Americans who are coming in – or minorities, period, coming in -- were the smaller players. Some sold to make money and get out. Others sold because they felt they had to. They couldn't compete. I think the FCC needs to somehow figure out how they can put an umbrella around the small players or do something to help the small players compete with the larger players. (PProut284, p. 19-20)*

➢ *The Impact on Access to Capital*

Beyond their relative disadvantage with respect to simple access to capital, small, women- and minority-owned companies perceive a diminished supply of capital available to them, resulting from structural changes and responses in the industry with consolidation, and with harmful impact on their ability to enter the industry and sustain their businesses.

Where personal resources and perhaps a bank loan used to be the cash requirements for license acquisition, ballooning station prices have necessitated access to huge sums of both debt and equity financing. Stations are now selling for millions rather than hundreds of thousands of dollars. Whereas before, banks might finance three-quarters of the cash needed to buy a stations, they are currently lending only up to approximately one-third of the purchase price for stations. The balance has to be financed with either venture capital funds or personal assets. Few people have personal assets large enough to forego the venture capital route.

Having been traditionally hampered in their efforts to acquire capital during the pre-1996 Act years, small businesses and especially minorities, are virtually precluded from gaining access to the financial wherewithal needed to be able to participate in today's consolidating broadcast marketplace.

Charles Cherry, a Black radio broadcaster, tells us that *"Consolidation sucks. ... (T)wo-thirds of the people that were in this business five years ago are now gone and [for] the people who want to stay in and grow the business there's no incentive because you can't get any help from anybody to do it. I mean, they just look at you like, you're just too small." (CCherry262, pp. 24, 28)*

Michael Carter, a White radio licensee, who benefited from high station prices when he sold his station, acknowledges that consolidation has hurt the *"little guy."*

> *Well, [raising the caps] helped me. It helped me get more money for WHB [upon the sale of the station], but it's not good for radio. What's good for Mike doesn't mean it's good*

> *for the industry . . . because a little guy like me doesn't have a chance to get in today. We really don't with these mega corporations. I don't have a chance.... You can't compete with their money. Three radio stations in Kansas City sold the other day for $113 million. I can't raise that. (MCarter230, pp. 14, 15)*

Manny Davila, a Hispanic radio broadcaster, shares the irrationality of the prices as they relate to the amount of capital a small radio operator can possibly raise for station acquisition.

> *What [does the FCC] do? Well, we're going to make it better. We're going to do a bidding process [among the buyers]. We're going to do a bidding process and make it fair for everybody. So you and I go bid for – you know, what are we going to bid? How would you like [to be] doing the cable network in New York, how about that? I want the cable network in New York. You and I go bid. What are you going to bid, girl? What am I going to bid?*
>
> *Well, I've got – damn, I've got 50 pencils here, man. And with your 25 bucks, we've got 25 bucks here. Oh, by the way, this guy just bid $10 million and he don't even know [squat] – but he's got it. You know ... come on, has it opened up for all of America? No, it's opened up for corporate America. Are we saying that maybe we should be on the corporate ladder? Yes, we should be on the corporate ladder. Have we had a chance, a real fighting chance to get on the corporate ladder? Hell, no, we haven't. Because, unless you're lucky, and actually got a station in a big market a long time ago – we don't have a chance.... I talked to a guy in San Antonio. And the guy says, well, you know, they're going to sell these stations for $40 million, two FMs that I'd like to buy, $40 million. Where is this guy going to get $40 million? (MDavila128, p. 51)*

Mary Helen Barro shared her story about how the timing of the FCC's announcement regarding the lifting of the ownership caps killed her deal to buy additional radio stations and ultimately forced her into bankruptcy. She was *"(t)wo weeks away from signing a refinancing deal that would have kept me alive and I would have ended up with 2 AM s and 2 FM s.... Two weeks away from signing my papers, the FCC announces that they're going to raise the ownership caps and this time they're going to raise them so high, ... (i)t scared my financing to death and they backed out. They said, "That's the end of small business in broadcasting." ... So my whole house of cards fell apart.... And, well, I went through bankruptcy. I lost everything. Yeah, I wasn't able to go through on the deal, I lost my FM, OK? My FM that I had on the air, I lost it." (MHBarro190, pp. 11-12)*

➢ *Impact on Cost of Capital*

Along with access to capital, cost of capital constitutes a competitive disadvantage and barrier to entry for small, women- and minority-owned companies. Large, publicly-traded companies have an advantage due to their ability to acquire debt financing at lower interest rates than can their small business counterparts; and they can use their stock as payment for station and company acquisitions.

As Diane Sutter, a White former television licensee, explains, a lower cost of capital enables the purchaser to bid a higher price than a could a competitor who had access only to more expensive money.

> *Well, if a deal is going to a broker, it's virtually an auction. And, it's very unlikely that an entrepreneur, especially in a larger market, that an entrepreneur can compete [in an auction for a station] because of his cost of money. So once you get to an auction... I couldn't compete with the public marketplace, because the cost of my money versus the cost of a Sinclair, of a River City at the time, of any of these other groups, when they have public financing, when they have public money, and their multiples, you know, they were trading [their stock on the stock market] at 15, 16, 17, 18 times multiples.*
>
> *So they could afford to pay a 14 or a 15 times multiple [that is the purchase price was a multiple of cash flow] to buy a station. And they had other stations that they had acquired earlier in a less inflationary market, so they could amortize their cost throughout and spread them throughout their stations, so an entrepreneur like myself, who had expensive money, if you will, I would bid $20 million on a station, and Sinclair would bid $23, $24 [million] because their cost of money was so much less than mine, they could afford to do that. (DSutter205, pp. 13-14)*

➢ *Competition for Revenue – the Struggle for a Proportionate Share*

Small, women- and minority-owned broadcasting businesses experience particularly acute problems in the advertising marketplace since deregulation according to existing licensees competing against much larger firms. Access to national advertisers' dollars is especially difficult and very necessary for independent station survival. This lack of access raises a huge market entry barrier for them.

Consolidation has affected not only the rates that one can get for advertising slots but also the absolute amount of dollars. Large group owners in a market can offer national advertisers packaged deals within and across markets, essentially eliminating the need for ad dollars to be spent with small, independent broadcasters. Large group owners are gaining a disproportionate percent of total market advertising dollars relative to their market share of listeners.

Benny Turner, an African-American radio broadcaster who first got into radio in 1985, explains it this way.

> *[The 1996 Act] has basically allowed for consolidation of ownership which in this market has allowed a concentration of ownership that affects the rates that we are able to get for our product, and it's basically decreased competition and has almost given ownership in this market the power to basically give their urban formats away, which is what we basically pursue. [It is very difficult to grow our station, to have it be economically viable] because we basically have been competing against [companies*

> *who] had several formats and basically what they tell the advertisers is, "If you buy our country station or rock station, we'll basically give you the urban station", and so it made it difficult for us to command a decent rate, when they were basically giving the [urban] format away. (BTurner108, pp. 10-11, 12)*

Francine Rienstra, a White radio licensee, says that *"Nowadays, because of the deregulation and the [companies] owning so many stations, we've got really four groups in this market that wield the entire ratings and wield the entire dollar. And everything else is struggling. (FRienstra360, p. 29)*

Richard Weaver-Bey, a Black radio station owner, addresses the effectiveness of having more stations to "sell" to advertisers.

> *And since consolidation we've seen an extraordinary dip in our ability to sell because you have Infinity and SFX and Clear Channel buying up five and six stations in the market, consolidating, moving all of their stations into one location, and when their salespeople go out they can sell five stations in one swoop. And so why does an advertiser need to think about a small station that's in a little corner of the market? (RWeaver-Bey171, p. 12)*

(b) Impact Upon the Public

Licensees and key market players interviewed expressed significant concern as to the impact of consolidation on the public; freedom of speech; diversity of views; and on quality of service to small, rural and minority communities, and the resulting increases in barriers to entry for small, women- and minority-owned companies. Henry Rivera, communications attorney and former FCC Commissioner, made this observation.

> *Well I think that [the lifting of the ownership caps] has hurt ... because you are seeing a consolidation of the radio industry that I don't think anybody envisioned. And you have a lot of people who were in the business who are selling out. Or people who are going up against these big conglomerates, trying to buy a station; and they can't afford the same prices because [the consolidation is] driving the prices up. So it is not a climate that induces a diversity of voices and viewpoints. Rather it's a climate that encourages consolidation and voices. So any time you've got that kind of a situation, you're going to have fewer minorities involved in the broadcast industry. It's just a, it's just the way things are. (HRivera516, p. 13)*

➢ *Loss to the Public Interest*

Erskine Faush, an African-American television licensee, spoke passionately about the obligations broadcasters assume as public trustees and the impact industry consolidation is having on diversity of opinion and voices.

Let me put it this way. I never thought I'd see in my lifetime prior to the Telecommunications Act, you know, the mega-mergers and so forth, that that much control of this industry would be in the hands of a few people. I think it has had its impact in terms of diversity of opinion, [and the] access of the community. I think it's had a profound effect.

... (W)e always understood that, as a public trustee, the community's interests, not only just your being able to have a viable entity in order to make money – and, of course, that's not a bad word at all, you know, in business. In our economy, you are either going to make money and stay in business or you don't make any and you're out. It's very simple. But by the same token you have an obligation as a licensee and public trustee to act in the public interest with those things that are going to make, hopefully, the quality of life better for people.

And we have sought to do that in every way we can, to be involved in the voice of the voiceless and to give access and be involved in those things that are going to serve the public interest. And seemingly much of that is on the back burner. In fact, we have, you know, at least in my opinion, persons who obviously have no broadcast experience, persons who are in the business... with only a profit motive. Again, I'm not saying that that's a bad idea, but it's always been our understanding from everything that we've understood coming out, that this industry had an obligation, that the airwaves belonged not to you. You are a trustee. And when you are entrusted with anything that belongs to someone else ... you have an obligation to act in their interest and not just your own.

... I think serious injury has been done, and frankly I don't know how it will ever be corrected. I think that we would have been out of business at this time, along with many others ..., except that we have a survival mentality and it's been forced upon us by generally the whole ethos of society. And given our experience, again, in coming up through the, prior to the, civil rights movement, the struggles that all of that engendered, coming from that time to where we are today – and I'm not unmindful of the tremendous strides that have been made, but I'm also keenly aware of how far it remains to go. (EFaush238, pp. 13-15)

> *Loss of Freedom of Speech*

With fewer and fewer companies owning more and more licenses, there is a real threat to freedom of speech... (Mary Helen Barro, former Hispanic radio broadcaster) (MHBarro190, p. 2)

Many licensees saw a loss of freedom of speech as a serious consequence of market consolidation. They attributed this impact to the diminishing number of small and minority-owned stations and the consolidation of broadcast properties into the hands of the few. They expressed concern that formats, news and public service programming were becoming

homogenized and less targeted to the needs of individual communities. Overwhelmingly, they worried that no one would serve the segment of the market to which they had committed themselves if they were forced to either close or sell their station.

Mary Helen Barro offered her view.

> *We little broadcasters dedicated a great deal of time and effort to community service, to public service, to informing, especially those of us in Spanish radio. We had a lot of activities to inform people about what was going on to educate them, to encourage them to become citizens, to register and vote, and become active in the process. The big corporations, they do a minimum token job of that.*
>
> *Your small broadcasters were much more dedicated to community involvement and getting people involved in the process. Your big corporations don't do that. And I think it's been a great loss to the community. And, as I say again, freedom of speech. ... You don't understand the real threat to freedom of expression that has occurred due to the FCC's policies. Not only did you shut out the little guy, you shut out the opportunity for expression. So it's not like other industries. When you're talking about broadcasting, when you're talking about media, you're talking about freedom of speech. (MHBarro190, p. 15)*

➢ *Loss of Diversity of Viewpoint*

The Commission has long since recognized that a "[d]iversity of ownership fosters [a] diversity of viewpoints,"[29] and aptly observed in its *Statement on Policy on Minority Ownership of Broadcasting Facilities* that "[a]dequate representation of minority viewpoints in programming serves not only the needs and interests of the minority community but also enriches and educates the non-minority audience....and enhances the diversified programming which is a key objective not only of the Communications Act of 1934 but also of the First Amendment." [30] The Commission's cornerstone responsibility of protecting and acting in the best interest of the public interest requires the agency to promote a diversity of viewpoints.[31] Many of the interviewees expressed concern over the loss of diversity of viewpoints.

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[29] In the Matter of 1998 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, 2000 WL 791562, FCC 00-191 (June 20, 2000).

[30] *See Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979, 981 (1978).

[31] *See Public Interest Obligations Of TV Broadcast Licenses*, Notice of Inquiry, 14 FCC Rcd. 21,633 (1999)(The Commission's "public interest standard should promote diversity over the public airwaves.").

John Tupper, a White television licensee and network affiliate, remembered a time when there was more diversity among owners of affiliate stations and the innovation that came from that diversity.

> *[You had] ideas that came from affiliates who were innovative because there was more diversity spread about in the license holding which resulted in basically better programming, new ideas being tried, et cetera. ... (W)hen you get away from that and you deal with all ideas emanating from programmers in Burbank, you get a different mix of service to the public than if you had more diversity in the ownership. (JTupper216, p. 36)*

Erskine Faush, an African-American television broadcaster who has devoted himself to responsible, informative broadcasting to his community, is proud of the contribution he has been able to make.

> *[Members of the community] know ... we are the friend that they can call, whatever they need. We have a talk program on in the mornings and so forth where we attack the issues, and have been doing it for years, of giving a voice to the community. And this is what we exist on because, as I said, we grew up in that time when we felt that that was an obligation to the community to be involved and to be the voice of those who had no voice. And I'm glad somebody is paying attention [with this study] to some of the things that's going on, you know.... I'm glad to have this opportunity, not for my sake but for the generations and things that will come along. There's a long way yet to go. And somebody needs to be picking up the mantle and running forward with it. (EFaush238 pp. 24-25)*

➢ *Loss of Community Service*

The theme of centralized broadcasting versus a local community focus emerged repeatedly throughout the interviews. Benny Turner shared that he was concerned about the local voice being lost with consolidation. *"Yes it does pose a threat and creates a greater opportunity for syndicated or centralized broadcasting away from the local community. (BTurner108, p. 14)*

Trent Boaldin, a White wireless licensee whose family owns wireless and cable systems, expressed that *"(s)erving the community is very much a driver for what we do. I mean this is a family business. I'm a third generation member of the family. (TBoaldin307, pp. 21)*

Mateo Camarillo, a Hispanic radio licensee, expressed concern that large corporations are more interested in serving their shareholders than they are in serving the communities from which their audience come.

> *And I really believe that ownership has a lot to do with the end product, whether you're talking about voice, service to the community, truly fulfilling the public trusteeship that you have in that license, to serve all of the public that's in your community, because you*

> *know a corporation in New York City doesn't have the same [interests], the shareholders are interested in a profit, and they may not be as interested in serving the neighborhood in Barrio Logan. (MCamarillo375, p. 28)*

Manny Davila, another Hispanic radio broadcaster, got into radio to serve his community.

> *We're the last independent(ly) owned station in San Antonio, and we're the last radio station that somebody can come into off the street with a tape that he recorded in his garage and we will play the damn song... And so you're talking about guys that got into radio when the FCC basically said that this is a community thing, and you're supposed to help the community. And we said, you know, that's the kind of jobs that we want, and in the meanwhile we might even make some money, because it was never the money that motivated us. (MDavila128, pp. 21-22.)*

Others, such as Richard Weaver-Bey, an African-American, discussed their discomfort with selling their stations believing that there will no longer be a voice of the community it serves when the station is gone.

> *Diversity of voices and views is a pillar of our democracy.... So right now we're looking at selling the station, and I really am not comfortable having to do that because I understand how strongly the station is needed in the community and that it is the voice of our community. (RWeaver-Bey171, p. 8, 14)*

Johnny Shaw, who with his wife, Opal, owns a radio station, feels an obligation to serve his African-American community. His commitment was expressed this way.

> *"... (I)t goes back to the service that we provide for the community. And I feel that I'm obligated, because this window of opportunity [to acquire a station] was open for us, to do this. To me, when we acquired that license from the FCC, it's kind of like we married the community, and we agreed that we would serve the community. I think when you sell, again, to the larger companies, I think you are selling your community out, because the larger companies are only going to focus on advertising dollars. They are not going to care about announcing the PTA meeting of the night. Do you know what I'm saying? . . . and I'm sure in talking to me you can tell I'm big on this idea of serving the community, being in the community, being a part of the community. (JShaw185, p. 22, 31)*

➢ *Loss to Minority Communities*

Minority licensees especially felt their commitment to their respective communities - to keep them informed, to empower them, to report on current events from the perspective of those whom the events would most impact.

Mateo Camarillo, a Hispanic radio licensee, was one such broadcaster.

> *I'm an immigrant and ... I've always identified with the Hispanic community; and my first discipline is social [work]. I have a Masters in social work. I started a school of social work to train Hispanics to work with the Hispanic community. So I'm very committed to the community that I grew up in that I feel obligated to pay back and develop that community. And one of the things that is very obvious is that it doesn't have the required resources or tools to be able to develop.*
>
> *One of the commitments I have made to myself is to help empower the Hispanic community to be at least on equal footing and one of the issues is information. And information is not readily available. The closest thing to information are papers that come out once a month or every 2 weeks, or whatever; it's not real-time information. So by the time you learn about an opportunity, whether it's a job application, or a request for a proposal, the deadline has passed. The opportunity [has passed]. So that is knowledge, such as that the City Council is meeting to decide the fate of something important to you or the school board is going to decide about the quality of education for your kid. You know you don't get the information when you need it. So I had always wanted to help get real time information so that people can be more efficient and effective in trying to do things that impact their life. (MCamarillo375, p. 8)*

William Saunders, and African-American, entered broadcasting because he wanted to make sure that the news about his community was reported accurately and completely. *"And every time that we did something, when it would end up on the radio and TV and the newspaper, it was different from what we did. And I felt that there had to be a way that we could tell people what we were about, the truth about the whole situation, and that basically is how I got involved."*

Many participants discussed how the perspective of the speaker affects the nature of what is spoken. Mr. Saunders highlighted that point.

> *The information that people need, they normally get it from a certain source; and then they get it better if it's presented by the source that also [is] impacted by that kind of information. So I think that that's the driving force and I think that's what the original Telecommunications Act was about in 1934, was to really be able to serve the community. (WSaunders163, pp. 15-16)*

Mr. Saunders adds, "... *(W)e really like to do the kind of programs that work for our community. I would like to see a program that ... could deal with having a teacher of the 3rd grade coming in on the afternoon just for kids to do homework. And to be able to have that kind of program sponsored by somebody. I think that is important. (WSaunders163, pp. 10-11)*

6. FCC Actions/ Inaction and Discriminatory Effects

Since the enactment of the Communications Act of 1934, the FCC has regulated the allocation methods and use of the radio spectrum. The FCC has used three primary methods to allocate a license when two or more mutually exclusive applicants have applied:

1) Comparative Hearings: An FCC proceeding, presided over by an Administrative Law Judge (ALJ), to determine, which broadcast applicant was 'best qualified' to hold the license. The 1965 Policy Statement on Broadcast Comparative Hearings defined the two primary objectives of comparative hearings to be: first, 'the best practicable service to the public' and second, 'maximum diffusion of control of the media for mass communications.' See Policy Statement on Broadcast Comparative Hearings, 1 F.C.C. 2d 393 (1965). The FCC provided seven criteria to the Administrative Law Judges (ALJs) upon which they should decide the comparative merit of the competing applicants:

   (i) Diversification of control of the media of mass communications;
   (ii) Full-time participation in station operation by owners;
   (iii) Proposed program service;
   (iv) Past broadcast record;
   (v) Efficient use of frequency;
   (vi) Character; and
   (vii) Other factors.

   In 1978, the FCC observed a continuation of an extreme disparity between the representation of minorities in our population and in the broadcasting industry and issued the Statement of Policy on Minority Ownership of Broadcasting Facilities, which formalized the use of minority and gender credits in comparative hearings. 68 F.C.C. 2d 979, 982 (1978). The FCC extended the credit to women owners in Mid-Florida Television Corp., 70 F.C.C.2d 281 (Rev. Bd. 1978), set aside on other grounds, 87 F.C.C. 2d 203 (1981). In 1992, the D.C. Circuit held that the FCC's use of gender integration as a "plus factor" in comparative hearings was unconstitutional. In 1993, the DC Circuit held that the integration credit of the FCC's comparative hearing criteria was arbitrary and capricious. Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993). In 1994, as a consequence of the Bechtel decision, the FCC suspended all active comparative hearings. In 1995, the Supreme Court held that any federal program that uses racial or ethnic criteria as a basis for decision making must serve a compelling governmental interest such as remedying past discrimination and must be narrowly tailored to serve that interest. Adarand v. Pena, 515 U.S. 200 (1995);

2) Lotteries: In 1982, Congress enacted Section 309(i) of the Communications Act of 1934 to allow the FCC to select licensees by random selection. 47 U.S.C. §309(i). Section 309(i) also required the FCC to establish incentives, rules and procedures ensuring a "significant preference" for minority-controlled applicants in awarding