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SUMMARY

Some commenters in this proceeding—invoking the public interest to cloak what really is *self-interest*—have once again advanced familiar false claims regarding Clear Channel. Those myths could not be further from reality. There is no “national playlist” at Clear Channel. Our programming decisions, including playlists at our music-intensive stations, are made locally by our station managers, air talent and program directors in individual markets across the country—people who are part of their communities and charged with being responsive to local needs and tastes. Our lack of ties to independent promoters and our extensive record of finding and nurturing new artists belie any claim that local communities have lost access to emerging musicians and local genres. And our local programmers’ use of voice-tracking technology on a limited basis to facilitate high-quality, ubiquitous radio service supports the overarching mandate of our stations to satisfy the distinct tastes and demands of the local markets they serve.

The overwhelming evidence presented by Clear Channel and other broadcasters in this proceeding exposes the false assertions of a small but vocal minority that localism is in need of repair. The Commission did the right thing for the right reasons more than twenty years ago, when it abandoned burdensome regulations in favor of a flexible approach that empowered consumers in the radio and television industries. The record shows beyond doubt that there is no reason to change course. A marketplace more intensely competitive than ever is driving broadcasters to serve their local communities in increasingly numerous and innovative ways.

cuts by the record labels and a perception by many that labels are overly focused on the bottom line and inadequate in the nurturing and development of new talent.²

Frequently, the commenters that are so eager to attack Clear Channel simply refuse to let facts stand in the way of their carefully spun, fanciful arguments. For example, the comments of a large coalition of consumer groups allege that “unduly powerful, highly consolidated corporations” engaged in the “suppression of information, or biased presentation of information.”³ As their prime example, they focus on Clear Channel and assert that when the lead singer for the country music group The Dixie Chicks protested the invasion of Iraq, “Clear Channel unceremoniously deleted the group from the playlists” on all of its stations.⁴ That is a false statement that we have repeatedly and publicly refuted. The fact is that the remarks by the Dixie Chicks proved extremely unpopular with many radio listeners, especially among listeners to country stations. Many listeners called and demanded that stations stop playing Dixie Chicks recordings altogether. As a result of listener feedback and demands, Dixie Chicks airplay on *all* radio stations in the U.S. declined an average of 44% in the two weeks following the remark. Clear Channel was no different in receiving these complaints and demands from its local listeners. While the company never instructed any of its stations how to respond, local program directors take their cues from listeners when deciding what music to put on the air. Because of the overwhelming negative reaction from listeners, many of our radio program directors—at the local level—chose to decrease airplay of the band. The decreased airplay on Clear Channel stations, however, according to Mediabase, a radio monitoring company, was three points *less* than the industry average, and *18 to 33 points less* than the top ten station owners. In fact, in the

² *Id.*

³ Comments of the Brennan Center for Justice, *et al.*, at 26.

⁴ *Id.* at 27.

two-week period following the London concert remarks, Clear Channel stations played Dixie Chicks songs *more than 10,000 times*.

The decisions about playing the Dixie Chicks were no different than any others made about airplay at local Clear Channel stations every day. The decisions are properly made locally by program directors based in the communities we serve, whose main goal is to deliver listeners in their local communities the programming and music they want to hear. In this case, listeners spoke loud and clear about their preferences. Had some commenters bothered to perform even the most basic of research on this issue, they would have found the comments of the Dixie Chicks' *own manager*, Simon Renshaw, at a July 8, 2003 Senate Commerce Committee hearing, where he said that Clear Channel was "get[ting] a bad rap" on its handling of the Dixie Chicks incident. Mr. Renshaw stated:

In the case of the Dixie Chicks, there was a situation where . . . one would have thought . . . that they would have been the very first people to turn around and issue some sort of ban. In fact, exactly the opposite was true. They went out and were very proactive at a local level with all of their stations in trying to make sure that people did act on a local basis and did take into consideration what the local market was demanding. But there was nothing done at a corporate level with them.⁵

Another example of the frequently shaky factual foundation on which some critics stand is an allegation in AFTRA's comments that Clear Channel's actions have caused the loss of jobs at the St. Louis radio station KIHT.⁶ Again, had the commenter bothered to check, it would have found that KIHT is a station that Clear Channel does not even own. Assertions like this go a long way toward illustrating that so many of the allegations leveled against us by our critics are

⁵ Transcript of Hearing on Radio Ownership, Before the Committee on Commerce, Science, and Transportation, United States Senate (July 8, 2003), at 82.

⁶ See Comments of the American Federation of Television and Radio Artists and the American Federation of Musicians (collectively "AFTRA Comments") at 16 n.11.

full of carefully honed rhetoric but short on reality. Below, we again address some of the more common myths.

A. Clear Channel Has No National Playlists; It Is Committed to Locally-Based Programming and Program Decisionmaking

1. The "National Playlist" Myth

Some commenters continue to propound the myth that there is a “national playlist” at Clear Channel.⁷ The allegation is just that—a myth. As noted in our initial comments, our programming decisions are made locally by our station managers, air talent and some 900 program directors in individual markets across the country. These people are members of their communities. They know the issues about which their audiences are concerned, and they must be responsive to the needs and tastes of the people they serve in order to succeed in the market. Programming decisions at Clear Channel stations are made at the ground level.

Our commitment to local programming extends to the development of playlists on our music stations. Playlists at our stations are created by local program directors without any involvement at the corporate level. The process is different in each market and for each station. That is the only proper way to address the divergent interests and preferences of listeners in our local markets, no two of which are alike.

In developing playlists, Clear Channel program and music directors rely on an array of resources. Each music-intensive station has its own budget for local music research. A given station typically will perform one or both of two primary types of research: local telephone surveys and auditorium music testing. In local telephone surveys, a station customarily first conducts “station preference” interviews—essentially miniature ratings surveys that collect information regarding the stations to which respondents listen. These are followed by periodic telephone music preference surveys, or “call-out tests,” in which participants listen to brief

⁷ See AFTRA Comments at 17-18; Comments of the Recording Industry Association of America, Inc., at 2-3.

excerpts of songs and rate each on a scale ranging from “unfamiliar” to “favorite.” Depending on the station, call-out tests are conducted, on average, anywhere from once a month to once a week. They are conducted particularly frequently at stations that play predominately new music (*i.e.*, hit music and rock stations).

Stations may also conduct auditorium music testing, or “AMT.” In this type of research, a sample of respondents is selected via telephone interviews similar to the “station preference” calls described above. Qualifying respondents are then invited to an auditorium, where their music preferences are tested in person rather than over the telephone. In contrast to audience call-out (which may test up to 40 songs in a given call), AMT tests present more titles (typically several hundred), require a longer period of time (several hours), and are conducted once or twice a year. Auditorium testing is particularly prevalent among stations that play “older” music (such as classic rock and “light” adult contemporary).

Today’s listening audience is tremendously fragmented due to the sheer number of terrestrial radio stations, satellite radio, cable radio and Internet competitors, and varying formats within a market. This makes market research a multifaceted and essential task for local radio stations. Finding out who is listening and what they like to listen to is of vital import to our radio stations in developing playlists that are appealing to the local community audiences they serve. Clear Channel music stations collectively invest millions of dollars a year on music research. Overall, our stations invest upward of \$70 million dollars a year on a wide variety of research tools to assist PDs in creating programming content that will attract listeners and maintain their satisfaction. Included in that figure is an aggregate \$10 million in 2004 for callout music research (over 400,000 calls), audience research (over 1.7 million calls), and auditorium testing (tens of thousands of respondents). Our radio stations also spend millions of local dollars conducting in-depth perceptual studies, examining listener perceptions of every element of a

market's radio stations. To complete our research, over 26 million telephone contacts are made per year.

Regardless of the market, these types of research methods act as important supplementary tools that Clear Channel program and music directors may use as indicators of what their local audiences like. In addition to these important types of research methods, our local station PDs and MDs also rely on a myriad of additional information—including listener requests and Internet feedback, sales of records in local stores, particular local interest in artists, and national airplay charts from independent sources such as *Billboard* and *Radio & Records*—to develop their station playlists. And above all, in every market, there is the knowledge, experience and intuition of our local program directors and music directors, who live in the communities they serve and know their audiences. These people make the playlist decisions, and it is up to them to decide which research tools to choose and in what proportion. Indeed, while our large-market stations may invest heavily in structured music research such as audience call-out and auditorium testing, it is not unusual for our stations in smaller markets (Anchorage, Alaska, for example) to rely more heavily on factors such as local retail sales, listener requests and the old-fashioned “golden gut” of its program and music directors, gained in years of interaction with the community.

Regardless of the playlist selection process in a given market or at a given station, one thing can be said for certain: the process is not alike for any two Clear Channel stations. Music selection is the responsibility of each local programmer. The result of this localized creation of individual station playlists means that similarly formatted stations can have vastly different numbers of spins of the same song. For example, during the same recent week, WRVQ, an adult contemporary station in Richmond, VA, played Mary J. Blige's song *Rainy Dayz* zero times while the same song received forty-four spins during the same time on our Dayton, OH adult

contemporary station, WDKF. The reality is that local Clear Channel stations spend vast amounts of time and resources researching what their local communities want to hear. The idea of a “national playlist” at Clear Channel could not be farther from the truth.

2. Clear Channel Broadcast Stations Provide Their Communities with Relevant, Popular Local Programming

In the course of bemoaning the supposedly diminished quantity and quality of local news on broadcast stations, AFTRA makes several statements regarding Clear Channel stations. One such statement regards WNUA in Chicago, where AFTRA alleges Clear Channel “recently terminated [its] remaining news personnel, leaving virtually all the radio stations in the Chicago market now reliant upon Shadow/Metro for the delivery of news product.”⁸ The reality is this: while WNUA’s local news originated from Metro for a time under prior station ownership, that situation changed once we acquired the station. For the past three years, WNUA has had its own news host, who provides locally originated news written by the news director for sister station WLIT. WNUA has its own local traffic reporters (from Clear Channel Traffic/Chicago) and is a local member of The Associated Press. More generally, nearly all of WNUA’s programming (including the Ramsey Lewis morning show) is locally originated, and all of the station’s air talent are locally based. WNUA has won *Radio & Records*’ Smooth Jazz Station of the Year award for the past seven years. This year, it was also honored with a Marconi Award for Smooth Jazz Station of the Year. Clearly, WNUA is a leader in the industry.

Regarding our radio stations in the New York City market, AFTRA claims that Clear Channel has “fired each of [the stations’] public affairs directors and has virtually eliminated public affairs programming from all of its channels.”⁹ Here again, reality stands in stark contrast to these allegations. Clear Channel’s local stations in the New York market are focused on their

⁸ AFTRA Comments at 8 n.3.

⁹ *Id.* at 14.

local communities, and their programming reflects this focus. For example, WHTZ (Z100) airs a weekly one-hour public affairs show, "Weekend Update," with its public affairs director, John Bell. "Weekend Update" is a unique interview program that deals with topics of community interest determined through interviews with leaders, service organizations, and individual residents of the community. The program is designed to provide useful information to people living in the New York area, often providing direction and advice on issues including transportation, child abuse, child care, and welfare. Agencies and organizations that participate in the program educate listeners on legislation and public service programs available in the area. Mr. Bell also presents PSAs regularly on the station's morning show. Additionally, Z100 regularly supports numerous local charities through public service announcements and fundraising, such as Musicians on Call at Jingle Ball.

Another of our New York stations, WWPR-FM (Power), features a weekly one-hour public affairs program, "Keep Hope Alive," hosted by the Rev. Jesse Jackson, as well as public service announcements every weekday. WKTU locally produces "Inter-Faith Connection," hosted by the Rev. Ben Gums, for one hour each week. It airs an average of 45 live and local PSAs each week and is involved in charity events such as softball games, basketball games, walks, and dinners throughout the year.

In addition, WAXQ (Q104) airs "Radio Health Journal" for one half hour weekly, providing free general health advice and a topical education for listeners who may not otherwise have access to such information. Issues covered range from patients' rights to children's health to elderly care. While a syndicated program, "Radio Health Journal" becomes local on occasions when it features a local expert on health issues. For example, Q104 recently recorded a "Radio Health Journal" segment with a local Westchester doctor who is an expert on weight control.

WLTW broadcasts a weekly 30-minute public affairs show, "Spot Lite on New York," which highlights topics that are useful to groups of listeners that may often be overlooked. Recent programs have explained how Medicare recipients may gain access to prescription discount programs and how people with disabilities can prepare themselves for employment. The station also broadcasts sermons from the Riverside Church every Sunday, providing a service to those who are unable to attend worship services. Moreover, since 1992 WLTW's public service director, Morgan Prue, has regularly attended meetings of a regional broadcasters' organization that focus on issues important to the local community. The station airs an average of 63 live and local PSAs each week and regularly supports a number of charities. WLTW was the main New York City media sponsor of the Susan B. Komen Race for the Cure, to which it donated \$550,000 worth of airtime.

WALK airs a half-hour weekly public affairs program, "Island Assignment," as well as one public service announcement every hour between 10:00 a.m. and 4:00 p.m. "Island Assignment" gives Long Island listeners an opportunity to discuss issues affecting their community and develops topics for the show in a collaborative way by inviting listeners to submit their concerns for show topics on the station's website. Recent subjects have included the rising rate of breast cancer on Long Island, local school programs, and government policy. The station also has an "Ask the Vet" feature once a month, where listeners may call in and receive health advice for their pets.

Indeed, the bleak picture of declining localism that some commenters attempt to paint is simply fanciful from our perspective. Clear Channel's stations bind themselves to and serve their local communities everywhere they are located and in many different ways, both on and off the air. Charitable and community organizations in our markets agree. In Alaska, for example,

the state District Manager for the American Diabetes Association had this to say about our efforts on behalf of the organization:

Clear Channel has supported the American Diabetes Association in their quest for a cure for the past 18 years. Not only sponsoring fundraising events, but also in our effort to alert the community to the dangers of diabetes, [and] the educational opportunities offered by American Diabetes. Their staff has a genuine interest in our mission, "to prevent and cure diabetes and to improve the lives of all people affected by diabetes."

And the local Children's Hospital at Providence in Anchorage praises our Anchorage radio stations:

The Children's Hospital at Providence is extremely grateful for the ongoing and incredibly generous support it receives from Clear Channel in Anchorage. Every station has been involved at some level helping our local Children's Hospital. Public service announcements and web site promotion for upcoming fundraisers and projects have been immeasurably beneficial. KASH Country 107.5 FM broadcasts an annual three-day live radiothon that has generated more than \$200,000 in donations in the past four years. Magic 98.9 FM has been actively involved in many programs benefiting the Children's Hospital, including co-hosting our annual telethon for ten years! The Children's Hospital at Providence and the thousands of children and families it serves are very blessed to have Clear Channel radio in Anchorage as a close corporate friend.

Over the recent holiday season, our Phoenix, Arizona, radio stations sponsored and partnered with community organizations in connection with a wide variety of local charitable activities. Using the airwaves to effectuate positive change, KFYZ aired "12 Days of Christmas," a 12-day series of on-air feature stories and interviews profiling a local charity daily (including an all-day website auction benefiting that charity). Not to be outdone, our Phoenix sports station KGME-AM aired the "XTRA Sports Miracle on 20th Street," in which personalities conducted on-air auctions of sports memorabilia and other items with all proceeds going to Phoenix Children's Hospital. In addition, our Phoenix country station, KNIX, showcased the "Tim & Willy/KNIX Christmas Breakfast Show at Night," featuring skits, songs and holiday music from

KNIX air staff and national country acts, all to benefit a children's foundation. Finally, the station staff at KISS-FM conducted the "KISS for Kids Holiday Drive," where they "hit the streets" to collect clothing, school supplies, and other items to assist underprivileged children. The commitment of our Phoenix stations to their community extends beyond the holiday season. Indeed, just last year, the stations were recognized with the Media Award from the Maricopa County District Attorney for their work over the past year on the Drug Free AZ program.

In Midland-Odessa, Texas, our radio stations participated in no less than 22 community events during 2004—ranging from the "Great Texas Trash Off Day" to a Black History Month fundraiser and a Tex-Mex Cookoff benefiting the Midland Hispanic Chamber of Commerce. Our Midland-Odessa market manager is a member of the local Board of Directors of the American Red Cross, the March of Dimes, the Hispanic Cultural Center of Midland, the Black Chamber of Commerce, the Permian Basis Ad Foundation, and Casa De Amigos. In Midland-Odessa, as in the other markets we serve, local management involvement in the community results in a commitment by our stations to local public service.

Clear Channel stations often find innovative ways to interact with the communities where they operate. For example, the morning show at WKDW(AM), Staunton, Virginia, features "Wednesday's Weather Kid," an elementary or middle school student chosen weekly to provide a taped introduction to the station's morning drive weather forecasts. In addition, WKDW hosts a "Meet the KJ" day at local elementary schools, where the morning show hosts visit schools and record children reciting the Pledge of Allegiance, which is aired the following week. This is just a small sampling of WKDW's involvement in the community. From working with St. Jude Children's Hospital, to raising money for the local Habitat for Humanity, to sponsoring the "Five Star A-Honor Roll," the station enriches the lives of many, including children, in the community of Staunton.

These examples are merely a few samples of the positive presence of our stations all across the nation. Clear Channel stations are making a difference in the communities where they operate. And our stations' connection to the needs and concerns of the communities they serve obviously manifests itself in programming that meets those needs. Nationwide, for example, since March 2003 Clear Channel stations have contributed over \$4.1 million in radio and out-of-home public service announcements for the American Red Cross.¹⁰ Beyond its PSA offerings, we work with the Red Cross on an ongoing basis to ensure that our local stations are able to mobilize immediately and communicate effectively during hurricanes, floods, and other disasters. This was never more apparent than in our efforts following 2004's hurricane chain in Florida, which were discussed in detail in our initial comments.¹¹

Indeed, our stations continually serve their local communities in times of disaster or emergency. As just another recent example, on a Sunday afternoon in December Clear Channel's Youngstown, Ohio, news staff hustled to provide on-the-spot coverage of a major traffic accident on Interstate 80 near Youngstown. Our Youngstown news director proceeded to the accident triage site and interviewed a first responder, a Cleveland trauma surgeon who was traveling at the time of the accident. The Youngstown stations aired continuous updates from the scene throughout the day, even breaking into a broadcast of a Cleveland Browns football game.

Clear Channel's decentralized structure, which ensures that programming decisions are made at the ground level by programmers connected to the communities they serve, allows programming to be tailored to respond to each market's individual needs. In Fairbanks, Alaska, for example, Clear Channel television station KTVM carries school bus reports every half hour between 7:00 and 9:00 a.m. These reports advise parents whether local school buses are running

¹⁰ See Exhibit A hereto (letter to Ms. Diane Dalton Warren, Clear Channel's Senior Vice President, Communication, from Darren Irby, Vice President, Public Relations, American Red Cross).

¹¹ See Clear Channel Comments at 26-27.

on time, so that parents can keep their children waiting a while longer inside, away from the cold Alaska temperatures, if buses are running late. While this may not seem earth-shattering, to our viewers it is important, timely information that helps keep children safe. Moreover, in Fairbanks there is a unique focus on military information. Fairbanks is home to two military installations (Fort Wainwright and nearby Eielson Air Force Base), so KTVF has responded with a military report twice a week. The reports cover topics selected by the military, such as a new piece of equipment that has arrived on base or a new program being offered to soldiers. A former base commander at Fort Wainwright advised KTVF that, so far as he knew, the station's military report was the only regularly scheduled program of its kind in the country.

In the small market of Dalton, Georgia, our radio stations air a weekly public affairs program entitled "Clear Perspectives," which is produced in partnership with the Dalton-Whitfield Chamber of Commerce. The stations recently received a letter from a recent program guest, a director at the Dalton-Whitfield Senior Center. The letter recounted the following story:

Two weeks ago a woman came in to the Center and asked to speak to me directly about our programs and asked for a tour of our facilities. I was very happy to oblige her. She then proceeded to tell me as we walked around the Center that her [m]other, whom she had been caring for, had passed away two weeks prior to this visit to the Senior Center. She then said that her son had also recently "left the nest" and she had been at a loss as to what to do with herself.

This woman stated that she had her alarm clock radio set to your station. The first thing she heard at 7:30 that morning was "our" radio show about the purpose and activities here at the Dalton-Whitfield Senior Center. She told me that she had her answer and that was why she was here to see me that day.

Clear Channel's public affairs teams constantly look for new, attractive ways to cover issues important to local listeners. As just one example, on December 12, 2004, four of our radio stations in the Washington, D.C. market provided a live broadcast of a D.C. town hall meeting covering the critical and relevant topic of teen driving fatalities, sponsored by the Metropolitan

Washington Council of Governments (MWCG). Attended by legislators, teens and activists, the event addressed the fact that seventeen young adults had been killed in auto accidents in the D.C. area in the last ten weeks alone. Our Washington staff initiated, organized and researched the event, bringing in ten panelists and the MWCG as a partner. During the forum, panelists could hear the radio broadcasts, allowing real time interaction among radio listeners, concerned callers, panelists and the audience. These types of events are scheduled quarterly in the D.C. market. Jerry Phillips, our Washington, D.C. public affairs director and one of the forum organizers, said recent teen driving fatalities are "a very important topic that affects a lot of people in our community and we knew that we had to spread the word." Clearly, our stations take seriously their role as local broadcasters helping to educate local communities.

Likewise, our television stations tailor their programming to the local audiences they serve. Just last summer, the UPN television network debuted a new program called "Amish in the City," which features five Amish teens living in a Hollywood Hills home with six non-Amish teens. This subject matter was of particular interest to Clear Channel Television's Harrisburg-Lancaster station manager, who oversees Clear Channel's programming of the UPN affiliate in the heart of Amish country. The station manager created somewhat of a stir by refusing to air the program until he was given an opportunity to view it, out of concern as to how the Amish community would be portrayed in the program. Rather than airing the program on its premiere night, our Harrisburg-Lancaster management instead taped the program and screened it before a local audience that included educators from three Lancaster-area universities, the local press, and two local ad agencies.¹² After a thoughtful discussion with local community leaders, the program was aired later that week. This event is just one example of the ways in which Clear

¹² See "At the Center of the 'Amish' Dust-Up," *Media Life*, Jul. 27, 2004.

Channel local programming personnel strive to meet the needs of specific, often underserved, populations in their communities.

Clear Channel's system of locally based program decisionmaking facilitates the development of targeted and relevant programming. For example, in Houston Clear Channel recently introduced a new bilingual format called "Hurban/CHR." This format, featuring music in Spanish and spoken content in "Spanglish" (a combination of English and Spanish), combines Spanish Hip-Hop, Reggaeton and Pop/Dance Music. It fills a void for the nearly half of U.S. Hispanic youth who prefer upbeat, rhythmic music but until now could only listen to American Hip-Hop. Similarly, Clear Channel television stations in Bakersfield, California and Cincinnati, Ohio have introduced Spanish newscasts to their markets for the first time. This type of sensitivity to unique segments of a station's audience is possible only when management is part of and attuned to the local community.

And Clear Channel stations continue to enhance local news offerings, including political and election coverage. For example, Clear Channel Television's twenty newsrooms across the country were impressive in their support of the 2004 presidential election by providing free airtime to candidates, comprehensive local coverage, candidate debates, and extensive web services. Our television stations' recently-concluded Election Initiative (discussed in our initial comments) provided 1,255 free minutes of air time to 216 political candidates at a value of \$1.2 million. These five-minute segments, rolled back-to-back, would result in a program more than 21 hours long! And that would represent only the time aired on television—many of our newsrooms also streamed these segments to their CCTVi websites, where they could be viewed at will by our web users. Our television stations also aired a number of candidate debates, with local program directors making independent decisions regarding their format and organization. For example, the debates hosted by a Clear Channel station in Salt Lake City included

“aggressive exchanges” and the opportunity for candidates to clarify what each considered distortions of their records in their opponents’ advertising. Whether free candidate segments, debates, “poll patrols,” extensive web coverage, “truth squads,” or town hall meetings, the impact of political coverage by our local television stations was substantial in their local communities.

Another measure of Clear Channel’s commitment to localism is its long-term decision to increase local daily news. Within the past year alone, six Clear Channel television stations have hired additional staff, made substantial capital investments, and debuted either additional or, in four cases, first-ever newscasts. On the radio side, our stations likewise reflect a commitment to covering local news and issues of local concern. WBCK(AM), Battle Creek, Michigan’s “Hotline with Chris Simmons,” airing weekdays from 9:00-10:00 a.m., has recently featured candidates for state representative, state Attorney General, county commissioner, county treasurer, and local prosecutor. WMT(AM), Cedar Rapids, Iowa, features the local “Tim Boyle Show” weekdays from 10:00 a.m. to 1:00 p.m. and the “Bob Bruce Radio Experience,” aired from Des Moines and regularly featuring elected officials, weekdays from 4:00-7:00 p.m. WLW(AM), Cincinnati, Ohio, airs local news/talk programs from 5:00 a.m to 3:00 p.m. every weekday, with recent guests including Jimmy Carter, John McCain, Donald Rumsfeld, Tom Ridge, Howard Dean, and Congressman Bob Portman. The morning show at WAEB(AM), Allentown, Pennsylvania, features frequent political coverage and a call-in format allowing listeners to discuss local issues on-air.

Clear Channel’s commitment to providing the best news and information to our listeners was reinforced once again last month, when our radio division signed a deal with FOX News Radio. The new agreement is two-pronged. First, it creates a two-way street for news gathering and sharing. Local stories reported and produced by our news reporters throughout the nation

will be made available to and distributed throughout the national FOX News network. Second, the agreement provides Clear Channel's local program directors a new choice among radio network news sources. Local management for each of our stations has always made its own decisions with respect to national news sources. With the FOX agreement in place, when a station's individual contract with its current network news provider expires, the local program director will have the option of renewing its current contract or choosing from a newly expanded menu of network options. Regardless of which national network is chosen by local management, national radio feeds are only one of the many news sources utilized by our stations. Our stations also rely on local Clear Channel reporters, the Clear Channel News Wire Service, the Associated Press wire services, and the myriad news sources available on the Internet.

These are just a few additional examples of the many ways in which Clear Channel and other broadcasters are responding to the needs of their communities more than ever before. The record of these efforts overwhelms the arguments of some commenters that localism in broadcasting should be achieved via government fiat.

B. Clear Channel Has Cut Ties With Independent Promoters and Is Dedicated to Discovering and Fostering New Music Artists

We have already discussed our commitment to playing the music that our local listeners want to hear. That commitment is manifested, among other things, in our lack of ties with independent record promoters and our ongoing efforts, both company-wide and in our local markets, to locate and nurture up and coming artists. Yet some commenters persist in claiming that pervasive independent promoter relationships foster a system where new artist airplay is based on financial consideration, and that local communities have lost access to new and local

artists and genres.¹³ Again, from an objective viewpoint, these assertions are divorced from the reality of our business.

As noted in our initial comments, we severed all relationships with independent promoters to avoid even the appearance that our music programming decisions might be based on anything other than the demands and tastes of our stations' local audiences. Infinity Radio and Entercom followed our lead and recently dropped their ties to independent promoters.¹⁴ This is strikingly clear evidence that the marketplace can and will resolve its own issues without the necessity of government intervention.

With respect to the development of new artists, the proof is in the facts. Our initial comments discussed, for example: the introduction of hip-hop artist Nelly by a Clear Channel station in St. Louis; Clear Channel's conduct and promotion of the regional competitions for "Nashville Star," the country radio version of "American Idol"; and our New Music Network, an online promotional resource for unsigned artists. Our initial comments also pointed out programming in our local markets that showcases entertainers with a more limited, regional appeal, such as KAJA, San Antonio's popular "Texas Music" show "The Other Side of KJ," "Studio C Local Edition" on KBCO, Denver, and "Local Lix" on DC101 in Washington, D.C.

Here are some additional facts:

- The Clear Channel New Music Network has doubled the number of acts featured in the past twelve months. It recently received its 20,000th uploaded song.
- In conjunction with a major record label, Clear Channel created the "Radio Star" talent search competition. The competition provided hundreds of unsigned artists and bands with a national platform and the chance for local artists to connect with record label executives and a national audience. The winner received a \$50,000 cash prize, a guaranteed opening spot at two major Clear Channel concert events, and an option for management representation by a major artist representation agency. Clear Channel

¹³ See AFTRA Comments at 18-25; Comments of the Brennan Center for Justice, *et al.*, at 25; Comments of the Recording Industry Association of American, Inc., at 4-5.

¹⁴ See Phyliss Stark, "Indies: We've Got Legit Role," *Billboard* (Dec. 18, 2004).

stations in small and large markets across the country used their community ties to find local artists for the contest. Seventy of our stations aired the weekly broadcasts of the competition. The 2004 "Radio Star" winner, Natalie Loftin, released her first single on the Epic Records label.

- Clear Channel's WAXQ(FM), New York, airs "Out of the Box," a Sunday night program featuring the best in new music and local undiscovered artists. "Out of the Box" is currently New York's most popular new music show.
- Clear Channel's KTCL in Denver recently launched the recording careers of two local bands. Recognizing the national hit potential of Love .45 and The Fray, KTCL committed to playing their songs regularly alongside music from national, signed acts during prime listening hours. As a result, Love .45 was signed to a recording contract with Rock Ridge Music and released their major label debut via Sixthman/ADA in November, exceeding album sales expectations. The Fray also signed with Epic Records, and its debut will be released in the Summer or Fall of 2005.
- Clear Channel's WJLB, Detroit, airs a number of new music features throughout the week. "DDT's New Music Report," airing on Tuesday and Wednesday mornings, features a song from a local artist and an interview with that artist. The station takes comments on the song from listeners. "Detroit's Unsigned Hype" airs Monday through Thursday mornings, featuring a song from a local artist. "What's Next on the Menu" is a weekly one-hour program with songs from local artists, interviews with the artists, and tips for entering and staying in the music industry.¹⁵
- Clear Channel's Cities 97 in Minneapolis features a weekly one-hour show for new artists called "Minnesota Music." It dedicates Mondays to new music as well, playing a new song every hour of the day. Like all of our stations' programming decisions, the music selections for "Minnesota Music" and New Music Mondays are made by local employees. Additionally, Cities 97's website provides a list of the artists and songs played on "Minnesota Music." When artist-approved MP3s are available, these are posted as well. While scores of Clear Channel stations across the country host similar shows, Cities 97's new music decisions provide an additional advantage for local artists. Without the backing of major labels, emerging artists have historically struggled to find retail space, especially at large chain stores. But Cities 97 has a year-round retail end cap display in the music sections of 49 local Target stores. These are stocked based on the new music and regional artists Cities 97 plays. New and emerging local artists are also the focus for Cities 97 on New Year's Eve. This will be the eleventh year in which the station has hosted the Minnesota Music New Year's Eve Party. This annual concert features regional artists and is promoted on-air for four full weeks. This year's guests include Tim Mahoney, Dazy Head Mazy, Grayson, Root City Band and Flavor—all local artists.

¹⁵ WJLB was featured prominently in "8 Mile," the semi-autobiographical hit movie featuring rap artist Eminem. In the movie, receiving airplay on WJLB, specifically the DJ "Bushman," is the Eminem-inspired character's primary goal. Bushman is an actual Clear Channel DJ and a close real-life friend of Eminem, who played himself in the movie. Bushman continues to play music from the Detroit hip-hop scene for WJLB.

- Cities 97 is also an example of the ways in which our stations use creative ways to fuse our commitments to new artists and to community service. For the last 16 years, Cities 97 has sold the Cities 97 Sampler, a CD featuring live music recorded locally and exclusively for the album. Every year the Sampler features music both from well-known, established artists and from local, up and coming artists, who receive priceless exposure. To date, Cities 97 Samplers have sold over 14 million copies and raised an aggregate of over \$4 million for local charities. Last year's Sampler alone raised over \$500,000. Community leaders understand the real difference this effort makes. Indeed, U.S. Congressman Jim Ramstad joined the Sampler release party this past year and was effusive in his thanks for Cities 97's efforts.
- "The Country Club," the morning show hosted by Kris Neil on our station WKDW in Staunton, Virginia, regularly spotlights local Virginia musicians such as Jimmy Fortune, Grandstaff, Phoenix, and Heather Berry and the Berry Pickers.

As shown by these examples and many others, no radio owner is more dedicated than Clear Channel to finding and fostering new artists. It is yet another way in which our stations ensure that local listeners come to them to hear the music that they want.

C. Clear Channel's Limited Use of Voice Tracking Does Not Diminish Localism

Finally, some initial commenters continue to purvey misperceptions about our limited use of "voice tracking" to provide quality radio service to small and rural markets that otherwise might not be financially or geographically positioned to obtain high-quality radio talent on their own. AFTRA, in particular, propounds a series of assertions about voice tracking that do not comport with reality. AFTRA's claims are simply false.

First of all, some commenters simply exaggerate beyond recognition the extent to which our stations utilize voice tracking. We have already stated that only approximately 9% of dayparts on Clear Channel stations are voice-tracked.¹⁶ AFTRA, however, makes the outlandish assertion that "up to 70% of Clear Channel's radio broadcasts are voice-tracked in markets of all sizes."¹⁷ The Commission should disregard such patently erroneous statements, which attempt to

¹⁶ Clear Channel Comments at 33.

¹⁷ AFTRA Comments at 16 n.10.

paint a false picture of prevalent voice tracking at Clear Channel stations that simply does not reflect reality.

Moreover, contrary to the assertion that “[voice-tracked] programs are . . . aired several days or even weeks later in cities and towns far away from where the airshift was recorded as ‘local’ programming,”¹⁸ voice tracking (where it is utilized) is not done weeks or even days ahead. In most cases, voice tracking is done 12-18 hours prior to the shift and in some cases even closer. Most voice-tracked shifts are in off-peak hours (nights, overnights, weekends), and a significant amount of voice tracking occurs within the same market, not between different markets. Thus, voice tracking does not represent the distribution of “canned,” dated programming to markets from coast to coast. It is merely a modern-day adaptation of the practice of prerecording voice material for later broadcast—a long-used industry tool.

Most importantly, the use of voice tracking—like all programming decisions at our stations—is left to the discretion of our local program directors. As we have emphasized repeatedly, it is the responsibility of those program directors to deliver programming that appeals to their local listeners. Otherwise, listeners will turn to one of our many competitors—other radio stations and other audio media. The use of voice-tracking technology is no exception. A local programmer who decides to utilize this technology must, as a business imperative, do so in a way that directs the programming to the local community. If a voice-tracked program was insufficiently local, listeners would tune out. If it were “built on deception,” as some commenters claim,¹⁹ listeners would tune out. If it were merely a cost-saving device to “import[] cheaper announcers from smaller markets into larger markets,” as some commenters also

¹⁸ AFTRA Comments at 15.

¹⁹ *Id.* at 17.

claim,²⁰ listeners would tune out. As a matter of the marketplace, voice tracking can be utilized by our stations only if it satisfies the needs of the local audience.

In short, voice tracking is nothing more than a slight extension of age-old technology that our local programmers may choose to use on a limited basis to facilitate high-quality, ubiquitous radio service, but always subject to their overarching incentive to maximize listenership within their markets by providing local audiences with popular programming they like. Ultimately, our listeners' dial choices are the arbiter of this technology. If listeners choose to tune in a voice-tracked program airing in their local market, they do so because the program is meeting their needs regardless of where and when it originated. If they opt out, then voice-tracking will change to meet local needs or else die of its own accord, in either case without a need for government regulation.

II. The Initial Comments Prove That Marketplace Factors Are Driving an Abundance of Localism in All Forms

As we observed in our initial comments, localism is the ultimate marketplace incentive. It is the essential ingredient of a successful broadcasting business. Localism enables broadcasters to distinguish themselves in an ever-changing and ever-expanding media marketplace where aspiring competitors vigorously compete head-to-head in an attempt to attract and maintain the interest of an increasingly fractionalized audience. If a broadcaster fails to respond to local needs and interests, it will lose its audience. It is that simple. Thus, the marketplace ensures that a broadcaster serves its local communities in order to maintain audience share and attract advertising revenue.²¹

The comments in this proceeding provide compelling evidence of this truth. Radio and television broadcasters, large and small, filed comments overflowing with examples of the ways

²⁰ *Id.* at 15-16.

²¹ *See* Clear Channel Comments at 3-6.

in which their stations respond to and serve the needs of their local communities. From local news, to community-oriented public affairs programs, to public service announcements, to political and election coverage, to information in times of emergency and disaster, to involvement with local charities, to participation in community events, broadcasters have demonstrated that localism is not a theoretical concept warranting lip service—it is an ongoing, thriving reality.

The evidence bears out the wisdom of the Commission's actions, over twenty years ago, in establishing a flexible regulatory scheme for overseeing broadcasters' performance of their local service obligations. Prior to 1981, the Commission had in place a set of regimented, paperwork-inducing rules more suited to a long-dead era of broadcasting, where hundreds (not thousands) of broadcast stations existed nationwide and many communities were served by just a handful of stations (and often only one or two). In 1978, the Commission began a series of steps to explore the possibility of deregulating the radio industry, on either an experimental or a general basis. These efforts culminated in the Commission's landmark 1981 decision eliminating its former nonentertainment programming guidelines, ascertainment requirements, commercial guidelines, and program log requirements.²² As the Commission explained, the inflexible rules then in place were no longer relevant to a rapidly expanding and competitive industry that had bypassed the days of a relatively few broad-based stations:

. . . [I]t is our concern that regulation should be kept relevant to a technology and an industry that has been characterized from its beginning by rapid and dynamic change. In less than fifty years, broadcast radio has grown from an infancy of 583 stations in 1934 to a maturity of nearly 9000 stations today. Moreover, in the early days of radio, it was essential that a few stations provide a broad general service. Today, however, it has become essential in view of the proliferation of radio stations and other broadcast services that radio licensees specialize to attract an audience so that they

²² *Deregulation of Radio*, 84 F.C.C.2d 968 (1981).

may remain financially viable. Consequently, policies that may have been necessary in the early days of radio may not be necessary in an environment where thousands of licensees offer diverse sorts of programming and appeal to all manner of segmented audiences.²³

The Commission took pains to make clear that it was not attempting to eliminate the statutory public interest standard. Rather, it had recognized that in a rapidly expanding and competitive industry where stations now tailored programming to appeal to specific audiences, a flexible approach to ensuring localism based on individualized community needs was far preferable to a “one size fits all” system of quantitative “guidelines” and burdensome recordkeeping. Ultimately, the Commission’s 1981 decision represented a determination that in the modern broadcasting industry, the demands and responses of consumers could safely take the place of regimented government regulation in making sure the needs of stations’ local communities are met:

We believe that given conditions in the radio industry, it is time to . . . reduce the regulatory role played by Commission policies and rules, and to permit the discipline of the marketplace to play a more prominent role. It is our conclusion that the regulations we are retaining and the functioning of the marketplace will result in service in the public interest that is more adaptable to changes in consumer preferences and at less financial cost and regulatory burden.

* * *

. . . [I]n most instances we believe that generalized requirements that permit licensees to respond to market forces within broad parameters are warranted in radio broadcasting. Simply stated, the large number of stations in operation, structural measures, and listenership demand for certain types of program[s] (and for limitations on other types of programming . . .) provide an excellent environment in which to move away from the content/conduct type of regulation that may have been appropriate

²³ *Id.* at 969.

for other times, but that is no longer necessary in the context of radio broadcasting to assure operation in the public interest.²⁴

Three years later, the Commission took the same actions with respect to television stations.²⁵ As in its decision with respect to radio, the Commission determined that “market incentives will ensure the presentation of programming that responds to community needs and provide sufficient incentives for licensees to become and remain aware of the needs and problems of their communities.”²⁶

The comments of broadcasters in this proceeding prove that the Commission did the right thing for the right reasons more than twenty years ago. Broadcasters are responding to the demands of their local communities in a myriad of ways without the necessity of Commission regulation. And in a media marketplace that has seen the advent of satellite radio, satellite television, the Internet, and many other technologies that continue to fractionalize listening and viewing audiences, the competitive forces that the Commission recognized two decades ago are exponentially greater today. The resultant benefits of this head-to-head competition, not only with other broadcasters but also with other players who operate in the same marketplace—yet under a dramatically lighter regulatory regime—are easily seen in the many enhanced and innovative local service initiatives portrayed in our comments and those of other broadcasters. Localism is alive and well. It needs no regulatory repair.

²⁴ *Id.* at 1014.

²⁵ *The Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 F.C.C.2d 1076 (1984).

²⁶ *Id.* at 1077.

III. CONCLUSION

Our comments, and those of other broadcasters in this proceeding, have shown that competitive forces and the demands of local audiences have driven stations to serve the needs of their local communities in more varied and innovative ways than ever before. This proves that a return to a bygone era of “one-size-fits-all” government intervention is not needed, particularly as the broadcasting industry continues to charge ahead into the digital age. And we are pleased to set the record straight on the myths proffered by our critics. From our cutting-edge role in embracing digital radio technology²⁷ to our leadership in service to local communities, Clear Channel is proud to have played a leading role in transforming a radio industry that was in decline prior to 1996 into a vibrant industry that is more capable than ever of investing in service to listeners in markets across the country.

Respectfully submitted,

CLEAR CHANNEL COMMUNICATIONS, INC.



By:

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Executive Vice President &
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January 3, 2005

²⁷ See http://www.clearchannel.com/Radio/PressReleases/2004/20040722_CCR.pdf (our announcement of plans to bring our listeners the benefit of digital radio technology through an aggressive rollout of digital radio equipment to 1000 of our stations).

EXHIBIT A



**American
Red Cross**

Together, we can save a life

October 24, 2004

Darren Irby
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Ms. Diane Dalton Warren
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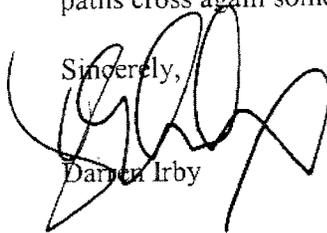
Dear Diane,

It sure was a pleasure to meet and visit with you over breakfast a couple of weeks ago. Your energy and professionalism are certainly inspiring!

Our tracking is less than accurate, but just since March of 2003, Clear Channel has supported our public service advertising with radio and out of home PSA placement exceeding \$4.1 million in estimated value.

Thank you and everyone at Clear Channel for your friendship with the American Red Cross. I'm so pleased we've been such great partners and I look forward to our future possibilities. I hope our paths cross again sometime very soon.

Sincerely,



Darren Irby



**American
Red Cross**

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Together, we can save a life