ORIGINAL

BEFORE THE

Federal Communications Commission

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 06-121
	)	
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

To: The Secretary
Attention: The Commission

COMMENTS OF MT. WILSON FM BROADCASTERS, INC.

FILED/ACCEPTED

OCT 23 2006

Federal Communications Commission
Office of the Secretary

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Dated: October 23, 2006

No. of Copies rec'd 0 + 12
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SUMMARY

Mt. Wilson FM Broadcasters, Inc. ("Mt. Wilson") is a small, family-owned company that has provided quality radio broadcast service to the Los Angeles market for nearly half a century. Mt. Wilson vehemently opposes any relaxation in the Commission's current radio ownership numerical limits and urges the Commission to (1) *reduce* the number of radio stations that can be owned in the Los Angeles market to a maximum of *three* FM stations and to a total of five; and (2) institute a market share cap requiring divestiture when an owner has more than a fifteen percent share of market revenues in a top-ten market.

The current state of radio ownership concentration in this country is destroying everything in radio broadcasting that has real and lasting value. It is destroying diversity of viewpoint. It is destroying diversity of programming. It is destroying free and fair competition. It is destroying radio localism.

The Commission has a choice of two paths. It can roll back the current radio ownership numerical limits; curtail radio ownership concentration with a market share cap; and thereby bring about a rebirth of diversity, competition and localism in American radio broadcasting. Or it can do nothing – or worse, relax even further the current, utterly inadequate radio ownership restrictions – and witness the death of every important value radio broadcasting has offered the American people since the first radio broadcast station received a federal license roughly eighty years ago.

History – and the people of this nation – will note and remember which path the Commission chooses.

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To: The Secretary
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COMMENTS OF MT. WILSON FM BROADCASTERS, INC.

Mt. Wilson FM Broadcasters, Inc. ("Mt. Wilson"), by counsel, submits these Comments in response to the Commission's *Further Notice of Proposed Rulemaking*[1] in the captioned proceeding. Mt. Wilson is a pioneer FM broadcaster and an independent, family-owned radio company which has served the Los Angeles market since 1959. Mt. Wilson *vehemently opposes* raising the existing radio ownership limits. Those limits should be reduced, not increased.

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[1] FCC 06-93 (rel. July 24, 2006).

I. STATEMENT OF INTEREST

Mt. Wilson is the licensee of stations KMZT-FM, Los Angeles, California, and KKGO(AM), Beverly Hills, California. Mt. Wilson has owned KMZT for forty-seven years. It built KMZT from the ground up starting in 1959, at the very beginning of FM radio, and has operated the station ever since.

Mt. Wilson is a small, family-owned company. It is today the only remaining independent, family-owned radio broadcaster in the greater Los Angeles market.

Mt. Wilson has been committed for five decades to the core principles of free and fair competition, localism and diversity in radio broadcasting. Mt. Wilson's KMZT (its call sign is in tribute to Mozart) broadcasts Classical music. KMZT is the only commercial radio station in all of Southern California which broadcasts Classical music – and one of the very few such stations remaining in the entire country. Mt. Wilson's companion AM station, KKGO, is also unique – it programs classic popular music "Standards." There is no other station like it in the Los Angeles market.

In addition, when the sole remaining Country music station in the Los Angeles market – KZLA-FM – recently abandoned its Country format (due to a purely profits-driven decision by a group owner), Mt. Wilson stepped in and made arrangements, through a programming agreement with another station, to preserve the availability of Country music radio in the nation's second largest radio market. And when local noncommercial radio station KKJZ-FM, Long Beach, California – the only Classic Jazz station in the Los Angeles market, and a station which has been broadcasting Classic Jazz for a quarter century – recently needed a new management direction, Mt. Wilson again stepped in to support this station's important service. Mt. Wilson is now completing arrangements to assist KKJZ-FM's licensee in continuing the station's Classic Jazz radio broadcast service for the people of Los Angeles.

Mt. Wilson is thus well-qualified to speak about what radio "diversity" is and what it is not, and also about what increased levels of radio ownership concentration do to real "diversity" in radio broadcasting. They destroy it.

As the lone remaining independent family broadcaster in a market it has served for nearly half a century, Mt. Wilson is also well-qualified to speak about what true radio "localism" is and what it is not – and about what increased radio ownership concentration does to true localism and to competition. As with diversity, increased radio ownership concentration does nothing but destroy both free and fair competition and localism in radio broadcasting.

The words "diversity," "competition" and "localism" are bland generalities. But properly understood, they together denote one very important thing – the beating heart of radio broadcasting in America. Further radio ownership concentration would unquestionably silence – perhaps forever – what has been the living heart of radio broadcasting in this country for more than eighty years.

Mt. Wilson hopes its comments in this proceeding will help to persuade the Commission to leave its mark in history by presiding over *a rebirth* – not the death – of diversity, localism and competition in radio broadcasting.

II. THE COMMISSION'S RADIO OWNERSHIP POLICY GOALS ALL FAVOR LESS OWNERSHIP CONSOLIDATION, NOT MORE

The radio ownership policy goals which the Commission identified in its *2002 Biennial Regulatory Review* – diversity of viewpoint and programming, competition and localism – have long been and must remain the touchstones of radio ownership policy.[2] Raising the current radio ownership numerical limits would be directly contrary to each of these policy goals. Increased numerical limits would lead to further consolidation, which in turn would produce *less* viewpoint diversity, *less* program diversity, *less* competition and *less* localism.

In its 2004 *Prometheus* decision, the United States Court of Appeals for the Third Circuit approved both the Commission's stated radio ownership policy goals and its conclusion that "by continuing to limit the consolidation of radio stations, numerical limits are 'in the public interest.'"[3] The Court chastised the Commission, however, for ignoring "market share" in evaluating competition.[4]

Adherence to the Commission's announced policy goals – which are not in dispute – mandates that the Commission (a) consider market share as a valid criterion to evaluate competition and to ensure the preservation of diversity and localism; (b) reject any increase in the current radio ownership numerical limits; and (c) reject also the false rationales for rule change offered by the large group owners, whose transparent goal is to increase even further their already astronomical profits at the expense of radio diversity, competition and localism – which is to say, at the expense of radio broadcasting itself and the public it serves.

A. Diversity of Viewpoint

In 2003, the Commission concluded: "[T]he policy of limiting common ownership of multiple media outlets is the most reliable means of promoting viewpoint diversity."[5] That conclusion is as valid today as it was three years ago. No rational argument to the contrary

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2 *2002 Biennial Regulatory Review, Report and Order and Notice of Proposed Rulemaking*, 18 F.C.C. Rcd. 13,620, 13,627 (2003) (¶17) ("*2002 Biennial Review*").

3 *Prometheus Radio Project v. FCC*, 373 F.3d 372, 432 (3rd Cir. 2004) ("*Prometheus*").

4 *Id.* at 433-34.

5 *2002 Biennial Review*, 18 F.C.C. Rcd. at 13,629 (¶26).

exists. Five independent viewpoints are not the equal of ten, and ten are not the equal of twenty. That is simple arithmetic. Nor are a few small radio voices likely to be heard above the din a big group owner can create with six or seven or eight very large and loud ones. As the Court stated in *Prometheus*,

> It defies logic to assume that a combination of top-ranked stations is the competitive equal to a combination of low-ranked stations just because the two combinations have the same number of stations.[6]

The logic of the Court's statement applies no matter whether benchmarks to preserve competition or to preserve diversity are at issue. The more independent station owners in a market, the more diversity of viewpoint and programming, and the greater the likelihood of free and fair competition. The fewer independent owners, the less diversity and the greater the threat to competition.

In considering numerical limits in its *2002 Biennial Regulatory Review*, the Commission specifically cited as an example the Los Angeles radio market. The Commission stated:

> [E]xtremely large radio markets tend to cover a large area geographically and also tend to be more 'crowded' in terms of radio signals. As a result, large markets may include a greater number of extremely small radio stations, as well as radio stations that are a significant distance from each other. Both of these phenomena may make a large market appear more competitive than it actually is.[7]

This describes the Los Angeles radio market perfectly. The market includes a large number of stations with extremely limited coverage, many of which are widely scattered. It is primarily these smaller, weaker stations – along with a few of the stronger ones – that provide today what remains of true diversity of viewpoint and programming in the Los Angeles market. Two prime examples are Mt. Wilson's KMZT-FM and KKGO, with their Classical and Standards music formats. The independent licensees of these often weaker and "niche" programmed stations are

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[6] 373 F.3d at 433.

[7] *2002 Biennial Review*, 18 F.C.C. Rcd. at 13,732 (¶291).

the very "independent voices" that will unquestionably be stilled if the Commission ignites yet another round of consolidation in radio ownership.

In deciding to maintain the current numerical limits in 2003, the Commission stated: "[W]e seek to ensure that such consolidation does not reach the point of stifling competitive incentives."[8] In affirming the Commission's decision to retain a numerical limits approach, the Third Circuit stated:

> Without numerical limits, radio markets risk becoming 'locked up' in the hands of a few owners . . . . Based on record evidence, the Commission justifiably concluded that numerical limits are necessary "to guard against consolidation . . . and to ensure a market structure that fosters opportunities for new entry into radio broadcasting."[9]

The Court thus agreed that numerical limits are necessary. It questioned, however, the propriety of retaining the Commission's *existing limits*, indicating great skepticism about whether those limits *go far enough* in curtailing undue ownership concentration in radio. The Court *criticized* the Commission's decision not to take "actual market share into account," *criticized* the Commission's reliance on "the fiction of equal-sized competitors," and noted *repeatedly* the dismal consequences for diversity, localism and competition that have resulted under the Commission'*s current* numerical ownership limits.[10] The last thing the Court contemplated, it would appear, is that the Commission would take the occasion of a remand to *further increase* the numerical radio ownership limits.

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[8] *Id.* at 13,733 (¶293).

[9] *Prometheus*, 373 F.3d at 431-32, *quoting 2002 Biennial Review,* 18 F.C.C. Rcd. at 13,732 (¶291).

[10] *Prometheus,* 373 F.3d at 432-34 (noting, among other things, the increased station prices, increased barriers to entry, reduced locally-produced programming and increased concentrations in market share and station ownership that have resulted under the Commission's current numerical limits).

If the Commission permits the radio ownership limits to be eroded once again in the name of greater profits to satisfy the Board Room demands of a few gigantic group owners, the precarious balance between consolidation and localism, diversity and competition, which even now is barely maintained, will be destroyed utterly – and perhaps irretrievably – in markets both large and small.

B. Diversity of Programming

The *2002 Biennial Regulatory Review* also addressed the matter of program diversity.[11] The Commission concluded:

> In general, we find that program diversity is best achieved by reliance on competition among delivery systems rather than by government regulation.[12]

Mt. Wilson agrees with this conclusion in the abstract – but notes that there is no real "delivery system" substitute for free, over-the-air radio broadcasting. Radio broadcasting is available to all without charge. It can be received anywhere with the most modest, inexpensive and portable devices. It is a lifeline in a way nothing else can be in times of natural disaster and catastrophe. It is of unsurpassed entertainment and information value. It is a bedrock of egalitarian communications in our democracy. It has been all this and more for longer than most of us now alive have lived. It has profound values that must be preserved – values we intimate but scarcely describe with dispassionate words such as "diversity," "competition" and "localism."

Parties supporting an increase in radio ownership limits often argue that night is day – that to increase ownership concentration will also increase program diversity. Any who might be fooled into thinking this is so should consider the case of station KZLA-FM in Los Angeles. KZLA was the lone remaining Country music station in the nation's second largest radio market

[11] *2002 Biennial Review*, 18 F.C.C. Rcd. at 13,631-32 (¶¶36-37).

[12] *Id.* at 13,632 (¶37).

when it abruptly abandoned its Country format a few months ago in favor of a so-called "rhythmic pop" format that is essentially *indistinguishable* from the existing formats of numerous other stations in the Los Angeles market. Why did this happen? As explained to the *Los Angeles Times* by a "top executive" at KZLA's owner, Emmis Communications, the change was made because:

> 60% of the local audience is Latino, Asian or African American, while "country fans are about 98% Caucasian." The top slots in Arbitron's local radio rankings have been dominated in recent years by stations offering Spanish programming, hip-hop, R&B and pop hits, while KZLA's ratings have been *mired just outside the Top 20.*[13]

Heaven forbid that the people of Los Angeles should continue to receive radio broadcasts in a major music format many of them cherish if that format has become "mired" in a position "just outside the Top 20." Perish the very thought.[14]

As mentioned earlier, Mt. Wilson – a small, independent family-owned radio broadcaster which has roots in Los Angeles that go back for decades – has taken steps to do what the gigantic corporate radio owners never will. Mt. Wilson has worked to make sure that real "program diversity" in Los Angeles remains a living, breathing thing – not two empty words to which the big group owners pay occasional lip service but never something more.

Profits and *profits alone* dictate the radio formats and content provided by the giant radio companies. What the Commission terms "program diversity" is an utter stranger to the motivational calculus of these massive corporations. The hard reality is that radio ownership

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[13] See the Attachment 1 copy of the *Los Angeles Times'* August 27, 2006 editorial from which this quotation is taken (emphasis supplied).

[14] In a *Radio Ink* article also included in Attachment 1, it is reported that Clear Channel's Mark Mays "joked" with Emmis's Jeff Smulyan from the platform of a panel at a recent NAB Radio show that Clear Channel would have retained KZLA's Country format because of Clear Channel's "scale" in the market, to which Smulyan is reported to have answered with a smile under his breath: "No you wouldn't have." It is clear who had the better – because the more honest – part in that exchange.

concentration and its inseparable by-product – a never-ending drive for ever increasing profits – inevitably lead to *less* program diversity. The gigantic group owners know but two ways to feed their addiction to ever greater profits. One is to destroy their competition. The other is through a seemingly endless set of minor, tiresome variations on "the most highly rated" program formats.

And from this we come, as the *Los Angeles Times* observed, to a place where "the city that was once home to Gene Autry no longer has a country music station."[15] That will not happen while Mt. Wilson has means to prevent it. But who will prevent it when Mt. Wilson – and the few other independent radio broadcasters like it who still survive – are driven at last from the field by yet another round of radio ownership consolidation? Who indeed.[16]

In the *2002 Biennial Regulatory Review*, the Commission specifically addressed the argument that "reductions in the number of owners in radio markets led to an increase in radio format *labels*."[17] The Commission stated:

> While we agree that the Duncan formats allow a somewhat richer portrayal of the variety of music than the more general format categories, we are not certain how substantial the difference between many of these minor subcategories within the major categories of format are.[18]

The Commission concluded:

> After careful review of the economic literature, however, we cannot confidently adopt the view that we should encourage more consolidation in order to achieve greater format diversity.[19]

[15] See the *Los Angeles Times* editorial reproduced in Attachment 1.

[16] It appears possible that, in order to properly serve Los Angeles with Country music radio, Mt. Wilson may be compelled to use KKGO. Should that occur, Mt. Wilson will make every effort to preserve a classic standards radio broadcast presence in the Los Angeles market. But Mt. Wilson is a small company. It owns only two Los Angeles stations. Mt. Wilson doubts greatly that either of the two dominant radio owners in the Los Angeles market – with their combined *fifteen* market stations – would notice or care if classic Standards disappeared from the market, much less act to prevent the people of Los Angeles from suffering such a loss.

[17] 18 F.C.C. Rcd. at 13,740 (¶310) (emphasis added). The key word here is "labels."

[18] Id.

[19] *Id.* at 13,742 (¶314).

That is a correct conclusion, but too mildly phrased. To achieve greater format diversity, the key is to *discourage* radio ownership consolidation. The idea that one might *encourage* format diversity through increased consolidation is like thinking the population of chickens can be encouraged by an increase in foxes. If the Commission should hear again in this proceeding the shop-worn refrain that increased radio ownership concentration leads to more program diversity, it should reject that tired canard out-of-hand. The other appropriate response – derisive laughter – is optional.

C. Competition

In the *2002 Biennial Regulatory Review,* the Commission also addressed the relationship between radio ownership concentration and competition in radio markets.[20] The Commission stated

> In limiting broadcast ownership to promote economic competition, we also take major strides toward protecting and promoting our separate policy goal of protecting competition in the marketplace of ideas – viewpoint diversity. This is because antitrust theory has at its core an objective that is similar to this Agency's goal of promoting viewpoint diversity: both public policy objectives share a common belief that the aggregation of inordinate market share by a small number of firms will tend to harm public welfare; both are built on the notion that highly concentrated markets tilt the proper balance of power too far in favor of some firms and against those who would challenge them.[21]

But after thus recognizing that "the aggregation of inordinate market share by a small number of firms will tend to harm public welfare," the Commission inexplicably went on *to reject* the use of a market share analysis in determining permissible levels of ownership concentration, stating: "We also reject arguments that we incorporate a market share analysis into the local radio

[20] *2002 Biennial Review*, 18 F.C.C. Rcd. at 13,637-43 (¶¶53-72).

[21] *Id.* at 13,639 (¶58).

ownership rule."[22] These statements cannot be reconciled with one another. The Court in *Prometheus* thus properly criticized the Commission for ignoring market share:

> It defies logic to assume that a combination of top-ranked stations is the competitive equal to a combination of low-ranked stations just because the two combinations have the same number of stations.[23]

In the *2002 Biennial Regulatory Review*, the Commission also cited the Los Angeles radio market in its determination that combinations of more than eight radio stations do not yield meaningful increased efficiencies:

> There is no evidence in the record that indicates that the efficiencies of consolidating radio stations increase appreciably for combinations involving more than eight radio stations.[24]

The Commission reached this conclusion that combinations of more than eight stations offer no benefits without even considering market share – and the positive harm to competition and diversity that can flow from combinations of *eight or fewer stations* even in markets as large as Los Angeles.

Attachment 2 to these Comments contains Arbitron revenue share information for the Los Angeles Metro Radio Market for the years 2001 through 2005. The information reflects only stations with a market revenue share of one-tenth of one percent or more. The information for the top-four station group owners in market revenue rank is as follows:

2005 (64 Total Stations, Total Revenues of $1.080 Billion)

Clear Channel (8 stations)	20.6%
CBS Radio (7 stations)	18.4%
Univision Radio (5 stations)	13.4%
Spanish Broadcasting (2 stations)	6.1%

[22] *Id.* at 13,736 (¶300).

[23] *Prometheus,* 373 F.3d at 433.

[24] *2002 Biennial Review,* 18 F.C.C. Rcd. at 13,732 (¶291).

2004 (69 Total Stations, Total Revenues of $1.045 Billion)

Clear Channel (8 stations)	20.2%
Infinity (7 stations)	18.4%
Univision Radio (5 stations)	11.3%
Spanish Broadcasting (2 stations)	6.0%

2003 (65 Total Stations, Total Revenues of $1.035 Billion)

Clear Channel (8 stations)	20.2%
Infinity (7 stations)	19.0%
Univision Radio (5 stations)	7.7%
Emmis (2 stations)	7.4%

2002 (67 Total Stations, Total Revenues of $950 Million)

Clear Channel (8 stations)	19.9%
Infinity (7 stations)	19.5%
Hispanic Broadcasting Corp. (5 stations)	9.2%
Emmis (2 stations)	7.3%

2001 (81 Total Stations, Total Revenues of Over $925 Million)

Clear Channel (10 stations)	21.9%
Infinity (8 stations)	21.0%
Hispanic Broadcasting Corp. (5 stations)	9.4%
Emmis (2 stations)	6.2%

Arbitron's Los Angeles market share information is thus entirely consistent with the record reviewed and the conclusion reached by the Court in *Prometheus*:

> According to the record, most markets are dominated by one or two large station owners. And the top-four station owners together control the lion's share of the market. . . . . In most, the largest and second-largest station owners had market shares considerably higher than the next largest owner. . . . In all but one of the 11 of the 50 largest markets analyzed by the UCC, the four largest firms controlled between 64 and 82% of the market share.[25]

In the Los Angeles radio market, two entities dominate the market – Clear Channel and CBS Radio (formerly Infinity). See *Prometheus,* 373. F.3d at 433. In the Los Angeles radio market,

[25] 373 F. 3d at 433 & nn.78 & 79.

"the largest and second largest station owners [have] market shares considerably higher than the next largest owners." See *id.* at 433 n.78. In the Los Angeles radio market, the top two station group owners control approximately 40% of all market revenues, and the top four station group owners control approximately 56% of all market revenues. The remaining minority of market revenues is divided among the approximately *sixteen* remaining station owners with market shares above 0.1%, plus numerous additional owners with shares below that level.[26]

These numbers tell only part of the story. Behind them is an ugly reality. The two dominant group owners in the Los Angeles market wield the inordinate power that comes with their inordinate size in a predatory manner, seeking to crush their weaker competition. At least *six times* in the most recent sales period alone, Mt. Wilson has been told by a significant advertiser that no more ads could be placed on Mt. Wilson's two stations, because Clear Channel – or on occasion CBS Radio – had used its size and market power to extract what amounts to a devil's bargain. The advertiser had been told that, to enjoy access and discounts from the *eight* Clear Channel stations (or the *seven* CBS Radio stations), it must agree to devote *all of its radio advertising budget* to purchases on those stations, and to refrain *entirely* from purchasing time on any other station. The advertisers could not afford to refuse, because these dominant owners'

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[26] In the Los Angeles radio market, Clear Channel – with a 2005 market share of 20.6% -- is the only entity currently operating the maximum number of eight radio stations. CBS Radio (formerly Infinity) operates seven stations with a 2005 market share of 18.4%; Liberman operates six stations with a 2005 market share of 4.7%; Entravision operates six stations with a 2005 market share of 3.89%; and Multicultural operates seven stations with a 2005 market share of 0.9%. The Commission's conclusion that five equal-sized competitors will ensure diversity and competition is thus belied by the facts. Clear Channel's eight stations captured more than one-fifth of all market revenues (20.67%) in 2005, whereas three of the other five owners with a roughly comparable number of stations in the market had market shares *below 5%,* with Multicultural's seven stations capturing *less than one percent* (0.9%) of 2005 market revenues. These five group owners may have similar numbers of stations, but the stations which they own are vastly different in power and reach. The five are therefore scarcely "equal sized" competitors. The Court's conclusion that the Commission's "five equal-sized competitor" benchmark "defies logic" is thus well supported by conditions in the Los Angeles radio market.

stations amounted to what in essence was an indispensable "buy." So the advertisers capitulated, although often reluctantly.

This has happened countless times, *over and over again*, since the Commission's current numerical ownership limits brought about the current overly-concentrated state of the Los Angeles radio market. The situation has already taken a significant toll on Mt. Wilson and other small radio owners in the market.

What the dominant group owners in the Los Angeles market are able to do *today* to stifle competition with their existing combinations of seven or eight strong market stations is more than should be permitted under any rational radio ownership policy. But it is nothing compared to what these giant corporations could do to crush their competition if they had *ten* or *twelve* stations in the Los Angeles market.[27] With that many stations would come all the power the dominant owners need (and more) to destroy any meaningful competitor they could not acquire.

In response to Clear Channel's announcement of record second quarter 2006 revenues of *$1.9 billion*, a media stock analyst observed that Clear Channel's "success" was due in part to the fact that "competing radio stations are in decline."[28] What went unsaid is that often it is *Clear Channel itself* which *drives* competing stations into "decline" with its unfair and predatory use of the inordinate market power it already has *today*. To increase the radio ownership limits would spell the death of many small radio companies like Mt. Wilson. "Diversity," "competition" and "localism" in radio broadcasting would become three lifeless words buried in the pages of the FCC's reports. The public – already outraged by *current* levels of media consolidation – would suffer the ultimate, irreparable harm to their radio broadcast service.

[27] Clear Channel apparently is seeking or will seek Commission approval to own ten stations in markets with 60 stations and twelve stations in markets (such as Los Angeles) with 75 or more stations. See the second of the two Attachment 5 *Radio and Records* articles.

[28] See the *Star-Telegram.com* article copied in Attachment 3.

D. Localism

Mt. Wilson has been a radio broadcaster in the Los Angeles market over a decade longer than Clear Channel has been in existence.[29] Over the past forty-seven years, Mt. Wilson has provided radio service in Los Angeles that is made *by* people in Los Angeles *for* the people of Los Angeles. Mt. Wilson's local roots have enabled it to know and serve the Los Angeles market well, because that market is made up of Mt. Wilson's neighbors. Their concerns, their institutions, their civic and cultural past and present are those of Mt. Wilson also. Real "localism" in radio broadcasting comes from this – local ownership roots.

Real "localism" in radio means creating and maintaining local jobs, not cutting jobs and shipping some of the remaining few off to distant places to create "efficiencies." It means substantive participation in the life of the local community to promote the common good, not window dressing to meet corporate demands for regulatory "talking points." It means above all *sacrificing profits* when necessary to provide a radio service *of real local value* to the people of the local community. It means knowing those people, caring about their needs and working to meet them – even if that entails leaving some portion of possible profits *on the table*.

Radio "localism" cannot be provided to Los Angeles, California, from a studio in Boise, Idaho, or one in San Antonio, Texas. It cannot be provided by an announcer who lives a thousand miles away and spends his working days "voice tracking" segments for replay by eight or ten or twenty or more different stations scattered across the nation. And it cannot be provided by the man in the catbird seat of a distant corporate tower who spends *his* working days tracking the profits of a thousand stations while gazing intently east – toward Washington and Wall Street.

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[29] According to Clear Channel's Web site, Clear Channel began in 1972 with the purchase of an FM station in San Antonio by what was then San Antonio Broadcasting Co.

True radio "localism" gets up in the morning in the city where it lives and goes to work there each day to provide a local radio service designed for that city. And when the day is done, it goes home to a home it never left – that same city. Radio "localism" lives only in the city of its birth. It dies if it leaves there.

The current level of radio broadcast ownership concentration in this country is as compatible with radio localism as ice is with fire. A massive, twelve hundred-plus radio station conglomerate has as much chance of providing a truly local radio broadcast service as a camel has of passing through the eye of a needle.

III. THE COMMISSION SHOULD ACT TO ROLL BACK CURRENT LEVELS OF RADIO OWNERSHIP CONSOLIDATION

It is not every day that the American public becomes passionate and angry about something as seemingly abstruse as media ownership concentration. But the American people have indeed become passionate and angry about current levels of media consolidation. To know that one only need attend one of the "field hearings" which Commissioners Adelstein and Copps have been conducting to hear from members of the public on the subject of media ownership, such as the recent hearing held in Los Angeles. Many angry and frustrated voices were heard at that meeting. Not one expressed any support for current levels of media ownership consolidation.[30]

Clear Channel not long ago announced second quarter 2006 revenues of *$1.9 billion* (up seven percent), and consolidated "OIBDAN" (which for the uninitiate means (if this helps) "operating income before depreciation and amortization, non-cash compensation expense and

[30] See, for example, the *Los Angeles Times* report on the Los Angeles field hearing copied in Attachment 4.

gain (loss) on disposition of assets – net") of *$647 million* (up ten percent).[31] Yet Clear Channel's astronomical profits do not prevent it from seeking even greater market power in its quest to generate *even greater* astronomical profits. This colossus with its approximately *$7.6 billion in annual revenues* has lately told the press that it needs *ten or twelve* radio broadcast stations in the top markets to stave off the dire threat posed by little "I-pods" and the frightening *2.5%* penetration of satellite subscription services.[32] As a recent Omnitel/American Media Services study indicates, radio broadcasting is in no danger from little "I-pods" or satellite subscription services.[33] And as Clear Channel's financial results attest, Clear Channel is in no danger from anything – except (if pride "goeth before a fall") perhaps itself.

But let us also consider for a moment what would happen if Clear Channel were granted its wish and permitted to own its desired *twelve* radio broadcast stations in the Los Angeles market. After Mt. Wilson and the few others like it who remain had been forced by Clear Channel's massive power to shut their doors, and the last commercial station broadcasting Classical music in Southern California had been forced off the air; and the last station broadcasting Country music in Los Angeles had been forced off the air; and the last station broadcasting Classic Jazz in Los Angeles had been forced off the air; and the last station

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[31] See the Clear Channel press release copied in Attachment 3.

[32] See the *Radio and Records* articles copied in Attachment 5. As they reflect, Clear Channel has claimed to the press that "satellite radio has 150 unregulated stations in every market and free radio is limited to just eight," which Clear Channel has claimed "shows the apparent disparity." If Clear Channel wants what it calls "150 unregulated stations in every market," it should simply sell all of its radio broadcast stations and buy XM or SIRIUS. The move would clearly benefit the public. On the other hand, Clear Channel could also petition the Commission to allow it to own up to 150 radio broadcast stations in Los Angeles and every other market, giving as justification the fact that this would "level the playing field" with subscription satellite services and "I-pods." After offering the press such compelling justifications for its lust for additional power over local radio markets, it would be a wonder if Clear Channel fails to ask the Commission for the truly appropriate relief.

[33] See the *FMQB* and *Radio Ink* articles on the AMS study copied in Attachment 6.

broadcasting classic Standards in Los Angeles had been forced off the air – the question then would be: How long would the people of Los Angeles have to wait for Clear Channel to sacrifice *even one* of its **TWELVE** Los Angeles radio stations or an *infinitesimal portion* of the massive profits it derives from the Los Angeles radio market to restore *even one* of those lost music formats back to radio air for the people of Los Angeles?

The answer, in the words of an old Standard, is "Until the Twelfth of Never, and that's a long, long time."[34]

There is no public interest value in permitting Clear Channel or CBS Radio – or anyone else – to own even as many as seven or eight radio stations in the Los Angeles market. To allow those companies or anyone else to own *more* than eight stations in the Los Angeles market would make a mockery of the public interest standard. It would drive the final, fatal knife into the heart of diversity, competition and localism in radio broadcasting.

The Commission should reject any call for an increase in the radio ownership numerical limits. It should in fact *roll those limits back* to permit the ownership of no more than *five* stations (and no more than three FM stations) in the largest markets, and fewer in smaller markets.

The Commission should also incorporate a market share test into its multiple ownership rules. Under that test, any ownership combination which attains more than a fifteen percent share of market revenues in a top-ten market should be required to *divest* such stations as are necessary to bring the combination under the fifteen percent benchmark.

[34] "The Twelfth of Never," words and music by Paul Webster & Jerry Livingston; recorded by Johnny Mathis, 1957.

IV. CONCLUSION

If the Commission takes this recommended path, it will be midwife to a rebirth of diversity, competition and localism in radio broadcasting, and it will secure a place in history for that accomplishment. If the Commission takes the opposite path, it will preside over the death of every real and lasting value radio broadcasting has ever offered the American public, and the Commission will secure a different place in history for that result.

Respectfully submitted,

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Dated: October 23, 2006

ATTACHMENT 1

LOS ANGELES TIMES EDITORIAL AND *RADIO INK* ARTICLE CONCERNING KZLA-FM ABANDONMENT OF COUNTRY FORMAT

From: "Don Barrett" <db@thevine.net>
Subject: **Re: LARP - Country Radio Gets the Blues   Comments From Saul Levine on LA Times Article**
Date: August 27, 2006 2:06:47 PM PDT
To: <saul@kmzt.com>

did you send comments?

db

----- Original Message ----- From: <saul@kmzt.com>
To: <db@thevine.net>
Sent: Sunday, August 27, 2006 1:34 PM
Subject: Re: LARP - Country Radio Gets the Blues Comments From Saul Levine on LA Times Article

> ----- Original Message -----
> From: Don Barrett
> To: <Undisclosed-Recipient:;>
> Sent: Sun, 27 Aug 2006 09:46:04 -0700
> Subject: LARP - Country Radio Gets the Blues
>
> Country Radio Gets the Blues
> Is media consolidation good or bad for L.A.'s stranded legions of country music fans?
>
> LA Times Editorial, 8.27
>
> IT'S PROBABLY ONLY A MATTER OF TIME before someone writes a song about it. KZLA-FM, based in
> Burbank, abruptly changed formats this month. It now plays something called "rhythmic pop," and the
> city that was once home to Gene Autry no longer has a country music station.
>
> The format change, as in other big cities that no longer have country stations, stems in large part from changing demographics. A top executive at Emmis Communications, which owns KZLA, told The
> Times that 60% of the local audience is Latino, Asian or African American, while "country fans are
> about 98% Caucasian." The top slots in Arbitron's local radio rankings have been dominated in recent years by stations offering Spanish programming, hip-hop, R&B and pop hits, while KZLA's
> ratings have been mired just outside the Top 20.

The other significant change in the last decade was the Telecommunications Act of 1996, which triggered a wave of consolidation in the radio business. Instead of a local limit of two stations (one AM, one FM) and a national limit of 40, the law allowed companies to control up to eight stations in the largest local markets and an unlimited number nationally. Opponents of deregulation
blame it for many of radio's ills, including narrower playlists and less diversity. But advocates - particularly Clear Channel Communications, which skyrocketed from 40 stations to about 1,200 - say
the more stations a company owns in a market, the more formats it will offer.

There's logic to that argument. If a company has only a few stations, it is likely to target the biggest demographic groups in a market. The more stations, the more incentive to expand its reach
by going after smaller niches. In reality, though, many groups offer multiple variations on one or two formats, hoping to capture as much of the biggest audience segments as possible. KZLA's switch
brings its format closer to that of Emmis' other station in Los Angeles, KPWR-FM, which is an urban-hits outlet. Similarly, Clear Channel's five stations in and around Los Angeles all offer hit songs from a narrow range of genres.

Southern California's country music audience is nothing to sneeze at - more country CDs are sold in
Los Angeles than in any other city. Granted, country doesn't dominate the Billboard Top 200, but neither is it a niche genre. So you'd think that some local radio broadcaster would leap at the chance to fill the void left by KZLA. Otherwise, the field will be conceded to competitors in neighboring counties and on satellite, putting more distance in the public's mind between "local" and "radio."