Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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
	)	

REPLY COMMENTS OF CLEAR CHANNEL COMMUNICATIONS, INC.

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SUMMARY

The overwhelming weight of comments filed in the opening round of this proceeding supports the view that the mass media marketplace has undergone nothing short of a sea change in the decade since the Telecommunications Act of 1996[1] was passed, and even since the FCC last considered changes to its ownership rules in 2003. Those commenters who advance a contrary position ask the Commission to turn a blind eye to the robust competition that exists in local radio markets. They also invite the FCC to ignore the scores of increasingly popular and emerging technologies and services that have transformed how Americans access entertainment and information, and to disregard the fact that these new technologies compete directly with – and pose substantial challenges to – the business models of traditional media entities such as terrestrial radio broadcasters like Clear Channel Communications, Inc. ("Clear Channel"). But despite broadcasters' efforts to counterbalance the financial and operational pressures that these new, and largely unregulated, competitors create, the question whether free, over-the-air, radio broadcasting will remain available as a choice to those who can afford to obtain audio programming from other sources – and as a vital lifeline for those who cannot – hangs in the balance, as the Commission considers revisions to its local radio ownership rules.

The Commission is not free to accept the invitation of some commenters to ignore the current competitive state of the media marketplace. As a statutory matter, Congress expressly mandated in Section 202(h) of the 1996 Act that the FCC "give recognition to [the market] changes which have taken place and to see to it that [ownership rules] adequately reflect the situation as it *is*, not *was*."[2] The Administrative Procedure Act would impose a similar

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[1] Telecomms. Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

[2] *2002 Biennial Regulatory Review–Review of the Comm'ns Broad. Ownership Rules*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13,620, 13,767 (¶ 367) (2003)

obligation on the FCC even if Congress had not issued a clear mandate to the Commission to undertake the task of ensuring that its ownership rules keep pace with developments in the dynamic media marketplace of the twenty-first century.

In light of the vast and ever-growing competition that free radio operators now face both within local radio markets and from alternative platforms, there is no basis for retaining any restrictions on local radio ownership at all. If some restraints are nevertheless maintained, they must – pursuant to the FCC's responsibilities under Section 202(h) and the APA – be updated to reflect today's marketplace realities by, at a minimum, increasing the number of stations a party can own in the largest markets and eliminating the sub-caps on how many AM and FM stations may be owned. Any such limits must also, in order to accurately reflect market realities, recognize that an outlet-based test, as opposed to audience share or revenue share tests, is the only sensible way to assess permissible levels of local common ownership.

Furthermore, to the extent that some commenters are attempting to use this proceeding as a vehicle for advancing familiar false claims about Clear Channel, their attempts to discredit Clear Channel's superior level of public service have not gotten any more accurate – nor do they sound any better – with either age or repetition. The reality is that there is no "national playlist" or any corporate mandates regarding which songs Clear Channel's locally-staffed and locally-managed stations may play; Clear Channel's commitment to new, and in particular local, artists is genuine, deeply held, and unparalleled in the industry; and the company's limited use of voice-tracking and syndicated programming on some stations is but one element of Clear Channel's effort to satisfy the distinct tastes and demands of the local markets that its stations serve.

In addition, the Commission should take advantage of the opportunity presented by this

("*2003 Order*") (emphasis added), *aff'd in part, rev'd in part, Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (2005); *see* 1996 Act, § 202(h).

proceeding to clear the way for additional ownership of broadcast properties by new entrants, including businesses owned by women and minorities. Among the options for accomplishing this goal that the FCC might consider are limited waivers of the local radio ownership caps where owners commit to engage in “incubator” programs within the relevant market, and extensions of construction deadlines on expiring permits and waivers of the AM expanded band forfeiture requirement when expiring permits and AM expanded band stations are sold to certain categories of new entrants.

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REPLY COMMENTS OF CLEAR CHANNEL COMMUNICATIONS, INC.

Clear Channel Communications, Inc. ("Clear Channel") hereby submits its reply comments in this proceeding.[3] As demonstrated in Clear Channel's opening comments and the comments of a multitude of other parties, and as further shown below, the marketplace has changed in a manner that renders the existing local radio ownership rule entirely unnecessary and

[3] *2006 Quadrennial Review of the Comm'ns Broad. Ownership Rules – Review of the Comm'ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996; 2002 Biennial Regulatory Review – Review of the Comm'ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms Act of 1996; Cross-Ownership of Broad. Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broad. Stations in Local Markets; Definition of Radio Markets*, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8834 (2006) ("*FNPRM*").

thus ripe for repeal. At the very least, the evolving competitive marketplace requires increases in the number of stations that can be owned in the nation's largest markets and elimination of the AM/FM "subcaps." The Commission should also consider adopting measures to promote increased participation in the broadcast industry, and radio in particular, by new entrants, including women and minorities.

I. AMERICANS TODAY HAVE NUMEROUS CHOICES AVAILABLE TO THEM FOR NEWS, INFORMATION, AND ENTERTAINMENT, AND THE FCC MAY NOT IGNORE THIS REALITY.

A. The Opening Comments Overwhelmingly Establish that Today's Consumers Have a Wealth of Options for News, Information, and Entertainment Programming.

As Clear Channel demonstrated in its opening comments, and as the opening comments of numerous other parties confirm, there has been a tremendous increase in the number of radio stations over time, and local radio markets of all sizes are vibrantly competitive.[4] The number of radio stations continues to rise, and according to the FCC's most recent estimates has now reached 13,793.[5] Clear Channel itself owns only approximately 8.5% of the nation's total radio stations, and there are approximately 4,400 other owners present in the market.[6] Moreover, as Clear Channel showed, markets as tiny as Cookeville, Tennessee, ranked 250th by Arbitron, have a substantial number of separate owners, and an even more significant number of separate

[4] Clear Channel Communications, Inc. ("Clear Channel"), 7-8; National Association of Broadcasters ("NAB"), 6-12; Progress & Freedom Foundation ("PFF"), 53, 57-58; Morris Communications Company, LLC ("Morris"), 9-13; Nexstar Broadcasting, Inc. ("Nexstar"), 7; *see also* Bonneville International Corporation ("Bonneville"), 6-7; Freedom of Expression Foundation, 10-12; Newspaper Association of America ("NAA"), 24; Media General, Inc. ("Media General"), 43-47; Tribune Company ("Tribune"), 27-79. Unless otherwise noted, citations consisting of party names followed by page numbers refer to comments filed in MB Docket No. 06-121 on or about October 23, 2006.

[5] FCC, Broadcast Station Totals as of Sept. 30, 2006, http://www.fcc.gov/mb/audio/totals/bt060930.html.

[6] Clear Channel, 7-8.

formats.[7]

NAB's opening comments similarly established that competition remains strong in markets across the country, finding that in a group of 25 randomly selected DMAs, the average number of full power stations in a market has risen by nearly 25% over the last 20 years, from 51.3 stations in 1986 to 73 today.[8] Moreover, these 73 stations are owned by 37.6 separate owners – an average of no more than two stations per owner.[9] NAB also showed that these estimates, as well as the FCC's own prior analyses of local radio competition, substantially *understate* the extent of competition, due to the significant number of stations from outside of Arbitron-defined markets that are heard – and therefore compete with stations – in a particular market.[10] Further, NAB's opening comments demonstrated that almost 37% of commercial radio stations in Arbitron markets are stand-alone stations or are operated as part of local two-station combinations.[11] The fact that more than a third of America's radio broadcasters are independent or very small group owners belies any suggestion that the radio industry is dominated by a group of large owners.

As Clear Channel and others also showed, and contrary to the factually unfounded and alarmist rhetoric advanced by some commenters in this proceeding,[12] the radio industry is *far*

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[7] Clear Channel, 9-10.

[8] NAB, 8-9 (citing Mark Fratrik, *Media Outlets Availability by Markets* (Oct. 23, 2006) (Att. A to NAB Comments)).

[9] *Id.*

[10] *Id.* at 10-12, 83-85 (discussing Mark Fratrik, *A Second Look at Out-of-Market Listening and Viewing: It Has Even More Significance* (Oct. 23, 2006) (Att. C to NAB Comments)).

[11] *Id.* at 9 (citing David Gunzerath, *Independent Radio Voices In Radio Markets*, at 1 (Aug. 2006) (Att. B to NAB Comments)).

[12] *See, e.g.*, AFL-CIO, 15-16; Consumers Union, Consumer Federation of America, and Free Press ("Consumers Union"), 15; Mid-West Family Stations, 9; Office of Comm'ns of the United Church of Christ, Inc. et al. ("UCC"), 79-80; Recording Artists' Coalition, 3-4; Rachel Stilwell,

less concentrated than nearly every other communications industry segment, and, indeed, many other domestic commercial industries as well. Clear Channel demonstrated, specifically, that the radio industry is less concentrated than the recording industry, the film production and movie theatre industry, and the cable industry, as well as the car rental market.[13] And NAB showed, similarly, that the radio industry is far less concentrated than satellite radio, DBS, outdoor advertising, cable, movie studios, television, and newspapers, based on the revenue share earned by the top ten firms in each industry sector.[14]

The record already before the Commission also establishes that free, over-the-air radio faces substantial and ever-increasing competition from a dizzying array of alternative platforms.[15] In 1996, Congress could not have even imagined many of these competitors, and

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32-33, 72. A "study" released by the Future of Music Coalition ("FMC") on December 13, 2006, which purportedly will be submitted in the docket in this proceeding, makes similar claims. *See* Peter DiCola, *False Premises, False Promises: A Quantitative History of Ownership Consolidation in the Radio Industry* (Dec. 2006), at 18-49, http://www.futureofmusic.org/images/FMCradiostudy06.pdf ("*DiCola Radio Study*"). Not only do these commenters and FMC paint a picture of the radio industry that is at odds with reality, but their concerns as to national concentration levels are also, as discussed below, completely irrelevant to this proceeding, which as to radio is (and must be) focused exclusively on *local* ownership. *See infra* pp. 39-40.

[13] Clear Channel, 8 (citing sources).

[14] *Percentage of Industry Revenues Earned by Top 10 Firms in the Sector* (Att. E. to Comments of NAB); *see also* Richard T. Kaplar & Patrick D. Maines, *Media Consolidation, Regulation, and the Road Ahead*, at 2 (Feb. 2006) (attached to Media Institute Comments) ("*Media Consolidation, Regulation, and the Road Ahead*") (noting that "virtually every major industry segment has seen a trend toward fewer but larger companies").

[15] Clear Channel, 10-17; CBS Corporation ("CBS"), 10; *Media Consolidation, Regulation, and the Road Ahead*, at 5; Media General, 49; Morris, 10; Tribune, 30-32; NAA, 15, 19-20; NAB, 12-22, 26. Many commenters recounted similarly explosive growth in other forms of new media that compete with television broadcasters and newspaper publishers. *See, e.g.*, Belo Corp. ("Belo"), 10-12; Bonneville, 6-11; Cox Enterprises, Inc. ("Cox"), 17-18, 20-23; Entravision Holdings, LLC ("Entravision"), 6-9; Fox Entertainment Group and Fox Television Stations, Inc. ("Fox"), 5-17; Freedom of Expression Foundation, 10-12; Gannett Co., Inc. ("Gannett"), 14-20; Gray Television, Inc. ("Gray"), 6-11; Hearst-Argyle Television, Inc. ("Hearst-Argyle"), 4-25; Media General, 42-63; *Media Consolidation, Regulation, and the Road Ahead*, at 1, 4-5; Morris, 9-13; NAB, 5-22; NBC Universal, Inc. and NBC Telemundo ("NBC"), 12-22; Nexstar Broadcasting ("Nexstar"), 6-10; PFF, 10-40; Shamrock Communications Inc. and the Scranton

the vast majority of them did not become real participants in the marketplace until after the FCC last considered changes to the local radio ownership rules in 2003. The country's two satellite radio operators – XM and Sirius – provide listeners with more than 270 channels of programming in every local market across the country.[16] Satellite radio today boasts over eleven million subscribers, having experienced a staggering increase of *1531%* in subscribership in just three years.[17] And sales of iPods and other MP3 players that can be used to listen to music programming and "podcasts" created for them – which did not even exist a decade ago – have risen substantially, and the popularity of these devices is predicted to continue to increase over time.[18] Apple's recent announcement that its new "iPhone" will be available later this year provides but one example of new technologies that will pose additional competitive threats to radio.[19]

Moreover, while Congress may have been able to envision the day when people might be able to listen to music over the Internet, or through music channels on subscription-based cable,

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Times, L.P. ("Shamrock"), 2-3; Sinclair Broadcast Group, Inc. ("Sinclair"), 12-25; Tribune, 15-79.

[16] *See* Clear Channel, 11-12; *see also, e.g.*, NAB, 6-8, 26; Nexstar, 7.

[17] *See* Clear Channel, 11; CBS, 10; NAA, 28; *see also* NAB, 26.

[18] Clear Channel, 13-14; CBS, 10; Fox, 12 & n.40; Gray, 8-9; NAB, 14-15, 19, 26; NAA, 29-30; Sinclair, 12, 16. As PFF explains, "'Podcasting' is the latest rage," PFF, 19, in terms of technologies that "give every man, woman, and child the ability to be a one-person publishing house or broadcaster[] and to communicate with the entire planet, or even break news of their own," *id.* at 18. "Using little more than an iPod and a computer, anyone can record and broadcast their own radio show to the rest of the world." *Id.* at 19; *see* NAB, 19. Sales of iPods and related equipment are expected only to increase during the holiday season and in 2007. *See also, e.g.*, Scott Reeves, *Update – Strong Holiday Sales Expected for Apple*, Forbes, Nov. 29, 2006, http://www.forbes.com/markets/2006/11/29/apple-computer-update-markets-equity-cx_xr_1129markets11.html (including an estimate that iPod sales will increase by eighteen percent in the first quarter of 2007); Richard Menta, *iPod Killers for Christmas 2006*, http://mp3newswire.net/stories/6002/ipod-killer-christmas2006.html (profiling *twenty-eight* devices that are competing with Apple's iPod in the 2006 holiday season).

[19] *See* http://www.apple.com/iphone/ipod/ (last visited Jan. 9, 2007).

DBS or IPTV platforms, the popularity of these services has now far surpassed the level that anyone would have expected them to achieve in 1996, or even just three short years ago. Furthermore, Wi-Max technology – not even imaginable to the average person in 1996 – will vastly expand the reach and portability of Internet audio programming, eventually allowing people to listen to Internet-delivered audio programming anywhere they can get a wireless connection, and poses yet another near-term competitive threat to free, over-the-air radio.

There is, of course, no regulatory limit on the number of channels that satellite radio operators or entities operating subscription-based cable and DBS music services may program or the number of sources of downloadable audio programming – for MP3 players, direct listening over the Internet, or mobile listening via Wi-Max – that a single entity may own. As Clear Channel and others have explained, terrestrial radio broadcasters, by contrast, remain shackled by restrictions on the number of radio stations that they can own in a local market – restrictions that have utterly failed to keep pace with the competitive changes in the marketplace.[20]

B. The FCC Is Statutorily Barred from Accepting Opposing Commenters' Invitations to Ignore Marketplace Developments.

Despite the clear record evidence of the substantial competition from other alternative sources that terrestrial radio broadcasters face in local markets, some commenters invite the FCC to turn a blind eye to reality, suggesting that media markets are not vibrantly competitive or arguing that alternative sources – regardless of their popularity – should not be considered here. This invitation is remarkable in its blatant disregard for the facts, and, more importantly, is one that the Commission is statutorily required to decline.

[20] Clear Channel, 10-11, 17; NAB, 28-29; *see Media Consolidation, Regulation, and the Road Ahead*, at 5 (stating that "government regulations . . . threaten the economic viability of radio operators"); *see also, e.g.*, Cascade Broadcasting Group, LLC ("Cascade"), 3; Fox, 2, 24; Gray, 11; Media General, 78; Nexstar, 10; NBC, 22.

For example, some commenters assert that local media markets are not, in fact, competitive.[21] As an initial matter, these commenters ignore the abundant evidence and empirical studies demonstrating that abundant competition *does* exist in local markets of varying sizes.[22] Moreover, although the number of owners may have decreased in some local markets, the transactions that caused this result were entirely consistent with – and, indeed, expressly contemplated by – the deregulatory changes to the local radio ownership rules mandated by Congress in the 1996 Act. Congress directed those changes based on its recognition that the radio industry was in trouble and needed help to recover, and its view that the synergies and efficiencies associated with increased opportunities for common ownership would provide a vehicle for terrestrial radio broadcasters to remain competitors in the expanding multi-media marketplace while delivering important benefits to the listening public.[23] Because Congress

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[21] *E.g.*, Mid-West Family Stations, 9; AFL-CIO, ii, 12, 13-14, 15-16, 47; Communications Workers of America ("CWA"), 61-62; Rachel Stilwell, 32-33, 72; UCC, 79-80; *see also DiCola Radio Study*, at 67-70. On January 12, 2007, Consumers Union released several "studies" that they state will be submitted with their reply comments in this proceeding. While Clear Channel reserves the right to respond more fully to these documents at a later date, it notes that the claims regarding alleged lack of radio competition contained therein are inconsistent with evidence already in the record in this proceeding. *See* Mark Cooper, *Misleading Market Industry Analysis*, at 1-6, *available at* http://www.freepress.net/docs/study_6_misleadingindustrymarketanalyses.pdf (last visited Dec. 12, 2007) ("*Cooper Market Analysis*"). The evidence of local competition submitted by Clear Channel, which showed abundant competition in Arbitron markets of all sizes, rebuts the arguments contained in the *Cooper Market Analysis* that local radio markets are not competitive. *See supra* pp. 2-3; Clear Channel, 7-8.

[22] *Supra* pp. 2-3; *see e,g.*, Clear Channel, 7-8; NAB, 6-12. Ms. Stilwell's claims regarding the New Haven, Connecticut market, and regarding overall radio concentration levels, are among the most outlandish. *See* Rachel Stilwell, 40. She claims, for example, that ten Clear Channel stations can be heard in New Haven, when in reality the company owns *three* stations in the New Haven market. *See* BIA Financial Network, FCC Geographic Market Definition Report for New Haven, CT (Nov. 2006). Her claims that Clear Channel owns "more than half of all popular music stations" and "almost two-thirds of rock stations across the country" are not only bizarre, but are also false. As noted above, Clear Channel owns only 8.5% of the country's stations, and as such could not possibly control 66% of the stations airing any particular format. *See supra* p. 2; *see also* Clear Channel, 7-8.

[23] *See, e.g.*, 141 Cong. Rec. S8424, S8424 (daily ed. June 15, 1995) (statement of Sen. Burns). ("Increased multiple ownership opportunities will allow radio operators to obtain efficiencies

made an express judgment in the 1996 Act that the levels of common ownership that it required the FCC to allow would *not* result in too much consolidation, the fact that parties availed themselves of these rule changes to acquire additional stations cannot be considered evidence of undue concentration.

Some commenters advance the similarly remarkable and demonstrably incorrect assertion that alternative media sources do not place competitive pressures on terrestrial radio broadcasters.[24] As Clear Channel established in its opening comments, however, numerous financial analysts have made dire predictions relating to radio stock performance and advertising revenue. They have, moreover, explicitly tied those predictions to the increased competition that

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from being able to purchase programming and equipment on a group basis and from combining operations such as sales and engineering."); *id.* at S8433 ("One way to help radio stations get out of the red is to permit them to use economies of scale that they can achieve from consolidating their operations. Lifting the ownership cap will permit radio stations to achieve these efficiencies.") (statement of Sen. Bryan); 141 Cong. Rec. S8076-S8077 (daily ed. June 9, 1995) ("[I]t is left up to us to empower radio so it can grow strong well into the next century, and continue to serve our communities as it has done so well for the past 70 years.") (statement of Sen. Pressler). Some commenters also advance thinly veiled suggestions that markets in which grandfathered combinations exist should somehow be considered suspect. *See, e.g.*, FMC, 2, 4-5, 6 & App.; *see also* Monterey Licenses, LLC, 13-14; UCC, 86 & App. B. This situation was created by the FCC's own rule change, and does not evince any "noncompliance" or other impropriety by radio broadcasters owning grandfathered combinations. The combinations, when acquired, were in full compliance with the Commission's then-existing local radio ownership caps, and the decision to grandfather those combinations was fully consistent with – and, indeed, compelled by – the FCC's pre-existing precedent and fundamental notions of fairness. *See, e.g.*, *Review of the Comm'ns Regulations Governing Television Broad.*, Report and Order, 14 FCC Rcd 12,903, 12, 965, 12,929 & n.97 (1999) (television LMAs and television duopolies); *Review of the Commn's Regulations Governing Attribution of Broad. and Cable/MDS Interests*, Report and Order, 14 FCC Rcd 12,559, 12630 (1999) (cable/broadcast combinations and cable/MDS combinations); *Amendment of Sections 73.34, 73.240, and 73.636 of the Comm'ns Rules*, 50 F.C.C.2d 1046, 1054 (1975), *recon.* 53 F.C.C.2d 589 (1975), *aff'd sub nom.*, *FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775 (1978) (newspaper/broadcast combinations except in limited "egregious" cases).

[24] *See, e.g.*, Mt. Wilson FM Broadcasters, Inc. ("Mt. Wilson"), 17; Adam Marcus, 35; *see also* American Federation of Television and Radio Artists ("AFTRA"), 7-8 (claiming that new technologies should not be considered because not all Americans have access); Rachel Stilwell, 33, 72 (same). Some who make this argument even acknowledge, as they must, that satellite radio and Internet radio listening have increased in recent years. *See, e.g.*, Rachel Stilwell, 41-42. It is impossible to square this recognition with their argument that these new sources do not place competitive pressures on radio broadcasters, and the commenters do not make any attempt at reconciliation.

radio companies face from new and emerging technologies such as satellite radio, portable audio devices, and Internet audio programming.[25] Very recent reports echo these concerns. Indeed, Lehman Brothers is "predicting [that] 2007 will be radio's worst [year] since '01."[26] As a matter of fact, the radio industry has long been experiencing substantial financial pressure, accompanied by resultant declines in advertising revenues and stock prices.[27] As NAB's comments show, even *market-leading* stations have experienced substantial decreases in audience shares over the past few years.[28]

Finally, some commenters claim that these alternative sources of audio entertainment, news, and information programming should not be considered as competing voices because they

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[25] *See* Clear Channel, 10-17, 50-52; NAB, 14-15, 19, 25-26; *see also, e.g.*, Block, 2-4; Cascade, 1; CBS, 11; Fox, 12-13; Gannett, 21-24; Granite, 3-4; Gray, 10-11, 14-15; Hoak Media LLC ("Hoak"), 4-6; Media General, 63; NAA, 42-45; NAB, 29-35; NBC, 7-12; Nexstar, 6-10; Shamrock, 6-7; Sinclair, 32-33; Smaller Market Television Stations, 6-10.

[26] Inside Radio (Dec. 6, 2006), at 2.

[27] Clear Channel, 10-17, 50-52; NAB, 14-15, 19, 25-26, 31-35. AFTRA further states that alternative technologies have been around for years, and asserts that "*[i]f* media consolidation has resulted in the erosion of independent editorial comments, fewer sources of news and information, and less diversity and competition, the wide availability of these technologies has not stopped that from happening thus far." AFTRA, 8 (emphasis). As shown below and in the opening comments, AFTRA's "[i]f" requires a leap of faith that is unsupported by the record; there has been no decrease in diversity as a result of common ownership, and if anything diversity has been enhanced. *See, e.g.*, Clear Channel, 22-32,41-43; *see also infra* pp. 13-26. As shown also above and in the opening comments, however, many of these technologies have only recently become popular, rendering AFTRA's statement factually incorrect. Moreover, if these technologies *had* been widely available for years, that would serve only to further demonstrate that the media ownership rules – including the local radio ownership rule – are in serious need of updating.

[28] NAB, 74 (citing NAB, *Aggregate Shares of Top Five Stations in Top 100 Arbitron Markets: Spring 2006 vs. Spring 2001 and Spring 1996*, at 3, which shows that the aggregate share of the top five stations in the 100 largest Arbitron markets declined an average of 5.9% from 2001 to 2006, and declined an average of 14.7% from 1996 to 2006) (Att. D. to NAB Comments)). NAB notes, further, that the Commission, four years ago, documented that the average number of listeners to radio had begun to fall. *See id.* (citing George Williams and Scott Roberts, *Radio Industry Review 2002: Trends in Ownership, Format, and Finance*, at 19 (Sept. 2002)).

are controlled by the same companies that own traditional media outlets.[29] This is simply wrong. Clear Channel does not control the satellite radio industry, and while its stations have a substantial Internet presence, that presence is truly minimal when compared to the hundreds of thousands of other sources of online audio programming available to anyone with an Internet connection.[30] The assertion that the vast amount of material available via podcasting is controlled by the traditional media is also absurd; one directory alone lists thousands of podcasts of music, news, entertainment, and informational programming, the vast majority of which are generated by individuals or entities with no ties whatsoever to any broadcasting company.[31] Thus, the facts – in contrast to opposing commenters' unsupported assertions divorced from reality – establish that radio broadcasters today face abundant competition.

Even if it wanted to do so, the Commission would not be free to accept these commenters' invitations to ignore the competitive developments that have occurred. As the comments of Clear Channel and numerous other parties establish,[32] and as the Third Circuit's decision in *Prometheus* clearly instructs, Section 202(h) "requires the Commission to take a fresh look at its regulations periodically in order to ensure that they remain 'necessary in the public interest'" in light of competition.[33] If the FCC concludes that its media ownership rules do not meet this test, the Commission has no discretion to maintain the *status quo*; the regulations "must

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[29] AFTRA, 10-13; Nancy Stapleton, 8.

[30] *See* Clear Channel, 15-16; *see also, e.g.*, CBS, 10; Morris, 10; NAB, 15, 86; NAA, 28-29.

[31] *See* Podcast Directory, http://www.podcastingnews.com/forum/links.php (last visited Dec. 18, 2006); *see also* Podcast.net, The Podcast Directory, http://www.podcast.net/ (last visited Dec. 18, 2006); Yahoo! Podcasts, http://podcasts.yahoo.com/ (last visited Dec. 18, 2006); podfeed.net, the podcast directory, http://www.podfeed.net/ (last visited Dec. 18, 2006).

[32] *See, e.g.*, Clear Channel, 3-5; NAA, 17-20; NAB, 3-5; Gannett, 14; Gray, 3-6; Media General, 66-69; Hearst-Argyle, 2.

[33] *Prometheus Radio Project v. FCC*, 373 F.3d 372, 391 (3d Cir. 2004).

be vacated or modified."[34]

To suggest, as a few commenters do, that this mandate is not deregulatory in nature,[35] is to advocate a position that is contrary to the teachings of two separate federal Courts of Appeal, the statute itself, its legislative history, and established canons of statutory construction. In fact, the Third Circuit recognized that "[t]he text and legislative history of the 1996 Act indicate that Congress intended periodic reviews to operate as an 'ongoing mechanism to ensure that the Commission's regulatory framework would keep pace with the competitive changes in the marketplace' resulting from that Act's relaxation of the Commission's regulations, including the broadcast media ownership regulations."[36] The D.C. Circuit has similarly made clear that Congress intended Section 202(h) to "continue the process of deregulation" that the 1996 Act commenced,[37] and that the 1996 Act's periodic review provisions require the FCC to reevaluate rules in light of current competitive market conditions.[38] This duty, as the Third Circuit and the D.C. Circuit have instructed, is "an obligation [the Commission] would not otherwise have,"[39] and one that "extends beyond its normal monitoring responsibilities."[40]

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[34] *Id.* at 394; *see id.* at 395 (rules that are determined to no longer be necessary in the public interest "must be repealed or modified"); *see also Cellco P'ship v. FCC*, 357 F.3d 88, 94 (D.C. Cir. 2004) (the 1996 Act mandates that the Commission identify rules that are no longer necessary "followed by their repeal or modification").

[35] *See, e.g.*, Center for Creative Voices in Media, 1-3; Screen Actors Guild, 27.

[36] *Prometheus*, 373 F.3d at 391 (quoting *2002 Biennial Regulatory Review*, 18 FCC Rcd 4726, 4732 (¶¶ 16, 17) (2003) ("*2002 Biennial Review Report*"), *aff'd*, 357 F.3d 88 (D.C. Cir. 2004)); *see 2003 Order*, 18 FCC Rcd at 13,624-25 (¶¶ 10-12).

[37] *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1033, *op'n modified in part on reh'g*, 293 F.3d 537 (D.C. Cir. 2002); *see id.* at 1044 (likening Section 202(h)'s command "to Farragut's order at the battle of Mobile Bay ('Damn the torpedoes! Full speed ahead.')").

[38] *See Cellco*, 357 F.3d at 98.

[39] *Prometheus*, 373 F.3d at 395.

[40] *Cellco*, 357 F.3d at 99 (emphasis added).

The statute's legislative history, as Media General explains, makes equally clear that the biennial (now quadrennial) review mandate requires the Commission to update its rules to reflect current competitive realities:

> Congress concluded that, because of "the explosion of video distribution technologies and subscription-based programming sources . . . Congress and the [FCC] must reform Federal policy and the current regulatory framework to reflect [ ] new marketplace realities."[41] In Congress' view, the industry even in 1995 was "operating under archaic rules that better suited the 1950's than the 1990's," even though "the broadcast environment today is the most competitive it's ever been."[42]

Moreover, as Clear Channel and others have explained before, interpreting the substantive obligation placed upon the agency by Section 202(h) to impose no deregulatory mandate at all would mean that the statute adds absolutely nothing to the agency's pre-existing duties, thereby rendering the provision entirely superfluous in violation of established canons of statutory construction.[43]

Finally, *even if* commenters were correct that *Section 202(h)* did not add anything to the agency's pre-existing obligations under the APA – which they are not – the Commission would *still* be required, as the opening comments of Clear Channel and others established, to update its rules to take into account competitive developments.[44] Simply put, the FCC is under a duty under the 1996 Act, the Third Circuit's remand order, and the APA to "'monitor the effect of . . . competition . . . and make appropriate adjustments to its regulations.'"[45] This duty, whatever its

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[41] Media General, 66-67 (quoting H.R. Rep. No. 104-204, at 55 (1995)).

[42] *Id.* at 67 (quoting S. Rep. No. 104-23, at 64 (1995) (Statement of Sen. Burns)).

[43] *See, e.g.*, Clear Channel, 6; NAA, 20-21; *see also Clear Channel Third Circuit Brief* at 24-25; *Clear Channel Third Circuit Reply Brief* at 5; *Clear Channel Supreme Court Brief* at 22-24.

[44] *See, e.g.*, Clear Channel, 4-5; NAB, 3-4; NAA, 20; Gray, 5 n.14.

[45] *Prometheus*, 373 F.3d at 391 (quoting *2002 Biennial Review Report*, 18 FCC Rcd at 4727

precise source, requires the Commission to reject out of hand suggestions that it may retain (or even tighten) its existing ownership limits in the face of competitive realities that unambiguously counsel in favor of deregulatory action.

II. THE RECORD DEMONSTRATES THAT EXPANDING OPPORTUNITIES FOR COMMON OWNERSHIP OF RADIO STATIONS THROUGH REPEAL OF THE LOCAL RADIO OWNERSHIP RULE WILL PROVIDE AFFIRMATIVE PUBLIC INTEREST BENEFITS AND CREATE NO COUNTERVAILING HARMS.

As discussed more fully below, the opening comments of Clear Channel and others provide persuasive evidence that higher levels of common ownership deliver important benefits to American radio listeners in the form of enhanced diversity and improved local service. This evidence – and the lack of anything other than conclusory contentions, unsupported supposition, and anecdotal allegations presented by those who oppose elimination or relaxation of the local radio ownership rule – requires rejection of calls to retain the local radio ownership caps, and an even more resounding negative response to those who advocate that the caps should be lowered in some fashion or other.[46]

A. The Record Demonstrates that Common Ownership of Radio Stations Increases Diversity – and, in Particular, Format Diversity.

As Clear Channel explained in its opening comments, the Commission has already correctly rejected allegations that increased levels of common ownership of radio stations adversely affect diversity, whether measured by format diversity or viewpoint diversity.[47] In

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(¶ 5)).

[46] *See, e.g.*, Mt. Wilson, 3-18; AFTRA, 15-20; Amherst Alliance, 2; CWA, 61-62; FMC, 2-3, 13; UCC, iv, 77-86; Adam Marcus, 34; Recording Artists' Coalition, 6; Nancy Stapleton, 9; Rachel Stilwell, vii, x, 79-81; Thomas C. Smith, 2-4; David E. Griffith, 9-10; Cary Pall, 2; *see also DiCola Radio Study*, at 70-74.

[47] Clear Channel, 17-18 (format diversity); *see id.* at 85 (citing FCC statements in newspaper/broadcast context that the degree to which common ownership influences viewpoint "cannot be established with any certitude"). In the *2003 Order*, the FCC found, moreover, that the breadth of available alternatives for communicating differing viewpoints adequately

addition, the opening comments of Clear Channel and others provide empirical evidence and real-world examples which demonstrate that common ownership of radio stations has actually *increased* the diversity of radio programming available to listeners.[48]

Studies by Professor Jerry A. Hausman of the Massachusetts Institute of Technology (submitted by Clear Channel) and Dr. Mark R. Fratrik of BIA (submitted by the NAB), empirically demonstrate the positive effect that common ownership has on format diversity. Professor Hausman's study demonstrated, specifically, that format diversity increased significantly between 1993 and 2006, with the average number of formats increasing between 1993 and 2001 – the time during which transaction volume was the heaviest – from 11.5 to 16.7, or by more than 45%.[49] Moreover, Professor Hausman found that 25% of the increase in format diversity that occurred between 1993 and 2001 can be directly attributed to increased levels of common ownership.[50] Dr. Fratrik's study similarly shows substantial increases in format diversity since 1996, with the number of general formats increasing by 16% and the number of specific formats increasing by 36.4%.[51] Dr. Fratrik demonstrates, moreover, that service to diverse segments of the American population, through increases in Spanish-language

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addressed any arguable viewpoint diversity concerns in the radio context, stating that "it is sufficient to say that media other than radio play an important role in the dissemination of local news and public affairs information." *2003 Order*, 18 FCC Rcd at 13,739 (¶ 305).

[48] *See, e.g.*, Clear Channel, 17-32; *Media Consolidation, Regulation, and the Road Ahead*, at 6 (explaining that "[a]n owner of several stations in a market will want to program a wide variety of formats in that market to capture as many listeners in that market as possible"); NAB, 79-84; *see also, e.g.*, Gannett, 43-44 (making same argument in the context of the local television ownership rule); Hearst-Argyle, 31 (same).

[49] Statement of Professor Jerry A. Hausman, at 4 & Table 1 ("*Hausman October 2006 Statement*") (Ex. 2 to Clear Channel Comments).

[50] *See id.*; *see also Media Consolidation, Regulation, and the Road Ahead*, at 6.

[51] Mark R. Fratrik, Ph.D., *Over-the-Air Radio Service to Diverse Audiences* (Oct. 23. 2006), at 3-7 ("*Over-the-Air Radio Study*") (Att. G. to NAB Comments).

programming, Asian-programmed stations, formats of specific interest to African Americans, news/talk stations, and a variety of other types of niche-oriented programming, has risen in recent years.[52] Clear Channel's experiences with format differentiation and the introduction of wholly new formats previously available nowhere on American radio dials – as well as the experiences of other broadcasters contained in the opening comments filed in this proceeding – provide real-world evidence that further supports these empirical results.[53]

Not surprisingly, many who advocate continued or tightened radio ownership regulation argue that consolidation decreases diversity.[54] Their arguments, however, largely consist of bald assertions, unsupported by any empirical or record evidence at all. Contentions that owners with fewer stations are most likely to supply "niche" formats[55] or that group owners seek to "superserve" the most desirable demographic groups[56] are, moreover, belied by the fact that Clear Channel itself has pioneered entirely new formats that previously existed nowhere on the radio dial and that serve previously unserved or underserved audiences, and by the evidence that today there are more formats targeted at discrete and diverse groups than ever before.[57]

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[52] *See id.* at 7-17; *see also* NAB, 79-84.

[53] *See, e.g.*, Clear Channel, 22-32; NAB, 79-84; *see also, e.g.*, Gannett, 43-44; Hearst-Argyle, 31. Clear Channel's commitment to serving niche audiences is further exemplified by its HD radio service and its Format Lab. *See* Clear Channel, 30-32. Clear Channel also provides abundant online content uniquely tailored to meet the wide ranging interests of its listeners, most recently introducing online on-demand lifestyle programs serving fans of auto racing and the gay and lesbian community. *See* Racing With Pride, CC Radio Launches Web-Based On-Demand Programming, *Radio Ink* (Dec. 12, 2006), http://www.radioink.com/HeadlineEntry.asp?hid=136155.

[54] *See, e.g.*, Mt. Wilson, 2-3, 8-10; AFL-CIO, 29; AFTRA, 16-18; FMC, 12-13; Recording Artists' Coalition, 4; Rachel Stilwell, 33-43, 60.

[55] *See generally* Mt. Wilson; *see also* FMC, 8-13.

[56] Rachel Stilwell, 33-34.

[57] Clear Channel, 22-25; NAB, 79-84; *Over-the-Air Radio Study*, at 7-17.

The only "study" currently in the record that purports to show a decrease in radio format diversity suffers from numerous analytical flaws.[58] Specifically, and as discussed in the attached Statement of Professor Jerry A. Hausman, the "study" uses "major format category" to evaluate diversity, rather than "format," and thereby completely ignores within-category variation.[59] It is therefore highly skewed towards *understating* actual diversity levels.[60] Indeed, there are only *nineteen* BIA major format categories, while there are *hundreds* of actual formats.[61] In addition, it looks only at whether larger station groups (taken as a whole) tend to offer a greater variety of formats than smaller groups, rather than considering – as the FCC has and as Professor Hausman does – the variety of formats available in *local* markets.[62] Further, it does not provide a numerical measure of format diversity at all.[63] As a result of these myriad errors, it "does not provide a policy-relevant analysis of format variety," and certainly cannot be considered to provide "evidence" that increased levels of common ownership result in decreased format diversity.[64]

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[58] *See* Peter DiCola, *Do Radio Companies Offer More Variety When They Exceed the Local Ownership Caps?* ("*DiCola Diversity Study*") (Attached to FMC Comments).

[59] Statement of Professor Jerry Hausman, at 4 (Att. A hereto) ("*Hausman January 2007 Statement*"). For example, it considers Hot Adult Contemporary and Soft Rock to be within the same format because they all belong to the same "category," even though Hot Adult Contemporary and Soft Rock stations obviously air very different music and serve very different demographics. *Id.*; *see infra* pp. 21-23 (discussing differences between demographic groups served by stations whose listeners highly-ranked the same songs).

[60] *See id.*

[61] *See id.* at Exhibit 2 (BIA, "Formats for Radio Stations" (2006)).

[62] *Id.* at 3. The question whether larger owners offer a wider array of formats overall, of course, is relevant if at all to national, rather than local, ownership considerations, which are, as discussed below, outside of the scope of this proceeding. *See infra* pp. 39-40.

[63] *Hausman January 2007 Statement*, at 3.

[64] *Id.* at 3. The *DiCola Radio Study*, which FMC has stated that it intends to submit in this docket, similarly purports to show a decrease in radio format diversity, and suggests that such

Some commenters advance allegations regarding playlist overlap in an apparent effort to undermine the overwhelming evidence that common ownership increases format diversity.[65] These contentions consist mainly of conclusory allegations and, in any event, are belied by the actual evidence of increases in the number of unique songs and artists played across all formats that were supplied in Clear Channel's opening comments. As shown therein, between 2001 and 2005 Clear Channel stations increased the number of unique songs by 29,330, and the number of unique artists by 5,478, which amounts to an overall increase of 70% in the number of unique songs, and 63% in the number of unique artists.[66]

In particular, Ms. Stilwell's specific statements that certain Clear Channel stations have substantial playlist overlap are, at best overstated, and in many cases, false. For example, Ms. Stilwell contends that three Clear Channel stations in New Haven, Connecticut have substantial playlist overlap.[67] This is impossible, because of the three stations that Clear Channel owns in

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decrease is attributable to increases in common ownership levels over time. *See Dicola Radio Study*, at 82-113. As Professor Hausman explains, this "new" study suffers from the same sorts of analytical flaws as does the *DiCola Diversity Study*. *See Hausman January 2007 Statement*, at 10. In addition, Mr. DiCola's own calculations show that even among format pairs with the greatest degree of overlap, additional formats do indeed provide additional variety by playing additional songs. *See id.* at 10-11.

[65] *See, e.g.*, AFTRA, 16-18; Rachel Stilwell, 36-37, 40, 60; *see also DiCola Radio Study*, at 103-110.

[66] Clear Channel, 26. To the extent that opposing commenters focus on alleged playlist overlap between same-format stations in different markets, *see, e.g.*, Rachel Stilwell, 40; *see also DiCola Radio Study*, at 103-110, their arguments – even if true – would be immaterial, as discussed below, *see infra* pp. 39-40. And, even if relevant, such overlap is hardly surprising. Radio formats are designed to appeal to specific demographic groups, and while local stations seek to serve the interests of their local listeners, it far from remarkable that an Adult AC station in Washington, D.C. and an Adult AC station in Casper, Wyoming would air similar music, as both stations are intended to serve the same demographic. Finally, the degree of playlist overlap that the *DiCola Radio Study* finds is not nearly as significant as much of its rhetoric suggests; even under Mr. DiCola's own analysis, two Clear Channel stations in the same format will have playlists that overlap by 54.6%, meaning that 45.4% of the songs that they air will be different. *See DiCola Radio Study*, at 107.

[67] *See* Rachel Stilwell, 40.

New Haven, only one of them – WKCI(FM) – airs music at all; the other two – WAVZ(AM) and WELI(AM) – are Sports and News/Talk stations, respectively. Her claim of overlap between the March 2006 playlists of Clear Channel's Adult Contemporary stations in Augusta, Georgia (WBBQ(FM)) and Anchorage, Alaska (KYMG(FM))[68] is simply false; actual data shows that the two stations' playlists are, indeed, quite different.[69] For example, songs by certain artists, such as Shania Twain and Tim McGraw, rank tenth and eleventh on Augusta's playlist, but do not appear at all on Anchorage's list of the fifty most played songs. Songs by the Los Lonely Boys and Counting Crows are ranked twelfth and fourteenth, respectively, on Anchorage's playlist and do not appear at all on Augusta's playlist. Even where there is "overlap," the stations play songs and artists in vastly different quantities. For example, The Eagles' "No More Cloudy Days" was number eleven on Anchorage's playlist, with 62 spins in March, while it was number twenty-five on Augusta's, with only 16 spins. These differences reflect the results of *local* research, in the form of Auditorium Music Tests, as well as telephone and email requests from listeners, that inform local station managers' respective judgments regarding the tastes of their local audiences. Both stations consistently earn top ratings, demonstrating the accuracy of those judgments.[70]

On December 29, 2006, the FCC released a number of documents related to this

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[68] *See id.* at 60.

[69] For Augusta, data for the following analysis was obtained from Mediabase, while RCS Selector data was used for Anchorage, because Mediabase does not track that market.

[70] Both stations also demonstrably tailor their programming to serve their *local* audiences, and provide specific *local* service, in other ways, as well. For example, WBBQ in Augusta airs local news, weather, and traffic five days a week and a daily Community Calendar, and longtime Augusta residents feature prominently among its on-air personalities. Similarly, KYMG in Anchorage airs local news and weather, as well as a 30 minute weekly public affairs program, and its on-air lineup includes individuals who have resided in Anchorage for between fifteen and thirty years. Both stations, moreover, are heavily involved in – and devote substantial on-air time to promoting – activities in the local communities that they serve.

proceeding in response to a Freedom of Information Act request.[71] Among those documents is what appears to be a draft study relating to radio playlists.[72] This study does not establish – as some opposing commenters have suggested it does – that common ownership reduces diversity.[73] In particular, the study itself does not purport to draw a direct link between ownership concentration and playlist diversity but, rather, states that its conclusions are "tentative" and that the authors "can make no definite statement regarding the relationship between concentration and diversity."[74] In addition, the study acknowledges numerous of its own flaws. First, its sample is restricted to only 245 of the 17,500-plus stations in the country.[75] By contrast, Professor Hausman's analysis of format variety examines all of the stations in 243 markets.[76] Second, the stations included in the study represent the nation's largest markets and the study thus "greatly" undersamples smaller markets.[77] Even within those large markets, the

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[71] *See* Public Notice, *FCC Media Bureau Posts Staff Reports and Studies on Media Ownership Webpage* (Dec. 29, 2006); *see also* http://www.fcc.gov/ownership/additional.html (last visited Jan. 4, 2007).

[72] *See* FCC Market Structure and Music Diversity Paper, August 2005, *available at* http://www.fcc.gov/ownership/materials/newly-released/radiomarketstructure081506.pdf ("*FCC August 2005 Draft Radio Diversity Paper*"). The FCC also released an undated version of a paper bearing the same title, which appears to be similar in substantive respects to the August 2005 version. *See* FCC Market Structure and Music Diversity Paper, *available at* http://www.fcc.gov/ownership/materials/newly-released/radiomarketstructure.pdf ("*FCC Undated Draft Radio Diversity Paper*").

[73] *See* Josh Wein, *FCC Ownership Studies' Release Seen Timed to Avoid Headlines*, Communications Daily, Dec. 29, 2006, 4-5 (quoting Andrew Schwartzman).

[74] *FCC August 2005 Draft Radio Diversity Paper*, at 1; *see FCC Undated Draft Radio Diversity Paper* (stating that the paper's conclusions "are tentative," noting that the authors "can make no definite statement regarding the relationship between concentration and diversity" based on their findings, and listing potential problems with the data set employed).

[75] *FCC August 2005 Draft Radio Diversity Paper*, at 5, 19; *see Hausman January 2007 Statement*, at 11.

[76] *See Hausman January 2007 Statement*, at 11.

[77] *FCC August 2005 Draft Radio Diversity Paper*, at 5, 19; *see Hausman January 2007 Statement*, at 11.

study's sample is drawn from "a possibly unrepresentative sample," because it includes only stations that meet a minimum ratings threshold and only stations that play new songs.[78] Third, the study analyzes only the stations' top-ten most played songs, and thus "do[es] not observe a complete or even a majority of each station's total songs played."[79] Fourth, the study recognizes that many of its results may face "endogeneity issues."[80] As Professor Hausman explains, because changes in concentration are endogenous, the study's results are "likely biased and inconsistent" due to the FCC's failure to address the endogeneity problem.[81] Finally, as Professor Hausman also explains, the study excludes the contributions to radio diversity that are made by stations that do not play music at all, such as news, talk, and sports-formatted stations.[82]

What is more, to the extent that the study purports to show a decrease in diversity among two stations in the *same format* and *same market* that went from separate to common ownership,[83] it is inconsistent with market realities and rational business behavior. Clear

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[78] *FCC August 2005 Draft Radio Diversity Paper*, at 5; *see Hausman January 2007 Statement*, at 11.

[79] *FCC August 2005 Draft Radio Diversity Paper*, at 19; *see Hausman January 2007 Statement*, at 11.

[80] *FCC August 2005 Draft Radio Diversity Paper*, at 19-20; *see Hausman January 2007 Statement*, at 12.

[81] *Hausman January 2007 Statement*, at 12. Another of the FCC's recently-released draft studies, while not expressly recognizing so, suffers from many similar flaws. *See* Preliminary Analysis for Diversity and Localism in Radio Playlists Study, *available at* http://www.fcc.gov/ownership/materials/newly-released/playlists080004.pdf ("*FCC Preliminary Draft Radio Diversity Analysis*"). It uses the same 245-station sample, *see id.* at 1; looks only at Top 10, Top 20, and Top 30 lists, *see id.* at 2-3; and simply notes that the number of owners of the stations included in its sample declined during the period covered by the study but does not purport to determine whether that decline had any impact at all on playlist diversity, *see id.* at 1, 3-4. Furthermore, many of its findings actually confirm that diversity has increased; with respect to songs played on stations in the same formats, the study finds a rise in diversity in eight out of twelve formats (or 66%), and as to songs played on stations in different formats, it finds a rise in diversity in eight out of fifteen format pairs (or 53%). *See id.* at 1-2 & Tables 1-2.

[82] *See Hausman January 2007 Statement*, at 11.

[83] *FCC August 2005 Draft Diversity Paper*, at 18.

Channel does not and would not ever program two of its stations in the same market with the same format, and it would be highly unusual for any group owner to do so. Even if there were an odd case in which a single owner programmed two stations in the same market with the same "format," the owner would *necessarily* use substantially different playlists across the two stations in order to serve different demographic groups. Any other behavior would result in a situation wherein an owner was competing with itself for listeners, which would clearly be irrational.[84]

In any case, this study provides substantial support for the proposition that format diversity has actually *risen* since 1996, and that common ownership has only increased the number of unique songs played on the radio today. For example, in eight of thirteen pairs of distinct, but similar, formats examined, the study finds an increase in song diversity.[85] Furthermore, using a panel regression, the study finds that where two stations in a local market went from separate to common ownership, the differences between their playlists increased, and that "owners differentiate play lists among their stations as long as those stations are within the same market."[86]

Moreover, opposing commenters' playlist arguments, and in large part the FCC's newly-released draft study on the issue, completely ignore the reality that even formats with some playlist overlap serve distinct audiences.[87] Indeed, this is necessarily the case, because the same

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[84] Moreover, to the extent that the study focuses on playlist overlap between stations in *different* markets, its conclusions are, as discussed below, irrelevant here. *See infra* pp. 39-40.

[85] *FCC August 2005 Draft Radio Diversity Paper*, at 12 & Table 3.

[86] *Id.* at 17-18 & Table 4; *see Hausman January 2007 Statement*, at 12.

[87] Clear Channel, 26-27. Some also criticize the rise of formats like "Jack," "Dave FM," and "Bob FM" because, while they have larger playlists, they may not play new music. *See* Rachel Stilwell, 43; AFTRA, 18-19. In Clear Channel's markets, however, there are, as discussed in detail below, abundant initiatives in place for promoting new music. *See infra* pp. 30-32. What is more, if the public does not like these formats, they will not listen, and owners will have no choice but to switch to a format that serves their listeners' needs and interests in response to

songs are often popular with vastly different demographic groups. For instance, in audience tests conducted in 2001 and 2002, the song "Amazed" by Lonestar received popularity scores of between 87 and 89 among listeners of WHTZ(FM), New York, New York, a Pop Contemporary Hit Radio formatted station, and WGAR(FM), Cleveland, Ohio, a Country formatted station. According to Arbitron, however, these stations had different target audiences at the time of testing, with WHTZ(FM)'s target audience being females between the ages of 12 and 21 and WGAR(FM)'s target audience being females between the ages of 38 and 46. But the differences between listeners of these stations do not stop at their ages. According to survey results, the largest percentage of these stations' listeners have widely varying demographic characteristics. For example, the largest percentage of WHTZ(FM)'s listeners are college-educated and have median household incomes of $107,923, while the median household income of WGAR(FM)'s largest percentage of listeners is about one-third of that figure, at $37,088, and they are high school graduates with no college education.

Similar results were found with respect to the song "Hot in Herre" by Nelly. That song received popularity scores in 2002 of between 98 and 101 among listeners of KSLZ(FM), St. Louis, MO, a Pop Contemporary Hit Radio formatted station, and WQUE(FM), New Orleans, LA, an Urban Contemporary formatted station. At the time of testing, Arbitron indicated that the target audiences of the stations were again very different, with KSLZ(FM)'s target audience being females between the ages of 12 and 21, and WQUE(FM)'s audience being evenly mixed between males and females between the same ages. And again, other demographic characteristics of the stations' audiences differed significantly as well. For example, the largest

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market pressure. *See Media Consolidation, Regulation, and the Road Ahead*, at 6 (stating that "the reward for giving listeners the kind of music and other programming they want to hear is economic success").

percentage of WQUE(FM)'s listeners have some college education, and have median household incomes of $48,666, while the median household income of KSLZ(FM)'s largest percentage of listeners is about half of that figure, at $26,471, and they are mostly high school graduates with no college education.[88] Accordingly, it is clear that the simple fact that stations may have some playlist overlap does not demonstrate that they serve audiences that can accurately be characterized as being "the same."

In an apparent attempt to expand on alleged format diversity concerns associated with common ownership, UCC further argues that tightening the ownership limits "will lead to increased innovation because, if radio broadcasters cannot obtain additional spectrum through purchasing more stations, they will have incentives to use their existing spectrum more efficiently."[89] This statement is not only unadorned by any explanation or elaboration – let alone any empirical or other evidence – but also makes no sense. In reality, as the record in this proceeding shows, common ownership *increases* efficient use of spectrum and incentives to innovate by providing group owners with the resources and risk-taking ability needed to serve niche audiences.[90] Clear Channel's high definition ("HD") radio initiative, explained in detail in its opening comments, in fact directly rebuts UCC's contention.[91] It is precisely the ability to spread risk across multiple platforms that has enabled Clear Channel to be a pioneer in

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[88] The results reported above were compiled by Critical Mass Media ("CMM"). They are based on Auditorium Music Testing surveys, Arbitron data, station information regarding listener characteristics, and personal interviews with listeners. The particular demographic information (*e.g.*, household income and college education) that is provided is specifically based on CMM's analysis of the aforementioned data sources using the "life groups" developed by Claritas – a renowned market research firm – through its "Prizm NE" market segmentation analysis. *See* http://www.claritas.com/claritas/Default.jsp?ci=3&si=4&pn=prizmne (last visited Jan. 11, 2007).

[89] UCC, 83.

[90] *See, e.g.*, Clear Channel, 22-23, 27-32, 41-43; NAB, 80-81.

[91] *See* Clear Channel, 30-32.

introducing HD radio and all of its benefits to a large portion of its stations' listeners in markets of all sizes.

A number of commenters also claim that corporate owners, such as Clear Channel, dictate the viewpoints aired on their stations.[92] These claims are factually incorrect, inconsistent with obvious market incentives, and in conflict with record evidence. As to Clear Channel specifically, and as noted in its opening comments, decisions relating to programming are properly made by program directors based in the communities its stations serve, whose main goal is to satisfy the desires and interests of local listeners.[93] By way of example, and as explained before, Clear Channel carries programming – often on different stations in the very same market – by both conservative and liberal talk personalities,[94] such that its CEO often observes that in many markets "it is safe to say you will probably hate at least one of our radio stations."[95] To the extent that some commenters recycle allegations regarding the effect the Dixie Chicks' lead singer's criticisms of the Iraqi invasion had on the band's airplay,[96] those contentions, as Clear Channel has explained before, are false.[97] In fact, any reduction in airplay of Dixie Chicks songs was the result of decisions made by *local* Clear Channel station management, in response to complaints and demands from *local* listeners; there was no

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[92] *See, e.g.*, AFL-CIO, 26-27; UCC, App. D, 20.

[93] Clear Channel, 22 n.89; *see Clear Channel Localism Comments*, 7-8.

[94] Clear Channel, 22-23.

[95] *Id.* at 23 (citing The Progress & Freedom Foundation, *"The Future of the Radio Marketplace" CEO Luncheon Featuring Mark P. Mays, President & CEO, Clear Channel Communications*, Progress on Point, Release 12.24, at 5 (Nov. 2005), http://www.pff.org/issues-pubs/pops/pop12.24markmayslunchеon.pdf)).

[96] *See, e.g.*, Rachel Stilwell, 54; UCC, App. D, 21; *see also* Amherst Alliance, 6-7.

[97] Reply Comments of Clear Channel Communications, Inc., MB Docket No. 04-233, at 2-3 (Jan. 3, 2005) ("*Clear Channel Localism Reply Comments*").

"corporate dictate" based on the desire to communicate (or silence) a particular viewpoint.[98]

As Clear Channel has also explained before, and as the comments of others demonstrate, market incentives render nonexistent any risk that group owners will use stations as megaphones to impose monolithic "viewpoints" upon listeners.[99] To the contrary, in order to succeed, group owners must appeal to as many segments of the listening audience as possible, and must be hyper-responsive to the particular needs, interests, and preferences of the local areas they serve.[100] And abundant empirical evidence further shows that any "slant" in viewpoint that might be detectable with respect to a particular media outlet is more likely the result of consumer preference than owner directive. Indeed, a recent academic study by professors at University of Chicago, in conjunction with the National Bureau of Economic Research, categorically

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[98] *See id.* One commenter states that even if reduced airplay of Dixie Chicks' songs following the incident was the result of listener feedback, the reduction did not take into account the desires of other listeners who might have agreed with the viewpoint expressed by the band's lead singer or wished to hear the band's songs irrespective of its lead singer's views on the Iraqi war. *See* Rachel Stilwell, 54. As explained in the *Clear Channel Localism Reply Comments*, however, Clear Channel stations did not eliminate Dixie Chicks' songs from their rotations and, in fact, played Dixie Chicks songs more than *10,000 times* in the two-week period following the remarks. *See Clear Channel Localism Reply Comments* at 2-3. Indeed, the Dixie Chicks' own manager publicly confirmed that Clear Channel was unfairly was "get[ting] a bad rap" on its handling of the Dixie Chicks incident. *See* Transcript of Hearing on Radio Ownership, Before the Committee on Commerce, Science, and Transportation, United States Senate (July 8, 2003), at 82 (refuting the idea that Clear Channel "issue[d] some sort of ban," stating that, "[i]n fact, exactly the opposite was true," and explaining that Clear Channel "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" and that "there was nothing done at a corporate level"). The suggestion that Clear Channel stations ignored listeners who still wanted to hear the band is thus demonstrably false.

[99] Clear Channel, 19; *see Media Consolidation, Regulation, and the Road Ahead*, at 6 (explaining that "it is very much in the interest of multiple-station owners to strive for as much viewpoint diversity as possible," and that group owners would not seek to convey monolithic viewpoints because they have natural incentives "to appeal to the greatest number of listeners" by "offering a more diverse (rather than less diverse) array of viewpoints among [their] stations"); *see also, e.g.*, Belo, 16; Cox, 19-20; Gray, 17-19; Media General, 31-39; NAA, 83; Shamrock, 3.

[100] Clear Channel, 19; *see also, e.g.*, *Media Consolidation, Regulation, and the Road Ahead*, at 6 ("Success is measured by achieving a profitable bottom line, not by achieving some sort of 'thought control' or political dominance of a radio market.").

concludes "that ownership does *not* account for any of the variation in measured slant" among co-owned media outlets.[101] Instead, the study found, any "slant" in viewpoint that exists responds to consumer demand, rather than the ideological preferences of outlets' owners.[102] Accordingly, it is clear that diversity has not been harmed – but instead has been enhanced – by increased levels of common ownership.

B. <u>The Record Demonstrates that Common Ownership of Radio Stations Increases Localism.</u>

As Clear Channel and others also explained, the FCC has previously concluded that the local radio ownership rule does not advance its interest in promoting localism.[103] In the context of other media ownership rules, moreover, the Commission has recognized that imposing arbitrary limits on the number of outlets a single entity can own in a local market actually harms localism.[104] And Clear Channel has provided concrete examples of how the efficiencies and economies that flow from common ownership enable group owners to intensify their commitments to serve their local communities by identifying issues of importance to listeners and their distinct local tastes, and by responding with broadcasts of locally-focused and locally-tailored programming, as well as by participating in local community events and committing on-

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[101] Matthew Gentzkow & Jesse M. Shapiro, *What Drives Media Slant? Evidence from U.S. Daily Newspapers*, at 5 (Nov. 13, 2006) (emphasis added), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=947640 (scroll down to the SSRN Electronic Paper Collection, and select Social Science Research Network, New York).

[102] *Id.* at 4.

[103] *See* Clear Channel, 18; NAB, 72, 83-84, n.200; *see also* Media General, 34 (discussing the FCC's relaxation of the local radio ownership rule in 1991).

[104] *See, e.g.*, *2003 Order*, 18 FCC Rcd at 13,683-85, 13,772-73 (¶¶ 164, 169, 383-85); *see also Prometheus*, 373 F.3d at 399, 415-16; *see also, e.g.*, Bonneville, 4; Equity Communications, 5, 10; NAB, 70-71; Gray, 15; Shamrock, 3-4.

air resources to promoting such events.[105]

In addition, as explained in the comments of Adam Thierer of the Progress & Freedom Foundation, the fact is that "localism is alive and well in the modern media marketplace."[106] This is true even as consumers have begun to prefer national programming over local programming; despite this trend, the overall amount of local programming has continued to increase.[107] While some commenters advance familiar allegations regarding the detrimental effect of common ownership in radio on localism, these assertions, as will be shown below, are based on faulty and unsupported assumptions, incorrect factual predicates, and, in some cases outright falsities, the vast majority of which Clear Channel has already rebutted on numerous prior occasions.

1. Local Programming and Local News.

Despite the FCC's prior determination that, if anything, restrictions on common ownership harm localism, and the record evidence that demonstrates the substantial local benefits – in the form of increased local news, local public affairs programming, and other local initiatives – that flow from common ownership, a number of commenters nevertheless claim that common ownership actually *decreases* localism.[108]

As an initial matter, those who contend that "local" *ownership* is required in order to promote "localism" are simply incorrect.[109] As explained in Clear Channel's submissions in the

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[105] Clear Channel, 32-41; *see* NAB, 60-61, 64-68; *see also* Belo, 13-17, 22-26; Block, 3-4, 8; Entravision, 10; Fox, 33; Gannett, 25, 34, 46-48; Hoak, 7; Gray, 15-17; NBC, 24-26; Tribune, 34-79; NAA, 65.

[106] PFF, 51.

[107] *Id.* at 54; *see id.* at 52-53 & Table 6.

[108] *See, e.g.*, Consumers Union, Compendium, 61-63.

[109] *See* Mt. Wilson, 15; *see also DiCola Radio Study*, at 75-81. As Professor Hausman explains,

FCC's localism proceeding, Clear Channel is purposely organized in a decentralized manner, and the overwhelming majority of its employees live and work in the markets that are served by Clear Channel stations. It is these local station managers, programming directors and on-air personalities – not corporate higher-ups – who make the programming decisions with respect to the individual communities that Clear Channel stations serve.[110] As NAB further explained, there is no merit to claims that programming must be locally *produced* in order to serve local

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the *DiCola Radio Study*'s proposed "Local Ownership Index," is fundamentally flawed and cannot be relied upon, in large part because the "Local Ownership Index" is based on assumptions rather than evidence. *See Hausman January 2007 Statement*, at 9. No proof is provided that local owners better serve the needs and interests of local listeners. *See id.* But in order to justify continued local radio ownership regulation on the basis of supposed localism concerns, the Commission would be required to marshal such proof, and it is clear that none exists. Indeed, both the FCC itself and the D.C. Circuit have previously so held, and the current record forecloses a change in course. *See, e.g.*, *Bechtel*, 10 F.3d at 880-81 (striking down FCC policy preferring applicants for new stations who promised owner participation in management due to complete absence of evidence that local owners better serve local needs); *Amendment of Section 73.3555, [formerly Sections 73.35, 73.240, and 73.636] of the Comm'ns Rules Relating to Multiple Ownership of AM, FM and Television Broad. Stations*, 100 F.C.C.2d 17, 35 (¶ 53) (1984) (noting that there was "no evidence indicating that stations which are not group-owned better respond to community needs, or expend proportionately more of their revenues on local programming"); *see also 2003 Order*, 18 FCC Rcd at 13,738 (¶ 304) ("we see little to indicate that the local radio ownership rule significantly advances our interest in localism").

[110] *See Clear Channel Localism Comments*, 7-8. Some commenters go so far as to argue that the FCC should require station owners to reside within the service areas of their stations. *See* David E. Griffith, 9-10; *see also DiCola Radio Study*, 79-81. Even if one were to accept the highly dubious proposition that the FCC has authority to impose residency requirements on individuals, and even if there were evidence that local ownership promotes localism (which, as discussed above, there is not) such a requirement is entirely unnecessary in light of the fact that (at least with respect to Clear Channel's stations) programming decisions are *already* made at the local level. Some commenters also claim that consolidation has resulted in the elimination of local management. *See, e.g.*, Rachel Stilwell, 39; Cary Pall, 2. These allegations are, as a factual matter, simply false as applied to the manner in which Clear Channel's stations are staffed, programmed, and managed, as already explained above. One commenter further suggests that Clear Channel would oppose efforts purportedly designed to encourage local ownership as likely to "jeopardize the quality of the product being put out on the airwaves." Carmine Joseph Tutura, 2. This is unsupported speculation, and mischaracterizes Clear Channel's position. Clear Channel, consistent with its public interest mandate, strives to serve the needs and interests of the local communities that its stations serve. To be clear, while Clear Channel does not believe that local ownership is *necessary* to promote localism, and submits that its efforts in increasing local service show that the economies and efficiencies generated by common ownership can serve to increase commonly owned stations' ability to offer local programming, it has never suggested that local owners necessarily provide inferior programming.

needs and interests.[111]

The contentions of those who allege that increased levels of common ownership have decreased the quantity of local news on radio[112] are equally false. In fact, as shown in Clear Channel's comments, Clear Channel devotes a tremendous amount of resources to local news. Clear Channel programs a large number of dedicated news/talk stations, many of which air an average of 900 minutes each week of local news and information; the company has more than 500 full-time local news and information staff members in 110 separate local news bureaus; each of its stations air local news and information *every single day*; and its stations air a tremendous amount of local public affairs programming in addition to their news offerings.[113] Moreover, contrary to the unsupported contention of UCC, and as also explained in Clear Channel's opening comments, diminishing opportunities for common ownership by lowering the ownership limits would not increase local news content but would have precisely the *opposite* effect by depriving owners of the efficiencies and synergies that provide the resources necessary to

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[111] NAB, 68-70.

[112] AFTRA, 16; UCC, 80-82; Thomas C. Smith, 4.

[113] Clear Channel, 33-39. Also false are the claims by some that Clear Channel remotely produces newscasts for stations in different markets. *See* Consumers Union, Compendium, 67; *see also* Mid-West Family Stations, 10. In Ohio, which Free Press points to as an example of this alleged practice, the truth is that each of the markets – Columbus, Toledo, and Lima – have their own full-time news staff. To the extent that news broadcasts were ever shared between stations across these markets, the news content was generated by reporters on the ground in the specific local markets. Moreover, Clear Channel's Lima stations have been providing independent news for at least the past four years, and as of January 1, 2007, the Toledo stations will do so as well. Equally false is the implication that Clear Channel failed to serve the residents of Corpus Christie during a recent hurricane because residents heard news emanating from "at least a hundred miles away." Consumers Union, Compendium, 67. News coverage during natural disasters such as hurricanes tracks the path of the storm; had Corpus Christie lacked adequate news personnel and been within the areas most likely to be hit hard, Clear Channel would have sent news personnel from other markets to augment their news staff. In both of the recent hurricanes, Katrina and Rita, however, Corpus Christie was not located within the direct path of the storm. Thus, Clear Channel stations there provided their own news coverage, supplemented by news coverage from other stations in areas more likely to be hit hard.

provide local radio news.[114]

One commenter claims, further, that consolidation has resulted in decreased coverage of local high school and college sports on the radio.[115] As explained in Clear Channel's comments in the localism proceeding, however, its stations provide expansive coverage of local sports,[116] and such coverage has only increased since the time of that filing. To provide but one example, Clear Channel's WDAE(AM) in Tampa, Florida carries live play-by-play coverage of local high school football games every Friday night during football season. In addition, between WDAE(AM), WFLA(AM), and WHNZ(AM), all located in Florida, the company's stations provide coverage of *all* University of South Florida and University of Florida football and basketball games. Numerous other Clear Channel stations provide coverage of multitudes of local high school and college sports each week. Clear Channel's own commitment to local sports shows the falsity of claims that common ownership decreases coverage of such events, and demonstrates that precisely the opposite is true.

2. New Artists and Concert Promotions.

The picture of Clear Channel's relationships with new and local artists that some commenters attempt to paint simply has no foundation in reality.[117] Again, programming decisions – including decisions regarding airplay – are made at the *local level*. Playlists are

[114] *See* Clear Channel, 33-39, 41-43; *see also* NAB, 94-102 (discussing how the television duopoly rule adversely impacts local television news and how additional television ownership flexibility would enhance local news); Morris, 13-20 (documenting the local news contributions made possible by its common ownership of newspapers and radio stations); Media General, 7-22 & App. 4 (documenting the local news contributions made possible by its common ownership of newspapers and television stations); Belo, 13-17 (same); Gannett, 27-28 (same); Cox, 13-15 (same).

[115] Thomas C. Smith, 2.

[116] *Clear Channel Localism Comments*, 12-13.

[117] *See, e.g.*, AFTRA, 18; AFL-CIO, iii, 20, 21, 34-38, 47, 48; Recording Artists' Coalition, 4; CWA, 62; Thomas C. Smith, 2; *see also* Rachel Stilwell, 39.

created by local program directors without any corporate involvement whatsoever, and different markets and different stations use different methods to ensure that the divergent interests and preferences of listeners in each local market – no two of which are exactly alike – are met.[118] In deciding which songs to play on the air, Clear Channel stations use a variety of methods and, contrary to the contentions of some, rely heavily on local listener requests and, in particular, local interest in specific artists, including emerging artists from around the country and new local artists trying to make their way on the local music scene.[119]

Moreover, as detailed in its opening comments in this proceeding and elsewhere, Clear Channel has made a tremendous commitment – at both the corporate and individual station levels – to promoting new and local artists specifically. The company's efforts range from regional and nationwide talent search competitions (including the first-ever, online, multi-genre video music competition), to its "NEW!" initiative that promotes new and unsigned artists both on the air and through a multitude of station websites in conjunction with GarageBand.com, to individualized programs on specific stations aimed at promoting new local talent.[120] Indeed, since the inception of "NEW!", 535 artists have been exposed to the listening public through the program. Clear Channel is, in short, deeply committed to fostering the development of new, and particularly local, artists and, as explained numerous times before, quite simply has no "national playlist."[121]

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[118] *See Clear Channel Localism Comments*, 4-7.

[119] *See id.* at 6.

[120] *See* Clear Channel, 27-30; *Clear Channel Localism Comments*, 18-20. In light of the commitments that Clear Channel and other broadcasters have made to assisting new and local artists in their efforts to gain exposure and airplay, there is certainly no basis for the government to mandate that stations air a certain amount of new or independent music or to contribute to local music organizations or local public radio stations, as the Recording Artists' Coalition suggests. *See* Recording Artists' Coalition, 7.

[121] As discussed above, *see supra* pp. 24-25, the recycled contentions of some commenters regarding airplay of the Dixie Chicks songs, *see* Rachel Stilwell, 54; Amherst Alliance 5-6;

Equally unfounded are the contentions advanced by some commenters relating to concert promotions.[122] As a matter of fact, and as Clear Channel explained nearly four years ago, its stations never used the threat of reduced airplay to force musicians to use its concert promotion business, and never retaliated against competing concert promoters by failing to accept ads promoting their shows.[123] Simply put, listener preferences drive airplay decisions. Moreover, in 2005 Clear Channel sold off its entertainment division, now a separate publicly-traded company called "Live Nation," and no longer has any ownership interest in any live entertainment production or promotion company.[124]

UCC, App. D, 21, are patently false. So, too, are statements that Clear Channel issued corporate mandates banning airplay of certain songs that it deemed inappropriate following 9/11. *See* UCC, App. D, 21. Like all decisions regarding airplay, post-9/11 decisions were made at the *local level*. To the extent that there were communications among Clear Channel employees responsible for programming after 9/11 about what songs to play or not play, those communications originated in local markets – not at corporate headquarters – and represented an attempt by programming personnel to take into account the potential sensitivities of their local listeners in light of the tragic events that had occurred.

[122] *See, e.g.*, UCC, App. D, 7-8; Rachel Stilwell, 64-65. For example, claims regarding allegedly anticompetitive behavior relating to concert promotions in Texas, *see* UCC, App. D at 7-8, are unfounded and, moreover, unsupported by anything other than conclusory allegations.

[123] *See* Testimony of Lowry Mays, Chairman & CEO, Clear Channel Communications, Inc., Before the United States Senate Committee on Commerce, Science, and Transportation (Jan. 30, 2003), *available at* http://commerce.senate.gov/pdf/mays013003.pdf.

[124] *See* Clear Channel, Press Release, *Clear Channel Communications Completes Spin-Off Of CCE Spinco, Inc.*, Dec. 21, 2005, http://www.clearchannel.com/Corporate/PressRelease.aspx?PressReleaseID=1479. One of the FCC's recently-released draft analyses – apparently produced in 2004 – also discusses Clear Channel's previous interest in concert venues through its entertainment division. *See* Localism Paper, *available at* http://www.fcc.gov/ownership/materials/newly-released/localismpaper070204.pdf. The paper acknowledges, however, that the concerns that it raises would disappear if Clear Channel sold off its interest, *see id.* at 14, as it has, rendering the paper no longer of any continuing relevance. In addition, one commenter argues that even though Clear Channel has sold off its concert promotion business, problems still remain, because concert promoters and music retailers often purchase radio advertising, and record companies often deliver free live concerts for radio sponsored shows. *See* Rachel Stilwell, 65. Under this line of reasoning, stations deny airplay to artists and record labels that do not advertise on the station. *See id.* There is no support offered for this proposition, and it makes no sense. Neither independent concert promoters nor music retailers make up a significant portion of stations' local advertising revenue. Stations therefore have no "incentives" to decrease airplay based on whether an artist's concert promoter or record label, or a music retailer selling his or her

3. Voice Tracking and Syndicated Programming.

Some commenters also continue their efforts to create misperceptions about the use of "voice tracking," refusing to let the actual facts get in the way of their rhetoric. Rather than voice-tracking "up to 70%" of its broadcasts in "markets of all sizes," as UCC claims,[125] Clear Channel makes very limited use of the technology in order to provide quality radio service to markets that otherwise might not be financially or geographically positioned to obtain high-quality radio talent.[126] Moreover, contrary to the assertions that voice-tracked programs are recorded remotely "several days or even weeks" ahead[127] and "sent to a radio station in a distant market and are aired by that station as though they are live and local, when in reality, they are neither,"[128] the vast majority of voice tracking occurs no more than eighteen hours in advance of airtime and in some cases even closer, during off-peak hours (nights and weekends).[129]

Most importantly, the question whether voice-tracking is used – like all programming decisions at Clear Channel's stations – is left to the discretion of local program directors, whose job it is to ensure that local listeners' desires and interests are served. If voice-tracked programs are insufficiently local or do not otherwise serve listeners, they have the power of the radio button at their disposal, and can easily switch to a competing station or turn off the receiver

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material, purchases advertising.

[125] UCC, App. D, 2.

[126] *Clear Channel Localism Reply Comments*, 20. In fact, less than 10% of dayparts on Clear Channel stations are voice tracked.

[127] AFL-CIO, 34; *see* Thomas C. Smith, 4.

[128] AFTRA, 19; *see* AFL-CIO, iii, 34.

[129] *Clear Channel Localism Reply Comments*, 21.

altogether and access audio programming via one of many alternative available means.[130] Thus, if, as some commenters contend, voice-tracking "worsens radio,"[131] or if it were merely a cost-saving device to "import[] cheaper announcers from smaller markets into larger markets,"[132] listeners would tune out, and radio broadcasters would receive the message loud and clear.[133]

4. The Minot Myth.

Recycling misconceptions that are now nearly four years old and that Clear Channel has rebutted on numerous occasions, several commenters repeat false allegations that Clear Channel failed adequately to staff its station in Minot, North Dakota, resulting in a lack of communication with radio listeners regarding the derailment of a freight train.[134] As Clear Channel has explained previously, however, its stations in Minot (and, indeed, its stations everywhere), are staffed at all times, and there were, in fact, personnel on duty on the evening in question.[135] The breakdown in communication was not a result of a lack of staffing at the station, but was caused by the local authorities' unfortunate failure to install their Emergency Alert System ("EAS")

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[130] *See supra* pp. 4-6.

[131] Rachel Stilwell, 56.

[132] AFL-CIO, 36; *see* Rachel Stilwell, 56.

[133] *See, e.g.*, *Media Consolidation, Regulation, and the Road Ahead*, at 6. The same is true, of course, with respect to the alleged increases in the use of syndicated programming that some commenters bemoan. *See, e.g.*, Rachel Stilwell, 55. Any such increase can properly be attributed to the rising popularity of such programming, not a move away from local service. Simply put, if listeners did not wish to hear the programming, they would tune out, sending a clear message to stations and their advertisers.

[134] UCC, App. D, 26; Rachel Stilwell, 58-59.

[135] *See, e.g.*, Clear Channel, *Know the Facts*, http://www.clearchannel.com/Corporate/PressRelease.aspx?PressReleaseID=1167 ("*Know the Facts*"); Speech of Steve Davis, Senior Vice President of Engineering, before the National Alliance of State Broadcasters Associations' (NASBA) 2006 National Summit on EAS and Emergency Communications in Alexandria, Virginia (Feb. 23, 2006), *Company Sets the Record Straight About Aftermath of Minot, North Dakota Train Derailment*, http://www.clearchannel.com/Corporate/PressRelease.aspx?PressReleaseID=1558 ("*Davis EAS Speech*").

equipment.[136] Specifically, local authorities attempted to contact the stations using the outdated Emergency Broadcast System, which was supposed to have been taken out of use and replaced with the EAS, consistent with the FCC's requirements, five years earlier in 1997.[137] Thus, the authorities were put through to the station's switchboard, which was also being flooded with calls from local residents regarding the train derailment. Far from failing to satisfy their duty to convey important information to the public, Clear Channel employees went above and beyond their professional responsibilities in responding to this serious situation, both during and after the incident.[138]

C. **The Record Demonstrates that the Local Radio Ownership Rule Is Not Necessary to Protect Competition.**

The evidence in this proceeding – as distinguished from unsupported assumptions and rhetorical allegations – also unequivocally supports the conclusion that elimination of the local radio ownership caps would not result in competitive harm and, as such, shows that tightening the limits is not needed to protect competition. Specifically, Clear Channel's comments, and the econometric studies by Professor Hausman submitted in this proceeding and previously, demonstrated that the increases in common ownership levels that followed the local radio ownership rule relaxation required by the 1996 Act had *no effect* on radio advertising rates, even in markets where two owners garner more than 80% of the radio advertising revenue.[139] As shown in Clear Channel's opening comments, due to the differentiated nature of radio

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[136] *See Know the Facts*; *Davis EAS Speech*.

[137] *See Amendment of Part 73, Subpart G, of the Commn's Rules Regarding the Emergency Broad. Sys.*, Report and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 1786, 1844-46 (¶¶ 164-170) (1994).

[138] *See Know the Facts*; *Davis EAS Speech*.

[139] Clear Channel, 43, 46.

advertising, coordinated behavior between owners is not a concern.[140] Moreover, because of the ease with which competing stations can switch formats, and thereby increase ratings, there is no significant risk that any single owner could corner all differentiated radio products in a given local market.[141]

NAB similarly demonstrated in its opening comments that there is an utter lack of evidence that radio groups currently do – or could in the future – exercise undue market power in the contemporary media marketplace.[142] NAB's comments point to additional academic and empirical literature establishing that increased group ownership does not lead to competitive harms.[143] If anything, as NAB demonstrated, the only competition concern that the FCC legitimately should consider in this proceeding is the risk that terrestrial radio broadcasters will be unable to remain viable as they are required to compete for listeners and advertising dollars with an ever increasing array of new sources of audio entertainment and information.[144]

Although some commenters contend that group owners engage in, or are likely to engage in, anticompetitive behavior, they provide no empirical or factual evidence – as distinguished from unsupported allegations – to support their views.[145] And the only "study" in the record that even discusses radio advertising rates provides no econometric analysis whatsoever and does not even purport to demonstrate that increased levels of common ownership actually *cause* rates to

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[140] *Id.* at 43-45.

[141] *Id.* at 45-46.

[142] NAB, 73-78.

[143] *Id.* at 75 (discussing R.B. Ekelund, Jr., G.S. Ford and T. Koutsky, *Market Power in Radio Markets: An Empirical Analysis of Local and National Concentration*, 43 J. Law & Econ. 157 (2000)).

[144] *See id.* at 74, 78.

[145] *See, e.g.*, Mt. Wilson, 13-14.

rise but, rather, simply cites a raw increase in advertising rates over a particular period of time.[146] As Clear Channel has demonstrated previously, advertising rates for television and newspapers, whose concentration levels changed little, also increased during the period at issue, leading to the conclusion that the economic growth during the period, together with limited increases in supply (i.e., little additional spectrum for broadcast stations and few new newspapers), and not increased consolidation, led to the rate increases.[147] Finally, commenters who allege that radio consolidation raises competition concerns completely ignore the existence of a fully functioning federal antitrust regime and state unfair competition laws that, as Clear Channel explained in its opening comments, bar anticompetitive conduct and provide a panoply of enforcement

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[146] Dean Baker, *Democracy Unhinged*, at 19-20 (Dec. 2002) (Attached to CWA Comments). This exact same "study," moreover, was also before the Commission in 2003, and the FCC did not then consider it to provide evidence of market harms. *See* Comments of the Communications Workers of America, MB Docket No. 02-277, Attachment A (filed Jan. 2, 2003). A change in course now would be subject to heightened judicial scrutiny, which, given the nonexistent factual or empirical foundation for a conclusion that consolidation causes advertising rates to rise, it would not survive. *See, e.g.*, *Prometheus*, 373 F.3d at 390; *Mazza v. Dep't of Health and Human Servs.*, 903 F.2d 953, 959 (3rd Cir. 1990) ("an agency changing its course must apply a reasoned analysis"); *Natural Res. Defense Council v. EPA*, 683 F.2d 752, 760 (3rd Cir. 1982) ("sharp changes of agency course constitute 'danger signals' to which a reviewing court must be alert").

[147] Statement of Professor Jerry A. Hausman, at 8 n.5 (Jan. 2003) (Ex. A to Comments of Clear Channel Communications, Inc., MB Docket No. 02-277 (Jan. 2, 2003)). For this very same reason, the supposed "analysis" of local HHI levels contained in the *DiCola Radio Study* is irrelevant. As Professor Hausman explains, the study provides no evidence regarding the effect of supposed concentration levels on advertising rates. *See Hausman January 2007 Statement*, at 8. However, recent DOJ-FTC commentary on the Merger Guidelines states, "market shares and concentration are but a 'starting point' for the analysis," and "full consideration of the factual and economic evidence" often lead to the conclusion that increases in concentration are "unlikely substantially to lessen competition." *Id.* (citing Department of Justice and Federal Trade Commission, "Commentary on the Horizontal Merger Guidelines," at 15-16 (Mar. 2006)). The antitrust authorities therefore counsel against "undue emphasis on market share and concentration statistics." *Id.* (citing same). Because the *DiCola Radio Study* examines purported concentration levels in a vacuum and without reference to their impact on advertising rates (or, indeed, any relevant factor), its analysis is immaterial. Similarly flawed is Mr. DiCola's attempt to justify lowering the local radio ownership limits based on an HHI target of 1800. As Professor Hausman explains, and as garden variety administrative law principles require, in order to justify lowering (or even retaining) the caps, the Commission would have to amass actual evidence that the costs of allowing higher levels of common ownership outweigh the benefits of such action. *See id.* The *DiCola Radio Study* "provides no evidence on either the costs or benefits of concentration," and thus cannot be relied upon to justify retaining, let alone lowering, the caps. *Hausman January 2007 Statement*, at 8-9.

mechanisms and remedies to address such conduct if it ever were to occur.[148]

D. Many of the Other Concerns Raised by Commenters Lie Outside the Scope of this Proceeding and, in any Event, Lack Substantive Merit.

A significant proportion of the concerns raised by commenters who advocate for continued local radio ownership regulation are outside the proper scope of this proceeding. The FCC previously, and quite properly, has refused to address matters unrelated to ownership in its periodic review proceedings. Indeed, in the *2003 Order*, the Commission explained that:

> Numerous parties submitted comments on issues not specifically raised in the Notice. As discussed below, we dismiss most of these requests on procedural grounds because they fall outside the scope of this proceeding.[149]

The *FNPRM* in this proceeding was carefully limited in scope to media ownership matters. This makes abundant sense, given that the notice sought comment on the rules subject to the FCC's periodic review obligation under Section 202(h), which are the very same rules that were the focus of the Third Circuit's remand in *Prometheus*. Widening the focus to include non-structural substantive regulations unrelated to ownership would not only be in conflict with the *FNPRM* itself and FCC precedent, but would also violate the APA's mandate that agencies provide commenters with adequate notice and an opportunity to comment on proposed rules and that any

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[148] Clear Channel, 46-50; *see* Gannett, 44-45; Fox, 19.

[149] *2003 Order*, 18 FCC Rcd at 13,858 (¶ 622); *see, e.g.*, *id.* at 13,859 (¶ 624) (refusing to consider proposal to require warnings on television because proposal was "outside the scope of this proceeding, which reviews our structural broadcast ownership rules pursuant to Section 202(h)"); *id.* at 13,859 (¶ 625) (refusing to consider promulgation of new PEG requirements as "outside the scope of this proceeding"); *id.* at 13,860 (¶ 627) ("dismiss[ing]" requests "regarding ownership or attribution issues that were not raised in the Notice and that are therefore outside the scope of the proceeding); *id.* at 13,860 (¶ 628) (refusing to consider alien ownership rule modifications as "outside the scope of this proceeding"); *id.* at 13,861 (¶ 631) (refusing to consider requests to modify the new entrant bidding credit in the broadcast auction process because the "proposals go to our broadcast auction rules and process, not our ownership rules"); *id.* at 13,862 (¶ 632) (denying request to "change [the Commission's] translator rules or afford spectrum to small broadcasters because they are outside the scope of the proceeding").

rules adopted in a proceeding be a "logical outgrowth" of a notice.[150] In any event, the irrelevant concerns articulated by some commenters are, like so many others articulated by proponents of continued radio ownership regulation, at best overstated and, most often, entirely unfounded.

For example, some commenters focus on alleged increases in radio concentration levels at the national level.[151] Still others attempt to undercut the substantial evidence of local radio programming diversity by mounting allegations regarding alleged format or playlist homogeneity in different markets across the country.[152] But the Commission has previously, and correctly, found that "[n]ational radio ownership limits are outside the scope of" its periodic review proceedings.[153] This conclusion was not a mere policy judgment; Congress expressly directed *elimination* of the FCC's previous limit on national radio ownership in the 1996 Act.[154] In the face of this mandate, it is at best highly questionable whether the Commission could *ever* again

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[150] *E.g.*, *id.* at 13,861 (¶ 631) (stating that modification of the new entrant bidding credit in the broadcast auction process would "not [be] a logical outgrowth of the Notice and . . . [is] therefore outside the scope of this proceeding"); *id.* at 13,865 (¶ 642) (declining to reimpose "fin-syn" type rules in party because "we do not believe that the Fin/Syn Proposals are responsive to the Notice, or that the adoption of such rules could be thought to be a logical outgrowth of the Notice").

[151] *See, e.g.*, AFL-CIO, 15-16; Consumers Union, 15; Mid-West Family Stations, 9; UCC, 79-80; Recording Artists' Coalition, 3-4; Rachel Stilwell, 32-33, 72.

[152] *See, e.g.*, Rachel Stilwell, 40, 60; *DiCola Diversity Study*, at 6-13; *DiCola Radio Study*, at 86-98, 103-110. The FCC's recently-released draft studies on radio playlist issues also suffer from this flaw. *See FCC August 2005 Draft Radio Diversity Paper*, at 11, 18 (analyzing differences between playlists in the same format regardless of geographic location); *id.* at 12 (analyzing differences between playlists in different formats regardless of geographic location); *see generally FCC Preliminary Draft Radio Diversity Analysis* (generally analyzing differences in playlists among stations regardless of geographic location).

[153] *2003 Order*, 18 FCC Rcd at 13,740 (¶ 304); *see Hausman January 2007 Statement*, at 7, 9-10, 12 (explaining that an analysis of national radio concentration is "uninformative" because "radio stations compete in local markets, not local ones;" stating that an analysis of radio format diversity at the national level constitutes "error," that "since any given listener only has the stations in his or her local market available, the correct way to measure variety is on a market-by-market basis;" and stating that a national diversity analysis is "not policy relevant" because "radio markets are local in nature").

[154] *See* 1996 Act, § 202(a).

regulate radio ownership on a national basis, and it would certainly be impossible for the FCC to justify doing on the current record.[155]

Some commenters also claim that common ownership of broadcast stations has adverse employment and wage effects.[156] Employment-related considerations, however, have nothing at all to do with the FCC's mandate to ensure that broadcasters use their licenses to serve listeners and viewers. Furthermore, the "studies" submitted on this issue either consist of surveys regarding the views of disgruntled media workers, themselves admit that their analyses "*do not* answer definitively whether consolidation 'causes' job loss or wage reductions,"[157] or suffer from numerous methodological defects.[158] The analysis of these commenters also overlooks the demonstrably *positive* effects – including higher salaries, better benefits, improved working conditions – that the efficiencies generated by increased common ownership have had on employment-related matters in radio. Finally, those who decry the employment and wage cuts that they claim have occurred as a result of increased levels of common ownership in radio should be careful what they wish for. As the record in this proceeding makes clear, the

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[155] Indeed, as discussed above, numerous of the claims regarding playlist overlap are either false, overstated, or based on flawed analysis. *See supra* pp. 17-23; *see also supra* pp. 2-4 (discussing evidence in the record that the radio industry is not, in fact, overly concentrated).

[156] *See generally, e.g.*, CWA Comments; AFTRA Comments.

[157] Peter DiCola, *Employment and Wage Effects of Radio Consolidation*, at 3 (Aug. 9, 2006) (emphasis added) (Attached to CWA Comments) ("*DiCola Employment Study*").

[158] As Professor. Hausman explains, the *DiCola Employment Study* is fatally flawed. *See Hausman January 2007 Statement*, at 5-6. Mr. DiCola's analysis does not consider any information at all regarding variables other than consolidation, such as population changes or economic activity, that would be expected to impact labor market outcomes. *See id.* As a result, it suffers from "omitted variables bias," which renders the analysis "biased and unreliable." *Id.*; *see id.* at 6. Indeed, as Professor Hausman notes, the study itself acknowledges this fact. *Id.* Moreover, when Mr. DiCola attempts to account for the omitted variable bias problem by using fixed effects regression, that analysis does not support a casual connection between radio consolidation and negative employment outcomes. *Id.* at 6. Accordingly, as Professor Hausman explains, the *DiCola Employment Study* does not provide empirical support for a conclusion that consolidation has led to adverse employment or wage effects. *Id.*

continued ability of broadcasters, and radio broadcasters in particular, to compete in the ever-expanding multimedia marketplace is at best uncertain, leaving open the question of just who will employ AFTRA workers or CWA members if free broadcasting is regulated out of existence.

Some commenters also attempt to connect what they perceive to be a rise in "indecent" programming to increased levels of common ownership. Indecency matters are properly considered, however, through the FCC's separate, and well-functioning, enforcement regime. And, here too, even a cursory examination of the single "study" on which these commenters rely reveals that the "evidence" they cite expressly states that the data on which it is based "*do not* prove a causal link between ownership concentration and broadcast indecency."[159]

Concerns relating to alleged payola violations and payola-like practices[160] similarly have no place in periodic review proceedings, as the FCC expressly recognized in the *2003 Order*.[161] Like indecency, such matters are properly considered in separate enforcement proceedings relating to individual factual circumstances. Moreover, commenters advocating the view that common ownership increases payola and similar problems offer nothing more than unadorned speculation in support of their position.[162]

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[159] Jonathan Rintels & Philip M. Napoli, *Ownership Concentration and Indecency in Broadcasting: Is There a Link*, at 5 (Sept. 2005) (emphasis added) (Attached to Center for Creative Voices in Media Comments).

[160] *See, e.g.*, Rachel Stilwell, 43-53; AFL-CIO, 49.

[161] *2003 Order*, 18 FCC Rcd at 13,860 (¶ 626).

[162] Finally, AFTRA's call for the FCC to increase its oversight of commercial agreements regarding the operation of radio stations should be soundly rejected. *See* AFTRA, 27-29. Contrary to AFTRA's suggestion, radio local marketing agreements ("LMAs") and joint sales agreements ("JSAs") are fully attributable under the Commission's rules, which prohibits a licensee from having an LMA or JSA relationship with another station in a market where it already holds radio station licenses unless it could own that station outright under the FCC's multiple ownership rules. *See* 47 C.F.R. § 73.3555, Notes 2(*i*)(2)(ii), 2(j). The FCC's rules regarding the types of relationships that result in attribution – the provision of 15% or more of a

Because issues relating to national radio ownership, employment matters, indecency, and payola are outside the proper scope of this proceeding, and because the concerns articulated by commenters on these subjects lack substantive merit in any event, the Commission should decline to address them.

III. IF THE FCC NEVERTHELESS RETAINS LOCAL RADIO OWNERSHIP CAPS, SECTION 202(h) MANDATES THAT THE COMMISSION MAKE DEREGULATORY MODIFICATIONS TO THE LOCAL RADIO OWNERSHIP RULE.

A. At the Very Least, the FCC Should Increase Permissible Levels of Common Ownership in the Nation's Largest Markets.

As demonstrated above and in Clear Channel's opening comments, the record establishes that the higher levels of common ownership permitted by the 1996 Act have created efficiencies and synergies that have delivered public interest benefits in the form of more diverse programming and increased local service and community involvement, with no countervailing competitive harms and that, in fact, total *elimination* of restrictions on local radio ownership would only increase these benefits.[163] If, however, the Commission nevertheless concludes that some local radio ownership limits are needed, both marketplace realities and simple logic require the Commission to increase the number of stations that can be owned in the nation's largest radio markets.[164] Specifically, the FCC should raise the number of stations that a single entity can own in markets with between sixty and seventy-four stations from eight to at least ten, and should

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station's programming or the sale of 15% or more of its advertising time – are also clear, *see id.*, and AFTRA has failed to demonstrate any need for scrutiny of relationships falling below this threshold or involving other matters, such as non-programming and non-advertising services. In short, AFTRA's argument demonstrates a total lack of understanding regarding the Commission's rules in this area and calls for the erection of a supplemental oversight regime that would result in a substantial, and entirely unnecessary, drain on FCC resources.

[163] *See supra* pp. 13-38.

[164] *See* Clear Channel, 50-59; *Media Consolidation, Regulation, and the Road Ahead*, at 8; *see also* NAB, 84-87 (urging the Commission to relax the local radio ownership rules).

raise the number of stations that a single entity can own in markets with seventy-five or more stations from eight to at least twelve, thereby creating two new ownership "tiers." The current record more than justifies adoption of this proposal to increase slightly the number of stations that can be owned in the nation's very largest markets, which Congressman Fred Upton has aptly noted is "embarrassingly modest"[165] and for which twenty-three members of Congress from both sides of the political spectrum have voiced their support.[166]

As Clear Channel and others explained in their opening comments, and as elaborated on above, radio owners currently face abundant and increasing competition within local terrestrial radio markets.[167] In addition, free radio now competes with multiple new platforms – including satellite radio; MP3 players; Internet radio stations; subscription-based music services available on cable, DBS, and through IPTV providers; and Wi-Max – none of which are subject to ownership limitations analogous to those that are currently crippling free, over-the-air radio.[168] The radio industry, as Clear Channel and others have shown, is "struggling to compete."[169] Radio advertising revenues and stock prices have declined dramatically in recent years, due to the competitive challenges that radio broadcasters face.[170] As the Media Institute explained in its opening comments:

> Radio captures about 8[%] of advertising dollars, a figure that

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[165] Remarks of Hon. Fred Upton Before the Media Institute, Feb. 16, 2006, at 10 ("*Upton Media Institute Remarks*").

[166] Letter from Paul E. Gillmor (R-OH), Gene Green (D-TX), *et al.* to the Hon. Kevin J. Martin (June 30, 2006) ("*Gillmor/Green Letter*").

[167] *See* Clear Channel, 7-8, 50-51; *see also supra* pp. 2-3 (citing additional comments).

[168] *See* Clear Channel, 10-17, 50-51; *see also supra* pp. 4-6 (citing additional comments).

[169] *Media Consolidation, Regulation, and the Road Ahead*, at 5.

[170] *Id.* at 7; *see* Clear Channel, 10-17, 50-52; *see also supra* pp. 8-9 (citing additional comments).

> hasn't changed since 1980. The chances of radio maintaining its 8[%] share are in doubt, moreover, because radio has been losing listeners to other media – and fewer listeners mean fewer dollars from advertisers.[171]

These competitive difficulties are only amplified by the existence of artificial and arbitrary ownership rules that apply solely to free radio. Indeed, while terrestrial broadcasters are suffering, their largely unregulated rivals are flourishing. For example, a recent study by PriceWaterhouseCoopers shows a dramatic 33% increase in online advertising revenues between the third quarter of 2005 and the third quarter of 2006, and total online advertising spending for 2006 to date reaching $4.1 billion.[172] Some of this revenue, quite clearly, constitutes money that would have been spent on traditional media advertising, such as radio.[173]

Further, the suggestion by UCC that terrestrial radio operators can simply migrate to new platforms such as podcasting, Internet radio, or HD radio and thereby ensure their financial recovery and success[174] reflects a fundamental misunderstanding of the investments involved and the manner in which the marketplace works. Indeed, a recent JP Morgan study finds, for example, that radio station owners' decision to expend significant sums on HD technology suffers from several intrinsic competitive disadvantages, including the investment banking firm's view that satellite radio is a "superior offering," that adoptions are likely to be slow, and that

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[171] *Media Consolidation, Regulation, and the Road Ahead*, at 7.

[172] Interactive Advertising Bureau, Press Release, *Internet Advertising Revenues Surpass $4 Billion For Q3* (Nov. 14, 2006), http://www.iab.net/news/pr_2006_11_14.asp; *see Media Consolidation, Regulation, and the Road Ahead*, at 7.

[173] *See, e.g.*, NAB, 32-35; NAA, 42-43.

[174] *See, e.g.*, UCC, 83; *see also* AFTRA, 8-10 (arguing that the FCC should consider multicasting capabilities in evaluating radio ownership limits); UCC, 54-57 (making similar argument as applied to digital television multicasting).

"HD radio is unlikely to solve radio's secular growth challenges."[175] Instead of allowing terrestrial radio stations to realize net increases in their audiences, JP Morgan predicts an audience fragmentation scenario, in which existing radio listeners are simply divided among more channels of programming.[176] It is only logical to assume that the same is true with respect to podcasting or Internet radio – net listening will *not* increase, but audiences will simply become increasingly spread out among the various platforms over which programming is delivered. Moreover, many of these new platforms are not necessarily revenue-generators in their own right; HD radio, for example, is currently commercial-free, and it is not at all certain that advertisers will find it to be an attractive vehicle to reach customers in the future even if broadcasters were to alter their advertiser-free strategy. It is clear, then, that operators such as Clear Channel who are heavily investing in HD radio and other new forms of audio programming bear substantial risks, and that these new technologies are far from a panacea for the success of the free, over-the-air radio business.

As Clear Channel further showed in its opening comments, allowing higher levels of common ownership at least in the nation's largest markets is necessary in order to allow free radio to remain available as a vital lifeline – particularly in times of local crisis and national emergency that we unfortunately experience all to often in contemporary times – to all Americans.[177] Terrestrial broadcasting is the only medium that is inherently local and radio is, as shown before, uniquely suited to providing much-needed information during emergencies, due in

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[175] JP Morgan, *Radio Broadcasting: Is HD Radio Too Little, Too Late?*, at 1, 3 (June 16, 2005).

[176] *Id.* at 3, 16.

[177] Clear Channel, 53-56.

part to its portability, redundancy, and near-universal availability.[178] This is why a bipartisan group of twenty-three members of Congress have voiced support for Clear Channel's proposal, recognizing that "Americans' reliance on free radio for both local news and community-oriented programming, as well as essential 'lifeline' information during emergencies [and] natural disasters," require the FCC to address the "evolving market situation" that terrestrial radio faces today.[179] Long-time former FCC Commissioner James Quello recently echoed these sentiments, observing that, "[b]roadcasters need help" to ensure that they can continue to make their "expensive but vital emergency, local-news and community services" available to the listening public in times of need.[180]

As Clear Channel also explained before, adopting its proposal to raise from eight to at least ten the number of stations that a single entity can own in markets with between sixty and seventy-four stations and to raise from eight to at least twelve the number of stations that a single entity can own in markets with seventy-five or more stations would be a far cry from radical deregulation.[181] To the contrary, it is accurately characterized as "embarrassingly modest"[182] and "even conservative,"[183] and would affect only the country's seventeen largest radio markets.[184]

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[178] *Id.*

[179] *Gillmor/Green Letter*.

[180] James H. Quello, *Let Broadcasters Be Free*, Broadcasting & Cable, Sept. 4, 2006, http://www.broadcastingcable.com/article/CA6368434.html?display=Opinion ("*Let Broadcasters Be Free*").

[181] Clear Channel, 56-57.

[182] *Upton Media Institute Remarks*, at 10.

[183] *Media Consolidation, Regulation and the Road Ahead*, at 8.

[184] Clear Channel, 56; *see* NAB, 85 (noting that one entity can own eight stations in a market with 45 total stations, but can still own only eight stations in a market with 60 or 75 (or even more) stations); *Upton Media Institute Remarks*, at 7 ("[T]here is absolutely no public policy

And it would allow ownership of, at most, 17% of a market's total radio stations, which is much less than the percentage of stations that the present rules allow in markets of all sizes.[185]

In short, increasing the local radio ownership limits in the nation's largest markets will confer substantial public interest benefits, is necessary allow free radio to remain a viable competitor in the ever-expanding multimedia marketplace, and will not result in more concentration in percentage terms than is allowed under the current rule. Accordingly, the FCC should increase the local radio ownership caps in the country's largest radio markets as proposed herein.

B. The 1996 Act and Marketplace Realities Require the Commission to Reject Calls to Base any Local Radio Ownership Limits that are Retained on Audience or Market Share.

As Clear Channel also demonstrated in its opening comments, any local radio ownership limits that the FCC chooses to retain must be based on the number of outlets owned, not audience or market share.[186] Most importantly, Clear Channel showed that Congress *required* this result, by directing in Section 202(b) of the 1996 Act that the FCC eliminate the 25% audience share component of its then-existing local radio ownership rule set particular limits on the number of stations that a party could own.[187] Clear Channel demonstrated, moreover, that the audience and revenue shares of radio stations at any given time are not reliable indicators of what the competitive state of the market will be at any point in the future, because of the

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good to justify the same local radio ownership cap for Cincinnati as for New York City, Chicago and Los Angeles.").

[185] *Id.* at 56. Even some who advocate for the retention of, or a reduction in, the current radio ownership limits acknowledge – as they must – that "increasing the number of stations that one could own may not have an impact in large markets like New York or Los Angeles." Thomas C. Smith, 4.

[186] Clear Channel, 59-66.

[187] *Id.* at 59-60.

volatility of audience and revenue shares, and because of the relative ease with which lower-rated stations may achieve ratings and share increases by altering their formats.[188] Further, Clear Channel explained that the number of stations that a party owns is a far better indicator of competitive significance over time, and also takes into account the fact that each station provides an owner with the capacity and the incentive to provide programming that will serve the needs of the public.[189]

A few commenters urge the FCC to ignore Congress's choice of an outlet-based test and to adopt an audience share or market share test instead.[190] Not a single one of these commenters, however, even tries to explain how a decision to use such a test could be squared with Congress's mandate in the 1996 Act that the Commission abandon the audience share component of the local radio ownership rule. Equally important, none of them even acknowledge – let alone rebut – the substantial evidence that audience share and market share are highly volatile.[191] Even aside from share volatility, none of the commenters advocating a departure from the FCC's traditional outlet-based approach present a shred of economic or empirical evidence or theory to support their view. Rather, all they do is state summarily that the

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[188] Clear Channel, 61-64 (citing *Hausman October 2006 Statement*, at 7-9 & Table 2; *see also* BIA Financial Network, *Volatility in Radio Market Shares* (March 26, 2002) ("*BIA Volatility Study*") (Att. C to Comments of the National Association of Broadcasters, MM Docket Nos. 01-317, 00-244 (filed Mar. 27, 2002)); *see also* NAB, 76-78 (discussing studies demonstrating substantial volatility in radio market shares, the ease with which stations can change formats, and the positive effect that format changes can have on ratings).

[189] Clear Channel, 64.

[190] *See, e.g.*, Equity Communications, LP, 10, 11; Mt. Wilson, 10-11; *see also* Mid-West Family Stations, 17-19; *cf.* Daily News, L.P., 7 (arguing for a market share test in the newspaper/broadcast context).

[191] Much of this evidence was before the FCC in the last ownership proceeding. *See supra* n.188 (discussing studies submitted to the FCC in the prior proceeding).

FCC should alter its method of calculating compliance with the local ownership rules.[192] A decision to do so based on the current record, however, would clearly be arbitrary and capricious.

For many of the same reasons, the Commission should reject the request by the National Association of Black Owned Broadcasters and Rainbow/PUSH Coalition (together, "NABOB") that it return to a "flagging" regime.[193] As Clear Channel explained in its opening comments, the FCC wisely abandoned "flagging" in the *2003 Order* based on a recognition that it was administratively unworkable and, as now-Chairman Martin acknowledged, created substantial uncertainty and contributed to substantial processing delays.[194] In addition, a return to "flagging" could not be justified in the face of evidence that present market shares are a completely unreliable indicator of future competitive significance.

C. Maintenance of AM and FM "Subcaps" in any Retained Local Ownership Rule Would Be Irrational.

As demonstrated in Clear Channel's comments, the Commission's retention of the AM/FM subcaps cannot be rationally supported. As Clear Channel has shown, the subcaps are based on subjective – and factually unfounded – FCC value judgments.[195] Neither the lone commenter advocating retention of the subcaps nor the Commission has put forth actual facts to support the subcaps' underlying rationale that the "technical and marketplace differences"

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[192] The *Cooper Market Analysis* also advances this view and, like the opening comments, fails to address the impact of the 1996 Act share volatility at all. Nor does it present any empirical or economic basis for ignoring the evidence that is already in the record regarding volatility and why it renders an outlet-based test the only legally or economically sustainable alternative. *See Cooper Market Analysis*, at 6-8.

[193] NABOB, 8-9.

[194] Clear Channel, 64. Certainly, if a return to "flagging" is determined to be warranted, there is no basis for adopting a lower share threshold of 40/60, as opposed to the 50/70 test that the FCC previously employed. NABOB, 8, 11-12.

[195] Clear Channel, 66-73.

between the two services warrant separate limits on the number of AM and FM stations that a party may own. To the contrary, the record is replete with evidence undermining the subcaps' primary policy justifications. Indeed, UCC, the only commenter urging retention of the subcaps, makes arguments that largely echo, but do not amplify, those advanced by the Commission in the *2003 Order*.[196] These arguments, of course, are the very same ones that the Third Circuit found insufficient and that Clear Channel and others have shown lack factual support.[197]

Specifically, UCC primarily relies, as did the Commission in 2003, on technical differences between AM and FM services that supposedly render AM radio the "weaker sister" of FM.[198] As the record establishes, however, any such technical differences do not necessarily place one service in a superior market position. Indeed, Clear Channel's own experience, coupled with the success and expansion of Multicultural Radio Broadcasting, Inc. ("Multicultural"), clearly demonstrate AM radio's viability in a competitive market.[199]

As demonstrated in its comments, Multicultural, a radio broadcaster that provides necessary and valuable programming to underserved communities, has based its business model largely on the use of the AM service. As it has grown, Multicultural has bumped up against the AM/FM subcaps in attempting to meet the demands of local markets. Multicultural's experience thus succinctly demonstrates the Hobson's choice presented to successful AM group owners: further growth in a local market – and increased service to underserved communities – may require abandonment of a successful AM-based strategy.[200] Because AM properties – as Clear

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[196] *Compare* UCC, 84-85, with *2003 Order*, 18 FCC Rcd at 13733-34 (¶ 294).

[197] *Prometheus*, 373 F.3d at 434-35; Clear Channel, 66-73; Multicultural, 2-3.

[198] *See* UCC, 84-85.

[199] *See* Clear Channel, 68-69; Multicultural, 2-3.

[200] In its comments, Multicultural demonstrates that expansion in certain markets where it

Channel and Multicultural discussed and as UCC itself admits[201] – tend to be more affordable, this can have the unfortunate effect of cutting off a broadcaster from growing its presence within local markets, thereby preventing it from continuing to expand service to underserved audiences.

UCC has quite clearly misplaced its reliance on the supposedly inherent "inferiorities" of the AM service.[202] As Clear Channel and Multicultural have shown, AM stations are able to thrive, even in the nation's most competitive local radio markets.[203] In fact, as Clear Channel noted in its comments, AM stations ranked first in more than one fifth of the country's fifty largest radio markets according to Arbitron.[204] Moreover, and contrary to the UCC's unsupported and unexplained assertion,[205] the introduction of terrestrial digital audio broadcasting ("DAB") using in-band, on-channel ("IBOC") technology, as Clear Channel has explained, promises virtually to eliminate present limitations on AM signal quality, thereby eliminating the main rationale for retaining the AM subcaps.[206]

Further, UCC contends that the subcaps should be retained because AM stations are more likely to air a news/talk format.[207] As explained in Clear Channel's opening comments, however, UCC's contention is an over-generalization that does not accurately reflect the current

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already owns stations is possible, but only in the FM service and only after the divestiture of one or more of its local AM stations. Multicultural, 3-4.

[201] *See* Clear Channel, 69-70; Multicultural, 3; UCC, 84.

[202] *See* UCC, 84-85.

[203] Multicultural, 3-4.

[204] Clear Channel, 67-69.

[205] *See* UCC, 84.

[206] Clear Channel, 70-71.

[207] UCC, 85.

state of the radio broadcast market.[208] For example, the majority of the broadcasters of Gospel, Black Gospel, Southern Gospel, and Oldies music formats use the AM service.[209] And the Commission's retention of the subcaps based on subjective judgments regarding the content typically aired on one type of station would be a content-based decision that would raise substantial First Amendment difficulties, a result that the FCC is duty-bound to avoid.[210]

Finally, UCC urges retention of the subcaps on the basis that AM stations are most affordable to women, minorities, and other new entrants.[211] As shown in Clear Channel's opening comments, however, and as clearly demonstrated by Multicultural's real-world experiences, the ease with which entities that are new to broadcasting and that seek to serve previously underserved audiences provides a powerful reason to *eliminate* the subcaps, rather than a rationale for retaining them.[212]

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[208] Clear Channel, 70.

[209] *Id*.

[210] *See, e.g.*, *Tel. Co.-Cable Television Cross-Ownership Rule*, Third Report and Order, 10 FCC Rcd 7887, 7888 (¶ 4) (1995) (noting the FCC's duty to avoid constitutional questions); *see also Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988) ("[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress"); *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 345-348 (1936) (noting obligation to avoid "decid[ing] questions of a constitutional nature unless absolutely necessary to a decision of the case") (Brandeis, J., concurring). Additionally, the Commission should be wary of accepting the UCC's implicit standard for viewpoint diversity – namely, that viewpoint diversity is fostered by the prevalence of talk formats on the AM service. *See* UCC, 85. Taken to its natural conclusion, this logic would militate against *any* action that would reduce or eliminate the supposed sheltering "inferiority" of the AM service that, UCC contends, protects talk radio from the marketplace realities of the FM service. This result would be completely at odds with the FCC's goal – which UCC elsewhere embraces – of fostering enhanced efficiency in spectrum usage and in improving the quality of broadcast service offered to the public.

[211] UCC, 84-85.

[212] Clear Channel, 72-73; *see* Multicultural, 2-3 (noting that AM stations are "ideal targets for entry-level acquisitions").

D. **The FCC Must Reject Calls to Exclude Noncommercial Stations From the Calculation of Stations Within a Local Radio Market.**

The Commission should not be swayed by calls to reverse course and now exclude non-commercial stations from the calculation of the number of stations in a local radio market.[213] In renewing its request that the Commission reconsider the inclusion of non-commercial radio stations, NABOB ignores *Prometheus*, in which the Third Circuit found that the inclusion of non-commercial stations would not dramatically increase the size of most markets, especially where this policy was implemented in conjunction with the use of Abritron Metro-based market definitions.[214] After rejecting the underlying assumptions supporting requests to exclude non-commercial stations from market calculations, the Third Circuit specifically affirmed the Commission's policy of inclusion.[215] Thus, the Third Circuit put to rest the arguments advanced by NABOB in its pending reconsideration petition and its comments in this proceeding.

Moreover, the exclusion of non-commercial stations from local radio market calculations would mark an abrupt change in the Commission's policy, and neither NABOB nor any other commenter has proffered facts sufficient to meet the legal prerequisites to justify such a change of approach. Under controlling Third Circuit case law, the Commission must engage in a "reasoned analysis" before reversing a recent decision.[216] As the record does not contain any new facts or studies to support the necessary "reasoned analysis," the Commission must reject

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[213] NABOB, 10. NABOB asserts that its pending Petition for Reconsideration of the 2003 *Order* is still ripe as to the issue of the inclusion of non-commercial radio stations in local radio market calculus. *Id.* at 8. Because, as discussed below, the Third Circuit specifically affirmed the FCC's 2003 *Order* on this issue, NABOB's contention is at best dubious.

[214] *Prometheus*, 373 F.3d at 425-26.

[215] *See id.*

[216] *See, e.g.*, *Mazza*, 903 F.2d at 959; *Natural Res. Defense Council*, 683 F.2d at 760 ("sharp changes of agency course constitute 'danger signals' to which a reviewing court must be alert").

calls to ignore the Third Circuit and to reverse the decision to include non-commercial stations in local radio market analyses.

NABOB's substantive arguments urging the Commission to exclude non-commercial stations from local radio market calculations are similarly unavailing. The Commission found that while non-commercial stations do not compete in radio advertising markets, they vigorously compete in the market for listeners. Competition for listeners, not for advertising dollars, serves the public interest, and the Commission correctly noted that non-commercial stations' "significant listening share" in a local radio market "exerts competitive pressure on *all other* radio stations."[217] Furthermore, the Commission observed that including non-commercial stations in local radio market calculations would reconcile this aspect of the local radio ownership rule with its counterpart in the local television ownership rule.[218]

In its recent comments as well as in its prior filings, NABOB has failed to present facts to unseat the Commission's logic, instead relying on an its erroneous and unsupported assumption that "commercial stations compete with other commercial stations, not noncommercial stations."[219] Moreover, NABOB fails to address the harmonization of the treatment of the treatment of non-commercial radio and television stations for local ownership purposes. Because no commenter has demonstrated that it acted irrationally in electing to include non-commercial radio stations in local radio market calculations, the Commission should reject requests to alter this policy.

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[217] *2003 Order*, 18 FCC Rcd at 13,734 (¶ 295) (emphasis added).

[218] *Id.*

[219] Petition for Reconsideration of the National Association of Black Owned Broadcasters, Inc., and the Rainbow/PUSH Coalition, Inc., MB Docket 02-277, at 12 (Sept. 4, 2003); *see also* Nancy Stapleton, 8 (arguing that the impact on advertisers was "disregarded" in the decision to include non-commercial stations in the definition of local radio markets).

IV. THE FCC SHOULD TAKE ACTION TO PROMOTE INCREASED PARTICIPATION IN THE BROADCAST INDUSTRY BY NEW ENTRANTS.

In their opening comments, and in response to the Third Circuit's remand and the FCC's resultant request for commenters to address issues relating to the ownership of broadcast stations by minorities, women, and small businesses,[220] the Diversity and Competition Supporters ("DCS") reiterate several proposals that have been previously presented to the Commission.[221] Clear Channel believes that the FCC should consider adopting at least three of these proposals, because doing so will promote increased participation in the broadcast industry by previously underrepresented groups.

Essential to many of DCS' proposals is a definition of a "Socially and Economically Disadvantaged Business," or "SDB."[222] DCS, however, does not propose a specific definition of an SDB. Of course, in shaping such a definition, the FCC must, as it recognized in the *FNPRM* be mindful of its obligations under the Constitution.[223] In order to promote increased opportunities for new entrants in broadcasting, while avoiding "any constitutional impediments to adoption,"[224] Clear Channel proposes that the Commission define an SDB to include any entity that:

> (1) Does not hold an attributable interest in more than fifty radio stations nationally and does not hold an attributable interest in any radio station in the local market where the transaction would take place, and
>
> (2) Does not hold an attributable interest in more than six television stations nationally and does not hold an attributable interest in any television

[220] *See Prometheus*, 373 F.3d at 421, n.59; *FNPRM*, 21 FCC Rcd at 8837 (¶ 6).

[221] *See* Diversity and Competition Supporters ("DCS"), App. A.

[222] *Id.* at 7 & n.32; *see id.*, App. A.

[223] *FNPRM*, 21 FCC Rcd at 8337 (¶ 5).

[224] *Id.*

station in the local market where the transaction would take place.

This definition is race and gender neutral, but is limited to individuals and entities that do not have a substantial presence in the broadcasting industry. It therefore would successfully promote new entry without raising any constitutional concerns.

As to specific means for accomplishing the goal of promoting market entry, Clear Channel believes that at least three of DCS' proposals warrant further consideration. First, the FCC should allow a company to acquire more than the otherwise-allowable number of stations in a market where the company establishes an "incubator" program that substantially promotes ownership by SDBs.[225] Such a program might involve providing direct financial assistance, offering management positions to graduates of the NAB's Broadcast Leadership Training Program,[226] setting up internships specifically targeted at fostering new entry into broadcasting, and/or developing and sponsoring other training and business planning programs or offering assistance on such matters. Such incubator programs would provide incentives for existing broadcasters to share their talent, experience, and financial resources, while at the same time promoting new entry. Second, the Commission should allow holders of expiring construction permits to transfer them to SDBs, and should allot the new owner a full three years from the date of closing to complete construction.[227] Expiring construction permits are generally of limited or no value to the holder, and would therefore likely be priced at affordable levels, allowing small businesses without extensive capital to purchase them and leaving resources free to construct and

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[225] *See* DCS, App. B, at 3.

[226] *See* National Association of Broadcasters Education Foundation, Broadcast Leadership Training Program, http://www.nab.org/AM/Template.cfm?Section=Education_and_Training_Programs&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=72&ContentID=6251 (last visited Nov. 29, 2006).

[227] *See* DCS, App. B, at 3.

commence operation of the stations. Third, the FCC should waive the requirement that a licensee operating a radio station in the expanded AM band return one of its AM allotments for cancellation on the fifth anniversary of the date on which the Commission issued the expanded AM band license when the licensee assigns or transfers control of one of its AM stations to an SDB, as Clear Channel and numerous other parties have previously urged.[228] This would allow AM expanded band licensees to continue to provide important program service to the public, while creating additional opportunities for small businesses and women and minorities to purchase AM expanded band stations that would otherwise be forfeited.[229]

While Clear Channel believes that the FCC should adopt the aforementioned proposals in short order, it also submits that actions – which often speak louder then words – of private parties and industry groups can make a substantial contribution to furthering the goal of increasing minority and female participation in the broadcast industry. To this end, Clear Channel, the Minority and Media and Telecommunications Council, and the NAB jointly sponsored a conference in Washington, D.C. from January 10 through 12 of this year to encourage minority and female purchases of broadcast assets. This conference was held to educate minorities, women, and small businesses interested in entering the industry on how to purchase and become successful broadcasters. In particular, the goal of the conference was part of Clear Channel's efforts to help minorities and women purchase some of the 42 TV stations and 430 radio outlets that Clear Channel has recently announced an intention to sell. The conference's more than 120

[228] *See* 47 C.F.R. § 73.1150(c); *see also* DCS, App. B, at 9-10.

[229] *See, e.g.*, Request for Waiver of Rules Requiring Return of AM Licenses of AMFM Radio Licenses, LLC (a Clear Channel subsidiary), *et al.* and the Minority Media and Telecommunications Council, *et al.*, *In the Matter of Implementation of the AM Expanded Band Allotment Plan*, MM Docket No. 87-267, at 9-10 (filed Mar. 27, 2006). The Commission should also move forward to complete its pending Section 257 proceeding by issuing a report containing further recommendations regarding means to expand minority and female broadcast ownership. *See* 47 U.S.C. § 257.

participants had the opportunity to meet with Clear Channel representatives as well as financiers, engineers and experts in FCC regulations.[230] This conference, and Clear Channel's efforts to sell stations to minority- and female-owned businesses, are but the most recent examples of Clear Channel's long history of promoting increased participation in the broadcast industry by these groups.[231]

V. CONCLUSION

The record in this proceeding conclusively demonstrates that the terrestrial radio industry is vibrantly competitive and that free, over-the-air radio broadcasters are subject to a vast and ever-increasing range of new competitors, none of which are subject to arbitrary limits on ownership, almost none of which Congress even could have envisioned in 1996, and many of which did not even exist in 2003 when the FCC last considered modifications to the local radio ownership rule. The record also shows that greater levels of common ownership lead to real consumer benefits in terms of increased program diversity, and increased and improved local programming and participation in community service. At the same time, local radio ownership limits are not needed to protect advertisers; the natural functioning of the marketplace provides

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[230] *See* Clear Channel, Press Release, *Clear Channel, MMTC and NAB Host Conference to Encourage Minority and Female Ownership of Broadcast Assets* (Jan. 11, 2007); *see also* Radio Ink, *CC, MMTC & NAB Host Conference To Encourage Minority & Female Ownership* (Jan. 12, 2007), http://www.radioink.com/HeadlineEntry.asp?hid=136483; John Eggerton, *Clear Channel Courts Minority Buyers*, Broadcasting & Cable (Jan. 11, 2007), http://www.broadcastingcable.com/article/CA6406945.html.

[231] *See, e.g.*, Clear Channel, 75-76. In addition to the sale of forty radio stations to minorities in connection with the AMFM merger that is recounted in Clear Channel's opening comments and Clear Channel's participation in the industry and public interest coalition suggesting waiver of the AM expanded band forfeiture requirement explained above, Clear Channel in recent years has also engaged in numerous other initiatives designed to increase participation in the broadcast industry by women and minorities. To provide but a few examples, in 1999, Clear Channel contributed $15 million to the Quetzal fund, which invests in minority owned media. In 2000, Clear Channel's Lowry Mays, speaking before the Rainbow/PUSH Coalition, was the first major broadcaster to suggest implementation of new EEO rules, and the rest of the industry later followed suit. Clear Channel also has and continues to support tax incentive legislation to encourage broadcasters to sell stations to small companies and new entrants.

more than sufficient discipline and, if it failed, there are a variety of antitrust enforcement mechanisms available to provide a swift and effective remedy. It is therefore high time that the Commission repeal the local radio ownership rule in its entirety, pursuant to its statutory obligation to examine whether its media ownership rules remain necessary in light of competitive developments in the contemporary media marketplace and, if not, to repeal or modify them.

At the very least, the FCC should modify the local radio caps to allow ownership of up to ten stations in markets with between sixty and seventy-four stations, and ownership of at least twelve stations in markets with seventy-five or more stations. Any limits that are retained must respect Congress's choice of an outlet-based test to measure permissible levels of common ownership, a choice which is also compelled by market realities. And because they have no basis in law or reality, the Commission should also, if local radio ownership limits continue on the books at all, eliminate the subcaps on the number of AM and FM stations that a single entity may own in a local market. The FCC should also consider adopting proposals to advance participation in the broadcast industry by women and minorities.

Respectfully submitted,

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Dated: January 16, 2007

ATTACHMENT A

Statement of Professor Jerry A. Hausman (January 2007)

Statement of Professor Jerry A. Hausman

I. Introduction

1. My name is Jerry A. Hausman. I am the MacDonald Professor of Economics at the Massachusetts Institute of Technology ("MIT") in Cambridge, Massachusetts. I graduated from Brown University in 1968. I received a D.Phil. (Ph.D.) in economics from Oxford University in 1973 where I was a Marshall Scholar. I have been at MIT since completing my D.Phil. My academic specialties are econometrics, the application of statistical methods to economic data, and applied microeconomics, the study of behavior by firms and by consumers. I teach a graduate course in applied industrial organization, which is the study of how markets operate. The title of the course is "Competition in Telecommunications," and competition in the media industry (including radio broadcasting) is one of the topics covered in the course.

2. I have been an associate editor of *Econometrica*, the leading economics journal, and the *Rand (Bell) Journal of Economics*, the leading journal of applied microeconomics. In December 1985, I received the John Bates Clark Award of the American Economic Association, awarded every other year for the most "significant contributions to economics" by an economist under the age of 40. In 1980, I was awarded the Frisch Medal of the Econometric Society. I have been a member of numerous government advisory committees for both the U.S. government and the Commonwealth of Massachusetts. I have published over 150 academic research papers in leading economic journals including the *American Economic Review*, *Econometrica*, and the *Rand (Bell) Journal of Economics*. I have done significant amounts of research in the telecommunications industry. I have published numerous papers in academic

journals and books about telecommunications. I have also done research regarding advertising on television and radio. My curriculum vitae is attached as Exhibit 1.

3. I have previously submitted declarations to the Federal Communications Commission (FCC) and made presentations to the Department of Justice (DOJ) regarding competition in radio, broadcast television, and cable television. In particular, I have submitted statements to the Commission in the media ownership proceedings in January 2003 and March 2002. I have served as a consultant to companies that own radio stations, broadcast television stations, and newspapers. I have also consulted for a variety of companies that sell consumer goods and do large amounts of advertising.

4. Previously in this proceeding I submitted a statement that analyzed issues relating to consolidation in the radio industry. In this statement I comment upon two other studies that addressed the effects of radio consolidation.

II. DiCola Study of Radio Variety

5. A study by Peter DiCola, "Do Radio Companies Offer More Variety When They Exceed The Local Ownership Cap?", claims that smaller station groups offer more programming variety than larger station groups.[1] At first glance this result would appear to contradict the results I reported in my previous statements that increases in consolidation have led to increases in format variety.[2] However, as I now discuss, the

[1] P. DiCola, "Do Radio Companies Offer More Variety When They Exceed the Local Ownership Cap?", submitted with comments of Future of Music Coalition and American Federation of Musicians ("DiCola I").

[2] My previous statement in this proceeding updated the results from my March 2002 statement, which itself updated the results obtained by Steven Berry and Joel Waldfogel in their paper "Do Mergers Increase Product Variety? Evidence from Radio Broadcasting," *Quarterly Journal of Economics* 116, 2001.

study does not conflict with my findings because Mr. DiCola's study does not provide a policy-relevant analysis of format variety.

6. My study of format variety analyzes how increases in consolidation in a local market affect the number of formats available to listeners in that market. In doing so I am consistent with the way in which the Commission staff has looked at format diversity. In analyzing format diversity, the Commission's *Radio Industry Review 2002* focuses on "the number of distinct radio formats available in each Metro market."[3] In contrast, Mr. DiCola only looks at whether larger groups (taken as a whole) tend to offer a greater array of formats than smaller groups, and does not examine format diversity at the local level. As a result, Mr. DiCola cannot draw any conclusions about how consolidation affects the number of formats available to a given set of listeners.

7. Furthermore, even if Mr. DiCola's study were relevant, it is not even clear that Mr. DiCola's claim that smaller station groups provide more variety is true. Mr. DiCola does not define what his measure of variety is or present any numerical analysis of variety. Instead, his analysis consists only of three pie charts. From these pie charts it is not clear that larger groups provide any less variety, and it is possible that for certain definitions of variety larger groups provide *more* variety. For example, one measure of variety could be the share of the largest format, with a lower share corresponding to more variety. From Mr. DiCola's pie charts it appears that the largest share in the small group stations (which is the share of the Religion format) is larger than the largest share of either of the larger groups (which is the Country format).

[3] G. Williams and S. Roberts, *Radio Industry Review 2002: Trends in Ownership, Format, and Finance*, FCC Media Ownership Working Group Study No. 11, 2002, p. 7.

8. Another limitation of Mr. DiCola's study is that it utilizes BIA's major format categories. As Mr. Dicola explains, "BIA Financial Networks categorizes each U.S. radio station's programming format into one of twenty-one categories."[4] However, Mr. DiCola does not consider the fact that these categories aggregate multiple different formats into a single category. For example, BIA's Adult Contemporary category includes seven individual formats: 80s Hits, AC, Bright AC, Hot AC, Mix AC, Modern AC, and Soft Rock.[5] As a result, Mr. DiCola's analysis ignores within-category diversity, and therefore significantly understates overall diversity levels. Although the Commission staff has used BIA format categories in previous analyses, it has noted their limitation by explaining that "[t]here is probably a great deal of shifting of sub-formats that our relatively aggregated measure of format does not capture."[6]

III. DiCola Study of Employment and Wage Effects

9. Mr. DiCola has also conducted a study of the employment and wage effects of radio consolidation.[7] In an effort to determine the effect of radio consolidation on labor market outcomes, Mr. DiCola constructs a panel data set with measures of radio and television labor market outcomes (employment, mean hourly wage, and median wage) and local radio concentration (total stations in market, stations per owner, and variance of stations owned) for 246 radio markets from 1998 through 2003. Mr. DiCola then estimates regression models to attempt to determine the effect of radio consolidation on labor market outcomes.

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[4] DiCola I, p. 9.
[5] See Exhibit 2 for a list of BIA's full format names and major format categories.
[6] Radio Industry Review 2002, p. 8.
[7] P. DiCola, "Employment and Wage Effects of Radio Consolidation," Future of Music Coalition, August 9, 2006 ("DiCola II").

10. It is important to note that Mr. DiCola does not collect any information on other variables (such as population and economic activity) that would be expected to affect labor market outcomes. The failure to include relevant variables in a regression model leads to what is known in econometrics as "omitted variables bias," which means that the regression estimates are biased and unreliable.[8] When panel data (i.e., data on a number of different cross-section units at different points in time) are available, a potential solution to the omitted variables problem is fixed effects estimation. Fixed market effects can control for variables that vary across markets, but not over time, and fixed time effects can control for variables that vary over time, but not across markets. In all of the econometric studies of radio markets that I have submitted to the Commission, I have used fixed effects to address the omitted variables bias problem. Mr. DiCola is also aware of the omitted variables problem, stating that since "many unobservable factors influence radio firms' employment decisions, ... I try to address the omitted-variable-bias issue by using a fixed-effects approach."[9]

11. When Mr. DiCola uses the fixed effects approach, he finds a statistically significant relationship between radio consolidation and negative labor market outcomes in only one out of his nine regressions. Mr. DiCola therefore correctly concludes that "the fixed effects-regressions do not support the causal inference that if consolidation increased over time (for some reason exogenous to the workings of the market) in a particular local market, job loss and lower wages would result in that particular market."[10]

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[8] See, e.g. W. Greene, *Econometric Analysis*, 3rd ed., 1997, pp. 401-404.
[9] DiCola II, p. 19.
[10] DiCola II, p. 24. Mr. DiCola goes on to note "some potential problems" with the fixed

12. However, the final sentence of Mr. DiCola's conclusion is that "[t]he employment effects of radio consolidation thus represent a threat to both localism and diversity."[11] This statement is unsupported by Mr. DiCola's analysis. As Mr. DiCola acknowledges, he has not identified a causal relationship between radio consolidation and negative labor market outcomes.[12] Instead, his statement appears to be based on his non-fixed effects regressions, some of which show a negative relationship between consolidation and labor market outcomes. Due to the omitted variable bias problem, it is incorrect to rely on estimates from regressions that do not include fixed effects, because such estimates are biased and unreliable.[13] Thus Mr. DiCola's analysis provides no support for a conclusion that radio consolidation has led to negative employment or wage effects.

IV. DiCola Consolidation Study

13. A third study by Mr. DiCola considers several issues relating to consolidation in the radio industry.[14] Although this study contains many assumptions and much speculation, as I now describe it does not contain useful evidence about the effect of radio consolidation.

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effects estimates (data incompleteness and measurement error), but it is important to note that all of these potential problems are problems with Mr. Dicola's data, not problems with the fixed effects methodology.

[11] DiCola II, p. 26.

[12] Mr. DiCola suggests that such a causal relationship "may exist" (p. 25), but his suggestion is speculation that is not based on any evidence or analysis.

[13] An econometric test known as the Hausman Specification Test shows that when fixed effects estimates differ significantly from non-fixed effects estimates, the non-fixed effects estimates are biased and unreliable (J. Hausman, "Specification Tests in Econometrics," *Econometrica* 46, 1978).

[14] P. DiCola, "False Premises, False Promises: A Quantitative History of Ownership Consolidation in the Radio Industry," Future of Music Coalition, December 2006 ("DiCola III").

14. Mr. DiCola first considers consolidation at the national level. However, radio stations compete in local markets, not national markets, so this analysis is uninformative.[15] Indeed, this failure to recognize the geographic scope of the relevant market leads to errors in Mr. DiCola's analysis. For example, Mr. Dicola claims that "nationwide concentration in the radio industry merits concern."[16] His basis for this claim is that the Herfindahl-Hirschman Index (HHI) for the national radio industry falls in the range that merits concern under the DOJ-FTC Horizontal Merger Guidelines. The error in Mr. DiCola's analysis is that according the Merger Guidelines, the first step in measuring concentration is defining the relevant market.[17] Since the relevant markets in the radio industry are local in scope, Mr. DiCola measures concentration for the wrong market. Thus he provides no basis for a claim that the level of nationwide concentration merits concern. Further, since listeners almost always listen to the radio in only one local market, consumer welfare and the "public interest" need to be considered on a local market basis.

15. Mr. DiCola also speculates that consolidation has led to a decline in listenership.[18] However, he provides no evidence to support this conclusion. Mr. DiCola supports his claim by noting that a decline in national listenership has happened at the same time as the consolidation of the radio industry. Because correlation does not imply causation, this "analysis" provides no support for the claim that consolidation has caused a decline in listenership.

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[15] Mr. DiCola concedes that radio markets are local, stating that "radio is a local medium," and that "Arbitron markets are the relevant markets in which to assess competition, diversity, and localism" (DiCola III, pp. 50-51).
[16] DiCola III, p. 43.
[17] DOJ and FTC Horizontal Merger Guidelines, Section 1.0.
[18] DiCola III, p. 45.

16. When Mr. DiCola turns to an analysis of local radio markets, he claims that HHIs for local radio markets fall into the "danger zone" of excessive concentration.[19] However, previous studies by myself and others have shown that the increases in concentration did not have any adverse consequences on advertising prices.[20] Mr. DiCola himself provides no evidence on the effect of concentration on any outcome. Instead, he relies solely on the HHI ranges set forth in the Merger Guidelines. As the DOJ and FTC have acknowledged, it is inappropriate to rely solely on HHIs as a measure of competitive concerns. As a recent DOJ-FTC commentary on the Merger Guidelines states:

> "[T]he Agencies have often not challenged mergers involving market shares and concentration that fall outside the zones set forth in Guidelines section 1.51. This does not mean that the zones are not meaningful, but rather that market shares and concentration are but a "starting point" for the analysis, and that many mergers falling outside these three zones nevertheless, upon full consideration of the factual and economic evidence, are found unlikely substantially to lessen competition. Application of the Guidelines as an integrated whole to case-specific facts—not undue emphasis on market share and concentration statistics—determines whether the Agency will challenge a particular merger."[21]

17. Mr. DiCola claims to provide a "justification" for a numeric local ownership cap.[22] However, a justification for a local ownership cap would consist of evidence that the costs of increased concentration outweigh the benefits of increased concentration. Mr. Dicola's proposed "justification" provides no evidence on either the costs or benefits

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[19] DiCola III, p. 67.
[20] See the studies contained in my March 2002 and January 2003 statements before the commission, and the Romeo & Dick and Waldfogel & Wulf studies discussed in my October 2005 statement.
[21] "Commentary on the Horizontal Merger Guidelines," DOJ and FTC, March 2006, pp. 15-16.
[22] DiCola III, pp. 70-74.

of concentration. Instead, Mr. Dicola's proposed "justification" consists of two alternative methodologies of choosing a numerical cap such that the corresponding HHI will be below 1800. Thus instead of providing a justification, Mr. DiCola simply assumes (without providing any evidence) that HHIs above 1800 are "bad", and then shows how a numerical cap can be used to reduce the HHI below 1800.

18. Mr. DiCola's "Local Ownership Index" is again based on assumptions rather than evidence. Mr. DiCola assumes that local owners "do the best job of assessing local preferences and needs and providing the appropriate programming to meet those preferences and needs."[23] Mr. DiCola does not provide any evidence that this assumption is correct. Alternatively, Mr. DiCola states that "if nationalization threatens competition, diversity or localism in local markets, then the Local Ownership Index provides a useful measure to document the threat."[24] Again, Mr. DiCola provides no evidence that nationalization is such a threat.

19. The last set of issues Mr. DiCola addresses relate to programming diversity, and he claims that "no sound evidence supports the notion that radio consolidation has enhanced programming diversity."[25] Mr. DiCola's analyses of the effect of consolidation on variety contain several errors that cause him to reach this incorrect conclusion. For example, Mr. DiCola compares the formats offered by all stations nationwide in 1996 and 2005 and concludes that "the vast increase in concentration of radio ownership has done little to change the concentration of programming formats."[26] The error in this analysis is that it is done at the national level. As I have explained above, since any given listener

[23] DiCola III, p. 75.
[24] DiCola III, p. 76.
[25] DiCola III, p. 113.
[26] DiCola III, p. 87.

only has the stations in his or her local market available, the correct way to measure variety is on a market-by-market basis. As Professors Berry and Waldfogel and I have shown, increased concentration within a local market does lead to increased format variety.

20. Mr. DiCola also performs an analysis of the formats offered by different categories of station groups, which is very similar to the analysis in his radio variety study. Once again, Mr. DiCola's analysis is uninformative because he only looks at whether larger groups (taken as a whole) tend to offer a greater array of formats than smaller groups, and does not examine format diversity at the local level. As a result, Mr. DiCola cannot draw any conclusions about how consolidation affects the number of formats available to a given set of listeners.

21. Mr. DiCola criticizes my study of consolidation and format variety because different stations with different formats sometimes play the same songs.[27] As a result, he claims, format variety is not a good measure of programming diversity. The basis for Mr. DiCola's claim is his analysis of overlap among the top 20 to 50 songs played for each format. Among the format pairs with the greatest overlap, the percentage of overlap ranges from 10% to 80%.[28] However, the fact that stations with different formats sometimes play the same songs does not mean, as Mr. DiCola claims, that "increased format variety *in and of itself* does not promote the public interest."[29] Indeed, Mr. DiCola's calculations show that even among format pairs with the greatest degree of

[27] DiCola III, p. 102.
[28] DiCola III, Table 3-5.
[29] DiCola III, p. 102 (emphasis in original).

overlap, additional formats do indeed provide additional variety by playing additional songs.

V. FCC Radio Market Structure and Music Diversity Draft Study

22. As part of this proceeding the FCC has released a draft study of the effect of market structure on music diversity, titled "FCC Radio Market Structure and Music Diversity Paper."[30] As FCC study correctly notes, the data used in the analysis is not ideal for measuring product diversity. The limitations of the data include the following: 1) Instead of having comprehensive playlists, the study only uses data on the top ten songs played at each station.[31] Thus the study is unable to measure any changes in diversity resulting from songs outside of the top ten. 2) The data consist of playlists for only 245 stations that are larger stations in larger markets.[32] As a result, the FCC study is unable to measure any changes in diversity in smaller stations or markets. By way of comparison, my analysis of format variety studied *all* the stations in 243 *markets*, both large and small. 3) The playlist data are only for stations that play new songs, so that stations that do not play new songs (e.g., Classic Rock, Oldies, Classical) are not accounted for.[33] Furthermore, there are additional formats that are not accounted for by this analysis – those where the content does not consist of music (e.g., News, Talk, Sports). Both of these types of stations are included in a format variety analysis such as my own, but not in included in the FCC study.

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[30] The FCC released two drafts of this study, which appear to be substantively similar. In my comments I refer to page numbers in the "undated" draft.
[31] FCC Music Diversity Paper, p. 9.
[32] FCC Music Diversity Paper, p. 10.
[33] FCC Music Diversity Paper, pp. 5-6.

23. The limitations of the data also create problems for the econometric analysis of the FCC study. Most importantly, as the study acknowledges, it is possible that market structure is endogeneous.[34] Professors Berry and Waldfogel addressed this problem in their study of format variety by using the varying effect of the 1996 Telecommunications Act on large vs. small markets as a source of exogenous variation in market structure. However, since the FCC study only has data from large markets, it cannot use this strategy to solve the endogeneity problem.[35] This failure to address endogeneity is important because in my March 2002 and October 2006 statements I used a Hausman endogeneity test to show that changes in concentration were endogenous in the context of a format variety analysis. Since the FCC study does not solve the endogeneity problem, the estimates are likely biased and inconsistent.

24. Although the limitations of the data and the problems with the econometric analysis limit the usefulness of the analysis, it is interesting to note that the FCC study finds that stations in the same market that come under common ownership experience an increase in playlist diversity.[36] This result is generally consistent with results from studies of format variety, which find that increases in concentration at the local level lead to increases in variety.[37] The FCC study also presents results about changes in playlist diversity for stations in different markets, but as I have explained above, since radio markets are local in nature these effects are not policy relevant. What matters to any

[34] FCC Music Diversity Paper, p. 5.
[35] FCC Music Diversity Paper, p. 5.
[36] FCC Music Diversity Paper, p. 18.
[37] See the format variety analyses in my October 2006 and March 2002 statements, and the Berry-Waldfogel study discussed therein.

given listener is the variety available to him or her, which depends on the variety among stations in his or her market, not on the variety available in other markets.

EXHIBIT 1

June 2006

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THESIS: "A Theoretical and Empirical Study of Vintage Investment and Production in Great Britain," Oxford University, 1973.

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Phi Beta Kappa
Marshall Scholar at Oxford, 1970-1972
Scholarship at Nuffield College, Oxford, 1971-1972
Fellow, Econometric Society, 1979.
Frisch Medal of the Econometric Society, 1980
Fisher-Schultz Lecture for the Econometric Society, 1982
John Bates Clark Award of the American Economic Association, 1985
Smith Lectures, Brigham Young University 1986
Jacob Marschak Lecture for the Econometric Society, 1988
Hooker Lectures, Macmaster University 1989
Fellow, National Academy of Social Insurance, 1990
American Academy of Arts and Sciences, 1991.
Fellow, Journal of Econometrics, 1998.
Shann Memorial Lecture for the Australian Economics Society, 2003
Cemmap International Fellow, University College London, 2004
Honorary Professor, Xiamen University, 2005
Biennial Medal of the Modelling and Simulation Society of Australia and New Zealand, 2005
Fellow, Modelling and Simulation Society of Australia and New Zealand, 2005
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EMPLOYMENT:

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1992-	John and Jennie S. MacDonald Professor
1979-	Professor, Department of Economics
1976-79	Associate Professor, Department of Economics
1973-76	Assistant Professor, Department of Economics
1972-73	Visiting Scholar, Department of Economics

VISITING APPOINTMENTS:

1986-87 Visiting Professor, Harvard Business School

1982-83 Visiting Professor, Harvard University Department of Economics

Visiting Positions: University of Washington, Australian National University, Ecole Normale Supérieure, Oxford University, University of Sydney, Wuhan University, Beijing University, University of Western Australia, University College London, Uppsala University, Xiamen University

U.S. ARMY, ANCHORAGE, ALASKA

1968-70 Corps of Engineers

PROFESSIONAL ACTIVITIES:

Associate Editor, Bell Journal of Economics, 1974-1983
Associate Editor, Rand Journal of Economics, 1984-1988
Associate Editor, Econometrica, 1978-1987
Reviewer, Mathematical Reviews, 1978-1980
American Editor, Review of Economic Studies, 1979-82
Associate Editor, Journal of Public Economics, 1982-1998
Associate Editor, Journal of Applied Econometrics, 1985-1993
Advisory Editor, Economics Research Network and Social Science Research , 1998-
Advisory Editor, Journal of Sports Economics, 1999-
Advisory Editor, Journal of Competition Law & Economics, 2004-
Advisory Editor, Journal of Applied Economics, 2005-
Member of MIT Center for Energy and Environmental Policy Research, 1973-1995
Research Associate, National Bureau of Economic Research, 1979-
Member, American Statistical Association Committee on Energy Statistics, 1981-1984
Special Witness (Master) for the Honorable John R. Bartels, U.S. District Court for the Eastern District of New York in Carter vs. Newsday, Inc., 1981-82
Member of Governor's Advisory Council (Massachusetts) for Revenue and Taxation, 1984-1992
Member, Committee on National Statistics, 1985-1990
Member, National Academy of Social Insurance, 1990-
Member, Committee to Revise U.S. Trade Statistics 1990-1992
Director, MIT Telecommunications Economics Research Program, 1988-
Board of Directors, Theseus Institute, France Telecom University, 1988-1995
Member, Conference on Income and Wealth, National Bureau of Economic Research, 1992-
Member, Committee on the Future of Boston, 1998
Member, GAO Expert Panel to advise USDA on Econometric Models of Cattle Prices, 2001-2
Advisor, China Ministry of Information on Telecommunications Regulation, 2002-
Member, FTC Panel on Merger Evaluation, 2005

PUBLICATIONS:

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EXHIBIT 2

Formats for Radio Stations

Because some radio stations air multiple formats, abbreviations are often used for formats in the Competitive Overview section. These abbreviations may appear by themselves or combined with other format abbreviations. The abbreviations, their expansions, and the major format categories in which BIA classifies these formats are listed in the following table:

Abbreviation	Short Abbrev.	Full Format Name	Major Format Category
70&80	7&8	70s & 80s	Oldies
70Hts	7Ht	70s Hits	Oldies
70sOd	70s	70s Oldies	Oldies
80&90	8&9	80s & 90s	Oldies
80Hts	8Ht	80s Hits	Adult Contemporary
AAA	AAA	AAA	Album Oriented Rock/Classic Rock
AC	AC	AC	Adult Contemporary
AdCHR	ACH	Adult CHR	Contemporary Hit Radio/Top 40
AdHts	AHt	Adult Hits	Oldies
AdRck	ARk	Adult Rock	Rock
AdStd	ASt	Adult Standards	Nostalgia/Big Band
Altve	Alt	Alternative	Rock
Amerc	Amr	Americana	Country
AOR	AOR	AOR	Album Oriented Rock/Classic Rock
Asian	Asn	Asian	Ethnic
Beach	Bch	Beach	Oldies
BgBnd	BBd	Big Band	Nostalgia/Big Band
BkGsp	BGp	Black Gospel	Religion
Black	Blk	Black	Urban
BlGrs	BGs	Blue Grass	Country
BrtAC	BtA	Bright AC	Adult Contemporary
BtfMs	Btf	Beautiful Music	Easy Listening/Beautiful Music
BusNw	BNw	Business News	News
CCtmp	CCt	Christian Contemporary	Religion
Kids	Kds	Children	Miscellaneous
CHR	CHR	CHR	Contemporary Hit Radio/Top 40
Chrst	Cst	Christian	Religion
ClHts	CHt	Classic Hits	Rock
ClRck	CRk	Classic Rock	Album Oriented Rock/Classic Rock
Clscl	Cls	Classical	Classical
Cntry	Cty	Country	Country
Comdy	Cdy	Comedy	Miscellaneous
CsMOR	CMR	Classic MOR	Middle of the Road
Dance	Dnc	Dance	Contemporary Hit Radio/Top 40
DARK	DRK	DARK	Station not on air
Divrs	Dvs	Diverse	Miscellaneous
DncOl	DnO	Dance Oldies	Oldies
Easy	Esy	Easy	Easy Listening/Beautiful Music
Ecltc	Ecl	Eclectic	Miscellaneous
Ethnc	Eth	Ethnic	Ethnic
Folk	Flk	Folk	Miscellaneous
FuSvc	FSv	Full Service	Middle of the Road
Gospl	Gsp	Gospel	Religion
Greek	Grk	Greek	Ethnic
HotAC	HtA	Hot AC	Adult Contemporary
Hwain	Hwn	Hawaiian	Ethnic
HpHop	Hhp	Hip Hop	Urban
Hurbn	Hur	Hurban	Spanish

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Abbreviation	Short Abbrev.	Full Format Name	Major Format Category
Info	Inf	Information	Miscellaneous
Inspr	Inp	Inspiration	Religion
Intnl	Int	International	Ethnic
Jack	Jck	Jack	Adult Contemporary
Japns	Jap	Japanese	Ethnic
Jazz	Jaz	Jazz	Jazz/New Age
Korea	Krn	Korean	Ethnic
Lt AC	LtA	Lite AC	Easy Listening/Beautiful Music
LtRck	LRk	Lite Rock	Easy Listening/Beautiful Music
MdRck	MRk	Modern Rock	Rock
Mexcn	Mex	Mexican	Spanish
MixAC	Mix	Mix AC	Adult Contemporary
ModAC	MdA	Modern AC	Adult Contemporary
MOR	MOR	MOR	Middle of the Road
Motvl	Mvl	Motivational	Talk
NAC	NAC	NAC	Jazz/New Age
News	Nws	News	News
Nstlg	Nst	Nostalgia	Nostalgia/Big Band
NwAge	NAg	New Age	Jazz/New Age
NwRck	NRk	New Rock	Rock
Oldes	Old	Oldies	Oldies
Polka	Pka	Polka	Miscellaneous
Polsh	Pol	Polish	Ethnic
Portg	Ptg	Portuguese	Ethnic
Prgvs	Pgv	Progressive	Rock
Publc	Pub	Public	Public - Non Commercial Station
PubSv	PbS	Public Service	News
R&BOd	R&B	R&B Oldies	Urban
RckAC	RAC	Rock AC	Rock
Regat	Reg	Reggaeton	Spanish
Relgn	Rlg	Religion	Religion
RhyBl	R&B	Rhythm & Blues	Urban
Rhymc	Rym	Rhythmic	Contemporary Hit Radio/Top 40
Rk&Rl	R&R	Rock & Roll	Rock
RlgMs	RMs	Religious Music	Religion
Rncha	Rch	Ranchera	Spanish
Rock	Rck	Rock	Rock
SfHts	SHt	Soft Hits	Easy Listening/Beautiful Music
SftAC	SAC	Soft AC	Easy Listening/Beautiful Music
SftRk	SRk	Soft Rock	Adult Contemporary
SmJaz	SJz	Smooth Jazz	Jazz/New Age
SGspl	SGp	Southern Gospel	Religion
Span	Spn	Spanish	Spanish
SpnAC	SpA	Spanish AC	Spanish
Sprts	Spt	Sports	Sports
Talk	Tlk	Talk	Talk
Tejno	Tej	Tejano	Spanish
Top40	T40	Top 40	Contemporary Hit Radio/Top 40
Trpcl	Trp	Tropical	Spanish
UrbAC	UAC	Urban AC	Urban
Urban	Urb	Urban	Urban
UrCHR	UCH	Urban CHR	Urban
UrCtp	UrC	Urban Contemporary	Urban
VarHt	VHt	Variety Hits	Miscellaneous
Varty	Var	Variety	Miscellaneous

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