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Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: *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; 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; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets, MB Docket No. 06-121, et al.*

Dear Ms. Dortch:

Enclosed please find an *ex parte* submission entitled *A Review of the Future of Music Coalition Study: Missing a Basis in the Reality of the Radio Industry* by Mark R. Fratrick, Ph.D. of BIA Financial Network. The attached review evaluates a previous report of ownership and programming trends in the radio industry, and demonstrates that the earlier report lacked a foundation in the realities of the radio industry and therefore fails to provide relevant insight into the industry and its recent developments.

Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,

Enclosure

**A REVIEW OF THE FUTURE OF MUSIC COALITION STUDY:**

**Missing a Basis in the Reality of  
the Radio Industry**

Mark R. Fratrick, Ph.D.

BIA Financial Network

November 1, 2007



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## Executive Summary

In an attempt to evaluate all aspects of the radio industry since the passage of the 1996 Telecommunications Act, the Future of Music Coalition (FMC) conducted several analyses of the ownership and programming trends in the radio industry. As detailed below, these analyses lack a foundation in the realities of the radio industry, and, therefore, the results generated are highly misleading. The study also fails to adequately acknowledge that more likely, alternative explanations for some of the results are present.

The purpose of this report is to analyze the major findings of the FMC study and evaluate whether the conclusions reached are fair, or alternatively, whether other conclusions are more reasonable. Some of the most notable shortcomings of the FMC study include:

- An understatement of the increased competition facing terrestrial radio broadcasters, including a minimization of the impact of the number of new radio stations.
- A misleading interpretation of the number of new owners of these new radio stations.
- An illogical conclusion that the increased number of translators providing services to underserved areas has increased concentration in non-commercial radio.
- An overstatement of radio group revenue shares caused by failing to utilize total industry revenues, including revenues generated outside of Arbitron metro areas, a mistake repeated from an earlier FMC report.
- An inappropriate comparison of national radio revenue shares for radio groups that do not compete against each other in the majority of their markets.
- A failure to acknowledge the possibility that the increased revenues earned by radio groups might have resulted, even in part, from improved performance of these radio stations in the marketplace.
- A refusal to acknowledge that increased audio competition (e.g., iPods, Internet radio, etc.) has substantially contributed to the decrease in average listening to local radio stations.
- An error in not including all radio stations that attract listening in the local radio markets in relevant calculations. In particular, the omission of stations that are physically located in one market, but listed by Arbitron as home to another market, results in some cases in the disregard of highly rated stations.
- A skewed mathematical exercise, not grounded in the way that radio companies operate, to call for the imposition of new, more stringent local ownership rules.
- A further mathematical exercise conducted to justify calls for reregulation, based on important assumptions that significantly bias the final result.

- A repetition of a format analysis that still fails to acknowledge fully the limitations of using general format categories.
- An exaggerated claim that certain niche formats have “disappeared,” while in fact the number of stations providing those specific formats either remain the same or has decreased by only 2%.
- A citation of only one music label’s sales in a particular genre of music to support criticism of the radio industry, when readily available data from the entire recording industry would refute that claim.
- A series of overstatements on the commonality of playlists for different radio stations when in fact there is substantial differentiation in the playlists and the frequency of airings of specific songs and artists.

The FMC study attempts, through manipulating large databases and making complex mathematical calculations, to examine comprehensively the current radio industry. That study, however, lacks a practical understanding of the radio industry, is dismissive of any alternative interpretations of the data, and is wholly self-fulfilling in reaching pre-determined conclusions. As a result, the FMC study fails to provide relevant, unbiased insight into the radio industry and its development since the passage of the 1996 Act.

## A REVIEW OF THE FUTURE OF MUSIC COALITION STUDY:

### Missing a Basis in the Reality of the Radio Industry

#### **Introduction**

In an attempt to evaluate all aspects of the radio industry since the passage of the 1996 Telecommunications Act, the Future of Music Coalition (FMC) conducted several analyses of the ownership and programming trends in the radio industry.<sup>1</sup> These analyses devised a variety of ways to examine the radio industry, based on complex mathematical exercises. Unfortunately, those analyses lack a foundation in the realities of the radio industry, and, therefore, the results generated are highly misleading.

This absence of a basic understanding of how the radio industry operates is a serious flaw in the FMC study. The study constructs several theoretical models of the industry that show either lack of knowledge or practical understanding of the industry. As a result of this shortcoming, the study fails to acknowledge adequately that more likely, alternative explanations for a number of the results are present. Indeed, it appears that the conclusions of the FMC study were predetermined, and then the analyses conducted and the models constructed to substantiate those conclusions.

The purpose of this report is to analyze the major findings of the FMC study and evaluate whether the conclusions reached are fair or whether other conclusions are more reasonable. We will follow the structure of the FMC study by first examining its national radio ownership

analyses, then its local radio ownership analyses, with its programming analyses at the end. When all of FMC's analyses are examined in the context of the realities of today's radio marketplace, it becomes clear that the study's conclusions and its policy proposals have little use.

## **National Radio Ownership**

### **Competition to Terrestrial Radio Stations**

To start, the FMC study highlights the increased concentration of radio station ownership on a national level since 1996. The FMC laments the decrease in the number of owners and blames all of the industry's perceived problems on that increased concentration.<sup>2</sup> Yet, the FMC study does not consider the tremendous increase in competition faced by terrestrial broadcasters during the 1990s and continuing since then, even though growth in competition was one of the major reasons for the passage of the broadcast provisions of the Telecom Act.<sup>3</sup>

For example, the FMC cites that "only" an average of 177 new radio station licenses were granted per year between 1995 through 2005.<sup>4</sup> But, the FMC study neglects to mention

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<sup>1</sup> Peter DiCola, *False Premises, False Promises: A Quantitative History of Ownership Consolidation in the Radio Industry*, Future of Music Coalition, December 2006 (hereafter referred to as the FMC study).

<sup>2</sup> "The law is to blame, however, for increasing concentration of ownership in the radio industry – with no demonstrable benefits for citizens and radio listeners." FMC study, p. 18.

<sup>3</sup> See H.R. Rep. No. 204, 104<sup>th</sup> Cong., 2d sess. 54-55 (1995) (discussing changes in audio and video marketplace, especially increases in the number of broadcast stations and competition from non-broadcast programming providers, and the need to "ensure" the broadcast "industry's ability to compete effectively" in the marketplace).

<sup>4</sup> FMC study, p. 23.

that the total number of licensed stations increased nearly 81% over the full thirty years examined (1975-2005).<sup>5</sup> In fact, it was this increase in the number of radio stations during these years -- and the resulting economic stresses on radio broadcasters -- that led to the initial relaxing of the ownership rules by the Federal Communications Commission (Commission) in 1992.<sup>6</sup> Moreover, while the FMC study briefly mentions the introduction of Internet radio, satellite radio, iPods, and other audio devices,<sup>7</sup> the study does not fully account for the impact that these new audio providers and devices have on local terrestrial radio operations.<sup>8</sup>

The FMC in this national radio ownership section, and again in the other two sections of its report, also overstates the importance of its results. For example, the FMC study states that from 1996-2005 “a fairly large percentage” of new radio station licenses were acquired by “just a few companies, as Table 1-2 describes.”<sup>9</sup> In fact, Table 1-2 cites the top eleven companies that acquired new radio station licenses during these years, and these companies only account for

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<sup>5</sup> FCM study, *see* Table 1-1, p. 24. The percentage increase in the number of FM stations was even larger, as this band became more popular in attracting listeners during this time. The FMC study also cites the fact that the number of AM licenses decreased slightly during these years, possibly because “licensees requested to switch from AM to FM.” (p. 24) If that flexibility was available, radio stations owners would rejoice, but as anyone knowledgeable about the radio industry knows, the availability of FM stations is dictated by the Federal Communications Commission’s table of allotments, and existing radio stations cannot just “switch” from AM to FM. Moreover, the decrease in AM stations during this time is indicative of the increased competition faced by terrestrial radio stations, a point the FMC overlooks.

<sup>6</sup> *See Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2756-57 (1992) (citing growth in the number of radio stations, including nearly 40% growth in FM stations from 1980-1991, and in the number of non-radio outlets that compete with broadcasters, as causing “tremendous market fragmentation” and, consequently, “serious economic stress” for many stations).

<sup>7</sup> FMC study, p. 45.

<sup>8</sup> To be clear, while satellite radio impacts local radio markets and stations, satellite radio competition at a national level exists only between two companies.

<sup>9</sup> FMC study, p. 27.

16.6% of the new licenses, with **1,062** different owners accounting for the remaining **83.4%** of the new licenses. Clearly, more than a “few” companies acquired new radio station licenses during this time. In light of the growth in the number of radio stations and non-broadcast audio competitors, and the variety of owners obtaining licenses for new stations, FMC’s conclusions that the Commission’s “entry restrictions” make the “radio industry an exclusive party” and protect existing radio broadcasters from “true competition” are not only overstated,<sup>10</sup> they are unsupported by marketplace evidence.

### **Mischaracterization of Radio Markets**

One of the major, general analytical errors in the FMC study is its focus on the radio industry using national level data. National data reveals relatively little of relevance about the radio industry. There are over 13,500 terrestrial U.S. radio stations on the air, and the relevant geographic market in which to evaluate the level of competition between these stations is the local radio market. Because terrestrial radio stations – even those with strong signals – can only reach listeners over-the-air in very limited geographic areas, radio broadcasters compete in local markets, not a single national one. National data simply do not relate to the level of competition in local radio markets.

One example of the irrelevance of national data is Figure 1-6,<sup>11</sup> highlighting the fact that more radio groups own stations in more cities, counties, markets and states. This expanded geographic reach emerged after the passage of the Telecom Act. It is unclear, however, how the expanded reach of some radio groups has affected consumers, as the number of radio stations in

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<sup>10</sup> FMC study, p. 29.

local markets has increased, or at the very least remained the same, during this time. After all, why should a radio listener in Boston care if a radio group with stations in Boston acquired a station in Minneapolis or Phoenix? The mere fact that a group owner may have stations in different markets says nothing about the levels of competition or service *within* those various markets.

Some have argued that radio groups' entrance into more markets and regions has led to a decline in both diversity in programming across markets and in local ownership, harming local consumers. The purported impacts on programming are addressed elsewhere in the FMC report. *See infra* 21-30. But as for the impact on competition, the mere fact that some radio groups have entered more and different markets has not harmed *competition* within local radio markets. In fact, the ability of radio companies to expand into new cities, counties, markets, and states is beneficial to the companies, and to the public, as these companies spread their risk by geographic diversification, becoming less susceptible to local market conditions. If one region experiences an economic downturn, the geographically dispersed radio group can better withstand that downturn without cutting back on station operations and investment, an action that an ownership group confined to a single locality may be forced to do.

Looking at national radio industry data also led the FMC to reach illogical conclusions about the consequences of changes to the FM translator rules. The FMC study contends that Commission rule changes allowing FM translators for noncommercial educational FM stations to receive their signals via satellite made translators "more attractive," and encouraged noncommercial FM licensees to "accumulate[] many translators," which do not "have to be in

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<sup>11</sup> FMC study, p. 35.

the same local market as their parent FM station.”<sup>12</sup> On this basis, the FMC study concludes that “the changes to the translator rules have increased consolidation in non-commercial radio,” thereby raising “competition, diversity and localism” concerns.<sup>13</sup> It is hard to understand, however, how making translators more attractive actually leads to increased and harmful concentration or these other alleged problems. As the Commission has recognized, FM translators provide service to areas where direct reception of radio stations is unsatisfactory due to distance or intervening terrain barriers.<sup>14</sup> Among other valuable services, translators “provide an opportunity to import programming formats otherwise unavailable” in local communities (especially ones in remote areas), and are “vehicle[s] for informing local residents of [emergency] situations.”<sup>15</sup> Because the introduction of a translator into a local market brings in a new previously unavailable radio signal, greater use of translators only increases the level of competition and programming diversity in local communities. The FMC evidently reaches its erroneous conclusions about translators by failing to focus on the local markets in which terrestrial radio stations actually provide services and compete.

FMC makes a more glaring mischaracterization of the radio marketplace by focusing on the radio advertising revenues of the top ten owners of radio stations nationwide.<sup>16</sup> Citing revenue totals for these companies, the FMC study determines their national revenue shares by

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<sup>12</sup> FMC study, p. 28.

<sup>13</sup> FMC study, p. 28.

<sup>14</sup> *Amendment of Part 74 of the FM Commission’s Rules Concerning Translator Stations*, Report and Order, 5 FCC Rcd 7212 at ¶ 1 (1990).

<sup>15</sup> *Id.*, p. 7219.

<sup>16</sup> FMC study, pp. 41-43.

dividing those revenues by the total revenues *in Arbitron radio markets only*.<sup>17</sup> As a result, the FMC report overstates the total national shares of these radio groups.<sup>18</sup> In an earlier study,<sup>19</sup> the FMC made the same mistake in its national revenue share calculations, and even though that mistake was pointed out to them, this new study again repeats the incorrect calculation.<sup>20</sup>

Using these miscalculated radio revenue shares, the FMC study then analyzes the level of concentration in the radio industry, once again *on a national level*. The resulting numbers reveal little of relevance about competition in the radio industry. Whenever an analyst calculates revenue share and concentration metrics, he/she is trying to assess the competition between those companies in the same product and geographic markets. So when the FMC reports that Infinity Radio (#2 national ranked radio company in 2004) has a 16.3% share of the industry revenues

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<sup>17</sup> Several of these companies, e.g., Clear Channel Communications, also own radio stations in areas that are not part of Arbitron markets.

<sup>18</sup> BIA Financial Network provides an estimate of the radio industry's total revenues that the FMC study could have used (including radio stations in Arbitron markets and those that are not) in its annual publication, *Investing in Radio*.

<sup>19</sup> *Radio Deregulation: Has It Served Citizens and Musicians*, Future of Music Coalition, November 18, 2001, p. 3.

<sup>20</sup> NAB sent a letter to FMC highlighting this error (Letter from Kathleen M. Ramsey, NAB Senior Vice President, January 6, 2003), and also noted this error in comments submitted to the Commission. See NAB Reply Comments in MB Docket No. 02-277 at pp. 68-69 (filed Feb. 3, 2003). The FMC study also errs in its assertions about local marketing agreements (LMAs). FMC asserts that allowing LMAs "undermine somewhat" the purpose of ownership caps, and they result in "additional consolidation." FMC Study, p. 37. In fact, this is not the case because the Commission "attributes" (i.e., counts under the ownership rules) LMAs that broker more than 15% of a station's programming. For example, if a radio group with four stations in a market has an LMA with another station in that market (and thereby provides more than 15% of the brokered station's broadcast hours per week), then that station group will be treated by the Commission as owning five stations in that market. See 47 C.F.R. § 73.3555 Note 2(j)(1). Because LMAs are counted under the Commission's numerical ownership limits, these agreements should not be regarded as "legal devices" allowing group owners to "control[] and

and Cox Radio (#3 ranked company) has a 3.6% share, it is implying that these two companies are directly competing with each other to generate the revenues to arrive at those shares. But these radio groups do **not** compete against each other in every (or even most) markets. Infinity owned stations in 42 markets in the year analyzed by FMC. Of those 42 markets, Cox Radio had stations only in 5 markets (of their total 19 markets). It is incorrect to measure the national concentration of radio groups when these groups do not compete with each other in the vast majority of their markets. It is also misleading to suggest that these national share numbers show some unhealthy level of concentration in the radio industry. Indeed, if Cox, the third-largest radio group in terms of revenue, owns stations in only 19 of the hundreds of radio markets in the country, it seems a stretch to suggest that competition and diversity are eminently endangered by the post-1996 changes in radio ownership. Indeed, the FMC report notes that, at the end of 2005, the radio industry had over 4,400 different owners.<sup>21</sup>

### **Allowing for Alternative Conclusions**

The FMC study, in its haste to reach conclusions supporting reregulation of the radio industry, does not adequately acknowledge alternative interpretations of some of their results. One clear example of not acknowledging alternatives is that the growth of the leading radio companies could have occurred, at least in part, from providing programming that attracted greater audiences and generated the resulting larger advertising revenues. After acquiring radio stations in new markets, these radio groups have changed the programming and/or local

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manage[.]” additional stations beyond the applicable ownership caps, as the FMC implies. FMC study, p. 37.

<sup>21</sup> FMC study, p. 33.

management, altered the marketing and selling efforts, thereby making these radio stations more formidable local competitors providing improved service to their local markets. The FMC never even suggests that the new owners could have improved the fortunes of these local radio stations through competitive actions that benefited radio listeners.

Another example of a rush to a pre-ordained conclusion is shown in the FMC's analysis of average radio listenership over the time period 1976-2003.<sup>22</sup> By emphasizing that the level of listening has been declining since 1989 and the "decline in radio listenership has accelerated during the post-Telecom Act period of consolidation,"<sup>23</sup> the FMC study concludes that "regulatory changes failed to make radio a more valuable public resource."<sup>24</sup> The jump to that conclusion is truly remarkable. To minimize the importance of alternative audio sources that now are available to consumers, as the FMC study does,<sup>25</sup> is one of the best illustrations of not fully analyzing the marketplace in which local radio stations compete for consumers' time and attention.

For example, the FMC could have examined the change in audience listening levels by different age groups to determine what is affecting the decline in total listening levels. That data shows the time spent listening (TSL) for the teen demographic (ages 12-17) decreased by 15.5% between 1999 and 2006, persons between 18 and 24 years of age by 12.2%, and persons between

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<sup>22</sup> FMC study, pp. 44-45.

<sup>23</sup> FMC study, p. 45.

<sup>24</sup> FMC study, p. 45.

<sup>25</sup> "Other, older technologies might have had some role, such as CD players in cars, but this is pure speculation." FMC study, p. 45.

the ages of 25 and 35 by 13.5%.<sup>26</sup> All of these three age groups tend to use the Internet more and are more likely to have iPods or other Mp3 players. These age groups also spend more time with other media such as video games. Clearly, competitive media sources are having a more dramatic impact on the level of listening than the FMC report acknowledges.

After misleadingly explaining the decline in radio listenership as a result of the Telecom Act, the FMC report includes another analysis that fails to consider alternative conclusions. The FMC uses an industry metric -- the power ratio<sup>27</sup> -- to analyze the performance of the largest radio groups in 2001 and 2005 to suggest an inability of these large groups to be efficient in running radio stations.<sup>28</sup> The use of an average power ratio for all of the different radio stations owned in different markets by any particular company is extremely misleading. It is clear that power ratios are determined on a local level, and are very dependent upon the format being aired by the local station and the local competition faced by that station.<sup>29</sup> How well each individual station had done over time – by examining the power ratios for several years, assuming that the

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<sup>26</sup> Arbitron Ratings Company, *Persons Using Radio Report*, available at <http://wargod.arbitron.com/scripts/ndb/ndbradio2.asp>. See also Bear, Stearns & Co. Inc., *Radio 2007: The Year of No Excuses?* (Jan. 5, 2007), p. 8 (“combination of competitive pressures from factors such as satellite radio, iPods, cell phones, Internet streaming, etc.” cited as the cause of broadcast radio’s overall decline in listening, and noting that listening has declined more among teenagers and 18-24 year olds, “which is not surprising”).

<sup>27</sup> The power ratio is simply a station’s local market advertising revenue share divided by the station’s local market commercial audience share. For example, a local radio station that had a local radio advertising share of 12% and a local commercial audience share of 10% would have a power ratio of 1.2 (12 divided by 10). Local radio stations that have power ratios over one are generating a larger share of the local radio advertising marketplace than their local audience share.

<sup>28</sup> FMC study, pp. 45-46.

<sup>29</sup> For example, News/Talk and Sports Talk stations tend to have higher power ratios since they appeal to audiences more attractive to advertisers (higher income and younger males, respectively).

station maintained its format – would have been a better method of evaluating the performance of these radio groups. Moreover, even if the FMC had correctly analyzed the power ratios and found that these group-owned stations have not improved their measures over time, would the FMC study have acknowledged that perhaps there remains a substantial amount of competition in local radio markets? In other words, even with the financial and other resources of the large radio groups, are other local radio stations “preventing” the stations owned by groups from garnering increased shares of local market revenues (and thus higher power ratios)?<sup>30</sup>

The erroneous analysis of power ratios was followed up in the FMC study by a limited discussion of the stock price history of large public radio companies - “This failure of the largest radio companies to deliver greater advertising revenue per listener might explain partially the sagging stock price of companies...”<sup>31</sup> The FMC study, not surprisingly, does not even consider other, more likely reasons for the decrease in stock prices of these companies. The list of alternative reasons is long, but includes more choices for listeners (e.g., iPods, satellite radio, and Internet radio) and greater competition in the advertising marketplace (e.g., increased cable system advertising efforts, increased availability of outdoor advertising, and Internet sites). The public equity markets recognize this increase in competition, resulting in substantial decreases in

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<sup>30</sup> A recent study by Justice Department economists in fact found that smaller radio groups or individual stations can, through format changes, “counter or defeat the potential exercise of market power by a radio group that acquires a substantial share of a particular audience demographic through merger.” Charles Romeo and Andrew Dick, *The Effect of Format Changes and Ownership Consolidation on Radio Station Outcomes*, 27 Rev. Ind. Org. 351, 354 (2005).

<sup>31</sup> FMC study, p. 46.

the prices of the publicly traded radio companies.<sup>32</sup> Once again, the FMC study had a conclusion it wanted to reach – the harm of consolidation – and did not allow for other, more plausible explanations.

## **Local Radio Ownership**

After inappropriately using national industry data to evaluate the locally-oriented radio industry, the FMC study then examines local radio ownership to further its contention that the Telecom Act and the resulting changes in the radio industry were bad for the industry itself and bad for local consumers. But even when examining the radio industry in the appropriate geographic markets, the FMC report fails to take into account practical realities of the radio industry, and once again, does not acknowledge that alternative conclusions can more reasonably be drawn from its analyses. The FMC study also conducts some theoretical analyses of local ownership that appear constructed to arrive at its predisposed conclusions.

## **Competition in Local Radio Markets**

As an initial matter, the FMC study in all of its analyses of local radio markets fails to consider all of the choices available. The FMC study only includes stations in their “home” markets.<sup>33</sup> The FMC study is correct when it states that stations are classified as home to only one Arbitron market; however, many of these stations are physically located in other markets.<sup>34</sup>

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<sup>32</sup> See Bear, Stearns, *The Year of No Excuses?* at 6-9 (discussing “structural changes” in radio industry, including “fierce” audio competition, as adversely affecting radio advertising and resulting in investors reducing their holdings in radio).

<sup>33</sup> FMC study, p. 53.

<sup>34</sup> The FMC study shows its lack of knowledge about the radio industry by incorrectly citing the “current version of the Local Radio Ownership Rule, [by stating that] a station must be

There are 296 stations that are physically located in one Arbitron market but have successfully requested Arbitron to list them as home to a different market.<sup>35</sup> Many of these stations still receive significant shares in the market in which they are physically located, thereby providing competition and additional programming choices that would not be included in the FMC analysis. For example, WKFR-FM – listed as home to the Kalamazoo, MI market but physically located in the Battle Creek, MI radio market – attracted a 14.5 share of all the listening in the Battle Creek, MI market (making it the #2 ranked station in the Battle Creek market). The FMC’s approach would not include this station when examining the Battle Creek, MI radio market.

The FMC analysis also omits another source of competition and diversity in local radio markets -- non-commercial radio stations. Today there are over 2,400 non-commercial FM stations in the non-commercial FM band and another nearly 500 non-commercial radio stations not in that band but operating as non-commercial stations. The number of non-commercial stations has increased 158.4% since 1980.<sup>36</sup> In many markets, the number of non-commercial radio stations is very large. Figure 1 shows the number of Arbitron markets with varying numbers of non-commercial radio stations.

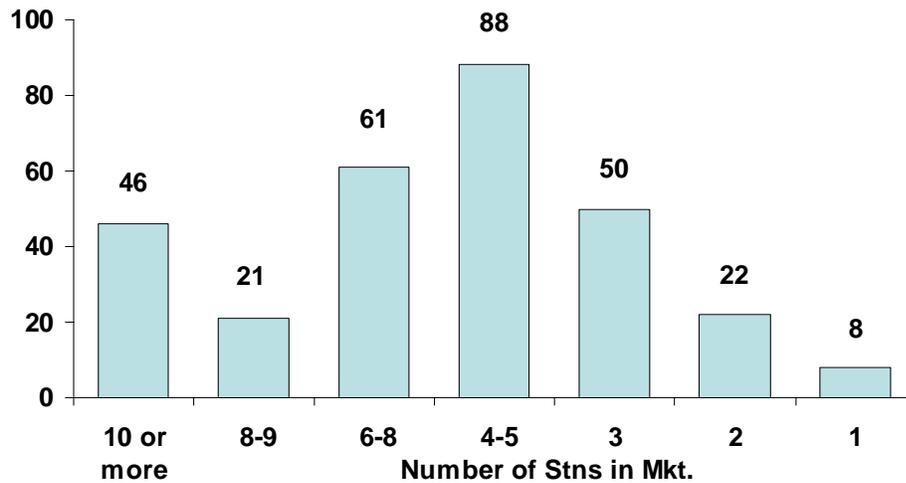
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home to an Arbitron market to be considered part of that market.” FMC study, p. 53. In fact, the FCC local ownership rule counts radio stations as being in a market if they are listed as home to a particular market *or* if they are physically located in that market (even though listed as home to another market). *See 2002 Biennial Regulatory Review*, Report and Order, 18 FCC Rcd 13620, 13727-28 (2003).

<sup>35</sup> Media Access Pro, BIA Financial Network.

<sup>36</sup> Media Access Pro, BIA Financial Network.

Figure 1  
 Number of Markets with Varying Numbers of  
 Non-Commercial Radio Stations



By not including these stations in its analysis, the FMC study seriously understates the level of competition facing local radio stations and the diversity available to local listeners. As a result, any analyses evaluating the level of concentration in local markets would be overstated.

In those analyses of concentration over time, the FMC reports that the levels, on average, have increased, and these increases are a cause for concern.<sup>37</sup> The FMC study never acknowledges or even considers that the higher listening and advertising shares earned by local groups might have resulted from certain local radio station clusters being more successful (as compared to other individually owned stations) in attracting audiences and, thus, advertising revenues. In other words, increased concentration in listening or advertising shares may have resulted, at least in part, from owners investing resources and/or changing the programming on newly acquired stations and improving their performance.

<sup>37</sup> See, e.g., FMC study, p. 68.

The FMC study could have attempted to distinguish the increases in concentration levels resulting from acquisition, as opposed to post-acquisition performance. By analyzing the audience and revenue shares of stations before and after their acquisition and comparing the history of those stations with the overall increase in concentration in local markets, the FMC study could have identified the impact that improved station performance may have had on audience and revenue concentration levels. Without that type of analysis, the FMC study is unable to reach any sound conclusions about the negative impacts, if any, of the formation of station clusters in local markets.

For example in the Portland, ME radio market, Atlantic Coast Radio acquired three AM and three FM stations in 1999 and 2000 acquisitions. For the three years prior to putting together that six-station cluster (1998-2000), those six stations collectively attracted 4.4% of the listening to the local commercial stations in that market. For the three years immediately afterwards (2001-2003), that cluster attracted 7.5% of that listening, and for the three most recent years, that share grew to 8.1%. Through programming changes and other actions, that group has been able to improve the product their stations offer to consumers in that local market and attract larger audiences. By neglecting this type of analysis that could have been conducted using their data, the FMC has mistakenly attributed such increases in share solely to “consolidation,” as opposed to the more valid interpretation of improved company performance. In other words, the FMC avoided challenging their pre-determined conclusions about the radio industry by not fully investigating actual situations in local radio markets.

## Justifying Lower Ownership Caps

The FMC study then conducts several mathematical exercises to justify the imposition of much more stringent local ownership caps.<sup>38</sup> Through these theoretical mathematical exercises, the FCM attempts to show that more stringent local ownership regulations are needed to drive their artificially high concentration measures to levels under the Department of Justice (DOJ) merger guidelines.<sup>39</sup> Yet, as discussed below, the hypotheses made by the FMC in formulating these mathematical models inevitably lead to the conclusion that more stringent local radio ownership caps should be imposed. In sum, the conclusions of the FMC study were predetermined by the assumptions made.

### *Method #1: Preventing Concentration Resulting From One Large Owner*

In its first mathematical exercise, the FMC establishes hypothetical situations where every radio station in every radio market starts out as being separately owned, and then calculates the concentration measures using present audience shares.<sup>40</sup> Of course, the concentration levels under this scenario are significantly lower than the danger level suggested in the DOJ Merger Guidelines. From that start, the FMC study then hypothesizes that the #1 ranked station will buy the #2 ranked station, and then the concentration measure is recalculated. If that value is still under the DOJ guideline level, the FMC study posits that the #1-#2 station cluster

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<sup>38</sup> See FMC study, pp. 71-74.

<sup>39</sup> It is interesting to note that these DOJ guidelines are just guidelines, not bright line levels as the FMC study uses in their mathematical analyses. Frequently, the DOJ allows mergers to proceed even when the concentration levels exceed these guidelines. Appropriately, the DOJ evaluates many other aspects of industries when considering proposed mergers, in addition to these calculated concentration metrics.

buys the #3 ranked station and then recalculates the concentration level. This process continues until the concentration level exceeds the DOJ guideline level. The “appropriate” local station ownership limit is determined to be one less than the number that resulted in the guideline level being exceeded. This process is conducted for all 297 Arbitron markets. The FMC study then averages the “appropriate” numerical ownership cap for different groupings of markets based on their size.

The FMC study suggests that this procedure has an “advantage” in “its conservatism in one respect.”<sup>41</sup> That alleged conservative advantage is created by assuming that every other station (outside of the growing cluster) is independently owned (i.e., keeps the concentration measure lower than if some were commonly owned). While this point is true, the fact that the FMC’s mathematical exercise posits that the growing cluster always purchases the next highest-ranked station leads to the concentration measure growing at the greatest rate possible. For example, if an existing cluster that had 30% of the listening in a market purchased the next highest-ranked station with 5% of the listening in that market, the concentration measure would increase by 325. Instead, if the cluster purchased a lower-ranked station with only 2% of the listening, the concentration measure would increase by only 124. Clearly, the FMC study attempts to increase the concentration metric as fast as possible in order to arrive at the lowest number of radio stations that any one group should be permitted to own.

In fact, many times radio owners look for underperforming stations to acquire in markets in which they operate, not the highest-ranked stations as the FMC study assumes. Through

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<sup>40</sup> Recall that these audience shares and resulting concentration measures are overstated for the reasons mentioned earlier. *See supra* pp. 12-14.

managerial efficiencies and programming changes, the acquiring radio company believes it can raise the performance of lower-ranked stations by bringing those stations into its local cluster.<sup>42</sup> Moreover, those underperforming stations tend to sell for lower prices than the higher-ranked stations, thus making them more attractive to purchase, and are typically more likely to be available for purchase. While the mathematics of the FMC's exercise may be correct, it seems divorced from the realities of the marketplace. The radio industry simply does not work the way that the FMC study hypothesizes, and, thus, the conclusions reached as a result of this mathematical exercise should not be relied upon.

*Method #2: Divesting the Lowest-Rated Station to Reduce the Local Concentration Levels*

FMC conducts a second mathematical exercise to arrive at “appropriate” local ownership caps, which is also not necessarily reflective of the realities of the radio marketplace. In this case, for all of the markets that supposedly have concentration levels above the suggested DOJ guidelines,<sup>43</sup> the FMC study determines how many stations have to be *taken away* from the largest local owner so that the concentration measure falls below the guideline level. In this mathematical exercise, FMC takes away from the largest owner the lowest rated station(s) in its cluster in each of these markets until the concentration measure falls under the guideline level. FMC's assumption is very significant, as the “appropriate” numerical ownership cap may be much higher if the local clusters under this scenario divested any of their higher rated stations. For example, it may be that divesting either the highest ranked station in a six station cluster or

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<sup>41</sup> FMC study, p. 72.

<sup>42</sup> This is shown by the example earlier cited in the Portland, ME radio market.

<sup>43</sup> Again, recall that these concentration measures are overstated.

the three lowest ranked stations would result in similar declines in the concentration levels in a local market. Obviously, which alternative selected would greatly affect the number of stations that local clusters should supposedly be required to divest to reduce concentration. Taking away the lowest rated stations leads to FMC's desired conclusion that groups must divest a greater number of stations.

This divestiture exercise also raises a point made earlier – that successful local groups increase their audience and revenue shares after acquiring stations by improving their programming and other operations. To reduce concentration, FMC is suggesting divestitures that would, in effect, penalize local clusters, including these successful ones with growing audience and revenue shares. A divestiture policy that penalizes station groups in local markets – especially those whose very success in attracting audiences has resulted in rises in concentration levels – appears unlikely to serve the interests of local audiences.

### **Local Ownership Index**

Next, the FMC study creates a measure of local ownership of commercial radio stations. By constructing this index and evaluating it over time, the FMC study is attempting to emphasize the fact that the radio groups owning the most stations are regionally dispersed.<sup>44</sup> The premise of the FMC's formulation of this local ownership index is spelled out in the study – “Statistics about whether owners of radio stations are locally based, as opposed to being spread out

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<sup>44</sup> As mentioned earlier, the regional dispersion of radio groups may make the radio industry stronger and better able to serve all of their local communities. By having a geographically diverse portfolio of radio stations, a group will be less susceptible to any one region's local economic problems. The FMC study never acknowledges this benefit of regional dispersion.

regionally or nationally, are relevant *if one subscribes to a theory that local ownership should be favored.*<sup>45</sup> Yet, by proposing to change radically the licensing process so that new radio licenses go only to local entities and may only be transferred to local entities,<sup>46</sup> the FMC assumes that this theory is correct. In fact, the FMC presumes that local ownership should be greatly favored without any substantiation demonstrating that local owners are in any way measurably better than other owners – a contention that the Commission itself has never established.<sup>47</sup> As a second alternative, FMC suggests that Congress or the Commission “could re-allocate existing radio spectrum to entirely local entities” as part of the transition to digital audio broadcasting.<sup>48</sup> Again, there is no showing that “entirely local” ownership is superior to other forms -- and certainly not so superior that current radio licensees should have their existing licensed spectrum taken away from them.

The FMC study further assumes that, absent having a local owner, the next preferable ownership situation “would be a nationally owned company with local program directors, local DJs, and a local office.”<sup>49</sup> Yet, the FMC study never analyzes these situations, and never attempts to find out whether there has been a significant decline in the number of stations without such local personnel. The database the FMC utilizes does provide the names of program directors, if

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<sup>45</sup> FMC study, p. 75 (emphasis added).

<sup>46</sup> FMC study, p. 79.

<sup>47</sup> *See Bechtel v. FCC*, 10 F.3d 875, 879-80 (D.C. Cir. 1993) (court invalidated Commission’s licensing policy favoring owners that participated in station management/operations, despite Commission’s assertion that these “integrated” owners were more likely to respond to community needs and were better able than absentee owners to gather information about satisfying community needs, because Commission had no evidence showing that its policy actually achieved these benefits).

<sup>48</sup> FMC study, p. 80.

<sup>49</sup> FMC study, pp. 75-76. Again, this is an assumption, with no empirical substantiation.

there are any, as well as addresses of the stations. The FMC study could have constructed a “local management index” that would have measured the continued presence of local personnel and management in their local communities.

## **Programming**

In its last section, the FMC study analyzes the programming of commercial radio stations in order to evaluate the industry’s performance in providing diversity. While the FMC study acknowledges that examining diversity through an analysis of format availability is limiting, FMC nonetheless reaches very broad conclusions about the negative effects of consolidation from its format analysis. Like the analyses conducted in the earlier two sections, many of the results reached in the FMC’s examination of programming have alternative, more plausible explanations than the ones posited by FMC.

## **Formats**

The FMC study begins its programming analysis by reporting on the percentages of general formats being offered by commercial and non-commercial radio stations.<sup>50</sup> That calculation is a more sophisticated analysis than a previous FMC study, which had failed to reflect the mixed formats of some radio stations.<sup>51</sup> The current FMC study does not, however, account for the differences between stations with the same general formats. For example, a Hot Adult Contemporary station is categorized as having the same format as an Adult Contemporary

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<sup>50</sup> BIA Financial Network categorizes all of the various specific formats offered by radio stations into 19 general format categories.

station, even though their playlists are substantially different (as shown later in the FMC study). Utilizing only these general format categories, the FMC study concludes that in the Spring of 2005, “Just fifteen formats make up 76% of commercial programming.”<sup>52</sup> Of course, if examining only these 19 general formats categories, it is not surprising that 15 formats account for three-quarters of the stations, since those 15 are 79% of the identified general formats. If a more detailed analysis of specific formats were conducted (e.g., allowing for the differences in Hot Adult Contemporary with Adult Contemporary), then the FMC study would find many more formats accounting for three-quarters of commercial radio programming.<sup>53</sup> This is made quite clear if one examines the range of specific formats included within the 19 general format categories. For example, all Spanish language programming formats, which range from news/talk to diverse types of music such as Tejano, Tropical and Ranchera, are all treated as a single general format. Similarly, the Urban general format includes a broad range of programming, from Urban/Talk to Urban/Jazz, Rhythm and Blues, and Urban/Gospel.

Using these limited general formats, the FMC study then examines what it calls “Disappearing Classical and Jazz Radio.” Specifically, the FMC examines the number of classical and jazz radio stations, both commercial and noncommercial, and suggests that such

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<sup>51</sup> See Comments of Future of Music Coalition in MB Docket No. 06-121 (filed Oct. 23, 2006). For example, this previous study did not recognize that a station with a classical/jazz format in fact had a format that differed from a classical only station or a jazz only station.

<sup>52</sup> FMC study, p. 86. Interestingly, even using only these general format classifications, this percentage is lower than the corresponding percentage of 79% for Spring 1996.

<sup>53</sup> Specific formats are those actually used by stations in characterizing their formats. These specific formats reflect how stations classify and distinguish themselves from other stations in their local marketplaces.

“niche formats are believed to be disappearing from the radio dial.”<sup>54</sup> This alleged disappearance occurred because the number of commercial classical stations went from 37 in 2001 to 36 in 2005, while the number of non-commercial classical stations went from 272 to 267 during those years. In total, the number of classical stations decreased by just **2%**. It seems quite an exaggeration to suggest that the classical format is disappearing with that small of a decrease.

As for the disappearance of jazz formats, the number of non-commercial radio stations airing that format increased by the exact same number (six stations) of the number of commercial radio stations that ceased airing that format between 2001 and 2005. It appears that the free market in which all radio stations (both commercial and non-commercial) compete for listeners is working, and these formats are not disappearing as the FMC suggests.<sup>55</sup>

In criticizing the commercial radio industry for not providing enough niche formats, especially classical radio stations, the FMC study cites data suggesting that classical is a very viable genre. Specifically, it cites statistics from one online record label whose four of their top ten titles by weekly sales were classical.<sup>56</sup> Yet, total industry data suggest otherwise – only 2.4% of the total recording industry sales are of classical music.<sup>57</sup> Relying on a single online record

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<sup>54</sup> FMC study, p. 91.

<sup>55</sup> A recent example in the Washington, D.C. market highlights this point. As soon as Bonneville Corporation determined that its commercial classical station would be changing formats, one of the local non-commercial radio stations, WETA-FM, announced that it was returning to that format. It appears that, in many markets, the business model of non-commercial radio stations works well for classical music, as fans of that music can express their demand for that music directly through contributions, an option that is not part of commercial radio stations' business models.

<sup>56</sup> FMC study, p. 93 citing Magnatune.

<sup>57</sup> 2005 Consumer Profile, Recording Industry Association of America. This percentage is close to the approximately 2.1% of all terrestrial radio stations (commercial and non-commercial) that air classical programming, according to the FMC study.

label that may have some popular classical artists, when total industry data are readily available, is an obvious attempt by FMC to support a conclusion with extremely limited facts.

In decrying the decline in “total airtime” devoted to classical and jazz,<sup>58</sup> the FMC study notes that the number of noncommercial stations listing classical as their primary format declined because some stations switched to a news/classical combination. The study does not acknowledge the possibility that such switches may in fact be responsive to consumer demand, and thus result in better service to the public. Further, the FMC’s statements about how “niche formats are often missing from the radio picture,”<sup>59</sup> appear to preclude the possibility that certain niche formats are offered relatively infrequently – especially in comparison to leading formats like news or country – because they in fact appeal to much more limited audiences. FMC’s opinion that niche formats, including specifically Americana, bluegrass and folk, are “important,”<sup>60</sup> cannot obscure the fact that the vast majority of radio listeners prefer other types of programming.<sup>61</sup>

The FMC study also notes that the share of revenue earned by the top 15 formats declined 6% from 1996 to 2005.<sup>62</sup> The decrease in revenue shares earned by the top format categories suggests that the commercial radio industry is in fact successfully providing greater diversity, with more revenues being earned by additional formats. While the FMC study cites

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<sup>58</sup> FMC study, p. 92.

<sup>59</sup> FMC study, p. 90.

<sup>60</sup> FMC study, p. 98.

<sup>61</sup> According to the most recent data, News/Talk formatted stations are the most listened to radio stations, followed by adult contemporary. Listening to Spanish language stations has also increased dramatically in recent years. *See* [http://wargod.arbitron.com/scripts/ndb/export\\_Tmp/Format200776165539.csv](http://wargod.arbitron.com/scripts/ndb/export_Tmp/Format200776165539.csv)

<sup>62</sup> FMC study, p. 93.

these data, it offers little insight or commentary – and certainly does not mention the possibility that such data indicates a greater diversity of programming in the marketplace.<sup>63</sup>

### **Playlist Analysis**

To examine further the provision of diverse programming, the FMC study next analyzes the reported playlists of radio stations with certain specific formats. While that analysis shows some commonality in the artists that are played on stations with different specific formats, it also highlights the fact that there are significant differences in the songs and artists that are aired on these stations with differing specific formats. For example, 43% of the songs for Hot AC are also aired on AC stations, indicating 57% differentiation between the two specific formats. CHR Pop and CHR Rhythmic had a 40% commonality (60% differentiation), and Urban and Urban AC only had a 27% overlap (meaning that nearly three-quarters of the playlists did not overlap).<sup>64</sup> And according to FMC, these are among the specific formats with the highest percentage of overlap on their playlists. Thus, other specific formats are even more greatly differentiated. Moreover, even if the some of the artists that are played on two radio stations are the same, the frequency of these artists being aired are not necessarily the same, thereby providing greater diversity.

The FMC study also looks at the overlap of playlists between specific formats from 1994 through 2006, and concludes that “some overlapping pairs [of formats] have grown closer, some

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<sup>63</sup> In this regard, FMC fails to note the tremendous increase in the number of radio stations serving diverse audiences, especially Spanish-speaking audiences, and in the hundreds of high definition stations utilizing multicast capabilities to provide more diverse, niche programming services. The number of Spanish formatted stations in the BIAfn database increased from 547 in 2000 to 825 in 2006.

have growth farther apart, *but the overall picture remains very similar.*<sup>65</sup> Yet, the FMC earlier in its study highlighted the increases in consolidation in the radio industry since 1996. Should the FMC study conclude, therefore, that consolidation has **not** led to homogenization of programming? Other studies examining the number of different formats offered by stations over time have in fact concluded that the post-1996 changes in the radio industry has led to greater diversity of programming.<sup>66</sup>

To further examine the issue of diversity, the FMC study analyzes the “top 30” playlists of two Country radio stations located in Wisconsin and New York, both owned by Clear Channel. After finding only four unique songs on these two stations’ top playlists, the study states, “this strongly suggests that the large radio companies are using centralized programming methods rather than local program directors to choose songs.”<sup>67</sup> This appears to be a rather sweeping statement to make on the basis of a single example. Moreover, this often cited complaint of similar playlists between geographically dispersed radio stations implies that radio stations should differentiate themselves by declining to air the most popular artists. The simple reason that the playlists of stations *with the same programming formats* are similar is that the

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<sup>64</sup> FMC study, p. 101.

<sup>65</sup> FMC study, p. 101 (emphasis added).

<sup>66</sup> Between 1996 and 2006, the number of specific programming formats offered by stations in the average Arbitron market increased by 36.4%, and the number of general formats increased by 16%. See Mark R. Fratrik, Ph.D., BIA Financial Network, *Over-the-Air Radio Service to Diverse Audiences* (Oct. 23, 2006), p. 7. Other analysts have similarly concluded that program diversity increased after 1996. See, e.g., Bear Stearns Equity Research, *Format Diversity: More from Less?* (Nov. 2002); Steven Berry and Joel Waldfogel, *Do Mergers Increase Product Variety? Evidence from Radio Broadcasting*, 116 Q.J. Econ. 1009 (Aug. 2001).

<sup>67</sup> FMC study, p. 103.

common artists are the most popular artists that consumers most want to hear. Indeed, many listeners prefer stations with “tighter” playlists that play the most popular artists more frequently.

In any event, FMC’s approach – comparing the most popular and frequently played songs of two stations – likely understates the amount of song diversity. The airing of additional songs beyond the most popular that stations with the same format will, not surprisingly, tend to air is precisely the type of diversity that should be examined. It should also be noted that while the playlists of the two country stations cited in the FMC study are similar, the number of times (and the corresponding percentage of the total) each of these artists are played on these two stations are different. Local program directors take account of local tastes by determining how often artists and songs are played.

The FMC study then presents the percentage of playlist overlap between all of the stations with the same format grouped by owner.<sup>68</sup> The FMC study compares all of these stations in order to see which companies have the most playlist overlap in which formats. While some of these company wide results are over 50%, others are below (and some well below, in fact as low as 10%). But the fact that some are slightly over 50% or slightly below means that around half of even these stations’ playlists are different.<sup>69</sup> And it is hardly surprising that stations *with the same programming formats* air a number of the same songs. After all, one should expect that country stations play the most popular country songs and rock stations play the most popular rock songs. Second, just because there is a certain percentage of playlist overlap does not mean that the

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<sup>68</sup> FMC study, p. 107.

<sup>69</sup> It is interesting that the single station pair highlighted by the FMC study has one of the highest percentage overlaps (93%), much higher than the average overlap for Clear Channel

number of times these commonly-owned, same-format stations play the same artists and songs are the same. Is the FMC suggesting that there is some “appropriate” level of playlist overlap that some radio groups have exceeded? The FMC’s analysis clearly implies that there is some maximum percentage of playlist overlap that should be allowed and that different radio stations should be discouraged from airing the same artists and songs, even if they are the most popular.

Finally, the FMC study overall seems to assume that local interests and listeners are somehow adversely affected if stations in different regions air some similar programming. In fact, listeners in local markets have much less interest in the diversity of playlists on stations in other markets than in the diversity of playlists on stations in their locality. Even if a country station in Louisville, KY, for example, had a similar playlist to a country station in El Paso, TX, the individual listeners in either market would be unaffected. And studies have not only found that stations within markets now offer greater numbers of programming formats than in the past (*see supra* page 26), other studies have indicated that playlist diversity within markets has increased as well. A 2002 Federal Communications Commission study on playlist diversity suggested that “diversity has grown significantly among stations within the same format and within the same city,” and stated that stations with the same “formats competing within the same market appear to differentiate themselves to appeal to their listeners”; as a result, “listeners in local radio markets may have experienced greater song diversity” since 1996.<sup>70</sup> These other

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country stations (57%) and for Clear Channel’s average for all of their stations with the same format (55%). FMC study, p.108.

<sup>70</sup> FCC, George Williams, Keith Brown and Peter Alexander, *Radio Market Structure and Music Diversity* (Sept. 2002), pp.16, 18.

studies contradict the FMC study's implications that local listeners in local markets have been adversely impacted by decreasing diversity of radio programming since 1996.

### **Analysis of Previous Research**

The FMC briefly criticizes other quantitative studies that indicated that the provision of different formats has increased since the passage of the Telecom Act.<sup>71</sup> Specifically, the FMC report criticizes other studies that analyzed the specific formats offered by stations, because the FMC disputes that these stations are actually providing different programming – “different names can have highly similar, almost identical programming.”<sup>72</sup> Yet in the table printed immediately above that statement, the FMC study shows that for six of the ten FMC selected pairings of different specific formats, over half of the songs were different, to say nothing about the differences in the frequency of playing these songs and artists. According to FMC, moreover, these are the specific formats with the highest percentage overlap, so clearly other specific formats are even more greatly differentiated.<sup>73</sup>

The lack of understanding of the radio marketplace and how radio stations alter their programming to attract audiences is exemplified in another paragraph in this section. The FMC study analogizes different formats with Mason jar labels describing grape jam – some labeled

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<sup>71</sup> In an otherwise gratuitous slap at these studies, the FMC points out that these studies are not “peer reviewed.” FMC study, p. 101. It is unclear as to the point of this statement as it is obvious that the FMC study is also not peer reviewed.

<sup>72</sup> FMC study, p. 101.

<sup>73</sup> And even in this listing of the format pairs with the highest degree of overlap, three of the listed pairs, for example, have playlist overlap of only 27%, 30% and 37%, meaning the percentage of playlist differentiation is 73%, 70% and 63%, respectively.

“grape jam, purple jam, grape preserves, grape jelly - ...”<sup>74</sup> suggesting that radio stations with differently identified formats are actually the same. The FMC study, however, fails to acknowledge that radio listeners “taste” different radio stations every day, and if there is a reason to switch from one to the other (i.e., a better tasting toast spread), they will. Radio stations are in a daily battle to attract and keep those listeners with differentiated programming, and they adjust their programming to succeed in attracting those listeners. As found by empirical studies, the differences between radio formats -- which FMC casually dismisses -- in fact are key to radio stations differentiating themselves in a competitive marketplace, and changes in formats are frequently used by stations to improve their performance.<sup>75</sup>

### **Network Programming**

The FMC study finishes its programming chapter by examining the prevalence of radio stations that air network programming.<sup>76</sup> The FMC study finds that station group owners that own networks are more likely to air network programming. This provision of network programming to its owned and operated stations is referred to as vertical integration. In the history of broadcasting and most other industries, vertical integration has been shown to generate efficiencies and benefits to consumers. In fact, the origin of the radio industry was characterized

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<sup>74</sup> FMC study, p. 102.

<sup>75</sup> See Romeo and Dick, p. 377 (empirical research indicates that “format changes often provide an effective means for improving station performance”; “[c]hanging a station’s major format category can yield substantial listening share gains,” while minor format changes “appear to be used as a tool for differentiating a station’s offerings in a crowded market space”). See also Mark R. Fratrick, Ph.D., BIA Financial Network, *Volatility in Radio Market Shares* (March 2002) (audience shares earned by radio stations are quite volatile, and stations are able to make significant gains in their shares over short periods of time by altering their formats).

<sup>76</sup> FMC study, p. 111.

by strong network programming offered by network owned and operated stations, which provided the needed impetus to this nascent industry. As for the radio industry today, network programming is often of high quality and supported by greater resources than much local programming. Networks provide programming and on-air talent not available in local markets, thus allowing local radio stations to compete with the panoply of other audio services and, ultimately, to better serve their local audiences.

## **Conclusion**

The FMC study attempts, through manipulating large databases and making complex mathematical calculations, to examine comprehensively the current radio industry. That study, however, lacks a practical understanding of how the radio industry functions. Perhaps as a result, the FMC report does not include all of the relevant local radio stations in its calculations; relies too heavily on national-level data that reveals little about local radio markets; overstates national revenue shares by not including (for the second time) all of the industry's revenues; and misstates the impact of an increase in the number of translators in previously underserved areas.

The FMC study is also dismissive of alternative interpretations of the data presented. For example, there is very little discussion of the impact of new audio competition on local radio broadcasters and on levels of radio listenership. The report further fails to acknowledge the possibility that improved service of certain group-owned radio stations has led, at least in part, to the observed increase in audience and revenues shares.

Finally, it appears that the FMC study wanted to reach certain pre-determined conclusions about the radio industry, and that the report was prepared to substantiate those conclusions. The mathematical exercises conducted to substantiate calls for more restrictive

regulation of local radio markets are two examples of reaching results based on hypotheses that do not reflect practices in the radio industry, thereby casting grave doubt on the validity of those conclusions.

As a result of these weaknesses, the FMC study fails to provide relevant insight into the radio industry and its development since the passage of the Telecom Act. The lack of objectivity and thoroughness in evaluating alternative interpretations in particular undermine this report's conclusions and policy recommendations.