

**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. ON FCC
MEDIA OWNERSHIP RESEARCH STUDIES**

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**REPLY COMMENTS OF CLEAR CHANNEL COMMUNICATIONS, INC. ON FCC
MEDIA OWNERSHIP RESEARCH STUDIES**

I. INTRODUCTION AND SUMMARY

Clear Channel Communications, Inc. (“Clear Channel”) hereby submits its reply comments in response to the Public Notice released on July 31, 2007, which seeks comment on ten studies on media ownership that will be incorporated into the above-captioned proceeding.¹ Clear Channel demonstrated in its opening comments that the FCC studies confirm the competition faced by free radio broadcasters, the public interest benefits that flow from common ownership of radio stations,

¹ Public Notice, *FCC Seeks Comment on Research Studies on Media Ownership*, DA 07-3470, MB Docket No. 06-121 (rel. July 31, 2007); *see also* Public Notice, *Media Bureau Extends Filing Deadlines for Comments on Media Ownership Studies*, DA 07-4097, MB Docket No. 06-121 (rel. Sept. 28, 2007) (extending comment and reply comment deadlines).

and the absence of any adverse effect of such common ownership on advertising rates.² Thus, Clear Channel showed that the FCC studies support relaxing, if not eliminating, the local radio ownership rule, because doing so will have affirmative public interest benefits in terms of diversity and localism and no adverse effect on competition.³

The opposing views expressed in the opening comments fall generally into two broad categories. The first ignore that the biennial review statute and administrative law principles place the burden squarely on the FCC and those advocating retention of the media ownership rules intact to justify keeping them in place, rather requiring those seeking elimination or modification of rules that no longer serve any demonstrable purpose to justify a change. The second act as if the FCC studies comprise the entire record in this proceeding, and that the Commission can rely on no other evidence to evaluate the legitimacy of modifications to its ownership rules. As shown below, however, neither of these contentions is accurate. Accordingly, based on the FCC studies and the abundant additional evidence contained in the record, it is clear that that the Commission must repeal or relax the local radio ownership rule.

II. THE FCC IS BOUND IN THIS PROCEEDING TO JUSTIFY ITS RULES; IF IT CANNOT DO SO, THEN THEY MUST BE REPEALED OR MODIFIED.

In comments and reply comments filed previously in this proceeding, Clear Channel and others explained how the biennial review statute – a clearly deregulatory Congressional mandate – operates to place the burden to justify retention of media ownership restrictions on the FCC and those wishing to maintain the *status quo*.⁴ In addition, Clear Channel and others explained that

² See Comments of Clear Channel Communications, Inc. on FCC Media Ownership Research Studies, MB Docket Nos. 06-121, *et al.* (filed Oct. 22, 2007) (“*Clear Channel Studies Comments*”).

³ See *id.*

⁴ See Comments of Clear Channel Communications, Inc., MB Docket Nos. 06-121, *et al.* (filed Oct. 23, 2006) (“*Clear Channel Media Ownership Comments*”), at 2-5; Reply Comments of Clear Channel Communications, Inc., MB Docket No. 06-121, *et al.* (filed Jan. 16, 2007) (“*Clear*

even ordinary administrative law principles compel an agency to eliminate or revise regulation in light of changed circumstances that render the original rationale for the rule invalid.⁵ In comments submitted on the studies, the Office of Communications of United Church of Christ (“UCC”) persists in contending – based on readings of certain FCC studies that Clear Channel will below show are flawed or inconsequential – that because the Commission’s studies fail conclusively to demonstrate that deregulation will yield affirmative public interest benefits, the FCC must retain the existing local radio ownership rule intact.⁶

UCC, however, has it exactly backwards. As the FCC has previously explained, and as the Third Circuit agreed, “[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.”⁷ Thus, the Third Circuit held that Section 202(h) “requires the Commission

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Channel Media Ownership Reply Comments”), at 10-12 & n.32 (citing comments of others).

⁵ See, e.g., *Clear Channel Media Ownership Comments*, at 4-5; *Clear Channel Media Ownership Reply Comments*, at 12-13 (citing comments of others).

⁶ Comments of the Office of Communication of United Church of Christ, Inc., National Organization for Women, Media Alliance, Common Cause, Benton Foundation, MB Docket Nos. 06-121, *et al.*, at 40-43 (filed Oct. 23, 2007) (“*UCC Studies Comments*”) (arguing that the findings of FCC Study 5, Tasneem Chipty, *Station Ownership and Programming in Radio* (June 24, 2007), available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A6.pdf (released in MB Docket Nos. 06-121, *et al.* as Study 5) (“FCC Study 5”), regarding the effect of common ownership on format diversity are “ambiguous” and that the study therefore justifies retention of the local radio ownership rule); *id.* at 48 (arguing that FCC Study 5’s findings regarding the effect of common ownership on news programming are “mixed” and that the study therefore justifies retention of the local radio ownership rule).

⁷ *Prometheus Radio Project v. FCC*, 373 F.3d 372, 391 (3d Cir. 2004) (quoting *2002 Biennial Regulatory Review*, 18 FCC Rcd 4726, 4732 (¶¶ 16, 17) (2003) (“*2002 Biennial Review Report*”), *cert. denied*, 545 U.S. 1123 (2005); see *2002 Biennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules*, 18 FCC Rcd 13620, 13624-25 (¶¶ 10-12) (2003) (“*2003*

to take a fresh look at its regulations periodically in order to ensure that they remain ‘necessary in the public interest.’”⁸ Put another way, the FCC must “periodically . . . justify its existing regulations,” “an obligation” that the Third Circuit held the Commission “would not otherwise have.”⁹ In order to justify retention of existing rules intact, the FCC must demonstrate that, based on current competitive market conditions, a regulation remains necessary in the public interest.¹⁰ If the Commission cannot show that its rules remain necessary, the Third Circuit made clear that the regulation “must be vacated or modified.”¹¹ And, under the Administrative Procedure Act, the Supreme Court has made clear that, in order to justify retention of a rule, the administrative record must demonstrate the existence of an actual problem in need of regulatory solution,¹² and that a rule cannot be preserved “[i]f time and changing circumstances reveal that the ‘public interest’ is not served by application of the Regulation[].”¹³ In the face of the Third Circuit’s clear instructions and the Supreme Court’s teachings, UCC’s argument, which would have the FCC ignore its heavy burden entirely, must be rejected out of hand.

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Order”).

⁸ *Prometheus*, 373 F.3d at 391.

⁹ *Id.* at 395.

¹⁰ *Id.* at 394-95.

¹¹ *Id.*; *see id.* at 395 (rules that are determined to no longer be necessary in the public interest “must be repealed or modified”).

¹² *See Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

¹³ *NBC v. United States*, 319 U.S. 190, 225 (1943); *see HBO v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977) (“[A] ‘regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist.’”) (citation omitted).

III. THE FCC CANNOT JUSTIFY RETENTION OF THE LOCAL RADIO OWNERSHIP RULE BASED ON FORMAT OR VIEWPOINT DIVERSITY CONCERNS, AND THE RECORD SHOWS THAT COMMON OWNERSHIP HAS POSITIVE EFFECTS ON BOTH OF THESE MEASURES.

As Clear Channel explained in its opening comments in response to the original Further Notice in this proceeding, while the FCC had sought to justify restricting local radio ownership based on concerns regarding “diversity” before 2003,¹⁴ it found in its *2003 Biennial Review Order* that it could “not conclude that radio ownership concentration has any effect on format diversity,” and that it therefore would “not rely on [diversity] to justify the local radio ownership rule.”¹⁵ As to viewpoint diversity in particular, the FCC stated 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,” making clear its view that retention of the local radio ownership rule could not be justified based on viewpoint diversity concerns either.¹⁶ As a result, absent new evidence that common ownership *harms* format or viewpoint diversity – of which there is absolutely none – the Commission cannot now justify retention of that rule based on diversity concerns.¹⁷

¹⁴ *2006 Quadrennial Review of the Commission’s Broadcast Ownership Rules – 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, Further Notice of Proposed Rulemaking*, 21 FCC Rcd 8834, 8837, 8838 (¶¶ 4, 7) (2006) (“2006 FNPRM”).

¹⁵ *2003 Order*, 18 FCC Rcd at 13742 (¶ 315).

¹⁶ *Id.* at 13739 (¶ 305); *see id.* at 13739 (¶ 306); *see also Clear Channel Media Ownership Comments*, at 17-18.

¹⁷ *See supra* pp. 3-4. A conclusion today that the local radio ownership rule furthers the FCC’s interest in diversity would be a departure from its contrary determination in 2002, and as such subject to heightened scrutiny. *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983) (“an agency changing its course must supply a reasoned analysis”) (citation omitted); *see Telecomms. Research and Action Center v. FCC*, 800 F.2d 1181, 1184 (D.C. Cir. 1986) (“When an agency undertakes to change or depart from existing policies, it must set forth

Rather than providing evidence that common ownership causes demonstrable harm, UCC points out that the FCC studies seem in some respects to show that common ownership does not enhance format diversity. As an initial matter, these contentions lack substantive merit. For example, UCC contends that FCC Study 5 and FCC Study 10¹⁸ show that common ownership has no significant effect on format diversity.¹⁹ UCC's reading of FCC Study 5, however, is simply incorrect. That study finds, as Clear Channel explained, that "[i]f anything, the market level analysis suggests that more concentrated markets have less pile-up of stations on individual format categories," meaning that there is *less* format concentration, and thus *more* format diversity, in markets with greater degrees of common ownership.²⁰

Furthermore, FCC Study 10 cannot be read to provide credible evidence that common ownership does not positively impact format diversity.²¹ First, FCC Study 10 does not even purport to establish an actual relationship between ownership and format choices.²² Second, and more importantly, it measures formats based on BIA's "broad format categories," rather than actual

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and articulate a reasoned explanation for its departure from prior norms."); *Natural Res. Def. Council v. EPA*, 683 F.2d 752, 760 (3d Cir. 1982) ("Sharp changes of agency course constitute 'danger signals' to which a reviewing court must be alert."); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970) (when the Commission departs from precedent it "must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored").

¹⁸ George Williams, *Review of the Radio Industry, 2007* (2007), available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A11.pdf (released in MB Docket Nos. 06-121, *et al.* as Study 10) ("FCC Study 10").

¹⁹ See *UCC Studies Comments*, at 40-41.

²⁰ *Clear Channel Studies Comments*, at 5 (quoting FCC Study 5, at 3); see FCC Study 5, at 27-28, 29-30, 44.

²¹ See *UCC Studies Comments*, at 40; see also FCC Study 10, at 8.

²² See FCC Study 10, at 8 (reporting on the "number of distinct radio formats" but not attempting to correlate that number to the degree of concentration).

formats, which the study itself recognizes “may not be the best proxy for capturing the diversity of programming.”²³ In fact, in a statement attached to Clear Channel’s reply comments in response to the initial Further Notice in this proceeding, Professor Jerry Hausman made clear why the use of BIA format categories “significantly understates overall diversity levels.”²⁴ As Professor Hausman explained: “[T]hese 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.”²⁵ An analysis based on format categories, therefore, completely “ignores within-category diversity.”²⁶ Indeed, even the Commission, in prior studies, had recognized that “[t]here is probably a great deal of shifting of sub-formats,” which the use of BIA format categories – a “relatively aggregated measure of format” – “does not capture.”²⁷

As to viewpoint diversity, commenters opposing deregulatory changes to the local radio ownership rule largely complain that the FCC studies fail to consider the impact of common ownership on this measure of diversity.²⁸ What they ignore, however, is that the FCC studies are

²³ *Id.* at 8-9.

²⁴ Statement of Professor Jerry Hausman (Jan. 2007), at 4 (Attachment A to *Clear Channel Media Ownership Reply Comments*).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 4 (citing G. Williams & S. Roberts, *Radio Industry Review 2002: Trends in Ownership, Format, and Finance* (Nov. 11, 2002), at 8).

²⁸ See *UCC Studies Comments*, at 41-42; Comments of Carolyn Byerly and John Arnold, Howard University, MB Docket Nos. 06-121, *et al.*, at 3 (filed Oct. 18, 2007) (“*Howard University/Byerly Studies Comments*”). The *Howard University/Byerly Studies Comments* also make reference to the alleged dearth of progressive material on the radio. See *id.* The commenters make no attempt to tie their complaint to any findings of FCC Study 5 regarding ownership concentration, rendering this point irrelevant. Furthermore, it is beyond obvious that the Commission is barred by the First Amendment from making decisions regarding its media ownership rules based on a preference for a

but a small part of an extensive record in this proceeding, and that that record, as discussed below, demonstrates that common ownership has no adverse impact on viewpoint diversity, and shows that in some cases it actually increases the number of viewpoints expressed through commonly owned media located in the same market.

As discussed in Section II, *supra*, moreover, it is the burden of the Commission (to the extent that it wishes to retain the local radio ownership rule), or commenters advocating that result, to show that common ownership *harms* format or viewpoint diversity. Therefore, to the extent that commenters claim that the FCC studies show that common ownership has *no effect*, that result counsels in favor of elimination or relaxation of the rule, not retaining or tightening it. The record evidence, moreover, is quite to the contrary, as Clear Channel and others have shown, particularly as to format diversity, where it is clear that common ownership has beneficial effects.²⁹ Clear

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specific type of program content, particularly based on the *viewpoint* supported by that content. *See, e.g., Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 642 (1994) (“regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content” or “compel speakers to utter or distribute speech bearing a particular message” – are presumptively unconstitutional); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 391 (1992) (“The First Amendment does not permit [the government] to impose special prohibitions on those speakers who express views on disfavored subjects.”). Furthermore, Clear Channel has been instrumental in creating opportunities for progressive talk radio. Indeed, the former Chairman of Air America’s parent company recognized in 2005 that “[s]ince Clear Channel owns so many stations in each market, they can afford to take a risk on converting one of the underperforming stations to a new format.” Robert Chappell, *The Liberal Media: One network set out a year ago this month to make the myth a reality. Could it survive in the cutthroat business of broadcasting?*, Madison Magazine, March 2005, http://www.madisonmagazine.com/article.php?section_id=918&xstate=view_story&story_id=194192. Ultimately, however, radio stations must adapt to the demands of their local audiences, as measured by ratings and advertiser response. To the extent that conservative talk programming may be more popular than liberal talk programming, that is the function of free market forces at work, not the result of consolidation.

²⁹ *See, e.g., Clear Channel Media Ownership Comments*, at 17-32; Statement of Professor Jerry A. Hausman (Oct. 2006) (Ex. 2 to *Clear Channel Media Ownership Comments*); *Clear Channel Media Ownership Reply Comments*, at 14-15; Comments of the National Association of Broadcasters, MB Docket Nos. 06-121, *et al.*, at 79-84 (filed Oct. 23, 2006) (“*NAB Media Ownership Comments*”); Richard T. Kaplar and Patrick D. Maines, *Media Consolidation, Regulation, and the Road Ahead*, at 6 (Feb. 2006), available at http://www.mediainstitute.org/issue_papers/ (“*Media Consolidation*,”

Channel and others also provided empirical and real-world evidence regarding the extent to which common ownership offers natural incentives for owners to differentiate the viewpoints communicated by their stations,³⁰ and have pointed out the lack of any credible evidence that common ownership actually harms viewpoint diversity.³¹ As a whole, then, the record – including the FCC studies – demonstrates that common ownership of radio stations has no adverse effect on format or viewpoint diversity and that, to the contrary, it actually enhances the array of formats available to the listening public. Thus, concerns regarding diversity cannot justify retention of the local radio ownership rule intact. To the contrary, the record as a whole supports repeal, or at least relaxation, of the rule.³²

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Regulation, and the Road Ahead) (attached to Comments of The Media Institute, MB Docket Nos. 06-121, *et al.* (filed Oct. 23, 2006)).

³⁰ See, e.g., *Clear Channel Media Ownership Comments*, at 19, 22-23; *Clear Channel Media Ownership Reply Comments*, at 24.

³¹ See *Clear Channel Studies Comments*, at 5 n.20 (citing comments of others); see also, e.g., *Clear Channel Media Ownership Reply Comments*, at 24-26. Consumers Union, *et al.* criticize the findings of FCC Study 6, Jeffrey Milyo, *The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News*, at i (June 13, 2007) available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A7.pdf (released in MB Docket Nos. 06-121, *et al.* as Study 6) (“FCC Study 6”), on this score, see Comments of Consumers Union, Consumer Federation of America, and Free Press, MB Docket Nos. 06-121, *et al.*, at 103, 217-51, 252-58 (filed Oct. 22, 2007). However, the peer review of this study that was conducted for the Commission found the methods by which it measured media “slant” to be sound. See Matthew Gentzkow, *Peer Review Evaluation, FCC Media Ownership Study #6, News Coverage of Cross-Owned Newspapers and Television Stations, Study Author: Jeffrey Milyo*, available at http://www.fcc.gov/mb/peer_review/prstudy6.pdf. Furthermore, CU’s criticism of the manner in which Study 6 categorized certain issues only goes to part of the study’s conclusions regarding viewpoint diversity, and the remainder are unaffected by CU’s analysis.

³² UCC further contends that if the FCC decides that relaxation of the local ownership rule is warranted based on the diversity benefits that would result from such a rule change, the Commission would be required to reverse its longstanding policy of refusing to consider petitions to deny license transfer or assignment applications based on the likelihood that a new owner will change a station’s format. *UCC Studies Comments*, at 42-43. This is ridiculous. The question whether common ownership increases the *overall variety* of program formats – which is the question at issue here – is entirely separate from the question whether it is in the public interest to

IV. THE FCC CANNOT JUSTIFY RETENTION OF THE LOCAL RADIO OWNERSHIP RULE BASED ON LOCALISM CONCERNS, AND THE RECORD SHOWS THAT COMMON OWNERSHIP HAS POSITIVE EFFECTS ON LOCALISM.

Just as in the case of diversity, and as Clear Channel explained in its opening comments in response to the original Further Notice in this proceeding, while the FCC had sought to justify restricting local radio ownership based on concerns regarding “localism” before 2003,³³ it found in its *2003 Biennial Review Order* that there was “little to indicate that the local radio ownership rule significantly advances our interest in localism,” and that localism concerns could not be relied upon to justify retention of the rule.³⁴ Here too, then, absent new evidence that common ownership causes actual harms – which, again, there is none – the Commission cannot now justify retention of that rule based on localism concerns.³⁵

Rather than providing evidence that common ownership causes demonstrable harm, UCC and others again argue that FCC Study 5 and FCC Study 10 fail to show that common ownership has beneficial effects on local news and public affairs programming, and that retention of the local radio ownership rule is thus appropriate.³⁶ But again, other empirical evidence in the record – including FCC Study 4-II – shows that common ownership of radio stations is associated with both an increased likelihood that stations will air news, as well as increases in the overall quantity of

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transfer a station license to a new owner who might change a station’s *existing format*. The former concerns diversity, while the latter would allow citizens, and ultimately the government, to express a value judgment as to the relative worth of particular radio content, something that, at best, would be constitutionally suspect.

³³ See, e.g., *2006 FNPRM*, 21 FCC Rcd at 8837, 8838 (¶¶ 4, 7).

³⁴ *2003 Order*, 18 FCC Rcd at 13738 (¶ 304).

³⁵ See *supra* pp. 3-4 & n.17.

³⁶ See *UCC Studies Comments*, at 46-48; *Howard University/Byerly Studies Comments*, at 2.

news that stations air.³⁷ The record also contains abundant real-world evidence provided by commenters regarding the beneficial effects of common ownership on local news and public affairs programming.³⁸

Certain commenters also attack the usefulness of FCC Study 5 due to its failure specifically to consider the extent to which common ownership impacts the amount of *local* news and public affairs.³⁹ While Clear Channel believes that the provision of local programming and public affairs programming is among radio broadcasters' most important roles, the Commission cannot lawfully express a preference for local content over other (such as regional or national) content, or for news or public affairs over other types of programming.⁴⁰ UCC further notes that some have argued that common ownership increases the use of voice-tracking, and faults FCC Study 5 for failing to analyze this issue.⁴¹ But this is simply another case in which the record already speaks for itself –

³⁷ Kenneth Lynch, *Ownership Structure, Market Characteristics and the Quantity of News and Public Affairs Programming: An Empirical Analysis of Radio Airplay*, at II-1, II-17-18, II-20, II-22 (July 30, 2007), available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A5.pdf (released in MB Docket Nos. 06-121, *et al.*, as Study 4, Section II) (“FCC Study 4-II”); see *Clear Channel Studies Comments*, at 8. In addition, FCC Study 5 finds “that stations operating in markets with other commonly owned stations achieve higher ratings, than do independent stations,” *Clear Channel Studies Comments*, at 8 (quoting FCC Study 5, at 3, 45), which lends support for the view that commonly owned stations serve the needs and interests of their audiences – including their need for and interest in locally-oriented news and information – well.

³⁸ See *Clear Channel Studies Comments*, at 8 & n.36 (citing additional comments).

³⁹ See *UCC Studies Comments*, at 46; see *id.* at 47 (noting that certain of the programs that FCC Study 5 considers to be “news” do not cover local issues); *Howard University/Byerly Studies Comments*, at 2 (faulting FCC Study 5 for its failure to measure the “amount of regularly scheduled public affairs programming” and arguing that FCC Study 5’s finding regarding the “paucity of non-music and non-sports programming” provides cause for concern).

⁴⁰ See, e.g., *Clear Channel Media Ownership Reply Comments*, at 52 & n.210 (explaining why the FCC cannot base a decision to retain the AM/FM subcaps on the type of programming typically aired on AM stations and citing cases); see also *NAB Media Ownership Comments*, at 56-57 (explaining that local programming should not be the FCC’s only focus).

⁴¹ See *UCC Studies Comments*, at 45.

Clear Channel, for example, has fully discussed the issue of voice-tracking in previous filings in this docket.⁴² Finally, some commenters question the extent to which radio broadcasters may legitimately seek to maximize profits.⁴³ As NAB aptly explained in its reply comments in response to the FCC’s initial Further Notice, however, “[s]eeking to maximize advertising (or other) revenue is no slight to the public interest.”⁴⁴ The stations subject to the local radio ownership rule are explicitly licensed for commercial operations, and the FCC has correctly recognized that it is *not* “troubling” that media outlets make decisions based on profitability, as the “need and desire to produce revenue, to control costs, to survive and thrive in the marketplace is a time honored tradition in the American media.”⁴⁵

In sum, the record in this proceeding, considered as a whole, shows no harm to localism, and if anything shows that common ownership has beneficial effects. The FCC thus cannot base a

⁴² *Clear Channel Media Ownership Reply Comments*, at 33-34.

⁴³ *Howard University/Byerly Studies Comments*, at 2 (pointing to FCC Study 5’s findings regarding the relative amounts of news and advertising aired on radio stations, and claim that the data indicate “that the public’s airwaves are being used for revenue-generation and not for disseminating public information, discussion, or debate”); John Arnold, *Howard University, FCC Study # 10, A Critique of the Review of the Radio Industry, 2007*, MB Docket Nos. 06-121, *et al.* (filed Oct. 1, 2007), at 2 (“*Howard University/Arnold Studies Comments*”) (criticizing FCC Study 5 for failing to address the purported tension between steps that broadcasters take to improve financial performance to serve investors, and broadcasters’ mandate to serve the public interest). Notably, no attempt is made to establish a causal link between these points and the degree to which radio stations are commonly owned. They are thus irrelevant to the continued validity of the local radio ownership rule, and certainly cannot form a basis for its retention.

⁴⁴ Reply Comments of the National Association of Broadcasters, MB Docket Nos. 06-121, *et al.*, at 35-36 (filed Jan. 17, 2007).

⁴⁵ *Id.* at 36 & n.127 (citing 47 C.F.R. § 73.3555(e)), 129 (citing *2003 Order*, 18 FCC Rcd at 13759 (¶ 353)). The *Howard University/Arnold Studies Comments* also note the finding in FCC Study 10 that radio station listening has declined, fault that study for failing to provide a “basis for comparison” or explore possible explanations for the decline, and offer several possible reasons why the decline might have occurred. See *Howard University/Arnold Studies Comments*, at 2-3. Neither these comments nor FCC Study 10 itself establishes any causal link between decreased radio listening and increased common ownership, and the alternative explanations proffered in the comments amount to nothing more than sheer speculation.

decision to retain the local radio ownership rule intact on localism concerns.

V. **EFFORTS TO RAISE CONCERNS REGARDING “CONCENTRATION” AND UNDERCUT THE FCC STUDIES’ FINDINGS AS TO THE LACK OF HARM THAT COMMON OWNERSHIP HAS ON ADVERTISING RATES ARE MERITLESS.**

In an apparent attempt to show that common ownership of radio stations raises competition concerns, several commenters point to the increases in concentration that have occurred since the 1996 Act.⁴⁶ As Clear Channel has already explained, however, the transactions that caused these results 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.⁴⁷ 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 allow free radio broadcasters to remain viable competitors in the expanding multi-media marketplace while delivering important benefits to the public.⁴⁸ Furthermore, and as Clear Channel has also shown before, radio remains far *less* concentrated than a large variety of other industry sectors.⁴⁹

Moreover, absent evidence of *harm* flowing from the increased concentration that the commenters who oppose repeal or relaxation of the local radio ownership rule seek to document,

⁴⁶ See *UCC Studies Comments*, at 39, 44-45; *Howard University/Byerly Studies Comments*, at 5; *Howard University/Arnold Studies Comments*, at 2; see also FCC Study 10, at 1-2, 4-8.

⁴⁷ See *Clear Channel Media Ownership Reply Comments*, at 7-8.

⁴⁸ See *id.* at 8 & n.23 (citing legislative history).

⁴⁹ See *Clear Channel Media Ownership Comments*, at 8; *Clear Channel Media Ownership Reply Comments*, at 3-4; *Percentage of Industry Revenues Earned by Top 10 Firms in the Sector* (Attachment E to Comments of the National Association of Broadcasters, MB Docket Nos. 06-121, *et al.* (filed Oct. 23, 2006) (“NAB Comments”)); *Media Consolidation, Regulation, and the Road Ahead*, at 2.

competition concerns cannot form the basis for its retention.⁵⁰ As Clear Channel explained previously, FCC Study 5 found that “consolidation in local radio markets has no statistically significant effect on advertising prices.”⁵¹ This finding is consistent with additional evidence already in the record.⁵²

The two sets of comments submitted by Howard University professors take issue with FCC Study’s conclusions on this score, based on bald assertions regarding increases in political advertising rates and the percentages of total campaign expenditures that candidates allocate to broadcast advertising.⁵³ But in large part their arguments are based on *television* advertising spending – which, of course, can have no bearing on issues related to local *radio* ownership.⁵⁴ Further, such generalized, anecdotally based claims cannot possibly overcome the economic evidence discussed above and elsewhere in this docket. Because the record is clear that common ownership does *not* cause advertising rates to rise, the Commission cannot rely on a supposed risk of competitive harm to retain the local radio ownership rule.

VI. THE REMAINING CONTENTIONS ADVANCED IN THE COMMENTS OPPOSING RADIO DEREGULATION ARE IRRELEVANT TO THIS PROCEEDING.

Opposing commenters advance two additional arguments that are irrelevant to this proceeding. These matters “fall outside of the scope of this proceeding,” and, just as the FCC

⁵⁰ See *supra* Section II.

⁵¹ *Clear Channel Studies Comments*, at 8 (quoting FCC Study 5, at 3, 45).

⁵² See *Clear Channel Media Ownership Comments*, at 43-46; *Clear Channel Media Ownership Reply Comments*, at 35-38; see also *NAB Media Ownership Comments*, at 73-78.

⁵³ See *Howard University/Byerly Studies Comments*, at 4; *Howard University/Arnold Studies Comments*, at 2.

⁵⁴ See *Howard University/Byerly Studies Comments*, at 4.

concluded in the *2003 Order*, are thus not appropriately considered here.⁵⁵

First, there is a contention that FCC Study 5 is suspect due to its failure to address the effect of consolidation on “propaganda disguised as news.”⁵⁶ In the *2003 Order*, the Commission rightly declined to consider sponsorship identification issues, and the same result is required here.⁵⁷

Further, the record provides nothing more than unsupported speculation regarding a link between alleged failures to comply with sponsorship identification requirements and common ownership. In any case, such matters are properly considered under the separate FCC enforcement regime, which is clearly more than adequate to address concerns raised by particular factual circumstances.⁵⁸

Second, there is a vague allegation regarding broadcasters’ alleged failure adequately to communicate important messages using the Emergency Alert System (“EAS”) during times of disaster, including the September 11 attacks, Hurricanes Katrina and Rita, and the Virginia Tech shootings.⁵⁹ There is no attempt to draw any link between these alleged missteps and increased levels of common ownership, and issues regarding EAS are being properly debated in another FCC docket.⁶⁰ Moreover, these allegations are based on a fundamental misunderstanding of the manner in which the EAS operates – it must be activated by the President or state or local officials, not

⁵⁵ *Clear Channel Media Ownership Reply Comments*, at 38 (quoting *2003 Order*, 18 FCC Rcd at 13858 (¶ 622)); *see id.* at 38 n.149 (providing additional citations).

⁵⁶ *See id.* at 3.

⁵⁷ *2003 Order*, 18 FCC Rcd at 13860 (¶ 626).

⁵⁸ *See, e.g., Sonshine Family Television, Inc. and Sinclair Broadcast Group, Inc.*, Notice of Apparent Liability for Forfeiture, File Nos. EB-06-IH-3489, EB-06-IH-3486, FCC 07-152 (rel. Oct. 18, 2007).

⁵⁹ *See Howard University/Byerly Studies Comments*, at 5.

⁶⁰ *See, e.g., Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, Second Report and Order and Further Notice of Proposed Rulemaking, EB Docket No. 04-296, FCC 07-109 (rel. July 12, 2007).

broadcasters, and was not so activated in any of the situations upon which commenters rely.⁶¹

Finally, any allegation that media coverage during these important events was somehow lacking is nothing short of absurd.⁶²

VII. CONCLUSION

The FCC-commissioned studies that touch on radio issues add to the already overwhelming record evidence in this proceeding that the terrestrial radio industry is vibrantly competitive, and that greater levels of common ownership produce consumer benefits in terms of increased program diversity and increased and improved local programming, while having no adverse effect on advertising prices. The comments that take a contrary view, as shown above, lack substantive merit. Accordingly, the Commission should move forward promptly to repeal the local radio ownership rule in its entirety, pursuant to its statutory obligation to eliminate media ownership rules that are no longer necessary in the public interest in light of competitive developments. At the very least, the FCC should modify the local radio caps to allow, as Clear Channel has previously proposed, 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. And, as Clear Channel has previously shown, the Commission should move forward to eliminate the subcaps on the number of AM and FM stations that a single party can own, due to the lack of any factual or legal basis for retaining the subcaps.

⁶¹ See *id.* at ¶ 54 (“during Hurricanes Katrina, Wilma, and Rita, broadcasters provided localized emergency information to the public, while none of the affected state governors formally activated EAS to provide the public evacuation, shelter or other critical information “); *Howard University/Byerly Studies Comments*, at 5 (quoting FCC letter stating that “[t]he EAS system was not activated on 9/11/01”). EAS was also not activated during the Virginia Tech shootings.

⁶² The record in this very proceeding, for example, provides abundant evidence regarding broadcasters’ heroic efforts to communicate important messages to the public during Hurricane Katrina. See, e.g., *Clear Channel Media Ownership Comments*, at 33-34, 53-55.

Respectfully submitted,

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