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

In the Matter of 2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Communications Act of 1996	)))))))	MB Docket No. 09-182

COMMENTS OF CLEAR CHANNEL COMMUNICATIONS, INC.

Jessica Marventano,
Senior Vice President, Government Affairs
Clear Channel Communications, Inc.
200 East Basse Road
San Antonio, Texas 75201
210.822.2828

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SUMMARY

In its 2010 quadrennial review of media ownership regulations, the Commission—as in prior reviews—is governed by Section 202(h) of the 1996 Telecommunications Act and by the Administrative Procedure Act. Section 202(h) requires the Commission to examine current competitive market conditions and, in order to retain current rules, to establish that those rules remain necessary in the public interest in light of such conditions. If the Commission is unable to do so, its regulations must be vacated or modified. Furthermore, the Administrative Procedure Act independently requires the Commission to demonstrate that its current media ownership regulations continue to be needed in a volatile, changing marketplace.

The Commission cannot demonstrate the necessity of local radio ownership limits in any form under either Section 202(h) or the Administrative Procedure Act. Even in the few years since the Commission's last quadrennial review, the number of terrestrial radio stations has grown, and ownership of those stations has become more diffuse. Broadcast radio remains one of the least consolidated of the country's major industries.

Along with increasing competitive pressures among terrestrial stations alone, radio broadcasters face an explosion of competition from other audio platforms, many of which were in their nascent stages in 2006. Satellite radio has grown exponentially in subscribership and is steadily making inroads into the auto market, where terrestrial radio has traditionally dominated. Internet-based audio platforms have transitioned, in just a few years, from new market entrants to full-fledged competitors that are placing additional pressures on terrestrial radio stations. The use of iPhones, smartphones, and other portable media players to download and listen to audio programming in all forms has become ubiquitous. Unlike terrestrial radio broadcasters, none of these powerful competitors are limited in the number of outlets or program streams they can

provide. Coupled with sharply increasing competition from other terrestrial broadcasters and new audio platforms, the radio industry has experienced significant financial setbacks since 2006. Beginning with the financial meltdown of 2007, the number of bankruptcy filings and lender workouts among terrestrial radio companies, along with other broadcast and print media, has ballooned.

In this competitive environment, the continued retention of broadcast radio ownership limits in any form plainly cannot be justified as "necessary in the public interest." Evidence submitted in the 2006 quadrennial review, which remains true today, establishes that radio ownership rules are not necessary to address competition concerns. Consolidation has been proven to have no effect on advertising rates, and the ease with which radio stations can (and do) change formats makes the possibility of coordinated behavior among owners an insignificant concern. And the rigorous scheme of antitrust law enforcement will remain as a safeguard to address any remaining competition concerns from radio consolidation. Nor are radio ownership limits necessary to foster program diversity or localism. Econometric analysis from the 2006 quadrennial review shows that group ownership of radio stations has enhanced diversity of programs and music formats and substantially increased radio broadcasters' ability to serve the local needs and interests of their communities. Clear Channel's experience bears this out. The company provides diverse, high quality programming and promotes new artists. Clear Channel has also made significant investments in its local communities by establishing Local Advisory Boards, expanding local affairs programming, and by making its stations available for local, regional, and national public awareness campaigns.

Even if the Commission decides to retain local radio ownership rules in some form, despite the overwhelming evidence that no limits are necessary, it should at least modify the rules to reflect the reality of a transformed audio marketplace. First, the Commission should create two new ownership "tiers," increasing from eight to ten the number of stations a single entity may own in markets with between 55 and 64 stations, and from eight to twelve the number of stations that a single entity may own in markets with 65 or more stations. Such a modification would have very limited impact, either in terms of geographic scope or broadcast radio ownership concentration in a market. Yet it would provide significant relief to group owners operating in the largest markets, where competitive pressures are the greatest, and such relief could manifest itself in improved public service and terrestrial radio technology to markets of all sizes. Moreover, the establishment of additional ownership tiers would provide a desperately needed stimulation of transactions and capital for the broadcast radio industry.

Second, the Commission should at long last act to abolish the AM/FM "subcaps," which anachronistically limit the number of radio stations in a single service that may be owned locally. The Commission has never adequately justified the existence of the subcaps, which among other things, are patently inconsistent with the Commission's other media ownership rules themselves. If any colorable justification ever existed for the subcaps, it has been totally eviscerated not only by the evidence of AM radio's strong performance as a competitor and revenue generator, but by technical advances that have provided AM stations a host of means to compensate for any technical inferiority to FM stations. Eliminating the unsustainable AM/FM subcaps will help to jumpstart acquisition activity in the radio industry and will create a market of divested stations which, in many cases, will be particularly attractive opportunities for station purchases by minorities, women and small businesses.

Any radio ownership limits that are retained must respect Congress's choice of an outlet-based test to measure permissible levels of common ownership. Because of their high volatility in the industry, market and audience share data are poor metrics for radio ownership rules. History has shown that case-by-case analysis of radio mergers and acquisitions in the radio industry saps scarce Commission resources and results in delays and uncertainty for parties and investors.

Clear Channel believes the Commission should consider additional means to promote diversification of broadcast ownership. In particular, Clear Channel favors an "incubator" system, whereby waivers of or exceptions from the local radio ownership rules are made available to broadcasters that engage in actions that enhance radio station ownership opportunities for economically and socially disadvantaged business, including businesses owned by women and minorities. Adoption of an incubator proposal would provide incentives to existing broadcasters to share their talent, experience and/or financial resources, while at the same time promoting new entry by giving individuals interested in becoming broadcast station owners real-world experience in the industry.

Finally, Clear Channel again urges the Commission to allow "grandfathered" station combinations to be transferred intact without restriction. The current rules governing the transfer of grandfathered combinations deprive radio operators of the opportunity to recoup investments they legitimately made in response to Congress's 1996 deregulation of radio ownership, and they are contributing to the radio industry's current stagnancy. The Commission should permit grandfathered combinations to be transferred intact without limits. At a minimum, the Commission must modify the definition of "eligible entities" permitted to acquire an entire grandfathered combination to include a wider, more realistic range of companies.

TABLE OF CONTENTS

Page

Before the
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In the Matter of 2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Communications Act of 1996	)))))))	MB Docket No. 09-182

COMMENTS OF CLEAR CHANNEL COMMUNICATIONS, INC.

Clear Channel Communications, Inc. ("Clear Channel") hereby submits its comments regarding the captioned Notice of Inquiry in the 2010 Quadrennial Review.[1] As demonstrated herein, over the past decade, the media landscape has transformed in ways that have made the Commission's current local radio ownership rules anachronisms that should be repealed, or at the very least, substantially reformed to increase the number of stations that a single entity may own in the nation's largest markets and to eliminate the AM/FM "subcaps." In addition, Clear Channel urges the Commission to establish additional rules that would encourage and assist women and minorities to enter the broadcasting industry and would permit the free alienability of grandfathered radio combinations.

[1] *2010 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*, Notice of Inquiry, MB Docket No. 09-182, FCC 10-92 (May 25, 2010) ("*2010 NOI*").

I. SECTION 202(H) OF THE COMMUNICATIONS ACT OBLIGES THE FCC TO REPEAL OR MODIFY RULES THAT ARE NO LONGER NECESSARY IN THE PUBLIC INTEREST IN LIGHT OF CURRENT COMPETITION LEVELS.

Section 202(h) of the Telecommunications Act of 1996 (the "1996 Act") governs the Commission's quadrennial review of its ownership rules.[2] In drafting and enacting this portion of the 1996 Act, Congress intended for Section 202(h) to be an engine that would drive deregulation of the broadcast industry.[3] In reviewing the Commission's past actions under Section 202(h), the courts have agreed, finding that the provision "carries with it a presumption in favor of repealing or modifying the ownership rules."[4] Under existing precedent, the Commission may only retain existing ownership rules if it "reasonably determines that the rule is 'necessary in the public interest.'"[5]

In reviewing its media ownership rules under Section 202(h), the Commission must "'monitor the effect of . . . competition . . . and make appropriate adjustments to its regulations.'"[6] As the Third Circuit has noted, Section 202(h) "[r]ecogniz[es] that competitive changes in the media marketplace could obviate the public necessity for some of the Commission's ownership rules."[7] In order to retain existing regulations, the Commission must establish that its current local radio ownership rules are "necessary in the public interest." Accordingly, the Third Circuit held that Section 202(h) "requires the Commission to take a fresh

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[2] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996) ("1996 Act"). Section 202(h), as initially adopted, required the FCC to conduct periodic reviews on a biennial basis. Congress has since amended the statute to provide for review quadrennially. *See* Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004).

[3] *See* 1996 Act, Preamble, 110 Stat. 56 (stating that the 1996 Act was primarily intended "to promote competition and reduce regulation").

[4] *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1048 (D.C. Cir. 2002) ("*Fox I*"), *modified on reh'g* 293 F.3d 537 (D.C. Cir 2002); *Sinclair Broad. Group, Inc. v. FCC*, 284 F.3d 148, 159 (D.C. Cir. 2002).

[5] *Fox I*, 280 F.3d at 1048; *Sinclair*, 284 F.3d at 159.

[6] *Prometheus Radio Project v. FCC*, 373 F.3d 372, 391 (3d Cir. 2004) (quoting *2002 Biennial Regulatory Review*, 18 FCC Rcd 4726, 4727 (¶ 5) (2003) ("*2002 Biennial Review Report*"); *see Fox I*, 280 F.3d at 1033.

look at its regulations periodically in order to ensure that they remain 'necessary in the public interest.'"[8] In requiring the Commission "periodically . . . [to] justify its existing regulations," the statute created a new obligation that "extends *beyond* [the Commission's] normal monitoring responsibilities."[9] Thus, in order to maintain the *status quo*, the Commission must establish that, in light of current competitive market conditions, its current rules are necessary in the public interest. If the Commission is unable to do so, the regulation "must be vacated or modified."[10]

Moreover, even absent Section 202(h)'s periodic review requirement, the Commission would still face obligations under the Administrative Procedure Act to "evaluate its policies over time to ascertain whether they work—that is, whether they actually produce the benefits the Commission originally predicted they would."[11] As the Supreme Court has noted, "[r]egulatory agencies do not establish rules of conduct to last forever; they are supposed, within the limits of the law and of fair and prudent administration, to adapt their rules and practices to the Nation's needs in a volatile, changing economy."[12] In order to justify adoption or retention of a rule, the administrative record must demonstrate the existence of an actual problem in need of regulatory solution[13]—for "a 'regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist.'"[14] Thus, the Commission bears a heavy burden in this proceeding to justify any decision to retain its local radio ownership rules in their

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[7] *Prometheus*, 373 F.3d at 391.

[8] *Id.*

[9] *Id.* at 395 (emphasis added).

[10] *Id* at 394.

[11] *Bechtel v. FCC*, 10 F.3d 875, 880 (D.C. Cir. 1993) (quoting *Bechtel v. FCC*, 957 F.2d 873, 881 (D.C. Cir. 1992)).

[12] *Am. Trucking Ass'ns, Inc. v. Atchison, Topeka & Santa Fe Ry Co.*, 387 U.S. 397, 416 (1967); *see NBC v. United States*, 319 U.S. 190, 225 (1943) (the Commission cannot retain a rule "[i]f time and changing circumstances reveal that the 'public interest' is not served by application of the Regulation[]").

[13] *See Burlington N. Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

current state. The record in this proceeding will establish that the Commission's current local radio ownership rules are no longer "necessary in the public interest" with respect to competition, diversity or localism. As such, they must be eliminated or modified.

II. THE FCC SHOULD REPEAL ITS LOCAL RADIO OWNERSHIP RULES.

In the *2008 Order*, the Commission summarized the current local radio ownership rule as follows:

> [A]n entity may own, operate, or control (1) up to eight commercial radio stations, not more than five of which are in the same service (*i.e.*, AM or FM), in a radio market with 45 or more full-power, commercial and noncommercial radio stations; (2) up to seven commercial radio stations, not more than four of which are in the same service, in a radio market with between 30 and 44 (inclusive) full-power, commercial and noncommercial radio stations; (3) up to six commercial radio stations, not more than four of which are in the same service, in a radio market with between 15 and 29 (inclusive) full-power, commercial and noncommercial radio stations; and (4) up to five commercial radio stations, not more than three of which are in the same service, in a radio market with 14 or fewer full-power, commercial and noncommercial radio stations, except that an entity may not own, operate, or control more than 50 percent of the stations in such a market.[15]

As explained below, retaining these outdated local radio ownership limits will only serve to choke an industry that is already facing fierce competition from other audio platforms. Further, shackling radio broadcasters to last century's ownership rules will ultimately detract from the Commission's policy goals of promoting diversity and localism by diminishing the radio industry's ability to compete in *this* century's "new media" ecology. For these reasons, Clear Channel urges the Commission to repeal the local radio ownership rules.

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[14] *HBO v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977) (citation omitted).

[15] *2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2016 (¶ 110) (2008) ("*2008 Order*").

A. Today's Media Marketplace is Significantly Different from That of 1996 or 2006.

Despite being battered by a severe global recession that began in late 2007, radio broadcast stations remain as fixtures in many Americans' lives. Today, there are over 14,400 free, over-the-air radio stations in the United States. This represents a 5% increase from the total number of radio stations in 2006, an 18.6% increase since 1996, and a 113.3% increase since 1970.[16] There are nearly fifteen times as many licensed radio stations today as there were when the Commission began to regulate radio ownership in the 1940s.[17]

Since the Commission's last quadrennial review, radio ownership has become more diverse. In 2006, the nation's 13,700-plus radio stations were owned by 4,400 owners.[18] Over the past four years, the growth in the number of radio owners matched the five percent increase in the number of licensed stations during the same period—from 4,400 owners in 2006 to more than 4,700 owners in 2010.[19] But these figures provide an incomplete picture of the expansion in the radio broadcast industry over the past four years, as they do not account for the significant number of newly-granted construction permits for new noncommercial educational ("NCE") FM stations. The sheer volume of applications from the October 2007 NCE FM application filing "window" illustrates the strong demand for radio station licenses: the FCC received approximately 3,600 applications for new stations, which resulted in 457 groups of one or more

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[16] FCC, News Release, *Broadcast Station Totals as of December 31, 2009* (rel. Feb. 26, 2010) (announcing that there were a total of 14,420 AM, FM, and NCE FM stations); FCC, News Release, *Broadcast Station Totals as of December 31, 2006* (rel. Jan. 26, 2007) (announcing that there were a total of 13,837 AM, FM, and NCE FM stations); FCC, News Release, *Broadcast Station Totals as of December 31, 1996* (rel. Jan. 21, 1997) (announcing that there were a total of 12,140 AM, FM, and NCE FM stations); FCC, News Release, *Broadcast Station Totals for January 1970* (rel. Feb. 10, 1970).

[17] Benjamin M. Compaine, *The Media Monopoly Myth: How New Competition is Expanding our Sources of Information and Entertainment*, at 16 (2005), http://newmillenniumresearch.org/archive/Final_Compaine_paper_050205.pdf (last visited July 11, 2010).

[18] *See* Comments of Clear Channel Communications, Inc., MB Docket No. 06-121, at 7 (October 23, 2006) ("*Clear Channel 2006 Comments*").

mutually exclusive applications.[20] Since October 2007, the Commission has granted over 1,000 permits for new NCE FM stations, many of which will be built and licensed over the next three years.[21] Accordingly, over the next several years, the country can expect to see a further expansion in both the number of licensed radio stations and in the number of radio station owners.

Clear Channel remains the largest single owner of radio stations, but over the last four years, the number of stations it owns has decreased, both in absolute terms and relative to the entire industry. In 2006, Clear Channel owned 1,168 stations—or 8.5% of all licensed stations in the U.S. Today, however, Clear Channel owns 857 stations, or 5.9% of radio stations. The remaining 94.1% of stations are owned by thousands of companies and individuals, making the radio industry one of the least consolidated of the country's major industries. For example, the top six film production studios have an 84% share of the market.[22] The top six multichannel video program distributors ("MVPDs") enjoy an 82% share of the market.[23] As discussed below, the satellite radio market is now a monopoly. The top four wireless telecom companies account

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[19] Owner information was obtained from the BIA database.

[20] *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the October 2007 Filing Window for Noncommercial Educational FM Stations*, 23 FCC Rcd 3914 (March 7, 2008); *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the October 2007 Filing Window for Noncommercial Educational FM Stations* 23 FCC Rcd 9508 (June 18, 2008); *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the October 2007 Filing Window for Noncommercial Educational FM Stations* DA 08-2259 (Oct. 9, 2008).

[21] The figures regarding the numbers of NCE FM construction permits sought and granted are based on a July 8, 2010 search of the Commission's CDBS system.

[22] 2010 Market Share and Box Office Results by Movie Studio, http://www.boxofficemojo.com/studio/ (last visited July 7, 2010).

[23] Top 25 Multichannel Video Programming Distributors as of Mar. 2010, NCTA, http://www.ncta.com/Stats/TopMSOs.aspx (last visited July 12, 2010). The 82 percent figure was calculated by comparing the total number of subscribers for the top six MVPDs to the total number of subscribers reported for the top 25 MVPDs.

for 91% of all wireless subscribers.[24] And the situation is comparable outside of the communications sector as well: four companies account for 95% of the auto rental market,[25] and five companies have a 58% share of the passenger airline market.[26] By contrast, the terrestrial radio industry is decidedly diffuse—fifteen companies accounted for 43.5% of the industry's revenue in 2009.[27]

As the Commission is well aware, the past decade has witnessed a blossoming of new media outlets that compete with radio broadcast media. The substantial record developed in the 2006 quadrennial review established that terrestrial radio is just one participant in the twenty-first century's vibrant media ecology. Today, terrestrial radio stations compete not only with their local peers but also with the growing panoply of regulated and unregulated competitors at the local, regional, and global levels. These competitors use new technologies and services to deliver music, entertainment, and news in formats and on platforms that today's audiences demand. Many of these outlets did not exist in 1996, and several were in nascent stages in 2006; today, satellite radio and internet-based services are robust competitors to terrestrial radio stations. Given terrestrial radio's past dominance as a purveyor of audio content, the presence of new competitors axiomatically reduces radio broadcasters' share of the market. As such, prior generations' local radio ownership rules are no longer appropriate.

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[24] *U.S. Wireless Data Market, Q1 2010 Update*, at 13, http://www.chetansharma.com/US%20Wireless%20Market%20Q1%202010%20Update%20-%20May%202010%20-%20Chetan%20Sharma%20Consulting.pdf (last visited July 7, 2010).

[25] *Market Data, U.S. Car Rental Market*, http://www.autorentalnews.com/fc_resources/ARNFB10UScarrentalMarket.pdf (last visited July 7, 2010).

[26] Research and Innovative Technology Administration, Bureau of Transportation Statistics, *Transtats*, http://www.transtats.bts.gov/ (last visited July 7, 2010).

[27] Who Owns Radio, *Top 50 Radio Group Owners by Revenue*, July 6, 2010, at 1 (indicating that the top 15 radio group owners had 2009 net revenue of approximately $6.976 billion); Radio Advertising Bureau, Yearly Revenue Trends, http://www.rab.com/public/pr/yearly.cfm (indicating that the total 2005 revenue for the radio industry was approximately $16.029 billion) (last visited July 8, 2010). The 43.5 percent figure was calculated by adding the advertising revenues for each of the top fifteen radio group owners provided by Who Owns What and dividing that

Satellite radio, which offers hundreds of channels of largely commercial-free audio programming, was transformed in mid-2008, when the Commission approved the merger of the nation's two satellite radio services.[28] The resulting entity, Sirius|XM Radio, Inc., still operates the original XM and Sirius satellite radio systems, which, in aggregate, boast a customer base of nearly 18.8 million subscribers. By way of comparison, this represents a 62% increase over the two services' subscriber base in 2006, and a 2,254% increase since the release of the Commission's *2003 Order*.[29]

Sirius|XM has continued to make inroads in the auto market. In its 2009 annual report to shareholders, the company touted deals with every major car manufacturer and noted a 55% penetration rate in the vehicular market for 2009—up from 44% in 2008.[30] At the end of 2009, there were 27 million satellite radios installed in U.S. autos, of which only 11.6 million were active.[31] This difference in installed versus active devices gives Sirius|XM new opportunities to "remarket" its services to non-subscribers and to buyers of previously-owned vehicles. As such, satellite radio persists as a significant competitive threat to terrestrial radio, which, until recently, has been considered the platform that "dominate[s] the car."[32] This threat is exacerbated by the Commission's local radio ownership rules. While a single entity can only own eight stations in

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number by the total radio industry's revenue provided by the Radio Advertising Bureau.

[28] *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, MB Docket 07-57, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348 (2008).

[29] *See Clear Channel 2006 Comments*, at 11.

[30] Sirius|XM Radio, Inc., *Proxy Statement and 2009 Annual Report*, http://files.shareholder.com/downloads/SIRI/946368919x0x366184/EF741909-023A-4EB8-9F1C-3E8CDA7E2F8A/SIRIUS_XM_Annual_Report_Proxy_2009.pdf, at 2.

[31] *Id*.

[32] Robert A. Papper, *et al.*, *Middletown Media Studies: Observing Consumers and their Interactions with Media, The Media Day*, at 19 (Fall 2005).

the nation's largest radio markets, Sirius|XM is able to transmit 300 audio channels into even the smallest radio market.

Even more so than in 2006, today's media consumers also can choose among a wide variety of unregulated sources of news, information, and entertainment that directly compete with broadcast radio. Different competitors use different consumer devices to access audiences' ears. For example, users of the Pandora service can "tune" to audio content on personal computers and wireless mobile devices, while users of Apple's iTunes service typically use Apple's own mobile handsets or portable media players to access audio purchased through the service. But regardless of the type of device that audiences use to listen to audio content from these competing media services, the underlying technological backbone is the same: the internet.

Internet-based audio platforms have transitioned—in just a few years—from new market entrants to full-fledged competitors of terrestrial radio broadcasters. During this time, studies have shown that audiences are increasingly prone to turn to internet-based platforms for music, entertainment, news and informational content. For example, one recent survey found that "[f]or the first time, more Americans say the Internet is 'most essential' to their lives when given a choice along with television, radio, and newspapers."[33] Another series of studies by Arbitron shows a steady decline in the amount of time that people spend listening to terrestrial radio stations in an average week. In spring 2006, Americans, on average, listened to 19 hours of radio each week.[34] The next year, that figure dropped to 18 hours and 30 minutes,[35] and in fall

[33] Edison Research, *The Infinite Dial 2010: Digital Platforms and the Future of Radio*, http://www.edisonresearch.com/home/archives/2010/04/the_infinite_dial_2010_digital_platforms_and_the_future_of_r.php (last visited July 7,2010).

[34] Arbitron, *Radio Today, How America Listens to Radio, 2007 Edition*, http://www.arbitron.com/downloads/radiotoday07.pdf, at 91 (last visited July 7, 2010).

[35] Arbitron, *Radio Today, How America Listens to Radio, 2008 Edition*, http://www.arbitron.com/downloads/radiotoday08.pdf, at 86 (last visited July 7, 2010).

2008, the figure fell to 15 hours and 15 minutes per week.[36] Yet, despite these statistics, radio still appears to hold a strong place in the American psyche. For example, in a 2010 survey, nearly 8 in 10 respondents over the age of 12 indicated that they would be "very disappointed" or "somewhat disappointed" if the terrestrial radio station they listened to the most was no longer on the air.[37] Further, unlike satellite radio and internet-based platforms—for which users pay monthly subscription or broadband access fees—terrestrial radio remains universally free and ubiquitous.

Recent estimates indicate that a majority of Americans over the age of 12 own an iPod (28%) or other portable media player ("PMP") (23%), almost double the number in 2006.[38] While it took Apple more than five years to sell its first 100 million iPods,[39] during the past four quarters, the company sold 82.34 million iPods and iPhones.[40] In the first quarter of 2008, 60% of the mobile telephones sold in the U.S. included a digital audio player as a standard feature.[41] And, as one media study notes, "[t]he Apple iPhone continues to change the mobile media

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[36] Arbitron, *Radio Today, How America Listens to Radio, 2009 Edition*, http://www.arbitron.com/home/radiotoday.htm (last visited July 7, 2010). In its 2009 study, Arbitron noted several factors—the addition of PPM data, the presidential election, seasonal differences, and the exclusion of data from Houston-Galveston—that may disproportionately impacted the data.

[37] *Infinite Dial 2010*, at 59.

[38] *Infinite Dial 2010*, at 73; *See* Press Release, Solutions Research Group, *Women in Driver's Seat as Digital Music Market Doubles* (July 13, 2006), http://www.srgnet.com/pdf/The%20Pink%20iPod%20Release%20July%2013%202006%20(f).pdf (last visited July 7, 2010).

[39] Press Release, Apple, Inc., *100 Million iPods Sold* (April 9, 2007), http://www.apple.com/pr/library/2007/04/09ipod.html.

[40] Press Release, Apple, Inc., *Apple Reports Second Quarter Results* (Apr. 20, 2010), http://www.apple.com/pr/library/2010/04/20results.html; Press Release, Apple, Inc., *Apple Reports First Quarter Results* (Jan. 25, 2010), http://www.apple.com/pr/library/2010/01/25results.html; Press Release, Apple, Inc., *Apple Reports Third Quarter Results* (July 21, 2009), http://www.apple.com/pr/library/2009/07/21results.html; Press Release, Apple, Inc., *Apple Reports Fourth Quarter Results* (October 19, 2009).

[41] Grant Eskelsen, *et al.*, *The Digital Economy Fact Book*, http://www.pff.org/issues-pubs/books/factbook_10th_Ed.pdf, at 90 (10th ed. 2009) (last visited July 7, 2010) ("*PFF Factbook*").

market."[42] As of January 2008, only 6.7% of U.S. mobile phone owners, and 27.9% of "smartphone" owners used their devices for audio playback, compared to 74.1% of iPhone owners.[43] According to a recent survey by the Pew Research Center, 33% of cell phone owners use their devices for audio playback.[44]

As with satellite radio, the growing popularity of using portable media players in automobiles has the potential to challenge terrestrial radio even more significantly for audience. Many vehicles' standard sound systems now have built-in capabilities to interface with various media devices.[45] Thus far, use of these interfaces has been limited to playback of downloaded audio content, but a significant portion of younger audiences would be "very interested" in listening to streaming internet audio through their car sound system.[46]

While Americans tend to be fiercely loyal to talk radio programs, a particular internet-based format—the "podcast"—may be eroding even this stalwart audience. Generally speaking, a podcast is "a series of digital media files (either audio or video) that are released episodically and often downloaded through web syndication."[47] A wide array of content producers distributes podcasts—from cabinetmakers[48] to nationally syndicated radio programs[49]—and U.S. audiences

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[42] *Id.*

[43] Press Release, ComScore, *M:Metrics: iPhone Hype Holds Up* (March 18, 2008), http://www.mmetrics.com/Press_Events/Press_Releases/2008/03/iPhone_Hype_Holds_Up (last visited July 7, 2010).

[44] *The Mobile App Goes Mainstream*, Inside Radio, July 8, 2010, at 1.

[45] *See, e.g.*, Rich Truesdell, *2007 Mobile Electronics Buyer's Guide: iPods, Alternatives, and Interfaces*, Motor Trend, Jan. 2007, http://www.motortrend.com/womt/112_0701_ipods_and_interfaces/index.html (noting that shortly after the introduction of Apple's first iPod, several automobile manufacturers quickly implemented interfaces with their vehicles' sound systems and that "since 2004 many more companies have come on-board").

[46] *Infinite Dial 2010*, at 26.

[47] http://en.wikipedia.org/wiki/Podcast

[48] *See, e.g.*, Logan Cabinet Shoppe – Podcast, http://logancabinetshoppe.weebly.com/podcast.html (last visited July 8, 2010)

[49] Several nationally syndicated hosts and programs that air on Clear Channel's stations, such as Sean Hannity and Rush Limbaugh, offer podcast versions of their programs for a fee. *See, e.g.*, Insider, The Sean Hannity Show,

are increasingly aware of and receptive to the format. Indeed, in 2006, only 22% of Americans aged 12 years and older had heard of podcasts, and only one in 10 had actually listened to one.[50] A survey conducted three years later shows that among the same population, 43% were aware of podcasting, and one in five had listened to a podcast.[51]

As suggested by the "very high" interest in listening to streaming internet audio in automobiles, internet radio remains a significant competitor to terrestrial radio. Edison Media Research and Arbitron recently found that approximately 70 million Americans over the age of 12 listen to internet radio on a monthly basis, up from 52 million in 2006.[52] Unlike satellite radio, internet radio does not normally require the purchase of new hardware; all that is needed is a computer (which most Americans already own) and access to a broadband internet connection, which is becoming increasingly ubiquitous.[53] Some internet radio sources direct users to the streaming broadcasts of local radio stations, but many others offer their own independent music programming. One service, "Pandora Internet Radio," even allows Internet users to create up to 100 of *their own* custom radio stations, based on selected songs or artists, and to share those stations with friends and other users.[54] Music is selected based on the user's personal choice of a

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http://www.hannity.com/insider (last visited July 9, 2010). Others, such as Democracy Now, offer free podcasts. *See*, *e.g.*, Democracy Now! Audio, http://www.democracynow.org/podcast.xml (last visited July 9, 2010).

[50] Tom Webster, *The Infinite Dial: The Podcast Audience Revealed: The Arbitron/Edison Internet and Multimedia Study 2006*, at 6-8, http://www.edisonresearch.com/The_Podcast_Consumer_Revealed_from_Edison_Media_Research.pdf (last visited July 7, 2010).

[51] Tom Webster, *The Podcast Consumer Revealed 2009: The Arbitron/Edison Internet and Multimedia Study*, at 7-9, http://www.edisonresearch.com/2009_Edison_Podcast_Consumer_Revealed.pdf (last visited July 7, 2010).

[52] *Infinite Dial 2010*, at 18.

[53] *See, e.g.*, American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2)(D), 123 Stat. 115, 516 (2009); *Connecting America: The National Broadband Plan*, 50 CR 1 (March 16, 2010).

[54] Pandora, Frequently Asked Questions, http://blog.pandora.com/faq/ (last visited July 5, 2010). Pandora is available in both a free, advertiser-supported format, and in a commercial-free, subscription format. Another service called "Last FM" offers similar capabilities to listeners. *See* Last.fm, Frequently Asked Questions, http://www.last.fm/help/faq (last visited July 5, 2010).

band, singer or song, and Pandora creates a new "radio station" that plays only songs with similar musicological characteristics.[55] In 2006, the sources of internet radio were evenly split between online streams of terrestrial radio stations and internet-only audio streams.[56] Today, however, internet radio audiences are less likely to "tune" to a terrestrial radio station's online stream than they are to seek out an independent online source of streaming content.[57]

At the same time that audiences witnessed an explosion in the number of unregulated media outlets vying for their attention, the broadcast and print media experienced significant financial setbacks that dampened their ability to compete with new sources of news, information, and entertainment programming. Over the past four years, the number of bankruptcy filings among broadcast and print media has increased sharply.[58] Moreover, broadcasters' ability to access credit markets has not improved since the financial meltdown of 2007,[59] which has starved many stations of the working capital they need to launch effective new platforms and services to compete with online media. Some broadcasters, such as Clear Channel, have launched new online services, such as the company's iheartradio.com streaming audio service, discussed below, but current market conditions may be preventing others from launching similar products.

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[55] Pandora stations can be listened to on computers, certain mobile phones, and a variety of networked consumer electronics. *See* http://www.pandora.com/on-the-go (mobile phones); http://www.pandora.com/in-the-home (networked consumer electronics).

[56] *Infinite Dial 2010*, at 24.

[57] *Id.*

[58] Examples of recent media bankruptcies include Tribune Company, *e.g.*, FCC File No. BAL-20081217AEU. Citadel Broadcasting Company, *e.g.*, BAL-20091222ABU, Freedom Communications, Inc., *e.g.*, FCC File No. BALCDT-20090908ACZ, Black Crow Radio , *e.g.* FCC File No. BALH-20100114ABQ, and NextMedia Group, Inc., FCC File No. BALH-20091221ADX.

[59] *See, e.g.*, *PricewaterhouseCoopers, Entertainment & Media M&A Insights: Analysis and Trends in US M&A Activity 2010* (2010) 1, http://http://www.pwc.com/us/en/transaction-services/publications/ts-insights/assets/ts_insights_em_us_2010.pdf (noting that in 2009, "[d]epressed economic conditions and challenging credit markets drove [entertainment and media] deal value and total volume to their lowest levels since 2004 and 2003, respectively"). *On Wall Street, New Doubt About Radio's Recovery*, Inside Radio, July 7, 2010.

In sum, terrestrial radio competes in a far more diverse and robust media environment than ever before. Yet, none of the new competitors to free, over-the-air radio broadcasting are constrained by government-imposed limits on the number of outlets that can be owned. Rather, all of these competing platforms are allowed to grow freely to meet marketplace demands. Giving terrestrial radio broadcasters equal treatment by eliminating the local radio ownership caps will enable the industry to remain competitive in the current, unsettled economy and in today's age of media abundance.

B. Common Ownership of Radio Stations Does Not Inhibit Competition.

As discussed above, radio broadcasters face enormous competition from other audio platforms in today's media environment, and it is clear that allowing greater levels of common ownership of radio stations will have little impact on competition in the aggregate. The same is also true within the radio broadcast industry itself. Indeed, the records of the Commission's prior regulatory reviews under the auspices of Section 202(h) have conclusively established that the consolidation in the radio industry that occurred following the 1996 Act had *no effect* on radio advertising rates, even in markets where two owners received 80% of the local radio advertising revenue.[60]

As Clear Channel previously demonstrated through the 2006 statement of Professor Jerry A. Hausman, radio is a differentiated product market—different stations broadcast different formats to attract different audiences.[61] Thus, coordinated behavior among owners is not a significant concern. Further, because of the differentiated nature of the radio advertising product, diverse advertisers will make independent business decisions on which stations to use to

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[60] *See* Comments of Clear Channel Communications, Inc., MB Docket No. 02-277, Ex. 1 at 4-5, (Jan. 2, 2003) ("*Clear Channel 2002 Comments*").

[61] *See Clear Channel 2006 Comments*, Ex. 2 at 5 (attached hereto as Appendix B) ("*2006 Hausman Statement*").

target audiences that are important to their businesses. As Professor Hausman has noted, this characteristic of the radio advertising market has a significant impact on any competition analysis, because anticompetitive concerns in a differentiated product market typically do not result from coordinated behavior. Put simply, two group radio owners in a local radio market cannot collude to raise advertising rates because they are not selling the same product to advertisers.[62]

The fleeting nature of a radio advertising spot provides a second guard against coordinated actions among group owners in a local radio market. A radio advertising spot is a perishable good—if it is not sold by air time, it "spoils" and loses all value. As air time approaches, a station owner has a strong incentive to discount the cost of unsold spots. Thus, the price of a radio spot is constantly in play and significant fluctuations in price are possible. As a practical matter, this makes coordinated behavior among radio station owners difficult, complex, and therefore unlikely to occur. In theory, increased market concentration in a particular format could give a group owner greater market power to control the price of identical "products." Yet, the record in prior proceedings contains data that empirically establish that increased concentration in a format does not impact advertising rates.[63]

Even in differentiated product markets, participants can exhibit anticompetitive behavior, especially where a single entity exerts power by cornering the market for all of the differentiated products. In this context, barriers to mobility are more important than barriers to entry,[64] and data have consistently shown two trends demonstrating that barriers to mobility do not exist in the radio industry. First, radio stations can change their formats with ease. And they do.

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[62] *Id*.

[63] *Id.* at 5-6.

[64] *Id.* at 7-9

According to recent data from BIA/Kelsey, between spring 2004 and winter 2010, 33.5% of the broadcast radio streams (including digital radio multicasts) in the U.S. changed formats at least once, and 11.4% changed formats more than once.[65] Second, as demonstrated in Professor Hausman's 2006 Statement, radio stations have high market share volatility.[66] Using the analytical methods outlined in Professor Hausman's 2006 Statement, the same is true today.[67] As shown in the following tables, over the course of a single year, a radio station is more likely to experience a large increase or decrease in market share than it is to experience a relatively constant share. The same holds true when market share is viewed over a two or three year period. Moreover, a comparison of the ratios in Table 1, which is reproduced from Professor Hausman's 2006 Statement, to the ratios in Table 2 shows that radio stations' market share is even more volatile today than it was in 2006. This further underscores the absence of barriers to mobility in local radio markets.

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[65] The rates of format changes were obtained through a review the following fields in the BIA/Kelsey Media Access Pro database: Format_2004_Spring, Format_2004_Fall, Format_2005_Spring, Format_2005_Fall, Format_2006_Spring, Format_2006_Fall, Format_2007_Spring, Format_2007_Fall, Format_2008_Spring, Format_2008_Summer, Format_2008_Fall, Format_2009_Winter, Format_2009_Spring, Format_2009_Summer, Format_2009_Fall, and Format_2010_Winter. For new stations or new HD Radio multicast streams, the first format choice (*i.e.*, a move from "nothing" to "something") was not counted as a change in format. For stations that temporarily ceased broadcasting between 2004 and 2009, however, both the move to silence and the resumption of operations (regardless of format) were counted as changes of format (*i.e.*, from "something" to "nothing" and then from "nothing" to "something").

[66] *2006 Hausman Statement*, at 7-9.

[67] *Id.* at 9, nn. 19-20. A June 25, 2010 search of BIA/Kelsey's Media Access Pro database yielded 5,749 radio stations with a reported average annual local commercial audience share ("LCS") for at least one year during the 2006-2009 timeframe. The one-year percentage change is (LCS_2009 – LCS_2008)/LCS_2008. The two-year percentage change is (LCS_2009 – LCS_2007)/LCS_2007. The three-year percentage change is (LCS_2009 – LCS_2006)/LCS_2006.

Table 1: Market Share Volatility in 2005

	One Year (2004-2005)	Two Years (2003-2005)	Three Years (2002-2005)
%ΔLCS ≤ -25%	17.8%	21.9%	25.7%
-25% < %ΔLCS ≤ -15%	10.2%	10.2%	9.7%
-15% < %ΔLCS ≤ -5%	15.6%	13.5%	12.5%
-5% < %ΔLCS ≤ 5%	19.0%	15.9%	13.1%
5% < %ΔLCS ≤ 15%	12.0%	10.7%	9.1%
15% < %ΔLCS ≤ 25%	7.3%	7.1%	7.0%
%ΔLCS > 25%	18.0%	20.8%	22.9%
Ratio of |%ΔLCS| > 25% to |%ΔLCS| < 5%	1.88	2.70	3.71

Table 2: Market Share Volatility in 2010

	One Year (2008-2009)	Two Years (2007-2009)	Three Years (2006-2009)
%ΔLCS ≤ -25%	20.0%	24.1%	28.0%
-25% < %ΔLCS ≤ -15%	8.9%	9.0%	9.1%
-15% < %ΔLCS ≤ -5%	14.1%	13.7%	11.3%
-5% < %ΔLCS ≤ 5%	18.6%	15.9%	12.2%
5% < %ΔLCS ≤ 15%	12.6%	10.3%	10.4%
15% < %ΔLCS ≤ 25%	8.7%	7.6%	7.4%
%ΔLCS > 25%	17.0%	19.5%	21.7%
Ratio of |%ΔLCS| > 25% to |%ΔLCS| < 5%	1.98	2.73	4.09

As noted above, radio broadcasters face continually expanding and evolving competition from essentially unregulated media platforms. While radio still plays an important role in today’s society, people no longer tune exclusively to radio broadcasts to obtain relevant and timely audio content. Instead, listeners choose content from vast personal libraries contained in small PMPs. They browse the internet for sites that offer streaming audio. They subscribe to podcasts or use new mobile broadband audio services, such as Pandora. Even in radio’s traditional sanctuary—the automobile—audience members either have satellite radio receivers or the capacity to play their PMPs or mobile devices over their car stereo. Moreover, the

Commission's current drive to promote mobile broadband connectivity will mean that streaming internet audio services may soon be available over automobile sound systems. A terrestrial radio station is merely one voice in the din of available audio content. Accordingly, an owner of a group of radio stations has little chance of being in a position to exert market power.

Even if a radio group owner attempted—or was able—to overcome the market's natural barriers to anticompetitive behavior, it would remain subject to government scrutiny and remediation under the federal antitrust regime as well as state unfair competition laws. As the Commission has previously acknowledged, "[t]he Department of Justice, the Federal Trade Commission, as well as state attorney[s] general[], review mergers generally and are concerned about the effects in the advertising market."[68] Merger review—whether under the Hart-Scott-Rodino Act or general Clayton Act authority—sufficiently protects against any isolated danger to competition in specific local markets. The federal merger review process is rigorous and ensures that mergers that require consideration receive a complete economic analysis. The governmental bodies primarily charged with antitrust and unfair competition enforcement—the DOJ, FTC, and

[68] *2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules*, 18 FCC Rcd 13620, 13753 (¶ 339) (2003) ("*2003 Order*"); *see Applications of Shareholders of CBS Corp. and Viacom, Inc.,* 15 FCC Rcd 8230, 8234 n.14, 8235 (¶¶ 12 n.14, ¶ 16) (2000) (noting that DOJ has examined the specific issue of concentration in program supply markets and thus declining to address the matter and suggesting that concerns regarding potential abuse of market power should be addressed not by the Commission but by antitrust authorities). In its discussion of the local television ownership rule, the Third Circuit found that the FTC/DOJ merger review process was not sufficient to guard against competitive harm because "the antitrust agencies typically review only large mergers," and because a large percentage of television station transactions fell below the threshold that renders a transaction reportable to federal antitrust authorities. *Prometheus*, 373 F.3d at 414 (citing 15 U.S.C. § 18a(a)). The Commission did not specifically address the sufficiency of the antitrust laws to guard against anticompetitive behavior in discussing the radio rules, nor did the Third Circuit. *See 2003 Order*, 18 FCC Rcd at 13711-47 (¶¶ 235-326); *Prometheus*, 373 F.3d at 431-35. Even if the Third Circuit's statement regarding antitrust enforcement and the local television ownership rule could be read to apply more broadly, the Third Circuit focused myopically upon pre-merger review pursuant to the Hart-Scott-Rodino Act. *Prometheus*, 373 F.3d at 414. As discussed in more detail below, federal and state antitrust statutes actually provide government regulators and private parties with a far greater range of tools to protect against anticompetitive effects. In addition, federal antitrust regulators can and do challenge mergers that fall below the Hart-Scott-Rodino Act thresholds. *See, e.g.,* News Release, Federal Trade Commission, *FTC Challenges Acquisitions by TALX Corp. that Stifled Competition in Unemployment Compensation Management and Employment Verification Services* (April 28, 2008), http://www.ftc.gov/opa/2008/04/talx.shtm (last visited July 9, 2010).

state attorneys general—frequently use the myriad powers at their disposal to obtain additional information from merging companies to ensure that their competition analysis is based on a fully developed record.

One of the tools available to reviewing agencies is Section 7 of the Clayton Act, which broadly prohibits mergers or acquisitions if the transaction's effect would be "substantially to lessen competition, or to tend to create a monopoly."[69] The FTC and DOJ have authority to enforce Section 7, and the statutory prohibition also "may be enforced through actions brought by private parties" and state attorneys general.[70] A transaction will be found to violate Section 7 whenever there exists a reasonable probability that competition will suffer.[71] The DOJ and FTC's authority, however, does not end with the consummation of a transaction, and the agencies may invoke enforcement authority to prevent competitors from exerting market power. Further, Section 7 can be invoked after a transaction is complete, and in such cases, the agencies can require divestiture.[72]

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[69] 15 U.S.C. § 18. This statutory prohibition applies outside of the traditional "merger" context to acquisitions of voting securities and assets, including licenses. *See* ABA Section of Antitrust Law, *Antitrust Law Developments* 319 (5th ed. 2002) ("*ABA Antitrust Law Developments*").

[70] *See id*. at 325; *see also* 15 U.S.C. § 26 (providing that any person "threatened [with] loss or damage by a violation of the antitrust laws" may obtain injunctive relief); 15 U.S.C. § 15(a) (authorizing any "person . . . injured in his business or property by reason of anything forbidden in the antitrust laws" to recover treble damages). States are "persons" within the meaning of the Clayton Act, and can therefore recover treble damages and costs, including reasonable attorneys fees, and can seek injunctive relief as well. *ABA Antitrust Law Developments* 325 n.66 (citing 15 U.S.C. § 15; *Hawaii v. Standard Oil Co.*, 405 U.S. 251 (1972); *California v. Am. Stores Co.*, 495 U.S. 271 (1990)). "State attorneys general can [also] represent" the people of their state as "parens patriae." *Id.* at 325 n.68 (citing 15 U.S.C. § 15c(a)(1)). State attorneys general have played a significant role in challenging mergers and acquisitions under Section 7, "usually in circumstances where the merger would allegedly lessen competition in local geographic markets in their states." *Id.* at 326.

[71] *E.g.*, *United States v. E.I. du Pont de Nemours & Co.*, 353 U.S. 586, 589 (1957); *see Brown Shoe Co. v. United States*, 370 U.S. 294, 323 (1962) ("Congress used the words 'may be substantially to lessen competition' to indicate that its concern was with probabilities, not certainties."); *see also, e.g.*, *United States v. Dairy Farmers of Am., Inc.*, 426 F.3d 850, 858 (6th Cir. 2005); *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 713 (D.C. Cir. 2001).

[72] *See*, *e.g.*, News Release, Federal Trade Commission, *FTC Intervenes in Lubrizol's Consummated Acquisition of Lockhart's Oxidate Assets*, (Feb. 26, 2009) http://www.ftc.gov/opa/2009/02/lubrizol.shtm (last visited July 7, 2010).

The Sherman Act stands as another statutory guard against anticompetitive behavior by owners of radio station groups. The Sherman Act provides for both criminal and civil sanctions and, like the Clayton Act, allows private parties to seek injunctive relief or damages. Section 1 of the Sherman Act prohibits any "contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce."[73] Section 2, which may be enforced by federal officials as well as private parties, prohibits the willful acquisition or maintenance of monopoly power.[74]

Section 5 of the Federal Trade Commission Act provides the FTC with regulatory powers that extend beyond its general powers to prohibit violations of the Sherman or Clayton Acts,[75] and the Supreme Court has held that the FTC may "define and proscribe an unfair competitive practice, even though the practice does not infringe either the letter or the spirit of the antitrust laws."[76] Finally, many state unfair competition laws provide state attorneys general with independent pre- and post-merger enforcement authority and allow private parties to bring actions to enforce the laws' constraints on anticompetitive behavior.[77]

Competition in the radio industry is fully and effectively safeguarded by the collective aegis of natural market forces, state unfair competition law, and federal antitrust law. As such, concerns about competition in local markets cannot form the basis of the Commission's regulation of radio ownership.

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[73] 15 U.S.C. § 1.

[74] 15 U.S.C. § 2.

[75] 15 U.S.C. § 45.

[76] *FTC v. Sperry & Hutchinson Cp.*, 405 U.S. 233, 239 (1972).

[77] *See ABA Antitrust Law Developments* 810-11 ("Today, every state has an antitrust statute of one sort or another, as do the District of Columbia, Puerto Rico, and the Virgin Islands.").

C. **<u>Common Ownership of Radio Stations Increases Diversity and Consumer Choice.</u>**

1. Market Dynamics Prevent Group Owners from Foisting Monolithic Viewpoints and Programming Choices on Listeners.

Although it may seem counterintuitive, common ownership of radio stations in a single market increases programming diversity. In order to succeed, group owners must appeal to as many segments of the listening audience as possible, and they must be hyper-responsive to the particular needs, interests, and preferences of the local areas they serve. Programming all of its stations—either locally or nationally—to advance a particular viewpoint or to air a particular type of content is simply not a rational option for a group owner. Thus, greater levels of common ownership create efficiencies and economies of scale that provide group owners with natural incentives to *increase* diversity of content.

As shown by Professor Hausman's 2006 Statement, discussed above, empirical analysis bears out the reality that increased levels of common ownership result in increased program variety.[78] Professor Hausman employed an econometric model using a fixed effects regression and data from 243 Arbitron metro markets between 1993 and 2006.[79] This analysis demonstrates that format diversity increased significantly during this period, with the average number of formats increasing between 1993 and 2001—the time during which transaction volume was the heaviest--from 11.5 to 16.7, or by more than 45%.[80] Moreover, Professor Hausman found that 25% of the increase in format diversity that occurred between 1993 and 2001 can be directly attributed to increased levels of common ownership.[81] Despite its decision to retain the local

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[78] *See Hausman October 2006 Statement* at 2-4.

[79] The study included observations for a number of points within this period, including 1993, 1997, 2001, and 2006. *See id.* at 3.

[80] *See id.* at 4 & Table 1.

[81] *See id.*

ownership rule in the *2008 Order*, the Commission went to some lengths to note that increased group ownership in a local radio market did not harm format diversity: "If anything, the market level analysis suggests that more concentrated markets have fewer stations with the same format categories, and therefore more format diversity."[82]

2. Clear Channel Consistently Takes Significant Efforts to Promote Format Diversity.

Clear Channel's real-world experience also demonstrates that group owners have natural incentives to counter-program their stations and that the efficiencies and economies associated with higher levels of common ownership result in increased diversity.[83] For example, Clear Channel has become a pioneer in foreign language programming, introducing new formats—such as La Preciosa, Hurban, Mega, Viva, and Reggaeton—which did not previously exist in the U.S. terrestrial radio market. Clear Channel is also a leader in political talk radio and airs programs that run the gamut of political viewpoints—from Democracy Now and shows hosted by Ed Schultz and Stephanie Miller on the left to Rush Limbaugh, Glenn Beck, and Sean Hannity on the right. Clear Channel also carries inspirational programming, such as the John Hanna Morning Show, which is aired by WGRB(AM), Chicago, Illinois.

Clear Channel stations are frequently recognized by industry groups as offering outstanding talent and programming to listeners. Most recently, Clear Channel's WMSI(FM), Jackson, Mississippi, and WRVA(AM), Richmond, Virginia, won 2010 National Edward R. Murrow Awards, which are presented by the Radio Television Digital News Association for

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[82] *2008 Order*, 23 FCC Rcd 2077, n. 404.

[83] It is important to note that Clear Channel corporate management plays no role in determining the content of either news and public affairs programming—which is most closely aligned with the FCC's traditional "viewpoint diversity" concern—or the songs that are played on its stations. Clear Channel's local managers make their own decisions about programming and community events based on extensive audience research conducted at the local level.

excellence in electronic journalism.[84] In addition, Clear Channel has received numerous industry, national, and regional awards that stand as a testament to its stations' commitment of providing varied and locally responsive programming.[85]

As to supposedly "overlapping" formats, even formats that are supposedly related, or even formats that are subsets of a larger format, attract audiences with different demographic features. Among country music audiences, it is obvious that a station airing music from artists like Patsy Cline should be treated as a different format as one that broadcasts songs by artists like Faith Hill. Such stations would attract different audiences. Likewise, stations within the "Lite A/C," "Urban A/C," "Hot A/C," and "Mainstream A/C" formats all strive to capture the attention of adult contemporary listeners. Accordingly, they all air substantially different programming. *All* of Clear Channel's stations—even those that air the "same" format—are programmed independently, based on extensive audience research at the local level. As a result, a "Lite FM" station in Chicago may sound very different from a "Lite FM" station in another market. Moreover, within a meta-category of listeners and formats—such as the various "A/C" formats discussed above—some listeners may want to listen to different sub-formats within different dayparts (for example, some listeners prefer "Lite A/C" for their morning commutes to work but "Urban A/C" for their drives home). Thus, the subdivision of meta-formats into more narrowly targeted sub-formats merely serves to demonstrate that radio broadcasters are responding to specific audience demands by diversifying format options in order to maximize their reach. The result of this dialog between audiences and broadcasters is an abundance of format diversity that is freely available over the air.

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[84] 2010 National Edward R. Murrow Award Winners, http://www.rtdna.org/pages/media_items/2010-national-edward-r.-murrow-award-winners1961.php?id=1961 (last visited July 9, 2010).

[85] A partial list of awards that Clear Channel has received since 2007 is attached as Appendix B.

In addition to increasing the variety of the audio content that its stations broadcast, Clear Channel continues to take significant steps to promote new artists. Each week, Clear Channel's stations broadcast more than 200 long format programs—nearly two-thirds of which are locally originated—that are dedicated to featuring new artists. Audiences in most markets that Clear Channel serves can hear these "new music" programs. As a result, each week, Clear Channel provides up and coming artists with more than 250 hours of air time across its stations. For example, for more than 10 years, audiences in and around the nation's capitol have been able to tune to WWDC(FM)'s weekly "Local Lix" show to hear music from local bands. Similarly, audiences in Denver, Colorado have been tuning to KTCL(FM)'s "Locals Only" show for more than 30 years to hear the best of local bands.

Clear Channel's "NEW!" is an online and on-air platform that promotes new artists in seven formats (Hit (Pop), Rock, Alternative, Country, Hip-Hop/R&B, Adult and Latin). Artists submit their material through an online portal, iheartradio.com. If selected, artists will receive national attention on a variety of platforms, including more than 350 terrestrial radio stations, online streaming through station websites, and Clear Channel's applications for Apple's iPhone and RIM's Blackberry devices.[86] To date, iheartradio.com has received submissions from 45,000 new artists.

Clear Channel has also devoted significant resources to increase the diversity of its free, over-the-air programming by investing in high-definition digital ("HD") radio, which has simultaneously improved sound quality while increasing programming variety through digital multicasting. Currently, 370 Clear Channel stations in over 100 markets are broadcasting HD radio multicast streams, and many of these additional multicast channels bring entirely new

[86] Frequently Asked Questions, iheartradio.com, http://www.iheartradio.com/new2/discover/faq.html (last visited July 11, 2010).

music or spoken-word programming to local listeners. Clear Channel's receipt of one of the National Association of Broadcasters' first HD Radio Multicast Awards for station KBCO-FM, Denver, Colorado, is a testament to the company's leadership in digital multicasting.[87]

D. Common Ownership of Radio Stations Enhances—Not Diminishes-- Localism.

1. The Commission has repeatedly found that common ownership does not inhibit localism.

Before 2003, the Commission attempted to justify its local radio ownership rules, in part, on concerns about "localism," but in its *2003 Order*, the Commission reversed course and noted that the local radio ownership rule does not further this interest. Specifically, the Commission found "little to indicate that the local radio ownership rule significantly advances our interest in localism"[88] but noted that there was insufficient evidence that a relaxation of the rule would promote localism.[89]

In its next review of the local radio ownership rules in 2006, the Commission once again expressly found that the record in that proceeding "does not show that consolidation in local markets has harmed localism."[90] While the Commission equivocated on whether common ownership enhanced localism in its *2003 Order*, it virtually ignored the question in its *2008 Order* by consigning its treatment of the issue to a footnote. Nevertheless, it is worth noting that, while the Commission's *2003 Order* allegedly found little evidence that common ownership enhances localism, in its *2008 Order*, the Commission made a passing reference to one of its media ownership studies, which "provided some evidence" of the localism-enhancing benefits of common ownership. In a footnote, the Commission described the study's findings, which

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[87] *See* Appendix A.

[88] *2003 Order*, 18 FCC Rcd at 13738 (¶ 304).

[89] *2003 Order*, 18 FCC Rcd at 13738 (¶ 304), 13742 (¶ 314).

demonstrated that increased levels of common ownership resulted in a statistically significant increase in the expected amount of public affairs programming aired by group owners.[91] Accordingly, within the context of localism, the Commission "conclude[d] that there are at least some economies of scope [arising from common ownership] that continue to benefit the radio marketplace."[92]

Despite the Commission's equivocation in the *2003 Order* and its side-step in the *2008 Order*, the collective experiences of group owners, such as Clear Channel, coupled with abundant empirical evidence, demonstrate that, as with diversity, increased levels of common ownership would enhance localism. The natural incentives that are inherent in group ownership in general, and particularly in the highly fragmented media marketplace within which terrestrial radio competes, encourage broadcasters to be sensitive to local needs. Indeed, the vast majority of radio stations are owned by dedicated operating companies who *must* meet the needs of local listeners if they are to achieve success by attracting and retaining listeners in the competitive media world. As discussed above, the Commission's conclusions regarding the benefits to localism and diversity that arise from common ownership are consistent with the agency's prior statements as well as with the findings of a broad range of empirical and academic studies, which span as far back as 1952 and continue to the present, and many of which have been previously cited by the FCC.[93]

(Continued . . .)
[90] *2008 Order*, 23 FCC Rcd at 2076 (¶ 126).

[91] *2008 Order*, 23 FCC Rcd at 2076, n. 397.

[92] *Id.*

[93] *E.g.*, *Cross-Ownership of Broadcast Stations and Newspapers:Newspaper/Radio Cross-Ownership Waiver Policy*, 16 FCC Rcd 17283, 17291 (¶ 17) (2001); *Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules*, 10 FCC Rcd 3524, 3550-51 (¶ 63) (1995).

2. Clear Channel stations demonstrate that, to remain competitive, radio broadcasters must satisfy local radio audiences' demands for increased amounts of local programming and services.

Clear Channel's focus on local programming and local service also exemplifies the benefits that flow from allowing increased levels of common ownership. As explained further below, Clear Channel is deeply committed to serving the public by identifying issues of importance to its listeners and their distinct local tastes, and by responding with broadcasts of locally-focused and locally-tailored programming, as well as participation in local communities.

Because of the economic and operational efficiencies associated with group ownership, Clear Channel is able to commit very substantial resources to providing local news and other locally oriented programming. As it has extensively described in the localism docket,[94] and as explained below, Clear Channel is fundamentally committed to providing meaningful and important services that are tailored to the communities which its stations serve. After identifying issues of local importance to its audiences, Clear Channel responds on the air with locally-focused programming and off the air by actively participating in local communities.

In April 2009, Clear Channel announced five new policies that marked a significant strengthening of the company's longstanding commitment to full engagement with local communities. These new additions built on a broad array of audience engagement programs that were already in place at many of Clear Channel's stations. First, Clear Channel expanded its Local Advisory Board ("LAB") program to establish a LAB in every market that its stations serve.[95] The LABs ensure that stations remain responsive to community needs and concerns by periodically convening meetings between station managers, local leaders, business owners,

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[94] *See generally* Comments of Clear Channel Communications, Inc., MB Docket No. 04-233 (Apr. 28, 2008).

[95] Press Release, Clear Channel, *Clear Channel Radio Launches Unparalleled Support for Local Communities* (April 15, 2009), http://www.clearchannel.com/Radio/PressRelease.aspx?PressReleaseID=2395&KeyWord=local+advisory+board

listeners and advocacy groups. Second, Clear Channel also announced new Public Service Announcement ("PSA") requirements for each of its stations. In addition to airing the PSAs associated with Clear Channel's existing national campaigns, the company now requires each of its stations to invite local leaders and community organizations to submit PSAs for broadcast. In addition, under the new policy, Clear Channel stations air a minimum of 12 minutes of PSAs each day (84 minutes per week) spread throughout all dayparts.[96] Third, Clear Channel also broadened the reach of its local, regional, and national charitable partnerships. Fourth, Clear Channel also expanded and improved its local public affairs programming in an effort to generate more community interest. In its new approach to local affairs programming, Clear Channel stations are producing short local segments—ranging from 60 seconds to 5 minutes—that air throughout the week. Clear Channel has long led the industry in both the quantity and breadth of community-service programs, and it firmly believes that the best radio is locally focused radio, and a part of the company's expansion of local programming includes the addition of programs devoted to local musicians and the expansion of Clear Channel's highly acclaimed "NEW!" program for new, local unsigned artists through the launch of "iheartradio" applications for several mobile devices.[97] Finally, Clear Channel announced that it was undertaking an effort to ensure that its stations were available 24/7 to local officials with emergency contact information for three layers of station management.[98]

As noted elsewhere in its comments, because of its size, Clear Channel is able to leverage the efficiencies and economies of scale associated with group ownership to bear on issues of

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("*LAB Press Release*").

[96] *Id.*

[97] *See supra*, Section II(C)(2).

[98] *LAB Press Release*.

local importance. Specifically, Clear Channel's newsgathering and local affairs programming efforts are supported by more than 850 news/weather/sports/traffic personnel. As a result, each of Clear Channel's stations—not just those with a news/talk format—is able to broadcast news and information that is relevant to local communities, and Clear Channel stations broadcast a significant number of local affairs programs, such the weekly "Community Focus" program broadcast by WRNO(FM), New Orleans, Louisiana. In Bismarck, North Dakota, Clear Channel's KBMR(AM) broadcasts several locally-produced programs, such as Al Gustin's "Spotlight on Agriculture" and "Market Talk." Audiences in the Dallas-Fort Worth, Texas, market can tune to any of Clear Channel's stations to hear its weekly local affairs program, "Sunday Morning Magazine." These programs in New Orleans, Bismarck, and Dallas are only a few examples from the many local affairs programs that Clear Channel stations broadcast throughout the nation.

Numbers, however, are not stand-ins for quality, and Clear Channel stations are routinely recognized by leading journalism organizations for their excellent news coverage. For example, Clear Channel's WRVA(AM), Richmond, Virginia, recently won a coveted National Edward R. Murrow Award for its breaking news coverage of a shooting at the Virginia Randolph Community High School.[99] Upon learning of the shooting, the station immediately sent a reporter to the scene to provide live coverage of the incident and, through interviews with school personnel and police information officers, provided listeners—including students' parents—with key information about the emergency situation at the school.[100]

In addition to providing breaking news coverage of emergent events, Clear Channel stations are active participants in their communities. For example, following a record flood of

[99] http://www.rtdna.org/pages/media_items/2010-national-edward-r.-murrow-award-winners1961.php?id=1961

Tennessee's Cumberland River in May 2010, Clear Channel's WLAC(AM), WNRQ(FM), WRVW(FM), WSIX-FM, and WUBT(FM) sponsored a "Radiothon" to raise funds for the Tennessee Emergency Response Fund of the Community Foundation. In addition to providing the on- and off-air facilities for the fundraiser, Clear Channel kicked off the event by matching, dollar-for-dollar, the first $10,000 pledged by listeners. By the end of the Radiothon, Clear Channel's listeners had pledged more than $200,000 for the flood victims in middle Tennessee and southern Kentucky. And, in November 2009, Clear Channel's Hawaii station group raised $155,000 in four hours for typhoon and tsunami relief efforts.

Through input from its various LABs, Clear Channel has expanded its local commitment beyond fundraising. One of the members of Clear Channel's Albany, NY LAB told station management that the community was in dire need of foster parents and that, given the current economy, it was difficult to built interest among potential foster parents. At the LAB member's request, Clear Channel Albany aired PSAs on all of its stations to promote an upcoming orientation session for prospective foster parents. All of the 31 attendees told the organizers that they learned about the event through Clear Channel's radio stations.

Clear Channel's experience in Macon, Georgia is further proof that sometimes the simplest acts can have profound effects. During a LAB meeting, station managers learned a surprising fact from the members who were educators: many area students miss the first week of the academic year because many students and parents are simply unaware of the date that school resumes following the summer break. As a result, up to two weeks of school are wasted as teachers wait for the majority of their classes' seats to fill. In addition, Clear Channel learned that many students and parents are unaware of other key dates—such as for standardized tests,

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[100] http://contests.rtdna.org/entries/public_view/603

report card distribution, and the start of the second semester. After discussing the issue in a LAB meeting, Clear Channel's stations in Macon decided to devote significant air time to help area school systems disseminate this important information to students and parents. Given the power of the simple PSA, there are doubtlessly similar examples from each community that Clear Channel serves. Indeed, since the beginning of this year, Clear Channel has aired 3.8 million PSAs. On a per-station basis, this means that the average Clear Channel station has already aired 4,579 PSAs so far this year. Even if only a fraction of these PSAs are as effective as those in Albany or as targeted as those in Macon, Clear Channel is using its broadcast licenses to the demonstrable benefit of the communities its stations serve.

Clear Channel's size also enables it to undertake projects that are beyond the scope of a single station—or even a group of stations in a single market. For example, in February 2010, Clear Channel stations in 29 markets broadcast a coordinated, two-day event for the St. Jude's Children's Hospital that raised $2.9 million. Countless individual radio stations have raised money to send food, water, and medical supplies to Haiti following the recent earthquake, but Clear Channel stations in 28 markets helped to raise $66 million for earthquake relief through the January 22, 2010 audio broadcast of MTV's Hope for Haiti Telethon on January 22, 2010. Clear Channel has embarked on a national campaign to raise awareness of HIV and AIDS and to promote the June 26 National HIV Testing Day. Part of this campaign included a 30-minute educational program hosted by nationally renowned radio personality, Steve Harvey. In the weeks prior to the National HIV Testing Day, Clear Channel stations in more than 60 markets aired the program and provided information about where listeners could receive free HIV tests.

In sum, technological advances and marketplace developments have rendered the local radio ownership rules' underlying policy justifications—the triad of promoting competition, diversity and localism—mere shibboleth. Accordingly, it is now time for the Commission to retire its numerical limits on local radio ownership.

III. <u>AT THE VERY LEAST, THE COMMISSION SHOULD MODIFY ITS CURRENT OWNERSHIP LIMITS TO ADDRESS THE TRANSFORMATION OF THE MEDIA LANDSCAPE THAT HAS TAKEN PLACE SINCE CONGRESS SET THE CURRENT LIMITS IN 1996.</u>

The current numerical limits on local radio station ownership were adopted in 1996. In the fourteen years since, the media—and specifically the audio—marketplace has transformed dramatically.[101] The growth in the number and diversity of ownership of radio stations alone, coupled with the exponentially increasing popularity and ubiquity of new audio platforms, has exploded since 1996 and has become more pronounced even since the Commission's last quadrennial review in 2006. Section II(A) above establishes that in the media marketplace of 2010 and beyond, there is no need for any limits whatsoever on common ownership of terrestrial radio broadcast stations. But even were the Commission nonetheless to determine that local radio ownership limits should be retained in some form, the overwhelming evidence of a transformed audio market and sharply increasing competitive pressures on radio broadcasters compels the Commission to modify those limits to reflect reality.

A. <u>Higher Levels of Common Ownership Should Be Permitted in the Nation's Largest Radio Markets.</u>

Radio broadcasters operate in a marketplace where a satellite radio competitor offers 300 channels of audio into even the smallest market, where thousands of audio offerings are downloaded and heard on demand by users of iPods, PMPs, iPhones and smartphones, and where internet streaming of countless more (and customizable) offerings is strongly challenging

[101] *See supra* Section II(A).

terrestrial radio for listeners' ears. In this incredibly diverse audio environment, it seems absurd that antiquated government rules should limit terrestrial radio broadcasters to eight, ten, or even twelve stations in a market. Should the Commission conclude that any limits at all remain necessary, however, the creation of two new ownership tiers in the largest markets would create sorely-needed relief for broadcasters, even while representing an exceedingly small piece of the deregulation that the 21st-century media ecosystem warrants.

The Commission should modify the rules to permit increased common ownership of radio stations in the markets with the largest numbers of stations. Specifically, the Commission should create two new ownership "tiers." It should increase from eight to ten the number of stations a single entity may own in markets with between 55 and 64 stations, and from eight to twelve the number of stations that a single entity may own in markets with 65 or more stations.

In terms of radio station market concentration as a numerical percentage, the effect of the proposed additional ownership tiers would be so granular as to be virtually non-existent. Under the current ownership limits, a single entity may own up to eight radio stations in a market of 45 stations, or 17.7%. Under the new ownership tiers suggested above, an entity would own, at most, 18.2% (10/55) of the stations in a 55-64 station market, and 18.5% (12/65) of the stations in a market with 65 stations or more. Thus, the new ownership tiers would result in a *less than one percent change*, expressed as a maximum percentage of market stations held by a single owner, over what exists now. Moreover, the proposed ownership tiers would still be less concentrated than smaller radio markets—in a market with 15 to 29 radio stations, an owner of six stations could own between 21% and 40% of the stations in that market. No wonder that, in the course of the 2006 quadrennial review, a member of Congress described the relief afforded by additional ownership tiers as "embarrassingly modest."[102]

Moreover, new ownership tiers would have very limited nationwide impact. As shown in the chart attached as Appendix C hereto, the additional ownership tiers proposed herein would affect only 28 radio markets. The 10 commonly owned/55-64 total station tier would apply to twelve markets, and the 12/65 or over tier would apply to sixteen. A rule modification applicable to 28, or 9.3%, of the country's 300 radio markets, would once again constitute "embarrassingly modest" relief.

Yet such relief, despite its small degree and scope, would come as an immense boost to terrestrial radio broadcasters. First, the increased ownership tiers proposed above would assist broadcasters in large markets, where the need for help may well be most acute. By definition, the markets affected by the additional tiers are the markets where the number of competing radio stations is greatest. Beyond this, the affected markets will mainly be the nation's most populous and most cosmopolitan cities. Those markets can be expected to be the ones with the most ubiquitous broadband access and larger numbers of persons with computer hardware and mobile devices to receive and use competing audio platforms. They will also be the markets with the greatest presence of minority populations, which rely particularly heavily on mobile devices for entertainment and information. A recent analysis by the Commission's Omnibus Broadband Initiative, for example, found that "[m]ovement of Internet-related social innovation to mobile devices disproportionately reaches African Americans and Hispanics, a higher proportion of whom use mobile devices for Internet activity relative to other groups."[103]

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[102] Remarks of Hon. Fred Upton before The Media Institute, Feb. 16, 2006, at 10 (cited in Clear Channel 2006 Review Comments at 56 n. 167).

[103] OBI Technical Paper No. 3, "Spectrum Analysis: Options for Broadcast Spectrum," at 10 (June 2010).

In short, the largest markets are the markets where competitive pressures on terrestrial radio broadcasters are most intense, and where stations are facing particularly significant financial struggles. Smaller radio markets have continued to outperform larger markets. Industry analysis from January 2010 indicated that small radio markets had outpaced large markets in 32 of the last 34 months and that, in the four years from 2005 to 2009, the average large market declined in revenue twice as far as the average small market.[104] Additional ownership tiers, therefore, would benefit the large radio markets where struggles are particularly acute.

However, the benefits of allowing greater levels of common ownership in the country's largest radio markets would not necessarily be limited to station clusters located in those markets. Rather, an owner would be able to allocate the economies and efficiencies that flow from increased group ownership in the larger markets to its stations in other markets that required the most help, based on internal business needs. In some cases, such stations might well be ones that fall outside of the larger markets. Some stations in mid-sized and smaller markets might have fewer resources available for important programming, such as local news and public affairs, and new technologies to enhance and increase programming offerings such as digital multicasting and format experimentation, than their large-market counterparts. Thus, a decision to modify the local radio caps in large radio markets has the potential to provide important public interest benefits across the entire radio industry and to all American radio listeners.

Perhaps just as importantly, at least in the short term, modifying the local radio ownership limits to permit increased common ownership of stations in the largest markets promises a desperately needed stimulation of transactions and capital for the terrestrial radio

[104] *See* J. Boyle, "The Sun Finally Peeks Out—December Revenue Up 2%," *Inside Radio*, Jan. 19, 2010. *See also* "In Radio These Days, Small Is Better," *Wall Street Journal*, Jun. 15, 2009 (reporting BIA data indicating that small

industry. It is no secret that, during the period of time almost since the conclusion of the Commission's last quadrennial review, the buzzwords for the radio broadcasting industry have been "bankruptcy," "restructuring" and "workout" rather than "growth" and "investment." The 2007 financial meltdown and subsequent ongoing recession, coupled with continued erosion of terrestrial radio listenership by new platforms that has resulted in decreased advertising revenues, has virtually frozen out radio broadcasters from new sources of capital. Radio companies have eschewed growth plans and instead have hunkered down to stay intact and meet financial covenants to their lenders. As noted above, many have not been successful. From large-market radio broadcasters (Citadel—just emerged from bankrutpcy; Tribune—in bankruptcy) to regional and ethnic-focused owners (Black Crow—in bankruptcy; New Northwest—in receivership; Border Media—in workout trust for the benefit of creditors; Bustos Media—being acquired by lenders), the list of radio owners that are undergoing or have undergone court-supervised bankruptcy or receivership proceedings or voluntary restructurings/workouts goes on and on. Many radio group owners that have been fortunate enough to avoid such processes have nonetheless abandoned acquisition and growth mode. Clear Channel itself has gone from publicly traded to privately held, and owns roughly 300 fewer radio stations than it did in 2006.

The terrestrial radio broadcast industry is in dire need of an economic jumpstart. A regulatory change to allow increased common ownership in large radio markets, while modest in degree and scope, would go far toward providing that jumpstart. Easing the local radio ownership limits, at least in the largest markets, will recapture investors' interest in radio broadcast companies. It will also stimulate the long-dormant market for radio station transactions. And with the return of capital that would be facilitated by even modest relaxation

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market stations are just about the only area of the radio industry performing positively in the current environment).

of the local ownership caps, radio broadcasters will be able to devote additional resources to programming, including increased and enhanced local news and public affairs and more diverse offerings of music and entertainment.

As demonstrated in Section II above, and by the record compiled in this and past regulatory reviews, free, over-the-air radio provides immense public interest benefits. It must be allowed to continue to as a vibrant participant in the contemporary media marketplace. In light of the increasing competitive pressures and current economic difficulty facing radio broadcasters, a modest relaxation of ownership regulation is the very minimum the Commission is compelled to afford in light of current marketplace conditions. If the Commission decides, despite the overwhelming evidence to the contrary, that radio ownership limits should remain in some form, it should at least relax those limits by allowing ownership of ten radio stations in markets of from 55 to 64 total stations, and up to twelve radio stations in markets of 65 stations and above. Such a relaxation, as explained above, is exceedingly modest in nature and effect, yet would provide vast relief to the radio industry both in large markets (where competitive pressures are the highest) and across the board.

B. The Commission Should Eliminate the Anachronistic AM/FM "Subcaps"

As an additional, or at least alternative, measure of deregulatory relief, the Commission should act in this review to eliminate the "subcaps" that impose separate limits on the number of stations in the same service (AM or FM) that a company may own in a local radio market. Having been faulted by the courts for a failure to adequately justify the subcaps in its 2002 biennial review, and having compounded that failure in its 2006 quadrennial review, the Commission must take the opportunity of this new quadrennial review to recognize that the AM/FM subcaps are unsustainable, and eliminate them.

In the 2002 biennial review, the Commission affirmed the AM/FM subcaps based on the purportedly "significant technical and marketplace differences between AM and FM stations."[105] On review, however, the U.S. Court of Appeals for the Third Circuit found that the FCC had not adequately supported its decision and had completely failed to explain "why it is necessary to impose an AM subcap at all."[106] Nevertheless, in the 2006 quadrennial review, the Commission once more chose to retain the subcaps. It relied once again on purported technical and marketplace differences between AM and FM stations, and it simply accepted at face value the arguments of the two commenters (out of over one hundred thousand) who urged retention of the subcaps.[107] The Commission not only failed to cite or provide any actual evidence of technical inferiority or of marketplace differences, it affirmatively ignored record evidence undermining the subcaps' primary policy justifications.[108]

In this 2010 quadrennial review, the Commission can no longer ignore the overwhelming evidence that undermines its original justification for the AM/FM subcaps. The facts demonstrate that AM stations are strong competitors in local radio markets across the country, and AM stations have more means to overcome their perceived signal inferiority than they did even in 2006. It is quite plain: the subcaps were unsustainable two reviews ago, and are even more so now. They cannot legally survive as an aspect of any local radio ownership rule.

Appendix D to these Comments is a study prepared for this proceeding by Dr. Mark Fratrik of BIA/Kelsey. Dr. Fratrik's report (the "Fratrik Study") provides empirical findings that

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[105] *2003 Order*, 18 FCC Rcd at 13733.

[106] *Prometheus*, 373 F.3d at 434-35.

[107] *2008 Order*, 23 FCC Rcd at 2079-80 (¶¶ 133-34).

[108] Clear Channel has appealed the *2008 Order* to the Third Circuit in light of the Commission's unlawful failure, in its 2006 quadrennial review, to adequately review and adopt the proposals to eliminate the AM/FM subcaps and to establish two additional ownership tiers in large markets. *See Brief of Clear Channel Communications, Inc. in Prometheus Radio Project v. FCC,* Nos. 08-3078 *et al.* (3d Cir. May 17, 2010).

undercut the notion that AM stations are weak competitors in their radio markets. To the contrary, Dr. Fratrik examines the 2009 audience shares of all AM stations located in all 300 Arbitron Metro markets. He finds that 187 AM stations ranked in the top five in their local markets in terms of audience share across the entire day. In 37 markets an AM station was the top-ranked station; in 35 markets an AM station was second; and in 41 markets an AM station was third. In San Francisco, CA, four AM stations are ranked in the top five, and in Chicago, the top three stations in terms of all-day audience share were AM stations. The strong ratings performance of AM stations, moreover, was not limited to large markets. Dr. Fratrik notes, for example, that AM stations are number one in audience share in Medford, OR (market #208), Fargo-Moorhead, ND/MN (market #215), and Champaign, IL (market #217).

Dr. Fratrik finds a similar trend when examining station revenue. In eleven radio markets, the total revenue share of AM stations is 30% or higher. In another 24 markets, combined AM station revenue is between 25% and 30%, and in another 44 markets, it is between 20% and 25%. Like audience shares, strong revenue performances by AM stations cut across all markets. AM stations exceed 30% in revenue in markets as large as New York and Chicago, and as small as Kalispell-Flathead Valley, MT (market #262), Battle Creek, MI (#265), and Bismarck, ND (#282).

One of the Commission's standing justifications for retention of the subcaps is the supposed "inferiority" of AM stations' technical characteristics and signal quality to those of their FM counterparts.[109] That conclusion simply cannot hold today. The Fratrik Study notes, for example, that 870 AM radio stations nationwide reach over one million persons with their daytime 2 mV/m contours, and 130 of those stations reach 5 million people or more. In contrast,

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[109] *See 2003 Order*, 18 FCC Rcd at 13733-34.

only 810 FM stations reach one million or more people, and only 64 reach five million or more. The ability of so many AM stations to reach large populations with their signals, concludes Dr. Fratrik, is a primary reason that so many AM stations can attract large audiences.

Moreover, if ever there was validity to the Commission's 2003 and 2008 suppositions that AM stations are technically inferior to their FM brethren, that validity has been destroyed by technical advances in subsequent years. Even more so now than four years ago, developments in technology and regulation have provided means for AM stations to improve their signals and compensate for any technical inferiority to FM stations.

First of all, Clear Channel has observed in prior media ownership rule reviews that the introduction of terrestrial digital audio broadcasting ("DAB") using in-band, on-channel ("IBOC") technology would carry the promise of virtually eliminating present limitations on AM signal quality. In the 2002 biennial review, IBOC DAB was just a promise; in the 2006 quadrennial review, it was in its nascent stages. Now, IBOC DAB has become a reality, for AM stations as well as FM stations. The Fratrik Study finds that 455 AM stations have obtained a Commission license to transmit an IBOC DAB signal using HD Radio™ technology, and 322 of those stations are already transmitting an HD Radio™ signal. Dr. Fratrik finds that IBOC DAB deployment by AM stations is, again, not limited to large and medium markets. There are 29 AM HD Radio™ stations in unranked areas, with another 41 in markets ranked #101 and above. Terrestrial DAB has, as promised, become widely utilized by AM stations to improve signal fidelity, and that use will only continue to grow.

HD Radio™ technology has, moreover, facilitated a second means for AM stations to improve their technical quality and reach. Specifically, a number of AM stations are accomplishing these objectives by simulcasting on an HD Radio™ multicast channel of a commonly owned FM station. The Fratrik Study finds that 72 AM stations are currently doing so. Thus, IBOC DAB technology has provided both direct and indirect opportunities for AM stations to improve in terms of technical quality and reach. As Dr. Fratrik notes, simulcasting an AM station on an FM multicast channel is a particularly good solution for AM stations that must lower power during nighttime hours.

Another means by which AM stations can now overcome signal limitations did not exist in 2006, but is now possible due to a regulatory change. In 2007, the Commission adopted a notice of proposed rulemaking to allow the use of FM translators by AM stations, and thereafter began authorizing such use by special temporary authority in certain cases. In 2009, the Commission formally adopted rules that permit AM stations to use authorized FM translators to rebroadcast their signals within their 2 mV/m daytime contours (or 25 miles, whichever is smaller) and which allow Class D daytime AM stations to originate programming on such FM translators at night.[110] As the Fratrik Study finds, 72 AM stations have thus far received permission to utilize FM translators within their coverage areas. The ability of AM stations to use FM translators to fill in signal deficiencies—an ability that did not exist at the time of the Commission's prior quadrennial reviews—is yet another mechanism whereby AM stations can overcome any deficiencies in signal quality and reach.

Dr. Fratrik also notes that as more and more people access audio through the internet, more radio stations are streaming their programming. The Fratrik Study finds that as of the end of June 2009, 1,931 AM radio stations were streaming their programming on the internet. This is a particularly effective way for AM stations to reach listeners who may be impeded from receiving the broadcast signal by terrain or building obstructions, such as listeners in office

[110] *See Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, MB Docket No. 07-172, FCC 09-59 (Jun. 29, 2009).

buildings. Moreover, internet streaming, like use of DAB technology or utilization of FM translators, allows AM stations to overcome nighttime power limitations and reach audiences on a 24/7 basis.

In short, here in the second decade of the 21st century, technological developments have extinguished any remaining justifications for retaining the AM/FM subcaps based on the alleged technical inferiority of AM stations. The widespread and growing use of HD Radio™ technology by AM stations and the ability of AM stations to use FM HD Radio™ multicast channels, FM translators, and internet streaming, vitiates the imagined notion of AM radio as FM's poor technical stepchild in need of protective ownership regulations.

And there is no other valid policy reason to retain subcaps which distinguish AM from FM on some "marketplace" basis. The Fratrik Study, as discussed above, finds that AM stations are strong competitors in their local markets in terms of audience and revenue share. Dr. Fratrik further notes that unique programming formats help a number of AM stations to garner those substantial audience shares and revenues. He finds that AM stations comprise more than half the stations nationwide that air seven different formats. Those formats include news, talk and sports; they also include ethnic, Spanish, nostalgia/big band, and middle of the road.

These statistics highlight two areas in which AM stations make critical contributions to the U.S. system of radio broadcasting. The first is AM's unique ability to reach inexpensive, portable receivers in locations from urban inner cities to remote rural areas. That ability is critical in times of disaster or national crisis, and it is fitting that AM stations play such a prominent role in airing news and other formats providing timely information. In its comments in the 2002 biennial review, Clear Channel supplied the following quote from a trade editorial—a quote that is no less true today:

> AM radios are cheap and ubiquitous and they require little power. Should things really go bad in this country, AM is the most surest way of reaching the citizenry. A handful of the old clear-channel stations can cover the entire nation. And in a pinch you can build a receiver with a handful of wire and some headphones. You don't even need batteries.[111]

Second—as evidenced by the Fratrik Study's finding that AM stations account for more than half of the radio stations in the country providing ethnic and Spanish formats—AM stations have particular value and ability to provide "niche" programming that reaches ethnic and minority populations with news, information and entertainment in their language and tailored to their needs. In today's increasingly diverse society, AM stations are thus immensely important contributors to the radio marketplace. Moreover, the prevalence of AM statins in nostalgia/big band and middle of the road (as well as ethnic and Spanish) formats shows that AM radio retains its vitality as a music and entertainment medium to significant segments of listeners.

Quite simply, AM and FM stations are equal, and equally important, participants in our nation's system of terrestrial radio broadcasting. There is no rational justification for retaining subcaps that limit ownership of stations in one or the other service based on some arcane perceived distinction between them. Indeed, with the exception of the local radio ownership rules, the Commission's current media ownership rules *themselves* do not distinguish between AM and FM stations. The Commission's radio/television cross-ownership rule, for example, permits common ownership of certain numbers of radio and television stations in the same market based on the number of "independently owned media voices" that would remain in the market post-merger.[112] In counting the number of "independently owned media voices," AM

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[111] Harry A. Jessell, *God Bless AM Radio*, Broadcasting & Cable, Aug. 18, 2003, *quoted in* Clear Channel 2002 Biennial Review Comments at 70 n. 207.

[112] 47 C.F.R. § 73.3555(c).

and FM stations are counted the same; an independently owned AM station is just as much a media "voice" in the analysis as an independently owned FM station. Furthermore, for purposes of both the radio/television and newspaper/broadcast cross-ownership rules, the radio aspect of the rule (or the broadcast aspect of the newspaper/broadcast rule) is triggered by ownership of *either* an AM or FM station that has the required contour overlap.[113] It is irrational in the extreme that the local radio ownership rule should contain subcaps distinguishing AM and FM stations, while no other provision of the Commission's media ownership rules makes such a distinction.

Finally, not only are the AM/FM subcaps unjustifiable as a legal and factual matter, but they are also rules that unnecessarily constrain radio industry participants. As Clear Channel has noted before, a number of leading radio group owners—such as Multicultural Radio Broadcasting—have station stables of which a majority or more are AM stations. These include minority-owned and other groups that provide specialized ethnic and other programming targeted to minority populations in a number of markets. The subcaps artificially constrain the growth of groups for which AM stations are the backbone.[114]

The elimination of the subcaps is particularly important in view of the radio industry's current dormancy and financial struggles. Like the additional ownership tiers proposed in Section III(A) above, eliminating the subcaps will trigger significant acquisition activity and help to counteract the years-long lull in such activity. Subcap relief would, moreover, do so without altering numerical ownership concentration within individual radio markets. It would also create a market of divested stations, as broadcasters seek to realign their market clusters by acquiring

[113] *See* 47 C.F.R. § 73.3555(c)(1)(ii), (d)(1)(i).

[114] Indeed, in the 2006 quadrennial review, Multicultural Radio Broadcasting noted that the subcaps limited the company's ability to expand. *Comments of Multicultural Radio Broadcasting, Inc.*, MB Docket No. 06-121 (Dec. 10, 2007).

certain in-market stations while selling others. The divested properties will in many cases be AM stations, which, as noted above, often serve concentrations of minority populations in certain cities. They can therefore be expected to provide opportunities for station purchases by minorities, women and small businesses.

In sum, for the past eight years the Commission has retained AM/FM subcaps while uniformly failing to supply adequate justification for their retention. In this new quadrennial review, the Commission must now recognize that the subcaps cannot be sustained in the media and radio broadcast world of 2010. The subcaps represent poor policy that cannot survive in the face of empirical evidence. At a very minimum, the Commission must—at long last—remove them.

C. Local Radio Ownership Limits, if Any, Should Be Bright-Line Standards That Are Not Based on Market or Audience Share Data

The *2010 NOI* invites comment on the benefits and disadvantages of bright line rules versus a case-by-case approach.[115] Clear Channel continues to believe that, if the Commission decides to retain local radio ownership limits in any form, such limits should be bright-line rules that are based on the number of stations in a local radio market, not on market share.

In its order in the 2002 biennial review, the Commission attempted to justify the current numerical local radio limits on the ground that those limits permitted roughly five equal-sized competitors in each market.[116] After the Third Circuit criticized this justification,[117] the Commission abandoned it in its order following the 2006 quadrennial review.[118] And in any case, in setting the numerical radio ownership limits in the 1996 Act, Congress intentionally

[115] 2010 *NOI*, ¶ 90.

[116] *See 2002 Order*, 18 FCC Rcd at 13731.

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

failed to carry over the audience share component of the FCC's previous rule, adopted in 1992.[119] Thus, as a matter of both statutory interpretation and history, both Congress and the Commission have found the prospect of a market share or audience share-based radio ownership rule to be wanting.

There are compelling reasons why the Commission should not premise local radio ownership restrictions on market or audience share—reasons that have always existed and have not changed. As Clear Channel and others have shown in the Commission's two previous review proceedings, the audience and revenue shares of radio stations at any given time are not reliable indicators of what the competitive state of the market will be at any point in the future. This is because of the extreme volatility of radio market and audience shares, which results from the ease with which lower-rated stations may change formats and thus achieve ratings and share increases. As discussed in Section II(B) above, between spring 2004 and winter 2010, 33.5% of the broadcast radio streams in the U.S. changed formats at least once. Moreover, the volatility of radio stations' market shares—proven to be high in Professor Hausman's 2006 statement in connection with the prior quadrennial review—has increased even more since 2006. Because of the ease and frequency of format changes, and the resulting volatility in market and audience shares, broadcast radio is and remains a uniquely inappropriate industry in which to impose limitations based on those metrics.

As to the *2010 NOI*'s queries regarding bright-line versus case-by-case tests, Clear Channel believes that a bright-line test must remain the form of any retained regulation of radio ownership. History has shown that attempts at case-by-case review of acquisitions sap scarce

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(Continued . . .)
[118] *2008 Order*, 23 FCC Rcd 2072 (¶ 117).

[119] *See Clear Channel 2002 Comments* at 60-61.

Commission resources and result in delays to the parties involved. This was never more apparent than during the Commission's brief early-2000's attempt to "flag" certain radio mergers and acquisitions for additional competition review. This regime resulted in considerable uncertainty and substantial processing delays (sometimes several years), thereby draining Commission resources and increasing applicants' transaction costs. In its 2003 order following the 2002 biennial review, the Commission wisely declined to retain the "flagging" practice.

Even if the Commission could employ sufficient, adequately equipped staff to perform individual case-by-case analysis of radio transactions on an expeditious, routine basis, the inherent uncertainty in such a process would have an extremely destructive effect on parties, investors and lenders. Neither sellers and buyers, nor their financiers, could predict the factors that might weigh in the Commission's review or the chance of a transaction's success. Investors and lenders would abandon the industry if a case-by-case review process were adopted. That is not a result that the radio industry needs, particularly at this time.

IV. THE COMMISSION SHOULD PROMOTE INCREASED PARTICIPATION IN THE BROADCAST INDUSTRY BY NEW ENTRANTS.

The *2010 NOI* observes that "minorities and women own very few broadcast stations," and asks whether the Commission's ownership rules should be used to promote diverse types of broadcast owners."[120] As it has in prior review proceedings, Clear Channel supports steps to promote increased participation in the broadcast industry by new entrants.[121] In its 2008 Report and Order and Third Further Notice of Proposed Rule Making regarding diversification of broadcast ownership, the Commission adopted a number of new measures designed to promote

[120] *2010 NOI*, ¶ 75.

[121] *See, e.g.*, Reply Comments of Clear Channel Communications, Inc., MB Docket No. 06-121, at 55-58 (Jan. 16, 2007).

new entry and diverse ownership in broadcasting.[122] Clear Channel believes that the Commission should consider further means to achieve this objective.

Specifically, Clear Channel supports the adoption of a system whereby waivers of or exceptions from the local radio ownership rules are made available to broadcasters who engage in actions that enhance radio station ownership opportunities for economically and socially disadvantaged businesses, including businesses owned by women and minorities. Clear Channel favors the adoption of a "menu-based" approach, which would allow a company to choose from among several options that would enhance the ability of such businesses to enter, or expand their presence in, the radio industry in exchange for an ownership "credit" or credits.

Possible menu options should include: (i) the sale of a station to a qualified entity; (ii) providing loans, loan guarantees, lines of credit, equity investments, or other direct financial assistance for use in financing a radio transaction or operating a radio station; (iii) contribution of a defined percentage of the purchase price of the additional station the incubating company seeks to purchase to a qualified entity for use in the purchase or operation of a radio station, to an educational institution with a communications program, or to a recognized training program or foundation that provides broadcast internship opportunities to potential new entrants, including women and minority students, for use by the organization to deliver benefits in a radio market; (iv) making an HD Radio™ multicast channel on the additional station that the "incubator" seeks to own, or on another commonly-owned station, available for lease by a qualified entity at no charge or at a very low cost, for at least five years; and/or (v) establishing and maintaining, for at least five years, a radio-related management training, business planning, or technical program that the incubating company demonstrates is likely to enhance radio station ownership

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[122] *Promoting Diversification of Ownership In the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rule Making, MB Docket No. 07-294 *et al.*, FCC 07-217 (Mar. 5, 2008).

opportunities for qualified entities. As discussed further in Section V, below, in defining "qualified entities" for an incubator program, the Commission should choose a broader definition than the "eligible entity" definition currently in place.

Each "credit" earned by an incubating company would be used by that company to own one station above the ownership cap in the applicable local market. Such credits should be available in markets of all sizes, as there is no reason to restrict the benefits that will flow to women and minorities as a result of this program. Moreover, if the AM/FM subcaps are not eliminated completely as proposed in Section III(B) above, an incubator credit should, in addition to a waiver or exception from the overall local cap, enable the incubating company to acquire one station above an applicable subcap.

Adoption of an incubator proposal would, in Clear Channel's view, improve immeasurably the prospects for entry into the radio industry by new entities, including women and minorities. It would provide incentives to existing broadcasters to share their talent, experience, and/or financial resources, while at the same time promoting new entry by giving individuals interested in becoming broadcast station owners real-world experience in the industry. Clear Channel once again supports rule waivers or exceptions for companies which establish incubator programs, and urges the Commission to consider adopting this type of proposal.

V. THE COMMISSION SHOULD PERMIT THE FREE TRANSFER OF "GRANDFATHERED" CLUSTERS OF RADIO STATIONS.

As it has done in prior review proceedings, Clear Channel again urges the Commission to modify any radio ownership rules it decides to retain to allow "grandfathered" station combinations to be transferred intact without restriction. Since the Commission revised the market definition methodology and other aspects of the local radio ownership rules in 2003 (revisions that took effect in 2004), it has prohibited the intact transfer of combinations made non-compliant by the rule changes except to "eligible entities," defined at the time as companies with $6 million or less in annual revenue.[123] This restriction on the transfer of grandfathered combinations, which the Commission declined to alter in the 2006 quadrennial review, continues to deprive radio operators of the legitimate opportunity to recoup their investments and, accordingly, is contributing to the stagnancy of the radio industry. The restriction should be eliminated. Alternatively, the scope of "eligible entities" to which grandfathered combinations may be transferred must be broadened, as it covers virtually no entities now.

As Clear Channel has argued before, in prohibiting intact transfers of grandfathered combinations except to "eligible entities," the Commission ignored the fact that group owners invested substantial sums in building radio combinations at the express behest of Congress and the FCC itself. When Congress increased the local radio ownership limits in 1996, it made clear its intent to encourage consolidation in the radio industry in order to bring about the public interest benefits of group ownership.[124] In reliance on the revised rules, radio operators invested significant sums to consolidate—and improve, to the public's benefit—their legally acquired station groups. Clear Channel, for example, spent hundreds of millions of dollars to co-locate commonly owned stations in local markets and to combine offices, staff, production studios and technical facilities, thereby allowing its station clusters to deliver the benefits of the efficiencies and synergies generated by group ownership to local listeners.

Experience has shown that these investments in efficiencies and economies of scale and scope reflect themselves in station values. In a nutshell, the whole of the cluster is much more

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[123] *2003 Order*, 18 FCC Rcd at 13811-12.

valuable than the sum of its parts. That is why clustered stations fetch far higher prices than individual stations. But as noted above, radio companies invested considerable money and resources in consolidating stations to achieve this premium value—and they did so in direct response to Congressional deregulation in 1996. The prohibition on transferability adopted by the Commission in 2003 prevents group owners from recouping these very investments. In this new quadrennial review, at a time when so many radio broadcasters are facing creditor issues and deal activity is at a nadir, the Commission should act to revisit its 2003 decision to prohibit the intact transfer of non-compliant combinations.

If the Commission nonetheless decides to retain the prohibition, it must at a minimum broaden the definition of "eligible entities" to which grandfathered clusters may be sold. The Commission now defines "eligible entities" as entities that would qualify as a small business consistent with Small Business Administration ("SBA") standards for its industry grouping. At the time the exception was adopted, this definition encompassed companies with $6 million or less in annual revenue. As Clear Channel demonstrated in filings and briefs in connection with the past two reviews, many of the clusters subject to forced breakup under current grandfathered cluster restrictions would be valued at amounts that far exceed the *annual revenue* of eligible entities.[125] It should come as no surprise that, since the restriction was adopted in 2003, Clear Channel's own sale of a New Hampshire combination is the only sale of a grandfathered cluster to an eligible entity of which it is aware. Quite simply, the Commission's "exception" to its restriction on the transferability of grandfathered radio combinations has been completely

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(Continued . . .)

[124] *See, e.g., Clear Channel 2006 Comments* at 73-76.

[125] *See Clear Channel 2006 Comments* at 78-79.

ineffective as a means of furthering the agency's purported goal of increasing participation in the radio industry by small businesses, including minority and women-owned businesses.

In short, the FCC should eliminate its restriction on the transferability of intact grandfathered clusters of radio stations. That restriction has continued to deprive radio group owners of the opportunity to recoup legitimate investments in consolidating stations as encouraged by the 1996 Act, and it currently operates as a disincentive to the buyers and investors the industry needs so much at this time. If the Commission maintains radio ownership limits and nonetheless refuses to allow transfers of grandfathered combinations across the board, it must modify the "eligible entity" standard to include a wider range of companies and a more "real" class of beneficiaries.

VI. CONCLUSION

The Commission has a statutory obligation in this proceeding to examine whether its media ownership rules remain necessary in light of competitive developments in the contemporary media marketplace and, if not, to repeal or modify them. As shown above, the terrestrial radio industry is itself strongly competitive, and free, over-the-air broadcasters are subject to a vast and ever-increasing range of new competitors, none of which are subject to arbitrary limits on ownership. The available evidence and Clear Channel's own experiences show that greater levels of common ownership create real public benefits in terms of increased program variety and improved local programming and community involvement. Indeed, in today's tattered economy, terrestrial radio broadcasters can only survive by accurately ascertaining and responding to the demands of their local audiences. Similarly, the local radio ownership rule is not needed to protect advertisers from anticompetitive behavior of group owners or groups of broadcasters acting in concert. The fundamental characteristics of the broadcast advertising market and the nation's tough antitrust laws provide sufficient protection. Thus, it is high time for the Commission to cast off a prior century's regulations by repealing the local radio ownership limits.

At the very least, the Commission should modify the local radio caps to allow greater levels of ownership in the nation's largest radio markets. Further, any limits that are retained must respect Congress's choice of an outlet-based test to measure permissible levels of common ownership. And because they have no basis in law or reality, the Commission should also—if local radio ownership limits are retained in any way—eliminate the subcaps on the number of AM and FM stations that a single entity may own in a local market.

The Commission should also examine programs that would promote female and minority investment in the terrestrial radio broadcast industry, and it should expand the classes of entities that are eligible to acquire grandfathered radio station combinations.

Respectfully submitted,

Clear Channel Communications, Inc.

By: Jessica Marventano

Jessica Marventano
Senior Vice President, Government Affairs
Clear Channel Communications, Inc.
200 East Basse Road
San Antonio, Texas 75201
210.822.2828

Dated: July 12, 2010

Appendix A: Representative Awards

Year	Organization	Award	Recipient
2010	Academy of Country Music	Major Market Personality of the Year	Ben Campbell and Matt McAllister, KNIX-FM, Phoenix, AZ
2010	Academy of Country Music	Large Market Personality of the Year	Gerry House, WSIX-FM, Nashville, TN
2010	Academy of Country Music	Small Market Personality of the Year	Jess Wright, WFRE(FM), Frederick, MD
2010	Academy of Country Music	Small Market Station of the Year	WUSY(FM), Chattanooga, TN
2010	American Advertising Federation, Tucson Chapter	Gold ADDY Award	Clear Channel Tucson
2010	Radio Television Digital News Association	National Edward R. Murrow Award: Radio: Small Market: Audio Breaking News Coverage	WRVA(AM), Richmond, VA
2010	Radio Television Digital News Association	National Edward R. Murrow Award: Radio: Small Market: Use of Sound	WMSI-FM, Jackson, MS
2009	Azcentral.com	BEST 2009 Readers' Choice Awards: Best Morning DJs	KISS-FM: Johnjay and Rich
2009	National Association of Broadcasters Educational Foundation	Crystal Award	WGY(AM), Albany, NY
2009	National Association of Broadcasters Educational Foundation	Crystal Award	KKLI(FM), Widefield, CO
2009	National Association of Broadcasters Educational Foundation	Crystal Award	KKXT(FM), Glenwood, IA
2009	Philadelphia Association of Black Journalists	Community Service Award	Loraine Ballard, Clear Channel Radio Philadelphia Director of News and Community Affairs
2008	National Association of Black Female Executives in Music and Entertainment	Living Ledgends Award	Thea Mitchem, Clear Channel Radio-Philadelphia

Year	Organization	Award	Recipient
2008	National Association of Broadcaster	Crystal Heritage Award	WUSL(FM), Philadelphia, PA
2008	Radio & Records	News/Talk/Sports Radio Station of the Year (Markets 1-25)	KFI(AM), Los Angeles, CA
2008	Radio & Records	News/Talk/Sports Radio Executive of the Year	Gabe Hobbs
2008	Radio & Records	News/Talk/Sports Radio Program Director of the Year	Robin Bertolucci, KFI(AM)
2008	Radio & Records	News/Talk/Sports Radio General Manager of the Year	Greg Ashlock, Clear Channel Los Angeles
2008	Radio & Records	News/Talk/Sports Radio Local Personality of the Year	Bill Handel, KFI(AM)
2008	Radio World	Excellence in Engineering	Jeff Littlejohn
2007	American Women in Radio and Television	Radio Personality of the Year	Bobby Bones
2007	American Women in Radio and Television	Best Community Affairs Radio Campaign of the Year	KASE(FM), Austin, TX
2007	Arizona Associated Press	Best Continuing Coverage	KFYI(AM)—"Serial Killers"
2007	Arizona Associated Press	Best News Writing	Hannah Scott, KFYI(AM)
2007	Arizona Associated Press	Best Series	Melody Birkett—"Too Young, Too Drunk"
2007	Arizona Associated Press	Best Light Feature	Jim Sharpe—"Passion of a Coach"
2007	Arizona Associated Press	Best Series	Jim Sharpe—"8 Days in Iraq"
2007	Arizona Associated Press	Best Team Coverage	Melody Birkett, Jared Serbu, and Jim Sharpe—"Labor Day Immigration Rally"
2007	Arizona Associated Press	Arizona Press Reporter of the Year	Jim Sharpe
2007	March of Dimes	Philadelphia Achievement in Radio Award: Best Weekday Midday Host or Team	WDAS-FM, Philadelphia, PA—"Middays with Patty Jackson"
2007	March of Dimes	Philadelphia Achievement in Radio Award: Best Station Promo Sales	WRFF(FM), Philadelphia, PA, Lucy St. James, Jerry Abate, and CJ

Year	Organization	Award	Recipient
2007	March of Dimes	Philadelphia Achievement in Radio Award: Norman D. Leebron Young Leaders Award	Matthew Schultz, WISX(FM) Account Manager
2007	National Association of Broadcasters	Crystal Radio Award	KHHT(FM), Los Angeles, CA
2007	National Association of Broadcasters	Crystal Radio Award	KOA(AM), Denver, CO
2007	National Association of Broadcasters	Crystal Radio Award	WTAM(AM), Cleveland, OH
2007	National Association of Broadcasters	Crystal Radio Award	WUSL(FM) Philadelphia, PA
2007	National Association of Broadcasters	HD Radio Multicast Award	KBCO(FM), Denver, CO
2007	National Association of Broadcasters	Marconi Award: Large Market Personality of the Year	Chuck Collier, WGAR-FM, Cleveland, OH
2007	National Association of Broadcasters	Marconi Award: Medium Market Personality of the Year	Van & Bonnie, WHO(AM), Des Moines, IA
2007	National Association of Broadcasters	Marconi Award: Oldies Station of the Year	WWSW-FM, Pittsburgh, PA
2007	National Association of Broadcasters Education Foundation	Service to America Award	KFI(AM), Los Angeles, CA
2007	ProgramDirector.net	New Comer Award	KFMK(FM), Austin, TX
2007	The Trevor Project	Trevor Hope Award	Clear Channel Communications

Appendix B: 2006 Hausman Statement

Statement of Professor Jerry A. Hausman

I. Introduction

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

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

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

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

II. Consolidation and Format Diversity

4. In my March 2002 statement I noted that a paper by Steven Berry and Joel Waldfogel had demonstrated that consolidation in the radio industry between 1993 and 1997 had lead to increased format variety.[1] In my statement, I updated the analysis to include data through 2001 and continued to find a positive relationship between consolidation and format diversity. In this section I update that analysis with 2006 data to determine whether the relationship between consolidation and format diversity continues to hold when more recent changes in industry structure are taken into account.

5. I estimate an econometric model using a fixed effects regression that relates the number of formats available in a market to the number of owners in the market and the population of the market. There are 243 Arbitron markets in the sample, and for

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[1] S. Berry and J. Waldfogel, "Do Mergers Increase Product Variety? Evidence from Radio Broadcasting," *Quarterly Journal of Economics* 116, 2001.

almost all of the markets I have observations for 1993, 1997, 2001, and 2006.[2] Data for 1993, 1997, and 2001 are from *Duncan's American Radio*. Since *Duncan's* stopped publishing in 2002, I collect data for 2006 from the BIA database. As I will discuss below, I use an estimation technique that accounts for possible differences in the two data sources.

6. The left hand side variable in the econometric model is the number of formats available in the market. The right hand side variables are the number of owners in the market and the population of the market. I also include fixed effects for each market and for each year.

7. The fixed effects estimation technique I use is unaffected by changes in formats that occur across all markets. To determine the effect of consolidation on format variety, the fixed effects technique essentially compares the change in the number of formats in markets that have consolidated to the change in the number of formats in markets that have not consolidated. Since changes in the number of formats common to all markets do not affect this comparison, they do not affect the conclusion about the effect of consolidation on format variety. In particular, my use of a fixed effects technique means that potential differences in the two data sources I use (Duncan's and BIA) will not affect my estimate of the effect of consolidation on the number of formats. For example, a potential concern may be that BIA uses a more detailed classification of formats than Duncan's, which would mean that I would observe an increase in the number of formats from 2001 to 2006 even though the true number of formats may not

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[2] Due to changes in Arbitron coverage over time, there are no 2001 observations for Danville, IL, La Crosse, WI, and Waterbury CT, and no 2006 observations for Danville, IL, Owensboro, KY, Sioux Falls, SD, Springfield, IL, and Waterbury, CT.

have changed. However, since all markets would be affected by the change in classification, the change will be accounted for by the fixed effects technique.

8. As in my previous analysis I use two-stage least squares (2SLS) to estimate the model, using the “policy band” approach of Berry and Waldfogel. I define three policy band variables, which are indicator variables that depend on the number of stations in the market.[3] I treat the number of owners as jointly endogenous, and use the policy band variables and policy band-year interaction variables as instruments. To determine whether it is necessary to estimate the model using 2SLS, I perform a Hausman specification test and find that the use of 2SLS is appropriate.[4]

9. Results are in Table 1. The coefficient on the number of owners is statistically significant and negative, demonstrating that a decrease in the number of owners in a market leads to an increase in format variety. Over the period of greatest consolidation (1993 to 2001), the average number of formats in a market increased from 11.5 to 16.7. These results indicate that consolidation was responsible for approximately 25% of the increase in formats during that period, and that consolidation has had a positive effect on format variety throughout the 1993 to 2006 period. I conclude that consolidation in the radio industry has resulted in increased format variety.

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[3] The policy band variables are based on the number of stations in the market in 1993 (as measured by the number of stations in the Arbitron book). One variable indicates markets with 15 to 29 stations, the second is for markets with 30 to 44 stations, and the third is for markets with 45 or more stations. These categories are based on Section 202(b)(1) of the Telecommunications Act of 1996.

[4] J. Hausman, “Specification Tests in Econometrics,” *Econometrica* 46, 1978.

III. Consolidation and Advertising Prices

10. In my previous statements I explained from a theoretical perspective why increased concentration was unlikely to have anticompetitive effects in the radio industry, and then performed empirical analyses demonstrating that increased concentration had not led to higher advertising prices. In this section I review my previous analysis, and discuss other studies that have addressed this issue.

11. An important factor that affects competitive analysis of the radio industry is that radio is a differentiated market in which different stations broadcast different formats that appeal to different audiences. As the *DOJ/FTC Merger Guidelines* recognize, coordinated interaction is unlikely to occur in differentiated product markets.[5] An additional factor that makes coordinated interaction unlikely to occur in the radio industry is that advertising time is a perishable good. If a radio station does not sell a timeslot by the airtime, it receives no revenue from that timeslot. As a result, advertising prices vary depending on the amount of time until airtime, as radio stations have a strong incentive to lower their price on any unsold timeslots as airtime approaches. Thus it would be difficult for radio stations to maintain prices above competitive levels through coordinated interaction.

12. Instead, anticompetitive concerns in differentiated product markets tend to arise from "unilateral effects," which are actions by single firms to increase price or reduce output.[6] A potential form of unilateral effect in the radio industry would be if one firm obtained a dominant position in a particular format in an attempt to increase prices

[5] "Conversely, reaching terms of coordination may be limited or impeded by product heterogeneity..." (*DOJ/FTC Merger Guidelines*), section 2.11.
[6] Ibid., section 2.2.

for advertising in that particular format. Whether such an attempt would be successful depends on barriers to mobility in the radio industry. The relevant question is whether other radio stations could economically reposition themselves to increase supply and hold down a possible price increase.

13. The ease and frequency of format changes in the radio industry indicates that any attempt to exercise market power by unilateral action would be defeated by other stations switching formats. My analysis of the BIA database indicates that from 2000 to 2006, 43% of radio stations changed formats. A recent paper by two DOJ economists, Charles Romeo and Andrew Dick, confirms that format changes are frequent and stations that change formats successfully increase their share, indicating that antitrust agencies can look to reformatting to counter any potential anticompetitive effects of consolidation.[7] As Romeo and Dick note, the investments required to implement a format change (such as new CDs, disc jockeys, and advertising campaigns) are small.[8] Importantly, they find that major format changes increase listening share by nearly 23%, which indicates that "major format changes do produce substantial market share gains on average."[9] They conclude that "format changes by smaller station groups may counter the potential exercise of market power by a radio group that acquires a substantial share of a particular audience demographic through merger."[10]

14. For the reasons discussed above it is unlikely that concentration the radio industry has anticompetitive consequences. This issue has also been addressed

[7] C. Romeo and A. Dick, "The Effect of Format Changes and Ownership Consolidation on Radio Station Outcomes," *Review of Industrial Organization* 27, 2005.
[8] Ibid., p. 353.
[9] Ibid., p. 374.
[10] Ibid., p. 351.

empirically, and studies have found that the consolidation that has occurred in the radio industry have not affected advertising prices. In my March 2002 statement I analyzed the effect of concentration on price using data on actual advertising prices in 37 markets in 1995 and 2001. I found that the consolidation of radio ownership in this period did not lead to higher advertising prices. In my January 2003 statement I extended my previous study by analyzing additional markets that had experienced significant increases in concentration. I found that even in markets where two firms control over 80% of radio market revenue, there is no evidence that increases in concentration have increased the price of radio advertising. My finding that increases in concentration do not affect radio advertising prices is also confirmed by a recent study by Joel Waldfogel and Julie Wulf.[11] Waldfogel and Wulf study 248 markets between 1995 and 1998 and conclude that "[b]ecause the concentration measures are significant in none of the fixed effects regressions, there is no portion of the change in ad prices that we can attribute to increased concentration."[12] Thus based on both theoretical considerations and empirical findings, consolidation in the radio industry has not had anticompetitive consequences.

IV. Volatility of Market Shares

15. In this section I consider the issue of whether it would be useful to take actual market shares into account for setting ownership limits. I begin by reviewing how market shares are used in the *DOJ/FTC Merger Guidelines*, and then provide an analysis of share volatility in the radio industry.

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[11] J. Waldfogel and J. Wulf, "Measuring the Effect of Multimarket Contact on Competition: Evidence from Mergers Following Radio Broadcast Ownership Deregulation," *Contributions to Economic Analysis & Policy* 5, 2006.
[12] Ibid., p. 14.

16. Market shares are generally used as one way of determining the potential competitive effect of mergers. According to the *Merger Guidelines*, "[m]arket shares will be calculated using the best indicator of firms' future competitive significance."[13] Although in many cases these will be based on actual market shares, the *Merger Guidelines* note that "[w]here all firms have, on a forward-looking basis, an equal likelihood of securing sales, the Agency will assign firms equal shares."[14] An article by Gregory Werden, a DOJ economist, provides further discussion of markets where actual market shares are not taken into account (sometimes called "one-over-*n*" markets).[15] According to Werden, "one-over-*n*" markets occur in situations where the ability to compete is determined mainly by intangible assets.[16] The two essential characteristics of these markets are "(1): a finite number of entities possess a readily identifiable set of assets essential for successful competition; and (2) the extent of ownership or control over the essential assets does not distinguish among these entities in any important way."[17]

17. The economic characteristics of the radio industry are such that actual market shares are not a reliable guide to future competitive significance. The essential intangible asset that all radio stations possess is the FCC license. All stations that possess a license have the potential to be successful competitors in the market.[18] Furthermore, as I now

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[13] *Merger Guidelines*, section 1.41.
[14] *Merger Guidelines*, section 1.41, footnote 15.
[15] G. Werden, "Assigning Market Shares," *Antitrust Law Journal* 70, 2002.
[16] Ibid., p. 85.
[17] Ibid.
[18] It should be noted that it may be appropriate to take technical differences across stations into account when determining which stations have the potential to be successful competitors. If a station's signal contour does not encompass a large enough fraction of a particular market, it may not be appropriate to consider that station as a competitor in that

demonstrate, volatility in market shares for radio stations is very high: over the course of a single year, a radio station is more likely to experience a large increase or decrease in market share than it is to experience relatively constant share.

18. To study market share volatility, I collect information on average annual local commercial audience share for stations in the BIA database.[19] I then calculate the percentage difference in share for each station over one, two, and three-year periods, using 2005 as the ending year.[20] The results are presented in Table 2.

19. Table 2 indicates that even over a one-year period, it is more likely for a radio station to experience a large change in share than it is for the station to maintain a relatively constant share. There are almost 1.9 times as many stations that experience a change of more than 25% (or less than –25%) than there are stations that experience a change of less than 5% in absolute value. When the time period is increased to two years, the ratio increases to 2.7, and for a three-year period the ratio is 3.7.

20. These results indicate that even over short periods of time there is substantial volatility in the actual market shares of radio stations, which means that actual market shares are not a reliable guide to future competitive significance. I thus conclude that it would not be economically appropriate to take actual market shares into account for the purpose of setting ownership limits.

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market. However, the possibility that a station's signal contour can be modified must also be taken into account.

[19] I collect information on the 5,834 stations in the BIA database that have a non-zero local commercial share for at least one year in the 2002-2005 time period.

[20] The one-year percentage change is (LCS_2005 – LCS_2004)/LCS_2004, the two-year percentage change is (LCS_2005 – LCS_2003)/LCS_2003, and the three-year percentage change is (LCS_2005 – LCS_2002)/LCS_2002.

Table 1: Format Variety Regressions

Dependent variable: Number of formats

Variable	2SLS
Number of owners	-0.1756
	(0.0434)
Population (millions)	6.9021
	(0.8754)
R^2	-
Root MSE	2.06
N	964
Hausman test p-value	0.000

Notes: Regression includes market and year fixed effects. Heteroskedasticity-robust standard errors in parentheses. Policy band variables and policy band-year interaction variables used as instruments for the number of owners. Null hypothesis for Hausman test is that number of owners is not jointly endogenous.

Table 2: Market Share Volatility

	One Year (2004-2005)	Two Year (2003-2005)	Three Year (2002-2005)
$\%\Delta LCS \leq -25\%$	17.8%	21.9%	25.7%
$-25\% < \%\Delta LCS \leq -15\%$	10.2%	10.2%	9.7%
$-15\% < \%\Delta LCS \leq -5\%$	15.6%	13.5%	12.5%
$-5\% < \%\Delta LCS \leq 5\%$	19.0%	15.9%	13.1%
$5\% < \%\Delta LCS \leq 15\%$	12.0%	10.7%	9.1%
$15\% < \%\Delta LCS \leq 25\%$	7.3%	7.1%	7.0%
$\%\Delta LCS > 25\%$	18.0%	20.8%	22.9%
ratio of $\lvert\%\Delta LCS\rvert > 25\%$ to $\lvert\%\Delta LCS\rvert < 5\%$	1.88	2.70	3.71

Notes: Table entries are percentages of radio stations with specified percentage change in audience local commercial share over the period.

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JERRY A. HAUSMAN
Massachusetts Institute of Technology
Department of Economics
Building E52-271A
Cambridge 02139
(617) 253-3644
jhausman@mit.edu

EDUCATION:

OXFORD UNIVERSITY
D. Phil. 1973 (Ph.D)
B. Phil. 1972

BROWN UNIVERSITY
A.B. (Summa Cum Laude), 1968

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

FELLOWSHIPS, HONORS AND AWARDS:

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

EMPLOYMENT:

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

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

VISITING APPOINTMENTS:
1986-87 Visiting Professor, Harvard Business School
1982-83 Visiting Professor, Harvard University Department of Economics
Visiting Positions: University of Washington, Australian National University, Ecole Normale Supérieure, Oxford University, University of Sydney, Wuhan University, Beijing University, University of Western Australia, University College London, Uppsala University, Xiamen University

U.S. ARMY, ANCHORAGE, ALASKA
1968-70 Corps of Engineers

PROFESSIONAL ACTIVITIES:

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

PUBLICATIONS:

I. Econometrics

"Minimum Mean Square Estimators and Robust Regression," Oxford Bulletin of Statistics, April 1974.

"Minimum Distance and Maximum Likelihood Estimation of Structural Models in Econometrics," delivered at the European Econometric Congress, Grenoble: August 1974.

"Full-Information Instrumental Variable Estimation of Simultaneous Equation Models," Annals of Economic and Social Measurement, October 1974.

"Estimation and Inference in Nonlinear Structural Models," Annals of Economic and Social Measurement, with E. Berndt, R.E. Hall, and B.H. Hall, October 1974.

"An Instrumental Variable Approach to Full-Information Estimators in Linear and Certain Nonlinear Econometric Models," Econometrica, 43, 1975.

"Simultaneous Equations with Errors in Variables," Journal of Econometrics 5, 1977.

"Social Experimentation, Truncated Distributions, and Efficient Estimation," with D. Wise, Econometrica, 45, 1977.

"A Conditional Probit Model for Qualitative Choice," with D. Wise, Econometrica, 46, 1978.

"Specification Tests in Econometrics," Econometrica, 46, 1978.

"Non-Random Missing Data," with A.M. Spence, MIT Working Paper 200, May 1977.

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"Stratification on Endogenous Variables and Estimation," with D. Wise, in The Analysis of Discrete Economic Data, ed. C. Manski and D. McFadden, MIT Press, 1981.

"Les models probit de choix qualitatifs," ("Alternative Conditional Probit Specifications for qualitative Choice.") (English Version), September 1977; EPRI report on discrete choice models, Cahiers du Seminar d'Econometrie, 1980.

"The Econometrics of Labor Supply on Convex Budget Sets," Economic Letters, 1979.

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"Comparing Specification Tests and Classical Tests," with W. Taylor, August 1980, Economic Letters, 1981.

"The Effect of Time on Economic Experiments," invited paper at Fifth World Econometrics Conference, August 1980; in Advances in Econometrics, ed. W. Hildebrand, Cambridge University Press, 1982.

"Sample Design Considerations for the Vermont TOD Use Survey," with John Trimble, Journal of Public Use Data, 9, 1981.

"Identification in Simultaneous Equations Systems with Covariance Restrictions: An Instrumental Variable Interpretation," with W. Taylor, Econometrica, 51, 1983.

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"Instrumental Variable Estimation," in Kotz-Johnson, Encyclopedia of Statistical Science, vol. 4, 1984

"Specification Tests for the Multinomial Logit Model," with D. McFadden, Econometrica, 52, 1984.

"Econometric Models for Count Data with an Application to the Patents R&D Relationship," with Z. Griliches and B. Hall, Econometrica, 52, 1984.

"The Econometrics of Nonlinear Budget Sets," Fisher-Shultz lecture for the Econometric Society, Dublin: 1982; Econometrica, 53, 1985.

"The J-Test as a Hausman Specification Test," with H. Pesaran, Economic Letters, 1983.

"Seasonal Adjustment with Measurement Error Present," with M. Watson, Journal of the American Statistical Association, 1985.

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"Specifying and Testing Econometric Models for Rank-Ordered Data," with P. Ruud; Journal of Econometrics, 1987.

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"Seasonal Adjustment of Trade Data," with R. Judson and M. Watson, ed. R. Baldwin, Behind the Numbers: U.S. Trade in the World Economy, 1992.

"Nonlinear Errors in Variables: Estimation of Some Engel Curves," Jacob Marschak Lecture of the Econometric Society, Canberra 1988, Journal of Econometrics, 65, 1995.

"Nonparametric Estimation of Exact Consumers Surplus and Deadweight Loss," with W. Newey, Econometrica, 63, 1995.

"Misclassification of a Dependent Variable in Qualitative Response Models," with F. Scott-Morton and J. Abrevaya, Journal of Econometrics, 1998.

"Semiparametric Estimation in the Presence of Mismeasured Dependent Variables," with J. Abrevaya, Annales D'Economie et de Statistique, 55-56, 1999.

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"Triangular Structural Model Specification and Estimation with Application to Causality", Journal of Econometrics, 2003

"Weak Instruments: Diagnosis and Cures in Empirical Econometrics", with J. Hahn, American Economic Review, 2003.

"Instrumental Variable Estimation with Valid and Invalid Instruments", with J. Hahn, August 2003, forthcoming Annales d'Economie et Statistique, 2005.

"Difference in Difference Meets Generalized Least Squares: Higher Order Properties of Hypotheses Tests", with G. Kuersteiner, forthcoming Journal of Econometrics

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"Duration Models," forthcoming in the New Palgrave, with T. Woutersen, March 2006.

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"The Evaluation of Results from Truncated Samples," with D. Wise, Annals of Economic and Social Measurement, April 1976.

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“Regulated Costs and Prices in Telecommunications,” in G. Madden ed. International Handbook of Telecommunications, 2003.

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“Sources of Bias and Solutions to Bias in the CPI”, NBER Discussion paper 9298, Oct. 2002, Journal of Economic Perspectives, 2003.

CPI Bias from Supercenters: Does the BLS Know that Wal-Mart Exists?, with E. Leibtag, presented at conference on Index Numbers, Vancouver, June 2004, NBER Discussion Paper w10712, August 2004.

“Did Mandatory Unbundling Achieve Its Purpose? Empirical Evidence from Five Countries,” with G. Sidak, Journal of Competitive Law and Economics, 2005.

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III. Applied Micro Models

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"The Bell Operating Companies and AT&T Venture Abroad and British Telecom and Others Come to the US," in Bradley, et al., ed., Globalization, Technology and Competition, 1993.

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"Proliferation of Networks in Telecommunications," ed. D. Alexander and W. Sichel, Networks, Infrastructure, and the New Task for Regulation, University of Michigan Press, 1996.

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"Superstars in the National Basketball Association: Economic Value and Policy," with G. Leonard, Journal of Labor Economics, 15, 4, 1997.

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Appendix C: Effect of Proposed New Ownership Tiers

Arbitron Market Rank	Market	Station Count[126]	Maximum Market Ownership: Current Rule (8 stations)	10 Stations in Markets With 55-64	12 Stations in Markets With 65+ Stations
1	New York, NY	149	5.37%	--	8.05%
3	Chicago, IL	133	6.02%	--	9.02%
14	Puerto Rico	127	6.30%	--	9.45%
4	San Francisco, CA	109	7.34%	--	11.01%
10	Boston, MA	98	8.16%	--	12.24%
2	Los Angeles, CA	93	8.60%	--	12.90%
5	Dallas-Ft. Worth, TX	87	9.20%	--	13.79%
7	Atlanta, GA	84	9.52%	--	14.29%
13	Seattle-Tacoma, WA	80	10.00%	--	15.00%
6	Houston-Galveston, TX	75	10.67%	--	16.00%
8	Philadelphia, PA	72	11.11%	--	16.67%
11	Detroit, MI	71	11.27%	--	16.90%
21	St. Louis, MO	70	11.43%	--	17.14%
24	Charlotte-Gastonia-Rock Hill, NC-SC	68	11.76%	--	17.65%
25	Pittsburgh, PA	65	12.31%	--	18.46%
30	Salt Lake City-Ogden-Provo, UT	65	12.31%	--	18.46%
9	Washington, DC	63	12.70%	15.87%	--
44	Nashville, TN	62	12.90%	16.13%	--
12	Miami-Ft. Lauderdale-Hollywood, FL	59	13.56%	16.95%	--
23	Portland, OR	59	13.56%	16.95%	--
15	Phoenix, AZ	58	13.79%	17.24%	--
17	San Diego, CA	57	14.04%	17.54%	--
33	Las Vegas, NV	57	14.04%	17.54%	--
49	Memphis, TN	57	14.04%	17.54%	--
86	Greenville-New Bern-Jacksonville, NC	57	14.04%	17.54%	--
66	Fresno, CA	56	14.29%	17.86%	--
16	Minneapolis-St. Paul, MN	55	14.55%	18.18%	--
63	Albany-Schenectady-Troy, NY	55	14.55%	18.18%	--

[126] The “FCC Market Station Count” for each identified market was obtained through BIA/Kelsey Media Access Pro database’s “FCC Geographic Market.”

Appendix D: Fratrik Study

THE IMPORTANCE OF AM STATIONS IN LOCAL RADIO MARKETS

Mark R. Fratrik, Ph.D.

Vice President

BIA/Kelsey

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TABLE OF CONTENTS

THE IMPORTANCE OF AM STATIONS IN LOCAL RADIO MARKETS

Introduction

AM radio stations, like their FM counterparts, face many challenges in today's media environment. From competition from other radio stations (AM and FM) to competition from satellite radio services to competition from webcasting services, AM stations, like FM stations, are always fighting to attract listeners. At the same time, AM stations, like FM stations, are also competing with their local radio stations as well as other media to generate advertising revenues to support their operations.

Yet, even while facing this competition, several AM radio stations are quite successful in both attracting listeners and turning those audiences into advertising revenues. These AM radio stations have been able to provide programming that local audiences want to hear. And, with certain recent technological and regulatory changes, AM stations are already beginning to enhance sound quality and compete even more effectively in their local markets.

This paper will present data demonstrating the continued important role that AM radio stations play in local radio markets. By examining both audience listening levels and advertising revenues, we will demonstrate that AM radio stations are important and healthy competitors in these local markets. Additionally, the paper will present data showing the important role that AM stations play in providing certain types of programming such as non-music (News, Talk, and Sports), Hispanic and other ethnic formats. Finally, the paper will discuss and provide evidence on the recent technological and regulatory changes which AM stations are utilizing to improve sound quality, specifically HD Radio™ and the use of FM translators within an AM station's service area.

Prominence of AM Stations

Audience Share Analysis

One clear way of seeing the prominence of the many AM radio stations in local radio markets is to see how many of these radio stations are market leaders in terms of attracting audiences. Specifically, we examined the Local Commercial Share[1] for 2009 of all AM stations located in all of the 300 Arbitron metro areas. We then compared these audience shares with all stations located in these markets to determine the rankings of these AM stations within their local markets.

Across all markets, 187 AM stations ranked in the top five in terms of attracting the largest audience across the entire day. In thirty-seven markets an AM station was the top ranked station, in thirty-five markets it was the second ranked station, and in forty-one markets it was the third ranked station. Two markets, San Francisco and Chicago, stand out in terms of how successful AM stations are in attracting audiences. In the San Francisco radio market, four AM radio stations (KGO-AM, KCBS-AM, KNBR-AM, and KSFO-AM) are ranked in the top five in

[1] The Local Commercial Share (LCS) for a radio station for a particular year is the average share for the prior 12-month period (beginning with the previous year's Fall ratings period through the subsequent Summer ratings period) adjusted for lost listening to out-of-market and non-commercial stations. The LCS is calculated by dividing the 12+ share by the total commercial station shares in the market. In other words, it is the share each station is receiving of the total local audience listening to local commercial radio stations.

attracting the largest audiences. In Chicago, three AM stations (WBBM-AM, WGN-AM, and WLS-AM) are ranked as the top three stations in attracting audiences in that market.

This ability to be highly ranked does not only occur in the largest markets. Many of the 187 AM radio stations ranked in the top five across all markets are located in markets much smaller. For example, KMED-AM, in Medford, OR (market rank: 208) is the number one station in attracting audiences, as well as KFGO-AM, Fargo-Moorhead, ND-MN (market rank: 215) and WDWS-AM, Champaign, IL (market rank: 217).

Given the wide range of sizes and locations of markets with strong AM stations attracting large audiences, it is apparent that AM stations garner sufficient listenership to be important players in local radio markets.

Revenue Share Analysis

To examine the revenues generated by AM stations, we analyzed the revenue estimates and resulting total revenue shares for all local AM stations for the most current year (2009) in their local markets.[2] Given the ability of AM stations to attract large audiences, it is not surprising to see in that analysis the noticeable level of revenues generated by these AM stations.

In terms of total revenue shares for AM stations, there are 11 markets where the total revenue share is 30% or higher. There are another 24 markets where the total revenue share is

[2] These radio station revenue estimates are generated by BIA/Kelsey and reported in its database service, Media Access Pro™. That database service provides information on all broadcast radio and television stations as well as all daily and weekly newspapers, including estimates on advertising revenues generated by these media properties.

between 25-30% and another 44 where the total revenue share is between 20-25%. Table 1 shows the 11 markets where the total revenue share attributable to local AM radio stations is above 30%.

Table 1- Top Ten Radio Markets by AM Stations' Revenue Share		
Rank	Market	Total AM Stations Revenue Share
215	Fargo-Moorhead, ND-MN	39.9%
123	Bridgeport, CT	36.4%
4	San Francisco, CA	35.5%
1	New York, NY	34.6%
94	Lakeland-Winter Haven, FL	34.4%
282	Bismarck, ND	33.0%
262	Kalispell-Flathead Valley, MT	32.4%
3	Chicago, IL	31.9%
28	Cincinnati, OH	31.0%
178	New Bedford-Fall River, MA	30.2%
265	Battle Creek, MI	30.0%

Much like the results showing the strong showing in attracting audiences by AM stations, the noticeable revenue shares of AM stations shown above cuts across many different market sizes and geographic areas of the country.

AM Format Analysis

One of the reasons that several AM stations have been able to attract noticeable audiences to rank high in their respective markets and thus generate substantial revenues is the types of programming offered by AM stations. AM is the predominant band for several formats, which in many situations are non-music formats. For example, sports, a growing format in terms of popularity, is predominantly provided by AM stations, with nearly five of every six stations with that format being AM stations. Table 2 shows the number of AM and FM stations for seven different formats that are nearly half or more provided by AM stations.

Table 2 – Format Provision by Type of Station

Format Category	# of AM Stations	# of FM Stations	% Stations AM
Sports	548	112	83.0%
Nostalgia/Big Band	216	52	80.6%
Talk	351	96	78.5%
Middle of the Road	37	11	77.1%
News	934	354	72.5%
Ethnic	97	55	63.8%
Spanish	496	497	50.0%

Given the uniqueness of some of the formats being provided by AM stations, they have the opportunity to attract audiences, and as was shown before, AM stations are attracting substantial audiences and ranked relatively high in their local markets. Further, as the Hispanic and other ethnic populations continue to grow at rates faster than the overall population, the many AM stations catering to these demographic groups will prosper as a result.

Populations Served by AM Stations

One of the reasons that so many AM stations provide unique formats and/or are able to attract large local audiences is the simple fact that they reach large potential audiences. With their daytime 2mV/m contours, 870 AM radio stations reach over 1 million persons or more, with 130 of those stations reaching over 5 million or more. In contrast, there are only 810 FM stations reaching 1 million or more and only 64 reaching 5 million or more. With such a reach, AM stations have the ability to attract larger audiences, generate additional revenues, and become more competitive in their local markets.

Ability to Improve Signals

In addition to improving their programming to attract larger audiences to become even more competitive, many AM radio stations have taken several steps to broaden their reach and improve the quality of their signals. These steps include transitioning to HD Radio™, use of FM translators within their service areas, use of co-owned multicast FM signals to broaden their reach, and streaming of their signals over the Internet.

HD Radio™

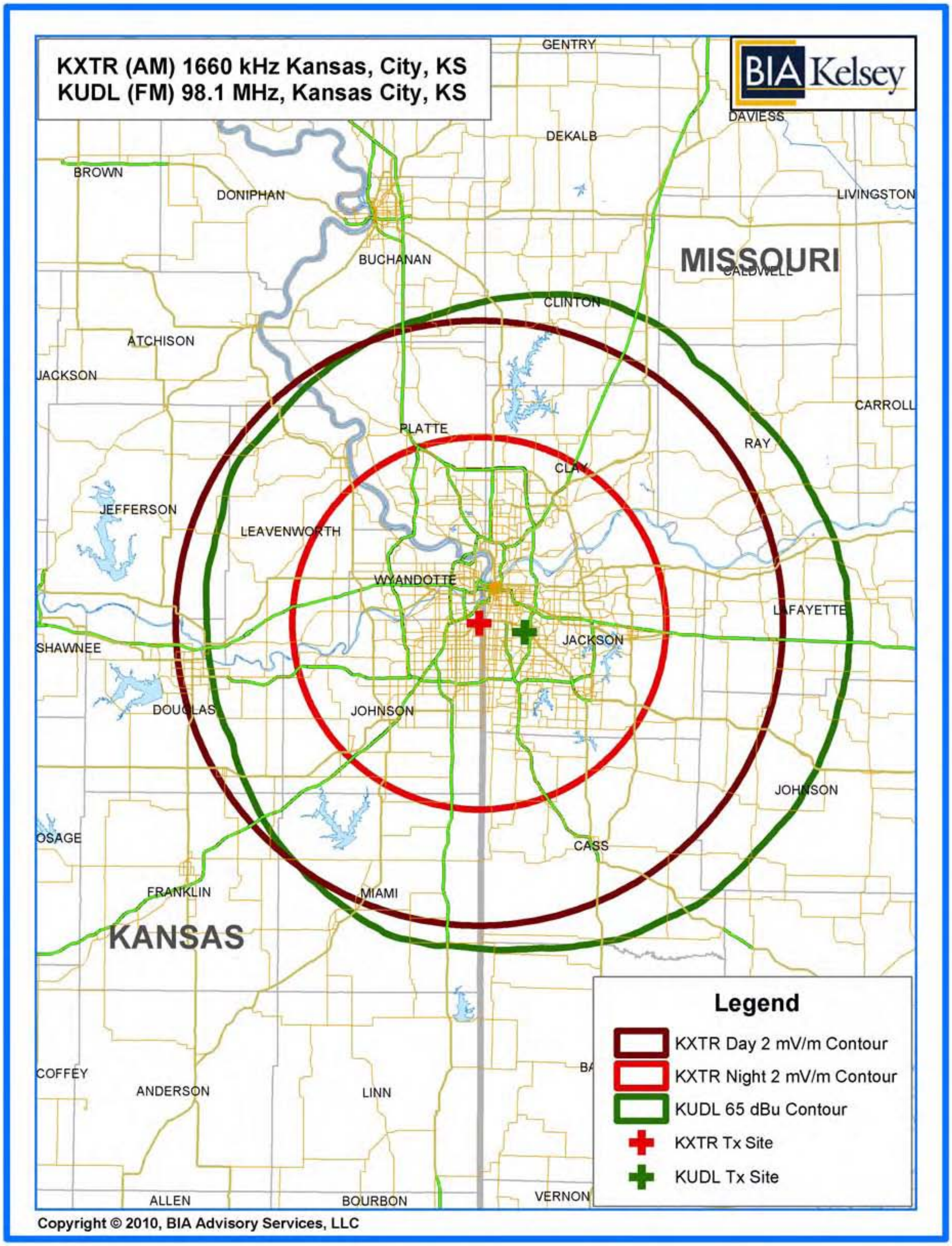
The introduction of the digital transmission technology of HD Radio™ was a significant milestone for all over-the-air radio stations. By improving the fidelity of the radio signal, and allowing for additional programming streams to be transmitted, this new technology opens up many new possibilities. The improvement for AM stations cannot be overstated – "AM stations now with FM-quality sound".[3] Many AM stations have either implemented or are planning to implement this new transmission technology. As of June 29, 2010, according to BIA/Kelsey's Media Access Pro™ database, there are 455 AM stations that have obtained a license from the FCC to transmit an HD signal with 322 of those stations already transmitting that improved signal. These stations are not located exclusively in large and medium markets. There are 29 HD AM stations in unranked areas, with another 41 AM stations in markets ranked 101 and above.

Simulcasting on FM Multicast Signals

In addition to improving the sound quality of their AM signals through implementing HD Radio technology, several AM radio stations are also broadening their reach by utilizing the multicast possibility of a co-owned FM station. As of June 29, 2010, according to BIA/Kelsey's Media Access Pro™ database, there are 72 AM stations that are simulcasting their programming on a co-owned local FM station's multicast signals.

By simulcasting on an FM multicast signal, an AM station can significantly broaden its reach in its local market, especially if that station has to lower its power during nighttime hours. An example of this improvement is seen in the situation in the Kansas City, MO market where KXTR-AM, broadcasting a classical music format, is also being simulcast on KUDL-HD2, a co-owned FM station in the market. KXTR-AM, broadcasting on 1660 kHz, has a daytime power of 10 KW, but has to lower that power to 1 KW at night. It reaches only 1,513,016 in population during the nighttime hours, while the KUDL-HD2 signal reaches 1,765,785, an increase of over 250 thousand. These two coverage patterns are shown in the map below.

[3] See http://www.hdradio.com/what_is_hd_digital_radio.php.



KXTR (AM) 1660 kHz Kansas, City, KS
KUDL (FM) 98.1 MHz, Kansas City, KS
BIA Kelsey
GENTRY
DAVIESS
DEKALB
BROWN
DONIPHAN
LIVINGSTON
BUCHANAN
MISSOURI
CALDWELL
CLINTON
ATCHISON
JACKSON
CARROLL
PLATTE
RAY
CLAY
JEFFERSON
LEAVENWORTH
WYANDOTTE
LAFAYETTE
SHAWNEE
JACKSON
DOUGLAS
JOHNSON
JOHNSON
OSAGE
CASS
FRANKLIN
MIAMI
KANSAS
Legend
KXTR Day 2 mV/m Contour
KXTR Night 2 mV/m Contour
KUDL 65 dBu Contour
KXTR Tx Site
KUDL Tx Site
COFFEY
ANDERSON
LINN
ALLEN
BOURBON
VERNON

Use of FM Translators by AM Stations

Recently the FCC allowed AM stations to use FM translators to improve their coverage within their daytime service areas.[4] Much like the use of a local multicast FM signal, the use of a FM translator can greatly improve the reach and quality of the AM signal, especially for AM stations that have to reduce their power at night. With expanded reach, these AM stations can only become more attractive to listeners, and become more competitive in their local radio markets.

While the FCC order was only adopted in October 2009, according to Dataworld, a BIA/Kelsey subsidiary engineering database company, there are already 72 AM stations that have received permission to utilize FM translators within their coverage areas.

To get an indication of the significance of this opportunity, we have provided below a map of WJFN-AM, Jackson, MI, which is now utilizing the FM translator W256BL within its daytime coverage area. The map below shows the daytime and nighttime 2 mV/m coverage patterns of that AM station along with the 60 dBu coverage pattern of the FM translator. During the day, WJFN-AM reaches a population of 264,614 within its 2 mV/m contour and at night it reaches only a population of 57,253. By utilizing the W256BL translator, it reaches another 212,042 in population at night that it would not otherwise be able to serve. That added reach will only lead to WJFN-AM becoming more competitive in the Jackson, MI radio market.

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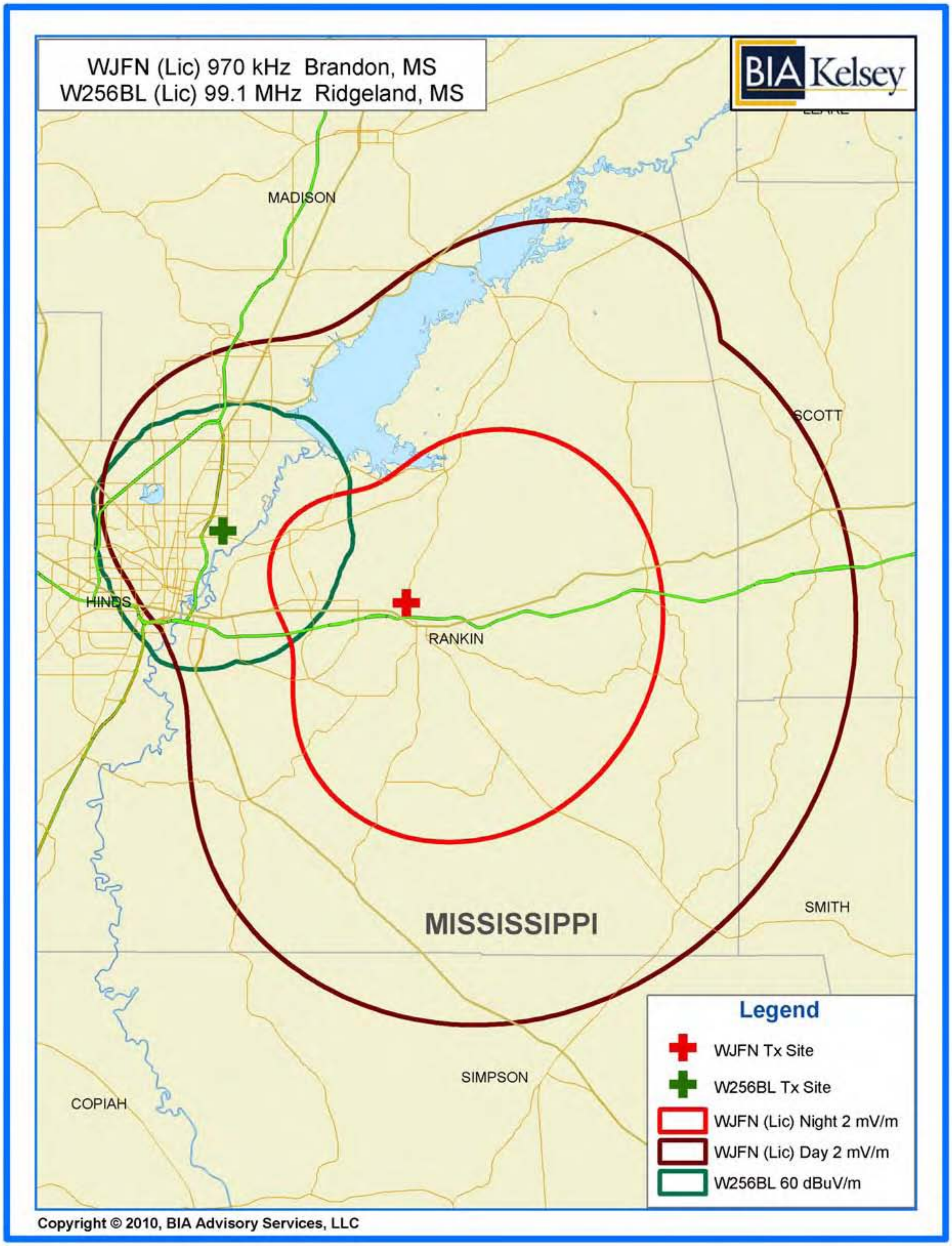
[4] Report and Order, Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, MB Docket No. 07-172, FCC 09-59 (June 29, 2009).


WJFN (Lic) 970 kHz Brandon, MS
W256BL (Lic) 99.1 MHz Ridgeland, MS
BIA Kelsey
MADISON
SCOTT
HINDS
RANKIN
MISSISSIPPI
SMITH
SIMPSON
COPIAH
Legend
WJFN Tx Site
W256BL Tx Site
WJFN (Lic) Night 2 mV/m
WJFN (Lic) Day 2 mV/m
W256BL 60 dBuV/m
Copyright © 2010, BIA Advisory Services, LLC

Streaming of AM Radio Stations

Another method of expanding the reach of AM stations is to stream their programming on the Internet. According to the most recent Arbitron/Edison Research study of online listening, approximately 70 million Americans listened to online radio in the past month.[5] More and more people are accessing their local radio stations through the Internet, sometimes in locations (e.g., office buildings) where the over-the-air reception is less than ideal. Consequently, many more radio stations are streaming their programming. According to one Internet site monitoring the prevalence of radio station streaming, 1,931 AM stations were streaming their programming as of June 29, 2010.[6] By expanding their reach into areas where terrain and building obstructions or limited nighttime power may impede their signal, these streaming AM radio stations can only improve their position in the marketplace.

Conclusion

Several AM radio stations have been able to emerge as very strong competitors (sometimes as market leaders). Many AM stations are providing unique programming in their markets and are able to reach very sizable audiences, thus making them strong competitors. In addition, recent technological and regulatory changes either improve the quality of AM signals or broaden their reach (especially at night). These developments can only improve the ability of AM stations to attract large audiences, generate high revenues, and compete effectively.

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[5] The Infinite Dial 2010: Digital Platforms and the Future of Radio, Edison Research, Arbitron, March 2010, p. 16.

[6] See http://streamingradioguide.com/.