

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

**REPLY COMMENTS OF
FUTURE OF MUSIC COALITION**

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APPENDIX

*False Premises, False Promises:
A Quantitative History of Ownership Consolidation in the Radio Industry
(2006)*

Future of Music Coalition (FMC) submits this reply comment to the FCC's 2006 review of its media ownership rules based on our independent research of the radio industry. FMC is a research and advocacy organization that addresses issues at the intersection of media, music, and technology. FMC seeks to advocate for the interests of musicians in particular as well as the interests of the general public of music listeners. But we are not a membership organization, and unlike some participants in this proceeding, our organization has no financial stake in the outcome. As an organization founded in 2000 precisely because of developments in music distribution technology, FMC understands the changing media and entertainment environment. Yet, because of our independence and commitment to the public interest, we also understand that increasing the size of radio companies is not the appropriate response. Instead, the FCC should consider the fifteen policy recommendations that we detail in this reply comment, taking an excerpt from our December 2006 study, *False Premises, False Promises: A Quantitative History of Ownership Consolidation in the Radio Industry*.¹ Based on extensive quantitative analysis, we believe that our list of suggested changes provide the best way to promote real competition, localism, and diversity.

Key Arguments of Radio Industry

The National Association of Broadcasters (NAB) and Clear Channel both argue that new technologies make it imperative for radio companies to become larger. As Clear Channel puts it, "marketplace developments have rendered the current local radio ownership caps entirely unnecessary in light of competition."² They argue that "common ownership," a euphemism for

¹ We have included the full study as the appendix to these Reply Comments [hereinafter "Appendix"].

² Comments of Clear Channel Communications, Inc., 2006 Quandrennial Regulatory Review, FCC MB Docket No. 06-121 (Oct. 23, 2006) [hereinafter "Clear Channel Comments"], iii.

“larger radio companies,” has some benefits and, amazingly, no costs: radio companies can grow larger in “the absence of any risk of competitive harm.”³ The astonishing absolutism of the claim that there is literally zero probability of “competitive harm” suggests a problem in their facts, their logic, or both. As we discuss below, competition (as economists define it in terms of market structure) decreased considerably in the radio industry after the Telecommunications Act of 1996. More concentrated market structures imply a greater risk of competitive harm, not a decrease in risk to zero. But the Commission does not have to base its decision on levels of risk. The larger radio companies of the past decade have in fact demonstrated no benefits from their greater size and appear instead to harm competition, localism, and diversity. Our research into the programming offered by station groups in excess of the local caps—the largest radio companies on a local level—shows that larger station groups do not offer a more diverse set of programming formats. In fact, those station groups offer almost no programming in so-called “niche formats.”⁴ The largest companies are offering the least innovation and the least diversity in programming.

We would put NAB’s and Clear Channel’s comments into their economic and political context. Radio companies have two margins to pursue, broadly speaking: the pursuit of regulatory largesse and the development of new business models. The two strategic paths are not mutually exclusive, but they do compete for companies’ resources and their managers’ attention. It is cheaper, from the radio companies’ perspective, to ask for changes in regulations that allow them to restructure the radio market. But that does not mean it is socially optimal to do so, or that a restructured radio market would improve anything. What would benefit the public most are new business models and new approaches to programming that can appeal to listeners in a crowded media environment.

³ *Id.* at iv.

⁴ See Appendix, Ch. 3, at 93-98.

Developing new ways to serve the public better is difficult. Unfortunately, instead of devoting their resources toward developing new business models, the NAB members have invested in a long discussion about the amazing business models that *other* media technologies such as broadband internet⁵ and satellite radio⁶ now employ. For example, NAB marvels that “According to a 2006 study, ‘[p]eople turn more often now to online news than they did four years ago because the offerings are more attractive and because they have formed online news consumption habits.’”⁷ This is no excuse for the way most commercial radio broadcasters have long since abandoned original radio news reporting⁸ while National Public Radio has doubled its listenership in the last five years, demonstrating radio’s continued vitality as a medium.⁹ The negative tone of the NAB’s and Clear Channel’s comments, if it were to be taken seriously, should have caused panic among their investors. But their laments for traditional radio and their plaudits for new technologies are not to be taken seriously. Media platforms compete based on their business models, including technological advancements, new ways of using technology, and appealing media content. Rather than relying on their ideas on those fronts, the radio companies seek to become larger yet again. Based on the facts, however—declining stock prices, measured performance, and recently announced sales of stations—we question whether it is economies of scale or diseconomies of scale that have come to fruition.¹⁰

If economies of scale actually benefited consumers, then the ability to syndicate programming should generate profits regardless of station ownership. Non-affiliated and not

⁵ Comments of the National Association of Broadcasters, 2006 Quandrennial Regulatory Review, FCC MB Docket No. 06-121 (Oct. 23, 2006) [hereinafter “NAB Comments”], 12-23.

⁶ Clear Channel Comments at 11-12.

⁷ NAB Comments at 13.

⁸ See, e.g., Marc Fisher, *Blackout on the Dial*, AM. JOURNALISM REV., June 1998, at 44.

⁹ Jacques Steinberg, “Money Changes Everything,” N.Y. TIMES, March 19, 2006, Sec. 2, p. 1.

¹⁰ See Appendix, Ch. 1, at 45-48.

commonly owned stations can buy their programming.¹¹ And if the homogenized programming these companies offer serves the public so well, other audio platforms such as satellite radio would carry the radio companies' content. Station ownership is a separate issue from syndicated programming. The radio companies are seeking not just increased horizontal concentration but also vertical integration when they advocate elimination of the local ownership cap. Yet they provide no argument for the benefits of having content producers own a higher percentage of the outlets. Nor do they explain how or why larger companies would serve local communities better. One is left to speculate that they seek supracompetitive profits from the market power that would come from controlling more outlets. But the FCC's responsibility is not to make money for radio companies, unless that happens to benefit the public. As the report contained in the appendix to our comments shows, consolidation has decreased competition, localism, and diversity and has not benefited the public.

Competition

What does competition mean? In common parlance, competition refers to the horse-race or tournament kind of competition we see in sports. Economists use the term to refer to a decentralized, unconcentrated market structure. But to NAB and Clear Channel, competition means simply the absence of regulation. Or it can mean the ability of particular incumbent radio companies to survive, that is, to continue competing. This ambiguity in the term "competition" has led to much confusion in radio regulation.¹² The policy goal for the FCC should be the economists' definition. Competition in the sense of an unconcentrated market structure provides

¹¹ Cf. Appendix, Ch. 3, at 111-12.

¹² See PETER DiCOLA & KRISTIN THOMSON, RADIO DEREGULATION: HAS IT SERVED CITIZENS AND MUSICIANS? 40-41 (2002), at <http://www.futureofmusic.org/research/radiostudy.cfm>.

more than just a decreased risk of market power (although it does that). It also provides more incentives for radio companies to exert the maximum effort and resources toward retaining and attracting new listeners. The enhanced incentive from competition is especially crucial in radio because the Commission already restricts entry into both full-power and low-power broadcasting.¹³ Without the threat of free or unregulated entry, and with many would-be broadcasters left out, radio incumbents enjoy special protection from new entrants into their industry. Thus it is imperative for the Commission to maintain an unconcentrated market structure so that radio companies have ample incentives to meet the demands of AM and FM radio listeners.

On the score of competition in the sense of market concentration, the radio industry has gone backwards over the last decade. The number of radio owners has declined overall by one-third and the number of commercial owners has declined by 43 percent.¹⁴ Ten companies have almost two-thirds of the market share nationwide.¹⁵ On a local level, the signal-contour market definition has resulted in abnormally large station groups in 104 different markets and higher concentration in those markets.¹⁶ An overwhelming majority of local markets have concentration well beyond the threshold for antitrust concern.¹⁷ These figures fully incorporate “out-of-market” listening as described in NAB’s comments¹⁸—and they still demonstrate alarming levels of concentration.

¹³ See Appendix, Ch. 1, at 20-21, 23-24.

¹⁴ *Id.* at 32-34.

¹⁵ *Id.* at 39-40.

¹⁶ See Appendix, Ch. 2, at 60-64.

¹⁷ *Id.* at 67-70.

¹⁸ NAB Comments at 11-12 & Attachment C (“A Second Look at Out-of-Market Listening and Viewing: It Has Even More Significance”).

Clear Channel submits that the volatility of market shares should alleviate concerns about these high and unprecedented concentration levels in radio. Prof. Jerry Hausman's analysis of this issue is misleading. Arbitron shares are small numbers, and are measured in relatively large and imprecise increments of 0.1. So a change of one or two increments in Arbitron ratings necessarily represents a large percentage change. Suppose a station has a 3.0 share, a fairly typical number. A change to a 2.8 share reflects a 7 percent change—greater than the 5 percent threshold used to indicate a “relatively constant” share in Prof. Hausman's analysis.¹⁹ But the actual change in market share, due to rounding, may be as little as 4 percent. Besides, the volatility of individual stations' market shares is irrelevant. What matters are the station groups' market shares. Station groups have the discretion to alter programming within the group—for instance, to switch one station from original programming to a simulcast of another. Programming changes within station groups will reallocate ratings among the individual stations. So the relevant economic object for measuring volatility would be the station groups' shares, taking common ownership into account. Data on individual stations' shares tell a misleading and incomplete story about the workings of radio markets.

Clear Channel's analysis of market shares' volatility actually comes in service of their argument that the FCC should measure only concentration of outlets, not concentration of market shares.²⁰ What they advocate is like ignoring the difference between a 50,000 square foot Wal-Mart store and a 1,500 square foot mom-and-pop store. Only in a footnote does Clear Channel acknowledge that the size of the broadcast area must be taken into account: “It should be noted that it may be appropriate to take technical differences across stations into account when

¹⁹ Clear Channel Comments, Exhibit 2 (Statement of Prof. Jerry A. Hausman), at 9.

²⁰ Clear Channel Comments at 59-60.

determining which stations have the potential to be successful competitors.”²¹ Along with power, tower height, and antenna shape, radio station’s position on the dial and listeners’ habits (operating through their ability to pre-program the frequencies of their favorite stations) are also important for determining each station’s listenership.²² Market shares capture the impact of all these factors succinctly. What matters for measuring a radio station’s economic, social, and political influence are actual listener ratings. It makes no sense to measure outlet concentration and then make corrections based on power, tower height, antenna shape, position on the dial, AM vs. FM, and so on. The FCC already has listener ratings available to measure the competitive position of radio stations.

Localism

Clear Channel claims to be “local” in the first sentence of its comments.²³ But the experience of Country radio listeners in Poughkeepsie, New York, and Eau Claire, Wisconsin, contradicts their claims. Twenty-nine of the top thirty songs played on each Clear Channel’s country stations in those two cities, or 97 percent, were identical. As the FCC’s own research staff has emphasized, the top thirty songs on radio stations have been receiving an ever-greater proportion of the airtime, making this an even more accurate measure.²⁴ What can explain such a huge correlation in playlists in totally different regions of the U.S. except a lack of localism in the internal organization of the nation’s largest radio company?

²¹ Clear Channel Comments, Exhibit 2, at p. 8 n.18.

²² See Appendix, Ch. 1, at 38-39.

²³ Clear Channel Comments at i (“Clear Channel Communications, Inc. (“Clear Channel”) is one of the world’s leading media and entertainment companies and is the licensee of locally-programmed and locally-oriented radio and television stations that are dedicated to serving communities across the United States.”).

²⁴ See “Preliminary Analysis for Diversity and Localism in Radio Playlists Study” (August 2004), at <http://www.fcc.gov/ownership/additional.html>.

The localism goal does not support further consolidation. The geographic reach of radio companies has already expanded drastically. One hundred and twenty-one companies and organizations now own radio stations in at least ten different cities. In 1975, only nine companies did so.²⁵ FMC created a Local Ownership Index to measure the geographic reach of radio companies. The index has declined 28 percent over the last decade.²⁶ As noted in the introduction, instead of regulatory relief, it is imperative for broadcasters to develop business models and attractive programming that take advantage of terrestrial radio's unique strengths. Radio programming—in the sense of broadcaster-sequenced music or talk—has never been more popular. The issue is whether the owners of the most ubiquitous and local medium can develop success business plans.

Diversity

The data both Clear Channel and NAB rely on involves measures in which formats are counted up without recognition of obvious format similarities. For instance, the regression analysis conducted by Prof. Hausman for Clear Channel uses as its outcome a simple count of how many format names appeared in each market.²⁷ The charts provided by Dr. Mark Fratrik of BIA Financial Networks in NAB's comments use a similar approach.²⁸ Under this methodology, Lite AC, Bright AC, Soft AC, and AC are all considered just as different as Rock, Jazz, News, and Sports. And, under this methodology, a station that listed its three formats as Rock/Jazz/Classical and another station that listed its three formats as Rock/Classical/Jazz would

²⁵ Appendix, Ch. 1, at 34-36.

²⁶ Appendix, Ch. 2, at 75-79.

²⁷ See Clear Channel Comments, Exhibit 2, at 3 ("The left hand side variable in the econometric model is the number of formats available in the market.").

²⁸ NAB Comments, Attachment G ("Over-the-Air Radio Service to Diverse Audiences"), at 3-7.

be considered two totally different formats with nothing in common. Clearly, Clear Channel and NAB's methodology is fundamentally flawed. Measures that simply count formats naively are totally inappropriate to measure the degree to which radio programming serves the public.²⁹ As part of our research, FMC examined the playlists of many of these supposedly distinct formats, and we found that many formats overlap considerably in terms of the songs played. Pairs of supposedly different formats can share well over half the same songs, like Rock and Active Rock, which overlap at an 80 percent level.³⁰

Interestingly, the FCC's own researchers have also moved beyond studying just formats to study individual songs on stations' playlists. They find that "owners prefer to play similar music across their stations in different markets and across their stations within the same format" and that "the tendency to play more similar music across stations within the same format outweighs the tendency to differentiate play lists within the same market."³¹ These newly released findings accord with our own analysis, which found extensive overlap in the playlists of commonly owned stations in the same format.³² We concur with the FCC researchers' conclusion: "Commonly owned stations within the same format and market play more similar music than separately-owned stations within the same format and market, because common ownership within format generates greater play list similarity."³³ In light of these new revelations and strong conclusions from the FCC's own expert research staff, it is untenable for NAB and CC to continue to claim that diversity on the airwaves has increased.

²⁹ See Appendix, Ch. 3, at 83-86, 101-103.

³⁰ *Id.* at 98-101.

³¹ "FCC Radio Market Structure and Music Diversity Paper" (Spring 2005), 19, at <http://www.fcc.gov/ownership/additional.html>.

³² Appendix, Ch. 3, at 103-110.

³³ "FCC Radio Market Structure and Music Diversity Paper" at 19.

Conclusion: Policy Proposals

To conclude, we would like to call special attention to the constructive policy proposals we have offered in the attached study. From the study's conclusion:³⁴

³⁴ Appendix, Conclusion, at 114-116.

Safeguarding Competition

- (1) **Maintain the current local ownership caps;** or
- (2) **Institute lower caps.** Ownership caps on radio-station ownership prevent concentration of economic, social, and political power. The most commonly accepted measure of concentration, the Herfindahl-Hirschman Index (HHI), has reached a high level in the national market and dangerous levels in most local markets. We have designed a pair of methods to calculate the ownership caps necessary to keep the HHI below the threshold of danger in each local market.³⁵ The FCC could justify a lower cap by using either of the methods or by combining them, applying the lower cap whenever the results of the two methods differ.
- (3) **Retain the current attribution rules.** In light of the recent trend of taking media companies off the public stock market and into the holdings of private equity firms, it is essential that the FCC continue to use its 5 percent threshold to determine when a company is considered to own a radio station.³⁶ Otherwise, shifting radio stations to private equity could become a loophole in the local ownership caps.
- (4) **Encourage ownership by small, independent, or minority owners.** We recommend that Congress and the FCC consider several initiatives, ranging from tax incentives to requirements on sale and divestiture of stations, including the 448 reportedly to be sold by Clear Channel.³⁷

Restoring Localism

- (5) **Adopt the Local Ownership Index developed by Future of Music Coalition.** Local ownership is one key aspect of the broader concept of localism. But it has the benefit of being

³⁵ See Appendix, Ch. 2, at 70-74.

³⁶ See Appendix, Introduction, at 13-14.

³⁷ See Appendix, Ch. 1, at 48.

relatively easy to quantify.³⁸ From 1975 to 2005, the Local Ownership Index has declined drastically, suggesting the need for the following three policy proposals to restore local ownership.

(6) Change the full-power licensing process. In recent years, some non-profit entities have benefited greatly from the points system used to allocate new, noncommercial, full-power FM licenses. We applaud this previous progress, but we also point out that many of the organizations that have benefited are national.³⁹ In the future, new licenses should go to entirely local entities and should only be transferred to entirely local entities. Otherwise, the level of local control over local radio stations will remain harmed.

(7) Use the digital audio broadcast (DAB) transition as an occasion to reallocate spectrum to entirely local entities. The transition to DAB has been slow so far. With concentration at historically high levels and localism at historically low levels, it does not make sense to allow current licensees to enjoy two to five times the digital channels with their current spectrum allocation. Local, independent entities could make better use of that spectrum.

(8) License more low-power FM stations. Some states, especially on the east coast, still have fewer than five licensed low-power FM stations. Congress should heed the engineering studies commissioned by the FCC and relax the rule banning low-power FM licenses when they would use frequencies supposedly too close to those of existing full-power FM stations.

Fostering Diversity

(9) Measure diversity more accurately. The FCC should disregard the industry practice of using format variety—simply counting up the number of format names—as a measure of true

³⁸ See Appendix, Ch. 2, at 75-79.

³⁹ See Appendix, Ch. 1, at 34-38.

programming diversity. Instead, the FCC should acknowledge the imperfections in the available data on formats, work to collect better data, and in the meantime use more subtle measures of format variety like those we have implemented.⁴⁰

(10) **End structural payola.** The practice of accepting funds from “independent promoters” in return for airplay—alongside more crude forms of payola involving gifts to radio employees—represents a structural problem with how radio playlists have been developed. The FCC should enforce the prohibition on payola by requiring broadcasters to provide data on both playlists and on consumer-testing pools of songs and monitor that data to verify a level playing field for musicians on music radio.

(11) **Apply the competition, localism, and diversity goals to the DAB spectrum.** The diversity requirement is especially important to DAB if the spectrum reallocation we recommend does not occur. In this case, current licensees will enjoy up to five times the spectrum. The FCC should expect five times the diversity from its licensees—not just rehashing of the same narrow playlists and syndication choices.

Improving Access to Data

(12) **Collect more ownership-related information from licensees.** The public should have much better basic information about radio licensees: such as their owner; their parent company; their headquarters and main centers of employment; and their local marketing agreements (LMAs), if any.

(13) **Begin collecting objective data on programming.** We emphasize the term “objective” because we believe that creating access to the simplest objective information about programming

⁴⁰ See Appendix, Ch. 3, at 85-90.

would be a major step forward. We do not expect the FCC to begin analyzing or classifying content—that step can be left to the public, but only if it has the raw, objective data. We would include such objective and easily verifiable information such as what networks each station carries, what popular syndicated shows each station carries, what playlists music stations are using, and so on.

(14) Make all information on radio easily available to the public on the FCC website.

Citizens should not have to purchase a \$7,000 commercial database to understand who owns which radio stations, where those owners are located, and what those owners are putting on the air.

(15) Keep increasing public access and public involvement. The FCC should have responsibility for cataloguing the public comments made in its proceedings. It should also continue the current policy of holding more public hearings when the media-ownership rules are reviewed. We have been encouraged by the FCC's efforts on this front and we urge the FCC to maintain its trajectory towards more open and transparent decision-making.

We offer these fifteen proposals in recognition of the changing media environment and the need for the FCC to maintain its role as guarantor of competition, localism, and diversity on the public airwaves. In this reply comment, we have responded to the major arguments offered by the radio industry on behalf of further consolidation. We urge the Commission to take the opposite tack. The attached study aims to provide a clear, accessible, and independent assessment of developments in the radio industry in a historical context, especially those of the last decade. We believe that the data analysis in the study supports the policy proposals we have offered above, and we respectfully submit both as part of this important proceeding.

Respectfully submitted,

_____/s/_____

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