Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of	)	
	)	
2010 Media Ownership Review	)	GN Docket No. 09-182

Comments of
Future of Music Coalition

INTRODUCTION

Future of Music Coalition (FMC) respectfully submits these comments to the FCC in its Quadrennial Media Ownership Review, with a focus on the broadcast radio sector. FMC is a national research, education, and advocacy, non-profit organization for musicians with an established history of documenting trends in the music industry, including commercial broadcast radio. FMC supports the interests of musicians, particularly independent artists, who have historically faced tremendous barriers in achieving commercial radio airplay. FMC also takes into consideration the interests of music fans, who have demonstrated clear demand for content scarcely offered by commercial radio programmers.

FMC was founded a decade ago, with the recognition of profound changes that digital technology would have on the worlds of media and entertainment. The brunt of these changes was borne by groups with significant investments in the distribution and sales of physical media — major record labels, for example. This is not to suggest that radio broadcasters have not been impacted by the rapid influx of alternative listening options. However, multiple studies show that consolidation in commercial broadcast ownership has had a deleterious effect on the radio sector. We urge the Commission to closely consider radio's transformation following the 1996 Telecommunications Act as it undertakes a review of current media ownership rules.

Since 2002, FMC has published six major research studies that examined various aspects of radio in the wake of the 1996 Telecommunications Act. We have conducted detailed analyses on radio station ownership and market share, broadcast industry employment and wages, a content analysis of citizens' comments filed during the 2002 proceeding, and the effectiveness of a 2007 voluntary agreement between the FCC and four major station group owners that was meant to curb structural payola. All of these documents and reports have been filed at the Commission during prior proceedings and are accessible via our website.[1]

Our research has brought to light several important findings about the radio industry, some of which have been cited by FCC Commissioners and the courts.[2] Among the most significant: counting format names is an inadequate measure for format "diversity"; just fifteen formats make up 76 percent of commercial radio programming; the FCC's signal contour market definition had allowed companies to exceed the ownership caps in 104 markets; and the 2007 payola consent decrees and Rules of Engagement have had little impact on musicians' access to the airwaves.[3]

In addition to research, FMC has articulated a four-part "Fixing Radio" agenda that focuses on tangible, commonsense policies to enhance the role that terrestrial radio can and should play in our culture and society. Much of our focus as an organization is on improving conditions for musicians, but there would likely be broader benefits to the listening public should these goals be properly addressed. FMC's "Fixing Radio" agenda seeks to:

1. Prevent further radio consolidation

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[1] All Future of Music Study's have been archived on our website at http://www.futureofmusic.org/research
[2] Statements of FCC Commissioner Jonathan Adelstein at the Social Science Research Counsel Media Research Pre-Conference, (Jan 11, 2007).
[3] DiCola, Peter. *False Premises, False Promises: A Quantitative History of Ownership Consolidation in the Radio Industry*, [hereinafter *False Premises*] December (2006) p.4 at http://www.futureofmusic.org/article/research/false-premises-false-promises

2. Expand and protect community radio
3. End structural payola
4. Ensure that the transition to HD Radio benefits the musicians and the public[4]

FMC strongly supports the FCC's stated principles of localism, competition and diversity, and believes that consolidation in radio station ownership has undercut these tenets by creating market conditions that have led to dramatic reductions in competition within the sector, as well as reduced diversity on the airwaves. In these comments, FMC will summarize our key determinations, which we hope will provide useful to the Commission as it evaluates its media ownership rules and assesses radio's important place in America's communications portfolio.

[4] Reply Comments of the Future of Music Coalition. *Broadcast Localism*. Report on Broadcast Localism and Notice of Proposed Rulemaking, FCC, MB Docket No. 04-233 (rel. Jan 24, 2008).

RADIO'S VITAL ROLE

In the words of media scholar Robert McChesney, radio is "the quintessential people's medium".[5] A public asset that has been managed on Americans' behalf by the Federal Communications Commission since 1934, radio is fundamentally inexpensive to produce and receive, allows for "real-time" communication in a regional area without regard to economic or literacy constraints, and can offer a wide range of news, entertainment, and discussion to a broad swath of the American public. Even faced with competition from television, the Internet, and print media, radio reaches 90 percent of American adults every week.[6]

Radio also continues to serve an important role in terms of public safety and local information. In fact, this may be radio's singular advantage over digital platforms. In times of public emergency, radio is the most efficient and reliable medium by which to distribute critical information to the public. And, in some communities, radio remains a primary source for information and entertainment. Some 30 percent of US households have yet to adopt broadband internet service due to availability, price, speed, or a real or perceived value gap. This means that radio is still a crucial communications platform for much of the country. With economic uncertainty and the lack of a clear path to expanding broadband service, affordable access for news, civic debate, public safety and entertainment becomes that much more important. Radio provides these necessities, as well as an affordable means by which the public can amplify their own voices.

RADIO'S ROLE IN THIS RULEMAKING

FMC recognizes that the Commission's responsibilities and policy prerogatives continue to evolve, and that some of the most critical questions being addressed in this Quadrennial review are not specific to — or even primarily about — traditional over-the-air broadcast radio. Indeed,

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[5] Robert McChesney, "Forward: Radio and the Responsibility of Radio Scholars," *Journal of Radio Studies*, Vol. 8, No. 2, 2001, v.
[6] Arbitron, "2008 Radio Today: How America Listens to Radio: 2009 edition," 3. http://www.arbitron.com/downloads/RadioToday_2009.pdf

many of the questions asked in this proceeding are far too complex for FMC to weigh in on. However, we do submit two points to the FCC in this comment.

First: we encourage the Commission to look at the policy goals of the Telecommunications Act of 1996 and the subsequent outcomes on the commercial radio sector as an important bellwether.

Radio consolidation has no demonstrable public benefit. Nor has it improved conditions for those working people in the music and media industries, including DJs, programmers and musicians. The Telecom Act unleashed an unprecedented wave of radio mergers that left a highly consolidated national radio market and extremely consolidated local radio markets. Radio programming from the largest station groups remains focused on just a few formats — many of which overlap with each other, creating further homogenization.[7]

From recent payola scandals to tales of failing business models among media conglomerates, we can see that the consolidation approach did not work. Rather than increasing competition and diversity, the Telecom Act worked to reduce competition, diversity, and localism, doing precisely the opposite of Congress's stated intentions regarding FCC media policy. There are clear lessons to be learned. Current and future debates about how best to regulate communications industries should take note of commercial radio's woes for an example of the dangers that come with the consolidated control of a media platform.[8]

Second, we encourage the Commission to adopt rules that strengthen radio's ability to serve *local* communities. It's no surprise that radio is facing enormous competitive pressure from other media sources — many of which are internet-based and fast becoming accessible across the US. Radio's greatest asset is its power to target a local audience. This is something that the internet does poorly; it would be in the public and the FCC's best interest in reviewing policies to pursue a goal of strengthening commercial radio's local footprint and invigorating its service to local communities.

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[7] *False Premises* at 8.
[8] *Id.*

REFLECTIONS ON THE TELECOM ACT

In this proceeding, the Commission asks some detailed and noteworthy questions about how it should define and measure competition in today's media marketplace.

We recognize the Commission's challenge in adopting definitions that can provide an accurate measurement of market conditions in this multifaceted media ecosystem. Instead of suggesting particular definitions, FMC urges the Commission to take a close look at times in recent history when policies led to measurable outcomes, and reflect on whether the intended goals of those policies have been met. In the radio broadcast sector, the Commission needn't look further than the 1996 Telecommunications Act.

The Telecommunications Act of 1996 provided the first major overhaul to media communications policy since the establishment of the FCC in 1934. The stated goal of the Act was to eliminate the artificial regulatory barriers that prevented marketplace competition from providing consumers with innovative and competitively priced communication services.

For radio, the most sweeping amendments in the Act were changes to the number of stations an owner could control, both locally and nationally. The national cap was eliminated entirely and local ownership rules were relaxed, allowing a single entity to control up to eight stations in the nation's largest markets.[9]

This was a windfall for some station owners, particularly those with enough capital to acquire as many stations as possible without violating local ownership rules. Within a month of Telecom Act's passage, two radio groups had acquired 52 and 46 stations respectively, more than twice the previous national limits.[10] By the end of 1996, 2,157 stations had changed hands.[11]

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[9] 47 C.F.R. § 73.3555(a)
[10] Sterling, Christopher. "Radio and the Telecommunications Act of 1996: An Initial Assessment," [hereinafter Sterling] *Journal of Radio Studies*, IV (1997), 4.
[11] Mark Fratrik, "Radio Transactions 2001: Where Did All The Deals Go?" BIA Financial Networks, 2002, Figure 2, 8.

While the relaxation of ownership caps is the most cited policy amendment — and clearly the change with the most tangible results — there are two other components of the Act that are important to acknowledge.

First, the station license term was lengthened. The new law amended Section 307(c) of the 1934 Act to extend a radio station's license term from seven to eight years. Prior to 1981, licenses were good for three years. Second, license renewal guidelines were amended. While previously radio broadcasters regularly engaged in costly legal battles to protect their licenses during renewal periods, the new law effectively guaranteed FCC license renewal so long as: "(a) the station has served the public interest, convenience, and necessity; (b) there have been no serious rule violations; and (c) the licensee has committed 'no other violations" of the Telecom Act of FCC rules "which taken together, would constitute a pattern of abuse."[12]

This new subsection shifted the renewal process from one where competitors could challenge existing stations to a situation where stations were virtually *guaranteed renewal*. Just as profound was the ineffectual process now available to challengers. If the existing licensee failed to meet the broad standards, the FCC could issue an order denying renewal. Only then could challengers file a competing application. Thus, no challenging applicant could even be considered until and unless the FCC declined to renew an existing applicant, even if the challenging applicant could better serve the public interest.[13]

The 1996 amendments to license renewal laws virtually ruled out the possibility of licensees being challenged by competitors on the grounds of their public behavior. In a 1997 *JRS* article assessing the Telecom Act, Christopher Sterling noted, "The assured renewal and virtual lapse of ownership restrictions… have raised concerns among the relatively few remaining 'public interest' critics of commercial radio who argue the changes put broadcast owners beyond the reach of listeners or the FCC."[14]

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[12] Sterling, at 2.
[13] Id. at 3.
[14] Id. at 6

Predictions Made about Telecom Act

Even before President Clinton signed the Telecommunications Act into law on February 6, 1996, numerous predictions were made regarding its effect on the radio industry.

Fewer Owners

Industry analysts predicted that the number of individual radio station owners would decrease. Those in the industry with enough capital would begin to snatch up valuable but under-performing stations in many markets, big and small.

Greater Financial Benefits for Radio

Station owners, given the ability to purchase more stations both locally and nationally, would benefit from economies of scale. Radio runs on many fixed costs; equipment, operations and staffing costs are the same whether broadcasting to one person or one million. Owners knew that if they could control more than a single station in a market, they could consolidate operations and reduce fixed expenses. Lower costs would mean increased profit potential.

A More Competitive Marketplace

An increase in financially sound radio stations would allow them to compete more effectively against new media competitors such as cable TV and the internet.

Greater Diversity

Applying Steiner's hypothesis, increased ownership consolidation on the local level would lead to an increase in the number of radio format choices available to the listening public. A single owner with multiple stations in a local market would provide more programming diversity in a given market than would five separate owners.

What Really Happened

More Stations, Fewer Owners

One prediction came true: the 1996 Act opened the floodgates for ownership consolidation to occur. From March 1996 to March 2002 the number of commercial stations increased by 5.6 percent — rising from 10,257 to 10,807 — while the number of owners declined by 33 percent — from 5,133 to 3,408.[15] Over the same period, the size and holdings of a number of the largest station group owners increased drastically. In 1996, the two largest group owners had fewer than 65 stations each. By 2005, the top two owners controlled 1,479 stations nationwide.[16]

In our 2002 and 2006 studies, FMC found that ten parent companies dominated the radio spectrum, radio listenership *and* radio revenues. Deregulation allowed a few large radio companies to swallow many of the small ones and, by 2001, these ten parent companies controlled two-thirds of both listeners and revenue nationwide. Two parent groups in particular, Clear Channel and Viacom, controlled 42 percent of listeners and 45 percent of industry revenues at the time.[17]

FMC also found that oligopolies controlled almost every geographic market. Virtually every geographic market in 2001-2002 was dominated by just four firms, which controlled 70 percent or more of market share. In smaller markets, consolidation was even more extreme. The largest four firms in most small markets controlled 90 percent of market share or more.[18]

Benefits From Economies of Scale Aren't for Everyone

Only the few radio station owners with enough capital to buy additional stations benefited from deregulation. Station owners consolidated their operations on a local level, frequently running a number of stations out of a single building, sharing a single advertising staff, technicians and on-

[15] George Williams and Scott Roberts, "Radio Industry Review 2002: Trends in Ownership, Format, and Finance," Media Ownership Working Group Paper #11, Federal Communications Commission, September 2002, Appendix A. http://www.fcc.gov/ownership/studies.html

[16] False Premises at 36.

[17] Peter DiCola & Kristin Thompson, *Radio Deregulation: Has it Served Citizens and Musicians?* 24-25 (2002), [hereinafter *Radio Deregulation*] *at* http://www.futureofmusic.org/research/radiostudy.cfm.

[18] *Radio Deregulation*, at 31-35

air talent. In some cases, radio station groups have further reduced costs by eliminating the local component almost entirely. Using satellite feeds and regional content managers, some stations consist simply of a broadcast tower and a part-time technician who controls feeds from regional or national offices, rebroadcasting them to local audiences. These group owners are benefiting from economies of scale, but what are the drawbacks? Local DJs and program directors have been replaced by regional directors, or even by voice-tracked or syndicated programming, explaining a marked decrease in the number of people employed in the radio industry.[19] Listeners are losing as well. With an emphasis on cost-cutting and an effort to move decision-making out of the hands of local station staff, much of radio has become bland and formulaic.

This emphasis on bottom-line programming may have made some stations more profitable, but the reduction in localism and programming diversity have had a negative impact on the industry, musicians and citizens.

Less Regulation Has Not Lead to Greater Market Competition

The economic argument for the need for increased competition in the radio industry was specious. Prior to 1996, radio was among the least concentrated and most economically competitive of the media industries. In 1990, no company owned more than 14 of the 10,000 stations nationwide, with no more than two in a single local market. Now, local markets have consolidated to the point that just four major radio groups control around 50 percent of total listener audience and revenue.[20] Clearly, deregulation has *reduced* competition in the radio industry in an important sense.

COMPETITON

Our look back at the predictions and outcomes associated with the Telecom Act may help the Commission in its current policymaking efforts. However, FMC recognizes that the media marketplace of 2010 is vastly different than that of 1996. Not only should competition within the broadcast radio sector be examined, but radio's ability to compete with other consumer-based

[19] See DiCola, Peter "Employment and Wage Effects of Radio Consolidation" (2006). http://www.futureofmusic.org/article/research/employment-and-wage-effects-radio-consolidation
[20] *False Premises* at 21-23.

media – from TV and newspapers to satellite radio, webcast stations, blogs, social networks, video games and YouTube. It is unarguable that the Commission needs to take these changes into consideration as well.

Radio may still be ubiquitous, but there's no doubt that the sector is facing declines in listenership and revenue. FMC's 2006 report *False Premises, False Promises* notes that, across 155 markets, radio listenership has steadily declined over the past 16 years and has dropped more than 22 percent since its peak in 1989.[21]

The increase in web-based media options is at least partly responsible for this drop. Even though many new devices can pick up terrestrial broadcast signals (car stereos, multi-purpose home listening appliances, some mobile phones), consumer have rapidly adopted many web-based services that offer the kind of diverse, personalized, niche musical content that large broadcast groups simply do not provide. Take, for example, the meteoric growth of webcaster Pandora, which is now the largest online broadcaster in the US with over 50 million listeners. Pandora is personalized radio; there are no DJs, no commercials, no shock jocks. As we detail in our studies "Same Old Song,"[22] commercial radio is cautious and risk-averse, sticking to known hits and major label talent in order to keep people from changing the channel. Pandora embodies traits that music-focused commercial radio has been reticent to attempt, but are proving wildly successful.

In order for competition to be a viable component of FCC policy, there must be a true commitment to structures that incentivize radio companies to meet the demands of listeners. Even with the scarcity of radio broadcast spectrum in some geographical areas, the FCC could do more to inspire competition in radio markets, either by modifying its re-licensing requirements, or identifying more opportunities for qualified entrants to make use of spectrum where available.

Although not strictly within the Commission's mandate, it may at some point be useful to imagine what the flexible transfer of licenses from current owners to new entrants might look

[21] *False Premises* at 4-5.
[22] Thompson, Kristin. *Same Old Song: An Analysis of Radio Playlists in a Post-FCC Consent Decree World*. [hereinafter *Same Old Song*], April (2009).

like. Given the colossal debt burdens of some major broadcasting groups, the current model of corporations owning multiple properties in different markets is unsustainable. However, local entrepreneurs who value radio as a public resource should have a shot at making commercial broadcasting economically viable through a more nuanced understanding of their local communities. As the issuer and guarantor of licenses, the FCC may have a role to play in identifying creative solutions that could benefit both debt-burdened station owners and would-be broadcasters, while boosting market competition.

LOCALISM

The FCC's localism goal does not support further consolidation in radio station ownership. Since the Telecom Act's passage, the geographic reach of radio companies has expanded drastically. As many as 121 companies and organizations or more currently own radio stations in at least ten different cities. In 1975, the number was nine.[23] FMC's 2006 research indicated a 28 percent decline in local ownership from 1996 to 2006.[24] Instead of seeking regulatory relief, broadcasters must develop workable business models and concentrate on programming that takes advantage of terrestrial radio's unique qualities — namely, its geographically limited broadcast signal. In light of competition from digital media, this actually becomes a strength. Even a terrestrial station's online simulcast could benefit from greater localism, as listeners beyond signal reach may "tune in" online to experience regional flavor. This is especially true for music, which offers a dynamic example of geographic cultural diversity.

Radio programming — in the sense of broadcaster-sequenced music or talk — remains incredibly popular. The issue is whether the owners of the most ubiquitous and local media format can develop sustainable business plans. The questions of station ownership and localism are inextricably linked. We believe the record clearly demonstrates that the massive and radical restructuring of the commercial radio industry following the 1996 Telecommunications Act had

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[23] *See* "Preliminary Analysis for Diversity and Localism in Radio Playlists Study" (August 2004), *at* http://www.fcc.gov/ownership/additional.html.

[24] *False Premises* at 75-79.

two fundamental effects. First, these policy changes allowed a disproportionate amount of market share to shift quickly into the hands of a small number of powerful broadcasting companies that base their business models on streamlining costs by reducing the amount of live, local programming and eliminating layers of management. Second, the domination of these larger owners skewed the historically diverse advertising revenue pie, putting significant economic pressure on small, local owners[25]. Tragically, many of these small owners — the types of broadcasters who lend diversity and local flavor to the airwaves — were either bought up by larger broadcasters or shut down their operations, which further reduced the niche and local programming that traditionally provided much of what made radio a vibrant communications medium in the first place.[26]

Commercial radio's exclusion of local and independent music hardly reflects actual demand. Local and independent record labels are responsible for over 80 percent of the music released in this country.[27] Although the evolution of internet-based models to distribute and access music has spurred significant growth in the independent sector's overall market share (now up to an estimated 30 percent of all sales), many artists and labels complain that access to commercial radio playlists is still limited those under major label contract. This is problematic: because of the difficulty in obtaining radio airplay, small, locally based record labels face a significant competitive disadvantage as they invest large amounts of risk capital to build artists' fan base, only to see these artists sign to major record labels in order to maximize their chances of appearing on commercial radio.[28]

FMC understands that locally oriented programming isn't as cost-effective as running a station using pre-programmed playlists and automated DJs, but it is radio's strongest asset in an increasingly saturated media environment. FMC and its partners have engaged in pilot projects with small commercial operators to determine best practices for engagement between programmers and the independent sector to set goals and identify mutually beneficial

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[25] Localism Reply Comments at 2.
[26] Id.
[27] Id. at 3.
[28] Id.

marketplace solutions. We hope that these projects help to convey information that other stations can use in the future.[29]

Our nation is moving toward a global communications environment, where members of the public who have the time, interest and economic means can access content — including music — through a dizzying array of legal platforms, including internet-delivered radio stations, satellite radio, social networking sites, music blogs, digital download stores, subscription services and more. In this context, the ultimate and most unique value of terrestrial radio centers on its ability to provide free, local content. Consumers don't need another alternative to these global outlets; they need and desire media that reflect the unique happenings of their local community and that can relate the local community to the global culture.[30] As the Commission considers the localism question in its media ownership review, it is important to consider how radio can better serve this important policy goal.

DIVERSITY

When the Telecommunications Act was passed, there were predictions made based on Steiner's theory that consolidated ownership would lead to increased diversity of content in a particular market. FMC's 2002 research looking at the actual *songs* played on stations — and the overlap between uniquely named formats — raised questions about Steiner's theory. We found that format variety had increased (in other words, there were more different types of radio formats), but in many cases this increase was superficial. Further, in conflict with Steiner's theory, we found that in many markets individual station owners operate multiple stations that compete directly for a specific niche of listeners. This format redundancy led to many missed opportunities for greater diversity on the air.

The Commission should disregard the industry practice of using format variety — simply counting up the number of format names — as a measure of true programming diversity. Instead,

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[29] *Same Old Song* at 7.
[30] *Broadcast Localism*, Comments of Clear Channel Communications, Inc., FCC, MB 04-233 (rel. Apr. 28, 2008) [hereinafter "*Clear Channel Comments*"].

it 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.

The data relied on by both Clear Channel and NAB involves a process by which formats are counted without recognition of obvious similarities. Under their methodologies[31], Lite AC, Bright AC, Soft AC, and AC are all considered just as different as Rock, Jazz, News, and Sports. Likewise, a station that listed its three formats as Rock/Jazz/Classical and another station that listed its three formats as Rock/Classical/Jazz would be considered two totally different formats with nothing in common. Measures that simply count formats naively are wholly inappropriate to measure the degree to which radio programming serves the public.[32] As part of our research, FMC examined the playlists of many of these supposedly distinct formats, finding considerable overlap in terms of the songs played. Pairs of supposedly different formats can share well over half the same songs, such as is the case with Rock and Active Rock, which overlap at an 80 percent level.[33]

Concentrated Ownership in Markets Does not Increase Program Diversity

The FMC data provided in the FCC's 2006 Quadrennial Review clearly shows that programmatic diversity is greatest in station groups that are below their local ownership market caps.[34] Among such smaller station owners, religious format stations and Spanish-format stations are more common, as are Classical and Jazz/New Age stations. Indeed, some of the nation's most fragile and culturally important musical formats are *only* served by small, independent owners. Additionally, the balance across all programming format categories is generally more even. It appears that a wider variety of programming comes from the relatively small station groups and not the large station groups that resulted from the FCC's signal-contour market definition.[35] This finding casts doubt on any potential claims that larger station groups will offer the public a wider variety of programming, and supports the notion that the local ownership caps should not be loosened or eliminated during this Quadrennial review.

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[31] Comments of Clear Channel Communications, Inc., *2006 Quadrennial Regulatory Review*, FCC MB Docket No. 06-121 (Oct. 23, 2006) p.3.
[32] *False Premises* at 83-86, 101-103.
[33] *Id*. at 98-101.
[34] Comments of the Future of Music Coalition, *2006 Quadrennial Regulatory Review*, FCC MB Docket No. 06-121 (Oct. 23, 2006) p. 11.
[35] *Id*.

In order to further support the policy goal of diversity, FMC urges the Commission to follow through with efforts to eliminate 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 — has persistently affected radio playlists, warping public perception while freezing out potentially worthy independent and local content. The FCC should enforce the prohibition on payola by soliciting data — either from commercial providers that serve the major broadcasters, or from the stations themselves — in order to ensure a fair and transparent process for generating playlists.[36]

Content from Other Platforms is not a True Measure of Overall Diversity

There is little doubt that platforms such as cable television, satellite radio and the internet offer a broad range of content. Unfortunately, this is irrelevant to low-income, underserved or late adopting communities that depend on broadcast mediums like radio for information that can inspire greater engagement in important civic debates, provide relevant local information and offer a means through which to experience their communities and culture through music. Ownership diversity certainly plays into the equation, and FMC supports Commission efforts to expand opportunities for women and minorities to own and operate broadcast stations. In fact, many localism issues would be addressed simply if more stations were owned by representatives of the communities in which certain stations broadcast. Ownership diversity may also promote content diversity for much the same reason.

LOCAL RADIO OWNERSHIP RULE

Radio station ownership caps are key to preventing the concentration of economic, social, and political power. The most commonly accepted measure of concentration, the Herfindahl-Hirschman Index (HHI), has reached extraordinarily high levels in both national and local markets. FMC has designed a pair of methods to calculate the ownership caps necessary to keep the HHI below the threshold of danger in each local market.[37] The Commission could justify a

[36] *Same Old Song* at 8.
[37] *False Premises* at 70-74

lower cap by using either of the methods or by combining them, applying the lower cap whenever the results of the two methods differ.

Now, a decade after the Telecommunications Act of 1996, we can assess the more complex aspects and consequences of the legislation. The FCC's Local Radio Ownership Rule, although relaxed by Congress in the Telecommunications Act,[38] still limits the size of station groups.[39] But enforcement of this rule depends on the details. Most important among them is the particular way the FCC defines a local market. The precise definition of what constitutes a local market determines how the FCC actually enforces cap on local radio ownership. We urge the Commission to fully examine these definitions and ask whether they are an appropriate metric by which to assign and enforce radio ownership caps.

DATA IS KEY

In order to better fulfill its goals, the FCC should re-conceptualize its public interest obligations for the digital age. We're heartened that the Commission's leadership has talked about making data-driven results a priority as it sets about an ambitious agenda to expand broadband service and craft clear and understandable rules to preserve the open internet. It is our belief that the FCC should extend these same obligations as it begins its media ownership proceedings.

To better understand the broadcast sector, the Commission should collect more robust and accurate data about station ownership. Other information that we think would be helpful in policymaking includes: changes in station ownership since 1996; details about Local Marketing Agreements; the number of women or people of color in leadership or ownership roles; the station's primary, secondary and tertiary formats; the amount of a broadcast week dedicated to particular types of programming (and whether that programming is locally generated or from a networked source); whether the station is webcasting or programming HD channels; and its charity work in the community. Having this data would vastly improve the Commission's ability

[38] Telecommunications Act of 1996 § 202(b).
[39] FCC Local Radio Ownership Rule, 47 C.F.R. § 73.3555(a) (2004).

to evaluate the effectiveness of particular rules, to determine which rules should be maintained and which eliminated in our rapidly converging media landscape.

CONCLUSION

FMC appreciates the opportunity to offer our perspective to the Commission as it undertakes this important proceeding, and humbly offers our organization as a resource for information about the challenges and opportunities that exist between music community and radio sector. It is our conviction that the FCC has a responsibility to ensure that its media ownership rules truly reflect its goals of promoting competition, localism and diversity on the public airwaves. By doing so, the Commission will not only be fulfilling its obligations to the American public, but also reaffirming the greatness of our nation's communications framework.\

Respectfully Submitted,

Michael Bracy
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