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Radio Deregulation:
Has It Served Citizens and Musicians?

Testimony of the Future of Music Coalition
on
"Media Ownership: Radio"

Submitted to the Senate Committee on
Commerce, Science, and Transportation

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Good morning. On behalf of the Future of Music Coalition, it is my honor to testify this morning on the critical issue of how radio consolidation is affecting musicians and citizens. This is a timely hearing, and we applaud you for holding it. We also applaud the participation of the other witnesses, as we firmly believe that the public deserves an open, honest discussion about these issues, especially in an environment where further deregulation is under consideration at the FCC.

First, I will provide a quick background about myself and the Future of Music Coalition. Second, I will outline some of the conclusions of our recently released study on the impact of radio consolidation on musicians and citizens. Finally, I will talk about the importance of radio as a medium, and what we can do to make it better.

About Jenny Toomey and the Future of Music Coalition

My name is Jenny Toomey. I am a musician, entrepreneur and activist. I have released seven albums and toured extensively across the United States and Europe. For eight years, I co-ran an independent record label called Simple Machines. I know first hand both the difficulties that independent artists face in getting their music played on commercial radio and the opportunities that are presented by non-commercial radio stations that -- thankfully -- have been very supportive over the years.

I speak to you today both as a working artist and as Executive Director of the Future of Music Coalition, a not-for-profit think tank I co-founded three years ago with Michael Bracy, Walter McDonough and Brian Zisk. The Future of Music Coalition examines issues at the intersection of music, technology, law, economics and policy, in search of policies, technologies and business models that can benefit musicians and music fans. The FMC is built on the idea that the music industry is broken at a very basic level, as the very artists who create the works that are the hallmark of our culture struggle against structural impediments that make it difficult to achieve economic survival. It is our hope that increased awareness and engagement among artists, combined with thoughtful implementation of new technologies, will lead to new structures in a digital future that won't replicate the failures of our terrestrial present.

The Importance of Understanding the Effects of Radio Deregulation

As our organization began working on a wide range of issues – major label contract reform, healthcare for artists, webcasting royalties, peer-to-peer file trading – one issue continued to rise to the top: commercial radio. Everywhere we turned, there seemed to be another article, another letter to the editor, another emerging artist complaining about what was happening with radio in his or her specific community.

Radio is, of course, a critical hub of communications, entertainment and information in our society. The technology is ubiquitous – nearly all Americans own a radio. Historically, radio has been the most effective means of making new music available to local audiences, as program directors and disc jockeys kept the pulse of the industry in search of the next new act or the next new sound. When you read interviews with great musicians, they often reflect on the inspiration they found in their youth as radio connected them with sounds and words from across the world.

For many others, radio is primarily a business, where corporations seek to maximize profits by offering targeted programming intended to reach specific audience demographics preferred by advertisers. In this model, the argument goes, the public is served because broadcasters research what their targeted audience wants to hear, then deliver programming designed to maximize listener share.

We argue, however, that this is not the reason that radio has become such an important part of American culture. Rather, radio has worked over time because of the fundamental regulatory priorities of localism, diversity and competition. Certainly, we believe the strongest demonstrations of localism and diversity are found in non-commercial radio, where a wide range of musical genres and public affairs programs flourish. We encourage the Congress to pursue strategies that maximize the potential of non-commercial radio regardless of this discussion of consolidation of ownership.

In November 2002, the Future of Music Coalition released a study entitled "Radio Deregulation: Has it Served Citizens and Musicians?" The lead authors of the study, FMC board members Kristin Thomson and Peter DiCola, are both here today. We would like to enter the study into the record along with our testimony. The study is also available on our website at http://www.futureofmusic.org, and was entered as a public comment in the FCC's media ownership proceeding.

Background: The Goals of Deregulation

Radio is a public resource managed on citizens' behalf by the federal government. This was established back in 1934 when Congress passed the Communications Act. This Act both created the Federal Communications Commission (FCC) and laid the ground rules for the regulation of radio. The Act also determined that the spectrum would be managed according to a "trusteeship" model. Broadcasters received fixed-term, renewable licenses that gave them exclusive use of a slice of the spectrum for free. In exchange, broadcasters were required to serve the "public interest, convenience and necessity." Though they laid their trust in the mechanics of the marketplace, legislators did not turn the entire spectrum over to commercial broadcasters. The 1934 Act included some key provisions that were designed to foster localism and encourage diversity in programming.

Although changes were made to limits on ownership and FCC regulatory control in years hence, the Communications Act of 1934 remained essentially intact until it was thoroughly overhauled in1996 with the signing of the Telecommunications Act. But even before President Clinton signed the Telecommunications Act into law in February 1996, numerous predictions were made regarding its effect on the radio industry:

Fewer Owners

First, 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

Second, 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 1 million. Owners knew that if they could control more than one station in a market, they could consolidate operations and reduce fixed expenses. Lower costs would mean increased profit potential. This would, in turn, make for more financially sound radio stations which would be able to compete more effectively against new media competitors: cable TV and the Internet.

More Diversity

Third, there was a prediction based on a theory posited by a 1950s economist named Peter Steiner that increased ownership consolidation on the local level would lead to a subsequent increase in the number of radio format choices available to the listening public. According to Steiner's theory, a single owner with multiple stations in a local market wouldn't want to compete against himself. Instead, he would program each station differently to meet the tastes of a variety of listeners.

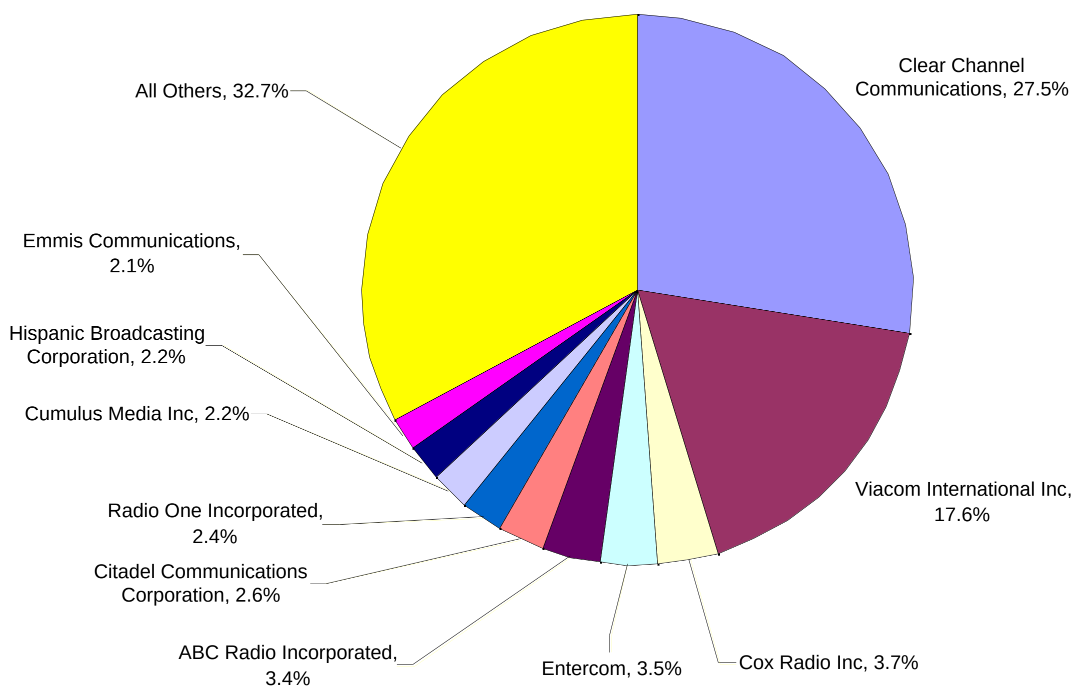
The Results of the Telecommunications Act

These were the predictions made prior to the passage of the Telecommunications Act, and clearly part of the argument made by broadcasters and their representatives on the importance of deregulation to the health of their industry. But what really happened? Enough time has lapsed to evaluate early predictions and note actual outcomes for the radio industry, musicians and citizens. Let's revisit these assumptions:

More Stations, Fewer Owners

Well, one prediction certainly came true: the 1996 Act opened the floodgates for ownership consolidation to occur. Deregulation has allowed a few large radio companies to swallow many of the small ones. Ten parent companies now dominate the radio spectrum, radio listenership and radio revenues, controlling two-thirds of both listeners and revenue nationwide.

Chart 3-4: Parents' U.S. Revenue Share, 2001



You can see from the revenue pie chart[1] that ten firms control 67 percent of industry revenue. The rest of the industry – a total of 4,600 owners – controls just 33 percent.

One gets much the same picture from the numbers on listenership. The same Top 10 firms control 65 percent of radio listeners:

[1] Source data: Media Access Pro, BIA Financial Networks, data as of May 16, 2002.

Top 10 Parents, Listeners and Listener Share, Winter 2002 [2]

Listener Rank	Parent Company	Arbitron Listeners (in Millions)	Nationwide Share of Listeners
1	Clear Channel	103.4	27.0%
2	Viacom	59.1	15.4%
3	Cox	13.2	3.5%
4	Entercom	13.1	3.4%
5	ABC Radio	12.6	3.3%
6	Radio One	11.3	2.9%
7	Emmis	10.6	2.8%
8	Citadel	10.5	2.7%
9	Hispanic Brdcstg.	8.7	2.3%
10	Cumulus	7.2	1.9%

An industry is an oligopoly in our terminology if the four largest companies control more than 50 percent market share. As you can see from the charts, the top four companies in radio control 52 percent of the revenue, making the radio industry an oligopoly. This means that we have *less* competition than before deregulation, not more. Oligopolistic control and socially beneficial competition are *opposites*. In general oligopolies can raise prices above competitive levels, restrict quantities of goods offered to the public, and – as we'll see in the radio industry – reduce the *quality* of what's offered to the public.

Two parent companies in particular – Clear Channel and Viacom – together control 42 percent of listeners and 45 percent of industry revenues. Clear Channel has grown from 40 stations to 1,240 stations -- 30 times more than congressional regulation previously allowed. No potential competitor owns even one-quarter the number of Clear Channel stations. With over 100 million listeners, Clear Channel reaches over one-third of the U.S. population. These two firms tower over the radio industry, and even over the other consolidators. Both own businesses in other media and advertising-based industries, such as network television, cable television, concert venues, and billboards.

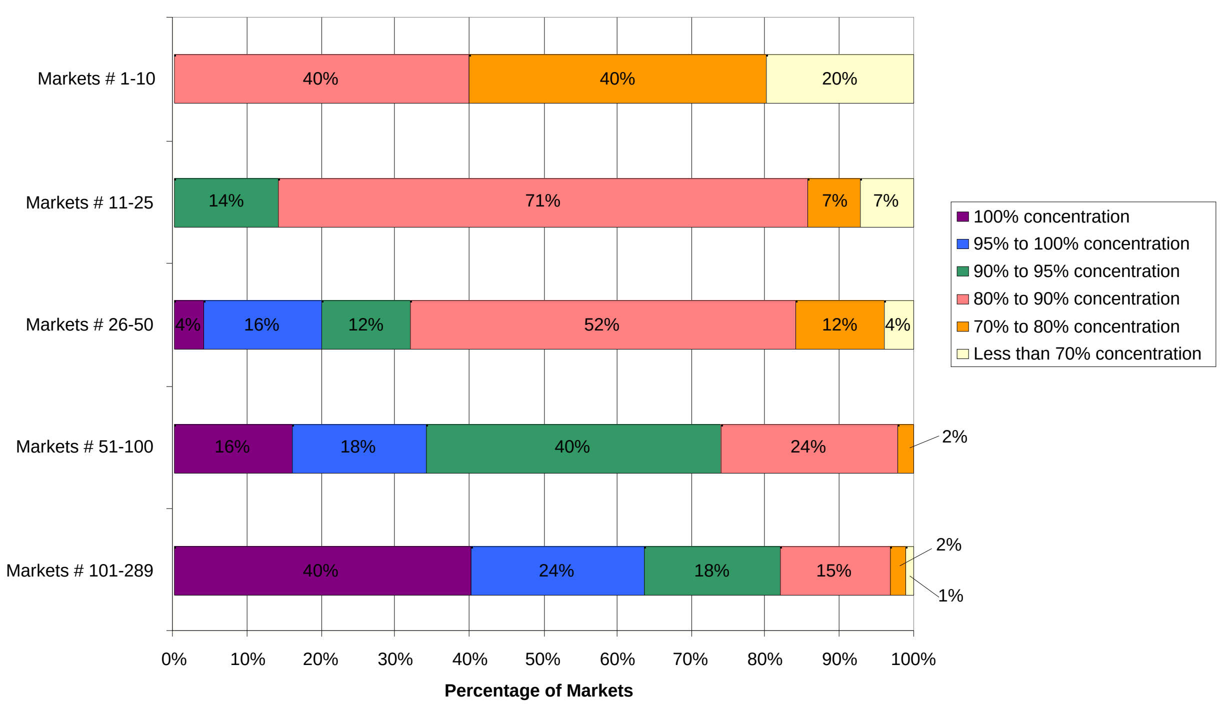
[2] Source data: Media Access Pro, BIA Financial Networks, data as of May 16, 2002. The statistic for listeners is known in the radio industry as "Metro Cume Listeners." Generally speaking, the BIA database has metro cume listener figures only for stations in the Top 289 Arbitron-rated markets. Many stations with religious formats do not appear to report listenership or revenue figures to BIA.

Radio at the Local Level

Even bleaker is the picture at the local level, where oligopolies control almost every geographic market. In smaller markets, consolidation is more extreme where the largest four firms in most small markets control 90 percent of market share or more. These companies are sometimes regional or national station groups and not locally owned.

This next chart[3] shows the extent of consolidation in these market size categories. Each market size category is broken down by the extent of consolidation in its markets.   Let's take an example. Among the markets ranked 101-289, 40 percent of the markets have four companies controlling 100 percent of the market share. 24 percent of the markets have four companies controlling 95 to 100 percent. 18 percent of the markets have four companies controlling 90 to 95 percent, and so on. Clearly consolidation is most extensive in the smallest markets.

Chart 3-5: Concentration by Market Size Category



[3] Source data: Media Access Pro, BIA Financial Networks, data as of May 16, 2002.

But the larger point is that consolidation is extensive in *all* sizes of local markets. In 98 percent of all local markets, the top four companies control a 70 percent market share or greater. Such large shares for the biggest companies indicate that very strong oligopolies exist locally.

Benefits From Economies of Scale Aren't for Everyone

What about those benefits of economies of scale? They've certainly borne out for some, but not for everyone. Only the few radio station owners with enough capital to buy additional stations have benefited from deregulation. Station owners have 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-air talent. In some cases, radio station groups have further reduced costs by eliminating the local component almost entirely. These group owners are benefiting from economies of scale, but what are the drawbacks? Local DJs and program directors are being 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. 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.[4]

Less Regulation Has Not Led to Greater Market Competition

The economic argument for the need for increased competition in the radio industry is 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

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[4] See the following articles for more information about voice-tracking, loss of localism, and regional-based programming: Anna Mathews, "Think Your DJ is Local? Think Again." *Wall Street Journal*, February 25, 2002. Randy Dotinga, "Good Morning [Your Town Here]," *Wired.com*, August 6, 2002. http://www.wired.com/news/business/0,1367,54037,00.html . Denny Lee, "Disc Jockeys Are Resisting Taking the Local Out of Local Radio," *New York Times*, August 25, 2002. Eric Boehlert, "Radio's Big Bully," *Salon.com*, April 30, 2001, http://www.salon.com/ent/feature/2001/04/30/clear_channel/index.html. Greg Kot, "Rocking Radio's World," *Chicago Tribune*, April 14, 2002. Jeff Leeds, "Clear Channel: An Empire Built on Deregulation," *Los Angeles Times*, February 25, 2002. Todd Spencer, "Radio Killed the Radio Star," *Salon.com*, October 1, 2002 http://www.salon.com/tech/feature/2002/10/01/nab/print.html Dale Smith, "Hello Honolulu and Amarillo, my Austin Secret is… I'm Your DJ," *Austin American-Statesman*, July 22, 1999.

10,000 stations nationwide, with no more than two in a single local market. But we found that local markets have consolidated to the point now that just four major radio groups control about 50 percent of the total listener audience and revenue. Clearly, deregulation has r*educed* competition within the radio industry.

More Diversity?

Finally, we raise questions about Steiner's theory that an owner would not want to compete against himself and would, therefore, operate stations with different programming. Our analysis of the data finds otherwise. Radio companies regularly operate two or more stations with the same format in the same geographic market. Using stations' self-reported formats, we found 561 instances of format redundancy nationwide – a parent company operating two or more stations in the same market, with the same format – involving 1,190 stations in Arbitron-rated markets, as of May 2002.[5] This amounts to massive missed opportunities for format variety, which might in turn enhance programming diversity.

Format Variety versus Format Diversity

In addition, we need to be clear about the difference between format variety and format diversity. Often, the radio industry measures diversity in programming by counting the number of formats available in each local market. In our report we show, in accordance with other studies, that format variety counted this way increased for a while after deregulation. But we also find that format variety has become stagnant over the last two years.[6]

Regardless, format variety is a flawed measure that doesn't capture the more relevant concept of programming diversity. A format is just a label – it doesn't necessarily describe the contents or imply that the contents are different than anything else. Increased format variety does not ensure increased programming diversity.

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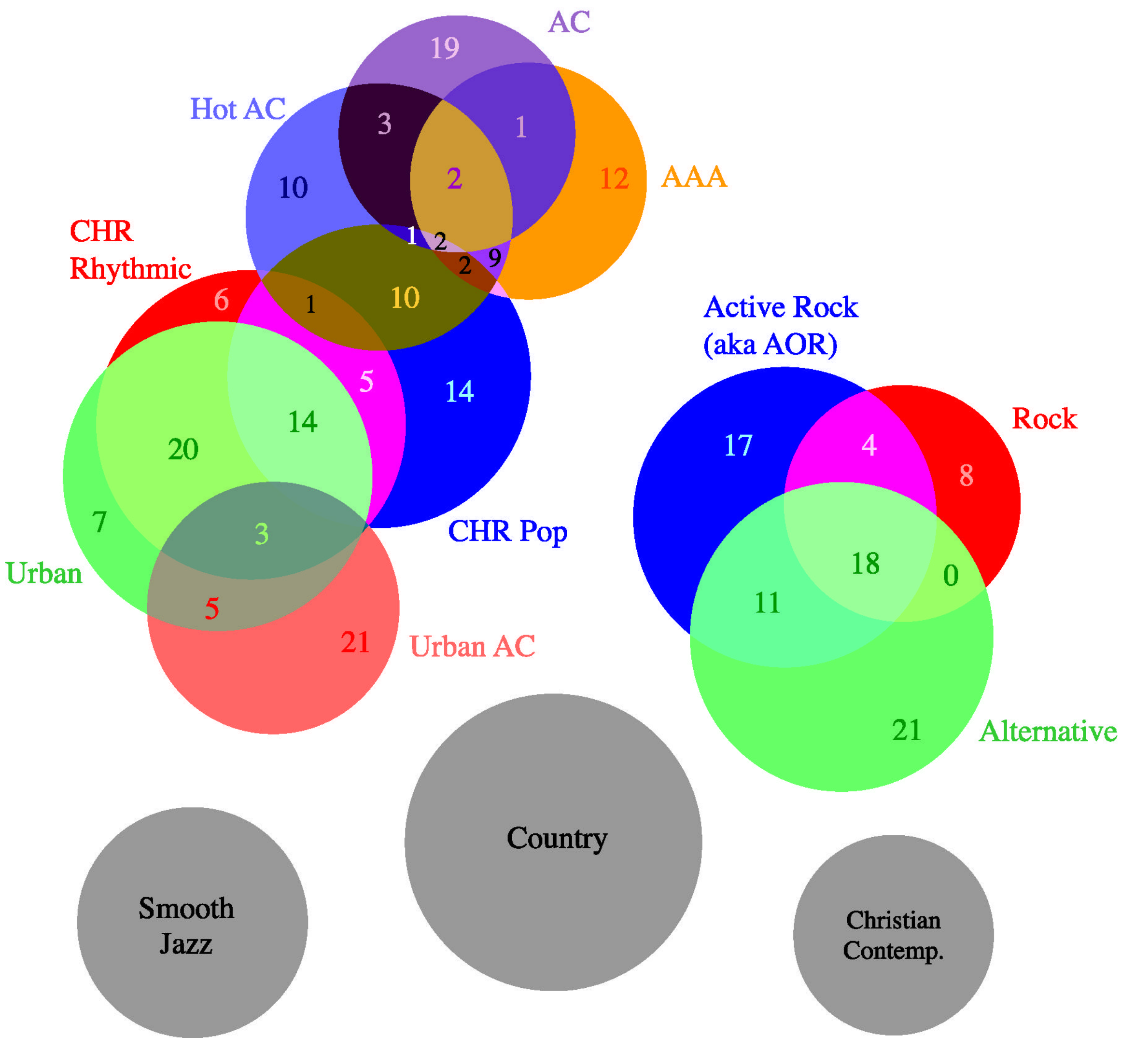
[5] Source data: Media Access Pro, BIA Financial Networks, data as of May 16, 2002.

[6] For an analysis of format variety 1996 – 2002 please see "Radio Deregulation: Has it Served Citizens and Musicians?" Chapter 3 pp. 44-48.

We tested this theory by analyzing data from charts in *Radio and Records* and Billboard's *Airplay Monitor*. Using radio playlist data, *Radio and Records* magazine computes weekly charts for 13 categories of music formats. We took these charts from one week in August 2002 – which show the top 30, 40, or 50 songs played on a given format – and calculated the number of overlapping songs between formats.

Diagram 4-1: Overlap of the 13 *Radio and Records* Formats[7]



[7] Notes: Data from the week ending August 2, 2002. The size of each circle in the diagram is proportional to the size of its corresponding format's chart (charts list 20, 30, 40 or 50 songs. Most of the charts have either 30 or 50 songs – only Christian Contemporary has 20 songs and only Hot AC has 40 songs. Not every overlap between two formats is demonstrated here, but almost all of the largest (five songs or more) overlaps are.

The charts revealed considerable format homogeneity – playlist overlap between supposedly distinct formats. Note that the formats are grouped in clusters. First, there's the pop cluster. It features seven overlapping formats. For example, Urban and CHR/Rhythmic overlap at a 76 percent level. 38 of their top 50 songs are the same. Then, there's the rock cluster. Rock, Alternative, and Album-Oriented Rock overlap considerably, between 36 percent and 58 percent depending on which pair among those three you consider. Only Country, Christian, and Smooth Jazz stand alone.

This high level of homogeneity shows that simply counting format names will overstate programming diversity. Adding a CHR/Rhythmic station to a market that already has an Urban station adds format variety. But it doesn't add any programming diversity. Thus, the radio industry has measured itself – and encouraged policy makers to measure it – with an inadequate statistic. If the FCC or the NAB are sincerely trying to measure "diversity" the quantity of formats is a flawed measure. That's like counting the number of jars on a shelf without taking the time to look inside.

Format Oligopolies

In addition, viewing each format as its own product market, every format category charted by *Radio and Records* is controlled by an oligopoly.

We studied format oligopolies by considering the radio stations nationwide within each format as a separate market. We simply tallied the listener share and revenue share within each format nationwide. As you can see from this chart,[8] every format is controlled by four companies with a 50 percent market share or greater.

[8] Source data: *Radio and Records* website, www.radioandrecords.com, and Media Access Pro, BIA Financial Networks, data as of May 16, 2002.

Table 3-10: Format Consolidation in the 13 *Radio and Records*-based Categories, by Listener Share

"R & R" Category	Listeners (in Millions)	Top 4 Firms, by Listeners	Top 4 Share
AC	38.5	Clear Channel, Viacom, Bonneville, Entercom	56.3%
CHR Pop	37.3	Clear Channel, Viacom, Entercom, Citadel	69.8%
Country	33.9	Clear Channel, Viacom, Citadel, Cox	52.6%
Rock	28.8	Clear Channel, Viacom, Citadel, ABC Radio	52.3%
Hot AC	19.3	Clear Channel, Viacom, ABC Radio, Entercom	57.9%
Alternative	17.8	Viacom, Clear Channel, Emmis, Citadel	60.5%
Urban	15.5	Radio One, Clear Channel, Inner City, Viacom	64.9%
CHR Rhythmic	14.4	Clear Channel, Viacom, Emmis, Cox	71.8%
Urban AC	13.1	Clear Channel, Radio One, Emmis, Cox	67.1%
Active Rock	9.2	Clear Channel, Viacom, Entercom, Greater Media	65.5%
Smooth Jazz	6.1	Clear Channel, Viacom, Radio One, ABC Radio	69.7%
AAA	3.6	Viacom, Clear Channel, Susquehanna, Entercom	53.8%
Christian Contemp.	2.7	Salem, Crista Ministries, Crawford, Clear Channel	68.9%

The format oligopolies reinforce the homogeneity of the product offered to listeners. They also result in a small number of gatekeepers deciding which musicians have their music played on the air. Importantly, these format oligopolies include many of the same companies. For instance, Clear Channel is one of the top four firms in each of these 13 formats. Viacom is one of the top four firms in 11 of these formats.

In fact, only 15 companies populate this chart of format oligopolies. These 15 gatekeepers determine to a very large extent what programming will reach the airwaves. And this just looks at music. Four companies own a 67 percent share of News format listeners nationwide. Consolidation has not resulted in a greater number of viewpoints represented on the air; instead, it has reduced the diversity of viewpoints considerably.

This final point may be the most critical one as we face an FCC that is poised to deregulate media even further in the next few months. It is time to put to bed the commonly held yet fundamentally flawed notion that consolidation promotes diversity as that radio station owners who own two stations within a marketplace will not be tempted to program both stations with similar formats.

In sum, consolidation has resulted in a small number of dominant companies, not competition; it has resulted in extensive local oligopolies, not localism; it has resulted in format homogeneity, not diversity in programming; and it has resulted in small number of gatekeepers for music and news, not a diversity of viewpoints. Clearly something has gone wrong. From the perspective of citizens and musicians, deregulation has failed to achieve its goals. Radio needs a new direction to restore its status as a live, local, diversely owned and diversely programmed medium.

Where Do We Go From Here?

Over the past year, we have heard concern about radio consolidation expressed by musicians, unions, record labels, consumer groups, religious groups, small broadcasters, current and former industry employees and elected officials. Concern about the loss of local voices. Concern about business practices like “pay for play” that appear to make eligibility for radio play contingent on an artist or label coming forward with huge “promotional” fees. Concern that the local stations that used to provide a platform for public service announcements now turn them away. Concern about the seemingly incessant advertising. Concern that small stations that have programmed an eclectic mix are changing formats or selling out because they can’t compete. Concern that elected officials have fewer outlets available to communicate directly with voters. Concern that talk radio stations won’t allow questions from callers who “sound old” because it will send the signal that their station is targeted for older consumers. Concern that parents can’t listen to the radio with their kids in the car because the content has become so overtly sexual. Concern that alternate models to commercial radio, like community-based Low Power FM, are scaled back because of the power of the broadcast lobby. And concern that musicians who speak publicly about troubling business practices will be in essence signing the death warrant for their careers.

In the end, we come back to this point: radio is a public resource. It belongs to the citizens of the United States. It is not simply a tool for corporations who are interested in maximizing profits.

We do not question that broadcast conglomerates spend enormous resources in attempts to draw the largest possible audience in the specific demographics that their stations are targeting. But is that really how we define serving the public interest? Huge ratings?

We need to return to the traditional priorities of localism, diversity and competition. Can local artists have a legitimate chance to get on commercial radio in their hometown? Is there not only diversity of format, but also diversity of ownership and, dare we say, diversity of programming targeting populations who may not fall into the most attractive marketing demographics? And is there a competitive environment that allows for the kinds of small, independent stations that tend to focus on local content and genres of music that are rarely seen from the conglomerates?

We have been joined by our colleagues in the music community to raise these questions. In particular, we are greatly appreciative of the support and cooperation of AFTRA – the union that represents on-air talent – the AFM, the Recording Academy, Just Plain Folks, the Artists Empowerment Coalition and the Recording Artists Coalition. On many of these issues, we even agree with the RIAA. But the onus of proof should not fall simply on the complainers. The broadcast industry pushed for these changes, and now they should be able to step forward to fully explain their impact on localism, competition and diversity. To this date, their participation in public discourse regarding the present and future of the radio industry has been sadly lacking.

In the end, it is clear that the broadcast conglomerates have one primary mission - maximizing shareholder value. They maximize value by utilizing the latest research techniques in an effort to build the largest possible audiences in their targeted demographics. Their mantra is that they give the people what they want. They play the hits.

But do they give the people what they want? According to *Duncan's Radio Report*, radio listenership is at a 27 year low.[9] And not one but two companies are now selling a satellite radio service based on the notion that consumers are so disenfranchised with radio today that they would pay $10 a month to subscribe to their service. And what if you don't fit into the demographics they pursue – what if you are old, or poor?

Has the restructuring of the radio industry been a success? This is the crux of the great disconnect. On one side, artists, record labels, consumer groups, religious organizations, community groups, unions, elected officials and music fans say "no". On the other, broadcasters say "yes." But you can't even say all broadcasters, since it seems that an increasing number of those left are expressing concern about their ability to compete in this consolidated marketplace.

Radio is too precious to let this happen. It is universal, and it is cheap. It is part of our culture. And communities are begging for the opportunity to better utilize it for non-commercial means. Thanks in great deal to the efforts of Chairman McCain, roughly 1000 rural community groups, schools and churches are launching Low Power Radio Stations in their neighborhoods or towns. The FCC was stripped of its ability to place these stations in urban areas pending further signal tests, and hundreds of urban groups are eagerly awaiting their shot.

Mr. Chairman, the problem is not radio, it's what has happened to radio. We can – we must – do better. I hope that today's hearing serves as an inspiration for citizens around the country to contact you, members of this committee and other members of Congress to inform them of how they would like to see radio better utilized in their community.

Thank you again for inviting me to testify today.

[9] "12+ Radio Listening At 27-Year Low" *Radio and Records* website, September 4, 2002.